

**COUNCIL OF THE VILLAGE OF BOSQUE FARMS, NM
MINUTES OF THE SPECIAL MEETING/WORKSHOP
MARCH 5, 2015**

1. CALL TO ORDER

Mayor Robert G. Knowlton called the meeting to order at 6:00 p.m.

2. ROLL CALL

Present were Mayor Bob Knowlton, Councilors Bill Kennedy, Russ Walkup, Wayne Ake and Dolly Wallace, Clerk/Administrator Gayle Jones, Treasurer Debra Kelly, Planning and Zoning Officer Loretta Hatch and Attorney Mark Jarmie.

3. RECONSIDERATION OF REQUEST FOR APPEAL OF BUSINESS REGISTRATION/BUSINESS LICENSE REVOCATION BY RIGOBERTO ANTONIO MEZA OWNER/OPERATOR BOSQUE FLEA MARKET BUSINESS LICENSE #0511, LOCATED AT 1775 BOSQUE FARMS BLVD., BOSQUE FARMS, NM 87068

Attorney Jarmie stated that it was not certain that the original hearing notice was received by Mr. Meza.

It was stated that an interpreter was present for Mr. Meza.

Mayor Knowlton stated that this would be a formal hearing and a decision would be made based on findings of fact.

Planning and Zoning Officer Loretta Hatch stated that after being notified on January 7, 2015, Mr. Meza failed to remove the structure in violation at 1775 Bosque Farms Blvd. Because the building wasn't removed within the 30 days given she notified Mr. Meza of the revocation in writing on February 9, 2015. Mr. Meza submitted a letter of appeal on February 17, 2015 regarding the revocation of his business license and the appeal hearing was set for February 23, 2015. Ms. Hatch stated that a notice of the appeal hearing was mailed on February 18, 2015.

On February 23, 2015 the appeal hearing was held. Ms. Hatch stated that she didn't object to Mr. Meza retaining his business license as long as he came back to the Planning and Zoning Commission to obtain a conditional use permit. She stated that neither Mr. Meza nor Mr. Carbajal appeared at the hearing, so council upheld the revocation at that hearing.

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Ms. Hatch called Mr. Meza the next day to find out why he wasn't in attendance at the hearing. Mr. Meza and Mr. Carbajal came in to the Village office to speak with Ms. Hatch and Mr. Meza stated that he never received the notice of hearing and there may have been a language barrier that has created a misunderstanding and asked if he could be given reconsideration.

After discussion with Attorney Jarmie, this reconsideration was added to this agenda. A notice was mailed to both Mr. Meza and Mr. Carbajal, certified return receipt requested. Ms. Hatch received both receipts and Mr. Meza and Mr. Carbajal were in attendance.

Mayor Knowlton asked Ms. Hatch what her recommendation would be and she suggested allowing Mr. Meza to keep his business license but obtain a conditional use permit.

Formal Testimony

Mr. Rigoberto Antonio Meza who resides at 715 ½ Towner Avenue NE, Albuquerque, NM was sworn in by Planning and Zoning Officer Loretta Hatch. (Mr. Meza's sister-in-law corrected him and stated that his address was NW, not NE.)

Mr. Meza: "The first paper that he received came to the address that he lived before. He got the letter after the date was set to come before you. He came as soon as he could to talk to Loretta. Loretta let him know that the issue with it was just the building and stuff. He took it down as soon as he could. She agreed to send him a letter to come before you. He didn't see it. Loretta called him the day after, on Tuesday, and Tuesday is when Loretta let him know that his license was suspended. Then he came to talk to Loretta. He doesn't think it is fair for you to cancel his license; he is willing to pay a sanction or fine. He knows he is guilty. He feels guilty for not having enough information of your requirements. He has been here for five years and has never had a problem and is asking you for your reconsideration, please. He's going to be up to date with what he needs to have, to have more information on what he needs. That is it."

Mayor Knowlton: "Are you aware of the recommendation that Ms. Hatch has made or what she is recommending to the Governing Body that we reinstate the license with the condition that you go before the Planning and Zoning Commission to get a condition use?"

Mr. Meza: "Yes".

