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SANTA FE
BOARD OF COUNTY COMMISSIONERS
MEETING
January 9, 2007

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

**SANTA FE COUNTY
REGULAR MEETING
BOARD OF COUNTY COMMISSIONERS**

January 9, 2007

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 3:10 p.m. by Chairman Harry Montoya, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

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

Members Present:

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

Members Absent:

[None]

V. INVOCATION

An invocation was given by Pastor Jimmy Sandoval from the Grace Community Church.

VI. APPROVAL OF THE AGENDA

- A. Amendments**
- B. Tabled or withdrawn items**
- C. Consent Calendar: Withdrawals**

ROMAN ABEYTA (County Manager): Thank you, Mr. Chairman, we do have some changes to the agenda. The first, under IX. Matters from the Commission, we added E. Discussion and Possible Approval for an Expenditure of Discretionary Funds in the Amount of \$5,000.00 to Ayudantes Inc. for the Mobile Drug Testing Program in Santa Fe County.

Under X. Consent Calendar, Findings of Fact, we corrected that caption to read CDRC Case. The original caption read CCDRC. So we fixed that. Then under item XI. D. 1, An order for Case #06-5361 has been tabled. Under XII. Staff and Elected Official Items, A. Land Use Department, 3, we corrected the caption to read Authorization to

publish title and general summary of an ordinance restricting the use of domestic wells for land divisions and subdivisions within the Eldorado area.

Then, Mr. Chairman, we added, under XII, Staff and Elected Official Items, C, Matters from the County Commissioners, 1. Discussion and possible action on legislation for the 2007 New Mexico legislative session, and 2, A resolution accepting dedication of Beckner Road. And finally, Mr. Chairman, under XIII, Public Hearings, A. Land Use Department, Case #3. CDR Case V 06-5570, Lopez Variance, has been tabled due to noticing issues. And other than that, staff has no other changes, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Are there any changes on the Consent Calendar. Commissioner Sullivan.

COMMISSIONER SULLIVAN: None, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Can we have a motion, as amended.

COMMISSIONER CAMPOS: Move to approve as amended.

CHAIRMAN MONTOYA: Motion by Commissioner Campos.

COMMISSIONER VIGIL: Second.

CHAIRMAN MONTOYA: Second by Commissioner Vigil. Further discussion.

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

VII. APPROVAL OF THE MINUTES:

November 15, 2006

COMMISSIONER ANAYA: So moved.

COMMISSIONER SULLIVAN: I had some corrections.

CHAIRMAN MONTOYA: I will second. Any discussion on the minutes?

COMMISSIONER SULLIVAN: I have some typographic corrections, Mr. Chairman.

CHAIRMAN MONTOYA: Okay, Commissioner Sullivan has some typographical corrections. Commissioner Anaya, is that acceptable?

COMMISSIONER ANAYA: Yes.

CHAIRMAN MONTOYA: And the seconder accepts also. Any other discussion?

The motion to approve the November 15th minutes as corrected passed by unanimous [4-0] voice vote, with Commissioner Campos abstaining due to absence from the meeting.

November 28, 2006

COMMISSIONER SULLIVAN: Mr. Chairman, I had one typographical.
CHAIRMAN MONTOYA: Okay, one typographical correction by
Commissioner Sullivan. Is that a motion also, Commissioner?
COMMISSIONER SULLIVAN: So moved, with the correction.
COMMISSIONER ANAYA: Second.
CHAIRMAN MONTOYA: Second by Commissioner Anaya. Further
discussion.

**The motion to approve the November 28, 2006 minutes as amended passed by
unanimous [5-0] voice vote.**

December 4, 2006 – Special Study Session

COMMISSIONER ANAYA: So moved.
CHAIRMAN MONTOYA: Motion by Commissioner Anaya.
COMMISSIONER CAMPOS: Second.
COMMISSIONER CAMPOS: Second by Commissioner Campos.

**The motion to approve the December 4th minutes as submitted passed by
unanimous [5-0] voice vote.**

VIII. MATTERS OF PUBLIC CONCERN – NON-ACTION ITEMS

CHAIRMAN MONTOYA: This is the portion of the agenda where if there is
anyone that would like to address the Commission on a specific issue they can do so at this
time. Sir, please come forward and identify your self for the record and the topic which you'd
like to address.

ARTHUR FIRSTENBERG: My name is Arthur Firstenberg. I live in Santa Fe.
I'm going to talk about the proposed action on the cell tower in Madrid.

CHAIRMAN MONTOYA: Okay, actually, that I don't believe is on the
agenda.

MR. FIRSTENBERG: It's not. Good afternoon. I bring to your attention
Rancho Palos Verdes v. Abrams, decided by the United States Supreme Court on March 22,
2005. [Exhibit 1] Under that decision telecommunications companies cannot sue communities
for damages or attorneys' fees. In 1996, Congress passed the Telecommunications Act, which
contained complex new rules about cell towers. Local governments couldn't regulate health
effects, but could regulate appearance; they couldn't discriminate between providers; they could
regulate locations; they couldn't prohibit service. The rules were confusing.

All over the country telecommunications companies took communities to court for

denying tower permits and they sued for damages and attorney fees. Since small communities couldn't afford to lose such lawsuits, even the threat of one forced most communities to back down. All over the country cities and counties lost control over zoning. Finally, one of these cases reached the Supreme Court and the Supreme Court said, No, these wealthy companies cannot bankrupt small communities over one mistake. They can ask a judge to overturn a zoning decision but they may not ask for monetary damages.

Justice Scalia said during oral argument, "I can't imagine that Congress wanted to impose damages plus attorneys' fees upon municipalities." In the opinion he wrote, "Liability for attorneys' fees would have a particularly severe impact. TCA plaintiffs are often large corporations or affiliated entities, whereas TCA defendants are often small, rural municipalities."

Justice Stevens agreed. He wrote, "Nowhere in the course of Congress' lengthy deliberations is there any hint that Congress wanted damages or attorneys' fees to be available." The Supreme Court's decision was unanimous.

Commissioners, in the case of the proposed tower in Madrid, a public hearing was held and the people of Madrid said No. The CDRC found good reasons to deny the application and on October 10th, this Commission agreed. I urge you, have the courage to stand behind your decision. Let the applicant decide whether it wants to gamble on getting a different decision from a court. I've read the October 10th minutes and I don't think a judge would reverse you. We wanted to preserve the historic look of Madrid. We do not want the tower, even a disguised tower on a ridgetop. There was abundant testimony that people were not given proper notice of meetings and hearings and you found that testimony credible.

There was testimony that community support for the tower was fabricated and you found that credible also. There was testimony that this location violates the master plan of Madrid. I doubt that a court would reverse you, but even if it did you cannot be sued for monetary damages. The County should assert its zoning power and confirm its decision to honor the will of the people of Madrid. Thank you. And I have a copy of the Supreme Court decision.

CHAIRMAN MONTTOYA: Thank you, Arthur. Is there anyone else that would like to address the Commission at this time?

IX. MATTERS FROM THE COMMISSION

A. Election of Chair and Vice Chair (Board of County Commissioners)

CHAIRMAN MONTTOYA: My understanding is that this will assume the responsibilities after this first meeting of the year. Commissioner Campos.

COMMISSIONER CAMPOS: I'd like to make a nomination. Mr. Chairman, I'd like to nominate - is this just for chair or is it for chair and vice chair?

CHAIRMAN MONTTOYA: Let's do both.

COMMISSIONER CAMPOS: Okay. I would like to nominate

Commissioner Vigil for chair and Commissioner Sullivan for vice chair.

CHAIRMAN MONTOYA: Okay.

COMMISSIONER ANAYA: Second.

CHAIRMAN MONTOYA: Discussion?

The motion to name Commissioner Vigil Commission Chair and Commissioner Sullivan Vice Chair passed by unanimous [5-0] voice vote.

COMMISSIONER ANAYA: Mr. Chairman, I'd just like to congratulate you on a job well done this past year as chairman of the Board of County Commissioners. I look forward to working with you as chairman and you did a wonderful job.

CHAIRMAN MONTOYA: Thank you. I know I had some tough shoes to follow. Commissioner Vigil

COMMISSIONER VIGIL: I think I do too. I was wondering if I might be able to borrow your shoes to see how well I could fit into them.

CHAIRMAN MONTOYA: They're not too big.

COMMISSIONER VIGIL: We'll work that one out.

CHAIRMAN MONTOYA: Thank you, Commissioner Vigil.

IX. A. Resolution No. 2007 -1. A Resolution Pursuant to NMSA 1978, § 4-44-12.3 (1991) Providing for a Salary Increase for County Commissioners in Districts 1 and District 3, the County Sheriff, the County Assessor, and the County Probate Judge, Effective January 1, 2007, the First Day of the Term of Office of Said Officials (Board of County Commissioners)

BERNADETTE SALAZAR (Human Resources): Thank you, Mr. Chairman, members of the Commission. I request approval of this resolution pursuant to state statute, and I stand for any questions.

COMMISSIONER CAMPOS: Why just them?

COMMISSIONER VIGIL: Move to approve, Mr. Chairman.

CHAIRMAN MONTOYA: Motion by Commissioner Vigil.

COMMISSIONER SULLIVAN: I'd like to get Commissioner Campos' question answered.

CHAIRMAN MONTOYA: We have a motion on the floor.

COMMISSIONER ANAYA: Second.

CHAIRMAN MONTOYA: There's a motion and a second. Commissioner Campos.

COMMISSIONER CAMPOS: Districts 1 and 3 only. What does the statute say about that?

MS. SALAZAR: I defer that question to legal.

CHAIRMAN MONTOYA: That 2, 4, and 5 are eliminated.

MS. SALAZAR: I believe it's just for incoming.

CHAIRMAN MONTOYA: It's for re-elected or newly elected officials assuming office as of January 1, 2007. Mid-term elected officials are not eligible for the increase at this time but, for example, if Commissioner Vigil is re-elected in two more years she will be eligible for that increase. Unfortunately, Commissioner Campos here is termed out. Commissioner Sullivan, you're termed out.

COMMISSIONER SULLIVAN: This sounds very familiar, Mr. Chairman. About two years ago, wasn't this also, didn't we do the same thing?

COMMISSIONER CAMPOS: About four years ago.

COMMISSIONER SULLIVAN: Four years ago?

COMMISSIONER CAMPOS: I think we should keep it equal, frankly.

What do you think?

COMMISSIONER SULLIVAN: I think they should donate the proceeds to equalize it.

COMMISSIONER CAMPOS: Keep it equal for the Commissioners.

CHAIRMAN MONTOYA: And give the other ones an increase.

COMMISSIONER VIGIL: We can't, statutorily. We are guided by the state statutes with regard to this and I think the Association of Counties is lobbying to try to get that changed for quite some time, and they're probably going to lobby for it this year too. However, I think it's even constitutional. Is that right, Steve Ross?

STEVE ROSS (County Attorney): Mr. Chairman, Commissioner Vigil, yes. The New Mexico Constitution prohibits mid-term salary increases. So the Association has taken this all the way to the New Mexico Supreme Court without a positive result so I guess the plan at this point is to try and amend the constitution.

CHAIRMAN MONTOYA: And just so there is some hope, Commissioners Campos and Sullivan, the Association does have this as a priority for their legislative requests for this year, to change that so that the statute is across the board regardless of where you are in your term.

COMMISSIONER CAMPOS: You do want to keep it equal, is that what you're saying?

CHAIRMAN MONTOYA: Yes, I do. I want to bring you guys up. So we have a motion and a second. Any other discussion?

The motion to approve Resolution 2007-1 passed by unanimous [5-0] voice vote.

COMMISSIONER CAMPOS: How much are you going to get?

CHAIRMAN MONTOYA: \$29,569? Is that correct?

MS. SALAZAR: \$29,569. Yes, that's correct, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. And the Sheriff will be at \$68,308, the

Assessor at \$65,501 and the Probate Judge at \$28,820.

IX. C. Resolution No. 2007-2. A Joint Resolution to Submit a Joint Request to the 2007 New Mexico State Legislative for Funding a Regional Carrier Technical Education Facility (Commissioner Vigil)

COMMISSIONER VIGIL: Thank you, Mr. Chairman. I'm asking that this Commission support this resolution. Historically in our county, Santa Fe at one point in time had a vocational/technical high school facility. That has been out of use for quite some time. It's actually going through some renovation right now. Santa Fe Public Schools, Santa Fe Community College and the City of Santa Fe have been meeting to try to revive that regional vocational/technical institute. Actually Santa Fe Public Schools will be going to the legislature for about \$200,000 for a feasibility study and a preliminary design and build.

Because this directly impacts economic development and of course also addresses a student population which hasn't been addressed for quite some time and that's the vocational/technical students who have historically come out of Santa Fe High. There's been a dearth in that kind of education, so with that, Mr. Chairman, I just ask that we support this together as a joint support with the City of Santa Fe, Santa Fe Community College and Santa Fe Public Schools. I believe actually Councilor Carmichael Dominguez is pushing this forth through the City and the resolution itself has been passed by all governing bodies.

CHAIRMAN MONTOYA: Okay. I'll take that as a motion.

COMMISSIONER VIGIL: So moved.

COMMISSIONER ANAYA: Second.

CHAIRMAN MONTOYA: Second, Commissioner Anaya. Discussion?

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: I want to thank Commissioner Vigil for bringing this forward. This is very important to communities. We are losing plumbers, electricians, carpenters and if we get vo-tech back this would help out in those shortages.

CHAIRMAN MONTOYA: Any other discussion?

The motion to approve Resolution 2007-2 passed by unanimous [5-0] voice vote.

IX. D. Discussion and Possible Approval of an Expenditure of Discretionary Funds in the Amount of \$2,000 to Aspectos Culturales for the Provisions of Providing Educational Teaching Materials for the Pojoaque Valley Schools Spanish Language Program (Commissioner Montoya)

CHAIRMAN MONTOYA: This particular request from my discretionary fund would go to fund exactly what is on there. It would fund three campuses, the 5-6 campus, the 7-8 campus and the K-4 campus. And for those of you who may not be familiar with Aspectos Culturales, this is a company that former Lt. Governor Roberto Mondragon and Georgia Roybal have developed and been very successful in doing a lot of history in terms of the Spanish, the Spanish language, and have developed a phenomenal program, which unfortunately, because a lot of schools don't have the necessary resources aren't able to purchase the materials that Aspectos Culturales is able to provide. So this would allow those three campuses in the Pojoaque Valley schools access to their materials for an academic year. And I would move for approval.

COMMISSIONER VIGIL: Second.

CHAIRMAN MONTOYA: Motion and second. Discussion?

The motion to approve the expenditure of discretionary funds for Aspectos Culturales passed by unanimous [4-0] voice vote with Commissioner Campos abstaining.

IX. E. Discussion and Possible Approval for an Expenditure of Discretionary Funds in the Amount of \$5,000.00 to Ayudantes Inc. for the Mobile Drug Testing Program in Santa Fe County (Commissioner Vigil)

COMMISSIONER VIGIL: Thank you, Mr. Chairman. As we all know because we serve on the Indigent Board, the organization known as Ayudantes who has historically been one of the organizations in our community that has addressed substance abuse problems for quite some time, is actually going through a reorganization. Ayudantes is creating more of a focus to assist the community.

Part of the reorganization's purpose is for them to create that focus, based on the fact that the services that they were providing were quite broad and were being somewhat diminished because of the broadness and the nature of the broadness of the services they were providing. Now they are trying to create a particular focus in the community for drug testing and are looking to get a mobile drug testing program with a mobile unit in place whereby they can actually provide a service onsite to organizations that need them and that would include government organizations, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Do you make that a motion,

Commissioner?

COMMISSIONER VIGIL: So moved.

CHAIRMAN MONTOYA: And I'll second. Discussion?

The motion to approve discretionary funds for Ayudantes passed by unanimous [4-0] voice vote with Commissioner Campos abstaining.

CHAIRMAN MONTOYA: Do you have a conflict?

COMMISSIONER CAMPOS: No, I have a concern. You know what it is.

CHAIRMAN MONTOYA: I know.

X. APPOINTMENTS & REAPPOINTMENTS [Synopsis on page 17]

A. Appointments to the Extra Territorial Zoning Authority (EZA)

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: I'd like to nominate three people. I'd like to nominate Chair Montoya, Commissioner Vigil and myself to the EZA.

CHAIRMAN MONTOYA: Okay, we have a motion.

COMMISSIONER CAMPOS: Well, a nomination.

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: I'd like to nominate Montoya, Vigil and

Anaya.

CHAIRMAN MONTOYA: Are there any other nominations?

COMMISSIONER SULLIVAN: I'd like to nominate Montoya, Campos and

Sullivan.

CHAIRMAN MONTOYA: Okay.

COMMISSIONER CAMPOS: We're all nominated.

CHAIRMAN MONTOYA: Now what? Close nominations and take a vote?

COMMISSIONER CAMPOS: Everybody's been nominated so we've just got to nominate everybody. The three top vote getters will be on the EZA.

COMMISSIONER VIGIL: I understand that but what are the nominations? What's the first one? It's Montoya, Campos and Vigil. Second one is what?

COMMISSIONER CAMPOS: Anaya, Vigil and Montoya.

COMMISSIONER VIGIL: And then the third one?

CHAIRMAN MONTOYA: Sullivan and Montoya. So I guess I'm automatically in. I made it all three times.

COMMISSIONER SULLIVAN: I move that Commissioner Montoya be appointed to the EZA.

COMMISSIONER CAMPOS: We've already had the nominations. Now we've just got to vote.

COMMISSIONER SULLIVAN: I was voting on one.

COMMISSIONER CAMPOS: Do you want to start with Chair Montoya? Who votes for Montoya?

COMMISSIONER SULLIVAN: Well, he got three nominations.

COMMISSIONER CAMPOS: We've got to have votes now.

COMMISSIONER SULLIVAN: That's what I'm saying.

COMMISSIONER CAMPOS: So you're voting for Montoya.

COMMISSIONER SULLIVAN: I move that he be appointed.

COMMISSIONER CAMPOS: Okay. I'll vote for Montoya.

CHAIRMAN MONTOYA: So motion, second. So that's one.

COMMISSIONER VIGIL: Should we be voting on this, Mr. Ross, as a ballot as they were presented, or should we go to individual votes? This is confusing me.

MR. ROSS: Mr. Chairman, Commissioner Vigil, there's really no guidance in our rules as how to proceed on these types of nominations. So you can do it however you want. It's the chair's discretion, actually.

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: I move we appoint Commissioner Vigil. We already voted on yours, right? Let's vote on Commissioner Vigil.

[A number of positive votes were cast.]

COMMISSIONER SULLIVAN: That was on Montoya.

COMMISSIONER ANAYA: That was on Montoya.

CHAIRMAN MONTOYA: That was me?

COMMISSIONER ANAYA: That was you.

COMMISSIONER SULLIVAN: We never did vote on you.

COMMISSIONER CAMPOS: Yes, we did. I voted for him. We nominated then we voted. You voted for him.

COMMISSIONER SULLIVAN: I don't remember voting.

CHAIRMAN MONTOYA: So that was for me. I'm on twice.

COMMISSIONER CAMPOS: No, you're just on once.

CHAIRMAN MONTOYA: So now for Commissioner Vigil.

COMMISSIONER CAMPOS: She got it. We already voted.

COMMISSIONER VIGIL: I move we nominate Paul Campos.

CHAIRMAN MONTOYA: So we're voting on Commissioner Campos.

[A number of positive votes were cast.]

CHAIRMAN MONTOYA: So that's it.

COMMISSIONER CAMPOS: Substitutes. Do we need substitutes at this point? Is that clear, Mr. Ross?

CHAIRMAN MONTOYA: Not for EZA, is it?

MR. ROSS: Mr. Chairman, I'll have to check on that. I'll check right now.

COMMISSIONER CAMPOS: On substitutes?

COMMISSIONER SULLIVAN: We had an alternate last year.

MR. ROSS: Roman thinks there was an alternate.

COMMISSIONER CAMPOS: There have been alternates for about two or three years.

COMMISSIONER SULLIVAN: I was it. That's why I know it.

COMMISSIONER CAMPOS: I was it the year before, I think.

CHAIRMAN MONTOYA: Could we have a nomination for an alternate then, or a volunteer. I'll take a volunteer.

COMMISSIONER SULLIVAN: I'll volunteer, Mr. Chairman.

CHAIRMAN MONTOYA: So Commissioner Sullivan will volunteer as the alternate on EZA.

COMMISSIONER CAMPOS: Let's vote on it.

The motion to appoint Commissioners Montoya, Vigil and Campos to the EZA, with Commissioner Sullivan as alternate passed by unanimous [5-0] voice vote.

X. B. Appointments to the Regional Planning Authority (RPA)

CHAIRMAN MONTOYA: Currently, I believe it's everyone minus Commissioner Anaya. Is there any changes?

COMMISSIONER CAMPOS: I have a question for Commissioner Anaya? What's your feeling about Regional Planning Authority? Do you want to get on it? I'm fine with staying on it.

COMMISSIONER ANAYA: No, I'm okay.

COMMISSIONER CAMPOS: You don't want to get on it. Okay.

CHAIRMAN MONTOYA: Okay, can we have a motion to nominate us four again?

COMMISSIONER CAMPOS: So moved.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN MONTOYA: Okay, motion and second for Commissioner Sullivan, Vigil, Campos and Sullivan on the RPA.

The motion to appoint Commissioners Campos, Montoya, Sullivan and Vigil to the Regional Planning Authority passed by unanimous [5-0] voice vote. [See below.]

X. C. Appointments to the Solid Waste Management Agency (SWMA)

CHAIRMAN MONTOYA: Currently we have Commissioner Vigil, Campos and Anaya, correct?

COMMISSIONER CAMPOS: I'd like to stay on, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Commissioner Campos.

COMMISSIONER VIGIL: I'm also willing to stay on SWMA.

CHAIRMAN MONTOYA: Okay, Commissioner Vigil. Commissioner Sullivan, would you like to be on SWMA?

COMMISSIONER SULLIVAN: I've been on it before. I'll pass, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. I've been on it before too.

COMMISSIONER CAMPOS: I've been on it for probably six years.

COMMISSIONER ANAYA: I'll stay on it.

CHAIRMAN MONTOYA: You'll stay on it, Commissioner Anaya. Okay.

COMMISSIONER CAMPOS: We need a substitute there too. We need a substitute for every position. We've got to formalize it.

CHAIRMAN MONTOYA: Okay, formalize the as Commissioner Anaya under the RPA.

The motion to appoint Commissioner Anaya as alternate to the RPA passed by unanimous [5-0] voice vote.

CHAIRMAN MONTOYA: Now, for the appointments for SWMA, Commissioners Campos, Vigil and Anaya.

The motion to appoint Commissioners Campos, Vigil and Anaya to the SWMA passed by unanimous [5-0] voice vote.

CHAIRMAN MONTOYA: Alternate, Commissioner Sullivan.

COMMISSIONER SULLIVAN: For what?

CHAIRMAN MONTOYA: SWMA.

COMMISSIONER SULLIVAN: No. I vote for Commissioner Montoya.

CHAIRMAN MONTOYA: Okay. I'll be the alternate.

COMMISSIONER VIGIL: So the motion is we appoint Commissioner Anaya, Commissioner Campos, Commissioner Vigil -

CHAIRMAN MONTOYA: We already did that. Now the motion is to appoint me as the alternate on SWMA.

COMMISSIONER VIGIL: Okay. So moved.

COMMISSIONER SULLIVAN: Second.

The motion to appoint Commissioner Montoya as alternate to the SWMA passed by unanimous [5-0] voice vote.

X. D. Appointments to the Buckman Direct Diversion (BDD)

CHAIRMAN MONTOYA: Currently, Commissioners Sullivan and Campos on that one.

COMMISSIONER VIGIL: Who is the alternate?

COMMISSIONER CAMPOS: My appointment runs till mid-year. That's the way it's been.

CHAIRMAN MONTOYA: And then what happens?

COMMISSIONER CAMPOS: We have to decide that today. It's you and I who split.

COMMISSIONER SULLIVAN: So it would be Sullivan for the year and Commissioner Campos for six month and Commissioner Montoya as the alternate for six months.

COMMISSIONER CAMPOS: Is that what you want to do?

CHAIRMAN MONTOYA: Well, either that or I'd like to be on it for a whole year.

COMMISSIONER CAMPOS: You have a year, I've had half a year. I have another half.

CHAIRMAN MONTOYA: So what if I take over for you after six months, Commissioner Sullivan.

COMMISSIONER CAMPOS: Why don't you take over for me if you really want to be on it. Commissioner Sullivan is our engineer. I definitely think we need him on it. You can have mine. I'll be willing to become a substitute.

CHAIRMAN MONTOYA: In June?

COMMISSIONER CAMPOS: Right now.

CHAIRMAN MONTOYA: Okay. So you'll be the substitute and I'll be the appointment for the year.

COMMISSIONER CAMPOS: Effective now.

CHAIRMAN MONTOYA: Okay. Do we have a motion?

COMMISSIONER VIGIL: So moved.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN MONTOYA: Discussion?

The motion to appoint Commissioners Sullivan and Montoya to the BDD, with Commissioner Campos as alternate passed by unanimous [5-0] voice vote.

CHAIRMAN MONTOYA: So Commissioner Campos is the alternate. And that was part of the motion, right.

COMMISSIONER SULLIVAN: Wait a minute. Who is the alternate?

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER SULLIVAN: For the -

CHAIRMAN MONTOYA: BDD.

COMMISSIONER SULLIVAN: Oh, I thought - oh, you're not going to do another six months?

COMMISSIONER CAMPOS: Well, I did but Commissioner Montoya wants to be on it. I think it's important that we have you as an engineer on it so I'm willing.

COMMISSIONER SULLIVAN: Okay, so the action was myself and Commissioner Montoya for a year, and yourself as the alternate for a year.

COMMISSIONER CAMPOS: Yes.

COMMISSIONER SULLIVAN: Okay. Just so I understood. So I know when to show up and when not to show.

X. E. Appointments to the Regional Transit District (RTD)

CHAIRMAN MONTOYA: Currently, Commissioner Sullivan is on there.

COMMISSIONER SULLIVAN: Move Commissioner Anaya.

COMMISSIONER VIGIL: Second.

CHAIRMAN MONTOYA: Commissioner Anaya. Other nominations? Okay, nominations are closed.

The motion to appoint Commissioner Anaya to the Regional Transit District passed by unanimous [5-0] voice vote.

X. F. Appointments to the Metropolitan Planning Organization (MPO)

COMMISSIONER VIGIL: I will withdraw from that.

COMMISSIONER CAMPOS: Me too. No, I'm not on it; am I?

COMMISSIONER VIGIL: We are as RPA members.

COMMISSIONER CAMPOS: We're not appointed. It's separate. You can't withdraw because you're not on it. These are new appointments.

COMMISSIONER VIGIL: I will withdraw from being considered.

COMMISSIONER CAMPOS: Will not serve if elected.

CHAIRMAN MONTOYA: Okay, so that leaves us four.

COMMISSIONER CAMPOS: There's only three and I don't want to be on

it. I don't want to be on the MPO.

CHAIRMAN MONTOYA: I don't either. Shall we flip?

COMMISSIONER CAMPOS: You got the other thing. You're going to get this one because of that. You've got to be on it.

COMMISSIONER SULLIVAN: We've already got Sullivan and Anaya; we need a third.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: On the MPO? I was the first to withdraw for consideration. We're back to me?

COMMISSIONER CAMPOS: Actually the chair -

COMMISSIONER SULLIVAN: Since the mayor - that's a good point.

Since the mayor is an automatic member of the MPO and then there's two City Councilors, so it would be good to have the chair as a member of the MPO.

COMMISSIONER CAMPOS: Good argument.

COMMISSIONER SULLIVAN: You like that.

COMMISSIONER CAMPOS: I like the argument.

COMMISSIONER SULLIVAN: I just dreamed that up.

COMMISSIONER SULLIVAN: Would you reconsider, Commissioner

Vigil?

COMMISSIONER VIGIL: I will. I'll do it.

COMMISSIONER SULLIVAN: I second Commissioner Anaya's motion.

CHAIRMAN MONTOYA: And alternate?

COMMISSIONER CAMPOS: The alternate, Harry Montoya.

CHAIRMAN MONTOYA: You're not on any committees, Commissioner

Campos.

COMMISSIONER CAMPOS: I'm on the RPA and the EZA and the SWMA. The first three. I made a major concession to you on the BDD so I think you should accept this.

CHAIRMAN MONTOYA: Okay. So I'll be the alternate.

The motion to appoint Commissioners Anaya, Sullivan and Vigil to the MPO, with Commissioner Montoya as alternate passed by unanimous [5-0] voice vote.

X. G. Appointments to the Multi-Line Pool

CHAIRMAN MONTOYA: I'd like to nominate Victor Montoya.

COMMISSIONER CAMPOS: I'll second it.

CHAIRMAN MONTOYA: Second by Commissioner Campos. Other nominations?

COMMISSIONER CAMPOS: Anyone on the Commission want to be on it?

CHAIRMAN MONTOYA: No. I already checked on that.

The motion to appoint Victor Montoya to the Multi-line Pool passed by unanimous [5-0] voice vote.

CHAIRMAN MONTOYA: Thank you, Victor. Congratulations.

X. H. Appointments to the North Central New Mexico Economic Development Board

CHAIRMAN MONTOYA: Currently that's me. I'm willing to give that up.

COMMISSIONER SULLIVAN: I thought you said you wanted to continue on that.

CHAIRMAN MONTOYA: Yes, and then I got appointed to some other ones that I didn't expect.

COMMISSIONER VIGIL: Mr. Chairman, does this require a Commissioner? Is it possible -- is this not an organization we previously had someone from the County Manager's officer representing that? Is that an option?

CHAIRMAN MONTOYA: Yes. Because that's economic development, obviously, and certainly one of the things that we've been talking about has been the creation of an economic development position. I don't know if we're going to continue to do that, Roman. Or if not, I know that Jack Kolkmeier and Robert have been active in some of the economic development activities with the Santa Fe Economic Development, Inc.

MR. ABEYTA: Right, Mr. Chairman. If a Commissioner didn't want to sit on that board I was going to recommend Jack Kolkmeier because of the economic development initiative that Land Use is undertaking for us now.

COMMISSIONER ANAYA: So moved.

COMMISSIONER VIGIL: Second.

COMMISSIONER CAMPOS: Does Jack want it? Okay.

CHAIRMAN MONTOYA: Great. Thank you, Jack. Any other nominations?

The motion to appoint Jack Kolkmeier to the NCNEMD passed by unanimous [5-0] voice vote.

CHAIRMAN MONTOYA: Congratulations, Jack. Thank you for serving on that board.

Synopsis of Appointments

- **Extra Territorial Zoning Authority (EZA)** Commissioners Montoya, Vigil and Campos. Alternate: Commissioner Sullivan
- **Regional Planning Authority (RPA)** Commissioners Campos, Montoya, Sullivan and Vigil. Alternate: Commissioner Anaya
- **Solid Waste Management Agency (SWMA)** Commissioners Campos, Anaya and Vigil. Alternate: Commissioner Montoya
- **Buckman Direct Diversion (BDD)** Commissioners Sullivan and Montoya. Alternate: Commissioner Campos
- **Regional Transit District (RTD)** Commissioner Anaya
- **Metropolitan Planning Organization (MPO)** Commissioners Sullivan, Anaya and Vigil. Alternate: Commissioner Montoya
- **Multi-Line Pool** Treasurer Victor Montoya
- **North Central New Mexico Economic Development Board** Land Use Administrator Jack Kolkmeier

XI. CONSENT CALENDAR

- A. **Findings of Fact**
 - 1. **CDRC Case #V 06-5460 – Santa Fe County Public Works Facility**
- B. **Miscellaneous**
 - 1. **Approval of Order for Case No. App. 06-5361, New Cingular Appeal of CDRC Decision (Legal Department) TABLED**
 - 2. **Resolution No. 2007-3. A Resolution Requesting an Increase to the EMS – Healthcare Fund (232) to Budget a Joint Powers Agreement with the New Mexico Department of Health to be Used by the Santa Fe Recovery Center for Substance Abuse Treatment in Santa Fe County / \$200,000 (Health & Human Services Department)**
 - 3. **Request Approval of a Joint Powers Agreement with the New Mexico Department of Health in the Amount of \$200,000 to be Used by the Santa Fe Recovery Center for Substance Abuse Treatment in Santa Fe County (Health & Human Services Department)**
 - 4. **Request Approval of a Professional Services Agreement with the Santa Fe Recovery Center in the Amount of \$200,000 to be Used for Substance Abuse Treatment in Santa Fe County (Health & Human Services Department)**

COMMISSIONER ANAYA: Move to approve.
CHAIRMAN MONTOYA: Motion by Commissioner Anaya.
COMMISSIONER SULLIVAN: Second.
CHAIRMAN MONTOYA: Second by Commissioner Sullivan.

The motion to approve the Consent Calendar with the exception of item XI. B. 1 passed by unanimous [5-0] voice vote.

XII. Staff and Elected Officials' Items

A. Land Use Department

1. Authorization to Publish Title and General Summary of an Ordinance Repealing Ordinance No. 1996-04, 1997-05, 1998-04, 1999-04, 2002-02, 2000-14, 2001-04, 2001-13 and 2001-14 (The "Eldorado Moratorium Ordinances")
2. Authorization to Publish Title and General Summary of an Ordinance Declaring a Moratorium for 6 Months on New Subdivisions, Land Divisions and Master Plan for Projects Served by the Eldorado Area Water and Sanitation District and to Establish Provisions Under Which Development Can Proceed
3. Authorization to Publish Title and General Summary of an Ordinance Restricting the Use of Domestic Wells for Land Divisions and Subdivisions Within the Eldorado Area

PENNY ELLIS-GREEN (Deputy Land Use Administrator): Thank you, Mr. Chairman, Commissioners. The next three agenda items, the one that you just read and items 2 and 3 were all requested by the Board on November 28th. The first item is to request publish title and general summary of an ordinance that will rescind the existing moratorium. The second item is publish title and general summary of a new moratorium ordinance for six months, and the third one is publish title and general summary for another ordinance that would restrict the use of domestic wells for land divisions and subdivision for any small lots smaller than 12.5, 20 acres or 40 acres, depending which hydro zone they're in.

They are three separate agenda items so they should be voted on separately. The Legal Department, the Water Resources Department and the Land Use Department have all worked on these together. And I'll stand for questions.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Chairman, it looks like we have at least, maybe three options here. I'd like to have staff evaluation of all three options. I think we may want to make a decision now and maybe authorize all of the and decide later that

maybe we want to make that decision today. So I'd like to have an evaluation, a weighing of the three options by staff.

STEPHEN WUST (Water Resources Director): Mr. Chairman, Commissioner Campos, they're not actually exclusive options. They're three different items that were requested by the Commission in order to be able to give different abilities to look at development in the Eldorado moratorium area. The first one is coming out of an earlier request to look at just simply rescinding the moratorium and therefore the area would undergo evaluation for development permits as per the regular Land Use Code. However, at the same time, the Commission asked us to look at possibly revising the Eldorado moratorium, and that's what the second one is. They're related in the fact that if you do number 2, you would need to rescind the current one and all the other ones that went along with it as part of that, and that's why those two in some essence go together but they're not necessarily tied, in that number one you can rescind all the current ones without imposing any new ones.

The second one, I'll just elaborate a little bit on what we tried to do. What staff tried to do at that time is simplify the current moratorium to just make it a simple moratorium and there have been a lot of questions on the current moratorium about who does what and who's imposed upon and all those kind of things, and that's why we tried to simplify that language.

The third one is more or less a separate item even though it comes down to the same area, because that came at the request of Commissioner Sullivan to look at having a special ordinance just dealing with lot sizes for lots that used shared or individual domestic wells. So that was an individual request and that was something that staff looked at to include on this agenda. It does apply only to the moratorium area and that's why it's in this grouping, but it's again not tied - these three are not necessarily tied together.

COMMISSIONER CAMPOS: It applies only to the moratorium area.

DR. WUST: That is correct. Number 3? That is correct, Commissioner Campos.

COMMISSIONER CAMPOS: Could you explain in detail what the Sullivan proposal is for item three?

DR. WUST: Mr. Chairman, Commissioner Campos, originally Commissioner Sullivan had asked that we look at an ordinance that would restrict the minimal lot size in the moratorium area to 12.5 acres for all lots that use individual or domestic wells, with the concern being large developments start to proliferate using multiple domestic wells that have no water rights attached to them or standardizations of well drilling and things like that.

As staff began to look at that we realized that the Eldorado moratorium area actually covers several geo-hydrologic zones. Those different hydro-geologic zones under the regular Land Use Code have some standard minimum lot sizes. So in order to be in conformance with that, the lowest is 12.5 acres, which is still the minimum that Commissioner Sullivan had requested we look at, but the others are larger. So in order to

be in conformance with hydro-geologic zones as laid out in the Land Use Code, that's why you see this third ordinance as it, that there are different minimum lot sizes depending on the hydro-geologic zone. It's 12.5 acres for the Basin Fringe, 20 acres for the Mountain Zone and 40 acres for the Homestead Zone. And that was just to make it match the Land Use Code.

COMMISSIONER CAMPOS: Have you consulted with Legal as to whether having the 12.5 minimum for domestic wells and having different regs outside that area - if that's okay?

DR. WUST: Mr. Chairman, Legal actually worked with us on this. So if you have a specific legal question on language I would defer to Legal on that, but he worked with us this whole time.

COMMISSIONER CAMPOS: Mr. Ross, if we restrict the rule just to this moratorium area and we have different rules applying outside this moratorium area as far as minimum lot sizes and domestic wells, does that raise any issues for you?

MR. ROSS: Mr. Chairman, Commissioner Campos, the only issue it raises is whether there's been planning done to support the requirements of the ordinance and we think there has, the way we've drafted it up.

COMMISSIONER CAMPOS: There has to be a finding as to water issues?

