

SANTA FE COUNTY
BOARD OF COUNTY COMMISSIONERS
REGULAR MEETING

November 18, 2008

Virginia Vigil, Vice Chair – District 2
Michael Anaya – District 3
Harry Montoya – District 1
Jack Sullivan – District 5
Paul Campos, Chair – District 4 [excused]

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This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 2:05 p.m. by Vice Chair Virginia Vigil 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 Virginia Vigil, Vice Chair
Commissioner Jack Sullivan
Commissioner Harry Montoya
Commissioner Mike Anaya

Member Excused:

Commissioner Paul Campos

V. INVOCATION

An invocation was given by County Clerk Valerie Espinoza.

VI. APPROVAL OF THE AGENDA

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- B. Tabled or Withdrawn Items**

CHAIR VIGIL: Mr. Abeyta, are there any changes to the amended agenda?

ROMAN ABEYTA (County Manager): Madam Chair, we do have amendments to today's agenda. The first being all the way on page of the agenda under Staff and Elected Official Items, XIII. C. We added a memorandum of agreement between the County of Santa Fe and the North Central Regional Transit District to provide shuttle bus service between Edgewood, Eldorado and the City of Santa Fe.

On page 5, XIII. F. 1, we clarified that this ordinance is amending the Galisteo Basin map territory. The first agenda wasn't clear about that. And finally, Madam Chair, page 7 of

the agenda, under Public Hearings, Growth Management, A. 4, Concierto at Las Campanas has been tabled. And item 9, the Armijo appeal, has been tabled. And those are staff's amendments.

CHAIR VIGIL: Okay. Are there any tabled or withdrawn items?

COMMISSIONER SULLIVAN: Madam Chair.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Are you talking about the Consent Calendar?

CHAIR VIGIL: No. I'm on item VI. B. I'll get to the Consent Calendar under item VII.

COMMISSIONER MONTOYA: Madam Chair.

CHAIR VIGIL: Commissioner Montoya.

COMMISSIONER MONTOYA: I'd like to request that we move, on page 4, item XIII. A. to under Matters from the Commission.

CHAIR VIGIL: Santa Fe County Clerk's introduction? Okay. After Approval of Minutes?

COMMISSIONER MONTOYA: Yes.

CHAIR VIGIL: Any other changes? Seeing none, what's the pleasure of the committee?

COMMISSIONER MONTOYA: Move for approval as amended.

COMMISSIONER SULLIVAN: Second.

The motion passed by unanimous [4-0] voice vote.

VII. APPROVAL OF CONSENT CALENDAR

A. Consent Calendar Withdrawals

CHAIR VIGIL: Let me just ask if there are any items that would like to be removed for discussion.

COMMISSIONER SULLIVAN: Madam Chair.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Item A. 1, page 2. And also, I'd like to ask on this amendment with the Regional Transit District for shuttle bus service. Is there a copy of that memorandum of agreement anywhere?

MR. ABEYTA: Madam Chair, Commissioner Sullivan, we just copied the agreement today, so if you don't have it on your desk I'll get it to you.

COMMISSIONER SULLIVAN: Okay. It's in the materials we have on the desk?

MR. ABEYTA: It should be.

CHAIR VIGIL: Are there any other Consent items, Commissioner Sullivan, that you would like removed?

COMMISSIONER SULLIVAN: No, that's all I had. Thank you.

CHAIR VIGIL: Okay, we're just asking for removal of Consent item XII. A.

1. So do I have a motion for approval of the Consent Calendar with removal of that one item?

COMMISSIONER MONTOYA: So moved.

COMMISSIONER SULLIVAN: Second.

The motion passed by unanimous [4-0] voice vote.

XII. CONSENT CALENDAR

A. Budget Adjustments

- 1. Resolution 2008-___. A Resolution Recognizing the State Authorization of an Appropriation (06-L-G-1893), Decreasing the Budget for the Pojoaque Valley Community Center Project By \$198,000 and Creating a New Project (08-L-G-5349) for the Nambe Headstart Facility Budget in the Amount of \$198,000 (State Appropriations Fund 318, Community Services Department) ISOLATED FOR DISCUSSION**
- 2. Resolution 2008-194. A Resolution Recognizing a State Appropriation to Purchase the Nambe Headstart Property, Increasing the Budget for That Project \$100,000. (State Appropriations Fund 318, Community Services Department)**
- 3. Resolution 2008-195. A Resolution Recognizing a Capital Cooperative Agreement Between Santa Fe County and the New Mexico Department of Transportation in the Amount of \$150,000 for Road Improvements for Multimodal Transit (i.e. Bike Ways) Along the Old Santa Fe Trail. (Road Projects Fund 311, Community Services Department)**
- 4. Resolution 2008-196. A Resolution Recognizing Three State Appropriations for Reimbursed Operational Expense for (a) the Santa Fe Recovery Center, \$10,000, (B) the Pojoaque Fire Station, \$20,000, (C) and the Youth Shelter and Family Services, \$5,000, for a Total Amount of \$35,000 (General Fund 101, EMS Health Services Fund 232, and Fire Operations Fund 244, Community Services Department)**
- 5. Request Approval for PA #09-AL-FTE164-091 Between the New Mexico Department of Transportation and the Sheriff's Office. This Grant is for the Programs Division/Traffic Safety Bureau for \$350,600.000. with This Grant, the Santa Fe County Sheriff's Office Will Be Provided with the Continued Funding for the 4**

**DWI Term Law Enforcement Officers for Fiscal Year 08-09
(Sheriff's Office)**

- 6. Resolution 2008-197. Approval of Budget Resolution Increase in the Amount of \$1,469,497 to Complete Construction of the New Public Works Facility (Community Services Department)**

B. Miscellaneous

- 1. Request Approval of the Accounts Payable Disbursements Made for All Funds for the Month of October 2008 (Administrative Services Department)**
- 2. Resolution 2008-198. A Resolution Authorizing the County Manager to Execute Contracts for RFP #29-0060-CSD/HGR for Water Treatment During Construction of the New Steve Herrera District Courthouse (Community Services Department)**
- 3. Approval of 2003 Grant Agreement Amendment No. 3 Between Santa Fe County and the Department of Finance and Administration in the Amount of \$19,411.31 for the Stanley Youth and Agricultural Facility (Community Services Department)**
- 4. Request Approval of the First Amendment to Grant of Trail Easement From the State of New Mexico Department of Transportation for the Santa Fe Rail Trail Between I-25 and U.S. 84-285 (Community Services Department)**
- 5. Approval of Memorandum of Agreement Between Santa Fe County and New Mexico Department of Health for "Project Launch" in the Amount of \$732,674 (Community Services Department)**
- 6. Resolution 2008-201. A Resolution Requesting Authorization to Transfer \$5,460.00 Out of 203-1111-385-0220 Cash Balance to 203-1111-413-8090 Other Capital Purchases for Customization of Parcel Builder Administrator Application (Assessor's Office)**

C. Findings of Fact

- 1. CDRC Case # VAR 08-5050 Marc Pearson Variance. Marc Pearson, Applicant, requested 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, (Commission District 3). Approved unanimously (5-0)**
- 2. EZC Case # PPL/FPL 08-4010 Mesa Vista Preliminary and Final Plat Approval. Mesa Vista LLC requested Preliminary and Final Plat approval of Phase II for the Mesa Vista Business**

Park. The project consists of 8.07 acres which would be divided into six (6) commercial lots. The property is located west of State Road 14 and south of the I-25 west frontage road, within Sections 25 & 26, Township 16 North, Range 8 East (5 Mile EZ, District 3) Approved 3-0

- 3. EZ CASE # DL 08-4120 Maes Family Transfer Land Division. Cindy Maes, Applicants, requested plat approval to divide 4.99 acres into three (3) lots. The lots will be known as Lot 1A (1.662 acres more or less), Lot 1B (1.662 acres more or less), and Lot 1C (1.662 acres more or less). The property is located at 82 Calle Estevan in the Pinon Hills Subdivision, within Section 25, Township 17 North, Range 8 East, (5 Mile EZ, District 2) Approved Unanimously 5-0**
- 4. AEDRC Case # V 07-5470 Casados Variance. Robert Casados, applicant, is requesting a variance of Article XIV, Section 10.6 (Density and Dimensional Standards) of the Land Development Code in order to place a second dwelling unit on .32 acres. The property is located at 4096 Agua Fria St., within the Agua Fria Traditional Community, within Section 31, Township 17 North, Range 9 East, (Commission District 2) Denied 5-0**

VIII. APPROVAL OF MINUTES

A. October 28, 2008

CHAIR VIGIL: Are there any changes?

COMMISSIONER SULLIVAN: Madam Chair.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: One typographical change.

CHAIR VIGIL: Okay.

COMMISSIONER ANAYA: So moved with the amendment.

COMMISSIONER SULLIVAN: Second.

The motion passed by unanimous [4-0] voice vote.

VIII. B. October 29, 2008

CHAIR VIGIL: Are there any changes?

COMMISSIONER ANAYA: So moved.

CHAIR VIGIL: There's a motion. Is there a second?

COMMISSIONER SULLIVAN: Second.

The motion passed by unanimous [4-0] voice vote.

IX. MATTERS OF PUBLIC CONCERN – NON-ACTION ITEMS

CHAIR VIGIL: These are non-action items and this is an opportunity for anyone in the public to address the Commission with any item that is not on the agenda? Is there anyone in the audience that would like to address the Board of County Commissioners? Very well, seeing none, we will move to item XIII. A. before we go into Matters from the Commission.

XIII. STAFF AND ELECTED OFFICIALS' ITEMS

D. Clerk's Office

1. Santa Fe County Clerk's Office Introduction and Recognition of Staff

VALERIE ESPINOZA (County Clerk): Thank you, Madam Chair. I appreciate this opportunity. As your Santa Fe County Clerk I just want you to know I'm surrounded by the best of the best staff. And let me introduce you to most of them that are here. Please stand. We have a little picture show so bear with us a moment. I just want to show you just how hard they work and show them in action.

CHAIR VIGIL: And fortunately, Ms. Espinoza, I actually saw a lot of that because of my office being close by.

MS. ESPINOZA: I'll be all of you saw that.

CHAIR VIGIL: Do you want to go ahead and introduce them?

MS. ESPINOZA: Sure. Actually, what I'm going to do is say a few words and we're going to present them with certificates and we can do that either –

CHAIR VIGIL: The least they deserve, right?

MS. ESPINOZA: Yes, ma'am. The entire staff worked long and difficult hours without complaint and at a great sacrifice to their families to ensure that the 2008 general election in Santa Fe County was an honest and – we faithfully worked to uphold the election code and delivered on what was a profound and historic election. We used computer technology to rapidly process voter information and to account for all ballots issued. We had our detractors and our critics but this negativity was miniscule when compared to the overwhelming positive support and acknowledgement that we received from many voters in Santa Fe County.

The community acknowledged us verbally, by email, they sent letters and even brought food, flowers, and refreshments in appreciation of our work. I'd like to personally acknowledge Denise Lamb who is the best election administrator in the state of New Mexico. You don't see her here today because she took a well deserved day off. Denise kept the primary and general elections on firm ground. Her leadership role in this whole process is commendable and it's no

wonder that she was recently appointed to the National Academy of Computer Science and Telecommunications Board as their advisor, and this is due to her expertise in elections.

I wanted to mention, the Elections Bureau staff one night, Eric Baraza, Rick Padilla, Richard Varela and Patrick Ortiz, who on October 29th worked all day and night until 6:00 a.m. that next morning to make sure that early voting ballots were counted. A big thank you to Eric, Rick, Richard, Yvonne, Patrick, Eloy, Lynn, Miss Fidel, Daniel, Teresa Atencio, George and Terry for their dedication and outstanding work in the Elections Bureau. That's not to say that the entire staff, recording, elections, everybody pitches in and they are all here. A big thank you as well to the entire staff for a job well done because we are all united in our office.

In addition our commitment extended from the basics of scheduling polling places with handicap accessibility to the final process of canvassing the election, and thank you for those who participated in that canvass. We all come from diverse backgrounds that reflect our community, and we are a tremendous team of professionals. My staff believes as I do that public trust is earned through treating every voter and customer with dignity and respect and while quickly providing them with the information and access they need.

Finally, I have to say a big thank you to our County Manager Roman Abeyta. He helped us immensely providing access for anything I needed on the spot. I have to thank our County Attorney Steven Ross for your continued support too, and I while we ended up in court, we still won that battle regardless. And so thank you for being there for me, for all of you. And I want to thank the other County employees who helped during the early voting process which Roman sent us various employees, and they're here too. So we've got to thank them. They're standing here somewhere as well.

So thank you too. And thank you expressly to Martin Vigil. He's the Santa Fe County Fire Department Emergency Manager who set up the emergency operations system on Election Day. He checked on me frequently because we had some cases that were a little out there, and so we were concerned about our safety and the safety of our employees and some of the voters. We had some hectic issues, so we definitely wanted to thank Martin Vigil for keeping a close eye on us, and thank you to the Santa Fe County IT Department and County Sheriff and his staff for always sending somebody to us on Election Day to also make sure that things are safe for all our voters and our employees.

And we had some security guards out front who were very helpful. They even helped wheel in some of the people that were on wheelchairs that couldn't get into the building. They took time to do that and so we want to thank them. And – I'm almost done – thank you to the media for covering this election and keeping the voters informed. Together we've made the process easier for voters to register and vote and now, County Commissioners, thank you very much for your support, for everything that I've been able to accomplish with your support.

And at this time, may I further request that we acknowledge my staff with seeking the means to provide them the pay increases that they deserve. What do you think? A little humor.

May I open this time if anybody on my staff may want to say something.

GERALDINE SALAZAR: Madam Chair and Commissioners, I'd like to take this opportunity to tell you since I've worked at the County Clerk's in office, I'm in awe with

the staff and how hard they worked and the service that they delivered. And also, I want to acknowledge our leader, Valerie Espinoza, who has provided tremendous leadership through this whole process that I've witnessed. Thank you to all of you and all County employees.

CHAIR VIGIL: Thank you, Geraldine. Thank you, Valerie. Wonderful.

MS. ESPINOZA: I think Roman was done signing those so each and everybody will have a certificate.

CHAIR VIGIL: Would you like to distribute those right now, Valerie.

MS. ESPINOZA: You can keep the projector moving if you'd like so that you can continue to display the pictures. Okay, is Marcos Archuleta here? He's our temp. that comes in at 3:00. Where's Mrs. Ester? Thank you. Veronica Duran, she's in the morning. Frank Fisher. Lynette Gallegos, you're right in front of me. Vin Garry, who had coordinate all our poll workers. Thank you for your patience here. Georgia Gutierrez, who doesn't want my job. John Hye, our latest and greatest new employee. Teresa Montes – helped pay the poll workers, right? Cordelia Montoya, also known as Cordy. And Jayla Ortiz, without her boxing gloves. Lawrence Ortega. I needed boxing gloves, let me tell you, during that election. Nick Rivera. Ms. Erica Romero. And Geraldine. Thank you, Geraldine. We're almost done. We have a big staff. Marcella. Vicki Trujillo even learned what it was like. Danielle, Danielle where are you. Ken Vaughan. Another new employee is Ms. Mela. Thank you. Teresa Atencio, mini-Denise. Mr. Eric. Another guy – we have been trained by the best of the best, but a lot of those best of the best were already there and this was one of them. Where's Miss Fidel. Yay, Miss Fidel. Daniel Fresquez, I just walked by. And Denise Lamb, I'll gladly accept on her behalf. George, where's George. Eloy, Mr. Eloy Madrid, are you here. Terry Martinez. Terry left us and came back, Had to come back, right? Patrick Ortiz, another hard worker in the Bureau. Lifting machines isn't an easy job, let me tell you, when we started lifting machines for our poll workers so they don't have to take them over, right. Thank you. Rick Padilla better be here. We almost gave that poor guy a heart attack. As Yvonne. We're not kidding. We are serious. Yvonne, good job. Richard Varela, the serviceman. I think that's it. I hope I didn't leave anybody out or I'll be in trouble. Rick, I thought you were – he was hiding from me. This is another very, very, very hard worker who coordinates everybody at that neck of woods at the warehouse and he makes sure everything's all right with everything as well. Both Phillips, where are you? The front line man. Get up here Phillip. You have a certificate. Let me see. Where is his certificate. Phillip is our front – he never sits down and I'm sure every time you walk in the office Phillip and Cordy are always up front. And then we have a new Phillip here too. He found out what it's like to work elections for the first time, so Phillip, we're going to pretend you're Marcos just for today until we get you another one. I'm going to blame Roman for that. Can I blame you, Roman? All right. I need to blame somebody, right.

Thank you so much all of you and just know that we did well and we did that for you.
Thank you.

CHAIR VIGIL: Thank you. Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Madam Chair. I just want to thank Valerie for bringing her staff forward to the Commission and recognizing them. It's important

to recognize your employees when they do a wonderful job and I know I came and I early voted and I could not believe the amount of people that were here. And Georgia helped me. She told me who to vote for. Thank you, Georgia. But again, I want to thank you all very much for the hard work that you did. I didn't have one complaint so you guys did a wonderful job and another round of applause for you all. Thank you very much. Thank you, Madam Chair.

CHAIR VIGIL: Commissioner Montoya.

COMMISSIONER MONTOYA: Madam Chair, I too would like to congratulate the Clerk and her staff. I think they did a wonderful job. It gets tough when you continuously have to keep going and running on fumes and every time we went down there everybody had a smile on their face. Except Yvonne. No, everybody did a wonderful job and I also wanted to congratulate the Clerk on being selected the Santa Fe Business Woman of the Year. Congratulations, Valerie on that honor as well.

CHAIR VIGIL: Really, Valerie, it's really wonderful that you brought forth everyone who worked here. I want to relay a story. I was at a presidential headquarters during this campaign. It's probably one of the most exciting involved campaign that any of us will every participate in. I'd love to see that all other elections would be like this. But I walked in there and there was a girl who was handicapped and she had relayed information to a couple of us who were there that she needed some help with her process and both of us knew to ask her to call Valerie. And before I left the office, and I was there just for a brief period, Valerie was on the phone with her, working out whatever arrangements they were. And so for your accessibility to the electorate and to the issues that you had to deal with, it was really a testament to how connected you are and responsible to your office and the better for Santa Fe County and Santa Fe County administration and the Board of County Commissioners, because you're the first line of response, not only for voting but for many other services. So thank you for your patience, your professionalism and your willingness to serve and help the public in such a positive manner. Continue the good work. We need you out there. Thanks.

And with that we will be moving onto the next item.

X. MATTERS FROM THE COMMISSION

- A. Discussion and Possible Approval for an Expenditure of Community Service Funds in the Amount of \$2,000 to Pandemonium Productions to Support their Mainstage Productions for 2008-2009 (Commissioner Montoya)**
- B. Discussion and Possible Approval for an Expenditure of Community Service Funds in the Amount of \$500 to Pojoaque Schools to Support the Pojoaque Valley Young Basketball League for 2008-2009 (Commissioner Montoya)**
- C. Resolution 2008-199. A Resolution Urging the State Legislature to Pass a Budget for the Interstate Stream Commission that Includes a Recurring Budget Item for the Purpose of Updating Four Regional Water Plans**

Each Year (Commissioner Montoya)

- D. Discussion and Possible Approval for an Expenditure of Community Service Funds in the Amount of \$1,000 to the Santa Fe Fiesta Council to support their 2009 Youth Mariachi Workshop (Commissioner Montoya)**
- E. Discussion and Possible Approval for an Expenditure of Community Service Funds Not to Exceed \$10,000 for a Walk in Refrigerator/Freezer for the Ken and Patty Adam Senior Center (Commissioner Sullivan)**

COMMISSIONER MONTOYA: Thank you, Madam Chair. This expenditure is in the amount of \$2,000 and it's going to provide an opportunity for our children to participate in some of the performing arts that is offered here in the community here in Santa Fe. And with that, I'd move for approval.

CHAIR VIGIL: I'll second.

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Yes, Commissioner Anaya.

COMMISSIONER ANAYA: I would like to, if it's okay with the Commission, I would move for all – A, B, C, D, and E.

COMMISSIONER MONTOYA: I would amend my motion to reflect A, B, C, D, and E, and would stand for any questions on any of the items that I have.

CHAIR VIGIL: Are there any questions on any of the items? The motion is amended to move to pass X. A, B, C, D, and E. Did I hear a second?

COMMISSIONER SULLIVAN: Second.

CHAIR VIGIL: Commissioner Sullivan. Is there any discussion?

The motion passed by unanimous [4-0] voice vote.

X. OTHER MATTERS FROM THE COMMISSION

CHAIR VIGIL: Commissioner Anaya, do you have any matters? Commissioner Montoya.

COMMISSIONER MONTOYA: Not right now, Madam Chair.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Not right now, Madam Chair.

CHAIR VIGIL: None from Commissioner Anaya. I do need to request from staff. An issue has come to my attention with regard to our new permit fees as it particularly relates to the film industry. As I've learned more and more about that it has become important to me that we dedicate staff time to developing a film ordinance that would identify appropriately with no discrepancies the permit fees. And I would also like staff to work really closely with the state's Film Office and with anyone that they consider relevant to contribute to this ordinance, and I would like the Board of County Commission to consider it.

The film industry is unique by nature and I think needs to be looked at from that unique perspective. One of the discrepancies that was pointed out is we do have a daily fee, and it seems unfair to charge that daily fee to someone who's here for three days versus someone who's here for seven months. So need to look at the equities in our permitting process. So I would direct staff to look forward into that and ask any of the Commissioners if they have any comments in opposition to that, or in favor. Seeing none, I guess we can move forward with that and I hope that the work on this ordinance can get started sooner than later because we do have films that have already been scheduled for Santa Fe County.

With that we will move to Appointments and Reappointments.

COMMISSIONER SULLIVAN: Madam Chair.

CHAIR VIGIL: Oh, Commissioner Sullivan. Do you have some items?

COMMISSIONER SULLIVAN: I did have one thing and perhaps

Commissioner Anaya has an item too. I'm not sure.

CHAIR VIGIL: He didn't.

COMMISSIONER SULLIVAN: He didn't have anything? Okay. I did mean to ask our staff, I noticed in the papers that two film companies have defaulted on their agreements in Rio Rancho to build a film studio. They had a two-year period to do that apparently and backed out of the deal. Where do we stand in that regard with the arrangements that we've made? I think we have, what? A three-year period for them to begin work and I believe in Rio Rancho they had a two-year period and the economy was cited as the reason for that. And do we see any indication that that's going to happen here?

MR. ABEYTA: Madam Chair, Commissioner Sullivan, we do have three years before they have to break ground for our agreement, but we haven't had any indication of that here. We've been continuing to meet with the Santa Fe Studios. In fact we're proceeding on planning a groundbreaking. So I read the same articles and we can ask those questions but as far as staff is concerned they continue to keep meeting with us and we continue to proceed forward.

COMMISSIONER SULLIVAN: Will there be a large amount of money expended before we have something coming up out of the ground? I guess I'm just a little concerned that we and also the state through the \$10 million grant are funding a lot of money that ultimately we end up with a half-built facility. Do we have some controls in place to keep that from happening?

STEVE ROSS (County Attorney): Madam Chair, Commissioner Sullivan, the ordinance and project participation agreement have lots of tools in them should the project not continue as detailed in those documents.

COMMISSIONER SULLIVAN: But we could or we would have to wait if that were the case at least three years before we would know whether they were going to break ground or not, although your thoughts are that it's going to happen sooner rather than later. Is that what you're saying?

MR. ROSS: That's correct. In fact, some of the state money that's been appropriated has to be expended by June 30th. So we expect to see dirt flying long before the end of this fiscal year. So we should know sooner rather than later, this year, whether the project

is going to move forward or not. But it appears to be moving forward.

COMMISSIONER SULLIVAN: That's good to hear. I think it will be good to keep this Commission updated periodically on that. Thank you, Madam Chair.

XI. Appointments/Reappointments/Resignations

A. Resignation From the MCH Planning Council, Carol Herrera, Shelly Moeller and Jill Reichman (Community Services Department)

CHAIR VIGIL: Who will take the lead on this? Steve? Lisa?

LISA GARCIA: Madam Chair and Commissioners, we have half of our members coming off and going on every year, so at this point we've got our resignations, appointments and reappointments that have come up. Their terms expired in October.

CHAIR VIGIL: Okay. So will you be making recommendations in the future to refill those? Besides Betty or Lynn?

MS. GARCIA: Right. Well, we're in the process of recruiting more members to have a more diverse council and those should be coming up in the next few months.

CHAIR VIGIL: Okay, and Mr. Ross, a motion to accept the resignation is necessary here?

MR. ROSS: Madam Chair, yes.

CHAIR VIGIL: Okay. What's the pleasure of the Commissioners?

COMMISSIONER SULLIVAN: Move for acceptance of the resignation.

CHAIR VIGIL: Okay. Is there a second?

COMMISSIONER MONTOYA: Second.

The motion passed by unanimous [3-0] voice vote. [Commissioner Anaya was not present for this action.]

XI. B. Appointment to MCH Planning Council, Betty Cardenas (Community Services Department)

MS. GARCIA: Betty, we're bringing her on as a representative of the substance abuse and incarcerated community to provide a more diverse group for us to look at issues that are facing residents of Santa Fe County.

CHAIR VIGIL: Questions?

COMMISSIONER MONTOYA: Move to approve.

CHAIR VIGIL: Motion, is there a second?

COMMISSIONER SULLIVAN: Second.

CHAIR VIGIL: I just want to say I'm really happy to see Betty working on that. I know Betty and I think she'll be excellent.

The motion passed by unanimous [4-0] voice vote.

XI. C. Re-Appointment to the MCH Planning Council, Lynn Hathaway, Ph. D and Marcia Panagakos, LISW (Community Services Department)

MS. GARCIA: Both of these women have agreed to serve another two-year term and they work in capacities that are very valuable to providing us input and guidance on the council.

CHAIR VIGIL: Pleasure of the Commission?

COMMISSIONER MONTOYA: Madam Chair.

CHAIR VIGIL: Yes, Commissioner Montoya.

COMMISSIONER MONTOYA: I take it that you look at attendance and contribution to the committee and all that? These people have satisfied that?

MS. GARCIA: Right.

COMMISSIONER MONTOYA: The reappointments?

MS. GARCIA: Yes. And they serve a very important role in the families that they're working with.

COMMISSIONER MONTOYA: Okay. Move to approve.

COMMISSIONER ANAYA: Second.

The motion passed by unanimous [4-0] voice vote.

CHAIR VIGIL: Please thank Marcia and Lynn for their commitment. They've been with the program almost since its inception. Thank you, Lisa.

XII. Resolution 2008-200. A Resolution Recognizing the State Authorization of an Appropriation (06-L-G-1893), Decreasing the Budget for the Pojoaque Valley Community Center Project By \$198,000 and Creating a New Project (08-L-G-5349) for the Nambe Headstart Facility Budget in the Amount of \$198,000 (State Appropriations Fund 318, Community Services Department)

COMMISSIONER SULLIVAN: Madam Chair, I'd just like to get some background on this. I understand from the packet material that this was a change in the state grant, and also this is for – somehow it's associated with the proposed community center. Could you explain that, Paul?

PAUL OLAFSON (Community Projects Director): Madam Chair, Commissioner Sullivan, yes. What had happened was in the past legislative session the legislature re-allocated approximately \$200,000 from the Pojoaque Valley Community Center

project to the Nambe Headstart project, and this is simply the mechanical recognition of that transaction, changing those grants. So this was a legislatively directed change.

COMMISSIONER SULLIVAN: And what will they use the money for in the Nambe Headstart project?

MR. OLAFSON: That project is to acquire property and then build a community park there that will include, I believe, two courts that could be used for basketball or tennis, etc., a walking path, a jungle gym kind of playground area, and a picnic area.

COMMISSIONER SULLIVAN: And then that reduces some money by the same amount I guess, the money for the Pojoaque Valley Community Center. Is that right?

MR. OLAFSON: That's correct.

COMMISSIONER SULLIVAN: And what's the status of that right now?

MR. OLAFSON: That project we're working on with the landowners to try and determine an appropriate site and look at access issues and we are actually scheduling another meeting with them next week. So we are moving forward. We have done some of the preliminary due diligence and we're trying to get into an agreement with them so we can start the actual designing and building. We have to acquire the property first.

COMMISSIONER SULLIVAN: And where is the property located?

MR. OLAFSON: That's adjacent to the Pojoaque High School.

COMMISSIONER MONTROYA: The Jacona Land grant?

MR. OLAFSON: To the west of the school campus there.

COMMISSIONER SULLIVAN: Okay. West of the new high school, not the old one.

MR. OLAFSON: Correct. West of the property line of the whole new school complex, yes. The high school complex.

COMMISSIONER SULLIVAN: The Jacona campus. Okay. All right. That's all the questions I had. Thank you, Madam Chair.

CHAIR VIGIL: All right. Anything further? Pleasure of the Commission?

COMMISSIONER SULLIVAN: Move for approval.

COMMISSIONER MONTROYA: Second.

The motion passed by unanimous [4-0] voice vote.

MR. OLAFSON: Thank you.

