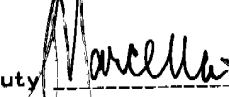


COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

BCC MINUTES  
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I Hereby Certify That This Instrument Was Filed for  
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Deputy  Witness My Hand And Seal Of Office  
Rebecca Bustamante  
County Clerk, Santa Fe, NM



**SANTA FE**

**BOARD OF COUNTY COMMISSIONERS**

**REGULAR MEETING**

**August 10, 2004**

Paul Campos, Chairman  
Michael D. Anaya  
Jack Sullivan  
Paul D. Duran [Excused]  
Harry B. Montoya

SFC CLERK RECORDED 11/03/2004

**SANTA FE COUNTY**

**REGULAR MEETING**

**BOARD OF COUNTY COMMISSIONERS**

**August 10, 2004**

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 2:40 p.m. by Chairman Paul Campos, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

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

**Members Present:**

Commissioner Paul Campos, Chairman  
Commissioner Mike Anaya  
Commissioner Jack Sullivan  
Commissioner Harry Montoya

**Member(s) Excused:**

Commissioner Paul Duran

**IV. Invocation**

An invocation was given by Deacon Enrique Montoya of St. Anne's Church.

**V. Approval of the Agenda**

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- B. Tabled or withdrawn items**

GERALD GONZALEZ (County Manager): Mr. Chair, members of the Commission, we have under Section XII. A tabling of those items.

CHAIRMAN CAMPOS: There was no material that was presented for the packet?

MR. GONZALEZ: That's correct.

CHAIRMAN CAMPOS: I didn't find any.

MR. GONZALEZ: That's correct.

CHAIRMAN CAMPOS: Okay. That would be XII. A. 1, 2, and 3?

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MR. GONZALEZ: That's correct.

CHAIRMAN CAMPOS: No material and they will be tabled per the request of the County Manager.

MR. GONZALEZ: Then under Section XIII. Staff and Elected Officials items, under A. Corrections Department, item number 1 has been moved below under Matters from the County Manager because the Corrections Department director is on leave, vacation. Then under Subsection C in the same Section XIII, in addition to adding that item 1 from above, item 2, Consideration of sublease with Whirling Rainbow Productions was also an addition. That's subject of course to Commission concurrence.

Then under Section XIV, Public Hearings, Subsection B, Land Use Department has requested to table item number 1, item number 2, item number 3, and item number 4 has been withdrawn. And those are the only changes that I have, Mr. Chair.

CHAIRMAN CAMPOS: So XIV. B. 4 is withdrawn?

MR. GONZALEZ: That's correct.

CHAIRMAN CAMPOS: I'm sorry. I didn't catch what you said about Whirling Rainbow. I'm kind of not following.

MR. GONZALEZ: I'm just saying that that item is also an addition, subject of course to the agreement of the Commission to keep that on as well.

CHAIRMAN CAMPOS: Okay. Commissioner Montoya.

COMMISSIONER MONTOYA: So XII. A. 1 through 3 are out, tabled. And then XIV. B. 1, 2, 3, 4 are tabled.

MR. GONZALEZ: That's correct.

COMMISSIONER MONTOYA: And that's it.

CHAIRMAN CAMPOS: Where's Whirling Rainbow on this agenda?

MR. GONZALEZ: Mr. Chair, Commission members, under Section XIII, Staff and Elected Officials' Items, Subsection C under Matters from the County Manager.

CHAIRMAN CAMPOS: It's under yours.

MR. GONZALEZ: That's correct. And I understand that they may have wanted to have this item delayed until the next Commission agenda, as opposed to placed on this one.

COMMISSIONER SULLIVAN: That's what I read, Mr. Chair, in the e-mail today, that they wanted it moved to the 31<sup>st</sup>.

COMMISSIONER ANAYA: Yes. That's what I heard.

MR. GONZALEZ: That's correct. The reason it's on here is because the publication ran yesterday reflecting that addition. There was a change in thinking that occurred after that publication had occurred and you're correct, Commissioner Sullivan, that was the request that was made that this item be pulled off the agenda by them.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: So the ones in red, are those tabled too?

MR. GONZALEZ: The ones in red are the additions that were made when the agenda was published yesterday morning.

COMMISSIONER ANAYA: XIII. C. 2? Is that what we're doing?

MR. GONZALEZ: That was the request that was made.

COMMISSIONER SULLIVAN: Since it's on the agenda I would like to say something about it when we get to it. Then we can table it.

COMMISSIONER MONTOYA: So we don't want to table it now?

COMMISSIONER SULLIVAN: No. I think we should just leave it on for now.

CHAIRMAN CAMPOS: Okay, with all the changes proposed by the County Manager, is there a motion to approve the agenda?

COMMISSIONER ANAYA: So moved.

COMMISSIONER SULLIVAN: Second.

**The motion to approve the agenda as amended passed by unanimous [4-0] voice vote.**

CHAIRMAN CAMPOS: Okay, as far as Consent Calendar withdrawals, is there anything from the Consent Calendar that anybody would like to withdraw for purposes of discussion?

**VI. Approval of Minutes: July 13, 2004**

CHAIRMAN CAMPOS: Is there a motion to approve?

COMMISSIONER MONTOYA: Mr. Chair, move to approve with an amendment that I have.

CHAIRMAN CAMPOS: Minor change?

COMMISSIONER MONTOYA: It's just spelling.

CHAIRMAN CAMPOS: Spelling. Okay.

COMMISSIONER SULLIVAN: I have one also.

CHAIRMAN CAMPOS: Okay. Two minor corrections of spelling. Is there a second?

COMMISSIONER SULLIVAN: I second.

**The motion to approve the July 13<sup>th</sup> minutes passed by unanimous [4-0] voice vote.**

**July 14, 2004 Special BCC - GRT Funding Issues**

CHAIRMAN CAMPOS: Is there a motion to approve these minutes?

COMMISSIONER MONTOYA: Mr. Chair, move for approval with an amendment also.

CHAIRMAN CAMPOS: Spelling correction?

COMMISSIONER MONTOYA: Yes.



CHAIRMAN CAMPOS: Okay, anything else?  
COMMISSIONER ANAYA: Second.

**The motion to approve the July 14<sup>th</sup> minutes passed by unanimous [3-0] voice vote, with Commissioner Sullivan abstaining.**

**VII. Matters of Public Concern –NON-ACTION ITEMS**

CHAIRMAN CAMPOS: Is there anyone out there that would like to address the Board of County Commissioners on any issue of public concern? Okay, no one coming forward, that item's closed.

**IX. Matters from the Commission**

**A. Proclamation for Chimayo Pride Day on August 14, 2004  
(Commissioner Montoya)**

COMMISSIONER MONTOYA: Thank you, Mr. Chair. I believe in your packet you have a proclamation. It's going to be occurring this Saturday. It's Chimayo Pride Day. The organization which I work for has been involved in a block leader program in northern Santa Fe County and also southern Rio Arriba County, and this Saturday I'd like to invite all the Commissioners as well and everyone out there to participate in this. It's going to start at 10:00 and at 3:00. It's going to be at Chimayo Elementary School. And this is kind of a celebration, a fiestecita if you will, honoring the block leaders, and honoring Chimayo as a community in terms of the work that is going on in there regarding the substance abuse problem that is occurring there.

So that is what the proclamation is about and I stand for any questions.

CHAIRMAN CAMPOS: How do you get there?

COMMISSIONER MONTOYA: To Chimayo?

CHAIRMAN CAMPOS: To the Chimayo school.

COMMISSIONER MONTOYA: If you go through 503, which is the Nambu turn-off, any you go all the way to Cundiyo, to Rancho Chimayo, turn left there and then go to the end of County Road 98 until you hit 76, State Road 76. Take a left and –

CHAIRMAN CAMPOS: You need to draw us a map.

COMMISSIONER MONTOYA: Okay. I'll draw you a map.

CHAIRMAN CAMPOS: I think it's a great idea.

COMMISSIONER MONTOYA: We're expecting 500, 600 people at least.

CHAIRMAN CAMPOS: Okay, do we number these proclamations, Ms.

Bustamante?

REBECCA BUSTAMANTE (County Clerk): No, we don't.

CHAIRMAN CAMPOS: Okay, is there a motion to approve the proclamation entitled "A proclamation in support of the Chimayo Pride Day on August 14, 2004?"

COMMISSIONER MONTOYA: So moved.

CHAIRMAN CAMPOS: Second?

COMMISSIONER ANAYA: Second.

**The motion to approve the Chimayo Day proclamation passed by unanimous [4-0] voice vote.**

**IX. B. Resolution No. 2004-86. A Resolution in Support of the 2004 Intergovernmental Summit (Commissioner Montoya)**

COMMISSIONER MONTOYA: Thank you, Mr. Chair. This resolution is simply affirming our participation and continued participation as part of the intergovernmental summit. There's been a subsequent meeting for August 17<sup>th</sup> of which we would like to have someone who is going to be consistently participating on behalf of Santa Fe County and would be the liaison between the Commission here and the task force or the yet to be named intergovernmental summit efforts. So that's what this is, affirming our continued participation in the intergovernmental discussions and I think the other thing of significance, Commissioners, is that this will allow us to again bring to the table, and I think it's been discussed. I think Commissioner Sullivan brought it up. The Regional Water Authority that we've discussed in the past and we have actually had that legislation, this body I think is what we need in terms of getting that buy-in and getting that cooperation which is really, I think, significant and I think the parties at the table, and Gerald, you can chime in, are very interested in looking at this as a viable effort for water and wastewater efforts in north central New Mexico.

CHAIRMAN CAMPOS: Commissioner, are you thinking of suggesting appointment of a person to be the liaison?

COMMISSIONER MONTOYA: Yes.

CHAIRMAN CAMPOS: Did you have someone in mind?

COMMISSIONER MONTOYA: I would be willing to continue to volunteer.

CHAIRMAN CAMPOS: Oh, you would like to be the person?

COMMISSIONER MONTOYA: Sure.

CHAIRMAN CAMPOS: I think that would be great, to have a Commissioner there. I thought you were maybe suggesting that a staffer should go.

COMMISSIONER MONTOYA: I think it would be good to have a staff also.

CHAIRMAN CAMPOS: Okay, well you can talk to the Manager about that.

COMMISSIONER MONTOYA: Okay.

CHAIRMAN CAMPOS: So any discussion? Is there a motion to adopt the resolution?

COMMISSIONER ANAYA: So moved.

COMMISSIONER SULLIVAN: Second.

**The motion to approve Resolution 2004-86 passed by unanimous [4-0] voice vote.**

**IX. C. Resolution No. 2004-87. A Resolution in Support of the Alcohol – Excise Tax (Commissioner Montoya)**

COMMISSIONER MONTOYA: Mr. Chair, Commissioners, this resolution is one that we had approved previously. The change in this is that as opposed to a local liquor option, we're also looking at a state-wide liquor excise tax. Discussions that I've had with Tasha Young over at the Association of Counties and Phil Larragoite who is the lobbyist for the Association of Counties, as well as the chief of staff, when I talked to Dave Contarino from the governor's office I suggested that maybe we consider expanding it so that it's not just local option but it would include a state-wide tax as well. So that's what this one is asking for and we did last week, at the Association of Counties board of directors adopt this resolution, this same resolution, as one of the top legislative priorities for the Association of Counties upcoming legislative session. So that's why I would ask that we adopt this as well, Mr. Chair.

CHAIRMAN CAMPOS: I have a couple of questions.

COMMISSIONER MONTOYA: Yes, sir.

CHAIRMAN CAMPOS: Now, we have an excise liquor tax, don't we, right now?

COMMISSIONER MONTOYA: Yes.

CHAIRMAN CAMPOS: State-wide?

COMMISSIONER MONTOYA: State-wide.

CHAIRMAN CAMPOS: How much is it?

COMMISSIONER MONTOYA: It's about five cents a drink.

CHAIRMAN CAMPOS: Five percent?

COMMISSIONER MONTOYA: Yes. Five percent.

CHAIRMAN CAMPOS: Now, this money, as I understand it, the idea behind it was that it would be used for treatment and rehab. But I understand also that a lot of this money is going to the general fund and being used for any purpose that the legislature wants it for.

COMMISSIONER MONTOYA: Exactly. Exactly. Thirty-three percent is what is actually coming to us, to the counties for the prevention and treatment programs that we have. The remainder 67 percent is going into the general fund.

CHAIRMAN CAMPOS: Well, shouldn't we have legislation that says that that 67 percent should come to the County, as opposed to – to have an excise liquor tax and then having two thirds of it go into the state general fund and only one third coming to the counties. That doesn't make sense. And that's always been a question that a lot of people have raised. Why does that happen?

COMMISSIONER MONTOYA: Well, now that it's gone into the general fund, the reality to get it to go back into where it should be going in for those services, it would be probably impossible because you have a lot of the different state-funded programs that are utilizing that as their revenue source. So just for example, if we're going to take that revenue source that let's say it going to Department of Health and Human Services for the Medicaid fund, well then they're going to have to find some other source to replace that funding stream, that funding revenue source and for them to do that – and that's just an example. It could be going in for roads right now. Nobody knows.

CHAIRMAN CAMPOS: It's not dedicated.

COMMISSIONER MONTOYA: Exactly.

CHAIRMAN CAMPOS: It goes into the general fund, it goes anywhere. It could be used for anything including 100 percent uses for non-rehab for liquor related problems. We don't know.

COMMISSIONER MONTOYA: Exactly.

CHAIRMAN CAMPOS: But to me it seems to make this simple that's what we should do.

COMMISSIONER MONTOYA: What we did, there was an attempt last year, Mr. Chair, that Jim Trujillo introduced a bill that would have increased it from 33 to 43 percent but it didn't go anywhere. And again, I think that's part of the reason why. I think unless – what this is doing is this is creating a new revenue stream. The other advantage of doing this is that by increasing liquor excises taxes there's a proven decline in the consumption and the purchase of alcoholic beverages, particularly among underage youth. And that's really where we're beginning to see the problem in our communities in terms of the underage drinking problem that's going on. And this is also a deterrent. Plus the reality is that the liquor lobby, liquor industry needs to – I think it should be more than what they are. They're certainly contributing a lot to the devastation of families and communities and people's lives. I think this is just a small way of them contributing something that hopefully can rehabilitate and prevent people from beginning this.

CHAIRMAN CAMPOS: I agree, it's a positive thing. But I'm just saying that if the state passed a law that says we're going to charge an excise liquor tax and they're not using it to help people with liquor problems.

COMMISSIONER MONTOYA: And this, we would be looking at a complete earmark for this.

CHAIRMAN CAMPOS: Complete dedication.

COMMISSIONER MONTOYA: Complete dedication.

CHAIRMAN CAMPOS: Any discussion? Okay. Is there a motion to adopt the resolution?

COMMISSIONER ANAYA: So moved.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER MONTOYA: Second.

**The motion to approve Resolution 2004-87 passed by unanimous [4-0] voice vote.**

CHAIRMAN CAMPOS: Commissioner Montoya, do you want to start Matters from the Commission?

COMMISSIONER MONTOYA: Mr. Chair, I just want to update the Commission on the meeting that we did have last week, the board retreat. The priorities for the Association of Counties for the upcoming year, I already mentioned was the liquor excise tax. Another is the repeal of the absentee by precinct. Another is a change of the date of the primary election. Another is to amend the Public Records Act. And then the housing of adults and juvenile prisoners will be pursued. Small county assistance, and then a constitutional amendment in terms of changing the terms for county elected officials.

CHAIRMAN CAMPOS: Could you provide us with more detail so we know what exactly they're proposing?

COMMISSIONER MONTOYA: Yes, sir.

CHAIRMAN CAMPOS: I'd like to see what the Association is proposing.

COMMISSIONER MONTOYA: Sure. I'll get copies of those resolutions. Absolutely. And then there's a few meetings if we can get staff, Gerald, to attend. One is regarding the County Indigent Fund meeting happening August 18<sup>th</sup>. It's going to be from 1:00 to 5:00 at the University of New Mexico. And that is actually a concern that was brought up that the County Indigent Fund may be looked at as a possible source of revenue for the state because they feel that we have balances that exceed what we should have in our coffers, I guess. We don't have that problem but it's still perceived out there. And then there was also –

CHAIRMAN CAMPOS: Let me ask you a question. You're saying there's a meeting in Albuquerque to discuss this issue?

COMMISSIONER MONTOYA: Yes.

CHAIRMAN CAMPOS: And you're suggesting we send somebody?

COMMISSIONER MONTOYA: Yes.

CHAIRMAN CAMPOS: Okay. And I guess you'll coordinate with the Manager?

COMMISSIONER MONTOYA: Yes, sir. Let's see. I think the other piece of information is the prisoner data. If we could get that to the Association of Counties. I don't think we've ever given them that information. Either that or they're asking for a \$500 contribution for someone to actually collect that data for us, so I guess one of the two. It might be cheaper to give them 500 bucks and get it out of the way. But those were the main issues that were discussed at the retreat last week.

And the last thing, Mr. Chair, is that apparently the governor has appointed what I understand is a former County employee, Robert Apodaca, to be his capital outlay person. The governor is still going to look at I guess consolidating projects. And Gerald, this is the other request. If you could get to Samuel Montoya, the Association of Counties, five priorities. And I guess we probably need to as a Board discuss what five priorities we would want to send to the Association. That's as far as it's going to go; it's not going to go to the governor's office but

they're looking at what are the priorities within each County in terms of things that are going to get funded or I think that we're going to request funding for. And again, this gets back to the cash balance that people have, different counties have, in terms of incomplete projects and I think that's something that we've actually done a good job ourselves in not carrying so many on the books. But he's actually got this individual now that's probably going to be contacting us and trying to get as much information as possible in terms of what projects we have that are not complete. So we got a request on that. And that's all I have, Mr. Chair.

CHAIRMAN CAMPOS: Thank you, sir. Commissioner Sullivan.

COMMISSIONER SULLIVAN: Thank you, Mr. Chair. Just a couple of quick items. We would like first of all to congratulate everyone, the volunteers and the participants in the Santa Fe County Fair that transpired this past weekend and we encourage and give our thanks to everyone who helped out with that, the 4-H group. Commissioner Anaya was there helping out and many, many others. It's a wonderful event each year and it's getting better each year. I wouldn't know where to start naming names so I'll just leave it as a broad thank you to everyone who participated in that.

At the same time that was going on there was going on this past weekend the fifth anniversary celebration of the Town of Edgewood, which also happens to be in Santa Fe County and used to be in District 5 but I passed it on to Commissioner Anaya. They also had a wonderful celebration down in Edgewood which I attended. The excellent thing that they did in that celebration was they had a very lively program for teenagers, including rock bands, monster trucks, sky divers, you name it. So we usually have programs for the toddlers and face painting and we usually have programs for the adults and we seem to leave out the teenagers when we do these celebrations. The teenagers were there and occupied and having a good time throughout the whole day. So I really think the Town of Edgewood is to be complimented on that. And again, our congratulations on their fifth anniversary as an incorporated municipality.

And then the last thing is we'd like to welcome the Border States Governors to Santa Fe County and they think they're in Santa Fe City, but we'll remind them they're in Santa Fe County. And we welcome them here and hope that their meetings with Governor Richardson and the others are productive ones. That's all I have, Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, thank you. First of all, we've got a representative here from Senator Jeff Bingaman's office. Pablo Sedillo is in the audience. Thank you for being here with us, Pablo. And I'd like to name off some of our new employees. Kevin Langle, from the Public Works Department, Alexander Ortiz, from Public Works. From our Fire Department we have Jeff Golden and from our Sheriff's Department we have Sharon Fresquez, and Monique Olivas. So congratulations for being with Santa Fe County.

I also have something here that was just brought to me today, Mr. Chair, and I'd like to pass this on to Steve Wust. This is something – this is the New Mexico Environment Department, and apparently the water that we're reusing or reclaiming, they're putting more tests and it's more difficult for the people that are reusing water to reuse water. They're putting a lot of tests on it. And I didn't get a chance to look at this. So if I could, I'd like Steve to look

at this and see what we can do to communicate with the state Department and find out more about what's happening with the reclaiming issues.

And with that, Mr. Chair, that's all I have.

CHAIRMAN CAMPOS: Thank you, Commissioner. A couple of things. At the last meeting, Mr. Gonzalez, Greg Parrish had asked – I guess I'll ask this to the Commissioners, that we set up appointments to go do a jail visit. Is that set up? It's time-sensitive.

COMMISSIONER ANAYA: I have not had time to go.

CHAIRMAN CAMPOS: Are you going to contact him? Do you have an appointment?

COMMISSIONER ANAYA: I don't have one set up.

CHAIRMAN CAMPOS: Okay. We need to do that soon.

COMMISSIONER MONTOYA: I haven't been contacted by anyone about it.

CHAIRMAN CAMPOS: Would you call him? Would you mind, so we can get this thing going. We need at least three Commissioners to do the jail visit very quickly.

COMMISSIONER MONTOYA: I've done it.

CHAIRMAN CAMPOS: I've been doing it for years. I know you've been doing it too.

COMMISSIONER SULLIVAN: I just did it about six months ago and I don't know – are we supposed to do it every six months or every year?

CHAIRMAN CAMPOS: Every six months. We need three Commissioners and I thought that Commissioner Anaya, you had and Commissioner Duran. We need to get it done. So if you guys could set up an appointment that would be great.

The other issue is for Mr. Gonzalez. The MPO position, 2 1/2 positions funded out of the federal funds and I have to guess that one of those positions, a full FTE be assigned to the County. I know you've been trying to meet with Councilor Wurtzburger and Jim Romero on that. I just think that's a priority. I've talked to a lot of people here on staff and they feel that we need that position desperately to just keep up on road planning and this is major planning. We're not out of the loop but we don't have an individual that actually can dedicate that much time and I would ask that you make this a priority and get this maybe back, get some information back to us by the next meeting. Does that work for you?

MR. GONZALEZ: Yes, and there has been a preliminary discussion with the City Manager. I think I sent a note out to some of the Commissioners reflecting that discussion. There's been resistance on the part of the City to fund a position over in the County, although they have indicated a willingness to at least make sure that the position would reflect County needs. So that's sort of the status of the discussion at this point.

CHAIRMAN CAMPOS: Well, it's not a City position that's going to be assigned for County purposes. It should be a County position. We're all paying for this, aren't we? We're all part of this, aren't we? Don't you think we need a position?

MR. GONZALEZ: What I was told, and this I need to confirm, but that it was actually 40 percent City money and 60 percent federal money that was funding the position.

CHAIRMAN CAMPOS: Well, if we could take part of that, if we have to put in our own money, we need a position. I've talked to people in Land Use and it's critical. I think it's been slipping here for the last six weeks since nobody can get together. I just ask you to make it a priority and get some resolution. It's an MPO position, the Metropolitan Planning Organization. It's about roadways, highways, federal monies. And there's 2 1/2 positions, mostly funded by the federal government. It provides 2 1/2 FTEs but they're all at the City. My suggestion was that one of those FTEs be a County employee so that we would have somebody that truly represents the County on those issues. And if we haven't been really represented except part time, people have a hundred other things to do, go to the meetings once in a while, we do need a full-time FTE. And that's what I think is really critical for us to fully participate in this planning process.

COMMISSIONER ANAYA: And where are we getting the money?

CHAIRMAN CAMPOS: Well, 60 percent of it is federal.

COMMISSIONER ANAYA: Is that for the City part? Or is that -

CHAIRMAN CAMPOS: We're both part of the MPO but the City has been taking all the money and using it for its 2 1/2 FTEs. But even if we have to put up some money to get a full-time FTE I think it's critical for the County.

COMMISSIONER ANAYA: So are they hiring two?

CHAIRMAN CAMPOS: One and a half already, and there's a vacancy. One of them quit and there's been a vacancy for about a month and they've been advertising it so that's why I think it's critical before they fill it that we discuss this. And I think if you talk with Diane Quarles, Judy McGowan or Jack Kolkmeier, they're going to tell you and I hope they have told you, Gerald, that this is very important to us. That's what I'm getting to.

The last thing I have is the Sheriff has issued a letter to us saying that things are really critical at the Sheriff's Department as far as positions and losing people. I think the way the budget is set up with our income, our expenses, we're not going to be able to do what the Sheriff needs. So we're going to have to maybe look at program cutting. Maybe even other adjustments. I think we need to have that discussion as County Commissioners because I think we all got an e-mail from the Sheriff showing how tough it is, and he's lost two or three new deputies and I think we've got to take the bull by the horns on this one. So that's for discussion maybe for the County Commissioners, maybe for the next time. We need to find a way of funding some of this stuff, if we're going to get enough people patrolling the streets.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER MONTOYA: I guess just regarding that, aren't we supposed to be discussing that, along with bond issues and gross receipts taxes and that sort of thing next week?

CHAIRMAN CAMPOS: Well, we've talked about the bond and how much of that money has to go to the jail and how little there's going to be for any FTEs or recurring expenses outside of the jail contracts. I don't think there's going to be a lot of money there. And if there is money, it's going to be short-term and you can't really count on it for a long



time, funding of positions. That's how I understand the issue. But I want the Commission and maybe Mr. Gonzalez can advise us on that issue by the next meeting. I think it's critical. Okay, that's all I have.

**X. Committee Resignations/Appointments/Reappointments**

None were presented.

**XI. Presentations**

**A. Presentation on Cloud Seeding**

COMMISSIONER SULLIVAN: Mr. Chair, before we start I'd just like to recognize our Commissioner-elect, Virginia Vigil, who is with us in the audience today. We appreciate her being here and getting a jump on her responsibilities the first of January and we'll try to make it interesting.

CHAIRMAN CAMPOS: At least amusing if not interesting. Okay. Sir, please state your name for the record.

WALTON CHAPMAN: Good afternoon. Thank you very much for giving us the time this afternoon to talk to you. My name is Walton Chapman. I've been in Santa Fe for an awful lot of years and probably most of you all went to high school with my kids.

To start, I'd like to tell you six years ago I was asked to join the Jemez y Sangre Regional Water Council. The state legislature had proposed a water plan for the entire state by regions, regions being areas that shared the same water sources, and our Region #3, the Jemez y Sangre came into being. The report was produced and accepted by the Interstate Stream Commission in April of 2003. We decided in the Jemez y Sangre group not to abandon, not to quit, but to go forward with the recommendations that had come forward from our work over that five-year period. We've been working for about a year on the production of our cloud seeding project in going forward. So that's what I would like to ask you to take a look at and be familiar with this afternoon.

We start with a note, in front of you or behind you, wherever you want to look. We're talking about the Jemez y Sangre area and we're talking about more water now. There's going to be considerable concern about what is the cloud seeding program and how does it work and does it work and who does it benefit and how much does it cost and so forth. And those are very good questions. The first note is the projected population growth through the year 2060 as shown in the Jemez y Sangre Regional Water Plan shows that we are going to have a considerable increase in people. This is following a - Santa Fe area is the one with the triangles, but for the entire area in the region it's the dark line on top.

The water supply that we have now and project to have in the future are those colored bars from various and sundry sources. The white bars are the shortages that we're going to

enjoy every year beginning soon, the shortfall in the amount of water. Our goal in cloud seeding is to seek new sources of water. All of the work that's being done on the – most of the elements of the plan are concerned with reducing demand for water. How do we conserve? How do we save? How do we eliminate waste and so forth? We think it's also a big area to be addressed increase supply? And one of the ones that we're going to recommend to you is cloud seeding.

Our project goals are to enhance the precipitation from the clouds we get. Let me tell you what that means. Passing over us every day are large amounts of moisture and from time to time, some of this moisture condenses into clouds, only about 30 percent of it. Of that amount, only about 20 percent of that ever reaches the ground in the form of precipitation. Both of those numbers can be improved, both the 20 percent and the 30 percent. Cloud seeding can increase the amount of precipitation that we would otherwise get from clouds. What we can get is a certain amount of usable water. This is new, ready to use water that does not belong to people who have prior claims upon it, because it just isn't here now. It will be here when we get it going.

And it's doing it. This is very low-cost water. Our projection on the water projected – and we'll run through these numbers a little bit, from cloud seeding is about \$25 to \$50 per acre-foot. You don't find any cheaper water than that. This is going to require broad community support to get this done and especially from the County because so –

Most western states are seeding. This is a look at where it's going on right now. Utah, Nevada, North Dakota, California, Texas, Oklahoma. It's not a process that is experimental or hit-and-miss. A lot of technology has been developed and is being developed all across the area. Here's where we were just talking about, the amount of precipitation that actually gets down. Eighty percent of the water remains in the atmosphere uncondensed. Of that part which goes into a cloud, only six percent falls as natural precipitation of the entire water that's available up there. Unpredictable cloud condensation after seeding is 13.1 percent. The increase precipitation we plan on is .9 percent. If you apply that against the six percent natural, we're showing an increase of about ten to twelve percent, fifteen percent, in the total amount of precipitation.

Seeding clouds is an introduction into the cloud of what are called cloud condensing nuclei. This is, in most cases that have been used over the years it's silver iodide but an awful lot of other materials are being used and have been used down to pure table salt. This is showing an arrow in this slide from an area where cloud seeding can be done. It can be introduced in the bottom of the cloud and the updrafts in the cloud take it up into the cloud where it condenses and gathers moisture and falls back down through. Every time it goes up and goes down it gets heavier until it falls out as rain. Or you can seed just the top of the cloud with the silver iodide crystals, which attracts the liquid water below freezing in the cloud. Some water remains liquid below freezing and that's the water that we can get to to increase the growth of the cloud, the life of the cloud and the amount of precipitation we're going to get from it.

This is an idea that our project, after seeding 200,000 acres for our seeding project,

which we plan to be a wintertime project. If we assume that the seasonal precipitation is ten inches, there are 200,000 acre-feet of water that would normally fall, and we're going to get 20,000 to 30,000 acre-feet of new water from this program. At \$25 an acre-foot, if you compare that with the other costs of water, Aamodt water is going to cost about \$1200 an acre-foot to solve that. San Juan/Chama water is about \$1200 an acre-foot. Santa Fe City water is \$1300 an acre-foot, and desalinization, water from that is \$1500 an acre-foot and that's FOB Willard; it's not even brought up here.

One of the things that must be done in order not to have a hit-and-miss program, in order to actually accomplish something real from this is a certain amount of pre-investigation, investigation that needs to start before we ever seed the first cloud. What we're going to do is have experts. We have been so fortunate in having experts volunteer their time from all over the country. Guys that are really super-educated, super-experienced in this and have been so kind just to come in pro bono and work with us on this. Our little committee has more than 4,000 man-hours of just donated time. We are all just volunteers. We are trying to take care of what we see as a future problem that has an answer.

Some of the investigation we need to do, the National Weather Service has archives of satellite data that has been accumulated over time. We need someone who can analyze that satellite data and tell us what kind of clouds we're going to get, what direction they're going to come from, what speed they're going to be going, and how often they're going to occur. We need to couple that with a certain amount of radar data that will tell us a lot of things. You see the Doppler radar on TV every night. There's a certain amount of information there that creates these same things.

Then you get more precise about the physics of the clouds. We need to fly an airplane up in there. An airplane properly equipped, not only with personnel, a meteorologist to read the dials and know what he's getting, but the machines to get the information there. We can tell the temperature at the top of the cloud, the most seedable clouds, those most likely to produce water need to be between  $-5^{\circ}$  and  $-15^{\circ}$  Centigrade at the top. They need to have an updraft of about 200 feet per minute. And they need to contain unfrozen super-cooled liquid water, or ice crystals, both of which give us an opportunity to increase the amount of water that can be drawn from that cloud and that cloud can draw from the moisture content that it sits in.

Once we have that data, modern computer programs enable us to put that into a modeling that will assist us in designing a cloud seeding program that's right for our area, a cloud seeding program that will tell us where to put the generators to introduce the cloud condensing nuclei into the clouds. How much to fly and when. Details of this nature are vitally important if we are to have a very successful program. We don't want to waste money or time on programs that don't work. We're designing this program to work, fortunately with the help of some awfully fine people as I have mentioned.

Once that is done, once the project is designed, then we can go into cloud seeding operations in accordance with that design. Where do we seed? How far away? Clouds move at about 30 miles an hour sometimes so you need to see ahead of where you want it to hit. What target area do we want to delineate? Where do we want it to hit? Primarily right now, our target

area, we think – we'll know better once we get the information – but we believe that our target area will be roughly the western slopes of the Sangre de Cristos, probably stretching from Santa Fe, maybe even as far as Taos.

That's a narrow ridge through there. That area puts on the west slope, is relatively narrow. So some of the moisture is going to have to go over and will, across the top of the mountains and also participate in the area that feeds the Pecos River.

The benefits of getting this stuff done to us, number one, we're helping satisfy the river compact requirements with Texas, both with the Rio Grande and on the Pecos. In addition to that, soil moisture will be increased, runoff will be increased, reservoirs, ponds, streams and lakes can be improved in the amount they're holding, and the aquifers, to some extent, can be recharged.

An awful lot of the water that comes down will go right back up into the clouds relatively fast as evaporation and transpiration from plants. One of the reasons we want a winter program is that we can keep that here without it evaporating so fast by putting it into snow pack along those mountains. And we believe that a great deal more snow pack can be accumulated along our mountains for our future use, plus wetter forests are not as likely to burn. There are all kinds of other side effects that this is going to have to produce great advantage for us.

That pre-seeding investigation and design of the project is going to cost a lot of money. We have been working on a number of \$150,000. We've now got our budgets put together and it looks like we're light. It's going to cost more than that, maybe as much as a couple hundred thousand dollars. The City of Santa Fe has been generous in offering us a donation of \$20,000 towards the pre-seeding, information gathering and analysis, contingent upon our raising \$80,000 more outside of that. We think all of the beneficiaries in this might be desirous of seeing this go forward to the point where they could assist in us and we're asking if you folks can match their \$20,000. Can you find a place to also help us get this done. And it's going to be one of the best things we believe that we can do with our time and energies and so forth for this whole region, and in fact to some degree for the whole state.

In addition to that, if you follow what we have and think that we're right, and there's a lot of information available on this from people and from your staff, we would like a letter of support telling us that you like what we're trying to do, because that will assist us in other fundraising. We're going in tomorrow for a fundraising effort with the Governors Innovative \$10 million that he's trying to put up for this type of purpose. We're going to see if they can't help us. They also require some matching funds. Everything seems to hit us for matching funds. But if you all can assist us in matching funds, that would be very important. A letter of support would be very important and the third thing that we're going to need as soon as we get opened up here is some kind of office space if you all can find a spot that you could put us as in-kind contribution, that would be most welcome. Thank you very much and I would be glad to answer any questions. Roy Stets is here who is the chairman of our technical advisory group and can give you better information than I can on a lot of things.

