PETITIONS FROM THE FLOOR 10 28 26

PROBLEMS WITH CITY APPEALS ORDINANCE

I have pointed out to the Governing Body more than once the problems with the appeals ordinance. (**14-3-17 D 6 Conformity of Appeal)** I heard that the GB does not think it happens frequently enough to correct these due process problems. However just a few months ago, the case involving the Zorro Ranch property brought the problem to light again—The city land use department with the concurrence of the city attorney recommended that Homewise lacked standing. There was no process for Homewise to be notified or respond. I have suggested making it a limited public hearing with only the city and the appellant as party and limited to the reasons regarding dismissal with the same type of notice/opportunity to respond as for a full public hearing.

A few weeks ago in the appeal from the HDRB decision regarding 515 Paseo de Peralta the 35 day rule **(14-3-17 C 4b Time to File**), part of the appeals ordinance that creates due process problems, reared its ugly head. The appellant has in total 65 days to appeal the HDRB's decision (the decision becomes final after 35 days if there are no findings of fact or conclusions of law adopted and then the appellant has 15 days to file an appeal). The problem is that the city has unlimited time until the actual appeal to adopt FOF and COL and the appellant is prohibited from amending its appeal to reflect these FOF/COL. In the recent case, the city created these FOF and COL One Week before the appeal or over 110 days. It is my experience that the city often makes up the FOF and COL that are not found in the record. In the case of 515 Paseo de Peralta, for example, I listened to the May 2026 meeting and there was no discussion of why the few architectural changes supported a finding of hardship. I know Ruybalid told you all that he took notes and listened to YouTube but you all did not…There was no transcript. And I have pointed out before, that your meetings are on Zoom which allows for recording and transcription which would be a much better way of making a record that is available to the GB and the public. (Yes, there needs to be editing of the transcription but it is a lot easier than listening to Youtube and relying the assistant city attorney's word as to what was said in that meeting). My suggestion has been to have the board have a special meeting as soon as possible to comply with the Open Meetings Act after the 35th day to adopt FOF and COL and that no decision is final until that is done. In the alternative, I would now suggest that the city is limited to providing a transcript of the hearing and if applicable the staff recommendations and are prohibited from making late self-serving FOF and COL.

Also I want to point out in terms of your decision at 515 Paseo de Peralta that Ruybalid violated standard rules of statutory interpretation as did your LUD staff. Only ambiguous terms are to be interpreted—clearly understood terms are to be applied as written. The word "addition" is clearly defined in English as "**Physical Additions:** A new room, wing, or structure built onto an existing building.") It is not ambiguous and is not limited to the connection to the actual addition as interpreted by your staff. It meant the whole addition needed to be 6 inches lower than the

significant structure—but I guess if you last name is Feghli the staff will bend over backwards to allow an addition that overwhelms a significant structure.

SECOND PROBLEM WITH APPEALS ORDINANCE --APPEAL FROM ISSUANCE OF A LAND USE PERMIT 14-3-17 A c and 14-3-17C 1c

One has 15 days from the issuance of a building permit to appeal to the land use director. The problem is one of Notice. The city does not inform the neighbors that a permit has been issued. I know from a permit I recently received that it was issued 7 days before I picked it up. If the applicant/owner is honest, the permit notice is displayed within 24 hours of the owner picking up the permit. All too often the owner does not post the permit until the construction begins. Even if it is posted in a timely way, the neighbor cannot go to city hall and view the permit application. The neighbor is required to make an IPRA request which you should all know by now generally takes more than 15 days so that the appeal period has expired even before the neighbor knows a permit is issued or what it contains so it can be appealed based on the application.

SUGGESTION: City has system to notify neighbors when a permit is issued and include the full permit application or period for appeal begins when work is begun and city makes permit application available for viewing at the permit office immediately, that is do away with IPRA request—the ability of someone to view a permit used to happen by request at the permit office. at used to happen

ANOTHER DUE PROCESS PROBLEM RE MINIMUM NUMBER OF VOTES AT HDRB MEETINGS: City of Santa Fe Rules and Procedures for City Committees Article 11B. C. A majority Of the members shall constitute a quorum. Each member, excluding the chairman, shall have one vote. The chairman may vote only in the case of a tie or when his or her vote will provide the necessary number of votes required by law for taking action on an issue before the committee. When a quorum is present at any meeting, the vote of a majority of members present shall decide any questions brought before such a meeting, except when extraordinary majorities are required as determined by Robert's Rules of Order

Frank Ruybalid has consistently misinterpreted the rules in Article 11that says a "majority of the members present" must vote for or against a motion in HDRB proceedings. That means that when there is a quorum of 4 out of 7 members instead of needing a 3-0 vote; he insists a vote of 2 out of 4 members is proper.. At first Ruybalid argued it meant "voting members." After I repeatedly pointed out that inserting a word into the ordinance was a clear violation of standards of statutory interpretation, Ruybalid came up with a 60 year old school board case in southern NM involving two politically appointed, at-large members who could choose to attend or not and vote or not—it clearly was not on point. Now Ruybalid has decided that the prohibition in the ordinance that prevents the chair (who counts for the quorum) from voting except in case of a tie or when administratively needed) is an abstention. This interpretation to allow a 2-1 vote when

4 members are present flies in the face of Roberts Rules of Order and the clear wording of the ordinance.

- **Abstention:** A conscious, voluntary choice by a qualified voter present at a meeting to decline casting a "yes" or "no" vote on a specific motion. [1, 2]
- **Prohibition:** An absolute rule or structural restriction that strips the chair of voting privileges on that body entirely (except perhaps to break a tie, depending on specific organizational bylaws). [1, 2]

Clearly a prohibition is not an absention according to accepted legal definitions.

In the usual situation, where the rules require either a "majority vote" or a "two-thirds vote," abstentions have absolutely no effect on the outcome of the vote since what is required is either a majority or two thirds of the votes cast. On the other hand, *if* the rules explicitly require a majority or two thirds *of the members present*, or a majority or two thirds *of the entire membership*, an abstention will have the same effect as a "no" vote. Even in such a case, however, an abstention is not a vote and is not counted as a vote. [RONR (12th ed.) 44:1, 44:3, 44:9(a); see also p. 66 of *RONR In Brief*.] **The record on these 2-1 votes does not show the chair's alleged abstention as being a no vote**.

I am concerned about Ruybalid's lack of competency if not ethics and what it does to all the cases involving a 2-1 vote when there is a quorum of 4 at HDRB meetings.