

SANTA FE

BOARD OF COUNTY COMMISSIONERS

REGULAR MEETING

July 8, 2008

Paul Campos, Chair
Virginia Vigil, Vice Chair
Harry Montoya
Michael Anaya
Jack Sullivan

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This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 3:05 p.m. by Chairman Paul Campos, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Following the Pledge of Allegiance and State Pledge, roll was called by County Clerk Valerie Espinoza and indicated the presence of a quorum as follows:

Members Present:

Commissioner Paul Campos, Chair
Commissioner Virginia Vigil, Vice Chairman
Commissioner Jack Sullivan,
Commissioner Harry Montoya
Commissioner Mike Anaya

Members Absent:

[None]

V. INVOCATION

An invocation was given by County Clerk Valerie Espinoza.

VI. APPROVAL OF THE AGENDA

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- B. Tabled or Withdrawn Items**

CHAIRMAN CAMPOS: Mr. Abeyta, any changes on behalf of staff?

ROMAN ABEYTA (County Manager): Yes, Mr. Chair, the first coming under X. Matters from the Commission, we added D, which is discussion and possible approval for an expenditure of community service funds in the amount of \$1,300.80 for L & L Portables for two additional portable toilets and two months of service for toilets in the Madrid and Cerrillos area.

We added an item E, which is a resolution declaring intention by the Board of County Commissioners to form a Regional Transit District with the City of Santa Fe, to enact an 1/8

gross receipts tax to fund that district, and to enter into a joint powers agreement with the New Mexico Department of Transportation and the Rio Metro Regional Transit District to provide the equivalent of a 1/16 percent gross receipts tax to fund the Rail Runner operations.

Under Public Hearings, XIII. A. Growth Management Department, item #2, AFDRD Case V 07-5410, the Joe Mier Variance, staff is requesting that this be tabled for one more month. We're getting pretty close to a resolution to this issue, Mr. Chair., and if we don't hear it by next month then we will be prepared to withdraw it, but we still need a little more time on that case.

And we received a request regarding Case #5, AFDRD Case V 07-5470, Robert Casados Variance. We have received a request from the applicant to table that for 30 days. This would be the third tabling and under our rules if it is not heard by next month, then that case will be withdrawn. There's nothing further from staff, Mr. Chair.

CHAIRMAN CAMPOS: Okay. Commissioners, any changes, additions to the agenda? Any changes? Okay, is there a motion to approve the agenda as amended and as set forth by Mr. Abeyta, our manager?

COMMISSIONER MONTOYA: So moved.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER SULLIVAN: Second.

The motion to approve the agenda as amended passed by unanimous [5-0] voice vote.

VII. APPROVAL OF CONSENT CALENDAR

A. **Consent Calendar Withdrawals**

CHAIRMAN CAMPOS: We have one item.

COMMISSIONER SULLIVAN: Move for approval of the Consent Calendar.

COMMISSIONER MONTOYA: Second.

CHAIRMAN CAMPOS: Discussion?

The motion to approve the Consent Calendar passed by unanimous [5-0] voice vote.

XI. CONSENT CALENDAR

A. **Miscellaneous**

1. **Resolution No. 2008-113. A Resolution Authorizing Santa Fe County to Receive Grant Awards from the US Bureau of Reclamation-Upper Colorado Region Water Conservation Field Services Program for Development, Implementation and Outreach for the County Water Conservation Program**

VIII. APPROVAL OF MINUTES

A. June 10, 2008

CHAIRMAN CAMPOS: Commissioner Sullivan, do you have anything there?

COMMISSIONER SULLIVAN: Yes, I have a couple of typos.

CHAIRMAN CAMPOS: Typographical corrections?

COMMISSIONER SULLIVAN: Correct.

CHAIRMAN CAMPOS: Okay. Any others? Is there a motion to approve?

COMMISSIONER SULLIVAN: Move for approval as amended.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER ANAYA: Second.

The motion to approve the June 10th minutes as corrected passed by unanimous [5-0] voice vote.

IX. MATTERS OF PUBLIC CONCERN –NON-ACTION ITEMS

CHAIRMAN CAMPOS: This is an opportunity for anybody in the public to come forth and address any issue to the Commission that is not part of our calendar, our agenda. Okay, no one having come forth, we move to item X.

X. MATTERS FROM THE COMMISSION

A. Discussion and Possible Approval for an Expenditure of Community Service Funds in the Amount of \$500 to the Espanola Public Schools to Support their “Key To the Future” Program (Commissioner Montoya)

COMMISSIONER MONTOYA: Thank you, Mr. Chair, members of the Commission. One of the programs that we’ve been involved in for the last three years has been with the Key to the Future program for the Española Public Schools, and what this has provided is a contribution as part of the continuing education. What we have done with this, Mr. Chair, members of the Commission is to provide a bit of funding to continue the education of a graduate from Santa Fe County and the Española Public Schools. So that’s what this \$500 would be used for, and I move for approval.

COMMISSIONER ANAYA: Second.

CHAIRMAN CAMPOS: Okay, any discussion?

The motion passed by 4-0 voice vote with Commissioner Campos abstaining.

X. B. Resolution No. 2008-114. A Resolution Calling for Consideration and Implementation of Various Measures to Reduce Fuel Usage and Consumption (Commissioner Campos & Commissioner Vigil)

COMMISSIONER VIGIL: Thank you, Mr. Chair. You do have the resolution before you and I do have some amendments. This resolution will create a focus for fuel usage and consumption and the reduction of it within the County. The amendments that I have are in the last whereas. That should read: Whereas, recommendations to reduce fuel usage should be brought forth by staff. We do have an addendum to this and I'm going to ask that we remove the language in the following: Now, therefore, should read Be it resolved by the Board of County Commissioners of Santa Fe County that this resolution is hereby adopted.

The amendments for this, I think could be inclusive of some additional items that could reduce fuel usage, so I'm directing and requesting that we enact this resolution for its purposes specifically to have staff come back with further recommendations to us on fuel cost reduction.

CHAIRMAN CAMPOS: Okay, so the fifth whereas you want to change that?

COMMISSIONER VIGIL: Yes.

CHAIRMAN CAMPOS: Staff shall recommend or shall bring forth recommendations to the County Commission concerning the reduction of fuel consumption. When? Do you have a time?

COMMISSIONER VIGIL: I would like that – we've already gotten a nice head start on this, Roman. I think, just from my conversations with staff who has worked on this, there are some other items that we'd like to look at – educational outreach and carpooling and other components that I think should be a part of this. I think it could be done by the next administrative meeting or land use, whichever comes first.

MR. ABEYTA: Mr. Chair, Commissioner Vigil, yes, staff will start reporting to the Commission by the next meeting. Some of the initiatives will take time to implement and so I envision this as something that's going to be ongoing and that we will have to report to the Commission periodically on. But we can provide our first recommendation and kind of action step, if you will, at the next meeting.

COMMISSIONER VIGIL: Okay.

CHAIRMAN CAMPOS: Any Commissioner have any questions about this report for action? Commissioner Anaya.

COMMISSIONER ANAYA: I hope we don't stop grading roads.

MR. ABEYTA: Mr. Chair, Commissioner Anaya, I don't believe we intend to stop grading roads.

COMMISSIONER ANAYA: Thank you.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: Under the X. G. it says lose weight. Does that

mean in the car or yourself personally.

COMMISSIONER VIGIL: Either would be helpful, Commissioner Montoya.

COMMISSIONER MONTOYA: Either one. Okay. Could we clarify that?

COMMISSIONER VIGIL: And actually the addendum is not being acted on today. That addendum will come forth as our County Manager has advised, at a future date.

COMMISSIONER MONTOYA: Okay.

COMMISSIONER VIGIL: We're only acting on the resolution itself.

CHAIRMAN CAMPOS: Mr. Abeyta, is this going to require any kind of staff focus, staff position, funding?

MR. ABEYTA: A lot of the items will not, but if we start approaching one where we want to take on initiative that will, we will report that to you before we take on that initiative. But some of these things won't. So to get started, I would say, no. But there could be a focus or an initiative where I come back and say, well, this is going to take this, in order to do it. But I would like to get started and analyze that and keep that option open as we go.

CHAIRMAN CAMPOS: We have an RFP as far as building audits. Is that still in discussion or is that going to be brought forth?

MR. ABEYTA: We are finalizing, Mr. Chair, that request for proposals, that RFP. I had a discussion with Community Services just yesterday on that, and I would expect that we could have that RFP advertised in the next 30 to 60 days.

CHAIRMAN CAMPOS: It had been advertised, hadn't it?

MR. ABEYTA: It had been, but we – some of the feedback that we got from people that submitted was that it was too broad, and that we may want to be a little more focused in our scope of work. So we have worked on that. I've asked Community Services to get with the Legal Department and make sure that we feel comfortable that we have a better scope of work, and if we do, then put that out to rebid.

CHAIRMAN CAMPOS: Okay. There is a Resolution 2008-114. Commissioner Vigil.

COMMISSIONER VIGIL: Mr. Chair, just kind of to follow up on the line of questioning you had, while this addendum does incorporate some of the energy efficiency pieces that we talked about and also includes some of the policies that we've already adopted, like looking to purchase more hybrid vehicles and that kind of thing, I think that reducing the fuel consumption of passengers is something that creates a specific focus for us at this particular time, with the high cost of fuel and the need for looking at alternative avenues for reducing fuel consumption. So I think one of the things I want to do with this resolution and why it's drafted the way it is is just to create a specific focus for that.

So while this doesn't dispel the energy efficient pieces, I think for me it was a little confusing that some of those were part of the addendum. But I think once we get moving on this and work specifically on focusing that we'll be okay with that. With that I move we approve.

CHAIRMAN CAMPOS: I'll second that. Commissioner, I think you're on the right track because we're trying to bring everything together, make it more comprehensive, so

there's one place we can look to and have a focus. Any discussion? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Abeyta, on the items that you would bring back to the Commission, because now we don't have the specifics here with the attachment being excluded, I noticed, for example, one of the recommendations was a four-day workweek for County staff. That's obviously a pretty big decision. Is that the type of thing that would come back to the Commission?

MR. ABEYTA: Mr. Chair, Commissioner Sullivan, yes. Those type of things I would bring back to the Commission with a recommendation, then have the discussion and get the actual approval or direction from the Commission to proceed. Anything that would affect our staff or our budget, I will be sure to bring to the Commission.

COMMISSIONER SULLIVAN: Okay. Thank you.

CHAIRMAN CAMPOS: Any other discussion?

The motion to approve Resolution 2008-114 passed by unanimous [5-0] voice vote.

X. C. Resolution No. 2008-115 A Resolution of Santa Fe County Supporting House Memorial 13 Requesting the New Mexico Legislative Council to Direct the Appropriate Interim Legislative Committee to Study Possible Regulation of the Propane Gas Industry by the Public Regulation Commission (Commission Anaya)

COMMISSIONER ANAYA: Thank you, Mr. Chair. This is another issue regarding fuel costs, and with me today I have Pilar and Betty and Harv, and I believe Betty, you can come forward and talk a little bit about this resolution.

BETTY HAGENSTED: My name is Betty Hagensted and I'm from Ojo Caliente in Rio Arriba County. I want to thank you for looking into this resolution. This propane issue came to my attention when I found out that propane in my area varied by the gallon between companies and within individual companies anywhere from \$2.60 a gallon to \$3.99 a gallon. That \$3.99 has gone up to \$4.35 a gallon. And the burden of paying the highest prices fell on the lowest income people who had been with Cotton Butane before it switched to Ferrell Gas, which charged the \$3.99.

One of the problems, you say, well, why don't you just switch over and go to a company that's cheaper. But to do that, the propane company rightfully has to inspect your propane system. And many of the poor people don't pass those inspections. If they stay with the company they're with, nobody inspects their tanks or anything. But if you go to change, you can pay up to \$1,200 to have your system upgraded. So people can't afford to switch companies because they're tied to the tanks that are rented from the companies.

If you rent, for instance, your renter, the person you're renting from does not want to pay that kind of money to switch. But you have to pay that \$4.35 a gallon. If you can only buy 100 gallons of gas, which a lot of low income people in trailers have to do, that's \$400 for

100 gallons of propane which sometimes doesn't even last a month. So people have been disconnecting their tanks and buying the little tanks you get for your barbecue pit and hooking them up to their houses and using it occasionally, which is a safety issue.

If you read the memorial you'll see that there are a lot of problems within the propane industry when it comes to how consumers are treated, because they are the only utility that has no oversight. They aren't considered a utility; they're hooked to our gasoline industry. So I spoke to several people and they thought it was worthwhile for the PRC or some other entity to have oversight of the propane industry and fix some of these problems that exist.

CHAIRMAN CAMPOS: Any questions?

COMMISSIONER ANAYA: Move for approval.

COMMISSIONER MONTOYA: Second.

MS. HAGENSTED: Oh, there's one more thing I'd like to say. Both Rio Arriba County and Taos County have passed this resolution.

CHAIRMAN CAMPOS: Okay. Thank you very much.

MS. HAGENSTED: Thank you.

COMMISSIONER ANAYA: Thank you, Betty and Pilar.

CHAIRMAN CAMPOS: Commissioner Anaya, any additional comment?

COMMISSIONER ANAYA: No, it's striking to see the price difference from \$2.60 to \$4.35, so it does need to get regulated somehow. So this would hopefully help. So I move for approval.

The motion to approve Resolution 2008-115 passed by unanimous [5-0] voice vote.

X. D. Discussion and Possible Approval for an Expenditure of Community Service Funds in the Amount of \$1300.80 for L & L Portables for two Additional Portable Toilets and two Months of Service for Toilets in Madrid and Cerrillos (Commissioner Anaya)

COMMISSIONER ANAYA: Thank you, Mr. Chair, Commissioners. This is some monies to extend the L & L Portables. I guess I have a question for Paul. We did purchase a – what's the word? Paul, help me. A vaulted toilet. And I want to know when that vaulted toilet is going to be installed, so that we can move these L & L Portables out.