CHAIR VIGIL: Paul, before you leave, and I meant to mention it under Matters from the Commission, what a wonderful job the staff did for the groundbreaking for the First Judicial District. I was impressed by all those who were in attendance and by the way it was set up and how lovely the surroundings were and the environment, and how well decorated it was. And also the food was great. Please thank everyone who worked on that on behalf of the Commission. It was well done.

MR. OLAFSON: Madam Chair, thank you, and thank you again for your support and the County Manager's and everyone's support for helping us move this project

forward.

CHAIR VIGIL: Thank you.

XIII. B. Community Services Department

1. Request Approval of Amendment No. 12 to the Memorandum of Agreement Between Santa Fe County and St. Vincent Hospital for FY 2009 (Community Services Department)

STEVE SHEPHERD (Health & Human Services Director): Madam Chair, Commissioners, I'm bringing amendment 12 to the MOA between St. Vincent and Santa Fe County. There were changes in numbers and obviously dates within this agreement. They're spelled out pretty well on the spreadsheet that is attachment 1 to the agreement. The only other major change was the recitals and initial sections were rewritten for better clarity and so they were easier to understand and I'd like to thank our County Attorney for doing that. I think he did a good job. I'd stand for questions at this point.

CHAIR VIGIL: Any questions?

COMMISSIONER SULLIVAN: Madam Chair.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Shepherd, could you explain the difference between the community benefit fund – and I'm looking on the second page of your attachment, and other community benefits. And I understand, and correct me if I'm wrong, that the \$410,000 in the community benefit fund will subsequently be – or \$510,000, will subsequently be the subject of RFPs and a review by the Health Policy & Planning Commission. Is that correct?

MR. SHEPHERD: That's correct.

COMMISSIONER SULLIVAN: And then the other community benefits – workplace health initiatives, ensuring trauma coverage and OB support. These are all items that St. Vincent designates themselves, that we don't have any part in that. Is that how that works?

MR. SHEPHERD: Madam Chair, Commissioner, that's correct.

COMMISSIONER SULLIVAN: And what is the workplace initiative. What does that mean?

MR. SHEPHERD: Madam Chair, Commissioner, the workplace initiative was started a year or two ago by St. Vincent and it was their effort to come into businesses and organizations within the county to essentially survey their workers and make recommendations for things that they needed to do to improve their health – catch people that needed to go see the doctor, but essentially get them on a healthy track. And I believe the survey was distributed by our Human Resources Division to County employees. I don't think the response was very good.

COMMISSIONER SULLIVAN: And did we spend \$150,000 on it last year? Or did St. Vincent spend \$150,000 on it?

MR. SHEPHERD: Madam Chair, Commissioner, I'm thinking they spent at

least that. Yes. That would be my guess.

COMMISSIONER SULLIVAN: And then the second of the three items under that community benefits, ensuring trauma coverage/neurosurgery. Is that just paying for insurance?

MR. SHEPHERD: Madam Chair, Commissioner, no it's not. What it does – and it's probably worded not very well. It's to ensure that there is essentially neurosurgery coverage. It's the paid-for, on-call, to pay to get neurosurgeons in when one isn't there and to try to make sure that we've always got one there.

COMMISSIONER SULLIVAN: And how about OB support? What does that consist of?

MR. SHEPHERD: Madam Chair, Commissioner, generally OB support has been supporting the operations that either the hospital supports through their OB clinic over on Galisteo, or supporting the OB efforts of La Familia Medical Center.

COMMISSIONER SULLIVAN: Okay. It seems like some of these are routine operation costs of St. Vincent. I always felt the memorandum of agreement was services above and beyond what St. Vincent routinely does. The only thing that caught my eye there, the last thing was that there was a comment that we're using carry-over funds to fund the CARE Connect and Mr. Valdez made a comment at our last meeting about that as well. He seemed to indicate that we may have some problems coming up funding the CARE Connection and it seems to me that of all of these things should be at the top of the list. What's the status of that?

MR. SHEPHERD: Madam Chair, Commissioner, he's correct about that. This fiscal year we're fine. Next fiscal year we will be looking for money to keep the CARE Connection going, because we have over time accumulated a lot of carry-over and we've used that to run the CARE Connection but next year it's going to need an infusion of operating money to continue its services at the current level.

COMMISSIONER SULLIVAN: Does that include the sobering center or is that excluding it?

MR. SHEPHERD: Madam Chair, Commissioner, it includes both sobering and assessment.

COMMISSIONER SULLIVAN: Because I'm a big supporter of the sobering center, always have been and of course the CARE Connection provides that follow-up service that substance abusers need as they – once they return to the community. But it also substantially reduces the load on the hospital emergency room, the sobering center does. So I really feel of any of the items the CARE Connection is the one that belongs at the top of St. Vincent's list, as it were, along with the County's list. Do they see it that way or no?

MR. SHEPHERD: Madam Chair, Commissioner, we've had some – it kind of depends on who you talk to. We feel that the ER doctors and the ER is very happy that it's there. So we think there is that kind of support. I know it's a money issue as well though. So it is a money issue.

COMMISSIONER SULLIVAN: Well, I just would hope that next year it won't be taken as a given that it's the CARE Connection that's going to take the hit for any reductions

that may have to take place, because that's really one service that we provide that's right out there, right up front and if those individuals can't avail themselves of that service then they wind up utilizing our jail facilities at much greater expense, as we all know. So I'd be very strongly supportive of that.

And I understand also that your intent is to negotiate this MOA in advance of the agreement next year as opposed to subsequent to it. Is that the plan?

MR. SHEPHERD: Madam Chair, Commissioner Sullivan, that's correct. We did discuss that through negotiations this year and I think both parties are agreeable to do that.

COMMISSIONER SULLIVAN: So they're in agreement with that, because before, the reason was, given at least by St. Vincent was that there was legal problems in doing that somehow.

MR. SHEPHERD: I think we can work that out.

COMMISSIONER SULLIVAN: Okay. So you've overcome that hurdle. And that will be a great help I think to have these items negotiated ahead of time as opposed to backfilling the agreement, so to speak.

MR. SHEPHERD: Commissioner, I'd agree, and I appreciate your comments.

COMMISSIONER SULLIVAN: And when do the RFPs go out for these other \$410,000 worth of community services?

MR. SHEPHERD: Madam Chair, Commissioner, those RFPs are available now. They're available from our office, both by email, mail or you can pick them up. If you call 992-9841 you can receive one.

COMMISSIONER SULLIVAN: Okay. And well, there is one other thing. This year what I see is a little different is that whereas before, everyone competed in the RFP process, this year St. Vincent has decided that \$100,000 will be allocated to Su Vida without competing with any of the other community benefit providers. And last year \$45,000 was allocated to them. What has changed at Su Vida? What's happening there?

MR. SHEPHERD: Madam Chair, Commissioner, this year Su Vida is being run strictly by Presbyterian Medical Services. It used to be a joint venture of the hospital and Presbyterian Medical Services. This is at least a part if not all of St. Vincent's obligation that they – I guess obligation's a good word, to Su Vida, and they included that in the negotiations knowing that they were obligated to pay that, at least this much this year. I don't know if there's more. But they ask that this be put in – taken from the community benefit fund and designated.

COMMISSIONER SULLIVAN: So last year the \$45,000 went to Presbyterian.

MR. SHEPHERD: Well, it went to the joint venture.

COMMISSIONER SULLIVAN: Of Presbyterian and St. Vincent.

MR. SHEPHERD: St. Vincent. And basically, what's happened, I think it's probably just a change in their corporate status. Presbyterian is now the entity that runs Su Vida, as opposed to a joint venture.

COMMISSIONER SULLIVAN: But this year it doubled, and why is that? Are they seeing twice as many patients?

MR. SHEPHERD: Madam Chair, Commissioner, I don't know if they're seeing

twice as many patients. I know that they probably need the money and I think part of the agreement between Presbyterian Medical Services and St. Vincent's probably was to pay a certain amount of money for their support.

COMMISSIONER MONTOYA: That's not our agreement though, is it.

CHAIR VIGIL: Do you have a question, Commissioner Montoya, on that?

COMMISSIONER MONTOYA: Yes. Is that our agreement too, or is that between two other entities that we're filling in the blanks?

MR. SHEPHERD: Madam Chair and Commissioner Montoya, this is one of the things that we agreed to within the negotiations, when it was negotiated. They gave us some things that we asked for and this is something they asked for. And that's how it happened.

CHAIR VIGIL: Anything further?

COMMISSIONER SULLIVAN: Nothing further from me, Madam Chair.

CHAIR VIGIL: Is anybody here from St. Vincent at all? You know, Steve, one of the things, and I've been involved in the joint venture here with St. Vincent's since its inception with the sole community provider dollars. One of the things that has yet to be crystallized is that when these dollars go out into the community, the marketing component identifies that it's a joint venture between Santa Fe County and St. Vincent's. For example, the nursing scholarships that go out. They're always marketed and the word out there is that they're from St. Vincent's. It's always been my understanding and I'd like to learn if St. Vincent's has a different understanding. It's always been my understanding that without these sole community provider dollars being made available, these dollars would not be available to be put out in the community.

So that when you look at the item that looks at marketing and educational outreach, I think that St. Vincent's needs to include Santa Fe County as a partner in providing these dollars to the community. Do you have a different sense, or do you have an understanding as why St. Vincent's hasn't done that. Perhaps that's not a fair question. Maybe we'll save it for the Healthcare Board. Is that something that you know they prefer not to?

MR. SHEPHERD: Madam Chair, what I could tell you could only be an opinion but I agree with you. It's been a mixed bag at times. They have recognized this. At times it is St. Vincent that's in the spotlight. But I'll be happy to sit down and talk with them about working on making that –

CHAIR VIGIL: I'd actually like to propose that if we approve this we include language in the agreement that – and I'll leave it to the attorneys to decide what that language would be – that markets these community dollars both through a joint partnership between Santa Fe County and St. Vincent's Hospital. And I would just propose if anyone is interested in making a motion that they consider including that in the agreement. That's all I have. Is there any other –

COMMISSIONER SULLIVAN: Move for approval as amended by
Commissioner Vigil.

CHAIR VIGIL: There's a motion with the amendment. Is there a second?

COMMISSIONER ANAYA: Second.

COMMISSIONER MONTTOYA: What's the amendment?

CHAIR VIGIL: The amendment was to include language in the agreement that will market all of these health initiatives in the community to include it being a joint partnership between Santa Fe County and St. Vincent Hospital.

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: And I saw a commercial the other day that St. Vincent and CHRISTUS put together. They didn't include Santa Fe County.

COMMISSIONER MONTTOYA: They never have.

COMMISSIONER ANAYA: So I agree with what you're saying.

CHAIR VIGIL: There have been a few events and things of that nature that they said joint partnership with Santa Fe.

MR. SHEPHERD: They do better in the print media.

CHAIR VIGIL: They do better in the print. And I'm not sure how that needs to be worked out. And I will ask Mr. Valdez at our next meeting. That really does need to be a part of what's going out there. I think residents need to know that without this partnership these dollars wouldn't be available.

COMMISSIONER MONTTOYA: Madam Chair, I guess the only thing I would say is that I agree with Commissioner Sullivan in terms of the concern, particularly with the CARE Connection and the sobering center, that whatever is negotiated next year be done so that it includes that, and if something needs to be cut from somewhere else that something else be cut other than that program. Because my understanding is that that program is in jeopardy right now of being lost to the community because of lack of funding. So if we're committing on the community benefit fund without even putting it out to bid I think we need to take care of what we've got first and certainly the sobering center and CARE Connection, we've put a lot of time and money into that program and I think that one needs to continue. Certainly, over something like Su Vida, which is getting an unsolicited amount already. So, just my comments, Madam Chair.

CHAIR VIGIL: Thank you. Any further? There is a motion to accept the MOA with amendment.

The motion passed by unanimous [4-0] voice vote.

XIII. B. 2. Discussion and Review of Potential Projects for Community Development Block Grant (CDBG) Application for 2009 Grant Cycle – Public Hearing (Community Services Department)

MR. OLAFSON: Madam Chair, Commissioners, we have here a second public hearing regarding applications for a Community Development Block Grant for the 2009 cycle. The grants are due in December, December 19th. At the next meeting we will bring forward a

resolution for the Board to consider authorizing staff to apply for a grant. What we've identified so far as the most viable grant so far is the Valle Vista water treatment plant. This plant serves approximately 270 residents in the Valle Vista subdivision, which is part of the County's affordable housing project, and it does serve low to moderate income families. The project is important to help protect these residents, prevent the degradation of neighborhoods and has an urgency due to the condition of the sewer system which does need improvement.

This is the second public hearing and again, at the December meeting we'll bring forward a resolution for the Board to consider. And this is a public hearing. And with that, I'll stand for any questions.

CHAIR VIGIL: Questions?

COMMISSIONER MONTOYA: Madam Chair.

CHAIR VIGIL: Commissioner Montoya.

COMMISSIONER MONTOYA: What's the amount that we're going to apply for?

MR. OLAFSON: Madam Chair, Commissioner Montoya, this year they have increased the amount from \$300,000 to \$500,000, and we are applying for \$500,000.

CHAIR VIGIL: Further questions? Are we, Paul, also applying with the Water Trust Board for any dollars for this project?

MR. OLAFSON: Madam Chair, we did not send an application this year, I don't believe, to the Water Trust Board but we did submit a unified funding application. I was just looking at Doug to nod his head that that's correct.

CHAIR VIGIL: Okay. Is that correct, Mr. Sayre, that we did not?

DOUG SAYRE (Water Utilities Division): Madam Chair, members of the Commission, we did not apply to the Water Trust Board on this project. The requirements for the Water Trust Board were very rigorous and required prior consideration by the Board with a resolution to consider, but we did file a unified funding application to the state for consideration of funding under their general programs.

CHAIR VIGIL: General programs, what does that mean? Severance tax dollars?

MR. SAYRE: Well, it means that we could money from the construction programs, we could get money from I guess DFA. There's a number of them. I don't remember all of them. But also I think it can be consideration we could get to the Water Trust Board also in the future. So that's the reason we looked at that option, was that it was more general in nature and we could look at possibly loans or grants.

CHAIR VIGIL: Are we also in touch with the New Mexico Mortgage Finance Authority for any grants or dollars available?

MR. SAYRE: it's my understanding this UFA application goes to them also.

CHAIR VIGIL: Okay. Thank you. Commissioner Sullivan.

COMMISSIONER SULLIVAN: Doug, is this recommendation for the wastewater treatment plant or for the water treatment plant?

MR. SAYRE: You're correct. It's a wastewater treatment plant.

COMMISSIONER SULLIVAN: We don't have a water treatment plant there,

do we?

MR. SAYRE: No, sir, we do not.

COMMISSIONER SULLIVAN: So, of course the Water Trust Board only takes applications for water things, so they wouldn't take an application for wastewater treatment.

MR. SAYRE: That was probably another consideration that we hadn't gotten into, why we pulled off and went for a UFA under that category.

COMMISSIONER SULLIVAN: They only do water projects. They don't do wastewater projects to my knowledge. But we just – those homes, those 270 homes are served by our well, right?

MR. SAYRE: Madam Chair, Commissioner Sullivan, they are served by the wells in the area but they're also served with the County water system.

COMMISSIONER SULLIVAN: Okay.

MR. SAYRE: So we have a dual way to feed all those homes.

COMMISSIONER SULLIVAN: But what we're looking to do is to upgrade that wastewater treatment plan. Have we finished the feasibility study on that?

MR. SAYRE: Madam Chair, Commissioner Sullivan, that's pretty well finished. We're just hoping for consideration that it could be used possibly to go down towards the state pen. But we will finish that to just consider that this will be – the plan will be at that Valle Vista site, rather than at the state pen site.

COMMISSIONER SULLIVAN: Okay, because it would be good to have that completed and a good cost estimate when we go to the legislature to look for money. It's going to be slim pickins this year.

MR. SAYRE: Agreed. Thank you.

COMMISSIONER SULLIVAN: That's all the questions I had.

CHAIR VIGIL: Okay. What's the pleasure of the Commission?

MR. OLAFSON: Madam Chair, I just wanted to re-emphasize this is a public hearing and this is to take community input on any project ideas for infrastructure. This is the project that we've been looking at but it could include other projects, just to make sure we do that public hearing aspect to allow for that.

CHAIR VIGIL: Thank you, Mr. Olafson. Is there anyone out there in the public who would like to address the Commission with regard to this item on the agenda, the Community Development Block Grant for Valle Vista wastewater treatment? Seeing none, what is the pleasure of the Commission?

MR. OLAFSON: Madam Chair, again this is just a hearing to take in public input. There's no action required and we will come back in December.

CHAIR VIGIL: You're required to do how many public hearings on this? Two or three?

MR. OLAFSON: A minimum of two. This is our second and the third we'll have –

CHAIR VIGIL: So the last hearing was publication of title and general summary?

MR. OLAFSON: No, the last hearing was just a public input discussion. That was last meeting, then this meeting, then in December we'll bring the resolution for the Board to authorize staff to send in an application.

CHAIR VIGIL: Thank you, Mr. Olafson.

MR. OLAFSON: Thank you.

XIII. B. 3. Request Approval to Amend the Fire Department's Volunteer Incentive Program Resolution 2007-159 to Increase Amounts From \$6.00 to \$10.00 for a Response to an Emergency 911 Call and From \$2.00 to \$4.00 for Approved Training.

STAN HOLDEN (Fire Chief); Madam Chair, members of the Commission, thank you for your consideration of this article. This resolution does two things, as you addressed. One increases the reimbursement for an emergency response and for an approved training, but more importantly, it probably also clarifies specifically some legal language that Mr. Ross so eloquently placed in the resolution and I think it more clearly defines and clarifies for the department the limitations of which we can operate within the incentive program. And I stand for any questions.

CHAIR VIGIL: Are there any questions?

COMMISSIONER MONTOYA: Madam Chair, what's the cost on this, Stan? And this is going to be a recurring cost?

CHIEF HOLDEN: Madam Chair, Commissioner Montoya, it is a recurring cost. We set aside \$250,000 for this program, and to date we've spent much less, significantly less than that and I believe we attached an FIR that shows you exactly what we've spent to date.

COMMISSIONER MONTOYA: What's fund 244?

CHIEF HOLDEN: Fund 244 is the countywide emergency services tax which funds the fire department operations and specifically, I can tell you that without these types of services for our volunteers, we'll be forced more and more into a situation where we're looking at adding additional paid staff and the possibility of that in the future is significant, and the longer we can delay that by keeping our volunteers, the better we'll be, from a budget standpoint.

CHAIR VIGIL: We're trying to figure out here, Mr. Holden, I think there was an amendment to this that not all of us received. Give us a minute, please.

COMMISSIONER SULLIVAN: Madam Chair.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I've been reading through that. I looked at it in Steve's email this morning. The question I had, Mr. Ross was the \$7,344 limit, is that statutory or where does that come from?

MR. ROSS: It's regulatory. It comes from the Wage and Hour Division of the United States Department of Labor. And it represents 20 percent of the lowest wage that we

have in place for volunteer firemen and volunteer EMS personnel. That's the limitation. Twenty percent of what you would otherwise a full-time person to do that work.

COMMISSIONER SULLIVAN: And so once they reach that amount of reimbursement they can't be granted any further reimbursement?

MR. ROSS: Correct.

CHAIR VIGIL: Any further questions?

COMMISSIONER SULLIVAN: The only thing that was a little confusing to me, reading it very quickly, is on page 2, in the middle where you paragraph 16. And the fourth line down says "shall not receive payments pursuant to this resolution of the volunteer firefighter or volunteer emergency medical technician has received the sum of \$7,344. So it's really more than that sum. It's not that they receive that sum – it means – and you say it a little bit clearer I think a little further down where you say that the medical technician or volunteer emergency medical technician has received the sum of \$7,344 in the current fiscal year, once he's received \$7,344 no volunteer incentive payments shall be authorized for the remainder of that fiscal year. So it's –

MR. ROSS: Like we lawyers do, we sometimes state things in the affirmative and the negative to make sure the point is raised, and that's what the purpose of that last sentence is, to make it doubly clear.

COMMISSIONER SULLIVAN: It's up to \$7,344.

MR. ROSS: Correct. Correct.

COMMISSIONER SULLIVAN: Okay. I just want to clarify that. That's all the questions I had.

COMMISSIONER MONTOYA: Madam Chair, this makes it clear then that this is for volunteers and volunteers only.

CHIEF HOLDEN: Madam Chair, Commissioner Montoya, that's correct. This can only be volunteers.

COMMISSIONER MONTOYA: Okay. And then the answer to my question again, in terms of the recurring costs, is this something that at this time we can afford to do? Is this a pretty static fund in terms of what's being collected annually?

MR. ABEYTA: Madam Chair, Commissioner Montoya, it does come from GRT, and so it's just something like the other things with GRT we just keep an eye on from year to year, and if we have to come back and amend it, because GRT is lower, then we would come back and amend the resolution and lower the amount. But it is something that we did budget for with this year's budget.

COMMISSIONER MONTOYA: So we're okay this year.

MR. ABEYTA: We are. But that's the same with all of our – it would just be another thing we need to keep an eye on and if GRT comes in at lower rates then we'd be meeting with Fire to talk about, okay, do we need to go back to the Board and lower this amount?

COMMISSIONER MONTOYA: Is this something that is like critical that we do? Right now?

CHIEF HOLDEN: Madam Chair, Commissioner Montoya, it is from my perspective critical. These expenses right now are coming out of the pockets of our volunteers. So they're not only giving of their time, they're also giving of their resources, and this is a small way that we can legally reimburse them for those expenses.

COMMISSIONER MONTOYA: And then, Roman, when will we know more or less what the return is on our GRT for this fund, as with any others?

MR. ABEYTA: Madam Chair, Commissioner Montoya, we will not know exact numbers until mid-year, January, on both GRT and property tax. But GRT we do have reports that we get every month, but they're for two months behind. So the report we received this week was for September. So that's just something that we will monitor monthly as a County.

COMMISSIONER MONTOYA: So, if we approve this we may, a year from now, be rescinding it if we have a budget shortfall?

MR. ABEYTA: We may, in GRT. We may. Or cutting somewhere else to keep this. To keep this in place. It just depends what kind of shortfalls we're looking at.

COMMISSIONER MONTOYA: Okay.

CHAIR VIGIL: Let me ask a question along those lines, Roman. Not that I do not support the intent here, but it seems to me that this request was probably down the pipeline before we knew how much we were going to have to tighten our belts. And I know that you and key staff people are working on recommendations to the Board of County Commission and we'll probably be hearing some of those later. Most of that will be inclusive if I remember correctly of no more merit increases. We're only going to do essential hires. I wonder, is this a particular request that came before you before we knew we were in the economic tightrope that we're in?

MR. ABEYTA: Madam Chair, yes. This item had been proposed since we approved this year's budget, which would have been six months ago and this is something that we've been working on over the past several months.

CHAIR VIGIL: Okay. And this – I guess the question I have for you is would you or can you represent staff's position with regard to this – would it be better to not approve this and factor it into a prioritization as you recommend changes for us with regard to how we will be treating volunteer employees, in the future?

MR. ABEYTA: That is something that we could take a look at. I just – I'm just not sure how desperate the Fire Chief is to get this done.

CHAIR VIGIL: Oh, he's desperate.

MR. ABEYTA: It's something we could – the resolution is done. If you'd like, we could put it off until we have our mid-year discussion in January. This could be one of the top priorities that we fund, once we have a better idea. It just depends on the Commission's – how comfortable the Commission feels implementing this at this time.

COMMISSIONER MONTOYA: Madam Chair, I would feel more comfortable holding off, just because of not knowing exactly where we're going to be fiscally in getting those reports back. Personally, that's where I'm at.

CHAIR VIGIL: Hesitantly, because it's always with heartfelt statements I make

for firefighters and volunteers but there are so many things to balance right now. I'd love for this to be a priority but I'm also leaning towards that way. Stan, behind you is Councilor Rita Loy Simmons from the Town of Edgewood. I'd like to recognize her and just ask if there's anything she would like to contribute to this discussion.

RITA LOY SIMMONS: Thank you very much, Commissioners, Councilors. I'm a great proponent of volunteerism. I don't think that our Fire Chief could put a dollar value on our volunteers. I'd like to give you a personal experience. One of the EMTs that took my mother to the hospital two months before she died, as part of the Santa Fe County Fire Department also had a second job and he was working the emergency room at Lovelace. And I caught him checking on her. And I thought, this is neighborly, it's volunteering his time just to make sure my mother's okay, there to give me counsel.

In the southern end of the county, I know that a volunteer fire person, each time they go to the fire department for a meeting or for a call-up can have a roundtrip of 40 miles, just depending on how far they live. At least a roundtrip of 20, no less than 20, especially if they live where Commissioner Anaya lives. They spend a lot of their time and resources and if you balance the dollar value donated to the County as these people are empowering the County and empowering our Fire Department and the response time. I would urge you to consider this now. I think anybody can understand if you have to have a fallback position, but they are the backbone of our community. Our Fire Department, our police entities. We have some wonderful people out there.

But I want to thank you very much for considering this and giving consideration to those volunteers that can put their life on the line too. So thank you very much, Commissioner Anaya, Commissioner Vigil, Commissioner Sullivan, Commissioner Montoya.

CHAIR VIGIL: Thank you for coming down. Appreciate it.

MS. SIMMONS: I appreciate everything you do for the Town of Edgewood.

Thank you.

CHAIR VIGIL: Stan, it sounded like you wanted to continue your advocacy here. Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Madam Chair. Thanks, Councilor, for coming up. Good to see you. The last time this was on the agenda I was upset that it was pulled off. I was glad to see that this is on the agenda today, maybe because I was a volunteer fireman at one time. And I would still respond if I could. But things change. They're always in training, updates on fire engines. It's a lot of work. Maintenance. So I think that to me, this is important. If we don't send a message today that we're behind our volunteer firemen, it's going to send a bad message. And I know that we're under budget constraints, but we talked about this. This has been – as I just heard, it's been talked about six months prior.

I think that it is important that we try to give our volunteers something that work hard for us in our communities, in our small communities. Four dollars for a training. Four dollars. That is nothing. Ten dollars for a call. That is nothing. And Rita Loy, Councilor, you hit it right on the spot. Some of those – most of our county volunteers have to drive 20 miles. So what is \$4? And I don't know the total figure but I think it's important that we send a message from this

Commission saying we support our volunteers, and by approving this it would say that. Thank you, Madam Chair.

CHAIR VIGIL: Any other comments? Okay. I just want to editorialize. In my profession, if I don't volunteer I have to pay. We're required to do pro bono work in the legal profession and I think volunteerism still should be a part of our system and through our state bar they try to make it that way by specifying requirements so I recognize the need for volunteerism and appreciate our volunteer firefighters. What is the pleasure of the Commission?

COMMISSIONER ANAYA: So moved.

COMMISSIONER SULLIVAN: Second.

CHAIR VIGIL: There's a motion and a second to approve item B. 3.

The motion tied by a 2-2 voice vote, with Commissioners Anaya and Sullivan voting in the affirmative and Commissioners Montoya and Vigil voting against.

CHAIR VIGIL: What does that mean, Mr. Ross? Does that come back for a full Commission vote?

MR. ROSS: Madam Chair, under our rules of order, when there's a member missing and there's a tie it comes back to the next agenda for a vote only.

CHAIR VIGIL: Okay. And maybe then you can make me change my mind.

COMMISSIONER MONTOYA: Madam Chair.

CHAIR VIGIL: Commissioner Montoya.

COMMISSIONER MONTOYA: And I could just explain the no vote. It has nothing to do with the value that I feel that our volunteer firefighters provide for this community. It has to do strictly with the budget and where we're at at this point, not knowing where we're at at this point. It's an unknown. The unfortunate reality is that if we are in the same situation six months, 12 months from now and we have to cut somewhere, well, then what if we had to cut them again? Are we saying that we don't value them because we have to cut them because they're volunteers? It's a real Catch-22. But I would rather err in caution than to go ahead and do something not that we may have to take a look at in six to 12 months and have to cut again. It's probably going to be a one- or two-month delay in terms of getting some figures and reports of where we're at. I don't think that's a huge delay. It's going to be one month, 60 days, two months, before we're able to act on this again and have, at least for me, Madam Chair, some more information in terms of making a much more rational decision in terms of where we're headed budget-wise.

CHAIR VIGIL: That would be my vote and I would ask that if we prioritize the budget it provides for it.

COMMISSIONER SULLIVAN: Madam Chair.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I think, just to explain my yes vote, that I think Commissioner Montoya has an excellent point and that is that once we start a train of funding then it's very difficult to take it back and to say, well, we're not going to do that anymore and it

reflects negatively on the volunteers which none of us wants to do. I think one of the reasons for my yes vote here, in addition to the fact that we know the volunteers work hard and that we need to keep them active is the fact that this resolution tightens up some problems that we've had in the past as to what the definition of a volunteer is. And quite frankly we have been paying, I think, some individuals who are employees who can't be paid as volunteers. Am I correct in that, Stan?

CHIEF HOLDEN: That's correct.

COMMISSIONER SULLIVAN: So I think what's going to happen here, and I don't have the figures, so it's only speculation, I think what we're going to see with this resolution is probably even though we're increasing the per diem payment, that we're not going to really see any difference in additional payments because there are going to be some individuals who have been receiving payments who are employees who are not going to be receiving payments in the future. So that may wash out. So I think probably what we may have here is a resolution that has better specificity over who is and who isn't eligible but may end up being budget-neutral as a result of that. And I don't know that for sure, and Stan, if you can have any comments on that chime in, please.

