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**MINUTES OF A REGULAR MEETING
OF THE GOVERNING BODY OF THE TOWN OF BERNALILLO
HELD AT THE TOWN HALL
June 28, 2010**

10 The Governing Body of the Town of Bernalillo met in a regular session within the law and rules
11 of the Town on June 28, 2010, at 6:30 P.M.

12 Upon Roll call the following members were found to be present:

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PRESENT:

Mayor Torres
Councilor Jaramillo
Councilor Praire
Councilor Montoya

ALSO PRESENT:

Margie Amiot Steve Amiot
Adrienne Hooper James Pike
Denise Silva Jim Hooper
William Sapien Henry Grant
George Perez Ted Montoya
Maria Rinaldi Rick Pola
Al Gabaldon Pamela Gabaldon
Ignacio Salazar Wayne Wormhood

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ABSENT:

Councilor Sisneros

Others Present Not Identified

APPROVAL OF AGENDA: 4a)

Councilor Prairie moved to approve the agenda as presented. The motion was seconded by Councilor Montoya and the motion carried unanimously.

PRESENTATIONS: 5a) Volunteer of the Month June 2010 SANDOVAL COUNTY VIETNAM MEMORIAL WALL COMMITTEE. Presenter Mayor Torres

Mayor Torres presented Sandoval County Vietnam Memorial Wall Committee the Volunteers of the Month for June 2010. The Sandoval County Vietnam Memorial Wall Committee does a wonderful job for recognizing Veterans for our freedoms. The Vietnam Wall presents a physical reminder of our freedom and is a value to our community.

PUBLIC HEARING: 5a) Discussion, Consideration and Action on Request for Variance on Flood Insurance Rate Map Hazard Designation change @ 436 Old HWY 44.

Presenter: Joey Gutierrez

Joey Gutierrez owner of 436 Old HWY 44 stated that in early March 2010 the contractor found out about FEMA 2 ft above natural soil. That would not conform to our existing home. We asked for variances were told we could not get one. Went ahead and built which was wrong and admits to that. The Building Inspector came out and RED TAGGED the project. After the fact I was told to apply for a variance. The new floor is 7 ¼ inches higher. The addition is about 50% done. Items are still exposed and cannot get proper inspections. Do have contractors. If allowed to get a variance will not hold the Town of Bernalillo responsible for damage due to a flood. If this has to be put in writing is willing to do so. Would not recommend to anyone in the Town of Bernalillo to build without the proper permits. Would like the Governing Body to consider the variance so proper permits can be pulled to complete the addition.

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48 Council Montoya asked if the construction has stopped after the property was red tagged.
49
50 Joey Gutierrez stated yes nothing has been done since the property was red tagged.
51
52 Councilor Jaramillo asked if he was told he could get a variance.
53
54 Joey Gutierrez stated that he was told no. After that fact he was told by two members of the
55 Planning and Zoning Committee to apply for a variance.
56
57 Councilor Jaramillo asked what type of variance are you asking for.
58
59 Joey Gutierrez stated that is would be a hardship variance because the height of the floors would
60 not meet the existing floors of the home.
61
62 Councilor Montoya asked did your contractor not know that permits would be required prior to
63 construction.
64
65 Joey Gutierrez stated his contractor did but he did not continue any construction after we were
66 told about the 2 ft. I continued to build.
67
68 Councilor Jaramillo asked was there any electrical or plumbing.
69
70 Joey Gutierrez stated that yes there was both but nothing has been connected.
71
72 Councilor Montoya stated that on April 8, 2010 there is a copy of a letter coming from Wayne
73 Wormhood. When was the first date you made contact with the Town.
74
75 Joey Gutierrez stated that it was around mid March.
76
77 Councilor Prairie stated you knowingly built without a permit.
78
79 Joey Gutierrez stated yes.
80
81 Councilor Prairie asked George Perez, Town Attorney what is the liability to the Town.
82
83 In Ordinance # 247 that does establish a variance appeal. Since you are the body that made the
84 Ordinance you would be the Body to hear the appeal. The Ordinance on page 15 gives you the
85 outline of variances. Variance shall only be issued upon a determination that failure to grant the
86 variance would result in exceptional hardship to the applicant.
87
88 Wayne Wormhood, Floodplain Manager stated that if there was not a height established the
89 regulation is 2ft. Wayne Wormhood met with the Mr. Joey Gutierrez and Mr. Randy Torres at

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June 28, 2010

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90 the site to talk about the 2ft. His advice was to speak to a licensed engineer. But, this was not
91 something done. He did indicate that if the building did proceed there would be violations. Mr.
92 Torres did speak to Wayne Wormhood about the variance. The State Flood Plain Manager
93 stated that this was not something he would advise as a hardship variance. Yes, it is a hardship
94 variance now because of the money put into the home. At this point in time things have changed
95 due to that. I cannot change the Flood Insurance charge that will be given because of the new
96 construction. They view it as an increased risk.

