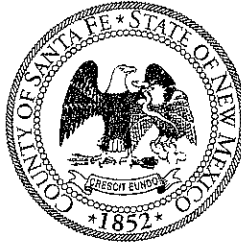


Danny Mayfield  
*Commissioner, District 1*

Virginia Vigil  
*Commissioner, District 2*

Robert Anaya  
*Commissioner, District 3*



Kathy Holian  
*Commissioner, District 4*

Liz Stefanics  
*Commissioner, District 5*

Katherine Miller  
*County Manager*

## BOARD OF COUNTY COMMISSIONERS

**CASE NO. V 11-5070**  
**JOYA DE HONDO ROAD VARIANCE**  
**GRAY-HALL LLC, APPLICANT**  
**JENKINS/GAVIN CONSULTANTS, AGENT**

### ORDER

**THIS MATTER** came before the Board of County Commissioners (“BCC”) for hearing on August 9, 2011, on the Application of Gray-Hall LLC (hereinafter referred to as “the Applicant”) for a request for a variance of the Santa Fe County Land Development Code (“Code”) to allow an off-site, living priority lane with a right-of-way ranging in size from 20 feet to 30 feet for a section of roadway approximately 1,110 feet in length and to allow a driving surface of 16 feet in width for a portion of roadway approximately 640 ft. in length, for the purpose of creating a four-lot Summary Review Subdivision. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted and makes the following findings of fact and conclusions of law:

1. The Applicant requests variances of Article XV, Section 6.E (Community College District Road Standards) of the Code regarding road width and right-of-way (ROW) width in order to create a four-lot Summary Review Subdivision on 43.8 acres.
2. The property is located off of Old Galisteo Way, within Section 15, Township 16 North, Range 9 East.

3. In support of the Application the Applicant submitted a letter of request, proof of legal lot of record, site plans, slope analysis, and a district court order.
4. Article XV, Section 6.E.7.a.iv (Community College District Road Standards) of the Code provides that a living priority lane shall consist of a 34' ROW with two 10-foot driving lanes. A 1970 district court order apparently precludes widening the road in the easement as required by Code. Therefore, the Applicant is unable to make improvements that meet County standards to that 640-foot portion of the road where only a 20-foot easement exists. A variance is requested to allow a ROW width of 20 feet and a road surface of 16 feet. However, the ROW beyond of the 640-foot portion is a maximum of 30 feet wide and on this portion of the roadway the Applicant will be able to construct the required improvements for a 20-foot driving surface so a variance is only needed to allow a ROW width of 30 feet for a length of roadway of approximately 470 feet.
5. Article II, Section 3.1 (Variances) of the Code states, in part: "Where in the case of proposed development, it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other non-self-inflicted conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a variance."
6. The court order that apparently precludes the road from being improved to meet County standards is non-self inflicted and constitutes an extraordinary hardship as required by code.
7. On April 21, 2011, the CDRC recommended approval of the variance request.
8. Staff recommends approval of the Application subject to conditions.
9. At the August 9, 2011 BCC meeting there were several individuals from the public present to speak in regards to this Application.

10. The creation of four proposed lots will not significantly increase the traffic on Old Galisteo Way.

11. As part of the proposed subdivision, the Applicant will construct an approved fire turn-around within the subject property. At the current time there are no Fire Marshal-approved turn-arounds on Old Galisteo Way. The construction of the proposed turn-around will benefit the entire neighborhood.

12. The Applicant states that he agrees to the conditions for approval of the requested variance.

**WHEREFORE**, the BCC hereby **APPROVES** the Application for the variance of roadway standards **SUBJECT TO THE FOLLOWING CONDITIONS:**

- a) Any further subdivision of land will require a secondary point of access. This shall be noted on the plat. Access via Old Galisteo Way will be limited to Lots 1 – 4 created by this plat. Any further subdivision of land will require an alternative access and any new development will not have access to Old Galisteo Way.
- b) At such time that Lot 4 is proposed to be subdivided, the owner of that lot will dedicate the Arroyo Hondo 100 Year Flood Plain and property to its south to Santa Fe County as open space.

**IT IS SO ORDERED:**

This Order was approved by the Board of County Commissioners on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.


**BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

By: \_\_\_\_\_  
Virginia Vigil, Chair

**ATTEST:**

\_\_\_\_\_  
Valerie Espinoza, County Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Stephen C. Ross, County Attorney

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

- XIII. B. 2. **CDRC Case # V 11-5070 Joya de Hondo Variance. Gray-Hall LLC. (Damion Terrell), Applicant, Jenkins/Gavin, Agent Request a Variance of Article XV, Section 6.E (Community College District Road Standards) of the County Land Development Code to Allow an Off-Site Living Priority Lane with a Right-of-Way Ranging in Size From 20 Feet to 30 Feet for a Section of Roadway Approximately 1,110 Feet in Length and to Allow a Driving Surface of 16 Feet in Width for a Portion of Roadway Approximately 640 Feet in Length, for the Purpose of Creating a Four-Lot Summary Review Subdivision on 43.8 acres. The Property is Located Off of Old Galisteo Way, within Section 15, Township 16 North, Range 9 East (Commission District 4). Vicki Lucero, Case Manager**

VICKI LUCERO (Development Review Team Leader): On April 21, 2011 the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of this request.

The subject property is an existing 43.8-acre tract located off of Old Galisteo Way which lies within the Community College District. The lot is currently vacant.

On April, 14, 2009, the Applicant submitted an application to Santa Fe County to create a four-lot Summary Review Subdivision on the 43.8 acres. As part of this submittal the Applicant was proposing to construct a 20-foot wide driving surface on Old Galisteo Way from Los Tapias Lane to the entrance of his property. County staff reviewed the application and determined that it met the requirements of the County Land Development Code. The Land Use Administrator was prepared to approve the plat when several of the neighbors filed an appeal of his decision claiming that as a result of a court order filed in 1970, and the court order is in Exhibit E of your packet, the road surface could not be increased beyond the existing 16-foot wide driving surface on Old Galisteo Way from Los Tapia Lane south for approximately 640 feet.

Upon review of the court documents, County staff determined that the easement precludes widening of the road as required by Code.

Article XV, Section 6.E.7.a.iv of the County Land Development Code provides that a Living Priority Lane shall consist of a 34-foot right-of-way with two 10-foot driving lanes. The Applicant states that because of the court order they are unable to make improvements that meet County standards to that 640-foot portion of road where only a 20-foot easement exists. Therefore, a variance is requested for the width of right-of-way and width of road surface of 16 feet. In addition, the right-of-way outside of the 640-foot portion is a maximum of 30 feet however on this portion of the roadway the Applicant will be able to construct the required improvements for a 20-foot driving surface so a variance is only needed to allow a right-of-way width of 30 feet for a length of approximately 470 feet.

Article II, Section 3.1 of the County Code states, "Where in the case of proposed

development, it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other non-self-inflicted conditions or that these conditions would result in inhibiting in achievement of the purposes of the Code, an applicant may file a written request for a variance.”

The Applicant states that the 16-foot wide road surface within the 20-foot access easement is non-self-inflicted. Additional access was previously available through the Santiago Subdivision to the north, however, in 1985 the Board of County Commissioners vacated these easements which eliminated the additional means of access to the subject parcel.

This request was submitted to the County Transportation Planner for review. The County Transportation Planner states that the proposed project lies in the vicinity, east of the conceptual alignment of the proposed Southeast Connector. Planning Staff analyzed the potential for connectivity between Old Galisteo Way and the Southeast Connector, which should be constructed, and actually more recently I've heard that it's going to be constructed within three to five years. Planning staff supports the proposed four-lot summary review subdivision and requested variance and believes that any further division of the remaining acreage should require that traffic be diverted onto the proposed Southeast Connector.

Recommendation: Staff believes that the creation of four proposed lots will not significantly increase the traffic on Old Galisteo Way. As part of the proposed subdivision, the Applicant will construct an approved fire turn-around within the subject property. At the current time there are no Fire Marshal-approved turnarounds on Old Galisteo Way. The construction of the turnaround provided by this development would benefit the entire neighborhood.

It is staff's position that the variance requested is unavoidable due to the ruling in the court order that would prohibit the Applicant from doing the required road improvements on the access road. This could constitute an extraordinary hardship to the Applicant as stated in Article II, Section 3.1 of the Code. Therefore, staff recommendation and the decision of the CDRC is to recommend approval of the variance requested subject to the following condition:

1. Any further subdivision of land will require a secondary point of access. This shall be noted on the plat.

MS. LUCERO: Madam Chair, I also just wanted to enter for the record that I handed out a letter from the president of the Old Galisteo Way Road Association requesting tabling of this case and a response of the applicant to that letter. *[Exhibit 5]* The applicant is not in agreement with the request for tabling.

CHAIR VIGIL: And I do believe that these requests and the response were received by email also.

MS. LUCERO: Yes, that's correct, Madam Chair.

CHAIR VIGIL: Thank you very much. Questions for staff? Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. Vicki, I noticed that with the CDRC meeting there was one person who was not noticed, Mr. Mullin, and I just wondered if he was noticed for this meeting.

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MS. LUCERO: Madam Chair, Commissioner Holian, he was, and I do have the certified receipts to show that he was sent the letter.

COMMISSIONER HOLIAN: Great. And I'm wondering, has staff ever done – or has anybody ever done a traffic count study for this road.

MS. LUCERO: Madam Chair, Commissioner Holian, for a four-lot land division traffic counts or a traffic study isn't required. However, the applicants did have their engineer go out there and perform some traffic counts and they may be able to address that a little bit further during their presentation.

COMMISSIONER HOLIAN: Okay. And then is this road actually a private road? I also saw in the packet materials that at one time it appeared to be maintained as a County road. Am I wrong about that?

MS. LUCERO: Madam Chair, Commissioner Holian, I believe that's correct. There was a change of alignment at the time but it was once a County-maintained road but at this point it is not.

COMMISSIONER HOLIAN: It is a private road.

MS. LUCERO: That's correct.

COMMISSIONER HOLIAN: And in that sense it's owned by the people who live along the road then?

MS. LUCERO: Yes, that's correct.

COMMISSIONER HOLIAN: And they are responsible for its maintenance.

MS. LUCERO: For maintaining it, yes.

COMMISSIONER HOLIAN: Okay. Thank you, Vicki.

CHAIR VIGIL: Any other questions? Commissioner Mayfield.

COMMISSIONER MAYFIELD: Commissioner Holian, I apologize. So the road that – I guess that travels south and north, that was at one time a County road?

MS. LUCERO: Madam Chair, Commissioner Mayfield, it was at one time a County road but I believe – and the applicant has all the history on it, but I believe there was a different alignment to that road at the time and then once they realigned it it's no longer a County road.

COMMISSIONER MAYFIELD: Okay. And the applicant has provided that history?

MS. LUCERO: Yes.

COMMISSIONER MAYFIELD: Okay. Thank you.

CHAIR VIGIL: Any other questions for staff?

COMMISSIONER ANAYA: Madam Chair, I may have some questions but I'd like to hear from –

CHAIR VIGIL: Okay, is the applicant here or their agent? Please come forward, state your name for the record and be sworn in.

[Duly sworn, Jennifer Jenkins testified as follows:]

JENNIFER JENKINS: Good evening, Commissioners, I'm Jennifer Jenkins with Jenkins Gavin Design and Development. This is Colleen Gavin, also of Jenkins Gavin and our client, Mr. Damion Terrell.

Good evening again, Jennifer Jenkins. Good evening, Chair Vigil, Commissioners. We are here this evening on behalf of Mr. Damion Terrell in request for a roadway variance

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that Vicki described to you quite aptly. I'm going to briefly touch on a few more details with respect to the project, a little bit of its history and also I will allow Mr. Terrell's attorney to address the public road issue. I think there's some confusion about that. We do concede it is not County-maintained. It is not a County-maintained road. However, the documentation that we have demonstrates that it is a public road. As we all know there are plenty of roads in Santa Fe County that are identified as public but they are not on the County's maintenance list. So that's really the differentiation there. But we will allow Mr. Cassett to speak to that a little more clearly.

So if I may I would like to approach. Can you guys see this okay? I know there's kind of a lot going on here. I'd be happy to –

CHAIR VIGIL: I wonder if you could push it to the side a little bit so that members of the audience can also see what you're –

MS. JENKINS: How's that? Is that okay?

CHAIR VIGIL: That looks good.

