

1958962

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

**June 12, 2001**

Paul Duran, Chairman  
Paul Campos  
Jack Sullivan  
Marcos Trujillo

Javier Gonzales [excused]

**SANTA FE COUNTY**

1958963

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**June 12, 2001**

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 4:25 p.m. by Chairman Paul Duran, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Roll Call preceded the Pledge of Allegiance and invocation and indicated the presence of a quorum as follows:

**Members Present:**

Commissioner Paul Duran, Chairman  
Commissioner Marcos Trujillo  
Commissioner Paul Campos  
Commissioner Jack Sullivan

**Members Excused:**

Commissioner Javier Gonzales

**I. APPROVAL OF THE AGENDA**

- A. Amendments**
- B. Tabled or withdrawn items**

CHAIRMAN DURAN: I have a couple of amendments. I don't know if you've noticed but it is pretty dry out there and Hank Blackwell is here from the Fire Department and has a couple of items on the agenda that he would like to bring up to the front so that he can go and stamp out fires.

So, with permission of the Commission I would like to bring items IX B. and item X B after approval of the minutes if that's acceptable.

COMMISSIONER TRUJILLO: That's fine.

CHAIRMAN DURAN: The other thing is item IX C. 2, Request Authorization to Proceed with Negotiations for the COLTPAC Phase III Recommended Projects, it wasn't published as a public hearing but we need to have it open for public comment, so we'll give the public opportunity to comment on that.

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Sam, do you have any other comments.

**SAM MONTTOYA (County Manager):** Yes, Mr. Chairman, good afternoon members of the BCC. We want to indicate that amendments that have been noticed, Mr. Chairman, are under the County Manager's segment and we have included an update on request for proposals on the jail facility and the juvenile facility and I'd like to give the members an update of where we are and seek some guidance from the Board.

Secondly, Mr. Chairman, I would like to discuss also groundbreaking on the new facility that the County has for the Justice Center out by the jail. So, Mr. Chairman, we'd like to add those as amendments and those are the only two amendments.

The tablings, Mr. Chairman, are under section X.D. and they are set in blue and are items 1, 2, and 3 relating to AT&T Wireless Cellular Facility, Santa Fe Down Pojoaque Pueblo, and the Downs liquor license. All three of those, Mr. Chairman, have been tabled. Also, Mr. Chairman, I would like to point out that item X D.6, the Village at Rancho Viejo de Santa Fe, has also been tabled - requested by the developer to be tabled.

Those are the tablings today, Mr. Chairman.

**CHAIRMAN DURAN:** Sam, I thought that Commissioner Gonzales had asked since he's not going to be here, that the Commission table item VIII B, which is appointments to the County Development Review Committee; did he have that conversation with you?

**MR. MONTTOYA:** Mr. Chairman, I did not have that conversation. I'm sorry but I am not aware of that.

**CHAIRMAN DURAN:** Well he called and asked me if we would be willing to table the appointments until the next meeting and I offered to make the recommendation and ask how the other Commissioners felt.

**COMMISSIONER TRUJILLO:** Mr. Chairman, that's the same conversation that I had with him and I also agreed with him. This item should be tabled to give Commissioner Gonzales a voice in the process.

**MR. MONTTOYA:** Mr. Chairman, he did phone me just prior to this meeting convening and I couldn't take his call, so that might have been his request. But I did not talk to him directly.

**CHAIRMAN DURAN:** What do you think?

**COMMISSIONER CAMPOS:** Well, Mr. Chairman, he has made a recommendation to his district so I don't think there is any need to table. I would move that we consider that.

**COMMISSIONER TRUJILLO:** I think we've got two at-large positions and I think that it is important for him to participate. We each have identified the person that we want to sit on the committee, but I think that the body as a whole should act on the two at-large positions.

MR. MONTOYA: Mr. Chairman, the commission could appoint their respective members from each of their respective districts and leave the other two at large for another date – perhaps the 26<sup>th</sup> meeting.

CHAIRMAN DURAN: How about that?

COMMISSIONER CAMPOS: I would say, let's do it now.

CHAIRMAN DURAN: What you're – what do you think Commissioner Sullivan?

COMMISSIONER SULLIVAN: Does Commissioner Gonzales have a preference for the at-large position?

CHAIRMAN DURAN: He has indicated to me that he does. I do not know who those are through.

We can respect his request, as he respected your request to reappoint the members of the CDRC or we can continue and move forward on this item with the possibility that we would have two for and two against any of the appointments and maybe then it would be a waste of everybody's time.

I'd like to make a motion that we table this item until the next meeting. I don't mind just tabling the at-large appointments and then moving forward tonight on the other ones.

COMMISSIONER TRUJILLO: Second.

COMMISSIONER SULLIVAN: So the motion is to table the at-large appointments, Mr. Chairman?

CHAIRMAN DURAN: Yes.

COMMISSIONER SULLIVAN: In my discussions, there is one other applicant, Mr. Gene Bassett, that also is a current CDRC member from Edgewood. He is not listed in the submittal because I do not think he submitted his request in time to get it in the book. It was dated, I think, the 6<sup>th</sup> of June. That makes four.

CHAIRMAN DURAN: Is Bassett someone that you are considering?

COMMISSIONER SULLIVAN: Yeah, he's the only one from the Edgewood area that has been on the committee and from that part of the County.

CHAIRMAN DURAN: And you would like to have him appointed?

COMMISSIONER SULLIVAN: That would be one of my recommendations. But my recommendation is already there for my nominee and that is Mr. Dayton.

COMMISSIONER TRUJILLO: I guess we could consider Mr. Bassett along with the other candidates for the two at-large positions.

COMMISSIONER SULLIVAN: That's what I am saying. I'm okay with moving forward on the five that are designated now and reconsidering the others later.

CHAIRMAN DURAN: There's a motion dealing specifically with this amendment to the agenda, not the other ones mentioned before. So specifically this item, there's a motion to table the at-large until the next Commission meeting and go forward with the ones selected by the Commissioners.

The motion passed by unanimous voice vote.

STEVE KOPELMAN (County Attorney): Mr. Chairman, just a clarification: Land Use items X.D. 1, 2, 3, and 6 are being proposed to be tabled. I would ask that they are expressly table them to the next land use public meeting on July 10<sup>th</sup>.

COMMISSIONER TRUJILLO: So moved, Mr. Chairman.

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: Okay, why don't we take the whole agenda as amended. So the motion is to approve the agenda as amended.

COMMISSIONER TRUJILLO: As amended.

The amended agenda passed by unanimous voice vote.

**VI. APPROVAL OF MINUTES**  
**May 8, 2001**

CHAIRMAN DURAN: Any changes?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Page 14, on the comments by myself about halfway down, it's just a typographical. The sentence that read, "I think although I have not problem" it should be "no." Two lines below that word "lien" should be "lean."

CHAIRMAN DURAN: Any other changes?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: On page 27, again about halfway down, the paragraph that starts out with the word "why" and the second line says, "suddenly becomes a facto" and that should be "de" facto. And then on page 48, halfway down in the middle of my comments it reads, "I am not..." and then I don't know what that word is "f-i-n-a-l-a-n-c-e." I'm not sure what has been transcribed there. I can't fill in the right word.

CHAIRMAN DURAN: Tell me one more time -

COMMISSIONER SULLIVAN: Page 48, middle of the page, under the paragraph that has my comments its says, "I'm not...my finance..." and I don't know what I'm trying to say there.

COMMISSIONER CAMPOS: Is it substantive; do you think?

COMMISSIONER SULLIVAN: I don't even know that. I just don't know what the transcription is there. Perhaps the recorder can go back and - it just doesn't right to me. I just ask that we go back and check that one item and I'd be glad to go along with approving the minutes with some clarification on that one item.

COMMISSIONER TRUJILLO: Okay.

CHAIRMAN DURAN: Any other changes or comments. The Chair will entertain a motion to approve the minutes of May 8, 2001.

Upon motion by Commissioner Trujillo and second by Commissioner Sullivan, the minutes of the May 8, 2001 meeting were unanimously approved as amended.

**May 14, 2001: Budget Hearing**

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Page 33, halfway down, the word "think" should be "thing." Page 73, third line, the word "know" should be "now" and finally on page 81, fourth line from the bottom, middle of that line, the word "it" should be "if." "If we did get a transportation package."

Upon motion by Commissioner Sullivan and second by Commissioner Trujillo, the minutes of the May 14, 2001 meeting were unanimously approved as amended.

**May 30, 2001: Special Meeting**

CHAIRMAN DURAN: Any changes, Commissioner Sullivan?

COMMISSIONER SULLIVAN: As a matter of fact, I do, Mr.

Chairman.

CHAIRMAN DURAN: You do?

COMMISSIONER SULLIVAN: Yes, sir. On page seven, these are summary minutes and not verbatim minutes and about two-thirds of the way down where there are comments by Mr. Frazer, Chair of the Sierra Club, indicating his support of the transfer of development rights program, I just wanted to include in those minutes that his support also included on behalf of the Sierra Club support for the four amendments which I had proposed and which had handed out prior to the meeting and that is not indicated in the summary here.

And unless any other Commissioners have amendments I would move for approval as amended.

Upon motion by Commissioner Sullivan and second by Commissioner Trujillo, the minutes of the May 30, 2001 meeting were unanimously approved as amended.

**VII. Staff and Elected Officials Items:**

**B. Fire Department**

**1. Update on the Santa Fe County Urban-Wildland Interface Code Coalition**

HANK BLACKWELL: Mr. Chairman and members of the Commission, thank you for moving this up on the agenda. Hopefully, both of these are

brief. We were directed to come back and report to the commission at the public hearing when we tried to introduce the Urban Wildland ordinance. What we've done is formed a coalition and our first true organizational meeting, not conference calling or individual meetings, was scheduled for the last gas leak. Consequently, we had to reschedule that meeting. It is scheduled now to commence at 5:30 p.m. on Wednesday the 20<sup>th</sup> of this month at this location here. You are welcomed to attend.

We have a great deal of interest for those people on the Commission. We should have a draft of a local ordinance from the County Attorney's office at that time or shortly thereafter for the coalition to consider. We're also going to have them consider another program, the Fire Wise Community Program, that we're piloting nationally in the Hyde Park area. So we hope to ask them to look at voluntary programs in fire prevention programs. That will be our task, it will be a process that will take some time but we will report to you based on our findings and the participation of the coalition that is underway.

CHAIRMAN DURAN: Any questions?

COMMISSIONER CAMPOS: Question.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: How many people on this coalition?

MR. BLACKWELL: Currently we have 14 volunteers to participate.

We've got probably 16 to 18 people who have said they want to attend and participate. Most everyone of those individuals state that they will bring one or two other individuals from their neighborhoods associations to attend as well, and I hope that happens. So minimally we should have at every meeting 10 to 15, but hopefully it will be twice that number.

COMMISSIONER CAMPOS: How did you select the members?

MR. BLACKWELL: Mr. Chairman and Commissioner Campos, there was no real selection: it was voluntary. What we did was ask - a lot of the people that had a lot of concerns and were very outspoken against the wildland code that was presented several months ago, those were the people that came forward and said they wanted to participate and wanted to be involved and we'd like to have our neighborhoods involved. It's been strictly voluntary and wide open. We've passed the word along to many people and I think that it has even been in the paper once as well.

Right now it is voluntary and we're trying to encourage as much participation as we can.

COMMISSIONER CAMPOS: Thank you.

CHAIRMAN DURAN: Any other questions?

MR. KOPELMAN: Mr. Chairman, just real quickly. Hank, do we have a date when the next public hearing is going to be on this ordinance?

MR. BLACKWELL: No, sir, we do not. I think the suggestion and the reminder from our attorney is that it would be wise for us to go ahead and set up another date if we are going to consider an ordinance or code and the Commission may want to set another date. That will also help task this coalition with that part of their

objective which is to consider a local code and come to you with their recommendations. It may actually help them move forward more efficiently.

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: Essentially, Hank, you've been working very hard on this ordinance and at this point the process is taking the ordinance into the community and giving impetus to a fluid and dynamic process with participation from the community so that there is vying across the board; is that correct?

MR. BLACKWELL: Mr. Chairman and Commissioner Trujillo, yes, sir, what the process will be as we hope to condense a local code at a working draft level and Sally Melave is working diligently on that, it's amazing, and combining several of our codes now so that we don't reiterate things that we have in our fire codes or land use codes and looking at the notes as well as the minutes from that public hearing meeting and addressing all of those in a working draft so that it is condensed and we can address those concerns.

In that working draft, we then plan to hand that to members of this coalition and is something that I think will be available to anyone that would want a copy and that's the working draft that this coalition will work toward getting comments back to the attorney's office and my office and kind of having several iterations of that draft until we get close enough that we can come to the Commission and I think that the recommendation may be the August 14<sup>th</sup> Commission meeting that we could come and report to you that here is what we've come up with and hear our concerns and here's how we feel about what is before you.

CHAIRMAN DURAN: Great. Thanks for the update, Hank.

#### PUBLIC HEARING

**B. Emergency Ordinance No. 2001-8 An Emergency Ordinance declaring Hazardous Fire Conditions Warranting a Situation in Santa Fe County to Impose Restrictions on Fireworks, Open Fires and Smoking within Santa Fe County**

MR. BLACKWELL: Mr. Chairman and members of the Commission, this is identical to what we've done every year over the past four years. What we've attempted to do here - I might make one minor correction. What we've done is combined these two issues into one emergency ordinance and we did that last year. This emergency ordinance, the good news is that the last three years I've come before you the first week of May because we've been at extreme conditions. But with some of our rainfall and some snowfall our fire season was shorter and that's the good news. The bad news is all of the indices that we have to look at before we can move toward suggesting this emergency ordinance and this restriction have been met in terms of fuel moisture content, in terms of the energy release component of the available fuels in the forest at all elevations, as well as wind and a lot of the other indices that both the National Forest Service, the state



Forestry Division as well as the National Park Service and BLM use to determine their fire restrictions. Last Thursday there was a multi-agency conference call of which the County was involved and most all of the federal agencies and the state agencies. And the indices are so extreme that all of these agencies went into full fire restrictions on June 9<sup>th</sup>. Which was last Friday. We wanted to parallel that and I told them the closest we could come to that was the 12<sup>th</sup> because of our political process.

Based on those indices and based on being parallel with all those other agencies which is also a requirement of the state code in terms of fire works restrictions, those have all been met now in terms of the extreme fire danger in the County and consequently, that is why we're before you requesting approval of this emergency ordinance as we've done in the past years.

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: Considering the situation that exists throughout the state regarding the dry conditions, I move approval of this ordinance.

MR. MONTOYA: Mr. Chairman, this is an ordinance so it has to be a public hearing.

CHAIRMAN DURAN: Thank you. Any other questions of Hank.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Blackwell, does this ordinance give you the authority to rescind the restriction if within the next 30 days the floods come?

MR. BLACKWELL: Mr. Chairman and Commissioner Sullivan, yes, it does. There are several conditions in this ordinance: one involving fire works that according to state law if indeed we restrict fire works use we can only do it for 30 day increments. If the conditions still warrant another restriction, I will come back before you and request that in four weeks at that next meeting and it will be on the agenda. The other thing that it does is it - the ordinance states that these restrictions will remain in effect until the Fire Marshal rescinds them based on conditions or for one year, whichever is sooner. That's the way we've written it for the last several years. So normally in June or August when we get our monsoons and our fuel indices, the moisture contents move up and our relative humidity move up and at that point of time I usually issue a media release and I also notify the commission that we can rescind the ordinance - they've never last more than about 60 days, usually even less than that. But there's a condition in this ordinance that allows that.

COMMISSIONER SULLIVAN: It is unlikely that it will be rescinded the 4<sup>th</sup> of July?

MR. BLACKWELL: In the past three or four years since I've been here with the County, it has not been.

COMMISSIONER SULLIVAN: Thank you.

CHAIRMAN DURAN: This is a public hearing: is there anyone out in the audience that wants to address the Commission concerning this ordinance? Please step forward. Please state your name and address for the record.

CARLA ARAGON: Carla Aragon, HPR 64, Box 20E, Chimayo. I'm actually here because I understand the conditions are for a ban on fireworks and historically speaking it has happened every year. One of my concerns are the public be given the opportunity and the information for whether they are banned and if so, when the bans are lifted. Because I work in the industry one of the biggest issues that we have had historically speaking is that when the bans are lifted they haven't given us, the public, the information isn't given out so we can either continue our business or attempt to recoup what our losses have been.

Just like everybody else, I live in this county and I'm concerned about what happens and I don't want the fires to happen. And we're willing to work with the county but give us the opportunity to also know what's going if we can lift those bans because I think in the past few years the bans have been lifted three or four days prior to the 4<sup>th</sup> but the information is not to the public so they're coming to us and we're not getting information from the County Marshal to know whether we can sell or not.

So I'm just here to speak my words to let the public know what is going on exactly because the media has projected that everything is illegal or that fireworks aren't allowed and that's my concern in getting that information out.

CHAIRMAN DURAN: How would you suggest we could do that?

MS. ARAGON: Actually, I didn't find out about this hearing until somebody called me and said there was a hearing regarding fireworks. I try to read the paper daily and I don't know if it was posted anywhere - I just think if it's an emergency situation the information has to get to either the media, like the *New Mexican* where most people get their information on a timely manner or also just to use the radio - because it is a big holiday and a lot of people want to know what to do. They want to be safe also.

CHAIRMAN DURAN: I think we have notified the newspapers in the past. I recall seeing it in the paper when the ordinance has been lifted. Sam, can you - if we lift it by the 4<sup>th</sup> of July can you make sure the public is made aware of it. Steve?

MR. KOPELMAN: Mr. Chairman, members of the Commission, the ordinance by its terms is dealing with two different issues. But state law and the ordinance provides that the fireworks ban is only effective for 30 days. It will expire automatically in 30 days unless it is brought back to the Commission. You would have to extend and issue a new proclamation under state law in order to extend the fireworks ban over 30 days.

CHAIRMAN DURAN: We'd have to have a special meeting?

MR. KOPELMAN: Either a special meeting or this matter would have to be brought up at the next meeting or the subsequent meeting. But as it stands now, the fireworks ban expires by its terms in 30 days or before that if the Fire Marshal declares that the danger is past and it is no longer an emergency.

MS. ARAGON: So can the Fire Marshal lift the ban and how does the public - I mean, do we have to have a special meeting for him to do that or how is that information given out?

MR. KOPELMAN: Mr. Chairman, members of the Commission, if the Fire Marshal makes a determination before the 30 days that there is no longer a fire

hazard, that matter then would – we would get that information to the newspapers and just make sure we disseminate it to the full extent that we can. And I would also say that if you would like notice, give the Fire Marshal your name and phone number.

MS. ARAGON: Thank you.

CHAIRMAN DURAN: If the Fire Marshal decides that it is safe to have fireworks on the 4<sup>th</sup> of July and he decides that on the 1<sup>st</sup> it doesn't have to come before the BCC to amend or repeal this ordinance?

MR. KOPELMAN: Mr. Chairman, for the fireworks it doesn't.

CHAIRMAN DURAN: It does not?

MR. KOPELMAN: No.

CHAIRMAN DURAN: Okay. So when we read in the paper that the Fire Marshal says it's okay to light fireworks on the 4<sup>th</sup> of July then we can do it?

MR. KOPELMAN: Mr. Chairman, I think that he would notify the manager and discuss it with the manager and then notify the Commissioners prior to making a formal proclamation.

CHAIRMAN DURAN: Okay.

UNIDENTIFIED INDIVIDUAL: My question is can he rescind the law or do we have to have another special meeting to do that and basically they have answered that.

CHAIRMAN DURAN: Anyone else out there that would like to address the Commission?

Commissioner Trujillo moved to approve Ordinance 2001-08. His motion was seconded by Commissioner Sullivan and Ordinance 2001-08 was approved by roll call vote as follows: voting for were Chairman Duran, Commissioner Sullivan, Commissioner Trujillo and Commissioner Campos.

CHAIRMAN DURAN: Did you want to say something quickly?

MR. BLACKWELL: Yes, Mr. Chairman, once this is approved, we will issue a media release to all the radio stations and newspapers. If we do rescind this we do the same thing via phone and writing as well as the County Manager's advice we'll do that. If there are other public members I can call directly, we'll do whatever we can to make sure that is noticed beyond the media.

CHAIRMAN DURAN: Great, thank you, Hank.

MR. BLACKWELL: Thank you.

### VIII. CONSENT CALENDAR

CHAIRMAN DURAN: Since there's only three items, should we just take them one-by-one? Okay, we'll do that.

**A .Resolution No. 2001-79 A Resolution Requesting a Budget Increase to the General Fund (101)//Region III Grant Program Reimbursement Revenue Received from the US Department of Justice for Expenditure in Fiscal Year 2001**

KATHERINE MILLER (Finance Director): Mr. Chairman, members of the Commission, I actually don't have a memo on this but essentially the Sheriff's region 3 grant provided for some overtime that has already been expended and we're just asking to budget that - the Sheriff's Department would like to budget that money.

CHAIRMAN DURAN: Any questions of Katherine?

COMMISSIONER TRUJILLO: Do you want to vote on these one-by-one or should we listen to all of them and then vote.

CHAIRMAN DURAN: Okay.

**Resolution No. 2001-80 A Resolution Requesting an Increase to the Indigent Fund (220) to budget Additional Gross Receipts Tax Revenue Received for Expenditure in Fiscal Year 2001**

MS. MILLER: Mr. Chairman, Commissioners, the Indigent Fund has additional indigent hospital bills to pay this year and there is additional gross receipts revenue to cover those and we're requesting to budget that \$117,000 of additional revenue to cover those hospital bills.

CHAIRMAN DURAN: Okay, thank you, Katherine.

**Request Adoption of Findings of Fact and Conclusion of Law for the Following Land Use Cases:**

1. CDRC Case #S 01-5050, Santa Cruz County Housing (Approved)
2. CDRC Case #Z 01-5040 AT&T Wireless (Approved)
3. CDRC Case #M 00-5955, LaFarge Mine Zone Creation (Approved)
4. CDRC Case #V 99-5661, Santa Fe Horse Park Variance of Pump Test Requirement (Approved)

CHAIRMAN DURAN: Any questions of Steve regarding these items? Okay, Chair will enter a motion to approve the Consent Calendar.

Commissioner Campos moved to approve the consent calendar as presented. The motion was seconded by Commissioner Trujillo and passed by unanimous voice vote.

**ADMINISTRATIVE ITEMS**

1958974

**A. Committee Expirations/Resignations/Vacancies**

**1. County Development Review Committee**

ROMAN ABEYTA (Deputy Land Use Administrator): Mr. Chairman, as directed by the BCC and in accordance with the resolution that was adopted on May 8, on May 14<sup>th</sup> all CDRC members were asked to resign effective July 26, 2001 and we have received those resignations from each member of the CDRC.

CHAIRMAN DURAN: Okay, the Chair will entertain a motion to accept the resignations.

Commissioner Trujillo moved to accept the resignation. Commissioner Campos seconded and the resignations were accepted by unanimous voice vote.

**B. Committee Appointments:**

**1. County Development Review Committee**

CHAIRMAN DURAN: Roman.

MR. ABEYTA: Thank you, Mr. Chairman. After polling the BCC, the following nominations have been submitted in accordance with the adopted resolution. Commissioner Trujillo has nominated John Paul Romero, a current CDRC member. Commissioner Duran appointed Louie Gonzales, a current CDRC member. Commissioner Gonzales has appointed Brian Gallegos. Commissioner Campos appointed Kathleen Holian and her resume is attached and Commissioner Sullivan has nominated Donald Dayton and his resume is attached as exhibit B.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: I'd like to make a motion to nominate all five recommended by the five Commissioners.

COMMISSIONER TRUJILLO: Second, Mr. Chairman.

The five nominees were unanimously appointed to the CDRC.

**IX. Staff and Elected Officials Items:**

**C. Finance Department**

**1. Request Authorization to Accept and Award a Professional Service Agreement to the Highest Qualified Respondent, RFP #21-49, for the Financial and Compliance audit for the Year Ending June 30, 2001.**

MS. MILLER: Mr. Chairman, Commissioners, the Finance Department is requesting authorization to enter a professional services agreement with Neff and Ricci for our County audit. This is an audit required by the state and Neff and Ricci was the only response from the proposal the county received. We had Barraclough and

Associates for the past six years but by state law we cannot use them – there is a six year law and then a two year with a different auditor for at least two – there has to be a break of at least two years. And Neff and Ricci have proposed in previous years against Barraclough and have been very competitive with them.

The terms of the is \$62,183.88 for the entire County including enterprise funds and also some preliminary work on the GASB 34 requirement. So I'm requesting authorization to award that contract because we need them to start, actually, as soon as the contract is awarded. .

CHAIRMAN DURAN: Any questions of Katherine?

COMMISSIONER TRUJILLO: What was the amount of last year's contract, Katherine?

MS. MILLER: Mr. Chairman, Commissioner Trujillo, last year's contract was \$60,350 and that did not include any of the GASB 34 requirements and about \$3,000 of this year's proposal is to help us to start to implement those requirements.

CHAIRMAN DURAN: Any other questions of Katherine?

COMMISSIONER CAMPOS: Quick question.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Again, we only had one applicant and it seems like in a lot of cases we're only getting one person applying for a contract. How much advertising are we getting or is there a problem finding CPA firms that want to do this type of work?

MS. MILLER: Mr. Chairman, Commissioner Campos, we sent out 19 solicitations. There are only 75 authorized audit firms in the state that can do government audits and most of those are in the southern part of the state and most of the counties and public entities are having difficulty getting audit firms to propose on these audits. As I said, last year we only had two propose and we called quite a few of them asking them to propose and they said that the government requirements are very cumbersome and they can only do so many government audits as well and that's regulated by the state auditor.

COMMISSIONER CAMPOS: Is this firm from Santa Fe or what part of New Mexico?

MS. MILLER: I believe, Commissioner Campos, that this firm is from Albuquerque for their main office, but they do audits all over the state. They've done the city of Farmington, Cibola County, Bernalillo County, Albuquerque, City of Albuquerque, and several state agencies as well.

CHAIRMAN DURAN: Any other questions of Katherine? What's the pleasure of the Board?

Commissioner Trujillo moved to award RFP #21-47 to Neff and Ricci. His motion was seconded by Commissioner Sullivan and passed by unanimous voice vote.

