

2706781

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

**September 9, 2003**

Jack Sullivan, Chairman  
Paul Campos, Vice Chairman  
Paul D. Duran  
Michael D. Anaya  
Harry B. Montoya



1300 651  
COUNTY OF SANTA FE } 95  
STATE OF NEW MEXICO  
I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED  
FOR RECORD ON 11:47 Nov 9 A.D. 2003  
AND WAS CLASSIFIED 2706  
PAGE 184 OF 870

WITNESSED BY  
*Harold [Signature]*  
COUNTY CLERK  
SANTA FE COUNTY, N.M.  
DEPUTY

**SANTA FE BOARD OF COUNTY COMMISSIONERS**  
**COMMISSION CHAMBERS**                      **COUNTY ADMINISTRATION BUILDING**

=====

**REGULAR MEETING**  
(Public Hearing)  
September 9, 2003 - 3:00 pm

***Amended Agenda***

2706782

- I. Call to Order
- II. Roll Call
- III. Pledge of Allegiance
- IV. Invocation
- V. Approval of Agenda
  - A. Amendments
  - B. Tabled or Withdrawn Items
- VI. Approval of Minutes *12/03/03 - 11:00 AM*
- VII. Matters of Public Concern - NON-ACTION ITEMS
- VIII. Presentations
  - A. Presentation by AngeloEconomics
  - B. Presentation on Bureau of Reclamation Purchase of San Juan Chama Water *X1-1/2*
- IX. Matters from the Commission
  - A. Resolution No. 2003 - *125* Resolution Declaring September 25, 2003 Immigrant Workers' Rights Day and Welcoming the Immigrant Workers Freedom Ride "On the Road to Citizenship" to the County of Santa Fe
  - B. Resolution No. 2003 - *126* Resolution in Support of a New Mexico Constitutional Amendment to Create a Cabinet Department of Education Headed by a Secretary of Education and an Elected Public Education Commission and an Amendment to Provide for a Limited Additional Distribution From the Permanent Funds to Provide More Money for the Public Schools
  - C. Request by Canada de Los Alamos Mutual Domestic Water Consumers Association for Emergency Bulk Water Sales
- X. Consent Calendar
  - A. Request Adoption of Findings of Fact and Conclusions of Law for the Following Land Use Cases:
    - 1. BCC CASE #M 02-4801 - Brumby's LLC (Approved)
    - 2. EZ CASE #S 99-4622 - Village Plaza (Approved)
    - 3. EZ CASE #S 02-4022 - Tesuque Hills Subdivision (Approved)
  - B. Resolution No. 2003 - A Resolution Requesting a Decrease to the Housing Capital Improvement Fund (301)/CIAP 2001 to Realign the Fiscal Year 2004 Budget with the Prior Fiscal Year 2003 Cash Balance for Expenditure in Fiscal Year 2004 (Community & Health Development Department)

*San Juan Chama*  
*Subdivision*

*12/03/03 - 11:00 AM*

*12/03/03 - 11:00 AM*

*12/03/03 - 11:00 AM*

*12/03/03 - 11:00 AM*

2706783

- C. Request Authorization to Accept and Award a Construction Agreement to the Lowest Responsive Bidder for IFB #24-14 for Modernization of Public Housing Units (Community & Health Development Department)
- D. Resolution No. 2003 - A Resolution Requesting an Increase to Emergency Medical Services (EMS) Fund (206)/All EMS Districts to Budget Prior Fiscal Year 2003 Cash Balances and to Realign the Fiscal Year 2004 Budget with the Final EMS Allotment Received from the New Mexico Department of Health for Expenditure in Fiscal Year 2004 (Fire Department)
- E. Resolution No. 2003 - A Resolution Requesting an Increase to Fire Protection Fund (209) to Realign the Fiscal Year 2004 Budget with the Final Fire Protection Allotment Received from the New Mexico State Fire Marshal for Expenditure in Fiscal Year 2004 (Fire Department)
- F. Resolution No. 2003 - A Resolution Requesting an Increase to the Fire Protection Fund (209)/All Fire Districts to Budget Prior Fiscal Year 2003 Cash Balances for Expenditure in Fiscal Year 2004 (Fire Department)
- G. Resolution No. 2003 - A Resolution Requesting an Increase to the Environmental Gross Receipts Tax Revenue Bond (402) to Budget Prior Fiscal Year 2003 Cash Balance for Expenditure in Fiscal Year 2004 (Finance Department)
- H. Resolution No. 2003 - A Resolution Designating a Grantee Representative and Signature Authority regarding the Regional Water System Feasibility Study and Environmental Assessment for Cuatro Villas Mutual Domestic Water Users Association (Land Use Department)
- I. Resolution No. 2003 - A Resolution Requesting an Increase to the State Special Appropriations' Fund (318)/River Trail Corridor Project to Budget Prior Fiscal Year 2003 Cash Balance for Expenditure in Fiscal Year 2004 (Project & Facilities Management Department)
- J. Resolution No. 2003 - A Resolution Requesting an Increase to the GOB Series 2001 Fund (353)/Public Works to Budget Prior Fiscal Year 2003 Cash Balance for Expenditure in Fiscal Year 2004 (Public Works)
- K. Resolution No. 2003 - A Resolution Requesting an Increase to the Correction Fees Fund (201) to Budget Prior Fiscal Year 2003 Cash Balance for Expenditure in Fiscal Year 2004 (Sheriff's Office)
- L. Resolution No. 2003 - A Resolution Requesting an Increase to the Water Enterprise Fund (505) to Budget Prior Fiscal Year 2003 Cash Balance for Expenditure in Fiscal Year 2004 (Utilities Department)

**XI. Staff and Elected Officials' Items**

**A. Matters from the County Manager**

- 1. Request by Bureau of Reclamation to Contract Lease the Use of Up to 2500 Acre Feet of San Juan - Chama Project Water Stored in Heron and Abiquiu Reservoirs
- 2. Request Direction and/or Approval of MOA with St. Vincent's Hospital

**B. Matters from the County Attorney**

**1. Executive Session**

- a. Discussion of Pending or Threatened Litigation
- b. Limited Personnel Issues
- c. Acquisition or Disposal of Real Property
- d. Discussion of the Purchase, Acquisition or Disposal of Water Rights

2706784

**XII. Public Hearings**

**A. Utilities Department**

1. Request Authorization to Implement the Following: Increase Residential and Non-Residential Water Service Rates; a Monthly Water Service Availability Rate; a New Meter Connection Rate; and Adopt the Conservation Measures Contained in Santa Fe County Ordinance No. 2002-13, an Ordinance Addressing Water Conservation for all Residential and Commercial Uses of Water within Santa Fe County

**B. Land Use Department**

1. Ordinance No. 2003 <sup>11/18</sup> An Ordinance Amending Ordinance 1996-10, the Santa Fe Land Development code, Article III, Section 4.4.1, Article V, Section 5.2.2, Article V, 5.3.2 and Article V, Section 7.1.2 to Require Rainwater Catchment Systems for all Commercial Development and for all Subdivisions, Excluding Summary Subdivisions, and to Amend Article III, Section 2.4.1 to Encourage Rainwater Catchment Systems for Residential Use (First Public Hearing) Penny Ellis-Green
2. <sup>7/23/03</sup> Ordinance No. 2003 <sup>11/18</sup> An Ordinance Amending Ordinance 1996-10, the Santa Fe County Land Development Code, Article XIV, Traditional and Contemporary Community Zoning Districts to Add a New Section 7, El Valle De Arroyo Seco Highway Corridor Plan Zoning District (Second Public Hearing) Robert Griego
3. CDRC CASE #MIS 01-5012 - Santa Fe Downs Reconsideration of Conditions. Pojoaque Pueblo Development Corporation Requests the Reconsideration and Clarification of Conditions that were Imposed on the Previously Approved Master Plan for the Santa Fe Downs, which Requires the Applicant to Submit a Manure Removal Plan within 2 Years of the Master Plan Approval, as Well as to Install a Monitoring Well to Monitor the Effects the Manure Pile May Have on Ground Water. The Property is Located Southwest of the Intersection of I-25 and SR 599, (Downs at Santa Fe), within Sections 26 & 27, Township 16 North, Range 8 East. (Commission District 3) Vicki Lucero TABLED
4. EZ CASE #A 03-4551 - Daniel Santos Appeal. Daniel Santos, Appellant (Christopher L. Graeser, Agent), is Appealing the Extraterritorial Zoning Commission's Decision to Deny a Proposed Plat to Divide 2.491 Acres into Two Tracts for the Purpose of a Family Transfer. The Property is Located at 988A Chicoma Vista, within the Wolfe Subdivision, within Section 29, Township 17 North, Range 9 East. (Commission District 5) Liza Vitale
5. CDRC CASE #A/V 03-5700 - Manuel Duran Appeal Variance. Manuel Duran, Applicant, is Appealing the County Development Review Committee's Decision to Uphold the Land Use Administrator's Decision to Deny a Small Lot Family transfer Land Division of .87 Acres into Two Lots; One Lot Consisting of .54 Acres and One Lot Consisting of .33 Acres, which Would Result in a Variance of Article III, Section 10 (lot size requirements) of the Land Development Code. The Property is Located at 05C Camino De Duran within Section 1, Township 20 North, Range 8 East. (Commission district 1) Wayne Dalton

**XIII. Adjournment**

The County of Santa Fe makes every practical effort to assure that its meetings and programs are accessible to the physically challenged. Physically challenged individuals should contact Santa Fe County in advance to discuss any special needs (e.g., interpreters for the hearing impaired or readers for the sight impaired).

2706785

2706786

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

September 9, 2003

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 3:00 p.m. by Chairman Jack Sullivan, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

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

**Members Present:**

Commissioner Jack Sullivan, Chairman  
Commissioner Paul Campos  
Commissioner Paul Duran  
Commissioner Mike Anaya  
Commissioner Harry Montc,

**Members Absent:**

[None]

An invocation was given by Jaime Estremera Fitzgerald.

**V. Approval of the Agenda**

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

CHAIRMAN SULLIVAN: Item V, Gerald, do we have amendments or withdrawals on the agenda?

GERALD GONZALEZ (County Manager): We do, Mr. Chair. Going through the agenda in order, under section IX, Matters from the Commission, we have the addition of items B and C. B is a resolution in support of constitutional amendments. C is a request by Cañada de los Alamos Mutual Domestic Water Consumers for bulk sale water.

Under section XI, Staff and Elected Officials Items, A, Matters from the County Manager, item 2, is Request direction and/or approval of MOA with St. Vincent Hospital. I also wanted to point out that item number 1 under Matters from the County Manager hooks up

2706787

with an item under the presentations, which is Presentation number B, a presentation on the Bureau of Reclamation purchase of San Juan/Chama water. So the Commission may want to think about taking those together or it can take them separately but I just wanted to point out that those two are linked.

Under Matters from the County Attorney, we have the addition of Discussion of the purchase, acquisition or disposal of water rights. And then going to Section XII, Public Hearings we have tabling of item number 3, that's Santa Fe Downs reconsideration of conditions and that's because that's sort of a continuing tabling item. We have one other item that we are requesting to table and that's item number 2 under Land Use Department. That's the ordinance amending Ordinance 1996-10 to deal with the Arroyo Seco Highway Corridor. We are working, based on some comments that were made at the last tribal summit, we're working with Santa Clara Pueblo there and want to give us an opportunity to provide us with their input before we actually get through Commission consideration of that item. So staff is requesting that we table that item number 2 as well.

CHAIRMAN SULLIVAN: Thank you, Gerald. Additions or corrections by the Commission?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: It wouldn't bother me to move, under Presentations, B. That item. And we could hear it at the same time as we hear Matters from the County Manager under item 1.

CHAIRMAN SULLIVAN: Or did you want to do it the other way around.

COMMISSIONER ANAYA: Or the other way around. It doesn't matter.

CHAIRMAN SULLIVAN: Did you want to move XI. A. 1 up as VIII. C, even though it's not a presentation it's a similar item? Does that make more sense?

COMMISSIONER ANAYA: Yes. That's fine with me.

CHAIRMAN SULLIVAN: Okay.

COMMISSIONER ANAYA: That way we can hear it together.

CHAIRMAN SULLIVAN: Are the people here for those presentations? Okay.

MR. GONZALEZ: Ready to roll, Mr. Chair.

CHAIRMAN SULLIVAN: All right. Then is that a motion, Commissioner

Anaya?

COMMISSIONER ANAYA: Yes, sir.

CHAIRMAN SULLIVAN: And a second.

COMMISSIONER DURAN: I second.

CHAIRMAN SULLIVAN: Second by Commissioner Duran. Okay, so we have a motion for the approval of the amended agenda as presented, including moving item XI. A. 1 to item VIII. C, or in conjunction with VII. B. We'll call it VIII. C.

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

2706788

**VI. Approval of Minutes: July 29, 2003**

CHAIRMAN SULLIVAN: Are there additions or corrections? I had some typographical corrections that I'd like to give to the recorder. Are there any others?

COMMISSIONER MONTOYA: Mr. Chair, I also have some.

CHAIRMAN SULLIVAN: Okay. Then could we have a motion with regard to the minutes from July 29<sup>th</sup>?

COMMISSIONER DURAN: So moved.

COMMISSIONER ANAYA: Second.

CHAIRMAN SULLIVAN: Would that be with the changes proposed by Commissioners Sullivan and Montoya? Okay. So that's a motion by Commissioner Duran and seconded by Commissioner Anaya.

The motion to approve the July 29<sup>th</sup> meeting minutes as corrected passed by unanimous [5-0] voice vote.

**August 12, 2003**

CHAIRMAN SULLIVAN: Are there any additions or corrections to those minutes? Seeing or hearing none, do we have a motion?

COMMISSIONER MONTOYA: Mr. Chair, I believe I have a couple on those also.

CHAIRMAN SULLIVAN: Okay. A couple of typographical corrections by Commissioner Montoya. So could we have a motion please?

COMMISSIONER DURAN: Move to approve with the corrections suggested by Commissioner Montoya.

COMMISSIONER MONTOYA: Second.

CHAIRMAN SULLIVAN: Seconded by Commissioner Montoya. Moved by Commissioner Duran.

The motion to approve the August 12<sup>th</sup> minutes passed by unanimous [5-0] voice vote.

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

CHAIRMAN SULLIVAN: These are non-action items where we give the public an opportunity to bring matters to the Board of County Commissioners for future consideration. Are there those who would like to speak? Yes, ma'am.

CHITA GILLIS: I'm Chita Gillis and I'm the treasurer of the Cañada de los Alamos Water Association, and I'm here to request wholesale water. We're needing to have



water hauled to our community because we can only produce half of what we need at this time. I understand it's not on the agenda under items to be raised by the Commission, but I would like to comment, do it as public interest first.

**CHAIRMAN SULLIVAN:** Okay. We'll take that up under item IX. C. Thank you for your attendance. Are there others who would like to bring items of public concern to the Commission?

**VIII. Presentations**

**A Presentation by AngelouEconomics**

**CHAIRMAN SULLIVAN:** I assume this has to do with the economic development study that the City's doing.

**STEVE WHITMAN:** County Commissioners, my name is Steve Whitman. I'm the economic development planner for the City of Santa Fe and contract manager for a contract with Angelou Economics updating the City's economic development plan, and we were asked if the contractors could make a presentation on where they are and where our project is. They're in town this week for a number of items including part of our program, a target industries report and a benchmarking study report and Mr. Angelou is also making a presentation at the State Economic Development Summit tomorrow. So the timing was good. So I'd like to introduce Amy Holloway from AngelouEconomics.

**CHAIRMAN SULLIVAN:** Thanks, Steve. Good to see you.

**AMY HOLLOWAY:** Good afternoon. Thank you for inviting us to give you a presentation. I'd like to just give you an overview of what our study is about, who we are and where we are in our process with the City. My name is Amy Holloway. I'm vice president of economic development for AngelouEconomics based in Austin, Texas. We're a site selection and economic development consulting company. In April, we started an economic development planning process for the City of Santa Fe. The process so far, we have talked to or surveyed almost 2,000 people in the City of Santa Fe. We've conducted focus groups with approximately 350 individuals in Santa Fe, interviewed, we had an on-line survey as well as a survey that was mailed out to 30,000 people in the City and in the County.

So over the last six months, I think it was about six months we've collected quite a bit of input. Our process started off with an economic analysis of the city and the surrounding region, including some data for the county. We conducted a SWOT analysis, strengths, weaknesses, opportunities and threats, really looking at the strengths and challenges of Santa Fe as a business location. Our main task in the project was to help the City identify initiatives that it could undertake to bridge the gap between the income levels in the city and the cost of living in the city. Our main approach has been to identify target industries and also identify marketing recommendations and community development recommendations that will help those target industries thrive in Santa Fe, help diversify the economy and help provide more opportunities for the folks who are living here.

2706790

We are two months from the completion of this study. We expect to have it presented, the entire strategy presented to the City in November. There's been a lot of discussion about how to involve the County in this process and the importance of the County also engaging in an economic development effort and being in line with what the City is doing in their own economic development effort. We did meet with one of the Commissioners last time we were here in July and gave some ideas on what it would take for the County to become engaged in the same process that the City is undertaking. Unfortunately, since we are about two months from completion of the City plan, it would be hard at this point to overlap a County plan as well but we would love to talk to you in more detail about the possibility of creating a countywide economic development plan. We think it makes sense at this point.

We're here for the next three days. We'll be making presentations of our target industry recommendations. We'll be doing some more interviews across the city and within the county to really define our recommendations, make sure they're as accurate as possible to build more buy-in to our process. We'll be back in October. On October 16<sup>th</sup> we'll lead a visioning session with the City Councilors, with the former mayor of Austin, Kirk Watson. We would like to help the City Councilors and city leaders identify a common vision for economic development. We hope that that can occur in October when we're here and plan to again present the final strategy in the beginning of November at a community-wide roll-out event.

Would you like to discuss a little bit about the County plan? The possibility of a County economic development plan?

CHAIRMAN SULLIVAN: Did you want to give us any type of a summary that you've come up with for the City part of it? Are you at that point in your study?

MS. HOLLOWAY: We are. We're at the point in the study where we've identified target industries. These are the industries that will drive what recommendations we offer to the City for an economic development plan. And I would be happy to review just very quickly some of the target industries that we've recommended. Would that be helpful to you?

CHAIRMAN SULLIVAN: I think it would. I think Commissioner Duran has a question.

COMMISSIONER DURAN: I just have one question. In your study, have you taken into consideration the land opportunities that are available in order to implement a real economic development plan for the City? Because my sense is that there are very few appropriately zoned properties within the city limits that can accommodate a real thrust in economic development for our community. Have you factored that into your study at all?

MS. HOLLOWAY: Absolutely, we have. Any time you talk about economic development you have to consider what sites and infrastructure are available. And because of this, we feel strongly that the county has a role to play in whatever economic development activities happen in the City of Santa Fe. The City of Santa Fe is limited infrastructure-wise in two respects. One is that land availability and size of sites are a little bit limiting for certain types of businesses. We've had to take that into consideration. In addition, the water issue. Both of those factors will affect which types of businesses we've recommended for the study. We're not recommending businesses that would require large tracts of land nor are we recommending

2706791

industries that would require high water usage

COMMISSIONER DURAN: Appropriately zoned land I think is really, that's part of it. The other part is the cost of that land. The high cost of land has a direct impact on our ability to draw appropriate businesses for the community. And I think for me, that's why I think the county should be involved in this process. In the EZ, right outside of the city limits is probably where we could work together with the City to develop appropriately zoned properties to accommodate the goals that I think you're probably going to present to us.

MS. HOLLOWAY: Absolutely. That's going to fall within our recommendations. We're still collecting information on the specifics of that but we see that as a critical need for the County and City to cooperate on development of a site within the EZ.

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

CHAIRMAN SULLIVAN: Okay. So did you want to give us a little summary of those targeted industries?

MS. HOLLOWAY: I would like to. Thank you. We've recommended six main targets for the city. We've taken into consideration a number of factors, sites and infrastructure being one of them, and current business strengths, current economic strengths, workforce skills, the strength of the state in marketing in the region and marketing. We've taken a lot of things into consideration in selecting these target industries. As you know, the City has already identified target industries. They had a plan in 1996 where several targets were identified. SFEDI also has clusters that it's focused on. We don't want to take the city too far astray from what is already a core of the economic development effort here.

So several of our target industries overlap with the target industries that are already in place, but the primary targets that we've identified for the city of Santa Fe are the design industry. The design industry includes arts and crafts related trades, computer related designs. The hospitality industry. We're saying we want to kick the hospitality industry up a notch, a little higher level workers and wages for that so we can provide more opportunities for the folks who are here and skilled in that industry already. Conservative technology, which is a slightly new target industry for the area. There's a number of factors here for Santa Fe and the County that make this an interesting industry for you, your skilled workforce, very highly educated workforce and it ties in with the design industry. It also ties in with your focus on environmental conservation and conservation of your natural resources. If water is a main concern of the region, then why not recruit businesses to develop technologies to help you conserve your water and approaches to help you conserve your water. We thought it was a good fit.

Software development, you already have a lot of these activities in place. Software companies don't require a lot of water. They require high skilled individuals. They also require good telecommunications infrastructure, not large building spaces or sites either. Publishing and new media, a target that you've already had in place. You already have strengths for these companies. It attracts a creative class of people which is perfect for the Santa Fe area. And finally, outdoor gear and apparel, companies that cater to your thriving outdoor industry, to individuals that appreciate the outdoors and appreciate the wonderful environment that you have

2706792

here already.

So those are the six primary targets. By primary targets, we're talking about the targets that would be aggressively retained and recruited by the City's economic development team. We've also identified three secondary targets. These are businesses that are probably going to be here already because it supports your population, but businesses that you need to make sure that you're retaining and providing benefits for. Healthcare, retiree services, you have an aging population and these individuals are going to need financial planning services and other services including healthcare. By healthcare we're talking about traditional medicine as well as alternative healthcare. And foods and beverages. A lot of the companies are already in place and it builds off of your good agriculture industry. It also helps Santa Fe to continue to expand its brand across the country and internationally.

Those are the target industries that we've recommended. And the plan that we'll be developing over the next month or two, that we've already started to develop, I was looking at recommendations for workforce development initiatives, infrastructure improvements, overall community development, and marketing initiatives, which would include internal marketing and improving communication within the city and county on economic activities, as well as an external marketing campaign aimed specifically at those target industries.

CHAIRMAN SULLIVAN: One question I had was we had mentioned a while back that Santa Fe County has a business park and are in the process of getting going and I understand the City also has some thoughts about a business park out in the vicinity of the airport. How many business parks do we need?

MS. HOLLOWAY: That's a good question and a lot of that has to do with how the County wants to develop and what types of businesses the County would like to see. The industries we've recommended for the City typically are not requiring large amounts of space, so it wouldn't require a large number of business parks. But we all know that growth is going to happen here. Where is the growth going to take place? Most likely we're going to keep expanding out into the county. We would love to work with the County on exploring a vision and determining exactly how many business sites need to be here, where they need to be placed, within the city and the county.

CHAIRMAN SULLIVAN: So these businesses that you're suggesting, these six, aren't necessarily businesses that need your traditional business park type of space.

MS. HOLLOWAY: They're not manufacturing business parks. Office business parks would be more appropriate but we're not really recommending large manufacturing plants that would require a lot of acreage, considerable acreage.

CHAIRMAN SULLIVAN: Okay, any other questions from the Commission? Commissioner Duran.

COMMISSIONER DURAN: Again, going back to the City/County cooperation on the economic opportunities for our community, I'm not sure what you've been made aware of, but I think Steve is aware of some of the projects that we have. We do have this County business park that we've been working on. The infrastructure there. We're in the middle of going through an RFP to find someone that could come in and advise us what would

2706793

be the best thing to do with that property. Our hope was initially to assist local businesses in the community to locate out there at below-cost rents so that money that they make could go into promoting their business.

In addition to that we have a large community being developed. It's called the Airport Redevelopment District and that's close to where the City is doing their economic development park. So somewhere along the way we need to get together to work together so that we know what we're doing and develop, I think, a regional plan for economic development in our community. Water is a big factor and I think that when the City was struggling with the minimum wage ordinance that something that failed to be factored into that was the fact that we really need to I think provide more opportunities for the community rather than -- as importantly as increasing the salaries. So hopefully we can tie that into this effort.

I'd be more than happy to meet with you at some point in time to let you know some of the things that we've been working on here at the County and provide staff to meet with you also.

MS. HOLLOWAY: We would like to meet with you and we will be here until Friday. If you have any time available we would like to meet with you. And we have had meetings with Jack Kolkmeier who provided us with some of your previous plans and we've reviewed all of those.

COMMISSIONER DURAN: Jack knows everything about what we've been working on the last six years or so. Thank you.

ANGELOS ANGELOU: My name is Angelos Angelou. I'm the principal of AngelouEconomics and if I may appeal to you on one point. Our firm has had the pleasure of doing economic development and strategic planning work for nearly 60 communities around the country and abroad. But we're also site selection consultants and we've worked with some of the largest companies in the world. Of course some of those companies or most of them will not be appropriate for this region, but our experience in site selection tells us that economic development has no political boundaries. When I go to a place to confirm whether it's going to be a good place for my client, I don't see city limits, I don't see county limits. What I see is a region of workers. The difference for me that can make or break a project would be within a 45-hour [sic] commute from the plant location. How many people can I count on as being part of the workforce.

So I'll appeal to you, it's kind of awkward to have come to this point now where we are finishing a project for the City, part of the county, and not have had the County's involvement as much as we would have liked to. There's water issues. There's development issues. There's growth issues that perhaps the County could have allowed a little bit more of possibilities here within this plan. It's never too late. I think the County has the opportunity to do a strategic plan of their own, a plan, however, that needs to somehow be meshed with the plan here in the city. Honestly speaking, both the city and the county are too small to be major players in economic development. And if you don't pool resources and if you don't work together I cannot say that the County business park is going to be very successful or the City business park is going to be successful. So I wish that we had been not in this awkward situation of having to talk about the

2706794

County economic development and yet know very little about it at this point in time. Perhaps it's not too late and we'll be ready to assist you any time that you'll be ready to undertake a strategic plan because it's a very important thing that you do.