MS. JENKINS: Okay. So I just want to, so everybody can kind of get where we are here. This is the subject property. It's just under 44 acres, and it's property that Mr. Terrell's grandfather purchased back in 1933, and he has inherited the property. And what we have, this is the roadway in question, which is Old Galisteo Way. Okay? Which is the primary point of access – it's the only point of access actually, into the subject property. And the portion of the roadway that is the subject of the variance primarily is this upper kind of 600 feet. As Vicki stated there was an adjudication back in 1970 for the roadway and the County Attorney felt that because of the road description that described this as a 16-foot wide road in that adjudication of 1970 that we need to honor that description and maintain that dimension.

So this is the subdivision request. We're zoomed in now on Mr. Terrell's property. We are proposing three 2 ½-acre lots and the remainder of the property is going to remain essentially as is. The property is traversed by the Arroyo Hondo, so of course the intent is in the future that this all get preserved as open space, which is part of the Community College District open space and trail plan for this area.

As Vicki also mentioned, historically, this property, there were other points of access and other points of roadway connectivity for the Old Galisteo Way neighborhood and I would like to address that real quickly. Colleen's just going to pass out reduced versions of what I'm showing you here. [Exhibit 6] In 1981, the Santiago Subdivision was platted. Mr. Terrell's property is right down here. You can see here, it says Wendell Hall estate. Wendell Hall is Mr. Terrell's grandfather. And you can see the main point of access comes up here from Rabbit Road down into the subdivision, which is 21 lots, and there were also access easements platted here, moving to the south, as well as access easements here connecting over to Old Galisteo Way, which was a really good plan. I think we all know that neighborhood connectivity for dispersing vehicular trips as well as emergency access issues that those are important connections to be made, especially serving a subdivision of 21 lots which is not insignificant.

And then, kind of mysteriously, in 1985, at the time, the Board of County Commissioners at the time approved a vacation of those easements. So then we end up with a land-locked 21-lot subdivision with one way in and one way out and basically an elimination



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of that internal roadway connectivity that would have provided access for not only Mr. Terrell's property but the other properties that not all of the traffic necessarily has to utilize Old Galisteo Way. There would have been other opportunities to connect to the roadway network via this, the roads within the Santiago Subdivision.

And so that is – this is partly what has created the situation where we find ourselves today.

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR VIGIL: I have a question, Jennifer. Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, Jennifer, on this map you just showed us, either the first or the second one, where is this property?

MS. JENKINS: Just to the south. So this is probably the best one. So this is the Santiago Subdivision.

COMMISSIONER MAYFIELD: So that's where the easements were in.

MS. JENKINS: Yes. So the easement ran here and then you can actually see it in this green area here. It actually still shows up in the County's GIS as a platted easement for a road even though now it's just a utility easement. And so this access here was directly to Old Galisteo Way and then there was the easement that came down here that connected to Mr. Terrell's property.

COMMISSIONER MAYFIELD: And can you show me that on one of the maps?

MS. JENKINS: It's a little bit off the map so Mr. Terrell's property sits right down here.

COMMISSIONER MAYFIELD: But I'm not seeing the easement that runs through that whole track.

MS. JENKINS: There was an easement here then also there was a second easement that ran through an adjoining tract that actually still exists. But it doesn't connect to anything because it can't get to this road.

COMMISSIONER MAYFIELD: So there's a second easement that runs through one of those plots?

MS. JENKINS: Yes.

COMMISSIONER MAYFIELD: Down into that property?

MS. JENKINS: There's a piece, there's an easement that runs along this property line. is that correct, Damion? Am I pointing at the right one? He's going to help me make sure I'm – oh, this one. Okay. So you can see this easement right here is a 50-foot wide ingress and egress easement which is offsite, and this is where it connected to the former Calle Lydia easement here that was vacated. So now this is the proverbial easement to nowhere. The Santiago Subdivision is right here.

COMMISSIONER MAYFIELD: And who owns that property?

MS. JENKINS: Who owns that property? I don't know. There's just two different landowners here. This is the former Father Bartolotti. Does his estate still own that?

COMMISSIONER MAYFIELD: So that piece of property is also land-locked.

MS. JENKINS: Well, there's access easement here that comes off Old Galisteo Way across the top that accesses these.

COMMISSIONER MAYFIELD: Thank you.

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MS. JENKINS: Thank you, Damion. That's helpful.

CHAIR VIGIL: Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. I guess I have a question for our staff. Can easements like that be reinstated?

MS. COBAU: Madam Chair, Commissioner Holian, this piece of property has been under application with the County for about four years. They originally came in as a 15-lot subdivision when we had the EZC, under the Extraterritorial Zoning Ordinance. And at that time when they came in for a larger subdivision we had the applicant's agent do substantial research and approach those property owners about reinstating or allowing access up that way. We had them look at access through the Oshara Subdivision. They've looked and relooked at access options and really, there are none. And I'm not sure how or why that easement was vacated. It didn't make any sense that it was. So we researched it enough and as a result of not being able to find secondary access the applicant subsequently dropped their application for a subdivision and was just going for the smaller land division that you see today.

COMMISSIONER HOLIAN: Thank you, Shelley.

CHAIR VIGIL: And Shelley, while we have you on the microphone, I have a few questions and then I'll let you go, Jennifer. But stay there please, because mine are quick. Where is this in terms of the Sustainable Land Development Growth Plan? Is this SDA-1? SDA-2? Do we know?

JACK KOLKMEYER (Land Use Administrator): Madam Chair, it's part of the Community College District, so it's in SDA-1.

CHAIR VIGIL: Okay. Thank you very much. Proceed.

MS. JENKINS: Okay. And with respect we're going to segue in and let's talk about the Community College, because this property is within the Community College and let's look at this one here. As stated – this might be a little difficult to see but this is the Arroyo Hondo, this is the Santa Fe Community College, Richards Avenue. I know you guys have probably seen this map many times. And the subject property is right here where my finger is, just adjacent to the Arroyo Hondo. And on the land use zoning map for the Community College District as well as on the circulation map for the Community College District a roadway connection connecting Old Galisteo Way to the future southeast connector is shown on both of these maps, going through Mr. Terrell's property.

So the roadway improvements onsite that we're proposing is kind of a first step in realizing that neighborhood connectivity that the Community College District Ordinance contemplates. And as was just stated we had a condition of approval that we have the three 2.5-acre lots that we're proposing currently and the remaining acreage, when and if that becomes further subdivided, we're required to provide alternate means of access at that time. That alternative means of access, more than likely is going to be the southeast connector. And as we all know the schedule for that has quite accelerated in the last few months and I think it's a very positive thing for Santa Fe County as a whole but definitely for this district in terms of additional connectivity beyond Richards Avenue and the traffic implications for that.

COMMISSIONER HOLIAN: Madam Chair.

CHAIR VIGIL: Commissioner Holian.

COMMISSIONER HOLIAN: So when the southeast connector is put into

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place the people who will be accessing the lots on Mr. Terrell's property will not be using Old Galisteo Way anymore, correct?

MS. JENKINS: The way the condition is couched right now is that the three lots we're proposing today, Old Galisteo Way would be their point of access. Any future lots that would be created we would have to provide secondary access.

COMMISSIONER HOLIAN: But the three lots could not use that connector road?

MS. JENKINS: I would hope so. The point is connectivity throughout these neighborhoods. And so we haven't really talked about it at that level of detail. All we know is that Old Galisteo Way is the only point of access right now. We're going to be limited to those three lots. In terms of how – and I think when, say five years from now if Mr. Terrell decides he wants to proceed and do something more with the additional acreage there at that time we would work with staff and address traffic circulation and see what makes the most sense. Do we need to kind of separate it and treat them as two distinct neighborhoods, the lots we're creating today and maybe the future lots that might get created in the future. That may be the solution. But we would work with staff and the transportation planner of the County to devise that.

Because we don't want to kind of turn our back on connectivity but we also want to recognize the concerns we're talking about today.

COMMISSIONER HOLIAN: Thank you.

COMMISSIONER ANAYA: Madam Chair, on that point.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: If we could, let's talk about that a little bit. On those first three lots if they were approved, just to cut to the chase, would you be willing to segregate access only for those three lots, if there was future development, where they couldn't access through the connector and that their only route would be to continue on Old Galisteo Way and that the balance of lots would all have to absolutely go the other way?

MS. JENKINS: Sure. Yes. And that is something we talked about with staff, and we would obviously – if that was the County's pleasure, so to speak and that's really the way they wanted to see that happen we'd absolutely be willing to do that. And we talked about that as a very likely scenario, that it could shake out that way, and we'd be very willing to do that.

COMMISSIONER ANAYA: So that there would always be only three houses that could potentially use that if we structured a condition that way.

MS. JENKINS: Yes. And for example, with the southeast connector coming down in this vicinity here, potentially a road would come in from this way to serve this and have a cul-de-sac and then these lots would be required to – all the traffic would be required to move to the west.

COMMISSIONER ANAYA: Madam Chair, a land use question for Jack or Shelley, without the proposed subdivision, the four lots, how many houses could he build on it now on just the space that he has without even constituting subdivided lots? Could he build houses on it now?

MS. COBAU: Madam Chair, Commissioner Anaya, based on the density allowed in the code he could build four houses on that property.

COMMISSIONER ANAYA: Right now he could do that.

MS. COBAU: That's correct.

COMMISSIONER ANAYA: He doesn't need a plat or anything. With just the main plat he could build four houses.

MS. COBAU: That's correct. And he wouldn't have to go through any rezoning action. He could come in and do it administratively.

COMMISSIONER ANAYA: So regardless of what we would do today, if we would deny it he could still build four houses on that tract of land.

MS. COBAU: Madam Chair, Commissioner Anaya, that's correct.

COMMISSIONER ANAYA: Okay. I'd like to hear from the –

CHAIR VIGIL: Let me take a question from Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. So many houses could be built on each of the 2.5-acre lots?

MS. JENKINS: One.

COMMISSIONER HOLIAN: So there couldn't be a house and a guesthouse?

MS. JENKINS: No.

CHAIR VIGIL: We can continue.

MS. JENKINS: So I guess really the point before was that the southeast connector, as you know the location study has been approved in the MPO's transportation improvement plan. That's the first step and that's very exciting so we basically have a funded location study. The RFP is going to be issued by the County this fall for that. So the southeast connector is becoming a reality, which is fantastic. And so that will enable that alternative means of access in the future and to again realize some of the vision of the Community College District transportation plan for that type of connectivity into this neighborhood.

As part of our subdivision application, as Vicki said, we originally proposed we were going to ensure there's a 20-foot drivable surface the whole length of Old Galisteo Way up to the entrance to our project. The County – we went through the process that Vicki described and the County Attorney advised us we need to leave the 16 feet, that first 600 feet, we need to leave that alone. You can't improve that even though we were very willing to do that at our expense and make that roadway improvement. So we were advised seek a variance so we can honor the court order and seek a variance to basically honor the court order. The remaining stretch of Old Galisteo Way up to our entrance we are investing in roadway improvements ensuring not only a 20-foot drivable surface – it exists in some spots; it varies, but there's adequate, plenty of easement there to accommodate it. And resurfacing – the road is going to be much improved, and also the new residents of the Joya de Hondo lots are going to be required to contribute financially to the Old Galisteo Way Users Association.

We think that's really important. If you're using the road you've got to contribute financially to that effort. We have covenants and homeowners association documents that have been prepared that have that in there as part of the budget. Not only are these residents maintaining the onsite, what we call Joya de Hondo Lane, but they also have to contribute as part of their monthly dues towards maintaining Old Galisteo Way. So we're here to a) improve the road, and b) to contribute financially to its long-term maintenance.

And with respect to the question about traffic, we're going to pass out – [Exhibit 7]

CHAIR VIGIL: Do you have a question?

COMMISSIONER ANAYA: I do on the last point. Talk to me a little bit about what you mean by committed to the maintenance of it. The entire stretch of the Old Galisteo Way? Tell me what you mean about you'd be willing to contribute to the maintenance.

MS. JENKINS: The Old Galisteo Way Users Association, they are – not every single lot-owner is a member. It's my understanding not every single lot-owner has – it's an elective thing that has been that the neighbors got together and recognized there needed to be a way that they could cooperate with one another to ensure that the road was maintained. And so as creating potentially three new homes, utilizing that road we would want to have membership in that association and to contribute in concert with the other residents to whatever maintenance expenses arise for Old Galisteo Way.