**D. Land Use Department**

**1. Request Direction on Present and Future Local Development Review Committees and the Structure of Such Committees**

TOM DOMINGUEZ (Development Review Director): Thank you, Mr. Chairman, I will be as brief as possible.

During the budget procedures and then again at last month's public hearing meeting we were directed to come forward with a plan on how we're going to handle the current structure and the future structure of the CDRC and the local development review (LDR) structure. As you're aware, currently we have the CDRC, we've got the Agua Fria Development Review Committee, the Tesuque Development Review Committee and the La Cienega Development Review Committee. And I would call your attention to attachments 4 and 5, the last two pages of this packet material, the problem lies in that currently with the rapid growth with community plans and whether they're traditional, historic, or contemporary or the districts - we have if you look at attachment number five the possibility of the potential of 17, it says 16, but it is actually 17 committees. The four that we currently have and this is in addition to the EZC and EZA as well. The Community College District, the Airport Development District, and then on down the line.

We're faced with the reality of each committee having a total of 12 deadlines and the deadlines range from the submittal deadlines, the review meeting deadline notice to applicants, notice to the *New Mexican*, applicant posting and publishing, etc. That's 12 deadlines and then there is the legal review meeting and then the actual meeting itself and then you multiply that by seven meetings that we've got including the Board of County Commission meeting.

I would say that we've taken into account some of the response we've got from especially the local development review committees. One is the difficulty we find to find a full board or a full committee. And then we also get the response from the committees such as Agua Fria, they tend to feel that they're being pitted against their neighbors and the community. It starts off that they're serving the community and then they wind up getting in some precarious situations that they don't feel real comfortable in.

So given that and the direction that we have from the Board, what we did is, and I'll call your attention to attachment 4, and I know that Commissioner Gonzales is not here but we have talked with somewhat on this and we will again, because today we are just looking for direction. What we're intending or what we would like to propose given the task that we were given is to keep the CDRC intact as you have recently appointed and then with the two at-large, they will continue with the same jurisdiction and then we would like to propose either one local development review committee which would consist of representation from all the current local development review committees that are in place and any that might be added or an option of a possible two DRCs and that could be done in any number of ways. It could be a northern region and

a southern region or it could just be two boards that have representation from different areas and different regions of the county.

What we've done now, for example purposes, we've contemplated what communities might have things in common and that's the way we've broken it up here. And then we've also proposed what we would call a planning district development review committee and that would be like the Santa Fe Community College District currently and we would initiate that as soon as this Board appoints that and then with the coming in of the Airport Development District, the Redevelopment District and the different areas such as that they would then come on board with this planning district board.

That is pretty much it in a nutshell. One more thing that I would add is that because the ordinance currently allows for the creation with each community, what we would propose is not to change that but we've put our minds together and maybe what we ought to do is appoint them as a planning and development commission if you would that would not so much be un-staffed but wouldn't be a recorded meeting and would be something that they would have to have but then the actual development review and taking action process would be through the local development review committees. We feel that it would be somewhat of a development - for example if you look at LDRC 1 and look at the cosmetics of those six communities we have in there and if we had representation of all six, be it six and one at large, they could glean information from different communities. That's the thought process behind this.

One of the big problems that we have noticed and it has been apparent for some time is the potential for legal liability, violations of open meetings act, and things of that nature and if you should require clarification, I would defer to Steve Kopelman.

I'm open for questions.

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Yes, Commissioner Trujillo.

COMMISSIONER TRUJILLO: I can see where the ubiquitous set of local development review districts would have some political and/or pitting families against families and neighbors against neighbors and probably would not be conducive to be doing a good job. As you said, these people are placed in a precarious situation. So in looking at your attachment 4 of recommendations and having a local development review district with representation from throughout the county either a northern development review district and a southern development review district, I can see that as being more conducive to overseeing planning and land issues from a more holistic stand point of not having the influence of neighbors and relatives and things like that.

I would conjecture that this scenario would work better and we would not see this proliferation of local development review districts which essentially are not serving the purpose that they should be serving.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I agree with Commissioner Trujillo. I think, Tom, that this is a good cut at trying to resolve this problem. On one hand it is a



problem and then on the other hand we're victims of our own success in that we're getting people involved in the planning process and it's becoming a bit unwieldy for the staff to manage it and I understand that.

I would offer a few suggestions and by way of clarifications and refinements. The first would be a question: on the planning district development review committee, would they have the same authority as an LDRC?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, that is correct. The reason we set them separate is because as you look at the LDRCs they fall under the guise of the County Code, whereas the planning districts have developed their own ordinance where they have a minimum standard and they say let's go from there up. And so that was the reason but they would have the exact jurisdiction.

COMMISSIONER SULLIVAN: I understand and that makes sense. And my understanding is that you're only proposing one which would be the initially the Community College District and then once the Airport Development District completes its plan, the wrapping of the Airport District into that; is that correct?

MR. DOMINGUEZ: That is correct. It could be structured that if it is within one year we could add a couple of members onto that and then at the end of the year restructure it.

COMMISSIONER SULLIVAN: My suggestion in that regard is that you know we have a resolution and we have nominees who have been submitted and I think it is due to come up at the next BCC meeting for the establishment of the Community College District LDRC or whatever you would want to call it, I would like to move forward, of course, with that, with the appointment of those five members and then as the Airport Development District came into being we could add two additional members and phase them into the committee and then, of course, rotate as terms allow.

I think that would work. I think there are some similarities between those two districts as you indicate in your memo they are the most heavily impacted and they could gain knowledge from each other. So I think that makes some sense.

The other thing I would throw out for consideration is what to do if you don't get a member from these communities. There is reluctance sometimes because of the distance to travel and so forth to get a member from a particular community to participate. And we don't want to drag someone onto the committee because then they won't participate actively and we'll have the attendance problem that you've referred to. So I guess my only suggestion that I can think there is that if we couldn't get a representative for example from one of those seven communities that you list under the LDRC for attachment 4, then that position be considered an at-large position to be designated by the BCC.

I'm just trying to figure a way of getting active participants and -

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, we have found out that it has been difficult to staff a full board and we have always found that there is somebody in a community that would like to participate but in the event that there's not, we would structure as we're directed or as we're guided by this board.

COMMISSIONER SULLIVAN: Just in the event that there is not, we'd want to, of course, put out as much effort as we could to get someone from each community. I think that there's good interaction there between community issues to have these members talk to each other. But I just want the mechanism there that we're not short a member because we can't get someone from one of those seven communities.

That would be my suggestions, Mr. Chairman.

COMMISSIONER TRUJILLO: Mr. Chairman.

COMMISSIONER SULLIVAN: Oh, and one other thing, excuse me. I didn't see in your breakdown in attachment 4 between LDRCs into 1 and 2, I didn't see Lamy on there and is not Lamy doing a plan.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, apparently not.

COMMISSIONER SULLIVAN: They're not included in the Eldorado area plan which I think is being called something other than Eldorado area. So my guess is and I think the discussion was that they are a different community and they might eventually want to be - want to have their own specific plan.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, the ones that we've identified when you look across attachment 5 with the 17, those are the communities that have stepped up already and expressed interest with Land Use and Planning that they would like to start one up. Just because they are not on this list does not preclude them from this list but it is just that they haven't identified the need.

COMMISSIONER SULLIVAN: Okay, suppose that happens then, would the number of members be adjusted? Let's say that Lamy decided and in fact completed its own plan separate from Eldorado area then there would be seven communities under LDRC number 2; how would we handle that?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, a board of nine is still manageable. So we could probably fit them in that way.

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: Tom, I see LDRC 1 we've got SNAC in there; can we make them a planning district? It didn't seem that they have anything in common with Agua Fria, Tesuque, La Cienega, Arroyo Seco or the Pojoaque and Santa Cruz Valley. Can you have them do the appropriate planning understanding the specific needs - I mean it's an area that stands by itself; could that be designated as a planning district rather than include it with an LDRC scenario?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, we can definitely look at that and see where they would better fit.

COMMISSIONER TRUJILLO: It seems to me they would fit better in a planning district.

MR. DOMINGUEZ: We'll look into that.

CHAIRMAN DURAN: Okay, so the direction to staff is to move forward with this process using number four as the guideline.

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COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I think Commissioner Campos brought this up initially and I haven't heard any comments from him. So I wondered if this looks like what you had in mind, Commissioner Campos?

COMMISSIONER CAMPOS: I brought this issue up a few months ago. I like what you've come up with Mr. Dominguez and I think that it is something that we can live with and it looks more efficient and effective. I think it will be better for staff. I like the plan. I think Commissioner Sullivan's suggestion of maybe two at-large or two substitutes in case you have some difficulties in getting a quorum. That's what I would propose. I don't know whether there's consensus or a need for a vote at this time.

CHAIRMAN DURAN: We need to give staff direction.

COMMISSIONER TRUJILLO: Just one question. As part of the planning process how are you looking at like Pinon Hills and all of those areas outside of SNAC that are also involved in their own community planning process?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, they would fit under the traditional contemporary communities so they would be eligible to fit in here. It may come to a point in the future when everybody steps up that we might need three and hopefully by then we'll be before you with new FTEs.

And as much as I would like to take credit for all of this work, I had a lot of help from planning staff and my staff and legal.

CHAIRMAN DURAN: Good work. I guess the direction is go for it. Can you bring it up as an ordinance or a policy change?

MR. KOPELMAN: Mr. Chairman, members of the Commission, we would bring forward an ordinance and also probably bring you some resolutions or at least start working on that aspect of it.

CHAIRMAN DURAN: And it would be open for public comment?

MR. KOPELMAN: That's correct, Mr. Chairman.

CHAIRMAN DURAN: Maybe you could get representatives from each of the existing LDRCs to come in and share some of their experience with us.

COMMISSIONER TRUJILLO: Good idea.

MR. DOMINGUEZ: We could do that, Mr. Chairman, and we will also be in conversation with Commissioner Gonzales as well.

CHAIRMAN DURAN: Thank you. Oh, and by the way, Commissioner Gonzales wanted me to read this into the record:

*Dear fellow Commissioners and members of the public: I regret that I am unable to attend today's Commission meeting. I am on travel to Washington DC. In my trip I will lobby the Congress on programs important to Santa Fe, namely the community development block grant program and homeownership programs. As you know both programs are of significant importance to us. I will be meeting with, among others, our US Senator Jeff Bingaman and US Housing and Urban Development Secretary Mel Martinez.*

*I will be sure to keep you informed of my progress in Washington DC and, again, I apologize for my absence and wish you the best of luck today.*

## **2. Request Authorization to Proceed with Negotiations for the COLTPAC Phase III Recommended Projects**

CHAIRMAN DURAN: This wasn't noticed as a public hearing but when the presentation has been made we will open it up for public comments. Alina.

ALINA BOKDE (Planner): Thank you, Mr. Chairman, Commissioners, staff is here to present the COLTPAC recommendations for Phase III projects on behalf of the committee. Staff will do a brief presentation and run through all the properties and funding for these projects will come from the second open space bond which is for a total of \$8 million. At that point, staff will be happy to take any questions and also COLTPAC members present that can answer any questions from the Board.

Staff today is requesting authorization from the Board to proceed with negotiations for the recommended projects with the recommended condition.

Just very quickly - the 2000 General Obligation Bond language allows for acquisition of real estate and easement for open space, trails and related facilities. The language is primarily as the first open space bond. The bond language also calls for an independent citizens oversight committee and a regular audit.

Staff would like to take this opportunity to introduce the committee members of COLTPAC. There are 11 members and 2 alternates and these members represent the various county region: north, central and south, as well as having many diverse views and come from rural as well as urban communities. The members that are here, if you could raise your hand or stand up: Edward Archuleta represents the City of Santa Fe; Rick Dotson is with the Town of Edgewood; Susan Martin is from the northwest Santa Fe area; Matthew McQueen for the City of Santa Fe; Bruce Richardson from the Community of Chimayo; Orlando Romero, also with Santa Fe; Robert Romero, the community of La Cienega; Eduardo Vigil, La Puebla; Arlene Walsh with Edgewood; Mary Louise Williams with Jacona; and, then our two alternates are Dave Gold from the westside of Santa Fe and Robert Findling within Santa Fe.

The Phase III review process began at the beginning of the year and the committee has met regularly to develop their recommendations that are before the board. This committee has worked hard. For example, they have met at least once a week for the past two months and have had many long days and nights. We definitely welcome the new members who have offered some fresh insights.

The COLTPAC vision is to achieve good value for County tax payers, support projects that benefit communities and have evidence of community support, protect significant resources, create a system of open land and trails to achieve the plan goals, provide recreational opportunities, insure equity and distribution of projects and protect scenic quality of the properties.

The following is the Phase III project review and evaluation process. The committee reviewed all applications and then conducted site visits with the applicant, community organization and community members. Step three they evaluated the project based on the criteria. The criteria includes threshold general and specific which emphasizes properties that have significant cultural, historic, natural, or recreational resources. The committee determined their preliminary recommendations and prioritized their projects. They held a number of public meetings to take public comment on the preliminary recommendations and then based on distribution of projects they determined the final recommendations and those are the projects before the Board today.

The Phase III project recommendations – you have a table that basically outlines the project recommendations from COLTPAC. There are seven projects for this phase that are recommended with a total allocation estimated at \$5.82 million. There are two projects that are under consideration and these projects will come before the board in the near future with a recommendation from COLTPAC and there are five projects that are not recommended.

The first project is the 27 acre piece in Chimayo, the potrero behind the Sanctuario de Chimayo. It had a high criteria score of 79.9 percent and has very strong community support. The asking price is between \$525,000 and \$600,000. The site contains acequias, riparian vegetation and is used for farming and pasture. If the board approved of this recommendation we would build upon an existing 17 acre property that is currently under negotiations and will assist in protecting practically the entire buffer behind the Sanctuario de Chimayo and the property also borders BLM land.

The next property recommended for acquisition is the Mt. Chalchihuitl property. This property also received a high criteria score of 70 percent. It has very strong community support. The Cerrillos Hills Park Coalition is very active in the existing property, the Cerrillos Hills Historic Park and is also willing to support long-term management of the property. This is a 430 acre site and the asking price is between \$345,000 to \$515,000. The property is currently on a State Register of cultural properties and may be eligible for listing in the National Register of Historic Places.

One of the significant resources that this property has is some of the most prehistoric mining remains in North America. And this property again would continue to build on the County's existing open space which is the 1,100 acres at the Cerrillos Hills Historic Park.

The next property that is recommended is the Arroyo Hondo property. The score is – the criteria score is 64.6 percent and contains very significant riparian vegetation. It is 86 acres and located at the entrance of the Arroyo Hondo community. This site contains pueblo ruins, acequias, hill tops of views and arroyos and trails. And this property also have great educational potential with all its various resources.

The recommendation from COLTPAC is that partial funding is recommended. They're recommended that appropriately \$600,000. The landowner may donate and the community has also agreed to raise additional funds. So generally the County's

commitment would be about 2/3s of the appraised value which is expected to run around \$600,000.

The next property recommended for acquisition is the Penasco Blanco. This is 12 acres within the traditional community of La Cienega and the asking price is \$224,000. The property lies along the Camino Real and has very significant rock outcroppings and visual qualities. It is also adjacent to State Land and BLM so there is recreational opportunities that may exist.

The condition that COLTPAC with this recommendation is that the acquisition of this property should be contingent on the Rancho de las Golondrinas placing a conservation easement on their adjacent 200 acres. In preliminary conversations with the museum, some of the committee members have had with the museum, if we acquire this property, they are willing to place a conservation easement on their property.

The next property is Thornton Ranch. The criteria score is 54.4 percent. This is a large parcel which is consistent with the plan goals for wildlife protection. This purchase will building upon an existing 780 acre County open space site which include Petroglyph Hill. This proposal is for 640 acres adjacent to the existing property and the asking price is \$1.8 million. This purchase will provide continuous open space between the Petroglyph Hill and CR42. This proposal also includes using the purchase as leverage for the Trust for Public Land, a non-profit organization, to secure a three-year phased acquisition contract for 5,000 acres with the Thorntons for a conservation development initiative. This would also potentially include the protection of the old Chili Line/old railroad bed-line for the purposes of developing the north and south trail corridor to possibly connect through Rancho Viejo into the City of Santa Fe.

With the potential of this acquisition, BLM is also exploring the possibility of either purchasing or swapping with a private landowner to protect the southern part of the ranch as public open space, the entire portion is potentially – the entire southern portion of the ranch – could be protected as open space.

The conditions that COLTPAC is recommending with this project is that if TPL is not successful in their three-year venture that the County would have the opportunity to purchase a 50 foot north/south trail easement at an agreed upon location with the landowners with an intent to build upon a primary trail system. And, also, before the County purchases this 640 acres, that TPL must have a three-year option with the landowner for the 5,000 acres.

The next property is El Tanque tract. This property scored 47.2 percent and is 12 acres in the traditional community of La Cienega. It is important open space property because it contains the acequia reservoir and has very strong visual qualities. The asking price from the landowner is \$90,000 and COLTPAC is recommending \$80,000.

The last project that is coming forward with a COLTPAC recommendation is trail easement purchases. The recommendation is to set aside \$2 million for trail easement acquisition. The set aside would be used to acquire trail easements for the development of primary and secondary trails. The system is outlined in the plan. The committee is concerned that monies were not allocated from the \$12 million bond

toward trails and the set-aside would allow staff, community members, community organizations and the committee the time and resources to secure trail easement agreements for the primary and secondary trail system.

There are two properties that are still under consideration and these projects will come before the board in the near future. These two projects are working with willing landowners on possible trail easement trails purchases. One would connect, possibly a potential section of the Santa Fe River trail to the trail system on the west side of Santa Fe and the other one is defining an approximately 20 mile trail corridor in the Ortiz Mountains.

The properties that are recommended with no acquisition include, the first one is Garden of the Gods. The criteria score was 54.9 percent and it is a conservation easement proposal. It is 197 acres and the cost was unknown to the committee at the time of the review. The property is located off Turquoise Trail near the Village of Los Cerrillos and contains significant outcroppings. The concerns that the committee had about this project was the concern regarding the lack of public access. That would have been one of the restrictions placed on the conservation easement and the other is the development potential for the property was fairly low. There were questions about being able to quantify the public benefit for this project.

The second property with no recommendation is Well Tract which is a property in La Cienega that scored 52 percent. This property was actually sold during the review process so was not available for consideration.

The next property is the Santa Fe River Cantu property that has no recommendation. This property scored at 46.7 percent and is 10 acres with an asking price of \$375,000. This property could potentially be a trailhead property to connect the possibility of a future Santa Fe River trail system with the trails to the west side of Santa Fe. But the community felt that the cost was too high for this property so the committee began exploring a possible trail easement. There were also concerns about future management of the property and there was no evidence of community support.

The last two properties coming forward with no recommendation are the Eldorado property and the Village Plaza. They both scored low on the criteria: Eldorado was 30 percent, Village Plaza was 17.6 percent. The properties do not contain significant recreational, cultural or natural resources and do not fit the intent of the program. The cost were also very high for these two properties.

In conclusion, the action requested of the board today is to request approval to proceed with negotiations for the Phase III recommended projects with the noted conditions. Staff will further research each approved property and return to the Board for final approval. Again, we're continuing a low-term program. These are outstanding projects with community support and will continue to build and diversify the county's open space and trail program.

Thank you.

CHAIRMAN DURAN: Thank you, Alina. We're going to allow the public to comment on the properties that were recommended for approval. And for the record I need to state that I will be recusing myself from voting on the Arroyo Hondo

property. So what we will do is isolate that one when it is time to take a vote and I will vote on the other ones and recuse myself from the vote on the Arroyo Hondo property.

Since this is a public hearing – are there any questions of Alina?

COMMISSIONER TRUJILLO: I have a question on the amount Mt. Chalchihuitl; you said that the market value of that was \$375,000 to \$516,000. Why is the requested funding at \$516,000?

MS. BOKDE: Mr. Chairman, Commissioner Trujillo, all of the properties that we move forward with – any acquisition will be based on fair-market value. In terms of the chart before you, what staff did was to put the highest numbers in case the appraisal came out at that point. All the recommendations and the final contract negotiations will come before the Board for final approval. So at this point it is just to have a sense of what the most funding would be from the bond that would be requested. That the purchase price could fall between that range of 345 to 516 and we'll get a better sense once we do an appraisal.

CHAIRMAN DURAN: Any other questions of Alina?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Alina, we have talked about this before but I just wanted to reiterate that we, of course, we're spending almost \$6 million of the \$8 million in the second bond issue with all these recommended properties, but I am still hopeful that we can set up a program to use these funds or these properties themselves to leverage other applicable federal funds, open space funds, through the various federal programs, because we're paying dollar for dollar cash here. I know that this has been discussed at COLTPAC meetings along with the management issues that you also have to deal with on these and I think that's good. That's an important step, but I don't want us to lose sight of the fact that we're making a substantial dollar for dollar cash investment here that I think is a good investment, an excellent investment, but I would just like to see it parlayed as one dollar into four wherever possible – not every property would qualify under the programs and I know that you've been considering that. Are we making any progress in that regard?

MS. BOKDE: Mr. Chairman, Commissioner Sullivan, staff made a request through the federal lobbyist to try and access funds from the Land and Water Conservation Fund of \$1 million. The three properties that we're trying to seek additional federal funds for to leverage the bond money are the Thornton Ranch property, the Mt. Chalchihuitl property and the Chimayo property because the criteria for the Land and Water Conservation Fund, as I understand it, is that they like to support building on existing properties or existing open space or parks. These funds, if hopefully we do receive any funds, then we can use them for any other properties that we might be able to target those specifically. That's primarily one of the major funding sources that we may have access to is the Land and Water Conservation Fund. Unfortunately, the fiscal expenditure for the Land and Water Conservation Fund for fiscal year 2001 was less than \$1 million for the whole state of New Mexico and so



there is not a lot of funds to try and go after but there has been talk that next year's appropriation may be higher and definitely we're very aware of that.

And staff does work with community organizations to apply for grants for management and capital improvements on these properties so that's also another form where we try to get additional funds.

COMMISSIONER SULLIVAN: Good, I encourage you to try and pursue that, obviously. My other question was do any of these properties about existing or were any concerned that about existing county land? In particular I'm looking at and was thinking about properties that are the old land and water conservation fund conservation properties that I believe the County has several scattered around the county that were acquired by either a 99 year lease or that outright purchase contingent on being improved for some recreational or other facility and in some cases they are just fallow and no one has done anything with them. Is there an inventory of those? Have they been considered in this process?

MS. BOKDE: Mr. Chairman, Commissioner Sullivan, there are three properties that are going to build on the existing open space properties that we acquired with funds from the first bond. In terms of funding for the parks that the County owns through the Land and Water Conservation Fund, we have worked with the resource development department to develop an inventory of the parks and we do have a list of those properties. These are - it is my understanding that these parks are more smaller properties anywhere from one acre to five acres and so we didn't use those parks as part of the consideration in this review process. But they are part of the overall program for the county.

COMMISSIONER SULLIVAN: Yes, well, it just seems that they are a part of also our open space or our recreational inventory and that as we get into talking about management, and as we get into talking about properties that may be near or contiguous to those, just inventorying those alone and finding out their legal status, I think is important that we focus on that.

What brought that up is on one occasion in I believe in Agua Fria, the County was proposing to extend the road or something out to the landfill and they found that the road went right through one of the Land and Water Conservation fund properties that nobody knew about. It was on the inventory and on the shelf, but nobody even knew it was a county managed or owned property so there was resource there that we weren't even aware of and I would like to catch up with that if we can.

MS. BOKDE: Commissioner Sullivan, staff is definitely aware of the need to inventory and be aware of all the open space properties and trails that have been dedicated and are part of the program. That is something that we are working on.

CHAIRMAN DURAN: Any other questions of Alina? Are there any members of the audience that would like to address the Commission concerning any of these properties? How many of you would like to speak to the Commission?

CLAIRE FULENWIDER: I'm Claire Fulenwider and I'm president of the Cerrillos Hills Park Coalition and would both like to thank COLTPAC for their

diligent and lengthy work on this evaluation process and just mention a couple of things to the Commissioners and thank you for this opportunity.

As you know, on the Mt. Chalchihuitl property the historic turquoise mines from tribal use far before the Spaniards arrived or located – so this has extreme historic values. So for that reason as well as the for the silver and many, many, many other mines on the property. The Santo Domingo Pueblo is also very supportive of this property going from private property to public access. And, I think if you notice some of the features in the presentations you saw that cost per acre is probably cheaper for this property than anything else so we think you would be getting quite a deal. I would like all of those that are here in support of the Mt. Chalchihuitl to stand and simply show your support. We thank you for the opportunity to consider this.

CHAIRMAN DURAN: Thank you, very much. Next speaker, please. State your name for the record.

FRED NATHAN: Mr. Chairman and members of the Commission, my name is Fred Nathan and I live at 46 Laughing Horse Lane in Arroyo Hondo. And I too was very impressed with the work of COLTPAC and County staff and admire their seriousness and diligence and the professionalism with which they went about their job and each of you is to be commended for appointing them.

And I particularly interested in Arroyo Hondo and they teach you in law school that when your side is ahead that that's your cue to sit down and be quiet. So I'll be very brief with three quick points. First, it's the only parcel and this goes to Commissioner Sullivan's point, it's the only parcel of land that will be matched with significant private dollars so you're leveraging private money by blessing this parcel of land. Secondly, the score that it received is quite high but it doesn't reflect that private contribution which would make the score even higher and I think that COLTPAC and the staff have testified that it would be academic but I wanted you to be aware of that. And, finally, to the extent that any of you have any doubts about the value of this land as open space, I would just encourage you to visit it yourself, it will sell itself and I too would also like to ask if there are others here from Arroyo Hondo or who are interested in the Arroyo Hondo land if you would just stand.

CHAIRMAN DURAN: Thank you very much. Next speaker please and state your name for the record.

WALTER WAIT: Mr. Chairman and members of the Commission, my name is Walter Wait I am the vice president of the San Marcos Neighborhood Association. First of all I would like to thank the members of COLTPAC and the communities for doing this very find thing.