Mayor Knowlton: "Are there were any questions from the Governing Body?"

Councilor Walkup: "I just need a little bit of clarification. I apologize; I was not at the other meeting. I assume that the initial issue was the building and the building has been taken down?"

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Mayor Knowlton: "Yes."

Mr. Meza: "Yes."

Councilor Walkup: "I guess I am not understanding what the issue is at this point, if he has come into compliance with what was originally stated, and that was the building."

Mayor Knowlton: "So if I have this correct, he was supposed to come before this Governing Body in order to appeal the revocation of the license and didn't come before this Governing Body. He said he didn't get the notification so he is back here for the revocation of his license to be reinstated, because it was rescinded by Ms. Hatch."

Councilor Walkup: "Okay."

Mayor Knowlton: "Any other questions?"

Councilor Wallace: "The question I have is why did you ignore the first letter that was sent to you to give you the 30 days?"

Mr. Meza: "He received it late."

Councilor Wallace: "No, I'm not talking about coming to the meeting; I'm talking about the very first letter."

Mr. Meza: "He received it late."

Councilor Wallace: "When did he receive it?"

Mr. Meza: "On Friday before he came to talk to Loretta."

Councilor Wallace: "How would he know to come and talk to Loretta if he had not received the letter?"

Mr. Meza: "The problem was his sister-in-law received the letter on Wednesday but she didn't tell him until Friday."

Councilor Wallace: "Did he take that first letter and show it to Mr. Carbajal?"

Mr. Meza: "He only called him."

Councilor Wallace: "Okay so Mr. Carbajal was aware he had the letter. Did he tell him what the substance of the letter was?"

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Mr. Meza: "He called Mr. Carbajal on Saturday morning because on the door of the flea market there was also a letter."

Councilor Wallace: "So that was the first time that Mr. Carbajal had been contacted at all?"

Mr. Meza: "Yes."

Councilor Wallace: "Okay, thank you."

Mayor Knowlton: "Any other questions?"

Councilor Ake: "I do, Mayor. At the last meeting we had, this council voted not to reinstate this license. I don't know; this is probably a question for Mr. Jarmie; once the council has taken an action can we rescind it, when he has demonstrated tonight that these letters are going to the right address?"

Attorney Jarmie: "Mr. Mayor and Councilor Ake. You have the authority as a council to reconsider all of your decisions, pursuant to meetings that have been duly called. Whether you choose to reconsider your decision is whether you choose to believe his testimony that he didn't receive these and then weigh that into your decision as to whether or not you ought to grant the reconsidered request, that is your own decision; you're a finder of fact, and that fact may or may not be material to your decision as to ultimately what you decide to do. So I guess what I am telling you is, you may find his testimony that he didn't receive this to be credible or not but that determination doesn't necessarily compel you to vote one way or another as to reconsider your previous decision."

Mr. Meza: "He wants you to know that his sister-in-law received the first letter, that's who received the first letter."

Councilor Ake: "I guess the reason I am asking, Mr. Jarmie, is because there was a list of six or eight other violations that the council discussed. So I guess I am looking for guidance as to what we are doing tonight, how that affects the things that the council wanted corrected."

Attorney Jarmie: "Mr. Mayor and Councilor Ake, I appreciate the efforts of the council at the previous meeting. I was informed that I didn't have to attend, that's why I didn't. I apologize to you."

Councilor Ake: "Don't feel bad. Nobody wanted to come here."

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Attorney Jarmie: "If you decide to continue to revoke the license, that's your decision. But if your decision is instead to reinstate the license on the condition that we return it to Planning and Zoning then I think all the issues that you apparently discussed at your previous council meeting can then be addressed by Planning and Zoning and is probably a better form for addressing those particular considerations and they can bring it to you if there are additional problems. But he won't have the ability to operate a flea market until he goes before Planning and Zoning and gets his conditional use permit."

Mayor Knowlton: "Is that clear enough?"

Councilor Ake: "Well, no it's not clear. I guess the question I want to ask now, Mr. Jarmie, is the council after this item on the agenda is considering an ordinance is to suspend all licensing for 90 days with a 60 day possible tail on that, if needed, how would that affect Mr. Carbajal and Mr. Meza?"