CHIEF HOLDEN: Madam Chair, Commissioner Sullivan, that's pretty close to correct. Right now we have some volunteer firefighters who serve in what we called PRN or as-needed capacities, and so they're basically in a dual role. And when we, with the adoption of this resolution, those individuals who serve in that capacity could not receive the benefit of both. They couldn't be paid a salary for doing their PRN work and collect the incentive pay.

COMMISSIONER SULLIVAN: So they can't be double-dipping. And this clarifies that where there's been some lack of clarity on that in the past. Am I correct on that?

CHIEF HOLDEN: Madam Chair, Commissioner Sullivan, as with any new program, you kind of learn as you're going into it things that you need to fix and amend and this is one of those fixes.

COMMISSIONER SULLIVAN: So I think that there's some good benefits to this. I think we've cleaned up something that could possibly get us into lawsuits. I don't know. But certainly may have resulted in some bad feelings in the past because of our inability to specify quite clearly who is and who isn't eligible for these payments, which I think this resolution does. So that's another reason I feel it's a timely resolution, Madam Chair.

CHAIR VIGIL: Thank you. Just a quick question. Mr. Ross, whether this resolution gets enacted or not, we are required to comply with the Fair Labor Standards Act and all the issues that this resolution addresses. Is that not correct?

MR. ROSS: That's correct.

CHAIR VIGIL: Okay. Thank you very much.

XIII. C. Growth Management Department

1. Request Authorization to Publish Title and General Summary of an Ordinance Amending Ordinance No. 2006-12 to Revise the Boundary of the Village of Agua Fria Traditional Historic Community (Growth Management Department)

ROBERT GRIEGO (Senior Planner): Madam Chair, Commissioners, Robert Griego, Growth Management Department.

CHAIR VIGIL: And Renee Villarreal has been helping you with this, correct? Welcome.

MR. GRIEGO: Madam Chair, Commissioners, the Village of Agua Fria Traditional Historic Community boundary amendment is a request from property owners to amend the boundaries. We have received several requests from property owners to be included in the traditional historic community. The existing ordinance allows property owners to request inclusion. We have gone out to the community and had several community meetings and received significant community input.

This request is to create a logical planning boundary for the traditional historic community. This area is also within the presumptive joint City-County annexation agreement, and for purposes of planning it would be important to have a clearer planning boundary for the Village of Santa Fe, as that will remain in the county. Staff is requesting authorization to publish title and general summary for the ordinance at this time, and would bring forward next month the boundary recommendations.

CHAIR VIGIL: Okay. Are there any questions?

COMMISSIONER MONTOYA: Madam Chair, I would move for approval.

CHAIR VIGIL: Okay, I have a motion for approval. Is there a second.

COMMISSIONER ANAYA: Second.

CHAIR VIGIL: Okay, Commissioner Sullivan.

COMMISSIONER SULLIVAN: Robert, I see here about certainly maybe more than 100 parcels are designated in blue that would be included in the traditional historic community. Have we had requests from 100 people to be included?

MR. GRIEGO: Madam Chair, Commissioner Sullivan, no, we have not. We've had several requests in each of the areas. If you look to the far northeast corner of the map, that's the area up to 599. We've had property owners within that area have requested it. We've had property owners in each of these areas request. We've had two community-wide meetings and at this point we have received verbal – or we had an exercise at one of the community meetings where people put dots on a map. We've also – there's a petition that some property owners have that we have not received. We've also received a stack of requests to our office. So at this time we're basing – we propose to bring forward next month a clear, definitive boundary based on property owners' requests and also based on a logical planning boundary.

COMMISSIONER SULLIVAN: Okay. The engineer in me says this is very

nice because it's nice and neat and tidy on the boundaries and everything and so that fills in all of the gaps there. But I just wonder what happens if someone who's along that new boundary, if this is the new boundary, wants to be annexed into the city from the THC? Can that happen? Do they go through the new – and maybe Mr. Ross can respond to this – do they go through the new Extraterritorial Zoning process, or is that not allowed at all because they're in the THC?

MR. GRIEGO: Madam Chair, Commissioner Sullivan, I'd like to take the first part of that question then turn it over to Mr. Ross. This boundary again, it's just a proposed boundary. We've talked to some of these property owners. We know that some of these property owners have requested to come in. There are some questions about the property owners that are sort of in the middle, and that's a question I'd like to turn back over to the County Attorney. But with the property owners that we have requested inclusion from, those are the ones that we're going to bring you and we're going to identify those properties to you at the next meeting and we'd also like to make recommendations based on the input that we have.

COMMISSIONER SULLIVAN: And then the question to Mr. Ross is, if we were to end up adopting this map as shown here, and someone who's on the boundary adjacent to the city decides that they want to develop their property and they can do it better by being annexed into the city, what's their procedure for doing that? Can they do that or not?

MR. ROSS: Madam Chair, Commissioner Sullivan, they would have to come to this Board and this Board would have to take the property out of the THC by ordinance.

COMMISSIONER SULLIVAN: Ah. Okay. So there is no annexation procedure once it's in the THC.

MR. ROSS: Right. Correct.

COMMISSIONER SULLIVAN: Okay. So that makes it even more important that we know for sure what that boundary is and so – you do say here potential Agua Fria parcels and I know you've had a couple of meetings and they've been well advertised, so I think we need to be very sure that everybody has had an opportunity to voice their opinion here because in the past, all of these stringy little additions to the THC have been actually the requests of single applicants, which I don't know that that's the way to go either. I've never thought that's the best way to plan for the THC. So I don't have a problem of looking at the whole THC as a unit, as a planning unit, but we darn sure better be sure that everybody knows, particularly like I say there's at least 100 of them there, parcels, that this is currently what's being considered so they have an opportunity to come to the hearings and state their point of view.

MR. GRIEGO: Madam Chair, Commissioner Sullivan, yes, we agree with you 100 percent on that. We have sent out over 150 letters to community members on two different occasions. We will send out another mailing to property owners prior to the Board hearing.

COMMISSIONER SULLIVAN: Thank you, Madam Chair.

The motion passed by unanimous [4-0] voice vote.

XIII. C. 2. Consideration and Approval of Amendment No. 6 to the Customer Contract for Commitment of Water Service By and Between Santa Fe County (County) and John J. McCarthy (Customer) (Growth Management Department)

MR. SAYRE: Thank you, Madam Chair and Commissioners. Before you you have amendment number six to the customer contract for commitment to water service between Santa Fe County and John J. McCarthy. The reason for this amendment is that I think the existing developer on the land has terminated their agreement with the State Land and therefore what was going to happen on this is now ceased and John McCarthy then needs to have another year to try to work out the logistics of getting development and submitting, as it says in here, for final plat approval by December 28, 2009. Can I maybe answer any questions regarding this?

CHAIR VIGIL: Are there any questions? None? Okay, the applicant is here. Does the applicant care to address the Commission at all? Please state your name and address.

CHUCK DUMARS: Madam Chair, members of the Commission, I'm Chuck Dumars. I represent John McCarthy. I'd stand for any questions that you may have about this one-year extension. I would say that we have been talking to the State Land Office; they have submitted a letter in support. Given the nature of things and the commitment of over \$700,000 of Mr. McCarthy to keep this going, he's willing to work with the State Land Office to make this happen if we do get the extension. If we don't, it will go away so it's really vital to him that we do get the extension.

CHAIR VIGIL: Thank you, Mr. Dumars.

COMMISSIONER ANAYA: Move for approval.

COMMISSIONER MONTROYA: Second.

CHAIR VIGIL: Motion, seconded. Commissioner Sullivan.

COMMISSIONER SULLIVAN: Madam Chair, the only issue I have with this is that this agreement was executed back in 1999, when we were buying water for \$20,000 an acre-foot. Now it's at least \$30,000 an acre-foot. It's not Mr. McCarthy's fault, I'm sure that the development hasn't gone forward but in order for us to prove up on this commitment that we've made to provide 22 acre-feet at \$20,000 an acre-foot we're going to go in the hole. We're now charging applicants who don't bring water rights to the table \$30,000 an acre-foot, and I think that's one of the things that we need to consider here is this agreement needs to be updated to what the cost of it is for us to supply the water that we're agreeing to supply here.

MR. SAYRE: Madam Chair and Commissioner Sullivan, perhaps I could add to this. Through all these years this contractor has paid standby fees for the amount of water

he has committed to. Although he committed back in 99 and paid a certain amount, he has paid fees up to this time to keep that contract in order. And he is up to date on that. So he has paid standby fees to make sure that that's still in place. Plus the fact he has moved a substantial amount of water rights to the Buckman Direct Diversion to help support this development which has been costly to him at whatever the market value is for those rights.

COMMISSIONER SULLIVAN: Okay. That's important. What he's moved to the Buckman Diversion, is that in addition to the 22 acre-feet?

MR. SAYRE: Madam Chair, Commissioner Sullivan, yes it is.

COMMISSIONER SULLIVAN: Okay. And then how much in standby fees has he paid?

MR. SAYRE: Madam Chair, Commissioner Sullivan, we did an evaluation but he tells me he's paid \$216,000 to date of standby fees.

COMMISSIONER SULLIVAN: \$216,000 in standby fees. Well, I appreciate that we charge anybody standby fees. Anybody who wants service whenever they want it at their discretion has to be pay standby fees and that applies to landowners as well as anyone, but my concern is still that we're going to have to cough up \$30,000 in order to provide water at the rate of \$20,000 an acre-foot, or more, depending on how tight the water rights market gets when they are ready to develop. So that's still a concern I have, Madam Chair.

CHAIR VIGIL: Thank you. There is a motion on the floor.

The motion passed by majority 3-1 voice vote with Commissioner Sullivan voting against.

XIII. C. 3. Memorandum of Agreement Between the County of Santa Fe and the North Central Regional Transit District to Provide Shuttle Bus Service Between Edgewood, Eldorado and the City of Santa Fe (Growth Management Department)

MR. ABEYTA: Madam Chair, I passed out earlier a memorandum of agreement between the County and the Regional Transit District. I have extra copies if you can't find that.

CHAIR VIGIL: Okay. Please proceed.

MR. ABEYTA: This agreement, Madam Chair, will replace an existing agreement that we have between ourselves and the Regional Transit District for shuttle bus service between Edgewood, Eldorado and the City of Santa Fe. The existing agreement ran from January of 2007 and expires in January of this next year, January 2009. The Regional Transit District has requested that we amend the agreement for two purposes. One is to align the agreements with their federal fiscal year, which runs from October to September, and two, to increase the amount of the agreement by \$20,000, because that, according to the Regional Transit District of the service. So the request today is for approval of a new MOA

which will replace the existing one and would be effective retroactively to October 1st of this last year and will run to July of next year. And it will be for \$120,000.

CHAIR VIGIL: Okay. Questions?

COMMISSIONER ANAYA: Move for approval.

COMMISSIONER MONTOYA: Second.

CHAIR VIGIL: I have a motion and a second. Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Abeyta, I guess my question is why we're having to pay the transit district for this service when the services that they're providing in the northern part of the county are being provided free. And by free, I mean not only free to the riders but they're using between a million and a half and two million dollars a year in federal funds to provide those routes at no cost. So are they applying federal funds to this route? It seems like we should get our fair share of those federal funds.

MR. ABEYTA: Madam Chair, Commissioner Sullivan, I'm not sure how much of federal funds they're applying to this route. Jack Valencia with the NCRTD is here and also Jack Kolkmeyer is here. Maybe one of them could answer that question.

CHAIR VIGIL: The question, Mr. Valencia is are the residents in the north receiving free service, non-federally subsidized, and how do you compare that to the memorandum of agreement we're approving?

JACK VALENCIA (NCRTD): Madam Chair, Commissioner Sullivan, there are matched funds that the pueblos and Española pays to the RTD to run services in order for us to maximize other funding available. And that is similar to what is being done in the Eldorado area. Of the monies that are needed in order to run that service it's \$120,000 per the amended agreement that we're talking about in addition to \$100,000 of Los Alamos gross receipts taxes that are being attributed and directed towards that, in addition to Jobs Access Commute monies which are federal funds that are assisting in total, in the aggregate funding that route in the Eldorado-Edgewood corridor. So in direct answer to the question, monies are being sought by all parties and we're leveraging federal funds in all areas of the county.

COMMISSIONER SULLIVAN: Madam Chair, my question was how much federal funds are being utilized by NCRTD in this route, or being proposed in this agreement.

MR. VALENCIA: Madam Chair and Commissioner Sullivan, I didn't bring the specific figure but as I recall it's approximately \$40,000 to \$50,000 of federal monies that are being utilized for the Eldorado route.

COMMISSIONER SULLIVAN: \$40,000 to \$50,000 out of the million and a half dollars doesn't seem to be a fair allocation of funds based on ridership and based on the amount of taxes this county is going to contribute.

MR. VALENCIA: Madam Chair and Commissioner Sullivan, it isn't one and a half million dollars. The \$50,000 is speaking specifically to the Eldorado route. And that amount of money in total is approximately \$270,000, approximately of what that route costs, of which \$50,000 of it is coming from federal funds, \$100,000, as I stated earlier, is coming from Los Alamos gross receipts to the county's allocation, in addition to the County paying \$120,000. So when you look at in specifics, it's \$120,000 that the County is contributing for

a \$270,000 project, which is less than 50 percent of the total.

COMMISSIONER SULLIVAN: Am I wrong that the NCRTD receives about \$1.5 million a year in federal funds?

MR. VALENCIA: Yes, you are wrong.

COMMISSIONER SULLIVAN: Okay. How much do we receive?

MR. VALENCIA: Approximately \$1.1 million.

COMMISSIONER SULLIVAN: \$1.1 million a year. Okay, then that of that \$1.1 million next year we're going to get \$50,000, roughly, or \$40,000 for this route as Santa Fe County's share of those federal funds?

MR. VALENCIA: That is incorrect, Madam Chair and Commissioner Sullivan.

COMMISSIONER SULLIVAN: How much will we get?

MR. VALENCIA: Madam Chair and Commissioner Sullivan, I'm not able to answer specifics with regard to that, but I can answer that federal funds are being applied to routes that come into Santa Fe County from the north, from the pueblos in which we're assisting within federal funds being able to be utilized against their match monies that they provide for services within the pueblos that we provide service to.

CHAIR VIGIL: Okay. I have a motion.

The motion passed by unanimous [4-0] voice vote.

COMMISSIONER SULLIVAN: Madam Chair, I have a question for Mr. Ross or maybe Mr. Abeyta. This only goes to January 31, 2009. Are we going to pay another \$120,000 then?

MR. ABEYTA: Madam Chair, this goes to July.

COMMISSIONER SULLIVAN: You mean July 31, 2009?

MR. ABEYTA: I can't say. We haven't budgeted for that. I think that would be something that we would take a look at as part of the new GRT transit tax that comes in. So we're not – I would say that right now, staff would probably prefer that that be covered with that tax if we continue this route.

COMMISSIONER SULLIVAN: Well, certainly. But I think we need to take a very hard look and our transit board member, as well as the City's transit board member needs to take a very hard look at where these federal funds are going, because there seems to be no accountability for them. Thank you, Madam Chair.

COMMISSIONER MONTROYA: Madam Chair, I'll just say that we did discuss this and I did ask some of the questions Commissioner Sullivan that you asked and I believe that there still remains a lot of work and we're going to have to get down to business in terms of the City and the County putting together a service plan so that we know exactly what it is that we need to do and we still haven't done that yet. Things like this still need to remain in place in terms of services and hopefully we'll get to the point where we won't be so reactive and be a little more – things will be well planned out. So this will help with that

route though.

CHAIR VIGIL: Thank you.

XIII. D. Regional Planning Authority

2. Request Approval of the Regional Planning Authority Recommendation to the Board of County Commissioners to Budget Funds to the Railyard Park Project as a Joint Regional Open Space and Trails Project \$200,000 (Regional Planning Authority)

CHAIR VIGIL: I think we're well versed on this. Does anyone need any information?

COMMISSIONER ANAYA: So moved.

CHAIR VIGIL: There's a motion to move. Is there a second?

COMMISSIONER MONTOYA: Second.

CHAIR VIGIL: Discussion from Commissioner Sullivan.

COMMISSIONER SULLIVAN: Madam Chair, I would suggest – and I am in favor of this and as you say, we're aware of the particulars from the RPA meetings. But I would say that the Commission should take a look at some other options for this regional county capital outlay money, the "other" category, and also the roads category. And the reason I say that is the fairgrounds money was not approved by the voters and in particular my understanding is it was supported in the rural areas but it was turned down in the urban areas. So perhaps there's some education that needs to go on there, but also I think improvements to the fairgrounds are an item that would certainly qualify under the "other" category of the regional funds. It's very similar to the railyard in that it's a facility that's in the city and it's enjoyed and serves both city and county residents. So I would suggest that as we look ahead, and Ms. Follingstad has a chart of these other funds that we get about \$250,000 a year to come into this category from the gross receipts tax. We also get \$250,000 that we've arbitrarily put toward the roads out of that ten percent category.

Now, the road bond issue did pass, so we're going to have road monies to begin a really aggressive road improvement program. So one of the things we might want to consider is that this Commission has never really delineated how that ten percent roads and other is divided. The staff has assumed that five percent would go to roads and five percent would go to other. To my recollection that's never been a Commission action. So we could, the Commission could if it wants, designate some different amount. They could designate eight percent to go to other and two percent to go to roads of that amount, given that we've got a good pot of other funding for road monies, and divvy up that \$500,000 a year a little differently if the Commission wanted to.

So I just throw that out as something for you all to consider. We have – the designs have already been in progress for work on the fairgrounds and it could move forward in a

phased manner with some capital improvement funding. So there are other requests. I know Zona del Sol was coming forward to the RPA tomorrow. They have a request for funds and it's certainly a worthwhile undertaking, and there's many like that. But given the defeat of that bond I would suggest maybe that this might be one area to look for some funding. It wouldn't get it done all at once but it could be done on a phased basis.

CHAIR VIGIL: Thank you, Commissioner Sullivan. With that, I'm going to take a count on the vote.

The motion passed by unanimous [4-0] voice vote.

CHAIR VIGIL: A stellar presentation, Ms. Follingstad.

XIII. E. Matters From the County Manager

1. Request Approval of Staff Recommended Temporary Budget Restrictions

MR. ABEYTA: Thank you, Madam Chair. In November, at the beginning of this month, I met with approximately 50 employees here in the chambers. We discussed cost savings ideas for the County. We discussed the current financial condition of the County, the financial condition of the nation as a whole, and this recession that we're in. As a result, the employees and myself laid out some cost savings ideas that we had as a group.

After we looked at – we gathered all the cost savings ideas we created subcommittees with these employees. One is a revenue generating subcommittee. The other is a feasibility analysis subcommittee, an implementation subcommittee and an employee information subcommittee. I handed out earlier today a packet of information that includes some of the work that these committees have done so far. At this point, given that we don't have numbers as far as property tax revenue that has come in yet. We'll have those mid-December. And we also don't have a good idea yet as far as gross receipts tax and how that is going to impact our budget.

What I am recommending today is the implementation of some budget restrictions, but not anything really strict at this time. The first would be a freeze on some in-state and out-of-state travel. Now, the freeze would be discretionary. At this point if employees are going to travel in or out of state we would just do a more stringent review on those requests. So we're not going to freeze all travel but we are going to take a closer look at those requests that come in.

Another measure would be to decrease supplies and contractual service budgets Countywide by five percent. We want to implement a hiring freeze for non-essential positions Countywide. We purposely used the term non-essential position, so it's still really broad. Non-essential could include or exclude positions such as an accountant or a transportation caretaker. What we would do, just like the in-state and out-of-state travel, when somebody

wants to hire, fill a vacancy, we will do a review of that, a thorough review of that request and determine whether or not that position is essential or non-essential before we would actually allow you to fill that position. So this is more of a soft freeze rather than a hard freeze.

We would like to implement strict energy-efficient measures such as making it a requirement that all lights are turned off in offices and buildings when they're not in use. We would want to put locks on the thermostats, for example, in the buildings, measures such as that. We want to eliminate the residential treatment program at the youth development program. We've already put them on notice that we are going to eliminate this program and we would expect to start seeing savings from that within the next 60 days.

We want to for now put a freeze on merit pool and merit increases. We are going to as a County request immediate reimbursement from all outside agencies that may owe us money. We're going to get real aggressive with that. And we're only going to authorize the purchase of capital purchases that are necessary for day to day to functions and hold off on making major purchases of capital equipment that may not be needed.

And so those are the recommendations that I'm bringing forward today. As I said earlier, in mid-December we'll have a better idea as to what the property tax revenue is going to look like and gross receipts tax, and we will have a detailed session with the Commission at the mid-year budget reviews in January and at that point we may have to make – we may have to turn the soft hiring freeze into a hard hiring freeze, make further reductions to the budgets Countywide.

Now, the information I provided, we put scenarios together for the Commission to just consider. The property taxes make up 70 percent of our general fund revenue. The property taxes are projected to be short by three percent. That would translate to a little over a million dollars to the County budget. If property taxes are short by five percent, the shortage would be \$1.7 million, and if property taxes were short by 10 percent then we'd be looking at \$3.5 million. That's how that would translate into our budget.

We've already taken a look at some cost savings measures to address these shortages if they are realized. For example, we've already implemented reduction of take-home vehicles. That would save us \$100,000. The freeze on some in-state and out-of-state travel, if we cut the travel budget by ten percent, if we had to, that would save us \$240,000. Then we have information regarding decreasing supplies, decreasing contractual services, implementing a hard hiring freeze if we had to. The savings from energy efficient measures – by eliminating the ARC program we are estimating an annual savings between \$200,000 and \$400,000. If we froze our merit pool budget, if we had to do that we would save \$270,000. And then by only authorizing capital purchases for day-to-day operations we could save anywhere between one and two million dollars.

Now, in our scenario we included gross receipts taxes. GRT only makes up 16 percent of our general fund revenues so we won't be as affected with the GRT shortage that maybe the City of Santa Fe or other agencies may be, but for example, if GRT is projected to be short by three percent that would translate into \$252,000 in our revenue. If they're projected

to be short by five percent, \$420,000. If GRTs are short by ten percent, we're looking at \$842,000. If we see a 15 percent shortage in GRT, that's \$1.2 million, and a 20 percent shortage would be \$1.6 million. So a worse case scenario would be if property taxes are short by ten percent and GRTs are short by 20 percent, in which case the shortage for both revenues would be \$5.2 million.

Now, so far we've projected savings that would have to increase by about \$400,000 if that was the case, and again, these are just projections and scenarios. As time goes on and as we meet monthly, we'll have a better idea as to what those shortages are going to be. But I do want to take some steps, some preventative measures today, which I outlined in the staff memo. Again, they're not hard freezes at this time but they are – we are going to be more diligent about how we spend money.

CHAIR VIGIL: Thank you, Roman. Commissioner Montoya.

COMMISSIONER MONTOYA: Madam Chair, Roman, so we would still, based on this have to look at \$490,000, almost half a million dollars of savings in order to break even under a worst case scenario.

MR. ABEYTA: Under a worst case. That's again presuming a ten percent shortage in property taxes and a 20 percent in gross receipts tax.

COMMISSIONER MONTOYA: The other thing that I would recommend as part of your recommendation on the elimination of the ARC program is that we utilize that now as office space and maybe get out of some of the rental offices that we have.

MR. ABEYTA: Okay.

COMMISSIONER MONTOYA: Because that's – at least the administrative portion is pretty decent for administrative office space.

MR. ABEYTA: We'll look at that. That's a good suggestion.

CHAIR VIGIL: Any other questions? What's the pleasure of the Commission?

MR. ABEYTA: I'm requesting approval because I want to make sure –

CHAIR VIGIL: Request approval of staff-recommended temporary budget restrictions.

COMMISSIONER MONTOYA: Move for approval.

COMMISSIONER SULLIVAN: Second.

CHAIR VIGIL: Motion and second.

The motion passed by unanimous [4-0] voice vote.

CHAIR VIGIL: Good luck, Roman. Good job so far. Not an easy thing to undertake.

XIII. E. 2. Update on Various Issues

MR. ABEYTA: Madam Chair, I'd like to call up Rudy Garcia, our staff lobbyist to give us a brief update on upcoming session and when we're going to have our reception for our delegation.

RUDY GARCIA (Community Services): Madam Chair, Commissioners, I'm sure you all know that the session is going to be coming up here very soon. I'm sure everybody's read the papers that the state is actually under a shortfall regarding money. Just as an example, the Local Government Division has requested a list of all of our projects that we have out there, for water projects, road projects, as well as capital projects. We have submitted that list to them. It seems like the Local Government Division is going to go through and any projects that are not moving or don't have any encumbrances they're actually going to try to take that money away.

Before they do that they'll have to go through that sponsor of that legislation and make sure that they're willing to give that up. Tomorrow actually, there's a Legislative Finance Committee meeting, Katherine Miller, Secretary from the Department of Finance and Administration will actually be giving an update on the state budget situation. The less oil and natural gas the state produces and also the cheaper the pump prices are – or the less the barrels of oil sell for the less revenue the state of New Mexico makes and gas and oil are actually a big budget item for the State of New Mexico.

The session actually starts a little bit later this year. It starts on January 20th, the third Tuesday of the month and Roman and I had talked about having the reception and/or breakfast that maybe we would do something a little different this year for the week of the 12th and we wanted to see if you all were going to be in town on the week of the 12th, and maybe if you wanted to do a breakfast or if you wanted to do some sort of a reception as we've done in the last three to four years.

CHAIR VIGIL: Which is the larger ticket item and which is the cheaper?

MR. GARCIA: Madam Chair, I would probably tend to say probably the breakfast would actually be a little bit cheaper.

COMMISSIONER ANAYA: What day was that, Madam Chair?

MR. GARCIA: Commissioner, we're looking at the week of the 12th. The 12th is actually a Monday. Then there's Tuesday, Wednesday, Thursday, or Friday in January.

CHAIR VIGIL: That's the week before the session starts.

MR. GARCIA: Correct.

CHAIR VIGIL: Is that a BCC day? That would be good. I hear a recommendation for doing a breakfast Tuesday, January 13th. Are there any other suggestions?

MR. GARCIA: Madam Chair, what we'll do is Roman and I will talk about the 13th and we'll poll a couple legislators to make sure they are available on the 13th, and at the December Board of County Commissioners meeting we're going to come back with a full legislative plan, recommendation, some priorities and also some priorities within each

legislator's district for projects that we're going to ask for continuing money if there is money out there so we can come back on the December Board of County Commissioners meeting and give you a more detailed update on that.

COMMISSIONER SULLIVAN: How about January 11th?

COMMISSIONER ANAYA: Are you going to be here?

CHAIR VIGIL: At 7:00 a.m.

MR. GARCIA: So after tomorrow's meeting when Katherine Miller actually speaks I'll email everybody as I did the last time to give you an update of where we are and what we're doing.

CHAIR VIGIL: Okay. Then I think you have a sense of direction that January 13th for breakfast looks like a possibility. And I must tell you, I know that other agencies and entities are looking to cut back in the legislative dollars that they spend also. So, okay.

MR. GARCIA: Thank you.

MR. ABEYTA: That's all I have, Madam Chair.

XIII. F. Matters From the County Attorney

1. Ordinance 2008-16. Consideration of an Ordinance Amending Ordinance 2008-02 to Adjust the Boundaries of the Galisteo Basin Map Territory Regulated by that Ordinance (Legal Department)

CHAIR VIGIL: Is this something that should be considered with item 5, Mr. Ross, or can we take action on item F. 1?

MR. ROSS: Madam Chair, F. 1 is a housekeeping matter and we can take it up now, if you're prepared. As you recall, in February, the County enacted Ordinance 2008-2 which is the Interim Development Ordinance. It was a one-year ordinance that put an end to any oil and gas exploration, the permitting of oil and gas exploration in the county for a one-year period. And attached to that ordinance was a map consisting of the Galisteo Basin growth management area as we understood it at that time.

During the ensuing ten months or so we have learned a lot about what the boundaries of the Galisteo Basin growth management area should be and have in front of you a proposed realignment of the map that was attached to the ordinance last February. This reflects some of the processes already begin through the growth management program that some of you are familiar with. It's just started formal proceedings at the County Development Review Committee, and it's wending its way to you. As you recall, there were four growth management areas. Among the four was the Galisteo growth management area, then there's the urban area, which we called El Centro, and El Norte, which is the northern part of the county, and Estancia, which is the far southern area of the county and in conjunction with further study by the Land Use Department the boundaries for the Galisteo growth management area were revised as you see in your material. With that I'll stand for questions.

CHAIR VIGIL: Any questions? Commissioner Sullivan, then Commissioner

Montoya.

COMMISSIONER SULLIVAN: Mr. Ross, is there any legal description that goes with this map?

MR. ROSS: I'm not sure, Commissioner Sullivan. I assume there is at some level because this is a map that comes from our GIS database. But I don't know whether it's been written down or not.

COMMISSIONER SULLIVAN: Well, according – looking at the scale of the map, the thickness of the green line is about a half a mile.

MR. ROSS: Yes, that's correct.

