



COUNTY OF SANTA FE) BCC MINUTES
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SANTA FE COUNTY

BOARD OF COUNTY COMMISSIONERS

REGULAR MEETING

March 12, 2013

Kathy Holian, Chair – District 4
Danny Mayfield, Vice Chair – District 1
Robert Anaya – District 3
Miguel Chavez – District 2
Liz Stefanics – District 5

SANTA FE COUNTY

REGULAR MEETING

BOARD OF COUNTY COMMISSIONERS

March 12, 2013

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 2:10 p.m. by Chair Kathy Holian, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Employees of the Housing Division Joseph Gonzales and Rodney Martinez led the Pledge of Allegiance and State Pledge, following roll call by County Clerk Geraldine Salazar which indicated the presence of a quorum as follows:

Members Present:

- Commissioner Kathy Holian, Chair
- Commissioner, Danny Mayfield Vice Chair
- Commissioner Robert Anaya [telephonically]
- Commissioner Miguel Chavez
- Commissioner Liz Stefanics

Members Excused:

[None]

V. MOMENT OF REFLECTION

Travis Schonrock led the Moment of Reflection.

VI. APPROVAL OF THE AGENDA

- A. Amendments**
- B. Tabled or Withdrawn Items**

CHAIR HOLIAN: Any suggested changes, Katherine?

KATHERINE MILLER (County Manager): Madam Chair, I just wanted to point out the amendments from the agenda that was posted on Thursday. There's the February 12th minutes under item VIII. Under XII. Consent Calendar, Final Order A. 2 has been tabled and also item C is withdrawn till the next meeting. There's an error in it so we'll bring it back at the next meeting. Then on page 4 under Public Hearings, item XVI. A. 3 is tabled; item XVI. A.5 is also tabled.

CHAIR HOLIAN: Any changes, Commissioners.

COMMISSIONER STEFANICS: Madam Chair, I'll move for approval of the amended agenda.

COMMISSIONER CHAVEZ: Second.

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR HOLIAN: We have some discussion. Commissioner Mayfield.

COMMISSIONER MAYFIELD: On one of the tabled items, Madam Chair, and it's – let me just go through it – it's Case #5, tabled, CDRC Case #V/PDP 12-5340, Family Dollar Store. Madam Chair, I will be out of town. I discussed this with Attorney Ross. I believe our next meeting that this will be tabled to will be April 9th. I'm going to be out of state and I definitely want to be present for this case. Madam Chair and Manager Miller, is there any day that we could move that to our administrative meeting? If the Commission would give that indulgence? This was tabled because of improper noticing by the applicant.

STEVE ROSS (Count Attorney): Madam Chair, Commissioner Mayfield, that's correct. We need 21 days to notice – have the applicant renote for whatever meeting we're going to choose. That means it's out of the question to do it for the very next meeting, which is only two weeks away. So that leaves April 9th – potentially if the Commission wants to do it at the administrative meeting, potentially April 30th or the next land use meeting is scheduled for May 14th. So we could notice physically at this point, given where we are for the 30th of April, and for sure for the 14th of May.

COMMISSIONER MAYFIELD: Madam Chair, I can make accommodations to call it, but I do know, and I think all of us have received from this site that everybody can now – I don't know what site it is but all of us have probably been getting a lot of emails from this one site. I would anticipate a full audience for this. I don't want people to think I've vacated my seat up here for this meeting. I would like to be present for it, so I would just ask the Commission's indulgence here right away.

COMMISSIONER STEFANICS: Madam Chair, I don't mind postponing it until May, but I think it should be at a land use meeting, not at an administrative meeting.

CHAIR HOLIAN: Thank you, Commissioner. I'm in favor of that as well. So I think we have consensus here to hear it in the early May land use meeting. Also, Commissioner Mayfield, you had a comment about the Jemez Mountain Electrical Cooperative case.

COMMISSIONER MAYFIELD: Madam Chair, thank you. Commissioner Chavez and the Commission also asked if Jemez could be part of the discussion of the proposed Jemez Mountain Electrics. I did, along with Mr. O'Hare and Rachel Brown meet with Jemez Cooperative yesterday. I also met with various potential affected customers in the proposed rate rider increase areas. They will not be able to make it to today's meeting until some time between 4:00 and 5:00, so I just ask – because they had a meeting out in the [inaudible] area, in the Navajo Nation. So they just asked if we could kind of hold off on that to sometime around 4:00 or 5:00 today. So with the Commission's indulgence I would just ask that we could kind of wait till they showed up.

And then in speaking with Commissioner Anaya, because I did think he was going to participate for a bit telephonically because he is pretty ill. He just asked if we could move up two items so he could get on the phone. And those two items were – I have them circled – were under XI. A under Finance, 2 and 3. If we could move up A. 2 and 3 and then I was going to carry his resolution –

CHAIR HOLIAN: Wait a minute. Commissioner Mayfield, you're saying move XI. A up?

COMMISSIONER MAYFIELD: He asked if he could hear XI. A – I think I

have that right.

CHAIR HOLIAN: Well, Commissioner, I think that the four items under the Proclamations and Presentations will not take very long, so I think we can go ahead and hear that in order.

COMMISSIONER ANAYA: Madam Chair, just for the record, I'm on the call.

CHAIR HOLIAN: Okay. Welcome, Commissioner Anaya. I think – let the record show that he is present via phone. I would also like to make a comment on the agenda. I will note that items XI.B and C under Matters from the Commission are nearly identical. They both deal with procedures for introducing resolutions. And I will also note that in our packet we had material for item XI. B but not for XI. C. And so I feel that in the spirit of openness and transparency that item XI. C. be for discussion only and not action today, since the public would not have had a chance to see that resolution since it was not in the packet material. And the public is always asked to comment on resolutions.

COMMISSIONER MAYFIELD: Madam Chair, may I make a comment on that, please?

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: XI. C is what I put in and XI. C was provided electronically, it was given in electronic format, so it was on the electronic agenda. Electronic copies were provided. As a matter of fact, that's how I accessed it.

COMMISSIONER STEFANICS: Madam Chair, I have an objection to the discussion.

CHAIR HOLIAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: We are discussing items on the agenda versus approving an amended agenda. We have a motion and a second for approval of an amended agenda.

CHAIR HOLIAN: And I was in essence amending the agenda to –

COMMISSIONER STEFANICS: I would call the question.

CHAIR HOLIAN: Okay. We have a motion to call the question.

The motion to call the question passed by unanimous [5-0] voice vote.

CHAIR HOLIAN: So that means I have a motion and a second for approval of the agenda with amendments.

The motion passed by unanimous [5-0] voice vote.

VII. APPROVAL OF CONSENT CALENDAR

A. Consent Calendar Withdrawals

CHAIR HOLIAN: Are there any Consent Calendar withdrawals?

COMMISSIONER CHAVEZ: Madam Chair, I would like some discussion on Consent item XII. A. 1, final order on the Shapiro variance.

CHAIR HOLIAN: Okay. Any other withdrawals? Actually, there's only one

other item on the Consent Calendar. Do I have a motion for the Consent Calendar?

COMMISSIONER MAYFIELD: Move for approval as requested by Commissioner Chavez.

CHAIR HOLIAN: Is there a second?

COMMISSIONER STEFANICS: Second.

CHAIR HOLIAN: I have a motion and a second.

The motion passed by unanimous [5-0] voice vote.

VIII. APPROVAL OF MINUTES

A. Approval of February 12, 2013 BCC Meeting Minutes.

CHAIR HOLIAN: Are there any changes from staff or from Commissioners?

COMMISSIONER STEFANICS: Madam Chair, I'll move for approval.

CHAIR HOLIAN: Okay, I have a motion for approval.

COMMISSIONER CHAVEZ: Second.

The motion passed by unanimous [5-0] voice vote.

IX. PROCLAMATIONS AND PRESENTATIONS

A. In Recognition of Tim Vigil for His Service and Contributions to the Santa Fe County Housing Authority Board

RON PACHECO (Housing Administrator): Thank you, Madam Chair, Commissioners. It is with great pleasure that I stand before you in recognition of Tim Vigil for his service and contributions to the Santa Fe County Housing Authority Board. As you all know, for the past six to seven years many decisions that are complicated, comprehensive, and sometimes difficult have been made by the Housing Board. Through that time, six years-plus, we've had the benefit of having Tim Vigil as part of our Housing Board team. I can't tell you how good it feels to know when you have someone with Tim's background helping you on the board. There have been many times that I have met with Tim just to talk about issues, and each and every time I've come away feeling much better about decisions I've had to make.

So it is with great honor that we recognize Tim for his many years of service, and as you all know, Tim is fairly humble and not somebody who's out there making a lot of noise, but he's extremely effective and has a tremendous amount of knowledge that we have benefited from and it's a great honor to recognize him for his six to seven years of service on the Housing Board. So I thank the Commissioners for recognizing that and I thank Tim for his service.

CHAIR HOLIAN: Thank you, Tim. Commissioners? Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you. I believe that Mr. Vigil has been invaluable because of his knowledge of the law and also as a realtor. And being in the real estate field, I'm very glad he's decided to join the team of Santa Fe County and staff, but

while he was on the public housing board he had the interests of the County and the residents at heart. And I thank you very much for that.

TIM VIGIL: Thank you, Commissioner.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: Tim, I'm just getting to know you but I do know that you've dedicated a lot of your time and energy to housing and as Commissioner Stefanics points out, that's the population that needs the help the most. So I want to thank you for your years of service and for your interest in continuing to serve to benefit the public that we are elected to serve and the public that you service. You interface with them on a daily basis, so again, congratulations and to all of the staff in the Housing Authority.

MR. VIGIL: Thank you.

COMMISSIONER MAYFIELD: Mr. Vigil, it's been a pleasure working with you and I've already started working with you in your capacity, so thank you for your service.

CHAIR HOLIAN: Thank you, Tim for all of your service. I think you were on the board of course when I started as County Commissioner and I was always impressed with the thoughtful approach that you brought to all the issues that came before us on the housing board, and I always really, really always appreciated your input. It was knowledgeable and thoughtful, and I am really pleased to be able to now see you full time here around the County. So thank you and congratulations.

MR. VIGIL: Well, thank you all and it's been my honor.

CHAIR HOLIAN: Should we have a picture?

[Photographs were taken.]

IX. B. Recognition of the Santa Fe County Housing Authority Maintenance Staff for Attaining a 100% Occupancy Rate in Public Housing

MR. PACHECO: Madam Chair, Commissioners, once again I thank you for this opportunity. It is again quite a pleasure to stand before you to have this conversation. Once again, it is with great pleasure I stand before you in recognition of our maintenance team and Madam Chair, I have to tell you, recently staff that's been around a long time told me, and she's sitting here with us, because we have some other housing team members here. She said to me that in all the years she's been here, which was in the 16 years, she hadn't seen us achieve 100 percent occupancy rate. So for us, this is a tremendous achievement and I have to tell you, Commissioners, for all the work that many of us people do in offices, there's always a team behind us in Housing doing the hard work, getting each unit ready for occupancy, and that team is the team that we are recognizing here before you today.

David Corriz, Joseph Gonzales, Rodney Martinez, Travis Schonrock, Lorenzo Gonzales, Victor Gonzales, are all led by a long-time County employee by the name of Larry Narvaiz, who's done a tremendous job. It is with great pleasure that I stand before you to recognize the hard work that these men do on a daily basis that when a family is coming into our program their home is ready and feels like a new home, and then when a family is leaving our program that that home is taken care of so that another family can be ready to move in. This is the crew that does that work, Commissioner, and it is with great pleasure

that we're here today to recognize 100 percent occupancy rate.

We don't know when that's going to happen again, because it's quite a fleeting moment, so we think it's appropriate that we recognize that we achieved 100 percent and we thank the team that is here before you and the staff behind them that make that happen. So with that, Commissioners, I thank you again and I recognize these gentlemen for the hard work they do.

CHAIR HOLIAN: Thank you very much, Ron. So we still do have 100 percent occupancy rate right at this very moment. Correct?

MR. PACHECO: Madam Chair, Commissioners, we're down to 99 percent I think today, because any time we get one unit on line or off line we lose a percentage point, and I believe that happened this week, so – although we're very happy to be at 99 percent we did hit 100 percent last week.

CHAIR HOLIAN: Wow, so anyway, congratulations and good job.
Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Madam Chair. I had the opportunity to go and visit some of the houses or the rental units that had to be rehabbed when people moved out or when things happen and I know it's a big job. And also watching some of the renovations that go on, it doesn't happen in a matter of an hour or two hours. So I thank you very much for being on top of all of that hard work. Thank you.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: Well, I want to say thank you to your staff, Ron, but would you introduce your staff to us for the record and for the public as well.

MR. PACHECO: With great pleasure. Right here we have Joseph Gonzales, he's been with the County over ten years, great worker. We have Travis Schonrock, as well who's been with us for a long time and Travis does a tremendous job. We have Rodney Martinez, who's right here. Rodney is fantastic. Also not here today is David Corriz. We have Larry Narvaiz. Where's Larry. We have Larry. We have Victor Gonzales here. And missing today are Lorenzo Gonzales, who's out working, Commissioners, because he couldn't make it in. He's in Santa Cruz doing inspections. And we're missing David Corriz who is having a couple medical challenges today. But this is our team and we are so proud to stand behind them.

CHAIR HOLIAN: Thank you. And it's really a pleasure to recognize the hard work of our Housing Authority maintenance staff and it's really paid off. So anyway, we would like to come down and take a picture with you all.

COMMISSIONER ANAYA: Madam Chair.

CHAIR HOLIAN: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I'd be remiss if I didn't congratulate Mr. Pacheco and Mr. Narvaiz and the entire team at the Housing Authority. It takes the maintenance crew, it takes the office staff and the collective effort to achieve what they achieved. And so I congratulate them and wish I was there to take a picture with you guys, but we'll catch up later. But thank you for your work day in and day out and the services that you provide to people day in and day out. Thank you, Madam Chair.

CHAIR HOLIAN: Thank you.

[Photographs were taken.]

IX. C. Presentation on the Rodeo Arena Project [Exhibit 1: Feasibility Study]

CHAIR HOLIAN: I will just note that these fine people here are from Rodeo de Santa Fe and the County in fact is partnering with Rodeo de Santa Fe, along with the City and state I might add, for major improvements at the rodeo grounds. Pilar Falkner had contacted us about meeting with each of the Commissioners individually to talk about these improvements but thanks to the good suggestion of Commissioner Stefanics we thought it would be even better for them to make a presentation at one of our Board meetings so that the public could hear as well. So with that I'll turn this over to you.

DAVID COPHER: Thank you, Madam Chair, Commissioners. I'm David Copher. I'm president of Rodeo Properties, Rodeo de Santa Fe. We have just received our summary of our feasibility study for the arena that we intend to build on our rodeo grounds over there and I would like to say first of all, thank you so very much for the County working with us in the way that we've been working in the past along with starting with the 4-H and all the way through to everything that we do there together, back and forth on the fairgrounds and our rodeo grounds. We have – I'm going to keep this short and sweet as I said I would.

To summarize everything here, what we've done is we've got our studies all completed and everything from traffic to feasibility. They have all come in very much favorable and we're very pleased with that. What you've just received there is a summary of everything that is in the report.

I'm going to hit on something here that I think is very important to all of us and basically that's the direct financial impact that they've said we're going to have here and basically I'm going to stick to the state because I guess that's where we share monies. And it looks like that we're going to be in the neighborhood of \$572,000 to \$684,000 that we will share per year with the state. We have an operating cost that is going to be somewhere around zero on our property and we're very happy with that as well. Also our studies on traffic, if you'd like to hear more about that we have our traffic guy with us here today. But I'd like to thank everybody that's on this Commission to have gotten on board with us and worked with us in this and come on with a partner and we're moving forward right now with getting the shovel-ready plans and we're working with the legislature to get that money together and we'll see how that comes out. But everything is completed on this first state. Thank you so much.

CHAIR HOLIAN: Thank you, David. Any questions, comments?
Commissioner Chavez.

COMMISSIONER CHAVEZ: Just briefly, because I know there's nothing guaranteed, but just a preview status of where you are in this legislative session, dollar amount that you're requesting and just quick status on that.

MR. COPHER: Where we are on that right now, of course the legislature has come forward with amounts of money that we have asked for and we're pretty close to reaching that total goal. Of course we won't know until the session is over.

COMMISSIONER CHAVEZ: Give us some numbers, just projected numbers.

MR. COPHER: We had asked for \$300,000 and we're looking in the neighborhood of \$300,000.

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COMMISSIONER CHAVEZ: And this would be, I would imagine, for design and construction?

MR. COPHER: Yes. Design and construction, shovel-ready plans.

COMMISSIONER CHAVEZ: Got it. Thank you, Madam Chair.

CHAIR HOLIAN: Thank you, Madam Chair. And thank you for coming today for your presentation. I'm not sure that it's in here, and maybe it's too preliminary to ask for but do you have a timeline laid out for this entire project?

MR. COPHER: For the building itself? Well, this legislature that we're working with right now of course is giving us the money for our shovel-ready plans and we think that will probably take about a year. And I'm really hoping that we can break ground in 15.

COMMISSIONER STEFANICS: Okay. Thank you very much. Thank you for coming and thank you, Madam Chair.

CHAIR HOLIAN: Thank you. And David, would you like to introduce the others who are here with you please?

MR. COPHER: Certainly. This is our architect, this is John Padilla, and he is from here in Santa Fe and a member of our architectural firm. This is Vince Daniels. He is the secretary of Rodeo Properties and on the board of Rodeo de Santa Fe. Pilar Falkner is our liaison, and Mike Gomez, he is responsible for the engineering with the Santa Fe Engineering Company for all of our traffic studies.

CHAIR HOLIAN: Thank you. Thank you very much and good luck and I'm looking forward to seeing it completed.

MR. COPHER: Thank you.

IX. D. Proclamation to Recognize March 11 - March 17, 2013 as Multiple Sclerosis Awareness Week

CHAIR HOLIAN: I will just say that multiple sclerosis that often and primarily attacks young people and now with new diagnostic techniques it's turning out that they're finding out that even children and teenagers can get MS. It's an autoimmune disease, and what that means is that the body's own defenses that are supposed to attack foreign invaders attack the body itself. And in the case of MS the immune system attacks the nervous system. And so there are a whole variety of symptoms that can occur like numbness, pain can be a symptom, difficulty walking, vision problems. It's really unique for every person who actually has MS.

The good news is there has been progress on the medical front. There have been new medications developed over the last ten, twenty, thirty years that have cut down on the number of attacks that people with MS have, and also that control the symptoms that they have. So a lot of progress has been made but there is still no cure. I would like to read the proclamation in recognition of MS Awareness Week, and then I would like to ask Teresa Martinez to come forward to say a few words about an event to raise funds for MS research that will be occurring at the end of April right here in Santa Fe.

Santa Fe County Proclamation to recognize March 11 through March 17, 2013 as Multiple Sclerosis Awareness Week.

Whereas, multiple sclerosis, MS, an unpredictable and often disabling disease of the central nervous system interrupts the flow of information between the brain and the body; and

Whereas, symptoms of MS range from numbness and tingling to blindness and paralysis, and the progress, severity and specific symptoms of MS in any one person cannot yet be predicted;

Whereas, more than 2.1 million people are affected by MS worldwide;

Whereas, every hour in the United States someone is newly diagnosed with MS;

Whereas, the National Multiple Sclerosis Society, Rio Grande Chapter, reports that in our state more than 2,500 people are living with this disease, and MS generally strikes between the ages of 20 and 50 and affects more than 400,000 people nationwide;

Whereas, in 2012, MS research continued to advance on many fronts including the approval of a second oral therapy for relapsing forms of MS and other emergency treatments which are progressing through the development pipeline, the launch of the International Progressive MS Collaborative, the largest effort to date to speed research to stop progressive forms of MS, the discovery of what could be a target of the immune system attack in MS which may lead to a new understanding of the disease and new treatment strategies, the completion of the first human trial of an experimental therapy targeting myelin repair, progress in restoring functions using innovative rehabilitation techniques, including memory enhancement using a technique involving stories and imagery to solidify learning, and improving balance and mobility with specific exercises, and advances in uncovering MS triggering factors which will bring us closer to finding ways to prevent the disease, and many other advances pushing us closer to a world free of MS;

Whereas, the National Multiple Sclerosis Society, Rio Grande Chapter, has been committed throughout the years to mobilizing people statewide to advocate on behalf of people affected by MS and is planning several major statewide fundraisers and educational programs to raise MS awareness;

Whereas, Walk MS and Bike MS events are scheduled this year throughout New Mexico;

Whereas, Santa Fe County is committed to ensuring that there are programs and services in the community to enhance the lives of those with MS and supports investment in research toward a cause and cure of MS;

Now, therefore, the Board of County Commissioners of Santa Fe County hereby proclaims that we recognize March 11 through March 17, 2013 as Multiple Sclerosis Awareness Week.

With that, I move for approval.

COMMISSIONER STEFANICS: I'll second.

CHAIR HOLIAN: I have a motion and a second.

The motion passed by unanimous [5-0] voice vote.

CHAIR HOLIAN: Teresa, perhaps you'll tell us what's happening here.

TERESA MARTINEZ (Finance Director): Madam Chair, thank you so much for supporting this support of the MS Awareness Week. I wanted to let everybody know that the annual walk, the MS walk, is going to be held at the Railyard Park on April 27th. The site

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will actually open at 8:00 am and the opening ceremonies begin at 9:00 am. The County itself has a team that is sponsored by employees and typically we do a frito pie fundraiser, so we'll try to do that again this year and everybody's walking around with their pledge sheets, so please, please support it. We have County staff of our own that have MS and we have County staff that have family members that are dealing with MS so we ask that you come out and support them. Thank you for doing this.

CHAIR HOLIAN: Thank you, Teresa, and I will be there for the walk. And I hope you'll walk with me.

MS. MARTINEZ: I will. I'll do it again. Thank you.

CHAIR HOLIAN: Commissioner Holian, I just want to thank you and staff for bringing this forward and again, when we can reach out to those members of our community that need the help most this is one thing we can do. It doesn't take a lot of money but it takes time so I hope to be there as well. Thank you.

COMMISSIONER STEFANICS: Madam Chair, I'm an on again, off again walker and I certainly hope this year will be warmer than one of the years I participated in.

CHAIR HOLIAN: Thank you. Thank you, Teresa.

X. MATTERS OF PUBLIC CONCERN – Non-Action Items

CHAIR HOLIAN: Now we are at that item X, Matters of Public Concern and this is for anybody from the public who would like to speak about an issue that is a non-action item on our agenda. Is there anybody here from the public who would like to address the Board? Seeing none, we will move on.

XI. MATTERS FROM THE COMMISSION

- A. Resolution No. 2013-25, a Resolution Approving the Edgewood Senior and Community Center Garden Project Funded by the Commission Priority Fund in the Amount of \$42,000 in Support of a Community Garden and Cold Frames to Provide Healthy and Nutritious Produce for the Seniors at the Edgewood Senior Center in Edgewood, New Mexico**
[Exhibit 2: Resolution Text]

CHAIR HOLIAN: Are you taking this?

COMMISSIONER ANAYA: Madam Chair, I'm going to start it and then I'm going to get some help from Chris Barela and probably Teresa and maybe Erik as well. And Commissioner Mayfield is going to help me with the resolution. I just wanted to say that I want to thank first and foremost the staff and Katherine, Erik, Rachel, and special thanks to all of you and Teresa Casados and Chris Barela for the coordination and work to help us get this down the road. I want to publicly thank on the record Councilor Simmons from the Town of Edgewood and Councilor Abrams from the Town of Edgewood that have been working closely with this project as well, and most importantly the seniors of the Edgewood Senior Center who had the inspiration and the vision to push forward to do this project and asked for some assistance and support, and also the Edgewood Soil & Water Conservation District board who at their meeting last week approved just over \$7,000 to help with the water

catchment portion of the project. With that, Madam Chair, I would turn it over to Mr. Barela or Mr. Erik Aaboe if they want to make additional comments, and then I would like to ask Commissioner Mayfield if he would read the resolution into the record.

COMMISSIONER STEFANICS: Madam Chair.

CHAIR HOLIAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: Did the Commissioner move it.

CHAIR HOLIAN: Did you want to move for approval?

COMMISSIONER ANAYA: I would move the resolution. Yes.

COMMISSIONER STEFANICS: I'll second.

CHAIR HOLIAN: Okay. Mr. Barela.

CHRIS BARELA (Constituent Liaison): Madam Chair, Commissioners, good afternoon. This project, Madam Chair, Commissioners, has been long desired by the community and the seniors of Edgewood to for some time now to do this garden, and so it's finally going to come into fruition it looks like so they're very excited as well as we are, very excited to see the members go forward with this project. It's going to be I think very – not so much, which is very important, they're going to be able to grow their own nutritious vegetables and fruits but I think they're going to be able to have that socialized aspect of it and physical exercise if you will to go out there with their – go out there and socialize and have hands-on in planting and gardening.

CHAIR HOLIAN: Okay. Thank you, Chris. Chris, I actually have a question. I wonder if there's been any thought given to a way to bring young people into this. I know this is really great for the seniors and I know that a lot of the seniors there have a lot of knowledge about how to grow things and they probably had victory gardens when they were young and so on, especially during World War II. So I wonder if anybody's given any thought to how you might bring young people there and it seems to me like it would be a great interaction between the generations.

MR. BARELA: That's a great point, Madam Chair. Not only is this a senior project but also with the community. Some churches are going to be getting involved that will also be bringing in youth from area schools. So that has been discussed.

CHAIR HOLIAN: Thank you. Are there any questions or would Commissioner Mayfield like to read it.

COMMISSIONER MAYFIELD: Madam Chair, thank you. I'll read this on behalf of Commissioner Anaya.

Whereas, it is the desire of the community members of the Edgewood Senior Center in conjunction with the Santa Fe County to construct a garden and cold frames to grow fresh and nutritious produce; and

Whereas, in the best interest of the welfare of the seniors of Santa Fe County to engage in the agricultural aspects of hands-on learning and to interact in some physical activity in a social setting by participating in the community gardens; and

Whereas, the community gardens of approximately .4 acre will allow for planting of an open garden and for the placement of cold frames for sprouted seed trays; and

Whereas, the community gardens will create a supplemental nutrition and healthy food system and may provide aid to those seniors who are most susceptible to food insecurity; and

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Whereas, community members of the Edgewood Senior Center will assist in the gardens to produce pesticide-free and completely organic vegetables and fruits; and

Whereas, Santa Fe County will purchase and install high commercial grade galvanized chain-link fencing to enclose and secure the garden area and a 20-foot long storage container to allow secure storage of garden supplies and equipment; and

Whereas, in addition Santa Fe County will purchase and install a 50-foot sidewalk and main walkway to the senior center to open garden to provide easy and safe access for the seniors; and

Whereas, Santa Fe County will purchase and install water storage tanks totally 8,000 gallons and will collaborate with the cooperative extension service and Edgewood Soil & Water Conservation District to phase in and develop a rainwater harvesting system and irrigation drip system that will be used to irrigate the gardens; and

Whereas, the Edgewood Soil & Water Conservation District has approved contributing up to \$7,000 for the rainwater harvesting system and irrigation drip system.

Now, therefore, be it resolved by the Board of County Commissioners of Santa Fe County as follows:

The Santa Fe County approves the Edgewood Senior and Community Garden Center project funded by the Commission priority funds in the amount of \$42,000 in support of a community garden and cold frames to provide health and nutritious produce for seniors at the Edgewood Senior Center in Edgewood, New Mexico.

Passed, approved and adopted this 12th day of March, 2013. Board of Santa Fe County Commissioners.

COMMISSIONER ANAYA: Thank you.

CHAIR HOLIAN: Thank you. Are there any questions?

COMMISSIONER ANAYA: Thank you Madam Chair and Chris and the entire staff and Commissioner Mayfield and Commissioner Stefanics for the second. I look forward to working and seeing this project happen. I appreciate your comments about the youth. We are going to work closely with Pat Torres through our 4-H programs as well. In addition, we're also going to work with Master Gardeners, several of the participants within the senior center are master gardeners. So I agree it [inaudible] across seniors as well as youth. So I don't have any other comments. Thanks again and thanks to the Commission for their consideration.

CHAIR HOLIAN: Thank you, Commissioner Anaya. Now this is a resolution. Is there anyone here from the public who would like to comment on this resolution before we vote? Seeing none, any other questions from the Commissioners? Okay, we have a motion and a second to pass Resolution No. 2013-25.

The motion passed by unanimous [5-0] voice vote.

XI. B. Resolution No. 2013-26, a Resolution Establishing Procedures for the Introduction of Resolutions Which Might Have a Fiscal Impact on Santa Fe County or Which Create or Amend Programs or Policies

COMMISSIONER CHAVEZ: Thank you, Madam Chair, and I'll just add to

that and read the background summary. The resolution sets uniform procedures for creating fiscal impact reports and directing staff to report expected recurring costs for proposed new policy, for amendments to existing policy, proposed new program services, new facilities, or land purchases. This resolution also sets a process for introducing resolutions which have an impact on County revenues.

So in essence it's two-fold. It outlines and has a fiscal impact form that will be attached to resolutions and I think even to ordinances as it applies to them. And it sets out a policy so that the resolutions will have ample time to be vetted amongst ourselves, staff and the public. And I did bring this to the attention of the County Commission I believe two meetings ago. I think the last meeting in February. So it has been vetted by staff. It's been approved by the Legal and should I go ahead and read it into the minutes now or do you want to have discussion first?

CHAIR HOLIAN: Thank you, Commissioner Chavez. Let me just ask staff. I think that when resolutions are discussed they are automatically included in the minutes. Correct? So it's not necessary to read them in. Is that correct, Katherine?

MS. MILLER: Madam Chair, the entire packet is recorded and then the minutes are verbatim, so it would be duplicative if you read the whole resolution.

CHAIR HOLIAN: Okay. So I don't think it's necessary, Commissioner Chavez. I think it will appear.

COMMISSIONER CHAVEZ: In its full form?

CHAIR HOLIAN: Yes. Are there any – Commissioner Stefanics.

COMMISSIONER STEFANICS: Madam Chair, thank you for bringing this forward. As a matter of fact I had suggested that perhaps as we do resolutions or other types of actions we might want to look at fiscal impact reports. I wanted to make sure that we have the ability to handle emergency requests immediately, so I believe some language was added for that, so that if we have a grant that we need to accept or we have some fire or some other emergency that we could accommodate that right away. I did want to make sure – so this is a question for our Manager – is there anything in this resolution that would cause a burden or inability of the staff to complete?

MS. MILLER: Madam Chair, Commissioner Stefanics, as it's written now it gives us enough latitude to actually put together a fiscal impact analysis and develop that form to do it, and we also had requested I think when it was being drafted that it not include our regular – a statement about not including our budget adjustments or grant agreements so that those are fairly administrative in nature and a budget adjustment itself already has that in it, what the money's being used for and whether it's recurring or not. So we ask that those two things be precluded in there. There's a statement in here that precludes those.

COMMISSIONER STEFANICS: Thank you, Ms. Miller. Thank you, Madam Chair.

COMMISSIONER CHAVEZ: Actually, I'd like to move for approval.

CHAIR HOLIAN: I'll second that, and then discussion, Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, I appreciate Commissioner Chavez' resolution but I want to bring this up. I know when I first came on the Commission I had a similar request of resolutions getting passed and I guess it kind of went nowhere and

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stalled and that's fine. I'm glad Commissioner Chavez broached this again. And that's why when I did see it come out I came with the one that you guys will see coming behind it, and appreciate your questions, Madam Chair, seeing that maybe mine wasn't timely in the packet which I do believe it was because it was electronically filed. And I will make note that there were other things in the packet today that were not in the packet that were recently approved.

With that being said, this Commission also, when there have been resolutions of a similar nature have taken the time to look at them and to work them out. I know we've done that recently with the Corrections Advisory resolutions. Madam Chair, when you've had a resolution, I've had a resolution. We went back and we merged the resolutions to try to merge them together to try to have a good working resolution. I look at this resolution that's on the table right now, I look at my resolution that's succeeding this resolution and I just find that we have a resolution on the table right now, and even the succeeding resolution that's going to be presented to this Commission in arguably two minutes, and this resolution is asking that we consider the resolution and then we stop, and then we bring it – we look at it, consider it, discuss it, and then we bring it back to the following meeting.