Attorney Jarmie: "Mr. Mayor and Councilor Ake. That is an excellent question. My opinion would be that his license is currently revoked and unless you reinstate that license then he would not have the ability to operate during the time of the moratorium because it would be applying for a new license, however; if you reinstate his business license on the condition that he goes back to Planning and Zoning, then he would still have an operating business license; he just couldn't do anything with that business license until Planning and Zoning says that he has complied with the conditions that were put forward."

Councilor Ake: "If this council decided to uphold the suspension I assume that Mr. Carbajal, who is still the owner of the property and the flea market and such, since he's been in what business that long, would his license be able to be valid? I mean we have a crazy thing here, we have kind of a lease and a, I don't know."

Attorney Jarmie: "I don't know what kind of a license he has, sorry, Mr. Mayor and Councilor Ake."

Councilor Ake: "I see Commissioner Eastman is saying that he doesn't have one."

Attorney Jarmie: "So in order for Mr. Meza to operate, should that be the will of this Governing Body, then it would have to do two things: First, it would have to reconsider the vote taken a couple of weeks ago and reinstate the business license. You are doing that before the moratorium is considered, so you are fine with that. Once you grant that you can do it on the condition that it goes back in front of Planning and Zoning, then Planning and Zoning can consider the myriad of issues they need to consider before a condition use is granted."

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Councilor Ake: “So would Planning and Zoning consider these questions and corrections that council had voted on the other night? I believe that was actually in the motion.”

Attorney Jarmie: “I presume so, yes.”

Councilor Ake: “It would have to go to them and for them to enforce those rather than the council.”

Attorney Jarmie: “If that is the will of the council, of course you are the ultimate decision makers, but you can choose to keep the business license operating. My recommendation to you would be to have Planning and Zoning consider that first, and then you guys can continue to serve as the appellate portion of the Governing Body, so he would have the normal appellate rights from Planning and Zoning, but he would have to comply with what Planning and Zoning does before he got his permit.”

Mayor Knowlton: “Did Mr. Meza understand the dialogue we just had?”

Mr. Meza: “Yes he did, because it is more or less the same thing that I told him.”

Mr. Jarmie: “I apologize to council. I just disregarded my own advice.”

Wayne. “So I am still not clear if we need to abandon our last decision or do we make a new decision?”

Mayor Knowlton: “Based on a finding fact, if we thought that he did get adequate notice previously and therefore the previous decision of the Governing Body would stand, how do we form that?”

Mr. Jarmie: “I think you can do it in as simple a motion that you just stated. The motion would be framed something like ‘I move that the Governing Body find that Mr. Meza received adequate notice and that the previous decision of the Governing Body be affirmed.’”

Mayor Knowlton: “That’s not my recommendation. I just wanted to be sure that I understood what our options are.”

Mr. Jarmie: “Sure. The other option would be the factual findings would be the reconsideration of the Governing Body’s previous ruling would be the best interest of the Village and the applicant and then to reinstate the business license on the condition that he return to the Planning and Zoning such hearings and permitting’s as they require .”

Mayor Knowlton: ‘Any further questions or concerns?’

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Councilor Ake: "I don't think we can have two decisions, if we want to do this. In other words, we haven't had a hearing tonight, like we did the other night as far as I'm concerned because we have a list of things I made the other night as Chair that needed to be corrected."

Mrs. Carbajal: "What other violations are going on at the flea market that we don't know about as the owners of that property?"

Councilor Ake: "I do think that Mrs. Hatch's letter explains what the violations were."

Mrs. Carbajal: "The only thing we heard about was the building, which he took down."

Councilor Ake: "Right, but there are other violations down there that we would recommend corrected."

Mrs. Carbajal: "Like what?"

Councilor Ake: "I'm going to tell you, Mrs. Carbajal, if you will let me. The Health Department; they are selling food down there without a license."

Mrs. Carbajal: "I heard that they have a license."

Mayor Knowlton interrupted: "We are getting into a dialogue that we probably shouldn't be doing without being sworn in."