**CHAIRMAN SULLIVAN:** Thank you, Mr. Angelou. Steve, anything to add? No? Did you have some handouts or anything? I saw some powerpoint looking things sitting over there.

**MS. HOLLOWAY:** That was my own notes. But I'd be happy to send you all a copy of the --

**CHAIRMAN SULLIVAN:** Okay. You're going to give us a copy. I assume staff will get the County a copy of the completed study. Additional questions? Commissioner Duran.

**COMMISSIONER DURAN:** I'd just like to say thank you for coming and making this presentation to us. We are very interested in working with your organization and the City in developing a comprehensive economic development for our community. The state is also very much interested in assisting us in that effort and I look forward to working with you.

**MS. HOLLOWAY:** Excellent. Thank you all so much for your time this afternoon and please let me know if you'd like to meet with us one and one we'd be happy to do that.

**COMMISSIONER DURAN:** I'll get a hold of Steve.

**VIII. B. Presentation on Bureau of Reclamation Purchase of San Juan Chama Water**

**DOUG SAYRE (Water Utility Director):** Thank you, Mr. Chair, Commissioners. Before you the issue is the Bureau of Reclamation has requested that the County and City of Santa Fe contract lease up to 2500 acre-feet of San Juan/Chama project water stored in -- I have Heron and Abiquiu but basically, what's stored in Heron is what they want to look at -- to provide for minimum flows of the Rio Grande during critical periods for the rest of the year.

The background is that the City and County currently have a contract with BOR for delivery of up to 5,605 acre-feet of San Juan/Chama project water annually, which has been delivered to Heron Reservoir. Over the past three years the excess water has been stored in Heron, El Vado and also Abiquiu reservoirs. Those amounts were what presently we have stored in those respective reservoirs. And I believe they're correct. I talked to BOR I believe last week about this. Because there is excess water stored in these operating reservoirs in excess of current needs which the City and County need, the United States is basically requesting beneficial use under terms and conditions as applicable federal and state law.

What this comes down to is that the Tenth Circuit Court decreed that we need to maintain flows in the Rio Grande for instream use for primarily I guess the silvery minnow and some other issues. So that's what this water would be used for is to maintain flows in the flow

2706795

stream below Cochiti Reservoir down to San Marcial, which is down south of Albuquerque.

In order to discuss this we have with us here today Ken Maxie who's the area manager with BOR who's a contract specialist. What the proposal is is to lease water from the City and County at \$47 per acre-foot and for us to obligate up to 2500 acre-feet if necessary over the next period of time to maintain the flows. In discussion with the City, my understanding is they will take this up also, I believe, tomorrow and they're pretty much, I think in favor of going ahead and doing this. As far as they're concerned that's the indication of staff of what they're considering. But at this time I guess we'd open it up to questions and I think I'll turn it over to Ken Maxie to discuss specific questions that you have on this particular contract if that's agreeable, Mr. Chair.

CHAIRMAN SULLIVAN: That would be fine. Welcome, Mr. Maxie. Do we have questions of Doug or Mr. Maxie from the Commission?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Maxie, so what you're asking us to give the okay to release 2500 acre-feet of water from the Heron Dam for the silvery minnow?

KEN MAXIE: Up to 2500 acre-feet. Yes. Basically, what I have requested is 1500 acre-feet firm with 1000 acre-foot option in case I need that additional water this year.

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

CHAIRMAN SULLIVAN: Mr. Maxie, is that for a period -- I see March 2003 in here. Is that for a period of one year?

MR. MAXIE: No, this would be to the end of the calendar year, sir. Right now, if I could explain, right now, I'm a bit water short to meet the required biological flows in the Middle Rio Grande from Cochiti Reservoir to basically Isleta Diversion Dam and in order to complete those flows for the year, I need to purchase a bit more water, primarily from the City and County of Santa Fe.

CHAIRMAN SULLIVAN: How much of the City/County allocation is available from the 5,905 acre-feet?

MR. MAXIE: I think 4900 acre-feet is what's showing on your briefing sheet, sir.

CHAIRMAN SULLIVAN: 4900 from Heron is available?

MR. MAXIE: From Heron.

CHAIRMAN SULLIVAN: Okay. And then we've got and I don't know, maybe Doug can answer it. We have a contract, proposed contract in the packet that has some amendments to it. Were those amendments that the County made or the BOR made or the City made?

MR. SAYRE: I think it was a consensus among the three parties, the BOR, the City and ourselves and also I think our retained attorney, John Utton, a lot of these were comments that we through corrections ought to be made. You see where the original contract came up from BOR and then some revisions were made to make it more specific to I guess the joint contractors, which in this case were the City and County of Santa Fe.

2706796

CHAIRMAN SULLIVAN: And I notice one of the revisions was a payment we make of \$47 an acre-foot but the County was stricken out from being a recipient or a joint recipient of that payment.

MR. SAYRE: That's on page 4? Excuse me. Which page is it on?

CHAIRMAN SULLIVAN: Page 4, paragraph 2. No. Page 5 near the top of the page.

MR. SAYRE: I think that probably needs to be corrected. I think it pertains to both parties. I think we're both contractors. I think probably he didn't catch that.

CHAIRMAN SULLIVAN: Okay. Assuming that correction would be made then, has there been any discussion on how that payment would be proportioned between the City and the County?

MR. SAYRE: There has been discussion, Mr. Chair, about that. I think what we're looking at is we're looking at these other agreements to address . . . If money is paid it will be addressed in some future agreements. This money would basically come back. I think it would be put in a reserve fund and then be distributed based on what we think the proportion would be the County's and the City's. I think we need to address that in a contract agreement with the City on how we're going to utilize San Juan/Chama water or transfer water. But that was sort of where we were looking at it would be addressed in future agreements.

CHAIRMAN SULLIVAN: Okay, other questions for Mr. Sayre or Mr. Maxie? Commissioner Duran.

COMMISSIONER DURAN: Mr. Maxie, I was curious. I've been appointed to Governor Richardson's blue ribbon water committee and we had a meeting a couple weeks ago. We talked about how dangerously low the levels at Heron Dam are currently. And I just had a question. I'm sure you're going to be taking that into consideration before you release any of that water. I heard that the level is so low that it's gotten to a point where the valves are. And I forget what they call it.

MR. MAXIE: The outlet works perhaps.

COMMISSIONER DURAN: I don't think that was it, but how are you going to release this water? If the levels are so low right now. Have the rain in recent weeks helped to bring that level up? Do you know much about the condition of Heron Dam?

MR. MAXIE: We operate Heron Dam, sir, and right now I did not understand that we had any problem getting water out of it. The water is considerably low. If memory serves, there's probably about 150,000 acre-feet total there right now out of a full storage capacity of 400,000. Round numbers. I haven't checked them lately but that's approximately what's there. Last year was a record low of trans-mountain in-flow, 6,000 acre-feet. This year we're probably looking at 60,000 acre-feet by the end of the year, so considerably better but not as good as what we expect, which is about 96,000. So the whole water situation in New Mexico is fairly grim. The water, I might inform you though, that is released down there will not just go to waste, if you will. We will meet the minimal requirements that we need to under the Fish and Wildlife biological opinion. Then that water once it reaches Isleta Dam can be diverted by the Middle Rio Grande Conservancy District to provide a little extra irrigation



2706797

water, perhaps for the rest of the season. But the district down there is basically out of water. It was out of water last week.

COMMISSIONER DURAN: When would the release begin?

MR. MAXIE: We will probably release it towards the last two weeks of October. We have water in storage right now in El Vado and that's the water that we're currently using to make flows.

COMMISSIONER DURAN: So this would occur between October and the end of the year, basically?

MR. MAXIE: Yes, basically. We may move it down to Abiquiu or El Vado but basically, we're looking at actually using it towards the last two weeks of October.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, Mr. Maxie, how much water -- if we didn't release it, we'd probably lose it anyway to evaporation?

MR. MAXIE: Perhaps not that much. Heron has a lower evaporative rate than, say, Elephant Butte does. If you keep it in storage there and we carry it over for you, it may be subject to some evaporation but not a whole lot.

COMMISSIONER ANAYA: Thank you.

CHAIRMAN SULLIVAN: Questions? Well, we have concurrent with this, as we amended the agenda, item IX. A. 1, which is the lease, which is what I assume you're referencing here.

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

**A. Matters from the County Manager**

1. Request by Bureau of Reclamation to Contract Lease the Use of Up to 2500 Acre-Foot of San Juan/Chama Project Water Stored in Heron and Abiquiu Reservoirs

CHAIRMAN SULLIVAN: What are the wishes of the Commission with regard to this proposed lease with perhaps that one change on page 5?

COMMISSIONER DURAN: Move for approval, Mr. Chair.

CHAIRMAN SULLIVAN: Okay we have a motion.

COMMISSIONER ANAYA: Second.

CHAIRMAN SULLIVAN: And a second. Motion from Commissioner Duran, second from Commissioner Anaya. That motion would be the with change on page 5?

COMMISSIONER DURAN: Correct.

CHAIRMAN SULLIVAN: Okay. To reinstate the words "and County." Is there further discussion?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: Just one question on page 2 at the bottom.

2706798

The underlined piece, which has December 1, 2003, does that mean that by that date you'll notify us if this contract is to be extended?

MR. MAXIE: That is when we'll notify you if we need to exercise the last thousand acre-feet of water. Basically though, if we get past October 31, there's virtually no chance that we would need the water this year.

COMMISSIONER MONTOYA: And then just in terms of future use, do you see that that's going to be something, this is going to be something that's going to be recurring?

MR. MAXIE: Yes, sir. Very likely. We have obligations under the Endangered Species Act to meet requirements for the endangered silvery minnow. The water supply is already limited so I will be out next year as I have the last couple of years attempting to purchase water from whatever source I can.

COMMISSIONER MONTOYA: Then, Mr. Chair, Doug, regarding the amount of time, how long can the County continue to lease these, in terms of our own use of these potential water rights or these water rights that we have?

MR. SAYRE: Mr. Chair, Commissioner Montoya, I'm not quite sure I understand the question. How long do we have to lease these?

COMMISSIONER MONTOYA: How long do you see into the future can we continue to lease these water rights?

MR. SAYRE: Mr. Chair, Commissioner Montoya, what I see is if we have another year like last year, which I consider 2002, there may be some tremendous obligation or request to lease some more water. If we have a good winter and we get good flows in the Rio Grande and we get good flows in the San Juan/Chama, probably we wouldn't have the request come down like it has. It just depends on what's going to happen with precipitation through the year and the snow pack that occurs up in Colorado and the upper part of the Rio Grande Basin. If we can maintain flows throughout the year then it's not quite such a problem. But right now, I think it's critical management of the various resources and we're kind of all trying to share in maintaining minimum flows in the Rio Grande for a period of time and I see it going on, as Ken says, for a period of time.

One comment I would like to make is that certainly one of the issues between, I think, the contractors on this water is that should this water be obligated because it's Colorado River Basin water that's being transferred and I think there's some legislation being proposed to not require that this water can be obligated for this instream use. We'll see what happens with Congress and whether that can be done but I know there are agendas before Congress that this water could not be considered for this type of flow.

COMMISSIONER MONTOYA: I guess what I'm trying to get at too, how long is it going to be before we start using these water rights and not being able to just let them flow down?

MR. SAYRE: Mr. Chair, Commissioner Montoya, what's going on presently is that this water is diverted over and stored in these reservoirs. Now, what we do is we work with the State Engineer and the Interstate Stream Commission, and to offset Buckman pumping, water is released downstream. And about 50 percent of the Buckman pumping is depletion of

2706799

the Rio Grande. So the water has been released down to offset Buckman pumping for the last 30 years that I know of. If we sort of look at what the obligations are and how much pumping is going on as to how much water is released. So it's kind of a continuous management system that's going on, of just being able to store water in the past because we haven't had to pump Buckman at such a rate that we used all of the San Juan/Chama. And that's why there's excess water in these upstream reservoirs.

COMMISSIONER MONTOYA: Thank you.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: So just to get a little bit more clear on this. So we basically have been using some of our San Juan/Chama water rights due to the fact that it's offsetting the water usage out of the aquifer in the Buckman area.

MR. SAYRE: Mr. Chair, Commissioner Duran, yes we have. We can go back and look at that but I know that in the early 90s we used a considerable amount of it. Last year we used almost all of the San Juan/Chama allocation to offset pumping in Buckman because last year the Buckman wells were pumped more than they have ever in the past. But that, as I say, even though we pump Buckman wells for approximately, I think 5,800 acre-feet, we only had to release about half of that to offset the effects on the Rio Grande. Because the rest of it came out of storage or some effects on the Tesuque-Pojoaque Basin.

COMMISSIONER DURAN: It's going to be a different issue but do we know the impact of that pumping on that aquifer?

MR. SAYRE: Mr. Chair, Commissioner Duran, absolutely. This is being monitored basically monthly by the State Engineer's Office, hydrology tests. They consider each month that Buckman's pump they can tell you this amount of effect goes to the Rio Grande. This comes from storage and this is the offset effect. So that's monitored as far as I'm concerned monthly by regulation parties.

COMMISSIONER DURAN: I have one last question. The Top of the World water rights that we have, is it possible to have those -- can we lease them or sell them on an annual basis until we need them for this particular purpose?

MR. SAYRE: Mr. Chair, Commissioner Duran, that's an interesting question. It's possible that that could be utilized. The problem we get into with Top of the World water rights is once they pass the gauge, a certain amount of those have to be obligated to what we call the Texas portion of it. That certainly, those rights could be considered, as far as I'm concerned as far as maintaining instream flows. Right now, that's what they're basically doing is because we haven't utilized them all and I don't think we'll totally utilize the Top of the World so some of them are basically spring flow into the Rio Grande so we're maintaining the flows at least to a certain point at this time.

Let me research that and get back on that question. Because that's something that I don't think we've considered

COMMISSIONER DURAN: Maybe we could sell it to the federal government, the Bureau of Reclamation and they could use it forever. It's going to be a long time before we use it.

2706800

MR. SAYRE: Mr. Chair, Commissioner Duran, let me research that and get back to you. It's an interesting question and let's see what the view would be by the various departments. As you know, we just acquired those totally this last, I think, two months ago. So that's why we really haven't tried to utilize them.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: Doug, who else will this benefit besides the silvery minnow?

MR. SAYRE: Mr. Chair, Commissioner Anaya, I think I prefer that Mr. Maxie answer that question because he's probably more in tune about where the water goes at this point than I am, below I'd say the Buckman diversion.

COMMISSIONER ANAYA: Okay.

MR. MAXIE: Mr. Chair, Commissioner, once the water is released out of basically Heron, then it goes down to Abiquiu, El Vado. Finally, it gets released out of Cochiti reservoir. And after that our target is 100 cfs at the Albuquerque central bridge. But the requirement is to maintain a continuous flow from Cochiti to Isleta diversion dam. After it reaches Isleta diversion dam, the Bureau of Reclamation doesn't care what happens to it. Most likely what will happen, and it will probably be a very small amount of that water that actually reaches there, it can be diverted by the Middle Rio Grande Conservancy District for use in their district, or it could be used by the Isleta Pueblo for possible use at Isleta Pueblo. So those are the two potential recipients of this. It is extremely unlikely it will ever make it to Elephant Butte in that slight quantity of water.

COMMISSIONER ANAYA: Okay. Thank you.

CHAIRMAN SULLIVAN: Other questions? Okay, we have a motion and a second on the floor.

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

MR. MAXIE: Commissioners, thank you very much on behalf of the Bureau of Reclamation, Department of the Interior.

COMMISSIONER ANAYA: Thanks, Doug.

CHAIRMAN SULLIVAN: We'll be back to you.

**IX. Matters from the Commission**

- A. Resolution No. 2003-125. A Resolution Declaring September 25, 2003 Immigrant Workers' Rights Day and Welcoming the Immigrant Workers Freedom Ride "On the Road to Citizenship" to the County of Santa Fe

CHAIRMAN SULLIVAN: I believe this was brought forward by Commissioner Campos. Commissioner Campos, do you want to take the lead on this?

2706801

COMMISSIONER CAMPOS: Mr. Chair, basically, this resolution is addressed to the fact that there are a lot of immigrants in our country who are contributing a lot of positive things to the economy, to our community, and it recognizes that there will be an Immigrant Workers Freedom Ride on September 25, 2003. So that is the purpose of this resolution.

CHAIRMAN SULLIVAN: Questions? Comments? Okay, I'm not hearing any. Then what's the wishes of the Commission with regard to Resolution 2003-125?

COMMISSIONER MONTOYA: Mr. Chair, move for approval.

COMMISSIONER CAMPOS: I'll second that.

CHAIRMAN SULLIVAN: Approval motion by Commissioner Montoya, seconded by Commissioner Campos. Further discussion?

**The motion to approve Resolution 2003-125 passed by unanimous [5-0] voice vote.**

**IX. B. Resolution No. 2003-126. A Resolution in Support of a New Mexico Constitutional Amendment to Create a Cabinet Department of Education Headed by a Secretary of Education and an Elected Public Education Commission and an Amendment to Provide for a Limited Additional Distribution from the Permanent Funds to Provide More Money for the Public Schools**

CHAIRMAN SULLIVAN: I believe this was brought forward by Commissioner Duran. Commissioner Duran, do you want to take this, Commissioner Duran?

COMMISSIONER DURAN: Yes. What I'd like to do is read the resolution into the record if I could. It explains pretty much, it's pretty self-explanatory. This is a resolution in support of New Mexico constitutional amendment to create a cabinet Department of Education, headed by a Secretary of Education and an elected Public Education Commission, and an amendment to provide for limited distribution from the permanent fund to provide more money for the public schools.

Whereas, all the children of the state of New Mexico deserve and are entitled to excellent public schools and education; and

Whereas, the great state of New Mexico has for far too long been recognized as one of the last states in its ability to offer a high level of public education; and

Whereas, there exists the need to set public education as a priority for the state, to streamline the educational system, to direct more funds into the classrooms, and to improve student achievement; and

Whereas, the current structure of the state's board of education is too large in order to effectuate coherent educational policy; and

Whereas, there exists a need to elevate the Department of Education to a cabinet level position; and

Whereas, a Secretary of Education, appointed by the governor and an elected Education

2706802

Commission will increase accountability, make the educational process more efficient for the public, and result in better management of the agency responsible for education; and

Whereas, there exists a need to eliminate state-level bureaucracy and to fund education reforms; and

Whereas, limited additional distribution from the state's permanent school fund will allow the state to provide more money for the public schools to implement and maintain education reforms and for other permanent fund recipients; and

Whereas, rigorous standards will be established and higher salaries will be paid through the additional distribution; and

Whereas, the state's permanent school fund is one of the nation's largest permanent funds and was created as an endowment for public school institutions and other institutions; and

Whereas, the time has come to set education as a priority of the state of New Mexico and put an end to the loss of human resources and economic development that the state has suffered for decades;

Now, therefore, be it resolved by the Santa Fe County Board of County Commissioners, that amendments to the New Mexico constitution are necessary to advance the continuous improvements of public education through the creation of a state Secretary of Education and an elected Public Education Commission, and through a greater distribution of the permanent school fund earnings for public education reform.

I would like for the Commission to approve this resolution. Many of us attended public schools here in New Mexico and I think are very familiar with the problems that our schools have had. And with that, I would like to make a motion that we move for approval of Resolution 2003-126.

COMMISSIONER MONTOYA: Second.

CHAIRMAN SULLIVAN: Motion and a second. Discussion? I had a question, Commissioner Duran. I'm still listening myself to the debates that are going on about this and what the effect of it is on the permanent fund and so forth, so firstly, I'm not ready to cast my vote here today until the election itself on the 23<sup>rd</sup>. But could you perhaps explain to me, one of the issues that has been brought forward is that this will -- with regard to the first item, which is taking a larger share of the permanent fund, that this will go for a period of eight years, which concurrently happens to be the potential period of the governor's office, and then after that it reverts back to a much smaller level. Would that put the then-governor in a problem where commitments, perhaps union commitments or other commitments have been made for salaries and then suddenly the rug is pulled out and we don't have the wherewithal to do that or it has to be done from the general fund? What's your reading on that?

COMMISSIONER DURAN: Well, I think this governor has taken -- is really thinking outside the box much more than other governors in the past. For the last eight years we've had a governor that has had relatively little interest in educational reforms for the state of New Mexico. I can't imagine that after an eight-year period that a new governor would come in and determine that -- my hope is that the new governor when he comes in, if it's eight years, will recognize how these constitutional amendments, what kind of impact they had on the

2706803

educational process.

I went to school in Los Alamos and in Santa Fe and there was no question in my mind that the education that was available to me in Los Alamos was far superior than the public education that was available to me here in Santa Fe. When I was going to school, Los Alamos was considered one of the top ten schools in the nation. And the reason for that is that they had federal funds available to them to supplement their programs, pay for higher salaries and that's what these amendments do. They provide our state the ability to raise salaries for our teachers and bring more money into the classroom and I think it makes a big difference and I've experienced it.

CHAIRMAN SULLIVAN: I guess in following up on that, Commissioner, if that's in fact the case, and I think we all generally agree that teachers' salaries need some better support than they're getting in this state, but if that's the case and this plan is well thought out, why not just do it permanently? That's what I'm not understanding, if this is a good idea, why isn't it just a good idea? Why does it become not such a good idea after eight years?

COMMISSIONER DURAN: Well, I can't really answer that. I can only assume if in eight years it's proven not to be the best thing for our state that the governor at that point would have the ability or the option to change it.

CHAIRMAN SULLIVAN: Commissioner Montoya, sure.

COMMISSIONER MONTOYA: On that point, my understanding is that, I'm not even sure if it's eight years. I think it may be either four or six that they're looking at extending this permanent fund into education, part of education reform. And part of it being for that period of time because they don't want to lock it up. I think it's four years. I don't think they want to lock it up for a longer period time than that because of the interest rates, in other words accruing a significant amount during the whole portion, the whole period until the stocks and everything crash. And now with interest rates as low as they are they don't want to extend it beyond, I believe that four-year period so that it allows them to again reinvest after that time. At least that's part of my understanding and I don't think it's eight years. Maybe it is. I don't think it's an eight-year period that they're looking at.

CHAIRMAN SULLIVAN: And is this money, and I'm just trying to get some information on this because it's been kind of all one-sided in sound bites on the TV, is this money going to go directly into teachers' salaries or is it at the discretion of the legislature to do whatever they want to with it?

COMMISSIONER MONTOYA: No, my understanding is that it's directly for teachers' salaries.

COMMISSIONER DURAN: And programs.

COMMISSIONER MONTOYA: And programs. Exactly. And educational programs.

CHAIRMAN SULLIVAN: Because what we've seen with some extent with regard to the lottery which was proposed as teachers' salaries was that the lottery money has gone for teachers' salaries but then the educational funding has been reduced by a similar amount. So they've met the letter of the law but in the end, a great deal of the monies haven't

2706804

reached the pocketbooks of the teachers.

COMMISSIONER MONTOYA: And again, my understanding is that all of it is supposed to be strictly for education reform initiatives which of course includes teachers' salaries.

CHAIRMAN SULLIVAN: But then what -- I know a lot of teacher organizations, school districts -- you're being on the school board previously from Pojoaque of course is a real big help here, those that are unionized, they enter into union agreements and based on incomes that they get from this additional money from the permanent fund, then what would happen after the four years, or whatever the period is?

COMMISSIONER MONTOYA: It could be the situation that we're in now and that's that things are frozen or that we're seeing decreases in certain programs. Certainly, thank God we're not seeing decreases in teachers' salaries but in some programs we're seeing cut-backs. So that's the potential I think that may occur after this four-year period.

CHAIRMAN SULLIVAN: And the other question I had, and maybe Commissioner Duran or Commissioner Montoya, whoever can help me with this, is that the other issue on the ballot is creating, or eliminating I guess the state Board of Education and creating a cabinet level position. What has been the problem with the state Board of Education? They say if something's not broken, don't fix it, well obviously the previous governor had the same feeling. I'm just not sure what the board of education is doing that a cabinet level could do better. Commissioner Duran.

COMMISSIONER DURAN: Well, if you don't think something's broken here, something's wrong. If you think being one of the last states that offer a high level of public education doesn't represent something wrong, I don't know what to tell you. It's not that they're doing away with the board, what they're doing is appointing a cabinet position, that would be directly involved with public school reform issues, rather than just a committee. There's still a committee, and that committee is elected by the public, based on districts. So every portion of the state is going to be represented on this committee. They're elected officials and we have someone keeping track of the programs, the reforms, all of the things that need to be changed to make a difference in our educational process here. I think something's broken.

CHAIRMAN SULLIVAN: I think you're certainly right, Commissioner, and I think we've consistently ranked near the bottom of various educational polls. But some figures that I've looked at, some of the states, many of the states that rank high have state boards of education just like ours. Many that rank high have cabinet levels. So there doesn't seem to be any direct correlation between a good educational environment for our children and whether it's managed by the board of education or a cabinet level. So I don't disagree that we need some change. I just wonder how this is going to help. You feel it's going to help us because the governor will be more directly involved in the day to day decision making. Is that what you're saying?

COMMISSIONER DURAN: I think the public will be more and more involved, and they will have more accountability by having a cabinet position and having elected members to the board, based on locale, districts.



2706805

CHAIRMAN SULLIVAN: But we have elected members now, don't we?  
COMMISSIONER DURAN: We do.

CHAIRMAN SULLIVAN: There are elected members to the state board of education now.

COMMISSIONER DURAN: I think there's like 15. Have you ever been on a committee with 15 people? I'm sure you've been on one. I've been on one with 15 people.

CHAIRMAN SULLIVAN: It's the size of the state board of education that you feel is a little unwieldy.

