

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC MINUTES
PAGES: 114

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SANTA FE

BOARD OF COUNTY COMMISSIONERS

MEETING

February 13, 2007

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

SFC CLERK RECORDED 03/27/2007

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

February 13, 2007

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

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

Members Present:

- Commissioner Virginia Vigil, Chair
- Commissioner Jack Sullivan, Vice Chairman
- Commissioner Paul Campos
- Commissioner Mike Anaya [3:55 arrival]
- Commissioner Harry Montoya

Members Absent:

[None]

V. INVOCATION

An invocation was given by County Clerk Valerie Espinoza.

VI. APPROVAL OF THE AGENDA

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- B. Tabled or withdrawn items**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

ROMAN ABEYTA (County Manager): Madam Chair, we have the following amendments. Under IX. Matters from the Commission, we added B, which is a request approval to allow a transfer of \$193,000 of EPA Grant the Cundiyo Water System. We've added item C, which is discussion and possible approval for expenditure of discretionary funds. And Commissioner Anaya has requested that the Commission hold off on acting on

this until he joins us.

Then we have under XII. Staff and Elected Officials' Items, A. 1, the ordinance governing design, construction and operations of swimming pools will be tabled. That ordinance will be heard at the February 27th BCC.

Under Public Hearings, XIII. A. 2, we've clarified that that ordinance is within the area served by the Eldorado Area Water and Sanitation District. And finally, Madam Chair, XIII. 5, BCC LIQ #07-5000 has been tabled. And other than that there are no further changes from staff.

CHAIR VIGIL: Are there any changes from any of the members of the Commission?

COMMISSIONER MONTTOYA: Madam Chair, move for approval as amended.

COMMISSIONER SULLIVAN: Second.

CHAIR VIGIL: Motion and second.

The motion to approve the agenda as amended passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]

VII. APPROVAL OF THE MINUTES:

A. January 9, 2007

COMMISSIONER SULLIVAN: Madam Chair.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I have some typographical changes.

CHAIR VIGIL: Typographical changes. Any other changes? Is there a motion?

COMMISSIONER SULLIVAN: Move for approval with the changes?

COMMISSIONER CAMPOS: Second.

CHAIR VIGIL: Motion and second.

The motion to approve the January 9th minutes as corrected passed by unanimous [5-0] voice vote.

VIII. MATTERS OF PUBLIC CONCERN – NON-ACTION ITEMS

CHAIR VIGIL: This is an opportunity for members of the public to address the Board of County Commission on items that are currently not on the agenda. If it's an item on the agenda that you're here to address the Commission, please wait until that item is heard. Otherwise you may approach the Board of County Commission with any members of public concern. Is there anyone out there who would like to address the Commission? Seeing none, we

are now on item IX.

IX. MATTERS FROM THE COMMISSION

A. Resolution 2007-35. A Resolution Concerning Investment in Northern New Mexico's Future (Commissioner Montoya)

COMMISSIONER MONTOYA: Thank you, Madam Chair. In your packet is a copy of the resolution that is being considered this afternoon for your approval, or at least your action on it anyway. This resolution is asking for Santa Fe County's participation in some legislation that is going to be introduced regarding part of the gross receipts tax coming back to local governments that's being collected at the Los Alamos National Laboratory. It's projected that possibly between \$60 and \$70 million is going to be generated as a result of the gross receipts tax that labs are going to be paying. This request, which is coming from Española's mayor is that he would like for other local governments to possibly benefit from that gross receipts tax to the tune of about \$20 million or so.

This resolution is one that was passed by the Municipal League. This is a Municipal League resolution, as opposed to the one that the City of Española passed, which was a little more prescriptive. This one is a bit more general in terms of our participation and how that would be spelled out. So that's basically asking the legislature to reappropriate, reallocate some funds in whatever amount it may be. We're not saying \$20 million, we're not saying \$30 million, we're just saying if it's the wishes of the legislature and the Governor that that happen that Santa Fe County would be part of that as well.

I'll attempt to answer any questions, Madam Chair.

CHAIR VIGIL: Are there any questions?

COMMISSIONER CAMPOS: What's the likelihood that this thing is going to pass?

COMMISSIONER MONTOYA: Well, in talking to one of the Councilors from Los Alamos and then also representative Wallace who's got that area as well, the concern is that you look at Sandoval County, then you start looking at Lea County and Eddy County – Sandoval County has Intel, so they'll say well, why doesn't Intel give us a percentage of the gross receipts that they pay. Lea and Eddy of course are big oil, gas counties, could potentially say the same things. So I don't know. I think it's going to be a tough sell, personally.

COMMISSIONER CAMPOS: That's what I've heard.

CHAIR VIGIL: Any further questions? Seeing none, is there a motion?

COMMISSIONER MONTOYA: Move for approval, Madam Chair.

CHAIR VIGIL: Motion to approve the resolution.

COMMISSIONER CAMPOS: Second.

CHAIR VIGIL: Seconded. Further discussion?

The motion to approve Resolution 2007-35 passed by unanimous [4-0] voice vote.

[Commissioner Anaya was not present for this action.]

IX. B. Request Approval to Allow a Transfer of \$191,000 of EPA Grant #XP-9762S-101-0 to the Cundiyo Water System (Commissioner Montoya)

COMMISSIONER SULLIVAN: Madam Chair, I need to recuse myself on this agenda item.

CHAIR VIGIL: Okay. Thank you.

COMMISSIONER MONTOYA: This item, Madam Chair, is one that we're going to be looking at reappropriating funds. It will be just redistributing them if you will. There's currently about \$191,000 that Cuatro Villas has had allocated to their project in the Sombrillo, La Puebla, Cuarteles, Santa Cruz area. They are not ready at this point to start utilizing those funds. On the other hand, Cundiyo and their water association have actually - they're under construction right now. There's holes in the ground as we speak and they need to have this funding in order to be able to complete the project.

There are a number of people here from Cundiyo. If you'd raise your hands please. Thank you all for being here. We certainly want to assist them in continuing the project as it's begun to this point. Rudy, did you want to add anything else?

RUDY GARCIA (PFMD): Madam Chair, Commissioner Montoya is exactly right. They are under construction. We have spoken with DFA. There is some money there that the Governor does have and DFA will actually be coming forward with a grant with Cuatro Villas to supplement their \$191,000 that will be given to Cundiyo if the Commission does approve it. I stand for any questions, if there are any other questions from the Commission.

CHAIR VIGIL: Has that been communicated to Cuatro Villas?

MR. GARCIA: Madam Chair, yes. The Cuatro Villas board has acted on it and they have allowed this transfer to move to Cundiyo. So, yes, the board of Cuatro Villas has approved this item.

CHAIR VIGIL: Do you have any questions, Commissioner Campos?

COMMISSIONER MONTOYA: Move for approval, Madam Chair.

CHAIR VIGIL: I will second that. I do have a question. This funding was originally \$300,000 that came to us from the federal government through lobby contract services. Is that correct?

MR. GARCIA: Madam Chair, back in 2002 we actually applied for this grant. It was a STAG grant from the EPA, which is a federal grant and they did award \$300,000. They let us keep about three percent of that in order for their administration costs. So the total grant was for \$291,000 and we want to take \$191,000 and give it over to Cundiyo.

CHAIR VIGIL: Okay. Motion and second. Is there any further discussion?

MR. ABEYTA: Madam Chair.

CHAIR VIGIL: Yes.

MR. ABEYTA: I just need to clarify for the record that it's \$191,000. The

caption reads \$193,00. And it's \$191,000, right, Rudy?

CHAIR VIGIL: And your motion will reflect that, Commissioner Montoya?

COMMISSIONER MONTOYA: Yes.

CHAIR VIGIL: Okay. My second will also.

The motion to approve the transfer of funds to Cundiyo passed by unanimous [3-0] voice vote. [Commissioner Sullivan recused himself and Commissioner Anaya was not present for this action.]

COMMISSIONER MONTOYA: Thank you, Madam Chair, and thank you all for coming this afternoon.

CHAIR VIGIL: Thank you, gentlemen and good luck on your water system and the water problems you have out there. Hope you can work them out.

We are going to wait on item IX. C until Commissioner Anaya gets here.

X. Appointments & Reappointments

A. Appointment to the Santa Fe County Board of Registration (County Clerks Office)

DENISE LAMB (Clerk's Office): You may recall we did this two years ago. This is what is known as the list maintenance procedures under the national Voter Registration Act. It used to be called the purge. And they don't call it that anymore because that sounds kind of Stalinist and so what we have done is I sent out letters to the political parties to notice them to give us a list of likely candidates for the Board of Registration. Roman, did we receive anything from the Democratic Party?

MR. ABEYTA: Madam Chair, not to my knowledge, no.

MS. LAMB: We did receive a list from the Republican Party and in anticipation of that possible scenario that we didn't receive anything from the Democratic Party I took the liberty of contacting the individuals that you appointed two years ago and asked them that should a letter not be submitted would they be willing to serve again. I have those names and I can provide them to you.

CHAIR VIGIL: What are they Denise?

MS. LAMB: Two years ago, the people that you appointed were Edna Wyatt, Ernesto Baca, and Terry Rivera. Terry was an alternate. Ernesto was the person that actually served. I spoke to him a couple of days ago; he's willing to serve again and I believe that Terry or Edna would be willing to serve as alternates for Democratic Party members. And the Republicans have submitted a letter in their order of preference and that lady that is put as the first priority did serve two years ago. She was actually a very good member.

COMMISSIONER MONTOYA: So we need to appoint two, Madam Chair?

MS. LAMB: You need to appoint no more than two of the same party affiliation. So it can be two Democrats and a Republican. It can be two Republicans and a Democrat. However you want to do it.

CHAIR VIGIL: So the nominations, who we have before us from the Republicans, in priority: Ellie Bickley, Mike Morrissey, Jim Holdrege and Bob Parmelee. And from the Democrats, Edna Wyatt, Ernesto Baca and Terry Rivera. Correct?

MS. LAMB: Correct.

CHAIR VIGIL: That's the entire slate. Okay. Are there any recommendations from the Commission?

COMMISSIONER MONTROYA: Madam Chair, I would nominate Ellie Bickley.

CHAIR VIGIL: There's a nomination for Ellie Bickley. Are there any other nominations? I would like to nominate Ernesto Baca and Terry Rivera. That would fill the slate wouldn't it. So it would be two Democrats and one Republican?

MS. LAMB: That is correct.

CHAIR VIGIL: And that would be sufficient for you?

MS. LAMB: Yes, Madam Chair.

CHAIR VIGIL: Are there any other nominations?

COMMISSIONER CAMPOS: Move to close the nominations and vote for these three as our candidates.

COMMISSIONER SULLIVAN: Second.

CHAIR VIGIL: There's a motion and a second to close.

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

CHAIR VIGIL: We can take action on the nominations now if someone cares to give a motion.

COMMISSIONER SULLIVAN: Move that the nominees be accepted by acclamation.

CHAIR VIGIL: Motion.

COMMISSIONER CAMPOS: Second.

CHAIR VIGIL: Second. Any discussion?

The motion to appoint Ellie Bickley, Ernesto Baca and Terry Rivera to the Board of Registration passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]

COMMISSIONER CAMPOS: Do we need an alternate?

CHAIR VIGIL: Do we need an alternate, Denise?

MS. LAMB: It would be helpful if you would nominate alternates. That would

be helpful. We didn't need them last time but I'd rather do that than come back.

COMMISSIONER CAMPOS: Who was the Republican second choice?

CHAIR VIGIL: Mike Morrissey.

COMMISSIONER CAMPOS: Okay, I nominate Morrissey as the Republican.

And who's the Democrat?

CHAIR VIGIL: Edna Wyatt on the Democrats. Any further nominations?

Seeing none, we can do a motion by acclamation. Is there a motion to accept these alternates by acclamation?

COMMISSIONER CAMPOS: So moved.

COMMISSIONER MONTTOYA: Second.

The motion to appoint Mike Morrissey and Edna Wyatt as alternates passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]

VIII. OTHER MATTERS FROM THE COMMISSION

CHAIR VIGIL: I will go back to Matters from the Commission and I will start with Commissioner Montoya. Are there any matters from you?

COMMISSIONER MONTTOYA: I'll pass at this time.

CHAIR VIGIL: Commissioner Campos.

COMMISSIONER CAMPOS: Just one issue that I've been thinking about, often times when we have public hearings we have a lot of contact from the developers or lobbyists or from the community. And I was wondering what the standards are for a contact by these folks with a County Commissioner before a public hearing. I'd address the question to our attorney.

MR. ROSS: Madam Chair, Commissioner Campos, do you want me to discuss that now or do you want me to prepare a memo and circulate it?

COMMISSIONER CAMPOS: Maybe a memo too. It would be important.

MR. ROSS: Generally, due process requires a fair and impartial tribunal and to the extent that those kinds of communications impair that then it could be a due process issue. But if it fails to reach that standard of course it's not. I can give you a little research memo and detail the latest law on that subject if you'd like.

COMMISSIONER CAMPOS: I'd like that. Also I would like to have some discussion about when a Commissioner should recuse themselves when there's a family relationship or significant political relationship, donation or whatever, and how that is brought forth for consideration before the County Commission.

MR. ROSS: Will do.

CHAIR VIGIL: Anything further, Commissioner Campos?

COMMISSIONER CAMPOS: That's it.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Thank you, Madam Chair. Just one item. In our meeting back on the 9th of January we were looking at legislative issues and discussing a number of issues that we have since put forward. And one of the things that I brought forward and I don't know that it's turned into any proposed bill or not was something to enable the County to recoup its administrative costs when we administer capital improvement bills. And I wanted to ask Roman, is there anything that we've been able to put together on that?

MR. ABEYTA: Madam Chair, Commissioner Sullivan, that's something we have been looking at with our lobbyist. I don't know if we're going to be able to get anything in during this session but it is something that we have already talked about amongst ourselves and the Association of Counties about dealing with in the interim, because this is an issue. We do want to meet with our delegation after the session and we want to bring it to their attention by showing them that the sheer volume and number of projects that we have and the impacts that those projects have to the County. And we'd also like to educate them on the process also because I think there's a lot of misinformation. I don't know how many of them actually know what it takes when they allocate money or projects to the County. So this is something we are going to target in the interim between this session and next.

One of our lobbyists was concerned that if we do drop something now there could be a risk to our priorities and other things we want to get accomplished, only because we're raising it at the last minute. But I am committed to raising it before next session and actually inviting the delegation to kind of a study session where we talk about projects and the impact it has on us.

COMMISSIONER SULLIVAN: Thank you, Madam Chair.

CHAIR VIGIL: I have a few matters. I just wanted to bring to your attention to the Board of County Commissioners and the general public that we have lost a really great person in our community. A person who honored and respected the Board of County Commission process. She was an activist who loved these chambers and loved coming here and no matter under what circumstances she came before the BCC she did it with sense of respect and dignity.

Olivia Tsosie died a week ago and the community of Agua Fria is at a huge loss with her gone. I just for a few moments want to read a couple of statements that were brought forth and I give credit to someone who was very close to her on these statements and that's Tamara Lichtenstein. She says that Olivia was passionate about the river. She cared deeply about Agua Fria, about its land, water, people, plants and wildlife. She noticed everything. She wrote about and cared about the children in our schools long after her own children had grown up and left those schools. She cared about libraries and books and bilingual education. She was active in the Old Santa Fe Association and our local community water association.

She followed her interest in community health to become a nurse and promoted every kind of social justice issue and issues on the environment. When she went down she was assisting in classrooms and she wrote to folks far and wide asking for attention to be paid to world treasures and to do what needs to be done to rescue social injustice and our environment from human folly.

The last e-mail that Tamara received from Olivia said this: Protest [inaudible] by hope far more modest than that of public success, mainly the hope of preserving qualities in one's own heart and spirit that would be destroyed by acquiescence. Olivia leaves eight children. They are [inaudible] Consuelo, Carol, Joseph, James, Robert, Lewis and Ramos. And I hope I got Lewis' name right. I'd like us to just take a few moments of silence please. Thank you. We extend our condolences to the family of Olivia Tsosie.

The next item I have on the agenda are probably polling items from the Board of County Commission. The City of Santa Fe is going to be considering a request to do away with the EZA at its meeting tomorrow night. When I learned about this I contacted Steven Ross so that he could better at least update us on what that would mean and after he does I'd like to poll the Commissioners in terms of what message we might be able to get to the City with regard to that recommendation. Steve, may I ask you to do an assessment of what that would mean?

MR. ROSS: Well, Madam Chair, the first thing I'll address is the notion that we should do a poll of the Commissioners. We can't do that. It's not on the agenda. So I would urge us not to do that.

CHAIR VIGIL: In lieu of that, after we've had discussion, can you summarize the discussion to give a summary of that to the City?

MR. ROSS: Sure. It's a little unclear what happens if a municipality terminates an agreement like this. We started studying it when the City of Española recently notified us that they wanted to terminate our existing joint powers agreement with the city. But we don't have an Extraterritorial Zoning Authority or Commission that deals with that area. All the authority that the city possessed to zone and plat in those areas was relegated to that old agreement. I think it's from the early 90s.

COMMISSIONER MONTOYA: 1992.

MR. ROSS: 1992. The ramifications of that are not as difficult to assess as this one where we have an EZA and EZC that administer not only the zoning in the Extraterritorial Zone but the platting and plats that are filed within the five-mile zone outside the City of Santa Fe. The reason it's a little unclear what happens is because in 2003 the legislature amended the statutes in connection with some large shifts that were occurring in Bernalillo County, between Bernalillo County and the City of Albuquerque. At that time they were restricting the City of Albuquerque's ability to annex and also restricting the ability of the - well, restricting the concurrent jurisdiction of the City of Albuquerque and the EZ there. While they were doing that they recognized the statutes and essentially places all the remaining Class A counties, ourselves, Dona Ana and San Juan, into the same statutes that had previously governed Bernalillo County, without repealing the prior statutes that applied to our operations. So it's created kind of a mess.

The nearest I can piece out from looking at it is that once an agreement like that is terminated it appears - and it's not 100 percent clear - but it appears that the County then has sole authority to zone within the two-mile radius outside the city. The possibilities at that point are that the City and the County could one, create a new EZA and a new EZC through a new joint powers agreement, or two, create a joint ordinance which would also create an EZA and

an EZC but slightly different. By slightly different I mean that the EZA would be composed of three City Councilors and four County Commissioners. That's four of you sitting on that body instead of three currently.

Plus it appears to me from looking at the statutes that the EZC would be composed of all the members of our CDRC plus a number of members from the City's Planning Commission. So it creates a larger EZA and a larger EZC if you do the joint ordinance method. It appears that the method of creating an EZA and an EZC by joint powers agreement still exists. That being said, I think the biggest question is what occurs in the time between the time when the notice of cancellation is received and when we get into a new arrangement with the City of Santa Fe. Depending on how long a period there is there could be a lot of uncertainty. Perhaps legal issues could arise and the like.

There are a number of statutes including the petition method annexation statutes that require resolution of certain disputes by the EZC and the EZA before the City can annex. I don't know that the City is aware of that. Were they to terminate that agreement, those vehicles would not be available to them if they received a petition from someone seeking annexation and they didn't have the requisite 30 percent of ownership in the area, thus requiring proceedings before the EZC and the EZA. I don't know how we would address that if we didn't have those bodies in existence or didn't have the statutory change. That's kind of my take, the preliminary take on things. It's not a very clear picture. One of the things I've always said is if that came to pass for a while we would have great uncertainty on folks trying to develop in the two-mile and possibly even the five-mile, trying to subdivide.

CHAIR VIGIL: Thank you.

COMMISSIONER MONTOYA: Madam Chair, I had lunch with Councilor Carmichael Dominguez and we discussed this and I'm not sure that there is widespread support, based on our conversation for this happening at this point. Not to say that at some point down the road that maybe we do need to revisit the composition and the responsibilities of the EZA. But I think until there's a vehicle to be able to address some of the things that Steve brought up, that we need to continue with the EZA. And then during the course of determining I think what we want to do with the EZA, determine, okay, are we going to have a joint City-County ordinance, or are we going to have the City conceding, saying the County has jurisdiction over this two-mile radius. But until we have those discussions I think we need to continue with the EZA. Those are just my thoughts.

CHAIR VIGIL: Commissioner Campos.

COMMISSIONER CAMPOS: One thing that needs to be addressed is that the EZO, the ordinance itself, is really outdated and very inadequate. And if we are going to continue in a relationship with the City, which I'm not advocating for, but if we are I think we seriously have to address the ordinance and probably redraft it completely. It would require both, I think City Council and County Commission approval.

CHAIR VIGIL: I'm agreeing with my colleagues here. I actually think that I'm not real clear. We're looking at annexation issues at this particular time and I'm not real clear as to whether or not once property annexed if that extends the EZA and I'm not even sure that

the statute is clear about that. So not having a real strong sense of direction, I think we would be creating a disservice to the community and the members of the EZA and also not having any kind of clarity between the City and the County, first on annexation issues. This is the first time I heard, Mr. Ross, that the EZA/EZC is so closely linked to the annexation component and I'm not even sure that that's been communicated to the Regional Planning Authority, because we've been proceeding with public hearings to learn from the public what their response is to annexation. So I think I'm in agreement with them with regard to protecting the current format for development review until we know exactly what happens to annexation and what kind of joint powers agreement we want to enter into.

If there's no further discussion on that, I just want to thank staff and all those who participated in the study session for the public improvement district. It was very informative to me. I think it answered and also brought forth more questions for me but now I have an opportunity to speak with Peter Franklin about those questions and I actually would like to propose – unless any of the Commissioners object – that we consider placing a decision on the public improvement district at our next BCC meeting. And if there are no objections to that I think the decision needs to be made. Are there? Okay. Then we can place that on our next BCC meeting.

MR. ROSS: Madam Chair, we're checking with Mr. Franklin right now to determine whether there are any notice issues that might dictate that it be placed on some other agenda. But barring any kind of issue like that we'll place it on our next agenda.

CHAIR VIGIL: Okay. Those are all the items that I currently have.

COMMISSIONER MONTOYA: Madam Chair.

CHAIR VIGIL: Commissioner Montoya.

COMMISSIONER MONTOYA: I wanted to also bring up and had brought it up I believe at the previous meeting, the need to have a work session to begin to prioritize all of the projects that we have in terms of having funds obligated to them and projects that need to have funds obligated to them, and again to get away from the perception that we're sitting on a bunch of money that DFA says we don't need any more when the fact is what we are sitting on is the County's match or portion of the contribution for the total project.

I would like to have that discussion with the Commission so that we can begin to now only prioritize those projects but also I think Commissioner Campos, we can prioritize the projects overall within the County, so we don't fall into the predicament of having too much on our plates and still adding stuff to staff's workload already. So maybe we could schedule that some time in the very near future.

MR. ABEYTA: Madam Chair, Commissioner Montoya, we'll poll you and get a date where we could get a special meeting in March to do that.

CHAIR VIGIL: Commissioner Montoya, is this something you'd like before the end of the legislative session or is that even possible?

MR. ABEYTA: Well, actually, yes. At the end of February I'm going to be coming forward with a request from the Chimayo Greater Mutual Domestic Water Association to the tune of about \$1.5 million for that project.

CHAIR VIGIL: At the end of March?

COMMISSIONER MONTOYA: No, at the end of this month. The end of February.

MR. ABEYTA: Madam Chair, we could pull stuff together. It's just going to depend on your availability, whether or not we can get all of your or three of you to a special meeting. But we can try to schedule something with you before the end of February.

CHAIR VIGIL: The reason I ask that, Commissioner Montoya, is I have also received messages from DFA in terms of what our priorities are where the dollars there are committed to. While I've expressed to them that they are committed and they are matching dollars, it would be good to have the Board of County Commission particularly have a consensus on where they go so that DFA would have that information. Because DFA is communicating that to the legislature and without that prioritization I think we're going to get a message that Santa Fe County doesn't know what their priorities are.

COMMISSIONER MONTOYA: And they don't need the funding.

CHAIR VIGIL: And they don't need the funding, bottom line.

MR. ABEYTA: Madam Chair, we'll work on scheduling something.

CHAIR VIGIL: Okay. Thank you. Anything else.

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

XII. Staff and Elected Officials' Items

B. Health & Human Services Department

1. Approval of Sole Community Provider Funding for FY-2008 for Holy Cross Hospital and St. Vincent Regional Medical Center

CHAIR VIGIL: Who's taking the lead on this?

MR. ABEYTA: Madam Chair, Steve Shepherd will start this discussion. Finance has some information they want to share with the Commission then we will be open to discussion with the Commission. But Steve Shepherd will start the discussion.

CHAIR VIGIL: Thank you. Mr. Shepherd.

STEVE SHEPHERD (HHS Director): Madam Chair, Commissioners, today we're bringing back two sole community provider requests, one for St. Vincent Hospital in the amount of \$32,278,499, and one for Holy Cross Hospital in the amount of \$21,321. Holy Cross was not included in the request at the last meeting as we didn't receive it until last week. And at this point I'd stand for any questions. I'm prepared to answer any of your questions.

CHAIR VIGIL: Thank you, Steve. Are there any questions for Mr. Shepherd? Hearing none, Roman, what was your next recommendation?

MR. ABEYTA: We were going to hear from Teresa Martinez, our Finance Director. She's handing out some information to go over with the Commission regarding funding.

TERESA MARTINEZ (Finance Director): The slides that you have before you

are categorized by fiscal year, sometimes being our fiscal years, July to June, and sometimes being federal fiscal year, October to September for comparison points. The first sheet you have in front of you is an attempt at showing our total revenue sources, less the state Medicaid required payments, coming up with a total revenue available for SCP payments, broken down by fiscal year and further broken down by the 1/8 increment dedicated to EMS and the 1/8 increment dedicated to the indigent fund. So in the middle of the page is total revenue available for SCP payments on a July to June fiscal year.

Also broken down are the required SCP payments, actuals, that we have made to the state. When you compare revenue available to required SCP payments, you get the net difference, over or under by fiscal year. The total over the course of the fiscal years comes to \$2.6 million to the good. Now, that \$2.6 million goes to further support EMS which is our fire operations as well as direct indigent health services. So you'll see that the \$2.6 million is declining over the course of the years. That again is supporting fire and indigent.

COMMISSIONER MONTOYA: Madam Chair, on that particular item there, Teresa, we started out in 2003 with \$2.2 million in the black.

MS. MARTINEZ: Right.

COMMISSIONER MONTOYA: And now we're \$2.7 million in the hole.

MS. MARTINEZ: Right.

COMMISSIONER MONTOYA: Could you explain how that occurred?

MS. MARTINEZ: Okay. In 2003 we had the rededication of the 1/16 to the third 1/8. So that kind of skews the revenue data. So our SCP requirement in that year was \$3.7 million and our total revenue available was the \$5.9 million, so we were to the good in FY2003. And you'll see that the problems don't begin until FY 2007 when we start falling short on revenue collections to support SCP requirements.

COMMISSIONER MONTOYA: And that's because the 1/8 GRT is not there?

MS. MARTINEZ: Well, no. The 1/8 now is totally dedicated to EMS and that total portion now goes to support the sole community provider.

COMMISSIONER MONTOYA: And where was it reflected in here on the previous years?

MS. MARTINEZ: I don't show 2002 and I don't show 2001. In the older years, that's when it was a 1/16 I believe general. And then it was split to give the EMS the additional 1/8.

COMMISSIONER MONTOYA: So originally we were taking some of that EMS 1/8 and putting it toward the SCP payments.

CHAIR VIGIL: And now we're not?

COMMISSIONER MONTOYA: And now we're not.

MS. MARTINEZ: Now the whole amount is dedicated to SCP, the 1/8, under the EMS fund.

COMMISSIONER MONTOYA: So both the EMS and the indigent -

MS. MARTINEZ: They're dedicated in total to SCP, less the state required Medicaid payment, the County's support of Medicaid.

CHAIR VIGIL: Let me ask you – are there any other questions?

COMMISSIONER MONTOYA: Madam Chair, I'm still trying to figure that last line item out in terms of where it turned around so badly.

MS. MARTINEZ: Let me say too that 2007 is not a completed year yet. That was projected, or a budgeted number. 2008 is projected numbers, so that will contribute to the skewing. That's what we're assuming to collect in revenue, and that's what we know to be our budgeted payment.

COMMISSIONER MONTOYA: Okay. That's all I have. Thank you.

CHAIR VIGIL: Any questions from any other Commissioners for Teresa? Teresa, we're all looking at this for the first time so we need to give the Commissioners a few more minutes to absorb some of this. I guess the question I have for you is if we were to – how many GRTs have we passed? I looked – we have the PID study and I looked at the PID study session showed because I wanted to make sure we've enacted all that we can, yet there are some that we haven't. And it looks like a hospital – and I thought a quality of life GRT was out there too, and we haven't enacted that.

MS. MARTINEZ: We have not enacted that.

CHAIR VIGIL: And then an emergency – another emergency GRT? Why don't you –

MS. MARTINEZ: Let me make a point of reference, FYI in your packet, the very last page, the summary of all the taxes that the County has currently enacted.

CHAIR VIGIL: And how many are available for us to enact.

MS. MARTINEZ: There are only four, and I apologize for not knowing all of them. The quality of life for one, and the 1/16 for indigent is also another one that has not been enacted by the County.

COMMISSIONER MONTOYA: So, Madam Chair, on this one we only have one left that Commissioner Campos can enact. Is that correct? The 101 general, the 1/16?

MS. MARTINEZ: Right. Actually the 1/16 that you're looking at is already enacted. That's also corrections that we've already started seeing.

COMMISSIONER MONTOYA: So which ones have we not then?

MS. MARTINEZ: The 1/16 for indigent has not been enacted, and then there is a quality of life.

COMMISSIONER MONTOYA: Okay. So those two have not. This is not reflected here. These are just the ones that are in place.

MS. MARTINEZ: What is in place currently. That is enacted.

COMMISSIONER CAMPOS: Madam Chair.

CHAIR VIGIL: Commissioner Campos.

COMMISSIONER CAMPOS: Ms. Sanchez, isn't there a GRT for the jail that is available to the County?

MS. MARTINEZ: That would be the very tail end. Right. That's the last GRT noted. What's before you is everything that has been enacted by Santa Fe County to date.

CHAIR VIGIL: And it seems to me, if we rely on the report by RBC that we

had in our study session, that the local actions that we have not enacted are the special County GRT, the County emergency GRT, apparently there's another one, the County hospital emergency GRT, and the County educational GRT.

MS. MARTINEZ: That sounds right and I'm wondering if reference to the County EMS doesn't reflect the recent tax that we enacted.

CHAIR VIGIL: It may. And let me just give you this Teresa, just for your quick review so that you can validate this. I don't want anything on the record that doesn't represent a review by you. And if you need further time, that's fine too.

COMMISSIONER MONTOYA: Madam Chair.

CHAIR VIGIL: Commissioner Montoya.

COMMISSIONER MONTOYA: What is the quality of life percentage?

CHAIR VIGIL: I don't see it on that list but – was it a quarter percent?

MS. MARTINEZ: I don't see it on the list either and I don't know the answer to that. I'll have to get back to you on that.

COMMISSIONER MONTOYA: Okay. Commissioner Campos would like to consider that one also.

MS. MARTINEZ: For enactment?

COMMISSIONER CAMPOS: Before the end of my term, yes.