COMMISSIONER SULLIVAN: So –

MR. ROSS: Don't forget that during the growth management process that we have underway right now we're going to end up having a parcel-based zoning map that will delineate zoning down to the property level. So this is really just to establish the boundaries of the areas that will be taken up next in the process and for no other purpose than that. By the time we get to the end of the process we'll have a parcel-based zoning map and it will be abundantly clear to everyone what the zoning is, and that's the end result of the process. So there can be some ambiguity in the exact boundaries of it because they're sort of artificial anyway. They sort of organize the thinking and the process and for the purposes of the ideal it's largely academic because we've developed an ordinance and it will be developed at some point and it will replace the ideal. But that's why I said at the beginning it's more like a housekeeping matter, to keep things –

COMMISSIONER SULLIVAN: So it will be refined in the final ordinance.
Down to parcels.

MR. ROSS: Yes, down to parcels, the parcel layer in our zoning program.

COMMISSIONER SULLIVAN: All right. Thank you.

COMMISSIONER MONTROYA: Move for approval.

CHAIR VIGIL: Is there a second to the motion?

COMMISSIONER SULLIVAN: Second.

MR. ROSS: Madam Chair, I think we'll need a public hearing for this matter.

CHAIR VIGIL: Okay. It wasn't noticed as such. Or do we do Matters from the County Attorney under public hearings?

MR. ROSS: It was noticed in the newspaper as a public hearing.

CHAIR VIGIL: Okay. Is there anyone out there who would like to address the Commission with regard to this item? Seeing no one, I do have a motion and a second.
Further discussion?

The motion passed by unanimous [4-0] voice vote.

MR. ROSS: And Madam Chair, just for the record on that last item, Commissioners Anaya, Sullivan, Vigil and Montoya voted in the affirmative, and Commissioner Campos was not present.

CHAIR VIGIL: Thank you for clarifying that.

COMMISSIONER SULLIVAN: Do we need to have a roll call for an ordinance?

MR. ROSS: Well, the minutes have to reflect the votes of the individual members. We don't necessarily have to call it a roll call, but that's what I just did is fix the record on that point.

- XIII. F. 2. Consideration and Adoption of the Santa Fe County and City Extraterritorial Land Use Joint Powers Agreement**
- 3. Consideration and Adoption of Ordinance No. 2008-17, an Ordinance Creating a New Article II, Section 1.4 of the Santa Fe County Land Development Code (1996, As Amended) Establishing the Santa Fe Extraterritorial Land Use Authority (ELUA) and the Santa Fe Extraterritorial Land Use Commission (ELUC) (Final Public Hearing)**

MR. ROSS: Madam Chair, items 2 and 3 are somewhat related because they relate to the ongoing work that the City and the County are doing with respect to annexation. As you recall, about a year ago the City and the County approved a settlement agreement that disposed of the five cases that resulted from our mutual annexation dispute. That agreement called for a number of subsequent agreements which include the agreement that's in front of you right now, the Extraterritorial Land Use joint powers agreement. The accompanying ordinance that amends the County Land Development Code to include references to the two new committees, the ELUA and the ELUC to replace the EZA and the EZC.

As far as the Extraterritorial Land Use joint powers agreement, as you recall, the annexation agreements with the City, the idea was to create a hard line around the city for 20 years that is essentially the far right-of-way of I-25 and New Mexico 599, in say the Airport Road area of the city and the county. That will be the city limit for a period of 20 years.

So the next question that arises is what happens with the concurrent jurisdiction that the City and the County have within areas not annexed by – not currently in a city but within the concurrent jurisdiction of City and County. So for our community, given our population, the City and the County have concurrent zoning jurisdiction within two miles of the city limits, and concurrent platting and planning jurisdiction in the five-mile area outside the city limits. What the joint powers agreement does is start the process in motion to delegate authority in those areas, city to county and county to city, so that there's clear jurisdiction in the areas within 599, I-25, and clear jurisdiction outside.

And what the JPA and the subsequent ordinance of the ELUA will do is delegate the City's jurisdiction in the two-mile concurrent zoning jurisdiction and the five-mile platting and planning jurisdiction to Santa Fe County, and vice versa. The areas within 599 and I-25 which will be annexed within about three years, the County will delegate its concurrent jurisdiction

over zoning and platting matters to the City, thus accomplishing a hard line around the city and the county as soon as the ELUA passes the final ordinance that's called for in our agreements.

It's fairly technical but this process was designed to make it a simple, transparent process for landowners inside and outside the bypass during this interim period when the City annexations that are called for in the settlement agreement are accomplished. And I should say there's an additional level of complexity and confusion inherent in all this and that is created by an amendment to our statutes by the legislature some ten years ago that changed the composition of the EZA and EZC for joint powers agreements created after the date of that amendment. Since our joint powers agreement dates from the early 80s we didn't have to change that but now that we're making a change like this we have to reconfigure our EZA to create an Extraterritorial Land Use Authority that consists of four County Commissioners, not three, and the EZC makes sort of similar changes. The ELUC is composed of a larger number of members than previously. But aside from that, the jurisdiction and authority of those two bodies remains unchanged.

So you can think of the ELUA as the EZA and the ELUC as the current EZC. So with that, I'll stand for questions.

CHAIR VIGIL: Questions? Seeing none, this is a public hearing for item 3. Commissioner Sullivan, go ahead.

COMMISSIONER SULLIVAN: Two items, Mr. Ross. One, the presumptive city limits go, we've always said to essentially 599 and I-25. Does that go to the city side right-of-way of 599 and I-25?

MR. ROSS: Madam Chair, Commissioner Sullivan, no, it goes to the county side. The presumptive city limits would be the limits of the city for 20 years, which when there's a roadway as a boundary of a municipality the city extends to the far right-of-way boundary. So in the case of 599 there's the highway and the frontage road. The state right-of-way is a fence on the west side of the frontage road. That would be the city limits, so that's also the presumptive city limits.

COMMISSIONER SULLIVAN: And that's all because of state statute?

MR. ROSS: State statute, right.

COMMISSIONER SULLIVAN: Okay. I see there may be some time in the future a little – some issue with that, with I-25 and 599 being in the city presumptive limits may have some interesting ramifications on the MPO. I know the City may have some different thoughts about where it wants interchanges and so forth, and improvements on 599 than the County. So I'm not sure if by saying I-25 and 599 are in the presumptive city limits whether they're in the city limits or they're not in the city limits for those purposes.

MR. ROSS: Madam Chair and Commissioner Sullivan, that's correct. We have that on our radar screen and I do not think that for purposes of the MPO, at least the current thinking is that that will not change the jurisdiction for purposes of the MPO because after all, those areas are not in the city and merely because there's land use authority by the City over those areas doesn't make it a part of the city for other jurisdictional reasons. Just for this limited purpose. But the City just yesterday passed the annexation phasing agreement which will be

coming your way next month, which is one of the three agreements that need to be also put in front of you to conclude all of this, and it calls for a very ambitious annexation schedule. I think the annexations are all concluded by – in three to four years.

COMMISSIONER SULLIVAN: Okay, but in your opinion the County would retain its jurisdiction such as it is over what happens in these highway corridors.

MR. ROSS: Madam Chair, for now, and Commissioner Sullivan, I think that we need to revisit that JPA as well as the RPA JPA because the jurisdictional territory is dependent on the EZA or the Extraterritorial Zone, the five-mile zone, if you will, and those artificial creations are pretty much going away under this set of agreements. So we definitely need to revisit that and make sure it's very clear.

COMMISSIONER SULLIVAN: Okay. Yes, I think that would be wise because I just feel that the Highway Department has been holding up on this corridor study and I think the County wants to be in as strong a position as possible when it comes out to establish such jurisdiction as it has.

The other thing was that this resolution has only signature blocks for the Mayor and the City Attorney. Is this something that they've already approved that we're approving? Or what's going on here?

MR. ROSS: Madam Chair, Commissioner Sullivan, the City approved this in August I believe and because of complications with our agenda we haven't been able to get to it until now.

COMMISSIONER SULLIVAN: But we're supposed to sign it too, right?

MR. ROSS: Yes, we're signing.

COMMISSIONER SULLIVAN: Okay, there's no signature blocks for us to sign.

MR. ROSS: Well, it might have been left out of your book. It's page 5 in my book. But we do have a signature line –

COMMISSIONER SULLIVAN: Oh. I take it back. It's further on. It's further on. Okay. That's all the questions I had. Thank you.

CHAIR VIGIL: Any further questions? We really need to be very cautious about how we get information out to residents with regard to the annexation and the agreements that are being brought forth. It's a 20-year plan. Despite the aggressive intent by the City, there are still many processes that need to occur, like early neighborhood meetings and things of that nature. I know that part of the residents in the Agua Fria Traditional Historic Village who are going through an educational curve on what it means to stay in the traditional historic village or what it means to be annexed. It's can be very confusing.

At the Regional Planning Authority we have asked that a bullet point sort of outreach manuscript be drafted so that people understand what it is, and I think we also need to put some information on our website, because there can be a lot of confusion and people are insecure about what it means to be annexed. And I don't care what stage of annexation we're in, that insecurity will surface for many residents and I'd like to be able to address as many of those questions as we can.

XIII. F. 2. Consideration and Adoption of the Santa Fe County and City Extraterritorial Land Use Joint Powers Agreement

CHAIR VIGIL: With that, the first item, item 2, does not require a hearing, so we can take action on item 2 without a public hearing. What is the pleasure of the Commission?

COMMISSIONER SULLIVAN: Move for approval.

CHAIR VIGIL: There's a motion. Is there a second?

COMMISSIONER MONTOYA: Second. Discussion.

CHAIR VIGIL: You have discussion, Commissioner?

COMMISSIONER MONTOYA: One question.

CHAIR VIGIL: One question.

COMMISSIONER MONTOYA: Steve, when we had originally looked at doing this, we had thought, well, we're going to eliminate the EZC, EZA, but now we're adding the ELUA an the ELUC, so there was a net gain of zero. So these are required by statute and by law?

MR. ROSS: Madam Chair, Commissioner Montoya, I neglected to mention one thing and that is when they amended the state statute some ten years ago they also provided that under certain circumstances, annexation – disputed matters of annexation go to the EZA or the ELUA for final disposition. So when we were trying to figure out how to eliminate the EZA and EZC we realized we couldn't completely eliminate them. We had to preserve that one function, because otherwise there would be no place for somebody to go who disputes a certain kind of annexation. So the ELUA and the ELUC, after an initial phase-in period will have to address a lot of issues particularly related to applications that are in process and have some level of approval here at the EZ level but don't have final approval and haven't constructed anything and are therefore entitled to vested rights when they move into the city.

So we have to address that situation and develop a phasing plan, and then after that's done, the only thing that the ELUA will be responsible for are these types of disputed annexations. So it will largely, after about a year, the ELUA will really have very little to do. It will only meet on demand.

COMMISSIONER MONTOYA: Okay.

MR. ROSS: Sorry. I forgot to mention that. It was on my mind to mention it.

CHAIR VIGIL: We have a motion.

The motion passed by unanimous [4-0] voice vote.

XIII. F. 3. Consideration and Adoption of Ordinance No. 2008-17, an Ordinance Creating a New Article II, Section 1.4 of the Santa Fe County Land Development Code (1996, As Amended) Establishing the Santa Fe Extraterritorial Land Use Authority (ELUA) and the Santa Fe Extraterritorial Land Use Commission (ELUC) (Final Public Hearing)

CHAIR VIGIL: We are on item 3 but we have heard from our County Attorney with regard to that item. Are there any questions on that particular item? If not, this is a public hearing. Is there anyone out there that would like to address the Commission on item F. 3. Please state your name and address for the record. And could you let me know how much time you need?

MATT MYERS: A few minutes.

CHAIR VIGIL: Okay.

MR. MYERS: My name is Matt Myers, 1401 Central Avenue, Albuquerque, New Mexico. I'm an attorney who represents a landowner who owns land within the current EZA. We have some approvals in the EZA currently. We have a development agreement that we've entered into with the City, and we also have a development plan that was approved by the EZA. I'm here today mostly to speak so that the Commissioners know that for some of us within the EZA, with current approvals we're a little nervous about how this joint powers agreement and the dissolution of the EZA and the EZC are going to affect our established rights. So we've actually been in talks with both the City and Mr. Ross and we've had the opportunity to express our reservations about moving forward with this.

But I think it's important that as the Commissioners are working on the JPA and the ordinance creating the ELUA and the ELUC, that you understand that at some point we're going to have to deal with the landowners who have different levels of approval by the EZA, which is going to be dissolved once this joint powers agreement and this ordinance are adopted.

CHAIR VIGIL: Okay. Thank you very much. Appreciate that. Mr. Sommer, did you want to address us? Please state your name and address.

KARL SOMMER: My name is Karl Sommer. My address is Post Office Box 2476, Santa Fe, New Mexico, 87504. Good afternoon, Madam Chair, members of the Commission. I'm here in support of both your joint powers agreement and the adoption of this ordinance, because what it does, first and foremost, it allows the City and the County to allocate their planning resources and their other resources in a long-term way that the County and the City have not been able to do for many, many, many years. Since the establishment of the EZA and the EZC, the overlapping jurisdiction and now the extension of services into these areas has created a great deal of confusion.

This cleans it up in a way that allows the County to say, okay, from here on, this is your responsibility, City, from here, this will be our responsibility. The County can then plan, allocate long-term resources, and therefore be more effective in both the allocation of resources and planning. And the same thing is true for the City.

The second thing it does is it ends many, many years of contentious litigation and I think constant sore spots between the County and the City over jurisdictional issues that really don't merit that kind of fight. So I'm here in support of this. I think it's a good thing for the County. I think it's a good thing for the City, and I urge its adoption. With respect to the comments about the last individual, I believe that the ordinance that will be adopted can take into account fully the level at which people have approvals and what they must do to affect those approvals in a way that's fair. I think everybody involved knows that millions of dollars have gone into planning in the EZA which shouldn't be wasted or redone just because of a shift in jurisdiction. And I think that can be adequately accounted for when you do your ordinance. Thank you very much.

CHAIR VIGIL: Thank you, Mr. Sommer. Is there anyone else out there that would like to address the Commission? Seeing none, what's the pleasure of the Commission?

COMMISSIONER MONTROYA: Move for approval.

COMMISSIONER ANAYA: Second.

The motion passed by unanimous [4-0] roll call vote with Commissioners Anaya, Montoya, Sullivan and Vigil all voting in the affirmative.

- XIII. F.**
- 4. Consideration and Possible Approval of the Proposed Oil and Gas Element, an Amendment to the Santa Fe County General Plan**
 - 5. Consideration of Ordinance No. 2008-__ . An Ordinance Amending the Santa Fe County Land Development Code for the Unincorporated Area of the County Enacting an Ordinance Establishing an Oil and Gas Overlay Zoning District Governing Oil and Gas Exploration, Drilling, Production, Transportation; Abandonment and Remediation; Providing for a Three-Step Development Approval Process for Oil and Gas Projects Involving: (1) Discretionary Approval of Applications for Oil and Gas Overlay Zoning District Classifications; (2) Discretionary Approval of Special Use and Development Permits; and (3) Subsequent Ministerial Approval of Grading and Building Permits and a Certificate of Completion; Providing for Consistency with State Statutes and Regulations and with the County General Plan Including but not Limited to the Oil and Gas Element of the General Plan; Establishing for the Galisteo Basin: (1) A Land Environmental Sustainability Matrix; (2) A Capital Improvement and Public Services Program; and (3) An Improvement District for the Galisteo Basin and Authorizing Preparation of the Same for Other Areas of the County; Establishing Requirements for Reports, Studies, Plans and Assessments For Review of Applications For Development Approval of Oil and Gas Overlay Zone District**

Classifications as Follows: (1) A General and Area Plan Consistency Report; (2) An Environmental Impact Report; (3) A Fiscal Impact Assessment; (4) An Adequate Public Facilities and Public Services Assessment; (5) A Water Availability Assessment; (6) An Emergency Service and Preparedness Plan; (7) A Traffic Impact Assessment; and (9) A Geohydrological Report; Development Agreements; Transfer of Development Rights; Capital Improvement and Service Programs, Plans and Budgets For Roads, Stormwater Drainage, Fire, Police and Emergency Response Services; Financing of Public Facilities and Services; Creation of Improvement Districts; Providing for Bonding and Insurance Requirements; Creating Standards for Equipment, Operations, Emergency Service and Response Plans; Site Remediation; Grading and Soil Disturbance, Spills and Leaks; Lighting, Buffers, Landscaping and Screening, Closed Loop Systems; Operating Hours; Temporary and Permanent Abandonment; a Discretionary Beneficial Use and Value Determination Process; Application and Permit Fees; Amending a Portion of Santa Fe County Ordinance 1996-1, Article III, Section 5.2 Defining "Mineral"; Amending Article X of the Land Development Code to Add New Definitions; Providing a Table of Contents and Appendices (FIRST PUBLIC HEARING)

CHAIR VIGIL: It is now approximately 4:30. What's the pleasure of the Commission? We are going on item 4, Consideration and possible approval of proposed oil and gas element, an amendment to the Santa Fe County general plan. Mr. Ross, that particular item would take how much time, would you suspect?

MR. ROSS: Madam Chair, probably an hour to two hours, possibly longer.

CHAIR VIGIL: Okay. Are you factoring in item 5 or just item 4? Or do you see them both related?

MR. ROSS: We had planned to take them on the way they are set forth on the agenda here. So the first item would be approval of the oil and gas element and the second item would be the ordinance. They're of course intimately related.

CHAIR VIGIL: Let's push forward then. Is everyone in agreement with that?

MR. ROSS: Madam Chair, what I would suggest is so we get the consultant team down here and get their presentation loaded up into the computer that we may take a five-minute break.

CHAIR VIGIL: We'll take a five-minute break for the consultants to load up their presentation, then we'll push forward. Thanks.

[The Commission recessed from 4:30 to 5:15.]

CHAIR VIGIL: We're reconvening from a short – well, longer recess than we anticipated. We are now on item F. 4 and 5, and we're on oil and gas. Mr. Ross, please proceed.

MR. ROSS: Madam Chair, thank you. We have in front of us the consideration of possible approval of the oil and gas element as amendment to the County General Plan, and then we have following that the proposed ordinance with the incredibly long title. That's an oil and gas regulatory ordinance that we're all fairly familiar with. Just kind of recapping, this body approved publication of title and general summary of the ordinance, which is the second item, back in September and also approved us taking the proposed amendment to the general plan through the CDRC process for their recommendation.

Since then, since you've last seen this, the CDRC met three times, once in special session and conducted three public hearings on these documents. And last week, on Thursday the CDRC voted to recommend both documents to you for approval. Now, a little footnote on that, the documents that they recommended that you approve are not identical with the document you approved in September. There were some changes made throughout the process by the consultant team which are reflected in the document I gave you a few minutes ago which has a number of changes indicated in the document in different colors. And of course each color pertains to a set of changes that the consultant team made at a particular point in time but what's important is all three colors represent sets of changes that were made since you authorized us to publish this a while back.

There have been some changes made to the proposed oil and gas element as well. Those are reflected in the document I also set up there today. There are quite a few changes to that document that have occurred since you've last seen it. But I venture to say that the document in front of you, the ordinance in particular, reflects the changes that the CDRC saw last week with the exception of the changes that are marked in blue, which are changes that have been made since the CDRC last saw the document. Once again, all these changes were made in response to comments that were received and forwarded to the consultant team.

Both these items have been advertised for adoption tonight, as well as also advertised for adoption on December 9th. You can take action on either proposed date as you see fit. How we thought we would proceed tonight is have Mr. Peshoff take a few minutes and discuss the oil and gas element, and then Dr. Freilich and Dr. Kramer here to talk about the ordinance and the various changes that have been made to those documents. Unless you'd like to proceed in some other manner that's how we would proceed to take this up tonight.

CHAIR VIGIL: Let's proceed in that manner.

MR. ROSS: Okay. Well, we have first Mr. Peshoff then, Bruce Peshoff of course from Planning Works in Kansas City. He's been before you before several times and will be before you quite a few more times in connection with the growth management plan, and he'll take you through the general plan amendment.

CHAIR VIGIL: Welcome, Mr. Peshoff. Thank you.

BRUCE PESHOFF: Thank you. It's good to be here. I have a very brief

presentation. I'll start with – I thought about starting with paraphrasing a slogan from the sixties but instead I'll just use one and that is, You've come a long way baby. The first two photos really underscore this. Earlier in the year there were some very loud, very public, very crowded meetings related to oil and gas. There was a lot of uncertainty, but there was a lot of sentiment. The County undertook a process that helped establish a way to get to a better place, and this was the meeting that was held – the CDRC meeting – at the convention center. It was a room that we anticipated could be overrun with stakeholders. As it turned out we had a very small crowd, a number of speakers, and we got some good information, but a big difference.

And I think the reason why is because of the process that the County undertook, that it wasn't just about creating a plan. It wasn't just about creating an ordinance, it was establishing an opportunity for stakeholders, for residents, for investors to be able to speak out and say what they thought was important, and for the process and the documents to reflect those wishes.

So I'm starting with just a brief summary. This was a process that was based on partnerships, extending a hand effectively to say give us a chance to hear what you have to say. We want to take your input. We want to be able to turn it into a plan, turn it into an ordinance, and then give it back to you so you again can comment on it. You'll have a better – the public would then have a better direction of what it is that we're proposing and what the recommendations are.

Something that was very helpful at the very outset as well, in terms of partnership, was the report from the Governor's Office on the Galisteo Basin. Because that really underscored the importance of intergovernmental cooperation. And that report said, just summarizing, that Santa Fe County should take the lead in relation to oil and gas development in the Galisteo Basin. The natural resources are at risk and that there's a significant amount of complexity in the basin. There's little definitive detail of known information, but that a comprehensive, resource-based process needs to be undertaken at the County. Santa Fe County needs to take a cumulative, big-picture perspective with the data.

It was also a process that was based on stakeholder involvement, holding activity-oriented workshops, brown bag lunches. A lot of direct communications. We understand before we got involved that there were numerous emails going to County staff. Well, we received a lot of emails as well. We've received a number of phone calls and those have led to – almost all of them – something productive coming forward, something going into the plan or the ordinance.

It's also a process that was based on data. We used a tremendous amount of data. All of the data – I can pretty much say that all the data that's available and that's good data based on local experts, based on the County staff, was used to create a methodology, an analysis, and models to assist with the decision making process. It wasn't a black box that spit out an answer, but it was data that was used to help the County make decisions.

This was also a process based on technology, using the webpage from the County, using the project webpage that we set up. Giving the public the ability to easily download

documents and review them to provide an easy opportunity for comments to the planning team, the consultant team as well as for our direct email addresses. It's a process that looked at alternatives. What were the implications of different alternatives? What choices did the County have? Because one of the points that we made at the very beginning was that the County does have choices. You weren't boxed into a corner.

One of the big things that came out of the plan was the oil and gas suitability model. I'm going to summarize that. This is a variation of a land suitability analysis. It is a land suitability model, meaning we put a lot of different data into it, and we ask it to tell us what are the important pieces of information that we need to know. The goal is to protect key resources – farms, ranches, plant and animal species, natural resources, lands with important cultural and historical value as well as conservation lands, and it's a model that was based on, as I mentioned earlier, data. It's also a model that is very dynamic. It's not intended to be the stopping point. It's intended to be the stopping point for now, but over the course of the next year we're anticipating that there will be some continual refinements made to the model. There's a lot of data that is available that is out there that isn't in a good enough condition to use right now, but the consultant team and County staff believe that over the course of the next year or two years, there will be an ability to refine that data even more.

So the plan recommends that there be annual updates. But in the meantime there needs to be a sense of stability. The model needs to be fixed. It needs to be a static model to provide property owners and developers, operators, potential owner-operators with a level playing field. What are the expectations that they're going to be faced with? But it's also important to point out that the oil and gas suitability model was not designed to establish no-drill zones. It was designed to create presumptions of suitability, environmental and cultural suitability. Areas that, based on the factor present, the natural factors, the man-made factors, compatibility factors, the areas may be described as having high sensitivity, moderate sensitivity, or low sensitivity.

The plan also recognized, and the model supports that the site plan review and the EIR process, the impact assessments that will take place during implementation of the plan in the ordinance are going to provide additional specific protections to properties as well. The model is not going to solve all of the potential problems. The model is going to identify some initial presumptions. It's the detailed analyses that take place during the site plan review, during the impact assessments, the EIR, the traffic impact assessment, that will clearly identify specific needs and specific areas to protect.

The model – and I've gone through all of the maps that we created for each of the factors. I'm just going to show the composite map. This is the map that was created from the application of all of the factors that were used, factors that you've seen before and that were supplemented with the current version, which is highlighted in your document. The dark green areas are the high sensitivity areas. These are the areas that are requiring the highest levels of mitigation, based on the cumulative effect of the factors in the basin. The medium green, that lime green, is a moderate sensitivity area, and the light green is a low sensitivity area. And each of that have standards that are identified in the ordinance. The purpose here in

the plan is to establish some presumptions of suitability for development based on sensitivity.

Now, since you have seen the original model in September we have received a lot of input. We've relooked at some of the data and we've received new data as well. This next map I'll show you is a revised version of the composite map. And this is based on the additional data that has been included. For example, there was a Forest Guild conservation easement that was included in the Ortiz Mine area. There's Cerrillos reservoir was included as a water body because there was some question before whether it had non-perennial status. As we received input from property owners – what about this? What about this drainage way? What about this slope? We tried to look at every one of those factors and we did look at every one of those factors to confirm that the data was there or if the data could be added.

The interesting point is there is so much data built into this model that there is virtually no difference between the composite you saw in September with the composite that we have today, based on the inclusion of data, because there wasn't that much data that was added. Which means that the databases that we had, the data sets that were provided by the public at the outset of the planning process by County staff, by other providers, by the state, was good data. We didn't miss very much. I should say, there wasn't much at all that was missed in the data sets. It doesn't mean that there's not anything to do over the course of the next year but the data has been good and it's given us a good readout in terms of suitability.

The other component to the element was the capital improvement plan and the annual operating costs as well, the CIP. A key component of the CIP was that there be concurrency, that public facilities and services needed to maintain an adopted level of service be available, either simultaneous to or with a reasonable period of time after development approval. This meant that the quality of life for residents in the county, in the Galisteo Basin, shouldn't decrease because of oil and gas development, and the facilities and services we looked at were public safety and roads, we were looking at the most critical: Sheriff, Fire, EMS and roads, levels of service.

After talking with, as I mentioned before, talking with the Public Works Director, Santa Fe County Sheriff, Fire Chief, as well as with Public Works directors, sheriffs and fire chiefs from other counties in New Mexico we were able to identify what types of system wide improvements would be needed if there were some widespread, moderate level of oil and gas development. And this was the map, transportation network for system-wide improvements that would be required to accommodate oil and gas. This isn't all of the improvements that would be required. These are the major transportation network improvements. Getting the trucks, the vehicles, the employees, off of the parcels, off of the private roads and drives and to a state highway, to the highway system.

We also looked at fire response in perspective of response times. Where are the existing wells as the map in blue? Where are the service areas in relation to the response time in the yellow and orange around each of the fire stations? Where are the gaps? Every place you see a blue dot without an orange or a yellow color means that it's going to take longer than eight to ten minutes from an existing fire station response to that facility. Additional demand, additional wells are just going to increase that deficit.

After talking with the professionals, public safety, roads, this was the total capital improvements plan, system-wide improvements that was generated. \$61 million. This was a 20-year, long-term, \$61 million in improvements for roads, vehicles, facilities, for public safety, to be able to accommodate that level of service, as I mentioned, to protect the existing residents as well as to protect the new development coming in. There are also annual recurring costs that this generated as well, primarily employee costs, additional staffing, fire, EMS probably took up the biggest bulk of that, additional firefighters that would be needed for an additional facility to be able to, again, maintain a sense of the quality of life that residents now enjoy, and that oil and gas would expect as they would in any other New Mexico county.

I'll talk for a moment about the role of what the CIP is supposed to do. It's supposed to help establish the importance, identify the importance of the fiscal implications of new development of oil and gas development on the County, that relationship between level of service – that's LOS – and the CIP, and the development proposal. What is that project-specific impact? What's the need that it's going to expect? And the CIP has a valuable tool to supplement the findings and the recommendations in the impact assessments.

Now, we have made some changes in the document and as you look through the document you'll see a lot of highlighted sections. We've simplified it. We haven't done red line strikeout. What we've done is blocked out in yellow highlighting all of the new substantive text that has been added. There have been minor typos. There is no need to draw attention to those. But I can summarize just on one slide what the types of changes are, and these are in sequential order from the front of the document to the back of the document. Identifying recommending findings that the County should undertake that the ordinance does include before a decision is made to allow oil and gas.

Emphasizing that any oil and gas activity should be sustainable. It should be as green as it can be. Protecting conservation easements, being a strong goal as well. Providing, acquiring ongoing monitoring to do occur for oil and gas operations. Ongoing intergovernmental coordination. It doesn't just stop at the County's plan or ordinance, but it's going to require continual coordination with other agencies, other service providers. Specific recommendations to the County's LDC related to oil and gas, as well as some other LDC related amendments, land use related amendments as well, including establishing an eco-tourism district. The plan identifies the importance – what is eco-tourism, the role for eco-tourism, and that that is an appropriate and very necessary overlay district that ought to be incorporated into the LDC. As well as building on the oil and gas suitability analysis model, and then using the CIP to support the County's ongoing decision making.

