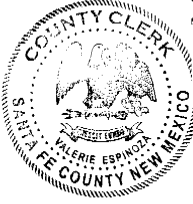


COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC MINUTES
PAGES: 156

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Deputy *Valerie Espinoza* Witness My Hand And Seal Of Office
Valerie Espinoza
County Clerk, Santa Fe, NM

SANTA FE
BOARD OF COUNTY COMMISSIONERS
MEETING
December 12, 2006

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

SFC CLERK RECORDED 02/23/2007
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**SANTA FE COUNTY
REGULAR MEETING
BOARD OF COUNTY COMMISSIONERS**

December 12, 2006

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 1:13 p.m. by Chairman Harry Montoya, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Prior to the Pledge of Allegiance and State Pledge, roll was called by Marcella Salazar and indicated the presence of a quorum as follows:

- | | |
|--|------------------------|
| Members Present: | Members Absent: |
| Commissioner Harry Montoya, Chairman | [None] |
| Commissioner Virginia Vigil, Vice Chairman | |
| Commissioner Paul Campos | |
| Commissioner Jack Sullivan | |
| Commissioner Mike Anaya | |

V. INVOCATION

An invocation was given by Chaplain Jose Villegas.

COMMISSIONER VIGIL: If I could just ask Simon Monsert to come to the podium, Mr. Monsert. Before we go into approval of the agenda, Mr. Monsert is here with the Faith at Work Community Outreach Program, and what I have for you, Mr. Monsert is the Board of County Commission this year has decided in their name to make a donation for the holidays to adopt a family and we are adopting a family, who, I understand from the e-mail I received is not only indigent but destitute. I do have an envelope here to give to you and before I do I'd just like you to brief us on what Faith at Work does with a couple of statements and then let us know what family we adopted.

MR. MONSERT: Mr. Chairman, County Commissioners, on behalf at Faith at Work and its Director, Meredith Lowry who couldn't be here this afternoon, I'd like to thank you for your adopting a family for Christmas. This donation will help a family, a hard-

working, single mother with two 14-year old boys. One of the boys is her own; the other one is a mentally ill homeless boy that she adopted. This family doesn't have it easy. But through your donation we will be able to give them clothing, a Christmas dinner food box, and we will be able to help them with their heating bills during this winter.

Faith at Work's mission is to help people who are experiencing crisis in their life, are unable to pay the rent, their utility bills, medical bills, and we hope to be able to get them to be able to regain their financial stability and self-reliance. And then in this part of the year we reach out to our clients and hope to give them some of the joy of Christmas by special donations. Again, I thank you for your generous donation.

COMMISSIONER VIGIL: Thank you, Mr. Monsert.

CHAIRMAN MONTOYA: Thank you, and thank you Commissioners for that kind donation and thank you, Commissioner Vigil, for initiating that for us.

VI. APPROVAL OF THE AGENDA

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

ROMAN ABEYTA (County Manager): Thank you, Mr. Chairman, we have minor changes from staff. The first being under VII. Approval of Minutes, A. The October 25th strategic planning session. That item needs to be withdrawn. That was a staff session and we didn't have a Commission meeting. So those will be approved administratively.

Under Matters from the Commission, IX, items I and J have been withdrawn from the agenda. Under XI. Staff and Elected Officials' Items, B. Matters from the County Manager, we added an item #2 which is request approval of a memorandum of understanding between the Nambe Pueblo and Santa Fe County for emergency response services. And finally, Mr. Chairman, under XII. Public Hearings, Case #10, CDRC Case V/DP 06-5530, PNM Las Colinas 13 Feeder Tie, that has been moved up to case #1 on the Public Hearing agenda. Other than that there are no other changes from staff, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Any Consent item withdrawals?
Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chairman, numbers 2 and 10, and I'd also like to ask if we could hear case #8 as the fourth item on the agenda instead of the eighth.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Mr. Chairman. I wonder if we could move item K under Matters from the Commission to A. And then I didn't understand - Roman, you mentioned under Land Use Department, you mentioned number 10. Are we doing anything with 10?

MR. ABEYTA: No, Mr. Chairman. On the agenda, the original agenda, the PNM case was item 10, and on the new agenda it's been moved up to item #1, but you should

have the new agenda in front of you.

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

CHAIRMAN MONTOYA: Okay. Anything else. Commissioner Vigil.

COMMISSIONER VIGIL: Mr. Chairman, under Matters from the Commission, IX, item H, this joint resolution has some updated information that needs to be included and I would like to bring it back in January.

CHAIRMAN MONTOYA: So you would like to table that?

COMMISSIONER VIGIL: Table it please. H, under Matters from the Commission.

CHAIRMAN MONTOYA: Okay. Commissioner Campos.

COMMISSIONER CAMPOS: I have none.

CHAIRMAN MONTOYA: Okay. Do we have a motion?

COMMISSIONER ANAYA: So moved as amended.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN MONTOYA: Motion by Commissioner Anaya, second Commissioner Sullivan. Further discussion.

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

VII. APPROVAL OF MINUTES

B. November 9 & 17, 2006 - Special Canvassing Meetings

COMMISSIONER CAMPOS: Move to approve.

CHAIRMAN MONTOYA: Motion, Commissioner Campos.

COMMISSIONER VIGIL: Second.

CHAIRMAN MONTOYA: Second, Commissioner Vigil. Discussion?

Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chairman, it's not actually a change, but it's a little confusing in the minutes on the members present and the members excused. They're listed at the front for the November 9th meeting, but there was another meeting of course on November 17th to close it and it mentions it later on as the closing. I would just like to see it formatted differently so that the members present are presented the same way for the closing meeting for the November 9th opening meeting. That's all.

CHAIRMAN MONTOYA: Can you get that? Okay.

COMMISSIONER SULLIVAN: That's not an actual change. I'd just appreciate a formatting change there.

CHAIRMAN MONTOYA: So motion, second. Any further discussion?

COMMISSIONER CAMPOS: That's fine with the mover.

COMMISSIONER VIGIL: Fine with the seconder.

The motion to approve the canvassing meeting minutes with the suggested formatting change passed by unanimous [5-0] voice vote.

VII. C. November 14, 2006

COMMISSIONER SULLIVAN: I have some technical corrections.

COMMISSIONER VIGIL: Move to approve with Mr. Sullivan's corrections.

CHAIRMAN MONTOYA: Okay. Motion by Commissioner Vigil.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN MONTOYA: Second, Commissioner Sullivan. Discussion?

The motion to approve the November 14th meeting minutes as amended passed by unanimous [5-0] voice vote.

VIII. MATTERS OF PUBLIC CONCERN- NON-ACTION ITEMS

CHAIRMAN MONTOYA: This is the point in the agenda where anyone who has an issue to bring forward to the Commission, if you would please do so at this time. Representative Wallace, did you want to stay for the hearing? We moved it up so that it will be right after Matters of Public Concern. Chaplain.

JOSE VILLEGAS: Mr. Chairman, members of the Commission, staff and members of the audience, I am here on behalf of the Collins family from Las Vegas, New Mexico. Ray Senior, and his wife Kathy would like to thank the following people that were there in response to that DWI fatal that we had recently. Arisa is doing okay. I've been in contact with the family since the tragedy. County Manager Abeyta has been really good to me in terms of getting things done and being the chaplain, I want to thank him personally for allowing me to continue doing God's work.

The family would like to thank the County Fire/Medical response, County 60, Med 80, the County BC, the County 11, Eldorado Medic 3, Eldorado Rescue 3, Eldorado 1, Hondo Engine 1, Hondo Medic 1, Hondo Rescue 1, Hondo 1. Santa Fe County Sheriff Solano and his troops, the Santa Fe Police Department, they were there as well. The Santa Fe Regional Emergency Communications staff - excellent work, and the City Fire/Medical response of Santa Fe Fire Engine 4, Medic 4 and Rescue 7.

It is a real tough one for the family but they really, for this little girl, for Arisa, what really made the difference for this little girl was bringing - the sergeant from the Santa Fe County Sheriff's Department, Dennis O'Bryan, authorized for two deputies, Deputy Clifton, Corpsman Malizia to transport Amor. Amor was the little Chihuahua of the family who was transported from the scene to the hospital where Arisa was. That made the difference. To see

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the law enforcement community and the fire community and dispatchers pulling for this little girl, it's commendable.

So on behalf of the Collins family, we say thank you. Muchas gracias and many blessings to your families. Thank you.

CHAIRMAN MONTOYA: Thank you, Chaplain. Anyone else like to come forward at this time? Chaplain Villegas, thank you for the work that you do for Santa Fe County and the citizens here. It's very touching to get those updates and know that there is something good out of something tragic. Thank you.

IX. K. Resolution No. 2006 -193. A Resolution Supporting the Southwest La Cienega Water System Extension. Project Would Construct Eight Inch Water Lines From the County's Existing Infrastructure Down Camino Loma, Across a Private Easement to Cielo del Oeste and Loop Back to Paseo C de Baca in La Cienega (Commissioner Anaya)

COMMISSIONER VIGIL: Mr. Chairman, before we go to that, based on the update that we got from our chaplain, you just handed out a drunk-busters number, which I think this is an appropriate time to mention not only for the audience here but for the viewing audience that we do have a program in this state and you may know more about it Mr. Chairman, because you're far more entrenched in the DWI issues than most of us on the Commission are. But the report drunk driver number is 1-877-394-4258, and that's a hot line, I believe, that's 24/7, that anyone who's on the road can actually report a driver who is actually driving while under the influence to this number and receive immediate support from law enforcement. Is that accurate, Mr. Chairman?

CHAIRMAN MONTOYA: Yes. Thank you, Commissioner Vigil.
Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Mr. Chairman, and I do also want to thank Jose Villegas for all your hard work that you do. It's not an easy job and we thank you. And to our Fire Department, Stan if you could take that message back to your people and to our Sheriff's Department who work hard through the late hours, we thank you.

Mr. Chairman, this resolution is a resolution of the Santa Fe County Board of County Commissioners to support a water line extension to the southwest La Cienega area. And this is for a resolution that hopefully I can get support so I can take it to the legislature to get funding to provide water line extensions and water service to the various residents that want it in La Cienega. And if I could, Mr. Chairman, there's a few people in the audience that would like to speak for this, and our honorable Representative Jeanette Wallace is here.

CHAIRMAN MONTOYA: Representative Wallace, thank you.

REPRESENTATIVE JEANETTE WALLACE: Thank you. I do speak in favor of this. You know, it's very difficult when I've watched the growth in La Cienega and I feel like yes, indeed, when it grows that fast the water issues, the road issues are all kind of important. I also understand the people that have lived there a long time and have built those

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mutual water systems. They have a proprietary right and I don't want them to ever feel like they have been walked over. So I do urge you all to take that into consideration when you're working with those water systems. We will move forward. Senator Griego, I talked with him right before lunch and yes he does convey his consideration of this too. The two of us will work to help the County move forward in the extension of the water lines. Thank you.

CHAIRMAN MONTOYA: Thank you, Representative Wallace.

COMMISSIONER ANAYA: Thank you, Representative. And I see also in the crowd Commissioner Grill. Would you like to add something, Commissioner?

LINDA GRILL: Mr. Chairman, Commissioners, Commissioner Anaya, I wanted to say thank you for everything that you have worked for in our district and the rest of you Commissioners that have joined in in helping him out. We really appreciate what you have done. All of you Commissioners are doing a great job. I know, I was here. I know you're doing a great job. I also want to compliment you on something else. Your appointment of the County Manager, Mr. Roman Abeyta. I think you made a wonderful selection. He started working for us when I was on the County Commission. He came here as a young kid and we saw a lot of potential in him. He was promoted to other positions and I'm very, very happy to see him here. Congratulations.

I would like to say we're here to thank you, Representative Wallace. We appreciate your support. Pass that along to Senator Griego for us. Thank you. And I'd like to say that we have a lot of people on all these roads that are listed in the resolution here that not only want the water but they really need the water. We have a lot of septic tanks out in that area on all these streets that are mentioned here and a lot of them are uphill so all that septic is running into their wells and I think it is really important that we be allowed to extend these water systems into all those streets.

When we got the water connected into Paseo C de Baca it was our understanding that it would be extended to all these County roads. Excuse me. Those are not County roads, okay? But that it would be extended to the 15 houses that are there. And somehow or another it went by the byway and it didn't get extended at that time. We are willing to go to the legislature and help you guys or try and help you Commissioners to get funds for the extension. I'm willing to do that. I have already talked to a few of them and all the ones that I have talked to are in support of it. So we are here willing to help you in any way that we can and we appreciate whatever your decision is today. I know your decisions aren't easy to make sometimes but we appreciate them either yea or nay, okay?

And again, you know that when I was on the Commission in 1990 I'm the one that really started working on the County water system. We wanted to bring it in from Cochiti but after I left it got on the sideway and it cost more money and other problems now but I do want to say thank you and I wish you all a very happy Christmas. Thank you so much.

CHAIRMAN MONTOYA: Thank you, Commissioner Grill. Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chairman, with that -
COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: I have some questions before. Commissioner Anaya, have you had staff do an analysis of this request. I think there are standards for water line extensions. I don't know if there are any issues outstanding from staff. Have you had a chance to get an evaluation?

COMMISSIONER ANAYA: I believe staff has looked at this and we did have a petition circulate. Do we have that with us?

STEPHEN WUST (Water Resource Director): Mr. Chairman, Commissioner Campos, Commissioner Anaya, what we did do is a cost analysis. Doug Sayre, our engineer is here, if you have some questions on the details of the cost analysis. We had a meeting with the residents down there to explain to them what was involved with this and basically it was showing them all the issues involved in the costs and explaining to them that if the Commission chose not to fund it they would have to look for funding elsewhere or get it themselves or pay it themselves and we would have to come before the Commission to request to even do it. That was all explained to them.

One of the steps that was going to be needed for this, they decided that they'd like to go to the legislature and request funding. One of the steps that was going to be required was a petition was circulated to all the residents so we would know that everybody was in agreement that they would hook up, and, because they were private roads, they would have to turn over some easements to the County so the pipes could be laid. So that was in the petition that they acknowledged that they agreed to turn over easements if this project went forward and they agreed to hook up. That way we knew we would have a customer base and it wouldn't be just one person. So those are basically the steps that have been taken by the County so far.

COMMISSIONER CAMPOS: Do we have a water extension policies when we do new lines that we have to abide by?

DR. WUST: Mr. Chairman, Commissioner Campos, the extension policy is that they can request an extension. They have to be in our service area and then there are a number of criteria that we look at before we come in front of the Commission, and then the step is we come in front of the Commission and say we have this request, here's the project, here's where the funding is coming from and then the Commission can make a decision on whether to proceed forward with that project or not.

COMMISSIONER CAMPOS: Any criteria other than that?

DR. WUST: The criteria for looking at whether to come in front of the Commission is are there in our service area and are they adjacent to our existing infrastructure, and is it in an area that we believe it would be a good thing to have a utility service there.

COMMISSIONER CAMPOS: What about water rights and water resources? Where are they coming from?

DR. WUST: The way the policy works now is the State Engineer has changed the rules. It used to be that if someone had a domestic well they could turn over a portion of that and it would turn into water rights for us but you can't do that anymore. The Office of the State Engineer has changed the policy on that. So what we do as a utility is if someone wants to

hook up, if they're large like a subdivision they can get their own water rights and turn them over to us but smaller users like individual residences or small groups, we have a fee-in-lieu-of and they pay that fee. I believe they're going to the legislature to ask to offset that also, but it comes out to about \$30,000 an acre-foot to basically help fund the County to go out and get those water rights and to pay our legal fees in the process. So it's a fee-in-lieu-of water rights is how we tend to do it with small users.

COMMISSIONER CAMPOS: So we need to go out and buy water rights?

DR. WUST: We are in the process now of acquiring water rights. It's an ongoing thing.

COMMISSIONER CAMPOS: It's not for this project, it's just in general?

DR. WUST: In general. That's correct.

COMMISSIONER CAMPOS: Does this have implications, this extension, to any other nearby projects in that area?

DR. WUST: There are other projects that have been proposed in that area.

None have come forward for a permit yet, but there are certainly a couple other projects in that area from developments, but they haven't gone through the process yet so I can't say if they're going to happen or not.

COMMISSIONER CAMPOS: Wasn't there a big project in that area, La Cienega area?

DR. WUST: Santa Fe Canyon Ranch, that's the one.

COMMISSIONER CAMPOS: And does this extension affect their application at all?

DR. WUST: I don't know how it would except it may get the infrastructure a little closer to them, but it wouldn't change anything in terms of their process. They still have to come and request and do all the rest of it and actually the amount of water they wanted was more than we were looking at prior to Buckman coming on line.

COMMISSIONER CAMPOS: There was some discussion when the Canyon Ranch project came up that the Canyon Ranch would buy certain things for the village. I don't know if it was treatment plants or pumps or wells or something. Is this connected somehow?

DR. WUST: Commissioner Campos, they may have. I didn't go to those community meetings and they have not made that kind of offer to our utility. So they've had some kind of discussion. I don't know what it is.

COMMISSIONER CAMPOS: And as far as your position, is it that this is a go? Any reservations?

DR. WUST: Mr. Chairman, Commissioner Campos, the biggest reservation was the cost for that number of people and the fact that it was not County roads. So because this is a letter of support to the legislature for funding, that relieves a lot of the issues that the County Commission had last time this project came in front of you was the funding of it because it is hundreds of thousands of dollars.

COMMISSIONER CAMPOS: Okay. Does it affect any of the other projects that you have in the utility?

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DR. WUST: No, because the total amount of water is not that much. Just a few acre-feet. So we have enough still in our accounting to be able to commit that amount. So at the moment it's not going to impinge upon any other activity that we're undergoing.

COMMISSIONER CAMPOS: Thank you, Doctor.

CHAIRMAN MONTTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Commissioner Anaya, this resolution, from my understanding, is we're just asking the legislature for funding to extend the lines that they originally funded. I believe they funded the Paseo C de Baca and there just wasn't enough funding for extending that so this is sort of like a second phase. Is that your understanding? At least that's mine this far.

COMMISSIONER ANAYA: Yes.

COMMISSIONER VIGIL: Then I have a question for Steve. Steve, the resolution actually it refers to and isn't really clear in terms of whether easements have been acquired. I think there's been some consensus that residents would be willing to give easements. Is it a good process to go after funding before those easements have actually be dedicated and shouldn't we work on getting those dedicated before the funding actually comes to us? I fear that once we have the funding and we're ready to move forward with the infrastructure, if we have a resident who isn't willing to dedicate an easement that would forestall the project.

DR. WUST: Mr. Chairman, Commissioner Vigil, generally, because there is no project at this time, we don't generally move forward with easements. We look at easements when there is a project. Basically, that's part of the process of the project. So the step was to get these petitions where people agreed to do it so we knew with some confidence that we could go and support the request for funding by not having this thing hang over our heads but on the alternative if we went and got easements and then there was no funding, there would be some pressure on the County to move ahead with the project and we'd fund it ourselves because we had just got these easements in place. That's the tradeoff.

COMMISSIONER VIGIL: I'm willing to support this project. I think it's a good thing to move forward with. My concern is whether or not we're thinking it thoroughly enough. If there are other communities who come to us with this mission in mind, we could look, ancillary to the request at moving forward with easements contingent on particular funding. And if in fact the funding doesn't exist the easement no longer exists either. I guess I'm implanting this in our Water Services Department in terms of really trying to do a comprehensive strategy in meeting the needs of these communities. So perhaps in the future we might consider trying to get going to the legislature with a full package that says we're ready to move, because I'm sure the legislature will be asking, what about the easements? They'll want to know the same questions.

DR. WUST: Commissioner Vigil, I'll get together with Legal and we'll work out a procedure to address that issue.

COMMISSIONER VIGIL: Thank you.

CHAIRMAN MONTTOYA: Commissioner Sullivan, then Commissioner

Campos.

COMMISSIONER SULLIVAN: Steve or staff, this is proposed as an extension to the County water utility system, is that correct? Not as a connection to the La Cienega system?

DR. WUST: Mr. Chairman, Commissioner Sullivan, that's correct. It would be to the County utility.

COMMISSIONER SULLIVAN: I know there's been over the years some discussions with the La Cienega system about providing them with fire service. They didn't want domestic service but they wanted fire service. But this is a separate - this adds on to the County system that's already in that general area which surrounds the La Cienega system.

DR. WUST: It's County lines that are right next to these roads, so it would be an extension of those.

COMMISSIONER SULLIVAN: Okay. I'm not clear about the hook-up fees. It says whereas the water rights fees being charged to residents desiring to hook up to the County system is currently \$7500 per meter, many residents may not be able to pay the fee which will aggregate to over \$150,000 for the entire project. And you indicated that you thought that was going to be part of the request to the legislature. And I wonder if the legislature approved that and if we get into the anti-donation clause issues of providing funds to private individuals and then are we making some commitment to pay that fee or if the legislature doesn't fund it, what happens to these 50 residents then? Will they still all hook up or not?

DR. WUST: Mr. Chairman, Commissioner Sullivan, that funding would be to the County and it's a fee-in-lieu-of water rights, so in essence it's helping the utility offset the acquisition of water rights in order to even out the amount of water delivery that we'll have. In terms of the language and how that works with the legislature I'd have to defer to Legal on that.

COMMISSIONER SULLIVAN: Okay, so Mr. Ross, that's probable that some funding could come to the County even though it's essentially benefiting each of these 50 individual water users?

STEVE ROSS (County Attorney): Mr. Chairman, Commissioner Sullivan, are you talking about the hook-up fee?

COMMISSIONER SULLIVAN: Correct. The \$7500 hook-up fee.

MR. ROSS: Well, that's a similar mechanism to what's proposed in the Aamodt settlement. And -

COMMISSIONER SULLIVAN: Which no one's approved yet.

MR. ROSS: Well, the agreement has been approved. The cost and system integration part of it is being negotiated at this point but everyone has signed off on that in principle, including the state. It's permissible in the context of that suit to provide hook-up assistance.

COMMISSIONER SULLIVAN: Okay. So we have some - or we will have some precedent that these individual hook-up fees could be funded through a legislative appropriation. Is that what you see happening?

MR. ROSS: Mr. Chairman, the Attorney General has been assisting with that case and nobody has raised any objections about that proposal so we think that that's probably

okay.

COMMISSIONER SULLIVAN: Okay. So then let's say the legislature appropriated \$200,000 for this project. They don't always give you everything that you ask for. Would we then use the \$150,000 to pay for the hook-up fees and then look for more money to add to the \$50,000? Or what's your strategy for dealing with the fact that we may not get \$419,000?

DR. WUST: Mr. Chairman, Commissioner Sullivan, there would certainly be some options we would present to the Commission for a final decision but one of the strategies very much like was done with Paseo C de Baca to begin with. These roads were originally requested to be added on to that original project. There wasn't enough funding and therefore the project was scaled back. That's a possibility. You could fund 100 percent of some small part of the total project or a piece of the total project if the Commission agreed that the County would make up the difference. So it would be a decision of the Commission but we could have some options available to you about what the legislative funding actually would fund for us.

COMMISSIONER SULLIVAN: We've had promises before and they don't always end up on the Governor's desk at the end of the session. So we've got to look at the contingencies.

DR. WUST: I was just going to say generally the infrastructure is the thing that we get most of the funding for. So probably the first step would be how much do we get from the legislature? Would that fund all the infrastructure, for example? And then we could look at our own water rights portfolio and how we're proceeding on that and see whether the Commission would like to accept the money and build the whole thing as infrastructure and basically waive hook-up fees or something because we have plenty of water rights or something like that.

COMMISSIONER SULLIVAN: And that's exactly the box canyon that I don't want to get into, is to be put on the spot saying, Oh, gee, we've got the money for the construction and now you have to come up with \$150,000 for the water rights. That's precisely what I don't want us to have to deal with, a Sophie's Choice, because we have other projects throughout the county that are equally as needy if not more so, in terms of water quality. Not to say this isn't a good project. I've always been in favor of getting people on public water service. But \$419,000, as I read it, includes the \$150,000 for water rights. Is that correct?

DR. WUST: That's correct.

COMMISSIONER SULLIVAN: So if we got \$419,000, give or take, we might have a viable project to serve all 50 residents. Is that -

DR. WUST: That's the scope of the project.

COMMISSIONER SULLIVAN: it's the current scope. Okay. I would just call your attention to two typos in the resolution. In the second whereas, Whereas the County constructed as water line, should read a water line. And the last whereas, Senator Phil Griego will has committed - maybe that indicates some ambiguity.

CHAIRMAN MONTROYA: Mine says "has".

COMMISSIONER SULLIVAN: Mine says "will has".

COMMISSIONER CAMPOS: Mine's just "has".

COMMISSIONER SULLIVAN: Okay. So yours says "has".

COMMISSIONER CAMPOS: Commissioner Sullivan has a different version.

COMMISSIONER SULLIVAN: I have a different version. I'm always given a different version.

COMMISSIONER VIGIL: No wonder you have so many questions.

COMMISSIONER SULLIVAN: I think the problem is I pick up my packet on time. And then there's all this scurrying around to put last minute junk into the packet. Okay. So the "will has" has become "has". How about the as? Has that "as" become "a"? And that's become "a". Okay. We could have saved a lot of time here. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Just a couple of comments. There are other areas in the county that have really bad water and lack of water. I think there's always a question of prioritizing. How do you prioritize all these demands. I think it's important that we do that because we're looking at Cañoncito with serious radon problems in the water. They can't even get water to drink. They've got to truck it in. Chimayo has water that's polluted. I think the discussion we had last time, I think La Cienega has water. It's a good idea to have a water line, a wastewater line, all that stuff, but also there's a question of priorities in different parts of the county.

If things like this come up again, I'd like to have a staff briefing and evaluation that comes along with the resolution so I have some good background. I know that staff has had an opportunity to evaluate this and staff actually I think should be looking at priorities too. Which projects, which communities are in most desperate need of clean water. I think that's the big issue. And if we do this, how do we set them back as far as legislative requests because all these monies are not going to be granted. By the legislature. There are just so many dollars that are out there and so many dollars that Santa Fe County is going to get for these kinds of water projects.

So I think that's the evaluation we need to have instead of just throwing them out on the table and seeing which one's first. So those are my concerns. I think it's a good project. I just have always had a priority issue because I know other folks have greater needs. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chairman, there were a lot of good questions asked and there was that stuck out and that was is this water line going to get closer to a development? Yes, it might be closer to it, but I'm not here trying to advocate for a new development. I'm merely trying to supply water to people, my constituents who are out in the crowd because they've asked me to. This is not going to be a trunk line that is going to go through this property or through their easements. This is merely going to be a water line, maybe a three, four-inch waterline, to feed their homes. So I just wanted to clear that up.

In terms of prioritizing, I know there's a lot of towns out there that are in need of water systems, but what would you want me to do, to tell my constituents that come to me time and

time again and ask me, Mike, when are we going to get our waterline extended to our homes. We really need this. This was part of the project. Well, you know what? That's not a priority right now. You guys have clean water. Go away. You wouldn't do that either. So they're merely here. I'm glad they're here. I see a lot of faces out there that are in support of this that are actually wanting this. So those were little clarifications that I'd like to bring up. Thank you, Mr. Chairman.

And I move for approval.

CHAIRMAN MONTOYA: Motion by Commissioner Anaya.

COMMISSIONER VIGIL: Second.

CHAIRMAN MONTOYA: Second by Commissioner Vigil. Discussion?

Commissioner Campos.

COMMISSIONER CAMPOS: I guess the only thing I could suggest is that since there are a number of projects out there that have even greater needs than the Cienega area at this point in time, any time you ask for one project you may be detrimentally affecting others, that they be pooled together so that we can have a focus with the legislature that this year we're going to go for this project, because they have no water at all. Next year we'll go for the project where they don't have drinking water, and in time we'll get to all the projects to protect the aquifer. I think we have to look at the big picture kind of, and evaluate in that way instead of bringing them up piecemeal. I just don't feel comfortable, even though I think it's a good project and La Cienega is a great place to live and it's growing very fast.

There are a lot of needs out there, but I just think we need to look at this in a bigger way. So that's my comment, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Any other discussion? My recollection in the previous attempt that was brought forward was that the cost was going to be borne by the County at that time. I see that this is an avenue that would supplement and actually supplant any need for County funding for this project, so I think where we can support these types of projects for legislative appropriations we should do so. And I think we do need, probably Commissioner Campos as you've said, come out with a long-term water plan. That's something, Dr. Wust, that we can take a look at all of the different needs that we have, because there are a lot of needs in this county and in this whole southwest region, as a matter of fact.

The motion to approve Resolution 2006-193 passed by unanimous [4-0] voice vote, with Commissioner Campos abstaining.

IX. A. Resolution No. 2006 -194. A Resolution of Support for Rio Arriba Health Commons Shared Health Facility for El Centro Family Health, Espanola Public Health and Rio Arriba County Health and Human Services (Commissioner Montoya)

CHAIRMAN MONTOYA: This is a resolution that last year we supplied for

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the El Centro Family Health, which was formerly Heath Centers of Northern New Mexico. They're still pursuing funding from the legislature. They've gotten some appropriations in the past and this is to request our support of their effort to get some additional funding for the central health complex that they're looking at building in the Espanola area.

COMMISSIONER CAMPOS: Mr. Chairman, you're looking for additional funding. This resolution says we want additional funding for this and some of the County supports it.

CHAIRMAN MONTOYA: We would just support their request, yes.

COMMISSIONER CAMPOS: This is like the case before. We keep asking - we have our priorities but we keep asking for a whole lot of other projects and CIP support. Does that detract, do you think, from our main effort to get our priority projects funded? That's an issue I think we've discussed I think many times in the past and it just keeps coming up.

CHAIRMAN MONTOYA: With this particular one I would say no. This particular one, they've got their own lobbyist, they've got their own staff at work in educating and getting the legislators on board for this. This is probably more of a token of our support showing that we're behind the project. So as far as staff resources, this one will not require any.

COMMISSIONER CAMPOS: Not only staff resources but conflict with our own requests for priorities. Are we competing against ourselves when we do one of these requests after the other? That's the question.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Just a clarification. On the Now, therefore be it resolved, that paragraph says that we will make it one of Santa Fe County's priorities for capital outlay funding in the 2007 legislative session. Now, is it your intent - we were asked to submit five priorities, which we did and debated and decided on. Is it your intent that this would be one of those five or this would be something different?

CHAIRMAN MONTOYA: No. Would you suggest some alternative language?

COMMISSIONER SULLIVAN: No, I don't draft language very well on the fly, unless it comes to water wells. I just think we need to make it clearer. Maybe we want to say that the Commissioners strongly support the Rio Arriba Health Commons' effort for funding in the 2007 legislature.

CHAIRMAN MONTOYA: That was good.

COMMISSIONER SULLIVAN: Does that work?

CHAIRMAN MONTOYA: That will work. And then strike -

COMMISSIONER SULLIVAN: Yes, just before funding. Then there's no conflict with our five priorities.

CHAIRMAN MONTOYA: Because that was not my intent.

COMMISSIONER SULLIVAN: That's what I heard from your comments.

CHAIRMAN MONTOYA: Any other discussion?

COMMISSIONER VIGIL: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: I just want to make at least a small attempt to

respond to Commissioner Campos' concerns. I think they're valid to some level and I think if I were to answer his question as to whether or not we're competing against ourselves I would say yes and no. But the nature of the legislature is such that there are legislators that have priorities and have districts and residents and priorities within their own processes for legislative funding. For some of these legislators they may be health. For other legislators they may be education. For other legislators it may be water infrastructure. It varies. Each one of these legislators serve on different committees. Each one of these committees have more opportunities to review issues at greater depth than other legislators do. The dynamic of the legislature is such that it is a composite for bringing forth all of the issues that affect our communities and I think as a local government entity, at some point we can create focuses for some of the needs of the communities and the communities that we represent.

Certainly health has been one of the needs. Whether or not that in itself competes with dollars that we're recommending. I think the process that we've tried to put in place through the dynamics of the legislators to list five priorities and to go forth with that. I guarantee you that those five priorities will be reviewed strongly by the legislators, but the legislature is going to be looking at projects that will impact the priorities for the people that they represent and the priorities from the state. So it's a yes and no answer.

With that being the case, I think as we review these resolutions that come before us we really should weigh the need, and I recognize need for promoting and building more infrastructure for health facilities. With that, there's absolutely no reason in my mind that I would think whether or not, or could even get into the mind of a legislator when allocating money, whether or not that legislator would say, oh, I think I'll give this project over the other because Santa Fe County has or has not. I think it helps when you create a focus for it and I think we should continue this kind of initiative. So I'm not sure that there is a really narrow way to address these issues but I certainly think as a support system we should support these kinds of issues. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Thank you, Commissioner Vigil. Other discussion?

COMMISSIONER ANAYA: Move for approval.

CHAIRMAN MONTOYA: Motion by Commissioner Anaya for approval.

COMMISSIONER VIGIL: Second.

CHAIRMAN MONTOYA: Second by Commissioner Vigil. Further discussion?

The motion to approve Resolution 2006-194 passed by unanimous [5-0] voice vote.

COMMISSIONER SULLIVAN: Mr. Chairman, clarification. Was that motion for approval as amended?

COMMISSIONER VIGIL: As amended.

CHAIRMAN MONTOYA: As amended.

COMMISSIONER VIGIL: And that just took off the language that says it's a

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priority, right?

COMMISSIONER SULLIVAN: Deleted "and will make it one of Santa Fe County's priorities for capital outlay" and inserted the word "for".

CHAIRMAN MONTOYA: Thank you for that clarification

IX. B. Resolution No. 2006-195. A Resolution of Support for the Submission of a Joint Application Between Santa Fe County and the Santa Cruz Irrigation District to the Department of Finance and Administration for a CDBG Planning Grant for the District's Silt Removal Project (Commissioner Montoya)

CHAIRMAN MONTOYA: As has been brought to us - I'd like to ask Mel Martinez who is a board member representing the Santa Cruz Irrigation District, as well as Erle Wright who has been working on this project if you would also come forward as there may be some questions that I would ask you. And Shelley, if you'd please come forward.

This is a project that we have previously provided as a Board support for their continued funding, their seeking of funding. This is again a planning grant that would be submitted by Santa Fe County with the Santa Cruz Irrigation District to DFA for a \$50,000 planning grant. As you're well aware this is a huge, probably one of if not the biggest suppliers for water for agricultural purposes in northern New Mexico, this particular reservoir. So with this particular request, again, we would be the fiscal agent for the Santa Cruz Irrigation District to provide that \$50,000 CDBG planning grant, which is a 25 percent match, non-federal match, that is required through the US Army Corps of Engineers for the continued architectural engineering design for the removal of the silt.

So with that, Mel, do you want to add anything?

MEL MARTINEZ: Mr. Chairman, Commissioners, the reason that we're asking, as you know, the silt is in very bad shape at the dam and we need to do something because we're not having the holding capacity when the dam was first built and all this sediment has built up quite a bit to where it's almost 50 percent and we don't have the holding capacity to really do enough irrigation, water draw for the parciantes. As you know we have quite a few parciantes in the dam. Our plea here today, mainly is to ask for help and it's going to be costly and I'll have Erle explain a little bit more about it. It's a big concern to us and we're trying to get enough water for our parciantes because there's still a lot of agriculture out there. We're fighting every year because the capacity is not there to where we have to ration water and a lot of these people are losing crops because we can't get them water. That's the main reason for trying to get all this silt removed and get that capacity back to our parciantes. I'll let them explain a little more.

CHAIRMAN MONTOYA: Are there any questions? Commissioner Vigil.

COMMISSIONER VIGIL: This is - Santa Fe County annually submits a CDBG grant request. Does this resolution limit our request to this particular project for this

upcoming year?

MR. MARTINEZ: No.

COMMISSIONER VIGIL: Okay. So this will be coming from the Santa Cruz Irrigation District?

MR. MARTINEZ: Yes.

COMMISSIONER VIGIL: And the 25 percent match will be matched by whom?

CHAIRMAN MONTOYA: Well, that's what the \$50,000 is for.

COMMISSIONER VIGIL: And they're asking the state legislature for that?

CHAIRMAN MONTOYA: DFA.

COMMISSIONER VIGIL: DFA. And does DFA have a fund for the CDBG matching funds?

CHAIRMAN MONTOYA: Well, the CDBG matching funds is the source.

COMMISSIONER VIGIL: Okay.

CHAIRMAN MONTOYA: The CDBG is the fund that will be used for the match to the US Army Corps of Engineers.

COMMISSIONER VIGIL: So the 25 percent would be the match. How much would the \$50,000 match?

SHELLEY WINSHIP: We're seeking the support of the County to help us apply for the CDBG funds because the Santa Cruz Irrigation District itself is not eligible to apply, whereas the County is. However, the SCID has agreed to set up a memorandum of understanding with the County that if they serve as the fiscal agent for this grant application that we will fulfill all the grant requirements. Basically, we're seeking the maximum grant available under this particular grant program which is \$50,000. That \$50,000 will leverage an additional \$150,000 from the Army Corps of Engineers. We've already signed an understanding, a working agreement with the Army Corps of Engineers. They've allocated a total, including our match, of \$5.5 million to the project. If we're successful in raising our 25 percent of that \$5.5 million. So this \$50,000 will be a piece of that 25 percent match, but this particular piece will allow us to complete a preliminary engineering study, which is a requirement of our relationship with the Army Corps of Engineers, and it also allows us to present the issue to our stakeholders with the most current information about the condition of the lake and the potential solutions to the problem so that the project can actually physically move forward. My name is Shelley Winship. I'm a parciante and a resident of Chimayo.

COMMISSIONER VIGIL: Mr. Chairman, I want to be able to support this but I'm not real clear. Is anyone from staff - Joseph Gutierrez - our CDBG process - currently, Shelly and members of the Santa Cruz Water Association, we actually have received funding and we're involved with our more recent receipt of money with the Agua Fria Community Center. The CDBG process, and correct me if I'm wrong and I want you to fill in the rest - the CDBG process requires us to complete a process before we apply for another. Now, is this the same avenue? So the Army Corps of Engineers is another pot of CDBG grants. Is that a correct assessment?

MR. GUTIERREZ: Mr. Chairman, Commissioner Vigil, the \$50,000 of Community Development Block Grants, this is an allocation of planning money, and that's separate from the infrastructure money. Currently the County is not eligible to apply for the infrastructure money until we close out the Agua Fria project. We are eligible to apply for the planning money. So these \$50,000 in funds would come from the planning allocation that DFA has, and it's strictly for planning.

COMMISSIONER VIGIL: If we approve this resolution, does this commit us to submit this project for CDBG infrastructure funding?

MR. GUTIERREZ: Mr. Chairman, Commissioner Vigil, it doesn't. What prohibits us this cycle is the Agua Fria project.

COMMISSIONER VIGIL: But once we complete the Agua Fria project, if we have approved this resolution to submit for planning monies, does this commit us to submitting this for our CDBG grant request in the next cycle?

MR. GUTIERREZ: Mr. Chairman, Commissioner Vigil, it doesn't prohibit us from applying for the infrastructure side once the Agua Fria project is closed down. These are only planning dollars and actually the deadline - what we were instructed was to get an application, to submit an application to DFA about the first of the year.

COMMISSIONER VIGIL: I know it doesn't prohibit us, but does it compel us, does it require us to submit this project for our CDBG infrastructure funding?

CHAIRMAN MONTOYA: I would say no.

COMMISSIONER VIGIL: I think that's what you said. I was just wondering.

CHAIRMAN MONTOYA: That's still an option that we determine. The Board determines what the priority is. So this is not in any way shape or form committing us to any future funding for CDBG for the infrastructure with this fund. It's kind of a different fund.

COMMISSIONER VIGIL: And that's the clarity I needed. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Sure. You're welcome. Any other questions?

COMMISSIONER ANAYA: Move for approval.

CHAIRMAN MONTOYA: Motion by Commissioner Anaya. I'll second for discussion. Any other discussion?

The motion to approve Resolution 2006-195 passed by unanimous [5-0] voice vote.

CHAIRMAN MONTOYA: Mel, Shelly, thank you for being here. Erle, thank you for your continuing staff support. This is really a much needed project and you all are doing a great job. Thank you. Appreciate it.

IX. C. Resolution No. 2006 -196. A Resolution in Support of the New Mexico Hispano Music Association and their Request for Capital Outlay Funding During the 2007 Legislative Session (Commissioner Montoya)

CHAIRMAN MONTOYA: This request, and I asked Casey Gallegos, who is the president for the New Mexico Hispano Music Association to come up for any other detailed questions that there may be. This request is – we would act as we do with many other requests that we get from constituents and agencies and organizations as we have already with the previous two, as you have noted, for our support of their legislative request for \$200,000 for the plan, design and engineering services for a facility which would be kind of a museum, kind of a hall of fame type of structure, as well as a building that would provide administrative offices, meeting rooms and places for them to store and archive their records.

So what we again would be acting as here is as we do in many cases, as the fiscal agent for the New Mexico Hispano Music Association.
Would you want to add anything?

CASEY GALLEGOS: The budget right now is in its infancy. We had our conversation before and this is our first attempt at getting funding for a project. We've identified some property in Santa Fe County, in Arroyo Seco, actually, and that's why we came to Santa Fe County, before this government entity.

CHAIRMAN MONTOYA: Okay. Any questions? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chairman, again, the wording of paragraph 3 of the Now, therefore, talks about the County's legislative agenda and different wording in all of these resolutions. I think perhaps we could revise that simply to read authorize County staff to support the legislation for the 2007 session.

CHAIRMAN MONTOYA: Okay. That's fine.