CHAIR VIGIL: Is that a local option. I don't even know.

MS. MARTINEZ: I don't even know on that either.

[Commissioner Anaya joined the proceedings.]

CHAIR VIGIL: Okay, are there any further questions from the Commissioners for Teresa? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Teresa, I just wanted to refresh my memory. When we talked last meeting about the 1/16 GRT it was estimated, I think that that would bring about a little over \$2 million. Is that right?

MS. MARTINEZ: That's correct.

COMMISSIONER SULLIVAN: I was looking at the rates that these contributions have been increasing in the last two or three years and they've been increasing at a 20 to 25 percent rate each year, which is about two million dollars a year. So if we funded – if we passed a 1/16 GRT and dedicated for this purpose to take care of fiscal year 2008, what will we do in 2009? Do we have any other GRTs left?

MS. MARTINEZ: No. Not for this purpose. If you go to the third slide, that's the point this slide is trying to make, that total GRT available, less what we pay for required Medicaid, and the list of the sole community provider payments by fiscal year identifying the base as well as the supplemental, so you would have that historical data, when you compare them, you're very right, Commissioner Sullivan. GRT is growing at a rate of three to five percent. We had one year where we had an eight percent growth. So on low end, three, on the high end, five. The sole community provider is growing at a rate of 25 to 29 percent. So the

revenue sources are not sufficient to sustain the growth of the SCP. So if you enacted the 1/16 tax, it would be a short-term fix and we would be in the very same situation that we're in right now, trying to determine how we would support the total base recommendation for sole community provider.

COMMISSIONER SULLIVAN: And as I recall, I think all of the Commissioners are in support of the hospital, but at the last meeting we had of the Indigent Board we looked at the statistics in terms of revenues and costs, and the hospital is in the black on these. Is that correct?

MS. MARTINEZ: I believe that's correct.

CHAIR VIGIL: So I think there was apparently a need for a rise. There was a sizable deficit in what they were expending and what they were having to – what they were receiving in return, but it appears the federal shares have gone up substantially. So we've now erased that deficit. So I think it sounds like we're at a more stable level. If we set an amount at this point and if it's the amount we have available, which seems reasonable, then if we are wrong on our estimates or we suddenly get an influx of money we hadn't anticipated, can we pick that up when it comes time for the supplemental?

MS. MARTINEZ: We could entertain it. Definitely.

COMMISSIONER SULLIVAN: So last year we didn't do any supplemental and the state stepped in to make that payment. This year it seems like we're in the same situation and we're not going to have funds for the supplemental either. But if things turn around, that option is still available to us, isn't it?

MS. MARTINEZ: It would be available, yes.

COMMISSIONER SULLIVAN: Okay. Thanks.

CHAIR VIGIL: I want to welcome Commissioner Anaya.

COMMISSIONER CAMPOS: Madam Chair.

CHAIR VIGIL: Commissioner Campos.

COMMISSIONER CAMPOS: Question for Commissioner Sullivan.

Commissioner Sullivan, you said that the hospital budget was in the black. Tell me what that means.

COMMISSIONER SULLIVAN: Well, in the quarterly report that they provide to the Indigent Board they summarize their total – all of their community based costs, which includes all of the components that are funded and their revenues. In prior years there's been a deficit and in their last report they were in the black. So at the current levels that we're providing SCP funds the hospital is recovering its costs as they pertain to Santa Fe County.

CHAIR VIGIL: Any further questions? Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Commissioner Sullivan, you mentioned supplemental. Could you go over that one more time? I wasn't particularly clear on that.

COMMISSIONER SULLIVAN: Okay. We have two opportunities each year to fund the hospital. The one that we're working with now is the base funding, and that's the largest chunk each year. And then later on in the year, based on what the feds have available, is

my understanding, from other areas that maybe haven't used all their funds, they come up with a potential supplemental amount that could be funded. Now that also has to be matched. We have to come up with the 28 percent for that as well. But I'm just saying that within less than a year, more like six months, I think, if we have better revenues than we anticipate we have another opportunity to assist the hospital in the supplemental funding category.

MS. MARTINEZ: Madam Chair, Commissioner Sullivan, if I can add to that, Commissioner Anaya? It is very right with the base and the supplemental. What the Board needs to keep in mind is that we commit to a base now. We're approached later for a supplemental. If we agree to that supplemental, the base grows by that supplemental amount each year. So next year's base is automatically going to be the committed base and supplemental from the previous year.

COMMISSIONER ANAYA: Okay. Thank you, Madam Chair.

CHAIR VIGIL: Any further questions for Teresa?

COMMISSIONER CAMPOS: Just one.

CHAIR VIGIL: Commissioner Campos.

COMMISSIONER CAMPOS: Last year the state paid for the supplemental. Did that – since the state paid for it, did that result in it being added to the base also?

MS. MARTINEZ: I believe it will add to the base, yes. Yes, it was added to the base.

CHAIR VIGIL: No further questions, but if you could stand by. We may have questions for you later. Roman, how would you like to proceed now?

MR. ABEYTA: Madam Chair, that's pretty much the information that staff has for the Commission to consider. If you want a recommendation from staff I could give you a recommendation. I don't know if you want to hear from St. Vincent Hospital or not before we get to that point.

CHAIR VIGIL: Of course we'd like to hear from St. Vincent's. Mr. Valdez, would you please approach.

ALEX VALDEZ: Good afternoon, Madam Chair and members of the Santa Fe County Commission. We appreciate the opportunity to come back before you today and present St. Vincent Hospital's request for full funding of sole community provider for this coming federal fiscal year, which starts in October. The amount that St. Vincent is requesting for match for purposes of base funding is approximately \$9.2 million for base. That will have an impact when we are able to leverage that dollar with the federal financing at a three to one ratio of approximately \$32 million for St. Vincent.

Before I get into a discussion around the matching itself and sole community provider I would like to be able to present the Commission with a few documents, if you don't mind and also have them submitted for purposes of the record, if that's fine with you.

Madam Chair, some of the items that I presented to you and to the Commission members, our first thing is a schedule that is attached to our most recent memorandum of agreement and it's titled "Scope of Services". I'd like for us to just spend a few minutes reviewing the scope of services that are provided as a result of our memorandum of agreement.

Seldom do we have an opportunity between St. Vincent and the County Commission to review those items and see the type of contributions that we are able to make as a result of the financing mechanism that we have for St. Vincent, not only to the County but also to different types of programs throughout the community.

I note from your chart you have expenditures for EMS for instance, and you'll see under scope of services that through St. Vincent as a result of our financing ability we are able to support emergency medical services. I'm not going to go through each one of these items, but you'll see that we're able to support emergency medical services to the tune of approximately \$3.6 million. You'll see that through the MOA we're able to support our indigent care funding to the tune of about \$1.6 million. That helps to enable Santa Fe County to pay out of county expenses for its residents that may find themselves in other hospitals.

In terms of our support for medical care for inmates that find themselves in Santa Fe County jail, Medicare for residents in custody, through our memorandum of agreement we're able to support to the tune of about \$2.2 million. Coordination of Health and Human Services, those are for administrative costs that the County incurs - \$186,000. Maternal Child and Health - \$180,000. I had a lady come up to me the other day at the legislature who was most appreciative of the funding that Las Cumbres is receiving through Maternal Child and Health, because it's helping them to address issues around early intervention for children that are at risk of school failure.

We have La Prada Transit, senior medical transport, \$90,500. Santa Fe CARE Connection, for a number of years now it has received \$522,000. In Santa Fe, CARE Connection is incredibly important for this County and it's incredibly important for this hospital and we appreciate the ability for us to be able to participate in supporting Santa Fe CARE Connection. Our mobile healthcare unit - I get demands for that mobile healthcare unit to see it become engaged in our communities in terms of early intervention, not only from a prevention perspective but early intervention - do more drug screenings, do more screenings out in our community.

Healthcare services in Santa Fe County, there's an attachment there to see what that goes for. Part of that, at least half of that goes to support physicians in our community who are participating in providing services to people who have no means to pay and yet were able to see that we're able to assist them with payment, and then there's an attachment that goes into greater detail there.

Nursing scholarships, \$190,000. This is an issue that I hope in our budget for St. Vincent in this next fiscal year we're going to be able to see it doubled because of the type of demand that we have not only for St. Vincent but the type of demand we have throughout this community to see more folks educated to be able to enter into the nursing programs and not only serve our hospital but serve our nursing homes at a higher level of quality than what we may be seeing today. That's an area that I see tremendous pressure in as we go forward to figure out how to increase.

And then community benefits fund, \$350,000. And that amount there, \$200,000 went to support in this current fiscal year PMS. The total amount that we see going through our

memorandum of agreement is approximately \$9,971,000. A significant amount of dollars that we appreciate the opportunity and the ability to be able to participate in. As you can see, these programs that are funded through this memorandum of agreement do not only touch St. Vincent. They touch many segments of healthcare delivery in our community. I think it's an incredible opportunity that we have to be able to participate in supporting EMS. I hope we have one of the more sophisticated emergency medical systems in this state as a result of this type of participation.

And then on the last two pages you see a schedule that reiterates much of what I just discussed in terms of the type of financing and support that we are able to provide through our memorandum of agreement, not only to Santa Fe County to see that Santa Fe County is able to continue with its programs and that it's able to support its indigents that may be going to other facilities, but of course any number of other programs that we see that are health-related, that serve the citizens of our community.

I think it's important for us to spend some time reflecting in terms of how significant and profound the relationship is that St. Vincent has with Santa Fe County. We are absolutely joined at the hip in terms of how we need to work in support of healthcare delivery in this community. There was a question raised earlier when the Commission was discussing the figures submitted by the County and the question was around whether St. Vincent found itself in the black this last fiscal year. I'm very pleased to say that we have found ourselves in the black the last three fiscal years. Finding ourselves in the black means that we have an operating margin that will enable, let's say, over New Year's weekend to absorb \$260,000 in overtime to assure that we could keep that hospital open 24/7 and well staffed.

That's what operating with margin means, that we have that type of flexibility. If we need to bring a spine surgeon into Santa Fe so that it can serve our population that operating margin enables us to enter into a relationship with a physician that costs us hundreds of thousands. When Women's Health comes to us and says they need to work on their electronic medical records for their physicians and their bases, we're able to assist them to the tune of \$50,000 without accounting for it in any MOA. But that's the type of flexibility that that enables us.

It enables us to move our bond rating from Baa with a negative outlook to a Baa stable, so that we can borrow money so that we can expand our emergency room, so we can renovate our operating rooms at less cost than what it would normally take if we had a Baa with a negative outlook rating. That's what a net margin enables us to do. That's what operating in the black enables us to do.

I've got to ask that this County Commission figure out how to support our healthcare system, not St. Vincent, our healthcare system, by coming up with a match of \$9.2 million. Do I understand that we are at the tipping point or the breaking point on this discussion? Most definitely. That's why over the course of the last week I have tried to obtain as many signatures as I could and generate as much legislative support as I could to say this issue around sole community provider needs to be addressed in the interim at the statewide level. It needs to be addressed at a statewide level. I think Santa Fe County is probably leading the pack in terms of

the pressures that are brought upon you, and I understand that.

Unfortunately we have not been able to address it from a statewide perspective yet, but the letter that I submitted to you from our legislative delegation from Santa Fe commits each and every one of those representatives and senators to supporting us in the interim to achieve a statewide solution where our counties are all participating under matching the type of taxes and things to enact to assure that there is County participation and that the state is then positioned to be able to assist all of our counties and our hospitals. I'm asking for funding for an additional year while we get this thing figured out at the state level, with your assistance and with the Association of Counties' assistance. We're going to need your leadership to help us figure this out from the statewide perspective.

Our board and many members of our board are here. David Gunderson, our chair, Al Robeson, our vice chair, Dave Delgado, one of our members, Frank DiLuzio, I saw him walk in, and I believe there are some other members of our board present with us – submitted unanimously – passed unanimously a resolution to be able to indicate to you how significant sole community provider is.

There are a number of community providers with us today. We have La Familia here through their executive director. It's significant for the type of funding we're able to assist La Familia with. We have Larry Martinez from PMS with us. Significant for the type of funding we're able to provide to PMS. Women's Health with us. Significant in the type of funding we're able to provide to Women's Health. Sometimes finding itself in the MOA, other times as a matter of health service development for our community.

I have one other handout that I'd like present to you, and it's a packet, if I may, Madam Chair, approach. This document addresses our community advisory groups, and the approach that we have employed at St. Vincent and we haven't had an opportunity to have a conversation on to assure that there is more community involvement on through our hospital. And you'll find that on the left-hand side of the document, Commissioner Sullivan, it's on the left-hand side, and it addresses our approach to try to assure that there is more community involvement, and it's not lip service that we have provided to this topic. We've already convened one of our community advisory groups to work on issues around spirituality in the hospital and healing in the hospital, and sought out and received the support of people like Jose Villegas to be able to help us in that effort. And that document is self-explanatory, and it indicates an opportunity for additional involvement from the Commission to assist us with that.

You also have on the right-hand side of the folder a document regarding community outreach, marketing and foundation to show you and hopefully impress on you the type of involvement that we've had at the county level in our community engagement.

The last document, Madam Chair and members of the Commission, is a document that we presented to some of you and it's the one that has a red line and a green line on it and it is an analysis that our chief financial officer, Rick Doxtater went through in looking at how we compare our sole community provider match from the County with the type of outlay that we have participated in through the MOA. And in our presentation it indicates that if you look at the total contribution throughout the years, particularly the last four years, through the MOA,

St. Vincent has been able to return both to the County as well as to different community organizations over 110 percent of the amount that has been put forth through the match that has come from the County.

Rick Doxtater is prepared to walk all of you through at the conclusion of my presentation. Madam Chair, once again in closing at this point, but for Rick Doxtater and others hopefully that are in the room that are willing to stand up and voice support for this match, I'd like to once again ask that the County Commission come across with \$9.2 million for purposes of matching sole community provider. You know that I have been very engaged in trying to find a statewide solution to this issue and will continue to do so. I need to get that Hospital Association onboard, and see our Santa Fe delegation onboard. I'm asking that we get through this for one more year and then hopefully, by the time we hit the next legislative session we have more of a statewide solution. Am I in a position to be able to guarantee that? No. Can I guarantee that you have 100 percent of my effort towards that? Yes. Thank you, Madam Chair and at this point I'd like to turn this over to Rick Doxtater.

CHAIR VIGIL: Let me just see if any of the Commissioners have questions for you. Are there any specific questions of Mr. Valdez?

COMMISSIONER MONTOYA: Madam Chair, one of the things that has been discussed over the period of the last month or so, Alex, has been the need for jail healthcare services. That's been one of the things that although we're getting some funding that's going for residents that are custody but one of the things that we've asked for in the past and going to ask again now is is the hospital willing to provide those services in the jail, because that will certainly relieve some tension from our budget from having to cover costs from the general fund for overall jail costs.

MR. VALDEZ: Madam Chair, Commissioner Montoya, at this point let me answer your question as follows. Let's start off by looking at the role of what I think our jail system may need from a jail health perspective. In the first instance I understand, and I understand this because I've gone out looking where we may be able to get engaged. This hasn't come to me from any requests; I've gone out looking for it. In the first instance, the point that's been addressed to me is that there is a need for a medical director. St. Vincent is prepared to provide and fund a medical director for Santa Fe County jail. We will work with your director to figure out what all of the needs are of that medical director, what those needs are that you have from a medical director. We need to get engaged in that conversation. I am prepared to get engaged in that conversation, but today I'm prepared to make that commitment that we will fund and provide a medical director for Santa Fe County jail.

Santa Fe County jail is also challenged from the perspective of staffing. There's a high turnover in terms of nurses. We too are challenged from a perspective of staffing in terms of our nursing. We have to depend to a large extent on Agency and Traveler. And of course as we recruit we want to recruit for our hospital as we must do, and we don't have the ability to assist the jail in terms of providing nurses because we don't have enough nurses to open up all of the beds that we need to open up. But I'm happy to work with Santa Fe Community College so that we can increase the amount of nurse graduates that they have, understanding that you have

demands and that we have demands and I'm also willing to work together with you in terms of how best we can assure ourselves that we are being wise in terms of our recruitment efforts that can serve not only the jail but serve Santa Fe in total.

But in terms of having extra staff that I'm able to assist with, I don't have enough staff to keep all of the beds open that I need to have open at the hospital. So that's a challenge, but I'm willing to work on that. We are willing to work with La Familia regarding placing at the time that inmates leave the jail to receive primary care and find a medical home. We're willing to work together with you to figure out how while an inmate is in custody we might be able to get that inmate on Medicaid after they're released from custody so that there's a payment source. We have that type of capacity within the hospital that we can assist you with.

We're willing to work with the CARE Connection and I'm not too sure if the CARE Connection wants to go down this road but I think we need to go down this road where the CARE Connection is not looked at only as an alcohol recovery program in the first instance for purposes of detox, but that we get serious about addressing issues around substance abuse in the jail. And Madam Chair, Commissioner Montoya, you know that I know that topic and am pleased to work with you on that.

But we've gone out trying to think about how best to get engaged beyond the conversation that we've had to date. And those are my thoughts. We're happy to figure out how best to get engaged on that. In the first instance, though, we're prepared to move on a medical director.

COMMISSIONER MONTOYA: Madam Chair, Alex, do you mean recruit and hire one?

MR. VALDEZ: We're prepared to recruit and hire a medical director and assist Santa Fe County in that respect.

COMMISSIONER MONTOYA: Just for the jail.

MR. VALDEZ: Well, as I understand it – and this is second hand, if not third hand, the jail is not thinking of needing a full-time medical director; they're talking about a part-time medical director. I've already met with Dr. Franz Melio who is our emergency room director and we're willing to take that one on and figure it out.

COMMISSIONER MONTOYA: Okay. Thank you.

CHAIR VIGIL: Any further questions for Mr. Valdez from Commissioners? Okay. And Madam Chair, Rick we'll be doing a presentation?

MR. VALDEZ: Yes, I'd like Rick to do –

CHAIR VIGIL: How much time do you need for your particular presentation? I'm trying to budget our time here.

RICK DOXTATER: Madam Chair, Commissioners, good afternoon. I can go through it fairly quickly and then stand for questions. What we've laid out here is really trying to look at the benefit to the County and the cost to the County, and given the fact that the County's fiscal year overlaps a little bit the sole community provider year, what we've done is laid out numbers that are tied back to documents. The top line that you see in the red are the commitment that the County makes to the sole community fund and that's a cash outflow to the

County, and that's by year. I did go over these numbers with Mr. Shepherd and he did confirm all figures in this document. So those are the County outflows by year, the commitment that's made by the Commission each year. If you see for 01 through 07, that was \$33 million.

This second part, as you know, each year later on in the year we have a discussion about contributions that the hospital is able to make to County programs, community programs. We look at the funding we have through the sole community program plus the hospital's other revenues. The second part of this is the memorandum of agreement. These numbers are all tied to the signed memorandum of agreement documents. There again, I verified with Mr. Shepherd. And you can see those are really inflows back to the County, the green numbers. And then the second set of numbers are the outflows that the hospital makes to community programs.

So in summary, for the period fiscal year 01 through fiscal year 07 the County has committed \$33 million to fund sole community. The County has received back through the MOA \$30.6 million or about 93 percent of what it put in. Then another \$12.5 million has gone from the hospital to community programs, most notably the CARE Connection of \$2.7 million and the other programs that Mr. Valdez mentioned.

If you look at the last four years, the County's committed \$23 million in sole community match. The hospital has paid back to County programs, including EMS, jail healthcare, indigent funding and so forth, \$23 million. So the County has actually received over 100 percent back the last four years in County programs in contribution versus what it's matched. So really at the top line the County has really not had a negative cash flow and in fact a positive outflow. And on top of that there's been over that period \$8 million that's gone out into other community programs.

The thing we want to stress is this leverage that the County provides. Sure, it benefits the hospital and it's allowed us to strengthen the hospital, but more importantly it has funded \$12.5 million that otherwise would have had to come from elsewhere to non-hospital programs, and the County's actually received contributions back to its programs in an amount greater. So you can just see the power of the leverage we have here and how important it is to take advantage of it. To cut back to the level that the County is proposing at this point will actually mean a decrease in funding received by the hospital. Certainly community programs will suffer. We will not be in a position to fund the CARE Connection or La Familia. That \$12.5 million that's been funded over from 01 to 07 will disappear. That's \$2 million going out this year. That will disappear.

So there is a lot at stake here. I just want to make sure that the economics are crystal clear. These numbers are all tied to documents provided by and agreed to between the hospital and the County. Those are all available and again, this is what we want to make sure - that the numbers are very clear, that there has not been a net cash outflow to the County at the top line during the course of this program, and community programs have benefited to the tune of \$12.5 million. And we would strongly encourage that we not disrupt that. We need at least one more year to stay in the game, to not lose funding until legislative solutions can be put together. So I'll stand for questions on the schedule.

CHAIR VIGIL: Does anyone have questions? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Just a quick one, Mr. Doxtater, and maybe it just has to do with fiscal years. But you show Santa Fe County as matching in fiscal year 07 \$7.227 million. Is that correct?

MR. DOXTATER: Madam Chair, Commissioner Sullivan, that is correct. That's the commitment of Santa Fe County.

COMMISSIONER SULLIVAN: Is that the base and supplemental or is that just the base?

MR. DOXTATER: Madam Chair and Commissioner Sullivan, as you know, base and supplement from prior year become base for the new year. So that is the base that the County committed to. It does not include the supplement that the state stepped up and provided a match for this year.

COMMISSIONER SULLIVAN: Because the figures that we have from Mr. Shepherd, the total County match in fiscal year 07 was \$8.648 million.

MR. SHEPHERD: Madam Chair, Commissioner Sullivan, we listed the base that the state paid for on there so we'd have an estimate for the next fiscal year.

COMMISSIONER SULLIVAN: For fiscal year 07?

MR. SHEPHERD: Yes. The \$7.227 million is the correct number from the County itself.

COMMISSIONER SULLIVAN: In fiscal year 07?

MR. SHEPHERD: Correct.

COMMISSIONER SULLIVAN: Okay. Thank you, Madam Chair.

CHAIR VIGIL: Any further questions? Seeing none, I know there are members from the health community that are here as Mr. Valdez mentioned. Would those of you who are in favor of St. Vincent's request just raise your hand? [Approximately 15 people responded.] And does anyone have a burning desire to address the Board of County Commission? Please come forth and state your name and address for the record.

DAVE GUNDERSON: Madam Chair and Commissioners, thank you. I'm Dave Gunderson, 667 Gonzales Road, Santa Fe, 87501. I'm a physician and chairman of the board of St. Vincent. I just want to stress that the difference between where the County is and where the \$9.2 million is is about \$2.5 million, which translates into about \$10 million in benefits that goes to the healthcare of citizens of Santa Fe County, and this is what we'll lose is if this isn't approved. There was a statement made that if some extra funds were available in the future and if you sort of wanted to do a little more you could. You can't. You have till the 15th of February to say whether you're going to make the match and if you say no, that you're not going to make the \$9.2 million, it's gone. It doesn't come back.

So I think we need to realize that it will cut \$10 million from our budget and it will affect services to the citizens of Santa Fe County. Thank you very much.

CHAIR VIGIL: Thank you, Mr. Gunderson.

COMMISSIONER MONTTOYA: Madam Chair.

CHAIR VIGIL: Commissioner Montoya.

COMMISSIONER MONTOYA: Dr. Gunderson, is that \$10 million that you have in the budget now that you're going to lose? Or projected?

DR. GUNDERSON: It's in the budget?

MR. VALDEZ: Madam Chair, Commissioner Montoya, the \$10 million is a budget impact on St. Vincent because it goes to our base.

COMMISSIONER MONTOYA: It's a budget impact but it's not in the budget right now?

MR. VALDEZ: Well, we haven't developed our budget for next fiscal year, but in order for us to address that budget for next fiscal year we're going to have to look at cutting programs, reducing funding. If you took that \$10 million and looked at it from a staffing perspective, that's 250 staff, approximately, so that's how we would have to adjust that budget.

COMMISSIONER MONTOYA: Okay, I guess it's still not clear that it's actual dollars that are in the budget right now that we have right here before us that you're losing.

MR. DOXTATER: Madam Chair, Commissioner Montoya, it would be an actual loss from the hospital is today because during the current fiscal year the state has stepped in and provided funding. They aren't going to do that again, but they did step in and provided supplemental funding. So that is in our base. We are expending that dollar today to run the hospital. The amount for next year is based on the funding that we received through the County, through the supplement that the state stepped in, plus they put in an inflation factor to help us keep up with our costs. So to move down to the number that the County has initially proposed would result in an absolute drop in revenue to the hospital from the level we're operating at today. And as Commissioner Sullivan pointed out, the level we're operating at today has allowed us to get very close to covering what's previously been several million dollars of uncompensated community benefit. So we will move back to those levels of prior years. Commissioner Sullivan pointed out that we worked hard to dig out so it will be, again, an absolute drop in revenue from where we stand this year.

COMMISSIONER MONTOYA: Okay.

CHAIR VIGIL: And question. How does this – this probably goes to you or Mr. Valdez – your uncompensated care – what is your current evaluation of your uncompensated care for this year and perhaps how does that go up on an annual basis? Do you actually allocate a figure to that?

MR. VALDEZ: Madam Chair and members of the Commission, in terms of – I don't quite understand your question.

CHAIR VIGIL: A lot of what St. Vincent's does, it provides care for the indigent and those people who are unable to pay their bills.

MR. VALDEZ: Correct.

CHAIR VIGIL: So do you have a budget item or at least I've seen in the past a budget item for uncompensated care.

MR. VALDEZ: Yes, we assign a dollar figure to the amount of uncompensated care that we provide.

CHAIR VIGIL: Do you know what that dollar figure is?

MR. DOXTATER: Madam Chair and Commissioners, as you know we present a report quarterly to the Indigent Board. I do have the fiscal year June 30 06 report that Commissioner Sullivan referred to. Our total cost of care of uncompensated care at cost – not at a marked up fee schedule but our actual cost this past year was \$15.2 million, at cost. The way we look at our community benefit is that, plus the MOA was \$8 million last year plus the hospital had other community benefit programs. So that's how we look at really trying to account for that funding. It's obviously the MOA back to the County, sole community allows us to make a contribution. We have to account for that. We account for the \$15+ million uncompensated care and then some other community benefit programs that DHA, AHA, CHA require.

CHAIR VIGIL: Another question, and let me just defer to Commissioner Anaya and I'll wait on my question. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I think the bottom line is are we going to raise taxes or not? Whether it's going to be a negative or a positive. I think what we have before us here is we need to decide whether we're going to do it negative or positive. I think that all we can say now is we're going to support the \$6,700,000 and then it's up to us to decide whether we're going to raise taxes or not. I think that's the issue.

Next year – you have a letter here signed by the representatives. What are they going to do next year? Because you're going to be back here and are they going to solve the problem next year?

MR. VALDEZ: Madam Chair and members of the Commission, Commissioner Anaya, it is our hope that we are able to come up with a solution that will in my eyes do the following: The County as a matter of law having responsibility under the Indigent Claims Act to provide funding for indigents. We have been very fortunate in this state to be able to have a sole community provider fund. Most states in the country do not. We have been able to take wise advantage of that opportunity to increase our healthcare service delivery.

From my perspective and I know there are others that share this same perspective with me, we are at the point where the state is going to have to figure out how best it can help supplement the contributions that are coming in from the counties to assure that we are able to at least hold even, if not continue to take advantage of sole community provider. So through my eyes, there is going to be a need for the state to come in with revenues to be able to assist us to capture the growth that is going on in sole community provider.

COMMISSIONER ANAYA: And they all realize that, I'm sure.

MR. VALDEZ: We've had a conversation, Madam Chair and Commissioner Anaya, with members of the Santa Fe delegation in particular. It's probably the most engaged section of our legislature on this topic. And they know that there needs to be a statewide solution and that means a financial commitment to try to figure out how best we can continue to operate this sole community provider program.

COMMISSIONER ANAYA: Okay. And then if this Commission decides to go on a positive, then we send it to the voters and it doesn't pass, and we say we're going to give you the \$2 million and it doesn't pass, how does that work? It doesn't work. Or does this

Commission say we're going to pass a tax with negative referendum and we're going to raises taxes 1/16 percent in order to give them their \$2 million. Is that bottom line?

COMMISSIONER MONTOYA: Yes.

COMMISSIONER ANAYA: So it's up to us to say right now, we're going to approve \$6.7 million, and then we've got to decide whether we're going to raise taxes or not. And if we decide to, I think it needs to be negative, or we don't raise taxes and you get your \$6.7 million and that's it. I think that's where we're at. So the motion would be to approve - if discussion is over -

CHAIR VIGIL: I have some further question before we're at motion. Alex, is St. Vincent's pursuing any relief for this through the legislature for the funding there?

MR. VALDEZ: Madam Chair, St. Vincent has a bill in front of the legislature currently that is requesting \$3.7 million to address this issue. I know the Santa Fe County Commission has received a letter from the Human Services Department asking that the Human Services Department be paid back that \$1.2 million. I am seeking legislative appropriation for that \$1.2 million so the Santa Fe County Commission does not have to pay that back. And I'm doing that with the - I would say the support of the Human Services Department to try to figure out how to get that money back and there have been of course other conversations around that \$1.2 million. In that legislation the remaining \$2.5 million is for purposes of if there is a supplemental in the fall, the ability for St. Vincent to access that supplemental with state revenues for purposes of coming up with the match for that.

Because we're going on two years now that Santa Fe County - the first year they were able to put in \$425,000 toward the supplemental and of course we thank you for that. And then this last year Santa Fe County was unable to come up with the match and we had the ability to access \$2.5 million and we went to the Human Services Department and got \$1.2 million from them on that match. Once again, you're looking at that match and you're looking at the ability to leverage that federal dollar and do what we do with it. That's our motivation.

CHAIR VIGIL: Is there any legislation, either by memorial or resolution that proposes a task force or a gathering of anyone to propose resolutions to the sole community provider fund problem that we have in our state?

MR. VALDEZ: Madam Chair, there's been discussion around the possibility of a memorial and I wish I would have received the letter from the Human Services Department, but I'll be happy to submit that later for the record. But the Human Services Department is sending me a letter indicating that that is their desire after the legislative session. You've got that letter from the legislature and we've got - on behalf of St. Vincent's saying we need to figure this out. Together with the hospital association, and I know that Dan Weeks is here with us. He's still here with us. Thank you, Dan. Dan is here who is the registered lobbyist for the hospital association and we know how critical this is. We just need to assure that everyone's eye is on this after the session.

CHAIR VIGIL: Commissioner Montoya.

COMMISSIONER MONTOYA: Madam Chair, I actually have a question for Dan Weeks.

CHAIR VIGIL: Dan, do you want to take the podium. State your name and address for the record please.

DAN WEEKS: My name is Dan Weeks, 413 Arroyo Tenorio during the session.

COMMISSIONER MONTOYA: Dan, the question I have is are other counties beginning to experience this? Are other counties right on the heels of where we are right now? Or is this a Santa Fe County phenomenon?

MR. WEEKS: Madam Chair, Commissioner Montoya, I would say that there are several counties throughout the state that are probably one to two years out of facing the same dilemma. Fortunately, and unfortunately for Santa Fe County, you all stepped up to the plate early on in this program so of all the counties that receive these dollars, you all and Dona Ana County actually are allocated the most. So you've hit the threshold a little bit before some of the other counties have. But yes, it's going to be a major statewide problem in the next couple years as that upper payment limit continues to grow.