The three parcels that I would like to talk about are primarily the trail system first. The trail system I believe a vital portion of this whole community effort to get this north/south corridor for trails for public access is extremely important as a linking of as a vehicle between the parcels that we have purchased and for the public good. Trails, I might add, are possibly eligible for a 4:1 funding from T-21 funds. There are federal granting programs that can match the money that we are trying to set aside for the trail system. I think it is extremely important for us not to forget the trail system

and the work that we have put into identifying the kind of trail system that we have. It has an enormous economic benefit to our community especially in the south because of the continual closing down of public access to areas to walk and ride and recreate.

Secondly, Mt. Chalchihuitl, speaking now as an archaeologist has tremendous value from a archaeological point of view it is the largest open pit mine, pre-historic open pit mine, in the country. It has an enormous tourist value. This is a big place and considering that they dug this huge hole with stone tools has an enormous impact on the people that see it and realize the amount of effort that went into its creation. We don't want them to do it anymore but considering that they did it almost 500 years ago – it is remarkable.

The Thornton property is the third piece of property in our area, in the San Marcos area, and we feel that it is a very, very important link when it comes to the trail from the rail-to-trail to the Galisteo and also to the parks that we have in that area.

All together we feel that the picks of the COLPTAC group have been excellent and we really urge you to let them go forward with this especially the trails. Thank you very much.

CHAIRMAN DURAN: Thank you, sir. Next speaker please and state your name for the record.

LINDA MURNIK: I'm Linda Murnik and I'm with the Cerrillos Hills Park Coalition and also a member of the San Marcos Association. I would like to stress still more the archaeological value of the Mt. Chalchihuitl property. We have received messages from not only the archaeologists from UNM who dig at San Marcos Pueblo in the summer but also from David Hurst Thompson who is the curator of North American archaeology at the American Museum of Natural History. I won't read this but both of these people have sent messages supporting the opportunity for Santa Fe County to protect this extremely significant site. And of course as you noticed from the chart, it has potential recreational and educational value beyond that.

In connection with Commissioner Sullivan's comments, I would like to say that the coalition is actively seeking funds. We have received a small grant from Eastman Kodak Conservation Fund American Greenways Program for infrastructure in the Cerrillos Hills Park. We have cooperated with the County in applying for T-21 money for some infrastructure in the Cerrillos Hills Park and we believe that that is successful and we've also attracted some National Park Service funding. So we're ready to put the same kind of energy into the Mt. Chalchihuitl property as well, so please let it go forward.

CHAIRMAN DURAN: Thank you very much. Next speaker please and state your name for the record.

RICHARD GRISCOM: Mr. Chairman, we have two representatives from the Village of Galisteo that would like to say a few words. My name is Richard Griscom.

LINDA McKEE: My name is Linda McKee.

MR. GRISCOM: I've been a resident of Galisteo for 30 years and I'm a founding member of the Community Association and currently the treasurer of the Water Association.

We have approximately 10 residents of the Village who are here to support the idea of COLTPAC and the County acquisition of the Thornton proposal. Maybe it would be appropriate for them to stand at this point.

MS. McKEE: I adjoin the Thornton Ranch and I have several neighbors here who also adjoin the Thornton Ranch and we are very much in favor of preserving this area for open land and we applaud COLTPAC for their support and yours also.

MR. GRISCOM: Mr. Chairman, if I might. We would like to stress the aspect of water. The fact that the County would be acquiring this land and it would not be developed would lead to water replenishment in the aquifer of the Galisteo Basin rather than water depletion. And we all know that the aquifers in that part of the County are gradually dropping. I'd also like to cite the aspect of wildlife. Because of the rapid development surrounding the Thornton Ranch there has been a centralization of wildlife in that area, animals especially that normally live in other areas and apparently there is now more wildlife in that area and that is especially important for us to preserve those that are there.

Another important fact, of course, is the link, the possibility of a open space/ green space line between south of CR 42 all the way into the City that would be facilitated by this purchase. And, finally, as Commissioner Sullivan mentioned earlier the opportunity to leverage this with federal funds and also with the arrangement with the Trust for Public Lands is attempting to work out with the Thornton Ranch. Thank you.

CHAIRMAN DURAN: Thank you very much. Next speaker please and state your name for the record.

CAROLYN SIGSTEDT: My name is Carolyn Sigstedt and I just too want to acknowledge the wonderful work of COLTPAC and the fact that this work is being done so well means that these bonds continue to be passed by our community which is for obviously the betterment of our future. I also want to commend COLTPAC for realizing that there are partnerships that they have recognized in private dollars, nature conservancy and also the Land and Water Conservation Fund.

I'm disappointed that only \$1 million was allocated to New Mexico and perhaps our County lobbyist should be working on appropriating more money to our state from Land and Water Conservation Fund. And last - well, then also, I'm so happy, and it seems like the price is really cheap, on the property behind Chimayo. That's just priceless in my opinion and we are all very lucky that we have even the possibility of retaining that property.

And, then also, I am a trail lover, I think one of the finest things - one of my most pleasurable things that I do is to walk trails. And I think the whole trail system is part of our heritage in the southwest. I have walked trails that go back that have rock work that the Conquistadors built. I mean old rumbled trails and the more trails we

have and the more support of trails in our region is also a very healthy thing to do.  
Thanks.

CHAIRMAN DURAN: Thank you very much. Next speaker please and state your name for the record.

LUCY LIPPARD: Just a P.S. to the -- I'm another resident Galisteo resident for the Thornton Ranch. I've spoken on this a few times so I won't go on -- but as a former COLTPAC member, my name is Lucy Lippard, and I edit the Galisteo community newsletter, but as a former COLTPAC member I recall the vision the committee was set to structure for open space in Santa Fe County and the acquisition of the second piece of land on the Thornton Ranch and the possibility of TPL's project and the tying up of trails to Sun Ranch and Rancho Viejo strikes me as a real vision and that is one of the many reasons I would like to see the Thornton Ranch acquired. Also there are archaeological sites all over the County but the ones on the Thornton Ranch are not specific but they are there. They haven't even been surveyed yet but all the archaeologists say there are tons -- there's a lot of stuff there and they are directly associated with the eight to ten major Galisteo Pueblos which are hopefully sooner or later going to be subjects of federal legislation for protection. This would be a more major site than Chaco Canyon if it was ever really protected. The early Hispanos, not only the Tano but the early Hispanos went through this as the trail -- the conquistadors went right through there to go to all the places that they went practically. And there is still a tremendous amount of research to be done on the ground that would be retarded if not devastated by further large scale development. There was also the Chili line that mentioned and also COLTPAC and the BCC voted plainly and wonderfully for another Galisteo parcel that finally fell because the owner was not willing to sell it to the public domain. So we really hope we get this one.

CHAIRMAN DURAN: Thank you very much. Okay, yes, please step forward and state your name for the record.

BILL JOHNSON: Mr. Chairman, Commissioners, I'm Bill Johnson. I'm on the Board of Directors for the Santa Fe Conservation Trust and we are a private organization that holds many of the same priorities that the COLTPAC committee does in terms of preservation of private lands and trail easements. We wholeheartedly support what you're about to vote on tonight.

CHAIRMAN DURAN: Thank you very much. Okay, I guess what we'll do; are there any other questions the Commissioners have of staff?

Let's isolate Arroyo Hondo and the Chair will entertain a motion to approve all the properties recommended as purchases. That would be the Portrero behind the Sanctuario de Chimayo, Mt. Chalchihuitl and El Penasco Blanco, the Thornton Ranch, El Tanque Tract and the trail easement purchases.

Commissioner Campos moved approval of the recommendation by COLTPAC and to authorize negotiations of those properties. His motion was seconded by Commissioner Sullivan and passed by unanimous voice vote.

Chairman Duran recused himself and Commissioner Trujillo chaired the meeting during the next action.

1958991

Commissioner Campos moved to approve COLTPAC's recommendation on Arroyo Hondo and authorize negotiations on acquisition. Commissioner Sullivan seconded and the motion passed by unanimous voice vote.

CHAIRMAN DURAN: Great! Thank you, Alina. And, thank you, COLTPAC.

[The Commission recessed for five minutes.]

**3. Request Authorization to Publish Title and General Summary of an Ordinance Amending Ordinance 2001-4, Declaring a Moratorium on New Subdivisions, Land Divisions and Master Plans for Projects served by Eldorado Utilities, Inc. and Encouraging Conservation Measures within the Eldorado Utilities, Inc. Service Area, to Allow Options for Development to Proceed under the Moratorium**

KATHERINE YUHAS: Mr. Chairman, Commissioners, as the information presented by Dr. John Shomaker indicates at this time, it would not be prudent or in the best interests of the residents of Eldorado to remove the moratorium on development utilizing the Eldorado Utilities, Inc. (EDU) water system. It is evident, however, that the moratorium has restricted development in the Eldorado area for an extended period of time. In addition, it appears that some of the proposals are water neutral and would not negatively impact the EDU water system. As reports show that EDU's current system will not be able to supply the current demand for 100-years, it will be critical to evaluate fully in any proposal that new wells drilled in the area will not further impair EDU's ability to supply the residents of Eldorado. Based on the Commission's request, staff has investigated and evaluated options for development in the Eldorado area and is bringing forward the following three options for evaluation through the public hearing process: 1) The current moratorium does not allow creation of residential lots smaller than 12.5 acres when private wells are used. We propose that this portion of the moratorium be lifted. Developers of residential lots would be allowed to develop based on the 100-year proof of water requirement of the County Code. Lots could be created which are as small as 2.5 acres, if adequate water could be demonstrated, appropriate water rights were obtained and a geohydrologic evaluation shows that there will be no impact to existing wells. 2.5 acre lots would be the absolute minimum allowed. A requirement of this provision would be that the developer furnish funds for the County to hire an independent hydrologist to evaluate whether production from the developer's well will impair EDU's ability to produce water. 2) If developers have wells and water rights which are transferred to the EDU water system, they can then take service for their development of the amount of water

donated minus 20 percent to account for leakage from EDU. A requirement of this provision would be that the developer furnish funds for the County to hire an independent hydrologist to evaluate.

195899

CHAIRMAN DURAN: Any questions of Katherine?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Yes, Commissioner Sullivan.

COMMISSIONER SULLIVAN: I would just like to throw out one additional item for consideration and that is that particularly since we're at least considering reducing the lot size from 12.5 to 2.5 acres and my understanding is that each of those, if they wanted, could drill individual wells, although, they might also be in a sub-community type subdivision with a community water system. And my concern is that we get to a position where we're encouraging and having a large number of wells drilled all over the area with no control on them other than our reporting control. So, I would suggest that we at least think about a fourth condition that developers within the EDU service area not be predicated on individual wells if they can be serviced. Now, those developments if they wanted to go forward could still take advantage of option 2 which would be a well - wet water as it were, into the EDU service area. The question comes up sometimes that the State Engineer is the one that permits the wells so we don't really have much control over what permissions he gives to the property owners to drill wells. Yet as he has explained to us, recently he has included a condition on the permit that if there is a requirement in the local jurisdiction, as for example there is in the city of Santa Fe against well drilling, and Santa Fe County does not have that anywhere that I know of, then the State Engineer honors that particular commitment.

I would like to put that out there as a consideration so that we don't encourage well drilling within an area that is already serviced by the EDU.

MS. YUHAS: Mr. Chairman, Commissioner Sullivan, do I understand that correctly that you want that to say that couldn't have a community water system for a development also, that would be separate from Eldorado Utilities or just a situation where each lot would have its own well.

COMMISSIONER SULLIVAN: I was putting in two issues.

MS. YUHAS: What specifically -

COMMISSIONER SULLIVAN: I was putting in two issues and maybe I should have separated them. I was just saying that maybe my understanding is that these 2.5 acre lots and these 12 acre lots would be essentially developed outside of Eldorado service area and would have their own well; is that correct?

MS. YUHAS: Mr. Chairman, Commissioner Sullivan, the idea behind that was that they would be served by wells other than the ones from Eldorado Utilities but not necessarily that you would have a whole bunch of 2.5 acre lots each with an individual well.

COMMISSIONER SULLIVAN: But they could.

MS. YUHAS: No, actually probably they could not.

COMMISSIONER SULLIVAN: Then maybe we need to clarify that because the way we have it written here it simply says the lots can be reduced to 2.5 acres and that as long as their well didn't impair – provided 100 year supply and didn't impair another well, it could go forward. So I could read that that could mean an individual well.

MS. YUHAS: I understand and I will get that clarified so that that reads a little better.

COMMISSIONER SULLIVAN: The focus there is to encourage community systems and not individual wells on each 2.5 acre lot. 1958993

MS. YUHAS: Mr. Chair, Commissioner Sullivan, that is correct. It was to encourage a community system that would be separate.

COMMISSIONER SULLIVAN: Right and that was my understanding of position one. But I was backing up then to go within the EDU service area and say that there it seems to me that we should not be encouraging the drilling of wells, more wells, in the EDU service area, unless they're already there and unless they can be transferred over as wet water. And the reason that it seems that we shouldn't be encouraging that is because our provision three is a conservation provision and we want to encourage development to apply innovative conservation principles to their development and if we allow random well drilling within the EDU service area it seems like we defeat that purpose. So that's my thoughts there.

MS. YUHAS: I will add that one is as a fourth condition.

COMMISSIONER SULLIVAN: That's all I have, Mr. Chairman.

CHAIRMAN DURAN: I agree with Commissioner Sullivan. The only way we're going to manage this resource is to prevent the proliferation of wells from being drilled. That's one of the reasons why we've been talking to the City about extending water out to the County because there have been a lot of wells drilled and depleting the aquifer is something that we have pretty much agreed to not support. To work against that which is in our general plan.

Any other questions. I'll entertain a motion.

Commissioner Trujillo moved to authorize the publication of title and general summary. Commissioner Sullivan seconded and the motion passed by unanimous voice vote.

**E. Matters from the County Manager, Samuel O. Montoya**

CHAIRMAN DURAN: Sam, do you have an issues you need to bring before us?

MR. MONTOYA: Yes, Mr. Chairman. I actually have two issues for you.

**1. Update on County Jail Request for Proposals**

MR. MONTOYA: Mr. Chairman, we passed out a short memorandum that talks about the specific dates and then field any questions after the presentation.



Mr. Chairman, I want to preface the brief to you by indicating that the current contract on the adult facility and the juvenile facility for operations expires on September 30, 2001. With that Mr. Chairman, the staff has been discussing the management of our facilities with the Board of County Commissioners for many months. Back in October of 2000 the County Commission gave the administration direction to prepare a RFP and to let it out to the general public for any entity or corporation that was interested in providing management to the adult and juvenile facility and to submit those back to the County by a certain date.

Mr. Chairman, the closing for the RFPs was February 7, 2001. Three companies met the deadline and they are Correctional Services Corporation, who submitted jointly with Youth Services International, a company out of Sarasota, Florida. The second company was Cornell Corrections out of Houston, Texas the third was Management and Training Corporation out of Centerville, Utah.

Mr. Chairman, once we knew that these three companies have met the deadline and the contents of the RFPs, the administration came to the Board of County Commissioners and asked for your concurrence to appoint a County Screening Committee whose task would be to take those three proposers and to match their proposals against the contents of the RFP. Mr. Chairman, you appointed Sheriff Sisneros, District Judge Hall, Councilor Miguel Chavez, Finance Director Ms. Miller, our legal department director and also Mr. Baron Briscoe. These were the six members that were picked for the screening committee to review the RFPs.

Mr. Chairman, the specific task of the committee members, Mr. Chairman, was to again make sure that the proposers met the contents of the request for proposals as stated and also to rate those proposals and bring back a priority rating as to which company was in line for negotiations.

Mr. Chairman, the committee completed its work on May 23, 2001 and the County asked them at that point that best and final offers be prepared and they be due to the County on August 7, 2001 based on the committee ranking. Mr. Chairman, I need to point out to the members of the Board that all three proposers after they submitted their proposals to the County are substantially over the budgeted allocations for the operation of these facilities for 2001/2002 fiscal year budget.

Mr. Chairman, we have now before us the task of negotiating with these companies and are before you today with three recommendations, Mr. Chairman. The first recommendation is that County staff request authorization from the Board of County Commissioners to open negotiations with the following firms in this specified order: negotiations to begin on the adult facility and the electronic monitoring services first with Management and Training Corporation of Centerville, Utah. If we're unable to negotiate with this firm, that then we be allowed to go to the second ranked which is Cornell Corrections of Houston, Texas. Secondly, we are asking authorization to being the negotiations on the juvenile detention facility with Cornell Corrections with the first ranked in that category and secondly, if we are unable to negotiate with this company, that we would go to Correctional Services Corporation who is ranked second in this

category and then lastly to Management and Training Corporation if we are unable to negotiate with the second vendor.

Mr. Chairman, the second recommendation is since the proposers have submitted budgets that exceed the budgeted allocations for these respective service centers, that the County be allowed to prepare an in-depth analysis on the possibilities of a County-run operation for the adult facility and the electronic monitoring operation. Mr. Chairman, again, the rationale for this analysis is that the proposers when they submitted their best and final offers were still substantially over the budgeted amounts. Therefore, Mr. Chairman, it becomes very clear that one of the potential options to the County is to – we could be in a position to take the facilities over particularly the adult facility. So that is our second recommendation that you allow the County staff to proceed with that in-depth analysis.

The third recommendation, Mr. Chairman, is that the County staff wants to bring to you a recommendation on the June 26th administrative meeting as to where we believe the County would go in relation to the operations of the adult, the electronic monitoring service and also the juvenile program.

Mr. Chairman, it is quite conceivable that on the June 26th date for the administrative meeting that we might not have all the specificity required on the specified initiatives. In other words, the specific detail on any of the contracts. However, we will have to the best of my judgment, a very strong conceptual understanding of where the county should go in relation to services in these three areas.

Mr. Chairman, that is the general content of my briefing to the Board and I would also defer to Mr. Kopelman or Ms. Miller who are here and also have been diligently involved in the processes that have framed these recommendations for you today. And I would stand for any questions, Mr. Chairman.

CHAIRMAN DURAN: Sam, I have a question. The cost of running the juvenile facility, is it a substantial--is the increase as substantial as running the adult and EM services? And if so, why wouldn't we consider running the juvenile facility? I understand that the program that's in place right now is exceptional but if the cost is a substantial amount over than what we are paying now, why wouldn't you consider taking that over?

MR. MONTROYA: Mr. Chairman, the comment that you've just made that the current operations of the facility are excellent is quite true. We have received accreditation for the facility. We've also received some great reviews from the folks that come in and do the analysis on the operations.

Mr. Chairman, in relation to your specific question on do we have better proposals in front of us, Mr. Chairman, yes we do and that is why we want to basically talk to the existing operator first. However, the second vendor, Correction Services Corporation, also has a very good proposal that we would like to look at thoroughly as well.

So, and to box the discussion, I think our concern, Mr. Chairman, is not focused on the juvenile as much as it is on the operations of the adult facility in terms

of budget. Our major concern is the adult facility and the electronic monitoring component. Those are the major concerns.

Relative to the juvenile operation, I think we could really be well-served by either the current vendor or possibly the second vendor who is Correction Services Corporation. So Mr. Chairman, we need to work on a lot of these particular details but again, the major concern is with the adult facility at this point.

COMMISSIONER TRUJILLO: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: I speculate that we did the budget allocation for the operation of the jail based on some experiential realistic scenario. Why do we get three bidders that are substantially higher than our budgeted allocation? Did we not anticipate that there were going to be other costs or -- what's driving the bids to be substantially higher than what we allocated, what we budgeted?

MR. MONTOYA: Mr. Chairman, I want to point out that I think we're comparing the prices, that we are paying, based on a negotiated contract three years ago versus putting out a new proposal that comes in beginning October 1, 2001. So most definitely, Mr. Chairman, Commissioner Trujillo, we've learned a lot over the last three years. And there have been some incremental increases in lots of areas relative to operations at the adult.

I also want to point out, Mr. Chairman, that members of the Screening Committee would like to address that particular question and offer some content on that response, as well. I'd like to have Ms. Miller give you her perspective.

MS. MILLER: Mr. Chairman, Commissioner Trujillo, one of the issues with this being a new facility, when we negotiated the operating contract with the new facility, there were many unknowns as to what it would actually cost and what type of contracts we could get with other entities to house their inmates there and offset our costs.

All of those factors with a now about a three year history have proven to show that the cost of running this facility is A, greater than anticipated and then what we currently have in the contract. And it's also that the market, what other, on the, whatever the market rate for those bids has a direct impact on the amount of money that the county has to come forward with. And that changes daily. That's a very difficult number to project.

And I think our current contractor has suffered the impact of that in the inability to know exactly what that will be and they struggle financially to operate the facility under the current contract.

MR. MONTOYA: Mr. Chairman, I also want to point out that the second request we have before you to allow us to do an in-depth analysis on possibly the County running the facility is indeed a massive undertaking. It requires quite a bit of administrative, legal, and financial analysis. And we are prepared, Mr. Chairman, to do that if you authorize the staff time to be involved in the analysis required.

But I believe we have come to a juncture, Mr. Chairman, where due diligence on this matter is required. And we're prepared to do so if you give us the green light on this initiative.

COMMISSIONER SULLIVAN: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Sam or Katherine, the RFP, did it permit the dividing up of the facilities?

MR. MONTOYA: Yes, Mr. Chairman, Commissioner Sullivan, yes.

COMMISSIONER SULLIVAN: So the respondents know that they can be chosen for one or both or neither?

MR. MONTOYA: That's correct.

COMMISSIONER SULLIVAN: Okay. I think that we should give some thought to the juvenile facility in that in-depth analysis, as well. Because my reaction in inspecting the two facilities is that that one's the easier one to run. And for two reasons: 1) because you're dealing with more manageable inmates, but secondly, because and I wasn't aware of this until I toured the facility, that by far, the majority of the inmates there are federal inmates and they are primarily Native Americans.

And I asked about that and the reason being that we're only one of a very small number of facilities accredited to take these federal juveniles and when a crime is committed on Indian lands, it becomes a federal crime. And so these juveniles end up in our jail, in Santa Fe. And in fact, most of them are from Arizona and other areas around -- not anywhere near Santa Fe.

So this is a fairly, as I understand it, stable population. And my numbers, and they may not be exactly right, but as I recall when I was there, there were about 115 in the facility and some 70 to 80 were federal juvenile inmates. And that was a relatively stable population.

So whereas in the adult facility we have, of course, the City of Santa Fe arguing with our fees. We have an up and down market for the federal marshal's prisoners that varies considerably. We have apparently greater potential for escapes and riots within the facility. It's a more difficult facility to manage, it appears.

So I wouldn't want us to necessarily let any one of the operators cream the crop here. I would say that if we were going to get into the business, which we'd have to take a very hard look at, we'd want to consider that too. Because that seems to be the juvenile facility seems to be one that's the more profitable and more easily manageable. Am I missing the boat on that?

MR. MONTOYA: Mr. Chairman, Commissioner Sullivan, no you are not. Actually, you are quite correct. The issue, Mr. Chairman, members of the Board, we need to consider some very serious components of this analysis.

First of all, Mr. Chairman, if the County takes over this operation of the adult facility, there's the question of liability which is huge. And we need to make certain that we are prepared for that and secondly, that we have the financial fortitude to support that.

Secondly, Mr. Chairman, we have to consider third party contracting which there are third parties that provide food services, that provide medical services, we have to make sure that from a procurement standpoint, that we can handle those within a timely manner.

Thirdly, there is the issue of external revenue which is brought in through the federal contracts that were alluded to by Commissioner Sullivan. We have the same issue, we have the same contract at the juvenile facility, as well. All of these need to be computed and the County would have to re-compete for those contacts and get them in order to sustain that external revenue. That in itself, Mr. Chairman, is a challenge.

However, it is also an important footnote, Commissioner Sullivan, that if we are to take both facilities it is going to be more of a massive undertaking because we are basically taking two separate management systems that actually run on different accreditation standards under our belt.

And that is why, Mr. Chairman, we are thinking at this point, that the juvenile facility might be better run by a private company until we are able to basically sustain or stabilize the adult facility and the EM program. Once we have those under our belt and have some comfort level, then we could incorporate the juvenile operation under our belt.

However, we understand that you want us to look at both facilities and we will do so if that is the direction and bring you a thorough analysis on both, on all three programs, excuse me.

COMMISSIONER SULLIVAN: Mr. Chairman, my last question was on the negotiations with MTC and then Cornell on the adult facility, did CSC not submit on that one? Or did you find them just to be unresponsive to that?

MR. MONTOYA: Mr. Chairman, and I will defer to the members of the committee for more thorough analysis, but Mr. Chairman, my understanding was that the ranking by the committee was that MTC should be ranked first and then that Cornell would be second. And I understood that the third party was not considered for the adult. And I will defer to them for the specificity on that.

MR. KOPELMAN: Mr. Chairman, members of the Commission, in ranking the three bidders for the adult facility, there were a couple of issues that CSC was rated far lower than MTC and Cornell. And there was also a question of non-responsiveness with respect to the EM program.

CHAIRMAN DURAN: I have a couple of questions. Do we know the total amount of income that comes into that facility--well actually both of them? Does Cornell give us information that we can determine what the total revenues that that facility's generating, the total amount of the revenues are?

What I'm leading up to is if we know how much that place is actually making, because it is a--as a private sector running it as a business, it must be showing a profit. And you shake your head so you must know how much money it makes.

MR. MONTOYA: Mr. Chairman, before Ms. Miller answers that, I want to point out that one of important highlights of the county analysis and its operating of the facility, is that there are two financial components that we can focus on

and actually extrapolate from the operating budget. And those are profit marking and gross receipts tax. Now, relative to what it's brought in terms of revenue from outside sources, I believe the amount is \$4 million. But I'm not completely sure of the number.

But we will necessitate to look thoroughly at the revenue picture but Ms. Miller might be able to offer more.

CHAIRMAN DURAN: So I guess when you make your recommendation to us, I guess it's more of a statement or comment, when you do make that recommendation, you will have analyzed the total income the facility brings in versus the debt or the cost to run it, minus the cost to run it and that should be the profit, right?

MR. MONTOYA: Correct, Mr. Chairman, we will actually extrapolate those at the very beginning and then look at new cost centers that do not exist now which are liability insurance and we'll have to take on some of the personnel costs. What we'll have to increase the percentage of fringe benefits is another point that I think is important.

We'll have to look at all of these cost centers where there might be a different percentage that's paid by the private sector versus public government. And we'll have to do a thorough analysis of how that impacts the total bottom line.