COMMISSIONER DURAN: We need someone to pay attention to the problem. Having 15 people with 15 different ideas I think has proven not to work in the past. And this governor, this administration is asking for us, asking the public, to take another look at how we deal with public education in our state and I think to go on, I think the status quo just doesn't work. If you want to spend another 30 years being last at everything, I don't think that's very progressive. We have to do something. I know that there are other states that have a similar situation as we have right now. Maybe they're right behind us. Maybe they're just in front of us. But I don't know. All I know is that we've been given the opportunity to try to make a change, to make a difference and this resolution is just in support of that effort. I'm not asking you to vote for the amendments at all.

CHAIRMAN SULLIVAN: Okay. Thank you. Those were some of the questions I had. Other questions or comments by the Commission? If not, we have a motion and a second for approval of Resolution 2003-126.

The motion to approve Resolution 2003-126 passed by unanimous [4-0] voice vote with Commissioner Sullivan abstaining.

**IX. C. Request by Cañada de los Alamos Mutual Domestic Water Consumers Association for Emergency Bulk Water Sales**

GARY ROYBAL (Utilities Director): Good afternoon, Mr. Chair, members of the Board. Before you is a request by the Cañada de los Alamos Mutual Domestic Water Consumers Association for the purchase of bulk water sales from the County's Utility Department. This request came in on September 3<sup>rd</sup> after the deadline for the packet material and was included under Matters by the Commission. Ms. Chita Gillis is here from Cañada de los Alamos to answer any questions on their water service availability but it's my understanding that Cañada de los Alamos is currently hauling water to their storage facilities to supplement their water supply during the process of developing an additional source of supply, which should be developed probably in the next couple of months. And they're hauling water, I believe from Española but they would like to haul it from Santa Fe which would lower their operating costs to do this.

We've been in a similar situation with the Cerrillos Mutual Domestic Water Association

2706806

and the rate that we charged Cerrillos was a ten dollar monthly service charge and \$3.94 per thousand gallons. Now, later on this evening there's a public hearing on an increase in rates to raise that to \$4.09, so if the Commission does decide to approve this, that this be approved condition upon any rate adjustments that may occur into the future, which would mean that it would be at the same commodity rate that was approved by the Commission. With that I stand for any questions.

CHAIRMAN SULLIVAN: Questions? Commissioner Anaya.

COMMISSIONER ANAYA: Gary, what is Cañada de los Alamos doing right now? Are they drilling a new well, or what's the problem?

MS. GILLIS: We're a membership of 25 families and we've been on a community well that was dug. It's really not very deep. It's around 20 feet deep that was dug in 1957 and served the community until 2002. And then in July of 2002, our August of 2002, we started having to supplement our water by hauling water to our storage tank and we put on very strict restrictions on our members to 50 gallons per household per day last year. This year we've only done 75 gallons per household per day because it is just so taxing on everyone.

Even with that, we can only produce half of what we need to serve our community. So we produced about 30,000 gallons a month last month and we bought 30,000 gallons. And it was hauled by Max Vigil and his family from Española and the problem is his expense to haul it has risen so much because of gas and because of the weight he has to haul and because we're asking him to haul more because we need more at this point. In order for him to continue doing it for us we have to get him a similar rate that he pays for water in Española. So that is what we're requesting.

We are right now one of the communities that has been approved for the \$400,000 emergency grant and we did all our final papers last week and we received our emergency well permit yesterday. So within the next two to three weeks, we'll be doing the drilling. Souder Miller is our engineering company. After that, I'm assuming it may take a couple of months for everything to be in place so that that water is truly available to the system. So we're asking for the -- last year we hauled water from August to January 3, 2003, so for five months. This year we started hauling in July, at the beginning of July and I'm hoping that everything will be in place by December so that we'll be able to rely on a deep water well to supplement more our very shallow well, which is only 20 feet deep, and right now, only has two feet of water in it, standing water. That's why we can only pump like for 15 minutes at a time. And many times throughout the day. That's how we tend to run it so that we can store it. Also part of our grant is to have a 50,000 gallon storage tank to help us through periods of drought because we do not have a history of high producing deep water wells up there, but the plan with the engineering company and the state is that we'll be able to build that to help with periods where there is not enough water to serve the community.

COMMISSIONER ANAYA: The \$400,000 that you're going to get in emergency monies, you're going to drill a well and install a new storage tank.

MS. GILLIS: And a new storage tank. And then there's a few upgrades on the system, although we have had two fairly recent upgrades in I think '96 and then in 2000, 2001

2706807

to our pipeline. We borrowed money for that. We have loans outstanding for that.

COMMISSIONER ANAYA: And how long are we looking for? How long do you need the --

MS. GILLIS: I would hope that maybe you could approve it through December. We'll stop hauling as soon as we have water, but last time, the last hauling we had to do for the year -- in other words, we had enough to replenish our well after that from run-off from the winter precipitation, was the beginning of January.

COMMISSIONER ANAYA: I just want to make sure that you don't have to come back. If you want to do maybe three months and that way it gives you time. Because I now this is a similar situation in Cerrillos and they had to come back. I know they're doing okay right now. But is three months good?

MS. GILLIS: So that would be -- could we do it for four through December? Because even if there's a delay in getting everything hooked up, because of course you may not hit water the first time. That kind of thing. But if there's a delay, we're pretty sure that by January there's enough precipitation in the area that our well recharges adequately to serve the community.

COMMISSIONER ANAYA: So the end of December?

MS. GILLIS: Yes. Thank you.

CHAIRMAN SULLIVAN: Other questions for the applicant, Ms. Gillis or for Gary?

COMMISSIONER CAMPOS: Just a question, Mr. Chair, for Mr. Roybal.

CHAIRMAN SULLIVAN: Commissioner Campos.

COMMISSIONER CAMPOS: What do we have to do today to authorize that the County sell bulk water to Cañada de los Alamos? Do we have a resolution or just a consensus amongst the Board or what are you asking for?

MR. ROYBAL: Mr. Chair, Commissioner Campos, what I would ask is that you approve a rate of \$10 per month as a customer service charge and \$3.94 conditioned upon any other rate adjustments that may occur between now and December 31<sup>st</sup>. The way we approved this the last time for Cerrillos was that we put a provision in there that it could be extended either by the Commission or by the County Manager. So if we have to go beyond the December 31<sup>st</sup> the County Manager could go ahead and extend this for another three months if needed. So the request would be as I just described.

COMMISSIONER CAMPOS: Okay, Mr. Chair, I would make that motion, also allowing water service to the end of December and allowing the County Manager to extend service if necessary thereafter, without having to come back through the County Commission.

COMMISSIONER ANAYA: Second.

CHAIRMAN SULLIVAN: Motion and a second. Discussion? On the extension, Commissioner, thereafter? Is there any term on that or just at the discretion of the County Manager?

COMMISSIONER CAMPOS: Well, I don't think they would be asking us for water if they had the well functioning. If they have problems with the well they're going to be

2706808

back and if they can go through the County Manager, that's simpler to do. So I don't see the village people coming and asking for more water than they need.

CHAIRMAN SULLIVAN: Okay. So the motion is to approve the sale of bulk water to the Cañada de los Alamos Mutual Domestic Water Consumers Association at the rates currently in effect at the time of sale, through the end of December, and with the option to extend thereafter at the approval of the County Manager. Is that how you understand it, Commissioner Anaya?

COMMISSIONER ANAYA: Yes. Discussion on that motion?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: I know there's another item on the agenda for rate increases and I believe that Ms. Gillis, you understand that if that gets approved then that's what -- okay. Thank you.

**The motion to approve sale of bulk water to Cañada de los Alamos passed by unanimous [4-0] voice vote. [Commissioner Duran was not present for this action.]**

MS. GILLIS: Thank you.

CHAIRMAN SULLIVAN: Thank you, and good luck with your new well.

Additional matters from the Commission. Let's start with Commissioner Montoya.

COMMISSIONER MONTOYA: Thank you, Mr. Chair. Just a couple of items. I was again going through the minutes and saw where we had talked about speed humps. I was just curious as to where we were with that in terms of getting information back to us. I believe it was Dan Rydberg who had given us some information on that.

JAMES LUJAN (Public Works Director): Mr. Chair, Commissioner Montoya, on that issue I believe we had scheduled to do some workshops between now and December and bring it either late December or the first part of January.

COMMISSIONER MONTOYA: For --

MR. LUJAN: For a workshop. Yes, and a policy. Right now we're putting all the leg-work together. What it's going to cost us for speed humps and a complete procedure of not just speed humps. Traffic calming I thought was the instruction by the Commission at one time of different alternatives other than speed humps so that's going to take some time to put that together. So I'd like to either see it late December or at the January meeting. But we definitely want to hold some workshops and public hearings with people and different citizens and we're putting that together right now.

COMMISSIONER MONTOYA: Oh, okay. All right. Thank you, James. And I just wanted to quickly report that I believe the Native American Summit, actually the Pojoaque Valley Community Planning Summit that we had with the different Pueblo communities went very well this past Friday, September 5 and I just want to thank Gerald and staff, Romela and Robert, who I see here for participating in that last Friday. So I think it went very well, just to let the Commissioners know as well.

2706809

The strategic planning process, Gerald, I know we kind of touched on it a little bit yesterday when we were meeting but do you have any concrete dates we may be looking at or what we're looking at?

MR. GONZALEZ: Mr. Chair, Commissioner Montoya, yes, we are scheduled for the 25<sup>th</sup> and the 26<sup>th</sup>. That would be at Vista Clara out in Galisteo. We are scheduled for 8:00 to 5:00 in the afternoon and I have been working on this week and last week with the consultant/facilitator who will help us move forward with that. So we're in the process of developing an agenda and focusing on some specific issues. We'll probably have an agenda to pass out later on this week so that we can get input from the Commissioners.

One thing that we had discussed at senior staff was having input from the Commissioners concerning what their top priorities and concerns are. I know from a staff standpoint, we've identified a number of issues and elected officials have identified some of their issues that they feel have to be part of that strategic planning process, but we also understand that you as Commissioners have your own issues and concerns that need to be added to that list so that when we come together and begin to identify those priorities, they incorporate the thoughts and the policy direction of you as Commissioners as well.

COMMISSIONER MONTOYA: Thank you, Gerald. And then just the last thing. I received notification yesterday that my name I guess has been submitted and I was appointed to the NACo for their Human Services and Education Committee. And then lastly, there was a resolution that had been included in your packet which did not meet the requirement in terms of publication of notice so I will be asking that this be brought up at the next Commission meeting that we have. Thank you, Mr. Chair.

CHAIRMAN SULLIVAN: Thank you, Commissioner. Gerald, clarification. You said the 25<sup>th</sup> and the 26<sup>th</sup>. What month would that be?

MR. GONZALEZ: My apologies, Mr. Chair. That's this month, September.

CHAIRMAN SULLIVAN: That would be a Thursday and a Friday.

MR. GONZALEZ: That would be a Thursday and a Friday. That's correct.

CHAIRMAN SULLIVAN: And who's the facilitator?

MR. GONZALEZ: The facilitator would be Bruce Poster, who has done some work a while back with the County. I think in '95 or '96 and I felt that he might be able to give us also some perspective on what that eight years traveled by Commission and policy changes and everything else would indicate to him in terms of how far we've come. That's not the only reason. He's also an excellent facilitator and has done work with a number of local governmental bodies, exactly this kind of thing.

CHAIRMAN SULLIVAN: Okay. We're still on Matters from the Commission. Commissioner Anaya, do you have anything?

COMMISSIONER ANAYA: No, Mr. Chair, I don't.

CHAIRMAN SULLIVAN: Okay. Commissioner Duran.

COMMISSIONER DURAN: I don't, that I can think of.

CHAIRMAN SULLIVAN: Okay, Commissioner Campos.

COMMISSIONER CAMPOS: Nothing.

2706810

CHAIRMAN SULLIVAN: Wow. I'm on a roll. Okay, I get to do a couple then . A couple of quick ones. At our July 29<sup>th</sup> meeting we talked about open space and COLTPAC acquisitions fairly extensively and the one thing that seems to be missing was a schedule of kind of critical benchmark times. Some of these acquisitions were lagging and kind of festering. And so I wondered where we stood with that, whether we at least have some target schedules that would hopefully move the sellers and the attorneys to some deadline. I think attorneys work better with deadlines.

TONY FLORES (Project Manager): Mr. Chair, just an update. We did present to the Board an update of where we're headed and we are currently still in the process of developing those schedules of the final acquisitions that are on the table. Some new information has been evolved around some of those projects and some of them have gone away. We are planning to bring back up the final open space schedule in the October administrative meeting at the end of the month as well as a white paper regarding the non-profit partnership or stewardship, I should say, of our open space properties. So that is scheduled to be brought forward at the end of October.

CHAIRMAN SULLIVAN: And does that schedule that you're working on also pertain to new projects? I think what I got out of the discussion at that meeting was that we needed to set some target schedules as we got onto new projects. If we had some difficulties then we could work with that and the Commission could be informed but it's more or less, at least seems to me on the Commission that this is kind of an open-ended process. I think we need to tighten it up a bit. Will that pertain to all projects?

MR. FLORES: Mr. Chair, yes it will.

CHAIRMAN SULLIVAN: Okay, good. Glad to hear that. So you'll be bringing that back at the next --

MR. FLORES: At the administrative meeting of October.

CHAIRMAN SULLIVAN: At the end of October. Right. Okay, great. Glad to hear that. And on the road issues, we approved a lighting agreement for County Road 73 and US 285. Mr. Eric Martinez gave us a presentation on that and one of the stipulations of that agreement was that we were going to request that the Pueblo of Tesuque assist in the cost of that. And I saw a letter which Mr. Martinez wrote to them about that and Mr. Lujan, have we had any response or discussion on it?

MR. LUJAN: Mr. Chair, members of the Commission, to date, they have not responded to that letter. I did inquire about it last week with Eric and they have not responded to that letter.

CHAIRMAN SULLIVAN: Okay. Well, maybe we can just keep -- I understand one of the outcomes of Friday's meeting, Commissioner Montoya, was talking about to keep the communication and cooperation on projects flowing and this seems to be a fairly logical avenue for something like that.

The last question I had was, and this is actually for Commissioner Duran, we talked several months ago, and I sent the EZA a letter about the change in the definition of community water system at your suggestion so that they were the same in the BCC as they are in the EZA.

2706811

Has anything been done at the EZA?

COMMISSIONER DURAN: Well, the last two meetings, we haven't had meetings for two months.

CHAIRMAN SULLIVAN: Okay.

COMMISSIONER DURAN: The last Tuesday it was cancelled because of the lights going out. And then the month before there wasn't anything on the agenda. So I'll check with staff and at our next meeting, which is the end of this month I'll make sure that the members are made aware of that.

CHAIRMAN SULLIVAN: Okay. I don't see Roman, but --

COMMISSIONER DURAN: He's sick today. Actually, you know the EZA meeting is just after the BCC meeting. If you want to remind me at that meeting I can pass it on.

CHAIRMAN SULLIVAN: If it's on the agenda I'd be glad to speak to it.

COMMISSIONER DURAN: Actually, I think it is on the agenda. It was to the last meeting.

CHAIRMAN SULLIVAN: You've got some staff language and so forth?

COMMISSIONER DURAN: I think so.

CHAIRMAN SULLIVAN: Okay. Good. I'd like to kind of close that loop-hole if we can and get both of those to read the same.

COMMISSIONER DURAN: Well, why don't we both communicate your concern to Roman. Maybe you want to look at it before.

CHAIRMAN SULLIVAN: Well, I think the letter that he sent you or that I sent you that he wrote for me, it also had some recommended language. Just strike-out language type of thing. So it was kind of all there and it was pretty easy to do. So if we could just kind of move forward with that. Those were the items I had. Anybody have anything else? All right. Thank you, gentlemen.

**X. Consent Calendar**

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

1. **BCC CASE #M 02-4801 - Brumby's LLC (Approved)**
2. **EZ CASE #S 99-4622 - Village Plaza (Approved)**
3. **EZ CASE #S 02-4022 - Tesuque Hills Subdivision (Approved)**

**B. Resolution No. 2003-127. A Resolution Requesting a Decrease to the Housing Capital Improvement Fund (301)/CIAP 2001 to Realign the Fiscal Year 2004 Budget with the Prior Fiscal Year 2003 Cash Balance for Expenditure in Fiscal Year 2004 (Community & Health Development Department)**

**C. Request Authorization to Accept and Award a Construction Agreement to the Lowest Responsive Bidder for IFB #24-14 for Modernization of**

2706812

- Public Housing Units (Community & Health Development Department)
- D. Resolution No. 2003-128. A Resolution Requesting an Increase to Emergency Medical Services (EMS) Fund (206)/All EMS Districts to Budget Prior Fiscal Year 2003 Cash Balances and to Realign the Fiscal Year 2004 Budget with the Final EMS Allotment Received from the New Mexico Department of Health for Expenditure in Fiscal Year 2004 (Fire Department)
  - E. Resolution No. 2003-129. A Resolution Requesting an Increase to Fire Protection Fund (209) to Realign the Fiscal Year 2004 Budget with the Final Fire Protection Allotment Received from the New Mexico State Fire Marshal for Expenditure in Fiscal Year 2004 (Fire Department)
  - F. Resolution No. 2003-130. A Resolution Requesting an Increase to the Fire Protection Fund (209)/All Fire Districts to Budget Prior Fiscal Year 2003 Cash Balances for Expenditure in Fiscal Year 2004 (Fire Department)
  - G. Resolution No. 2003-131. A Resolution Requesting an Increase to the Environmental Gross Receipts Tax Revenue Bond (402) to Budget Prior Fiscal Year 2003 Cash Balance for Expenditure in Fiscal Year 2004 (Finance Department)
  - H. Resolution No. 2003-132. A Resolution Designating a Grantee Representative and Signature Authority regarding the Regional Water System Feasibility Study and Environmental Assessment for Cuatro Villas Mutual Domestic Water Users Association (Land Use Department)
  - I. Resolution No. 2003-133. A Resolution Requesting an Increase to the State Special Appropriations' Fund (318)/River Trail Corridor Project to Budget Prior Fiscal Year 2003 Cash Balance for Expenditure in Fiscal Year 2004 (Project & Facilities Management Department)
  - J. Resolution No. 2003-134. A Resolution Requesting an Increase to the GOB Series 2001 Fund (353)/Public Works to Budget Prior Fiscal Year 2003 Cash Balance for Expenditure in Fiscal Year 2004 (Public Works)
  - K. Resolution No. 2003-135. A Resolution Requesting an Increase to the Correction Fees Fund (201) to Budget Prior Fiscal Year 2003 Cash Balance for Expenditure in Fiscal Year 2004 (Sheriff's Office)
  - L. Resolution No. 2003-137. A Resolution Requesting an Increase to the Water Enterprise Fund (505) to Budget Prior Fiscal Year 2003 Cash Balance for Expenditure in Fiscal Year 2004 (Utilities Department)

COMMISSIONER ANAYA: Move for approval.

COMMISSIONER MONTROYA: Second.

CHAIRMAN SULLIVAN: We have a motion and a second. Motion by



2706813

Commissioner Anaya, seconded by Commissioner Montoya to approve the Consent Calendar.  
Is there discussion?

The motion to approve the Consent Calendar as submitted passed by unanimous  
[5-0] voice vote.

**XI. A. Request Direction and/or Approval of MOA with St. Vincent's Hospital**

**CHAIRMAN SULLIVAN:** Who is going to discuss this? Don't be bashful.  
Don't everybody run up to the podium here. We have to maintain some order in this room.

**MR. GONZALEZ:** As a preface, we did meet with St. Vincent's yesterday.  
This has been an intense week so I was trying to put an extra day in there, Mr. Chair. But we  
did have preliminary discussions with them yesterday and I'll let Steve also give us a little bit of  
introduction.

**STEVE SHEPHERD (Health Division Director):** Mr. Chair, Commissioners,  
yesterday we did meet. It was a formal meeting of the Progress Review Committee, which is a  
function of the memorandum of agreement. At that meeting we discussed legal issues,  
especially the separation of the MOA from sole community provider supplements. We  
discussed the possible involvement of St. Vincent's Hospital in assisting Santa Fe County with  
jail healthcare needs. And basically, I'd probably say that we did not come to a conclusion yet.  
We probably do need to have further discussions, either with staff or on a higher administrative  
level. The issue of supplemental sole community provider probably will require at least a  
special meeting of the Commission. I stand for questions.

**CHAIRMAN SULLIVAN:** Questions? Commissioner Duran, you had your  
hand up?

**COMMISSIONER DURAN:** I was just wondering, isn't the biggest issue right  
now the healthcare needs we have out at the jail and how St. Vincent's might be able to  
participate in providing the community some healthcare out there? I think the answer to that is  
yes. It's my understanding that's what part of the issue is. The other thing is when we first put  
together the MOA, we had to be very careful about how we structured it, how these services  
were given back to the community and how the County was involved in that. And my  
understanding is that there was desire for this Commission to direct St. Vincent's to provide x-  
amount of dollars to the jail for healthcare, and I think that that might create some problems for  
us from a fiscal point of view and basically how that money is supposed to be spent.

What I would like to do is ask the Commission to ask St. Vincent's to put together some  
kind of program, knowing that the community needs help out there, maybe we could ask them  
to develop some kind of program that we could take out to the jail that works within their  
budget and works within the intent of the MOA and doesn't violate any federal law.

**MR. GONZALEZ:** Mr. Chair, Commissioner Duran, we have had some  
separate preliminary discussions with St. Vincent's about that. Dr. Lucas indicated that he

2706814

would be glad to put a number of proposals on the table. Among other things we discussed the possibility of getting some federal funds, reimbursement funds for doing some of those programs. I think there are a number of items that they have under consideration that would be able to assist the County significantly in terms of dealing with the jail healthcare issues and I think that's an excellent suggestion. Dr. Lucas in fact made the same suggestion himself and said I'd be happy to sit down and meet with you or the Commission or whomever in order to discuss how we can provide healthcare in this separate form for the jail.

One of the issues that we talked about was the cycling through of diseases, HIV, sexually transmitted diseases, other similar kinds of diseases and how those get out into the community and actually affect the community as a whole. So they're concerned about that and interested in sitting down with us to discuss how to address those kinds of things.

CHAIRMAN SULLIVAN: And I think too, Commissioner Duran, what we hope to get completed here is I think a general proposal like you're alluding to from St. Vincent's or from the County that St. Vincent's is in agreement with, but in essence a budget. Because we have a short time frame here. This has to be completed by the 19<sup>th</sup> of September.

COMMISSIONER DURAN: Right. For that new allocation, right?

CHAIRMAN SULLIVAN: Correct. So basically what we need to agree upon is a budget and a general scope and once we do that, then I think we do what we've done in all the other MOAs and that's refine that, come to some agreement on how it would operate with MTC. They already have a healthcare contractor, so that has to be worked out. How it would be handled at St. Vincent and those details, I don't think we're going to resolve prior to the 19<sup>th</sup>.

One thought that we came up with in my discussing this with staff was that we do need to have a special session, you can call it a work session or an approval session or whatever. I wanted to throw out the possibility of Tuesday the 16<sup>th</sup> for that and see how you all reacted to that. We couldn't have it here because Becky's having her elections, I think, going on. Aren't you, Becky? The 16<sup>th</sup> of September? So we might have to hold it over at the prior magistrate building. We have a conference room there, perhaps something like 3:00 to 5:00 because there's an RPA meeting at 6:00. The RPA meeting at 6:00 is here in the Commission chambers. So it's a thought that might be a good target date. If things are wrapped up by then we'd be finished and at least conceptually we'd be able to give the staff the green light that that budget looks good and it's ready for the County Manager to sign off on. If we're still in discussions then we might have to meet again on the 18<sup>th</sup> as a back-up. Does that work with people's schedules, say from 3:00 to 5:00 on the 16<sup>th</sup> of September?

COMMISSIONER DURAN: That doesn't work for me. Commissioner Campos would be proud of me. I'm going to a drought seminar in Albuquerque so I can't make it.

COMMISSIONER MONTOYA: Mr. Chair, I won't be able to make it that day either.

CHAIRMAN SULLIVAN: Okay, let's pick -- I think we need to --

COMMISSIONER DURAN: Could we do it that Monday?

CHAIRMAN SULLIVAN: Monday's a possibility. The only thing, I guess Mr.

2706815

Buff has been out of town and he doesn't get back into town until Monday and he's been one of the people who's been very familiar and interacting with the County on these issues. I'm not sure he would be ready to have a proposal by Monday but maybe by Monday afternoon he would. Steve, have you got some thoughts on that?

MR. SHEPHERD: Mr. Chair, I could check on that.

CHAIRMAN SULLIVAN: So tentatively then, some thought. Maybe Monday afternoon from 3:00 to 5:00. Again, it would have to be in the same place. Becky, you're still doing early voting here, correct?

REBECCA BUSTAMANTE (County Clerk): We're doing special voting until the 20<sup>th</sup>. If you need to use the room, we just need advance notice and we can do it in the hall.

CHAIRMAN SULLIVAN: Until the 20<sup>th</sup>. Well, we could work that out with the staff. Whichever works. Monday, let's see. This is Tuesday. I don't know. Will that give you enough time to put some things together, Steve, with St. Vincent's?

MR. SHEPHERD: I could probably take a look.

CHAIRMAN SULLIVAN: We could go to Wednesday. Is that better? How does Wednesday work?

MR. GONZALEZ: The only caveat is that --

COMMISSIONER DURAN: I trust you to represent us.

CHAIRMAN SULLIVAN: I think Commissioner Montoya had a few problems with that date too. With Tuesday. So it's got to be either Monday or Wednesday.

MR. GONZALEZ: Mr. Chair, the only caveat about Wednesday, although it's not essential or critical is that I may be -- in fact I'm planning on being out of state at that point.

CHAIRMAN SULLIVAN: On Wednesday?

MR. GONZALEZ: Yes. Actually, the 17<sup>th</sup> through the 23<sup>rd</sup>.

CHAIRMAN SULLIVAN: We better do this Monday because if we have issues that look to be too large to come to a resolution on Monday then at least we'll have a couple more days to arm-wrestle.

COMMISSIONER ANAYA: From 2:00 to 4:00?

CHAIRMAN SULLIVAN: I was thinking of from 3:00 to 5:00.