COMMISSIONER MONTOYA: Okay. So we're not going to be at the legislature alone trying to get this thing -

MR. WEEKS: Madam Chair, Commissioner Montoya, there will be a stampede at the legislature, probably next year if not the following year, seeking a statewide solution to this problem. And I might add, with respect to your question about whether there's a meeting or any kind of a task force being put together, we do have a meeting scheduled tomorrow in the Governor's office to discuss this. The Association of Counties has been invited. The hospital association will be there. Human Services will be there and we're going to try to begin formulating a solution to this issue. But I would really implore you all to strongly consider making the maximum match this year so that you don't leave money on the table.

I have other hospitals in other counties that are ready to step up to the plate in a reallocation as they did with the supplemental this fall, if this money is not kept in Santa Fe County. But given your needs and the fact that St. Vincent's is a regional facility and people come from all over north central New Mexico for services here, I would just hate to see that money go to other parts of the state, even though they may be deserving as well.

But it's yours for the taking and I would ask that you do that. Thank you.

CHAIR VIGIL: Dan, I had a question for you. And Commissioner Anaya poses a question that is important to be responded to. And probably if there's a clear understanding or a message that we need to give to the community and to everyone in here is this Commission has not been shy about enacting GRTs. We actually have moved forward with quite a few and some at a high cost to pay. Negative referendums and fire emergency services. If in fact we do not do a negative referendum and we do a positive referendum and that referendum comes back with a thumbs down, what other creative ways are available for this County to stretch itself out and fund this fully?

MR. WEEKS: Madam Chair, that's a pretty far-reaching question. Let me back up and tell you that statutorily, I think the 1/16 does not require any form of referendum, whether it be positive, negative, it's just a statutory authorization for you all to put it in place by

ordinance. And then once you do that I don't think there's any way to reverse it unless you were to reverse the ordinance. So I wouldn't see a necessity to put this out to positive referendum.

You also have available to you through the Indigent Fund Act the ability to do a mill levy, a property tax mill levy. A lot of counties in this state do that to support their local hospital and you can go up to 4.25 mills, and that does require a public referendum. So you have those kinds of options available.

What could also take place is actually taking half of the indigent increment, which is 1/8 cent, and paying your obligation under the County supported Medicaid fund. So the County is actually not putting the entire amount of the second 1/8 toward indigent services per se because the state is requiring you to submit to them an amount equivalent to 1/16 gross receipts tax. So I think there are about 13 counties statewide that have imposed that 1/16 so those counties have their full 1/8 available to them to make these matches. That's not to say that you haven't step up to the plate in the past; you have with your indigent programs. But you do have that tax increment available.

CHAIR VIGIL: Are there any further questions for Mr. Weeks?

COMMISSIONER CAMPOS: Madam Chair, question for Mr. Valdez.

CHAIR VIGIL: Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Valdez, you said the County might be liable for the \$1.2 million that you obtained last year for supplemental funding from the state government?

MR. VALDEZ: Madam Chair, Commissioner Campos, the County received a letter from the Human Services Department. I've had conversations with the Human Services Department regarding this also and I'm seeking that \$1.2 million from the state. We've got it through committee. Of course it hasn't gone through the whole legislature. And I am prepared of course to get engaged in any conversations with the Human Services Department that it takes going forward.

COMMISSIONER CAMPOS: But you're saying that the Human Services Department has written a letter to the County of Santa Fe saying we want you to pay the \$1.2 million?

MR. VALDEZ: Madam Chair, Commissioner Campos, that is my understanding. I believe as a matter of federal compliance they needed to send that type of letter.

COMMISSIONER CAMPOS: So in a couple of months, if we don't have any money for supplemental, you go back to the legislature, get more money, we're going to get stuck with the bill again.

MR. VALDEZ: Madam Chair, Commissioner Campos, no, because we are going to be receiving an appropriation for this.

COMMISSIONER CAMPOS: You're assuming you're going to. You don't know that for sure, do you?

MR. VALDEZ: Of course I don't at this point, Madam Chair,

Commissioner Campos. I don't know for sure whether we'll get that appropriation or not in that supplemental. However, that is a direct appropriation going to the Department of Finance and Administration for match, so there won't be any obligation on the County to that match.

COMMISSIONER CAMPOS: On future supplementals also.

MR. VALDEZ: That is correct, Madam Chair.

COMMISSIONER CAMPOS: Because really what you did was you wrote the check and now we have to pay the bill for the last supplemental. At least we're exposed to that right now.

MR. VALDEZ: Madam Chair, I can understand that and that is the reason behind the appropriation request from the legislature.

COMMISSIONER CAMPOS: The second point, Mr. Valdez, is your jail proposal. I think it's inadequate. I think St. Vincent really has to step up. What you proposed is really not much. We've talked about this. We've tried to have a conversation with St. Vincent on a number of issues over the last four years and it's been a battle. You say we're joined at the hip. I don't buy that. It seems you come to us when you need something. Other than that we have a hard time generating a conversation with you or your board. So I get a little frustrated. I know some of the Commission has been frustrated.

But your jail proposal is inadequate as far as I've seen. You have to come up with a heck of a lot more.

MR. VALDEZ: Madam Chair, Commissioner Campos, I appreciate your comment. However, in terms of any engagement with the County regarding jail health the HPPC has put together a committee that's come up with some analysis regarding jail health, and then I've gone out and asked questions around where the needs may reside. And based on those limited conversations that I've had, that's where this issue around medical directorship resonated. So that's -

COMMISSIONER CAMPOS: But that's nothing. You know where we need help. We need certainly the administrator, which is a part-time position, but we're going to need nurses and a doctor at least. It's a big deal to operate a medical facility at a jail. And you have the expertise and you could - the hospital has the expertise and they have the connection to the personnel and to other doctors and medical providers around the state and country to really step up, but you're not willing to. And I see that as a huge negative. It's just a comment. Thank you, Madam Chair.

CHAIR VIGIL: Thank you. I'll ask some more questions. It seems to me that the overriding issue is how do we actually improve the health of our community as a whole. Santa Fe County entered in the sole community provider relationship by providing matching funds some time ago because we recognized that the federal match would only create a benefit for our community as a whole. I think that what I'm hearing today is first of all that our New Mexico State Legislature is urging us to consider passing or taking action on fully funding this and I think that's a strong message that we shouldn't ignore. I and I think some of the other Commissioners have had meetings with our state legislators.

Everyone wants to see the health of our regional hospital improve and the health of our community as a result of its improvement, improve.

The dollars that we have been providing through sole community provider funding have been dollars that have enhanced services, have improved services in the area of health and I know that but for those dollars, that would not have been improved. I don't know that I can support an increase in GRT but I don't know that I have to right now.

Where I'm coming from I think is to say, and we all hear differently, but I am hearing St. Vincent's making a good faith statement of trying to work a relationship out with the County so that the dollars that we would be able to provide for the match would be something first of all that the state legislature would recognize and perhaps acknowledge. And I know that the state legislature is always looking for matching dollars. It is my believe that if we move forward in this direction we'll be gaining more support from our state legislature because this is something that only the County can provide for. But it is also something that the state legislature and our state can support the County with.

Now whether we have the cart in front of the horse - I think that's part of the problem with this. The sole community provider deadlines come so quickly. The dollars are available. The overriding problem is we don't have enough people in our entire state, registered Medicaid recipients. As a result sole community provider dollars are available at a large amount and those dollars get distributed in accordance with the balance of what's not paid through Medicaid and what's available through sole community provider. That is a state problem. Our state needs to aggressively address Medicaid registration. I'm not sure how this Commission is willing to move forward but I certainly want to advocate for the fact that if we could somehow borrow from Peter to pay Paul to get paid back to Peter somehow, I'd like to see us move forward in that direction. And if it means Santa Fe County taking an aggressive role with our state legislature, then I think the legislature is going to here the message: We're working together to improve the health of our community, and that's just the position I'm taking at this point in time. Commissioner Montoya, then Commissioner Anaya.

COMMISSIONER MONTOYA: I'll yield to Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Commissioner Montoya. Madam Chair, I guess what I'm hearing is that St. Vincent's is already trying to seek out money from the legislature, if we can't give them the \$2 million? No? that's not correct?

MR. VALDEZ: Madam Chair, Commissioner Anaya, we are talking about base funding now. We're not talking about supplemental funding that may become available later on down the road; this is base funding. In that legislation I am also speaking about an amount to reimburse the Human Services Department for that loan that they made for us last year.

COMMISSIONER ANAYA: Okay. The \$1.2 million. Correct?

MR. VALDEZ: Correct.

COMMISSIONER ANAYA: So I guess the question is, you're not at the legislature asking for funding for base monies at all.

MR. VALDEZ: Madam Chair, Commissioner Anaya, that is correct. We are not.

COMMISSIONER ANAYA: Okay. I have a question for Teresa.

MR. VALDEZ: Madam Chair, if I may while Teresa gets up here. I received the letter from the Human Services Department from the director of Medicaid whereby she is conveying to all that we will be convening this meeting sometime after April 7th to address sole community provider. If I may approach?

CHAIR VIGIL: Yes.

COMMISSIONER ANAYA: Teresa, the last page on your packet shows all the taxes that the County has enacted, and the total is \$32 million. Correct? Is that how I read this?

MS. MARTINEZ: That's correct.

COMMISSIONER ANAYA: And if we were to enact another tax it would be two million on top of that?

MS. MARTINEZ: \$2.4 million.

COMMISSIONER ANAYA: \$2.4 million. So, Madam Chair, in your statement, I was confused with your statement. Are you for approving the total \$9 million and enacting the tax? A negative?

CHAIR VIGIL: I think it's probably fair for me to say that I summarized my recommendation by approving the \$9 million and looking for alternatives to make up the difference of the \$2 million that our budget currently, at least our mid-year budget review currently does not allow for. That would include, from some of the testimony I've heard today, perhaps the tax increase, but I don't think it precludes us from going as a County to the state legislature, perhaps through House Bill 2 or other avenues, the junior bill, saying, okay, we're going to help out St. Vincent here. How can you help us help them? Now St. Vincent is at the state legislature trying to make the County whole based on an allocation that was done in previous years, but in order for us to move forward on this allocation and make St. Vincent whole through what's available through the sole community provider, I don't know that we can make that decision today but I do know that from the testimony I've heard we have alternatives.

Yes, that does include tax increases but it also included our ability to go to the state legislature and let them know we want to help them out. How can you help us help them out. And this would our initiative, not St. Vincent's.

COMMISSIONER ANAYA: So, Madam Chair, you're saying that you're not necessarily for raising taxes. You're trying to find other funding.

CHAIR VIGIL: Exactly. I think there are alternatives.

COMMISSIONER ANAYA: I'm sure that our staff has looked into finding \$2 million before even going into raising taxes and we can't find it.

MR. ABEYTA: Madam Chair, Commissioner Anaya, that's right. The only way you can do it from the County is by raising this tax unless we go to the state and they assist. But unless you want to cut money out of your general fund, \$2 million, you've got

to raise the tax.

COMMISSIONER ANAYA: And Commissioner, I guess I'm hearing what you're saying, to go out and ask the legislators for help. Is it too late for this year?

CHAIR VIGIL: I don't believe it is too late under House Bill 2 or the junior bill. I'm not even sure they've decided whether or not they have a junior bill and I'll defer to Mr. Weeks about that. Are you familiar with that process? Has the junior bill been identified? Is it too late?

MR. WEEKS: Madam Chair, it's never too late, *sine die*. I'm not trying to be facetious, but things happen at the last five minutes, the last 50 seconds, so there are ways to approach the legislature. This is one of those programs where you do get a leveraged dollar and they're certainly aware of the benefit of being able to do that. So I would encourage you and your lobbyist, everybody else in the community if they're really interested in trying to get a couple million dollars to augment this to go over. Because it's never too late, like I say, until they adjourn.

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: I would highly recommend that we try that first before we do our negative if that's the way the Board's going to go. I think that not only us but St. Vincent with us, to help us try to find that \$2 million, if we allocate the \$9 million, \$9.7, or something. I don't know what the procedure is but if we decide to go that route we don't want to go alone. We need your help. Thank you, Madam Chair.

CHAIR VIGIL: Thank you. Commissioner Sullivan.

COMMISSIONER SULLIVAN: I'll make it real quick. My only concern, Madam Chair, is that I think we want to do that and I think we are doing that in so much as we can, going to the legislature. My only concern is if we commit now to \$9.4 million, then there's no reversing that. That is the number. And if nothing happens in the legislature, no matter how hard we work or St. Vincent works we are then faced, we have, ipso facto, to approve the gross receipts tax. So that's from a fiscal standpoint we have to live within our own means. St. Vincent has to live within its own means. And we've, I think, done that.

That's my concern is that if we take that action today we can't go back and undo it at a later point. We've set the new base. We've set the commitment for those quarterly payments and we've got to come up with the money, and there's where I begin to get a little nervous.

CHAIR VIGIL: Understandably so. Commissioner Montoya.

COMMISSIONER MONTROYA: Madam Chair, I think if we look at what we have in terms of numbers, and Dan, I appreciate your acknowledging that Santa Fe County has really stepped up to the plate from 2003 to 2007, and obviously 2006, but in 2006, we did get to the point where we were - the proceeds, the dollars were just not there to contribute the way we were able to in the past, but I think people need to know that this Commission did significantly provide for the sole community provider and the

match for that. It's led to a Catch-22 I think with the MOU. The services that are out there now are services that are good and they are now services that are expected. I don't think the CARE Connection and the mobile healthcare unit and Women's Health Services and PMS and anyone else would appreciate, because we can't come up with a match that their programs are going to get cut too. It's kind of a domino effect over here now that we're facing.

I don't know if it's possible to give a conditional approval. Steve, based on the discussion, in terms of what Commissioner Sullivan mentioned, because I think - could you answer that?

MR. ROSS: Madam Chair, Commissioner Montoya, we don't really know. I suppose if you fashioned a condition carefully it might pass muster over at Human Services, but we really don't know how that would be received over there. So I don't know. I could work on fashioning something that might pass muster.

COMMISSIONER MONTOYA: Okay. And then I guess the other concern that I have now, and I'm glad we're trying to get the reimbursement, Alex, for the \$1.2 million, but then you're looking for \$2.5 million for supplemental later on that is going to again add to the base of where we're at. So we're looking at \$2.5 now, that's \$5 million in a year added to our base.

MR. VALDEZ: Madam Chair, Commissioner Montoya, I'm glad we're engaged in this conversation and I'm happy to continue this conversation with the Commission regarding that \$2.5 million and how best to approach that or think about it in terms of the type of future impact that it brings to our entire system. We haven't had that conversation, Commissioner, and I'm happy to have that conversation. That bill has made it through one committee. It's got to go through Senate Finance next and Senator Grubestic was carrying that legislation for us and from the reaction that we received in Senate Public Affairs I've just got to say that we'll just have to see how it gets through Senate Finance. But I'm happy to have that conversation with you because I understand the implications of our actions having an impact on both of us.

I would like to point out a few more things if I may, Commissioner, and that is as Commissioner Sullivan said, these are quarterly payments. The first is due in October of 2007, followed by January of 2008, March of 2008 and then July of 2008. So it is broken up into quarterly payments. What is necessary by the 15th of this month is a letter to the Human Services Department indicating that the County will put up the match. But they are quarterly payments. That gives us an interim and that gives us another legislative session before we have to address the last two of those quarterly payments.

COMMISSIONER MONTOYA: Then, Madam Chair, lastly, I'd like to hear what staff's recommendation is.

MR. ABEYTA: Madam Chair, Commissioner Montoya, the only way this could happen is if the taxes are implemented or if we get some help from the state. Staff is concerned that whatever supplemental St. Vincent's gets automatically gets added to the base next year. So we could be possibly looking at \$11.5 million next year that we have to

come up with if the state doesn't help us. So even if we do pass the tax we have to go to the state and we've got to basically beg them to help us, because if not, then you're cutting your general fund to come up with the \$2 million that's going to be required next year if the state gives them \$2 million this year. So staff is extremely concerned about this because if not we're going to be cutting positions, FTEs to make our match.

So if you do decide to do this then we are going to get in there with the state and we've got to get this resolved, because even if the tax passes, if he gets his two more million from the state, we're going to owe \$11 next year and we will only have \$9 with the GRT. That's my concern, Alex. I don't know if you'd be willing to hold off on seeking that supplemental because that's a big risk that we're going to be putting ourselves in. If he gets any supplemental, that's over and above beyond what we can do even with the tax. And I'm really concerned as the County Manager about that, because all we have left is general fund and that's cutting programs and cutting FTEs really is what it - to the tune of \$2 million and that's 40 or 50 full-time employees for the County.

MR. VALDEZ: Madam Chair and County Manager Abeyta -

CHAIR VIGIL: Just a moment, Alex. Did you want Mr. Valdez to respond to your question?

MR. ABEYTA: I would like - if the Commission wants. Like I said, that's what concerns me here is the supplemental, because then that becomes our base next year automatically. And we're taking a chance that the state's going to bail us out between now and next year. Yes, they might say we're tapped out and the tax is done but they've got to come up with two more million dollars.

CHAIR VIGIL: Okay, Mr. Valdez, let me let the Commission chime in and then keep the question in mind if you'd like to respond to it. Commissioner Montoya, you still have the floor.

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

CHAIR VIGIL: Commissioner Campos.

COMMISSIONER CAMPOS: Let me ask you a question, Mr. Abeyta. If the base goes up now, our base with the new \$2 million and we couldn't afford any additional sums in the future, can we back off the base? Go back down? If so, how does that work?

MR. ABEYTA: Madam Chair, it's my understanding we cannot.

COMMISSIONER CAMPOS: Mr. Ross, is that your understanding?

MR. ROSS: Madam Chair, Commissioner Campos, this whole area is very vague so I can't really answer the question straight out but I think it is theoretically possible to reduce our contribution under the right set of circumstances.

COMMISSIONER CAMPOS: Possible. Okay. What we're doing here is something very risky and Mr. Valdez, you're asking us to do something very risky, something full of contingencies. Something that could benefit you now but be very detrimental to us. I hope you appreciate that. This spot you're putting us in. Let me just

finish. First of all, we have federal law to deal with. Now, you're saying that we may be charged back the supplemental funds you got from the legislature last time or from HSD. Now, if you go again, we could get charged back again.

Even if you get your \$3.4 million they could come back to the County again and ask us to pay for it. We have federal law to deal with. So we're in a very tough situation. And the scenario could degenerate very quickly for the County's budget, for our programs and I don't know if the hospital really – obviously, it's a great thing to have good medical care and to have a local hospital that's viable, that's strong, that's controlled by a local board of directors, but at what point – what's the tipping point here, where we have to see that the County is being put at risk by this proposal. I think it is.

So there's a lot of pitfalls, a lot of contingencies I think. I think what you're proposing is no tax but we'll look for funds and if we can't find funds then we're going to ask for a tax but we do have to commit to this letter February 15th and we have to do it today because we have no other meetings. And if we do this we're going to do what Commissioner Sullivan is saying, we're committing ourselves to the tax. Period. There's too many contingencies, too many ifs. It's pretty dangerous. Thank you, Madam Chair.

CHAIR VIGIL: Are there any other comments from the Commissioners?
Commissioner Anaya. Then I'll allow you, Mr. Valdez, to respond.

COMMISSIONER ANAYA: Madam Chair, Commissioner Campos, you're for funding the \$6.7?

COMMISSIONER CAMPOS: Well, you know what I'm saying is that we can do only what we can do. Everybody is saying step up to the plate and take a chance. It's easy for them to say that. They're selling a great product. Good hospital service. Who can say that they're not? We're putting our organization at risk and they're asking us to do that and we have to appreciate that risk. It's a huge risk. And if we do anything on the 15th we're committed to this course of action to the end of time, because even our attorney says it's iffy if we can back down on the base. We're committed forever on the base. These questions are simply not answerable at this point in time. It's a very tough situation is what I'm saying and I'm concerned and my primary concern has to be for County government and County employees at this point in time.

COMMISSIONER ANAYA: I'm sure – like you said it is a tough situation and we're having to say if we give them the \$2 million and they get \$10 million back in services for our community – we see that. But I guess I can see where you're coming from Commissioner Campos. My late father would always say, if you don't have the money you can't do it. You're going to keep getting yourself deeper and deeper in debt. And is that what we want to do with the County, going deeper and deeper in debt? I don't know. It's a tough situation. We want to and we have helped out our communities.

But when do you draw the line? It could go on and on and on. When do you stop and say, hey, we can't do that no more. We've got to figure something else out. So I'm listening to the Commissioners to see whether they all have – we're all very concerned about the health in Santa Fe County, but we're all very concerned about our budget and

our employees and our programs. Thank you, Madam Chair.

CHAIR VIGIL: I have a couple of questions. Alex, does this letter require that the Commission commit to enacting the GRT?

MR. VALDEZ: Madam Chair, which letter?

CHAIR VIGIL: There's a letter that's due February 15th.

MR. VALDEZ: Madam Chair, no. The letter that's due to the Human Services Department indicated that Santa Fe County will come up with the approximately \$9.2 million in match for the next federal fiscal year that starts in October. It does not commit the County to imposing a 1/16 gross receipts tax. That's not the purpose of that letter.

CHAIR VIGIL: Let me ask you, can this letter say that this match would be quarterly?

MR. VALDEZ: Madam Chair, the match is quarterly. The first quarter of that would be in October of next fiscal year.

CHAIR VIGIL: Can this letter also say that Santa Fe County will be looking to New Mexico State Legislature to fund the additional \$2 million that is currently not in its budget and that we will allocate \$6.7 million? Could it be conditional on that? I'm seeing Dan Weeks nod no.

MR. VALDEZ: Madam Chair, that is correct, because the request is at the base amount of \$32 million. That is the base amount, Madam Chair.

CHAIR VIGIL: Okay. And I guess I'm - I guess I have more faith in partnerships between local government and private entities and the state legislature. I am seeing in this letter that is before me the Speaker of the House's signature, the chairman of Appropriations and Finance, all of our delegation to include those who have quite a bit of seniority including Phil Griego and Senator Rodriguez. By this letter I am seeing that they are looking for Santa Fe County to propose a good faith effort in supporting this project and while there can be no commitment to funding, I am reading that there is a willingness here to support us. I just want to make sure that the state legislature, and Alex, you might be able to address this, is not requiring or asking us to unequivocally pass a GRT.

MR. VALDEZ: Madam Chair, the state legislature is not asking you to pass unequivocally a GRT. That is within the purview and the prerogative of the County Commission.

CHAIR VIGIL: Thank you. Commissioner Montoya.

COMMISSIONER MONTOYA: Madam Chair, I was going back - I know we haven't had this discussion but certainly it's going to probably influence my decision this evening if you would maybe back off that supplemental of another \$2.5 that would put the base at \$11.5 has been discussed.

MR. VALDEZ: Madam Chair, Commissioner Montoya, I am prepared to do that. Because I understand the implication on the County at this point where we are at a tipping point. I recognize that. I respect that and I will back off on the \$2.5 million. With all due respect I want to go forward on the \$1.2 million because I want that monkey off

everyone's back even though I don't think it's significant but I just want that taken care of. But on the \$2.5 million, Madam Chair and Commissioner Montoya, I'm prepared to do that.

COMMISSIONER MONTOYA: Okay. Madam Chair, with that I'd like to make a motion.

CHAIR VIGIL: Please do.

COMMISSIONER MONTOYA: That we submit a letter of intent for the max to be at \$9.2 million - whatever it's supposed to be - for the fiscal year 2008.

MR. SHEPHERD: Madam Chair, Commissioner Montoya, there's actually two items. One is St. Vincent's. You would be committing to an overall contribution of \$32,278,499 with a match of \$9,276,841. The other item in this request is Holy Cross hospital. The match is \$6,128 for a total of \$21,321.

COMMISSIONER MONTOYA: That \$6,000 concerns me, Madam Chair.

CHAIR VIGIL: I agree.

COMMISSIONER MONTOYA: That would be my motion then, what Steve stated. For Holy Cross and for St. Vincent's both.

CHAIR VIGIL: Motion. Is there a second? I will second that motion. Commissioner Sullivan, discussion.

COMMISSIONER SULLIVAN: Commissioner Montoya, what's your approach then? We still need the \$2.5 million for this upcoming fiscal year, even if we don't have the onus of a \$5 million burden hitting us thereafter with the supplemental. So it seems like the question is still before us, how do fund the difference between \$6.7 and \$9.3 million, which is almost \$2.6 million? So are we headed to the GRT or is the direction to the staff that we should start looking at programs and personnel? I think with that motion there has to be some way to pay for it.

COMMISSIONER MONTOYA: Well, I think the obvious immediate solution we have before us is the GRT, so I think we need to have that discussion as soon as possible also in terms of is that what we're going to do or are we going to cut employees, staff, in order to make up that \$2.5 million? But I would probably be personally in favor of looking at the GRT immediately as the solution to that \$2.5 million.

COMMISSIONER CAMPOS: I have a question for Commissioner Montoya.

CHAIR VIGIL: Commissioner Sullivan, you still have the floor. Do you have anything further? Okay. Commissioner Campos.

COMMISSIONER CAMPOS: What do you do the next year, Commissioner Montoya, when the base is increased? We don't have the money even with the GRT enacted. What do you do then?

COMMISSIONER MONTOYA: We're stuck.

COMMISSIONER CAMPOS: No, we're screwed.

COMMISSIONER MONTOYA: That's another way of saying it. We can't do anything. We're stuck after this year. And I think Alex and everybody realizes that. We

have nowhere to go. We have nowhere to go.

COMMISSIONER CAMPOS: Your motion is saying let's go down this road. We may get stuck.

COMMISSIONER MONTOYA: We may get stuck and then hopefully we may get some help from the legislature and other sources as well. I think that's the hope, anyway.

CHAIR VIGIL: You still have the floor, Commissioner Campos, Anything else?

COMMISSIONER CAMPOS: I'm done.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, so the option is - do we have the option still to go to the legislature and ask for funding at this time?

CHAIR VIGIL: That is the question that I asked and it was responded to in the affirmative. Yes.

COMMISSIONER ANAYA: So we're not just looking at the quarter percent - the GRT increase. We could also look other places. It's not just the quarter percent. Now, I recently, last Friday was listening to the radio that Arturo and Larry are on and they had Representative Peter Wirth and Representative Jim Trujillo were on there. And I was listening to their talk about the money from Santa Fe County, and Representative Wirth said I hope that Santa Fe County can step up to the place and give the money, the whole funding.

Now, I'm asking that I hope the representatives and senators, if this does pass, to step up to the plate and help us. I think it's easy for them to tell us to raise taxes but we need help. We have to do this together, partnerships. And I think from what I heard on the radio is that if we're willing to do our part, they'll be willing to do their part. I don't want to see us cut any programs. I want to continue to help our health providers because when people are sick they need help. And I realize what Commissioner Campos is saying, but I'm turning to our legislative delegation, from what they've told us, I'm going to turn to them for help. And anything we can do, and they can do, hopefully will solve this issue for this year. Thank you, Madam Chair.

CHAIR VIGIL: Commissioner Campos.

COMMISSIONER CAMPOS: Madam Chair, thank you. I think we need to have a back-out strategy on the base. And Mr. Ross, you're saying that we possibly could have a back-out strategy on the base. How long would it take to determine that?

MR. ROSS: Madam Chair, Commissioner Campos, there's no determining it. We have the materials that we've been looking at for 15 years. There's really no answer.

COMMISSIONER CAMPOS: There's no precedent.

MR. ROSS: There's no precedent. There's nothing. All we have are the materials we have and as near as I can tell, you have some discretion there.

COMMISSIONER CAMPOS: To do a back-out strategy.

MR. ROSS: If you're talking next year to devise a back-out strategy under appropriate conditions, I think there are some limitations.

COMMISSIONER CAMPOS: Okay. The other thing I'd like to throw out to the maker of the motion and seconder is the jail. I would propose that a condition be attached that St. Vincent's take full management of our jail operation.

CHAIR VIGIL: Of the entire jail or the medical facility?

COMMISSIONER CAMPOS: The medical facility. They're laughing at it but I think that's important.

CHAIR VIGIL: Does the maker of the motion consider that a friendly amendment?

COMMISSIONER MONTOYA: Commissioner Campos, I would rather maybe make a motion to the effect that we begin to work toward that.

COMMISSIONER CAMPOS: Well, we talked about it for years.

COMMISSIONER MONTOYA: Mandating it -

COMMISSIONER CAMPOS: But they have never responded in any way except a very, kind of an in-name-only by Mr. Valdez today. He could have come together - today, he would have come with his most serious proposal and that's his most serious proposal and I think that's as good as it's going to get. So I think if we don't make it a condition now, we'll never get it.

CHAIR VIGIL: And the maker of the motion is saying he would amend his motion to say we'd work towards that? Is that it?

COMMISSIONER MONTOYA: As opposed to mandating it at this point. I would rather that we - and they've set a time frame of October.

COMMISSIONER CAMPOS: But there's no backing out, Commissioner. You can set a condition, you can set a deadline, but they can just let it run by and you're still committed. You're not off the hook. This is not the way you get off the hook. You're on the hook. This is what I'm talking about.

CHAIR VIGIL: And I think I would agree as the seconder of the motion to include language of that sort. Are you trying to enhance this conversation?

MR. VALDEZ: Madam Chair, I am and the reason for that is around a discussion of quid pro quo in terms of the match having to stand alone, and then any obligation and responsibility of St. Vincent Hospital from a legal perspective having to stand alone.

CHAIR VIGIL: Understood. So the motion would remain in favor of the \$9.7 million with no conditions attached. Commissioner Sullivan.

COMMISSIONER SULLIVAN: Well, two things. I find that the hospital has no problems discussing a quid pro quo when it comes to combining the MOA monies that we've spent and so forth. When it comes time to attach some conditions then suddenly we have to separate them and we can't talk about it. I think the issue is more than that. I think that we're getting ourselves into hot water here. The tone of the letter from the legislators which St. Vincent obviously solicited and from what I understand the lobbying

has been essentially Santa Fe County is not stepping up to the plate. Santa Fe County is not doing its job. This is a Santa Fe County problem. It's easy to take care of. All they have to do is pass a 1/16 gross receipts tax.

The legislature is making its opinion very clear here. They say we look forward to working with you in the interim to fund a long-term solution. We ask that County Commission at its February 13th meeting vote in support of fully funding the sole community provider funds. There is no intent here to provide any legislative funding in the near future. They're going to work in the interim but I think the radio program that Commissioner Anaya listened to and the tone of this letter is very clear that they have been convinced, and that's certainly their right to be so convinced, that this is a Santa Fe County problem, and it is. I would agree it is. And we have to pay for it.

Now, Commissioner Montoya has said, push come to shove, he would support the 1/16 GRT. Then when we got to next year we would just have to cross that bridge when we came to it. I can't be that optimistic myself. I think we have to live within our means and we are already way over our means in this request. Once we sign that letter and send it to the State Human Services Department, the same organization is saying we owe them \$1.2 million, that will be cast in bronze, gold, whatever you want.