97

98 Mayor Torres asked even if he had a variance it would not change the flood insurance excessive
99 higher rate.

100

101 Wayne Wormhood stated yes. The building permit process there is some things that I cannot
102 verify such as the foundation.

103

104 Councilor Montoya stated the Governing Body has never has seen this before. You stated that
105 there were several addresses that have dealt with similar situations have they been given
106 variances.

107

108 Wayne Wormhood stated they complied with the 2ft elevation.

109

110 Councilor Montoya asked what the consequences you stated would happen are.

111

112 Wayne Wormhood stated higher insurance premium and obtaining building permits. FEMA
113 suggest communities not to establish a pattern of granting variances.

114

115 Councilor Prairie asked if FEMA put out a limit of 2ft is that set in stone.

116

117 Wayne Wormhood stated the community can come back and establish a height in the flood zone
118 areas.

119

120 Mayor Torres asked what the scientific basis for the 2ft is.

121

122 Wayne Wormhood stated it is just in the FEMA regulations for A zones.

123

124 Mayor Torres asked you stated in the May 12th letter the cost of insurance would raise. Isn't that
125 telling us that we do not have the authority.

126

127 Wayne Wormhood stated that is the issue of insurance.

128

129 Mayor Torres asked Joey Gutierrez are you still interested in obtaining a variance from this body
130 knowing the information on the insurance.

131

132 Joey Gutierrez stated yes.

133
134 Mayor Torres stated would it not be easier for Mr. Gutierrez to get a LOMAR on his property.
135

136 Wayne Wormhood stated that the burden of proof is on the home owner. I thought the easiest
137 way was to get an engineer to look at the property.
138

139 Joey Gutierrez stated he did try to talk to several engineers but not one would look at the
140 property due to the fact that of dealing with FEMA.
141

142 Mr. Ted Montoya of Coronado Water and Soil Conservation stated that the cost for an engineer
143 to do that would be in the range of \$35,000 to \$40,000 and it would still have to be approved by
144 FEMA.
145

146 Kelly Moe, Planning and Zoning Director stated that Wayne Wormhood covered the basis but
147 there was one question that arose during the testimony. Various questions were asked of Mr.
148 Joey Gutierrez if he was allowed to request a variance early on. In Early February Mr. Randy
149 Torres, agent for Mr. Joey Gutierrez was told in the beginning that the property would not be
150 allowed for a variance prior to the addition being constructed. In the Ordinance the
151 prerequisites which George Perez, Town Attorney stated in Article 4 Section D Subsection 10
152 page 15 but on page 14 Article 4 Section D Subsection 2 it states that a variance can be heard
153 only when it is alleged that there is an error in any requirements, decision or determination.
154 Surely back then before the building was constructed which created the problem and created the
155 hardship, at that point there was not a question in the error decision or determination that Mr.
156 Wormhood had made. So at that time it did not meet the requirements for a variance.
157

158 Mayor Torres asked so you are saying an appeal and a variance are the same thing.
159

160 Kelly Moe stated no.
161

162 Mayor Torres asked again are you suggesting an Appeal and Variance are the same. Mayor
163 Torres stated as he read the Ordinance it states "The Appeal Board shall hear and render
164 judgment on an appeal only when it is alleged there is an error in any requirement".
165

166 Kelly Moe stated he is not going to characterize the language in the Ordinance but to him it
167 applies to this section.
168

169 Mayor Torres stated as he reads the Ordinance an appeal and a variance are two separate items.
170

171 Kelly Moe stated he just wanted to clarify that point initially before the building was
172 constructed.
173

174 Mr. Steve Amiot asked what was the purpose of the variance is it for a building permit or
175 relevant to the Flood Zone.

176
177 Wayne Wormhood stated the only item before the governing body is the variance of the Flood
178 Zone.

179
180 Councilor Prairie stated that the 2ft rule has caused a lot of homeowners not to build an addition
181 due to the FEMA regulations. This is something we should look at.

182
183 Mayor Torres asked George Perez, Town Attorney if we allow the variance does it create a
184 precedence of others coming forward.

185
186 George Perez stated it is a case by case basis stated on the circumstance. It is not like a court
187 case. You can rule on each one on a case by case basis.

188
189 Mayor Torres asked Mr. Gutierrez has stated he was willing to release the Town and not hold the
190 Town liable should that be part of the action on the approval of the variance.

191
192 George Perez stated yes it should be part of the approval.

193
194 Councilor Prairie asked if the property was sold in 10 years what liability would the Town have.