PAUL OLAFSON (Community Projects Director): Mr. Chair, Commissioners, we received notice this week from the company, CTX, I believe, that we're buying the vaulted toilet from, they are in production. They are building the unit right now. Their delivery window is estimated right now between July 28th and August 8th. So they're saying they anticipate delivering and installing the facility between July 28th and August 8th.

COMMISSIONER ANAYA: Okay, so by August 8th it will be done? Or when?

MR. OLAFSON: Yes, unless their schedule changes from something on their

end. But that's the timeline that they're giving us right now. Following the installation of the building itself – you have to dig a hole and put the vault in and then put the unit on top of it. And then we would need to do some handicap parking right next to and some bollards for protection from the roadway.

COMMISSIONER ANAYA: When do you think that that will be completed, even the handicap parking? The whole thing?

MR. OLAFSON: Hopefully by the end of August.

COMMISSIONER ANAYA: End of August. Okay. That's all the questions I have. I move for approval.

COMMISSIONER SULLIVAN: Second.

COMMISSIONER VIGIL: Mr. Chair.

CHAIRMAN CAMPOS: Discussion.

COMMISSIONER VIGIL: Paul, is this a long-term solution to the portables, and is it a septic system?

MR. OLAFSON: Mr. Chair, Commissioner Vigil, this facility will be – it's certainly more aesthetically pleasing than the portables. It will still be a vaulted, closed system. So it's not hooked up to a leachfield or any septic system, it's just a giant tank, basically, and that tank will still have to be pumped regularly. We're working with the Madrid Business Owners Association to work on having them help us with maintaining the facility and keeping it clean. It will certainly be an improvement from the current situation; it's not the end-all solution of a community-wide system.

COMMISSIONER VIGIL: Are there wastewater lines there at all?

MR. OLAFSON: Mr. Chair, Commissioner Vigil, no.

COMMISSIONER VIGIL: Okay. So it really is the next best step.

MR. OLAFSON: Yes.

COMMISSIONER VIGIL: Okay. Thank you.

CHAIRMAN CAMPOS: Any other comments, questions?

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

- X. E. Resolution No. 2008-116. A Resolution Declaring Intention by the Board of County Commissioners to Form a Regional Transit District with the City of Santa Fe, to Enact a 1/8 Percent Gross Receipts Tax to Fund that District, and to Enter into a Joint Powers Agreement with the New Mexico Department of Transportation and the Rio Metro Regional Transit District to Provide the Equivalent of a 1/16 Percent Gross Receipts Tax to Fund Rail Runner Operations (Commissioner Montoya)**

[Exhibit 1: Resolution 2008-116]

COMMISSIONER MONTROYA: Thank you, Mr. Chair. The reason for this

resolution, Mr. Chair, members of the Commission, is it has never been the intent of Santa Fe County to not follow through and work with the City in getting this 1/8 percent gross receipts tax passed. This now clearly gives the delineation of how this will be done in terms of working with the City of Santa Fe in forming a Regional Transit District. There has been work that has been done between the New Mexico Department of Transportation, the Rio Metro Regional Transit District, and the North Central Regional Transit District that has facilitated at least what, with respect to the Rail Runner project specifically funding 1/16 of that 1/18 for the Rail Runner project.

This is something that I believe that all of us have felt that is needed in terms of avoiding the double taxation that was being discussed early on between the Department of Transportation and the Regional Transit District. So now that the control is within the hand of Santa Fe County and City of Santa Fe we can still utilize what has been drafted in terms of a joint powers agreement between the New Mexico Department of Transportation, Rio Metro Transit, North Central Transit whereby Santa Fe County will participate as well as Valencia, Sandoval and Bernalillo in enacting the 1/8 percent gross receipts tax. And again, half, the 1/16 would be dedicated to the operation of the Rail Runner.

So that's the concept that we have here, Mr. Chair, in terms of our continued commitment so that we get the message also to the Governor and to the Secretary for the Department of Transportation that Santa Fe County is actively and very aggressively moving forward with what needs to be done in terms of the formation of a Regional Transit District, and also in enacting this 1/8 gross receipts tax, which ideally, if we can get things done quickly enough, will be on the November ballot. If not, we'll have to wait until after that time period. But this, essentially, Mr. Chair, is to maintain the commitment that we have in terms of the funding of the 1/16 for the Rail Runner. And I move for approval.

CHAIRMAN CAMPOS: Okay, is there a second?

COMMISSIONER SULLIVAN: Second.

CHAIRMAN CAMPOS: Discussion? Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Mr. Chair. I haven't had time to have conversations with the DOT and the Governor's office about this resolution. After being the chairman of the RTD for several months, it's kind of hard for me to turn my back on our northern counties. I feel that this is kind of insulting to bring this forward at this point, right after we have worked for three months, working hard to try to come up with a solution and then all of a sudden this comes forward.

So I am going to respectfully bow out of this decision today. I just feel that we worked hard to try to come up with something and to try to please the City of Santa Fe and Santa Fe County and it wasn't just myself but it was a lot of Councilors and Commissioners in the RTD that had their heart in it. So I'm going to bow out of this decision right now and go back to the Governor's office, DOT and ask for – so that we can communicate more. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Vigil.

COMMISSIONER VIGIL: Yes. I guess I have several issues that I'd like to

put out there for the record with regard to this. I'm concerned about the pace that we're conducting meetings, motions being received before there's an opportunity for discussion, so that action is going to be required. I think part of the reason was I don't feel very confident in the fact that I had the opportunity to state my positions at the meeting we had yesterday. I think we made a mistake with the decision that was made. The action that we took yesterday is critical to the future of transportation. We took it without full knowledge of the consequences and we also took it without full knowledge of what staff's position was.

We now have to create a special RTD district, which conceptually sounds good, but what it means is we need to identify and hire FTEs, transportation specialists, perhaps redo needs assessments, ridership counts – everything that the Regional Transit District has already started on. This is not only for City and County, but we need to look at what this is going to mean to residents of mostly northern New Mexico, the hundreds of people who commute here every day, who come to the city and spend their money on GRT. I think one of the arguments in this case was the fact that we contribute more GRT, well, northern communities contribute to that GRT. We don't have that breakdown but I would imagine that if we looked at pro rata share, their pro rata share may be the 50/50 split that the RTD had proposed.

I don't believe that transportation should have boundaries. You don't pick up people at the boundary of Santa Fe County and then bring them into the city and then take them back. We need to look at transportation as bringing a traveler from Questa or further north, all the way down to Edgewood. We don't stop at a boundary. It's unfortunate because the vote that we took yesterday doesn't lend itself to that at all. I don't believe that the 50/50 proposal was too far off from what we should have at least considered. I think that because many residents come here and pay for those GRTs we need to consider that, and that was not made part of the record.

I'm particularly concerned that we took action when we heard overwhelming testimony that told us that we should remain with the RTD, and the echoes of this vote, I think, have been stated that we can now manage our own dollars. That is something that we do not know the consequences of. We have not put anything in place to be able to manage that, nor do we know what needs to be put in place. We should be working cooperatively with our neighboring counties. We didn't ask the question what we need to do. We just relied on one Commissioner's statement that we could do this. I think we're doing a disservice to Santa Fe County by staying with the vote that was taken yesterday, and I make these statements in proposal that before we take the vote, as I say, I think was done expeditiously, so the testimony and the hearing was done yesterday. Before we take that vote, that any of those who voted in favor of the motion reconsider their vote for further action at a future date. And I think we're at a very good place to do that, because we have now been able to restart the clock with regard to this, and I'm just going to throw that out there, Mr. Chair.

CHAIRMAN CAMPOS: Okay. There's a motion and a second. Any further discussion?

COMMISSIONER MONTROYA: I was just going to say again, this is just to

again, reiterate the commitment that we have in terms of our intent to form the Regional Transit District. I still believe that we have not lost the regional concept by what was done yesterday. Santa Fe County will still be involved in regional planning for transportation services, it's just going to be in a much different manner that what we had been previously participating in. It's similar if any of the other counties or any other organization was to want to form a Regional Transit District would be doing the same thing that we're doing, essentially, no difference there. Once that's all said and done in terms of planning and everything that needs to be done, we will be transcending boundaries so that transportation is not going to begin and end in Santa Fe County. It will continue to go all the way from Valencia County all the way up to Taos County. So again, this is reiterating our commitment in terms of funding both the Rail Runner and the transportation services and how that is proposed to be done at this point is through the formation of a Regional Transit District with the City of Santa Fe.

CHAIRMAN CAMPOS: Thank you, sir. For the record, I want to make clear that I think Attorney Ross has presented us with a cleaned up version and he has distributed that to us and that's what we're voting on. *[Exhibit 1]* It's not the resolution in the packet. Is that correct?

STEVE ROSS (County Attorney): Mr. Chair, that's right. I distributed a clean copy to all of you just a few minutes ago.

CHAIRMAN CAMPOS: Okay.

COMMISSIONER VIGIL: Question for Mr. Ross.

CHAIRMAN CAMPOS: Commissioner.

COMMISSIONER VIGIL: Mr. Ross, do you have an answer to this question? If we don't move forward on this, does the state have separate authority to move forward with a GRT for these purposes?

MR. ROSS: Mr. Chair, not at this time, Commissioner.

COMMISSIONER VIGIL: So it would have to be a local government referendum.

MR. ROSS: Well, it has to be under the auspices of a Regional Transportation District. Unless the state chooses to appropriate from the state share of the GRT, through the session, through the budget. That would be the only other way that I can see that they could accomplish Rail Runner funding at this point.

COMMISSIONER VIGIL: The state share of GRT or severance tax bonds or other pools of money, is what you're referring to.

MR. ROSS: Yes, any of their various revenue sources that are available for these purposes.

COMMISSIONER VIGIL: Okay. But they do not have separate authority?

MR. ROSS: No.

COMMISSIONER VIGIL: Okay. That's important, Mr. Chair, because that does put us in a position where we have to assist the Department of Transportation on this.

CHAIRMAN CAMPOS: Okay.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Anaya, round two.

COMMISSIONER ANAYA: Yesterday I didn't have a chance to ask staff the question on how they felt about the regional transit. My understanding is that staff was in favor of the 50/50 split. I would like to know how staff feels about the resolution in regards to creating a new transit district for the City of Santa Fe and Santa Fe County. And what is that going to do to staff, staff's time, to duplicate services that were already being done?

MR. ABEYTA: Mr. Chair, Commissioner Anaya, it is going to take a lot of work for staff to initially set up. If indeed the RPA though becomes the Regional Transit District, then the burden will be on the RPA. Of course we will have a role and a major role, especially in the beginning, but hopefully, as this evolves and the RPA takes over this function for the County. But in the beginning it is going to be a lot of work to get it set up, but we're willing to do it, just like we're willing to stay in the RTD and work that route also.

COMMISSIONER ANAYA: Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Any further comments?

The motion to approve Resolution 2008-116 passed by 4-1 voice vote with Commissioner Anaya voting nay.

CHAIRMAN CAMPOS: Are there other matters from the Commission?
Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Mr. Chair. I just wanted to say that our satellite office in the town of Edgewood is doing quite well and Alva Holden is not here. I asked her to be here but apparently she's probably working. But she's doing a great job down there and Pauline Glenden. I just wanted to let the Commissioners know about the services that we're providing down there and the number of people that are attending, participating and going to the satellites. And, I'll pass this down. That's all I have, thanks.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: Thank you, Mr. Chair. I just wanted to report that we concluded with our 8th annual intergovernmental summit. It went very well. We had excellent participation from the majority of the tribal governments as well as other governments from Rio Arriba, City of Santa Fe – it just went really well. We had the Secretary for the Department of Indian Affairs, Secretary Alvin Warren who was at the meeting. Commissioner Vigil and I are going to be meeting with him to discuss how we can essentially expand on what Santa Fe County has been a model for in terms of providing intergovernmental relations and working towards that end for other parts of the state that would like to replicate what it is we're doing here. So in the near future we'll be meeting with him but I just wanted to thank people that participated for their participation and we look forward to doing this again and hopefully in perpetuity. That's all I have.

CHAIRMAN CAMPOS: Commissioner Vigil.

COMMISSIONER VIGIL: Yes, I'm going to hand out – I think I've spoken

at one time or another with everyone of you with regard to this request. It has to do with our support of the Rail Runner which is quite apropos because we've been discussing this issue with regard to GRTs. Staff has been meeting, Robert Griego in particular representing Santa Fe County with City staff with regards to arts in public places and identifying an art project for the 599-rail stop. The City has committed \$50,000 to this particular project and is looking for the County to provide a \$25,000 not match but at least contribution. These dollars hopefully will be leveraged further with some dollars from other sources to address placing art at all of our rail station stops.

I do believe that it does not qualify for the 1 percent arts in public places allocation that usually qualifies for funding of this nature. But I know I've spoken to some of you who have been strongly supportive of it and some of you have been waiting to see what the budget outcome will be. For the \$25,000, I got a good distribution from all of us from our community service dollars because this is a Countywide project I'm asking that you consider \$5,000. I have committed \$5,000 to this project and I'm hoping that each one of you will consider the same amount.

CHAIRMAN CAMPOS: Anything else, Commissioner. Commissioner Sullivan?

COMMISSIONER SULLIVAN: No.

COMMISSIONER ANAYA: Question on that.

CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: You mentioned the 1 percent; is that the same 1 percent, Steve, I gave you a copy of from Roosevelt County or Curry County that they were using 1 percent of monies from the legislature to do projects that we could spend on art; is that what's she's talking about?