So I just am concerned that we can say our legislators are going to help us, and I know they want to help us. I've met with many of them. But this is not what they're saying in this letter. What this letter says is this is a County problem, not a state problem. And it is a County problem. That's the way the statute currently reads and the statute hasn't been changed and it's not going to be changed this session. They say we're going to work on it in the interim. That means it would have to be on the Governor's call next year.

So if it's a County problem then I don't think we can be quite so optimistic that the legislature is going to be our shining knight. The session is going to be over before we know it and we're going to be stuck holding the beans and the beanstalk isn't going to grow. So where do we go? So I would certainly, even though Mr. Weeks doesn't like the idea of putting the motion the other way I would certainly phrase any motion for funding that we commit now to the funds that we have available, as you were suggesting, Commissioner Vigil, and that we condition it that we tentatively or conditionally approve up to \$9.2 million pending funding from outside sources, whether it's the state or wherever it is. They may not have seen a resolution like that before, a letter like that before but so be it. That's really what we're saying here in our discussion. I think that would be a safe approach.

I think also that would put the onus on St. Vincent and the legislators and everybody to work on this issue. Once you sign that \$9.4 million letter everyone's going to fade away into the woodwork. You're not going to see them until the next funding cycle. Those are my feelings. Thank you.

CHAIR VIGIL: Commissioner Anaya, then Commissioner Campos, then we need to wrap this up. We've got a larger agenda, and take action on at least this motion.

COMMISSIONER ANAYA: Madam Chair, what he just said, could we do?

MR. ROSS: Madam Chair, Commissioner Anaya, which part?

COMMISSIONER ANAYA: The part that approved the \$6.7 million and possibly get funding – if we get the funding then we can give them that.

MR. ROSS: I think HSD is expecting a letter that's unconditional.

COMMISSIONER ANAYA: Just either or.

MR. ROSS: Right. Either or. We're committing to do this and pretty much without condition. I think that's what they're expecting.

COMMISSIONER ANAYA: But what if we put conditions?

MR. ROSS: Well, we don't know what would happen.

COMMISSIONER ANAYA: They could say no.

COMMISSIONER MONTOYA: And then stick us to \$6.7 million?

MR. ROSS: And stick us – however the letter was phrased. There's always a chance that –

COMMISSIONER ANAYA: They won't throw everything out, right?

MR. ROSS: Well, if the position that this Board takes is we send them a letter that we commit to \$6.7 million but if we can raise the revenue we'll commit to \$9.4, we don't know how they'd receive that but if you wrote it that way they'd probably have to accept the \$6.7 million, even if they rejected the conditional nature of the additional \$2.5 million offer.

COMMISSIONER ANAYA: I guess what Commissioner Sullivan said is if we do that, then it brings everybody to the table. If we don't do that then Santa Fe County is up there by themselves with the legislature saying, help us, help us, help us. That's the way I look at it. And if we could do that, I would like that.

CHAIR VIGIL: Okay. I have to just sort of disagree with the characterization of the letter that we receive from our delegation, particularly in the last paragraph. It does not say Santa Fe County, this is your problem. It says Santa Fe County, we want to work with you in creating a resolution to this problem with a specific language that says, "We the undersigned members of the legislature look forward to working together with you during the interim to find a long-term solution to the financing challenges presented by the sole community provider program. We ask that the Santa Fe County Commission at its February 13th County Commission meeting vote in support of fully funding the sole community provider match that is vital for continued healthcare services for our citizens of our county."

Now, I agree with the conversations that have occurred here. We are taking a huge leap. It's very difficult to do because we are fiscally responsible here for what goes on. If we cannot be made whole as a result of this it would totally disheartened my ability to serve the public here, because my leap of faith here is saying St. Vincent's, maybe we haven't really worked things out to both St. Vincent's satisfaction and the County's satisfaction. But I still believe as a whole, what this has provided is funding for services needed in our community which would not have otherwise occurred.

We can continue that and through the statements of the legislators and the support

that I have actually heard them say is there, what I am saying and what I will vote for tonight is taking a leap of faith, partnering with St. Vincent, partnering with other healthcare providers, partnering with the state – the Department of Health, the Human Services Department, and in particular our legislators and saying you have told us by your communication that we need to work this out through a partnership and what does that partnership mean? Let's look at our options and create that. So with that, unless there's any other questions. The motion is that Santa Fe County send a letter saying that we would commit to the \$9.2 million. It has been seconded.

COMMISSIONER MONTROYA: And the \$6,000.

CHAIR VIGIL: And the Holy Cross, as stated on the item of the agenda.

The motion to approve \$9,276,841 in match funding for St. Vincent Hospital and \$6,128 for Holy Cross passed by majority 4-1 voice vote with Commissioner Sullivan casting the nay vote.

COMMISSIONER CAMPOS: I'm going to vote aye so long as we pursue the back-out strategy if this gets us in the hole. And there's further discussion issues raised.

CHAIR VIGIL: Motion passes. Thank you for the riveting and informative discussion and thank you all, health providers for being here.

MR. VALDEZ: Thank you, Madam Chair and members of the Commission. Thank you.

COMMISSIONER CAMPOS: We have to talk about this, Mr. Valdez in a serious way. I think you have to start coming to the table and discussing some of these issues we've raised over the last four years.

MR. VALDEZ: Happy to. Happy to, Madam Chair and Commissioner Campos.

COMMISSIONER CAMPOS: I take that as a commitment.

MR. VALDEZ: Well, that's what I meant.

XI. CONSENT CALENDAR

A. Findings of Fact

1. CDRC Case # Z/DP 06-5580 Robbie McCoy

B. Miscellaneous

- 1. Request Authorization to Enter into a License Agreement with TBL Land Co., LLC to Allow TBL Land Co. to Maintain an Encroaching Structure on Bishop's Lodge Road (Land Use Department)**
- 2. Request Authorization to Enter into an Agreement for Adult Inmate Confinement Between the County of Santa Fe and the City of Santa Fe (Corrections Department)**

3. **Request Authorization to Enter into Agreement #27-0808-FD/JC, an Indefinite Quantity Price Agreement with Fire Service Equipment Inc., to Provide Bunker Gear for the Santa Fe County Fire Department. This Agreement will be a One (1) Year Agreement with an Option to Renew for Three (3) Years (Fire Department)**

CHAIR VIGIL: I as chair did not call for a vote on the Consent Calendar and with that I will request it.

COMMISSIONER MONTROYA: So moved.

COMMISSIONER SULLIVAN: Second.

CHAIR VIGIL: Motion and a second.

The motion to approve the Consent Calendar passed by 4-0 voice vote.
[Commissioner Anaya was not present for this action.]

CHAIR VIGIL: It is now 6:00 and we do have a couple of other items. What's the pleasure of the Commission with regard to how we want to handle the remainder of the agenda?

XII. Matters from the County Attorney

2. **Executive session**
 - a. **Discussion of pending or threatened litigation**
 - b. **Limited personnel issues**

COMMISSIONER CAMPOS: Madam Chair.

CHAIR VIGIL: Commissioner Campos.

COMMISSIONER CAMPOS: I understand – I'd like to find out if we need an executive session.

MR. ROSS: Madam Chair, Commissioner Campos, we need to discuss one urgent matter and possibly another matter if you have time. The two discussions shouldn't take more than 15 minutes.

COMMISSIONER CAMPOS: Madam Chair, I would suggest that we go into executive session to have dinner and come back about 6:45, 7:00.

CHAIR VIGIL: Okay. Is there any other suggestions? Seeing none, it does look like the next items on the agenda are going to require discussion, so we will leave and recess.

COMMISSIONER CAMPOS: We need a motion to go into executive session.

COMMISSIONER MONTROYA: So moved.

COMMISSIONER CAMPOS: Where we'll discuss what items?

MR. ROSS: Madam Chair, Commissioner Campos, pending or threatened litigation and limited personnel issues.

COMMISSIONER CAMPOS: Is that the motion?

COMMISSIONER MONTOYA: Yes.

COMMISSIONER CAMPOS: I'll second it.

The motion to go into executive session pursuant to NMSA Section 10-15-1-H (7 and 2) to discuss the matters delineated above passed upon unanimous roll call vote with Commissioners Campos, Montoya, Sullivan, Vigil and Anaya all voting in the affirmative.

CHAIR VIGIL: And we'll try to make it back by 6:45. Is that what your recommending?

COMMISSIONER CAMPOS: That's fine.

[The Commission recessed from 6:00 To 7:15.]

CHAIR VIGIL: Is there a motion to come out of executive session?

COMMISSIONER CAMPOS: Madam Chair, I move that we come out of executive session where we only discussed pending or threatened litigation and limited personnel issues. Anything else, Counsel?

MR. ROSS: That's it.

CHAIR VIGIL: Is there a second?

COMMISSIONER ANAYA: Second.

CHAIR VIGIL: Motion and second to come out of executive session.

The motion to come of executive session passed by 4-0 voice vote.

[Commissioner Montoya was not present for this action.]

CHAIR VIGIL: Before we go on to item 13 we need to turn back on the agenda to item IX.

IX. C. Discussion and Possible Approval for an Expenditure of Discretionary Funds not to Exceed \$2,5000 for Frames and Certificates for Special Appreciation Presentation of County Employees at the February 21st Special BCC Meeting

COMMISSIONER ANAYA: Thank you, Madam Chair. This is just to get some monies out of my discretionary funds so that we can present some certificates in nice

frames to the people that have worked – to our staff that have worked really hard on the snow removal throughout Santa Fe County.

CHAIR VIGIL: I understand, Commissioner, that we're also going to be recognizing our law enforcement personnel.

COMMISSIONER ANAYA: Law enforcement, yes, and our Fire Department. From our staff, Madam Chair.

CHAIR VIGIL: Okay. Is there any questions?

COMMISSIONER ANAYA: Move for approval.

COMMISSIONER CAMPOS: Second

CHAIR VIGIL: Motion and seconded for approval?

**The motion to approve the discretionary funding passed by 4-0 voice vote.
[Commissioner Montoya was not present for this action.]**

XII. C. Matters from the County Manager

1. Update on Various Issues

CHAIR VIGIL: Did you have any updates, Roman?

MR. ABEYTA: Madam Chair, no. Nothing I can't catch up with you guys on over the next couple of days.

CHAIR VIGIL: Okay.

XII. D. Matters from the County Attorney

1. Request to Publish Title and General Summary of an Ordinance Amending Ordinances No. 1996-10 and 1998-15, the Santa Fe Land Development Code, Article III, Subsection 8.3.8 Relating to the Undergrounding of Electric Utility Lines

CHAIR VIGIL: Who will take the lead on this?

MR. ROSS: Madam Chair, as you know, the County has several ordinances including the Land Development Code and Ordinance 1998-15 that require undergrounding of certain – well, all – utilities, including electrical utilities. We've had a lot of discussion about this subject over the past, I'd say about a year because of the PNM activity that's working on a number of the transmission lines around the Santa Fe area to improve their reliability.

These ordinances all require that all electrical utility lines, including transmission lines be placed underground. Some of the problems that have arisen in the past year have been struggles by this body over whether a variance can be granted legally for an underground utility line in the absence of some issue related to the physical condition of

the property. We've discussed the burden on the local taxpayers that could result from the application of Rate #22 that the Public Regulation Commission has. That rate shifts the burden for undergrounding, all electrical utility lines and primarily in the case of the transmission lines, high cost items underground, the cost of which is borne primarily by the local ratepayers rather than the statewide rate base. The discussions have been whether this is fair. Whether this is something the Commission ought to do.

We've also had an issue with the varying jurisdictions having varying requirements. For example, the City of Santa Fe does not require that transmission lines be placed underground. Instead they permit them to be overhead and Extraterritorial Zoning Authority has permitted such lines to be placed overhead and yet the Board of County Commissioners has required that transmission lines be undergrounded.

We've become recently aware that staff of the Public Regulations Commission is questioning whether counties like this one have the authority to have these kinds of ordinances in place insofar as they relate to transmission lines, because of what is perceived to be an unreasonable impact on rate payers. All these issues have led the Legal Department to draft up for you a proposed ordinance, which is in your books. It amends Ordinance 1998-15 and essentially provides that any electrical transmission line, and it's defined as any line that carries voltage 46 kilovolts or higher be permitted to go overhead and the usual height limitations on other development not be applied to those lines.

The draft that's in your packets is Ordinance 1998-15 with those changes. I haven't indicated the changes to you on the draft because the original Ordinance 1998-15 had a lot of grammatical issues and I fixed those all and the content is exactly the same with the exception that lines 46 kV or higher are exempt from the requirements that we enacted in 1998. With that I stand for questions.

CHAIR VIGIL: Questions for Mr. Ross? Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Ross, as far as the PRC proceeding, where are we?

MR. ROSS: The PRC proceeding, I think it relates to a portion of Project Power, or it could be the Miguel Lujan tap. It was an application for a rate rider by PNM and the County has joined as an interested party and obviously Santa Fe has done the same thing.

COMMISSIONER CAMPOS: The City?

MR. ROSS: Yes, the City of Santa Fe. The written testimony has been completed and we're on the eve of a hearing before a hearing examiner.

COMMISSIONER CAMPOS: Now, at this hearing they will decide the issue on the undergrounding authority?

MR. ROSS: The practice at the PRC is that the hearing examiner will hear everything and then make a recommended decision, draft a recommended decision that is then given to the Public Regulation Commission for adoption some time in the future.

COMMISSIONER CAMPOS: You don't know when the hearing officer will consider the evidence and the testimony?

MR. ROSS: Well, the hearing examiner will consider the evidence and the testimony contemporaneous with the testimony and then subsequently draft a recommended decision and transmit that to the PRC. I understand that takes a number of months. But they have guidelines that they have to hit. I think that decision has to be done in just a few months in order to ensure that the date of the application and the decision of the PRC are within a particular time frame, which I think is six months.

COMMISSIONER CAMPOS: Is there any benefit to just simply waiting it out and deciding what the Commissioners want to do about this issue? Or is it best at this point in time?

MR. ROSS: Well, this is before you now because of the concerns that PRC staff has expressed about the County's authority to require the transmission lines be placed underground, and because of all the difficulties that I explained earlier, that we've grappled with over the last year, the policy issues related to our current ordinance.

COMMISSIONER CAMPOS: So you think it's preferable to act now as opposed to having the PRC ultimately and finally decide the issue?

MR. ROSS: Well, it's always better to participate in deciding your own fate, if that's possible.

COMMISSIONER CAMPOS: What about negative consequences of their decision? There's no fiscal impact to us, is there?

MR. ROSS: I don't think there's a specific fiscal impact to us, but of course there's the potential fiscal impact to the ratepayers of the PRC for example agrees that the County has the authority to underground and then imposes the costs of the undergrounding on the local rate payers. The citizens will have to pay that burden.

COMMISSIONER CAMPOS: But that's what our ordinance says should be done, right?

MR. ROSS: The ordinance is silent on that but the PRC's rate rule 22 is the mechanism by which those charges are passed on.

COMMISSIONER CAMPOS: The rate decision isn't going to be made until the PRC makes a decision on this issue.

MR. ROSS: That's right.

COMMISSIONER CAMPOS: So there is no rate decision, no immediate fiscal impact, even on our ratepayers until PRC rules.

MR. ROSS: Right.

COMMISSIONER CAMPOS: Okay. A quick question on the ordinance itself. It's subsection 2.3.9.b.1, the fourth line, starting with 46 kilowatts and you go to the unless - unless the Board of County Commissioners finds that the public health and safety require such lines to be placed underground. Do we need more defined criteria?

MR. ROSS: Madam Chair, Commissioner Campos, that's the current state of the law. The only exception to the rule I was describing earlier is where health concerns can be established.

COMMISSIONER CAMPOS: Can you give us examples?

MR. ROSS: Well, say, if an overhead line would go directly above a school or something and it would be safer to locate the line underground, or something like that.

COMMISSIONER CAMPOS: Okay. Thank you, Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, move for approval.

CHAIR VIGIL: Motion for approval. Is there a second?

COMMISSIONER MONTOYA: Second.

CHAIR VIGIL: Motion and second. Discussion? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Madam Chair, I wonder if, rather than just amending our ordinance without knowing that it benefits us any, not knowing what the outcome of the case may be, it seems like another alternative would be to just reconsider that case and then if the BCC ruled differently, then the case would be moot.

CHAIR VIGIL: That's a question for you, Mr. Ross.

MR. ROSS: Madam Chair, Commissioner Sullivan and Commissioner Montoya, there's really no mechanism to reconsider a case that's been heard and voted on so long ago but we've provided that mechanism in subsection 8.3.8, on the second page, the second sentence of subsection 8.3.8.

COMMISSIONER SULLIVAN: Yes, well, suppose we just told the applicant to reapply and that the Board would reconsider. In land use cases people can bring them by it seems like as many times as they want to. If they're turned down they pop up again the next month and on and on. Couldn't we just hear the case again?

MR. ROSS: Madam Chair, Commissioner Sullivan, it wouldn't set good precedent because these cases should be final when they're done and if we start permitting applicants to come back and just file the very same application again after again after again, it actually violates a rule called *stare decisis*, which means that a case once heard should never be filed again and never be heard again.

CHAIR VIGIL: With regard to *stare decisis*, would this be outside of the *stare decisis* kind of evaluation because there is a new development in this case? It's being considered under the State Regulatory Commission for rate pay increase and who the rate pay goes to. Is that sufficient to have a consideration for there being a new claim on this case?

MR. ROSS: Madam Chair, it would be the same application for the same relief. So *stare decisis* would be a concern because it's the very same application.

CHAIR VIGIL: Okay.

COMMISSIONER SULLIVAN: Then another question I had is that I was a little concern in either case below or above 46 kV we don't subject the lines to any height restrictions at all. So it's not even a case where the Commission can get an opportunity to review the height restrictions. It seems like we could say something, shall not be subject to the Code height restrictions but shall be reviewed by the Commission or something like that. Otherwise we could have monstrosity poles, hundreds of feet high and there'd be absolutely no public input and no oversight whatsoever. Is there anything we can do with

that issue?

MR. ROSS: Madam Chair, Commissioner Sullivan, we could do something about that. I would caution against reserving in the Board absolute discretion because there really is no such thing. But we could work on height limits that make sense. Our current height limit is 24 feet and given the voltage of some of these lines they need to be a certain height above the ground to be safe so that the radiation that comes off the lines doesn't extend down to the surface where people are. But we can certainly work with PRC staff and PNM staff to provide realistic limitations in there We could do that.

COMMISSIONER SULLIVAN: I would certainly encourage that because just to have no guidelines at all on heights - I think having that encourages better design and design of poles that are more aesthetically pleasing and better for birds. And if we just say put up anything you want to, any height you want that kind of removes any incentive to make the lines compatible with the surrounding environment. So you're saying you can work on something?

MR. ROSS: Madam Chair, Commissioner Sullivan, I can sure work with those entities and I'm sure we can come up with something.

CHAIR VIGIL: Further discussion?

COMMISSIONER CAMPOS: This motion is simply to authorize publication of title and general summary. We're not approving the ordinance right now.

CHAIR VIGIL: That's correct.

COMMISSIONER CAMPOS: That was a motion to approve.

CHAIR VIGIL: Motion and seconded. Seeing no further discussion we'll take a vote.

The motion to authorize publication of title and general summary to amend undergrounding ordinances passed by unanimous [5-0] voice vote.

XIII. Public Hearings

A. Land Use Department

- 1. Ordinance No. 2007-__ . 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"). (1st Public Hearing)**
- 2. Ordinance No. 2007-__ . An Ordinance Declaring A Moratorium for Six Months on New Subdivisions, Land Divisions and Master Plans Establish Procedures for Review as Necessary of this Ordinance, Providing for Automatic Repeal. (1st Public Hearing)**
- 3. Ordinance No. 2007-__ . An Ordinance Restricting the Use of Domestic Wells for Land Divisions and Subdivisions Within the Eldorado Area, (1st Public Hearing)**

PENNY ELLIS-GREEN (Deputy Land Use Administrator): Thank you, Madam Chair, Commissioners. This is the first of three ordinances being considered related to the Eldorado moratorium ordinances. This ordinance repeals the current moratorium by repealing all the previous moratorium ordinances. And I'll stand for questions.

CHAIR VIGIL: Are there any questions for Penny?

COMMISSIONER CAMPOS: Madam Chair.

CHAIR VIGIL: Commissioner Campos.

COMMISSIONER CAMPOS: It seems to me that all three items are related and we should have all three presented because I think the members who have come to talk probably want to talk about all three because there's an interrelationship here.

CHAIR VIGIL: If there's no opposition to Commissioner Campos' request, Penny or whoever from staff would like to address item XIII. A. 2 and item XIII. A. 3.

STEPHEN WUST (Water Resources Director): Madam Chair, I'll just address the second one. That is a replacement moratorium ordinance that streamlines and puts a definitive end date on the current moratorium procedure and basically just simply says no new applications for anyone wanting to hook up to the Eldorado water system for six months, and has a requirement that the staff review any new information that may come its way within that time frame.

CHAIR VIGIL: Okay. Will you be addressing item 3 also?

DR. WUST: Penny will do that, Madam Chair.

CHAIR VIGIL: Just stand by, Steve, for questions.

MS. ELLIS-GREEN: Thank you. The third ordinance would require any residential land division or subdivision which utilizes domestic wells to meet the minimum lot size in the Land Development Code, which would be 12.5 acres in the Basin Fringe Zone, 20 acres in the Mountain Zone, and 40 acres within the Homestead Zone. The

existing Code would allow a developer to create smaller lots if they proved long-term water availability, so that would restrict this. And again, this is the first public hearing for all three of these ordinances.

CHAIR VIGIL: Okay. Are there any questions? Commissioner Campos.

COMMISSIONER CAMPOS: Ms. Ellis, you talk about the Eldorado area. Do you define that in the ordinance?

MS. ELLIS-GREEN: Madam Chair, Commissioner Campos, the applicability in this ordinance the area within the geographic area served by the Eldorado Area Water and Sanitation District, or proposed to be served by the Water and Sanitation District. So I do not believe they have a boundary that has been established and they do serve outside of their service area, so if a project came in proposing to use the Water and Sanitation District it would be affected by these ordinances.

COMMISSIONER CAMPOS: Okay. What about the minimum lot size proposed here? We have other standards imposed in other parts of the county. These would be special standards for this district. I would assume there has to be special justification for the special standards for this district.

MS. ELLIS-GREEN: The proposal here is to not allow people to go below the standard minimum lot size. We have standard minimum lot size throughout the county. But yes, this would be one area where they would not be able to go smaller than the standard minimum lot size.

COMMISSIONER CAMPOS: And what's the justification? What's the facts that support us to make this decision?

MS. ELLIS-GREEN: The backup for this would be the Land Development Code that established the Basin Fringe, the Homestead and the Mountain Zone. The reason not to go below that would be to protect the water resources in this area.

COMMISSIONER CAMPOS: Okay. Now you say the existing Code would allow the developer to create smaller lots with proof of long-term water availability. What does that mean? It seems like the same rule that we have now.

MS. ELLIS-GREEN: That is the rule that is in existence now. This third ordinance would prohibit someone from proving long-term water availability and going smaller than 12.5, 20 or 40 acres. So at the moment, if you were in the Homestead Zone you could submit a geohydro report to prove that you could go smaller than 40 acres.

COMMISSIONER CAMPOS: Okay. But it says here would allow a developer to create smaller lots with proof of long-term water availability. That's under Summary, your second paragraph.

MS. ELLIS-GREEN: Correct. That's under existing Code.

COMMISSIONER CAMPOS: Oh, the existing Code.

MS. ELLIS-GREEN: Correct. That's what the existing Code allows. This ordinance would prohibit that.

COMMISSIONER CAMPOS: Okay, I see, the existing Code not would allow but does allow a developer to create smaller lots with a proof – okay. I see what

you're saying.

CHAIR VIGIL: Further questions for staff? Seeing none, this is a public hearing. Is there anyone out there in the public that would like to address the Board of County Commission on any one of these items. Please come forward and state your name and address for the record. Good afternoon.

RAY NICHOLS: Madam Chair, Commissioners, my name is Ray Nichols. I live at 19 Estocada Road in Eldorado. The last time I spoke before this Commission I was a member of the board of directors of the Eldorado Area Water and Sanitation District. I am no longer on the board. I am speaking as a private citizen. I still am interested in water issues in that area, and particularly I'm interested in not proliferating domestic wells. That would lead me and I hope lead you to the item number 3 which would be limiting on domestic wells.

It seems to me that in an area where the water supply needs to be controlled it's much easier to control if the users are associated with the community water system. I think that the State Engineer has worked very hard to place limits on domestic wells and it has long been my interest to see the Eldorado water system become a participant in a regional water system. And I think the best way of handling that is to have the water users on the community water system rather than having a proliferation of domestic wells. So I encourage you to support the item number 3. Thank you very much.

CHAIR VIGIL: Thank you, Mr. Nichols. Is there anyone else out there. Before you leave, Mr. Nichols, does anyone have questions for Mr. Nichols? Seeing none, anyone else that would like to address the Board? Thank you, Mr. Nichols. Please state your name and address for the record.

JOE MILLER: My name is Joe Miller. My address is 286 Riverbank Road, Lamy. I've been waiting for 11 years to be able to get up here and comment on the moratorium. This is the first chance in 11 years that any of us had any chance to even comment on this moratorium. I think we set a record here in Santa Fe County. It's the longest moratorium of any moratorium in the state of New Mexico. It's gone on too long now.

I look at your sign up there, Equal justice under the law. Makes you wonder how you square that with the fact of moratorium going on for so long. There's a lot of us that have been paying taxes on land, increasing every year. Every year the taxes go up. This is on land that we're not allowed to use. And to set it off, just four years ago or three years ago we got an additional 3.5 mill levy on us to buy a water company and to operate the water company. And it's a water company that this Commission will not let us use. We've got to pay taxes on it but you keep us from using it. We're not allowed to use that water company.

Now there's - the people who have master plans that are approved and recorded and there's not that many and those people really should be exempt from this new moratorium. There's only four of us that have recorded masters and waiting for 11 years, and of those four two of them are out of town, out of state and they probably will never

develop. They want to sell their land but they can't; they've got a white elephant. Nobody is going to buy a piece of land that the only thing you can use it for is to pay taxes.

There are two of us that are here and we do want to develop the land we feel we should be exempted from any ordinance. I don't know why, why we even have the ordinance at all in the first place. The fact that evidence that the moratorium should never have been on for the first place because in the last 11 years no one's ever even come close to running out of water because of a water shortage. Some did because of breaks in pipelines or something but the fact that that happened is evidence that that moratorium should have never been put on in the first place.

There's plenty of water out there, lots of water. I submitted and I don't know whether you people got to see it, a list of 12 wells that were drilled within the past year or so. Those wells were listed. They run anywhere from 40 gallon a minute up to 410 gallons a minute. And that's plenty of water. There's plenty of water in the area. It shouldn't be done because of a shortage of water.

As far as water rights are concerned, the State Engineer admitted that the EDU, the Eldorado utility before this has 985 acre-feet of consumptive water rights. Last year, last fiscal year, EDU or Eldorado Water Sanitation District only used 577 acre-feet of water rights. They have 408 feet of water rights that they're not even using. So there's plenty of water and plenty of water rights. In fact they do have another 2200 acre-feet of water rights, inchoate water rights and a percentage of them probably could be proved up. There's no shortage of water and there's no shortage of water rights.

Myself, I drilled one of those wells that's on that list. It's right off of 285 between the gas station there and the country store. That well alone would produce over 300 gallon a minute. It's enough to supply 50 percent of Eldorado's water. Now, the proposed moratorium restricts us - we're working with the water company, trying to negotiate with them and I think we've got pretty well settled that we want to give them that water well and in exchange they're going to give us water rights and give us the service that we need.

Right now, we can't do that. This Commission will not let us get water online. And the new moratorium, we can't do it at all. We're completely restricted. As it is right now if we prove the water up and turn it over to them we could do it except in my case, I have on my master plan a stipulation that says we will use Eldorado water. And since we have that on there we're subject to the moratorium and we can't use our well. It's a well that would really help the system and really increase the water available to the system, but you people won't let us do it. We can't put that water well online if we can't use the water in it. And this new ordinance prohibits us from using that water. It prohibits us putting in online. We could start a new water company of our own and develop that land and that's what everybody could do out there now the way the new ordinance is. I don't know how many new water companies you have, you're going to have, if that's the case. And that's something you don't need, more water companies.

If someone starts a water company, we can prove the well and turn it over to a new water company, but we can't do through the Eldorado Water District. I don't know why

you have it out for a certain water district. It would let us hitch on to other water districts if they're formed but not this one. And if there's a shortfall this summer for water, it can be laid right at the feet of this Commission for refusing to let us put this well online and supply the water.

Now as far as the 12.5-acre ordinance is concerned, I've got some problems with that. I'm not so sure what area it covers. It says in the ordinance that it covers the Eldorado Water and Sanitation District boundaries but there are a lot of lots out there, a lot of land out there that were in the Eldorado Utility water district, but they're not in the Eldorado Sewer and Water District and I'm not sure if it applies to them or not. And if it doesn't, some of us are going to have to go to 12.5, 40 or even maybe 80-acre lots. And it just doesn't work, not with our new affordable houses. An 80-acre lot is not an affordable lot. Those large lots should be exempt from the affordable housing also. And as far as drilling wells it's kind of ridiculous. I have one parcel of 48 acres and it's got Eldorado utilities water on all four sides of it. It's got a 10-inch line on the west side and an 8-inch line on the other three sides.

But if I have to use that I have to drill a well. That's ridiculous, required to drill a well right in the middle of the water lines. I think it should be looked over and I think the people that do have approved master plans, they've been punished enough for the last 11 years. They should be exempt from this. There really is only four of them. If you have any questions I'd be glad to answer them.

CHAIR VIGIL: Are there any questions for Mr. Miller? Seeing none, thank you, Mr. Miller. Are there any other speakers. Please state your name and address for the record.

JERRY COOPER: Jerry Cooper, 17 Cato Road, Eldorado. I'm vice president of the Eldorado Water and Sanitation District. There are several things. To clarify one point, the district does have boundaries and they were defined years ago. On the point of transferring wells, that has been a very contentious issue. The County has not allowed certain people such as Mr. Miller to transfer wells to the district. We need the pumping capacity. That's our main issue. It's not a matter of water. We need pumping capacity. We need to get the water up from the aquifers up to the surface.

The County has not allowed those wells to be transferred and these new proposed ordinances stop it entirely. So we have an issue through the Land Use Department of how do we transfer those wells over when in fact they want to be transferred over and we as the water district are willing to accept them. There's a mechanism, some mechanism I don't understand, that doesn't allow them to be transferred over. So we have an objection on that part of it. This is an issue that needs to be clarified because it's a procedural issue. It's very important.

CHAIR VIGIL: Mr. Cooper, do you think that within the next six months for the time frame of this, this is something you could work with with Land Use?

MR. COOPER: If you read the ordinances, the way they're stated, there's nothing will happen during that six months.

CHAIR VIGIL: But you also testified to the fact that this is something you would need to work out with the Land Use Department. Is that something you'd be willing to work on with them?

MR. COOPER: Yes. We have approached them a couple of times and at the point, none of these people - we have something like five wells that are waiting to be transferred over to the district but cannot or have not been transferred over. Some of them have been waiting a year and a half.

CHAIR VIGIL: Okay. Is there anything further, Mr. Cooper.