COMMISSIONER DURAN: 3:00 to 5:00 is okay. Or even 4:00 to 6:00.

CHAIRMAN SULLIVAN: How about 4:00 to 6:00 on Monday? Is that better?

All right, 4:00 to 6:00 Monday at St. Vincent's. In agreement with that. Jaime, any thoughts on that that you wanted to add?

JAIME ESTREMERA-FITZGERALD: I think that sounds like a good time. I think the only thought that I would ask the Commissioners to consider is this amendment that we're talking about that's due on the 19<sup>th</sup> certainly is a part of the discussion, but I think what pleases me and I think as Gerald Gonzalez, the Manager and I have talked, the hospital really is wanting, as Commissioner Duran had mentioned, recognizing that part of the community benefit of the MOA is to deal with community needs and the County is faced with a pretty major community need at the jail in terms of healthcare. I've had several discussions myself with cabinet secretary Williams and I am concerned myself to deal with it and I am happy that

2706816

the hospital really does want to sit down -- it's beyond this amendment. We're talking of how we could really come into a relationship that I think the hospital really could help the County in serving the needs of the jail healthcare a lot better than has been done up to this point. So I think if you can work on that.

But I also just want to remind us that the amendment is only one small piece of it. You need to look at the bigger picture also.

CHAIRMAN SULLIVAN: Yes, and I think you're right, Jaime. We have a fairly short period of time to do that. I think probably we're looking at two documents and one may be a simple resolution to approve the funding match, 25 percent match, and another would be an agreement on budgeting funds. But my feeling is that both of those documents have to be agreed upon in principle before the 19<sup>th</sup> when we have to write a check. So we need to keep the negotiating moving. Okay, so we said 4:00 to 6:00 then Monday, and we'll let you know where that's going to be, whether you want to do it in here or over at the old magistrate building. Commissioner.

COMMISSIONER MONTOYA: Mr. Chair, where are we stuck right now in this negotiating process? Is it on the dollar amount that we're proposing that would be going to the jail, the jail sort of medical services?

MR. SHEPHERD: Mr. Chair, Commissioner, I'd say we're stuck in a few places and please feel free to jump in. One is the legal issue separating sole community provider funding from our separate MOA or contract with the hospital. That's an issue that needs to be dealt with. The other is probably negotiating an amendment to our MOA. I don't know if we've gotten deep enough into negotiations to know that it's the jail funding itself or whether it's any part of this proposed budget. I'm not sure we addressed the dollars.

MR. GONZALEZ: My sense, Mr. Chair, Commissioner Montoya, is that we still haven't fleshed out the budget portion of it. So there is the threshold issue of making sure that we maintain separation and no linkage in terms of quid pro quo in dealing in dealing with the MOA. But the secondary issue is just making sure that we feel comfortable with whatever overall budget is agreed to that would be refined down the road but just making sure that that ends up being I guess an allocation made in categories that the County would feel comfortable with in terms of where we're headed for with how that money would be used.

COMMISSIONER MONTOYA: Mr. Chair, I guess part of the concern that I have, and I thought it would probably be a good idea to negotiate medical care through this MOA and through the amendment actually, not through the -- through the amendment to the MOA that we're looking at for the \$466,000 or something like that. But I think if the jail issue for this amendment is going to confound and delay the process then maybe my suggestion would be that we put this off until we look at the overall negotiations for the actual MOA. That's just my gut feeling in terms of are we going to allow this potential increase in medical care services be delayed or possibly destroyed because of not being able to reach an agreement because of medical care for the jail, which we are going to negotiate anyway at some point in the future in terms of the willingness, it sounds like, from the hospital to go ahead and be able to provide that care. That's the concern that I have and I don't know if we're going to try and

2706817

resolve the whole MOA thing or if we're going to just resolve this amendment to the current MOA.

MR. GONZALEZ: The difficulty, Mr. Chair, Commissioner Montoya, is making the jail discussion a sub-set of the budget discussions we're having with respect to the MOA. I guess I wasn't clear that it's important to avoid quid pro quo linkage between the County's participation in the supplemental process by putting forward the money that it would in order to bring the augmented funds and the issue having to do with where we are on the jail. So I guess what I'm suggesting is that we need to, for the moment, set aside that linkage and look at not only -- and look at the spectrum of potential funding that would allow us to deal with the jail issue. If we hook the two together then I think what we're saying is we're asking for trouble.

CHAIRMAN SULLIVAN: And I think, too, Commissioner Montoya, that the reaction we're getting from St. Vincent's is a very positive one on the jail. There was an editorial in the paper, in the *Journal North* that seemed to indicate that this was a hang-up but in fact, St. Vincent has been working with the staff on that and proposed that and I think was even considering being here today under Matters from the Public to bring us forward a proposal but didn't quite get around to it. So my -- correct me if I'm wrong, Steve, my reaction is that this is not a stumbling block. There are some details --

COMMISSIONER MONTOYA: For this amendment.

CHAIRMAN SULLIVAN: For this amendment. But we can't make the amendment so specific as to say St. Vincent's will do this and MTC will do that and the County will do this. We have to budget the funds and then, as you indicate, work out the details. But I don't think they're balking, are they, Steve, at the actual concept of doing that.

MR. SHEPHERD: I'd agree with you that the hospital definitely expressed willingness to work with the County on its jail issues.

CHAIRMAN SULLIVAN: I think more of the hang-up is that the PRC meeting had five attorneys there. I think this issue which Gerald is going to address and Steve is going to address, and which Commissioner Duran addressed of keeping the quid pro quo and the tenor of the MOA as it has been in the past very clear that what we're providing here is services back to the community. We're not reimbursing Santa Fe County for money.

COMMISSIONER MONTOYA: Right.

CHAIRMAN SULLIVAN: And that's a concern that St. Vincent expressed and we've got our top-notch legal staff right on that and that's why we may have two agreements. We'll be sure that we don't jeopardize this funding to do that. But aside from that issue, the issue that we've had every year in the past three years and that is we've got to come up with a budget that we both agree with. To respond to your question, the jail doesn't seem to be a philosophical problem. But they haven't gotten to the point of talking numbers, so we don't know whether the \$519,000 is a magic number or if it's some other number. I'm not expecting problems there. Just move it behind schedule on our negotiations.

MR. SHEPHERD: Mr. Chair, I would agree with you.

CHAIRMAN SULLIVAN: We can put this thing together. That's a new

2706818

concept, dealing with the jail and we're not going to try to solve it before the 19<sup>th</sup>. If we have a concept agreement and a line item budget, and even that budget can be changed by the recommendation of the PRC as we move down. They meet quarterly and they come back to the BCC and make adjustments to that budget and Steve reports to us, so we've got a lot of flexibility on this issue and I'm not expecting the staff to have it all tied up by the 19<sup>th</sup>. Excuse me, I think I interrupted you.

COMMISSIONER MONTOYA: Well, that's the concern that I have again, that it doesn't get tied up because this is too short term. And I think the negotiation in terms of the care at the jail is more of a long term, probably in perpetuity in terms of the MOA, having that included somehow, somewhere, some way. So I'd hate to see that we get stalled at this point for what is still a lot of money but in comparison to the whole enchilada, it's not a whole lot of money to be solved up at this point. But it can still provide a lot of good medical care for the County. So that's my concern and that's why I was curious as to -- because I was just going to suggest -- my druthers is to give you direction and say, Go in. Negotiation what needs to be negotiated in terms of the immediate care and we'll leave the jail negotiations for the big piece, the big picture. For this one, just stick to the nuts and bolts of what we need to focus on for this particular amendment. So that was my thinking on that, Mr. Chair. Thank you. Thank you, Steve.

CHAIRMAN SULLIVAN: I think Commissioner Duran had a question.

COMMISSIONER DURAN: Just for clarification on a comment you made, and that is you mentioned that in our negotiation with St. Vincent we would have a line item, would there be a line item entry for jail?

CHAIRMAN SULLIVAN: There was in the scope, in the document that we approved at the last BCC meeting, Robert Anaya presented a discussion scope document, which the Commission approved. That discussion document had \$519,000 allocated to jail medical services and it had no other details. It was a budget item.

COMMISSIONER DURAN: And I think if we're not careful that could cause us some problems. I think that we need to take that out as a line item matter and just move forward on this amendment with the understanding that they have made a commitment to work with us on it. I really think that if we don't do that, work with the jail issues, I think to actually have a line item in there that says that x-amount of dollars is going to go back to our County for inmate care could come back and create some problems, that a backlash could be tremendous.

CHAIRMAN SULLIVAN: Well, the current thinking is it doesn't come back to the County. The current thinking is that it's a service that St. Vincent will be providing.

COMMISSIONER DURAN: As long as it doesn't look like we're giving them money and then --

CHAIRMAN SULLIVAN: No, if it came back to the -- if it was a rebate situation I see what you're saying. It would cross that line of quid pro quo. No, this is just like any other service that St. Vincent's provides, the Arroyo Chamiso Health Center, any other service.

COMMISSIONER DURAN: Got it.

2706819

CHAIRMAN SULLIVAN: And it's matter of saying, do we agree with that in principle? I think we do. Do we agree with the budget? We haven't gotten that far yet. But my understanding in dealing with it, that's not a dollar amount that would come back to the County for the County to decide how it would do it, i.e., whether we would put it out for an RFP, whether it's a service that St. Vincent's will provide and we need to hone that down. Is that your understanding, Jaime?

MR. ESTREMERER-FITZGERALD: Mr. Chair, yes. But here's just a suggestion that I would throw out to you as chairman of the Health Policy and Planning Commission, so I'm just here to participate with you and help however I can. One thing I think could happen is to take those undesignated funds, the category you just talked about, the 500-whatever it is, put it up under the Community Benefit section of the amendment. Because you are going to be in discussion in talking about how to resolve. It doesn't have to be assigned a specific cost. It could be put to the Community Benefit side, which is definitely controlled 100 percent by the PRC, making decisions along with the hospital and you have the final say-so and if we enter into discussions and talk about how to resolve these issues of healthcare in the jail, then definitely that, at the appropriate time could be utilized as funds that would help meet those needs. I'm just throwing that out and that would keep your process moving forward very quickly and still not have any legal issues or problems. That's just something I throw out there.

CHAIRMAN SULLIVAN: That's another possibility but so far, we don't even have a letter or anything in writing indicating from St. Vincent's that what they've talked with us about is doable with regard to the jail. We could put that in a kind of general category that you indicated so that we would retain the approval of it. Of course, what happens as you know, physically, that once we write a check on the 19<sup>th</sup> of September for \$417,000, that goes to the state of New Mexico and that's the end of it. We have no further role in the distribution of that money. That money then goes the state. The state then matches it with the other 75 percent from the feds and they disburse it to the hospital on a quarterly basis.

MR. ESTREMERER-FITZGERALD: And the beautiful part about that, Mr. Chair, and this is to the Commission, is that that match that the County puts up will create an additional \$1.6 million, which the hospital can utilize in whatever way it can in this Community Benefit category that it has in working with the community. So there is a come-back to the community in that the community health benefits, which is why we established the MOA in the first place, was so we could work together on meeting the needs of Santa Fe County. And all I'm saying is that if the hospital is wanting to work with these community needs, then I think in discussion we'll be able to come up with how the hospital can meet those needs. Right now, you're right. What we'd like to do is be able to take advantage of that \$1.6 million that's being made available, come back to the hospital to help them and the County meet community needs.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: So, Jaime, what you're saying is that basically where we have included that budgeted amount of \$519,000, should we just delete that and just

2706820

put it up into the Community Benefits?

MR. ESTREMERER-FITZGERALD: I'm just saying it could be put in the Community Benefit area where you've already got commitments from the PRC of which you are totally represented. That's a proper area, because that's an area where the hospital and the County work on meeting the needs with funds that are made available from the hospital for that person. They're the ones giving it.

COMMISSIONER MONTOYA: As opposed to where it is currently allocated.

MR. ESTREMERER-FITZGERALD: Right. I think as Commissioner Duran said, one of the problems that we have, we want to make sure that we utilize all of these funds properly and I think it would be a better category.

COMMISSIONER MONTOYA: Okay. And they're in agreement with that? St. Vincent's?

CHAIRMAN SULLIVAN: I don't think it's been -- we're not at that point. We have those options and we need to get the staff back together and work on this budget. If it's a sticking point, and again, it hasn't been indicated as being a sticking point but if it is and the lawyers can't find the right way out of it, we can put that money there. We can have St. Vincent's write us a letter indicating that they have an interest in this area. There's a lot of ways to do it but I don't think we want to have a blank MOA here. I think we want to sign a budget, just the way we've done in the last three years.

There's nothing different now than there has been in the last three years. The federal law hasn't changed. Nothing has happened and St. Vincent's attorneys and our attorneys are in agreement that everything that's been done in the past has been legal. So we haven't broken any laws and we want to continue not to break any laws, but we'd also like to get a budget that's at least conceptually and mutually agreed upon by both parties.

MR. ESTREMERER-FITZGERALD: And I trust your staff to do that and I think Monday would be perfect and it will be resolved.

CHAIRMAN SULLIVAN: Well, we hope so because I don't want to have any more meetings than we have to here. Okay, any other questions of Steve? All right. Thank you for that update, Steve, and we'll be back at you on Monday.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: Since we're talking about St. Vincent's, I was wondering if you could send a message to St. Vincent's, Gerald. There's a little bit of unfinished business and that is the appointment to the hospital board. I think that there's still some concern from the Commission that they did not select one of the two people that we recommended. And maybe a way of getting around that is if they could send the appointee, the one that they decided to appoint, to come in and talk to the Commission, if not in an individual basis then here at the meeting. It's my understanding, the way this whole thing came about the Commission, at some point in time felt that the community needed some representation on the hospital board. Someone that didn't have the hospital's best interest in mind when they were making decisions there, but someone that had the community's interest in mind. And that's why



2706821

we selected or recommended one of those two. And maybe Mr. DiLuzio has the community in mind, but without having the opportunity to talk to him and explain to him what the Commission is hoping or was hoping to achieve by having one of our recommendations appointed, it's just hard to determine whether or not he's going to be representative of this Commission's desire.

MR. GONZALEZ: We can set that for a future meeting. We can coordinate that.

COMMISSIONER DURAN: I definitely would like to talk to Mr. DiLuzio.

CHAIRMAN SULLIVAN: I think also, Commissioner, there's been some general background discussion here too that it's not a done deal, that there's still some consideration for the appointees we recommended.

COMMISSIONER DURAN: Oh, okay. And that was relayed to --

CHAIRMAN SULLIVAN: It was relayed to me. And I think we'd like to visit with and communicate with all of the St. Vincent board members, not just the new ones. We'd like to have a session with them and express some of our ideas and hear their arguments.

COMMISSIONER DURAN: At our last indigent meeting, there was some concern that they didn't select one of our --

CHAIRMAN SULLIVAN: Yes, absolutely. The concern was clearly there and we relayed that in our last meeting as a separate issue in our last meeting. We didn't tie it to the MOA issue.

COMMISSIONER DURAN: No. No, exactly.

CHAIRMAN SULLIVAN: We relayed it as an issue and I think, and correct me if I'm wrong, Steve, but St. Vincent is still aware that that's a concern of the Commission.

MR. SHEPHERD: Mr. Chair, Commissioners, yes, they are aware of it. Whether they'll do anything to change their choice I couldn't tell you. But I know they're aware of it. We've been very vocal in telling them.

COMMISSIONER DURAN: Mr. DiLuzio is a fine man, a member of our community. I'm sure that his approach to the issues are going to be community based. But without being able to talk to him, we're kind of -- there's a void here that I'd like to fill.

CHAIRMAN SULLIVAN: And maybe, again, one step further, Gerald, is to set up a working session at some time with the St. Vincent board and ourselves. Not just -- and Mr. DiLuzio and whoever else they've recommended for appointment. I think our concern in the indigent board was that the two appointments were essentially City personnel and none were County appointments and the City doesn't provide money to St. Vincent, the County does. So we felt that we certainly had some standing there to have some consideration of some community appointees. But I'd like to have a joint meeting with the whole board and expand a little on Commissioner Duran's idea.

MR. GONZALEZ: I'd be glad to coordinate that, Mr. Chair. And with respect to Mr. DiLuzio, we'll contact him and either arrange to have individual meetings with the Commissioners or a joint meeting depending on what his schedule is.

CHAIRMAN SULLIVAN: Okay, it's now five after five. We have two matters

2706822

left. One is public hearings and the other is executive session. Here's the options, gentlemen. We have one fairly rapid Utilities Department issue and we have three land use issues, two have been tabled. One is an ordinance regarding catchment, which some of you may have had discussion on before, and two others are appeals. Would you like to break for executive session now? Would you like to hear the appeals? We have, I think, the applicants and here are the other items. After the executive session -- I'm trying to think how we can accommodate the public because I think they've been generally told around 5:00 is when the public hearings start.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: I'd like to move the executive session to the end of the meeting, after public hearings.

COMMISSIONER DURAN: Second.

CHAIRMAN SULLIVAN: I don't know that we need a motion if everyone's okay with that. We can just crash through. Okay. All right. We're going to crash through. Here we go. Well, maybe -- I'm sorry. Maybe we do need an amended agenda motion. That was a motion by Commissioner Anaya and it was seconded by Commissioner Duran.

The motion to amend the agenda to hold executive session at the end of the agenda passed by unanimous [5-0] voice vote.

CHAIRMAN SULLIVAN: Utilities Department. Request authorization to implement rate increases.

MR. GONZALEZ: Mr. Chair, I believe that Gary --

CHAIRMAN SULLIVAN: Okay, they don't get their rate increases. Next item. That will make us popular.

MR. GONZALEZ: There is one interim item that I did want to ask the Commission about while we're waiting. November 11 is a holiday but that's also the same day for which we normally would schedule a Commission meeting. And so I wanted to ask the Commissioners whether they had a preference in terms of how to deal with that, whether to hold it the following day, a Wednesday, or to simply skip that meeting.

CHAIRMAN SULLIVAN: I think we're catching up here. Can we skip?

MR. GONZALEZ: I believe we can. I'm not aware of anything that would require from a scheduling standpoint that we absolutely meet that day, the 11<sup>th</sup>, so my thought is that we could skip that and whatever additional items we had, sweep those in at the subsequent meeting of the 25<sup>th</sup> of November.

CHAIRMAN SULLIVAN: Okay. Anyone have any problems with that?

COMMISSIONER ANAYA: No problem.

CHAIRMAN SULLIVAN: No problems to the right, no problems to the left. Second chance for the Utility Department. Going once --

2706823

**XII. B. Land Use Department**

- 1. Ordinance No. 2003-\_\_ . An Ordinance Amending Ordinance 1996-10, the Santa Fe Land Development code, Article III, Section 4.4.1, Article V, Section 5.2.2, Article V, 5.3.2 and Article V, Section 7.1.2 to Require Rainwater Catchment Systems for all Commercial Development and for all Subdivisions, Excluding Summary Subdivisions, and to Amend Article III, Section 2.4.1 to Encourage Rainwater Catchment Systems for Residential Use (First Public Hearing)**

CHAIRMAN SULLIVAN: This is the first public hearing of how many, Penny; two?

PENNY ELLIS-GREEN (Planner): Mr. Chair, there will be two public hearings.

CHAIRMAN SULLIVAN: I know several of the Commissioners have been briefed by the staff who have been working diligently on this so we do have some background on this. Would you go ahead, Penny.

MS. ELLIS-GREEN: Thank you, Mr. Chair, Commissioners. On August 12<sup>th</sup> the BCC granted authorization to publish title and general summary of this ordinance. The proposed ordinance will require all commercial development and residential development within subdivisions, excluding summary subdivisions, to utilize rainwater catchment systems to collect rainwater from the roof of all structures for outdoor watering use. The amendments to the Land Development Code are in the submittal sections and reference guidelines which will be prepared by the Land Use Department and will be updated as necessary and as additional informational guidance can be made available to the public. The draft guidelines are attached as your Exhibit B and they define water harvesting and list requirements for commercial and residential development and subdivisions.

These developments will be required to install cisterns, either buried or in a structure, and connect these cisterns to a drip irrigation system to serve the landscaping areas. At the time of dividing land or doing subdivision, the applicant will be required to note on the plat the disclosure statement and the covenants that a system will be required when a house is built on the lot. In addition, the ordinance gives guidelines – the ordinance and the guidelines encourage residential structures to install rain barrels with a hose bib attachment and covered by a screen.

On August 28, 2003 the CDRC met and acted upon this ordinance. The decision of the CDRC was to recommend approval of the ordinance and exclude affordable housing from the requirements of the ordinance. Thank you, Mr. Chair.

CHAIRMAN SULLIVAN: Questions for Ms. Green?

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: Penny, have we made a determination about the fiscal impact this is going to have on say a house of say, 2,000 square feet, 2,500 square feet?

2706824

MS. ELLIS-GREEN: Mr. Chair, Commissioner Duran, it's our understanding that this can be installed at the moment, various systems range between about \$4,500 and \$6,500.

COMMISSIONER DURAN: So on a 2,000 square foot house.

MS. ELLIS-GREEN: It would be within that range. Probably about \$5,000.

The ordinance as written and as presented would only require that for larger subdivisions.

COMMISSIONER DURAN: What do you mean large subdivisions?

MS. ELLIS-GREEN: That means more than five lots. The summary subdivisions are not included in that. Those are the ones less than five lots. There's also a Type V subdivision which can go up to 24 lots but every lot is larger than 10 acres. That's also included as a summary subdivision. So those are not included in this ordinance. It would be other subdivisions larger than five lots. The other thing that's not included is the land division, through the exemptions. There's an agricultural exemption, a family transfer, a 140-acre exemption and you can divide a single parcel of land every five years. None of those are included in this ordinance. They will simply be encouraged to use rain barrels but there will be no requirement. And existing legal lots of record are not required to follow this as well.

COMMISSIONER DURAN: So the -- you determined that the requirement that you're going to put in place for constructing new homes will add about \$5,000 to each home?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Duran, that is correct.

COMMISSIONER DURAN: I guess I'm concerned. How did you arrive at that. Because if you have cisterns that catch the water from the roof, which is what I think we're trying to do here, I can't imagine that that wouldn't be adequate to meet the intent of this ordinance. What we're trying to do is ensure that people use rain water to water their landscaping so that we don't -- so that it lessens the burden on the aquifer or the usage of the aquifer. I can't imagine for \$5,000 -- you can buy these cisterns that are underneath the spouts to catch the water and they have drains on them. Are you requiring that they actually put French drains?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Duran, yes, they could do that. Some kind of catchment basin or some kind of downspout that would go into a cistern. This is a price that we got from the Raincatchers, who are installing these in Rancho Viejo at the moment. And the diagram attached to your guidelines, I think it's about the sixth page, shows a catchment basin going into a cistern and a pump that is connected to your drip irrigation. And that's where we got the figure of about \$4,500 to \$6,500.

COMMISSIONER DURAN: So you're requiring drip irrigation to be installed?

MS. ELLIS-GREEN: Right. Correct. The drip irrigation system would be connected to the cistern.

COMMISSIONER DURAN: What if you didn't want to install drip irrigation. What if you wanted to just have the cisterns with a hose attached to it?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Duran, that is allowed for the residential use, but these guidelines would require the new subdivisions and the commercial to actually have the drip irrigation.

2706825

COMMISSIONER DURAN: I don't know what the difference between new subdivisions and residential use are. I can understand commercial usage, but I don't understand what you mean, what's the difference between new subdivisions and residential use?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Duran, existing legal lots of record would not be required to do this. The only residential development that would be required to do this is any new subdivisions coming through. The houses that are built in there would be required to follow this ordinance.

COMMISSIONER DURAN: Why would we not require legal lots of record that don't have improvements on them to conform?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Duran, staff's idea behind this was that when you actually purchase a lot, that you would have in the disclosure statement, the plats and the covenants, a note that would disclose that you need this system and how expensive it would be. So it wouldn't then catch somebody that had an existing legal lot of record and was saving now to build their house that would then be affected and have to find an extra \$5,000, \$6,000 to do the system. That's the way the guidelines are presented today.

COMMISSIONER DURAN: Why would you not require an existing lot of record to do that?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Duran, just because when the lot was purchased or a lot being purchased, the purchaser did not know that they would have to install this system and it is a fiscal impact.

COMMISSIONER DURAN: I can understand a cistern underneath a spout, in my opinion isn't a system. It's a way of catching rainwater. I can see where if you had a commercial project that there would be a system required. But to require single-family houses to install a system I think is -- I understand what we're trying to do and I am in total support of that but to add another \$5,000 to the cost of the home, I think there are other ways of achieving the goals that we're trying to achieve here than requiring people to put in a system. I think that there are methods that work but to require a system -- I've had a lot of people call me on this and their concern is that we're requiring them to put in a system at what I consider to be an exorbitant price, when there are other methods available to achieve the same thing.

MS. ELLIS-GREEN: Mr. Chair, Commissioner Duran, and that may be something more in line with what's on page 5 of the guidelines, the existing residential uses, recommending rain barrels and some guidelines that are associated with that. We have included that as well.

COMMISSIONER DURAN: I'm sorry that I was unable to attend the meeting that we had scheduled. Since there's two meetings on this, or two hearings, how about if I try to meet with you before the next one and try to iron out some of my concerns.

MS. ELLIS-GREEN: Commissioner Duran, we can certainly do that.

COMMISSIONER DURAN: Maybe bring some solutions forward instead of just questions. Thank you.

CHAIRMAN SULLIVAN: Commissioner Montoya, did you have a question?

COMMISSIONER MONTOYA: Thank you, Mr. Chair. Charlie, did you have

2706826

something?

CHARLIE GONZALES (Code Enforcement): Chairman Sullivan, Commissioner Duran, if you like, I could explain to you the difference between a cistern and a French drain.

COMMISSIONER DURAN: I think I know what the difference is.

MR. GONZALES: Okay. Thank you.

COMMISSIONER MONTOYA: Mr. Chair, Penny, just regarding the minutes that I received now from the CDRC. The motion was made by Member Romero to recommend the adoption of the rainwater catchment ordinance with a note in the guidelines that state affordable housing is exempt. How would we determine whether or not something is affordable housing or not? Primarily through the subdivisions? We're talking about more than one residential unit probably, at that point.