COMMISSIONER CAMPOS: Or we could delete it entirely and just endorse it generally but not require staff time to deviate from our priorities.

COMMISSIONER SULLIVAN: Number one says support the request, number two says encourage Governor Richardson to sign it. So one and two seem to be pretty explicit.

CHAIRMAN MONTOYA: Okay. Any other?

COMMISSIONER SULLIVAN: Move for approval as amended. With just paragraphs 1 and 2.

COMMISSIONER VIGIL: Second.

CHAIRMAN MONTOYA: Okay. Motion by Commissioner Sullivan, second by Commissioner Vigil. Further discussion?

The motion to approve Resolution 2006-196 passed by unanimous [5-0] voice vote.

CHAIRMAN MONTOYA: Casey, thank you for bringing this to us.
Appreciate it.

IX. D. Resolution No. 2006 - __. A Resolution in Support of Robert Anaya's Candidacy for Sr. Vice President of the National Association of Housing and Redevelopment Officials (NAHRO) (Commissioner Montoya)

CHAIRMAN MONTOYA: Robert is our executive director for the Housing Authority and presently is serving as the Southwest Regional Chapter, and has been nominated to run for the senior vice president for the National Association, and what I'm asking for here is that the Santa Fe Board of County Commissioners support his presidency for his candidacy as the senior vice president for the National Association. Any discussion?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Is it appropriate to make such an endorsement? I've never seen it done before? We've never endorsed your candidacy or Commissioner Anaya's candidacy, or Commissioner Vigil, and you all have run for different offices.

CHAIRMAN MONTOYA: Well, personally, I guess I deliberately did not ask. I probably should have, but I didn't ask for -

COMMISSIONER CAMPOS: Were you concerned about the vote?

CHAIRMAN MONTOYA: Yes, I was concerned about getting the vote of my own County Commission. I didn't know if I had three.

COMMISSIONER VIGIL: Mr. Chairman, I'm wondering. I think there needs to be some discussion with regard to a policy that we establish in putting forth these kinds of resolutions. I think that in general, there's a consensus that we support employees who move forward through any of their national affiliates, state or regional, and I think currently Robert is a regional officer with this organization. I'm not sure that it actually makes a difference during his campaign at NAHRO whether or not this resolution exists or not, because I think those kind of candidates get elected on their merits. But we have other employees who belong to other associations and affiliates who actually want to advance within their associations and affiliates and who don't have the opportunity of coming forth to the Commission to request a resolution supporting them. And I think if you would consider it, and I'd also like to speak to Commissioner Anaya about this. I think it might be good for us to talk about establishing a policy as to how we support these kinds of endeavors on behalf of our employees.

On the one hand, this could be opening the floodgates. On the other hand it could be perceived as this Commission creating a narrow support for only one particular employee. So I'm concerned about the repercussions of that and what it would mean to other employees. So I would propose that we consider tabling this to establish and maybe work with the County Manager's office with regard to how we move forward in support of employees' advancement to national affiliates and how we do that fair and equitably.

If the Commission is in agreement with that, I would consider that we might table this, and this is no reflection on this particular employee, I just want to make sure that we have a consensus and a generalized policy that we work to advance all employees who are seeking to

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advance themselves through their affiliates.

So with that, I would ask if you would consider tabling this so that we have an opportunity to perhaps have the County Manager propose some kind of a policy or a direction or an avenue for all employees to come to us for resolutions that would support them in their advancement.

CHAIRMAN MONTOYA: Okay. Any discussion? Commissioner Anaya.

COMMISSIONER ANAYA: I can understand where Commissioner Vigil is coming from. I don't know if there's another person in Santa Fe County that is also seeking this position. And I guess I'm kind of - is there, that you know of?

COMMISSIONER VIGIL: Commissioner, it's not this position I'm particularly focused on. I think our Land Use Administrators belong to Land Use affiliates, they participate in state levels of things. At some point or another many of them have run for state level offices. Many of those do participate or have affiliations with national affiliates. I think there are other - they're not coming to mind but there are other affiliates through many of our organizations within the County that are employees participate, both state and nationally that we're not familiar with because we don't know. And that's what I'm asking, that we look at the broad scope of what employees we support in their advancement through their affiliates.

Housing certainly is one of them but I know Land Use is another. They're not all coming to mind and I don't know if you know of any, Roman, but I think there are other affiliates that our employees participate in and I'd like to be able to support them all.

CHAIRMAN MONTOYA: Roman, in your history here, have there been other employees of Santa Fe County that have sought national offices? And could there be potentially be, as Commissioner Vigil suggested?

MR. ABEYTA: Mr. Chairman, in my history, I'm not aware of any employees that have sought national offices but like Commissioner Vigil says, Land Use, they are a member of the APA, which is the Association of Planning and Architecture, and there are offices there that could be sought. So there are different programs and affiliates that County employees can seek offices. We do have an employee development program. When you were talking about us creating a policy, this is something that we could have our employee development specialist work on right away. We could work on something like this. So it's up to the Commission.

I'm not aware of any major national offices that anybody has held, but there are positions within different affiliates that County employees are members of.

COMMISSIONER VIGIL: We could actually create resolutions for state offices also through this process if we develop and establish a policy for it through the employee development. And I think probably the opportunity would be to actually advance employee development through something. This brings the consciousness to me about that. One of the things we do want to do is encourage this kind of thing and I think through our employee development if we identified the scope or the potential of affiliates that employees could participate in we might be able to promote them at some level. I think we all want to encourage this but I want to make sure that we do it in as broad a base as we possibly can.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: It's 2:20 and we're talking about a lot of real symbolic gestures here. It seems to me that this resolution is not going to help Mr. Anaya in his candidacy at all and I don't think it deserves to be on the agenda, frankly.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chairman, I think if there's some necessity that there be a letter of support, I think in terms of employee initiatives like this it should be done through the County Manager and the County Manager could write a letter supporting that. And that would also mean when these state and national organizations are seeking officers, that takes time and that time is taken away from County activities, and I think the County Manager is the one best suited to evaluate that. And I don't think we need to have our agenda filled up with a lot of these support resolutions. I think what Commissioner Vigil says is a good idea, that we establish, as the County Manager suggested through the employee development program, that we establish a mechanism where the County Manager could provide whatever support letters are needed and at the same time he would know if there's some commitment of the staff's time involved there. We don't have - I don't have that knowledge of how much time this position would take and who would fill in for Mr. Anaya when he's performing these duties. So I would suggest that it be tabled as well.

COMMISSIONER VIGIL: Move to table.

COMMISSIONER CAMPOS: Second.

CHAIRMAN MONTOYA: Motion and a second to table.

The motion to table the resolution in support of Robert Anaya's candidacy passed by unanimous [5-0] voice vote.

CHAIRMAN MONTOYA: So Roman, if you could come up with something.
MR. ABEYTA: I will.

IX. E. Discussion and Possible Approval for an Expenditure of Discretionary Funds in the Amount Not to Exceed \$20,000 to Pojoaque Valley Schools for the Provision of the 2007 Summer Youth Recreational Program (Commissioner Montoya)

CHAIRMAN MONTOYA: This is a program that has been ongoing in Pojoaque that I've talked about ad nauseum in our discussions about whether or not we should have a discretionary fund, and this is a continuation. Again, it's been in existence at the same amount for probably about 14 years now, and with that I would ask for a motion.

COMMISSIONER ANAYA: So moved.

CHAIRMAN MONTOYA: Motion by Commissioner Anaya.

COMMISSIONER VIGIL: Second.

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CHAIRMAN MONTOYA: Second by Commissioner Vigil. Discussion?

The motion to approve the expenditure of discretionary funds passed by unanimous [5-0] voice vote.

- IX. F. Request Reconsideration of CDRC Case # DP 06-5381. New Cellular Wireless Application, Request an Appeal of the County Development Review Committee's Decision to Deny a New Wireless Communication Facility with a 25' Stealth Monopine Cell Tower on 0.013 Acres of Leased Area and a Variance of Ordinance 1998-15, Section 8.3.8 to Allow 600 feet of Utility Line to be Placed Above Ground. The Property is Located at 12 C Icehouse Road in the Traditional Historic Community of Madrid within Section 25, Township 14 North, Range 7 East (Commissioner District 3) Jan Daniels, Case Planner (Commissioner Montoya)**

CHAIRMAN MONTOYA: I have asked that this be brought forward so that at the next land use meeting that we could hear this case again.

COMMISSIONER VIGIL: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: I appreciate you bringing it forth. I think what's happening now is as the Commission gets more and more proposals for cell towers, we're sort of on a learning curve here in terms of what we're limited and what the scope of our authority is under federal regulations. And I think we do need to reconsider some of the cases that we have decided and I appreciate that you've brought this forward, Commissioner Montoya, because in fact I'm not fully educated on what the scope of our authority is under the federal regulations. So I think it's important that we reconsider this case and through the process of reconsidering it we become more familiar and I hope we can get a more definitive understanding of what our authority is with the Federal Telecommunications Act of 1996.

And I know really the authority is very specific, it's limiting and that it has specific requirements. With the two cases I've seen I'm not that familiar with those so I think when we do reconsider it perhaps we might be able to be educated and highlighted on that authority. So with that, Mr. Chairman - do we need a motion on this?

CHAIRMAN MONTOYA: Yes.

COMMISSIONER VIGIL: I move that we reconsider CDRC Case DP 06-5380, New Cingular Wireless Development Plan.

COMMISSIONER ANAYA: Second.

CHAIRMAN MONTOYA: Motion, Commissioner Vigil, second, Commissioner Anaya. Discussion? Commissioner Sullivan.

COMMISSIONER SULLIVAN: I'm wondering, there seems to be two components to this. One is for a so-called stealth mono-pine tower and equipment facility on

.013 acres of leased area. And secondly, a variance of Ordinance 1998-15 to allow 600 feet of utility line to be placed above ground. I'm not sure, Mr. Chairman or perhaps Mr. Ross can explain to me, is the Telecommunications Act also saying that the utility line has to be above ground?

MR. ROSS: Mr. Chairman, Commissioner Sullivan, no.

COMMISSIONER SULLIVAN: Okay. Well, I would certainly support the Commission and the CDRC's decision to deny the aboveground placement of the utility line. I do understand that it would be worthwhile to re-evaluate the cell tower itself. We do have a fairly comprehensive cell tower ordinance. When Commissioner Campos and I first came onto the Commission there were some very high profile cell tower cases that resulted in a pretty good, I think, cell tower ordinance. It's been several years since we've revisited it. We haven't had too many cases.

But my suggestion for reconsideration would be that it be for the wireless communications facility, the 24-foot proposed stealth mono-pine tower and not the underground utilities.

CHAIRMAN MONTOYA: Steve, can it be broken up that way?

MR. ROSS: Mr. Chairman, I think the only issue with that is that if the tower is relocated, there may be different variances. They may still want a variance for the utility line or it may not be necessary, depending on where they relocate it. If that actually occurs.

CHAIRMAN MONTOYA: We would need to keep it as it's been presented.

MR. ROSS: It's probably a good idea just for now. I understand where Commissioner Sullivan is going and I agree with his assessment that the utility line is unrelated to anything that's implicated by the Telecommunications Act. But if the end result is that they have to move it, it may become moot, for example, or there may be other variances they're asking for. So I'm not sure what my recommendation would be at this point. I don't see any harm in what he's suggesting right now. It expresses to them something concerning their activities down there that it might be important.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: I support the reconsideration.

CHAIRMAN MONTOYA: Okay. Could we have a motion?

COMMISSIONER VIGIL: There is one.

CHAIRMAN MONTOYA: Oh, we do?

COMMISSIONER VIGIL: I made one.

COMMISSIONER CAMPOS: Commissioner Anaya seconded it.

COMMISSIONER VIGIL: I voted in favor or reconsidering that case.

CHAIRMAN MONTOYA: As is?

COMMISSIONER VIGIL: Yes.

CHAIRMAN MONTOYA: As is. All right.

The motion to reconsider CDRC Case #DP 06-5381 passed by majority 4-1 voice vote with Commissioner Sullivan casting the negative vote.

CHAIRMAN MONTOYA: So it will be on our next land use agenda.

IX. G. Resolution No. 2006 -197. A Joint Resolution in Support of the Securing Funding from the Legislative and Executive Branches of the Government of the State of New Mexico to Acquire Equipment to Support the Solid Waste Diversion and Recycling Activities of the Buckman Road Recycling and Transfer Station (Commissioner Vigil)

COMMISSIONER VIGIL: Thank you, Mr. Chairman. This is not the first time that we've approved this resolution Randall Kippenbrock, who is the director of the Solid Waste Management Authority - as you know that is a joint authority between the City and the County, is here just to briefly describe what kind of funding we will be going for. If you would just identify that Mr. Kippenbrock I think what we're doing is just asking this authority independently and the City will also be acting on this resolution tomorrow night. The authority actually exists independent of both governing bodies, but because it's made up of both governing bodies, we're bringing for this resolution to the County and as I said, the City. Randall, specifically, if you could just highlight the funding we're going to be requesting on this.

RANDALL KIPPENBROCK: Thank you, Chairman Montoya an Commissioner Vigil. The funding that we're requesting is to assist the new MRF that's under construction right now. We are seeking approximately \$1.4 million. There are three levels of priorities. The first levels are all related to rolling stock equipment such as semi-trucks, transfer trailers, etc. And also in the first level of priority the household hazardous waste collection. We're going to have a year-round collection. Down the road, as we get additional funding, we are looking at additional trucks and containers to be able to expand out recycling efforts. And last but not the least, a technical assistance program and possibly initialize the commercial and institutional collection program at these locations as well.

Keep in mind, it's been a long process. Back in December 2004, the County, the City and the Agency jointly supported the creation of the MRF Which is the material facility, or better known as the recycling center at the Buckman Road recycling transfer station, formerly the City transfer station. Earlier this - or late last year, about one year ago, we at the agency set aside money for the \$3.2 million worth of recycling equipment that is being currently constructed. And last but not least, Julie Grimm, who happened to be in the audience, works for the New Mexican newspaper, she's been covering it and hopefully she will have another great article out soon on the advancement of the construction of the recycling center. We expect to have it completed by mid-January. Hopefully we will have the pilot program up and running by mid-February and eventually up and running some time thereafter. We are asking for you support as well from the City to show more support now just from the County and City of Santa Fe, as well as northern New Mexico that we do need additional funding to

better secure the necessary recyclable material to make this project a success.

COMMISSIONER VIGIL: Mr. Chairman, I know James drafted a very comprehensive memo for our packet. Did you want to add anything, Mr. Lujan, to this? Okay. Nothing further from me, Mr. Chairman.

CHAIRMAN MONTOYA: Any questions on this?

COMMISSIONER VIGIL: I therefore move we approve.

CHAIRMAN MONTOYA: Motion by Commissioner Vigil.

COMMISSIONER CAMPOS: Second.

CHAIRMAN MONTOYA: Second, Commissioner Campos. Discussion?

The motion to approve Resolution 2006-197 passed by unanimous [5-0] voice vote.

IX. OTHER MATTERS FROM THE COMMISSION

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Not at this point.

COMMISSIONER CAMPOS: I'll pass.

COMMISSIONER SULLIVAN: Nothing further, Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: I just wanted to – I think this is our last meeting before the new year. I wanted to thank my constituents for allowing me to serve them for four years and I look forward to serving them for another four years, and I wish everyone a Merry Christmas and a Happy New Year. And going back to the resolution about supporting Robert Anaya for the housing, I think that he was merely asking for support from this Commission, and he didn't have to do it, but when he wanted to move forward, which I respected, I think it would have been appropriate for this Board to support him. And it kind of hurts. It really hurts to see that the Commission would not support somebody moving forward through the – especially for Santa Fe County. So with that, thank you, Mr. Chairman.

COMMISSIONER VIGIL: Mr. Chairman, on that I'd just like to let Commissioner Anaya know that the Commission has only been table and could be reconsidered. I guess part of the issue that I would like discussed is if this is a requirement and if it is a requirement, certainly that's something that we need to step up to the plate. And secondly, if there's a way we could do this for all employees and give everyone a fair chance at coming to the Commission for this recommendation. But because it's been tabled and because the Manager has a direction to set some policy I don't see that this can't be brought forth again and reconsidered. So I don't see our action as non-supportive. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. I just have a couple of items. I'd like to invite people, as Commissioner Anaya mentioned, this is our last meeting prior to the first meeting in January, so between now and then we will have our inauguration ceremonies. They will be here in the Commission Chambers, beginning at noon on January 1st so I'd like to invite

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people to come out on that date, skip some football for some good entertainment here. We have, I believe five newly elected or re-elected officials that will be sworn in on that date. I will be one of them and I'd also like to thank my constituents for giving me the privilege and the honor of continuing to serve for another four years and look forward to continuing a lot of the projects that we've begun and hopefully will come to fruition at the end of four years. And I'd also just like to wish everyone a Merry Christmas and a Happy New Year and a safe holiday season.

X. CONSENT CALENDAR

A. Miscellaneous

- 1. Request Authorization to Accept and Award a Professional Services Agreement to the Second Highest Rated Offeror in Response to RFP# 27-0705-PFMD/RH to Provide Architectural and Engineering Design Services of the Vista Grande Library Phase III Expansion \$50,000 (Project & Facility Management Department)**
- 2. Request Approval of Use of the Cooperative Educational Services (CES) Contract Agreement and Memorandum of Understanding (MOU) with COMARK Building Systems, Inc., for the Site Design, A/E, Civil Engineering, Landscape Architecture Design and Structural Engineering Services for the Esperanza Administrative Complex \$48,796 (Projects & Facility Management Department) ISOLATED FOR DISCUSSION**
- 3. Request Approval of an Amendment to the Existing Lease Agreement Between Santa Fe County and the New Mexico State Land Office to Allow Relinquishment of a Portion of the Lease of Approximately 2.5 Acres in Order to Allow Presbyterian Medical Services Construction of a New Headstart Facility in Agua Fria (Projects & Facility Management Department)**
- 4. Request Approval of an Agreement with Presbyterian Medical Services to Reimburse the County for the Portion of Annual Lease Payment Applicable to the Approximately 2.5 Acres of Land for the Agua Fria Headstart After Relinquishment From the Existing Lease with the New Mexico State Land Office (Projects & Facilities Management Department)**
- 5. Request Approval of Contract with US Bureau of Reclamation for Lease of Santa Fe County San Juan-Chama Water for Calendar Year 2006. Contract No. 06-WC-40-840. (Water Resources Department)**
- 6. Request for Approval of the 2006-2007 Cooperative Program**

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Funding Agreements, for Various County Road Improvements Projects, From the New Mexico Department of Transportation (NMDOT) - \$465,659.49 (Public Works Department)

7. **Request Approval and Execution of Amendment Number One to the Professional Services Agreement, with Southwest Archaeological Consultants, Inc., to Provide Additional Testing, Data Recovery and Archaeological Survey Services for Agua Fria Phase III Projects - \$34,295.95 (Public Works Department)**
8. **Request Approval of Collective Bargaining Agreement Between AFSCME and Santa Fe County (Human Resources Department) ISOLATED FOR DISCUSSION**
9. **Request of Approval of Cost of Living Increase for Non-Union Staff Members (Human Resources Department)**
10. **Request Approval of Lease by and Between Santa Fe County and Women's Health Services Inc., (Legal Department) ISOLATED FOR DISCUSSION**

COMMISSIONER ANAYA: Move to approve.

CHAIRMAN MONTROYA: Motion by Commissioner Anaya.

COMMISSIONER SULLIVAN: Second.

Cm Second by Commissioner Sullivan.

The motion to approve the Consent Calendar with the exceptions of items X. 2, 8, and 10 passed by unanimous [5-0] voice vote.

- X. A. 2. **Request Approval of Use of the Cooperative Educational Services (CES) Contract Agreement and Memorandum of Understanding (MOU) with COMARK Building Systems, Inc., for the Site Design, A/E, Civil Engineering, Landscape Architecture Design and Structural Engineering Services for the Esperanza Administrative Complex \$48,796 (Projects & Facility Management Department)**

COMMISSIONER SULLIVAN: Thank you, Mr. Chairman. I'd like to thank my constituents for not recalling me.

CHAIRMAN MONTROYA: Yet.

COMMISSIONER SULLIVAN: I noticed an article in the paper about Las Vegas. This is a fairly complicated agreement between Santa Fe County and Women's Health Services. It provides that - well, I want to find out what it provides. As I understand it, it provides that we buy a building for them with funds provided by the legislature, and I hope it's

all the funds provided by the legislature, and they're then allowed to lease that back from Santa Fe County at terms as indicated in the agreement, but also to provide services to indigents for all or a portion of those services. So there's no cover memo and perhaps somebody could expand on what this is and what the obligations of the County are and what the possible glitches might be in doing this.

AGNES LOPEZ: Mr. Chairman, Commissioner Sullivan, are you referring to the Esperanza Shelter agreement or Women's Health Services.

COMMISSIONER SULLIVAN: I said Women's Health Services. That's not the right one?

MS. LOPEZ: No. Item 2 on the Consent is Esperanza.

COMMISSIONER SULLIVAN: I got the wrong one then. I'm one behind. We can talk about Women's Health Services later. I've got to move up to number 2. My question, Mr. Chairman, on Esperanza was how the decision was made to go with CES procurement and why we didn't procure these services for architectural and engineering services through the normal procurement route. It's \$48,796 and in dealing with some of the school districts around the state I've found some of them to be fairly unsatisfied with CES, which is primarily a mechanism to get around the state procurement code, as I view it, personally. But this is the first one of these I've seen. How did we come to decide this was the way to design this particular facility?

MS. LOPEZ: Mr. Chairman, Commissioner Sullivan, the PFMD staff and Esperanza looked at some buildings that COMARK had built and we were looking more at COMARK. CES has a contract with them. They built the charter school at Taos. It was roughly a 20,000 square foot building. We also visited one in Albuquerque, the Highway and Transportation that they also built, and they were very happy with that as well. So we were pretty comfortable with going with Comark and CES was a vehicle to procure that.

COMMISSIONER SULLIVAN: But my understanding is that this is not to build the building. This is just to provide architectural and engineering services and bidding services.

MS. LOPEZ: Mr. Chairman, Commissioner Sullivan, that's correct. They do both. They do the design as well as construct the building.

COMMISSIONER SULLIVAN: Sure. And so my question is, they may well be, this particular firm, a very good firm at doing this type of thing and specialized in it, but why wasn't it put out for architectural/engineering proposals, just the way we do anything that exceeds \$25,000 in A/E services?

MS. LOPEZ: Mr. Chairman, Commissioner Sullivan, Esperanza - their lease has expired. They are very anxious to get into a new building. And because we were comfortable with Comark we decided to use the CES contract and go that route.

COMMISSIONER SULLIVAN: Well, just so the Commission's aware, architectural and engineering firms can be qualified or be listed on the CES roster and it really was started for routine things like building chain-link fences and doing things like that that districts could tap into to construct routine things using a statewide procurement basis. It then

apparently became more complex with construction management services and so forth. But these fees aren't set. In other words, they're negotiated. They're not a statewide fee that every Esperanza administrative complex in the state of New Mexico will be designed for \$48,000. It's negotiated just the way any other A/E fee is.

Everyone's in a hurry. We hear that all the time. I don't think that that sets up an entitlement not to follow the procurement code. Perhaps you can explain the emergency here a little more.

ELLIE EDELSTEIN: Mr. Chairman and Commissioner Sullivan, my name is Ellie Edelstein. I am currently on the board at Esperanza and it's been involved with this project, I think it's at least three years that we have been talking about it. The urgency is we have run out of space. We cannot really provide all the services to the efficiency and completeness that we would like. We have people sharing offices. We have - you have to come and visit to understand it. Our lease expired; we are not on a month-to-month lease. Because we've been working on this for so long and because of the intricacies of working through the government we have run out of space and I want to just add one thing and that is the cost of this compared to what the state has given us - the state has given us through two legislative sessions so far, \$1.645 million.

For us to build something in the neighborhood of 10,000 square feet with that kind of money, you cannot go the route that normally you would go, because it would be twice that cost and we would get half the building. So part of it was a time constraint, because this is one company that can do the whole job. They use, like Ford, an assembly line approach. They have a complex in Texas that is unbelievable. It must 200,000 square feet, and when they build a building, it's built in three months from beginning to end.

I don't know if that answers your question.

COMMISSIONER SULLIVAN: I certainly appreciate the work that Esperanza does and it's a wonderful program. I'm concerned when we're dealing with \$1.6 million in public funds and an architectural agreement that was procured with no competition.

MS. EDELSTEIN: None of this - there is going to be no competition in this. This was a decision that was made and supported -

COMMISSIONER SULLIVAN: That's what I'm complaining about, that there was no competition. That something of this size - and I'm not familiar with the facility, but if it's a 10,000 square foot facility, that's \$164 a square foot. And that's certainly well within the range of manufactured buildings that can provide heated space. They may not be as fancy as our new courthouse that we see in front of us, our district courthouse rather, but nonetheless it's certainly do-able. I'm just concerned setting a precedent of selecting architectural and then most likely, since they're going to do the architecture and design it will be for their own facility, and the next request that will come back will be to procure the facility with this same firm.

I think we're stretching the procurement system when we do this. I would like to see them compete with any other entities that do this, or if you wanted to do a design-build procurement we could certainly look at that as well. That's my feeling. Joseph, did you have some thoughts on that? I think Joseph had some answers or some comments on that.

MR. GUTIERREZ: Mr. Chairman, Commissioner Sullivan, I don't know that I

have answers for you. I know that in terms of procurement that it was possible that we could big this out, but by using an existing state contract we are not in violation of any procurement, and the fact that what Esperanza, who is the user at this point, and the dollars are allocated, the modular route was the route that we chose. The fact that there is a state contract that allows us to expedite it, that was the avenue that we sought at this point. And I think for their needs and their discussion and working with COMARK and with customers that they service we felt that this was the best route.

But again, I want to stress that as far as my knowledge, it isn't in violation of any procurement because the state went out, the schools went out and bid this and CES facilitates these kinds of situations. They may or may not work in all circumstances. This is unique because we have limited dollars and Esperanza looking at 10,000 to 12,000 square feet. And \$160 a square foot, that's very reasonable. The A&E agreement comes out to be five percent of the total cost, which is very reasonable for us because we don't traditionally get a rate that low. Just some explanation in terms of the situation.

CHAIRMAN MONTOYA: Anything else, Commissioner Sullivan?

COMMISSIONER SULLIVAN: Yes, Joseph. Is there some guarantee that they will build this 10,000 to 12,000 square foot facility for the budgeted \$1.6 million?

MR. GUTIERREZ: Mr. Chairman, Commissioner Sullivan, there's not a guarantee but whatever the actual square footage and the cost of that, we will negotiate with them and that would come to you for final approval, but what comes to you for a final approval will be the satisfaction of the user agency, which is Esperanza and with our satisfaction that we've met the criteria in terms of procurement and that they can deliver that product.

COMMISSIONER SULLIVAN: That's all the questions. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Just a little bit of statement to let you know in support of this project. As you know, Esperanza has been working on this for quite some time. They've gone to the City, they've come to the County, they've gone back to the City, they've come to the County. Ultimately, this project has been fully funded and is supported because of the purposes and the population that they serve. Domestic violence is a huge problem in our community and indeed throughout our state and indeed nationally. I think it was very prudent of staff to consider an expeditious way of trying to get this project going because they are also faced with the problem of a landlord right now who has wanted them out yesteryear, and caught in the middle of trying to get an expeditious way of relocating and meeting and continuing the needed services that they provide. So with that, Mr. Chairman, I think I will move that we approve this.

CHAIRMAN MONTOYA: Motion for approval by Commissioner Vigil. I'll second for discussion. Further discussion? I'll just say that as a former school board member and as an individual who works for a non-profit I see that this potential to utilize CES services is needed for sometimes circumventing the long, drawn-out bureaucratic process that tends to slow projects down and tend to spend a lot more money, which I've experience in the non-

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profit that I work for by it running through going out to bid, putting out for everything that you can think of between here and the end of the hallway over there. This is an avenue to allow governments and other entities in cases where it's appropriate, to move forward in a much more expeditious manner. Usually these things, when we would utilize them was for emergency situations. I clearly see this as an emergency situation that Esperanza is facing here. They need to move forward quickly and expeditiously. So I fully support the request and I think more importantly trust that staff is doing a good job in terms of the recommendation that we're getting from you.

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

X. A. 10. Request Approval of Lease by and Between Santa Fe County and Women's Health Services Inc., (Legal Department)

COMMISSIONER SULLIVAN: This is the Women's Health Services lease which I would ask someone who's involved with this to give us a little more detailed explanation. There's no staff cover memo on it.

MR. ROSS: Mr. Chairman, Mr. Gutierrez and I, I guess will tag-team on these questions. This is a legislative appropriation to Women's Health Services and it came to the County as an appropriation to the County to provide a building to house facilities that would address women's health issues. The intent was always that the funds would come to the County and then the County would purchase the building, if possible, that Women's Health Services currently occupies.

The lease was prepared by outside counsel in consultation with the Attorney General. As you know, in general, donations to non-profit corporations are unconstitutional. We've recently had a statute enacted which helps flesh out an exception in the constitution for the care of sick and indigent patients. The statute says that you can, consistent with the constitution, provide a donation to a non-profit corporation and offset from the rent, which you would normally charge an entity for using government property. That amount of money that represents the difference between the amount of basically uncompensated cost of care for sick and indigent patients. And that's what you see reflected on Exhibit C is essentially to formula for determining the rent payments that are due annually should the County successfully purchase this building with those legislative dollars.

How that works is that each year, the County and Women's Health Center would get together and review the books, essentially, from the preceding year and agree what percentage of the care that was rendered was uncompensated. And what we're using as a formula so that it's more of an objective test is data provided by the Rural Primary Healthcare Act through the Department of Health. These are essentially statistics that establish the cost of healthcare in a given community at a given time.

I said for the preceding year we would do this look-back but for the first period, in other words, the period from January 1st of 2007 for the ensuing 18 months we would consider an 18-month period and then after that it would be a 12-month period so that we're coordinated with the County fiscal year. This lease presumes that we can successfully negotiate a purchase agreement with the owner of the building where Women's Health Services currently resides and we're fairly confident that that can occur. But the legislative money that was appropriated is not quite adequate we feel to purchase the building at this point so we'll be coming back and talking to you about that in the future.

But the lease is a necessity to get the funds through the State Board of Finance because these are severance tax bonds. So we need to have a lease agreement to show them so that the money for the acquisition can be released and then we can negotiate with the current owner of the property. The property comes encumbered by three or four leases. We will of course assume those leases and the obligation to house those tenants for the periods of those leases. The lease is fairly simple. It is a five-year lease. It provides for additional space should Women's Health Services desire to move into additional space. It provides for the rent, which is essentially the rent they're paying now, and since it is a five-year lease there's no escalator in there. And then there's certain terms, the usual terms for options and who's going to pay for what, who's going to ensure the property, how the whole transaction is going to work. Essentially, Women's Health is going to be responsible for maintaining their part of the building and the remainder of the building would be maintained by the landlord, the County.

COMMISSIONER SULLIVAN: Madam Chair, let me just clarify that the 8150 square feet referred to in the lease, that's the space that Women's Health Services currently occupies?

MR. ROSS: Correct.

COMMISSIONER SULLIVAN: Okay. So we're still obligated then to continue to lease out other space, so there's some liability to the County there if that space becomes unleaseable.

MR. ROSS: Yes.

COMMISSIONER SULLIVAN: Plus there's some liability of some potential issues where we still haven't negotiated a price with the owner of the building that equals the legislative appropriation.

MR. ROSS: That's correct, Commissioner Sullivan. What we had thought we would do is approve the lease but not execute it so that we're not obligated to lease a building we didn't own.

COMMISSIONER SULLIVAN: The other question I had was we're utilizing, I guess this care of sick and indigent patients mantra to formulate the lease, and as I mentioned earlier, the Women's Health Services can offset their rent with payments for that. But my concern is that in Exhibit C, paragraph 4 it says Women's Health Services may at its option pay all or a part of the annual rent in cash in lieu of providing services. So they have the option, and in the past have been somewhat reluctant to handle indigent cases is my recollection. I think I've heard that they're doing more of them, which is good, but if they have the option to

opt out or doing any indigent patient work then how do we justify this lease that revolves around their providing this care to indigent persons?

MR. ROSS: Commissioner Sullivan, if they do not offset their lease payments through providing uncompensated care, they would essentially be providing a fair market price for their space, which is not unconstitutional. We can rent buildings to people should we need to so long as we charge a fair market value for that rental space. So if they choose not to provide care to indigent patients and choose to pay the full rent, which I think is unlikely from my conversations with them, but should they choose to do that the County would receive what is essentially the fair market value of that rental space and that would be permissible.

COMMISSIONER SULLIVAN: Okay, I understand. But going back a step, my understanding was that what enabled us to consummate this transaction was the fact that it was with a non-profit that provides care to sick and indigent patients. Now, if that non-profit no longer provides care to sick and indigent patients, then what happens?

MR. ROSS: Well, the legislative appropriation was for the County to provide women's health services, and they do that. The legislation itself did not contain any proviso that required Women's Health Services or the County to provide care for sick and indigent patients. That's a requirement in the New Mexico constitution to provide a donation to a non-profit corporation.

COMMISSIONER SULLIVAN: Okay, so I'm still trying to understand. What happens if, under paragraph 4 in Exhibit C they opt not to provide care to sick and indigent patients? Do we now run into a problem with that constitutional requirement?

MR. ROSS: No. Should they elect not to provide care to sick and indigent patients then they would pay full market value for the property, which would not violate the constitution. And because they're providing women's health services to residents of the county they wouldn't violate the appropriation either. So I think that would be fine.

COMMISSIONER SULLIVAN: Okay, so the only issue about providing care to sick and indigent patients is that proviso that allows them to substitute care for rent. It's not the basic transaction itself.

MR. ROSS: Exactly.

COMMISSIONER SULLIVAN: I see. Okay. I think that answers my questions, Madam Chair.

COMMISSIONER VIGIL: Are there any other questions? With that the Chair entertains a motion.

CHAIRMAN MONTROYA: Move for approval.

COMMISSIONER VIGIL: Motion to approve. Is there a second?

COMMISSIONER SULLIVAN: Second.

COMMISSIONER VIGIL: Motion and seconded. Is there any further discussion?

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

COMMISSIONER VIGIL: With that I hand the podium over to Mr. Chairman.

XI. Staff and Elected Officials' Items

A. Projects & Facility Management Department

- 1. Request Approval to Award Construction Agreement No. 26-1403-UT/RH to the Lowest Cost, Responsive Bidder, Lockwood Construction to Provide Construction of the Water System Improvements for the Agua Fria Community Center Building in the Amount of \$286,539.30**

CHAIRMAN MONTOYA: Any questions. Commissioner Sullivan.

COMMISSIONER SULLIVAN: Joseph, Mr. Chairman, it indicates in the memo that this solicitation was done with a request for quote. Could you explain that process to me as opposed to bidding this out?

JOSEPH GUTIERREZ (PFMD Director): Mr. Chairman, Commissioner Sullivan, it's my understanding, and Randy Herrera, who actually oversaw this process can explain it, but I believe this went out twice for bid and both times we were unsuccessful in soliciting a contractor to do the work for various reasons, and I believe the procurement code after that point allows us to procure quotes at that point.

COMMISSIONER SULLIVAN: What were the problems that in two attempts you couldn't do it but in a third you could?

RANDY HERRERA (Contracts Manager): Mr. Chairman, Commissioner Sullivan, on the first attempt that we had we actually did award a contract. That first contractor could not bond the project. We waited on him for over probably sixty days for him to come up with a bond. Therefore we deemed it as a non-responsive bid to us. Everything after that we actually went for another invitation to bid. The second invitation to bid brought no bids at all. Therefore under 13-1-131 we went out for solicitation via quotes and went with the lowest quote.

COMMISSIONER SULLIVAN: And did you get more than one quote?

MR. HERRERA: No sir. The lowest responsive quote we've awarded.

COMMISSIONER SULLIVAN: And who designed this? Was this designed in-house or was this designed by a consultant?

MR. HERRERA: Mr. Chairman, Commissioner Sullivan, that's in-house design.

COMMISSIONER SULLIVAN: It looks like a fairly straightforward project to me, a water line system and booster station and a ground storage tank. What did the contractors indicate was the problem in bidding the job?

MR. HERRERA: From what I found out, Commissioner Sullivan, I found out a couple of the contractors that specialize in water were already into two jobs, so they

were already working at that point in time. So they chose not to bid.

COMMISSIONER SULLIVAN: And how did we ascertain that that quote then was reasonable? Or did we simply just say, Well, we got one quote. That's it?

DOUG SAYRE (Utility Director): Mr. Chairman, Commissioner Sullivan, what we did was we compared them against the previous bids, item by item, that were provided to us in the first go-round where we lost the lowest responsive bidder. We compared them to see if they were reasonable. We felt that this was reasonable based on there had been a time span between that bid and now, and that's how we came to the conclusion.

COMMISSIONER SULLIVAN: And this contractor, unlike the first one, I assume is bondable.

MR. SAYRE: Mr. Chairman, Commissioner Sullivan, yes. He is bondable. We certainly checked on that to make sure.

COMMISSIONER SULLIVAN: So we didn't have to change any of our specifications, did we?

MR. SAYRE: Mr. Chairman, Commissioner Sullivan, no, we did not have to change any specifications regarding this project.

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

COMMISSIONER VIGIL: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Doug, once we do award this, how soon can the work be done and how soon can the community center open?

MR. SAYRE: Mr. Chairman, Commissioner Vigil, we have given him I believe 120 days to get this done, as soon as we give him a notice to proceed. I guess based on where we are today, that would be approximately the first part of April, I would say, or the latter part of March. We hope to get this done. There is a contingent there on some equipment that had to be delivered and I think that within ten weeks, ten to thirteen weeks. We're going to try to push that as much as possible and that's the booster pumping station equipment.

I've been advised by Ron who is more or less the project manager, Commissioner Vigil, that it's probably going to be mid-May. We will push it as fast as we can. We want to get this whole operation up and have this facility on-line as soon as we can.

COMMISSIONER VIGIL: Thank you. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Other questions?

COMMISSIONER ANAYA: Move for approval.

CHAIRMAN MONTOYA: Motion by Commissioner Anaya for approval.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN MONTOYA: Second by Commissioner Sullivan. Further discussion?

The motion to approve the awarding of the Agua Fria Community Center water system improvements passed by unanimous [5-0] voice vote.

MR. ABEYTA: Mr. Chairman.

CHAIRMAN MONTOYA: Roman.

MR. ABEYTA: I have on my notes that item number 8 on the Consent Calendar was withdrawn by Commissioner Sullivan, the collective bargaining agreement between AFSCME and Santa Fe County.

COMMISSIONER SULLIVAN: No.

MR. ABEYTA: No? Okay, well, I wanted to clarify for the record that – that's what my notes indicate for the record. I just want to clarify for the record that it was approved as part of the Consent Calendar approval.

CHAIRMAN MONTOYA: Okay.

COMMISSIONER SULLIVAN: I had not withdrawn it, but we can go back and take action on it.

X. A. 8. Request Approval of Collective Bargaining Agreement Between AFSCME and Santa Fe County (Human Resources Department)

CHAIRMAN MONTOYA: Roman, do you want to give us an update on that on?

MR. ABEYTA: Mr. Chairman, I just actually want to thank both the bargaining unit, AFSCME, the employees, and also the management team. They worked out an agreement that will cover the next three years and that I think addresses the needs both for the employees and for management, so I want to express my thanks to both sides. I think we have a contract that is in the best interests of the County employees. And again, that is speaking both on behalf of management and the employees.

The contract outlines and clarifies existing arbitration procedures that were in the original contract so we added language to clearly define that process. And the classification and pay plan is as follows: Employees who currently earn less than \$25,000 a year will receive a five percent cost of living adjustment. Employees that earn \$25,000 but less than \$40,000 per year will receive a four percent cost of living adjustment and employees that earn more than \$40,000 a year will receive a three percent cost of living adjustment, and this will be for the next three years.

Again, Mr. Chairman, I want to say thank you to both AFSCME and the management team for a good agreement.

CHAIRMAN MONTOYA: Okay. Congratulations and good job on both sides. Any discussion on this? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Nothing.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: How long do these negotiations, this settlement – when will they have to renegotiate new contracts?

MR. ABEYTA: The renegotiation of this particular contract will start in January of 2009. This contract runs to June of 2009 so we will probably start in January of 2009.

COMMISSIONER VIGIL: Thank you.

CHAIRMAN MONTOYA: Is there a motion?

COMMISSIONER ANAYA: So moved.

CHAIRMAN MONTOYA: Motion by Commissioner Anaya for approval.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN MONTOYA: Second, Commissioner Sullivan. Further discussion?

The motion to approve item X. A. 8 of the Consent Calendar passed by unanimous [5-0] voice vote.

MR. ABEYTA: Thank you, Mr. Chairman. I would ask now that we move item 3 from the Project and Facilities Management Department up before item number 2. We're waiting for our bond counsel and looking at the two items it may make more sense to talk about the professional service agreement first and then the bond sale.

XI. A. 3. Request Authorization to Accept and Award a Professional Services Agreement to the Highest Rated Offeror in Response to RFP#27-0701-PFMD/MS to Provide Architectural and Engineering Design Services for the New First Judicial Courthouse Complex [Exhibit 1: Budget]

MR. GUTIERREZ: Mr. Chairman, members of the Commission, this is something I had discussed with you all the previous meeting and today in front of you we have the model and we have the schematics. I also brought the firm that was the top rated firm to make a presentation to the Commission in terms of the ideas that they presented to the evaluation committee. I have Mr. Robert Culvaney who is the principal at NCA and I have Evan Sakolosky who is the designer with Durrant who is a partner with NCA. The memo outlines the dollar value of this contract. In addition to approval we are also asking that you authorize and direct the County Manager to execute the professional services agreement to the highest rated offeror in terms of the response that went out.