CHAIRMAN CAMPOS: Any questions? Let's keep it brief, but any questions of Mr. Chapman?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: Mr. Chapman, first of all, I want to thank you and Roy for volunteering your time and trying to come up with other ways to get more water, rainfall. I know that you must be doing it in Stanley because I've got grass this high over there. I attended the cloud seeding conference you had here and one of the issues was who owns the clouds and if you're cloud seeding here, the people are going to miss out in the next state. So could you tell me where that is?

MR. CHAPMAN: Absolutely. Thank you for that question because that's one that's asked a lot and a lot of people are concerned about that. Are we taking the water that would otherwise go to someone further downstream? And the answer is no, we're not. Most of the water that falls in all of New Mexico is returned to the clouds, about 95 percent of it is returned to the clouds through evapo-transpiration. And that big water mass that's moving on, it's still moving on, we're taking 9/10 of one percent of the water from that big water mass. We're certainly not affecting anyone adversely down the stream. And in fact we are affecting people positively.

Increases in precipitation have been measured 150 miles downwind of the target area. Not at the same level as the target area, but that effect continues on down and a lot of people get benefits from there.

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

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: Mr. Chapman, regarding those states that are doing this right now, what successes have they had? What's their average rainfall? How long have they been doing it and I guess my main question is are they getting more rain?

MR. CHAPMAN: Cloud seeding has been going on for 50 years. Technology has advanced most rapidly in the last three or four years, and even in the last three or four months. So there's great changes occurring. But it's expensive to do. \$400,000 for a winter seeding in our area is a lot of money. And these people are not continuing to spend that money year after year after year except that it's succeeding. Let me give you just a couple of examples.

COMMISSIONER MONTOYA: It's not being done here in New Mexico, correct?

MR. CHAPMAN: Yes, sir, it is.

COMMISSIONER MONTOYA: Oh, it is.

MR. CHAPMAN: Yes, Lee County and Roosevelt County have been seeding for about six years now, in conjunction with a group in Texas called SOAR, which is Southern Oglalla Aquifer Restoration Program. Let me tell you what they do there because that's an interesting concept. That area has no surface water. They have no lakes, no streams, no runoff, nothing on top that supports their agriculture. Their agriculture comes from pumping water out of the ground. Just the pumping costs, when added up, are reduced by the seeding program of 60 times the cost of the program. It has a 60 to one cost-benefit ratio in that particular area and

that's well documented.

CHAIRMAN CAMPOS: I'd just like to have staff maybe make a recommendation to us as to whether we should make any donations or what we should do in reference to this request. Mr. Abeyta, you've heard the discussion. Could you consult with staff and maybe at the next meeting give us a recommendation as to what we should do as far as money and other requests made by Mr. Chapman?

ROMAN ABEYTA (Deputy County Manager): Yes, Mr. Chair. We'll do that.

CHAIRMAN CAMPOS: Is that adequate? Okay. Thank you very much.

Appreciate your coming.

COMMISSIONER ANAYA: Thank you.

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I'd just like the staff also to discuss with us when they come back with a report about where county residents outside the city would capture this water. I understand the discussion that there would be some infiltration, obviously, to the ground, although it takes years to get to the aquifer. But the City of course has the storage facilities and those streams that receive the recharge from the snowpacks are city reservoirs. So at this point in time there are no county reservoirs so I guess what I would like to know is if we were expending County money, how could we show to county residents that that money was providing them these benefits that Mr. Chapman alludes to, these reduced pumping costs, this \$25 an acre-foot water and these benefits. So if you could look into that, I'd appreciate it.

MR. CHAPMAN: The area of the city for water fall is 17,000 acres. We're going to treat 200,000 acres. Most of that will be in the county, not in the city. So what benefits there are, the County, we believe, I believe, will enjoy far more of them than the City will actually benefit from, even though their reservoir will receive some recharge. But the reservoir recharge that they can receive is only going to be about 2,500 acre-feet out of 20,000 acre-feet that we hope to put in.

CHAIRMAN CAMPOS: Thank you, sir.

## **XII. Consent Calendar**

### **A. Request Adoption of Findings of Fact and Conclusions of Law for the Following Land Use Cases:**

#### **1. CDRC CASE #S 04-5050 – Rosa Linda Subdivision (Approved)**

**TABLED**

#### **2. CDRC CASE #A/V 04-5071 – John Montano Appeal Variance (Approved) **TABLED****

#### **3. EZ CASE # S 02-4321 – La Pradera Subdivision (Approved)**

**TABLED**

### **B. Resolution No. 2004-88. A Resolution Requesting an Increase to the Recreation Fund (217) to Budget Prior Fiscal Year 2004 Cash Balance**

- for Expenditure in Fiscal Year 2005 (\$6,367) (Manager's Office)
- C. Resolution No. 2004-89. A Resolution Requesting an Operating Transfer from the Capital Outlay GRT Fund (213) to the Road Projects Fund (311)/Avenida Eldorado and CR 55-A for Expenditure in Fiscal year 2005 (\$142,964) (Public Works Department)
  - D. Request Acceptance and Award of Construction Agreement to the Lowest Bidder for IFB #24-46 for the County Road 55-A Low Water Crossing Project (\$271,748.72) (Public Works Department)
  - E. Resolution No. 2004-90. A Resolution Requesting an Increase to the General Fund (101)/Region III Grant Program to Budget Prior Fiscal Year 2004 Cash Balance for Expenditure in Fiscal Year 2005 (Sheriff's Office)
  - F. Resolution No. 2004-91. A Resolution Requesting an Increase to the General Fund (101)/HIDTA Grant Program to Budget Prior Fiscal Year 2004 Cash Balance for Expenditure in Fiscal Year 2005 (Sheriff's Office)
  - G. Resolution No. 2004-92. A Resolution Requesting an Increase to the General Fund (101)/Region III Program Income (\$1,899) to Budget Prior Fiscal Year 2004 Cash Balance and to the Federal Forfeiture Fund (225)/Region III Program Income (\$103,472) to Budget Prior Fiscal Year 2004 Cash Balance and Federal Forfeiture Restitution Revenue Received for Expenditure in Fiscal Year 2005 (Sheriff's Office)

CHAIRMAN CAMPOS: Is there a motion to approve the Consent Calendar?

COMMISSIONER MONTOYA: So moved.

CHAIRMAN CAMPOS: Second?

COMMISSIONER ANAYA: Second.

The motion to approve the Consent Calendar B through G passed by unanimous [4-0] voice vote.

### **XIII. Staff and Elected Officials' Items**

#### **A. Corrections Department**

- 1. Request Authorization to Enter into Amended and Revised Operation, Management, and Maintenance Agreement for the Santa Fe County Adult Detention Facility between Management and Training Corporation and Santa Fe County

MR. GONZALEZ: Mr. Chair, members of the Commission, we'll try to be brief. I'll to the introduction. We also have a quick presentation from Legal, from Finance,

from MTC, then a quick wrap-up. Basically, I just wanted to indicate that from standpoint of the County, in addition to addressing many of the staffing issues that we've had out at the adult facility, this proposed agreement will do a number of other new things, among those are that it will ensure that the adult facility in the future will be more strongly connected with the community and some of our community organizations and healthcare providers, including Health Policy and Planning Commission and our Jail Advisory Committee and it will also ensure that the jail facility operates in a way that meshes also with County objectives and I'm going to turn it over to Grace from Legal so that she can just quickly outline what the highlights are with respect to what the discussion was and then at that point she'll turn it over to Susan to do the financial run-down.

GRACE PHILLIPS (Assistant Attorney): Good afternoon. The document that we are proposing you approve this afternoon is titled "Amended and Restated Operation, Management and Maintenance Agreement". We styled it in that fashion so that we could have one consolidated document going forward. Currently, we're operating under the original operation, management and maintenance agreement and there have been a couple of amendments. So what this document does is it folds in those amendments, adds the new language and presents it in a consolidated document.

So what you're looking at you no doubt will recognize and many of the current terms from our existing document, but there have been some significant changes. Specifically, the current operating agreement is scheduled to expire the end of September. So this amended and restated agreement will, if approved, begin, the term would begin October 1, 2004. It provides for a two-year term with an option to renew for a third year. The amended agreement provides for 25 additional employees at the jail, and provides for additional medical employees but also different types of medical employees and coverage, specifically there will be a new subcontractor providing medical care at the facility. There will be a registered nurse on site 24 hours a day, seven days a week. There will be a physician on site four days a week. There will be a physician's assistant or nurse practitioner on site full time as a 40-hour a week position and a psychiatrist will be on site three times a week and we will still have two mental health providers but the scheduling will be such that we'll have seven-day coverage for those folks.

The per diem that we're presently paying is \$41 a day. That will go up to \$42 a day for up to 400 County inmates. If we exceed the 400 amount, the amount of per diem will go up to an amount that is calculated, a market rate, based on the average rate that MTC is collecting for all facility beds. It would be in all of our best interest for the County if we can to remain under that 400 bed amount. And finally, all revenue collected for per diem for the facility will go to MTC. Those are the highlights.

CHAIRMAN CAMPOS: Okay. Questions?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: How many inmates do we currently have now?



MS. PHILLIPS: 380 is our average population.

COMMISSIONER MONTOYA: 380? Okay. So have we ever exceeded the 400?

MS. PHILLIPS: We have recently.

COMMISSIONER MONTOYA: On certain days, only for a certain length of time? Or three weeks in a row?

MS. PHILLIPS: During the last three months we have exceeded 400 on occasion. I think our population does fluctuate. And some of that may be due to summer months, things like that. But we have gone up recently.

COMMISSIONER MONTOYA: Over the last three months every day? Or the census fluctuates?

MS. PHILLIPS: It's fluctuated up to 405 or 406 and then down to 400. And then presently we're at 380.

COMMISSIONER MONTOYA: Presently we're at 380. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Thank you. Commissioner Sullivan.

COMMISSIONER SULLIVAN: Thank you for your efforts on this and to the Sheriff as well, because I know that everyone has worked on it and met with MTC and spent a great deal of time to try to hammer this difficult agreement out. The first question I had is how much more is this going to cost a year?

MS. PHILLIPS: I'm going to defer the financial questions to Susan. She has a summary for that.

SUSAN LUCERO (Finance Director): Mr. Chair, members of the Board, I believe you may have received a special handout. [Exhibit 1]

COMMISSIONER SULLIVAN: If this is going to be a presentation then let me ask some other questions.

CHAIRMAN CAMPOS: Let's go in order and see if there are any questions for Ms. Phillips and then we can go to the next. Are there any more questions for Ms. Phillips?

COMMISSIONER SULLIVAN: I don't know who wants to answer - let's leave the financial till last. We'll get the bad news last. Twenty-five more employees is obviously going to cost more money and my question is how much and we'll get that soon. On the Inmate Welfare Fund, page 22, this has been a sore point. We never could, when Cornell operated the facility, get an accounting of where the Inmate Welfare Fund went. And when Cornell left, the Inmate Welfare Fund, it appears, went with them. My understanding from this is that the Inmate Welfare Fund comes from telephone commissary services, but that MTC can expend these funds at their discretion and that these funds have to be from a list, an approved list. I don't see that list here attached, and apparently, it's the idea that MTC will prepare that list, the County will approve it and then they can generate funds, they can use funds from that list. If that's the case, my question would be what types of things would be on that list?

MS. PHILLIPS: This is a provision that has remained unchanged from the current contract. My reading of it is exactly like yours, that they would propose a list and MTC could thereafter utilize the money to purchase any goods and services from that list. I don't know, again - I wish Mr. Parrish were here - what the current status of that is. I know that funds are received through commissary and through the cost of telephone calls, but I don't know how they have been used in recent months.

COMMISSIONER SULLIVAN: Okay, well, maybe we'll defer that to Susan to tell us, do we know how money is in that fund now? No, we don't. Why not?

MS. LUCERO: Mr. Chair, Commissioner Sullivan, what we have on record is the amount that Cornell left with and wrote the County a check for. We know what that is. Since MTC took over we have not had an accounting or reconciliation of the Inmate Welfare Fund. We have received requests from them as far as expenditures that they are asking for such as exercise equipment, things to benefit the welfare of the overall inmate congregation, so we have received that but we haven't received a reconciliation of that account, at least Finance hasn't, and I couldn't speak to whether or not the program has.

COMMISSIONER SULLIVAN: So for over a year, MTC has been in operation out there we have no idea how much money - there's been no audit or reconciliation of that Inmate Welfare Fund?

MS. LUCERO: That would be correct at this point.

COMMISSIONER SULLIVAN: So what do we plan to do to rectify that?

MS. LUCERO: Well, we'll begin with a notice to them through the end of this last June for a reconciliation of all funds received and dispersed from this fund since the inception of the contract from MTC.

COMMISSIONER SULLIVAN: How much was left over from Cornell that they wrote us a check for?

MS. LUCERO: That has been maintained in a separate account. We have not mingled that with anything that MTC has received or dispersed. And that amount was \$37,000 that remained on the books.

COMMISSIONER SULLIVAN: One thing that occurs to me, I guess we and MTC together can define any items we want on this list, but there were certain uncovered medical items as we go through the contract and I think they're costs under \$25 or maybe it's \$50. I forget what the number is. Certain medical costs that MTC doesn't cover that the County has to cover if they're not within the Indigent Fund. So I'm wondering whether, and it seems logical to me that the Inmates Welfare Fund would be to cover otherwise uncovered medical expenses that they might have that doesn't fall into one of those categories. I don't know. That's why I was asking whether that may have been done in the past. Was there in the current MTC contract a list of these items, these approved expenditures?

MS. LUCERO: Mr. Chair, Commissioner Sullivan, no. There's not a list. We do review them. Mr. Parrish reviews them as they come to him and there's typical standard type items that are always on there and then once in a while there will be

something different. Now, medical expenses for individual inmates is not something that would typically be considered just because it does benefit one person as opposed to the whole. So we try to review those expenditures in terms of what promotes wellbeing for the entire population.

COMMISSIONER SULLIVAN: Okay. Thank you. Has anything been discussed about providing better waiting facilities for those who come to pick up the released prisoners?

TONY FLORES (PFMD Director): Mr. Chair, Tony Flores, Project and Facilities Management Department Director. Commissioner Sullivan, yes, we have looked at a couple of additional capital outlay items to improve the functionality of the facility and the first one that's on the top of my list from the assessments we've completed is the expansion and reconfiguration of the waiting area as well as the staff parking area. So we are looking at those two areas, primarily first the entrance or the waiting area and then the second part is the staff parking area so that we can move staff vehicles in a safe and secure way out of the front of the building to the side of the building and possibly and be able to expand that front waiting area.

COMMISSIONER SULLIVAN: Because I understand, people complain that release, first of all, release times seem to vary and aren't any specified time but secondly, even when they're told a specified time, the release doesn't happen at that time and I understand there could be several things going on. There could be a security problem. There could be a lock-down. There could be any number of issues going on in the jail that that individual wouldn't know about that would have to be attended to. So one can't always assume that an estimated release time of seven pm is going to be seven pm. It may be later than seven pm. I understand that. So I'm not harping at that. But if you tell people just to sit out in their cars for four hours in the parking lot and wait till hopefully they see someone come out of the corner of the building, it seems like we could do a little better than that. So what you're saying, Tony, is that it relies on us to cough up some renovation costs to do that.

MR. FLORES: Mr. Chair, Commissioner Sullivan, yes. And I think with the assistance of the operator and the Sheriff's Department and the Corrections Department we can prepare a plan that makes sense and is fiscally sound also. But those capital expenditures are on our list.

COMMISSIONER SULLIVAN: Okay. I was glad to see some language in there that MTC assures us that there will be someone at the front desk during a period of time. I forget the time. It's written in here. There's actually supposed to be someone, I think till 5:00 or something. It's not 24 hours, but as many times as I've been there as not, when I've gone in the front door there's been no one at the front desk to take care of reception and tell people where they need to wait or what the procedures are for visitation and so forth. So that's an improvement and I think that's a good improvement in the contract. Glad to see that.

That's all the questions I had, Mr. Chair, until we get to the financials.

CHAIRMAN CAMPOS: Commissioner Anaya? Okay, who's the next speaker?

MS. LUCERO: Mr. Chair, members of the Board, the analysis that you have in front of you is an illustration of the negotiation process in terms of original offers, proposals from MTC on the left side, and then the counter proposals from Santa Fe County in the middle, and then off to the right, depicted by different colors, the final offer for this year's budget, the impact to this year's budget and then an analysis and cost projection for next fiscal year, 2006.

The very far right column for comparison purposes, I've included the fiscal year 04 budget and the per diem cost to give you an illustration and an ability to compare where we are now. So to begin with, the very first column, the original offer by MTC was at a per diem of \$51.92 a day. The revenue was still estimated at \$3.29 million, which actually is a reduction from this past fiscal year for two reasons. Number one, we are not anticipating re-entry of federal prisoners, and number two, we are anticipating a reduction of population for the State Department of Corrections. That is the impact then to the budget.

In terms of care of prisoner cost, between the other jurisdictions and the County's population which has grown this year by about eight percent, the care of prisoner dollars to MTC equated to \$10.3 million, which after other operational costs including debt service for the County, would have required an additional increase from general fund of \$3.2 million. So this was our high end. This was what we were working downwards from.

Giving you the history, the second column shows the next offer from MTC, but I'd like to focus on the third column which shows where the County would have been had we not increased the per diem, which also meant no increase to staffing. Due to our own population increase, and again the reduction of other prisoners leaving the facility such as State Department and federal prisoners not re-entering, the County would have had to increase its operating transfer from general fund by \$1.1 million.

The fourth column indicates by interim budget which is what you approved, the change in the last proposal that the County countered to MTC upon the interim budget's time frame as to when you approved the interim budget. At this point the shift is for the other jurisdiction revenue, the difference between that revenue and the cost shifts down into the care of care of prisoner line item which is the amount of money contractually that goes to MTC. So you can see in this fourth column that the care of prisoner dollars increased up to \$8.6 million. And this wasn't sufficient for MTC's required needs in order to meet increased staffing levels.

And the sixth column over that's labeled final offer FY05 budget, this was the final per diem that we agreed on of \$42 per day. Again, all revenue from outside jurisdictions is passed on to MTC. Security staffing levels increase. Medical staffing requirements are increased and specifically stated. And our inmate population is at right under 400 at 396. That gives us a total care of prisoner cost of \$9.1 million for the year and requires, after debt service and other operational costs a transfer from general fund of \$1.495 million.

For the upcoming year, 2006, assuming the same per diem, but now we are looking

at a 12-month contract rather than this year where the first three months are at the current contract amount, the last nine months are at the new contract amount, there will be no incoming outside revenue from outside jurisdictions. The care of prisoner cost will go up, largely due to the per diem increase as well as the County's population going up to approximately 416, which has been a norm, a five percent increase. Our debt service stays roughly the same. Other operational costs stay roughly the same but the required general fund transfer will be then \$2.68 million in comparison to fiscal year 04 dollars.

So each year, we are growing anywhere from \$1.2 to \$1.5 million on the overall budget. I stand for any questions.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: Susan, how much more do we pay per diem per day when we go over the 400 number?

MS. LUCERO: Mr. Chair, Commissioner Montoya, the average per diem, I've figured, based on the way the contract reads would be about just under \$46 a day. About \$45.71, something like that.

COMMISSIONER MONTOYA: Okay. So where is that reflected or is it reflected here in terms of overage?

MS. LUCERO: It is reflected in the \$6.3959 number, in the fiscal year 06 column So I've anticipated our population going up and we are needing to pay that higher average when it hits that higher number. We are putting into place a contract for a court liaison, a contractual person, which will be reviewing the sentencing and the documentation for the County inmates to try to get them through the system faster and into the court system faster so that the County can be relieved of their care and custody for more periods of time.

COMMISSIONER MONTOYA: So how many days will that cover? The overage? What was it calculated at?

MS. LUCERO: Commissioner Montoya, the overage is actually anticipating an average of over the entire year, 365 days, anticipating it will be above 400 by another 16 individuals. So if our population grows at five percent, this will be the minimum. If it grows higher the number would need to go up. If we can work with this other remedy of possibly having somebody review the court cases and get them through the system and out of the jail quicker, that might reduce this number.

COMMISSIONER MONTOYA: Okay. And then the FY06 cost projection, you're saying that we're looking at probably an additional \$1.4 again for next year? On top of what we're putting in this year?

MS. LUCERO: Mr. Chair, Commissioner Montoya, we are looking at approximately another \$1.2 million.

COMMISSIONER MONTOYA: Okay. And are we projecting to take this from the GRT hopefully that we'll get passed here?

MS. LUCERO: If the GRT is after your enactment, if it's not, if it goes

through without any negative petition then we would look at this as a funding source specifically for the jail.

COMMISSIONER MONTOYA: So at this rate of growth, in four years we'll have zapped the GRT that we're projecting is going to generate \$4 million a year.

MS. LUCERO: That is correct. If our population continues to grow at five to eight percent per year, and if we continue operating it under the current scenario, yes, we will outgrow that.

COMMISSIONER MONTOYA: Okay. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Other questions? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Susan, just to clarify the final offer FY05 budget column, \$1.495 million, that's the average for nine months beginning October 2004?

MS. LUCERO: Correct. Well, it's annualized in the sense that we are looking at it for the entire year, but it's mainly due to the change since beginning October.

COMMISSIONER SULLIVAN: The contract expires when?

MS. LUCERO: September 30.

COMMISSIONER SULLIVAN: Okay. So that yellow column, that yellow number of \$1.4 million is a nine-month number and then the next column, FY06 is a 12-month number.

MS. LUCERO: That is correct.

COMMISSIONER SULLIVAN: Six million, and as Commissioner Montoya said if we're looking at an increase of \$1.2 million a year we're shortly out of money.

MS. LUCERO: Right. I think the best way to interpret this year compared to the next is that each year our population goes up by five percent. That's about \$400,000 in costs. So if you take that from the \$1.2 growth, the \$800,000 is your built-in additional per diem in order to remedy the security staffing and the medical staffing requirements.

COMMISSIONER SULLIVAN: So getting back to my original question, how much more is it, since nine months is \$1.5 million, then obviously 12 months would be \$2 million, if you looked at it on an annual basis. So in terms of today's, for our next current fiscal year we're looking at a rate that's \$2 million more than we were paying last year. And these of course are to pay for requirements of security, to pay for medical requirements, to pay for the issues that were brought up by the Department of Justice and Department of Corrections. Is that correct?

MS. LUCERO: That is very well summarized. Last year we had budgeted about \$500,000 for anticipated Department of Justice settlement costs. This year, with the additional \$1.5 you're exactly right. We're at the \$2 million increased costs.

COMMISSIONER SULLIVAN: and next year it will be \$2.68 million.

MS. LUCERO: In comparison to FY04.

COMMISSIONER SULLIVAN: For the year concluded. Well, that's rather depressing.

MS. LUCERO: I'm sorry.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: On that point, and that means we don't even have four years. We have more like two and a half before that \$4 million is gone.

MS. LUCERO: I think this gives us an opportunity to put checks and balances in place which is what the jail team will now be working on as phase 2. And it affords us the opportunity to analyze exactly where we're headed and where we want to go in anticipation of what we already see at this point.

CHAIRMAN CAMPOS: Okay, who is your next presenter?

COMMISSIONER SULLIVAN: It's going to come to haunt you, is what's going to happen. Your second term, you're going to be out there on a corner with a cup in your hand.

GREG SOLANO (Sheriff): Mr. Chair, Commissioners, what we looked at as the jail team was a very difficult scenario. Number one, we wanted a responsible use of the taxpayer dollars, but number two, at the same time, we wanted to fix the problems at the jail and develop a facility that will be a model for others. That's very high goals for us to look at. We needed to take a serious look at all the options on what to do at the jail. One of the options that we did look at very seriously among all of them was also even County take-over. And really at this point what we decided was that not continuing with the current operator would hurt the County more than the advantages that we could get by changing operators, the new operator being the County.

The loss of the accreditation, the work that we've done so far in straightening out the problems would all – we'd have setbacks in all of that if we didn't continue with the current operator. So that was part of the decision along with working out a dollar amount that would work and at the same time incorporate into the contract all of the changes that you've seen.

And if you look at the changes that were done they've been things as simple as putting somebody at the front desk to as serious and much more complicated was working out medical problems and things going on with the medical issues and security issues that have been going on. So we looked at a wide ranges of issues and tried to incorporate them into the contract this time. I think the County has learned, and I wasn't here back in the previous contracts. But as we've looked at the previous contracts and we've all done it, we've taken steps forward at each step and I think this is a giant leap forward for the County as far as making the facility what it needs to be, which like I said is a model facility.

The key to this, and in talking about the figures, but the key to this is working on ways to keep the County's population down now and that's the next step that we need to look at. We've got to have ways of keeping our population growth down and perhaps even a reduction in population which would really be nice. But we have to at least control the growth. And we talked about the liaison being one of the things, but that's just one of the many things that we need to look at. And that's the jail team's next stated goals is to go

into looking at how we make all the changes that we need to do for both the Justice Department, our accreditation and just having a good running facility over all, and at the same time trying to control growth. And that's going to be key.

And I'll tell you one thing. I know the jail team is committed to working very hard to solving these solutions and have worked very hard up to this point. One thing I want to throw out there is that we need to continue to look at all options. This isn't the end coming up and getting this contract before you. This is only a beginning. And it has to only be a beginning. We have to continue to not only work with the current operator to make the jail what it needs to be, but we have to continue to evaluate all the options in the County, that the County has with this facility and to continue to re-evaluate those options time and time again, because as you can see, dollar amounts can change. Population growth can grow or drop. There's so many factors that can go into the jail.

The legislature can pass increased DWI laws which they have, which can end up increasing our population and each of these things we have to continue to re-evaluate and that's one thing that I think that we've gotten a good commitment from the County to continue the jail team on from this day on forward and from when we started it. Because these are things that have to be continually re-evaluated. So I just wanted to bring those comments up. And now I want to introduce some people that are here from MTC. Al Murphy is here. He's the vice president of operations.

CHAIRMAN CAMPOS: Sheriff, could you hold on for one second? We're going to have a scheduling problem. We have a public hearing about six. We have an important discussion on the direction for the proposals for the geo-hydro study. So I'd like to finish this presentation by 4:15 if it's okay with the Commission so we can have the second discussion finished up by 5:00, take our break and have public hearing at 6:00. Is that okay? So we've just got to be brief.

SHERIFF SOLANO: I don't think they're going to say anything, other than the warden wanted to introduce himself. I think this will be the first time some of you meet him. But Al Murphy has been my counterpart in these heated discussions we've had, but yes, we've worked it all out and he's the vice president of operations with MTC.

And then the warden is Cary Dixon. We have Lt. Wendell Montano and he's in charge of training and recruiting for the jail which is one of the very important functions that we have to work on and have been working on. And then Sabino Rodriguez is in charge of the plant and all of the facilities, keeping it going and making sure that the facility is kept up. Does a great job of that. So, Warden, would you like to say a word? I'm all through unless you have any questions for me, specifically.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: I just want to thank the Sheriff and the jail team for working hard and together and I know this is going to be an ongoing issue but we'll just keep working at it.

CARY DIXON (Warden): Mr. Chair, Commissioners, I'm going to be real



brief. I would like to tell you that if approved, I'm looking very forward to working here in Santa Fe. I've been here since March. I've enjoyed it very much, the community, the people. I look forward to being part of a winning solution in this ongoing issue. I would like to commend you for the jail team's work and the team that was put together and it was very pleasant to work with and knew what they were talking about. A great professional group and they've been very helpful to me personally since I've been here with questions and answers, especially from past reviews and stuff like that. So again, I'll shut it off right now and just say thank you for your time, your consideration of this issue and I would like to invite all of you any time. Please, just call me and come out and we'll show you the whole thing. Thank you.

CHAIRMAN CAMPOS: Any questions for the warden?

COMMISSIONER SULLIVAN: Mr. Chair, not for the warden. I have a question for Susan or whoever. For four years we've been talking about a detox center and for four years we've made no progress on it. If we ever get a detox center, we're using the jail now as a drunk tank and a substance abuse tank, and I assume, the way this contract would operate since we're running at 416 which is over the 400, that means those inmates would be at roughly the \$46 a day or whatever that you're projecting would be the average cost. Do we have any idea once we get this detox center off the ground how much we would save in these holds?

MS. LUCERO: Mr. Chair, Commissioner Sullivan, I can tell you in kind of round numbers. I think what we have seen in the past, in rosters, is that on average, 30 inmates of the population are related to PC or intoxicated situations.

COMMISSIONER SULLIVAN: Protective custody.

MS. LUCERO: Right. And 30 out of those 400 is a significant number. That's about eight percent. The cost of one inmate per year just to house them and not necessarily seek outside medical help or anything along that line but just to feed them and house them is around \$17,000 a year. So it's maybe half a million if you just looked at very directly like that. Not to mention the fact that those beds would be empty for other inmates, which may or may not be County inmates.

COMMISSIONER SULLIVAN: So that's a big number. That's, as you say, in your scenario there, \$500,000, \$510,000, half a million dollars a year under this current contract as we had it presented to us here today, could be saved by moving the detox services. Now, probably not every single one of the thirty could be moved, if they're violent and can't be handled in the detox center then they have to be incarcerated. So we probably can't count on every single one of those. But the great majority of them I would think could be handled elsewhere rather than sleeping on a mat on the floor of the jail, waiting to wake up. So that's a big number. That's encouraging. That's half a million dollars which encourages me to press on to try to get this detox center a reality.

CHAIRMAN CAMPOS: Any other questions?

COMMISSIONER MONTROYA: Mr. Chair, on that point, we also need not only to get it going but we'll need the funding to get it going as well. And I think we're

going to need the Sheriff's Association on this also in getting the liquor excise tax passed, because it would potentially generate about an additional million dollars for Santa Fe County of which we definitely need it for the operational costs. Is that correct, Tony, for the CARE Connection? Because we still don't have operational costs.

MR. FLORES: Mr. Chair, Commissioner Montoya, yes. It's my opinion that we've secured capital outlay dollars to be able to implement the detox center or at least a large proportion of the capital outlay dollars. There has been and will continue to be the operational costs that are associated with the detox. I can build it, but I'm not convinced and Robert Anaya has had this discussion with the Board before, that we can operate it on the level that we want it to be operated at.

COMMISSIONER MONTOYA: Thank you.

COMMISSIONER SULLIVAN: Mr. Chair, Commissioner Montoya, I think my thinking here on that line is that if you move forward with no negative referendum and get that correctional gross receipts tax in place by the first of the year, we could save possibly half a million dollars by having a detox center. So it would pay us to take half a million dollars from that correctional GRT or from the general fund, as it were, to put towards that, thereby reducing - killing two birds with one stone. Making life easier for administration at the jail and secondly providing better treatment, more appropriate treatment for people that are currently under protective custody. So it seems like that would be a good use to allocate in the future against that correctional gross receipts tax money. That is my thinking.

CHAIRMAN CAMPOS: Okay, is there a motion to authorize the entry into an amended and restated operations contract with MTC?

COMMISSIONER ANAYA: So moved.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN CAMPOS: Discussion?

**The motion to authorize the MTC amended contract passed by unanimous [4-0] voice vote.**

**XIII. B. Utilities Department**

**1. Consideration with Direction to Staff of Draft Request for Proposals for Geohydrologic Study and Regional Aquifer Evaluation**

DIANE QUARLES (Utilities Director): Chair Campos, members of the Commission, included in your packet is a draft of the RFP through discussion and recommendations regarding any changes prior to letting the RFP. The scope of work basically includes two primary tasks, the first would be an initial geo-hydrologic modeling that would be based on measurable criteria relative to groundwater sources. That would be

done in order to model and identify optimal areas for future potential wells.

The second task looks at a more comprehensive modeling function that would measure both the groundwater and surface water interactions with the goal being a recommendation on conjunctive management for the overall system. You will notice that we've identified that the construction and drilling of exploratory wells would be done under a separate RFP, however, it would be informed under the initial geo-hydrologic modeling and the recommendations that would come from that first function. The data that would be collected under that would be put back into the second model in order to do the conjunctive management modeling.

That's it in a nutshell. I would stand for questioning and recommendations as far as changes.

CHAIRMAN CAMPOS: Questions?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: Diane, regarding, on page 5 on the project purpose, "a small County northern service area". What is that area?

MS. QUARLES: Let me defer to Doug.

DOUG SAYRE (Deputy Utilities Director): Mr. Chair, Commissioner Montoya, that refers to what we call the west sector part of the County service area, which is south of Las Campanas and I guess west of the City service area. But it's like Los Sueños, La Serena, El Prado, La Vida. Those particular sections of the county have that service area out in what we call a small portion in the northern part of the west sector area.

COMMISSIONER MONTOYA: Okay. So then this doesn't go into the northern part of the county at all then.

MS. QUARLES: That's correct, Commissioner. I think one thing we envisioned – we referred to it as the central Santa Fe region for mapping purposes but one thing I think that needs to be discussed is how large a study area should it include. And so that's one of the things I think is on the table. Obviously, the larger the study area, if it takes in the whole county it will have larger data requirements that certainly need to be discussed.

COMMISSIONER MONTOYA: Okay. And then regarding the scope of work on page 6, it goes on to say, the first paragraph, the purpose of phase 1 and 2 of this scope, etc., etc. and then the next sentence, task 1 pertains to the development...Is there a phase and a task, or is there a phase with tasks within that? I guess probably semantically more than anything else, I kind of got confused.

MS. QUARLES: Commissioner, that's probably a semantics issue. I think when we talk about phase.

COMMISSIONER MONTOYA: Phase and task are synonymous.

MS. QUARLES: Exactly. The tasks are broken out into A and B but they're actually a phase one and phase two. Phase 2 or task 2 would be optional, depending on whether you choose to proceed, but we would have them and bid under the assumption that

we would move into phase 2 or task 2.

COMMISSIONER MONTOYA: So under this RFP we're looking at phase 1, task 1:A and task 1:B?

MS. QUARLES: That is correct. That would constitute, task 1:A, task 1:B would be comparable to phase 1.

COMMISSIONER MONTOYA: Okay. And what are we projecting that this may cost.

