

SFC CLERK RECORDING 08/17/2004

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

**REGULAR MEETING
(Public Hearing)
October 9, 2001 - 4:00 P.M.**

Amended Agenda

2003528

- I. Call to Order
- II. Roll Call
- III. Pledge of Allegiance
- IV. Invocation
- V. Approval of Agenda
 - A. Amendments
 - B. Tabled Items or Withdrawn Items
- VI. Approval of Minutes
- VII. Consent Calendar
 - A. Resolution No. 2001- A Resolution Requesting an Increase to the General Fund (101)/Regional III-HIDTA (High Intensity Drug Trafficking Area) Grant Program to Budget Grant Revenue Received for Expenditure in Fiscal Year 2002 (County Sheriff's Office)
 - B. Request Authorization to Accept and Award a Price Agreement to the Lowest Responsive Bidder, IFB #22-13, for the Printing of the Tax Bills (Treasurer's Office)
 - C. Request Authorization to Enter into a Participating Agreement with U.S. Forest Service, Southwestern Region and Santa Fe National Forest for the County Fire Department to Utilize U.S. Forest Service Equipment (Fire Department)
 - D. Request Adoption of Findings of Fact and Conclusions of Law for the Following Land Use Cases:
 - 1. LCDRC Case #V 01-5160 - Bonnie Anderson Variance (Approved)
 - 2. CDRC Case #Z 01-5230 - Solitaire Homes (Approved)
 - 3. CDRC Case #V 01-5200 - Copar Pumice Co. Variance (Approved)
 - 4. CDRC Case # V 00-5861 - Barbara Zavada Variance (Denied)
- VIII. Staff and Elected Officials Items:
 - A. Matters from the County Manager, Samuel O. Montoya
 - 1. Request Approval of Temporary Employee Incentive/Merit Increases for County Employees
 - 2. Resolution No. 2001- A Resolution Selecting a Method of Payment of the Federal Forest Reserve Fund's Distribution for Santa Fe County, New Mexico
 - 3. EZ CASE #S 01-4300. Tierra Grande. Land Ventures LLC (Allan Hoffman), applicant, Oralynn Guerrerortiz, agent, request preliminary and final development plan and plat approval for a 16-lot residential subdivision on 40.1 acres. The property is located off a future extension of Los Suenos Trail, within Section 19, Township 17 North, Range 9 East (5-Mile EZ District). Vicki Lucero (Deliberation Only) TABLED
 - B. Matters of Public Concern - NON-ACTION ITEMS
 - C. Matters from the Commission
 - 1. Resolution No. 2001- A Resolution Establishing a Joint City/County Capital Improvements Advisory Committee and Adopting Rules of Procedure for the Joint

City/County Capital Improvements Advisory Committee

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D. Matters from the County Attorney, Steven KopelmanIX. Public Hearings:

A. **Ordinance No. 2001- An Ordinance Amending Ordinance No. 2001-4, Declaring a Moratorium on New Subdivisions, Land Divisions and Master Plans for Projects Served by El Dorado Utilities, Inc. and Encouraging Conservation Measures within the El Dorado Utilities, Inc. Service Area to Establish Provisions Under which Development can Proceed (Second Public Hearing) TABLED**

B. Land Use Department Items:

1. CDRC CASE #A/V 01-5320. Barry Green Variance. Barry Green, applicant, requests a variance of Article III, Section 10 (lot size requirements) of the Land Development Code to allow for a land division of 39.15 acres into two lots; one lot consisting of 20.14 acres and one lot consisting of 19.01 acres created by a 5 year exemption. The property is located at 72 Wild Turkey Way, within Section 35, Township 16 North, Range 10 East (Commission District 4). Wayne Dalton
2. CDRC CASE #MIS 01-5430. Tesuque Village Market Liquor License Ownership Transfer. Tesuque Village Market Inc., applicant, requests approval to allow a transfer of ownership of Liquor License No. 817 from Jerry Honnell Sr. to Tesuque Village Market Inc.; the liquor license is to remain at the present location (Tesuque Village Market). The property is the Tesuque Village Market, Route 4 Box 70A, located on County Road 73, within Section 25, Township 18 North, Range 9 East (Commission District 1). Penny Ellis-Green
3. EZ CASE #DL 01-4070. Tom and Kathy Sedillo. Tom and Kathy Sedillo request plat approval to divide 4.98 acres into two tracts. The tracts will be known as Lot 1-A (2.4916 acres) and Lot 1-B (2.4919 acres). The property is located on Calle Estevan, within Section 25, Township 17 North, Range 8 East, NMPM (2-Mile EZ District). Audrey Romero
4. EZ CASE #DL 01-4450. Robert F. and Rosemary Montoya. Robert F. and Rosemary Montoya, applicants, Ector G. Alvarado, agent, request plat approval for a family transfer to divide 2.693 acres into two tracts. The tracts will be known as Lot 3-A (1.25 acres) and Lot 3-B (1.44 acres). The property is located off Camino Bajo within the Valle Lindo Subdivision, within Section 25, Township 16 North, Range 8 East (2-Mile EZ District). Audrey Romero
5. EZ CASE #A 01-4081. Silveira Appeal. Otavio Silveira, applicant, Walter Schlieman, agent, appeal the EZC's decision to grant approval of a Family Transfer Land Division for William and Mary Marcia Burden (EZ Case #DL 01-4080) to divide 3.0 acres into two tracts. The subject property is located off Old Santa Fe Trail, within Section 6, Township 16 North, Range 10 East (2-Mile EZ District). Vicki Lucero
6. AFDRC CASE #V 01-5150. Padilla Variance. Phillip and Mary Padilla, applicants, request a variance of Article III, Sections 4.1 and 4.2 (types and locations of commercial districts) of the Land Development Code to allow commercial zoning outside a potential commercial district on a 0.78 acre tract. The property is located at Route 6 Box 89, within the Traditional Historic Community of Agua Fria, within Section 32, Township 17 North, Range 9 East (Commission District 2). Frank White
7. CDRC CASE #A/V 01-5260. Jeanine Firsich Variance. Jeanine Firsich, applicant, requests a variance of Article III, Section 10 (lot size requirements) of the Land Development Code to allow for the placement of a second home on 1.38 acres. The property is located at #2 Cedar Court, within Section 19, Township 10 North, Range 7 East (Commission District 5). Wayne Dalton

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8. **CDRC CASE #V 01-5240. Melvin Varela Variance.** Melvin Varela, applicant, requests a variance of Article V, Section 8.2.7d (Grade Percentages) of the Land Development Code to allow for a driveway to have a 16% grade at an intersection instead of the Code required 3% grade, to access 5 lots. The property is located off State Road 50; a portion of the property is located within the Traditional Community of Glorieta, within Section 36, Township 16 North, Range 11 East (Commission District 5). Frank White
9. **CDRC CASE #MIS 01-5811. Vallecitos De Gracia Time Extension.** Jim Brown, applicant, Jim Siebert, agent, request a 1-year extension to the expiration date of a preliminary plat for Vallecitos De Gracia, a 16 lot residential subdivision on 42 acres, which expires October 8, 2001. The property is located along County Road 54, northwest of the Downs Racetrack, within the Traditional Historic Community of La Cienega, within Sections 22, 27 and 28, Township 16 North, Range 8 East (Commission District 3). Frank White

X. 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).

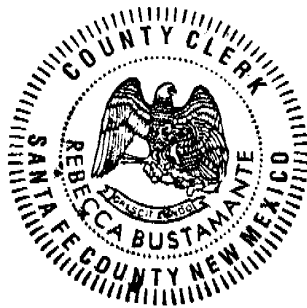
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SANTA FE
BOARD OF COUNTY COMMISSIONERS

REGULAR MEETING

OCTOBER 9, 2001

Paul Duran, Chairman
Paul Campos
Javier Gonzales [excused]
Jack Sullivan
Marcos Trujillo



1179107
COUNTY OF SANTA FE
STATE OF NEW MEXICO } ss
I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED
FOR RECORD ON THE 2 DAY OF NOV A.D.
20 01 AT 8:37 O'CLOCK a.m.
AND WAS DULY RECORDED IN BOOK 2003
PAGE 528-1022 OF THE RECORDS OF

SANTA FE COUNTY
WITNESS MY HAND AND SEAL OF OFFICE
REBECCA BUSTAMANTE
COUNTY CLERK, SANTA FE COUNTY, N.M.

Marcella Salazar
DEPUTY

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SANTA FE COUNTY
REGULAR MEETING
BOARD OF COUNTY COMMISSIONERS

October 9, 2001

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 4:10 p.m. by Chairman Paul Duran, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

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

Members Present:
Commissioner Paul Duran, Chairman
Commissioner Marcos Trujillo
Commissioner Paul Campos
Commissioner Jack Sullivan

Members Absent:
Commissioner Javier Gonzales

IV. INVOCATION

An invocation was given by Finance Director, Katherine Miller.

V. APPROVAL OF THE AGENDA

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

STEVE KOPELMAN (County Attorney): Mr. Chairman, just to confirm, on page 2, at the very top, under matters from the County Manager, there's an addition, an amendment, resolution selecting a method of payment of the federal Forest Reserve funds distribution for Santa Fe County, New Mexico. And I believe that Katherine Miller, the Finance Director, handed out copies of that. Also, VIII. A. 3. EZ Case #S 01-4300, Tierra Grande, has been tabled.

Then, in addition, IX.A. Ordinance No. 2001-__ on the Eldorado moratorium has also

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been tabled.

CHAIRMAN DURAN: Okay, any changes from the Commission? What's the pleasure of the Board?

COMMISSIONER TRUJILLO: I have a question, Mr. Chairman. I understand we have a joint Commission/EZA meeting today. Are we going to recess and then reconvene at 6:00? How's that going to be?

MR. KOPELMAN: Mr. Chairman, Commissioner Trujillo, that's correct. The plan is that at 6:00 to recess this meeting to begin the joint EZA/BCC meeting and then when that's over to go back to this meeting.

COMMISSIONER TRUJILLO: Thank you.

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

COMMISSIONER TRUJILLO: Move for approval, Mr. Chairman.

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: There's a motion and a second to approve the agenda as amended. Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

VI. APPROVAL OF MINUTES : September 17, 2001

CHAIRMAN DURAN: Are there any changed to those minutes?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I have a few minor editorial changes I'd just like to give to the recorder if I could.

CHAIRMAN DURAN: Okay. Let the record show that, note that. The chair will entertain a motion to approve as amended by Commissioner Sullivan.

COMMISSIONER CAMPOS: Move to approve.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN DURAN: There's a motion and a second. Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

VII. CONSENT CALENDAR

- A. **Resolution No. 2001-155. A resolution requesting an increase to the general fund (101)/Region III-HIDTA (High Intensity Drug Trafficking Area) grant program to budget grant revenue received for expenditure in fiscal year 2002**
- B. **Request authorization to accept and award a price agreement to the lowest responsive bidder, IFB #22-13, for the printing of tax bills**
- C. **Request authorization to enter into a participating agreement with the US**

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- Forest Service, Southwestern Region and Santa Fe National Forest for the County Fire Department to utilize US Forest Service equipment**
- D. Request adoption of findings of fact and conclusions of law for the following land use cases:**
- 1. LCDRC Case #V 01-5160 – Bonnie Anderson Variance (approved)**
 - 2. CDRC Case #Z 01-5230 – Solitaire Homes (approved)**
 - 3. CDRC Case #V 01-5200 – Copar Pumice Co. Variance (approved)**
 - 4. CDRC Case # V 00-5861 – Barbara Zavada Variance (denied)**

CHAIRMAN DURAN: Are there any items on the Consent Calendar that— actually there's not that many. Do you just want to go through them as they appear?

COMMISSIONER SULLIVAN: Mr. Chairman, I just have three, B, C, and D.3. That's what I had a question about.

CHAIRMAN DURAN: Well, take a few minutes to look at the resolutions and see if we need to isolate any of them. Other than item D. is there an agreement that A, B, and C are ready for approval or action?

COMMISSIONER SULLIVAN: B and C, Mr. Chairman, I'd like to ask a question about.

CHAIRMAN DURAN: Why don't we just take each of them?

- A. Resolution No. 2001-155. A resolution requesting an increase to the general fund (101)/Region III-HIDTA (High Intensity Drug Trafficking Area) grant program to budget grant revenue received for expenditure in fiscal year 2002**

CHAIRMAN DURAN: Is anyone from the Sheriff's Department here? Katherine? Does anyone have any questions on this resolution? If not, what's the pleasure of the Board?

COMMISSIONER TRUJILLO: Move for approval, Mr. Chairman.

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: There's a motion and a second. Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

- B. Request authorization to accept and award a price agreement to the lowest responsive bidder, IFB #22-13, for the printing of tax bills**

MATTHEW RIVERA (Chief Deputy Treasurer): Mr. Chairman, Commissioner Sullivan.

COMMISSIONER SULLIVAN: Thank you, Mr. Chairman. The questions I

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had were, number one, was this the same firm as last year that did this.

MR. RIVERA: Yes, sir, it was.

COMMISSIONER SULLIVAN: Did we have some problems with getting the bills out accurately last year?

MR. RIVERA: No, sir. As a matter of fact, last year was the smoothest year that I've had any part of and I've been here five years. This will be my sixth tax year.

COMMISSIONER SULLIVAN: The year before then?

MR. RIVERA: The year before, yes. We did have a problem with the name on the accounts and on the tax bills.

COMMISSIONER SULLIVAN: Was that the same firm?

MR. RIVERA: Yes, sir. However, it wasn't his fault. It was the information we provided to him.

COMMISSIONER SULLIVAN: Okay. And they were the only bidder that you had?

MR. RIVERA: Yes, sir.

COMMISSIONER SULLIVAN: I was wondering about the—I had a question about the term "overruns won't be accepted." What does that mean?

MR. RIVERA: The overruns? I'm not sure, sir. I didn't see that part.

CHAIRMAN DURAN: Maybe Katherine, could you help us with that?

KATHERINE MILLER (Finance Director): Mr. Chairman, Commissioner Sullivan, what page is that on?

COMMISSIONER SULLIVAN: Let me find it. It's on page 10 of the Santa Fe County general terms and conditions. Back as part of the contract agreement. Very near the end of the packet. Just four pages from the end.

MS. MILLER: Under contract objectives?

COMMISSIONER SULLIVAN: Correct. In bold caps it says "overruns are not acceptable." And I wondered what that means.

MS. MILLER: Tony probably would know. This came out of your shop.

MR. RIVERA: All I brought with me were the bill specs.

COMMISSIONER SULLIVAN: Whatever they are, we're not going to accept them.

MR. RIVERA: Right. And we don't have to pay for them.

COMMISSIONER SULLIVAN: Whatever overruns are, we won't accept them. All right. Then the only other question I had is that it requires these to be completed by November 1st. And it's already October 9th. Are they going to make that schedule?

MR. RIVERA: Mr. Chairman, Commissioner Sullivan, we are at this time awaiting from the distribution rates from DFA. We have the tax rates which you approved on Friday. We have those in wait. As soon as we receive our distribution rates we are entering them into the system. At that time, we get a test run from Mr. Anderson and we're shooting for Monday the 15th to be able to get him a test file. He needs three or four days to get them to us. And he will give us a sample of the entire population that we will go over and as soon as

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that's okay, he runs with it.

COMMISSIONER SULLIVAN: So this bidder has no problem meeting the November 1st deadline and being assessed a ten percent penalty if he doesn't.

MR. RIVERA: Not at all, sir. As a matter of fact, last year he didn't receive any of the rates until late October. We're doing pretty well this year.

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

CHAIRMAN DURAN: Okay. What's the pleasure of the Board?

COMMISSIONER TRUJILLO: Move for approval, Mr. Chairman.

CHAIRMAN DURAN: There's a motion to approve the request for authorization to accept and award a price agreement on IFB #22-13. Is there a second?

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: There's a motion and a second. Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

C. Request authorization to enter into a participating agreement with the US Forest Service, Southwestern Region and Santa Fe National Forest for the County Fire Department to utilize US Forest Service equipment

COMMISSIONER SULLIVAN: Thank you, Mr. Chairman. Hank, the only question I had, I understand that this is to use Forest Service equipment for chipping to help in clearing undergrowth and preventing fires. On the third page, we're agreeing that the chipper will not operate on private land, and I'm thinking there are a lot of areas where we have private roads to go into and housing subdivisions and in many cases those roads, number one, are private and number two may only be 20 feet wide. So where are we going to put this chipper?

HANK BLACKWELL (Fire Marshal): Mr. Chairman, Commissioner Sullivan, the reason that statement was put in the agreement was again, partially just to satisfy the anti-donation laws. So what we've been doing in our practice in the past has been we will locate those chippers in a safe area, number one, and number two, usually, we use our substations, so that we're on public property and we know that we have control of that property. We know that there's plenty of easement, there's plenty of safety in terms of traffic and in those cases, those residents, in terms of reducing that green waste to chips, they'll have to take that waste from their property, at least to one of our substations or to some public property.

COMMISSIONER SULLIVAN: So you're not able to take it a little closer to where the clearing might take place.

MR. BLACKWELL: Mr. Chairman, Commissioner Sullivan, that's correct in many cases. Because some of the areas are remote but this is something that basically has never been done until last year. So with the Public Works, solid waste chipper that they've been able on occasion to loan to us and this one from the Forest Service, we're still by a factor of two,

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increasing our effectiveness over last year. So it's just another step in the right direction, we feel.

COMMISSIONER SULLIVAN: Because I recall, I think it was some residents from the San Pedro area were saying that they really appreciated having the chipper made available to them and they could clear their lands that way and get rid of the slash real quickly.

And I got the impression from the testimony that it was brought around their subdivision kind of as a traveling facility that they were able to use. But I guess that's not what happened, was it? They had to take all their brush to a central point.

MR. BLACKWELL: Mr. Chairman, Commissioner Sullivan, I believe that's correct. We're going to still work on increasing that effectiveness and we're hoping in the next few years with some Forest Service grant money or some federal grant money, to try to get a chipper for the Fire Department, a small, mobile chipper that we might be able to just keep attached to one of our own apparatus, and we can actually be a little bit more effective in getting closer to those individuals that have some of that green waste to chip. We just have to walk a fine line between fire mitigation and chipping some of the green waste and becoming a public tree service. So that's one of the reasons why we're trying to keep this on public land right now.

COMMISSIONER SULLIVAN: And the chipper is operated by Santa Fe County personnel?

MR. BLACKWELL: Mr. Chairman, Commissioner Sullivan, that's correct. One of the things that we are going to be doing is receiving training from the Forest Service and the vendor so that we can have personnel in the Fire Department certified for liability and safety purposes on that chipper before it's operated.

COMMISSIONER SULLIVAN: Thank you.

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

COMMISSIONER SULLIVAN: Move for approval.

COMMISSIONER TRUJILLO: Second, Mr. Chairman.

CHAIRMAN DURAN: There's a motion and a second. Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

A. Request adoption of findings of fact and conclusions of law for the following land use cases:

1. LCDRC Case #V 01-5160 – Bonnie Anderson Variance (approved)

CHAIRMAN DURAN: This was approved. What's the pleasure of the Board?

COMMISSIONER TRUJILLO: Move for approval, Mr. Chairman.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN DURAN: There's a motion and a second. Any further

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discussion? Those in favor signify by saying "aye." [Commissioners Trujillo, Sullivan and Duran voted aye.] Opposed? [Commissioner Campos voted nay.] Motion carries.

2. CDRC Case #Z 01-5230 – Solitaire Homes (approved)

CHAIRMAN DURAN: Is there a motion to approve?

COMMISSIONER CAMPOS: Move to approve.

COMMISSIONER TRUJILLO: Second, Mr. Chairman.

CHAIRMAN DURAN: There's a motion and a second. Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

3. CDRC Case #V 01-5200 – Copar Pumice Co. Variance (approved)

CHAIRMAN DURAN: Is there a motion to approve?

COMMISSIONER TRUJILLO: So moved, Mr. Chairman.

CHAIRMAN DURAN: I'll second it. So there's a motion to approve. Any further discussion?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: On page 2, item 11 at the bottom, I don't recall this term being brought up but it may have been during the hearing stating that the applicant was apparently not asking for a waiver but rather asking for a dimensional variance. I don't think I've heard that term before or am familiar with that. Could somebody explain to me what the difference between asking for a lot split, which was the case here where the applicant requested that a 2.01-acre lot be divided into two lots, one being one acre and the other being 1.01 acres, as a lot split. What's the difference between a lot split and a dimensional variance?

MR. KOPELMAN: Mr. Chairman, Commissioner Sullivan, I think dimensional variance is just a fancy word for really a variance for density purposes. It's not for the use. It's not varying the Code to allow a use that's not permitted. It's a legal term.

CHAIRMAN DURAN: I like it.

COMMISSIONER SULLIVAN: It's what everyone who's asking for a lot split is asking for. Is that correct?

MR. KOPELMAN: Mr. Chairman, Commissioner Sullivan, yes, you're right. That's correct.

COMMISSIONER SULLIVAN: So the same criteria apply to a dimensional variance as apply to a lot split.

MR. KOPELMAN: That's correct.

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COMMISSIONER SULLIVAN: Okay. Thank you. I just didn't know if we were coming up with a new and improved term.

CHAIRMAN DURAN: Okay. There was a motion to approve, seconded by myself.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: I'd like to file an objection to the motion on the basis that this variance is granted without any support from the ordinance and no factual basis for its granting. Therefore I don't think we have jurisdiction to grant it at this point or approve this order.

CHAIRMAN DURAN: Let the record show Commissioner Campos' objection. Those in favor signify by saying "aye." [Commissioners Trujillo and Duran voted with the motion.] Opposed? [Commissioners Campos and Sullivan voted against.] We'll take this to the next meeting.

4. CDRC Case # V 00-5861 – Barbara Zavada Variance (denied)

COMMISSIONER TRUJILLO: Move for approval, Mr. Chairman.

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: There's a motion and a second to approve the decision. Any further discussion? Those in favor signify by saying "aye." [Commissioners Trujillo, Sullivan and Campos voted with the motion.] Opposed? [Chairman Duran voted against.] Motion carries.

VIII. STAFF AND ELECTED OFFICIALS' ITEMS

A. Matters from the County Manager

1. Request approval of temporary employee incentive/merit increases for County employees

HELEN QUINTANA (Human Resources Director): Good afternoon, Mr. Chairman and Commissioners. On May 29, 2001, the Board of County Commissioners approved the fiscal year 2001 interim budget that included the financing of merit increases for several departments for a total of \$75,000 including benefits. In addition, a proposal was brought forth to include \$100,000 to be used as a performance based incentive in an effort to reward a larger number of deserving employees without a subsequent increase to recurring expenses.

The net effect to the County general fund would be \$120,000 to account for PERA benefit contributions. In addition, approximately \$15,000 from grant related funding will be made available to provide those employees who are in grant areas to also receive an incentive. This proposal will allow the County to provide a financial incentive to all deserving employees

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who continue to perform at high levels and make valuable contributions to the County. The requirements for the performance based incentive are: no merit should have been received in the last 12 months; the employee does not have a probationary status; the incentive is warranted, meaning that the employee has demonstrated exemplary performance, and the incentive shall not exceed five percent of the current salary of the employee.

The funds are going to be allocated to each department with your approval as a percentage of total hourly rates. It will then be to the discretion of the department director to distribute those funds among the deserving employees in their departments based on that criteria that I've listed. I do have an amended potential pool for the incentives that includes the PERA contributions. When the money is paid out to an employee during the regular pay period, it does include the PERA contributions, which was not included in your packet. So if you would like an amended [version], I would be happy to bring it forward.

COMMISSIONER TRUJILLO: I have a question, Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER TRUJILLO: Helen, the bonus program is performance driven, like the merit program? They're both performance driven?

MS. QUINTANA: Mr. Chairman, Commissioner Trujillo, yes it is. It would be based on two criteria. One, we would review the evaluation performance of the employee, but also the incentive is to encourage the performance to continue, as opposed to just looking at their past performance, but also to continue the high level of performance.

COMMISSIONER TRUJILLO: And the merit exercise happened within the last 12 months, right?

MS. QUINTANA: Are you referring to the merits that were approved on the budget? Yes. Many of those merits have already been distributed. They were in just several departments. Public Works was approved for some merit increases, as was the Assessor's Office, and those have already been pretty much distributed.

COMMISSIONER TRUJILLO: Well, why would a good performer not qualify for both a merit increase and a bonus, non-base-building increase?

MS. QUINTANA: Mr. Chairman, Commissioner Trujillo, most merits are usually based off of salary savings when a department has salary savings in order to award that type of incentive. Unfortunately, if it is not already in someone's budget or if there aren't salary savings that are discovered later on, maybe because of attrition, then those smaller departments or those departments who do not have attrition, don't have the opportunity to award their employees any type of a merit or incentives. So this incentive is really as a means to award a larger number of employees who might not otherwise be able to be awarded that.

COMMISSIONER TRUJILLO: I was under the impression that the distribution formula addressed any disparate impact, if you will, so that the allocations would take place in a more egalitarian, fair way. So that the rich would not get richer and the poor stay poor.

MS. QUINTANA: That's right. It is allocated based on the total hourly rate of each department. That's how the allocations were based.

COMMISSIONER TRUJILLO: So my question still is why would not a good

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performer qualify for both a bonus, non-base-building, and a merit increase?

MS. QUINTANA: And you certainly have the authority to be able to amend that. These were criteria that we had come up with so that someone who may be—especially a department who weren't able to give any type of a merit increase, that we could still use that money to reward those people. That doesn't mean that we want to deprive a good performing employee with an additional incentive and if you would like for us to approach it in that manner, you certainly—

COMMISSIONER TRUJILLO: I think that should be at the discretion of the director, the manager, the elected official. That's my—

MS. QUINTANA: I stand for any other questions.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Helen, when we first talked about this there was concern, certainly at least on my part, that these salary savings merit increases were inequitable across the board because they rewarded departments that had vacant positions and penalized departments that had employees who were long standing and had low turn-over. So does this bonus program then, assuming it may go each year, at the discretion of the Commission of course, would this replace then these salary savings merit increases?