The reason for that is, again, this project, we're trying to expedite it in terms of getting it started. Steve Ross, who looked at the agreement drafted the agreement to terms with the architect and the team that negotiated it. It has not been finalized yet. He has another attorney looking at it. It will go the architect and in an effort to expedite this

contract we ask you that after you go through this process that you authorize the County Manager to execute this contract.

In addition, if you would like, I also have the budget, how it's broken out in terms of the agreement, the finance, but in the interim I'd like to have Mr. Culvaney and Evan make the presentation on the model and the design.

ROBERT CULVANEY: Mr. Chairman, Commissioners, we put together, we think, the best possible team for really a successful project. As he mentioned, we have Durrant out of Phoenix and today Evan Sakalosky is here and we will talk a little bit and give you a brief overview of what we've done to date. We've certainly enjoyed working with the staff so far and we look forward to a long relationship with them.

Not only do we have Durrant but we also have the Nation Center for State Courts out of Denver who have been pretty instrumental in organizing the courts and looking at their volume and things of that nature. We also have Walker Parking for the parking structure. With that team, it's a seamless team but 83 percent of the work would be done by New Mexico firms.

I was going to give you a little overview of the management that we propose. The pre-design, if you approve our contract, would happen the first quarter of 2007, and then we would look at the program. You've had an existing program done but we would revisit that program and try to analyze it and make it the highest and best use of the spaces as possible. We would also look at the court's needs assessment. And again, that would be the National Center for State Courts, looking at the needs assessment for the courts as well as technology and security for the courts.

Then we would do schematic design in the second quarter and there we would do a process called onsite design where we would bring our team to Santa Fe and sit with the users and design the facility here for about a week, week and a half, and really get the users' views in this onsite design kind of approach. We would then do design development in the third quarter. Then we would have construction documents finished the fourth and first quarter of 2008, and then have construction complete in December of 2009. Part of that we would do a furniture package with occupancy the first part of 2010, so the job would be finished, we would occupy it the first part of January.

All through this process we would have estimates going and we would were told and we are using a MACC of \$30 million and we would not go over that \$30 million. We would guarantee that. In front of you you have the model and we put together a site plan and schemes but you need to keep in mind that it's only preliminary. These things are only schematic and we know that during the process and relooking at the program things can change and change considerably. So keep that in mind as we go through this little overview today with you. But in the model you can see that we're on the corner of Sandoval and Montezuma and one of the things that we think is really important and exclusive to this scheme and urban process which we think brings so much not only to your facility and the people who use the facility, the public and the staff and the judges, but just the community around this facility. So the public plaza with parking beneath is exceptional for this project.

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We also planned the project to expand it. It would expand another 60,000 square feet to the north, and with that I think I'll let Evan just give you a brief overview of again, a preliminary and schematic design that we've come up with to date.

CHAIRMAN MONTOYA: Thank you, Mr. Culvaney.

EVAN SAKALOSKY: Mr. Chairman, Commissioners, I really thank you for this opportunity. The project as it stands before you is a really exciting opportunity for Santa Fe County and our team to work together. As Bob mentioned, the design of the project and the experience of the building starts well before you ever set foot inside the door. And so when we started looking at this and understanding the assessment that was out there, the program that was there, we really looked outside of our building before we started developing the plan, and how we could make this build not only function for the users but really be an overall benefit for the city.

And one of the opportunities that we have by placing this facility in downtown Santa Fe is begin to create some urban landscaping, some urban design, and start to fill in the fabric of downtown. So as you look at that and as you think of putting a project in a downtown area, the building itself begins to create those avenues or approaches and then it's how you actually enter the building, the spaces around it, that begin to develop the character. Too many times in design we create just an icon building. We create a building on an island. And what we really wanted to do with this project is weave it into the fabric. So what we chose to do is put a strong front along Sandoval and then looking at the possible future pedestrian connections along Montezuma is what you again experience that building as you move by heading east as you get to that public plaza that Bob mentioned.

That public plaza is really not only meant for the users, for the public, but also for the city in general and the community. It gives an opportunity for meetings. And we began to look at it a step further and I'll touch that as I get into the plan.

But as well as the importance of the facility itself, a courthouse in history and all the way to today demands importance. It signifies dignity and authority. And we felt like creating this public plaza would begin to emphasize that. Because oftentimes when you're coming to court, you're there for serious business, and so that approach through the plaza up to the front door, it gives you an opportunity to reflect and understand what's going on. But as we move into the facility we also understand the importance of a clean, efficient organization within the space. We have the users, the staff, where we have a lot of different people coming to the facility. So on the exterior we need a clear vision of how we enter the facility - where is our front door? How does somebody coming to the courthouse for the first time understand?

And then as we move in, we need a real clear way of how to move them through the facility. One of those first steps, one of the real important things to address is the security aspect. There's different levels of security and control that we need to address throughout the facility, the first of which is moving the public in. At times when we call jurors and have people come in, there's a large volume of people, so we need to have that space to move them in, and then get them clearly into the building. People come for the

jury assembly or to go to court themselves so that circulation and that pattern, once we begin to move in the facility itself becomes very important. And the easier it is for people coming to the courthouse to understand that and get in and out of the building, overall, we hope, the more pleasant an experience they'll have at the courthouse even though sometimes those events are not all that pleasant.

With that I mention the connection to the public and to the community. One of the things we looked at was this design and with the public plaza is the opportunity to engage the public with our jury assembly. Jury assembly space is a large meeting space and we looked at, as we worked through the users and worked through this process, is there an opportunity to let a jury assembly space reach out into the public plaza during off hours with security control, with access. Can we bring this to be even more of a public facility? Can it address the needs of the community, whether it be for meetings, a number of different things could happen in the plaza and go in and out within the facility when it's not being used for jury assembly.

As far as the courthouse and beginning to move into that courthouse, I spoke of the layers of control and security so you obviously have that clean, concise, logical progression for the public, but we also have the different layers of control that we need for the staff that we really wanted to address. Being the staff, the judges themselves, so we have that security in the back of the house, and then also that other level that we have to address in a courthouse like this is in-custody holding. We looked at that and not only are we looking at doing an underground parking structure with the public, but also the prison holding, in-custody holding and the judges parking would be locate below the facility itself. We looked at this and bringing that access off of Sandoval so we can bring those prisoners into the facility, get them secured and get them up directly to court.

That's one of the other challenges when you're in an urban setting in a downtown is getting those prisoners directly and getting them out of the view of the public and in a controlled space. And with this, the undergrade parking at that point, it allows us to bring those prisoners directly up into holding on the court floors and distribute them out into the environment safely.

With that, I could probably go on for a little bit too much but we really look at this as an exciting opportunity for the County of Santa Fe.

CHAIRMAN MONTROYA: Okay. Any questions for Bob or Evan or Joseph? Commissioner Campos

COMMISSIONER CAMPOS: Thank you, Mr. Chairman. What about energy ideas, alternatives? Conservation? Alternative energies like solar, photovoltaics, etc. That's been something that we've emphasized to staff and I was wondering how you're translating that.

MR. CULVANEY: There is a LEED certification that the state has adopted and things of that nature and we're well familiar with doing LEED certification. But I think what's important to this project is that we just do good, sustainable design. I think Evan and I can attest that just doing good architecture brings good, sustainable design to

any particular building and good architects have been doing that as far as siting their buildings, using good day-lighting, using solar energy and things of that nature, and good mechanical systems with sensors and things of that nature. We certainly plan to do that and part of our proposal was to track the sustainability of this project, not necessarily make it certified, but to make sure that it is a sustainable building.

And there are various ways to do that. During our kind of programming session and schematic design we're going to talk about all of these issues with our mechanical, electrical engineers, as well as just architectural.

COMMISSIONER CAMPOS: What about alternative energies, like photovoltaics or solar to heat the building?

MR. CULVANEY: Again, during this kind of programming and schematic design we will make these kinds of shopping lists of these energy saving strategies and then talk about how we can integrate those into the design. So certainly, part of our programming and schematic design would address that.

COMMISSIONER CAMPOS: Do you have experts that are consulting in that area? You did mention, you said you had other experts.

MR. CULVANEY: We do. We have mechanical engineers and we do have commissioning agents out of Nevada that can come in and help us as well. So, yes, we do have some of those kinds of resources.

COMMISSIONER CAMPOS: Okay. Because this is an important issue to the Commission and I hope you understand clearly that that is a priority. Thank you.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: In the sheet you passed out, the column, "Proposal", then there's another column next to it, "Budget", is the column "Proposal" items that are not going to be provided?

MR. CULVANEY: Oh, I see. Like the LEED certification, you'll see there there's LEED's commissioning and LEED's certification and then onsite representation, which was like 40 hours a week. Those things which are in that one left-hand column are not part of the proposal. And again, if you wanted it to be LEED certified, which we don't think you do, again, you just want sustainable design and tracking of that, that's what we based our proposal on.

COMMISSIONER SULLIVAN: And I understand in terms then of course there will still be site representation on construction.

MR. CULVANEY: Absolutely.

COMMISSIONER SULLIVAN: But not full time. I understand the County is looking at retaining a separate construction manager to be the owner's representative. Is that your understanding?

MR. CULVANEY: That's our understanding. Yes.

COMMISSIONER SULLIVAN: Okay. The other question I had was for the staff. I think two things, Joseph, are important on this. One is, and I don't have the contract in front of me so I can't see whether it's there or not, but I think we need to have an independent

peer review at the 30 and 80 percent completion levels. That's extremely important. We have a large facility here. There's a lot of different ways to skin a cat and we have to of course deal with the City of Santa Fe and the residents around and we have to deal with all of our needs and a limited budget of \$30 million, as odd as that sounds.

So I would recommend that a) as a provision of the contract, once it's negotiated and then b) also, we have a time constraint here and I would recommend that there be, as General Services does through the state, have penalty provisions for failure to complete on time. Those are the two things that I think are extremely important and particularly with some of the experiences we've had in the Eldorado Senior Center facility, which was delayed about a year. I think that we need to have benchmarks with some serious repercussions if they're not met. If we don't stay on track, once you get behind that has a cumulative effect in these large projects. You never catch up. So those would be two recommendations that I have, Mr. Chairman.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Question for Commissioner Sullivan. You said peer review at the 38 -

COMMISSIONER SULLIVAN: Thirty and 80.

COMMISSIONER CAMPOS: At 30 and 80. What does that mean?

COMMISSIONER SULLIVAN: Well, at the 30 percent level of a project, 30 percent completion, or 25 percent completion, or you might call it at the completion of the schematic design level, something in that point, you're looking at is this model what we're going to go with or is the building going to be turned this way or is the parking entrance going to be off Sandoval Street or is it going to be off some other street? A lot of important design criteria. So it's good at that point to have some independent thinking and review of the assumptions that went into the design. Because once you commit to that schematic design, there's no going back. You're now expending a whole lot of money doing working drawings and all the approvals and things like that based on that concept, so it's good to have a second set of eyes at that point.

And then again around the 80 percent level to look at a complete set of drawings and specifications to see where efficiencies can be made and sometimes this is referred to as a constructability review, and it's good to bring in a contractor at that point in time and say, Here's what we're proposing; can this be constructed for \$30 million? Do we have any materials that we've specified that there's a long delay in getting them that we have to deal with? Do we have any ways that we could provide the same quality furnishings or flooring or roofing at less cost, particularly in Santa Fe where you're dealing with a limited pool of laborers and limited suppliers? Do we have to get a particular specified item from California or from China?

So at the 30 and 80 percent levels there are two totally different reviews. One's kind of a general master plan focused review and the second is a really redline, nit-picking review to say this is the best way to build this project. And another thing is to take a look at the drawings and say, Are they 80 percent done? Very often there's differences of opinions as to how

complete a set of drawings is. So I think those are important peer review steps in project design.

COMMISSIONER CAMPOS: Then the County would have to retain additional professionals to do this?

COMMISSIONER SULLIVAN: The County would have to do this and I've talked to PFMD about that and they can probably wrap that into their construction management contract. The architect has to agree to participate in that and to address each of the comments that are made during the solicitation. The Corps of Engineers requires peer review for any projects over \$10 million and this is three times that, so I think it's money well spent on the County's part and it's time well spent on the architect's part to have someone taking a look over your shoulder because sometimes you can miss the forest for the trees.

COMMISSIONER CAMPOS: Mr. Gutierrez, have you talked to the architect about these ideas?

MR. GUTIERREZ: Mr. Chairman, Commissioner Campos, no I haven't, but I think they're excellent ideas and staff has already informed me, because I had a conversation with Commissioner Sullivan previously, and I think they're excellent ideas and we can really put that into a construction management contract.

COMMISSIONER CAMPOS: Okay. Thank you, Mr. Chairman.

CHAURMAN MONTOYA Okay. Commissioner Vigil.

COMMISSIONER VIGIL: Thank you. Is that 30-80 – and Judge Hall is going to recognize this – is that standard practice in the industry? This 30-80?

COMMISSIONER SULLIVAN: Well, it depends again, Commissioner Vigil. I haven't sent their contract. It's typically done at the end of schematic design and that's generally around 25 to 30 percent of their fees collected. So if the schematic design was 25 percent then it would be good to do it at the 25 percent level. I just say 30 as a rough estimate. And then 80 percent completion is essentially final completion of working drawings and almost all of your specifications, giving you enough leeway with that final 20 percent to make any changes that are recommended by that review body. So it's not written in stone. It could be 25-75, it could be 30-80, but it's those two important benchmarks in the design process.

COMMISSIONER VIGIL: Okay. And Mr. Chairman, Joseph, I just would like someone to take a few minutes to explain these charts in front of us. I see the parking chart. None of that was in our packet unless I missed it. If somebody could just briefly – to me those look like floor plans while we're still in the design phase you have been brought before us as the best offeror, but I don't have any knowledge as to why. So if you could just briefly describe your floor plans and your little schematic here.

MR. SAKALOSKY I would love to. And just as we did these, this was part of the process of the proposal. Where we're at right now is really just the baby steps of this process. This was based on the existing program that was developed that we had to look at, which called for approximately 120,000 square foot courthouse to house about 12 courtrooms. So with that in mind we took that information to begin to develop to address some of the issues on the site, address how a facility of this size could fit on the site that was proposed.

So this is really to show – and it's not schematic at all, it's a concept. It's an idea based on the knowledge that we have of courthouses, of the design as well as your program. But the first step in this whole process is going to be to go back with NCSC, and really do a validation of the program, and that will be what we use to begin to develop these floor plans. So this is really just the very early conceptual idea based on what documentation we have to date. As I mentioned, by the time we move through this process, and the process of design is really interactive. Not only with the users and the County and the community, but it's also interactive with the program as well. They begin to talk to each other and that third element of this process, or that other element, is the budget.

In developing all of this, in developing the program, we need to understand how all of this design fits into the budget so what we're designing and what we come up with at that 80 percent at the construction documents is buildable within our budget. So all of these work together. This was again an early concept to show how we can make this project fit with some of the constraints on the site. So we looked at is not only developing the 12-courtroom plan overall and some of the associated support functions, but also looking at some of the bigger issues on the site: the need for expansion, you mentioned sustainability before. One other aspect of sustainability is to build a project that can last for a long time, and while we may not be able to build a courthouse to extend 50 years as far as its space needs – that's what we'll address in the programming – but if we develop the design to allow for building expansion, that's what this element is here.

We're also looking at the connection to the district attorneys' offices. What we're able to do is start developing a justice campus here because we do have existing facilities that are functional, that are usable, and so what we looked at in developing these schemes was can we leave that as part of the existing complex that you're designing and address the budgetary needs and the future needs of that on down the road, whether it comes in our building's future expansion, that they move off-site, that there's renovation of the existing facilities. So those were all the things that we began to take into account with these schemes. It's just to show some of that understanding and a very loose approach.

COMMISSIONER VIGIL: The parking scheme?

MR. SAKALOSKY: The parking, as I mentioned, we're looking at underground parking, both for a small amount of public, as well as the judges and some specialized staff. Basically, what we were looking at in developing again an urban facility, a downtown site is are there opportunities to take advantage of some parking throughout downtown. Courthouses typically have a large parking requirement but there are some parking facilities around, as well as some intent for some public transportation, some links that would wrap around this site.

We looked at providing two levels of below-grade parking for the public that would be below the plaza, and then our judge's parking, secure prisoner holding that I mentioned before, is accessed off Sandoval and drops you down below the facility. Again, that provides a lot of control, a lot of security for those individuals and movement within the facility.

COMMISSIONER VIGIL: Thank you. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Any other questions. I guess the – Judge

Hall, did you want to say anything regarding this? Thanks for being here this afternoon.

JUDGE JIM HALL: Thank you, Mr. Chairman, members of the Commission. I served on the selection panel, the review panel, along with Steven Pacheco, our court administrator and then a number of other representatives. So I saw all the presentations. I want to say I think we had a very good group of people who bid on this project. I was quite impressed with the abilities they had and I concur in the selection of this particular group for a variety of reasons. I don't know that I need to go into any of those but I would urge the Commission to move forward with this in a manner the staff is requesting because I do think it's a good step forward.

CHAIRMAN MONTOYA: Okay. Commissioner Vigil.

COMMISSIONER VIGIL: Judge Hall, I just really wanted to commend you and the bench and actually the bar for all the work that they did to make this come forward and make the general obligation bond become a reality. I know that you were available to speak to any group, anyone, anytime, anywhere, and I think that availability made a huge difference. And I also think that because this kind of project has come before voters before and has been voted down, to me the single strongest element that made it happen was the support of the bench and bar. I really want to thank you very much for the work that you and everyone else put behind it.

JUDGE HALL: Mr. Chairman, Commissioner Vigil, thank you very much. I'd like to thank the Commission and my next goal is to get the very best building we can for both the court and all the citizens of Santa Fe, so that's what we're working toward now.

CHAIRMAN MONTOYA: Very good. Thank you, Judge Hall. Appreciate your time and expertise and energy in making this selection. I guess the only comment that I would have, and actually, just to kind of alleviate any potential shortfall or shortcomings in terms of not meeting deadlines, Bob, if you could maybe just be intimately involved in the whole process, I would really appreciate that so that -

MR. CULVANEY: I'll be the principal in charge, Commissioner, and I'll make sure the project is on time. We've already laid out a good schedule with several reviews after each phase, and we won't go onto another phase without these reviews. But it will happen on time and we'll keep updating that. It's not a static schedule; it's flexible and we'll make sure that you see it and be kept aware.

CHAIRMAN MONTOYA: Okay. I appreciate that. Any other questions? Any other discussion? Can we have a motion?

COMMISSIONER SULLIVAN: Mr. Chairman, I'd move for approval of the staff recommendations to award the professional services agreement to the highest rated offeror for the architectural and engineering design services for the First Judicial Courthouse Complex, with the additions of two peer review sessions at the approximately 30 and 80 percent completion levels and provisions for liquidated damages for failure to perform on time.

CHAIRMAN MONTOYA: Okay. I have a motion by Commissioner Sullivan.

COMMISSIONER CAMPOS: Second.

CHAIRMAN MONTOYA: Second by Commissioner Campos. Further

discussion?

The motion to award the contract as noted above passed by unanimous [5-0] voice vote.

CHAIRMAN MONTOYA: Thank you, Joseph, Bob. Thank you, Evan. Appreciate you and congratulations and look forward to working with you for the next four years. Thank you. Roman, is our bond counsel here?

MR. ABEYTA: Mr. Chairman, I don't see him but I think we may be able to handle this without him being here. If we get into too many technical questions then I would ask that we wait till he arrives.

CHAIRMAN MONTOYA: Do you want to move on to Matters from the County Manager?

MR. ABEYTA: We could do that, Mr. Chairman, but in the interests of time though, seeing that we're already running towards 4:00, I would ask that we go to the executive session before we do Matters from the County Manager, because I believe executive session is going to be pretty lengthy, and seeing the length of the agenda for this evening, I could put off item B.1. I don't know what the Commission's request is for B.2. If we'd have to. I'm just concerned that you won't get through the evening agenda if we spend too much more time on item B. 1 or B. 2.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Is there anything, Mr. Chairman, that's unusual about A. 2? And your missing our bond attorney. Is that the problem?

MR. ABEYTA: Right. But we can proceed unless the Commission were to have any specific -

COMMISSIONER SULLIVAN: They're never around when you need them, right?

MR. ABEYTA: He just walked in.

CHAIRMAN MONTOYA: It's all about timing. Mr. Franklin, you're on.

COMMISSIONER SULLIVAN: We just spent 10 minutes debating whether we should bypass you or not.

- XI. A. 2. Resolution No. 2006 -198. Request Adoption of a Resolution Directing Publication of Notice of Sale of General Obligation Bonds Totaling \$25 Million, Payable From General (Ad Valorem) Taxes, to Acquire Real Property for and Construct, Design, Equip, Improve and Furnish a District Courthouse and Related Parking Facilities in Santa Fe.**

PETER FRANKLIN (Bond Counsel): Mr. Chairman, members of the Commission, this resolution is the follow-through from the authorization from the voters of Santa Fe County to issue up to \$25 million in general obligation bonds to finance courthouse construction. The voters approved this issuance on November 7th at the general election, and what this resolution does is authorize the County administration and bond counsel and financial adviser to publish a notice of sale which would be held on January 9, 2007, requesting bids on \$25 million of courthouse general obligation bonds. So what we are anticipating is that if you approve this resolution we will take bids on January 9th, open them I think around 11:00, and then identify the best bid and have the Board of County Commissioners award the bonds to the best bidder on January 9th, with an award resolution, and we would close the transaction on or about February 15th of next year.

CHAIRMAN MONTOYA: Any questions for Peter? Commissioner Sullivan.

COMMISSIONER SULLIVAN: One quick question. Peter, how do you develop these maturity schedules? There's \$9,000 left at the end of the bond maturity.

MR. FRANKLIN: Mr. Chairman, Commissioner Sullivan, the short, unhelpful answer is that I don't, Kevin Powers from RBC Capital Markets does, but what I can tell you is that these maturities are structured so as to keep the tax rate level through the duration of the bond. The idea is to prevent the taxes from going up, and also to prevent them from going down. The idea is to leave room for the County to continue to have capacity to issue GO bonds with voter approval without raising the tax rates.

COMMISSIONER SULLIVAN: It continues during the period of maturity or afterwards?

MR. FRANKLIN: During the period of maturity.

COMMISSIONER SULLIVAN: Oh. So when you say keep bond rates level you mean - certainly there's going to be an increase in taxes as a result of this bond.

MR. FRANKLIN: There will not be any increase in the tax rate.

COMMISSIONER SULLIVAN: In the tax rate.

MR. FRANKLIN: Right.

COMMISSIONER SULLIVAN: Because of the retiring of existing bonds that we have.

MR. FRANKLIN: Correct.

COMMISSIONER SULLIVAN: Okay. So this is structured to keep that level. If we wanted to issue more bonds then we would have an increase in tax rate. Or not?

MR. FRANKLIN: Within the capital finance plan that we've been working with the County staff and I think that has been presented to the Board a couple different times in the last, I'm going to say 18 months or so, by structuring these bonds in this way, we have additional bonding capacity to issue an additional \$20 million of GO bonds within the next two years and I believe there are some other series as well that can be issued within the existing rates but would still need voter approval.

COMMISSIONER SULLIVAN: Okay. So the basic concept is that it keeps the tax rate level.

MR. FRANKLIN: That is correct.

COMMISSIONER SULLIVAN: Not let it dramatically rise or dramatically decrease.

MR. FRANKLIN: Well, in fact to not let it rise or fall at all.

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

CHAIRMAN MONTOYA: Okay. Any other questions? Seeing none, could I get a motion, please?

COMMISSIONER VIGIL: Move to approve.

CHAIRMAN MONTOYA: Motion by Commissioner Vigil.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN MONTOYA: Second by Commissioner Sullivan.

The motion to approve Resolution 2006-198 passed by unanimous [5-0] roll call vote with Commissioners Anaya, Campos, Sullivan, Vigil and Montoya all voting in the affirmative.

XI. B. Matters from the County Manager

2. Request Approval of a Memorandum of Understanding Between the Nambe Pueblo and Santa Fe County for Emergency Response Services

MR. ABEYTA: Thank you, Mr. Chairman. This item was added to the agenda and we put a draft memorandum of understanding between the Nambe Pueblo Gaming Enterprise and Santa Fe County in your mailboxes, but Steve Ross is passing out another draft.

ELIZABETH TRAVIS (Assistant County Attorney): Chairman Montoya, Commissioners, just to give a brief summary and to add some clarification as to what this item is. This is a memorandum of understanding with the Nambe Pueblo Gaming Board, which is an enterprise that has been created by the Pueblo in order to build a gaming facility on what is called Tract 1, and it's Exhibit A of the packet you've been handed. There are members here today of the Pueblo's council and the gaming enterprise board. Members are here and they can speak to some of the urgency behind the need for this formalized agreement.

Today we're asking for approval to enter into an agreement to provide County emergency medical services to the Pueblo's gaming board on Tract 1, which is on Pueblo land, about 48 acres, and in exchange, the gaming board is agreeing to compensate the County for the services rendered. At this point, Exhibit B has not been seen by the Board. It's a new add. We feel pretty confident the agreement itself has gone through about six rounds of redrafting and language working. What we're hoping at this point is that we can get approval as drafted or as close to as drafted as you see it now.

The Pueblo is requiring this formalized agreement as part of its need to obtain an environmental assessment from the National Indian Gaming Commission, and what we're formalizing is response service for gaming facility employees, patrons, and visitors to Tract 1

land. I stand for any question from the County's side of the drafting. I believe the Chief is here to discuss Exhibit B which is the fee schedule that we're proposing to the Pueblo, and as I mentioned there are members from the gaming board and their counsel here to stand for questions as well.

CHAIRMAN MONTTOYA: Questions for counsel? Stan, did you have anything to add?

STAN HOLDEN (Fire Chief): Mr. Chairman, on behalf of the Fire Department I can simply refer to the table itself that was added to the document. That table was based on what is called the Resource Mobilization Plan that has been adopted and approved by the State Forestry Division of Energy and Minerals, and it's the rates that have been approved at the statewide level when we are deployed to other jurisdictions throughout the state of New Mexico. The state reimburses us at those rates, and that's why we thought it was fair compensation for what was proposed. And I'll be happy to answer any other questions that the Commission might have.

CHAIRMAN MONTTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Chief, resources - where you're going to deploy, do you have the manpower, the machines, to deal with this extra burden?

CHIEF HOLDEN: Mr. Chairman, Commissioner Campos, the resources would be deployed from the Pojoaque station in Pojoaque Pueblo.

COMMISSIONER CAMPOS: Are they volunteers or full-time permanent -

CHIEF HOLDEN: Currently, as you know, we have two full-time staff on duty there 24/7 and we're augmented by an additional 30 volunteers from the Pojoaque Fire Station. It certainly would be very useful and helpful for the entire area if we were able to get volunteers from the Nambe Pueblo area as well, but we'll also be adding an additional four FTEs, 24/7 to that Pojoaque station to provide better coverage in the entire area.

COMMISSIONER CAMPOS: When?

CHIEF HOLDEN: Well, as you know, the tax doesn't go into effect until July 1. We won't see our first disbursement until October of 2007, so it probably will not be until 2008 until we're fully deployed from that station.

COMMISSIONER CAMPOS: When does the contract call for the beginning of service?

CHIEF HOLDEN: Mr. Chairman, Commissioner Campos, I can't answer that question.

MS. TRAVIS: Mr. Chairman, Commissioner Campos, at this point we are anticipating that service would not begin until the casino is fully built and I believe we're looking at 2008 before we would start providing services under this agreement.

COMMISSIONER CAMPOS: Thank you.

CHAIRMAN MONTTOYA: Any other questions? Commissioner Sullivan.

COMMISSIONER SULLIVAN: This is a legal question. My concern is liability and jurisdictional in nature. I see a provision that the parties waive against each other claims or compensation for loss, damage, personal injury, but when a County employee is

operating on Pueblo lands, and something happens, someone gets injured, someone gets sued, somebody does something that someone else feels is the reason for some lawsuit, what happens?

MS. TRAVIS: I may actually have to defer to the Chief. The anticipation is that this will continue on as any other response that's made to Pueblo land. The full-time employees are still employees of the County and so the liability there is the same. We are not looking to try to be umbrellaed under the Pueblo's provisions in any shape or form. I believe the Chief may be able to speak a bit more to what occurs in the field for our employees.

COMMISSIONER SULLIVAN: Well, I just kind of know that we're dealing – and perhaps the Chief can answer it, with sovereign immunity is what we hear all the time, and when I have my fire fighters out there, they, in my judgment, better be under the control and direction of the Santa Fe County Fire Department, not someone claiming sovereign immunity and directing them onsite. I do see a provision here that says that if they deem that it's unsafe that they can leave the site. But I guess when we're on that site providing these emergency services, I'm concerned that we're in charge of providing these services – no one else. Am I comfortable in that with this agreement?

MS. TRAVIS: Mr. Chairman, Commissioner Sullivan, I'd like to defer a bit to the Chief. We do have a provision, I believe it's on page 3, that discusses a uniform command, and I believe the Chief can talk to how that structure works as far as decision making and direction.

CHIEF HOLDEN: Mr. Chairman, Commissioner Sullivan, you have echoed exactly the concerns that I conveyed to the legal staff regarding this agreement. We have tried to address that through the language that struck some of the requirements of the Pueblo that we were going to be under the chain of command of the governing authority on the Pueblo tribal property. My concern there was that, for instance, we could be responding to a medical emergency and one of the casino managers could say, Well, this is what we want you to do with that patient, which could be completely outside of the scope of medical practice that our paramedics are licensed to provide, because we are on sovereign land.

So the way we tried to address it was, as we do with other agencies, discuss and open up a unified command structure so that we will bring those people into our unified command, just like we would if we were responding into the City of Santa Fe, our officers would join their officers at the command center, and the scene or the emergency would be mitigated from that point forward. You do not deploy or engage in providing services until your officers are in agreement with the tactics that are going to be utilized to mitigate the emergency. That was my attempt, Commissioner Sullivan, to address that very issue.

COMMISSIONER SULLIVAN: That's – you're looking at paragraph B.2 on page 3, I assume.

CHIEF HOLDEN: Yes, sir.

COMMISSIONER SULLIVAN: With the Fire Department, Sheriff's office, shall report to the board's designated representative in charge at the location – the board being the gaming board – to which the equipment and personnel are dispatched and shall include

such officials in a unified command and control system, implemented to mitigate the emergency. Now, what does it mean to include that official? Who's in charge?

CHIEF HOLDEN: Our officer on scene would be in charge. If our resources are at risk, then they would, under a separate provision under that same paragraph, would leave the scene.

COMMISSIONER SULLIVAN: So if a designated board representative from the Nambe Pueblo didn't agree with your tactic, what would happen?

CHIEF HOLDEN: We would leave.

COMMISSIONER SULLIVAN: You would leave. Okay. That's what I want to know. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Other questions?

COMMISSIONER CAMPOS: Just a quick one.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Go ahead.

COMMISSIONER VIGIL: Are there any outstanding issues on this for anyone? I just got the memorandum and some information right before the meeting so I haven't even had time to read any of this. I appreciate Commissioner Sullivan's inquiries but I haven't even had enough time to read this to know what my inquiries would be. Is there any outstanding issues, is where I'm at with this.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: I have a question simply for legal about County liability in the contract. How is that defined? Any exposure?

MR. ROSS: Mr. Chairman, Commissioner Campos, like Ms. Travis said, the County has liability for its emergency response wherever it is. I don't see -- and of course we're insured against that liability through the Association of Counties and our insurance pools and their various caps and we're protected also in terms of liability by our own Tort Claims Act. So I don't see this as providing a significant increase in liability.

COMMISSIONER CAMPOS: Where would litigation occur? And does the Tort Claims Act apply in Indian Country?

MR. ROSS: The Tort Claims Act applies to plaintiffs suing defendants in the County of Santa Fe, no matter where the act occurs. It gets a little bit tricky when you talk in terms of whether the state or federal courts would have the first jump on that.

COMMISSIONER CAMPOS: Isn't that something that you agree upon?

MR. ROSS: Well, it's trust land. You're responding to something on trust land and there's a doctrine called the extension, and it provides rules for determining as between tribal courts and federal court, where the action occurs. But the fact that those rules apply wouldn't change the County's exposure to personal injury claims lodged under the Tort Claims Act.

COMMISSIONER CAMPOS: Couldn't there be an agreement that says that they would have to be filed in state court, for example?

MR. ROSS: Well, all those kinds of agreements with Pueblos are problematic

because of the eleventh amendment and the issues concerning tribal sovereignty. Generally, counties are sued in federal court and Pueblos are not sued in state court, so there's an automatic tension there. Normally, these kinds of agreements, because of those problems, contain dispute resolution clauses that requiring binding arbitration in lieu of any court action. That's not necessarily needed in this agreement but what you're asking about is an interesting issue and would arise in the context of litigation but I don't see how it would be a problem if the County were sued in federal court [inaudible] in that jurisdiction. If somebody sued the County in state court over an incident in Nambe Pueblo, that action would undoubtedly proceed in state court.

COMMISSIONER CAMPOS: We could wind up in tribal court.

MR. ROSS: No.

COMMISSIONER CAMPOS: No is your answer.

MR. ROSS: No is my answer.

COMMISSIONER CAMPOS: Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Georgene Lewis and Brenda McKenna, is there anything that you -

BRENDA MCKENNA: Thank you, Commissioner and thank you, Chairman. I realize we were put on the agenda rather late, but I truly appreciate your accommodating our request today. My name is Brenda McKenna and I'm the chair of the Nambe Pueblo Gaming Enterprise Board, and I'm also a tribal member, and Georgene Lewis, counsel, from Chestnut Law. I also appreciate the time that County Attorney Mr. Ross and Assistant Attorney Travis have shared with us through these many weeks of working through this agreement.

The reason we seek your concurrence today with the agreement is in response to a federal agency request and that request is that this agreement would serve as an addendum to our final environmental assessment. That request is based on the public comments that we received at the June 2006 public environmental assessment hearing, here in Santa Fe. I understand that on the first of November of this year the County parties to the agreement supported it in principle and my board supports the agreement pending the future negotiations, if any, from the fire and medical apparatus rates that the Fire Chief has provided. We received those this morning and one of my questions was where the rates came from and the Fire Chief answered that inquiry for us, which we are thankful.

This type of agreement, we want to remind everyone follows in the spirit that this body and Nambe Pueblo made in 2003, and I do have a copy of it, whereby we have a memorandum of understanding to provide various services between Nambe Pueblo and the Santa Fe County. We would truly appreciate your approval today as we cannot move forward with our casino project without the agreement and we believe this project in the long run is going to be helpful to the Pueblo, its tribal members and to our neighbors with jobs and other economic development.

By the way, if I may, can I respond to some of the Commissioners' concerns about the cooperation between the future casino general manager and in the instance that there are any emergency situations. That is we and our management partner, Full House Resorts,

Incorporated, we are committed to working with all first responders, no matter what. The safety of our patrons, our employees is the priority that we're steadfast about. And we have expressed this both in many correspondence and at the public hearing where we spoke to many members of the volunteer organizations of Pojoaque Valley Fire Department.

CHAIRMAN MONTTOYA: Okay. Any questions for Brenda?

COMMISSIONER CAMPOS: I have a question.

CHAIRMAN MONTTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: If we don't act today, if we wait to our January meeting would this hurt you in any way? Would it put you back very far?

MS. MCKENNA: Yes, it would, Commissioner Campos. We have been working on this particular agreement in its many, its various forms for at least four months and in fact, as I said, it is the only item that is outstanding before we can submit our environmental assessment to the National Indian Gaming Chairman and ask for his approval.

COMMISSIONER CAMPOS: I understand that, but how much does one month matter at this point in time?

MS. MCKENNA: Again, we've been waiting for at least four months and we cannot, for instance, approach our potential financial lenders, the bankers, which we are in talks with right now, until the environmental assessment has been approved. Moreover, a management agreement also has to be approved by the NIGC and our contract director for the NIGC needs to have the environmental assessment completed. So it is very, very important to us if this body could approve the agreement as it is today with perhaps any technical changes that the Commissioners would like to propose to the Board.

CHAIRMAN MONTTOYA: Any other questions? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Have you approved this memorandum?

MS. MCKENNA: Yes, we have.

COMMISSIONER SULLIVAN: So it's been formally approved by the Nambé Pueblo Gaming Enterprise Board?

MS. MCKENNA: Via e-mails and voice mails today. Yes.

COMMISSIONER SULLIVAN: We can't do that. We have to meet in public. But this document has been approved.

MS. MCKENNA: Yes.

COMMISSIONER SULLIVAN: Okay. Thank you.

CHAIRMAN MONTTOYA: Any other questions? Brenda, the one that I had in our discussions over the phone last week was that we are going to be a back-up to BIA. Could you explain how BIA is going to be the first responder?

MS. MCKENNA: Yes. And I would also like to ask our attorney, Georgene, if she could also provide some background in that. But yes, that is my understanding from our NIGC NEPA, which is the National Environmental Protection Act officer. He needs to see that we have this agreement in place so that it serves as "back-up purposes" to the Bureau of Indian Affairs first responders. Georgene, do you have anything else to add?

GEORGENE LEWIS: Good afternoon, Commissioners, Chairman. Brenda is

correct in stating that this MOU is very important to us. The BIA will be responding in terms of law enforcement. As far as fire services we have the Pojoaque Valley – that's with them, and I guess that's essentially the part that we need here. The NIGC just wants us to ensure that sufficient emergency response services will be provided to that gaming facility site. We do have time to make amendments to this MOU. There's a provision regarding amendments in the event that we need to, but as far as form and the current terms I believe both the County and the gaming enterprise board is – they're both on the same page and we would like to move forward with this if there aren't any more questions or big concerns from the Commissioners.

CHAIRMAN MONTOYA: Well, I guess the biggest concern that I have is that I haven't seen the table, the schedule of fees until today. I hadn't seen the agreement until Brenda e-mailed it to me and it's changed from the one that we got today. And we're talking about taking action here on something – I know it's been four months, but I'm not sure – are there interest penalties or anything that's going to be accrued or that's going to hurt the Pueblo at this point if we wait for a month to maybe work on those amendments that you're suggesting, and then come with a clean agreement at that point.

MS. MCKENNA: Commissioner Montoya, the biggest problem we have with not having this MOU in place is that a lot of lenders out there want to make sure that these federal approvals are in place before they speak with us in terms of getting out initial term sheets and other kinds of terms for the lending process, which in turn puts this back – it would truly put the project back at least a month.

CHAIRMAN MONTOYA: Okay. So then the reality is that we're not going to be a back-up; we're going to be the first responders.

MS. MCKENNA: In terms of fire services, yes. In terms of law enforcement, we will have the BIA law enforcement services. The gaming employees will also be trained in CPR and other emergency response training. So they'll have that training so that they can respond to smaller type situations at the casino site.

CHAIRMAN MONTOYA: So again, I don't know how the other Commissioners feel but that's just my perception right now is I don't feel like I've had the time to look at this substantively and make sure that what we're getting into is going to cover some of the questions that have been brought by some of the Commissioners today. So that's just where I'm at right now. I don't know if we want to table it and then bring it back at our next meeting for further discussion. Commissioner Vigil.

COMMISSIONER VIGIL: Mr. Chairman, based on my comments, I of course would be in agreement with the tabling because while I've heard sufficient information here I'm not even sure where we need to amend it or why we need to amend it, and if we do, I think I'm hearing there's a 30-day opportunity to do that, but I'm not even clear about that because I really haven't had an opportunity to read this. So even if we don't, I couldn't vote on this. I don't have sufficient information, Mr. Chairman.

MS. MCKENNA: Could we respond to that?

CHAIRMAN MONTOYA: Sure.

MS. MCKENNA: Commissioner Vigil, the County and the Pueblo currently

work together in these types of agreements, and correct me if I'm wrong, but they currently provide services to tribal lands right now, because we acknowledge that this site, due to economic development will increase the number of visitors to that area, that's why we want to have an agreement in place. Currently, there's an informal agreement whereby the County does provide services to Pueblo lands.

COMMISSIONER VIGIL: An informal agreement - verbal? Written?

MS. MCKENNA: The County provides services regardless of jurisdictional areas. They just do it based on dispatch calls. Am I correct?

COMMISSIONER VIGIL: And it's because you're required to, right? Under federal regulations. Is that correct? Thank you.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: My understanding is that you're looking for us to provide back-up, not only for fire and EMT but also for law enforcement services, for the Sheriff, according to this.

MS. MCKENNA: That's correct.

COMMISSIONER SULLIVAN: Okay. And what would the rates for the Sheriff be?

MS. MCKENNA I'm sorry, Commissioner. We just received this compensation fee schedule today so I think some of those will need to be negotiated prior to the opening of the gaming facility.

MS. TRAVIS: Mr. Chairman and Commissioners, the Sheriff's services have not been looked at with a fee schedule and that may well be an oversight. Currently we respond without receiving compensation. So I haven't gotten any response from the Sheriff's office and it may just be an oversight on their part.

COMMISSIONER SULLIVAN: This is a much more concentrated potential for law enforcement needs that you would have on a day-to-day domestic dispute or automobile accident or murder, rape, pillaging.

MS. TRAVIS: That's correct.