But if you extrapolate some of those cost centers that are incorporated in by the private sector and then put in some of the cost centers that local government needs, we might find a balance. And that's what we're hoping for and I think once we're completely done with that analysis, we'll be able to give you a much more thorough picture that all three of us agree on.

CHAIRMAN DURAN: Okay. Thank you very much. Any questions of staff?

COMMISSIONER CAMPOS: Question for Mr. Montoya. How long will your assessment take, Mr. Montoya?

MR. MONTOYA: Mr. Chairman, Commissioner Campos, actually I've been working on it for some time peripherally hoping that we would be able to bring you a good package from the private sector. However, always knowing that there's a strong possibility that something could go wrong. We've been kind of on the peripheral doing some analysis. But I think we need a full week of quality time on the issue to bring you some good numbers. So 7 - 10 days, Commissioner Campos.

COMMISSIONER CAMPOS: Assuming you decide that public is better than private, that we should go public, what kind of a transition period are we looking at?

MR. MONTOYA: Mr. Chairman, Commissioner Campos, we are basically -- that's basically dictated to us. We have a 90-day window. We could possibly negotiate extensions if the other side is amenable. However, the minimum time frame would be 90 days. If we're able to negotiate extensions, it could be 6 months.

COMMISSIONER CAMPOS: Ninety days is not very realistic; don't you think?

MR. MONTOYA: Mr. Chairman, Commissioner Campos, that is what the in-depth analysis will tell us.

COMMISSIONER TRUJILLO: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: Sam, this is a time of privately run facilities. Is there any in New Mexico that is not privately run, that is run by local government? Maybe we can get some experiences and do some comparisons.

MR. MONTOYA: Mr. Chairman, Commissioner Trujillo, we've been doing exactly that. As an example, Doña Ana County runs their own facility, Rio Arriba County runs their own facility. I believe San Juan County runs their own, and we've been checking everybody's budgets and looking at different operating modes.

So we have been doing some due diligence, Mr. Chairman, and again, we didn't want to really go 100 percent on the analysis until you knew what the possibilities are and that you would give us that guidance so that you know that we will be focusing all that in the next 7 - 10 days if you agreed to have us proceed in that fashion.

CHAIRMAN DURAN: Sam, let's say that in the final analysis you decide that one of these companies should run the jail and that the operating expenses \$1 Million, 9-1/2 over what we budgeted for this coming year, where do you plan on getting that extra dough?

MR. MONTOYA: Mr. Chairman, that's a million dollar question or maybe a million and a half dollar question. Mr. Chairman, we are hoping that our efficient finance director will bring that answer to the forefront and that the assessor brings us some new construction and that the efficiencies of local government in Santa Fe County will provide it.

Right now, Mr. Chairman, those are the best three venues I can give you. But we're hopeful that we can bring you some kind of balance based on the equilibrium that I talked to you about earlier between private and locally run. We might be able to find some middle ground and that's what we're hoping for.

CHAIRMAN DURAN: Well, I know Katherine's a master of smoke and mirrors down there but, you know, it really concerns me that we might have to take away from the funds that would be available for additional services that we're hoping to provide the community and they're expecting to get.

MR. MONTOYA: Mr. Chairman, in the final analysis, unfortunately, we might have to anti up anyway. And the question is, is it to a publicly run operation or to a private.

CHAIRMAN DURAN: Right.

MR. MONTOYA: And so it's six of one and half a dozen of the other at this point. And I think until we have some succinct numbers for you, we can't quite answer your questions yet. But if we prepare that report, Mr. Chairman, that will be our best effort to bring you those answers.

COMMISSIONER TRUJILLO: We were sure wrong about this one when the jail construction was presented to us, it was presented as a cash cow and we thought that we would make some profits in the future and as it turns out now we're in a pretty dire situation.

MR. MONTOYA: Mr. Chairman, that's what I would call the number one management challenge the County has at this point.

CHAIRMAN DURAN: Well, you're our number one man, good luck.

COMMISSIONER SULLIVAN: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I wanted to ask about the advisability of doing these in order. And I know that the procurement code says you negotiate with the most qualified and if you can't reach an agreement you move to the next qualified and terminate negotiations with the first.

But, it would seem to me that both Cornell and MTC, we would have better negotiating leverage, if both properties were on the block. So in other words, if we're doing them independently, they don't have an option of quoting a better price for two. It would seem like if any one of the firms were running both facilities, they could run them more economically with personnel and management staff rather than dealing with only one.

So if we're separating them out and negotiating separately with them, MTC and the Cornell on the adult and then Cornell, CSC, and MTC on the juvenile, then we've eliminated our option of getting perhaps a more reasonable management cost for operating both of the facilities.

MR. MONTOYA: Mr. Chairman, Commissioner Sullivan, we did ponder that. The reality is that jail contracts or negotiations of this nature is actually exempt from the procurement code. Secondly, when we asked that the proposers give us best and final we were hoping that that other layer of questionability would go away and they would sharpen their pencil and give us their best number.

However, it did not move much at all. So the only other possibility we have now is to negotiate from a strong and aggressive standpoint. However, since the best and final didn't move much, that seems to be an indicator to us that they probably won't move much anyway.

However, Mr. Chairman, I don't want to go into the negotiating issues anymore. I think we're kind of treading on some sensitive ground in public.

COMMISSIONER SULLIVAN: Then that answers my question that you do have the flexibility if the correctional facilities aren't covered by the procurement code, then you could entertain a proposal from either MTC or Cornell during the negotiation process for a given dollar level to operate both facilities. So you don't necessarily have to eliminate one before you begin negotiating with the either.

MR. MONTOYA: Mr. Chairman, Commissioner Sullivan, that is possible, that is correct.

COMMISSIONER SULLIVAN: So I throw that out as a possibility. Then, finally, I just reiterate, I think we should look, if you're doing cost negotiations



at the juvenile facility because I think it's easier to run. And I think it's easier to make money on. And we don't necessarily want to start off in negotiations by saying we're not going to play with that trump card.

That's a totally renovated facility. It's up to specifications apparently. It's well below the levels of population that create problems. And it just seems to me that would be a viable undertaking. I might be wrong, financially, once you do the study.

MR. MONTOYA: Mr. Chairman, Commissioner Sullivan, as I stated earlier, I think that the management systems for the adult and the juvenile are distinctly different. And for one, one of the examples I want to pose to you is that at the juvenile facility, the ratio between the correctional officer and the actual inmate is 3 to 1 versus at the adult which is much, much higher. So it's easier to manage the juvenile population because there's more staff relative to the number of inmates versus a large population under x number of correctional officers at the adult.

But I still want to point out though that there are 140 employees at the jail facility, at the adult facility, on its own. So it's not a small operation. It's quite large operating budget approximately \$11 million per annum.

CHAIRMAN DURAN: Okay, well we look forward to your report, Sam.

MR. MONTOYA: Mr. Chairman, I'm then to understand that we're to go ahead?

CHAIRMAN DURAN: Do we need a motion for that?

MR. MONTOYA: Mr. Chairman, for the record I think it would be important for the Commission to instruct us to prepare.

CHAIRMAN DURAN: Well is there consensus?

COMMISSIONER SULLIVAN: Well let's make a motion to make it very --

CHAIRMAN DURAN: I don't think we can make a motion on a non-action item, can we?

MR. KOPELMAN: Mr. Chairman, we're really asking for direction only.

CHAIRMAN DURAN: Right. So just give me consensus. Do we have consensus that that's the direction that we want them to take? Is that what you'd like Commissioner Sullivan?

COMMISSIONER SULLIVAN: Well, if the direction is they only look at the adult facility or that they're going to look at the juvenile facility also?

CHAIRMAN DURAN: Both of them.

MR. MONTOYA: Mr. Chairman, our incentive was to look at both of them.

COMMISSIONER CAMPOS: Mr. Chairman, I agree with your three recommendations. I think it's time to really closely look at going public. I think it's the time.

CHAIRMAN DURAN: And I agree.

MR. MONTOYA: Thank you Mr. Chairman. Members of the Board. Thank you very much.

CHAIRMAN DURAN: Is that all you had Sam, from matters from the manager?

**2. Public Safety Complex Groundbreaking Ceremony- June 18, 2001 at 11:00 a.m.**

MR. MONTOYA: Mr. Chairman, my second item is just an invitation. I want to point out to the Board that we're going to have a ground breaking for the Public Safety Complex, that's out by the adult facility and we're going to have a ground breaking on Monday, this coming Monday, June the 18th at 11:00 a.m. and we would like to have all of the Commissioners there to break ground on behalf of the County. Thank you Mr. Chairman.

CHAIRMAN DURAN: Well, we're going to take a real five minute non-verbal break.

[The Commission recessed for 10 minutes]

**F. Matters of Public Concern- Non-Action Items**

CHAIRMAN DURAN: Is there anyone out there in the audience that would like to address the Commission?

CAROLYN SIGSTEDT: Good evening. My name is Carolyn Sigstedt. I live downtown. Two matters of public concern. The first is the request for the authorization the Public Title and General Summary of an ordinance amending the moratorium on Eldorado. And I just want to state, I guess there's a meeting coming up this Thursday, I may have the date wrong, but there's an entire community out there that is not being reached and that is Ojo de La Vaca. The community, the developments that are across the road also from Eldorado. The entire community out there is growing by leaps and bounds. And in my opinion, it's all part of the same water basin so it's kind of the bathtub effect on everyone. And so I think this meeting that's coming up on Eldorado on Thursday night, it's too bad that a larger community, all the periphery neighborhoods that are quite dense, some effort should have been made to notify those folks and I don't think they know about it.

I do realize there will be public hearings but sometimes it's good to be notified kind of at the get-go. So that's one concern.

And then secondly, I just want to mention that I think it's really good that we are assuming our responsibility mandated by statute which is for us, as a County, to take care of our juvenile and adult correctional facilities. I've always felt that any analysis of whether a private industry is doing well or not has got to take in a full evaluation of what it would mean for us to be responsible and run it publicly ourselves.

I don't think that the record over the years has been that good. And I do understand, full well, the risks and liabilities. But my feeling is, and as you said, Commissioner Trujillo, you know, a long time ago we all, I never did, but many of us felt that this was a cash cow that was could make money from.

I think there are still communities, Española, Taos, that are under that impression. And looking at starting facilities themselves, not only do I feel that we should look at this privately as a County endeavor, I still strongly feel and I don't know how this could be done in 7-10 days but that we should buddy-up, partner-up with these other interested jurisdictions, including the city.

At one point the city did an analysis of what it would cost them to run a facility because they felt that they should do that. And so they've got some real figures as well. Rio Arriba, I personally feel that a joint effort, you're not only sharing the responsibility and the management, you're sharing a liability and the costs and it would take more time. But I think it's time well-spent.

I also think that some middle ground could be arranged. You can negotiate anything. A lease to own, whatever, but nothing is going to happen in 90 days. We can't know the answer responsibly in 90 days. But we can put together something that will allow us to come to a truce. And hopefully even a justice. And that might be a management system in partnership with one of these private entities but that would over a shorter period of time put it into the public domain and our responsibility. Thank you.

CHAIRMAN DURAN: Thank you. Is there anyone else out there that would like to address the Commission. Please state your name for the record.

KATHY LONGWATERS: Kathy Longwaters, 19 Derby Road. Now I see why those chairs are so well padded. You guys sit here so long. But I'll be brief.

Mr. Chairman, and Commissioners, I would like to request in the spirit of preservation that we've had here tonight, that the County consider preserving rather than paving Leaping Powder Road. It's a project that's being managed by the County. And I know from County officials that I've spoken with that there's an impression that 97 percent of the neighbors are for the paving. I knew off hand enough folks who are against the paving to equal 25 percent. So I started a survey of my own and in less than a week I have a 25 percent response rate. And so far, it's a dead split, 50-50. And I'll give a copy of that to the Commissioners in a week or so when I get some more responses.

CHAIRMAN DURAN: Thank you. James, make a note of that. Isn't that a state project, though? State-funded? Could you comment on that? Do we have any jurisdiction over whether or not it's paved or --

JAMES LUJAN [Public Works Director]: Mr. Chairman, it is a state legislative appropriation that was funded last year, 2000 and it's pretty much a go on that. They've been holding community meetings and I think it's the first 9/10 of a mile that we're paving. We're just acting as a fiscal agent on it.

CHAIRMAN DURAN: And if the community, if the majority of the community doesn't want it paved, what's their further options?

MR. LUJAN: I think they'd have to take it back to the legislature and see where they reappropriate that money. But after speaking to Senator Maes, that project has been in the works for two years now so that is the community's desire that's wanted that road.

CHAIRMAN DURAN: Okay, thank you, James. Anyone else out there that would like to address the Commission. Okay, we're going to move to matters of the Commission. Anybody up here have anything they want to say?

COMMISSIONER SULLIVAN: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chairman, just in response to Carolyn Sigstedt's comment regarding the meeting. It is on this Thursday on the Eldorado water proposals made by staff. I believe it starts at 6:30 and goes till 9:00. And there's been quite an extensive advertisement campaign for it. The 285 Coalition Committee which is an extremely active core group has been distributing flyers and has really set the meeting up themselves with the systems from County staff. So I think they have hit all of the subdivisions.

And it's not just an Eldorado proper that is effected by these changes. So there's been a pretty substantial effort. And they also have several very experienced persons there speaking from State Engineer to attorneys to, I believe, our own Mr. Lopez and others who will be there to respond to questions and to discuss the issues in this document.

So it should be a good meeting and I think we've gotten very good coverage on it.

COMMISSIONER TRUJILLO: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: We've gotten the TDR ordinance that was considered and approved by this Commission. I conjecture that in order for that TDR ordinance to work, it needs to be part of the Highway Corridor Plan. And I'm wondering where we're at with the Highway Corridor Plan. It's something that's been in the works for a long time and it's important that it be resurrected so that we, together with the public, can reconsider it and hopefully pass an ordinance on it. Do we have a status on it.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, if I may. We had an initial meeting today with Mr. Steve Burstein and his staff. And they have begun to create a draft ordinance in the EZ area and they'll be following it up with the County ordinance. And I believe the target date was coming before the Board in August.

COMMISSIONER TRUJILLO: Okay, and that's for the Board to take action on and listen to public input or comments?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, that's correct.

COMMISSIONER TRUJILLO: And is the City considering this ordinance? What have they done?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, that is the purpose for starting the EZO part of it first to get the city involvement. They will be involved. They've been invited to the meetings.

COMMISSIONER TRUJILLO: Okay, thank you.

CHAIRMAN DURAN: Any other comments from the Commission? Okay. We're going to move the executive session to the end of the meeting.

**X. Public Hearings**

**A. Ordinance No. 2001-9 An Ordinance Relating to Wireless Communication Antennas, Towers and Other Facilities; Prescribing Regulations for Location, Placement, Appearance and Design (Final Public Hearing)**

CHAIRMAN DURAN: This is the Final Public Hearing. As we move forward on this Tom, I need to ask you a couple of questions. How are you going to present this ordinance to us at this time? Are you going to go through the whole thing again or just the amendments that you are suggesting?

MR. DOMINGUEZ: Mr. Chairman, we had planned to do a power point presentation. It's somewhat brief. And it will encompass generally the whole ordinance.

CHAIRMAN DURAN: Well, wasn't the presentation made to us the last time? I don't want to hear the ordinance again if I heard last time. I would like to know what amendments you're making to it. And then open it up for public comment.

MR. DOMINGUEZ: Mr. Chairman, we're open to your direction, whatever you'd like.

CHAIRMAN DURAN: Is that acceptable? I mean, we've heard it before. Well, you might want to hear it again, but I don't.

COMMISSIONER CAMPOS: There are members of the public here who may want to hear it and the comments won't make sense unless we played it into context. I think the presentation is going to be brief and then we'll get into some of the changes. I think we should proceed at this time. That's what I would recommend.

CHAIRMAN DURAN: Well, I would not like to do it that way. I've heard it once and everyone that has been involved in this ordinance, I'm sure has read it. If they came here without having read it - and if -- don't think that's the case. Those that are interested have read it. They were here at the last meeting. They have a copy of this proposed ordinance and I think that if staff present the amendments in a proper fashion, then they can tie it all together. So Tom, please why don't you move in that direction.

MR. DOMINGUEZ: Thank you, Mr. Chairman. Would you like me just to go through all the strike throughs, just highlight the changes that we've done?

CHAIRMAN DURAN: Well, I think you should give us an overview and then go to the amendments that you've made from the last meeting.

MR. DOMINGUEZ: Thank you Mr. Chairman. I may defer at some point to Chris Graeser because I was unable to attend the last meeting. But I have been involved with the ordinance writing.

Primarily the amendments that we have included, one, that is key, at the CDRC meeting that we had a couple of weeks ago, we had a member from the public get up and express some concern regarding some small antennas that they used for home wireless internet access and he questioned if that was part of this. We advised him that it was not. We included that within the definition of the private wireless as we've amended to include small antennas on private residences in the exemption from this ordinance. That's under Section 5, Definitions.

Under Section 7, A, 2, Residential setbacks--

CHAIRMAN DURAN: Could you cite the page number too, please Tom?

MR. DOMINGUEZ: Yes, page 6.

CHAIRMAN DURAN: Well, let me ask you a question. So the amendments that you've made on page 3--

MR. DOMINGUEZ: Okay, on page 3, line 19 struck the heading D and we included or we added a typical example of "would be an antenna re: located on an existing building." We were trying to bring clarification to what an attached wire on a communications facility was. So it's an example. And then under D, "Board shall mean the Board of County Commissioners of Santa Fe County."

Under co-location, we struck comments "and license holders" and replaced that with "carriers." And again, in line 22, "license holder" with "carrier." Same page, line 25, we struck "in question." We replaced it with "of application."

CHAIRMAN DURAN: If any of the Commissioners have any comments while Tom's going through this, please speak up.

MR. DOMINGUEZ: On page 4, line 2 we struck "which although does not have a county permit was in existence prior to adoption of the Land Development," and we just stopped the definition at "of an existing vertical infrastructure as long as approval by the County has not expired in any legal non-conforming structure."

Line 5, we replaced "residence" with "building." Line 6, we added, "from the finished grade to the top of the main structure, generally the roof." In line 8, under Highway Corridor District, we just added the language, "of the Land Development Code, as amended." As you know we're preparing this coming fiscal year to rewrite the code. Under L. Private Wireless, again we added, "the small antennas located on the residence." We added the example under, Support Structure, "example: the tower."

I'll kind of breeze through just the highlight. Page 5 under E, we just added, "the state statute annotated, 78." Going down to line 16 under citing, under A,2. Architecturally integrated ADWCF's Undiscouraged Locations made, " in the code administrator's discretion." We added that for clarification. Under Encouraged Locations we added, "small architecturally integrated WCFs."

Under line 23, the location of WCFs we added, "meeting established criteria." And then, "Also pursuant to subsection C below which is the Wireless Communications Facility Master Plan.

CHAIRMAN DURAN: What's a WCF again?

MR. DOMINGUEZ: It's a Wireless communications facility.

CHAIRMAN DURAN: Oh, okay.

MR. DOMINGUEZ: Under design standards in A, we just took out the abbreviation and put, "a registered New Mexico professional engineer," instead of PE. No. 2, Residential Setbacks, it reads now with the change, "new WCFs, wireless communications facilities, shall be set back a minimum of 100 feet, and we added, "or a distance equal to twice the tower height, whichever is greater from the property line of any property on which a residence is located."

COMMISSIONER SULLIVAN: What is in this ordinance is maximum height of any situation that you would--that a tower could be permitted?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, I guess the correct way to respond to that would be the maximum height as allowed under this ordinance would be whatever height this Board would give approval to the code administrator -- tables are in here -- there's a standard height, that we call a standard height and the code administrator can approve up to that height in the specific areas and can also approve a height bonus of up to two co-locators. Anything above that would go to the County Development Review or the local development review committee. Again, at the standard height up to 4 co-locators and then above that, it would come before this Board.

And when you look at the Board approval, it says that the Board can give approval to any tower. So it would be left at your discretion at this point.

COMMISSIONER SULLIVAN: So what would be the maximum height that could be approved without going to the Board?

MR. DOMINGUEZ: It varies, Mr. Chairman, Commissioner Sullivan, depending on the zoning of the property. I will give you an example. Before coming to the Board, we would look at and I draw your attention to page 13 and 14. These are the facilities permitted by development review committee.

In a residential-agricultural area, a wireless communication facility, this would be free standing would be allowed 36 feet. An architecturally integrated or what we'd call camouflaged, would be allowed up to 45 feet for approval by at this Board, and then what's called an AWCF or an attached wireless communication facility. We talk about co-locating on a tower. They would be granted up to 10 feet I believe the language says, "or whatever is technically proven for up to 4 co-locators."

So in a residential area, we would look at, I guess if you want to talk about the highest, and again, we're not talking about residential subdivision. We're talking about the underlying zoning throughout the County which is residential/agricultural.

We'd be looking at the 45 feet. If they did a Stelph application, with the possibility of up to 40 feet, so that would be 85 in those areas. And then, so you could

look at that column under architecturally integrated and then add 4 co-locators to that as the height that would be approval by the Development Review Committee.

COMMISSIONER SULLIVAN: So then, it looks from this table then that the maximum would be 105 feet if you allow 4-10 foot bonuses or whatever you call them, for co-location in the commercial centers. You can go 75 feet plus 4 times 10 feet; is that correct?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, Chris just pointed something out to me. I misstated, we're looking at the last column is an attached which would be an existing structure that allowed up to 10. If you look up in line 7 of the same page, it says that a co-located facility shall equal the minimum amount technically necessary not to exceed 15 feet. So I misstated the 10 feet. I would be up to 15 feet per co-locator. And that would have to be technically proven to us, that they need the 15 feet. So you would look at 75 feet. plus 60 feet. So 135 feet.

COMMISSIONER SULLIVAN: Sixty; what is the 10 then?

MR. DOMINGUEZ: Again, for clarification, the 10 feet on the column to the right is the height that they're allowed above an existing structure.

COMMISSIONER CAMPOS: So for example, if there was a 36 feet building, they would be allowed up to 10 feet above that building, if they attached on the building? That's what that column's for?

COMMISSIONER SULLIVAN: So then an architecturally integrated WCF, that's one that's somehow camouflaged or attached to a building or something like that, right?

MR. DOMINGUEZ: That's correct.

COMMISSIONER SULLIVAN: Okay, so a free standing would be what you call a WCF?

MR. DOMINGUEZ: Correct.

COMMISSIONER SULLIVAN: So in a commercial center, another 60 feet. Perhaps you're saying, based on this 15 foot times 4, so you could have 100 feet tower approvable by through the staff process without coming through the Commission; is that correct?

MR. DOMINGUEZ: Mr. Chairman, that would not be through the staff process, that would be through a public hearing at the Development Review Committee. But that would be before it came to you.

COMMISSIONER SULLIVAN: But it wouldn't need to come to us?

MR. DOMINGUEZ: Correct.

COMMISSIONER SULLIVAN: If they could approve it and that would it then --

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, as the ordinance now reads, that's correct.

COMMISSIONER SULLIVAN: So 100 feet would be the --

MR. DOMINGUEZ: That would be 120 feet -- 60 feet. plus up to 60 feet. in co-location.



COMMISSIONER SULLIVAN: So that would be 120. So getting back to your fall radius then, you would say in that case that they had to be 240 feet; is that right?

MR. DOMINGUEZ: For resident, no --

COMMISSIONER SULLIVAN: Twice the height, right? One hundred feet or twice the height, which ever is greater. So in that case it would be a radius of 240 feet; is that right?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, if I may draw your attention to the setback, twice the height is residential setback. What we're looking at, the numbers we're talking about, the 60 plus the 60 would be in a commercial zone so that would not be in a residential setting.

COMMISSIONER SULLIVAN: Okay, so that fall radius only applies to a residential setting?

MR. DOMINGUEZ: No, Mr. Chairman, the fall radius is separate from the residential setback. Those are two different setbacks.

COMMISSIONER SULLIVAN: If you look at the resident then we could add as much as 60 feet to that, that would be 96 feet. times 2 would be 192 feet.

MR. DOMINGUEZ: From a residential property.

COMMISSIONER SULLIVAN: For a residential property. Thank you.

CHAIRMAN DURAN: Can we move back to page 6?

MR. DOMINGUEZ: Yes, thank you. Line 20, we struck, "ground mounted antenna--" we replaced it and now it reads, "architecturally integrated WCFs less than 24 feet in height, no setback shall be required."

Page 7, line 9, D, 2, we added, "all disturbed areas shall be re-vegetated and or stabilized as necessary to control erosion and dust." Line 13, under 4, we struck the majority of it and it now reads, "all landscaping plans shall be approved by the fire marshal."

CHAIRMAN DURAN: Why do you want that?

MR. DOMINGUEZ: The fire marshal asked for that. They just -- we would review it within land use but they also want some comment on it. I believe it has something to do with defensible spaces. Because in some cases we asked that they put trees up and it could be that the trees would not be in their best interest in a defensible area.

CHAIRMAN DURAN: Don't master plans go through their review anyway?

MR. DOMINGUEZ: Mr. Chairman, they do. We are in the process now. They're somewhat busy, if you would. I'm not sure the right word to use, that we have worked with them through the master plan area and then going into preliminary and final so they would like to see these at this point. It was a request by the Fire Marshal's office.

CHAIRMAN DURAN: Okay.

MR. DOMINGUEZ: Line 22, page 7, some minor changes, "No equipment facilities in the form of sheds or buildings shall be located on slopes greater

than 30 percent. Line 23, "support structures and equipment facilities in the form of," we added. So it was just for clarification.

Page 8, Line 2, if I go too fast, please stop me. Line 2 on page 8, after Power Outages, it now reads, "emergency backup generators in use only during times of power outages and testing or maintenance shall comply with those standards."

Line 25, 10, C, now reads, "location of support structure," D reads, "equipment facility." Moving to page 9, just being consistent in the language, line 5 reads instead of buildings, "equipment facilities, support structures, antenna rays, dishes, type of support structure," and then the example would be, "Monopole, supported lattice, existing vertical infrastructure."

Line 13, that would be under a little subtitle 14, "Topography and slope plan which identifies all slopes at 30 percent or greater and ridgetops." They need to identify the ridgetops. Line 16, we added, it now reads, "Certification that the WCF meets or will meet FCC requirements," and we added, "a copy of the FCC Compliance Statement, any other relevant FCC submittals and any other necessary documentation."