Mr. Jarmie: "I think that is right Mr. Mayor. I think the question before the council is a simple one right now. You can either affirm your previous action or you can reconsider your previous action and then remand things back to Planning and Zoning for its consideration; where all the concerns that the council brought forth at the last meeting and any others that need to be addressed by Planning and Zoning can be fully addressed at a hearing there. I don't think this is the right time for that hearing."

Mayor Knowlton: "So I would ask at this juncture do we have anybody else who we need to swear in and be another potential witness in this case? I have Mayor Eastman."

Ms. Hatch suggested swearing in everybody at once.

Mayor Knowlton: "Whoever wants to address the Governing Body, come up and get sworn in."

Ms. Hatch swore in Beatrice Carbajal, Phillip Carbajal and Planning and Zoning Commissioner Sharon Eastman.

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Ms. Eastman: "I don't actually have testimony to give. I have a question to ask. If the business license is reinstated tonight with the instruction that Mr. Meza come before Planning and Zoning and Planning and Zoning should deny the conditional use permit, then what happens to the business license?"

Mr. Jarmie: "Mr. Mayor, Madam Mayor; what would happen to it is that he would have a license which he could do nothing. He has a license to operate a business but because he can't meet the conditions imposed on him, then he could not operate his business."

Ms. Eastman: "And then, an amendment to that question is, are we not putting the cart before the horse? Should he not be instructed to come before Planning and Zoning and either get or not get a conditional use permit and then get his business license?"

Mr. Jarmie: "Certainly that is the traditional way of doing things."

Mayor Knowlton: "I think part of the issue is that there should have been a conditional use and there hasn't been for all these years so that is why we are all confused."

Ms. Eastman: "And we have no idea how long that has been."

Mr. Jarmie: "I guess the only reason we are going through this convoluted process is because you are considering a three (3) month moratorium and if he didn't have a business license and you granted him his condition, then he couldn't operate his business until that term of moratorium was up."

Ms. Eastman: "Since this discussion started before the passage of the ordinance that may or may not be passed tonight would this not be exempt from that ordinance because this process has already started? I don't know."

Mr. Jarmie: "My opinion would be that even though the process has started he currently has no license right now and so if he was to come before you and comply with all the conditions that you set upon him, he would have to come before the council and say "I have complied" and "May I have a license please?" and the council would say "Love to help you out but we have a moratorium going on, because he doesn't have a license right now." By doing it this way the council can grant him the privilege of doing business only on the condition that he comply with your conditional use permit."

Ms. Eastman: "Would he continue to do business starting this Saturday or after he has seen Planning and Zoning?"

Mr. Jamie: "Only after he goes to Planning and Zoning."

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Mrs. Carbajal: "I have known Mr. Meza for the past 5 or 6 years. If he said he didn't get the letter, he didn't get the letter. We have never, ever had pause to think Mr. Meza has ever come up with any stories to make us think he's not telling truth. Mr. Meza's a hardworking man. He runs the flea market and he goes to another job to take care of his family. This is a hardship on him. Granted, he did not do what was supposed to be done from the very beginning, but he has come back, he has apologized, he's falling on the mercy of the court; my goodness, have some consideration for this man."

Mr. Carbajal: "We have had the flea market for over 32 years. It has been a well-run flea market. It is only being run on Saturday and Sundays. After the flea market is over we clean the whole property and it is very, very clean. We run a clean flea market. Now, Mr. Ake said a while ago that there are other violations. I don't know, because I haven't heard about the violations. Can you explain to me the other violations? Why didn't somebody approach us and say "Hey, you are in violation of this." No, never been notified of other violations."

Councilor Ake: "Do you want me to explain the ones that came out, or..."