MR. COOPER: No. Thank you.

CHAIR VIGIL: Thank you very much for your testimony.

COMMISSIONER CAMPOS: Madam Chair.

CHAIR VIGIL: There might be a question for you, Mr. Cooper.

COMMISSIONER CAMPOS: No, for Dr. Wust.

CHAIR VIGIL: Dr. Wust.

COMMISSIONER CAMPOS: Could you explain what the last speaker spoke about, about the well transfer issue? I don't quite understand it.

DR. WUST: Madam Chair, Commissioner Campos, the current ordinance lays out a whole procedural set up for what needs to happen for that well transfer to take place. It doesn't deny it. It says whoever's got the well must demonstrate 100-year water availability both for their own needs plus 20 percent or something, and have water rights and turn both of those over to the Water and Sanitation District. And actually that was done recently. There's a development that completed the permit process using that very procedure. But most of the wells have had some problems. Either there was not a demonstration of 100-year supply or there are no water rights associated with one or the other. So they weren't completing the steps. Those were the issues. It's not a straight denial or an acceptance.

COMMISSIONER CAMPOS: Okay. Thank you.

CHAIR VIGIL: Any further questions?

COMMISSIONER SULLIVAN: Madam Chair.

CHAIR VIGIL: I know we have one more person wanting to testify but if you have a question on this matter.

COMMISSIONER SULLIVAN: On that same issue I just wanted to point out that I believe the way staff drafted this six-month transition period, it indicates that during that period Santa Fe County staff shall continually analyze and make recommendations concerning the continuing need for the moratorium created in this ordinance with respect to the following: new information received by staff concerning the ability of the Water and Sanitation District to deliver sufficient water to meet needs of existing and committed future users, new information received or developed by staff concerning the aquifer characteristics, and it goes on regarding that, and any information provided by the district that tends to establish that the district meets or exceeds the standards set forth in the County Land Development Code.

So the intent is not that the six-month period be a static period. The intent is that the period be one of information gathering and communication and resolution of this issue so as Ray said, we don't have the district ringed with domestic wells that have no water rights and that have limited long-term potential but could impair the district's use of the aquifer. So I think this is an active moratorium that staff is proposing as it were and not a passive one. We're really pleased, and we did have a few days ago a public meeting out in Eldorado with the Water and Sanitation board and with the public, well attended and two hours in length and we got lots of good input from people and answered questions and I think the staff was there. Penny was there, Dr. Wust was there. And I want to thank those who attended that because I think it helped really to facilitate that communication about this.

CHAIR VIGIL: Commissioner Sullivan, does it look like there might be a resolution to some of these issues that we've heard about within the next six months or not?

COMMISSIONER SULLIVAN: Well, I think it is. I think there will be. And I'm learning too. The Water and Sanitation District is new and they have a big task in front of them, not only operation and maintenance but planning for the future. They are in the process of drilling a new well, so that well will provide an additional water source which the district never had before. They're in the process of completing a hydrologic study which I believe Jerry said would probably be done in April, or at least they'd have some results from it in April. Am I wrong about that Jerry? Is it April?

MR. COOPER: April or May.

COMMISSIONER SULLIVAN: April or May. Okay, Madam Chair. I just wanted to be sure I had the date right on that. So that's within our six-month period. We don't want to prolong this forever. We have a problem that we want to solve and that's I think the district is approaching the issue and certainly that's the way the County is approaching the issue. So I think we're on the right path. We do have differences of opinion about this issue but we're addressing it pro-actively and to me that's good. So I just wanted to provide the Commission with that background.

CHAIR VIGIL: Thank you, Commissioner Sullivan. I believe we have one more person who wants to address the Commission. Please come forward. State your name and address for the record.

DARIA PETERSON: Madam Chair, my name is Daria Peterson. I live at 527 Abeyta Street, Santa Fe, 87505. I'm addressing the Commissioners in reference to a letter I sent last year in November about my feelings about keeping rural New Mexico separate from city New Mexico and I would like to express my support of these moratoriums because I feel that they give us more time to not only think about the scarcity of water but also about the way that we want to use our land and if we want this land to be used for further suburb and development, if that's a good way to use the water and good way to use the land. So that's it. Thank you.

CHAIR VIGIL: Thank you, Ms. Peterson. Is there anyone else out there?

Are there any further questions for staff from the Commission? This is the first public hearing. We're required to do two, Mr. Ross, is that correct? Okay. Hearing no further questions, no action is necessary and we will have another public hearing on this, at which time the Board of County Commission will be required to take action. It's March 13th that the next hearing will be, according to Commissioner Sullivan.

COMMISSIONER CAMPOS: That's a caveat.

COMMISSIONER MONTOYA: So what's the real date.

CHAIR VIGIL: Thank you all for coming here.

XIII. A. 4. An Ordinance No. 2007 - . An Ordinance Amending Article XIV, Traditional and Contemporary Community Zoning Districts, of the Santa Fe County Land Development Code, Ordinance 1996-10, as Amended, to Add to a New Section 10, Village of Agua Fria Planning And Zoning District (1st Public Hearing) [Exhibit: Zoning Map]

CHAIR VIGIL: Robert, do we need one or two public hearings on this? So this is the first. I know we took action on title and general summary on this last time. Mr. Griego, the floor is yours.

ROBERT GRIEGO (Senior Planner): Madam Chair, County Commissioners, this is the first public hearing for the proposed Village of Agua Fria Zoning District. For this public hearing I'd like to make a five-minute presentation to briefly present the Board the background information in regard to the ordinance. And I would also like to inform the Board that staff has identified some minor editing and clarification changes to the draft that we'd like to bring forward at the next public hearing.

The map that I handed out now, it was a change to the map that was in your packet material. The packet material draft was very much of a draft. We've been working on that and this map would replace the map that is in your packet material in the ordinance on page 11. Commissioners, the Village of Agua Fria Community Plan was adopted through Resolution 2006-116 on June 11, 2006. The community plan amended the County's growth management plan for the Village of Agua Fria. The community plan was developed by the Agua Fria Planning Committee through a three-year process. The ordinance is intended to amend the County's Land Development Code for the Village of Agua Fria Zoning District. It is also intended to implement the land use goals of the Village of Agua Fria Community Plan.

The Village of Agua Fria Zoning District boundary is the Village of Agua Fria traditional historic community, which was adopted by the Board on December 12, 2006 through Ordinance 2006-12. The Village of Agua Fria Zoning District is comprised of two subdistricts – the Agua Fria residential urban zone and the Agua Fria traditional community zoning district. On your map you will note that there are the yellow section of

the planning area is the Agua Fria urban zone and the brown area there is the Agua Fria traditional community zoning district. We'll go through that in just a minute here. The residential urban zone is currently part of the County's Land Development Code and the Agua Fria urban zone will replace the residential urban zone within the zoning district. And that again is the area north of the Santa Fe River on the map that's shown there - the area in yellow.

The Agua Fria traditional community zoning district is also part of the existing County Code and this proposed ordinance will expand the traditional Agua Fria zoning district, and I'll pull up that map in just a minute here. The area for the Agua Fria traditional zoning district is the area south of the river within the traditional historic community boundary. There's two maps there. I'm not sure if there's an issue with the maps, but we had two. One was the Agua Fria traditional historic community boundary map and the other one is the zoning district. So if - I'm not sure if everybody got a copy of the zoning district map.

COMMISSIONER CAMPOS: I didn't.

MR. GRIEGO: I apologize for that, Madam Chair, Commissioners. I was planning on giving you both of the maps, but there was a problem with the printer. So in front of you, you should have Exhibit A, the Agua Fria Planning and Zoning District map. Getting back to the ordinance, the zoning district use table is on page 2 of the proposed ordinance in your packet. As we stated, of the two zoning districts, the use table identifies permanent uses, conditional uses, special uses and uses not allowed for each of those subdistricts. I'll briefly go through the process for each of those.

Permanent uses would require administrative approval. Traditional uses would require committee approval from the Agua Fria Development Review Committee. Special uses would require Board of County Commissioners' approval. The land use table is on page 3 of the proposed ordinance in your packet, on pages 3 through 6 of the proposed ordinance. The use categories in the proposed ordinance include residential uses, public, civic and institutional uses, retail service and commercial use, industrial and open use, and agricultural categories.

The density and dimensional table is also on page 7 of the ordinance. It outlines the standards and densities allowed within each subdistrict. The proposed ordinance does not change the density within the district although it will amend the zoning district boundaries. The zoning densities - I'll briefly describe what the zoning density is for each of the areas. The Agua Fria urban zone, this is on page 7 of the proposed ordinance, is one dwelling unit per 2.5 acres. The density can be increased with either community water or community sewer to one dwelling unit per acre.

Density can further be increased with both community water and sewer, if you have both, to one dwelling unit per half acre. Within the Agua Fria traditional community zoning district, the base density is one dwelling unit per $\frac{3}{4}$ of an acre, and that can be further subdivided but you have to have both community water and community sewer, and the density could be increased if both community water and community and community

sewer to one dwelling unit per a third of an acre.

The other zoning district supplemental use standards identified in the ordinance include preservation of open space corridors, non-residential standards, which include a maximum of 5,000 square foot for each non-residential development, with the exception of a small grocery store, which may request up to 10,000 square feet. Also setbacks from residential properties, non-residential from residential properties, no parking within five feet of the property lines. Home businesses are allowed throughout the zoning district and must comply with the standards set forth in the ordinance. There are also non-conforming use standards within the ordinance.

Finally, the district standards for water and wastewater are also on page 10 of the ordinance. New land divisions and subdivisions using groundwater from the domestic wells shall limit water consumption to a quarter acre-foot per dwelling unit. Property within 200 feet of a public sanitary sewer that can be accessed with gravity flow shall connect to that line, and property divisions will require that facilities are in compliance with New Mexico Environment Department regulations.

The final special community notice procedures include posting standards and a pre-application review for subdivisions or non-residential development shall hold a pre-application meeting with registered neighborhood organizations within the district. The Village of Agua Fria Planning and Zoning District will also be formally reviewed by a committee established by the Land Use Department at least once every five years.

The Agua Fria Development Review Committee unanimously approved the recommendation of the proposed ordinance and this is the first public hearing. This concludes my presentation and I stand for questions from the Board.

CHAIR VIGIL: Any questions from Mr. Griego? Commissioner Sullivan.

COMMISSIONER SULLIVAN: I just had one quick item if you might give some thought to this when you consider some of these amendments next time. On page 9, under wastewater, I'm not sure why you would limit the connection of a public sanitary sewer line to that which can be accessed by gravity flow. That may have been in the ordinances years and years ago but now we have very inexpensive pump systems, force mains and grinder pumps and just you name it that developers are using everywhere, in fact the City of Santa Fe is using. So it's relatively easy to connect in to a sanitary sewer whether it's gravity or not, provided jurisdiction of course approves it, the County or the City. But I think that's kind of throwback to decades ago when gravity flow was essentially the way all the sewers were designed. But my suggestion would just simply be that that's 200 feet to the public sanitary sewer line shall be connected to that line.

In many cases it's less expensive, actually to connect in with the force main because you don't have to go down real deep the way you do with a gravity sewer. You can lay the sewer line smaller and you can also lay it closer to the service, and you can snake around a lot of times too. So cost-wise, I don't know that there's any difference. So that would be my suggestion on that particular - 10.8.b. sub 1. Thank you, Madam Chair.

CHAIR VIGIL: And Robert, I would just ask was that the way it was

proposed to us because this community has a strong and active water association?

MR. GRIEGO: Madam Chair, are you referring to Commissioner Sullivan's comment? There was a lot of discussion with regard to that but I think at first it actually was more with the way that Commissioner Sullivan recommended. There were some property owners who were concerned that we would be requiring them to hook up to the system if it was at great expense to the property owner. I suggest that we take this back to the planning committee and have a further discussion before we bring it back to the Board.

CHAIR VIGIL: Okay.

COMMISSIONER CAMPOS: Madam Chair.

CHAIR VIGIL: Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Griego, you talked about new land divisions and subdivisions using groundwater from a domestic well limited to .25 acre-feet. Was there any discussion about using a number less than .25 acre-feet? Because we have imposed numbers less than that on a number of other subdivisions.

MR. GRIEGO: Madam Chair, Commissioner Campos, no. There was no discussion further than that quarter acre-foot. There was actually some hesitation on requiring property owners to restrict the water use to a quarter acre-foot because within this area this is not a regulation within the traditional community. So part of the planning process was to try to encourage hooking up to the water system while allowing this restriction of a quarter acre-foot. Right now within traditional communities in the County Land Development Code there's an exception to limiting the groundwater from wells to a quarter acre-foot.

COMMISSIONER CAMPOS: There's an exception where?

MR. GRIEGO: In the traditional communities -

COMMISSIONER CAMPOS: In the state law?

MR. GRIEGO: In the County Land Development Code.

COMMISSIONER CAMPOS: Because a quarter acre-foot is a lot of water. It's about 7,000 gallons a month plus. That's a lot of water. That would be something that I would think the Commission should consider lowering. I think it saves groundwater and I think 7,000 acre-feet is a lot of water per month. So it's just a thought.

MR. GRIEGO: Madam Chair, Commissioner Campos, we can also bring that to the planning committee as well.

COMMISSIONER CAMPOS: Sure.

CHAIR VIGIL: My concern with that, Mr. Griego, would be that we would by standard application require .25 and many of the property owners in this area are long-standing families who probably are looking at possible family transfers, and I think that ultimately many of them probably have three acre-feet right now through the State Engineer's Offices. Is that not so?

MR. GRIEGO: I would maybe defer that to maybe our Development Review on how that works.

CHAIR VIGIL: And I don't know that it needs to be decided or discussed

further, but those would be the items I would bring up when you take it to the community. Okay? Anything further?

KAREN TORRES (County Hydrologist): Madam Chair, I heard water come up and I ran out. I believe the question was with a domestic well, whether you can still utilize three acre-feet per the State Engineer. For multiple households you may utilize three acre-feet. For commercial purposes, for sanitary, you can use utilize one acre-foot. So as long as there's multiple households – it's one per household, one acre-foot per household.

CHAIR VIGIL: Okay. Thank you, Karen. Appreciate that. Anything further, Mr. Griego?

MR. GRIEGO: Madam Chair, I have nothing further at this time.

CHAIR VIGIL: Okay, are there any questions of Mr. Griego? Seeing none, this is a public hearing. Does anyone care to address the Commission on this? Commissioner Varela Lopez.

JOSE VARELA LOPEZ: Madam Chair, Commissioners, good evening. I just wanted to very briefly thank the planning staff for all their time and effort with the folks in Agua Fria in getting this plan and now this ordinance language in place and I also wanted to personally thank Chairwoman Vigil for her dedication to seeing this plan come to its fruition, and to thank the County Commission as a whole by allowing both traditional and contemporary communities to have a better and bigger say in the future of their communities as we move into the future. So thank you.

CHAIR VIGIL: Thank you, Commissioner. Is there anyone else who would like to address the Commission? Seeing none, this is the first public hearing. No action is required and Robert, if you could take the direction of the Commission and take those issues back to the community for further discussion and recommendation on the water, making that a part of the presentation for the second public hearing.

MR. GRIEGO: Thank you.

XIII. A. 6. CDRC Case # Z/DP 05-5220 The Bad Ass Coffee Co. The Bad Ass Coffee Co. (Seferino and Ruby Valdez), Applicants, Jon Paul Romero, Agent, Request master Plan Zoning, Preliminary and Final Development Plan Approval to Allow a Retail Coffee Shop With a Drive-Thru Lane and a Storage Area on One Acre. The Property is Located at 1 North, Range 9 East (Commission District 1)

JAN DANIELS (Review Specialist): Thank you, Madam Chair. On November 17, 2005 the CDRC met and acted on this case. The decision of the CDRC was to recommend master plan zoning, preliminary and final development plan approval to allow a retail coffee shop with a drive-through lane and a storage area on one acre. Also the CDRC approved a variance of Article III, Section 4.1 and 4.2, Types and location of commercial districts, of the Land Development Code to allow commercial zoning outside of an eligible commercial district for a retail coffee shop with a drive-through lane on one acre.

The applicant is requesting master plan zoning, preliminary and final development plan approval for a retail coffee shop with a drive-through lane and a storage area on one acre. The property is not located within a commercial node but it is in an area where commercial development will be permitted by the Pojoaque Valley Community Planning Committee. The business will consist of a 2,880 square foot framed stucco building with one drive-up window. The retail coffee shop will use 1,700 square feet and the remaining 1,100 square feet will be utilized as a storage area for machinery, to store equipment and retail products. The hours of operation will be Monday through Saturday, 6:00 am to 8:00 pm there will only be two employees on the premises at any given time. There will also be outdoor seating available for customers and the single indoor bathroom will be handicap accessible.

This application has been reviewed for adjacent development, lot coverage, access, water, fire protection, liquid and solid waste, terrain management, landscaping, traffic, signage, lighting and parking.

Staff's position is that the proposed submittal is in accordance with Article V, Section 5, Master plan procedures of the County Land Development Code. Staff recommends master plan zoning, preliminary and final development plan approval subject to the following conditions. Also, we are adding one condition, that they must use a hot water recirculation device. Madam Chair, may I enter the conditions into the record?

[The conditions are as follows:]

1. The applicant shall comply with applicable review comments from the following:
 - a. State Engineer
 - b. State Environment Department
 - i. Per the NMED, the well must be 200 feet away from the leach field if restaurant capacity exceeds 25. Ponds used for stormwater detention must be set back 100 feet from the leach field.
 - c. State DOT (access permit)
 - i. An updated access permit will be required by the State Department of Transportation.
 - d. County Hydrologist
 - e. Development Review Director
 - f. County Public Works
 - g. County Technical Review Division
 - i. The applicant shall provide cross sections of the retention ponds along with engineer calculations.
 - ii. The applicant shall provide a grading and drainage plan.
 - iii. A Type III barricade with a 9-button delineator shall be installed at the north end of the access road.
 - iv. The master plan must show a stop sign at the exit to NM 502.
 - h. County Fire Marshal

Reviewing agency comments are summarized above. Additional information/comments may be included in correspondence from the agency. The applicant must revise plans accordingly and resubmit to Land Use for review/approval by commenting reviewing agencies.

2. The master plan/development plan will be recorded with the County Clerk's office.
3. All staff redlines will be addressed, original redlines will be returned with final plans.
4. The landscaping plan shall comply with the Land Use Code
5. The applicant shall comply with the water harvesting requirements of Ordinance 2003-6, and water use shall be restricted to 0.25 acre-feet per year.
6. The applicant shall submit an updated liquid waste permit from the Environmental Department.
7. The applicant shall comply with all Fire Marshal requirements. The applicant shall request a final fire inspection prior to occupancy of the building.
8. The applicant shall submit cut-sheets for all outside lighting.
9. Development plan submittals shall include, but not limited to the following:
 - a. Architectural treatment with stucco façade, awnings shall have territorial earth tone color
 - b. Access road shall conform to minimum standards for a local road and a road section detail with an easement width of 50 feet and 20-foot wide roadway shall be submitted. Proposed driveway off access road shall have a minimum separation of 100 feet from intersection.
 - c. Utility lines shall be underground.
10. The applicant shall submit cost estimate and financial surety for completion of required improvements as approved by staff, obtain business registration prior to occupancy.
11. The water budget must be approved by the County Hydrologist and annual water readings must be submitted to the Land Use Administrator by January 31st of each year.
12. Applicant shall provide a distinction between retail storage on Sheet 4 of the plans.
13. All signage shall conform to the Land Development Code.
14. The applicant must notify the State Engineer's Office in writing that use of the well will be changing from domestic to commercial use.

CHAIR VIGIL: Are there any questions for Ms. Daniels? Seeing none, is the applicant here? Oh, I see one now. Commissioner Sullivan, for Ms. Daniels.

COMMISSIONER SULLIVAN: Ms. Daniels, you're recommending approval. You say it's in conformance with the Land Use Code, but when I was reading the Code - I understand it's outside the commercial node, but that - correct me if I'm wrong - it's in the proposed or what would be the proposed commercial area once the community plan is completed. So I'm a little confused as to why you say it's in compliance with the Code. It's not in compliance with the Code. They're asking for a variance, right?

MS. DANIELS: Madam Chair, Commissioner Sullivan, they did get that

variance approved. However, it was not necessary to ask for it because Article III, Section 4.2.2.b.1.b states that for location of commercial or light industrial zoning may be approved in the traditional community where no qualifying intersection appears to be present provided – in b. is that the rezoning to be approved is similar in type and scale to those uses suggested for neighborhood or small-scale districts, for Article III, Section 4.3.2. So they never really had to ask for the variance.

COMMISSIONER SULLIVAN: This was during the master plan?

MS. DANIELS: Yes.

COMMISSIONER SULLIVAN: And is this in the traditional community?

MS. DANIELS: Yes, sir, it is.

COMMISSIONER SULLIVAN: Okay. Thank you.

CHAIR VIGIL: Any further questions for Ms. Daniels? Seeing none, is the applicant here? Please state your name and address for the record.

[Duly sworn, Jon Paul Romero testified as follows:]

JON PAUL ROMERO: My name is Jon Paul Romero. Madam Chair, Commissioners, we've met with staff over the lengthy process of the development plan. We're in conformance with all staff review comments and conditions of approval, even the other one with recirculation. I'd like to stand now for any technical questions, and if you have any individual questions with respect to the business, the owners would like to speak to that.

CHAIR VIGIL: Are there any questions?

COMMISSIONER CAMPOS: Are the conditions acceptable?

CHAIR VIGIL: Are the conditions acceptable?

MR. ROMERO: Yes, they are.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Romero, I note that there's a requirement for sprinklering which the applicant is in agreement with.

MR. ROMERO: Yes.

COMMISSIONER SULLIVAN: And I looked through the County Fire Department's review and I didn't see anywhere how you're going to store the water. I didn't see any requirements for storage of the water for the sprinkler system. I see you have a 4,000-gallon landscape cistern, but I don't see what you're going to do to store water for the sprinkler. How do you plan to do that?

MR. ROMERO: Madam Chair, Commissioner Sullivan, I just received comments from the Fire Department staff yesterday and we realized that we're going to have to install some type of tank, storage facility which will be installed underground and it will probably have to be a 30,000-gallon tank. Right now we're going to work with the County Fire Chief to determine the exact size that we need for the storage for capacity for water and fire protection.

COMMISSIONER SULLIVAN: Because this looks like they're the final comments here and I didn't see any mention of that. So I guess my suggestion would be to

add another condition which would be water storage for fire protection purposes in the amount determined by the County Fire Marshal. Is that acceptable?

MR. ROMERO: Yes. That would be acceptable.

COMMISSIONER SULLIVAN: Okay. That's all. Thank you, Madam Chair.

CHAIR VIGIL: Okay. Any other questions? Seeing, hearing none, thus far, and correct me if I'm wrong, Ms. Daniels, in addition to the 14 conditions we have #15, a hot water recirculation system, and #16 a water storage tank pursuant to the recommendations of our Fire Department. So there are 16 conditions of approval. Correct? Okay. If there are no further questions for the applicant this is a public hearing. Does anyone care to address the Commission with regard to this case? Seeing, hearing no one, what is the wish of the Commission?

COMMISSIONER ANAYA: Move for approval with conditions.

COMMISSIONER MONTOYA: Second.

CHAIR VIGIL: Motion for approval with conditions and seconded. Is there any further discussion?

The motion to approve CDRC Case #Z/DP 05-5220 passed by unanimous [5-0] voice vote.

CHAIR VIGIL: Congratulations and good luck, Bad Ass Coffee Shop.

MR. ROMERO: My clients invite you out to the grand opening for a fee cup of coffee.

CHAIR VIGIL: When is the grand opening?

MR. ROMERO: Soon, probably within the next six months.

CHAIR VIGIL: Thank you and good luck on your business.

- XIII. A. 7. **CDRC Case #V 06-5590 Bett Johnson Variance & After The Fact Permit. Bett Johnson, Applicant, Michael Ossorgin, Agent, Request a Variance of Article 902.2.2.6 of the Uniform Fire Code 1997 Edition to Allow the Grade of a Driveway to be 18% Which Exceeds the Required 11% a Variance of Article VII, Section 3.4.1 (Slope and Buildable Areas), to Allow Slope Disturbance in an Area Where Slope Exceeds 30% and Variances From the Urban Wildland Interface Code to Allow a New Home Which has Been Substantially Constructed Without Non-Combustible Materials, Sprinklers, or Obtain a Permit For Those Portions Already Constructed. The Property is Located at 124A La Cueva Road Within Sections 25, 26, 35 and 36 in Township 16 North, Range 11 East (Commission District 4)**

JOSE LARRAÑAGA (Review Specialist): Thank you, Madam Chair. On December 21, 2006 the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the proposed variance with staff conditions and two added conditions. The applicant has constructed a 1,940 square foot log home on 22.79 acres with access from La Cueva Road via a driveway with grades nearing 18 percent. The applicant began the building permit process in March of 2005, but states that she decided against obtaining the required permits and variances when she was advised that the property is sited in an Urban Wildland Interface Zone per Ordinance 2001-11. The applicant was advised by County staff during a field visit regarding the location on the site that a residence could be placed without a variance to Code and was apprised at the time that driveways in excess of 11 percent were not permitted and was further advised that should she wish to continue she would need to request a variance and pursue approval of her request through the public hearing process.

The applicant proceeded with construction without a permit and without the benefit of inspections by the Construction Industries Division. The applicant has stated that compliance with the public hearing process for an application for variance would be too lengthy, and due to her living arrangements at the time she proceeded without a permit. The residence is complete, and the applicant is residing in the home. Mr. Larrañaga said The request is not in compliance with Article 902.2.2.6 of the Uniform Fire Code 1997 Edition, Article VII, Section 3.4.1 of the Land Development Code, and Ordinance 2000-11. The structure is substantially complete with the applicant in residence at this location. Staff advised the applicant she could not build on the site prior to commencement of construction. The applicant proceeded with construction despite staff recommendation without a permit. There is no provision in the Land Development Code to allow this variance. Therefore staff recommends denial of the applicant's request.

Should the BCC approve this variance staff recommends the following conditions:

1. The fact that emergency vehicles cannot reach this site due to the terrain, the grade of the road, and the fact that the applicant will never receive a certificate of occupancy on this home from the State Construction Industries Division, a disclosure statement releasing Santa Fe County of all liability of emergency and fire liability, signed by the applicant and notarized, must be recorded with the County Clerk and referred to on the plat of record. This document must disclose this information to any future property owner.
2. The applicant shall address all Fire Marshal requirements.
3. The applicant shall complete the required building permit application process and pay all required permit fees.
4. Cut slopes which exceed a 2:1 ratio must be re-graded per Code, or a slope retaining system provided.
5. All disturbed areas must be re-vegetated with native seed, and further disturbance to slopes in excess of 30 percent shall be avoided.

6. The existing well shall be equipped with a meter, and annual water meter readings shall be submitted to the Land Use Administrator by January 31st of each year as required by the Plat recorded in Book 1047, Pages 857-852 as Document 856-645.
7. Terrain management and other Code requirements must be fulfilled where possible, such as detention of storm water and rainwater harvesting.
8. The applicant shall rebuild the driveway to improve on the exiting slope with the proper erosion controls. A plan and profile shall be submitted stamped by an engineer verifying the improvements were made.
9. The home shall have fire protection either by sprinkler or tank with hydrant.
10. The applicant must comply with all conditions within six months of approval. A financial guarantee acceptable to the County in the amount of the approved cost estimate must be submitted to ensure the completion of the conditions.

CHAIR VIGIL: Are there any questions of staff? Seeing none, is the applicant here and would the applicant like to address the Commission? Please come forward and state your name and address and be sworn in for the record

[Duly sworn, Michael Ossorgin testified as follows:]

MICHAEL OSSORGIN : Michael Ossorgin, 2904 Avenida Alamosa, Santa Fe. I'm speaking on behalf of Bett Johnson. I'm a contractor in Santa Fe and was asked to intervene and help with this situation. I came in after the fact, after the building was in place. I'm working with Bett in explaining what's occurred, what needs to happen and how we can move forward, and also working with staff. So I'm available for any questions and I have a couple ideas on how to get this taken care of.

CHAIR VIGIL: Do you want to propose those now?

MR. OSSORGIN: Okay. When it comes to making the best of a situation that's already in place, I would like to have the opportunity to take County Engineer Paul Kavanaugh and Marshal Patty, if they would be willing to look at the driveway since it's been a while since it's been viewed by staff, and see the actual conditions, now that the house is up. They can see the drainage that's available, the pond that's available, including, if I could supply some water at the top of the hill. I have discussed some of this with Marshal Patty. And then involve an engineer just for the simple fact of expediency and to see what staff can find acceptable given the best situation so that I'm not trying to force a design, just sticking literally to certain criteria. I've worked with County Engineer Paul Kavanaugh in the past and he's pretty brilliant when it comes to that type of assessment on the existing condition.

Then, I find no problems with addressing all the Fire Marshal requirements to the point that it can be done. This is an existing road that has been improved to the tune of \$25,000 already but it does need some restriction on the water flow. It does need some additional improvements but hopefully not a whole lot. We're fully in favor of fixing the slopes that have just been cut through and are unsightly to create something that looks

good. I personally have suggested in the past that the second driveway – but again I would default to whatever Marshal Patty has to say. But the second way out which is temporary is way too steep and seems to be an impossibility and is unsightly. I think that should be abandoned and reseeded and cleaned up for that side of the lot.

Lydia Ortega, my assistant will give you some pictures that show you a little bit better than these black and white photographs. Then, as far as working for getting the permit which we fully understand now with CID and I'll work with trying to get out and trying to see what we can do with the inspections on that. I think that for the timing to do this it would take a couple months on planning and going back with staff and creating something to be able to come up with a plan that would be acceptable, and then hopefully, my intention is two-fold. Make it look as good as it can for its unsightliness. Make it safe, so maybe there are a few items there. Safety of course, but even if the title is going to be clouded with a statement that would say to any future buyer or whatever that they've accepted that this is a situation where the fire trucks have a hard time getting in. I would like to still see in that two-month period if we can't get to a point where maybe there's less strong language on that. Whatever can be done.

The house, I've seen it. It's well built. It is a kit for the most part and there's been great care taken on by Bett as far as creating rain catchment and stuff, having nice ponds and all of that. So pretty much I'm saying try to make the best that we can out of it and I would work to bring the Codes up and have them inspected. I've worked to comply as much as we can but I want input from staff in the field, is what I'm asking for.

And then I'm also asking for maybe a couple months before the six-month time starts. And then I think that item number 9, the home shall have fire protection either by sprinkler or tank with hydrants is really tied in with number 1 and 2 which is again, some thing that Marshal Patty or whoever from the Fire Department will have to – I want them to have the ability to say if we're going to comply with whatever the Fire Marshal needs and if we can accomplish that, that he also has the authority to maybe delete or add where necessary so that we can get this done.

CHAIR VIGIL: Is that it, Mr. Ossorgin?

MR. OSSORGIN: Yes, Commissioner Vigil.

CHAIR VIGIL: Before I ask other questions, I'll ask you, are you actually asking us for additional time because there's been a change in the grading and you perhaps don't need the request for the variance, or maybe the slope is a little different than what was proposed originally and you have new drainage? Are you saying there's been a change from the time this documentation was brought to us that might even affect whether or not a variance is requested, or perhaps maybe a variance is still needed but not with the same data?