COMMISSIONER SULLIVAN: Whatever goes on in Santa Fe County without my knowledge. But he's expensive, our Sheriff. Have you seen his vehicles? This is something that's intended that there would also be rates for the Sheriff, correct?

MS. TRAVIS: I believe that's correct, sir, and the emergency response for the Sheriff differs a bit from the day-to-day response and we're not looking in any way to expand law enforcement jurisdiction. They would be there, say, in a horrible emergency for crowd control purposes and things along those lines. So I do believe we don't have a specific fee schedule from them but we could certainly work one out between now and 2008 and make that one of the amendments.

COMMISSIONER SULLIVAN: They might be there in the event of the unavailability of someone from the BIA, of the law enforcement officer from the BIA who might not be available in the event of an emergency, in which case you would call upon the Sheriff.

MS. TRAVIS: That's right. That's correct, sir.

COMMISSIONER SULLIVAN: It would be a good idea to get that hammered out. It shouldn't be too difficult to do.

CHAIRMAN MONTOYA: That's another instance of what – I'd like to have this thing be as clean as possible, rather than saying we're going to approve it with amendments to come forward at a later date. That's just again my personal preference in terms of how I would like to see this. And I know that this thing's been delayed and I would just rather, now that I think we're at least hearing it and discussing it, there are some things that need to be hammered out that I think can be done within a month so that we can get these things done. I would really rather do it that way than to piecemeal it, make sure that your board's comfortable with it, make sure that this whole Board is comfortable with it as well. So Sheriff's fees is another thing that needs to be addressed here.

COMMISSIONER ANAYA: Move to table.

CHAIRMAN MONTOYA: Motion by Commissioner Anaya.

COMMISSIONER VIGIL: Second.

CHAIRMAN MONTOYA: Second by Commissioner Vigil.

The motion to table the MOU with Nambe Pueblo passed by unanimous [5-0] voice vote.

COMMISSIONER SULLIVAN: We need a specific date.

CHAIRMAN MONTOYA: It would be for our next administrative meeting.

MR. ABEYTA: It would be the last Tuesday of January.

CHAIRMAN MONTOYA: So motion carries 5-0. So we'll hear it and just continue to get everything that we need to get finalized finalized so that we can get it on board and moving forward on the points. What is it the 22nd of January?

COMMISSIONER SULLIVAN: Thirtieth of January.

MS. MCKENNA: Thank you for your time. See you in January.

CHAIRMAN MONTOYA: Thank you.

XI. C. Matters from the County Attorney

1. Executive Session

a. Discussion of Pending or Threatened Litigation

b. Limited Personnel Issues

c. Discussion of the Purchase, Acquisition or Disposal of Real Property or Water Rights

d. Discussion of Bargaining Strategy Preliminary to Collective Bargaining Negotiations with a Bargaining Unit

MR. ROSS: Mr. Chairman, we need a closed executive session to discuss

pending or threatened litigation, limited Personnel Issues, purchase, acquisition or disposal of real property, and water rights, and we also need to discuss collective bargaining strategy preliminary to collective bargaining negotiations with a bargaining unit.

CHAIRMAN MONTOYA: Okay. We have a recommendation.

COMMISSIONER VIGIL: Mr. Chairman, I move to go into executive session for the reasons stated by our attorney.

CHAIRMAN MONTOYA: Motion by Commissioner Vigil.

COMMISSIONER CAMPOS: Second.

CHAIRMAN MONTOYA: Second, Commissioner Campos.

The motion to go into executive session pursuant to NMSA Section 10-15-1-H (7, 2, 8 and 5) to discuss the matters delineated above passed by unanimous [5-0] roll call vote with Commissioners Anaya, Campos, Sullivan, Vigil and Montoya all voting in the affirmative.

CHAIRMAN MONTOYA: What time have we posted for public hearing?

MR. ABEYTA: Mr. Chairman, the public hearings were noticed for 5:00.

CHAIRMAN MONTOYA: Okay. And how long do we anticipate this going?

MR. ROSS: Mr. Chairman, this could be fairly lengthy. We have a number of items but we'll try and get through them fairly quickly so we can start it no later than six.

CHAIRMAN MONTOYA: Okay. So let's say 6:00 for people that are here for the public hearings, we'll be back from executive session at that time.

[The Commission recessed from 4:27 to 6:15 pm]

CHAIRMAN MONTOYA: I'd like to call this meeting back to order. Do we have a motion to come out of executive session?

COMMISSIONER CAMPOS: I move to come out of executive session where we only discussed the items in our motion to go into executive session.

COMMISSIONER ANAYA: Second.

CHAIRMAN MONTOYA: Okay, items C. 1 a through d. Motion and second.

The motion to come out of executive session passed by unanimous [5-0] voice vote.

XI. B. Matters from the County Manager

1. Resolution No. 2006-199. A Resolution Accepting Dedication of Beckner Road

MR. ABEYTA: Thank you, Mr. Chairman. We received a request for dedication of Beckner Road. This property is located within the Extraterritorial Zone and a

master plan has been approved by the Extraterritorial Zoning Authority. Subsequent lot splits and lot line adjustments have been done in accordance with that master plan and now a portion of Beckner Road is being dedicated to the County. Staff has reviewed the plats and staff is recommending that the County accept the portion of Beckner Road that is being proposed for dedication. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Okay, are there any questions for Roman?

Discussion?

COMMISSIONER VIGIL: Roman, is this the plat that identifies it?

MR. ABEYTA: Mr. Chairman, Commissioner Vigil, yes. The plat is in your packet that identifies Beckner Road.

COMMISSIONER VIGIL: And this is the smaller portion, the smaller version, rather?

MR. ABEYTA: That is a picture of the larger piece, the master plan that was approved by the EZA and the large plat in your packet shows the road itself and the tracts it's going through.

COMMISSIONER VIGIL: Thank you.

CHAIRMAN MONTOYA: Any other questions?

COMMISSIONER VIGIL: Move to approve.

CHAIRMAN MONTOYA: Motion by Commissioner Vigil.

COMMISSIONER CAMPOS: I second to accept the dedication of Beckner

Road.

CHAIRMAN MONTOYA: Second by Commissioner Campos. Further

discussion?

COMMISSIONER SULLIVAN: Mr. Chairman, it's just a portion of Beckner

Road, correct?

CHAIRMAN MONTOYA: As identified in the exhibit. Any other discussion?

The motion to accept the dedication of the portion Beckner Road as identified passed by unanimous [5-0] voice vote.

XI. B. 3. Update on Various Issues

MR. ABEYTA: Mr. Chairman, I have nothing at this time. Thank you.

XII. PUBLIC HEARINGS

A. Land Use Department

- 1. CDRC Case #V/DP 06-5530 PNM Las Colinas 13 Feeder Tie. Public Service Company of New Mexico, Applicant, Laurie Moye, Agent, Request Development Plan Approval (Las Colinas 13 Feeder Tie) to Allow 2000 Feet of Newly Constructed Electrical Lines and Poles for a Three-Phase**

Feeder Line to Connect to an Existing Overhead Single Phase Line on the West Side of Highway 285, the Existing Single Phase Line will be Re-Built to a Three-Phase Service for 4000 Feet to Provide More Reliable Service to Existing Customers. This Request also Includes a Variance of Article III, Section 2.3.6b (Height Restrictions for Dwelling or Residential Accessory Structures) of the Land Development Code to Allow Electric Line Poles to Exceed 24 Feet and a Variance of Articles III, Section 8.3.8 of the Land Development Code to Allow the Placement of Overhead Utility Lines. The Property is Located Within an Existing Public Utility Easement on Vaquero Road, in Eldorado, Within Section 21, Township 15 North, Range 10 East (Commission District 5) [Exhibit 2: Opposition Statement]

SHELLY COBAU (Review Supervisor): Mr. Chairman, members of the Commission, the applicant is requesting development plan approval to allow 2,000 feet of newly constructed electrical lines and poles for a three-phase feeder line to connect to an existing overhead three-phase line on the west side of Highway 285 and to provide more reliable service to existing customers. On September 21, 2006 the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the variance request.

The applicant is requesting a variance of Article III, Section 2.3.6b (Height Restrictions for Dwelling or Residential Accessory Structures) of the Land Development Code to allow electric line poles to exceed 24 feet in height, and a variance of Ordinance # 1998-15, which amended Article III, Section 8.3.8 of the Land Development Code to allow the placement of overhead utility lines.

Ordinance 1998-15, amending Article III, Section 8 specifies that all new and replacement utilities shall be placed underground, or subject to approval by the BCC, who shall consider environmental and visual impacts. Article III, Section 2.3.6b of the Land Development Code states the height of any dwelling or residential accessory structure shall not exceed 24 feet.

The applicant is requesting a variance for the following stated reasons: Denial of the variance would result in a hardship to PNM's customers and the citizens of Santa Fe County. The project would meet existing electric power needs and projected load growth. The proposed project would reduce the amount of electrical power on the existing 46 kV lines that supplies the substation.

PNM is obligated to maintain conductor-to-ground and conductor-to-conductor clearances in accordance with the National Electric Safety Code (NESC); therefore to meet certain NESC minimum clearances, height requirements must be met for overhead lines such as the one proposed.

Santa Fe is served by an aging 46kV system. Lines and equipment are reaching capacity and nearing the end of their useful life. Current electrical load growth is requiring PNM to

perform upgrades to the system to provide reliable service by shifting the electrical demand from the overload 46kV system to the 115 kV systems, which has the capacity to carry today's loads as well as accommodate future growth.

Staff's recommendation is as follows: Article III, Section 2.3.6b of the Land Development Code states the height of any dwelling or residential accessory structure shall not exceed 24 feet and Ordinance 1998-15, amending Article III, Section 8 specifies that all new and replacement utilities shall be placed underground, or subject to approval by the BCC. Staff has determined that the proposed development would introduce overhead utilities into a corridor that is presently not interrupted. Staff recommends denial of the proposed development plan and variances.

If the decision of the BCC is to recommend approval staff recommends the following condition be imposed. Mr. Chairman, may I enter the condition into the record?

[The condition is as follows:]

1. Compliance with applicable review comments from the following:
 - (a) State Department of Transportation
 - (b) Development Review Director
 - (c) County Fire Marshal (Development Plan and Building Plans)
 - (d) County Public Works (access permit)
 - (e) County Technical Review Division

CHAIRMAN MONTOYA: Questions for staff?

COMMISSIONER VIGIL: I have one, Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Shelley, when staff is making the statement that this corridor is presently not interrupted, are you saying that there are currently no overheads?

MS. COBAU: Mr. Chairman, Commissioner Vigil, that's correct. There are no overhead utilities existing in this area and I would also like to point out that it is part of the 285 Corridor Plan and it is a corridor that we're trying to preserving the scenic integrity of that corridor also.

COMMISSIONER VIGIL: Thank you. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Other questions for staff? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Just to clarify, Shelley. Aren't there existing overhead lines on 285, west of 285?

MS. COBAU: Mr. Chairman, Commissioner Sullivan, there are sparse overhead in that area. There's a feeder line that runs from the gas station there at Avenida Eldorado that's approximately 150,200 feet off the highway running southward towards this area. But other than that I'm not aware of any other overhead utilities, certainly not in Eldorado. They were required to go underground.

COMMISSIONER SULLIVAN: Thank you.

CHAIRMAN MONTOYA: If the applicant would come forward and be sworn in please.

[Duly sworn, Laurie Moye testified as follows:]

LAURIE MOYE: My name is Laurie Moye, PNM. Mr. Chairman, members of the Commission, the first thing I'd like to do is clarify [inaudible] from approximately I-25 down. There is also a single-phase line that also runs from I-25, single phase all the way down [inaudible] so there is overhead in the area. The homes are typically served underground and certainly Eldorado takes its electricity from the three-phase that runs along 285.

I would like to begin with - because I know there are a number of people here to listen to the testimony and they do have representatives that want to speak to you. And I want to say to you what I said to the County Development Review Committee. Unfortunately, or fortunately, the variance process through the County is currently the only mechanism that allows the County to deny PNM the opportunity to build overhead, and in that denial, enables PNM to go to the PRC for cost recovery. So I have to come here and ask for an overhead variance so you can deny me, so that I can then go to the PRC for cost recovery.

I also would like to point out, typically when I've been in front of your in the past, I've been talking with you about transmission lines. This is a distribution line - very different voltage. If I could just kind of run through the application very quickly. We are going to tap into an existing overhead, three-phase distribution line on the west side of 285. We are proposing to build an overhead distribution three-phase line 2,000 feet along Vaquero to an existing single-phase distribution line, and we would rebuild 4,000 feet of the existing single-phase line to a three-phase and we would terminate that at Rey de Reyes and we would be using 200 to 300-foot spans. PNM has existing easements for both sections of this project.

Pole heights would be 34.5 feet above ground, which is out there now, and the cross-arms would be what PNM terms raptor-safe design, because this is a raptor area, and it enables the birds to safely land and take off from the poles and the wires.

Why do we have to do this? PNM is required by the NMCRC regulations to maintain the customer voltage at or above something that's known as the [inaudible] range, which is 110 volts at the customer's meter. Currently, with the one single-phase line that exists now that feeds this entire area on the east side, we are not able to maintain these voltages. That's why we're coming and asking to rebuild three phases so we can split the load.

The areas benefiting from this project are the developed areas to the east of Highway 285. I'd like to close with this particular project's focus for PNM is not underground versus overhead, but it's about cost recovery. PNM is willing to build this project underground using Rate Rider 22, which requires the County to deny the overhead request. With that, I stand for questions.

CHAIRMAN MONTOYA: Questions for the applicant? Commissioner

Sullivan.

COMMISSIONER SULLIVAN: There seem to be two situations here. One is where we're going or where you're proposing to go along Vaquero Road which is an area of no lines now, and then another is going south along an alignment of existing lines. Is that correct?

MS. MOYE: Mr. Chairman, Commissioner Sullivan, that's correct.

COMMISSIONER SULLIVAN: So what would be the additional cost to the

ratepayers to go underground? First of all, what would be the additional total cost and what would be the cost to the ratepayers, and what ratepayers would pay those costs?

MS. MOYE: Mr. Chairman, Commissioner Sullivan, if I could answer the last question first. Rate 22 requires that the governmental entity that requests the undergrounding that all of the PNM customers within that governmental jurisdiction would pay the rate rider cost. Your first question was what would the cost be. Would you like specific costs per month?

COMMISSIONER SULLIVAN: First of all, I wanted the construction - the difference, for example, along Vaquero Road of underground versus going overhead.

MS. MOYE: Okay, why don't I give you total costs first? The estimated underground cost for this entire project are \$219,991. The estimated overhead cost for this project are \$81,702, which leaves an excess cost of \$138,289. Your question was what is the underground cost on Vaquero if I separated it out from the estimated underground cost, and that is approximately \$164,000. So the bulk of the underground cost for this particular project is the underground construction on Vaquero Road.

COMMISSIONER SULLIVAN: \$164,000 is the underground cost, and what's the overhead cost on Vaquero?

MS. MOYE: I don't have that broken out. I only have the total project cost of \$81,702 for the entire project. The new 2,000 feet on Vaquero and the 4,000 feet of rebuild.

COMMISSIONER SULLIVAN: The 4,000 feet is overhead now, correct?

MS. MOYE: Yes, but we have to rebuild that.

COMMISSIONER SULLIVAN: I understand. And then that \$138,000 difference on the whole project between overhead and underground, what does that translate to the ratepayers and over what period of time?

MS. MOYE: Mr. Chairman, Commissioner Sullivan, the rate recovery period would be one year, 12 months. The residential costs would be approximately 38 cents a month. For small power would 68 cents a month, the general power users would be \$19.41 a month, the large power users would be \$172.65, and then the water and sewage users would be \$18.90 a month for one year.

COMMISSIONER SULLIVAN: And that's everyone in Santa Fe County that is served by PNM.

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

COMMISSIONER SULLIVAN: Thank you, Mr. Chairman.

MS. MOYE: Perhaps I should do a point of clarification on that. The way the rate rider is broken out, the City of Santa Fe PNM customers would not be paying this rate rider. It would only be residents of Santa Fe County that are served by PNM, excluding those customers within the City of Santa Fe city limits.

CHAIRMAN MONTOYA: So about how many people is that?

MS. MOYE: I believe that's approximately 25,000 meters.

CHAIRMAN MONTOYA: Questions? How many residents reside in that area that's going to be impacted, more or less?

MS. MOYE: Mr. Chairman, I'm not sure what your question is.

CHAIRMAN MONTOYA: In the Vaquero Road area that you're proposing to put this in, around Vaquero Road and down this - what is it? Calle Cristiano? Camino Amansador, Hijo de Dios, Alma, that area right there.

MS. MOYE: Mr. Chairman, I don't know and I was looking to see if the president of the 285 Coalition is in attendance and maybe one of the members of the public can answer that question. I don't know the answer to that.

CHAIRMAN MONTOYA: Okay. Any other questions for the applicant? Thank you. This is a public hearing. I'd like to see a show of hands for people that are opposed to this. If you want to stand up that's fine. [Approximately 70 people stood.] If I could ask you all to maybe get a couple of people to be your spokesperson. Let me just tell you that I probably have about as many letters about as many people that are here this evening in opposition to this. So we have had a tremendous - I have had a tremendous amount of correspondence. I won't speak for the other Commissioners, regarding the opposition. So if you could maybe do that. I'll give you a couple of minutes to select a couple of - oh, you already have. Great. So if you would come forward then please and be sworn in.

[Duly sworn, Rosemarie Bigioni testified as follows:]

ROSEMARIE BIGIONI: My name is Rosemarie Bigioni. I live on 28 Camino Caballos Spur. Mr. Chairman and Commissioners, I'm here on behalf of the US Highway 285 South Coalition, which is a 14-year old organization of all the homeowners associations, residents and property owners associations along the seven-mile corridor between I-25 and New Mexico 41. In one of the e-mails sent to you you should have a list of the current membership of the coalition.

At the September meeting of the coalition, Laurie Moye and Tom Dominguez presented PNM's plan and they discussed the proposed request for variances to the gathering of the coalition delegates and to several community residents. The coalition is opposed to granting this request for variances. A community member has been selected to speak to the very specifics regarding the present land development code. I'm here on behalf of the coalition to talk about the greater community's feelings about this.

The community really values visual integrity of the open spaces as specifically noted in the US Highway 285 South Corridor Plan, and as emphasized in the restrictive covenants that many of the subdivisions in the area have. There are 23+ subdivisions in the area, Eldorado being one, and the number of communities that are specifically affected by this are the residents along Vaquero Road, the Los Vaqueros Subdivision, the Ridges Subdivision and a neighboring subdivision that will have sight of this.

The coalition strongly requests that the variances be denied, and I'll leave the details of that to the next speaker. But I thank you for your consideration of the consideration of the greater community.

CHAIRMAN MONTOYA: Thank you, Rosemarie.

[Duly sworn, John Noble testified as follows:]

JOHN NOBLE: My name is John Noble and I'm the vice president of the Los Vaqueros Landowners Association. I live at 190 Vaquero Road and I have been asked by the

various residents in our general area, namely the Los Vaqueros Subdivision, Ridges Subdivision, Cielo Colorado and the residents along the Vaquero Road to speak on their behalf tonight. To that end I have prepared a letter, which is a statement of our objections to the granting of a variation and with your permission I would like to give the letter to each one of the members of the Commission. *[Exhibit 2]*

Mr. Chairman, Commissioners, the US Highway 285 South Corridor Area community statement in opposition to PNM application for variances, proposed variances. The Public Service Company of New Mexico has requested development plan approval to allow a variance to the Santa Fe County Land Development Code, Article III, Section 2.3.9b (1) that all new and replacement utility lines should be placed underground, and also Article III, Section 2.3.6b, that the height of any dwelling or residential accessory structure shall not exceed 24 feet.

PNM's plans call for the installation of three-phase overhead feeder lines from the Eldorado stable area over and above US Highway 285 to continue 2,000 feet along the north side of Vaquero Road to attach to an existing overhead single-phase feeder line. The existing single-phase feeder line and poles would be removed and replaced with new three-phase lines and new power poles 34.5 feet in height that would run 4,000 feet along the west border of Los Vaqueros Subdivision through a portion of the Ridges Subdivision and beyond.

Contrary to the arguments submitted by PNM at the September 21, 2006 CDRC public hearing, there is a notable absence of overhead electrical distribution lines within the US 285 Highway South community. In fact, the written argument presented by PNM at that public hearing describes conditions along US 599 corridor, not the US 285 corridor. It incorrectly states there are numerous overhead distribution lines serving the community there. Granting of this request for variance would single out the Los Vaqueros and Ridges subdivision and residences along Vaquero Road as the first communities forced to accept a variance permitting installation of overhead power lines, contrary to the County Land Development Code in the US 285 South Highway Corridor area.

Next, I have a community statement. The elected officers of the homeowner associations directly affected by the proposed PNM project, as well as adjacent subdivisions not directly affected and some homeowners not represented by homeowner associations have documented their unanimous opposition to the PNM proposed variances to the County Land Development Code. Community petitions, homeowner association officer letters and individual homeowner letters voicing opposition to the proposed variances have previously been submitted to the County Land Use Department. The large contingency of homeowners in attendance at the September 21, 2006 CDRC meeting was further testimony to the public opposition to the proposed variance.

Additionally, the US Highway 285 Coalition has documented its opposition to the proposed PNM variances and requested that the proposed variances be denied and that PNM be required to comply with the County Land Development Codes which are in fact in place to protect our community from the unsightly and outdated installation and potential hazards of overhead utility lines. We are concerned that the approval of these variances would establish a dangerous precedent which would almost certainly encourage further deviation from Ordinance

2005-08, the US 285 South Highway Corridor Plan and the County Land Development Code, further compromising the realization of the communities' objectives and values as development continues in the US Highway 285 South Corridor area. The community values the visual integrity of the open views as noted in the US Highway 285 South Corridor Plan and is emphasized in the restrictive covenants of many subdivisions in the area. As a community we are strongly opposed to the approval of the proposed variances to the County Land Development Code.

The US Highway 285 South Corridor Plan and Ordinance, 2005-08. In December 1999, the Board of County Commissioners authorized a planning committee to work in conjunction with the Planning Division to plan for the US Highway 285 South Corridor. In July 2004, the Board of County Commissioners approved Resolution 2004-73 adopting the US Highway 285 South Corridor Plan, and incorporating it as an amendment to the Santa Fe County Growth Management Plan. In September 2005, the Board of County Commissioners approved Ordinance 2005-08, the US Highway 285 South Corridor plan which incorporated all the regulations, policies and conditions established in the Santa Fe County Land Development Code. The objectives of the plan and ordinance were among other things to strengthen community identity and identify shared values within the community to guide the future development of the US Highway 285 South Corridor.

As participants in the development of the US Highway 285 South Corridor Plan we strongly support the development of the community values and development guidelines formalized in the plan and approved by the Board of County Commissioners in Ordinance 2005-08.

Santa Fe County Land Development Code Article III, Section 2.3.9b(1), this Code section states in part "All new and replacement water, gas, electric, telephone, television or other utilities, including both main and service lines, shall be placed underground within designated corridors." The remainder of this Code section deals with infill development which does not apply to our situation, and the intent of the Code section is clear and unambiguous, to minimize the visual intrusion to the skyline caused by overhead installation of utilities.

Santa Fe County Land Development Code Article III, Section 2.3.6b. This Code section states in part, "The height of any dwelling or residential accessory structure shall not exceed 24 feet." The remainder of the section is not applicable to our situation. The request becomes moot in the event PNM is required to install the new and replacement power lines underground.

Santa Fe County Land Development Code Article II, Section 3: Variances. This Code section sets for the criteria and guidelines for granting variances. Section 3.1 states in part, "A development review committee may recommend to the Board and the Board may vary, modify, or waive the requirements of the Code and upon adequate proof that compliance with the Code provision at issue will result in an arbitrary and unreasonable taking of property, or exact hardship and proof that a variance from the Code will not result in conditions injurious to health or safety. In no event shall a variance, modification or waiver be granted by the Board if by doing so the purpose of the Code would be nullified."

In this case PNM will not suffer arbitrary or unreasonable taking. PNM has an easement over privately owned lands to install its electric utilities. PNM does not own these lands. The owners of these lands are among those present today objecting to the variances sought by PNM. If PNM is not granted the variances it will not lose its easement and will continue to retain the right to install its power lines in the easement

In this case, compliance with the Code will not exact a hardship on PNM. All present here today acknowledge that underground installation of power lines costs more than overhead installation. This was taken into account when Article III, Section 2.3.9.b.1 of the Code was drafted and enacted into the County Code. Therefore the fact that underground installation of power lines costs more than aboveground installation cannot be cause to grant a variance from Article III, Section 2.3.9.b.1.

The power lines in question here are feeder lines, not high tension/high voltage transmission lines. If their increased cost of installation to comply with the Code is a hardship on PNM then PNM and any other utility seeking to install overhead utility lines in the future would, by precedent, be entitled to a variance, thereby rendering Article III, Section 2.3.9.b.1 of the County Code ineffective and unenforceable. Furthermore, granting this variance would set a precedent that would destroy aesthetic, open views in the US 285 corridor and its surrounding properties. Article II, Section 3.2 of the County Code states that in no case shall any variation or modification be more than a minimum easing of the requirements. In this case, granting PNM a variance to install overhead power lines would be the exact opposite of what the Code requires. Power lines are either installed overhead on power poles or buried underground; there's no in between.

The matter of safety. Area residents drive their vehicles, ride their horses, walk their dogs along the PNM easement. Underground installation of power lines eliminates the possibility of a vehicle or a horse colliding with a utility pole or a broken or loose power line causing an electrocution or a fire. It also eliminates the accidental electrocution of birds, including valuable raptors such as owls and hawks that may land on dangerous components of power lines.

In summary, the communities of the US 285 Highway Corridor area want to impress on the Board the importance we place on the US 285 South Corridor Plan and the County Land Development Code. We thank the Board of County Commissioner for their wisdom in sponsoring community development in the plan through passage of Ordinance 2005-08. The question before you as a Board is whether or not the plan, the ordinance and the County Land Development Code will be enforced, and the PNM variances denied. The community residents fully understand the need for PNM to recover incremental costs associated with underground installation of power lines through petitions to the Public Regulation Commission, and we are prepared to accept our share of rate increases approved in support of that reality. We have demonstrated to you through our petitions, letters and direct involvement in public hearings that we're an involved community and we are strongly opposed to the approval of PNM's proposed variances to the County Land Development Code. Denial of the proposed variances by the Board of County

Commissioners would be a strong step towards effectively establishing the authority of a well conceived and progressive Code. It is vital to the future development of Santa Fe County in general and the US 285 Highway South Corridor in particular. Therefore we respectfully request that you deny PNM's petition for variances.

CHAIRMAN MONTOYA: Thank you, John. Any questions for John? Okay. Thank you, and again, we recognize all of the other members in the audience who are opposed to this. Now, are there any proponents or people to speak in favor of this variance request? Seeing none, this public hearing is closed. Questions from the Commission?

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: I guess it's a question of the applicant. If this is denied, then you would take this to the PRC and ask them if it's okay that all the other metered people in Santa Fe County pay for this.

MS. MOYE: Mr. Chairman, Commissioner Anaya, that's correct.

COMMISSIONER ANAYA: In the past, has the PRC recommended that?

MS. MOYE: Mr. Chairman, Commissioner Anaya, yes, consistently.

COMMISSIONER ANAYA: Consistently.

MS. MOYE: On distribution projects. Yes. No transmission project has been brought to them except right now there is one for Santa Fe County in front of them, on a transmission. But routinely, on distribution projects, yes.

COMMISSIONER ANAYA: Okay. And you're proposing, and I guess I need to ask the people that are against this, the 2,000 feet, you want that to be underground, and the 4,000 feet, you also want that to be underground? I'll ask you. Do they want that?

MS. MOYE: Yes.

COMMISSIONER ANAYA: They want the whole thing underground?

MS. MOYE: Yes.

COMMISSIONER ANAYA: And they want the county's residents to pay for it, is what I'm hearing.

MS. MOYE: Mr. Chairman, Commissioner Anaya, that's what I heard.

Yes.

COMMISSIONER ANAYA: As a representative of District 3, which this does not include District 3, I was represented to help them any way I can and by supporting what the residents want, that would mean that I would increase their payments for the beauty of the views that they probably aren't going to see. That's the way I'm looking at it. And we can discuss this more, but just from the fact that the way I'm looking at it, to me it doesn't make sense.

Now, I could see possibly undergrounding the Vaquero Road but not undergrounding the three-phase line, because it already exists. Now, let me ask you another question. How much higher are the poles going to be that are existing now? When

you go three-phase?

MS. MOYE: Mr. Chairman, Commissioner Anaya, my understanding is they will be same height.

COMMISSIONER ANAYA: Same height. You're just going to add an arm?

MS. MOYE: That's correct.

COMMISSIONER ANAYA: And a couple of extra wires.

MS. MOYE: And a couple wires. Yes.

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

CHAIRMAN MONTOYA: Okay. Any other questions? Commissioner

Sullivan.

COMMISSIONER SULLIVAN: Just a clarification. I was kind of curious why the Vaquero undergrounding was so much more expensive per foot than the other 4,000-foot stretch.

MS. MOYE: Mr. Chairman, Commissioner Sullivan, we are not going to be undergrounding that 4,000-foot entire piece. What PNM has done is when we met with the community they indicated very strongly they would not support any overhead, a rebuild or an overhead line on Vaquero. Subsequently we went back, we analyzed the area and we still need to build the underground portion along Vaquero three-phase. However, as we go further south from Vaquero we will be doing several small, single-phase underground lines to connect to provide looped service for the lower portion of this area in order to break up the three-phases and break up the load.

The reason that the Vaquero underground portion of 2,000 feet is so expensive is that we have to bore 285 twice, we have to have two separate trenches along Vaquero to loop the three-phase in and out, and we are going to have to place a switchgear, a piece of equipment, adjacent to the single-phase line and riser. It's very cost-intensive to place Vaquero underground and that's why it's approximately \$164,000 for this. If you'd like a more detailed description I have my engineer here.

RYAN POLK: We may be able to do it in one trench but it's going to have to be a looped circuit. The three-phase that we would tap on the west side of 285 would have to be bored over along Vaquero to a switchgear and then that three-phase would have to come out of that switchgear, go underneath 285 and riser on the existing three phase. So it may be in one trench. I was just going to clarify that, but when we have to install underground facilities, we need to have them looped from the standpoint that if we have a failure and it's underground it's nothing that we can fix quickly. So we have two sources of power - would be the right way to say it. So that's the standard method of construction for installing underground facilities. My name is Ryan Polk with PNM.

COMMISSIONER SULLIVAN: So then the 4,000-foot line, that's going to remain?

MS. MOYE: Mr. Chairman, Commissioner Sullivan, that will remain because there are a number of people who probably are here today who receive their power from that line.

COMMISSIONER SULLIVAN: So this undergrounding wouldn't underground that 4,000 feet. It would just underground the single-phase, or portions of the single-phase line that will be going along that easement. Is that correct?

MS. MOYE: No. We will do the loop in Vaquero and then as we move south from Vaquero, there are a number of roads that go in, and we have underground lines to feed the different subdivisions. And what we'll do is we'll just bring a single-phase in to loop in and out. Off of -

COMMISSIONER SULLIVAN: Off of the aerial line? How will you get three-phase onto the aerial line? It's only a single-phase now.

MR. POLK: We would have to tap the existing overhead three-phase line farther south along 285, and just bore underneath 285 again and install underground facilities at locations a little further south than Vaquero to create some new single-phase underground loops. When we have the three-phase line on the west side of 285 we will just tap one phase and tie into some existing underground single-phase.

COMMISSIONER SULLIVAN: Okay. So that 4,000 stretch won't become three-phase then.

MS. MOYE: No.

COMMISSIONER SULLIVAN: That will stay single-phase.

MR. POLK: That will stay there.

COMMISSIONER SULLIVAN: I see. So basically, what's chewing up the cost here is that looping of the Vaquero line underground.

MS. MOYE: That's correct.

COMMISSIONER SULLIVAN: But there won't be - and I want to be sure the residents understand that - I guess many of them do. I didn't. That this won't eliminate those poles that already exist going down the center of the subdivision there to the east of 285.

MS. MOYE: That's correct. And just for another point of clarification, these subdivisions are all served off of this single-phase line that's in place right and the lines come down underground and they go into the different subdivisions. What we're going to be doing is bringing them another source from the strong source on 285 underground in so that they have an opportunity to have a loop. Yes.

COMMISSIONER SULLIVAN: Which as you testified earlier, is a three-phase line, the one on 285.

MS. MOYE: Yes.

COMMISSIONER SULLIVAN: Okay. Now I understand. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Commissioner Anaya.

COMMISSIONER ANAYA: You just confused me. But that's only if we say you have to underground.

COMMISSIONER SULLIVAN: That's correct.

COMMISSIONER ANAYA: But if we don't say that, they could put

another line above.

COMMISSIONER SULLIVAN: That's correct. And then make it three-phase.

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

COMMISSIONER SULLIVAN: So much for my electrical engineering.

CHAIRMAN MONTROYA: Commissioner Vigil.

COMMISSIONER VIGIL: Thanks. And I have some questions for our Legal Department. We've heard testimony that the distribution lines the PRC has decided in those cases that the cost is borne by the residents consistently. Can you agree with that statement?

MR. ROSS: Mr. Chairman, Commissioner Vigil, I think that's correct.

COMMISSIONER VIGIL: Okay. And is there not an intermediary option that PNM has before they go to the PRC and that is to ask the County to reimburse them for the cost? Is that not even a requirement?

MR. ROSS: Mr. Chairman, Commissioner Vigil, I think that's the option for transmission lines.

COMMISSIONER VIGIL: Okay, but not for distribution lines.

MR. ROSS: Right. I'm not 100 percent sure on that. I haven't looked at that particular tariff.

COMMISSIONER VIGIL: Do you want to respond to that?

MS. MOYE: If I could answer. What PNM, the process is, PNM will write a letter to the County, Mr. Chairman, Commissioner Vigil. PNM will write a letter to the County explaining these costs and will give the County 60 days to respond. The County has the option of writing a check to PNM for the excess cost of \$138,289, or the County can say to PNM, go to the PRC and recover it from all of PNM's customers in the county. So there are two options. PNM will come to the County and give them the option of paying for it themselves, finding a way to pay for it, but PNM will look to the County for reimbursement or look to the PRC and that's the process that we'll do.

COMMISSIONER VIGIL: I'll turn this over to our staff. When we do get a request for paying - one of the most glaring inequities about this request is while we want to protect the environment and we want to move forward on pristine kinds of views with undergrounding, there doesn't seem to be a fair and equitable way to do that because all residents will be responsible. Particularly at a time and phase when utility bills are very difficult for many people to pay without additional tariffs.

So my question to you and Roman or Steve, either one of you, feel free to answer this. Is there a way, is there a remedy through this process that once we receive a request we could create a special assessment district for those residents who actually are going to receive the benefit of that? It just seems to me that we need to be creative about making this a fair and equitable resolution.

MR. ROSS: Mr. Chairman, Commissioner Vigil, we'd have to study that. I don't know - I had never thought of a special assessment district as a vehicle to address

these charges from PNM. So we can look at that and see if that's feasible.

COMMISSIONER VIGIL: Okay. I'm looking for possible alternatives here to what seems to be the inevitable and that is if we do want to comply with what the residents are requesting, and certainly I understand where they're coming from. They're building a community for their future, their families and their children and that community should include pristine views and the ability to keep that area from overheads, which is, I must say, is an opportunity that many communities that are closer to us have not had. So my sense is I want to be able to say underground and let's be able to move forward with fully undergrounding but I think the process has put us in a very difficult position here, to say yes to that and to know that the possible outcome is not going to be good for, as Commissioner Anaya has said, his constituents. It certainly won't be good for my constituency and I represent a very diverse constituency. I represent such a diversified constituency that it includes a traditional historic village and Las Campanas. Now, how do I create equities with that?

So I'm not sure how we're going to do this, but I guess maybe I'd ask the representatives from Eldorado, and if you don't feel you can respond to this quickly, if the County was able to look at the parameters of creating a special assessment district for the residents of Eldorado to be able to be responsible for this, is this an alternative you would consider?

CHAIRMAN MONTROYA: And if I could just briefly say, and you may know that a special assessment district is within that area, so it would be you that would bear the cost, not every resident in Santa Fe County would bear the cost. It would just be that area that we're talking about right here. Do you want to respond for the community, ma'am?

[Duly sworn, Judy Whitely testified as follows:]

JUDY WHITELEY: I guess I would like to say, representing our subdivision of 84 properties that we have said from the beginning that we would be happy to absorb our share of the cost, and while I understand Commissioner Anaya and Commissioner Vigil's concerns about your constituents, if I'm not mistaken, in the past and the future, when there are similar projects costs routinely get spread over the entire county. I'm not opposed to a special assessment district if that's going to be a uniform treatment. If our area as members of the county, as residents of the county pays for your constituents' issues and yours, we are happy to participate as co-equal with everybody else in the county.

If you are going to when there is an improvement in your areas have a special assessment district for those areas, then that's fair. However, if ours is the only one that is having a special assessment district for this type of issue, and I'm sure it could encompass a number of different things, outside of just an electrical upgrade. Then that wouldn't be equitable. So I'm willing to pay and I believe that our residents are willing to pay their fair share.

CHAIRMAN MONTROYA: Okay. Any other questions? Commissioner Sullivan.

COMMISSIONER SULLIVAN: I think a couple of things. I understand the philosophy of trying to lay the costs where the benefit derives. I think what we have in the case, particularly of this part of the county is a majority of the infrastructure out there has been constructed privately. We just approved a resolution today, \$419,000 for a water system in La Cienega. We've done sewer extensions on Agua Fria Road. We've done water extensions on Agua Fria Road. We've done community service buildings in Agua Fria. All of those have been paid for with tax dollars that 285 area residents pay and don't get any benefit from.

So when you start to break these things down by section, I would think you'd probably find, particularly we have assessed values on the homes being larger on the average that you'll find that the burden probably shifts the other way, that you probably have more tax dollars going into other areas of the county from this area than vice versa. That would be my guess; I haven't done a study on it.

So I look at 38 cents. It doesn't seem to be too much of a burden for a year on your bill. It seems like a manageable amount of money. I think we could look at assessment districts and should in the future, particularly on larger projects, the secondary line. It's not much on the total radar screen of what PNM spends each year for construction. And quite frankly, everything they spend eventually goes into the rate base, no matter how you look at it. They don't walk away with zero dollars.

So one way or another, whatever they do goes into the rate base, this just being another part of it. So I think that it seems to me that PNM has come up with a reasonably solution for undergrounding, coming across the road, the highway, from 285 from the west, leaving the existing line in place, minimizing the costs for undergrounding, not opening up a new area for overhead lines. It seems to be like they've done their homework on that and the \$138,000 cost seems to be fairly reasonable to me, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Any other discussion? Deliberation?

COMMISSIONER VIGIL: I have some, Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Laurie, could you give us those costs again?

Thirty-eight cents was not what I heard.

COMMISSIONER SULLIVAN: Thirty-eight cents per month.

CHAIRMAN MONTOYA: Per month for 12 months?

COMMISSIONER SULLIVAN: For 12 months.

CHAIRMAN MONTOYA: And then it's over?

COMMISSIONER SULLIVAN: Then it's over.

COMMISSIONER CAMPOS: It varies by rate.

COMMISSIONER SULLIVAN: Well, yes.

COMMISSIONER CAMPOS: By the type of user.

COMMISSIONER SULLIVAN: If you're a commercial user it's 68 cents.

COMMISSIONER VIGIL: Would you give us those rates, Laurie, please?

MS. MOYE: Yes, Mr. Chairman, Commissioner Vigil. Residential is 38

cents a month, small power user is 68 cents a month, general power user is \$19.41 a month, large power user is \$172.65 a month, and water and sewage is \$18.90 a month.

COMMISSIONER VIGIL: That would be if we approved all of the undergrounding for this particular project.

MS. MOYE: For this project only, yes, Mr. Chairman, Commissioner Vigil.

COMMISSIONER VIGIL: And Mr. Chairman, the other thing is, Commissioner Sullivan, this is comparing apples to oranges. The Agua Fria community has indeed received phase 1, phase 2, phase 3 and a community center. So has Eldorado. None of this money has come from ratepayers. It's all come from capital outlay through the legislature. Those are severance tax bonds, and that comes from the oil and gas revenues. So that's apples and oranges here. What we're actually making a decision for utility ratepayers. These are individual ratepayers. I think those are the oranges and the severance tax bonds are the apples. So I don't think you can use that comparison. I think we have to be careful about how we move forward with this.

COMMISSIONER SULLIVAN: The waterline came from County bonds.

COMMISSIONER VIGIL: Which waterline?

COMMISSIONER SULLIVAN: The Agua Fria line.

COMMISSIONER VIGIL: I don't believe so. I think it came from an allocation from Senator Rodriguez.

COMMISSIONER SULLIVAN: No. It came from County bonds.

CHAIRMAN MONTOYA: Okay, let's stay on focus here. We need to determine what we're going to do with this case. Any other discussion? Commissioner Anaya.

COMMISSIONER ANAYA: I would be opposed - I'll make a motion. Is that okay?

CHAIRMAN MONTOYA: Please.

COMMISSIONER ANAYA: I would like to see that the 2,000-foot line be undergrounded and that the 4,000-foot line be aboveground, and all you'd have to do is add the extra two lines. The poles stay the same and you'd add the cross-T's to hold those lines. So that's my motion.

CHAIRMAN MONTOYA: Second for discussion. Discussion?