MS. QUINTANA: Mr. Chairman, Commissioner Sullivan, this does not address any future merit programs or any incentive programs that we might adopt at a later date. We are, however, working on a new merit program for the new budget cycle for your review. And also, you had directed staff, the last time that we brought this issue up, to do a comparison of benefits because you wanted to look at how our benefits compare to both the City and the state and other counties. I do have available that comparison that we could also look at. But because those monies are recurring funds, it cannot be adopted at this point of the budget cycle, but at the beginning of the budget cycle we can review it again.

COMMISSIONER SULLIVAN: I guess my concern was that I thought I remembered several months ago that the direction was to come forward with a comprehensive review of the whole merit program and it seems what we've come forward with is two bonus programs. We've said, yes, we like the merit increases. We want that to stay. And now we'd like to add another bonus program on top of that, and we haven't addressed the core of the problem which is the inequity of the merit program. So it seem like we're eating the ice cream here but we're not getting to the heart of the problem.

MS. QUINTANA: The merit proposal that we are working on for the new fiscal budget for the 2002 fiscal budget, would include the salary savings and addressing the salary savings and those salary savings not actually going back to the department but going back to a general pool to use for a merit pool.

COMMISSIONER SULLIVAN: So that would take the place of a bonus and a salary savings program.

MS. QUINTANA: Exactly. Yes, if it is something that is approved by the Commission.

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COMMISSIONER SULLIVAN: So the salary savings would go into a pool, as you say.

MS. QUINTANA: That's correct.

COMMISSIONER SULLIVAN: That then would be distributed equitably by department.

MS. QUINTANA: That's correct.

COMMISSIONER SULLIVAN: Could you explain to me what this means, what these actual hourly rates mean?

MS. QUINTANA: If you added up the hourly rate by employee for each department, you would come up with that dollar amount there.

COMMISSIONER SULLIVAN: Oh, I see. You just took the hourly rate of each department employee.

MS. QUINTANA: That's correct.

COMMISSIONER SULLIVAN: So that indicated not only how many employees they have but what their gross hourly amount is. Then you made that a percentage so that they get some percentage of that allocation. Following up on Commissioner Trujillo's question, is there still merit salary savings money left for salary savings increases in departments?

MS. QUINTANA: I would have to defer that question to Katherine.

MS. MILLER: I'm sorry. What was the question?

COMMISSIONER SULLIVAN: Is there still salary savings money left? Helen said most of it has been dispersed.

MS. MILLER: Each department, depending on whether or not somebody has left and what they've rehired at, has different salary savings throughout the year. The Commission approved some merit increases. Many of those have already been distributed to the employees which they were intended for. However, at the same time, that same department that receives that additional money may have lost an employee that was there and has freed up some money. So the system that was in place prior to, or that's been in place of letting each department director maintain their salary budget is still there and the departments are able to give merits if they have salary savings.

COMMISSIONER SULLIVAN: So the department director could have the option of giving an increase either through the salary savings or through this bonus program right now.

MS. QUINTANA: Yes, that's right.

COMMISSIONER SULLIVAN: If they have some salary savings left.

MS. QUINTANA: Yes, that's correct. And typically, what will happen though if they do have salary savings, they will use that in conjunction to award merits for those who maybe are receiving an annual review in the future, or are just reaching their classified status in the future.

COMMISSIONER SULLIVAN: The difference being that the salary savings merit increases are permanent. Is that correct?

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MS. QUINTANA: That's correct. And that's a recurring dollar amount.

MS. MILLER: Mr. Chairman, Commissioner Sullivan, however, they do stay within the budget allotted during the budget cycle for that department. So even though they may be redistributed between positions within a department, they never exceed the budget that is given for the department.

COMMISSIONER SULLIVAN: Well, it seems like in light of the fact that within six months we'll be starting the next budget cycle.

MS. MILLER: We start mid-year reviews in January and then go right into the next budget cycle.

COMMISSIONER SULLIVAN: It would seem that this is at least a good guideline that no merit would be received in the last 12 months. I think we could certainly give the directors the discretion if there was a unique employee that they felt highly about but still providing that as perhaps not a rule but at least some guidance so that the balance of the \$100,000 is distributed more equitably among those who deserve it but who didn't get the merit increases. I guess that's kind of a modification of what Commissioner Trujillo was thinking. That would be my thought on it.

CHAIRMAN DURAN: Any other questions of Helen?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Ms. Quintana, where does this money come from? Is it general fund money?

COMMISSIONER CAMPOS: And at already has been allocated?

MS. QUINTANA: Yes it has already been—

MS. MILLER: Mr. Chairman, Commissioner Campos, we would have to budget this money. It has not been budgeted. It is unbudgeted money, and when we spoke to the Commission about two, three weeks ago concerning unbudgeted cash, this was one of the allotments for the unbudgeted cash that we requested. And that distribution of where that money would be reserved and what we be budgeted as that has not come back to the Commission in total, but this was, we had requested out of that total number that approximately \$100,000 be used for this program.

COMMISSIONER CAMPOS: Thank you.

COMMISSIONER TRUJILLO: I have one more question. The merit window. Is that the whole year? Do employees receive merit increases throughout the year or is there a window that it needs to be submitted?

MS. QUINTANA: No, the merit program is throughout the whole year and it varies throughout the year and it varies by department. Basically, based on any salary savings or any previously approved merits from the budget.

COMMISSIONER TRUJILLO: So a department head has the discretion of expending their allocation throughout the year.

MS. QUINTANA: Yes sir.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos. 2003544

COMMISSIONER CAMPOS: I have a question for Commissioner Trujillo. I'd like for him to explain to me, I didn't quite understand what you're saying. You're saying that you were proposing that an employee could get both the merit and the bonus.

COMMISSIONER TRUJILLO: Right.

COMMISSIONER CAMPOS: And this plan as proposed does not do that.

COMMISSIONER TRUJILLO: That's right.

COMMISSIONER CAMPOS: Does merit become part of the base pay for the following year?

COMMISSIONER TRUJILLO: Yes it does.

COMMISSIONER CAMPOS: It does.

COMMISSIONER TRUJILLO: Yes, it does and the bonus does not become part of the base pay.

COMMISSIONER CAMPOS: Mr. Chairman, I'd like to throw out some ideas for discussion before anyone makes a motion. I guess the first one would be that the increases should not go to anyone earning more than \$50,000. I would ask for discussion on the number of five percent. Is that in the range that the Commission thinks appropriate. The other is should this apply to department directors? Because these are the highest paid people in the County and should these merit bonuses apply to them? There's \$6,000 set aside for that. I think these are people who are key performers in the administration and I think they have plenty of incentive to perform at a higher level. I think we have to focus on people under \$50,000.

As far as the awarding of the incentive, I would think that maybe the manager should have the final say. Recommendations could be made by the department heads, subject to manager approval. Those are the ideas I would ask for some feedback or discussion.

CHAIRMAN DURAN: I'm opposed to all of your ideas.

COMMISSIONER CAMPOS: Thank you, Mr. Chairman.

CHAIRMAN DURAN: Everybody's working hard here and just because someone makes more than \$50,000 doesn't mean that they're less deserving as being recognized as contributing over and above the call of duty, and I think that that's what this incentive program is all about is recognizing those people that have gone the extra mile for us. I think we're putting them—Sam doesn't know what every department employee is doing. I think that the department head knows exactly who is entitled to those and to give Sam another job is just making the whole process a little bit more difficult. So those are my reasons for being opposed to it, Commissioner.

COMMISSIONER TRUJILLO: And I think that those limitations, Mr. Chairman, directly impact the intent of the program in that ostensibly, this program is supposed to reward going over and above the call of duty, whether you make \$50,000 or whether you make \$30,000. It's non-base-building. It's not a recurring expense. It's a one-time shot for exceptional performance at the discretion of management. So I don't think that we should attach any limitations that castigate or punish good performers that happen to make \$50,000 and above.

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COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Helen, I know in some performance based or bonus programs, including I think the City, they have a sliding scale. For example, you could say five percent for employees earning up to \$30,000, four percent for employees earning \$30,000 to \$50,000 and three percent for employees earning over \$50,000. Would a sliding scale like that pose a problem or have you worked with something like that before?

MS. QUINTANA: Mr. Chairman Commissioner Sullivan, we had considered something very similar to that. We also looked at the amount of money and the amount of employees that we were looking at as a totality. And it's going to turn out in most likelihood, we're looking at maybe \$100, \$150, maybe \$200 to an employee, based on the number of employees in that department. So we were considering the amount of bonus, the effect it would have or the incentive that it would be for that employee who already makes a large salary, as opposed to those who don't. So looking at the dollar amount and how much of an incentive that would be.

So we wanted to kind of make it commensurate with their salary so that it would be an incentive and mean something.

COMMISSIONER SULLIVAN: So in a typical department, how many employees or what percentage of employees did you assume would get this bonus?

MS. QUINTANA: No, we didn't assume all of them would, because there are many who are on probationary status. There are many who have already received merit increases for the year and may or may not warrant an additional incentive on top of a merit, and also there are employees who don't meet the criteria of that level of performance. Not everyone in that department is at that level. It's kind of a Bell curve. So there's only the few in the middle that really exceed expectations.

COMMISSIONER SULLIVAN: So just in doing that estimate where you came up with a couple hundred dollars, did you assume like maybe 50 percent of the employees would be eligible?

MS. QUINTANA: Basically, a rough estimate.

COMMISSIONER SULLIVAN: A rough estimate. So at that level, the net effect would be a couple hundred dollars per employee.

MS. QUINTANA: That's correct.

COMMISSIONER TRUJILLO: Which is good.

COMMISSIONER SULLIVAN: Thank you.

CHAIRMAN DURAN: Okay. What's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chairman, I move to approve the bonus program. I'd like to purge the no merit received in the last 12 months, and leave it to the discretion of the supervisor. And I'm sure that they're going to take that into consideration. That's it.

CHAIRMAN DURAN: So you're asking to delete the no merit—

COMMISSIONER TRUJILLO: Delete no merit received in the last 6 months.

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And I agree with Commissioner Sullivan that that should be left to the discretion of the department head or elected official.

CHAIRMAN DURAN: I'll second that. For discussion, Commissioner Campos.

COMMISSIONER CAMPOS: Question for Ms. Quintana. What is the rationale for the no merit received in the last 12 months? Keeping costs under control or what is it?

MS. QUINTANA: Mr. Chairman, Commissioner Campos, the rationale was really just to afford the ability for a department to have that much more money to distribute among other employees who might not have been able to receive it. And that was really the basic rationale with that, that if somebody was able to receive a merit, maybe either based off of salary savings or whatever other reason, that they did get rewarded, and that would still allow them, with a pool of money to be able to distribute among other exemplary employees.

COMMISSIONER CAMPOS: Okay.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Another question. Then who evaluates the department directors? Is that the County Manager?

MS. QUINTANA: That's correct.

COMMISSIONER SULLIVAN: And do have both exempt and non-exempt employees?

MS. QUINTANA: In the County? Or in the directors?

COMMISSIONER SULLIVAN: In the County.

MS. QUINTANA: Yes.

COMMISSIONER SULLIVAN: So does this apply to both exempt and non-exempt?

MS. QUINTANA: Yes.

COMMISSIONER SULLIVAN: So does the County Manager then review or make the determination for all exempt employees?

MS. QUINTANA: Mr. Chairman, Commissioner Sullivan, the exempt-status employees are almost all, I don't think there's anyone that's not, directors. That's exempt status.

COMMISSIONER SULLIVAN: Okay, so all of those would be determined—

MS. MILLER: The deputy directors of the elected officials are.

MS. QUINTANA: They're exempt.

MS. MILLER: Mr. Chairman, actually all personnel actions get final approval by the County Manager. So every one of these would have to go through him anyway.

COMMISSIONER SULLIVAN: But in terms of the recommendation, obviously, a department director makes a recommendation for employee-x, that they receive a bonus of \$200. For the department directors and assistant directors of elected officials, that recommendation comes from whom? The County Manager?

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MS. MILLER: Elected officials I don't believe are involved but, yes, all directors would be County Manager.

COMMISSIONER SULLIVAN: All directors and you said the deputies of elected officials.

MS. QUINTANA: That recommendation would come from the elected official.

COMMISSIONER SULLIVAN: That would come from the elected official. Okay. For those two.

MS. QUINTANA: For the deputies.

COMMISSIONER SULLIVAN: I'm assuming the Treasurer's Office and the Assessor's Office, and the Sheriff's Office.

MS. MILLER: And the attorneys are exempt as well, and would come from the County Attorney.

COMMISSIONER SULLIVAN: Okay, but who— does the County Manager then make the recommendation for the director of the department?

MS. QUINTANA: Yes.

CHAIRMAN DURAN: Okay. Those in favor signify by saying "aye."
[Unanimous] Opposed? Motion carries.

VIII. A. 2. Resolution No. 2001-156. A resolution selecting a method of payment for the Federal Forest Reserve fund's distribution for Santa Fe County, New Mexico

MS. MILLER: Mr. Chairman, Commissioners, I handed out some information to you at the beginning of the meeting. I apologize it was not in your packets but I received this information last week and had to do some research with the Federal Forest Reserve. We receive currently about \$20,000, \$22,000 a year. The state receives a couple million dollars and then they distribute about 25 percent of that to the counties that have national forests. Then they also split that money between the schools and the County. That's how we're currently receiving the funds and the amount is determined.

There's a chart in there about four pages back in the materials that I handed out to you that the Federal Forest Reserve put out showing that the laws have changed and we can now elect a different method of distribution, and that is that they will take the three highest paying years. And it's because the funds have been dwindling year after year. So the public law changes. We can opt to take an average of the three highest years and have that money distributed to us in that method. That would equate to about \$39,000, \$40,000 a year for us.

The money is currently budgeted in the road maintenance fund. We're allowed to use it for roads. As long as we stay under \$100,000 distribution, which we probably will, between our full distribution, which is the schools and the County, we can continue to use it for roads. If we go over \$100,000, we have to reserve 15 to 20 percent of it for other items. But I don't

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believe, if anything our amount will go down, it won't go up based upon the reduction and the amount of funds that the federal government is distributing to the state.

So this resolution, in order for us to receive any money, I found out that we actually have to pass the resolution. I spoke to Sam before he went out of town and requested that we go this route because it will just about double our funds and it's available for road maintenance. So we're requesting that we pass this, that the Commission adopt this resolution to select the full payment method that the new law has offered us.

CHAIRMAN DURAN: Didn't we miss the deadline?

MS. MILLER: I called the federal government and requested if we did it today, could we still be in and they said yes. I received this information last week and put it together as quickly as I could based upon what I received.

CHAIRMAN DURAN: Is this the first year we received this money?

MS. MILLER: No, we've been receiving it for about 14 or 15 years, Mr. Chairman, but this is the first time they changed the law saying there's a different way to do it.

CHAIRMAN DURAN: What department is in charge of ensuring that we get this money?

MS. MILLER: The DFA, actually the federal government gives it to the state, and then DFA has distributed it to us, and by law, they've just given it to us. There's not been any action required on our part. And DFA since stated that we needed to take action on this and send it back to the federal government.

CHAIRMAN DURAN: Who's going to take care of it next year?

MS. MILLER: Now that I know—because it's floated around the County to several departments before it hit my desk last week, so ensuring that we are going it if we take this action.

CHAIRMAN DURAN: Any questions of Katherine?

COMMISSIONER TRUJILLO: Move for approval, Mr. Chairman.

CHAIRMAN DURAN: There's a motion.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN DURAN: There's a second.

COMMISSIONER SULLIVAN: Question.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Katherine, has this been noticed?

MS. MILLER: Yes, yes, Mr. Chairman, Commissioner Sullivan, Debra amended the agenda last Friday.

COMMISSIONER SULLIVAN: To include this item?

CHAIRMAN DURAN: So we would meet the deadline?

MS. MILLER: Yes.

COMMISSIONER SULLIVAN: So we could act on it.

CHAIRMAN DURAN: Right. So we could act on it. Okay, any other questions? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

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VIII. B. Matters of Public Concern – NON-ACTION ITEMS

CHAIRMAN DURAN: Is there anyone out there that would like to address the Commission on anything. Please step forward and state your name for the record.

JELLE BAKER: [Away from microphone] We are being driven mad from lack of sleep as well as from the frenetic quality of the barking which is going on and on and on. [inaudible] What is needed apparently is some sort of consistency in terms of what constitutes dog barking problems because I was told by the Dog Control people that dogs have to be barking consistently for one hour. I mean like 15 minutes, 60 seconds out of every minute, which seems to be a little unrealistic.

It's been my experience that if a dog parks even 10 minutes out of every hour, that that's enough to drive you nuts and keep you awake all night.

My name is Jelle Baker. It sounds like initials but it isn't. It's elle. I have more letters here. This problem has been going on every since I moved. Well, I've experienced it since I moved to Santa Fe. I'm new to the area. I've been here about five months. Others in my community have experienced it before, but it's intensified. It's the sort of thing, well, people they get more dogs or the little puppies grow up and they become more vociferous. So at any rate, this has been an ongoing problem.

I do have more letters here to share with you. When I call Animal Control at night and when other people do, it's some sort of I don't know what. It's some sort of a bitter irony that a dog can be barking pretty much consistently for three hours. Let somebody call the Sheriff's Department and it's like the dog knows. It's like it stops barking for the moment. Especially at night, the Sheriff has other concerns besides being called perpetually to solve this problem. It's low on his priority list. He's got domestic violence issues, traffic accidents, God knows what. It isn't as though Animal Control has a real representative at night when it's really needed. Instead it's a whole different world because the night people are coming from a different place.

During the day, the Animal Control people have their—that's their focus, dealing with animal control problems. But at night, unfortunately, that's when the dogs bark. They do not bark during the day, enough to cause the problem that comes somewhere between midnight and three in the morning, they start and then they go on and on and on. I would be willing to pay for somebody. My community would be willing to pay for an officer or some designated Animal Control person to be there for at least a couple of nights until people there got the idea that there was a concern.

Anyway, if there could be some sort of a meeting with the people in the community and with Animal Control representatives and is there a County Attorney that can give precise guidelines. Surely there has to be something other than a dog barking for an hour. And what's made this even more horrible for me, I went—99 1/2 percent of the barking is coming from two families on one road called Camino Tres Arroyos, which is becoming infamous because of this dog barking. It's just like canine row.

Anyway, so first of all I didn't know it was a private road, and second of all if I did, it

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wouldn't have mattered because I consider myself a neighbor. I'm one road over. If they came on my road, so what? I would assume that was okay. Four Sheriff cars pull up in front of my house one morning out of nowhere. I'm thinking, great, they're finally here to solve the problem. Instead they present me with a harassment thing from these two families. Number one, I had been on a private road. I didn't know one barking from another and I had to find out where it was coming from.

The other thing was a barker breaker, which is a device to cut down noise, was placed on somebody's front door step. I was invited to place the barker breaker down. At that point the person whose dog was barking the most positioned himself as my friend. He would come to my house to solve the dog barking problem. And he was going to use it on his dogs. In fact he did, but he said his wife said it worked too well.

Okay. And the third thing was that I was feeding the animals and they were afraid they were going to be poisoned. I mean like total paranoia reigns there. The only time I fed a couple of dog biscuits was when I tried to get out of the car to leave the dog barking breaker. And the dogs didn't know me and in order for me to get to the doorstep from my car, as a pacifier, I gave them a couple of Trader Joe dog biscuits imported from California. Anyway, that was the extent of it.

And what really bothered me is one of the people with a barking dog problem it happens that their son works for Animal Control. Their son is a lieutenant or a captain in the force. All these guys know him. They're all buddies. It's like I don't have a chance.

They came to my house. I felt like I was a criminal. I couldn't move out of my room. And the other guys were laughing outside the window, which I could see, like it's a big joke. I need some direction what to do here. What does one do in a situation like this besides going mad?

COMMISSIONER TRUJILLO: Mr. Chairman, I think that if we look at the big picture across the county, I live in the community of El Rancho in the Pojoaque Valley. And there are also copious dogs in the area. So the neighborhood has to deal with all this noise and on top of that it seems like the coyotes are communicating with the dogs from the hills. And this happens on a nightly basis. We do have an ordinance, a noise ordinance in place that Animal Control enforces and monitors, but again, this is a big county and there's a lot of communities in this county that are experiencing the same situation. In a rural area, especially, every family has a dog and dog barks.

MS. BAKER: I hear and appreciate what you're saying. There are differences here, however. It's normal for a dog to bark at a coyote or a rabbit. But when a dog is totally neurotic, it's one dog in particular. It's like when the coyote goes, the barking doesn't stop. He gets into this hyped up state and it goes on for hours. It's really bad. Also, that time when I had the whole county of Sheriffs at my door about this harassment issue, they told me that there was a distinction between dogs that are indoor dogs and outdoor dogs. And outdoor dogs can't be put indoors.

However, these dogs have been put indoors and it was blissful for a while.

CHAIRMAN DURAN: Ma'am—

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MS. BAKER: I'm sure I'm overstaying.

CHAIRMAN DURAN: I think the solution to the problem is for you to give your name to the County Manager's Office. The County Manager will get a hold of the Sheriff and set up a meeting with the three of you to discuss your concerns and maybe at that meeting, you can come up with some resolution to the problem.

MS. BAKER: The three would include the dog owners.

CHAIRMAN DURAN: No, you, the County Manager and the Sheriff would be—you'd have to have some dialogue with the Sheriff. If you give the County Manager you're name and number, we'll try and get the Sheriff to get a heads up from whoever went out that last time and then he can explain to you what he can or can't do to alleviate the problem.

The other thing is that maybe what you should do is take a recording of the noise.

MS. BAKER: I have a recording. I do. If that's—would a recording be officially sanctioned? Technically, I could make a recording of anything, any passing dog. How would they know, other than my—would my affidavit be sufficient? Would that take the place of an Animal Control officer hearing it himself? I have recordings. It's easy for me. Any night of the week.

CHAIRMAN DURAN: Okay, then why don't you just give your name to the County Manager's Office and have them contact, they will get in touch with you.

MS. BAKER: Thank you.

CHAIRMAN DURAN: It's really the Sheriff that's responsible for enforcing that ordinance. Is that correct, Steve?

MR. KOPELMAN: Yes.

MS. BAKER: It's so vague.

CHAIRMAN DURAN: It's the Sheriff that has to do that.

MS. BAKER: Does the Sheriff redefine, make the ordinance more precise? is that within his jurisdiction? Who does? Is it the County Attorney? All it says is persistent barking but it doesn't specify anything and it's up for grabs, subjectively, what constitutes—

CHAIRMAN DURAN: We could amend the ordinance if it's deemed to be inadequate. And before we can ascertain whether or not it's inadequate, you need to talk to the County Manager, who will set up a meeting with the Sheriff and they'll listen to you.

MS. BAKER: Thank you so much.

CHAIRMAN DURAN: And if you don't get any satisfaction, come before us, come back to us. Please step forward. State your name for the record.

LUCIAN NIEMEYER: Mr. Chairman, my name is Lucian Niemeyer. I moved to Eldorado about a year and a half ago. At the time I was told there was a contractual agreement between the County and the Eldorado Association regarding the paving of De Compadres and that this was already a year and a half old and that there had been funds from the homeowners there to complete that particular paving. I have called Mr. Sullivan without very much response. I have contacted your engineers in there. Over a year and a half now. I have heard of a sliding date. It slides every month or every two months.

I don't know that that is acceptable when you have a contract. I don't think that's

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correct. I think that very simply there is a priority. There's a contract that's done. The contract was between the community and you, and very simply, every time I hear it, there's another movement from you pushing down the paving of this particular road. I don't think that's correct. It shouldn't be correct when you have a contractual agreement. Now it's over three years and it seems to me that that road should be paved.

There's a second thing that's happened and I think it's been brought to your attention and I think it's of vital importance. When you come down Eldorado Road, there's a railroad crossing. You've gotten a letter on this. You've seen letters in the newspapers on this. It is an unguarded crossing. On the other side, when Vista Grande had three deaths, then you decided with the state to put in a crossing. Well, I guarantee you there's going to be a death. I saw in front of me just maybe at 25 yards at the most, another gentleman that was a lawyer out there has seen, almost had an accident. You're going to have an accident. That crossing, the cars are crossing that particular crossing at 45, 50 miles an hour and there is no way to see that train coming. And if you've got your radio on, you can't hear.

So I think you've got a problem there, and it's got to be addressed. It's a major problem, it's a liability problem. It's going to affect the County, it's going to affect the railroad and it's going to affect Eldorado.

CHAIRMAN DURAN: Sir, could you give your name to Steve Kopelman, the County Attorney? He will get with James Lujan, who's our Public Works director and we'll review the contract and find out why it hasn't happened and address the railroad crossing issue immediately.

MR. NIEMEYER: You mean De Compadres, why that hasn't happened?

CHAIRMAN DURAN: Right.

MR. NIEMEYER: And the other one the railroad tracks.

CHAIRMAN DURAN: We'll address both of your issues. We have to get with James Lujan to do both of those. So if you give your name to Steve Kopelman, he'll follow up on that. Do you have a comment or anything on that, Commissioner?

COMMISSIONER SULLIVAN: I did check, there were a couple of calls regarding that, with Robert Martinez and I don't have a copy of the contract so I don't know when, dates are on it, but they did say that it had been pushed back time-wise from earlier in the summer when they thought they could do it and that they had given other roads for safety reasons priority and that I think the gentleman is correct that it's been moved back several times. But I've never gotten specific reasons why it's been moved back, other than it was a decision of the Public Works Department based on work force priorities on other projects.

CHAIRMAN DURAN: Does that sound like a reasonable solution to have James report to us? Can you ask James to give us a report at the next meeting? In two weeks.

MR. KOPELMAN: Yes.

CHAIRMAN DURAN: Okay, is there anyone else out there that would like to address the Commission on any matter?

BECKY BUSTAMANTE (County Clerk): I would. Thank you.