MS. QUARLES: I might defer to Doug. I think the original, and Doug can correct me, was \$600,000 was what was budgeted.

MR. SAYRE: Mr. Chair, Commissioner Montoya, we originally budgeted about \$650,000 but that included some drilling of exploratory wells. So I would say this portion is probably going to cost us around \$200,000 to \$250,000.

COMMISSIONER MONTOYA: For phase 1.

MR. SAYRE: For this, I guess phase 1, task 1:A and 1:B. Yes, sir.

MS. QUARLES: Commissioner, I might add, we have an alternative cost in here depending on whether we take ownership of the model. We've asked that the contractor break that cost out so that will have an impact on what the bids come in. If we actually take ownership of the model and take a license and have them install it in the system so that we have access to it, obviously, it would incur greater cost. What we want to kind of flesh out is how much would it for us to acquire the model.

COMMISSIONER MONTOYA: I believe that's all I have for now, Mr. Chair. Thank you.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Diane or Doug, a couple of comments on page 5 again on the second paragraph. I think on the project purpose where you go on to say that you are looking for wells that are to be strategically positioned in areas of highest potential yield and water quality with the least expected impacts to both the aquifer, the La Cieneguilla/La Cienega Springs and/or surrounding wells, I would like to add right after La Cienega Springs the Route 14 area. That's an area where we've had numerous complaints and persons coming forward to this Commission saying their wells are declining or drying up. I think that's in the same portion of the aquifer that impacts La Cienega, it just impacts Route 14 first, hits there first and the downslope goes on to La Cienega and of course then on to the Rio Grande. So I'd like to emphasize that.

Another suggestion I had was just in the line above there where you say highest potential yield and water quality, I would suggest the insertion of the language, irrespective of distance from current development. And the reason I suggest that is that I think what we're asking this geo-hydro to do is to find just exactly what you've said here, the highest potential yield, the best water quality, and the least impacts on the aquifer.

COMMISSIONER MONTOYA: Where was that again, Commissioner?

COMMISSIONER SULLIVAN: It's in the second paragraph and it would be page 5, the fifth line of this second paragraph, where it mentions essentially the three criteria

that the staff is looking for here, which is high potential yield, good water quality, and least impacts to the aquifer. These seem to be the three criteria that occur throughout this proposal and those are three important ones. And I just feel that we want this geo-hydrologic study and modeling that goes with it to tell us regardless of where it's going to be. It may be in La Bajada. It may be at Buckman. It may be wherever. Where are those three criteria best met?

COMMISSIONER MONTOYA: So you're suggesting language what?

Irrespective of -

COMMISSIONER SULLIVAN: Irrespective of distance from current development. In other words, what I'd like to avoid is getting a recommendation back saying well, here are two well locations, or here's a well location and we like it because it's close to our existing waterline. I think that's something - that's a policy decision that we as a Commission can make based on recommendations from Doug Sayre. We can get cost estimates as to how much it costs to put a line in from whatever this location is. And we can make those judgements based on staff recommendations. But I don't want the hydrologists to feel that they need to pick a well location based on proximity to population. I want them to pick a well location based on these three criteria that you've outlined in the study.

Now, you do say, and I think this is appropriate -

COMMISSIONER MONTOYA: But that's exactly what it's asking for.

COMMISSIONER SULLIVAN: Well, a little further it mentions that. Let me explain why. The point further on on page 7, you're right. It doesn't say anything about that. So if you read that paragraph alone you wouldn't need that language. But if you go to page 7 and you go to paragraph 2 and 3 under task 1:B, and that talks about the modeling and then it talks about the report that the geo-hydrologist is going to prepare. And in modeling, they want the geo-hydrologist to take in as one of the factors the costs associated with permitting, design construction and delivery are considered reasonable.

Now, I think that's okay. Obviously, we don't want a well located in Cibola County or something. So I think that makes sense. But when you go down to paragraph 3, we ask the consultant to prepare a report of the results and recommendations to include several alternatives where different weights are assigned to the above criteria. So here we seem to be asking the geo-hydrologist to get into engineering, to give different weights to these criteria, again the distance, permitting, design, construction and delivery. Well, delivery means how far is the pipeline to the well. And do you have to treat it and those kinds of issues.

Personally, I think that's something that staff has the ability to do. Doug Sayre is a professional engineer and I think we've got a good department and they can make recommendations on that to us. Otherwise, we're getting the geo-hydrologists into doing engineering work. And then he's going to have come on board with a team of engineers as well as geo-hydrologists. I think those are policy decisions. I think staff may come back and say, Here's a well site that's close to La Cienega that will cost us \$20 million to develop. Here's a well site that's a great deal away from La Cienega that will cost us \$30 million to develop.

Well, we may select the \$30 million one because we don't want to impair existing users in La Cienega. I think we don't want to push the geo-hydrologist into policy decisions. I think

we want his or her undiluted professional opinions on quality, impairment and quantity. And where do we go to get that? Within a reasonable distance. And I think reasonable is a good word. So that's why I had a little bit of concern with that language and that's why I felt insertion of that other language – or similar language. I'm not saying it has to be exactly that way – would be useful.

Now, let me refer you back to page 5 in the third paragraph, and this is my last comment on an otherwise very good RFP. I think it's very difficult to separate these things out. "Development and production costs associated with various locations shall also be considered in recommending optimal locations for future wellfield sites." Now, if I interpret that right, I think that's fine, and correct me if I'm wrong. By "development and production costs" I assume you mean the costs of drilling a well, the cost of getting it into a production mode, not transmission costs or anything of that nature. So that's important. Obviously, if a well in one area if we have to go 1500 feet and in another area we have to go 1200 feet we have more development and production costs. Am I right, Diane? Is that what you're thinking in that sentence there?

MS. QUARLES: Commissioner Sullivan, that's correct. It also implies a certain time value of money. I even toyed with the idea of using that term, for instance if we have to go through an EIS study versus somewhere where we wouldn't, there's a certain time value of money component. It's not explicit in here, but it may be something that we say might be considered a criterion under that. But it doesn't include the actual engineering costs. It's more like soft costs or conceptual costs related to the actual well itself.

COMMISSIONER SULLIVAN: So basically, what you were saying here is if it were on federal land, that's going to be less desirable than if it's on private lands because we don't have to –

MS. QUARLES: That's correct, but obviously the offset is going to be that you're going to be further distance from surrounding wells and there will be less impairment, theoretically, if you're going to be in vacant areas. So those two things have to be weighed as far as the time value of money versus being on land that you can move more quickly.

COMMISSIONER SULLIVAN: I think, and we may want to clarify that in the final RFP but if you're just looking at the difference in EIS costs, but my guess is that you better consider EIS costs regardless, because the EIS cost is going to come into play not just if it's on federal land but if there's any federal money in the job. So if we anticipate getting any federal grants, which we'll certainly try to do there, for this, then they're going to insist on an EIS. So if we can clarify that that means the physical production, again, whether we're dealing with a 1200-foot well or a 2000-foot well, whether we're dealing with water quality problems that have to be mitigated through water treatment, what it takes to get that first drop of water to bubble out of the ground, so to speak. Then I see that that makes sense, site A versus site B versus site C.

I just don't want to encourage the consultant to lean towards an area that's closer to the population because it's cheaper. Because the closer we get to populated areas the more problems we have in the community objecting to the well. And whether it's a valid objection or not, the studies show, you have that public perception if it's close to their well that their well

could be impaired. And that in the end I think ends up here in the decision we have to make.

So those were the only conceptual areas of the study that I felt would be unclear for a respondent, that we really want this respondent to obviously look into it within a reasonable area. We've made it clear that it's outside the boundaries of the City of Santa Fe. We've made it clear that we have these three criteria that you want, and the matrix I would find a little difficult to work with but however you want to deal with that. But with those basic precepts, that's what we want to know. That's precisely the information we need to know where to direct our efforts.

CHAIRMAN CAMPOS: Ms. Quarles, what are your comments to Commissioner Sullivan's suggestions?

MS. QUARLES: I think they're well-founded. I think that some of the subtlety that I was implying but not real explicit I think he caught on quickly. And I think we can separate the engineering component. The problem with the engineering component is it may skew the study to some degree and we may be focused more on costs than we are the geo-hydrologic portion. So what we need to do is probably downplay that. One suggestion I might make is under task 1:B.3, it would get into the weighting factor. Maybe at that point we make it clear that the above criteria with particular emphasis on 1) and 2) so that we understand that criterion number 3) is not to be heavily weighted. Meaning that's not really what we're going after. That may be a way to keep the emphasis off number 3) and focus on 1) and 2).

COMMISSIONER SULLIVAN: And I think it's useful, Mr. Chair and Diane just to have, if the consultant knows that there would be some permitting problem based on their experience, whether it had to do with archeological remains nearby or something like that, to tell us that and to maybe give a slightly less hardy recommendation to that site because of that. But aside from that, we want to be able to say to the public, these are the best sites. This is where your gross receipts tax money is ultimately going to go. This is where we want a developer to assist us in participating in the cost of these facilities to serve future development and to provide supplemental water as you indicate possibly to the Galisteo area, to the Eldorado area. So aside from that, it seems to me this is do-able.

Now, on schedule. The first thing I looked at when I went through this I said, Gee, how long do you want this to take. Then I saw in your selection criteria, which I thought was a good idea and I do want to point it out to the Commission, that you've put the schedule off onto the consultant. You've said, Give us what you feel is your schedule, and you've assigned 100 points to that. So theoretically, someone who could do it faster might get a few more points. But also someone who puts down an unreasonably fast schedule probably doesn't know what they're talking about and so would get fewer points because they are just trying to impress the selection committee and not be realistic. Am I reading that correctly?

MS. QUARLES: That's correct, Commissioner. One thing we want them to do is give us a clear indication of complexity of the model. Because obviously, the more complex and the more data requirements the longer it's going to take to build it, but at the same time we've also said, under item 3, project schedule, page 20, we've put them on notice that proponents should note that timeliness is considered of high importance in this proposal. So

there's a balancing act between getting a sophisticated, good model versus the time it will take to build that model.

COMMISSIONER SULLIVAN: And cost is not excluded. Cost, I believe is 100 points out of I forget how many. Five hundred?

MS. QUARLES: I think it's 500.

COMMISSIONER SULLIVAN: Five hundred. So cost is not the driving factor but we're not writing blank checks here either. So people have to sharpen their pencils if they want to participate in this study.

MS. QUARLES: That's correct. And obviously we need to leave money left over for the exploratory wells out of the budget. So we can hope that it comes in around \$150,000 with the option of being able to acquire the model. Again, we don't know, but it may come in under \$200,000. It may be somewhere between \$100,000 and \$200,000, depending on whether we acquire the model.

COMMISSIONER SULLIVAN: Did you have any qualifications for the consultants?

MS. QUARLES: Yes, I believe we do, and it's spoken in sort of broad terms. I think it's under VI, 17, actually at the bottom, it begins "Proponents must demonstrate capabilities and expertise in many fields," and it goes on, one, the hydrologic evaluation and water modeling, and proponents should also be able to demonstrate a proven track record in water resource planning and management, and really, that's the emphasis on the second side to give us a conjunctive management plan. It's fairly broad. It gives us some discretion but we want to make clear that you must know these two things and know them well.

COMMISSIONER SULLIVAN: And that will be one of the evaluation criteria that you'll look at in assigning points as to -

MS. QUARLES: That's correct, and that's why we asked them to give us a complete and thorough breakdown of what the model will entail. That way we can differentiate between what is a canned model versus what has to be built and also it's compatibility with the compatibility with the lessee.

COMMISSIONER SULLIVAN: Thank you. Sounds good. That's all the questions, Mr. Chair.

CHAIRMAN CAMPOS: Okay, to me, Ms. Quarles, it seems that we have to expedite this as much as possible. How can we do that? I'm looking at the situation between as far as the negotiations go between the City and the County. They're not going anywhere. For five weeks the City has basically refused to meet with us to talk about the water service agreement, to talk about regional water. It doesn't seem we're going far. It seemed that was going to cause the County to maybe lean in the direction of creating its own system. To me, that's important that we do it sooner than later. How do we expedite the process?

MS. QUARLES: Mr. Chair, I think the most important thing is that we get this RFP, get the changes in, get Legal to review it and get it out quickly and get the respondents in. Try to let a contract as quickly as possible. I think when we begin the interview process, we need to let the contractors know who are submitting that we need a compressed schedule and



that we will lean favorably towards that. I'm hoping that in the initial modeling function, obviously there's some data collection, but if they can demonstrate they have access data and that they can populate the model quickly, that will make it move much more expediently. Maybe six months, we can get it on a turn-around depending on how quickly we can get a contract let.

My goal is to fall somewhere, possibly get at least the initial cut within six months, maybe as long as eight but anything outside of eight, they need to do better.

CHAIRMAN CAMPOS: Okay. The other issue, you're going to put this for RFP and there's going to be a lot of hydrologists in the area who might bid for this. A lot of hydrologists do a lot of work for the City. Do you perceive that as a conflict?

MS. QUARLES: Mr. Chair, I haven't really thought about it. This is a kind of new, revised version of a similar RFP that had already gone out. Many people - when that RFP was stopped, was halted, many of them expressed an interest, saying If this comes back out, we really want to rebid it. We're familiar with what it's going to take. So that should speed it up. I would assume that some of them have contacts with the City; some of them are going to be from Albuquerque. But this is really won't be anything new and I think a lot of people have been waiting for this RFP to come back out.

CHAIRMAN CAMPOS: You don't perceive there's going to be a real conflict? If you compare a company that does a lot of work for the City and they are doing something for us, that may be in conflict with what the City is proposing to do.

MS. QUARLES: We would have to look at that under the qualifications and maybe ask them right up front, Do you perceive a conflict of interest if they do a lot of exclusive work for the City. And ask them pointblank how they feel about that.

CHAIRMAN CAMPOS: I would be concerned about that. I think that has to be clear up front. I'd like to have someone that's really loyal to the County and what we're trying to do. Okay, well, to me, this is one of the most important steps we've taken in a long time. I think it's critical that we move quickly. Any other questions?

COMMISSIONER SULLIVAN: Mr. Chair, just to respond to that particular concern, you might include, just in the submittal criteria, just state, disclose any recent or ongoing work that your firm has performed for the City of Santa Fe or for developers who are proposing projects in the county of Santa Fe. That doesn't mean we're excluding them, but it means we want them to disclose that in the proposals.

CHAIRMAN CAMPOS: I think that's a good point about developers because a lot of hydrologists who work for developers may have their own agendas.

COMMISSIONER SULLIVAN: If we eliminate them completely we may have nobody left here.

CHAIRMAN CAMPOS: We may have to go to Albuquerque.

COMMISSIONER SULLIVAN: But if they disclose it, if 90 percent of their work is for the City of Santa Fe, then perhaps that's not the best firm for us. But at least if they disclose that you'll be able to get a handle on that.

MS. QUARLES: I think that's a wonderful suggestion.

CHAIRMAN CAMPOS: Okay. Commissioner Montoya.

COMMISSIONER MONTOYA: Mr. Chair, Diane, you mentioned that this RFP was stopped before?

MS. QUARLES: Commissioner Montoya, this is actually a new version of an original RFP that was let six, seven months ago. About that time. And it looks terribly different than this. One of the issues that arose in that RFP was that it was a mixing of apples and oranges. Because this is a professional services contract and it had sort of construction bid items that were in there and it wasn't going to work. So we had to go back and reformat it and make it specific to a professional services agreement. That's partly why the reference to exploratory wells is a separate RFP. That way apples and apples are together.

COMMISSIONER MONTOYA: So that took six or seven months to correct.

MS. QUARLES: I can't speak. This was the first thing I did when I came on, so I think a lot of the question is well, how do we proceed? What is the process by which we go by? I think in some of the discussions at Commission level it fleshed itself out and it resulted in this.

COMMISSIONER MONTOYA: Well, in order to expedite it I would like to make a motion that we move forward with this RFP.

CHAIRMAN CAMPOS: Okay, now, Commissioner Sullivan had suggested some changes. Is that motion -

COMMISSIONER MONTOYA: No, just as is. That's my motion.

COMMISSIONER ANAYA: Second.

CHAIRMAN CAMPOS: Okay, Commissioner Sullivan, you had some suggested changes.

COMMISSIONER SULLIVAN: I had some comments about the focus on the cost issues and I had that additional language that I had recommended for the second paragraph on page 5, adding in the Route 14 area and adding in that we're looking for these criteria irrespective of distance from current development.

CHAIRMAN CAMPOS: Anything else?

COMMISSIONER MONTOYA: I think Route 14 is okay, but I think the way that sentence reads, it is irrespective of -

COMMISSIONER SULLIVAN: Okay, let's not put it there then. Let's not put it anywhere. Let's just use Diane's suggestion then on page 7, where page 7, task 1:B.3 where you talk about different weights assigned to above criteria, and I believe your suggestion was with criterion 2. 3) being of lesser weight than criteria 1) and 2). I think that's what you said, Diane, correct?

MS. QUARLES: That's correct, Commissioner, and we would just say, With particular emphasis, when we talk about weighting, with particular emphasis placed on 1) and 2) and a lower weight -

COMMISSIONER SULLIVAN: On 3).

MS. QUARLES: Just so we put them on notice that when we do the weighted factors we want to really emphasize the first set of criteria and put less on the last one.

COMMISSIONER SULLIVAN: How does that sound? Does that work better?

CHAIRMAN CAMPOS: Commissioner Montoya, does that work for you?

COMMISSIONER MONTOYA: I want to understand exactly where you're talking about. Parentheses 1) and 2) on 2, and on 1?

COMMISSIONER SULLIVAN: No, 1 were not dealing with. Just task 1:B paragraph 2 has three criteria.

COMMISSIONER MONTOYA: Right.

COMMISSIONER SULLIVAN: The least long-term impact to the aquifer and area springs is 1). Number 2) is the lowest expected impairment to area wells, and the third one is costs associated with permitting, design, construction and delivery are considered reasonable. I just want to put emphasis on criteria 1) and 2). We want the best water, the least impact and impairment. Otherwise we're going to get constant complaints and objections to our permit when we go to the State Engineer for permitting.

COMMISSIONER MONTOYA: So you would put that in after criteria, on number three. The recommendations should include several alternatives where different weights are assigned to the above criteria with particular emphasis on criteria 1) and 2) on task 1:B.2 above.

COMMISSIONER SULLIVAN: Or on criteria 2.1) and 2.2). With particular emphasis on criteria 2.1) and 2.2). And I would put that, as Diane suggests, in paragraph number 3. Does that work?

COMMISSIONER MONTOYA: Okay.

COMMISSIONER SULLIVAN: So we won't bother with mentioning it there. We'll keep the Route 14 in there and we're clear on what development and production costs mean. And if we're not, we might make that clear. These are the only wording changes I really had. I just wanted to be clear that we wanted the hydrologist to do hydrology, not engineering.

COMMISSIONER MONTOYA: I'll amend my motion to reflect those amended changes.

COMMISSIONER ANAYA: Second, Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Anaya is okay with that.

**The motion to approve the geo-hydrological study RFP with amendments passed by unanimous [4-0] voice vote.**

CHAIRMAN CAMPOS: Thank you very much, Ms. Quarles, Mr. Sayre. Thank you for all your good work. Appreciate it.

COMMISSIONER MONTOYA: See you at the next meeting with the bidder, right?

COMMISSIONER SULLIVAN: And at the meeting after that with the results.

**XIII. C. Matters from the County Manager**

**1. Consideration of Sublease with Whirling Rainbow Productions**

MR. GONZALEZ: Mr. Chair, the only comment I had was just to relay the request that had been made to move this decision over to the meeting of the 31<sup>st</sup>, but I think Commissioner Sullivan had indicated that you wanted to make some comments.

CHAIRMAN CAMPOS: Comments.

COMMISSIONER SULLIVAN: Mr. Chair, Commissioners, the only comment I wanted to add as we were drafting this final lease for our agreement was to bring forward something that Commissioner Duran had brought forward in some previous meetings, which I agree with, and that is that we be explicit as to what the economic benefits are to the County in the lease. We've seen a lot of estimates from this potential lessee as to employment and impact on the economy, all of which look very good. But I think we need to quantify those to where we have an agreement. I understand they have to meet a certain level of local employment to get the 15 percent tax credit. So that's built into the package. But beyond that I want to be sure that we quantify some of these issues so that we can justify why we're providing a lease at below-market rates for these benefits and so that we can monitor them and insist on performance.

CHAIRMAN CAMPOS: Can you be more explicit? It sounds fairly vague to me and Ms. Collaros is not here right now.

COMMISSIONER SULLIVAN: It is fairly vague and in the documents that I've seen so far it's been fairly vague and that's my concern is that we've been looking hard at this because the County's business park is for economic development. And we've spent a lot of time on what the lease cost should be and so forth and what the qualifications of the lessee are, whether they can carry forward with this business plan, but so far I haven't seen anything that says that they are in fact in the lease agreement that they are going to agree to certain benchmark criteria. This isn't something new. When you do an IRB, an industrial revenue bond for a business, or you give them tax reductions, you say We want you to employ x-number of people in order to get these funds. We want you to have certain benefits.

So they're not always easy to quantify but those that we can I think we should.

CHAIRMAN CAMPOS: I don't see how you can quantify it. The contract has pretty much been negotiated and I'd hate to reopen that.

COMMISSIONER SULLIVAN: I didn't know that. I haven't seen any contract.

CHAIRMAN CAMPOS: We haven't seen it, but any comments from the other Commissioners?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: I think that until we have Whirling Rainbow come forward with the full packet, then I believe we'll find out and then we'll know what steps to take, but I haven't seen anything and I think we need to wait for that first step, for them to

come forward and tell us exactly what they're going to do. I've heard a lot of good things and I think we're going in the right direction. I think it's going to bring a lot of good jobs, good paying jobs to the community, and until we hear from Whirling Rainbow and what exactly they're going to do, that's all I can say. I can't speak on anything else because I don't know anything else but we're working on it and we're getting it together.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: Ditto.

CHAIRMAN CAMPOS: Okay. What I would suggest is maybe if you would like to sit with Sophia Collaros and she could update you on what's going on. I think that contract is pretty much written out. Maybe she could sit down and talk to you about it.

COMMISSIONER ANAYA: She has spoke to me about it but she hasn't presented it to the Commission.

CHAIRMAN CAMPOS: No.

COMMISSIONER ANAYA: And until we get the full - I hear bits and pieces but we don't know the whole thing. I think until we see that.

CHAIRMAN CAMPOS: I'm just maybe suggesting a pre-meeting briefing because there's some complexity to it.

COMMISSIONER ANAYA: I know that.

CHAIRMAN CAMPOS: I've been talking to her and I think it's looking pretty good. There's a lot of detail that we need to discuss and I think it would be simpler if we understood everything and had all the questions out before next meeting so we could actually have the contract done on 8/31 because there's some urgency to it. So if we could iron that out before then that would be better than waiting for the last minute to ask the questions. Would you meet with her?

COMMISSIONER SULLIVAN: I can meet with her but we just received today in fact a list of - I don't know what they were. They were economic benefits. They were two pages of benefits as a part of this proposal. The number of people that were going to be hired and such. My question is what of that list is going to become a part of the contract, or is it all going to be a part of it, or was that just selling the sizzle as it were as opposed to the steak?

CHAIRMAN CAMPOS: I just don't see how you can quantify and put things like that into the contract. Why don't we have that discussion with Sophia before the next meeting. Let's try and iron everything out so that on 8/31 we have some consensus.

COMMISSIONER SULLIVAN: I could quantify how many Santa Fe employees they hire. That would be easy enough to do. Santa Fe County employees.

CHAIRMAN CAMPOS: Okay. Anything else, Mr. Gonzalez?

MR. GONZALEZ: That's all I had from the County Manager, Mr. Chair.

CHAIRMAN CAMPOS: Okay, as far as public hearings, we're probably going to come back between 6:00 and 6:30.

**XIII. D. Matters from the County Attorney**

- 1. Executive session**
  - a. Discussion of pending or threatened litigation**
  - b. Limited personnel issues**
  - c. Discussion of possible purchase, acquisition or disposal of real property or water rights**
  - d. Discussion of bargaining strategy preliminary to collective bargaining negotiations**

**Commissioner Montoya moved to go into executive session pursuant to NMSA Section 10-15-1-H (2, 5, 7 and 8) to discuss the matters delineated above. Commissioner Anaya seconded the motion which passed upon unanimous roll call vote with Commissioners Anaya, Campos, Montoya and Sullivan all voting in the affirmative.**

[The Commission met in executive session from 4:55 to 6:40.]

**Commissioner Anaya moved to come out of executive session having discussed only the matters outlined in the agenda, and Commissioner Montoya seconded. The motion passed by unanimous [4-0] voice vote.**

**XIV. Public Hearings**

**A. Matters from the Commission**

- 1. Request to Publish Title and General Summary of an Ordinance that Would Prohibit the Sale of Antifreeze without an Added Bittering Agent**

CHAIRMAN CAMPOS: I've been contacted by folks in other counties and municipalities that have asked that we do this. Basically, it's to protect animals from being poisoned by antifreeze, from the sweetness of antifreeze which is very attractive. This is only the request to publish title and general summary. There is an ordinance in the packet, basically, as I understand it. This is what's been done roughly in other places but we could certainly modify it. There's a memo also from Julian Barela where he outlines that the cost is going to be minimal to the consumer and I think this is a good piece of legislation and I would ask that we move forward with it after a public hearing. Any comments from the Commission? Okay, this is a public hearing. Anybody out there want to talk about this proposed ordinance to prohibit the sale of antifreeze without an added bittering agent? Okay, no one having come forward, is there a motion that we move forward with the publication of title and general summary of the ordinance?

COMMISSIONER ANAYA: So moved.

CHAIRMAN CAMPOS: I'll second it. Discussion?

**The motion to authorize publication of title and general summary of an ordinance to require a bittering agent in antifreeze passed by unanimous [4-0] voice vote.**

**XIV. B. Land Use Department**

**5. CDRC CASE #A/V 04-5100 - Johnny and Tillie Garcia Appeal Variance**

DOMINIC GONZALES (Review Specialist): Mr. Chair, this has been tabled also.

CHAIRMAN CAMPOS: Has that been tabled also?

MR. GONZALES: It's been tabled also. Johnny and Tillie Garcia.

CHAIRMAN CAMPOS: That's been tabled? Did we approve that tabling?

MR. GONZALES: We just received a letter right before 5:00.

CHAIRMAN CAMPOS: Is there a motion to table the John and Tillie Garcia Appeal?

COMMISSIONER ANAYA: So moved.

COMMISSIONER MONTOYA: Second.

**The motion to table CDRC Case #A/V 04-5100 passed by unanimous [4-0] voice vote.**

**XIV. B. 6. CDRC CASE #V 04-5170 - Julian Romero Variance. Julian Romero, Applicant, is Requesting a Variance of Article III, Section 4.1 and 4.2 (Types and Location of Commercial Districts) of the County Land Development Code to Allow Commercial Zoning Outside of an Eligible Commercial District on .43 Acres. The Property is Located at Lot Three of the Carlson Subdivision, off of Emily Road, within Section 34, Township 16 North, Range 8 East (Commission District 5). Dominic Gonzales**

MR. GONZALES: Julian Romero, Nancy Gilorteanu, agent requests a variance of Article III, Sections 4.1 and 4.2 (Types and locations of commercial districts) of the Land Development Code to allow the property that is not located at a qualifying commercial district to be eligible for commercial zoning on .43 acres. The property is currently vacant. The subject property is located between Emily Road and I-25 east frontage road. The property in the surrounding areas are of mixed use. The applicant has indicated that if the variance is approved the master plan will be submitted for

consideration of an office or warehouse type use.

On May 20, 2004, the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of a variance of Article III, Sections 4.1 and 4.2 (types and locations of commercial districts) of the Land Development Code. It is staff's evaluation that the requested variance is not consistent with the adopted Highway Corridor Plan for La Cienega Corridor Subdistrict. The plan recommends residential uses and existing non-residential uses. The intent of this plan is that no new non-residential development be allowed in this district. Therefore staff recommends denial of the requested variance.

CHAIRMAN CAMPOS: Questions from staff?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: Is that in District 4?

MR. GONZALES: Mr. Chair, actually I believe it's in District 5.

COMMISSIONER ANAYA: That's what I thought.

MR. GONZALES: Yes, it's in District 5. The district line actually runs down I-25 and with our map it's kind of hard to determine that.

COMMISSIONER ANAYA: Okay. Thank you.

CHAIRMAN CAMPOS: Questions of Mr. Gonzales?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER MONTOYA: Mr. Gonzales, in the report, you mention that the properties in the surrounding areas are of mixed use. Could you indicate and describe a little bit more in terms of what type of mixed use?

MR. GONZALES: Mr. Chair, Commissioner Montoya, there's an auto body business located right there on the intersection of Auto Road. I believe there are a couple of auto body businesses. Santa Fe Bronze is out there and various trucking type businesses within the commercial district.

COMMISSIONER MONTOYA: So there are some commercial -

MR. GONZALES: Mr. Chair, Commissioner Montoya, that's correct.

COMMISSIONER MONTOYA: Okay. And then on page 10 of your - the CDRC May 20<sup>th</sup> meeting, Mr. Catanach mentioned an ordinance is yet to be adopted, however. What ordinance are you talking about, was he referring to there? The Highway Corridor Plan?

MR. GONZALES: Mr. Chair, I believe that's correct.

COMMISSIONER MONTOYA: So the Highway Corridor Plan hasn't been adopted yet?

MR. GONZALES: It hasn't been adopted yet.

COMMISSIONER MONTOYA: Okay. I think that's all I have for now, Mr. Chair.

CHAIRMAN CAMPOS: Other questions? Commissioner Sullivan.



COMMISSIONER SULLIVAN: Commissioner Montoya, I don't know if you take a look at Exhibit F, at the end of the file. That indicates a 500-foot radius and the subject property is residential and the next property to the right is vacant. The next one to the right is residential. The next one to the right is residential. The next one to the right is vacant. And those are inside the commercial node. Then you get to the commercial property. The two properties on the left are residential both. So although there are commercial properties in the neighborhood, my understanding, correct me if I'm wrong, but the commercial properties that are in the neighborhood are within the radius. Is that correct?

MR. GONZALES: Mr. Chair, Commissioner Sullivan, that is correct. And a point of clarification, lots 5 through 9 are actually commercial. They appear to be residential from the frontage road but when you go inside Emily Road, those are also commercial type businesses.

COMMISSIONER SULLIVAN: Five through nine. Five, six, seven, eight, nine, you mean.

MR. GONZALES: That's correct.

COMMISSIONER SULLIVAN: You have one that's shown to be vacant. Seven is shown to be vacant.

MR. GONZALES: That's shown to be vacant but when a site visit was conducted yesterday it appeared that from the front of I-25 they appeared to be residential but behind them you could tell that they were commercial type businesses.

COMMISSIONER SULLIVAN: But those five through nine are within the commercial node, right?

MR. GONZALES: Mr. Chair, Commissioner Sullivan, that's correct.

COMMISSIONER SULLIVAN: So this would be the first business outside the node that would be commercial.

MR. GONZALES: Mr. Chair, that's correct.

COMMISSIONER SULLIVAN: So there are no commercial businesses now outside the node existing.

MR. GONZALES: The only one would actually be that lot 33, which is actually commercial but it's also a little part of it is inside that commercial node.

CHAIRMAN CAMPOS: Any other questions of Mr. Gonzales? Okay, is the applicant here? Please state your name and address and you'll be sworn. Are you going to have two people speak on your behalf?

NANCY GILORTEANU: I'm going to present it. This is the owner.

CHAIRMAN CAMPOS: Okay, please state your name for the record and we'll swear you in.

MS. GILORTEANU: My name is Nancy Gilorteanu. I live at 713 Garcia Street.

CHAIRMAN CAMPOS: And you're the agent?

MS. GILORTEANU: I am.

CHAIRMAN CAMPOS: And you sir?

JULIAN ROMERO: I'm Julian Romero. I'm the owner.

CHAIRMAN CAMPOS: Address.

MR. ROMERO: 03 Escolita Lane in Pojoaque.

[Duly sworn, Julian Romero testified as follows:]

MR. ROMERO: These are letters from the neighbors. [Letters of support from relatives attached as Exhibit 2]

[Duly sworn, Nancy Gilorteanu testified as follows:]

MS. GILORTEANU: We are making this request based on the following facts. Lots 6, 7, 8, 9, and 10 of the subdivision are today in commercial use. Lot 10 is being used for an auto body shop. Lot 9 and 8 are being used for a metal foundry. Lot 7 has a metal building on it and is being used to store heavy equipment. Lot 6 has Henry's Top Shop. The large triangular lot behind this property has heavy equipment and a few metal buildings as is the case of a few other properties in the subdivision. We believe that this request is consistent with what has happened around this property. Registered letters were sent as required and we did not receive even one answer of opposition. He has handed you letters from the owners of lots 4 and 5 agreeing to this and actually wanted this to happen. Additionally, the property is only 100 feet from the commercial node.

CHAIRMAN CAMPOS: But you recognize that it's outside the node.

MS. GILORTEANU: It is. It's outside.

CHAIRMAN CAMPOS: And the law prohibits you to have commercial outside that node.

MS. GILORTEANU: That's why we're asking for a variance.

CHAIRMAN CAMPOS: So there's no dispute about that.

MS. GILORTEANU: No.

CHAIRMAN CAMPOS: Okay. Is there anything else you want to add? Those are the basic facts, right?

MS. GILORTEANU: That it's 100 feet from the node.

CHAIRMAN CAMPOS: Anything else that you'd like to add?

MS. GILORTEANU: Well, I know that the County does not concern itself with covenants, I would like to point something out for your consideration. When Mr. and Mrs. Romero purchased this property in 1967, the covenants stated that the property could be used for commercial uses such as restaurants, motels, service stations, garages, grocery stores, etc. When the County zoning went into effect in 1981, the lots that were being used commercially were grandfathered in. The Romeros were never aware that the zoning had removed the commercial status of their property. They've held on to this lot all this time thinking that it had commercial value. The value will be significant lower if it can only be used for residential.

The lot is not an ideal residential lot because it is so close to the highway and because of all the commercial use around it. Not many people would want to live there. We thank you for your consideration and hopefully your approval. Mr. and Mrs. Romero

are here if you have any questions for them.

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: What does the applicant plan to use the lot for, Ms. Gilorteanu?