So with that being said I ask for that same consideration on this proposed resolution. We look at it. We digest it. We consider it. We go ahead and comment on it, and then we bring it back to the following meeting and take action on it. And I think based on that we should lead by example with this resolution. And we don't take action on this resolution, we do what it's proposing. We consider it and we bring it back to the following meeting if we're going to pass it, and we pass it at that next week's meeting.

COMMISSIONER CHAVEZ: Can I speak to that?

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: Commissioner Mayfield, I would have like to have heard from you before now. As I said earlier, I let everyone here know my intentions well in advance and I would have entertained some discussion but I think that we also have to be careful that if the three of us are discussing any one topic those three could be accused of a rolling quorum. So I wanted to be very careful in how I approached this. I think you could have worked with staff to merge the two. I think there was enough time to do that. So I allowed for that, but this resolution sets out a policy moving forward, because that policy has not been in place to date. So I appreciate your concern and your comment but I think that it's noticed. It's been properly noticed. Staff has spent time on it; I've spent some time on it and I think that it's in good form and should move forward. It can be amended at any point in time in the future if need by. Thank you, Madam Chair.

COMMISSIONER MAYFIELD: Madam Chair, I still have the floor.

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you. And I appreciate what Commissioner Chavez is saying to avoid a rolling quorum. And that's what I'm doing, Madam Chair. I brought a resolution and it's going to succeed this. And again, the Commission has set the precedent by rolling two resolutions together and going back and working them out. And that's what the debate is right now at this table discussing it.

And again, look at what the resolution is asking for. The resolution is asking don't act on something immediately. That's what this resolution is directing us to start doing in the

future. And we're asking to take immediately pass this resolution today right now. It's a direct contradiction of what this resolution is asking this Commission to vote on. What's the haste in this? To set it aside, to look at my resolution that's coming behind it, and I think if everybody looks at this resolution provides a lot more in-depth detail and gives a lot more policy direction. It establishes a lot more set procedures. In merging the two – as a matter of fact, Commissioner Chavez, I think I basically did ask what you asked for in your resolution and tried to enhance a little more. If there's not what you like it in we can talk about that. We can bring it forth to the next meeting. And if the Commission so chooses to approve them they do. If they don't, they don't.

COMMISSIONER CHAVEZ: So, Madam Chair, on that point, Commissioner Mayfield, your suggestions for policy, have they been vetted by staff? Is it do-able? Because I know that the suggestions in this resolution are do-able. It's not asking for anything out of the ordinary. I think it's pretty cut and dry. I don't want to tell staff how they should do their job. I want it to work for staff. So have your suggestions been vetted by staff? Because that's the only way I would consider accepting them as amendments to the resolution that's being discussed before us now.

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER CHAVEZ: Not what hasn't happened in the past or what needs to happen moving forward.

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, I can't say what's happened in the past or not but I can tell you what happened –

COMMISSIONER CHAVEZ: But you're bringing that up, Commissioner Mayfield, because we don't have policy.

CHAIR HOLIAN: Commissioner Chavez, I'm afraid Commissioner Mayfield has the floor.

COMMISSIONER MAYFIELD: Madam Chair, all I can say is what happened two weeks ago. Two weeks ago there was a resolution on the floor. Two weeks ago, because we don't have clear established procedures on this bench, Commissioner Anaya and myself needed to vote on a resolution that was on the floor. Arguably there was a vote taken. Arguably there was a friendly amendment trying to be passed, and then there was a way that Commissioner Anaya were not able to comment on it because it didn't happen. We tried to repass something so when a Commissioner up here tries to add something or tries to have debate on something up here, if the vote's taken our voice can't be heard.

So the reason I asked that a subsequent resolution come up is how I place this on this bench up here today. And that's why I asked for a resolution. A little earlier today it was alluded that it wasn't timely noticed; it was timely noticed. It was properly noticed based on our rules of operation up here. It was done electronically. Anybody can get a copy of our electronic agenda and typically that's how it's done. People typically operate by pulling a copy of our electronic agenda and everything was submitted electronically.

So as far as the resolution that's in front of us, I think there is some very ambiguous language in here where it's very subjective as far as bullet point five in the resolution. The

procedures set for above may be waived by the BCC. I don't know what that means. It means if we don't like it, if we want to waive a resolution at any time – how is that being determined how it's going to be waived? If we like a resolution that comes in front of this Commission at any time, okay, well then three of us at any time can say, okay. We like this resolution and we don't want an FIR on it, does that mean this Commission just waives it at that time? I don't know what that means as far as number five on the resolution that's presented in front of me right now.

I'm not going to speak about the resolution that I have behind it because we're not on that point of discussion yet. But when we get to that resolution I think at least what I put in place spells out some pretty specific language of what the procedures will be set forth of how the Commission can waive the requirements for an FIR. So that's what causes me some concerns with the resolution that's in front of us right now.

COMMISSIONER CHAVEZ: Well, just if I could, Madam Chair. I'll just sort of scratch the surface, because I think in some cases there may not be a need for a fiscal impact. I don't want to make that determination. I would like staff to make that determination, and if I could, Madam Chair, could staff, since staff did vet this resolution that's before us, Mr. Attorney, on point five, the procedures set forth above may be waived by the BCC. We're asked for an explanation on that point.

MR. ROSS: Well, Madam Chair, Commissioner Chavez, I think it says what it means is that the elements of the resolution can be waived as needed by the Commission on a case-by-case basis.

COMMISSIONER CHAVEZ: Could you give us an example of when those cases – would this policy that's suggested in this resolution might be waived.

MR. ROSS: Well, let's say a grant resolution that's time-sensitive gets put on the agenda without an FIR and then the Commission approves it, or considers it and approves it, that would be an example of waiving the requirement for an FIR on the fly as needed.

CHAIR HOLIAN: Commissioner Chavez, could I just ask a question on that point? So if we had a situation like that, Steve, would we first vote to waive the requirement and then vote for the resolution in question? In other words, would we have to have two votes in that particular case?

MR. ROSS: Madam Chair, you wouldn't have to, because a resolution remember is not an ordinance. A resolution is just a memorandum of a decision by the body. It's just a written guidance document that can be amended on the fly at any time. So if you take action that's inconsistent with the prior resolution it's like you either waived or amended the prior resolution. So you wouldn't necessarily have to have two questions.

CHAIR HOLIAN: Okay. Thank you. Commissioner Chavez.

COMMISSIONER CHAVEZ: Yes, Madam Chair. Thank you. On bullet point two, Each draft resolution shall also be assigned to the appropriate department for a financial impact analysis and an analysis of the impact of the new policy or program. So let's say that we go through the process that's been outlined by the County Manager. You have due date where you submit your material to be included in the packet, either electronically or hard copy. Right? That draft resolution is assigned to staff to determine if the fiscal impact is applicable or not. So we have that information before we vote on that resolution.

CHAIR HOLIAN: Okay. Commissioner Mayfield.

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COMMISSIONER MAYFIELD: Madam Chair and Commissioner Chavez, and I hear what you're saying and I appreciate what you're saying, but what you just said on points two and five – let's go to point five first, nowhere does it say that the County Manager is going to assign that. And I am going to go to my resolution really quick, and that's why I wish we could work on this. In my resolution, that's where I am saying if we could go to mine for one second, I am saying in mine that the County Manager will assign that to staff.

COMMISSIONER CHAVEZ: Well, I think that should go without saying.

COMMISSIONER MAYFIELD: Well, I'm glad you're saying that, but I don't think that does go without saying.

CHAIR HOLIAN: Okay. Commissioner Mayfield, are you finished?

COMMISSIONER MAYFIELD: No.

COMMISSIONER ANAYA: Madam Chair, I've got a few comments whenever [inaudible]

COMMISSIONER MAYFIELD: In mine, if you go to bullet point two, it says each draft resolution or ordinance shall be assigned by the County Manager to the appropriate departments including the Legal Department, the Finance Department and the affected department –

COMMISSIONER CHAVEZ: On that point.

COMMISSIONER MAYFIELD: For the financial impact.

COMMISSIONER CHAVEZ: On that point.

COMMISSIONER MAYFIELD: Yes.

COMMISSIONER CHAVEZ: If it wasn't the County Manager assigning staff to do this work, who would it be?

COMMISSIONER MAYFIELD: I don't know. I don't know what your resolution –

CHAIR HOLIAN: Okay. Wait a minute. I'm the chair here. I'm going to please ask people to speak when they are recognized. So, Commissioner Mayfield, you have the floor.

COMMISSIONER MAYFIELD: Thank you. And Madam Chair, I appreciate it. And I'll just summarize it really quick. Even going to number five again, because that's where we got off. It does say the procedures set forth above may be waived by the BCC. And you did defer to the Attorney on this. I'm going to defer to the Attorney. Respectfully, Attorney Ross, who's the BCC? It's the five of us sitting up here. And the five of us can waive these procedures at any time. We've acted on a couple resolutions before us. So I think, the way I read this resolution respectfully, is the five of us want to waive an FIR process on any resolution that comes in front of us, if three of us want to rule on it, on waiving the FIR, I think majority rules. If three of us say we're waiving it, we can waive it. And that's where I think we don't have clear-cut set procedures, if three of us elect to waive it, based on how this resolution would go forward. And I'm just saying how I drafted it I think we're clearly defining what can be waived on.

CHAIR HOLIAN: Okay. Commissioner Mayfield, do you have any other points to make?

COMMISSIONER MAYFIELD: Right now, on this point, no, but I'm going to reserve more comments for a few minutes later.

CHAIR HOLIAN: Commissioner Chavez, do you have –

COMMISSIONER CHAVEZ: No. I have no other comments. I think that the resolution speaks for itself; it's specific enough. It should be clear to us who would be assigning the work to the departments. I don't know what we were elected to do but to respect the chain of command and the County Manager's office. That's protocol. But having said that I will yield the floor. I know that Commissioner Anaya has some comments. Thank you.

CHAIR HOLIAN: Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Madam Chair. Former chair Stefanics had a similar issue that came about, an issue relative to the Correctional Advisory Committee with yourself and Commissioner Mayfield, you had resolutions that were similar in nature. I see value in all the comments that were made by both Commissioners and I see no reason why we couldn't sit back, put the two together and bring forward a resolution that complements the good comments on both sides. The one question that I do have is the prior item that I had on the agenda was a resolution that had fiscal resources associated with it, but that was tied to discussions and working in the district. I wouldn't want any resolution to take away a Commissioner's ability to bring forward projects like the Edgewood garden, or like a garden in Eldorado or any other of the Commission districts to where we have a resolution that just asks two additional meetings to a timeline or additional work. I can see where it will make a lot of sense on an outside issue that [inaudible]. But I wouldn't want to take away from the last resolution we just passed.

So Ms. Miller, or Mr. Ross, if this resolution would pass, would this add time or more work, if you will, to the resolution I just passed on Edgewood? Because if it would, that would frustrate me, because I don't think that's the intent of those resources and why we budget them the way we do.

CHAIR HOLIAN: Steve, did you want to comment?

MR. ROSS: Madam Chair, Commissioner Anaya, it would require that the resolution first be presented at one meeting. Both resolutions would do this. That the resolution be presented at one meeting and then acted on the second meeting after a fiscal impact is done. So it would delay it. I don't know that it would change the process other than that.

COMMISSIONER STEFANICS: On this point.

CHAIR HOLIAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Madam Chair. Steve and Katherine, we have some resolutions that are new fiscal expenses and we have some items that are basically budget adjustment requests. We have appropriated money for projects like the one referenced by Commissioner Anaya. Why would that even need to come forward in the form of a resolution, versus some other mechanism that the County has?

MR. ROSS: Madam Chair, Commissioner Stefanics, Katherine and I were just talking about that. The new resolutions would not affect a budget adjustment resolution. Both of them explicitly exclude that, so if Commissioner Anaya's project were represented as a budget adjustment resolution by its very nature such a resolution is a fiscal analysis, because it shows there's money available and it's being moved into the appropriate line item. So it wouldn't necessarily require a stand-alone resolution and wouldn't necessarily require this

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process if it were presented that way.

COMMISSIONER STEFANICS: Okay, and Madam Chair, still on that point, Ms. Miller, the money that was set aside for projects in the Commissioners' districts, that has been budgeted. Could that come forward in a BAR or something else?

MS. MILLER: Madam Chair, Commissioner Stefanics, yes. You're getting actually what probably would be a better way to do those anyway. Because it was budgeted. It's in the original budget as \$200,000 for capital projects within your district per district. But what we did when we set that there were some parameters which you did beside the projects that you wanted it to go towards in your district that it would come back as a budget resolution to the Commission. But the form that was used for this particular one is not the budget adjustment form that we normally do, but we could use the form and then it would not need to come to two meetings because it's precluded in Commissioner Chavez' resolution proposed here. So it would come as one budget adjustment resolution.

CHAIR HOLIAN: Anything further, Commissioner?

COMMISSIONER STEFANICS: Thank you very much.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER ANAYA: Madam Chair, I think I still have the floor.

COMMISSIONER CHAVEZ: Madam Chair, the only other thing that seems to be missing is the piece where we have the recurring, because we have the one-time cost and then the recurring, and I think the fiscal impact would catch both the one-time cost and the recurring cost in [inaudible] proposed.

CHAIR HOLIAN: Thank you. Commissioner Anaya, did you have a comment?

COMMISSIONER ANAYA: Yes, I still had the floor. I just wanted to say that I appreciate very much Commissioner Stefanics' clarifying questions and the answers provided. I'm still hopeful that we don't just push this through a vote to see what votes come down [inaudible] I would much prefer that we try and work this out before we push it to a vote. That's my last comment. Thanks.

CHAIR HOLIAN: Okay. Any further comments?

COMMISSIONER CHAVEZ: Well, I appreciate that, Commissioner Anaya, but I'm going to go ahead and call the question.

CHAIR HOLIAN: Okay. I have a motion to call the question.

The motion to call the question passed by majority [3-2] voice vote with Commissioners Chavez, Stefanics and Holian voting in favor and Commissioners Anaya and Mayfield voting against. [Commissioner Anaya subsequently changed his vote. See below.]

CHAIR HOLIAN: There are three for and two against to call the question. So I – actually I have a procedural question, Steve.

COMMISSIONER ANAYA: Actually, Madam Chair, you were just voting on calling the question. I'm fine with that. I'm fine with calling the question.

CHAIR HOLIAN: Okay. We are going to call the question, but I have a procedural question for Steve. On resolutions we are supposed to ask for public comment.

Should I ask for that before or after we vote on the resolution?

MR. ROSS: Madam Chair, I would think before.

CHAIR HOLIAN: Okay. Then I will ask is there anyone here from the public who would like to comment on the resolution that we've been discussing? Okay, seeing none, we have a motion and a second on the floor for Resolution No. 2013-26.

The motion passed by majority [3-2] voice vote with Commissioners Chavez, Stefanics and Holian voting in favor and Commissioners Anaya and Mayfield voting against.

COMMISSIONER STEFANICS: Madam Chair.

CHAIR HOLIAN: Yes, Commissioner Stefanics.

COMMISSIONER STEFANICS: On the issue that's being discussed about possibly taking two or more similar resolutions to discuss together to delay and bring back. I think that my comment might be that perhaps that is something that could be considered if the sponsor wanted it. And if the sponsor didn't want it that we move ahead with the resolutions. So maybe in the future we could think about how we handle this again because we have handled it in varied ways in the past. Thank you.

CHAIR HOLIAN: Thank you, Commissioner.

XI. C. Resolution No. 2013-___, a Resolution Establishing Specific Procedures for Adopting Resolutions with Any Fiscal Impact on Santa Fe County or Which Create or Amend Programs, Policies or County Ordinances
[Exhibit 3: Resolution]

COMMISSIONER MAYFIELD: Thank you, and I'm going to read my resolution into the record.

COMMISSIONER CHAVEZ: Madam Chair, I'd like to ask for a copy, because I have nothing – with all due respect, Commissioner Mayfield, I have nothing in my packet for this item. I'm sorry. I don't know what to tell you. So I need a copy.

CHAIR HOLIAN: Is it possible to get copies of the proposed resolution?
Geraldine?

GERALDINE SALAZAR (County Clerk): I do not have the original copy in my packet so without a copy I can't assign a number to that document.

CHAIR HOLIAN: Okay. Then I will rescind number.

COMMISSIONER MAYFIELD: Let me ask the County Attorney and Ms. Mihelcic.

CHAIR HOLIAN: Point of order, Steve. Do you have a comment on this, Steve, when nobody actually has a copy of the resolution in their packet.

COMMISSIONER MAYFIELD: What are our electronic rules, please?

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Ross, you sent them out electronically. They're given to everybody electronically and hard copies were delivered on Thursday or Friday of last week. So what are our rules regarding electronic copies with the

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Commission?

MR. ROSS: Well, Madam Chair, Commissioner Mayfield, I did send them out by email and I also put a copy in all the Commissioners' boxes on Thursday.

COMMISSIONER MAYFIELD: It's also posted on our website.

MR. ROSS: I have one, Commissioner. It's got my notes all over it but I'll give it to you right now so I can look at it.

COMMISSIONER CHAVEZ: And with all due respect, Commissioner Mayfield, being that my mail is shuttled from our administrative offices here to West Alameda, I'm going to miss mail. So all I asked for was a hard copy that I could have in my hand here and now.

COMMISSIONER STEFANICS: Madam Chair.

CHAIR HOLIAN: Commissioner Stefanics, on that point.

COMMISSIONER STEFANICS: On this point, Mr. Ross, I am wondering about – and this is in no way to challenge you or the County Clerk. But if the County Clerk doesn't have something and it's official, what takes precedence here? If you're handing out something and she doesn't have it for the record, and she indicated she can't assign a number to something because she doesn't have it - I just need some legal clarification I guess.

MR. ROSS: Madam Chair, Commissioner Stefanics, I don't know what happened to the original brown copy. We delivered them all but it got lost somewhere. So she doesn't happen to have the brown copy that she would normally have. It's just what I said a minute ago. Everything was delivered on Thursday afternoon after we did a brief review of the resolution. We can pass a resolution without the County Clerk having a copy. We can assign it a number and get it to her later. That's fairly common; we do that all the time. So I don't think there's any legal impediment to taking action just because she doesn't have it. It's regrettable that she doesn't but our procedures are geared towards the packet so when things get late then we don't really have procedures for that and so we do as much as we can to get everything to you all and to the Clerk.

CHAIR HOLIAN: Thank you, Steve. Commissioner Stefanics, and then I have a question.

COMMISSIONER STEFANICS: So then, you more or less answered that question. But my second part to the question was how does the public fit into this?

MR. ROSS: Madam Chair, Commissioner Stefanics, that's why late packet material is always problematic because the public gets shortchanged. So if we can we should try and get things in the packet. Because the press picks up – they all have packets assigned to them. We put the packets up on the website. We have pretty ironclad procedures in place to notify everybody of what's going on. And those procedures gear towards the packet. And if we don't get things in the packet then we have problems like we're discussing right now.

CHAIR HOLIAN: Okay. Thank you, Steve, and actually I have a question too, Steve. So the public really did not see a copy of this resolution in any way? I'm not really sure. If it came in late would it be sort of added into the on-line version of the packet? Okay, Katherine.

MS. MILLER: Madam Chair, it came in on time to get it online. It has been online since Friday. Kristine posted it online.

CHAIR HOLIAN: And is it part of the packet that's online, or is it just

separate?

MS. MILLER: It's part of the packet that's online. It was added after but put in the packet where it was referenced. Because the caption was printed on the agenda on Thursday when we print the captions. When we printed the packets, the hard copies that you have we did not have a copy of it, so it did not get in your hard copy, but it has been in the online version since Friday. And we hand all the originals in one pile to the Clerk but when the Clerk got that packet today she said it wasn't in there. So we have been looking for it as to whether it was left somewhere out because it did not come with the rest of the originals.

CHAIR HOLIAN: Okay. Thank you. Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you. Madam Chair, I just need a point of clarification for myself, because I don't want to read a resolution that I shouldn't be reading in. So as far as electronic copy, Mr. Ross, Manager Miller, so it's there legally. I just want to clarify that, right. It's been there legally. Public view has been able to accept – access it legally through the electronic version. How many people come in and access a hard paper copy from our County Chambers? Anybody?

MS. MILLER: Madam Chair, Commissioner Mayfield, sometimes they do. It's rare but sometimes people ask for copies.

COMMISSIONER MAYFIELD: Could they technically access it electronically?

MS. MILLER: If they do –

COMMISSIONER MAYFIELD: I recently passed a resolution, just so everybody knows this, it was the Lead by Example Resolution of reducing paper and recycling, and one thing that I did get a little criticism for is that I did not add electronic versions of paper and get rid of all of our paper versions. So I am going to bring an amendment to that resolution to ask that we do straight electronic filing. I don't know if that will pass, but hopefully I will get some support on that passing. But with that, there were other packet materials that we recently approved a little earlier today, just some proclamations. I didn't have a paper copy of that. Just so everybody knows that. I don't know if it's a big deal. It wasn't a big deal by me but there were some proclamations we approved a little earlier that I don't have in my packet paper material but I use an electronic forum. I have a book up here today but I usually just access everything electronically. It's a little cleaner on the carbon footprint. But I'm going to go ahead and read this resolution in if there's no issues with it. If I could move forward with it, Madam Chair. Thank you.

So the resolution, a resolution establishing specific procedures for adopting resolutions with any fiscal impact on Santa Fe County or which create or amend programs, policies or County ordinances.

Whereas, Santa Fe County wishes to institute relevant guidelines, quantifiable fiscal measures and uniform procedures to ensure public transparency and administrative objectivity in County government fiscal policies and procedures; and

Whereas, Santa Fe County recognizes the public and fiscal benefit of developing and establishing consistent and objective procedures for determining the fiscal impact of resolutions and ordinances, including those creating new programs or policies, amending existing programs or policies, or for one-time expenditures but not limited to real property acquisitions, construction or acquisition or improvements of County facilities;

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Whereas, a standard and prescribed process and analysis for evaluating resolutions which have a fiscal impact, create or amend policy, or implicate real property acquisition and construction or acquisition or improvement of County facilities, should include placement of a draft resolution on an agenda of the Board of County Commissioners, the BCC, for review and discussion only, as well as assignment of the draft resolution by the county manager to the appropriate department(s) including the finance department, the affected department(s) and the legal department for a financial impact analysis and/or a policy impact summary which shall be completed within 72 hours of introduction of the draft resolution or ordinance; and

Whereas, fiscal impact report, FIR, analyses shall adhere to a standard file format and convention when completed and shall include a standard template to be used by all County staff completing FIR's including a section analyzing the fiscal impact of staff time and resources utilized to develop the FIR; and

Whereas, FIR templates shall be developed based on the New Mexico Legislative Finance Committee model and shall include administrative instructions for submitting FIR Analyses to the BCC and shall be completed within 72 hours of draft resolution and included in BCC packets when submitting it to the BCC for consideration for final action; and

Now, therefore, be it resolved by the Santa Fe County Board of County Commissioners that the following shall be Santa Fe County's uniform and standard procedure for introducing resolutions or ordinances which shall have a fiscal impact on Santa Fe County or which create or amend policies or programs, including but not limited to those approving real property acquisitions or construction or acquisition or improvement of County facilities:

1. A draft of each resolution or proposed ordinance shall be placed on the agenda for review and discussion at least one BCC meeting prior to being placed on a BCC agenda as an action item;
2. Each draft resolution or ordinance shall also be assigned by the County Manager to the appropriate department(s), including the legal department, the finance department and the affected department(s) for a financial impact report and analysis and an analysis of the impact of the new policy or program;
3. Staff will submit a report on the impact of the proposed new or amended policy or program as well as a fiscal impact report on the expected costs over the first four years following adoption of the resolution, online and as part of the packet material for the BCC meeting at which the resolution may be adopted;
4. If real property acquisitions are proposed by resolution, the resolution must address the intended purpose of the acquisition, and any limitations or requirements associated with the real property;
5. The procedures set forth above may be waived by the BCC if an emergency arises which impacts public health, safety and welfare and or support of local, state, tribal or federal entities which request support, cooperation or assistance from Santa Fe County;
6. The procedures set forth above shall not apply to budget adjustment resolutions submitted by the Finance Department for approval by the BCC.

Madam Chair, based on the discussion we had a little earlier I'm go to add to number 6: or for grants.

Also, I'm going to add a number 7 to this and number 7 will be Any draft resolutions

which have a fiscal impact, create or amend policies, or implicate real property acquisition and construction or acquisition of County facilities shall be provided at least one BCC meeting prior to being placed on a BCC agenda to the League of Women Voters, the Coalition of Good Government or any news organization requesting a resolution so that they may have input on fiscal impact reports generated by Santa Fe County related to the specific proposed resolution.

And with that, I move for approval, Madam Chair.

COMMISSIONER ANAYA: Second.

CHAIR HOLIAN: Okay. I have a motion and a second. Now we're on to discussion. Any comments, questions? Commissioner Chavez.

COMMISSIONER CHAVEZ: Yes, if I could, and I hate to put staff in this dual imposition, because I think that it seems as if these suggestions that Commissioner Mayfield is bringing forward are valid, Commissioner Mayfield, did you in fact share these with staff and to what extent did staff have the time to review the specifics, like 72 hours or the fiscal impact should be completed within 72 hours, the FIR templates shall be developed based on the New Mexico Legislative Finance Committee model. I'm wondering, do dual ordinances have to be included in this resolution or not. I have questions on this and I'm presenting them to you and to staff and I'd like to have staff answer first.

CHAIR HOLIAN: Katherine.

MS. MILLER: Madam Chair, Commissioner Chavez, we did not go over – it went to Legal for review, but as far as the recitals that indicate – and I have a little confusion with that because they're in the recitals and typically in the whereas recitals those aren't the directives, so I don't know if it was to be suggested it be similar to that or if it's implied that we would do them exactly the same way as the state.

COMMISSIONER CHAVEZ: But is staff in fact already developing its own fiscal impact form, if you will, so that we can track what we're spending money on, where we're spending it, if it's one-time construction cost or if it's recurring. The main purpose of the fiscal impact report and the intent behind either of these resolutions if I understand them and so it's just kind of –

MS. MILLER: Madam Chair, Commissioner Chavez, yes. After, I think it was about two or three BCC meetings ago there was a request by, I believe it was Commissioner Stefanics. I think it was in January, asking could we have more of a long-term fiscal impact information along with action items. So we started developing a format to do that. We've been developing it. I can't say that it's perfected but we did some trainings, two trainings at this point, at least getting staff in the respective departments with all of their materials to provide the initial cost impacts as well as long-term recurring costs and those are now being provided in packet material as it's being submitted.

So we are doing that, but as I said, we're still perfecting that process. We're not doing them to the degree that the Legislative Finance Committee uses them. They actually do an actual policy analysis of it. We don't really have the staff to do that type of policy analysis and I think that would be also a little bit difficult in the sense of staff work for the Board, and I think there might be some concern about whether they'd be stepping on somebody's actual policy proposal as opposed to just giving fiscal information and factual information of how it would impact us based on staffing and recurring costs and initial cost.

CHAIR HOLIAN: Commissioner Chavez, do you have anything further?

COMMISSIONER CHAVEZ: Well, I guess – let me ask the question another way then. Were there any significant points in this resolution that could have been merged into the one that was discussed previously? Because we talked about it being workable, not too burdensome for staff.

MS. MILLER: Madam Chair, Commissioner Chavez, I think if you were to just look at the points one through six that come under the Therefore portion of the resolution much of them are the same. And that's why I was saying I was not sure if in the recitals it was just using those as examples or whether the intent was to have them identical or to use them to draw from. Because in the actual end part of the resolution it just says to develop an FIR. So a lot of it is similar in the actual Therefore clauses so that would be my question as to whether the intent was to do them identical to the state's or not. I think that would be hard for us to do.

COMMISSIONER CHAVEZ: Okay. Thank you, Madam Chair.

CHAIR HOLIAN: Thank you, and actually thank you, Katherine, because that was a concern that I had when I was reading through this was it seemed like there were two whereas clauses that were actually direction and if they were truly direction they should have been under the Therefore part of the resolution. So I was confused about that myself. So Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, I appreciate that and if I could get the seconder to agree with a modified amendment. And I guess when I brought this up to Commissioner Chavez and I need to bring it up to my own resolution, because maybe I erred when I moved for approval on my resolution. And I did confer with Attorney Ross and I don't know if I briefly spoke to Manager Miller because I was out of town last week and her schedule is very busy as well as mine was. My intent was to move this but to use this as the example of a resolution and still to work on it over the next two to three weeks and then bring it back for either final up or down vote to the following meeting. So I didn't want it to be the final up or down vote today. So if I can modify that action to say, look, let's work on this and then bring it back after we work with staff over this over the next two weeks.

CHAIR HOLIAN: So Commissioner, are you changing your motion then to tabling?

COMMISSIONER MAYFIELD: No, I'm not tabling it; I'm just trying to make the motion to say however – well, how does it read? To bring this out of the first moving motion, to bring it back to the next meeting for the actual final action. So that's how I would like to pose this and let's work it out with staff and all the comment period to see if this would be amenable and hopefully, again, the Commission has already approved Commissioner Chavez' resolution. I respect that process, but if I could incorporate, or just do some addendums to Commissioner Chavez' and make this a workable document from the two. That's what I'm looking for, and bring this back to the following meeting, if we could get a working document between the two.

And then going back to the FIR, and I understand that I wanted to use the template from the legislature template, knowing though that it had to be modified for the County. And I did recognize in today's packet a little later, that we do have a modified FIR in our packet from our Finance Director, and I was going to bring that up, and I'll bring it up later, but I

just want to direct us to later on in our packet. And what I was going to get at is on one of the resolutions a little later – and I don't know which one everybody wants to look at, but later on we do have a fiscal impact report on some of our budget resolutions and I'm just going to bring this up now though, and my question to staff, to Finance Director Martinez, was what methodology was used so you can just keep that wherever you are, Teresa, as I am going to ask that. What methodology was used for your determination on these FIRs. Because I liked it, but I need to figure out what methodology you were using to get this information for me. And that's where I was going, just trying to establish the baseline for an FIR process for us. So that's all I have, but again, Commissioner Anaya, thank you for being on the phone, but I do move that modified approval of this resolution where I would like consideration to still work on this document and bring it back for final approval to the Commission two weeks from now. Thank you.

COMMISSIONER ANAYA: I'd accept that.

CHAIR HOLIAN: Okay. Any further comments or questions? Okay. This is a resolution. Is there anyone here from the public who would like to comment on this resolution? Okay, seeing none, we have a motion and a second on the floor. We have a motion now – would you restate that, Commissioner Mayfield?

COMMISSIONER MAYFIELD: Madam Chair, I'm moving this resolution, but I'm asking that we move it as far as – the way the resolution is stated is all future resolutions will take a vetting process of bringing the resolution to the first meeting and asking for approval at the second meeting.

COMMISSIONER STEFANICS: Okay. So you're still moving the resolution.

COMMISSIONER MAYFIELD: I am, but I'm moving it in that form, that we at least bring it to this meeting, but we don't take final action on the resolution until the second meeting. So I'm still asking for this consideration to move it today, but we don't bring it back to the following meeting, till the final action so we can still work out any bugs or any thoughts on the resolution. So that's my motion.

CHAIR HOLIAN: Okay. The motion is to –

COMMISSIONER MAYFIELD: That's how we're going to bring every resolution from here on out, based on what we just passed with Commissioner Chavez'. So anyhow, that's how I have to do this resolution. There's no choice. We just approved it.

COMMISSIONER STEFANICS: Well, Madam Chair.

COMMISSIONER CHAVEZ: No, that's not –

CHAIR HOLIAN: Commissioner Stefanics, point of order.

COMMISSIONER STEFANICS: Mr. Ross, when we pass something, does it go into effect immediately or in 30 days?

MR. ROSS: Madam Chair, Commissioner Stefanics, a resolution is in effect immediately.

COMMISSIONER MAYFIELD: So we have to do that no matter what, right?

MR. ROSS: We have to do that anyway.

COMMISSIONER MAYFIELD: So it doesn't matter. We have to do that no matter what.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: I have no comment.

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CHAIR HOLIAN: Okay. All right. So do we all understand the motion that was made? I'm not sure I do.

MR. ROSS: Madam Chair.

CHAIR HOLIAN: Steve, please clarify.

MR. ROSS: Sorry. I don't know if this helps or hurts, but item number 1 of Commissioner Chavez' resolution that was just passed says a draft of each resolution shall be placed on the agenda for review and discussion at least one BCC meeting prior to being placed on the agenda as an action item, which means no action would be appropriate.