MR. ROSS: We already have the hydrologic zoning scheme. We're really only preserving that. The only thing we're not doing is permitting variances from that. The word variance isn't good in that context, but permitting lesser lot size after a finding of adequate water under the particular lot. We have these geo-hydrological investigations that we accept and permit the lot size to go down further than what the presumptive hydrologic zoning is. So we think there's enough planning being done to support that particular method.

COMMISSIONER CAMPOS: Okay. So here it would be 12.5 minimum period. No variances.

MR. ROSS: No variances, right.

COMMISSIONER CAMPOS: The Commission couldn't say, oh, we want to give someone a variance because they're nice guys.

MR. ROSS: Well, it wouldn't be possible under the Code.

COMMISSIONER CAMPOS: Okay.

CHAIRMAN MONTROYA: This is consistent with the Code as I understand, correct?

MR. ROSS: That's correct. Except that the Code does permit under appropriate circumstances and that is a hydrologic report or a full hydrologic investigation that this is water available, and this wouldn't be permissible in that area.

CHAIRMAN MONTROYA: It wouldn't be?

MR. ROSS: It would not. It wouldn't be permissible to have, say, a 2.5-acre lot based on a -

CHAIRMAN MONTROYA: A geo-hydro?

MR. ROSS: A geo-hydro.

CHAIRMAN MONTOYA: So we're restricting that.

MR. ROSS: In a sense, although this an area subject to a moratorium. They can't do those kinds of activities now anyway.

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chairman, I need some clarification on exactly what we're doing here. In terms of item number 1, authorization to publish title and general summary of an ordinance repealing the ordinances listed. Now, you're asking us to publish title and general summary to do away with the moratorium in Eldorado? Or to talk about it.

MS. ELLIS-GREEN: Mr. Chairman, Commissioner Anaya, that is what item 1 would do. There's an existing moratorium and item 1 would be an ordinance that would rescind that moratorium.

COMMISSIONER ANAYA: Would lift that so that -

MS. ELLIS-GREEN: That's correct.

COMMISSIONER ANAYA: Okay. Number 2, authorization to publish title and general summary of an ordinance declaring a moratorium of six months on new subdivisions, land divisions, master plans and projects served by the Eldorado Area Water and Sanitation District. We're saying: hold off. This other general summary is saying we're going to hold off for six months.

MS. ELLIS-GREEN: This would be a new ordinance that if the existing moratorium ordinance were rescinded, that this would be a new ordinance, a new moratorium ordinance that would come into effect.

CHAIRMAN MONTOYA: For six months.

MS. ELLIS-GREEN: For a six-month period. Correct.

COMMISSIONER ANAYA: Okay. Explain that part. Review, six months.

MS. ELLIS-GREEN: That there would be a review after six months and there's language in the draft ordinance as to what we would review.

CHAIRMAN MONTOYA: What are some of those things, Penny, that we would review after six months?

DR. WUST: Commissioner Anaya, basically, let me clarify. According to Legal, this moratorium is simply for six months. Then at the end of that time the Commission may choose to extend and pass another moratorium ordinance or just let it die, or review it and rescind it at some earlier time. Now this section on the review is simply saying that in this six-month period, if new information becomes available to us, somebody does one of these studies, some kind of hydrologic study - the current moratorium talks about if a regional study is done and the question was always who's supposed to do it? When are they supposed to do it? So we simplified that and just said if somebody does that and we get any new information - staff - then staff will evaluate that. Staff will evaluate it in context of what it means for the moratorium, and then we are to come in front of you

on the Commission and review that for you so you can see if there's new information available and you may want to rethink this moratorium. That's all the review is, that if new information becomes available to us in the six-month period, we are then to come in front of you and let you know what we think about it and what it does for this moratorium.

The language of the moratorium says, and this is the way legal moratoriums are supposed to be set up is that it has an end date and the end date is six months from its enactment. And if you as a Commission choose to do nothing then it just lapses and that's the end of it. Or if you choose to extend it then you can extend it or have a new ordinance or whatever you wish to do. But in the meantime, the review is kind of imposed on staff, that if we get something, then we have to look at it and come in front of you and tell you what we found and what it means.

COMMISSIONER ANAYA: Okay, Mr. Chairman. So the first one is repealing the ordinance. The second one is just a six-month study period.

DR. WUST: It's a new moratorium.

COMMISSIONER ANAYA: A new moratorium.

DR. WUST: But it's simpler. It says no new developments hooking up to Eldorado for six months. That's the main thrust of this new moratorium.

COMMISSIONER ANAYA: No new developments hooking up - isn't that a moratorium?

DR. WUST: That's what it is. It's a new moratorium.

COMMISSIONER ANAYA: Okay. I got that. Now, authorize to publish title and general summary restricting the use of domestic wells on land divisions and subdivisions within the Eldorado area. What is the smallest size they can go down to, 2.5 or 12.5?

MS. ELLIS-GREEN: Under this ordinance the proposal is that if you're on domestic wells, that 12.5 would be the minimum, if you're in the Basin Fringe, which is the majority of the Eldorado area. The northeastern portion is in the Mountain hydrologic zone, and that would have a 20-acre minimum, and the southern portion is in the Homestead hydrologic zone. That would have a 40-acre minimum.

COMMISSIONER ANAYA: So there's none in the 2.5.

MS. ELLIS-GREEN: There's none in the Basin, which is a 2.5-acre minimum. So what this is saying is that you stay at the standard minimum lot size, 12.5, 20 or 40 acres, and you can't do a hydrology report to prove that you can go smaller than that, if you're using domestic wells.

COMMISSIONER SULLIVAN: If you're on a water system you can go lower.

COMMISSIONER ANAYA: If you tap into the water system you can go lower, but you don't want to use the well for 12.5 and you don't want to use the well to divide the 12.5 into 2.5's.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN MONTROYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Correct me, Penny, if I'm wrong, but those 40, 20 and 12.5 acres only apply to the use of a domestic well.

MS. ELLIS-GREEN: That's correct. For a subdivision or a land division using a domestic well.

COMMISSIONER SULLIVAN: An applicant can still come forward with a subdivision with smaller lots using either a community water system or tying into the Eldorado Water and Sanitation District.

MS. ELLIS-GREEN: Correct. As long as there's no moratorium.

COMMISSIONER SULLIVAN: If there's no moratorium, doing that for six months or whatever. But item 3 standing alone doesn't restrict lots to 12.5 acres. It just restricts lots to 12.5 acres that are using a domestic well as their source of water supply, which has no water rights.

MS. ELLIS-GREEN: That's right.

COMMISSIONER ANAYA: Commissioner Sullivan, you're saying that you don't want them to use a well on 21.5?

COMMISSIONER SULLIVAN: Well, we don't want them to use a domestic well on less than 12.5. If it's 12.5 acres they can use it. If it's 13 acres they can use it. It's just that when you get down below that size you get into these serial subdivisions of using one well for a one-acre lot and you end up with 50 wells.

COMMISSIONER ANAYA: Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Commissioner Vigil.

COMMISSIONER VIGIL: Penny, just a couple of questions. Give me some clarity with what this does to previously approved master plans. Does it hold the time?

MS. ELLIS-GREEN: Mr. Chairman, Commissioner Vigil, I believe the second ordinance states in there that the time is stayed on the previously approved master plans. So the time is not ticking, the same as the existing moratorium language states.

COMMISSIONER VIGIL: Okay.

CHAIRMAN MONTOYA: Say that again.

MS. ELLIS-GREEN: When you have an approved master plan it lasts for five years. When the moratorium was first put in place it says that time clock stops ticking while that moratorium is in place and this second ordinance says the same thing. So you're not losing time on your master plan.

CHAIRMAN MONTOYA: Okay. Thank you. Commissioner Vigil, you still have the floor.

COMMISSIONER VIGIL: I did have another question and this was for Dr. Wust. Do we have any indication as to when the geo-hydro will be done? The hydrological report that has been eluding everyone here.

DR. WUST: Mr. Chairman, Commissioner Vigil, the latest information I had was how I reported to you last month that in the letter we had received from the Eldorado Area Water and Sanitation District they said they hoped to do this study in '07, but it didn't have a month or anything, it just said they hoped to have that report, or the

study done in '07. So hopefully some time this year.

COMMISSIONER VIGIL: They are a government entity, is that not correct? For all intents and purposes? Or are they private? I'm not sure. The Eldorado Water and Sanitation District.

MR. ROSS: Mr. Chairman, Commissioner Vigil, it's a political subdivision.

COMMISSIONER VIGIL: A political subdivision. Okay. Do we know if they have started an RFP?

DR. WUST: Mr. Chairman, Commissioner Vigil, I don't know that but I believe Mary Rayard may be here so if you have some questions for her I think she might be here.

COMMISSIONER VIGIL: Is that still a negotiated issue? Is that something that we should be working with the community more strongly?

DR. WUST: Mr. Chairman, Commissioner Vigil, actually that's one of the items that we tried to simplify the language in this revised moratorium. The current moratorium says that if a regional study is completed that demonstrates sufficient water resources then the 12.5-acre minimum lot size may be reduced. First off, it doesn't address what happens with the moratorium and secondly it's very unclear as to who's supposed to do it and if anybody has responsibility to do those things. That question certainly came up during the report. So what we did in this language is just say pretty simply that instead of trying to deal with that kind of thing that if any new report comes out then that's something that staff can evaluate, but we put in language saying that County staff were not required to independently investigate it, and the reason staff suggested we put that language in is that's not an area of the Santa Fe County utility at the moment. So for us to be spending resources on studying another area while we're in the middle of trying to develop our own well program is not necessarily the best use of County resources. But we didn't want to tell Eldorado they had to do it because we certainly shouldn't be doing that kind of thing, so we just said if somebody does one - and it could be anybody actually - then our staff could certainly evaluate it and bring it forward for you to see what it says to us about that area.

COMMISSIONER VIGIL: Mr. Chairman, just from my perspective, at least when I am looking to evaluate what is in the best interest of Santa Fe County in the Eldorado community with this, I feel that the data isn't there and the data is lacking because we don't have that hydrological report. And if it's a lack of resources for it we really need to assist in some way to get the resources, either through the state legislature or through the New Mexico water and wastewater bill, somehow, because I agree, Mr. Chairman. I think we do need to consider rescinding this moratorium. Any action is better than no action with regard to this. I think I'm going to support these three items, only because they just authorize the publication of title and general summary. But I think we may still need to work on fine-tuning the ordinance and the recommendation on the domestic well.

I'm concerned that not supporting this will put us back in the same position that we've been in for the last five years and that's not really doing anything about this ordinance. We do need to move forward with it. Perhaps this isn't at this point in time the best way to move but I think this kind of puts us in a catapulting position to start doing something about it. So I do agree that the old ordinance needs to be rescinded and we need to evaluate the other two options.

CHAIRMAN MONTOYA: Okay. Any other questions? Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chairman, I agree with Commissioner Vigil. I just want to clarify something. You're saying that we don't have the resources to do the hydrological study and we need to get that. And we need to rescind this, get the study done and then go on to the next step.

COMMISSIONER VIGIL: I'm saying that I consider that an option. I'm saying that it's regretful that we haven't been able to get that hydrological report because it's the one piece of information that's missing for me in order to move forward. And if it's been because of a lack of resources both on the County's part and the Eldorado Water and Sanitation District's, we really should put our heads together in terms of where we can get those resources, because that is the critical component in my mind in helping make a decision here, is the hydrological study.

I understood staff to testify that we don't have the resources currently and that's a valid position. I'm not making a call on that, but if we don't, the Eldorado Water and Sanitation District doesn't either. We need to put our heads together and I suggested even going to the legislature to do a study or to - what is the name of that organization? The Water Trust Board. There's many avenues. This is the year of the water for the Governor. It could be something that we could gather resources for to get done. I just know that that is a need.

COMMISSIONER ANAYA: I agree. I think that that is the most important and that is to get the hydrological study before we keep this moratorium going. Question for staff. If we were to approve item number one and then we were to approve item number two, aren't we in the same boat?

DR. WUST: Mr. Chairman, Commissioner Anaya, no, and the reason is that the current moratorium is very detailed and lengthy and talks a lot about hookup policies and things like that, which were applicable when EDU was a private entity and we had to put some controls on there. The Eldorado Area Water and Sanitation district has had conversations with us and as another governmental entity they would like to be able to develop their own policies and things like that. So what we tried to do is strip out a lot of those specific items and just say we're not going to allow new development to hook up to the utility for six months while we evaluate the situation and see if the utility is capable, but give them a chance to develop their system and their studies and their policies and things like that in order to, hopefully in six months they can come back and say, yes, we looked at it and we can advise you and you can say it looks okay now.

But in the meantime, the current moratorium has all these rules and specific items. A lot of them are on the County to have to evaluate and test and we've already had a number of disagreements with development permit holders that have come in front of you on the Commission that people have said, are the water rights valid or not? Do we have enough water or not? And we didn't think under a moratorium that the County should be doing all those details. And therefore just having a simple, six-month moratorium to say we're not going to really do anything and give everybody a chance to look at the situation and not worry about all these people coming forward and saying, well, I really have water rights, and then we have to evaluate them. I really have a good well. We have to evaluate it. A lot of those are a lot of time-consuming items for staff in order to fulfill these requirements of the moratorium.

At the same time the Eldorado Water and Sanitation District was saying why is the County coming and looking at their hook-up policy? And so we thought this was a nice simplification of that. So it's not the same boat in that it's just kind of a step back, take your breath, nice and simple, and in six months we'll know where we stand. That's where we're trying to go with this.

COMMISSIONER ANAYA: Mr. Chairman, then in that case I'll make a motion to approve or make a motion to publish title and general summary of an ordinance repealing the ordinance, the numbers listed, on the Eldorado moratorium.

CHAIRMAN MONTOYA: Okay. We have a motion by Commissioner Anaya.

COMMISSIONER VIGIL: Second.

CHAIRMAN MONTOYA: Second by Commissioner Vigil. Discussion on number 1.

COMMISSIONER SULLIVAN: Are we only doing number 1 and not 2 and 3?

CHAIRMAN MONTOYA: Correct.

COMMISSIONER SULLIVAN: Because the reason that I have a problem dealing with that is that my vote would change, not knowing what would happen with 2. And here's my thinking on that. I think we can approve - if the Commission wants to repeal the moratorium ordinance because it's outdated and has some vague requirements about the study, then I can understand that. Then I think number 2 becomes very important. I also think we discussed before six to 12 months. I'm not sure they can get the hydrologic study done in six months. I think maybe 12 months might be needed. And I think number 3 is a very important ordinance. I think that's a cornerstone to preserving the aquifer that the Water and Sanitation District relies upon and will rely upon. So I think that's a cornerstone. So the reason I'm saying it's a concern for me is that if we're only dealing with ordinance 1, I don't want to vote in favor of repealing it unless I know that there are these alternates being put in place in lieu of that. So then I would have to vote no.

If we put those alternates in place then I would say, yes, that makes sense to me and I would vote yes. So understanding that and if the Commission wants to vote I'll vote

no but only to let you know that I don't have a problem with repealing an ordinance that's out of date as long as we replace it with a process which is up to date.

CHAIRMAN MONTOYA: That's what we're doing with number 2.

COMMISSIONER SULLIVAN: With number 2 and I think number 3. So if we go on to those and say let's move forward with those, then I agree to withdraw number 1 or to repeal the existing one. Do you see where I'm coming from? It's a little hard to vote.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: I agree with Commissioner Sullivan. I think what I would like to do is vote to authorize all three at the same time in one motion.

COMMISSIONER SULLIVAN: That's what I would like.

COMMISSIONER CAMPOS: That way it's very clear to us that we're considering three options.

COMMISSIONER SULLIVAN: If the maker would consider it -

CHAIRMAN MONTOYA: Can we do that? I don't think we can do that procedurally.

MR. ROSS: Mr. Chairman, with an ordinance, it's best to take them up separately but my suggestion would be you just move to item number 2 and then number 3 and then take up item 1 at the end.

COMMISSIONER SULLIVAN: So I see. So go to number 2 and 3 and then go back to 1, because that's the kicker.

CHAIRMAN MONTOYA: So if we have a motion to table number 1 until after items 2 and 3 -

COMMISSIONER SULLIVAN: So moved.

COMMISSIONER CAMPOS: Or just to withdraw the motion.

COMMISSIONER ANAYA: I'll withdraw.

MR. ROSS: Mr. Chairman, I think you have the discretion just to move on without a vote to the next item.

CHAIRMAN MONTOYA: Okay. Then we'll move on to item number 2 then.

XII. A. 2. Authorization to Publish Title and General Summary of an Ordinance Declaring a Moratorium for 6 Months on New Subdivisions, Land Divisions and Master Plan for Projects Served by the Eldorado Area Water and Sanitation District and to Establish Provisions Under Which Development Can Proceed

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: As I just stated, I think item number 2 makes sense. I'm a little concerned. I have had a meeting with the Water and Sanitation

District. They are moving forward at a rapid pace on locating a new well, getting a hydrologic study in place, on getting management procedures in place with regard to meter readings and the operations of the well systems, of mapping the districts lines which were previously unmapped. So they have a lot on their plate, the hydrologic study being one of them.

And I agree with Commissioner Vigil. I'd like to help and support them to get funding to do that study. I'm just concerned that six months is too short a period, that's all.

COMMISSIONER VIGIL: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: If I could ask Penny, doesn't the ordinance allow for an extension if so necessary, so the six months is just sort of a phase or a preliminary period?

MS. ELLIS-GREEN: Mr. Chairman, Commissioner Vigil, I believe you'd have to have a new ordinance at the end of the six months.

COMMISSIONER SULLIVAN: It automatically repeals.

CHAIRMAN MONTOYA: Is there any other discussion on this?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: What Commissioner Sullivan is suggesting is that instead of every six months that you review the ordinance we would review it every 12 and consider that as a legislative option when we have final consideration on the matter.

COMMISSIONER SULLIVAN: Well, I think, Mr. Chairman, the way this ordinance is written, and I see the logic that the staff has put into this and I like the wordsmithing. The way it's written is they will review it during the period of the moratorium but after six months, or 12, whichever the case is, the ordinance is repealed, no longer exists.

COMMISSIONER CAMPOS: It expires.

COMMISSIONER SULLIVAN: It expires. Correct. Unless this Commission takes some other action, either to extend it, to change it, even to repeal it earlier. So they're giving a time certain to do this, which is - I always like to have deadlines. Deadlines put people to work and get things done. So this really gets a deadline out there.

CHAIRMAN MONTOYA: We've waited ten years.

COMMISSIONER SULLIVAN: And the problem was we didn't have a deadline. And as Dr. Wust said, the problem was it was on us. It was Santa Fe County, you review it every six months. You do studies. You do this and that, and during that process of course the district purchased the private water system and we're now in a different ownership mode. So that's my concern.

CHAIRMAN MONTOYA: I'd like to make a few comments if no one else has any. I think that six months is a reasonable time limit. Again, I'm going to say we've waited more than ten years, now going into 11 years. I think it was clear to me during the

last discussion that we had that this was certainly something that was beyond the responsibility and the scope of what the County was responsible for and there are other parties involved that need to be responsible for providing the information. I think the way that this is it certainly allows for the district as well as others to potentially provide that information to the County to determine whether after six months or not this is something that we need to continue.

So I'd like the six-month deadline. I like that we do now have a deadline and that we will be reviewing this on a consistent and timely basis. So I would move that we approve number 2.

COMMISSIONER CAMPOS: Second.

CHAIRMAN MONTOYA: Motion by myself. Commissioner Campos seconds. Other discussion?

The motion to authorize publication of title and general summary of an ordinance declaring a six-month moratorium as delineated above passed by unanimous [5-0] voice vote.

XII. A. 3. Authorization to Publish Title and General Summary of an Ordinance Restricting the Use of Domestic Wells for Land Divisions and Subdivisions Within the Eldorado Area

COMMISSIONER CAMPOS: Move to authorize.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN MONTOYA: Motion by Commissioner Campos, second by Commissioner Sullivan. Any other discussion?

The motion to authorize publication and title and general summary of a well ordinance in Eldorado passed by unanimous [5-0] voice vote.

XII. A. 1. Authorization to Publish Title and General Summary of an Ordinance Repealing Ordinance No. 1996-04, 1997-05, 1998-04, 1999-04, 2002-02, 2000-14, 2001-04, 2001-13 and 2001-14 (The "Eldorado Moratorium Ordinances")

COMMISSIONER CAMPOS: Move to authorize.

CHAIRMAN MONTOYA: Motion by Commissioner Campos.

COMMISSIONER ANAYA: I think we already had a motion.

COMMISSIONER CAMPOS: That's right. We did have a motion. And a second.

CHAIRMAN MONTOYA: Who made the motion? Commissioner Anaya, and Commissioner Vigil seconded. Okay. So we're back to that motion. Thank you. Any

discussion?

The motion to authorize publication of title and general summary of an ordinance repealing previous Eldorado moratoria passed by unanimous [5-0] voice vote.

CHAIRMAN MONTOYA: Thank you, staff for your work on this and your continued work.

X. OTHER MATTERS FROM THE COMMISSION

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Not at this point.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Mr. Chairman. I just wanted to say 2006 went out with a bang with a snowstorm and then we came in with 2007 with a bang, and I want to congratulate a lot of people that helped and are still helping with this snowstorm. And the Regional Emergency Communications Center and staff, the road department, the Fire Department, the County Extension agent, Pat Torres, Becky Martinez, who is the Regional Emergency Communication Director, Martin Vigil, the Sheriff's Office, the Manager's Office, the City of Santa Fe, the Red Cross, Bernalillo County Sheriff's Department brought their helicopter out. We flew around the area to see and they dropped off food and just did a tremendous amount of work to help us here, the National Guard, the State Emergency Operations Center, San Miguel County, Torrance County, the area residents helping our neighbors to get out of this mess. I want to thank PNM for their sno-cat. The snow mobiles that were provided to us to help get into the residents where they needed to get medicine, A-1 Communications, the Olive Garden for providing the meals for the Regional Communications Center, Steve Gomez I mentioned for his snow mobile, Brian George, the Santa Fe Power and Equipment, the Flying Tortilla for donating the food for our people that were working.

Mr. Chairman, this snowstorm is probably one of the worst in 50 years. We had a lot of telephone calls. The Public Works Department is working still to try to get people that are still stranded in the southern part of Santa Fe County, so bear with us. And again, thank you to everybody that was working hand in hand.

A couple more issues, Mr. Chairman. I was visiting with the Mayor today, of Edgewood, Howard Calkins and he asked a question, and that was how come the city, or some of his city residents weren't able to purchase a County transfer station tag to dump their trash? So maybe that's something that the Manager could work on. It might not be the same price, it might be more but that way we could provide that service to the people that want to use our transfer stations.

And in terms of all the snow and the roadwork that we've been doing, he brought up another issue and that was maybe possibly exchanging some roads. As you know in Edgewood we blade up to the Town of Edgewood and then we lift our blade up because that's the Town of Edgewood and then we have to drop our blade down and there's various spots in there that are checkerboard and we want to do a trade agreement so that we don't have to lift that blade; we can go through. And then they would take care of some of the roads that Santa Fe County has. I'd like to see if James could also work on that so that we could probably evenly trade out roads so that we're not having to lift our blade and then drop it and grade and I think it would make it easier on both of us. Other than that, Mr. Chairman, thank you.

CHAIRMAN MONTOYA: Okay. Commissioner Campos.

COMMISSIONER CAMPOS: Just one thing, Mr. Chairman. The Regional Transit District Authority, during the past year I've had conversations about this authority with Commissioner Sullivan and I think one thing I'd like to explore is whether Santa Fe County should be a member of this district. I'm not sure if it's functional or it serves our interest or what's going on but it seems to be non-functional. I don't know if Commissioner Sullivan wants to add any comment to that, but I would like to know whether we have the authority to pull out, and it's my impression that we should if we can. But I'd like to have some comment from Commissioner Sullivan.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chairman, I got on to the Regional Transit District board last year to try to determine what was going on and I sadly need to report that after a year I still don't know. I've had fairly regular attendance at the meetings and Jack Kolkmeier and staff has been at the meetings with me. Santa Fe County has been pretty well left out of the planning process that the district has been doing and I think we need to take a serious look at what our role is in that process, and the costs that we pay and whether it results in any benefits to us. I haven't really seen any.

We tried to get an Eldorado program started for a bus commuter ride. It's eventually going to get going. It's taken the better part of a year to get started to use \$80,000 in federal funds that was available. Other than that, the programs that the district does are all existing programs so they are functioning on their own separately from the district. What's down the horizon of course is the option that the legislature gave to the district to have the counties enact another quarter percent gross receipts tax to fund the Railrunner operation. And that seems to be the ultimate purpose of the district as I can determine it and that may or may not come into being. But the operation is I think - we need to take a much harder look at it and perhaps Commissioner Anaya will do that as he begins to look at the district and report back to us and give us his feelings. But those are mine at least.

COMMISSIONER CAMPOS: I would like to have some feedback from staff on whether we can get out of this organization. I'm concerned also. Commissioner Sullivan attempted to talk to the director many times. Calls are not returned. Information

coming from the chair has been very limited and basically non-substantive. It's not working for Santa Fe County, I don't believe. So I'd like to have an evaluation and maybe in the next 30, 60 days have a report and we could consider that. Is that okay, Mr. Manager?

MR. ABEYTA: Yes.

COMMISSIONER CAMPOS: Any objections from the Commission?

COMMISSIONER ANAYA: Mr. Chairman, Commissioner Anaya, I object to that, because as of right now I'm not too familiar with that is going on there and I think I need a little bit of time to get my feet wet. It's - I don't understand Commissioner Campos' thinking in terms of getting out of the Regional Transit District when you always want to get involved with things. Why would you want to not get involved with it and stay in the loop? I don't understand. Maybe he had some wrong dealings. Have you been on the Regional Transit District?

COMMISSIONER CAMPOS: No, sir. I've just relied on -

COMMISSIONER ANAYA: I don't know what you're actually talking about so I really don't think we need to waste staff's time. Maybe if you want to get with Jack Kolkmeier and he can brief you on it. That would be my suggestion, but I don't think staff needs to waste their time on that. Thank you, Mr. Chairman.

CHAIRMAN MONTROYA: I guess my sentiments would be the same, having served on that RTD board for two years before Commissioner Sullivan took over. It is in the very formative stages. Certainly something that has taken a while to get to where it is today and I think as it continues to evolve, we're going to see some benefits for Santa Fe County. Certainly we have been contributing, and actually more short-term than long-term discussion is that we will no longer be needing to pay what we're paying as a result of the gross receipts tax that's going to be generated at Los Alamos County and has graciously offered to contribute towards this operation and the work that they're doing. So at least the financial burden would be relieved of Santa Fe County and the other participating entities, probably within a year if not sooner than that. But certainly within a year. And I think before we pull out I think we need to see what the direction is and allow Commissioner Anaya that opportunity to provide us with that assessment as well as Jack Kolkmeier who's been involved with it since the inception as well.

COMMISSIONER CAMPOS: Well, I really want staff to give me an opinion. I don't think it's going to take too long. It's just a question of looking at the statute. Is that about right? Just letting me know. Because if there's a possibility I may be pushing for that in the next few months.

CHAIRMAN MONTROYA: Okay. Commissioner Sullivan, did you have anything else under Matters from the Commission?

COMMISSIONER SULLIVAN: I had two things, Mr. Chairman. One was we've had, as Commissioner Anaya said, a number of calls from a lot of residents. Some are frustrated at nature's white Christmas for us and many others and in fact most have been very understanding and patient, supportive, of what the County has to do. I believe -

I wanted to ask James, who's taken a look at the Eldorado situation specifically. When we look at Eldorado we have a population out there that's the size of Socorro or Taos and it's essentially a big city and - I don't know, James, how many miles of roads is it out there to deal with? I know you've looked at that and could you give us an update. We're still digging people out there as of today, I think.

JAMES LUJAN (Public Works Director): Mr. Chairman, members of the Commission, yes, Eldorado has had a lot of complaints and a lot of e-mails and a lot of gracious people. Approximately 105 miles of total roads in there, 87 of which are County roads. I evaluated the situation there this morning. There are still some roads that we have not got to. We opened up the main arterials. We've cleaned them, cleaned them again. As of Friday we thought we were making a lot of progress and then the wind started from Eldorado all the way down south. So we have been on some of these roads.

I did find some of the complaints today and I went out there and we moved graders in there. As of this afternoon, we're going to move in a contractor that we had. We have three private contractors working with us, so I'm moving them up to that area as of tomorrow morning.

Eldorado has had somebody in there for the last 12 days, two or three graders. That area has been not left alone. They may think they've been abandoned but we have been there every day since the storm. The first day of the storm I came up and went in there and it was just a mess. There was 20, 30 inches of snow. We opened up the major arterials. We got people moving. A lot of people walking. We helped out.

The thing on the driveways, that we were cleaning private driveways - with that amount of snow, we would windrow, the blades would windrow it, it was blocking the driveways. The only way I could get in there is take a backhoe behind them and get into people's driveways and push the snow back into the road. That's why we were in people's driveways. We had obstacles from garbage bins out there to vehicles, but as of this afternoon, it looks like things are thawing out, hopefully before Thursday night and it looks like we'll make some more headway tomorrow. I'll get some more blades in there.

Down south, they got snowdrifts as high as some people's homes and those people have been stranded. We've been working with them. We've got bulldozers down there. We are non-stop since the 29th putting in 16-hours days. I don't recommend my guys working late at night. It's been very cold and we just don't make any progress. We have more breakdowns after midnight and things go wrong. Stuck in bar ditches. It just doesn't get very comfortable after midnight. But we've been starting up at 4:00 in the morning, so they've been working during those hours. But as far as Eldorado, it looks like everything hopefully will be cleared out - not totally melted - it has not melted. We've had extremely low temperatures during the day so it has not thawed out at all. We're not even using cinders right now because it's not helping.

The only thing we can do is plow the roads and they're very slick and people are going to have to be cautious in shaded areas. There's still some ice that melts and shades up at night and freezes. But we're working - not around the clock. We're working 16-

hour days in there.

COMMISSIONER SULLIVAN: Mr. Chairman, we really appreciate the job that the Public Works Department is doing. I reminds me of six years ago when we had the big storm that came though Albuquerque and Edgewood and it was a few days after I'd taken the oath of office and I started getting phone calls. It didn't hit Santa Fe much but it sure did bury Edgewood and James was down there for days and then after the snow left we were down there for another couple weeks digging people out of the mud, which is the next thing we'll have to deal with.

So a couple of suggestions that I'd through out there. The obvious one is well, let's buy more equipment, let's have more personnel and so forth. We have fiscal limitations on that. We could perhaps have a program in the future of training additional operators and I don't know whether those could come from our maintenance people or if those could come from outside, but if they could become trained we could be able to relieve the operators that we have that are working these 16-hour days and aren't perhaps as productive after they've been doing that for two weeks straight. So that's a thought of something we could perhaps fund.

And then of course, I know it's been hard to get private contractors because they're all busy elsewhere at parking lots and shopping malls, but I'm glad to hear you've got a couple lined out and that one will be out there in Eldorado as well. The magnitude, when I think of it, I think well, let's just say if we ask Mr. Lujan's staff to grade all roads in Santa Fe County in two weeks. Grade all the roads in two weeks. You'd say, that's nuts. It takes us - we don't get to them in six months, let alone two weeks. Well, that's essentially what we're asking them to do, is grade every single road in Santa Fe County's system, plus a bunch of private roads in two weeks. And that's hard. That's a tough job to do and I don't care how much equipment you have or how many people we have, you'd have twice and much and just say, let's grade all the roads in Santa Fe County in two weeks. Well, good luck. You're just not going to do it.

So I'm real appreciate of what the staff. I've received some positive e-mails. I've received a few nastygrams and you people know who you are. But in the final analysis, I think we've done an excellent job, particularly when you consider for example the City's policy which is that they don't plow side streets. That's their policy. And the County does and we've got 1900 square miles to do and we are doing side streets, not just major thoroughfares. So that was one issue. Thank you, James. I really appreciate the work you guys are doing and thanks for keeping us up to date on what's going on in Eldorado. I went out and I saw the emergency center operation and that looks like a really good operation. I know Stan and his crew have gotten a lot of compliments and I'll offer mine as well.

One other question, Mr. Chairman, for Roman. Switching gears to the RECC, what's the procedure going to be for moving into that administrative change of the RECC?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, we have a draft joint powers agreement that we are going to distribute to the City of Santa Fe to start

reviewing. The RECC board has asked to be allowed to give input on that JPA also so we're going to distribute it there. And then we're going to hopefully have an agreement in front of the Commission and the City Council within the next 60 days. We have until July 1 to actually start with the takeover as far as fiscal agent. But we have a draft JPA that we're going to circulate in the next couple of days.

COMMISSIONER SULLIVAN: And the RECC currently operates under a JPA, correct?

MR. ABEYTA: Yes.

COMMISSIONER SULLIVAN: So this would amend the current one.

MR. ABEYTA: This would amend the current one and designate Santa Fe County as the fiscal agent. It would have a provision that deals specifically with the City's cost that they put into the RECC, the funding that the City provides currently.

COMMISSIONER SULLIVAN: And the City will continue to provide funding for the RECC?

MR. ABEYTA: As I understand it, the City will continue to provide funding above their \$2.1 or \$2.5 million that they're covering now. The agreement, what they're paying now, we will take over. Additional costs, that will be their contribution, but we will always match the current cost.

COMMISSIONER SULLIVAN: And is there some time frame for them to comment on this?

MR. ABEYTA: We would like to have the agreement in place before the beginning of the fiscal year so within the next three or four months we need to get this wrapped up.

COMMISSIONER SULLIVAN: And my understanding was that the RECC board will remain constituted as it is.

MR. ABEYTA: Yes. We're not proposing any changes to the makeup of the board.

COMMISSIONER SULLIVAN: Okay. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. I just also want to extend my thanks to all of the staff, to James and Stan and everyone. I think you've done a yeoman's job in terms of handling a situation that is beyond any human's control, and certainly God has provided us with some good moisture and snowfall that we've longed for and we're talking about record amounts. It's not something that is just a small amount that has caused some of the crises that we're facing now but I think as humanly possible we're doing the best that we can in a situation that's beyond our control, really. So I just wanted to extend my thanks and appreciation for everything that's been done for Santa Fe County residents by Santa Fe County staff. I think they've just done an exceptional job with again, the manpower that we've got, the equipment that we've got and everything that has been done up to this point.

In terms of a federal lobbyist, we have talked about that in the past and I don't know if that's something that this Commission is still considering. I'd like to maybe kind

of get a pulse from the Commissioners as to where you're at in terms of thinking. We have put the RFP out and never made the award, never did anything with it and I believe we may still have some of that funding there and I don't know if that is something that is still something that we want to pursue or not. Are there any thoughts on that one way or the other? Commissioner Vigil.

COMMISSIONER VIGIL: Thank you, Mr. Chairman. I've always been in favor or pursuing a federal lobbyist. I think we're losing out on an opportunity to bring in some of those federal dollars, and in particular now that we've got Congressman Tom Udall as chair of the Appropriations Committee I think we're disconnecting with our congressional delegation if we're not able to keep presence in Washington and advocate for some of the projects that we will not be able to complete without federal dollars and that of course, principally is the Buckman Direct Diversion.

CHAIRMAN MONTROYA: Commissioner Campos, any thoughts?

COMMISSIONER CAMPOS: My position is the same. I'm against it. I don't think it's fruitful. I think we should focus in-state. We have Udall now in position at Appropriations. He's always been helpful. He's always been accessible. Maybe that's a good argument as to why we don't need a lobbyist at this point.

CHAIRMAN MONTROYA: It's unfortunate Commissioners Sullivan and Anaya stepped out.

COMMISSIONER VIGIL: I would like their input too, Mr. Chairman, so maybe we could reserve discussion on that until they return.

CHAIRMAN MONTROYA: I'm in favor of. I think it's something that we do need as well. And I agree with everything that Commissioner Vigil has mentioned in terms of the things that are 180 degrees different than they were nine days ago.

COMMISSIONER CAMPOS: The money's not there. There's very little federal money. Where does it come from? Do we have the money budgeted? Are we going to have to take it out of other programs? These are the questions we're going to have to ask.

CHAIRMAN MONTROYA: Well, those are the questions that we need to determine. Like I said, I don't even know if the budget is still there for us to do that. I think it's their job as well as ours to be able to allocate resources as is needed in the different states that are asking for it. If we don't ask for it we're not going to get it. My concern is that at this point with the agreement that we have with BDD it is BDD and that's it. We don't look anything beyond BDD for any other infrastructure for affordable housing, economic development, different programs that the feds have to offer that we don't even tap into because of not having that sort of a presence there. So that would be my pitch for advocating for something of this nature in the short period of time because we're talking about March, April, being probably the drop-dead date as to when these appropriations, requests, need to be submitted.

When I talked about the representation that we have with the City, none of our priorities are there. Aamodt's not there. We don't talk about Aamodt unless we go and talk

about it separately. Aamodt should be something that is being discussed between the City and the County and that's not being done. So I just think that we're potentially missing opportunities to get whatever little federal funding there may be. We're certainly not getting any of it now so I don't know if we have anything to lose by attempting to do something like this.

COMMISSIONER CAMPOS: Except money.

CHAIRMAN MONTROYA: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chairman, sorry I didn't catch all of it, but you're asking about a federal lobbyist and I think I've always wanted to have a federal lobbyist for Santa Fe County. I think it's important from the issues that you just mentioned. It doesn't hurt to ask and I think in the past it's like there's been some hard feelings on this Commission. I don't think we've ever had one since I've been on the Commission. But I think it's important. Those dollars are out there and if we don't ask for them we won't get them. So I'm all in favor. I don't know what your suggestion was. Is staff going back and looking to see what they can come up with in terms of funding? I'm all for it. Thank you, Mr. Chairman.