MS. GILORTEANU: Well, they're actually going to sell it and they would like the commercial use to be like whatever is around there. A couple of people have approached us. One is a warehouse for a builder and mechanic.

COMMISSIONER SULLIVAN: So the applicant's not planning to develop commercial. The purpose is to sell the commercial so you can get more revenue when you sell it.

MS. GILORTEANU: That's correct.

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

CHAIRMAN CAMPOS: Okay, public hearing. Anybody here in the public who wants to speak to this case, for or against? Please come forward right now. Okay, no one having come forward. Commission, discussion.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: Being that there's some other commercial uses around the area, I'm going to go ahead and move to approve.

COMMISSIONER MONTOYA: Second.

CHAIRMAN CAMPOS: Okay, basically, if there's an approval, Mr. Gonzales, are there any conditions that would apply or attach?

MR. GONZALES: Mr. Chair, they would have to come with a master plan, development plan for the property if they did get approval tonight just to allow them to come forward with that master plan.

CHAIRMAN CAMPOS: You would put that condition on it?

MR. GONZALES: Yes, sir.

CHAIRMAN CAMPOS: Is that condition adequate?

COMMISSIONER ANAYA: Yes.

COMMISSIONER MONTOYA: Yes.

CHAIRMAN CAMPOS: Okay, my feeling is that the law is pretty clear and the law is designed for a specific purpose to avoid commercial sprawl which is what's going to happen. So I'm inclined to vote against it.

**The motion to approve CDRC Case #V 04-5170 tied by a 2-2 voice vote, with Commissioners Anaya and Montoya voting for and Commissioners Sullivan and Campos voting against.**

CHAIRMAN CAMPOS: I guess we have to defer the decision to the next month so that we can have the fifth Commissioner so they can make that decision. Thank

you, ma'am.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: How are we going to address this issue when Paul comes back? Are we just going to allow him to vote? Are we going to take another vote? Are we going to hear the case again?

CHAIRMAN CAMPOS: Usually the practice has been is that the other Commissioner will review on the record. If they want to come forward and answer questions we've always had that flexibility. No one came forward from the public so that's not a big issue right now in this case. There's no public witness for or against.

COMMISSIONER ANAYA: So do we need to -

COMMISSIONER MONTOYA: It's not a public hearing.

COMMISSIONER ANAYA: It's not a public hearing?

CHAIRMAN CAMPOS: It is a public hearing. I think it would have to be, right?

MR. ABEYTA: Mr. Chair, we generally note it on the agenda under the - well, we could do it either way but usually we do put it deliberation only and we don't usually have a public hearing.

CHAIRMAN CAMPOS: Okay. If the Commission wanted to hear any testimony.

MR. ABEYTA: Mr. Chair, the Commission can -

CHAIRMAN CAMPOS: Even if it's not a public hearing?

MR. ROSS: Mr. Chair, I think if the Commission wanted we could require the applicants to readvertise and start over. Generally, what occurs is, as Mr. Abeyta said you just vote.

CHAIRMAN CAMPOS: Okay. Deliberation only.

COMMISSIONER ANAYA: So what we just did here today is nothing.

CHAIRMAN CAMPOS: Well, yes. It's a 2-2 vote. We tied.

COMMISSIONER ANAYA: Yes, but the applicant now has to come back, has to readvertise -

CHAIRMAN CAMPOS: You could change your vote. You could go the other way and he wouldn't have to come back.

COMMISSIONER MONTOYA: But they don't have to readvertise.

COMMISSIONER ANAYA: They don't?

COMMISSIONER MONTOYA: No. It will just be heard at the next BCC meeting.

MR. ABEYTA: Mr. Chair, Commissioner Montoya, we usually put it on the next Land Use meeting under deliberation only.

COMMISSIONER MONTOYA: So it will be a month from now then.

MR. ABEYTA: Yes.

COMMISSIONER ANAYA: Thank you.

COMMISSIONER SULLIVAN: And I want to be clear. This is in District 5 and I think in looking over the staff materials and the CDRC decision, I think there's a difference between variances where there's a lot of existing non-conforming uses and you then have someone who is proposing to do the same thing within the existing non-conforming uses that have been there all along as opposed to a new commercial development which is outside the existing commercial uses, and is only for the purpose of resale as a commercial lot, not for the purpose of actually setting up a business. So those are two issues that are important to me as well as setting a precedent when we have these Community College District zoning regulations that we need to stay within those criteria.

That's why I feel the vote's important and we can have the fifth Commissioner, Commissioner Duran, evaluate when he returns.

CHAIRMAN CAMPOS: Another point is that the CDRC did reject it. I think they acted appropriately and I think we have to really re-evaluate our position as a Commission on variances, because I think we're acting without authority. I know we've had this debate with Commissioner Anaya and I would suggest you talk to an attorney if you want to off the record, but the law is pretty clear. And we create rules and then we just disregard them. If we want to do that why don't we just not create rules and let people do whatever they want. That's the easier solution. Commissioner Anaya.

COMMISSIONER ANAYA: Staff, when you created this node of 500 feet, when you created the node, what made you create, why did you put it right there?

MR. ABEYTA: Mr. Chair, Commissioner Anaya, the commercial district or node, the Code is clear that it begins at the center of an intersection. So you go 500 feet out from the center of the intersection. But it could be adjusted based on uses that come in and actually get their property zoned. But I believe this is at the center of that intersection, which is what the Code calls for.

COMMISSIONER ANAYA: But isn't there a requirement on what kind and what size intersection?

MR. ABEYTA: Yes. The larger the intersection the bigger the district can be because the more traffic it can handle. And because Auto Road is a smaller road and primarily provides access to residential properties, it's a smaller district because it cannot handle as much traffic as a larger intersection would be able to.

COMMISSIONER ANAYA: Is the access off of this site that we just talked about, off of that small road in the back or is it off of the frontage road?

MR. ABEYTA: Mr. Chair, it's my understanding that it's off the small road in the back.

COMMISSIONER ANAYA: So that's how they'd get to it. And that's how all of those people get to their lots?

MR. ABEYTA: Yes.

COMMISSIONER ANAYA: I've driven out there and I know some of them come right off of the main frontage road. Would that make a difference?

MR. ABEYTA: Mr. Chair, Commissioner Anaya, no, it's not what road

you front, it's at an intersection. In fact that's the purpose of limiting the size of districts so that you don't have this strip pattern of commercial where everybody all along up and down the road has commercial. We limit it to the intersection.

COMMISSIONER ANAYA: Thanks.

**XIV. B. 7. CDRC CASE #Z/DP 04-5090 – Miguel Terrazas Master Plan/Development Plan. Miguel Terrazas, Applicant, is Requesting Master Plan Zoning and Preliminary and Final Development Plan Approval for an Automobile Collision Center on .751 Acres. The Property is Located in El Valle De Arroyo Seco Off of Highway 84/285 at 2 Sueno de Vigil, within Section 13, Township 20 North, Range 8 East (Commission District 1).  
Jan Daniels**

JAN DANIELS (Review Specialist): The applicant is requesting master plan zoning and preliminary and final development plan approval for an automobile collision center with three bays to repair automobiles with state-of-the-art equipment. Two bays will be used for bodywork and one will be used for painting. The building is 50 by 60 and has a small office and restroom.

Staff's position is that this application is in accordance with Article III, Section 8, Zoning for other development, and Article III, Section 4.4, Development plan procedures of the Land Development Code, and Article XIV, Section 7, El Valle de Arroyo Seco Highway Corridor Zoning District. Staff recommends master plan with preliminary development plan approval for the automobile collision center subject to the following conditions. Mr. Chair, may I enter the conditions into the record?

CHAIRMAN CAMPOS: They're so entered.

[The conditions are as follows:]

1. The residence is allowed 0.25 acre feet per year and the business is allowed 0.35 acre feet per year per Article XIV, Section 7. The Declaration of Covenants and Water Restrictions, referred to in Plat Book 522, Page 14, allow 1.00-acre foot of water to this property. The applicant will meter the well and send annual meter readings to the County Hydrologist every August and will be subject to random meter readings new water restrictions shall be recorded for this lot.
2. All new commercial development shall be required to connect to a community water system When a system is extended to within 200 feet of the property line, provided that adequate capacity exists in the system and water taps are available.
3. All outside lighting shall be shielded; cut sheets shall be submitted for all lighting prior to permit issuance.
4. Submit a fire protection plan as required by the County Fire Marshal's Office.
5. The applicant shall pay a fire review fee in the amount of \$50.00 in accordance with

Santa Fe County Resolution No. 2001-114, prior to recordation of the development plan.

6. The development plan shall be recorded with the County Clerk's Office.
7. Building plans are subject to approval by County Fire Department.
8. Submit landscaping plan in conformance with minimum standards. All trees shall be a minimum of 6 feet in height, 1.5-inch caliper at planting. All landscaping shall require only low to moderate water use as per county code, address fence screening in conformance with minimum standards for a solid wall or fence, including noise buffering.
9. Compliance with the applicable review comments from the following:
  - A. State Engineer's Office
  - B. State Environment Department
  - C. County Hydrologist
  - D. County Fire Marshal
  - E. County Public Works
  - F. Development Review Director/Technical Review
  - G. State Department of Transportation
10. The applicant shall submit a financial guarantee, in the amount approved by the County, for All improvements including fire protection, road improvements, parking, drainage improvements, retention ponding and landscaping fence prior to grading or construction permit issuance. The financial guarantee for landscaping and revegetation will be kept until the plantings have taken, for a minimum of one year.
11. The applicant shall comply with Ordinance 2003-6 for rainwater harvesting.
12. The access road shall be in conformance with minimum standards for a local road.
13. The proposed sign shall be in conformance with minimum standards.
14. Submit access permits as approved by state DOT and County Public Works.
15. Submit contractual agreement for disposal of chemical waste with a company that is approved by NMED.
16. Must file a liquid waste application reflecting the modification from residential to commercial (change in gallons per day) with the Espanola field office, prior to using the system commercially.
17. A business registration is required prior to occupancy.

MS. DANIELS: Mr. Chair, the CDRC met and approved the case with two conditions. May I read them into the record?

CHAIRMAN CAMPOS: Please.

MS. DANIELS: Thank you. The body paint shop must conform to CID regulations. Number 2. Amend the County building permit from residential to commercial.

CHAIRMAN CAMPOS: Okay. Thank you, Ms. Daniels. Any questions of Ms. Daniels? Okay, is the applicant here? Please come forward. State your name, address,

and we're going to swear you in.

[Duly sworn, Miguel Terrazas testified as follows:]

MIGUEL TERRAZAS: Miguel Terrazas. My address is #2 El Valle de Arroyo Seco, Sueño de Vigil.

CHAIRMAN CAMPOS: Mr. Terrazas, do you agree with the conditions set by staff?

MR. TERRAZAS: Yes, I do.

CHAIRMAN CAMPOS: Okay. Do you have any questions that you'd like to raise at this point?

MR. TERRAZAS: Not so far.

CHAIRMAN CAMPOS: Then let's go to the public hearing. This is a public hearing. Is there anybody out there that wants to come and speak for or against this? Okay, no one having come forward, public hearing is closed. Is there a motion to approve with conditions, including the two CDRC conditions?

COMMISSIONER MONTOYA: So moved.

COMMISSIONER ANAYA: Second.

The motion to approve CDRC Case #Z/DP 5090 passed by unanimous [4-0] voice vote.

- XIV. B. 8. **BCC CASE #MIS 04-5091 – Komis Business Park Master Plan Extension. Christopher Graeser, Agent, The Komis Land Company, LLC, (Peter Komis General Partner), Request a 2 Year Time Extension for an Approved Master Plan/Preliminary Development Plan to Permit a Commercial Subdivision on 58.7 Acres. The Property is Located Off the I-25 West Frontage Road/State Road 599, within Section 23, Township 16 North, Range 8 East (Commission District 5). Victoria Reyes**

VICTORIA REYES (Review Specialist): Christopher Graeser, the Komis Land Company, LLC are requesting a two-year time extension for the approved master plan preliminary plat development plan to permit a commercial subdivision on 58.7 acres. The property is located off the I-25 west frontage road/State Road 599 intersection within Section 23, Township 16 North, Range 8 East. If I could clarify, the Commission district should be 3.

In October 1997 the Board of County Commissioners granted master plan approval for commercial use and subdivision of the property, including one lot for community use as a cultural art center. In August 2002 the EZC granted approval for preliminary plan/development plan consisting of 18 lots on 58.7 acres.

It is the review of staff that the previously approved master plan for commercial subdivision is consistent with the adopted Highway Corridor Plan for the commercial



gateway subdistrict as it relates to the required setbacks. Staff recommends approval of this request to extend the master plan approval and the preliminary plat/development plan approval until October 2006 subject to the following conditions.

1. Compliance with conditions previously imposed for master plan and preliminary plat/development plan.
2. Compliance with objectives and guidelines for the Highway Corridor Plan regarding architectural and design standards.

CHAIRMAN CAMPOS: Ms. Reyes, is there a good cause requirement in the ordinance?

MS. REYES: Yes, Mr. Chair, there is.

CHAIRMAN CAMPOS: And it doesn't seem that it's been addressed in the body of the -

MS. REYES: A good cause, or are you looking for - I have what requires them, the ordinance that requires them, the ordinance that requires to get a two-year time extension. Is that what you're - that should be Exhibit B, and that's 5.2.7.

CHAIRMAN CAMPOS: Okay. Exhibit B, attached, 5.2.7, Expiration of master plan. Okay, is there progress in the planning or development of the project approved in the master plan consistent - isn't that the standard that we have to judge it by?

MS. REYES: That's the standard that you have to judge it by.

CHAIRMAN CAMPOS: It hasn't been discussed in the body of the complaint, of the -

MS. REYES: It says they were requesting the two-year time extension.

CHAIRMAN CAMPOS: So the criteria that we have to use is there on Exhibit B. Okay, any questions of Ms. Reyes? Applicant.

CHRISTOPHER GRAESER: Christopher Graeser, 200 West Marcy. Thank you, Mr. Chair. I was going through the voluminous paperwork we have on this, preparing for tonight I came across an October 1997 letter from Rudy Garcia, then the Development Review Specialist, approving the master plan. It says that the applicant is advised that it may take months or years to perfect water rights and transfers. So I'd like to give congratulations to Mr. Garcia for being right.

In fact in October 1997, master plan approval was received. September 2002, preliminary development plan approval was received. Both master plan and preliminary required use of Santa Fe County water utility to provide water service to the Komis Business Park and since the time of - I should say later in October 2002, the Commission approved a water service agreement with Komis that required diversion of the water rights, Santa Fe Basin water rights that Mr. Komis at the Buckman wellfield.

Since that time we've been working with our technical consultants as well as working with County staff regarding the feasibility of diversion at Buckman and other possibilities for diversion. Certainly our understanding from our technical consultants that

diversion at Buckman isn't feasible because it would reduce the water rights significantly, some people say even to virtually nothing.

Mr. Komis does have approximately 40 acre-feet of Basin water rights. The approved water budget for the project is in the neighborhood of 28 acre-feet. The master plan approval was most recently renewed in fall 2002, September 2002, when we received preliminary development plan approval pursuant to the ordinance. It's always been a bit unclear in the ordinance whether that is a two-year or a five-year extension. If it calls for – it provides for an automatic renewal of progress has been made pursuant to a number of things including receiving a preliminary development plan approval. What's unclear is whether that's a renewal for five years of the master plan originally, or an extension for two years. We feel we're being prudent by coming before you tonight to request an additional renewal, being that to my knowledge, that provision has never been interpreted by a court of law.

As the Commission may be aware we have been in discussions with County staff and have been close a couple time to bringing forward requests to the County Commission and the County was looking at various options, most recently as we discussed earlier tonight, a study to determine where the best places to divert water are. Certainly providing another two-year extension on this project allows us to wait that process out and work with the County as opposed to really having to push forward.

I think perhaps the biggest stumbling block to our ability to move forward in water is in the City. When the County required diversion from Buckman in July of last year, the City made it clear to the County in a publicly distributed letter that the City would be required to either waive or be a co-applicant with the County in the development applicant on any project that seeks to divert water from Buckman. We did in fact make a request to the City in October of last year, provided the City more information of November of last year and do not yet have an answer from the City as to whether we can apply to Buckman or not. Even though our engineers are indicating to us that it's not a feasible process, our willingness to go forward and give it a try hasn't been able to go forward in any event because we've not heard back from the City.

CHAIRMAN CAMPOS: Okay. Anything else?

MR. GRAESER: Nothing.

CHAIRMAN CAMPOS: Okay. Public hearing. Anybody want to speak for or against? Okay, no one having come forward.

COMMISSIONER SULLIVAN: Mr. Chair, I have a question of the applicant. Mr. Graeser, what I don't understand about this case which started before my time on the Commission in 1997, and I'm looking at page 15 of the CDRC minutes. One of the conditions of the CDRC approval, condition 3, was Prior to preliminary development plan consideration of any change, the applicant will need to acquire and transfer to a County water company's point of diversion sufficient water rights for the project. Has that been done?

MR. GRAESER: Mr. Chair, we have not been able to – we have acquired

water rights, certainly. We have not been able to transfer them to a point of diversion because, as I said, we're waiting for an adequate point of diversion from the County. My understanding was the County permitted this before preliminary but that is a condition for final development plan approval.

COMMISSIONER SULLIVAN: That was my question. How - it then went to the EZC, correct, for preliminary approval?

MR. GRAESER: I believe that's correct.

COMMISSIONER SULLIVAN: How did the EZC approve this, the preliminary approval, when that condition wasn't met? Was there a variance requested in the conditions?

MR. GRAESER: There is not to my knowledge a variance requested, Commissioner Sullivan. I'm trying to remember if I've seen anything in the file that was not a process that I was involved in. I'd certainly have to check the file. It's my understanding that a decision was made at the County level.

COMMISSIONER SULLIVAN: To permit it to go forward, made at the County level.

MR. GRAESER: In other words, Mr. Chair, I don't think we just came through and made an application and no one caught the requirement, is what I'm saying.

COMMISSIONER SULLIVAN: Well, I'm looking at the EZC minutes, which are also in our packet as Exhibit F, and I don't see anything in the EZC minutes that relates to the status of the water or anything of that sort. And that was August 8, 2002, and you were there, you were listed as counsel for the applicant. So how did we get from October 14, 1997, with this condition that they transfer sufficient water rights for the project. It also says they have to, prior to preliminary development plan, consideration of any phase applicant shall have a valid contract with Santa Fe water company.

How did we get from the master plan approval, which the County Commission did on the 14<sup>th</sup> of October of 1997, to EZC approval of preliminary plat without any water rights being transferred anywhere?

MR. GRAESER: Mr. Chair, Commissioner Sullivan, I'm sorry. I don't have an answer for you. I'd certainly have to research that. Perhaps someone from staff does remember.

COMMISSIONER SULLIVAN: We are only talking about parcels A and B, is that correct?

MR. GRAESER: I believe so, Mr. Chair. A total of 58 and change acres.

COMMISSIONER SULLIVAN: Well, there's a map in here but it doesn't distinguish between A, B, and C. When the original approval was done in 1997 there was a great deal of discussion, I read in the minutes about parcels A, B, and C. And the final approval was given for parcels A and B.

MR. GRAESER: Mr. Chair, Commissioner Sullivan, if my memory or the overall plat for the property serves, parcel C is significantly larger and a decision was made not to attempt to develop it at this time.

COMMISSIONER SULLIVAN: So that's not at issue here, parcel C. Only parcels A and B is at issue. And the maps we have just show some lots sketched in on a piece of land. But is there anyone who can shed some light at how this thing is now at preliminary plat approval with no transfer of water rights? Roman, can you answer?

MR. ABEYTA: Mr. Chair, Commissioner Sullivan, I don't recall what the discussion was. We can research the file and see if there's anything in there that indicates why it was allowed to proceed.

COMMISSIONER SULLIVAN: I certainly think that we should table this until we find this out. The condition is very clear. It's certainly not one that I made up; I wasn't here at the time. It was made up by the Commission at that time. No one seems to know how we're at preliminary plat approval.

MR. GRAESER: Mr. Chair, Commissioner Sullivan, I think it's certainly something we can get an answer for. Our request now is for an extension on the master plan, not an extension on any development plan. So we're running up against a time limit this fall on expiration of the master plan.

COMMISSIONER SULLIVAN: Well, I understand that, but there's also a letter in the packet from Mr. Sommer. It says approval of the preliminary – and I'm looking at Exhibit A for those on the Commission, second paragraph. It says Approval of the preliminary development plan on August 8, 2002 – and this is the one I'm asking about how that was enacted – acted as an automatic renewal of the master plan for at least an additional two years pursuant to LDC Section 5.2.7.c. Is that true, Roman? It's the first time I've heard of it if it is, but that doesn't mean it isn't true.

MR. ABEYTA: Mr. Chair, Commissioner Sullivan, are you referring to the automatic renewal of the master plan?

COMMISSIONER SULLIVAN: I'm just referring to the letter from Sommer Udall dated June 9, 2004 which says that the EZC's approval of the preliminary development plan acted as an automatic renewal of the master plan.

MR. ABEYTA: Mr. Chair, yes. That's staff's interpretation of the Code language on Exhibit B, the very next page. It says expiration of master plan. It says Master plan shall be considered for a period of five years and then Master plan approval may be renewed and extended by the Board at the request of the developer. And then C, it says that, it talks about progress, submitting the development plan and approval would constitute an automatic renewal of the master plan. So that what we have interpreted that to mean is that you don't have to go back to the Board; it's an automatic renewal.

COMMISSIONER SULLIVAN: Okay, so they went from October 14, 1997 to exactly five years, October 14, 2002, five years and one day, and at that point, somehow rather than getting an extension on the master plan, got an EZC approval for a preliminary plat.

MR. ABEYTA: Right. They got that in August 2002 before it expired in October, therefore it was automatically renewed for an additional two years.

COMMISSIONER SULLIVAN: Okay.

MR. ABEYTA: They came in August 8<sup>th</sup> – it didn't expire until October but they came in before that with their preliminary so it was automatically renewed but to August of 2004.

COMMISSIONER SULLIVAN: But I don't see how that could have been recommended or how that could have been done without satisfaction of the conditions in the master plan.

MR. ABEYTA: Mr. Chair, we would have to look into that. Reviewing the minutes I see that we talked about water and the fact there was a letter of intent that was issued by the – an intent to serve, that was going to be issued by the utilities.

COMMISSIONER SULLIVAN: I understand the applicant is having trouble and I can sympathize with that and these issues dealing with the City of finding a point of diversion. But the first requirement is that they transfer the water rights to the County and that hasn't been done. So you don't need a point of diversion to transfer the water rights to the County.

MR. ABEYTA: Mr. Chair, Commissioner Sullivan, there could have been an interpretation or a determination that since it wasn't a Code requirement at the time – it is now – that you have water at master plan, but since it wasn't a requirement that the applicants could go forward because the condition wasn't based on Code, any Code requirements. That's possible, but I'd like to look into that further.

COMMISSIONER SULLIVAN: I agree there wasn't any requirement that water be in place for the master plan, but these conditions state that water must be in place for the preliminary development plan. And the EZC went ahead and approved the preliminary development plan and we're getting all these approvals and the applicant hasn't made any transfers or complied with conditions 3 or 4 of the approval.

MR. ABEYTA: Mr. Chair, Commissioner Sullivan, if the Board likes they could postpone this case and staff could go back into the file and take a look and see why they were allowed to proceed with the preliminary plat.

COMMISSIONER SULLIVAN: I think if we wanted to be fair about it we could say we can postpone it or table it without prejudice. In other words, I understand that we're at the August date here. In fact, we're over the date by two days.

MR. ABEYTA: Right.

COMMISSIONER SULLIVAN: So technically it's more than two years. But if the Commission was in agreement with not prejudicing the application, in so far as the two-year requirement is concerned, I'm just totally mystified as to how this project is where it is without any conditions being met.

CHAIRMAN CAMPOS: Is there a motion?

COMMISSIONER SULLIVAN: I move to table, Mr. Chair, with the proviso that there is no prejudice to the applicant with regard to the two-year performance period and for rehearing at the next land use meeting.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER ANAYA: Second.

**The motion to table BCC Case #MIS 04-5091 passed by unanimous [4-0] voice vote.**

CHAIRMAN CAMPOS: The matter is tabled. Mr. Graeser, if you can meet with Land Use staff and clarify this as soon as possible.

MR. GRAESER: All right.

CHAIRMAN CAMPOS: Thank you, sir.

**XIV. B. 9. CDRC CASE #V 04-5155 – Gilbert Duran Variance.**

MR. ABEYTA: Mr. Chair, the next case, Gilbert Duran Variance, the applicant is here but he's requesting that he be tabled.

CHAIRMAN CAMPOS: How come?

MR. ABEYTA: I'm not sure. I just got a note from staff.

CHAIRMAN CAMPOS: Your name?

GILBERT DURAN: My name is Gilbert Duran.

CHAIRMAN CAMPOS: You're the applicant?

MR. DURAN: Yes, sir.

CHAIRMAN CAMPOS: Why are you asking for a tabling?

MR. DURAN: Mr. Chair, I'm asking for a variance, for a table for the reason my tenant was not able to be here. And also I don't have the proper mapping that I wanted to include and therefore I respectfully ask for tabling the matter.

CHAIRMAN CAMPOS: You knew the hearing date. You had opportunity to provide all the appropriate documentation. I don't think that's a good reason. I'd like to move forward with it.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: I just heard the applicant say that he doesn't feel comfortable coming forward to the Commission and with that, I would make a motion to table this and put it on the next land use agenda.

COMMISSIONER MONTOYA: Second.

COMMISSIONER SULLIVAN: Next BCC or next land use?

COMMISSIONER ANAYA: Next land use hearing.

**The motion to table CDRC Case #V 04-5155 passed by a 3-1 majority voice vote with Commissioner Campos voting against.**

MR. DURAN: Thank you very much Commissioners and Mr. Chair.

COMMISSIONER MONTOYA: Thank you.

**XIV. B. 10. LCDRC CASE #V 04-5031 – John Cordova Variance. John Cordova, Applicant, is Requesting a Variance of Ordinance 2002-9 Traditional and Contemporary Areas of La Cienega/La Cieneguilla, Article XIV, Section 6.10.1 (Areas for Commercial Development and Requirements) of the Land Development Code to Allow Commercial Use on 3 Acres. The Property is Located at 27451B West Frontage Road, within Section 27, Township 16 North, Range 8 East (Commission District 3). Dominic Gonzales**

MR. GONZALES: Thank you, Mr. Chair, Commissioners. John Cordova, applicant, requests a variance of Article XIV, Section 6.10.1, Areas for commercial development and requirements within the La Cienega/La Cieneguilla planning area to allow commercial use, a towing and storage yard on three acres. The property is located at 27451-B West Frontage Road in Section 27, Township 16 North, Range 8 East. The applicant is requesting a variance of Article XIV, Section 6.10.1, Areas for commercial zoning requirements in the La Cienega/La Cieneguilla planning area.

There is currently a residence, a well and a septic system on the property. On June 10, 2004 the LCDRC met and acted upon this case. The decision of the LCDRC was to recommend denial of a variance of Article III, Sections 4.1 and 4.2, Types and locations of commercial districts of the Land Development Code. Staff's position is that this application is not in accordance with Article XIV, Section 6.10.1, Areas for commercial development and requirements, which prohibits any new commercial zoning on the property except for developments that have both residential and non-residential uses on the same property as part of a home business or a home occupation. Also, the property is not identified for commercial use on the Highway Corridor Plan. Staff recommends that the BCC uphold the decision of the LCDRC and deny the variance.

CHAIRMAN CAMPOS: Okay. Questions? Applicant.

[Duly sworn, John Cordova testified as follows:]

JOHN CORDOVA: My name is John Cordova. I live at 08 Las Estrellas, here in Santa Fe County. Mr. Chair, members of the Commission, I applied for a variance of this property for the purpose of temporary storage of automobiles in that property. My intention was to fence half an acre of it and store the vehicles in there. It's just temporary storage. It's not a wrecking yard. It's not a junk yard. I don't have a license for that. When I first purchased this property four years ago I was given a document which is recorded at the County reflecting the uses, what I could use that property for and in there, part of it was storage and garage and other items I could use it for.

At this point what I want to do is store vehicles that aren't claimed – I'm sorry, that are impounded until the owners can claim them.

CHAIRMAN CAMPOS: Mr. Cordova, you understand that the Code doesn't permit what you're asking for, right?

MR. CORDOVA: I understand that.

CHAIRMAN CAMPOS: Okay. Any questions of Mr. Cordova? Okay. This is a public hearing.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER MONTOYA: Mr. Cordova, when you purchased this land you were under the impression that it was allowed for commercial use?

MR. CORDOVA: That is correct.

COMMISSIONER MONTOYA: And the document, again, you got was from the County? What document?

MR. CORDOVA: Mr. Chair, Commissioner Montoya, it was a document that the realtor provided me that showed that it was recorded in the County.

COMMISSIONER MONTOYA: The realtor that you purchased the property from.

MR. CORDOVA: That's correct.

COMMISSIONER MONTOYA: Okay.

CHAIRMAN CAMPOS: Mr. Gonzales, do you want to reply to that? Is there a document such as that?

MR. GONZALES: Mr. Chair, my understanding is the document is actually, I believe it's recorded covenants that were recorded.

CHAIRMAN CAMPOS: It's not a County-generated document.

MR. GONZALES: It's not a County-generated document. It was recorded by the Clerk.

CHAIRMAN CAMPOS: Okay, this is a public hearing. Anybody want to speak for or against this case. Please step forward. Everybody who wants to speak for or against it come up. Please state your name and your address and we'll swear you in.

[Duly sworn, Danny Marmion testified as follows:]

DANNY MARMION: My name is Danny Marmion. I live at 19-A Las Estrellas. Mr. Chair, Commissioners, I come before you tonight in favor of the applicant and I'm wearing two hats. I sit on the LCDRC board that met twice and reviewed this applicant for a request. The first time he came before us we denied it. As soon as the applicant left, one of the committee members said that he voted in error. He didn't understand how he voted and we debated it for a while and then staff said he has to come back. He came back the second time. We voted in favor of it and then the County Attorney advised us that this was the first time that the chair could vote to break the tie. The chairman voted to break the tie against it. The applicant left. We again debated on that the chair really, because of some technicality or rule did not have the right to break that tie or to vote that day, so the applicant went before that board; I think we kind of let him down. I think that we probably would have, if those problems had not occurred we would have sent to the Commission a positive recommendation.

CHAIRMAN CAMPOS: It sounds like a good argument to have the CDRC



as opposed to the LCDRC make decisions. It seems that you make decisions, you have hearing after hearing, you change you mind. That's not the way to operate.

MR. MARMION: I voted consistent. I'm only one member.

CHAIRMAN CAMPOS: I know, but the official record says that they voted against the application.

MR. MARMION: Correct, and if you look at the minutes to those meetings you'll see the debate that happened after those votes. I'm here as a neighbor of Mr. Cordova and I know that when he bought that piece of property he was under the impression that it was a commercial property. That property was owned by a Joe Decker. There's a 50-foot gas easement. PNM has a service facility there. So it looks like it's commercial. It's a bastard-shaped lot. The covenants, and I know the County doesn't recognize private covenants but the private covenants call for it as being commercial.

CHAIRMAN CAMPOS: Zoning supercedes that.

MR. MARMION: I understand that. But that is the problem the applicant has. As a neighbor I'm in favor of helping my neighbor. He agreed to put a six-foot fence so you wouldn't see through it and he agreed to put gravel on the ground. The topography of the land, we can't see it from Las Estrellas and you can't see anything that would be inside that property from I-25 frontage road or from the I-25 highway. So I'm here to just say that I'm in agreement with the applicant.

CHAIRMAN CAMPOS: Okay, Mr. Marmion. Mr. Gonzales, would you address the issue raised by Mr. Marmion concerning the LCDRC decision?

MR. GONZALES: Mr. Chair, actually, this case was supposed to come to the BCC back in, I believe it was early this year. The applicant requested that it be heard by the LCDRC again. The applicant requested -

CHAIRMAN CAMPOS: Reconsideration?

MR. GONZALES: Which is actually in Exhibit E I believe. And his letter of request.

CHAIRMAN CAMPOS: What happened at the second hearing?

MR. GONZALES: The second time was, I believe a split vote between, with the chair voting.

CHAIRMAN CAMPOS: To break the tie.

MR. GONZALES: To break the tie.

CHAIRMAN CAMPOS: Did the chairman have the authority to break the tie?

MR. GONZALES: This stuff is not even addressed in the report. What's going on?

MR. ABEYTA: Mr. Chair, staff is recommending denial of this. It doesn't meet the Code. The LCDRC recommended denial. I don't know -

CHAIRMAN CAMPOS: It's pretty clear that the chairman had the vote on that night. I guess that's the legal issue that's raised by Mr. Marmion.

MR. ABEYTA: It's clear to me that chairman voted and was allowed to

vote. The chairman's always been allowed to vote in the case of a tie.

CHAIRMAN CAMPOS: Okay. Then that's clear.

MR. ABEYTA: It's clear.

CHAIRMAN CAMPOS: Okay. Then the LCDRC denied the application. Okay. Public hearing. Anybody else want to talk. Okay, the public hearing is closed. Discussion?

COMMISSIONER MONTOYA: Mr. Chair:

CHAIRMAN CAMPOS: Sir.

COMMISSIONER MONTOYA: My understanding is that in July, I think we finally took action to allow chairs of the different CDRC, LCDRCs, CCDRCs, all those alphabet DRCs to vote. Previous to that, they weren't allowed to vote. Am I -

MR. ABEYTA: Mr. Chair, mm, you're correct, but what was stated is he wasn't allowed to vote in a tie. The chair has always been allowed to vote in a tie.

COMMISSIONER MONTOYA: They have been.

MR. ABEYTA: They have always been allowed to vote in a tie. But you're right. In the past they weren't allowed to vote unless there was a tie. But in this case there was a tie and the chair broke the tie.

CHAIRMAN CAMPOS: I apologize, Mr. Gonzales. I think you're right. Obviously the chairman has a right to vote on a tie. Any other questions?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: Roman, if this were to get approved, this would just be allowing it for that property to be commercial. They would have to submit a master plan and come back to the Commission, correct?

MR. ABEYTA: Mr. Chair, Commissioner Anaya, that's correct. All this will do is allow them to come in and submit the master plan and request commercial zoning.