MS. ELLIS-GREEN: Mr. Chair, Commissioner Montoya, they would have to, I guess the applicant would need to go through the affordable housing procedures, either with the County or the state to qualify the price of a home and the income. And that if that happened -- and again, exempting affordable housing, again only subdivisions, the way this is working is only the large subdivisions would even be required to do this. And then if someone purchased into that subdivision and was building an affordable house and met the requirements, they then wouldn't need to do this. I guess then they would move to the requirement or the encouragement of using a rain barrel instead of using an underground cistern.

Just for a reference point, I did look at the CDRC, which is the area that's affected by this ordinance and the CDRC number of subdivisions they've done in the last year and in 2002 they didn't have any subdivisions. This year they've had one so far, a 16-lot subdivision. So the impact on residential is very limited.

COMMISSIONER MONTOYA: Okay. So I think overall I definitely support this ordinance. I think it has been something that particularly Commissioner Anaya has mentioned in the past and I know that it will help in terms of the reuse of the water, so I think it's good work. Thank you both.

CHAIRMAN SULLIVAN: Any questions? Just one comment I wanted to add before we go to public hearing. I think we should think about the exemptions part of it. I think we're exempting out family transfers as a part of this and other exemptions and I think probably if any place, when we're doing family transfers we're pushing the envelope of land use and well use and impact of wells on neighbors when another one is added or when an additional family is added to a smaller lot that that's probably one of the ideal times to put in a rainwater catchment system. Where we're in such a confined space. So it just seemed to me that we might think in those situations. And again, the individuals would know that if they came in for a family transfer, they would know that that would be a typical condition, that we might want to consider that.

Okay, this is a first public hearing on this ordinance.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Oh, Commissioner Anaya has a question of staff.

2706827

Excuse me.

COMMISSIONER ANAYA: Mr. Chair, I feel like I don't want to create a hardship for an individual out there who has a piece of property that is trying to build a home and they're trying to get enough money to build a home, install septic tanks, install a well, and then have to go through the process of purchasing a cistern. Although we want to encourage that the resident-owner think about water harvesting but I don't want to make it, I don't think it would be good to make it a requirement right now, or an ordinance. I think that I agree with what staff has brought forward. I think we don't know enough about rainwater catchment systems yet and I think that if we make rules rather than an ordinance, then in the next two or three years we can go back and visit it and we will know more about rainwater catchment systems work and then, maybe then we could do an ordinance. Right now, I don't want to make it mandatory that a person out there who is building a home be required to put in a catchment system. Because I know that there are people out there who are trying to finance and get qualified for homes and can't afford it right now. But I do agree with what staff has brought forward and I just wanted to mention those. Thank you.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: Just one last thought on this. The house that I'm in right now, it's a 14-unit complex and they have, I think the City required them to put catchment systems in this. I don't remember. Or maybe it was something that the developer decided to do on his own. But they're pitched roof houses and basically what he did is he had canals that caught the water and put it in -- he built a cistern out of culverts and at the bottom he attached a hose bib. And now everybody in that complex uses that water that they've caught, captured in that catchment system to water the grounds.

I just think that this ordinance seems to be a little punitive at this point, with the requirements that you've brought forward. And I don't think it should be punitive. I think that it should be something that the community should embrace as a policy that we all need to incorporate into our lives but to make it a punitive thing, and if it's \$5,000 that we're talking about, I think that is a little punitive. Especially when we can create or adopt some guidelines that would allow for the catchment of that water for a lot less. Thank you.

CHAIRMAN SULLIVAN: Okay. Other questions or comments from staff?

Okay, this was a public hearing, the first public hearing for the ordinance to require rainwater catchment systems for all commercial developments and for all subdivisions, excluding summary subdivisions and to amend Article III, Section 2.4.1 to encourage rainwater catchment systems for residential use. Is there any individual in the audience who would like to comment on this proposed ordinance?

KARL SOMMER: Mr. Chair, my name is Karl Sommer and I work in the land use area. We've reviewed the proposals -- I say we, me and I and some colleagues have reviewed it and we generally support what staff is attempting to do here and we are in favor of the ordinance and we're trying to come up with comments that we'll deliver to staff in between now and the next hearing to address some of the things that have been stated here today. We have some of the same concerns, but I would like to say, generally,

2706828

we support the effort. We think that it can be implemented in a fair way and I think that's what staff is after.

One thing that we are working on internally, and we're going to talk to staff about this is, part of the problem with rain catchment is the storage. You might have a great cistern but if it doesn't store water when water comes, then the system has got a fault to it. So we're trying to figure out how do you deal with enough storage capacity without increasing the expense to a landowner or a property owner who is doing exactly -- \$5,000, \$6,000 is a bathroom or it's a bedroom. It's real sticks and mortar to these people who are building homes. We are working to see how that can be done with people in the industry and try to get our comments back to staff in a useful manner. But I would just like to say, generally we support the idea and some of the concerns that you've talked about tonight, I think we can address adequately, but I think that they've done a good job, both responding to the requests that this Board has made of them and to the concerns of the development community that are going to have to implement this. Thank you.

CHAIRMAN SULLIVAN: Anyone else who'd like to comment on the proposed ordinance? Okay, this concludes the public comment period. There will be a second hearing next month. What's the date, Penny?

MS. ELLIS-GREEN: Mr. Chair, it will be next month. I believe October 14<sup>th</sup>.

CHAIRMAN SULLIVAN: October 14<sup>th</sup>. Thank you.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: I'd like to thank all the volunteers that helped out with the -- I don't know if you have the names, Penny. Do you have the names of the volunteers that met and helped us out?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Anaya, I can try to remember them.

COMMISSIONER ANAYA: Okay, go for it.

MS. ELLIS-GREEN: There was Hunzie and Ozzie Mohn, who have a system on their house in Ojo de la Vaca, Herb and Mary Fowler on Goldmine Road, and then we were also helped by Melissa McDonald and Spencer Farr, Al Lilly, Jim Siebert, Oralynn Guerrerortiz, Ike Pino, Jon Paul Romero. I think those are all the individuals we've met with so far.

COMMISSIONER ANAYA: Thanks, Penny.

CHAIRMAN SULLIVAN: Okay, Commissioner Duran.

COMMISSIONER DURAN: Well, it has something to do with the ordinance that I think needs to be mentioned.

CHAIRMAN SULLIVAN: I think we have your thoughts on this, Commissioner Duran.

COMMISSIONER DURAN: Well, I have a couple others if you don't mind.

CHAIRMAN SULLIVAN: All right. Go ahead.

COMMISSIONER DURAN: I'll make them quick. My understanding is that



2706829

Rancho Viejo has participated in this and there's been a determination made that if they can incorporate these catchment systems even in their affordable housing that it decreases their water budget. So I think there are some benefits here that weren't mentioned earlier in the meeting that give this ordinance some merit. I had another thing but I forgot it. Thank you, Mr. Chair.

CHAIRMAN SULLIVAN: You're welcome. Commissioner Montoya

COMMISSIONER MONTOYA: Mr. Chair, what he meant to say was that he really sees this is a short-term investment for a long-term gain, is how I see this. I think it's a win-win for people that may need to up front consider -- is that what you meant to say?

COMMISSIONER DURAN: And I actually remembered the other thing too.

The thing I was going to mention is that I don't know why if one subdivision has come in in the last year and that's the one that this is going to apply to, it's not going to have any impact on the community. I think what we need to do is make it applicable to the building permit process, whether it's a subdivision that's been approved ten years ago or last month. That's where we're going to make an impact. There are tons of lots out there that have been pre-approved that I think need to participate in this. Thank you very much.

CHAIRMAN SULLIVAN: Okay. This hearing is over.

- XII. B. 4. **EZ CASE #A 03-4551 - Daniel Santos Appeal. Daniel Santos, Appellant (Christopher L. Graeser, Agent), is Appealing the Extraterritorial Zoning Commission's Decision to Deny a Proposed Plat to Divide 2.491 Acres into Two Tracts for the Purpose of a Family Transfer. The Property is Located at 988A Chicoma Vista, within the Wolfe Subdivision, within Section 29, Township 17 North, Range 9 East. (Commission District 5)**

LIZA VITALE (Review Specialist): On July 10, 2003 the applicant appeared before the EZC requesting plat approval to divide 2.49 acres into two tracts for the purpose of a family transfer in the urban zone. The proposed family transfer is as follows: Tract-2A-1.244 acres more or less, to be transferred to Daniel Santos, adult son. Tract-2B- 1.246 acres more or less, with an existing residential unit, to be retained by Dorothy Santos.

The decision of the EZC was to deny the request for plat approval based on relevant issues regarding the legitimacy of the proposed family transfer, as well as protests by area residents. The applicant has submitted a letter stating reasons they believe the decision of the EZC was not appropriate. The application was reviewed for the following: access, water supply, liquid waste, solid waste, terrain management, fire protection, and environmental review. If the appeal is granted, staff recommends the following conditions. Mr. Chair, may I enter the conditions into the record?

CHAIRMAN SULLIVAN: Yes.

[The conditions are as follows:]

2706830

1. The applicant must record water restrictive covenants simultaneously with the plat of survey imposing 0.25-acre feet per year per lot. Water meters must be installed at each lot at the time of development, and meter readings must be submitted to the County Hydrologist annually by March 31<sup>st</sup> of each year.
2. Water supply to these lots are governed by The Extraterritorial Zoning Ordinance Section 10.1.A
  - a) Only one well shall be permitted to serve these lots. This well shall be subject to a shared well agreement to be approved by the County and executed prior to plat recordation. The plat must indicate shared well easements.
  - b) If regional water is available within 200 feet of these lots, drilling of any new domestic wells is prohibited.
  - c) If regional water becomes available, domestic well use shall cease within 90 days and these lots shall connect to the regional water system.
  - d) All wells drilled on these lots post January 1, 2000 must be constructed per EZO standards listed in Section 10.1.A.3. Proof of proper construction must be submitted at the time of development permit request, or upon demand by the County Land Use Administrator.
3. A 10' wide utility easement along all property lines must be dedicated and shown on the plat for future potential water lines.
4. The private on-site access and utility easement must be a minimum of 38 feet and must be developed meeting SFC Common Roadway Standards, prior to recording the plat of survey or the applicant must provide Santa Fe County with a certified engineer's cost estimate to develop the access. A financial guarantee acceptable to the County in the amount of the approved cost estimate must be included.
5. As per ESR regulation, a solid waste fee shall be assessed for all newly created parcels. The fee for this subdivision is \$86.01
6. Approval from the New Mexico Environment Department for the proposed liquid waste disposal system must be obtained prior to plat recordation.
7. Compliance with County Fire Marshal review as applicable.
8. Submit family transfer affidavits and deeds transferring lots to family members prior to plat recordation.
9. A retention pond in accordance with the Santa Fe County Regulations will be required for both lots at the time of development.
10. Approval of rural address
11. The applicant must address all minor redline comments by the County Subdivision Engineer as shown on the plat of survey and terrain management plan. These plans may be picked up from Liza Vitale, Development Review Specialist with the Land Use Dept. These plans must be resubmitted with the Mylar prior to recordation.

CHAIRMAN SULLIVAN: Okay. Questions of staff from the Commission? If not, is the applicant present?

2706831

MR. SOMMER: Mr. Chair, my name is Karl Sommer. My mailing address is Post Office Box 1984, Santa Fe, New Mexico. I represent the Santos family here. They are the appellant. Members of the Commission, this case is pretty straightforward from a legal standpoint. I think it has other implications that really are not related to this case but you all are looking into in other arenas. And what I'd like to do is one, discuss a little bit of the procedure of this case and why it's in front of you. Two, address the very specific substantive issues that are in front of you, and then conclude by giving you our opinion as to why this case should not be here and it should be approved.

Procedurally, the Extraterritorial Zoning Ordinance and the BCC's ordinance related to subdivisions make this kind of family transfer an administrative approval. Now, there are several ways that an administrative approval can be obtained. Generally, in this forum, for this kind of approval, what happens is a case for a family transfer goes in front of the EZC. It's placed on the consent agenda and it gets approved. And that approval just simply means that the conditions of the ordinance have been met, the six conditions that are there. And that's why it goes on the consent agenda because generally there aren't very many issues about whether you meet the six conditions and these cases don't take a lot of time.

This case came off of the consent agenda because there was an issue that I think the neighbors are concerned about, related mostly to density. Now density is something that is established by the Code. It's not something that Mr. or Mrs. Santos establish or they're trying to get around. This lot that is being proposed for division is in the urban area. The law provides that through a family transfer you can go down to 1.25 acres on this property. That's what we're proposing to do. We're not asking for a variance. You all often have cases that come in front of you where people are saying we'd like to do a family but we'd like a variance to the density requirements so that we could go lower in lot size than normal, than you would normally allow. That is not this case. We are not asking for a variance or any kind of exception or some special consideration to allow the development of one more lot. And that is the division of one more lot. We're doing what the law allows.

Why is the case so controversial? The case is controversial principally because I think that the neighbors in the area disagree with the law. They don't believe that the urban area and the law as it's designed right now should be what it is, being that you can get down to 1.25 acres. Now, I understand that concern. We're not blind to it. But it's not something we create and we're not asking for an exception to that requirement, to go down below what the law allows. That concern has been raised before this Board on many occasions in other contexts, but principally, it is a legislative concern. It is a concern that maybe the law should be changed. Maybe it shouldn't be changed. And there are pros and cons which have been debated in this forum for many, many years about what the appropriate density in a family transfer should be.

This is not the place to decide whether the law is right, good, wrong or bad. I think that the job of the Board of County Commissioners is to decide whether this case meets the six criteria that the Code sets forth and that's it. If Mr. Santos and Ms. Santos do not meet those criteria, and there will be no evidence that they don't meet the criteria, if they did not meet that criteria then you would have some basis for a denial. In this case, all six criteria found in the

2706832

Code have been met. The reason it is in front of you and the reason that the Board, the Land Use Administrator opted to refer this case, I think principally was questions related to whether or not the six criteria were met and principally, because it was controversial due to the density issue raised by neighbors.

What are the six criteria? Ownership of the land in the family proper for five years. There is no doubt. The record is clear. That is the case. No prior transfers to the recipient. The recipient will be Mr. Daniel Santos. His mother will transfer the lot to him. There is no prior transfer by his mother to him on a family transfer at all. That's never happened in the County of Santa Fe or in the state of New Mexico for Mr. Santos, so he meets that requirement. Recipient over 18 or emancipated. He's over 18 and I think he's emancipated. Public notice completed. No question about that. The lots each have at least one-half standard minimum lot size and at least 3/4 acre. We are one-half the minimum lot size, which is .25 here. We're going down to half that, and we are over 3/4 of an acre. Compliance with the water supply, liquid waste disposal, drainage, access and environmental requirements. The staff report covers each one of those matters and we are in compliance.

So I think that the simple question before you, while it may be pertinent in another forum, and that is the density appropriate or not. That question which has been raised by the neighbors is not something to be decided in this case. Mr. Santos is simply complying, Mr. and Ms. Santos are simply complying with the law. And if there is a change to be made, it's not to be made in Mr. Santos' case. And I would emphasize again, we're not here asking for a variance. We're not here asking for some special consideration. We're asking here simply for you all to find that the six criteria raised by the Code have been met or they have not been met, based on the evidence in the record. And I think the evidence is uncontradicted. There will be no evidence that any of those six criteria have not been met.

I'd like to just a moment what I have seen in the record with respect to protests. I know that there are neighbors here tonight who you will hear from about their protests. What I've heard is traffic issues, generally. What I've heard is water issues, generally. These are issues that the Code addresses and sets very specific criteria. We meet the criteria of the Code and the concerns I think you're going to hear about are related to is the Code strict enough? Should it require Mr. Santos to do something else? And again, that is an issue not to be decided in Mr. Santos' case. The only issue in his case is has he followed the law as it's written. I think that what you're going to hear about is that the law should be rewritten and it should be more strict. I think it's a classic case of people who are in a neighborhood already and they are experiencing certain aspects of growth or development and they'd like to see, to make sure that things in their way of life or that sort of thing doesn't change. And that's a policy and legislative issue, and it doesn't go unnoticed by the people who are also trying to live here as well, but I think that the issue before you is simply did Mr. Santos and Ms. Santos meet the law. And I think it's clear that they have. And we would stand for any questions you might have about this.

CHAIRMAN SULLIVAN: Questions for Mr. Sommer? Commissioner Campos.

2706833

COMMISSIONER CAMPOS: Mr. Chair, Mr. Sommer, what does the EZ Ordinance say about what the purpose of a family transfer is? Does it not say it's for the creation of affordable housing?

MR. SOMMER: It does not say that. No. That is not the purpose of a family transfer.

COMMISSIONER CAMPOS: That's not what the EZO says?

MR. SOMMER: That is not the purpose stated in the EZO for a family transfer.

COMMISSIONER CAMPOS: Is it different in the County Code?

MR. SOMMER: I think the purpose behind it has several purposes. One of them is not for the creation of affordable housing. I understand your question.

COMMISSIONER CAMPOS: The second question is, is the County Code different?

MR. SOMMER: I don't believe the County Code is any different. In fact I think the County Code is more specific as to the criteria.

COMMISSIONER CAMPOS: I have read one of the ordinances. I'm not sure if it's the County ordinance or the EZ, but it does say for the purposes of creating affordable housing.

MR. SOMMER: I don't think that's in the BCC's Code. I don't think that the term affordable housing is used in a technical sense. That's the way I understood your question. If it's to create housing that's more affordable -- let me see if I understand your question, Commissioner. As you know, affordable housing has a very specific definition. It's a very specific price point, and I don't think family transfers deal with that.

COMMISSIONER CAMPOS: No they don't.

MR. SOMMER: So I think I'm answering that specifically. If it is to create housing for members of a family and leave a legacy, I think that is the purpose behind the Code. That's the purpose behind it.

COMMISSIONER CAMPOS: Okay. Thank you.

CHAIRMAN SULLIVAN: Other questions? Commissioner Duran.

COMMISSIONER CAMPOS: Just for Ms. Vitale.

CHAIRMAN SULLIVAN: Oh, you still have questions, Commissioner

Campos?

COMMISSIONER CAMPOS: Just on the same issue.

CHAIRMAN SULLIVAN: Excuse me.

COMMISSIONER CAMPOS: Mr. Chair, what is the purpose of the family transfer ordinance provision in the EZO? Does it mention affordability as a condition for its existence? Mr. Catanach?

JOE CATANACH (Review Division Director): Mr. Chair, one of the purpose statements is as follows: "To permit transfers of lots which do not meet the lot size requirements of the ordinance from parents or legal guardians as a one-time gift to a child in order to provide a more affordable home site for these adult children."

COMMISSIONER CAMPOS: That's what I was asking about.

2706834

MR. SOMMER: That's what I was saying, the term "affordable."

COMMISSIONER CAMPOS: The term "affordable." Okay. Thank you.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: Well, it's an affordable home site, which is a little difference than affordable housing. So, Mr. Catanach, the EZC actually approved, or made a recommendation to approve the request for the family transfer?

MR. CATANACH: Mr. Chair, Commissioner Duran, the EZC denied the request, or recommended denial.

COMMISSIONER DURAN: I meant to say staff's recommendation at the EZC was to approve.

MR. CATANACH: Yes, Commissioner Duran.

COMMISSIONER DURAN: They recommended approval, the staff recommendation.

MR. CATANACH: The presentation to the EZC was a recommendation for approval. That's correct.

COMMISSIONER DURAN: And was that because staff had determined that it met the criteria for a family transfer?

MR. CATANACH: As Mr. Sommer stated, the basic criteria and guidelines had been met in that the property has been within the family proper for a period of over five years and other criteria he met. Now, part of what's missing there is when you think about property being within the family proper, you typically think that the parent has owned it for over five years and therefore they can go forward and do the family transfer. In this particular case, Daniel Santos, the son, has owned the property since 1988 and conveyed the 2.5 acres to his mother, Dorothy Santos recently, July 2003 or somewhere in that time period. Some time in 2003, the 2.5 acres was conveyed from the son to the mother in order to -- so I think that understanding needs to be there, that when we talk about property being within the family proper, it's typically where the parent has owned it for a period of time. In this case the son has owned it for a period of time and he conveyed the 2.5-acre lot to Dorothy Santos, his mother, in order for the family transfer to meet the criteria.

COMMISSIONER DURAN: So you mean under current Code, if Mr. Santos wanted to do a family transfer to his mother, the Code wouldn't allow that?

MR. CATANACH: I think if you look under the criteria, it seems like it would be allowed, but under the definition of family transfer, it talks about from parent to children. So that's where this idea, or that's where this has been presented as being a family transfer from the mother to the son.

COMMISSIONER DURAN: In your experience with this family transfer process, was there some reason for saying parent to child? Or specifying parent to child and not child to -- family is family. I was just wondering if there was reason behind that particular section of the Code. Is it to prevent something from occurring? I'm just wondering if I'm missing something here. Is there something wrong with a child giving the property to their parent?

2706835

MR. CATANACH: Well, you know, Mr. Chair, it seems like when this Code and this family transfer was first put together, it was more typical for property to come down where the parents or the grandparents owned the property and they wanted to give portions of the property to the children. It seems like it's occurring more and more where actually the children are trying to help out their parents.

COMMISSIONER DURAN: Okay. I think that's all I had for now, Mr. Chair.

CHAIRMAN SULLIVAN: A question I had, does either the son, Mr. Santos or his mother, do they both have homes now?

MR. CATANACH: Mr. Chair, I think we need to ask the applicant those specific questions. I can tell you right now that Daniel Santos, the son, as I mentioned, he's owned the property since '88 with an existing house on it. And he also owns an adjacent 2.5-acre lot with an existing house.

CHAIRMAN SULLIVAN: And where does the mother live?

MR. CATANACH: Okay, Mr. Sommer, where does the mother live?

MR. SOMMER: I believe she lives in Burlingame, California. Yes,

CHAIRMAN SULLIVAN: So the transfer has been made to the mother, the 2.5 acres was transferred to the mother and now she's claiming to transfer to whom?

MR. SOMMER: She's transferring one lot to Mr. Santos and retaining the other lot.

CHAIRMAN SULLIVAN: Now, Mr. Santos already has a house there, right?

MR. SOMMER: Correct.

CHAIRMAN SULLIVAN: So what's he going to do with the other lot? The purpose of a family transfer is to provide affordable housing, provide housing for a family member to reduce the cost of housing, isn't it?

MR. SOMMER: That's one of the purposes that was stated in the Code, yes.

CHAIRMAN SULLIVAN: But he already has a house. So explain to me what's the purpose of the transfer?

MR. SOMMER: The purpose is to create a lot.

CHAIRMAN SULLIVAN: That he's going to build a house on?

MR. SOMMER: He has no plans to build a house on the lot.

CHAIRMAN SULLIVAN: Is he going to sell the lot?

MR. SOMMER: Possibly.

CHAIRMAN SULLIVAN: And you feel that's within the intent of the ordinance?

MR. SOMMER: I think that what the Code provides is many-faceted. One is to get from, to have a legacy left for your children. The other is to allow other family members to benefit from lands that are acquired by people who are in the family proper, as in this case. What has occurred, and what occurs often and more and more these days is a particular member of a family can acquire property and would like other members to share in it, but not necessarily all of it. And in this case, and this is what the Code provides, is that other members of the family under the Code can share in the legacy that maybe was created by say, a brother

2706836

or a sister, but the Code provides that in order for the brother or sister to have that legacy passed on, it must go through the parents. Must go through the parents. Father to child.

So the end result is that Ms. Santos will have a legacy to leave to her other children.

CHAIRMAN SULLIVAN: I think you answered my question. Let me understand this. So, and correct me if I'm wrong. So the son has recently, in less than a five-year period, transferred 2.5 acres to his mother.

MR. SOMMER: That's correct.

CHAIRMAN SULLIVAN: Okay. The son lives on a parcel adjacent to this one, 2.5 acres.

MR. SOMMER: That's correct.

CHAIRMAN SULLIVAN: And the mother is then requesting a family transfer to divide the lot in half, one half of which she's going to retain and one half of which she'd going to deed to her son.

MR. SOMMER: That's correct. And the other half of which she will have at her disposal.

CHAIRMAN SULLIVAN: And there are other children in the family.

MR. SOMMER: That's correct.

CHAIRMAN SULLIVAN: And as was stated before, there's no intent for the son to build a house on it?

MR. SOMMER: He has no further intention to build on that lot. His present intention is for his mother to be able to have the other lot for her disposal.

CHAIRMAN SULLIVAN: And the mother lives, as you've indicated, in California.

MR. SOMMER: That's correct.

CHAIRMAN SULLIVAN: All right. I think I'm clear on it. Other questions for the applicant?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: I have a couple, just regarding, Mr. Sommer, first, on the traffic. Could you state a little bit in terms of the impact or has a feasibility study been done or traffic study done?

MR. SOMMER: I'm not an expert on traffic but I'll give you my understanding of it and qualify it that way. My understanding is that the objection to traffic has been that any additional residences in this area are going to adversely affect traffic. That's the general complaint. I think the truth of the matter is that every additional house in every area brings an increment of traffic. I don't think that there's any evidence anywhere that the current infrastructure in place does not support the traffic that will be imposed by an additional residence. One additional residence generally produces anywhere between five and ten trips of a car a day. There's no evidence anywhere that I've seen that five or ten additional trips on the roads leading to this by a car could not be supported.

Now I understand. I don't want to minimize the issue. I think people are generally



2706837

concerned about traffic in their neighborhood and I think that's the kind of concern that I have read about.

COMMISSIONER MONTOYA: Then, Mr. Sommer, regarding the decision of the EZC, their decision was based on, and the other question as it's been stated in terms of the protest by area residents, the other that they were concerned about was regarding the legitimacy of the proposed family transfer. Could you comment?