MS. MOYE: Mr. Chairman, may I make a comment?

CHAIRMAN MONTOYA: We've got a second and a motion. We're in deliberation right now amongst the Commission. Commissioner Anaya.

COMMISSIONER ANAYA: And that, Mr. Chairman, would mean that if this does get approved by the PRC in terms of spreading it out it won't be such a hard hit to the residents in my district. I think I'm meeting half way. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Any other discussion?

The motion to approve CDRC Case #V/DP 06-5530 as described above passed

by unanimous [5-0] voice vote.

MS. MOYE: Point of clarification? You requested an underground for Vaquero and a rebuild of the 4,000 feet of the existing overhead line. Is that correct?

CHAIRMAN MONTOYA: Correct. That was the motion. And it did pass.

COMMISSIONER CAMPOS: Mr. Chairman, is there an issue here of clarification?

MS. MOYE: I would like to clarify for the Commission that there is one penny cost difference with this proposal.

CHAIRMAN MONTOYA: Thank you for that clarification.

- XII. A. 2. FOR VOTE ONLY - EZ Case # DL 06-4530 Pomonis/Wikoff Land Division. Daniel Pomonis and Denise Wikoff Applicants, Request Plat Approval of a Land Division to Divide 5.0 Acres into Two Tracts, Within the Alameda Ranchettes Subdivision. The Tracts Will be Known as Tract C-1 (2.50 Acres More or Less) and Tract C-2 (2.5 Acres more or less). The Subject Property is Located on Sloman Court, Via Sloman Lane (County Road 70-A) Within Section 25, Township 17 North, Range 8 East, (5-Mile EZ, District 2)**

JOSE LARRAÑAGA (Review Specialist): Thank you, Mr. Chairman. A brief summary on this project. On November 14, 2006, the BCC met and heard this case. The motion was made by Commissioner Anaya to grant plat approval of a land division to divide five acres into two tracts. The vote ended in a tie, with Commissioners Anaya and Montoya voting in favor of the motion and Commissioners Sullivan and Campos voting against the motion.

Commissioner Vigil was not present, therefore this case is being heard for deliberation and vote only. Mr. Chairman, would you like for me to continue with the report?

CHAIRMAN MONTOYA: No, let's go ahead and take a vote on this. Commissioner Vigil.

COMMISSIONER VIGIL: Before we do, I just have a couple of questions. Maybe Shelley or you can answer. My understanding was that part of the basis for this request and the lot split division was because there are surrounding properties that are already split to 2.5 acres and this would be one of the few or many even the only land that would not be split, that it would be five acres. Is that accurate?

MR. LARRAÑAGA: Mr. Chairman, Commissioner Vigil, that was what the applicant brought to us.

COMMISSIONER VIGIL: Is that reflected in our land use map?

MR. LARRAÑAGA: I believe so.

COMMISSIONER VIGIL: Okay. And also, there was a question, and I wasn't here for the deliberation, as to whether or not this qualified for a family transfer, and apparently there was some discussion that it did not. Do you recall that and can you clarify to me why it didn't?

MR. LARRAÑAGA: Mr. Chairman, Commissioner Vigil, this could possibly qualify for a family transfer. We'd still have the same issue with the access.

COMMISSIONER VIGIL: Okay. So the access issue was in fact that there needs to be a culvert placed or there's a crossing that's inappropriate or does not meet County standards? Are we requiring the applicant to bring that up to County standards? Then I understand also the Hagerman Road is supposed to create some kind of a relief.

MR. LARRAÑAGA: Mr. Chairman, Commissioner Vigil, yes. Access, what we had reviewed, Sloman Court via Santa Fe County Road 70-A, which crosses a 100-year floodplain, that's why we were recommending denial, because of the crossing.

COMMISSIONER VIGIL: Will the Hagerman Road create relief for this?

MR. LARRAÑAGA: Mr. Chairman, Commissioner Vigil, we believe that the Hager Road will create an alternate access to this area.

COMMISSIONER VIGIL: Okay. Now I just have a question for Mr. Ross. Mr. Ross, do we have to retake the vote or do I just vote in the affirmative or the negative? How do we move this?

MR. ROSS: Mr. Chairman, Commissioner Vigil, it's like nothing happened. We start over. We need a new motion.

COMMISSIONER VIGIL: Okay.

CHAIRMAN MONTOYA: Any other discussion? Could I have a motion?

COMMISSIONER ANAYA: Move for approval.

CHAIRMAN MONTOYA: Motion by Commissioner Anaya for approval.

COMMISSIONER CAMPOS: Is that with conditions?

COMMISSIONER ANAYA: With conditions.

CHAIRMAN MONTOYA: I'll second for discussion. Further discussion?

The motion to approve EZ Case #DL 06-4530, with conditions passed by majority 3-2 voice vote, with Commissioners Sullivan and Campos casting the nay votes.

[Commissioner Sullivan left the meeting.]

XII. A. 3. FOR VOTE ONLY – CDRC Case #V 06-5510 Carmelita Gurule Variance. Carmelita Gurule, Applicant, Thomas Maestas, Agent, Request a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow a Land Division of 1.59 Acres into Two Lots. The Property is Located at 250A and 250B State Road 76, Within Section 6, Township 20 North, Range 9 East (Commission District 1)

JOHN LOVATO (Review Specialist): Mr. Chairman, Commissioners, this once again is for summary. On November 14, 2006, the BCC met and heard this case. A motion was made by Commissioner Anaya to grant a variance of Article III, Section 10, lot size requirements, of the Land Development Code to allow a division of 1.59 acres into two lots. The vote ended in a tie with Commissioners Anaya and Montoya voting in favor of the motion and Commissioners Sullivan and Campos voting against the motion. Commissioner Vigil was not present, therefore this case is being heard for deliberation and vote only.

CHAIRMAN MONTOYA: Okay. Any discussion? Any deliberation?

COMMISSIONER VIGIL: Was this that day I was taken to urgent care?

Why wasn't I here? I can't remember. Does anybody?

MR. ROSS: Mr. Chairman, Commissioner Vigil, I don't think it was the day you were at urgent care. I think you just left the meeting for a short while and these two cases come up.

COMMISSIONER VIGIL: See, I leave them for a while and they just put me in a spot.

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: Move for approval with conditions.

CHAIRMAN MONTOYA: Motion by Commissioner Anaya with conditions. I'll second for discussion. Any further discussion?

The motion to approve CDRC Case #V 06-5510 passed by majority 3-1 voice vote with Commissioner Campos casting the negative vote. [Commissioner Sullivan was not present for this action.]

XII. A. 4. Second Public Hearing for Ordinance 2006 -11. An Ordinance Amending Article XVI, Ordinance 2000-8, of the Santa Fe County Land Development Code, Ordinance 1996-10, to Include the Los Cerrillos Traditional Community Zoning District Map and to Clarify Density within the Los Cerrillos Traditional Community Zoning District

ROBERT GRIEGO (Planner): Mr. Chairman, Commissioners, this is the second public hearing for the Los Cerrillos Zoning District Ordinance. At the first public hearing we presented the background and the changes that we were proposing for this ordinance. For today's public hearing we wanted to propose the amendments that we've made since that last meeting. There was extensive public outreach that we documented from the first public meeting. We did a mail-out to the community members, we had community meetings. Since the Board meeting on November 14th, there's been a proposed amendment. Staff drafted a written description of the traditional community zoning district, which was an amendment to the map that was part of this. You have that information in your packet.

The proposed changes are just clarification of the boundaries and we worked with our GIS staff to draft this ordinance amendment for that. So from that, we just wanted to also inform the Board that we also did public notice in the Santa Fe *New Mexican* for this hearing. Staff's requested action is approval of Ordinance 2006-11, an ordinance amending Article XIV, Ordinance 2000-8, of the Santa Fe County Land Development Code, Ordinance 1996-10, to include the Los Cerrillos traditional community zoning district map, and to clarify density with the Los Cerrillos traditional community zoning district.

Staff recommends approval of this ordinance at this time. I stand for questions from the Board.

CHAIRMAN MONTOYA: Questions for staff?

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: Robert, thank you for the presentation. So this is to clarify the 25 by 100 lots. Correct?

MR. GRIEGO: Mr. Chairman, Commissioner Anaya, that's part of it. There was no map. The main impetus for this ordinance amendment is to create amp for this area. When staff drafted the ordinance initially in 2000 there was no map attached to the ordinance, so we wanted to create a map. The problem with the 25 by 100 lots, there is a reference in the previous ordinance to the old townsite plat of Los Cerrillos. Staff - we've been working with legal staff, has determined that - what we wanted to do was just clarify the legal lots of record. The County has a definition for legal lots of record so we're not changing that for this area. Where somebody has a legal lot of record, it's still in effect for this area. We just wanted to say that you can't create any more new of the small 25 by 100 lots. So that was a major change that we're trying to make here.

COMMISSIONER ANAYA: So if somebody has a 25 by 100-foot lot that has a separate deed, that is dated prior to 1981, they can build on it.

MR. GRIEGO: Mr. Chairman, Commissioner, that's my understanding. If it's a legal lot of record they would be eligible to build on that lot.

COMMISSIONER ANAYA: Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Other questions for staff? Okay, this is a public hearing. It's our second public hearing on this ordinance. If anyone would like to come forward and speak on behalf of this ordinance, please come forward now.

[Duly sworn, Yolanda Sandoval testified as follows:]

YOLANDA SANDOVAL: My name is Yolanda Sandoval. My address is 7 Second Street, Cerrillos. First of all, Commissioners, I would like to thank Robert and the rest of staff for all the hard work that they put into this amendment. They really worked well with the community. I would like to speak in favor of this amendment, the ordinance amendment. I was one of the people that was involved in the planning process and we found out, I guess the end of last year, the first part of this year, that there was a problem with that, with development that was allowed that was not the intent of our original plan. And so we brought that up to the staff and they've worked with us to try to correct that. And our intent, in regards to the 25 by 100 lots was even back then, if somebody had a deed that recognized those lots that we were not against them developing them.

So we weren't trying to take away anyone's right to those lots. But the development that was allowed in that case I believe did not have a deed that referenced those 25 by 100 lots. So thank you.

CHAIRMAN MONTOYA: Okay. Now, if there's anyone opposed to this, if you'd please come forward. Okay, seeing none, this public hearing is closed.

COMMISSIONER ANAYA: Move for approval.

CHAIRMAN MONTOYA: Motion by Commissioner Anaya for approval.

COMMISSIONER VIGIL: Second.

CHAIRMAN MONTOYA: Second, Commissioner Vigil. Further discussion?

The motion to approve Ordinance 2006-11 passed by unanimous [4-0] voice vote with Commissioners Anaya, Campos, Vigil and Montoya all voting in the affirmative. [Commissioner Sullivan was not present for this action.]

CHAIRMAN MONTOYA: Thank you, Robert, for your work on that and Yolanda, thank you also for being here this evening.

XII. A. 5. Ordinance 2006 -11. An Ordinance to Amend Ordinance 2004-1, the Village of Agua Fria Traditional Historic Community Boundary [Exhibit 3: Supporting Materials]

RENEE VILLAREAL (Planner): Good evening, Mr. Chairman, members of the Board. Tonight we are here to discuss the ordinance amendment to revise the boundary of the Village of Agua Fria Traditional Historic Community. This is the only public hearing that is necessary for this ordinance. Before we discuss the details for the THC boundary amendment we'd like to give you a brief history of the Agua Fria THC boundary.

The Village of Agua Fria THC ordinance was created in 1995 establishing the boundary in accordance with New Mexico state law which defines a traditional historic community as an unincorporated area of Santa Fe County that has an identifiable village that has been in existence for more than one hundred years, includes structures or landmarks associated with the identity of this area, has a distinctive character and/or traditional quality that can be distinguished from the surrounding areas, and it must be declared a THC by ordinance from the BCC.

The Village of Agua Fria an identifiable village that has been in existence for more than one hundred years, includes structures or landmarks associated with the identity of this area, has a distinctive character and/or traditional quality that can be distinguished from the surrounding areas, and it must be declared a THC by ordinance from the BCC.

The Village of Agua Fria THC was established on September 12, 1995 by Ordinance 1995-8. The original THC boundary encompasses 4,650 acres, and the boundary was then amended in 1996 that reduced the boundary to 540 acres. However, a provision was included to allow property owners outside of but contiguous to the THC boundaries to request inclusion.

The Village of Agua Fria THC Ordinance was amended again in April 2004. The amended boundary was the result of the Village of Agua Fria Planning Committee's work who felt strongly about bringing back land including the Agua Fria Community Park, BLM land, and San Ysidro River Park, and El Instrumentario de Agua Fria. Including this there was a written description of the THC boundary at this time and they also accepted requests from property owners for inclusion. This is the map that was included at that time.

Currently, or most recently I would say, the Village of Agua Fria Community Plan was adopted by the Board via resolution 2006-116 on July 11, 2006. The plan recommended that property owners have an opportunity to request inclusion into the THC. Included in the plan was a map showing the requests from property owners who submitted at the time with a letter of intent requesting inclusion and including a plat and/or warranty deed showing that they had ownership of the property. There were also recommendations that included in the Agua Fria Plan that were unanimously approved, not only by the Agua Fria Planning Committee but by the Agua Fria Development Review Committee and also by the Board of County Commissioners.

Most recently a community meeting was held on November 27th to inform property owners of the proposed boundary revisions to the THC. This meeting was publicized a number of ways. There was a mail-out informing property owners of the meeting. The mail-out also announced the public hearing schedule including this meeting. There was a public notice advertised in the Santa Fe *New Mexican*. At the meeting we gave a presentation and there were questions that were answered about the inclusion request process, to be included in the THC. At this time I'm going to hand it over to Robert to talk more specifically about the inclusion requests that have been made up to this point.

MR. GRIEGO: Mr. Chairman, Commissioners, I'd like to maybe see if we could pull up the ARC map on there. We have a map showing all the property owners included in the materials that were in your packet material. I also handed out the request for inclusion into the Village of Agua Fria THC with a spreadsheet showing the property owners who have requested since, including the property owners who have requested prior to the meeting on November 27th. We've received a number of requests since the meeting on November 27th. The total number of requests we've received are 30 requests from property owners. Twenty-six of them are contiguous to the Agua Fria Village Traditional Historic Community. There's four properties that are outside of the boundary.

On the information I've provided to you we have each of the properties listed. Each of these property owners submitted a letter of intent to the County to have their properties included within the Traditional Historic Community. They also submitted information showing where the property was including a plat and/or a deed for that property. We have - I'm not sure what the best way to go with this. What I was proposing to do is maybe go through the entire map showing you each of the property owners and where they lie within the Traditional Historic Community.

As the spreadsheet shows, the 26 properties there are contiguous, but I wanted to go through the map to show you each property, if that's at the request of the Board, Mr. Chairman.

CHAIRMAN MONTTOYA: Are there any questions at this point? Do you need that information or want that information?

COMMISSIONER CAMPOS: I do.

CHAIRMAN MONTTOYA: I think we've got the gist of exactly what we're looking at here.

MR. GRIEGO: There are a couple of issues there that I wanted to highlight. There's a couple of properties there. If you notice on #26, that property shows approximately 35 acres. Her property is the first on the map. The property owner requests in blue there, with the blue-hatched area. That property goes on both sides of Agua Fria. It's both north and south of Agua Fria, and it goes up to the Santa Fe River, which is adjacent to the Traditional Historic Community and BLM land.

CHAIRMAN MONTTOYA: Is that the one off Willy Dail?

MR. GRIEGO: Yes, that is correct, Mr. Chairman.

COMMISSIONER VIGIL: So, Mr. Chairman, we don't have clarification,

Robert, that this property is actually contiguous?

CHAIRMAN MONTROYA: It's not.

COMMISSIONER VIGIL: Based on the fact that what separates them from Agua Fria, there's BLM land and the Santa Fe River? Is that accurate? Or are we still waiting for a decision on whether or not BLM land and the Santa Fe River can be considered land for purposes of the definition of the contiguous definition?

MR. GRIEGO: Mr. Chairman, Commissioner Vigil, let me try to answer your question. The property as it is right now is not contiguous to the THC boundary as you stated. It's contiguous to the Santa Fe River which is public land and BLM land which is contiguous to the THC. So it's not contiguous at this point. That is public land and the Board may choose to bring in the public lands along with that.

COMMISSIONER VIGIL: Oh. Is it possible to look at - there are property owners who indeed have gone through the process and probably have an expectation of being included. Is it possible to include all of those who are clearly, definitively contiguous? And I'm going to address this question to you. Steve Ross. Those property owners that are all in blue in the map are clearly contiguous and clearly qualify for inclusion, but this particular property, Mary Stacy, I guess what I'm hearing is that it isn't clear that she qualifies unless we can legally state that the BLM land and the Santa Fe River, we can include them in the Agua Fria Traditional Village or we can say, like Edgewood did, a street connection is contiguousness. What is your response to that?

MR. ROSS: Mr. Chairman, Commissioner Vigil, you'd have to include the public lands in the boundary of the Traditional Historic Community to get that one parcel, to add that one parcel.

COMMISSIONER VIGIL: Can we do that without their permission?

MR. ROSS: Probably.

COMMISSIONER VIGIL: BLM?

MR. ROSS: Yes. The petition process is essentially to get it in front of you. It doesn't seem to be a requirement. You can probably change the boundaries without the permission of property owners.

COMMISSIONER VIGIL: My concern is, and we're looking at annexation at this point in time, and this northern part of Agua Fria is one of the areas - and I'm looking at the annexation map right here - that our staff has recommended no to annexation on. My question, Robert, is is this the only opportunity these landowners are going to have to come before us for exchange of boundaries, or do we need to be real clear about this opportunity being available in the future or not available in the future, and if so, wouldn't it be prudent to identify limitations on this, so property owners aren't coming every so often saying, Oh, I want to be contiguous. Were these issues discussed with the Agua Fria people?

MR. GRIEGO: Mr. Chairman, Commissioner Vigil, these issues were discussed in front of the planning committee and they did have some recommendations in regard to that. I first want to make a point in regard to this ordinance amendment. This

ordinance will amend Ordinance 2004-1, so that statement which says "Owners of property outside of but contiguous to the boundaries of the Traditional Historic Community boundary..." that statement will remain as part of the ordinance. So what you're doing today is you're bringing in the property owners that have requested inclusion and that fit the criteria identified by the Board or by the ordinance.

So as far as the last part of your question, the planning committee, the Village of Agua Fria Planning Committee made recommendations that property owners should come forward with their requests for inclusion at the time of the adoption of the plan and ordinance. However, they should also stated that property owners north of the Traditional Historic Community should request inclusion at any time into the future. So this property is a little bit different because it's not north of the THC, according to that recommendation that was made in the Village of Agua Fria Community Plan.

CHAIRMAN MONTOYA: It's north? Or south?

MR. GRIEGO: This property is south of the existing boundary.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Restate that. Which property is south? Is that Mary Stacy's? Are you referencing hers in particular? I'm sort of viewing every property north.

MR. GRIEGO: Yes. Mary Stacy's property is south of the THC as it exists today.

COMMISSIONER VIGIL: Wait. Let me stop you. So that really doesn't by nature of the planning process and their plan and their criteria qualify, does it?

MR. GRIEGO: Mr. Chairman, Commissioner Vigil, what the planning committee said, well, yes and no. Yes in the sense that if it's identified contiguous, then it does qualify. It's not north of the boundary, but it is contiguous. The Village of Agua Fria Community Plan stated a property owner should come forward if they're contiguous and have the amendment of the ordinance done at the time, as long as they meet the requirements of being contiguous to the boundary.

COMMISSIONER VIGIL: Okay. I guess I have a concern for this particular plat of land that is Mary Stacy's. While she seems to qualify she also is surrounded by a lot of density, and I'm not sure - was there an understanding or a communication as to why this particular property owner wanted to be a part of the Traditional Historic Village? And has she been involved in any of the planning processes? What is her connection and rationale for being included?

MR. GRIEGO: I'm not sure if the property owner is here. Mr. Chairman, Commissioner Vigil, she attended the meeting on November 27th and at that time she was very adamant about having been taken out of the boundary in 1996 when the Board shrunk the boundary to that smaller area. So she was concerned that the Board did that at that time without her consent. She wasn't a part of the planning process. However, she did attend the meeting that we had earlier on where we talked about the boundaries and she indicated that she would like to come back into the boundary. So her rationale for wanting to come

in, I don't know.

CHAIRMAN MONTOYA: Have you verified that?

MR. GRIEGO: Mr. Chairman, I'm not sure what you mean?

CHAIRMAN MONTOYA: That was her property in 1996 when this came into effect?

MR. GRIEGO: Mr. Chairman, yes. As was shown on the presentation earlier, the larger boundary included that whole area outside of there, so all of these properties were part of the original boundary in 1995. In 1996 when they shrunk, she was left out.

CHAIRMAN MONTOYA: And she did own the property at that time?

That's my question.

MR. GRIEGO: Oh, no. I have not verified that. I'm sorry, Mr. Chairman. I misunderstood.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Mr. Chairman, there are members from the planning committee here. I see actually the chair, Gil Tercero, and I see José Varela López, and I think Tamara Lichtenstein are here. I wonder if they want to address the Commission with regard to this. I'd really like to hear from them because they were entrenched in this process. Gil, are you wanting to speak? I just wanted to make sure that we do have their desire.

CHAIRMAN MONTOYA: Yes, when we open the public hearing. Right now we're on the questions of staff from the Commission.

MR. GRIEGO: Mr. Chairman, Commissioners, I just pulled up on the map there the property that's in question. As you'll notice, the brown area is the current existing boundary. That pinkish area there is BLM land, and the Santa Fe River is the blue area here, and her property is adjacent to that.

CHAIRMAN MONTOYA: And that property was part of the Traditional Historic Community in 1996?

MR. GRIEGO: Mr. Chairman, Commissioners, in 1995, the original THC boundary - it was part of the original THC boundary.

CHAIRMAN MONTOYA: I guess I don't have that map.

MR. GRIEGO: I did not provide that larger map. As Renee indicated, it was approximately 4,650 acres and so it included much of the southwest area of Santa Fe, the original THC boundary.

CHAIRMAN MONTOYA: Okay. Other questions for staff? I guess it looks like we're doing what we're asking the City not to do, and that's kind of piecemeal and putting donut holes all over the map in terms of bringing in requests to the Traditional Historic Community. Has there been any discussion that within the existing boundaries of the brown, now the proposed where the blue is, to the other side of the brown. The blue I'm talking about - what's that? Via Veteranos? Is that right?

MR. GRIEGO: yes, Mr. Chairman.

CHAIRMAN MONTOYA: Via Veteranos all the way to See Alias. I'm sure that's not See Alias. Prairie Dog Road. That property in there along the Alameda Frontage for Veteran's Memorial, has there been any discussion about the inclusion of all that area? Or was that area ever included at one point?

MR. GRIEGO: Mr. Chairman, Commissioners, that area was part of the original boundary, up to 599 in 1995. I believe those property owners may be here tonight. The property I think that you're referring to is the ones adjacent to that Via Veteranos.

CHAIRMAN MONTOYA: It would go from Via Veteranos, Amarante, Sierra Azul, San Ysidro, this side of Entrada, Roy's, Gil's, all of those, that whole area right there. This whole area - that all used to be part of the Traditional Historic Community?

MR. GRIEGO: Mr. Chairman, yes.

CHAIRMAN MONTOYA: Okay. And I guess that's my question. Has there been any discussion that all of that be included again, rather than donut-holing the way we're doing it right now?

MR. GRIEGO: Mr. Chairman, Commissioners, yes, and the planning committee's chairperson is here to probably address that. But one of the things that the planning committee was very concerned about through their process was not bringing in property owners that didn't want to come in. To bring in a whole area if there were property owners that didn't want to come in because the original boundary issue was very divisive in the community. So the way that it is right now, property owners can come in if they request it, that does lead to a lot of holes in there, but I think that's kind of what the issue is, that there's not a clear boundary. It's just that the property owner's own request.

CHAIRMAN MONTOYA: Okay. So I guess the other concern that I have is that we're then trying to use all kinds of linkages - I'm next to BLM, or I'm next to the Santa Fe River or state land, in order to be considered linked in to the THC. So I don't know. I guess that's just a concern that I have in terms of the discussion that we've been having ongoing in the Regional Planning Authority with the City and we're actually discussing this area right now in terms of the annexation as well.

COMMISSIONER VIGIL: I think this is phase 3.

CHAIRMAN MONTOYA: Yes.

MR. GRIEGO: Mr. Chairman, Commissioners, there's two property owners that fit that description that you just mentioned. The Mary Stacy piece here and then there's one other property which is right over here which is adjacent to public land along the right-of-way. Other than that, the rest of the properties are contiguous if you bring them in together. They would all be contiguous.

CHAIRMAN MONTOYA: Okay. Any other questions for staff? Okay, this is a public hearing. Those who would like to speak on behalf of or in opposition to this ordinance, if you would please come forward.

[Duly sworn, Gil Tercero testified as follows:]

GIL TERCERO: Mr. Chairman, Commissioners, thank you for the

opportunity to approach you this evening. First of all, let me just say that the extent to which you, Commissioner Vigil, and you Chairman, have grasped the issues that are taking place here amazes me, with the agenda that you have and the schedule that you have. It really impresses me to know that you've studied this issue and that you're asking relevant questions pertaining to not only the boundaries but the desires of the people of Agua Fria.

The issue that we're facing today came about as a result of a lot of political wrangling that took place back in 1995 and I feel certain that had the Commission been as concerned then as you are today about what is in the public's best interest and what the people are asking for, then that issue could have been resolved way back then and not have to be drug up today. So thank you for the extent to which you show concern over this issue.

The staff, Robert and Renee, have done a tremendous job in trying to solicit input from not only the people within the THC boundaries but those who are outside, explaining to them the pros and cons of being part of the THC and have done so in a very honest way and a way where they're not trying to convince anybody to go one way or the other. As a result, a lot of people have decided that their interest would be better served to be inside the traditional community. Unfortunately, we do end up with a piecemeal situation where we have strips of land that are inside the THC and others that are not. I would hope that in time, as provided for in the ordinance that future opportunities that people have to request to be brought into the THC will eventually fill in all the gaps.

We think that it's a logical pattern and the boundaries to which the THC can grow are logical in that the northern boundary would be 599. The future, no one knows how long this will be in this shape. However, I think people need to have an opportunity to come before the County some day in the future and request that their properties be included. As to the existing issue of Ms. Stacy, I know that she's attended two meetings. At both those meetings she was irate about being removed from the THC back in '95 or '96. Her ownership of this property goes back to probably the thirties as far as the family is concerned, so they have had this land for many years and she was under the impression that she was part of the THC until she was informed otherwise. That's the only part of your question that I can answer with respect to Ms. Stacy.

CHAIRMAN MONTOYA: Okay.

MR. TERCERO: And if you have any questions I'd be glad to answer them.

CHAIRMAN MONTOYA: Thank you, Gil. Any questions for Mr.

Tercero? Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chairman, thank you. Thanks, Gil. How are you doing? So you're in agreement with what we have here?

MR. TERCERO: Yes, sir. Commissioner Anaya and Chairman Montoya, again, as I said, staff has bent over backwards to try to get the word out to the people and inform them that this is an opportunity that they have where County staff is basically doing all the legwork necessary to bring them into the THC. If they choose to come into the THC

in the future they may have to bear expenses associated with coming before the County Commission with a request for an amended ordinance. Because that's what it would take.

COMMISSIONER ANAYA: You're in agreement with the property that is not contingent?

MR. TERCERO: I personally - we haven't discussed this as a committee about the specifics on those two properties that are not - or could or could not be contiguous, but personally, I see any one of these pieces being added to the THC as further protection to the THC. Because right now, and you can't really see it on that map - well, you can. Just immediately, almost immediately east of the Stacy property we're talking about is a chunk of land that has recently been annexed by the City. They're going to be getting residential, urban densities. The impact of that annexation is going to be put 100 percent on Agua Fria Road. The County has had some input, I imagine through the Public Works Department on how to mitigate the impacts, but nevertheless, the County has had absolutely nothing to say about the densities or any of the other issues that are taking place on that project and it's going to impact the village.

That same scenario could happen to any one of these properties in the future unless they're part of the THC and cannot be annexed. So my answer is the more you get protected the less possibility of annexation right in the immediate area.

COMMISSIONER ANAYA: Thank you.

CHAIRMAN MONTOYA: Okay. Any other questions? Commissioner

Vigil.

COMMISSIONER VIGIL: In addition, I would just add that one of the principles that we were operating on for the annexation process was to create a buffer for the historical villages, some kind of a separation from those areas that are going to be annexed and those areas that want to remain in the traditional historic status. It seems to me that this process lends itself to that. And I agree with Mr. Tercero that the northern boundary being 599 would be that buffer. We can no longer create a buffer on the south side because the only buffer there is Rufina Street and then you have the density of all the developments that are going there. I think the only way that buffer can be created and the way we can move forward towards that principle is by allowing this process as the ordinance provides for it.

I wonder though if it would be appropriate, and I'll ask Steve Ross as I'm considering a motion, if it would be appropriate to be inclusive of all those properties who are clearly contiguous and then perhaps allow those properties who we don't have a sense of clarity as to whether or not they're contiguous. I believe that would be Mary Stacy's and who is the other one, Robert? The one who's next to public land?

MR. GRIEGO: Mr. Chairman, Commissioner Vigil, that would be Santos Montoya.

COMMISSIONER VIGIL: Okay. And perhaps everyone else who does have a contiguousness to the property, and those are all the blue except for those two, if we could look at a motion accepting those within the THC boundaries, and that motion to

include the opportunity for Mr. Montoya and Ms. Stacy to also be included once we have a clear definition that they are contiguous. Is that possible? To make a motion of that nature? Okay. So I will move forward with that unless there are any other questions.

CHAIRMAN MONTOYA: Wait. We're still in a public hearing.

COMMISSIONER VIGIL: I'm so wanting to move forward. Can you tell?

CHAIRMAN MONTOYA: Is there anyone else who would like to speak regarding this ordinance? Robert, are we required to have another public hearing or could this be it? This is it. Okay. Well, this public hearing is closed. Commissioner Vigil.

COMMISSIONER VIGIL: Thank you, a few seconds later. I move that we accept those property owners identified to us by the map and the public hearing draft by name and area, property owners one through 25, less 18 and 26. That property owners 18 and 26, Mary Stacy and Santos Montoya be allowed to come forward after there has been a legal determination that their property is contiguous to the traditional historic village.

CHAIRMAN MONTOYA: We have a motion.

COMMISSIONER ANAYA: Second.

CHAIRMAN MONTOYA: Second by Commissioner Anaya. Any further discussion.

The motion to approve Ordinance 2006-12 passed by unanimous [4-0] roll call vote with Commissioners Anaya, Campos, Vigil and Montoya all voting in the affirmative. [Commissioner Sullivan was not present for this action.]

CHAIRMAN MONTOYA: Thank you, Gil. Thank you, Robert, Renee.

XII. A. 6. First Public Hearing for Ordinance No. 2006 - __. An Ordinance governing Design, Construction, Operation, Replacement and Maintenance of Swimming Pools Within the Unincorporated Areas of Santa Fe County, Providing for Medical Exceptions, Amended Land Use Code 1996-10 (as amended); Repealing Resolution No. 2006-86.

MR. ROSS: Mr. Chairman, I guess I'll take this. We had a little bit of discussion about this ordinance and during the last meeting - I think it was two meetings ago, when we authorized publication of title and general summary of the ordinance. At that time you suggested that I get input from the departments which I have. I've included that input in the draft ordinance so you can see how it's evolving. And I also included the concerns of Commissioner Sullivan that were expressed at that time. I can go over those suggestions briefly, if you like. The ordinance had been developed before we did the title and general summary so these changes are shown from the version that's on file downstairs at the Clerk's office, that was actually proposed.

The changes are fairly minor. The suggestion of Commissioner Sullivan you'll see there in section 3.b, basically says that when there's a water emergency in effect such as if you're on the County water system and there's a water restrictive period because of drought or whatever, that during that period no permits will be issued.

And then Dr. Wust sent a number of comments which are all incorporated in here under Section 5.a, Design. He clarified with me that the Environment Department doesn't permit captured water that might fall on the surface of the cover of the swimming pool to be used in the pool.

Dr. Wust's primary concerns were with the proposal that was in the original ordinance that permits water instead of being used to fill the pool from a local source, such as a local water supply or a well. In lieu of that the owner of the swimming pool could fill the pool with trucked water, and he thought that was just an invitation for abuse. So you'll see those references in there. There are several of them in there. They've been deleted at Dr. Wust's recommendation.

I think those are the major changes or suggestions that I've received from the staff since the last meeting.

CHAIRMAN MONTOYA: Okay. Any questions for Steve? Okay. This is a public hearing. This is the first public hearing on this ordinance. Is there anyone who would like to speak on behalf of this, if you would please come forward. Please come forward and be sworn in.

[Duly sworn, Linda Hermanson testified as follows:]

LINDA HERMANSON: Good evening, Mr. Chairman, Commissioners. Thank you for giving me to opportunity to present the information regarding this ordinance. My name is Linda Hermanson. I am a principal in Hermanson Construction, a swimming pool construction company based in Albuquerque. I come before you today with information that I hope will dispel misconceptions regarding swimming pools and put in perspective the role of swimming pools in the dialogue on water conservation. One of the reasons cited for restricting pool construction is the amount of water used. We need to take a look at how much water is really being discussed, water being actually used as opposed to be perceived to be used. I have previously supplied Commissioners with information packets.

Probably one of the biggest common misconceptions I've run across is that pools need to be drained every year and refilled, and consequently, people think in terms of water in their pool being dumped every year and refilled. That is not necessary. With proper maintenance by the owners, which our owners do very well, that water can last many, many years. My own pool went ten years and the only reason we drained it is because our pool is a guinea pig pool if you will, and we were testing alternative sanitizers, some of which didn't work very well and they stained it. Consequently we did, but in a normal, average backyard pool you can go ten to twelve years on the same water just fine.

Now the way the pools work is you have this body of water, it's kept there consistently, and I'm trying not to hit you with too many numbers, but it's a real simple

mathematical calculation. If you take a 15 by 30 pool, and that pool is a shallow-type pool, which today most often they are because people are building them for therapy, exercise, things like that. They're not really into the big diving thing so much anymore. If you take that pool and you figure out the volume of that pool, it averages about 15,000 gallons.

Now, Mr. Wust of the Water Resources Department uses a calculation that basically takes an open body of water such as a lake and by his calculations, figures that the amount of water that you add to the pool during the season, what we call make-up water, equals the volume of the pool. Now, that pool is going to be covered, by Code, that pool is covered eight months of the year. The only time it's uncovered is during the four months that it's used and even then the only time it's uncovered is when it's in use. Our owners are very good about keeping it covered for a multitude of reasons. Small children, maintenance, and that sort of thing.

So if you put a cover on the pool, that cover, by the Department of Energy's software program, has been shown to be 90 percent effective in reducing the evaporation. This is also a figure that is given on the City of Albuquerque water conservation website and the water conservation officer in Albuquerque is Katherine Yuhas, who is a former County Hydrologist from Santa Fe. So if we take that 90 percent figure, our make-up water figure drops down to 1,500 gallons of water. Now we have this cover and I understand the concern about taking the water and recirculating it back into the pool. However, that water can still be captured off the cover and put into the system for other uses.

If you take that water off of the pool cover, in order to make up the 1,500 gallons all you need is four inches of rainfall in a year to make up this 1,500 gallons. Additionally, if you take the concrete deck around the pool, instead of sloping it away from the pool, you can slope it gradually toward the pool, the water will collect on the cover. You take a submersible pump, put it in the middle, you take that hose and that hoses can be directed. I generally direct mine over to trees because those are where I want to the additional water to go. You can take that water, you can direct it into a cistern. You can direct it onto landscaping.

Also, the water that runs onto the deck can be sloped towards deck drains and a deck drain is usually the full thickness of the concrete. The water can then be channeled from the drain again back to cisterns. And this has been done; we are currently doing this on our pools.

So what I'm saying is that the water that is needed, that you are offsetting any water that is needed to add to the pool by being able to harvest that water. You actually can end up with a net gain on the pool. The other thing is that there is this perception that because we live in this nice, warm climate there are just scads of pools. The reality, especially in Santa Fe County is this is not at all like Arizona where they literally build thousands a year. In an average year our firm will request between four to six permits, max, a year. We're not talking about hundreds of pools. So we're talking about four to six pools a year. Additionally, these pools are being hooked up with hydrants that allow the

owner to be able to have the County Fire Department be able to come out there and hook up to either a regular hydrant or what they call a pony hydrant. It's just a small hydrant. What you do is you have the County Fire folks come out. They tell us exactly what piece of equipment we have that's compatible to theirs. In case of fire, they now have that reservoir. And that is such a significant benefit in rural areas that the insurance companies are offering large discounts to homeowners who have the ability to use that water to fight a fire.

On my own property, we are not near a hydrant. The insurance company dropped our rates back to what they would be if we lived near a hydrant. The Fire Marshal came out. They tested the hydrant, and it is not only available for use in my own home but also - we live on a corner - the three adjacent houses. So what it allows you to do is offers the County of Santa Fe a vessel of water that they are allowed to draw upon in case of fire to fight this homeowner's fire, without having the added cost to the County. Additionally, we have folks who have gone back and retrofitted. Perhaps they didn't have the hydrant put in at the time of construction. They've gone out there and they have these carts that are put out with the hose, with a gas-powered pump. And we have owners who will park one of these. They'll get it tuned up at the beginning of the season, make sure everything's running, and they will leave it parked there during the wildfire season. And when the wildfire season's over, then it gets drained out and put away.

But it allows these people to take care of their own property because I know that the Fire Department is a volunteer department. It means putting together a lot of manpower, pulling together all of the water to fight a fire - it's right there; it's on site.

And I understand that there is a concern about the water usage on this. If you're looking at it in terms of the number of gallons I added up the water sitting in the pools that we've built over the past six years in the city and the county, and it turned out to be 12 percent of a single days usage in the City of Santa Fe. The amount is extremely small, so it may bring back a question of why am I here making a bit of a fuss about four to six pools max a year? Well, in terms of water usage it is infinitesimal, but in terms of a small business like ours, it means keeping these 25 people employed. It means keeping a small business going. It means allowing us to keep the business going and pay gross receipts taxes and buy materials and that sort of thing.

Several years ago we had this discussion in this very room. At that time, Jack Frost was the County Hydrologist, and he made a very interesting point. What he said was, "It is not about the amount of water the pools use, because they don't use that much water, but it is about the message that they send." And I am especially requesting - I've been working with Attorney Ross and we'll be working with Mr. Wust on this, we're tweaking this and working out this ordinance. But I'm requesting that you please consider allowing us to work with you as far as being good neighbors, as far as doing everything we can to make our pools as water efficient as we possibly can, but still allow us to be able to earn a living. Thank you very much.

CHAIRMAN MONTOYA: Thank you, Linda. Any questions for Linda?

Commissioner Vigil.

COMMISSIONER VIGIL: Thank you. Thank you for your information. You said that you do about four to six permits per year. Is that just in Santa Fe County?

MS. HERMANSON: It's Santa Fe County and it varies from year to year. Some years it's three. It's seldom any more. I can't remember a year that it's been more than six.

COMMISSIONER VIGIL: And you also market your pools in Albuquerque?

MS. HERMANSON: Yes, ma'am.

COMMISSIONER VIGIL: How many permits do you get in Bernalillo County?

MS. HERMANSON: In Bernalillo County and surrounding areas, probably about 45.

COMMISSIONER VIGIL: Okay. Thank you.

CHAIRMAN MONTOYA: Okay. Any other questions for Linda? Okay. Thank you, Linda. Appreciate the information. If you would please come forward and speak. We're still on behalf of this ordinance.

[Duly sworn, Jill Gonzales testified as follows:]

JILL GONZALES: My name is Jill Gonzales and I live at 1 Wild West Lane in Santa Fe, in the Pojoaque area. Mr. Chairman, Commissioners, thank you for the opportunity to voice my support for this draft pool ordinance for the Santa Fe County residents. My husband Greg Gonzales' family tree dates back to this area for hundreds of years so while I'm not from here, my family is. We are good stewards of our precious water. We harvest rainwater and snow melt from our rooftop canales to an underground holding tank used for irrigation. We also have a ditch in which we have the rights, and are active members of our local ditch. My husband is even treasurer of our ditch. So we know about the importance of conserving our water as a precious resource.

We happen to live in the Aamodt area and in a 1998 agreement had our well allotment reduced from three acre-feet per year to .7 acre-feet. And even with this reduction, our water consumption for the last three and a half years has totaled only .9 acre-feet. So my point is we are good conservers of groundwater. We are not water wasters nor would we do anything to waste water. Now, that being said, we want a pool. I'm a mother of two kids. As a swim instructor, lifeguard and water safety instructor for 20 years I cannot stress the importance of swimming lessons and water safety for our kids. Think back on how you learned to swim, if you did learn to swim, and was it like me or my husband, who were lucky enough to have a neighbor who opened up their pool?

There are many reasons to approve this ordinance or at least bear it out this first meeting, many of which are included in the design. In reading the ordinance, I thought they were wonderful. The water harvesting, whether we can use it to go back into the pool or not I think is a valuable measure. The automatic pool cover for evaporative purposes is one, but I think more important is the safety of our kids and animals in the area. An

automatic cover can hold I think a car on top of it without the tracks bearing through. The fire hydrants, living in a rural area, not near a fire hydrant, I'm concerned about our house burning down and I would appreciate the ability to fight our own fires with water in our backyard as a holding tank.