Ultimately and in conclusion we see the role for the plan element is one, that it is going to amend the County's 1991 general plan. There wasn't sufficient direction in the plan to identify a path to take. The plan element also is a way to implement the community's direction. The output that we received, the input that we received at the very beginning of the process and throughout, the public that has stayed with the process. I don't know that I've seen a more dedicated group of citizens following through from the beginning of one of

projects to the point where we are now, and continuing to offer new input, new comments. We're not hearing the same things over and over. We're actually getting very good input and that's actually rewarding.

The plan element is also the starting point for the oil and gas ordinance, and I'll be turning this over in just a matter of seconds to Dr. Freilich as the foundation of what the plan will be used for and how it will be used. I would also see a role for this as the starting point for the general plan update. Because we've identified a number of issues relating to land use and development. Some we talked about early on. How does the county feel about different encroachments into some of your critical areas? That would be the next step is updating the general plan and providing some of the same protections for growth management, related to growth management that we've identified for oil and gas operations. That takes me to the conclusion of my presentation. Thank you.

CHAIR VIGIL: Thank you, Mr. Peshoff. Dr. Freilich, are you ready for yours?

ROBERT FREILICH: Thank you for inviting us here today and again, this is our first opportunity to meet with you since September 30th. Let me just say, number one, that I want to reiterate the fact that this was a very community based process. When we started on September 30th we had already had numerous meetings with citizen groups and other stakeholders in preparing the initial draft of the ordinance. As your County Attorney, Steve Ross said, from September 30th to 11/13, we had numerous meetings with stakeholders, with citizens, environmental groups, property owners, with regard to changes that they sought in the plan.

I'm happy to say that over 100 major changes in the ordinance were made pursuant to the kind of reiterative process with the citizens, with the website, with direct email, meetings, comments at the CDRC. The CDRC as you'll note gave you an unconditional recommendation for adoption of both the plan element, the oil and gas element and the oil and gas zoning ordinance.

I want to go over some critical points with you. First of all, for your own understanding, there is a table of contents behind the ordinance, in case you're searching for things within the ordinance, it's very helpful to have that. Secondly, what's important about this ordinance is that in the judgment of comments that are coming in nationally from all over the country this is the most comprehensive oil and gas ordinance in the United State, bar none. And what's really critical about this is it achieves this goal at the same that that it stands complementary and supplementary to state regulation. We do not feel, and Dr. Kramer is going to go over this information further, we do not feel that there is any conflict with the state, there is any pre-emption. We have incorporated the state findings to that regard. There's an entire set of findings that you had on September 30th with very little change.

There are new regulations that you may have been aware of. Only eight days ago the Oil and Gas Commission published proposed amendments to the New Mexico Administrative Code to provide for new regulations for the Galisteo Basin and for Santa Fe County. Those regulations essentially confirm what we've known all along, that is the state is relying on the County to do the major surface land use work with regard to the protection of

habitat, environmental lands, steep slopes, floodplains, archeological sites, traditional communities – we can go through the whole thing.

Basically, the state even adopted the concept of having a report, essentially an exploration and development report, before there will be any issuance of an ADP permit for drilling. In there, you can see that because the details are so sketchy in what the basically state that report is, is that they're really going to be looking at the concept plan that comes out from any project in Santa Fe County or in the Galisteo Basin as the basis for the exploration and development report.

So it's clear that there is a complete synergy between state regulation and what we're doing. And we do not fear any facial as-applied challenge on that regard. I also want to make it clear that as we spoke to you on September 30th, nothing in this code outright prohibits oil and gas drilling on any specific piece of property with a few exceptions in the mountains and a few park sites. The land evaluation suitability analysis that comes into this ordinance basically creates three suitability zones: high suitability, moderate, and low suitability. And basically what they're dealing with is the fact that we're dealing with the number of drill sites. In other words, wells have to be co-located and located on drill sites. In areas where there are high environmental impacts, the number of those drill sites is reduced. Whatever wells there are will have to be produced on those drill sites and the numbers are very significant. And they moderate down through the moderate and then to the low sensitivity areas.

The suitability study has put in some 27 different factors that we've been studying, has prioritized them, weighted them, and then applied them to come up with these areas. Now, nothing will happen to specific land until an applicant comes forward and goes through three specific approval processes. One is they have to get this overlay zone approval, they have to get a special use and development permit, and finally, they have to get grading permits, building permits and a necessary certificate of completion when they have completed all requirements.

Now in order to obtain those approvals, in order to get that overlay zone approved, they're going to have to go through seven specific assessment processes. One is a highly detailed environmental impact report. Nothing like this exists anywhere in the United States with the exception of New York and California. So you are really the first in the Rocky Mountain West to adopt this kind of detailed environmental impact review. And one of the things as I'm going through these, you can see that as we amend the general plan, not only to add this oil and gas element but then to work on a growth management element, most of the material in this oil and gas is also going to carry forward to all development, all subdivision, all zoning in the county that will basically have organized sets of principles now to deal with how that's going to happen.

Now, one thing that's important, people have come up and said, well, my land is in the floodplain – it should just basically be in a no-drill zone. We want you to legislate in the ordinance where you can drill and where you can't drill. And of course that's exactly what we've discussed before with regard to takings analysis. We do not want this ordinance as a

legislative ordinance to decree where drilling will occur and where drilling will not occur until there is an application presented and we learn the full environmental impact of that application.

Now, if, as one of the women in the audience at the CDRC said, if you are in a floodplain the ordinance specifically says that it will be identified in the environmental impact report, and that there will be no drilling allowed in floodplains or in floodways, nor on steep slopes, nor on other areas that will have been identified. But we need that as-applied process to see where are the wells going to be actually proposed, and then what are the environmental impacts that are going to follow from there.

And if you really read this carefully you'll see that the environmental impact report will look at the no-drill alternative for a project, which is no project alternative. It will look at a project alternative with full mitigation, and a full mitigation cannot occur of all environmental impacts, there may not be approval of that site. And then it will describe in detail exactly what that mitigation has to be for environmental factors. And that will go through everything, from archeological, historical, habitat corridors, vegetation corridors, air quality, noise – we've made five changes to this ordinance to adopt changes that the citizens requested with regard to noise level.

For example, originally we had a 75 and a 70 dBA noise level sensitivity test. We've now said that if in fact as applied any project creates noise that is unsuitable for residential or other development we can go below those levels, and you'll have to mitigate below those levels. So we're responding to what the citizens said. We've put in material with regard to parks and open space and protection and conservation easements and other things. Of course there are – there's common law, there's all kinds of complications about mineral estates and leases separated from the surface estate, but primarily what we're looking at in this ordinance is to make absolutely certain that there will be no drill site that is created that will not meet environmental standards of the highest import.

Number two: We're requiring an adequate public facilities test. And again, some people commented and said, well, this is not fair because you're asking the oil and gas industry to finance this \$61 million capital impact program, capital improvement program requirements. I want to point that out because these things are very important. One of the changes that we made because of citizen communication – Sierra Club, basically the Natural Resources and Defense Council. We even got from the Acoustical Research Institute. This county is full of talent and we have used that talent to the best we can. We've added things other than what I've already mentioned. Reclamation of a site not required for production immediately as soon as excavation is completed.

Administrative rules will be added and will be funded to clear up any further details. Staff instructions and bulletins. Converting wells to drill sites. Adding common operations of pooled or common unit operations. TDRs to bind both mineral estates and leases. Minimum drill site sizes. Minimum noise levels. Wildlife corridors. Parks.

So all of these things, people are concerned about man camps, that there will be these camps where hundreds of employees are located on flimsy structures, etc. Well, they will not

be located on man camps because an entirely separate permit would have to be obtained to get a special use in order to build housing or other residential facilities. So that's all part of what's going to be the environmental impact, etc. It's unlikely anyway in an urban area that we're going to see those kinds of man camps. They're very rare throughout the United States except in very remote rural areas and places where hotels do not exist or other things for temporary employees.

The ordinance is going to be extremely valuable for permanent changes to the Land Development Code. We have now refined the transfer of development rights concept. It will be applied initially to oil and gas but it is going to, in my judgment, prevent any taking as applied of any property in this county. It's also going to be now useful to use that for other environmentally sensitive areas, other than oil and gas drilling. We have a new process, a beneficial use determination process, that we will use to substitute for various processes because it's highly more sophisticated and attuned to what real hardship is all about and what it means to suffer unnecessary hardship under state law.

We will extend adequate public facilities to all developments, including family transfers and other. You may not have seen the statistics, but five years ago family transfers were one-tenth of all activity in the county for development. Last year, family transfers were ten times as much as any other form of approval. So almost all development that's now occurring is under family transfers. And this is going to be something that we will be able to deal with, not just under subdivision, because of the state law, but we're going to deal with under zoning, under the environmental impacts, adequate facilities, etc.

We've added this entire environmental impact report process, which could be used for subdivisions and other developments in the county. We've created a hearing officer so that on controversial cases, particularly before the Planning Commission, there can be a hearings record made and there can be evidence submitted, not just five-minute and ten-minute speeches, but an opportunity for property owners and environmental groups and neighbors and residents to present evidence.

We will create a new Planning Commission. We will add fiscal impact to all development in the county. This ordinance defines steep slopes as 11 percent and if you go forward with that that will change all of the regulations dealing with development on steep slopes in the community. We have refined historic, archeological, and cultural sites. We now have ways of indicating where traffic can be located and what mitigation for traffic will be required. We will have a CIP for each of the area plans. There will be four area plans in the county. We'll have assessment districts and improvement districts to be able to fund proportional costs of improvements. We'll have water availability studies. We're going to have a parks and open space defined element that will be protected. And basically, I think what's significant about what we've done is we have really taken the public health, safety and welfare, worked with intergovernmental cooperation with the state. We helped with Rio Arriba County in filing an amicus brief to protect against a facial declaration that their ordinance was facially invalid, and that lawsuit was withdrawn.

So we're working with adjacent counties. We've been working with the state, and

we've been highly working with your staff, your departments. We had a wonderful meeting the other day with Roman and his staff with regard to what's going to happen in the future plan.

And I want to understand that in oil and gas drilling there are no national standards about length of roads. There are no national standards about the size or width of roads or paved processes, because it all varies depending on the impact of particular sites. So we are case-specific. And we're also dealing with eco-tourism. That's one of the factors that will be considered also in the environmental impact review process. So all in all, when you go through this I think you'll see that we have a very, very detailed and comprehensive way of evaluating what's going on with great protection.

Now, after you get through that zoning process, then that plan will be shipped up to the state. That concept plan which will form the basis for the overlay zone approval, and with all those six reports, seven reports coming in, and one other concept we've added here is consistency with the general plan and general plan elements. From here on in all zoning and all approvals will have to be consistent with your adopted general plan and plans.

Now, these are important things to consider. After that, when they come back with the specific plan from the state and the ADP permits from the state, then they're going to go into a special use and development application or permit, which is going to look at specifically how that particular drill site will specifically look. What's going to happen with regard to where directional drilling is going, what's going to happen with the parking, the landscaping, the noise contours that have been followed through from the environmental. So all of the details will be dealt with in that special use and development permit.

And from there, they can go on and get grading permits and building permits and move forward.

We've been requested to make an exception for exploratory drilling. And it was my recommendation, along with the County Attorney and the consultant team, including our petroleum engineer and our petroleum law expert, Dr. Kramer, that we not make a special exception for exploratory drilling, because that defeats the very purpose of looking at the environment and looking at the health and safety of the community. Because an exploratory drilling is just as significant as the drilling for any other well in place. We suggested that if oil and gas mineral estate owners or lessees come up in their concept plan and say they want to do one site, and that site is approved, nothing stops them from putting an exploratory well in there, as opposed to doing the full apparatus. But I think it's important to understand that everything will be subject to the requirements of this ordinance.

Now, there may be some people who say something tonight that's new. If it is, as Solomon said in Ecclesiastes, there's always something new under the sun. But the fact of the matter is I would be surprised if there really was something new. We have heard hundreds and hundreds of comments. And we've been through them all. I think we've fair reply. We've responded to the citizens. And if there are suggestions that come up tonight, we welcome them. But I just want to tell you that we have tried to live up to your mandate, being sensitive to the community and sensitive to the environment and I think we've struck that

process. And also very careful about the liability of the County and very careful about how we go about doing this in a proper and data-supported manner. So I thank you very much.

CHAIR VIGIL: Thank you very, very much. Well done. Dr. Kramer, thank you for being here.

BRUCE KRAMER: Thank you, Madam Chair, members of the Commission, my comments will be much briefer, talking about two just general issues of some concern. One is the issue of state pre-emption. That is an issue that has come up. It was one of the grounds for the Rio Arriba suit that has been filed. But we as a consultant team have attempted to eliminate the threat of litigation. Obviously we can't eliminate the threat but we can do our best to eliminate it, to deal with the issue of pre-emption.

Now, again, County governments act to a certain extent as creatures of the state. They have been enabled or authorized to engage in a kind of regulation that we are proposing that the Commission adopt, namely land use, nuisance type environmental regulation. But nonetheless, the state always has the power to take away from counties the ability to exercise what is traditionally called police power regulation. They can do that in a number of ways. The first way is by having an express statute, i.e., the legislature can, in their infinite wisdom or lack thereof, adopt a statute that says counties shall not engage in any regulation relating to x, or any subject. They can do that. When it comes to oil and gas development they have not done so. There is nothing in the Oil and Gas Act and other statutes to date that says that counties or cities may not regulate various aspects of oil and gas development. So there's no express pre-emption.

There are two other legal doctrines that may be applied to find that there has been a pre-emption of County authority. One of them is called implied pre-emption by occupation of the field. So if a state has adopted a lot of statutes in a field, let's say penal code, the uniform commercial code, or something like that. Even though they don't have any express provision, local governments would not be able to regulate in that field. And again, this is a judicial doctrine. The courts apply it. And obviously, they apply it in the context of litigation. So there's this implied pre-emption by occupation of the field.

There are no New Mexico cases that say that the field of oil and gas regulation has been occupied by the New Mexico Oil and Gas Act and subsequent statutes that deal with those matters. There is an Attorney General's opinion from about 35 years ago. It was cited by the plaintiff's in the Rio Arriba case that suggests or at least hints that there might be an occupation of the field theory, but most of the judicial decisions since that opinion have essentially narrowed the field which is occupied by state governmental statute.

There's a third form of pre-emption, which is called applied pre-emption by conflict. And again, this is where this ordinance attempts to avoid conflict with state regulation and that's regulation both from the statutes, such as the Oil and Gas Act, as well as the OCD regulations. As Dr. Freilich mentioned, just about a week ago the state pursued the OCD or the OCC, pursuant to Governor Richardson's executive order has put up a notice for proposed rulemaking. The hearing I believe is scheduled, public hearing is scheduled for December 11th, to adopt special rules relating to oil and gas permits within the Galisteo Basin

in an area that includes not just Santa Fe County but I believe two other counties as well.

Our scheme, however, is a little bit more comprehensive. It fills in the blanks that the state scheme doesn't, and it is as we say consistently throughout the ordinance, complementary of, supplementary to, and not in conflict with these OCD regulations. And that is because again under New Mexico judicial opinions the fact that two entities, the state and a county, are regulating in the same field is not necessarily bad. And that as long as the regulations are not in conflict with each other the County is free to adopt regulation, even though in this case the state may be adopting regulations covering some of the same kinds of concerns. As Dr. Freilich mentioned, the state's proposed rules deal with general plans or general concept plans. Under the old system, essentially a person who wanted to drill a well came to the state, to the OCD and filled out the necessary forms showing that they owned the right to the minerals, came in with a plat saying we're going to put the well bore within the area of your rules allowing well spacing, and then it would be approved. The new system that they're proposing involves more requirements, although not as many as this ordinance will propose.

But in general, this ordinance is designed to be supplementary to and complementary with state regulation and we believe that it does not rise to the level of any kind of implied pre-emption by conflict. And again, we were trying all along to understand, and did get comments from actually one of my former students at Texas Tech happens to be the director of the OCD, Mark Fesmire, and he submitted comments to the consulting team regarding our proposed plan, our proposed ordinance, and essentially, some of those comments were accepted; others were not. But essentially, at no point in time would he say this is pre-empted, this is not pre-empted. You can't do that. They were basically attempts to make our dual systems of regulation complementary. And again, that's what the ordinance does.

I want to just briefly talk a little bit about the SUDP process, which Dr. Freilich mentioned. After you get through the overlay zone, then you go back to the state and you'll go through the state and get your approval of your permit to drill, then you come back for a site-specific SUDP – I hate to add more alphabet soup to your diet, but it will be a special use and development permit. In addition to the requirements of submitting all the materials before hand, what the SUDP process does is deal with post-permit issues. In other words there are extensive, what I call performance standards that govern a whole range of activities and they were mentioned earlier – noise, water, hours of operation, limits on hydraulic fracking – other kinds of things that will be made part of that permit.

Obviously, if those provisions are violated that's an ordinance violation and it gives the power of the County to enforce by seeking either monetary fines or equitable relief to prevent the continued operations until such time as those specific performance standards are complied with. So in addition to having a second level of as-applied review to a specific drill site location that's proposed by the operator, what that SUDP section does, which is Section 11 is it has about 15 or 16 or so specific performance standards that will govern the operations after the permit is issued and which must be complied with by the operator of that particular facility. Thank you.

CHAIR VIGIL: Thank you very much. Are there any questions from the Commissioners at this point? Okay. We'll reserve questions then for later perhaps. This is a public hearing. Could I have a show of hands from the members of the public who would like to address the Commission at this point in time? Let me get a count. There's eight of you. And I know there's a lot of information that you want to share with us. I do want to share with you that we have condensed two meetings today and that we're also at a place where we've got continued cases for land use. So if I provided a two-minute amount of time for you to speak, would that be sufficient? You can also amongst yourself share time perhaps.

So with that, those of you who would like to speak I'm going to ask you to stand up to my left in a row so that we can have an orderly discussion. Anyone who'd like to be first go ahead and stand up and please when you come to the microphone state your name and address for the record. And do we need to swear everyone in? Okay. All of you who would like to speak please stand to the left so we'll have a clear understanding of the time allotment we can provide here. And Dr. Freilich, you have said you're not sure you're going to hear anything new so I'm going to go ahead and challenge that. The challenge is if you do I would really like to provide you the opportunity to address it. Please come forward and state your name and address.

MARYANNA HATTON: Good evening. I'm Maryanna Hatton. I live at 29 High Feather Ranch near the village of Cerrillos. I've addressed various County boards before but I'd like to say quickly again, thank you very much for your time, resources, the County staff and the consultants in preparing this ordinance and this element.

I do have a concern with even the revised element and it just came to light to me this evening sitting here, but it may be new. But that is the distinction between residential roads and private/public roads or public/private roads. Residential roads, there is no definition of the ordinance for that term, yet it is used in the element, or in the ordinance. There is a definition for private road which says that it is to be maintained by a private entity. Now, these extraction routes, these County roads and state roads that are defined, and those terms are pretty fairly, easily understood, but there's no reference to these private/public roads and many of the proposed well sites in the first applicant, the Tecton Industries, were accessed through these private/public roads. And it's – I think that the ordinance needs to be gone through again with an eye towards these private/public roads because the way I'm reading it, I'm hung out to dry if I live on one of those because it's maintained by a private entity is me. Me, citizen.

Furthermore, the County has allowed development. I myself have developed land and a business, gotten a building permit off of one of these private public roads, yet there is no County money for maintenance or improvements on these private/public roads and this seems like a sacrifice zone waiting to happen with no protection in the ordinance.

CHAIR VIGIL: Thank you very much, Ms. Hatton. Next. Please come forward and state your name and address so we can include it in the record, sir. Welcome.

DOUG STEWART: Good evening, Madam Chair, Commissioners. I'm Dr .Doug Stewart and I'm the coordinator of the Eldorado Gas and Oil Team, and I represent

them, and I'd like to say thanks and how proud we've been and pleased we've been to work with teams at this level in our own small way as a contribution to the ordinance. It has really been a pleasure for us.

A couple of things we'll do very quickly. One of the things that we're very pleased with is a shift toward looking at lives, human and ant and plants and animal lives as part of being protected by this ordinance. It isn't just our data but our data is supporting the fact that we are dealing with lives, and we're doing that better and better as we refine the ordinance.

One of the things that you'll notice as you look through the latest version of that is that we now have in several cases medical personnel working with technical personnel in terms of monitoring water, in looking at fracking chemicals and so on, so we have both medical advice as well as the technical advice. So a petroleum engineer working with appropriate physicians can really take a close look at what some of the dangers are in some of the chemicals that are used. So we feel that we're really improving that.

Also, just very quickly I want to just echo what Dr. Freilich has said about the discovery wells. Yes, those need to be regulated because they can do as much damage as any other thing if not regulated. So we really support that also.

One of the things also that comes to mind as we look at the news and see what is happening in southern California with regard to fire. It is one of the confusions that we see in the current document that can be easily corrected I think but it says that we will use planned, manned professional service people. And yet we have 410 firefighters in Santa Fe County, 80 percent of them are volunteers. So we need to clear that up, because it's going to be volunteers that do the firefighting. We have to take another look at response times. I live in an area in Eldorado of course that has volunteer firefighter. I know when we have a fire thing how long it takes for the engineer driver to get to the firehouse and then they have a response time to the fire itself. So we feel that does need to be cleared up, so that we're adequately covered there, if we don't go to fully professional firefighters.

In terms of the man camps, that they're having a good deal of problems with in Colorado. We've interviewed some people here who have had that experience. It can be very difficult, so we certainly support the appropriate permitting and so on of the man camp issue. And also we really – we really want to say with regard to the meeting this evening, we do hope strongly that the approval will be on the December 9th meeting, partly because of the confusion of knowing today what time the meeting was going to be, and also that gives everyone involved the chance to say, yes, I looked at it. Go for it.

Public support behind this ordinance is going to be important. If it is ever challenged we'll need that. But just the feeling that this is a community ordinance supporting everyone, we feel it's quite important and that that would be very helpful.

CHAIR VIGIL: Thank you, Dr. Stewart.

DR. STEWART: Thank you.

CHAIR VIGIL: Next, please state your name and address for the record.

ROSS LOCKRIDGE: Thank you. Ross Lockridge, P.O. Box 22, Cerrillos. I'd like to pass out a few maps real quickly. *[Exhibit 1]*

CHAIR VIGIL: If you just give us the pile and we'll pass them down and that will give you more opportunity to speak to us.

MR. LOCKRIDGE: So under the letter, the item that shows those little green drainages on the composite oil and gas suitability map, those are drainages that we think the water system, the water association feels that should be acknowledged in the suitability map. They're recognized as drainages, but they're not in this gas suitability map. They feel San Marcos. They go to our reservoir and they also connect to the Galisteo Creek where we have a well. And on that stapled sheet, if you turn that, open that up, you can see where these items are. The Cerrillos Reservoir. And then down in the village you'll see that little circle. That's the well that we have that's along the creek. So we feel a little nervous not seeing those drainages recognized.

And the next map is an attempt to try to bring some of the scenic elements that we think would be acknowledged in an eco-tourism map which as yet has not been evolved. You can see the legend that we've drawn, the scenic area constraints, the yellow. We think – the yellow areas are shown on the scenic area constraints map but again, they're not recognized in the gas suitability map.

Also the scenic roads. There are some scenic roads that are left unprotected and we've drawn those in. You can see there's 45. There's Waldo Canyon Road that shows up going up to La Bajada Mesa which is also not protected in this composite. And we also want to point out that the historic Cerrillos mining district, which is a state cultural property, I don't believe it's acknowledged. I may be wrong. It may have been acknowledged some place in the factors but I haven't seen it.

So these are just a few things that we wanted to make sure that you're aware of and we request your support in including these.

The very last one shows the cultural properties that I mentioned, the Cerrillos mining district. Thank you.

CHAIR VIGIL: Thank you, Mr. Lockridge. Next. Please state your name and address.

DAVID BACON: David Bacon, 54 San Marcos Road West. I want to first also thank Dr. Freilich and underline that there should be no exceptions in this ordinance to exploratory wells. I think that's very important. When I was sitting there looking at the modeling, which is impressive of Santa Fe County, I was thinking that what this ordinance leaves out and should be included, either in this ordinance or in a separate one, I don't know which, is the modeling that's been done on global warming, global climate change and global climate disruption.

While this may be one of the most comprehensive ordinances in this country about oil and gas drilling, it certainly isn't within the most cutting edge litigation realm which is happening in the world right now. There's an attorney that is representing a small Alaskan village who's suing the oil and gas corporations on the basis of conspiracy to cover up global climate change. And if you look at just the national cases that have been settled on the basis of global climate disruption, it's a fairly powerful litigatory arena right now. A lot of coal

plants, coal-fired plants have been shut down because they don't address the contribution to global climate disruption.

The small Alaskan village is being represented by the attorney who actually represented the tobacco companies in that conspiracy case and he saw that the opponents on the other side that he had belittled at the time had a very valid point. An industry-wide conspiracy to cover up a health problem is a very huge wedge in dealing with corporate malfeasance. So I don't know if it happens in this ordinance that we take into account global climate disruption caused by digging out, mining, extracting, processing and burning more sequestered carbon or not, but it at some point has to be addressed.

And while Santa Fe County's contribution to that, it's still a significant amount when you look at the projections of oil and gas as to what lies under the surface here.

I also think as soon as we begin to address that issue then we have to address the issue of Santa Fe County's continuing use of fossil fuels and what Santa Fe County intends to do to change or switch from fossil fuels, from burning of sequestered fossil fuels. So I realize it's a large question, but it's certainly applicable because when you talk about oil and gas, the only thing they do is drill sequestered carbon and ultimately burn it, and we know now that this is endangering the entire planet, the eco-systems that give birth to and sustain and nourish life. So somewhere within this ordinance, or a separate ordinance, I feel we'll have to address that. Thank you.

CHAIR VIGIL: Thank you, Mr. Bacon. Next.

JOHNNY MICOU: Madam Chair, Commission, my name is Johnny Micou. I reside at 179 County Road 55A. I just have a few quick things. Firstly, I've complimented the County in other meetings but this is the first time before the BCC at this level. Really, really appreciate what you guys have done for Santa Fe County. This is really good stuff. Thank you.

CHAIR VIGIL: Thank you, Mr., Micou.

MR. MICOU: On the questions I have, in regards to OCD, December 11th, firstly, will the County or has the County been invited to participate in the special provisions drafting process?

CHAIR VIGIL: Would you state the name again?

MR. MICOU: For the Oil Conservation Division, on December 11th, Governor Richardson's executive order have drafting special provisions for Santa Fe County and the Galisteo Basin. The question is as this ordinance is coming forth, has the state asked the County to come in and participate in that process.

CHAIR VIGIL: I don't believe we've received an invitation but that doesn't mean we won't.

MR. MICOU: If you were to be invited, would the County accept?

CHAIR VIGIL: I would defer to Mr. Ross with regard to that. I think it would be something that we'd have to discuss. I'm not sure. I couldn't answer that for you. I think we're trying to protect the fidelity of our own process in moving forth with this and hope that the state is doing the same for them and that we're creating a complementary regulatory

scheme here.

MR. MICOU: Okay. In that context then, in the overlay zone, when it comes down through the APD and so forth, what would preclude an applicant to go for the APD to OCD first? Is there anything in the ordinance that really restricts that? I think I need to wait for the attorneys.

CHAIR VIGIL: We'll get the answer for you soon, and if you have other comments.

MR. MICOU: Well, it's also, what would preclude an applicant to go to OCD first on this process, and it's not clear whether the overlay process actually applies to exploratory drilling and we'd like to see if that could be cleared up. In addition, I want to echo that we do not absolutely support weakening or exempting or giving a variance for exploratory drilling, and I'm sure you're going to hear some of that in a little bit. I guess that's it. I just really would rather get back with your answers and then go from there.

CHAIR VIGIL: Thank you, Johnny. I'm going to give Dr. Freilich an opportunity to respond to all these questions after we've taken all the testimony from the public.

MR. MICOU: Thank you very much.

MICHELLE HENRIE: Madam Chairperson, Commissioners, Michelle Henrie. I represent Ortiz Mines, which is the mineral interest holder in the Ortiz Grant. My address is 201 Third Street NW in Albuquerque.

CHAIR VIGIL: Welcome.

MS. HENRIE: We do appreciate the process. We've been saying all along please add the environmental protections, please take care of these things that we all think are very important, and they are very important, but please don't shut down the drilling because my client gets nothing if no development occurs. And we've been a stakeholder, we've been here at the table but I feel like this ordinance has gone as far as it can to shut down the drilling. And I think that while we have these protections in place let's keep them but let's also not shut down the drilling.

And specifically, I'm going to talk on two points tonight. Our hydrologist is here; he will talk on a couple of points as well. But my big concerns are, number one, that we have drafted this ordinance with the presumption that anybody who goes through the exploratory zone phase actually has a project, actually has several wells that they're going to drill. And that's why they're doing a traffic assessment. That's why they're saying these roads need to be upgraded to handle all of the trucks that are going to be coming back and forth to service those wells.

Until you explore, until you know that you've actually got a hole that can produce something, you don't know that there's going to be truck traffic going back and forth. You don't know these things. So it puts the cart before the horse. The plan says there's been 29 wells drilled in Santa Fe County, none of which has produced anything. And so we need to know, we need our impacts and our process and our assessments to match the scope of the project, and they don't right now.