COMMISSIONER ANAYA: So what – Madam Chair, if I could – what's going on now relative to maintenance? How is that handled right now?

MS. JENKINS: I think, it's my understanding and there might be neighbors here who could speak to that with more expertise than I can, but I understand it's basically done on an as-needed basis. After the winter and when there's any washboarding or anything that the neighbors get together and contribute money, and I think there's even some neighbors out there who have some equipment themselves and they go out there and blade the road and so I think it's done on an as-needed basis and really, it's dependent upon neighbor cooperation and participation.

COMMISSIONER ANAYA: So just so I completely understand where you're at, when you say contribute you just mean you're willing to be part of a group but –

MS. JENKINS: We had set it up where it was our hope that we could contribute a set amount on a monthly basis so it's consistent, that each of these lots would contribute blank amount of dollars on a monthly basis towards the maintenance fund, just so it's a regular thing and so there's always – and I don't know if that's the way they're doing it now or if it's – like I said, it's a little more ad hoc, on an as-needed basis.

COMMISSIONER ANAYA: So it sounds like you're just going to be part of it and then –

MS. JENKINS: We want to be part of it. We want to contribute financially and it's about being part of the community.

COMMISSIONER ANAYA: Thank you, Madam Chair.

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR VIGIL: Commissioner Mayfield.

COMMISSIONER MAYFIELD: I took a drive out on that road earlier today. That road runs about a mile? A little less than a mile?

MS. JENKINS: Yes, a little less.

COMMISSIONER MAYFIELD: And you all indicated that was a County road at some time. Are you going to get to that?

MS. JENKINS: We are. I'm about to wrap up and then I'm going to let – Mr. Terrell has a few words and we could maybe let Mr. Cassett come up first because I know we want to clarify that for everyone.

You have in front in you some trip generation data that is prepared by the – it's based up the figures provided by the Institute for Traffic Engineers, which is the national standard

for traffic generation data. And the highlighted sections are the most important. When we talk about traffic impact the key things are the peak hours – in the morning when people are going to work and in the afternoon and early evening when they're coming home.

So the three dwellings that are proposed here, in the am peak hour there's two vehicle trips that are generated and in the pm peak hour there are three vehicle trips that are generated. And we acknowledge that the neighbors have some concerns about increasing traffic on Old Galisteo Way and we respect that, but I think it's hard to characterize two trips in the morning and three trips in the afternoon as a significant traffic impact. So we just wanted to provide this information for you. And with that, I appreciate your attention and we will – I'm going to turn it over to Mr. Ken Cassett who is Damion's legal counsel and he's going to walk us through this public road question as well. Thank you so much.

CHAIR VIGIL: Thank you, Ms. Jenkins. Mr. Cassett, please step forward.

KEN CASSETT: The document that I'm going to talk about I believe is part of your packet. It's the decision of the court. This is a 1970 case. This is a very helpful document because it runs through the whole history of this road. So just hitting some of the highlights – we don't need to go through it word by word, but on page 3, paragraph 12, the finding of the court was actually that this road as early as 1912 was a public road. The phrase is kind of interesting. It said at least as early as the year 1912 a public road had come into use and existed over and across public lands. They might have been talking something along the lines of a Section 9-32 road, although this is before the Quintana case so I'm not sure if the judge had that in mind or even had awareness of that federal statute, but the road existed and it was acknowledged as a public road.

In paragraph 13 you can see that starting in about 1946 the County begins to maintain the road. That occurs for about 13 years. In 1959 Mr. Larry Tapia convinced the County to stop maintaining the road. Then it continued again. It says up until 1967 the County maintained the road. And then of course there was a switch in the first part of the road. It had run diagonally and then some time in the 1960s it was straightened out and became a north-south road. So the judge comes to a conclusion, and this is on page 7, right at the top, plaintiffs are entitled to declaratory relief, recognizing and judging a public road over and across the lands of the principal defendant.

CHAIR VIGIL: May I take a question?

MR. CASSETT: You bet.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Just to make sure I follow you. Page 4, 15: On or about August 1915 at the insistence of defendant Larry Tapia for the sole benefit, for the benefit of himself and the defendants, the County road grader discontinued maintenance of the diagonal road. So in 1959 the section that we're talking about right now stopped being a County road?

MR. CASSETT: No. What happened in 1959 is that the road was redirected. It was put in another place. Up until 1959 it cut across diagonally, but in 1959 it was straightened out into the alignment that now exists.

COMMISSIONER ANAYA: So in 1959 – and I'm talking about the part that we're going to be dealing with today – it ceased to be County in that section? Because the County, from what I'm hearing, the County continued to maintain the new alignment and still

does. Is that right?

MR. CASSETT: No.

COMMISSIONER ANAYA: The County doesn't?

MR. CASSETT: Let's be clear – first of all let's be clear on the terms. When you say a County road you might mean that it's a County-maintained road.

COMMISSIONER ANAYA: No, I'm just thinking County maintenance. That's all I'm thinking right now.

MR. CASSETT: What we're saying is that this is a public road, which means regardless of whether the County is maintaining it, it's a public road that is open to the general use of the public.

COMMISSIONER ANAYA: I'm not questioning public road; I'm just trying to find out when did it stop being a County road. That's all I want to know right now.

MR. CASSETT: This decision tells us that it was maintained by the County – once it was realigned and straightened out it was maintained by the County until March of 1967.

COMMISSIONER ANAYA: Okay.

MR. CASSETT: Okay. At that point, at least according – I don't know what happened between 1970 and 2011 but the court is finding that for a period of three years the road had not been maintained by the County, but it still was recognized as a public road.

COMMISSIONER ANAYA: Just, Madam Chair, if I could, did you find any documentation or anybody else that showed that the County vacated maintenance of the road?

MR. CASSETT: I don't know if that was done formally. I don't know.

COMMISSIONER ANAYA: Thank you, Madam Chair.

CHAIR VIGIL: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Let's go back to the diagonal road that the County once maintained. Where is – and I may have the name wrong so I apologize. Is it Camino Los Tapias or Los Tapias Lane? Where is Los Tapias Lane? Okay, so where is the diagonal road that the County once maintained? How long did that road run when the County maintained it? Did it just run that little strip or did it run the whole mile?

[inaudible comments away from the microphone]

COMMISSIONER MAYFIELD: Let's just talk about the diagonal portion. What was the road width at that time when the County maintained it? Was it 16 feet? Was it 20-some feet?

MR. CASSETT: The decision also tells us that and basically, what it says, I can cite you to chapter and verse. But there was a 16-foot wide driving surface, and then it [inaudible]

COMMISSIONER MAYFIELD: Open land?

MR. CASSETT: I think it's private land.

COMMISSIONER MAYFIELD: Thank you, Madam Chair.

CHAIR VIGIL: Okay. Please continue.

MR. CASSETT: Well, that's it. So that is the basis for our understanding right now that this is a public road, and so the straightened out portion has been a public road for 52 years.

CHAIR VIGIL: Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. I'm not sure who should answer this but I'm wondering about when the requirement for having a 20-foot wide requirement went into place, and was it actually in place in 1970 when this decision was made?

MR. CASSETT: I doubt that.

MS. COBAU: Madam Chair, Commissioner Holian, the 1981 Code certainly required the current standards. It hasn't changed.

COMMISSIONER HOLIAN: So in 1970 you don't really know whether the 20-foot standard was there yet.

MS. COBAU: No.

COMMISSIONER HOLIAN: Okay. Thank you.

MR. CASSETT: What the court did hold in 1970 is that this is a public road and it's adjudicated to be wide enough for the reasonable passage for two vehicles going in opposite directions along any part of said easement public roadway. But then it was also specified 16 feet driving surface and two feet on either side. Twenty-foot easement.

CHAIR VIGIL: Okay. I have a question from Commissioner Stefanics.

COMMISSIONER STEFANICS: Madam Chair, it's for our staff or Legal. Do we have a history that we could cite of other roads that we have maintained and then released?

MS. COBAU: Madam Chair, Commissioner Stefanics, not that I'm aware of unless a road is abandoned. But one thing that I wanted to point out in response to Commissioner Holian's question also is the new Sustainable Land Development Code is steering toward a narrower road section than 20 feet.

COMMISSIONER STEFANICS: Okay, but my question really has to do with the release. So Steve, if until – what would be the legal process to release a road back to private maintenance versus us always maintaining it?

MR. ROSS: Madam Chair, Commissioner Stefanics, there's a brief process. It involves sending people called viewers out to the road and they bring back recommendations to the Board of County Commissioners who then enters a formal order abandoning the road. I don't know if that was done in this case.

COMMISSIONER STEFANICS: Okay, so that was my next question, Madam Chair, is do we have anything in writing that released the County or abandoned this road?

MR. ROSS: I don't believe so.

COMMISSIONER STEFANICS: Thank you very much, Madam Chair.

CHAIR VIGIL: Okay.

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, in a previous life I spent seven years on the Santa Fe County Road Advisory Committee as well as chairing that committee and there is a process and the County does in fact, did on occasion, well, accept roads, number one, but also have recommendations to remove roads. So that's – I appreciate your line of questioning. On page 6, Madam Chair –

CHAIR VIGIL: Could I ask you a question? Was this Road Advisory Group in existence in 1970?



COMMISSIONER ANAYA: No. The Road Advisory Group was not but the County Commission has always had the authority to put roads and remove roads off of the inventory and it's always been a long-standing, contentious issue. So relative to the comments and what I was trying to gain an understanding, on page 6 it talks about the acts of principal defendants and references Mike Tapia, and that it also goes to say, after said acts led to and were the proximate cause of the County's inability and unwillingness to maintain the road. So it goes further and gives us a little historic perspective that it was essentially blocked and the County at that point couldn't get in or decided they weren't going to push it, I guess. But I still have questions as to whether or not it was formally removed or not, which I think is an issue to look at.

CHAIR VIGIL: Okay. Thank you very much. The next person is Mr. Terrell. Mr. Terrell, you've been sworn in, correct?

[Previously sworn, Damion Terrell testified as follows:]

MR. TERRELL: I have.

CHAIR VIGIL: Please just state your full name for the record.

MR. TERRELL: My name is Jeremy Damion Terrell. And I am the grandson of Wendell Hall. Commissioners of the Board, Madam Commissioner, and the neighbors of Old Galisteo Way. I would like to tell you a little about my history of my land, my personal history, and what my intentions are.

In 1933 my grandfather purchased a homestead south of the city that was originally 160 acres. My grandfather passed away in 1974 leaving his estate entrusted to his family. During my childhood I worked this homestead and tended livestock there. It was during this time that family would fall apart and I would be placed in a foster care. I was moved to Los Alamos where I attended middle and high school. I held a part-time job after school. I graduated from high school in 93 and remained a ward of the court until age 18. After graduating high school I applied to the University of New Mexico. During college I gained a position as staff as the systems analyst for UNM's main IT Department in 99. This enabled me to finish school, and in 2002 I graduated with a bachelors of engineering and computer science and a minor in archeology.

Throughout my education and employment I maintained a strong work ethic and established myself as a valued member of UNM's IT staff. I have thought long and hard about the kind of legacy I would like to leave. I have known my entire life that I have the responsibility and stewardship of this land, that this land was part of the Hall family legacy. When I took the reigns of my grandfather's estate, all that was left of the original homestead was this 43 acres. It originally included what was the Santiago Subdivision and the lands on either side of Old Galisteo Way connecting to the Tapias.

With that I became asset-rich but was still money poor. Caring for the land was a tough burden while trying to put myself through college. I knew at some point I would have to sell and so I thought about what my next goal would be. How could I best utilize this asset? I did not want to squander this legacy for a short-term gain. I wanted to accomplish something and learn from it. I wanted to reinvest the knowledge gained and to further business venture, and most importantly to be able to reinvest in New Mexico.

I have been approached by organizations, realtors and developers with their intentions toward this land. I felt that the potential for selling to them would be disastrous for they most

certainly would not have the emotional attachment that I have. I would not want to see it exploited with maximum density or cookie-cutter model homes. I delayed my project for over six months to work with Mr. Hitt on an application to COLTPAC. We were unable to come to an agreement and furthermore, the County could not afford it, not when the ability to work with me as a landowner was available. Furthermore, I felt it detrimental to the neighborhood to develop Mr. Hitt's plan as community gardens which would require a dedicated parking lot on Old Galisteo Way for market vehicles, workers, visitors and hikers. This would generate far more non-residential traffic than a handful of new neighbors to this community.