Commissioners, I want to make a statement for the record today, because I wasn't here the last

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two weeks and something has occurred that has been a concern to me and that is a reorganization that took place and requiring authorizing some new positions. I would just like to say as an elected official, I came before you in a budget before all the departments, all of the elected officials, we were told we had a flat budget. We were told what we had to do. We came in good faith. I did, certainly. And to hear that now a reorganization has taken place afterwards and four new positions certainly has been a concern to me because I just don't know where the money's coming from and why, certainly in me, as an elected official, why wasn't I allowed to participate in any reorganization.

I'm concerned because these will be reoccurring funds that will impact the budget and what will happen next year when we come before the budget to ask for other things? I think in good faith, I came before the budget, worked with the Finance Director, worked with the County Manager, gave up some stuff and today, I read it in the paper this weekend. I followed up today to make sure if in fact this reorganization, what in fact did that mean and it meant there were quite a few positions and these are high level positions.

My positions in my office are very low-level. They've only been raised since I've been the County Clerk through vacancy savings. I would hope that would never be taken away because that's the only way I've been able to get them to a higher level. My deputies only make \$17 an hour. The deputies in the rest of the County make a lot more than that. I live within my budget but I certainly feel that this reorganization in creating all these high-level positions is a really sad thing for those of us who came in good faith before the budget and also it's really sad for my department because we get—my staff does not get paid a whole lot. And I just want to state that for the record. Thank you.

CHAIRMAN DURAN: Thank you, Becky. I think the way it was presented to us at that last meeting, it wasn't an increase to the budget that we had. It was a reorganization of monies. So I don't think that we have tapped—at least that's the way I recall that it was presented to us, that these new positions were a shuffling of old positions and a shuffling of the funds that funded those positions. If that's not the case, or if that is the case, I'm not sure if what you said tonight really has much merit because I think that we did this, based on my understanding, with the monies that we had available and decided as a Commission that these new positions and this reshuffling were appropriate based on the needs and demands of the County.

MS. BUSTAMANTE: Mr. Chairman, then I must stand corrected because the research that I did today did not indicate that and that's why I felt that I had to come and make a statement before the public record.

CHAIRMAN DURAN: Well, let's check into it further. Because I think that was some of the Commission's concern is that we weren't coming up with new money, or finding money elsewhere.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I think my concern was that the majority of those monies for those new positions were derived from the savings from canceling the

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Washington lobbyist contract. And so I think it made a budget neutral proposal for this year. But then the question came up, what will happen next year if we decide we do want a lobbyist, be it in Washington or in Santa Fe, then we would have made a commitment for new positions that would carry forward. So I don't think it's a fiscal problem this year, but I think the County Clerk raises a good point that it may well become an issue next year.

CHAIRMAN DURAN: We've had two years of paying a lobbyist that hasn't produced anything. I doubt we're going to go back to hiring a lobbyist but stranger things have happened I guess.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Ms. Bustamante, I tend to agree with you. I think it's going to cost us more than we think and we have asked that staff prepare actual numbers as to what it's going to cost us, not only in positions, but all related and associated costs. And we should have that information by the last meeting. I understand, Ms. Miller, the numbers are not ready now.

CHAIRMAN DURAN: That's right. You were supposed to that that this week.

COMMISSIONER CAMPOS: Right. We don't have the numbers now, but we expect to have the numbers within a couple of weeks.

MS. MILLER: Mr. Chairman, Commissioner Campos, we did not on Friday have the information from the departments that would be affected by the reorganization. When I talked to the County Manager, he said let's try to have this by the 30th, the meeting on the 30th.

COMMISSIONER CAMPOS: So reorganization will not occur as far as new monies until the Commission resolves this.

MS. MILLER: It's my understanding that we are holding off on hiring any new positions until the Commission has taken action on it.

COMMISSIONER CAMPOS: Thank you very much.

CHAIRMAN DURAN: Anyone else out there that would like to address the Commission, please step forward, sir.

CIPRIANO VARELA: My name is Cipriano Varela and I live in Santa Fe County there by Glorieta and I would like to address a case, V 01-5240.

CHAIRMAN DURAN: Sir, is this a case that we're going to be hearing later on today?

MR. VARELA: Oh, you haven't heard it yet?

CHAIRMAN DURAN: No. You'll have to wait until—

MR. VARELA: I don't mind doing that. I didn't hear any of the cases mentioned, numbers or anything, so I just wondered. You might have gone to it earlier or something.

CHAIRMAN DURAN: No, you'll definitely have an opportunity to voice your opinion.

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MR. VARELA: Okay, so you haven't heard it yet.

CHAIRMAN DURAN: No.

MR. VARELA: Okay. Thank you.

CHAIRMAN DURAN: Thank you.

VIII. C. Matters from the Commission

1. Resolution No. 2001-157. A resolution establishing a joint City/County Capital Improvements Advisory Committee and adopting rules of procedure for the joint City/County Capital Improvements Advisory Committee

CHAIRMAN DURAN: The chair will entertain a motion to approve this resolution.

COMMISSIONER TRUJILLO: So moved, Mr. Chairman.

CHAIRMAN DURAN: There's a motion. I'll second it for discussion. Is there any discussion?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Is the City represented here to discuss this? I guess not. I have some concerns. You'll recall, several months ago, this was brought forward with a list of some representatives that were proposed by the City and the Commission then added, I believe, five names to that and sent it back to the City. I had several people call me who were included in those five names wondering what happened to this. And it apparently worked its way, not only to the City Council but then to the Public Works Committee and I don't know where else. Perhaps Mr. Kopelman has some more information on this.

CHAIRMAN DURAN: Well, Congress decided that everybody had the opportunity to appoint one individual. It was an act of Congress.

COMMISSIONER SULLIVAN: Yes. So my question was, were the ones that were submitted by the City, they're nine, because we sent over I think five, and would those be our five?

MR. KOPELMAN: Mr. Chairman, Commissioner Sullivan, my understanding is the City had passed the resolution. The Mayor had brought forward some names. It came to the County Commission. The County added some names. When it went back to the City they decided they weren't really thrilled with the way it had originally been done and so they redid it again to give one appointment to each member of the County Commission and the City Council. And this comes back as a joint resolution as opposed to a separate resolution. So that's my understanding is that fundamentally, the scope of what this committee would be doing has not changed at all. The only thing that's changed is the selection process and the number on this advisory committee.

COMMISSIONER SULLIVAN: But are all the members who are already

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designated still going to be the members of the committee?

MR. KOPELMAN: Mr. Chairman, Commissioner Sullivan, my understanding is until the County passes it, this resolution is not a valid resolution. So I don't assume any appointments have been formal yet.

COMMISSIONER SULLIVAN: Well, I don't think this makes a great deal of sense because just because there are nine City Councilors and five County Commissioners, this particular program, this Capital Improvements Advisory Committee, which is a state-mandated committee, its main task is to look at impact fees and make recommendations on impact fees. And certainly a major area where that's of concern is in the county and in the Extraterritorial Zone. So I would think, if anything, the membership should be half and half, or, if anything, the membership should be more County than City, only because that's where the issue is and the City for one has brought that issue up on numerous occasions, claiming that the County's impact fees are not as much as the City's and the County should do something about it.

So I don't see any justification or rationale for pegging the number of members to the number of Commissioners and Councilors.

COMMISSIONER SULLIVAN: Commissioner Sullivan, we discussed this at the RPA and decided we were going to rise above the issue here and just go with it. So you've changed your mind, I take it.

COMMISSIONER SULLIVAN: I wasn't on the RPA.

CHAIRMAN DURAN: Oh. Then let me rephrase it. The RPA decided we were going to rise above this issue and just go ahead and go with the recommendation rather than get into this territorial or one party not having equal representation. It's just a committee to analyze the impact fees and if we don't like what they come up with we don't have to approve it. If the City doesn't like it they have the same option. But to put this thing back, to not approve this resolution tonight throws this six-month resolution into a tizzy, which I think is totally unnecessary. And that's what we decided at the RPA.

COMMISSIONER SULLIVAN: Well, I imagine it was decided at the RPA because the City was able to place the resolution in the context that it wanted. So that was fine with the City but at some point in time I think we need to provide equal representation for members of the County, for residents of the county, and particularly for those who are going to building in the county and those who will be paying these impact fees, the majority of which will be in the county.

It doesn't necessarily mean that whoever the County representative is is going to participate one way or the other, but I think to arbitrarily say that all of the members who have already been appointed by both the City and the County are apparently now unappointed and we're going to start over again to do this, I think that delays it more than anything else.

CHAIRMAN DURAN: Okay, well your objection is noted. Any further discussion?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

CHAIRMAN DURAN: Question for Mr. Kopelman. On page 2 of the

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proposed resolution, lines 14, 15, it talks about a 40 percent membership of the committee that would go to the real estate, development, and building industries. Is that by statute?

MR. KOPELMAN: Mr. Chairman, Commissioner Campos, that's correct. It is by statute, yes.

COMMISSIONER TRUJILLO: Move for approval, Mr. Chairman.

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: Second my Commissioner Campos. Any further discussion? Those in favor signify by saying "aye." [Commissioners Trujillo, Campos, and Duran voted aye.] Opposed? [Commissioner Sullivan voted nay.] Motion carries.

Are there any other Matters from the Commission?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I have one matter. I received a call from Patrick Torres who is the Santa Fe County Extension office manager and it concerns the sign in Eldorado which is on the main highway, 285, advertising the local 4-H group in the Eldorado area. And there was a complaint, apparently, regarding the sign. It's on private property; it's not on the right-of-way and the 4-H group went in and paid a \$25 fee and got a permit but there apparently is additional process involved where they have to have a hearing and they have to pay another \$50. Perhaps Roman, you can explain what that's all about. But they were just asking if they needed to go through a hearing and I didn't know where that hearing would be except perhaps the CDRC, and whether they could be, that additional fee could be waived.

ROMAN ABEYTA (Deputy Land Use Administrator): Mr. Chairman, Commissioner Sullivan, the request requires a variance because it's considered offsite advertising. So they need to come before the CDRC and the BCC for a variance to the sign requirements.

COMMISSIONER SULLIVAN: And is there an additional fee to it also?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, there's a standard variance fee that they're being charged.

COMMISSIONER SULLIVAN: Well, this was his request as an Extension office employee for the benefit of the 4-H people that apparently the sign is acceptable and he indicated it was within the requirements size-wise but you're saying it doesn't meet the requirements because it's offsite advertising?

MR. ABEYTA: Technically, yes.

COMMISSIONER SULLIVAN: This sign is nowhere near as big as the signs I've seen in Rancho Viejo. There's about ten of them advertising Rancho Viejo, so I'm a little confused. What would be your recommendation, Roman?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, we could get with our Legal Department and see if there's anything that prohibits us from waiving that fee.

COMMISSIONER SULLIVAN: But they would still need to go before the CDRC and the BCC?

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MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, they would still need to go before the CDRC and BCC to have that variance granted.

COMMISSIONER SULLIVAN: Okay, I guess there's no way around it. It's a green sign about that big. On the side of the road, I don't know if you've seen it on 285 there. It says welcome to the 4-H Club.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, again, we're responding to complaints that we've received from area residents. So that's—

COMMISSIONER SULLIVAN: I know. Apparently some people in the 285 Coalition didn't like it there and so I guess it will have to be heard by the BCC and the Commission and let them state their objections to it. And at that time, could they also discuss the fee waiver as a part of that?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, we'll actually discuss that before with the County Attorney because it's an application fee.

COMMISSIONER SULLIVAN: Okay. Would you talk to Pat please and let him know what—he wasn't clear on where he had to go and let him know what the procedure is.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, I'll do that.

COMMISSIONER SULLIVAN: Thanks.

CHAIRMAN DURAN: I have a matter for the Fire Marshal but he's not here.

Oh, he is?

COMMISSIONER SULLIVAN: Mr. Chairman, while we're waiting, could I ask a question? We tabled the action regarding the possible amendments to the moratorium ordinance in the Eldorado area. Is there a date set for that?

MR. KOPELMAN: Mr. Chairman, Commissioner Sullivan, I'm glad you brought that up. It's a matter is was going to bring up under Matters from the Attorney. That on that, we have to formally table it to a date certain. I believe that a date was chosen and we do need to put that on the record.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, it's my understanding from talking to the County Manager's Office that I believe October 22 was the date that was agreed to, which is a Monday evening.

CHAIRMAN DURAN: October 28th?

MR. ABEYTA: Twenty-second.

COMMISSIONER SULLIVAN: And that would be a special meeting?

MR. ABEYTA: Yes, Mr. Chairman, Commissioner Sullivan.

MR. KOPELMAN: Excuse me, Mr. Chairman, if I might, again, I was going to bring this up under Matters from the Attorney, but I think a formal motion agreeing to that date and tabling it to that date is in order, whether you want to do that now or later.

COMMISSIONER SULLIVAN: Could someone check, because I had heard it was going to be the 25th. It was apparently organized around Commissioner Gonzales' schedule so perhaps somebody that knows Commissioner Gonzales' schedule—

CHAIRMAN DURAN: Tila's not here?

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MR. KOPELMAN: The 25th is a Thursday and then the 29th would be that Monday.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, the 25th, we have a CDRC meeting. That's the regular scheduled date for CDRC. There was an advertisement in the newspaper today stating that it would be postponed and I believe it stated that Monday the 22nd was the date we agreed to.

COMMISSIONER SULLIVAN: Twenty-second at what time?

MR. ABEYTA: I believe it's 6:00 p.m. but I'll call you to verify that.

COMMISSIONER SULLIVAN: Then I would move, Mr. Chairman, if it's in order, regarding item IX. A. which has been tabled that it be tabled and brought forth on October 22nd.

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: Motion and a second. Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

Okay, well, I just had friend, Stan, that faxed me something and she wanted me to read and maybe you could—I don't think you need to spend a lot of time right now because maybe you could organize your thoughts and get to us at the next meeting. Basically, the information I've received is that the County, City, and St. Vincent's Hospital should join efforts in creating and implementing a hazardous waste material plan that is countywide. Currently there are some plans in place but they are not as a joint effort. She said practice drills should be performed so as to ensure that all equipment needs are met and that performance of these devices work accordingly to specifications.

There's a hazmat training meeting at St. Vincent's Hospital on October 18, 2001. Is there a waste material plan in place?

STAN HOLDEN (Fire Chief): Mr. Chairman, members of the Commission, the Fire Department does work in conjunction with the hospital and with the City of Santa Fe Fire Department on hazardous materials exercises, and plans, as a matter of fact scheduled on the 27th, I believe of October. I'll let, since this is Assistant Chief Blackwell's area, I'll let him speak specifically to those.

MR. BLACKWELL: Mr. Chairman, members of the Commission, as Chief Holden said, we have a hazardous materials program and we're working toward upgrading the training and the capabilities that we have in our volunteer staff as well as our career staff. We've been working at updating the annex for hazardous materials events in the All Hazards Plan, which is a City/County plan. That's an ongoing effort. One of the results of that ongoing effort is a hazardous material drill in the community of Galisteo. We have two to three of these a year. And this one's going to be a combination hazardous materials and multiple casualty incident drill that will involve the hospital, the City, the City hazardous materials team, the County, County volunteers and members of the State Emergency Management Office.

And that's one of the things we do throughout the year, just to make sure that we're prepared. Part of it is hazardous materials and part of it is to comply with being a jurisdiction on the WIPP route.

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CHAIRMAN DURAN: In the same vein, can you give us some information on how the County and City are working together on any biological warfare concerns that we might have here? I know that nationally, they're beefing up security and everything. What are we doing locally to protect the citizens of Santa Fe?

CHIEF HOLDEN: Mr. Chairman, there are discussions and we would prefer that if you want additional information that we do that one on one, individually with the Commissioners.

CHAIRMAN DURAN: Okay. So there's nothing you can reveal to the community.

CHIEF HOLDEN: Well, certainly, the community needs to know that not just at the County level but specifically at the state level as well that there are plans that are being put together to address the concerns secondary to terrorism. It's not limited to just bio-terrorism, but if you would like individual briefings, we could do that in more detail at those briefings.

CHAIRMAN DURAN: I don't mind having an individual briefing but I sure would like to advise the community as to what we're doing. Is there some secret about that?

CHIEF HOLDEN: Well, certainly the more information that you allow to go public, you don't know who the information is going to ultimately get to, and you don't want to relay information and safeguards that may have been put in place that specifically have been put in place for security reasons. You jeopardize the security at that point. I don't want to appear evasive, because—

CHAIRMAN DURAN: No, I understand. So maybe if anyone is interested up here we can contact you and you can advise us.

COMMISSIONER TRUJILLO: Mr. Chairman, I'd just like to congratulate Hank on his contribution to the disaster relief effort in New York City. I'm sure that you represented not only Santa Fe County but the state of New Mexico well. Thank you.

CHAIRMAN DURAN: Thank you, Hank.

MR. BLACKWELL: Mr. Chairman, Commissioner Trujillo, thanks for the kind words and the people from New Mexico on that team gained a lot of admiration from the other teams and even the Department of the Army in terms of their level of work and how hard they worked so I think New Mexico as a whole as well as Santa Fe County has a lot to be proud of. But thank you for those words.

CHAIRMAN DURAN: Thank you. Okay, Stan, thank you very much. Any other Matters from the Commission?

IX. PUBLIC HEARINGS

B. Land Use Department

- 1. CDRC CASE #A/V 01-5320 Barry Green Appeal/Variance.
Barry Green, applicant, is appealing the Land Use
Administrator's decision to deny a land division of 39.15 acres**

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into two lots: one lot consisting of 20.14 acres and one lot consisting of 19.01 acres created by a five-year exemption which would result in a variance to Article III, Section 10 of the Land Use Code. The property is located at 72 Wild Turkey Way, within Section 33, Township 16 North, Range 10 East.

WAYNE DALTON (Review Specialist): Thank you, Mr. Chairman, Commissioners. The applicant was denied an application for a land division created by five-year exemption due to the fact that the applicant would not conduct a geo-hydrologic survey of the proposed property to be divided. The applicant claims that he has met the geo-hydrologic survey requirements because he claims that he has an agreement with Santa Fe County to accept a geo-hydrologic report that was conducted in 1994 for an adjoining lot. Reconnaissance reports are not allowed in this area because of the complex geology. In order to comply with the County Land Development Code, the applicant is required to drill an on-site well and complete the on-site pump test. The ability to create more lots will be based on the results of the pumping test. The ability to create more lots will be based on the results of the pumping test.

Recommendation: Staff recommends that the request for a variance be denied. The intent of the Code is to set minimum lot size in this area at 80 acres without performing an onsite geo-hydro. The decision of the CDRC was to recommend approval of the variance to allow a land division of 39.15 acres, subject to the following conditions. Mr. Chairman, may I enter those into the record?

[The conditions are as follows:]

1. Water use shall be restricted to .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 August 31st of each year. Water restrictions shall be recorded in the County Clerk's Office.
2. No further division of the land shall be permitted, this shall be noted on the plat.
3. A plat of survey meeting all other County Code requirements shall be submitted to the Land Use Department for review and approval.

CHAIRMAN DURAN: Any questions of Wayne?

COMMISSIONER CAMPOS: I have a question, Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: Mr. Dalton, as far as the reconnaissance requirement, is that specifically stated in the ordinance that that is required, that you cannot have a reconnaissance report in this particular district?

MR. DALTON: Mr. Chairman, I would have to defer that question to Katherine Yuhas.

KATHERINE YUHAS (County Hydrologist): Mr. Chairman, Commissioner Campos, that is in the County Code. Yes.

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COMMISSIONER CAMPOS: Was that part of the Code in 1994?

MS. YUHAS: Mr. Chairman, Commissioner Campos, no it was not. It changed in 1996.

COMMISSIONER CAMPOS: Thank you.

CHAIRMAN DURAN: Is the applicant here? Please step forward, state your name for the record and let the Clerk swear you in.

[Duly sworn, Barry Green testified as follows:]

BARRY GREEN: Thank you, Mr. Chairman. I'm Barry Green.

CHAIRMAN DURAN: Do you have anything you'd like to add to the record?

MR. GREEN: Yes, I would, Mr. Chairman. I submitted a letter to you all with some attachments trying to outline what we consider to be what happened in the situation and hopefully it's a little clearer now. When we went before the CDRC they felt it was a little unclear the situation. So I'd like to just quickly go over what we consider the fact scenario here.

Basically, in 1993, we bought three adjoining tracts that equaled 160 acres and we went to the County with a geo-hydrological study done by Dennis Cooper because we were going to request a five-lot split of the lot adjoining the one in question today. We met with Gilbert Chavez, then the County Land Use Administrator and we felt that we worked out an agreement that all of the reports that we did—an archeological study and the geo-hydrology report could apply to all three of the lots that we owned at that time and could be used to divide any of those lots in the future. The County's part in that was, Mr. Chavez said if you do this we'll put a water restriction on this lot, tract C, the one that is in question today that we don't have any rights to put a water restriction on, but if you agree to do this, we'll put that restriction on.

So based on that, we signed covenants that restricted our water use on tract A, tract B and tract C. We were dividing tract B. Tract C was not involved any way, shape or form in any of that division. And so we understood that we had an agreement, that in the future, when we went to divide tract C, the water assessment would already be fixed by the geo-hydrological report Mr. Cooper did. This was important to us because we explained to Mr. Chavez that eventually, we wanted to own five or six lots there and we wanted to sell the remainder. And what we talked about was that this is an area where there are a lot of families that keep the land in their family and we think that is a great thing to do and that's what we want to do, but our concern is that if we have large lots and something unusual happens, there might be a need to sell some of the land.

And unfortunately, that has happened. About a year and a half ago, my wife developed renal carcinoma. They had to remove her kidney and she now has to have very expensive testing every year and it's not clear but it seems like this kind of cancer comes back and so the impetus for getting this done is that we may need some money at some point. We hope that we won't have to do that. We hope that this land can be split and be available to give to our two sons when they reach an age where they'd like to live there and build a house. Right now they're very small. One is less than two years old. The other is five.

So basically, we felt we had this agreement. We came to the County and we said,

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Okay, as we told you back in 1994, as we testified before the CDRC and before the BCC, we want to split this tract C into two lots, making a total of 11 lots that were created on the 160 acres we originally purchased. We didn't create those 11 though. We sold one of the 40-acre lots to someone else and restricted them and allowed them only to create four lots with the County's approval, which they did receive.

The County came back and we actually applied in November of 1999, so this has been going on for a couple of years. And we've been back and forth with the County. They've had additional requirements for us to meet and we have met them, but basically, it all boiled down to whether or not that study would be accepted. We met with the County Attorney, we went with the County Land Use Administrator and unfortunately, personnel has changed and they said You don't have something that says specifically you do not have to do this study again. All you've got are the covenants.

So I went to talk to people who had been involved, and both Dan Esquibel, who was the County employee who represented us at the hearings before CDRC and BCC and Rudy Garcia told us that was standard operating procedure in our office back then. If you had an adjoining lot we would fix the water rights so that your water rights would be reduced, but you wouldn't have to do this study again in the future. And Mr. Garcia told me that he contacted Roman Abeyta, who still works at Land Use who was just talking to you and he agreed that that was standard operating procedure.

But Mr. Kopelman and Mr. Dominguez said that they didn't feel that that was sufficient proof and they denied our application. So we are here today to ask you to find that there was an agreement, that we have met the requirements and therefore this tract should be allowed to be split because we've met all the other requirements and I think the County agrees with that, and each of the lots created should have .5 acre-feet per year available pursuant to that agreement, which was that the 40 acres had one acre-foot available.

I was at a hearing a while back and I remember that Commissioner Duran said that the Commission has spent years trying to make Land Use more user friendly, and when I heard that it struck a chord because I felt like this is exactly the situation that happens when staff changes. You've been told one thing by staff at one point in time and now it's not being honored. I think it should be honored and I would hope today that the Commissioners would honor that.

If the Commission does find that there is no agreement, we would alternatively request that you allow a variance and allow the split anyways, and allow us the half an acre-foot water rights.

CHAIRMAN DURAN: So Mr. Green, you're not in agreement with the CDRC's recommendation, which was to restrict it to .25 acre-feet?

MR. GREEN: Well, we feel we had an agreement and we agreed to have these water rights restricted, because as the Commission knows, if you don't have a water rights covenant, you're allowed three acre-feet per year. And when this all happened I then asked Mr. Dominguez to release us from the restriction on tract C, since they weren't honoring the agreement. Mr. Dominguez said, no, you're still stuck with the restriction, but we're not going

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to honor anything else about it.

So while we feel that we should be entitled to have a half an acre-foot for each lot, if the only way the Commission would approve a variance is to reduce us to a quarter acre-foot, we would agree to that but we would really like the Commission to go along with the original agreement.

CHAIRMAN DURAN: Is your plan to drill a well on each lot or would you be sharing, have a well sharing agreement?

MR. GREEN: We have a well on the lot right now. When it's split, we feel that the terrain probably would not allow for sharing, because this land has a lot of arroyos and it's basically, it's 40 acres, so it's a very large tract. But we don't have any plans right now to put another well on or to build any houses. One of the things that I tried to do when this all started was to think ahead, because as I said, we really admire the fact that our next door neighbors have lived on this land for 100 years and we'd like to do something like that as well with our family.

CHAIRMAN DURAN: The well that you have right now, can you tell me how deep it is and what the production of it is?

MR. GREEN: It's 800 feet, I think, approximately, and I don't know the production. I think it was eight gallons a minute but I'm not sure. We didn't put a pump in it. We ran out of money and that's why we didn't do the geo-hydro test.

CHAIRMAN DURAN: Eight gallons a minute?

MR. GREEN: Yes. I believe that's what it is.

CHAIRMAN DURAN: Okay. Any other questions of the applicant?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I had a question about that part of it because I read in the minutes, and apparently the Land Use Administrator didn't realize that there was a well there. So was that well tested as a part of Cooper's test back in '93?

MR. GREEN: No, that well was drilled I think in December of last year, after this process had already pretty much run its course.