MR. SOMMER: Sure. I think this is the issue that is raised and I think Commissioner Sullivan's questions were aimed at that. Here's the issue. Is this somehow Mr. Santos getting away with something? And the answer to that is plainly and simply no. In order for this to happen, Mr. Santos had to give away land to his mother. That has an economic and tax consequence to Mr. Santos that is not done lightly. She must hold on to that other lot. That's the purpose of the Code, so that the family can share in the success of other family members. But the Code is specific, that in order for that to happen, it's got to come out of the mother or the father.

So now, Ms. Santos didn't have any land to leave to anybody else. Now she does. But Mr. Santos, essentially, gets to share in what he's created. The question is is that legitimate under the Code? Is that what the Code anticipated? I think that's the issue that has been raised. I think that it is legitimate. I think that if a family member is successful out there in the world and they come back to their hometown and they are able to acquire property and they want other family members to share in it, and they're willing to give that property to the parents to distribute out in that fashion, I think that's what the Code is all about. I think that's an issue of legitimacy.

I think the question became and becomes, is he trying to get away with something? Are they trying to get away with something. I'll tell you no, because they have had to make the transfer. And as you all know, transferring property has an immediate tax consequence, a real tax consequence. And you don't do that unless you're willing to pay the consequences or you're serious about what you're doing. So I think that's the issue that has been raised and that is our answer to it.

COMMISSIONER MONTOYA: Same question for staff, Ms. Vitale. Could you comment on the concern that the EZC had regarding the legitimacy of the proposed family transfer? Or Joe?

MR. CATANACH: Mr. Chair, Commissioner Montoya, if I could address that. Certainly, I would refer you to the meeting minutes that are attached as an exhibit. I think that as this was being presented to the EZC it got somewhat confusing as to what the intent was, where 2.5 acres was being split by Dorothy Santos, the mother. She was keeping half of the property with an existing house. A vacant lot was being transferred to the son. So then, as that was being presented and other information came out, it seemed like it got confusing about what the intent was. Mr. Santos stated in the minutes that his mother, Dorothy is keeping half the property, a 1.25-acre lot with an existing house, but the existing house, it's a split-level house, he stated and because of her age condition or her physical condition she would not be able to use that house. So it got confusing as to whether then the mother was going to keep a lot or that

2706838

she was in fact going to sell it. It became confusing that Mr. Santos, Daniel Santos, the son was getting the other half of the property vacant, a vacant lot when he owned a house on the adjacent property.

So there's a lot of unique issues that came out and that are happening here. I think as Mr. Santos was trying to explain his position it became somewhat confusing and that included the true intent of how this was helping a family member.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: So then in terms of the split, Mom was going to split it and keep the house.

MR. CATANACH: The lot with the existing house on it. Yes, Commissioner Montoya.

COMMISSIONER MONTOYA: And that's the house that Mr. Santos is living in now?

MR. CATANACH: I believe that Mr. Daniel Santos lives on the adjacent 2.5-acre lot with an existing house. Again, it's starting to get confusing even as we're talking here about that as well.

MS. VITALE: In the EZC he stated he was going to [inaudible]

COMMISSIONER MONTOYA: So there's already two residences on this property.

MR. CATANACH: The property that's being split for family transfer has one existing residence. Mr. Daniel Santos owns an adjacent 2.5-acre lot that has an existing house as well.

COMMISSIONER MONTOYA: And then, Mr. Chair, Mr. Catanach, regarding the comments that you had made in terms of family transfers are to provide a home site needed for a family member and that does not appear to be the case here. That was in the minutes. Could you maybe expand a little bit on that and clarify for me what you were talking about there?

MR. CATANACH: Mr. Chair, Commissioner Montoya, again, as the discussion was going on it seemed to be somewhat confusing about exactly how this family transfer was helping a family member, be it the mother or be it the son. And as that confusion continued that's where the staff perspective on this was that it was not clear how this was in fact helping a family member for the reasons I just stated earlier. Dorothy Santos, the mother was going to keep the lot with the house on it but yet she was not going to be able to live in the house because it's a split-level house and her physical condition, it wouldn't accommodate her.

Daniel Santos, the son, was getting a vacant lot, but again, he lived in the house, in the existing house on the adjacent 2.5 acres.

COMMISSIONER MONTOYA: Those 2.5 acres that he already owned?

MR. CATANACH: Yes, that he already owned.

COMMISSIONER MONTOYA: Go ahead.

MR. CATANACH: Again, that's where it became confusing about the intent

2706839

and it became clear that it wasn't clear exactly what the intent of this family transfer was.

COMMISSIONER MONTROYA: Thank you, Mr. Chair.

CHAIRMAN SULLIVAN: Other questions? Commissioner Duran.

COMMISSIONER DURAN: Does Mr. Santos have the ability to get a lot split on his other -- on the one that he's living in?

MR. CATANACH: Mr. Chair, Commissioner Duran, if Mr. Santos has children, which I don't know the answer to that, certainly, he would be able to do a family transfer himself on the other 2.5 acres. Children or grandchildren.

COMMISSIONER DURAN: Maybe he can answer that later. But the other thing I need to ask our legal staff about, the question I have for you is, the Code is the Code. We have the Code and if this individual meets the intent of the Code I don't know how we can deny this request if he's met the letter of the law. The neighborhood doesn't want it, or some of the people in the neighborhood don't want this to happen but if we're here to uphold the Code, I don't understand -- to me it seems like we have some exposure here if they've met the Code, we deny them and they come back and we end up losing in District Court because we have a Code and if we don't like the Code the process is to change the Code. I don't know if we can change the Code just because we don't like it today, without going through the public hearing process. So have you reviewed the application and in your opinion, does the application meet the letter of the Code?

STEVE ROSS (County Attorney): In terms of requirements, I think we know that staff previously recommended approval of the lot split because it did in fact meet all the six criteria. I think where the EZC, and I was there when they presented this case, I think where they got a little concerned was that they thought that maybe the family transfer process was being used to create a three or four-lot subdivision through some common promotional plan or some other improper device. And that's where they kind of came down on this case. That's something that's the subject of a lot of debate where, whether under the Subdivision Act, a family transfer can be scrutinized in that manner.

So I'm not trying to be evasive but it's a little bit of a confusing issue. Under the Code the way it's written there is some discretion for the Commissioners under the Purposes section, for example. It says that the intent of the ordinance is to set forth standards for defining family transfers and assuring that the procedure is not being used to circumvent zoning or subdivision requirements through such means as a common promotional plan disguised as a family transfer. So it's a little unclear to me as to whether the Subdivision Act permits us to go that far. I think it certainly possible but it's not something that's all that clear.

So I guess my recommendation is if you think, if you're convinced that there's a scheme here, basically, to create a four-lot subdivision through family transfers that would ordinarily have required a different process like variance, an additional --

COMMISSIONER DURAN: Where's the four lots?

MR. ROSS: The whole thing.

COMMISSIONER DURAN: If he went forward with a --

MR. ROSS: Yes. If you think that there's -- and I think this where the EZC was

really getting concerned because the adjacent property, it's immediately, right? So you have basically the possibility of --

COMMISSIONER DURAN: What if he owned a lot on the other side of town?

MR. ROSS: Exactly. Exactly.

COMMISSIONER DURAN: What happens then?

MR. ROSS: Yes, exactly.

COMMISSIONER DURAN: You couldn't say that that was part of a scheme.

MR. ROSS: No, you couldn't say that was part of --

COMMISSIONER DURAN: He has the right to live anywhere he wants.

MR. ROSS: Right. I'm just explaining where things got a little confused

factually before the EZC and I think that created in their minds a suspicion that there may have been something going on here. I think you are the ones that need to make the determination.

COMMISSIONER DURAN: We wanted you to.

CHAIRMAN SULLIVAN: Let me clarify, a subdivision has to be contiguous.

Lots have to be contiguous to be defined as a subdivision. So if he owned two lots on the other end of town that would be a different situation than the lots we're dealing with here are contiguous.

COMMISSIONER DURAN: We're assuming his coming in later.

CHAIRMAN SULLIVAN: I'm not making any assumptions. I'm just clarifying if there were some questions as to whether it were to be a subdivision, those lots would have to be contiguous to be a subdivision. Commissioner Montoya.

COMMISSIONER MONTOYA: Mr. Chair, Mr. Ross, regarding the conditions that have been set forth by staff, can additional conditions be placed -- they've met the requirements, could we place a condition that the family transfer be held for ten years before anything can be done with the property? By changing the deeds and the plats?

MR. ROSS: I wouldn't advise you to do that unless they applicant were to consent to it.

COMMISSIONER MONTOYA: Would the applicant consent to that?

CHAIRMAN SULLIVAN: We do want to get to the public hearing though too, so I think before we get too far here, gentlemen, in terms of making proposals or what might be motions, I think it's appropriate that we hear the public. I don't want to cut you off, Commissioner Montoya, but let's -- I just don't want to get this into a deal-making session here before we've even had an opportunity to hear the public. Do you have an answer, Mr. Sommer? Yes or no?

MR. SOMMER: Mr. Chair, Commissioner Montoya, the applicant would accept a condition of a time period to hold the lot, but what the Code provides in another section is a three-year holding period which he has no objection to. Ten years is a long time to hold a lot. There are a couple of reasons why I don't think ten years is acceptable to them. One is his mother is going to be 80 this year and holding a lot for a period of ten years, if there's a medical need of some kind for her, if she needs to dispose of a lot, then she might have to have that. Ten years would be a long time and it would be a little risky. But the three-year period

2706841

that the Code provides in other circumstances similar to this or used to provide anyway, would not be objectionable as a condition. So I wanted to answer your question.

COMMISSIONER MONTOYA: Thank you, Mr. Chair. I'll hold off any other questions.

CHAIRMAN SULLIVAN: Commissioner Anaya, did you have any questions?  
COMMISSIONER ANAYA: I'll hold off.

CHAIRMAN SULLIVAN: Let's get some public comment and then we can have more questions. Those in the public here this evening that would like to comment about, would you step forward please and state your name for the record and have the recorder swear you in please.

[Duly sworn, Gene Farnum testified as follows:]

GENE FARNUM: My name is Gene Farnum. I live at 971-B Chicoma Vista, just across the street from the property. Chairman Sullivan, did you get the e-mail letter that I sent you?

CHAIRMAN SULLIVAN: Yes.

MR. FARNUM: All right. And have the other Commissioners seen that?

CHAIRMAN SULLIVAN: I don't know. If you sent it to them --

MR. FARNUM: I sent it to Mr. Duran and to you.

CHAIRMAN SULLIVAN: I haven't made any other copies of it. I'd be glad to pass it around.

MR. FARNUM: Okay. I have one extra copy here. May I give it to you?

CHAIRMAN SULLIVAN: Why don't you give it to someone who doesn't have a copy. Or give it to -- we'll just pass it down the row there.

MR. FARNUM: I just enumerated some of my objections to the proposed dividing of the lot and I don't want to go over those again. But I would like to address one or two issues that I thought Mr. Sommer brought up that I disagree with. First of all, he talked about the intent of the Code, and my understanding of the intent of the Code, is not that the family will share in the profit from the sale of the property, my understanding of the intent of the Code is that families can divide a property so they can live together. So if I buy a property as an investment, am I allowed then, after five years to divide that up into 1.25-acre lots even though the zoning says 2.5-acre lots is the appropriate size for the environmental condition.

I think all of us on the street, yes, we're concerned about density. But we also think that 2.5 acres is the appropriate size for that area and we don't want to see it made smaller. So I'm questioning the intent of the Code, whether it is to allow, as Mr. Sommer suggests, the family to share in a profit from a land investment that the parent has made, or whether it really is made so that families can pass this land within the family and it stays in the family.

We think it does. We think this action is trying to circumvent zoning and the intent that Mr. Santos has expressed in the previous meeting with the Extraterritorial Zoning Commission was that he wanted to divide this lot into two, sell one of the halves of it and use that money to build a house on the second half. Not that's not what he expressed tonight. I don't know how

2706842

his story has changed from then to now but we question whether the intent really does meet the intent of the Code to keep property within the family.

And one other thing that I would mention in addition to points that I tried to make in a letter is that Mr. Sommer claimed that all the criteria were met. However, one of the criteria is five-year ownership of the property, and he stated that this lot that is in question, the one that is to be divided, was only transferred to Dorothy Santos in July of this year. So clearly Ms. Santos has not owned the property for five years. She's only owned it for a short period of time. Prior to that Mr. Santos owned both of the lots, the one he lives on and the one he's now trying to divide. So from my point of view, this does not meet the intent of the Code. I'm sorry I can't address the specifics of the Code because I'm not a lawyer and I'm not in that position. But I would ask you to consider this and use your judgement accordingly and I thank you very much for your time.

CHAIRMAN SULLIVAN: Thank you, Mr. Farnum. Is there anyone else in the audience who would like to speak either for or against this application? Give us your name and address and have the recorder swear you in.

[Duly sworn, James Marshall testified as follows:]

JAMES MARSHALL: James Marshall. I'd like to thank the Commission and all the members of the Board for giving me the opportunity to speak tonight. I'm not a lawyer; I'm not a very good spokesperson but there are some issues here that I'd like to mention and they may have some value. Under the intent of the Code, what I understand is the purpose of this is to supply or give the opportunity to a family member, whether it be a father, a mother or a child, the opportunity to build affordable housing. This is one of the intentions, main intentions. Now, there are two houses on two separate parcels. One is owned by the mother, which was recently given to her by her son. The other parcel is owned by the son. I presently don't see any need for an additional house.

Now there was mentioned the word legacy was used in terms of subdividing the 2.5 acres to 1.25 acres with no intention to build a house but to create a legacy for the mother to give to her other children, if in fact she has other children, or perhaps to sell off if she has medical emergencies or needs. I don't quite -- I don't feel this is covered under the intent of the Code. This is not -- I don't believe that the Code was created to give the family an opportunity to generate new revenue. It specifically is for a dwelling.

It was also mentioned during the course of the conversation tonight that this is a very confusing issue and on the surface it does appear very confusing. That's because Daniel owns all the property. He gave half of it to his mother. Now his mother is going to give it back to him and an intent was mentioned tonight by Mr. Santos but I question the true intent. This is a rather convoluted way of dealing with things, assuming the fact that there is no intent to build a house on this, presumably third smaller parcel. It's the concern of the neighbors where we live that -- first of all, let me state that we honor this Code. We believe that this is a fair, and a very sensitive Code to families who are living in Santa Fe County. The price of land is going up. The price of housing is going up. People who have lived here their entire lives can no longer afford to build houses on this property because of land values. So this is a very real and

2706843

important use of this Code, to supply housing, especially for those of you who have lived here your entire lives, and I happen to not be a native of New Mexico.

But my biggest concern is manipulating this Code for personal profit, or for some other intent or reason that isn't quite clear to me. So for the reasons that I've stated, I really feel that it's not appropriate that this dividing of this piece of property happen. If it were a clear, cut and dried case where there are children in need or a mother who doesn't have a house and needs a house, I would say, Fine. And of course the neighbors, all of us are concerned about a precedent setting. And that's something we can't address and attach to this particular concern. But that's something that I might most humbly ask that you all might consider reviewing for future cases, that there has to be some -- maybe that loophole has to be closed up a bit, I don't know.

So for all these reasons I am against this proposal to subdivide once again. And I appreciate your time.

CHAIRMAN SULLIVAN: Thank you, sir. Anyone else?

[Duly sworn, Ricardo Sanchez testified as follows:]

RICARDO SANCHEZ: My name is Ricardo Sanchez. I live at 871 Chicoma Vista. I don't really want to get up here and beat a dead horse but I've kind of heard what my neighbors have said and I've heard what Mr. Santos has said and I don't really think that this is an appropriate family transfer. I just want to go on record and say that.

CHAIRMAN SULLIVAN: Thank you, sir. Appreciate your brevity. Next speaker.

[Duly sworn, Tana Acton testified as follows:]

TANA ACTON: My name is Tana Acton. I live at 971-A Chicoma Vista, directly across from this property that's in question. And I do believe that it's true that as the Code specifies, he's got everything in place. He's brought in someone to prove that and I don't know -- not everybody was here at the last meeting but it was obvious that he too was confused about what he was doing. I know that a couple of the Commissioners were here and it was very confusing. And that was one of the reasons why they denied it last time. Even though Mr. Sommer is here representing Mr. Santos tonight, I do not feel that that confusion has changed. I feel that all the issues are the same. And that's why we're asking you to reconsider this once again.

Maybe everything is in place there and maybe Mr. Santos won't sell the property. Is there, or is there not a three-year time period after a family transfer when the property cannot be sold. Okay, so there's no Code that is strict enough to keep anyone like Ricardo said, from giving their children a piece of their property and selling it off within ten minutes after it's become theirs through a land transfer. There is nothing to protect the neighbors [inaudible] or anything.

One of the things that got brought up last time is that this is a private road. The County doesn't repair this road. The road's a mess. Ten more trips a day? What's the big deal? We can't even keep the people from coming onto our private road and dumping junk at the end of our road. So it's just more. More, more, more. We understand that the County has to follow its

2706844

own Code and we're just hoping that you will consider what we've all had to say tonight.  
Thank you.

CHAIRMAN SULLIVAN: Thank you, ma'am. Next speaker.

[Duly sworn, Marta Nystrom testified as follows:]

MARTA NYSTROM: My name is Marta Nystrom. I own and reside at 648 Chicoma Vista and I'd like to say that I think there's one additional fact that has been omitted from the proceedings today that may or may not be material, and that is that the 2.5 acres that Mr. Santos resides on was placed on the market immediately following the transfer of title on the other side of the lot to his mother. Now, it's already been ascertained that his mother physically would not be able to reside in the house on the lot split that is being proposed now, which means that either that would have to be sold or Mr. Santos would reside there and the additional lot then improved for his mother's use.

Again, I feel this is extremely murky and it looks to be an effort to go around the subdivision law. And this is kind of a test case for our neighborhood. There was another family on our road that years earlier had a valid lot split proposal before the EZA and it also was denied. They ended up simply making an addition to the existing building to accommodate their growing family and they have lived that way ever since. It seems a real disservice to have not granted them what was very clearly a family lot split and to be considering this lot split that is not so clear-cut, in addition to which there will be another one proposed on our road in the not too distant future that probably has more merit than this case but probably also would not be a valid lot split.

So I think this needs to be tread very, very carefully. Thank you.

CHAIRMAN SULLIVAN: Thank you, ma'am.

[Duly sworn, Judith Turley testified as follows:]

JUDITH TURLEY: My name is Judith Turley. I live at 850 Chicoma Vista. I would just like to offer a few things that are of concern to me. Ms. Nystrom already addressed the first, which was that the -- I didn't know that the lot split had happened earlier this year but I do know that a For Sale sign went up at the end of July and August and I guess the property didn't sell and it was withdrawn.

I too am concerned about the intent of this lot split, that first Mr. Santos gave it to his mom and now she's deeding it back to him. If there are two residences and places for each of them to live, I just don't understand why this lot split needs to happen. Also, I was not present at the first meeting but I am concerned about where the water is going to come from. Thank you, gentlemen.

CHAIRMAN SULLIVAN: Thank you, ma'am. Anyone else who'd like to testify on the application?

MR. SOMMER: Mr. Chair, could I have a brief opportunity to --

CHAIRMAN SULLIVAN: A brief rebuttal. Go ahead, counselor.

MR. SOMMER: I'll keep it under two minutes. You can time me, Mr. Chair.

This issue boils down to one question. Does he meet the provisions of the law? I think that's clear. There's no question he meets the provisions of the law. The first speaker who got



2706845

up here said it hasn't been in Ms. Santos' name for five years. That's not what the law requires. It says very specifically, family proper. Well, one must ask, what's the intention if it's in the family proper? This question does raise a serious, serious issue for you all as Commissioners about family transfers. You see dozens and dozens of these a year. I know every one of you up here has seen family transfers. You've gone, Well, the Code says this. Is this child going to sell it and move on somewhere else? And undoubtedly, that's all the time, because the Code doesn't specify a time period for holding it. Why not? The family transfer law in this county has always been applied and utilized to allow a family to share in a legacy.

Now the Code says that it must come from the parent to the child. The substance of this case, and this is the bottom line in the case, if this was simply form over substance, that this was a way to get around, would Mr. Santos have done the following: he took the piece of property and he put it and gave it legally to his mother. That has an immediate tax consequence to the both of them. That is substance, not form. Now, the Code specifies that a family member can do that for another family member, but it also provides that that family member who's making that gift can get part of it back through a family transfer so that all of it isn't given up.

The question you are asked here tonight is is that the intention of the Code. I guarantee you that there will be a family in here, maybe not tomorrow, maybe not next month, who will have a very similar circumstance where one family member has benefited largely out there in the world and come back to help other family members and will use this provision of the Code in a real and substantive way by making a gift to the mother or father so that they can leave a legacy to the other brothers and sisters if that's what they choose to do. Without having to give up everything that they've acquired.

Now, finally, that has been characterized as profit and revenue. That's not what this case is about. It's not about profit and revenue. Mr. Santos ends up with half the property. That's real. That's form. That's not form over substance. That's substantive. So the question for you is, and I said it at the beginning, did Mr. Santos meet the requirements of the law? The answer is yes. Is this what the Code was intended for? Yes. Is it proper to change the requirements in this hearing? I don't believe it is. We would submit to you again to prove the substance over the form, put a holding period on Ms. Santos, on the property that she's going to retain, the three-year period. We don't have any objection to that. Now that is again substance, not form. So thank you very much.

CHAIRMAN SULLIVAN: Thank you, Mr. Sommer. Okay, comments or questions from the Commission? Commissioner Duran, then Commissioner Montoya.

COMMISSIONER DURAN: This is for Mr. Catanach. And I don't know if I'm correct in this. I don't know if -- I think you've been at this land use business longer than I have. I'm not sure. But I recall before the new subdivision regs were adopted that the Code had a three-year hold period. Okay, maybe it was five years. Do you remember way back then?

MR. CATANACH: Mr. Chair, Commissioner Duran, at one time the County was imposing that family transfer lots not be sold for a period of three years, but it was not specific. It's never been specific in the Code. It was being done as a policy.

COMMISSIONER DURAN: It was a policy.

2706846

MR. CATANACH: It was being done as a policy. The City Code had the provision, had the regulation, so that's kind of how it evolved before there was a separate joint City/County ordinance, certain requirements, regulations out of the City Code were being applied.

COMMISSIONER DURAN: I remember that, because I was dealing with a piece of property out in Cañada de los Alamos that they did a lot split, it was a family lot split and there was a three-year hold on it. And then the state adopted new subdivision guidelines and I believe at that point the policy -- we adopted the state guidelines which didn't have a hold period. And the reason I bring that up is that -- I know that there's some concerns that somebody might do a lot split and then sell it and benefit by the profit there. But to be quite honest with you: I don't see a problem with that. And I'm sure that when they adopted the subdivision regs at the state level that they thought about this. Why would we want, if we really were trying to enhance the lives of families and give them the opportunity to split their lots, why would we restrict them from benefiting financially from that?

Whether they use it to go to Las Vegas or if they use it to take care of their mother. There's nothing in the Code to prevent someone from doing that and I think the reason for that is it's money that could be used if they decided to sell the lot for the benefit of the family. So I just wanted to say that. Thank you.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: Thank you, Mr. Chair. Mr. Santos, why did the original transfer of the land take place in the first place, and when did it occur?

MR. SOMMER: The transfer to the mother?

COMMISSIONER MONTOYA: Yes.

MR. SOMMER: Okay, the facts as I understand them and Mr. Santos can correct me, but Mr. Santos had originally wanted to sell off a piece of the property. But he wanted to keep the other piece of the property for his mother. He was told by land use staff, well, look, in order for you to accomplish your goal, you actually have to give this to your mother in advance. So that's when the transfer took place is when that came. So I think that the facts that would be true to you tonight are true. That the property went up for sale. There were objections raised. He came in and checked into it and he was told, Look, in order to accomplish this, you must transfer this to your mother. He did that. So it happened after the property, part of the property did go up for sale and it was within the last whatever period of time. Does that answer your question?

COMMISSIONER MONTOYA: Within the last six months?

MR. SOMMER: It was whenever the objections were first raised. So it was within the last six months.

COMMISSIONER MONTOYA: In June of this year, of 2003?

MR. SOMMER: Yes.

COMMISSIONER MONTOYA: And then, again, just clarify for me, other than the legacy, why does he want the land back now?

MR. SOMMER: Here is the -- Mr. Santos has been -- he purchased this

2706847

property and he would like to give a portion to his mother. He doesn't want to give it all to his mother. He would like for her to share. Now the question is, does she have to live there? The Code doesn't say she has to live there, but in order to get half the property into her name, he's got to divide it. The Code says it can't be divided. So in order to give half the property to her and for him to keep the other half, they've got to go this route. So the purpose is so that she can have the benefits of half of the property -- he's got a brother and a sister, and she is an elderly woman. So the purpose of the transfer is so that he can keep half the property and she can do with the other half what she would like.

COMMISSIONER MONTOYA: So then in effect, he would own 3-point-some acres. Is that correct?

MR. SOMMER: He would own the 2.5 that's there plus this 1.25. About four acres, right, 3.75.

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

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: On that note, picking up where Commissioner Montoya left off, would it be, would you be in favor of -- I guess to make this clear, Mr. Santos had five acres. He had then split it into 2.5s, or he bought one 2.5 and then he purchased another 2.5. And he wants to divide one of the 2.5s to give a piece of the property to his mother. Another option might be that he take the total five acres and make it one lot and subdivide 1.25 acres for his mother. So that way you would end up with two lots, one with 1.25 and the other with 3.75. That's another way to look at it.

COMMISSIONER DURAN: That's what he has now.

COMMISSIONER ANAYA: But instead of making three lots, you're making two lots. He has one now, one 2.5, and he transferred 2.5 over to his mother. His mother wants to divide the 2.5 in half. But what I'm saying is let him take one of the halves and add it on to his 2.5 and that way you have two lots only.

CHAIRMAN SULLIVAN: Other comments, questions from the Commission? What's the pleasure of the Commission on this EZ Case #03-4551?