COMMISSIONER ANAYA: So then those issues that were raised in the LCDRC concerning the fence and the other issues that the residents brought up, those could be addressed in the master plan on whereabouts the wall is going to be an how many vehicles are allowed to be in that particular area at a certain time. Is that correct?

MR. ABEYTA: Mr. Chair, Commissioner Anaya, yes. They would have to submit a master plan that would be reviewed by the LCDRC and the Board of County Commissioners, and then a development plan after that that would just go to the LCDRC. The things like landscaping, numbers of vehicles, walls, all that would have to be addressed in those applications.

COMMISSIONER ANAYA: Okay. Thank you.

CHAIRMAN CAMPOS: I think there are two problems here, Mr. Abeyta. The one is Section 6.10.1 which prohibits any new commercial zoning on property except for development that has both residential and non-residential, and then the Highway Corridor, right? The Highway Corridor Plan does not allow commercial in this area but

again, I guess the issue is that the Highway Corridor Plan has not been adopted as an ordinance?

MR. ABEYTA: Mr. Chair, that's correct. The Highway Corridor is just a plan but the La Cienega Ordinance prohibits this.

CHAIRMAN CAMPOS: Also?

MR. ABEYTA: Also.

CHAIRMAN CAMPOS: In that particular area.

MR. ABEYTA: In this area.

CHAIRMAN CAMPOS: Okay, so there's two issues. Essentially it's asking for almost two variances.

MR. ABEYTA: Almost two, but technically it's just one, for the La Cienega Ordinance.

CHAIRMAN CAMPOS: Okay. Any further discussion? Is there a motion?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: From the testimony that I heard today, I'd like to move to approve this case. Were there conditions on that?

CHAIRMAN CAMPOS: Let's see. Do we have to make a motion to reverse the LCDRC, is that right? How would you phrase this motion?

MR. ABEYTA: Mr. Chair, it's just a recommendation from the LCDRC.

CHAIRMAN CAMPOS: Just a recommendation. Okay.

COMMISSIONER ANAYA: I'd like to approve this and -

COMMISSIONER MONTOYA: Second.

MR. ABEYTA: Mr. Chair, Commissioner Anaya, there's no conditions. They would have to then come in with the other applications if this is granted.

CHAIRMAN CAMPOS: There's a variance here. Do you guys want to address the variance criteria? Otherwise there's no support to the motion.

COMMISSIONER ANAYA: Request - what are you talking about?

CHAIRMAN CAMPOS: Talking about page 2 of the variance request. You can't grant it unless the act is within the authority granted to you by the ordinance and that's set out in page 2, paragraph 2 starting Article II, Section 3, the Code states that where in the case of proposed development it can be shown...That's what you have to address. You have to be able to prove that this case has facts -

COMMISSIONER ANAYA: Mr. Chair, I said from the testimony that I had heard.

CHAIRMAN CAMPOS: Does any of it address the criteria? I don't see it. Okay, there's a motion.

COMMISSIONER SULLIVAN: Mr. Chair, discussion. I think it's important that people understand that we have these local development review committees and it's a tough job for those committees because they're having to rule on their neighbors, or make recommendations, not necessarily rule on their neighbors' properties and plans. So

I personally put a lot of weight in what they say because I don't know the individuals, I don't know their plans and I don't know the specifics of the property and the neighbors. We've created these local development review committees just for that purpose.

They're not approval bodies but they are recommendation bodies. They spend a lot of time, in this case obviously two meetings' worth debating these issues and getting public input and we have the minutes that help us to evaluate that. So I just want to say that I look very closely at what those local committees do and that frequently affects my decision. Thank you.

COMMISSIONER MONTROYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER MONTROYA: This is the third case, the second one that we've heard, third one that I reviewed that there's been questions about covenants. And the question has come about after County ordinances have come into effect as of 1981. I think when these people have purchased these properties. I don't know. Mr. Cordova, when did you purchase your property?

MR. CORDOVA: Mr. Chair, Commissioner Montoya, June 14, 2001.

COMMISSIONER MONTROYA: 2001, so it's a recent purchase. But the previous two that I heard, Mr. Chair, either realtor are writing in covenants within these purchases or something's got to occur because if I were to purchase a piece of land and I saw in there that I have a commercial use, well, then I'm probably going to use it for some sort of commercial use. And that's what I think these people are doing. Again, this is the third one tonight and I don't know - what do we have in our Code to address any of that other than we don't accept covenants?

MR. ABEYTA: Mr. Chair, Commissioner Montoya, that's just it, that we don't recognize private covenants. We just enforce the County Code.

COMMISSIONER MONTROYA: So I don't know. Maybe we ought to consider something to that effect. How are we going to do it? But I think, again this is the third case. If someone sold a bill of goods, whatever it may be, they expect whatever they purchase that's what they can use it for and again, this is the third case just tonight, the second we've heard that that's been the situation.

CHAIRMAN CAMPOS: We can't let covenants overrule public law. One, if there's a cause of action it's against the realtor who didn't properly do the homework and do the research that was necessary. The public has an ordinance that says this is the public good, this is what we want to do for this community. And it's pretty clearly stated. And we can't let - if the covenants could overrule the public law then we wouldn't have public law. Anybody could just go in there, write a covenant, boom, the public law is cancelled. So I just don't see that we can address it that way.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: I completely agree with Commissioner Montoya. I think how do we talk to the realtors and tell them or whoever is selling the

property to say that these covenants, how does it get to the buyer? Because if I'm a buyer out there and a realtor tells me, Oh, you could build whatever you want here. Sign right here and then they're gone, they go out there and do that and then the County goes out there and gives them a citation, then they have to come through all this. So I do feel for them.

And I want to address another concern is that Commissioner Sullivan, and I attend LCDRC meetings. I attend CDRC meetings. I attend those meetings and I do appreciate what they do. And it's just because maybe one or two times I don't maybe agree or the board splits a decision, well then I'm going to make the decision and my decision was clearly heard today that I was in support of this, other than because of the fact that there was covenants out there. But I do appreciate everything that those CDRC members do and all those advisory committees. So just because I vote in opposition one or two times does not mean that I am against what they are trying to do. Thank you.

CHAIRMAN CAMPOS: Any further discussion? Do we have a motion? What is the motion? To allow the variance? Okay.

**The motion to approve LCDRC Case #V 04-5031 tied 2-2 with Commissioners Anaya and Montoya voting for the motion and Commissioners Sullivan and Campos voting against..**

CHAIRMAN CAMPOS: You have to come back in 30 days at the next meeting. Have the other Commissioner vote on that, Mr. Cordova. Thank you.

- XIV. B. 11. CDRC CASE #MIS/DP 04-5200 – Agora Addition. John Gary Boyle, Applicant, Requests a Master Plan Amendment and Preliminary and Final Development Plan Approval for a 11,075 Square Foot Addition to the Existing Agora Shopping Center Supermarket on 9.56 Acres. The Property is Located at #7 Avenida Vista Grande in Eldorado, within Section 9, Township 15 North, Range 10 East (Commission District 5). Wayne Dalton**

WAYNE DALTON (Review Specialist): On June 17, 2004, the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of a master plan amendment, preliminary and final development plan for an 11,075 square foot addition to the existing Agora Shopping Center/Supermarket on 9.56 acres.

On June 8, 1993, the Board of County Commissioners approved master plan zoning for a large-scale commercial development, adoption of a use list and establishment of intensities on 12.28 acres, and development plan approval was also granted for the existing shopping center. The applicant is requesting a master plan amendment, preliminary and final development plan approval for a 11,075 square addition to the existing Agora

Shopping Center Supermarket on 9.56 acres. The previously approved master plan did allow five additional commercial buildings to be developed in phases, and ranging in size from 6,000 square feet to 11,200 square feet.

Recommendation: Staff's position is that this application is in accordance with Article III, Section 4.4 of the County Land Development Code. Staff recommends approval for a master plan amendment, preliminary development plan with final development plan to be approved administratively for a 11,075 square addition to the existing Agora Shopping Center Supermarket on 9.56 acres subject to the following conditions. Mr. Chair, may I enter the conditions into the record?

CHAIRMAN CAMPOS: They are so entered.

1. Compliance with applicable review comments from the following:
  - (a) State Engineer
  - (b) State Environment Department
  - (c) State Department of Transportation
  - (d) County Hydrologist
  - (e) Development Review Director
  - (f) County Fire Marshal (Development Plan and Building Plans)
  - (g) County Public Works (access permit)
  - (h) County Technical Review Division
2. The master plan/development plan will be recorded with the County Clerk's office.
3. All Staff redlines will be addressed, original redlines will be returned with final plans.
4. All outside lighting on the property shall be shielded.
5. The applicant shall submit a cost estimate and financial guarantee for completion of the required improvements as approved by staff, or other method acceptable to staff.
6. The applicant shall comply with the water harvesting requirements of Ordinance #2003-6. A water-harvesting plan shall be submitted prior to recordation of the development plan to ensure water use does not exceed 4.4 acre-feet.
7. Water use shall not exceed 4.4 acre feet per year. Annual water readings shall be submitted to the County Hydrologist by June 30<sup>th</sup> of each year.
8. This application is subject to final inspection by the County Fire Marshal. The applicant shall comply with all Fire Marshal requirements.
9. The applicant shall pay a fire review fee in the amount determined by the Fire Marshal in accordance with Santa Fe County Resolution N. 2001-114, prior to recordation of the Final Development Plan.
10. Landscape Plan shall include, but not be limited to the following:
  - a. The applicant shall submit a landscape plan consisting of trees and shrubs within all areas of new development.
  - b. Provide interior landscaping within the parking area consisting of (1) deciduous shade tree and (3) shrubs for every (10) parking spaces.
  - c. All landscaping shall be of drought tolerant varieties and shall utilize a drip

irrigation system.

11. The total building area established with the original master plan shall be maintained in the amended master plan.

CHAIRMAN CAMPOS: Okay, applicant. Please state your name and address for the record and we'll swear you in.

[Duly sworn, John Gary Boyle testified as follows:]

JOHN GARY BOYLE : John Gary Boyle, 830 Acequia Madre, Santa Fe.

CHAIRMAN CAMPOS: Mr. Boyle, do you agree with the conditions set forth by staff?

MR. BOYLE: I do.

CHAIRMAN CAMPOS: Okay, do you have any additional comments? I'd like also just to say to the Commission that while the 285 plan has not yet become ordinance or law, we have directed our architects to make sure that we're in compliance with the plan as approved last month by the BCC. I'm talking about the architectural standards. And we are and we will be. And I'd like to also add that out in this particular node where the Agora sits there's also covenants that determine architectural standards for that node and there are four quadrants to the node, and we are and will be in compliance with those as well.

CHAIRMAN CAMPOS: Okay. Any questions for Mr. Boyle? Okay, no questions. Public hearing. Anybody here for or against? Please come forward. Everybody come forward so we can get you all in at one time. Okay, we have one person coming forward. Two persons.

[Duly sworn, John Reeder testified as follows:]

JOHN REEDER: I'm John Reeder. I live at 1 Bosque Loop in Eldorado. I'd like to speak from three different perspectives. One as a resident of the Eldorado region. I certainly support the expansion of the Eldorado supermarket which is this project is all about. I think it's a needed service in the community. Having said that, I just want to make sure that we are communicating on a couple of other issues. As Mr. Boyle stated, he is in compliance or wants to be in compliance or is willing to be in compliance with the 285 South Highway Corridor Plan. I'm not sure that as the CDRC reviewed the project that they had those standards in front of them.

CHAIRMAN CAMPOS: It doesn't matter.

MR. REEDER: It doesn't matter? Okay. Because what? Because Mr. Boyle agreed to those now? By record.

CHAIRMAN CAMPOS: The plan is the basis for an ordinance. We don't have an ordinance yet. The plan simply forms the basis for an ordinance and we haven't passed an ordinance.

MR. REEDER: So he's not obligated or is obligated?

CHAIRMAN CAMPOS: It's not relevant is what I'm saying, to this discussion. Are you for it? Do you have any reason to oppose it, Mr. Reeder?

MR. REEDER: No. I just want to make sure that the record, either with Gary's testimony or by the CDRC says that, Yes, these architectural standards that we've been working for so long on and that you approved are part of the thought process in the standards for the project. That's all I'm asking for, just to ensure that that occurs.

CHAIRMAN CAMPOS: Are you asking that as a condition of approval that we impose the standards, the architectural standards?

MR. REEDER: Yes, Mr. Chair.

CHAIRMAN CAMPOS: And that we approve the plan?

MR. REEDER: Yes, Mr. Chair.

CHAIRMAN CAMPOS: Okay. I understand.

MR. REEDER: The other perspective is, as Mr. Boyle indicated is this architectural node, architectural review committee that has standards and I just want the record to recognize that Mr. Boyle has said of his willingness to comply with those standards also. So I'm just looking for are we in agreement or do we understand those two things will occur through this process because I'm looking at process. I'm making sure that the due process occurs because they weren't in the CDRC review process recommendations. So I'm not sure that they were aware of those or had those in front of them and I just want to make sure those occur. And it has nothing to do with my feeling about the project because I support it. I just want to make sure that the process is there. Thank you.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: So we're going to put in two more conditions, 12 and 13, that we consider -

CHAIRMAN CAMPOS: That we consider additional conditions.

MR. REEDER: Yes, sir. That's what I'm looking for.

COMMISSIONER ANAYA: The corridor plan.

CHAIRMAN CAMPOS: The 285 corridor plan architectural conditions.

MR. REEDER: The 285 South Highway Corridor Plan.

COMMISSIONER ANAYA: And then 13 would be the covenants?

MR. REEDER: It's called a declaration of covenants for the 285-Vista Grande commercial node.

COMMISSIONER SULLIVAN: I think that's where we have a problem. I think if we - I think any covenants have to be enforced by the property owners who mutually agreed to those covenants. I think it's certainly appropriate and the applicant has agreed to abide by the architectural conditions of the south highway 285 plan but I'm afraid we're breaking shaky ground by including conditions that say you must comply with some covenant provisions that you mutually agreed upon. I think that's between the individuals who mutually agreed upon those covenants and if one doesn't abide by them then there's other remedies for that. But I think the applicant has come forward and said that he will and I would anticipate that he would and that he's on the record as saying that



and if anyone had any questions they could go back to the record and say, Look, you said that you would, but I'm a little concerned about putting that particular one into the ordinance. But we can get into that.

CHAIRMAN CAMPOS: Mr. Ross, what do you think from a legal perspective?

MR. ROSS: Mr. Chair, Commissioner Sullivan, I agree with Commissioner Sullivan. We don't have anything in our ordinances that would permit us to enforce private covenants. Certainly the applicant could agree to whatever conditions the applicant might be agreeable to agree to but we couldn't necessarily force private covenants as a matter of law.

CHAIRMAN CAMPOS: Are the private covenants expressly set forth in the plan? Covenant A, B, C, and D, regulating different things?

MR. ROSS: I haven't examined the covenants that we're talking about. I'm assuming they're private covenants on the property that haven't been made the subject of any particular approval by the County. I think that's what we have to do.

COMMISSIONER MONTOYA: Mr. Chair, on that point.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER MONTOYA: So then we don't recognize the covenants. We don't enforce the covenants.

MR. ROSS: Right. Commissioner Sullivan characterized them correctly. They are private agreements between two people.

COMMISSIONER MONTOYA: So who enforces them?

MR. ROSS: The two people.

CHAIRMAN CAMPOS: Who have agreed.

MR. ROSS: Who have agreed.

CHAIRMAN CAMPOS: A covenant is essentially a contract between two or more people, usually like a subdivision. They agree, all five or ten, there's a contract that covers them.

COMMISSIONER MONTOYA: So if I build a 30-foot house on a 24-foot covenant place, I could still do it even though I - that's what's happening in some of these situations.

CHAIRMAN CAMPOS: You could be sued by the people that share in the covenants. And my feeling is we probably shouldn't even approve them. My tendency would be to respect the covenants. If the covenants says don't do it, I don't think the County should just say, Okay, ignore it. But that's the interpretation of the County over the years. Okay. Thank you, Mr. Reeder.

MR. REEDER: Thank you so much. May I just for your paperwork load hand out the covenants that we have just for education? Because this is an issue that has come up several times between the architectural review committee and the County. [Exhibit 3] Appreciate it. Thank you.

CHAIRMAN CAMPOS: Thank you. Okay, sir, another witness. Please

state your name, address and you'll be sworn in.

[Duly sworn, Freemont Ellis testified as follows:]

FREEMONT ELLIS: Commissioners, my name is Freemont Ellis. I live at San Sebastian Ranch on the Old Las Vegas Highway. Commissioners, I'm actually not really here for or against the Agora expansion project but I'd just like to – I'm here to be considered and heard for a little bit. I may be a little redundant about a few things but I hope I'll keep it as brief as possible. First of all, I'd like to thank County staff, Wayne Dalton, Steve Wust, Jack Kolkmeier and Judy McGowan. They helped clear up a few misconceptions and misperceptions on my part as well as clarify what's going on with the packets that you have regarding this extension. You guys have a great staff and I always like the amount of effort they put into everything. So I want to make sure you get that clear.

Originally, I was very concerned in the packet by the appearance on Exhibits I and page 3 of the amendment where it describes the access where you get drawings of the parking spaces for the addition as well as access and parking on page 2 of the packet. It was a bit confusing because it originally appears as 242 parking spaces were going to be added along with the 11,000 square foot addition. But Mr. Dalton and the rest of the staff made it – we got all that straightened out and it looks like there's only 85 parking spaces being added along with the addition. So that's a pretty good thing since around 60 is Code. So I'm happy about that.

He also made it clear in the recommendations, the landscaping for the parking lot is going to be followed in its recommendations here in this packet. So I think that's very good information and I'm relieved that my perceptions were cleared up about that.

Concerning the water harvesting from the roof, my understanding from Mr. Wust is that he's recommending that the harvesting be done from the entire building complex and I'd certainly like to see something like that go forward since it is in the County Code and as you know, even though the corridor 285 plan is not ordinance yet, those are one of our recommendations in the corridor plan as well. I understand from what Mr. Gary Boyle presented just a few minutes ago that he would like to comply with as much as he possibly can in the corridor plan, I'm glad he's making a public record of that and also that he's willing to perform and demonstrate basic compliance with this neighbors in Dos Griegos and the, I believe it's called the 285, the architectural review committee for the commercial node of 285 there that Mr. Reeder was just talking about a little while ago. This is related to their covenants, etc.

I'd also be interested in making certain, even though it is not ordinance yet, the corridor plan, that he is able to follow the guidelines and design standards and so forth on page 121 through 127, in particular about multiple masses for his building project and addition because it's not terribly clear at this scale on these xeroxes whether his elevations are broken up with more than six-foot offsets or less than six foot offsets. It's not clear whether the portals are a minimum of six feet deep. And it's not terribly clear as well that the façades have at least 25 percent openings of doors and windows, etc. So we'd certainly

like to see that go forward as well.

Harvesting water from the parking lot is a recommendation we've made in the corridor plan, but I understand from Mr. Wust that that's actually a part of terrain management, which on the staff recommendations list I guess would be part of the County technical review division. There's some question as to whether he could successfully harvest water off of the parking lot without poisoning trees and causing problems for children or other people in the area. But I still think it should be considered if it's all possible, even in a low-tech sense, to use that water off the parking lots, since they're so big, for watering the trees and so forth.

I'd also like to see a detailed landscaping and the staff recommendations carried through in its plans along with the architectural review committee compliance demonstrations that he's planning on working on. I'd like to see him also demonstrate those factors regarding the corridor plan before the final development plan is approved administratively. I would like to see that go back to you guys at the BCC for final approval so that the public also has a chance to review the details more thoroughly, especially for a project this large. I wouldn't suggest anything like this if it was a small house going up or anything like that. So I'd like to see something like that taken as a suggestion on top of the list that you have here in your packet.

I believe – are you taking a vote on the amendment today?

CHAIRMAN CAMPOS: The proposed amendment as to architectural standards?

MR. ELLIS: You have to vote on this packet and the amended addition, isn't that correct?

CHAIRMAN CAMPOS: I don't know if I understand your question.

COMMISSIONER SULLIVAN: Yes, the matter is up for a vote tonight. That's why there's a public hearing. There will be a vote after the public hearing.

MR. ELLIS: Yes, I guess I'm not communicating that well. I don't know whether you will particularly agree with me or look upon it as an issue. I don't think you would necessarily follow through with it but my understanding from campaign contribution records is that Commissioner Sullivan has received from Mr. Boyle and Aurora Properties the second largest contribution, actually the third beyond his own contributions to his campaign, from Mr. Gary Boyle who's partner Tom Nasco and Aurora Properties, and in terms of perception, I think it would just be quite simple to recuse himself from the vote on this particular project at this time. That's just a matter of perception there.

CHAIRMAN CAMPOS: Anything else?

MR. ELLIS: I've got a packet of the contributions if you want that in the record.

CHAIRMAN CAMPOS: No. Is that it?

MR. ELLIS: Yes, just about. The only other thing is that it's my understanding that the Crossingham project, the Village at Eldorado, was required to come back to the BCC before they could get final approval and even though hers isn't built, it

wasn't just administratively approved and I believe a number of people out in the area would like to see this extension on this Agora project go through the same process, come back to you guys at the BCC with detailed plans that fulfill all your recommendations and a few of our suggestions, because some of them are not ordinance, and that way the public would have a chance to review in detail what the final picture is going to look like.

CHAIRMAN CAMPOS: Thank you, sir.

MR. ELLIS: Thank you.

CHAIRMAN CAMPOS: Okay, anyone else out there? Okay, public hearing is closed. Discussion by the Commission.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: Roman, question. Water harvesting. I see it in here. What does that mean? Are they doing the whole building or just the building that they are wanting approval on?

MR. DALTON: Mr. Chair, Commissioner Anaya, there are two conditions. One condition is condition number one that states compliance with applicable review comments from the following. One is the County Hydrologist. The County Hydrologist in his letter does recommend that a water harvesting system be done for the entire facility.

COMMISSIONER ANAYA: Okay. Thank you. Another question. I got a letter or somebody told me that the Agora has not supplied a fence in the northern part for north Griegos because of the trash blowing on the property. [Exhibit 4] Is that on there too?

MR. DALTON: Mr. Chair, Commissioner Anaya, that's not a condition of approval. The applicant is working with the Dos Griegos Homeowners Association and I did hand out a letter stating that they are working with each other and they will resolve this problem.

COMMISSIONER ANAYA: Okay, so do we need to put that in here, because I don't want this to just go away.

MR. DALTON: Mr. Chair, Commissioner Anaya, I believe it's the Board's discretion to add that in as a condition.

COMMISSIONER ANAYA: What would you recommend we put in there?

MR. DALTON: Mr. Chair, Commissioner Anaya, I believe Construct a fence - I believe it's up to the discretion of the Board whether it's a coyote fence, a wall, maybe trees and shrubs. I believe it's your decision on what you guys want.

COMMISSIONER ANAYA: Okay, maybe we can come up with some language.

CHAIRMAN CAMPOS: Any other comments?

COMMISSIONER ANAYA: Yes. Terrain management, in terms of collecting water off of the runoff from the streets, are we doing something there? From the parking area and maybe the curbs? Are we having them tilt their curbs a little bit towards the plants and trees and shrubs?

MR. DALTON: Mr. Chair, I wouldn't be able to answer that question. That would be a question for the terrain management technical review division.

COMMISSIONER ANAYA: Do we have an ordinance on that? I know that people are doing it.

MR. ABEYTA: Mr. Chair, the ordinance on terrain management states that you have to have a retention pond. This project has a retention pond, but you can also, as part of it, you can substitute that with directing the flow into landscaping. That could qualify as part of your retention pond. But in this case there is a retention pond on the property and so the drainage from the parking area and the pavement will be going into the retention pond.

COMMISSIONER ANAYA: Okay. So all we've got to do is talk about the fence, and maybe the applicant can tell me what he wants to do there or what he's working on.

CHAIRMAN CAMPOS: Mr. Boyle.

MR. BOYLE: Yes, Commissioner. I wrote a letter. I think it's in your packet, actually, proposing to the Dos Griegos folks that we put up and share the cost of a wire fence, a field fence, that would collect any refuse that's blowing, which is one of their main problems. There is a certain amount of refuse that is generated at the center, as anyone could understand, at that sometimes blows on their yard. That wire fence would stop that.

COMMISSIONER ANAYA: I don't agree with the sharing of the cost. I think that you should supply the fence because it's your part that's going into their part.

MR. BOYLE: Right. And we're willing to negotiate with them to either put up the fence - at this moment they're of the opinion that maybe a first step is for us to police the refuse more diligently and regularly and then see whether that solves the problem. If that does, then there's not a need for a fence, if that doesn't, then we would do the fence.

COMMISSIONER ANAYA: But what if you sell the property and move on and the new owner comes in and doesn't do what you say.

MR. BOYLE: We'll have an agreement and I have agreed with the president of the association that I will write essentially a contract that says We will do this and then we will do that.

COMMISSIONER ANAYA: What size of fence were you planning on putting up? If you were going to share the cost? Is it a four-foot fence?

MR. BOYLE: It's a four-foot wire fence, the heavy wire fence with posts every whatever number of feet and that would stop the refuse from blowing across into their property as well as stopping any trespassing that might take place.

COMMISSIONER ANAYA: And how long is that fence?

MR. BOYLE: It will be somewhere in the range of 600 to 800 linear feet. It will run across the three properties that are directly adjacent to the rear of the shopping center.

COMMISSIONER ANAYA: Okay. I guess I'll just see what the Commission wants to do on that.

MR. BOYLE: This is all going to be put into writing and it will be essentially a contract between us.

CHAIRMAN CAMPOS: If there's an agreement. If you actually can agree. If not, it won't be put into writing. What about the rooftop collection? Are you going to do the whole building or just part of it.

MR. BOYLE: Well, we certainly want to follow the ordinance and the ordinance isn't clear the way it's written as to whether retrofitting is intended, particularly on the scale that we're talking about. Now, let me just give you two facts. Ten thousand square feet, which is the extension, that's the roof size of the extension.

CHAIRMAN CAMPOS: You're not willing to, right? Is that what you're saying?

MR. BOYLE: To do the whole thing? No, I'm not willing. I'm not willing. I would not want to -

CHAIRMAN CAMPOS: You'd object to that condition.

MR. BOYLE: I would object to that condition. Yes.

CHAIRMAN CAMPOS: Okay. Now what about the parking lot surface and the collection there? It says the applicant shall comply with the water harvesting requirements of ordinance number - yes.

COMMISSIONER MONTOYA: That's what you're objecting to?

MR. BOYLE: I'm not.

CHAIRMAN CAMPOS: His argument is it should only apply to the new section. Water harvesting there but he doesn't want to harvest the entire roof, old structure.

MR. BOYLE: And Mr. Chair, the reason is, if we did the whole center, we would essentially be generating an acre-foot of water a year. We use 15,000 gallons only in irrigation because we have a mature shopping center landscape. We use 15,000 gallons. An acre-foot would be 330,000 or 325,000 gallons. We wouldn't know what to do with the water. We wouldn't have enough space to put the tanks. So it's an unreasonable situation from that prospect.

CHAIRMAN CAMPOS: Okay, now what about the - Commissioner Anaya asked about the collection of water from the parking lot surface.

MR. BOYLE: As Roman just stated, we have a collection pond and we collect water from the parking lot and it comes off the roofs onto the parking lot into the collection pond. We are going to build some new parking, which we have to do according to Code, and we have not actually planned to collect that water someplace. It will go into a collection area but not into a tank, necessarily, because I think that the extension rooftop will give us - actually it will generate in annual normal rainfall, 75,000 gallons, just off the 10,000 square feet. And that's far more than we need.

CHAIRMAN CAMPOS: I think you've made that point. Is there a motion

or any other public comment? Any other speakers? No. The public hearing is closed. Any motion? Anybody make a motion?

COMMISSIONER MONTOYA: Mr. Chair, I would move to uphold staff's recommendation with the additional – with their conditions.

CHAIRMAN CAMPOS: One through eleven?

COMMISSIONER MONTOYA: Yes, sir. And then the additional condition from the compliance with the 285 corridor plan, which references pages 121 to 127.

CHAIRMAN CAMPOS: Those are the architectural standards?

COMMISSIONER MONTOYA: I believe so. Yes. And also for the referral or final approval coming back to the BCC for BCC final approval. And a contract regarding what is going to occur with the fencing that is in question in terms of the debris that's blowing around there.

CHAIRMAN CAMPOS: You want the fencing agreement to be resolved before it comes back to final.

COMMISSIONER MONTOYA: Yes.

CHAIRMAN CAMPOS: Okay, there's a motion. Is there a second?

COMMISSIONER ANAYA: Second.

CHAIRMAN CAMPOS: Okay. Discussion?

**The motion to approve CDRC Case #MIS/DP 04-5200 passed by unanimous [4-0] voice vote.**

CHAIRMAN CAMPOS: Thank you, Mr. Boyle.

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER SULLIVAN: I just wanted one clarification on the last approval. So that was a preliminary and final plat approval and the issues that Commissioner Montoya wanted to have the applicant bring back were a final plan to see what it looks like, like an elevation and so forth, final architectural plan.

COMMISSIONER MONTOYA: And then the water collection.

COMMISSIONER SULLIVAN: So the issues that the Commission will review when it comes back will be the architectural plan, the onsite water collection, is that what you mean? Okay. And the water harvesting plan we want to look at. Okay. And the fencing resolution. So those are the three major items. I was just trying to get it clear in my mind because the staff recommendation was for final plat approval so we've done that. These other things would normally be done by the staff, so what you're saying is that these things –

CHAIRMAN CAMPOS: It's not plat, Jack, it's plan.

COMMISSIONER SULLIVAN: Well, it's a development plan. Excuse me. It's already platted. You're right. It wouldn't normally come back any further. So we want the Commission to review these three major issues once they're resolved. Okay. Does that

summarize what we're going to address when it comes back?

CHAIRMAN CAMPOS: Just one other point of clarification. Mr. Dalton, as far as the rooftop collection. I assume we're only going to go with collection on the new part of that building, correct? Is that staff's interpretation of what we need to do?

MR. DALTON: Mr. Chair, staff's in kind of a hard position with the roof water issue. Staff's recommending they do comply with that ordinance -

CHAIRMAN CAMPOS: Which means what? Is it the whole roof or the new structure? That's the question.

MR. DALTON: It means that they comply with that ordinance which staff would say would be the addition, but the County Hydrologist is recommending that he comply and bring the whole facility in compliance with that water harvesting ordinance.

CHAIRMAN CAMPOS: I voted for it on the basis that it would be only the new construction. Is that your intent?

COMMISSIONER MONTOYA: That was my understanding.

MR. ABEYTA: Mr. Chair, I just spoke with the County Hydrologist and given the issues that the applicant brought forward I think we could work something out. At a minimum, he's got to do the addition, but I think we can work something out with the hydrologist to whether or not we need to do the whole thing because he's not certain that he needs to do the whole thing. In fact, he wanted to put that on the record. So if it comes back and you don't see the whole thing, it will be because we worked out an agreement with him between now and when he comes back.

CHAIRMAN CAMPOS: Okay. Thank you. Thank you, Mr. Boyle.

MR. BOYLE: Thank you.

- XIV. B. 12. EZ CASE #A 04-4271 - Ernest Montoya Appeal. Ernest Montoya, Appellant, is Appealing the Decision of the Extraterritorial Zoning Commission to Grant Approval of the Montoya Family Trust 14 Lot Family Transfer (Application #04-4270). The Property is Located on Paseo Don Fabian, Which is at the End of Paseo Del Coyote Road, within Section 9, Township 17 North, Range 9 East (Commission District 2). Vicente Archuleta**

VICENTE ARCHULETA (Review Specialist): Thank you, Mr. Chair. Ernest Montoya, appellant, is appealing the Extraterritorial Zoning Commission's decision to grant approval of the Montoya Family Transfer consisting of 14 lots on 27 acres. The property is located on Paseo Don Fabian, which is at the end of Paseo del Coyote Road, off of Fin del Sendero. On August 8, 2002, the EZC granted approval of a request by the Montoya Family Trust for plat approval to divide 35 acres into six lots for the purpose of a family transfer. Lot 1 consisting of 8 acres was transferred to the appellant, Ernest



Montoya. The remaining 5 lots (27 acres more or less) are the properties in question.

On May 10, 2004, Patrick Romero submitted an application for a 14-lot family transfer of 27 acres more or less on behalf of the Montoya Family Trust. On June 10, 2004 the Extraterritorial Zoning Commission met and granted approval of the family transfer based on conformance with the Extraterritorial Zoning Regulations. The subject property is located in the Basin Hydrologic Zone, which allows for the creation of 2.5-acre lots with water restrictions. This area allows for the creation of 1.25-acre lots for family transfers, which would allow up to 21 lots on 27 acres. The applicants are proposing 14 lots ranging from 1.918 acres to 1.929 acres.

The application was reviewed for the following: access, water supply, liquid waste, solid waste.

On June 25, 2004, Mr. Montoya filed an appeal of the Extraterritorial Zoning Commission's decision to approve the 14-lot family transfer. According to the letter submitted by Mr. Montoya, his grounds for appeal are as follows:

1. Public Notice- notice was not properly posted on the subject property.
2. Case caption- Newspaper notice and published agenda caption for the EZC meeting listed this case as a consent agenda item requesting plat approval to divide 27 acres into 14 lots. The appellant states: "Division of land is limited to 4 parcels maximum".
3. Certified Mailings- the certified mailing indicates a request for plat approval to divide 5 lots containing 27 acres more or less into 14 lots. The appellant states, "The action requested, thus becomes a lot line adjustment, which may not be used to increase the number of lots".
4. Holding Period- the appellant states: "The deeds and plat recordation of March 10, 2004 establishes a new holding period of five years on family transfer. Thus, this appears to be a "serial subdivision" and not a family transfer".
5. Ostensible Authority- the notice provided indicates that Mr. Patrick Romero is an agent for the "Montoya Family Trust". The appellant states: "Mr. Patrick Romero does not represent my interest as a spokesman, and/or agent, or trustee to the Montoya Trust."

Recommendation: The appellant filed an appeal based on his arguments stated above. In regards to the noticing issue the public notice board was posted in the easement adjacent to the subject property for the full fifteen-day posting period. The request made by the Montoya Family was for a Family Transfer. Family Transfers are not considered subdivisions; therefore there are no limitations as to the number of lots that can be created provided all requirements of the EZO are met.