COMMISSIONER SULLIVAN: Okay, so you have the well in place, so the only thing I'm thinking that a part of the requirement is since you're going to be selling these lots is not only that it produce a certain amount of water but also that it not impair other wells. So if these other parcels are being sold to other individuals, you've got two other wells on these other parcels? Or three?

MR. GREEN: Commissioner Sullivan, I think there's some confusion. We don't plan on selling these lots. We will only do that in an emergency situation.

COMMISSIONER SULLIVAN: Whether you plan on it or not, you have the legal right to do so, so we have to look at it as a separate incident. If it's a separate lot it can be sold and if that separate lot has a well, then one well may impair another, and that's one of the purposes of the test.

MR. GREEN: Commissioner Sullivan, first of all, Assistant County Attorney

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Graeser said at the last hearing that one of these lots can't be sold for a minimum of five years. The nearest well to the one that is on this lot is probably a quarter of a mile away. That's also on our property. The next closest well is probably a half a mile away. We did, when we drilled these wells, we did contact the State Energy Research and Minerals Department and they sent us a map that showed the fractures, and we drilled into one of the fractures.

As far as their map indicated, as far as our research indicated, there's actually no other wells on this fracture, because this lot—there isn't any dwelling within probably three-quarters of a mile of this lot and right after this lot is an empty lot owned by Greg Witten, and then there's national forest. So this whole area is completely undeveloped and had no real access except for our road.

COMMISSIONER SULLIVAN: Have you gotten a cost estimate on what it would cost to do the testing, given that you have a well there? The pump doesn't have to stay in there permanently. The pump of course, just temporarily while they do the test. Have you gotten an estimate of what that would cost you?

MR. GREEN: I contacted Mr. Cooper to see if he would do it and he said No. And he said that the only one in Santa Fe left is Jay Lazarus at Glorieta Geoscience, and when I contacted Mr. Lazarus in 1994, he told me \$11,000. That was if we have the pump already in place. So we would have to add the cost of putting some kind of pump in there.

COMMISSIONER SULLIVAN: That's all the questions of the applicant? It's a public hearing. Is there anyone out there that would like to address the Commission either for or against this issue? Please step forward. State your name for the record and let the Clerk swear you in. She's right over there.

[Duly sworn, Claire Webber testified as follows:]

CLAIRE WEBBER: Mr. Chairman, Commissioners, I just want to speak on behalf of the Green family. My husband and I purchased property from them a few years ago and we're in favor of them being able to do this. Their oldest son Eli is our godson, my husband's and I's godson and I just wanted to say I'm in favor of them being able to do this and be able to see my godson and his brother grow up there.

CHAIRMAN DURAN: Thank you very much. Anyone else out there that would like to address the Commission? What's the pleasure of the Board?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: I have a question for Mr. Dalton. Mr. Dalton, what's your position on the contract? The applicant is saying that there is an agreement of some sort. I assume it was a verbal agreement.

MR. DALTON: Mr. Chairman, Commissioner Campos, I think what the applicant is referring to is the recorded water restriction and covenants on the property.

COMMISSIONER CAMPOS: He talks about an agreement with Gilbert Chavez back in 1994 I believe.

MR. DALTON: That's what I believe the applicant is talking about, about the water restrictions.

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COMMISSIONER CAMPOS: Does that refer at all to the waiver or the need, or allowing that report to be applicable to the entire tract?

MS. YUHAS: Mr. Chairman, Commissioner Campos, I'll have to ask you to repeat the question.

COMMISSIONER CAMPOS: There is an argument by the applicant that there was an agreement in 1994 with the Land Use Administrator, basically stating that the hydro report could be used for purposes of supporting activity in other tracts and lots in 160. Is that a verbal? Is there anything in writing to confirm that?

MS. YUHAS: Mr. Chairman, Commissioner Campos, I don't think so.

COMMISSIONER CAMPOS: Mr. Kopelman?

MR. KOPELMAN: Mr. Chairman, Commissioner, we did spend some time trying to track that down and we were not able to find anything in writing and I think one of the issues here is that back in 1993, up until the time the law changed, that there was not a problem allowing the reconnaissance report in a situation like this. The law changed and that's why I gave my legal opinion. Because right now, it's not permitted under the present language in the Code. And again, we didn't find anything in writing to indicate that there was a binding agreement.

COMMISSIONER CAMPOS: So Mr. Kopelman, in 1994, when this agreement was made, if it was made, at that time the staff would not have raised any objections and would have gone along with Mr. Green's recommendation or proposal?

MR. KOPELMAN: Mr. Chairman, Commissioner Campos, at that time there was not a prohibition against him doing what he's asking to do now. So I don't think there would have been a problem back then in all likelihood.

COMMISSIONER CAMPOS: So do you think, if there was an agreement, does the law in 1996 change that agreement or nullify that agreement?

MR. KOPELMAN: Mr. Chairman, Commissioner Campos, if there was something in writing. For example, something on the plat, or a condition indicating that he actually had that type of approval, then I think that that would be valid and binding. Again, if there's nothing in writing, there's nothing on the plat, I wasn't able to find enough to come to a conclusion that there was a binding contract.

COMMISSIONER CAMPOS: The applicant has testified that there was a binding contract. Does the County have any opposing testimony, if not in writing?

MR. KOPELMAN: Mr. Chairman, Commissioner, I think the problem is that under New Mexico state law a contract, to bind the County has to be in writing. And that was just reaffirmed recently in a case that went to the Court of Appeals. So I'd say from a legal standpoint, even if there were verbal agreements with the Land Use Administrator, it doesn't bind the County Commission.

COMMISSIONER CAMPOS: Thank you.

CHAIRMAN DURAN: I didn't hear him say it was a contract. I heard him say that the policy at that time was that there was not a requirement that a geo-hydro be performed, and that was the policy at that time. But in trying to find an equitable solution to

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the issue here, I'd like to make a motion that we uphold the CDRC's decision to recommend, which includes a restriction to restrict the water usage to .25 acres per lot. What we're really trying to do is protect the aquifer. If you are allowed half an acre-foot, it allows you to have two dwelling units on it. With a quarter acre-foot you're only entitled to one.

I think that since we did change the policy that it would be fair to allow you to do this with the restrictions imposed by CDRC. So my motion is to uphold the CDRC's decision with their conditions, 1, 2, and 3.

MR. GREEN: Mr. Chairman, may I address Commissioner Campos' question?

CHAIRMAN DURAN: We're in the middle of a motion.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN DURAN: Okay, there's a motion and a second.

COMMISSIONER SULLIVAN: Mr. Chairman, just let me add some discussion.

CHAIRMAN DURAN: Okay.

COMMISSIONER SULLIVAN: I think that the applicant had a contract signed by Gilbert Chavez which did indicate that there would be these restrictions on each of the tracts in terms of water. And I think that's what he bases his feeling that they wouldn't have entered into that restriction for tract C, for all the tracts, if he hadn't assumed that that would apply to tract C. So from that standpoint there seems to be some validity to that position. The other side of the coin is that there is nothing in that particular agreement that says that the applicant has any right to divide the tract at all. The minimum acres, lot size is 80 acres and he has approximately a 40-acre tract and he wants to divide it into two 20-acres.

So regardless of the water issue, there's an issue that he's requesting a division based on hardship here that no one has ever agreed to. So I think that probably what you're getting at here is is it fair—which is why I seconded your motion—is it a fair resolution to those uncertainties.

CHAIRMAN DURAN: Any more discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

You wanted to say something?

MR. GREEN: Yes, Mr. Commissioner. The recommendations of the CDRC had a second condition which you all have not discussed and I'm wondering whether your motion included that or not.

CHAIRMAN DURAN: It included all three of the recommendations by CDRC.

MR. GREEN: May I comment on the second measure, since it hasn't been discussed yet?

CHAIRMAN DURAN: We've already made the motion. You can't subdivide the property any more and that all the—a plat of survey meeting all other County Code requirements be submitted to Land Use for review and approval. There's really no reason to discuss it.

MR. GREEN: The second condition prevents the lots from ever being divided again.

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CHAIRMAN DURAN: That's correct.

MR. GREEN: And we strongly objected to that because we feel that that restricts our rights that no other neighbors have and we feel that if we do get the money to do a geo-hydro study and it does show that we have sufficient water, we should be allowed to come to the County and petition pursuant to the law as our neighbors can, to do any kind of division the law allows. Now, after the CDRC hearing, we realized that if the issue is that the CDRC wanted us to be held to the original idea that we talked about, we would be happy to agree to that restriction for our ownership, but we would ask that that restriction not be placed on subsequent owners, whether they be our children or subsequent purchasers. That's the real problem we have with that restriction.

CHAIRMAN DURAN: Mr. Green, we've already made the motion and approved it. If you would like for us to withdraw the motion and deny the request, we can do that.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: I'd like to have Mr. Kopelman address the issue, the contention made by Mr. Green as to item number two, condition number two.

MR. KOPELMAN: Mr. Chairman, Commission, I think that the condition is legally placed because again, the Code requires that there be a well and a geo-hydro test. I would also say though that if down the road, Mr. Green does a geo-hydro test, I think he can still come back and request that the condition be amended. So I don't think it's set in stone, and I think that he does have the opportunity down the road to come back again.

CHAIRMAN DURAN: Thank you, Mr. Green. Are all the members of the EZA here? Is Carol here?

[The Commission recessed from 6:10 to 7:43.]

CHAIRMAN DURAN: We're going back into session.

- IX. B. 2. **CDRC Case #MIS 01-5430. Tesuque Village Market Liquor License Ownership Transfer. Tesuque Village Market, Inc., applicant, requests approval to allow a transfer or ownership of Liquor License No. 817 from Jerry Honnell, Sr. to Tesuque Village Market, Inc.; the liquor license is to remain at the present location (Tesuque Village Market). The property is in the Tesuque Village Market, Route 4, Box 70A, located on County Road 73, within Section 25, Township 18 North, Range 9 East**

PENNY ELLIS-GREEN: Thank you, Mr. Chairman, Commissioners. The applicant is requesting to change the owner name on the liquor license to Tesuque Village Market, Incorporated. The liquor license will remain at the same location which is the Tesuque

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Village Market and this is a transfer of ownership only.

Recommendation: Staff recommends that a transfer of ownership of Liquor License No. 817 be granted to Tesuque Village Market.

CHAIRMAN DURAN: Any questions of staff? Is the applicant here?

[Duly sworn, Jerry Honnell testified as follows:]

JERRY HONNELL: Mr. Chairman, Commissioners, my name is Jerry Honnell.

CHAIRMAN DURAN: Are there any questions of Mr. Honnell? Do you have anything to add for the record?

MR. HONNELL: No, I don't.

CHAIRMAN DURAN: This is a public hearing. Is there anyone out there that would like to speak for or against this matter? What's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: Move for approval of CDRC Case #MIS 01-5430.

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: There's a motion and a second. Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

- IX. B. 3. **EZ Case #DL 01-4070. Tom and Kathy Sedillo. Tom and Kathy Sedillo request plat approval to divide 4.98 acres into two 2.49-acre tracts. The tracts will be known as Lot 1-A (2.4916 acres) and Lot 1-B, (2.4919 acres). The subject property is located on Calle Estevan within Section 25, Township 17 North, Range 8 East**

AUDREY ROMERO (Review Specialist): Thank you, Mr. Chairman, Commissioners. On April 19, 2001, the Extraterritorial Zoning Commission recommended plat denial. The property is located within a subdivision that was approved by the BCC in 1964. The subdivision is legal non-conforming and it does not meet current subdivision standards for fire protection, roads, water and liquid waste. The described property lies within the Basin Hydrological Zone where the minimum lot size is 2.5 acres with a .25 acre-foot water restriction and proven water. The following lot sizes are proposed: Lot 1-A: 2.49 acres, which is vacant, and Lot 1-B, 2.49 acres, with a storage shed and small accessory structure.

The application was reviewed for the following: access, water supply, liquid and solid waste, terrain management, fire protection, archeology review and environmental review.

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Required action: The property is located within a previously approved subdivision. Therefore, the BCC must review and consider the findings of the report and action must be taken to approve or deny this request.

Staff recommendation: This case was previously heard and denied by the EZC on April 19, 2001. The EZC decision was to recommend denial due to concerns regarding water availability. It is staff's position that the further subdivision of the lots within the Piñon Hills Subdivision will diminish the performance of existing infrastructure by potentially doubling the density and therefore intensifying the non-conforming status. Prior to allowing the creation of additional lots within Piñon Hills, the subdivision should be upgraded to current subdivision standards. With respect to size and number of lots, an upgrade to Piñon Hills would require, among other things, a fire protection plan and existing roads to be substantially improved. Therefore staff recommends denial of this request as proposed.

CHAIRMAN DURAN: Are there any questions of staff?

COMMISSIONER TRUJILLO: Yes, I have a question. When was the threshold that the County decided that there would not be any further lot splits in this area? If I remember correctly, Piñon Hills has a whole gamut of lot sizes from 2.5 acres through 1.25 acres to one acre, taking into consideration the infrastructure, including water, including roads and everything like that. I'm wondering when was that threshold set in place by the County that from this day forward, regardless of the situation, lots would not be any smaller than—what is it?—five acres?

MS. ROMERO: Yes.

COMMISSIONER TRUJILLO: Is it five acres? I've seen it happen all along.

MS. ROMERO: Mr. Chairman, Commissioner Trujillo, I think what you're asking me is if there was a place in time where we stopped doing that or recommending that. It's my understanding that most of those lots that were created below the five acre minimum were done with either land division where water was proved or through family transfers. So some of those lots went down to below the five-acre minimum by way of family transfer or land division.

COMMISSIONER TRUJILLO: And there are lots in that subdivision of 1.25 acres? Or I think there are even lots of one acre in that subdivision, some of them because of family transfer and others for other reasons, legal non-conforming.

MS. ROMERO: Mr. Chairman, Commissioner Trujillo, according to the records in the Assessor's Office, the smallest lot size I saw that was created was a 1.25.

COMMISSIONER TRUJILLO: Right. Okay.

CHAIRMAN DURAN: So this is about the only five-acre lot left out there, is that correct?

MS. ROMERO: Mr. Chairman, Commissioners, no. There are other five-acre lots out there. There's about 13 that have been divided below the five-acre minimum out of about 70.

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COMMISSIONER TRUJILLO: Mr. Chairman, I'm sorry. And each of the lots in that area has an individual well.

MS. ROMERO: I believe, Mr. Chairman, Commissioner Trujillo, that there are shared wells and individual wells serving the lots. There is not an established community water system.

COMMISSIONER TRUJILLO: So how are we making the determination about the impact on the aquifer when potentially, even if you're dividing a lot to 2.5 acres, an individual well will go into the aquifer and mine the water table. How are we making that determination?

MS. ROMERO: Mr. Chairman, Commissioner Trujillo, I believe that question would be better addressed to the County Hydrologist. Unfortunately, I don't believe she's present. Maybe Roman.

MR. ABEYTA: Mr. Chairman, Commissioner Trujillo, we require that these applications for land division submit a hydrology report when you go below five acres to 2.5. In this particular case, it doesn't look like—it looks like they did speak with the County Hydrologist and she's requiring a water restriction and that the homes be metered. But in any case, staff is recommending denial of these splits within these subdivisions because they're non-conforming. At the time the subdivision was created, there weren't real extensive water studies required, which was back in 1964. So that's part of our concern and that's why we've consistently recommended denial of these splits in these subdivisions.

CHAIRMAN DURAN: Any questions of staff, Audrey? Is the applicant here? Please step forward and state your name for the record and let the Clerk swear you in please.

[Duly sworn, Tom Sedillo testified as follows:]

TOM SEDILLO: My name is Tom Sedillo.

CHAIRMAN DURAN: Mr. Sedillo, do you have anything you want to add?

MR. SEDILLO: Yes, I do. I lived out there for about, I don't know. Sixteen years or so. And there are probably six roads out there, six main roads and out of the six roads, there's one road that does not have any lot size smaller than five acres. There are three, maybe four 1 1/3 lots. I live on a 2.5-acre lot. As a matter of fact, the lot that I bought back then, it was a divorce case and it got subdivided into three 2.5-acre lots and one of the lots, it has a shared well and they're always having problems like when the water's not working or they're getting air in their tank, people are wondering who's going to pay for what electricity or stuff like that because you're sharing a well. It makes it more of a hassle.

The reason I want to keep—the reason I'm subdividing this lot is because I went through a divorce a year ago. I tried to sell it. It's been close to a year. I haven't been able to sell it. So what I want to do is I want to get my portion of this property and give it to my kids. I have two girls that were born in that area and I want them to stay in that

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area and that's the reason why I want to subdivide is I want it for my kids and whatever the ex does with hers she does. But mine is for my kids.

When I first bought that lot three, four years ago, whenever it was, I bought it for an investment for my kids and then this happened and now I'm trying to do the best I can to provide for my kids.

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER TRUJILLO: So essentially, you've been mandated to divide your property in half.

MR. SEDILLO: Correct.

COMMISSIONER TRUJILLO: So this five-acre lot, 50 percent of it belongs to your wife.

MR. SEDILLO: Correct.

COMMISSIONER TRUJILLO: That's a mandate, that's a requirement from the courts.

MR. SEDILLO: Right. I had to sell everything 50-50. Whatever that lot, the other lot, I had to pay for half of the house, whatever. Everything went down the middle, 50 percent and that's the reason.

COMMISSIONER TRUJILLO: And your 50 percent you want to keep for your children. You don't want to sell it or develop it or anything like that?

MR. SEDILLO: Correct. That's for my kids.

CHAIRMAN DURAN: I have a question of staff. Isn't this in an area where the minimum size lot is 2.5 acres, independent of whether it's in the subdivision or not?

MR. ABEYTA: Mr. Chairman, that's correct. It's a 2.5-acre minimum. However, it's within a previously approved subdivision and that's why we're before the Board this evening.

CHAIRMAN DURAN: Okay. Any other questions?

MR. SEDILLO: The only thing is that there was three lots done within the last year that was under 2.5, which is 1 1/3.

CHAIRMAN DURAN: I know. We did it. We approved them.

MR. SEDILLO: Correct. That's it. Thank you very much, Commissioners.

CHAIRMAN DURAN: Any questions of the applicant? It's a public hearing. What's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER TRUJILLO: Move for approval of EZ Case DL 01-4070.

CHAIRMAN DURAN: I second that. I'd just like to make a comment that we have approved over the last four years several 2.5-acre lots out there and the argument was made that the subdivision roads did not meet current standards but we felt since there were

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some precedents set there and the roads really aren't that bad, that it was an appropriate thing to do. So I second it. Any further discussion?

MS. ROMERO: Excuse me, can I enter into record the conditions of approval, Exhibit E?

COMMISSIONER TRUJILLO: That's fine.

CHAIRMAN DURAN: Sure.

[The conditions are as follows:]

1. The portion of Calle Estevan that extends along the platted area 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.
2. The applicant must record water restrictive covenants simultaneously with the plat of survey imposing .25 acre-feet per year per tract. Water meters for each subject parcel must be installed to monitor water use. Annual water consumption reports must be submitted at the County's request if and when deemed appropriate.
3. The applicant must contact Rural Addressing (995-2732) for assignment of addresses for the proposed tracts. Addresses must be added to plat.
4. EZ Subdivision Regulations Appendix K require a solid waste fee be assessed for all newly created parcels. (\$38.45 per lot.)
5. The applicant must prepare and submit covenants and disclosures for the use and development of the property.
6. Submit a school impact report per County Code.
7. The applicant must obtain approval from New Mexico Environmental Department (4 Calle Medico, Santa Fe 837-1839) for the proposed liquid waste disposal plan.
8. Compliance with Fire Marshal review.
9. The applicant must address all minor corrections by the County Subdivision Engineer as shown on the plat of survey and terrain management plan. These plans may be picked up from Audrey Romero, Development Review Specialist within the Land Use Department. The plans must be submitted with the mylar prior to recordation.
10. Applicant must submit a shared well agreement prior to plat recordation.
11. Applicant must submit an archeological survey.

CHAIRMAN DURAN: Those in favor signify by saying "aye."

[Commissioners Trujillo and Duran voted with the motion.] Opposed? [Commissioners Campos and Sullivan voted against.]

Sir, this thing will be tabled—not tabled, but it will go to the next County Commission meeting when there's a full Board here to make a decision. Because there's a tie it's not a denial or an approval. It has to have the full Board vote on it.

COMMISSIONER CAMPOS: Mr. Chairman. Just a point of clarification from Legal.. This is a decision of the EZC that denied the plat. Does he have to prevail

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at this point, if he gets a two-two, does he lose?

MR. KOPELMAN: Mr. Chairman, Commissioner Campos, the EZC is a recommendation to this body.

COMMISSIONER CAMPOS: Okay. So it goes on to the next BCC?

MR. KOPELMAN: That's correct. Under our rules, governing body rules of order, when there's a two-two tie and the fifth Commissioner is not there, the matter automatically gets transferred to the next meeting. It will be determined at the next meeting. At the next land use meeting.

MR. SEDILLO: Commissioners, so that means that I got to come back over here again? Okay. That's fine. Thank you.

CHAIRMAN DURAN: We should have substitute Commissioners.

- IX. B. 4. EZ Case DL 01-44 50 Robert F. and Rosemary Montoya. Ector G. Alvarado, agent request plat approval for a family transfer to divide 2.693 acres into two tracts. The tracts will be known as Lot 3-A (1.25 acres) and Lot 3-B (1.44 acres). The property is located off Camino Bajo within the Valle Lindo Subdivision, within Section 25, Township 16 North, Range 8 East (2 Mile EZ District)**

MS. ROMERO: Thank you, Mr. Chairman, Commissioners. On September 13, 2001, the EZC recommended plat approval. Robert and Rosemary Montoya are requesting plat approval for the creation of two tracts for the purpose of a family transfer. The described property lies within the Valle Lindo Subdivision which was previously approved by the Board of County Commissioners. Plat filed December 21, 1965.

It is within the Basin Hydrological Zone. This area allows for the creation of 1.25-acre minimum lots, which meets the minimum density requirement for family transfer. The property has been owned by the applicant since 1993 and the following lots sizes are being proposed: Tract 3-B would be 1.443 acres where the existing dwelling is to be retained by property owner, and Tract 3-A, 1.25 acres, which is vacant, to be transferred to their 26-year old son.

The application was reviewed for the following: access, water supply, liquid waste, solid waste, terrain management, fire protection, archeological review and environmental review. The BCC must review and consider the findings of the report. Action must be taken to approve, deny, approve with conditions or table for further analysis.

A site inspection has been made. Submittal and notice requirements have been complied with. This proposed subdivision meets all requirements of the Extraterritorial Subdivision Regulations. Staff recommends approval subject to the following conditions. Mr. Chairman, Commissioners, can I enter the conditions into record?

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[The conditions are as follows:]

1. Applicant must record water restrictive covenants simultaneously with the plat of survey imposing .25 acre ft. per year per tract. Water meters for each subject parcel must be installed to monitor water use prior to plat recordation. Annual water consumption reports must be submitted to the County Hydrologist by September 30th of each year.
2. The applicant must contact Rural Addressing for assignment of address for the proposed tract.
3. Applicant must pay the solid waste fee as required by the Extraterritorial Subdivision Regulations.
4. The applicant must obtain approval from NMED for the proposed liquid waste disposal plan.
5. The following note must be added to the plat of survey: " If any part of this property division reverts back by conveyance, default, assignment of real estate contract or any other method to any person in the previous chain of title except the immediate owner/seller, or to any relative or employee of that person or any entity involving such entity or person then this property division is void and shall be considered reconsolidated.
6. Applicant must submit deed of transfers to be recorded simultaneously with the plat of survey, include family member's name on plat.
7. Compliance with County Fire Marshal review.
8. A retention pond will be required for Tract 3-A.
9. Submit a Shared Well agreement.
10. The additions to the plat of survey as per the Santa Fe County Subdivision Engineer and Plat Checklist will need to be addressed prior to recording the plat. The plans and checklist may be picked up from Audrey Romero, Development Review Specialist with Santa Fe County and resubmitted with the Mylar.
11. Lot 3-A shall be accessible from the existing driveway and share the driveway with Lot 3-B.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Just to clarify, the minimum lot size in this subdivision is 1.25 acres, if it's a family transfer, is that correct?

MS. ROMERO: That's correct.

COMMISSIONER SULLIVAN: But otherwise it would be 2.5?

MS. ROMERO: Mr. Chairman, Commissioner Sullivan, that is correct.

COMMISSIONER SULLIVAN: Okay. I just wanted to clarify that. And then on a family transfer when they transfer it to their son, it cannot be resold for five years. Is that correct?

MS. ROMERO: Mr. Chairman, Commissioners, I don't believe there's a

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holding period for the EZ area.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, that's correct. There's not a holding time.

COMMISSIONER SULLIVAN: There's no holding period. Thank you.

CHAIRMAN DURAN: Any other questions of Audrey? Is the applicant here? Could you please come forward and state your name for the record? The applicant's not here? What happened to your applicant?

MS. ROMERO: Mr. Chairman, Commissioners, I'm not sure what happened to the applicant.

CHAIRMAN DURAN: Were they here a while ago?

MS. ROMERO: They were here before so I'm not sure—

CHAIRMAN DURAN: Why don't we move this to the back of the meeting?

COMMISSIONER CAMPOS: Mr. Chairman, I'd like to go to public hearing and then move to approve it. I think staff is recommending it with conditions and I don't see why we should—

CHAIRMAN DURAN: That's fine. I'll second that. I'm sorry. Is there anyone out there that would like to speak for or against this matter? Commissioner Campos, what's the pleasure of the Board?