CHAIR HOLIAN: Okay. So no action would be required on this. Okay. I think I understand this now. No action is required. We've had discussion. We can put it on the agenda for the next meeting and discuss it again and then take action if it is so moved.

COMMISSIONER MAYFIELD: Fair enough.

CHAIR HOLIAN: Katherine.

MS. MILLER: So Madam Chair, I want to clarify that from this point forward then resolutions will go on and the first time they go on it will say discussion only, and then the second meeting it's for discussion and vote. So this one, the next BCC can come on for vote.

CHAIR HOLIAN: Yes. Thank you. By George, I think I've got it. That's much clearer. So I think we don't need to use the number that was on that resolution after all. Correct? Number 27 is still free. Is that correct, Geraldine? Okay. Thank you. Commissioner Mayfield, the next item has to do with the Jemez Mountain Electric Cooperative. Are the people here who would like to talk about that or should we move on?

COMMISSIONER MAYFIELD: Madam Chair, at least until 4:00.

CHAIR HOLIAN: Okay. All right.

XI. E. Commissioner Issues and Comments

CHAIR HOLIAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Madam Chair. First of all, I'd like to acknowledge that we have an informal but serious holiday for some on this next Sunday, St. Patrick's Day, and I would encourage people to be safe in their celebrating of that particular holiday.

The second thing is that I know that we're going to have a legislative update. We are in the last week of the long session of the state legislature but I would like to thank all of our staff who have worked very hard on this. It's Hvtce Miller, Lisa Roybal, Rudy Garcia, and I'm sure many others have participated and attended the legislative sessions. But I'd just like to let the public know that we utilize our own staff as the lobbyists for Santa Fe County. We do not go out and employ someone special. And I'd like to give them a big thank you. That's all. Thank you.

CHAIR HOLIAN: Thank you. Commissioner Anaya, do you have anything?

COMMISSIONER ANAYA: No, not at this time. Thank you.

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, I don't know if you wanted to do it now but I can give a quick NACo recap.

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CHAIR HOLIAN: Sure.

COMMISSIONER MAYFIELD: Just, Commissioner Stefanics and myself went out there. It was very informative. Manager Miller, there was a NACo technology summit. I think this Commission could really benefit from a lot of information that was provided. They addressed a lot of cyber-security issues, a lot of the new cloud technology. I don't know if our Commission is up to speed with that. I know that we have our IT manager out there. But talking about cloud technologies, I think that's a new movement out there but I think it could be really beneficial. I think a lot of local governments are moving towards that. It gets you off of the old server systems. It might be something that could be hugely beneficial. I'll give you all the packet material that I brought back from that, but again, I think it could be a huge benefit. [inaudible] collaborated with other municipalities and stuff. So I'll provide you or Jeff or whoever needs that information.

And then there were some various steering committees that we all went to, energy, environment steering. They talked a lot about some fracking issues. Also solid waste issues. And then finance, governmental affairs issues. Where else was there? They call it NACHO, but Hispanic officials, they talked about immigration reform. There were various resolutions that were passed. That was something that myself and Commissioner Stefanics attended, meetings on the hill and various meetings with our delegation. We met representatives. I'll give you all a more detailed briefing on that. I'll provide information to the Commissioners of what we did. And then for different congressional meetings.

And just for your benefit, a lot of information. There was a pretty big snow storm that never materialized in central DC. They closed down the federal government, but it was all around. But as far as sequestration, they talked a lot about that. They talked about the continuing resolution, the impacts that's going to have, that they do anticipate that coming out but it will probably catch up with us in a month now if they don't get working together on how it will affect local governments and national issues.

So we'll give you more detail. I'll give you all the packet material we received. It was a pretty good benefit for us. Just some local issues that I need to address. I don't know if Mr. Leigland is here, or Ms. Casados, but the Bennie Chavez Center, that is still non-operational. I need to ask this. I need an update on it because I have a lot of community members that are calling me right now, saying they see no construction activity moving out there and they're just very concerned. So can you guys just give me a quick update on what's going on on the Bennie Chavez Center, because they're very concerned that there's no construction activity going on.

TERESA CASADOS (Senior Services): Of course, Madam Chair, Commissioner Mayfield. They are continuing to do work at the Bennie J. Chavez Center. There right now may not be much activity because we're waiting on a couple of permits to be pulled, so they have done some original work. They requested permits. We're waiting to get those before we can start the second phase of the construction project.

COMMISSIONER MAYFIELD: Fair enough. And it was told to me that they found no mold out there. Correct?

MS. CASADOS: Madam Chair, Commissioner Mayfield, I have not seen a final report. I've just been getting email reports from Public Works as it's been moving, so I do not know if they found mold or they did not. But I know they did a full remediation and I

don't know if they found mold.

COMMISSIONER MAYFIELD: Is it possible – I'm just going to ask this – to go ahead and put up a false wall between the kitchen and the activity center, where the ladies and the gentlemen can still continue their weaving, and you all can at least allow that entry to the front part of the building, so they can at least have access for their weaving activities, their arts and crafts activities? Because that's really what they're trying to do is to get in there at least to continue their efforts for their weaving activities. Could you please look into that and address that with them?

MS. CASADOS: Madam Chair, Commissioner Mayfield, we'll look into that possibility. We have offered to continue providing services at other sites. We offered to transport them to Nambe to continue activities and to transport them to Santa Cruz to continue activities. We've been doing that daily since the center has been closed and we have not had any individuals who are interested in continuing those activities. So I can look into that possibility, but to go through the expense of putting up a false wall and then having staff there to monitor them if they're not going to continue coming while it's closed, because a lot of them are coming for the meals. But we can look into that possibility and see what the cost would be, versus the amount of time that that center will still be closed.

COMMISSIONER MAYFIELD: Well, it's just a second home and I believe many of them are using it just for the activities. So if you could look into that I'd appreciate it.

MS. CASADOS: We will look into it.

COMMISSIONER MAYFIELD: Thank you. That's all I have. Thank you, Madam Chair. Thank you, Teresa.

CHAIR HOLIAN: Thank you. Commissioner Chavez. Do you have anything?

COMMISSIONER CHAVEZ: Yes, I do. Thank you, Madam Chair. I want to extend a thank you to all staff that attended the Agua Fria Village Association meeting on the 4th. It was an evening, so it's after hours. It's above and beyond the call of duty in many cases. I'm not going to remember all the names but there were people from the Sheriff's Department. I know Adan Mendoza was there, Captain Mendoza was there. Adam Leigland was there from Public Works. We had somebody from Parks and Open Space. And so we were able to talk about, discuss a lot of the issues that are of concern to the village but also the surrounding area so it was really good to have staff there and to allow that interaction between staff and the residents and I really appreciate that. I wish I had a full list of everyone that was there. But thank you to staff on that note.

And then also I want to recognize the Corrections staff. I did a tour of the jail on the 5th and boy, is that another world. It's a world unto its own. It's like 24/7. It doesn't stop. Staff is on call 24/7. I don't know when they rest, but I hope they do. But it was a really, really eye-opener for me. And you know when we talk about the population that is down and out and needs help, that's the population. And so I really enjoy what I do, but those people out there really have to like what they do because you're dealing with a population and family that's not easy. So Sheriff, to you on that and to Pablo Sedillo. The tour, and that's a facility that I think is probably the hardest to run and has the most liability and tort claims and things. I see Pablo in the back there. So it was a good tour. I thought I was going to be there for a couple of hours. I was in no rush, but I got a really full tour of almost every nook and cranny

in that facility. Even got to walk through the kitchen and see that work in progress. So anyway, my hat's off to staff. Thank you.

CHAIR HOLIAN: Thank you. The first public meeting on the draft Animal Control Ordinance which had to do with dogs was held on – let's see. It was just last week. Audrey Esquivel and Captain Mendoza conducted the meeting. There were about 20 people there from the public who were commenting. I think it was a really good meeting and we did actually reach consensus on a number of issues, particularly regarding license fees, as well as the concept of having nuisance animals which require more control than animals who are not considered nuisances. Anyway, Rachel Brown, who also attended the meeting, is now, I believe incorporating some of these suggestions, especially those where we had consensus into the new draft of the Animal Control Ordinance.

The meeting that will be centered around issues regarding cats will be held on Wednesday, March 20th at 6:00 pm and it will be right here in the Chambers. That will probably be a little bit more controversial but hopefully, we can actually make some progress on that topic as well.

And related to this, March 20th is National Spay Day. The Santa Fe Animal Shelter's south side clinic will spay or neuter the first 120 animals that are brought in for free on that day. And then if there are more than 120 animals they will hand out vouchers so that people can have them spayed or neutered for free in the future. So this is a really good thing to take advantage of. The south side clinic, just for your information is at 2570 Camino Entrada. Also, other veterinarians throughout the county will be participating in this day, and the locations of these veterinary clinics will be published in the newspaper the week before.

The final item I have is that there will be an official signing of the Aamodt settlement agreement this coming Thursday, that is day after tomorrow. It's going to be at 12:30 at the BIA Indian School on Cerrillos, and Governor Charlie Dorney of Tesuque Pueblo wanted me to specifically let the Commissioners know that you are all invited to the signing, although if you are I think it would be a good idea to let staff know so that it could be noticed. It's at 12:30.

COMMISSIONER CHAVEZ: I won't be able to go.

CHAIR HOLIAN: Probably the signing will be a little bit after that because the Secretary of the Interior will be attending this and it revolves around his schedule. But in any event, Charlie Dorney wanted me to let you know that you're all invited.

COMMISSIONER CHAVEZ: Madam Chair, I think that's been a long process. That's 40 years in the making?

CHAIR HOLIAN: Fifty.

COMMISSIONER CHAVEZ: Fifty now. So I think that's really going to be a historic moment. I would like to be there, but unfortunately, I'm scheduled to work, so give my regards to the governor.

CHAIR HOLIAN: Thank you. And with that, we've been here for two hours now and I think it's time for a little break so I am calling a recess for ten minutes and we will return at 4:10.

[The Commission recessed from 4:00 to 4:18.]

XI. D. Discussion of Proposed Rate Increase for Jemez Mountains Electric Cooperative Inc. Customers and Possible Action to Authorize the Filing of a Protest with the Public Regulation Commission of the Proposed Rate Increase

CHAIR HOLIAN: I will call this regular meeting of the Board of County Commissioners back to order. It is 4:18. We will now go on to item XI. D.

COMMISSIONER MAYFIELD: Madam Chair, thank you. I just want to recognize that we do have the Jemez Cooperative general manager, Rose Marie Law here. Also we have board member Larry Rodriguez here. I don't know if there's anybody else from Jemez Cooperative here. We have various and distinguished members from our community, of the El Rancho community, the San Ildefonso community, the Nambe community and the Pojoaque community here. We also have Governor Terry Aguilar from San Ildefonso Pueblo here. If I'm missing anybody in the audience just please let me know.

Madam Chair, I brought this issue up a few weeks ago. There were some rate riders that were filed by the Jemez Cooperative board affecting the external boundaries, exterior boundaries of the San Ildefonso Pueblo, the Pojoaque Pueblo and the Nambe Pueblo that were having significant rate increase impacts on both pueblo and non-pueblo members within all the external boundaries. Since then I asked the Commission for authorization for the County Board to start talking to the Jemez board as prescribed in the PRC rules. The Commission afforded us that opportunity to do that. We had that meeting. Myself, Mr. Craig O'Hare and our County Attorney, Rachel Brown. We had that meeting yesterday with Rose Marie Law, Mr. Wayne Fellow – I apologize if I got that name wrong – and Ms. Rose Marie Law with Jemez Cooperative. Excuse me. Rachel Brown also sent out a letter to Jemez Cooperative last week or the week before and they received a return letter under Katherine Miller, our County Manager's signature and they sent her a return letter. I hope that our County Commissioners received that letter. I think you all did.

Commissioner Chavez asked that we extend the opportunity or afford the opportunity to Jemez Mountain Electric to come and speak to the Commission. We did notice this. I did ask that the public that we serve have an opportunity to come and speak to this Commission and also that the governors from the pueblos have the opportunity to come and speak to this Commission. With that I did ask, because we have various service interests within these rate rider areas by the County, such as our fire stations, community centers, that will have a great impact if the rate riders go into effect. It will have a significant cost to us that we enter into a formal protest with these rates ourselves and present these to the Public Regulation Commission.

One that I want to bring up before I ask the Jemez Cooperative and community members to speak, and then Governor Aguilar to speak, but I just want to bring that significant importance that I think remains semi-unaddressed, but I just want to bring this to everybody's attention, is within the San Ildefonso area, and we briefly spoke about this, Madam Chair. You just brought it up is the impact this could have on all of us is potentially the wastewater treatment center and the diversion center and the proposed Aamodt diversion. As we all know the majority of us, the four of us sitting here, we know the costs that are

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incurred under the BDD and we know, based on the BDD, the power that we use on that BDD, the peak-hour usage that comes out of there in PNM rates and when we have to turn that off or when we cannot run that because of the costs again that we incur through our PNM electric rates.

So looking at that diversion and looking at that treatment facility plant, when that diversion comes on line, when it comes on line, we have to anticipate those dollar expenses that we will all be paying if this is sided out in the San Ildefonso area. So I just wanted to put that in everybody's mind, because right now I think, as is proposed, the potential rate increase as proposed in the San Ildefonso/El Rancho area, and I stand to be corrected, but under the proposed rate rider for the San Ildefonso area I think we're looking at potentially an aggregate of about seven cents a kilowatt-hour. That's pretty significant in that area. And again, I stand to be corrected by anybody who comes up. So with that, Madam Chair, I'd just like to turn it over. If Jemez wants to start commenting first, maybe then the community members, then Governor Aguilar. So I just turn that over to whoever wants to comment, Madam Chair.

CHAIR HOLIAN: Okay. Thank you, Commissioner Mayfield. Is there anyone here who would like to comment on the rate rider increase? Please come forward. Please, all who would like to speak come forward and then introduce yourself for the record before you speak. And please try not to repeat and keep your comments efficient.

DAVE DOGRUEL: Thank you, Madam Chair. My name is Dave Dogruel from the Nambe community. I just wanted to check per Commissioner Mayfield's suggestion is there any priority in people speaking. What is the Commission's pleasure?

COMMISSIONER MAYFIELD: Madam Chair, Mr. Dogruel, I appreciate it. I guess what I'm looking for is, again, I'm going to ask the Commission to formally afford the Commission a process or take action or intervene in this rate case or proposed rate rider. I know right now Jemez has suspended the proposed rate riders for two of the three. They're moving forward as I know with rate rider 2, which is a system-wide rate rider for the valley, and when I say valley I'm talking again of the San Ildefonso/El Rancho area, the Nambe and the Pojoaque Valley. I do know that there is going to be a proposed one with the Santa Clara coming down the line.

They're moving forward with the Pojoaque rate rider, but I am going to ask that the Commission intervene in this proposed rate rider case. So I guess what I'm going to ask is that the Commission just talk about the potential impact on them as they feel it's going to impact them. If they have an interest individually if they're going to intervene in this case, and/or if they feel the need for the Commission to intervene in this case. I would also ask since time is limited for this body and we have a lot of work ahead of us for this evening that if you just keep your comments limited and that you all have different comments to make. Thank you.

CHAIR HOLIAN: So Mr. Dogruel, do you have instructions? Do you understand?

MR. DOGRUEL: Yes. Thank you. Madam Chair, Commissioners, thank you for the opportunity to allow public comment on this issue. Without repeating some of the previous statements by Commissioner Mayfield, as a point of clarification, in one of the proposed rate riders the increases may be as much as 51 percent in electric rates paid by both pueblo and non-pueblo members.

A couple issues with the way that folks were informed about this process by Jemez Mountain Electric Co-op. The noticing was inadequate. They used the *Enchantment* magazine as distributed by mail to many ratepayers. However, at the meeting held in El Rancho several weeks ago, Mr. Sol told the audience how they were made aware of the proposed rate increase by the sole notice in the *Enchantment*. Only approximately half the people attending that public meeting indicated that they'd received notice from the sole source used by Jemez Mountain Electric Co-op to notice the proposed rate riders.

Also this notice was provided in English only, disenfranchising many seniors and residents of the Pojoaque Valley who only speak and/or read Spanish or other languages.

Now I'd like to speak specifically why Santa Fe County should become an intervener in PRC case #12-00375-UT, the Tri-State Advice Notice #15, and party to the three protests in process regarding the massive proposed electric rate increases by Jemez Mountain Electric Co-op. First, Santa Fe County is an affected ratepayer with public facilities and operations in the Pojoaque Valley, including the El Rancho and Nambe community and senior centers, the Pojoaque and Nambe fire stations, the Pojoaque satellite office and the solid waste transfer stations. Secondly, economic hardship that a 50 percent increase in electricity rates will likely result in an increased burden on local government services as the budget of Santa Fe faces other increased pressures and I'm sure the Commission has heard about today, particularly with the courthouse, but the delivery of these services will be severely impacted if people have to pay a lot more money for their electricity every month and using County services more.

Third, the proposed electric rates artificially create sub-classes of citizens based solely on where they live in relation to lines drawn on a map from the Pueblo Lands Act. This inequitable distribution of costs is a serious miscarriage of social justice. Fourth, the dangerous precedents of the methodology proposed by Jemez will create a domino effect for all affected communities adjacent to tribal lands where utilities pass through in the entire state of New Mexico. The multi-million dollar easements the pueblos are demanding will place an impossible burden in perpetuity on the farmers in the Pojoaque Valley.

Fifth, property values will be impacted, again, in perpetuity as the easements are renewed and their costs will increase over time. This will impact Santa Fe County tax revenue and affect the ability of the County to provide necessary services. All utilities, including gas, water, wastewater, and electricity, future network infrastructure and telephone will be impacted by tribal easement negotiations and costs.

Sixth, Santa Fe County should encourage a process of mediation that allows the member-owners of the cooperative, including Santa Fe County – Santa Fe County is a member and owner of the Jemez Mountain Electric Co-op – to be part to any negotiations where their concerns can be heard and addressed.

Finally, in closing I ask the Board in Santa Fe County to honor their charge as shown on the wall right behind of you of protecting the property and citizens of Santa Fe County from these unjust and unprecedented electric rate increases. Thank you.

CHAIR HOLIAN: Thank you, Mr. Dogruel. Who would like to speak next?

ROSE MARIE LAW: Thank you, Madam Chair, Commissioners. My name is Rose Marie Law I am the acting general manager for Jemez Mountain Electric Cooperative. I want to clarify a few things here. What we are seeking with the PRC is a rate recovery, not a

rate increase. As a cooperative, whatever charges we have our consumers incur go directly to the cost of power for which we pay Tri-State, our G&T provider, the operation and maintenance of our lines, our meters, and yes, to recover the costs of the easements. These easements are vital to provide everybody the electrical service that they require and need and anymore, it's not a luxury. It is a necessity. Well, we understand that. We also understand that it is – what the economic impact concerning all the communities right now, this is a rough time for everybody, but as prices go up on fuel, as prices go up on material, as prices go up on labor, so must our prices go up a little bit to try to recoup those costs.

Now, these easements that we've been talking about, Jemez Mountain Electric Co-op serves nine Native American tribes. We are right in the middle so everywhere our lines go they go into tribal lands. Back 40 or 50 years ago we put specifically lines through there to help provide power to these people. We've provided power to our community. We've provided power to the rural areas where IOUs did not want to because of the dense population. You look at an IOU, they have 43 meters per line of line. You look at ours; we have maybe eight to ten meters per mile of line. There's a big impact there. Our job as a cooperative is to serve the members. Unfortunately, we cannot do that without paying the right-of-way easements, without maintaining our lines, building substations, providing our infrastructure to make sure that we have reliable service to those people.

Unfortunately, as everything goes up, 20, 30, 40 years ago an easement was done over a handshake and it was done between a board member, a manager and [inaudible]. Legal very rarely got involved, only at the end to draw up the easement. There was no negotiators involved. There was no contractors hired in to come to do the negotiations. Well, go forward 50 years, and yes, times have changed. Legal is brought in from the very beginning. Negotiators are brought in from the very beginning. And sometimes the negotiators that are brought in don't understand the value of the people from the community. They don't understand the value of a cooperative, what it means. So that's where we go from easements where we were charged \$200,000 for 25 years, we are now charged millions for 25 years.

So there's a big impact on us and the only way that Jemez can continue to provide power to these people, to our members to support their daily life is to try to negotiate easements in the most fair and equitable way and try to get these costs spread out to everyone.

CHAIR HOLIAN: Okay. Thank you, Ms. Law. Commissioner Stefanics.

COMMISSIONER STEFANICS: Yes, thank you. I have a couple of questions. I'm trying to understand this and make it more than just an issue about the easements with the tribes. So could you identify what your cash balance is and your reserves?

MS. LAW: Right now, at the end of the year we had an operating margin of \$159,000. Remember, we are a cooperative; we are not an IOU. Basically our revenues for the year are about \$46 million, however, our cost of power is about \$44 million. Basically 55 percent of all the revenue that we get from our customers go to pay the power bill. That goes straight to Tri-State. So the 35 percent that is left is used to maintain and operate our facility.

CHAIR HOLIAN: So your cash balance is \$159,000, but what about reserves?

MS. LAW: Right now our reserves are a little over a million dollars, something like \$1.2 million at the end of the year.

COMMISSIONER STEFANICS: Thank you so much for sharing that.

CHAIR HOLIAN: Thank you, Ms. Law. Who would like to speak next?

SEC CLERK RECORDED BY 10/2013

GEORGE GOMEZ: Madam Chair, members of the Commission, my name is George Gomez. I'm a retired school administrator living in the community of El Rancho, which is within the boundaries of San Ildefonso Pueblo. My bill, and I'll take it home to my own home, my bill last month was \$149 for electricity. If this rate rider is approved it would have been \$225. So a \$75 increase. My next-door neighbor is paying a \$200 electric bill per month; his bill would have been \$300 per month. If it's for a 25-year period he would realize like a \$25,000 increase in his utilities, if you're looking at a 25-year period. We feel that the rate increase should be considered as a cost of doing business. There are 33,000 members in the Jemez Electric Co-op. They are taking this negotiated amount of \$5.9 million and charging only 600 customers in the El Rancho area to pay for the \$5.9 million.

The dollar amounts are different with the different communities because the negotiated amounts are different. We also feel that it is discriminatory to target a small area. We feel that it's unconstitutional and we also feel that it is in complete – the vision and mission statement of the co-op is in complete opposite of what the co-op is doing today. The median income of the El Rancho income is \$31,000. It's below poverty. So we feel it is a hardship case for single-parent families, the elderly, people that are on fixed incomes, people not employed because of our economy and the last item on it would be that approximately 85 percent of the communities, the residents of El Rancho are retired and cannot afford the rate increase. We plan to go before the PRC and protest. We had a community meeting at El Rancho and had about 150 people and personally I have about 250 signatures from those people. I stand for questions.

CHAIR HOLIAN: Thank you, Mr. Gomez.

MR. GOMEZ: Thank you.

CHAIR HOLIAN: Next. And welcome, Commissioner Montoya.

HARRY MONTROYA: Thank you, Madam Chair. It's good to be back, I think. I'll keep my comments under 30 minutes here. I just wanted to say in terms of what has been explained already, in terms of the rate increases, I just wanted to put this in a little bit more of a global perspective and that's that we're looking at potentially two rate increases and I will be impacted as I live in the Pojoaque Corridor as well so it will significantly impact my residence. And what we're looking at are the potential two rate increases. One that's being proposed as part of the negotiations that have gone on with the pueblos, and then the second from what I understand is a potential shortfall from maybe some miscalculations that occurred when Jemez was going through their budgeting and found out that they may have to look at another potential increase. So that's potentially two from Jemez.

The other, a third, that is currently going before the PRC and that's with Tri-State. When you look at what Tri-State has done in terms of their requesting of increases, this will be their ninth request in the past 12 years for an increase if this is passed. If we look at between the periods of 2002 to 2022 we're looking at a potential of a 225 percent increase over that period. So that's about a ten percent increase per year. And on average, any individual, and I don't know what the County has been able to do, but on average, if an individual gets a three percent cost of living increase per year that's pretty significant these days. So the Tri-State increases alone outweigh what the individuals get on cost of living increases.

So what I wanted to do and would ask you also in addition to the Jemez protest is to

consider joining along with the Continental, Springer and Kit Carson electric cooperatives in protest of the wholesale rates that are being proposed by Tri-State Generation and Transmission Association. I know that's not what you have before you but I just wanted you to please consider looking at the big picture in terms of what's being proposed for increases, just within our cooperative that we're a part of. Thank you.

CHAIR HOLIAN: Thank you, former Commissioner.

MR. MONTOYA: I'd stand for any questions. Please don't have any. Thank you.

CHAIR HOLIAN: Next.

GOV. TERRY AGUILAR: Good afternoon, Madam Commissioner, Commissioners. My name is Governor Terry Aguilar from the Pueblo of San Ildefonso, but before I speak I want to introduce our Lt. Governor, Terrence Garcia in the audience. Coming from the Pueblo of San Ildefonso we wanted to at least extend our thank you for inviting us, mm. I know I didn't get to meet some of the Commissioners yesterday at yesterday's meeting. However, also, Madam Chair, it's Governor Mark Mitchell from the Pueblo of Tesuque. It's former Governor Charlie Dorney.

CHAIR HOLIAN: Oh, yes. Sorry.

GOV. AGUILAR: So I wanted to clarify that, in regards to the Aamodt. The Pueblo of San Ildefonso will be contesting the rate rider and the issue that we had is the increase is 50 percent in our pueblo. We had a community meeting last night in our community, with the seniors, and I do believe that the underlying issue is not a recovery. The issue is more about fairness. Because what was not talked about was how this stipulation agreement was developed last year in the fall, in which Jemez Mountain was able to work with another stipulation with another pueblo. They used this model to now apply it to the other pueblos. There's a pueblo up north, north of the Pueblo of San Ildefonso in which their rates are going to be lower. They're going to about four, maybe five percent increase. And what it is, the reason why theirs is much lower is because they have a much larger population, bigger industry, versus San Ildefonso and Nambe.

We have less people, less usage, so that's why our increases are so high. And the issue is not about right-of-way, because if it really was the issue is about the Pueblo of Nambe, they want the standard right-of-way with the Bureau of Indian Affairs. And that issue is really about fairness of how this rate is going to be applied. And any – I know it's not called a tax, but any rate increase should be applied fairly across the board. We are all co-op members and we determined that last night when we were looking at our bill. Who's a co-op member? We all are. And if there was going to be a rate across the board it should have been across all 33,000 members. It's going to increase, but some of the negotiations that happened with the other pueblos I think were unfair and unconstitutional. And I do have an understanding of what unconstitutional means with the background that I have and the negotiations that we do. And the issue with the right-of-way agreements, why were they having to do the right-of-way agreements? Because they were in trespass.

Now, these issues should have been dealt with previously and there should have been some sort of discussion, meeting with the pueblos, meet with the counties and everyone else. But these are what we're trying to find out now days, these are problems that we're dealing with. My concern is members of the co-op, Mr. Montoya, Mr. Gomez, and all the other

Gomezses that are out here, they can't afford this. And it's going to be unfair and how are we going to deal with it. The only way that I can really see how this is going to be done properly and fairly is for it to be applied equally across the board.

Now that may upset some of the other pueblos and everyone else, but this needs to be based on fairness and the only way to do that is to make sure that this rate should be across the board for everyone. So what's negotiated with one pueblo should be also negotiated across the board for everyone else. And I'll say that the Pueblo of San Ildefonso is going to look at this, in order for this to be done properly, constitutionally as well as equitably it should be across the board and we will fight for that increase. But also, Commissioner Mayfield, I think that the other issue that we may be looking, what concerns us is if the first three rate riders between the other pueblos that are applied, if we don't contest that now that it may come back and say, well, you didn't contest it for the future. So we're probably going to contest those ones also too. But we're looking from a legal standpoint whether we can do that.

I do think that I'm really pretty upset with this only because of the way the pueblo was treated. I couldn't be at a meeting and I put my attorney and my tribal members to meet with Jemez Mountain, and the consultant that they hired came in and kicked my attorney out. It's my pueblo; it's my people. It was in my office, and they kicked my attorney out. So this is the attitude that we're having with Jemez Co-op. But they did talk with Ms. Law, and we will try to communicate and try to figure something out. But we are at an impasse right now. Sometimes impasses, we can always figure a positive way about this but I do think that for initially, we do have to figure out what we're going to do and what the initial aspect, what the pueblo is going to do is contest it and we'll fight this.

We may not be successful; the County may not be successful but there's also the court process which we can also do. And I do think there's a constitutional issue on here so we're going to go with that. Appreciate it, Madam Chair. I appreciate all the Commissioner and I know that we may see you on Thursday. But we also really like working with Mr. Ross. He's a very hard worker so we really appreciate working with the County, Commissioner Mayfield, and the Sheriff. We want to make sure that we do, the Pueblo of San Ildefonso does work with the County and we do need to at least sometimes try to sit down together and try to work together versus on sides. Thank you very much.

CHAIR HOLIAN: Thank you, Governor Aguilar. Is there anyone else who would like to speak?

MARCOS TRUJILLO: Madam Chair, Commissioners, sorry that I'm late. My name is Marcos Trujillo and I'm a resident of El Rancho.

CHAIR HOLIAN: Commissioner, I'm sorry I didn't recognize you. I apologize.

MR. TRUJILLO: No problem. Just a few words. I just want to give a personal perspective to the proposed impact fees or the proposed rate increases. And from my perspective the increases will impact my family in the area by over \$20,000 over a 20-year time period on top of the electric bill that I'm paying now on a monthly basis. And there are families on fixed incomes and young families that reside in the community and are taking very austere measures to maintain their budgets and this proposed increase would have a devastating effect on those people's ability to maintain their budgets and to be able to make

decisions regarding whether to pay a fee for a little league baseball program, to buy a prescription or such.

I would also like to take this opportunity to address your Spanish-speaking radio audience in Spanish if I may, Madam Chair.

CHAIR HOLIAN: Yes, please.

MR. TRUJILLO: Les hablo Marcos Trujillo tocante al propósito de Jemez Co-op que quiere aumentar sus rates de electricidad significativamente in las comunidades de El Rancho y Nambe. Si están en contra de esta acción por favor contacten a George Gomez en el número 699-8739, or Marcos Trujillo en 455-7778, o a sus miembros electivos en el cuerpo de Jemez Co-op: Larry Rodriguez, Patrick Montoya y Kenny Borrego. And I thank you very much for your time and I appreciate being before you.

CHAIR HOLIAN: Thank you, Commissioner. Is there anyone else who would like to speak? Okay, are there any questions or comments? Commissioner Stefanics, and then Commissioner Mayfield.

COMMISSIONER STEFANICS: Madam Chair, thank you. I just want to clarify what Commissioner Mayfield is asking us to do. I understand he's asking us to join – Santa Fe County to join in on the rate protest. Is that correct?

COMMISSIONER MAYFIELD: Madam Chair, thank you, Madam Chair, Commissioner Stefanics. I would just ask, at this time Jemez has rescinded from the rate riders, and I want to as Rose Marie, if you don't mind, Manager Law, you rescinded on the Nambe and the San I rate rider. I don't know if there's going to be a lot of individuals protesting the Pojoaque, but I know Santa Fe County has initiated the protest on all three rate riders and I would hope that Santa Fe County still – I don't know if there's going to be 20 people protesting the Pojoaque rate rider, but I would request that Santa Fe proceed with the protest on all rate riders at this time, knowing and anticipating that you all will file these rate riders. Because you've already made some payment to the pueblos. I don't know if you're going to move forward with mediation. I think arguably that's where it may go. But I still have some questions, but I am going to ask for approval that Santa Fe County intervene on the rate rider protest.

COMMISSIONER CHAVEZ: On that point, Madam Chair.

CHAIR HOLIAN: Yes, Commissioner Chavez.

COMMISSIONER CHAVEZ: Commissioner Mayfield, I think if you could be more specific, because what I'm understanding, and you can correct me if I'm wrong, it's rate riders 4, 5, and 6.

COMMISSIONER MAYFIELD: Correct. So on rate riders 4, 5, and 6, I would ask that Santa Fe County move. I would also even ask that Santa Fe County move on rate rider 2. That's the system-wide rate rider. That we move on intervening on these rate riders. I would hopefully entertain a second if there is one out there.

COMMISSIONER ANAYA: I agree with you, Commissioner. I'll do the second.