195
196 George Perez stated if the FEMA map does not change in 10 years he does not see a title
197 company or a mortgage lender loaning money on that home.

198
199 Mayor Torres asked in the ordinance it states that the variance should not increase flood height
200 additional threats to public safety.

201
202 Wayne Wormhood stated he does not see any increased flood height for the property.

203
204 Mayor Torres asked if Staff could move forward on the 2ft requirement as Councilor Prairie
205 suggested. Knowing that FEMA never came on site to inspect the Town, the 2ft rule may or
206 may not fit our community.

207
208 Mayor Torres asked for a motion to approve the Variance on Flood Insurance Rate Map Hazard
209 Designation for Joey Gutierrez owner of 436 Old HWY 44.

210
211 Councilor Jaramillo moved to approve the Variance on Flood Insurance Rate Map Hazard
212 Designation for Joey Gutierrez owner of 436 Old HWY 44. The motion was seconded by
213 Councilor Prairie.

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215 Roll Call Vote

216 Councilor Jaramillo Yea

217 Councilor Montoya Yea

218 Councilor Prairie Yea

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APPROVAL OF MINUTES 7a) Regular Meeting of June 14, 2010

Councilor Prairie moved to approve the minutes of June 14, 2010 as presented. The motion was seconded by Councilor Jaramillo and the motion carried unanimously.

PERSONNEL: 8a) Wine Festival Coordinator (9). Presenter Ida Fierro

Ida Fierro stated that it was her recommendation to hire Christine Perea as Wine Festival Coordinator for the Town of Bernalillo Wine Festival.

Councilor Montoya moved to approve the hiring of Christina Perea as Wine Festival Coordinator for the Town of Bernalillo Wine Festival. The motion was seconded by Councilor Jaramillo and the motion carried unanimously.

NEW BUSINESS: 9a) Discussion, Consideration and Action on Award of Lodgers Tax July 1, 2010 Funding Cycle. Presenter: Maria Rinaldi

In accordance with New Mexico State Statute and Town Ordinance, the following recommendations for the expenditure of Lodgers Tax fund for the purpose of promoting and tourism activities in Bernalillo for July 2010. Lodgers Tax Funding Recommendations for July 1, 2010 Cycle \$100,000.00 advertised as available.

Funding Cycle July 1, 2010 Advertising/Promotion

- The Town of Bernalillo Fiesta Council for the promotion, sanitation, and security for the annual Fiestas August 8 & 9, 2010 in addition to the removal of and installation of special event electrical services; \$29,000.00
- The Town of Bernalillo for the promotion of and sanitation service related to the Rail Runner Express services during the 23rd^d Annual New Mexico Wine Festival at Bernalillo September 4-6, 2010 \$35,000.00
- Sandoval County Historical Society for the promotion of the advertising and promotion of the Annual Sandoval County Sheriff's Posse Rodeo and Parade to be held August 7 & 8, 2010 \$12,000
- The Friends of Coronado for the promotion of thirty eight specials events and lectures to be held at Coronado State Monument in Bernalillo July 1, 2010-June 30, 2011. Friends of Coronado is a non-profit organization that receives no funding through State Monuments.9, \$11,500.00
- The Sandoval County Historical Society for the promotion of the public activities, the "Ed Delavy House", a facility of the Historical Society, and the historical collection housed in the facility \$11,000.00

Total Recommending Award This Funding Cycle: \$99,000.00

Mayor Torres entertained a motion.

Councilor Prairie made a motion to approve July 2010 Lodger Tax fund award recommendation

262 of \$99,000.00. The motion was seconded by Councilor Montoya and carried unanimously.

263

264 **FINANCIAL SECTION:10a) Approval of Account Payable List.**

265 Mayor Torres asked for a motion to approve the accounts payable voucher list in the amount of
266 \$270,176.95.

267

268 Councilor Jaramillo made a motion to approve the accounts payable voucher list in the amount
269 of \$270,176.95. The motion was seconded by Councilor Montoya and the motion carried
270 unanimously.

271

272 **MISCELLANEOUS SECTION:11a) Update on No Burn Ordinance. Presenter Fire**
273 **Chief Michael Carroll**

274 Michael Carroll Fire Chief reminded everyone about the dry conditions and stressed fire
275 safety.

276 **MISCELLANEOUS SECTION:11b) Public Comment**

277 Pam Gabaldon of Cottonwood Village complained about the trash in the area and the upkeep of
278 the public areas. Maria Rinaldi will follow up.

279

280 There being no further business, the meeting was adjourned at 7:55P.M.

281

282 Done this 28th day of June 2010.

283

284 ATTEST:

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287 _____
Ida Fierro, Town Clerk

288 (seal)

Jack S. Torres, Mayor