Mr. Carbajal: "No. I should have been notified. I didn't want to come down here and listen to this right now. I should have been notified. This would be a real hardship on me and my wife and Mr. Meza here. There are three acres on that piece of property. One acre is the parking lot for the flea market that I paid a ton of money to have parking sufficient for the flea market. The other two acres consist of the flea market that we operate. We carry a liability policy of \$1 million on that piece of property. On the acre, our property taxes are \$1,347.00 per year, the other two acres is \$2696.00. We pay a total of \$4043.00 a year in taxes. If this place wasn't in operation, it would be a real hardship. It would be a hardship on him, me and my wife, the vendors that come and sell, the people who go down there to visit, to buy. I mean what has happened here is sort of a misunderstanding, I guess. I just don't see how you guys can be so harsh on the man. I have known him for six years and he is a hard-working man; two jobs to support his kids. I hope you guys consider that."

Mayor Knowlton: "I think that is it for testimony unless Mr. Meza would like to address the Governing Body."

Mr. Meza: "He is asking you to reconsider this. It is not only hard on him but he believes a lot of people depend on it. For some people it is their only job, that they sell their products. There are several people that this is their only income; it will be hard for them."

Mayor Knowlton: "Does the Governing Body have any additional questions, concerns, discussion?"

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Councilor Wallace: "I have a comment, please. Times are really tough for everybody and I understand that, but at the same time when this Village sends out a letter to the address that you have given us that letter is to be taken seriously. That's the one thing that concerns me and that would be one thing if I did vote for reinstating his license that everything that you did was in compliance and you took it seriously. So if I do vote to give you your license back this would be one stipulation that I would hope that our Planning and Zoning would take into consideration and that deadlines are absolutely met. Not a day later, or two days later, but that they are met and he is responsible for himself."

Mayor Knowlton: "Ms. Hatch, did you have anything to add to the Governing Body?"

Ms. Hatch: "No sir."

Councilor Ake: "I have a statement. I, like Councilor Wallace, and I don't want anybody, particularly Mr. and Mrs. Carbajal, to think that we have singled him out. This came before us because he did not...and it is not your responsibility. I have known you for 30 something years and you have always been an honest and honorable man and I don't think you are trying to pull anything. I want you to understand that, but as Councilor Wallace says, if he is running the business, he's got to be responsible and we are not trying to get him other than the things that he didn't comply with. The conditional use permit; I don't even know if that was his fault, but we can't go well, okay, that's fine, but Benny's needs one and they don't have one, so we are going to ignore them. I am just using them because they don't. I just want Mr. and Mrs. Carbajal to understand that this council in no way is trying to pick on Mr. Meza and I hope it can be worked out. The bad thing is, as I had stated earlier, it happens to fall right here where this moratorium is. Under normal conditions we can just send it back and let it go, so we may have to as a council. So I think I have probably said enough. Just the council has to do what is brought before it. We are going to make a motion and whatever it is I hope it is the best for him and for you and for us and for the Village."

Mrs. Carbajal: "This conditional use; we have had the flea market for 32 years. I don't know if anyone has had the conditional use, so I am not sure why it is all of a sudden fallen on him to have the conditional use. This flea market has been open for 32 years, so how come when he comes to apply to open the flea market, why isn't that put out for him? I mean, all of a sudden you've got this conditional use."

Councilor Ake: "As I have just stated...why, I don't know, but it is not because somebody is after him."

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Mrs. Carbajal: “We realize that and he knows he is at fault. There’s no doubt about it and the thing is as I have said before, he has never given us pause. Granted, our relationship is only as someone who rents from us but he has never given us pause to think, whenever we have asked of him about things, that he is lying about it, so when he said he didn’t get the letter, he didn’t get the letter. The first letter that was sent, Dolly, was sent to the wrong address. The second letter that he got was sent to the address he’s got, but he did not receive it. And I told him when we had left the last time that if you get that letter, don’t open it, so you can bring it here and show that this letter has not been opened and you can show the court that you did not get it. And he did get the other letter and he signed for it. We got the letter and I think we, as owners of that property, should have been notified that this was going on. We did not know anything about it until he called us and let us know about it. That is the first that we had heard about it; or we would have been here last week.”

Mayor Knowlton: “Any more from the Governing Body?”

Mayor Knowlton: “Mr. Jarmie, before I ask for a motion from my council any more we need to consider to do as far as this hearing process?”