Therefore I have worked to establish covenants, and Ms. Jenkins has mentioned, and I hope to eventually, with the final approval of my eventual plan to actually dedicate 42 percent of the property to help preserve the Arroyo Hondo corridor.

It is my goal to create the infrastructure to sell to individual families who desire to build their own homes and become members who will cultivate and enrich this community. It is my desire to one day build there as well. The hardship through which I am apply for variance has come under question including the assumption of financial hardship, but as explained in the staff memo, the hardship is based on the loss of access to my property over time. My grandfather was one of the original landowners in this area and at that time he had clear and public access. Over time that access has been moved and whittled down and false statements made. In this plan I will significantly be contributing to the improvement of Old Galisteo Way and I will require future homeowners to continue contribution to its maintenance.

I thank the Land Use staff for their summary approval of my subdivision and their support of my request for a variance. Distinguished Commissioners, Madam Chair, it is my desire to work with you and the community and I hope you will support my request for variance.

CHAIR VIGIL: Thank you very much, Mr. Terrell. And are you in agreement with the recommendations that staff has made?

MR. TERRELL: Yes, I am.

CHAIR VIGIL: Thank you very much. Ms. Jenkins, did you want to wrap up?

MS. JENKINS: That pretty much concludes our presentation. We're happy to stand for additional questions, and we respectfully reserve the right for a rebuttal tied to the close of the public hearing.

CHAIR VIGIL: Most definitely.

MS. JENKINS: Thank you for your attention.

CHAIR VIGIL: Thank you. This is a public hearing. Is there anybody here to address the Commission on this item? Please raise your hands. Those of you who are going to testify, why don't we all stand and we'll get sworn in at once and when you come to the podium you can state your name. Please raise your right hands.

CHAIR VIGIL: Please step forward whoever would like to speak first.

[Duly sworn, Sam Hitt testified as follows:]

SAM HITT: My name is Sam Hitt. I live at 48 Old Galisteo Way. Myself and my family have lived at that address for 24 years and I am currently the president of the Old Galisteo Way Road Association. I think to start, perhaps, I sent out an email to staff about a week ago asking if this hearing could be tabled to allow the community to gather hard,

empirical data on traffic use. *[Exhibit 5]* Not modeled data as was presented earlier but the actual use that we experience every day.

No one has argued, no one will argue that this road is adequate for current traffic. It is a mess, and I've watched it over the years become worse and worse and worse. We cannot afford to maintain the road. We cannot afford to improve the road. As was stated, it is a voluntary road association and not everyone pays dues. I am extremely skeptical that if this development goes through that these additional homeowners will in fact pay dues when over half their neighbors don't. Who is going to enforce the dues payment? And even if everyone did pay dues it still would not be adequate to do snow removal, to deal with flooding, which is a serious problem and it's gotten worse over the years, and just the standard maintenance that any road requires.

We have some very dedicated people that have a tractor and have some equipment and they will speak later and you can hear from them their story on how difficult it is to maintain this road.

I guess all I want to say really is we have an unsustainable situation in terms of traffic. The road does not meet County standards, and now we will have additional traffic. Now Greyhall, LLC and his consultant argue that this is not a significant increase in traffic. Well, over the past 24 years each additional increase in traffic has not been significant but cumulatively, added all together it has been extremely significant. So I don't know where the request is for tabling this. I've talked to a number of road engineers. We have consulted a methodology on how to gather data for exiting and entering Old Galisteo Way at Los Tapia Lane and we can do it. And we would be happy to work with staff to insure that the methodology is accurate and that the data is also credible.

I think it would be very helpful to have credible data to address this complex issue. As you see it goes back many, many decades. But just getting to the issue of the 1970 court judgment. Now, that judgment was cited by staff when they responded to our appeal of the summary review subdivision back in December 16, 2010. And they said, and I will submit the letter to the record so you can see. *[Exhibit 8]* I'm sorry I don't have enough copies but you can pass it around. That adequate easement does not exist to permit Old Galisteo Way to be improved to County road standards. And that's because of confusion in their mind as to what the easement was. Was it 16 feet? Or was it 20 feet? It's difficult to tell from reading the judgment. That key fact was ignored by the Gray-Hall, LLC. So whether it's a public road or not this is a serious legal matter, I understand. But the courts have found that there is confusion about what the right-of-way is on the road. So County staff, given this confusion, County staff said given what staff knows of this situation – well, first of all they denied the summary review subdivision and they said given what staff knows about the situation you can expect staff to recommend against approval of a variance. Against approval of a variance.

I guess all I want to say really is we have an unsustainable situation in terms of traffic. The road does not meet County standards, and now we will have additional traffic. Now Grey-Hall, LLC and his consultant argue that this is not a significant increase in traffic. Well, over the past 24 years each additional increase in traffic has not been significant but cumulatively, added all together it has been extremely significant. So I don't know where the request is for tabling this. I've talked to a number of road engineers. We have consulted a methodology on how to gather data for exiting and entering Old Galisteo Way at Los Tapia

Lane and we can do it. And we would be happy to work with staff to insure that the methodology is accurate and that the data is also credible.

Now, what happened between December 16, 2010 and today, where now they are supporting this variance request? I don't know the answer to that question. Mr. Terrell was correct in that we worked in a cooperative manner for a number of months to try to get this land protected as open space and I think we made a lot of progress. However, I want to clear out just one issue here. We were proposing community gardens and agricultural use of this wonderful topsoil that exists on part of the property but we were not proposing access from Old Galisteo Way. We're proposing access from the west from the southeast connector and that would have to occur before any sort of development that we contemplated would take place.

So I would like to submit for the record the proposal that we made to the COLTPAC. *[Exhibit 9]* It's called save the Arroyo Hondo corridor. So you can see the detailed explanation of the incredible resources that exist in this area: Just very briefly they are incredible habitat linkages, water recharge areas, and of course the Arroyo Hondo Trail that has long been proposed that would run through the property that connects the foothills all the way to La Cienega. And there are a number of large, ancient ruins on the property as well that date from the 12<sup>th</sup> and 13<sup>th</sup> centuries. And what's of particular interest to me is the deep and fertile soils that exist in the Arroyo Hondo. I'm a gardener. I see at the farmers' market and I have researched the soils. In fact that's one of the reasons that we moved to this area. Less than .2 percent of the county contains soils this fertile. It's over 20 feet of sandy loam.

We had proposed, as I say, a number of schemes and working with the Community College to promote sustainable agriculture, food security, and training of young people in gardening techniques for part of the land. And just to emphasize the agricultural potential a little bit more the –

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Mr. Hitt, I understand what you're talking about relative to the agriculture but before us is a land use case, not based on COLTPAC and what the County could potentially do or whether or not the ground is fertile or not fertile or applying for agricultural use. The case is a land use case associated with this individual's desire to develop it. So help me understand. The County doesn't go around picking – this gentleman is bringing a case that's a land use case, so that's what we're reviewing tonight. So you need to help me connect the dots. Your traffic points I can understand but you're talking about something that I think is irrelevant, to be frank and honest.

MR. HITT: Okay.

COMMISSIONER ANAYA: So help me understand your perspective.

MR. HITT: I just wanted to give you a sense of what's at stake here. It's not just any piece of land; it's some of the rarest land in the county in terms of agriculture. So it looks like I failed to bring the critical map showing the land that would be developed is in fact the most fertile land on the property of the 42 acres.

There's a matter of notice. It's kind of a legal matter but it's important. During the CDRC hearing not adequate notice was given to all the neighbors within 100 feet of the

property. We submitted a plat from the property of Keith Melton and Carol Robinson. Their property is directly across the street from the entrance of this proposed subdivision. They were not notified. They did not receive a certified letter as the code requires. This in itself should be grounds for them to start over and do proper notice. However, that was not done. As I'm sure you'll hear from staff they relied on the County Assessor's map of the property. Well, the County Assessor's map is not accurate. And they said, well, we don't have to research all property boundaries when we serve notice. Well, I gave the County the plat of Keith and Carol's land many, many months ago. So it was in their possession. They didn't have to do any research at all.

CHAIR VIGIL: I have another question, Mr. Hitt. Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. Well, I guess I was going to ask, Mr. Hitt, when you were first talking about the road issues, if the County were to accept that road on a conditional basis for road maintenance and the County were to maintain that road in better condition, even at the 16-foot width, would that alleviate your concerns, although I'm guessing not, considering that you're talking about the land itself.

MR. HITT: Well, that's something we've discussed a great deal in the road association among neighbors and friends that live along the road. That is a very interesting idea that we could theoretically discuss and perhaps agree with. I'm pretty sure there would not be 100 percent agreement but we make get consensus on something like that.

COMMISSIONER HOLIAN: And another question I wanted to ask is you apparently think this land is very valuable and would be wonderful agricultural land. Have you ever – have you approached any private individuals about getting a consortium together to purchase it for that purpose?

MR. HITT: Well, it's a very good question, and yes, we have, but nothing has come of that to date. I think quite frankly – well, I'll just drop it there. But yes, that has been explored.

COMMISSIONER HOLIAN: And so you would be mostly – if it were going to go towards that purpose, you would be mostly counting on the County to purchase it. Is that correct?

MR. HITT: That was the original idea by seeking open space protection, yes.

COMMISSIONER HOLIAN: And I wonder since our staff is here whether – I know that COLTPAC considered this property and I wondered if we could have a summary of what their conclusion is. Do we have that information or do we need someone from Open Space?

MS. LUCERO: Madam Chair, Commissioner Holian, in visiting with the Open Space staff it was my understanding that they were originally interested in the property. However, the funds didn't come together in the end, so it was a funding issue.

COMMISSIONER HOLIAN: Okay. Thank you, Vicki.

MR. HITT: So if I could just wrap up real quick, it's the issue of economic hardship. This has to be substantiated. There's nothing in the record that substantiates economic hardship.

CHAIR VIGIL: Just to clarify for you, it's not economic hardship they're claiming. It's terrain management and road management that they're claiming. It's not economic.

MR. HITT: But that's the reason that they're seeking a variance under the code.

CHAIR VIGIL: Right. It's terrain management is the variance that they're seeking; not economic hardship.

MR. HITT: But the reason they're seeking an exception from the County road standards is because they cannot develop their property because of economic hardship.

CHAIR VIGIL: I didn't hear that if the applicant would like to respond to that I'd be happy to have them to because I don't believe that was part of the testimony.

MR. HITT: Okay, well, I think that is in the code and if that's the case, that's fine. Let's have proof. Let's have a banker, let's have tax statements, let's have something that would prove that there is a dire situation here that means us neighbors have to suffer further traffic so this land can be developed. Also there is language in the code I believe that talks about – well, I don't have the code in front of me right – but if the action – if the problem in development does not originate with the landowner, therefore it's not self-imposed, then they are released to seek a variance.

So the problem with the road, as Mr. Cassett made clear, goes back to the turn of the last century. To be ignorant of these problems of access and rights-of-way is just not credible. This is not – if Grayhall, LLC was serious about developing land they should have looked seriously at the problems of access. In fact the County did an appraisal of the land as part of the COLTPAC process. The County paid for an appraisal. And the appraisal came out relatively low, \$660,000 for about 44 acres. And the reason for that was because of the problems of access. So if the appraiser can see it why can't the bank that makes the loan that's fueling the consultants and the lawyers and the engineers and things like that? This is not looking reality in the face.

CHAIR VIGIL: Thank you very much, Mr. Hitt. Next, whoever would like to testify. I would just ask – I think there's about five or six people, not to repeat the same testimony, if you would just shed more light on your concern for this case from your perspective we'd appreciate that.

[Previously sworn, Greg Tapia testified as follows:]

GREG TAPIA: Good evening, Commissioners. My name is Greg Tapia. I live at the southwest corner of Los Tapias Lane and Old Galisteo Way. My family's been there continuously since the 1930s and I would like to – I have a letter here regarding the maintenance issue we discussed earlier about Old Galisteo Way. *[Exhibit 10]* I'm sorry I don't have copies because [inaudible] been done in agreement with the Old Galisteo Way Road Association and my family, which owns both sides. We pay taxes on both sides of that property and the easement itself. So I'll let you guys have a look at that letter.

The reason I and my family are in opposition to this development is because we think that the access, Old Galisteo Way, is inadequate for what's there now, not to mention adding more, and I have some pictures I'd like to show you as well.

COMMISSIONER STEFANICS: Madam Chair, our attorney should see this letter as well.