COMMISSIONER SULLIVAN: Can I ask a question? Back on page 3, when we were looking at that chart, you have those architecturally integrated which generally tends to give another 10 to 15 feet of height. And under the definition of architecturally integrated in 4, B; on page 3, you state, "a facility which is visually integrated into the landscape or existing vertical infrastructure by means of height, color, texturing, architecture, treatment, massing, placement, size, designing or shape."

I'm reading into that that almost just by painting the tower could you say "color" by painting the tower adobe or whatever color, we can qualify for an architecturally integrated WCF and gain that height. Is that a fair interpretation?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, I don't believe that that was the intent of that statement there. We used an example as we putting this together and I believe we shared this with yourself. We gave the example of a mountain that might have a red face on it, a red colored dirt and they could put a tower in there and they would paint it that would visually mask it and they would not see that. That would be one example. But it would be at the discretion, again, of the Land Use or the code administrator.

COMMISSIONER SULLIVAN: Yeah, I just see a problem there because I just see almost any kind, you could paint it blue, you could paint it red, you could paint it adobe, whatever the land use administrator thought was correct and then you would immediately pop into that second column. And I think that's a little too lenient. But maybe as you go on we can--when we get back to the charts, we can discuss that more.

But I just think that color jumps out at me as being too easy a way to pop into the second column and get that additional 10 or 15 feet.

CHAIRMAN DURAN: Well, would you rather see it at a certain height than not see it?

COMMISSIONER SULLIVAN: Well, I think what was originally thought in terms of architectural treatment and that type of things was either

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camouflaging it as a palm tree or something as is done in some areas of the country. Or having some kind of innovative way of disguising the facility.

But I think just painting it, I think we're going to have everybody coming in that column and the first column won't even apply.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, Chris came up with some real quick language and we could change it or add something simple to read something like, "so as not to appear as a wireless communication facility to the naked eye." We could work on some language that would clarify that.

COMMISSIONER SULLIVAN: Okay.

MR. DOMINGUEZ: That's simple.

COMMISSIONER SULLIVAN: I would suggest taking color out, actually, and including what you say there.

MR. DOMINGUEZ: Sure.

CHAIRMAN DURAN: Well, let's talk about that a little bit.

MR. DOMINGUEZ: Okay.

CHAIRMAN DURAN: I was driving north this weekend and in the Pojoaque, not Pojoaque, but those big red towers, they're 200 feet. They're visible during the day, you can see them. You can actually see them in the night because they have lights on too. As I went further up north, towards Taos, I noticed one that was pretty much the same height and it was painted a light gray. And as you looked at it with the sky behind it, you couldn't even see it.

So I think that color does have something to do with how visible those towers are. And especially when you get higher. As you get lower, you're going to have the-- because we live in rolling hills, where if they paint it brown or green, it's going to camouflage it. But the higher you get, the more visible it's going to be. And color, I think, is the only way you can--

MR. DOMINGUEZ: Mr. Chairman, what we could do is, we could take it out of this part. Under design standards we do have a section there that says the land use administrator has the authority to say what color it should be painted. So the color is addressed with in there. It may not be -- it may alleviate some of the concerns that Commissioner Sullivan has. As far as getting a height bonus, for looking like that. But we could also address the color within the code administrator's authority.

COMMISSIONER SULLIVAN: Mr. Chairman, I think everyone under -- every tower under 200 feet is going to come in as some compatible color. Whether it's the adobe or the blue or green. I think what you're seeing up there north, by federal requirements, once they go over 200 feet; a) they have to have a light on them, and b) they have to have the checkerboard color, the red, white, red, white, red, white

So once they go over 200 feet we have no control over the color. They become that color and they have a light on them. So once they're below that, then I think they're going to be a variety of colors, whatever is the most pleasing. And I think probably the companies would want that as well.

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And I just don't want to see that be a criteria that because mostly towers, I think, that we'll be approving will be less than 200 feet. I don't want to see that move them into that other category. It sounds, Tom, like you can work with that.

MR. DOMINGUEZ: Mr. Chairman, we could fix that language.

CHAIRMAN DURAN: Okay.

MR. DOMINGUEZ: Line 21, No. 19 now reads, "technical data including fall radius, proof of technical necessity for height adjustments, WCF mounting type and co-locator capacity." A few typographical errors on page 10. --is line 24, under notice, under Posted Notice, we just added that, "the applicant shall post notice," that was always there but we added, "that the notice would be provided by the code administrator consistent with our code."

Page 11, again, added the same language, "provided by the code administrator." Under sub-paragraph 6, under Neighborhood Notification now reads, "the applicant shall notify by certified mail all groups and individuals which have requested notice of an application in the intended area."

The only thing we added there was instead of singling out groups, we added, "and individuals." "Code administrator shall keep a record of the name and addresses of all community groups and individuals wishing to receive notice."

COMMISSIONER SULLIVAN: Excuse me, Tom. I missed another one. Back on page 5, under Citing, you talk about 6, A and B, in Discouraged Locations and Encouraged Locations. In the first drafts that I saw, making reference to the Santa Fe County Visual Resources Inventory and Analysis, of October, 1995, it said that those locations identified in there would be prohibited.

And now we're categorizing them as, "discouraged and encouraged." Could you explain to me what that means. What does, if an applicant is coming forward with a discouraged location, are his criteria any different than if he's coming forward with an encouraged, in this case?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, I draw your attention to the board up here in the side. Under encouraged locations, an encouraged location we have the first bullet there, Future Planning Process, including citizens, staff and industry. What we envision is we would like to draft a GIS map. It's no different from what we talked about before with the involvement of citizen, staff, industry, be it like a field trip type of deal.

However, it would be so that we can come up with encouraged locations where we would like to see them. We would like to have the industry involved so that we would know where they would like to be as well and we feel that there could be some agreement, all things being equal, you know. We could come up with some ideal locations to have towers.

Secondly is, visually appropriate location i.e. out of the view sheds and we'll address discourage with the next line. "Visually appropriate locations, the maximum utility to users and employee cites specific criteria" which we would rely on industry for.

Under discouraged locations, again, "being part of the future planning process, the same process where we would not want to see them." Some of those are identified as the scenic areas, scenic corridors, specific viewpoints, and then any other identified locations that might come up through any kind of plans that the County has that have already been adopted or would be adopted.

And then at the bottom we say, "free standing antennas and towers require conditional use permit and discourage locations." So they could not get approval in a discouraged location, administratively. They would have to come in to the review public hearing process.

COMMISSIONER SULLIVAN: What was the reasoning from changing from prohibited to discouraged?

CHRIS GRAESER (Deputy Attorney): Mr. Chairman, Commissioner Sullivan, it was really a "never say never" issue. We recognize that there are other laws supreme to ours that work here. And we didn't want to set up ourselves for a situation where we couldn't do something that we really had to do to comply with federal law or something like that.

Second is, if it implied somewhere, we're kind of picturing in our head some big ugly tower there, or something, we want to call the a discouraged location.

Someone maybe will come in with something very, very innocuous that you really even can't see that will allow them to provide service without having to put up a bunch of towers in other places, you know, if you have the right topography or something.

We thought we should at least open the door for that. You will note that there is a location or sighting hierarchy in this ordinance and discouraged locations are down towards the bottom. So you have to prove that you can't go anywhere else, also, before you can even apply to go there. Again, it's up to the discretion of the land use administrator -- but it really was a "never say never" issue.

CHAIRMAN DURAN: Okay, we're on page 11.

MR. DOMINGUEZ: Page 11. Under 9, A, Administrative Reviews, sub-paragraph, little a, says, "a WCF that meets the height limitations defined in this section," we added, "and the locational criteria and other requirements of this ordinance." Last line, Structure on which is to be located by more than--well let me read the whole thing, sub-paragraph 2, "does not exceed the height of support structure on which it is to be located by more than the amount permitted by this section." Again, just for clarification.

Page 12, line 7, we added, "authority on ridgetops and it reads, "the code administrator may approval architecturally integrated WCFs less than 20 feet in height located on a ridgetop. All other locations on ridgetops shall be pursuant to conditional use permit."

Again, if we could flip through-- this is a good example right here. This is Dos Griegos in Eldorado. There's at least 6 towers in this frame of this picture. You cannot see them from here and we're somewhat close to the base of this mountain. And then when you look at it, that's what they look like. You can see centered in the

frame, they're about 12 feet poles with an antenna on it, they're painted camouflage. You can't see them unless you're right on them. So that's that kind of thing that we're looking at in the example that we added here.

And now that brings us to the tables. We didn't change anything on the tables, but Commissioner Sullivan seemed to have an interest in the numbers.

COMMISSIONER SULLIVAN: Yes. I was a little unclear in the Community College District. Assuming that that's not in a discouraged location, would they--in contemporary communities locations require conditional use permits. Yet, in the Community College district, which also has very dense residential clusters, we don't seem to require that. Could you explain that?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, in the Community College District, because they passed their own ordinance, they have set a different height limitation and that's what we're referring to here. The otherwise allowable height would be those that are dictated by the Community College District plan or district ordinance.

COMMISSIONER SULLIVAN: And what's that maximum height?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, it varies in the different types of zones and I really couldn't rattle that off to you right now. But we could get that for you if you'd like.

COMMISSIONER SULLIVAN: So there would be no situation in the Community College District where a conditional use permit would be required? I don't think there's any ridgetops there.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, if it's the--Community College District Ordinance dictates the maximum height. Anything above that or that follows the guides of this ordinance, the number of co-locators, et cetera, would have to come before the public hearing process.

COMMISSIONER SULLIVAN: When you have the co-locators, giving them another 60 feet, it seems that when these applicants come in initially, and in particularly if they're tower building companies as opposed to AT&T or some other carrier, they don't know yet if they--they say, "Oh well, we're proposing to have co-locators," but you know, they don't have any contracts in their pockets until they get the tower approved and get it built. How do we address that?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, within the submittals, anybody that's coming in with a co-locator is required to have a signed contract by the co-locator in order for us to approve it. At the submittal.

COMMISSIONER SULLIVAN: At the initial submittal?

MR. DOMINGUEZ: At the time of application, that's correct.

COMMISSIONER SULLIVAN: At the time of application, okay. Are we through with page 12?

MR. DOMINGUEZ: Yes sir. Page 13, line 11, we added, "B. and it reads, "WCFs located on ridgetops that otherwise comply with this ordinance." That's under, Development Review Committee would see. Nothing else substantial on there.

Page 14, although we're looking at the heights there, if you have any questions on the chart, we're open. If not, we'll move on. Page 14--

COMMISSIONER SULLIVAN: Excuse me, Tom. Did you define Development Review Committee anywhere?

MR. DOMINGUEZ: In the Land Development Code that is defined. We weren't specific because it's either going to be the CDRC, the SFCC, DRC, whatever LDRC it would be that has the jurisdiction.

COMMISSIONER SULLIVAN: So would an LDRC or this new composite that we discussed earlier today, would they have jurisdiction to approve antennas that complied with this chart?

MR. DOMINGUEZ: If it is within their jurisdiction, they have the same authority as the CDRC.

COMMISSIONER SULLIVAN: Which is only recommended--though.

COMMISSIONER TRUJILLO: That's right.

CHAIRMAN DURAN: On some issues.

MR. DOMINGUEZ: On some issues.

COMMISSIONER SULLIVAN: That's what I'm getting at. Minor variances they're allowed to approve.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, under this ordinance it is structured to have three steps. One is an administrative approvable, the second would be one public hearing which is the Development Review Committee and then the third, the only thing that would come to you would be as what's laid out here.

COMMISSIONER SULLIVAN: So anything on these charts that an applicant proposes and complies, with these charts, can be reviewed at the local development review committee level and that's the end of it?

MR. DOMINGUEZ: That is correct. As long as they comply with the criteria set forth in here. The administrative approval does not have the--the code administrator does not have the authority to approve anything within a residential subdivision or traditional community. That has to go to the development review committee. So it would go to the pertinent committee in that community.

COMMISSIONER SULLIVAN: And then if it was turned down, then it would move forward on appeal?

MR. DOMINGUEZ: Onto the Board of County Commissioners, that's correct.

CHAIRMAN DURAN: Page 14.

MR. DOMINGUEZ: Page 14. C, 1, a, reads, "Approval conditional use permits: heights greater than those approval by a development review committee," again, I'm sorry, let me tell you the heading is, "The Board of County Commissioner Reviews." "Approval of conditional use permits: heights greater than those approvable by a development review committee, where the applicant is appropriate pursuant to the conditional use permit criteria and otherwise complies with this ordinance.

The other change is under 2, and it now reads, "The Board of County Commissioners shall render its decision within 90 days after development review

committee makes its recommendation but in no case more than 180 days unless by agreement with the applicant."

COMMISSIONER TRUJILLO: Mr. Chairman?

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: Mr. Dominguez, could you explain Item 2, time, it's no later than 90 days after a review committee makes its recommendation, but in no case more than 180 days?

MR. GRAESER: Mr. Chairman, this is actually a drafting mistake. If I could suggest inserting, "but in no case more than 180 days after a complete application is made unless by agreement with the applicant." We lost some language there.

COMMISSIONER CAMPOS: Okay.

MR. DOMINGUEZ: Okay, Mr. Chairman, Commissioner Campos, I'll clarify for myself, anyways, and I think the question that you asked relative to the time frame it says, "90 days after development review committee makes its recommendation." This would be for anything that is beyond the scope of what a development review committee could review. So it would--they would make a recommendation on it to you. I think you asked that question.

COMMISSIONER CAMPOS: I just wanted some clarification on that. Considering that language and the one that followed.

CHAIRMAN DURAN: Do you have that clarification?

COMMISSIONER CAMPOS: I think the proposed language makes it clear.

CHAIRMAN DURAN: Okay.

MR. DOMINGUEZ: Moving on, nothing substantial, just a few clerical cleanup on that. Page 15, on line 16, it now reads, "any WCF that is not operated by any user for a continuous period of 12 months," we added, "by any user." Line 22, now reads, "the height of the highest currently used antenna lays on the WCF is lower than any point at which the support structure may feasibly be disassembled. i.e. a junction between two tower sections and the higher portion."

The reason for that clarification was we were asked that--this is talking about abandoned facilities and the need to bring them down and before there was no clarification. It said if they're gone, they have to come down but we realize now that the facilities are made in certain lengths and so they would have to come down at a reasonable length. And that would be case by case, whatever that structure is.

Line 25, we struck line 25 and 26, which read, "the code administrator shall have the authority to permit maintenance of the support structure moderately higher than otherwise permitted by this section." And then 14, now reads, "RF emissions and monitoring all antenna raised shall conform with the applicable FCC requirements for radio frequency emissions. In the case of non-conformance, the facility operator and/or owner shall be notified immediately and given 7 days in which to bring the facility into conformance. RF monitoring requirements such as use of the--protocol on a reasonable basis in accordance with the applicable law may be imposed pursuant to a conditional use permit.



COMMISSIONER CAMPOS: Mr. Chairman?

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: Mr. Dominguez, could you go back to page 15 line 21, that responsibility for taking these towers down. You talked about landowner, you know, "that the landowner may ultimately have the responsibility to pay for the takedown of the tower." How do you ensure that the landowner knows of his responsibility and contracts for that?

MR. GRAESER: Mr. Chairman, Commissioner Campos, we would hope that if a landowner is contracting to allow a wireless communications facility on their property that they would make themselves aware of any applicable ordinances. Other than that, certainly if applications to come into us, the developer review staff is pretty good about letting everyone know the requirements. I'm not sure if I can answer that other than that.

We certainly, the first line of addressing this situation would be to try to get the individual or the company that erected the tower to take it down, because it shows more of their responsibility. But if you do lease out your property, you have the ultimate responsibility there.

COMMISSIONER CAMPOS: My feeling with these that we have some affirmative duty to go out and inform the landowners that there is no miscommunication, no misunderstanding, argument, "Hey, I didn't know that." It probably should be the burden of the carrier but there should be some evidence in the application file that shows that the landowner was informed.

MR. GRAESER: Mr. Chairman, Member Campos, may I suggest we add as the final number under submittal requirements, "certification that any landowner has been given a copy of this ordinance."

COMMISSIONER CAMPOS: Well, not only the ordinance. Maybe the average person would not read the whole ordinance. Maybe specific information, a copy of the specific reference to the responsibility on takedown.

MR. GRAESER: What if we require that the landowner be given a copy of this ordinance and the informational letter provided by the land use administrator. And we could put together a letter with everything we think is really important to call their attention to.

COMMISSIONER CAMPOS: I think that would help.

MR. DOMINGUEZ: Mr. Chairman, continuing, well we're on page 15, the last page, nothing substantial.

CHAIRMAN DURAN: Okay, great. Thank you Tom.

This is a public hearing. Is there anyone out there that would like to address the commission concerning this proposed ordinance?

COMMISSION TRUJILLO: Mr. Chairman, I have a question for Tom and/or Chris. We've got a pretty comprehensive and possibly stringent ordinance here regarding cells towers and then antennas and the like. How are we making sure that this ordinance will be implemented on Native American Trust Land and highway right-of-ways.

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Because it doesn't make any sense to have something like this in place for all other land and then we'll see a proliferation because of this ordinance on Native American land and on the highway land just for the sake of circumventing the requirements that are delineated in this ordinance.

So I don't want to put something in place that will give impetus to a proliferation in other areas where the county doesn't have any jurisdiction and we cannot implement these requirements.

MR. GRAESER: Mr. Chairman, Commissioner Trujillo. we certainly understand that concern. And we've been trying to address that. We've made the tribes, the Eight Northern Pueblos, State Land Office, the Forest Service, the Highway Department aware of all the versions of this and everything we've been doing with regard to this ordinance. We don't have a way to force any other jurisdiction to adopt this.

This ordinance does apply to the extent it legally can on lands of other jurisdictions. At some extent we will have that answer from the Court of Appeals sometime this year.

What this does do though, it allows the Commission to have a legal avenue to approve, in some cases, much larger facilities than you could now under the code. The highest commercial tower you can do under the code now is 36 feet. So we can go up a lot high to where circumstances dictate that it is appropriate to go higher. And hopefully, that will encourage the applicant to come within this code rather than going to other jurisdictions.

Other than reaching out to those other governmental jurisdictions and suggesting that they can adopt this along with us, we don't have the authority.

COMMISSION TRUJILLO: I think the point that I'm making is that I don't want to see this code circumvented and the exact thing we're trying to regulate and oversee and control happened outside of our jurisdiction. It wouldn't make any sense to have this document in place if we're going to see these things go up where we don't have any jurisdiction. And that's ostensibly what we're forcing people to do.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, if I could attempt to clarify what we were attempt to do with this is we feel that the ordinance that we have in place now and I'm reiterating what Chris has already said, allows through the administrative approval and then through a one public hearing approval much taller towers than are allowed now by the current code.

Right now it's 24 feet and 36 feet. 24 in residential and 36 feet in commercial. And that would be even before coming to you and going for a variance to the height.

What we're trying to attempt now is we're offering the ability to have higher towers through an easier process to try and encourage locating within Santa Fe County and not on other jurisdictions. And that's the intent of this.

COMMISSION SULLIVAN: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSION SULLIVAN: Two questions, Tom. One is, and maybe I missed it, but what are the fees that we...we talk about fees, application fees in here too. What's the typical application fee?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, right now what will be coming along with this ordinance as it goes at your next Board of County Commission meeting, we will be bringing forward the resolution to address the concerns brought up at budget hearing reflecting our normal fee increases but as far as addresses this ordinance we're looking at and this will be what we will bring before you, the administrative procedure and would be \$750.00.

The one public hearing procedure which would go to a local development review committee that's got the jurisdiction, I believe, is \$1200.00 and then the application that would come all the way to the Board would be \$2,500.00.

I believe those are roughly the amounts we have on it right now that will come before you and the justification that comes with that. What we did is we looked at staff time from the pre-application meeting all the way through the appropriate steps through administrative approval. One hearing and two hearings that included all the costs for staff time, materials, review agencies, and all of those types of things. It did not include overhead, but they reflect those true costs.

COMMISSION SULLIVAN: That is not in this ordinance?

MR. DOMINGUEZ: That is not in this ordinance. It currently resides in a resolution and a fee structuring. It will remain there as we come to you next month.

COMMISSION SULLIVAN: Okay, then my other question was, in general, and you don't obviously need to get into specifics, how does this ordinance compare with the city's cell tower ordinance in terms of height and so forth?

MR. DOMINGUEZ: I was going to give an answer but I was going to defer to Chris but he had the same answer. Currently the city's ordinance, it's a pretty complicated ordinance. And it was somewhat difficult for us to decipher. I have been trying to bring that tower through that so I can't give you an educated answer. We have been told, by some of the industry that's been dealing with this, that they've appreciated this approach versus, I believe, the city's is 50 or more pages long.

COMMISSION SULLIVAN: In terms of maximum allowable heights, you feel that our ordinance is more liberal than the city's?

MR. GRAESER: Mr. Chairman, Commissioner Sullivan, it's more liberal in that it really gives the Commission flexibility to allow whatever is needed, whatever is appropriate in any area. It's less liberal in the land use administrator level. This ordinance has the lowest law life of any ordinance I've seen. If that answers your question.

CHAIRMAN DURAN: It might keep us out of court.

MR. DOMINGUEZ: Okay, if there are any technical questions, I'd like to recognize Mr. Chris Witze. I did not introduce him other than he's one of the founding fathers in the industry. And he's a resident of Santa Fe County and he's been working with us.

CHAIRMAN DURAN: Well, I think we're moving to the public comment.

COMMISSIONER CAMPOS: Could we begin by asking Mr. Witze to maybe make general comment on the ordinance if you'd like to do that?

CHAIRMAN DURAN: No, I'm not going to allow that. We're going to move into the public comment. I think enough has been said. Let's see what the public wants and has to say about it. Does anyone out there in the audience that would like to address the Commission concerning this ordinance. Please step forward and state your name for the record and your address. Not your address, your name is fine.

JANET DEGAN: I'm Janet Degan, I live in Santa Fe. And on behalf of the Santa Fe Citizen Task Force on microwave antennas which represent 1500 citizens of which the signatures have already been given to the county, we really want only one major thing.

This most important concern is for residential areas to be protected by a 1500 foot setback. This is a simple zoning request totally allowed by the Telecommunications Act of '96 not based on health.

It's based on zoning. Zoning is created to separate residential areas from commercial and industrial interests which zoning recognizes as incompatible. Why? People need their stable. They go from generation to generation beyond 10 years more like seven generations. Commercial and industrial uses are short term and profit motivated. They aren't concerned with the public interest. They're concerned with private profit.

The public interest is to protect the views, protect property value, have safety from lightening strike, protect in power failure, protect the ability to citizen to obtain home loans. All which are impacted by intruding of wireless communication facility only 100 feet from their home which this ordinance allows.

You know lightning strike, there's a wide range in atmosphere and ground disturbance beyond 100 feet. When a towers falls, it could be high winds, pieces break off, travel down, they're a hazard for quite a distance. We sent you all a packet that includes the citing of the hazards. Also the FHA will not give loans to residences who are near a tower.

We ask for a 1500 foot setback for wireless communications facilities for residential areas. We want zoning protection. Unfortunately there is no real zoning designations in the county for commercial and industrial uses and it's mostly zoned residential. Therefore, in lieu of this zoning -- to protect residences we are asking for a 1500 foot setback from properties containing residences in lieu of this zoning commercial industrial areas.

Fifteen hundred citizens have requested that residential areas be protected by a 1500 foot set back. We have a legal right under the Telecommunications Act of 1996 to uphold the protection of residential zoning. We have a right to ask for it and we have a right to get it in this ordinance. This is the will of the people and even mandated to create and preserve residential zoning. Residential zoning has been around a long time before the wireless industry appeared.

It is an essential tradition of local government for people to have places to live which are free from commercial industrial use for reasons that are old and ongoing historical recognition that there is a likely incompatibility between residential and commercial industrial land use, because the proper motive may not blend well with the

homesteading motive. The need for homestead for residential rest in recreation and child rearing. I'm not just saying this needs for extraction of maximum corporate cash profit from a piece of the land.

We need zoning to separate public interests from private interests. There's a current tendency to commercialize every remaining aspect of life. We're standing for the roots of the citizen democracy and that we need to have some say, at the very least, about what happens to the piece of land where we live.

Residential areas requires stability. Wireless communications facilities introduced change in technology changes in government regulations and we're asking for a tiny buffer zone given the size of this county. And a buffer zone that preserves residential property and is perfectly legal. We believe that land use stability is desirable for raising children.

Government regulation should be long range versus shortsighted and take the seventh generation perspective. Can you tell us what changes in industry will come even in the next 10 years? I think not. No changes in FCC guidelines have been made since 1986. That is likely to change soon. There's been no research incorporated in the FCC guidelines since 1986. No more money has been allocated for research. Though industry wrote the act, the Telecommunications Act, the industry does its own monitoring. And the industry in our county is now dictating a residential zoning in this ordinance. Are they invaluable? Where creative profit is of concern, there is fallibility.

We are ask for wireless communications facilities to be setback 1500 feet for residential properties unless there is written consent from homeowners within 1500 feet of the proposed wireless communication facility. We can be flexible in allowing this compromise. This was industry's suggestion at a conference and we think it should be included in the ordinance. And we hope it will.

I am also on the Santa Fe National Forest Scenic Byway Task Force. We have requested that wireless communication facilities not be located in the scenic byway view corridors. The community has worked very hard to protect our scenic byway and obtaining federal enhancement grants and promoting safety for the byway. Scenic byways are a valuable county resource and are worthy of protection from wireless communications facilities for obvious safety reasons and a view shed protection.

I believe that it's too weak to say "discouraged location," and we should say "prohibited." We don't want all these hearings to keep coming up. We've had the opportunity to write a firm law so that we don't have to keep coming back in the court. If we have a strong ordinance, then we can avoid a lot of these hearings.

So I hope we take this opportunity to make a local law that is here to protect our community. Thank you.

CHAIRMAN DURAN: Thank you. Next speaker, please.

CAROLYN SIGSTEDT: My name is Carolyn Sigstedt. I live in downtown Santa Fe. And first I want to commend the Commission for putting together this ordinance. You saw a problem and it was a problem that I felt you addressed immediately. The action that you're taking with it, actually the process that took place in putting together this ordinance was quite good. I think it's a process that should be used for other highly contentious issues at the county level.