MR. ROSS: Mr. Chair, Commissioner, I'm not sure what she's referring to but she did say -- and perhaps she can address this --

COMMISSIONER VIGIL: I'm here. I can answer.

COMMISSIONER ANAYA: Okay, I didn't know if that was the same money. So we can't use it?

COMMISSIONER VIGIL: We can't and I don't see Jack or Robert here but I had a meeting with him earlier and he specifically stated that that was not possible. I don't know why the project doesn't fit the criteria.

COMMISSIONER ANAYA: I would think that since it has to do with art that money would be because that's what it is allocated for.

COMMISSIONER VIGIL: That's exactly my sentiments but that's par for the information that I have. That it does not qualify. And despite the fact that it does qualify, the 1 percent if it did, if we found out in the future that it which I'm told we won't, we can always not commit, we can always withdraw if that would suffice for this project. Now, we just last meeting passed a resolution creating an art and culture commission. I think this commission will serve really well to clarify some of those issues and to make recommendations on them. But despite the fact the 1 percent is or is not there, I think a local

government match is also being sought.

COMMISSIONER ANAYA: I would like to see if you could look into it, Steve. You already said you don't know or you might know. I would like to know for sure before I commit to any money.

COMMISSIONER VIGIL: I understand that.

MR. ROSS: Mr. Chair, Commissioner Anaya, I'll certainly look into that. I don't understand why the Rail Runner funding would be exempt from the state statute that requires the 1 percent.

COMMISSIONER VIGIL: No, but you've heard the say; haven't you?

MR. ROSS: No, actually I haven't so this comes as news to me.

Commissioner Anaya and I had a discussion a month or more ago about in general when the 1 percent funds must be used and my understanding from looking at the statute is whenever there's an expenditure of state funds. So unless there's an exemption in the Rail Runner Statute that I'm not aware of which I'll go look for – well, I'm not clear why there would be an issue with the availability of those funds with the Rail Runner.

COMMISSIONER VIGIL: And maybe that communication can be through and by staff that has been working on this project too. Thank you.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: No comment.

CHAIRMAN CAMPOS: I have no comments.

XII. STAFF AND ELECTED OFFICIALS' ITEMS

A. Matters from the County Manager

1. Update On Various Issues

MR. ABEYTA: Mr. Chair, we were notified by the State of New Mexico that they would be terminating with us in regards to the care of prisoners at our adult facility. We are taking a look at the fiscal impact that that is going to have and we will have a report for the Commission within 30 days as to what the plan of action will be.

That's all I have, Mr. Chair.

B. Matters from the County Attorney

1. Resolution No. 2008 – A Resolution Authorizing Publication of a Notice of Sale of Santa Fe County, New Mexico General Obligation Bonds, Series 2008 in the Principal Amount of \$32,500,000

2. Resolution No. 2008 – 117: A Resolution Directing Publication of a Revised Notice of Public Meeting and Hearing for Adoption of an Ordinance Authorizing the Sale and Issuance of the Santa Fe County, New Mexico Gross Receipts Tax Revenue Bonds, Series 2008 in the Aggregate Principal Amount of \$30,000,000

MR. ROSS: Mr. Franklin is here and can address this item as well as the next one.

CHAIRMAN CAMPOS: Are they related, the two items?

MR. ROSS: No, they're not.

PETER FRANKLIN (County Bond Counsel): Mr. Chair, members of the Commission, thank you. The initial item is a – sorry, I forget which one we're doing first here. The first item is a resolution of intent directing publication of notice of public hearing and the title of a bond ordinance authorizing issuance and sale of Santa Fe County's Gross Receipts Tax revenue bonds in an aggregate principal amount of \$30 million. This item has come up probably four times in the last four or five months and for various reasons has been tabled. Mainly, because we have not had the super majority present necessary to approve the ordinance itself. Basically what we're doing is re-noticing the public hearing, enough time has gone by that we want to send out a new notice. In discussions with Mr. Ross, I think we both agree that at this time a new notice is appropriate. The purpose again is to authorize the issuance of \$30 million in GRT revenues bonds for the purpose of funding the additional cost of the County Courthouse.

COMMISSIONER MONTOYA: Mr. Chair, move for approval.

CHAIRMAN CAMPOS: Can you hold just one second. You're talking about item 12 –

COMMISSIONER VIGIL: I'll second that motion.

CHAIRMAN CAMPOS: -- B 1 for \$35,000?

MR. FRANKLIN: I'm sorry. I was talking about B.2.

CHAIRMAN CAMPOS: Okay, do you want us to deal with B.2 first?

MR. FRANKLIN: It would probably be easier than me going back and redoing it again. I apologize.

CHAIRMAN CAMPOS: Okay, so then this is 12. B.2; is that what you're moving for approval?

COMMISSIONER MONTOYA: Yes.

CHAIRMAN CAMPOS: Is that so for the second?

COMMISSIONER VIGIL: Yes.

CHAIRMAN CAMPOS: That's directing publication of a revised notice of public hearing. There's a motion and a second. Discussion.

COMMISSIONER SULLIVAN: Is that 116?

COMMISSIONER VIGIL: That's resolution number is 117.

The resolution 2008-117 passed by unanimous [5-0] voice vote.

1. Resolution No. 2008 – A Resolution Authorizing Publication of a Notice of Sale of Santa Fe County, New Mexico General Obligation Bonds, Series 2008 in the Principal Amount of \$32,500,000

CHAIRMAN CAMPOS: Okay, going back.

MR. FRANKLIN: Mr. Chair, members of the Commission, this is a reason not to try and do two of these back to back, clearly.

The other item is a notice of sale resolution authorizing a general obligation bond sale to be held sometime – actually, the sale is expected to be held just before the BCC's meeting on Tuesday, August 12th. The sale will be of \$32,500,000 in General Obligation Bonds. This is the final series of bonds that were authorized by the voters in November 2004. The purpose of these bonds will be to fund various water projects, primarily, the Buckman project.

CHAIRMAN CAMPOS: Is there any discussion or is there a motion to adopt the resolution 118?

COMMISSIONER MONTROYA: So moved.

COMMISSIONER SULLIVAN: Second. What happened to 116?

MS. ESPINOZA: 116 is the resolution on the transit that Commissioner Montoya proposed.

COMMISSIONER SULLIVAN: Okay, thank you.

CHAIRMAN CAMPOS: Do we need a roll call? I don't think so.

MR. FRANKLIN: Technically not, Mr. Chair.

Resolution 2008-118 passed by unanimous [5-0] voice vote.

- 3. Executive Session**
- A. Discussion of Pending or Threatened Litigation**
 - B. Limited Personnel Issues**
 - C. Discussion of the Purchase, Acquisition or Disposal of Real Property or Water Rights**
 - D. Collective Bargaining**

MR. ROSS: Mr. Chair, we need to close to executive session to discuss pending or threatened litigation and discuss the purchase, acquisition or disposal of real property or water rights.

CHAIRMAN CAMPOS: Items A and C. How long do you think this will take?

MR. ROSS: It can be very brief. We might be able to be back here at 5 or so.

CHAIRMAN CAMPOS: What time are the public hearings scheduled?

MR. ABEYTA: Mr. Chair, 5 o'clock.

CHAIRMAN CAMPOS: We'll need a motion to go into Executive Session to

discuss items A and C.

COMMISSIONER MONTOYA: Can we add item B also, limited personnel issues.

CHAIRMAN CAMPOS: Okay, that would be A, B and C.

COMMISSIONER MONTOYA: Yes, sir.

Commissioner Montoya moved to go into executive session pursuant to NMSA Section 10-15-1-H (7), (2), and (8) to discuss the matters delineated above. Commissioner seconded the motion which passed upon with Commissioners Campos, Montoya, Sullivan, Vigil and Anaya all voting in the affirmative.

[The Commission met in executive session from 3:55 to 5:15.]

Commissioner Vigil moved to come out of executive session having discussed only the matters outlined in the agenda (A,B, and C), and Commissioner Sullivan seconded. The motion passed by unanimous voice vote. [Commissioner Montoya arrives after the motion.]

XIII. PUBLIC HEARINGS

A. Growth Management Department

1. Ordinance 2008-___. An Ordinance Replacing Resolution No. 2003-123 Establishing Permit and Review Fees Within Santa Fe County. Wayne Dalton. (First Public Hearing)

WAYNE DALTON (County Permit Building & Development Services Supervisor): Thank you, Mr. Chair, Commissioners. My name is Wayne Dalton, Permit Building and Development Services Supervisor in the Growth Management Department.

On June 10, 2008 the Board of County Commissioners granted authorization to publish title and general summary of an ordinance replacing resolution number 2003-012 establishing permit and review fees within Santa Fe County. In 2003, the Board of County Commissioners approved a resolution establishing development review fees and establishing site inspection fees – that’s Exhibit B in your packet. On May 13, 2008, the BCC authorized staff to draft a fee increase in order for the Planning and Development Division to begin building permit and building inspection function. County fees are currently low as compared to the City of Santa Fe. This ordinance will increase both the development review fees and the building permit fees.

The increase of development review fees would fund the NPDS coordinator position and an NPDS inspector position. The building permit fees would initially fund three zoning inspectors and the remainder of the funds would be tracked and used to fund the startup cost for 12 additional employees needed to begin the building permit process.

The proposed ordinance will replace Resolution 2003-123. Recommendations, the staff recommends approval of this ordinance. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Commissioners, any questions?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Yes, sir.

COMMISSIONER ANAYA: I just wanted to thank Penny for getting with Lisa to talk about if there would be any conflicts with the State and I believe you guys worked things out.

PENNY ELLIS-GREEN (Deputy Land Use Administrator): Mr. Chair, Commissioner Anaya, I have spoken to Lisa and we'll be having some meetings to see if we can get involved with their certificate of occupancy – get involved with doing our inspections before they issue a certificate of occupancy. So we will be working on that.

COMMISSIONER ANAYA: Okay, thank you.

CHAIRMAN CAMPOS: Any other questions. Mr. Dalton, can you just give us a brief outline of the changes in fees?

MR. DALTON: The building permit fees as you can see on Exhibit A that's your fee permit fee ordinance. Excuse me, Mr. Chair, let me get to the right exhibit. That's Exhibit D that is breakdown of costs comparison spreadsheet. What we did was to take the cost of our existing fees and our proposed fees and totaled the difference and the difference in percentage. If you look at Exhibit D, a residential permit with a valuation of \$0 to \$25,000 the current fee is \$17.50, our proposed fee is \$75 for a difference of \$57.45. So we increased that by 325 percent.

CHAIRMAN CAMPOS: What is the comparable fee at the City?

MR. DALTON: Mr. Chair, that is also attached as Exhibit F and if you look at Exhibit F under building permits for a development from \$2,000 to \$25,000 the City is charging – was charging \$58.85 and they revised their fee and now they're charging \$69.25. So it's in the same range.

CHAIRMAN CAMPOS: Okay.

MR. DALTON: We are staying in the same range as the City.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Wayne, the question I have and this came up before with our prior ordinances is that these development fees were also the fees that were being charged to someone who was protesting or questioning an application. Is that the case with these?

MR. DALTON: I'm sorry, Commissioner Sullivan, I couldn't hear you.

COMMISSIONER SULLIVAN: My question was that in the previous ordinance before, 123 I think it was before it was amended, the County was charging someone who wanted to protest a development application/land use application the same fee as the developer themselves, and that was changed. I remember in the last series of fee changes we did we didn't charge someone who is making a protest the same fee as the actual developer because if someone is protesting a 300 lot subdivision they'd have to pay \$1,350 just to file a protest. So, how do we deal with that?

MR. DALTON: Mr. Chair, Commissioner Sullivan, under Resolution 2003-

123, if someone wanted to file an appeal no matter if it was an average Joe off the streets or a developer it would be a \$75 appeal fee.

COMMISSIONER SULLIVAN: Is that still the cases?

MR. DALTON: That actually, we increased the appeal fee and if you look under Exhibit A under miscellaneous, the appeal of the Land Use Administrator's decision is \$125 instead of \$75 and an appeal of a development review committee decision is \$150. So, we did increase the appeal fees.

COMMISSIONER SULLIVAN: Okay and that applies regardless of the size of the subdivision?

MR. DALTON: That's correct.

COMMISSIONER SULLIVAN: I see. Thank you.

CHAIRMAN CAMPOS: This is the first public hearing. Is there anyone here who would like to testify or comment on this particular ordinance? If you do, come forward. Please state your name and your position.

LISA MARTINEZ: Mr. Chair, and members of the Commission, my name is Lisa Martinez and I'm the Director of Construction Industries Division. My particular interest in this ordinance is not specifically related to the fee increases but the possible program, the possible full-service billing department program that may come out of the use of some of these fees in the future. I think it was mentioned that the County is interested in hiring some new inspectors to take on some of the current planning and zoning requirements that you have in place. But I also understand that there's a desire at some point for the County to move forward and to create what we would call a full service building department, meaning that you would take on responsibility for permitting and inspections for general construction, for electrical work, and for mechanical and plumbing.

The one thing that I wanted to let the Commission know, there has been a lot of discussion over the last few months, and there are a lot of changes that are coming as a result of some legislation that was passed during the 2007 legislative session. There is a bill that's number House Bill 219, and it specifically relates to local government building departments and their programs and how they currently operate. There are currently 33 local programs around the state of New Mexico. Some of those programs handle things that range from just planning and zoning requirements, to others that handle everything from permitting and inspection for all the trades, and then there are others that only handle inspections for certain trades. In other words, some of them may handle general construction and others may do general construction and electrical work, some are general construction and mechanical and plumbing. There's a variety of these programs.