COMMISSIONER MAYFIELD: Madam Chair, let's get a few copies.

CHAIR VIGIL: So while we're getting copies of the letter made, which Tapia is your father?

DRAFT

MR. G. TAPIA: Michael.

CHAIR VIGIL: Is he the tennis player?

MR. G. TAPIA: That was my dad, yes. Okay, and looking at those pictures I passed out – it says the purpose of the County code here, and I know you guys are aware of this but for those that aren't – to provide for the safety, preserve health, promote prosperity and improve the morals, order, comfort, convenience of the county and it's inhabitants. Safety is one of the key issues. If you look at those pictures right there, that's two vehicles trying to pass each other, a truck and a trailer. Imagine a fire engine, trash trucks, propane trucks, everything uses that road. Imagine if you throw a little chaos in there like a fire or something. If something like that were to happen, a traffic jam like that, in the first 640 feet somebody's going to have to back up all the way and that could take as much as ten minutes, especially with a trailer. If there's somebody that needs medical attention and didn't receive it in that ten minutes I think that would be a pretty important issue to the County. My question is would the County be held liable for that if they approve more traffic that may or may not have caused that traffic jam.

Also, staff and the Fire Marshal has acknowledged that there are no fire turnarounds on Old Galisteo Way, so that's another issue as well. Like I said, the first 640 feet is at a very steep grade and somebody's going to have back up all the way.

Another reason I'm opposed and my family as well is the degradation to private property. As I mentioned before, my family owns both sides and the actual easement. It's an easement. And we pay taxes on it like I said. Over the years it's just gotten worse and worse with trash we have to pick up, erosion, the roadbed has sunken in about three feet. That caused our fences, all our fence posts and everything to wash up. I have more photos of that also.

It has just become a major headache for us and it's a hardship for us. I know in the United States people have their rights and to do what they want with their private property within the law but – and everybody's for prosperity but I don't see why we have to sacrifice our property and our way of life to make somebody else prosperous. Our neighborhood is the one that's going to pay the cost. Everybody in the neighborhood that lives there, the traffic, all those issues could pertain to anybody, especially the safety issue. Thank you.

CHAIR VIGIL: Hold on, in case there's questions. Are there any questions?

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Good to see you Greg.

MR. G. TAPIA: How are you?

COMMISSIONER ANAYA: Good. It's been a long time. Just a couple questions and then you can respond. You guys, your family, have been there many, many years. Your late father who I knew and respected, you guys did a lot yourselves to take care of your neighborhood and to construct homes. Your dad was a worker. I had a lot of respect for him and the whole family. But you guys built quite a few houses there that were within the code so there's a lot – would you agree that there's a lot of traffic that's historically been on that road, based on things that you yourselves even did that I wouldn't take anything away from. I saw what your dad did in the particular and others. Would you agree that part of that work also impacted that road that you guys actually provided easement to?

MR. G. TAPIA: With all due respect I do disagree because all of the homes that we have built in that area, with the exception of one that we sold, all have their own access through our own private property to Rabbit Road. So none of our tenants, if they do use it, they're not supposed to be using, maybe one or two, but they all have access through our property directly to Rabbit Road so they have no need for traffic on Old Galisteo Way.

COMMISSIONER ANAYA: There's quite a few other houses along that stretch as I think your pictures show. I'm reading – and I read it five times, and I want your perspective. I respect you, I respect your whole family and everybody that's here on both sides. I just want to say that for the record. This was a difficult issue. I imagine when I'm reading this document that was ordered by district court. And I have a little bit, Madam Chair and staff, I have a little bit different perspective on the easement issue of 16 feet and let me just clarify that. I don't think that the 16 feet was put into place as something that would restrict development at all. When I read this case it basically is setting forth that the Halls were claiming that they have a legitimate access to the property, and that 1970 was way pre-code issue. And I have some other questions for legal associated with pre-code issues, that I would even question to a certain extent how much it's even a variance given the fact that it was a pre-code determination, but that the case that I read essentially says to the Halls, you have access. You have a legitimate, bona fide access.

Do you agree with that or do you disagree with that? Because that's what Judge Montoya basically provided a ruling on, that this parcel has legitimate legal access. And you want to help me and comment on just that piece alone.

MR. G. TAPIA: I do agree that they have an access but the County code is what's holding them up. It's the County code that's holding them back from what they want to do already. And that's not something that we put there that said you've got only a 16-foot access. You can't do it with the 16-foot access. That's the County's position. That's the way I see it and enlighten me if I'm wrong but maybe I don't understand it entirely.

COMMISSIONER ANAYA: Greg, I'm learning myself. I'm new on the Commission and I'm learning myself. But I do think there are some things that happened pre-code that constitute legal access and use that I think people have legal right to use. So I'm hearing what your comments are and I respect your comments. Your comments are a little different than Mr. Hitt's comments. You didn't bring up the COLTPAC issue. You're more speaking to the traffic.

MR. G. TAPIA: And safety.

COMMISSIONER ANAYA: Let me ask a question, and Commissioner Holian asked this question of Mr. Hitt, I believe. Given what Commissioner Holian said, what's your position on when the County stopped using it. Were you supportive of that? That's the first question. And then the second question is, given its proximity to the Community College District – and I'm not saying we would do this – but would you be open to the potential that this could be maintained potentially by the County on some kind of limited basis? Would you help me with those two questions?

MR. G. TAPIA: You're going to have to repeat the first one just because I'm trying to keep up, but the last one, I would have to speak with my family and see what's going to be best for our interest. As you know the County has power to condemn property and like I said, we've been there since the 1930s continuously and that would be a shame if



that were to ever happen. We want to do everything within our rights to keep it the way it is but I would have to get together with my whole family. We would have to make a decision together on that.

COMMISSIONER ANAYA: My first question was it seems like it's clear in the documents from the court that there was opposition to maintenance of the road by the County but I'm not completely sure. But were you – do you believe your dad or your family was opposed to County maintenance?

MR. G. TAPIA: We were opposed to County maintenance for the reasons – more safety issues. The bottleneck, 16 feet. There was a time I think when the County wanted to pave it and people already go through there 30, 40 miles an hour and that road 35 feet from my bedroom window. And it's in pretty bad shape. If it was in great shape, a blacktop road or a road with no bumps that people had to watch out for or something like that, you could have a potential – and it's on a very steep grade as I mentioned. Some of those pictures will show you can't see what's coming over the hill or you can't see what's coming from the bottom, and people would be going faster. That was one of the main reasons we were opposed to County maintenance.

And the second reason we were opposed to County maintenance is because it is an easement but it also is our property and we wanted to be on the upkeep and be more or less in control of what's going on as far as maintenance and we've been working with the Old Galisteo Way Association on an agreement basis and we've been doing okay lately and I think we hold up our end pretty well and I think they hold up their end pretty well. Like I said, as far as the issue of County maintenance I think we'd have to have a family meeting and see what our position would be on that.

COMMISSIONER ANAYA: Madam Chair, and thanks a lot. I appreciate that. And as others come forward it would be helpful for me to know on those two points whether you're opposed to County maintenance and then the second one would be whether you would consider County maintenance for others that are coming forward. Thank you, Madam Chair.

CHAIR VIGIL: Thank you. Are you done, Mr. Tapia? Okay. Next.

MR. G. TAPIA: [inaudible] my photographs?

CHAIR VIGIL: I have a question on your photographs. Whose truck and horse hauler are they?

MR. G. TAPIA: That's mine.

CHAIR VIGIL: That's yours. And the other vehicle that is on the other side of the street?

MR. G. TAPIA: That was just somebody going through. And it just happened that I had a camera with me and I asked if it would be okay if I took a few pictures just to demonstrate what people that use that road have to deal with.

CHAIR VIGIL: So you use that road on a regular basis for hauling horse traffic?

MR. G. TAPIA: The only reason I came through there is because one of our accesses was blocked with a broken down vehicle so just to get to where I was going on time I came out that way. I usually don't. Very rarely. Maybe once or twice a month will I ever use that Old Galisteo Way.

CHAIR VIGIL: Thank you, Mr. Tapia. Next. Please step forward and state

your name. A Santa Fe County employee.

[Previously sworn, Carl Tapia testified as follows:]

CARL TAPIA: Hi. My name is Carl Tapia and I'd like to address the County Commission. I own five acres that Mr. Terrell wants to have access there. He wants his so-called four-home subdivision. If I remember correctly we had a meeting about a year ago at Capshaw Mid-School and he proposed 22 homes. So I'm here to say that I don't believe that it's going to sit at four homes. Four homes today, eight tomorrow, 22 by the time it's over with. And I'd like to kind of correct – the way I understand, I think I heard Mr. Terrell's attorney say that his mother used to pass and his grandfather right through the middle of our property. Yes, he did. And my grandfather's the one – the way I understand, he's the one that told my father, why don't you give them access, and it was just access to use on the corner of our property so he wouldn't pass through there. And if I remember correctly we had quite a hard time making his mother use that road.

I remember because I'm the one that was there. I remember his mother picking up a cedar post and hitting my father over the head. I'm not trying to sling mud here, and put a pretty big gash on his head because she was determined to pass wherever she wanted. I also remember her shoving a stake through my uncle's jacket, Mike Tapia. It turns out he was wearing a heavy jacket, because she wanted to pass through where he was. And I feel, this is what I feel, I don't have a problem with a man trying to better himself, but why at our expense?

I'm here because that road is just an easement. He's trying to better himself at our expense. He's saying now I'll build four homes, if I can get four, next year I'll get eight. And I like the color of green myself. It's a pretty nice color. When I want to get some green I'll go out and do it on not nobody else's expense. If he wants to build 20 homes, that's fine. But let him provide an access for them. Can you imagine, four homes, that's probably two vehicles to each home. That means we have to settle for all the dust. He likes the color green? We'll be looking at brown when we look at the mirror, all the dust that we have on our teeth. And that's what it comes out. And if it comes out to four, they have families, they get two more cars, so more cars.

I don't think that road's adequate to provide that much – for that many traffic. And I know I've read a letter here that I believe property his attorneys had asked the County Commissioners, well, why don't you just condemn that road. Well, yes. Condemn it. I'm asking Mr. Terrell here to take responsibility for what he's asking here today. If he wants to build 20 homes, let him provide access. It's not just condemn somebody's property. It's – I'm here to protect my property. I believe in justice for all, as it says. For everybody. Thank you.

COMMISSIONER STEFANICS: Thank you. Commissioner Anaya, do you have a comment?

COMMISSIONER ANAYA: Yes, Carl, a couple questions. Mr. Tapia, it's good to see you. Carl, you and I have worked together, known each other for a long time. And I understand – that's okay. I know. I understand. All the Commissioners understand and staff and the people in the community. Any time you're dealing with land issues it's a difficult issue. So I fully understand.

A couple of questions I'd asked previously. Relative to County maintenance from your perspective, did you prefer not to have County maintenance or would you like to have

County maintenance? Just as a question?

MR. C. TAPIA: If it was County maintenance the road sits as it is. I'm not sure if it's 30 feet, something like that. Well, County maintenance means that if it's County maintenance that means that we're actually turning over the road to the County, right? Am I wrong or not?

COMMISSIONER ANAYA: Yes. That was something that the County would do on whatever basis, limited or not. And I'm not saying we're going to make that decision here tonight, I'm just saying would you even embrace that?

MR. C. TAPIA: I'm an old country boy. I enjoy the road the way it is. I've been driving down bumpy country roads all my life, you know what I mean? So to me I'd rather have it the way it is. Actually, personally –

CHAIR VIGIL: Okay. Mr. Tapia, I think you answered the question. You'd rather leave it the way it is, correct?

COMMISSIONER ANAYA: Yes, and if I could, just a follow-up comment from my perspective. Based on the information I've heard so far, and I want to hear from everybody. I believe that this gentleman has a right to build four houses whether we approve this or not. Okay? Whether we approve this variance, based on what I heard from Legal and staff is that they could build up to four houses right now, without subdividing it. That being said I also believe that associated with additional lots that there would need to be a secondary access and we probably should think about, if we went that route to allow the four lots that we would stop any other houses. So you provided an example and I want to speak right to it, just from my perspective. I'm not speaking for my fellow Commissioners.

From my perspective, as a Commission we could set up a condition where we would say for those houses, the four houses, you could only access Old Galisteo Way and than any additional that would come in, we could do a condition that would set that in place to where it would have to be somewhere else. So I just want you to know that, that we could do that. But that right now, the gentleman sitting behind you has the ability within code to build four houses.