And the filtering systems that are in this ordinance that are water saving filtering systems. But those are the design reasons. To me, as a swimmer, a swimming pool offers fitness, it offers physical therapy and rehabilitation and fun. It is as important learning to swim, water safety, water physical therapy, is as important as any sport – soccer, football, baseball, softball, all of which require green watered fields. And it is also a life skill. So thank you for hearing me out. I hope that you take into consideration this ordinance. You heard from Ms. Hermanson who is on the business side. You've now heard from me and the families who are on the swimmers' side and who would very much appreciate being able to have a pool in our community. Thank you.

CHAIRMAN MONTOYA: Thank you, Jill. Any questions for Jill?

COMMISSIONER VIGIL: Mr. Chairman, we don't have to take a vote on this tonight, do we?

CHAIRMAN MONTOYA: No. Okay, anyone continuing to speak on behalf of? Anyone wishing to speak in opposition to this ordinance? In opposition, please come forward.

[Duly sworn, Shannon Weaver testified as follows:]

SHANNON WEAVER: I was actually here for some other thing. We had a pool in California before we came here, and I can tell you we had to change the water in the pool every three to four years because the chemicals wouldn't balance. It could be that experts here can keep a pool going for ten years but most people aren't experts on pool maintenance. I would also like to say that putting a cover on a pool is a lot of work and I think a lot of people get lazy about that. So I think all in all, what she says is a best-case scenario and not a scenario that's probably going to be taken up by every person.

In addition to that, in California I planted anything I wanted to, but here because I moved in around the time of the drought, I have taken a lot of pains to put in a lot of xeriscape planting and even those I feel guilty about watering. I just hate to think that people are going to be putting in swimming pools when I'm killing myself trying to put in xeriscape planting. That's all. Thanks.

CHAIRMAN MONTOYA: Thank you, Ms. Weaver. Anyone else wish to speak in opposition to this ordinance? Okay, if not, this public hearing is closed and we'll have one more, Steve? Is that correct? At the January 30th meeting?

MR. ROSS: I think we advertised it for the land use meeting, which would be the first meeting in January.

CHAIRMAN MONTOYA: So it would be the first meeting in January. Okay. So the first meeting in January we'll have the second hearing on this. So thank you all for coming this evening to hear this first public hearing on this ordinance.

XII. A. 7. CDRC Case # 06-5580 Robbie McCoy Commercial Zoning. Robbie McCoy, Applicant, Requests Master Plan Zoning Preliminary and Final Development Plan for Commercial Use in a 837 Square Foot Building on 0.126 Acres. The Property is Located at 2828 Highway 14 in Madrid Within Section 36, Township 14 North, Range 7 East (Commission District 3)

JAN DANIELS (Review Specialist): On October 19, 2006, the CDRC met and acted on this case. The decision of the CDRC was to recommend master plan zoning, preliminary and final development plan approval to allow a retail folk shop selling antiques, musical instruments and art objects on 0.126 acres.

The applicant requests master plan zoning preliminary and final development plan approval for commercial use within an existing 837 square foot building on 0.126 acres. The existing building is 14.5 feet by 36.6 feet with two stories and stands 22.6 feet in height. The proposed owner-operated business will be a retail folk shop selling antiques, musical instruments, and art objects. Hours of operation will be Wednesday through Sunday from 10:00 a.m. to 5:00 p.m.

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

Staff's position is that this application is in accordance with Article V, Section 5 (master plan procedures) and Article III Section 4.4 (development plan procedures) of the County Land Development Code. Staff recommends master plan zoning preliminary with final development plan to be approved subject to the following conditions.

CHAIRMAN MONTOYA: Jan, are you leaving out "administratively"?

MS. DANIELS: No, that was in another report. Just strike that please.

CHAIRMAN MONTOYA: Okay.

MS. DANIELS: Thank you. May I enter the conditions into the record?

[The conditions are as follows:]

1. The development plan shall be recorded with the County Clerk's office.
2. All staff redlines will be addressed, original redlines will be returned with final plans.
3. Water use shall not exceed 0.25 acre-feet per year. Annual water meter readings shall be submitted to the Land Use Administrator by January 31st of each year.
4. The applicant shall comply with all Fire Marshal requirements which may include the installation of a water storage tank and draft hydrant system.
5. All outside lighting on the property shall be shielded.
6. Submit landscaping plan in conformance with minimum standards for road frontage landscaping. All trees shall be a minimum of 6 feet in height, 1.5-inch caliper at planting. All landscaping shall require only low to moderate water use as per

county code.

7. The applicant must comply with Ordinance # 2003-6 for rainwater harvesting.
8. The applicant must apply for a business license.

CHAIRMAN MONTTOYA: Any questions for staff? Commissioner Anaya. Commissioner Campos. Okay, Is the applicant here? Would you please come forward and be sworn in?

[Duly sworn, Robbie McCoy testified as follows:]

ROBBIE MCCOY: Robbie McCoy, my home address is 244-A Star Route, Madrid, New Mexico.

CHAIRMAN MONTTOYA: Robbie, are you in agreement with the conditions?

MS. MCCOY: Yes.

CHAIRMAN MONTTOYA: Okay. Does anyone have any questions for the applicant? Seeing none, unless you want to add something to anything. So let's move on to the public hearing. This is a public hearing for this case. Does anyone wish to speak on behalf of or in opposition to this case, if you'd please come forward. Seeing no one, this public hearing is closed. So what are the desires of the Board? Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chairman, move for approval with conditions.

COMMISSIONER CAMPOS: Second.

CHAIRMAN MONTTOYA: Motion by Commissioner Anaya, second by Commissioner Campos. Further discussion?

The motion to approve CDRC Case #06-5580 with conditions passed by unanimous [3-0] voice vote. [Commissioners Vigil and Sullivan were not present for this action.]

- XII. A. 8. BCC Case # LIQ 06-5650 Baked in Tesuque, LLC Liquor License. Baked in Tesuque, LLC, Applicant Michael Reeves, Agent, Requests a Transfer of Ownership of a Liquor License from Tesuque Village Market to Baked in Tesuque. The Property is Located at 138 Tesuque Road, Within Section 24, Township 17 North, Range 9 East (Commission District 1)**

MS. DANIELS: Thank you, Mr. Chairman, Commissioners, Baked in Tesuque, LLC, doing business as Tesuque Village Market is a legal non-conforming business established before 1981. The applicant states that he is requesting a transfer of ownership of a liquor license from Tesuque Village Market to Baked in Tesuque due to a change in the ownership of the business. The request is in accordance with the notice requirements and staff

recommends approval.

CHAIRMAN MONTOYA: Any questions for staff? Okay, seeing none, if the applicant would come forward and be sworn in please.

[Duly sworn, Michael Stein testified as follows:]

MICHAEL STEIN: Michael Stein, 147 Gonzales Road, #23.

CHAIRMAN MONTOYA: Okay, Michael, is there anything you'd like to add?

MR. STEIN: No, that's it.

CHAIRMAN MONTOYA: Okay. Any questions for the applicant? If not, this is a public hearing. If there's anyone who would like to speak on behalf of or in opposition to this case, would you please come forward. I'm giving up on you all. So we will move forward. This public hearing is now closed. What are the wishes of the Board?

COMMISSIONER CAMPOS: Move to approve.

COMMISSIONER ANAYA: Second.

CHAIRMAN MONTOYA: Motion by Commissioner Campos, second by Commissioner Anaya.

COMMISSIONER VIGIL: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: We're just approving the transfer from one title of a business to another. Correct?

CHAIRMAN MONTOYA: Yes.

COMMISSIONER VIGIL: That was my understanding. That's all.

CHAIRMAN MONTOYA: And this is the same business, same building, just a different owner.

COMMISSIONER VIGIL: Right.

The motion to approve BCC Case #LIQ 06-5650 passed by majority 3-1 voice vote with Commissioner Montoya casting the sole nay vote.

COMMISSIONER VIGIL: He has to. He's on the DWI Task Force.

CHAIRMAN MONTOYA: That's right. It's a principle thing.

XII. A. 9. EZ Case #S 06-4200 Mattsson Subdivision. Phil Hindmarch, Agent for Bjorn Mattsson, Applicant is Requesting Preliminary and Final Plat/Development Plan Approval for a 16 Lot Residential Subdivision on 40 Acres. The Property is Located off Centaurus Ranch Road Northeast of Aldea Subdivision Within the Two Mile Extraterritorial District, Section 17, 20, Township 17 North, Range 9 East (Commission District 2) [Exhibit 4: Memorandum on Fractional Ownership]

JOE CATANACH: Mr. Chairman, before I present my report for this proposed 16-lot subdivision, this subdivision was recommended, the EZC recommended preliminary and final approval for this subdivision and my staff report references those dates, June 8, 2006, and September 14th. After the EZC recommended approval for this subdivision it was brought to my attention or I became aware that what was being proposed for this subdivision were houses that were going to be used as fractional time-shares. At that point – there is an ordinance within the Two-mile EZ that would allow time-shares as a special exception. So the question became is what's being proposed for this subdivision, the use of these homes, does that fall within the definition of time-share under our ordinance. So it became a legal question as the Land Use Department asked the attorney's office for some direction and in fact whether what was being proposed for this subdivision, whether it fell under our definition for time-shares.

Carolyn Glick, one of the assistant County Attorneys has written a letter, so what I have given you is a letter from Carolyn Glick, the County Attorney, and she also has some attachments with that letter and included in those attachments is the ordinance that regulates time-shares and so it has the definition for time-shares. So the question was asked whether what was being proposed for this subdivision falls under our definition of time-shares, which would mean that this applicant would have to go before the EZC and EZA and request a special exception if in fact what they are proposing falls under our definition of time-shares.

Carolyn has written a letter that she believes what is being proposed does fall under the definition of time-shares. Therefore, before I present this subdivision there should be, we should have a discussion or we should have some direction as to whether what is being proposed falls under the definition of time-shares and therefore would have to actually go back to the EZC and the EZA so that they can, well, grant the special exception for the zoning that would allow the time-shares. So we have Carolyn, the County Attorney stating that these fall under the definition of time-shares and we have the applicant's attorney stating that this does not fall under the definition of time-shares.

And so at this point, before I make the presentation, if the Commission felt it was necessary to make a determination whether in fact what is being proposed here does fall under the definition of time-shares and therefore it would have to go back to the EZC and EZA and like I mentioned, the County Attorney's position is in fact that what is being

proposed for this subdivision falls under our definition of time-shares.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Could we have Counselor Glick give us a presentation on her position as to what this development is?

CHAIRMAN MONTOYA: Sure.

CAROLYN GLICK (Assistant County Attorney): Mr. Chairman and Commissioners, the issue in this case is whether the fractional ownership being proposed by the developer falls within our definition of a time-share. My opinion is that it does. What you have in front of you is our ordinance defining time-share. A time-share unit is defined as meaning two or more accommodations or dwelling units on the same property and related facilities, for which the right of use or occupancy or ownership interest is shared by various persons in accordance with a time schedule. My position is that what is being proposed falls within that definition.

Ms. Vazquez, the attorney for the developer, stated in a letter to me that the single most important distinction between fractional ownership and a time-share is that with fractional ownership you have a deed and own the property. She stated that with a time-share the only thing owned is the right to a period of time in which you can visit; you have no deed. My research actually shows otherwise. I did some research on the Internet. I went to the Federal Trade Commission website which describes a time-share as a "deeded time-share ownership". It explains in a time-share you either own your vacation unit for the rest of your life, for the number of years spelled out in your purchase contract or until you sell it.

Your interest is considered real property. You purchase the right to use a specific unit at a specific time every year and you may rent, sell, exchange or bequeath your specific time-share unit. You and the other time-share owners collectively own the resort. Unless you bought the time-share for cash you are responsible for paying the monthly mortgage. Regardless of how you bought the time-share, you also are responsible for paying an annual maintenance fee. Property taxes may be extra.

Another website that I looked at. Wikipedia is an online encyclopedia. It describes two types of time-share ownership - deeded and right to use. It explains that with deeded contracts, the use of the time-share resort is usually divided into week-long increments and these are sold as fractional ownership and are real property. Additionally, another website, Bankrate.com explains fractional ownership and compares it to time-shares as follows: If fractional ownership sounds a lot like a time-share that's because there are similarities. The more fractions that are sold the more it resembles a time-share. Both can be bought as deeded property and can be rented out, shared with family and friends, sold or left to someone in a will. The big differences between time-shares and fractional ownership property are prices, financing and fees. While time-shares can be had for a few thousand dollars, fractional ownerships can run \$100,000 or more, much more.

COMMISSIONER CAMPOS: Thank you very much. Mr. Chairman,

certainly this is a jurisdictional issue. Do we want to proceed? Was this application filed properly or not is the real issue. I would suggest maybe we could have Ms. Vazquez give her position briefly then we can decide the jurisdictional issue.

CHAIRMAN MONTOYA: Okay. Rosanna.

ROSANNA VAZQUEZ: Thank you, Mr. Chairman. Good evening, Commissioners. My name is Rosanna Vazquez and my client, Phil Hindmarch is here. I want to give a little bit of background and then go into the position that I received from Ms. Glick in terms of the procedure that you just asked about.

COMMISSIONER CAMPOS: I'm concerned about the jurisdictional aspect, nothing else.

MS. VAZQUEZ: That's fine. If you look at the references that are made by Ms. Glick in her report, in her memo, which I received today, and if you look at this definition of time-share in the EZO, both refer to the ownership or a percentage of the ownership of the unit. It does not refer to the ownership of the land. And she's right. You can get either a contract for a unit or a deed for a unit. What the Mattsson subdivision has done and what we went into Land Use with on January 13th to explain was that it was not the unit that was going to be sold; it was the lot.

So we created 16 lots to be sold, and those lots will be sold with homes to be constructed in a green and sustainable manner, and we can go through that if we get to that portion of the hearing. It is not the unit. I ask you to specifically go to the EZ Ordinance. The EZ Ordinance definition does not refer to development, it does not refer to the land; it refers to two or more accommodations or dwelling units on the same property. That qualifies as a time-share. The distinction here is that there will be a deed for a piece of property. And if I choose to buy that piece of property with my entire family, I will own that property and that house. I can build that house to whatever specification we want as owners of the land, but that is the distinction with regards to the deed or a contract.

This is not being sold as a unit. These will be sold as 16 individual lots. Actually, 14 will be market rate and two will be affordable. There is no resort here as in most time-shares. There is no scheduling of time. This is a residential subdivision. If you go through the covenants that we've got it's in reference to individual ownership. The reason that this subdivision and the reason that we went into the Land Use office in January before we made the submittal was to explain this position. And the position was the subdividers wanted a subdivision that people would be living in. They recognized the fact that in the northwest quadrant, a majority of the homes are sold as second homes. They did not want to create a Las Campanas.

COMMISSIONER CAMPOS: That's not the issue. You're getting away from the main legal issue. I'd like to see, Mr. Chairman, if Ms. Glick wants to rebut her essential arguments, her legal arguments as to time-share, fractional share difference.

MS. GLICK: I don't think I have anything to add, other than what I did before.

COMMISSIONER CAMPOS: Okay.

CHAIRMAN MONTOYA: So are we going to hear the case?

COMMISSIONER CAMPOS: Mr. Chairman, I agree with the County Attorney's position that this is not ripe for consideration at this point in time, that it should go to the EZC/EZA.

CHAIRMAN MONTOYA: Go to EZC/EZA for -

COMMISSIONER CAMPOS: Time-share.

CHAIRMAN MONTOYA: For a special exception.

COMMISSIONER ANAYA: I agree with Commissioner Campos.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: I have some questions for Ms. Vazquez.

CHAIRMAN MONTOYA: Relative to -

COMMISSIONER VIGIL: The jurisdictional, fractional ownership.

Fractional ownership, Ms. Vazquez, as you view it, allows for more than one resident to be an owner of one piece of property. Is that how you're defining it?

MS. VAZQUEZ: In this subdivision, that's the idea. I think Ms. Glick is correct on there are some fractional developments that are viewed as time-shares. They're limited to units, not the property.

COMMISSIONER VIGIL: Okay. This development, will it have an association?

MS. VAZQUEZ: It has a homeowners association, yes.

COMMISSIONER VIGIL: Will it have a property management team?

MS. VAZQUEZ: No. The homeowners association will carry out the functions of maintenance, roadwork and snow removal, all of the basic things homeowner associations do.

COMMISSIONER VIGIL: Will there be full-time residents in that they live there full-time?

MS. VAZQUEZ: That was the hope, Commissioners. That was the intent of the property owners here, that they wanted full-time residents on the property. They wanted community there.

COMMISSIONER VIGIL: The wastewater facility that you're proposing there - well, that's probably a different issue. I probably shouldn't go there. I'm not ready to make a decision on jurisdiction, Mr. Chairman. I know we have two Commissioners who believe it should go to the EZO. If you're definitive on your decision, I'm willing to defer to the majority.

CHAIRMAN MONTOYA: I guess if the recommendation of staff is that it needs to go to the EZC for that special exception, that's what I would recommend as well.

COMMISSIONER VIGIL: So I think that would be three in favor and one undecided.

CHAIRMAN MONTOYA: So Steve, do we need to take action on that to recommend it go back to the EZ?

MR. ROSS: Mr. Chairman, if you're not going to act on the case proper I

think you probably need formal action.

COMMISSIONER CAMPOS: Could you recommend a motion? Is this simply a remand? If this case was improperly presented in the wrong section what do we need to do?

MR. ROSS: One way to do it, to simplify the process when it comes back is to ask for a postponement until the rezoning is addressed. And then it could be just placed back on the agenda in three or four months when the EZC and EZA have had a chance to deal with the zoning issue then we could just have the case before you at that time.

COMMISSIONER CAMPOS: It comes back to us as a subdivision case?

MR. ROSS: For the same thing.

CHAIRMAN MONTTOYA: Then it would be zoned at that time for –

MR. ROSS: The zoning should be taken care of at that point and it would just be here.

MS. VAZQUEZ: Mr. Chairman.

CHAIRMAN MONTTOYA: Rosanna.

MS. VAZQUEZ: I don't think we would need to be required to subdivide if we got zoning, because the zoning wouldn't be tied to a land division at all. We could just zone the entire property as a time-share and so it would no longer come forward as a subdivision, in my interpretation of the Code.

MR. ROSS: Well, unless you're going to actually subdivide the parcels.

MS. VAZQUEZ: And create a residential subdivision?

MR. ROSS: My interpretation of this was that there were going to be separate parcels.

MS. VAZQUEZ: It is a subdivision right now. It would have been separate parcels. If we are going to go forward for a rezoning, I think it's no longer a subdivision; it's commercial zoning. It's not tied to hydrological standards at all. You could have more units on there based on your request for zoning than in a residential subdivision, which is directly tied to the hydrological zoning in which it is in. I just want some clarification so I know how to go forward.

MR. ROSS: Mr. Chairman, it's the applicant's choice, I think at this point, how to structure a time-share, if that's how the applicant wants to proceed. If it ends up being deeded parcels I think the zoning would probably be necessary to address essentially the density issue that a time-share creates. Instead of having 16 owners you have 16 times 52 weeks. That's the number of owners you could conceivably have, versus having 16 neighbors. That's got to be addressed. And then if there's going to be subdivision and sales of individual lots then it could come back here. It doesn't have to unless – if it's configured so that there are no lots created. So maybe instead of postponing just deny the case for failure to go through EZC and EZA and then the applicant can decide at that point how they want to proceed.

CHAIRMAN MONTTOYA: Okay.

MS. VAZQUEZ: May I ask one more question. Mr. Chairman, so if my

clients decide they want to do a residential subdivision with one owner of the property, then we can go forward as a residential subdivision and agree to a condition to sell to one owner for the property. Is that correct? That's correct, right? Okay.

COMMISSIONER VIGIL: In fee-simple?

MS. VAZQUEZ: All of the lots were going to be sold in fee-simple, yes. I want to make something very clear to this Commission and that is there was never an intent by this owner to deceive anybody. When we went in in January to talk to Land Use, we were given direction that we could do this, so we put it in the report as a fractional development because of that. And we explained what we were trying to do. If this is not possible, my clients do have two options. They can go forward with the residential subdivision, or they can attempt to rezone. I'm not sure what they were going to do. But we do have that option. We can go forward with the residential subdivision. We could even go forward with it tonight and agree to a condition that the lots would be sold to single owners. Is that correct?

MR. ROSS: I think that's right.

MS. VAZQUEZ: Okay. One moment.

[The Commission recessed briefly.]

CHAIRMAN MONTTOYA: Rosanna, what -

MS. VAZQUEZ: We'll go forward as a residential subdivision and agree to a condition of approval that it will not be used as a time-share, and we request that any reference - I think there's one reference in the development plan report, that it was a fractional be stricken.

CHAIRMAN MONTTOYA: Oh, that fractional shares be stricken. So I guess with that, Joe.

MR. CATANACH: Mr. Chairman, I'll go ahead and present the proposed subdivision. Phil Hindmarch, agent for Bjorn Mattsson is requesting preliminary and final plat development plan for 16 residential lots on 40 acres. As I mentioned, June 8th the EZC recommended preliminary approval and September 14th they recommended final approval. This property is within the Basin Hydrologic Zone. The minimum lot size is 2.5 acres with water restrictions. The proposed density - the lot sizes are one acre in size with a gross density of 2.5 acres which includes the open space for a density transfer.

The staff report addresses existing conditions. Access to the property, access to this property is off of 599 though the Aldea Subdivision. The proposal for water is a cluster well system with a .25 water restriction on each lot. The fire protection will be existing hydrants that are within the Aldea Subdivision and Fire has reviewed that proposal and that those existing hydrants would be within the distance that's required for hydrants. I can't remember. They may have to extend hydrants into the property. But they would be using hydrants that are already existing within the Aldea Subdivision.

Liquid and solid waste and advanced wastewater treatment cluster systems are

proposed for this subdivision. With this proposal for advanced wastewater treatment system, the cluster systems, under the conditions that would be subject to a discharge permit from the state Environment Department in order for the system to qualify as a community sewer system. So we have conditions that require approval of a discharge permit from the state and common ownership of the system by the homeowners association in order for the proposed cluster system to qualify as a community sewer system.

Staff report addresses terrain, stormwater, landscaping, archeology, trails and open space, signs and lighting, homeowners association and affordable housing. Affordable housing requires 16 percent of the total number of lots to be affordable. What's being proposed are two residential units for affordable housing and to pay cash in accordance with the ordinance that allows alternative compliance with cash in lieu for the third unit, and that's written into the affordable housing agreement that was in your packet. The staff has reviewed that agreement and there was a memo from Duncan Sill regarding his review of the affordable housing agreement. So they'll have to comply with any conditions of his review. Staff is recommending approval and the EZC recommended approval subject to the following conditions and my understanding is, Mr. Chairman, that they are in agreement with the conditions. And of course the seventh condition that would be part of the additional conditions would of course be what we just talked about in that this proposed subdivision would not be used for time-share purposes. Thank you.

COMMISSIONER CAMPOS: Or fractional.

MR. CATANACH: Or fractional. And I guess as a matter of due process the condition could be written that unless this applicant goes forward on a request to the EZC and the EZA for a special exception.

CHAIRMAN MONTOYA: I don't think they've expressed that part. I think if we just keep that as the way you stated. No time-share or fractional use. Would that be appropriate, Steve? Okay. Any questions for staff? Commissioner Campos.

COMMISSIONER CAMPOS: A question about water. Is the applicant proposing domestic wells?

MR. CATANACH: Commissioner Campos, yes. The applicant is proposing a cluster well water system, which would be made up of three or four -

COMMISSIONER CAMPOS: But no water rights are being brought to the project.

MR. CATANACH: No.

COMMISSIONER CAMPOS: Just domestic permits. And that's appropriate?

MR. CATANACH: The ordinance that I'm working off of would not require this type of subdivision to have a community water system. That's correct.

COMMISSIONER CAMPOS: It would not.

MR. CATANACH: Would not.

COMMISSIONER CAMPOS: I thought if you had more than x-number of connections to domestic that it had to have water rights in a community water system.

MR. CATANACH: The definition, just by using the definition saying that if you connect four or five units to a cluster well doesn't necessarily mean that the subdivision is required to have a community water system. I don't think that's the only criterion that's used. The criteria used obviously is based on the size and number of lots. That's the criteria that's used as to whether you need a community water system. The ordinance I'm working off of would not require a community water system for the proposed gross density is less than 2.5 acres. So where you have a proposed - when the gross density is less than 2.5 acres or you have a Type I or Type II subdivision construction of a community water system is required. I don't have any of those three criteria here. I don't have a gross density exceeding 2.5 acres. The gross density is at 2.5 acres and I don't have a Type I or Type II subdivision here.

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

MR. ROSS: Mr. Chairman, Commissioner Campos, Mr. Catanach knows the Code. I think we can rely on his interpretation. I haven't studied it for purposes of this case.

MR. CATANACH: I can pass out the ordinance that I'm working off of, Commissioner Campos, if you'd like.

COMMISSIONER CAMPOS: That's okay. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: One of my concerns for this northwest quadrant is that they are drawing many straws for wells for perspective and future development of that. I think Aldea actually has a wastewater treatment facility. Why is this applicant proposing a separate one and has there been any attempts to work collaboratively with Aldea on this? And that was a request - does staff make those kinds of recommendations?

MR. CATANACH: Aldea Subdivision is on the City sewer system. The requirement - certainly there's two standards that I'm working off of here. Obviously a community sewer system is required. You talked about punching straws in the aquifer and I'm going back to water system. Was it a water system question?

COMMISSIONER VIGIL: Well, maybe I need to preface that by saying does Aldea have a wastewater treatment facility or by nature of the fact that they're hooked up to the City, is that both for water and sewage?

MR. CATANACH: Aldea is connected to the City water and -

COMMISSIONER VIGIL: So there's no wastewater treatment facility. Are there any other perspective wastewater treatment facilities in that area?

MR. CATANACH: Las Campanas.

COMMISSIONER VIGIL: Okay. And how far north is Las Campanas to this development?

MR. CATANACH: The Las Campanas wastewater facility is located in the area where Las Campanas Driver intersects with Caja del Rio. So as we know, the proposed Gerald Peters' Suerte del Sur Subdivision will be connecting to the Las Campanas wastewater facility. To answer your question specifically, without looking at a

map I'm guessing we'd have to be a mile or more.

COMMISSIONER VIGIL: Okay. Is it feasible?

MR. CATANACH: For connection?

COMMISSIONER VIGIL: Yes.

[Commissioner Sullivan returns to the meeting.]

MR. CATANACH: Certainly issues of capacity would have to be addressed as to whether there's sufficient capacity for the Las Campanas system or whether it would have to be expanded. Issues of whether it's available for use and certainly Las Campanas has been looking for wastewater in order that they can use the effluent for golf course watering. Certainly it's feasible to extend pipes and pumps. As far as easements and expansion or capacity, those are questions that the applicant would have to address.

COMMISSIONER VIGIL: Okay. And Ms. Vazquez, may I should be asking you these since you represent contiguous clients with these developments. Is this something that's feasible, and please understand that my intent here is not to duplicate services, particularly because we do not have a utility system and when we make these approvals we're sort of approving them to meet the needs of that particular subdivision, and all of a sudden there's a larger subdivision that a collaboration might work out a good water/sewage treatment facility. Those kinds of things. Are you following me?

MS. VAZQUEZ: Yes, I am. The intent of the subdividers for this subdivision was to be able to put an onsite system where they would be able to reuse the graywater. Connecting to Las Campanas, we would not be able to get that effluent back and it would be incredibly cost-prohibitive because the connection is - it's actually off the Hager Road extension to Los Suenos Trail. It's up at that end. So it is over a mile of a connection that would need to be done for the subdivision.

But the main reason really was because of the need and the desire of these developers to use the graywater system and to be able to reuse the water. And that was the big issue. A permit has already been obtained from the Environment Department for the first well and I think they share your concern, Commissioner Vigil, about putting too many straws in the aquifer. They are going to use three wells to serve the entire development in order to not put as many straws into the aquifer.

COMMISSIONER VIGIL: Okay. Thank you.

CHAIRMAN MONTOYA: Any additional questions for staff?

Commissioner Sullivan.

COMMISSIONER SULLIVAN: It may have already been addressed, but Joe, did we address how much storage these wells were going to have?

MR. CATANACH: Mr. Chairman, Commissioner Sullivan, I did mention to this applicant that the submittal did not include engineering plans for a cluster well system and I have asked this applicant if the engineer has prepared any engineering plans for the cluster well system. I believe that at this point, no. There have not been any engineering plans prepared for the cluster well system.

COMMISSIONER SULLIVAN: Okay, but this is final development plan

approval, right?

MR. CATANACH: Yes, it is.

COMMISSIONER SULLIVAN: So shouldn't we have plans?

MR. CATANACH: The discussion that you and I had yesterday was that certainly this submittal would - that it can be required that we have engineering plans for a cluster well system but my response was that I don't have any - the Extraterritorial Subdivision Regulations don't have any standards to apply for what would be required for a clustered well system. But certainly engineering plans can be required.

COMMISSIONER SULLIVAN: But even if there are no standards, there's not standards for everything and plans are submitted and engineers review the plans for traffic and water and so forth and if we're in final we should have those. Let me just reiterate my concern there is that I think six units on a well is bad design. I think no matter how much water is in the aquifer, when you have six families all taking showers at 7:00 in the morning or 8:00 at night, you're going to run out of water unless you've got adequate storage to provide that peak demand. And nowhere does it indicate what that's going to be.

Since they're using another water system, they're using the Aldea water system for fire protection they have no storage on side for individual usage. Personally, I think any more than four units on a well is stressing it unless you have a tremendous amount of storage and I don't see anything. Could the applicant tell us how much storage they're going to have for each cluster well?

CHAIRMAN MONTOYA: We'll get to that when we get to the applicant.

COMMISSIONER SULLIVAN: Okay. I thought they had already finished.

CHAIRMAN MONTOYA: Are there any more questions? Seeing none, would the applicant come forward please?

MS. VAZQUEZ: Hello. I'll start off just with a quick introduction on the subdivision, just a couple of corrections to the staff report. The subdivision actually has approximately 65 percent open space. There is a 40-acre parcel and the lots are one-acre in size. It's a cluster development. The cluster development was done for various reasons. It was done to create a community, to create interaction between the homeowners and it was created to use the land efficiently and leave as much open space as possible and to be able to only have to drill three wells on the property.

So the actual open space land is about 24 acres of open space and what Mr. Hindmarch has done is colored in in green the open space areas and also delineated the trail systems which are extensive and will connect into the Aldea Subdivision.

CHAIRMAN MONTOYA: So it's 24 instead of 17.

MS. VAZQUEZ: It's 24 acres of open space, yes. Commissioner Sullivan, to answer your question with regards to storage, I'm not sure how much storage is going to be needed. I know that when we submitted this plan with our geo-hydro at the State Engineer we disclosed the three wells for the use of the 16 lots and we received a positive opinion on that. Once we receive approval we will have all the plans engineered and reviewed by the County and assured that they are approved before we record. We don't

have problems to agreeing to a condition like that for this subdivision.

Commissioners, the main focus of this development here is sustainability. It goes to the argument of the use of only three wells. The developer, Mr. Hindmarch and his partner want to create a subdivision that's green. And Commissioner Campos, what does green mean? I can answer that for you. What it means is they want to go beyond the basics. They will do water harvesting. They will do water conservation. They are going to use an advanced treatment wastewater system so they can reuse the water for the landscaping. They're also going to construct with green building materials that will have a low level of embodied energy in them. They are going to do energy-efficient type of development with regards to insulation, lighting and appliances.

They would like to be able use local green products if possible. It's difficult to find but you can construct with pumice which is very energy-efficient and that's one of the means by which they'd like to construct these homes. They want to reuse the water to be able to bring the property back to its natural state, plant only native vegetation in the open space areas and reuse the water from the graywater system. All of the homes will be oriented to fit the terrain and to make best use of solar energy, and that is regardless of where they sit in terms of views of the mountains. Their focus here is really to try to create a home that is incredibly energy-efficient, and the most important thing is energy from the sun. That's what they'd like to do, is create these homes in a way to use the solar energy.

All of these attributes are also going to apply to the affordable homes that are going to be built on the property. The homes that are affordable are going to be clustered within the other homes. They're going to be on the same size lots and they'll all be created in the same green, efficient manner as the rest of them.

Our access is through Aldea. We believe the easements - our letter responds to the easement is attached. They want to create a sustainable community. They want it to be ecologically sustainable and a sustainable community. And I believe that they have met that obligation. I stand for questions if you have any.

Oh, one other correction to the staff report. There won't be any fire hydrants on the property. Joe, remember we made that determination that the Aldea fire hydrant was close enough so we didn't need to build another fire hydrant on the property. I believe it's directly across the property line.

CHAIRMAN MONTOYA: Okay. Commissioner Campos.

COMMISSIONER CAMPOS: Ms. Vazquez, I'm looking at the conditions. What requires you to build green? To do all the things you just said? Is there a requirement?

MS. VAZQUEZ: There's not really a requirement. It was stated in our development plan report and it's been our intention. If you would feel more comfortable that we have a condition to build green. The only concern that we have is on the pumice-crete versus some of the other construction materials, they're often difficult to obtain in Santa Fe. But they are committed to build green.

COMMISSIONER CAMPOS: That could always change. It could change

ownership or whatever. The homes are going to be built and sold as homes, or are you going to have standards for the homebuilders?

MS. VAZQUEZ: There will be standards for the homebuilders. Yes.

COMMISSIONER CAMPOS: You'll buy a lot, then you'll have a contractor to come and build your house?

MS. VAZQUEZ: They will have to comply with the covenants, and that contractor will build the home. Yes.

COMMISSIONER CAMPOS: Because there's no real guarantee here that what you're saying is actually going to happen. The other issue I have for you, how are you going to heat the space other than passive solar? Are you going to use active solar? Are you going to use photovoltaic?

MS. VAZQUEZ: Mr. Hindmarch can answer this question but he basically told me it's going to be solar radiant.

COMMISSIONER CAMPOS: Is it a hydronic system? A hot water hydronic system where you heat the water and run it through a radiant system? Is that how you're going to heat the space?

[Duly sworn, Phil Hindmarch testified as follows:]

PHIL HINDMARCH: I'm Phil Hindmarch. I live at 7641 Old Santa Fe Trail, Santa Fe. Commissioner Campos, we haven't identified for certain all of the green features that we want to do. I'm the project manager for this project and there are two partners who are owners and one is a resident of Santa Fe and it's Dirk Loaks. He's an educator, a culture educator and he has a lifelong commitment to green building. It's his dream that it come down this way.

So he, as the developer, would contract with contractors to build these homes. He has talked to me about extensive use of solar and photovoltaic and hot water solar and in passive solar design in siting each house so it faces south. Every building envelope that we've designed has a good solar advantage. He's actually met every sort of condition of the ordinance in an excited state because he's really excited about the project. To him it's sort of a culmination of everything he knows with the bio-remediation that's happening. So if it were to be a condition of approval that it be built to green standards I'm sure he would not have a problem with that. I'm sure he would accept that.

COMMISSIONER CAMPOS: Mr. Ross, how would you - they're proposing to do something as they define green. Would it be proper to establish a condition? If they're proposing to do it in a particular way, just say, okay, this is the way it's going to be done, as a condition of approval? How would you do it?

MR. ROSS: Mr. Chairman, Commissioner Campos, the problem we always have with this is that there's not really a recognized standard that we can refer to. If they say they're going to build green, what does that mean? It's hard. So maybe you could verbalize it in general terms and we as staff could work with the applicant to put some more detail to it, since you don't have those details available tonight, specifically what kinds - you talked to the applicant briefly about the solar heating and solar hot water -

those are certainly two fairly concrete things that could be included.

COMMISSIONER CAMPOS: There's Energy Star standards that are typically used to conserve energy. Then there's the production of energy. There's certainly positioning of the house and design of the house too, to let the sun in when it's cold and keep it out when it's hot. These are critical design elements. So I'm not sure. I would say, yes, I would like to make a condition that they meet with staff and make concrete proposals as to what energy conservation standards, using probably Energy Star, solar heating, design, positioning. Staff may have to evaluate what the positioning of a house needs to be to be truly effective as a passive solar home.

MR. HINDMARCH: Commissioner, we did have a meeting with Valerie Walsh, who is a LEED certification coach and consultant and we were exploring that possibility too, that these might be LEED certified, but we haven't made that leap yet, because that really commits a building and project to green standards and there is of course a premium that you have to pay in construction if you're going to certify LEED, to be LEED certified. So that is a possibility and that's an objective kind of measure as to how green you are. That's an example of one of the avenues that we've been pursuing.

COMMISSIONER CAMPOS: Would you be comfortable with that condition? Or meet with staff and propose something concrete and there'll be some interaction and a final agreement as to exactly what you're going to do?

MR. HINDMARCH: I would be comfortable with that.

COMMISSIONER CAMPOS: Is that okay? It doesn't have to be LEED. That's an option. LEED is - there are probably other ways of doing things. I don't want to restrict them to LEED, but certainly Energy Star is important.

MR. CATANACH: Mr. Chairman, Commissioner Campos, I'm sure staff could meet with this applicant and see that we can incorporate certain green standards into their covenants and disclosures, to make sure that the covenants and disclosure have reference to green construction.

COMMISSIONER CAMPOS: That would be fine.

CHAIRMAN MONTOYA: We'll add that as a condition. So it would be condition number nine. Does anyone else have a question for the applicant? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chairman, getting back to the applicant's comment about the State Engineer and the storage, which we know that the State Engineer doesn't approve the engineering plans, they just approve, review the water availability. So I think we're still short on that important engineering determination of the project.

CHAIRMAN MONTOYA: Do you want it as a condition?

COMMISSIONER SULLIVAN: Well, there's not even a condition that addresses it. We could certainly add it. That well storage is reviewed by the County for sufficiency. Did I read that this was going to include sprinkler systems for the units? Yes. Okay. Well, then you definitely need to address the storage issue.

CHAIRMAN MONTOYA: Well storage?

COMMISSIONER SULLIVAN: Well storage, because there's no storage on site. They're piggy-backing off Aldea, apparently, for fire flow, so where do you get the water to run your sprinkler systems? As soon as you turn on a sprinkler system you've dried up the well. So you've got to have a tremendous amount of storage. I recall other small subdivisions we've had, I recall something on the order of 30,000 gallons of storage for sprinkler systems for small subdivisions, smaller than this.

CHAIRMAN MONTOYA: So the condition would be well storage?

COMMISSIONER SULLIVAN: Well, the condition is there needs to be adequate storage to operate the sprinkler systems as well as to, that's community storage, and then there needs to be adequate cluster well storage to provide the day-to-day domestic flows. They're really two different things.

CHAIRMAN MONTOYA: Two different things that would still fall under water storage?

COMMISSIONER SULLIVAN: Under water storage. Correct.

CHAIRMAN MONTOYA: So water storage could umbrella both of those?

COMMISSIONER SULLIVAN: Yes. You have two different systems. You either put enough storage at each well to run all of your day-to-day domestic water requirements, as well as your fire flow requirements. So that means you're essentially tripling the size of the storage at each of the cluster well systems. Or you design a smaller storage at each cluster well - let's just say 5,000 gallons or just pick a number. Then you have a 30,000-gallon or some other size water tank, which is connected to all the lines so that if there's a fire and the sprinklers go off you've got enough water to fight the fire. And that's what Santa Fe County has been requiring in other subdivisions that rely on wells for fire protection.

CHAIRMAN MONTOYA: So they need a water storage plan to address daily use and fire sprinkler -

COMMISSIONER SULLIVAN: Fire sprinkler use. I kind of think what it boils down to, really what we're looking at is a preliminary plan here. We're really not looking at a final plan. Sounds like this really isn't the final plan.

The other question I had, Mr. Chairman, was on the affordable housing. The affordable housing requirement for this subdivision would be three units. So they're proposing two and \$112,000 in cash as a result of the fractional unit. And it said something about the cohesiveness of the design, and I understand that two of the affordable units are going to be in duplexes. And I was curious, what was the cohesiveness of the design that required you to drop one of your affordable housing units, to maintain the cohesiveness of the design, it says.

MR. HINDMARCH: Commissioner Sullivan, what we planned for the market rate units are three-bedroom homes that are in the square footage range of over 2,000, probably around 2,300 square feet. And the square footage requirement for the affordable houses is - the minimum square footage is pretty - I can't remember exactly

what it is. Something like 1,100 square feet for a three-bedroom house. So by making two of them a duplex on a property line, so that they would each be on their own piece of the lot, that duplex can be made to look exactly like the other – or not exactly like, but to fit in with the other houses. It would look like a structure that's the same and not like tiny little houses next to larger houses.

So two of them fit in well as a duplex, square footage-wise. What we wanted to do was do two and they pay in lieu of for the third one.

COMMISSIONER SULLIVAN: Well, I guess in other subdivisions they've managed to overcome that. In the La Pradera Subdivision they build a small affordable housing single-family unit right next to the sewage treatment plant. It was one of the first ones sold. So the fact that it's a little smaller than the other units I think comes with the territory. I personally would rather see a third affordable housing unit. That's what we need. We don't need the money. We've got quite a bit of money in our affordable housing kitty right now – over \$2 million. I'd rather see the units. I think that's what's needed. I think with some design creativity and some fencing, some landscaping, they can look pretty much like the other units and then of course the residents tend to improve them as well.

CHAIRMAN MONTROYA: Okay. Anything else, Commission?