Where this affects the state and where it affects Construction Industries is in the fact that if one of these local programs loses an inspector, let's say that someone quits, someone gets fired, someone retires, and they no longer have someone on staff to do the work, the work automatically reverts back to Construction Industries. This has been a pretty significant problem for us over the years in that we don't necessarily have the financial or the people resources available to just be able to jump in and cover the plan review and inspection needs

for that local jurisdiction. So what we did through this legislation that we passed two years ago was to try and put a process in place to make sure that we could all be much more efficient in terms of the way that we provide these services to the public. We want greater efficiency at the state level and also at the local level. So what this legislation requires, in a nutshell, is that if a local government program chooses to adopt an ordinance to have a local building department, they are now required to have what we're calling this full service program. Meaning they can't take on just one portion of the work; they will need to take on all of it.

So one of the things that I've been doing is traveling around the state visiting with the local governments, with the city councils, with the county commissions, and telling them what this legislation is about because there are a lot of rumors out there, the number one rumor being that CID is trying to take over the world and take over all the work. That is not our goal, that is not our interest, we don't have the resources to do that. Our goal is to figure out how to work with the local governments to help create much more efficient programs at all levels, figure out how we can share our resources, how we can work together to make some of these things happen, and those are some of the things that Penny and I have been discussing. I understand that the City is interested in making sure that their planning and zoning requirements are in force. We want to have a way to be able to tie that to the process for issuing a certificate of occupancy, so you actually have a means of enforcing your requirements prior to that CO being issued so that you don't walk in after the fact, find that your requirements haven't been met, and then you struggle with trying to figure out how you're going to get that homeowner or that building owner to comply with the requirements that you've established.

So those are some of the things that we're going to be working on over the next several months, and so we look forward to working with the County and helping you if you choose to build that sort of program, I just want you to be aware that that legislation does exist. It does mean that it creates an extra cost for the County because they do have to provide for all of those inspectors, but Construction Industries is in the process of developing some rules for that program, for the legislation, for the implementation of it, and we do have a lot of options available to be able to provide assistance from our own inspectors and from our own staff to help build up those programs, to help train inspectors, and to be able to ride with those individuals in the field and show them some actual fieldwork and give them some training in terms of how the inspection process should work.

And so with that, Mr. Chair and members of the Commission, I thank you for the opportunity to speak before you, and I'm more than happy to answer any questions at any point.

CHAIRMAN CAMPOS: Questions?

COMMISSIONER MONTOYA: Mr. Chair

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: Ms. Martinez, how are current county ordinances enforced by CID? For example, our cisterns, our hot water re-circulation pumps,

things that are required in our ordinances. How are they enforced by CID?

MS. MARTINEZ: Mr. Chair and Commissioner Montoya, actually Construction Industries does not enforce any of the ordinances at the local level. We enforce the state wide building codes that have been adopted as a minimum, and we leave the local governments to handle everything from grading to drainage to flood-plan management to planning and zoning, any specific fire ordinances that you might have. All of those are handled specifically at the local level.

COMMISSIONER MONTOYA: Okay, Mr. Chair, question for staff: How is that monitored in terms of everything that was just described?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Montoya, at the moment we do not go out and do inspections for things like rainwater harvesting systems, re-circulating systems, those kind of things, so with the presentation I brought a few months ago to the Board recommended that regardless of whether we move forward to a building permit program, that we still fund positions through fee increases for some zoning inspectors that would go out and immediately start enforcing, actively enforcing, the rainwater harvesting, sprinklers in houses, even water conservation water meter readings, re-circulating systems, all of those things -- setbacks, retention ponds on property.

We do initial inspections. At the moment we do not have the staff to do final inspections, so this fee increase would allow us to hire zoning inspectors to be able do that. And then, through my discussions with Lisa, we would hope that we could have some kind of program where we can work together, and she can let us know when certain inspections are being requested so our staff can also go out. And we would hopefully be able to see how that moves forward to be able to come back and give the BCC an update on how that's working before we make final decisions as to whether or not we move into building permits.

COMMISSIONER MONTOYA: Okay. And how long do you anticipate this period?

MS. ELLIS-GREEN: I would hope that we would have a clear understanding, I'll be able to have zoning inspectors on board and be able to work with CID by the end of this year. We have talked before about possible building permits' start-up between July and December of next year.

COMMISSIONER MONTOYA: Okay. Mr. Chair, Ms. Martinez, one of the other things that we've discussed is the possibility of implementing a green building code. How will that, our ordinance and our code, be enforced by CID?

MS. MARTINEZ: Mr. Chair and Commissioner Montoya, actually as of this last July 1, as of just a few days ago, New Mexico has implemented on a state-wide basis a new green building code. In fact, we have all new codes that we've adopted, but specifically we have adopted a green code that is a minimum requirement for everyone building across New Mexico. There are a lot of local government programs that are adopting their own codes. I know the City of Santa Fe is working on one, Albuquerque has done one in the past, and there are others that are moving forward with that. Certainly anything that's adopted at the state level is considered the minimum for everyone. A local government program can

adopt any sort of code or ordinance that's more stringent than what the state has. But one of the things that Penny and I were talking about earlier is that we had to be really cautious in what we adopted because it was a minimum. We needed to make sure that it could be implemented across the board for everyone. So we were very conservative in our approach in terms of making sure that it was affordable, that the materials were available.

There are lots of great new building products out there related to green. There's lots of new technology. But not all of it is available here in New Mexico, or it's very expensive to get it here. So we were very cautious. And really the focus of our green building code is about increasing insulation requirements everywhere from foundations to perimeter of structures to duct work. That was one of the things that we felt we could have very significant gains in terms of energy savings and not spend a lot of money to be able to do this.

So, I think that while lots of local government programs are thinking about doing this, you have to think about how you're going to enforce it. We realized that is was going to be a whole new way of thinking even for our staff and for our inspectors, because they're used to models of code enforcement that are very prescriptive, meaning you know exactly how deep the foundation is supposed to be, how wide your footings are supposed to be. Green building is more of a performance-based plan where you have to take a number of different components and put them together to achieve the desired results. So that's a whole new way of thinking. It's a whole different kind of training that we've been doing for our staff to teach them how this is supposed to work. But most importantly, when you think about adopting it, think about how you'll implement it, what the costs will be, and what the long-term effects will be. I think what's happening on a national level is that all of the national codes are getting together, and I think before long there will probably be a national code on the market that will blend with all the codes that we've adopted, and at some point probably everything that we've adopted at a local level might go away. I see those things coming in the very near future, but in the meantime we're trying to take a step in the right direction, and we're looking primarily at new technology and at good design. I think those are two primary components that are missing from a lot of the existing green building codes, and that's going to be our new focus along with water conservation over the next year.

COMMISSIONER MONTOYA: So, in terms of, you answered my question, in terms of monitoring, it would be dependent on us to monitor our own green building codes once it's implemented based on the minimum requirements by the state. Are there any incentives in the state's green building code? For builders? For homeowners?

MS. MARTINEZ: Mr. Chair and Commissioner Montoya, there aren't direct incentives within the code requirements themselves. However, there are a lot of tax credits that have been developed over the last couple of years. They apply to all different kinds of things from having, what they call, "solar ready roofs," meaning that you have mechanical systems in place and electrical systems in place for people to be able to install solar panels on their roofs or, you know, solar-voltaic panels, all those different kinds of things. There are tax incentives directly related to those components. In fact I think Taxation and Revenue and Energy and Minerals department have brochures and a listing of all of those different credits

that are currently available, and I know that they're going to be expanding on those in the upcoming legislative session so that more people will have an opportunity to take advantage of those.

COMMISSIONER MONTOYA: Thank you Mr. Chair. Thank you Ms. Martinez.

MS. MARTINEZ: Thank you.

CHAIRMAN CAMPOS: Any other questions? Thank you, Ms. Martinez. I appreciate it very much.

This first public hearing is closed. Do we have to set a date, Mr. Ross, for the next public hearing? Or announce it at this point?

MR. ROSS: Mr. Chair, I'm told that it's going to be brought back at the next land use meeting on August 12.

CHAIRMAN CAMPOS: August 12 will be the meeting where we consider adoption?

MR. ROSS: Yes, and it will be published in the newspaper and noticed like any other ordinance.

3. **CDRC CASE # V 06-5670 Daniel and Colleen Martinez Variance - Daniel and Colleen Martinez, Applicants, Design Enginuity (Oralynn Guerrerortiz), Agent Request a Variance of Article III, Section 2.3 (Site Planning for Residential Uses) of the Santa Fe County Land Development Code to Allow the Disturbance of Slope Over 30 Percent in Order to Allow a Driveway and a Residence on Previously Disturbed Slopes On 1.25 Acres. The Subject Property is Located At 65C Camino Chupadero, Which is off Santa Fe County Road 78, within Section 6, Township 18 North, Range 10 East (5-Mile EZ, District 1). Vicente Archuleta [Exhibit 2: June 2008 – Court judgment regarding easement issue]**

CHAIRMAN CAMPOS: Mr. Archuleta.

VINCENTE ARCHULETA (Case Planner): Thank you Mr. Chair. On March 13, 2007, the BCC met and tabled this case so the applicant could address the easement issues. The applicant states that the easement --

CHAIRMAN CAMPOS: You're going to need to speak directly into the microphone. It doesn't pick up real well.

MR. ARCHULETA: Okay. The applicant states that the easement issue has been resolved by court order, and now the applicant wishes to proceed with a variance request. On January 18, 2007, the CDRC met, and we heard this case due to improper noticing on a December 21, 2006 CDRC meeting. The decision of the CDRC was to recommend approval subject to staff conditions.

Daniel and Colleen Martinez are requesting a variance of section 2.3 to allow slope,

disturbances on slopes greater than 30 percent. The applicants have previously disturbed approximately 850 square feet of slope exceeding 30 percent, and propose an additional 3,942 square feet of 30 percent slope disturbance, which would be necessary to construct a driveway, which will meet the County's Emergency Access Requirements. The applicants met with the county fire marshal, and proposed driveway grades will not exceed 11 percent. The driveway width is between 15 and 20 feet. The driveway will serve their planned residence.

Article 3, section 2.3.3a states, "No development sites may occur on a natural slope of 30 percent or greater. Exceptions may be approved by the court administrator for access, corridors, utility corridors, and landscape areas proposed on natural slopes in excess of 30 percent that disturb no more than three separate areas of no more than 1,000 square feet each, provided the applicant demonstrate that no alternative development location is available. Therefore a variance is required."

Article 2, section 3.1 states, "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 non-self-inflicted conditions, or that these conditions would result in inhibiting the achievement of the purpose of the code, an applicant may file a written request for a variance. A development review committee may recommend to the BCC, and the Board may vary, modify, or waive the requirements of the code. And upon adequate proof of compliance with the code provision, at issue will result in an arbitrary and unreasonable taking of the property or exact hardship and proof that a variance from the code will not result in conditions injurious to health or safety. In arriving at its determination, the development review committee and the Board shall carefully consider the opinions of any agency requested to review and comment on the variance request. In no event shall a variance modification or waiver be recommended by the development review committee nor granted by the Board if doing so, the purpose of the court would be nullified."

Recommendation. After conducting a site visit with the applicants and their agent, staff has determined that the proposed building site is a most suitable location for construction, and the impact to terrain and visual impact is minimal. Pursuant to Article 2, Section 3.1, this could be considered a non-self-inflicted condition. Therefore staff supports the requested variance. If the decision of the BCC is to recommend approval of the request, staff recommends the following conditions be imposed. May I enter those into the record? I'd like to clarify condition, or delete condition number four. That has already been addressed. Thank you Mr. Chair.

1. Compliance with minimum standards for Terrain Management as per the Environmental Requirements of the Land Development Code.
2. Compliance with review comments from the Santa Fe County Fire Marshal. The developer must schedule a final inspection with the Santa Fe County Fire Marshal prior to the approval of the CO.
3. A fire protection plan must be reviewed and approved by the County Fire

- Marshal.
4. Deleted
 5. The previously disturbed road shall be re-vegetated.
 6. The applicant shall address all minor redline comments by the County Subdivision Engineer as shown on the plat of survey and terrain management plan. These plans may be picked up from Vicente Archuleta, Development Review Specialist within the Land Use Dept. These plans must be resubmitted with the Mylar prior to recordation.

CHAIRMAN CAMPOS: Thank you. Questions of staff? Applicant?
Commissioner Sullivan.

COMMISSIONER SULLIVAN: What is the requirement for the slope of a driveway in the County Code? I see that they're proposing 11 percent.

MR. ARCHULETA: Mr. Chair, Commissioner Sullivan, the maximum is 11 percent that the fire marshal would require.

COMMISSIONER SULLIVAN: Okay, because – do we have a 9 percent requirement anywhere?

MR. ARCHULETA: Mr. Chair, Commissioner Sullivan, it's 11 percent for fire.

COMMISSIONER SULLIVAN: Okay. Regardless, it's all 11 percent?

MR. ARCHULETA: That's correct.

COMMISSIONER SULLIVAN: Okay, because it seems I've heard some different numbers, but thank you.

CHAIRMAN CAMPOS: Any other questions?

[Duly sworn, Orallynn Guerrerortiz testified as follows]

ORALYNN GUERRERORTIZ: I'm Orallynn Guerrerortiz with Design Enginuity and Commissioner Sullivan, there are some requirements for collector and arterials that are stricter that I think are as low as 8 percent. But they don't apply to driveways. We were here more than --

CHAIRMAN CAMPOS: Let me stop you. You have reviewed the conditions and the recommendation?

MS. GUERRERORTIZ: Yes, and I agreed to, we agreed.

CHAIRMAN CAMPOS: And you agreed to all the conditions?

MS. GUERRERORTIZ: Yes.

CHAIRMAN CAMPOS: Okay. Could you give us a brief summary of your position?