What we had was we invited all parties or interested parties to a discussion, an afternoon discussion, regarding different perspectives on cell towers. And I thought it was very valuable what took place there because it wasn't just a public hearing where people get up and get to present. You actually had a dialogue where people got to present their perspective and then one could respond to it.

And I think this is a very healthy thing to do. And often in discussions like this one can come to a better truth. I think it's important to stress that this ordinance had to be put together rather quickly because this business is moving very fast. And so I do understand that. But because it was put together so quickly, I want to make sure that I stress to you and the public and the county that the intent of this ordinance has always been and I think it's most important intent is to provide for the creation of a master plan.

This is an ordinance that is not a master plan yet, but we should keep that vision in mind and follow through on that. And if we had master planning, Commissioner Trujillo, your concern, which I think is very, very valid, of different jurisdictions not having their own governmental right.

And there are so many issues in government nowadays where jurisdiction will always overlap each other. It's high time that we, at the county, the city, the state, the feds, the pueblos, we all have to begin this dialogue to learn to respect each other's position, learn to understand each other's positions.

And then in my opinion, I actually think the county has done some ground-breaking work in regard to ski expansion when you stood up and made a statement to the federal government that you wanted the federal government to recognize local ordinances.

We at the county recognized city ordinances. I think this discussion needs to take place with the pueblo and the state as well. A part of the ordinance that concerns me is the section on page 12, number 10, that deals with conditional use permits. And the county Commission has been criticized by governing too much by variance.

CHAIRMAN DURAN: Excuse me what page? Or what line?

CAROLYN SIGSTEDT: Or may I -- I'm just talking about conditional use permits and I actually put concept that I want us to think about because it's really important what we're doing here.

CHAIRMAN DURAN: Are you addressing this specific ordinance, Carolyn?

CAROLINE SIGSTEDT: I am.

CHAIRMAN DURAN: Then which part of the ordinance are you addressing.

CAROLYN SIGSTEDT: Oh, I'm sorry. I have a different ordinance that you do.

CHAIRMAN DURAN: And which part of this is of...

CAROLYN SIGSTEDT: I'm just talking about conditional use permits which is a new way, it's a new term, that I hope we don't abuse. What I was stating was, what my affirmation stated and I'll state it again is that the county has been criticized over the past years for governing too much by variance.

So we don't, in this ordinance, write variance at all except for variance, the only variance we have is in to comply with the Federal telecommunication Act. But we do have this section here which talks about a conditional use permit. And I just don't want that abused. And I want everybody to understand what we're talking about here.

A variance allows, 1) to not comply with the law. In other words, that's how we come up with the term "legal non-conforming use," We do that. Under what a conditional use permit means is that it's actually allowed by the law if it meets certain conditions to the satisfaction of you, the county commission.

Now, that is a good thing in that it's flexible but it's a bad thing in that it actually gives more power than a variance would. And it can be abused. So the fact is, I just want you to understand that the good thing is the county commission can nix the ultimate decision.

The bad thing is that the county commission makes the ultimate decision, and we have to be aware of that and it cannot be abused. And at this point, it could be. I wonder whether the language from "prohibited" to "encouraged" will switch. So that it could fit into what one could read in the industry as a loophole under the conditional use permit. It's just something that concerns me.

I also feel that the 1500 square feet. next to residence, if you look -- I drive out to Española. I see the tower in Arroyo Seco next to this very well kept tide full, modest property. And you have to understand that cell towers are imposing because of their heights.

So the distance the neighbors are asking may seem a lot like the industry because it costs them more money to buy this piece of property. I mean it is a bottom line issue.

But what you're doing by not recognizing this distance is that you're leaving these humble residences that have built their homesteads, over many years, degraded and devalued by this disproportional structure. It's kind of like having a Wal-Mart next to your house. So those are the issues that I think are worth discussing.

CHAIRMAN DURAN: Thank you. Next speaker please.

MARK BASHAM: Mr. Chairman, Santa Fe County Commissioners, my name is Mark Basham. I represent Cricket Communications. I, too, want to commend staff and Commissioner Campos in all the hard work that went into this. Not only did they work hard, they also solicited and included citizen and industry input in this ordinance.

I wouldn't characterize this ordinance as less stringent than the city's. I would characterize it as an easier read than the city's, but certainly not less stringent. It's just not easy. There's a lot of loops than an applicant must jump through. There's extensive submittal requirements. In some it's just not easy.

And I'll be honest with you, Cricket is not happy with the entire ordinance but it's an ordinance we can live with. It's the result of reasonable compromise. Thank you very much.

CHAIRMAN DURAN: Thank you. Next speaker please.

KEVIN HOWELL: Mr. Chairman, members of the Commission, my name is Kevin Howell, I represent Verizon Wireless. I want to thank both the

Commission and Chris and Tom for all the work that they've put in. We really do believe in the processes you've heard from the neighbors.

We did not get everything industry wants. I don't think the neighbors got everything that they want. It's a compromise and it's a workable one.

From Verizon's view, this ordinance does not drive every site to alternative jurisdictions per Commissioner Trujillo's concern. We think it's something that we can live with and work in the jurisdiction. The setbacks in the ordinance are appropriate. Topography portions, installations and residential areas to cover because the line of sight issues. Stealth sights like water tanks, PNM poles, we believe are good, low visual impact sights and they are sometimes in real residential neighborhoods and we think that the setbacks at 100 feet are appropriate.

You have to remember that the 100 feet is to the property line plus whatever building setbacks are there. So you can't get within 100 feet of a residence. It would probably be closer to 150 or something.

So we urge you to pass this with the setbacks as written. Thank you very much.

CHAIRMAN DURAN: Thank you. Next speaker please.

ALLEN JARAMILLO: Mr. Chairman, members of the commission. My name is Allen Jaramillo, I'm am zoning coordinator for Voicestream Wireless, 4830 Pan American Freeway, Albuquerque, 87109. Thank you again for your work on this ordinance. It's been a long journey. We've gone through a long hard path to get to this point.

Voicestream does have some concerns that we would like to address concerning this proposed ordinance:

1) Much of the concern has been addressed concerning possible fall of a tower. I would like to mention that in New Mexico, there has not been in record of these towers falling in recent times and injuring people.

Towers constructed with the highest building and permitting standards in all federal and local uniform building codes and are stamped with professional engineers' license of approval. Tower are designed to collapse within themselves meaning that there is a potential fall. But if there is a potential fall, they will not fall their full length. I would like to just read a few paragraphs, if I may, from a structural engineer named Jason Dickman. He's with TowerCom Technologies.

All communication structures designed for installation through out the United States are manufactured in strict accordance with the ANSI/TIA/EI-22 design code. This particular code was written for the sole purpose of providing for safe and functional communication structure design, fabrication and installation. All communication structures designed for installation within Santa Fe county must be designed for a basic, minimum wind speed of 75 feet, local jurisdiction may require higher wind speeds. This wind speed is the theoretical maximum anticipated wind speed which will occur once in a 50 year period. The code relies on the allowable structural stress requirements as specified in the American Institute of Steel Construction. The code requires that the maximum allowable structural stress, outlined above, be maintained at a level well below



that which will actually be required to cause the structure to fail. Maintaining such low stress levels will ultimately result in very safe communication structures with extremely low probabilities of failure. Failure Mode as stated above, communication structures are designed with significant factors of safety which will greatly reduce the probability of failure. However, there have been occurrences where communication structures have failed, fallen or buckled. Failure of communication structures have historically occurred during the erection phase of new structures or the refitting of existing structures. Monopole full scale testing has shown that monopole structures tend to fail in a buckling manner similar to the side-wall crushing of a soda-pop can. Total collapse of a monopole structure is extremely rare. Guyed towers, historical evidence has shown that guyed structures, upon the rare occurrence of failure, usually involves the structure spiraling downward upon itself therefore resulting in a collapsed pile of steel and cable. Due to the inherent design of guyed towers, total collapse/ falling over, is highly unlikely. Self supported towers: Self-supported towers have traditionally failed by "folding over" about a point located anywhere between the base and the top of the tower.

And I could submit this for evidence if requested.

Number two, setbacks of the ordinance proposal, a 1 to 2 ratio, this defeats the heights-location incentive bonus. If an existing tower is already at a maximum setback requirement, we recommend that this requirement be reduced to a 1 to 1 ratio or just remain at the previous 100 feet standard proposed setback as before.

There has been support for our 1500 foot setback by other groups. If this type of setback requirement is adopted, it will almost impossibly be hard to find zoning and land where carriers can adequately meet RF requirements. If a 1500 foot setback is considered, this means that from the pole to the facility, in all directions, there would be more than a 1/4 mile. If, and I ask the question, if a property owner wants to build in between that setback, would he have to meet the requirements of this code or the regular underlying zone code? And if he just has to meet the underlying zone code, would that put that existing pole in an illegal setback situation.

To conclude, the ordinance, if passed, will greatly limit Voicestream's ability to adequately give federal required coverage to the County of Santa Fe. There is a need and a demand for wireless service, not only by its residence, by also the thousands of people who travel here to visit, not as a stopover, but as a destination point.

Voicestream considers the Santa Fe area one of its most beautiful places in its entire coverage area. And we want to be good neighbors and we'll do everything in our ability to keep the character and integrity of the county intact. Thank you for your time and courtesy.

CHAIRMAN DURAN: Thank you sir. Is there anyone else out there that would like to address the Commission?

JIM LEARY: My name is Jim Leary, and I'm with SBA Towers, Incorporated. And I have some questions and then I have some comments. The first thing I want to note is Cricket is a client of our, Verizon is a client of ours, Alltel is a

client of ours. We build towers for these carriers, more often now, than they build towers for themselves. What is important here is to realize that these carriers use us many times because it does make it economically possible for them to build because of us burdening the initial startup cost of building a tower.

We're able to build a tower for Cricket or Verizon or Alltel when we know that we can add other carriers to that tower to make it economically feasible to build it.

This ordinance, as it's now written, if I understand it right and I may not be understanding it right so this could be posed to you as a question instead of a statement. If I understand, for example, if I built in the rural area, we'll say on 41, somewhere down by Stanley and Verizon wanted me to build a tower there, that tower, the first height that it would have to be at is 35 feet and Verizon therefore would be mandated to be at 35 feet on that tower. Am I understanding that right?

MR. DOMINGUEZ: Mr. Chairman, this ordinance does not mandate anybody to be at any height. We're merely specifying the level of approval. If they wanted a 10,000 foot tower they could come before the Board and request it.

MR. LEARY: Let me ask that question again then. Under obviously this approval procedure though, with the code administrator, 35 feet would be the max?

MR. DOMINGUEZ: As presented in the ordinance, it is 36 feet in the area that he's describing for administrative approval throughout the [inaudible]

CHAIRMAN DURAN: Well, I think what he's asking, correct me if I'm wrong, is it 36 feet right?

MR. DOMINGUEZ: Yes, sir.

CHAIRMAN DURAN: If Verizon comes in and they are the applicant, they have to be at 36 feet and then Cricket would be at the next level; is that what you're asking?

MR. LEARY: That's correct. The company that maybe initiated this tower, the need and pointed out that there is the need for this tower and was the first one that came to us and asked for this tower, would be restricted to the 36 foot height. Then Cricket comes in and says, "Hey, that's a neat tower, we'll go at 16 feet or 15 feet above that."

CHAIRMAN DURAN: Is it possible for the co-locators and the original applicant to locate at the same height or within the same height? I mean, if someone had to be at 36, someone at 46, someone at 56, in 10 foot increments, or can they co-locate at the same height?

MR. DOMINGUEZ: Mr. Chairman, it is my understanding that technically there needs to be separation so that there would not be interference.

CHAIRMAN DURAN: How much separation?

MR. DOMINGUEZ: That varies. We gave the up to 15 because the industry seemed to indicate that it would be no more than 15. But we've seen in applications that have come forward as little as 4 to 6 feet separation.

CHAIRMAN DURAN: I guess I can get your point, sir, where if the first person that applies is restricted to the lower level, which means less coverage, you'd want

to be the last one to make application, right? So someone along that way is going to penalized for being the first one out of the blocks.

MR. DOMINGUEZ: Mr. Chairman, that was the intent behind getting the height adjustments or height bonuses, whatever you want to call them, for having signed up a co-locator because a tower builder or the carrier could then come in and build a 66 feet tower and have co-locators already set up on it.

CHAIRMAN DURAN: Well, if they came in and asked for a -- how would one individual get a 100 feet tower?

MR. DOMINGUEZ: Mr. Chairman, they would make an application with Land Use for a 100 feet tower and then they would be brought in to you.

CHAIRMAN DURAN: So that would be a Commission --

MR. DOMINGUEZ: That's correct.

CHAIRMAN DURAN: Okay, so what you're trying to do is after we approve the towers that have the least impact on the community, that's administrative level. And then those that are going to have a much larger impact, it's going to have to have a public hearing and a decision made by the Commission?

MR. DOMINGUEZ: Mr. Chairman, that's correct. We're not maximizing any height.

CHAIRMAN DURAN: Okay. So what's wrong with that?

MR. LEARY: Well, my first comment is that it doesn't really give a lot of hope for the first carrier. Actually if that height is not good. The next thing is that under this policy, then, it doesn't promote co-location until you go to conditional use permit. A conditional use permit would promote or allow for co-location. As it is set up now, though, you're not going to get co-location.

And that's why I want to point out that the difference between the carriers who do not maybe have a problem with this because a carrier builds a tower for himself and himself only. For his RF needs and often times structure related, the tower is built for his needs only. And that's how we got, many years ago, the proliferation of towers.

A carrier would build here, another carrier would build here, another carrier would build here. This under the code, as you have it now, where the code administrator approves it. A code administrator is going to be working for towers that are carrier operated and owned only, if that can happen. It's not going to promote co-location until we get the conditional use permit.

And I'm just pointing that out as a fact. The issue that SBA has with this ordinance is on page 15 and it deals with your abandonment. As you have it written, I might point out that if I came to you for a conditional use permit and again, the question can be, can this abandonment issue be waived if a person comes to you for a conditional use permit?

MR. GRAESER: Mr. Chairman, the answer is "yes." The final line of that section says, "The provision of this section may be modified pursuant to a conditional use permit." So if an applicant were to come in front of you with some particular business model, it seemed to make sense, but maybe it didn't comply with this, those provisions could be modified.

MR. LEARY: The reason I bring that up again is that our company just recently got financing for a half billion dollars. But in the same token, every single tower, before it is financed, must meet certain requirements that a lending institution recognizes.

And I think you gentlemen realize that if you were trying to build another business in this county and you went to the bank and you said, "You know, my business can be torn down in 12 months, I must tell you that because that's in the county ordinance," you're going to find that a lending institution is going to hesitate to getting you money to do that.

That same thing would apply to SBA. Now SBA has resources to build that tower regardless of actual funding from a bank but we don't. Every single tower must meet the same financial requirements that Lehman mandates on us.

And if we went to our lending institution or if you had to go to a lending institution and you told them that, "You know, this particular tower, Verizon, Alltel, or Voicestream, if they went under, today, before maybe another applicant could get permission to take over that license and locate on that tower, that tower could be down. No lending institution is going to SBA money with that kind of abandonment structure.

I want to point out to you, though, that for example in our land leases, we have a five year option. We'll do maybe 10 five year options. This is very much a part of the industry. We do a five year option. If we decide that that tower is no longer needed at five years, we agree with the landowner to 1) remove the tower, obviously we don't want to continue on paying a lease to that landowner for a tower that's not being used. So we agreed if we cancel the option at five years, we take down the tower.

So it's right there that we are going to protect that because we need to take down that tower then and we have to return it as collateral for the financing. The way you have it written now, it's going to make it very, very difficult for tower companies, not carriers, because a carrier obviously is going to risk it with that because if he's going to go bankrupt, he's lost it anyway. But if we lose a carrier, you're saying we've got to take down our tower, possibly, before another carrier can come in.

The next thing that you should realize is the industry is constantly changing. The people that are here tonight, as carriers, are not going to be the same carriers that will be needing towers five years from now. When G3 and several others where the companies here tonight get into that spectrum. Things are going to change.

Tomorrow Voicestream could be gone from a tower, Verizon could be gone from a tower, but there will be another person or company wanting space in that tower. That's one of the reasons we get into this business. Independent tower companies like SBA have been very, very successful because we saw what co-location meant and that's co-location is what's been encouraged by the federal government and that's what we exist on. If you have an office, a 3-story office building that's in Santa Fe or in the County and that top floor goes vacant for 12 months, are you going to say, "Take that top floor off?" And are you going to say that that top floor is actually more offensive than a 36 feet tower. I don't know how you can say that.

I would think and very careful to use the word "hostile" but it is used in the courts and how this is. That is definitely discrimination against the tower. You're not going to

make an office building take down their top 10 feet because it hasn't been leased in a 12 month period of time. Why do you pick out a tower and say you have to do that? A lot of people would say that an office building can be as offensive looking as a monopole.

So our request to you is that we look at this as actually preventing towers from being constructed by tower companies in Santa Fe County. And we ask that you take that language out of this ordinance. Thank you.

CHAIRMAN DURAN: Anyone else out there? Okay, what's the pleasure of the Board?

COMMISSIONER CAMPOS: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Chairman, I'd like to have some response from staff to Mr. Leary's allegations that this ordinance would discourage co-locations.

CHAIRMAN DURAN: Before you answer that, if we're going to talk about what Mr. Leary just said, I think that if there's some risk that the celltower builders are going to experience, I mean they could plant that onto the co-locators so that they don't have to take on the entire burden of the risk of this abandonment issue.

I really think that if 12 months is too short, well, what is reasonable. Is it 24 months? I think the -- 5 years for abandonment? I don't think works for me. The industry is changing and if new techniques are coming to the community, I think that if all of your co-locators have abandoned the fight because of new technology then you need to make some arrangements to have them take that risk with you.

MR. DOMINGUEZ: Mr. Chairman, I would respond by saying we agree with you. The language that we came up with as most of this ordinance does reflect some sort of compromise between the public and the industry and staff. You know, we ran the gamut and a lot of these things from no--zero time to 15 years to having them posting a bond at the time of application so that we could hold that and this was what we felt was a safe and comfortable compromise.

There is language in there that says if within the 12 months, if there is no reasonable, and I guess I should read it so I don't misquote it. It said: "With no reasonable potential for occupation in the near future for greater than 12 months," so we are allowing a 12 month period for them to pursue another locator in the place.

A couple of other things just for quick clarification, if I may, one thing that Mr. Leary mentioned, he said that under administrative approval, that they're stuck at 35 feet, it's actually 36 feet without any co-locations. That's not true. We're allowing up to 2 co-locations to be approved by the code administrator.

And the in regard with would we allow a 3-story building to come down, there has continually been reference about us singling out celltowers versus regular development. Currently within the county, we don't even allow a 3-story building to be built. Their height is 24 feet

CHAIRMAN DURAN: Does he answer your questions?

COMMISSIONER CAMPOS: Well, you asked a different question, may I ask my question?

CHAIRMAN DURAN: What was your question?

COMMISSIONER CAMPOS: Mr. Dominguez, Mr. Leary alleges that this ordinance would discourage co-location. Could you address that?

MR. DOMINGUEZ: The way I would address it is, Mr. Chairman and Commissioner Campos, we feel we're trying to encourage co-location by height bonuses and we're not sure who is going to benefit. If it's the carrier or if it's the tower builder. We are allowing, through the process, what's an easier process now is co-location. Somebody can come in and build instead of a 36 feet tower up to a 66 feet tower with 2 co-locators on an administrative approval. That's unheard of in today's current code.

And then again, through one public hearing, could be allowed up to 4 co-locators through the Development Review Committee process. And then anything above that would then come before the Board of County Commissioners. So we feel that we're encouraging him.

CHAIRMAN DURAN: Thank you.

COMMISSIONER SULLIVAN: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I just wanted to point out with the first speaker who was concerned about locations in the highway corridor. There is a provision under the Design Standards that no wireless communication facility shall be located in the required setback of the Highway Corridor Plan or the highway corridor district. So that addresses that. That's an out and out prohibition, as I see it.

They do permit the consideration of facilities in the desired setback in the Highway Corridor Plan but that is only by conditional use permit. So I think we're fairly well covered. I think on this particular issue, I think we are encouraging co-location because if we start out with a facility that has either 2 or say 4 then with one carrier dropping off, the 12 months doesn't kick in. The 12 months doesn't kick in until every single carrier is off the facility.

So if I were in this business, I would be sure at the outset that I got some co-locators in case one of my carriers did go bankrupt or decided to go elsewhere. I would have 2 or 3 others on the pole so that I wouldn't be kicking in with this 12 month situation.

So to me, this would discourage single carrier facilities and encourage multiple ones. That would be my feelings. The last comment that I would have is that I would be supportive, on page 6, in the design standards of a residential setback of 200 rather than 100 feet I think that that can be worked with. I think 1500 which is more than a quarter mile is overly restrictive.

CHAIRMAN DURAN: What page is that please?

COMMISSIONER SULLIVAN: Page 6, 7, A, 2.

CHAIRMAN DURAN: So you're suggesting that be changed to 200?

COMMISSIONER SULLIVAN: Instead of 100, yes.

MR. DOMINGUEZ: Mr. Chairman, if I may put things in perspective as you talk about setbacks. And this is merely just informational for you all. Something that would require as written in a 100 foot setback, we would have to look at a piece of

property that would be 200 foot square. And it would be in the center of it in order to cover that setback. We're talking 9/10 of an acre.

If you look at a 200 foot setback, we would now be requiring 3.67 acres. If it were a 1500 feet setback, you'd be requiring a 206.6 acres of property. So it's just more - it surprised us when we started putting acreage into the picture.

COMMISSIONER SULLIVAN: I don't know, Tom, if that is exactly right because we're not necessarily saying a setback as a square. If there's nobody there at the time, the setback could be long in rectangle.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, as written, it says, "a 100 feet setback from a residential property line." So the closest it could be would be 100 feet from a property line.

CHAIRMAN DURAN: And everything outside the node is residential.

MR. DOMINGUEZ: So I believe, unless we did something wrong, that it would be, and it may not be a square, it could be circular, it could be a 100 feet radius.

CHAIRMAN DURAN: And then we could be accused of unnecessarily restricting the industry.

COMMISSIONER SULLIVAN: I don't think 3 acres is too restrictive.

CHAIRMAN DURAN: Well, you're adding another additional cost to it.

COMMISSIONER SULLIVAN: I guess I'm not understanding. You could be -- so you're saying you could be 200 feet from a forest service boundary or BLM boundary or highway right-of-way. I mean, there's lots of ways to be 200 feet from a property line. It doesn't necessarily mean you have to buy land. For example, the towers along 285, north of Santa Fe, they purchased the parcel and the front part of it is the highway right-of-way line.

CHAIRMAN DURAN: What if we said something like if it would be 200 feet and it could be less if the applicant can prove that it's buffered by something other than residential land.

COMMISSIONER SULLIVAN: Yes, something like that. Because if you're up against the highway right-of-way, you've got, usually, 400 feet at least of highway right-of-way that's your buffer before you come to a residential property.

MR. DOMINGUEZ: Mr. Chairman?

CHAIRMAN DURAN: Go ahead.

MR. DOMINGUEZ: That's exactly what it says right now. This is 100 feet setback from a residential property line. So if it is something other than residential, they could get closer to it. So the example I gave, I'm sorry, the example I gave was if it were surrounded by residential properties. So I think what you said, if they can prove that it's something other than residential, then they wouldn't fall in this residential setback requirement.

CHAIRMAN DURAN: Well, if we changed it to say 200 feet or if they can demonstrate that they are -- I mean, it wouldn't have to be a 200 feet square. It could be 200 feet from the residential area and 100 feet from the commercial area.

MR. DOMINGUEZ: Again, Mr. Chairman, I appreciate what you're saying and I think this says that already. I may have just given a bad example. I gave the

example that it would have be to square if it were surrounded by residential properties. In the situation that you're describing, it would be 200 feet from the residential property line but not necessarily from any other commercial property line. I believe we've covered what you're getting at but we can look at it for clarification, if you'd like, and make sure that it states that, in fact.

CHAIRMAN DURAN: So if it was 100 feet it would have to be at least an acre, it was in the middle of it, right? Is that what I heard you say? 9/10 of an acre?

MR. DOMINGUEZ: A 100 feet setback if it were surrounded by residential, 9/10 of an acre.

CHAIRMAN DURAN: So that would be like 200 by 200?

TOM DOMINGUEZ: Correct.

CHAIRMAN DURAN: You still want to change it to 200?

COMMISSIONER SULLIVAN: Okay, so you're saying that it would require a site that's 200 feet square all the way around?

MR. DOMINGUEZ: For all intensive purposes.

COMMISSIONER SULLIVAN: Yes, well, how about 150?

MR. DOMINGUEZ: Yes, 150 would only require 2.06 acres.

COMMISSIONER SULLIVAN: That seems reasonable. On worst case, this is worst case.

MR. DOMINGUEZ: Correct.

COMMISSIONER SULLIVAN: You could have a lake on one side, you could have an arroyo on one side, you could have a park, I mean, there could be a lot of things that occur on one side that don't necessarily mean it's 2 acres.

COMMISSIONER TRUJILLO: This is another situation where it would force the construction of these facilities to go through Indian land. You go to Cuyumungue and the residential area is 50 feet from the celltower without the County having any jurisdiction. So we're going to force the providers to utilize other less stringent areas to build their towers.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, part of the reason for the 100 feet setback as we presented it here, was we looked at the current code because we had been accused of not keeping all things equal. And to keep all things equal, a 100 feet setback is the maximum setback that we have in a commercial district. So we thought that 100 feet was justified from staff's position. And that was the reason that 100 feet is in here as presented.

COMMISSIONER TRUJILLO: Leave it as is.

COMMISSIONER SULLIVAN: I agree.

CHAIRMAN DURAN: Let me ask you a question. I've seen these towers, these kind of pyramid towers, really have a much more impact, visually, than the monopole or even ones that are thinner. Are you offering any kind of inducement or bonus for the thinner tower? Is there some benefit to having the wider pyramid versus a monopole or a thinner --

MR. DOMINGUEZ: Mr. Chairman, I believe our first iteration of this was kind of focused that way and due to industry comment and public comment and so on,



we were at where we are now but we believe that it's in the best interest of the tower builder or the carrier, whoever may be constructing this, to make as visually correct, if that's the right way to say it, an installation as possible because then it eases their process. Be it administrative --

CHAIRMAN DURAN: So this code has been created to promote that?