COMMISSIONER CAMPOS: I'd like to move for approval of EZ Case DL 01-4450 with staff conditions.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN DURAN: There's a motion and a second. Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

IX. B. 5. EZ Case #A 01-4081. Silveira Appeal. Otavio Silveira, appellant, Walter Schliemann, agent, appeal the EZC's decision to grant approval of a family transfer land division for William and Mary Marcia Burden (EZ Case #DL 01-4080) to divide three acres into two tracts. The subject property is located off Old Santa Fe Trail within Section 6, Township 16 North, Range 10 East

VICKI LUCERO (Review Specialist): Thank you, Mr. Chairman, Commissioners. On August 9, 200, the EZC heard the request by William and Mary Marcia Burden to allow the family transfer land division. The decision of the EZC was to grant approval of their request. On August 23, 2001, an appeal was filed by Mr. Silveira that stated that the Burdens do not have a legal easement to access their lots off of Cloudstone Drive. Mr. Silveira has submitted a quitclaim deed that shows he obtained

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ownership of Cloudstone Drive in 1990. He has never given easement to the Burdens to access their property. The Burdens reside on the parcel adjacent to the tract that was divided for a family transfer. They have accessed their residence from Cloudstone Drive for several years.

A plat dated July of 1985 was submitted which shows an ingress and egress easement from Cloudstone Drive to the Burden residence in Exhibit G.

Staff's response: The Burdens have used Cloudstone Drive to access their property for over 15 years. The Burden plat from 1985 shows an access easement from Cloudstone Drive. In addition, after ten years, the easement becomes a prescriptive easement. Since that is the only access into any of the Burdens' lots, County Legal staff has taken a position that the prescriptive easement shall be used to access all property owned by the Burden family.

Recommendation: It is staff's position that the Burden's have an easement as shown on the 1985 plat and prescriptive easement rights to access all property from Cloudstone Drive since they have been using the ingress and egress easement for more than ten years. Staff recommends that the BCC uphold the EZC's decision and grant the request to allow family transfer land division requested by William and Mary Marcia Burden. And for the record, Mr. Chairman, I'd just like to add that I did receive a phone call from one of the adjacent property owners, Sandra Culver, who said that she was in support of the family transfer. Thank you, Mr. Chairman.

CHAIRMAN DURAN: Vicki, I have a question. Looking at this plat it seems—is there some reason why the applicant would not access one of these lots from the Old Santa Fe Trail? Or even both of them, for that matter?

MS. LUCERO: Mr. Chairman, the property does abut Old Santa Fe Trail and they would have to get a permit. I believe it's the County that has jurisdiction over Old Santa Fe Trail in that area. But yes, that would be a possibility, although the applicant was proposing to use Cloudstone Drive as their point of access.

CHAIRMAN DURAN: So they don't mind battling the prescriptive right easement?

MS. LUCERO: I guess that's correct because that's what they stuck with was their original proposal.

CHAIRMAN DURAN: If they did not claim access off Cloudstone Drive, would the County have any problem with approving the subdivision?

MS. LUCERO: I believe they would have to look at the separation of other accesses off of Old Santa Fe Trail. Without them looking at it I don't—or without the measurements from the other ingress easements, I couldn't say whether or not it would be approvable.

CHAIRMAN DURAN: Have you seen the terrain? Have you seen the lot?

MS. LUCERO: Mr. Chairman, no, I actually haven't been out there.

CHAIRMAN DURAN: Okay. Any other questions of Vicki? I guess we don't have a slope analysis or topo of that property. Do we require a slope analysis and

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topo on family transfers?

MS. LUCERO: Mr. Chairman, I believe Oliver Garcia was the original case planner and he had gone out to the property to take a look at it. I guess he mentioned that it was rather flat. Usually, if there is problems with the terrain, he will require a slope analysis. If it's visually flat then—

CHAIRMAN DURAN: Thank you. Any questions of Vicki? Is the applicant here? Please step forward—the appellant. Please step forward state your name for the record.

[Duly sworn, Walter Schliemann testified as follows:]

WALTER SCHLIEMANN: My name is Walter C. Schliemann. I'm an attorney representing Otavio Silveira, who is the appellant in this matter. Mr. Chairman, Commissioners, if it please the Board, before I begin, I just would like a point of clarification. I'll make a presentation and the applicant has a response. Do I get to make a rebuttal on an appeal?

CHAIRMAN DURAN: Yes.

MR. SCHLIEMANN: All right. Thank you. I filed on behalf of Mr. Silveira a letter on August 22, and I'd just like to read two paragraphs from that. Mr. Silveira owns property immediately adjacent to and south of the applicant's tract B-2, including the land identified on the proposed family transfer plat as Cloudstone Drive, a 50-foot r-o-w for right-of-way. This 50-foot strip along the southern boundary of applicant's tract B-2 is the private property of my client unencumbered by any easement rights for tract B-2.

The specific grounds for this appeal are that the applicants do not have any easement rights over my client's property to provide access or fire protection services or utilities for that matter for tract B-2, all as required by, and in violation of Extraterritorial Zoning Ordinance subsection 5.2.C.4.e and subsection 3.4.8.D of the Santa Fe Extraterritorial Subdivision Regulations. These regulations, the ordinance and regulations are attached, I understand, to your packet.

The Extraterritorial Zoning Ordinance, Section 5.2.C.4.e states that an easement demonstrating adequate access for ingress and egress, utility service and fire protection, either by easement or by public right-of-way. And then supporting that is under the Extraterritorial Zoning Regulations, Roads, it says under 3.4.8.D, construction of a main access roadway is required and the easement shall be indicated on the plat.

Now the plat is indicated in Exhibit D. It shows r-o-w for a right-of-way. This is not a right-of-way; this is a private access strip. This strip was created in 1959 when the then owner, Madeline Galt, decided to sell property fronting what was then the Old Las Vegas Highway, now the Old Santa Fe Trail and I'll refer to it as the Old Santa Fe Trail from here on out. She created this strip basically, if you will, as a flagpole to provide access to her properties that are further to the east of the Old Santa Fe Trail when she sold off properties that were fronting the Old Santa Fe Trail. In 1960, she sold this parcel which is now owned by Mr. Burden, the applicant, which is on the north side of Cloudstone Drive.

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My client subsequently acquired all of the properties to the south of this 50-foot strip. The 50-foot strip runs a quarter of a mile back into the hillside where it then would connect with the last parcel owned by Ms. Galt, which my client purchased in 1985 from the Madeline Galt heirs. I believe Ms. Galt died some time in the late '60s, thereabouts. We've been dealing mostly with the heirs who have been conveying the properties and the easements and the quitclaims that were involved in this transaction.

The regulations require that the minimum standards for land surveying in New Mexico be followed. Those minimum standards, amongst other things require that the location and description of all easements known or disclosed to the surveyor which serve the surveyed tract, together with the recording data, this would be indicated on the plat. That's regulation 12-8.2.9.J subparagraph 11. And under the same subsection under subparagraph 18 entitled access easement under the minimum standards, it says if a surveyed tract is not contiguous to a public right-of-way, any access easement of record which is known to the surveyor shall be described on the plat and its location shall be determined. If no easement is known to the surveyor a note prominently shown shall disclose that fact.

There's nothing on the plat that indicates any easement of record, nor is there any note that says the surveyor knows anything otherwise. As Vicki has indicated in your packet, I believe you've got Exhibit E-F. Well, I think it's attached to Exhibit F, you have a 1985 plat. Mr. Chairman, if I may approach the Board I'd like to pass out another plat to take a look at.

CHAIRMAN DURAN: While you're up here, there must be at least 30 people that live off of Cloudstone Drive. Do any of those people have a specific easement of record that gives them the right to access their properties off Cloudstone Drive?

MR. SCHLIEMANN: This plat that I just handed out, as you can see, was approved in April of 1981. The plat is prepared by the same surveyor who did the plat in 1985 and who did the unrecorded, unsigned plat of 1995, which is referred to in the current plat. You'll note that the road or the 50-foot strip that's in question here is defined on this plat as County Road 67F, 50-foot wide row, right-of-way. Now obviously, there's some errors, there's some mistakes. I believe it started with probably, from what I can tell it started with this plat and then it's been carried on so that we now see, we see Cloudstone Drive being shown as a 50-foot right-of-way.

It is not a right-of-way. It's private property and there were easements granted along this property. In 1971, there was a parcel of land that was sold on the north back further east off of Old Santa Fe Trail that was on the north side of the road and it was given an easement along this road, along with the deed to the property. In 1973, there was a transaction which—oh, also on the north side of the road between the predecessor in interest to Mr. Burden, the Elliotts, and their neighbor that adjoined them to the east, the Townsends, and they did a lot line adjustment. And as a condition, presumably a condition in 1973, the Townsends got an easement to use the 50-foot strip but the Elliotts did not. The reason being they had access off of Old Santa Fe Trail.

My client, when my client bought the lands on the south side of the 50-foot strip and applied in 1988, subsequently in 1988 to subdivide those lands, 30-some plus acres to be

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divided into 2.5-plus-acre lots each, application was made. One of the conditions that was imposed by approval was that they prove access via this 50-foot strip. And to do that we acquired easements from the Galt heirs to use this 50-foot strip for all of the land to the south and including the land that adjoined the end of this 50-foot strip that was back up in the hills. So we had the easements. When the easements were acquired, they were recorded in January of 1990 and this Board in March of 1990 approved the subdivision.

CHAIRMAN DURAN: Excuse me, Walt. I just have a question of Legal. Do we need to get involved in the legal issue of whether this is a prescriptive right or not? It seems to me that we can't make that determination. If Mr. Schliemann is asking us to make a decision tonight that based on his information that this—that there is no easement, that there is no prescriptive right, we're not a court of law. That seems to me to be a legal issue.

MR. KOPELMAN: Mr. Chairman, that's correct. It is ultimately a legal issue. In staff's view, the applicant here, the Burdens met the threshold criteria to demonstrate that they have adequate access. We've had this issue come up in the past and we've had situations where we've granted a lot split and then subsequently, the neighboring property owner took it to court and they had a declaratory action. But again, in our view, in evaluating it, we felt that there was adequate access to take it forward and to grant the lot split.

CHAIRMAN DURAN: So would it be appropriate for me to limit testimony tonight to issues other than whether or not legal access exists or not?

MR. KOPELMAN: Mr. Chairman, I think that you could hear testimony on legal access and again, I think it's a question of whether you believe a threshold has been met, whether you're comfortable that there's enough to demonstrate that they can go forward and that the lot split should be granted or shouldn't.

CHAIRMAN DURAN: But if we make a decision not to grant this lot split because a majority of us feel that there isn't sufficient evidence to prove that they have legal access, aren't we making a legal decision?

MR. KOPELMAN: Mr. Chairman, you are, but I think implicitly, one way or another, you'll be saying—if you grant the lot split, I think you're at least saying, maybe not expressly, that you believe there is access here to allow it. And if you turn it down you're in effect saying that maybe that's the reason you're denying it.

CHAIRMAN DURAN: Okay.

MR. KOPELMAN: So my feeling on this, Mr. Chairman, is if you believe they've met the threshold and you think that they have it or it looks like, by a preponderance of the evidence, you're sitting in effect as a quasi-judicial body, that you feel that there's enough evidence to show that they do have access and you grant approval, then the burden would be on the neighboring property owner to take it to court and get a ruling from a judge.

CHAIRMAN DURAN: Okay. Thank you. Go ahead.

MR. SCHLIEMANN: Mr. Chairman, Commissioners, I think I can address this issue on the legalities of the prescriptive easement issue. Staff's memo to the Board concerning this appeal appears to concede the fact that the applicant does not have an easement of record to provide access via Cloudstone Drive to the proposed lots on this tract B-2. Instead

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staff maintains that the applicant has a prescriptive easement to use this access. I believe staff is mistaken.

MR. KOPELMAN: Excuse me, Mr. Chairman. I'm sorry to interrupt but I think staff's position is that the 1985 plat did show that there was a right-of-way. And in addition to that that the applicants have been using that open and notoriously for at least 15 years so I think there's two points and I'm sorry to interrupt but I thought it was important to clarify that point.

MR. SCHLIEMANN: Mr. Chairman, Commissioners, since we had that interruption, I'll just point out again, the plat that I just delivered to you shows that this was a County Road, which was erroneous. The plat in 1985 was erroneous. The plat that's submitted today is erroneous. Cloudstone Drive is not a right-of-way. It's a private strip which has private easements and permissive uses on it.

CHAIRMAN DURAN: Walt, do you have something that contradicts these, besides you telling us that there is no—do you have a survey that says private road?

MR. SCHLIEMANN: There are surveys that show private road. Yes.

CHAIRMAN DURAN: Do you have a copy of that with you?

MR. SCHLIEMANN: I may have one of those in my file. I'll take a look and see. I think there's one that says private road. At least several say private road. It's anything you wish. I want to point out that surveyors don't grant or create easements or rights-of-way. They're supposed to, according to the minimum standards, they're supposed to reflect what is of record, and there's no easement of record. There's no right-of-way of record and this certainly is not a County Road. It's got a huge electronic gate across it which denies any except those that are given permission to use it or have legal right to use it.

CHAIRMAN DURAN: That gate only went up recently. It wasn't there in 1980.

MR. SCHLIEMANN: The gate went up in August or perhaps late July of 1992.

CHAIRMAN DURAN: Right.

COMMISSIONER TRUJILLO: Mr. Chairman, regardless of the designation whether it's a County or was designated as a County road or is anything else, the reality is that this road has been used as ingress and egress to the applicant's road, whether it's been called a County road, whether it's been called something else, this has been the right-of-way, the access to the applicant's property. And it's happened for more than 15 years.

MR. SCHLIEMANN: I can address—Mr. Chairman, Commissioner Trujillo, I can address that issue. Perhaps if I go through my presentation and maybe that will explain. And I'm trying to make a separation here. There were two lots that were created in 1973 when there was a lot split done. Excuse me, 1981, there was a lot split done in 1981.

CHAIRMAN DURAN: Mr. Schliemann, I need to just tell you one thing. We have a big agenda still in front of us so I'm going to limit the time that you have to make your point. So please proceed.

MR. SCHLIEMANN: Okay. First, the New Mexico Court of Appeals has

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said that the appropriate method to establish a prescriptive easement is my statutory suit to quiet title under Section 42-6-1 through 17 of the New Mexico Statutes Annotated. It's not for staff to usurp the judiciary's role in such a matter, for to do so would amount to a denial of my client's private property rights without due process of law. New Mexico courts have held and I quote, "Generally law does not favor claims of easements and the burden is on the party asserting a prescriptive easement to prove it clearly." That's on the applicant, not on my client.

Furthermore, the courts have held, and again I quote, "The party claiming existence of a prescriptive easement must prove the elements of such prescriptive easement by clear and convincing evidence. Even if Mr. Burden were successful in establishing a prescriptive easement by quiet title suit, to serve his residence on one tract, that doesn't mean that he has a prescriptive easement to serve another tract as he is proposing in this application. The rule of law is that the extent of a prescriptive easement is established by its historic use. And answering Commissioner Trujillo's question about the use here, the use of this road was to serve one residence on a different lot, and it was use of a road that is at the gate—the gate is at the entrance with Old Santa Fe Trail, the road width right there is approximately 18 feet and it narrows down to 16 feet very quickly after you leave the entrance. Within a couple hundred feet it's down to 16 and that's the area that's adjacent to this tract B-2. The tract in question as we all know is a corner tract fronting on Old Santa Fe Trail.

The Supreme Court, in a 1953 case entitled *Posey v. Dove* stated the owner, and again, I quote, "The owner of an easement can make no alteration in the dimensions, location, or use of his easement which increases the burden on the servient estate except by consent of the owner of the servient estate" Again in 1984, the court held in *Brookes v. Tanner* that the burden on the servient estate cannot be increased without the owner's consent.

Mr. Burden has used Cloudstone Drive to access his residence only on tract B-1. He has not used it for this other tract. He has never cut any driveway off of the existing road to go into this corner lot. The road itself is between 16 to 18 feet wide in a strip 50 feet wide. The road is fairly centered in the 50-foot strip. That means there's a 17-foot strip which is not roadway, which has not been used, and he is proposing to now, asking to be able to go off, to exceed beyond what he would ever be able to claim in a quiet title suit under prescriptive easement to be able to go into land that he has never used and to expand and increase the easement, which is clear under New Mexico law they do not allow.

Furthermore, the Extraterritorial Subdivision Regulations require a minimum of a 30-foot wide easement, excuse me 38-foot wide easement with two ten foot driving lanes or a 20-foot wide road. Here we have a road that doesn't even meet the width conditions. It's a 16 to 18 foot road. The requirements are, and the regulations state that the road is supposed to be constructed to specifications so it has to be expanded to 20 feet and the applicant doesn't have the—even if he had a prescriptive easement. Even if that prescriptive easement could serve this corner lot, he doesn't have an easement that could expand the road to what is required by the County Code. Not only the road, that's the driving surface, he doesn't have an easement that would expand it certainly to the 38 feet that's required by the regulations.

And just in closing I would just like to say that I don't think a prescriptive easement is

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going to be of any help to the applicant to serve this particular lot. To do so it would constitute a trespass. To get to his lot over the not used portion of the 50-foot strip. It would deprive my client of his property rights and I can't see that this Board would condone a trespass on private property rights. The argument of a prescriptive easement just isn't sufficient to satisfy the requirements of the Extraterritorial Zoning Ordinance and the Subdivision Regulations. Thank you.

CHAIRMAN DURAN: Thank you. Is the applicant here. Please step forward and state your name for the record.

[Duly sworn, William Burden testified as follows:]

WILLIAM BURDEN: I am William Burden. My wife is Marcia Burden and we are the applicants in this case. The analysis that was given to you had to do with prescriptive easements. I think that's accurate but it's not necessary and I hope to demonstrate that to you with some deeds that I can hand up to you if it's all right if I bring these documents up. [Exhibit 1]

CHAIRMAN DURAN: Is there any reason you don't access the property off Old Santa Fe Trail?

MR. BURDEN: [inaudible] Mr. Schliemann did not favor me with a copy of what he handed up to you so I'm at a little bit of a—

MR. SCHLIEMANN: I gave you a copy.

MR. BURDEN: When?

MR. SCHLIEMANN: Just right now.

CHAIRMAN DURAN: You can have mine.

MR. SCHLIEMANN: It's sitting over here on your notebook.

MR. BURDEN: Just one sheet? You refer to a packet?

CHAIRMAN DURAN: Sir, could you please address the Board?

MR. BURDEN: I'm sorry. I have not seen a packet from him.

CHAIRMAN DURAN: Well, take a few moments to look at that.

MR. BURDEN: I've seen it. What I'd like to do is go through the actual conveyances. What I've handed up to you is a series of deeds that relate to the property in question and other property. The first item that I want to show you is a plat that demonstrates how Madeline Galt actually conveyed these properties out and it shows properties with the names Elliott, Allen and Thompson and this is the way that these tracts were actually conveyed and was indicated earlier, she conveyed these lots from the west to the east. The Allen property as I remember was conveyed first, and then the Elliott property.

Now the second document here, the warranty deed, is of six acres of the seven acres which my wife and I own and I have highlighted on that deed the language that says subject to any rights-of-way of record all as delineated upon that certain plat entitled lands surveyed for Madeline Galt. And the next page is the plat with the 50-foot road reservation. And while this deed to our predecessor in title, Benjamin and Maureen Elliott, did not contain a specific grant of easement, it did refer to a right-of-way as indicated on this plat and I can't imagine what else she was talking about other than this roadway.

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Now this conveyance was back in 1960, and that was six of the seven acres. The next conveyance is an actual grant of easement from the Galt heirs to Townsend who is also one of our predecessors in title to the additional acre or the seventh acre, which was tacked on to the east of the six acres that were conveyed originally to the Elliotts in the first instance. And that grant of easement, I've highlighted the distance that ran from Old Santa Fe Trail. It ran up to the east 1475 feet. The next and in the body of that easement it says that it's a right-of-way and easement for utilities in common with others. So that to me clearly demonstrates what Madeline Galt's intention was with reference to this right-of-way. This easement, this specific easement was a grant to John Townsend but she gave it to him in common with others. Well, who were those others? Those others were the people that she was conveying that property to as she went up Old Santa Fe Trail.

Contrary to what you were told by Mr. Schliemann, the next deed is a deed from John Townsend to Ben Elliott where there is a transfer of an easement which he got from the Galt heirs and in the body of that conveyance it says together with a right-of-way and easement for utilities. So there is explicit grant of easement to at least one acre of the six acres and implicit in this is the fact that she intended this right-of-way to be a right-of-way for everyone using the road.

Finally, I want to say this to you. I want you to turn to the very last document that's in this document. It's a document on the letterhead of Scheuer and Engel and you'll see Mr. Schliemann's name at the top of it. And in this document, it was written to the Land Use Administrator of the County Santa Fe back in 1989 when Mr. Silveira had his subdivision developed. And if you'll go to the second page, you'll see the bottom paragraph that says the Turley plat, and that's one of the plats that we've been referring to here, make it clear that the Galt owners considered Cloudstone Drive to be an easement for the benefit of themselves and for the benefit of persons claiming by, through or under them. There is no indication in any of the documentation that Mrs. Galt ever intended that Cloudstone Drive should provide access to a part of her property but not to other parts.

Now this is a letter from Mr. Schliemann's partner that is 180 degrees opposite to what he has just told you and it sustains a proposition that there is an easement over that road. There's a prescriptive right, but there is an explicit easement, at least that was Mr. Scheuer's opinion back in 1989. Now what you're being told today is exactly the opposite of that and of course the reason for that is it serves the interest of his client to take that position today.

So I would—the question was raised earlier about what other people up the hill—the Piedras Rosas Subdivision up the hill is occupied by people who were not the grantees of Madeline Galt. John Eric developed that subdivision. As I remember he got that land, that used to be forest land or government land and that was obtained by trade with the government and that, those lots up there, and I think there are 24 homes up there, also go up Cloudstone Drive. So if the position that's taken here today is appropriate for me, it would also be appropriate for everybody up on the hill. In other words, if I don't have access to the seven acres that I bought, that I acquired, then what about the people up the hill.

And more broadly, there are lots of roadways in Santa Fe County that are not unlike

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this and a lot of confusion about whether they're public roads or private roads, and what happens if we go out buying up the fee of these roadways that have been used historically and then we take the position, now wait a minute. You can't divide that lot up and use it and let some user come in there without paying me a toll or paying me a fee to get my consent to do it, and that is in a—I don't know what Mr. Schliemann's motivation is here today. It may have to do with some events that occurred over a decade ago when I raised issues about the Silveira Subdivision and the way they were handling septic and water. This may be nothing more than payback.

On the other hand, maybe he has some other motivation for it, but in any event, I think the right of access I have to all this track is sustained for two reasons. One, the reason that the County staff suggested to you, prescriptive right, my predecessor in title or I have been using that roadway for over 40 years and secondly, these conveyances demonstrate that the Galts wanted that roadway used as a right-of-way or an easement way for people that bought land from her. And at one time, Mr. Schliemann and his partner acknowledged that. That's all.

CHAIRMAN DURAN: Thank you, sir. Walt, I'm going to go to the public hearing and then you can have the last word. Is there anyone out there that would like to address the Commission concerning this matter?

MR. SCHLIEMANN: Mr. Chairman, Commissioners, the title to Elliott back in 1960 was made subject to rights-of-way of record. That is a limitation on warranties of title. That had nothing to do with the road reservation that you see on that 1959 plat. I presume that's what you have there. If anything it has to do with the Old Las Vegas Highway, now Old Santa Fe Trail. Whenever it's subject to, that's a limitation on a warranty of title, not a grant of any kind of an easement.

And secondly, in the 1973 grant of easement to Townsend, that was a requirement, presumably by the staff in order to complete that lot line adjustment, he was back there. He didn't have an easement of record so he had to go out. Once he applied, after he applied he went and got the easement of record. Elliott didn't get it for whatever reason, I don't know. But when Townsend transferred one acre of his seven acres to Elliott, he transferred along with that right-of-way that he had for the seven acres. So that one acre came with a right-of-way but it only applies to that one acre. He can't transfer anything more than he has. So he can't create an easement for the other six acres out of that.

Thirdly, the letter from Ralph Scheuer, who was boss, not my partner. I think Mr. Burden compliments me. You look at that letter, you'll see I was licensed at that time in California and I was probably at the time that letter was written, I was either studying, taking or recovering from the New Mexico bar at that time. That letter was written in response to an earlier letter written by Mr. Burden opposing the Silveira Subdivision on the basis that they lacked access to the subdivision via Cloudstone Drive, which resulted in that opinion letter from Mr. Scheuer that I had nothing to do with.

But I will say that that letter only applies to the lands that were south of Cloudstone Drive and it still didn't answer the questions of staff. They still made them go out and have provable easements of record and so we had to turn around and contact the Galt heirs and get

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easements of record, which were acquired over the next six or eight months and recorded in January of '90, and subsequently with those easements of record, the Board then permitted the subdivision to go forward.

Lastly, in 1971, Branegger got a large portion of acreage in the back, north of the tail end of this 50-foot strip. He subsequently conveyed a portion of that to the subdivision behind, which they then got access to what we all call lower Cloudstone Drive and they have the upper portion. That upper portion is theirs. When Branegger got his deed in 1971, it came with an easement. The easement was in common with others. That means it's non-exclusive. That's all that means, in common with others.

And so the subdivision up the road got it. We had a lawsuit over this in 1992, '93 which resulted in a settlement and agreement between the parties where my client agreed to give permission to the subdivision homeowners association and the residents there to be able to use lower Cloudstone Drive in consideration for the homeowners association maintaining the gate and lower Cloudstone Drive, with the costs to be shared. So there have been other legalities that have been crossed. The t's have been crossed the i's have been dotted and they have a legal permissive right to use that road now. And in fact they do maintain it.

Also, there is a letter that was supplied initially by the president of the homeowners association of Monte de las Piedras Rosas whereby he was writing for 19 members of the association where they were opposing this subdivision. It's part of the record that hasn't been submitted to this body. I have a copy of it if you would like to see that. Lastly, Mr. Chairman, you asked for a plat that shows something other than a right-of-way. I have a plat here prepared by Southwest Mountain Surveys, Mitch Noonan, back—I'm looking for a date on it. 1987. It was signed by Tom Wilson, the Land Use Administrator in 1987 and it shows private gravel road (Cloudstone Drive). If I may I'll show you this. I only have one copy. It's in this file.