COMMISSIONER MAYFIELD: Thank you, Commissioner Anaya.

CHAIR HOLIAN: Commissioner Mayfield, are you done?

COMMISSIONER MAYFIELD: I'm done on moving but I still have some questions.

CHAIR HOLIAN: Okay. Commissioner Stefanics, are you finished or do you have other –

COMMISSIONER STEFANICS: No, that clarified my question.

COMMISSIONER CHAVEZ: Madam Chair.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: Commissioner Mayfield, there's rate rider 2 and 6, so I think we need a full list, a comprehensive list of all of the rate riders and their implications. I am going off the letter.

COMMISSIONER MAYFIELD: That's Jemez' letter, right?

COMMISSIONER CHAVEZ: No, I know, but it's referenced – the rate riders are referenced in their letter so I want to be sure that we're all on the same page and that we're protesting –

COMMISSIONER MAYFIELD: I'm moving to protest rate riders 2, 4, 5 and 6.

COMMISSIONER CHAVEZ: Okay.

CHAIR HOLIAN: Okay, and I have a question, Commissioner Mayfield, and that is if we were to protest this, what would it mean for our staff? In other words, what would our staff be required to do? Just write a letter, or would they be testifying or lobbying or doing things like that in addition to writing a letter of protest?

COMMISSIONER MAYFIELD: Well, our staff would be an intervener in the case. I'd let our staff answer that. I know Santa Fe County has intervened in PNM – intervention in PNM rate cases before so I'd just ask Mr. Ross to discuss that. I'll be over there at the PRC giving my knowledge that I have, just so you know.

MR. ROSS: Madam Chair, Commissioner Mayfield, obviously it will take attorney time. Mr. O'Hare will have to be involved and we'll probably have to obtain the services of an expert rate analyst, a rate expert to provide expert testimony. What we typically do when we've done this before is seek out the other protestants and try and agree to share the costs of a person like that because it can be fairly expensive. That would be the primary direct cost is for somebody like that, plus staff time.

COMMISSIONER CHAVEZ: On that point.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: On that point, we talked a lot about fiscal impact earlier and I think that when you talk about staff time, that's valuable time and it should be factored into those fiscal impact reports. So I think it's a good question because when we assign staff to do work, we're adding on top of what they're already doing. So I think we need to be considerate in those areas as much as possible.

COMMISSIONER ANAYA: Madam Chair.

CHAIR HOLIAN: I still have the floor, Commissioner Anaya, and I will call on your when I'm finished. So, Steve, do you have any estimate of what those kinds of services might cost? Judging from the past?

MR. ROSS: Madam Chair, not at this time. I can't speculate at this point.

CHAIR HOLIAN: Okay. And actually I wanted to ask Katherine too, because you wrote the letter to Jemez Mountain Electrical Cooperative. What was the response that you got?

MS. MILLER: Madam Chair, we got an immediate response, and actually I think it was handed out to you and there were quite a few attachments to that. [Exhibit 4] They responded promptly with this letter and then attachments to it, which I just wanted to make sure that you got what was just handed out to you.

CHAIR HOLIAN: Okay. Thank you.

COMMISSIONER STEFANICS: Madam Chair, please put me on the list after Commissioner –

CHAIR HOLIAN: Okay. Commissioner Anaya.

COMMISSIONER ANAYA: Okay. Thank you, Madam Chair. I just want to thank Commissioner Mayfield for bringing this forward. I also want to thank all the distinguished guests from the north, from our pueblos, former Commissioners. Thank you for your comments. I think the decision to bring this forward is based on integrity and fairness that needs to be managed so that the people of this co-op are treated equitably and fairly. I think it goes to their comments that were made on the floor today, and I think it also goes to our interests as a member of the co-op. So those things, kept in mind I think are very worthy of continued effort and I'm very supporting of continuing to move this forward. Thank you, Commissioner Mayfield. Thank you, Madam Chair.

CHAIR HOLIAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Madam Chair. This is not the first time we've discussed this topic so I don't believe we came unprepared for this. We have also in the past signed on as interveners for other rate cases and we usually do that when we have a vested interest. And I think we have two vested interests today. I think we have our own County facilities, and I think we have the interests of our constituents. So I would support signing on as an intervener.

CHAIR HOLIAN: Okay. So I have a point of order, Steve. Do we need to have a motion?

MR. ROSS: Madam Chair, it's like I said last time, from the Legal Department's perspective the earlier you let us know that this is going to be our responsibility the better because there re time deadlines associated with all this and we kind of need to get organized. So I would prefer that as earlier as you're capable of making a decision that you do.

CHAIR HOLIAN: Okay. Thank you.

COMMISSIONER ANAYA: Madam Chair, I thought we had a motion on the floor.

CHAIR HOLIAN: Okay. We have a motion on the floor and did we have a second?

COMMISSIONER ANAYA: Yes, I seconded.

CHAIR HOLIAN: We have a motion and a second. Any further discussion? Commissioner Chavez.

COMMISSIONER CHAVEZ: The only thought I have is I guess to County Attorney Ross is if we do it hire outside legal services, that maybe we should discuss that dollar amount when we get to that point. But I think it is a statement that needs to be made, the dollar amount and staff time, I think we can absorb that but we should be aware of what that cost is.

COMMISSIONER MAYFIELD: And Madam Chair, just on that.

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Well, let me just call for the question and then I can go with a little more discussion afterwards.

CHAIR HOLIAN: Okay. We have a call for the question.

The call for the question passed by unanimous [5-0] voice vote.

CHAIR HOLIAN: Okay. All those in favor of the motion for protesting rate riders 2, 4, 5, and 6, signify by saying aye.

The motion passed by unanimous [5-0] voice vote.

COMMISSIONER MAYFIELD: Thank you. Madam Chair, just a quick question in follow-up to Commissioner Chavez. I wholeheartedly agree. I think that this may proceed to mediation and that's where we could entertain if there's any follow-up. Madam Chair, before the co-op leaves, if I could just ask two quick questions. Madam Chair, Ms. Law, as far as the rate rider areas, if you could just help me out really quick, because I think I heard from Mr. Gomez, there's 600 members in the exterior boundaries of the San Ildefonso area, give or take a few members. What are we looking at in the Nambe area please? Nambe Pueblo external boundaries?

MS. LAW: Madam Chair, Commissioner, in the Nambe area we are looking at 852 customers.

COMMISSIONER MAYFIELD: Okay. So Nambe is 852. And how about Pojoaque?

MS. LAW: Pojoaque Pueblo was 1,816.

COMMISSIONER MAYFIELD: Okay. And then you are potentially going to file coming up with Santa Clara?

MS. LAW: Yes. We anticipate not filing but putting a notice out there to our members. It will be coming out in the April edition of the Enchantment.

COMMISSIONER MAYFIELD: Okay, and how many members in the external boundaries of Santa Clara?

MS. LAW: That one I do not have at this time. I don't have the maps with me, but I can get that information for you. But Santa Clara is larger than Pojoaque Pueblo was.

COMMISSIONER MAYFIELD: Okay, and just going –

CHAIR HOLIAN: Commissioner Mayfield, I think we should move on.

COMMISSIONER MAYFIELD: Hold on. I've got one last quick question and it's important, Madam Chair. As far as the protest, Ms. Law, and the PRC rule as you all understand it, when the protest provisions say one percent or 25 members, based on you guys' determining how you're filing the rate rider protest, and let's just use San Ildefonso external boundaries. And I heard what Mr. Gomez said. He has enough protesters, over 200. But would you guys look at it being 25, as far as meeting that threshold, or would you look at it being six people meeting that threshold?

MS. LAW: We would look at it either way, and basically, once they go file

with the Commission, whatever the Commission will turn around and tell us that there are enough protesters and we'll go from there.

COMMISSIONER MAYFIELD: Okay. Thank you. Thank you, Madam Chair.

CHAIR HOLIAN: Thank you. We will move on now but first of all I want to make an announcement. Is anybody here for a land use case? Please raise your hand if you are. Well, I want to first of all alert you that two land uses cases have been tabled: the Susan Sutton variance, and also the Family Dollar Store cases have been tabled. But the others will be heard. We still have a number of items on our agenda so I think it will be a while before the land use cases are heard in case you would like to go out and get a bit to eat or something like that. I think it will be probably at least 6:30 before we were to hear the land use cases. And you'll notice how it's noticed on our agenda, it's that the land use cases are no earlier than 5:00. So I just want to alert you about that.

XII. CONSENT CALENDAR (Public Comment for Resolutions)

A. Final Orders

1. CDRC CASE #V 12-5060 Jay Shapiro Variance. Jay Shapiro, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow Two Dwelling Units on 10.21 Acres. The Property is Located at 94 Cloudstone Drive, within Section 5, Township 16 North, Range 10 East. (Commission District 4) Denied 5-0. Vicki Lucero, Case Manager **ISOLATED FOR DISCUSSION**
2. CDRC CASE # V-12-5280 Kimberly Moseley Variance. Kimberly Moseley, Applicant, (Rubin Katz Ahern Herdman & Macgillivray, P.A.) Frank Herdman, Agent, Request a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow Two Dwelling Units on 11 Acres. The Property is Located at 24 South Cloudstone Drive, within Section 5, Township 16 North, Range 10 East (Commission District 4). Approved 5-0 Miguel "Mike" Romero, Case Manager. **(TABLED)**

B. Resignations: Resignation of Richard Rodriguez; District 2, From the Health Policy & Planning Commission (Community Services Department/Health Division/Patricia Boies)

C. Resolutions

1. Resolution No. 2013-___, an Amendment to Resolution 2012-149, a Resolution Establishing the Santa Fe County Corrections Advisory Committee

Withdrawn Item

- XII. A. 1. **CDRC CASE #V 12-5060 Jay Shapiro Variance. Jay Shapiro, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow Two Dwelling Units on 10.21 Acres. The Property is Located at 94**

Cloudstone Drive, within Section 5, Township 16 North, Range 10 East. (Commission District 4). Denied 5-0. Vicki Lucero, Case Manager

COMMISSIONER CHAVEZ: Thank you, Madam Chair. In communication with staff about this item, it was suggested that I make a motion to table until the next meeting and allow staff time to work on one specific procedure which would be to have this applicant fill the sewer line with concrete. So I guess to make a long story short I've got a soft heart on this case. I've asked staff to reconsider just that aspect of the final order. So with the tabling it will come back at the next meeting and allow staff time to work on some language that would meet our requirements but still allow them the opportunity in the future when our Land Use Code changes to reapply and do it the right way.

CHAIR HOLIAN: Okay. So you're making a motion to table, Commissioner Chavez?

COMMISSIONER CHAVEZ: Yes. Until the next meeting.

CHAIR HOLIAN: I'll second that.

The motion to table passed by unanimous [4-0] voice vote. [Commissioner Mayfield was not present for this action.]

XIII. STAFF AND ELECTED OFFICIALS' ITEMS

A. Finance

- 1. Resolution No. 2013-27, a Resolution Requesting Budget Increases to the Capital Outlay GRT 2010A Bond Fund (337), Capital Outlay GRT 2010B Fund (338) and to the Water Enterprise Fund (505) to Budget Cash Balances for the Purchase of Diversion Capacity in the Buckman Direct Diversion Project/\$1,875,000**

CHAIR HOLIAN: Now, the next two items are related to each other and they have to do with budgeting capital funds and operational expenses for the First Judicial Court Complex. I believe that Katherine and our Finance Department have made efforts to account for the remaining balance with regard to O&M and capital.

COMMISSIONER STEFANICS: Madam Chair, I think the first one is the Buckman.

CHAIR HOLIAN: Oh, I'm sorry. I see that. Teresa.

MS. MARTINEZ: Madam Chair, at a recent meeting you approved a contract to purchase the additional acre-feet with an option to buy more diversion capacity, so what you have before you is the budget resolution item that will budget the money so that we can move forward with that purchase. So this is for 498 acre-feet with the additional 50 acre-feet. And I'll stand for questions.

CHAIR HOLIAN: Thank you. Any questions?

COMMISSIONER STEFANICS: I'll move for approval after.

COMMISSIONER CHAVEZ: Second.

CHAIR HOLIAN: Okay. We have a motion and a second. Is there any further

discussion? Is there anyone here from the public who would like to comment on this resolution?

The motion passed by unanimous [5-0] voice vote. [Commissioner Mayfield was not present for this action initially and subsequently added his aye vote. See page 59]

XIII. A. 2. Resolution No. 2013-28, a Resolution Requesting a Budget Increase to the General Fund (101) and to the Sheriff's Operating Fund (246) to Budget for Various Capital, Personnel, Equipment and Supplies Needed to Open and Operate the First Judicial Court Complex / \$1,211,786

CHAIR HOLIAN: Now we are on to the resolutions that are related and I think that we can discuss these together to some extent. So I would actually like to ask Katherine to make a few comments first on the overview of these resolutions.

MS. MILLER: Madam Chair, Commissioners, as you know we're getting to the end of the construction of the courthouse and over the last several months we have brought forward some different issues relative to finishing up the courthouse and some of the change orders that we've had. I had mentioned in some of the presentations, I had Mark Hogan and Adam and Teresa and those who have been working on the project that we would probably need to come back for some changes relative to – change orders for security access, access to the facility, the ramp going into the parking garage needing to be heated and some things like that.

So we do have a change order for those items and we also need to budget some additional funds for the capital to do that. We will be working on getting some cost recovery on some of the items in the change order as well as for gross receipts tax paid on personal property within the facility, so we hope to recover several hundred thousand dollars of these funds that we are asking for to finish the project. Additionally, we said during last year's budget process that we knew that we would be finishing the project some time this fiscal year. We did not know a date specific at this time. We estimated around January. As you know it's now April, and we did not budget for some of the operations for that and we need to – not knowing whether it would be in this fiscal year or next fiscal year. We do need to then bring on some of the operational items into the budget this fiscal year.

We also need to buy some start-up items, so Teresa has – so that's what – we're trying to bring all of this. These are the final things that will be needed in order to get the project completed and doors open and operating. With that I would turn it to Teresa to discuss the budget adjustments and then Mark for the change order.

CHAIR HOLIAN: Okay. Thank you. Teresa.

MS. MARTINEZ: Madam Chair, Commissioners, what you have before you again is a coordinated effort between staff of the Public Works Department, staff of the Sheriff's Office, Finance staff, in an attempt to cover all needs, operational and capital expenditures to ensure the efficient operations of the new Judicial Courthouse. So within that request you have a total request of ten new FTEs, eight FTEs for Sheriff's officers, which are deputies, and then you have two FTEs for the Public Works Department to assist in the

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custodial care of the facility.

We included within the memo a detailed breakdown by office as to what those costs would be. So from an operational standpoint you have a total need of \$413,597. That includes the needs of the Sheriff's Office, Property Control, Building Services, and then the monthly utilities that we will have to take on with the opening of that building.

Additional capital needs are broken down for you and that totals \$525,577. So I want to point out that the total request you have before you is \$1,211,786, and that includes all operational, all start-up supplies, all types of utilities as well as any capital remaining to complete the building. And I'll stand for questions.

CHAIR HOLIAN: Okay. Commissioner Chavez.

COMMISSIONER CHAVEZ: Thank you, Madam Chair. So on the fiscal impact report I see a different dollar amount on the different expense. Can you explain that?

MS. MARTINEZ: Sure. Madam Chair, Commissioners, that is our error. We submitted the caption with the deadline that was required and then we were still firming up the numbers, so my apologies for not having that.

COMMISSIONER CHAVEZ: So then the accurate number would be the \$1,211,786?

MS. MARTINEZ: That is correct.

COMMISSIONER CHAVEZ: Okay, so then you'll just have to fix the fiscal impact to reflect the dollar amount.

MS. MARTINEZ: We will do that so that it goes correctly.

COMMISSIONER CHAVEZ: And then you have – and it makes sense because you have future expenses – let's see, recurring and non-recurring, right?

MS. MARTINEZ: Madam Chair, Commissioners, yes. What we'll do is if you look, there's a little paragraph. The future expenses are based on a five-year time span. So that is trying to focus at our best attempt at what it would cost us over the next five years. But then we indicate that it's a partial recurring, because you will have the staff, you will have supplies, you may have uniforms. We have to do some form of vehicle replacement. Typically every fifth year we'll replace a vehicle, and then the update and upkeep of maintenance of cleaning supplies and tools.

COMMISSIONER CHAVEZ: So I guess that would be the separation between capital cost, which is sometimes a one-time cost?

MS. MARTINEZ: Madam Chair, Commissioner Chavez, you're correct. The capital cost should be a one-time cost and the recurring would basically be staff as well as their need to maintain the upkeep of the building.

COMMISSIONER CHAVEZ: And really capital cost in reality is not a one-time cost because we have replacement cost, but that's the lifespan of whatever it is, we're buying a car or carpeting or whatever. But I guess that's just – we have to account for that in the normal course of doing business. But I just wanted to understand this a little bit more and be sure that the dollar amounts are following consistently. Thank you, Madam Chair.

CHAIR HOLIAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Madam Chair. I really want to see this courthouse open but I have some concerns about how much money and how we're continuing to spend. So I have a couple questions. On some of the capital changes, why

didn't the architect plan some of these things, and what are going to be able to recoup from the architect or the builders or insurance, etc.?

MARK HOGAN (Facilities): Madam Chair, Commissioner, it's premature at this time to get to detect the amount although we know the issue, the snow melt on the ramp is probably the largest single item that probably could have been anticipated earlier on in the project and what we're going to be looking at is how much it would have cost the County had it been anticipated in the original contract versus what it's costing the County now to install that. One benefit of having hindsight on it is that we were able to take the time to evaluate two different systems. The one that we're bringing forward is an overhead radiant which will have a much lower operational cost and lower energy consumption, versus having a heated ramp which would have probably been anticipated – what they would have done if they had put that in the original bid.

COMMISSIONER STEFANICS: What is the projected date, Madam Chair, of move in?

MR. HOGAN: Madam Chair, Commissioner, we have the Certificate of Occupancy right now and so we're working around the judiciary and their convenience right now. They're looking at either the second or the third week in April.

COMMISSIONER STEFANICS: So we have the CO?

MR. HOGAN: We do.

COMMISSIONER STEFANICS: Is the state legislature, Madam Chair, considering any funds for anything related to the courthouse at this time? And could we review that?

MS. MILLER: Madam Chair, yes. They have some funding, I believe in House Bill 2 as well as the capital bill. I'll see if I can get staff to pull those up. Predominantly for, it's for furniture and IT and fixtures. It's not for the construction of the building.

COMMISSIONER STEFANICS: Okay. I would like to know because we in good faith became a partner with the courts and with the state and I would like to make sure that the state is continuing to partner since this wasn't our responsibility in the first place to furnish. I believe – this is still a philosophical, political and legal consideration in terms of our spending that money. We are continuing to have to spend a great deal of money in the future to operate this. So my next question is, and you probably can't answer this, Mark, somebody else might have to, how much could we pare off of this to have a bare-bones County presence in the courthouse? And let the courts pick up where we left off?

MS. MILLER: Madam Chair, Commissioner Stefanics, we already carved quite a bit off of this relative to what the department thought they might need. For instance the Sheriff indicated that he believed he would need more individuals but based on the way the courts operate he believes he can – on the days when they don't have as many cases then those officers can be out on the street. So we went through that issue. We went through janitorial, quite a bit of that cut out and doing some of their basic stuff. We also have looked at – so we cut that back. Same with maintenance. On parking, there's issues there but these are not our issues. We should not have to deal with their staff, aside from what is already provided there.

So we have cut quite a bit back in that regard, but statutorily we are required to

provide the security, the maintenance and the housing of the staff there, and to include the janitorial services within that. So these are things that statutorily we're required to do. The thing that we did that we were not was the \$275,000 that the Commission allocated for furniture. But we actually cut this request to you back quite a bit just internally taking things out we felt we could do without.

COMMISSIONER STEFANICS: And Madam Chair, Ms. Miller, did you get the amount from the legislature?

MS. MILLER: There's \$1.5 million in House Bill 2 for furniture and fixtures, and then I also think \$80,000 in the capital bill for IT.

COMMISSIONER STEFANICS: Thank you. Madam Chair, I'd like to ask our Sheriff to come up. I thought I saw him. And thank you for being here today, Sheriff Garcia. Sheriff, is it your belief that the eight extra deputies will be required to be in service every day that the courthouse is open?

ROBERT GARCIA (County Sheriff): Madam Chair, Commissioner Stefanics, it's very possible there would be days that I will not require every single deputy in the courthouse, so those deputies would be working day shift, just as an example, say, they would be out on patrol patrolling the rest of the county. So it's very possible that there may be days that I don't require all these deputies. Right now, as I mentioned I have nine – nine I believe, ten, that are assigned and there are times that they are also not only assigned to the security of the courthouse but also transporting inmates. So there will be days, I'm sure that not all of them will be required to be there on certain days.

COMMISSIONER STEFANICS: And so Sheriff and Madam Chair, we currently do some booking via video teleconferencing. Is that going to continue?

SHERIFF GARCIA: Usually it is happening through magistrate court if I'm correct. Pablo, am I correct? I do not believe we are doing that through district court.

COMMISSIONER STEFANICS: So has that topic been explored with the district court in terms of people power, that we're requiring to transport and to get people to and fro?

SHERIFF GARCIA: I'm glad you brought that up, Commissioner, because that's something I could go back to the presiding judge Ortiz and probably address that concern that it would limit the amount of deputies having to transport on an daily basis or heavy docket days where they would be able to address that concern over video arraignments. There are times though, and I can honestly say that in a lot of cases in order to satisfy the defense attorneys we end up having to transport them here so that defense attorneys can meet with them. So I would hope that they would consider this and change course, but that's something we're going to have to deal with as we move forward. By statute we have to provide the security but I would think that they could meet us somewhere in the middle with regard to video arraignments.

COMMISSIONER STEFANICS: So, Madam Chair, Sheriff, one of the things that I hear you saying is that if some of the deputies would not be required at the courthouse they could be out in the field.

SHERIFF GARCIA: Yes, ma'am.

COMMISSIONER STEFANICS: Okay. Thank you very much, Sheriff, for my part. But the other issue I have here is the amount of money, and I'd like to plant this

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thought with the Board of County Commissioners. In having to budget a very large amount of money that we had not planned to do, we're really taking away from next year's budget initiatives and activities that we might have planned to do. And so I want the public to be aware of that, that by us pouring a great deal of money into this courthouse, which we are required to do, to get it open and by law, we are in fact taking money from the budget.

One of the things I would ask our Board to think about when it comes time for budget considerations, and I have mentioned this to our Manager and to our Finance Director, is that perhaps we need to – we're never going to recoup this, because next year there is going to be some other big issue. It could be Aamodt, it could be the Buckman, it could be something else. So we're always going to have a big issue that might pop in there and take a great deal of money. So this is where we come back to perhaps discussing a reserve or a contingency reserve for big issues like this, so that we're not cutting into the initiatives we'd like to see in the next budget year.

As I said, Madam Chair, and I think I'm going to be finished is I want to see the courthouse open; I'm just pained that it has to be so much money again. And I haven't really heard how we could get around it yet. Thank you very much.

CHAIR HOLIAN: Thank you, Commissioner Stefanics.

COMMISSIONER ANAYA: Madam Chair.

CHAIR HOLIAN: Commissioner Mayfield and then Commissioner Anaya.

COMMISSIONER MAYFIELD: Madam Chair, thank you. I'll yield to Commissioner Anaya if he wants to go first, Madam Chair.

CHAIR HOLIAN: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Commissioners and everybody listening or watching, I'm just reading – I pretty much echo the frustrations that were just articulated by Commissioner Stefanics and I would multiply my anxiety over this particular item by at least ten or twenty time. We absolutely by taking this action will absolutely take away from other potential projects that we had talked about in the past budget cycle. We're pre-empting our budget process repeatedly by delegating or signing 10 positions, eight deputy positions and two custodial positions as I understand it.

I do not think we fully vetted options to reduce the dollar amount with the judiciary, with the chief justice or with the chief judge I should say or all of the judges. I don't think we've done everything we can do relative to the recurring revenue and my frustration goes without saying and it's connected to even the action that we took as a Commission over the parking issue that I brought up last meeting and I'll continue to bring up until we rediscuss that issue and rehear options. So that's where I'm at right now. That comes from discussions with constituency. That comes from discussions with the public. So that's all I have for right now, Madam Chair.

CHAIR HOLIAN: Thank you, Commissioner Anaya. Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, thank you. Madam Chair, Manager Miller or Mr. Ross or Ms. Jaramillo or Ms. Martinez. I too echo a lot of what preceded me, but let me ask a couple questions. As far as the current fiscal year that we are in and opening this courthouse, I understand that. But we haven't even finished our budget cycle for FY13. No presentations have even been made to this Board yet, and we're committing so

many dollars right now. And I do appreciate that you have a fiscal impact in this packet, but even with what you have in this fiscal impact, what you're telling us – I am just so worried. We are already anticipating so many program cuts across the board with what is presented to us right here today for FY13. I'm anticipating that.

Public Works, ain't a whole lot looking good for you right now. I can just tell you that. Senior services, I don't know right now too. That's just my interpretation. But with that being said, I would like to see what we can do right now for the current remainder of this fiscal year. But I'm going to ask a couple questions. And I think some of my Commissioners may have stated this. I apologize. I was outside for a few minutes.

But let's just go back to this ramp that there was some mistakes made on the ramp. I heard a little earlier that there was a – when I say a little earlier, a few months back when we spoke about this that there was an error and omissions policy that we were going to look at. You're asking for us to pay for this right now, and maybe you guys spoke about this when I was out of the room a few minutes ago. What happened with the errors and omissions policy? Why are we having to eat this right now?

MR. HOGAN: Madam Chair, Commissioner, the way the process works is the County must approve the change order in order to get the work complete and then we've already issued the architect a letter saying that there's a potential claim involved so those things get settled out later, so it's really more of a matter or reimbursement. But it will take a while to determine to what extent that reimbursement might be and there really is a balance between what it would have cost originally to the County versus what it's costing today.

COMMISSIONER MAYFIELD: Mark or Mr. Ross, you said a word that I disagree with – potential. What do you mean, potential? Just like somebody messed up and it wasn't us. So why don't we just have the claim for demand? We want reimbursement because you guys messed something up. And why don't we just send a demand right now: pay us and make this right. Because you say potential and now we're going to negotiate and who knows when we'll get reimbursed for this. So, Steve, why are we just saying the potential for claim? Why aren't we just asking a demand letter? Reimburse us. There was a mistake made.

MR. ROSS: Madam Chair, Commissioner Mayfield, I didn't use the word potential.

COMMISSIONER MAYFIELD: Our architect did.

MR. ROSS: The basic process here is that in order to have the work done there has to be a change order made and we have to perform the work and only until we perform the work and incur damages as it were we don't really have a claim. So we have to do what we're doing in front of us right now in order to perfect any claim we might have and then work with the insurance company to negotiate possible –

COMMISSIONER MAYFIELD: But Steve, we really have to do the work first? We just can't say, look guys. Reimburse us.

MR. ROSS: You don't have any damages without doing the work.

COMMISSIONER MAYFIELD: Well, in our design we did not have intran or radiant or any heating in the design?

MR. ROSS: Apparently not; that's the problem.

COMMISSIONER MAYFIELD: Okay.

MR. ROSS: So it's a design issue and the question is whether it should have been included in the design by a reasonable architect in this community. That's the standard.

COMMISSIONER MAYFIELD: Okay. Well, let me just ask this question this way. We talked about this seven months ago. So why are we dealing with it today?

MR. HOGAN: Madam Chair, Commissioner, the reason is we wanted to fully evaluate the options in front of the County to see which would be the most cost-effective, and this was discussed while you were out of the room. We evaluated an in-slab heating system, and not only the cost of that initial installation, how long that was likely to hold up, but also the operational expenses in terms of the amount of energy consumed, and we compared that with an overhead radiant system. And so we determined that the overhead radiant system at the end of the day was going to be a better value for the County and more in keeping with the values we wanted to set in terms of setting an example for good energy, wise energy use. The overhead radiant is much less expensive to operate.

The initial expense is probably comparable but overall, it's going to be easier to maintain and if there's any failure in the overhead radiant it would be small components rather than a whole slab.

COMMISSIONER MAYFIELD: Okay. And I'm just going to go over a couple of these line item requests. What is change order 22, \$122,00 for tax?

MR. HOGAN: Change order 22 is a change order that has not been processed and it is – we know that there's other items that are, as we move in, there's some things that we need to address and that's anticipated to be the final change order that will clean up any outstanding issues, whether it's janitorial supplies is one of the issues on there. There's a host of small items that we're going to still have to clean up before the project is complete.

COMMISSIONER MAYFIELD: For \$122,000?

MR. HOGAN: I'm not sure where that number's coming from because we don't have a final on change order number 22 is just taken from a log that we keep. We have weekly meetings where we're looking at every issue that's before us in terms of getting the project complete. So that number has not been finalized. There's a number of items that are in there that we're still negotiating with the judiciary in terms of absolute need so I can't really talk about specifics of change order 22 at this point.

COMMISSIONER MAYFIELD: Yes, but respectfully, Mark, you're just asking us to sign a blank check right here right now then.

MR. HOGAN: No, we're actually trying to, Madam Chair, Commissioner, we're really trying to get approved the things that are time-sensitive that need to be addressed so that the court can operate and we can finish the project. We have anticipated that there are going to be some final cleanup items. They will be accounted for thoroughly. So there's no blank checks involved.

COMMISSIONER MAYFIELD: I was going to say it and I am going to pick some of this apart. You cannot give me any detail for \$121,794? You're saying janitorial supplies.

MR. HOGAN: I'm sorry. Say it again.

COMMISSIONER MAYFIELD: You just said some janitorial supplies but you can't provide any details on it.

MR. HOGAN: It's not janitorial supplies. Those would be in the operational

expenses. There's equipment that we're looking at, for instance, there was things related to janitorial supplies had to do with toilet seat covers, rolled toilet paper and things that we're looking at, whether we're getting better value by putting in paper holders that are more efficient to use. We're coordinating that with the operations division. So you might want to –

COMMISSIONER MAYFIELD: What's wrong with the old paper holders?

MR. HOGAN: Well, the County gets better value when they buy in bulk. We want to make sure that the toilet paper holders work for the things the County gets the best value on.

COMMISSIONER MAYFIELD: So did we buy some that we are now going to throw away? Did we not buy the initial ones?

MR. HOGAN: Those are the questions that we want to resolve before we bring that back to you or to the County Manager.

COMMISSIONER MAYFIELD: But I'm asking, do we have stuff that we've already purchased for the courthouse that we're now going to surplus, or did you not make those acquisition purchases already?

MR. HOGAN: Both, Madam Chair, Commissioner Mayfield.

COMMISSIONER MAYFIELD: I would like to know what you have purchased that you're not going to use for the courthouse. And I would like to know what those detailed dollars are.

MR. HOGAN: I have nine pages of issues that if you like I could go through.

COMMISSIONER MAYFIELD: I would just like a total dollar amount if you can. If we have purchased one dollar or one million dollars of property that we are not going to use at that courthouse, just let me know. And where is it going?

MR. HOGAN: There's – the only property that I think we're looking at at this point is toilet paper holders. There has been – I think we changed out a door that we'll have to surplus. There's a bench or two. This has been a –

COMMISSIONER MAYFIELD: What's the dollar amount please?

MR. HOGAN: I can't. I can't answer that off the top of my head. And the breakout isn't provided on –

COMMISSIONER MAYFIELD: Madam Chair, Mark, I'm going to still ask some questions, but you're not going to get me to vote on this unless you can give me a dollar figure on what we're surplusing and where it's going.

CHAIR HOLIAN: Okay, Commissioner, are you –

COMMISSIONER MAYFIELD: I've got a few questions, Madam Chair. So Madam Chair, so as far as General Martin contract extension, \$35,000 – what is that contract extension about?

MR. HOGAN: That is project representative services. That contract expires at the end of January and so they're providing services to us for coordinating the punchlist as well as evaluating project information to make sure that all those items are being accounted for. So we've had that project services representative since the initiation of the project and they act as owner's representative. We want to make sure those services continue until the project is complete.

COMMISSIONER MAYFIELD: Okay. And Bradbury Stamm's tax for \$81,000?

MR. HOGAN: The tax? That is just the tax amounts on the items that we've asked for in the change. It's just New Mexico gross receipts tax.