CHAIRMAN MONTROYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chairman, traditionally and historically I have not seen the value of the federal lobbyist. I do, however, agree that when we've made our trips to Washington the agenda has certainly been a City infrastructure agenda. So the question is how do we deal with that, how do we get the necessary follow-up with our congressional delegation? Do we do that with an in-house person? Do we do that with a lobbyist firm? And as much as I've enjoyed the trips to Washington and meeting with our delegation and so forth, that doesn't seem to be a venue that really gets something done.

So you have to say to yourself first, is there money there, and if so, I need someone in town to work it. Just taking a ceremonial trip to Washington doesn't get that money. So that says, yes, we should need a lobbyist to do that. On the other side, with the Democratic Congress now, one of the pieces of legislation that they've introduced that Nancy Pelosi has introduced and others, has been to limit the earmarks. The lobbyist firms that have made presentations to us that I recall have all said, that's where you get your money, is on the earmark legislation, essentially the little amendments to the big bills that all the pork projects are created from. They're going to cut those back severely.

So I really wonder, I just can't evaluate the cost-effectiveness of it knowing that they're going to cut those earmarks back. Now, perhaps we want to give a firm some specific deadlines, some specific goals, evaluate how much money they bring to the County and give it a try for a year. But I was on the Commission when we had the other lobbyist firm and the County staff is the one that recommended we terminate that agreement. I wasn't involved very much with them. I believe Commissioner Vigil was involved with them more than I was. When you were on staff?

COMMISSIONER VIGIL: Yes, I believe I was.

COMMISSIONER SULLIVAN: But either way, the County Manager's office didn't feel we were getting our money's worth at the time. And this is big money. This is several hundreds of thousands of dollars. This is not a \$30,000 personal services contract. These firms come fairly expensive. So I'd certainly be willing to look at some more information, at a scope of work, at an analysis of what the new Democratic Congress will do and won't do, where we're missing the funds, and the one that comes to mind - I know Aamodt comes to mind for you certainly. The one that comes to mind for me is the jail, is funds for the jail. If we can have a lobbyist firm come in here and say I'm going to get you \$2 million in correctional funds, and we pay them \$250,000, and they do it, we've made a good deal.

It's not something that's quite as interesting, those correctional funds. They're back in the deep depths of Congress. People go after water funds and they go after rapid transit funds and maglev funds. Correctional is kind of a dull field but it is draining the County. It is just absolutely sucking us dry. So if we could get a firm that had expertise in that area, I'd be interested.

CHAIRMAN MONTROYA: Okay. So maybe, Roman, you could come up with some sort of hybrid of what's been done already, and number one if there's anything available in terms of funding for this.

COMMISSIONER VIGIL: Mr. Chairman, on that. I would just ask also, Roman, the time frame for requests for Washington is really short and it's getting shorter, so is it possible to get that to us at least by next meeting so that a decision could be made, we could take action if necessary?

MR. ABEYTA: Mr. Chairman, Commissioner Vigil, yes. A lot of the work has already been done with the previous RFP but we can probably add to that and get something to you by the end of the month.

COMMISSIONER VIGIL: Thank you.

XII. B. Water Resources Department

1. Resolution 2007-4. Consideration and Possible Approval of a Joint Resolution Regarding the Joint Efforts by Santa Fe County and the City of Santa Fe to Receive State Funding for the Buckman Direct Diversion Project

DR. WUST: Mr. Chairman, this is a resolution that the City Council passed recently and it was delivered to us. It addresses some joint moving forward on the Buckman project. This was not an item that County staff had participated in writing. The City Council has voted for it. As noted in the cover memo from County Attorney Ross, there is an incorrect statement in that item, and it says that it's on the ICIP priority list for both City and County, and it is not one of the five priority items that this County Commission voted for. We realize very clearly that it's always been an important project

for the County but that's just an incorrect statement.

So the City has delivered it to us requesting that we bring it in front of the Commission for your consideration and approval.

CHAIRMAN MONTOYA: As is?

DR. WUST: As is. My understanding is that if you make any changes it goes back in front of the City Council. That may be the way it is. That's your decision.

COMMISSIONER VIGIL: Okay. I think we can approve it as is. It is on the ICIP plan, whether it's part of our five priorities, that's our process. The ICIP plan is DFA's process. So oftentimes DFA is looking at the ICIP as the prioritization process, so I think we can approve as is, and with that, Mr. Chairman, I'll move to approve.

COMMISSIONER ANAYA: Second.

CHAIRMAN MONTOYA: Motion by Commissioner Vigil, second by Commissioner Anaya. Discussion?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: I agree with Counselor Ross that that's an inaccurate statement and I don't think we should be adopting resolutions that are inaccurate.

CHAIRMAN MONTOYA: Any other discussion?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Maybe one way would be, rather than putting it back through the arduous process of the City's committee and Council consideration, perhaps if we instructed staff to forward the resolution with a cover letter that made that clarification that simply said the Buckman Direct Diversion project is a priority for the County but it was not listed as the top five priorities. Or whatever language would be appropriate. Just to make a clarification, rather than holding it up. The legislature is going to start in another two weeks.

CHAIRMAN MONTOYA: Next week.

COMMISSIONER SULLIVAN: Next week. Would that be -

COMMISSIONER VIGIL: That's acceptable. I still don't - knowing the legislative process and the ICIP process, because it isn't one of our top five priorities it doesn't mean it isn't a priority and I think further clarification would resolve that. So I would include in my motion a cover letter that further describes our ICIP process and where Buckman Direct Diversion is in that prioritization.

COMMISSIONER CAMPOS: It's a muddled version.

CHAIRMAN MONTOYA: To approve and include?

COMMISSIONER VIGIL: To approve and include a cover letter.

CHAIRMAN MONTOYA: And the seconder is okay with that?

COMMISSIONER ANAYA: Yes.

CHAIRMAN MONTOYA: Further discussion? Has this been placed on our ICIP priority list? Obviously it's not if you said that it hasn't, Steve.

MR. ROSS: Mr. Chairman, it is not on the priority list.

COMMISSIONER VIGIL: Rudy, is the Buckman Direct Diversion on our ICIP priority list?

RUDY GARCIA (PFMD): Mr. Chairman, Commissioners, the Buckman Diversion, yes it is on our ICIP plan. It's not in our top five priorities but it is in our ICIP plan.

COMMISSIONER VIGIL: Okay. Thank you.

CHAIRMAN MONTOYA: It's on the list but it's not on the priority list.

MR. GARCIA: Mr. Chairman, it's on our list and it's not one of our top five priorities, yes.

COMMISSIONER CAMPOS: Mr. Garcia, may I ask a question?

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: This is such an important project, do you recall why we did not put it as one of our top five?

MR. GARCIA: Mr. Chairman, Commissioner Campos, I guess as a point of clarification, the DFA, as Commissioner Vigil has stated, does run the ICIP plan and there's the top five priorities for each one of the projects. The Buckman Direct Diversion project is ranked as number one in our priorities, but our top five priorities are the priorities we're going to talk about next on the agenda. But it is ranked number one for Santa Fe County.

COMMISSIONER CAMPOS: On our priority list.

COMMISSIONER VIGIL: On our ICIP -

COMMISSIONER CAMPOS: On one of our priority lists but not the other one.

MR. GARCIA: It's ranked number one on the ICIP plan but it's not the County's top five priorities.

COMMISSIONER VIGIL: Mr. Chairman, let me just ask, is it possible to include it as one of the County's priority? As a sixth priority? Because DFA asks - we actually identified five priorities, but it doesn't matter to DFA which priorities those are, correct?

MR. GARCIA: Mr. Chairman, Commissioner Vigil, yes, that's correct. And if the Commission wants to chose to add a sixth priority. That's definitely fine. We can add that to our presentation for tomorrow night's session. That's fine with me.

COMMISSIONER VIGIL: I think that might be the resolution to this issue, Mr. Chairman, is that we do include it as one of our now six priorities. It really should be in one of our sort of stronger lobbying efforts. So perhaps -

MR. GARCIA: Mr. Chairman, Commissioner Vigil, the way I view it is the top five priorities that DFA requires of the local government entities to give to DFA is that if there's only enough money to supply for the County's top five priorities, those would be our top five priorities. We would take the money from the legislature. So if there's a sixth priority, that's definitely fine and at that time we would decide what monies we would

want if DFA and the legislature would actually say you can only get money for these top five or six priorities.

COMMISSIONER VIGIL: Maybe, Mr. Chairman, we'll wait to have that discussion under the legislative component of tonight's discussion, but really, because this is the year of the water and there is the Water Authority, the New Mexico Water Authority and other avenues for looking for funding for particular water projects, I think we should consider prioritizing it as one of our – as our sixth priority. So with that, I stand by my motion.

MR. GARCIA: Mr. Chairman, Commissioners, just to keep in mind, we as staff haven't totally forgotten about the Buckman Diversion. It is definitely on our radar screen. Our lobbyists have actually drawn up some proposed legislation that's going to be moved forward this year so the legislature actually does have the Buckman Diversion on a proposed bill to the Legislative Finance Committee, which actually allocates money. Hopefully, if it does get signed by the Governor, to proposed legislation from the New Mexico Finance Authority to include the Buckman Diversion as one of their top priorities in the New Mexico Finance Authority's bigger million dollar bill.

CHAIRMAN MONTOYA: Any other discussion?

COMMISSIONER CAMPOS: It seems, Mr. Chairman, that we have a local priority list and the Governor says we're going to have regional priority lists that involve the Buckman and probably the legislature will have those as important regional projects. We can compare that to our five as being our County priorities.

MR. GARCIA: Mr. Chairman, Commissioner Campos, that's actually a good way to look at it. The Buckman Diversion is on a bigger priority list because that's a big dollar amount that the legislature isn't going to fund through capital outlay money; they're going to fund it through a big bill, through possibly the New Mexico Finance Authority. But it is on their radar screen and it is on that proposed bill that our lobbyist had actually brought forward to us. So we are watching that and monitoring that bill.

CHAIRMAN MONTOYA: Further discussion?

The motion to approve Resolution 2007-4 passed by unanimous [5-0] voice vote.

XII. C. Matters from the County Manager

1. Discussion and Possible Action on Legislation for the 2007 New Mexico Legislative Session [Exhibit 2: Legislative Initiatives]

MR. ABEYTA: Mr. Chairman, Commissioners, John Michael Salazar is passing out a list of things we plan on pursuing this legislative session unless the Board gives us direction otherwise today. So if I can, Mr. Chairman, I'd like to just go down the list one at a time.

The first would be staff would pursue legislation amending the Economic Development Act to allow for public/private partnership activities. And the discussion and the direction regarding this legislation is such a bill would allow the County to enter into public/private partnerships for the purpose of maybe renovating or rebuilding County buildings or facilities. For example, we have the district court facility up the street that would then we would look at remodeling or doing something with that. This bill would allow us to enter into a private partnership for that renovation and for possible economic development or revenues that could come from such a renovation. So this was listed on one of our initiatives that we found in the Manager's office when we were putting our list together. So I guess staff is requesting direction as to whether or not to pursue this legislation at this time.

CHAIRMAN MONTOYA: I would say yes. Commissioner Vigil.

COMMISSIONER VIGIL: Currently the Economic Development Act does allow to some extent for local government to enter into partnerships. It allows local governments to actually donate land for private purposes. I don't know enough about this to say that we should put our efforts into it. I think we're creating a really large agenda here. As I look at some of the other considerations I would probably put this on a waiting list until we were able to identify some legislation that might be more of a priority. This is a huge agenda from my perspective.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: I agree with the comments that Commissioner Vigil has made. We have a big agenda. We have a lot going already, and it seems to me that this is an initiative being driven by some developers who want to develop St. Vincent Hospital. And I think they've already talked to a lot of the Commissioners. I'm not sure whether we should - I don't know enough about the legislation to feel comfortable but if it is developer-initiative - they're the ones that came up with the idea that we should make these changes as I understand it and they have talked to a lot of the Commissioners about this. I'm just not sure I know enough about the legislation to feel comfortable as a priority, and I don't know if we should expend our resources. I think we have to be focused and really decide what we want and realize that if we don't focus and try to get everything we're not going to get very much. That's what's happened in the past.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: No one has talked to me about this, Mr. Chairman, and so I'm not familiar at all with what's being suggested.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chairman, I don't know if there's a particular job that we're looking at in terms of public/private partnership, but I think it's important that we look at this and in the future if we can do this. I think it's very important that we partnership with whoever we can to get things taken care of. Thank you.

CHAIRMAN MONTOYA: And as I mentioned very briefly I am in favor of this particularly because I think governments throughout this country are seeing more and

more that they can't do things for everybody and do everything for everybody either, and are looking at creative, out of the box of creating and doing economic development opportunities. And certainly public/private partnerships is one of the ways this is being done, and if this is not a mechanism or a tool that we are allowed to utilize, well then we'll continue to flounder and really not do anything in terms of economic development as Santa Fe County has not done for years. But this particular legislation at least allows us, as Commissioner Anaya said, that opportunity to take a look at doing that sort of thing. So with that feedback we'll let you make the decision.

COMMISSIONER CAMPOS: Can I say one more thing?

CHAIRMAN MONTROYA: Commissioner Campos.

COMMISSIONER CAMPOS: This proposal was put forth by a partnership that wants to develop hotels downtown, including the St. Vincent property and they want to look at the current courthouse property as a potential hotel. I'm not game for that right now. I don't understand it sufficiently.

MR. ABEYTA: Mr. Chairman, the next item is legislation that revokes the PRC rule charging undergrounding to a specific area and requires that it be included in the utility company's overall rate base. The Commission has had several cases, not only this year but last year, the year before, regarding undergrounding and one thing that always comes up is, well, we can do this but we're going to charge the people in the area who it's going to affect and so their bills are going to skyrocket. It has always referred to a PRC rule that says they're restricted to charging this one area and so we are proposing legislation that would allow the undergrounding to be charged to the overall rate base for the utility company.

CHAIRMAN MONTROYA: Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Abeyta, when you say overall rate base, are you saying the statewide rate base?

MR. ABEYTA: Either statewide or within the jurisdiction of the county, Santa Fe County. Three companies serve -

COMMISSIONER CAMPOS: So that would include the municipalities.

MR. ABEYTA: Right.

COMMISSIONER CAMPOS: Counselor Ross, what is your thinking on this?

MR. ROSS: Mr. Chairman, Commissioner Campos, as you know, right now we're before the PRC and the Project Power rate case, arguing about whether the rate payers outside of the city or inside and outside the city should be charged with the cost of that increase. Every time we require a utility company to go underground with the possibility that we're going to be in a rate case addressing the proper application of the rate to the customers comes up. I think what Mr. Abeyta has suggested is that the legislature change that by statute and set some further guidelines which right now, frankly don't exist.

We've also recently become aware that at least PRC staff has taken the position that counties have no authority to order undergrounding under any circumstances, which is a

new thing. So it raises some concerns that we've got kind of a problem here that the legislature may want to address.

COMMISSIONER CAMPOS: Okay, thank you. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Any other thoughts, questions?

COMMISSIONER SULLIVAN: I think this is a good one.

CHAIRMAN MONTOYA: Commissioner Sullivan thinks it's a good one.

Commissioner Anaya is thumbs up.

COMMISSIONER ANAYA: Thumbs up.

CHAIRMAN MONTOYA: Thumbs up, no idea from Commissioner Vigil and myself.

COMMISSIONER VIGIL: I just think again this is quite ambitious and we don't have sufficient information to know what alternatives or whether the broad rate base is the most appropriate way to approach legislation. I shudder to think if we give our lobbyists the green light on this, again, incredibly ambitious. How is PRC going to feel about this? How is PNM going to feel about this? How are the small - this affects - this is a statewide issue. Because Santa Fe County enacted an ordinance requiring undergrounding, I think this is an attempt to try to correct our own ordinance, but I think we can do that independently, but I'm hearing Mr. Ross say, now maybe we can't even go there. So I'm not sure we're even ready to lobby for something like this.

CHAIRMAN MONTOYA: Okay. Legislation requesting funding for a teen court.

MR. ABEYTA: Mr. Chairman, thank you. We've received word from our teen court program that the Governor's office is willing to provide permanent funding, a permanent funding source for the teen court program. So we want to bring that to the Commission's attention and we will pursue that request. Because I've heard from both the Governor's office and also DFA has left me a message because they'd like to talk to me about it. So I just wanted to make sure that the Commission was aware of this and supports a request for permanent funding of our teen court program.

COMMISSIONER VIGIL: Most definitely.

CHAIRMAN MONTOYA: Any problems with that? Seeing none, okay. Legislation eliminating the County Surveyor position in Santa Fe County.

MR. ABEYTA: There's been a lot of discussion over the last year or two about this, Mr. Chairman, so it was put on the list. I stand for direction from the Board.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Yes. It saves the taxpayer money. It's a position that no one else has in New Mexico, no other county. When the opportunity came up to eliminate the position by other counties they all eliminated this position, except Santa Fe County.

CHAIRMAN MONTOYA: Oh, really?

COMMISSIONER CAMPOS: That's what I understand.

COMMISSIONER VIGIL: Oh, yes. Santa Fe County is the only county. Roman, have we contacted our current County Surveyor for any input? I thought he might even be here tonight.

MR. ABEYTA: Mr. Chairman, Commissioner Vigil, no, we have not.

COMMISSIONER VIGIL: Okay. It seems to me that this issue had come out mid-term when our current County Surveyor would be elected for a second term. He is now term-limited so I think that the issue is ripe for the legislature. So my sense is unless we hear evidence to the contrary we would probably move forward with this. I actually think it does create a benefit for the taxpayer.

CHAIRMAN MONTOYA: Commissioner Anaya. Commissioner Sullivan. Okay. Legislation creating water/wastewater authority.

MR. ABEYTA: Mr. Chairman, there was a discussion with the Board back in November regarding this legislation. At the time the Utton Transboundary Resources Center had a contract with the Office of the State Engineer to develop draft legislation for this session. That has been dropped, so the state will no longer be pursuing this legislation, so the question for the Commission is whether or not the County wants to pursue this legislation this year again. I will be meeting with our lobbyist and Bill Hume for the Governor's office tomorrow. I'll talk to him specifically about this to see whether or not - to get more information as to why the state isn't pursuing this this session. I don't know if we want to put ourselves in the position where we pursue something that doesn't have the support from the state legislature or the Governor's office. So I can get back to the Commission on this initiative if you'd like me to.

CHAIRMAN MONTOYA: Why don't you do that. That would be the better way to go.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: The only comment I'd offer is I understand from reading the memo from Lisa is there is another initiative to bring forward, a water and wastewater authority bill that might be less favorable to the County if it were brought forward, if it were passed. So I think I agree that unless everyone's on board with this, unless this is an executive initiative, unless it's an imitative from the UNM group that we're going to have a hard time doing it ourselves. But I would talk to them, ask what is being proposed and I would suggest keeping this in our back pocket so that if there is legislation, then we can bring it forward and say, how does this compare to this other regional legislation? What are we trying to achieve here? And maybe even throw that in as a substitute bill. If it doesn't appear then probably we don't have the time and resources to push this through.

CHAIRMAN MONTOYA: Okay. Legislation supporting earmarking a portion of state tribal gaming revenues.

MR. ABEYTA: Mr. Chairman, this issue usually comes up every session, sometimes by the Municipal League, sometimes by the Association of Counties. I don't

know if Santa Fe County wants to introduce our own bill or if you want us to just watch this and if it is being – if something is submitted then we would discuss whether or not we would add our support to it. Unless of course the Commission wants us to submit our own bill.

CHAIRMAN MONTOYA: Roman, we submitted one last year, didn't we? Yes. I would support us submitting one again. Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Chairman, a question for you. I think all the tribal gaming operations are in counties; they're not in any municipality except the City of Espanola, right?

CHAIRMAN MONTOYA: Right.

COMMISSIONER CAMPOS: All others are counties. Would the sharing be with counties and municipalities or depending on their territory?

CHAIRMAN MONTOYA: Depending on their territory.

COMMISSIONER CAMPOS: So if they were in the county, they would be contributing to the County, if they were in a municipality they'd contribute to a municipality. Is that the way I understand it, Mr. Abeyta?

MR. ABEYTA: Yes.

COMMISSIONER CAMPOS: I would agree that we move forward with that idea.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: I agree with that. I do so, Mr. Chairman, just based on the experience with the local liquor excise tax. There was some dollars allocated to local governments and local governments sort of stepped up to the plate. Most recently and now even looking for more dollars. For a period of time, the local liquor excise tax reverted back to the state. So I think so long as we stay in front of letting the state know that we should advocate for a share of that tribal gaming then perhaps we don't run the risk of running in the same error avenue.

CHAIRMAN MONTOYA: Okay. Commissioner Sullivan.

COMMISSIONER SULLIVAN: Fine with it.

CHAIRMAN MONTOYA: Okay. So five thumbs up. Legislation eliminating Santa Fe Extraterritorial Zone and limiting municipal annexations without County approval. I'd say yes.

COMMISSIONER CAMPOS: Big thumbs up.

CHAIRMAN MONTOYA: Big thumbs up. Big thumbs up.

COMMISSIONER CAMPOS: This would be the Bernalillo model, which already exists in statutes and has existed for a number of years and we would simply add or modify the population number to allow Santa Fe County to qualify under that. I think it's a great idea.

CHAIRMAN MONTOYA: Okay, then there will be requests for additional monies for projects that have been previously funded but have shortfalls, for example, the Madrid ballpark.

MR. ABEYTA: Right, Mr. Chairman. That is just because of the increase in construction costs we haven't been able to complete projects, there will be requests for additional money for projects that have already been previously funded. We will also be working on a list of reauthorization for previously funded projects that we haven't begun yet. And we'll discuss this with the legislative delegation tomorrow evening.

Also, there is the document imaging program for the County Clerk's office that we're working on. So I wanted to let the Board know that we're going to continue to pursue funding for that project.

And finally, Mr. Chairman, we will be keeping an eye on other bills that the Association of Counties will be submitting or other municipalities or counties. There is also the Aamodt settlement. The Governor's office has indicated that the Governor may be supporting a down payment and funding for Aamodt, so we'll be keeping an eye on that and of course supporting that initiative.

There is also - Bernalillo County is proposing corrections legislation that we are going to be keeping an eye on and supporting and that is in regard to - one specifically is to increase the GRT from 1/8 to 1/2 percent, the corrections GRT that we currently have, Bernalillo County is requesting that that be increased. They're also suggesting other ways to reduce prison populations through legislative changes such as the decriminalization of misdemeanor offences. So that could have an effect on our facility so we'll be watching that and lending our support to that.

There's DWI legislation that the Association of Counties is supporting, which is an increase in the DWI distribution to 45 percent total liquor excise tax collections. There's mid-term salary increases, again that the Association of Counties is pushing. Commissioner Campos -

COMMISSIONER CAMPOS: I'm not pushing it. I just want equal treatment presently. I want these guys not to accept the increase so we're all on the same page. I don't want any more money.

MR. ABEYTA: There's a Tort Claims Act liability that the Association of Counties is supporting which would allow coverage to certain public safety workers, such as animal control officers and emergency dispatchers. The Association is also supporting legislation that would give local governments a voice on the soon to be created statewide GIS Council. And there is legislation, Mr. Chairman, coming out of the Espanola Basin Regional Planning and Information Forum that we are members of that would allow tribal members of joint powers agreements such as this to invoke a privilege exempting discussions and documents from public disclosure whenever the tribal entities believe that sensitive tribal matters may be involved.

Mr. Chairman, that's the summary of the legislative initiatives that we will be pursuing.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Question for Mr. Abeyta. You said under the

Tort Claims Act animal control officers will be provided with immunity or will the statute allow that they be liable for any wrongdoing or negligent doing?

MR. ABEYTA: According to my notes, Mr. Chairman, Commissioner Campos, it says that the legislation would seek to expand the Tort Claims Act coverage to include -

COMMISSIONER CAMPOS: Which means that they would exclude them from liability. That's my read of it. That's what I remember a commentary from the Association. I don't favor that. I think that if a County employee does something that's negligent and hurts someone I think they should be liable. That's spreading the risk.

MR. ABEYTA: Mr. Chairman, Commissioner Campos, the Association is pushing that so we'll just watch.

COMMISSIONER CAMPOS: I know they are but I hope Santa Fe County doesn't.

CHAIRMAN MONTOYA: Say that again. That you don't support it why?

COMMISSIONER CAMPOS: It's my understanding that the Association of Counties is wanting to have animal control officers protected by sovereign immunity, that is they're not liable, even if they do something negligent that hurts somebody. That's what they want. They want protection - non-liability. My position is is if an animal control officer that does something that's negligent and hurts someone, there should be insurance coverage for these folks so that they could be compensated for their personal injury.

CHAIRMAN MONTOYA: What about emergency dispatchers?

COMMISSIONER CAMPOS: What about them?

CHAIRMAN MONTOYA: They're wanting to be included just like animal control officers.

COMMISSIONER CAMPOS: They want to be excluded from liability?

CHAIRMAN MONTOYA: No, they want to be excluded from claims.

COMMISSIONER CAMPOS: That's what it means. If you want sovereign protection, sovereign immunity, it means that you're not liable, even if you do something wrong. I hadn't thought about that issue.

COMMISSIONER VIGIL: Mr. Chairman, I don't know that we have the exact language but I do know that the Association has worked really hard through Steve Kopelman and others there. I think they're crafting language that is reasonable language and I think if it rises to the level of gross negligence or negligence, I don't think you can be exempt from the Tort Claims.

COMMISSIONER CAMPOS: You can be exempt.

COMMISSIONER VIGIL: For gross negligence?

COMMISSIONER CAMPOS: For negligence you can.

COMMISSIONER VIGIL: But what about gross?

COMMISSIONER CAMPOS: I don't know.

COMMISSIONER VIGIL: I think they're trying to craft something -

COMMISSIONER CAMPOS: Some Allstate solution.

COMMISSIONER VIGIL: Yes. It might be. So I'm not willing to take a position on this.

CHAIRMAN MONTOYA: Any other attorneys like to join in this discussion?

COMMISSIONER CAMPOS: Just say no to Allstate.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: On a separate item, Mr. Maes, I'm going to be out of town tomorrow so I won't be able to participate in the legislative reception so if you would give my best to the legislators I'd appreciate it and thank them for their effort, and twist their arms. But one thing that I've been an advocate for and continue to be is to include funding in capital improvement bills to pay for the County's administration of those projects. Whether it be crafted up to five percent at the discretion of the County - we may not want to use that money. Let's say we're allocated \$500,000, the more money we use for administration the less we have to build the project.

But there's some cases where we can't afford to administer the project unless we go out and hire an expert to administer the project. And if we don't have funds to do that we can't implement the project. And as a result, some projects have really been delayed by the fact that we don't have in-house staff to keep them moving. Or projects that would require us to hire another staff, another FTE.

So we are getting so many projects put on our plate, whether it's Women's Health Center, whether it's projects of this sort that we have to renovate buildings, we have to buy buildings, we have to do things that are very expensive undertakings that require thousands of hours of staff time. These aren't little, small road paving projects or culvert projects, these are complicated architectural leasing, legal issues type of projects. And we don't get a dime to do this. And these get heaped on our plate and we have no budget for them. We come into our budget year and suddenly we find out Projects and Facilities Management staff is spending time on 50 percent of the projects that we didn't even know existed the year before because these are legislative priorities that suddenly appeared on our budget ledger.

So if there's any way we could encourage some legislation that would allow administrative costs up to some level to be used from the allocation across the board. That would really help us because we just have been spending a lot of money on projects that every so often aren't our own priorities; they're the legislators' priorities and that's good. We don't mind that, but they're not our priorities and now we have to manage those projects and administer them. A very expensive undertaking. So if we can somehow get someone to sponsor an initiative like that, that would really be a big help.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Chairman, I think that's a very important issue, because it does take away from our priorities. And the legislators certainly like to fund priorities that are being lobbied for by people in their districts, and that's fine

for them, but they leave us hanging, as Commissioner Sullivan said, with huge costs. They have to be made aware of that fact because the only other option is to start rejecting projects, saying, okay, it's being funded by the legislature but we reject the funding because it's going to cost too much money. That's our only option.

I've raised that issue before because I know Bernalillo and the City of Albuquerque have rejected projects when they think they're not meritorious or they're going to cost the county too much money or the city too much money. But it seems that we've been very deferential to our legislative delegation and never willing to take that stand. So I think that they're aware that it's going to cost more money than just the \$100,000 or the \$1 million. That would be very important for our budget and our resources. Critical, really.

CHAIRMAN MONTOYA: So you're saying Bernalillo has turned down special appropriations from legislators?

COMMISSIONER CAMPOS: Right, saying this just doesn't make sense, or this is just a dumb idea.

CHAIRMAN MONTOYA: Interesting.

XII. C. 2. Resolution No. 2007-5. A Resolution Accepting Dedication of Beckner Road

MR. ABEYTA: Mr. Chairman, this is the remaining portion of Beckner Road that has been brought before us for dedication. At the BCC in December the Commission accepted a portion of Beckner Road and this is the remaining portion.

COMMISSIONER SULLIVAN: Is there a document?

CHAIRMAN MONTOYA: Did we receive - is there a document in there?

MR. ABEYTA: We have a resolution and a survey that's attached to it.

COMMISSIONER VIGIL: Mr. Ross, have we taken action on this at any level? It just looks familiar.

MR. ROSS: Yes, you accepted in December the first portion of this road and this is the second portion.

COMMISSIONER VIGIL: Okay. That's why I thought we had done it before.

MR. ROSS: That's right. It's very familiar because it's the identical document except the survey for the second portion has now been prepared.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Move that we adopt the resolution accepting dedication of the second part of Beckner Road.

CHAIRMAN MONTOYA: Motion by Commissioner Campos. I'll second. Discussion?

The motion to approve Resolution 2007-5 passed by unanimous [5-0] voice vote.

XII. C. 3. Update on Various Issues

MR. ABEYTA: Mr. Chairman, I think the Commission covered it with the discussion we had with our Public Works Director. I would just like to also extend my thanks to the staff for all the hard work in both Public Works, Fire and the other County departments who are volunteering at the emergency operations center.

CHAIRMAN MONTOYA: Thank you, Roman.

COMMISSIONER CAMPOS: I agree. I think staff did a great job, and I want thank you too for leading the effort along with James and Stan and other people. Thank you very much.

CHAIRMAN MONTOYA: Yes. Thank you, Roman.

XII. D. Matters from the County Attorney

1. Resolution No. 2007-6. A Resolution Determining Reasonable Notice of Public Meetings of the Board of County Commissioners of Santa Fe County, and for Boards and Committees Appointed by or Acting Under the Authority of the Board of County Commissioners.

MR. ROSS: Mr. Chairman, on D. 1 we have the annual Open Meetings Resolution that we need to adopt this evening. The only change from last year is a clarification in paragraph 8 that this particular resolution does not apply to the EZC and the EZA. They need to do their own Open Meetings Resolutions this month. That is the only change from last year's resolution.

COMMISSIONER VIGIL: Move to approve.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN MONTOYA: Motion Commissioner Vigil, second Commissioner Sullivan. The only question that I had on this is that under the regular meetings, again it still has under number 1 that we're going to meet on the fourth Tuesday of each month, as opposed to the last.

COMMISSIONER CAMPOS: I think - isn't it statutory?

CHAIRMAN MONTOYA: Is it still second Tuesday of each month and the administrative meeting will be held on the fourth Tuesday of each month?

MR. ABEYTA: We're going to change that to the last.

CHAIRMAN MONTOYA: It will be the last. Okay.

COMMISSIONER VIGIL: Mr. Chairman, my motion would include that that change be done, unless statutorily prohibited. It isn't? Is that motion okay, Mr. Ross?

MR. ROSS: Mr. Chairman, Commissioner Vigil, that's correct. It's not statutory that you have a meeting on any particular day.

CHAIRMAN MONTOYA: So this is our - okay. So just so that we know, it is the second and the last Tuesday.

The motion to approve Resolution 2007-6 passed by unanimous [5-0] voice vote.

XII. D. 2. Resolution No. 2007-7. A Resolution Establishing Rules of Order for Santa Fe County Boards and Commissioners; Rescinding Resolution No. 2006-4

CHAIRMAN MONTOYA: Are there any questions?

COMMISSIONER CAMPOS: Move to approve.

CHAIRMAN MONTOYA: I'll second for discussion. Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chairman, I had brought up to Mr. Ross the issue of tabling and it wasn't included in this on how we handled tablings. The way we handle them now is currently included in Resolution 2001-14. And I think what Mr. Ross just passed out to you are amendments to this which include how we handling tablings and withdrawals. And it seems like it would be better to have it in this one document than to have it a separate document, a resolution and then a separate rules of order. Maybe, Mr. Ross you want to explain what those changes are.

MR. ROSS: Mr. Chairman, Commissioner Sullivan, we have an existing resolution, 2001-14 that provides guidelines for tablings and postponements of matters on the BCC agenda. It basically provides that if someone, either staff or an applicant, proposes that an item be taken off the Commission agenda fewer than two full business days prior to the meeting that they have to show good cause for that proposed tabling. So we have - what essentially I've done is move Resolution 2001-14 into this resolution and also you'll see in the title a proposal to rescind that earlier resolution so all the procedural rules are in one document.

CHAIRMAN MONTOYA: So we currently have these under that current resolution and this is how we're operating.

MR. ROSS: That's correct.

CHAIRMAN MONTOYA: And we're just putting that into this one. Okay.

MR. ROSS: We had a discussion a couple months ago about this. I wasn't even aware that this resolution was on the books until Commissioner Sullivan brought it to my attention.

CHAIRMAN MONTTOYA: And there's no change in any of the language?

MR. ROSS: Well, I did condense the language from 2001-14 somewhat. But all the essential points are in there. I am proposing a number of other changes in this year's rules of order that aren't real changes. They're structural changes from the document we've been operating under, but they don't change the rules at all. They're just my attempt to document the rules we're currently using. And I can go through those changes quickly if you'd like. Most of them may be self-evident.

If you take a look under Article I, Applicability, we've attempted there to – once again, just like with the Open Meetings Resolution, there's been some confusion over the past years which committees and other boards the rules of order, as well as the Open Meetings Resolution applies. So we've attempted in the first article to clarify who is governed by these rules and who is not.

The other major changes are in Articles III and IV. Under Article III, the prior resolution sort of clumsily handled how we prepare and establish agendas. So what we did there was set out what needs to be included on each agenda of a regular meeting, what we're requiring be included on every agenda or a land use meeting, what we require on the agenda when we enact an ordinance, and similarly with special and emergency meetings. Most of these things have just become a matter of course at the County but they weren't set out very well in the old rules of order.

Then the next big article, Article IV, discusses how an agenda item itself, not the agenda but an item within the agenda is processed. The different kinds of items. The requirements are different when you're in an administrative meeting or for example, this part of the meeting, we're processing administrative items so we generally don't have a public hearing during this part of the meeting. But the previous rules or order didn't differentiate between administrative meetings or meetings when we're legislating, passing ordinances, or when we're processing land use items. So what we've done in Article IV is set out those requirements separately. So the first set of items pertains to administrative meetings like this. We normally have a staff presentation and there's always the option for some public input and discussion. Very simple.

CHAIRMAN MONTTOYA: What page are you on? Article IV is page 3, right?

MR. ROSS: Page 4 at the bottom. Article V. I'm sorry. I've been calling it Article IV. I'm reading from the strike-out line item version so I don't forget anything, and I've given you a clean copy because it's quite an ugly document in the other form. So we're talking about Article V. So for example today, we've had a number of staff presentations. We haven't had much public input although that's been taken up in the past, and we've had discussion. For administrative items that's all we generally do.

For administrative/adjudicatory proceedings, which are land use hearings that will happen later on this evening, I have taken the material from last year's rules of order and clarified for purposes of those proceedings and added a couple of things. Normally we have a staff presentation and a staff report. There's a new item here, cross examination.

Cross examination is required by principles of due process but it's hardly ever utilized. One element that's included in there is that anyone seeking cross examination has to notify you, the chair, that that's desired, and if they don't notify you and exercise their right to do so, their right to do so - they've waived that right.

Then generally, there's an applicant's presentation, and once again, cross examination is a possibility there from say, folks who oppose an application. And then presentation from other parties and another opportunity for cross examination and public input. Those are the items that are constitutionally required to be included in a policy like this for an administrative/adjudicatory manner.

Then there's a third category of items. These are things we're used to doing here so it shouldn't come as any surprise, any of these items. Ordinances are legislation so they're governed by yet a third set of rules. What we do with ordinances and other matters that require public hearings is conduct a public hearing in this manner: We have a staff presentation. We have our public hearing at which time we receive public input.

Then the next subsection under documents, these are rules we've had on the books forever. There've been hardly any changes to that and I think aside from the changes that Commissioner Sullivan explained earlier, those are the primary changes from last year.

CHAIRMAN MONTOYA: Okay, any discussion? Do we have a motion?

COMMISSIONER SULLIVAN: Move for approval.

CHAIRMAN MONTOYA: There already was a motion?

COMMISSIONER SULLIVAN: We need to revise it. Because we didn't

have this -

CHAIRMAN MONTOYA: Because the motion didn't have the changes. So

could you -

COMMISSIONER CAMPOS: I amend my motion to include the document presented to us with all the changes therein.

CHAIRMAN MONTOYA: Okay, and I'll second that. Any discussion?

The motion to approve Resolution 2007-7 passed by unanimous [5-0] voice vote.

- XII. D. 3. Executive session**
 - a. Discussion of pending or threatened litigation**
 - c. Discussion of possible purchase, acquisition or disposal of real property**

MR. ROSS: Mr. Chairman, we need a brief closed executive session to discuss pending or threatened litigation and discussion of the purchase, acquisition or disposal of real property.

CHAIRMAN MONTOYA: Okay.

COMMISSIONER CAMPOS: So moved.
CHAIRMAN MONTOYA: Motion by Commissioner Campos.
COMMISSIONER ANAYA: Second.
CHAIRMAN MONTOYA: Second, Commissioner Anaya. Roll call please.

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

[The Commission recessed from 5:50 to 6:45.]