MS. GUERRERORTIZ: Certainly. There's only one building site on this property. It's across from an arroyo. To get there, we've got to go through some 30 percent slopes so we've designed a road that the fire marshal likes. The terrain management rules are being met except we do a variance for slope analysis. There was a question as to whether an access easement existed and that's been documented now by a court order so we stand for any questions and hopefully you'll give us approval tonight.

CHAIRMAN CAMPOS: Okay, it's a public hearing. Does anyone out there want to speak for or against this application? Sir, state your name and address.

[Duly sworn Michael Bosbonis testified as follows]

MICHAEL BOSBONIS: Michael Bosbonis, 11 Bonito Road, Santa Fe. I'm here – I'm really glad that this issue is finally coming to hopefully a resolution here. My concern is that my wife and me are the owners of Lot B and essentially we went to court to try and clarify an easement that wasn't very clear when the land was divided. If you could turn to the judgment that the judge gave us back on May of '08. And, Orallynn, could I borrow your map? Fantastic. It's good to see that in 1941 there was an existing roadway that was used to access what is now Lot A and B. One of the concerns that I have as part property owner of Lot B is the access to our property.

I have reviewed the Martinez' plans and it is quite an engineering feat which they're going to attempt to do with an excavation of a lot of land and steep slopes. My concern has always been the existing roadway and the judge has found out through our court hearings that in 1941 there is an existing roadway and I'd like to point to the map just to show that out.

Okay, as you can see our property is right here and as you can see by the map here, here is the existing roadway that is already there. And as the judge ordered that, you know, the easement is through the existing roadway and then it has been ordered that the existing roadway is an easement through Lot C to A and B. Now, the easement – the road first came up here and looped around and came down. Now, the concerns are when I've looked at all these engineering plans that have been made, this roadway here which is going to disturb all of this untouched soil, all of this graded at 30 degree slope, great big retaining walls, big culvert, large everything else it kind of doesn't take into consideration the easement that we have onto our property from the historical road that was put back in 1941.

My concern is, yes, everybody needs access to this property. We need access to this property but the way the plans are submitted right now putting this engineering feat in right now, what's going to happen to the easement agreement which wasn't clarified back when the property was divided back in '81 on the existing roadway. And, that's one thing I have always said, Let's don't tear up the land. There's an existing roadway there: Let's use it. We're going to build back there. Our building lot is over here. So if this construction project goes in here and ours goes right here and then basically end up in the same place.

Now, another thing is that when we got this judgment, number three, a maintenance agreement shall be entered into by plaintiffs and defendants. I dropped a couple of phone calls to Mr. Martinez and I never specifically spoke to him directly but I left him a message going, Hey, congratulations on getting this easement agreement that went your way. We need to still work as neighbors, let's – give me a call. Let's get together, you know, too bad we had to, you know, get our disagreement settled out in court but the judge here says we have to enter into some sort of maintenance agreement of said roadway.

The thing is I've tried to extend the olive branch out going, Hey, let's get together and figure it out. And, we're more than happy to enter into the roadway agreement but again there is an existing roadway up there. The construction of a new project and everything done how you

want it done and then you're just going to hand us the paper work going okay, this is the agreement? Whoa, wait a minute. We're all supposed to be neighbors here and we're all suppose to work together. Why don't we have some dialogue and conversation just to kind a figure out what we need to do here or what's going to be expected of each other rather than one person drawing up all these plans and going, Okay, this is it. This is the agreement, here sign it.

We got an order from the judge saying, again, I'll just reiterate and rap this up here. Again, 1941 an existing roadway was used to access all the lots, even my wife's lot, okay. And the judge said that this is the access to the lots. This is what we need to use. As you can see here on the aerial photo there is one there. The plan which is being submitted to you is this great big construction project, again, with high retaining – excuse me – what's the length – what's the maximum length of the one retaining wall that has to go in? How many linear feet, Oralynn? On the map –

MS. GUERRERORTIZ: I don't know.

MR. BOSBONIS: Eighty feet, 100 foot?

MS. GUERRERORTIZ: I don't know.

MR. BOSBONIS: Guesstimate.

MS. GUERRERORTIZ: I'd have to look at the plans.

MR. BOSBONIS: Okay, I kind a looked at it and it's almost 100 foot – how high, eight foot high, six foot high, how high?

MS. GUERRERORTIZ: No.

MR. BOSBONIS: How high is this retaining wall that has to go in? So we're kind a looking at this going this is quite the project and why don't we just use what was dug out in '41? And, then again a maintenance agreement. Let's get together as neighbors because the judge says but if someone is not going to return phone calls or try to work with the other land owner, what sort of agreement is this? It seems more like, Hey, this is what I've done and sign it and this is what you guys need to do.

Again, we need to get access down to our property too. We're looking at the value of our property. We'd like to use, again, what was historically existing there rather than just this big construction project going in and then we're going to put in a road on the existing roadway just 20 feet away from it. So we'll have two accesses down this hillside 25 feet apart from each other. And, again, this is disturbed land in here –

CHAIRMAN CAMPOS: Okay, we understand that. You're getting repetitive. Any questions for the speaker?

COMMISSIONER MONTOYA: Mr. Bosbonis, regarding the existing driveway is that the one that is 25 feet wide on the judgment?

MR. BOSBONIS: It was 25 feet wide and I think that judgment came from the original deed that said 25 foot easement.

COMMISSIONER MONTOYA: So the existing road is 25 feet?

MR. BOSBONIS: Yeah, it's about 25 foot. And, as you can see by the aerial maps it's existing versus brand new construction.

CHAIRMAN CAMPOS: Thank you. Ms. Guerrerortiz, any response?

MS. GUERRERORTIZ: There's one retaining wall that's about 30 feet long that is 4 feet in height. It's adjacent to the driveway parking area. There's another retaining wall that is 20 foot in length. It ranges from a high of 7 feet at a tip and it goes down to 4 feet. So there are two retaining walls. The second retaining wall is next to a property boundary and basically because we don't have any easement on that property it's to prevent an encroachment.

CHAIRMAN CAMPOS: I think the question raised by the speaker was that there was an alternate route so that you could use that to access without applying for a variance that would require a huge amount of disturbance.

MS. GUERRERORTIZ: That's impossible. There is no way to get to this site without requesting a variance before you. But I will defer to Ms. Vazquez to discuss the judgment in general.

MS VAZQUEZ: Good evening. Rosanna Vazquez, PO Box 2435.

CHAIRMAN CAMPOS: You're here as attorney?

MS. VAZQUEZ: Yes, I am. Mr. Chair, Commissioners, I want to address a couple of the issues raised by Mr. Bosbonis. He's correct in that what we proved in court was that in 1941 a road existed on this property. And what we further proved and I'm going to show you what was an exhibit for the District Court case. Which was that the easement that goes up Mr. Romero's property actually forks. It forks into Lot A and into Lot B. And this was submitted as an exhibit to the judge and was part of the judgment. If I may approach?

CHAIRMAN CAMPOS: Please. You'll have to use the microphone.

MS. VAZQUEZ: What you're seeing is a photo from the Bureau of Land Management which was certified as a public record by that office and it shows that in 1981 when this land division was created, we demonstrated to the judge that the easement actually went through the initial first two lots and it forked into Lot A and into Lot B, that would be Mr. Martinez' property and Mr. Bosbonis' property. What you see are the two roads in to Lot A and into Lot B.

As such, the judgment that was given by the court allowed access onto both those lots from that main roadway – it stemmed into each of the individual lots.

CHAIRMAN CAMPOS: Can you show us that in the bigger diagram?

MS. VAZQUEZ: Sure. So what you see here is the existing roadway and the lot actually doesn't end here, it ends a little farther out, the line is a little odd here and what you see in that map is that the road goes into Lot A and you see this line here? This was the old road into Lot B, the road into Mr. Bosbonis' property.

One of the issues that we proved to the court to get this judgment is, do you see this green area right here? It's a Chinese Elm tree and Chinese Elms are not native to this area and so we demonstrated that in effect the road came in through here but when Mr. Romero built his home he put a leach field in this area right here and prior to the time the Martinezes bought the property, the leach field leaked. It leaked into this property and as a result there was a Chinese Elm that grew. So the photos while not showing the road coming in here actually the 1981 photo prove that there had been an existing road cut into Lot A and into Lot B. With that information, the judge ruled that both lots had access.

Mr. Bosbonis is correct that we're required to do a maintenance agreement. I did draft a maintenance agreement. I did contact legal counsel for Mr. Bosbonis and Mr. Romero, they use the same counsel, and they advised me that prior to entering into any sort of maintenance agreement they wanted the approval to be obtained and I was to contact them later. So, that is the reason for the fact that there has been no maintenance agreement entered into. There has been some informal communications with Mr. Romero and Mr. Martinez prior to us having to go to court to establish this easement about some of the things that they would work on together to maintain that road.

Mr. Chair, the road is actually about 12 feet wide. The easement is 25 feet wide. I stand for questions if you have any.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner.

COMMISSIONER MONTOYA: Rosanna, was this judgment – did this clarify a question I had the last time we heard this case and that was, was there an infringement – and I asked Steve the same question – in terms of trespass or taking property from the current landowner with what is being proposed?

MS. VAZQUEZ: I believe it does, Mr. Chair, Commissioner Montoya. What the issue was at the last hearing and I wasn't at the last hearing but in looking at the case and preparing for trial on this the argument by Mr. Graeser was that there was in existence a 25-foot wide easement that was created when Mr. Romero bought this parcel here. So what they did when they purchased the parcel is they created an easement that went along the property boundary here. So his argument was this design is not within the easement that we have on our deed which is right here. That is why Steve and this Commission tabled this case so we could clarify where the easement was.

We filed a complaint in district court for declaratory judgment and requested a judgment that this was in fact the prescriptive easement for these back lots and that's what we went to court for, Commissioner, and that's what we established through the judgment.

COMMISSIONER MONTOYA: Okay, so what is being proposed the judge said was appropriate.

MS. VAZQUEZ: Yes.

COMMISSIONER MONTOYA: Thank you.

CHAIRMAN CAMPOS: Mr. Archuleta, any comments? I guess the question is, is there another way to access this land without cutting into the mountain and getting a variance? What are the options?

MR. ARCHULETA: Mr. Chair, the road has already been in place – that was part of the problem with coming forward. The applicant had to request a permit after the fact because they had already started the work. Staff went out and took a look at the property and the location that they requested was actually the only suitable area for building so we support this, the variance.

CHAIRMAN CAMPOS: The roadway was already cut?

MR. ARCHULETA: The roadway was already started.

CHAIRMAN CAMPOS: And we're talking about permitting this roadway that was already started?

MR. ARCHULETA: That's correct.

CHAIRMAN CAMPOS: Okay.

MS. VAZQUEZ: Mr. Chair, may I clarify?

CHAIRMAN CAMPOS: Yes.

MS. VAZQUEZ: The picture that you see there show the road going through Lot B that was in existence. What Mr. Martinez did was began cutting into that roadway, the same road that you've got there. After consultation with county staff and Ms. Guerrerortiz, they moved the road onto the Martinez property slightly over – and I'll show you here – in order to avoid further disturbance of 30 percent slopes. But the original road that you see in that picture, the 1981 picture, goes this way right in here. But the slopes were much greater and there was going to be more of a disturbance so that was why it was designed this way.

CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Mr. Chair. Rosanna, you said the road went around those trees originally. Right there below the house, point to the trees – right there yes. The road that you are already committed to or already constructing is the one in pen right?

MS. VAZQUEZ: The road that was originally disturbed was this way; right, Orallynn?

MS. GUERRERORTIZ: Yes, it's through here. He was trying to follow the original –

COMMISSIONER ANAYA: Wait, the road you want permission for is which – point it out. Okay. And the original road went right – how come I don't see that road and I can clearly see the other road from 1941?

MS. VAZQUEZ: Because of the Chinese Elm tree, Commissioner, and that –

COMMISSIONER ANAYA: All the way up? Because I don't see the Chinese Elm all the way up.

MS. VAZQUEZ: May I approach?

CHAIRMAN CAMPOS: Sure.

MS. VAZQUEZ: The photo is not great here but what we established in the court was that this here is a Chinese Elm, right there. And the road went this way more – and we established that it was grown out of the septic that was leaking.

COMMISSIONER ANAYA: So what you're saying is that that road already existed and you're just making it come around the tree instead of coming the way it used to go by the tree.

MS. VAZQUEZ: That's correct but it's not for the sake of saving the tree so much as for the sake of disturbing 11 percent slopes versus 15 percent slopes.

COMMISSIONER ANAYA: Okay, what about Michael who spoke. He needs access. Is that access already established for him, that 1941 road?

MS. VAZQUEZ: Mr. Chair, Commissioners, Mr. Bosbonis joined the lawsuit

as an intervener and he was represented by same legal counsel. The judgment gives him, affords him an easement through here and onto his property this way. Now, what Mr. Bosbonis and Mr. Romero did was enter into another easement agreement so that they could get access through the Trujillo property over here – but that’s a whole separate issue.

He has access to here through this existing roadway this way.

COMMISSIONER ANAYA: Why didn’t you contact him when he contacted you to talk about the existing ’41 road and possibly be able to use that? You didn’t want to share a driveway.

MS. VAZQUEZ: Mr. Chair, Commissioners, there was actually quite a bit of conversation and, in fact, what was established in the court hearing was that prior to the submittal to this Commission what Mr. Martinez did was actually design a road that went through Mr. Bosbonis’ property. He hired an engineer. He designed a road that would be shared and that entrance came in this way and came around over onto the Martinez property. That was designed, that was agreed to and at the last minute when they were going to sign, the evidence at court demonstrated that that agreement fell through.