MR. OSSORGIN: The variance will be needed in any case. However, that's a good point. It will be needed but I would like to minimize, if I can accomplish something, can give a turnaround for fire trucks, can accomplish something, but I can't really determine what Marshal Patty could tell me with a short drive out there and a few

minutes, can this be done? Or, here's what I see, and then Paul Kavanaugh could say yes or no, or I don't like this. Whatever. Then it gives me a chance to see if we can't make it better than what this is proposing right now. Just to make it look better, to do as much as we can.

I think the variance has to happen as far as the driveway goes at this grade. That is a problem. But I just wanted to see if the trucks can make it up and see if that's not a possibility. So the time that I need is more for before we start the work since staff made it clear to me that they want to have an engineer design this, that before I go and get an engineer and do all that, it's really this planning stage. I plan on – if Bett Johnson is able to improve and go through – if we reach an agreement, I want to get it done as soon as possible. But I know that creating such a plan is going to take a couple months.

CHAIR VIGIL: Is Ms. Johnson here this evening.

MR. OSSORGIN: Org.

CHAIR VIGIL: Okay. Thank you. Any further questions for the applicant?
Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Ossorgin, the only thing that concerns me is the fire safety. There is a requirement for the sprinkler or a draft hydrant and I'm not sure what good a draft hydrant would be if the fire trucks couldn't get up there. So the sprinkler would be obviously the better solution with obviously a storage tank. Now, the existing home didn't put any sprinklers in, right?

MR. OSSORGIN: Correct, Commissioner Sullivan. And from my understanding, I could be wrong on this, but the sprinkler systems are required in some type of development ahead of time but in that area I would have to ask Marshal Patty what it is there. But his feeling is even if we did have some type of storage, some type of hydrant, he still needs to get up there before he could sign off and he wants something on the plat that says Ms. Johnson is agreeing to take the liability in case we get this waived.

But obviously we want to be safe and look good. I think it would be difficult and a lot of the money that could be used to improve the area and revegetate and stuff to try to sprinkle this small house. But if he makes that determination that that's what has to be done after he goes up there and sees, then that's the time I'm asking for.

COMMISSIONER SULLIVAN: Maybe, Madam Chair, we could have Buster explain this a little more because I thought they had already made their review on this and it seems like the sprinklering is a fairly important part of this.

CHAIR VIGIL: I guess, Buster, as you address that, in addition to that there was a question in my mind as to whether or not insurance would be acquirable for the applicant here, fire insurance. So if you might be able to address those issues.

BUSTER PATTY (Fire Marshal): Madam Chair, Commissioners, it's a real concern of ours whether it's sprinklered, whether we have water storage, whether we have a draft hydrant. They don't really help us if we can't get there, and the main issue is getting up the 18 percent grade drive that I went and saw about a year and a half ago. Now, I understand there are some more improvements since then that I have not seen and

that I probably need to go see, since the house is there now and kind of see what the conditions are.

You could add sprinklers into the house. That may help her insurance-wise. But there again, an MPA 13-D residential insurance sprinkler system is only a ten-minute system. It only works for ten minutes. For that type of system, what it does is it buys the Fire Department time to get there. This is still our concern – whether we can get there at all. We're also looking not just at fire but EMS calls. If they request an ambulance. As you guys well know, our ambulances are quite large, about the size of a fire truck, a little bit shorter. We still have to get up to that residence, go up the same drive.

So as you know our minimum grade is 11 percent. What I'm looking at in the packet that they've provided here, the top part of it is 18 percent grade. Now, when I spoke with the applicant, maybe there's a possibility they can re-engineer this drive to get some of that grade out of there. That would make things better than they are now. I don't know this. So what I might need to do is go out and have a look and see what is possible and then make a determination then what we're going to be able to do since the house is already there.

I understand there is a pond up there also that has water storage in it. I would have to have some engineer's report that that pond is full at all times with a minimum of – most insurance companies, and I'm not going to quote them, but most insurance companies before they recognize a water source that is usable for a residential house is a minimum of 10,000 gallons. Once again we could put a draft hydrant on a water storage system. It doesn't get there is we can't get there and tie on to it.

So I think at this point we probably need to go have a look and see just exactly what the condition is up there.

CHAIR VIGIL: Thank you, Mr. Patty. Any further questions? I have a question. It seems to me, and I guess I don't have a clear understanding but I'd like an explanation. That staff had already made a recommendation that this property not be developed and that recommendation was made before any of the building took place. And subsequent to that recommendation the building went up. Explain that to me. Part of our frustration is trying to enforce a Code here and here before the fact we tried to enforce it and after the fact it was violated.

MR. OSSORGIN: Commissioner Vigil, it's an excellent question and one that I struggled with before I'd even get involved because it is a touchy thing and the situation now, what I understand is that staff, and Shelley could correct me if I'm wrong, but they didn't say that the property should not be developed but that the house should not be placed where she placed it. And I've talked to Ms. Johnson and my understanding is that I think it's a little bit of a first-timer situation where she did come in with all good intentions wanting to work with – in fact that's kind of what led to her getting red-tagged is of course she went in and she started the whole process. She applied and when – I think it was Charlie Gonzales went out there and met with her and I'm not sure who else and said you can develop this but we want you to put the house here in a low place.

After she had bought the property the real estate people were showing her the lot site. I know that the driveway existed previously because when I was in the Forest Service as a teenager I remember that road being there up the back side so you can get to the fire tower. So I think what happened is she was being told that she could not put her house there and then I think there was a moment of – I don't want to make a harsh judgment on it but it was faulty thinking. She just decided to go ahead and hired subcontractors and people that did the work promising to not reveal – that she's on her own. That she would suffer the consequences herself. And I don't think that she had a realistic idea, not to belittle her, of what the consequences were.

In fact when I got the first call from a mutual friend to intervene it was more that there was a driveway situation. I didn't realize how far things had gone. So she readily admits that she made this decision, that she's made this mistake and it's one of these situations where she's put a lot of money into it. I will say she's trying to make it look beautiful. I had her finish the deck because it was an unsafe situation, but she is not so belligerent and not trying to just shove it down anybody's throat but unfortunately I see that that's how it comes across.

I hope that helps. I think she tried to do everything to Code and it looks good and solid and she just felt this is my property; I have a right to build. Perhaps I'm overspeaking. She could explain for herself but she readily admits that this isn't the way to go.

CHAIR VIGIL: Thank you, Mr. Ossorgin. Are there any other questions?

COMMISSIONER CAMPOS: Madam Chair.

CHAIR VIGIL: Commissioner Campos.

COMMISSIONER CAMPOS: A question for Mr. Larrañaga. Is there any public benefit to approving any of this? Any of these variances?

MR. LARRANAGA: I'm sorry sir. I don't understand the question.

COMMISSIONER CAMPOS: The applicant here just ignored everything and everybody and now wants variances. Is there any public benefit in granting any variances or doing anything in this case?

MR. LARRANAGA: Madam Chair, Commissioner Campos, we would get the permitting done and get something done for fire. That would be the public benefit. If we could get the grade down and have her get the permit, what she can at the County and then apply at CID for a building permit. Of course I've already talked to CID and CID, because it's already built will never give her a CO, certificate of occupancy because they never saw the building go up from the ground up. Plus, if she ever sells the property then one of the conditions is to have a disclosure recorded with the County Clerk with a special warranty deed or with the plat so the person that's buying the property would know that it never got a certificate of occupancy.

COMMISSIONER CAMPOS: I understand that but it just doesn't make any sense to me. This case doesn't make any sense to me. Thank you, Madam Chair.

CHAIR VIGIL: Mr. Larrañaga, if I read something correctly, didn't she

bring in some electrical wiring into the community where some of her neighbors can hook up to that, if I remember reading this correctly. If there is a question of public benefit, there was not that electrical wiring before she moved in and she brought it in. Can that be addressed?

MS. COBAU: Madam Chair, members of the Commission, we do have correspondence in the file that indicates that electric service was brought into the area which prior to Ms. Johnson locating her residence up there, there was no electric service in the area. There's correspondence in your packet, from one of the neighbors that indicates that they felt they benefited from her bringing electric to the community.

If you look in the engineering drawings that were provided there's a profile of the existing driveway. It's Exhibit B, the third sheet. If you look at that, you can see the driveways taking a pretty straight shot up to the residence and staff believes that it through some engineering, perhaps that driveway could be meandered in some manner and the slope flattened to be closer to the Code criterion of 11 percent. Because they've just taken it straight up the hill.

CHAIR VIGIL: Okay. Thank you. Commissioner Sullivan.

COMMISSIONER SULLIVAN: The builder that built this built it without a permit. Is that correct?

MR. LARRANAGA: Madam Chair, Commissioner Sullivan, yes. They built it without a permit.

COMMISSIONER SULLIVAN: Has any action been taken with regard to his license or with regard to Construction Industries?

MR. LARRANAGA: Madam Chair, Commissioner Sullivan, we don't know who the builder is that built the building. The property owner is the one that usually comes in for the building permit.

COMMISSIONER SULLIVAN: Well, it's in the documents here. A gentleman from Pecos.

MR. LARRANAGA: To answer your question, no. Nothing has been –

COMMISSIONER SULLIVAN: Don't you think – it's separate from the issue that we're dealing with here, which is how to mitigate a bad situation, but by the same token, this is a clear violation of the Code and you have to have a building permit to build a residential structure, don't you? Mr. Ossorgin might know. He's in the business. Can you help me out with that? Do you have to have a permit or not?

MR. OSSORGIN: Madam Chair, Commissioner Sullivan, I wasn't aware of a builder. I understood that Ms. Johnson took it on herself and hired various people to do work.

COMMISSIONER SULLIVAN: The document says I found a builder – this is written by Ms. Johnson in response to the notice of violation. It says found a builder in Pecos, Doug Keller, who specialized in construction of log homes and hired him to build my home.

MR. OSSORGIN: You'd have to ask Bett Johnson about that. I was just

aware that she had taken it on herself.

COMMISSIONER SULLIVAN: She does go on to say that, however, since he did not want to do the general contracting I decided to do it myself. But he obviously built something.

MR. OSSORGIN: Yes, Commissioner Sullivan. I'm not aware that there was any builder. Like I say, I came on much later, if that helps.

COMMISSIONER SULLIVAN: Okay. I think that's something the staff needs to look at. We need to enforce the ordinance. I have another question for Buster. Buster, the NFPA guidelines for slopes, maximum sustained grade is eight percent and we're allowing 11 percent. Why do we allow that extra? Is that just because there's lots of hilly areas in Santa Fe?

MR. PATTY: Partly, that's right. One of the reasons why we've got 11 percent is because the Forest Service also uses 11 percent which they have now changed and gone to 10 percent. But 11 percent is kind of a medium that we did choose. The County Code used to have a 15 percent grade that was just totally impossible for us. Eleven percent is even very difficult under certain conditions. Eleven percent grade is a grade that we can get our tankers and our equipment up under regular conditions. In snow conditions as we've got out there right now, or mud conditions, 11 percent is difficult. As you say, six to eight percent is a desirable grade for the equipment that we have going in.

An 18 percent grade that we have right now is very dangerous when we try to get tankers with 2000 gallons of water going up a grade that steep. If we don't make that grade we have back back down. It's extremely dangerous and hard to do that because all the weight of that truck goes to the back every time you apply the brakes. It takes the weight off the front of the wheels and you lose your steering. So it's just too steep of a grade.

COMMISSIONER SULLIVAN: Kind of hairy.

MR. PATTY: Right.

COMMISSIONER SULLIVAN: Okay. I was just wanting to confirm that although we talk about 11 percent and really the recommended national standard is eight percent for roads.

MR. PATTY: Correct.

COMMISSIONER SULLIVAN: Although ordinance wise we're seven percent off, we're really ten percent off in terms of national recommended standards and that's sounds reasonable. There may be ways to serpentine the road to cut down those grades and there maybe be ways to put in pull-outs that would enable the vehicles to catch their breath before they go up the next incline. I know we have approved situations like that. It's kind of things that allow the truck if it did have to back down to back in, and then go down frontwards so the backing down distance would be minimal. I guess, Madam Chair, here, we're only dealing with the road variance. Is that correct? Is that what we're looking at? To decide on, Shelley? The Commission is only being asked to grant a variance for the 18 percent road grade?

COMMISSIONER CAMPOS: There's two variances at least. There's also the Urban Wildland Interface Code building standards.

MS. COBAU: Madam Chair, Commissioner Sullivan, there's also slope disturbance in areas in excess of 30 percent. So there's a variance request for that on this also.

COMMISSIONER SULLIVAN: Okay. Right. Well, it seems like there's a lot of work here to do and members of the Commission, I can say to you that Mr. Ossorgin is the man to get it done if it can be done. If it can't be done, it can't be done, but I'm just wondering if we shouldn't table this and give the staff and Mr. Ossorgin who has a tremendous amount of construction experience an opportunity to work a little further on that and perhaps modify the conditions if the Fire Marshal and the staff see fit. Does that make sense, Michael?

MR. OSSORGIN: Yes, and I appreciate that, Commissioner Sullivan. And Madam Chair, I wanted to throw in a couple more comments to some of the questions of Commissioner Campos. As far as benefit, it was electrical lines and it was vast improvement to the road that goes back to the neighbors which we will also complete and help with the neighbors back there. They couldn't front any of the money for the electrical so she did it in exchange for future consideration in a neighborly fashion.

The reason we need the variance is so that we can do the rest of the work. Without the variance I can't apply for a building permit. I can't meet the other conditions. I think you're correct though, Commissioner Sullivan, that it is two things that need to happen. One, the approval of the variance on the slope and approval of the driveway. From there on, once that's granted, everything else can happen. I just was suggesting the time and the workability to make the best out of what has to happen because I want to see a beautiful project also, otherwise I wouldn't get involved. And I think I can.

There is one possible place for a turnout as Marshal Patty suggested but I think also that he'll be, hopefully, pleasantly surprised when he goes up. You'll see some pictures there [inaudible] and I stopped at various points and just start out again. And there was another car that followed me up afterwards. I think that in a sense we have steep, and then we have a little bit of a break and then steep again. It's at the very top that there's a problem. But I think we can do hopefully something or just try it out and see.

COMMISSIONER SULLIVAN: I guess, Madam Chair, my concern is that if we grant the variance then there's a variance for the 18 percent grade, and that's that. So what do we -

MR. OSSORGIN: That's what's tough, Commissioner Sullivan, because I'm a little bit old-fashioned. I wish I could just say trust me and let's get this done and then see, so you can make - I'm willing to turn complete control over to Marshal Patty and to County Engineer Paul Kavanaugh that I can come up with a solution or - I can work with these two and listen to them. I think it needs that, a non-field take on this. I know it's a lot to ask for that kind of trust, but I don't see - if we just try to engineer it or do anything it's going to either cut the land and make it look horrible or we simply can

make some of the conditions.

COMMISSIONER SULLIVAN: But there's nothing in the conditions about the slope, other than to say that the applicant shall rebuild the driveway to improve on the existing slope.

MR. OSSORGIN: That's as a result of the last meeting where it was brought up that there are some straight runs and when water starts taking off - I've worked on a lot of trail crews and you just see erosion instantly happen. So we need some type of check system and some slowing down of that, some cleaning out of the ditches. Gentling the cut-out slopes that have already been made to smooth it out and make it look nice. So I think that's what that was about. In fact, if you look at some of the remarks you'll see that we were suggested a person who's very good at making some suggestions, offering suggestions. So it's more like - is that your understanding, Shelley, from the last meeting?

MS. COBAU: Madam Chair, Commissioner Sullivan, perhaps we could clarify it by changing our condition #8 and requiring a specific maximum slope on condition #8. If we could get it down to something that would be permissible with the County Fire Marshal, that would result in a less drastic exceeding of the maximum slope to get something down that's flatter. I don't know. I don't know how we remedy this situation. County staff went out a year and a half ago and told the applicant not to put her house up at that location. We've been discussing this case since August. We tabled it one month at CDRC. So it's been around for at least six months.

COMMISSIONER SULLIVAN: I was thinking of something along the same lines, that we need some specificity in there and I know in some parts of the Code it occurs to me we have a certain grade for a certain length, like 12 percent for 300 feet, so that we acknowledge there might be a little deviation from that where you've got a rock ledge or something and maybe you get Buster's truck to get a head start and charge up and try to make it to the next site. Buster, any specific suggestions you would offer on length and grades?

MR. PATTY: Just show you know where we stand, over 11 percent is a violation of our Code. Now, to have some kind of a compromise we may have to go out and have a look and see if there's a possibility that we can get the bottom of this hill, like you're suggesting, a lesser slope that we could get started on, and then have some variations in that, just exactly like you're saying. There's still going to be grades over 11 percent and that violates our Code, and you guys will have to grant the variance on that; I can't, because I'll be violating my own code. But we can see if we can't work something out where it would be better than what we've got now to where we could possibly get up there.

Now, if they have something up there and you guys grant this, we're not saying we're not going to go. Of course not. We're going to do everything we can to get up there. But we can't guarantee that and we don't want to be held liable as the Fire Department for both fire or EMS or ambulance in case we can't get up there. In case they need an

ambulance.

COMMISSIONER SULLIVAN: What would be a running start distance? Would 300 feet or 200 feet? 250? Not for the running start part but for the steepness part?

MR. PATTY: We would have to have a maximum 11 percent grade to get started. And maybe we could hit a small section that maybe is a little bit steeper than that and then grades back out. But the only time I was out there which was quite some time ago, it was a very nicely done road. It was relatively steep to begin with, but at the very last part there, at the very top when the farther you're getting to the top of the hill the less power that truck's getting, that's when it got real steep and that's going to be real difficult to do.

COMMISSIONER SULLIVAN: And that's why I was thinking - what would that distance be? I just threw 300 feet out. Does that make any sense or should it be less?

MR PATTY: Well, we would need at least a couple hundred feet of a decent grade to get started with, and then we've also got to talk about if we did get up there, then coming off of this thing, especially if we got up there in the snow or some kind of slick weather, coming back down that thing is another story. So we would have to have some flatter spots that we could work with before we could approve anything.

COMMISSIONER SULLIVAN: I'm just thinking in terms of getting it towards a resolution, if we modified condition #8 to say, with no section greater than 15 percent greater than 200 feet in length, subject to the approval of the County Fire Marshal.

MR. PATTY: Or if we could get something to where we could do a variation of percentages, like you say. Like you're saying, where nothing goes over 15 percent for a max, just short distance, or a total distance. I'm not even sure the length of this driveway. That may be the majority length of this driveway is at 11 percent and then just a small section of it.

COMMISSIONER SULLIVAN: I was trying to home in on what the short section would be.

MR. PATTY: There's nothing in the Code that allows us to do that.

COMMISSIONER SULLIVAN: No, I understand. But if we're just getting it moving forward for a variance.

MR. OSSORGIN: Madam Chair, Commissioner Sullivan, if we could look at this photo here, I think it will help.

COMMISSIONER SULLIVAN: 473 feet.

MR. OSSORGIN: On the left side, that is the driveway that I want to eliminate. That's just an impossibly steep, straight down driveway. Now the one that I want to keep is on the right, where you'll see the car on the bottom of the photo. You'll see that you do have areas where you can get this access and climb but Marshal Patty is correct that at the very top is where you have the problem but that's why I want to take them out. I'm afraid to say not exceed 15 percent or whatever the amount is. I think we have a good long distance that can do things so we can make best out of it, but I do think you do have that running start you need. I think the larger problem is once we get the

trucks up there, how do we get them down? That's where I need their input.

But I do think that a lot of what you're asking for, and I think it's an excellent idea, I was trying to think of it before in terms of percentages, let's say for 75 percent of the road or something, that you don't violate this little bit. But there will be a part at the very top that I think even 15 percent is impossible to achieve.

COMMISSIONER SULLIVAN: Well, that's what I was thinking, Madam Chair, that it just seems that - I understand that the applicant needs a variance in order to do any of this work but it seems like we're one step ahead of things here. It seems like we don't have the design yet. We don't have the necessary recommendation from the Fire Marshal in order to grant the variance. I feel that probably the appropriate thing to do is to table it for 30 days and get an engineer's recommendation. Get the Fire Marshal's recommendation on the solution that's being proposed and see if a compromise can be achieved. I'm having a hard time legislating it here on the fly.

CHAIR VIGIL: Is this in the form of a motion, Commissioner Sullivan?

COMMISSIONER SULLIVAN: Can I ask, Madam Chair, is that workable?

MR. PATTY: I would recommend that they do hire an engineer to have a look at this site to see if there is a way to engineer a road that can go up. I understand it could be costly, but I think we need to see that. We're not engineers who are going to engineer a road. So maybe they need to have a professional come in and have a look at this to see what should be done.

COMMISSIONER SULLIVAN: I move, Madam Chair, that this issue be tabled until the next land use meeting with the direction that the applicant obtain the services of a registered professional engineer in cooperation with the Fire Marshal and with Mr. Ossorgin to develop an alternative plan that we could look at and have a recommendation from the Fire Marshal on that specific plan.

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

COMMISSIONER CAMPOS: Second.

CHAIR VIGIL: Motion and seconded. No discussion on a tabling motion.

The motion to table CDRC Case #V 06-5590 passed by unanimous [5-0] voice vote.

COMMISSIONER SULLIVAN: I think they can work it out.

MR. OSSORGIN: [inaudible] but I really appreciate it. Thank you.

COMMISSIONER SULLIVAN: Well, let's see how it works. If it doesn't, come back and we'll have another hack at it with our hatchet.

- XIII. A. 8. CDRC CASE #V 06-5570 Lopez Variance. Joe A. Lopez, applicant, requests a variance of Article III, Sections 4.1 and 4.2 (Types and locations of commercial districts) of the Land**

Development Code to allow property that is not located at a qualifying commercial district to be eligible for commercial zoning on 0.28 acres. The property is located at State Road 291, #484, Santa Cruz, within Section 1, Township 20 North, Range 8 East [Exhibit 2:Stark Letter]

MR. LARRANAGA: Thank you, Madam Chair. This case was heard by the County Development Review committee on October 19, 2006. The decision of the CDRC was to recommend denial of the applicant's request. There is currently a two-story residence and a 3,000 square foot accessory building on the .28-acre property. The 3,000 square foot building was approved by the BCC as an accessory structure in the year 2000. Approximately 1,400 square feet of the building was built around an existing swimming pool. The remaining 1,600 square feet is currently being used as a garage for an auto repair business.

A notice of violation was issued by the Santa Fe County Code Enforcement Department for operating a business without a license. The applicant applied for and was denied a home occupation business license due to the fact that the nature of this business is not allowed as a home occupation. Land Use policy dated July 25, 2003 states car sales and car mechanics do not qualify as a home occupation, nor can car dismantlers or salvage operations due to the history of properties appearing to be commercial in nature. Home occupations can be granted with only one commercial vehicle and a requirement that no commercial related vehicles may be brought to the home.

The property is located within a residential neighborhood, therefore the property is subject to the zoning criteria for location within a qualifying commercial district. This property is not located within a qualifying commercial district. The property is approximately 800 feet from the Española city limits.

The applicant states that he makes his living from the business which he operates from the garage. The type of business is auto body, welding and mechanic work. The applicant also states he is the only employee at the business.

Recommendation: It is staff's position that this application is not in accordance with Article III, Section 4.1 of the Land Development Code. In granting this variance, the purpose of the Code is to avoid strip commercial development along collector and local roads and to protect existing residential development from encroachment of non-residential uses would be violated. Staff recommends denial of the requested variance.

CHAIR VIGIL: Okay. Are there any conditions of approval should we decide to approve this?

MR. LARRANAGA: Madam Chair, there are none.

CHAIR VIGIL: Thank you very much. Any questions for Mr. Larrañaga?

COMMISSIONER MONTOYA: Madam Chair, why aren't there any conditions?

MR. LARRANAGA: Madam Chair, Commissioner Montoya, staff decided not to put any conditions on there because this type of use is not – it can't be done as a

home occupation and when he was granted the approval for the accessory structure it clearly stated, or one of the conditions was that it was not to be used for commercial use. The part of the building that he's using is exceeding the home occupation criteria and the type of use also.

COMMISSIONER MONTOYA: Okay.

CHAIR VIGIL: Anything further, Commissioner Montoya?

COMMISSIONER MONTOYA: No. Thanks.

CHAIR VIGIL: I do have a question, Mr. Larrañaga. The applicant has applied for a home occupancy that doesn't qualify for a home occupancy.

MR. LARRANAGA: Madam Chair, that is correct. Auto mechanics or auto body does not qualify for a home occupation.

CHAIR VIGIL: Okay. So would he be required to have a commercial business license and that is not allowable in that area. Is that correct?

MR. LARRANAGA: Madam Chair, that is correct.

CHAIR VIGIL: So did we advise him appropriately to apply for a home occupancy license? Should we not have advised him to apply for a variance with regard to a business occupancy? A commercial business occupancy?

MR. LARRANAGA: Madam Chair, he was advised when he came in for a home occupation, to apply for a home occupation, that he did not qualify for a home occupation business license and therefore he would have to come in for a variance or try to zone his property to be commercial.

CHAIR VIGIL: Okay. Any further questions for Mr. Larrañaga?

CHAIR VIGIL: Madam Chair, are there any other businesses of this nature that are in that area?

MR. LARRANAGA: Madam Chair, Commissioner Montoya, the applicant states that there are other backdoor garages. That they do bodywork there. They are not licensed. They haven't come forward to the County that I know of for any kind of business license for that. But I have no proof that there is any.

COMMISSIONER MONTOYA: Okay.

CHAIR VIGIL: Thank you, Mr. Larrañaga. Is the applicant here? Mr. Lopez, would you please state your name and address for the record and be sworn in?

[Duly sworn, Joe A. Lopez testified as follows:]

JOE A. LOPEZ: Joe A. Lopez, State Road 291, House #484, Santa Cruz. I have resided there since like 1965. Built our house and everything. Back in the year, I believe it might have been the year 2000, I built a big shop behind my house, around my swimming pool. And we paved the whole - the whole lot is paved. So like I was saying, back in the year 2000 we had a business down in Española. I had like eight employees, but after what happened on 9/11 in New York the government - we did a lot of work for the government. It all went away. So right now the only employee I have is myself. I do work by appointment only.

I did apply for a permit trying to get a permit trying to get a residential or a home

permit and it was denied. So they told me I had to go this way. So the first time we came on, back around October 19th it was denied so the last meeting, it was supposed to have been last month it was tabled so tonight finally we made it. My neighbor had come by and he had had a letter – I have a letter from him where he said, well, I would have to read it to you, because it's hard to say what he was saying. Anyway, I gave a copy to Mr. Jose here. He has a copy of my neighbor, where he says that sure, the compressor I have makes noise. It's inside the shop, but that's a way I make a living. Whenever the compressor goes on because I'm using my air tools or whatever.

I think the last time they claimed that – like Mr. Armstrong here is saying that he was against me having it because I would throw oil, which is not true. Sure, I change a lot of oils and all that, but I get rid of all the oils and all that, but I get rid of all that. I put it in containers. I keep my – all my shop is all concrete and the floors are clear. All my yard is paved and you drop oil on the pavement, it will break the pavement up. It's no good. So I keep it clean. You go to my house and you won't see any oil spots, anything.

That's the way I make a living. I have a mortgage. I'm 62 years old. I retired. Well, I applied for my [inaudible] which I got in one check already and I should be getting some more. But that's still not enough to pay my mortgage and pay my automobile. We bought a new Hummer a couple of years ago and we make payment on it. Plus utilities and we've got to live and this is the way I make my living by doing this. I do a lot of welding. I do – we used to paint a long time ago. I don't do any more painting. I do have a paint booth in there but we don't use it, not anymore. I keep it for – well, I put the car in there. I guess that's all I've got to say.

CHAIR VIGIL: Thank you, Mr. Lopez. Are there any questions for Mr. Lopez? Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Madam Chair. Mr. Lopez, the letter stated that there's some noise and you would be working on helping reduce the noise?

MR. LOPEZ: Yes, sir. The noise – my air compressor. I could build a little house around it, insulate it. That would quiet the noise down.

COMMISSIONER ANAYA: Is that the only thing?

MR. LOPEZ: The compressor is the noisiest thing about it.

COMMISSIONER ANAYA: Thank you, Madam Chair.

CHAIR VIGIL: Any other questions? Mr. Lopez, do you have family living with you?

MR. LOPEZ: Yes, my wife.

CHAIR VIGIL: And do you have any children or grandchildren?

MR. LOPEZ: We have a lot of grandchildren.

CHAIR VIGIL: But they're not currently living with you. Do you own any other property in the area?

MR. LOPEZ: No, we don't.

CHAIR VIGIL: Okay. And the swimming pool that was built, when was

that built?

MR. LOPEZ: We built that thing back in 1981, I believe. Or 1980, maybe. And it's been in our backyard for a long time now and like I said, back in the year 2000 we built this building around it.

CHAIR VIGIL: Okay. Was there a permit granted for the enclosing of the swimming pool?

MR. LOPEZ: Yes, ma'am.

CHAIR VIGIL: And we have record of that?

MR. LOPEZ: Yes, ma'am. I can to Planning and Zoning.

CHAIR VIGIL: And I suppose when you're moving the oil from the vehicles you're not letting it seep into the concrete or grass. You're collecting it. What do you do with it, once you collect it?

MR. LOPEZ: I take it down to the Española transfer station. They take the oil down there. They can take up to five gallons a day and even more. I've taken more than five gallons a day. Sometimes I let it collect ten gallons and then I'll go down there once a week or whatever. And like I say, I clean my floor. I use a lot of oil solvent and whatever to clean the floors good and whatever - no matter how good you clean it's still dirty. Like my yard, I sweep it, I blow it. But every day, there's a lot of dust and dirt. But I try and keep it as clean as I can.

CHAIR VIGIL: How many vehicles would you be serving a day if you take ten gallons to the transfer station?

MR. LOPEZ: Yesterday I had one. Today, I didn't do anything because I was going to come down here. I left like at 3:00.

CHAIR VIGIL: One vehicle and you gather ten gallons of oil?

MR. LOPEZ: Oh, no, no, ma'am.

CHAIR VIGIL: Let me state the question again. How many vehicles would you be servicing per day to collect ten gallons of oil that you deliver to the transfer station?

MR. LOPEZ: You'd have to do at least eight cars. That would be more than a week's worth.

CHAIR VIGIL: Okay. I understand you.

MR. LOPEZ: Like I said, sometimes I'll do a lot of oil changes, transmissions or whatever and I'll just collect the oil. I'll take it up in one-gallon cans or five-gallon cans or whatever I have available. Then I'll get rid of it whenever I go to the transfer station.

CHAIR VIGIL: Thank you, Mr. Lopez. If there are no further questions for Mr. Lopez, this is a public hearing. Would anyone like to address the Commission on this request? I see one hand. I see another hand, and I see a pointer. Those in favor of this applicant, please come forth, state your name and address and be sworn in for the record.

[Duly sworn, Robert A. Naranjo testified as follows:]

ROBERT A. NARANJO: My name is Robert A. Naranjo, 1229 Dona Carmelita Court, Española. Madam Chair, members of the County Commission, I'm here to speak in favor of the variance for Mr. Joe Lopez, Lopez Auto Repairs, long-time

businessman in Española. I am the former executive director of the Española Valley Chamber of Commerce. Also, the Small Business Advisory Committee for Central New Mexico Community College in the past. I'm currently the DWI Outreach Coordinator for Rio Arriba County through the Department of Transportation through the DWI Resource Center in Albuquerque.