Our proposal for the exploratory zone, and let me just be clear because I think it's not been clear in what was stated before, was not that they would be exempted from the requirements of the ordinance, not that they would be free-for-alls. Not that people could just go out and punch holes in the ground. That is not what we have said all along. We are concerned about protecting the environment. And what we have said, if you read my proposal, is that if there's these exploratory zones, we put a cap on the number of wells that can be drilled in a time period. And then we also require the applicant to do an environmental impact report. We require them to do a water supply plan. We require them to do a geohydro report, and we require them to do a drilling response plan so while they're drilling they have professionals there, onsite, for example firemen who are off duty who can be there.

We are not suggesting an exploratory zone that is a free-for-all, and I just really think it's important that we have some mechanism in there so that the drilling can take place. And if the holes are all dry, let's move on. Let's not worry about the truck traffic and all of these other impacts of oil and gas development because it's not going to happen.

So we want something balanced. We want to be a part of this but we don't want it to go so far as to shut down the drilling. We want the environmental protections plus the drilling.

The other thing I want to bring up is the TDR, the transfer of development rights. It's a concept that works when we're talking about surface development – buildings, things like that. It works fine. When we're talking about mineral estates it doesn't. And the problem is that when you are an owner of a mineral interest you own the right to develop the minerals under a certain piece of ground, and minerals aren't unanimous. They're not spread similarly across all ground. It's different. Under some ground there's gold. Under some ground there's copper, turquoise. Under some there's oil, and under some there's oil that is developable and under some there's oil that is not.

And so as a mineral owner I have a right to develop what is under my piece of ground in the quantity and the quality that's there. It's not the same as a piece of ground a few miles away. The analogy would be if I have my house – I live in my house. There's another house across town. If the County were to say, I'm sorry but you need to move out of your house even though you own it. You can't live there any more. It's okay. You can live in this house across town. Well, it's not my house, and what's more, what's more, there's already a family living in that house, because whoever owns the mineral estate where those transfer of development rights would be implemented, they have the right to develop their minerals in its full scope as well.

So I think there's a real problem there. And the other problem is that my client who's the guy who gets the rent on the first house. If our mineral estate is not being developed but it's somebody else's down the street, we don't get any of those royalties. So it really does become no way for my client to recover. So I think the TDR is not going to work. I think there needs to be some more thought put into it. We have been trying to submit our comments and work with the consultants. We will continue to do that and we appreciate your time here tonight.

CHAIR VIGIL: Thank you, Ms. Henrie. Appreciate it. Next. Good evening.

HENRY CAREY: My name is Henry Carey. I live at 72 Bauer Road and I'm here tonight representing Lone Mountain Ranch, which is near Golden, and it represents 29,000 acres down there. My clients are also trying to protect their property rights, and we think that the ordinance as presented to date does an excellent job of protecting those rights. And I would compliment the consultants and the attorneys for their really thorough and excellent job.

I think there are additional things that are clearly coming up at this meeting that need closer scrutiny so I would also advocate that you not vote on this issue tonight but defer to the December meeting. So thank you very much.

CHAIR VIGIL: Thank you, Mr. Carey. Next.

KIM SORVIG: Madam Chair, Commissioners, my name is Kim Sorvig. My address is 103-C Camino los Abuelos, otherwise known as County Road 42, so I'm right in the middle of this. We definitely have come a long way. October 4th last year – I remember this because it's my wife's birthday – was the first time that I heard about this and I had to go home and try to celebrate with her when I felt like I had been just kicked in the guts. Tecton was still telling us that there was no possible way that an accident could happen. We've come so far from that and we have invested so much. And I'll just briefly say thanks to everybody and leave it at that. You all know who you are and how much courage it's taken.

What I'm here to ask very specifically is please do not vote on this tonight, and secondly do not vote on the element separate from the ordinance. The consultants, as I think everybody agrees, have really shown their true colors by listening to people, incorporating things that we have suggested, working hard with the staff. They're still doing that and there are still a great number of things that are important. You know the saying that the devil is in the details. This is a very good ordinance and plan in its basic structure but there are a number of things that could make it difficult to defend, hard to enforce.

There is, as far as I can see, no reason to hurry through the process at the expense of the next iteration of proofreading and coordination. I just want to give you two or three examples, and Bruce, these are out of the plan, not because I'm picking on you but because that's the one that the minutes say they might approve tonight. So that's the only thing I'm taking them out of the plan. And these are examples of the coordination issues. Within the plan there is a conflict between two different pages that say well pads are generally one to two acres, and well pads are generally three to four acres. So this is an internal contradiction which also impacts some of the limits the ordinance is trying to set on well pads, which is critical to the minimizing the surface impact. So it's a coordination issue that if we finalize the plan tonight, and wait until December to finalize the ordinance it's going to be harder to coordinate.

There are still comments coming in of the magnitude of the points about exploratory wells and about TDRs. Those need time for resolution. And as you know, the last revised version that the public has seen was only released five days ago. The only people who have really been through it are speed-readers and I'm not one. I'm struggling. So I really would ask

you to defer the decision until December 9th. If necessary, defer it longer, but we're all tired of it; I think we'd like to get it done. But tonight, in my opinion is not the night.

If we are seriously trying to get to December 9th, I would urge you to state tonight when you will cut off public comments. It looks to me like it has to be at Thanksgiving at the very latest, and to direct the consultants to finish what will be the final version and post it, hopefully a week before the meeting on December 9th when there would be a vote. We need to have that final document available so that all of us can read it and see what's gotten in there before it's finally decided. So that's my request, and again, thank you very much for the courage you showed last year, in what are we calling it now? The interim development ordinance, in passing that, and for getting consultants who have given us what I believe is very, very good advice on both the plan and the ordinance. Thank you.

CHAIR VIGIL: Thank you, Mr. Sorvig. Next. Please state your name and address.

EDUARDO KRASILOVSKY Good evening. My name is Eduardo Krasilovsky. I live in Eldorado, 17 Lucero Road. I'm going to address this issue in generalities. I don't have the mind of a lawyer or a scientist. And I will say that I read the ordinance once, but I think it's a very good ordinance. I think it will protect us quite well, but of course it has its limits. It's not perfect. But I think it's a very good ordinance and it's a shame that it was not written in, say, 1943, the year I was born, because maybe we wouldn't be in the situation we are today with respect to the health of the planet and our health. So I would have to say that maybe, I hope in the near future some minerals shouldn't be extracted like oil, coal, and gas, because they are simply killing us. They have been killing us for about 100 years, much longer of course the effect of coal. Mining coal is much older than the mining of oil and gas.

So I believe that this ordinance is a very good stepping-stone for the writing of future ordinances that will be appropriate for the challenges of the 21st century. So I will challenge our lawyers and our Commissioners to begin to think about writing a Santa Fe County Energy Ordinance that will take us to the point where we can say, I hope within ten years, I think we can do it, that we are fossil fuel-free. That the County, that the land that belongs to Santa Fe County is not using any fossil fuels and has replaced them with green energy fuels that are much less damaging to our bodies and our neurological systems, our brains, our children, our future generations.

The second ordinance I would like you to begin to work on is the one that will address the real issue that is presented by this ordinance, which is addressed somewhat, which is – because the issue is not about how many wells to drill, where to drill, but power. That's the issue. So we need an ordinance that will address the rights of the citizens of the county and the rights of the county, the democratic rights, the constitutional rights that we have that were stolen effectively by the corporations.

So to me this is a stepping-stone. We need more things to do. There's more work to do. Thank you.

CHAIR VIGIL: Thank you, Eduardo. Next.

JAY LAZARUS: Madam Chairperson, Commissioners, my name's Jay Lazarus with Glorieta Geoscience, 1723 Second Street here in Santa Fe. I represent the mineral right owners, Ortiz Mines. I'm not here representing an oil company or exploration company; we're here representing the mineral owners. I'd first like to say that I'm in complete agreement with what Mr. Sorvig said about slowing down passage of this ordinance. I couldn't agree with him more and he saved me a lot of time. I'd like to also agree with him that as it's stated, it is difficult to defend and hard to enforce. We provided about 12 pages of comments on the ordinance where we thought we could improve it, make it more technically accurate and make it work. As it stands right now, the portions of it, specifically on the drilling hours, Commissioners, make this a no-drill ordinance. Okay? It's been my instructions from my clients that we are to work with the County to try and make this workable. We are not here to try and kill the ordinance in any way, shape or form, and it's my understanding that the County is very interested in making sure that there are no fatal flaws. We see this as a fatal flaw.

The problem with this is that if you're limiting drilling to nine hours during the day you have the potential to create very serious environmental problems, which this ordinance is all about protecting and not creating. We need to maintain stability in boreholes. When we start drilling past 1,200, 1,500, 2,000, 3,000 feet, we routinely drill wells 3,000 feet or deeper for municipal water supplies. All of these are 24/7 operations. As the County petroleum engineer told the CDRC, they shut down on Christmas and that's it.

So by restricting these hours, not only are you making it – creating potential environmental problems you're also creating safety problems because all of the drillers, the driller-helpers, are handling the drill strings way too many times.

In terms of drilling mud, and I don't want to get as technical as we got in the memo, think of it like you're plastering your house. You're going to put your scratch coat on first, and that scratch coat is going to be on there for a while and it's going to be in pretty good shape. Then you're going to put your brown coat on. Well, if there's a lot of places where your brown coat hasn't covered your scratch coat, you're either going to get plaster coming off, or when you come on with your color coat you're going to have something that's really marred because nothing's uneven. Because things are uneven. When that happens in a 4,000 foot drill-hole you can start getting your clay swelling and the formation collapsing in on 3,000 or 4,000 feet of drill string which then is going to create a situation where we can have cross contamination of formations vertically because we weren't allowed to keep the hole conditioned because we had to quite at 5:00.

This is impossible to do, and I'm cautioning the County that this becomes a no-drill ordinance with this in there. The language we've proposed was the drilling operations be allowed 24/7, use everything in our powers to make sure that we have mufflers and light control. And we can have very, very sophisticated mufflers. We drill in residential neighborhoods for months at a time on deep-water wells where we put up sound blankets, have directed light, and we can make it work. And we have made it work successfully. And any deliveries other than in emergencies would occur during daylight hours. So trying to keep

the traffic down there. But I think this is a very significant problem.

Two other things I'd like to bring up, not as much detail. I know you've heard a lot of testimony tonight. The way that the monitoring well requirements, and I believe that Mr. Sorvig alluded to it, are written, it requires us to go off the drill pad and possibly offsite for groundwater quality monitoring. And while we agree that groundwater quality monitoring is important and essential and we have no problem with the concept, we've got some problems with the way that the ordinance is worded for us to be able to get proper access to drill these monitoring wells offsite or collect this offsite data.

So I think if we could take a little time and try and figure something out with your consultants we might be able to come up with something that's more do-able and more realistic in terms of our ability to collect field data to actually characterize background conditions prior to drilling.

And the last thing I'd like to discuss is the plan includes groundwater sensitivity map and an aquifer vulnerability map. We requested the data from the County Hydrologist to look at all the information that was used to create those maps. It's sort of funny; the shoe's on the other foot. The County Hydrologist normally reviews our work. Well, the County submitted something out to the public to review and now we're reviewing the County's work. We can't get the raw data or haven't been able to get the raw data from the County to review the inputs into these maps in the same the way the County makes us submit raw data to you guys. So we think before you go ahead and adopt the plan or the ordinance that the public should be able to review these data. The last we've spoken with the County there was no internal quality assurance or quality control on any of these data that went into this map and no one's been able – into the two maps and no one's been able to look at the assumptions. So we would appreciate the opportunity to be able to look at all the geologic and hydrologic data that was inputted into the DRASTIC model before it becomes part of the plan. And I will stand for any questions. Thank you.

CHAIR VIGIL: Thank you, Mr. Lazarus. Gentlemen on the Commission, this is the last of our testimony, I believe. Is there anyone else? I'll just ask one more time because this is a public hearing. I'm going to ask Dr. Freilich to respond to some of the glaring issues that he heard through the testimony. Then we can ask our questions. Dr. Freilich.

DR. FREILICH: Thank you very much. I think the first speaker addressed the distinction between residential streets and private roads and what standards would be used, what operations and maintenance, etc. One of the key elements of the ordinance is that the traffic impact analysis, that is the standard of the road, the right-of-way, the materials used, the annual maintenance operation, the bonding, the insurance, everything, will be incorporated in the development agreement between the County and the applicant, and all of the operations and maintenance costs will be paid, all the construction costs will be paid, all of that will be built to the standards of the County but it will remain a private road as long as it is on private property. It does not have to be dedicated to the County for County operation and maintenance. But there is full protection for the private roads, and if it's not clear, we'll make that clear as well.

The second comment from Dr. Stewart was that we should add response times to the response times, the time it takes volunteers to get to the fire facility, to the truck, not just the time from the facility to the site. Of course, that's part of – we've already sampled these response times. We measure from the call to the fire site to how long it takes to get to where the emergency is. So if their response is delayed because their personnel is delayed in getting to the site, that's part of the response time. The response time is not measured from the time the vehicle leaves the site. It's measured from the time the call is received. But if that's not clear we will make that clear. And then if they don't meet those response time standards there will have to be more professionals or other mitigation added to make absolutely certain that that response time will be met, that's necessary for health and safety. So we will deal with that.

Their third speaker discussed the question of scenic elements and proposed certain specifics about scenic roads and the historic Cerrillos mining district and so forth. I'll discuss those issues with Mr. Peshoff to see if that data is in the plan or in the LESA model, but certainly as we pointed out, all of that is going to come up in the environmental impact analysis on the project right from the get-go. So whatever scenic roads, scenic vistas, other historic features, natural features, they all will be fully examined under the environmental impact process. I believe there were also factors that were taken into account in developing the LESA model.

The fourth speaker addressed the problem of exploratory wells and global warming. There is a reference to global warming. The environmental impact report will consider global warming as an output from the well, from the production and so forth. There is a rule that basically you can't go beyond the project's impact, so we don't know where that oil is going. It might be going to a refinery in Louisiana and then produced into gasoline and other effects there, but we certainly can deal with the effects within the county with regard to global warming. It's already in the ordinance; we'll make it clearer that that's a factor to be considered.

With regard to the exploratory wells, if it's the Board's wish we could specifically state that exploratory wells are subject to the ordinance.

With regard to the OCD hearing on December 11th, we have received notice to submit comments. In fact the rule itself makes it mandatory on OCD to send the comments to the County. We have until December 3rd to make comments and I will get together with Mr. Ross and we will prepare our comments to the OCD and to the Commission.

As far as Michelle Henrie, the attorney for Ortiz, we're very pleased, and we've heard this before and I want to comment favorably that they have stated that they welcome environmental and other testing. They're certainly supportive of those goals and objectives. One thing that was suggested tonight was the question of removing the operation hour time constraint to the drilling for exploratory wells and leaving it in place for all truck traffic or for all delivery of materials, etc., to and from the site. I have to explore that. I certainly would welcome comments from the Commission itself, the BCC if you have any comments about that. I'm not certain how that should be handled but I'm certainly willing to look at that.

The second point Ms. Henrie mentioned was that she didn't believe that the TDRs would work for mineral estates because their property is really not tangible, and receiving zones are already allowed to drill to their fullest extent. I don't agree with those comments. I definitely have worked with TDRs in many places which also have dealt with surface and air rights and subsurface rights and I believe the TDR scheme is workable.

I think Mr. Carey mentioned some acreage within the mountain range and some other things and we'll check out that comment as well.

Mr. Sorvig is very modest. He has been in touch with me about 40 times and we've gone over things a lot. I don't reject his suggestion that you don't vote on the plan tonight or vote on the element tonight. We're perfectly willing to abide by what the BCC thinks is appropriate. I think his suggestion about cutting off and making a final draft as of Thanksgiving Day if we do go to the next hearing would be important. I do think it's important, and I want to mention this to the BCC and to the public, that I believe we should get our ordinance adopted prior to the adoption of the state's rules, because anything can happen on December 11th and I think that we gain certain credible legal rights if our ordinance is adopted and in place before those rules go into effect. So I think we should have a cut-off period if we are going to go beyond tonight.

As to the last speaker, Mr. Lazarus, I believe that I've already commented about the limitation on drilling, the hourly rates, and his concern about the data, he raised that with us last week and I think that Karen is looking at the distribution of that data. That's something that has to be discussed with the County Attorney. I'm not going to get in the middle of what County data should be disclosed on that. But it doesn't sound unreasonable.

The last thing is the question of the mufflers, light control, sound blankets, etc. Well, I think that just reiterates the fact that those are the kinds of mitigating – just single examples of many of the mitigation measures that could be required as a part of this ordinance.

So, so far what I've heard tonight is pretty consistent. I didn't hear anyone actually get up and say this ordinance shouldn't be adopted. I think people – just inertia is the problem. We keep going, keep making change and change. But I do think that if you give us a cut-off date we'll certainly respond to what we've heard tonight. Any other changes that we find, any comments that you might have from your discussions we'll be happy to submit that by any date you tell us to do that. But I think I've responded pretty well to what I've heard.

CHAIR VIGIL: Okay. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, thank you. Dr. Freilich, before you leave, could you explain to me what, or how the exploratory well works in your ordinance? Because I heard comments out there that they wouldn't work – to me it just doesn't make sense. So if you could explain it.

DR. FREILICH: Well, I think the ordinance itself, specifically, defines wells as including every kind of drilling exploration, etc. so as far as I'm concerned and as far as everyone else who's looked at this ordinance, exploratory wells are just as much covered as any other producing or drilling or any other type of exploration. I think the question that they're raising is that an exploratory well, if it turns out to be a naked well, a dry well, will

not have any of the production apparatus attached to it and the truck deliveries back and forth over the extended period of time. So the argument well is that the exploratory well, being very limited in duration, would therefore have very limited impact. But the fact of the matter is that if everybody were entitled to develop an exploratory well on all of the mineral estates in this county and not go through the environmental testing and the requirements for all of these requirements, we might as well just as well not adopt an ordinance, because what you're really doing is you're just assuring that all over the county, on different properties and land there's going to be major exploratory wells produced. And my feeling is the same impacts are created by an exploratory well as are created by any drilling well. There are additional and different impacts from a producing well afterwards, because it's not drilling and not creating some of the noise and other requirements, but an exploratory well and a producing well are interfering with habitat, they are interfering with archeological zones and so forth, they are basically dealing with greater pressure on water sources, pollution, etc. We have a greater possibility of contamination, greater possibility of accidents in many, many different places and so forth, because the drilling is the most dangerous part of the process. So for – I believe that that's not the purpose for which this project was initiated.

To basically say that exploratory wells should be put under far less control until we discover that we have oil, in which event then you should go into a full extent regulatory scheme. So that's my feeling about it. We have also Mr. Kramer. I think he might like to comment on that, and of course it's up to the Board of Commissioners.

DR. KRAMER: I just wanted to add that the environmental impact report, if a person is proposing to drill a single exploratory well in an area of which there is no or little geologic data, to a certain extent the environmental impacts will still be there but they will be less than somebody who's got a project in which they're planning to drill five, ten or fifteen production wells. They go through the process, but clearly, if they're going through an exploratory well process, the environmental impact study will be of lesser duration and it will be shorter in context than somebody who's coming in saying I'm planning to put on five or ten or fifteen production wells, because the environmental impacts of a production activity are much greater than a single exploratory well. But they still go through the process. The process provides the integrity for looking at the appropriate place to place the exploratory well and limits it in that case, but it also understands that the environmental impact, the fiscal impacts of a single exploratory well will undoubtedly be less than somebody who's developing a field-wide reservoir with ten, fifteen, twenty, 100 production wells.

CHAIR VIGIL: Any further questions, Commissioner?

COMMISSIONER ANAYA: I understand all of that part, but what I'm saying is, let's say somebody wants to go drill an exploratory well. They have to go through that that you just explained. I don't have a problem with that. But what about the road maintenance and the fire protection, and all of that stuff? If it's only exploratory, do they still, in your ordinance, do they still have to go through all of that?

DR. KRAMER: The way to deal with the fact that it's "an exploratory well" is to execute a development agreement with the County that says these are our limited goals in

drilling this particular well. We're still going to have a drilling rig out there, depending on the target formation, whether it's 3,000 or 8,000 or 10,000 feet, for 25 to 30 days. There's going to be trucks moving in and out with the casing and everything else. There will be employees out there constantly for 25 or 30 days. So the answer is yes. They're going to have to go all through that, but those impacts are going to be to a certain extent time-limited. Because once the drilling process is finished, once they're reached a target formation, at that point in time there'll be lesser truck traffic or no truck traffic. There's still environmental impact because you've cleared off two acres of land. You've put out – you've removed native vegetation. You've put out your pipe on the ground and everything else. You had to do all sorts of other things. And you've got a road that is going to have to be built out there to take the truck traffic. You've still got fire issues, you've still got EMT issues. You still have police issues in terms of that. There are still impacts and they need to be discussed and analyzed, although they're less than if you're dealing with a full-blown production facility that's going to be drilled out there.

COMMISSIONER ANAYA: Is an exploratory well a smaller diameter, or is it the same?

DR. KRAMER: It can be. In most cases – again, today a lot of exploration activities can be done with minimal permanent surface occupation. If you're drilling a well, you're drilling a well. And even if it's a smaller diameter well bore, the answer is you're still drilling a hole in the ground and you're going to run into all those issues and you still have the derrick there. Unless you're going down 100 feet. If you're going down several thousand feet you have almost all of the impact, even if it is a smaller diameter hole. You're still going to have a full crew out there drilling a hole. You're still going to have all of the issues that you have with the production or most of them.

COMMISSIONER ANAYA: Thank you, Madam Chair. Thank you.

CHAIR VIGIL: Commissioner Montoya, then Commissioner Sullivan.

COMMISSIONER MONTOYA: Thank you, Madam Chair. I just – I think Dr. Freilich answered a lot of the questions that I had. I just want to thank and congratulate you and the staff that have been working on this. Certainly Steve Ross and Roman for all the time you've put in there. We have come a long way in the little over a year now that we've been working on this. I think in terms of, speaking for myself, in terms of the vision that I have in terms of what we needed to do for Santa Fe County has been fulfilled. There is – we were talking about 100 major changes that you had that have been incorporated as part of public input. We didn't have quite 100 tonight so that was pretty good.

DR. FREILICH: I thought we got down pretty well.

COMMISSIONER MONTOYA: Yes. And I think there's still that element of change that may need to be tweaked a little bit in terms of what I heard and from what I heard you say as well, but not a whole lot. So I think the important thing and I just want to ask, those of you who came out here, do you think we should wait until December 9th before we finalize this? If you'd just raise your hand. And then how many of you will be here December 9th objecting to what we did? That's none. So I would say we wait until December 9th.

But we have essentially until December 11th. Is that correct? In order for us to finalize it?

DR. FREILICH: December 11th is when the state has its hearing on those rules and could in fact adopt them on December 11th. They could carry them over for further hearings also. One other point I wish to make is, believe me, during this process as time goes on and we are considering applications and so on, we're going to have a whole set of administrative rules that will go with the further explanation of terms, etc. We can even amend the ordinance from time to time.

COMMISSIONER MONTOYA: Right.

DR. FREILICH: I mean, there's nothing that says that this is a static vehicle that cannot be adapted, and I would highly recommend, in fact we have a provision in there for the amendment of the ordinance and so forth, and for the provision of administrative rules. So, yes, I have no objection to the additional time. We will make certain changes tonight that we've heard about and if you can give us that cut-off date than we can get it to you with enough time for you to – all of the Commission and the public to review it, that would be very helpful. So if you would give us the direction that we have it in by – what was the date we thought? The 3rd of December?

COMMISSIONER MONTOYA: The 1st? The 1st of December.

DR. FREILICH: The 1st of December? All right. That would be fine.

COMMISSIONER MONTOYA: I think that would be reasonable, Madam

Chair.

CHAIR VIGIL: Are you making a motion?

COMMISSIONER MONTOYA: I'm just making a recommendation that we have a cut-off on December 1st and certainly, I just want to reiterate, Dr. Freilich, you said it's important that this is not something that is going to be set in stone and concrete, that cannot be amended as we move on with the process. If we see that something isn't right then certainly we need to come back and amend it and we can do that to make sure that this is something that's fair and equitable. So certainly we do have the authority to do that.

DR. FREILICH: I think there's just one other point I'd like to make and that is I think you're going to be very surprised and happy to see how this administrative process is really going to work out, because it is going to flesh out the unknowns and the problems and the unique situations and so forth, and deal with them and do that in a concerted way before you have to face approvals of the zoning of the application. So it's going to give both property owners, oil and gas interests, mineral estate interests, residents and everybody else a full opportunity at these hearings to really spell out what are the impacts from that particular site, those particular things, and they're going to get their full and fair hearing.

I think there's only so much that you can put into a piece of legislation before it gets accused of being the Internal Revenue Code. And we all know how confusing, lengthy and obtuse that that is. So the more we put into – I think the real purpose of the ordinance is to set these processes in motion, set the basic legislative standards that you want to see accomplished, and the processes, and let those processes work. That's, I think, the genius of

this ordinance is to let those processes work and not see that we can pre-ordain everything here in this written ordinance, because that's not the way complex situations are in fact resolved in real life. And I think I've said my piece on that.

CHAIR VIGIL: Commissioner Sullivan has just a few questions.

COMMISSIONER SULLIVAN: Mr. Freilich or whoever, following up on Commissioner Anaya's question, for an exploratory well, if the applicant goes through the process and does an environmental statement report that's applicable to that undertaking and so forth, and then an agreement, and then they have to go to the state, to OCD to get a permit for that well. Then they come back to the County to obtain this final approval for the specific instance, as I understand it. Now, are we then approving an overlay zone in the initial stage that gives them the right to drill a permanent well, or if they do this scaled-down report and then they get their permit from OCD, then they come back and an agreement is entered into, and they find there is production capability there, what then happens? Do they then go back and say, okay, now we have a production well? And they do another environmental report and so forth? What happens at that point?

DR. FREILICH: Right. I think that's really to some degree the choice of the applicant. Now, if the applicant says we're only going to apply for an exploratory well in this location, and the exploratory well does fine oil or gas, what's going to happen is they're going to have to come back with a supplemental application for those producing wells and examine the entire environmental impact of all of those wells that would be produced, all those drill sites, all of that. Our suggestion would be that if you're drilling for oil and you want to file for exploratory wells, you should at the same time come in and say if we find oil and gas in our exploratory wells, here – this is the type of drill sites or production, etc. They might get pre-clearance for a wider thing. But we would be studying then the producing wells and locations, etc.

If they come in with a single exploratory well, they're obviously going to have to amend their application to add other producing wells, etc., if we're not looking at the environmental impact from those subsequent wells.

COMMISSIONER SULLIVAN: Okay, but – and so does your ordinance or plan element allow for that?

DR. FREILICH: It mentions it. It mentions the fact there can be supplemental EIRs.

COMMISSIONER SULLIVAN: It can be a supplemental. Because that the point that the one – that the attorney for Ortiz made was that we don't want to spend the \$61 million or whatever portion of it that might be if there's no oil there. So I would think that they would want to have minimal outlay at the outset. Now, of course, by the same token the County wants to be absolutely sure that whatever the impact is that that's going to be mitigated in whatever the capital improvements are in terms of firefighters and road improvements and so forth even for an exploratory well. That's got to be done. But my question really is assuming they go that process, which would be the lower cost route initially, is it very clear that that gives them no grandfathered rights to go any further without

going back?

DR. FREILICH: Right. Well, one thing we do require, they have to come in – we have a definition here called same ownership. They have to come in and produce their concept plan on all the lands that either multiple corporations with same shareholders or multiple shareholders with different corporations, including lessees, unit operators, and mineral interest, mineral estate owners, they have to produce all that land under that same ownership. They can't just come in and say, well, we've got this corporation or that corporation. That one isn't coming in. They've got to give us the overall picture so we can see what the environmental impact is going to be, even on that exploratory well.

COMMISSIONER SULLIVAN: Okay.

DR. FREILICH: Of the whole site.

COMMISSIONER SULLIVAN: They could give you that information but they –

DR. FREILICH: Right. But some of that CIP, for example, that would be produced by trucks coming out with petroleum, etc., with heavy weights and continuous usage of the site, etc. They can supplement the EIR by coming back and amend their application for those producing wells.

COMMISSIONER SULLIVAN: They could provide all of that information about all their holdings, but they could come in and say we're only going to do exploratory well A and limit their application to that and –

DR. FREILICH: They're still going to have to show that they're not on an architectural, historical, cultural site, and we could move that drill site to somewhere else, that in fact they're not on a habitat corridor and all of these things, or mountain slopes, etc.

COMMISSIONER SULLIVAN: I understand.

DR. FREILICH: They're going to have to have the roads to get access to and from, they're going to have to deal with noise, they're going to have to deal with lighting, they're going to have to deal with all of those factors anyway. There may be some reduced CIP and related type costs, but they still will have to provide that access, that fire, that emergency service.

COMMISSIONER SULLIVAN: I understand, and they should. But my point is that the ordinance and the plan does have a process for an exploratory well if they want to follow that process, and it could result in lesser CIP for them, particularly if the well doesn't produce out and they cap it and go on their way.