MR. DOMINGUEZ: Mr. Chairman, we feel it has because if the less visually obtrusive that it is, the more streamline the procedure would be. Because then it becomes more in the camouflage architecturally integrated type of facility.

CHAIRMAN DURAN: Okay.

MR. GRAESER: Mr. Chairman, if I could just make two comments. The first one is related to setbacks. We also have a setback in here from residential property lines of twice the height of the tower. So once you get anything higher than 50 feet you're going to have more than 100 feet setback anyway. You get one of those 200 foot towers, it has to be set back 400 feet.

And then this addresses your concern on Section 7, B, 1, "Visual Impact, antenna shall be low profile or flush mount [inaudible] considerations reasonably permitted, wireless communication facilities shall eliminate work platforms and other infrastructure devices where technical [inaudible] consideration reasonably permit."

So the idea is to have a little stuff hanging off there, if possible. And again, in the carrier's best interest, to propose the best looking thing because they're getting staff's recommendation if staff thinks that they can get something that looks better.

And we will have, we've provided to have a technical engineer, outside technical engineer review these.

CHAIRMAN DURAN: Okay. Well, how about a motion? Mr. Witze, would you like to say anything. Okay, thank you.

MR. LEARY: I have one question.

CHAIRMAN DURAN: Okay.

MR. LEARY: The setback, is that from the tower or from the guyed tower or from the structure?

CHAIRMAN DURAN: What do you mean, the wires?

MR. LEARY: Correct.

CHAIRMAN DURAN: Versus the tower itself?

MR. LEARY: Exactly.

COMMISSIONER SULLIVAN: I would think that it would be the tower but it is not clear.

TOM DOMINGUEZ: Mr. Chairman, I believe it would be from the tower base. You'd need a large portion of property anyways to get the guys to anchor it down.

CHAIRMAN DURAN: Right. Okay. Anybody want to make a motion?

COMMISSIONER CAMPOS: Mr. Chairman. Could I have some guidance from counsel, Mr. Graeser. If there going to be any proposed amendment? Did we handle the amendments first and then go to a motion to approve?

MR. GRAESER: Mr. Chairman, Commissioner Campos, what I would suggest is we have I think, four amendments we've talked about tonight and maybe I could read those into the record right now. And if the motion maker wanted to incorporate those into his motion.

CHAIRMAN DURAN: Read what amendment?

MR. GRAESER: The four changes we've talk of here tonight to this ordinance. Talked about.

CHAIRMAN DURAN: Okay.

MR. GRAESER: And those are, on page 3, this is page 3 of your redlined copy, this wouldn't necessarily be page 3 of the final ordinance. But Section 4, No. B, we're going to take out color and we're going to add in at the end, "so as not to appear as a Wireless communications facility to the naked eye." I believe that's language from the - or close to the language from the Albuquerque Ordinance.

CHAIRMAN DURAN: Could that include color? Would the option of color be something they could use?

MR. GRAESER: Absolutely. As part of trying to camouflage, these colors can be very important. I think getting color out of there, the address that Mr. Sullivan is concerned as saying, okay I've painted it blue, it's looks like the sky, it's now camouflaged.

CHAIRMAN DURAN: But would it allow someone to argue the point that they have it this color. That it is hidden from view.

MR. GRAESER: Mr. Chairman, as we said, remind you that the administration require the best color that they think is best.

CHAIRMAN DURAN: What is appropriate?

MR. GRAESER: What this section was getting at was really the camouflage installation. And this is designing things to look like a clock tower or windmill or fence post, what have you.

CHAIRMAN DURAN: Okay.

MR. GRAESER: The next one on page 8, section 8, B, 4. At the end of that, that now requires proof of permission to locate on the site. At the end of that we would suggest language: " In certification from the landowner, that the landowner has received a copy of this ordinance and an informational letter regarding the owner's responsibilities provided by the code administrator."

CHAIRMAN DURAN: Okay.

MR. GRAESER: The next one would be page 14, Section 9, C, 2. It would be line 14 on this ordinance, "when in no case more than 180 days after a complete application is made, unless by agreement with the applicant."

CHAIRMAN DURAN: Okay.

MR. GRAESER: And I believe those were those four.

CHAIRMAN DURAN: I have one that I'd like for you to consider. And that would be on page 7, line 13, where you've changed it to, "all landscaping clients shall be approved by the fire marshal." I'd like for it to go back to original language which is, "All disturbed areas shall be re-vegetated and are stabilized as this is to assert control of

erosion and dust." The fire marshal gets to see these things anyway and if he feels that there is something inappropriate to the landscaping that he can make that recommendation. This is the same kind of language that they keep on trying to insert. You know, like wildlife-wild fire ordinance. It's anyway, I'd like to see that as amended.

MR. GRAESER: Mr. Chairman, actually the old disturbed area already appears under No. 2. We just moved it. So I guess that correction would be just eliminating subparagraph 4.

CHAIRMAN DURAN: Okay; do you have a problem with that. Do you want to debate that?

COMMISSIONER SULLIVAN: You want to just say reviewed instead of approved?

CHAIRMAN DURAN: Well, but he does review it already; doesn't he?

MR. GRAESER: For a conditional use permit, anything that's come into hearing, the fire marshal can review and provide his comments, certainly.

CHAIRMAN DURAN: I feel it'd be tough enough already. I mean, I think you have the fire marshal showing his two cents on this. It's just another level that we don't --

COMMISSIONER SULLIVAN: Mr. Chairman, for a staff approval or for a development review district approval, does the fire marshal have an opportunity to look at them?

MR. GRAESER: They are one of the reviewing agencies, Mr. Chairman, and also the landscaping plan has to be approved by the land use administrator. So once the land use administrator get the fire marshal's comments, land use administrator could then choose to incorporate those comments.

COMMISSIONER SULLIVAN: Okay, that was my question, as a matter of course for a staff approval it does go to the fire marshal?

MR. GRAESER: Correct.

COMMISSIONER SULLIVAN: So this would seem to be not necessary.

CHAIRMAN DURAN: So is it okay? Okay.

COMMISSIONER TRUJILLO: I'm fine.

CHAIRMAN DURAN: Okay, so are you ready for the motion?

COMMISSIONER CAMPOS: One last question, Mr. Graeser. Effective date, if we approve this tonight, when will it be effective?

MR. GRAESER: It will be effective 30 days after the clerk records it. That generally happens in the next day or two. So it will then be effective on -- say the 13th or 14th of July. The moratorium, which we've been laboring, racing the clock, expires on the 21st of July. So actually this becoming effective would cause the moratorium to expire at that time.

COMMISSIONER CAMPOS: Ms. Farrell, what ordinance number would this be.

KAREN FARRELL: Mr. Chairman, Commissioner Campos, this would be 2001-09.

CHAIRMAN DURAN: So that's 5 amendments. Okay.

1959038

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner

COMMISSIONER CAMPOS: I'd like to move for the adoption of Ordinance 2001-9, an ordinance relating to wireless communications as amended. Staff has presented with the redlined and the blue lined plus the five amendments --

MR. GRAESER: Mr. Chairman, there are actually four because we didn't end up changing that setback. As far as, that's what I heard.

CHAIRMAN DURAN: Oh, okay. Okay. With the four amendments?

COMMISSIONER CAMPOS: That's the motion.

CHAIRMAN DURAN: Okay, and I'll second.

Upon unanimous roll call vote with Chairman Duran, Commissioner Trujillo, Commissioner Sullivan and Commissioner Campos voting "aye," Ordinance 2001-09 was approved.

CHAIRMAN DURAN: Good work.

COMMISSIONER CAMPOS: Mr. Chairman?

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: I'd like to thank Tom Dominguez, Chris Graeser, Penny Ellis-Green from staff for doing a great job and working really hard these last four months. It's been very intense at time. I'd like to thank Mr. Chris Witze who has volunteered his time and effort and helped us a lot. I mean, when we first started this process we needed help and he volunteered and he has been a great asset to the county and I think his work has resulted in a much better ordinance. And I thank you very much Mr. Witze.

I think the ordinance is very thoughtful, it's progressive. It's going to protect the County viewsheds. I know we have to refine it and work further and we will do that. We're not going to stop today. We're going to keep working at it and refining it. And I thank everybody.

CHAIRMAN DURAN: Okay. I have a question. On Item 10, C, Ordinance No. 2001-10, I guess. An ordinance submitted to Santa Fe County Land Development Code. We have people here waiting for us to get to the land use issues. Is it okay if we do this before we go after that.

Then we're going to move that to just before Executive Session.

**B. Land Use Department Items**

**CDRC CASE #A/V 01-5120 Mike Ferran Appeal Variance. Mike Ferran, applicant, requests a variance of Article III, Section 10 (lot size requirements) of the Land Development Code to allow a family transfer land division of 5.25 acres into two lots; each lot consisting of 2.625 acres. The property is located off I-25 in Valencia, within Section 32, Township 16 North, Range 11 East**

WAYNE DALTON (Review Specialist): Thank you Mr. Chairman, Commissioners. There are currently two homes, a workshop and one septic system on the property. The property is serviced by an onsite well which serves the existing homes.

In 1991, the applicant was approved for a residence and a mobile home for the use of a workshop and storage facility on the property. In 1992, the applicant was granted a variance for a second home to be placed on the property. The applicant is now proposing to divide the property in order to give his daughter, who is a senior in high school, the opportunity to own a home and land. The applicant states too that due to the high cost of living in Santa Fe, his daughter would not be able to purchase her own piece of property or afford to pay rent.

Recommendation. Staff recommends that the request for variance be denied. The intent of the code is to set minimum lot size in this area at 80 acres per dwelling unit. The decision of the CDRC was to recommend approval of the variance to allow a family transfer of land division of 5.25 acres, which is two lots subject to the following conditions: Mr. Chairman, may I enter those conditions into the record?

CHAIRMAN DURAN: Please. Any questions of Wayne?

COMMISSIONER CAMPOS: Question.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Just for clarification, there are two houses now, two residences?

MR. DALTON: That's correct.

COMMISSIONER CAMPOS: And the new lot would that have, would that divide, put a residence on each lot?

MR. DALTON: That's correct.

CHAIRMAN DURAN: How long have the mobile home has been in existence on these lots.

MR. DALTON: Mr. Chairman, in 1992, the applicant was granted a variance for a second home on the property. So of them has been there since 1992. And I believe the applicant has lived there, you might want to ask the applicant, Mr. Chairman, I'm not sure how long he's lived on the property.

CHAIRMAN DURAN: But the two dwellings have been in existence since '92?

MR. DALTON: That's correct.

CHAIRMAN DURAN: And the variance for the second dwelling didn't have a time limit on it; right?

MR. DALTON: That's correct, Mr. Chairman.

CHAIRMAN DURAN: So whether it was subdivided or not, the intensity of the use would still remain the same?

MR. DALTON: That's correct.

CHAIRMAN DURAN: Okay. Any other questions?

COMMISSIONER CAMPOS: Question. Mr. Dalton, what is the minimum lot size in the Mountain District?

MR. DALTON: Mr. Chairman, Commissioner Campos, it is 80 acres per dwelling unit.

COMMISSIONER CAMPOS: That's a minimum.

MR. DALTON: That's the minimum lot size.

COMMISSIONER CAMPOS: For a family transfer?

MR. DALTON: Actually, for a family transfer it be actually 40 acres.

COMMISSIONER CAMPOS: Is that why staff is recommending denial?

MR. DALTON: That's correct.

COMMISSIONER CAMPOS: Is there --

CHAIRMAN DURAN: They always recommend denial.

COMMISSIONER CAMPOS: Any other issues?

MR. DALTON: No, not at this time.

COMMISSIONER CAMPOS: Okay, so there are two dwellings and you anticipate that there will only be two dwellings?

MR. DALTON: That's correct.

CHAIRMAN DURAN: Any other questions of Wayne? Is the applicant here? Please step forward and state your name and address for the record and let the recorder swear you in.

[Duly sworn, Mike Ferran, testified as follows]

MIKE FERRAN: My name is Mike Ferran and I live in the residence in Valencia.

CHAIRMAN DURAN: Mr. Ferran, are you in agreement with all of the conditions set out by staff?

MIKE FERRAN: I'm in agreement with them. I just had a question on the septic tank. When it was installed in 1992, I worked real close with EID and the CID because I had mentioned to them it was going to be for two residences. And we worked real close and I probably have the largest personal septic system in Santa Fe.

I worked with them and it should be stated on the permit, I'm pretty sure of that, for two residences. And they've been in operation for 10 years and there's never been any problems or anything with them.

CHAIRMAN DURAN: Okay. Do you have anything to add?

MIKE FERRAN: No.

CHAIRMAN DURAN: Are there any questions of Mr. Ferran?

COMMISSIONER CAMPOS: I have a question.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Do you have a daughter that you're going to transfer this property to, sir?

MIKE FERRAN: Yes, I have a daughter and a son. I'd like each one of them to have half.

COMMISSIONER CAMPOS: A daughter and a son, so you're not living on the property at all?

MIKE FERRAN: Yes, I am.

COMMISSIONER CAMPOS: You're going to move off the property and give a piece to your daughter?

MIKE FERRAN: Well, my son is only 9 years old.

COMMISSIONER CAMPOS: So how old is your daughter?

MIKE FERRAN: She's going to be a senior, so what's that 17.

COMMISSIONER CAMPOS: Okay.

MIKE FERRAN: So the only thing I want to comment is why another septic system being that that one is already -- was already -- it's been qualified legal for two residences?

CHAIRMAN DURAN: Maybe staff, do you know the reason behind the request for two septic systems?

MR. DOMINGUEZ: Mr. Chairman, that was a condition brought up by the CDRC.

CHAIRMAN DURAN: I realize that but --

MR. DOMINGUEZ: The reasoning was if the applicant was going to create two lots and they wanted a septic tank for each of the homes. That was basically the reasoning behind that condition.

CHAIRMAN DURAN: So no reason at all?

COMMISSIONER SULLIVAN: Well, Mr. Chairman, I think also in the CDRC testimony, it was questioned, could there be a limitation that the property only be transferred to the family members and the response was no. It could go to anyone. And if that's the case then there.

CHAIRMAN DURAN: So this isn't a family transfer?

COMMISSIONER SULLIVAN: This is a family transfer.

CHAIRMAN DURAN: So it can be transferred into their name but it doesn't have to remain in their name?

COMMISSIONER SULLIVAN: That's correct.

CHAIRMAN DURAN: Right.

COMMISSIONER SULLIVAN: So, I think then they felt that the lot has to be self-sufficient to it has to have its own septic tank to be a legally transfer. As it is now, but once you make two lots out of it, then it's got to meet the requirements of each lot being self-sufficient on its own, as it were. I think that's the reason that they did that.

CHAIRMAN DURAN: Well, I've seen a lot of properties out there that share a septic system.

COMMISSIONER SULLIVAN: In separate ownership?

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CHAIRMAN DURAN: Yeah.

COMMISSIONER SULLIVAN: Separate legal title ownership?

COMMISSIONER TRUJILLO: I've seen sharing septic systems. I've also seen sharing the wells.

CHAIRMAN DURAN: Correct.

COMMISSIONER TRUJILLO: Seeing different ownership. But on a family transfer.

CHAIRMAN DURAN: Any questions of the applicant. Okay, this is a public hearing. Is there anyone that would like to address the Commission concerning this issue? What's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: I move for approval of CDRC Case #A/V 01-5120. And rescind the condition by CDRC to require two septic tanks.

CHAIRMAN DURAN: There's a motion. Is there a second? I'll second it. Is there any further discussion?

COMMISSIONER CAMPOS: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Again, we have a situation where the variance does not meet standards, explicit standards set forth in the ordinance and if we grant a variance, essentially what we're doing is legislating without giving proper public notice. We're setting a precedent. I think it's the wrong thing to do and I would be inclined to vote against this.

CHAIRMAN DURAN: Well, we've already set a precedent. And that is that we grant variances in situations that, in our opinion, are appropriate. We have two mobile homes, two dwellings, on a piece of property. It's a family transfer, he's going to transfer one of them into his children's name and he's going to retain ownership of the other one. And this is one way that we, as County Commissioners, can assist our constituents in home ownership.

And I understand your reasons for not granting variances. I disagree entirely with you on your approach on -- code doesn't mean that we can't use our -- the ability that we have to grant a variance to do something that's right. And I think this is totally appropriate.

COMMISSIONER CAMPOS: Mr. Chairman?

COMMISSIONER CAMPOS: Commissioner Campos.

COMMISSIONER CAMPOS: I think it's essentially an issue of market ability when you create two lots, one variance does not give you the power to do whatever you feel is appropriate in any particular instance. It must meet the criteria. Hardship related to poverty, that is the only power that you do have. It's not just like, I can just do, as case-by-case, and do something different for somebody. That's not the standard.

CHAIRMAN DURAN: Well, it's a good thing we all don't think like you. Okay, so is there any further discussion?



COMMISSIONER SULLIVAN: Mr. Chairman, I still have a concern on -- and perhaps the staff has more comments about the septic tank or whether the environment department permit should be reviewed or the Environment Department should be consulted. I still have a concern on that. Can you give me any more information on that?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, the applicant does have a septic permit from the environmental department showing both homes on the property, permitting both homes, permitting both -- one septic tank for both homes.

COMMISSIONER SULLIVAN: Okay. And does the Environment Department have any further requirements when you legally divide the properties? Like if Mr. Ferran were to sell the property to me, would it have to have an easement or does the environment department had any additional requirements?

MR. DALTON: The long size for the environmental department is 3/4 of an acre. So as long as you have 3/4 of an acre, you would be allowed to put a septic tank permit on that property.

MR. DOMINGUEZ: Mr. Chairman, I'd clarify a little further than that. They require a minimum 3/4 acres per conventional. Anything smaller than 3/4, they would recommend an advance system, nitrate removal.

COMMISSIONER TRUJILLO: Which is vaulted.

MR. DOMINGUEZ: A vaulted system.

CHAIRMAN DURAN: So, what you're saying then is that the system that's in place right now meets state guidelines and is adequate to take care of the waste that's produced at both of those homes?

MR. DALTON: That's correct.

COMMISSIONER SULLIVAN: Let me ask again, then, Wayne, if I purchase one of these lots, I take the trailer off the lot and I build a much larger home on it. What's the situation now? I don't have a septic tank. I'm utilizing the other one on the other lot. And I move in a large family or I change the conditions. How is that dealt with?

MR. DALTON: Mr. Chairman, Commissioner Sullivan, if you're going to build a bigger house, if you're going to change what's there now, you'd come through for the building permit process. Part of that process is that you have an updated ED permit, we would require it here.

COMMISSIONER SULLIVAN: So if there were any change -- so could this position, since you do require that, could we modify this condition, to say that if there were any change to the dwelling on the property without the septic tank to increase the water usage, that then an additional septic tank would be required.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, you can add that condition if you would like. But that is currently the process.

COMMISSIONER SULLIVAN: That would be consist with what you would require when they came in for a permit in that situation?

MR. DOMINGUEZ: That's correct.

COMMISSIONER SULLIVAN: Would that condition be acceptable?

CHAIRMAN DURAN: Sure, I don't have a problem with that.

COMMISSIONER TRUJILLO: I think that would be redundant. It's already required as part of the process. We don't need to identify it as another condition.

COMMISSIONER SULLIVAN: It is kind of doing it twice. And the reason I am thinking about it is I'm thinking about the other purchaser. That we have that disclosure to the other purchaser in the event it's not ultimately a family member.

CHAIRMAN DURAN: But how would he know about it? How would the new owner, who's not a family member, who bought the lot, and moved the mobile home out, know that if he doesn't build the same size mobile home, that he's going to be required -- if he builds a home larger than the existing mobile that was there, how is he going to know that he has to increase the size of the septic? Unless the Land Use Department has something in place and it seems like they already do.

MR. KOPELMAN: Mr. Chairman, Commissioner, I think the way that would work is if somebody were to move the mobile home off the property and want to build, they would just have to go back to ED and ED would issue them an permit. They may be required to put in a new septic. ED may determine that the septic tank there is adequate. But it would be an ED permitting issue.

CHAIRMAN DURAN: Not a -- but then when they get the permit, they have to come back and show you that they have a permit?

MR. KOPELMAN: Mr. Chairman, that's right. They would have to go to CID also in order to get the certificate of occupancy. And one of the requirements is that they're going to have to have a permit from ED. And ED would make a determination whether the current septic tank is adequate or whether they would have to either get a new one or do something differently. So it would be taken care of in the natural building permit process.

MR. DOMINGUEZ; And both of those be brought to the county before they're issued a building permit.

CHAIRMAN DURAN: Then that's proof that they have received those have been checked off?

MR. DOMINGUEZ: That's correct, Mr. Chairman.

CHAIRMAN DURAN: Does that do it for you?

COMMISSIONER SULLIVAN: Well, that's better than nothing.

CHAIRMAN DURAN: And you have the option of nothing. Okay, if there's no further discussion; there is a motion on the table to approve it with recommendation number five removed as a condition.

The motion passed by majority [3-1] voice vote with Commissioner Campos voted for against.

CHAIRMAN DURAN: Okay, thank you very much Mr. Ferran, you were approved. Just don't let that 7 year old live there alone, okay.

**CDRC CASE #V 00-5861 Barbara Zavada Variance.** Barbara Zavada, applicant, requests a variance of Article III, Section 4.1 and 4.2 (types and locations of commercial districts) of the Land Development Code to allow commercial zoning outside of a potential commercial district on 0.90 acres. The property is located at 24 Meyers Road, in the Traditional Community of Arroyo Seco, within Section 30, Township 20 North, Range 9 East (Commission District 1). Wayne Dalton

MR. DALTON: Thank you Mr. Chairman. This request was heard by the County Development Review Committee on December 21, 2000, And then denied by the Board of County Commissioners on February 13, 2001. The applicant is requesting reconsideration based on the proposal of direct access from Highway 285, and a 1600 sq. feet art studio and gallery. The application heard by the Board of County Commissioners on February 13, 2001, included access from Meyers Road and an art gallery located in the residence of the applicant.

The applicant, at this time, conducts a business of lot of fine art and currently has a home occupation business registration. The applicant is now proposing a 1600 sq. feet art studio and gallery. The applicant intends to keep the current studio as her residence.

The applicant is also proposing direct access to the property from Highway 285 and states no business traffic will pass through Meyers Road. The applicant states that there are currently several properties in this area that are commercial.

The properties include Leon's RV Repair, Showcase Mobile Homes, Meyers Steel, an electrical shop, a day care center and the Santa Fe Winery.

Recommendation. Staff's position is that this application is not in accordance with Article 3, Section 4.1 of the Land Development Code and granting this variance the purpose of the code to stop strip development would be violated. Therefore staff recommends denial of the requested variance. The decision of the CDRC was to recommend approval of the variance to allow commercial zoning outside of a potential commercial district on 0.90 acres. Thank you.

CHAIRMAN DURAN: Okay, any questions of Wayne?

COMMISSIONER TRUJILLO: Just one question. The County Commission took action on this proposal how long ago?

MR. DALTON: Mr. Chairman, Commissioner Trujillo, this Board heard this application on February 13, 2001.

COMMISSIONER TRUJILLO: And the recommendation was to deny the proposal, the project, right?

WAYNE DALTON; That's correct.

COMMISSIONER TRUJILLO: What has changed? What is the scope of the project now and what are the issues that have changed so that the applicant is coming forth for approval?

MR. DALTON: Mr. Chairman, Commissioner Trujillo, basically what changed was the proposal you heard in February of 2001, was access of Meyers Road and the applicant was proposing to use her home as her gallery and studio. Now, this

application has access off 285, direct access off by 285 and she's proposing to build a 1600 square feet art studio and gallery for business use. That's what's changed on this application.

COMMISSIONER TRUJILLO: Well, how does she negotiate access with the Highway Department directly from 285 or how did that happen? Did that exist already?

MR. DALTON: Mr. Chairman, Commissioner Trujillo, I don't believe the applicant has talked to the Highway Department. This application is of variance of the rotational criteria. That I believe she'd have to talk to the Highway Department on master plan, development plan states if this application was approved tonight.

COMMISSIONER TRUJILLO: So what if we approve it and she doesn't get approval from the Highway Department and there's no access to the property, what happens then? She can't build?

MR. DALTON: Mr. Chairman, Commissioner Trujillo, the application before you now is just to allow her now to come forward with a application. At that point she would be required to submit a Highway Department access permit with this proposal. If she doesn't have it, it's an incomplete submittal so she would not be allowed to make application. This just allows her the opportunity to come forward for Master Plan.

COMMISSIONER CAMPOS: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: It's a question about the situation. Mr. Dalton, what was the vote last time as far as the Commission vote, was it unanimous to deny?

MR. DALTON: Mr. Chairman, Commissioner Campos, I believe it was a unanimous decision to deny this application.

COMMISSIONER CAMPOS: Okay. So anybody really could then change their vote and ask for reconsideration?

CHAIRMAN DURAN: Well, the issues are different. The application last time was for her to build to the east of Meyers Road and the testimony at that time was that the increased traffic on Meyers Road, no one in the neighborhood wanted that. So what's she's come before us tonight she moved her studio over here, taken away access in and off of the highway, taken away the argument that she's going to have increased traffic. So the traffic is going to remain the same here.

She is being able to utilize more of her property -- if we don't allow her to build anything on this thing except residential, then I'm not sure that residential use of this along the highway is the most appropriate thing. But anyway, what she's doing is asking for approval of her studio over here. Wherein the last one it was over here.

CHAIRMAN DURAN: Okay.

COMMISSIONER CAMPOS: Question for Mr. Kopelman. I know some ordinances have regulations that you can't come back and ask for another zoning decision unless so much time has passed. Do we have such a regulation?

MR. KOPELMAN: Mr. Chairman, Commissioner Campos, I was just talking with Tom Dominguez about the fact that we don't have that, no.

CHAIRMAN DURAN: But this is a different situation.

COMMISSIONER CAMPOS: The ordinance would say it has to be substantially different.

CHAIRMAN DURAN: It is substantially different?

COMMISSIONER CAMPOS: Well, that's the question to be resolved by the Commission.

CHAIRMAN DURAN: Okay.

Any questions of Wayne? Is the applicant here? Could you please come forward and state your name for the record and let the recorder swear you in.