XIII. PUBLIC HEARINGS

A. Land Use Department

1. **Ordinance No. 2007-___. An Ordinance Governing Design, Construction, Operation, Replacement and Maintenance of Swimming Pools Within the Unincorporated Areas of Santa Fe County, Providing for Medical Exceptions, Amending the Santa Fe County Land Development Code, Ordinance No. 1996-10 (As Amended); Repealing Resolution No. 2006-86 (Second Public Hearing)**

MR. ROSS: Mr. Chairman, Dr. Wust and I will tag-team this item. This item has been before you once previously for a public hearing and during that public hearing we received some comments from the Commission. The Legal Department also received some comments from the Water Resources Department and we've incorporated those comments into a draft that's in your packet. You'll see that all the various comments and proposed changes to the language are attributed to the source, so WRD, for example, is a comment that arose, came out of the Water Resources Department.

Essentially what this ordinance does is codify the office policies that the Land Use Department has had for some years on governing swimming pools, construction of swimming pools in the county. The ordinance is my product. I drafted it up last fall based on the Land Use house policies as well as looking at similar ordinances in other western cities. Since the last public hearing you've received a set of comments which are attached, by one person, Linda Hermanson, who's been following this. Her comments are summarized in my cover memo and you'll see that what she has done is taken a draft of the ordinances and made comments directly on it. So those comments are in the back of your packet. With that I think I'll stand for any questions. This is the second public hearing. You can adopt the ordinance tonight or some time subsequent.

CHAIRMAN MONTOYA: Okay, any questions for Steve? Seeing none, this is a public hearing, if there is anyone who would like to speak on behalf or in opposition to this, would you please come forward. If you would identify yourself.

RON YATES: Thank you, Commissioners. My name is Ron Yates. I'm with [inaudible] Pools. I've been in business in the state of New Mexico for 25 years and been building pools in the state of New Mexico for 33 years. I'm also up here as a representative for the ASPS, Associated Pool and Spa Professionals. I have a number of concerns with the ordinance. It's full of erroneous information. Item A, paragraph 2 states that the pool would be emptied on an annual basis. That's not something that's commonly done. Typically pools get emptied on a seven-plus year basis and they only get partially emptied due to total dissolved solvents that build up into it, and it's just not something that's done. That's completely erroneous.

Then if you go to paragraph 3 -

CHAIRMAN MONTOYA: What section are you on, Ron? You said item A, but there's no item A.

MR. YATES: It's on Section A, item number 2. Section 4, I'm sorry, item A, number 2.

CHAIRMAN MONTOYA: Section 4, Letter A, item 2. Is that correct?

MR. YATES: Yes.

CHAIRMAN MONTOYA: Okay. Sorry. Go ahead, Ron.

MR. YATES: Then the next one would be on paragraph 3 is that there's an adequate supply to fill the swimming pool after the initial filling. If initially you were able to fill it I'm sure that we should be able to maintain it. We have lots of documentation that a normal swimming pool wouldn't use more than approximately four inches of water in a year. If we had four inches of rainfall, the rainfall that would be captured on the pool cover would be more than adequate to fill up the evaporation that would occur with that. I've had a number of customers over the years up here in Santa Fe that have free form pools that don't even have covers on them who have never had to add any supplemental water to them pools after the initial filling.

So we have supplied some documentation to you in the past in that regard. I don't know why that information hasn't been accepted.

I'm a little concerned too in regards to Section 5 that there would have to be a water storage device placed on there to capture and harvest any rainwater that would be coming on an automatic pool cover or getting on the deck, but then you wouldn't be allowed to potentially use that water to refill your pool which there wouldn't really be a need to do that because what you would pump off your pool cover you'd pump back into the pool and keep that cycle going. And then building a tank in there I believe would be an unnecessary expense on pool buyers and if we're not making other folks do that I don't understand why we would want to just single out pool people to do that, especially if we're not going to use it for any other purpose. Maybe the intent of that ordinance was to use it for irrigation purposes, but we've also shown that the same equivalent area, if one were to

have a lawn, would actually consume more water on an annual basis than the swimming pool. So there are a couple of pretty gross misconceptions in there, I believe.

CHAIRMAN MONTOYA: So just for my clarification, the water should be able to be used in the swimming pool?

MR. YATES: Yes, sir. Because it just gets filtered out through the filter. A lot of municipalities would use lake water or river water or something like that and we would use the rainwater. It's a little low on pH but that gets balanced out anyway with the normal use of the swimming pool.

CHAIRMAN MONTOYA: Okay.

MR. YATES: The other thing is we're really talking about a pretty small number of pools. I've never noticed more than about 25 pools since I started in the industry in 1973 in Santa Fe, the City of Santa Fe and the county combined. So if had the typical pool, 25,000 gallons of water in there, we're talking under a million gallons of water on an annual basis, which would be the equivalent of three acre-feet for folks to use. The benefits of course are that those pools could be used as a fire protection area because there's lots of areas in the county where there are no hydrants and no ready source of water. I had the misfortune of seeing a neighbor's house burn down where I live and the pool wasn't available at that time to use. Lots of times you see those fires over there and I think the ordinance that you all have in there would be a great thing for the Fire Department to potentially use that.

Then of course there's the medical benefits of having a pool, and the fun of owning it. You'd also see up to a 25 percent reduction in your insurance costs to those homeowners because of the water being available to actually fight a fire. So I'd ask you all to maybe give us an opportunity to meet with whomever you deem necessary to work on this.

CHAIRMAN MONTOYA: Okay. Thank you, Ron. Any questions for Ron? Thank you. Anyone else wish to speak?

LINDA HERMANSON: My name is Linda Hermanson. I'm with Hermanson Construction and we are a swimming pool contractor in Albuquerque. We've been in business 25 years. I will not repeat some of the points that Mr. Yates made. I've addressed that in the previous hearing also. I would like to say we have been working on this ordinance, actually since the ban in May. We've been speaking with the County Commission. We've spoken to Mr. Ross, Mr. Wust. We've been working on this. And what I would ask that is before a vote be taken on this there are some points that Mr. Yates has brought up and that I have submitted to Mr. Ross.

Some of the points we would like to be able to address further and discuss the idea of the misconception of the draining/refilling every year, the issue of being able to truck in water. That issue doesn't occur that often but occasionally we have an owner who says their water quality is such, perhaps it has too many metals for a pool, so the owner will opt to bring in trucked water to start with. We would like them to have that option so we would like the opportunity to address that further with Mr. Wust. This ordinance is a very,

very good starting point. We appreciate the effort that has been put in my staff and the communications. We respectfully request that you folks please give us any questions that you may have.

I know that sometimes pools are a little bit – there are some ideas that are misconceptions. We are not talking about a great deal of what here as Mr. Yates has pointed out and as I've told you in the past. We appreciate your consideration on this. Thank you.

CHAIRMAN MONTOYA: Thank you, Linda.

JILL GONZALES: Good evening, Mr. Chairman, Commissioners. My name is Jill Gonzales and thank you again for the opportunity to come before you to support this ordinance. The last time I was here I spoke as a former swim instructor, coach and lifeguard, outlining all the benefits of swimming – fitness, physical therapy, sport, lifesaving skills, etc. Now I come as a mom and a homeowner. I believe it's important to pass this ordinance, once you get things worked out with the builders, because number one, it would provide families the benefits of swimming. Mr. Yates says it's fun. As you know, we live in an area where there are no parks. There's nothing for kids to do except the great outdoors, which is great, but.

Number two, it would ensure maximum water conservation by requiring owners and builders to design, build, operate and maintain pools according to the strict and specific criteria of the ordinance. For example, the automatic pool covers, paper filters as opposed to sand filters, etc. And number three, it would allow homeowners such as myself to protect our home and our neighborhood in the event of a fire. Not passing this ordinance and continuing with the resolution to me has some negative consequences. Number one, it would feel like to me that you would essentially be taking away our legal right to use our allotted water for beneficial use. Number two, by saying that pools are not under the beneficial use criteria you would then be developing your own definition of what beneficial use is.

According to the New Mexico Legislative Council information bulletin dated July 6, 2006, it says beneficial use is not a defined term in the constitution or in the New Mexico statute, but has been generally characterized by court decisions to include irrigation, domestic, commercial and industrial use. Where I live I have the legal right to 276,000 gallons of water a year. To build a pool, it's 15,000 gallons. So I ask you to keep this under consideration and respectfully ask that you pass it. Thank you.

CHAIRMAN MONTOYA: Thank you, Jill. Any questions for Jill? Thank you. Anyone else wish to speak on this ordinance? Okay, questions from the Commission? Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chairman, are we acting on this today?

CHAIRMAN MONTOYA: We could, or we could put it off for another –

COMMISSIONER ANAYA: I'd like to see us put it off. That way we have a chance for the gentleman to visit with staff and really fine-tune it so that when it does come before us it's a done deal. He's got some legitimate concerns and I'd like to see those

looked at. Thank you, Mr. Chairman.

CHAIRMAN MONTROYA: Okay. Commissioner Sullivan.

COMMISSIONER SULLIVAN: I'd like to get Dr. Wust's comments on some of the points that were brought up, because as I recall reading this, I think that those points were brought up in a letter and I think the staff made their best attempt at incorporating those comments where they felt they were reasonable. Is there anything new here, Steve? Do you want to comment on some of the recommendations that were made?

DR. WUST: Mr. Chairman, Commissioner Sullivan, yes, I'd be glad to. Actually, that kind of discussion came way before this or a proposed ordinance and actually a lot of language in the proposed ordinance came out of those discussions, because a lot of this grew out of an earlier policy that Land Use and the Water Resources Department worked up to deal with swimming pools, just as a policy of approach. Then when we realized we needed an ordinance to codify that, a lot of that approach came out of this. And basically it comes down to this, that every pool permit ended up being a fight on the water budget, or a negotiation. It's how much water they really use. How much gets splashed out. How much gets evaporated. And the bottom line really is that most of the proposals by the pool folks require in essence, as you heard in the first hearing - I'll remind you - perfect maintenance.

The homeowner has to operate it exactly right to have all these things fall into place. And as we did here in the first hearing, and as I heard a number of times when I reviewed the water budget through the policy in the Land Use Code, most people don't maintain their pools that way. A number of people do drain them. A number of people, for repair, because they don't want them to freeze, whatever, they don't always cover them. They don't always use water properly. And what it ended up being is this long, protracted case-by-case basis discussion, negotiation, argument, about exactly how much water a pool may use.

So in consultation with Land Use, just as a practical matter, it seemed reasonable to say, to keep the permitting process simple, just assume it's one pool volume a year. That way it's easy to calculate. No one has to fight about operation, how people behave, how people might use their pool or might not, or what they do and what we want is actually to simplify the permitting process. That was the idea of this.

The issue on the trucked water actually came out of other permits that came before Land Use for other things, not pools. If people wanted to use trucked water for their water supply. And the issue with that is that the County demand, through the Land Use Code, that you demonstrate assured water supply for 100 years. And trucked water will not do that, first off, because we don't have an evaluation of the water source for the trucking company. We don't have any evaluation of the longevity of the company itself, and we don't have any kind of control over the contracting arrangements between the applicant and that company. In other words, and actually through practical experience of Land Use, they told me about cases where somebody would say, well, I'm going to use trucked water, and then a couple years later they don't want to pay the bill or whatever and the company goes

out of business and they just start using their well, and their well may not be able to have that supply.

So again, it was to simplify the process so we're not arguing and debating about is that company and good and again, the onus is on the County to try to do those evaluations. But to try to conform to the Land Use Code, which says the only way you can have an assured 100-year water supply is that you use your onsite source, which is what everybody else has to do for any other kind of permit.

On utilizing the water from the cover, that's basically kind of conforming to the roof catchment ordinance, which says if you can capture water, you should. And that's where that comes from. Why we don't allow it to be used in the pool, first off, again, is to get out of this argument about if that's what you need to make your water budget, how do we guarantee that you actually have captured it all and are using it. But the other more important issue was that in conversations I had with the New Mexico Environment Department, they don't allow runoff – they actually require runoff to go away from pools. It's a public health concern. And I realize these are private pools, but because of that consistency, they're worried that when water washes from the sides of the pool into a pool it may pick up, if somebody's been using pesticides or fertilizers on their lawn, that could get into the pool. It's more of a contamination issue than anything else for the Environment Department. And that mixed in with again, you're requiring folks to operate it exactly right in order to be able to say that's an assured water supply.

Again, to simplify the process, but we'd like to use it for catchment like we do for roofs, but that's not a water supply because it's not an assured water supply. Trucked water is not an assured water supply. And again, just to reiterate, one pool volume was to simplify the process. We know some people do that. There actually are people that I know, in my experience who drain their pool a couple times a year. They're probably not common, but probably neither are the folks that do everything exactly perfectly right. So just as a good compromise we thought one pool volume was a good approach because then the folks in Land Use don't have to get into an argument on water use and water budget. It's a nice, simplified permitting process. I hope that addressed all the things that came up. If I forgot anything let me know and I can address those also.

COMMISSIONER SULLIVAN: Mr. Chairman, I think that was most of the ones that I recall. The only place I see the filling of the pool once a year is in Section 7.B. I didn't see anything about it in Section 4.2.

CHAIRMAN MONTOYA: It's Section 4.A –

DR. WUST: Nine A, I believe is one of the places.

COMMISSIONER SULLIVAN: My 4.A.2 says the water budget restrictions, if any, on the property are adequate to permit filling of the proposed swimming pool annually. But I see it also in Section 7, it says the swimming pool shall only be filled when absolutely necessary and no more frequently than once a year.

DR. WUST: Commissioner Sullivan, 9.A.

COMMISSIONER SULLIVAN: And 9.A. Nine A says the swimming pool

can supply the water needed for initial filling, to keep the pool filled after initial filling and subsequent refillings. Okay. So you've just kind of used that as a guideline to determine water budgets, that it has to at least have the volume of the pool at least once a year.

DR. WUST: Mr. Chairman, Commissioner Sullivan, that's correct. In other words, to help the permit review it's just a nice, simple thing so they're not going through the hydrologist and arguing water budgets every single time.

COMMISSIONER SULLIVAN: And is there any limit on the size of pools in this ordinance?

DR. WUST: Mr. Chairman, Commissioner Sullivan, I believe there is. I think it's by the square footage of the surface area. I'm looking towards Steve but I believe that's in there somewhere.

COMMISSIONER SULLIVAN: I see in the definitions that a pool is defined as anything whose surface area is greater than 150 square feet.

DR. WUST: No upper limit.

COMMISSIONER SULLIVAN: But there's no upper limit. Is that something we want to encourage? Swimming pools of any size whatsoever?

DR. WUST: Mr. Chairman, Commissioner Sullivan, when they get large enough, Steve just told me they'll be community pools and then they'll fall under that auspices. But certainly if the Commission would like to have an upper limit, that's allowable. This square footage was mainly put in because currently in the Land Use Code swimming pools are not defined, so there's often a discussion about when does a spa become a swimming pool? If a koi pond has stairways into it does it then become a swimming pool? So by doing it by size, we just get out of that - again, simplifying things. We know when a pool is at least a pool and not a pond or a spa or something else.

COMMISSIONER SULLIVAN: I guess another way of looking at it too is by acre-foot. What we're saying is, when we look at new developments we're saying we expect at an absolute upper level a residence not to utilize more than a quarter acre-foot per year of water. And in multiple dwelling units and small units when you see that going down below .2 - are we encouraging here someone that has a 72-12-1 well, just using more and more of that water for pools of an unlimited size?

DR. WUST: Well, Mr. Chairman, Commissioner Sullivan, they would have to demonstrate that the water availability is there. This has been a long argument in the Land Use Code and how the County operates. Someone with a domestic permit gets three acre-feet, but the County requires under its Code that you only get how much water availability your well can have for 100 years. So the fact that the State Engineer issues a permit that says three acre-feet, it does not qualify then as three acre-feet of water supply for a County permit because we require the water availability demonstration.

COMMISSIONER SULLIVAN: But if I'm an individual that already has a home and I want to construct a pool, I don't have to do a hydrologic study to prove water availability, do I?

DR. WUST: We're checking. I don't think it does for this one.

COMMISSIONER SULLIVAN: So the argument would be to the permitting department, I've got a domestic well permit. I can use three acre-feet of water, 350,000 gallons times three or whatever it is, and it would seem to me when we're doing a pool ordinance we should be encouraging water conservation just as we do in our other ordinances and at a minimum, put an upper limit on the total consumption of the residents and the pool. If these pools are as efficient as the people say they are in terms of evaporation and so forth, they should be able to live well within the quarter acre-foot.

DR. WUST: Mr. Chairman, Commissioner Sullivan, staff has been looking at each other and I don't think we have any issue if the Commission wished to put an upper limit on a pool. I would just caution about language about adding the pool to the total use of the property and could not exceed a quarter acre-foot. And the reason I suggest that is we have - and this is from experience again - we have had pool permit applications in the past where the people have said, well, I'm just not going to put any water on my landscaping anymore in order to meet this water budget. Then of course we know for the future, if the house is sold or something we have no control over if somebody decides they really do want their landscaping.

Again, it got into this big discussion over what is the real water budget. So I think it's a more - again, to keep the permitting simplified, a more practical matter would be to just say there's an upper limit on the size of any pool. It probably would make for easier permitting than to try to again start recalculating water budgets - what does the house use? If they don't have a metered well, for example, we wouldn't even know what their current water situation is, water budget.

COMMISSIONER SULLIVAN: Or we could require metered wells and reports just like we do on any other -

DR. WUST: That would also be an alternative.

COMMISSIONER SULLIVAN: Subdivision. Those are some alternatives. I think it's a good idea to codify these various staff review opinions. I think that's a good idea and policies that we've been using. I think it's - we've got to think pretty hard about encouraging swimming pool construction in a desert. And I know there are benefits to it. Certainly I'm a supporter of municipal pools but with no upper limit and no control over water usage it doesn't seem like we're gaining anything here from a conservation standpoint, if we're just allowing getting our mechanism for pools to be any size they want to be and any water usage, they want to be up to three acre-feet.

So those are some of my concerns, Mr. Chairman.

CHAIRMAN MONTOYA: Do we want to hold off on this until some of those issues have been addressed.

COMMISSIONER SULLIVAN: I'd like some upper -

COMMISSIONER VIGIL: Mr. Chairman, I think there are some issues that have been brought up that are valid and probably need further discussion. However, I'm concerned that this ordinance does not turn into a regulatory measure. In particular, and I'll use the example of a recommendation that we place in the ordinance that if our

firefighters use the water from the swimming pool the County be responsible for reimbursing them. I don't think an ordinance is a place for that. I think the time and place for that kind of arrangement is by private agreement with a private landowner. I think if we start trying to regulate every kind of behavior that actually occurs under this we're going beyond the scope of what our intent is for this ordinance, and that is really to look at what is in the best interest here towards water conservation and balancing that towards the needs of the swimming pool industry.

So I want to make sure that we don't start regulating too much with this. But with that, I'm happy to consider tabling.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: If we do table and this comes back to us, what I'm concerned about is the administration. We don't have the staff probably to regulate this effectively. So you approve a pool, whatever goes on goes on and we can write the best ordinance in the world but it's meaningless because we don't have the resources to enforce it. I'd like a little bit of thinking about that.

COMMISSIONER ANAYA: Second.

COMMISSIONER CAMPOS: Is that a passive motion, affirmative second?

COMMISSIONER VIGIL: Who made the motion?

COMMISSIONER CAMPOS: He's saying you did?

COMMISSIONER VIGIL: I made a motion?

COMMISSIONER CAMPOS: He's accusing you of it.

COMMISSIONER VIGIL: You're accusing me? I will make this in the form of a motion. I move we table it until next meeting, that staff have the opportunity to respond to not only some of the questions that were brought up through a public hearing but some of the issues that were brought up through the process of the Commission. But I would like to bring this before the Board of County Commission at our next meeting, if it's possible. I believe that's an administrative meeting. Should there be any problem in that? I don't think there's going to be swimming pools brought up between now and then. At least in Santa Fe. Maybe. We have other snowstorms coming.

CHAIRMAN MONTOYA: Maybe we could fill them up with snow.

COMMISSIONER VIGIL: Snowstorms. There you go. Let's include this.

Can we do it in an administrative meeting is my question, Steve Ross?

MR. ROSS: Mr. Chairman, Commissioner Vigil, we can.

COMMISSIONER VIGIL: If I make it a certain time.

MR. ROSS: It would not be a public hearing.

COMMISSIONER VIGIL: Okay, so we would just take action?

MR. ROSS: Right.

COMMISSIONER VIGIL: My motion would include that we take action on this ordinance at our next regularly scheduled meeting, and that between now and then staff do meet with the public and perhaps try to address some of the issues that were

brought up by Commissioner Sullivan. That's my motion.

COMMISSIONER CAMPOS: Second.

CHAIRMAN MONTOYA: Okay, we have a motion and second.

The motion to table action on the swimming pool ordinance passed by unanimous [5-0] voice vote.

CHAIRMAN MONTOYA: So we will have it at our next administrative meeting and it will be for action only. Debate and action.

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: This weekend I was at a Leadership New Mexico conference in Las Cruces and they were talking about water. They said that 95 percent of the water used in New Mexico is agricultural and five percent is just residential/commercial. So really all we're talking about here is less than five percent of water. Thank you, Mr. Chairman.

- XIII. A. 2. CDRC Case # V 06-5610 Eloy Vigil Variance. Eloy and Deborah Vigil, Applicants, Jim Corbin, Agent, Request a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Divide 30 Acres into Two Lots for a Family Transfer in the Homestead Hydrological Zone. Also, This Request Includes a Variance of Article VII, Section 6.4.6 (Substitution of a Reconnaissance Geohydrology Report for a Complete Geohydrology Report). The Property is Located at 29 Verbina Road Near San Pedro Within Section 35, Township 12 North, Range 7 East (Commission District 3)**

JAN DANIELS (Review Specialist): Thank you, Mr. Chairman, Commissioners. Before I read the report, let's go to page 2 of the report, paragraph 2, line 2 and the second word, where it says report for reconnaissance, change "for" to "by" and that will clarify what I'll be reading. Thank you.

At the regularly scheduled meeting of November 16, 2006, the CDRC recommended approval of this request. The applicant is requesting that a family transfer land division be allowed to proceed without the preparation of the Code-required geohydrological report, and instead substitute a reconnaissance water availability assessment. Article VII, Section 6.4.6 of the Land Use Code allows for the substitution of a geo-hydro report by a reconnaissance water availability assessment if the density created by the division is less than two-fold. The minimum lot size if 40 acres with water conservation measures in the Homestead Zone. The smallest lot that can be created with a

reconnaissance geo-hydrology report is 20 acres.

There is currently one home and one septic system on the property. The property is served by an onsite well. The applicant states that a full geo-hydrology report and well test will cost somewhere between five and ten thousand dollars. They do not have the funds to support such an effort. Ms. Vigil is a teacher at St. Michael's High School and her husband is a store clerk. Their daughter owes \$150,000 in college loans that she much repay in the next few years so she does not have time to support this effort.

Based on their financial situation and the additional financial hardship that a full geo-hydrology report and well test would cost, they would like to have a reconnaissance report developed. The applicants have stated that they have the right to use up to three acre-feet per year from their existing well, and further state that if the lot were to be split into two parcels and each parcels were to be restricted to a quarter acre-foot per year, that would be a savings of 2.5 acre-feet that clearly supports the County's conservation of water efforts and the State Engineer's as well.

Staff's position is that this application is not in accordance with Article III, Section 10, Lot size requirements, of the Land Development Code, and Article VII, Section 6.4.6, Water reconnaissance availability assessment, which allows a substitution of a reconnaissance geo report for a complete geo-hydrology report. Staff recommends denial of the requested variances.

If the decision of the BCC is to recommend approval of the request, staff recommends the following conditions be imposed. Mr. Chairman, may I enter the conditions into the record?

[The conditions are as follows:]

1. Water use shall be restricted to 0.25 acre-feet per dwelling. Water restrictions shall be recorded in the Santa Fe County Clerks Office. A water meter shall be installed for both parcels. Annual water meter readings shall be submitted to the Santa Fe County Land Use Administrator by January 31st of each year.
2. The applicant shall provide staff written documentation from the well driller as to why the original well log was amended; so the amended well log can be used in the Reconnaissance Water Availability Assessment.
3. The Family Transfer Land Division must adhere to the criteria set forth in Article II, Section 2.3.1 of the Land Use Code and will be subject to administrative review and approval.
4. No further division of this land shall be permitted, and this will be noted on the plat.
5. A shared well agreement shall be recorded in the office of the County Clerk and an easement for the well shall be shown on the plat.

CHAIRMAN MONTROYA: Okay, questions for staff. Seeing none, if the applicant would come forward please.

[Duly sworn, Jim Corbin testified as follows:]

JIM CORBIN: Thank you, Mr. Chairman. With me today I have Debbie Vigil and Nicole Vigil. Nicole is a veterinarian, just graduated fairly recently from Colorado State University. Her parents would like to split their 30-acre lot into two 15-acre lots. We're in total accord with the staff's conditions and recommendations should you approve this. As somebody who has supervised the drilling of at least eight wells in that general area - it's in the Estancia Basin actually, and I'm quite familiar with the Estancia Basin.

There's a geo-hydro report that's about .8 mile to the west and just a little south of this location and above it. The water from that particular well, which is a little over 600 foot deep, the strike takes it down through this area. Both wells, the Vigil well and the well that the geo-hydro report is on are in the same kinds of formations. The Vigil well is about 1015 foot deep. The pump is down there at about 900 feet. There is a technical reason why I really don't want to do the geo-hydro report and the well test, is because the pump that's in there today won't push enough water for us to get a really half-way decent well test.

So we're going to have to take the pump out and take everything out of that well. That's going to cost a lot more money. And we may well damage the well when we do that. I just don't want to take that chance if we don't have to. There's plenty of water in that area. The 40-acre lot that's .8 mile away that had the geo-hydro report done on its well had about 1.4 acre-foot of water availability per lot. This one - and the recon report, you deduct from that however much your water availability by 30 percent. In other words you only get 70 percent of it. We get about .6 acre-foot per lot on the 15-acre lots if we were to split the lot.

Mr. Vigil is not here tonight. He's trying to find a way to get the $\frac{3}{4}$ of a mile from Highway 344 to their house busted open for him and his neighbors. Nicole is certainly available to talk to the \$150,000 in college loans and debt that she's got to pay off over the next few years. I just - what I'm going to end up with if I do a geo-hydro is a better water availability than I have with the recon report. It's not going to change the fact that there's enough water there to split those lots. That was originally a 40-acre lot. The ten acres just to the south of it was split off several years ago, long before they bought the 30 acres.

Most of the lots in that area are five to ten-acre lots. Not all of them, but most of them. So I suggested to the Vigils rather than pay me a lot of money and other folks a lot of money to do the geo-hydro and the well test that it would be better to come forward for the variances to you folks and explain what we've got and why we want to do that and hope that you'll go along with us on that. It will change the ability of somebody to use water in that area on that 30 acres from today three acre-foot per year, because it's an older permit and it's not - it hasn't been affected by the State Engineer's recent policies. It puts them under your policy which is a quarter acre-foot per lot, and they're perfectly happy to do that.

They don't use a lot of water. I wouldn't want you to think that they're using three acre-foot a year. They aren't. They're using less than a quarter acre-foot right now. And

Nicole doesn't have the money to put anything on that second lot for several years. At least I don't think, unless she marries wealth here in the next future. And oh, by the way, Commissioner Anaya, she is both a small animal and large animal vet. Commissioner Anaya asked that one when we were talking to him about this a few months ago. So yes. And she works in the Edgewood area. So I'm ready to stand for any questions you have or if you'd like to have Nicole discuss the hardship on her. She's really the client. She's really the one who's paying the bill.

CHAIRMAN MONTTOYA: Okay, any questions for Jim?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Just - I think Mr. Corbin understands that personal hardship is not a criterion, not a justification for the granting of a variance. You understand.

MR. CORBIN: Yes, we do.

COMMISSIONER CAMPOS: Okay. And you're asking for us to kind of waive a lot of the rules that we have out there that are important to the public.

MR. CORBIN: Well, I don't believe that's going to set any precedent because your Code rules essentially say that if you make a decision that is in line with what the applicant requests that that does not set a precedent because you have to evaluate each one individually in terms of the conditions and what's laid in front of you. We did look at that and think about that, but of course quality of life is an important issue. I would agree with you that money is not an overriding issue in terms of right and wrong the way you've laid it on the table. And they are certainly willing to go ahead with a well test and a geo-hydro. I just felt that we ought to bring it forward and ask you for the variances because they really don't have the money. It's just going to set her further and further in debt. And I think it's kind of terrible to go to college and get to a great vets' school and get the kind of degree that she's got -

COMMISSIONER CAMPOS: That's not an issue. I understand that Mr. Corbin. I think we should stay to the issues. What justifies -

MR. CORBIN: It's the technical part that justifies.

COMMISSIONER CAMPOS: I haven't heard anything really.

MR. CORBIN: The technical part that justifies it is that I'm not really sure we can get that pump out of that well at this point in time. If we do that, then they've got to drill another well. Another well there at 1000 feet is going to cost them \$40,000 to \$50,000.

COMMISSIONER CAMPOS: You've read the ordinance.

MR. CORBIN: Yes, I've read the ordinance.

COMMISSIONER CAMPOS: And seen the language.

MR. CORBIN: Yes, I have.

COMMISSIONER CAMPOS: Okay. Thank you.

CHAIRMAN MONTTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Corbin, two things, or a couple things. One, in a report called executive summary which I assume is prepared by you.

MR. CORBIN: Probably.

COMMISSIONER SULLIVAN: Exhibit F. You talk about the water quality. And I don't see any reports in here. You say the water quality has been checked for nitrates, nitrites, *E. coli*, coliform. Who did that checking?

MR. CORBIN: According to Mrs. Vigil, In-depth Water out of Santa Fe did that. It was done when they bought the property.

COMMISSIONER SULLIVAN: Was the well on the property when they bought the property?

MR. CORBIN: No, shortly thereafter. They drilled the well.

COMMISSIONER SULLIVAN: They drilled the well. So we don't have a copy of that. Was there any problems with arsenic at this level?

MR. CORBIN: None. Not down there. No problems with nitrates either. In the fractured rock in that area you can have problems with nitrates but there was none in this case.

COMMISSIONER SULLIVAN: You also said in your discussion with the CDRC regarding the .8 mile away 40-acre project, that that lot split was approved based on water availability and he said this location is in a better position than the previously approved split. And what makes this location better?

MR. CORBIN: It's further down that valley. The valley in that area is a bowl, 344 runs through basically the bottom of the bowl. And the water comes both from the north and the south into that bowl, and then goes east out into the Estancia Basin. They're down at basically the mouth of that, pretty close to it, where the water that comes out of that bowl - those mountains are really badly fractured and they're just kind of like a big sponge that moves the water both south into Entramosa and north and then east into this area. So it's a terrific location for water to come through that area.

We don't have a lot of wells other than right in that bowl. And that's part of the problem with the Homestead Zone. When Lee Wilson and Associated did the background for what we've got now in terms of the hydrologic code, there were a lot of areas in the county that didn't have very many wells. That was one of those areas then. Now we know at least in the area around the Vigils pretty well what those areas look like and what the water looks like there.

COMMISSIONER SULLIVAN: Then my last question was, apparently there was a question raised by the County hydrologist about an amended well log. I don't see either the original or the amended log in our packet, but my understanding is apparently there was a well log when the well was first drilled which indicated some amount of flow, and I don't know what that is, and then the well-driller's father changed it.

MR. CORBIN: That's correct. Let me take you through that. We have the amended well log here. It has been accepted by the State Engineer's Office. The other well

log is no longer in existence. It no longer applies.

COMMISSIONER SULLIVAN: Let me just stop you there. Does the State Engineer ever reject well logs?

MR. CORBIN: Yes. Yes. Not very often, but they certainly have on occasion. In this case here, Jimmy Caldwell, Wes Caldwell's son, drilled the well. Jimmy doesn't pay any attention to anything other than the major aquifer that he's going after. He went through several minor aquifers before he got down to where he really got a lot of flow. The reason I know that is because Wes was concerned about the well and he called me and had me come out and take a look at it when they were drilling it. I didn't get out there until they were down almost 1000 feet. All right? I never saw the well log that Wes turned in because that wasn't part of the reason I was there. I was just there to advise him on whether he should stop, if I thought he had enough water, which I did at that point.

The well log that was turned in that Wes signed didn't accurately reflect the strata that they went through that I saw on the cuttings on the ground that I took a picture of and that I noted in my notes. It clearly showed that they had gone through and been involved in water well before - they were doing most of it by air. So you get a pretty good idea with an air drilling rig each time you go through an aquifer. The static water level is at 650 feet.

COMMISSIONER SULLIVAN: So what was the flow estimate, the original flow estimate?

MR. CORBIN: Same as it is now. Fifteen gallons a minute.

COMMISSIONER SULLIVAN: And then what was the amended log's -

MR. CORBIN: The flow didn't change. What changed was the saturated thickness that you looked at, and that's what Karen was concerned about is, were we playing with it to come up with saturated thickness? She didn't say that but that's what she was concerned about. I'm not going to play with anything. What we wanted to be sure was we had as accurate a well log as we possibly could to bring forward, and that's what we did. Wes Caldwell is not somebody that amends anything just because somebody asks him to.

COMMISSIONER SULLIVAN: And how long was the well tested or developed?

MR. CORBIN: I actually don't know, but it's usually about a four to six-hour period, once it's in.

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

CHAIRMAN MONTROYA: Okay. Any other questions for the applicant? Does the Board want to hear any other testimony? Is there anything else that Nicole or Debbie would like to add?

NICOLE VIGIL: I feel a little uncomfortable now, hearing Commissioner Campos' opinion there, but I did want to thank you very much for hearing this subject. I wanted to let you know, Mr. Chairman and Commissioners that the reason that I'm up here and the reason that we're here is that we're asking for your help. Yes, I know money

is not a huge issue you want to hear about but it is a large issue for me. I went to school for lots of years to become a veterinarian. I enjoy and love what I do. I work two jobs, one in Santa Fe proper, one in Edgewood. I am asking for this because I would like to eventually live in the area around my Edgewood job. That's a job where I'm allowed to be a large and small animal veterinarian, use my abilities to their greatest capacity. So simply, what I'm asking for here is your help, the ability to live in this area eventually, to have this beautiful land transferred and to move on with my life finally, after all these years of studying and incurring debt. And to do that without incurring thousands and thousands of dollars more. I understand all your concerns and I thank you so much for at least considering this.

CHAIRMAN MONTOYA: Okay. Any questions? Commissioner Vigil.

COMMISSIONER VIGIL: Actually, you went ahead of me. This is for Mr. Corbin. Mr. Corbin, I know you have made a case for a variance based on the student loan and all of that, but I really wanted to delve more into the well that currently exists there, because I think there may be some terrain management issues there. It seems to me that that well is 1000 feet.

MR. CORBIN: A thousand fifteen, yes, ma'am.

COMMISSIONER VIGIL: And that several aquifers were bypassed before the thousand feet. Would you explain to me the problem with that?

MR. CORBIN: Sure. The particular person that was running the well drilling rig didn't feel that he was coming up with enough flow out of those other aquifers. They were any place from a seep to a gallon to two gallons a minute, and he was trying to get somewhere in the ten to twenty gallon a minute range. He didn't call for any help from anybody until he was done at about 800 feet. When I got out there the next day they were down close to 1000 feet. Wes has always had problems lifting water, in terms of his well rig. He's had that problem on Rowe Mesa and Glorieta Mesa where we've gone 1500, 2,000 feet. They don't know for sure they've got water. Okay? Because they can't get it up because of the distance they're lifting it. Particularly if you've got an old rig that doesn't really perform real well.

So he had to have enough water when he got there, so once I had him stop and looked at the cuttings, and the cuttings clearly showed that they had gone through water-bearing formations. Okay? He went and got a fuller horsepower pump and put it - and we cased and put it in the well, and we got 15 gallons a minute at the surface. That means there's a terrific friction and head-loss because you're pulling it almost 900 feet to the surface from where that pump is located. Probably where that pump is is closer to 30 to 40 gallons a minute. But you can't lift that with that particular pump. And it was done with PVC so the max size pump that we could put in that casing is a four horsepower pump. We couldn't put anything bigger in there.

COMMISSIONER VIGIL: And are there adjacent property owners who have done a geo-hydro?

MR. CORBIN: No, the only geo-hydro is the one I did .8 mile to the west

on a 40-acre split that the County approved.

COMMISSIONER VIGIL: And would your reconnaissance report, would that geo-hydro be highly referenced for –

MR. CORBIN: It's in the reconnaissance report.

COMMISSIONER VIGIL: Right. Okay. Thank you, Mr. Chairman. Thank you, Mr. Corbin.

MR. CORBIN: Thank you.

CHAIRMAN MONTOYA: Okay, if there are no other questions of the applicant, this is a public hearing. I would ask that people who would like to speak in opposition or in favor of this case to please come forward. Okay, seeing none, this public hearing is closed. What are the wishes of the Commission?

COMMISSIONER ANAYA: Mr. Chairman, from the testimony that I've heard today, from the applicant, I'll move to approve this case with the conditions.

CHAIRMAN MONTOYA: Okay, motion by Commissioner Anaya to approve with conditions. I'll second for discussion. Discussion?

COMMISSIONER VIGIL: I have some discussion. I'm going to solicit our County attorney's assistance here. This family lot split that's being requested based on the testimony may be granted a variance based on – refresh my recollection.

MR. ROSS: Mr. Chairman, Commissioner Vigil, a variance can only be granted on a showing of extraordinary hardship and it has to be related to come condition on the land. And Commissioner Campos is right. Financial hardship has been repeatedly – the courts have said that a showing of financial hardship doesn't get you a variance. So in this case you'd have to look to something physical as the basis for the granting of a variance. Looking at Mr. Corbin's report, the difficulties he's described with the well and the fact that it's not a straight hole in the ground, it's maybe twisted and the potential damage. You'd have to base a variance on something like that in a case like this, not on the financial hardship.