So it was after that, that Oralynn was hired to design this road to come into this property. And it was as a result of this design that we had to go to court to request a declaratory judgment. The Martinezes have tried to work with Mr. Bosbonis and spent quite a bit of money, in fact, one of our accounts before the court was an enforcement of that verbal agreement to share a driveway that was originally designed by the Martinezes.

COMMISSIONER ANAYA: Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Any other questions? Anyone else for or against? Anyone else; yes, come on up. State your name and address.

[Duly sworn, Alfonso Romero, testified as follows]

ALFONSO ROMERO: Alfonso Romero, 65 B Camino Chupadero. I own Lot C or Tract C which is right below Mr. Martinez and Mr. Bosbonis. My land is the land where the road is going to run through in order for them to get to their land behind. [Using the map, he identifies his land] This is my land here with the house on it and that’s the road running through my land to this point here.

Anyhow my concern at the beginning was that there wasn’t an easement for them to go through my land to go to the west to get to their property. Their easement was on the east side of my property which is one of the reasons we went to court and they got the prescribed easement to go the way that they needed to go, which is fine.

But now again and I had addressed these concerns before, I am concerned about my children’s safety because they plan in that area that they’re going to be building the road to get to their home. And my leach field also runs through that same area that they’re going to be building a road to get to their home. So I’m concerned with how they’re going to address those two areas: the safety and the leach field. If that leach field breaks it’s not only going to affect me it’s going to affect them when an 8 foot deep 5 foot wide ditch or trench has to be made in order to fix that if that should break. And the cost will be something that I can’t afford to be able to fix. So I just want to know how they’re going to address that: the safety of my kids and also

they'll have one road going to their property and the Bosbonises are going to build another road to go to their property and now I have my land which is no longer my land but everybody else's driveway for the Martinezes to go to their left and the Bosbonises to go to the right. I stand to lose a lot which again that's how it goes they got the easement to go their way and it caused a lot of heartache for them and it caused a lot of heartache for us and you know I apologize to them for that. It was never the intention it was just they had to do what they had to do and I understand that. We had to do what we had to do. But now, those are my concerns and I would just like to see if there could be just one road for everybody to go through instead of having two and having my driveway become a parking lot and a road for everybody else and I kind a lose my chunk of land.

That's it. Those are my concerns. Thank you.

COMMISSIONER MONTOYA: Mr. Romero, how much land are you going to be losing as a result of the driveway going left?

MR. ROMERO: Well, they were given a 25 foot wide easement which is – well, a lot of that, well, 25 feet of my driveway will be used as their easement.

COMMISSIONER MONTOYA: Could you show me on the map how far down your property goes?

MR. ROMERO: I'm going to turn it around if I may. This is the county road down here. This is the road we would all drive up to get to my property. Right here is where I have my driveway and this is the area where my leach field is as well as the area my kids play in – it's all right there.

And one of my other concerns is that when they were given the prescribed easement it was for them to be able to enter at point A and B which is right here, but – you know, I'm concerned about that because I don't know if it's correct or not. But, again, the road is coming right here and I'm just hoping that they can go a little bit more this way or that one road can be created so that everybody can go through instead of one road going this way and another going this way for the Bosbonises.

COMMISSIONER MONTOYA: Okay, thank you.

MR. ROMERO: Yes, thank you.

CHAIRMAN CAMPOS: Okay, the public hearing is closed. Any other questions? What are the wishes of the Commission? Commissioner Sullivan.

COMMISSIONER SULLIVAN: I have a question for Ms. Vazquez. I want to be sure that I'm orienting this photo correctly that you handed out. Is this photo oriented the way that one is right now? Where's north?

MS. VAZQUEZ: That's correct. This would be east this way, north is that way.

COMMISSIONER SULLIVAN: Oh, so north is up at that the top like.

MS. VAZQUEZ: Yes.

COMMISSIONER SULLIVAN: Is this white thing anything or is it just an imperfection in the photo?

MS. VAZQUEZ: No, that was just a point we made on the photo to demonstrate the entrance onto Bosbonis and this is the entrance onto Martinez' property.

COMMISSIONER SULLIVAN: Okay, the road that you're showing that existing here in 1941 before the elm tree goes to and appears to stop at what looks like an arroyo. I assume that's the arroyo that you're putting the culverts through there; is that correct?

MS. VAZQUEZ: That's correct. The arroyo is right here.

COMMISSIONER SULLIVAN: Right, but it doesn't go any farther than that. But the house is farther north so does the judgment say that you have an easement going beyond the arroyo or does the easement end at the arroyo?

MS. VAZQUEZ: Mr. Chair, Commissioners, the only question that was before this court was the access easement through Lot C.

COMMISSIONER SULLIVAN: Oh, it didn't have anything to do with this little piece going straight up the hill that Oralynn says is 14 or 15 percent grade?

MS. VAZQUEZ: This here?

COMMISSIONER SULLIVAN: No. I'm talking about the piece between the horseshoe. This piece right here.

MS. VAZQUEZ: No, it didn't. We did submit evidence through testimony and through photos, old photos, that this road was created on an existing road that actually did go up here because there are Indian ruins up at the top. There's a mesa up here that people wanted to access. And, also, we had testimony that demonstrated that this area here was used to obtain sand and gravel in the old days when people used to get sand and gravel by hand and not buy it at a Lowe's or something like that. So we did have that testimony to establish the existence of this road already.

COMMISSIONER SULLIVAN: Explain to me what the judge ruled.

MS. VAZQUEZ: The judge ruled that there was an easement and if I may approach --

COMMISSIONER SULLIVAN: From the existing county road --

MS. VAZQUEZ: From the existing county road --

COMMISSIONER SULLIVAN: -- up to the Trujillo's house.

MS. VAZQUEZ: -- past

COMMISSIONER SULLIVAN: I mean the Romero's house.

MS. VAZQUEZ: Through the Romero's house to the left and then to the right to access the Martinez' property and to access the Bosbonis' property.

COMMISSIONER SULLIVAN: And where did that easement end?

MS. VAZQUEZ: Do you mean where did it end on the Martinez' property?

COMMISSIONER SULLIVAN: The north -- what's the north terminus of that easement?

MS. VAZQUEZ: There wasn't a determination made with regards to that. Like I said, we submitted evidence that demonstrated that the road had come up all the way to the top and people used to access it back since the 1940s when this land was originally obtained by the family.

COMMISSIONER SULLIVAN: Okay, so what was determined by the judge was that, in fact, there were two ways of getting up there and now the question is one way if we

went straight up would be 15 percent and the curved route that is being proposed by the applicant is 11 percent. What's the grade on the other route that goes towards Mr. Bosbonis' house?

MS. VAZQUEZ: This one here?

COMMISSIONER SULLIVAN: Yes.

MS. VAZQUEZ: I'm not aware of that and I don't think that was ever studied.

COMMISSIONER SULLIVAN: Well, if it were studied and if it were 11 percent or close to 11 percent wouldn't that satisfy both Mr. Romero's problems or concerns and Mr. Bosbonis' concerns?

MS. VAZQUEZ: I think I'll have Orallynn address that because she knows the slope areas a little better.

Mr. Chair, I want to also state for the record that we agreed, Mr. Martinez agreed to buffer the area around the house in order to address his concerns for safety. That was agreed to prior to this lawsuit. The play yard as he stated is right here and there was an agreement to move it to this area because that area was cleared and there was an agreement to stabilize the slope on this end for Mr. Romero because of the concern and the intent by Mr. Martinez to work with him on some of his concerns.

We had been told that the leach field had been moved. In fact, we did not know that the leach field had not been moved until court when Mr. Romero on the stand was asked by Mr. – his lawyer is also Romero, no relation I don't think – was actually asked by Mr. Romero whether that leached field had been moved. That was the first time we were told that the leach field hadn't been moved. But the leach field is right in this area adjacent to the road. But we will address his concerns with regards to buffering and safety for the kids and that's been discussed.

COMMISSIONER SULLIVAN: The question is still has the alternate going to the east, I'll call it the horseshoe road, been investigated in terms of slopes because basically that's what your original concern was, was slope. Then you got the slope within the requirements and then your concern was disturbance was of more than 3/1000 square foot area and you're now scurrying I think close to 5,000 square feet so wasn't that – I'm sure you must have looked at that other route for getting up there.

MS. VAZQUEZ: Commissioner Sullivan, what was looked at by Mr. Martinez was this road coming this way and around and that was the road that was originally designed by the Martinezes for Bosbonis. There was about \$6,000 spent on that design and about three or four months of time that the Martinezes spent on trying to get that approved. The day before they were supposed to go to the title company and sign that easement agreement for that approval so the Martinezes could go through the Bosbonis' property, they received a phone call from the Bosbonises saying that they were no longer in agreement with that easement. That was the only reason that they hired Orallynn to design this road because they have tried to work with the Bosbonises with regards to an easement agreement here and we had been unable to do so.

COMMISSIONER SULLIVAN: Okay, but maybe now that you have your

judgment Mr. Bosbonis might be more in agreement with it. Is the tip of that horseshoe route, I'll call it for a lack of a better name, is that on Mr. Bosbonis' property? If you go around the horseshoe. No, take your finger and go around the horseshoe.

MS. VAZQUEZ: It actually comes this way.

COMMISSIONER SULLIVAN: Is that Bosbonis property?

MS. VAZQUEZ: That's Martinez. It actually comes, if you see the cut here, it comes this way and turns into the Bosbonis property.

COMMISSIONER SULLIVAN: I'm getting at the turn. Go around – there. Is that the Bosbonis property?

MS. VAZQUEZ: Yes, that is.

COMMISSIONER SULLIVAN: Okay, well, what he was asking I think in his testimony is why don't you build your road up my way and then that way I can access my property too. And, he didn't say anything about it but maybe he might be able to contribute to the cost of that as well for improving that access.

MS. VAZQUEZ: Mr. Chair, Commissioners, I'm going to let Oralynn address the slope issue. I will just state that we had a settlement agreement before we went to court on this. There was a proposal. I'm able to speak on it because we're not in a courtroom. But there was a proposal for exactly that. It was not agreed to and this was prior to going to court and spending four days in a trial and considerable amounts of money for all parties with regards to this easement. At that time it was not agreed to.

I'm not completely comfortable with saying we would agree. I know Mr. Bosbonis is nodding his head and saying we would – we have made every attempt to work with the Romeros and with Mr. Bosbonis in good faith and we haven't gotten far. The Martinezes have had to spend a considerable amount of money and a year of time to get this thing resolved before a court and I will Oralynn address the slope issue, but I believe that we've done what we can with regards to Mr. Bosbonis and working with him on his property. There may come a time at a later point where the Martinezes will work with Mr. Bosbonis on the road that they've created. I'm not sure whether that will happen or not. We are committed to going forward with the roadway and maintenance agreement. We are committed to buffering. We're committed to moving the play yard for the Romeros and we're committed to stabilizing the slope. It was something that was a verbal agreement between them before we went to court and the Martinezes were going to put that in the maintenance agreement. We haven't gotten that far Commissioners because Chris Graeser and Mr. Romero just weren't comfortable entering into a maintenance agreement at this time until we were a little further along with the judgment and this decision. I'll let Oralynn address the slopes.

COMMISSIONER SULLIVAN: Mr. Chair, before Oralynn comes up here and I'm interested in hearing what she has to say, but one thing. You're talking about moving the play yard to the other side of the road; isn't that more dangerous for the children to have to go across the road to their yard?

MS. VAZQUEZ: Well, it would be if it were Richards Avenue or a major street. It's a driveway, that's all it is.

COMMISSIONER SULLIVAN: Well, any road with a 3,000 pound car –

MS. VAZQUEZ: We're not talking about 10 trips a day which is the normal calculation on a road. We're talking about a driveway. And there is a driveway that exists here currently. But it was an agreement that they had discussed prior when Ms. Romero had agreed to this roadway design initially.

COMMISSIONER SULLIVAN: Mr. Chair, let me ask Mr. Romero if that road were to follow the old curved loop is that more acceptable to you or does that do anything for you one way or the other? And, if it doesn't then there's only one issue and that's Mr. Bosbonis' and not you. Do you understand my question?

MR. ROMERO: I'm sorry, I didn't hear your question.

COMMISSIONER SULLIVAN: Okay. Come up to the map again. I've been talking about the road that curves around to the right – no, don't turn it upside down. I just oriented – north is up here you guys.

Okay, now that road that goes around to the right that looks like a curve or a racetrack.

MR. ROMERO: This one here?

COMMISSIONER SULLIVAN: No, no, the one on the right.

MR. ROMERO: On this side?

COMMISSIONER SULLIVAN: No, here, that road that is shown there. If the applicant were to go that way does that make the project anymore acceptable to you or does that not make any difference at all?

MR. ROMERO: I see what you're saying, I just wanted to make sure we're talking about the same road and –

COMMISSIONER SULLIVAN: Yes, that one.

MR ROMERO: Yeah, it would take them away from the leach field for one and it would give my kids a safer place to play.

COMMISSIONER SULLIVAN: Okay, that's all I need to know, thank you.

And, then, Mr. Chair, if you would like to hear Oralynn, I'd like to hear what she would say.

CHAIRMAN CAMPOS: Okay.

MS. GUERRERORTIZ: I did analyze a little bit but not in detail.

COMMISSIONER SULLIVAN: A little closer to the microphone please.

MS. GUERRERORTIZ: The existing roadway that goes through the Bosbonis property, it's more than 18 percent. To get it to 11 percent for the fire marshal, you couldn't follow that alignment you'd have to put another swing in it to get – you'd have to lengthen the road. And another point is that why the Martinez demonstrated with the court easement through this land, they don't have any easement through Mr. Bosbonis' property.

COMMISSIONER SULLIVAN: I understand that.