[Duly sworn, Barbara Zavada testified as follows]

BARBARA ZAVADA: Mr. Chairman, Commissioners, my name is Barbara Zavada. I live in Arroyo Seco on 24 Meyers Road.

CHAIRMAN DURAN: Would you like to add anything to the testimony Wayne Dalton has provided?

BARBARA ZAVADA: Yes. The property is a long strip along the highway and that most of the property is between Meyers Road and 285. The access is from the highway. There's plenty of room to do that. Recently, Mr. Ben Lujan, who is just south of me, south of the winery, he was approved for a commercial site. His property is immediately off the highway just as well. But his -- you come down a hill and he doesn't have as much space, yet it still was approved and it's quite possible to do that and it's convenient.

I would have preferred to use Meyers Road but it is said that there was objection from it. Already there are a lot of trucks moving in Meyers Road from Meyers Steel. So I offered to use another separate access road.

CHAIRMAN DURAN: Then there's not -- I mean she was granted the variance there's no conditions. Does that mean she can do anything there or does she have to come back with a plan?

MR. DALTON: Mr. Chairman, this application is only for a variance to the locational criteria.

CHAIRMAN DURAN: Oh, okay. Are there any questions of the applicant? Okay. Anything else to add?

BARBARA ZAVADA: Well, I feel that there is a lot opposition. Some opposition from the neighbors in Meyers Road. There are neighbors in favor of it. They don't speak up. There's only one letter I have for recommendation. But the people right east of me who are behind two fences, they have young children and they are planning that children go to private school in Santa Fe. And they are planning on moving to Santa Fe, anyhow, as soon as Mr. Salazar said he can fix up the property and put it for sale.

So for that reason, I don't understand why he would be objecting if he's planning on leaving the area anyhow. And the neighbor immediately to the north, the Romeros, they initially, he had wanted a business himself. The only problem was he doesn't have access to the highway. I know how dear the land is to him. After I moved in I offered to let him have some of my land cause I thought it was just too much. I didn't need all this land. And then he said he wanted me to do all the legal matters and but he did not offer

some type of financial re-numeration and so I just let it be. You know, I was waiting for him to go back to me.

And another neighbor immediately to my south and -- he's also objecting and I don't really understand why he's objecting because, all right, he has had the property for a long time but he doesn't live there. I've been on that property in August, 4 years. During that time, he's only lived there very briefly. He lives in other people's houses. So out of courtesy, I extended to him the invitation to come to the hearing. But he does not live there.

And furthermore, Mrs. Meyer who put in an objection, she owns a big business and all the roads are broken up because of all the trucks passing through Meyers Road. And yet, I'm offering not to use Meyers Road and to have an access immediately off the highway.

And I do have to travel quite a bit. That is another matter. I have museum exhibits, I have openings, I give workshops, and then I just need to be away. I am artist in residence and a mural is forthcoming for a museum. So it does take me away from the property. But New Mexico is my home now. I do have need for a studio to work and also to show my work. And for that reason I have all this property. I really would like to have a studio gallery.

COMMISSIONER TRUJILLO: Mr. Chairman. Your property is zoned residential now right?

BARBARA ZAVADA: Mr. Chairman, Commissioner Trujillo, yes. But I do have a home studio and I have a sign out and I receive gallery directors to view my work. But --

COMMISSIONER TRUJILLO: I guess what I'm trying to understand is that whole area, that highway corridor, is proposed for re-engineering. There's going to be frontage roads and probably expanded on a frontage infrastructure. So I'm trying to understand why you're trying to put a business that will potentially be torn down in the next five years. Other than the fact that you're going from residential to commercial and that will make it more valuable when the State Highway Department goes through there and condemns, if you will, the land. Cause that whole area is going to be re-engineered and you want to put up a building that is going to be torn down in the next five years.

BARBARA ZAVADA: Mr. Chairman, Commissioner Trujillo, I have to work now before I get too old. I really don't have a lot of time to waste. I want to create, I'm an artist. That is my foremost decision. I am aware that the highway may want to take that property. I know from people who have property close to the highway and I was just informed that the highway was not going to buy their property in the near future because it ran out of funds. And this may be for long term that the highway may not be acquiring this land.

So if I say, "well, I wait 5 years," and maybe then another 5 years, during that time, I could be utilizing that property.

CHAIRMAN DURAN: It seems to be that just because the state's interested in acquiring the property doesn't mean that we have to put our lives on hold until they come around and condemn the property. The other thing is that I think this

property does meet one of the criteria, the 10 reasons from granting the variance. That is that by denying the variance, we would be denying her the same use and benefit that her neighbors are enjoying and that is, I mean there's Arabian horses next to her, all the best properties. There's a day care center, Meyers Steel, Showcase Mobile Homes, Santa Fe Vineyard. I mean the whole area, to say that we if we grant this we'd be promoting strip development. Well I think that we're a little too late.

If we only allowed her to build a home on this, then she's going to be the only residence along 285 that doesn't have commercial rights. And I think that the use that she's proposing is very low impact. In the testimony you said that you would restrict it to only gallery use. And that would be --

BARBARA ZAVADA: Studio gallery.

CHAIRMAN DURAN: Studio gallery. And your employees would be, what would you have, one or two?

BARBARA ZAVADA: Not right away, but it would be very nice if I could have an assistant. Especially for the larger pieces and physically to handle it.

CHAIRMAN DURAN: And you know, the last time she was here it was the concern that the additional traffic would ruin the residential character on Meyers Road. Well she's addressed that. She's moved it to, the access, to the highway. And she plans on living in the home that she lives in now. And with no substantial, with no impact on the traffic.

So, I don't know, it just seems to me to be a reasonable use and I don't think it's too much of a stretch.

BARBARA ZAVADA: I do have a fine well with a 1 acre-foot of water. I have a septic system. I'm alone. How much water can I use? You know. And the studio gallery, there will not be that excess water usage or the usage of a septic system. I have a fine septic system which, you know, is more than adequate.

CHAIRMAN DURAN: Okay, if you have nothing else to add, we'll go into the public comment.

How many people want to address this issue? Could you please stand and raise your hand and let the clerk administer the oath.

[Duly sworn, Ted Griffith, testified as follows]

TED GRIFFITH: Good evening, Mr. Chairman, members of the committee, my name is Ted Griffith. I'm the one who lives just south to Mrs. Meyers. My main concern is that Ms. Zavada is just looking to get this property zoned for commercial use to sell it and leave.

In previous conversations, she told me that the only people interested in the property would buy it if it was zoned for commercial use.

We, in the neighborhood, do not want our buffer zone that protects our little piece of heaven taken out by a commercial venture. There a commercial node a couple of miles down the road.

CHAIRMAN DURAN: Thank you. Next speaker, please.

[Duly sworn, Annette Romero testified as follows]

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ANNETTE ROMERO: My name is Annette Romero. I live on 26 Meyers Road. My husband and myself are both opposed to the commercializing of Mrs. Zavada's property. We do not want traffic which will come from the business, even if she did get access from the highway what's to stop them from coming across and down the frontage road on both sides. Which would likely happen because of the steepness of the hill that would have to be made for the access to that property and due to the lack of space.

We live in a quiet neighborhood, a family oriented, caring neighborhood. We need to preserve the safety of our families and we feel that this is threatened by this proposal.

This proposal of this 1600 square foot building, which I can't see fitting in this property, with the possible acquisition of 20 feet from the Highway Department and the new septic system which will have to be installed for this size of building, plus the parking lot and the lots that would be required by the state for this building. And the lighting required which is going to disturb the neighborhood because we're directly behind it, all of us.

My husband and I have lived there for 18 years, the Salazars, 16 years, Ted, 22 years, the Meyers, 40 years. Ms. Zavada, 3-1/2 years. We feel that why should our quality of life change when we've been there so long and have so much at stake for someone who's been there 3-1/2 years and only stays there a few months out of the year.

I'm sorry, but I do not trust or believe Ms. Zavada's intentions. The property was on the market when we had the last meeting and brought this up, all of a sudden the sign was gone. What's to keep her from commercializing, selling this property, leaving us with a big mess on our hands. This is my biggest concern.

So I ask of this committee to consider our concerns and our objections to this proposal. Thank you.

CHAIRMAN DURAN: Next speaker please.

[Duly sworn, Kenneth Salazar testified as follows]

KENNETH SALAZAR: My name is Kenneth Salazar. I live right behind Ms. Zavada. Right in front of us, along that Meyer's bend there, there's a highest speed limit between Española and Pojoaque. Right along that stretch on 285 where the bend is it slopes down as you're going north. It's hard enough to get on and off Meyers Road to get onto 285 on either direction as it is now.

With the slope that she's proposing now for her proposed business, I don't know how she's going to do it. The driveway is going to have such a steep grade and traffic is just going to be difficult to see.

I'm having trouble trying to understand what she's doing because of her small drawing that she wrote. We contacted the Highway Department, she hadn't talked to anybody. I talked to Mr. David Martinez who is a traffic engineer, he hasn't heard from her or heard about this. And we've also talked to EPA about the septic system that she's proposing. It sure would seem that if she were serious about a commercial venture she would have looked into these things already for questions to be answered.



As for these already commercial properties along this corridor, sometimes those seem to stick out but people forget about the residences that are on that corridor. There's a heck of a lot of them. And they might not be as attractive as something you'd find here in Santa Fe, native adobe and with nice landscaping and everything, but it's our community. It's our neighborhood.

One thing that hasn't been mentioned, is that this sounds like it's Ms. Zavada's only residence. She has another residence in Utah. That's what we mean about her being here only half the time. She has another home in Castle Rock, Utah. She hasn't mentioned that at all.

Again, we just don't think she's up front with her intentions and we do not -- we have trouble believing what she's saying. Our main concern, again, is her getting the commercial variance and then just selling to another commercial entity and who knows what will happen to that property. Thank you.

CHAIRMAN DURAN: Thank you. Next speaker please.

[Duly sworn, Nancy Salazar, testified as follows]

NANCY SALAZAR: Nancy Salazar, I live at 28 Meyers Road, Arroyo Seco. Mr. Chairman, and the members of the committee. I think of a lot of what I was going to say has already been said. I've been to some of the Highway Department meetings where they -- and the whole idea is to have less and less accesses onto that road. It's a dangerous road. I drive it every day of the week. I see accidents all the time. And a lot of that problem is people coming out.

What about acceleration and decelerational lanes. You already have that 2000 foot frontage road with 2 accesses and you're going to put one right in the middle and you have people trying to slow down onto the frontage road and then you're going to have people try and slow down into a business and then on the other end I think the danger is there a lot. And I think the Highway Department is trying to have less accesses rather than more.

I also feel very strongly that back in February there was a sign up. After the last meeting where she was denied, the sign came down. All of a sudden, this new proposal. I guess I'm really fearful of her intent. And if this was to be approved, I would appreciate it if something was put into it that there had to be a certain amount of time that she did these improvements and that she did follow up on having access to the highway and checking with the Highway Department and everything so that we wouldn't be vulnerable to walking out this door and then her "For Sale" sign going back up and it'd be open to anything.

A small art gallery isn't that big of a deal. I mean, that's not going to have a lot of impact on us. Something else, storage units, anything like that would have a big impact on us. I have two small children 7, and 4. We use that frontage road, you know, that's our little buffer. I mean, we have a highway and then a frontage road. And that is my biggest concern and that they'll turn around.

The last meeting at the CDRC meeting when they asked her, "Well, is this for your use?" and she hawed and hummed and didn't say anything and then she finally said, "For the time being." Well how long is for the time being. Those are my concerns and

that's what I really want you to think about as far as what her intent is on this property. Whether she's going to turn around and as soon as she gets commercial zoning, sell it. Or if she is indeed, going to put these improvements on and have her studio. And I thank you.

CHAIRMAN DURAN: Okay, thank you. Okay. Is there anyone else out there that wants to address the Commission. Ms. Zavada you have the last -- make the last comment.

BARBARA ZAVADA: Mr. Chairman, Commissioners, originally I started out with wanting to sell the property because there was not enough space for me and I did not physically want to build at that time. I wasn't well. Since the last hearing I had a different plan that I want to -- I didn't want to move, I have the land, why not use it. I do need a studio to work on.

All my neighbors are, it's true, they're on the buffer zone. Then way in back they have the beautiful land to enjoy. I'm right on the highway. Since I live with the highway, I might as well use it for my work, for my business. And I just feel that Mr. Ben Lujan has left space for his access and exit to his property, then I have a long strip along the highway so that should be able to be worked out.

And it's my work, my art, and I really feel strongly that it would be a benefit to the whole area too. There are other businesses and why shouldn't I have a small gallery. It would only add to the northern New Mexican charm.

CHAIRMAN DURAN: Okay. Thank you. Okay. Any questions?  
Commissioner Sullivan.

COMMISSIONER SULLIVAN: Tom, some concern has been expressed that other commercial development or storage units or so forth might be, might end up on this property. With this proposal for 1600 square feet and for a studio gallery, is that, does that limit what the applicant can do on the property?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, I would again remind the Commission that the application before you right now is just a variance to location criteria to allow her to come forward to request commercial zoning. At that point, if she's approved to come forward, the use will be attached at that point. And then the CDRC or the Board, or both, could limit the uses to the studio gallery at that point.

COMMISSIONER SULLIVAN: Could you explain what you mean by variance to location criteria? Are you talking about the fact that it's outside the commercial nodes?

MR. DOMINGUEZ: That's correct, Mr. Chairman, Commissioner Sullivan.

COMMISSIONER SULLIVAN: Okay, so before -- it seems that the subdivisions that we're dealing with here, before the proposal was to use Meyers Road along with other vehicles that use it, including trucks, and to do a home business, that was disagreed with by the residents because of the increase that might occur on Meyers Road.

We now have a situation where the proposal is that place, the parking and the driveway, to the parking in the studio out where it fronts on the property. This would create another commercial property outside the commercial node but within an area of

other existing commercial properties. So we're now not impacting Meyers Road but there's some traffic issues that might occur on 285.

Those I assume would be addressed by the Highway Department when she applies for a permit. Is that correct, whether she had to put in accel, decel lanes and so forth?

MR. DOMINGUEZ: Mr. Chairman, that's correct.

COMMISSIONER SULLIVAN: I think we have two different issues here. I think that I don't feel that the issue of whether the applicant is, lives there full time or how long they've lived there, 3-1/2 years or 40 years is relevant. I feel that any person has a right to request zoning under the conditions and I don't know that anywhere in our codes the length of residency is a requirement for receiving a variance unless I'm mistaken about that. If Mr. Kopelman could perhaps comment on that; is that correct?

MR. DOMINGUEZ: That's correct.

COMMISSIONER SULLIVAN: Okay. So I appreciate that the residents, nearby, can see that this adds perhaps another straw to the haystack of commercial along the road, nonetheless, I think that it is there and this doesn't impact it significantly.

And then there's other concerns of whether or not the applicant intends to sell it, I think any person is entitled to sell their property and entitled to zone it commercial to improve that sale and propose a structure.

Now the last question that I saw in some of the correspondence was placing a condition that the approval would expire in some time period or that building had to occur within some period of time. Could you comment on that, Mr. Dominguez?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, I'm not sure what reference you're making to placing a time frame to expire. Currently, under the code, a master plan, again this is not a master plan, but in the event that this would be approved and the allowance for master plan to come forward, if a master plan or once a master plan is approved, there's a five year time frame that comes with it by code. It's valid for five years and can be extended by progress. Progress being a submittal of a preliminary or final plan.

In most cases, something of this magnitude would generally come forward as a master plan preliminary, final, all at once. At which point, once something has a final development plan, it's valid for two years.

COMMISSIONER SULLIVAN: I was just referring to one of the letters that one of the residents wrote that they recommended that some time period be placed on them. So at this point, a time period wouldn't be appropriate but during the master plan submittal then there is a time period if that's approved, of five years?

TOM DOMINGUEZ: Mr. Chairman, that's correct.

COMMISSIONER SULLIVAN: Okay, thank you.

COMMISSIONER TRUJILLO: Mr. Chairman?

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: What we're considering tonight, is whether the applicant can utilize a commercial protocol to submit application, is that right? Whether she submits the application for an art studio or storage units or whatever, once

we designate that area, that land commercial, any commercial endeavor could happen in that area.

And on the issue of the road, on the issue of the access from the highway, even though there's access from the highway, directly intersecting to 285, there's no guarantee that the traffic will utilize that intersection, that Meyers Road is always available. And my speculation is that anybody that sees the health and safety issues on that intersection will avoid the intersection to the land and use Meyers Road thus having a disparate impact on the community. Because no one's going to stand by the intersection of Meyers Road and going to say, "Are you going to that art gallery, you cannot use this road." People are going to use that road to access that property.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, the first issue that you brought up, the action that you take tonight does not grant commercial zoning to this property. Merely, the allowance for the applicant to come forward with a master plan at which point that action, if approved, would allow the commercial zoning.

COMMISSIONER TRUJILLO: Let me ask a question. If we approve a commercial tonight, and tomorrow there's a sign for sale, what can the buyer, because now all that's been represented to the buyer that this is commercial, what can the buyer do?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, the would be a misrepresentation. The zoning does not change until the master plan is approved. Again, this is merely the allowance to allow the applicant to come forward for a master plan to change the zoning. So if you took a favorable action tonight, it does not change the zoning. They would not be able to sell it as commercial property. It will still remain residential property until such time as a master plan with the uses and all of that are tied down.

To just your second concern, as far as the traffic using US 285 or Meyers Road or whatever, again, at the time that the applicant were to come in with a master plan, those types of issues could be used, I guess, if that were a concern and this is a little premature to talk about it. But you know, there could be safeguards that would allow -- that would disallow the entrance from Meyers Road into the property, i.e. some parking -- or something of that nature that would separate it and not give an access to it. That's merely to address your concern for that access point.

You are correct though in saying that there is no guarantee that the Highway Department will give them an access. There was reference made tonight that hasn't contacted them yet. There is really no need for it at this point, unless you wanted to. But it will be necessary if this is approved and she comes forward for master plan.

CHAIRMAN DURAN: What would be wrong with conditional approval and those conditions would be that if we were to approve the commercial position of this property for specific use subject to a submittal of a master plan for this specific use of a studio gallery of 1600 square feet Why can't we be specific in our approval with no access off Meyers Road.

MR. DOMINGUEZ: Mr. Chairman, I believe that it's definitely within your prerogative to place conditions of any sort on this approval. Again, I would just say,

again, we keep referring to this commercial approval. This is not a commercial approval, this is just the allowance to come forward but you can place any condition that you see fit.

CHAIRMAN DURAN: Right. Okay.

MR. DOMINGUEZ: Reasonable condition always apprised by counsel.

CHAIRMAN DURAN: We're reasonable. Any other questions. Okay, what's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chair.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: Move for denial of CDRC Case #V-00-5861, Barbara Zavada Variance.

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: Okay, any further discussion. There's a motion and a second.

Those in favor signify by saying aye. [Commissioners Trujillo and Campos voted for the motion and Commissioners Sullivan and Duran voted against motion]

CHAIRMAN DURAN: Well, a tie means no; is that correct?

MR. KOPELMAN: Mr. Chairman, the motion dies. But that means you can also vote and bring it forward for approval and if it goes 2 to 2, that motion dies also.

CHAIRMAN DURAN: Well, I would make the motion that we approve this case with the condition that the commercial uses that are allowed are specific in that only a 1600 square foot studio gallery could be constructed on this site, that no further division of the property could take place, that barricades be built to prevent access to the property off of -- barricades, I mean, just anything to prevent traffic from going down Meyers Road and accessing the property, and that it would be subject to the applicant getting a permit from the state.

COMMISSIONER SULLIVAN: Second.

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

Commissioners Sullivan and Duran voted for the motion and Commissioners Trujillo and Campos voted against the motion.

CHAIRMAN DURAN: The motion dies. What are her options now?

MR. KOPELMAN: Mr. Chairman, she will receive a letter from the Land Use Department. Her option is she can appeal it to the District Court or else it's over.

CHAIRMAN DURAN: So we're sending you to land use purgatory. Can she come back when there's a full Commission and put Javier on the spot?

COMMISSIONER TRUJILLO: That's double jeopardy.

MR. KOPELMAN: At this point, Mr. Chairman, her applicant is denied. I guess at the next meeting somebody who voted in the negative could move to bring it back and reconsider it but in light of the fact that Commissioner Gonzales isn't here, under

Roberts Rules that couldn't be brought back. So I'm afraid that she would have to start all over again.

CHAIRMAN DURAN: Well, Ms. Zavada, your application has been denied. You're options are to go to district court or reapply. Could you reapply in a year. We have no deadline?

MR. KOPELMAN: Mr. Chairman, there's no time limit in our code. So until there is, there's nothing to prevent her from bringing in another application forward.

CHAIRMAN DURAN: Okay. Next on the agenda is -- and Ms. Zavada do you need any further direction.

Okay, that takes care of the land use items.

**X. C. Ordinance No. 2001- An Ordinance amending the Santa Fe County Land Development Code, Ordinance 1996-10, to Add Section 13 to Article I Entitled "Procedures for Ordinance Amendments" (First Public Hearing)**

CHAIRMAN DURAN: Okay, what's the pleasure?

MR. KOPELMAN: Mr. Chairman, this is just the first public hearing and in light of the late hour, you may prefer to just see if there is any public comment and at the next hearing, I can go into detail if you like.

CHAIRMAN DURAN: So is there anyone out there that would like to address the Commission on this matter.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I would like to address the Commission.

I think it's fine to wait until the next meeting to get the details on the ordinance but, I do want to register a concern with 13.1 which talks about having someone sponsor an ordinance amendment. I think as small as the Commission is, with only five persons, I think that word could be changed to "requesting such an ordinance amendment." And my concern is that occasionally when someone is sponsoring an amendment it puts a personal face on it -- excuse me, I said amendment but I meant an ordinance or an amendment to that ordinance. I would rather consider an amendment to an ordinance or an ordinance on its pure merits and not necessarily consider it because Commissioner X or Commissioner Y proposed it. And I think sometimes in the public's perception if a Commissioner proposed an ordinance or an amendment that may put a spin on it that this ordinance is of one type of another.

CHAIRMAN DURAN: And where is that?

COMMISSIONER SULLIVAN: It's down on 13.1, the last line in 13.1: "Any individual, corporation, public agency, department or office may submit any ordinance amendment to any member of the Board who has the discretion and option of sponsoring such an ordinance amendment."

CHAIRMAN DURAN: Well, we've really never done that here and -  
COMMISSIONER SULLIVAN: I don't think what we do is request that staff brings it forward and at times we're asked - well, this was brought forward by Commissioner Sullivan or this was brought forward by Chairman Duran but I've given it a lot of thought since this was initially discussed a couple of months ago about whether I think it's necessary for us to sponsor an amendment and the more I thought about it the more I said, no, this is just something that I feel puts a tinge on the amendment and I don't think we need to sponsor an amendment.

CHAIRMAN DURAN: I don't think it's necessary.

COMMISSIONER SULLIVAN: And maybe that's not what you had in mind here and that was a long speech for nothing.

MR. KOPELMAN: Mr. Chairman, Commissioner Sullivan, Section 3-21-14.A of the New Mexico Statutes which is attached does provide that ordinances authorizes under 3-21-13, which are zoning regulations, may be proposed by any members of the Board of County Commissioners. Now, that language, I think is saying that any commissioner may propose a zoning ordinance.

CHAIRMAN DURAN: I think there is no problem with getting away with deleting that sponsoring. Can we say - "may submit an ordinance amending - amendment, proposed to any member of the board who can bring such ordinance amendment up for consideration."

COMMISSIONER SULLIVAN: Yeah, I would just say "requesting such an ordinance amendment."

CHAIRMAN DURAN: That sounds good. Okay, well, how about we talk about it next time.

COMMISSIONER SULLIVAN: That's fine, I just wanted to give staff some time to think about it and I think it is more than just wordsmithing - I think it has some other impact.

**X. MATTERS FROM THE COUNTY ATTORNEY**

- 1. Executive session**
  - a. Discussion of pending or threatened litigation**
  - b. Discussion of possible purchase, acquisition or disposal of real property or water rights**

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

[The Commission met in executive session from 10:20 p.m. to 10:55 p.m.]

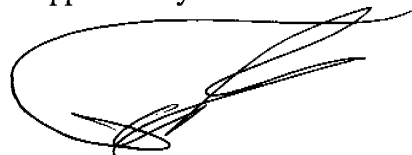
Commissioner Trujillo moved to come out of executive session having discussed only the matters outlined in the agenda, and Commissioner Sullivan seconded. The motion passed by unanimous voice vote.

Chairman Duran announced that only the items noted in the agenda were discussed.

ADJOURNMENT

Chairman Duran declared this meeting adjourned at approximately 11:00 p.m.

Approved by:

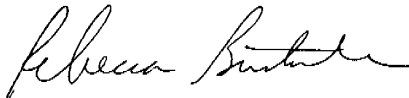


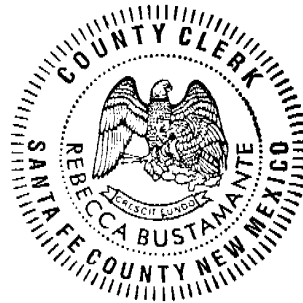
Board of County Commissioners  
Paul Duran, Chairman

Respectfully submitted:

  
Karen Farrell, Commission Reporter

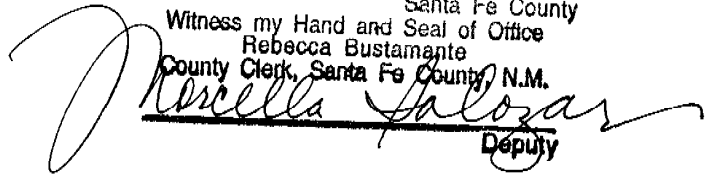
ATTEST TO:

  
REBECCA BUSTAMANTE  
SANTA FE COUNTY CLERK



11  
COUNTY OF SANTA FE  
STATE OF NEW MEXICO } SS  
I hereby certify that this instrument was filed  
for record on the 10 day of Aug A.D.  
20 01 at        o'clock    A.M.  
and was duly recorded in book 1958+1959  
page 962-158 of the records of  
Santa Fe County

Witness my Hand and Seal of Office  
Rebecca Bustamante  
County Clerk, Santa Fe County, N.M.

  
Deputy