COMMISSIONER MAYFIELD: We've got to pay their tax. And then you have LEED, the LEED for \$11,700. I already thought we were arguably gold LEED certified there.

MR. HOGAN: That's correct, Commissioner and Madam Chair. We have a LEED gold designation right now. It seems fairly secure. We are essentially one point I think from being platinum, which is the highest rating possible. Our LEED consultant has been with the project again since the initiation. This is to extend their contract through the completion of the project. And we're hopeful that we can reach the platinum status.

COMMISSIONER MAYFIELD: Okay, so what's the bill for \$11,000 for Vered? It says \$11,700.

MR. HOGAN: That's correct.

COMMISSIONER MAYFIELD: So just help me – it's Vered.

MR. HOGAN: That's the name of the consulting firm that is –

COMMISSIONER MAYFIELD: It's a consulting firm.

MR. HOGAN: Yes.

COMMISSIONER MAYFIELD: To help us achieve that?

MR. HOGAN: Yes. They – when you go for a LEED designation the process begins at the programming stage of the project and continues till well after the thing is finished. We had to do commissioning to make sure that all the mechanical equipment was performing as specified and the building gets tuned in order to achieve that designation for LEED.

COMMISSIONER MAYFIELD: And then I'm just going to go up now. I did speak with the Sheriff yesterday. I understand his needs and understand what the law says. The law does say that the Sheriff has to have that building occupied by certified sheriffs. I don't know if certified is the right terminology, Sheriff, but you have to have sheriffs that protect that building, knowing that if you have the excess that they will be serving in our communities. And there's need for sheriffs in our communities.

Let me ask this, with property control, \$26,700, building services, another \$64,000, plus utilities, \$50,000. I spoke with Manager Miller on this a little bit. Manager Miller, you were going to look also though at Administrative Offices of the Courts, and there's was something in the law that they might be responsible for the utility payments. Was there anything when you looked into that? Just what their responsibilities were on that side? Are we responsible for those utility payments, ongoing, recurring?

MS. MILLER: Madam Chair, Commissioner Mayfield, we are responsible to house the courts, and that means house the individuals in it. As far as operating, it would be a great change in trying to shift over utility bills and things like that to them because we're responsible for the facility. They're responsible for the operations inside the facility, the actual court operations. But statutorily, we went back and looked at the statute and the one thing that, as I said, there's some latitude with a couple of things as far as a strict interpretation of the law, but either way this would be a battle back and forth to start shifting costs that they have not had onto them now. And I don't know that we want to get into an issue of well, the lights aren't on.

We signed up the accounts; we're the ones who got those utility accounts and everything so we'd have to shift them over to them and without their acceptance of them I don't know that that could even happen. I think part of the issues that we're discussing are things that would take time to try to shift over but either way we need to try to get into the facility and get it operating. So we may be able to adjust some things downward after we are in there and we know what it really costs to operate it, and then also, since we have some offsets with the other facility not being used for a while, those utilities may come down.

The other thing is as we renovate that other building there's quite a bit of leases that we currently have throughout the city. We also pay for a lot of parking for our own employees throughout the city. So there's a lot of other costs but it's just not going to happen tomorrow. But I think there will be a lot – we'll see reductions that offset the cost of opening this new facility. We don't know them exactly today.

COMMISSIONER MAYFIELD: And Manager Miller, I know – well, I know I've been in discussion with some of the judges. I can't speak for every Commissioner. And I know you have because you and I have had this conversation, but on the operation side, I know we've talked about electronic monitoring and things like and I've talked to the Sheriff about this as far as their docking system, but just as far as the operational, like if there's where we could have some cost savings as the expenses we pay and how they do their operational management, are those conversations happening more for the operational and the expense side of what we have to deal with. Do you have that dialogue going on more at an administrative, operational level where we can try to reduce some operational cost? Is that happening more? For recurring. I'm looking for long-term recurring dollars.

MS. MILLER: Madam Chair, Commissioner Mayfield, actually I wasn't here but I do understand that what – the County hired a consultant to look at ways that the court could operate – I want to say more efficiently so that the facility could either be a smaller footprint or operate in a way that utilizes the full facility all the time, so maybe not need to be as large. And my understanding at that time was that the judiciary did not like any of the recommendations that that consultant made and it's very difficult because we aren't in charge of their operations. So I don't know what options the County would have in that case to say, well, at that point I guess the County would have said, well, then we won't build your new courthouse if you don't change your operations, but I don't think that that was ever contemplated, six, eight years ago.

As far as where we are today, that courthouse was built in a way to accommodate their current way of operating and that current way, unfortunately, does incur greater expenses than maybe what they could do.

COMMISSIONER MAYFIELD: But just to ask for that dialogue of saying, look, can you help us with those recurring – they're all our taxpayer dollars. Just that dialogue. We just recently passed Commissioner Chavez' FIR footprint impact on us. Like, courts, you have an FIR impact on County operations recurring. And I'll just close with this, Madam Chair and Manager Miller. I really think we need to look at maybe just short-term dollars for this current FY to get this courthouse open, but we also should look at the budget cycle for the next FY. Because we haven't even had our budget study session for next year. And we've already made decisions where we may not have any money for any other – our Clerk's sitting right here. There may be no money for our Clerk.

I was going to say it straight up. We've committed a lot of money right now based on what I think we potentially could approve right now. That's all I have, Madam Chair. Thank you.

CHAIR HOLIAN: Okay. Thank you, Commissioner. I think that we will move forward and I will read this resolution – or not the whole resolution but I will read the caption into the record and entertain a motion. Resolution No. 2013-28, a resolution requesting a budget increase to the general fund and to the Sheriff's operating fund to budget for various capital, personnel, equipment and supplies needed to open and operate the First Judicial Court Complex in the amount of \$1,211,786. Do I have a motion?

COMMISSIONER MAYFIELD: Madam Chair.

COMMISSIONER CHAVEZ: I'll make a motion.

CHAIR HOLIAN: Okay. Well, I think I have –

COMMISSIONER CHAVEZ: Motion to approve.

CHAIR HOLIAN: Commissioner Chavez, we have a motion to approve and I'll second that.

COMMISSIONER CHAVEZ: And I have a question.

CHAIR HOLIAN: Well, first of all, before discussion, I would like to ask – this is a resolution. Is there anyone here in the audience who would like to come forward and speak about this resolution? Okay seeing none – oh, Commissioner Anaya. This is for the public to comment on, and now we are on the discussion of the motion. Commissioner Anaya.

COMMISSIONER ANAYA: What I was going to say relative to what you just asked of the public, is if the public realized they weren't going to have the opportunity to access potential dollars based on the approval of this item we probably would have had a full house of people. So I think that's not a very fair statement to put that out that way given that they really don't understand the ramifications that this decision will have on future budget considerations. I need to put that forward. I don't have anything else.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: I'm going to see if I can follow up on that, Commissioner Anaya, because I do agree with you. I don't take this lightly, Commissioner Mayfield. I think that this is a large dollar amount, but I think that unfortunately, to use a painter's term, we're painted into a corner. There's not much we can do and the longer we drag this on I think it's going to be more of a disservice, not only to the users of the building but to the general public.

And so I want to talk a little bit about where the money's coming from and maybe Katherine, you could help me on that. Because we have a resolution that's requesting a budget increase to the general fund and to the Sheriff's operating fund. Those are two separate line items, two separate operating funds. So when you talk about the Sheriff's operating fund, I don't think we can build parks with that fund, I don't think we can do much else with that. So when we tell the public you're going to be losing when we take this action, that's not completely accurate. I think that they may be sacrificing a little bit but I don't think we're going to lose everything that we've planned for in the last year. That would be my hope. So I would want Teresa to touch on the two different operating funds, the general fund and the Sheriff's operating fund. And touch on the impact it would have on future projects.

MS. MARTINEZ: Okay. Madam Chair, Commissioners, the funding source is basically the general fund. The Sheriff's operating expenditure and operating budget if you will sits in what we call a special revenue fund. So in order to fund this we would have to do an operating transfer from the general fund to support the needs of the Sheriff's Office. Now the Public Works staff reside in the general fund, so this is recognition of additional need for startup supplies and FTEs. So that will be, if you will, remain within the general fund.

This definitely will have an impact moving forward. Right now it's hard to say. We're currently formulating revenue forecasts for you. There are multiple factors that affect that. We have other challenges and issues that we have to face, so if there was any new revenue it's definitely being occupied by the fact that we have this new additional operating expense as well as other needs countywide. So we are trying to plan for a budget study session, probably early to mid-April so we can bring all of that to you and you're aware. We are also trying to finish our individual meetings with each of the Commissioners so we can get the budget priorities of each and bring that before you, and then do the balancing of, is there any new revenue? And if there is, is it eaten up by moving forward, whether it be by judicial or other functions and what recommendations could we possibly give if there's even any room for new items.

COMMISSIONER CHAVEZ: I appreciate that. So it is going to be interesting to see how we balance that budget and still meet our needs. But I don't think we can ignore this one too much longer because of the service that it provides. And so that's kind of what I'm looking at. Thank you, Madam Chair.

CHAIR HOLIAN: Okay. Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, I appreciate everything that was said but this is how I look at it also. The County did a great service by cleaning up an environmental mess out there. And I won't tread over a lot of territory that's been said. We have a legislative session that's going to be completing in a week. Commissioner Stefanics brought up a couple very relative points. There's a lot of dollars being requested right now for this courthouse. We have no idea what is going to happen with the Governor or with legislative appropriations that's coming. I don't think another week or two weeks, granted, even what the Governor is going to do is going to have a whole lot of impact on us opening that courthouse. They still have a building down the street that they're utilizing.

So I don't think it puts us in a huge predicament to wait for one other month to figure out even what we're doing with our budget cycle. We can move up the Commission's budget request to us. I think you all have met with all of our leadership here at the County. You know what requests have come from your leadership. Well, if you don't then you can kind of move that up internally. You can bring the budgets to us. We can see what our anticipated needs are going to be for FY 13.

So I honestly – and I know everybody wants to get into the new courthouse but we don't need to make hasty decisions. I just straight up ask Mr. Hogan, tell me what you guys – all the change orders you have made and what surplus equipment you have and what give-backs we've given back. For all I know it's been \$10, for all I know it's been \$100,000. I just want to know what has been given up. I haven't got a straight answer. I can't even – and I don't say straight answer. That's wrong. I haven't been provided with detailed information. I can't even get detailed information on some of these capital needs that you're asking for.

You don't have to answer it now, Mark, but I think that that's pertinent for me to ask. And I don't think that by us putting this off two weeks or one month is going to have us arguably moving into that courthouse any sooner to get this factual information. Knowing if the legislature approved these requests, and as Commissioner Stefanics said, this Commission voted on a \$275,000 furniture request a couple months back, there's a request now for all other types of furniture funding now, right now in capital requests. So how do we know if that is going to be approved? Will the Commission receive some reimbursement for that? I don't know.

MS. MARTINEZ: Madam Chair, Commissioner Mayfield, if I may. Could I ask that you possibly consider moving today's resolution for the current year fiscal needs before you so that we give the staff time that they need to prepare. Because there will be some ordering of supplies and materials that will be necessary to support the judiciary when they do in fact move. And then between here and when the legislature will end we'll have an idea as to what the Governor will sign and the impact that may have moving forward on our future budget FY 14 cycle.

COMMISSIONER MAYFIELD: Can you just break that more specifically down for me then? What is it exactly that you all need –

MS. MARTINEZ: Well, Madam Chair, Commissioner Mayfield, I'm asking you to approve the resolution you have before you today and let you know that we are working together due diligently to ensure that we are getting the best dollar that we can for the outstanding capital items. We can prepare a list for you of all the questions you've asked. We have it here. So we can compile that and get that to you. But my concern lies with the staff and their ability to do their job from the operational standpoint at a minimum, as they get ready to move into the building. There are some items that we need to purchase.

CHAIR HOLIAN: Commissioner Mayfield, do you have anything further, anything different to add?

COMMISSIONER MAYFIELD: Well, I'm going to respond. Who's putting the drop-dead date of when the new courthouse has to be occupied? Why does it have to be tomorrow? Why does it have to be next month? Why can't it be the new fiscal year of July?

MS. MARTINEZ: Madam Chair, Commissioner Mayfield, I can't answer that.

CHAIR HOLIAN: Katherine.

MS. MILLER: Madam Chair, the reason we are moving on this is because we have anticipated to be in there, as I said earlier, in January. The construction was a little bit longer but the Commission wanted us not to leave it empty. We were given direction the previous court item was to get it completed and get it open to get them moved over so we could start using the warranty. Because if we get the CO our warranty period starts and if nobody's in there actually testing it out then we're running out of our warranty time. So that was our primary reason for trying to make sure that we didn't leave it empty for a long time.

I could suggest, if you wanted, you could approve some of these items and I think what Teresa was alluding to – from an operating standpoint your approval of this budget adjustment today does not commit you to – when we build the budget for 2014 you could cut back some of these things if you find that that's not where you want to cut back what's allocated to here. Additionally, I talked to the Sheriff, if that many deputies really aren't needed and as they work through that then could we either move them out into the field or

could we free some of those positions.

So we're putting the fiscal impact for you that if you left it exactly like this, this is what it is year after year, but that does not preclude you from making a different budget for this facility coming in our 2014 fiscal year. But this is what we felt we needed to ask for in order to make sure we didn't undercut bringing that facility on line.

COMMISSIONER MAYFIELD: And Manager Miller, and I hear and I appreciate what you're saying with the warranty issues, and I know we've been part of that discussion, but every day is just more dollars and more dollars that we keep putting in to that courthouse. So there is time's when financial considerations come, and I'm just worried about future program impacts to this County for the next fiscal year and if it draws out the rest of this year – those are my worries for the rest of the County.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: Thank you, Madam Chair. So Teresa and to the County Manager and to Commissioner Mayfield, in the event that the state legislature would fund the request for this year we could reallocate some of the money that we're approving now into other projects. Is that correct?

MS. MARTINEZ: Madam Chair, Katherine, I'm going to defer to you on the state legislature funding.

COMMISSIONER CHAVEZ: If that funding were to materialize, and we approve this, would we be able to reallocate this money back into other programs?

MS. MILLER: Madam Chair, Commissioner, I doubt that any of the funding that's in House Bill 2 or in the capital bill for the district court is for any of the things that we're obligated to do. All we've put forward were the things in the statute that we're obligated to do, which is utilities, maintenance, the security and the actual construction of the facility. So all that's in here, we're not taking on any of their operating costs.

COMMISSIONER CHAVEZ: I apologize. I remember your saying that earlier. So I'll call the question.

CHAIR HOLIAN: Okay. I have a motion to call the question.

The motion to call the question passed by majority [3-2] voice vote with Commissioners Chavez, Stefanics and Holian voting in favor and Commissioners Anaya and Mayfield voting against.

CHAIR HOLIAN: We have a motion and a second on the floor to pass Resolution No. 2013-28.

The resolution passed by majority [3-2] voice vote with Commissioners Chavez, Stefanics and Holian voting in favor and Commissioners Anaya and Mayfield voting against.

CHAIR HOLIAN: Now, I have a couple of announcements to make. I suspect that a lot of you are here for a land use case that is coming up. First of all I want to tell you that we are – there are two items under the Growth Management section that have to do with the rent-to-own program and the down payment assistance program, and they will be put off

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until our March 26th meeting. So we will be skipping those two items.

Then we have two – I want to again alert everybody that two land use cases are tabled – the Susan Sutton variance and the Family Dollar Store cases. And then I also got a request from Commissioner Mayfield. He wants to vote for the purchase of the extra diversion capacity for the BDD. So I have a point of order question for Steve. Do I have to call for the vote again? Or can we just record that he's voting in the affirmative?

MR. ROSS: Madam Chair, just direct that the recorder show Commissioner Mayfield voting in the affirmative. [See page 43.]

CHAIR HOLIAN: So what we have left is to consider item 3 under the Finance Department, and then there is a fairly short item I think about a Community Development Block Grant, and then Matters from the County Manager.

XIII. A. 3. Request Approval of Change Order No. 21 to the Contract Between Santa Fe County and Bradbury Stamm Construction, Inc. to Include User Requested Changes to the Judicial Courthouse Project in the Amount of \$476,826.33, Exclusive of Gross Receipts Tax and to Bring the Total Contract Amount to \$45,573,949.41 Exclusive of Gross Receipts Tax

COMMISSIONER STEFANICS: Madam Chair, I move for approval.

COMMISSIONER CHAVEZ: Second.

CHAIR HOLIAN: Okay. I have a motion and a second. Any further discussion?

The motion passed by unanimous [5-0] voice vote.

XIII. B. Growth Management

1. Discussion and Direction to Manager on a Rent-to-Own Program for Sale of County-Owned Affordable Units
2. Discussion and Direction to Manager on Proposed Amendments to Ordinance 2011-6 and Resolution 2010-190 Relating to the Down Payment Assistance Program

[These items were deferred. See above.]

XIII. C. Public Works Department

1. **Request Approval of a Community Development Block Grant to Install Water Lines in the Glorieta Community in the Amount of \$424,759**

ADAM LEIGLAND (Public Works Director): Madam Chair, Commissioners, the County received a Community Development Block Grant to, as the caption says, install water lines and this item is just to accept the grant, and just to notify, there will be two more items coming before the Commission. The second one will be a joint powers of us partnering

with the Glorieta community to execute this grant and also a budget resolution to budget this grant.

COMMISSIONER STEFANICS: Madam Chair, I move for approval.

COMMISSIONER CHAVEZ: Second.

CHAIR HOLIAN: Okay. I have a motion and a second. Is there any further discussion? Well, first of all, I would just like to say thank you, Adam, and I'd really like to say thank you to all the staff that worked on this long and hard. I know that there were public meetings scheduled and so on and I want to thank Rudy and all the rest of the staff who put those together. So in any event, we have a motion and a second.

The motion passed by unanimous [5-0] voice vote.

XIV. MATTERS FROM THE COUNTY MANAGER

A. Miscellaneous Updates

B. Annexation Update

MS. MILLER: Madam Chair, I'm going to just skip the miscellaneous updates to keep things moving and give you an annexation update. As you know there was a joint City-County meeting scheduled at the end of February and that meeting did not happen. It ended up getting cancelled early in the day of that meeting due to the fact that we had negotiated at the staff level several agreements on fire, law enforcement, roads and utilities, and the City came back with a proposal on the utilities that was quite different than what we had been working off of for several weeks. So we were concerned where they were coming from with that and felt that that wasn't really appropriate and we didn't even have then a starting point on that particular issue with both bodies.

And so since then, we have met and we went back to the agreement we had been working off of. We have made quite a bit of progress on that agreement and hope that now we are back to where we thought we were prior to the last scheduled annexation meeting between the City Council and County Commission. With that, I wanted to make sure that you had that update and had an opportunity to ask me any questions relative to where we think that stands.

CHAIR HOLIAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Madam Chair. Madam Chair and Manager Miller, on behalf of myself –I'm not speaking for any other Commissioner – I hope that you will express to the City our disappointment in their last minute, behind the scenes changes on what we felt was a good faith effort to continue negotiations on annexation. I believe that this County Commission has been meeting with the City since last summer, making progress, and this really was a very big black mark for us. And I hope you will convey my comments to them. Thank you.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: I don't know how better that could be said, but I'll try to add to it. I think that the stalemate that we're in between the two local governments is doing a disservice to both organizations and most importantly to the population that lives within the presumptive city limits. Because part of what's been done is that the County has

transferred their authority for the planning and platting of the presumptive city limits but yet holding back on signing the document to make the annexation official.

I think that when we continue the negotiations we need to have some notion that there would be a deadline, because the settlement agreement did impose deadlines that have been ignored. And again, that's doing a disservice really to the general public. We're talking about agreements in fire, roads and water. We've, I guess, agreed on closure to fire and roads but not water. And so this piecemeal negotiation and chipping away at the foundation of this annexation policy is really not good.

And so I think we need to send a message that we're not pleased with the bait and switch that we've experienced, and when we come back to the table we need to agree and finalize all three of these areas at once, not one before the other or one after the other, but a comprehensive approach. Because that's what the settlement agreement would have done. It would have been comprehensive. It may not have been easy for everyone or may not have been what everybody wanted, but it would have been comprehensive and it would have removed the overlapping jurisdiction and the duplication of services. That's what's costing more in moving forward.

So I think that we need to send a message that we are serious about moving forward, but that we want a comprehensive approach and no piecemeal. Thank you, Madam Chair.

CHAIR HOLIAN: Thank you. Any further comments? Yes, Commissioner Mayfield.

COMMISSIONER MAYFIELD: And Madam Chair, Manager Miller, I appreciate all the work you've done. I know you've put a lot of time and effort into this, but maybe we do bring a resolution forward and we send a resolution from the body of five to the City Council and to the Mayor just asking that we have a meeting, through a formal resolution from this body. That's just a suggestion.

COMMISSIONER CHAVEZ: I think that would be great, Commissioner Mayfield, and in that resolution we go back to the settlement agreement and say, look, these are the resolutions that were suggested. We've passed those dates but we need closure on this. We need deadlines on this and we have to meet those deadlines.

CHAIR HOLIAN: Okay. So, Katherine, do you have anything on the legislation?

XIV. C. Discussion and Possible Action by the Board of County Commissioners in Support of or Opposition to Legislation Under Consideration by the New Mexico 2013 Legislature

MS. MILLER: Madam Chair, yes we do. As Commissioner Stefanics mentioned earlier, Hvtce, Rudy and Lisa have been doing an exemplary job in tracking legislation and providing updates and reports. I just wanted to give you the latest update. This is a packet that has all the legislative dates of note. [Exhibit 5] We also have added Senate Bill 60, or the portion of Senate Bill 60 which is the capital outlay bill that's going through the legislature right now. If you notice on what Hvtce just handed out we show all of the appropriations that are currently in Senate Bill 60 that have to do with Santa Fe County or that we had noted we had interest in. For instance, the Indian Water Rights settlement does

not come directly to us but goes to the Indian Water Rights settlement fund, but they have in there currently \$10 million to go towards Indian water rights settlement cases that the state is participating in.

And then you can see the others that are in there. Many of them were right off of our ICIP and hopefully those will stay in the bill as it proceeds through the rest of the process, through the signing time.

And then you can also see all of the other Santa Fe County related legislation. We have showed details for the items that are passing – that have passed over to the second chamber. If it hasn't gotten out of one chamber at this point it's not likely to make it through the process. So with that we would just stand for any questions, but other than that I would just say you can look through here for any bills of interest.

CHAIR HOLIAN: Okay. Thank you. Any questions, comments?

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. I guess after everything's said and done, but as far as the impacts for, say, PERA benefits, health benefits, I know that we do fall in sync with a lot of state health benefits. Maybe PERA we don't track as much, but I know there will be – I'm just anticipating a lot of significant reductions on that level. I don't know how we track in tandem with them but I think we semi-do. Maybe after everything is said and done, have it get signed by the Governor you can let us know and we can see them again but what we just approved is what we just approved. But how we can try to afford or work that into our budget cycle for our employees, I really would like that consideration to come to us with enough time for our new budget projections for the next year.

MS. MILLER: Madam Chair, Commissioner Mayfield, yes. One of the reasons we actually wanted to postpone a Commission-wide study session on the budget is we wanted to see what legislation would pass that would affect the County's budget and make sure that we had all of that information to show you what things we would either benefit from or what things that we would need to account for additional costs. For instance, if health insurance costs go up, that would pass on to us because we piggyback off of the state's insurance policies. Also, any possible PERA changes where there's a larger employer contribution.

COMMISSIONER MAYFIELD: Or employee contribution.

MS. MILLER: Yes. But from the County's budget side we'd have to make sure that there's anything from the employer contribution that would affect the County not just the state, because several of those can affect us as well. Also whether hold-harmless bills pass, any efforts of that. Those don't appear to be moving anywhere so I don't think that's going to be an issue. And if any property tax bills pass. All of those would have an impact on our revenues or potentially expenditures that we would have to accommodate before we could entertain other what I would call discretionary budget items.

COMMISSIONER MAYFIELD: Madam Chair, on that point. What is the status of 521? Because I know there was some floor amendments. I know how the vote taken; I won't go there. But were those amendments beneficial or were they detrimental from the position the County took? Because we did take a position and there were some floor

amendments. I just want to make sure they were in sync with the position the County took.

MS. MILLER: I'd have to ask Rudy. I don't know the latest.

COMMISSIONER MAYFIELD: There were a couple of floor amendments.

CHAIR HOLIAN: So Rudy, do you have something to add to that.

COMMISSIONER MAYFIELD: Okay. Well, it might be a moot point if it hasn't crossed over.

RUDY GARCIA (Community Services): Madam Chair, Commissioner Mayfield, I actually don't have an answer for that question with all the amendments that have happened in the committees. But we certainly can find out where they're at. Now, they just got off of the floor, the Senate just got off of the floor, and depending whether that House bill makes it to the Senate side we can email you here within a half-hour, an hour and let you know what's happening.

COMMISSIONER MAYFIELD: It hasn't crossed the House. It's on the floor still, right? On the house side?

MR. GARCIA: Yes.

COMMISSIONER MAYFIELD: So it hasn't moved yet. Okay. Thank you.

CHAIR HOLIAN: Any further – yes, Commissioner Stefanics.

COMMISSIONER STEFANICS: Madam Chair, I would also be remiss if I didn't mention the New Mexico Association of Counties and their staff and lobbyists that are at the legislature on behalf of all counties. Paul Gutierrez, the executive director, Grace Philips, one of their attorneys, Steve Kopelman, one of the attorneys, Joy Esparza who deals with federal lands and forest and wildfire issues, Tasha Young, lobbyist, former Senator Tito Chavez, lobbyist, and they really spend every day there from morning till night on behalf of all the counties. So between our staff and the Association of Counties we have a great team working for us. Thank you.

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR HOLIAN: Thank you. Yes, Commissioner Mayfield.

COMMISSIONER MAYFIELD: And Commissioner Liz Stefanics who sits on our executive board there who provides us with daily updates. Thank you, Commissioner Stefanics.

CHAIR HOLIAN: Yes. Thank you to all. I feel like I'm more informed about what's going on at the legislature than I ever have been.

XV. MATTERS FROM THE COUNTY ATTORNEY

A. Executive Session

1. Discussion of Pending or Threatened Litigation

3. Discussion of the Purchase, Acquisition or Disposal of Real Property

4. Discussions Preliminary to Collective Bargaining Negotiations

CHAIR HOLIAN: Do we need an executive session, Steve?

MR. ROSS: Madam Chair, we do need a closed executive session. I don't know if you want to do it now or later. We do need to discuss pending or threatened litigation, have some discussions preliminary to collective bargaining discussions about to open with AFSCME, and discuss briefly a proposed acquisition of real property.

CHAIR HOLIAN: Okay. And how long to you estimate that it would take?

MR. ROSS: Forty-five minutes is what we're –

CHAIR HOLIAN: Okay then, do I have a motion to go into executive session?

COMMISSIONER STEFANICS: Madam Chair, I move that we go into executive session for the aforementioned purposes.

COMMISSIONER CHAVEZ: Second.

The motion to go into executive session pursuant to NMSA Section 10-15-1-H (5, 6 and 7) to discuss the matters delineated above passed upon unanimous roll call vote with Commissioners Chavez, Mayfield, Stefanics and Holian all voting in the affirmative. [Commissioner Anaya was not present for this action.]

CHAIR HOLIAN: Thank you. We will now go into executive session and we will reconvene at 7:00.

[The Commission met in closed session from 6:13 to 7:15.]

CHAIR HOLIAN: Do I have a motion to come out of executive session?

COMMISSIONER STEFANICS: I move to come out of executive session having discussed pending or threatened litigation, collective bargaining, and present were the four County Commissioners, minus Commissioner Anaya. We had our County Attorney, our Deputy County Attorney, our County Manager and we had members of the management team who are part of the negotiating team including our HR Director, our Finance Director, our roads manager, our deputy sheriff, and I'm missing somebody. So that's who was in the executive session.

CHAIR HOLIAN: Is there a second?

COMMISSIONER CHAVEZ: Second.

The motion passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]

CHAIR HOLIAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: Madam Chair, I'd like to mention that we did have a discussion on collective bargaining and the role of the Santa Fe County Board of County Commissioners with collective bargaining. And since we make no decisions in executive session I'd like to propose a motion at this time, that I would move that the Board of County Commissioners entrust the collective bargaining negotiations to the management team that has been assigned, and that the Board of County Commissioners will only be involved in the collective bargaining negotiations when the County Manager brings to us issues that she or the management team would like our positions on so that they can continue negotiating.

COMMISSIONER CHAVEZ: Second.

CHAIR HOLIAN: Okay. I have a motion and a second.

SFC CLERK RECORDED 04/18/2013

The motion passed by majority [3-1] voice vote with Commissioner Mayfield voting against the motion and Commissioner Anaya not present.

XVI. PUBLIC HEARINGS

A. Growth Management Department

- 1. BCC CASE # MIS 12-5460 Steven & Lana Park Vacation of Easement. Steven & Lana Park, Applicants, (Southwest Mountain Surveys) Gabriel Pacheco, Agent, Request Approval to Vacate a Platted Ten-Foot (10') Wide Private Utility Easement on 5.054 Acres. The Property is Located at 29 Conejo Trail, within Section 5, Township 17 North, Range 9 East (Commission District 2)**

MIKE ROMERO (Case Manager): Good evening. The subject property consists of two legal lots of record, which were created through a land division in May of 2007 – one lot consisting of 2.51 acres and one lot consisting of 2.54 acres, which the applicant proposes to consolidate into one lot totaling 5.054 acres.

There is currently a residence on the property, lot 2-A. The ten-foot wide private utility easement is centered on the property line, which was created when the lots were split into two lots, 2-A and 2-B as indicated on the recorded plat. The Applicants feel that since the lot is going to be consolidated back into its original state, the easement which is paralleling the property line is no longer necessary. The Applicants claims no other party will be adversely affected by vacation of the easement.

Staff recommendation: Approval to vacate a platted ten-foot private utility easement on two lots totaling 5.054 acres. If the decision of the BCC is to approve the Applicants request, staff recommends imposition of the following conditions. May I enter these into the record?

[The condition is as follows:]

1. Upon approval of the Lot Consolidation Plat, the Plat shall be filed with the County Clerks Office with a note stating that the ten-foot (10') wide private utility easement is being vacated. (As per Article V § 5.7.3).

MR. ROMERO: I stand for any questions.

CHAIR HOLIAN: Okay. So are there any questions of staff at this point? Okay. First of all, I would like to recognize in our audience is Representative Max Coll, former Representative. Any questions for staff? No? Is the applicant here? Would you please come forward, and would you please be sworn in?

[Duly sworn, Desiree Romero testified as follows:]

DESIREE ROMERO: Desiree Romero, agent for Southwest Mountain Surveys.

CHAIR HOLIAN: Do you have anything to add?

MS. ROMERO: No.

CHAIR HOLIAN: Okay. Any questions for the applicant or for staff? This is a public hearing, and so is there anyone here from the public who would like to speak about this case, either for or against? Okay. Seeing none the public hearing is closed. What are the

wishes?

COMMISSIONER MAYFIELD: Move for approval, Madam Chair.

COMMISSIONER STEFANICS: Second.

COMMISSIONER CHAVEZ: I'll second, and I'll just ask that we include staff conditions.

CHAIR HOLIAN: With staff conditions? Okay. So we have a motion for approval with the staff condition.

The motion passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]

XVI. A. 2. BCC CASE #13-5010 Joseph V. Guerrero Vacation of Easement. Joseph V. Guerrero, Applicant, (Del Rio Surveys, Inc.) Philip Wiegel, Agent, Request Approval to Vacate a Platted Archaeological Easement on 4.02 Acres. The Property is Located at 46 Cerro Blanco Road, within Section 32, Township 15 North, Range 10 East (Commission District 5)

MR. ROMERO: The subject property consists of one legal lot of 4.02 acres, which was created through the Spirit Wind Ranch Residential Subdivision in 2007. There is currently a single family residence on the property.

The Applicant has verified through the State Historic Preservation Office that the original surveyor mistakenly plotted the archeological easement on the subject property. Based on subsequent archaeological studies that were conducted, the State Historic Preservation Office has determined that the archaeological site actually exists on the adjacent subdivision known as Spirit Wind West. The Applicant feels that since there is no archeological site on their property, the archeological easement should be removed from the plat.

Staff recommendation: Approval to vacate a platted archeological easement on one lot totaling 4.02 acres, subject to the following staff conditions. Madam Chair, may I enter this into the record?