DR. FREILICH: We're not going to bond them for \$30 million in road improvements before they build an exploratory well. Right.

COMMISSIONER SULLIVAN: Okay. So that's one question. So there is – the ordinance does have a process to permit other than a full-bore –

DR. FREILICH: and if necessary, because all of this seems to be the major focus of attention tonight, I'll address some attention, some language in the ordinance to more fully flesh that out.

COMMISSIONER SULLIVAN: and the other question was, the comment was

made that it's a no-drill ordinance because you don't let us drill 24 hours a day.

DR. FREILICH: Right.

COMMISSIONER SULLIVAN: and I don't know whether you have the expertise there or who has the expertise, but is it your experience that a well can't be protected if the drilling is stopped?

DR. FREILICH: It's a little more expensive but it can be protected. I mean, the drilling, the noise level from drilling is the most excessive noise level that will occur during the entire process, including producing. So that is a major concern of nighttime ambient noise for hundreds of people that live around that area. And the other thing is these roads – there's no lighting, there's no – it's very difficult. They're going to have to do something if they're drilling 24 hours. The people coming in at night, production shifts, crew changes – all these things are happening on dark, inadequate, unsafe roads.

COMMISSIONER SULLIVAN: But the ordinance doesn't let them drill at night.

DR. FREILICH: It doesn't let them do that right now. I will check again with the petroleum engineer. We have an excellent petroleum engineer.

COMMISSIONER SULLIVAN: I just want to get clear on the question –

DR. FREILICH: He's going to be here on the final hearing, I believe. Yes. And he can – we'll get his report on that, on those drilling hours and operations as well.

COMMISSIONER SULLIVAN: Okay. Thank you.

CHAIR VIGIL: What's the pleasure of the Board of County Commissioners.

COMMISSIONER SULLIVAN: Madam Chair, I've got one other final question. We've really been talking basically about the ordinance here, which is really item number 5, and not the general plan oil and gas element. And so – and I think one person testified that we should do them together. I'm just – I didn't hear anybody have any comments about the general plan element, other than the gentleman from Cerrillos who said he thought there were some drainage areas that needed to be included in that. So is there – let me ask Mr. Ross. Is there any value to dealing with at least the oil and gas element tonight, or does that not make any difference if we're going to do the ordinance next month?

MR. ROSS: Well, Madam Chair, Commissioner Sullivan, certainly you could deal with the plan before you deal with the ordinance, because the plan informs the ordinance and not the other way around. But if it seems to the Board that there's consensus on the plan, I don't see any reason why you couldn't adopt it this evening if you wanted to take some action. Otherwise, we'll put both on the next agenda. They're both already advertised for consideration on the next agenda. It's really up to you.

COMMISSIONER SULLIVAN: Does it put us in any better objection of the public position by approving the oil and gas element tonight or not, versus doing it in December?

DR. FREILICH: I would suggest it's always better to have an adopted plan before you adopt an ordinance. The greater time period between it is more effective. So it doesn't harm you to adopt the plan tonight at all. Because so much of New Mexico law now

is looking to consistency of ordinances with general plan elements. So it's really essential that that general plan element come into effect. So it could be adopted tonight and then the ordinance the following –

COMMISSIONER SULLIVAN: We see a plan, Madam Chair, as being a plan, which is not a fully enforceable document. It's a guide that is the base document on which the ordinance was based. And so we have lots of plans and sometimes they conflict with each other and sometimes they have typographical errors in them and so forth. But really, the key is what does the ordinance say?

DR. FREILICH: Well, the ordinance does say that it will be consistent with the plan, in the approval process, in going through zoning and special use permits and the capital improvement program, and so it's a major venture to approve this plan element. Because the ordinance does say that it will be consistent with and take into account the plan's directions.

COMMISSIONER SULLIVAN: Do you or does the planning consultant feel that the plan needs to be changed from what we've heard tonight. We've heard a few things that might tweak the ordinance, but is there anything that we would need, from what you've heard tonight, the change in the plan?

DR. FREILICH: I don't believe so. I don't believe so.

COMMISSIONER SULLIVAN: I'm just wondering if we, in moving forward, shouldn't consider moving forward with the plan tonight and then giving the public an opportunity to comment on the ordinance and for you to make fine tunes to the ordinance on December 9th and limit ourselves to the ordinance. But I only would consider that if you didn't think there was anything that needed to be modified.

DR. FREILICH: I've been through this plan 100 times. I think it's an outstanding job. Of course that's sort of self-congratulatory; my name appears on it. Honestly, we have worked so hard and Mr. Peshoff really deserves the greatest appreciation for the work that he has put in with every community group and with the planning staff and with the Planning Director and the County Manager. We really have worked hard to get these standards in there, especially the capital improvement program standards, the sensitivity, the modeling, I think it's one of the best models I've ever seen of any local government ordinance.

I think it's an excellent product. I think the problems that we're wrestling with in the ordinance which deal with applications and standards that would apply to specific projects are not problems that the plan phases.

COMMISSIONER SULLIVAN: If that's the case, Madam Chair, then if the Commission is interested in moving that way I'd be glad to propose a motion for approval of the oil and gas element to the Santa Fe County General Plan and to defer action on item 5, the proposed ordinance, until December 9th

CHAIR VIGIL: Are you making that in the form of a motion?

COMMISSIONER SULLIVAN: Yes.

COMMISSIONER MONTOYA: Second.

CHAIR VIGIL: I hear a motion, a second. Any further discussion?

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Commissioner Sullivan, could you include in it that comments will stop December 1st?

COMMISSIONER SULLIVAN: That's a good thought. Is that okay? December 1st, 5:00 p.m. would be for additional comments on the ordinance.

CHAIR VIGIL: Amendment to the motion has been accepted by the seconder.

DR. FREILICH: Sorry. Could we just do that on Thanksgiving Day, so that I have the final ordinance on December 1? Because if I get the comments at 5:00 p.m. on December 1 we won't get the ordinance –

COMMISSIONER SULLIVAN: Oh, in time for the 9th? Oh, okay.

DR. FREILICH: That's all I was just suggesting is just give me enough time so I can deliver the ordinance on December 1.

CHAIR VIGIL: So by November 26th at 5:00 p.m., November 27th being Thanksgiving Day. Are you in agreement with that, the maker of the motion.

COMMISSIONER SULLIVAN: Is that okay?

COMMISSIONER MONTROYA: Yes.

COMMISSIONER SULLIVAN: Okay.

COMMISSIONER MONTROYA: Let's go with that.

CHAIR VIGIL: We do have a motion and a second. I just want to add a couple of items through everything that we've heard that you may want to consider. I did hear that there might have been a discrepancy between one and two acres, and three and four acres when describing well pads. That was I think by Mr. Micou or Sorvig. I'm not sure. I'd also like some further clarification on the statement that TDRs do not create any kind of a benefit for mineral rights. That clarification and perhaps that's just something you can clarify for me personally, or in our next hearing.

The other issue that had is the time constraints with regard to drilling. I would ask that you explore the possibility that perhaps maybe there won't be time constraints but there will be traffic constraints, or perhaps we might be able to address it with regard to that. And with that, I'm very impressed. As a lawyer, everything that I read as I read the original ordinance reminded me of something one of my law professors said and that is, good law is poetry, and poetry allows for interpretations. And you have allowed for that through this because you allow for due process to occur. And I'm very, very pleased to see that.

The motion to approve the oil and gas element to the general plan passed by unanimous [4-0] voice vote.

XIV. PUBLIC HEARINGS

A. Growth Management Department

- 1. CDRC Case # DP 07-5501 Apache Springs Subdivision. Beverly Chapman, applicant, Joe Ortiz, agent, request final and plat approval for a sixteen-lot residential subdivision on 40 acres. The property is located at 87 Camino Valle, within Section 10, 11, 14 and 15, Township 15 North, Range 10 East (Commission District 5) Vicki Lucero, Case Manager**

VICKI LUCERO: Thank you, Madam Chair. On August 21, 2008, the CDRC met and acted on this case. The decision of the CDRC was to recommend approval subject to staff conditions. On May 13, 2008, the BCC granted preliminary plat and preliminary development plan approval. The applicant is requesting final development plan and final plat approval for a 16-lot subdivision on 40 acres. The proposed lots range in size from .75 acres to 4.29 acres. The property is located within the Mountain Hydrological Zone where the minimum lot size is 20 acres per dwelling unit with a 0.25 acre-foot per year per lot water restriction; unless an approved geohydrologic analysis demonstrates water availability to support increased density.

This application was reviewed for existing conditions, phasing, access and traffic impact, terrain management and water harvesting, water and liquid waste, solid waste, fire protection, landscaping, open space, archeology, signage and affordable housing.

The proposed subdivision is compliant with Article III, Article IV and Article VII of the Land Development Code, and applicable County ordinances pertaining to final development plan and plat submittals. Staff therefore recommends final development plan and plat approval of the Apache Springs Subdivision subject to the following conditions. Madam Chair, may I enter those conditions into the record?

[The conditions are as follows:]

1. Compliance with applicable review comments from the following:
 - a. State Engineer
 - b. State Environment Department
 - c. State Department of Transportation
 - d. County Water Resources Specialist
 - e. County Public Works
 - f. County Technical Review Division
 - g. Santa Fe Public School District
 - h. State Historic Department
 - i. Rural Addressing
 - j. County Affordable Housing Administrator
2. The final development plan and plat must be recorded with the County Clerk's office.
3. All redlines will be addressed, original redlines will be returned with final plans.
4. The applicant shall comply with the water harvesting requirements of Ordinance

- 2003-6. A rainwater-harvesting plan will be required from individual lot owner upon application for a building permit. This requirement must be included in the Subdivision Disclosure Statement and restrictive covenants, and noted on the final plat.
5. The applicant shall comply with all Fire Marshal requirements.
 6. All exterior lighting must meet Code criteria. The specific requirements for residential outdoor lighting shall be included in the Subdivision Disclosure Statement and restrictive covenants.
 7. A liquid waste permit must be obtained from the Environment Department for the proposed septic systems prior to issuance of building permits; this requirement must be included in the Subdivision Disclosure Statement and noted on the Plat.
 8. The applicant must record water restrictive covenants simultaneously with the Plat imposing 0.25 acre-feet per lot per year. Water meters must be installed to 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.
 9. No further division of this land will be allowed; this shall be noted on the Final Plat and in the Subdivision Disclosure Statement.
 10. The applicant shall provide a Vegetation Management Plan to be reviewed and approved by the County Fire Marshal and must be recorded with the final development plan and referenced on the final plat.
 11. Construction Plans indicating proposed widening locations where Camino Valle narrows to less than 20' in width, any culvert extensions needed to accommodate widening, tree removals, and existing driveway locations shall be submitted for review prior to application for final development plan and plat approval before the BCC. These plans shall indicate placement of basecourse on Camino Valle from Camino Piñon to the entrance of the Apache Springs subdivision to a 3" depth. The applicant shall either bond or build out the improvements to Camino Valle prior to recordation of final plat.
 12. A location for a future cluster mailbox area to serve the Apache Springs Subdivision and other areas must be provided. This pullout shall meet the minimum specifications for mailbox pullouts set forth by the NMDOT. The pullout driving surface shall be a minimum of 6" of aggregate basecourse, and adequate drainage must be provided. The detail of this location shall be included in the final development plan, and additional right-of-way as required indicated on the final plat.
 13. The applicant shall submit a financial surety, as required by Article V, Section 9.9 of the Code, in a sufficient amount to assure completion of all required improvements. The surety bond shall be based on a county approved engineering cost estimate for the completion of required improvements as approved by staff prior to final plat recordation. All improvements shall be installed and ready for acceptance within eighteen months of recordation.

CHAIR VIGIL: Thank you very much, Vicki. Are there any questions for

staff? Later, is what Commissioner Sullivan said. Is the applicant here? Mr. Ortiz, is there anything you'd like to add and are you in agreement with all the conditions that have been set forth?

[Duly sworn, Joe Ortiz testified as follows:]

JOE ORTIZ: I am, Madam Chair. For the record, my name is Joe Ortiz. I live at 99 San Marcos Loop.

CHAIR VIGIL: Okay. And you are in agreement with everything?

MR. ORTIZ: Yes, I am.

CHAIR VIGIL: Okay. Is there any questions of the applicant?

COMMISSIONER MONTOYA: Madam Chair, just on the affordable housing units, how many will there be?

MR. ORTIZ: Madam Chair, Commissioner Montoya, three.

COMMISSIONER MONTOYA: Three? Okay. Thank you. That's all I had, Madam Chair.

CHAIR VIGIL: Any further questions?

COMMISSIONER SULLIVAN: I have some questions. I don't know if it's for staff.

CHAIR VIGIL: Please proceed, Commissioner Sullivan.

COMMISSIONER SULLIVAN: Shelley and Mr. Ortiz, if you can answer that's fine too. When we approved the master plan for this there were several things that were discussed and also included in the motion to take a look at. And one was the issue of the status of the property on the other side of this property, going towards I-25. And several neighbors were considered that the road would be inadequate and that would be used as a through route, once that property was developed. What have we found out about that other property since then?

SHELLEY COBAU (Land Use Department): Madam Chair, Commissioner Sullivan, there's not an approved subdivision to the east of the Apache Springs Subdivision, contrary to the allegations or the concerns that had been brought up by some of the members of the neighborhood. There was no 50-lot subdivision previously approved. There was never a recorded plat for that 50-lot subdivision. Should a subdivision come in to the east of Apache Springs, and the number of lots and the trip traffic that they would generate could require a road upgrade to Camino Pinon, we would require that they would upgrade the road to the standard based on their trip traffic. But the road that Mr. Ortiz has provided, the road design, has been reviewed by both Public Works and County Fire and Land Use staff and is in compliance with the Code for the amount of lots that are on that road at the current time and those that are proposed.

COMMISSIONER SULLIVAN: Okay. So, a) there's no subdivision that we know of on the other side of this property now. So that answers that question. So, refresh my memory. For a 16-lot subdivision, these are just going to be gravel roads; they're not even going to be paved roads. Am I reading that correctly?

MS. COBAU: That's correct. The local road standard for the county is based

on the number of lots and the number of lots that are being created and that the road is served by. We did a pretty detailed research because staff was concerned about Camino Pinon also, and they're bringing it up. They are improving the road. They're widening and they're adding basecourse, which is not required by Public Works or by Fire but in order to meet the road criteria in Article V of the Code they are required to upgrade that road. So it is being widened at any point where it's narrower than 24 feet in width. But they're not required to paved based on the number of lots.

COMMISSIONER SULLIVAN: Boy, that – I just think that that's a real problem to get a 16-lot subdivision as closely, as densely located as these lots are without a paved road. That's just generating dust and maintenance issues for the owners who have to handle that through the homeowners association. And I know from living on one for many years and having to do that it doesn't get done and what happens is the people end up coming into the County and saying, please accept our road, and then the County ends up one way or another, either through state legislation or something, having to put the cost of that road improvement on all the taxpayers, when really, it should be the homeowners. In other words, I realize that increases the cost of the lots, but that's who it benefits and that should be built into the project, in my judgment.

The other question that was brought up at the master plan hearing was that there were no fire hydrants on the property whatsoever, and you were going to research that also.

MS. LUCERO: Madam Chair, Commissioner Sullivan, the applicant did do a cost comparison of what the cost would be to install the 30,000-gallon fire suppression tank that they were originally proposing, versus connecting to the existing fire hydrant on Camino Valley. *[Exhibit 2]* And it came out to be almost double to connect to the existing fire hydrant. It was just a little over \$100,000 to install the storage tank and \$214,000 to connect to the tank.

COMMISSIONER SULLIVAN: So the storage tank doesn't have any fire hydrants associated with it?

MS. LUCERO: There will be a single hydrant located within the subdivision.

COMMISSIONER SULLIVAN: And how far is the furthest house from this single hydrant?

MS. LUCERO: I believe it meets Code criteria of 500 feet.

MR. ORTIZ: That's correct.

COMMISSIONER SULLIVAN: The furthest lot is 500 feet from the draft hydrant?

MR. ORTIZ: It does meet the Code requirement. I'm not sure – I don't know if –

COMMISSIONER SULLIVAN: Well, my question is, what's the Code requirement?

MS. LUCERO: Madam Chair, Commissioner Sullivan, we're looking into it, but the Fire Marshal did review the application and did submit a favorable response.

COMMISSIONER SULLIVAN: Well, again, I appreciate the cost comparison

\$101,000 versus \$214,000 but when we're looking at the safety of the community out there, and we have an existing community and now we're going to have a new community, we have fire service up that road and now we're going to not utilize that. In many areas a tank and a draft hydrant is fine where we don't have service, but here we have service. We ought to make use of that and provide the protection. A 30,000-gallon tank is not anything like tying onto a water system that has hundreds and hundreds of thousands of gallons of fire storage capability, so you can fight an extended duration fire.

You can figure it out for yourself. If you fight a fire with 1500 gallons a minute, which is typical, and you have a 30,000-gallon tank, how many minutes do you have to fight that fire? Only a few. So I think we're missing the boat here. Here we have services right at the boundary of this subdivision that are there to provide the safety of the public and we're disregarding them. I'm not sure what the Fire Marshal is saying there but I think in terms of having that capability, particularly since some of these are going to be mobile homes that go up in a flash, you're going to be hard-put to respond quickly or adequately from a draft hydrant. That's just been my experience. So I guess the answer to my question is that there won't be connections to the fire system, because there have been other projects in the Eldorado area where they've connected onto the Eldorado fire system, they've run the fire lines in there, but they've still used wells. They've still used domestic wells to serve the residents. That hasn't been unusual. Those subdivisions seem to have felt that that was economical to do. So I'm concerned that we're not taking advantage of the public facilities that we have right at hand, right at the property.

MS. LUCERO: Madam Chair, Commissioner Sullivan, I believe the fire hydrant is located at the intersection of Camino Valle and 285 which is probably almost about a mile and a quarter away from the proposed development. And just to answer your question, the Code requires a minimum of 1,000 feet, the buildable area on each lot has to be within 1,000 feet of a hydrant.

COMMISSIONER SULLIVAN: And this meets that is what you're saying?

MS. LUCERO: Yes. That's correct. And then also the Fire Marshal is requiring sprinklers in all the residences in the subdivision.

COMMISSIONER SULLIVAN: Now, again, it's a pay me now or pay me later. You have to sprinkle your house, or if you had a fire system and you pay for that in the cost of the lot, I imagine it wouldn't be that much different. But it makes the lot seem less expensive until suddenly when you want to build on it you find out you have to have a sprinkler system that will cost you \$10,000. So I just – if we have \$10,000 per sprinkler system and we have 16 lots, there's \$160,000 right there that we could have put into the price of the lot and had a better system of public protection. That's what I think we have to look at. I know the developer is looking at getting the least expensive lot, and what I think we have to look at is what's the maximum public protection within the reason and within economics. I think that's certainly within economics of the project. All right. Thank you.

CHAIR VIGIL: Any other questions. Shelley, I know that we've been trying to get with these small developments easements for mailboxes. Is that required for this

development? If so, I don't know where it's stated.

MS. COBAU: Madam Chair, there is a requirement for mailbox easement and it's right at the entrance of their subdivision on the road that goes – kind of bisects the lots, and it's shown on the plat.

CHAIR VIGIL: Okay. So you don't put it under recommendations or compliance requirements?

MS. COBAU: It's condition #12 under the staff conditions.

CHAIR VIGIL: Ah. Thank you very much. That's where I couldn't locate it. And thank you for working on those. That's a huge problem. Mr. Ortiz, I have a question I guess. One of the problems that Santa Fe County has and the Board of County Commissioners is that we approve these subdivisions after master plan, preliminary and final, and then people come to us and want to subdivide some of their property. Would you comment on that?

MR. ORTIZ: As part of our plat recordation, there will be no additional subdivisions allowed, as part of the plan.

CHAIR VIGIL: Okay. Would you comment on that Shelley? Could we make that a specific condition of approval, or just because it's stated on the plat, does that keep the subdivision from occurring?

MS. COBAU: I don't think it would hurt to add no further division of these lots can occur as an additional condition, but it is also a requirement as a plat note.

CHAIR VIGIL: Okay. Mr. Ortiz, would you object to that as a condition of approval?

MR. ORTIZ: Not at all.

CHAIR VIGIL: Okay. I would propose that we include as condition #14 that no further subdivision can occur here.

MS. COBAU: Madam Chair, it may be important to note that family transfer land divisions are not considered subdivisions, so unless the condition states, as we require it to state on the plat, no further division, then these lots could be divided through the family transfer process.

CHAIR VIGIL: That was my intent, to say no further division.

MS. COBAU: No further division. Okay.

CHAIR VIGIL: Okay. Are you in agreement with that, Mr. Ortiz?

MR. ORTIZ: Yes, I am, Madam Chair.

CHAIR VIGIL: Thank you. Anyone out there care to comment or speak to this issue? Seeing none, what is the pleasure of the Commission?

COMMISSIONER ANAYA: Move for approval with staff conditions. Staff recommended approval, right? Move for approval.

COMMISSIONER MONTOYA: With the added condition of Commissioner Vigil?

COMMISSIONER ANAYA: Yes.

COMMISSIONER MONTOYA: I'll second.

The motion passed by majority 3-1 voice vote with Commissioner Sullivan casting the nay vote.

- XIV. A. 2. EZ Case # a 07-4431 Lujan Appeal. Solis Lujan, applicant is appealing the Extraterritorial Zoning Commission's decision to deny her request for plat approval to divide 5.01 acres into two lots for the purpose of a family transfer (EZ Case #07-4430). The property is located at 4 Brooks Way, within Section 25, Township 16 North, Range 9 East (2-Mile EZ, District 4). Vicki Lucero, Case Manager**

MS. LUCERO: Thank you, Madam Chair. On March 13, 2008, the applicant's request for a family transfer land division on this property was heard by the Extraterritorial Zoning Commission. The decision of the EZC was to deny the request based on the applicant's refusal to comply with one of staff's conditions, which required a common access roadway to serve both lots as required by Section 10.1.C.3 of the EZO, and Section 3.5.1.f.1 of the Extraterritorial Subdivision Regulations. The applicant has stated that she initially refused to comply with this condition but subsequently indicated she intended to comply with all conditions.

The applicant is requesting plat approval to divide 5.01 acres into two lots for the purpose of a family transfer. The property currently has a residence, a septic, and a well. The property lies within the Metro-Basin Fringe Hydrologic Zone where the minimum lot size is five acres per dwelling unit, with quarter-acre-foot water restriction. Through a family transfer they could go down to half the minimum lot size which would allow 2.5-acre lots. The following lot sizes are being proposed: Lot 2-A, 2.51 acres more or less, and that's with the existing residence, and Lot 2-B, which will be 2.50 acres more or less, that's a vacant property right now.

The application was reviewed for the following: access, water supply, liquid waste, solid waste, terrain management, fire protection, archeological review and environmental review.

Staff recommendation: Staff finds that this application conforms to applicable provisions of the Extraterritorial Subdivision Regulations, Section 3.3.6. Therefore, staff recommends approval of this request based on the following conditions. Madam Chair, may I enter the conditions into the record?

[The conditions are as follows:]

1. The onsite access roads must have a minimum 38-foot easement with a 20-foot 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 provide Santa Fe County with a certified engineer's cost estimate

- detailing the cost of construction. 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 restriction on both lots. A water meter must be installed on Lot 2-B at the time of development and meter readings must be submitted to the Land Use Administrator annually by January 31st of each year.
 3. The Applicant must pay a solid waste fee for the newly created parcels. The fee for this subdivision is \$39.44 per lot.
 4. The applicant must submit a school impact report statement as per EZO/ESR.
 5. The applicant shall submit a family transfer affidavit.
 6. The applicant must address all minor corrections as shown on the proposed Plat. The redlines have been delivered to the applicant by Jan Daniels, Development Review Specialist. These redlines must be resubmitted with the Mylar prior to recordation.
 7. Compliance with conditions from the Technical Review Division as follows:
 - a) Staff will require existing residence to capture its roof drainage in a 600 cubic foot pond to bring existing residence into compliance.
 - b) A note shall be placed on the plat, that a 600 cubic foot pond will be required for 2,500 square feet of impervious area. Anything larger will require a professional engineer registered in New Mexico.
 - c) Staff will require a Local Common Access Roadway as per the EZO Subregs.
 - d) An all weather access will be required on Brooks Way to access both lots.
 - e) Staff will require a sign off for lengths of driveways from Santa Fe County Fire Marshal's Office.

CHAIR VIGIL: Thank you, Ms. Lucero. Are there any questions for Vicki? Seeing none, the applicant is here. Would you please state your name and address and then you can be sworn in.

[Duly sworn, Solis Lujan testified as follows:]

SOLIS LUJAN: Solis Lujan, 3125 Jemez Road, Santa Fe, New Mexico.

CHAIR VIGIL: Ms. Lujan, do you agree with all the conditions of approval?

MS. LUJAN: Yes, I do.

CHAIR VIGIL: Okay. Are there any questions for Ms. Lujan or staff at this point in time?

COMMISSIONER MONTROYA: Madam Chair, so Ms. Lujan, with the access point for the driveways, that's something that you're agreeable to now and you accept?

MS. LUJAN: Yes, I was always agreeable to it. I didn't refuse. I would rather have had it come off of Nine-Mile Road but I didn't refuse, as it states on the minutes. I would have gladly accepted those conditions.

CHAIR VIGIL: Okay. Any other questions? Well, I'm going to make my usual request here, Ms. Lujan. One of the problems we have is that properties get divided and

divided and divided, and all of a sudden we've got a serial subdivision going on. As a condition of approval, would you agree to no further division of this property?

MS. LUJAN: Oh, absolutely.

CHAIR VIGIL: Okay. With that, are there any further questions?

COMMISSIONER SULLIVAN: Madam Chair.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I think that's a good condition to add, but let me just clarify, and Mr. Ross isn't here. Maybe Shelley or someone can say what the regs are, but even though we add that condition to the plat, that's still not a completely effective prophylactic as I understand it because the applicant – any applicant – can still come back and ask for a variance to that condition. Is that not correct, Shelley?

MS. COBAU: Madam Chair, Commissioner Sullivan, that would be correct. They can come back to the Board and ask for reconsideration of the plat condition or ask for relief from a plat condition. That's correct.

COMMISSIONER SULLIVAN: Okay. Right. It's nice to have it there, so they know when they're buying or when they're making an offer that the Board feels that there should be no further subdivision, but I just wanted to be sure that I understood that that doesn't – that that's not the final say. That they could still subdivide down to the minimum that we allow for family transfers in that area, so long as the Board did approve a variance. Is that correct?

MS. COBAU: Madam Chair, Commissioner Sullivan, that's correct. In addition, if these go down to 2.5-acre lots as proposed tonight, that's the maximum. The minimum lot size has been achieved at this time. It's not a traditional historic community. It's in the Basin Hydrologic Zone where 2.5 acres is the minimum lot size so she'd have to go for a density variance also in addition to relief from the plat condition.

COMMISSIONER SULLIVAN: Okay. So family transfer wouldn't automatically get someone below 2.5 acres on this site anyway.

MS. COBAU: That's correct, Commissioner Sullivan.

COMMISSIONER SULLIVAN: So it's a belt and suspenders thing to put it on the plat as it stands now unless there were community water or community sewer, it couldn't go less than 2.5 acres.

MS. COBAU: Madam Chair, Commissioner Sullivan, it couldn't go below 2.5 even with community water and community sewer without coming in for a density variance based on the hydrologic zone.

COMMISSIONER SULLIVAN: Okay. Thank you.

CHAIR VIGIL: Okay. But I think the fact of the matter is that we have a clear understanding that there will be no further divisions, inclusive of family transfers in this area. Is that your understanding? Okay. Public hearing. Commissioner Montoya requests one. Is there anyone out there who would like to address us. Seeing no one, what is the pleasure of the Commission?

COMMISSIONER MONTOYA: Madam Chair, I move for approval with

staff conditions, and your added condition as well.

CHAIR VIGIL: I'll second that.

The motion passed by unanimous [4-0] voice vote.

CHAIR VIGIL: You are now set, Ms. Lujan. You have got your division.

MS. LUJAN: Thank you so much.

- XIV. A. 3. **CDRC Case # Z/MP 08-5040 Oliver Road Business Park. Ray Dunn, applicant, James Siebert and Associates, Inc. (James Siebert), agent, request master plan approval for a commercial development consisting of four buildings of 8,668 square feet each, for a total of 34,672 square feet for the purpose of office/warehouse uses on 2.64 acres more or less. The subject property is located at the northwest corner of Baca Lane and Oliver Road, within the Santa Fe Airport Business Park, which is off of Airport Road, within Section 11, Township 16 North, Range 8 East, (5-mile EZ, District 2). Vicente Archuleta, Case Manager**

CHAIR VIGIL: Mr. Archuleta, or Vicki, will you be taking this?

MS. LUCERO: Madam Chair, I'll be presenting this tonight.

CHAIR VIGIL: Thank you.

MS. LUCERO: Just a clarification to start. The property is actually adjacent to the Santa Fe Airport Business Park, not within the Santa Fe Airport Business Park.

CHAIR VIGIL: Okay.