CHAIRMAN DURAN: Okay, Walt.

MR. SCHLIEMANN: I would like just to say one more thing in closing, that this is a matter for a quiet title suit to be resolved in court. It's not a matter for this Board to get involved in the legalities of legal rights between adjacent private property owners and I don't know why Mr. Burden is resisting either dealing with my client or if he feels so strongly about his right, to bring appropriate action as is called for under the law of New Mexico, which in this case would be a quiet title suit to either determine that he has either, if he as he claims, an easement, or if not an expressed easement, which I maintain he does not have, then a prescriptive easement, which if he obtains a prescriptive easement I maintain it's not sufficient to satisfy the County or the Extraterritorial Zoning Subdivision Regulations with respect to access.

CHAIRMAN DURAN: Thank you.

MR. SCHLIEMANN: Thank you.

CHAIRMAN DURAN: Okay. We've had the public hearing. What's the pleasure of the Board?

COMMISSIONER SULLIVAN: Mr. Chairman.

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CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I have a question for the appellant and also for the applicant.

CHAIRMAN DURAN: Oh yes. I meant to ask that. Is there any questions of either party?

COMMISSIONER SULLIVAN: First I guess since you're up there for the appellant. On the easement that the applicant obtained for the one acre on the eastern most portion, you acknowledged that the applicant has an easement for that one acre?

MR. SCHLIEMANN: That one acre was conveyed by the adjoining landowner, the Townsends, back in 1973. When he conveyed it by deed, he conveyed that one acre by deed together with an easement, because that one acre has an easement just like his remaining six acres has easement. It was granted by, I believe it was the Galt heirs, Tom Galt and—so that one acre has an easement. But Townsend, who conveyed, made that conveyance of the one acre, which brought along, piggy-backed along an easement for just that one acre. That doesn't allow that easement to expand to include the other six acres.

COMMISSIONER SULLIVAN: That's answered my question. So that one acre, we're not contending with, has an easement. There's nothing on that one acre. I understand that. The applicant's house is not on that acre. So if that acre has an easement, then further west of that is the applicant's house. Is that correct?

MR. SCHLIEMANN: No, sir, the applicant—yes, excuse me. You're right. Sorry. Yes. The applicant's house, as the 1985 plat shows—

COMMISSIONER SULLIVAN: Yes or no.

MR. SCHLIEMANN: Yes, the applicant's house is further west of that one acre.

COMMISSIONER SULLIVAN: So during the course that the applicant's been using that property, has your client made any objection to the applicant on their use of that road, easement, whatever it is, any objection to the use of that easement to access their house?

MR. SCHLIEMANN: I don't know the answer to that, Commissioner Sullivan. I don't know. The applicant or my client was represented by another law firm during that time. I've only recently taken over this particular matter. So what happened prior to this time I have no knowledge of.

COMMISSIONER SULLIVAN: Okay. Thank you. And then one question for the applicant. Mr. Burden, you did a family transfer on lot B-1 for the purpose of transferring it obviously to a family person. Who now owns that tract that you divided?

MR. BURDEN: The one—

COMMISSIONER SULLIVAN: The one that does not have a house on it?

MR. BURDEN: I do.

COMMISSIONER SULLIVAN: You do?

MR. BURDEN: Yes. It went to my son and when he moved to Missouri a year and a half ago, he conveyed it back to me.

COMMISSIONER SULLIVAN: Okay.

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MR. BURDEN: That's on this other lot you're talking about.

COMMISSIONER SULLIVAN: Right. I'm talking about B-1.

MR. BURDEN: Right.

COMMISSIONER SULLIVAN: So B-1 was split some years ago.

MR. BURDEN: Yes, in 1985.

COMMISSIONER SULLIVAN: To go to your son. Went to your son by quitclaim deed. The deed wasn't recorded and it's now been returned to you by quitclaim deed.

MR. BURDEN: Yes.

COMMISSIONER SULLIVAN: So you now own the lot that was family transferred?

MR. BURDEN: Well, subject to a beneficial interest in him, but yes, I own it.

COMMISSIONER SULLIVAN: Okay. So you're now going to subdivide the tract to the west, B-2.

MR. BURDEN: Correct.

COMMISSIONER SULLIVAN: Again, under the family transfer provisions.

MR. BURDEN: Yes.

COMMISSIONER SULLIVAN: And let me ask the staff here. Acreage-wise, is that within the allowable acreage for a family transfer in this area?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, yes, it is.

COMMISSIONER SULLIVAN: What's the minimum acreage?

MR. ABEYTA: The minimum lot size for a family transfer is 1.25 in this area.

COMMISSIONER SULLIVAN: One and a quarter. Okay. So he's permitted a family transfer provided it goes to a family member, obviously.

MR. ABEYTA: Yes.

COMMISSIONER SULLIVAN: And we have no requirements where it goes after that.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, that's right.

COMMISSIONER SULLIVAN: So we could eventually here have four lots that are all within the ownership of the Burden, Mr. Burden.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, that's right.

COMMISSIONER SULLIVAN: And that would be legal.

MR. ABEYTA: That would be legal.

COMMISSIONER SULLIVAN: That would be legal. So the issue, so there's no contention over the legality of dividing the lots or that the applicant could have four lots here with one house. The only contention is whether or not the applicant has access, has an easement, and even if the applicant doesn't have an easement, technically, although I sure wouldn't do it, because Old Santa Fe Trail is pretty dangerous and there's pretty fast traffic along there, could put a driveway on Old Santa Fe Trail. That physically would be a possibility.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, we would rely on

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Public Works for that but I'm sure they would allow it.

COMMISSIONER SULLIVAN: It would be far more dangerous to have an access on Old Santa Fe Trail than it would be off Cloudstone or whatever that may be because of the speed of traffic on Old Santa Fe Trail and the site distance, I'm sure. Okay. That clarifies it. Thank you, sir.

MR. SCHLIEMANN: Mr. Chairman, Commissioner Sullivan, if I may response in rebuttal if I may on that one question you asked about the family transfer in 1985. At the time, the City Code was what was in effect. There were not Extraterritorial Zoning Subdivision Regulations adopted. They weren't adopted until '91. The City Code, back in 1985 required that a copy of the deed of conveyance be delivered to the City and that the deed of conveyance be filed along with the plat. That was never done. There was never a record of any deed of conveyance into the son for that lot on the east side of lot B-1.

Contrary to what Mr. Burden said, it was not a year and a half ago, but in 1997, his son who was supposed to have received that lot, quitclaimed that lot back to his parents and—

COMMISSIONER SULLIVAN: I saw that in the EZC record.

MR. SCHLIEMANN: You did see that in the record. Okay. And I just want to, just for the record—also you might have seen in the record that five months prior to these filing application for this particular family transfer, the applicant had filed a well application for lot B-2, and on the statement of explanation he stated to the State Engineer's Office on their official form, applicant intends to build a dwelling for resale to a third person. That was five months before he filed application for a family transfer.

COMMISSIONER SULLIVAN: Just one last question, Mr. Schliemann while you're there. Your client lives where? To the south of Cloudstone?

MR. SCHLIEMANN: Yes. My client owned all the property to the south of Cloudstone, of that 1880-foot long, quarter-mile long strip, except he sold a five-acre parcel kind of in the middle, closer to Old Santa Fe Trail.

COMMISSIONER SULLIVAN: Okay. And then what negative effect does this subdivision have on your client or on your client's health, safety and welfare.

COMMISSIONER SULLIVAN: Okay. And then what negative effect does this subdivision have on your client or on your client's health, safety and welfare?

MR. SCHLIEMANN: You're talking about this proposed family transfer subdivision, the lot split?

COMMISSIONER SULLIVAN: Yes, sir.

MR. SCHLIEMANN: It increases the density. It increases the use. It's going to cut driveways, as proposed, it would cut driveways, two more driveways right near the gate. It creates some safety concerns that we have in terms of coming down that road. It concerns maintenance. And it's not just my client has those concerns, the neighbors that maintain, the homeowners association that maintains that road for us has voiced objections to me. I'm surprised there isn't something in the file more recently other than the April 18th letter that they had sent because he called me about this matter.

COMMISSIONER SULLIVAN: So other than the driveways, which there's

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one there now and obviously, they could have three anyway and they could have—so your concern would be about the fourth one. Do the Burdens contribute to the maintenance of Cloudstone?

MR. SCHLIEMANN: We maintain that putting more driveways in there is going to create, not only create a safety hazard, but it's also a trespass upon my client's property. There is no easement nor prescriptive right to use that strip.

COMMISSIONER SULLIVAN: I understand that. But the question is, there would be, as a result of this action, one extra driveway, one extra potential driveway. Because there's already three lots there now. So there would be one other potential—

MR. SCHLIEMANN: Well, there's three lots there, but the lot we're talking about, the corner lot, B-2, always has had access from Old Santa Fe Trail. So I wouldn't say—there's only one driveway. There's only one driveway, and under the 1985 family transfer subdivision, that one driveway serves, splits off and serves both of those lots. So there would only be one driveway coming in there.

COMMISSIONER SULLIVAN: And so to get back to my question, does the applicant contribute the maintenance of Cloudstone Drive?

MR. SCHLIEMANN: Does the—I don't know. He'd have to answer for himself.

COMMISSIONER SULLIVAN: Well, that was one of your concerns was that this would impact on some additional traffic.

MR. SCHLIEMANN: The maintenance of Cloudstone Drive is performed under contract agreement by the homeowners association of the Monte de las Piedras Rosas Subdivision, which is further up the hill.

COMMISSIONER SULLIVAN: Let me just ask Mr. Burden then. Do you contribute to the maintenance of Cloudstone Drive? You're shaking your head, meaning yes. Okay. And is that done in conjunction with the homeowners association of the subdivision to the south?

MR. BURDEN: I'm not a member of it but they do an assessment based on frontage.

COMMISSIONER SULLIVAN: And even though you're not a member of that association you pay a part of that assessment for the maintenance of the road.

MR. BURDEN: Yes.

COMMISSIONER SULLIVAN: And how long have you paid that?

MR. BURDEN: Well, I'm trying to remember. They put a gate in, an automatic gate a number of years ago and I know we've been assessed, we were assessed some money for the gate, which I paid. And there have been yearly assessments since then. And I can't remember whether or not I paid any assessments before the gate went in.

COMMISSIONER SULLIVAN: The gate went in about ten years ago.

MR. BURDEN: I guess so.

COMMISSIONER SULLIVAN: I think the testimony was '91 or something like that.

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MR. BURDEN: Well, it was around 1990 because there was litigation between Mr. Silveira and the people who put the gate in.

COMMISSIONER SULLIVAN: From the early nineties to the present you've contributed by frontage foot to the maintenance of Cloudstone Drive.

MR. BURDEN: Yes.

COMMISSIONER SULLIVAN: All right. Thank you, sir. Thank you, Mr. Chairman.

CHAIRMAN DURAN: Mr. Chairman, I have a question. How many children do you have?

MR. BURDEN: Two.

CHAIRMAN DURAN: What's your plan for lot B? I mean, I can understand—the only concern I have now is I think that the family transfer process is available for what it's for, family transfers, and I'd hate to see somebody abuse it by creating more lots just because the family transfer process is there available to you.

MR. BURDEN: I have two sons, Bricker Burden, who until—I was corrected—until '97, lived in Albuquerque and went to TVI. He had been a New Mexico resident continuously from the time that lot was split until that point in time and then he married a girl and moved to her hometown, which is actually the town we came from. He married a girl in Joplin, Missouri and she took him home. So that's what caused the deeding back. And while I'm talking about that, Mr. Schliemann has misstated to you the circumstances concerning that lot split.

There was in effect in 1981 an ordinance relating to lot splits in the Extraterritorial Zone. There was no requirement that the deed be recorded. Salvador Vigil handled the lot split. The requirements that were made of him or set forth, and I've submitted this too, and we complied with all those requirements. He said you had to comply with the City and the City required that a deed be filed. The City ordinance did not apply; the Extraterritorial Zoning Ordinance of 1981 applied and Salvador Vigil took care of it for me.

On the second one, you asked me about my other son, that's Alexander. Alexander lives in Kansas City, Missouri. He was here as recently as this past weekend. I cannot tell you that he's going to come here and build a house on that lot in two years.

CHAIRMAN DURAN: That's not a requirement.

MR. BURDEN: That's not a requirement. My assumption is that he will get the benefit out of that lot. Now whether or not he gets the benefit out of that lot by building a house on it or by selling it, I don't know. But at this point in time I have two sons, both of whom would love to live in Santa Fe. Neither of whom can afford it at this point in time.

CHAIRMAN DURAN: Okay. Thank you, sir. What's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: I make a motion to go along with the decision of the EZC to grant approval of a family transfer land division for William and Mary Marcia

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Burden.

CHAIRMAN DURAN: Okay, there's a motion to—

COMMISSIONER TRUJILLO: —uphold the decision of the EZC

CHAIRMAN DURAN: Of the EZC. Is there a second?

COMMISSIONER SULLIVAN: I'll second for discussion.

CHAIRMAN DURAN: For discussion. Commissioner Sullivan.

COMMISSIONER SULLIVAN: I want to defer first to Commissioner Campos who has a question.

COMMISSIONER CAMPOS: I don't have a question.

COMMISSIONER SULLIVAN: Oh. He doesn't have a question. Sorry.

Thought he had a question. Let me pose a question to the staff then, if I can. If an applicant—the applicant now has a lot available for a family transfer to the son that might or might not live there as a result of the other son moving to Joplin, Missouri. Is the Code such—is there any requirement or limitation on the number of family transfers that an applicant can do? Is there any connection to the number of siblings that the applicant has or can he do five, ten, fifteen, twenty, as many as he wants, or she?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, he's only allowed to transfer one piece of property per child. So if he has two children, he could create two lots for family transfer. In most cases, in this case, he owned two separate pieces of property and so he did one family transfer at one point, where one son got a piece of property; he kept the other piece. Now he has another piece of property where he's doing a family transfer and he's keeping the other piece for himself also. Because they're two separate pieces of property, the Code doesn't prohibit this from taking place.

COMMISSIONER SULLIVAN: And what is the condition now where lot B-1, although divided under family transfer, is now in his complete ownership? Do you see my point? The other lot could be transferred to son number two.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, that could be but that's not required by Code.

COMMISSIONER SULLIVAN: That's not required. So you could transfer as many as you have siblings, regardless of whether the siblings turn it back to you or not.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, that's correct.

COMMISSIONER SULLIVAN: There seems to be some basic flaws but we'll get to that some other day in the family transfer provisions.

CHAIRMAN DURAN: I think that we'd have to prove that there was a deliberate attempt to circumvent the regulations, which I don't think we're going to do tonight. Any further discussion? Those in favor signify by saying "aye." [Commissioners Trujillo, Sullivan and Duran voted aye.] Opposed? [Commissioner Campos voted nay.] Motion carries.

So you have your family transfer.

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- IX. B. 6. AFDRC CASE #V 01-5150. Padilla Variance. Phillip and Mary Padilla, applicants, request a variance of Article III, Section 4.1 and 4.2 (types and locations of commercial districts) of the Land Development Code to allow commercial zoning outside of a potential commercial district on a 0.78-acre tract. The property is located at Route 6, Box 89, within the Traditional Historic Community of Agua Fria, within Section 32, Township 17 North, Range 9 East**

CHAIRMAN DURAN: We're going to try and adjourn this meeting at 10:00 so I'm going to limit testimony to three minutes per individual. I can only tell you, I'd like to tell you about this particular case. The applicant met with the Agua Fria Village Association and I was at that meeting and the concern that they had was that they uses that the applicant came up with were conducive to the rural character and solitude of that area. I believe that was the message given to the applicant and we'll see what he came up with. Frank?

MR. WHITE: Thank you, Mr. Chairman, Commissioners. Just to add to that, he did meet with the Agua Fria Village Association and two of the neighbors, Frank and Arlene Tercero. They did supply a letter and the applicants are in agreement with the conditions and so forth. If you could take a look at page 2 of the memo, there's two buildings, basically the uses are going to be for light commercial. No RV or auto storage. It can possibly be for parking for customers and employees, and that's for the existing, 1,600 square foot building. The proposed 2,000 square foot building, and this is the north portion of the property, similar uses, light commercial. And auto mechanics shop would be fine. No towing or auto salvage or auto storage of any kind. Nothing to look like a wrecking yard.

The applicant also met with the neighbors, Frank and Arlene Tercero. They were in agreement with the Agua Fria Development Review Committee suggestions. They also supplied a letter. That's within the packet. The applicants did sign the letter and are willing to comply with any conditions, any requests that the community does have regarding this project.

Staff's recommendation is that this is not in accordance with Article III, Section 4.1 of the Land Development Code and in granting and in granting this variance, the purpose of locating commercial, industrial and non-residential businesses within the potential nodes would be violated. Therefore staff recommends denial of the requested variance. Thank you, Commissioners.

CHAIRMAN DURAN: Frank, this property had a history of being used as a auto salvage place, towing area, is that correct?

MR. WHITE: Mr. Chairman, Commissioners, this has not been used as an auto storage, auto salvage yard. It was used by Rocky Mountain Cable for storage of cables, electrical supplies. They had import auto salvage and a few other businesses that

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did have business licenses. The problem is it did lose its grandfather status.

CHAIRMAN DURAN: So it never was a vehicle storage place or towing or anything.

MR. WHITE: At one point it was Paul's Towing. That's correct.

CHAIRMAN DURAN: Okay. In looking at the uses for the 1600 square foot building, I recall in the meeting they had with the Agua Fria Village that they wanted to make sure that whatever activity took place in that building was—because there was some question about recreational, all-terrain recreational vehicles being sold there. And they wanted to make sure that it was limited to light commercial use for offices or businesses. So as long—I'm not sure that we need to put no RV or auto sales there, just provided that the applicant understands that the association gave the applicant their blessing provided that that front spot was sales or business.

And the 2000 square foot building, there was some concern that there would not be any car repair that would cause a lot—they didn't want to hear a bunch of jack hammers, and banging on metal and stuff like that. And if that did occur, that there had to be a limit on when that could occur, like 6:00 or something like that. So anyway, that's just my report on what happened at the Agua Fria Village Association. Any questions of Frank?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Frank, on this letter of September 24th, to you from Phillip Padilla, has the applicant agreed with all of these conditions?

MR. WHITE: Mr. Chairman, Commissioner Sullivan, the applicant does agree.

COMMISSIONER SULLIVAN: So, Commissioner Duran, you're saying that even though the applicant agrees, you think that some of those conditions should be stricken?

CHAIRMAN DURAN: On the 2000 square foot building?

COMMISSIONER SULLIVAN: Yes.

CHAIRMAN DURAN: Well, I'm just saying that if the auto mechanics shop, there was some discussion that if there was an auto mechanics shop there that the noise would be curtailed and that at 10:00 at night they wouldn't be hearing somebody with a jackhammer or something, you know.

COMMISSIONER SULLIVAN: A lug wrench or something.

CHAIRMAN DURAN: Right. A lug wrench thing. That's what I was thinking. So if there's some way we can make sure if this thing goes forward that that's part of the recommendation, that noise is limited after 6:00. I don't know how else to say it. I need help with that because I'm getting tired.

MR. WHITE: Mr. Chairman, if I may, this is for the locational criteria, a variance of locational criteria. It needs to return for master plan, preliminary and final. It will return to the Agua Fria Development Review Committee as well as the Board of County Commissioners. If this is approved tonight we do have a condition that they will need to

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comply with neighboring properties as well as the Agua Fria Village Association. So I believe that those two entities can really help the applicant along.

CHAIRMAN DURAN: Well then I don't have a problem with it. We just want to make sure that what he brings forward in his master plan are in line with what the association agreed to in order for him to move forward with the variance.

COMMISSIONER SULLIVAN: Seems like he's making a lot of concessions here, although I realize it's not in the commercial node so we're creating a sub-commercial node as it were.

CHAIRMAN DURAN: It was already used for that and there might have been a little, some misrepresentation or perhaps not enough due diligence to ascertain whether or not he could actually do this on this property without going through a variance.

And the association in discussing this with them felt that it was, that he had made adequate concessions to address the concerns of the community, of the village and did not feel threatened by his proposal.

COMMISSIONER CAMPOS: Mr. Chairman, I'd like to make a motion to deny the variance on the basis that it violates the Land Development Code and there's no evidence that would satisfy the criteria for a variance.

CHAIRMAN DURAN: Well, I would let you do that but we haven't even gotten to that point yet.

COMMISSIONER CAMPOS: We've already had the case. It's been here before. We've had public comment.

CHAIRMAN DURAN: Well, we still have to have it now. I'll let you make that motion after we're done with public comment. Is the applicant here? Would you like to add something for the record please?

[Duly sworn, Phillip Padilla testified as follows:]

PHILLIP PADILLA: My name is Phillip Padilla. My address is 2724 Henry Lane. I brought this whole situation before the Agua Fria Association and I also talked to my neighbors about this and we did agree. I've taken my neighbors through a tour of the property and he felt very comfortable with what I was going to do, that I was going to upgrade this property and I told him I'd keep the noise to a minimum. We had discussed the situation of a body shop and I told him I wasn't for that at all because of noise conditions and other hazardous conditions that could occur on that land.

CHAIRMAN DURAN: So Mr. Padilla, you met with Mr. Tercero after the Agua Fria Village meeting?

MR. PADILLA: Yes, Mr. Chairman, I sure did.

CHAIRMAN DURAN: Because I know there was some concerns that he had. There's a letter in here, Exhibit G, a letter from him. Is that—

MR. PADILLA: Yes, sir.

CHAIRMAN DURAN: Which he asked to be considered as additional requirements. Are you in agreement with this?

MR. PADILLA: Yes, I sure am, Mr. Commissioner.

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CHAIRMAN DURAN: Do we have that Frank?

MR. WHITE: Yes we have. It's in the packet.

CHAIRMAN DURAN: Where would that be?

MR. WHITE: It's Exhibit G. And it has been signed by the applicant.

CHAIRMAN DURAN: Okay. I see it. Are there conditions that Mr. Tercero would like to see incorporated into staff's recommendations?

MR. WHITE: Mr. Chairman, this would be at the master plan level that we can incorporate these into the actual proposal.

CHAIRMAN DURAN: But we wouldn't have a problem making sure that the record reflected that that was going to be part of the master plan.

MR. WHITE: That would not be a problem.

CHAIRMAN DURAN: Okay. Any questions of the applicant?

COMMISSIONER SULLIVAN: Mr. Padilla, one of the conditions from the Terceros was—it's not in the other staff conditions but one that the chairman just mentioned is only daytime businesses allowed. And it doesn't say with regard to which building but are you comfortable with that? If you have a mechanics shop, there's times when you've got to work at night if you're going to make a buck.

MR. PADILLA: I can understand that and I'm pretty much in agreement to that from an eight to five type service within that vicinity right there.

COMMISSIONER SULLIVAN: I would see that it's reasonable, if that's your definition of a daytime business as opposed to having a nightshift that works from five to midnight or something like that. I can see that. But I think it's a little bit restrictive to ask someone not to work at all at night. I think it's reasonable to ask them to work quietly. I guess we can iron this out at the master plan stage, what that means. But your understanding of that is a daytime business being an eight to five business doesn't mean you have to lock the door and can never go back in until 8:00 the next morning. That would be, to me, unreasonable.

MR. PADILLA: I agree.

CHAIRMAN DURAN: I think putting some torque on a bolt is kind of quiet thing, depending on how much you grunt. We can do that at master plan. Is there anyone out there that would like to speak for or against this issue? What's the pleasure of the Board?

COMMISSIONER SULLIVAN: Mr. Chairman, I would move for approval with condition one, An application for master plan and development plan approval must be submitted for AFDRC and BCC approval, and condition two, In addition to Santa Fe County Code requirements, the master plan must comply with the terms and conditions requested by neighboring property owners and the Agua Fria Village Association, as outlined in the memorandum dated September 24, 2001 to Frank White, Development Review Specialist, and three, That the conditions requested by Francisco and Arlene Tercero be a part of the master plan approval, be considered in the master plan approval process.

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CHAIRMAN DURAN: Second.

COMMISSIONER SULLIVAN: Frank, does that do it?

MR. WHITE: That would be fine, Commissioner Sullivan.

COMMISSIONER SULLIVAN: Is the applicant okay with that?

MR. PADILLA: Yes, sir.

CHAIRMAN DURAN: Any further discussion? Those in favor signify by saying "aye." [Commissioners Sullivan, Duran and Trujillo voted with the motion.] Opposed? [Commissioner Campos voted against.] Motion carries.

Roman, is CDRC Case MIS 01-5811, the last one, has that been tabled?

MR. ABEYTA: Mr. Chairman, no. That has not been tabled.

- IX. B. 7. CDRC CASE #A/V 01-5260: Jeanine Firsich Variance. Jeanine Firsich, applicant, requests a variance of Article III, Section 10 (lot size requirements) of the Land Development Code to allow for the placement of a second home on 1.38 acres. The property is located at #2 Cedar Court, within Section 19, Township 10 North, Range 7 East.**

MR. DALTON: Thank you, Mr. Chairman. There is currently one home and one home and one septic system on the property. The existing dwelling is served by Entranosa Water. The applicant stated that she was in a car accident and her back was broken in two places. The applicant since this time has had two back surgeries and three knee surgeries. The applicant states her doctor recommends that she be close in proximity to someone for help. The applicant also states that due to her financial situation, she is no longer able to afford the mortgage on her current home due to the fact her husband has recently passed away.

Recommendation: Staff recommends that the request for a variance be denied. The intent of the Code is to set minimum lot size in this area at five acres per dwelling unit. The decision of the CDRC was to recommend approval of a variance to allow the placement of a second home on 1.38 acres subject to the following conditions. Mr. Chairman, may I enter those into the record?