COMMISSIONER DURAN: I have a question, Mr. Chair, before we go to motion.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: Karl, do you think Mr. Santos would agree to not apply -- would he restrict his 2.5 so there was no further subdivision of that one? While you're doing that, Joe, does the Code allow for a family transfer to a sibling? If he doesn't have any children, could he request a family transfer of the lot that's in his name and then deed that to one of his --

MR. SOMMER: Mr. Chair, we would agree to that condition. As I said, you're talking about the 2.5 acres that is adjacent, which is in his name right now. The answer is would he agree not to subdivide that? He would agree not to subdivide that.

COMMISSIONER DURAN: Under family transfer?

2706848

MR. SOMMER: That's correct.

CHAIRMAN SULLIVAN: Questions? Comments?

COMMISSIONER DURAN: In that case, I'd like to make a motion, and that is that we overturn the EZC's decision to deny the family transfer, impose all of staff's condition with an additional condition that he would not subdivide the lot, the adjacent lot which he is entitled to right now under the family transfer provide of the Land Use Code.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: What about the provision of the three-year hold?

COMMISSIONER DURAN: Oh. But what if his mother needs the money?

COMMISSIONER MONTOYA: Do you still agree to that, Mr. Sommer and Mr. Santos. They had agreed to it earlier.

COMMISSIONER DURAN: Okay, I'll incorporate that. I'll agree.

MR. SOMMER: We don't have any objection. The three-year period would be acceptable and the reason I say that is if you're wondering, Mr. Santos can help his mother if something arises in that time period, but that time period is acceptable to us.

COMMISSIONER MONTOYA: Would you incorporate that into your motion?

COMMISSIONER DURAN: I would. What would be the benefit of it though?

COMMISSIONER MONTOYA: Well, probably it's more philosophical for me than anything else, in terms of my --

COMMISSIONER DURAN: Then I would agree to it.

COMMISSIONER MONTOYA: You're not going to let me explain?

COMMISSIONER DURAN: No, no. I would agree to that.

COMMISSIONER MONTOYA: I'll second that then.

CHAIRMAN SULLIVAN: Okay, we have a motion and a second. Further discussion?

MR. CATANACH: Mr. Chair, I'm not sure I understood the motion.

CHAIRMAN SULLIVAN: Too bad.

COMMISSIONER DURAN: Maybe I phrased it incorrectly.

CHAIRMAN SULLIVAN: No, I think you -- I understood it.

MR. CATANACH: There would be no division of the adjacent 2.5 acres?

CHAIRMAN SULLIVAN: Of the adjacent is what he said. Under the family transfer provision.

MR. CATANACH: Okay, so --

CHAIRMAN SULLIVAN: And the existing -- correct me if I'm wrong, Commissioner, and the existing, the 2.5-acre parcel that's being proposed to be divided would have a limitation that no sale would occur for a period of three years.

MR. CATANACH: For the lot that the mother is --

CHAIRMAN SULLIVAN: Correct.

MR. CATANACH: Okay. So for the County to regulate no division of an adjacent 2.5 acres that's not part of this application, they would have to replat both properties

2706849

on the same plat.

**CHAIRMAN SULLIVAN:** I would suggest that they bring a deed before we approve the lot splits that they provide a deed that would be recorded at the same time that the plat gets recorded. It would be a deed restriction that would be of public record.

**MR. SOMMER:** We would put it on the plat so that staff could pick it up. We don't have a problem with doing both, but I think what Mr. Catanach's concern is that if someone shows up for a building permit application, when staff looks at the plat for the legal lot --

**MR. CATANACH:** Well, somebody would show up, if Mr. Santos would show up to request to split the adjacent 2.5 we would have no idea unless we saw a note on the plat.

**MR. SOMMER:** Right. So we don't have any objection to it.

**COMMISSIONER DURAN:** The deed restriction is to the lot, not to Mr. Santos, so if he sells his house, the owner of that, the new owner is required, is under the same requirements.

**MR. SOMMER:** Okay, I had understood you said that Mr. Santos and nobody in his family would do a family transfer on the adjacent five acres and we don't have any objection to that. If you're saying that if somebody else came in and had a family transfer, like somebody totally unrelated to him -- I don't know if that's what you meant.

**COMMISSIONER DURAN:** What I meant to say is that it would be a deed restriction that would go with the property and that deed restriction would be that this lot could not be further subdivided under any provision of the County Code, including family transfer.

**MR. SOMMER:** Let me just clarify that because I had understood earlier that neither he nor any of his family members would attempt a family transfer on that adjacent five acres.

**COMMISSIONER DURAN:** The reason for that Mr. Sommer is I'm trying to - I can understand the community's concern that they were in there. They're all in 2.5-acre lots, the road isn't maintained properly. They have some problems there and if we don't try to give them some protection -- it's not what they want but it's a compromise.

**MR. SOMMER:** Okay. Let me just check with him real quick if I may.

**COMMISSIONER CAMPOS:** Mr. Chair.

**CHAIRMAN SULLIVAN:** Commissioner Campos.

**COMMISSIONER CAMPOS:** After listening to staff and looking at the intent of the Code, I think that this does not meet with the requirements of the family transfer. It has nothing to do with family. It has something to do with cashing out on a 1.25-acre lot. It's plain and simple. That's what it's all about and I think that's what the EZC saw and I think they're doing their job and I think we need to support them. To me, this is pretty much a sham.

**MR. SOMMER:** No objection.

**CHAIRMAN SULLIVAN:** Mr. Sommer says no objection to that provision then. Getting back to you, Mr. Catanach, your question about clarification was a good one. I'll retract my No, you can't get clarification. Are you clarified now?

2706850

MR. CATANACH: I believe I have an understanding that there is some notation, both on the plat and the deed regarding that there would be no division of the adjacent 2.5 acres for a period of three years.

CHAIRMAN SULLIVAN: No.

COMMISSIONER DURAN: No.

CHAIRMAN SULLIVAN: Go ahead, Commissioner Duran. I think it's none, period, on the adjacent. I think the three years only applies to the 2.5 acres that is currently being split. Is that correct, Commissioner Duran?

COMMISSIONER DURAN: There is a deed restriction on the lot that he owns that's not here being requested to be subdivided. The deed restriction would be a condition of the approval of the lot split, of the family transfer when he comes in to replat for recordation, we would require him to record a deed restriction on his home. I wish I had the address. Is it north of this lot? South of this lot?

MR. CATANACH: It's pretty much surrounding it.

COMMISSIONER DURAN: What's the address of your home, sir.

CHAIRMAN SULLIVAN: 988.

COMMISSIONER DURAN: So there would be a deed restriction on that particular lot.

MR. SOMMER: What I understand, so the record's clear, that there is going to be deed restriction and a note on the plat on the adjacent five acres that says it will not be subdivided. Excuse me, the adjacent 2.5 acres that will not be subdivided, and that will be by deed restriction and by note on the plat. So therefore we're going to have to plat that five acres with this lot split showing it. On this lot split, there will be a condition that the property retained by Ms. Santos is going to be retained for a period of not less than three years. That's how I understand it. That's what I understand the motion is and I'm making this clear so that when I talk to Joe, we're on the same page.

CHAIRMAN SULLIVAN: What about the property retained by Mr. Santos that's being split in your motion?

COMMISSIONER DURAN: Would that go to half an acre?

CHAIRMAN SULLIVAN: No, I'm saying instead it wouldn't be sold for three years. Three years pertains to the sale. So what Mr. Sommer has said was that the three years was applying to only the mother's portion of the lot. So what about Mr. Santos also has half of that lot?

COMMISSIONER DURAN: No, it's only for the lot.

CHAIRMAN SULLIVAN: Only for what lot?

COMMISSIONER DURAN: Only for the vacant lot. The house, whether he owns it or someone else owns it, it's not going to impact the neighborhood any more.

CHAIRMAN SULLIVAN: The vacant lot is going to his mother. Is that right?

COMMISSIONER DURAN: Right.

CHAIRMAN SULLIVAN: Okay, so your restriction only applies to the vacant lot. The lot with the house on it, which will now be approximately 1.25 acre, can be sold at any

time.

COMMISSIONER DURAN: Right.

CHAIRMAN SULLIVAN: Tomorrow. Whenever. As envisioned by your

motion.

COMMISSIONER DURAN: Is that philosophically in line with your --

COMMISSIONER MONTOYA: No, actually.

COMMISSIONER DURAN: So you want to deed restrict both?

COMMISSIONER MONTOYA: I thought it was for the whole 2.5 acre piece, even after it was transferred.

COMMISSIONER DURAN: Okay, is that your understanding? You have to hold both those lots for three years.

MR. SOMMER: My understanding was that the lot that was going to remain in Ms. Santos' name would have the restriction on it and that's what I understood earlier. And the whole reason was, the whole thing that gave rise to this was Mr. Santos wanted to sell a portion of the property and deed a portion to his mother.

COMMISSIONER DURAN: And now the only thing he could sell is the house that he owns.

MR. SOMMER: If that's the lot that she's retaining, I'm not sure --

COMMISSIONER DURAN: Don't be confused. We're almost there.

COMMISSIONER CAMPOS: It's like twenty pages of minutes from your

motion.

COMMISSIONER DURAN: No, no, no. I understand that your second was that they couldn't sell the lot that's being subdivided right now into two lots for three years. And the other one, the other 2.5 acre is only restricted to no further subdivision.

CHAIRMAN SULLIVAN: Mr. Sommer, did you want to comment?

MR. SOMMER: Mr. Chair, what is acceptable to Mr. Santos is a restriction on the lot that his mother keeps for a three-year period. It was originally, the way he had planned it, was to give her the lot with the house on it and that would be restricted. And the whole idea was that she would intend to hold that. That was the issue raised. Was this truly to put it into her name for her use? That's the issue, and we're willing to agree to that restriction. Keeping the other one would thwart Mr. -- putting the same restriction on the other one would thwart Mr. Santos' whole intention in the first place, which was to make the division to get her part of the property and so that he could do with it with the rest of it. The additional three years on the both lots would not be acceptable. So I was just clarifying my understanding.

COMMISSIONER DURAN: I've lost my second, right?

COMMISSIONER MONTOYA: Yes.

COMMISSIONER DURAN: Okay.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: This case seems a little confusing. I kind of understand where things are going. I think that if he wanted to help his mother out, if she does

become ill, he could sell the 2.5 acres to help her. I think the family transfer is to transfer it over to somebody who is going to live there and I don't think that's the case here. I think that what I'm hearing is he might sell it, but I think if it was a true family transfer you wouldn't sell it. So with that, Mr. Chair, I move to deny this case.

**CHAIRMAN SULLIVAN:** Motion from Commissioner Anaya. Is there a second?

**COMMISSIONER CAMPOS:** Second. Is that a motion to sustain the EZC decision? To hold it? I'll second that.

**CHAIRMAN SULLIVAN:** Okay. So the motion is to sustain the EZC decision which was for denial. Made by Commissioner Anaya, seconded by Commissioner Campos. Is there discussion?

The motion to uphold the decision of the EZC and deny EZ Case #A 03-4551 passed by unanimous [5-0] voice vote.

- XII. B. 5. CDRC Case # A/V 03-5700 Manuel Duran Appeal Variance.**  
Manuel Duran, applicant, is appealing the Land Use Administrator's decision to deny a small lot family transfer land division of .87 acres into two lots, one lot consisting of .54 acres and one lot consisting of .33 acres, which would result in a variance of Article III, Section 10 (lot size requirements) of the Land Development Code. The property is located at 05-C Camino de Duran, within Section 1, Township 20 North, Range 8 East, Commission District 1

**WAYNE DALTON (Review Specialist):** Thank you, Mr. Chair, Commissioners. Manuel Duran, applicant, is appealing the County Development Review Committee's decision to uphold the Land Use Administrator's decision to deny a small-lot family transfer land division of .87 acres into two lots, one lot consisting of .54 acres and one lot consisting of .33 acres, which would result in a variance of Article III, Section 10 of the Land Development Code. The property is located at 05C Camino de Duran within Section 1, Township 20 North, Range 8 East, Commission District 1.

On July 31, 2003 the CDRC met and acted on this case. The decision of the CDRC was to uphold the Land Use Administrator's decision to deny a small-lot family transfer land division of .87 acres into two lots. The property is located at 05C Camino de Duran within the Basin Hydrologic Zone. Article III, Section 10 of the Land Development Code states the minimum lot size in this area is ten acres. Lot size may be reduced to 2.5 acres if the applicant signs and records water restrictions. The minimum lot size for a small lot family transfer would then be 1.35 acres.

There are currently two homes and two septic systems on the property. The



2706853

property is served by an onsite well, which serves both homes. The applicant has proven that both dwellings are legal non-conforming. The property would be divided and have one home on each lot. The applicant states that he would like to give his son a piece of property in order for his son to place his home and property as collateral if needed for home improvements, consolidation of bills or if financial need were to arise.

Staff recommends denial of the appeal, based on Article III, Section 10 of the Land Development Code, which states that the minimum lot size for a small lot family transfer in this area is 1.25 acres per dwelling unit. Staff also recommends that the request for a variance be denied. Thank you.

CHAIRMAN SULLIVAN: Questions for Mr. Dalton? Commissioner Duran.

COMMISSIONER DURAN: Wayne, it says in here that the property was determined to be non-conforming, legal non-conforming. Does that mean that they pre-date the Code or what does that mean, actually?

MR. DALTON: Mr. Chair, Commissioner Duran, what that means is that means that both homes that are on the property are legal non-conforming, that have been there before 1981.

COMMISSIONER DURAN: Before 1981?

MR. DALTON: That's correct.

COMMISSIONER DURAN: And so the well, the septic systems, they all pre-date the Code?

MR. DALTON: Mr. Chair, that's correct. I know one septic system would pre-date the Code. They did submit a permit for a second septic system back in I believe the eighties some time, 1986.

COMMISSIONER DURAN: So denying the application would not lessen the impact that exists currently, right?

MR. DALTON: Mr. Chair, Commissioner Duran, that's correct.

COMMISSIONER DURAN: The impact would still be the same.

MR. DALTON: Mr. Chair, Commissioner Duran, that's correct.

COMMISSIONER DURAN: Maybe I didn't read this. The family lives, there's family members in both homes?

MR. DALTON: Mr. Chair, Commissioner Duran, yes, both family members are in each home.

COMMISSIONER DURAN: So there's no rental situation taking place?

MR. DALTON: Not that I'm aware of, no.

COMMISSIONER DURAN: Thank you, Wayne. Thank you, Mr. Chair.

CHAIRMAN SULLIVAN: Other questions for Mr. Dalton?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: Regarding the information you gave us, you say that there are currently two homes and two septic systems on the property. Is that

2706854

the way it's set up right now?

W: Mr. Chair, Commissioner Montoya, that's correct. That's the way the site plan that the applicant submitted, that's the way it's set up on the property.

COMMISSIONER MONTOYA: And these septic systems, are they -- do they have leach fields or do we know what type of system it is?

MR. DALTON: Mr. Chair, Commissioner Montoya, I believe they're conventional septic systems. Maybe the applicant can better answer that question.

COMMISSIONER MONTOYA: Okay, I'll ask them. Thank you.

CHAIRMAN SULLIVAN: Mr. Catanach.

MR. CATANACH: Mr. Chair, I would just want to clarify for the record that the applicant site plan indicates there's two homes and a septic system for each. However at the CDRC meeting the applicant stated there was only one septic system so if the applicant could clarify whether in fact there are two septic systems on the property.

CHAIRMAN SULLIVAN: Okay. We'll ask him to do that. Other questions for Mr. Dalton? Commissioner Duran.

COMMISSIONER DURAN: Just one. Wayne, there's one well that serves both residences?

MR. DALTON: Mr. Chair, Commissioner Duran, that's correct.

COMMISSIONER DURAN: And is the location of the septic adequate distance from the well?

MR. DALTON: Mr. Chair, Commissioner Duran, according to the site plan given by the Environmental Department in '86, they are about approximately 100, 150 feet from the well.

COMMISSIONER DURAN: Okay. Thank you.

CHAIRMAN SULLIVAN: Okay, could we hear from the applicant please?

[Duly sworn, Manuel Duran testified as follows:]

MANUEL DURAN: My name is Manuel Duran.

CHAIRMAN SULLIVAN: Mr. Duran, is there anything you would like to add? There was one question on the part of the staff with regard to the septic system.

MR. M. DURAN: We have two septic systems and they're permitted. They're legal and everything else.

CHAIRMAN SULLIVAN: Okay, so you have two septic systems.

MR. M. DURAN: Yes, sir.

CHAIRMAN SULLIVAN: One goes with each house.

MR. M. DURAN: Yes, sir.

CHAIRMAN SULLIVAN: Okay.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Montoya.

COMMISSIONER MONTOYA: Could you explain to us what type of system is it? Has it got the drain field?

MR. M. DURAN: Yes, it's got a drain and a leach field. Each one of them.

2706855

COMMISSIONER MONTOYA: And how often is each one maintained or cleaned out?

MR. M. DURAN: Oh, we clean them up about every eight months, ten months, depending.

COMMISSIONER MONTOYA: Thank you.

COMMISSIONER CAMPOS: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Campos.

COMMISSIONER CAMPOS: Question for Mr. Dalton. Have you been out to the site, Mr. Dalton?

MR. DALTON: Mr. Chair, Commissioner Campos, I have been out to the site.

COMMISSIONER CAMPOS: Are both homes stick-built?

MR. DALTON: Mr. Chair, Commissioner Campos, yes, they are.

COMMISSIONER CAMPOS: Okay. Thank you.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: What was the question?

CHAIRMAN SULLIVAN: The question was are both homes stick-built and the answer was yes.

COMMISSIONER DURAN: Did you name that road?

[Duly sworn, Daniel Duran testified as follows:]

DANIEL DURAN: Anyway, that land has been in the family from generation to generation, handed down and the road has been named after all of us.

CHAIRMAN SULLIVAN: Thank you, sir. All right, if there are no other questions from the Commission at this point, are there individuals in the audience who would like to testify either in favor of or in opposition to this case? I don't see any. Okay, Commissioner Anaya, did you have your hand up?

COMMISSIONER ANAYA: No, but --

CHAIRMAN SULLIVAN: But now you do. I didn't know if you were just waving or what was going on over there.

COMMISSIONER ANAYA: I was waving.

CHAIRMAN SULLIVAN: What's the pleasure of the Commission then? Commissioner Anaya, you have the floor.

COMMISSIONER ANAYA: Mr. Chair, move for approval with County conditions.

COMMISSIONER DURAN: Second.

CHAIRMAN SULLIVAN: Motion and a second by Commissioner Duran. Discussion?

COMMISSIONER CAMPOS: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Campos.

COMMISSIONER CAMPOS: Just for the record. It's pretty clear that the

2706856

Land Use Administrator ruled that this was not consistent with law and the CDRC sustained that so we have two decisions against this. The minimum lot size is 1.25. This is an extreme departure from that standard, so I think it should be denied. I don't think it's in the public interest and it violates County law.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: Yes, I agree with Commissioner Campos, but these houses have been there for a period of time and I don't think drawing a line in the sand is going to hurt this. Thank you.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: I agree with both Commissioner Campos and Commissioner Anaya. This is not impacting -- this has no impact on the neighborhood. It's been in existence since '81. I'm in favor of it.

CHAIRMAN SULLIVAN: We assumed that, since you seconded the motion. Okay. Any other discussion? Commissioner Montoya

COMMISSIONER MONTOYA: Mr. Chair, I too, I see Commissioner Campos' point regarding the letter of the law but again, I think the existence of these structures that have been there for a number of years already and I think the reasons given in the letter that we received from Mr. Duran state clearly the intent of -- unlike other cases we've heard in the past where the intent is to transfer for a profit, this is certainly going to profit and benefit Daniel as opposed to anyone else. That's the reason I would vote for overturning the staff and the CDRC recommendation as well.

CHAIRMAN SULLIVAN: I had a question for staff, in the conditions, nothing is mentioned in the conditions about the well. Don't we normally have a condition for these types of approvals where two lots, separately deeded lots are going to be created, that there has to be a well sharing agreement.

MR. DALTON: Mr. Chair, it's not placed as a condition, but in order, before they can record the plat they will have to sign and record a shared well agreement.

CHAIRMAN SULLIVAN: I like to see those things in the conditions so it's clear.

COMMISSIONER MONTOYA: Are those part of the conditions, Mr. Dalton?

MR. DALTON: Mr. Chair, Commissioner Montoya, that's not a condition.

CHAIRMAN SULLIVAN: So are the maker and seconded in agreement with that as an additional condition, that there be a well sharing agreement?

COMMISSIONER ANAYA: Are they already sharing a well?

CHAIRMAN SULLIVAN: Yes, there's one well between the two houses. You are sharing, Mr. Duran, right? You're currently sharing. But if they've divided the lots and one then sells, then there has to be some mechanism that whoever purchases the lot is entitled to continue to share that well.

2706857

MR. D. DURAN: My father and I have discussed that.

COMMISSIONER ANAYA: I don't have a problem putting that in the motion.

COMMISSIONER DURAN: Neither does the second.

CHAIRMAN SULLIVAN: Okay, so that would be fifth condition that there be a well sharing agreement. Sixth? Maybe I'm reading the wrong conditions.

COMMISSIONER MONTOYA: Mr. Chair, I would just have them -- I think it's good in terms of the maintenance that you're providing for your septic and just encourage you to continue to do that.

CHAIRMAN SULLIVAN: Okay, so we're going with the conditions -- maybe it's good that we clarify this. I was reading the conditions that were -- there were four conditions listed. Forget it. The five conditions are the CDRC conditions, right? So this would be number six. Right. I'm on board here now.

[The conditions are as follows:]

1. Water use shall be restricted to 0.25 acre-feet per year per lot. A water meter shall be installed for both lots; this shall be noted on the plat. Annual water meter readings shall be submitted to the County Hydrologist by July 31<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office.
2. The applicant must submit a revised Environmental Department liquid waste permit showing both homes and the correct lot size.
3. No further division of this land shall be permitted; this shall be noted on the plat.
4. A plat of survey meeting all other County Code requirements shall be submitted to the Land Use Department for review and approval.
5. Failure to comply with all conditions shall result in administrative revocation of the variance.
6. A shared well agreement will be drawn up for the two lots.

CHAIRMAN SULLIVAN: So we have a motion and second. Is there further discussion?

The motion to approve CDRC Case #A/V 03-5700 passed by majority [4-1] voice vote with Commissioner Campos voting against.

2706858

**XII. A. Utilities Department**

1. **Request Authorization to Implement the Following: Increase Residential and Non-Residential Water Service Rates; a Monthly Water Service Availability Rate; a New Meter Connection Rate; and Adopt the Conservation Measures Contained in Santa Fe County Ordinance No. 2002-13, an Ordinance Addressing Water Conservation for all Residential and Commercial Uses of Water within Santa Fe County**

**CHAIRMAN SULLIVAN:** I think this is not an ordinance. This is a resolution, correct?

**MR. ROYBAL:** Mr. Chair, this is a request. Upon approval of any of the changes that are being requested here I will draft up a resolution for the next BCC meeting for ratification of any approvals that are granted today. These requests would not be effective until October 1<sup>st</sup>.

**CHAIRMAN SULLIVAN:** Questions for Mr. Roybal? Are you finished?

No.

**MR. ROYBAL:** Well, I was just going to go through our request.

**COMMISSIONER DURAN:** I just have a quick one, Mr. Chair.

**CHAIRMAN SULLIVAN:** Commissioner Duran.

**COMMISSIONER DURAN:** Is the current rate schedule in place by ordinance?

**MR. ROYBAL:** Mr. Chair, Commissioner Duran, not it's not, it's by resolution. These rates were implemented through resolution last summer.

**COMMISSIONER DURAN:** Okay. Thank you very much.

**COMMISSIONER MONTOYA:** Mr. Chair.

**CHAIRMAN SULLIVAN:** Commissioner Montoya.

**COMMISSIONER MONTOYA:** Mr. Roybal, what have we done in terms of informing the public about a potential increase for current customers?

**MR. ROYBAL:** Mr. Chair, Commissioner Montoya, we have sent out notices to all our customers and other entities that are going to be impacted by this rate increase or rate adjustment and notified them of this public hearing.

**CHAIRMAN SULLIVAN:** Okay, Commissioner Duran.

**COMMISSIONER DURAN:** Why are we raising the rates?

**MR. ROYBAL:** Mr. Chair, Commissioner Duran, one of the reasons we're raising rates is we purchase our water from the City at this point. They had a rate increase in May of this year from \$3.94 to \$4.09. Being as we are a customer of theirs and we do serve the same classes of customers, residential and commercial customers, I believe it is appropriate that our rate structure should either be equivalent to or greater than the rate structure that the City has in place, simply because it's the same customer class. We do purchase our water from the City and we also have additional expenses on top of purchasing our water from the City and

2706859

distributing and maintaining the system. And that is probably the two basic reasons why we're requesting this rate increase.

**COMMISSIONER DURAN:** Are the rates that are in place right now, are they representative of -- the rates that are in place right now, are they greater than the cost of getting the water from the City? Are we doing this just to stay up with the Jones or is there a real need to do that from a financial point of view or does the money that we receive right now, the revenues that are generated, adequately cover our costs and the expenses we incur for maintaining the system?

**MR. ROYBAL:** Mr. Chair, Commissioner Duran, last year after we implemented the first rate adjustment for the utility, after fiscal year 2003, we generated a margin of \$7,600 above our expenses. This proposed rate increase would increase our revenue base by approximately \$10,800 over the next fiscal year. Not all costs are being covered in running a utility, although I haven't performed a full cost of service study, there are additional costs that go in that aren't being recovered from our rate structure. For instance, a depreciation expense, which would be kind of a sinking fund expense if you will whereby we would put this into our cash reserves for plant replacement into the future. At some point in time our plant will be deteriorating over time and it will have to be replaced. Those funds have to be generated from our revenue so we can maintain and operate our system to provide adequate service. Those costs aren't included in there.