COMMISSIONER VIGIL: Okay. And the variance is a request for not having to do a geo-hydro.

MR. ROSS: Right.

COMMISSIONER VIGIL: And a reconnaissance report would be in lieu of.

MR. ROSS: Right.

COMMISSIONER VIGIL: And the reconnaissance report would reflect or actually does reflect the fact that this well is not a straight well, that in fact it's got some crooked, jagged edges, so to speak.

MR. ROSS: And the potential for damage, I suppose, is another issue related to the physical conditions that are existing on the land that cause extraordinary hardship. It has to be something with the land. The usual example that I give is a river or a cliff or something like that, that makes locating something on the property difficult or impossible.

COMMISSIONER VIGIL: But a river and a cliff can actually exist in the

cavity or within the cavity of this well. I mean, river, cliff, some kind of -

MR. ROSS: Well, something physical. In this case we're talking about a well and the difficulty of successfully recovering the existing pump and putting another pump in and doing a whole geo-hydro, then replacing the pump with the original pump and the potential for damage, given the fact that the well, the hole in the ground isn't a very good hole in the ground.

COMMISSIONER VIGIL: So therein lies the hardship.

MR. ROSS: If you find that that constitutes extraordinary hardship in these cases you could grant a variance in this particular case.

COMMISSIONER VIGIL: Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Further discussion?

The motion to approve CDRC Case #V 06-5610 passed by majority 4-1 voice vote, with Commissioner Campos casting the dissenting vote.

CHAIRMAN MONTOYA: The motion passes three to two.

COMMISSIONER CAMPOS: The motion was out of order. There were no findings that would support a variance.

CHAIRMAN MONTOYA: Oh, you voted in favor. It was 4-1. Thank you, Commissioner Sullivan.

MR. CORBIN: Thank you very much for your consideration and help.

CHAIRMAN MONTOYA: Thank you, Jim.

- XIII. A. 4. CDRC Case # S/V 06-5240 Freedance LLC, Clifs at Padre Springs Subdivision. Freedance LLC, (Bob Sherwin President) Applicant, Scott Hoeft, Agent, Request Preliminary and Final Development Plan and Plat Approval for a 24-Lot Residential Subdivision on 417 Acres. This Applicant Includes a Request for a Variance of Article V, Section 8.2.1 (c) Local Roads; to Allow a Local Sub Collector to Have Less than the Code Required Two 12' Driving Lanes With a Six (6) Inch Minimum Surface Thickness of Crushed Gravel Base Course. The Application Also Includes a Cul-de-sac in Excess of 500' in Length. The Property is Located Approximately 5-Miles Southwest of the Village of Pecos, South of I-25 on Glory Lane, Within Sections 1, 11 & 12, Township 15 North, Range 11 East (Commission District 4)**

MS. COBAU: Mr. Chairman, members of the Commission, on November 16, 2006, the CDRC met and acted on this case. The decision of the CDRC was to recommend preliminary and final development plan and plat approval for a 24-lot

residential subdivision on 417 acres. The proposed 24 lots vary in size from 4.99 acres to 37.36 acres, with an average lot size of 17 acres. The property is located within the Homestead Hydrologic Zone. Approximately 50 percent of the overall site, 260 acres, will not be eligible for development due to slope restrictions, and building sites will be restricted to the developable area indicated on the applicant's plans.

The site is accessed via La Joya Road to Glory Lane. La Joya Road passes underneath Interstate 25 through a series of 14-foot wide by 50-foot long concrete tunnels beneath the east and westbound lanes. These tunnels are approximately 1.5 miles from the site, and due to the existing tunnel widths the applicant has requested a variance from Article V, Section 8.2.1(c) of the Code. Article V, Section 8.2.1(c), which is Road Design for Local Roads, requires that a local subcollectors have two 12-foot driving lanes with a six-inch minimum surface thickness of crushed gravel base course.

The applicant has stated that the requirements outlined in Article V, Section 8.2.1(c) of the Code cannot be met, as this is a non-self inflicted condition which could not be rectified without reconstructing the tunnels and I-25. The applicant has met with representatives from both the New Mexico Department of Transportation and the Santa Fe County Fire Department regarding the tunnel constriction. These representatives have indicated that the DOT has no plans for tunnel reconstruction at this time, and the Santa Fe County Fire Department has told the applicant that their largest fire trucks currently traverse the tunnels without difficulty.

The applicant also requests approval of Article V, Section 8.2.1(d), Cul-de-sacs, of the Land Development Code to allow the cul-de-sac to exceed 500 feet in length. The proposed 3900-foot long cul-de-sac provides access to 17 of the proposed lots, and includes a 50-foot radius turnaround. The remainder of the lots will take direct access off Glory Lane. The applicant has prepared a Wildland Fire Mitigation Plan in an effort to address potential Fire Department concerns regarding the cul-de-sac length. The report outlined three strategies for fire mitigation including vegetation management, firescaping individual lots, and firescaping individual homes. These methods have been incorporated into the subdivision design.

Article V, Section 8.2.1(d) states that cul-de-sacs shall not be longer than 500 feet with a 50-foot radius turnaround. Section 8.2.1(d) further states that "in low density residential areas the length of cul-de-sacs may be adjusted by the County Development Review Committee with the changes consistent with public safety factors". The CDRC approved the cul-de-sac at their regular meeting of November 16, 2006.

The application has been reviewed for the following: existing conditions and adjacent property, roads and access, water, fire protection, liquid and solid waste, terrain management, archeology, signage and lighting, homeowners association documentation and affordable housing.

Staff's recommendation is as follows: The tunnels under I-25 have been in place on La Joya Road for over twenty-five years. La Joya Road is a County-maintained road serving approximately 23 Sections, which is 16,640 acres, and the tunnels are located within New Mexico Department of Transportation right-of-way over 1.5 miles from the Cliffs at Padre Springs proposed subdivision. The site access will meet the requirements of Article V, Section

8.2.1(c) with the exception of the 100 lineal feet constricted by the tunnels. The applicant has demonstrated that strict compliance with the requirements of the Code would result in extraordinary hardship because of unusual topography and other such non-self-inflicted conditions.

Because the applicant has demonstrated that strict compliance with the requirements of the Code would result in extraordinary hardship staff recommends approval of the variance to Article V, Section 8.2.1(c) as requested. The subdivision application is in accordance with Articles III, IV and VII of the Code for preliminary development plan and plat submittals. Staff recommends preliminary and final development plan and plat approval for a 24-lot subdivision on 407 acres subject to the following conditions. Mr. Chairman, may I enter the conditions into the record?

[The conditions are as follows:]

1. Approval of the variance request by the BCC.
2. Compliance with applicable review comments from the following:
 - a) State Engineer
 - b) State Environment Department
 - c) State Department of Transportation
 - d) County Hydrologist
 - i. All subsequent wells drilled to at least the same depth as the two onsite wells
 - ii. Well site water quality treatment required
 - e) County Fire Marshal
 - i. Cul-de-sac radius 60' minimum
 - ii. 10,000-gallon cistern and draft hydrant in place and tested prior to construction
 - iii. Sprinklers must be provided in each residence
 - iv. Include vegetation management plan requirements in restrictive covenants and cross referenced on plat
 - f) County Public Works
 - g) County Technical Review
 - h) State Historic Preservation Division
 - i. Provide horizontal dimensions and horizontal tie downs to clarify precise location of all archaeological sites on sheet L-2 and on the Plat.
 - ii. Revise building envelopes as necessary to remove from archaeological sites.
 - iii. Compliance with wildland interface must not affect arch sites. (refer to memo dated 9/12/06 for specifics)

Reviewing agency comments are summarized above, additional information/comments may be included on correspondence from the agency. The applicant must revise plans accordingly and resubmit to Land Use for

- review/approval by commenting reviewing agencies.
3. Plans for street and fire information signage for Padre Springs and Glory Road shall be submitted for review and approval prior to recording the Final Plat.
 4. A minimum 50' access and utility easement must be dedicated for Glory Road along the northerly boundary of the site.
 5. Operations and maintenance manual(s) for all facilities maintained by the Homeowner's Association, including water systems, fire suppression systems, trail systems, open space, roadways, etc. shall be submitted.
 6. Submit exterior lighting cut sheets.
 7. The applicant shall submit a cost estimate and financial surety for the completion of required improvements as approved by staff.
 8. A liquid waste permit must be obtained from the Environment Department for the proposed septic systems prior to issuance of building permits.
 9. Road name and rural addressing must be approved by the County prior to recording the final plat.
 10. Water use on this property will be restricted to 0.25-acre foot per year per lot. Water restrictive covenants must be recorded with the final plat. A water meter must be installed for each lot and annual readings must be submitted to the County Hydrologist by January 31st of each year. The applicant shall add this responsibility to the Director's duties listed in each Well Sharing Agreement.
 11. Well Sharing Agreements, Subdivision Restrictive Covenants, the Subdivision Disclosure Statement, and a Fire Affidavit must be recorded with the Final Plat.
 12. Wells shall be tested for water quality, water quality tests shall be submitted to the County Hydrologist and water treatment systems installed at the well head if water quality is outside acceptable standards. This shall be noted on the Plat.
 13. Guesthouses are considered accessory structures and must adhere to all pertinent Code requirements and ordinance currently in place for accessory structures. This notation must be placed in the Subdivision Restrictive Covenants and the Subdivision Disclosure Statement where guesthouses are mentioned.
 14. All archeological sites, drainage courses, trails, stormwater management facilities, and well sites must be placed within easements and recorded on the Final Plat
 15. No further division of this land will be allowed, this shall be noted on the plat and in the disclosure statement.
 16. The applicant shall cap the wells and connect to the County water system should it become available within 200 feet.
 17. Individual fire suppression sprinkler systems will be required in each dwelling, and fire suppression systems must be checked and approved by the Fire Marshal prior to issuance of building permits.
 18. Fire Impact fees of \$936.42 must be paid prior to recordation of the Final Plat.
 19. Rainwater harvesting must be provided on all structures per County Ordinance 2003-6 and 2004-3.

20. All redline comments must be addressed, and original redlines must be returned.

CHAIRMAN MONTOYA: Questions for staff?

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: You said 407. Is it 407 or 17?

MS. COBAU: 417.

COMMISSIONER ANAYA: Okay. Thank you.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Question for legal on the recommendation.

Staff concludes that the applicant has demonstrated affirmatively that there is extraordinary hardship, not because of the land itself but because of an access point. Is there any case law that supports that analysis?

MR. ROSS: Mr. Chairman, Commissioner Campos, not specifically that I know of but there's a ton of case law on variance law. Are you referring to the request for a variance for the width of the tunnel?

COMMISSIONER CAMPOS: Yes, sir.

MR. ROSS: The extraordinary hardship, obviously would be based on the cost of widening the tunnel.

COMMISSIONER CAMPOS: I understand that, but it's not part of the land itself.

MR. ROSS: It's not; it's an access point.

COMMISSIONER CAMPOS: It's an access point. I just don't see that as connected to the land.

MR. ROSS: And I haven't done any specific research on off-site issues on this, but like I say, there's a lot of case law on variances all over the country. I just haven't researched this particular issue. In general though, courts require that we grant a variance based on a condition existing on the land.

COMMISSIONER CAMPOS: Right. And that's what the statute expressly states.

MR. ROSS: Of course the cul-de-sac is another example that the applicant has demonstrated to the Land Use Department's satisfaction that the cul-de-sac, because of the topography existing on the land, meets the criteria. Obviously, you're the final judge of that.

COMMISSIONER CAMPOS: The primary question though is whether they have a hardship to even establish that subdivision because they have no access. Thank you.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Shelley, in the staff conditions, I see the Department of Transportation's recommendations included lights and gates on both sides of the Atchison Topeka & Santa Fe crossing. But I don't see those in the staff conditions.

Was there a reason for that?

MS. COBAU: Mr. Chairman, Commissioner Sullivan, that wasn't a requirement by the DOT; it was a recommendation. The need for signalization at a rail crossing is determined by trip generation, and the trip generation from this subdivision is right on the borderline where it really - I think that's why they made it a recommendation instead of a requirement, because the trip generation created by this subdivision doesn't really necessitate the need for a gated and signalized crossing. Signalized crossings, as you know as an engineer, are determined by approach speed, sight distance, and things of that nature. They did make the recommendation, however, they did not make it a requirement.

COMMISSIONER SULLIVAN: I guess I'm not clear. Typically the letters that I've seen from the DOT don't ever state requirements. They're always doing a review and making recommendations so I tend to feel that when they make a recommendation, they wouldn't have made it if they didn't feel it was necessary.

MS. COBAU: Mr. Chairman, Commissioner Sullivan, I did call the DOT on this and I did also talk to Shabih Rizvi, who is the County's traffic engineer, and the crossing is open where you can see the trains approaching from some distance and there are a number of residents up there living in that area that are currently making that crossing without it being signalized. The DOT, the gentleman I spoke to at the DOT told me that this was in fact a recommendation.

COMMISSIONER SULLIVAN: What is the number of units that would require the applicant to have a public water system?

MS. COBAU: The number of units that would require the applicant to have a public water system? Much greater than 24. I think it's something like 60 units.

COMMISSIONER SULLIVAN: I think it's 25.

MS. COBAU: I thought it was 60. I'm sorry. I have to look in my Code book.

COMMISSIONER SULLIVAN: Maybe we can get that answered during the meeting. That's all the questions I have right now. Thank you.

CHAIRMAN MONTOYA: Any other questions of staff? Okay, if not, if the applicant would please come forward.

[Duly sworn, Scott Hoeft testified as follows:]

SCOTT HOEFT: Scott Hoeft, Santa Fe Planning Group, 109 North St. Francis. I'd like to introduce our team. We have Meagan Hodges from Glorieta Geoscience. We also have Morey Walker, who's our traffic engineer and civil engineer on the project. Jim Freeman, who put together our fire mitigation plan, and I also have the owner of the project here, Denise Sherwin.

What I wanted to do is just make sure everyone has an understanding of the site and its location, and spend maybe about ten minutes on a brief presentation, and then I'll open it up for questions. The site is on the south side of I-25, so if you get off at the Glorieta exit and if you head on 50, opposite of the church, about two miles down the road, you hang a right, you go underneath the highway. There's two tunnels there that Commissioner

Campos has already asked about. And then the site, you come up on the railroad track and you take a left on Glory Lane. There's Glorieta, there's the site on the south side of I-25. It's right on the San Miguel County border, which is here. Does everyone have an understanding where the site is at? Makes sense?

I'm not going to reiterate Shelley's report. I just wanted to highlight a few things about this site. The site, as you're driving on I-25 you look up and you'll see the cliff. That's not the site. That's the highpoint of the property, towards the rear. That's roughly 8,000 feet. The property works down to a bench at roughly 7,400 feet and then it comes down again to about 7,200 feet. So the property and the area of development is relatively flat. Here's the property looking north and here's the cliff of the property. It works down to the bench and you can see the yellow sites which are designated on this plan as homesites.

The railroad is on the north side of the property, the access road is Glory Lane. The two tunnels that I referred to earlier are roughly - here's the entrance to the subdivision, roughly 1.5 miles back in this direction.

There were a few things I want to emphasize on the project. The large lots - we've got 417 acres as we mentioned. We've got our smallest lot of roughly five acres in size and our largest at roughly 37 acres in size and that's intentional. That's in keeping with the rural character of the area, so there's no small lots on this property. The second thing I'd like to emphasize is the open space. I know Shelley mentioned in her report that we've got 216 acres of undevelopable land, and I wanted to emphasize that's not the open space on the project. There's far more open space. If you've got roughly 417 acres and if you take out roughly 10 acres for a roadway, if you take out one acre for a developable area for a home, it leaves you roughly about 383 acres of this site that's going to be undeveloped. That's roughly 92 percent of the site that remains intact and is unchanged,

An important point to emphasize again in keeping with the rural character of the area and the other thing I'd like to emphasize is the owner of the property that I pointed out earlier, Denise, they have handled this property with dignity throughout. This has been a couple of years in the works and with each step along the way, we stepped back and discussed the issues with Santa Fe County staff and we went with the recommendations each time, even though one recommendation took over a year to solve, which was our fire mitigation strategy for the project, we were meeting with Buster Patty and Hank Blackwell a lot onsite, we took the time to do that and hired a consultant, Jim Freeman, to make sure that those issues were satisfied in the eyes of the Fire Department. So when you go through your report, some of the things you'll see are a positive review from Santa Fe County Fire and a positive review from the Department of Transportation. And that was important for us to proceed with the project.

And again, the owner at each step did not flinch. We proceeded with the recommendations from staff, and that also includes recommendations regarding water. I just wanted to highlight that the owners of the property are long-time Santa Fe residents. They are committed to this site. They plan on having a house of their own on the property

once it's completed. I think it's important to understand that this isn't just simply a subdivision that they're putting forward, that this is a property that they truly love and plan to live on. With that I stand for questions.

CHAIRMAN MONTOYA: Okay. Questions for the applicant?
Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Hoeft, the State Engineer issued a negative opinion on this on November 6, 2006, do you have a comment on that?

MR. HOEFT: I prefer to have Ms. Torres or our hydrologist, Meagan Hodges, address that question, Commissioner Sullivan.

COMMISSIONER SULLIVAN: Well, Ms. Torres is not the applicant; she works for Santa Fe County, so how about your hydrologist?

MR. HOEFT: We can definitely address that, Commissioner Sullivan.

[Duly sworn, Meagan Hodges testified as follows:]

MEAGAN HODGES: Did you have a specific question or did you want me to go over the report?

COMMISSIONER SULLIVAN: I'll repeat the question. My question was on November 6, 2006 the State Engineer issued a negative opinion on this project. Would you like to comment on that?

MS. HODGES: Okay. The November 6th memo from the State Engineer is basically a repeat of the September 8th memo, so if it's okay I will go by what that memo says, since it has more detail in it. It actually said their opinion didn't change, the November 6th, so I was going to go through and direct the points from the September memo since there's more detail on that one.

COMMISSIONER SULLIVAN: That's fine.

MS. HODGES: The first issue from that memo was the water demand and conservation. They have requested that the budget be more detailed. Essentially what the budget was the Santa Fe County standard for a single-family home lot, which is a quarter of an acre-foot, plus the fire protection and the line losses at ten percent of the amount of water that's going to the lots for domestic use. So we had a total of .28 acre-feet per year and felt that was considered the County standard and doesn't need to be broken down into the exact domestic use for that.

That water budget has been accepted by the County Hydrologist.

COMMISSIONER SULLIVAN: Well, I guess my only point of confusion here is that after the September 8th letter I guess you made a resubmittal and then they wrote two letters on November 6th reissuing a negative opinion. So I guess the .25 didn't convince them. There must have been some other issues. Were there some other issues? Was there a water quality issue there?

MS. HODGES: There is a water quality issue. One of the wells has elevated gross alpha and uranium and the developer as part of the disclosure statement has included that the water system will be installed prior to build-out of any of the lots so that the water that is delivered to the lots will meet the Santa Fe County standards for drinking water.

COMMISSIONER SULLIVAN: So does that mean - there's five shared wells, is that correct? Proposed?

MS. HODGES: Yes.

COMMISSIONER SULLIVAN: So does that mean that the wells, each one is going to have wellhead treatment?

MS. HODGES: If it is required. Two of the wells are drilled right now. One of those wells has water quality issues. The other one meets all of the water quality standards for the County.

COMMISSIONER SULLIVAN: So you have to develop some type of reverse osmosis then to meet that.

MS. HODGES: For one of the wells, yes.

COMMISSIONER SULLIVAN: And perhaps for others; you don't know yet.

MS. HODGES: The other three wells that are proposed will be drilled by the developer and will be tested prior to connecting into the water lines that will supply to the lots, so that if water treatment is required, it will be installed prior to delivering water to the lots.

COMMISSIONER SULLIVAN: And then this may be a question for either you or Mr. Walker. I see also that your placing a requirement - or the County is placing a requirement on each of the landowners to build a 10,000-gallon - in one place it says 11,000-gallon underground storage for fire protection. Is that correct?

MS. HODGES: Yes. That was part of the arrangement with the Fire Department so that because of the large lot size, the fire protection is provided at each lot as opposed to having one large storage area. That way the fire protection will be closest to the actual home.

COMMISSIONER SULLIVAN: But it would seem that it might be a better idea just to do a storage tank. It wouldn't have to be anywhere near as large as 240,000 gallons or 10,000 gallons times 24 lots, to serve the community. Was that option looked at?

MR. HOEFT: Yes, it was, Commissioner Sullivan, and the option that we have on the table was actually preferred by the Fire Department. They prefer the proximity of having the draft hydrant at 10,000 gallons. I know you saw 11,000 and I can explain that in a second. To have the draft hydrant immediately adjacent to the home as opposed to a centralized system. And the reason why I said 11,000 is at one time we were proposing 11,000 with the 10,000 requirement plus an additional for the catchment. But after looking at the plan and the engineering of it and having discussions with Ms. Torres, we decided to separate it out - a 10,000-gallon tank that's dedicated to fire protection, pursuant to the request of Mr. Patty and Mr. Blackwell, and then have a 5,000-gallon tank to meet the County requirement of catchment. So we'll have two tanks by each residents.

COMMISSIONER SULLIVAN: So it would be more than 240,000 gallons, right?

MR. HOEFT: Yes.

COMMISSIONER SULLIVAN: That's all the questions I have right now, Mr. Chairman.

CHAIRMAN MONTOYA: Any other questions for the applicant? Okay, this is a public hearing, so if anyone would like to come and speak on behalf of or in opposition to this case, would you please come forward. And if you'll identify yourself and be sworn in please.

[Duly sworn, Ann Vanderland testified as follows:]

ANN VANDERLAND: Ann Vanderland. I'm a neighbor of this subdivision and I'm here in support of granting the developer a variance for the subdivision. Thus far they've been really great neighbors. They share in the cost of maintaining the roads, which helps offset the cost for everyone. We're able to not only afford it better but the quality of the road is better because there are more people contributing to the maintenance.

When I first built out there there was a Forest Service representative out there that had recommended some forest management because it's old growth forest and my observations of what the developer has been doing is that they've been managing the forest very well, doing some pruning and cleaning up what might be a fire hazard. I think all the work they've done out there is good and I'm recommending it. That's all I have to say. I'm in approval, or I'm in support.

CHAIRMAN MONTOYA: Any questions? Okay. Thank you. Anyone else, please come forward. Seeing none, this public hearing is closed. What are the wishes of the Board? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chairman, I really feel that there's a couple of issues here. Number one, the traffic as a constriction under the I-25 is a big issue. There's only occasional traffic there now. Nothing is going to be done with the railroad crossing, and we have lots of sight distance at St. Michaels where the train crosses and we get accidents every year there. We're going to be increasing the daily trips by 240 trips a day on this road, so I think this is not a minor variance and it's also not a topographic variance; it's one that can be mitigated. It just costs money to mitigate it, that's all.

This really is a classic case for a community water system for a number of reasons. Number one, water quality issues. Best to be controlled and monitored in a community water system. Number two, storage. A community water system could probably have half the storage that we're talking about here in all these individual homes. Just as - and from a County control and monitoring standpoint, we're now going to have to have the Fire Department monitor 24 draft hydrants on 24 underground tanks, built in rock formation, whereas we could have one overhead tank at a much lesser cost that we could easily monitor, control the water quality. This is really a classic case for a water system.

In fact it's very much like the community of Cundiyo. It's the same size, same topographic situation. Not exactly, but with mountainous areas. And I think it's a disservice to the County and to the residents to place all of those requirements on a purchaser when really what's needed here is a sensible community water system that would serve this area for years to

come. My feeling is that the application is – that the variance is a serious one and should not be granted, and in addition to tanks we're going to put sprinklers in, so the lot owner not only has to build tanks, he has to build a sprinkler system and then each one of those has to be dealt with individually.

I think it's a classic case for a community water system. In terms of water quality and public health and safety. That would be my suggestion, that the applicant look into that as an option and perhaps the County Commission could at the same time re-evaluate the underpass and see if there's some less expensive mitigating ways to deal with that. Perhaps signing, perhaps some other drainage or paving. I'd be willing to look at some issues dealing with the underpass but I'm really disappointed at this subdivision, 24 units of five wells where we could really have enough residents here to form a viable community system. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Could I have a motion? Commissioner Vigil.

COMMISSIONER VIGIL: Mr. Chairman, for our hydrologist, Karen. What is your response to that? Is a community water system viable, feasible or even desirable or possible?

KAREN TORRES (County Hydrologist): Mr. Chairman, Commissioner Vigil, The Land Use Code doesn't have a requirement for a community water system unless there has to be 100 parcels that were being subdivided for the Land Use Code to kick in. So that's my answer as far as the Land Use Code. Personally, I like community water systems and I do believe there is a need in this area. There are lots of folks that are having issues getting water, who have older wells in this area. New wells, they are possibly going to be drilling 800 to 1000-foot wells. So it's definitely a need in this part of the county.

COMMISSIONER VIGIL: Scott, what is your response to this potential recommendation?

MR. HOEFT: I liked her first answer better than her second answer. I guess my immediate reaction is I think the developer met the intent of the ordinance and he spent an awful lot of time, several years, getting this property keyed up to go. I think to send this back to us for other option – I'm not certain if this actually includes water rights as well, Commissioner Vigil, I believe there's going to be a lot more cost involved in this.

Also, we did explore the option of the tank, as Commissioner Sullivan has pointed out and that's something that they did not want. I'm not kidding you. We spent over a year with Buster Patty and Hank Blackwell going over the fire protection plan for this subdivision. There's a tendency for the large tank systems to fail, and then what do you do. So if you have 417 acres and you've got lots that are a great distance away from each other, the idea of a single tank servicing all 24 lots is an extremely hard proposition if you consider the topography.

So the draft hydrant system was the preferred option by the Fire Department, to have the unit, the property, right next to the house combined with a defensible space around the property, combined with proper building materials on the home, combined with a vegetation management plan. And that was the work of about a year to get them sold on that issue. So that's the one component of the community water system.

We also have worked at great length with Ms. Torres regarding the five-well strategy that we have. Water quality did surface on one of the wells and we're doing far more than just a reverse osmosis system on that. We are planning a commercial grade water quality system on that, and again, that was at the recommendation - as we proposed the reverse osmosis system. That was not accepted by the County department. So I guess what my point and what I'm saying is that it seems knee-jerk but a lot of time and effort has been put into these issues that we're discussing today and this isn't knee-jerk by any stance. Over three years have been spent mitigating this issue.

Going back to the railroad crossing, I think to compare with railroad crossing, where you can literally look down three miles and see the distance, compared to Cerrillos Road and St. Francis is an unfair comparison. And regarding the railroad crossing, I think the point that Commissioner Sullivan brought up first is that we should be required to do something. We have looked into that because we saw the same letter that you guys did and have explored that, and it's \$150,000 for a simple system, \$350,000 for an advanced system. And our response on that is that we would be more than willing to pay our fair share. As Shelley pointed out in her staff report, there's 16,000 acres in this area. We represent less than three percent of the area. So the condition right now is pretty safe, relatively, given the distance that you have to be able to take a look down the tracks. So I guess that's how we answer that question.

COMMISSIONER VIGIL: Okay. But you understand the reason for the recommendation is one of the phenomena we're experienced is so many straws being dug into the aquifer and if it's possible to consolidate that we're looking towards a remedy that really complements what the State Engineer's office is doing and what we're trying to do with water conservation and preservation of the land. So you do understand.

MR. HOEFT: I do, and I think if you see this site, and if you think of the topography, to try to do a system that is more of an urban system, as opposed to a huge property type of system, I'd say a water system that is much more decentralized, as we have designed it, is far more efficient, far more costly, and each step along the way we're willing to write on the plat that we're willing to meet the requirements of Ms. Torres with water quality, with the well testing. That's going to be right on the plat for everyone to see. I think it's a pretty good way to handle this project as opposed to a method to try to centralize it.

COMMISSIONER VIGIL: Although this is next to Canoncito, is it not?

MR. HOEFT: It's quite a ways.

COMMISSIONER VIGIL: It's quite a ways? It's off of Glorieta Pass?

MR. HOEFT: We get off at the Glorieta exit, and then you drive several miles down the road, and then you go over the highway, and then you're several miles back to the site.

COMMISSIONER VIGIL: Okay. Thank you, Mr. Chairman. Did we get a response of what the minimum requirement is for water systems, how many lots?

MS. COBAU: Mr. Chairman, Commissioner Vigil, in Article V, there's a table, 5.1, that states that based on minimum net lot size, the minimum net lot size in this case is 17 acres, it would be over 99 lots before community water system requirement would come

into place.

COMMISSIONER VIGIL: Okay. Thank you.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I think that's any one lot that's under that and the minimum lot here is three acres, so you might want to take another look at that, but either way -

MR. HOEFT: It's five acres.

COMMISSIONER SULLIVAN: Oh, it says 4.99, excuse me, in the report. Just one final observation. I think it's fine to look a long ways down the railroad track and look for the train. The only problem is at night you can't see it. At night it comes fast, and that's when you get hit. In terms of the fire protection, when you have a draft hydrant on a house, when you've taken 10,000 gallons out of that tank, you're done. You're finished. You'll take that 10,000 gallons out in about six minutes. Maybe seven. If you haven't fought the fire, if it's not completely out and all the brush around the house isn't out within six to seven minutes, you're out of water.

When you have a community system, you have a water tank that may have 100,000 gallons, it may have 150,000, it may have whatever. And you've got more water to fight the fire. So anyway, I would make a motion, Mr. Chairman, a component motion. One would be to approve the subdivision and deny the variance.

CHAIRMAN MONTOYA: For preliminary and final development plan and plat?

COMMISSIONER SULLIVAN: Preliminary and final plat approval with denial of the variance requested, with an option that the variance would be approved along with the inclusion in the project of a community water system.

MR. HOEFT: I'm confused.

COMMISSIONER SULLIVAN: Mr. Chairman, I think we've finished the public hearing process now.

CHAIRMAN MONTOYA: Okay.

COMMISSIONER SULLIVAN: What I'm suggesting. Excuse me, Mr. Chairman. Go ahead.

CHAIRMAN MONTOYA: The option to approve the variance if a water system is implemented.

COMMISSIONER SULLIVAN: Yes. In other words, I'm saying that I don't know what the cost of enlarging the two underpasses under I-25 would be. That's what would be required to meet the Code. Let's say that would cost several hundred thousand dollars to do that, to meet the Code. I'm saying that my feeling is that that money would be better spent in initiating a community water system for these residents. So I would feel more at ease about this subdivision if it had a community water system in it rather than requiring compliance with the Code with regard to the underpass.

CHAIRMAN MONTOYA: Okay. So you'd be okay with approving the

variance if they put the water system in.

COMMISSIONER SULLIVAN: Exactly. Exactly. I'd rather put the money there than in the two underpasses.

CHAIRMAN MONTOYA: Okay. Did everyone understand the motion? So we have a motion on the floor. Motion dies for lack of a second.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: I'd just like to ask Mr. Hoeft a question. Is that okay with you?

CHAIRMAN MONTOYA: Sure.

COMMISSIONER CAMPOS: I know that we're in a different phase of the hearing. But it seems that clustering would make more sense instead of having lots and homes all over the place in this kind of a situation.

MR. HOEFT: If you consider the plan, if I may - in a way they are clustered along the best developable area on the property, Commissioner. As I mentioned in the earlier part of my presentation, you've got a ridge that traverses the property across the center, and that's where all of our developable areas are. That is relatively flat. There's no severe slopes in that area whatsoever.

COMMISSIONER CAMPOS: To me, it doesn't look like clustering. Maybe that's the best you think you can do on that piece of property.

MR. HOEFT: Well, I think you also have to consider the area, Commissioner Campos.

COMMISSIONER CAMPOS: I am considering the area.

MR. HOEFT: This is a rural area.

COMMISSIONER CAMPOS: I am understanding that and I'm asking the question anyway, as dumb as it may seem to you.

MR. HOEFT: I would argue, Commissioner, to be respectful of you and your question, that in an area as rural as this is, with huge tracts of land around us, to do a cluster development doesn't quite make sense. And I think you heard in a memo from the public who lives in the area, to have open space and to have lots of land surrounding her is what people would move out to this area for, not to be clustered into a small area. I think that defeats the whole point of the subdivision.

COMMISSIONER CAMPOS: I understand your marketing perspective but I respectfully disagree with your analysis as far as community value to the prospective buyers. Thank you.

CHAIRMAN MONTOYA: Do we have an alternative motion, Commissioner Anaya?

COMMISSIONER ANAYA: Mr. Chairman, a couple comments before I make a motion. The applicant, the first thing that he said was that he met with staff and they worked closely together, and it took years, not months, not days, but years. They also met with the Fire Department and they recommended that this applicant put in 24 tanks.

They're asking staff what they should do and staff is telling them what to do and they're doing it.

The railroad crossing. You have sight distance on both sides. Everybody knows that you need to stop at the railroad crossing. It would be nice to have a railroad crossing signal at every level crossing but we don't. We can't. Open space, 300 and some acres. Water quality, commercial grade systems. The Land Use Code does not require us to put in water system. It doesn't require us. If we want to change that we need to go back and look at that. They've met all the requirements. And the clustering development does not make sense in this area. It is a rural atmosphere, and if you put cluster development in you're going to have this chamber full of people over there saying what are you guys doing with our neighborhood?

With that, Mr. Chairman, I move for approval, with the testimony that I've heard.

CHAIRMAN MONTOYA: Is that with the staff recommendations and conditions?

COMMISSIONER ANAYA: Yes.

CHAIRMAN MONTOYA: Okay. We have a motion.

COMMISSIONER VIGIL: Second.

CHAIRMAN MONTOYA: We have a second. Discussion?

COMMISSIONER CAMPOS: Mr. Chairman, point of order. It's out of order because any time you have a variance you have to make specific findings as to why this particular variance meets ordinance criteria for variances. This doesn't have it. It's a jurisdictional question.

CHAIRMAN MONTOYA: Okay.

COMMISSIONER VIGIL: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Mr. Hoeft, and I guess I'm trying to find it in the packet, that you addressed that. Can you tell -

CHAIRMAN MONTOYA: It's under the recommendation on the staff, that the staff has entered. That's where the hardship is that some of us may or may not agree with the reason for the variance request.

COMMISSIONER SULLIVAN: Discussion.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: This is a serious safety issue. I think the staff is way off base in even suggesting that we put a one-lane tunnel as an access to a 24-unit subdivision, plus what other residences are out there. And I don't know how many people live on those 16,000 acres. The applicant at a minimum should be putting crossings on the railroad. If they can't find or negotiate an alternate access they need to enlarge and improve the safety of the existing one. They're doing none of that. This subdivision is poor-boyed right from day one. Everything that is as cheap as you can do it has been done on this subdivision. I don't see anything in our Code that says because you spent two or three years doing this that that makes it a more viable or more approvable subdivision. It

was a bad subdivision, apparently a year ago and they continued to work on it and in my judgment it's still a poor subdivision.

Now, the Code is minimum. The Code is the minimum. We have an obligation to the public to say these are the minimum things. They do apply to everyone, but there are other cases where we have to ensure that the public health and safety is met. This doesn't do it. This subdivision isn't even close. Thank you.

CHAIRMAN MONTOYA: Okay. Other comments.

COMMISSIONER CAMPOS: Just my objection on the jurisdictional - on the motion itself. I think it's out of order. It's inadequate.

COMMISSIONER VIGIL: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Can we read into the record the recommendation that because the applicant has demonstrated strict compliance with the requests of the Code would result in extraordinary hardship because of unusual topography and other such non-self-inflicted conditions, staff is recommending approval of the variance?

COMMISSIONER CAMPOS: Point out to the specific -

COMMISSIONER VIGIL: And that's what I'll ask staff, why that recommendation.

MS. COBAU: Mr. Chairman, Commissioner Vigil, the tunnels that traverse under Interstate 25, it's approximately a 100-foot length of tunnel. It's really a reinforced concrete box culvert. It's a large box culvert that's used by the residents in that area. The Code states that a variance can be considered for a non-self-inflicted condition. The applicant isn't proposing the placement of this tunnel. That is an existing condition out in the field that is - perhaps it's possible to increase the width of that tunnel that goes under a major interstate highway without impeding the performance of I-25 in the process, but I think it is a very difficult condition.

I spoke at great length with Buster Patty regarding the existence of those tunnels. The applicant met on numerous occasions, went out in the field with Buster Patty to assure that fire access could be provided. Our Code is in place to provide emergency access. We are assured here by the Fire Department that we have emergency access to this subdivision. To ask this applicant to remedy a situation that's been in place on that roadway for a period of I don't know how long. Twenty-five years? I don't know how long I-25 has been in place in that area. Longer than I've lived here and I've lived here for 12 years.

I believe it is an extraordinary hardship in this case and I stand by my report that it is a non-self-inflicted condition. We are assured by the Fire Department that there will be emergency access. There's been a detailed wildland fire mitigation strategy. The applicant is going to be required to clear a large area along the railroad tracks to assure there are no embers to create fires up in that area. They've gone to extenuating lengths to meet with staff regarding the water issues and regarding the access issues and I will stand by my recommendation.

COMMISSIONER VIGIL: Thank you, Shelley. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Regarding the concrete underpasses or whatever they're called, are they drainage as well?

MS. COBAU: Mr. Chairman, they're not. Where the tunnels go under I-25 it's a relatively flat area. There are other culverts to the east of the project that convey the major drainage under I-25. This is not a drainage crossing at this location.

CHAIRMAN MONTOYA: Okay. And with all of the snow, and I know you probably haven't been out there. Maybe the applicant has. Is it passable right now for emergency vehicles to get in there?

MR. HOEFT: Commissioner, I haven't been out there recently. A person in the audience who spoke earlier, she has been out there. She still lives out there.

MS. VANDERLAND: It is passable.

CHAIRMAN MONTOYA: It is passable?