[The condition is as follows:]

1. The Applicant shall file the portion of the Final Plat (Lot 8) affected by the vacated archeological easement with the County Clerk's Office (As per Article V § 5.7.3).

MR. ROMERO: I stand for any questions.

CHAIR HOLIAN: Are there any questions for staff? Seeing none, is the applicant here? Would you please be sworn in?

[Duly sworn, Philip Wiegel testified as follows:]

PHILIP WIEGEL: Philip Wiegel, agent.

CHAIR HOLIAN: Is there anything that you would like to add at this point?

MR. WIEGEL: No, Madam Chair.

CHAIR HOLIAN: Are there any questions for the applicant? Okay. This is a public hearing. Is there anyone here from the public who would like to speak about this case, either for or against? Okay, seeing none, the public hearing is closed.

COMMISSIONER STEFANICS: Madam Chair.

CHAIR HOLIAN: Yes, Commissioner Stefanics.

COMMISSIONER STEFANICS: I would move for approval with staff conditions.

COMMISSIONER MAYFIELD: Second, Madam Chair.

CHAIR HOLIAN: Okay. I have a motion and a second with staff conditions.

Is there any further discussion?

The motion passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]

XVI. A. 3. CDRC CASE # V-12-5430 Susan Sutton Variance. Susan Sutton, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow Two Dwelling Units on 2.492 Acres. The Property is Located at 8 Ute Lane, within Section 20, Township 16 North, Range 10 East (Commission District 4) Miguel "Mike" Romero, Case Manager (TABLED)

XVI. A. 4. CDRC CASE # V 12-5111 William Frederick Wagner Variance. William Frederick Wagner, Applicant, (Sommer, Karnes & Associates, LLP), Joseph Karnes, Agent, Request a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow a Family Transfer Land Division of 31.824 Acres into Two Lots; One Lot Consisting of 20.990 Acres and One Lot Consisting of 10.834 Acres. The Property is Located at 45 La Barbaria Trail, within Section 9, Township 16 North, Range 10 East (Commission District 4)

WAYNE DALTON (Case Manager): Thank you, Madam Chair. Madam Chair, I just want to state that this application was originally reviewed under Section 9.8, which is the Mountain Special Review District Standards of the Extraterritorial Zoning Ordinance. Since that time and after further review of the SpAZO Ordinance, staff and the Legal Department have determined that those regulations are no longer in effect and this case, this application, is governed by the Land Development Code.

The Applicant now requests a variance of Article III, Section 10 of the Land development code to allow a family transfer land division. The subject lot was created in 1978 and is currently vacant.

Article III, Section 10 of the Land Development Code allows lot size to be reduced to twenty acres or more with signed and recorded water restrictions and for lots created through family transfer, subdivision or land division. A family transfer under the Land Development Code is permitted from husband to wife. An immediate family member as defined in the Code is a husband, wife, father, stepfather, mother, stepmother, brother, stepbrother, sister, stepsister, son, stepson, daughter, stepdaughter, grandson, step grandson, granddaughter, step granddaughter, nephew, niece, whether related by natural birth or adoption.

The Applicant intends to gift one of the two proposed lots to his wife. The Applicant states he has no children of his own and desires to maintain the property for personal use and for his extended family and desires to create two lots. The Applicant also states, the proposed lot sizes are substantially larger than existing adjacent lots in the immediate vicinity.

On February 21, 2013, the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the Applicant's request by a 5-0 vote and those minutes are attached in Exhibit 1.

Staff recommendation: Denial of a variance from Article III, §10 (Lot Size Requirements) of the Land Development Code. If the decision of the BCC is to approve the Applicant's request, staff recommends imposition of the following conditions. Madam Chair, may I enter those into the record?

CHAIR HOLIAN: Yes, you may.

[The conditions are as follows:]

1. Water use shall be restricted to 0.25 acre-feet per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, § 10.2.2 and Ordinance No. 2002-13).
2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval (As per Article III, § 2.4.2).
3. Further division of each Tract is prohibited; this shall be noted on the Plat. Only one dwelling unit shall be permitted on each lot (As per Article III, § 10).
4. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review (As per 1997 Fire Code and NFPA Life Safety Code).

CHAIR HOLIAN: Are there any questions of staff at this point?

COMMISSIONER CHAVEZ: I have a question.

CHAIR HOLIAN: Yes, Commissioner Chavez.

COMMISSIONER CHAVEZ: Yes, Mr. Dalton, so it seems that this applicant would like to do a lot split and they're using the family transfer mechanism to do that. Is there another – are they provided another mechanism other than the family transfer, if they wanted to subdivide this lot into two lots?

MR. DALTON: Madam Chair, Commissioner Chavez, yes. The applicants could do a land division.

COMMISSIONER CHAVEZ: And would the total piece of the property – I don't remember what the size is – would that be – would it be allowed? Is the size large enough to do a lot split on? Would it create two legal lots?

MR. DALTON: Madam Chair, Commissioner Chavez, no. The maximum allowable lot size in this area is 20 acres, so they would actually be below the minimum lot size whether they did a family transfer or a land division, they would still be below the minimum lot size in the area.

COMMISSIONER CHAVEZ: So does the family transfer then soften the requirements?

MR. DALTON: Madam Chair, Commissioner Chavez, as far as lot size

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requirements, no. But as far as on- and off-site improvements, yes.

COMMISSIONER CHAVEZ: So those standards would be at a lower standard and things like that?

MR. DALTON: Madam Chair, Commissioner Chavez, that's correct.

COMMISSIONER CHAVEZ: Thank you, Madam Chair.

CHAIR HOLIAN: Okay. Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Madam Chair. Mr. Dalton, if there was a land division, they would have to do a water study? Forty or 100-year water supply?

MR. DALTON: Madam Chair, Commissioner Stefanics, technically, yes. In order to get down to a ten-acre lot, yes, they would have to do a geo-hydro study on the property.

COMMISSIONER STEFANICS: But for a family transfer they don't?

MR. DALTON: Madam Chair, Commissioner Stefanics –

COMMISSIONER STEFANICS: They just have to meter and keep within the allowed water use?

MR. DALTON: Madam Chair, Commissioner Stefanics, technically, yes. Even if they do a family transfer. In order to get down to this lot size they would have to do a water study on the property.

COMMISSIONER STEFANICS: They still would.

MR. DALTON: Yes.

COMMISSIONER STEFANICS: I'm sorry. Is that one of your conditions?

MR. DALTON: Madam Chair, Commissioner Stefanics, no, it is not.

COMMISSIONER STEFANICS: So, is that a condition we would need to add?

PENNY ELLIS-GREEN (Land Use Administrator): Madam Chair, Commissioner Stefanics, I believe that's the reason why they're asking for the variance.

COMMISSIONER STEFANICS: Okay. That's all right now. Thank you.

CHAIR HOLIAN: Thank you. And Wayne, let me ask you. Is there a hardship in this case?

MR. DALTON: Madam Chair, not that I can see, no. Other than the fact that the applicant does not have children of his own.

CHAIR HOLIAN: Okay. Thank you.

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR HOLIAN: Yes, Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Dalton, I'm looking at Exhibit 7, and it's just hard for me to read, but are there any adjacent lots that have smaller properties than 20 acres?

MR. DALTON: Madam Chair, Commissioner Mayfield, yes. The immediate lots in the area range from five acres all the way up to 157 acres.

COMMISSIONER MAYFIELD: And where are the five-acre lots?

MR. DALTON: If you look on Exhibit 7 there's some five-acre tracts to the east of this property and also to the south of this property.

COMMISSIONER MAYFIELD: And those are legal lots of record that have

homes on them?

MR. DALTON: Yes. I'm not sure if they're built upon, well, yes, you can see a couple residences. So yes, they are legal lots of record.

COMMISSIONER MAYFIELD: And Mr. Dalton, they received a permit pre-lot split? Did they receive family transfers? Do you know off-hand?

MR. DALTON: Madam Chair, Commissioner Mayfield, I don't know off-hand but a lot of these lots in this area are pre-code lots. This lot itself is a pre-code lot.

COMMISSIONER MAYFIELD: The current lot we're talking about right now is a pre-code lot?

MR. DALTON: Madam Chair, Commissioner Mayfield, that's correct.

COMMISSIONER MAYFIELD: Okay, and then also on – that's all I have for now, Mr. Dalton. Thank you.

CHAIR HOLIAN: Okay. Thank you. So is the applicant here.

KARL SOMMER: Madam Chair, my name is Karl Sommer. I'm an attorney in Santa Fe. I represent Mr. Wagner and he couldn't be here tonight. What I'd like to do is make a presentation about what the history of this case has been, talk to you a little bit about what's unique about this situation, and most importantly, to review with this Board of County Commissioners what has developed as a consistent policy under the code, interpreting its own code in family transfer situations and lot size density variances. I think this Commission has established a very consistent reading of the code in circumstances under which it grants variances, and circumstances under which it does not. I'd like to go over that with you tonight because I think it bears directly.

Then I'd like to address some of the opposition that has been raised. Mr. Graeser is here tonight, ironically, who is the representative of Mr. Shapiro whose findings of fact and conclusions of law you approved tonight, which denied a density variance and that case is distinguishable, and I think it's very interesting because it fits within the policy that you've established. That's what I'd like to go through. If at any time you have any questions please interrupt me and I'll answer them, but I'll try to be as brief as possible. Mr. Wagner owns 30 acres of property in the La Barbara Canyon. He owns it as his sole and separate property and it has always been his sole and separate property. He does not have children and he would like to, as part of his estate plan, leave a portion of this property to his wife. This is very similar to a case not so far away from here in which the Kirkpatrick family developed a very similar pattern, husband to wife as part of an estate plan. The courts approved that division as being consistent with the policies of this Board and of the code.

So that's what's gone on; that's what we're dealing with here is dividing the piece of property that is 30 acres into a 20-acre lot and a 10-acre lot. He's going to give the 10-acre lot to his wife if you approve this.

So what's the history and why are we here? As you all know, the Board of County Commissioners entered into a settlement agreement with the County which resulted in the SpAZO ordinance and it resulted in the appeal of certain portions of the EZC and EZO codes. There was a provision in there that said the Mountain Special Review District shall not be repealed in areas that are to be annexed or something like that. It's something like that. The code has been interpreted since the SpAZO ordinance in 2009 as being the Mountain Special Review District which went all through La Barbara Canyon as you know deep into the EZ.

Staff and the County have been interpreting the code to say, do you know what? The MSRDR still applies. It's like the County's escarpment ordinance. It deals with siting and moving houses out of the view corridors. It deal with density – how big lots can be. All of those things. The MSRDR was one of the hallmarks of the County's protection of the Mountain Special Review District. It had densities of 20 acres. That was the minimum density. Excuse me. The minimum lot size.

Under the County MSRDR the minimum lot size could be varied in a family transfer down to ten acres. If the code had been applied, the MSRDR, the way the County has been applying the code since 2009 in this case we wouldn't be asking for a density variance. The code would say, those densities are okay. We'd be here asking for a variance with respect to whether or not you could transfer from a husband to a wife, because ironically, under the EZC, a family transfer did not include a husband or wife. Under the County code it always has. We'd be talking about something else. Not a variance about density; we'd be talking about husband and wife.

Well, this case went through on that analysis all the way up to this Board and then the County staff – Mr. Graeser got in the case. He sent in a letter that said, you know what? The MSRDR has been appealed. Legal staff agreed with him. County staff had been applying the MSRDR for years. So they said, let's reconfigure this case as a variance under the County code. That's why this case is in front of you under this configuration. Because staff has now taken the position that the MSRDR no longer protects the Mountain Special Review District. And all the protections that were there with respect to siting and view corridors have been wiped out. So this case is here under that auspices.

I don't know that that's – I'm not a judge and you're lawyers are not judges and all of that. We're here to try and see if the case can be decided. So the case is in front of you on a density variance. That means that we're looking at the County code, because the County code says that you can have a transfer to a husband and a wife as part of the transfer. The question is is what is the minimum lot size? In this case you could get down to 20 acres under the code with water restrictions. We would be here. One of the lots is going to be ten acres.

So what is the County's policy and what are the sections of the code that we're dealing with? Just by way of what is the area like? This property is adjacent to many five-acre parcels, ten-acre parcels, 40-acre parcels. It's a mishmash of property sizes. The codes that have been applied in this area have variously said, 20-acre densities, ten-acre densities, and by the stroke of a pen things have been changed. Not by reason of studies related to water. Not be reason of studies related to safety. But by reasons of policy changes related to County code versus City code and annexation. That's what this case – and that's what's happened in this area.

You're going to hear some from the opponents saying, oh, there's water. Oh, there's fire safety. Oh, there's ways of life and there's all that. The County code, the MSRDR, they were changed not on the basis of any of that. They were changed on the basis of a policy that the City and the County entered into saying that the County would govern this area.

So let's go to the code. We're dealing with the variance section. There are two criteria in your variance section which you apply in these kinds of cases. More often than not these cases come to you in a family setting, and people have various reasons that they want to divide their lot in ways that the County code would not allow under the density requirements.

So I've done a review and gone through – what is the section we're dealing with? Well, one criteria of the code that you have to consider is is there some physical characteristic of the land which creates a hardship. That's one criteria. And you will hear tonight from the opponents that that's the criteria that applies and therefore because there's no physical characteristic it doesn't meet the criteria.

Well, there's another criteria in your code and that is whether or not the application, the denial of the application would inhibit some purpose of the code. And this code has been applied in this setting – and I'll be specific about what that section says. Let me read to you the exact language. I haven't got it right in front of me. It's whether or not some purpose of the code will be inhibited by the denial. And all of the family transfer cases that come in front of you, they don't deal with physical characteristics of the land. They deal with what are the desires of the applicant. And I'd like to go through, because I think you have developed a consistent policy, and that policy is – and I'm just going to go through some cases.

Specifically, that came in front of this Board as constituted presently, the Elias Gutierrez Variance. That was a family transfer variance requested by a mother who wanted to help her daughter who had fallen on financial hard times. Nothing to do with the characteristics of the land, just the desire of the mother to help the daughter. This Board in that setting – and I note for you, in that setting, in that case, they hadn't violated the code. They weren't in front of you on a code violation. They were here saying I would like to help my daughter out; she needs a place to live. We need a variance to the density requirements. Unanimously, the Board approved that variance. That was Case #12-51520, CDRC Case #V 12-5120.

And what was the case. It was two units on 1.24 acres in the county. Was there some extraordinary hardship? No. Not necessarily. What was there was was the desire of the mother to help the daughter who had fallen on financial hard times. It wasn't even the property owner who had the hardship; it was the daughter who had the hardship. I'm not being critical of the code or of this Board's interpretation or application of the code. But that is what is consistently brought in front of you and this is what you look at.

Another case, very, very similar, the Lawrence Maes Case, which was Case #V 12-5090, Lawrence Maes Variance, a variance to allow three dwelling units on 10.21 acres. What were the facts of that case? Not one mention of the physical characteristics of the land. Not one mention at all. Instead, it was a father helping out a child who had apparently been involved in a car accident. Again, it wasn't even the property owner. It was not even the property owner who was under the – it was the daughter or the child who had been in a car accident who needed the assistance of the father. This Board looked at that and said, well, one of the purposes of a family transfer is to allow parents to help children or family members to help one another in some fashion or another. Because that's one of the purposes of the code. To deny that because of the density would be inhibiting that purpose of the code. I think that's the policy.

What's another one that this Board has dealt with? This is a very interesting one. The Carla Cavaliere Case. And that was Case #12-5250. And what was that variance? The father had 25 acres of land and he had three children. Not one mention of the physical characteristics of the land. Not one mention. He had purchased the property in 1978 and he wanted to leave it to his three kids. And so he started the process of division and then he

passed away. The children came in front of you and said, he wanted us to have these three lots. So the variance was to allow, on a family transfer from his estate three lots on 25 acres of eight acres each. No mention of the physical characteristics of the land, and in fact, no specific particular hardship of any individual other than them to say our father wanted us to be able to take advantage of that provision of the code for family transfer, from father to child. This Board unanimously approved that.

Why is that? Unanimously approved. Why is that? Because the Board was looking at that section of the code that says what are the purposes of the code and would the denial of this inhibit that purpose? That is implicit in all of these cases.

What's another one? And you will notice that I'm talking about cases that have a 12 in them at the beginning. That means that they happened just last year. Here's another one. Joseph and Anna Garcia Variance. That case, this was just a father who wanted to leave property to his children and have them live close to them. Absolutely no specific hardship. Nothing, other than I would like to leave this to them, have them have a place to live, and I would like them close to me so that as I get old they can care for me. Again, what was another important factor of this? Mr. Garcia had not violated the code in any fashion and I raise that because it's important in this Commission's view. Mr. Garcia's variance request to divide the property – not one mention of the physical characteristics of the land. It was approved unanimously.

How is that? Because this Commission has interpreted that section of the variance criteria to say what are the purposes of the code and would a denial inhibit that under these circumstances between family members. Consistently again with the policy that you've set, you approved it unanimously.

Now I'd like to turn to a couple of other cases that are recent. One of them was a very, very, very heartfelt case that was denied. And it was a family in the Pecos/Glorieta area, the Roybals. They came to you and they had on their property a house, a mobile home, and another house under construction on I believe it was less than an acre of land. They were denied, even though the parents said – and it's true, absolutely true – nobody had anywhere else to go because one of the trailers could not be moved without its total destruction and that's where one of the families was living, and there was not enough room in the parents' house to accommodate the children's families. But what was important about that case is that they had illegally divided the land and they had occupied the land in violation of the code. This County Commission in very difficult circumstances denied the variance unanimously.

I'm sure it was difficult because of all the other cases you have in front of you, but why is it important? Because when somebody has violated the code and comes in front of you and requests a variance, in coming in asking for forgiveness rather than permission, that is not in keeping with the policies of the code in that particular case and I think consistently this Board has denied those kinds of variances.

I mentioned Mr. Graeser's case, the Shapiro case. That is very fresh in your memory I am sure. Very similar. He came in asking for a variance to the density requirements, not under family transfer. But Mr. Shapiro, in your findings, violated the code. He signed an affidavit that said he wouldn't put in a kitchen. He put in a kitchen and then rented out the property. He came in front of you and said I'd like a variance to that. Consistent with your policy you denied that and tonight you approved the findings of fact denying it.

CHAIR HOLIAN: Excuse me, Mr. Sommer. We actually didn't tonight.

MR. SOMMER: Oh, I thought you did. I thought you approved those.

CHAIR HOLIAN: No. That case was actually tabled for future discussion.

MR. SOMMER: Okay. I knew the Mosely case was tabled.

CHAIR HOLIAN: Yes, that was tabled, but then the other one was also. It's going to be reconsidered.

MR. SOMMER: Okay. The Mosely Case?

CHAIR HOLIAN: The Shapiro Case.

MR. SOMMER: Okay. Well, it's been denied thus far, and again, like the Roybal case there was a code violation in it admittedly, but significantly, on your agenda, on the Mosely Case, dealing with a family, no particular hardship related to anything other than these people bought into a lot that had apparently been misrepresented to them. But there was no physical condition of the land and really what you were dealing with, even if they hadn't bought it with a misrepresentation, that was consistent with your policy. Family members and their desire to keep their parents close. One of the policies of the code.

So why do I say that? All of this? Because in all of these cases, there is no mention of the physical characteristics of the land. In this case, the husband would like to be able to carry out his estate plan in a manner that – he doesn't have children; he'd like to leave a portion of this to his wife and he's got other relatives he would like to leave another portion of his property too. These are not young folks. That's one of the purposes of the code is to allow husband and wife to transfer property, just like the Garcia case, father to son, with no particular desire other than for them to have a place to live and to call their own. This case falls within that policy, and I think that chairperson Holian asked is there any particular hardship in this case. This Board has interpreted the code to say, well, let's look at the circumstances and what are the desires of the party? And there have been many cases where you have found, without any particular hardship, that the purposes of the code would be inhibited by the denial.

That's it. There are some cases that come to you with a particular hardship, but they are not hardships related to the property owners; they're hardships related to their kids. And I understand the interpretation and how that inhibits the purposes of the code to allow family members to help one another out. Your code allows husband and wife to do the same thing.

I've been to three hearings in this case, at least. And every one of them I've heard the opposition get up and talk about their way of life, how this is – there is a water shortage. How there is a fire danger, how there is – and these are people who live on five-acre lots who are going to develop five-acre lots, who live on ten-acre lots who are going to develop ten-acre lots in the immediate vicinity. There is no fire danger for their development, there is no water problem. But the excuse is, well, we're already here. That is neither novel nor important. It is, in my opinion, a distinguishing feature. What's good for them is not good for their neighbors. That's not fair, and I don't think it has much bearing in this case.

And it got pretty personal after one hearing. I had somebody come up to me and say, How dare you represent these people? You know they're going to develop. The family transfer provisions of this code allow parents to give to their children, husbands to give to their wives for that purpose; not to have and hold, but to allow them to use it in some fashion or another. There is nothing wrong with that. And the code recognizes it and this Board has

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recognized it time and time again.

So we're here tonight on a case that is consistent with the policies that you have developed and most recently applied in the last 12 months consistently. Mr. Wagner and Mrs. Wagner are not violating the code. They're not here because they're asking for forgiveness. They're not here asking for some special treatment that you haven't allowed anybody else that comes to you and says I'd like to leave this to my daughter because I'd like her to have a place to live.

I submit to you, members of the Board, that this case falls squarely within your policies as you have developed them and as you have applied the code. I am not here telling you you must because you've allowed these other variances, approve this variance. I think that Mr. Ross has on many occasions said, look, every variance request stands on its own, and the facts and circumstances of every variance request are different. So I'm not here saying you're bound – you must do this or you must not do that. I think it is clearly within your discretion and this case is clearly within the policies, and that Mr. Wagner deserves the same consideration that the Board has applied over and over again. I'd stand for any questions you might have.

CHAIR HOLIAN: Thank you, Mr. Sommer. Any questions? Commissioner Stefanics.

COMMISSIONER STEFANICS: Madam Chair, it's not for Mr. Sommer; it's for our staff.

CHAIR HOLIAN: Okay. Go ahead.

COMMISSIONER STEFANICS: Mr. Dalton, can you tell me the source of water on this property and the adjoining lots of other homeowners?

MR. DALTON: Madam Chair, Commissioner Stefanics, the water source on this property is actually a domestic well, and I believe that's the water source for every property in this area.

COMMISSIONER STEFANICS: Okay. The reason I asked is that we do have some comments in the CDRC case that some homeowners have had problems drawing down water and I wanted to identify the source of water. I also read in the minutes that somebody said that the Wagners have other houses in Santa Fe and one in Albuquerque. And if that is the case then I'm having a little trouble about dividing the land to give to a spouse if there's already other properties available. Is that confirmed?

MR. DALTON: Madam Chair, Commissioner Stefanics, no. That was just what was stated at the public hearing. I have not done any of that research.

COMMISSIONER STEFANICS: Okay. Thank you. That's all for right now.

CHAIR HOLIAN: Okay. Any other questions? Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, thank you and staff or Mr. Sommer, whoever can answer these questions. I guess the water source – do we have a potential water source going up by this – by these tracts of property?

CHAIR HOLIAN: Steve, can you answer that?

MR. ROSS: Madam Chair, we're working on a line that goes out Old Las Vegas Highway so I suppose it's not inconceivable it could run up La Barbara. I just don't know how far – where exactly – I don't think there are any immediate plans but there may be long-term plans.

COMMISSIONER MAYFIELD: Off Old Las Vegas Highway – how far is this property up?

CHAIR HOLIAN: Commissioner Mayfield, actually I can add something to that, because we're actually running the water out Old Santa Fe Trail and La Barbaria takes off from Old Santa Fe Trail.

COMMISSIONER MAYFIELD: So conceivably there could be –

CHAIR HOLIAN: It's still a ways beyond where that line is going to end.

COMMISSIONER MAYFIELD: I don't know. There could potentially be a water system up there one of these days. Thank you. And then as far as the new code, for staff, and maybe this is for the applicant. Have you thought of the accessory dwelling that's being proposed in the new code?

MR. SOMMER: Madam Chair, Commissioner Mayfield, I have looked at the provisions as they are evolving and I've watched the Board consider how it's going. It doesn't work here in the sense that this would be a primary dwelling and a primary dwelling, not accessory and I think your code provisions are going to be a little different in that regard, but it's something that's still evolving.

COMMISSIONER MAYFIELD: And on that note, Mr. Sommer, Steve, we're looking at potential accessory dwelling to be maybe 1,000 square feet in the new code proposal? 1,100 square feet?

MR. ROSS: Madam Chair, Commissioner Mayfield, I think the accessory dwelling is permitted to be larger than that, but that implies that you'd have two dwelling units on the same lot and the application here is to actually make two lots. So there wouldn't be an accessory dwelling. Penny's gone to get the new code so we can describe how the zoning might map from the current zoning, hydrozoning, to the zoning districts that are established in the new code. She'll be back in just a second with that information.

COMMISSIONER MAYFIELD: And Mr. Ross, I appreciate that. I'm not speaking for the applicant by any means, but however a trust is set up you've got a 20-acre footprint. If you want to set up a trust and you've got an accessory dwelling it doesn't mean that one house can be on one side of a lot, the accessory dwelling can be on the other side and you can set up the trust any way you want to say this who gets this home and this is who gets the other home, the other side of the lot.

MR. ROSS: Madam Chair, Commissioner Mayfield, I guess I interpret the application as creating an unrestricted lot as opposed to some sort of trust relationship or something else like that.

COMMISSIONER MAYFIELD: And then, Madam Chair, Mr. Ross, I guess my last question right now was under the new code, and I respect this is in Commissioner Stefanics' area, but excuse me, Chairwoman Holian's district, but is there going to be any smaller density proposals for this area? Are they going to still be the same footprint? Are we looking at maybe smaller density allotments up there in the new code?

MR. ROSS: Madam Chair, Commissioner Mayfield, that's what Penny has gone to fetch is the new code to see how the zoning might map to new zoning.

COMMISSIONER MAYFIELD: Okay. I'll wait until she comes back with that. Thank you, Madam Chair.

CHAIR HOLIAN: Okay. Thank you. Captain Patty, I have a question for you.

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I was wondering, have you reviewed the property and would there be, if this lot split were granted, would there be any modifications that would be required by the fire code?

BUSTER PATTY (Fire Marshal): Madam Chair, Commissioners, yes, we do have some conditions. They would meet the fire code. There are some questions about access going up to the property. The requirements on the property if they were split would have to meet the minimum requirements of the code, 14-foot wide driveway and 11 percent grades. Also turnarounds if they're beyond 150 feet from the main road. Until they give us a footprint of where they would build we don't know exactly what we would require but there would be some requirements, yes.

CHAIR HOLIAN: Does it seem like it's possible that they could have roads that were less than 11 percent grade?

MARSHAL PATTY: Yes, right next to the main road there are some spots that they could do some building sites.

CHAIR HOLIAN: Okay. Thank you, Captain. Are there any other questions for staff or for the applicant?

COMMISSIONER MAYFIELD: Madam Chair, last question for the applicant.

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Sommer, if this was approved by this Commission and seeing that what you've stated a little earlier, there would not at this time be intent to sell this property?

MR. SOMMER: No intent to sell, it's to leave it to her as her legacy from him. He has no desire to sell the property or turn around and sell the property.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. That's all I have.

CHAIR HOLIAN: Okay. Thank you, Mr. Sommer. This is a public hearing. Is there anyone here from the public who would like to speak on this case? Mr. Graeser.

CHRISTOPHER GRAESER: Madam Chair, I am an attorney under oath of office.

CHAIR HOLIAN: There are a number of people who would like to speak and so if you could – maybe this would be a good time to just stand up and all be sworn in and then when you come up to say your piece then please say your name for the record. So all people who would like to speak about this case please be sworn in.

[Audience members were administered the oath.]

MR. GRAESER: There is no hardship here. This case is almost unique from that perspective. Mr. Sommer did a really nice job of summarizing cases you've seen in the last year and he talked about how in each of those cases there was a compelling story that compelled this Commission to grant that variance, typically a family hardship situation. The child had been in a car accident. The father who wanted the family near him. The one where the father started dividing the property and then died and couldn't finish it. These are compelling stories and it compelled the Commission to grant variances in those cases.

There was a good faith need for some relief in those cases. That's not here. To Mr. Wagner and Mr. Sommer's credit they're not pitching a sob story here. They didn't come up and insult you by trying to come up with one. There simply isn't one. And Mr. Wagner is not here. I don't know that he couldn't be here since he wasn't here for any of the other prior

hearings either. If there was a compelling reason that he needed to divide the property I assume he would have been here to tell you about it.

There have been – this Commission has approved plenty of variances but as Mr. Sommer says himself that doesn't compel you to approve any others. They are all determined on a case-by-case basis, based on what you feel is both legal and is humane and required by the circumstances. The law is very, very clear on this. Granting this variance would not comply with the law. It violates the law; it violates state statute; it violates legal precedent. The code, of all those, the County's code is probably the most stringent. It says, "Where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that the conditions would result in inhibiting the achievement of the purposes of the code."

Extraordinary hardship, so not just your run of the mill hardship. And that's the requirement. Where it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant. You cannot legally grant a variance without extraordinary hardship, be that related to the land or related to the family, we could have that discussion, but here it doesn't matter because there is none either way.

Mr. Wagner just wants another lot. Mr. Wagner already has – Mr. and Mrs. Wagner have three houses. I have seen the real estate records. Unfortunately, I don't have them here with me. I could certainly submit them. I've seen the real estate records. They have a rental house on Alameda. They have a rental house on – I'm sorry, either Lomita or Lolita – I always get those two confused, and they have a house that they own and live in in Albuquerque. They don't need another dwelling. They simply want to increase the estate. So when we're talking about estate planning, the problem here isn't how do we pass on this value without incurring tax consequences, which is typically estate planning, they're talking about creating more value than they'll have to worry about passing on.

There's no hardship because there's nothing prohibiting development of this lot. They have the lot; they can build on it. There's no hardship there. The only thing self-inflicted is the desire for more.

With regard to the state statute, and we passed out a letter to everyone. [Exhibit 6] The very first thing that state statute talks about is you can only grant a variance if it is not contrary to the public interest. Now, residents and long-term residents of the neighborhood wish to get up and talk about that tonight and they'll do a much better job than I will. But Mr. Sommer kind of pooh-poohed these concerns but use of water is a real concern. Emergency access is a real concern. Solitude and quiet is a real concern if you all have ever been up there. And it's way up La Barbaria. There are no waterlines anywhere near this nor will there be.

Not only that, granting this variance sets a precedent for other variances. Mr. Sommer was just up here arguing precedent. Look at all these other cases. Look what you did. Now you should do that in this one. So granting this variance would set a precedent for other variance requests in this neighborhood.

I talked about unnecessary hardship. The requirement in state statute also is you honor the spirit of the zoning – or you serve the spirit of the zoning ordinance and do substantial justice. The spirit of the zoning ordinance is 80-acre minimum lot size. The nominal

minimum lot size in this district is 80 acres and that was based on hydrology. It was based on the hydrologic study done by the County in the early 1980s. So that's the spirit of the ordinance. And if you agree to curtail your water use you can go lower but we're asking now down to ten acres, one-eighth of the minimum lot size.

There's no justice requiring granting Mr. Wagner special rights and relief from code provisions that apply to everyone else in the neighborhood. By the way, I've looked at all the surrounding lots. I did the math and it's a little bit over a 40-acre average lot size.

The next thing the state statute tell us to look at is the comprehensive plan. You all know it well because you just passed it in 2010, the Sustainable Land Development Code. And you go through that and over and over it gives you reasons to deny this application. It does not give you reasons to grant this application. Those policies include things like directing growth to specific areas most efficiently served by adequate facilities and services and this gets right to what Commissioner Mayfield was asking about waterlines going there. Allowing higher densities in primary growth areas where infrastructure and services can be efficiently provided. That's not at the top of La Barbaria. And this is La Barbaria Trail, by the way, not La Barbaria, so it's not the one that directly intersects with the highway.

If you look at the maps in the Sustainable Land Development Code this area is mapped as low suitability for land development. It's in the SDA-3 zone which is designed to protect agricultural land, environmentally sensitive land, conservation areas. It has no public facilities. There are no transportation facilities and it's in an area of high wildlife activity, again, going to the theme of protecting sensitive land in conservation areas.