CHAIR VIGIL: Okay. Thank you. Next speaker, please.

[Previously sworn, Jim Victor testified as follows:]

JIM VICTOR: My name is Jim Victor. I'm at 64 Old Galisteo Way. My property almost corners the subject property on Old Galisteo Way. Grayhall is making a nice offer to the neighborhood to be able to be a welcome neighbor to our community. However, like the Tapias have mentioned, safety for the people using the road, including the children that right their bicycles, etc. is really being ignored here. As shown by the pictures [Exhibit 11] – now these pictures were taken on a Sunday afternoon, about 3:00 in the afternoon, not a busy time of day. Granted, the picture of the Tacoma truck is mine. I was turning on to the road. The first vehicle in the line is Mr. Hitt's car, the pickup truck. You can see how wide the road is right there at the entrance. It is very restrictive. The other cars behind Mr. Hitt's pickup truck just happened to be coming by at the same time. So none of this is really staged in its entirety.

This is a very blind corner at the entrance to the road, exiting Old Galisteo Road onto Los Tapias Lane requires a person to pull out onto Los Tapias Lane to see the oncoming traffic. Because of the way the road is situated you need to pull far enough out into the traffic,

if there is any, in order to be able to see each way. If there are – more than once I've encountered fast vehicles including school buses going down Los Tapias Lane that you cannot see unless you're practically in their way. Most often a car entering onto Old Galisteo Way from Los Tapias Lane must wait until that vehicle exits the road and clears an area to be able to go ahead and be able to pull onto the road.

CHAIR VIGIL: Jim, is this the same intersection of the pictures that were taken by Mr. Tapia with the horse trailer and the truck? Because we saw those.

MR. VICTOR: I didn't see the Mr. Tapia's pictures.

CHAIR VIGIL: You didn't see them. Okay. Are there more than one turn on that road? So if there's only one this would be the same one, right?

MR. VICTOR: Yes.

CHAIR VIGIL: Okay. Thank you.

MR. VICTOR: My concern really here is safety. We have quite a number of cars going up and down the road. I don't know where the study came from Grayhall has. Mr. Hitt has asked that the meeting here be tabled until a good study can actually be made as far as how much traffic is coming and going. My opinion is that that doesn't matter at all, other than the fact that until this entrance way can be improved on and access and exited safely then this project needs to be halted for the interests of the safety of everybody involved.

On the question of County maintenance, I personally work with Greg Tapia, as far as maintaining the road. I own a small tractor that has a box blade on the back. We do our best to keep the road manageable, which has got a lot to be desired. It is an old tractor. It's not really designed to be able to do a great deal of work. I'm in favor of County maintenance. I think that if the hill that has to be taken after the entrance there was improved and it was raised that more of the road that is there would be usable. As it is, cars will travel down the middle of the road because it's a ditch, practically. And people will take the path of least resistance. That's about all I have to say.

CHAIR VIGIL: Thank you very much, Jim. Next. Is there anyone else that will be addressing the Commission tonight? One more. Did we swear you in? When you come forth you can be sworn in. Please state your name for the record.

[Duly sworn, Tony Tapia testified as follows:]

TONY TAPIA: I am Tony Tapia. I own Tapia Estates with my children. I just want to state that I agree that Mr. Terrell should be able to improve his property, but like what my nephew said, he says, where does it stop? It's three houses now and now it's four houses. Is it going to be eight houses next year? I'm concerned about the aquifer. The wells are going dry and we have a big problem with that. I think that if you guys approve this subdivision that started out at 20 and now it's four, now it's three, that he should be made to have an access out the west side and not to encourage any more traffic on that road. It's very dangerous. I do appreciate your time and thank you.

CHAIR VIGIL: Thank you, Ms. Tapia. Please step forward.

[Duly sworn, Valerie Lucero testified as follows:]

VALERIE LUCERO: Hello, Commissioners. My name is Valerie Lucero and I have lived on the Tapia Estates for five years already. And to answer Commissioner Anaya's – first of all, Commissioner Anaya, I really appreciate the fact that you have given us other options to look at, and thank you for considering our hardship. I am in opposition of the

County maintenance because right now there hasn't been a problem and already people that do use Old Galisteo Way end up using the Tapia's private driveway as well. And like Mr. Anaya had addressed, they do have residents, if you will because they do have tenants that use our private driveway and this has caused more traffic.

I do have a question in regards – and maybe you can help me better understand this, the 20 feet. If this variance is approved it is my understanding that it would be required for 20 more feet of our road to be – well, for the road to expand. So this would also require that 20 feet to come from our land and from our personal property that we currently utilize. So that's my opposition to the matter.

CHAIR VIGIL: Yes, Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, just to clarify, if this variance is approved they would use the existing 20 foot, so they wouldn't expand into the property.

MS. LUCERO: The private property? Okay.

COMMISSIONER ANAYA: Right? Yes.

MS. LUCERO: And if this variance is approved, will Mr. Terrell be allowed to build more houses in addition to the four?

CHAIR VIGIL: No. Shelley, do you want to further explain that as to why that couldn't occur?

MS. COBAU: Madam Chair, I think that's identified in the conditions, that no further division of the property can be recorded until there's another access.

CHAIR VIGIL: And with another access, what are the limitations for that area?

MS. COBAU: Madam Chair, members of the Commission, it would be based on proving water at that point and the current code would allow them to go down to 2.5-acre lots, which I believe was – it's a 48 or 50-acre piece of property. A lot of it's in the flood plain.

CHAIR VIGIL: Okay.

MS. COBAU: While I have the floor can I point something out, Madam Chair.

CHAIR VIGIL: Please.

MS. COBAU: We have a map that's prepared by our GIS Department and I'll bring it closer so you can see. It shows – you can see a little more clearly than you can on the aerial that's provided by the applicant's agent. And Mr. Terrell's property is in fact the last large parcel that hasn't been divided down into small properties in this area and there are at least 35 other addressed homes that are using Old Galisteo Way. The Fire Department has been out there and looked when the submittal was originally made before the EZC and they said they didn't have any issues with fire access. That was my case when I was a case planner. It's been that long in the County, this gentleman's property.

The access up to the Tapia Lane where this T's in could be much improved, but there's a fence in the way that's owned by the Tapias. In fact it's in the easement that serves this area. The easement is rounded and the fence is square. So the easement would allow for a return-type roadway which would be curvilinear up to Tapia Lane, but there's a fence that obstructs it. Land Use staff had originally in fact approved a summary subdivision and we subsequently rescinded it because it was our interpretation of the court order in Land Use that we could allow them to develop and improve a 20-foot road section. In fact they came

forward with a design for an inverted crown, to eliminate the roadside ditches and direct into the center of the road in an inverted crown and stay within the 20 feet.

We subsequently rescinded that after we conferred with Legal staff and it was our fault that we didn't really read the court order correctly, that they could only have a 16-foot driving surface. I just want to stress this applicant has been before County staff so long we practically have this memorized without even looking at the case file. And I want to just approach and walk this past each of you so you can see clearly how his property is the last one on Old Galisteo Way that isn't divided.

CHAIR VIGIL: Okay. You can proceed that way, Shelley. Thank you, Shelley. Valerie, we didn't mean to cut you short. What would you like to add to this?

[Audio difficulties: Ms. Lucero stated she would like to raise her own family in the area some day, that this was her home.]

CHAIR VIGIL: Thank you, Valerie. I appreciate that.

COMMISSIONER STEFANICS: Madam Chair.

CHAIR VIGIL: Yes.

SCOMMISSIONER STEFANICS: Shelly, could I have that map to look at?

CCOMMISSIONER ANAYA: Madam Chair, I have a question for Ms.

Lucero.

CHAIR VIGIL: Valerie, I think there's a question for you.

COMMISSIONER MAYFIELD: Madam Chair, Ms. Lucero, if I heard you correct you said you moved out there – you didn't say you moved out there. But you've been there for five years. How do you access your home? Off of Old Galisteo Way? Or off Los Tapias Lane?

MS. LUCERO: I use the private driveway off of Los Tapias Lane.

COMMISSIONER MAYFIELD: So coming off of Los Tapias Lane.

MS. LUCERO: I come off of Rabbit Road onto the private driveway. So I don't access Old Galisteo Way.

COMMISSIONER MAYFIELD: Okay. Thank you very much. I'm going to have some questions of staff after a bit.

CHAIR VIGIL: Okay. Commissioner Holian.

COMMISSIONER HOLIAN: I actually have a question for staff. Shelley, are there any plans to bring County water out to that area?

MS. COBAU: Madam Chair, Commissioner Holian, not that I'm aware of. I don't even know if it's inside the boundary of the utilities water service area. It's intended to be served by a private well.

COMMISSIONER STEFANICS: Madam Chair, on that point.

CHAIR VIGIL: Commissioner Stefanics.

COMMISSIONER STEFANICS: Madam Chair, because Pego has been working with the community of Eldorado and Cañoncito to hook up to the lines, the lines would go up that area. Now, he would have to show us on the map exactly where, but there has to be something going through that area to get to the Eldorado to connect to get to Cañoncito. So I think that's a very valid question and possible condition. Thank you.

CHAIR VIGIL: I think we're done with, Valerie. Thank you. Commissioner Mayfield, do you have questions for staff?

COMMISSIONER MAYFIELD: Madam Chair, I was going to ask that all applicants state what – excuse me, the applicant, all parties that are opposed to this, and then I will ask questions.

CHAIR VIGIL: What is your question?

COMMISSIONER MAYFIELD: Well, I don't have a question yet. I just want everybody to finish their presentation.

CHAIR VIGIL: I think that was the last person.

COMMISSIONER MAYFIELD: Did she want to rebut.

CHAIR VIGIL: She's the applicant so she's going to rebut.

COMMISSIONER MAYFIELD: Thank you.

MS. JENKINS: One item, just for a point of clarification, we'd like to pass out. [Exhibit 12] There were some questions raised with respect to some testimony earlier about the width of the easement, and so we are passing out the easement document to you, which shows that it is a 20-foot easement in that top 640 feet from Los Tapias Lane, the northernmost 640 feet of Old Galisteo Way.

And also what you can see there at the top in the highlighted portion, as Shelley mentioned, it shows that the easement itself incorporates a turning radius at the intersection of Los Tapias Lane and Old Galisteo Way. But as you can see from the survey – the survey is old but I can tell you, having been out there that the fences that are shown that encroach into the corners there are still there. And so some of the irony here is that in our original proposal for the summary subdivision and working with the Land Use staff, that we knew we had a 20-foot easement so we proposed making improvements in that 20-foot easement ensuring a 20-foot drivable surface the whole length of Old Galisteo Way up to the entrance to the subdivision, which mitigates the safety issues that have been addressed here.

We also proposing moving and relocating the fencing at our expense to ensure proper turning radii at Los Tapias Lane. We volunteered at our expense to do all that work and yet, it came to light that the County Attorney office's interpretation of the court order, which differs from Mr. Terrell's legal counsel's interpretation of the court order, that we were precluded from doing those improvements. Fine. So that's why we're here. We were precluded from spending our money to make the road better. So we will spend our money to make it better where we can make it better, which is the remaining stretch. Once we get to the 640 we will invest to ensure a better road that is less expensive to maintain, and has a 20-foot drivable surface the whole distance so we don't have issues of cars being able to pass one another, and these three new homes will be required per the covenants that run with that land to contribute financially to that effort. It's only right. It's only right to do that.

And with respect to, again, the improvements we're proposing will improve and mitigate the safety issue. We would still be willing to work with the Tapia family to institute improvements on that stretch but that option is not available to us, so that's fine. So we're here asking for your consideration so Mr. Terrell can move forward with three new lots on this property. And we really appreciate your time and attention and we'd be happy to stand for additional questions.

CHAIR VIGIL: Okay. Any questions of the applicant? Okay, I have Commissioner Mayfield and Commissioner Anaya.

COMMISSIONER MAYFIELD: Thank you, and just from what I believe I

read, Madam Chair. Wasn't there an issue though that you could not obtain the 20 feet? Wasn't the court order indicating that there was an arroyo or a water right-of-way through one side of the property where you could not pull 20 feet out of it?

MS. JENKINS: No. the 20-foot easement is there, but the court order describes the roadway as having a 16-foot drivable surface with two feet of drainage on either side. That roadway description of the condition of the road in 1970 has been interpreted as a limitation. I don't personally agree with the interpretation. I think I share Commissioner Anaya's interpretation of that but that was descriptive in nature as a minimum that must be maintained through the Tapia property, not as a maximum until the end of time.