COMMISSIONER SULLIVAN: Well, I would echo Commissioner Vigil's concerns about the well usage for the water system, particularly when there's a public water system right next to the project, immediately adjacent to the project. I think it's a problem to be continuing to drill wells where we have public water supplies available. I realize it's not easy to make the arrangements for those. It takes a little planning and some time and some money, but I think that's the way we should be going. When you talk about sustainability and all of those nice words, you're really missing the number one issue here which is water sustainability which this subdivision does not conform to.

But getting back to the affordable housing, I guess – let me just put it to the applicant this way. Are you okay with building three affordable housing units, as a condition?

MS. VAZQUEZ: Mr. Chairman, Commissioners, the reason the two were proposed is because the intent was to build all 16 units green, and it's very costly to build all units green because a lot of the materials that are used for construction of a green home are more costly than the regular construction. And in looking at the application of the Affordable Housing Ordinance, they wanted to continue the theme of the subdivision which was sustainability, and create affordable units that would fit into that idea of that subdivision. So they felt that if they could create the two and donate the money, they would be putting together affordable homes that not only met the affordable housing ordinance but also met this Commission's concern for green construction at that level. We're hoping that they can be models for future type of construction of affordable housing, and it is costly, and it is an issue that they looked at.

COMMISSIONER SULLIVAN: Well, Mr. Chairman, I think I could

certainly be convinced of that in some future submittal, but I think we just talked about we don't really know what green means here. We don't know what it's going to entail. We don't know if it's more expensive or less expensive. And again, I can only refer to other subdivisions that have actually gone even further which Ms. Vazquez represented, and not only recycled graywater but recycled brownwater back into the homes. So in terms of cost, I think it can be achieved. I'm just looking for getting the maximum. We're only requiring 16 percent affordable homes. In larger subdivisions we now require 30 percent. So it's not like it's an onerous requirement on the applicant to provide three affordable homes; it's half what we're requiring of other applicants.

CHAIRMAN MONTOYA: Okay. Anything else? Is this on that point?

COMMISSIONER CAMPOS: Yes, on that point, for Commissioner Sullivan. What is the standard for affordable housing in a 16-lot subdivision?

COMMISSIONER SULLIVAN: I guess this is 14 lots, right? According to staff it's 16 percent. And if you multiply 16 lots by 16 percent you get 2.56 affordable housing units. According to the ordinance you round that up to three.

COMMISSIONER CAMPOS: After it's over 2.5.

COMMISSIONER SULLIVAN: After it's over 2.5. And what the applicant is proposing is we don't want to round it up. We want to give you the money.

COMMISSIONER CAMPOS: Okay.

COMMISSIONER SULLIVAN: And what I'm suggesting is I think we need the housing more than we need the money.

CHAIRMAN MONTOYA: Commissioner Campos, anything else on that point?

COMMISSIONER CAMPOS: Not right now.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: I'm going to respectfully disagree. I think we also need the money and I think a balanced proposal with partial affordable housing units and partial money is not something that we should not consider. I don't know if the \$2 million that you're referencing, Commissioner Sullivan, is the \$2 million that was committed to us by Las Campanas development. I'm not sure we have that \$2 million. But I also know that we're going to need to move forward with a lot of other programs and take some strong initiatives ourselves on affordable housing so that it's going to need to be funded. And we currently have no funds for any of that.

So I'm not in disagreement with the applicant's proposal for two units and the .5 or whatever that rounds off to three units be a part of in-lieu-of. So I think it's a balanced proposal.

CHAIRMAN MONTOYA: Any other questions for the applicant?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Just to clarify Commissioner Vigil's question. The \$2 million is the amount of money that we have from the - plus it's in the

bank from the Housing and Urban Development home sales program where we've sold public housing, and that money can be reinvested in affordable housing at our discretion, and that's the \$2 million. We also, you referred to the Las Campanas affordable housing contribution. That was originally \$2 million. That's now about \$1 million. About a million of that was spent on affordable housing, non-profits, and programs of that sort and I'm advised that we have about \$1 million in cash left in that program. So essentially we have three million dollars, although they're in two separate programs from which we can, I think, chart a pretty aggressive affordable housing program. \$112,000 is nice, but I'd rather have the house at this point.

CHAIRMAN MONTOYA: Okay. Any other questions for the applicant? Okay. Hearing none or seeing none, we have the public hearing to conduct now, so at this point, if there's anyone here who would like to speak on behalf of or in opposition to this, if you would please come forward. Okay, seeing none, this public hearing is closed. Deliberation - what's the wishes of the Commission?

COMMISSIONER SULLIVAN: Mr. Chairman, I'd move for preliminary approval with staff conditions and the additional conditions that were added.

CHAIRMAN MONTOYA: There's a motion by Commissioner Sullivan for preliminary approval, along with the additional conditions, under the additional conditions, which are, what? No time-share or fractional use, they have to be energy - whatever we want to call, define energy-efficient built.

COMMISSIONER CAMPOS: And they must consult with staff when they propose a specific plan.

CHAIRMAN MONTOYA: Okay. And then water storage, to address daily use and fire sprinkler flow. Those are the additional conditions I have under additional conditions.

COMMISSIONER CAMPOS: Question for the maker of the motion.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Are you saying that you want three affordables in your motion?

COMMISSIONER SULLIVAN: I'm not including that at this time.

COMMISSIONER CAMPOS: Okay.

COMMISSIONER SULLIVAN: I want it, but I think that we could readdress that at final.

COMMISSIONER CAMPOS: So you want to keep it open so that they may add a third unit?

COMMISSIONER SULLIVAN: I think it should be added but I'm not sure that the balance of the Commission is sold on that yet.

COMMISSIONER CAMPOS: I understand the importance of having units out there as opposed to the money in the bank. Thank you, Mr. Chairman.

COMMISSIONER VIGIL: I have a question for the maker of the motion.

CHAIRMAN MONTOYA: Okay. Commissioner Vigil.

COMMISSIONER VIGIL: Commissioner Sullivan, is that the only purpose for not including the final development plan in your motion? To wait and see what we could do with the affordable housing?

COMMISSIONER SULLIVAN: No, I don't think so, Mr. Chairman, Commissioner Vigil. I think that there are a number of unresolved things here this evening that the applicant has some ideas that they're pursuing, and that's good. I'd like to see those ideas. As Mr. Ross says, we really can't quantify what green means in terms of a condition or regulation. I'd like to have that explored. I'd like for certainty, something more specific about water.

CHAIRMAN MONTOYA: We have a motion.

COMMISSIONER VIGIL: Mr. Chairman, I have another question.

CHAIRMAN MONTOYA: Okay, I'm going to second for discussion.

COMMISSIONER VIGIL: I thought there was a second.

COMMISSIONER SULLIVAN: No, there hasn't been a second.

COMMISSIONER VIGIL: I guess this is, if we delay the final development plan, how long can that be delayed for?

COMMISSIONER CAMPOS: It depends on when the applicant comes forward.

COMMISSIONER VIGIL: Do we want a certain time?

COMMISSIONER CAMPOS: Ask the applicant when they can come forward with the information that's necessary.

COMMISSIONER VIGIL: Mr. Ross.

MR. ROSS: Mr. Chairman, Commissioner Vigil, the brain trust beside me thinks 60 days.

COMMISSIONER VIGIL: Would be the deadline?

MR. ROSS: We be about the quickest that final could get back to you.

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

CHAIRMAN MONTOYA: Okay. We have a motion and a second. Any further discussion?

The motion to approve EZ Case #S 06-4200 passed by unanimous [4-0] voice vote with Commissioner Vigil abstaining.

COMMISSIONER CAMPOS: Ms. Vazquez wants some clarification.

MS. VAZQUEZ: Well, the vote's already been taken, but the issue of the water tank is done at building permit, when you go to the Fire Marshal. The Fire Marshal will take a look at your well system and will address the issue of water storage, and it's usually done through the building permit when the Fire Marshal reviews. I just recently had experience with that because we had a client issued a building permit for a Borrego subdivision lot in which there was - fire was tied directly to the well, and he required that

because they've got every ordinance imaginable at the Fire Marshal's office. He required exactly what Commissioner Sullivan is requesting, which is a tank to be constructed, in addition to the water harvesting tank, but a tank for storage. It's actually the same tank that was used for water storage, for the use of the development, as well as water storage for the fire suppression system. But is at building permit. It is not done prior to that point.

CHAIRMAN MONTOYA: Okay. So we can get some clarification with staff to make sure that's addressed then. The motion carried 4-0. Are you abstaining, Commissioner Vigil?

COMMISSIONER VIGIL: Yes.

CHAIRMAN MONTOYA: Four in favor, one abstention with Commissioner Vigil.

- XII. A. 10. CDRC Case #APP 06-5501 McFarland/Levacy Appeal. James and Milicent McFarland and Lori and Dan Levacy, Applicants Request an Appeal to the County Development Review Committee's Decision to Uphold the Land Use Administrator's Decision to Approve a Driveway Permit Within a 25-Foot Access and Utility Easement Crossing a 7.0 Acre Property Owned by the McFarland's and Providing Access to the Proposed Michael and Kathleen Casey Single Family Residence on 40 Acres. The Properties are Located on Gold Mine Road, South of the Village of Cerrillos in Section 20, Township 14 North, Range 8 East (Commission District 3)**

MS. COBAU: Mr. Chairman, members of the Commission, on September 21, 2006 the CDRC met and acted on this case. The decision of the CDRC was to uphold the Land Use Administrator's decision to issue a driveway permit for Michael and Kathleen Casey. The applicant's request an appeal of the County Development Review Committee's decision.

On May 1, 2006 Michael and Kathleen Casey submitted an application for a single-family home with garage on a 40-acre lot accessed via a platted 25-foot easement off Gold Mine Road. The Casey site is located in the Homestead Hydrologic Zone where the minimum lot size allowed is 40-acres. The proposed driveway would cross the McFarland property through a platted 25-foot wide access and utility easement immediately south of the Levacy property which is shown in Exhibit F. So the platted easement runs between the Levacy and the McFarland property.

On May 2, 2006 County staff received a letter of concern from Levacy and on May 9, 2006 from McFarland regarding the driveway crossing associated with the Casey property.

On June 23, 2006 James and Millicent McFarland met with Development Review

staff and expressed their desire to formally appeal the permit. Following review of the submitted engineering drawings, Development Review staff met with the Casey and their engineer, Jorge Gonzales, P.E., and discussed additional computations and minor revisions that would be required in order to bring the driveway into compliance with the Code. Casey expressed willingness to bring the design into compliance with the Code and to address McFarland and Levacy concerns regarding preservation of existing vegetation and directed their engineer to redesign the crossing or negotiate a solution

Attempts were made through meetings and field visits by County staff and the Casey engineer in an effort to provide a resolution. Casey subsequently submitted revised engineering drawings, runoff computations, and culvert capacity calculations. These computations and revised drawings have been reviewed and approved by staff, and a driveway permit issued administratively on August 7, 2006 as permitted in Article II, Section 2.3 Administrative Procedures of the Code.

The following are the applicants' grounds of appeal and staff responses. I'm going to try to read through these relatively quickly. There's a number of concerns. In an effort to expedite this process I have just referred you to the appellants' actual letters of appeal.

The applicant Levacy states road construction plans do not address preservation of the properties adjacent to the proposed road. The lack of impervious materials to be used around the culverts to be used to maintain the steep slopes of both sides of the narrow roadway seems to be overlooked. A possible surety/performance bond may need to guarantee that proper care and cleaning be maintained on the culverts and that the slopes of the roadbed be maintained so they do not erode into or cause damage to the adjacent properties and that both adjacent property owners, McFarland or Levacy are not held responsible for harm to the County road and accident on or off County land, damage to their land or damage to the Caseys' roadway.

Staff's response is that the driveway plan and profile show the driveway, headwalls and outward erosion protection all within the limits of the 25-foot platted access and utility easement. Vertical gabion headwalls are provided and all grades are flatter than the 3:1 slope required by Code. Maintenance of the twin 48-inch diameter culverts under Goldmine Road is performed by the County's Public Works Department. The Caseys agree that any maintenance needed to remove silt and/or debris from the driveway culverts will be conducted on a regular basis.

In response to Code criteria, the design engineer, Jorge Gonzales has produced plan and profile drawings of the proposed driveway alignment as well as slope analysis map of the entire 40-acre site in order to illustrate the impacts of all proposed development. Vertical headwalls have been introduced in order to minimize the width needed for the driveway and the disturbed area has been kept to the minimum needed within the platted 25-foot wide access and utility easement in order to facilitate access to the Casey parcel which would otherwise be landlocked, as you can see in Exhibit D.

The terrain management plan has been reviewed by the Land Use Department' technical review section as well as County Public Works and found to be in compliance

with County terrain management policy. Outward erosion protection has been provided and the flow velocity and the outlet of the proposed driveway culverts is less than six feet per second per the engineer's computations. Performance bonds are not required on private driveways.

The appellant Levacy also states that –

CHAIRMAN MONTOYA: Shelley, if I may. There's a total of what? Eleven?

MS. COBAU: Yes, there is a considerable number of these, Mr. Chairman, so if you'd like me to go straight to the staff recommendation –

CHAIRMAN MONTOYA: Actually, I just asked the Commissioners and we read them so we know what they are. So I think for the record, if we could enter them in for the record, and then you can go on to the rest of your report.

MS. COBAU: Very good. Thank you, Mr. Chairman. I'll just go straight to our recommendation. Staff's position is that the Casey development permit application is in accordance with Article II, Section 2.3.1 of the Land Development Code and that the required procedures were followed and pertinent Code criteria addressed for this application. The driveway construction will occur within a platted 25-foot access and utility easement. Therefore staff recommends denial of the appeal. And I'll answer any questions that you may have.

CHAIRMAN MONTOYA: Okay. Thank you, Shelley. Any questions for Shelley? Commissioner Vigil.

COMMISSIONER VIGIL: Shelley, am I to understand that there was a decision that was made that favored residents and the appeal we're hearing are from adjacent residents who feel, because they were not part of the hearing when the original decision was made, they felt their due process was violated?

MS. COBAU: Mr. Chairman, Commissioner Vigil, a permit was issued administratively for the driveway.

COMMISSIONER VIGIL: Oh, okay.

MS. COBAU: Our administrative process does not require notice of driveways that access only one property. These two properties are adjacent and the easement is through the McFarland parcel. The McFarlands and the Levacys both did attend the CDRC hearing and were given due process at that time and their appeal was denied by the CDRC.

COMMISSIONER VIGIL: Okay. The administrative approval was given because the request met with the Code requirements. Correct?

MS. COBAU: Correct. There were some initial concerns by myself regarding the – the permit was issued administratively and then the McFarlands came forward with their request for appeal based on the approval over in the Permits and Inspections Division. Because of my drainage experience, I looked at this and I said that I felt that we needed additional drainage computations and that some of the slopes proposed were not within the provisions of the Code, and subsequently, Jorge Gonzales did upsize

the culverts and redesigned the driveway configuration.

COMMISSIONER VIGIL: Thank you. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Other questions for Shelley?

Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chairman, thank you. So Shelley, when the engineer upgraded it, did the Caseys agree to construct it the way he upgraded it?

MS. COBAU: Mr. Chairman, Commissioner Anaya, the Caseys did agree to the design changes. Part of this project is to extend some culverts that are existing under Goldmine Road which are owned by our Public Works Department. So the Public Works Department does get in there and maintain those pipes and there are pictures in your packet that show the location of those pipes. There are two pipes that will go under the driveway. There will be an extension of the twin 36-inch pipes under Goldmine Road, and then there are two smaller pipes to convey local flow underneath the driveway. There have been concerns and we have addressed the concerns and I would just like to point out again that the application is in compliance with all Code criteria.

COMMISSIONER ANAYA: Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Other questions? Commissioner Sullivan.

Commissioner Campos. Okay, if the applicant will come forward, be sworn in please.

[Duly sworn, Millie McFarland testified as follows:]

MILLIE MCFARLAND: My name is Millie McFarland. My husband, Jim and I live at House 51, County Road 55. I'm sorry about my cold. My throat's a little strange right now. Lori Levacy is our neighbor. She and her husband Dan have the property immediately north of us.

One question on procedure that I'd like to ask right away, after we give our presentation I know there is going to be people that will want to respond. If appropriate, will we be able to respond to their responses? If we have questions about those we will certainly ask. Yes.

MS. MCFARLAND: I'd like to share a packet that I put together. It's in large type so our eyes won't be strained. I just want to start by saying that we recognize this is an easement; that's not been an issue for us. We know we have an easement. The County have been using this easement to drain Goldmine Road. Our property and Levacy's also cross under Goldmine so we have County Road 55 as another easement. So we're well aware of easements.

Our issue is our concern about flooding. We've lived there nine years and the 40 acres that the Caseys purchased had been for sale all that time. Many people looked at our easement crossing as well as Levacy's and no one thought the arroyo was crossable because in most people's opinion it isn't. I'm sharing some digital photos to give you some sense of the volume of water that comes from Goldmine during intense rains, of which we had many this last summer.

In picture one you can see the two 48-inch County culverts and the roadside drainage coming from Goldmine. This was during one of those rainfalls that was pretty

intense. The thing about coming out to take pictures is that you actually aren't catching it at its peak fall because you can't go out when it's raining cats and dogs so you go out later. But there is quite a bit of water here. You can see the roadside drainage. You can also see water pooling up on the County road above it. That is standing looking south from Levacy's land.

Our concern is that with additional culverts attached to these 48-inchers, clogging will occur and consequent flooding will go over the roadway. You can see in the first picture the heavy erosion taking place to the left of the culverts and that's actually gotten a lot worse since these photos were taken.

In picture two I gave you - I'm sorry about the darkness of the photos. This is looking, standing on the road looking northeast towards Levacy's land. One concern is there's a great potential for heavy erosion of Dan and Lori's land as the narrow culverts are placed as planned, giving kind of a shotgun effect, shooting the water out. It's hard for me to imagine, I guess having lived there eight and a half years and experienced the water, especially the amount of rainfall we've had more recently, how a driveway is going to survive this rain, to be quite frank with you. The kind of flooding that may result on Goldmine as a result of backing up of water.

Picture three shows roadside drainage coming toward the arroyo from south to north. You can also see the curve in the road. I'm going to address the line of sight issue and that curve is right there in this area where the road, driveway is proposed. Again, there's no question this is an easement. The thing about this is this easement is an arroyo. The easement in question is already used by the County to drain County Road 55, Goldmine Road. This easement is in the first one-half mile of Goldmine and flooding here would impact hundreds of residents further up the road.

More residents are coming in all the time via a Dickie Montoya development and other developments. There are several bed and breakfast establishments further up the road, and I just want to real quickly share a letter that was submitted by Michael Lancaster and Barbara Harnack. They also came to the CDRC meeting and spoke in person about the line of sight issue.

Part of the letter says, There are now 150 families on the road and as you well know, the population is growing rapidly. If during a heavy monsoon rain the road gets washed out, it could keep emergency vehicles from helping citizens as well as firefighters from helping homeowners fighting a fire in the Ortiz Mountains. We have seen the water at that arroyo so high and swift that we estimate it would easily move an automobile. These are neighbors of ours who live on a ridge above the road so they can see a good distance down into the arroyo.

One issue that I have, and part of this is a real question I'm going to present to you. The issue that I feel has been ignored by staff is the question regarding precedent, and I have a letter attached that I wrote to Mr. Kolkmeier that includes a letter from Marvin Vigil from September. We had asked early on for an example of another instance where a private driveway was attached to County culverts. I'm referring to the letter that I've

attached here to Mr. Kolkmeier. Writing in regard to our appeal. Second paragraph: Of the many reasons listed in our appeal, one that has never been at all addressed by Land Use, and if it has been addressed I will gladly stand corrected on this – is how it is that a private drive can be allowed to be attached to public drainage culverts, the building and maintenance of which are paid for by taxpayers.

I'm including a copy of an e-mail dated September 15th in which Marvin Vigil acknowledges an absence of a pre-existing example of a private drive connection to a County culvert. Perhaps the reason for such a lack is that it is illegal to do so according to the anti-donation clause of the state constitution which forbids public donation of time, labor or materials to maintain private structures. And I'm just going to refer you to the letter underneath that. I've placed in bold his one response. He says your request for information involving a similar situation involving County culverts and private easements is not immediately forthcoming. However, we will continue to try to locate another circumstance where this may have been done. I don't know, Shelley, if you guys had ever found another example of that. That was back in September.

So that's an honest question that I have regarding the anti-donation clause of the constitution. County staff in their summary maintains that Public Works will continue to maintain the 48-inch culverts that cross under Goldmine Road. In maintaining them, aren't they also maintaining Caseys' driveway and donating their labor and materials for a private drive? That's an honest question and I'd be interested in hearing to say what you have to say about that. It hasn't been addressed by staff. Is this too weird a question or what?

CHAIRMAN MONTOYA: Staff?

MS. COBAU: Mr. Chairman, members of the Commission, the McFarlands have sent numerous e-mails to me requesting examples where there were similar crossings of this nature. My explanation to them and I have many e-mails that I can hand up there to you guys if you'd like to see them but the stack is about this thick. There are numerous instances where people cross arroyos in Santa Fe County to access their property. Santa Fe County is covered with arroyos of this nature. The Q, the full quantity in this arroyo is around 100 cubic feet per second that's coming underneath the Public Works-placed and maintained culverts under Goldmine Road. We have not one but three memos from Shabih Rizvi who is the engineer for the Public Works Department who has indicated that Public Works has no issue with the extension of these culverts to facilitate the placing of the Caseys' driveway. Public Works will maintain the culverts under Goldmine Road and the Caseys will maintain the culverts under their own driveway. Public Works has not expressed any issue other than the placement of erosion protection at the outlet of these culverts and the design engineer has complied with those conditions.

CHAIRMAN MONTOYA: Does that answer your question?

MS. MCFARLAND: It was all due politeness. I recognize that people do driveways over culverts. That's what most people do through arroyos. My question is specifically attaching a private driveway to a County culvert and whether there is an instance of that?

MS. COBAU: Mr. Chairman, members of the Commission, I think we could look along Hyde Park Road, where there are public crossings of Hyde Park Road that have been extended to facilitate driveway crossings. I think we can look where there are 96-inch diameter culverts going under Cerrillos Road where people have driveways that cross those culverts. Numerous instances, too many to count. And I think that the culverts have been designed by a licensed professional engineer and the extension in one case is seven feet and for the other culvert it's around 26 feet. They're minimal. They don't have any impact hydraulically upstream on these culverts. The applicants for the driveway are tasked with passing historic drainage flows under their driveway without impeding or increasing the flow rate, the flow velocity unless they account for the erosion and I think that that's been done.

MS. MCFARLAND: Okay. Thank you.

CHAIRMAN MONTOYA: So the answer is yes.

MS. MCFARLAND: So I want to address the line of sight issue which was eloquently addressed at the last meeting, at CDRC by three neighbors, John Kemp, who's one of our neighbors who served in management for the State Highway Department, discussed in detail his concerns about possible accidents at the interface of the proposed driveway with Goldmine Road. John had also talked with Shabih back in June regarding this issue and suggested a safety study by done.

On page 22, that same page I referred to, you have other comments from Michael Lancaster and Barbara Harnack about the line of sight issue, and I even found a reference that Caseys' contractor suggested speed bumps. There was a traffic study requested by multiple concerned citizens and the CDRC, there's a staff letter dated 9/20 requesting findings regarding traffic safety. My question is, has there ever been a safety study done. We're not aware of any line of sight study being done regarding this yet.

CHAIRMAN MONTOYA: Shelley.

MS. COBAU: Mr. Chairman, members of the Commission, if you look in Exhibit E of the packet, there's a color photo of the corner. I did request per the CDRC direction a safety study of Goldmine Road. It's posted at I believe 30 miles per hour, and while I acknowledge that cars do come down that hill that's shown in the lower drawing, there's a rock wall and cars do come down that hill. I think nature has taken care of our speed bumps because Goldmine Road is severely potholed at this point. I went out there about three weeks ago. You can no longer get up to a fast speed without hitting these potholes and I realize that's a maintenance issue of our Public Works Department.

But I would like to point out that the tip of the white arrow on the lower photo is where this driveway is located. That's looking towards the north and that's where you can gain the most speed. Looking southward in the upper photo, right underneath the L in Driveway Location is the Levacys' driveway on the opposite side of the roadway. The line of sight issue, this applicant is just trying to get their driveway in here. There's nothing in our Code that says for a single driveway entrance - they don't have to perform traffic analysis to address line of sight issues.

MS. MCFARLAND: But at the CDRC meeting they directed the staff to conduct a line of sight.

MS. COBAU: That's correct, and we did forward that request to our Public Works Department and they'll follow through when time is afforded for them to do that.]

CHAIRMAN MONTOYA: Okay. So they're going to do that but it's not required.

MS. COBAU: That's correct.

MS. MCFARLAND: So even though the CDRC requested that, it may or may not be done? I just need clarification.

CHAIRMAN MONTOYA: It will be done. The request is in and it will be done.

MS. MCFARLAND: Some of the main issues that we do not see yet addressed, and I appreciate you addressing things I've been bringing up, there's a memo dated 9/20/06 from Shabih Rizvi, toward the end of the packet. It says Public Works has again reviewed the design and will issue a driveway permit only if the following conditions are addressed. A new gabion rock basket should be buried to three feet. Please provide a detail. And I was just interested. We have asked to see a detail on when that's been completed.

CHAIRMAN MONTOYA: Shelley?

MS. COBAU: Mr. Chairman, members of the Commission, the design engineers agreed that those gabion baskets will be buried. There will be field inspections, and we do have a detail which is shown, I believe it's in Exhibit J of your packet. It shows the standard placement of wire-enclosed rip-rap and it also shows his details of basically all the drainage structures that are proposed as part of this project.

MS. MCFARLAND: So he has provided detail?

MS. COBAU: He has and it's been existing for some time. He's going to turn down the ends of the wire-enclosed rip-rap which is very common and gabion placement, they're commonly buried. They can't just set them at grade. They have to bury that first basket. They key them into the slope with a specific engineering design to keep them from tipping, then they backfill.

CHAIRMAN MONTOYA: We do have that in our packet.

MS. MCFARLAND: Okay. Thank you. The maintenance and repair of the proposed 18 and 36 cnp culverts shall be the responsibility of the easement owner, in this case Michael Casey. That's really one of our main concerns if this permit is issued, the whole maintenance and repair issues. On the second page of the staff report, at the bottom, The very last part of that paragraph, it states that Casey has agreed that any maintenance needed to remove silt and debris from the driveway culverts will be conducted on a regular basis. The implication is that Casey will be fully responsible for the maintenance on these culverts.

Then again on page 5, this is repeated, that same statement. This is at the top paragraph on page 5, with the added comment that neither Levacy nor McFarland will be

responsible for maintenance associated with the driveway crossing. That's a real concern of us, because we really believe there are going to be some issues here. So our question is how to enforce the maintenance that's supposed to be carried by the Caseys. We have these clear multiple statements from both Land Use staff and Public Works staff and the statement from the Caseys themselves, the intention is for them to be solely responsible for maintenance associated with the driveway crossing.

How will this requirement be discovered during a title search by future owners so that they know what future responsibilities they are incurring? Can this requirement be placed on plat of survey so that any future owners of the 40 acres understand their responsibility to repair and maintain these culverts, and who would be responsible for making sure this was done?

CHAIRMAN MONTOYA: Steve, that's a legal question. Unless Shelley can answer it.

MS. COBAU: Mr. Chairman, I believe that we could address that concern if in the future we could require that a driveway access agreement, a driveway maintenance is drawn up and we can record that and reference the section, township, range and parcel number of the Casey parcel, and we can cover that concern in that manner. We can also put a time frame for maintenance on that driveway maintenance affidavit if you wish, where they check it make sure every 90 days of something that it's not in need of any maintenance. And we can certainly accommodate that request of the McFarlands.

MS. MCFARLAND: Shelly, I need clarification. I'm sorry. So where would this be - repeat again what this would be.

MS. COBAU: We would have a document. It would be a driveway maintenance agreement affidavit, wherein the Caseys would agree to maintain the two culverts that are associated with their driveway. We have three letters from Public Works stating that they main the culverts under Goldmine Road so that shouldn't be an issue. And we can get an affidavit stating that they would maintain those culverts and check them every 90 days and record it at the Clerk's office and reference the UPC.

CHAIRMAN MONTOYA: Okay.

MS. MCFARLAND: So that would be discoverable by someone if they were buying the property. That's my other question.

MS. COBAU: Mr. Chairman, members of the Commission, I'm not a title research specialist, but I believe that any time a title search is done they pull every document wherein that parcel is referenced. They will verify that. They'll check it when they do title search.

CHAIRMAN MONTOYA: So Steve, just for my clarification, is that something that can be imposed?

MR. ROSS: Mr. Chairman, that's not a normal procedure in these cases. It could be done, but it's not normal.

MS. COBAU: So we can ask the appellant if they're agreeable to that, in their testimony.

MS. MCFARLAND: To solve it this way, that we would have an affidavit the way Shelley described it?

CHAIRMAN MONTOYA: To answer your question, yes.

MS. MCFARLAND: That sounds like a good approach. Yes, it does. It would assuage our fears about the maintenance issue and liability, etc.

CHAIRMAN MONTOYA: Okay.

MS. MCFARLAND: I appreciate your listening. This has been a very long process for us and it was not done lightly, but we have been very concerned about this use of the arroyo.

CHAIRMAN MONTOYA: Okay. Any questions for the applicants? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Is there another point of access that if you were to do this in a way that you would prefer, that you would utilize other than the one that the Caseys have proposed?

MS. MCFARLAND: We have spent a lot of time on this on both sides coming up with proposals and their engineer did come out. He was a very nice man, and walked the land with us and actually came up with a solution that would kind of meander through a little further south of the easement. Same trees, all that. He seemed very excited about it. At the time he was suggesting land exchange, which is something we couldn't follow up on at the moment because we're in the process of selling our house. Okay? There were definite – yes, there are some other ways that should be taken to cross that area. At this point, in reality, if the Caseys wanted to pursue that they would have to talk to the new owners who might be amenable to that. But there are – we did discuss and spent a lot of time on proposals back and forth. We just couldn't come to a solution, Mr. Sullivan.

COMMISSIONER SULLIVAN: So you're no longer the owner of the property?

MS. MCFARLAND: We are the current owners at the moment, yes. We have been the owners for the last eight years and we've been the owners when all this started, but we are in the process of selling right now.

COMMISSIONER SULLIVAN: Okay. And there was a letter in the packet from a Mr. Karl Sommer representing the Caseys and indicating a suggestion of purchasing some land to make an easement wider and then agreeing to vacate the other.

MS. MCFARLAND: Right. We were in negotiations and my husband did respond to their lawyer, and maybe I shouldn't speak to that but there were negotiations back and forth, just nothing was ever resolved. So that's why we're here today.

COMMISSIONER SULLIVAN: I guess my question was, this offer, would that have been acceptable? Would that have provided a better solution?

MS. MCFARLAND: I'm going to let –

[Duly sworn, Jim McFarland testified as follows:]

JIM MCFARLAND: The problem with that offer was that it was a piece of

land that included some of the best vegetation in that area. The land that we identified with the engineer, Jorge Gonzales was actually farther south that that and included about a half an acre of our land and included the former piece of easement. It was something that we were agreeable to but we couldn't agree to that to just adding another 25-foot section as suggested by the attorney, which was Janice Ahern, I believe.

COMMISSIONER SULLIVAN: This easement goes through the center of your property, or north of center.

MR. MCFARLAND: No, it's the north boundary of the property.

COMMISSIONER SULLIVAN: North boundary.

MR. MCFARLAND: It's the boundary between our property and our neighbors, the Levacys.

COMMISSIONER SULLIVAN: Thank you.

CHAIRMAN MONTOYA: Okay. Any other questions for the applicant? Okay, seeing none, this is an open public meeting. Oh, okay.

MR. MCFARLAND: If it's not too late, I would like to make some comment.

The reason we're appealing the issuance of the driveway permit is because of actual flaws in the design. These are flaws that have been ignored by Land Use staff. Jorge Gonzales did an admirable job of trying to fit a 70-foot project into a 25-foot space, but it's just - if you look at the plan of this, it fills up that 25-foot space totally and it extends on either end, on the north end, it extends into my neighbors' property, the Levacys, because they're going to be impacted by the increased erosion, really impacted if you look at the plan by that 36-inch culvert, that's the farthest east one, which is totally aimed right at a wall that is going to disappear as soon as the next rains come, if this is installed.

It's just really aimed poorly. It's a 30-foot culvert that's trying go through what is now a snaked arroyo and they're trying to straighten it out with this straight piece of culvert, and it's just aimed right at something that's going to erode seriously.

The other problem is the roadside drainage issue. I haven't received any degree in civil engineering and I haven't had roadside drainage 101. I'm just a simple country person who has learned by observing something over a period of time that you can get lots of clues of what's going to happen in the future. Having lived at this house for nine years I've observed what happens during the storms and I've seen the roadside drainage culverts of my own driveway silt up, the stormwater overflows on to the road and that's one of the bid issues of why Goldmine Road is in the condition it is right now because of the tremendous rains we had this summer. And the water and the silt and the debris washed out of the ditches onto the road and the road was subsequently damaged.

It had been there for a number of years before we had all this serious, this rain and the silting up of the roadside drainage culverts. So the calculations that the engineers used and the ones that are defended by Land Use staff don't match what a plain person can see in the real world. The 18-inch culvert is not going to be self-cleaning. It will silt up and it will probably result in removal of the applicant's driveway and very possibly it's going to flood and damage Goldmine Road and property downstream from us.

The gabion at the inlet of the 18-inch culvert will in effect become a dam. The culvert will flood up, because they do. It's going to cause water to back up onto my land and this project has changed or would change what is not a free-flowing roadside drainage ditch, which historically has been maintenance-free, it's going to become a silt-plugged five-foot deep pit.

COMMISSIONER CAMPOS: Sir, I think we've heard these arguments. Is there any additional argument you want to make? It's late in the day. We've got to make a decision.

MR. MCFARLAND: That's pretty much my concern about it. That it damage my property.

COMMISSIONER CAMPOS: I think you've clearly made your concern known to the Commission. Anything else?

MR. MCFARLAND: I do have other things but I really - I do understand it's late and -

COMMISSIONER CAMPOS: Anybody else? We don't want you to cover the same issues. We understand what the other witnesses - I think there's a lot of evidence so if you could be very brief we'd appreciate it.

MR. MCFARLAND: That's pretty much it.

[Previously sworn, Lori McFarland testified as follows:]

LORI LEVACY: Thank you, gentlemen, for hearing me today. You can take a look at the letter that I wrote in the appeal with the details of concern. This was never an issue of wanting the land for myself and my husband, nor was it ever to keep the Caseys from accessing their own land. In two other instances during the last eight years I've worked with other possible buyers, both Jimmy Plumber and Maria Lacapo -

COMMISSIONER CAMPOS: Could you state your name for the record.

MS. LEVACY: Oh, I'm sorry. I'm Lori Levacy. I live at 34 County Road 55. That's in Cerrillos.

COMMISSIONER CAMPOS: You own property nearby?

MS. LEVACY: I own the property adjacent to the Caseys and to the McFarlands. As I said, I've worked with other possible buyers in the past and we've worked amiably about accessing their property and never had any problem. These people also backed out for completely different reasons. One being that they backed out for the fact that there was too much traffic noise from Highway 14 and the other one said that they couldn't afford to purchase the property without having a house on it.

I never was able to sign any paperwork with Kay Rivers who previously owned the land that the Caseys have purchased, strictly because I never received the paperwork in my hand. All this was going on during the time I was handling two estates out of state and that was over the last two years. I've been gone almost two weeks out of every month and trying to handle this as the same time. It's been quite difficult.

All the monies that were contingent on purchasing that land were all to culminate in the course of a couple months and it never did. It took, as you know - estates sometimes take a lot longer. It's taken two years. So the money that I was planning to buy that land of Kay Rivers,

previously to the Caseys, just never came to. And I spoke with Kay Rivers intensely about it and said I was very sorry that I was not able to commit -

COMMISSIONER CAMPOS: Excuse me, what does this have to do with the issues?

MS. LEVACY: The issue was that there was a letter written in there by Kay Rivers that was very, very injuring to my side of the story. He said that I basically tried to stop this - the Caseys from purchasing this property by stalling with this issue. I have not. The issue has always been -

COMMISSIONER CAMPOS: What does that have to do with any issue that we have to decide upon tonight?

MS. LEVACY: What it has to do with is that they have taken other tactics to get this issue through, and they've completely ignored the fact that what I was coming through with is I just want to make sure that they have a safe access to their home, that they don't ever have to come to the neighbors to say, do we mind if we cross your land to get out of our property or onto our property. We want to make sure that their access is viable and that it will work forever and not just until the first flood.

I'm hoping that you guys will understand also that I had no intention of ever stopping them from accessing their land. This easement is legal. It is on paper. It just wasn't very easy to access the land through, meaning that they had to do some extra engineering in order to make it a viable crossing of that arroyo.

My issue with that is just the fact that I felt the way that things have transpired, it made us look, the McFarlands and Levacys, look like we're just being picky. Well, we're picky only in the issue that we just don't want any problems in the future. We want to make sure that their land is protected and that if there is a good flood or a good rain that causes problems, we're not having to pay the price. And that we don't have any way of getting back to the Caseys, or the future owners of that property about how to reclaim our land if their engineering fails. That's all I had to say.

COMMISSIONER CAMPOS: Thank you. Are we in public -

CHAIRMAN MONTOYA: We're now in public hearing mode. So if there's anyone who would like to speak on behalf of this appeal, if you would please come forward.

[Duly sworn, Ken Weaver testified as follows:]

KEN WEAVER: Ken Weaver, 53 Old Coal Road, Cerrillos, New Mexico. It reminds me of an old song: second verse, same as the first. The appeal is the same thing. We agreed then that the appeal wasn't going to happen and the driveway was going to go through. This has become almost harassment. I think it's pretty easy. The easement was there. They're going on the easement. They got an engineer to engineer it. What else can they do?

CHAIRMAN MONTOYA: You're speaking opposed to the appeal?

MR. WEAVER: I'm for the easement. It's there. It's on the drawings.

[inaudible]

CHAIRMAN MONTOYA: So against the appeal, then.

MR. WEAVER: Yes, against the appeal.

CHAIRMAN MONTTOYA: I'd ask people who are willing to speak in favor of this case to please come forward. Okay. Now, let me ask, people who are speaking in opposition to this case please come forward.

[Duly sworn, Carol Everett testified as follows:]

CAROL EVERETT: I'm Carol Everett, and I do oppose this appeal. I'm not an expert but as far as I know from the first appeal, I haven't heard anything new when the first appeal was denied. And again, as I said at the first appeal, I spoke with Lori Levacy over the phone, she denied that there was access or easement, and then when I said do you want me to fax you a copy of your own plat, she said, well, they can have ten feet. There has not been truthfulness here. There has been a sense of not wanting them to be on their own land. It's like a little range war. It's ridiculous and I ask that you please deny this appeal.

CHAIRMAN MONTTOYA: Thank you, Carol. Anyone else like to speak, please come forward. If you'd like to speak please come forward, sir.

[Previously sworn, Shannon Weaver testified as follows:]

SHANNON WEAVER: I've been sworn in. Shannon Weaver, 53 Old Coal Road, Cerrillos. This is a continuing process. It's been a waste of our time, a waste of your time and I just know that the Caseys have done everything they could to satisfy these people and Land Use, I'd like to thank them for all the help they've give to the Caseys to try and get what the Caseys are really entitled to, which is an easement. We live and die by our easements in the county. And they need an easement to get to their property. These people have the easement. They don't seem to want to let it go. I'm asking you to please let the Caseys have this easement once and for all. They have spent thousands of dollars trying to satisfy these people's concern and the McFarlands are moving. Their house closes on the 22nd. I can't imagine why they are here again. Thank you.

CHAIRMAN MONTTOYA: Thank you.

[Duly sworn, Frank Young testified as follows:]

FRANK YOUNG: My name is Frank Young. I want to be brief. I see up there equal justice under the law and behind you, protection of property. These people are all friends of mine, or at least I consider them friends, so I don't want to speak against any of them or for any of them, but I do want to speak to the idea of the protection of property. All of us are touched by easements one way or another. My wife and I have property on Goldmine Road. It has 1300 feet of easement. I do not want this body or any other body in the future to take that easement away. Without those easements we have no access to property and without those easements we have no access to electricity. Without those easements we have no value in our property. So I'm speaking just to the value of the property. It is your duty I think in your jurisdiction, City, County, State, whatever, to uphold those easements into perpetuity. Otherwise, our property values have no meaning whatsoever. So I would like to encourage you to vote in favor of the Caseys on this situation because that easement is theirs. Thank you.

CHAIRMAN MONTTOYA: Thank you, Frank. Sir.

[Duly sworn, James McCabe testified as follows:]

JAMES MCCABE: My name is James McCabe. I live at 134-A Stoney Road in

Cerrillos, which is up on Goldmine Road, County Road 55. Because of the hour and out of respect to this body and your patience, I'm not going to go into the rationale for my objections to this appeal, because I think it's been stated adequately enough already. Just one thing that Shannon brought up and that is that the McFarlands, when they agreed - at the time of the first appeal, they had already listed their property for sale. They have now come to terms with a buyer. They have not had a closing, but at this point it is moot. It is irrelevant because they have come to agreement of terms. Therefore, legally, they have agreed to a quitclaim on this whole issue. They no longer have a horse in the race. The horse died in the starting gate.

I really do not understand why you are even here beating a dead horse. Anyway, I support my brother Michael and his wife Kathleen in their attempts to live a plain and simple life out there on County Road 55 and I oppose this appeal. Thank you very much for your time and patience.