Mr. Jarmie: “No, it will all come in the form of your motion and I appreciate the wisdom in Mayor Eastman’s comment, that we seem to be putting things sort of in a cart before a horse and the only reason we are doing that tonight is because of a potential for a moratorium, otherwise I think Mayor Eastman would be exactly right. We just have to go through a process. I’m just trying to figure out how to expedite the process for Mr. Meza and for the Carbajal’s if that be the will of the council. That’s the reasoning that I have; I hope that is clear to the council and to all here. If that is your desire, that is the way I can figure to do that. That’s rather extraordinary, but I think it comes within the bounds of the law.”

Mayor Knowlton: “I will entertain a motion.”

Councilor Wallace moved to revoke the council’s previous decision in reference to the registration and business license of Rigoberto Antonio Meza, owner and operator of the Bosque Farms Flea Market, License # 0511, located at 1775 Bosque Farms Blvd., Bosque Farms, NM 87068. I would want this to go back to Planning and Zoning and bring them in to code and in to a conditional use permit as is required by our ordinances for this type of business. I do not want this business to be affected by the moratorium. It is in the best interest of the Village and Mr. Meza. Councilor Ake seconded the motion.

Councilor Wallace stated that she was ready to revoke his license because he didn’t take the Bosque Farms government seriously. What helped to change her mind is his apology and that his mistake affected so many other people.

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Ms. Hatch reiterated that he would be in possession of an active business license but would be unable to operate until he goes to Planning and Zoning for a conditional use permit.

Councilor Walkup had concerns because this motion would shut his business down until after the next Planning and Zoning meeting. He stated that he was looking for a temporary re-instatement for 60 days allowing Mr. Meza to operate until Planning and Zoning made their decision.

Mr. Jarmie stated that the council should come to a settlement agreement tonight with Mr. Meza. He stated that the council can restrict the operation of a business for a period of time and then re-visit the decision.

Councilor Wallace stated that she understood that but was concerned about liability to the Village since these issues have been brought to their attention. She suggested Planning and Zoning have a special meeting to move this forward.

Ms. Eastman stated that they could move a meeting up about a week. She asked if the Governing Body could grant a temporary conditional use permit or a permanent conditional use permit.

Mr. Jarmie stated that council does have the authority to grant a temporary conditional use permit.

Mayor Knowlton stated that it looked like council had an option to grant a temporary conditional use permit with Planning and Zoning granting the permanent conditional use permit.

Councilor Wallace withdrew her motion. Councilor Ake withdrew his seconded.

Councilor Walkup moved to overturn the previous revocation and reinstate Mr. Meza's business license with the following: grant a temporary conditional use permit valid for no longer than forty-five (45) days and the Planning and Zoning will take up the issue and discuss all necessary permits and concerns for this business license. Councilor Ake seconded.

Councilor Walkup reiterated that should Planning and Zoning deny the conditional use permit, all business will cease.

Motion carried unanimously.

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Councilor Walkup moved to recess for five (5) minutes at 7:47 p.m. Councilor Wallace seconded. Motion carried unanimously.

Meeting reconvened at 7:55 p.m.

**4. CONSIDERATION OF APPROVAL OF ORDINANCE 2015-01
ESTABLISHING A NINETY (90) DAY MORATORIUM ON NEW BUSINESSES**

Councilor Wallace moved to approve Ordinance 2015-01 establishing a ninety (90) day moratorium on new businesses. Councilor Walkup seconded. **Motion carried unanimously.**

It was noted that Home Occupation Permits were excluded from this moratorium.

5. DISCUSSION OF 2015-2106 GENERAL FUND EXPENSES

Councilor Ake moved to postpone this agenda item to Monday, March 16, 2015 at 6:00 p.m. Councilor Wallace seconded. **Motion carried with a 3-1 vote in favor of the motion. Councilor Wallace, Ake and Kennedy voted in favor of the motion. Councilor Walkup voted against the motion.**

4. ADJOURNMENT

Mayor Pro-Tem Ake adjourned the meeting at 8:00 p.m.

PASSED, APPROVED AND ADOPTED THIS 16TH DAY OF APRIL 2015

Robert G. Knowlton, Mayor

(SEAL)

ATTEST:

Gayle A. Jones, Clerk/Administrator