COMMISSIONER MAYFIELD: Thank you. Madam Chair, could I ask the attorney's interpretation of that court order?

MR. ROSS: Madam Chair, Commissioner Mayfield, if you take a look at paragraph number 2 under the conclusions of law and paragraph number 7, it's pretty clear that there's a 16-foot driving surface as declared by the court with two feet on either side for drainage structures and back-slope.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Ross, could that be interpreted though that that drainage on both sides could be put in under pipe or no?

MR. ROSS: Under pipe?

COMMISSIONER MAYFIELD: Yes. Just so that they could have the full 20 feet.

MR. ROSS: Well, what is clear is that there's a 16-foot driving surface. What you can do in the additional four feet, two feet on either side, is very ambiguous in the court's order. In fact it could be read as contradictory, two of those paragraphs, like paragraph 2 and paragraph 7 could be read as contradictory. Or 7 could be read as consistent with 8. So since this is a 1970 court order we can't go ask the judge what he intended. But what is clear is that there's a 16-foot driving surface that is permitted. If we were to, say, make an interpretation that you could have a 20-foot driving surface and permit the applicant to do that I'm virtually certain there'd be litigation which is what we were trying to avoid. We talked about this a lot, I think before your time. The Commission and myself had talked about this issue repeatedly. And the conflict in the order would certainly result in litigation that we would be drawn into and the Commission's view at that time was it was the applicant's responsibility to initiate that and the applicant of course felt it was our responsibility to deal with that. And you all disagreed with that interpretation. So that's kind of where we arrived at the idea that let's go get a variance for what we know can be accomplished, which is for sure there's a 16-foot easement across this property and that people can use it and that it's probably adequate.

COMMISSIONER MAYFIELD: Thank you. Madam Chair and whoever can answer this question. And I did briefly speak to Jack on the side so I'm just going to ask the question again. Jack, there are times when staff takes a position that they really don't support just because the way the law is written in black and white and the variance comes to the Commissioners for that request. You all are supporting this variance and you were telling me why you were supporting it. Do you mind just putting that out there again?

MR. KOLKMEYER: Madam Chair, Commissioner Mayfield, sure. The variances that we don't generally support that come before you are frequently for economic hardships, health issues, those kinds of things. When the applicant, when we tell them we



can't support that reason for them coming forward with a land division or whatever it is we do tell them they can bring it to you for a variance. But it's really clear in the code that the variances that can be supported are ones that are caused in some way by the land, that is with terrain issues generally. And the way that we have interpreted this because of what Mr. Ross just explained it was the court order that says it has to be 16 feet. In that case so that means then that's not up to our road standards so we would support them going forward with a variance because that's what the court case said.

So in this case, it's of course very convoluted and goes back a long time but that's the position that we took in this particular case, because if you again look at what the map that Shelley pointed out, we've done a lot of research on this road ourselves. So it becomes an issue and a way, not only saying that yes, we can support the variance for that issue, but one of fairness in that regard because when I first started in this in 2005 with Mike Tapia, the issue was he didn't want anybody grading the road at the top of the hill at all, whether it was the road association or anyone else. They didn't want any further development down the hill, if you know how the road goes there to the bottom of the hill. There were only a couple of houses that Mr. Tapia had agreed really should be able to use that road. If you look at the map you now see there's 32 homes since that time. So the last one in does the door shut and everybody else has been accessing it on 16 feet as well.

So after our deliberations on this case at this point we felt that the court order created the hardship and so therefore we would support Mr. Terrell's variance application.

COMMISSIONER MAYFIELD: Thank you. And Madam Chair and Jack or Shelley, on that point and the map that you all pulled out, everything that was post-1981, that's when the County went to the 20-foot wide, correct?

MR. KOLKMEYER: We don't know for sure, but it's safe to assume that that being the first land use code that's when the road standards were created.

COMMISSIONER MAYFIELD: Do you all know how many of these home sites or these properties were developed after, post-81?

MR. KOLKMEYER: The applicant says they have that information.

MS. JENKINS: We do have that information and we actually have copies of those plats, so we'd be happy to pass them out if that's helpful. [Exhibit 13] It's in the neighborhood of, since 1981, probably close to 20. About 20 individual lots have been created and based on our research, none of those land divisions were required to seek a variance from Santa Fe County.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. So Jack, that's what I was going to ask you. Did any of those individuals come for a variance from the County?

MS. COBAU: Madam Chair, Commissioner Mayfield, I'll take that question. I think probably the majority of them were created through the family transfer process, under the Extraterritorial Zoning Ordinance and family transfers are not required to address offsite road improvements.

COMMISSIONER MAYFIELD: Thank you. And again, Shelley, that's 2.5 acres in this area?

MS. COBAU: Two and a half acres, but with a small-lot family transfer they could actually get a half minimum lot size so they could have gone down to 1.25 acres.

COMMISSIONER MAYFIELD: Thank you. And Madam Chair and staff, do you know what the typical lot size is out there in that area? Where there is an actual physical residence on it?

MS. COBAU: Madam Chair, Commissioner Mayfield, in looking at this map and eyeballing it it looks like they range anywhere from two to five acres, primarily, with none more than about five acres, other than Mr. Terrell's parcel.

COMMISSIONER MAYFIELD: Thank you. And I think this is my last question. As far as the easement that was granted when the easement came to be, was there a thought – was it to go back to the big acreage back there? Was it to go to small lots? What was the history of the easement that was granted?

MS. JENKINS: It really wasn't specified. The easement was for access to Damion's grandfather's property, and there were a couple other property owners there as well. At the time there weren't that many property owners in the vicinity and over time, as properties have been subdivided the property owners have increased, so there were larger tracts at the time, when the access was created. But the access was created back in – as they said, at the turn of the century, and then it wasn't adjudicated and sort of formalized until the 1970 court order.

COMMISSIONER MAYFIELD: Thank you. And I guess I want to follow up on that. So when the easement was granted, was it to Mr. Hill, initially?

MS. JENKINS: Mr. Wendell Hall.

COMMISSIONER MAYFIELD: Oh, I apologize. Was that just for that one – that one – what was it initially? 240 acres at one time?

MS. JENKINS: Initially it was 160 acres.

COMMISSIONER MAYFIELD: And now it's kind of whittled down to 42 acres.

MS. JENKINS: Yes, now it's down. He's at almost 44 acres.

COMMISSIONER MAYFIELD: So at some time was that property split up and sold off from the 140?

MS. JENKINS: Yes. Over time. As Damion shared with you, the Santiago Subdivision, which has direct access off of Rabbit Road was originally part of his grandfather's homestead.

COMMISSIONER MAYFIELD: Thank you. But that now has a different access and there's no access coming all the way down.

MS. JENKINS: There's not anymore. There was supposed to be but there isn't anymore.

COMMISSIONER MAYFIELD: That's where the County at one time vacated

MS. JENKINS: Vacated those easements, yes, sir.

COMMISSIONER MAYFIELD: And maybe staff has this answer. The Santiago Subdivision, can they still get an easement through that subdivision?

MS. JENKINS: We requested it from those property owners.

MS. COBAU: It was vacated through the action of the EZC at the time. I believe we have the vacated plat was sent out and it was in 1980. So it was formally vacated. And when the applicant first came to the County with the proposal we asked that they see if

that could be reinstated and they have worked with the landowners and been told no.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. I may have a few more questions but for now, thank you.

CHAIR VIGIL: His brain is going.

MS. JENKINS: And Madam Chair, just as a point of clarification, I think as Shelley mentioned it's very likely that there have been some small-lot family transfers along Old Galisteo Way because you will see a smattering of maybe one-acre lots. Among the Tapia Estates you will see that, and that's probably how those lots were created. But we did some research over the last 15 years on these plats and none of these plats are identified as family transfers. So I think there's probably a combination of standard, summary subdivisions, and lot splits that occurred in addition to I'm sure a handful of family transfers as well.

COMMISSIONER MAYFIELD: Madam Chair, thank you. I'll take that.  
Thank you.

COMMISSIONER ANAYA: Madam Chair, a couple of comments relative to all the comments made. I can understand fully the frustration of the homeowners and some of the residents. He mentioned, Mr. Carl Tapia mentioned a meeting at Capshaw Junior High several years ago that reflected not four houses but more than I guess 20, or how many was it?

MS. JENKINS: As Shelley mentioned, Madam Chair, Commissioner Anaya, originally, when we were in the Extraterritorial Zone we had a proposal for a 14-lot – in accordance with that zoning.

COMMISSIONER ANAYA: Fourteen lots.

MS. JENKINS: But we don't have enough land to allow for that many lots. The density calculation doesn't work out. But they're right. It was definitely more than the current four that we're showing today.

COMMISSIONER ANAYA: And I appreciate that clarification. So 14, even so, there's a big difference between four lots and 14 and the amount of traffic that would be increased as a result of that. I could also see their point associated with the easement issue. It wasn't through – as far as they knew, there was another subdivision as you pointed out in your documents in which there was a secondary access that was going to access the property, and I think I appreciate all the comments of the Commissioners and questions but I think one of the comments that Commissioner Mayfield just made even clarified even more in my mind that part of that subdivision, the Santiago Subdivision, the entire Santiago Subdivision, was your grandfather's? Was it your grandfather, Mr. Hall?

MR. TERRELL: Yes, it was.

COMMISSIONER ANAYA: And I appreciate that clarification that Commissioner Mayfield brought up that I didn't catch it earlier, but I think that that also for me makes it even more clear in my mind that if there were easements that were needed to be put in place and maintained that you yourselves, your family – I'm not saying you – but your family are the ones that actually did the development or sold the parcel for the development.

MR. TERRELL: Do you want me to address that please?

COMMISSIONER ANAYA: Sure.

MR. TERRELL: That issue actually came under the fact that that was after my

grandfather died and the property was left in trust with the First National Bank as trustee. Now, I do not know the specifics of exactly what happened, of what the trustee determined that should be done with the property in order to create capital to maintain it in perpetuity until I was able to fully inherit it. All I know is what I have left. That I did not see any benefit from the Santiago Subdivision.

COMMISSIONER ANAYA: Well, Madam Chair, Damion – and I understand what you're saying, but associated with that parcel that was part of your grandfather's tract of land and presumably Santiago Subdivision happened some time after 1970.

MS. JENKINS: It was originally in 81.

COMMISSIONER ANAYA: 81. Okay. So it happened during a time frame when the code wasn't in place yet? Is that right? The code came in 84? Or right in 81. So right at that time was when they did it. So I think there was opportunity there to establish additional rights of way and for whatever reason, through no power of yours, I hear what you're saying, that was vacated or taken away. I actually think that because it's in the Community College District I would like to know more about that process that occurred for vacating it and how that was vacated and look into the legal aspects associated with that. And because of its proximity into the Community College District I think it may merit the County to do so and to potentially look at easements and access that tie into the entire Community College District.

Those things being said there is no question in my mind. I am an advocate of property rights. There's no question in my mind that the Halls in 1970, through the judgment that was issued on February 7<sup>th</sup>, that Mr. Montoya, the judge at the time, Judge Montoya, heard the preceding arguments and verified that there was access for use of that property. To presume, from my perspective that they can't do anything with it I think is a false assumption and I wouldn't sit up here as a Commissioner and advocate that they couldn't do anything with it.

That being said, I think anything beyond the four houses, that we need to be very explicit and even add conditions to make it very clear and explicit that any additional units would have an alternate access. And I would even go as far as saying that if there was a 20-lot subdivision at some point or whatever the proposal would be, long after I'm not sitting as a Commissioner, that potentially that Galisteo Road access would even maybe fall into emergency access, out of that subdivision, instead of a primary access, even for those four, which is a thought to maybe engage staff in some discussions. But for four houses, I think that they have a right. I think they could build those four houses now based on the determination I heard from staff. Beyond the four I can understand the concern that was raised here today and the concern that they raised at Capshaw Junior High School. So that's my perspective.

CHAIR VIGIL: I have a few questions and they might directly go for you. I heard the testimony and Commissioner Anaya alluded to this in terms of additional conditions. But your client is willing to dedicate easement to the Arroyo Hondo Corridor. What percentage is he willing to dedicate?