Most of you know the impact of a small business. Sure, you have your Walmarts, you have your Lowe's, you have your big businesses. But I don't know how many times you have heard that small businesses of America are the backbone of America. The impact that Mr. Lopez makes in the Española Valley, and that's why I wish you would approve the variance, is large. He buys advertising from KDC radio and he's done that for years. He's a good customer. Of course that's to promote his business, get customers over there to repair the car or to change oil as he said. Also he buys advertising from the *Rio Grande Sun*.

So by one small business, in this case Mr. Lopez, Lopez Auto Repair, is impacting other businesses in the Española Valley, mainly the City of Española. So that's why I think, again, being a small business advocate for years, although I'm in the DWI business now, I think that businesses like that should be given the benefit of the doubt and a variance in this case.

He's been a mechanic, a good mechanic - I know I've taken my cars to him. I know people who have done it and I know he means well and he did have a business before in, as he stated, behind Walgreen's. A very good business. As he said, he had a lot of government work. Now he's moved it to his home. I've been there numerous times. As he stated, it is a very clean operation. You will hear from the opposition, people that are here to oppose it. They have traffic issues.

He's not running a Sonic here. He's not a McDonalds. He has a few cars, maybe. So the traffic on Llano Road or State Road 291 is not going to impact - there are housing divisions up there, going up, that are impacting the traffic on that road a lot more than a one-person auto shop.

The other issue that they'll bring up is environmental. Meaning that it makes is sound like they're throwing oil in the back. Again, I've been there. It's very clean. He recycles it through North Central Solid Waste. That's the transfer station that he mentioned, and they do take tires, batteries - they take batteries to Gallegos Recycling on McCurdy Road, so he's not really impacting the environment. In fact, if anything, what's impacting the environment in that area in terms of nitrates, it's the septic tanks across the street from him. There's a lot of high density homes. So as a Commission you'll probably be visiting that down the road as you did in Santo Nino years back.

So I'm here to again support my past small business experience to support this man, as he - I hadn't even considered that he has mortgages and payments and insurance and this and that to pay. I beseech you that you pass this variance and also relative to the question asked earlier by - I'm not sure which Commissioner, there are other businesses along Llano Road. There's an airport, so you're going to see development along that road

and that's Indian land so they can do what they want, basically. There is another auto shop. It's in Rio Arriba County, because as you know, the boundary for Rio Arriba and Santa Fe County zig-zags through that Española Valley, through Española, actually.

So a little further down, there's two - across from the high school there's a beauty shop. Where there downs are there's a beauty shop, and across from the airport there's a mechanic shop. So there are others like that small business, as you say, roadside business, and more to come. Be advised, there will be more, especially in the Native American area of San Juan or Okhay Owingeh Pueblo. So there are other business, Madam Chair, along that road and more coming. And tons of housing developments. And if there's anything that's impacting the soil or rather the watershed, it's these numerous homes that have cars leaking oil and here are these cars leaking oil, here comes the rain, washes all that water from all these homes. Not everyone has a 2007 car. Leaking oil, here comes the water, right into the acequias, into the watershed. So if it's anyone that's leaking oil into this system it's all these housing divisions that are going up along El Llano Road, not Mr. Lopez changing one car a day or one every two days or something like that.

At any rate, in closing, Madam Chair and members of the County Commission, I hope that you do consider the plight of this man and I know it's a home occupation variance and this and that, however, variances are made for that purpose is to give him a variance and I hope that you do in this case, give Mr. Joe Lopez, from Lopez Auto, a long-time businessman in Española a variance as he has requested. Thank you, Madam Chair. If there are any questions I will entertain them at this point.

CHAIR VIGIL: Does anyone have questions for Mr. Naranjo. Seeing none, anyone else would like to address, I guess in opposition to this? Please come to the podium, state your name and address, be sworn in for the record.

[Duly sworn, Harold Armstrong testified as follows:]

HAROLD ARMSTRONG: My name is Harold Armstrong. I own - my wife and I own a horse ranch property adjacent to Mr. Lopez' on the north and west side. We have those two boundaries. And I'm here tonight, Madam Chair and Commissioners, to ask you to deny this request. Listen to your P & Z committee. I was here along with my wife and several other neighbors at the P & Z meeting and we went into great detail about some of the issues. I'd like to mention a few of them. I think you should have all that in your records. I also provided pictures of the particular lot, the pictures of the facility that we're talking about and at the end of that meeting, the P & Z committee told Mr. Lopez to cease working at this location until he could come back and get approval, which he is asking for tonight.

Well, I have two pictures here. It's the same picture; I only have two copies. But here's a picture of Mr. Lopez doing work on January 11th at this location when the P & Z committee specifically told him not to.

CHAIR VIGIL: When you're referring to P & Z, what is that acronym?

MR. ARMSTRONG: The planning and zoning committee.

CHAIR VIGIL: The CDRC? The County Development Review Committee?

MR. ARMSTRONG: Yes. I think we call it P & Z up in Española. But it was the October 19th meeting that was held here and the gentleman here that talked and made the recommendation about that. Sorry about the terminology.

Mr. Lopez has continued to do work at this location and he was ordered to stop several times and he continues to do business. I'd like to mention that there's building codes for reasons and building codes need to be followed. We have several businesses in the Española Valley. My wife's family has been in the valley since the early 1920s. They've had a little mercantile store there, and as we've done projects in the valley, we have come to Commission. We have to follow the rules and whatnot, and this is a case where we feel for Mr. Lopez, but the property that he's working on is very small, .28 acres, and this structure was built for residential use, not for commercial use. And the use that he's using now could be considered industrial use. It's auto mechanic. There's reasons why we don't put these in neighborhoods.

There are materials besides oil that he's probably using in his operation. He was doing paint jobs there I know because we could smell the fumes. Our property is below his. We could smell paint fumes emanating from there. Welding - I'm not a welder, I don't know what materials are used there. So not only is there oil but there's concern about what he puts into a septic system.

Most of the properties in this are have wells for their house water. We certainly have well water too, so I'm concerned about what's going down through his septic system that's draining down into the well water that I'm getting. I'd also - some of the projects we've had to do, we've had to do environmental impact studies. We have to do traffic studies. We have to get permits for disposal of certain things. I think this operation has none of that. This wasn't designed as that type of project, so none of that was done. This is an after-the-fact type situation to try to backdoor into a variance.

It's my opinion that that should have all been done up front if that's truly what Mr. Lopez wanted to do. But I think my bigger concern has to deal with safety in this area. State Road 291 is probably not a legal size road for traffic, if you look at the traffic laws, and the road right by Mr. Lopez' property is probably at its narrowest. A lot of high school students drive on this road because it's one of the main ways to get out to the high school. There's more subdivisions being built out there so there's more traffic. Coming from the north, by Mr. Lopez' property it's almost like a blind corner and when you come around his property it's very hard to see where his entrance is. So if traffic is going in and out of his shop, it's going to be dangerous, and in fact on Sunday morning there was a head-on wreck just right to the entrance to his property. It didn't involve him but nevertheless, at that narrowest spot it is tough to negotiate two cars passing together.

I'd also like to say this is a rural area. We probably have the oldest cemetery in the state just hundreds of feet from this location. There's another cemetery across the road and this is a very rural area. It just is not a location where this type of business should be located.

So in closing I would ask you to listen to your committee that made the

recommendation from the October 19th meeting and deny this request.

CHAIR VIGIL: Thank you very much, Mr. Armstrong. Are there any questions for Mr. Armstrong? Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Mr. Armstrong, what kind of business do you run?

MR. ARMSTRONG: Well, we have a True Value, we have an aggregate business. It's the family's. I actually work at the lab but my wife and her family run several businesses in the valley.

COMMISSIONER ANAYA: And you live next to the applicant?

MR. ARMSTRONG: Yes, I do. I border his property on the north and the west side.

COMMISSIONER ANAYA: And what do you have there?

MR. ARMSTRONG: Well, we have eight acres and we also raise horses. We breed horses and the concern of the water, and then the noise and the fumes and whatnot.

COMMISSIONER ANAYA: How many horses?

MR. ARMSTRONG: I have ten horses on the property.

COMMISSIONER ANAYA: On eight acres?

MR. ARMSTRONG: On eight acres.

COMMISSIONER ANAYA: And how many acre-foot of - what is your - do you have a well?

MR. ARMSTRONG: Yes.

COMMISSIONER ANAYA: And how many acre-feet are you allowed to pump?

MR. ARMSTRONG: I don't know that. I don't know that fact, but I have irrigation rights to the El Llano ditch.

COMMISSIONER ANAYA: So you have access to the ditch?

MR. ARMSTRONG: Yes, and I think it's like 3.5 acre-feet, something in that range, for my eight acres.

COMMISSIONER ANAYA: What kind of horses are they?

MR. ARMSTRONG: They're Arabians. Would you like to come and see them?

COMMISSIONER ANAYA: Thank you, Madam Chair.

CHAIR VIGIL: Mr. Lopez' property - perhaps this is for Mr. Larrañaga. Is that next to the highway corridor? And you are behind him?

MR. ARMSTRONG: I've got a little map.

CHAIR VIGIL: I actually have a map over here.

MR. ARMSTRONG: I have entrance into my property off of 291 and just maybe 100 feet north of my entrance Mr. Lopez' property comes right up onto 291. In fact his in-laws lived in a house right next to his and there's a rock wall that's built just right on the road.

CHAIR VIGIL: Okay. Thank you, Mr. Armstrong.

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya. Hold on, Mr. Armstrong.

COMMISSIONER ANAYA: Do you sell those horses?

MR. ARMSTRONG: Yes, we do.

COMMISSIONER ANAYA: Do you have a business license?

MR. ARMSTRONG: Yes, we do.

COMMISSIONER ANAYA: So you do have a business in that area then.

MR. ARMSTRONG: Yes.

COMMISSIONER ANAYA: Okay. Thank you.

MR. ARMSTRONG: I would like to mention though that the businesses that were brought up and the airport, those are probably five miles, six miles, on the other end of El Llano, adjacent to the San Juan Pueblo. And the area that we're talking about is all residential. A couple cemeteries. My neighbor on my side of the road also has like 5.5 acres, so there are big parcels on our side of the road and on the other side it's more of a subdivision type.

CHAIR VIGIL: Thank you, Mr. Armstrong. Next. Did you have a question?

COMMISSIONER MONTOYA: Mr. Armstrong, what's right before the cemetery, up on that little hill there?

MR. ARMSTRONG: On the east side of the road? The crisis center is there, and that's the Rio Arriba County line. And if you recall, there's a road that goes up where the dump used to be out there, but they closed down the dump because of the concern of groundwater contamination and whatnot, and they relocated that out to industrial park.

COMMISSIONER MONTOYA: So is the crisis center still operating out of that building?

MR. ARMSTRONG: It is. It is. And then on the south side of the crisis center there's a subdivision of like 16 units, 12, 16 units going up.

COMMISSIONER MONTOYA: Thank you.

CHAIR VIGIL: Thank you. Would you please state your name for the record and be sworn in.

[Duly sworn, Joe Madrid testified as follows:]

JOE MADRID: My name is Joe Madrid. I live in the same area that Joe Lopez does. I came in support of Mr. Armstrong for the reasons that he has stated. In addition, I'd like to say that we live within probably 1200 - very close to the dump that was separated by City of Española. And what concerns me on that subject is that the City of Española at the time was not complying with the laws, the environmental laws and the laws of the federal government and that landfill is still in the status where we could come back to the City and make them responsible for the industrial waste that they had taken to the landfill.

I would think that honoring that request that Mr. Lopez has, he might be putting

himself if a very awkward position where he will be a participant in contaminating the ground wells that we have in the area which are – our domestic wells are within 200 feet deep, all of them. We do not draw water from the Española Basin. Those wells are 600 to 700 feet deep. One of the wells that the City of Española has. I would like to also add that it will be favorable to say that Mr. Lopez had a garage off of Fairview Land and Riverside Drive. He had a four, five-stall repairing shop there and all of you have seen throughout your years in those small area garages come vehicles that are leaking Prestone, leaking oil, and atmosphere conducts to the environment a negative approach.

We love our community very much. We are proud of it. My wife and I are owners of five acres of land. We enjoy the style of life we have. I believe the operation that Mr. Lopez has is not conducive to the laws of the environment and I think that you people should not honor his request. Thank you.

CHAIR VIGIL: Thank you. Are there any questions for Mr. Madrid? Seeing, hearing none, this is a public hearing. Is there anyone else who would like to address the Commission? I will now close the public hearing and ask for deliberation within the Commission. Any questions, response, motions?

COMMISSIONER MONTOYA: Madam Chair.

CHAIR VIGIL: Commissioner Montoya.

COMMISSIONER MONTOYA: Mr. Lopez, one of the concerns that has been given to us in our packet here says that you have a body painting facility. And you mentioned that you're not going to do that anymore?

MR. LOPEZ: Yes, sir. We haven't painted in a long time. Actually, I painted three police units for the City of Española a year and a half ago and that's when I got the citation. And I painted a car for the neighbor that owns the house right above and next door. That's when they – the citation came in regards because we were painting the car that night like at 6:30 in the evening and the lady that was trying to sell the house, she was showing the house to some people and they just didn't like the smell of the paint. She said she had lost her client there because of that. But I do have a paint booth in there. It's well insulated. Inside the shop it's nice and all. But of course the fumes got to go out.

COMMISSIONER MONTOYA: So you're not going to use it anymore?

MR. LOPEZ: We haven't use it. What I do have, a lift in there to fix cars. I use it to store cars. I keep my Hummer in there.

COMMISSIONER MONTOYA: Okay. Thank you, Madam Chair.

CHAIR VIGIL: Thank you. Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Lopez, another question. In September of 2000 the CDRC granted you the approval for a 2800 square foot accessory structure. That's the one I guess that goes around your swimming pool and at that time it said the structure is not to be utilized for any commercial use. Then in your letter of September of 2006 you say that you erected the building and it's 1400 square feet around the pool and the garage is the remaining 1600 square feet, and in the year of 2000 I employed eight employees. So it seems that you went right away to using the structure as a commercial

structure. But correct me if I'm wrong on that.

MR. LOPEZ: Well, I build this. It was built back in the year 2000, I think. At that time, we were still – we had a business down in E spañola, down on Fairview Lane and I think we had to get rid of the building like in the year 2002, 2003, I guess. We had to get rid of it. Give it away. We couldn't sell it. Get all of our debts or I would have probably had to file bankruptcy. So I had no other choice. At the beginning of they year, probably 2003 I started doing some work there at the house. I had my body working with me and he helped me about a year and then later on I started doing all the work by myself and I've been working by myself for a long time.

I do cars by appointment. If I can get one car for tomorrow, I'll do it. I know I've got one for Friday and I've got to go check on a couple of jobs tomorrow.

COMMISSIONER SULLIVAN: So in 2003 you moved your business from where it was back to this address.

MR. LOPEZ: Yes.

COMMISSIONER SULLIVAN: And then why at that time didn't you – since you had this condition that it couldn't be used for commercial use, why didn't you apply at that time for commercial use?

MR. LOPEZ: I don't know. I don't even have a sign. I guess I knew I was doing it wrong all the time, you know. So I had no other place to go so I needed to – like I said, I've got to pay my mortgage. I got to pay the utilities. I've got to pay everything. I've got a vehicle I'm making payments on and I still lack about three more years.

COMMISSIONER SULLIVAN: Okay. Thank you. Mr. Larrañaga, when did the Code come into effect, the home occupation code for this area?

MR. LARRAÑAGA: Madam Chair, Commissioner Sullivan, I believe that policy, as far as auto body and painting, is Exhibit L. So that came into effect in July 25, 2003.

COMMISSIONER SULLIVAN: It's part of the Land Use Code?

MR. LARRAÑAGA: Madam Chair, Commissioner Sullivan, that is correct.

COMMISSIONER SULLIVAN: Is this in any particular area or any zone, or this is the general County Land Use Code.

MR. LARRAÑAGA: Madam Chair, Commissioner Sullivan, that is throughout the county. This type of use is not –

COMMISSIONER SULLIVAN: Okay. I understand that car mechanics and car sales cannot qualify as home occupations, nor can car dismantlers or salvage operations. Now, why is it that he has to qualify as a home occupation? Can he qualify just as a straight commercial? Or as a home occupation, he wouldn't need a variance. Is that what you're saying?

MR. LARRAÑAGA: Madam Chair, Commissioner Sullivan, that is correct. And just to clarify, the applicant is coming forward to be eligible for commercial zoning. If he would be granted this variance he would still have to come back with master plan and development plan.

COMMISSIONER SULLIVAN: Okay. So, now timing-wise, this land use policy is dated July 25, 2003. I'm not sure when it came into effect. His approval for the accessory structure was in 2000, but it wasn't to be used for any commercial use. So what was the - was there another Land Use Code in effect in 2000 and this was the newer one? What Code applied to him in 2000?

MR. LARRAÑAGA: Madam Chair, Commissioner Sullivan, the general rules, ordinance on home occupation. Also one of the main criteria of a home occupation is that you can only use 50 percent of the square footage of the home for the home occupation. In general this building may not qualify on the square footage wise.

MS. COBAU: Madam Chair, Commissioner Sullivan, also I'd like to interject that that policy that Jose is citing began to be developed with the Code back in 1981 and it's something that staff updates every year based on additional problems that come to us through complaint or other means. That policy is continuously updated.

COMMISSIONER SULLIVAN: Okay, so this is a land use policy. This is not a County ordinance or a County regulation.

MS. COBAU: Madam Chair, Commissioner Sullivan, that's correct. However, it is derived from the home occupation policy of the Code.

COMMISSIONER SULLIVAN: Of -

MS. COBAU: Of the County Code, Section 3, home occupations. That policy is based on you're not supposed to have any visible signs of the business from other properties. There's not supposed to be any noise, there's not supposed to be any odor. All that's cited in the Code.

COMMISSIONER SULLIVAN: Okay, and is that the 1997 Code?

MS. COBAU: That's the 1981 Code.

COMMISSIONER SULLIVAN: 1981 Code. Okay, so we have a 1981 Code and we also have a 1997 amendment here that defines what an accessory structure is. It includes but is not limited to an office, art studio, workshop, garage or carport for storage of personal vehicles, utility or storage sheds, stable or barn or greenhouse. So none of that would apply to this accessory structure. So what you're saying then is the home occupation code has been in effect since 1981. Is that what you're - and then it's been interpreted by this land use policy in 2003.

MS. COBAU: Madam Chair, Commissioner Sullivan, that's correct. I think it's also important to note that in the section of the Code that cites commercial uses, auto repair shops are specifically included in that as a use, considered a commercial use.

COMMISSIONER SULLIVAN: Okay. And the home occupation policy was adopted in August of 2000, it says here. A home occupation may use up to 50 percent of the square footage of the residence. Accessory structures which are used as a part of the home occupation shall not exceed 50 percent. So this policy was adopted just one month before he got his approval from CDRC, as best I can tell. September 29th? No? He got it September 29th and that was August 7th.

MS. COBAU: Well, portions of the policy - some of the policy could have

been in effect before that, because as I said, I think staff was continuously adding to that policy. When someone comes in for a home occupation we have a packet that we give them. It's about a seven-page packet. It includes that policy. It also describes all the material that they're supposed to provide. It cites parking criteria, that they can't exceed more than 50 percent of their structure. They can't have outdoor storage. We have a packet for home occupation applications.

COMMISSIONER SULLIVAN: Okay, and then my last question, Madam Chair, is I guess it would be – in the definition of home occupation it says home occupations can be granted with only one commercial vehicle in a requirement that no commercial-related vehicles, i.e., a towed vehicle, may be brought to the home. What does that mean? Only one commercial vehicle meaning like you could only work on one car at a time, or that would be your own commercial vehicle? Would he qualify under that clause?

MS. COBAU: Madam Chair, Commissioner Sullivan, I think that that – maybe to take it out of the context of this business, if he were, for example, operating a painting business, he would be able to have one vehicle that contained the equipment that he needed to operate that painting business and no more than that. We have specific – we only have precedent that precludes having towed vehicles or tow trucks as part of home occupation permit.

COMMISSIONER SULLIVAN: Suppose he's working himself in his garage and he's working on one vehicle at a time. Well, he also has his personal vehicle I guess that he runs around and goes the grocery store. But if he's only working on one vehicle, is that a home occupation?

MS. COBAU: If he had one vehicle that had his tools in it that said Joe's Auto Repair, that would be the one vehicle that he would be allowed to have on his site. We have a policy that says auto repair is not considered – doesn't qualify as a home occupation.

COMMISSIONER SULLIVAN: Okay. So he could have the vehicle there and he could go drive it somewhere else and do auto repairs or do painting or whatever, but it wouldn't occur on that site, is what you're saying.

MS. COBAU: Madam Chair, Commissioner Sullivan, that's correct. It would be if he had an office off his premises and he brought that truck home that said Joe's Auto Repair and he did his books at his house, then he would qualify for home occupation. But he isn't allowed to service vehicles at that location as part of a home occupation. He could do books. He could do something that didn't create fumes, noise and other things that are considered detrimental use and not in concert with other residential uses in the neighborhood.

COMMISSIONER SULLIVAN: Okay. Thank you.

CHAIR VIGIL: Any further questions, comments from the Commission?

COMMISSIONER MONTROYA: Madam Chair, would you be opposed, Joe, if we were to add the conditions of no painting on the premises and one vehicle per – what would you say? Occupation? Mr. Lopez.

MR. LOPEZ: That's what I really wanted. A car a day or whatever. Sometimes I do a car, it takes a couple days if you're doing a clutch or whatever. I'm not that young, not that fast anymore but I can still do it. I don't do any painting, like I said and I have no intentions of doing it. The only thing, I do do a lot of welding, do muffler work and all that. I love welding and mechanical work.

COMMISSIONER MONTOYA: And then the other thing that you said you would do to help eliminate the noise would be to –

MR. LOPEZ: Yes, I can. I've got my air compressor already in the corner. All I've got to do is two more walls and it's got a ceiling. I've got like an upstairs for my jet-skis, where I have like – I don't know what you want to say – like a shelf, which is on top of the air compressor and I store my jet-skis up there and several other things that I have. I would be willing to do more walls and a door, just in case I got to get in there, got to service it.

COMMISSIONER MONTOYA: So at least it's insulated and not –

MR. LOPEZ: Correct. And it wouldn't make any noise. At least not inside in the shop anymore.

COMMISSIONER MONTOYA: Madam Chair, members of the Commission, I did go out and visit the site and he didn't have any vehicles in that he was working on on that particular day. I did see the grounds. They are paved and cemented. I don't see how contamination can occur. He is disposing of the oil in an appropriate manner. I think the hardship that it could create in terms of a potential loss of income would be detrimental to Mr. Lopez and his family and I really don't see the creation of a lot of traffic in that area. I do agree that the subdivisions and developments that are going on there are creating more traffic and I did go out about 9:30 or so that morning and – can you tell your customers to go about 9:00 or 9:30 because there was no traffic the whole time that I was there for about half an hour, 45 minutes. Pretty minimal traffic at that time. Sure, there's huge traffic probably between 7:30 and 8:00.

MR. LOPEZ: Yes. And then in the afternoon around 3:00 in the afternoon. Three to four. It's horrible.

COMMISSIONER MONTOYA: So, Madam Chair, with those conditions, no painting, the one vehicle per occupation and then insulate the air compressor to eliminate some of the noise. I would move for a granting of this variance.

COMMISSIONER ANAYA: Second.

CHAIR VIGIL: Motion and second for the granting of this variance. Is there any discussion?

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Commissioner Montoya, what did you mean by one vehicle per –

COMMISSIONER MONTOYA: He pretty much just works on one vehicle at a time, so it doesn't congest his yard or his garage. So if he works on one vehicle at a

time it doesn't create cars being parked outside and an eyesore. I would encourage anyone to visit it. I think he does a really good job of keeping it clean and taking care of the premises.

COMMISSIONER ANAYA: So when he finishes that car he can get another one.

COMMISSIONER MONTOYA: Right.

COMMISSIONER ANAYA: It doesn't mean one car per day.

COMMISSIONER MONTOYA: No. If he finishes that car - he can work on one car at a time. Yes.

CHAIR VIGIL: Commissioner Montoya, have you seen the letter from Greg Stark who requested that Mr. Lopez work with the neighborhood to create solutions that satisfy their concerns yet allow him to continue his living. I recognize some of the conditions that you're setting forth, but do we know that those are all the conditions that the neighborhoods are concerned about.

COMMISSIONER MONTOYA: Those are the main ones that I read and heard about and actually was even told by Mr. Lopez what some of the concerns were which were documented as part of this packet. Those are the only ones that I'm aware of.

CHAIR VIGIL: Okay. The question I have for staff, and perhaps Mr. Ross. Can a temporary license be issued on his with review after a certain amount of time? Or is home occupancy a vested right in perpetuity?

MR. ROSS: Madam Chair, there's nothing in the Code that permits us to issue anything of the sort. We have recognized a need for vehicles like that so in the Code rewrite there is a temporary license proposed, but it has been a tradition around here to give a two-year license for certain kinds of non-conforming uses like mobile homes that aren't consistent with the minimum lot size but I'm not aware that we've ever done that in a case like this.

CHAIR VIGIL: We've never done this? Is that what you're saying?

MR. ROSS: Not a temporary license. It's completely without reference in the Code whatsoever.

CHAIR VIGIL: Okay. Any further questions? Seeing, hearing none, there is a motion to approve this variance with conditions, and a second.

The motion to approve CDRC Case #V 06-5570 passed by 3-2 voice vote with Commissioners Vigil and Campos voting against.

CHAIR VIGIL: You have your variance.

MS. COBAU: Madam Chair, members of the Commission, I'd like to point out that this applicant will be back before you with a master plan and development plan for this site now that the variance has been granted for the commercial use at this location.

CHAIR VIGIL: Thank you.

- XIII. A. 9. 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 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) [Exhibit 3: Thornburg Letter]**

VICENTE ARCHULETA (Review Specialist): Thank you, Madam Chair. On January 9, 2007, the Board of County Commissioners met and acted on the above case. The BCC tabled the case in order for the applicant to apply for sewer service from the City of Santa Fe sewer line that services Turquoise Trail Subdivision.

The applicant has applied with the City of Santa Fe for sewer service and the City of Santa Fe's response is included as Exhibit L. 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 acre. On January 12, 1999 the BCC granted final plat and 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 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 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 applicant now requests 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 offsite 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.

The applicant requests a variance of Section 3.5.2 of the road requirements and standards of the Extraterritorial Subdivision regulations to allow a cul-de-sac to exceed 1000 feet in length. Section 3.5.2.f.2.b 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.2.b.2 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 of 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.

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 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 forth in Section 3.5 and 3.6 of the EZO. Staff recommends preliminary and final plat/development plan approval subject to the following conditions. May I enter those into the record?

COMMISSIONER SULLIVAN: I think Vicente, they're already entered because we tabled this from the last meeting.

MR. ARCHULETA: I also handed out a letter from David Thornburg. That was the last letter that Jose handed out. And that's in reference to the Longford Turquoise Trail Development.

COMMISSIONER SULLIVAN: Just let me understand, Vicente here, your recommendation is for approval of the preliminary and final plan but denial of the variance.

MR. ARCHULETA: That's correct.

COMMISSIONER SULLIVAN: Okay. Thank you. Questions for staff? Seeing none, is the applicant present?

[Duly sworn, Jim Siebert testified as follows:]

JIM SIEBERT: My name's Jim Siebert. My address is 915 Mercer. When you heard this last I think there was a perception that septic tanks would require variance to the Code and that's actually not the case. We are connected - the subdivision is connected to County water and as such they can go down to one-acre minimum lot size and septic tanks are permitted. But given that, there was some direction to seek connection to the Thornburg Enterprises LLC sewer system, which is actually a private sewer system within their development, which then in turn connects to a City sewer system on the north side of State Road 14.

We consulted both with the City and they sent us a letter that said the City's ordinances that you cannot connect until you're annexed to the City but you always have a right to petition to the City to utilize City sewer. We also have talked to David Thornburg with Thornburg Enterprises LLC and he stated in his letter that they have a private

contractual agreement with the City that prohibits the extension or connection to sewer outside of the private sewer system outside the boundaries of their service area.

One thing that we did in addition is we took a look at connecting to the Rancho Viejo system and the length – we estimated the length to connect under the Rancho Viejo system at about 6700 lineal feet. The cost for that for running the piping would be approximately \$55,000, which for 14 lots works out to be about \$4,000 a lot. The pump, and it's an E-1 pump – they're pretty common as Commissioner Sullivan pointed out, with the installation is about \$4500. The connection fee to the Rancho Viejo system would be approximately \$1000. So for the wastewater system we're looking at about \$9,500 a lot.

Realizing that onsite systems are permitted we'd like to offer an alternative that we think is probably a better solution, and that would be to use what they call the piranha system. And the piranha system is an onsite, higher level treatment system that treats effluent to a secondary level and it is certified by NMED for secondary treatment. There's two advantages to this. One is it allows for reuse of the water for landscape purposes on the site, rather than sending it offsite. And one of the requirements of the piranha system is you have to enter into a maintenance contract and the contracts are continuing over a long period of time in order to ensure that the system is operating correctly.

So what we'd like to offer to the Commission is to make it a requirement that a piranha or similar system that treats effluent to a secondary level be installed on every lot within the subdivision. It is served by County water. It has a, in fact, a 16-inch waterline that runs right through it. There are fire hydrants that are fully pressurized throughout the subdivision, and I'll answer any questions you may have.

CHAIR VIGIL: Thank you, Mr. Siebert. Are there any questions from the Commission? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Madam Chair, just to remind the Commission where we were on this last month, there were two – well, there was one issue that was strong in my mind and that was the fact that when this subdivision was initially approved for master plan it was approved with the understanding and the agreement of the applicant that the second phase would be sewered by either a community system or connection to a County system. Those were the two alternatives. And I read – I don't need to do it again tonight – the testimony from Mr. Siebert and others to that effect.

So we asked Mr. Siebert last month to follow that up and see how that could be done. The piranha system is – I'm not personally familiar with it but my only concern is that we always seems to be getting compliance with good design by putting it on the lot owner and putting it on the builder, as opposed to putting it on the developer where we have better control. We don't have the control of each of the 14 builders. That's CID and so we really – it's difficult for us to have the staff to do that. We do have better control of the developer because we have a bond requirement and the County staff goes out and they review the development to see how much he's complied and what percentage of the bond can be released in a periodic basis as the development proceeds with its roads and

waterlines and so forth.

So while I appreciate the fact that Mr. Siebert has done what we asked him to do, which is look at these alternatives, I still feel, a) that a condition of master plan approval here was that the lots be sewerred. And that if we're changing that we need a new master plan. And then secondly, I see Mr. Thornburg's letter and I did a little of my own review of what it would take, because there are other areas that we're going to have to deal with on Route 14. This isn't the only one. And there are going to be more coming up. We're going to have to address this problem each time with regard to sewer.