MS. GUERRERORTIZ: Anyway, we couldn't follow that existing scar. It has to be a different alignment and it has to be a lot longer alignment.

COMMISSIONER SULLIVAN: Even if you had to put another curve in it, you have to put a little curve in this road anyway; would the cost be any different?

MS. GUERRERORTIZ: They wouldn't be dramatically different. I don't

know. I doubt it. It would be about the same probably. The only thing is that there is scar through here currently because they did go in and try to start working on the road and you presumably would have staff saying if you're going to go this way instead then we need to reclaim the existing scar so we would get that additional expense no doubt. And the way that ours is currently in following this alignment that gets disturbed with a fill slope so the disturbance is already kind of covered up by a new fill slope.

COMMISSIONER SULLIVAN: Let me ask did –

MS. GUERRERORTIZ: And another point is – just one further thing – Mr. Bosbonis was trying to work on getting good access to his property so I've seen documentation that he's got an agreement with a neighbor over here so that he could swing out further. And, at one point one of the reasons that I had been told and it's total hearsay, but I was told that they didn't like one of the designs that came through here and they were actually thinking of a house site in this location. So they didn't want the road right there so the idea of swinging the road wider got them to the house site that they wanted.

COMMISSIONER SULLIVAN: Vicente, did the staff look at that alternative of following that circular road?

MR. ARCHULETA: Mr. Chair, Commissioner Sullivan, we went out and we looked at the site and we were okay with their proposal. The other proposal, the one that you're talking about, the slopes were going to be more restrictive.

COMMISSIONER SULLIVAN: In its current condition, Ms. Guerrerortiz said it was steeper in its current condition and I was just asking if it were switched back the way their proposed drive is if that would make any difference in cost and I think she said the only major difference would be having to do some revegetation on the other side.

But I don't know, Mr. Chair, whether you want to pursue this any further or whether Mr. Bosbonis wants to comment any further. It just seems like there is another alternative to look at here but I understand at least from the testimony that Mr. Bosbonis wasn't amenable to working out an easement initially and now the applicant has spent a lot of money and designed something that they feel meets the criteria and they probably don't want to go back and spend more money to do it again. I think is what I would surmise; is that a correct summary, Ms. Vazquez?

MS. VAZQUEZ: It's a question of time and money, Commissioners. It's both. The Martinezes began this project in 2005. The initial discussions with Mr. Bosbonis were at the end of 2005 and the summer of 2005 or 2006. They came before you in the fall of 2006 and they were postponed because of this. We had to file a lawsuit in April 2007. We just got a trial date in May 2008 and just got a decision. They've been paying their loan that they took out to purchase this property ever since that time and attorney fees and engineering fees and have not been able to build their home.

And I would point out for the record, that there was a submittal made by Mr. Bosbonis for a driveway on his property and that submittal was never completed and thus never completely reviewed by land use because there was no engineering attached to it to see whether or not the slopes were greater. In Ms. Guerrerortiz' quick review she believes that they are over

18 percent but there is nothing to contradict that testimony in the record because there was never any engineering or topography work done on Mr. Bosbonis' application for a driveway permit.

COMMISSIONER SULLIVAN: Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Okay, we're ready for a motion.

COMMISSIONER MONTOYA: Mr. Chair, I move for approval based on staff's review and recommendation and including all conditions except for number four.

CHAIRMAN CAMPOS: Okay, and would you include a finding that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography.

COMMISSIONER MONTOYA: Would you say that again?

CHAIRMAN CAMPOS: Strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography.

COMMISSIONER MONTOYA: Sure, that's fine, Mr. Chair.

CHAIRMAN CAMPOS: In order to grant a variance you've got to have a finding that there's something unusual about this circumstance.

COMMISSIONER VIGIL: Second.

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

- 4. EZ Case # DL 08-4140 Lerma Family Transfer – Isaac Lerma, Applicant, Requests Plat Approval to Divide 4.73 Acres into Two Lots for the Purpose of a Family Transfer. The Lots will be Known as Lot 2-A (1.25 Acres More or Less) and Lot 2-B (3.48 Acres More or Less). The Property is Located at 19 Calle Suzanna, within the Pinon Hills Subdivision, Via County Road 70, within Section 25, Township 17 North, Range 8 East, (5 Mile EZ, District 2) Jose Larrañaga**

JOSE LARRANAGA (Case Planner): Thank you, Mr. Chair. On May 8, 2008 the Extraterritorial Zoning Committee met and acted on this case. The decision of the EZC was to recommend approval of the Applicants request. The Board of County Commissioners met and acted on this case on June 10, 2008. The decision of the BCC was to table the Applicants request and asked that the Applicant meet with the neighborhood associations. As directed by the BCC, Mr. Lerma has worked with neighborhood associations as required by the BCC. County staff attended these meetings, and it appears issues with the Pinon Hills neighborhood association have been resolved amicably.

Applicant, Isaac Lerma, wishes to convey 1.25 acres of a 4.7-acre parcel, to his son. The Application for a division of land by way of a Family Transfer is in compliance with applicable provisions of the Extraterritorial Subdivision Regulations, Section 3.3.6. The property has been in the family proper since 1992. There is currently one dwelling on the property. The property is located in the Pinon Hills Subdivision within the Basin Hydrologic

Zone where the minimum lot size is 2.5 acres. Under the EZO, Family Transfers of one-half the minimum lot size are allowed, therefore creation of these lots is possible with .25 acre-feet per year water restrictions.

The subdivision in which the property is located was approved by the BCC in 1964. This subdivision is legal non-conforming, as it does not meet current subdivision standards for fire protection, roads, water and liquid waste. The following lot sizes are proposed: Lot 2-A, 1.25 acres Lot 2-B, 3.48 acres.

This Application was reviewed for the following: access, water supply, solid waste, fire protection, terrain management, and environmental review.

Recommendation: The existing infrastructure such as fire protection and roads within Pinon Hills/Alameda Ranchettes have been constructed in accordance with the subdivision standards that were in place in 1964 at the time of approval. Infrastructure requirements in 1964 were not as comprehensive as today's standards, thus the Pinon Hills/Alameda Ranchettes Subdivision is legal non-conforming.

Access to the property crosses over a 100-year flood zone that does not have an all weather crossing. Staff does not support increasing density in areas that do not have adequate access for emergency vehicles. Therefore, staff recommends denial of the Applicant's request.

If the decision of the BCC is to recommend approval of the request, staff recommends the following conditions be imposed.

Mr. Chair, may I enter the conditions in the record.

CHAIRMAN CAMPOS: So entered.

1. The on site access road must have a minimum 38' easement with a 20' driving surface and must be developed meeting Section 3.5 of the Extraterritorial Subdivision Regulations (Road Requirements and Standards). Prior to recording the Plat the Applicant must construct the road or provide Santa Fe County with a certified engineer's cost estimate for roadway improvements. A financial guarantee acceptable to the County in the amount of the approved cost estimate must be included.

2. The Applicant must record Water Restrictive Covenants simultaneously with the Plat imposing 0.25 acre feet per year water restrictions. Water meters must be installed on each lot at the time of development and meter readings must be submitted to the Land Use Administrator annually by January 31st of each year.

The Applicant must record a Shared Well Agreement simultaneously with the Plat.

3. Final Plat shall be recorded within eighteen (18) months of the date of final approval, per Section 3.3.5.C.9 (Final Plat Procedures) Extraterritorial Subdivision Regulations.

4. A future mailbox cluster may be required to serve these and other parcels, therefore a 15 X 20 foot easement shall be platted on the Calle Suzanna frontage.

5. The Applicant must address all minor corrections as shown on the proposed Plat. The red lines have been delivered to the Applicant by Jose E. Larrañaga, Commercial Development Case Manager. These redlines must be resubmitted with the Mylar prior to recordation.

MR. LARRAÑAGA: Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Questions for staff?

COMMISSIONER VIGIL: I have a couple of questions.

CHAIRMAN CAMPOS: Commissioner Vigil.

COMMISSIONER VIGIL: This case was tabled previously, right. And the major issue was fire access and the applicants were asked to work with staff to correct that because there's a persistent fire access issue in that entire area. Actually, there are several of them. But at this point in time I think staff is working very closely with the applicant and with some of the surrounding neighbors there and a resolution has been created. Now you referenced that earlier; could you elaborate on it?

MR. LARRAÑAGA: Mr. Chair, Commissioner Vigil, I personally did not attend those meetings, Shelley Cobau attended, so I really don't know what was discussed.

COMMISSIONER VIGIL: James Lujan is here and he might be able to update us on the access issue.

JAMES LUJAN (Growth Management Director): Yes, Mr. Chair, Commissioners, yes, Joe is right, he wasn't at the meeting. As of two weeks ago we met with residents of this subdivision and what we're planning – we're currently getting an all-weather design, an all-weather crossing design for that entrance and we're working with the other development to get an emergency access and we're working with the other development to get an emergency access for fire and fire protection with another developer adjacent to that. So, yes we are. And I apologize for not getting that to staff earlier.

But we are in the process currently of getting designed an all weather crossing for a 50-year flood, 50-year design.

COMMISSIONER VIGIL: Okay, I guess my question would be to Steve Ross. If, in fact, we are able to make that conditions of approval then in fact the variance would not be needed; is that correct?

MR. ROSS: Mr. Chair, Commissioner Vigil, I don't think a variance is being requested. Staff is recommending denial because of the emergency access issue but if that's being solved then maybe staff could talk to that issue.

CHAIRMAN CAMPOS: Mr. Lujan, how likely is there to be an all-weather crossing and emergency access to this property?

MR. LUJAN: Mr. Chair, we have currently put it out to design and we will probably have that built – we're hoping to have that built before the end of the summer.

CHAIRMAN CAMPOS: Do you have the money to do so?

MR. LUJAN: Yes. What we're looking at is a multi-plate like we used at – me and Roman met, the county manager, and we felt that it is a dire need to get a crossing there because that is the only access and it should have been done many years ago. It is very likely we will have it done by the end of the summer.

CHAIRMAN CAMPOS: What will the cost be to the County?

MR. LUJAN: We're looking at in the neighborhood of somewhere around \$90,000. This is an arroyo. It doesn't run all the time but when they do get flooding it does

run pretty hard depending on the event. I was directed to get it done before the end of the summer for the access of this subdivision. There are many residents in there that are very concerned about it because this is the only access.

CHAIRMAN CAMPOS: Mr. Larrañaga, does that change staff opinion?

MR. LARRAÑAGA: Mr. Chair, yes, the recommendation from staff was denial because of the access for fire protection. This would change the recommendation to approval.

CHAIRMAN CAMPOS: Okay, thank you.

M.R LUJAN: And I apologize for that. This was just a lack of communication, Jose. We'll make sure we don't let that happen again.

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I think if that's the key issue here then that should probably be a condition because I think the safety issue is the fire access and the County is obviously working on that, using taxpayer dollars to correct what a developer didn't do correctly in the first place. But then that's a whole other issue. But I think a critical condition here is that any approval would be conditioned upon the completion of an all-weather access which is currently underway but that would mean that they couldn't record this, or build on it, or submit for a permit until the access is there. I don't think we want to worsen the condition. But we want to allow legal development to occur once that impediment is removed.

That would be a suggestion that I would have that condition number six would be the completion of construction of an all-weather emergency access.

CHAIRMAN CAMPOS: Well, there's two issues. Completion of an all-weather crossing and an emergency access. There's two things; isn't there?

COMMISSIONER SULLIVAN: Is that two different things?

COMMISSIONER MONTROYA: They're interrelated, Commissioner.

MR. LARRAÑAGA: Mr. Chair, I believe if they would fix the crossing then we would have an all-weather crossing for emergency access.

CHAIRMAN CAMPOS: Mr. Ross, Commissioner Sullivan has suggested a condition 6; do you have anything to add?

MR. ROSS: Mr. Chair, no, I think that's a sensible condition.

CHAIRMAN CAMPOS: The applicant is here, please come forward.

[Duly sworn, Isaac Lerma, testified as follows]

ISAAC LERMA: Isaac Lerma, 19 Calle Suzanna.

CHAIRMAN CAMPOS: Mr. Lerma, do you understand that staff is now recommending approval subject to six conditions. Five conditions plus a sixth one suggested by Commissioner Sullivan as to having an all-weather crossing already in place.

MR. LERMA: You're saying that you will approve the split after the construction of the crossing?

CHAIRMAN CAMPOS: I suppose so. Would that be withholding of the plat

filing until after the all-weather crossing was installed?

MR. ROSS: Mr. Chairman, yes, prior to recordation.

CHAIRMAN CAMPOS: Your plat could not be filed until after there was actually an all-weather crossing. After that it could be approved and Mr. Lujan has testified that he expects to have that done by the end of the summer.

Are those conditions acceptable to you, sir?

MR. LERMA: Well, I really don't understand why those conditions would be imposed on me because in the prior meeting last month a subdivision of several lots was approved and there is no crossing for those individuals.

CHAIRMAN CAMPOS: I understand that. Do you accept or not those conditions?

MR. LERMA: I would prefer that the split be approved now. In all fairness, like I said, several lots were approved –

CHAIRMAN CAMPOS: I understand that. We've had this issue come up many times here and we understand the history of that particular subdivision. Would you like to add anything else, Mr. Lerma?

MR. LERMA: I just don't – I was instructed that it was tabled and I was instructed to meet with the presidents of the home associations for that area and the comment that was made by the homeowners association president for my area was, I don't understand why this is being denied. This was said in a meeting here at this County building in front of various people. The other person who is a president of the other association was unavailable because she was in Viet Nam and Laos but the person that was speaking for her said I don't see any problem with it myself.