MS. JENKINS: It really works out – as part of the Community College District, as the remaining about 36 acres, that fourth lot which is the remainder that at the time when we come in, when that alternative access becomes available and the opportunity presents itself to potentially create some additional lots on that remainder parcel, we will call

it, that as part of that we will be dedicating upwards of 42 percent of this land as County-dedicated open space and trail corridor.

CHAIR VIGIL: Would you consider that a condition of approval? •

MS. JENKINS: That it be implemented at the time, yes. For a three-lot, four-lot subdivision today, but we definitely – it's always something we discussed with staff and we know that that is something that's part of the long-term plan.

CHAIR VIGIL: One of the things I'm trying to do is ease residents' concern about there being 20 residents there, and the testimony I heard that would alleviate that concern if in fact that amount of property was dedicated to the Arroyo Hondo Corridor.

MS. JENKINS: And I would ask, maybe we could craft the language so as not to quote me on percentages, because I don't have those figures right in front of me, but it's basically – we could craft it to be everything, basically the Arroyo Hondo floodplain, the 100-year floodplain, and everything south of that, which is about 40 percent of the property. But since I don't have the exact figures in front of me maybe we could describe it graphically.

CHAIR VIGIL: Could we say approximately 40 percent?

MS. JENKINS: We could say approximately 40 percent, sure.

CHAIR VIGIL: Okay. The other – I think on this subject Commissioner Mayfield has a request.

COMMISSIONER MAYFIELD: Could you put the big aerial up there so everyone can see the exact lot? Thank you, Madam Chair.

CHAIR VIGIL: Do you want to identify the areas that would be dedicated?

MS. JENKINS: So the shaded area here is actually the FEMA floodplain for the Arroyo Hondo and then there's some land to the south so that that is outside of the floodplain, but we would propose that the open space dedication be everything from the floodplain boundary south.

CHAIR VIGIL: Okay. And how much of that area is arroyo?

MS. JENKINS: Here, the Arroyo Hondo, there's some areas where it's narrower there's areas where it flattens out. And I don't know –

CHAIR VIGIL: What is the widest?

MS. JENKINS: The widest. Let me see. What's my scale?

CHAIR VIGIL: Just approximately.

MS. JENKINS: The widest point, I would say – I think it's probably about 40 to 50 feet. And then there's a few areas where the terrain tightens up and channelizes and then it flattens out. So it sort of meanders. It's really quite beautiful.

CHAIR VIGIL: Okay. You also testified that the homeowners of this area are going to be contributing. Is this going to be through a neighborhood association? Are you going to create a PID?

MS. JENKINS: We have already drafted the documentation for a – to maintain Joya de Hondo Lane, the onsite road, for the homeowners to contribute to the maintenance of that. There's also a shared well, so there's maintenance of that. So there's things that are already in place so documentation has to be created for the maintenance of those items, and on that list of maintenance items includes contributing to Old Galisteo Way maintenance.

CHAIR VIGIL: Okay. Is this going to be an association fee that's in perpetuity

so that maintenance would be a part of it.

MS. JENKINS: Absolutely.

CHAIR VIGIL: Okay. And when you say it's going to improve on the road, would it improve on the road to County standards or as close to? What are you proposing?

MS. JENKINS: Once you reach the southern end of the Tapias land across which the 16-foot drivable surface limitation is, at that point we begin with ensuring a 20-foot drivable surface with new, fresh road surfacing, all the way down to Joya de Hondo Lane. And so there's areas where 20 feet already exists and there's areas where it's more than 20 and then it kind of meanders in those areas where it's only 18 or 19 feet. So our engineering plans for that show that within the boundaries of the legal easements that exist there we will be making those necessary improvements to ensure a minimum of a 20-foot drivable surface.

CHAIR VIGIL: And would you be willing to make that and agree to a condition of approval for that?

MS. JENKINS: Sure. It's already part of the summary subdivision, so we would be happy to agree to that.

CHAIR VIGIL: And everything else you've addressed is part of your covenants?

MS. JENKINS: Yes, as part of the covenants. And those will get recorded commensurate with recording the subdivision plat.

CHAIR VIGIL: Okay. I have no further questions.

COMMISSIONER HOLIAN: Madam Chair.

CHAIR VIGIL: Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. Jennifer, on that open space there, is there connectivity to other places, or would it just exist in isolation?

MS. JENKINS: This is – this boundary here, the west boundary of the property, is the eastern most boundary of the Oshara master plan. So as part of the Oshara master plan there is an open space corridor that runs along the Arroyo Hondo as well as future trail improvements. And so all this land of course – I think this is Phase 3 of Oshara, and of course right now there's not a lot of activity but there is absolutely intended that all the connectivity is really moving in this direction. Through the COLTPAC process, when Mr. Terrell kind of put everything on hold to kind of see that through and see if there would be an opportunity for an open space preservation program here with Santa Fe County, one of the concerns the County had was the connectivity.

This way is limited because of individual parcels, that the arroyo runs through individual parcels going this way. So it would be great – they said in the future they definitely like the idea of reaching out to these property owners to apply a trail easement so the connectivity could be done this way, but right now the connectivity is moving to the west.

COMMISSIONER HOLIAN: And I guess I have a question for Mr. Terrell since you've been familiar with this property for a long time. Do you know whether this is a wildlife corridor? Do you know if wildlife tends to use this property to move through here, to migrate?

MR. TERRELL: No, I would not say that there is any particular wildlife that does migrate if you're thinking things like big game or anything along that line. It is host to

various smaller wildlife such as rabbits, snakes, quail, lizards, things like that.

COMMISSIONER HOLIAN: Okay. Thank you.

CHAIR VIGIL: Okay. Commissioner Anaya.

COMMISSIONER HOLIAN: Madam Chair.

CHAIR VIGIL: Commissioner Holian.

COMMISSIONER HOLIAN: Actually, I would like to have Mr. Hitt comment. I think he may be commenting on my wildlife question.

CHAIR VIGIL: And Jennifer, that will allow you an opportunity to respond to him.

MR. HITT: Yes, just very quickly, we did have a wildlife biologist that did write a statement about the Arroyo Hondo Corridor and said it was very important for wildlife movement, especially connecting from the foothills to the Rio Grande.

COMMISSIONER HOLIAN: So is that the main Arroyo Hondo, when you think of the Arroyo Hondo open space and so on, and it going out to La Cienega and so on? Is that part of that connectivity there?

MR. HITT: Correct. Correct.

COMMISSIONER HOLIAN: Okay, then I know it is actually wildlife. And that brings up another question that I want to ask Jennifer then. Would you be willing to have a condition to consult with – there are people who are experts on wildlife movement, and would you be willing to have a condition to consult with them as to how to place houses so that you don't disrupt that?

MS. JENKINS: May I approach? I think to some degree we've address that. The County requires a 75-foot setback from the edge of the floodplain. Now the floodplain extends kind of beyond the limits of the arroyo itself, so we have a 75-foot setback here, and then the buildable areas themselves are set back even further. So there is no development – and this is actually Joya de Hondo Lane here, which is of course outside of the floodplain. So there's separation so the private driveway that serves these three homes is already a physical separation, and those homes are even set further back.

COMMISSIONER HOLIAN: So that driveway already exists.

MS. JENKINS: No, not yet.

COMMISSIONER HOLIAN: All right. Thank you.

MS. JENKINS: So I think just based on the plan of the plat itself that is already being addressed.

CHAIR VIGIL: Okay, I'm going to start losing Commissioners here, so I'll allow one more question. Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you. And you said – what's the lane now that goes to the three properties?

MS. JENKINS: Oh, we call it Joya de Hondo Lane. It's very original.

COMMISSIONER MAYFIELD: And then on Tract 4 I'm seeing that there's 38 acres?

MS. JENKINS: Yes. Thirty-six acres.

COMMISSIONER MAYFIELD: So you're not proposing to develop that.

MS. JENKINS: No, we're not. We're not right now. And as, Madam Chair,

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Commissioner Mayfield, as Madam Chair and I discussed we're in agreement to a condition that the time that this 36 acres is developed with alternative access to the west, we will make sure that open space dedication is in place.

COMMISSIONER MAYFIELD: As far as the three tracts that you're proposing to develop, are you going to gate that at the very end? Because if there's potential for future development as you all testified, nobody will ever have –

MS. JENKINS: That was a suggestion that Commissioner Anaya made, that at the time that we have access in this direction that we may want to consider requiring these three homes to utilize that access as well, and that is something that has not been – and so we're open to that, that in the interim that these three lots would use Old Galisteo Way but once additional access goes, the whole neighborhood moves out this way.

COMMISSIONER MAYFIELD: And last question. Is there any potential, and I know that this was an agricultural area in the past, to do any type of grazing out on those 36 acres, where you'll have additional traffic out there? Do you have any other use right now for those 36 acres?

MR. TERRELL: Nothing other than my own personal use.

COMMISSIONER MAYFIELD: Thank you. And Madam Chair, my last question for staff. Indicating these other developments that have come off of Old Galisteo Way, why would folks not – and just as I'm trying to understand stuff as a new Commissioner – why would folks never have had to come to us for a variance if they were going to build a home off of it if it was just a 16-foot wide road?

MS. COBAU: Madam Chair, Commissioner Mayfield, I think that's a good question. In looking at the plats that were passed out my Jennifer Jenkins, most of these cases went before the EZC and were signed off by the EZC chair. I think we're more sensitive to road issues now than we were even five years ago. So I think we're more careful perhaps for tomorrow.

COMMISSIONER MAYFIELD: If one of these individuals or a new individual wanted to come and ask for a building permit, they're going to have to go through the same process, right? They're going to have to come and say we don't have a 20-foot road. How are we going to get 20 feet into your property that you maybe want to do a family lot split on?

MS. COBAU: Madam Chair, Commissioner Mayfield, family transfer land divisions are different, but if somebody wants to come on the south side of Arroyo Hondo and put in an addition on their house, because they don't have all-weather access we wouldn't be releasing a building permit until they come to you for a variance.

COMMISSIONER MAYFIELD: Thank you, Madam Chair.

CHAIR VIGIL: Okay, I will allow two statements from you, Mr. Hitt. Go ahead. Because we need to close this public hearing. You will have to speak to the microphone.

MR. HITT: Thank you. Just one statement. That FEMA map is outdated. There is a new FEMA map that was done this year and I think it would behoove staff to look at that. In fact I got the FEMA map from County staff. The new FEMA 100-year floodplain covers that access road. It comes right up to the edge of the property of those three lots. So –

CHAIR VIGIL: Thank you, Mr. Hitt. I'm going to close the public hearing.



Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, a comment before my motion. My comment for the motion is that we at the County Commission are constantly looking at easement and access issues associated with the size of the road, and that there are many properties throughout Santa Fe County, there's many in northern New Mexico as one huge example that never would ever get close to having 20 feet or even 16 feet. That there are many traditional roads throughout the entire county that are 12, 13 feet and constantly the Commission is hearing cases associated with people wanting to be able to even do a family transfer or some other split that we consider all the time. So I just want to clarify that the objective of our Fire Department and others in the County to make sure that we have safety and wide roads and fully maintained roads all the time is an objective many times but not a reality, just because of existing conditions that are prevalent throughout the entire county.

That being said I would move for approval of the three 2.5-acre lots with the remaining larger lot, with the conditions set forth that there's going to be a dedication of the arroyo area to open space. And also to clarify the condition that's in the book, that if a secondary – if additional development comes forward that Old Galisteo Way will only be utilized by those first lots, that they would not utilize Old Galisteo Way, the other lots at all. And I just want to clarify that because the condition says until the secondary route is obtained, which implies that you could utilize the primary and the secondary route. So I want to clarify that and be explicit that the only units would be, in my motion, are those initial lots approved today and not be on that. I would also like consideration associated with what I brought up earlier about utilizing that as an emergency ingress and egress only at a future date for the entire area, if presumably there is another access found. So, that's my motion.

MS. JENKINS: And if I may, pardon me, Madam Chair, Commissioner Anaya, just to clarify the open space condition. That upon the development of Lot 4, which is the remaining 36-acre parcel, that at that time the open space as described, which is the Arroyo Hondo floodplain and lands south, would be dedicated to Santa Fe County as open space.

CHAIR VIGIL: Okay. And I think that's what Commissioner Anaya said.

MS. JENKINS: Thank you for that opportunity. Thank you.

COMMISSIONER STEFANICS: I will second.

CHAIR VIGIL: Okay. I have a motion and a second. Is there any further discussion?

**The motion passed by majority 4-1 voice vote with Commissioner Holian casting the nay vote.**