The 27-acre property consists of five lots. The applicants are requesting a re-plat to create a total of fourteen lots; therefore a lot line adjustment is not relevant.

The EZO requirement for Family Transfer states: "Proof that the land has been in the lawful possession of the family proper for no less than five years". The subject property has been owned by the Montoya family since 1931. As for the issue of Ostensible

Authority, the application was submitted on behalf of five of the six heirs to the Montoya Family Trust. This application does not include the appellant's property.

It is staff's position that the application for a family transfer land division is in accordance with the applicable Extraterritorial Regulations, therefore staff recommends this appeal be denied.

CHAIRMAN CAMPOS: Questions of Mr. Archuleta? Okay, appellant, Ernest Montoya.

[Duly sworn, Ernest Montoya testified as follows:]

ERNEST MONTOYA: Ernest Montoya, my address is 1500 Alamosa Drive, Santa Fe, New Mexico.

CHAIRMAN CAMPOS: Mr. Montoya, how much time do you think you need to make your presentation?

MR. MONTOYA: I shouldn't take long.

CHAIRMAN CAMPOS: Ten minutes?

MR. MONTOYA: Maybe fifteen.

CHAIRMAN CAMPOS: Okay. Please proceed.

MR. MONTOYA: Mr. Chair, County Commissioners, about a week ago I dropped in your boxes at the Manager's office a six-part folder that contained documents that were in my possession that will support my appeal. I am wondering if all of you received it, and if you've had an opportunity to review it.

CHAIRMAN CAMPOS: Did you provide it to staff?

MR. MONTOYA: Pardon?

CHAIRMAN CAMPOS: Did you provide the material to staff?

MR. MONTOYA: No, I provided a letter of appeal back on the 24<sup>th</sup>.

CHAIRMAN CAMPOS: Did you provide the material to staff that you provided to the County Commissioners?

MR. MONTOYA: No, sir.

CHAIRMAN CAMPOS: Okay. Please proceed.

MR. MONTOYA: I would like, if its possible, to have one of those files read into the record, made part of the record. [Exhibit 5]

CHAIRMAN CAMPOS: Okay.

MR. MONTOYA: In addition to that, on the 25<sup>th</sup> of June Mr. Coppler, who is my neighbor out there on the property, also filed an appeal. I understand that his was denied because he didn't provide the fee. I would at this time make those arguments part of my appeal and adopt them for the record. And I have a letter that he provided the staff. I would like that made part of the record. [Exhibit 6]

CHAIRMAN CAMPOS: You can make it part of the record, but you've got to make your own case.

MR. MONTOYA: Okay. I'm adopting, though, his arguments in addition to mine.

CHAIRMAN CAMPOS: Go ahead.

MR. MONTOYA: My appeal basically is based on the language contained in paragraph 1.5.G, Section 1.G, "General Provisions of the EZA Ordinance," 1997-4, which states: "Applicants which are approved on the basis of submittals containing false information or data may be subject to revocation and penalties imposed in accordance with section 1.5." My allegations are that Mr. Patrick Romero, as agent for the Montoya trust, obtained approval for a 14-lot family transfer subdivision by deceit and misrepresentation of facts.

In section 4 tab 4 are the files that I provided, paragraph two, Patrick Romero, P.E., is attesting that the property has been in the family proper since 1931. Section 5-1, paragraph 1, the minutes of the EZA, last paragraph on page five and continues on page six, Mr. Catanach, Land Use staff, states: "He said [Patrick Romero] the applicant attests that the property has been in the family since 1931, and the County looks at the long range, rather than whether the subsequent generations had title." Page 2-6 of the Santa Fe ordinance, 1997-4, the definitions: "Family proper for the purpose of family transfer, family proper means lineal relationships up to and including the third degree, grandparents, parents, and child."

By warranty deed on the 21<sup>st</sup> of May of 1960, the 27 acres which were part of the original 156 acres passed to Sydney and Ursula Hayter. That deed is at tab 1, section 1. Ursula Hayter was an aunt, and does not fit the description of family proper. The period does not fit the definition of family proper as claimed by Mr. Romero. The property, nor any portion of it, never passed to my father, Julio Montoya in probate. [Inaudible] 25-64, which is on file with the County, which I can provide at your request.

The subject property, basically, was in a will that was executed both by my grandmother and my grandfather jointly. When my grandfather passed away, the property, by being a joint will, passed to my grandmother. My grandmother, in fact, sold it to Ursula Hayter. There were some conditions at the particular time. And she's still alive. Mr. Hayter is not.

The undated title opinion, Office of State Engineer, paragraph two, states Ursula Hayter paid only for a fraction of the property and never obtained title. The warranty deed, which is at tab 4 section 6, evidence of adequate consideration in the form of revenue stamp on the deed, the stamp was recorded, the I.R.S. accepted that in fact proper payment was made. The last sentence: "After all these things occurred, Ernest Montoya filed a partition suit against his siblings." I don't think that's correct either.

Section 1 tab 4, a quitclaim deed, Antonio to Victoria on the 9<sup>th</sup> of December, 1998, subsequent to the complaint for partition - and partition basically was filed in October - the deed was cut on the 9<sup>th</sup> of December of '98, prior to the arbitration, which was on the 25<sup>th</sup> of September 2000. The purpose of me filing basically a partition suit is because the law allowed me to partition that property into two sections, one for the plaintiff and one for the respondents. That way it would have been 27 and eight and they could have gone their way. The basis for me doing that is because I was collecting the taxes, and every year it got more difficult and more difficult with my siblings, with things

that were happening within the family. Somebody would say, "Well, I paid his taxes, I loaned him money for this, he didn't pay the rent." It was totally destroying the family.

In addition to that, my wife had come down with cancer. I was also diagnosed with cancer. I knew that I had to put my estate in the proper format. Because if not, my trust, all I was doing for my kids was leaving them a lawsuit. So I filed a lawsuit based on that pretext, that I needed to put my estate in its proper condition so that my heirs would not have to have a problem.

Section 1, tab 7, warranty deed, Gilbert to Pat Romero, joint tenant on 28<sup>th</sup> of September 2000, subsequent to complaint for partition, arbitration, and order of dismissal, First Judicial Court, section 1 tab 6, and prior to Patrick Romero's development request of 8<sup>th</sup> July 2002, section 2, tab 2 - these three documents appear to violate section 3-1-10 of the ESR. An extract copy of the ESR is at tab 4 section 1. It states you cannot sell, advertise for sale, or do anything with property until the final plat has been approved. These two deeds actually transferred five acres to Victoria, who was not on the original deed. They transferred the four acres that Gilbert had to Pat Romero and Rosina Romero, my sister, by warranty deed prior to the plat approval.

On the 24<sup>th</sup> of February 2004, the family transfer dated the 14<sup>th</sup> of January 2003 was approved and recorded on March 11<sup>th</sup>, 2004. There was a whole year difference between the approval of the plat and this recordation. There were numerous delays that were encountered between the plat preparation on the 14<sup>th</sup> of January 2003 and the approval on the 24<sup>th</sup> of February 2004. First, Mr. Vicente Archuleta, Land Use staff, informed us that the roads had to be constructed or bonded before he would obtain plat approval. This was a condition that was not part of the conditions of approval by the EZC, section 2, tab 7. The EZC did not impose those conditions that were later imposed by Mr. Vicente in addition to what the EZC had told us.

Secondly, the approval conditions were imposing .25 acre-feet per lot, conflicting with the allowable amounts established by the development code of 0.1 acre feet of water per acre-foot of land. So basically, for instance in my case I had eight acres, they were saying that my water restriction for those eight acres was going to be a quarter of an acre-foot, when in fact the code allows 0.1. I would have had eight-tenths. And that was finally resolved. I got the eight-tenths.

Thirdly, Gilbert, the owner of lot four, had his spouse notarize the signatures on the water covenants, as well as on the plat. The situation was illegal, and we had to take the plat back and have it re-notarized.

Fourthly, the deeds transferring required by paragraph six, page three of six of the settlement agreement, section five, were not prepared by the grantees of lots 2 to 6. The arbitration award actually called for each of the parties and their spouses to sign the deeds.

CHAIRMAN CAMPOS: Five more minutes, please.

MR. MONTROYA: The deeds transferred or executed on the 10<sup>th</sup> of March, 2004 still do not meet the requirements of the settlement agreement. The spouses to the grantees lots two through six did not sign as required. They did not sign. The deeds show

five and sometimes six notary seals for four signatures. The failures of Patrick Romero, Rosina's husband, to execute the required deed leaves lot four, which was awarded to Gilbert, in joint tenancy. Because Rosina awarded back on a quitclaim deed to Gilbert, but Pat did not sign that, so now lot four is in joint tenancy between Gilbert, my brother, and Pat, my brother-in-law. This negates the eligibility of family transfer for that particular lot.

On the 20<sup>th</sup> of October, Patrick Romero, after having been red-tagged by the County Land Use for grubbing the road easement without a road cut permit, obtained a road cut permit which was approved by the administrative action of the Land Use Administrator. The road accessed six separate properties, as deeds to the lots one through six had been executed by Ernest Manito Montoya, as well as my siblings and their spouses. On the 14<sup>th</sup> of February 2003, tab one and two, roads accessing more than one property require public notice and posting. That road was cut to a length of 1,421 feet, to a cul-de-sac approximately 424 feet beyond the approved conditions of the EZC, section two, tab six, 336 feet outside of any plat and granted easements. I find no evidence that a variance has been applied for or granted to prevent these conditions to any length beyond the EZC approval of 1,000 feet.

I have some documents basically that will explain what the EZC approved. The EZC, in the agenda, were led to believe that they were splitting 27 acres into 14 lots. The letter that was addressed to me, certified mail, indicated that they were taking five lots containing 27 acres and turning them into fourteen lots. This was not made known to the EZC when they took action. The posting on the property itself also indicates dividing five lots containing 27 acres into fourteen lots. And I have, if I may approach, copies of those postings.

CHAIRMAN CAMPOS: Why don't you start with Commissioner Anaya, and he can pass them down.

MR. MONTOYA: I also have some – it shows the first family transfer and the second family transfer with an overview of what actually is there.

CHAIRMAN CAMPOS: Are these photographs, Mr. Montoya, part of the record?

MR. MONTOYA: Yes, please. Now, what did the EZC approve on June 4<sup>th</sup> of 2004? A: The first column basically is what the arbitration award and plat at both 554 page 30-1 awarded to Marcella Romero, lot two, tract B, eight acres to Rosina, lot 3, tract B, eight acres to Gilbert, lot four, tract B, four acres to Victoria, lot five, tract B, five acres, for a total of 27. What did the EZC approve? Lots one through four, containing 7.714 acres to Rosina. Lot five – I'm sorry. To Marcella, 4.754, which is a net decrease of 286 hundreds. Lot five through ten contain 11.572 acres, plus 3.572 to Rosina, three more acres. Gilbert was totally vacated from that plat. Victoria landed up with lots eleven, twelve, and thirteen, increasing from five to 7.87. Tony Montoya, lot fourteen, was decreased 0.87. That totals 27 acres, awarded 26.997. The survey basically lacked 131 square feet of closing.

Now, let's look at lot six.

CHAIRMAN CAMPOS: You've got to speak into the mike. This is being recorded.

MR. MONTROYA: Antonio Montoya's lot was two acres. The new lot size is 1.918. The net change is .082, 3,572 square feet. This 0.82 acres are being transferred to lot thirteen, Victoria's daughter Janine Romero, see "Findings of Fact," Vicente Archuleta, on 10<sup>th</sup> of August, '04. The standard lot size for the hydrological zone is ten acres. One half of the standard lot size allowable for the family transfer is five acres. Water restrictions allow two and a half acres. Tony's lot already is below the minimum of two and one half. Tony is transferring .082 acres. This is below the allowable of 1.14, because the law and the ordinance says that the portion retained and the portion awarded have to be equal, and they cannot be less than one and a quarter. So he's transferring .08, which is below the one and a quarter. This lot is not eligible for a family transfer, as well as four.

Small lot family transfer, you have to prepare an affidavit of how they are going to be transferred. It has to be from grandfather or grandmother, father or mother, to a child. If you look at those, they're from an aunt. Look at lot one, tract B. Victoria was the sister and is transferring to Marcella, lot one tract B. This does not fit the family transfer.

Again, the next one, Victoria Romero, aunt, is transferring to Isaac Romero, junior lot two, tract B. Lot three, 1.43 acres of lot three, tract B is being transferred to Edward Romero, Marcella's son, by Victoria the aunt. The remainder of .785 will be transferred to Edward from Marcella. So we've got a joint tenancy, they're putting together two different portions to create a lot, one from Marcella and one from an aunt. The aunt does not qualify to grant the family transfer.

Lot five, Marcella Romero, a sister, to Rosina Romero. She's awarding lot five, tract B to her sister. This again doesn't qualify for a family transfer. Again, lot six, Marcella Romero, an aunt, to Charlotte Romero, lot six. Charlotte is Rosina's daughter. So she's going aunt to niece. None of these qualify for family transfers. Lot awarded to Patrick, Marcella Romero, aunt, to Patrick Romero. 1.488 acres of lot seven, and the remainder from Rosina, her mother. Again, another split, an aunt and a mother. Rosina Romero, sister to Victoria Romero is awarding lot eleven, and part of it is coming from Gilbert Montoya, brother, or maybe Patrick Romero, because that lot is in joint tenancy.

So folks, it's going to create a very significant problem down the road to establish legal ownership of that particular land. Number one, if the spouses to my siblings did not sign those deeds, they will not be able to obtain title insurance. They will not be able to get a loan to construct on those lots.

Now, you ask me, "Why are you doing this to your siblings, if they're splitting lots down to two acres?". Basically, the real reason is because I entered covenants with my neighbors out there to two and a half acre lots regardless of family transfers. The reason for me doing that is because the 156 acres, if you do the math, you're going to come out with 62 lots. Anything over 59 lots puts it into a sub-collector role. We've got a very pristine area over there. We're right at the northeast corner of the City of Santa Fe. The

City of Santa Fe has already designated that area to be maintained as open space. They're never going to do it.

Now, we're a quarter-mile from the northeast corner. The County and the road people have already platted and have in their plan both Wellsanes Road, they've got North Efren Road, and they've got North Boundary Road. They're going to crisscross all through that area. We don't need that. All that's going to do is create more traffic coming down from Sundance, from Tano, right through our particular area. We've engineered the roads for what we want, for what the neighborhood wants, what is best for everybody concerned. When they subdivided these lots over here, we already had 63 lots behind those roads. That adds seven more. So now we got ten lots that the roads will not support, making us a requirement to go back and re-design the roads, extend them, put more money into them and make them into collectors and sub-collectors. Gentlemen, I stand for questions.

CHAIRMAN CAMPOS: Questions? Okay, anybody else want to speak?

[Duly sworn, Frank Coppler testified as follows:]

FRANK COPPLER: Frank Coppler, 645 Don Gaspar Avenue, Santa Fe, New Mexico.

CHAIRMAN CAMPOS: Mr. Coppler, you're here as an attorney, or on your own behalf?

MR. COPPLER: No, I'm not, I'm on my behalf and I want to flesh out the arguments that Mr. Ernest Montoya adopted by asking you to include my letter as part of the record on his behalf.

CHAIRMAN CAMPOS: Okay. It was somewhat difficult to follow at times what Mr. Montoya was saying. So if you could just make it very simple, if possible.

MR. COPPLER: Commissioner Campos, I'm going to make it as simple as possible, but being an attorney, I have a natural affliction to stating things in as few words as possible. But I'll try to do that tonight.

CHAIRMAN CAMPOS: It's already going to be nine o'clock.

MR. COPPLER: I think the issue here that Mr. Montoya is raising is posed by the court of appeals case involving Santa Fe County, and it's known as the Gould case. It involved litigation with respect to Santa Fe County's family transfer ordinance. And I know that your attorneys have probably discussed this case and talked to you about it on occasion. But I would like to point out what the court of appeals said in that case with regard to the family transfer provision of the Santa Fe County ordinance.

CHAIRMAN CAMPOS: What year was this decision rendered?

MR. COPPLER: This decision was rendered October 31<sup>st</sup>, 2001.

CHAIRMAN CAMPOS: 2001, is that right?

MR. COPPLER: Yes, sir.

CHAIRMAN CAMPOS: Okay.

MR. COPPLER: And what the court said is that a lot is created by family transfer if it is transferred by a father or mother to their children or grandchildren. The purposes of the family transfer provision are to maintain local cultural values to assure

family transfers are not being used to circumvent the zoning requirements, to set minimum environmental standards, etc. So that's the test you have in front of you. And what your ordinance does is basically incorporate that test, because your ordinance says that there is required proof that the land has been in the lawful possession of the family proper for no less than five years.

Now, let's discuss the evidence that Mr. Montoya gave you. The family proper that is talked about is a mother and a father under the court of appeals test. That's the family proper. And the lineal descendents are the children of the mother and the father. So what Mr. Montoya is saying to you with his well done acetate overlay here is that when the first family transfer of this property was approved and filed in March, I believe, of 2004 by the County, that created five lots. And so when you want to split any one of those five lots, any one or all, you need to look at the family proper as being the owner of each one of those lots. That is the family proper under your family transfer ordinance.

COMMISSIONER ANAYA: Pardon me, but is it six lots or five?

MR. COPPLER: Commissioner Anaya, it's five lots in the 27 acres that you're being asked to overturn approval tonight.

COMMISSIONER ANAYA: No, but I mean, when they first did this split here, this plat that I see has six lots.

MR. COPPLER: Yes. Before this plat it was 35 acres, which meant that in this plat before the split, Mr. Ernest Montoya's tract was part of it. It was the sixth lot. But tonight your applicants have gotten approval by the EZC of the family transfer of only the five lots that are outlined with the green magic marker.

So the point being that under the family transfer provisions in the Gould case, when you look at the family proper as set forth in your ordinance - let's take Marcella Romero, the owner of tract B of the five lots that were approved in March of 2004. Under your definition of a family as set up by the court of appeals, Marcella Romero and her spouse, if she still has a spouse or if she's single or widowed or whatever, could pass on under a family transfer a portion of this eight-acre lot to her lineal descendents, her sons or daughters. Now, that's what the family transfer provisions of the County Code say. And Mr. Ernest Montoya points out that over on tract B, Antonio Montoya's lot is only two acres. Well, that's not eligible for a family transfer because you can't go less than an acre and a quarter.

So these transfers, none of which involve transfers to lineal descendents except for four of them, which does not make this family transfer application legal, because this involves a re-subdivision and a re-combination of lots. And I'm going to get into that next. The point is that under the court of appeals case, this is not an eligible family transfer because it's not to lineal descendents.

The second point is the notices that Mr. Montoya handed out to you earlier that he took pictures of on the sign. If you read those notices, what those notices say to the neighbors in terms of legal notice, is those notices say that 27 acres is going to be divided into lots under the family transfer provision. That's what the public was told this process



was all about. What this process is, however, about as a legal matter is – and that notice doesn't say that – this process is about a re-combination of these five lots into one lot, which under your Code is a subdivision. A re-combination of lots is included in the definition of subdivision. And secondly, then, a division of this entire 27 acres after it's all recombined into one lot, it is a re-subdivision of this entire 27 acres into fourteen lots.

That's what that notice has to have told the public in order for that notice to stand up under New Mexico law requiring notice to the public under the Open Meetings Act of the content and the issues at the meeting. And that notice is totally defective. If you read that notice, it says there's a family transfer, and it says nothing about a re-combination of lots and a re-subdivision and a second re-subdivision of the 27 acres into fourteen lots. And that's defective under any concept of due process notice and opportunity to be heard, which the neighbors have.

And I might mention I am a neighbor. I own property that is shown on Mr. Montoya's well-done plat here, within 100 feet of the corner of these 27 acres, I own and my family owns ten acres. And I just want to mention real quickly in case it comes up later that you may have been informed during the period of time that we did a family transfer to divide our lots. And that is not correct. Our ten acres we purchased from the developer and we divided it pursuant to the subdivision ordinances of the County, and followed the subdivision ordinances, and followed all the requirements of the County, including open-space set asides. We did not take advantage of the family transfer ordinance.

Finally, let me mention one other thing. And it's too bad that the County Attorney's not here, because I totally agree as an attorney practicing land use law in New Mexico, having been a city attorney for the City of Santa Fe for several years, and having been a County attorney for two or three different counties over the years, I agree that it's not the Santa Fe County's responsibility to enforce private covenants. I agree with that. I've given my public entities the same advice. But let me follow through with you how these covenants fit into this case here.

What is being asked for her under the family transfer is a variance. A variance from your Code provisions. A variance – in order for a variance to be legal under New Mexico law, you must find hardship or special circumstances. Under New Mexico law, the hardship or special circumstances cannot be found to be personal to the ownership. The hardship or special circumstances must be found as related to the land itself. That's the standard. So the Montoya Family Trust must show to you that, to your satisfaction, that they are entitled to a family transfer because of hardship or special circumstances.

First point. if you go out to that land, no one lives on that land. There are no homes on that land. There is no situation that's contemplated by the family transfer ordinance of a mother and father who live on the land and who have children that they want to give a portion of their land to so they can build a house next door to their house. That is the underlying public policy behind the family transfer provisions of Santa Fe County. Those circumstances, those special circumstances, do not exist in this case. It is not going to be a hardship on any member of the Montoya family if this variance is denied,

because none of them live there and a denial of the variance is not going to prohibit a mother and father from giving to lineal descendants a place next to the family home to build their home. And that's the kind of hardship and special circumstances that are required in the law for you to find to grant a family transfer.

Now, let me just finish that point by saying, how do the covenants fit in? The covenants fit in because in 1990, the covenants were put on this land – and I just brought one copy because I know you fellas get some reading material, you get sick of it. But in 1990, those covenants were put on the land, and they were signed by the heirs. And the names on those covenants are the signatures of the heirs who are on the five lots in front of you today. Those covenants filed in 1990 provided that they could be amended by a signature of 80 percent of those land owners. And attached to those covenants is an amendment to those covenants, signed by 80 percent of the land owners. And the language in the covenant says: "No lot within the property, whether created by subdivision, family transfer, court order, or otherwise, and regardless of governmental approval having been granted for the creation of said lot, shall be smaller than two and a half acres."

Now, we are not here saying that you the County should enforce that covenant for us. We know that that's a private contract. What we are saying, however, is that where you're being asked to do equity, to do fairness to the family, because they're saying, "It's a hardship, we need a family transfer," they're asking you to do the right thing, to exercise your conscience and do the right thing for them because of this hardship. We're saying that where the covenants have been put on the land and they signed those covenants – they didn't sign the amendments, but they signed the covenants, and the covenant says 80 percent of the land owners can amend them. And they have been amended by 80 percent of the land owners, putting two and a half acre restrictions on there. Where they have signed the covenants, you should not, as the county Commission, exercise your discretion. You should not exercise your equitable power. You should not use the power of your conscience, if you will, to grant a variance, because there is no hardship, and because there is an agreement among all of these landowners to stick with the two and a half acre lot minimum.

Finally, why is the two and a half acre lot minimum so important? It's important because all of those properties are served by domestic wells. There are domestic wells up there that have come in as little as ten gallons per minute. And I know that for a fact, as a landowner. This family transfer is going to involve at least three, possibly four, more domestic wells in that area than would go in now. The situation is such that for example one or two of these new wells will be within 1,000 feet of my well, for example. They'll be probably closer than that to Mr. Montoya's well. The fact of the matter is the more wells we put out there in that aquifer, and it's 850 to well water right now, the closer we are going to get in that area to the situation we have down in Commissioner Sullivan's south part of the county, where those wells are going dry.

So for all of those reasons, I would ask that – and I have one other reason. That is your five-year prohibition, I want to mention that, is in your ordinance, and these folks

have not held this property for five years to be eligible for a family transfer. These lots, they came into possession of them in March 2004. And with that, I would ask that you overturn the decision of the Extraterritorial Zoning Commission or Authority approving this transfer. Thank you.

CHAIRMAN CAMPOS: Thank you, sir. Any question for Mr. Coppler. Okay, anyone else?

[Duly sworn, Phillip Saltz testified as follows:]

PHILLIP SALTZ: My name is Phillip Saltz, my address is 3173 Vista Sandia, Santa Fe. Members of the Commission, I am the president of the Santa Fe Northwest Advisory Council, an association of about 17 homeowners organizations in the northwest sector of the Santa Fe County. I am here today to support the appeal. And basically, I also am an attorney, and I'm going to be very brief. I'm going to adopt everything that Mr. Coppler said. So I will not repeat anything that he said, other than to say that we have a vested interest in seeing that the restrictive covenants that exist on this property are not violated.

Again, I understand that you do not enforce private restrictions. But enforcing them is different from aiding and abetting the violation of them. And I would like you to keep that in mind when you make your decision on this matter. The refusal to grant this requested variance upholding this appeal is going to be aiding the violation of these restrictive covenants, rather than just enforcing them. I would submit to you that it's our position that this appeal should be upheld. Thank you.

CHAIRMAN CAMPOS: Thank you, sir. Any questions? Okay. It's my impression that we've gotten a lot of information tonight. A lot of information was never presented to the staff or to the County Attorney. I think I would suggest we table this for thirty days until the next BCC land use meeting to have our attorneys and staff re-evaluate all these documents. Any commentary?

COMMISSIONER SULLIVAN: Mr. Chair, I would agree with that. I think that there is a significant issue over the holding periods and the lineage of the applicants after the re-platting, which I've been trying to follow here, but have not totally followed, and would like some legal guidance, which may be difficult to ask for at nine o'clock at night. So I would support that if the balance of the Commission wants to do that. If they want to discuss, we can hash it out.

CHAIRMAN CAMPOS: Before we file any motions, I'd like for the public record, Mr. Montoya introduced six photographs [Exhibit 7], introduced a document called "What Did the EZC Approve on 10 June '04?" for the record [Exhibit 8], and a plat with a transparent cover, that's the best I can describe it [Exhibit 9]. Those are the documents, and one more. Mr. Coppler introduced a document called, "A Declaration of Restriction Covenants and Conditions," beginning with page 672013 [Exhibit 10] That's for the record. I would suggest tabling. Sir?

MR. COPPLER: Was my letter put in the record as well that Mr. Ernest Montoya adopted?

CHAIRMAN CAMPOS: Why don't you identify it?

MR. COPPLER: It's dated June 25<sup>th</sup>, 2004, to Roman Abeyta. It's a four-page letter summarizing my presentation tonight. [Exhibit 6] And Mr. Ernest Montoya adopted it as a supplemental argument in his case.

CHAIRMAN CAMPOS: Okay, I'd ask that it be made part of the record, if you could give it to our court reporter. Okay, any discussion, gentlemen? I propose tabling for thirty days so that we have some time to look at this very carefully.

COMMISSIONER ANAYA: Mr. Chair?

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: What issues are you going to have the staff look at?

CHAIRMAN CAMPOS: Well, this whole thing's a mess. It's very convoluted.

COMMISSIONER ANAYA: The five-year period?

CHAIRMAN CAMPOS: Everything, from A to Z. I mean, I don't know what documentation was presented to the EZC, but it seems that we really have to look at this more carefully. Find out what the basic facts are, how this came to be, if the notice was adequate. There's a lot of issues out there. It's messy. I talked to Mr. Ross, and he feels it's a very complex case.

COMMISSIONER ANAYA: Are we going to let him speak? Mr. Romero?

CHAIRMAN CAMPOS: If you'd like. Sir?

PATRICK ROMERO: Mr. Chair, thank you for the opportunity to speak. My name is Patrick Romero.

CHAIRMAN CAMPOS: Address?

MR. ROMERO: 1938 Calle Micaela here in Santa Fe.

CHAIRMAN CAMPOS: Let her swear you in.

[Duly sworn, Patrick Romero testified as follows:]

MR. ROMERO: I can straighten out a lot of what –

CHAIRMAN CAMPOS: Well, that's not – we're talking about tabling this. It's late, there's a lot of information. Why shouldn't we? Is there any urgency – are you prejudiced about waiting for thirty days?

MR. ROMERO: Well, the thing is I've been working on this since 1999, 2000. And it just keeps getting delayed and delayed. And I'd like to just address a few things that they brought up that are issues.

CHAIRMAN CAMPOS: Do you want to hear those, Commissioners?

COMMISSIONER ANAYA: I'd like to.

CHAIRMAN CAMPOS: Okay. You've got about five minutes.

MR. ROMERO: Okay. First of all, as far as – I'm a direct descendent of Julio Montoya and Fabian Montoya. They were my great-grandfather and my grandfather.. They're no longer alive. That's why they cannot transfer the property to us. Now, my aunt Ursula, they're saying she did not have color of title. She did not have the actual title. She

had color of title.

CHAIRMAN CAMPOS: Hold on. Grandparents? His grandparents?

MR. ROMERO: My grandma and grandpa did.

CHAIRMAN CAMPOS: And they had children?

MR. ROMERO: Yes. My parents. My mom.

CHAIRMAN CAMPOS: So your grandparents passed titles to your parents?

MR. ROMERO: No, this is what happened. My great-grandfather Fabian, he had the property.

CHAIRMAN CAMPOS: He was married?

MR. ROMERO: Yes, and they passed away. It was true what Ernie said, my uncle Ernie, about how my aunt Ursula only had color of title. She did not have actual title.

CHAIRMAN CAMPOS: Slow down. You're confusing me.

MR. ROMERO: When my great-grandfather died, somehow my aunt Ursula ended up with it. But she did not have clear title. That's why she filed a motion of quiet title. She tried to get us to sign a quitclaim deed. And my mom would not sign it. And then she settled with us, and part of the settlement was she said, "Okay, well, I've give you this much land." So the land has been in my family since 1931.

And then this is a whole new issue brought up. I'm not an attorney, but my brother is. He said the exhaustion doctrine doesn't allow this kind of argument. Because it wasn't brought before by the lower administrative hearing. As far as the water's concerned, I do hydrology work, I know it's going to have very little effect.

I've been working with the staff on this for, like I said, five years, around there. And every step of the way they said, "You're fine, you're fine, you're fine." And I don't understand how there's an issue. Like I said, it's been my great-grandfather's property since 1931. If there any issues that you guys would want to table this, bring it up and I'd like to discuss it and just get it over with. That way I don't waste any more of your time.

CHAIRMAN CAMPOS: I didn't follow you, frankly. Okay, any questions?

COMMISSIONER ANAYA: Mr. Chair, I guess one of the issues is that the holding of the five-year period. That's one of the issues that I see. The other issue that I know that if you were to do a family transfer with, for example, tract B, lot two, eight acres, if you were to do the family transfer, you would get six lots out of there right now. Correct? Staff? You could get 21 lots out of this whole area.

MR. ROMERO: Yes, sir.

COMMISSIONER ANAYA: Now, the way you're proposing it is to get fourteen lots out of the 27 acres, correct?

MR. ROMERO: Yes, sir.

COMMISSIONER ANAYA: But Mr. Coppler brings up a good point, that you're crossing the line. You're giving, for example, Marcella Romero, who owns lot 2, is giving part of her property to Rosina Romero.

MR. ROMERO: Oh no no. That's not correct.

COMMISSIONER ANAYA: It shows it on the plat here.

MR. ROMERO: That's Mr. Montoya's thing. I haven't had a chance to look at it.

COMMISSIONER ANAYA: So those aren't true.

MR. ROMERO: No, they're not true. We're basically replatting it so we have the 27-acre plat we're dividing into 14 lots and we're going to take between the 14 lots all, that way it's fair. Because some of the lots are nicer areas than others and this is the only way we could work it out so that it would be fair for everybody.

COMMISSIONER ANAYA: You look at this and tell me that's not the way you're going to plat it out.

MR. ROMERO: This clear copy is how we're going to plat it out, instead of this. This is not going to exist anymore at all. Let's just forget about this. It's a replat.

COMMISSIONER ANAYA: Fold it over and see how that green line splits the property.

MR. ROMERO: It doesn't make any – Basically, we're doing away with this and we're replatting it completely. So this doesn't exist at all, period. We're all going to – it's like a resubdivision instead of cutting up new lines or anything.

COMMISSIONER ANAYA: But right now that does exist, correct?

MR. ROMERO: Right now, yes it does exist. But we're replatting what we did before. The only reason we've platted it this way is to make my Uncle Ernie happy. He wanted us to do it this way. We said, Okay, we'll do it this way and there's so many things that he brought up where we moved around title just to satisfy him and now he says he has a problem with it.

COMMISSIONER ANAYA: One more question. The property, if you divide this up, who are those properties going to?

MR. ROMERO: Well, I'm going to get one and I'm going to build my house out there. My brother Roman is going to get one. He's right here. My brother Lawrence is going to get one here. My cousin Eddy is going to get one here. My cousin Phil is going to get one here. My sister Charlotte is going to get one here. Right now, we're all paying mortgages.

COMMISSIONER ANAYA: Fourteen? Fourteen of you are going to live there?

MR. ROMERO: Yes, sir. The reason we did 14 lots instead of 21 or whatever was so that every single one of my brothers and sisters could get a lot and every single one of my cousins could get a lot.

COMMISSIONER ANAYA: And there's no intention of selling this property –

MR. ROMERO: Actually, my mom made an agreement with us that we cannot sell the property.

COMMISSIONER ANAYA: And is that stipulated in the contract or in this?

MR. ROMERO: No, she stipulated it to us, that we cannot sell, because this

was my great-grandfather's land.

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER SULLIVAN: Quick question for Mr. Ross. Are cousins in the family transfers in the direct line of descendents?

MR. ROSS: Mr. Chair, Commissioner Sullivan, it depends on how you look at it. That's kind of the problem. We've heard two different views of how to look at it. A cousin would be within the group of persons who are defined in the Sub Regs as persons in the family proper but the argument here by the opponents is that these are improper transfers because they're not transfers by a father or mother to children or grandchildren.

COMMISSIONER SULLIVAN: So at least one scenario is that each one of these five green outlined lots should be transferred to a son or daughter or a grandchild or grandson.

MR. ROSS: That's an argument. Yes.

MR. ARCHULETA: Mr. Chair, may I make a clarification?

CHAIRMAN CAMPOS: Sure. I have a list here of how they're going to transfer the lots.

COMMISSIONER SULLIVAN: That's in the packet.