You'll notice right after Exhibit L, which is the letter from the City, there's a copy of the City ordinance. And on the second page of the City ordinance, it says property outside the city limits, and the title of this ordinance is regarding City wastewater and water service outside the city limits. And under purpose, it says the governing body has determined that connections to the City's sewer system should be allowed outside the city limits under certain conditions. The wastewater treatment plant has the capacity for such connections. The effluent is a benefit to the City and protection of the groundwater is important.

Now, that's where I'm coming from, just exactly what that part of the City ordinance says. Now, as Mr. Siebert indicates, it's not that easy. You have to get the approval of the City Council to do that, a) and the b) you have to agree to be - not to oppose annexation if you're going to be annexed by the City. And Thornburg has already done that. That's already a part of their approval.

Now the letter from the City wastewater plan people - and I talked to Mr. Bryan Romero who's the engineer who's in charge of the wastewater division, wastewater management division, indicated two things. One, it indicates that the Longford Homes system is a privately owned system, so they can't approve or disapprove tying into it. And secondly it says that your application for service has not provided the required submittals as outlined in the ordinance. If you wish to continue, please contact me and we'll assist you with the application.

So what the City wrote back was not no. They just said that you're going to have to fill out the application materials and you're going to have to go to the City Council. That's just what has to be done.

CHAIR VIGIL: Commissioner Sullivan, can I ask you to make the point - either through questions or not. We have gotten word that there is snow in some of the parts of Santa Fe County, and some of the roads are questionable in terms of travel.

COMMISSIONER SULLIVAN: That's fine. I move to table.

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

COMMISSIONER CAMPOS: I'll second.

CHAIR VIGIL: There is a motion and a second to table. Is Commissioner Montoya here? Did he leave? I know he was checking the road conditions. Okay. There's a motion to table. No discussion is needed in that.

The motion to table failed by a 2-2 voice vote with Commissioners Sullivan and Campos voting in favor of the motion and Commissioners Vigil and Anaya voting against. [Commissioner Montoya was not present for this vote.]

CHAIR VIGIL: What do we do in this case? It's considered a no vote, right? Thumbs down. All right, Steve Ross.

COMMISSIONER SULLIVAN: Then, Madam Chair, my final point on this, and I think this is important and if we are in a hurry we should put it off until another time. Because we are dealing with the public health here of the residents. All of the 512 units of the Thornburg Longford Homes project, which is right next to this project are sewer. This one's not. The letter from Mr. Thornburg dated January 31 says that he has a contractual relationship with the City to provide sewer services and one of the requirements is there are not to be any additional people or projects outside the Thornburg properties hooked up to the system. Therefore we cannot accommodate your request for service.

Now, my understanding is that the requirement of that agreement is that there not be any additional people or projects outside the project without the City's approval. And in fact, when Thornburg first started designing the system, they were designing it as a regional system. And they designed it with somewhat larger lines and somewhat larger pumps and the only reason it is the way it is now is because they couldn't get commitments from people to tie into it because there weren't any requirements that people tie into it.

So the final thing that I did was in this letter that I pointed out as Exhibit L the City wastewater division makes mention of Karen Aubrey who is the attorney who represents Thornburg and who is also the attorney for the Turquoise Trail Master Association. That's the association that runs the sewer system. I talked with Ms. Aubrey. Ms. Aubrey said they were very receptive to considering that, and this is an association that's made up of several members, including one of the gentlemen who was here this afternoon at our Longford Homes PID work session, and they are a member of that board. Mr. Thornburg is not the deciding member. This is now owned by the association.

She said they were willing and quite enthusiastic in fact about the possibility of tying them in. There would be some cost and they would have to have their engineers review the system to see if 14 units would make any difference. They have - I think it's a 10-inch force main and pumps and so forth - whether that would make any difference in the supply. And that's as far as I went on that.

I think that this hasn't been pursued as much as it could be to tie into the existing sewer line. Instead it just seems axiomatic that if you've got a sewer line there you can tie into it as long as there's the capacity and I don't think we have that answer yet. There's certainly a willingness to look at that, at least from Ms. Aubrey, who did contact Mr. Robinson prior to her getting back to me to review that and it would just be pending an engineering determination of whether that was possible to do. So that's as far as I went on

it. I think that it can still be done; I think it should be done and that's why I spent the time taking a look at it. Thank you.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Jim, how often do those piranha systems need to be serviced?

MR. SIEBERT: Well, the contract is initially a three-month, a six-month and a year schedule and after that it's semi-annual – twice a year.

COMMISSIONER ANAYA: And are there any other systems out there like that that don't require –

MR. SIEBERT: Well, there's other systems. I think the advantage of this is that they're becoming more common in the area and it comes with a maintenance contract.

COMMISSIONER ANAYA: Is it a lot of money?

MR. SIEBERT: They're more expensive. They're on the order of \$5,000, \$5,500 when they're fully equipped. Especially if you add a system where you reuse the water for landscape.

COMMISSIONER ANAYA: So what about the maintenance contract?

MR. SIEBERT: Well, the maintenance contracts are not that expensive. They run about \$150 a year.

COMMISSIONER ANAYA: A year. Okay. Thank you.

MR. SIEBERT: One thing I would like to point out is, it's correct that Longford Homes is connected to a sewer that goes to the City sewer plant but they have densities on the order of five units per acre. We are one unit per acre. There is no efficiency of scale. There's only 14 units, and we're even further away from the Thornburg system than the Rancho Viejo system. It's probably another 1000 feet. So it's about 7600 feet to tie into the Thornburg system.

CHAIR VIGIL: Further questions? Have you, Mr. Siebert, contacted Ms. Aubrey or any of the contacts that Commissioner Sullivan made mention of?

MR. SIEBERT: No, I've not. Ms. Aubrey is the attorney for Thornburg Enterprises. My relationship has always been with Dave and Tom Thornburg directly because they're basically the owners and the managers of the system.

CHAIR VIGIL: Okay. And how do you respond to Commissioner Sullivan's statements that he thinks all other options have not been pursued and that we haven't exhausted the options available for wastewater?

MR. SIEBERT: Well, I think in reference to the community sewer, in the time we've worked on this project which has been eight years ago, the project immediately to the east, which I think was 120 acres or something like that, it looked like that project was going to proceed forward and we could have connected to the community sewer on that project. Or to the south is the San Cristobal project. We could have connected to that if it had proceeded forward. So the idea was that the community sewer system would be in closer proximity than it is now, which is approximately 7,000 feet away.

CHAIR VIGIL: Is this piranha system compatible with a community sewer

system or does it stand alone?

MR. SIEBERT: It is a stand-alone system.

CHAIR VIGIL: Okay. I have no further questions. Commissioner Montoya.

COMMISSIONER MONTOYA: Madam Chair, Jim, in terms of the potential for annexation, is this site one of the ones that the City's talking about?

MR. SIEBERT: I don't believe so.

COMMISSIONER MONTOYA: No? Okay.

CHAIR VIGIL: What are the wishes of the Commission? This is a public hearing. Is there anyone out there that would like to address the Commission in favor or against this project? Hearing, seeing none, I'll close the public hearing and then again request what are the wishes of the Commission?

COMMISSIONER CAMPOS: Madam Chair, it seems to me that the option of hooking up to a public sewer is still there. I don't know if it's been fully pursued. Based on what Commissioner Sullivan has said I don't think it has been and I think it's important that it be pursued. So I think tabling for another month is not a bad idea.

CHAIR VIGIL: Mr. Siebert, how do you respond to all the options put forward?

MR. SIEBERT: Well, I guess the question is if we table it for a month, what would the outcome be? For me to pursue sewer through the City I'm going to have to go through a whole series of committees and then onto City Council. That will probably take six months to accomplish, just to get approval from the City Council, if they would grant it.

CHAIR VIGIL: So have you made any kind of inquiries with the City with regard to hooking up with them?

MR. SIEBERT: I have not.

CHAIR VIGIL: You have not?

MR. SIEBERT: The only way you can do it, as was pointed out in the City letter, that you have to submit an official application and then it's taken to the Public Works Committee.

COMMISSIONER CAMPOS: Mr. Siebert, you're concerned about the six-month delay? Is that your big issue?

MR. SIEBERT: Correct.

COMMISSIONER CAMPOS: It seems like having the City sewer is a big deal, important. But you're saying you're under the gun for some reason?

MR. SIEBERT: Well, my client isn't getting any younger. She's 87 years old.

COMMISSIONER CAMPOS: How long have you had this master plan in the works?

MR. SIEBERT: It's been approximately eight years we've been working on the project.

COMMISSIONER CAMPOS: Eight years. It's been there for a while.

CHAIR VIGIL: Any further questions? Again, I ask what are the wishes of the Commission?

COMMISSIONER ANAYA: Madam Chair, I'll go ahead and move for approval with the conditions and with the use of the piranha system.

CHAIR VIGIL: Motion. Is there a second? I'll second it for further discussion, if there is any further discussion.

COMMISSIONER SULLIVAN: If you want to we can talk all night.

CHAIR VIGIL: I know you could, Commissioner.

COMMISSIONER SULLIVAN: I've been very quiet.

CHAIR VIGIL: Then we'll take a vote on the motion. The motion was to move for approval with the piranha system, and other conditions of approval.

The motion to approve EZ Case # C/S 03-4832 failed by 2-3 voice vote with Commissioners Anaya and Vigil voting in favor.

CHAIR VIGIL: Motion fails 2-3.

COMMISSIONER CAMPOS: Move to table.

CHAIR VIGIL: There's a motion to table this.

COMMISSIONER SULLIVAN: Second.

The motion to table passed by 4-1 voice vote with the chair dissenting.

COMMISSIONER SULLIVAN: Madam Chair, to the maker, I assume that would be to the next land use meeting unless the applicant needs more time.

COMMISSIONER CAMPOS: Well, it seems Mr. Siebert is saying he needs six months to go through the City process so I don't know. Usually we table to the next meeting. I assume we'll reconsider when there's some -

COMMISSIONER SULLIVAN: When the application -

CHAIR VIGIL: Mr. Siebert.

MR. SIEBERT: The question in terms of direction I would have is is there something wrong with the Rancho Viejo system, community sewer system? Politically, that's something that we can manage. The City sewer system is something we really can't.

COMMISSIONER CAMPOS: You can't?

MR. SIEBERT: We cannot.

COMMISSIONER CAMPOS: Because? Time?

MR. SIEBERT: There's a whole variety of reasons but principally time.

COMMISSIONER CAMPOS: Is it mostly time? Because they seem amenable. They seem open. It's just you've got to go through the process.

MR. SIEBERT: I guess we'd prefer to deal with Rancho Viejo where we have a little more control over the system.

COMMISSIONER SULLIVAN: Madam Chair, I think that's a reasonable

compromise, given the 14 units that we're dealing with and trying to keep the cost reasonable.

MR. SIEBERT: Well, let me ask you this then. Would the Commission consider reconsidering the issue if we agree to connect to the Rancho Viejo system?

COMMISSIONER CAMPOS: Do you have an agreement with Rancho Viejo?

MR. SIEBERT: We do not have approval. They are expanding their plant from 400,000 to 800,000. I talked to Jon Paul Romero today. There is capacity to do it.

COMMISSIONER CAMPOS: Is there willingness to consider?

MR. SIEBERT: There is. Their plan was with the increase in the capacity that they could take on additional units outside their property.

COMMISSIONER SULLIVAN: Pretty good deal. A thousand dollars, you can't beat the price to hook in.

COMMISSIONER MONTOYA: For Rancho Viejo?

MR. SIEBERT: It's not quite a thousand. It's \$9,500 to \$10,000 to tie in.

COMMISSIONER SULLIVAN: That was the hook-in fee then. Madam Chair, I'd be willing to reconsider with that condition if the remainder of the Commission feels that's appropriate.

COMMISSIONER CAMPOS: I'm comfortable with that.

COMMISSIONER MONTOYA: So moved.

COMMISSIONER ANAYA: Second.

CHAIR VIGIL: There's a motion to reconsider Valle Serena Subdivision, phase 2.

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

CHAIR VIGIL: Mr. Ross, can we actually reconsider this at this particular time or do we need to go to the next land use.

MR. ROSS: Madam Chair, I think you can probably do it now.

CHAIR VIGIL: It's within the 30-day.

MR. ROSS: Yes.

COMMISSIONER CAMPOS: Madam Chair, move to approve with all the conditions, including the condition that there be a hook-up to the Rancho Viejo sewer system.

COMMISSIONER SULLIVAN: That wastewater service be provided through – I would say the Rancho Viejo system or the Thornburg/City of Santa Fe system.

MR. SIEBERT: That'd be fine.

COMMISSIONER CAMPOS: That'd be fine.

CHAIR VIGIL: Motion and second. Any further discussion on that particular motion?

The motion to approve EZ Case #V/S 03-4832, subject to conditions and with the stipulations described above passed by unanimous [5-0] voice vote.

XIII. A. 10. EZ Case #S 06-4200 Mattsson Subdivision. Phil Hindmarch, Agent for Bjorn Mattsson, Applicant is Requesting Final Plat/Development Plan Approval for a 16 Lot Residential Subdivision Within the Two Mile Extraterritorial District, Section 17, 20, Township 17 North, Range 9 East (Commission District 2)

JOE CATANACH (Technical Review Director): Thank you, Madam Chair, Commissioners. This applicant is requesting final plat/development plan approval for a 16-lot residential subdivision on 40.14 acres. The EZC recommended approval on June 8, 2006, preliminary, and then final on September 14, 2006, and on December 12, 2006 the BCC granted preliminary plat/development plan approval, and I have the minutes of that meeting in your packet.

The discussion that took place had to do with giving the applicant direction to address or otherwise clarify certain parts of his proposal. These conditions are number 8 and 9 and this applicant was required to submit proposed energy conserving green measures to be incorporated into subdivision covenants and disclosure statement, and condition 9, Submit engineering plans for cluster well water system that address water storage for domestic use and fire protection sprinkler systems. And I have an exhibit in your packet, Exhibit I, and that Exhibit I is the additional submittals regarding those conditions that were discussed with this applicant and the BCC at the December meeting.

This applicant has submitted a list of what they propose to incorporate into their covenants and disclosure statement for energy conserving green measures. This applicant has submitted an engineering plan for the cluster well system that's been stamped and sealed by a PE, and also a letter from the engineer indicating that the flow of the wells was adequate without additional water storage. I believe what this applicant is going to tell you is that these sprinkler systems operate on a portable system, meaning when the individual homes come in for building permits, at that time the Fire Marshal would review the fire sprinkler plans for the individual homes. Thank you, Madam Chair.

CHAIR VIGIL: Thank you. Are there any questions of Mr. Catanach?

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: This condition number 8, submit proposed energy conserving green measures. I know that we – I remember that we asked this developer to do this but is that part of our ordinance? Are we requiring people to do this or was it just put on this individual? And if it was, I don't think that's right because another

developer just got approved and there was no green measures in that development.

MR. CATANACH: Madam Chair, Commissioner Anaya, that issue actually came up at the December meeting and it was asked whether this was a requirement of the County Code and the response was no. I think what was happening is we had a developer that was making certain commitments to develop a green development and so I think that the Commission wanted to see in fact that we just don't have somebody saying they're going to do this, that they had in fact real intent and plans to require this of the subdivision for building the houses and the type of homes. So I think it was more, well, let's see how you plan to actually execute that and actually have that built out?

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

CHAIR VIGIL: Joe, you're recommending - what is staff's recommendation and are you including conditions for that? Did you read that into the record? I'm sorry, I can't recall.

MR. CATANACH: I'm sorry; I did not. Staff is recommending final plat and development plan approval for a 16-lot subdivision with conditions.

CHAIR VIGIL: Right. And you have conditions 1 through 11 and then you have additional conditions 1 through 9. Those are the ones you want as part of the record?

MR. CATANACH: Yes, Madam Chair.

[The conditions are as follows:]

1. Compliance with applicable review comments from the following:
 - a) State Engineer
 - b) State Environment Department
 - c) State Department of Transportation
 - d) County Hydrologist
 - e) Development Review Director
 - f) County Fire Marshal
 - g) County Public Works
 - h) County Technical Review
 - i) Soil and Water District
 - j) State Dept. of Cultural Affairs Historic Preservation Division
2. 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 wastewater treatment center
 - e. Maintenance easement for zero side yard
3. Road section shall comply with minimum standards for a local road (50' easement with a 22' roadway).
4. The applicant shall contract with a licensed solid waste disposal service for trash

pick-up.

5. Submit solid waste fee in accordance with subdivision regulations and submit fire review/inspection fees in accordance with Resolution No. 2003-47.
6. All redline comments shall be addressed.
7. Submit a cost estimate and financial surety for completion of required improvements as approved by staff.
8. The applicant must record water restrictive covenants simultaneously imposing .25 acre- feet per year per lot. Water meters for each subject parcel must be installed to monitor water use. Water consumption reports must be submitted to the Land Use Administrator by January 31st of each year.
9. The applicant must submit a discharge permit as approved by NMED for the proposed wastewater system to qualify as a community sewer system. A community sewer system is required for subdivisions with net lot sizes less than .75 acre.
10. Identify base flood elevations for areas that lie within a 100-year flood zone.
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 Victoria Reyes, Development Review Specialist within the Land Use Dept. These plans must be resubmitted with the Mylar prior to recordation

Additional conditions:

1. Submit final affordable housing agreement as approved by staff.
2. Submit final grant of easement from Aldea HOA.
3. Final plat shall include but not be limited to the following:
 - a) Cross reference for recording covenants, disclosure statement and affordable housing agreement.
 - b) Compliance with plat checklist.
 - c) Special building permit conditions as required by staff.
4. Development plan submittals shall include but not be limited to the following:
 - a) Provide recreational trail network and trail section detail as approved by staff.
 - b) Submit well logs for cluster well system for compliance with minimum depth required by the County Hydrologist prior to releasing financial surety.
 - c) Cul-de-sac road providing access to five or more lots is subject to a 50-foot easement.
 - d) Address proposed garage buildings encroaching within road and utility easement.
 - e) Provide engineering calculations for proposed culvert sizes.
 - f) Horizontal road grades shall not be less than one percent.
 - g) Road section detail shall specify six-inch basecourse.
5. Covenants to include ownership and maintenance of community sewer system by HOA.
6. Address disturbance of slope exceeding 1000 square feet for proposed road extension with Aldea.
7. Subdivision shall not be used for time shares or fractional ownership.
8. Submit proposed energy conserving green measures, to be incorporate into subdivision

- covenants and disclosure statement.
- 9. Submit engineering plans for cluster well water system that address water storage for domestic use and fire protection sprinkler systems.

CHAIR VIGIL: Thank you, Mr. Catanach. Any further questions?

COMMISSIONER MONTOYA: Madam Chair.

CHAIR VIGIL: Commissioner Montoya.

COMMISSIONER MONTOYA: Regarding the issue that we had last time regarding the time share, has that been resolved?

MR. CATANACH: That was resolved with the applicant agreeing to condition 7.

COMMISSIONER MONTOYA: Okay. So that's not an issue.

MR. CATANACH: That's correct.

COMMISSIONER SULLIVAN: Madam Chair.

CHAIR VIGIL: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I think there were two issues. One was the time share, Commissioner Montoya, and the other was that the Code requires that they have 2.56 affordable units. That's what the Code says, and the applicant is saying we only want to build two affordable units and give you the money for the rest. And my personal opinion was at the last meeting that I would rather have the affordable housing than the money because I felt we had enough money in the affordable housing kitty right now. And there was considerable discussion on that. We left that issue unresolved in the tabling. We didn't take that any further. So I think we should give direction on that as well, because my recollection is, and we'll see when they come up, if that's still what they're proposing. That's not what the ordinance specifies.

CHAIR VIGIL: Any further questions for Mr. Catanach. Seeing none, is the applicant here. And while the applicant's coming, I have a quick question for Commissioner Sullivan. How do you foresee someone proposing to build two and the .5 units of affordable housing?

COMMISSIONER SULLIVAN: Well, that's pretty difficult unless you have a mother-in-law that you don't like very much. I think the way the ordinance handles it is that once you go over 2.5 then it's rounded to the next full number. So in this case it comes to 2.56, and so that would round up to a requirement for three units.

CHAIR VIGIL: That's how you see it. Thank you. Ms. Vazquez, welcome.

ROSANNA VAZQUEZ: Thank you very much. Good evening, Commissioners. With regard to the question of affordable housing we spent a lot of time working with Duncan as to what it was that the Code required and the requirement for this subdivision is 2.56. And the question was what to do with the .56. The Code does allow for an alternate means of compliance to comply with that .56. Given that we were so close to the .5, we met with the Housing staff and they felt that this was a reasonable way to meet the requirement of the affordable housing ordinance. And what we would be doing is

giving \$112,000, which would be the price for the third home that would have to be developed to research sustainability.

The reason that these developers wanted to do the two homes and the money and thought that was a reasonable idea was because they wanted to create the two affordable units as duplex lots, each on separate legal lots of record, but to create a unit that would be similar in size to the other homes out there. That was one of the reasons. And the \$112,000 could go a long way towards working on trying to create sustainable methods for construction.

Now, these affordable units will also be built green and will be compliance with the covenants and the standards that we've put together and worked with staff on.

CHAIR VIGIL: Are you proposing that the \$112,000 be specifically used and earmarked for researching sustainability? What if within our affordable housing pool we discover that we're channeling our energies and the funding that we get into senior citizen housing or something like that? Is this condition specific?

MS. VAZQUEZ: Madam Chair, Commissioners, it was the wishes of the developers because they are trying to build a sustainable development. If it was something that needed to be used in a different manner, I don't think we worked all those issues clearly out, and I believe that they'd be open to any suggestions like that.

CHAIR VIGIL: Okay. Thank you. Is there anything else you'd like to add, Ms. Vazquez?

MS. VAZQUEZ: I believe that we've addressed the two issues that were raised at the last Commission meeting. We would really to receive an approval from you to be able to go forward. We need to design this, design the homes. The idea of sustainability is central to the development and they can't move forward until they get an approval and see how we can design and site each of the homes on the lots.

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: I move for approval -

CHAIR VIGIL: We have a public hearing.

COMMISSIONER ANAYA: There's nobody out there.

CHAIR VIGIL: They may come in droves. You never know. Can I ask you to hold on your motion?

COMMISSIONER ANAYA: You bet. I'll hold.

CHAIR VIGIL: I actually think we can move forward. If there's anybody out there from the public that would like to address us, this is their opportunity to come forward. The doors aren't opening, so I will close this public hearing and entertain a motion, Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Madam Chair. I move for approval. I think the applicants have done over what they were asked by the County. I don't have a problem with accepting the two affordable units and the \$112,000 to go for whatever we need to do in terms of affordable housing, and with the conditions.

COMMISSIONER MONTROYA: Second.

CHAIR VIGIL: Motion and seconded. Are there any questions?

Commissioner Sullivan.

COMMISSIONER SULLIVAN: Yes, discussion. I think that we'll see in the affordable housing ordinance that the developer does not have the option to specify what the money is used for. Is that correct, Mr. Kolkmeier?

MR. KOLKMEYER: Madam Chair, Commissioner Sullivan, that's my understanding, that it goes into the affordable housing fund, period.

COMMISSIONER SULLIVAN: And if we want to use it for that fine. I just want to be sure that there were no stipulations on that fund that were contrary to the ordinance. And in terms of, again, I think the applicant is circumventing the storage requirements that are needed here. When you go to a well system, it's just not as simple as hooking on to the City water or the County water. You don't have fire flow. You don't have those things that you take for granted when you live in an urban water system.

This developer needs to build water storage for these cluster well systems at their expense. What we don't want to have is each time – they're on a cluster well and each time a single house comes in, say of those six, each one has to build a separate storage tank for their sprinkler systems. You've hear Buster Patty talk about 30,000-gallon tanks earlier today and ten-minute storage requirements and the amount of time it takes to get the truck out there, it's just a stop gap until the fire truck gets there. It's not a be-all, end-all. And so this Design Engenuity letter says flows for fire protection will not be provided through this system.

I think that the County Code requires in any of our subdivisions that we have fire flows, that we have fire protection. Why should somebody in a 16-lot residential subdivision not have fire flows and someone in a 100-lot subdivision have fire flows? Are they worth less? This is not a good design, A, and B, I don't think is in accordance with the County's Land Use Code.

CHAIR VIGIL: Do you propose anything in the alternative, Commissioner Sullivan?

COMMISSIONER SULLIVAN: I would just propose a condition that says that the water system shall provide fire flow and storage in the amounts specified by the County Fire Marshal.

CHAIR VIGIL: Mr. Catanach.

MR. CATANACH: Madam Chair, I just want to clarify that fire protection will be provided to this subdivision by existing hydrants, fire hydrants within the Aldea Subdivision. That's been accepted by the County Fire Marshal. So there will be fire protection in this subdivision. What I mentioned is that the sprinklers would have a portable system, as I understand.

CHAIR VIGIL: And I see that under fire protection, that they would utilize existing fire hydrants. Were you referencing the fire hydrants or the sprinkler system, Commissioner Sullivan?

COMMISSIONER SULLIVAN: Well, I was referencing the sprinkler system. You need to have at least ten minutes of flow as Fire Marshal Patty explained for the sprinkler system, and that's a fairly sizable tank. And you also don't assume that all six houses are going to burn down at the same time. You put in one tank and you assume one of them is going to burn, so you have enough water to have one of them go off at one time. If you look at this plan at the back of the submittal, if they're relying on a fire hydrant in the Aldea Subdivision, that's a long way. They don't have any fire hydrants in their subdivision. What they're relying on as a fire hydrant in the Aldea Subdivision which is served by the City of Santa Fe system. So they're piggy-backing. They're getting a freebie here. And that's a long way. I don't know the distance, but you typically like to have those fire hydrants within 500 feet of each other.

So I personally do not feel that we've given much thought here to this, and at one time when this first came forward, one of the conditions, I believe, is that they will connect to the City or to the County system when it comes within a certain distance. I believe that's one of the conditions. We put that on almost all these subdivisions that are out in that area by Las Campanas. But you'll notice through this map that the lines are only four inches in diameter. Well, that's too small for a fire hydrant. So if they put these lines in they could never put a fire hydrant. If the connected to the County system, this wouldn't meet the County system requirements. So even though we have that as a condition in there, we've essentially relegated this development to a well system in perpetuity. I think it's not well designed. You need a six-inch line at a minimum for a fire hydrant.

CHAIR VIGIL: Any other discussion?

COMMISSIONER CAMPOS: Just a question, Madam Chair.

CHAIR VIGIL: Commissioner Campos.

COMMISSIONER CAMPOS: Ms. Vazquez, I think the dedication of the money has to be to the affordable housing fund, and that's by ordinance. Aren't you in agreement with that?

MS. VAZQUEZ: Commissioner, Madam Chair, we have no problem with that.

COMMISSIONER CAMPOS: Okay. I just thought that was an odd request in light of the ordinance requirement. Thank you, Madam Chair.

CHAIR VIGIL: I do see a Santa Fe Fire Department official submittal review from the County Fire Department and I didn't see anywhere that they were recommending anything with regard to their inspections - we're hearing from Commissioner Sullivan. Joe Catanach, do you recall that sufficiently? It's actually in our packet, right past the summary sheet.

MR. CATANACH: Yes, the review from the County Fire Department indicates that all fire hydrants shall be spaced so that the furthest buildable portion of a parcel shall be within 1000 feet as measured along the axis route.

CHAIR VIGIL: And that the applicant is required to comply with.

MR. CATANACH: I believe that they're coordinating with Aldea to

actually relocate a hydrant so that it is within the specified distance.

CHAIR VIGIL: Is there any further discussion? There is a motion and it has been seconded. The motion is to approve the applicant's request with conditions.

The motion to approve EZ Case #S 06-4200 passed by 3-1 voice vote with Commissioner Sullivan voting against and Commissioner Campos abstaining.

COMMISSIONER CAMPOS: I just had a question about the suggestion on the six-inch line.

CHAIR VIGIL: You're welcome to bring it up. The applicant is still here. You have received your approval by a 3-1 vote.

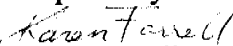
XIV. ADJOURNMENT

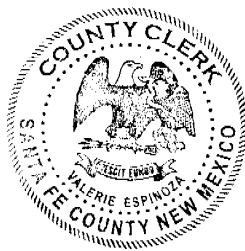
Chair Vigil declared this meeting adjourned at approximately 10:55 p.m.

Approved by:


Board of County Commissioners
Virginia Vigil, Chair

Respectfully submitted:


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











ATTEST TO:


VALERIE ESPINOZA
SANTA FE COUNTY CLERK

Exhibit 1: Village of Agua Fria Traditional Historic Community Boundary adopted by the Board of County Commissioners via Ordinance 2006-12



- Legend**
-  Village of Agua Fria Traditional Historic Community Boundary as Amended by ORD 2006-12
 -  Tres Arroyos Planning Area Boundary ORD 2006-02
 -  Parcels
 -  Extraterritorial Zoning Area Boundary 2-Mile
 -  City of Santa Fe Boundary (2006)
 -  NM 599 RW
 -  Santa Fe River 100 Year Flood Zone
 -  Roads



1:13,000
1 inch equals 1,083 feet
0 0.1 0.2 0.4 Miles

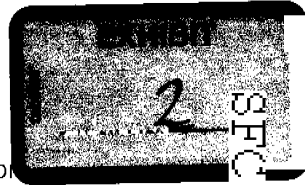
This information is for reference only. Santa Fe County assumes no liability for errors associated with the use of these data. Users are solely responsible for confirming data accuracy.



SFC CLERK RECORDED 03/27/2007
February 2, 2007

Greg Stark

P.O. 2877, Santa Fe, New Mexico 87504-2877 • (505) 747-0405 • gregorstark@hotmail.com



January 27, 2007

To Whom it May Concern:

My wife and I rent a house right next to Joe and Marcella Lopez. I would like to offer a point of view regarding Joe's application to do business out of his home.

As neighbors we notice the noise from the business during the warm months of the year. But I believe Joe should be given an opportunity to address neighbor concerns. He has mentioned to me things he could do to reduce the noise level from his work, and a negotiated solution can be a neighborly way to resolve things.

I also believe he should be given this opportunity because where a man's livelihood is being weighed against neighbor peace-of-mind both have legitimate stakes in a positive solution. A solution that truly satisfies neighbor concerns yet allows him to make a living should be given a chance.

Sincerely,

Greg Stark

REC'D
CLERK RECORDED 03/27/2007

2502 CAMINO ENTRADA
P.O. BOX 29840 87592-9840
SANTA FE NM 87507



SFC
CLERK RECORDED 03/27/2007

Jim Siebert

January 31, 2007

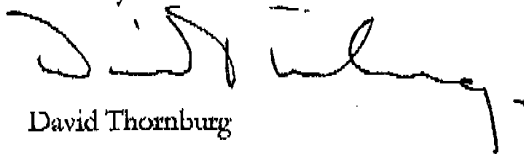
915 Mercer

Santa Fe, New Mexico 87505

Dear Jim

I am writing in response to your request to tie in to the sanitary sewer in the Longford development on State road 14. Thornburg Enterprises LLLP has a contractual relationship with the City of Santa Fe to provide sewer service to the Thornburg properties in the county. One of the requirements for the service is that there are not to be any additional people or projects outside of the Thornburg Properties hooked up to the system. Therefore we cannot accommodate your request for service.

Sincerely



David Thornburg