MR. ROSS: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

MR. ROSS: I might be able to clarify it a little bit for Mr. Lerma. What's being proposed by staff, the recommendation is that the split be approved but the actually plat not be recorded until the all-weather access is provided. It's going to take a couple of months to get all the documents together that need to be put together prior to recordation anyway. I don't think what staff is proposing is going to be a delay on the final recordation of the plat.

MR. LERMA: The concern that I have as well as my son is that we were hoping to start construction before the end of the year, as soon as we got approval on the permits and everything required. Now what I'm hearing is that I might not be able to start for two more months.

CHAIRMAN CAMPOS: Okay, any other comments.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: When is the crossing going to be finished?

COMMISSIONER VIGIL: August.

COMMISSIONER ANAYA: When is the crossing going to be finished?

MR. LUJAN: Mr. Chair, Commissioners, I hope to have it done by the

middle of August.

COMMISSIONER ANAYA: This August?

MR. LUJAN: This August, yes.

COMMISSIONER ANAYA: I don't have a problem voting to approve this if this is going to be done in the middle of August.

MR. LUJAN: We have met with – and I think you were in the meeting with us – with various members of that community and it is a very big concern and we need to get it done. Not just for this case. I'm not advocating this case. But for the other people because there is some problems in there and we had never realized them until we met with these people a couple of weeks ago. So at that time the manager directed me to get a design on it. It's going to be a simple design but it's going to be an all-weather crossing. We just did one near the Santa Fe River over on Calle Deborah.

I am very confident that we can get it. It's a matter of getting the materials here and we've already talked to a vendor and it'll take about three weeks to fabricate and then we'll put it together here. I'm hoping by the middle to the end of August.

CHAIRMAN CAMPOS: Okay. This is a public hearing. Okay, the public hearing is closed no one having come forward.

Is there a motion?

COMMISSIONER ANAYA: So moved with conditions.

CHAIRMAN CAMPOS: You're moving for approval of the division with the conditions 1-5 plus 6 that Commissioner Sullivan suggested?

COMMISSIONER ANAYA: No. What was the plus six?

CHAIRMAN CAMPOS: That was the completion of the all-weather crossing before –

COMMISSIONER VIGIL: Before the recordation of the plat.

COMMISSIONER ANAYA: No, what I don't – what I want is for him to go ahead and start working or building if he'd like. Now, I don't want him to have to wait for till the construction because it is going to be done anyway. So I would not recommend that condition.

CHAIRMAN CAMPOS: That's conditions one through five. Is there a second?

COMMISSIONER VIGIL: Second.

The motion passed by majority [4-1] with Commissioner Sullivan voting against.

CHAIRMAN CAMPOS: Motion passes to divide the lots. Four-to-one.

6. **CDRC CASE # V 08-5050 Marc Pearson Variance: Marc Pearson, Applicant, requests a variance of Article III, Section 10 (lot size requirements) of the Land Development Code in order to place a second dwelling unit on 3.00-acres. The property is located at 37 Derek James Drive via U.S. Highway 66, within Section 19, Township 10 North, Range 7 East (District 3).**

JOHN LOVATO: Thank you, Mr. Chair. On May 15, 2008 the County Development Review Committee, CDRC, met and acted on this case. The decision of the CDRC was to recommend approval of the requested variance with all of staffs' conditions and one additional condition.

The Applicant is requesting a variance of Article III, Section 10 of the Land Development Code in order to construct a second dwelling unit on his 3-acre property. Currently there is a singlewide manufactured home on the property which has been on the property for fourteen years. This existing manufactured home was permitted in 1994 under permit 94-464. Article III, Section 10 of the Land Development Code states the minimum lot size in this area is 20-acres per dwelling unit. Lot size may be reduced to 5 acres with water restrictions of 0.25 acre-feet per year. Lot size may be further reduced to 2.5 acres if community water is available. The Applicant's 3-acre lot is within a subdivision called Mountain Valley Estates, which was platted in 1988. Lots in the Mountain Valley Estates Subdivision are served by the Entranosa Water System.

The applicant states that he intends to use the modular home for his mother-in-law, his own mother, or other elders of his family in order to prevent their placement in a nursing home and wishes to construct a second residence on the property for his own use. The existing residence is connected to Entranosa Water and liquid waste is handled by a conventional septic system. The Applicant has provided documentation from the Entranosa Water System that an additional service connection to that system will be possible and an updated liquid waste permit. However, this parcel is not eligible for placement of a second dwelling unit, nor is it eligible for further division through the family transfer provision. The Applicant is therefore seeking a variance of Article III, Section 10 of the Land Use Code.

Recommendation: Staff recommends that the request for a variance be denied. The Applicant has not demonstrated as required by Article II, Section 3 (Variances) that an extraordinary hardship exists and this request is not the result of unusual topography. Article III, Section 10 of the Land Development Code states the minimum lot size in this area is 2.5-acres per dwelling unit with community water; therefore the proposed request is not in conformance with the Code.

If the decision of the Board of County Commissioners is to recommend approval of the Applicant's request, staff recommends the following conditions be imposed. Mr. Chair, may I enter those conditions into the record?

CHAIRMAN CAMPOS: So entered.

Conditions

1. No additional dwellings will be allowed on the property.
2. The existing driveway must serve both homes and an engineered crossing must be designed to access the second unit. This analysis must be submitted for review and approved by staff, and a bond will be required.
3. The Applicant may not use the dwellings as rentals.

COMMISSIONER VIGIL: I have a question, Mr. Chair.

CHAIRMAN CAMPOS: Go for it.

COMMISSIONER VIGIL: Could you – have you done an onsite visit? Could you describe what the surrounding area is like there? What's the density like there? Are there other modular homes? What's the pattern of development?

MR. LOVATO: Mr. Chair, Commissioner Vigil, there are several modular homes. There are several parcels out there that contain two or more dwelling units on a site inspection I have done.

COMMISSIONER VIGIL: And are they in compliance or do we know? I know they weren't the focus of this case but we also aren't very good about going out there and enforcing our code unless its been brought to our attention of some kind. This area is somewhat remote and I wonder if we know how many other surrounding neighbors aren't or are in compliance.

MS. LOVATO: Mr. Chair, Commissioner Vigil, I'm not sure how many are permitted. It's a 36-lot subdivision.

COMMISSIONER VIGIL: Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Other question? Is the applicant here? Please state your name, address and we'll have you sworn in.

[Duly sworn, Marc Pearson, testified as follows]

MARC PEARSON: Ladies and gentlemen, my name is Marc Pearson. I live at 37 Derek James, Edgewood, New Mexico. I have done this since January. I have applied. I have gone through everything that the County and Land Use has asked me to do. I've designed a culvert for a crossing where I do have a little river running through it. I have got the septic permit. I have sent out two legal descriptions: one in Santa Fe and one in Edgewood. I've sent out eight certified letters to my neighbors which are all for what I would like to do. I would like to keep the trailer for family use only not as a rental. I'm not there to do that. I'm just doing this for my family. For the elders that have taken care of me and my wife and my kids to show respect.

I have been doing this since January and I've complied with everything. I've spent a lot of money on architectural design for the culvert and stuff. I've got the plans for the housing, which by the way is going to be a green building with solar panels, windmill, et cetera. So that way I can be completely off the grid and don't have to pay no more electrical bills for one. And, I would just like to get started on this. I've spent a lot of money and effort in this. Me and my wife would like to get started and with the price of oil and gas and everything going up, I know that the cost to build is going to go up. I'm lucky, I've been

fortunate that I've worked in construction for 32 years and I can save a lot of money by doing this myself. Of course, I am going to have people do the electrical and the concrete work and some of the carpenter work. I've had prior approvals from the committee and the council and I'm just asking because I'd like to get started. I just want this where I can get dreaming my dream house, me and my wife. And I would like to keep the trailer there for family but the trailer won't be there forever. You know, once I see that there's no need for the trailer and to take care of family, the trailer is going to be donated to Joy Junction or something like that for a charitable cause. But for right now I'd like to keep the single mobile home unit there for family instead of a nursing home.

CHAIRMAN CAMPOS: Thank you, sir. Questions of the applicant by the Commission? Yes, Commissioner Sullivan.

COMMISSIONER SULLIVAN: So you're not requesting a lot split. You're requesting a second unit on a three-acre lot; is that correct?

MR. PEARSON: Basically, yes, sir.

COMMISSIONER SULLIVAN: In some instances in the past we've had hardship applications come forward where the doctors have said there is an infirmed in-law that needs assistance or something like that. Are you saying that you have family that needs to be nearby, a mother or father?

MR. PEARSON: Yes, I have her mother in-law, which is diagnosed with cancer. She is in remittance right now. My dad just had a [inaudible] put in two weeks ago.

COMMISSIONER SULLIVAN: In some cases that I can recall we've approved applications like that and we've put a stipulation that – because 2.5 acres is the limit on lots for that area with community – that you would or whoever owns it would return to the County in a certain period of time, like three-years or four-years or five-years, to determine if that trailer is still serving that same purpose or to put it a little less gently, whether your mother in-law is still alive or not.

MR. PEARSON: That's understood and I agree to that. I do because it's only going to serve a purpose of taking care of my elders, that's all.

COMMISSIONER SULLIVAN: So would you be then in agreement to a condition that after let's say three years you would return to the county administratively and by that I mean you wouldn't need to come back to the County Commission, but you would go to the County staff in order to renew that approval until such time as you no longer need it?

MR. PEARSON: In other words you're saying, like right now I can't determine how long my mother in-law has life expectancy –

COMMISSIONER SULLIVAN: As long as – and I'm not even limiting it to your mother in-law.

MR. PEARSON: Okay.

COMMISSIONER SULLIVAN: I'm saying if you had a serious family circumstance where you needed to look after someone that's what the trailer is for, that's what you have testified. So as soon that circumstance is no longer needed you would agree to take that trailer off the lot.

MR. PEARSON: Yes, I would, sir. That's what I agree to.

COMMISSIONER SULLIVAN: So all I'm doing here is putting an automatic little review period into that where every three years you would come back and say I just need to renew this, my mother in-law is still there and they would say okay.

MR. PEARSON: I agree to that.

COMMISSIONER SULLIVAN: Okay. We've done that before and I think that makes sense.

MR. PEARSON: And to your question that you asked John Lovato, Jean did apply for a variance in that area and she does live on the same property as her son. And I know that she went through the County you know for the variance change.

COMMISSIONER VIGIL: That's a separate case.

MR. PEARSON: Yes, that was a separate issue. But on mine, I agree to what you say and I will do and I will honor and I will not use it as a rental. It's strictly for family. And I would like to get on to where I can build my house before things get too high with the price of oil and gas.

COMMISSIONER SULLIVAN: That's all the questions I have, Mr. Chair.

CHAIRMAN CAMPOS: Okay, this is a public hearing anybody who would like to testify for or against, you're invited to speak now. No one having come forward, the public hearing is closed. Is there a motion?

COMMISSIONER SULLIVAN: Mr. Chair, I'd move for approval with staff conditions and an additional condition that the applicant has agreed to that the applicant or owner will return to obtain administrative continuance of the approval predicated on the family need of the trailer and that when that need no longer exists, that the applicant will remove the trailer.

COMMISSIONER ANAYA: Second.

CHAIRMAN CAMPOS: Discussion. Commissioner Vigil.

COMMISSIONER VIGIL: I'm assuming that the maker of the motion has included the CDRC item three that the applicant may not use the dwelling as rentals because has incorporated that into their recommendation; is that how you view it Commissioner Sullivan?

COMMISSIONER SULLIVAN: Yes, and I just heard the applicant say that he was in agreement with that rental provision.

MR. PEARSON: That is true. I will not use it as a rental at all. It is strictly for family and family only.

CHAIRMAN CAMPOS: On condition three there is a misspelling instead of "no" it should says "not" use the dwellings as rental, either dwelling; is that what that means, Mr. Lovato?

MR. LOVATO: Mr. Chair, that is correct.

CHAIRMAN CAMPOS: I don't think, Commissioner Sullivan, that we've ever approved anything for an indefinite duration and there is no statutorily, that is ordinance authority to grant this type of application and certainly it's not a variance and that has to be

made clear because a variance would run with the land and I don't think that's your intent.

COMMISSIONER SULLIVAN: No, and I don't know if I used the term variance.

CHAIRMAN CAMPOS: But it's a request for a variance and I'm suggesting that if you're going to make this motion you have to make it clear that it's not a variance.

COMMISSIONER SULLIVAN: What would we call it?

CHAIRMAN CAMPOS: Deviation. What do we call them temporary permits in the past?

MR. ROSS: Mr. Chair, that's what we've called them in the past. It is not provided for by the code but we have included it in the rewrite because we frequently have this discussion.

CHAIRMAN CAMPOS: So it's a temporary permit?

MR. ROSS: Temporary permit.

COMMISSIONER SULLIVAN: It's a temporary permit then, okay, I see. So let me recharacterize the motion to say that we would be approving a temporary permit to allow a second dwelling on the lot with the mobile home to be re-evaluated each three years by staff on application by the applicant or owners. Does that meet our conditions?

MR. ROSS: That it's a temporary permit to be renewed every three years administratively for family needs.

COMMISSIONER SULLIVAN: So it's to be a temporary permit for three year and that it would be renewal upon staff review of the same conditions as existed at the time that you made your application here, namely, that there's a need for family care.

COMMISSIONER ANAYA: I'll second that, again.

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

XIV ADJOURNMENT

Chairman Campos declared this meeting adjourned at 7:00 p.m.

Approved by:


Board of County Commissioners
Paul Campos, Chairman

ATTEST TO:

Santa Fe County
Board of County Commissioners
Regular Meeting of July 8, 2008
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VALERIE ESPINOZA
SANTA FE COUNTY CLERK

Respectfully submitted:


Karen Farrell, Wordswork
227 E. Palace Avenue
Santa Fe, NM 87501