[The conditions are as follows:]

1. A temporary permit will be issued for a period of four years to be renewed for consecutive four-year periods by Staff. The applicant at that time must prove the hardship still exists.
2. The applicant shall connect the proposed mobile home to Entranosa Water and provide Staff a letter of service.
3. The mobile home is not to be placed on a permanent foundation.
4. No additional permanent structures to be erected on site to support either dwelling.
5. The existing driveway will serve the proposed residence.

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6. The applicant must follow all other building permit regulations including construction of a retention/detention pond.
7. Failure to comply with all conditions shall result in administrative revocation of the variance.

CHAIRMAN DURAN: Any questions of Wayne?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Wayne, how far is this property from the annexed area of Edgewood?

MR. DALTON: Can you repeat that question?

COMMISSIONER SULLIVAN: How far is this parcel from the nearest annexed parcel of Edgewood?

MR. DALTON: It's a subdivision so it's not very far from the adjacent. I would say approximately a mile or so. It's in a little cul-de-sac.

COMMISSIONER SULLIVAN: And within the area, the town boundaries of Edgewood, the annexed area, what would be the lot size requirements? Would it also be five acres?

MR. DALTON: This is in the metro area of Edgewood so I believe, yes, it would be five acres.

COMMISSIONER SULLIVAN: So the Edgewood requirement would be five acres?

MR. DALTON: There's a few—in Edgewood there's a traditional community, which is three-quarters of an acre, and a metropolitan area which is five acres.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, in the city limits of Edgewood, I don't know if anybody here is familiar with what their minimum is. I know I'm not. I don't know if Frank or—

COMMISSIONER SULLIVAN: Well, what are you talking about the five acres then? Edgewood doesn't have an Extraterritorial Zone, does it?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, no. There's no—they may by law but there's no formal agreement between Edgewood and the County of Santa Fe that establishes a zoning ordinance and regulations.

COMMISSIONER SULLIVAN: It certainly looks like the lots are a lot smaller than five acres in downtown Edgewood.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, the majority of the downtown Edgewood is in the traditional community or what we used to consider the traditional community before it was annexed, and the minimum was three-quarters of an acre.

COMMISSIONER SULLIVAN: And this is outside that?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, yes, this is outside that.

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COMMISSIONER SULLIVAN: And Frank, have you visited the site?

MR. DALTON: Mr. Chairman, Commissioner Sullivan, yes I did.

COMMISSIONER SULLIVAN: And what's the surrounding area in terms of approximate lot sizes.

MR. DALTON: I would say it's roughly about the same. One acre. Maybe a little over.

COMMISSIONER SULLIVAN: About one acre?

MR. DALTON: I would say.

COMMISSIONER SULLIVAN: Thank you.

COMMISSIONER TRUJILLO: One more question. You're saying the de facto size of the lots is one acre? The existing lots that are there are one acre?

MR. DALTON: Mr. Chairman, Commissioner Trujillo, I would say approximately one acre. They don't look very big.

COMMISSIONER TRUJILLO: And there's a minimum lot size requirement of five acres?

MR. DALTON: Yes.

COMMISSIONER TRUJILLO: So nobody's satisfying that requirement?

MR. DALTON: Mr. Chairman, Commissioner Trujillo, I really couldn't answer that question. The lots look fairly equal in size in the subdivision.

COMMISSIONER TRUJILLO: But they're less than five acres.

MR. DALTON: I would say yes.

CHAIRMAN DURAN: Okay. Thank you. Is the applicant here. Please step forward. State your name for the record and let the recorder swear you in.

[Duly sworn, Jeanine Firsich testified as follows:]

JEANINE FIRSICH: My name is Jeanine Firsich.

CHAIRMAN DURAN: Mrs. Firsich, if you are approved this evening, are you in agreement with the CDRC's recommendations?

MS. FIRSICH: Yes.

CHAIRMAN DURAN: Do you have anything to add?

MS. FIRSICH: I'd like to answer his question. We are in a private subdivision with all kinds of covenants. I'm three miles exactly from my driveway to the post office of Edgewood, off of Old 66, and our lots vary from $\frac{3}{4}$ of an acre to six acres in this private subdivision. And I'm secretary-treasurer of the association. I have sent letters to every single homeowner in the subdivision. I have not, to my face, I have not been told anything derogatory against me moving there. And I'm not taking over my son's lot' I'm borrowing it for the time I have left. I have been told by my doctor that I have heart trouble, very serious heart trouble. I have anemia and I no have ulcers thanks to all of this and my husband dying.

CHAIRMAN DURAN: Thank you. Any questions of the applicant?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

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COMMISSIONER SULLIVAN: Are there other lots within the subdivision that have two trailers on a lot?

MS. FIRSICH: Not yet, but there are petitions out already. Yes. There will be.

COMMISSIONER SULLIVAN: But there are other lots, you said, within the subdivision that are as small, three-quarters of an acre?

MS. FIRSICH: Yes.

COMMISSIONER SULLIVAN: Thank you very much.

CHAIRMAN DURAN: Let's hope they don't all come with the same story. Is there anyone out there that would like to speak for or against this matter? What's the pleasure of the Board?

COMMISSIONER SULLIVAN: Move for approval, Mr. Chairman.

COMMISSIONER TRUJILLO: Second, Mr. Chairman.

CHAIRMAN DURAN: There's a motion and a second. Any further discussion? Those in favor signify by saying "aye." [Commissioners Sullivan, Trujillo and Duran voted aye.] Opposed? [Commissioner Campos voted nay.] Motion carries.

MR. DALTON: Excuse me, Mr. Chairman. Is that approved with staff's conditions?

CHAIRMAN DURAN: Yes.

COMMISSIONER SULLIVAN: Yes, with staff conditions.

CHAIRMAN DURAN: So for those of you that are left tonight, please speak directly into the microphone.

- IX. B. 8. CDRC CASE #V 01-5240: Melvin Varela Variance. Melvin Varela, applicant, requests a variance of Article V, Section 8.2.7d (Grade Percentages) of the Land Development Code to allow for a driveway to be 16% in grade at an intersection instead of the Code required 3% grade in order access five lots. The property is located off State Road 50; a portion of the property is located within the Traditional Community of Glorieta, within Section 36, Township 16 North, Range 11 East**

MR. WHITE: Mr. Chairman, under the issue, this is a roadway. The memo does say driveway. It is a roadway. The applicant states that the entrance to his property is 16.5 percent in grade for approximately 200 feet and is solid rock. The applicant states that it would be a hardship to obtain a 3 percent grade for the roadway.

The applicant has provided a letter from the Glorieta Fire Chief stating that emergency vehicles would be able to access the site at the existing grade. This is Exhibit D of your packets. The County Fire Marshal has reviewed this application and will approve the grade of the road at 11 percent maximum per Code and practice. Also, an all-

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weather driving surface is recommended.

Article V, Section 8.2.7d of the Land Development Code that states that grades at the approach to intersections shall not exceed 3 percent for 100 linear feet, excluding vertical curve distance. This is Exhibit E of your packets.

Recommendation: Staff recommends that this variance be denied based on Article V, Section 8.2.7d of the Land Development Code which requires grades at the approach to intersections not exceed three percent for 100 linear feet. The decision of the CDRC was to recommend approval of a variance of Article V, Section 8.2.7d, Grade percentage of the Code, with the following conditions. If I may enter them into the record, Mr. Chairman.

[The conditions are as follows:]

1. The applicant will submit an approved State Highway Department driveway permit to access five lots prior to grading of the access road.
2. The applicant shall indicate the Traditional Community boundary on the proposed plat.
3. The roadway shall not exceed nine percent on the first 100 feet. The applicant shall explore the possibility of constructing a landing within the first 100 feet.

CHAIRMAN DURAN: I have a question. So the CDRC's recommendations were nine percent grade, which is not—and he was asking for 16?

MR. WHITE: Mr. Chairman, he is asking for 16 but he is in agreement with the conditions set forth by the CDRC, which is nine percent with a possible landing.

CHAIRMAN DURAN: So in our deliberation tonight, we should be looking at a nine percent.

MR. WHITE: Nine percent. That would be correct.

CHAIRMAN DURAN: Any questions of Frank?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Frank, what is the sight distance either way? The purpose of keeping the grades down at an intersection is so that you're able to have an unobstructed view to the right and left as you come out onto the highway. I haven't seen this particular property. What's your call on the sight distance?

MR. WHITE: Mr. Chairman, Commissioner Sullivan, the CDRC as well as staff did perform a site visit. The sight distance is not bad at all, in fact it's very visible. I think the concern is the actual steepness of the slope coming out, especially in bad weather, winter, so forth. That would be the main concern. Safety.

COMMISSIONER SULLIVAN: You're coming down to the highway or you're coming up to the highway?

MR. WHITE: You would be coming off the highway up into the subdivision. If you're going out of the subdivision, you'd be going down the slope into the highway.

COMMISSIONER SULLIVAN: You'd be sliding down—

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MR. WHITE: Possibly.

COMMISSIONER SULLIVAN: And onto the highway. Okay. I believe, and correct me if I'm wrong, that the City's maximum is eight percent, is it not, for long drives into a residence?

MR. WHITE: Mr. Chairman, Commissioner Sullivan, eight percent seems reasonable. I don't know what the City would require. The state, that sounds like something the state would require. I believe eight percent would be for the state regulation.

COMMISSIONER SULLIVAN: I don't have a problem with nine percent.

MR. WHITE: In fact just to go a little bit further, it is eight percent with the state. Maybe ten percent would be the maximum limit.

COMMISSIONER SULLIVAN: And this would be gravel?

MR. WHITE: Well, the Fire Marshal is requiring an all-weather driving surface, which would be paved.

COMMISSIONER SULLIVAN: I would sure recommend that because I've had trouble with a four-wheel drive Explorer getting up gravel eight percent.

CHAIRMAN DURAN: I know.

COMMISSIONER SULLIVAN: And it's tough. In good weather. So if they're able to pave that, then it gives you a lot more traction.

MR. WHITE: That would be fine. We would have to enter that as a condition.

COMMISSIONER SULLIVAN: That's not a current condition?

MR. WHITE: It is not.

COMMISSIONER SULLIVAN: I don't know what paving means. All-weather means something more substantial than gravel.

MR. WHITE: According to the Fire Marshal it's a paved roadway.

CHAIRMAN DURAN: So if we agree to all-weather it would be paved?

MR. WHITE: It would be paved. Of course we'd have to ask the applicant if he's in agreement with that.

COMMISSIONER SULLIVAN: I would sure recommend that because it's just extremely hard to control a car on a grade above eight percent on gravel.

CHAIRMAN DURAN: Any other questions of Frank. Is the applicant here? Could you please come forward, state your name for the record and let the recorder swear you in. And please speak directly into the microphone.

[Duly sworn, Melvin Varela testified as follows:]

MELVIN VARELA: Melvin Varela. When I brought this property it was a total of almost nine acres. I've done other subdivisions in the past where I've tried to do affordable properties for people that ordinarily can't afford properties like that. In this particular case, it's in the traditional community so it's allowed in the first two lots, ¾-acre lots, so we've done a summary survey where it's come out to about 1.66 acres on each lot. Of course, like I stated earlier, I try to keep the property sales, when I do sell

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them, down to a minimum but every time that we encounter other staff recommendations as to what we need, like plan and profiles, engineering costs and all this, it's been raising the cost. If we have to take all that rock out of that driveway, well then of course that raises the cost of the property, which when we do sell, if we sell, it doesn't become that affordable anymore. So that's what presents a hardship.

As far as what the driveway is right now, coming off Highway 50, that is a ten percent grade which was done by the state about five years ago. I don't have a problem in meeting that nine percent grade. I don't have a problem with paving it and setting a landing in that first 100 feet. We're trying to work with the State Highway Department in order to get that resolved. So I don't have a problem if you do approve it that way.

CHAIRMAN DURAN: In my mind, I wasn't going to ask you to pave the whole road but just the front.

MR. VARELA: The first 100 feet.

COMMISSIONER SULLIVAN: I think it recommends 200.

CHAIRMAN DURAN: Two hundred feet?

COMMISSIONER SULLIVAN: I was just reading the CDRC minutes. It says, "In response to a series of questions asked by Member Anaya, Mr. White offered that the driveway would have to be paved for at least 200 feet."

CHAIRMAN DURAN: But the front part says 100 feet.

COMMISSIONER SULLIVAN: Which part is that?

CHAIRMAN DURAN: The roadway shall not exceed nine percent for the first 100 feet. The applicant shall explore the possibility of constructing a landing within the first 100 feet. That's condition three. Right? Am I wrong?

COMMISSIONER SULLIVAN: I see that.

CHAIRMAN DURAN: Okay. Any questions of the applicant? Thank you, Mr. Varela. Is there anyone out there that would like to speak for or against this issue? Please step forward and state your name for the record.

[Duly sworn, Keith Padrone testified as follows:]

KEITH PADRONE: Keith Padrone. I'll be real brief. Mr. Varela's intentions are to keep housing affordable for people and if these certain accusations or situations keep coming up by the staff then like he said, the homeowners who do buy the property will have to absorb the cost. So basically his intentions are just to keep affordable housing for the people that can't afford it and like I said, if these conditions keep coming then he has to put it into the cost of the home, which raises the price, obviously. So I'm in favor of Mr. Varela.

CHAIRMAN DURAN: Okay. Thank you very much sir. Anyone else out there would like to address the Commission?

[Duly sworn, Cipriano Varela testified as follows:]

CIPRIANO VARELA: Cipriano Varela. Commissioners, I'm impressed with the fact that Mr. Varela says he wants to build affordable homes. I think that's a good enough reason to build anything. However, I know a particular house that he sold up

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at Cow Creek which was in the \$100,000 range. I don't know if you would call that affordable. At any rate, like I say, I don't know if you could call that affordable but I think his intentions are good as long as you carry them out.

However, we're concerned about the road. One of the things that hasn't been addressed is the drainage. The road is draining right into State Road 50 right now and every time one of the trucks or vehicles comes out of that place there's big old clumps of mud on the road for 50, 100 yards or so. And there is a possibility, because there's some houses across from that road, that if the drainage is not addressed it's going to drain into those houses. I'm talking about Mr. Roybal's place across the road.

I don't know if this has been thought of, safety. I'm concerned about safety also. But are we just concerned to keep this at a certain grade level just for the cost or are we concerned as is really going to happen though, this affordable housing.

CHAIRMAN DURAN: We have no requirement for him to provide affordable housing. Our Code requires that he build it to certain standards so if he says he's going to do affordable, we have no way of ensuring that he does that.

MR. C. VARELA: I knew you didn't. I just heard this along the way so I kind of responded to it. I was just wondering what kind of a gimmick that was. Okay. Thank you.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Frank, I have another question. The recommended CDRC conditions says the roadway shall not exceed nine percent for the first 100 feet and the applicant shall explore the possibility of constructing a landing within the first 100 feet. What happens after the first 100 feet? I'm looking at a situation when I look at that profile, which is this item. When you look at the profile, there's 180-foot vertical curve there and if the first 100 feet is at nine percent and he constructs a landing, then what that means is the next 100 feet or so are going to be well over 11 percent, because he's got to meet the existing slope about 200 feet back. See what I'm saying? So if he constructs a landing and goes nine percent then the balance of the road is going to 11, 12, 13.

MR. WHITE: Right. Mr. Chairman, Commissioner Sullivan, I see what you're saying. Keep in mind the Fire Marshal can support 11 percent, which is probably what it's going to pan out to be.

COMMISSIONER SULLIVAN: I would think that we should—200 feet of paving is not that expensive. It's not much more than a driveway. I would think that if we say nine percent, as these conditions state, that we should also say that 200 feet should be all-weather, and that the balance of the road should not exceed 11 percent. If you stayed nine percent all the way along, you're going to end up probably 300 or 400, 500 feet of road cut through the rock and that will be extremely expensive to the applicant. But if you get over 11 percent, then fire trucks aren't going to be able to get in.

So my suggestion, if that jibes with what you've seen out on the site, would be 200-

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foot all-weather, first 100 feet, nine percent. Balance, no greater than 11 percent.

MR. WHITE: That would be 200 feet all-weather.

COMMISSIONER SULLIVAN: And 200 feet would be all-weather.

There's nowhere else where the road exceeds those kinds of slopes. Once you get beyond about 200 feet, then you have a seven percent slope, you have a six percent slope, you have an 8.9 percent slope, you have a 1.9 percent slope. So there's nowhere else that it's over 11 percent, or that's over actually nine percent. So that would be a recommended condition that I think would be reasonable.

CHAIRMAN DURAN: Okay.

COMMISSIONER SULLIVAN: And if there's no other, Mr. Chairman, I would so move.

CHAIRMAN DURAN: Second. Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

- IX. B. 9. CDRC Case #MIS 01-5811. Vallecitos de Gracia Time Extension. Jim Brown applicant, Jim Siebert, agent, request a one-year extension to the expiration date of a preliminary plat for Vallecitos de Gracia, a 16-lot residential subdivision on 42 acres, which expires October 8, 2001. The property is located along County Road 54, northwest of the Downs Racetrack, within the traditional historic community of La Cienega, within Sections 22, 27, and 28, township 16 North, Range 8 East**

MR. WHITE: Thank you, Mr. Chairman, Commissioners. On November 14, 2000, the Board granted a one-year extension subject to no further extensions and the plat would be granted. The conditions were read into the record, but it was unclear whether they were accepted within the motion. This is Exhibit D of your packets. It was staff's opinion at the last request for the extension that only one year would be granted due to the pending La Cienega Community Plan, which at that time, may have changed the zoning on this area.

On August 14, 2001, the La Cienega Community Plan was adopted. The zoning has not changed but other regulations regarding submittals and procedures for subdivisions have. The applicant is now requesting a one-year extension for the preliminary plan and plat, which expired October 8, 2001, which was yesterday.

The applicant states that the property is presently the subject of litigation caused by the difference of opinion between the prior landowner and the present owner regarding land improvements. The law suit was heard at the end of September. The applicant is requesting a one-year time extension in order to resolve this matter.

Article V, Section 5.3.6a of the County Code states an approved or conditionally approved preliminary plat shall expire 24 months after its approval or conditioned

approval. Prior to the expiration of the preliminary plat, the subdivider may request from the Board an extension of the preliminary plat for a period of time not to exceed 36 months. This is Exhibit G of your packets.

Recommendation: This will be the applicant's third request for an extension of time for this preliminary plan and plat. It is staff's position that this project has been given ample time to proceed with final plan and plat. Due to the newly adopted La Cienega Community Plan, and this being the third request for an extension of the preliminary plat and plan, staff recommends that this request for an extension be denied. Thank you.

CHAIRMAN DURAN: Frank, if we approve this, does it exceed the 36 months?

MR. WHITE: Mr. Chairman, if you approve it, it will not exceed the 36 months. It was granted one year through the EZ when it was not under the County jurisdiction, and it was granted another year in November.

CHAIRMAN DURAN: So the Code allows for an extension not to exceed 36 months and if we granted this approval we would not be in violation of that?

MR. WHITE: Mr. Chairman, you would not be in violation—

CHAIRMAN DURAN: Thank you. And I know that there's a community plan there and all that.

MR. WHITE: Right. And that was taken into consideration.

CHAIRMAN DURAN: Okay. Any questions of Frank?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I'm a little confused. Frank, you just said that you recommend denial, is that correct?

MR. WHITE: Mr. Chairman, Commissioner Sullivan, that is correct.

COMMISSIONER SULLIVAN: And I'm reading in the—oh, this was the BCC minutes of November 2000 where they recommended due to the La Cienega Community Plan that they recommended a one-year extension at that time.

MR. WHITE: That is correct and that is the reason for our recommendation.

COMMISSIONER SULLIVAN: Now, let me be clear. Is the issue that whether or not the staff recommendations were in there or not in there, by granting the time extension, are we also saying that the staff conditions that are under question are not appurtenant then to the subdivision?

MR. WHITE: Mr. Chairman, Commissioner Sullivan, whether they were in there or not, I believe the applicant has the right to come forward with this request. Of course it was unclear whether they were included within the motion.

COMMISSIONER SULLIVAN: So this approval doesn't change whether there were or were not staff conditions.

MR. WHITE: I would have to defer to Legal but I wouldn't think so.

COMMISSIONER SULLIVAN: Mr. Kopelman, do you have a thought on

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that? The question is whether, apparently it's under dispute as to whether the staff conditions were included in the original approval of the subdivision and now, since then, the La Cienega plan has been adopted, which has different requirements. So I guess the question is under what requirements does this subdivision exist? Does it exist under (a) the La Cienega plan requirements, under (b) the approved plan with staff conditions, or (c) the plan with no staff conditions? Or is none of that the subject of this?

MR. KOPELMAN: Mr. Chairman, Commissioner Sullivan, with a master plan, there's no vested rights at all. He doesn't have a final development plan approval, so arguably, he could be subject to the new regulations. That's definitely legally possible at this point.

COMMISSIONER SULLIVAN: And the master plan has not been approved yet or has been approved?

MR. KOPELMAN: The master plan has been approved.

COMMISSIONER SULLIVAN: The master plan has been approved. But the preliminary development plan has not.

MR. KOPELMAN: I'm not sure. Does he have preliminary? He does have preliminary.

COMMISSIONER SULLIVAN: He doesn't have final.

MR. KOPELMAN: He doesn't have final. He has preliminary.

COMMISSIONER SULLIVAN: So at the final stage, could additional staff conditions be included in the approval?

MR. KOPELMAN: I believe that legally, you can do that. Yes, Mr. Chairman, Commissioner Sullivan.

COMMISSIONER SULLIVAN: So an extension at this point in time wouldn't preclude the Commission from adding conditions to the final plat approval.

MR. KOPELMAN: Mr. Chairman, Commissioner Sullivan, that's correct.

COMMISSIONER SULLIVAN: Thank you.

CHAIRMAN DURAN: Is the applicant here? Do you have anything to add for the record?

[Duly sworn, Jim Siebert testified as follows:]

JIM SIEBERT: My name is Jim Siebert. My address is 915 Mercer. Just to clarify the issue of jurisdiction. When we originally submitted it, it was under the Extraterritorial jurisdiction. Once they adopted the local, the La Cienega Local Development Review Plan and Committee, it then came under the jurisdiction of the County Development Code, and that's the jurisdiction that it falls under right now is the County Development Code.

In terms of the conditions, we'll acknowledge for the record that the conditions that were imposed on the subdivision still continue to exist. We have to go through a final plat process which would go to the La Cienega Local Development Review Committee and then on to the Board, so there's still opportunity to apply additional conditions that you may feel appropriate. In terms of the background, this has been the subject of litigation since 1998 and it

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has to do with, actually it has to do with some of the standards and what standards were in place at what time. In fact, County staff has provided testimony at deposition regarding this matter and it's something that was going to trial in September. The attorney had open heart surgery so it's been delayed and probably will be delayed another month for the actual trial to take place. And I'll answer any questions you make have.

CHAIRMAN DURAN: Any questions of Jim?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Jim, the staff seems to feel that enough is enough with this subdivision. It's been renewed twice. What in your feeling gives us—why should we think that it's going to be resolved in another year, at which time the 36 months—

MR. SIEBERT: The staff is correct. There has been ample time. What distinguishes this from other cases is the fact that it has been the subject of litigation since 1998. If the applicant proceeds forward, there may be an issue of him giving up certain rights in the process of doing that. The difference is it has been the subject of litigation for 2 ½ years but not it's actually—they had a trial date set in September and that had to be postponed because of the problem with one of the attorneys.

COMMISSIONER SULLIVAN: Thank you.

CHAIRMAN DURAN: Any more questions? Is there anyone out there that would like to speak for or against this case? Let the record note that there's no one out there. What's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER TRUJILLO: Move for approval of CDRC Case MIS 01-5811.

CHAIRMAN DURAN: Okay, there's a motion and I'll second it. Any further discussion? Those in favor signify by saying "aye." [Commissioners Trujillo, Duran and Sullivan voted aye.] Opposed? Motion carries. [Commissioner Campos abstained.]

Do we need to clarify that motion?

MR. KOPELMAN: Mr. Chairman, the motion was to extend it for another year.

COMMISSIONER SULLIVAN: I think Commissioner Campos' question is the CDRC Case number the case of the subdivision or the case for the extension of time.

MR. KOPELMAN: It's the extension. It's not the subdivision.

COMMISSIONER CAMPOS: I know that. It's just that the motion wasn't very clear.

EXHIBIT
1
SFC CLERK

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RECORDING 08/17/2004

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Via Fax to 986-6389 and Hand Delivery

August 22, 2001

Mr. Estevan Lopez
Santa Fe County Land Use Administrator
102 Grant Avenue
P.O. Box 276
Santa Fe, New Mexico 87504-0276

2003610

Re: Petition of Appeal of EZC decision in EZ Case DI 01-4080;
Application of William and Mary Marcia Burden for
Small Lot Family Transfer Subdivision of Tract B-2

Dear Mr. Lopez:

On behalf of my client, Otavio R. Peixoto da Silveira, and pursuant to subsection 3.8.C.1. of the Santa Fe Extraterritorial Zoning Ordinance ("EZO"), this Petition of Appeal to the Santa Fe Extraterritorial Zoning Authority ("EZA") is hereby submitted to appeal the approval by the Santa Fe Extraterritorial Zoning Commission ("EZC") at its August 9, 2001, meeting of the above-referenced application for Family Transfer Subdivision, EZ Case DI 01-4080.

Mr. Silveira owns property immediately adjacent to and south of Applicants' Tract B-2, including the land identified on the proposed family transfer subdivision plat as "Cloudstone Drive 50' R.O.W." This fifty (50) foot strip along the southern boundary of Applicants' Tract B-2 is the private property of my client, unencumbered by any easement rights for Tract B-2. Apparently, the Applicants propose to access the proposed family transfer subdivision of Tract B-2 via my client's property, without any easement for such use granted by my client or his predecessors in interest.

The specific grounds for this appeal are that the Applicants do not have any easement rights over my client's property to provide access or fire protection services for Tract B-2, all as required by, and in violation of, EZO subsection 5.2.C.4.e and subsection 3.4.8.D of the Santa Fe Extraterritorial Subdivision Regulations ("ESR").