MR. HOEFT: It is passable.

CHAIRMAN MONTOYA: Okay. We have a motion and a second.

The motion to approve CDRC Case #S/V 06-5240 passed by majority 3-2 voice vote with Commissioners Campos and Sullivan voting against.

- XIII. A. 5. LCDRC Case # V/DP 06-5540 PNM State Pen 12 Feeder. Public Service Company of New Mexico, Applicant, Laurie Moye, Agent, Request Development Plan Approval to Upgrade 5,800 Feet of Single-Phase Line From the Frontage Road Along Interstate 25 Northeast to Los Pinos Road in Order to Provide More Reliable Service to the Customers of La Cienega and Within the Santa Fe Area. This Request Also Includes a Variance of Article III, Section 2.3.6b (Height Restrictions for Dwelling or Residential Accessory Structures) of the Land Development Code to Allow Electric Line Poles to Exceed 24 Feet and a Variance of Article III, Section 8.3.8 of the Land Development Code to Allow the Placement of Overhead Utility Lines. The Property is Located along Interstate 25 Northeast in La Cienega, Within Section 33, Township 16 North, Range 8 East, (Commission District 3)**

MS. COBAU: Mr. Chairman, members of the Commission, on November 2, 2006 this case was heard by the La Cienega Development Review Committee. The decision of the LCDRC was to recommend denial of the variance request. Prior to the November 6th hearing the LCDRC required that PNM conduct a community meeting to discuss the project with area residents. This community meeting was conducted by the applicant on Saturday, October 28, 2006.

The applicant is requesting development plan approval to allow 5800 feet or replacement electrical lines, including replacement of 18 existing 35-foot high poles with new 39.5-foot high poles and the addition of five new 39.5-foot poles for a three-phase feeder line on the frontage road of I-25 northeast to Los Pinos Road. The applicant is requesting a variance of Article III, Section 2.3.6b of the Land Development Code to allow electric line poles to exceed 24 feet in height, and a variance of Ordinance 1998-15, which amended Article III, Section 8.3.8 of the Land Development Code to allow placement of overhead utility lines.

Ordinance 1998-15 amending Article III, Section 8 of the Land Development Code specifies that all new and replacement utilities shall be placed underground or subject to approval by the BCC who shall consider environmental and visual impacts. Article III, Section 2.3.6b of the Land Development Code states the height of any dwelling or residential accessory structure shall not exceed 24 feet.

The applicant is requesting a variance for the following reasons: The higher cost of installing electric lines underground and the need to cross the wetlands and uneven terrain in area. PNM strives to provide service to its customers at the lowest reasonable cost. If PNM is required to install this project underground, it will seek recovery from the PRC of the excess costs of installing the line underground from Santa Fe County residents.

Both overhead and underground electric systems provide a high degree of reliability of service. Restoring service on overhead lines is generally faster than on underground lines.

This project would rebuild the existing single-phase overhead line with poles 4.5 feet higher in the general location. Underground lines significantly impair the use of the land in the easement, and faulted cable locations in this area will take much more time to find and isolate, while the recommended rebuild of the existing overhead line will not be as restrictive. The underground line would be more likely to be in conflict with any further grading work associated with development. If PNM is required to build underground, the existing overhead line will stay in place.

Staff feels that the proposed development plan and variance requests may be considered based on the fact that the proposed development will not introduce new overhead utilities to this area. The proposal includes the placement of five additional poles within the 5800 feet where existing overhead electric is present. The addition of five poles should have a minimal visual impact over this distance.

If the decision of the BCC is to approve the request, staff recommends the following conditions. Mr. Chairman, may I enter the conditions into the record?

[The conditions are as follows:]

1. Detailed plans must be submitted for review by staff and applicable agencies which depict pole and/or trench locations for the entire length of the project.
2. Applicant shall contact the U.S. Army Corps of Engineers to determine if a Section 404 permit will be required.
3. Compliance with applicable review comments from the following:
 - (a) State Department of Transportation

- (b) Development Review Director
- (c) County Fire Marshal (Development Plan and Building Plans)
- (d) County Public Works (access permit)
- (e) County Technical Review Division
- (f) US Army Corps of Engineers (Section 404 Permit)

CHAIRMAN MONTOYA: Thank you. Questions for staff. Shelley, I just have one and that's the existing poles are there but the new ones would be larger than what's allowed in our Code?

MS. COBAU: That's correct. The poles that are existing actually exceed what's allowed in the Code. They have 35-foot high poles out there currently, and they're going to replace them with 39.5-foot poles. So it would be a four and a half-foot height increase over what's existing.

CHAIRMAN MONTOYA: Okay. All right. Any other questions? If not, would the applicant please come forward.

[Duly sworn, [Duly sworn, Laurie Moye testified as follows:]

LAURIE MOYE: My name is Laurie Moye. I'm an agent for PNM. Happy New Year, Commissioners. Let's see, where shall I begin? To repeat the staff report, 5800 feet of single phase line from the frontage road along I-25 to Los Pinos Road in the area of La Cienega. We're going to be replacing their poles and we're going to be adding five new wood poles because of the additional weight of the conductor and the span. All of the wood poles would be framed with eight-foot cross-arms and braces in order to meet the raptor safety standards because this is a raptor area.

I think just to reinforce the fact that if the variance is denied, the existing line would remain in place. If the variance is denied we will go to the PRC to seek rate recovery. What I'd like to do if I may, if you're interested, I've got a series of pictures and boards that we used at the public meeting. Shall I show them to you?

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: Yes, Mr. Chairman, I'd like to know exactly where this line is going. I can't see this map very well, so if you would just show me.

MS. MOYE: Can you see this well enough? I-25, there's a frontage road. There's an existing line. There's a house here. There's an existing line that runs all the way over here to Los Pinos and up to this connection.

COMMISSIONER ANAYA: Show me where that is. There. Where is the racetrack?

MS. MOYE: Way up here.

COMMISSIONER ANAYA: On which side of the road? That side?

MS. MOYE: This side of the road. Here is the racetrack.

COMMISSIONER ANAYA: Okay. Where is Los Pinos Road?

MS. MOYE: Right here, and this is the proposed line.

COMMISSIONER ANAYA: So County Road 54 -

MS. MOYE: Runs along here.

COMMISSIONER ANAYA: Okay, there we go. Decker's Corner?

MS. MOYE: I'm not familiar with Decker's Corner, but this is the racetrack, this is 54, this is the existing line. This is La Entrada.

COMMISSIONER ANAYA: I got you. Where's - there's that development right before -

MS. MOYE: Las Lagunitas? Right here.

COMMISSIONER ANAYA: Okay. Thank you. I know where it is. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Okay.

MS. MOYE: A little out of order but what I wanted to do was just describe the reason why we want to build the project. This existing line, the overhead wire currently, we built this a very long time ago. It's 110 percent of the normal rating and it's within 18 amps of exceeding its emergency capacity rating during peak load conditions. The voltage imbalance, which is the biggest problem out here, because we have all these sort of radial lines going everywhere, the voltage on balance is at seven percent, currently. A voltage imbalance of three percent less is required to avoid damage to three phase equipment, which is pumps and motors.

This area, 528 customer accounts experienced extended outages of one hour or more for an outage anywhere on this circuit. And due to the connected area power it must be restored very slowly, which is one small area at a time. If I could show you another map - I know that I've been before you many times and I've talked about substations and I've talked about feeders, and I've talked about how they're like fingers in spider webs out of a particular substation.

This is the substation, this is the location of the substation that serves this area. This brown is all the fingers from this substation that feed this area. This is just one feeder out of this substation. What we're trying to do is to split the load so if we have a single phase we've got all of this on one phase. When we bring in two more phases what we can do is split the load and unweight the load on that single phase. So that's our plan - to be able to bring in a single phase here and we can put part of this load on one phase, part of this load up here on another phase and this load on another phase. And that's the reason we want to upgrade it.

This was our overhead. This is an existing overhead line. We know that they don't want more overhead lines so we thought we would rebuild an existing line. It's got two wires on it now. We're going to add two more wires on it. Just to give you an example of what it would look like when it's completed, this is the existing alignment looking north, and again the existing alignment looking north again, and you notice, I believe Qwest is on the pole as well. And this is what the new cross-arm would look like, the raptor-safe cross-arms, and this is the configuration. This is what it would look like and this is what it would look like. This is not in the project area but it's a sample of the poles, the height of the poles and what they would look like.

When we went to the community, we worked with Mr. Dickens and we had a community meeting. One of the things they wanted to know was if you were going to build this underground what would it look like and where would it be? This is our underground route. This is our existing overhead line. It would have to stay in place and this would be the route of our underground line. It would do the same thing. It would split everything up. We would just be a little further north than our A point and our B point, but that is the underground design.

We were initially resistant to the idea of an underground line because this particular area has a lot of cultural resources in it. It is an original settlement area as many of the residents have testified, whose families have lived out there a very long time. What this is is this is a cultural resource map and it talks about where the wetlands are, talks about identified areas of cultural significance. When we build an overhead line - and I know you've heard me say this to you before - we can go out and move the pole. If we find something or we know that there's something there we can move the pole and avoid it. Because the poles don't have to be placed exactly there. They can slide.

When we're building an underground like we're opening up a trench and we would just simply have to trench through this area. So I brought this map just to show you that we did take a hard look at the cultural resources in this area. The span length, if you're interested, 240 feet between the span lengths. Our typical equipment to build this overhead line would be rubber-tired trucks. We have a very active environmental department at PNM and there would be environmental monitors on this site and they would be watching very carefully the construction out here. I know that - perhaps I'm jumping the gun a little bit but I did want to let you know that we did do an underground estimate. The overhead route cost is \$224,493 and the underground cost is \$649,040. And when we do that into a one-year recovery, residential 1-A and 1-B is \$1.15 a month. I know I've given you numbers like this when I was here for the Colinas 13 variance request that you denied. Small power, 2-A and 2-B is \$2.09. General power 3-B rate class is \$59.60. Large power is \$530 and water and sewer is \$58, and that would be per month.

This is of course going to be on top of the Colinas. You've already denied the Colinas and that will go forward to the PRC. This is a new one. It's a separate case. That will go forward to the PRC and it's likely PNM will bundle - we'll be seeing you the end of this month for a third case, and they will all be bundled together and - I won't be seeing you. I'll be seeing some of you at the EZA, for the third case. Can I answer any questions for you? I know last time you had no map.

CHAIRMAN MONTOYA: When you're through with your presentation we will entertain questions.

MS. MOYE: I think that that will pretty much wrap it up.

CHAIRMAN MONTOYA: Okay. Any questions for the applicant?

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: Laurie, how many public hearings did you

have with the community of La Cienega?

MS. MOYE: We had one.

COMMISSIONER ANAYA: And how many people showed up?

MS. MOYE: I think eight. I'm sorry, Carl is saying there were about 15 people.

COMMISSIONER ANAYA: Fifteen?

MS. MOYE: I had only eight people sign in, so I guess perhaps spouses didn't sign in that were there.

COMMISSIONER ANAYA: And you explained this whole thing to them and they are aware that the poles are going to be in the same location?

MS. MOYE: I believe so. Yes.

COMMISSIONER ANAYA: Okay. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Any other questions for the applicant?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Laurie, when you go to the PRC and request this extraordinary rate recovery, do you request the total \$600,000 and some, or do you request the difference between the \$600,000 and the \$200,000?

MS. MOYE: We request the difference.

COMMISSIONER SULLIVAN: Okay. Thank you. Other questions? Okay, this is a public hearing. We will now ask, anyone who would like to speak on behalf of or in opposition to this case if you would please come forward.

[Duly sworn, Carl Dickens testified as follows:]

CARL DICKENS: Carl Dickens, 27347-B West Frontage Road, La Cienega. Thank you very much for allowing me to appear before you. The La Cienega Valley Association Board met last Tuesday and reiterated its position of opposing the variance requested by PNM. We reiterate also our position that the replacement lines be placed underground and moved off narrow, private, inaccessible right-of-ways and onto public right-of-ways with access of public thoroughfares.

In the early 1940s when these lines were installed, when electricity, basically, first came to La Cienega, I'm sure the location of these lines made sense. Sixty years later they don't, they don't make sense and should be moved to public thoroughfares for ease of service and maintenance. One of the poles that they will be replacing is in the middle of a wetlands and will be placed by helicopter. Our understanding is it would be placed by helicopter. So to us, to move it to a public road really makes some sense.

The La Cienega Valley Association fully understands this is just the beginning of a sequence or a series of needed and necessary upgrades for the entire electrical system, the power system in our community. And I want to apologize. I don't have the pictures that they have. I had planned to take some pictures of where some of the poles have been placed as we look to the future. This is what we see as the beginning. We are already aware that there is going to be another request coming from PNM for an upgrade at

another location within the community. So we see this as sequential. This is the beginning of what we think there will be - obviously when we have poles and systems that are 60 years old they're going to need upgrades. Again, I apologize for not having pictures that show power poles that are six inches away from Los Pinos Road, power poles that are in the middle of people's front yards.

Up and down Paseo C de Baca, Camino Capilla Vieja and Los Pinos, they're certainly placed in areas they shouldn't be placed. That's another reason we feel it's appropriate to put these lines underground. I also want to point out that the newer communities, the areas around the racetrack area, Las Lagunitas, most of La Cieneguilla, have their lines underground and they have access to views that our community, the traditional historical community really doesn't have anymore. Not that they don't have them but they certainly are impacted by these poles. So we stand very strongly opposed to this request for a variance.

And we do understand that the existing poles would stay in place and that's something that we would address down the road and possibly look at someday to fund to have even those lines put under ground. But it is the firm conviction of the La Cienega Valley Association that we oppose the PNM variance. Thank you. I stand for questions.

CHAIRMAN MONTOYA: Okay. Any questions for Carl? Carl, I have one and you probably didn't see from back there where the line is proposed in terms of the new underground. Do you know if that's private?

MR. DICKENS: It's private. It's owned by - I live right beside it. It is owned by the Gonzales family. The Gonzales family owns about the first 40 acres, then there's Tom and Susan Simon who own the rest of the access that would go to their property. Literally, I live right there. I rent from the Simons.

CHAIRMAN MONTOYA: So this isn't accomplishing what your association wants.

MR. DICKENS: No. What we wanted to see done is moved it to a public - either Entrada or Los Pinos so it's going down a major road. We believe in terms of maintenance and service, that really makes more sense to us than to leave it down - really if you ever get a chance, come out and look where the line is now and Mr. Gonzales, who will follow me, will explain it. But it just isn't an appropriate place for a power line.

CHAIRMAN MONTOYA: Okay.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: A question for Ms. Moye. Ms. Laurie Moye. Ms. Moye, what do you think of Carl's proposal that this be put on a public roadway?

MS. MOYE: Well, I have two comments about it. He talks about the internal distribution system in a subdivision being underground. That's not what I'm talking about. I'm talking about a PNM system, a distribution system, which is very different, and I think it's appropriate to put electric lines underground for an internal residential area, but this is a substation tie. This is my point A. This is my point B. There

are no roads that go from my point A to my point B.

We moved to the closest thing. This is somewhat of a road here and then it disappears. So we moved to something that was a road, that was close to where our point A and our point B needed to be based on our studies of the voltage issues that we have out there.

COMMISSIONER CAMPOS: Let me ask you a question. Let's say the line fails that's underground. It's on a public road. Do you have to dig it up or access it somehow. Would that impede traffic flows?

MS. MOYE: Absolutely.

COMMISSIONER CAMPOS: How wide of an easement would you need in order not to have impedement of traffic.

MS. MOYE: If we're going to build an underground line we do not want to be in the public road right-of-way. We like to be at the edge of the public road right-of-way. If there isn't room for us to be at the edge of the public road right-of-way for whatever reason and we're in the public road right-of-way, we would have to close one lane. And if it's underground, we have to find where the issue is, underground. And I don't know. That's surveying equipment. That's bouncing it. That's digging it up. It just depends on what kind of outage it is.

COMMISSIONER CAMPOS: Okay. Thank you.

CHAIRMAN MONTOYA: Okay. Any other questions for Mr. Dickens.

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: Carl, you've seen where they want to put the line underground.

MR. DICKENS: Yes, I have.

COMMISSIONER ANAYA: You've seen it. And your association still would like it on a roadway?

MR. DICKENS: That's been our position. Yes, sir.

COMMISSIONER ANAYA: Even though - now this question might go back to Ms. Moye. The cost, if we do take it to a different route, then the cost goes up, correct?

MS. MOYE: Yes.

COMMISSIONER ANAYA: Was that considered from your association? We don't know that yet because we haven't picked a site or a location, or a route, actually.

MR. DICKENS: Yes, it was considered, Mr. Chairman and Commissioner Anaya. Yes, it was considered by the association. The cost that was quoted to us seemed to be reasonable, and the duration of one year is something that we felt was something that was acceptable.

COMMISSIONER ANAYA: But that was for this location, not what you're

MR. DICKENS: Right. We don't have an estimate on how much it would

cost, although we are aware there is a good possibility there will be a new proposed replacement line going along Entrada so we're thinking maybe that would be an opportunity to run the line there.

COMMISSIONER ANAYA: Okay. Thank you.

CHAIRMAN MONTOYA: Any other questions for Mr. Dickens?

COMMISSIONER ANAYA: Laurie, go ahead.

MS. MOYE: Thank you. I will be submitting another underground variance request and it is going to go down La Entrada from the frontage road to Paseo C de Baca. It's for a different area and a different issue. This is in addition to this issue. So it is not going to solve this issue. It's in addition to this issue. And it's like Mr. Dickens said, this area was developed a long time ago. The lines are overhead. The wires are small. People are plugging lots of things in and the area's growing, and we need to upgrade it.

COMMISSIONER VIGIL: Laurie, would you explain that it's a different issue?

MS. MOYE: Sure. I talked to Mr. Dickens prior to the hearing starting to tell him I was going to need his help again to contact the community because I have another project coming.

COMMISSIONER VIGIL: What is the difference between these projects?

[Previously sworn, Tom Dominguez testified as follows:]

TOM DOMINGUEZ: Mr. Chairman, Commissioners, I'll refer back to this map here and what Laurie was showing, talking about the spider webs or the radials that are out here and what we'd have to be accomplishing. What we've got is we've got this area that's broken into, this whole brown area. Right now it's currently on one phase. When we were here for the Las Colinas we explained a lot about this on the one-phase issue and the need for three-phase in order to break up and get reliable power.

Everything you see in the brown here is exactly that same issue. We've got it all on one phase so what we are attempting to do with this line is come through in the middle here and we're trying to get into this area to break up one section of this. What we'll be coming forward for in another month or so is going to be at La Entrada, which is just a little bit further than Camino San Jose. We're going to be coming in to request another three-phase line that's going to come in to accomplish the same thing. We want to bring the three-phase in to pick up all of this load down at the bottom and to bring that into a separate phase.

So we right now have this one that's going to be intercepting somewhere in the middle of this whole brown mess, if we could say that, and then we'll have one a little bit further south at La Entrada that's going to be coming in. So if we talked about today, tonight's issue and saying can we move it down to La Entrada, it's not going to accomplish - what we would have to do is we'd actually have to come from this point A down to La Entrada, all the way across, and then come all the way back to point B, and then also come back with this project that would make another connection down there. Two separate issues.

COMMISSIONER VIGIL: Thank you.

CHAIRMAN MONTROYA: Okay. Any other questions for Mr. Dickens? Okay, if not, if there's anyone else that would like to speak on behalf of or in opposition to this case, if you would please come forward and be sworn in.

[Duly sworn, J.J. Gonzales testified as follows:]

J.J. GONZALES: J.J. Gonzales, 54 Entrada La Cienega. Mr. Chairman, members of the Commission, if I may approach and pass out a letter from the Golondrinas Museum. [Exhibit 3] I think this letter basically states what our position is regarding the replacement of this line. We would like it, if they rebuild it, we would like that they put it underground, and also that they put it in the public right-of-way. The Land Use Code says when they rebuild the line that it be placed underground. That is what you've been going by for the last ten years.

Also the La Cienega Development Review Committee heard this case a couple of months ago and they also said that they should place it underground. The La Cienega Valley Association met last week and their consensus is that this be placed underground and also be put in a public right-of-way.

This section of line runs from the West Frontage Road to Los Pinos Road. There is no service road along any part of this line. It crosses two sections of private property. The museum owns about 90 percent of the route. This line has an easement but it doesn't have any service road along that easement. So in order to service this line they have to cross over private property to get to any parts of this line. Also this area, we have some wetlands that they have to go through and that's impossible to get to. They want to rebuild it and they said that in that area they've got to get a helicopter to replace some of those telephone poles. That's really extraordinary. There's agricultural land that they have to cross. There's the La Cienega Creek, which is maybe 25 feet deep and this power line crosses over that creek. There's also 40 or 50-foot tall cotton woods that would be over the top of this power line within maybe ten feet of where these power lines are going to be.

The other thing is in La Cienega we probably have the oldest system out there other than what's in the City of Santa Fe. La Cienega has existed out there for many, many years and we first got electricity out there I guess back in the forties. They say that they ran electricity out there in 1946. These poles and these lines are dated that old. They've never been replaced. There's been a few that have been replaced that really just broke down and they had a replacement. But the majority of the power lines out there and the power poles are 60 years old and I think, according to them, they have probably reached the end of their useful life. So what they're talking about here is replacing one section of power line from Los Pinos to the West Frontage Road which is one mile. The other six or seven miles are also just as old and their useful life is probably near to the end. And they'll also have to be replaced.

So what they're doing is asking you for one section, then again in the future there's going to be some other lines that have to be replaced, and then they have to come back again. The thing is that many of these lines are not in any - they're in people's backyards

or on property that is inaccessible. What we would like them to do is put these power lines, rebuild them. If they have to rebuild them, put them under ground and move them close to a public right-of-way where they can be serviced without having to cross into people's backyard or people's private property or places where they're really – today – some of those poles are inaccessible. Especially if you get weather like we've had the last couple of weeks, it's impossible to get to.

I think our consensus is these lines, something has to be done with them and they're starting to do something now. I think they realize there's got to be some replacement done but they really are reluctant to look at any alternatives. We've suggested several alternatives. One was Entrada La Cienega. We suggested that to them and they weren't responsive to that. Tonight they come up and say that is one of the areas that they're going to rebuild. Well, I live right on that road and I am at the end of the line that comes from Los Pinos Road. I live about 2,500 feet away from the interstate and this is one of the areas that they're going to come forward to put in power lines from the interstate over to Entrada La Cienega.

That feeds all of the southern part of La Cienega. Up on Los Pinos Road, that is the Upper La Cienega area and that line from Los Pinos Road goes all the way to the end of the valley which is at the Gallegos Ranch. And that's probably five or six miles of power lines. I think that at some point all of these lines have to be replaced and what they're trying to do now is one section of a time, ask for variances. I think what they need to do is probably figure out one way they can maybe get an estimate and replace the entire electrical system out there because it is, other than the City of Santa Fe is the oldest system that exists I think in the southern part of Santa Fe County. I think with that, I'll finish. Thank you very much.

CHAIRMAN MONTOYA: Any questions for Mr. Gonzales? This kind of relates – and maybe I'll ask – actually I'll ask Ms. Moye regarding a comment that Mr. Gonzales made. Is this a rebuild?

MS. MOYE: This is a rebuild of an existing line.

CHAIRMAN MONTOYA: Because what our Code says is that any rebuild is to be placed underground?

MS. MOYE: I'd have to defer to staff.

MS. COBAU: Mr. Chairman, members of the Commission, the County Code does state that all new and replacement utilities shall be placed underground. We have the La Cienega and Cieneguilla – there's an ordinance which there's a copy of in your packet, and I'll just read Section 6.1.9 from that ordinance. "All new and replacement utility lines and fixtures within the planning area must be installed underground, or if the Land Use Administrator determines this is not feasible due to terrain or physical conditions, lines and fixtures shall be installed in such a manner as to mitigate the aesthetic impact on the rural character of the community and surrounding natural environment. Installation of all utilities shall meet all other requirements in this Code."

So I think that does allow for placement of overhead utility if it preserves the rural

character of the community and surrounding natural environment, and that's for the Commission's interpretation in this case I believe.

CHAIRMAN MONTOYA: So that's from the LCDRC?

MS. COBAU: That's from the LCDRC ordinance. And Mr. Chairman, there is a copy of this page, I think it's Exhibit F.

CHAIRMAN MONTOYA: Thank you. Any questions for Mr. Gonzales. Thank you. So anyone who would like to, please come forward. Anyone else? Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chairman, I think PNM is trying to upgrade the system and get the power to the La Cienega residents so that they don't have the power outages. I understand all the three-phase stuff and we only have a single phase there now and they want to split it up. It all makes sense. They want to take the shortest route to that location, which makes sense. But 20 years ago, 30 years ago, they could do that, but now we've got people out there that want to not see the power lines.

So my suggestion, Mr. Chairman, is for PNM to go back to the drawing board or sit down with the residents or the community association and see if they can come up with alternatives. It's not necessarily the easiest route anymore because people don't want to see the overhead lines. So with that, I'd like to make a motion to -

CHAIRMAN MONTOYA: Let me just close the public hearing. No one else came forward so the public hearing is closed. Do you have a final comment?

MS. MOYE: Yes, I do. I would like to just address this letter. Of course we just got it tonight, but what I would like to tell you is we did hear the comments from the public and at the LCDRC. We did go back to our engineers. We did come up with an alternative route. And unfortunately, the only way for me to come to you and say, deny it or put it underground - we'll get cost recovery is to go through this very painful process. Painful for PNM and painful for the public. Now, maybe we could work on a better way to do that but I don't know what that is. And today, this is the process that we have.

But I don't think that we have paid lip service to the public. And to address Commissioner Anaya's comment, we did go back. Now, we did not sit down with the community. We went back to our engineers who work on these kinds of problems and we said the community wants an underground route. What is a viable underground route that solves the problem that we have. And unfortunately, there are not roads that go directly from point A to point B sliding along the frontage road or sliding along 54 or Los Pinos. That is the only road that goes almost halfway that we could find, to place it underground. I just wanted to make that comment to you.

The more we loop it around, the costs just - this cost to put it underground is what \$639,000? I don't remember what I quoted you, but it's significant compared to the overhead. The longer we go underground, two things happen. One, it gets more expensive, and two, it defeats the purpose. As Commissioner Anaya knows, you can only string out electricity for so long. It's like a garden hose and we look for shorter connections.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: I realize everything that you said. I know you went back to your people and you came up with another route, but I think we need to include the association, the people that live there, and tell them exactly what you told me. If the longer we extend the line, the more it's going to cost them. Maybe they're going to sit back and say, wait a minute. Maybe we don't want that. Maybe they would agree. Maybe the residents would stand up and support this alternative route. But do we know that? Have you gone and explained that to them. And have you sat down with the association and the members there and community, and said if we went this route, it will cost us this much, if we go this route, it will cost you this much. I don't know. Have you done that?

MS. MOYE: What we did was we worked with Mr. Dickens and I believe we mailed 600 notices out. And perhaps what we should do is attend one of their board meetings and maybe they have greater attendance. To mail to a community like this and to get 15 people to show up, it's disappointing. My sense was that people looked at the -

CHAIRMAN MONTOYA: So in response to Commissioner Anaya's question, no, that hasn't been done.

MS. MOYE: No, and if you want me to do that I'm happy to do that. And when we explain to them that it would be \$1.15 on their bill, they said so what? And when we explained that if they had a business out there it would go up more, and they didn't seem to care.

COMMISSIONER ANAYA: What I don't want is you coming to the community and saying this is the route, or this is the route, pick which one. And they're sitting back and going wait, wait. This is our community and you're telling us where the lines should go. We know you know where they should go because that probably is the least expensive and the quickest and fastest way. But we need a communication between yourself and the community so that it's not like that. If you establish relationships then you could probably do that, but if you're going to shove it down their throat, they're going to say wait a minute. That's why they're here today arguing.

So if you could just go back and do those simple things, hopefully you can come up with a - and usually you do.

MS. MOYE: Right.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Laurie, I have a question. Isn't the initial investment in underground utilities the most costly, so that when you do have to upgrade - say you went down the main entrance to La Cienega with an underground and you have to upgrade, the time that you upgrade would be less of an investment, or is it always the same investment? Because isn't the underground utilities one of the major costs the piping that you have to do? Doesn't that piping remain the same? No.

MS. MOYE: Do you want to answer this? I'll let Tom.

MR. DOMINGUEZ: Mr. Chairman, Commissioners, Commissioner Vigil, the initial cost of underground is a lot more expensive, number one due to the trenching.

The standards that we build to, unless this were actually what we call a feeder getaway that comes out of the substation, that is put in the conduit system, these would be a direct bury system so in the event that we needed to upgrade this in the future we would have to go through the trenching process, opening back up the ground, putting in new cable. What we would do now is design for a capacity to be able to service this area but in the event that in the future time we needed to go back and upgrade this it would be the same costs. It would be a brand new trench, brand new cable. It would just be a whole new job.

COMMISSIONER VIGIL: So I guess I'm having a visual that you're not confirming for me here. The underground cabling, isn't that encased, somehow? It's not at all?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Vigil, no it's not. It's a direct buried system. It's an insulated cable that just gets laid in an open trench and then covered.

COMMISSIONER VIGIL: Interesting.

MR. DOMINGUEZ: The estimate that's here does not reflect any kind of conduit. You could put something in a conduit system that would add another probably \$3 or \$4 a foot to your estimate.

COMMISSIONER VIGIL: Thank you, Mr. Chairman. Thank you.

CHAIRMAN MONTOYA: Okay, what are the wishes of the Commission?
Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chairman, I'd like for them to go back and talk to the community and explain everything that we talked about. Explain the cost. Explain that if they do go down a major arterial that there's probably going to be traffic delays. Explain everything so that they get the whole - they can understand everything and that way they can make a decision, you all can make the decision together and come back to us. Thank you, Mr. Chairman. Move to table.

CHAIRMAN MONTOYA: Motion to table.

COMMISSIONER VIGIL: I'll second that.

CHAIRMAN MONTOYA: Okay, second.

The motion to table LCDRC Case #V/DP 06-5540 passed by unanimous [5-0] voice vote.

CHAIRMAN MONTOYA: So this will be tabled to our next land use meeting. Is that correct, Steve.

MR. ROSS: That's correct, Mr. Chairman.

MS. MOYE: When is that? When is the next land use meeting?

CHAIRMAN MONTOYA: February 9th? 13th? Thirteenth.

MS. MOYE: Thank you very much.

CHAIRMAN MONTOYA: Thank you.

- XIII. A. 6. EZ Case #V/S 03-4832 Valle Serena Subdivision Phase II. Zena Boylan, Applicant and Jim Siebert, Agent, Request Final Development Plan and Plat Approval of Phase II of the Valle Serena Residential Subdivision Consisting of the 14 Remaining Lots on 50.019-Acres and a Variance of Section 3.5 (Road Requirements and Standards) of the Extraterritorial Subdivision Regulations (ESR) to Allow a Cul-de-sac Exceeding 1,000 Feet in Length. The Property is Located Approximately One Mile East and Section 30, Township 16 North, Range 8 East, NMPM, Santa Fe County (5-Mile EZ, District 5) [Exhibit 4: Revised Staff Memo]**

VICENTE ARCHULETA (Review Specialist): Thank you, Mr. Chairman. Did everybody get a revised copy of the report? I put it in your box.

COMMISSIONER SULLIVAN: Tell us what the difference is.

MR. ARCHULETA: Thank you, Mr. Chairman. The reason I had to do a revised report was the one that was submitted into the packet was incorrect, so I had to amend the packet. Basically, all it is is the new one has a variance request in it; the other one did not. The other one was what had gone to EZC and been approved previously. It starts in the middle of page 2, where the variance information is. That was added.

CHAIRMAN MONTOYA: So all the rest of it is the same other than the variance?

MR. ARCHULETA: Mr. Chairman, that's correct. I'll be going over that now. Shall I go ahead and start?

CHAIRMAN MONTOYA: Yes. Go ahead.

MR. ARCHULETA: Thank you, Mr. Chairman. On December 14, 2006 the EZC met and recommended approval for phase 2, subject to staff conditions. On November 12, 1997 the BCC granted master plan approval for a 20-lot subdivision on 50 acres. On January 12, 1999, the BCC granted final plat/development plan approval for phase 1 consisting of six lots. The property is located south of Vista del Monte Road in the Basin Hydrologic Zone within the existing neighborhood zone of the Community College District.

The previous approval expired and on November 13, 2003, the EZC recommended preliminary plat approval for 20 lots and recommended final plat and development plan approval for phase 1, which consisted of the six lots. On January 13, 2004, the Board of County Commissioners granted preliminary plat approval for 20 lots and recommended

final plat and development plan approval for phase 1, subject to staff conditions.

On September 14, 2006, the EZC met and granted preliminary development plan and plat approval for phase 2 subject to staff conditions. The applicants now request final plat approval for the 14 remaining lots as phase 2. All infrastructure has been constructed for phase 1 of the subdivision, the crossing of the drainage, installation of all utilities, construction of the majority of the roadway and improvements to the off-site road have all occurred as part of the infrastructure for phase 1.

The improvements for phase 2 are relatively limited since the majority of the infrastructure was constructed for phase 1.

Variance: The applicant requests a variance of Section 3.5.2 of the Extraterritorial Subdivision Regulations to allow a cul-de-sac to exceed 1000 feet in length. Section 3.5.2f.2b states a cul-de-sac may be either gravel or asphalt and shall be no longer than 500 feet except as provided below. At the closed end there should be a turnaround having a radius of 50 feet of driving surface and a minimum right-of-way diameter of 120 feet.

Although Section 3.5.2.f.2b states in order to accommodate circumstances such as difficult terrain, large lots or cluster subdivisions with large open space tracts, the EZC may allow cul-de-sacs of up to 1000 feet in length as long as the average daily traffic or 300 vehicles is not exceeded and the County Fire Marshal approves a plan for fire protection and public safety factors.

The application was reviewed for the following: existing conditions, access, water, fire protection, liquid and solid waste, terrain management stormwater retention, landscaping, archeology, open space, signage and lighting, homeowners association.

Recommendation: The applicant is asking for a variance to allow a cul-de-sac exceeding 1000 feet in length. Section 3.5.2f.2b states a cul-de-sac may be either gravel or asphalt and shall be no longer than 500 feet. At the closed end there should be a turnaround having a radius of 50 feet of driving surface and a minimum right-of-way diameter of 120 feet. Therefore staff recommends denial of the variance.

The proposed preliminary plat/development plan is in accordance with the procedures and submittals set for in Sections 3. And 3.6 of the EZO. Staff recommends final plat and development plan approval, subject to the following conditions. May I enter those into the record?

[The conditions are as follows:]

1. Compliance with applicable review comments from the following:
 - a. State Engineer
 - b. State Environment Department
 - c. State Department of Transportation
 - d. Soil and Water District
 - e. Santa Fe County Water Company
 - f. County Hydrologist
 - g. County Development Review Director/Technical Review
 - h. County Fire Marshal

- i. County Public Works Department
2. Final Plat to include but not be limited to the following:
 - a. Compliance with plat checklist
 - b. Approval of rural address and street names
3. Final homeowner documents (covenants, by-laws, articles of incorporation, disclosure statement) subject to approval by staff and shall include but not be limited to the following:
 - a. Water restrictions shall be .25 acre-feet per lot
 - b. Water conservation measures shall include water storage from roof drainage
 - c. Maintenance of roads and drainage facilities
 - d. Maintenance of septic systems
4. Development plan shall include the following:
 - a. Signage plan
 - b. Detail for turn-around
 - c. Off-site road section shall have a minimum 22-foot roadway
 - d. Define limits of the 100-year floodplain and provide base flood elevations
5. Submit solid waste fee in accordance with subdivision regulations and submit fire review/inspection fees in accordance with Resolution 2003-47.
6. A liquid waste disposal plan to utilize a community sewer system must be utilized. This system will be subject to a NMED discharge permit. The permit must be obtained prior to final plat approval, or lot sizes shall not be less than one-acre.
7. Valle Serena shall participate with Browncastle Ranch, Sunterra and Thornburg Development in paving Vista del Monte Road. Valle Serena will be credited a pro rata share for Phase one road improvements.
8. Submit engineer's cost estimate and acceptable financial surety for completion of required improvements as approved by staff. Upon completion, submit certification by registered engineer that improvements have been completed in conformance with approved development plans.
9. A liquid waste permit must be obtained from the Environment Department for the proposed septic systems prior to issuance of building permit.
10. Applicant shall submit a letter of availability for fire protection from the County Utilities Department prior to plat recordation.
11. The applicant must address all minor redline comments by the County Subdivision Engineer as shown on the plat of survey and terrain management plan. These plans may be picked up from Vicente Archuleta, Development Review Specialist within the Land Use Department. These plans must be resubmitted with the Mylar prior to recordation.

CHAIRMAN MONTROYA: Questions for staff? Commissioner Sullivan.
COMMISSIONER SULLIVAN: If you're recommending denial of the

variance how could we move forward with the final plat approval?

MR. ARCHULETA: Mr. Chairman, Commissioner Sullivan, there could be other ways to address the cul-de-sac length. The actual subdivision was approved back in '97 and at that time this wasn't an issue, the cul-de-sac length wasn't an issue. But since they came back now they have to ask for the variance.

COMMISSIONER SULLIVAN: Okay, I understand I think now, but if -

MR. ARCHULETA: The rest of the subdivision complies.

COMMISSIONER SULLIVAN: But now we're talking about approval of a final plat so if the Commission were to agree with you and not approve the variance then this plat that they've proposed wouldn't be right. Is that correct?

MR. ARCHULETA: Mr. Chairman, Commissioner Sullivan, that's correct.

COMMISSIONER SULLIVAN: So it would seem that if we were to go along with staff recommendation on the variance probably we shouldn't go any further than preliminary. And once the preliminary were approved and they worked out a different configuration that staff agreed with then they would come back for final. Wouldn't that seem logical?