We could probably use an additional FTE to operate within our system. Our system has grown significantly over the last couple of years. We serve over 800 customers at this point and we're growing at the rate of about 10 customers a day. We operate two facilities and our service area is quite spread out. So there is additional costs that are out there that I don't believe are fully recovered through our rate structure at this point. I'm also aware that the City is proposing or is having a cost of service study done by a consultant that would increase our rates for wholesale water under that proposal also. So we do need to be aware of that when we go forward.

It's not so much to keep in line with the Joneses, but it's to recover our costs of service that we are currently incurring.

**COMMISSIONER DURAN:** I think that, I don't know when we decided or determined that our utility was going to be a revenue source for us. I doubt that we're going to get another FTE for \$10,000 if that's the amount it's going to increase. I thought the utility was created to provide a service to the community. And if we're meeting, if we're able to satisfy the cost of maintaining the utility, I don't see why we need an increase. I can see where at some point in time we might need one but this one isn't going to do anything for us. That's my opinion.

**CHAIRMAN SULLIVAN:** Commissioner Anaya.

**COMMISSIONER ANAYA:** Mr. Chair, Gary, what, I see you have three things down here. You have the rate increase for the residents that are using the water, then you have a monthly water service availability rate, and then you have a new meter connection rate. What if we kept the rates the same, which would be \$3.94, and we moved on the water service

2706860

availability rate and the new meter connection. Would that help it?

**MR. ROYBAL:** Mr. Chair, Commissioner Anaya, yes, that would help us. That would give us additional revenues. However, I really believe it is appropriate to maintain at minimum the same rate structure that the City has, simply because we are under a purchase, under a sale for resale scenario with the City and we're purchasing this water from the City. It would generate additional revenues for us and it would allow us also to operate. I would say above the line. I don't believe that we are looking to make this a revenue generating entity at this point. What we're trying to do is recover our costs and make sure that we have sufficient capital and reserves so that we can maintain this system. We do incur unexpected maintenance costs. For instance, we had to replace a pump in one of our wells that burnt out. Gas expenses have gone up so we have to go from one end of the city to the other end to maintain these meters and maintain our facilities. These costs were unexpected costs that we didn't have in the fiscal year last year. I also believe that as an enterprise fund, we don't get subsidized by the general fund. We have to maintain a level of reserve in our books so that we can maintain a level of service. We haven't received, at least in the two years that I've been here, any subsidy from the general fund in our water department. I think it's appropriate utility policy to maintain a reserve margin in our operations.

**COMMISSIONER MONTOYA:** Mr. Chair, is that what the \$15 a month would provide? That's in the new chart, right?

**MR. ROYBAL:** Mr. Chair, Commissioner Montoya, the charge is a relatively new charge. It will be new to some customers. Right now, we have for instance our Las Lagunitas subdivision, the subject of a \$15 water service availability fee. Rancho Viejo pays, I believe, somewhere in the area, I think it averaged out, I did the math, it averaged out to \$15.50 per quarter acre-foot that they're paying as a water service availability fee. The other entities that have water service contracts with the County pay -- and I'm not going to say it's uniform, but I believe it's \$92 per acre-foot for the water service availability from the County.

What this will do, this will apply to those lot owners that have pipes that run contiguous or right along their property line that have water service availability from the County but aren't taking it at this time. And the reason it would impose this fee is to offset the cost associated with the maintenance and operation that goes to keeping that facility in place so when they do come on line or when they do request service, next year, five years, ten years down the road, that those facilities are in place and operational to give them the service that they have requested. It would increase our revenue base though. I guess the short answer is it does go to offset some of these costs.

**COMMISSIONER MONTOYA:** So that would be the reserve that you're talking about in terms of having that available. That's where it would be generated from.

**MR. ROYBAL:** Commissioner Montoya, that would add to our reserve, but I imagine that that money would also go into our annual operating expenses also to offset the costs associated with just the system -- gas, vehicles, salaries, just the other operating costs that go into running the department.

**CHAIRMAN SULLIVAN:** My concern all along with the water company has



2706861

been that we don't have a reserve for replacement. For example, most federally or semi-federally or state funded systems always require a certain reserve for replacement, utility services, and we're becoming, as you indicate, a big system. And we need to get serious about this reserve for replacement. If we have some pump problems or some well problems we could find ourselves in a deficit position pretty quickly. So I think we need to keep a handle on it. We need perhaps some better projections as to what a reasonable reserve and replacement is. These increases don't seem to be out of line now but I do think we need to structure it a little more than we have so we know that we're always hitting that reserve and even perhaps make that reserve a matter of Commission policy so it gives you a target to hit each year. Does that sound reasonable?

MR. ROYBAL: Mr. Chair, that does sound reasonable. An appropriate sinking fund might be somewhere in the area from two percent to four percent of the actual capital cost that went into the system and at this point, I believe we're right around \$7 million of capital investment into the infrastructure. So I would say that somewhere between a two to four percent sinking fund base would be appropriate. Which we don't have at this point.

CHAIRMAN SULLIVAN: You should have \$280,000 in the bank for emergencies is what you should have if it were four percent.

MR. ROYBAL: Mr. Chair, that's correct. And we do have a capital reserve fund where I have instructed our financial person to reserve a 25 percent of that reserve fund simply for emergency purposes. But that was developed at the initial stages of the creation of this utility. It's not from revenues that we're generating through our rates at this point.

CHAIRMAN SULLIVAN: Any questions? I think Commissioner Duran had a question, then Commissioner Campos.

COMMISSIONER DURAN: Yes, Gary --

CHAIRMAN SULLIVAN: And then Commissioner Montoya.

COMMISSIONER DURAN: The monthly water service availability rate, so if I own a lot and your utility is going to start charging me \$15 a month for the right to maybe hook up in the future?

MR. ROYBAL: Mr. Chair, Commissioner Duran, probably about \$150 for you. I'm just being facetious. Commissioner Duran, yes. And the reason is that if you have a water service agreement, or the developer who sold you the lot has a water service agreement with the County and isn't paying a water service fee under that agreement and you buy the lot, you could buy it as an investment, you could buy it until you build your home but you're not ready, whatever it is, when you're ready to build that, when you're ready to build on that facility, the County has to be ready to provide you that service when you come to us and say I want service at my lot.

COMMISSIONER DURAN: We're ready now.

MR. ROYBAL: And that's the point. We're ready today. The system is in place. We need to maintain and operate that system so if you as the lot owner decide that you don't want to build on there for ten years down the road, for ten years the County will have to operate and maintain that line that is running in front of your property. That cost is either borne

2706862

by all the other rate payers that are on the system or the cost should be spread to everybody that has that availability to get that water service. We have that concept also with our water service agreements with other entities who don't have any facilities in place but have a water service contract with the County for x-amount of water rights. They pay a water reservation or water service charge if you will, of \$92 an acre-foot. So this is basically leveling the playing field for all our customers.

**CHAIRMAN SULLIVAN:** Commissioner Campos, then Commissioner Montoya.

**COMMISSIONER CAMPOS:** Mr. Chair, I think the Commission has to take into consideration that the cost of serving water in the county is much more expensive than the cost of serving in the city because of proximity. And all Mr. Roybal is asking for is charging the same rate. I think we have to -- we're not charging true costs. There's a lot of costs that we're not recovering. We don't have a sinking fund. We don't even have a fund to go out and buy water. We know water is getting more expensive and more difficult to find. And it's logical that the ratepayers should kind of contribute to the purchase of new water resources to be ready so that we can repair parts of the water system as they fail, and realize that it's expensive to serve the county, because houses are so spread out.

So we're talking about \$10,800, that's a tiny rate increase. I just don't see why we're getting into a major philosophical debate about this when down the road, we're going to have to look at higher rates, significantly higher rates.

**COMMISSIONER DURAN:** Because it's fun.

**COMMISSIONER CAMPOS:** I'd like to move on to some other fun.

**CHAIRMAN SULLIVAN:** Commissioner Montoya.

**COMMISSIONER MONTOYA:** Thank you, Mr. Chair. Mr. Roybal or Mr. Gonzalez, Gerald, regarding public hearings, is there a set protocol or procedure that we have in terms of does it have to go through two hearings or just one or how does that work?

**MR. GONZALEZ:** Mr. Chair, Commissioner Montoya, for resolutions, I don't believe we have the same restrictions as we do for an ordinance. It's simply an initial hearing and then bring the resolution forward. In a sense, that will give everyone a second bite at the apple anyway when the resolution does come forward if that's the wishes of the Commission. But I don't want to put words in Gary's mouth.

**MR. ROYBAL:** Mr. Chair, Commissioner Montoya, if I would just add to that, the last rate adjustment, or the first rate adjustment we went through went through a resolution which basically codified the rates and rules that we had in place that hadn't been formally and officially adopted by the Commission. The reason I would want to bring this forward in a resolution so that all these changes that are taking place in our rates and rules are uniform and that anyone from the public wishing to come in and find out what our rules are, what our current rates are and go to a specific resolution or can come to the County Utility Department and we'll have a full package that has been adopted by the Commission. It's more for uniformity than anything else.

2706863

COMMISSIONER MONTOYA: Okay. Thank you.

CHAIRMAN SULLIVAN: Okay, this is a public hearing, so do we have any individuals in the audience who would like to speak with regard to this proposal? Yes, sir. This is not a land use hearing so I don't believe that swearing in is required, Gerald?

MR. GONZALEZ: That's correct. It's a public hearing, legislative process.

CHAIRMAN SULLIVAN: I'd just like to know your name and address please.

ANTHONY NARVAIZ: I'm Anthony Narvaiz. I live on 26 San Pedro Way, Valle Vista Subdivision. And this gentleman was saying that he purchases water from the City but our subdivision has its own wells and I don't see justified that he's saying that we should pay this increase because we're not even tapped. There's no way that he can get City water. There is a main running on Highway 14 by our subdivision but we got our own six wells and I don't understand why we should pay for that increase that he's proposing since our community has its own wells and it serves housing in the same subdivision, federal housing that's the same County housing that's in the same subdivision. So I can't understand how the water -- there is the main that goes all the way from 14 all the way to the new County facility, County jail or whatever it is out there. But I don't see where we're tapped where it would affect us as much as the other subdivisions that you've got in mind.

CHAIRMAN SULLIVAN: Thank you. I don't want to speak for Mr. Roybal. We'll ask him to respond to your question. I do believe that the County is going to have to do a great amount of work on those wells. I believe that there are problems with them.

MR. NARVAIZ: Yes, they already put meters and that we understand, with everybody with a meter rate.

CHAIRMAN SULLIVAN: But I mean with the wells themselves, I think they're failing and it's going to be necessary to redrill them and enlarge them in order to keep the service up. And so some of these rate proposals will pay to do that. But I recognize that Valle Vista is on its own well system. It is also connected into the County so that if your wells go bad and you can't be served by those and they are marginal, I'm told, then they can open the valve and they can serve you from that Route 14 line. So you have a safety net there. But I don't know, Mr. Roybal --

MR. NARVAIZ: The federal government as far as the housing --

CHAIRMAN SULLIVAN: The County housing is there too.

MR. NARVAIZ: Federal assistance from the federal government since it's federal housing.

CHAIRMAN SULLIVAN: Well, and again, I don't see our housing director here, but the County Housing Authority pays water bills just like you do. They pay to the utility. Is that correct, Mr. Roybal? Would you want to just respond to that for this gentleman? Thank you, sir.

MR. ROYBAL: Thank you. We are interconnected with the Valle Vista

2706864

system so we in fact just when one of our wells failed and the pump burned out, we did feed the system with the City water supply. So that did go in there. So we are interconnected to that system. County Housing was our commercial customer until January 1<sup>st</sup> of this year, then they converted over and every, all of the tenants on County Housing are now customers of the utility. But the County Housing does pay for their own facilities, the Boys and Girls Club and their office space and stuff of that nature.

CHAIRMAN SULLIVAN: The individual residents pay for their water.

MR. ROYBAL: The individual residents pay for the water and it's my understanding that County Housing was paying the utilities but then they switched the gas and electric to individual customers and now the water was the last part of the utility structure that went to the individual units that are being rented by Housing.

CHAIRMAN SULLIVAN: Thank you. I believe this gentleman here had a comment.

CHARLIE C DE BACA: My name is Charlie C de Baca. I live on 7 Ya Callete, off of Paseo C de Baca in La Cienega. I was one of the main individuals that contacted the County to extend the County waterline down our road. And the water is there now. I'm kind of confused with the rates here that Mr. Roybal is presenting here. Right now, I guess I'm on standby. I haven't connected to the system. My meter, my connection is there, but here we had to give a quarter acre of water rights, plus we had to pay an assessment fee to connect to this system, and I think that right now, if I understand correctly, my standby fee is \$114 month for a 1.5 inch meter. Now is this going to raise it \$15 more per household. Then for standby, I would be paying around \$200 and some dollars a month just to stand by. I can't foresee that. But I guess it would be cheaper to just go ahead and connect to the system and do away with that fee. I'm just confused.

The residents there at Paseo C de Baca, at our meetings with the utility company here realized that any time the City would raise their rates the County was going to do the same and I guess that's what's going to happen. So if Mr. Roybal could answer that question for me I guess.

CHAIRMAN SULLIVAN: We'll ask him to. I'm guessing if you are under that standby fee doesn't apply to lots and lot owners who are already subject to a service charge under a water system contract. I believe you have a water system contract with the County now. So let's ask Mr. Roybal to clarify that. Thank you for your comment. You have another one? That's fine. That's fine. We'll get this one clarified.

MR. ROYBAL: Thank you, Charlie. The Paseo de C de Baca line extension was an -- well, not an unusual one, but it had its own individual conditions. That line was extended by the County in participation with the state, County funds and also the residents. The Commission approved this transaction, I believe it was in the spring of last year whereby the residents would pick up a portion of the cost of running the line from -- I'm not quite sure what the County road is -- County Road 50, at the intersection of County Road 50 down Paseo C de Baca. There was some state funding that was provided for that in the amount of somewhere around \$90,000. The difference of the cost of that line

2706865

extension, less the \$90,000 that was split 50-50. The County picked up 50 percent, the residents would pick up the other 50 percent.

The service fee that is being assessed to the residents of Paseo C de Baca is for the actual line extension cost itself. We are working with the residents to transfer a quarter acre-foot of their domestic rights from their wells into our system so that we have the source of supply to provide them the water that would be delivered to their households. The water service availability fee is for the purpose of maintaining and operating that system. I believe that we did make that condition known to the residents, we mentioned to them that there would be a fee assessed if they didn't hook up immediately.

The meter cans are available. The meter cans are there. The meters are in the meter cans. What's all that's left is for the residents to hook up a line from the meter to the residence. It may be more economic for Mr. C de Baca to come in and ask to be a customer even if he doesn't take any water because he would just be paying a monthly service fee. But that monthly service fee also goes towards covering our costs of operation and maintenance.

CHAIRMAN SULLIVAN: So under his alternatives, currently he's paying - what fee is he currently paying?

MR. ROYBAL: I'm not sure if he's paying any fees. Are you paying a fee right now?

MR. C DE BACA: No, not yet.

CHAIRMAN SULLIVAN: Not yet. But all of the residents paid the cost for half of the waterline, correct?

MR. ROYBAL: Yes. They're paying a portion of the cost of that water. So they'll pay it over a period of time on their water bills. It's not an up front cost.

CHAIRMAN SULLIVAN: But if they're not connected in, are they still paying for that?

MR. ROYBAL: No, they're not. They wouldn't pay for that until they come to get connected on to the system and then they'd be a customer of ours.

CHAIRMAN SULLIVAN: And then they would pay that fee.

MR. ROYBAL: That fee, yes.

CHAIRMAN SULLIVAN: So this is somewhat of an encouragement to get them connected in. If they don't connect in and continue to use wells, then they'll be subject to the \$15 fee. Is that what you're proposing?

MR. ROYBAL: That's correct, Mr. Chair.

CHAIRMAN SULLIVAN: So I misspoke when I said you had a contract. This contract, it actually isn't a contract so this wouldn't apply to that situation.

MR. ROYBAL: That's correct.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: I guess I'm a little confused now because Mr. C de Baca said that he was paying a hundred and some dollars right now? Or not?

2706866

MR. C DE BACA: I had five hook-ups and I paid my assessment of \$4,000 for the connection. Also, the standby fee, according to the rate charge is, I think \$114 a month for standpoint if I don't use any water right now.

COMMISSIONER ANAYA: That's added up your \$15 for each five hook-ups?

MR. C DE BACA: No, that's the fee for the meter size that I required.

MR. ROYBAL: Mr. Chair, Commissioner Anaya, Mr. C de Baca is under a commercial meter setting, because he is providing, if you would think of it like an apartment complex. He's a master meter and he takes water through this meter and it's not a residential 5/8 inch meter, it's a 1-1/2 inch meter. So the fee -- the larger your meter size, the larger your monthly fee. So that's why he pays a higher monthly fee if you will.

COMMISSIONER ANAYA: So the \$15 isn't going to apply to him? Or it is? If it's approved.

MR. ROYBAL: Mr. Chair, Commissioner Anaya, I believe a Commissioner brought this up at the last meeting. It only dealt with the 5/8 inch meter. We didn't extrapolate it to a meter above 5/8 inch. So if we were to do an equivalent meter size, he may be paying somewhere in the area of what he would be paying if he were a monthly customer anyway. So maybe the way to approach his situation would be just to charge him what the monthly fee is for that commercial service rate as if he were a customer. But I haven't really addressed that issue. That was just something I just thought of now.

COMMISSIONER ANAYA: Thank you.

CHAIRMAN SULLIVAN: Mr. C de Baca, you had another question or issue?

MR. C DE BACA: Yes, I just have a question for you. Commissioners, some of you were here probably back then. The County passed the gross receipts tax to help with the infrastructure of water and road paving. We weren't able to utilize that to cover the assessment. I would like to request here or maybe get the ball moving and see if possibly we could get the Commission to maybe go back in there and repair our road, repave it, since all the lines that crossed the roadway in there, if that would be possible to use some of that gross receipts money for that since that's what it was voted for. And I just want some input on that I guess or see if we can use it or whatever. Thank you.

CHAIRMAN SULLIVAN: Sure enough. We are working on a capital improvement infrastructure plan now with staff and we also have a road advisory committee that prioritizes the road recommendations for that and those are items that that quarter percent will go to. Of course 75 percent of it goes towards water so we only have a small percentage that is allocated to road repair work and a great number of needs in the county. I think there's 200 paved miles and 1500 unpaved miles in the county. But that's in the works right now. I'm certain your Commissioner will adequately keep you up to speed on that. Right, Commissioner?

COMMISSIONER ANAYA: That's right. I'll push for it.

2706867

**CHAIRMAN SULLIVAN:** He does all the time. All right. Other comments on this authorization, and there will be a resolution that will follow it at the next meeting, to implement these rate increases. Ma'am, come forward.

**MAGGIE COFFEY:** My name is Maggie Coffey and please excuse my inexperience. I wasn't even sure this meeting was being held before the County Commission and I just want to say in terms of the notification, when we checked out in the lobby, none of the staff out there knew that this meeting was taking a place. There wasn't a notice on their general bulletin board. I don't know if this is appropriate, but I think when there's a water meeting being held, I wonder if the time indicated, if it could be first of all, posted in the County building and secondly if it could be kept at a certain time where people know that that's the time for it.

I'm just asking; I don't know how that works. Also, I live up in the Valle Vista neighborhood and I've lived there for several years. Just last year I was able to purchase one of the units for low, low income purchasing. I'm very grateful about that. And I do know that a lot of us up there are on fixed income as I am for physical illness. And I know that any rate increase for us, those of us, and there are many on fixed income in the county, needs to be just watched and I think if there's any rate increase approved I would like all of you to really do what you need to do to really understand if that's necessary because of us living out there. I'm nervous and I'm having a particularly physically difficult day.

What I think I heard was that the County utility wants to be on parity with the City water in terms of their cost. Is that accurate? Is that something of what I heard you speaking of? Well, I understand that. They may need this rate increase. I don't know for sure. That's why I ask you to really check to know. I would like to be -- if that's true, I would like us also to have -- we are on water restrictions right now where we can water once a week and I know the City is on three times a week so I wonder about that parity as well. And I've woken up lots of mornings, come into the house in the afternoons and there's no water. I wasn't informed. And I understand they were working some place. So I would ask in this equation that there could be more recognition for the residents up there.

Because I thought I had heard that they wanted some parity, I would like there to be, perhaps, more respect for what happens to us.

**CHAIRMAN SULLIVAN:** Thank you. Anyone else would like to comment on the proposed rate schedules? I guess not. Okay. What are the wishes of the Commission with regard to item XII. A. 1?

**COMMISSIONER CAMPOS:** Mr. Chair.

**CHAIRMAN SULLIVAN:** Commissioner Campos.

**COMMISSIONER CAMPOS:** I'd like to move forward with the recommendations made by Mr. Roybal and ask him to bring forward the resolution at our next meeting.

**CHAIRMAN SULLIVAN:** Is that a motion?

**COMMISSIONER CAMPOS:** I think he's only asking for direction. I

2706868

guess.

CHAIRMAN SULLIVAN: He's requesting authorization. I'm not clear what that means.

MR. ROYBAL: Mr. Chair, Commissioner Campos, I'm asking for authorization to implement these rates effective in October for September usage.

COMMISSIONER CAMPOS: You said you were going to bring a resolution? So you want a motion?

CHAIRMAN SULLIVAN: I think he needs a motion.

COMMISSIONER CAMPOS: Okay, that's a motion.

CHAIRMAN SULLIVAN: We have a motion for the Utility Department's recommendation. Is there a second? I'll second for discussion.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN SULLIVAN: Commissioner Anaya.

COMMISSIONER ANAYA: So that would mean that with this motion and second that the rates would go from \$3.94 per thousand gallons to \$4.09, an increase of 15 cents for a thousand gallons.

MR. ROYBAL: Mr. Chair, Commissioner Anaya, that's correct. And we operate at a revenue base of about a million dollars so it's probably close to about a one percent increase in revenues for the Utilities Department.

CHAIRMAN SULLIVAN: In terms of the residents, I think it's about a four percent increase.

COMMISSIONER ANAYA: Then, on the same lines, we charge a monthly water service availability rate of \$15?

MR. ROYBAL: Commissioner Anaya, that's correct.

COMMISSIONER ANAYA: And that we would charge a \$200 meter connection fee.

MR. ROYBAL: Commissioner Anaya, that would be \$300. And our existing customers, just to clarify, our existing customers who are taking water would only see the 15 percent increase. New customers would see the \$300 meter installation charge when we go out there to put a meter to provide them service. They would see that charge. So there's different classes of customers that this applies to. Going from \$3.94 to \$4.09 are to all customers who are getting water today from the department. The \$15 will be for those lot owners who have the ability to get water from the County that aren't paying a fee under an existing water service agreement. The \$300 would be for those new customers who come in and request water service and don't have a meter to their lot. We would have to go out and install a meter. That's where the \$300 would apply, and that covers our cost of the meter and our labor cost to go out and install it, dispatch a technician and go out and install that meter.

COMMISSIONER ANAYA: Mr. Chair, I was the vice president of the Galisteo Mutual Domestic Water Association in the Village of Galisteo and it was costly to operate that system, even though we had about 50 people on that system. And we did have



2706869

a monthly water service availability rate in the Village of Galisteo, even though they weren't using it. We didn't have any meters but I know it was costly to operate. So I don't think that -- I know I listened to some concerns of the residents out there but we, I think we do need to raise it and it's 15 cents per thousand, to me that's not a lot, but in order to continue to run our system and keep the water there so that you can use it, I would agree with staff. Thank you.

CHAIRMAN SULLIVAN: Commissioner Duran.

COMMISSIONER DURAN: Gary, how much is the average usage, does a family use?

MR. ROYBAL: Mr. Chair, Commissioner Duran, it runs somewhere from, I would say close to 6,000 gallons system-wide.

COMMISSIONER DURAN: Six thousand gallons --

MR. ROYBAL: Per month, per household.

COMMISSIONER DURAN: I guess I don't have a problem with that part, but when you bring this resolution before us, we can still amend it then?

CHAIRMAN SULLIVAN: Certainly.

COMMISSIONER DURAN: Okay.

CHAIRMAN SULLIVAN: A resolution isn't official until the Board passes on it by majority.

COMMISSIONER DURAN: I just think, just in closing here that I think that we should provide some services to the community and I don't think we need to -- you said that we had a \$7,000 fund right now and this would raise it to \$10,000? Is that what you said?

MR. ROYBAL: Commissioner Duran, that's correct.

COMMISSIONER DURAN: I think that a raise is appropriate. I'm not sure that this is the right time for it.

CHAIRMAN SULLIVAN: Further comments? Okay, we have a motion and a second. We've heard from the public.

The motion to authorize rate increases for the Water Utility passed by majority [4-1] voice vote with Commissioner Duran casting the nay vote.

XI. B. Matters from the County Attorney

1. Executive session

- a. Discussion of pending or threatened litigation
- b. Limited personnel issues
- c. Acquisition or Disposal of Real Property
- d. Discussion of the Purchase, Acquisition or Disposal of Water Rights

Commissioner Duran moved to go into executive session pursuant to NMSA Section 10-15-1 (2, 7 and 8) to discuss the matters delineated above. Commissioner

2706870

Campos seconded the motion which passed upon unanimous roll call vote with Commissioners Anaya, Campos, Duran, Montoya and Sullivan all voting in the affirmative.


[The Commission met in executive session from 7:50 to 9:15]

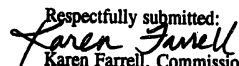
Commissioner Duran moved to come out of executive session having discussed only the matters outlined in the agenda, and Commissioner Anaya. The motion passed by unanimous [4-0] voice vote. [Commissioner Campos was not present for this action.]

**XIII. ADJOURNMENT**

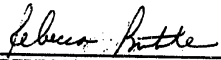
Chairman Sullivan declared this meeting adjourned at approximately 9:15 p.m.

Approved by:

  
Board of County Commissioners  
Jack Sullivan, Chairman

Respectfully submitted:  
  
Karen Farrell, Commission Reporter

ATTEST TO:

  
REBECCA BUSTAMANTE  
SANTA FE COUNTY CLERK