MR. ARCHULETA: It's in the packet. It's on page 2 of our packet. And they're all sons and daughters of the Montoya family heirs. So they are cousins within cousins -

COMMISSIONER SULLIVAN: Yes, but the question is, is each one a son or a daughter of the person who is transferring that particular lot, i.e., one of those five lots. That's one question.

MR. ARCHULETA: Mr. Chair, Commissioner Sullivan, they'll have to do certificates of small lot family transfers, affidavits, basically, stating that these are children of the actual heirs of the property.

COMMISSIONER SULLIVAN: The green plat was recorded in 2004, was it?

MR. ARCHULETA: Yes.

COMMISSIONER SULLIVAN: So what's the staff's response to the issue of the requirement for holding for five years of each of these lots, once the subdivision has occurred?

MR. ARCHULETA: Mr. Chair, Commissioner Sullivan, we were under the impression that the grandparents were - well, thought that the grandmother was Ursula Hayter. She is the aunt, but basically she was the one that was entrusted to do the subdivision, I guess. So when they came forward with the six-lot subdivision, we brought it forward as a family transfer also. So Mr. Montoya was one of the heirs so he got one lot. Marcella Romero got one lot. Victoria Romero got a lot. Antonio Montoya, Gilbert Montoya and Rosina Romero, all children of - they were all heirs to the Montoya Family

Trust.

COMMISSIONER SULLIVAN: I understand but -

MR. ARCHULETA: So they each got one lot.

COMMISSIONER SULLIVAN: So all of these six lots - correction: five lots, were created by family transfer in 2004. Then would not each owner, Marcella Romero, Gilbert Montoya, etc. be required to hold that lot for five years before they again transfer it into a family transfer?

MR. ARCHULETA: Mr. Chair, Commissioner Sullivan, we were under the impression that this has been held by the family since 1931, meaning that they've already complied with the five-year holding period.

COMMISSIONER SULLIVAN: I understand the 27 acres.

MR. ARCHULETA: Well, there were 35 to begin with.

COMMISSIONER SULLIVAN: Thirty-five acres was somehow in family ownership, but then once they took that family ownership and said, okay, now I want to do a family transfer and make it into six lots. And that was approved. Doesn't that start the clock running on the holding period of five years before another family transfer can occur? Otherwise, it is in fact a serial subdivision.

MR. ARCHULETA: Mr. Chair, Commissioner Sullivan, under the testimony that we've heard tonight, I believe that would be true. But under the testimony we had received and the information we had received, we were under the impression that they were a part of the family proper, meaning Ursula Montoya Hayter being the grandmother. And the grandmother transferring to the children, meaning the Montoya heirs. And then it would still be under the - it would still be within the family proper, transferring to the grandchildren.

COMMISSIONER SULLIVAN: But if I'm - and I understand that there's more information that's come forward this evening that you perhaps didn't have at the EZC, but just to finish the question here and not belabor the point, if I'm Antonio Montoya and I own tract B at 2.0 acres right now, does this plat filed, approved and recorded, I can go sell this lot, can't I? I own it myself.

MR. ARCHULETA: Mr. Chair, that's correct.

COMMISSIONER SULLIVAN: This is a fee-simple, clear title, I can sell the lot. So it's not encumbered by any family trusts or - I don't have to get anyone else's approval to sell this lot, do I?

MR. ARCHULETA: Mr. Chair, Commissioner Sullivan, that's correct.

COMMISSIONER SULLIVAN: Okay. So it's a stand-alone lot. I've got a lot. Now, the issue is what can I do with it? The appellant says because it's two acres I can't family transfer it because the minimum family transfer size is 1.25 acres and I couldn't chop that one up. But if I'm Gilbert P. Montoya and I own four acres adjacent to that, I could cut that up. I could cut that one into three lots.

MR. ARCHULETA: Mr. Chair, Commissioner Sullivan, that's correct.

COMMISSIONER SULLIVAN: That would give me 3.75 acres. So it does



seem, and I think we do need a little more legal review of this. It does seem that what we're doing is intermixing or intermingling these now and adjusting boundaries around to create these 14 lots.

MR. ARCHULETA: Mr. Chair, Commissioner Sullivan, they can do a replat of this property and create the 14 lots. Basically, under the trust I believe that that's the only way I could see it.

COMMISSIONER SULLIVAN: Okay, but we're not hearing a replat tonight, are we?

MR. ARCHULETA: With this 14 lots we are. That's what their intent was with the 14 lots, was to replat the five lots and create 14 lots.

COMMISSIONER SULLIVAN: Okay. So that's the way it was noticed. Is that the way it was noticed, as a replat?

MR. ARCHULETA: Mr. Chair, Commissioner Sullivan, no. We didn't really have to renote it, because of the way we were bringing it forward as a family transfer. This was before we got all this information tonight. So if we would have had all this information before, we would have done it differently.

COMMISSIONER SULLIVAN: So you feel that they eventually could still do this, presuming all the owners agreed, all five of them, they could do a replat. All the owners would of course have to agree.

MR. ARCHULETA: Mr. Chair, Commissioner Sullivan, that's correct.

COMMISSIONER SULLIVAN: And they would get together and do a replat of that 27 acres.

MR. ARCHULETA: Mr. Chair, Commissioner Sullivan, they could also do lot line adjustments to create sizable lots to be able to accommodate the 1.25 or the approximate two-acre lots. They could do lot line adjustments to create the -

COMMISSIONER SULLIVAN: But it doesn't seem like we can do both. It seems like we do a replat, then we have a new owner. It seems like that owner has to own the property for five years. Or we could continually do these replats ad infinitum until we got down to the smallest lot size possible, which is in fact a serial subdivision. It seems like once you do a replat then you, as I said before, you've restarted the clock.

MR. ARCHULETA: Mr. Chair, family transfers aren't considered subdivisions. They're exempt from the subdivision regulations. So in that sense, they could create as many lots as they could. With the 27 acres they could create 21 lots doing a family transfer at an acre and a quarter minimum.

COMMISSIONER SULLIVAN: And had they done that -

MR. ARCHULETA: No.

COMMISSIONER SULLIVAN: Had they done that before, that might have been something different, but what we're dealing with now is five lots.

MR. ARCHULETA: Right.

COMMISSIONER SULLIVAN: That's been approved and recorded.

MR. ARCHULETA: Yes, sir.

COMMISSIONER SULLIVAN: It just seems to me that we're dealing with five individual lot owners and they can't replot again under a family transfer for five years.

MR. ARCHULETA: That's correct.

COMMISSIONER SULLIVAN: That's what I'd like to –

MR. ARCHULETA: That's the impression I'm getting from the conversation.

COMMISSIONER SULLIVAN: And I understand you're not an attorney and I don't want to ask you for legal opinions but I do feel that I'd like to get a little more research on this from the staff.

MR. ABEYTA: Mr. Chair, for family transfer, the clear requirement that you have to provide proof that the land has been in the lawful possession of the family proper for no less than five years. Family proper is defined as, the definition states for the purpose of family transfers, family proper means lineal relationship up to and including the third degree, i.e., grandparent, parent, child. So in this case, staff – and staff has always interpreted it this way is that if you have property that was in your father's name for two years, but it's been in your grandparent's name for three more years then it's been in the family proper for five years. Therefore it can be transferred down to you. Because again, family proper is defined as lineal relationships up unto including the third degree. So that's how we've always interpreted it.

In other words, we've never interpreted it that once land is transferred to a parent that that parent has to own it for five years. If it's been in the family proper for five years or longer then the parent could do the family transfer to a child. But again, that's just the way we've been interpreting it. That's not to say that there isn't another way to interpret it, which means that it needs to be in the actual parent doing the transfer for five years. Because again, it says family proper, not parent or grandparent's name. It just says in the family proper.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: So, Roman, you feel that what is presented before us today, that you think that it's been in the family proper and we could act on this or how do you feel about this particular case?

MR. ABEYTA: Mr. Chair, that was our original understanding was that, it was always my understanding and Vicente could correct me if he understood something different, but I always thought the family was originally in the grandparent's name. Then it went to children, and now children are wanting to give to their children, which ultimately are the original owners' grandchildren. Therefore it's always, as far as we're concerned, it's always been in the family proper. It's been in the family proper for more than five years. So we felt it could be done.

COMMISSIONER ANAYA: Okay. Thank you. This is a very difficult case, first of all, because you've got family members out there that are arguing. It is difficult for us. I've always been a supporter of family transfers and handing down

property because I got property handed down to me from my grandparents, great-grandparents, grandparents, parents, and now me, and now, I'll give some property to my kids. This is a difficult issue, like I said, just for those reasons. You could take this 27 acres and turn it into 21 acres. Do we want 21 wells out there? Do we want 21 septic systems out there? I don't think so.

I think staff, you guys have worked on this a long time. I think the Romeros have worked on it a long time. I think that you've come up with a good design and after the testimony - I wasn't really sure after listening to this for a while. I didn't think this was going in the right direction. But now that I'm starting to - Commissioner Sullivan brought up some good points. I think that right now, especially if you people out there that are going to use this property for your kids and not sell it. I'll make a motion to approve this. I don't know what will happen. But if you're going to keep it in the family, I think this is a good thing whether you cross the boundaries or not. The family feud, I'm sorry. I just - it happens to so many people and it's too bad. It really is too bad. But Mr. Chair, I'm going to make a motion to stick with the EZC's decision to approve this, from the testimony that I've heard this evening.

CHAIRMAN CAMPOS: Fourteen lots on 27 acres. Okay, there's a motion. Is there a second? Okay, there's no second. Is there another motion?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER MONTOYA: If anything, what I've heard tonight in terms of the testimony has just confounded where I'm coming from in terms of the information that I've been given. I would support getting the information clarified, seeing where we need to go with this whole thing and hearing it again at another time. So I would make a motion to table.

CHAIRMAN CAMPOS: To the next land use -

COMMISSIONER MONTOYA: To the next land use meeting.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER SULLIVAN: Second.

**The motion to table EZ Case #A 04-4271 passed by majority 3-1 voice vote with Commissioner Anaya voting against.**

**ADJOURNMENT**

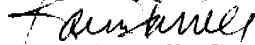
Chairman Campos declared this meeting adjourned at approximately 9:30 p.m.

Approved by:



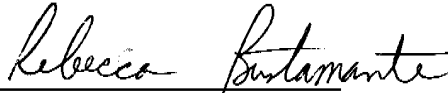
\_\_\_\_\_  
Board of County Commissioners  
Paul Campos, Chairman

Respectfully submitted:



Karen Farrell, Commission Reporter

ATTEST TO:



\_\_\_\_\_  
REBECCA BUSTAMANTE  
SANTA FE COUNTY CLERK



SFC CLERK RECORDED 11/03/2004

Santa Fe County  
 Adult Jail Operations - Contractor Operated Scenario  
 FY 05 Budget and FY 06 Cost Projection

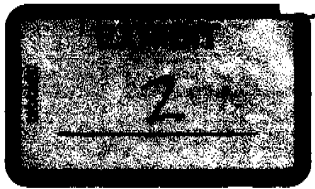
	Santa Fe County							
	MTC	Projected Scenario		Offer #3		Estimated		
	Original Offer (\$51.92/Day)	Counter Offer (\$46.85/Day)	Under Current Contract No Increased Staffing (\$41/Day)	(Interim Budget) (\$37.35/Day)	Semifinal Offer (\$41/Day)	Final Offer FY 05 Budget (\$42/Day)	FY 06 Cost Projection (\$42/Day)	For Comparison FY 04 Budget (\$41/Day)
Revenue	\$ (3,290,030)	\$ (3,290,030)	\$ (3,290,030)	\$ (829,194)	\$ (829,194)	\$ (829,194)	\$ -	\$ (5,320,280)
Care of Prisoners (Population of 149)	2,823,669	2,547,937	2,300,486	3,078,634	3,078,634	3,078,634	3,301,822	3,249,267
Care of Prisoners (Population of 396)	7,504,517	6,771,699	5,926,140	5,530,100	5,926,140	6,034,644	6,395,910	5,428,919
Subtotal Care of Prisoner (\$ to MTC)		9,319,636	8,226,626	8,608,735	9,004,774	9,113,278		8,678,186
Debt Service	1,933,146	1,933,146	1,933,146	1,933,146	1,933,146	1,933,146	1,933,146	1,934,246
Other Operational Costs	231,673	231,673	231,673	357,173	357,173	357,173	357,173	707,848
<b>Required Funding Transfer *</b>	9,202,975	8,194,425	7,101,415	6,991,225	7,387,265	7,495,769	8,686,229	6,000,000
Compared to FY 04 Gen Fund Transfer	(6,000,000)	(6,000,000)	(6,000,000)	(6,000,000)	(6,000,000)	(6,000,000)	(6,000,000)	(6,000,000)
<b>Required Gen Fund Trans Increase</b>		<b>2,194,425</b>	<b>1,101,415</b>	<b>991,225</b>	<b>1,387,265</b>	<b>1,495,769</b>		-

Issues:

- 1) Federal prisoners not anticipated for additional 18-24 months until medical area can be rectified; revenue loss impact \$2.25M over 3 years
- 2) Security staffing levels increased.
- 3) Medical staffing requirements increased and specified.
- 4) Santa Fe County Offer includes revenue sharing from outside jurisdictions beginning 10/01/04.
- 5) Santa Fe County inmate population estimated at 5% growth increase for FY 06, population of 416.

\* NOTE: Required funding transfer is sourced primarily from general fund, secondarily from the Corrections Fee Fund, investment income and other miscellaneous revenue.





August 8, 2004

To the County Commissioner

I have no objections for my sister's land to be residential/commercial in which my father bought the land in 1967. If you have any questions about this matter, please call me at 473-1482.

Thank you very much.

Sincerely,

*Louise Jiron-Lopez*

Louise Jiron-Lopez  
23 Emily Rd.  
Santa Fe, NM 87508

z

*Karen Renner*

*8-9-04*



OFFICIAL SEAL  
KAREN RENNER  
NOTARY PUBLIC  
STATE OF NEW MEXICO

My Commission Expires:

*03-03-2007* *KR*



OFFICIAL SEAL  
KAREN RENNER  
NOTARY PUBLIC  
STATE OF NEW MEXICO

My Commission Expires:

*03-03-2007* *KR*

SFC CLERK RECORDED 11/03/2004

August 4, 2004

To the County Commissioners of Santa Fe:

My sister, Mary Frances Romero and her husband, Julian Romero have informed us that they are exercising their rights as property owners of Lot 3 of the Carlson Subdivision adjacent to the Highway 285 East Frontage Road and requesting that their property be reclassified to its original classification (commercial/residential).

We, Yolanda Jiron Ferrez and David C. Ferrez, are the property owners of Lot 4 of the Carlson Subdivision adjacent to Lot 3 and Lot 5. These three lots when purchased were documented and recorded in the book of registry on the 29<sup>th</sup> of November 1967. Book 253, pgs.457,458,459; signed by Pita T. Gonzales, County Clerk and Robert J. Duran, Deputy. Lots 3, 4, and 5 were purchased by the family. The lots were purchased because the covenant stated that all three lots were commercial and residential usage. This was highly appealing and consequently purchased at commercial property prices.

We understand that the rezoning of properties was implemented in the year 1981. We have been continuous residents of San Diego, California and were never notified regarding this action prior to or after 1981. We feel, strongly, that the responsibility and failure on the counties part to inform and notify us, as property owners, of such action is negligent, deplorable and an illegal injustice and invades our rights as property owners. We were never notified or allowed to give our input. We would have never known about the rezoning implementation, if it had not been for Mary Frances Romero informing us and bringing to our attention of such action.

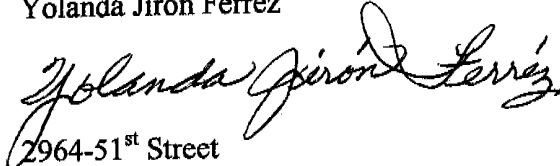
We were under the impression that once documents were legally documented, recorded and notarized they were to stand and be upheld. What is the point of documents being recorded and notarized if they're not being abided by. We resent the manner in which this rezoning action was handled without our knowledge. Therefore, we Yolanda Jiron Ferrez and David C. Ferrez do not oppose to any action taken by Mary Frances Romero and Julian Romero to do what is legally and morally necessary to rectify this injustice. We, Yolanda Jiron Ferrez and David C. Ferrez would also like to exercise our legal rights and request that our property Lot 4 of the Carlson Subdivision, located and described on paragraph one and two of this letter, be reclassified to its original classification that being (commercial/residential).

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We would greatly appreciate hearing from you as soon as possible regarding this matter.

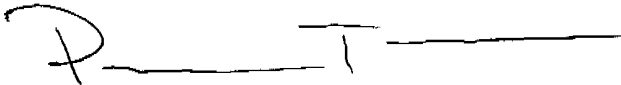
Sincerely,

Yolanda Jiron Ferrez



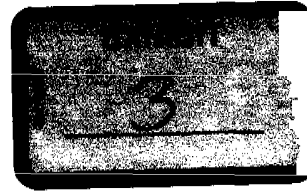
2964-51<sup>st</sup> Street  
San Diego, Ca.  
(619) 262-2192



  
8/5/04

SFC CLERK RECORDED 11/03/2004





**Subject:** [Fwd: Please forward to 285 Corrodoir Committee]

**Date:** Tue, 10 Aug 2004 10:23:08 -0600

**From:** Judy McGowan <jmcgowan@co.santa-fe.nm.us>

**To:** Frances Sid Lumbers <blakan@earthlink.net>, Linda Strong <llstrongart@aol.com>, Fred Raznick <FSRAZNICK@aol.com>, Fremont Ellis <eb.fa@att.net>, Jean Crawford <jean@mirageframes.com>, Joe Miller <JM3241@aol.com>, Pat Coughlin <PJCOUGHLIN@aol.com>, Pat Lavengood <plavengood@earthlink.net>, Pat Kuhlhoff <PGLK@earthlink.net>, Pam Henline <phenline@mindspring.com>, Mary Anne Stickler <prepmom3@aol.com>, Rose Marie Bagioni <simply\_rosie@earthlink.net>, Robert Thompson <rthompson2002@comcast.net>, Stacy Crossingham <stacycrossingham@aol.com>, John Reeder <Zaluki@aol.com>, Kathy Pilnock <WK-Pilnock-2@worldnet.att.net>, Kathy Walker <stephenwalker4@prodigy.net>, Jack Kolkmeier <jkolkmeier@co.santa-fe.nm.us>, Sarah Ijadi <sijadi@co.santa-fe.nm.us>, Roman Abeyta <rabeyta@co.santa-fe.nm.us>, Teresa Seamster <tercseamster@qwest.net>

**CC:** Wayne Dalton <wdalton@co.santa-fe.nm.us>, Jack Kolkmeier <jkolkmeier@co.santa-fe.nm.us>

---

**Subject:** Please forward to 285 Corrodoir Committee

**Date:** Mon, 9 Aug 2004 21:16:54 EDT

**From:** Zaluki@aol.com

**To:** jmcgowan@co.santa-fe.nm.us

Greetings,

I am asking Judy to forward this email as a reminder that Tuesday, August 10th The Agora Expansion project is on the BCC agenda. This project is entirely within the 285 South Highway Corridor Plan space.

I'm attending to ask the BCC to add the following requirements to the approval process. These items were not addressed or recommended by the CDRC.

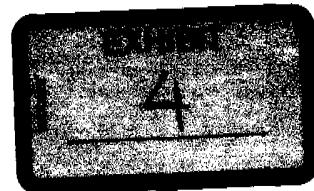
1. The standards of the APPROVED 285 South Highway Corridor Plan be recognized and implemented.
2. The Declaration of Covenants for the 285 - Vista Grande Commercial Node be recognized and implemented.
3. Justification for the extensive additional parking spaces be justified.
4. Screening between the project and neighbors be complete and at the expense of the project.

I think it is important for the 285 committee to attend, thus letting the BCC know we are still involved and concerned.

Sincerely,

John Reeder

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**Subject:** Fw: From Dos Griegos

**Date:** Tue, 10 Aug 2004 08:53:09 -0600

**From:** "Aurora Properties, Inc." <aurora@newmexico.com>

**To:** "Wayne Dalton" <wdalton@co.santa-fe.nm.us>

**CC:** "Roman Abeyta" <rabeyta@co.santa-fe.nm.us>,  
"Joe Catanach" <jcatanach@co.santa-fe.nm.us>

Wayne, FYI.

Please see copy of Dos Griegos' email to Commissioners below. We (Dos Griegos and Agora) are working out solutions to this issue among ourselves based on my letter of July 16th. This should not be a subject of discussion at tonight's case review by the BCC.

GB

----- Original Message -----

**From:** [KENTWJONES@aol.com](mailto:KENTWJONES@aol.com)

**To:** [pcampos@co.santa-fe.nm.us](mailto:pcampos@co.santa-fe.nm.us)

**Cc:** [hmontoya@co.santa-fe.nm.us](mailto:hmontoya@co.santa-fe.nm.us) ; [pduran@co.santa-fe.nm.us](mailto:pduran@co.santa-fe.nm.us) ; [manaya@co.santa-fe.nm.us](mailto:manaya@co.santa-fe.nm.us) ;

[jsullivan@co.santa-fe.nm.us](mailto:jsullivan@co.santa-fe.nm.us) ; [aurora@newmexico.com](mailto:aurora@newmexico.com)

**Sent:** Monday, August 09, 2004 8:46 PM

**Subject:** From Dos Griegos

Dear Commissioner Campos:

I am writing as President of the Dos Griegos Homeowners Association regarding Gary Boyle's proposed expansion of the Agora Center.

Several homeowners have asked that Mr. Boyle install a fence or wall between the Agora Center and their adjacent properties to minimize the blowing of trash from the Center onto their properties. Mr. Boyle has proposed a solution that is under consideration by the Association and the homeowners. Based on my conversations with the homeowners, Association Directors and Mr. Boyle, it is my opinion that we will be able to reach an agreement shortly with Mr. Boyle.

Please call me at 466-1994 with any questions. Thank you.

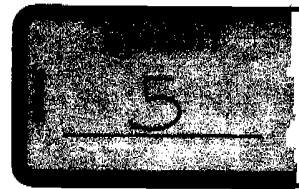
Kent Jones, President  
Dos Griegos Homeowners Association

c: Commissioners Anaya, Duran, Montoya and Sullivan  
Gary Boyle

SFC CLERK RECORDED 11/03/2004

**Ernest Montoya**

2500 Alamosa Dr. Santa Fe, NM 87505



August 1, 2004

Board of County Commissioners  
Santa Fe County  
P.O. Box 276  
Santa Fe, NM 87504-0276

*COMMISSIONER MIKE ANDRYS*

RE: APPEAL OF EZ CASE DL#04-4270, MONTOYA FAMILY TRUST-FAMILY TRANSFER.

Dear Commissioners,

On Thursday June 10<sup>th</sup>, 2004 the Extraterritorial Zoning Commission, in spite of my objections approved the proposed subdivision of 5 lots containing 27 acres into 14 lots. The purpose of this letter is to provide you with the history of the land and supporting documents to support my appeal.

My appeal is based on the language contained in para 1.5G, Section 1 General Provisions of the EZA Ordinance 1997-4 which states "Applications which are approved on the basis of submittals containing false information or data may be subject to revocation and penalties imposed under Section 1.5".

My Allegations are that Mr. Patrick Romero PE as agent for the Montoya Trust, obtained approval of a 14 Lot Family Transfer Subdivision by deceit and misrepresentation of facts.

I am enclosing for your review a six (6) part folder, which is arranged chronologically in descending date order of documents in my possession, which will support my allegations.

**Section 4 Tab 4.**

In Para 2, Mr. Patrick Romero PE is attesting that the property has been in the "Family Proper" since 1931. Section 5 Tab 1, Minutes of EZC Last Paragraph of Page 5, and continued on Page 6. Mr. Catanach (Land Use Staff) states, "He said the applicant attests the property has been in the family since 1931, and the county looks at the long range rather than whether the subsequent generation have had title".

**Page 2-6, SFE Ord. 1997-4 Definitions**

"Family Proper" for the purpose of Family Transfer "Family Proper" means Lineal relations up to and including the third degree i.e. Grandparent, Parent, Child.

**Section 4 Tab 6.**

By warranty deed on the 21<sup>st</sup> May 1960, the 27 acres, which were part of the original 156 acres, passed to Sidney And Ursula Hayter, in joint tenancy. It remained in their possession until 21 February 1990. See quick claim deed Section 1, Tab 1. This period does not fit the definition of "Family Proper" as claimed by Mr. Romero PE. This property or any portion of it never passed to our father Julio Montoya in probate. (Fabian Montoya probate 2564) which I can provide upon request.

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**Section 4, Tab 5.**

Undated title opinion Office of the state Engineers. Paragraph 2, Ursula Montoya Hayter\*\*\* "Paid only for a fraction of the property and never obtained title"

**Section 4, Tab 6.**

Warranty Deed, Evidence of adequate consideration in the form of affixed revenue stamps on the deed.

**Section 4, Tab 5.**

Last sentence "After these things occurred Ernest filed a partition suit against his siblings"

**Section 1, Tab 4.**

Quick claim Deeds Antonio to Victoria 9 December 1998. Subsequent to the complaint for the partition, but prior to Arbitration on 25 September 2000.

**Section 1, Tab 7**

Warranty Deed. Gilbert to Pat and Rosina Romero, Joint Tennant 28 September 2000 Subsequent to Complaint for partition, arbitration and Order of Dismissal 1<sup>st</sup> Judicial Court (Section 1 Tab 6) and prior to Patrick Romero's development request of 8 July 2002 (Section 2 Tab 2). These 3 deeds appear to violate Section 3.1.10 of the ESR. See Extract of ESR Tab 4a section1.

**Section 3, Tab 9.**

On 24 February 2004, the Family Transfer Plat, dated 14 January 2003 was approved, and recorded on 11 March 2004. There were numerous delays, encountered between the Plat preparation on 14 January 2003, and its approval on 24 February 2004. First, Mr. Vicente Archuleta, land use staff informed us that the roads had to be constructed or bonded before we could obtain plat approval. A condition that was not part of the conditions of approved by the EZC. (Section 2, Tab 7)

Secondly, The Approval Conditions were imposing .25 acre-feet per lot, and conflicted with the allowable amounts established by the development code @ .1 of an acre-foot of water per acre-foot of land.

Thirdly, Gilbert, the owner of lot 4, had his spouse notarize his signature on the Water Covenants as well as the Plat.

Fourthly, The deeds of transfer required by Para 6, (Page 3 of 6) of the Settlement Agreement (Section, / Tab 5) were not prepared by the grantees of lots 2 thru 6.

The deeds of transfer executed on 10 March 2004, still do not meet the requirements of the settlement agreement. The spouses of the Grantees of Lots 2 thru 6 did not sign as required. The deeds show 5, and sometimes 6 notary seals for 4 signatures. The failures of Patrick Romero, Rosina's husband to execute the required deed, leaves lot 4 awarded to Gilbert in Joint Tenancy, negating its eligibility for Family Transfer. (Section 3 Tabs 3 thru 7).

**Section 2, Tab 8.**

On 20 October 2003, Mr. Patrick Romero PE, After having been Red Tagged by County Land Use for grubbing a road easement without a road cut permit, obtained a road cut permit (#03-1413), which was approved as an Administrative action of the Land Use Administrator. The road accessed 6 separate properties as deeds for lots 1 thru 6 had been executed by Ernest and Anita Montoya, as well as my siblings and their spouses, on 14 February 2003 (Section 3 Tab 1 and 2) Roads accessing more than1

property require Public Notice and Posting. The road was cut to a length of 1421.48 ft. to a Cul de Sac. Approximately 424.18 feet beyond the approval conditions of the EZC (Section 2 Tab 6 and 336.7 ft. outside of any platted or granted easement. I find no evidence that a variance was either applied for or granted to permit this construction, to any length beyond the EZC approval of 1000 feet. It appears that the county Land Use Administrator in his administrative decision to approve the Road Cut Permit usurped the authority of the EZC.

#### Section 4 Tab 1

On 1 June 2004, I received by certified mail the enclosed notification, which states "Patrick Romero, Agent, Montoya Family Trust, Applicant. Requesting approval to divide 5 lots containing 27 acres into 14 lots".

For the record, I restate my objections as stated in my letter to Mr. Roman Abeyta on 5 June 2004 (Section 4 Tab 9). The letter of 14 June 2004 (Section 5 Tab 2), with one exception, where I state in Para 3 of page 2, "On 3 March 2004, by quick claim deed, Rosina Montoya Romero transferred these shares (4 acres) back to Gilbert Montoya". Since Mr. Patrick Romero did not sign (execute) this deed (Section 3 Tab 5), the deed passed 50% of lot 4 to Gilbert, with Pat Romero maintaining 50% ownership with Gilbert in Joint Tenancy. Therefore, this lot cannot be considered eligible for the proposed Family Transfer.

No Public notice was ever given that the property was going to be combined (consolidation), lot lines ignored and the entire property would then be resubdivided as if it were one piece of property owned by a single owner. That the owners would later with out supervision by the county determine the grantees of these created lots irrespective of their relationship to the grantors. I am appalled that the land use staff would accept and take action on a preliminary plat submitted without execution of the dedication and affidavit that the division is made with the wishes and desires of said owners.

The certified notice received as well as the improper posting on the neighbors property allude to the fact that Mr. Patrick Romero, PE is requesting vacation of the previous plat of survey, containing 5 lots and requesting to re-subdivide the 27 acres into 14 lots for the purpose of a Family Transfer based on a Family Partnership which he has not been required to provide evidence of its existence.

The published agenda for the EZC meeting of 10 June 2004 (Section Tab 3) is totally different. It is requesting to divide (subdivide) 27 acres into 14 lots for the purpose of a Family Transfer. The newspaper publication (Section 4 Tab 2) also states the same thing "divide 27 acres into 14 lots for the purpose of a Family Transfer".

The minutes for the EZC meeting of 10 June 2004 (Section 5 Tab 1) quotes Mr. Vicente Archuleta in his staff report to the commission "Approval to divide (Subdivide) 27 acres into 14 lots. This appears to be deceptive and collusive. The applicants as well as county staff are choosing to ignore that a family transfer was accomplished on 10 March 2004 by recordation of Survey Plat at book 554 pages 30-31 (Section 3 Tab 9) that the title to Lots 4 and 5 are clouded at best. That no evidence has been established that would qualify the unidentified grantees to these 14 lots are in fact eligible.

Additionally, I take issue to the conditions of approval as recommended by Land Use Staff and approved by the EZC on 10 June 2004 (Section 5 Tab 1) as follows:

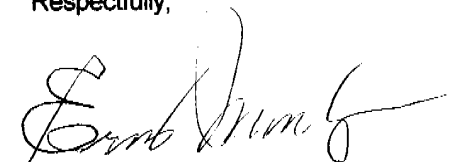
1. The statement that this is a division of land is incorrect. The division of land constitutes 4 parcels or less, greater than 5 acres in size. This is a family transfer subdivision. Family Transfer subdivisions are required to meet all applicable plan and plat submittals and review of EZR. They should be presented to the EZC under Summary Review Procedures.
2. Condition 2, establishes a requirement for a 50 foot easement not to exceed 1000 ft. is incorrect. EZC **MAY** allow 1000 ft. Cull de Sac roads for Larger Lots (10 acres or more). Otherwise, 500 ft. for 50 foot easements and 250 for 38-foot easements.

3. Condition 3, requiring restrictive water covenants of .25 acre ft. per tract, I believe is incorrect. Ordinance No 2003-1 amended section 10.1 A 2, and a community water system is required.
4. Condition 9, Submitting Family Transfer Affidavits simultaneously with Plat of Survey. This is incorrect. (Section 5 Tab 4) Para 6a section 5, EZO 1997-4 "Family Transfer Subdivisions shall meet all applicable requirements for Plan and Plat submittal and review of the EZR" Section 3.3.6 D 1 b (1) of the EZR. "The person transferring the lot shall file as affidavit with the county Clerk containing the following which will be a condition of approval for a Development Permit (Added emphasis) "Development Permit". This case should not have been referred to the EZC without meeting these conditions. In short, No Affidavit, NO DEVELOPMENT PERMIT.

In addition to my request for revocation of approval requested in my appeal, I hereby recommend the following additional actions be required of the applicants by the Board.

1. That the applicant be required to divulge the source of his authority to "veto" the recorded lot size covenants to which he testified to under Oath before the ECZ on 10 June 2004. (Page 6 Line 9) EZC Minutes (Section 5 Tab 1) "Mr. Romero\*\*\*\*\* the covenants and restrictions are not legal. He said he controls veto power there"
2. That the applicant be required by the Board to obtain a court ruling that the covenants do not apply to their properties prior to any approval by the Board.
3. That the deeds executed by Antonio Montoya, Book 1576 pages 538-539, Book 1567 pages 540-541, and the deed executed by Gilbert Montoya, Book 1811 page 124, be legally reviewed to determine if a violation of Section 3.1.10 has occurred.
4. That the applicants be required to show compliance with Para 6 (Page 3 of 6) of the arbitration award, requiring the spouses to execute the Quick claim deeds.
5. That the applicants be required to show proof that a "Montoya Trust" exists, and that they all have standing to it.
6. That any findings of Deceit and Misrepresentation of facts by Mr. Patrick Romero, PE, be brought to the attention of the New Mexico Board of Licensure for Professional Engineers as provided for in Section 61-23-24 of the Engineering and Surveyors Practice Act NMSA 1978.
7. That Mr. Pat Romero, and Mr. Issac Romero be required to provide proof as to the source of the inheritance which they claimed under oath, before the EZC on 8 August 2002 (Section 2 Tab 6 Page 4).

Respectfully,

  
Ernest Montoya

**COPPLER & MANNICK, P.C.**  
A PROFESSIONAL CORPORATION



FRANK R. COPPLER  
PAUL D. MANNICK  
GERALD A. COPPLER\*  
NANCY E. NICKERSON‡  
JOHN L. APPEL

ATTORNEYS AND COUNSELORS AT LAW  
645 DON GASPAR AVENUE  
SANTA FE, NEW MEXICO 87505

TELEPHONE  
(505) 988-5656

TELECOPIER  
(505) 988-5704

June 25, 2004

\* also licensed in Texas  
‡ also licensed in California

**Hand Delivered**

Ramon Abeyta  
County Land Use Administrator  
Post Office Box 276  
Santa Fe, New Mexico 87504-0276

Re: Appeal of EZ Case DL#04-4270 Montoya Family Trust Transfer

Dear Mr. Abeyta:

I was informed in conversation with a receptionist at the land use office about this. I went to the Land Use office the day after the June 10, 2004 decision to allow the family transfer. I did so per the suggestion of land use staff at the EZC meeting. I inquired with regard to the time in which to file and the form of an appeal. After three or four relays back and forth to the administrators' offices, she informed me that the deadline for appeal of the decision of the Extraterritorial Zoning Commission (EZC) on the above captioned matter is 15 days from the date of the decision.