MS. LUCERO: On June 19, 2008, the County Development Review Committee met and acted on this case. The CDRC recommended approval of the applicant's request subject to staff conditions. On May 13, 2008 the Board of County Commissioners approved the applicant's request to proceed with master plat to create four commercial/industrial lots on 2.64 acres. A request for subdivision approval will be submitted if the master plan is approved. The applicant now requests master plan zoning approval to allow a mix of live/work and office/warehouse along with other uses compatible with Major Center Districts.

One 8,668 square foot building consisting of 3,467 square feet for office use and 5,200 square feet for warehouse use is proposed for each lot, a total of 34,672 square feet of gross building area for all four lots. The application was reviewed for the following: existing development, lot coverage, access and traffic, water and wastewater, fire protection, terrain management, landscaping, signage, lighting and archeology.

Recommendation: This application is in conformance with Article III, Section 4 and Article V, Section 5 of the Santa Fe County Land Development Code. Staff recommends

master plan zoning approval subject to the following conditions. Madam Chair, may I enter those conditions into the record?

[The conditions are as follows:]

1. All redlines comments must be addressed.
2. Compliance with applicable review comments from the following:
 - a) Sangre de Cristo Water Co.
 - b) City of Santa Fe Wastewater Management Div.
 - c) Soil & Water District
 - d) State Department of Transportation
 - e) County Hydrologist
 - f) County Fire Marshal
 - g) County Public Works
 - h) Technical Review Division
3. The applicant must submit a water service letter from Sangre de Cristo water.
4. A detailed grading and drainage plan must be submitted with the preliminary development plan application.
5. A detailed lighting plan must be submitted with the preliminary development plan application and must conform to Santa Fe County Land Development Code requirements.
6. Submit Access Permit as approved by City of Santa Fe Traffic division relevant to the Airport Road and Oliver Road intersection.
7. Residential units for live/work proposal shall not exceed a total of four (4) residential units for the Business Park.
8. Submit building elevations demonstrating proposed architectural treatment of buildings, including vertical and horizontal offsets.
9. Minimum spacing between driveways shall be 200 feet.
10. Site development plans for each lot shall be approved by Staff.
11. Outdoor storage shall be prohibited.

CHAIR VIGIL: Thank you, Vicki. Are there any questions thus far for Vicki? Seeing none, is the applicant here? Mr. Siebert.

COMMISSIONER SULLIVAN: I have a question.

CHAIR VIGIL: Question from Commissioner Sullivan for Vicki.

COMMISSIONER SULLIVAN: Vicki, do we have – I don't see it in the packet. Do we have a list of uses for this parcel?

MS. LUCERO: Madam Chair, Commissioner Sullivan, we do. It's under Exhibit A. It's on page 5 of Exhibit A.

COMMISSIONER MONTOYA: Professional business, business service, research/development, retail establishment, personal service. That one?

MS. LUCERO: Yes. That's correct.

COMMISSIONER MONTOYA: Offices, studios, veterinary hospital.

COMMISSIONER SULLIVAN: I'm still not finding it but I'm sure it's here.

COMMISSIONER MONTROYA: Light industry, manufacturing, art galleries or dealers, wholesale, warehouse, storage.

COMMISSIONER SULLIVAN: Okay. This is the applicant's development report. Now, do we include that by reference into the approval or –

MS. LUCERO: Madam Chair, Commissioner Sullivan, it is referenced under our staff report under the summary, but it's referencing you to an Exhibit F, so that was actually a typo.

COMMISSIONER SULLIVAN: It's referenced where?

MS. LUCERO: On the staff report, second page, the very top.

COMMISSIONER SULLIVAN: Okay. Where it talks about Exhibit F?

MS. LUCERO: Right. Yes. It references you to Exhibit F but that's a misreference there.

COMMISSIONER SULLIVAN: Okay. So does the fact that there's a staff report then set these uses?

MS. LUCERO: Madam Chair, Commissioner Sullivan, it does. As you can see they're referencing – they're requesting approval to allow other uses besides office and warehouse and live-work that are compatible with major center commercial district uses, so we did review the use list that they proposed to make sure that it was in conformance with the major center district criteria and the County Code and it is.

COMMISSIONER SULLIVAN: Okay. So if there were some other use, such as a liquor dispensing establishment or something of that sort, they would have to come in and amend the master plan. Is that correct?

MS. LUCERO: Madam Chair, Commissioner Sullivan, for any type of liquor sales, yes, they would have to come back anyway.

COMMISSIONER SULLIVAN: Okay. What about for any other use other than what's shown on these bullets?

MS. LUCERO: Madam Chair, Commissioner Sullivan, I believe as long as whatever use they were proposing is compatible with the major center use list and the County Code they would be allowed to proceed with development of that use.

COMMISSIONER SULLIVAN: So what we're asking for here, or what they're asking for is a master plan under the major center district. Is that what they're asking for?

MS. LUCERO: Yes. That's correct.

COMMISSIONER SULLIVAN: And are there any other uses here that might be offensive to the neighbors that you can think of that would be in that list?

MS. COBAU: Commissioner Sullivan, I can go through the use list for you. I think there are a couple that are noteworthy that you may want to be aware of. Professional business, governmental office, business services, research and development businesses and laboratories, retail establishments, restaurants and bars, service stations, tire recapping or retreading, repair garage establishments and related uses, personal service establishments,

hotels, motels, bed and breakfasts, commercial indoor recreational uses, such as theaters, bowling alleys, pool rooms, game rooms, skating rinks, commercial parking lots and garages, offices, studios, clinics, laboratories, banks or other financial institutions, private clubs and lodges, public or private utilities, veterinary hospitals, public buildings other than elementary or high schools, churches, business and vocational schools, greenhouses and plan nurseries, auto/truck/RV dealerships, mobile home sales and service, art galleries, planned unit or master planned developments for mixed use, clubs and museums, lodges, office parks, shopping centers, colleges and universities, hospitals, medical/dental clinics, light industry, manufacturing, wholesale warehouse distribution and general industry. Those are the uses that are permitted under the Code for a major or community commercial or industrial non-residential district.

COMMISSIONER SULLIVAN: My only concern here is that we're looking at a master plan that says here are the uses but there are some of those other uses such as the tire recapping and the bar and so forth that if people were notified that there were those uses there they may or may not want to have some input on that. And I guess one way to deal with that is to approve the master plan with these uses that the applicant has proposed and leave it at that. Does that create problem, Mr. Siebert?

JAMES SIEBERT: Well, maybe I can clarify this issue. On page 5 of my report I state the following uses are proposed in conformance with types of uses permitted in a regional or major center district, and it's a more limited use list than what was just read out. Let me read them to you.

COMMISSIONER SULLIVAN: No, I can see it. You don't have to read it to me. I can read it. I've been looking at it here and I didn't see those other things about the bars and the tire capping and so forth. But my question to you was are you comfortable in the approval with that master plan approval being limited to that use list?

MR. SIEBERT: Yes, we are.

COMMISSIONER SULLIVAN: Okay. So that answers my question easily enough. Thank you, Madam Chair.

CHAIR VIGIL: Okay are there any other – Mr. Siebert, are you in agreement with all of the conditions?

[Duly sworn, Jim Siebert testified as follows:]

MR. SIEBERT: Jim Siebert, 915 Mercer.

CHAIR VIGIL: I would like to get out of here before – in about 20 minutes, if you could limit your testimony.

MR. SIEBERT: Well, I think the issue that I can see is the use list. We agree to the use list as stated in the report, and the way that's implemented is as we go forward to the development plan stage we create covenants. These become part of the covenants so that everybody buying a lot in the subdivision knows exactly what the use list is. This particular project is surrounded entirely by either built or approved industrial. It's served by City water and sewer by an agreement dating back to 1997, and I'll answer any questions you have.

CHAIR VIGIL: Any questions for the applicant? You do? Go ahead.

COMMISSIONER SULLIVAN: Yes, I had a question for Mr. Siebert. Mr. Siebert, usually at the master plan stage we have a building layout. I just see cross-hatches up there. Is there a plan?

MR. SIEBERT: No, this is the actual plan for the property and I assume it's in your packet.

COMMISSIONER SULLIVAN: Yes, I think I saw that. Is that it? It's just four storage units or four things or what are they?

MR. SIEBERT: Correct. It's four buildings on four lots.

COMMISSIONER SULLIVAN: That are at this point in time undetermined.

MR. SIEBERT: Correct.

COMMISSIONER SULLIVAN: But they'll be one of those things on the use list.

MR. SIEBERT: Correct.

COMMISSIONER SULLIVAN: Okay. Thank you, Madam Chair.

CHAIR VIGIL: Okay Public hearing. Would anyone out there like to address the Commission on this? Seeing none, what's the pleasure of the Commission?

COMMISSIONER SULLIVAN: Madam Chair, I move for approval with the additional condition that the uses are limited to the 13 uses that the applicant has proposed and included in its master plan report.

COMMISSIONER MONTOYA: Page 5, Appendix A.

COMMISSIONER SULLIVAN: Page 5, Appendix A.

COMMISSIONER MONTOYA: Second.

CHAIR VIGIL: Motion and second.

The motion passed by unanimous [4-0] voice vote.

CHAIR VIGIL: Mr. Siebert, you are done.

- XIV. A. 5. **BCC Case # MIS 08-5300 Copa de Oro Restaurant License. Tauer Enterprises, LLC, applicant (DBA Copa de Oro), requests approval of a restaurant liquor license to serve beer and wine with meals. The subject property is located at 7 Avenida Vista Grande, Suite B-6 in El Dorado, within Section 9, Township 15 North, Range 10 East, (District 5). Jose E. Larrañaga, Case Manager**

JOSE LARRAÑAGA (Land Use Department): Thank you, Madam Chair. The zoning for this property is regulated by the US 285 South Highway Corridor Zoning District. The ordinance established the designated zoning for the property as a village mixed-use subdistrict and specifies that restaurants serving alcohol are a permitted use.

The Copa de Oro Restaurant has changed ownership. The prior owner was in

possession of a full dispenser liquor license at this location. The applicant is requesting approval of a restaurant liquor license. The Copa de Oro Restaurant will not have a bar but will serve beer and wine with meals. The issuance of restaurant liquor license will not increase the intensity of the restaurant as there is not any proposed expansion for the existing site. The State Alcohol and Gaming Division granted preliminary approval of this request in accordance with Section 60-6B-4 NMDA of the Liquor Control Act. Legal notice of this request has been published in the newspaper. The Board of County Commissioners are required to conduct a public hearing on the request to grant a restaurant liquor license at this location.

Recommendation: The applicant's request for a restaurant liquor license to serve beer and wine at the existing Copa de Oro Restaurant complies with the US 285 South Highway Corridor Zoning District, Ordinance No, 2005-08, and has met the State of New Mexico requirements for noticing and distance from schools and churches. Therefore staff recommends approval of this request.

CHAIR VIGIL: Okay. Thank you, Mr. Larrañaga. Any questions? Is the applicant here? Would you please come to the front and state your name and be sworn in for any testimony.

[Duly sworn, Gene Tauer testified as follows:]

GENE TAUER: My name is Gene Tauer.

CHAIR VIGIL: You're in agreement with the process and everything that's been identified and stated tonight?

MR. TAUER: Yes, I am.

CHAIR VIGIL: Are there any questions for Mr. Tauer.

COMMISSIONER MONTROYA: Madam Chair, how many other establishments are there in this vicinity that already serve liquor?

MR. TAUER: In the Agora Center there isn't one but across the street at Brumby's, that is a bar.

COMMISSIONER MONTROYA: Where? I'm sorry.

MR. TAUER: Across the street at Brumby's. It's a new – well, it's three years old, and they are basically a bar. But in the Agora Center itself, Copa de Oro is the only besides the grocery store that sells alcohol.

COMMISSIONER MONTROYA: Okay.

CHAIR VIGIL: There's a public hearing. Would anyone like to address the Commission on this? Seeing none, I have some questions for staff. So Mr. Larrañaga, this will probably – thank you very much for the report. Thank you, Mr. Tauer. This is a staff question. Thank you for the report you gave to us after your visit from Alcohol and Gaming. The question I have and maybe Steve Ross can help out with this. It seems to me that one of the guidelines that we can look at when making decisions for the alcohol dispensary license is DWI accidents. Is that something – at least that's what I surmised from your report. Are you in agreement with that, Mr. Larrañaga?

MR. LARRAÑAGA: Madam Chair, that was my comment that it would be a

public safety issue, maybe getting information from our Sheriff Department and seeing if there's been several accidents because of alcohol being served in that area, would be a public safety issue and that would be one of the reasons to be able to deny a liquor license.

MR. ROSS: Madam Chair, can I add to that though? Because any such consideration would have to be a problem related to the applicant, not DWIs in general. It has to relate somehow, health, safety and morals of the community have to relate to the applicant itself under our statutory scheme. We have very limited authority to deny these types of transactions.

CHAIR VIGIL: Okay. I always thought it was 200 feet from a school. Now it's 300? Has that been changed recently?

MR. ROSS: Yes. Three hundred.

CHAIR VIGIL: Okay. The other questions I have are, the fees we require. Are those set by state statute?

MR. ROSS: You're referring, Commissioner, to our annual license fee?

CHAIR VIGIL: Yes.

MR. ROSS: Yes, that's set by state statute and enacted on an annual basis by this body.

CHAIR VIGIL: Okay. Those are the only questions I had. Thank you very much.

COMMISSIONER SULLIVAN: Madam Chair.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I just wanted to mention for the staff benefit and Shelley that I don't know if we've ever checked but the other liquor establishment on the other side in the shopping center that's across from Agora, it might be useful if you went back and looked at the conditions for the approval of that shopping center, because there were some conditions about what would be done, as I recall, before there's a liquor establishment there and there was also some conditions when that was approved because they couldn't meet with all the proposed development their water usage requirements. And so there were conditions in the approval that they had to use paper plates, which they agreed to. So I don't know whether that establishment serves food or not or whether it just serves booze, but I'd check on that unless you know about that.

MS. COBAU: Madam Chair, Commissioner Sullivan, I can testify from personal experience that they don't serve paper plates. I've eaten breakfast there and they serve their food on dishes. They do have a separate bar area that I haven't been in but I understand has a limited menu, and I would have to research to find out what the conditions of approval are, but they don't use paper plates, Commissioner. If that was one of their conditions they're not doing it.

COMMISSIONER SULLIVAN: It was for the restaurant and I remember that quite well because they were pushing the envelope on their usage and I thought that that was probably rather inconvenient and I would rather use regular dishes too but then of course you have to wash them and so forth. So I would just suggest that you go back and look at the

conditions for that approval on that one. Thank you, Madam Chair.

CHAIR VIGIL: Thank you. What's the pleasure of the Commission, and I think I've already asked if there's any comments, but I will again. This is a public hearing. Does anyone care to testify on this? Seeing, hearing none, pleasure of the Commission?

COMMISSIONER SULLIVAN: Move for approval

CHAIR VIGIL: Motion. Is there a second?

COMMISSIONER ANAYA: Second.

The motion passed by unanimous [3-0] voice vote, with Commissioner Montoya abstaining.

- XIV. A. 6. BCC Case # MIS 08-5310 Steaksith LTD Co, Liquor License. The Steaksith Ltd. Co, applicant, requests approval of a transfer of ownership for dispenser license # 684. The subject property is located at 104-B Old Las Vegas Highway, within Section 7, Township 16 North, Range 10 East, (District 4). Jose E. Larrañaga, Case Manager**

MR. LARRAÑAGA: Thank you, Madam Chair. The Steaksith is a full-service restaurant serving food and beverages in the bar, lounge and restaurant. The establishment is a legal non-conforming restaurant which has conducted business at this location for a period of approximately 22 years. The corporate structure of the Steaksith, LTD Company has changed but the licensed owners remain the same. Richard T. Vimont now owns 49 percent and Rosemarie V. Vimont owns 51 percent of the Steaksith. Richard T. Vimont is the resident agent of the company.

The applicant is requesting a transfer of ownership of dispenser liquor license #684. Liquor license #684 is a full dispenser license which allows for serving beer, wine and liquor in the restaurant.

The State Alcohol and Gaming Division granted preliminary approval of this request in accordance with Section 60-6B-4 NMDA of the Liquor Control Act. Legal notice of this request has been published in the newspaper. The Board of County Commissioners are required to conduct a public hearing on the request to grant a restaurant liquor license at this location.

The issue to be considered by the Board of County Commissioners is whether the transfer or ownership should be approved. The applicant has met the State of New Mexico requirements for noticing and distance from schools and churches. The intensity of the restaurant will not increase as there is not any proposed expansion of the existing site. Therefore staff recommends approval of this request.

CHAIR VIGIL: Any questions for staff?

COMMISSIONER MONTOYA: Madam Chair.

CHAIR VIGIL: Commissioner Montoya.

COMMISSIONER MONTOYA: So this is going from Mr. to Mrs.?

MR. LARRAÑAGA: Madam Chair, Commissioner Montoya, I believe there was another owner involved and now just the corporate structure changed to include Ms. Vimont as one of the major shareholders, I guess, of the company. So with that change the liquor license was with that old corporate structure. When the new corporate structure changed, now they have to reapply for basically a name change of ownership.

COMMISSIONER MONTOYA: Oh, okay. So it's just two instead of three.

MR. LARRAÑAGA: I believe that's the way it worked out. I think it was laid out in the application by Alcohol and Gaming in there, what was happening.

CHAIR VIGIL: Any other questions? Is the applicant here? Please come forward, state your name and address and be sworn in for your testimony.

[Duly sworn, Richard Thompson Vimont testified as follows:]

RICHARD VIMONT: Richard Thompson Vimont, 2223 Calle Alvarado.

CHAIR VIGIL: Mr. Vimont, do you have anything to add and are you in agreement with everything you've heard and the process for which you've gotten this transfer?

MR. VIMONT: All the information is correct.

CHAIR VIGIL: Okay. Any questions? Seeing none, this is a public hearing. Would anyone like to address the Commission on this item? Seeing none, what's the pleasure of the Commission?

COMMISSIONER ANAYA: So moved.

COMMISSIONER SULLIVAN: Second.

CHAIR VIGIL: There's a motion and a second.

The motion passed by unanimous [3-0] voice vote, with Commissioner Montoya abstaining.

- XIV. A. 7. **BCC Case # MIS 08-5330 Estrella del Norte Vineyard, LLC. Winegrowers Liquor License. Estrella del Norte Vineyard, LLC, applicant, requests approval of a Winegrowers Liquor License. The subject property is located at 106 North Shining Sun, within Section 8, Township 19 North, Range 9 East, (District 1). Jose E. Larrañaga, Case Manager**

MR. LARRAÑAGA: Thank you, Madam Chair. The applicant is requesting approval of a winegrowers liquor license. A winegrowers license will allow the applicant to manufacture or produce wine, sell wine wholesale, conduct wine-tastings, and sell wine by the glass or by the bottle. The zoning for the property is regulated by the Pojoaque Valley Community District. The vineyard, wine sampling and wholesale distribution of the product

produced on this site are permitted under Section 12.6B of the Ordinance 2008-5.

The State Alcohol and Gaming Division granted preliminary approval of this request in accordance with Section 60-6B-4 NMSA of the Liquor Control Act. Legal notice of this request has been published in the newspaper. The Board of County Commissioners are required to conduct a public hearing on the request to grant a winegrowers liquor license at this location.

Recommendation: The applicant's request for a winegrowers liquor license to be approved at this site complies with the zoning requirements of the Pojoaque Valley Community District and has met the State of New Mexico requirements for noticing, distance from schools and churches. Therefore staff recommends approval of this request.

CHAIR VIGIL: Thank you, Mr. Larrañaga. Questions? Seeing none, is the applicant here? Mr. Reinders, would you please step forward. Welcome. Nice to see you. Would you state your full name and address and then be sworn in for any testimony.

[Duly sworn, Lydia Eileen Reinders testified as follows:]

LYDIA EILEEN REINDERS: Yes, my name is Lydia Eileen Reinders, and I live at 106 North Shining Sun, Santa Fe, New Mexico, 87506.

CHAIR VIGIL: Ms. Reinders, is there anything you'd like to add and do you agree with the process as it's occurred so far?

MS. REINDERS: I agree with it as stated.

CHAIR VIGIL: Are there any questions of the applicant? This is a public hearing. Anyone out there care to address the Commission on this? Seeing none, what's the pleasure of the Commission?

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Yes.

COMMISSIONER ANAYA: I really wanted to taste the wine before I made a motion. But I'll go ahead and move to approve.

COMMISSIONER MONTOYA: Second.

CHAIR VIGIL: Motion to approve and a second.

The motion passed by unanimous [4-0] voice vote.

CHAIR VIGIL: Good luck in your venture.

MS. REINDERS: Salud.

XIV. A. 8. BCC Case # MIS 08-5370 Backroad Pizza, LLC. Restaurant License. Backroad Pizza, LLC, Applicant, requests approval of a Restaurant Liquor License to serve beer and wine with meals. The subject property is located at 5 Bisbee Court, within Section 24, Township 16 North, Range 8 East, (District 5). Jose E. Larrañaga, Case Manager

MR. LARRAÑAGA: Thank you, Madam Chair. Commercial zoning was approved for the Turquoise Trail Business Park in 1991 by the Board of County Commissioners. The approval of the master plan by the BCC allowed for the sale of liquor on this site. The applicant is requesting approval of a restaurant liquor license. The Backroad Pizza will not have a bar but will serve beer and wine with meals. The issuance of a liquor license will not increase the intensity of the restaurant as there is not any proposed expansion of the existing site.

The State Alcohol and Gaming Division granted preliminary approval of this request in accordance with Section 60-6B-4 NMSA of the Liquor Control Act. Legal notice of this request has been published in the newspaper. The Board of County Commissioners are required to conduct a public hearing on the request to grant a liquor license at this location.

Recommendation: The applicant's request for a restaurant liquor license to serve beer and wine at the existing Backroad Pizza complies with the master plan zoning granted by the BCC and has met the State of New Mexico requirements for noticing, distance from schools and churches. Therefore staff recommends approval of this request.

CHAIR VIGIL: Any questions of Mr. Larrañaga? Seeing none, is the applicant here? Oh, I see a question. Commissioner Sullivan.

COMMISSIONER SULLIVAN: Two questions. One, is this where the packing store used to be or is next to –

CHAIR VIGIL: Java Joe's – of Java something.

COMMISSIONER SULLIVAN: No, but my question is, is this where – was there a packing –

CHAIR VIGIL: There still is.

COMMISSIONER SULLIVAN: Is it still there?

CHAIR VIGIL: Do you know the answer? And we'll get you to answer if Mr. Larrañaga doesn't know it.

MR. LARRAÑAGA: Madam Chair, Commissioner Sullivan, no I don't know. I believe the packing –

CHAIR VIGIL: Okay. We'll wait till you get sworn in. I have a question for staff before we get to the applicant, and maybe this is for you, Mr. Ross. Am I making your night easy or what? My question is, and the way this is drafted struck my curiosity. No reflection on your application, but it says the issuance of a liquor license will not increase the intensity of the restaurant as there is not any proposed expansion of the existing site. No proposed expansion with regard to additional square footage, but would not a beer and wine

license attract more customers, and is that considered increased intensity?

MR. ROSS: Madam Chair, it could possibly create a zoning issue, unrelated to the application for the liquor license that's before us. It could cause them to be out of compliance with some zoning restriction, which I'm sure the staff has – Shelley tells me they have a zoning statement so we've already looked into that. The Alcohol and Gaming Division require us to look at the zoning once they receive the application and give them a zoning statement. So apparently the staff has already looked into that and determined that it did not put the applicant in violation of whatever zoning is present on the property.

CHAIR VIGIL: Okay. Thank you. I have no further questions. Would the applicant please come forward and state your name and address. Are there two of you and would one of you just like to be the spokesperson?

[Duly sworn, Piper Kapin testified as follows:]

PIPER KAPIN: My name is Piper Kapin. My address is 510 Escudero Street.

CHAIR VIGIL: Are you in agreement with all the conditions and everything you've heard in the process as you've been engaged in it?

MS. KAPIN: Yes, I am.

CHAIR VIGIL: Okay. Do you have anything to add?

MS. KAPIN: No.

CHAIR VIGIL: Okay. Any questions? You weren't hoping to get pizza?

COMMISSIONER ANAYA: No, I ate there the other day. It was actually pretty good. A beer would have washed it down real nice.

COMMISSIONER SULLIVAN: Madam Chair.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: My question was, I was trying to get oriented. Is the packing store still there?

MS. KAPIN: It is still there.

COMMISSIONER SULLIVAN: Where are you in relation to that?

MS. KAPIN: We're next door to it.

COMMISSIONER SULLIVAN: You're right next door to it. Okay. The case says Backroad Pizza and your license says Java and Good Stuff. So what is this an application – what business is this an application for?

MS. KAPIN: Backroad Pizza, LLC.

COMMISSIONER SULLIVAN: Okay. In our packet we have a food establishment permit for Java and Good Stuff. Where is that?

CHAIR VIGIL: That's the previous owner, right?

COMMISSIONER SULLIVAN: Okay. What about the current owner? That's you. Where is your business license and food establishment permit?

MS. KAPIN: The business license is in the name of Java and Good Stuff, as the – we're doing business as that, but it's under our Backroad Pizza, LLC.

COMMISSIONER SULLIVAN: Okay. Your application to the Liquor Control Board was for Backroad Pizza, LLC, or for Java and Good Stuff?

MS. KAPIN: Backroad Pizza, LLC.

COMMISSIONER SULLIVAN: And Vicki, how are they permitted? What's the name of the company that's permitted there? The occupancy permit.

MS. COBAU: They have a Santa Fe County business registration under the name of Java and Good Stuff. Madam Chair, Commissioner Sullivan, and they have a food establishment permit under Java and Good Stuff.

COMMISSIONER SULLIVAN: Okay, and the application is made on behalf of Backroad Pizza, LLC, and to the Alcohol and Gaming Division and to us.

CHAIR VIGIL: And?

COMMISSIONER SULLIVAN: And it seems like we need to establish some relationship between Java and Good Stuff and Backroad Pizza, LLC, here.

MR. LARRAÑAGA: Madam Chair, Commissioner Sullivan, on the business license they could be registered as Backroad Pizza, LLC, and they came in doing business as Java and Good Stuff. As far as a business license, that's how they could have registered the business license when they got this. I don't know, it's possibly the same thing with the ED permit.

COMMISSIONER SULLIVAN: Well, I think we need to get something clarified in the County records here. Are we permitting Java and Good Stuff or are we permitting Backroad Pizza LLC?

CHAIR VIGIL: My question was when he have them down as a business license, that's a whole different sort of set of circumstances and responsibility for them if they are as a business license under Java. But if they applied for a liquor license under Backroad Pizza, is that going to make a difference or create any difficulty?

MR. LARRAÑAGA: Madam Chair, I believe all we have to do as far as a business license is do the name change since the location has not changed. So we could fix that as far as business license and they would have to fix this with the ED permit, and we wouldn't sign the – the only control that we have on is a business registration, which would be part of the zoning, and get them to fix that so that we could sign off on the liquor license and send it off to Alcohol and Gaming.

CHAIR VIGIL: Commissioner Sullivan, is that what your concern was, and would that address it?

COMMISSIONER SULLIVAN: I would assume it would, but I would ask for Mr. Ross to concur.

MR. ROSS: Madam Chair, Commissioner Sullivan, I'm reasonably certain they can't get a liquor license in the name of a business as you're doing business as. It's just like the popular name of a business. I'm reasonably certain you have to get your liquor license in the name of your underlying entity, which would be the LLC. So they're doing that right. So I think the solution is to get the applicant to state in the record that the dba is in fact something that is a product of the LLC and then we'll be okay.

COMMISSIONER SULLIVAN: Well, their business registration is Java and Good Stuff.

MR. ROSS: I think you can probably get a business registration legitimately in the name of a dba, but I don't think you can get a liquor license.

COMMISSIONER SULLIVAN: I see.

MR. ROSS: Without drilling down to the underlying entity. But it would make sense to get all the records straightened out so they all basically reflect the same name. If the business registration needs to have the dba on it, I would put both of them on it. I would put Backroad Pizza dba Java and Good Stuff and then the record is clear what's going on. But I think the applicant needs to clarify this for us, on the record under oath.

COMMISSIONER SULLIVAN: I guess we'll do that on the record, just simply ask the applicant is Java and Good Stuff and Backroad Pizza, LLC, one and the same entity?

MS. KAPIN: Yes, they are.

COMMISSIONER SULLIVAN: Okay. And are you agreeable to work with the staff to get the business license – business registration updated as necessary?

MS. KAPIN: Yes.

COMMISSIONER SULLIVAN: Okay. Thank you, Madam Chair.

CHAIR VIGIL: Thank you. Any further questions? This is a public hearing. I'm going to ask the masses out there if amongst any of them they care to testify. Seeing, hearing none, what is the pleasure of the Commission?

COMMISSIONER ANAYA: So moved.

COMMISSIONER SULLIVAN: Second.

The motion passed by unanimous [4-0] voice vote.

CHAIR VIGIL: You now can go serve beer and wine. Thank you for your patience.

XV, ADJOURNMENT

Chair Vigil declared this meeting adjourned at 8:50 p.m.


Approved by:

Board of County Commissioners
Virginia Vigil, Vice Chair

ATTEST TO:

VALERIE ESPINOZA
SANTA FE COUNTY CLERK

Respectfully submitted:


Karen Farrell, Wordswork
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