MR. ARCHULETA: Mr. Chairman, Commissioner Sullivan, I believe you're correct.

COMMISSIONER VIGIL: Any further questions, Commissioner Sullivan? Did you complete your presentation, Mr. Archuleta?

MR. ARCHULETA: Madame Chair, that's correct. We can hear from the applicant. Is the applicant here? You were hiding from me.

[Duly sworn, Jim Siebert testified as follows:]

JIM SIEBERT: My name is Jim Siebert. My address is 915 Mercer, Santa Fe. He described to you the particular situation of this subdivision. Zena, by the way was the first participant in the County water system and at that time she bought six taps and what you see in the yellow and the dot pattern is the phase 1 of the project, so actually the cul-de-sac, the variance was really granted as part of phase 1. It already exceeds 500 feet.

In terms of the infrastructure, it's pretty much all in. These two wings of the cul-de-sac would be added to what's already there now, so in terms of the improvements, the actual improvements are limited. It is served by the County water system and the reason that there's been a delay in proceeding forward to final plat is that she had to acquire water rights. She had to kind of search around for the right number of water rights and then she had to transfer those water rights and it's been several years to accomplish that. That's the way we've gotten here today.

In terms of the actual length of the cul-de-sac, we have talked to the Fire Marshal. The roadways are 24 feet in width. There are fire hydrants throughout it. It's served by the County water system on pressurized hydrants and the Fire Marshal feels that is sufficient and worthy of granting the variance. We are in agreement with all conditions as stated by staff and I'll answer any questions you may have.

COMMISSIONER VIGIL: Is there any questions for Mr. Siebert?

Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Siebert, the State Engineer's Office had a negative recommendation and said they couldn't find anything about the water rights. You say you've purchased 4.2 acre-feet of water rights and submitted an application to the County and I don't see that in the packet either. What did you submit to the County?

MR. SIEBERT: We've actually submitted the actual information for the transfer of water rights themselves. The idea is that these water rights would go to the Buckman water system.

COMMISSIONER SULLIVAN: And Karen, do we have those in hand? Are they transferable?

MS. TORRES: Madam Chair, Commissioner Sullivan, that application was filed February - I can't remember the day - 2006. It's not clear in the application exactly what development that is for, which is one of my jobs, to tie the developments that get approved to these transferred. This is not approved as of yet. It was protested. The protest was withdrawn and then the application will get remanded back to water rights and they will process it. So there's still a little bit more that needs to be done.

COMMISSIONER SULLIVAN: Okay. Thank you. Then back to Mr. Siebert again. In the first phase of this there was discussion - in fact the first phase was approved with a sewer system. Now the lots, I guess have been changed to go over an acre so that you can use septic tanks. Is that correct?

MR. SIEBERT: Correct. The first phase was modified as well to increase all the lots to a minimum of one-acre lot size.

COMMISSIONER SULLIVAN: And in the discussion at that time, on January 13, 2004, we talked about - well, actually you and Commissioner Campos, about what would be involved in sewerage the subdivision, which is close by, and Commissioner Campos said, what about the six that we approve tonight? Would they also tie to a community water system if you come in for the additional 14? And you said, "Well, no. If we increase the lot size to a minimum one-acre, then they would be on individual septic tanks. I guess we could double-plumb it in such a way that you would have two lines. You could simply cut one line off and abandon the septic tank and that would connect into a central sewer system, so that's a possibility. We can include that in the requirements to builders of the lot."

And Commissioner Campos said, "So would you agree to include that?" And you say, "Yes, we would accept that as a condition." Will they be constructed with dual structure or will they be constructed with these double-plumb options?

MR. SIEBERT: I assume they were. I wasn't responsible for the construction of the unit. I think the intent there was that at some point in time, when the state land would develop that there would be the possibility of connecting into the state land, but that hasn't proceeded forward.

COMMISSIONER SULLIVAN: How could we find out if that condition that you agreed to as the agent was in fact carried forward?

MR. SIEBERT: I would have to ask the builders of each of the individual lots.

COMMISSIONER SULLIVAN: Well, was it a condition on the plat, or was it a condition in their agreements?

MR. SIEBERT: Frankly, Commissioner Sullivan, I don't recall that that ended up as a condition of approval of the subdivision. I'd have to go back and check the record. It's almost ten years now.

COMMISSIONER SULLIVAN: Well, it was 2004.

MR. SIEBERT: I was thinking of the original approval.

COMMISSIONER SULLIVAN: So it's three years now. And then you further say, well, the approval was with conditions, so I assume it was. We have to look at the record. Then Mr. Campos asks another question: "Should Zena Boylan ever decide to proceed forward, and that's dependent on the availability of County water, which is obviously there, she would agree to have a community system or a system, or if a County system is available, to tie into that." So is she agreeing now to having a community sewer system?

MR. SIEBERT: Well, as I recall, the discussion was if such a system was available there was two options. One was there was a project immediately to the east that was owned by the Montoya family, originally [inaudible] and the idea is if that developed they would have a community water system with a sewer system; you could tie into that. The other option was if the state land developed, which would be the south of this particular parcel, that you could tie into that system. In this case, neither of those projects ever proceeded forward.

COMMISSIONER SULLIVAN: That doesn't seem to be what you said here. What you said was that she would agree to have a community system, or a system, or if a County system is available, to tie into that. I don't see anything about any other systems.

MR. SIEBERT: Well, I think with the County system, the idea was that - as I recall at the time and I was working with Mike Gomez who is Santa Fe Engineering Consultants, the idea was the County at some point may extend the sewer line which goes through the County business park and extend it up that drainage to this area in this particular subdivision.

COMMISSIONER SULLIVAN: But that wouldn't be a community system. That would be a County system.

MR. SIEBERT: I think that's what I meant, what I was referring to.

COMMISSIONER SULLIVAN: The County system hasn't gotten quite to this property I assume, yet, but it seems like in the approval of this project in January of 2004, the expectation based on your testimony was that there would be a community sewage treatment system in the subsequent phase, and that's how it got approved.

MR. SIEBERT: And once again, it was my understanding that we'd have two systems, either, one it would be a community sewer system. It would be private from

the development to the east. Or it would be a County sewer system from the development to the south. Neither of those have taken place.

COMMISSIONER SULLIVAN: Well, let me be a little bit clearer then. A little bit earlier than that, in response to a question I asked about having community sewer you said, "The understanding is on the subsequent lots that either there would be a community sewer system or they would connect to whatever sewer system might be available in the area." So it seems that we approved this master plan, this development plan - actually what we approved was we approved a final development plan for the six lots and a master plan for the balance, for the total 20 at that time. It seems to me that - and now of course you're coming back for the preliminary and final on the remainder. But it seems to me that it was very clear that the expectation was in that approval that the balance of the subdivision would be sewer. That's the testimony; I'm just reading it verbatim. And is it sewer now?

MR. SIEBERT: The first six lots are on individual septic systems.

COMMISSIONER SULLIVAN: And what's the proposal for these additional lots?

MR. SIEBERT: That they would be developed on individual septic systems as well.

COMMISSIONER SULLIVAN: So I think we knew that the first six lots would be, because that's what the indication was, and it was only six lots. But now we have 20 and I feel from your testimony, Mr. Siebert that that approval that was given in 2004 was based on the anticipation that the balance of the project would have a community sewer system.

MR. SIEBERT: Once again, it seems that it's impracticable to put a few units on a community sewer. I can understand if there was a sewer system in the area to connect to, but to put 14 units on a community sewer system, I'm not sure that would make sense.

COMMISSIONER SULLIVAN: Have you investigated how close the sewer might be and what it might cost to run to that? All of Longford Homes, which is hundreds of units, is right next door to you and is all on sewer.

MR. SIEBERT: As I recall, the Longford Homes is actually on the City water system and one of their requirements is they had to tie into the City sewer system. So we're talking about two distinct sewer systems. My guess is if you're not tied on the City water it's difficult to tie onto the City sewer.

COMMISSIONER SULLIVAN: My understanding is that they love to get people on the sewer system because that gives them extra return-flow credits. They built a lift station down there on Route 14 and it goes across the highway and right to the plant and that's exactly what it's for is for that future expansion of the Route 14, of which this is a part. Have you taken a look at that at all?

MR. SIEBERT: No, I have not.

COMMISSIONER SULLIVAN: Well, Madam Chair, my concern here is

that my anticipation all along on this subdivision or this second phase was that they would have a sewer system, either through an onsite community system or a through a connection to the brand new system that's already there on Route 14 with a brand new lift station that goes over the City of Santa Fe's treatment plant. And I thought that's what we were agreeing to when we agreed to this initial approval. So I have a concern that that's not what we're seeing today. That's all I have. Thank you.

MR. ARCHULETA: Madam Chair, can I address that?

COMMISSIONER VIGIL: Mr. Archuleta, please.

MR. ARCHULETA: Madam Chair, Commissioner Sullivan, on the issue of the City sewer, according to another applicant that's coming in for property in that general area, one of their conditions is that they check into connecting to the sewer line. And according to them, the City of Santa Fe is not allowing them to connect to that particular sewer line because that was designated strictly for Longford or Turquoise Trail Subdivision.

COMMISSIONER SULLIVAN: Madam Chair, just to respond to that, I have heard that, but I would like to see that in writing from the City because what I had heard was that they were requesting a cost-sharing, and there's a difference between a free connection and a cost sharing and the cost of that lift station and the force main and that it was in fact way over-designed so that it could accommodate future service out in the Route 14 area in terms of size of line and pumps, but no, they weren't going to let you just connect in because it was there. They were going to require that you have some cost-sharing that was commensurate with the size of your development.

So I appreciate that information. We always hear these rumors but until we actually see the decision from the City wastewater, Brian Romero is the wastewater manager there, it would be difficult to know exactly what was being said. Sometimes a developer's interpretation of what the City says to them is a little different from what the City is saying to the developer.

COMMISSIONER VIGIL: Are there any further questions?

COMMISSIONER ANAYA: Madam Chair, Jim, could you tell me – the variance for the cul-de-sac is over 500 feet and you're going 1000 feet plus the diameter is smaller. Is that what you're asking for?

MR. SIEBERT: Well, two things. The current roadway is over 500 feet, so we're already beyond the limit. What we've done is two things. You have pressurized hydrants that serve the entire subdivision and we've increased the right-of-way from a 50-foot right-of-way to a 60-foot right-of-way to address the requirements of the Fire Marshal.

COMMISSIONER ANAYA: So all the ones in the orange, that's your proposed phase.

MR. SIEBERT: Correct.

COMMISSIONER ANAYA: Where's the other phase?

MR. SIEBERT: The second and last phase – the first phase, the roadway is

in yellow and the lots are on the dotted pattern here.

COMMISSIONER ANAYA: And how many lots are those?

MR. SIEBERT: There's six.

COMMISSIONER ANAYA: Oh, six. And now you're asking for 14?

MR. SIEBERT: For 14 more, served off the same roadway.

COMMISSIONER ANAYA: Okay. Thank you.

COMMISSIONER VIGIL: Any further questions from any members? Okay, this is a public hearing. Is there anyone that would like to speak for or against this project? Seeing none, this public hearing is closed. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Jim, another question. Tell me again - I'm sorry I didn't quite understand it. Tell me again why the variance. It's late and I'm -

MR. SIEBERT: Well, really the reason for the variance is the Code has changed since we came in for the first time. Under the first application there wasn't a requirement for a variance, so we put in the road without the variance.

COMMISSIONER ANAYA: So, okay, you've already built this out.

MR. SIEBERT: Yes. The road's built out. It's completely constructed.

COMMISSIONER ANAYA: And prior to that, you didn't have to have a variance, but now that you've already built the road, you're coming in for the variance because the Code changed.

MR. SIEBERT: Right. We're in the second phase. And now it does require a variance whereas before it did not. I think that's correct. Vicente can verify that.

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

COMMISSIONER VIGIL: Any further questions of the applicant? Seeing none, what are the wishes of the membership?

COMMISSIONER ANAYA: Madam Chair.

COMMISSIONER VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: From the testimony that I've heard, I think we should move to approve this with the variance, because he's already built the road out. Everything was in place and I don't think it would be right to deny this because it was already in place before the Code came into effect. The cul-de-sac. I move for approval with conditions.

COMMISSIONER VIGIL: Motion. Is there a second?

CHAIRMAN MONTROYA: Second.

COMMISSIONER VIGIL: Motion and second to approve this case with conditions. Any further discussion? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Madam Chair, I would just reiterate that we have a project that doesn't conform to the overall plan that was approved in 2004 in a substantive way. And that we had representations when we approved that 20-unit plan that the balance would be sewer. And now we've had the rug yanked out from underneath us and not only is it not sewered there's a variance being requested. I would suggest that this

be tabled until the applicant investigates the sewer options that we were promised in 2004. Or in the alternative, that it be approved as a preliminary plan and that the sewer option be investigated as a part of the final development plan process. Thank you.

COMMISSIONER CAMPOS: Madam Chair, are you going to make a motion to table?

COMMISSIONER ANAYA: There's already –

COMMISSIONER CAMPOS: A motion to table overrides any pending motion.

COMMISSIONER SULLIVAN: All right. Move to table to the next land use meeting.

COMMISSIONER CAMPOS: So the applicant can explore the issue of connection to a sewer?

COMMISSIONER SULLIVAN: Correct.

COMMISSIONER CAMPOS: I'll second that. I think that's a critical issue.

COMMISSIONER VIGIL: Okay, motion to table and seconded on this case for the purposes of the applicant pursuing sewer extension and options with regard to that. Is that your motion?

COMMISSIONER SULLIVAN: That's the motion.

COMMISSIONER VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, point of order. We already had a motion and a second on the floor.

COMMISSIONER VIGIL: Actually, I do believe after looking at the rules that a motion to table can be brought subsequent to a motion before action is taken on it. Is that correct, Mr. Ross?

MR. ROSS: Madam Chair, a motion to table takes precedence over any other motion that's on the table.

COMMISSIONER VIGIL: Okay, so we need to act on the motion to table.

The motion to table EZ Case #V/S 03-4832 passed by majority 4-1 voice vote with Commissioner Anaya dissenting.

COMMISSIONER CAMPOS: Madam Chair, just direction to the applicant. I think we need something in writing – is that right? – from the City. A formal response to this inquiry as far as connectivity to the sewer line.

COMMISSIONER SULLIVAN: I think that's very important.

- XIII. A. 7. EZ Case #S 02-4494 Las Cordilleras Subdivision Phase III. Kaloko Land Corporation, (Lynn Fowler), Applicant, Jim Siebert, Agent, Request Final Development Plan and Plat Approval for Phase III of the Las Cordilleras Subdivision (Formerly Mountain Vista) Which, Will Consist of 5 Lots on 22.136 Acres. The Property is Located One-Half Mile North of Lluvia de Oro and West of Paseo de Aguila, Within Section 4, Township 17 North, Range 9 East, NMPM, Santa Fe County (2-Mile EZ, District 2**

MR. ARCHULETA: Thank you, Mr. Chairman. On December 14, 2006 the EZC met and recommended approval for final development plan and plat approval for phase 3 of the Las Cordilleras Subdivision, formerly known as Mountain Vista, subject to staff conditions. On February 10, 2004 the BCC granted approval for final development plan and plat approval for phase 2 of the Las Cordilleras Subdivision which consists of 18 lots on 71.15 acres, subject to staff conditions.

On May 13, 2003, the BCC granted final plat for phase 1 consisting of five lots, including the requested variances. The applicant is requesting final development plan and plat approval for phase 3 of the Las Cordilleras Subdivision which will consist of the remaining five lots on 71.15 acres. Lot sizes will range from 2.6 acres to 3.91 acres with an average lot size of approximately 3.01 acres.

The application was reviewed for the following: Access, water, fire protection, liquid and solid waste, terrain management, archeology, open space.

Recommendation: The proposed final development plan and plat is in accordance with the procedures and submittal requirements set forth in Sections 3.5 and 3.6 of the EZO. Staff recommends final development plan and plat approval for phase 3 of the Las Cordilleras Subdivision, formerly Mountain Vista, which will consist of the remaining five lots on 71.15 acres, subject to the following conditions. May I enter the conditions into the record.

CHAIRMAN MONTOYA: Yes.

MR. ARCHULETA: I would like to clarify one condition. Condition #7 can be eliminated. The sites have been mitigated by SHPO and I have a letter from Michelle Ensey that I'll hand out that states why. Thank you, Mr. Chairman.

[The conditions are as follows:]

1. All redline comments must be addressed and original redlines must be returned.
2. Road names and rural addressing must be approved the County prior to recording the plat.

3. The applicant will submit homeowners association bylaws, articles of incorporation, water covenants, disclosure statement, restrictive covenants, maintenance agreement, and shared well agreement subject to staff review and approval prior to recording the final plat.
4. The standard County water restrictions, final homeowners documents, disclosure statement and development plan must be recorded with the final plat.
5. The developer must pay the solid waste fee in accordance with subdivision regulations (\$32.89) per lot, prior to recording the final plat.
6. All lots are subject to the Santa Fe County fire and rescue impact fees. This must be clearly noted on the final plat.
7. The six archeological sites shall be placed within preservation easements in order to protect them from future disruption. The preservation easements shall be shown on the plat. [Deleted at report.]
8. Residential fire suppression sprinkler systems are required to be installed in all houses. This shall be noted on the plat.
9. A signage plan must be submitted for review and approval prior to final plat recordation.
10. Water use on this property will be restricted to .25 acre-foot per lot. Water restriction covenants must be recorded with the final plat. A water meter must be installed for each lot. Annual readings must be submitted to the County Hydrologist by January 31st of each year.
11. The applicant shall submit a financial guarantee, in the amount approved by the County, for all improvements including fire protection, road improvements, drainage improvements, retention ponding and landscaping/revegetation, prior to grading permit issuance. The financial guarantee for landscaping and revegetation will be kept until the plantings have taken, for a minimum of one year.
12. The applicant shall address solid waste removal and septic maintenance in covenants.
13. Compliance with applicable review comments from the following:
 - a. State Engineer's Office
 - b. State Environment Department
 - c. State Historic Preservation Office
 - d. Soil & Water District
 - e. Department of Transportation
 - f. County Hydrologist
 - g. County Development Review Director/Technical Review
 - h. County Fire Marshal
 - i. County Public Works
 - j. Santa Fe Public School District
14. The applicant shall pay a fire review fee in the amount of \$650 in accordance

- with Santa Fe County Resolution 2001-114 prior to recordation of the plat.
15. All lots shall be required to have individual onsite retention ponding if impervious surface area exceeds 14,000 square feet. This shall be noted on the plat.
 16. All utilities shall be underground. This shall be noted on the plat, covenants and disclosure statement.
 17. A final fire inspection is required for the subdivision. No permits for building construction will be issued until improvements for roads, drainage and fire protection have been completed as required by staff.
 18. The applicant shall delineate proposed trail easements as private trail easement on the plat, and roads shall be granted for public use.
 19. The maintenance plan will include maintenance of roadways, drainage structures and fire protection.
 20. No further division of this land will be allowed; this shall be noted on the plat and in the disclosure statement.
 21. The applicant shall cap the wells and connect to the County water system when it becomes available within 200 feet.

CHAIRMAN MONTOYA: Okay. Any questions for staff, for Vicente?
Okay, seeing none, if the applicant would come forward please.

MR. SIEBERT: My name's Jim Siebert. My address is 915 Mercer. I was previously sworn. This is the last, the third phase of the development. Basically, all the road and infrastructure is in place. We have a short loop road that completes this project. We're in agreement with all conditions as stated by staff and I'll answer any questions you may have.

CHAIRMAN MONTOYA: Okay, any questions for the applicant?
Commissioner Anaya? Commissioner Sullivan? You don't have any?

COMMISSIONER SULLIVAN: Mr. Siebert, I'm a little confused on this one. When this was first approved, it was approved as a 23-lot subdivision with phase 1 consisting of five lots. And now, is this five lots - so that's a total of 23 lots. Eighteen was phase 2, five were in phase 1. Now is this an additional phase, another five lots?

MR. SIEBERT: This was actually part of the original master plan, with five lots proposed. What we did is we consolidated - I think we originally had five phases. We ended up consolidating two of those phases.

COMMISSIONER SULLIVAN: Well, I'm just again reading from the minutes of 2003. Staff recommends approval for a 23-lot residential subdivision and final plat approval for phase 1 of this development, consisting of five lots. The decision of the EZC was to recommend approval for preliminary plat and development plan for a 23-lot residential subdivision on 84.16 acres. This is requesting final plat approval for phase 1 on five lots and a variance of Section 3.5.2.f.2 of the ESR, Extraterritorial Subdivision Regulations, to allow a cul-de-sac to exceed 500 feet in length.

I guess I had this same question at the time as to what we were approving back then because I said, "Now this phase is 18 units. Is there another phase to it?" Mr. Siebert: "No. This is it." Commissioner Sullivan: "Okay. The total. Okay. And did you investigate – you're going to have four wells serving four or five lots each?" "Correct. It will be a shared well system." And then I go on to ask about a community water system, which was not agreed to. So I don't see in the record where we have a development plan approval for 28 lots. I see it for 23 lots.

MR. SIEBERT: Commissioner, the first phase is five lots, the second phase was 13 lots, so that's 18.

COMMISSIONER SULLIVAN: Eighteen, according to what was approved here.

MR. SIEBERT: Well, the plat shows 13. And then we have another five lots in the last phase.

COMMISSIONER SULLIVAN: But I asked you on February 10, 2004, when we approved this 18-unit phase, I said this phase is 18 units. Is there another phase? And you said, no, this is it.

MR. SIEBERT: Then I was incorrect. I can't believe I'd say that, but if it's in the minutes, but the master plan said 23, we showed five phases. We consolidated some of those phases. We're coming in the last phase and the last phase makes the total lots 23 lots.

COMMISSIONER SULLIVAN: Okay, so the clarification is your second phase wasn't 18, it was only 13.

MR. SIEBERT: Correct.

COMMISSIONER SULLIVAN: Okay. So now you're coming in for the last five which would bring us up to 18.

MR. SIEBERT: Twenty-three.

COMMISSIONER SULLIVAN: And let me ask the staff again, on this subdivision which has lots that are just slightly over one acre, what's the number that's required for a community water system.

MR. SIEBERT: The minimum lot size has always been 2.5.

COMMISSIONER SULLIVAN: And every one of your lots is over 2.5.

MR. SIEBERT: Correct.

COMMISSIONER SULLIVAN: We'll just have them check that out. And refresh my memory also, this was a subdivision that initially was approved and you agreed to a wastewater system, then you changed your mind on that and you came back and the lots were changed and it was no longer a wastewater system.

MR. SIEBERT: Correct.

COMMISSIONER SULLIVAN: Because you were concerned that the subdivision next to you wasn't required to do a wastewater system. Is that right?

MR. SIEBERT: Commissioner Sullivan, you have an excellent memory. That's exactly what happened.

COMMISSIONER SULLIVAN: I thought it looked familiar. And these roads are only gravel. They're not paved? We have a lot of plowing snow this year with gravel roads.

MR. SIEBERT: Right. The first phase actually was paved. Paseo de Aguila is paved, that's been paved. And phase 2 is a gravel basecourse road - is that correct? Gravel basecourse in this phase as well.

COMMISSIONER SULLIVAN: And is that the minimum County requirement for this number of lots?

MR. SIEBERT: For this number of lots there is no requirement to pave the road.

COMMISSIONER SULLIVAN: There's no requirement to pave the road. That's another thing we need to fix. So for this number of lots, meaning 23.

MR. SIEBERT: Correct.

COMMISSIONER SULLIVAN: Shelley, or someone, do you want to verify that?

MS. COBAU: Mr. Chairman, Commissioner Sullivan, per the same table that we were referring to earlier, based on minimum net lot size for one to 2.5-acre lots, number of lots ranging from five to 24, a community system is required.

COMMISSIONER SULLIVAN: Is required. But he - five to 24 would be required, but he doesn't have any lots in the one to 2.5 category, right? All of your lots are over 2.5 acres, right?

MR. SIEBERT: Commissioner, that's correct.

MS. COBAU: For lots greater than 2.5 acres there's no requirement for a community water system.

COMMISSIONER SULLIVAN: That's what I thought. So between one and 2.5 acres we have a community water system, we have water rights, God's in his heaven, all's right with the world. The minute we go over 2.5 acres we have chaos.

COMMISSIONER VIGIL: Log cabins.

COMMISSIONER SULLIVAN: But I want to make a suggestion. We're doing a variance here, right?

MR. SIEBERT: No. There's no variance.

COMMISSIONER SULLIVAN: This is just for final plat?

MR. SIEBERT: Correct.

COMMISSIONER SULLIVAN: We have a lot of trouble with these roads. Now, will these be County roads or will these be maintained by the homeowners association?

MR. SIEBERT: No, they would be maintained by the homeowners association.

COMMISSIONER SULLIVAN: Okay. And they would do what they've done to us, call up and say, we don't have any equipment to snow plow our roads. Would you please come plow us out? So we ended up plowing hundreds of private roads, once the

Governor made his declaration of emergency. I would suggest you consider paving. I think that's all the questions I had, Mr. Chairman. Thank you.

CHAIRMAN MONTOYA: Okay. Commissioner Campos. Commissioner Vigil. Okay, I don't see anybody, but does anyone want to speak on behalf of or in opposition to this application? Okay, seeing none, this hearing is closed. What are the wishes of the Commission? Would you like to proceed with this? Again, staff is recommending approval with the conditions that are outlined, minus number 7, which has been accomplished.

COMMISSIONER VIGIL: So moved, Mr. Chairman, with conditions.

CHAIRMAN MONTOYA: Motion by Commissioner Vigil with conditions.

COMMISSIONER ANAYA: Second.


CHAIRMAN MONTOYA: Second by Commissioner Anaya. Further discussion?

The motion to approve EZ Case #S 02-4494 passed by unanimous [5-0] voice vote.

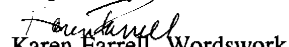
XIV. ADJOURNMENT

Chairman Montoya declared this meeting adjourned at approximately 10:45 p.m.

Approved by:

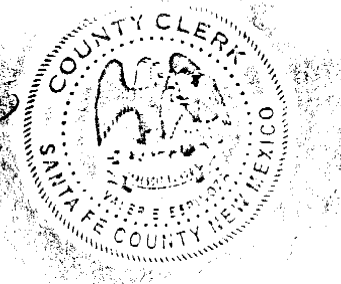

Board of County Commissioners
Harry Montoya, Chairman

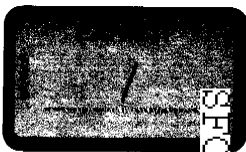
Respectfully submitted:


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

ATTEST TO:


VALERIE ESPINOZA
SANTA FE COUNTY CLERK





SHC
CLERK RECORDED 02/23/2007

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CITY OF RANCHO PALOS VERDES ET AL. v. ABRAMS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 03–1601. Argued January 19, 2005—Decided March 22, 2005

After petitioner City denied respondent Abrams permission to construct a radio tower on his property, he filed this action seeking, *inter alia*, injunctive relief under §332(c)(7)(B)(v) of the Communications Act of 1934, 47 U. S. C. §332(c)(7), as added by the Telecommunications Act of 1996 (TCA), and money damages under 42 U. S. C. §1983. Section 332(c)(7) imposes specific limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of wireless communications facilities, and provides, in §332(c)(7)(B)(v), that anyone “adversely affected by any final action . . . by [such] a . . . government . . . may . . . commence an action in any court of competent jurisdiction.” The District Court held that §332(c)(7)(B)(v) provided the exclusive remedy for the City’s actions and, accordingly, ordered the City to grant respondent’s application for a conditional-use permit, but refused respondent’s request for damages under §1983. The Ninth Circuit reversed on the latter point.

Held: An individual may not enforce §332(c)(7)’s limitations on local zoning authority through a §1983 action. The TCA—by providing a judicial remedy different from §1983 in §332(c)(7) itself—precluded resort to §1983. Pp. 5–13.

(a) Even after a plaintiff demonstrates that a federal statute creates an individually enforceable right in the class of beneficiaries to which he belongs, see *Gonzaga Univ. v. Doe*, 536 U. S. 273, 285, the defendant may rebut the presumption that the right is enforceable under §1983 by, *inter alia*, showing a contrary congressional intent from the statute’s creation of a “comprehensive remedial scheme that is inconsistent with individual enforcement under §1983,” *Blessing v. Freestone*, 520 U. S. 329, 341. The Court’s cases demonstrate that the

Syllabus

provision of an express, private means of redress in the statute itself is ordinarily an indication that Congress did not intend to leave open a remedy under §1983. Pp. 5–8.

(b) Congress could not have meant the judicial remedy expressly authorized by §332(c)(7) to co-exist with an alternative remedy available under §1983, since enforcement of the former through the latter would distort the scheme of expedited judicial review and limited remedies created by §332(c)(7)(B)(v). The TCA adds no remedies to those available under §1983, and limits relief in ways that §1983 does not. In contrast to a §1983 action, TCA judicial review must be sought within 30 days after the governmental entity has taken “final action,” and, once the action is filed, the court must “hear and decide” it “on an expedited basis.” §332(c)(7)(B)(v). Moreover, unlike §1983 remedies, TCA remedies perhaps do not include compensatory damages, and certainly do not include attorney’s fees and costs. The Court rejects Abrams’s arguments for borrowing §332(c)(7)(B)(v)’s 30-day limitations period, rather than applying the longer statute of limitations authorized under 42 U. S. C. §1988 or 28 U. S. C. §1658, in §1983 actions asserting §332(c)(7)(B) violations. Pp. 8–12.

(c) In concluding that Congress intended to permit plaintiffs to proceed under §1983, the Ninth Circuit misinterpreted the TCA’s so-called “saving clause,” which provides: “This Act . . . shall not be construed to . . . impair . . . Federal . . . law.” Construing §332(c)(7), as this Court does, to create rights that may be enforced only through the statute’s express remedy, does not “impair” §1983 because it leaves §1983’s pre-TCA operation entirely unaffected. Pp. 12–13.

354 F. 3d 1094, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O’CONNOR, KENNEDY, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined. BREYER, J., filed a concurring opinion, in which O’CONNOR, SOUTER, and GINSBURG, JJ., joined. STEVENS, J., filed an opinion concurring in the judgment.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 03–1601

CITY OF RANCHO PALOS VERDES, CALIFORNIA,
ET AL., PETITIONERS *v.* MARK J. ABRAMS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[March 22, 2005]

JUSTICE SCALIA delivered the opinion of the Court.

We decide in this case whether an individual may enforce the limitations on local zoning authority set forth in §332(c)(7) of the Communications Act of 1934, 47 U. S. C. §332(c)(7), through an action under Rev. Stat. §1979, 42 U. S. C. §1983.

I

Congress enacted the Telecommunications Act of 1996 (TCA), 110 Stat. 56, to promote competition and higher quality in American telecommunications services and to “encourage the rapid deployment of new telecommunications technologies.” *Ibid.* One of the means by which it sought to accomplish these goals was reduction of the impediments imposed by local governments upon the installation of facilities for wireless communications, such as antenna towers. To this end, the TCA amended the Communications Act of 1934, 48 Stat. 1064, to include §332(c)(7), which imposes specific limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of such facilities, 110 Stat. 151, codified at 47 U. S. C. §332(c)(7).

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Under this provision, local governments may not “unreasonably discriminate among providers of functionally equivalent services,” §332(c)(7)(B)(i)(I), take actions that “prohibit or have the effect of prohibiting the provision of personal wireless services,” §332(c)(7)(B)(i)(II), or limit the placement of wireless facilities “on the basis of the environmental effects of radio frequency emissions,” §332(c)(7)(B)(iv). They must act on requests for authorization to locate wireless facilities “within a reasonable period of time,” §332(c)(7)(B)(ii), and each decision denying such a request must “be in writing and supported by substantial evidence contained in a written record,” §332(c)(7)(B)(iii). Lastly, §332(c)(7)(B)(v), which is central to the present case, provides as follows:

“Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction.”

Respondent Mark Abrams owns a home in a low-density, residential neighborhood in the City of Rancho Palos Verdes, California (City). His property is located at a high elevation, near the peak of the Rancho Palos Verdes Peninsula. *Rancho Palos Verdes v. Abrams*, 101 Cal. App. 4th 367, 371, 124 Cal. Rptr. 2d 80, 82 (2002). The record reflects that the location is both scenic and, because of its high elevation, ideal for radio transmissions. *Id.*, at 371–372, 124 Cal. Rptr. 2d, at 82–83.

In 1989, respondent obtained a permit from the City to construct a 52.5-foot antenna on his property for amateur use.¹ He installed the antenna shortly thereafter, and in

¹The City’s approval specified a maximum height of 40 feet, but, because of an administrative error, the permit itself authorized respondent to construct a tower 12.5 feet taller. 354 F. 3d 1094, 1095 (CA9

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the years that followed placed several smaller, tripod antennas on the property without prior permission from the City. He used the antennas both for noncommercial purposes (to provide an amateur radio service and to relay signals from other amateur radio operators) and for commercial purposes (to provide customers two-way radio communications from portable and mobile transceivers, and to repeat the signals of customers so as to enable greater range of transmission). *Ibid.*

In 1998, respondent sought permission to construct a second antenna tower. In the course of investigating that application, the City learned that respondent was using his antennas to provide a commercial service, in violation of a City ordinance requiring a “conditional-use permit” from the City Planning Commission (Commission) for commercial antenna use. See Commission Resolution No. 2000–12 (“A Resolution of the Planning Commission of the City of Rancho Palos Verdes Denying With Prejudice Conditional Use Permit No. 207 for the Proposed Commercial Use of Existing Antennae on an Existing Antenna Support Structure, Located at 44 Oceanaire Drive in the *Del Cerro* Neighborhood”), App. to Pet. for Cert. 54a. On suit by the City, Los Angeles County Superior Court enjoined respondent from using the antennas for a commercial purpose. *Rancho Palos Verdes*, 101 Cal. App. 4th, at 373, 124 Cal. Rptr. 2d, at 84; App. to Pet. for Cert. 35a.

Two weeks later, in July of 1999, respondent applied to the Commission for the requisite conditional-use permit. The application drew strong opposition from several of respondent’s neighbors. The Commission conducted two hearings and accepted written evidence, after which it denied the application. *Id.*, at 54a–63a. The Commission explained that granting respondent permission to operate commercially “would perpetuate . . . adverse visual im-

2004).

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pects” from respondent’s existing antennas and establish precedent for similar projects in residential areas in the future. *Id.*, at 57a. The Commission also concluded that denial of respondent’s application was consistent with 47 U. S. C. §332(c)(7), making specific findings that its action complied with each of that provision’s requirements. App. to Pet. for Cert. 61a–62a. The city council denied respondent’s appeal. *Id.*, at 52a. See, generally, No. CV00–09071–SVW (RNBx) (CD Cal., Jan. 9, 2002), App. to Pet. for Cert. 22a–23a.

On August 24, 2000, respondent filed this action against the City in the District Court for the Central District of California, alleging, as relevant, that denial of the use permit violated the limitations placed on the City’s zoning authority by §332(c)(7). In particular, respondent charged that the City’s action discriminated against the mobile relay services he sought to provide, §332(c)(7)(B)(i)(I), effectively prohibited the provision of mobile relay services, §332(c)(7)(B)(i)(II), and was not supported by substantial evidence in the record, §332(c)(7)(B)(iii). Pet. App. 17a. Respondent sought injunctive relief under §332(c)(7)(B)(v), and money damages and attorney’s fees under 42 U. S. C. §§1983 and 1988. Plaintiff/Petitioner’s Brief Re: Remedies and Damages, Case No. 00–09071–SVW (RNBx) (CD Cal., Feb. 25, 2002), App. to Reply Brief for Petitioners 2a–7a.

Notwithstanding §332(c)(7)(B)(v)’s direction that courts “hear and decide” actions “on an expedited basis,” the District Court did not act on respondent’s complaint until January 9, 2002, 16 months after filing; it concluded that the City’s denial of a conditional-use permit was not supported by substantial evidence. App. to Pet. for Cert. 23a–26a. The court explained that the City could not rest its denial on aesthetic concerns, since the antennas in question were already in existence and would remain in place whatever the disposition of the permit application. *Id.*, at

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23a–24a. Nor, the court said, could the City reasonably base its decision on the fear of setting precedent for the location of commercial antennas in residential areas, since adverse impacts from new structures would always be a basis for permit denial. *Id.*, at 25a. In light of the paucity of support for the City’s action, the court concluded that denial of the permit was “an act of spite by the community.” *Id.*, at 24a. In an order issued two months later, the District Court held that §332(c)(7)(B)(v) provided the exclusive remedy for the City’s actions. Judgment of Injunction, No. CV00–09071–SVW (RNBx) (CD Cal., Mar. 18, 2002), App. to Pet. for Cert. 14a. Accordingly, it ordered the City to grant respondent’s application for a conditional-use permit, but refused respondent’s request for damages under §1983. Respondent appealed.

The Court of Appeals for the Ninth Circuit reversed on the latter point, and remanded for determination of money damages and attorney’s fees. 354 F.3d 1094, 1101 (2004). We granted certiorari. 542 U. S. ____ (2004).

II

A

Title 42 U. S. C. §1983 provides:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

In *Maine v. Thiboutot*, 448 U. S. 1 (1980), we held that this section “means what it says” and authorizes suits to enforce individual rights under federal statutes as well as

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the Constitution. *Id.*, at 4.

Our subsequent cases have made clear, however, that §1983 does not provide an avenue for relief every time a state actor violates a federal law. As a threshold matter, the text of §1983 permits the enforcement of “rights, not the broader or vaguer ‘benefits’ or ‘interests.’” *Gonzaga Univ. v. Doe*, 536 U. S. 273, 283 (2002) (emphasis in original). Accordingly, to sustain a §1983 action, the plaintiff must demonstrate that the federal statute creates an individually enforceable right in the class of beneficiaries to which he belongs. See *id.*, at 285.