The decision was announced in the form of a vote approving the Montoya Family transfer on June 10, 2004 at approximately 7:00 pm. I was also informed at the time of our inquiry at the Land Use office that the form of the appeal should be a letter to you signed by the Appellants setting out our arguments as to why the approval of EZC should be reversed. Present, during these conversations was Charley Gonzales of the land use staff and he will, I am sure remember the direction I was given on the time and form of appeal. This letter constitutes our appeal and, for the following reasons, the decision should be reversed:

1. The transfer will create lots less than 2.5 acres in size violating restrictive covenants that require that each lot be at least 2.5 acres in size. The unambiguous and reasonable restrictive covenants on the property at issue require minimum lot sizes of no less than 2.5 acres per lot. These covenants were placed on the entire original tract of 155+ acres (including the property at issue) on March 8, 2002 and are recorded with the County at Book 2084, pages 029-035. Prior to applying for a family transfer, the Montoya trust were well aware of these restrictions and now simply invite litigation (to which the County may become a party) through their request to divide their property

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below that minimum. Nonetheless, the EZC erroneously approved the family transfer anyway.

2. Family transfers constitute zoning variances which are extraordinary exceptions and can only be granted under peculiar and exceptional circumstances. Here, the Montoya trust presented no evidence of undue hardship or extraordinary exceptions supporting their request for a family transfer subdivision that would create 14 lots under 2.5 acres in size. This violates both the County minimum lot requirements and the restrictive covenants. Nonetheless, the EZC erroneously approved the family transfer anyway.

3. While the County may not be required to enforce restrictive covenants, they should recognize them and make zoning decisions that do not contradict the explicit terms of unambiguous and reasonable restrictive covenants. Here, the EZC ignored the covenants in reaching its decision.

4. The property at issue was previously subdivided by plat approved by the County on February 24, 2002 and recorded March 10, 2004. Upon information and belief, this new family transfer subdivision request constitutes a common plan in violation of the family transfer ordinance.

The property was previously subdivided by plat recorded on March 10, 2004 by the 5 owners of the Property. The plat recognizes ownership of the following lots:

- Marcela M. Romero – Lot 2, 8.001 acres
- Rosina M. Romero – Lot 3, 8.001 acres
- Victoria M. Romero – Lot 5, 5.010 acres
- Gilbert P. Montoya – Lot 4, 4.0 acres
- Antonio Montoya – Lot 6, 2.0 acres

Now the above owners seek not only to be allowed to develop this raw land in violation of County standard minimum lot sizes and in violation of the restrictive covenants of 2.5 acres per lot, they seek to *combine* by common plan the entire 27 acres as if it were a single lot owned by one owner and then re-subdivide it into 14 lots. Accordingly, this constitutes not only an alleged family transfer, but lot consolidation, property conveyances and lot line adjustments all in one transaction. No public notice was ever given that the property was going to be combined together, lot lines would be ignored, and that the entire property would then be re-subdivided as if it were one piece of property owned by a single owner. This violates both the spirit and intent of the family transfer variance ordinance.



At best, if any family transfer is to be permitted (and no such transfer should if it violates the 2.5 acre lot size restrictive covenants on the property) each of the above owners should file separate applications covering their own property and otherwise comply with the requirements of the family transfer ordinance. The only reasonable interpretation of the family transfer provision is that it would allow one or more of the persons listed above to, on individual case basis, apply for a transfer. The person is required to file an application for a family transfer involving the tract owned by the person (for example: Marcella Romero's lot #2). They must show that the proposed transferee is related, how they are related and the extraordinary circumstances or hardship that compel the County to allow such as an exception to the ordinary subdivision processes that all other citizens must comply with. After all, those requirements are there for a reason, to protect the County and the public from the results of unfettered subdivision of land.

The process approved by EZC in this case is a massive recombination of five earlier subdivided lots, with a simultaneous re-subdivision into lots violating county and covenant minimums. This is proposed to be allowed only because the owners are related. This is done without showing extraordinary circumstances, hardship or how the transferees qualify in their alleged family relationship to the transferors. For example, when the tract owned by Marcella is superimposed on the lots created by this common scheme it appears parts of her lot will end up transferred to several different owners of several different new lots. What is her family relationship with them? What are the extraordinary circumstances or hardship with respect to each that would result if this transaction was refused approval? These requirements are not nitpicking. They are there to protect the county and the public from use of the family transfer loophole so as to avoid land subdivision requirements put in place to protect the public, (for example open space dedication).

5. The additional lots permitted by the family transfer means more stress on an already stressed aquifer and such concern overrides any interest in granting the variance.

6. Under New Mexico law, restrictive covenants are important property rights and the failure by the County to act so as not to impair the covenants but instead to permit a zoning variance on the property in clear violation of them, constitute a taking of appellants' rights without just compensation. Accordingly, the County exposes itself to liability in approving the variance and in taking appellants' property rights.

7. The permitted family transfer violates Section 10.1 of the County code in that no connection to or construction of a community water system has been required.

Ramon Abeyta  
June 25, 2004  
Page 4

8. On the issue of the restrictive covenants, the Appellees should be required by the County to obtain a court ruling that the covenants do not apply to their properties prior to making application to the County to subdivide below the 2.5 acre minimum.

As for my standing in this appeal, I own property in the original tract in which the property at issue lies (less than 100' away) and it is covered by the same restrictive covenants. My water well draws water from the same aquifer from which the lots in the property at issue will draw.

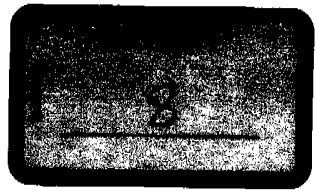
Sincerely yours,



Frank Coppler

T:\FRC\LETTER\1827CY.DOC (DFH2004)

SFC CLERK RECORDED 11/03/2004



WHAT DID THE EZC APPROVE ON 10JUNE 04?

Arbitration award Plat Book 554 Pages 30-31	EZC 10June Family Transfer Findings of Fact 10Aug	Net Change
MARCELLA ROMERO Lot 2 Tract B 8 Acres	Lots 1 thru 4 , 7.714 acres	(0.286)
ROSINA ROMERO Lot 3 Tract B 8.00 Acres	Lots 5 thru 10 , 11.572 Acres	Plus 3.572 acres
GILBERT MONTOYA  Lot 4 Tract B 4 Acres	VACATED	(4.00 Acres)
Victoria R omero  Lot 5 Tract B 5.00 Acres Tony Montoya Ot 6 Tract B 2.00 Acres	Lots 11, 12, 13  Lot 14	Plus 0.787 Acres  (0.087)
Totals: 27 Acres	26.997 Acres	(131 Sq Ft)

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SURVEYOR,  
 BEST OF MY KNOWLEDGE  
 FOR THIS SURVEY.  
 THE MINIMUM STANDARDS

REC'D  
 SEC CLERK  
 SFC CLERK  
 RECORDED  
 11/03/2004

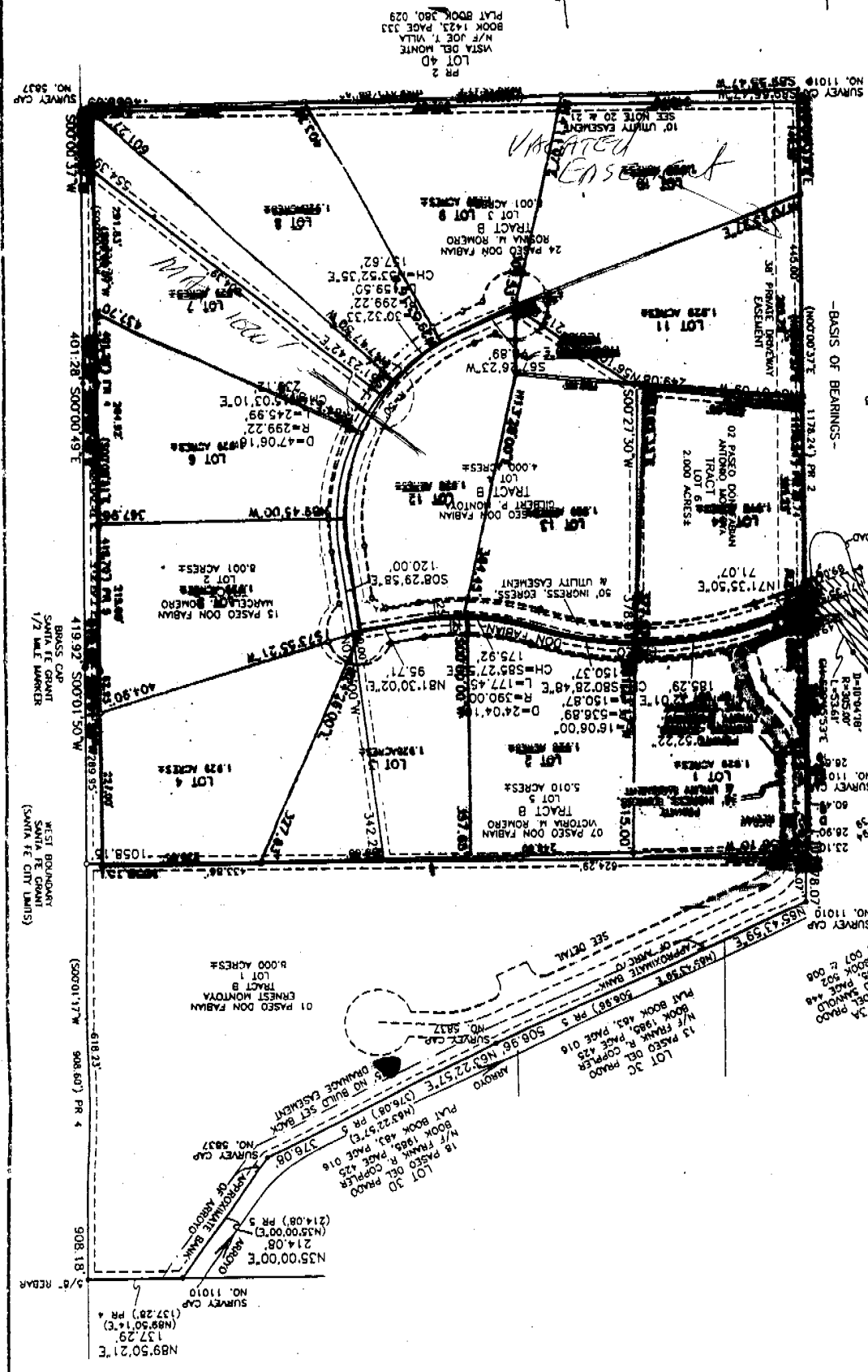
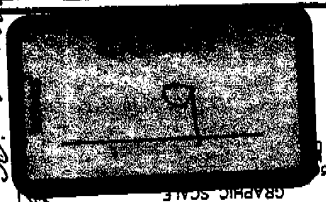
EXISTING LOT LINES

UTILITIES ON SITE

Well 20918202

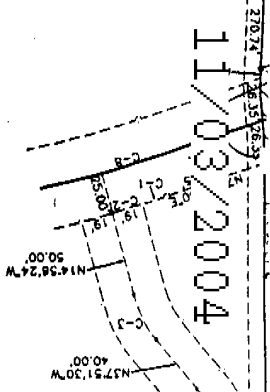
Road 69h

- 71.07
- 185.29
- 150.37
- 175.92
- 95.71
- 120.00
- 239.12
- 50.00



-BASIS OF BEARINGS-  
 LOT 40  
 VISTA DEL MONTE  
 N/4 JOE T. WILLA  
 BOOK 1423, PAGE 333  
 PLAT BOOK 380, 029

LOT 2A  
 LOT 2B  
 LOT 2C  
 LOT 2D  
 LOT 2E  
 LOT 2F  
 LOT 2G  
 LOT 2H  
 LOT 2I  
 LOT 2J  
 LOT 2K  
 LOT 2L  
 LOT 2M  
 LOT 2N  
 LOT 2O  
 LOT 2P  
 LOT 2Q  
 LOT 2R  
 LOT 2S  
 LOT 2T  
 LOT 2U  
 LOT 2V  
 LOT 2W  
 LOT 2X  
 LOT 2Y  
 LOT 2Z



10

A DECLARATION OF RESTRICTIONS, COVENANTS AND CONDITIONS 672013

THIS DECLARATION is made on the 7th day of February, 1990, by and between SIDNEY HAYTER, URSULA MONTOYA HAYTER, ERNEST MONTOYA, MICHAEL L. MONTOYA, GILBERT P. MONTOYA, ANTONIO MONTOYA, ROSINA MONTOYA ROMERO, MARCELLA MONTOYA ROMERO and GARRETT R. QUINTANA, SR., with respect to that certain real property situate in Santa Fe County, New Mexico, and more particularly hereinafter described.

It is hereby declared that all of the described real property is subject to this Declaration which is for the improvement and protection of the value, desirability and attractiveness of the described real property.

This Declaration shall run with the described real property and shall be binding upon and inure to the benefit of each owner of the described real property or any part of it, and each successor in interest of any such owner.

ARTICLE 1

Definitions

Unless the context otherwise specifies or requires, the terms defined in this Article shall have the meanings as defined in this Article for the purpose of these restrictions, covenants and conditions.

"lot" - the term "lot" shall mean each of the lots designated on any future subdivision plat or existing survey on

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[Faint stamp or signature]

672014

the subject real and all improvements located on each such lot.

"Subdivision" - the term "subdivision" shall mean any of the property hereinafter described, which property is located in Santa Fe County, New Mexico.

"Subdivision Restrictions" - the term "subdivision restrictions" shall mean, with respect to all property hereinafter described, the limitations, easements, restrictions, covenants and conditions set forth in this Declaration, as this Declaration may from time to time be amended. The term "this Declaration" and the title to this Declaration shall have the same meaning as "subdivision restrictions."

ARTICLE 2

Property Subject to Subdivision Restrictions

The following described real estate located in Santa Fe County, State of New Mexico, shall be subject to all of the terms and conditions of this Declaration of Restrictions, Covenants and Conditions:

All of the following land and real estate, situate, lying and being in Township 17 North, Range 9 East, N.M.P.M., in the County of Santa Fe, State of New Mexico, and being more particularly described as follows:

From that U.S.G.L.O. brass marker located at the northwest corner of the Santa Fe Grant in Section 4 of Township 17 North and bearing south 00° 01' 17" west 1,583.72 feet to the point and place of beginning, thence south 00° 01' 17" west 908.60 feet, thence south 00° 00' 51" east 419.70 feet, thence south 00° 00' 37" west 1,316.17 feet, thence south 89° 46' 28" west 1,914.59 feet, thence north 00° 03' 47" east 1,321.36 feet, thence south 89° 55' 47" west 1,326.51 feet,

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thence north 00° 19' 42" west 1,323.06 feet thence north 89° 50' 14" east 3,247.69 feet to the point and place of beginning, and comprising 156.6608 acres, more or less, as per that survey conducted by Smith Williamson & Associates during February, 1989, Richard E. Smith, N.M.P.L.S. No. 5837.

672015

ARTICLE 3

Permitted and Prohibited Uses of Property

- (a) No mobile home, trailer, manufactured home, or similar facility or structure shall be kept, placed, or maintained within the subject real estate at any time. The provisions of this subsection shall not apply to temporary construction shelters or facilities maintained during, and used exclusively with, the construction of a single-family residence on the premises, provided, however, that any such temporary construction shelter shall not remain in place for more than six (6) consecutive months.
- (b) No animals, livestock, horses, insects or poultry of any kind shall be kept, raised, or bred on the subject real estate, except as herein provided. Dogs, cats and other household pets in reasonable numbers may be kept, providing they are not kept, raised or bred for commercial purposes. Such household pets, except cats, must be restrained on a leash or otherwise under the direct control of an individual when in the subdivision. Two (2) horses per lot shall be allowed

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672016

on the subject real estate, but only for recreational purposes and not for commercial purposes.

- (c) No chain link fence, cyclone fence, welded wire, plastic or vinyl, unfinished concrete, barbed wire fence, or welded pipe fence enclosures shall be permitted on any lot in any area of the subject real estate, except for tennis courts and swimming pools.

*Handwritten notes:*  
 RME SWH Fe  
 umh  
 10/20  
 ML  
 RFM

ARTICLE 4

Miscellaneous Provisions

Amendment or Appeal. At any time following the execution of this Declaration, the owners may amend or appeal this Declaration in the following manner:

- (1) by the written approval by owners of at least eighty percent (80%) of the acreage described herein; and
- (2) the recordation with the Santa Fe County Clerk of a certificate setting forth, in full, the amendment or amendments so approved, including any portion or portions of this Declaration repealed, which certificate shall be signed by owners of the required acreage.

IN WITNESS WHEREOF, the undersigned have executed this

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Declaration on the day and year first above written.

672017

Sidney Hayter  
SIDNEY HAYTER

COUNTY OF Santa Fe )  
STATE OF NEW MEXICO ) ss.

SUBSCRIBED AND SWORN to before me this 7<sup>th</sup> day of  
February, 1990, by SIDNEY HAYTER.

[Signature]  
NOTARY PUBLIC



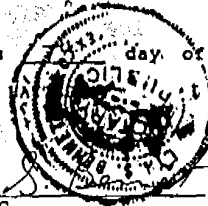
My commission expires:  
6-29-91

COUNTY OF Santa Fe )  
STATE OF NEW MEXICO ) ss.

Ursula Montoya Hayter  
URSULA MONTOYA HAYTER

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of  
February, 1990, by URSULA MONTOYA

[Signature]  
NOTARY PUBLIC



My commission expires:  
6-29-91

SFC CLERK RECORDED 11/03/2004

672016

*Ernest Montoya*  
ERNEST MONTOYA

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss.

SUBSCRIBED AND SWORN to before me this 7th day of  
February, 1990, by ERNEST MONTOYA.

*Janet H. Russell*  
NOTARY PUBLIC

My commission expires:  
4/18/93

*Michael L. Montoya*  
MICHAEL L. MONTOYA

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss.

SUBSCRIBED AND SWORN to before me this 7th day of  
February, 1990 by MICHAEL L. MONTOYA.

*Janet H. Russell*  
NOTARY PUBLIC

My commission expires:  
4/18/93

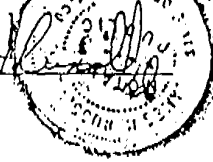
SFC CLERK RECORDED 11/03/2004

672019

Gilbert P. Montoya  
GILBERT P. MONTOYA

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss.

SUBSCRIBED AND SWORN to before me this 7th day of  
February, 1990 by GILBERT P. MONTOYA.


James H. [Signature]  
NOTARY PUBLIC 

My commission expires:  
4/18/93

Antonio Montoya  
ANTONIO MONTOYA

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss.

SUBSCRIBED AND SWORN to before me this 7th day of  
FEBRUARY, 1990 by ANTONIO MONTOYA.

James H. [Signature]  
NOTARY PUBLIC 

My commission expires:  
4/18/93

SFC CLERK RECORDED 11/03/2004

672020  
Rosina Montoya Romero  
ROSINA MONTOYA ROMERO

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss.

SUBSCRIBED AND SWORN to before me this 7th day of  
FEBRUARY, 1990 by ROSINA MONTOYA ROMERO.

Janet H. Russell  
NOTARY PUBLIC

My commission expires:  
4/18/93

Marcella Montoya Romero  
MARCELLA MONTOYA ROMERO

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss.

SUBSCRIBED AND SWORN to before me this 7th day of  
FEBRUARY, 1990 by MARCELLA MONTOYA ROMERO.

Janet H. Russell  
NOTARY PUBLIC

My commission expires:  
4/18/93

SFC CLERK RECORDED 11/03/2004

672021

*Garrett R. Quintana, Sr.*  
GARRETT R. QUINTANA, SR.

COUNTY OF SANTA FE }  
STATE OF NEW MEXICO } ss.

SUBSCRIBED AND SWORN to before me this 6th day of February, 1990 by GARRETT R. QUINTANA, SR.

OFFICIAL SEAL  
~~NOTARY PUBLIC MICHAEL RYAN~~  
NOTARY PUBLIC - STATE OF NEW MEXICO  
My Commission Expires 5/31/97

My commission expires:  
\_\_\_\_\_

698985

COUNTY OF SANTA FE } ss  
STATE OF NEW MEXICO }  
I hereby certify that this instrument was filed  
for record on the 7 day of Feb A.D.  
19 90, at 2:35 o'clock P.m.  
and was duly recorded in book 1072  
page 03-021 of the records of  
Santa Fe County.

Witness my Hand and Seal of Office  
Jana G. Armijo  
County Clerk, Santa Fe County, N.M.

*Jana G. Armijo*  
Deputy



SFC CLERK RECORDED 11/03/2004

Amendment to a Declaration of Restrictions, Covenants and Conditions

THIS AMENDMENT to a Declaration of Restrictions, Covenants and Conditions is made this 8<sup>th</sup> day of March, 2002, by and between the undersigned, being the owners of at least eighty percent (80%) of the acreage described herein below.

WHEREAS a Declaration of Restrictions, Covenants and Conditions was made on February 7, 1990 by the owners of the acreage described below for the protection of the value, desirability and attractiveness of said acreage; and

WHEREAS said restrictive covenants and conditions may only be amended on the written approval of at least eighty percent (80%) of the owners of the acreage; and

WHEREAS the owners of at least eighty percent (80%) of the acreage described hereinbelow desire to amend the Declaration of Restrictions, Covenants and Conditions made on February 7, 1990 to address the minimum size of individual lots in the acreage; and

NOW THEREFORE, the undersigned hereby amend the February 7, 1990 Declaration of Restrictions, Covenants and Conditions as follows and declare that all of the real property described therein shall be and is hereby subject to this Amendment which is adopted for the protection and improvement of the value, desirability and attractiveness of the below described real property:

1. Amendment. This Amendment to a Declaration of Restrictions, Covenants and Conditions (the "Amendment") amends the restrictive covenants entitled "A Declaration of Restrictions, Covenants and Conditions" entered into on February 7, 1990 and recorded in book 672, pages 13 - 21 of the records of Santa Fe County (the "Declaration").

2. Property subject to this Amendment. The following described real property (the "Property") located in Santa Fe County, State of New Mexico, shall be subject to all of the terms and conditions of this Amendment:

All of the following land and real estate, situate, lying and being in Township 17 North, Range 9 East, N.M.P.M., in the County of Santa Fe, State of New Mexico, and being more particularly described as follows:

From that U.S.G.L.O. brass marker located at the northwest corner of the Santa Fe Grant in Section 4 of Township 17 North and bearing South 00° 01' 17" West 1,583.72 feet to the point and place of beginning, thence South 00° 01' 17" West 908.60 feet, thence South 00° 00' 51" East 419.70 feet, thence South 00° 00' 37" West 1,316.17 feet, thence South 89° 46' 28" West 1,914.59 feet, thence North 00° 03' 47" East 1,321.36 feet, thence South 89° 55' 47" West 1,326.51 feet, thence North 00° 19' 42" West 1,323.06 feet, thence North 89° 50' 14" East 3,247.69 feet to the point and place of beginning, and comprising 156.6608 acres, more or less, as per that survey conducted by Smith Williamson & Associates during February, 1989, Richard E. Smith, N.M.P.L.S. No. 5837 and recorded in book 206, page 008 in the records of Santa Fe County as document number 697-616.

*[Handwritten signatures and initials on the left margin, including 'J.T.L.', 'D.S.', and 'K.A.']*

SFC CLERK RECORDED 11/03/2004

3. Minimum lot size. No lot within the Property, whether created by subdivision, family transfer, court order, or otherwise (and regardless of governmental approval having been granted for the creation of said lot), shall be smaller than 2.5 acres in area.

4. Binding Effect. This Amendment shall run with the Property and shall be binding upon and inure to the benefit of each owner of the Property, or any part of it, and each successor in interest of any such owner.

5. Modification – Repeal. This Amendment may only be modified or repealed (1) by the written approval of the owners of eighty percent of acreage in the Property described above and (2) the recordation with the Santa Fe County Clerk of said written approval whose notarized signatures appear thereon.

IN WITNESS WHEREOF, the undersigned owners of 129.65 acres of the Property, representing approximately 83% of the total acreage in the Property, have executed this Amendment as of the day and year first written above.

Charlotte Capling  
Melinda, Inc.  
By: Charlotte Capling, its President  
Owner, Lot 1 TRACT A, containing 10 acres

Dennis Branch  
Realty 3000 L.L.C.  
By: Dennis Branch, its Manager  
Owners, Lot 2 TRACT A, containing 10 acres

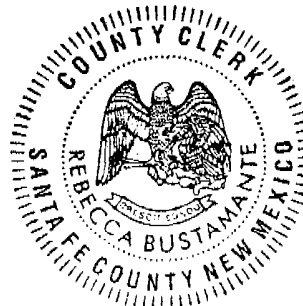
David Sandvold  
David Sandvold  
Owner Lot 3A TRACT A, containing 2.5 acres

Gerald A. Coppler  
Gerald A. Coppler  
Owner Lot 3B TRACT A, containing 2.5 acres

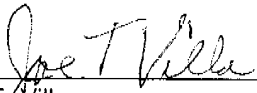
Frank R. Coppler  
Frank R. Coppler  
Owner Lots 3C and 3D TRACT A, containing 5.03 acres

Hassan Salam  
Hassan Salam

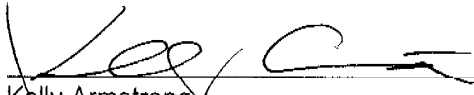
COUNTY OF SANTA FE 1196) ss 324  
STATE OF NEW MEXICO  
I hereby certify that this instrument was filed  
for record on the 11 day of May A.D.  
20 02 at 8:14 o'clock A.m  
and was duly recorded in book 2084  
page 029-035 of the records of  
Santa Fe County  
Witness my Hand and Seal of Office  
Rebecca Bustamante  
County Clerk, Santa Fe County, N.M.  
Kimberly O'Neil  
Deputy

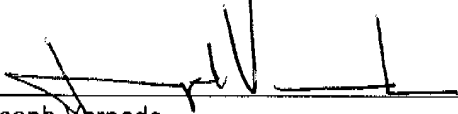


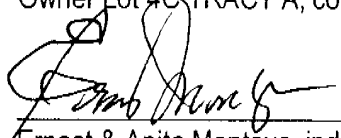
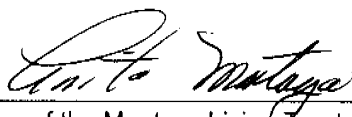
SFC CLERK RECORDED 11/03/2004

  
\_\_\_\_\_  
Joe T. Villa  
Owner Lot 4A TRACT A, containing 10.04 acres  
and Lot 4D TRACT A, containing 61.41 acres

**2084031**

  
\_\_\_\_\_  
Kelly Armstrong  
Owner Lot 4B TRACT A, containing 10.02 acres

  
\_\_\_\_\_  
Joseph Varnado  
Owner Lot 4C TRACT A, containing 10.15 acres

  
\_\_\_\_\_  
  
\_\_\_\_\_  
Ernest & Anita Montoya, individually and as trustees of the Montoya Living Trust  
Owners 8.0 acres of TRACT B

SFC CLERK RECORDED 11/03/2004

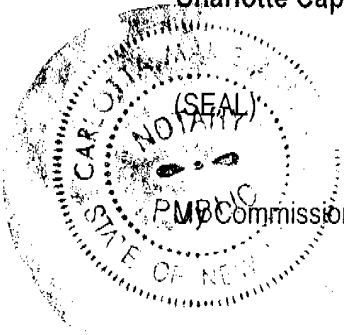


Acknowledgements

**2084032**

COUNTY OF SANTA FE )  
 )ss  
STATE OF NEW MEXICO )

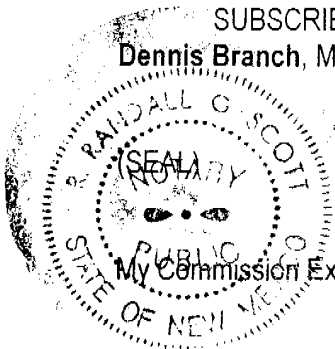
SUBSCRIBED AND SWORN TO this 8<sup>th</sup> day of March, 2002 by  
**Charlotte Capling**, President of Melinda, Inc., on behalf of said corporation.



Carlotta Maria Capling  
Notary Public

COUNTY OF SANTA FE )  
 )ss  
STATE OF NEW MEXICO )

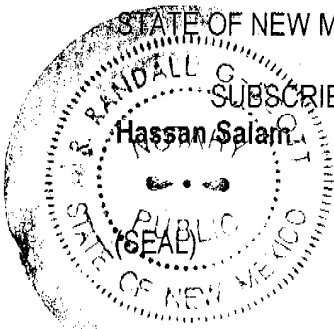
SUBSCRIBED AND SWORN TO this 8<sup>th</sup> day of March, 2002 by  
**Dennis Branch**, Manager of Realty 3000, LLC, on behalf of said limited liability company.



R. Randall G. Scott  
Notary Public

COUNTY OF SANTA FE )  
 )ss  
STATE OF NEW MEXICO )

SUBSCRIBED AND SWORN TO this 8<sup>th</sup> day of March, 2002 by  
**Hassan Salam**



R. Randall G. Scott  
Notary Public

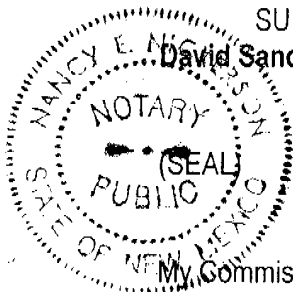
My Commission Expires: 3/8/02

SFC CLERK RECORDED 11/03/2004

COUNTY OF SANTA FE )  
 )ss  
STATE OF NEW MEXICO )

2084033

SUBSCRIBED AND SWORN TO this 8th day of MARCH, 2002 by  
David Sandvold.

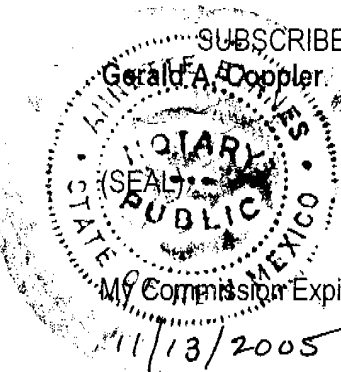


[Signature]  
Notary Public

My Commission Expires:  
1/19/2004

COUNTY OF SANTA FE )  
 )ss  
STATE OF NEW MEXICO )

SUBSCRIBED AND SWORN TO this 8th day of March, 2002 by  
Gerald A. Doppler.



[Signature]  
Notary Public

My Commission Expires:  
11/13/2005

COUNTY OF SANTA FE )  
 )ss  
STATE OF NEW MEXICO )

SUBSCRIBED AND SWORN TO this 8th day of March, 2002 by  
Frank R. Doppler



[Signature]  
Notary Public

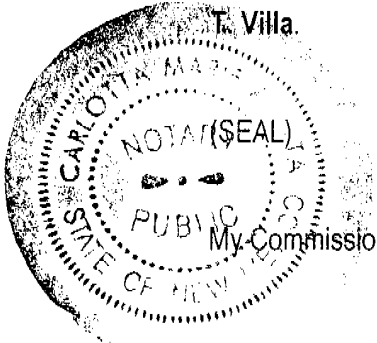
My Commission Expires:  
11/13/2005

SFC CLERK RECORDED 11/03/2004

COUNTY OF SANTA FE )  
 )ss  
STATE OF NEW MEXICO )

2084034

SUBSCRIBED AND SWORN TO this 8<sup>th</sup> day of March, 2002 by Joe  
T. Villa.

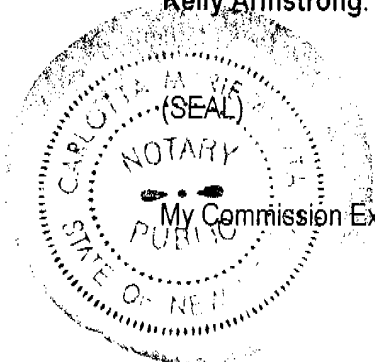


My Commission Expires: 11-21-2004

Carlotta Marie Aheyo  
Notary Public

COUNTY OF Santa Fe )  
 )ss  
STATE OF NEW MEXICO )

SUBSCRIBED AND SWORN TO this 8<sup>th</sup> day of March, 2002 by  
Kelly Armstrong.

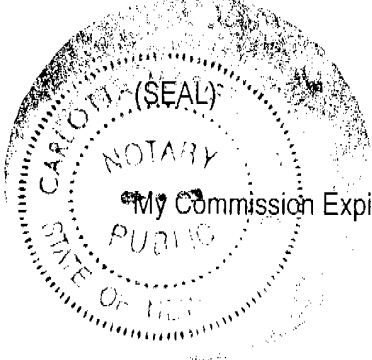


My Commission Expires: 11-21-2004

Carlotta Marie Aheyo  
Notary Public

COUNTY OF SANTA FE )  
 )ss  
STATE OF NEW MEXICO )

SUBSCRIBED AND SWORN TO this 8<sup>th</sup> day of March, 2002 by  
Joseph Varnado.



My Commission Expires: 11-21-2004

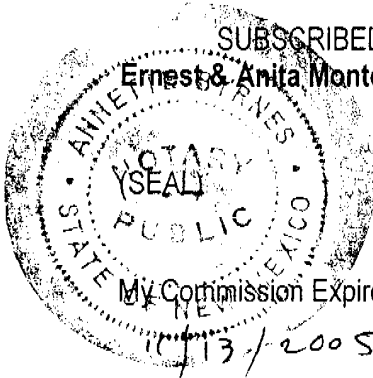
Carlotta Marie Aheyo  
Notary Public

SFC CLERK RECORDED 11/03/2004

COUNTY OF SANTA FE )  
 )ss  
STATE OF NEW MEXICO )

**2084035**

SUBSCRIBED AND SWORN TO this 8th day of March, 2002 by  
**Ernest & Anita Montoya for themselves and as trustees of the Montoya Living Trust.**



Annette Byrnes  
Notary Public

SFC CLERK RECORDED 11/03/2004