With regard to case law and Mr. Sommer got to talk about the irony of me having been up here asking for the Jay Shapiro Variance, I get to talk about the irony of Mr. Sommer having had the case that set New Mexico law on variances, the downtown neighborhood case. In that case he represented the neighborhood and successfully got the variance denied based on what the New Mexico law is.

What the downtown neighborhood's case – and this is out of the Court of Appeals – has us look at is whether the parcel is distinguishable from other properties subject to the same zoning restrictions. The answer depends on whether, as a result of the differences between this parcel and others the zoning restrictions create particular hardship for the owner. We've heard nothing about how this is different than any other parcels in the neighborhood. There is a range of sizes but they're all – it's a very hilly area. It's poor access. The water availability is very spotty. These properties are all very similar in that way, but we've heard nothing about any differences between this lot and any others that would warrant a variance and that is what the state statute says.

In the downtown neighborhood's case the court also has us look to comparison, essentially a weighing test of the special circumstances faced by the applicant versus the public interest, and again, I don't want to get too into public interest because a lot of the neighbors who are concerned about the effect of this on the community will wish to talk about that.

The argument that Mr. Sommer was making, the legal argument is what we typically call an administrative law, and that's if you interpret your code in one way consistently enough then you're bound by that interpretation. But, you know what? That entire concept only applies if the law in question being interpreted is ambiguous. Here there is absolutely no

ambiguity. We know exactly what the lot size portion of your code says. We know exactly what the variance portion of your code says. If you analyze these on a case-by-case basis you can't with a straight face say because this lot is being divided and one portion is being given to a family member, this Commission has established a policy that that has to happen no matter what, since we know what the law is.

To address a couple of the specifics, Commissioner Stefanics asked about a water study. Yes, sure, I suppose you could do a geohydro study and see if you had enough water and try to prove up smaller lot sizes. Based on what I know about some of the wells out there I don't know if you'd have much luck doing that, and that really is an argument for not allowing the variance.

As Mr. Sommer noted, going through these cases where there were really some very emotional, very compelling family stories, but there weren't necessarily extraordinary hardship there. If there wasn't extraordinary hardship with trying to give your daughter somewhere to live because she can't afford to live somewhere else there is really no extraordinary hardship facing the Wagners.

With regard to that second provision, and again, the County code says you have to have an extraordinary hardship. That hardship can derive from unusual topography or other non-self-inflicted conditions or it can derive from an intention to adhere to the purposes of the code, but here, what is the purpose of the code? What is the purpose of the code that would allow you to grant a waiver simply because someone wants to divide a lot? And Mr. Sommer wasn't able to point to that, point to a purpose in the code where that purpose says you just get to divide it essentially because you wanted to.

I did mention that I can commit to this Commission that I have seen the land records and the Wagners do have those three other houses in addition to this property. They may have more; I don't know. That's what they have in New Mexico.

We talked about the issue of potential accessory dwelling. Here there's just simply the desire to divide the lot. I will answer questions but I know the neighbors are anxious to talk about the issue.

CHAIR HOLIAN: Thank you, Mr. Graeser. Any questions for Mr. Graeser? Okay. So whoever would like to speak next on this issue please come forward. Please state your name for the record.

[Previously sworn, Jay Shelton testified as follows:]

JAY SHELTON: My name is Jay Shelton. I am a neighbor. The Santa Fe Land Development Code, Section 3, Variances, 3.1 requires, and I quote, "proof that a variance from the code will not result in conditions injurious to health or safety." We are in an area which has the highest possible fire risk rating that the county has, and I will just tell you what my fear is. I think if you are on the edge about whether or not other legal matters would permit this subdivision, think about this issue.

One reason – there are two reasons why it's such a high-risk area. One is there's lots and lots of fuel up there, but the other is there's only one road. There's no way to get out any other way. Some parts of the road are narrow enough that we have to pull over. It's one lane, and I'm trying to picture what might happen. I don't know what the odds are but if there is a fire up there there are going to be residents up there panicked, trying to get out. There may be inhibited visibility due to smoke and flames. Because they're going to be going very fast they

may get into accidents, they may block the roads, slipping, and then nobody else can get out. There may be people who are trying to come in to rescue pets. There may be emergency vehicles trying to come in. And again, lots of this is only one-lane road.

So the more residents we have the higher is the risk to public safety because of that. If this also is permitted, I don't know what would prohibit the very large number of very large lots up there from also openly subdividing and the problem just magnifies. So I urge you to take into consideration whether or not this in fact – whether we can prove that there's no impact on health and safety. I think there is. Thank you very much.

CHAIR HOLIAN: Thank you, Mr. Shelton. Next.

[Previously sworn, Max Coll testified as follows:]

MAX COLL: Madam Chair, members of the Commission. My name is Max Coll. We live out in that area. We're a neighbor. We're on a shared well with our next-door neighbor and we have a fractured granite aquifer out there. The fractures in our aquifer recharge every year from our rainfall, snowfall, river runoff. We are not going to have any river runoff this year. There's not enough snow pack to give us a river flow. Ordinarily there's a great river flow for several months, but we're not even going to have any this year. And this is about water. It's about overusing water and we've got to stop it. And that's the way, as I understand it, the law is set up, the regulations of this Commission are set up is to be conservative of water.

We're in trouble. We know it. We don't need any more big water users out there and if you split this into two lots we'll have another big user out there. Thank you, Madam Chair and members of the Commission.

CHAIR HOLIAN: Thank you, Mr. Coll. Is there anyone else that would like to speak?

[Previously sworn, Katherine Joyce Coll testified as follows:]

KATHERINE JOYCE COLL: My name is Katherine Joyce Coll and I'd like to first answer a few of the questions your asked about William Wagner, because I had Jonathan Thornton, a private detective in town do a background check on him. And he is a doctor, he's an engineer, and he's a real estate speculator. And he has speculated in real estate in Florida, Arizona, Colorado, and now New Mexico. And as Chris said, he owns two properties in Santa Fe that are rental properties and then the home he has in Albuquerque. And he did come, after we tracked him down, because we wanted road dues. We don't get enough money to maintain our one-lane dirt road from our dues and he was a landowner so Richard Stark and I, who were the neighborhood chairmen at the time, tracked him down and he came to one neighborhood meeting, and the only reason he was there was to try to persuade us to put a fancy gate at the foot of our less than one-mile road, because he wanted his lots to be more exclusive.

We're a very funky area. We back up on our east and part of the north side on the Santa Fe National Forest and I know that part of the County plan has been put in place to provide wildlife corridors. And we treat our neighborhood – and we're passionate about this – it's a wildlife preserve. Jay's family has the Dasburg family trust, which has been in place as far as I know back to the 30s or 40s. And in the middle of it Jay and his wife and the sister-in-law have five-acre parcels, but they're in and are part of the trust.

There are six small parcels under ten acres that were divided up I think in the late 60s

or 70s, but because of the lay of the land, none of us can see one another's houses. There are a couple of rooftops that can be seen. We're at 8,000 feet, give or take 100 feet on a very steep road with no way out except down to La Barbaria Road and then another two miles down. We're three miles from the Old Santa Fe Trail, and it's only four-wheel drive access.

We have bears. We have the occasional passing cougar. We have wild turkeys. There have been up to 21 in our yard in the morning. We all feed birds. We have bobcats that are very shy but that we see. We have two coyote packs that live in the neighborhood and we have to be very careful with our dogs.

So this is not the kind of area that you develop. Now, I know this man is a developer. I also know a realtor who once represented Bill Wagner, and when the realtor told him that it would be nice if he tried to get along with the neighbors and pay neighborhood dues – because I had complained about the fact that he didn't, he fired that realtor. This man is not there to build a family home. One of the neighbors phoned him when this started and said you know, no one here objects to your building a house and a guesthouse. And we don't. That's legal and it's fine. But the man started out telling us that he wanted to give it to his in-laws. And when he was asked why he couldn't just build a guesthouse and let the in-laws live in it, he said because when they die I want to sell it.

So he may be planning to keep it for a while, but this isn't estate planning and a lifetime project.

So I wanted you to know all of that. And then – plus the fact that his lot goes along almost the entire side of the road for probably a quarter of a mile, but it only goes back about 70 to 100 feet and then it drops off very steeply down to the Hondo River. And so none of that is buildable. It could only be built along the road. So that infringes on everyone's privacy because the rest of us have long driveways, and they're all funky and dirt. This is not a fancy area. And houses up here don't sell well, so I don't know why he'd want to build houses that he's planning to sell anyway. Most houses up there are for sale from two to five years, and then the prices go below the appraisal, and they sell.

Most people are afraid of the altitude, the wilderness, the inaccessibility of the road and the distance from town. Those of us who live there I think are sort of rare people. We are people who need to be near town but love wilderness life.

So, and I guess the fire danger has been mentioned. We have the highest fire danger for catastrophic fire in the state of New Mexico, and this is the State Fire Department that tells us this. Our fire chiefs worry about us constantly. One fire chief told us at a meeting that he was afraid to let his firemen come up there if there was a major crown fire because he couldn't get them out and he'd probably have to go home and watch us on TV and send in airplanes.

So that's the kind of area this is. It's not an area for spec houses. And this isn't a man who wants to build a nice house and live there or he'd do what other people have done, build a house and a guesthouse. Thank you.

CHAIR HOLIAN: Thank you, Mrs. Coll. Is there anyone else who would like to speak on this case? Please come forward. Perhaps, sir, you could start making your way forward so that we can be efficient.

[Previously sworn, Sandra Rowley testified as follows:]

SANDRA ROWLEY : I'm Sandra Rowley and I'm under oath. Correct?

CHAIR HOLIAN: Yes.

MS. ROWLEY: As Katherine said, we are kind of rare people up there because of the circumstances that we are willing to live under, the danger that we are willing to live under because we want to live in the country, want to live in the mountains, want to live with wilderness, we want to live with wild animals. We want acreage and my husband and I own 30+ acres. We paid quite a bit for it. The land is not cheap up there. The land isn't cheap anywhere around Santa Fe. But we paid a might lot for our 30+ acres and we hired a lawyer as we were considering buying it, and we learned from the lawyer the codes. And the codes say there will be no land split. And we felt, because we wanted the acreage, because we both come from farm families, actually. We've lived here 20 years. But we wanted that for our souls. That's what we wanted it for. It's very restorative and very nourishing. We would not have bought and put that much money into 30 acres of mountain if it hadn't been important to us, to our lives.

And Mr. Sommer talks about something, well, we all want – we want what we want but we don't want anybody else to have it. That's so far from the truth. Mr. Wagner has land. Let him build on it. What does he want to split it for? Well, we all know why he wants to split it for because we all know he's a real estate developer. But that never seems to come up with the other lawyer.

And yes, I am under oath. Mr. Sommer, you are not under oath. I am oath.

CHAIR HOLIAN: Mrs. Rowley, please just speak to the –

MS. ROWLEY: All right. But I want to say something. All right. I am under oath and I am too smart to say to Mr. Sommer, how dare you take this case? He was at one time my lawyer and I had great respect for him. I said, and I am under oath, I can't believe you took this case in good conscience. Because I know how he feels about land. And he said, I'm sorry you feel that way. And I said, well, you know that he wants to develop the land. And Mr. Sommer said, I don't know that. Everybody else does.

All right. So we're not suburbia. We're not a development and we're not a subdivision. Nobody wants to be up there. We live in the country on acreage which is precious to us and we live with bear, elk, deer, cougar, bobcats, hawks, falcons, small animals, snakes. I walked out of my front door one time and there was this huge rattlesnake sidled up to the banco where it was warm, sunning himself. Another day in the summer, one time I walked out and there was again, a huge black snake. And I decided to take another door.

So another thing that was said which is we are a close community. We support each other. We work and live together. If somebody gets stuck on a road, which happens quite a lot, because it's just a country dirt road which we maintain ourselves and we just do our best. One of the neighbors plows the road whenever we have snow and sometimes he's up at 4:00 in the morning and he has a job. And sometimes we can't get it plowed for two days because the weather doesn't stop and we can't get out.

So this is the neighborhood we are. We're just a country neighborhood on a dirt road that we maintain ourselves. Now, we drilled our own well. We drilled 500 feet. We bought the land in 95, we built in 97. And we went 500 feet and we got one gallon per hour. Water is not gushing out of the rocks there, let me tell you. And our – the man who drilled, the drillmaster, said I don't advise you to drill any deeper because it may go dry on you. So we

didn't. So there is a water problem.

When we first moved out there there were two times that the Hondo River [inaudible] and it covered the road. Not La Barbaria Road, which is a County road. And it covered it and I went through and walked through it and it was clear up to here on me.

CHAIR HOLIAN: Ms. Rowley, please speak into the mike so it can be recorded.

MS. ROWLEY: Sorry, Commissioner. Well, it was very high. We don't have that anymore. The last three summers my husband and I have had to buy water. There is a water shortage. We're in a drought. As for fire, I think that point has been made. There's no egress; we're a dead-end road. It's really hard to turn around. We can hardly turn around if you want to turn around. But what I would like to say is this a report from the Hondo Fire District, and I just want to read a few sentences that refer to us.

La Barbaria Road has a classification of extreme – and they have that in quotation marks – in the US Forest Service fire assessment system. There is only one means of egress by residents. The possibility of congestion on the road is very high if a large number of residents choose to evacuate at the same time it would be very hazardous. A stuck vehicle could turn the roadway into a very hazardous parking lot for anyone unable to get around that vehicle. There are places in this area where the road is not wide enough for a 10-foot wide fire engine and a passenger vehicle to safely pass in opposite directions. Since much of La Barbaria Canyon aligns with the region's prevailing southwest winds the possibility of spot fires created by wind-blown embers is high. Spot fires can easily start one half mile downward from the main fire and then just jump over. Thank you very much.

CHAIR HOLIAN: Thank you, Mrs. Rowley. Is there anyone else who would like to speak? And I would like to ask you if possible, not to repeat too much the points that have been made other than briefly.

[Previously sworn, Ken Rowley testified as follows:]

KEN ROWLEY: I want to thank you all for allowing me to speak because in some countries I would be allowed to speak.

CHAIR HOLIAN: I will ask you to identify yourself please.

MR. ROWLEY: My name is Ken Rowley. I live in La Barbaria Canyon and I've lived there since 97. And it is two blocks down from heaven. But I want to thank you for allowing me to speak because in some countries, a guy like me, hell, they'd just run over me and I wouldn't be allowed to speak to you or anything like that. And I feel like there is someone trying to run over us though. We live up there. You've heard all these other things and I'm not a lawyer, and I don't understand what these people say a whole lot, but in the history of this case already, and the number of times we've already been said, yes, we're right. In basketball terms, I thought it was a dunk, a slam-dunk case, and I didn't realize we'd even have to end up here or not.

But anyway, when I was a kid I grew up in a family just like all the rest of you, and we didn't have any legal people so I don't know a whole lot about the legal business. Except I know that my parents taught me a couple things that they drilled in pretty hard, and I imagine looking at you people you had that same type of experience, and that is law is not a perfect science. There isn't a formula that will explain these different things. And you can even see they start attacking you on some past history. It's not consistent, but you try your damndest

to make it fair.

And I'm asking for that. My parents said, you know, Ken, you need to be honest about things and it stuck. And I feel that when your things that we can jab this or jab that and you're doing your best. We ask that, you know, in life that there be fairness and they drilled into me that there was such a thing as right and wrong. And when we get on this case and everything has been said about this and this and this and suffering and things like that and you bet, the people suffer, and you bet – I hope you people do something to help those people. But when people are not suffering and want to be considered in that direction it's wrong. Just as simple as that. And I hope that you all, as you make your decision that you have that same sense of right and wrong and I think that as well as the formula of law which we say doesn't exist. It's not a perfect science or anything else, but when you make your decision you make it from within your own self, your own heart, your own integrity, and I hope you can see the fact of how wrong this case is. And I thank you.

CHAIR HOLIAN: Thank you, Mr. Rowley. Is there anyone else who would like to speak on this case, or are there any questions from the Board before I close this public hearing. I will give you a chance to follow up. I just wanted to know if there were any questions from the Board for the public. Okay, this public hearing is closed, and first of all, Mr. Sommer, would you like to respond?

MR. SOMMER: I'll be as brief as possible. I'd like to address just a few things. I heard something that I've never heard in a public hearing before in a case like this. I heard an invitation for you to judge Dr. Wagner's character. We did an investigation with a private investigator who determined he's a doctor, he's an engineer, and by God, he's a real estate speculator. And the realtor who used to work for him said the following, and the neighbor on the phone said this, said that. That is the rankest sort of hearsay and the worst sort of invitation to try and judge a person, who is not here, on the basis of things that are not in front of you.

I submit to you, do not ever, and particularly in this case, give in to that kind of invitation. The case in front of you is like many other cases that you get. You don't judge the character of the people; you judge the facts that are in front of you, and you certainly don't judge the character on somebody said this about them out there about that. I submit to you that is not proper in this hearing and it's not fair to anybody, including Dr. Wagner.

It used to be that being a doctor and being an engineer and owning real property was a success. Apparently it isn't anymore, and somehow that has some bearing on this case. I submit to you it doesn't. This case is about one thing and one thing only. I told you they would get up here and say, oh, there's no physical hardship. There's no hardship at all. You all have been interpreting these words in your code, in your variances, that the conditions would result in inhibiting the achievement of the purposes of the code. I named you three cases – the case in which a gentleman was dividing his property and wanted to give it to his kids, didn't succeed because he died. His kids wanted it divided and given to them.

Now, is that some sob story? Is that some extraordinary hardship? Is that something? No, it isn't. What it is is an interpretation of this language, that there were factors in that case, namely the size of the lot and the three kids that would result in inhibiting the achievement of the purposes of the code. What purposes? The family transfer purposes. You all have made that determination over and over again and consistently. And I'm not saying that because you

did it in those cases, you must do it in this case. That is a mischaracterization of what I've said. I've said the exact opposite. Mr. Graeser said Mr. Sommer has already argued the precedent that you are bound to do that. I didn't say that at all. I said the exact opposite. You are not bound, because as Mr. Ross has told you on many occasions, every case is different in a variance case. Every fact, setting, every factual issue is different. It doesn't set a precedent.

And I'm not here arguing that you're bound. I came back to just one thing and one thing only. Your code recognizes that the transfers between husband and wife and family members is something that is important to this community. And when parents want to give it to their kids, not because they have some sob story. Not because they come and tell you some compellingly sympathetic story or [inaudible], because they'd like to leave it to their kids, and you all recognize that transfers between family members are important. I submit to you, I did not say if you did this you must do that. That's not what we're here about. I thank you all very much for your attention to this case and for listening to us. Thank you.

CHAIR HOLIAN: Thank you, Mr. Sommer. Any questions for staff or anybody else? Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, Ms. Ellis-Green, did you find out that information I asked for with the proposed land code?

MR. ROSS: Madam Chair, Commissioner Mayfield, we looked at the draft zoning map. We located the property and the property is in the rural fringe. It's proposed to be in the rural fringe zone, which is a 20-acre minimum lot size. However, the property is on the – the next lot over, the next lot south is rural residential, which is a ten-acre minimum.

COMMISSIONER MAYFIELD: So potentially in the new code it will be ten-acre minimums?

MR. ROSS: It would be a 20-acre minimum but it would adjoin, the very next lot over would be a ten – this is the boundary between rural residential and rural fringe.

COMMISSIONER MAYFIELD: Okay.

MR. ROSS: And our mapping is an attempt, the staff's attempt to map the proper zoning districts in the new code with the properties and the adjoining properties.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Ross, I know we're here where we are today, but just anticipating, you know, the future. Would that be – I mean the line's going to be where the line's going to be drawn whenever we finish our code. But would anybody be able to come to this Commission and appeal it based on that, do you think? Would that be an appealable cause to this Commission?

MR. ROSS: Well, Madam Chair, Commissioner Mayfield, yes. Obviously when the map is adopted anyone can, number one, can provide input at the public hearings where the map is adopted and try and convince staff and the Board that the designations are incorrect. And of course once a decision is made it's freely appealable.

COMMISSIONER MAYFIELD: Thank you. That's all I had, Madam Chair.

CHAIR HOLIAN: Okay. If there are no further questions what are the wishes of the Board?

COMMISSIONER CHAVEZ: Madam Chair.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: Madam Chair, I'm going to make a motion and my motion is going to deny the variance based on the CDRC findings and the fact that they

also denied the applicant's request by a 5-0 vote. So my motion would support the CDRC recommendation and deny approval of this lot split.

CHAIR HOLIAN: Is there a second?

COMMISSIONER STEFANICS: I'm going to second.

CHAIR HOLIAN: Okay. I have a motion and a second. Is there any discussion? I will just say that I am going to vote against this variance. I do not find a very compelling reason to grant the variance, and this does seem to me to be an area in which large lot sizes are to be desired because of the fire danger in that area, the lack of water in that area, as well as the wildlife corridors in that area. So I have a motion and a second.

The motion to deny passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]

XVI. A. 5. CDRC CASE # V/Z/PDP 12-5340 Family Dollar Store. Glenwood Development Company, Applicant, Request Master Plan Zoning and Preliminary Development Plan Approval for an 8,320 Square Foot Structure to Be Utilized as a Family Dollar Store on 0.87 Acres. The Request Includes Final Development Plan Be Approved Administratively. The Applicant Also Requests a Variance of Article III, § 4.4.3c (Parking Lot Location) to Allow the Parking Lot to Be Located in Front of the Proposed Building and a Variance of Article VIII, §'S 7.3, 7.8 and 7.14 (Design Standards for Permanent Signs) to Allow a Sign to Exceed the Height and Set Back Requirements and to Allow a Wall Mounted Sign to Exceed 70 Square Feet in Sign Area. The Property is Located at 18094 US 84/285, within the Pojoaque Valley Traditional Community, within Sections 6 & 7, Township 19 North, Range 9 East (Commission District 1) Jose E. Larrañaga, Case Manager (TABLED)

XVI. A. 6. **CDRC Case # Z/S 08-5430 Spirit Wind West Subdivision.** Joseph Miller, Applicant, Danny Martinez, Agent, Requests Master Plan Zoning Approval for a 39-Lot Residential Subdivision on 133.73+ Acres and Preliminary and Final Plat and Development Plan Approval for Phase 1, Which Will Consist of 16 Lots. The Property is Located South of Eldorado, on the East Side of US 285, Off Old Lamy Trail (CR 33), within Section 5, Township 14 North, Range 10 East and Section 32, Township 15 North, Range 10 East (Commission District 4)

VICKI LUCERO (Case Manager): Thank you, Madam Chair. On January 17, 2013, the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of this request.

On December 20, 2012, the CDRC tabled this case to allow the applicant to meet with the neighbors to discuss their concerns, to have the County Hydrologist present at the CDRC

meeting to address questions about water, and to have staff contact the OSE to get an update on the status of the request by EAWSD for the additional Point of Diversion.

A meeting between the Applicant and neighbors was conducted on Thursday, January 10, 2013. Staff did contact the OSE and was informed that the application for the point of diversion was approved. Staff requested a revised memo from the OSE. The OSE has provided an updated response however, they maintain a negative opinion.

The Applicant requests Master Plan Zoning approval for a residential subdivision located northeast of the intersection of US 84-285 and Old Lamy Trail. The subdivision will consist of 39 single-family residential lots on ±133.73 acres, which will be developed in four phases. The proposed lots range in size from 2.50 acres to 3.47 acres. The property is located within the Homestead Hydrological Zone where the minimum lot size is 40-acres per dwelling unit with a 0.25 acre foot per year per lot water restriction; unless water availability is proven to support increased density or community water and/or sewer is available.

The Applicant also requests Preliminary and Final Plat and Development Plan approval for Phase I of the subdivision which will consist of 16 residential lots.

Staff recommendation is for approval of the request for Master Plan Zoning approval for a 39-lot residential subdivision and Preliminary and Final Plat and Development Plan Approval for Phase 1, which will consist of 16 lots subject to the following staff conditions. Madam Chair, may I enter those conditions into the record?

CHAIR HOLIAN: Yes, you may.

MS. LUCERO: Thank you. I also want to state for the record that we did hand out some letters of opposition that we recently received. [Exhibit 7]

[The conditions are as follows:]

1. The Applicant shall comply with all review agency comments and conditions, Article V, Section 7.1.3.c.
2. Master Plan and Final Plat and Development Plan, with appropriate signatures, and subdivision covenants and final disclosure statement shall be recorded with the County Clerk, as per Article V, Section 5.2.5 and Section 5.4.5.
3. The Applicant shall submit a financial guarantee, in a sufficient amount to assure completion of all required improvements. The financial guarantee shall be based on a county approved engineering cost estimate for the completion of required improvements as approved by staff prior to Final Plat recordation. All improvements shall be installed and ready for acceptance within eighteen months as required by Article V, Section 9.9.
4. The letter of commitment from the Eldorado Area Water & Sanitation District shall be amended to include water service for the 39th lot prior to plat recordation of Phase I, Article VII, Section 6.3.

CHAIR HOLIAN: Thank you, Vicki. Are there any questions of staff at this point? Okay, seeing none, is the applicant here?

RON VANAMBURG: Madam Chair, if it please the Commission, I'm Ron VanAmburg on behalf of Sprit Wind and with me is Danny Martinez.

CHAIR HOLIAN: Mr. VanAmburg, would you like to start with the presentation?

MR. VANAMBURG: Yes, I will start. I represent Spirit Wind Subdivision which has been in he progress for a long time. It was tabled once at the CDRC and then received approval from the CDRC, and we are here today. One of the things I would like to explain is the cooperation that Mr. Miller has shown with the representatives of the homeowners association, a Mr. Beal, and in particular, the concessions involved the covenants that Mr. Miller had planned for his subdivision.

On February 28th we sent Mr. Beal a copy of the subdivision covenants and that is shown on the first page of the Exhibit 4, which is a series of emails. [Exhibit 8] These covenants were sent without particular attention paid to the suggestions that Mr. Beal had made previously and the reason for that was because we had to get these covenants to the County for review. On the second page Mr. Beal reflects that he was not a happy camper because his suggestions were not properly considered. On February 28th I responded that the reason there was not sufficient consideration given was because we were in a hurry trying to get those covenants to the County, but then I stated that we would then give them the most consideration we could.

In that letter I also attached a red-line modified version of the covenants and explained to him that we had essentially adopted the changes that he had suggested except that Mr. Miller did not have a prohibition against modular homes and had a covenant which did not prevent two-story homes. Mr. Beal responded, We are almost there. Thank you for making the changes. In the subsequent email exchanges we explained that Mr. Miller, who wanted to have two stories because they are something that are desired by people, some people, but he would be willing to drop the two-story homes if he could get the support from Mr. Beal and his community.

Mr. Beal asked in subsequent emails whether or not the changes that we had already agreed to were also conditioned on his support and his association's support and we explained to Mr. Beal that we would make those changes anyhow out of consideration for Mr. Beal and his neighbors, even if they did not show up at the meeting and support us. And accordingly, that is what we have done. We have modified the covenants to a large extent in full satisfaction of Mr. Beal's comments and we have submitted those changes to the County and we are prepared to adhere to our commitment.

CHAIR HOLIAN: Mr. VanAmburg, I have a question about the covenants, since you brought them up. When I was reading through the packet there was some concern expressed by the people in the neighboring subdivision regarding storage of recreational vehicles and boats on the proposed lots in the new subdivision. What is your position on that at this point? Or what is Mr. Miller's position on that?

MR. VANAMBURG: Well, if it was raised by Mr. Beal we consented to it. I think the position is that there are two subdivisions going on. There is the Tierra Bello one and then there's Spirit Wind, and I believe that we do not permit storage of recreational vehicles. Mr. Martinez confirms that we do not permit the storage of recreational vehicles and trailers on the lots. And if that's not clear in the covenants we'll make it clear.

CHAIR HOLIAN: Okay. Thank you. Please proceed.

MR. VANAMBURG: Okay. I'm not exactly sure what the issues are that may be raised but in the past one of the issues that was raised was the issue of water. Mr. Miller has a will-serve from the Eldorado Water and Sanitation District and I'd point out that in

Exhibit 1 [*Exhibit 9*] there has been a study done by County staff, by a hydrologist by the Water & Sanitation District which relate to water rights and which relate to water capacity. The water rights, I think it is virtually unchallengeable exist to support this subdivision and other subdivisions that may come on board. These water rights are sort of unique. This property was formerly ranch land. All the Eldorado area was, and when AMREP bought the property there were a number of wells that were drilled throughout the area, and the question came up as to what water rights were attached to those wells.

In 1972 there was a court decree which established what the water rights were, and it broke it down into three categories. Some of the wells had the right to production and the right to water rights in four of the wells to the extent that production existed as of December 30, 1970. Some of the wells were allowed to be completed and repaired and rehabilitated and then the capacity of those wells would also be included as water rights. And some wells were allowed to be enlarged but not deepened, and then the capacity of those wells was added to the total of the water rights.

It then took a while to figure out exactly how that would compute, but right now, the State Engineer recognizes 783.4 acre-feet of water rights and of that, 254.4 acre-feet are within one of the wellfields and if you look at Exhibit 1 [*Exhibit 9*] which are the Eldorado *Water Notes* it says EAWSD's current water rights have been established at 783.4 acre-feet for withdrawing groundwater via the Office of the State Engineer's license issued June 4, 2010, and I'll get to that. The license also allows EAWSD to develop up to an additional 254.4 acre-feet of water rights in the central wellfield over the next 18 years if and as water demand and thus production increases. So there are a certain amount of water rights that are recognized and then there is reserved an additional acre-feet of water which can be developed as the need arises.

Out in the Eldorado are the annual production is averaged about 545 acre-feet for the last eight years but has decreased below the average in the past eight years to a range of 516 to 544 acre-feet. So there is a cushion in water rights of about 493 acre-feet.

These Water Notes also explain that it is anticipated that the Water & Sanitation District will be increasing its water capacity and has done so and it notes that for additional water production, two new wells have been drilled into the fractured granite adding 298,000 gallons per day of sustained production. It's also noted in here that ratepayers are actually reducing their consumption by about five to 15 percent.

Exhibit #2 [*Exhibit 10*] is a memorandum of understanding that has been entered into between the County and the Eldorado Water and Sanitation District, and this was signed by the County Commission on October 9, 2012. And in this there are a number of whereas clauses which recite the basis for the final agreement and then the final agreement itself. This is the product of a study that was done involving hydrologists and County staff. The fifth whereas says Whereas, consistent with the shared goals, the County through its Utility Division is willing to assist the District from time to time to improve the reliability of the District's system in times of drought or mechanical failure, or as otherwise agreed to by the parties by providing access to water supplies from the Buckman Direct Diversion or from any other sources.

What's happening now as I'm sure the Commission understands is there are negotiations going on now between the Water & Sanitation District and the County about

bringing waterlines which would be supplied with water from the Rio Grande diversion out to the Eldorado area. It would be there as backup in the case of any need, and as I understand it it is also anticipated that it's going to be going east to the Cañoncito area which is having problems.

The second whereas provides that the County has a statutory duty to the Subdivision Act, the Zoning Enabling Act and the Santa Fe Growth Management Plan and the Santa Fe County Land Development Code to assure that proposed development within the county is consistent with statutory requirements and that the LDC and specific to assure that a 99-year water supply exists for the proposed development within the County land use jurisdiction. Accordingly, the 99-year water supply requirement was investigated by the County and the conclusion was that this memorandum of understanding would satisfy that requirement.

The next whereas clause recites that the County acknowledges that the District's source of water supply are more than adequate at the present time to serve its customers and also acknowledges partial license RG-18529 and 18526 issued by the Office of the State Engineer, and the acknowledgement in those licenses that the District has available to it 783.43 acre-feet per year of water rights.

It continues and says that water experts have reviewed the District's source of supply and connection with recent applications to develop property and have agreed with the District that more than adequate water resources currently exist to serve existing customers and to serve new developments within the District's service area.

Finally, the whereas clause provides that, Whereas, a constructive way to assure progress on all of these objectives is for the County to agree that the District has provided sufficient present information concerning the District's water supply to justify the County's acceptance of a will-serve letter from the District, that the District is ready, willing and able to provide a customer with water service as adequate for purposes of the Subdivision Act and the Zoning Enabling Act, the Santa Fe County Code Growth Management Plan, and the Santa Fe County Land Development Code for a minimum of three years, and for the County and the District to agree to work together toward providing the District with water from the Buckman Direct Diversion or other sources as available to assist the District in times of drought or mechanical failure.