Even after this showing, “there is only a rebuttable presumption that the right is enforceable under §1983.” *Blessing v. Freestone*, 520 U. S. 329, 341 (1997). The defendant may defeat this presumption by demonstrating that Congress did not intend that remedy for a newly created right. See *ibid.*; *Smith v. Robinson*, 468 U. S. 992, 1012 (1984). Our cases have explained that evidence of such congressional intent may be found directly in the statute creating the right, or inferred from the statute’s creation of a “comprehensive enforcement scheme that is incompatible with individual enforcement under §1983.” *Blessing*, *supra*, at 341.² See also *Middlesex County Sewerage Authority v. National Sea Clammers Assn.*, 453 U. S. 1, 19–20 (1981). “The crucial consideration is what Congress intended.” *Smith*, *supra*, at 1012.

²This does not contravene the canon against implied repeal, see *Posadas v. National City Bank*, 296 U. S. 497, 503 (1936), because we have held that canon inapplicable to a statute that creates no rights but merely provides a civil cause of action to remedy “some otherwise defined federal right,” *Great American Fed. Sav. & Loan Assn. v. Novotny*, 442 U. S. 366, 376 (1979) (dealing with a provision related to §1983, 42 U. S. C. §1985(3)). In such a case, “we are not faced . . . with a question of implied repeal,” but with whether the rights created by a later statute “may be asserted within the remedial framework” of the earlier one. *Great American Fed. Sav. & Loan Assn.*, 442 U. S., at 376–377.

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B

The City conceded below, and neither the City nor the Government as *amicus* disputes here, that §332(c)(7) creates individually enforceable rights; we assume, *arguendo*, that this is so. The critical question, then, is whether Congress meant the judicial remedy expressly authorized by §332(c)(7) to coexist with an alternative remedy available in a §1983 action. We conclude not.

The provision of an express, private means of redress in the statute itself is ordinarily an indication that Congress did not intend to leave open a more expansive remedy under §1983. As we have said in a different setting, “[t]he express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.” *Alexander v. Sandoval*, 532 U. S. 275, 290 (2001). Thus, the existence of a more restrictive private remedy for statutory violations has been the dividing line between those cases in which we have held that an action would lie under §1983 and those in which we have held that it would not.

We have found §1983 unavailable to remedy violations of federal statutory rights in two cases: *Sea Clammers* and *Smith*. Both of those decisions rested upon the existence of more restrictive remedies provided in the violated statute itself. See *Smith, supra*, at 1011–1012 (recognizing a §1983 action “would . . . render superfluous most of the detailed procedural protections outlined in the statute”); *Sea Clammers, supra*, at 20 (“[W]hen a state official is alleged to have violated a federal statute which provides its own comprehensive enforcement scheme, the requirements of that enforcement procedure may not be bypassed by bringing suit directly under §1983” (internal quotation marks omitted)). Moreover, in *all* of the cases in which we have held that §1983 *is* available for violation of a federal statute, we have emphasized that the statute at issue, in contrast to those in *Sea Clammers* and *Smith*, *did not*

Opinion of the Court

provide a private judicial remedy (or, in most of the cases, even a private administrative remedy) for the rights violated. See *Blessing, supra*, at 348 (“Unlike the federal programs at issue in [*Sea Clammers and Smith*], Title IV-D contains no private remedy—either judicial or administrative—through which aggrieved persons can seek redress”); *Livadas v. Bradshaw*, 512 U. S. 107, 133–134 (1994) (there was a “complete absence of provision for relief from governmental interference” in the statute); *Golden State Transit Corp. v. Los Angeles*, 493 U. S. 103, 108–109 (1989) (“There is . . . no comprehensive enforcement scheme for preventing state interference with federally protected labor rights that would foreclose the §1983 remedy”); *Wilder v. Virginia Hospital Assn.*, 496 U. S. 498, 521 (1990) (“The Medicaid Act contains no . . . provision for private judicial or administrative enforcement” comparable to those in *Sea Clammers and Smith*); *Wright v. Roanoke Redevelopment and Housing Authority*, 479 U. S. 418, 427 (1987) (“In both *Sea Clammers and Smith* . . . , the statutes at issue themselves provided for private judicial remedies, thereby evidencing congressional intent to supplant the §1983 remedy. There is nothing of that kind found in the . . . Housing Act”).

The Government as *amicus*, joined by the City, urges us to hold that the availability of a private judicial remedy is not merely indicative of, but conclusively establishes, a congressional intent to preclude §1983 relief. Brief for United States 17; Brief for Petitioners 35. We decline to do so. The ordinary inference that the remedy provided in the statute is exclusive can surely be overcome by textual indication, express or implicit, that the remedy is to complement, rather than supplant, §1983.

There is, however, no such indication in the TCA, which adds no remedies to those available under §1983, and limits relief in ways that §1983 does not. Judicial review of zoning decisions under §332(c)(7)(B)(v) must be sought

Opinion of the Court

within 30 days after the governmental entity has taken “final action,” and, once the action is filed, the court must “hear and decide” it “on an expedited basis.” §332(c)(7)(B)(v). The remedies available, moreover, perhaps do not include compensatory damages (the lower courts are seemingly in disagreement on this point³), and certainly do not include attorney’s fees and costs.⁴ A §1983 action, by contrast, can be brought much later than 30 days after the final action,⁵ and need not be heard and decided on an expedited basis. And the successful plaintiff may recover not only damages but reasonable attorney’s fees and costs under 42 U. S. C. §1988. *Thiboutot*, 448 U. S., at 9. Liability for attorney’s fees would have a

³Compare *Primeco Personal Communications, Ltd. Partnership v. Mequon*, 352 F. 3d 1147, 1152–1153 (CA7 2003) (damages are presumptively available), with *Omnipoint Communications MB Operations, LLC v. Lincoln*, 107 F. Supp. 2d 108, 120–121 (D. Mass. 2000) (“[T]he majority of district courts . . . have held that the appropriate remedy for a violation of the TCA is a mandatory injunction”).

⁴Absent express provision to the contrary, litigants must bear their own costs. *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U. S. 240, 249–250 (1975). The Communications Act of 1934 authorizes the award of attorney’s fees in a number of provisions, but not in §332(c)(7)(B)(v). See, e.g., 47 U. S. C. §§206, 325(c)(10), 551(f)(2)(C), 605(e)(3)(B)(iii).

⁵The statute of limitations for a §1983 claim is generally the applicable state-law period for personal-injury torts. *Wilson v. Garcia*, 471 U. S. 261, 275, 276 (1985); see also *Owens v. Okure*, 488 U. S. 235, 240–241 (1989). On this basis, the applicable limitations period for respondent’s §1983 action would presumably be one year. See *Silva v. Crain*, 169 F. 3d 608, 610 (CA9 1999) (citing Cal. Civ. Proc. Code Ann. §340(3) (West 1999)). It may be, however, that this limitations period does not apply to respondent’s §1983 claim. In 1990, Congress enacted 28 U. S. C. §1658(a) (2000 ed., Supp. II), which provides a 4-year, catchall limitations period applicable to “civil action[s] arising under an Act of Congress enacted after” December 1, 1990. In *Jones v. R. R. Donnelley & Sons Co.*, 541 U. S. 369 (2004), we held that this 4-year limitations period applies to all claims “made possible by a post-1990 [congressional] enactment.” *Id.*, at 382. Since the claim here rests upon violation of the post-1990 TCA, §1658 would seem to apply.

Opinion of the Court

particularly severe impact in the §332(c)(7) context, making local governments liable for the (often substantial) legal expenses of large commercial interests for the misapplication of a complex and novel statutory scheme. See *Nextel Partners Inc. v. Kingston Township*, 286 F. 3d 687, 695 (CA3 2002) (Alito, J.) (“TCA plaintiffs are often large corporations or affiliated entities, whereas TCA defendants are often small, rural municipalities”); *Primeco Personal Communications, Ltd. Partnership v. Mequon*, 352 F. 3d 1147, 1152 (CA7 2003) (Posner, J.) (similar).

Respondent’s only response to the attorney’s-fees point is that it is a “policy argumen[t],” properly left to Congress. Brief for Respondent 35–36. That response assumes, however, that Congress’s refusal to attach attorney’s fees to the remedy that it created in the TCA does not *itself* represent a congressional choice. See *Clammers* and *Smith* adopt the opposite assumption—that limitations upon the remedy contained in the statute are deliberate and are not to be evaded through §1983. See *Smith*, 468 U. S., at 1011–1012, and n. 5; *Sea Clammers*, 453 U. S., at 14, 20.

Respondent disputes that a §1983 action to enforce §332(c)(7)(B) would enjoy a longer statute of limitations than an action under §332(c)(7)(B)(v). He argues that the rule adopted in *Wilson v. Garcia*, 471 U. S. 261 (1985), that §1983 claims are governed by the state-law statute of limitations for personal-injury torts, does not apply to §1983 actions to enforce statutes that themselves contain a statute of limitations; in such cases, he argues, the limitations period in the federal statute displaces the otherwise applicable state statute of limitations. This contention cannot be reconciled with our decision in *Wilson*, which expressly rejected the proposition that the limitations period for a §1983 claim depends on the nature of the underlying right being asserted. See *id.*, at 271–275. We concluded instead that 42 U. S. C. §1988 is “a

Opinion of the Court

directive to select, in each State, the one most appropriate statute of limitations for *all* §1983 claims.” 471 U. S., at 275 (emphasis added); see also *Owens v. Okure*, 488 U. S. 235, 240–241 (1989) (“42 U. S. C. §1988 requires courts to borrow and apply to *all* §1983 claims the one most analogous state statute of limitations” (emphasis added)). We acknowledged that “a few §1983 claims are based on statutory rights,” *Wilson, supra*, at 278, but carved out no exception for them.

Respondent also argues that, if 28 U. S. C. §1658 (2000 ed., Supp. II), rather than *Wilson*, applies to his §1983 action, see n. 4, *supra*, §1658’s 4-year statute of limitations is inapplicable. This is so, he claims, because §332(c)(7)(B)(v)’s requirement that actions be filed within 30 days falls within §1658’s prefatory clause, “Except as otherwise provided by law.”⁶ We think not. The language of §332(c)(7)(B)(v) that imposes the limitations period (“within 30 days after such action or failure to act”) is inextricably linked to—indeed, is embedded within—the language that creates the right of action (“may . . . commence an action in any court of competent jurisdiction”). It cannot possibly be regarded as a statute of limitations generally applicable to *any* action to enforce the rights created by §332(c)(7)(B). Cf. *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 U. S. 143, 168 (1987) (SCALIA, J., concurring in judgment) (“Federal statutes of limitations . . . are almost invariably tied to specific causes of action”). Respondent’s argument thus reduces to a suggestion that we “borrow” §332(c)(7)(B)(v)’s statute of limitations and attach it to §1983 actions asserting violations of §332(c)(7)(B). Section 1658’s “[e]xcept as other-

⁶Title 28 U. S. C. §1658(a) provides as follows:

“Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.”

Opinion of the Court

wise provided by law” clause does not support this suggestion.

C

The Ninth Circuit based its conclusion that Congress intended to permit plaintiffs to proceed under §1983, in part, on the TCA’s so-called “saving clause,” TCA §601(c)(1), 110 Stat. 143, note following 47 U. S. C. §152. 354 F. 3d, at 1099–1100. That provision reads as follows:

“(1) NO IMPLIED EFFECT—This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.”

The Court of Appeals took this to be an express statement of Congress’s intent *not* to preclude an action under §1983, reasoning that to do so would be to “impair” the operation of that section. 354 F. 3d, at 1100.

We do not think this an apt assessment of what “impair[ment]” consists of. Construing §332(c)(7), as we do, to create rights that may be enforced only through the statute’s express remedy, leaves the pre-TCA operation of §1983 entirely unaffected. Indeed, the crux of our holding is that §332(c)(7) has no effect on §1983 whatsoever: The rights §332(c)(7) created may not be enforced under §1983 and, conversely, the claims available under §1983 prior to the enactment of the TCA continue to be available after its enactment. The saving clause of the TCA does not require a court to go farther and permit enforcement under §1983 of the TCA’s substantive standards. To apply to the present case what we said with regard to a different statute: “The right [Abrams] claims under [§332(c)(7)] did not even arguably exist before the passage of [the TCA]. The only question here, therefore, is whether the rights created by [the TCA] may be asserted within the *remedial* framework of [§1983].” *Great American Fed. Sav. & Loan Assn. v.*

Opinion of the Court

Novotny, 442 U. S. 366, 376–377 (1979).

This interpretation of the saving clause is consistent with *Sea Clammers*. Saving clauses attached to the statutes at issue in that case provided that the statutes should not be interpreted to “restrict any right which any person . . . may have under any statute or common law to seek enforcement of any . . . standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).” 33 U. S. C. §1365(e).” 453 U. S., at 7, n. 10; see also *id.*, at 8, n. 11. We refused to read those clauses to “preserve” a §1983 action, holding that they did not “refer . . . to a suit for redress of a violation of th[e] statutes [at issue] . . .” *Id.*, at 20–21, n. 31.

* * *

Enforcement of §332(c)(7) through §1983 would distort the scheme of expedited judicial review and limited remedies created by §332(c)(7)(B)(v). We therefore hold that the TCA—by providing a judicial remedy different from §1983 in §332(c)(7) itself—precluded resort to §1983. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

BREYER, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 03-1601

CITY OF RANCHO PALOS VERDES, CALIFORNIA,
ET AL., PETITIONERS v. MARK J. ABRAMS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[March 22, 2005]

JUSTICE BREYER, with whom JUSTICE O'CONNOR,
JUSTICE SOUTER and JUSTICE GINSBURG join, concurring.

I agree with the Court. It wisely rejects the Govern-
ment's proposed rule that the availability of a private
judicial remedy "*conclusively establishes* . . . a congres-
sional intent to preclude [Rev. Stat. §1979, 42 U. S. C.]
§1983 relief." *Ante*, at 8 (emphasis added). The statute
books are too many, federal laws too diverse, and their
purposes too complex, for any legal formula to provide
more than general guidance. Cf. *Gonzaga Univ. v. Doe*,
536 U. S. 273, 291 (2002) (BREYER, J., concurring in judg-
ment). The Court today provides general guidance in the
form of an "ordinary inference" that when Congress cre-
ates a specific judicial remedy, it does so to the exclusion
of §1983. *Ante*, at 8. I would add that context, not just
literal text, will often lead a court to Congress' intent in
respect to a particular statute. Cf. *ibid.* (referring to
"implicit" textual indications).

Context here, for example, makes clear that Congress
saw a national problem, namely an "inconsistent and, at
times, conflicting patchwork" of state and local siting
requirements, which threatened "the deployment" of a
national wireless communication system. H. R. Rep. No.
104-204, pt. 1, p. 94 (1995). Congress initially considered
a single national solution, namely a Federal Communica-

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BREYER, J., concurring

tions Commission wireless tower siting policy that would pre-empt state and local authority. *Ibid.*; see also H. R. Conf. Rep. No. 104-458, p. 207 (1996). But Congress ultimately rejected the national approach and substituted a system based on cooperative federalism. *Id.*, at 207-208. State and local authorities would remain free to make siting decisions. They would do so, however, subject to minimum federal standards—both substantive and procedural—as well as federal judicial review.

The statute requires local zoning boards, for example, to address permit applications “within a reasonable period of time;” the boards must maintain a “written record” and give reasons for denials “in writing.” 47 U. S. C. §§332(c)(7)(B)(ii), (iii). Those “adversely affected” by “final action” of a state or local government (including their “failure to act”) may obtain judicial review provided they file their review action within 30 days. §332(c)(7)(B)(v). The reviewing court must “hear and decide such action on an expedited basis.” *Ibid.* And the court must determine, among other things, whether a zoning board’s decision denying a permit is supported by “substantial evidence.” §332(c)(7)(B)(iii).

This procedural and judicial review scheme resembles that governing many federal agency decisions. See H. R. Conf. Rep. No. 104-458, at 208 (“The phrase ‘substantial evidence contained in a written record’ is the traditional standard used for judicial review of agency actions”). Section 1983 suits, however, differ considerably from ordinary review of agency action. The former involve plenary judicial evaluation of asserted rights deprivations; the latter involves deferential consideration of matters within an agency’s expertise. And, in my view, to permit §1983 actions here would undermine the compromise—between purely federal and purely local siting policies—that the statute reflects.

For these reasons, and for those set forth by the Court, I

BREYER, J., concurring

agree that Congress, in this statute, intended its judicial remedy as an exclusive remedy. In particular, Congress intended that remedy to foreclose—not to supplement—§1983 relief.

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STEVENS, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

No. 03–1601

CITY OF RANCHO PALOS VERDES, CALIFORNIA,
ET AL., PETITIONERS *v.* MARK J. ABRAMS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[March 22, 2005]

JUSTICE STEVENS, concurring in the judgment.

When a federal statute creates a new right but fails to specify whether plaintiffs may or may not recover damages or attorney’s fees, we must fill the gap in the statute’s text by examining all relevant evidence that sheds light on the intent of the enacting Congress. The inquiry varies from statute to statute. Sometimes the question is whether, despite its silence, Congress intended us to recognize an implied cause of action. See, e.g., *Cannon v. University of Chicago*, 441 U. S. 677 (1979). Sometimes we ask whether, despite its silence, Congress intended us to enforce the pre-existing remedy provided in Rev. Stat. §1979, 42 U. S. C. §1983. See *Maine v. Thiboutot*, 448 U. S. 1, 4 (1980). And still other times, despite Congress’ inclusion of specific clauses designed specifically to preserve pre-existing remedies, we have nevertheless concluded that Congress impliedly foreclosed the §1983 remedy. See *Middlesex County Sewerage Authority v. National Sea Clammers Assn.*, 453 U. S. 1, 13 (1981). Whenever we perform this gap-filling task, it is appropriate not only to study the text and structure of the statutory scheme, but also to examine its legislative history. See, e.g., *id.*, at 17–18; *Smith v. Robinson*, 468 U. S. 992, 1009 (1984); *Cannon*, 441 U. S., at 694.

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STEVENS, J., concurring in judgment

In this case the statute's text, structure, and history all provide convincing evidence that Congress intended the Telecommunications Act of 1996 (TCA) to operate as a comprehensive and exclusive remedial scheme. The structure of the statute appears fundamentally incompatible with the private remedy offered by §1983.* Moreover, there is not a shred of evidence in the legislative history suggesting that, despite this structure, Congress intended plaintiffs to be able to recover damages and attorney's fees. Thus, petitioners have made "the *difficult showing* that allowing §1983 actions to go forward in these circumstances 'would be inconsistent with Congress' carefully tailored scheme.'" *Blessing v. Freestone*, 520 U. S. 329, 346 (1997) (emphasis added) (quoting *Golden State Transit Corp. v. Los Angeles*, 493 U. S. 103, 107 (1989)). I therefore join the judgment of the Court without reserva-

*The evidence supporting this conclusion is substantial. It includes, *inter alia*, the fact that the private remedy specified in 47 U. S. C. §332(c)(7)(B)(v) requires all enforcement actions to be brought in any court of competent jurisdiction "within 30 days after such action or failure to act." Once a plaintiff brings such an action, the statute requires the court both to "hear and decide" the case "on an expedited basis." *Ibid.* As the Court properly notes, *ante*, at 9–10, the TCA's streamlined and expedited scheme for resolving telecommunication zoning disputes is fundamentally incompatible with the applicable limitations periods that generally govern §1983 litigation, see, e.g., *Wilson v. Garcia*, 471 U. S. 261 (1985), as well as the deliberate pace with which civil rights litigation generally proceeds. See, e.g., H. R. Conf. Rep. No. 104–458, p. 208–209 (1996) (expressing the intent of the congressional Conference that zoning decisions should be "rendered in a reasonable period of time" and that Congress expected courts to "act expeditiously in deciding such cases" that may arise from disputed decisions). Like the Court, I am not persuaded that the statutory requirements can simply be mapped onto the existing structure of §1983, and there is nothing in the legislative history to suggest that Congress would have wanted us to do so. For these reasons, among others, I believe it is clear that Congress intended §332(c)(7) to operate as the exclusive remedy by which plaintiffs can obtain judicial relief for violations of the TCA.

STEVENS, J., concurring in judgment

tion.

Two flaws in the Court's approach, however, persuade me to write separately. First, I do not believe that the Court has properly acknowledged the strength of our normal presumption that Congress intended to preserve, rather than preclude, the availability of §1983 as a remedy for the enforcement of federal statutory rights. Title 42 U. S. C. §1983 was "intended to provide a remedy, to be broadly construed, against all forms of official violation of federally protected rights." *Monell v. New York City Dept. of Social Servs.*, 436 U. S. 658, 700–701 (1978). "We do not lightly conclude that Congress intended to preclude reliance on §1983 as a remedy Since 1871, when it was passed by Congress, §1983 has stood as an independent safeguard against deprivations of federal constitutional and statutory rights." *Smith*, 468 U. S., at 1012. Although the Court is correct to point out that this presumption is rebuttable, it remains true that only an *exceptional* case—such as one involving an unusually comprehensive and exclusive statutory scheme—will lead us to conclude that a given statute implicitly forecloses a §1983 remedy. See *Wright v. Roanoke Redevelopment and Housing Authority*, 279 U. S. 418, 452 (1979) (statutory scheme must be "sufficiently comprehensive and effective to raise a clear inference that Congress intended to foreclose a §1983 cause of action"). While I find it easy to conclude that petitioners have met that heavy burden here, there will be many instances in which §1983 will be available even though Congress has not explicitly so provided in the text of the statute in question. See, e.g., *id.*, at 424–425; *Blessing*, 520 U. S., at 346–348.

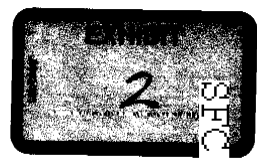
Second, the Court incorrectly assumes that the legislative history of the statute is totally irrelevant. This is contrary to nearly every case we have decided in this area of law, all of which have surveyed, or at least acknowledged, the available legislative history or lack thereof.

STEVENS, J., concurring in judgment

See, e.g., *Wright*, 479 U. S., at 424–426 (citing legislative history); *Smith*, 468 U. S., at 1009–1010 (same); *Sea Clammers*, 453 U. S., at 17–18 (noting that one of the relevant factors in the Court’s inquiry “include[s] the legislative history”); *Cannon*, 441 U. S., at 694 (same).

Additionally, as a general matter of statutory interpretation, Congress’ failure to discuss an issue during prolonged legislative deliberations may itself be probative. As THE CHIEF JUSTICE has cogently observed: “In a case where the construction of legislative language such as this makes so sweeping and so relatively unorthodox a change as that made here, I think judges as well as detectives may take into consideration the fact that a watchdog did not bark in the night.” *Harrison v. PPG Industries, Inc.*, 446 U. S. 578, 602 (1980) (dissenting opinion). The Court has endorsed the view that Congress’ silence on questions such as this one “can be likened to the dog that did not bark.” *Chisom v. Roemer*, 501 U. S. 380, 396, n. 23 (1991) (citing A. Doyle, *Silver Blaze*, in *The Complete Sherlock Holmes* 335 (1927)). Congressional silence is surely probative in this case because, despite the fact that awards of damages and attorney’s fees could have potentially disastrous consequences for the likely defendants in most private actions under the TCA, see *Primeco Personal Communications v. Mequon*, 352 F. 3d 1147, 1152 (CA7 2003), nowhere in the course of Congress’ lengthy deliberations is there any hint that Congress wanted damages or attorney’s fees to be available. That silence reinforces every other clue that we can glean from the statute’s text and structure.

For these reasons, I concur in the Court’s judgment.



Legislative Initiatives for BCC Consideration

- Legislative Amending the Economic Development Act to Allow for Public/Private Partnership Activities
- Legislation that revokes the PRC rule charging under grounding to a specific area and requires that it be included in the utility company's overall rate base.
- Legislation requesting funding for Teen Court.
- Legislative Eliminating the County Surveyor Position in Santa Fe County
- Legislation creating Water/Waste Water Authority
- Legislation Supporting earmarking a portion of State Tribal Gaming Revenues for Local expenditure
- Legislation eliminating the Santa Fe Extraterritorial Zone and limiting municipal annexations without county approval.
- There will be requests for additional monies for projects that have been previously funded but have shortfalls tied to increase in construction costs; Example: Madrid Ball Park
- PFMD working on a list of re-authorizations for previously funded projects. We'll discuss this tomorrow night at the Legislative Reception. List of Projects will be provided
- Document imaging program for County Clerk's Office.

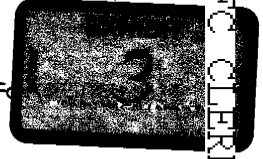
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EL RANCHO DE LAS GOLONDRINAS

A LIVING HISTORY MUSEUM

334 Los Pinos Road • Santa Fe, New Mexico 87507 • Phone (505) 471-2261 • Fax (505) 471-2262



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January 8, 2007

Santa Fe County Commission
130 Grant Street
Santa Fe, NM 87501


Dear Commissioners,

I am writing on behalf of El Rancho de las Golondrinas to indicate that I fully support the La Cienega Valley Association and the La Cienega Development Review Committee's position regarding PNM's request for a variance to construct a three phase power line, replacing the existing line, most of which is located on museum property.

I strongly believe that PNM should more exhaustively search for alternate routes, preferably underground and definitely on a public right of way as opposed to private easements.

I would also like to express my disappointment in PNM giving lip service to objections expressed to them during the December hearing in the county chamber, and then again at a meeting in La Cienega, and then ignoring all of that and continuing with the original proposal. To me, it shows just how arrogant and unresponsive PNM really is to its rate payers.

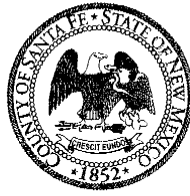
Sincerely,


George B. Paloheimo
Director

Harry B. Montoya
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Michael D. Anaya
Commissioner, District 3



Gerald T. E. Gonzales
County Manager

Land Use Department

MEMORANDUM

DATE: January 9, 2007
TO: Board of County Commissioners
FROM: Vicente Archuleta, Development Review Specialist II *VA*
VIA: Jack Kolkmeier, Land Use Administrator *JK*
Shelley Cobau, Development Review Division Director *SC*
FILE REF.: EZ CASE # V/S 03-4832 Valle Serena Subdivision Phase II

ISSUE:

Zena Boylan, applicant, Jim Siebert, agent, request Preliminary Plan and Plat approval of Phase II of the Valle Serena Residential Subdivision consisting of the 14 remaining lots on 50.019-acres. This request includes a variance of Section 3.5 (Road Requirements and Standards) of the Extraterritorial Subdivision Regulations (ESR) to allow a cul-de-sac exceeding 1000 feet in length. The property is located approximately one mile east of NM 14, on Vista del Monte, within Section 25, Township 16 North, Range 8 East and Section 30, Township 16 North, Range 8 East, NMPM, Santa Fe County (5-Mile EZ, District 5).

SUMMARY:

On December 14, 2006 the Extraterritorial Zoning Commission (EZC) met and recommended approval for Phase II subject to Staff conditions (see December 14, 2006 EZC Meeting Minutes as Exhibit "I").

On November 12, 1997, the BCC granted Master Plan approval for a 20 lot subdivision on 50-acres. On January 12, 1999 the BCC granted Final Plat/Development Plan approval for Phase I consisting of 6-lots. The property is located south of Vista del Monte Road, in the Basin Hydrologic Zone, within the existing Neighborhood Zone of the Community College District.

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BCC
Valle Serena Subdivision Phase II
January 9, 2007
Page two

The previous approval expired and on November 13, 2003, the EZC recommended Preliminary Plat approval for 20 lots and recommended Final Plat and Development Plan approval for Phase I, which consisted of six lots. On January 13, 2004, the Board of County Commissioners granted Preliminary Plat approval for 20 lots and recommended Final Plat and Development Plan approval for Phase I subject to staff conditions (See January 13, 2004 BCC Meeting Minutes as Exhibit "G").

On September 14, 2006, the Extraterritorial Zoning Commission (EZC) met and granted Preliminary Development Plan and Plat approval for Phase II subject to staff conditions (see September 14, 2006 EZC Meeting Minutes as Exhibit "H").

The applicants now request Final Plat approval for the 14 remaining lots as Phase II.

All infrastructure has been constructed for Phase I of the subdivision. The crossing of the drainage, installation of all utilities, construction of the majority of the roadway and improvements to the off-site road have all occurred as part of the infrastructure for Phase I. The improvements for Phase II are relatively limited since the majority of the infrastructure was constructed for Phase I.

Variance:

The applicant requests a variance of Section 3.5.2. (Road Requirements and Standards, Classification of Highways, Streets and Roads) of the Extraterritorial Subdivision Regulations to allow a cul-de-sac to exceed 1000 feet in length. Section 3.5.2.F.2.b (1) states: "A cul-de-sac may be either gravel or asphalt and shall be no longer than 500 feet except as provided below. At the closed end there should be a turn-around having a radius of 50 feet of driving surface and a minimum right of way diameter of 120 feet." Although, Section 3.5.2.F.2.b(2) states: "In order to accommodate circumstances such as difficult terrain, large lots (10 acres or more), or cluster subdivisions with large open space tracts, the EZC may allow cul-de-sacs of up to one thousand (1000) feet in length as long as the average daily traffic of 300 vehicles is not exceeded and the County Fire Marshal approves the plan for fire protection and public safety factors."

Section 3.7.A (Variances) of the EZO states that "Variances are intended to afford relief from the strict letter of the Ordinance requirements to protect against individual hardships related to unique circumstances of a particular property. Each case of a variance therefore depends on its own facts. The purpose of the variance is not to effect amendments to what are perceived to be flaws in the zoning ordinance, nor to effect rezonings, nor to alleviate personal problems or inconveniences for property owners. Variances are not to be used to permit buildings, businesses, densities or intensities, or uses prohibited by

BCC
Valle Serena Subdivision Phase II
January 9, 2007
Page three

ordinance nor to authorize zoning violations. Application for rezoning or special exception or ordinance amendment may be the appropriate mechanism in these circumstances.”

The applicant has responded to the variance review criteria as required by the EZO (see Exhibit “B”).

The application was reviewed for the following:

Existing Conditions

All infrastructure has been constructed for Phase I of the subdivision, which consists of 6 lots. The crossing of the major drainage, installation of all utilities, construction of the roadway and improvements to the off-site road have all occurred as part of infrastructure for Phase I. The improvement for Phase II is relatively limited since the majority of the infrastructure was constructed for Phase I.

Access

One point of access from Vista del Monte Road is proposed for the 20-lot subdivision. The County Public Works Department required the connection to Vista del Monte Road, rather than Camino Bajo Road, during the prior Master Plan review.

Two internal roads are proposed. Serena Road extends south off of Vista del Monte and connects with Serena Lane East and Serena Lane West. Both roads will have a 50-foot easement with a 24-foot basecourse roadway, and dead end in a 50-foot radius cul-de-sac at Serena Lane East and Serena Lane West.

A Traffic Impact Analysis was submitted by Longford Homes which included the evaluation of the State Rd 14 and Vista del Monte intersection. The TIA took into account additional traffic on Vista del Monte. Longford Homes is responsible for improvements to State Road 14 and Vista del Monte signalized intersection as well as the improvement of State Road 14 to a four lane section from Vista del Monte to I-25.

Water

A 16-inch water line is located along the northern boundary of the development. Water supply for the six lots in Phase I of the development is supplied by the Santa Fe County Water Company. Water capacity is sufficient to satisfy the domestic and fire protection requirements for the development.

As part of the Phase I improvements, a 12 inch water main was constructed within the development and extended to the southern boundary of the property to serve the future

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development. Water service to individual homes is limited to .25 acre feet per year per lot.

A request for additional water taps has been submitted to the Santa Fe County Utilities Department. The applicant has an option to purchase water rights and has submitted an application for water rights transfer as a co-applicant with the City and County. A request for additional water has been submitted to the County Utilities Department.

Fire Protection

The La Cienega Volunteer Fire Department will provide fire protection. The Santa Fe County Water system will serve as the water supply for the fire protection system. Fire hydrants will be located within 500 feet of each home site. The system has been designed to satisfy Santa Fe County fire-flow requirements.

Testing of the fire system for Phase I indicates the fire-flow is adequate to satisfy the requirements of the Uniform Fire Code. Sprinkler systems will not be required to serve this development since the regional system provides a substantial level of fire protection for the subdivision.

Liquid and Solid Waste

Individual on-site wastewater systems were approved for Phase I. The current plan proposes one acre lots with individual on-site septic systems. Soils and percolation are suitable for septic tanks and leach fields.

Each lot owner is responsible for the disposal of solid waste. Each owner must contract with a licensed Solid Waste Removal Service and have trash pick-up at least once per week.

The restrictive covenants include a provision that allows the homeowners association to intercede and collect the solid waste from the lot if the homeowner fails to properly manage solid waste on their lot. The homeowner in violation of the covenants would then be assessed for solid waste collection by the association.

Terrain Management/Storm Water Retention/Landscaping

A slope analysis was submitted in November 1997, which demonstrated adequate road and buildable area. The slope on the property ranges between 0-20 0/0 with some areas over 30 0/0. The lots have been clustered to take advantage of the areas of land with slopes less than 10 0/0.

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Central storm water detention ponds will be located within the subdivisions open space to detain excess flows caused by the development. The storm water management system will be maintained by the Homeowners Association. Ponds were constructed as part of Phase I and detain water from Phase II as well.

Archeology/Open Space

The property is located within a high potential archeological district. An archeological report was previously submitted and no significant historical or archeological sites were found on the property. The Archeological Report for Valle Serena is on file with the State Historic Preservation Division.

Open space for Phase I consists of 16.89 acres and 12.23 acres for Phase II, for a total of 28.52 for the entire development. This open space will have a pedestrian and equestrian trail.

Signage & Lighting

A subdivision sign will be constructed at the entrance from Vista del Monte Road. This sign will not exceed an area of 20 square feet, nor a height greater than five feet and will be set back 10 feet from the road and utility easement on Vista Serena Road. The sign will be constructed of letters incised into colored concrete or letters incised into natural stone.

No street lighting is proposed for the subdivision. The most appropriate way of complying with suggested night-sky standards is to avoid lighting along streets.

Homeowners Association:

The homeowner documents address use and development of the lots, including water restrictions, ownership and maintenance of roads, common areas and facilities, and solid waste removal. The covenants were recorded with Phase I of the subdivision.

The articles and by-laws for the homeowners association have been filed with the State Corporation Commission as part of the procedure for recording Phase I of the project.

REQUIRED ACTION:

The EZC shall review the attached material and consider the recommendation of staff, take action to approve, deny, approve with conditions or table for further analysis of this request.

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RECOMMENDATION:

The applicant is asking for a variance to allow a cul-de-sac exceeding 1000 feet in length. Section 3.5.2.F.2.b (1) states: A cul-de-sac may be either gravel or asphalt and shall be no longer than 500 feet. At the closed ends there should be a turn-around having a radius of 50 feet of driving surface and a minimum right-of-way diameter of 120 feet. Therefore, staff recommends denial of the variance

The proposed Preliminary Plat/Development Plan is in accordance with the procedures and submittals set forth in Sections 3.5 and 3.6 of the EZO. Staff recommends Preliminary Plat/Development Plan approval subject to the following conditions:

1. Compliance with applicable review comments from the following:
 - a) State Engineer.
 - b) State Environment Dept.
 - c) State Department of Transportation
 - d) Soil and Water District.
 - e) Santa Fe County Water Co.
 - f) County Hydrologist.
 - g) County Development Review Director/Technical Review.
 - h) County Fire Marshal.
 - i) County Public Works Dept.
2. Final plat to include but not be limited to the following:
 - a) Compliance with plat checklist.
 - b) Approval of rural address and street names.
3. Final homeowner documents (covenants, by-laws, articles of incorporation, disclosure statement) subject to approval by staff and shall include but not limited to the following:
 - a) Water Restrictions shall be .25 acre-feet per lot
 - b) Water conservation measures shall include water storage from roof drainage.
 - c) Maintenance of roads and drainage facilities
 - d) Maintenance of septic systems

4. Development Plan shall include the following:
 - a) Signage plan.
 - b) Detail for turn-around.
 - c) Off-site road section shall have a minimum 22-foot roadway.
 - d) Define limits of the 100-year flood plain and provide base flood elevations.
5. Submit solid waste fee in accordance with subdivision regulations and submit fire review/inspection fees in accordance with Resolution No. 2003-47.
6. A liquid waste disposal plan to utilize a community sewer system must be utilized. This system will be subject to a NMED discharge permit. The permit must be obtained prior to final plat approval, or lot sizes shall not be less than 1 acre.
7. Valle Serena shall participate with Browncastle Ranch, Sunterra, and Thornburg Development in paving Vista del Monte Road. Valle Serena will be credited a pro-rata share for Phase One road improvements.
8. Submit Engineers cost estimate and acceptable financial surety for completion of required improvements as approved by staff. Upon completion, submit certification by registered engineer that improvements have been completed in conformance with approved development plans.
9. A liquid waste permit must be obtained from the Environment Department for the proposed septic systems prior to issuance of building permit.
10. Applicant shall submit a letter of availability for Fire Protection from the County Utilities Department prior to plat recordation.
11. The applicant must address all minor redline comments by the County Subdivision Engineer as shown on the plat of survey and terrain management plan. These plans may be picked up from Vicente Archuleta, Development Review Specialist within the Land Use Dept. These plans **must** be resubmitted with the Mylar prior to recordation.

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EXHIBITS:

- Exhibit "A" - Applicants Letter of Request
- Exhibit "B" - Variance Review Criteria
- Exhibit "C" - Review Agency Responses
- Exhibit "D" - Development Report
- Exhibit "E" - Vicinity Map
- Exhibit "F" - November 13, 2003 EZC Meeting Minutes
- Exhibit "G"- January 13, 2004 BCC Meeting Minutes
- Exhibit "H"- September 14, 2006 EZC Meeting Minutes
- Exhibit "I"- December 14, 2006 EZC Meeting Minutes

SFC CLERK RECORDED 02/23/2007