In addition to the aforementioned violations, approval of this application by the EZC without first establishing an adequate access easement also violates EZO subsection 5.2.C.6.a and ESR subsection 3.3.6.D.2.a.

Please schedule this appeal for hearing before the EZA.

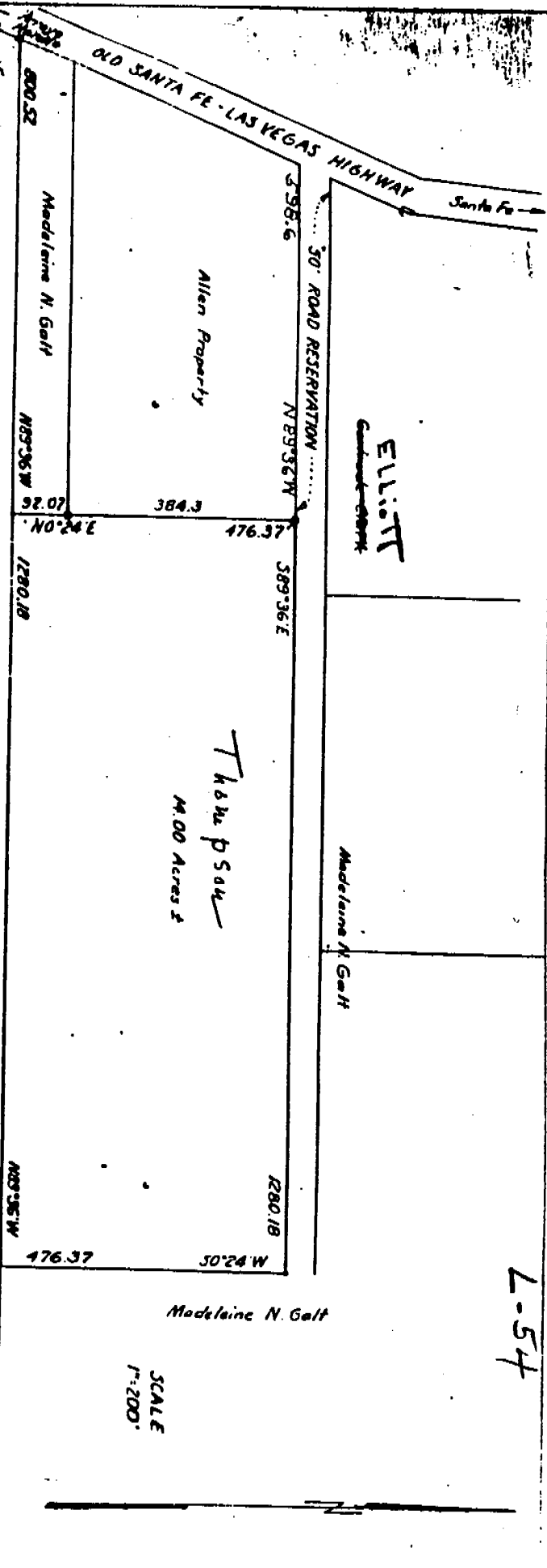
Very truly yours,


Walter C. Schliemann

WCS/ln

cc: Otavio R. Peixoto da Silveira

2003611



L-54

CERTIFICATE

I hereby certify that this map and the field notes hereon are a true and correct copy of surveys completed in the field November 25, 1959 by me.

Walter S. Taylor
 R.D. Prof. Eng. and Land Surveyor

Bradley - Olcott Property

Madeline N. Galt

SCALE
1"=200'

58936 E - 507 N: Annex
 5015E - 2181.95 to Sec
 Cor. 5-6-7-8, T4N R10E

LAND SURVEYED FOR
 MADIELE GALT
 SDC 6 T16R R10E

(B)

237FS4

STATE OF NEW MEXICO
COUNTY OF SANTA FE

Notary Public
1960-2004
1/25/2002
R. H. GALT
Notary Public

WARRANTY DEED

MADELEINE N. GALT, a widow, for consideration paid, grants to
BENJAMIN ELLIOTT and MAURINE A. ELLIOTT, his wife, the following
described real estate in Santa Fe County, New Mexico:

Commencing at an iron post with brass cap, naked witnessed
and set by the General Land Office for the corner common to
Sections 5-6-7 and 8 of Township 16 North Range 10 East, and
running N. 0°15' W., 2181.95 feet; thence N. 89°36' W., 3067.88
feet; thence N. 23°22' E., 571.7 feet to an iron stake set on
the easterly side of the Old Santa Fe-Las Vegas Highway for the
southwest corner of the lands herein described; thence, from
the said southwest end beginning corner, running N. 23°22' E.,
142.1 feet, along the easterly side of the Highway, to an iron
stake; thence running N. 6°40' E., 275.3 feet, along the easterly
side of the Highway, to an iron stake set for the northwest corner
of the lands herein described; thence, leaving the said Highway,
and running S. 89°36' E., 617.3 feet to an iron stake set for the
northeast corner of the lands herein described; thence S. 0°24' W.,
404.5 feet to an iron stake set for the southeast corner of the
lands herein described; thence W. 89°36' W., 702.8 feet to the
southwest corner, the point and place of beginning, containing
6.00 acres, more or less, and subject to any rights-of-way of
record. All as delineated upon that certain plat entitled,
"LANDS SURVEYED FOR MADELEINE N GALT SEC 6 T16N R10E", the
surveys for which were completed in the field August 25, 1959,
under the direction of Walter G. Turley, registered professional
engineer and land surveyor No. 95, and designated as file
Number 59F54.

with warranty covenants.

WITNESS my hand and seal this 6th day of April, 1960.

MADELEINE N. GALT (SEAL)

By Tom Galt
Her Attorney In Fact

STATE OF FLORIDA }
COUNTY OF DUYAL } ss.

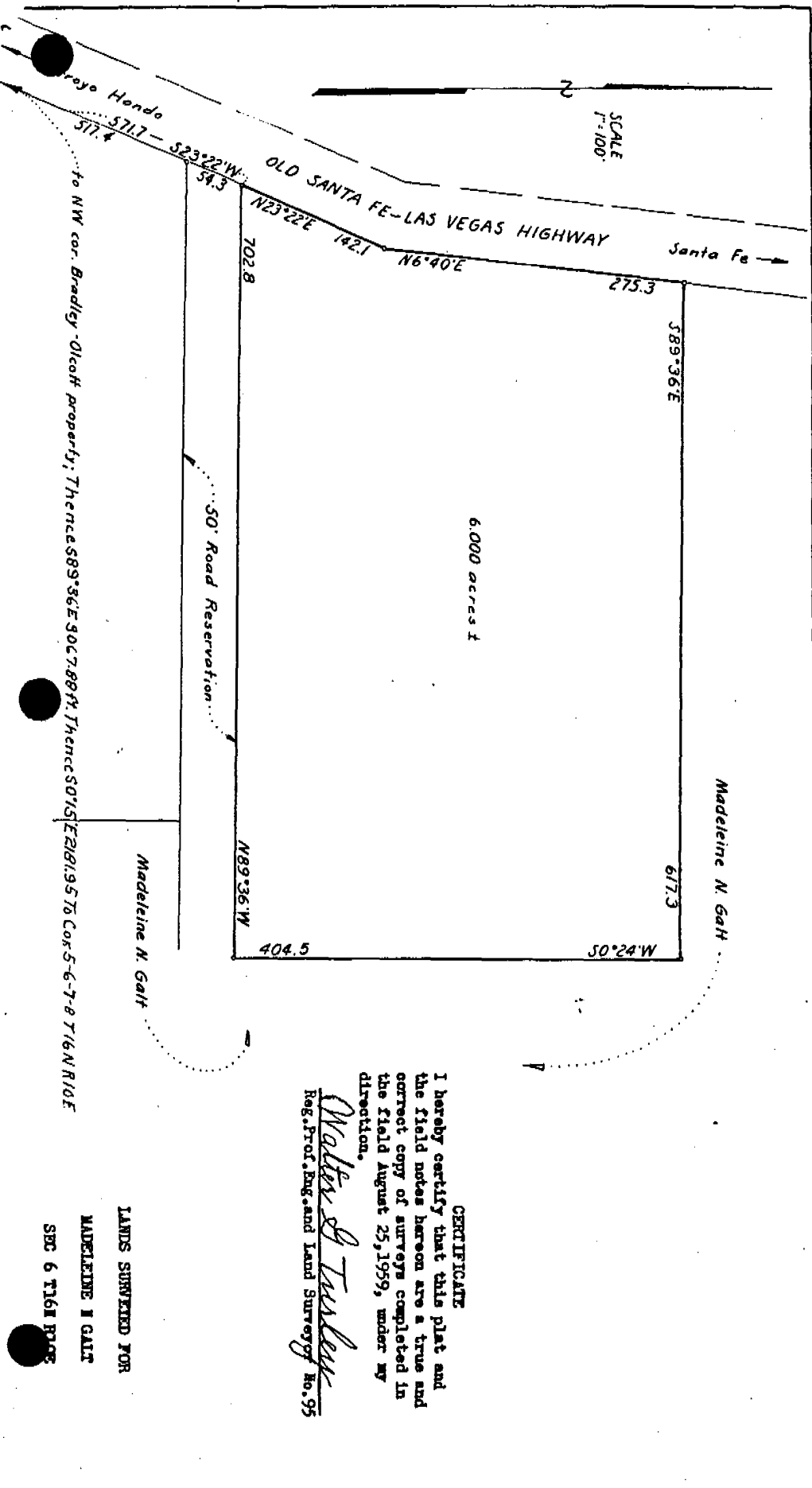
The foregoing instrument was acknowledged before me this 6th
day of April, 1960, by Tom Galt, as attorney in fact on behalf of
Madeleine N. Galt, a widow.

Jimmie Wright
Notary Public

Notary Public, State of Florida at large
My commission expires Dec. 3, 1960.
Bonded by American Surety Co. of N. Y.

Tom Cotton Box 788 city

2003613



6,000 acres ±

CERTIFICATE
 I hereby certify that this plat and the field notes hereon are a true and correct copy of surveys completed in the field August 25, 1939, under my direction.

Walter S. Insler
 Reg. Prof. Eng. and Land Surveyor No. 95

to NW cor. Bradley-Olcott property; Thence $S89^{\circ}36'E$ 3067.88 ft; Thence $S0^{\circ}15'E$ 2101.95 to Cor. 5-6-7-8 T16N R10E

LANDS SURVEYED FOR
 MADELEINE N GALT
 SEC 6 T16N R10E

52
12-95

GRANT OF EASEMENT

305667

ELIZABETH GALT CURRIER, an unmarried woman, and TOM GALT and SUSAN GALT, his wife, for consideration paid, grant to JOHN B. TOWNSEND, an unmarried man, a right-of-way and easement for utilities in common with others over and upon the following described real estate in Santa Fe County, New Mexico:

Commencing at an iron pipe set for and marking the southeast corner of that certain tract conveyed by Madeleine N. Galt to John B. Townsend, et ux. by warranty deed dated November 12, 1960, and recorded in Book 173 at page 24 of the records of Santa Fe County; thence from said point of beginning, which marks the northeast corner of the right-of-way being described, S. 0° 24' W., 50.0 feet to a point marking the southeast corner of the right-of-way being described; thence N. 89° 36' W., 1475.98 feet to an iron stake marking the southwest corner of the right-of-way which stake is set on the easterly side of the Old Santa Fe-Las Vegas Highway; thence along the easterly side of said highway N. 23° 22' E., 54.3 feet to an iron stake marking the northwest corner of the right-of-way being described; thence S. 89° 36' E., 1480.60 feet to the northeast corner of the right-of-way being described and the point and place of beginning.

WITNESS our hands and seals this 24 day of September, 1973

OF SANTA FE 155 358,856
NEW MEXICO)
Notary Public, and this instrument was filed
for record on the 12 day of OCT A.D.
1973 at 10:35 o'clock A.M.
and was duly recorded in Book 155
page 667 of the records of Santa Fe County,
New Mexico.
Witness my hand and Seal of Office
CAROL ANN CALIS
County Clerk Santa Fe, N.M.
Shirley Lopez
SHIRLEY LOPEZ

Elizabeth Galt Currier (SEAL)
ELIZABETH GALT CURRIER
Tom Galt (SEAL)
TOM GALT
Susan Galt (SEAL)
SUSAN GALT

STATE OF ARIZONA)
COUNTY OF PIMA) ss.

The foregoing Grant of Easement was acknowledged before me this
24 day of September, 1973, by Elizabeth Galt Currier, an unmarried

Lois ...
Notary Public

My commission expires:
6-6-76

Book 155, Page 667
Sept 24, 1973

WARRANTY DEED-JOINT TENANTS 306936

John B. Townsend, a single man
Benjamin Elliott and Maurine A. Elliott, as joint tenants
the following described real estate in Santa Fe County, New Mexico

2003615

Beginning at the northwest corner of this tract, which corner bears N. 89° 00' 30" W., 2,124.44 feet from an iron pipe, which pipe bears N. 0° 14' 00" E., 467.00 feet from the quarter corner of Sec. 5 and 6, T. 16 N., R. 10 E.; thence S. 0° 58' 27" W., 404.55 feet to an iron pipe; thence S. 89° 01' 15" E., 107.75 feet to an iron rebar; thence N. 0° 58' 27" E., 404.55 feet to an iron rebar; thence N. 89° 00' 30" W., 107.75 feet to the place of beginning, and containing one (1) acre, more or less. All as shown on a plat of survey of land in Sec. 6, T. 16 N., R. 10 E., N.M.F.M., done for John B. Townsend by Claude A. L. Pilley, a licensed surveyor, from a field survey completed by him on April 12, 1973, bearing his No. 01-N.M. 2051, and filed in the office of the County Clerk of Santa Fe County, New Mexico, on November 21, 1973, under Reception No. 359,936.

Together with a right-of-way and easement for utilities in common with others over and upon the real estate described as "Road Easement" on the plat of survey described above.

Together with and subject to the utility easement along the east side of the tract, as shown in said plat.

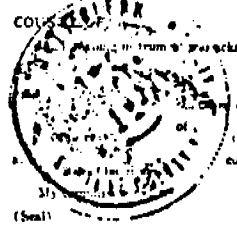
with warranty covenants
WITNESS my hand and seal this 29 day of NOVEMBER 1973
John B. Townsend
John B. Townsend

ACKNOWLEDGMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO
COUNTY OF SANTA FE
The foregoing instrument was acknowledged before me this 29th day of November 1973 by John B. Townsend, a single man
My commission expires June 16, 1975
Notary Public

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO
COUNTY OF SANTA FE
The foregoing instrument was acknowledged before me this 29th day of November 1973 by Benjamin Elliott and Maurine A. Elliott, as joint tenants
My commission expires June 16, 1975
Notary Public
Cardina R. Goncalves
County Clerk, Santa Fe County, N.M.



County Bureau #6008



City of Santa Fe, New Mexico

P.O. BOX 909, 200 LINCOLN AVE. 87501 • (505) 982-4471

LOUIS R. MONTANO
Mayor
ELIZABETH STEWART
Mayor Pro Tem
JERRY MANZAGOL
City Manager

COUNCILORS:
RICHARD B. CATANACH
BILL DIMAS
CARLOS GALLEGOS
JUDITH C. HERRERA
DIEGO MARTINEZ
J.M. (MACK) MOORE
ART SANCHEZ

May 13, 1985

2003616

Salvador Vigil
P.O. Box 5132
Santa Fe, N.M. 87501

RE: Case #S 1985-36. Townsend Replat, Tract B-1. Request preliminary and final plat approval of a family transfer on 4 acres. Salvador Vigil, Agent for Bill and Mary Marcia Burden. Property located on Old Santa Fe Trail, within the five-mile extraterritorial area. Proposing 2 tracts.

Dear Mr. Vigil:

This is to inform you that the Extraterritorial Zoning Commission at their meeting of Thursday, May 9, 1985 met and acted on the above referenced case.

The decision of the Commission was to grant approval of your request subject to the following conditions:

1. ~~That the applicant obtain a County development permit prior to filing of the plat.~~
2. ~~That a note be placed on plat stating that maintenance of the private access easement be the responsibility of the users.~~
3. ~~That transferred lot not be sold for a period of at least three (3) years from the date of approval.~~
4. That a family transfer affidavit be be filed simultaneously with plat.
5. ~~That plat indicate name of individual to which property is being deeded to.~~
6. ~~That a note be placed on plat indicating property was divided through family transfer.~~
7. ~~That plat be revised to include a signature block for the Land Use Administrator and the development permit number.~~

May 10, 1985
Salvador Vigil
Page 2

If you have any questions, feel free to contact me.

Sincerely,

Frank Romero

Frank Romero,
Code Enforcement Officer

/mmg

xc: Antonio Ortega, Chairman, Extraterritorial Zoning Commission

2003617

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SCHEUER & ENGEL, P.C.

ATTORNEYS & COUNSELORS AT LAW

125 LINCOLN AVE., SUITE 223

P.O. DRAWER 9570

SANTA FE, NEW MEXICO 87504

ALPH H. SCHEUER

ROBERT A. ENGEL

RICHARD S. LEES

JOHN BIGELOW

WALTER C. SCHLIEMANN

ADMITTED IN CALIFORNIA ONLY

PHONE: 505-982-9911

FAX: 505-982-1621

February 8, 1989

Tom Wilson
Land Use Administrator
COUNTY OF SANTA FE
P. O. Box 276
Santa Fe, New Mexico 87504

2003618

Re: Silveira Subdivision

Dear Mr. Wilson:

We represent Mr. Otavio Silveira, the applicant for subdivision approval in connection with the above-referenced matter.

We understand that some adjacent property owners have expressed concern regarding the ingress and egress rights of the southerly portion of the subdivision over Cloudstone Drive. Particularly, we are aware of letter dated November 10, 1988, from William H. Burden, Jr., which letter was addressed to you. Mr. Burden is an attorney, and additionally happens to own some real estate immediately north of the proposed subdivision, bordering on Cloudstone Drive and on Old Santa Fe Trail.

In forming our opinions as to the rights of access over and across Cloudstone Drive, we have referred not only to Mr. Burden's letter, but also to the complete history of the title, as abstracted through January 3, 1989, by Capitol City Title Services, Inc.

After review of such records, and appropriate legal research, we are of the opinion that access over Cloudstone Drive exists for the benefit of the entire Silveira tract, including the southern-most portion thereof consisting of a 1.65 acre tract and a 21.579 acre tract.

The entire area comprising the subdivision, along with the dirt underlying Cloudstone Drive and the properties

(*)

SFC CLERK RECORDING 08/17/2004

Tom Wilson
Page 2
February 8, 1989

2003619

immediately to the north of Cloudstone Drive, were at one time, owned by Madeline Galt. Over a period of years, she sold off parcels of her property. Other portions she retained. For example, in 1960, she sold that portion of the real estate presently owned by Mr. Burden to Mr. and Mrs. John B. Townsend.

Subsequently, Mrs. Galt would sell other properties, lying both north and south of Cloudstone Drive, as she deemed appropriate. Generally, she sold the westerly tracts first and sold her property in series, moving toward the east. Among those properties sold, were the various portions included within the proposed Silveira Subdivision.

The Silveira tracts, were disposed of by Mrs. Galt, first in October of 1959, at the southeast corner of Cloudstone Drive and Old Santa Fe Trail. Subsequent portions of the Silveira property were conveyed out by Mrs. Galt in May of 1961, and in February of 1971.

All of the foregoing conveyances, to Mr. Burden and other persons along the northerly side of Cloudstone Drive, and to the predecessors in interest to Mr. Silveira, occurred without any real reference to Cloudstone Drive. Cloudstone Drive was part of a survey prepared by Walter G. Turley on a plat dated November 25, 1959, which plat shows Mrs. Madeline Galt as owning properties both north and south of Cloudstone Drive and shows, for Cloudstone Drive, the phrase "50 foot road reservation". In June of 1971, a tract on the north side of lower Cloudstone Drive, at its far east end, was conveyed by Elizabeth Currier Galt, et.al., devisees from Mrs. Madeline Galt, to F. J. Brandiger. The Brandiger warranty deed made a specific reference to the land underlying the westerly or lower portion of Cloudstone Drive, and granted to the Brandigers an easement, "in common with others", along such southerly portion of Cloudstone Drive.

The Turley plat and this conveyance, make it clear that the Galt owners, considered Cloudstone Drive to be an easement, for the benefit of themselves and for the benefit of persons claiming by, through or under them. There is no indication in any of the documentation, that Mrs. Galt ever intended that Cloudstone Drive should provide access to a part of her property, but not to other parts.

The law is abundantly clear, that in the absence of an express provision limiting the use of a retained easement, that easement is available for the use of all property owners, regardless of the size or configuration of their respective tracts, who originally abut the easement, and all of their successors in interest, whether or not the successor abuts. For example, 25 AmJur 2d, Easements and Licenses, Section 96, states:

"As a general rule, if the dominant tenement (Silveira tract) is transferred in separate parcels to different persons, each grantee acquires a right to use easements appurtenant to the dominant estate, provided the easements can be enjoyed as to the separate parcels without any additional burden on the servient tenement (Cloudstone Drive). Thus, where there is an easement of way appurtenant to a dominant tenement (Silveira tract), the subsequent grantee of a part of such tenement has the right to use the way as appurtenant to his particular part. And this has been held to be true notwithstanding such grantee's particular portion does not abut on the way". (parentheses in the foregoing quote supplied by the undersigned)

The foregoing provision makes it clear, particularly in the third sentence of the quoted language, that even remote parts of the Galt property which are a part of the Silveira Subdivision, have the right of ingress and egress over and through Cloudstone Drive.

The same rule has effectively been adopted in New Mexico. The case of Brooks v. Tanner, 101 N.M. 203, 680 P.2d 343, (1984) holds that where there is a straight-forward reservation of an easement, and the terms of that reservation are specific and unambiguous, there is no need for reference to extrinsic evidence. Thus, any other easements or grants of easements which Mrs. Galt may have created, are totally irrelevant. The law clearly allows that more than one ingress and egress easement can be created for a specific piece of property.

In addition to the foregoing reasons for allowing

Tom Wilson
Page 4
February 8, 1989

2003621

SFC CLERK RECORDING 08/17/2004

the entire Silveira tract ingress and egress access over Cloudstone Drive, it is appropriate to further note that persons to the north of Cloudstone Drive do not have any rights to object to such use of the easement. A review of the Santa Fe County Clerk's records, indicates that the heirs of Madeline N. Galt are the present owners of the lower (westerly) portion of Cloudstone Drive. Those heirs are the only persons who have the right to object to the use of that road. The rights of persons owning property to the north of Cloudstone Drive to use Cloudstone Drive are rights, in common with other persons having rights. They are not exclusive rights.

Even Mr. Burden acknowledges that the property owners immediately to the south of Cloudstone Drive, including Mr. Silveira, have an easement over Cloudstone Drive. The only issue raised by Mr. Burden is whether the access rights apply to persons owning parts of the Silveira tract not immediately adjacent to Cloudstone Drive. The law is rather clear, as cited above, that the entire Silveira tract can utilize Cloudstone Drive for ingress and egress. Objection to such use, if any, could only come from the Galt family, not from adjacent property owners.

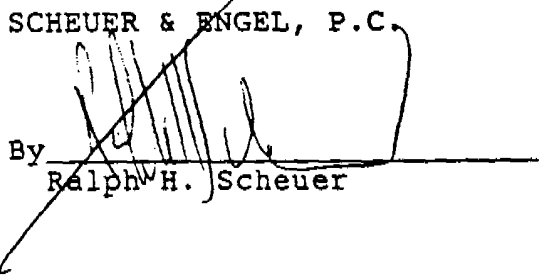
The issue raised concerning the easterly portion of Cloudstone Drive, and the eastern part of the Silveira tract is totally irrelevant. That part of Mr. Silveira's land is not a part of the proposed subdivision, and that part of Cloudstone Drive is irrelevant to the subdivision.

Based upon the foregoing, I believe it is rather clear that sufficient access to and from the Silveira Subdivision exists. The alleged absence of access is not supported by law or by fact and is not grounds for rejecting the proposed subdivision.

Should you or you staff desire further information in this regard, please do not hesitate to let us know.

Sincerely,

SCHEUER & ENGEL, P.C.

By 
Ralph H. Scheuer

RHS/m
of/87-B-002

2003622

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ADJOURNMENT

Chairman Duran declared this meeting adjourned at approximately 9:55 p.m.

Approved by:




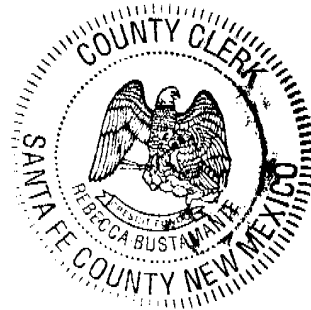
Board of County Commissioners
Paul Duran, Chairman

Respectfully submitted:


Karen Farren, Commission Reporter

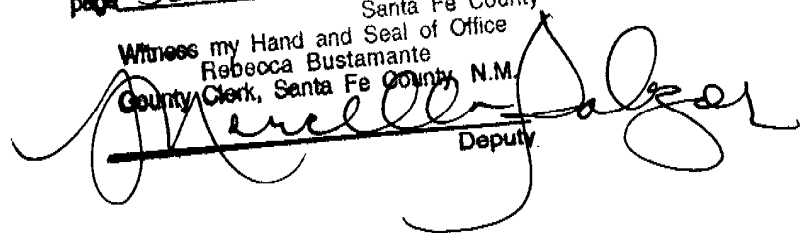
ATTEST TO:


REBECCA BUSTAMANTE
SANTA FE COUNTY CLERK



1179167 } ss
COUNTY OF SANTA FE
STATE OF NEW MEXICO
I hereby certify that this instrument was filed
for record on the 2 day of Nov A.D.
20 01 at 8:37 o'clock PM
and was duly recorded in book 2003
page 528-622 of the records of
Santa Fe County

Witness my Hand and Seal of Office
Rebecca Bustamante
County Clerk, Santa Fe County, N.M.


Deputy