The County then – or this memorandum of understanding then says it is therefore understood and agreed by and between the parties as follows. One of the agreements is that for a minimum three years from the date of execution of this agreement no further information is needed and the County will accept a will-serve letter from the District that it is ready, willing and able to provide a customer with water service as adequate for purposes of the requirement, required review under the Subdivision Act, Zoning Enabling Act, and the Land Development Code without further technical review or inquiry.

The agreement also states that the County and the District agree to work together towards a subsequent agreement whereby the County provides the district with water from the Buckman Direct Diversion project to assist the district in times of drought or mechanical failure or as otherwise agreed by the parties on terms specified in the subsequent agreement. The last clause says this agreement shall be perpetual.

So we understand that there are concerns about water but we also understand that this has been thoroughly examined by the County, by the Water & Sanitation District, which is a

quasi-municipality, and that there's a contractual agreement here that will-serve letters will be accepted by this County for a period of three years from October 9, 2012. Exhibit 3 [Exhibit 11] is for your reference and that is the partial license from the State Engineer's Office which goes through the mechanics of how the 783 acre-feet are established and recognized in the Water & Sanitation District.

Mr. Miller, who is the principal involved in this subdivision application has been working on this for a long time. He has held meetings, he has cooperated, he has responded to all County inquiries, has met all the requirements and we're asking for approval for his phase 1 of his Spirit Wind and for his preliminary and master plan approval. Are there any questions?

CHAIR HOLIAN: Thank you, Mr. VanAmburg. Are there any questions for the applicant or for staff? Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Madam Chair. We can start with the applicant first. There's 133.73 acres, correct?

MR. VANAMBURG: Right.

COMMISSIONER STEFANICS: And the subdivision will consist of 39 residential single-family residential lots.

MR. VANAMBURG: Right.

COMMISSIONER STEFANICS: So the – and I didn't do the math, but will the 39 residential sites take up the entire area or will there be green space and how much green space?

MR. VANAMBURG: I would like Mr. Martinez to respond to that who is the planner.

[Duly sworn, Danny Martinez testified as follows:]

DANNY MARTINEZ: Danny Martinez, agent for Mr. Miller. Madam Chair, members of this Commission, yes, there are 133 acres in the development, 39 lots with an average of 2.8 acres, more or less, and that's just average. There's a total of 13 acres of open space that will eventually be utilized within the development. In the immediate first phase there's a total of seven-plus acres that will be part of the open space. In addition, the 285 Corridor Ordinance is very specific that any development along 285 would have a 100-foot setback. We have also dedicated that area as open space. So we feel that we have met the criteria for our open space.

COMMISSIONER STEFANICS: Madam Chair, the next question I have is that some of the responses that you provided to us and that I'm reading from other people have to do with two-story versus one-story, and also manufactured housing. So could you clearly address each issue?

MR. VANAMBURG: The covenants do provide for two stories. The reason for that is it could be desired by some people. I would point out that the first part of the Spirit Wind West that the portion of the subdivision that was developed years ago is at a much higher elevation, so it's not as though the two-story would be blocking their views. Modular homes are allowed. Your mobile homes are not allowed. The modular homes have to be put on foundations; they have to be stuccoed; they have to pass the architectural committee and the intent is that they really – you can't tell the difference between that and a site-built house. They are built in accordance with building codes. They are built the same way and actually

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better constructed than onsite houses because they have to be reinforced because of their travel. Again, they are placed on their own stem walls and stuccoed and they can be any size that you want. There's a 1,400 square foot minimum so –

COMMISSIONER STEFANICS: Great. Thank you, Madam Chair. That's all for right now.

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, I'm reading through the packet this past week and I think there were a couple questions already broached, but as far as some of the covenants, sir, and maybe covenants from the adjacent Spirit – I may get the name wrong. But you touched on manufactured homes. You can't discriminate against manufactured homes, I think under state law, correct?

MR. VANAMBURG: There is a state statute that prohibits discrimination against them by a governmental entity. We could ban them through the covenants, likely, but it should not be a reason for turning down a subdivision.

COMMISSIONER MAYFIELD: How could you ban them through covenants if state statute prohibits that?

MR. VANAMBURG: Well, that's an interesting question.

COMMISSIONER MAYFIELD: Okay. Let me ask our attorney then. Mr. Ross, how could covenants ban a manufactured home if state statute does not allow that as discriminatory?

MR. ROSS: Madam Chair, Commissioner Mayfield, the state statute only prohibits us from making that a condition of development approval, but private people operating on their own with private contracts like private covenants can, in my opinion.

COMMISSIONER MAYFIELD: Okay. So that was answered. Thanks. Then a question about RV's and boats. Covenant restrictions say nobody can have an RV or boat on the property? In their driveway? On their lot?

MR. VANAMBURG: Yes, they're allowed to say that and that's not an uncommon covenant provision.

COMMISSIONER MAYFIELD: Okay, but then if the applicant then wanted to designate an area – five acres or maybe ten acres to say this is where the community can park their RV or their boat, that's permissible? That's not permissible?

MR. VANAMBURG: It's permissible if it were part of the application but it's not part of this application.

COMMISSIONER MAYFIELD: Okay, so I'm just going to ask this question. So then if people in the community have RV's and boats, but they don't want them in arguably that neighborhood, where are they supposed to park them? Are they going to move them – and I'm just going to say this – to my neighborhood?

MR. VANAMBURG: Well, there's another subdivision that we're proposing which has a commercial aspect to it and also have a storage area for boats and RV's which I think is really needed out there in the Eldorado area.

COMMISSIONER MAYFIELD: Okay. And then reading through a lot of just what I've read, I know there's a lot of questions about water and about the restrictions of .25 on each lot. I know there was an agreement or MOU that the County passed, I think back in October, knowing that we have our BDD and we're working with the Eldorado – and I might

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get their water district wrong. There were some agreements I think. Our Utility Director might be kind of working a little different avenue now. And the reason I bring all this up because there might be an opportunity for the Eldorado area to tie in with our water utility. But I also recall that the applicant – and I don't want to say donated. That might be the wrong term.

MR. VANAMBURG: I think it's the right term.

COMMISSIONER MAYFIELD: Okay, then donated is the right term. I stand to be corrected by anybody. But did something where he donated them a lot of water rights or some wells to the Eldorado water situation for the actual water system. What was the amount of water that was given to that association? Donated, sold, whatever the term is? To help improve that whole system.

MR. VANAMBURG: Mr. Miller had a well which was tied in, not to the river, but is tied into the aquifer. There are two sources out there, one draws off the Galisteo River and the other draws off an aquifer. And it was a huge producing well. He donated that well to Eldorado and also gave them essentially the site. Well, there was a total of five wells that he donated to Eldorado and one of them was a very high producer. And then right next to that well the Water & Sanitation District spent a million dollars in drilling a large casing well which is probably going to be capable of servicing most of the needs out there. So there's been a substantial amount of wet water that has been added to the system.

COMMISSIONER MAYFIELD: And whatever this Commission decides to do with this application, these 39 lots would be subject to tying into that water system? Or would they still be permitted to drill their own private wells on these lots?

MR. VANAMBURG: No. The plan is to tie into the water system and that's why we got the will-serve letter from the Water & Sanitation District.

COMMISSIONER MAYFIELD: And then, Madam Chair, Mr. Ross or Ms. Ellis-Green, there's still that potential possibility that the Eldorado – and correct me again if I'm wrong – would still have the potential of working with the MOU that's in our packet with our County water authority through the BDD if there was ever that shortfall of water anticipated in the future. Correct?

MR. ROSS: Madam Chair, Commissioner Mayfield, since that MOU was passed we've had several meetings with the Water & Sanitation District, the most recent of which was last week, and there was the intent for the Water & Sanitation District to tie into the Buckman line in two places, probably fairly soon.

COMMISSIONER MAYFIELD: Thank you. That's all I have, Madam Chair. Thank you.

CHAIR HOLIAN: Okay. Thank you, Commissioner. Commissioner Chavez.

COMMISSIONER CHAVEZ: I did have a question. Commissioner Stefanics touched on this a minute ago but I want to revisit that. It has to do with open space. You had a number, Mr. Martinez that you gave us on open space, and then I have another number here in the packet which is different. But maybe I'll start with that. The open space – the packet indicates that a total of 7.4686 acres is proposed as open space. That's dedicated as a park. So will that be passive? Will it be active? And then I think the number you gave earlier was larger than that.

MR. MARTINEZ: Madam Chair, Commissioner Chavez, so I can be clear,

what we're dealing here is we're dealing with a phase 1 final that dedicates actual open space under phase 1. The future phases also dedicate a trail easement along the western boundary for a width of 25 feet that has the potential to be classified as open space also. So what I'm looking at – I was trying to give you the number of what we're dedicating under phase 1 and what the future potential could be dedicated. We were working with the Open Space and Trails Committee and they opted to not take on the dedication of the trail easement, which we thought was ample for the County to utilize because what it does is it ties in the 285 trail end and it would take it all the way into the Lamy or Santa Fe County Road 33 which ultimately ends up in Lamy. So again, we thought what we had was going to be an agreement to dedicate that trail but we still have it listed as part of our open space.

So again, immediately under phase 1 we're dedicating the 100-foot right-of-way section. We also have 100 feet that has to be separated between the railroad track and the first properties adjacent to the railroad track. So our total of open space, and I don't have it right off with me, is well over seven acres.

COMMISSIONER CHAVEZ: So this seven acres would just be for the first phase?

MR. MARTINEZ: Well, again, what we're doing in the first phase is we're actually dedicating two parcels along the south side of the highway, plus the 100-foot setback.

COMMISSIONER CHAVEZ: Okay. So that didn't track so that's part of why I wanted to ask the question. And it's hard not having – I don't know if you have a preliminary plan done or not but not having seen one it's hard to visualize it myself. Are we looking at phase 1 there or is that the whole development?

MR. MARTINEZ: Madam Chair, Commissioner Chavez, this is the whole development. Again, the 100-foot separation we have from the railroad track and along the 285 corridor, that's one set of open space. We will have an additional 100 feet on a future phase, and then we have the trail easement that would run along the west boundary that would tie into the south part of the development. To corner parcels over here, those are our dedicated open space parcels. Our preference at this stage of the game is there's an existing park right directly across from this property that's County owned park. It has picnic tables, it has the amenities of a park. We'd like to leave that open so that the homeowners association has the option of deciding how they want to develop their open space. So that's the extent of our open space is this parcel, this parcel, this strip all along the west side, and then the setbacks we have for the 285 and the railroad parcel.

COMMISSIONER CHAVEZ: Thank you, Madam Chair.

CHAIR HOLIAN: Okay. Thank you. Any further questions for the applicant or for staff? Okay, seeing none, this is a public hearing. Is there anyone here from the public who would like to speak on this case, either for or against. Please raise your hands so I can get a feeling for how many would like to speak. Okay. Perhaps you can all stand up to be sworn in and then when you come forward you can state your name for the record.

[Those wishing to speak were administered the oath.]

CHAIR HOLIAN: Okay, so who would like to start? Somebody please come forward and please state your name.

[Previously sworn, Kathy Olshevsky testified as follows:]

KATHY OLSHEVSKY: Hello. My name is Kathy Olshevsky and I live at 22 Mad Dog Drive. Mr. Miller supposedly met with the neighbors and he did with Spirit Wind but he unfortunately didn't meet with us at Mad Dog and we're actually adjacent to one of the first phase sections. Mr. Miller's agent talked about the trail easement that they had offered to the County and I thought that was really curious because I had spoke to Colleen Baker in the past and I knew that she really wanted to put a trail easement in from the rail easement which is across 285 into Lamy from east to west. And so I called her and eventually got to talk to her and she said that the trail easement that they offered was not suitable for what they required based on code. They needed it to follow terrain and it didn't. It was just basically a 15-foot easement, according to her, that followed the boundaries of the property and was not an east-west connection.

And of course I am concerned about water and I'm not quite sure that our concerns are being addressed per se. I know that there's at least three other developments, one of which is not Mr. Miller's that are going in or being proposed to go in. I just hope that the hydrologist is right because it would be really devastating to run out of water in 50 years. Anyway, I would really like to see larger lots being considered. I really do not want to see two-story buildings. I know that that maybe won't interfere with some of Spirit Wind but it could conceivably interfere with us, because the section closest to us is higher up. It's not as low down as they are referring to, the majority of Sprit Wind West.

So anyway, thank you.

CHAIR HOLIAN: Thank you, Ms. Olshevsky. Who's next?

[Previously sworn, Paul Rice testified as follows:]

PAUL RICE: My name is Paul Rice. I live at 35 Cerro Alto Road, and the first thing I'd like to address is Mr. Beal is not here tonight because of illness and his name was mentioned several times by Mr. Miller's counsel. And while I won't comment on whether the quotes were correct I feel strongly that the spirit of what Mr. Beal was trying to address his concerns were not well represented. While many of the things were talked about that was not the main concerns of not just the people in Spirit Wind, but we're only a small percentage of all the neighbors that will be affected and the community that will be affected by this project.

We are concerned about the water in spite of the fact that the County's water bureau has found to some extent in favor of this project. We know that laws that were passed and zoning that was passed in the 1970s could not have anticipated the crisis that we're in the midst of now in the southwest. And we know what the trend is for water. We understand. We live it daily. I've watched my water pressure drop from 2007 when I bought my home significantly over the years. So I am very, very concerned.

I'm also concerned – I don't see the economic value for the community. When my house was built in 2007, between 2006 and 2007, it employed upward of 20 people over the period of a year, countless contractors and people that lived and worked in Santa Fe were part of that construction. I don't see how modular homes that are coming from some other area are going to benefit our community.

I also think that – I'd like to understand how the spirit of the zoning code that requires a home in excess of 2,500 square feet to have a cistern. Now, I was just under 2,500 square feet but I put a cistern in because I felt it was the responsible thing to do. However, these 39 homes in such a dense area are clearly going to use more water than the surrounding area is

using because we don't have that kind of population, and yet I haven't heard anything in the covenants about cisterns of planning for water going forward.

So these are the concerns I think that many of us that are here and that have signed the petitions have. Thanks very much.

CHAIR HOLIAN: Thank you, Mr. Palmer. Who's next?

[Previously sworn, Paul Olshevsky testified as follows:]

PAUL OLSHEVSKY: Hello, Madam Chair and Commissioners. My name is Paul Olshevsky and I live at 22 Mad Dog Drive just adjacent to the proposed Spirit Wind West. The first question I'd like to ask all you Commissioners is if you received my letters that I sent to every one of you.

CHAIR HOLIAN: Yes. I think that was included in our packet.

MR. OLSHEVSKY: Okay. So I won't have to go over any of the facts in there. However, I did want to bring up it was talked about that there was less water being used by the people in the area. And I believe the reason for that is because the rates have gone up so much that it's a penny a gallon, over a penny a gallon now for our water. And so that's why I believe that people are using less water in the area.

And also I want to talk about the EAWSD, that's the water district that services us. They, in the past, their maintenance program, and I don't believe that they're that much better, has caused water restrictions in the last four years in their maintenance program that they're lacking in. They have exposed lines. They've had leaks, and they have these pressure valves that have been leaking on the south end of the district that have caused water restrictions where we couldn't even wash our cars. The landscape, cars, and I'm afraid that all the building that these proposed developments – like my wife said there are going to be four of them that are proposed in our area, serviced by this water district. We'll not be able to meet that demand and if we have a leak or a severe rupture in one of those 8" lines that go down by our property we'll be in big trouble and Spirit Wind will be in big trouble too because they're serviced by that. I want to thank you for your time.

CHAIR HOLIAN: Thank you, Mr. Olshevsky. Who's next?

[Previously sworn, Kathy Beal testified as follows:]

KATHY BEAL: Hi. My name is Kathy Beal, and I just wanted to talk about three points pretty quickly. One was the higher elevation – I'm sorry. I live in Spirit Wind Ranch and our property is adjacent to the new proposal and we don't have a height difference of 20 feet. We have a height difference of maybe three feet. Our property is right next door, so I would definitely not like to see two-story houses. And I wanted to demystify the myth that all Spirit Wind properties are at such a high elevation that a two-story house would not matter.

The other thing along those same lines is since these properties, these subdivisions are adjacent I'm wondering why there's no open space between the subdivisions. That would certainly have helped in our support of the project.

And lastly, everyone is concerned about water and while the wells from Mr. Miller's donation have been pumping in Eldorado we've still been on water restrictions as it is. Every summer we've had water restrictions. A couple years ago we couldn't plant any new plants for landscaping. Just because those wells are there and are pumping doesn't necessarily mean they can support all these new homes. Thank you.

CHAIR HOLIAN: Thank you, Ms. Beal. Is there anyone else who would like to speak from the public? Okay. The public hearing is now closed. Are there any – well, first of all, Mr. VanAmburg, would you like to make some closing statements?

MR. VANAMBURG: Just I understand that concerns were presented but I didn't hear the intensity of these issues as much as sometimes you hear in these proceedings. I would just like to point out that Mr. Martinez and Mr. Miller did what they could to meet with anybody who had some concerns. We were hopeful that Mr. Beal could round up everybody in the neighborhood and if he did not do that certainly I understand why. But we tried to meet with everybody we could just so we wouldn't have to hear at this meeting that we didn't meet with someone. So we apologize if we were at fault at all but we did our best.

This is not a response on the trail connection. My understanding from Mr. Martinez is we have not been told the reason why the trail was not accepted. We're still willing to talk to the County about having the connecting trail. On modular homes not providing jobs – these will not all be modular homes, I'm sure. I'm sure people are going to want to build their homes on site. It's just that if somebody wants to have a modular home it's not precluded.

The water rates are up. Yes, this is a high price for water that people are paying out there and the result is that people cut down on the water use. I don't think that's all bad. EAWSD, the Water & Sanitation District is a quasi-municipality that was approved by the courts. It inherited a system that was in disrepair. They are making repairs; they are adding wells. It's a professional organization and is not following the same patterns that maybe some of its predecessors did. So I don't think that we need to have concerns over EAWSD doing its job in the future.

That's it. If there are any questions –

CHAIR HOLIAN: Thank you, Mr. VanAmburg. Commissioner Chavez.

COMMISSIONER CHAVEZ: Yes, thank you, Madam Chair. Could you tell us how the development will handle conservation and things like water harvesting?

MR. MARTINEZ: Madam Chair, Commissioner Chavez, again, we're pretty much identifying on our subdivision plat that the development will comply with Santa Fe County ordinance, whatever it is, which is very clear. Water harvesting, cisterns. That's how we approach it is we approach it by stating on the subdivision plat that this development will comply with Santa Fe County ordinances. And again, that's the best way we can approach it because when they come in for a building permit pretty much mandates cisterns. They identify water harvesting. They identify the things necessary to follow those particular ordinances and that's what we're doing.

COMMISSIONER CHAVEZ: Okay, Madam Chair. I appreciate that, Mr. Martinez. I didn't see that in staff recommendations and I don't know if this is not the place for that right now, but would staff consider adding that or is that language that is somewhere else that I don't see?

MS. LUCERO: Madam Chair, Commissioner Chavez, it's not listed as a condition of approval but it is an ordinance that will be enforced with they come in for building permit. So we could add it but it will be done because they will be required to comply with our ordinance.

COMMISSIONER CHAVEZ: So if it's a standard it will be part of the review process and they go through the final development of the actual subdivision.

MS. LUCERO: Madam Chair, Commissioner Chavez, it will actually be – the water harvesting will be enforced at the time of building permit, because at this point we don't know the size of the structures that are going to be on each lot. So that's what regulates whether or not cisterns are required or if rain barrels would be sufficient.

COMMISSIONER CHAVEZ: Okay. Thank you, Madam Chair.

CHAIR HOLIAN: Any further questions? Commissioner Stefanics.

COMMISSIONER STEFANICS: Madam Chair, it's more a statement than a question at this point. There are many community concerns and we can identify – well, first the comment. When people buy property they have the right to develop it within the codes and the ordinances. And we've had many difficult cases come in front of us that haven't been received well by communities. And it comes down to whether or not – no one can just buy a piece of property and do whatever they want. They have to abide by the code and by the ordinance. And we are in the process of changing the ordinance, but they have a right to do something within their property.

So we've had difficult situations where oftentimes developers and existing residents have not always had the opportunity to negotiate or reach agreements. So sometimes we have postponed decisions to allow for further time and effort to be put into the process, and we did one just recently with Rancho Viejo. We've done it with Commonweal to actually a couple years. Saddleback. The Girls and Boys Ranch. We've had many, many, many land use decision cases that were even much more controversial than this. And the one thing I'm not quite sure about is whether or not the developer and the communities – plural – have really had the chance to be at the table.

I've heard today that Mr. Miller or representatives met with Spirit Wind but I'm not sure they met with some other areas somebody spoke today about. So I think there might still be some opportunity to work out some issues. I do think we also have been in situations before where we don't want something in our own backyard, and that's a very difficult issue. People say, oh, it's going to wreck my property value. Oh, this is going to happen. Oh, this is going to happen. Well, I'm the same way. I had somebody who was a fracker who wanted to move in next door to me and I was going ballistic.

So one of the things that happens though is trying to work with the code, the ordinance, to work with the community and the developer. And so I'm interested in hearing what my colleagues have to say but this also might be a situation that isn't ready to decide. Thank you.

CHAIR HOLIAN: Thank you, Commissioner. And actually, Mr. VanAmburg, would you like to respond to that?

MR. VANAMBURG: I would, but first I would ask the Commission's indulgence and maybe have Robert Rambo from the Court of Appeals address the efforts of trying to connect with the community.

CHAIR HOLIAN: Okay.

[Duly sworn, Robert Rambo testified as follows:]

ROBERT RAMBO: Robert Rambo, appellate mediator for the New Mexico Court of Appeals. I would – what I can add, Madam Chair and Commissioner Stefanics, is in the course of this process in the last two years of mediating with Mr. Miller and the County there have been opportunities that have been established to try and respond to the community.

As part of that I've been in two meetings that Mr. Miller has conducted with community members. One that was in the Agora Shopping Center in the community room there with members of Spirit Wind Ranch, is I believe the homeowners association and other folks as well. My understanding is the County Land Use has tried to coordinate opportunities to meet Mr. Beal. I've been in touch with him. He's the representative of Spirit Wind Ranch folks.

There have been continuing discussions and we continue to try and provide opportunities for conversations to take place. Any questions?

CHAIR HOLIAN: Thank you, Mr. Rambo. Any questions? And Mr. VanAmburg –

COMMISSIONER STEFANICS: Madam Chair, let me ask a question.

CHAIR HOLIAN: Yes, Commissioner Stefanics.

COMMISSIONER STEFANICS: In your estimation, is there anything that the developer did not attempt that could have been tried with the surrounding neighbors?

MR. RAMBO: I'm not familiar with the process beyond that the Land Use Department does try to collect information from community members and provide that information to the developer. I think there was a list that Land Use has of individuals that may want to speak. I'm not exactly sure how that part of the process works. I was just asked at one point to attend two meetings that were held and was in contact with Mr. Beal about continuing discussions. I guess maybe the answer is I've assisted with monitoring that process and being available if anybody wanted facilitated meetings I engaged in one of those.

COMMISSIONER STEFANICS: And Madam Chair, one other question. Was there great attendance at either of these meetings?

MR. RAMBO: The meeting at the Agora Shopping Center, the community room, I think there was about 20 to 30 people that were in attendance at that meeting. The other meeting involved another project, Tierra Bello, and that was out at the Community Center, I believe, the Eldorado Community Center and there was about a dozen or so folks attending that meeting.

COMMISSIONER STEFANICS: And Madam Chair, was there any changes made in the plans based upon the interactions?

MR. RAMBO: Yes. My understanding is changes were made following both of those meetings and there were continued discussions with Mr. Beal and the Spirit Ranch folks and changes were made all the way up to and including yesterday, there were some additional changes made based on those discussions.

COMMISSIONER STEFANICS: Thank you very much.

CHAIR HOLIAN: Okay. Thank you. Any further questions for staff or for the applicant?

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR HOLIAN: Yes, Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, just for the applicant and staff. I don't know what position the Commission is going to take in a few minutes but my suggestion, just as an added staff condition is as far as the trailhead space, the 15-foot wide easement, if staff hasn't gotten back to the applicant or if there's still some language that needs to be addressed, that if you can make the topography of that land accessible as it was brought up I think – and I apologize, Ms. Olshevsky, if I pronounce your name wrong. But if

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there's some inclines and stuff that makes that inaccessible in speaking with our staff that you would all address that. I think that's kind of what I've heard. I don't know if Ms. Ellis-Green if that's an issue with you all.

MS. ELLIS-GREEN: Madam Chair, Commissioner Mayfield, are you talking about the proposed trail easement?

COMMISSIONER MAYFIELD: Yes, the 15-foot wide – that's what I've heard.

MS. ELLIS-GREEN: Okay. I understand that the Open Space Department had said that they didn't think it was accessible, so are you asking them to move –

COMMISSIONER MAYFIELD: I'm just asking if that could become a staff condition if this Commission moves forward with this, that has to be addressed. It has to become an accessible 15-foot easement to access that open space.

MR. MARTINEZ: Madam Chair, Commissioner Mayfield, the property in general doesn't have this up and down situation. There's a power line and waterline actually within the same area in this trail easement. The power line, again, like I say, it's very gentle sloping terrain. In this agreement, in this effort to negotiate with Open Space there's an additional parcel that Mr. Miller offered to the County as a parking area coming off of the 285 trailhead that would have allowed anybody to come off and park off of 285 and utilize a trail, plus, they still have the access going south or north into the community of Eldorado. So that property was available to the County and the County just basically said we just don't feel that this trail meets our needs at this time. We're still dedicating it, but the County just felt that they didn't need it at that point. So even in regards to the parking, there was a request for proposals that was out to determine where they could put a parking easement at the beginning of this trail easement. Again, that issue never went anywhere. The County just decided they weren't interested in the trail at this time and they weren't interested in the parking. So that offer that Mr. Miller offered on this parcel of land, outside of this development, up against 285, basically went away.

So you can see, it's been a continuous effort to try to satisfy the trail easement part and we're still open to working with the County on this. It's just they've made the determination that they don't want the trail.

COMMISSIONER MAYFIELD: Thank you, Madam Chair, Mr. Martinez. You bring up another point now, just on some other issues I've dealt with up north. But as far as the parcel of open space – again, I don't know how big it is. Is it a few acres? Ten acres? Twelve acres? We're talking maybe with a picnic area?

MR. MARTINEZ: Madam Chair, Commissioner Mayfield, two of the parcels are greater than 3 ½ acres that would allow for picnic areas and development of the open space as a park for the community of the subdivision.

COMMISSIONER MAYFIELD: Okay. Great. And then it could access some also trail space.

MR. MARTINEZ: Correct.

COMMISSIONER MAYFIELD: And then you may have just broached this, but – because an issue that I deal with up north is parking. Because I would hope then when people decide to park there, because you're going to get other community members outside of this community that will go there, but the issue that I deal with is that there are community

members saying, well, we don't want people parking in our driveways or on our streets. So you guys are then respectfully affording for parking spots within this community also, so people are not parking in somebody's driveway.

MR. MARTINEZ: Madam Chair, Commissioner, that's correct. In these open spaces they would have their own parking spaces allotted for them is what they would do.

COMMISSIONER MAYFIELD: Thank you. Thank you, Madam Chair.

CHAIR HOLIAN: Okay.

MR. MARTINEZ: Madam Chair, if I could just point out one thing that's really important. As of yesterday, two-story houses are no longer in the subdivision. That's the biggest issue that we saw that was hanging over us. We have agreed to eliminate two-story homes entirely.

CHAIR HOLIAN: Okay. Thank you, Mr. Martinez. Okay, what are the wishes of the Board? Okay, well, I will just say that the developer has complied with a number of requirements by the County including protection of archeological sites, access requirements by the Department of Transportation, open space, affordable housing, terrain management, and they have met with the neighbors to try to address some of the concerns that the neighbors had and they have modified the covenants.

With regard to the water, I will acknowledge that there is a memorandum of understanding between the County and the EAWSD. In fact that MOU states the County will accept a will-serve letter from the District, that it is "ready, willing and able to provide a customer with water service." So we cannot really question that letter.

But, in my opinion, this is a development that is not in keeping with the vision of the Sustainable Growth Management Plan. It is sprawl. There's no way around that. That means that it has expensive to maintain infrastructure. It's expensive to travel to work, school, shopping, other things, and there's very little opportunity for efficient use or re-use of water.

This is the kind of development that we've had a lot in our county over the years, and it was very common practice 10, 20 years ago. But in my opinion it's not the kind of development that we really need or want at this point in time. So I really cannot in good conscience vote for this. So I guess I make the motion to deny CDCR Case #Z/X 08-5430, Spirit Wind West Subdivision. Is there a second? Okay, seeing none, the motion dies. Would anybody else like to make a motion?

COMMISSIONER MAYFIELD: Madam Chair, I will make a motion. My substitute motion would move that we would postpone this to our next land use meeting asking that the developer go back and work with the community, one last opportunity, seeing if there could be more differences that could be ironed out, hearing what was stated tonight, and they would come back to us at our next land use meeting, and we could have this case for final action at that meeting.

CHAIR HOLIAN: Is there a second?

COMMISSIONER CHAVEZ: Second.

COMMISSIONER STEFANICS: Madam Chair, I would add something, if the maker of the motion would consider this friendly. I would like to have identified when the applicant comes back the very specific conservation measures that plan to be taken with open space, water conservation, archeological sites and anything else that staff could recommend. But just so that we have very specific comments about it. Thank you. Is that friendly?

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CHAIR HOLIAN: Commissioner Mayfield, are you okay with that?

COMMISSIONER MAYFIELD: I am, Madam Chair, but after we take this vote I just need before we adjourn to make one other point. Because that land use meeting will be on what day again, Steve?

MS. ELLIS-GREEN: April 9th.

COMMISSIONER MAYFIELD: And if you all will just indulge me, I'm going to just make another clarifying point after we take this vote please.

CHAIR HOLIAN: Okay. We have a motion and a second with an amendment for postponing this case until April 9th, with direction given.

COMMISSIONER STEFANICS: Well, Madam Chair, the only thing I would say is we might not need to put a date yet, because we didn't actually put a date on the other postponement we did, and it really is working. The developer and the community is meeting, but it took them almost six weeks to get it together to meet.

CHAIR HOLIAN: Okay. Fair enough. So this is an indefinite postponement until various issues can be worked out. So I have a motion and a second.

The motion to postpone passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]

CHAIR HOLIAN: So, Commissioner Mayfield, you wanted to make a point?

COMMISSIONER MAYFIELD: Well, I was just going to say if it was to the 9th I would just call in and take care of that other case on the 9th also.

COMMISSIONER STEFANICS: Madam Chair.

CHAIR HOLIAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: I think just to clarify though, the applicant can ask to get back on the agenda at any time. So the applicant has that right to say I'm ready to come back, and we'll find out if anything has changed or not, in the one month or the three months or the six months. So thank you.

COMMISSIONER MAYFIELD: And then, Madam Chair, on that point, Commissioners. Steve, on that earlier case that we tabled because of the improper noticing, if that's the case I will make myself available by phone on the 9th of April that we can hear both of these cases. So I know that we asked to push that other case out, but if that's the case for April 9th if that other case has to be brought forward to us, I will just make myself Skype or phone to bring that case back. It is what it is. I'll call in from out of the country last time.

MR. ROSS: Madam Chair, Commissioner Mayfield, if that's the case maybe we notice it for the next available meeting so that we have flexibility.

COMMISSIONER MAYFIELD: Or even for that other case that we pushed back because it can just be heard of. That's fine then. Just so we can make that point of clarification right now please.

MS. ELLIS-GREEN: Madam Chair, Commissioner Mayfield, so can I confirm that that is CDRC Case 12-5340, the Family Dollar Store?

COMMISSIONER MAYFIELD: That's fine. If it's acceptable by this Commission, that's fine that we hear that case as soon as it can be heard, but I just want everybody to know, I will more than likely be participating telephonically. If you guys want

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to see my face it will be done through Skype.
CHAIR HOLIAN: Okay. Thank you.

XVII. ADJOURNMENT

Having completed the agenda and with no further business to come before this body,
Chair Holian declared this meeting adjourned at 10:05 p.m.



Geraldine Salazar
GERALDINE SALAZAR
SANTA FE COUNTY CLERK

4/9/2013

Approved by:

Kathy Holian

Board of County Commissioners
Kathy Holian, Chair

Respectfully submitted:

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SFC CLERK RECORDED 04/18/2013