CHAIRMAN MONTROYA: Next.

[Duly sworn, Michael Casey testified as follows:]

MICHAEL CASEY: My name is Michael Casey. I have been dealing with the McFarlands and the Levacys for seven months now, trying to get this 100-foot easement or driveway in and initially, the Levacys denied that we even had an easement over their land. I can state that emphatically because my wife was talking to them on the phone and Dan Levacy kept saying, No, you don't have an easement. You don't have access. I just want to say that I've done everything that the County has asked. I have never questioned any of it. My engineer has redrawn these plans three or four times. Every time - it's mostly the McFarlands who are doing the complaining but the Levacys were involved in it also. Every time they asked for a change we didn't do it, but every time the County asked for a change we did do it.

What I believe is the crux of the matter here is early on in this process when the Levacys finally agreed that there was an easement, they stated to my contractor that they would, for ten acres of land they would give me access through their corral, as long as I was willing to open and close the gates. And I did not accept that offer. The McFarlands made numerous offers, most of which I accepted, and then they would go away and come back with these ridiculous demands. Their last correspondence, which, by the way, I had to do all of this through my engineer because they wouldn't speak to us, was from the McFarlands, and it states that after some discussion we have decided that we require a cash settlement, an outright real estate purchase of the half-acre in question. But I was never intending to buy a half-acre. And based upon the increased land values, we are asking \$25,000 in addition to the requirements we had already sent Shelley.

Now those requirements basically were that they wanted to design the driveway. That I had to put in gates both ends of the 100 feet. It was two full pages of requirements and after I bought the land from them now they want to maintain those requirements. And that they had final approval of the driveway. And I would just like to read the last letter from - this is the letter from Kay Rivers that was sent to the Board, actually to Land Use. And it states, I allowed the Levacys and the McFarlands complete access to the property for horseback riding and hiking. Perhaps that was a mistake on my part, as they could use the land as if it were already

theirs. In summary, the Levacys had ample opportunity to purchase the entire property or a portion of it and did not. Only they would know the reasons why.

So all I can say is all the engineers agree that this is a legal driveway and not going to be a problem. Land Use agrees that it's a legal driveway and not going to be a problem. Only these two couples disagree with that and I personally believe it's because they wanted the property and they didn't buy it. So, anyway, I thank you for your time. I'm sorry that the County has wasted so much time and money no all of these dealings with these people.

CHAIRMAN MONTOYA: Okay. Thank you, Michael.

KATHLEEN CASEY: Mr. Chairman and Commissioners, all I ask you to do is to uphold the Land Use Administrator's decision to approve the driveway permit. We've done everything that was legally asked of us and anything that was required of us, we have done, and it's taken seven months with these two appeals. And I think that's unfair. And I'm asking you to make a decision tonight in our favor. Thank you.

CHAIRMAN MONTOYA: Would anyone else like to speak in opposition to this appeal? Okay, seeing none, this public hearing is closed. What are the wishes of the Commission?

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: It's late. I'm tired. It's been a long day. I would hope that maybe in the years to come our meetings don't last this long. But I move that we uphold the Land Use Administrator's decision and deny the appeal.

COMMISSIONER VIGIL: Second.


CHAIRMAN MONTOYA: Motion and second. Discussion?

The motion to uphold the Land Use Administrator's decision and deny the appeal passed by unanimous [5-0] voice vote.

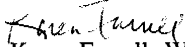
XIII. ADJOURNMENT

Chairman Montoya declared this meeting adjourned at approximately 10:40 p.m.

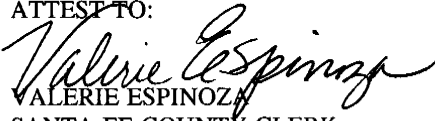
Approved by:

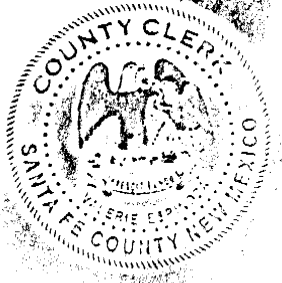

Board of County Commissioners
Harry Montoya, Chairman

Respectfully submitted:


Karen Farrell, Wordswork
227 E. Palace Avenue
Santa Fe, NM 87501

ATTEST TO:


VALERIE ESPINOZA
SANTA FE COUNTY CLERK



Santa Fe County Courts

NCA / Durrant

6-Dec-06

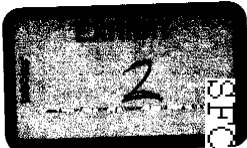
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12-11-06
11:45 AM

| DISCIPLINE | BUDGET | SPECIALTY SERVICES FEE BY PHASE | | CD | 40% | BID | 5% | CA | 20% | POST | TOTAL FEE |
|---|-------------|---------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-------------|-----------|
| | | PRE D | SD | | | | | | | | |
| TOTAL BASIC FEE | \$2,145,000 | \$64,350 | \$321,750 | \$321,750 | \$858,000 | \$107,250 | \$429,250 | \$429,250 | \$42,900 | \$2,145,000 | |
| Site Survey | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | |
| Site Geotech. | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | |
| Traffic Study (Miller Eng.) | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | |
| Civil Drainage Report (Miller Eng.) | \$22,000 | \$22,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$22,000 | |
| Grading & Drainage (Miller Eng.) | \$6,000 | \$6,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$6,000 | |
| SWPPP Storm drain report (Miller Eng.) | \$11,000 | \$330 | \$1,650 | \$4,400 | \$950 | \$2,200 | \$2,200 | \$220 | \$0 | \$11,000 | |
| Site Utility Plan Civil Engineering (Miller Eng.) | \$6,000 | \$3,000 | \$3,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$6,000 | |
| Landscape Irrigation Design (Sites Southwest) | \$6,000 | \$180 | \$900 | \$2,400 | \$300 | \$1,200 | \$1,200 | \$120 | \$0 | \$6,000 | |
| Model & Renderings (NCA) NTE | \$25,000 | \$750 | \$3,750 | \$10,000 | \$1,250 | \$5,000 | \$5,000 | \$500 | \$0 | \$25,000 | |
| Master Plan Courts & DA (Durrant NCA) | \$20,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$20,000 | |
| DA Existing Survey (Durrant NCA) | \$3,000 | \$3,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$3,000 | |
| Courts Needs Assessment (NCSC) | \$50,000 | \$50,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$50,000 | |
| Program Courts & DA (NCSC,Durrant,NCA) | \$100,000 | \$100,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$100,000 | |
| Courts Design Assistance (NCSC) | \$10,000 | \$300 | \$1,500 | \$4,000 | \$500 | \$2,000 | \$2,000 | \$200 | \$0 | \$10,000 | |
| Technology Assessment (NCSC) | \$25,000 | \$25,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$25,000 | |
| Security Assessment (NCSC) | \$5,000 | \$5,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$5,000 | |
| Security Electronics Design (Durrant) | \$60,000 | \$1,800 | \$9,000 | \$24,000 | \$3,000 | \$12,000 | \$12,000 | \$900 | \$0 | \$60,000 | |
| Tele/Data Systems Design (Durrant) | \$45,000 | \$6,750 | \$33,750 | \$18,000 | \$2,250 | \$9,000 | \$9,000 | \$900 | \$0 | \$45,000 | |
| Court Technology Design (Durrant) | \$65,000 | \$1,950 | \$9,750 | \$26,000 | \$3,250 | \$13,000 | \$13,000 | \$1,300 | \$0 | \$65,000 | |
| Detention Hardware Design (Durrant) | \$20,000 | \$600 | \$3,000 | \$8,000 | \$1,000 | \$4,000 | \$4,000 | \$400 | \$0 | \$20,000 | |
| Interior's Furniture Design (Durrant, NCA) | \$80,000 | \$2,400 | \$12,000 | \$32,000 | \$4,000 | \$16,000 | \$16,000 | \$1,600 | \$0 | \$80,000 | |
| Public Information Process (NCA) Hourly | \$35,000 | \$10,000 | \$5,000 | \$10,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$35,000 | |
| Sustainable design documentation (NCA) | \$20,000 | \$600 | \$3,000 | \$8,000 | \$1,000 | \$4,000 | \$4,000 | \$400 | \$0 | \$20,000 | |
| LEED Commissioning | \$150,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$150,000 | |
| Cost Estimating (Balls & Co.) | \$40,000 | \$5,000 | \$10,000 | \$15,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$40,000 | |
| Fire Sprinkler System | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | |
| Parking Design (Walker) | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | |
| On Site Field Rep 18 Months, full time (NCA) | \$230,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$230,000 | |
| On Site Field Rep Expenses (NCA) | \$9,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$9,000 | |
| Special Insp- Structural | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | |
| Special Insp- Electrical | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | |
| Construction and Material Testing | \$85,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$85,000 | |
| Commissioning | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | |
| Special Bidding (Demo, FFE, Geotech, survey.) | \$21,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$21,000 | \$0 | \$0 | \$21,000 | |
| Record Drawings (NCA) | \$10,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$10,000 | \$10,000 | |
| Signage Graphics (NCA) | \$15,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$15,000 | |
| TOTAL SPECIALTY SERVICES | \$514,000 | \$269,260 | \$94,300 | \$101,300 | \$177,800 | \$39,100 | \$16,840 | \$16,840 | \$770,000 | | |

| DISCIPLINE | BUDGET | ADDITIONAL EXPENSES | | CD | 40% | BID | 5% | CA | 20% | POST | TOTAL FEE |
|--|-------------|---------------------|-----------|-----------|-------------|-----------|-----------|-----------|-----------|-------------|-----------|
| | | PRE D | SD | | | | | | | | |
| TOTAL BASIC FEE PLUS SPECIALTY SERVICES | \$2,915,000 | \$333,610 | \$416,050 | \$423,050 | \$1,035,800 | \$146,350 | \$500,400 | \$500,400 | \$59,740 | \$2,915,000 | |
| Travel (NCSC) 12 man trips | \$8,000 | \$5,000 | \$2,000 | \$1,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$8,000 | |
| Travel (Durrant) 44 man trips | \$28,000 | \$9,000 | \$8,000 | \$5,000 | \$3,000 | \$0 | \$3,000 | \$0 | \$0 | \$28,000 | |
| Mileage Design phase(NCA) 90 man trips @ 110 miles | \$3,000 | \$500 | \$500 | \$500 | \$1,000 | \$0 | \$0 | \$0 | \$0 | \$3,000 | |
| Phones, Deliveries, Postage, Plots, Printing | \$20,000 | \$600 | \$3,000 | \$3,000 | \$8,000 | \$4,000 | \$4,000 | \$400 | \$0 | \$20,000 | |
| County submittal Set Printing | \$20,000 | \$2,000 | \$3,000 | \$5,000 | \$10,000 | \$0 | \$0 | \$0 | \$0 | \$20,000 | |
| CA field rep Mileage 100 man trips @ 110 miles ea. | \$6,000 | \$0 | \$0 | \$0 | \$6,000 | \$0 | \$0 | \$0 | \$0 | \$6,000 | |
| Bid CD & Printing (CD and 2 set per GC only) | \$12,000 | \$0 | \$0 | \$0 | \$12,000 | \$0 | \$0 | \$0 | \$0 | \$12,000 | |
| Record drawing printing | \$5,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$5,000 | \$0 | \$5,000 | |
| Total Expenses | \$102,000 | \$17,100 | \$16,500 | \$14,500 | \$34,000 | \$1,500 | \$5,400 | \$5,400 | \$102,000 | | |
| Total including expenses | \$3,017,000 | \$350,710 | \$432,550 | \$437,550 | \$1,069,800 | \$147,850 | \$513,400 | \$513,400 | \$65,140 | \$3,017,000 | |

SFC CLERK RECORDED 02/23/2007

**U.S. Highway 285 South Corridor Area
Community Statement in Opposition to PNM Application for Variance**



SHC
CLERK RECORDED 02/23/2007

Proposed Variances

The Public Service Company of New Mexico has requested Development Plan approval to allow a variance to the Santa Fe County Land Development Code Article III, Section 2.3.9b(1) that all new and replacement utility lines shall be placed underground and Article III, Section 2.3.6b that the height of any dwelling or residential accessory structures shall not exceed twenty four feet (24').

PNM's plans call for the installation of three phase overhead lines from the Eldorado stable area over U.S. Highway 285 to continue 2,000 feet along the north side of Vaquero Road to attach to an existing overhead single phase line. The existing single phase line and poles would be removed and replaced with new three-phase lines and new power poles 34.5 feet in height that would run 4,000 feet south along the west border of Los Vaqueros Subdivision, through a portion of the Ridges Subdivision and beyond.

Contrary to the arguments submitted by PMN at the September 21, 2006, CDRC public hearing there is a notable absence of overhead electrical distribution lines within the U.S. 285 Highway South communities. In fact, the written argument presented by PNM at that public hearing describes conditions along the U.S. 599 corridor, not the U.S. 285 corridor and incorrectly states that there are numerous overhead distribution lines servicing the communities. Granting of this request for variance would single out the Los Vaqueros and The Ridges subdivisions and the residences along Vaquero Road as the first communities forced to accept a variance permitting installation of overhead power lines contrary to the County Land Development Code in the U.S. 285 South Highway Corridor area.

Community Statement

The elected officers of the homeowner associations directly affected by the proposed PNM project as well as adjacent subdivisions not directly affected and some homeowners not represented by homeowner associations have documented their unanimous opposition to the PNM proposed variances to the County Land Development Code. Community petitions, Homeowners Association officer letters and individual homeowner letters voicing opposition to the proposed variance have previously been submitted to the County Land Use Department. The large contingency of homeowners in attendance at the September 21, 2006, CDRC meeting was further testimony to the public opposition to the proposed variances. Additionally, the U.S. Highway 285 South Coalition has documented its opposition to the proposed PNM variances and requested that the proposed variances be denied and that PNM be required to comply with the County Land Development Codes which are in place to protect our community from the unsightly and outdated installation and potential hazards

of overhead utility lines. We are concerned that the approval of these variances would establish a dangerous precedent which, almost certainly, would encourage further deviations from Ordinance 2005-08, the US 285 South Highway Corridor Plan and the County Land Development Code, further comprising the realization of the communities' objectives and values as development continues in the U.S. 285 corridor area. The community values the visual integrity of open views as noted in the U.S. Highway 285 South Corridor Plan and as emphasized in the restrictive covenants of many subdivisions in the area. As a community, we are strongly opposed to the approval of the proposed variances to the County Land Development Code.

U.S. 285 South Highway Corridor Plan & Ordinance 2005-08

In December, 1999, the Board of County Commissioners authorized a Planning Committee to work in conjunction with the Planning Division to plan for the U.S. 285 Highway South corridor. In July, 2004, the Board of County Commissioners approved Resolution 2004-73 adopting the U.S. 285 Highway South Corridor Plan and incorporating it as an amendment to the Santa Fe County Growth Management Plan. In September, 2005, The Board of County Commissioners approved Ordinance 2005-08, the U.S. 285 Highway South Corridor Plan, which incorporated all regulations, policies and conditions established in the Santa Fe County Land Development Code. The objectives of the Plan and Ordinance were, among other things, to strengthen community identity and identify shared values within the community to guide the future development of the U.S. 285 South Highway Corridor. As participants in the development of the U.S. 285 Highway South Plan, we strongly support the development of the community values and development guidelines formalized in the Plan and approved by the Board of County Commissioners in Ordinance 2005-08.

Santa Fe County Land Development Code, Article III, Section 2.3.9b(1)

This Code section states in part "All new and replacement water, gas, electric, telephone, television or other utilities, including both main and service lines shall be placed underground within designated utility corridors". The remainder of this Code section deals with infill development which does not apply to our situation. The intent of this Code section is clear and unambiguous, to minimize the visual intrusion to the skyline by overhead installation of utilities.

Santa Fe County Land Development Code, Article III, Section 2.3.6b

This Code section states in part "The height of any dwelling or residential accessory structure shall not exceed twenty four feet (24')". The remainder of this Code section is not applicable to our situation. The request for this variance becomes moot in the event PNM is required to install the new and replacement power lines underground.

Santa Fe County Land Development Code, Article II, Section 3-Variances

This Code Section sets forth the criteria and guidelines for granting variances. Section 3.1 states in part "A Development Review Committee may recommend to the Board and the Board may vary, modify or waive the requirements of the Code and upon adequate proof that compliance with the Code provision at issue will result in an arbitrary and unreasonable taking of property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety. In no event shall a variance, modification or waiver be granted by the Board if by doing so the purpose of the Code would be nullified.

In this case PNM will not suffer an arbitrary or unreasonable taking. PNM has an easement over privately owned lands to install its electric utilities. PNM does not own these lands. The owners of those lands are among those present today objecting to the variances sought by PNM. If PNM is not granted the variances, it will not lose its easement and will continue to retain the right to install its power lines in the easement.

In this case complying with the Code will not exact hardship on PNM. All present here today acknowledge that underground installation of power lines costs more than overhead installation. This was taken into account when Article III, Section 2.3.9b(1) of the Code was drafted and enacted into the County Code.

Therefore, the fact that underground installation of power lines costs more than aboveground installation cannot be cause to grant a variance from Article III, Section 2.3.9b(1). The power lines in question here are feeder lines, not high tension high voltage transmission lines.

If mere increased cost of installation to comply with the Code is a hardship on PNM then PNM or any other utility seeking to install overhead utility lines in the future would by precedent, be entitled to a variance, thereby rendering Article III, Section 2.3.9b(1) of the County Code ineffective and unenforceable. Furthermore, Granting this variance could set a precedent that would destroy aesthetic, open views of the U.S. 285 corridor and its surrounding properties.

Article II Section 3.2 of the County Code states that in no case shall any variation or modification be more than a minimum easing of the requirements. In this case granting PNM a variance to install overhead power lines would be the exact opposite of what the code requires. Power lines are either installed overhead on power poles or buried underground. There is no in between.

Safety

Area residents drive their vehicles, ride their horses, and walk their dogs along the PNM easement. Underground installation of power lines eliminates the possibility of a vehicle or horse colliding with a utility pole or a broken or loose

power line causing an electrocution or a fire. It also eliminates the accidental electrocution of birds, including valuable raptors such as owls and hawks, that may land on dangerous components of power lines.

Summary

The communities of the U.S. 285 Highway Corridor area want to impress on the Board the importance we place on the U.S. 285 Highway South Corridor Plan and the County Land Development Code. We thank the Board of County Commissioners for their wisdom in sponsoring community involvement in the Plan through passage of Ordinance #2005-08. The question before you, as a Board, is whether or not the Plan, the Ordinance, and the County Land Development Code will be enforced and the proposed PNM variances denied.

Our community residents fully understand the need for PNM to recover the incremental costs associated with underground installation of power lines through petition to the Public Regulation Commission and we are prepared to accept our share of rate increases approved in support of that reality.

We have demonstrated to you through our petitions, letters and direct involvement in public hearings that we are an involved community and that we are strongly opposed to the approval of PNM's proposed variances to the County Land Development Code. Denial of the proposed variances by the Board of County Commissioners would be a strong step toward effectively establishing the authority of a well-conceived and progressive Code vital to the future development of Santa Fe County in general and the US 285 Highway South Corridor area in particular. Therefore, we respectfully request that you deny PNM's petition for variances.

Submitted by

John A Noble on behalf of the US 285 Highway South Corridor area community residents

Requests for Inclusion into Village of Agua Fria THC

BCC Public Hearing Draft

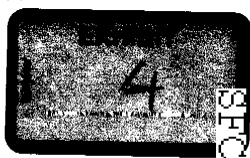
| Number | Name | Address | Parcels | Acreage | Contiguous to THC? |
|---|------------------------------------|-----------------------------|---------|---------|---|
| 1 | William Spencer & Robbyn Garden | 1895 Hammond Rd | 1 | 2.5 | Yes |
| 2 | Marietta Rotunno | 4760 Alameda | 1 | 15.9 | Yes |
| 3 | Ann Patty | 4711 Alameda | 1 | 3.038 | Yes |
| 4 | Ann Patty | 4711 Alameda | 1 | 6.569 | Yes |
| If adjacent property owners requests are included, this property is contiguous | | | | | |
| 5 | Keith Glasscock | 4679 Alameda | 1 | 4.043 | Yes |
| 6 | Santa Fe Tree Farm | 1749 San Ysidro Crossing | 1 | 6.87 | Yes |
| 7 | Santa Fe Tree Farm | 1750 San Ysidro Crossing | 1 | 2.5 | Yes |
| 8 | Santa Fe Tree Farm | 1751 San Ysidro Crossing | 1 | 2.5 | Yes |
| 9 | Santa Fe Community Farm | | 1 | 12.4 | Yes |
| If adjacent property owners requests are included, this property is contiguous | | | | | |
| 10 | Arthur and Amada Mae Montoya | Unassigned Location Address | 1 | 2.91 | contiguous |
| 11 | Frank Montoya | 1130 Camino Tranquillo | 1 | 2.84 | ibid |
| 12 | Ralph and Gretchen Breggren | Unassigned Location Address | 1 | 3.948 | Yes |
| 13 | Ralph and Gretchen Breggren | | 1 | 3 | Yes |
| If adjacent property owners requests are included, this property is contiguous. Property is also north of NM 599 which is part of the TAP Ordinance. Staff recommends inclusion of approximately 13 Acres | | | | | |
| 14 | Amelia Romero | Unassigned Location Address | 1 | 12.714 | ibid |
| 15 | Karen Romero | 4115 Alameda | 1 | 3 | Yes |
| 16 | Amelia Romero | Unassigned Location Address | 1 | 14.17 | Yes |
| 17 | James and Sandra Cassel | 4111 Alameda | 1 | 2.641 | No |
| No-property is adjacent to public land which is contiguous to THC | | | | | |
| 18 | Santos Montoya | 1638 Camino McMillan | 1 | 1.3 | Yes |
| 19 | Georgia Wofford | 3086 Agua Fria | 1 | 2.397 | Yes |
| 20 | Zane Fischer and Sylvie Baumgartel | 3094 Agua Fria | 1 | 2.651 | Yes |
| 21 | Barbara Douglas | 3807 Wofford Lane | 1 | 2.853 | Yes |
| 22 | Barbara Douglas | 3801 Wofford Lane | 1 | 1.902 | Yes |
| If adjacent property owners requests are included, this property is contiguous | | | | | |
| 23 | Barbara Douglas and Sally Grenall | 3800 Wofford Lane | 1 | 2.518 | contiguous |
| If adjacent property owners requests are included, this property is contiguous | | | | | |
| 24 | Sally Grenall | 3804 Wofford Lane | 1 | 2.003 | contiguous |
| If adjacent property owners requests are included, this property is contiguous | | | | | |
| 25 | Sally Grenall | 3808 Wofford Lane | 1 | 2.768 | contiguous |
| 26 | Mary Stacy | 4721 Agua Fria | 1 | 35 | No-property is adjacent to public land which is contiguous to THC |
| Total Acreage Requested | | | | 154.935 | |

Inclusion Requests not contiguous to Village of Agua Fria THC

| | | | | | |
|----|------------------|--|---|------|----|
| 27 | John Winneberger | | 1 | 0.51 | No |
| 28 | Delores Durnell | | 1 | 0.51 | No |
| 29 | Delores Durnell | | 1 | 4.35 | No |
| 30 | Judith Terley | | 1 | | |

SHC CLERK RECORDED 02/23/2007





SHC
CLERK
RECORDED
02/23/2007

Memorandum

TO: Stephen Ross
FROM: Carolyn Glick
RE: Mattson Subdivision
DATE: December 11, 2006

The question raised by this case is whether the “fractional ownership” proposed by the developer falls within the definition of “time-share unit” in the Extraterritorial Zoning Ordinance. My opinion is that it does and that the developer therefore has to request a special exception from the EZC.

A “time-share unit,” under the EZO, means “two or more accommodations or dwelling units on the same property, and related facilities, for which the right of use or occupancy or ownership interest is shared by various persons in accordance with a time schedule.” (the Ordinance defining “time-share unit” is attached).

Rosanna Vazquez, the attorney for the developer, states in her December 4, 2006 letter to me that the single most important distinction between fractional ownership and a timeshare is that with fractional ownership, you have a deed, and own the property. She says, “With a timeshare, the only thing owned is the right to a period of time in which you can visit. You have no deed, you do not pay taxes on the property, and you do not need to worry about maintenance or upkeep.” My research shows otherwise. The attached article from the Federal Trade Commission website describes a timeshare as a “deeded timeshare ownership.” It explains:

In a timeshare, you either own your vacation unit for the rest of your life, for the number of years spelled out in your purchase contract, or until you sell it. Your interest is considered real property. You purchase the right to use a specific unit at a specific time every year, and you may rent, sell, exchange, or bequeath your specific timeshare unit. You and the other timeshare owners collectively own the resort. Unless you’ve bought the timeshare outright for cash, you are responsible for paying the monthly mortgage. Regardless of how you bought the timeshare, you also are responsible for paying an annual maintenance fee; property taxes may be extra.

The FTC distinguishes a timeshare from a “vacation plan,” which it explains is a “right to use” option where the developer owns the resort and you purchase the right to use an interval at the resort for a specific number of years. Wikipedia, an on-line encyclopedia, describes two types of timeshare ownership: deeded and right to use contracts. It explains, “With deeded contracts the use of the timeshare resort is usually divided into weeklong increments and these are sold as fractional ownership and are real property.” It explains that with right to use, “the timeshare purchaser has the right to use the property in accordance with the contract but at some point the contract ends and all rights revert to the property owner.”

Another website, bankrate.com (attached), explains fractional ownership and compares it to timeshares as follows:

If it [fractional ownership] sounds a lot like a time share, that's because there are similarities. The more fractions that are sold, the more it resembles a time share. Both can be bought as deeded properties (some time shares are now sold as club memberships instead of time in a specific unit), and can be rented out, shared with family and friends, sold or left to someone in a will. . . . The big differences between time shares and fractional ownership properties are prices, financing and fees. While time shares can be had for a few thousand dollars, fractional ownerships can run \$100,000 or more – much more.

With regard to the particular definition of "time-share unit" in the EZO, Ms. Vazquez says that fractional units are not time-share units because the ownership interest is not shared in accordance with a time schedule. I do not see how this is possible. If the ownership interest is shared, I do not see how it cannot be in accordance with a time schedule.

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SANTA FE EXTRATERRITORIAL ZONING AUTHORITY

Ordinance No. 1999 - 1

An Ordinance amending Section 2, Definitions, Section 6, Industrial, commercial & other Non-residential Uses and Section 7, Special Exceptions of Ordinance 1997-2, the Santa Fe Extraterritorial Zoning Ordinance, in order to define "time-share" units as commercial uses for purposes of zoning in the Extraterritorial Zoning District.

BE IT ORDAINED BY THE EXTRATERRITORIAL ZONING AUTHORITY OF THE CITY AND COUNTY OF SANTA FE THAT THE EXTRATERRITORIAL ZONING ORDINANCE BE AMENDED AS FOLLOWS:

Section 1.

SECTION 2, DEFINITIONS, is amended to add a definition for time-share units which shall be incorporated into Section 2 in the proper alphabetical order.

Time-share Unit - means two or more accommodations or dwelling units on the same property, and related facilities, for which the right of use or occupancy or ownership interest is shared by various persons in accordance with a time schedule.

Time-share Interval - the period or length of time of occupancy in a time-share unit.

Section 2.

SECTION 6. INDUSTRIAL, COMMERCIAL AND OTHER NON-RESIDENTIAL USES, F. Guidelines for Permitted Uses and Structures is amended to include time-share units as a type of permitted use in Regional or Major or Community Commercial or Industrial Non-residential Districts as follows:

1. Guidelines for Types of Permitted Uses and Structures in Regional or Major or Community, Commercial or Industrial Non-residential Districts

h. Hotels, motels, bed and breakfast inns, time-share units with a time-share interval of three (3) months or less;

Section 3.

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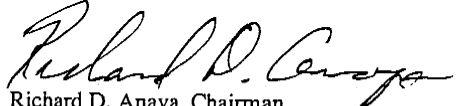
Section 7 SPECIAL EXCEPTIONS, D. is amended to include time-share units as special exceptions in resorts as follows:

10. Guest ranches, bed and breakfast inns, cottages, casitas, or cabins; time-share units with a time-share interval of three (3) months or less;


Severability 1662982

If any part of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and its application to other persons or circumstances shall not be affected thereby.


PASSED, ADOPTED AND APPROVED this 29th day of June, 1999, by the Santa Fe Extraterritorial Zoning Authority.


Richard D. Anaya, Chairman

ATTEST:


Rebecca Bustamante
County Clerk

APPROVED AS TO FORM:


Denice Brown, County Attorney


Mark Basham, City Attorney

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CERTIFICATE OF FILING 1662983

I, Yolanda Y. Vigil, City Clerk, do hereby certify that the foregoing ordinance, designated as EZ Ordinance, No. 1999 - 1, was filed in my office on the 5th day of July, 1999.

SANTA FE CITY CLERK

Yolanda Y. Vigil
Yolanda Y. Vigil

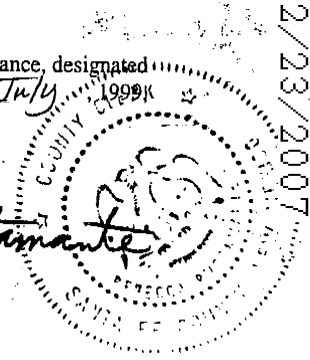


CERTIFICATE OF FILING

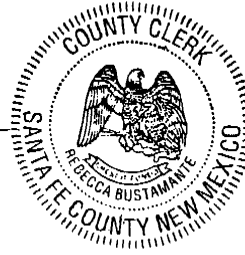
I, Rebecca Bustamante, County Clerk, do hereby certify that the foregoing ordinance, designated as EZ Ordinance, No. 1999 - 1, was filed in my office on the 12 day of July, 1999, in Book Number 1062 at Page 981-984

SANTA FE COUNTY CLERK

Rebecca Bustamante
Rebecca Bustamante



1081. 988
COUNTY OF SANTA FE)
STATE OF NEW MEXICO)
I hereby certify that this instrument was filed for record on the 12 day of July A.D. 19 99, at 1:58 o'clock P.m. and was duly recorded in book 1062 page 981-984 of the records of Santa Fe County.



Witness my Hand and Seal of Office
Rebecca Bustamante
County Clerk, Santa Fe County, N.M.

Michelle Alvarado
Deputy

SFC CLERK RECORDED 02/23/2007



Facts for Consumers

PDF Version



SFC CLERK RECORDED 02/23/2007

Time and Time Again: Buying and Selling Timeshares and Vacation Plans

The thought of owning a vacation home may sound appealing, but the year-round responsibility — and expense — that come with it may not. Purchasing a timeshare or vacation plan may be an alternative. If you consider a timeshare or vacation plan, the Federal Trade Commission (FTC), the nation's consumer protection agency, says it's a good idea to do some homework.

The Basics

Two basic vacation ownership options are available: timeshares and vacation interval plans. You should know that the value of these options is in their use as vacation destinations, not as investments. Because so many timeshares and vacation interval plans are available, the resale value of yours is apt to be a good deal lower than what you paid. Both a timeshare and a vacation interval plan require you to pay an initial purchase price and periodic maintenance fees. The initial purchase price may be made all at once or over time; periodic maintenance fees are likely to increase every year.

Deeded Timeshare Ownership. In a timeshare, you either own your vacation unit for the rest of your life, for the number of years spelled out in your purchase contract, or until you sell it. Your interest is legally considered real property. You purchase the right to use a specific unit at a specific time every year, and you may rent, sell, exchange, or bequeath your specific timeshare unit. You and the other timeshare owners collectively own the resort.

Unless you've bought the timeshare outright for cash, you are responsible for paying the monthly mortgage. Regardless of how you bought the timeshare, you also are responsible for paying an annual maintenance fee; property taxes may be extra. Owners share in the use and upkeep of the units and of the common grounds of the resort property. A homeowners' association usually handles management of the resort. Timeshare owners elect officers and control the expenses, the upkeep of the resort property, and the selection of the resort management company.

"Right to Use" Vacation Interval Option. In this option, a developer owns the resort, which is made up of condominiums or units. Each condo or unit is divided into "intervals" — either by weeks or the equivalent in points. You purchase the right to use an interval at the resort for a specific number of years — typically between 10 and 50 years. The interest you own is legally considered personal property. The specific unit you use at the resort may not be the same each year. In addition to the price for the right to use an interval, you pay an annual maintenance fee that is likely to increase each year.

Within the "right to use" option several plans can affect your ability to use a unit:

Fixed or Floating Time. In a fixed time option, you purchase the unit for use during a specific week of the year. In a floating time option, you use the unit within a certain season of the year, reserving the time you want in advance; confirmation typically is provided on a first-come, first-served basis.

Fractional Ownership. Rather than an annual week, you buy a large share of vacation ownership time, usually up to 26 weeks.

Biennial Ownership. You use a resort unit every other year.

Lockoff or Lockout. You occupy a portion of the unit and offer the remaining space for rental or exchange. These units typically have two to three bedrooms and baths.

Points-Based Vacation Plans. You purchase a certain number of points, and exchange them for the right to use an interval at one or more resorts. In a points-based vacation plan (sometimes called a vacation club), the number of points you need to use an interval varies according to the length of the stay, size of the unit, location of the resort, and when you want to use it.

Before You Buy

In calculating the total cost of a timeshare or vacation plan, include mortgage payments and expenses, like travel costs, annual maintenance fees and taxes, closing costs, broker commissions, and finance charges. Maintenance fees can rise at rates that equal or exceed inflation, so ask whether your plan has a fee cap. You must pay fees and taxes, regardless of whether you use the unit.

To help evaluate the purchase, compare these costs with the cost of renting similar accommodations with similar amenities in the same location for the same time period. If you determine that purchasing a timeshare or vacation plan makes sense, comparison

shopping is your next step.

- Evaluate the location and quality of the resort, as well as the availability of units. Visit the facilities and talk to current timeshare or vacation plan owners about their experiences. Local real estate agents also can be good sources of information. Check for complaints about the resort developer and management company with the state Attorney General, and local Better Business Bureau and consumer protection officials.
- Research the track record of the seller, developer, and management company before you buy. Ask for a copy of the current maintenance budget for the property. Investigate the policies on management, repair, and replacement furnishings, and timetables for promised services.
- Get a handle on all the obligations and benefits of the timeshare or vacation plan purchase. Is everything the salesperson promises written into the contract? If not, walk away from the sale.
- Don't act on impulse or under pressure. Purchase incentives may be offered while you are touring or staying at a resort. While these bonuses may present a good value, the timing of a purchase is your decision. You have the right to get all promises and representations in writing, as well as a public offering statement and other relevant documents.
- Study the paperwork outside of the presentation environment and, if possible, ask someone who is knowledgeable about contracts and real estate to review it before you make a decision.
- Get the name and phone number of someone at the company who can answer your questions — before, during, and after the sales presentation, and after your purchase.
- Ask about your ability to cancel the contract, sometimes referred to as a "right of rescission." Many states — and maybe your contract — give you a right of rescission, but the amount of time you have to cancel may vary. State law or your contract also may specify a "cooling-off period" — that is, how long you have to cancel the deal once you've signed the papers. If a right of rescission or a cooling-off period aren't required by law, ask that they be included in your contract.
- If, for some reason, you decide to cancel the purchase — either through your contract or state law — cancel it in writing. Send your letter by certified mail, return receipt requested, so you can document what the seller received. Keep copies of your letter and any enclosures. You should receive a prompt refund of any monies you paid, as provided by law.
- Use an escrow account if you're buying an undeveloped property, and get a written commitment from the seller that the facilities will be finished as promised. That's one way to help protect your contract rights if the developer defaults. Make sure your contract includes clauses concerning both "non-disturbance" and "non-performance." A non-disturbance clause ensures that you'll be able to use your unit or interval if the developer or management firm goes bankrupt or defaults. A non-performance clause lets you keep your rights, even if your contract is bought by a third party. You may want to contact an attorney who can provide you with more information about these provisions.
- Be wary of offers to buy timeshares or vacation plans in foreign countries. If you sign a contract outside the U.S. for a timeshare or vacation plan in another country, you will not be protected by U.S. laws.

Exchange Systems

An exchange allows a timeshare or vacation plan owner to trade units for a discrete time with another owner who has an equivalent unit at an affiliated resort within the system. Here's how it works: A resort developer has a relationship with an exchange company, which administers the service for owners at the resort. Owners become members of the exchange system when they buy their timeshare or vacation plan. At most resorts, the developer pays for each new member's first year of membership in the exchange company, but members pay the exchange company directly after that.

To participate, a member must deposit a unit into the exchange company's inventory of weeks available for exchange. When a member takes a week from the inventory, the exchange company charges a fee.

In a points-based exchange system, the interval is automatically put into the inventory system for a specified period when the member joins. Point values are assigned to units based on length of stay, location, unit size, and seasonality. Members who have enough points to secure the vacation accommodations they want can reserve them on a space-available basis. Members who don't have enough points may want to investigate programs that allow banking of prior-year points, advancing points, or even "renting" extra points to make up differences.

Whether the exchange system works satisfactorily for owners is another issue to research before buying. Keep in mind that, you will pay all fees and taxes in an exchange program no matter whether you use your unit or someone else's.

Selling a Timeshare

If you want to sell your deeded timeshare, and a company approaches you offering to resell your timeshare, go into skeptic mode:

- Don't agree to anything over the phone or online until you've had a chance to check out the reseller. Contact the Better Business Bureau, state Attorney General, and local consumer protection agencies in the state where the reseller is located. Ask if any

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complaints are on file.

- Ask the salesperson for all information in writing.
- Ask if the reseller's agents are licensed to sell real estate where your timeshare is located. If so, verify it with the Real Estate Commission. Deal only with licensed real estate brokers and agents, and ask for references from satisfied clients.
- Ask how the reseller will advertise and promote the timeshare unit. Will you get progress reports? How often?
- Ask about fees and timing. It's preferable to do business with a reseller that takes its fee after the timeshare is sold. If you must pay a fee in advance, ask about refunds. Get refund policies and promises in writing.
- Don't assume you'll recoup your purchase price for your timeshare, especially if you've owned it for less than five years and the location is less than well-known.
- If you want an idea of the value of a timeshare that you're interested in buying or selling, consider using a timeshare appraisal service. The appraiser should be licensed in the state where the service is located. Check with the state to see if the license is current.

Contract Caveats

Before you sign a contract with a reseller, get the details of the terms and conditions of the contract. It should include the services the reseller will perform; the fees, commissions, and other costs you must pay and when; whether you can rent or sell the timeshare on your own at the same time the reseller is trying to sell your unit; the length or term of the contract to sell your timeshare; and who is responsible for documenting and closing the sale.

If the deal isn't what you expected or wanted, don't sign the contract. Negotiate changes or find another reseller.

Resale Checklist

Selling a timeshare is a lot like selling any other piece of real estate. Check with the resort to determine restrictions, limits, or fees that could affect your ability to resell or transfer ownership. Then, make sure that your paperwork is in order. You'll need:

- the name, address, and phone number of the resort;
- the deed and the contract or membership agreement;
- the financing agreement, if you're still paying for the property;
- information to identify your interest or membership;
- the exchange company affiliation;
- the amount and due date of your maintenance fee;
- the amount of real estate taxes, if billed separately.

For More Information

To learn more about vacation ownership, contact the American Resort Development Association. It represents the vacation ownership and resort development industries. ARDA has nearly 1,000 members, ranging from privately-held companies to major corporations, in the U.S. and overseas.

American Resort Development Association
1201 15th Street N.W., Suite 400
Washington, D.C. 20005
(202) 371-6700; Fax: (202) 289-8544
www.arda.org

To File a Complaint

Timesharing usually is regulated through the Real Estate Commission in the state where the timeshare property is located. The sale of vacation plans generally is not regulated at all. However, if you believe you've been the victim of false or deceptive advertising or marketing of a vacation plan, contact the Federal Trade Commission.

The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit www.ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

March 2005



Timeshare

From Wikipedia, the free encyclopedia

For the movie, see Time Share.

A **timeshare** is a form of vacation property ownership. With timeshares, the use and costs of running the resort are shared among the owners. While the majority of timeshares are condominium vacation resorts, developers have applied the timeshare model to houseboats, yachts, campgrounds, motor homes and cruises.

The notion of a timeshare was originally created in Europe in the 1960s. A ski resort developer in the French Alps innovatively marketed his resort by encouraging guests to "stop renting a room" and instead "buy the hotel". The developer was successful in increasing occupancy and the idea spread worldwide. While a useful tool for many, the timeshare industry has also become a magnet for attracting illegal and barely legal methods for the sale and resale of property.

Methods of use

Timeshare is a business model whereby a company buys something and sells small slices of it to customers. This concept is most frequently used for vacation condominiums/homes, but it has also been used for high end private jets. In general, "timeshare" refers to the former rather than the latter.

Timeshare owners may elect to:

- Use their usage time
- Rent out their owned usage
- Give it as a gift
- Exchange internally within the same resort or resort group
- Exchange externally into thousands of other timeshare resorts

Though some developers may limit which of these options are available at their properties

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Timeshare owners can elect to stay at their resort during the prescribed period, which varies depending on the nature of their ownership. In many resorts, they can rent out their week or give it as a gift to friends and family.

Timeshare offers owners the possibility to exchange their week, either independently or through several exchange agencies, to stay at one of the thousands of other resorts worldwide. There are many exchange agencies, of which the two largest are Resort Condominiums International and Interval International. Both have resort affiliate programs and members can only exchange to affiliate resorts. It is rare to find a dual affiliate resort, it is more common for a resort to be affiliated with only one of the larger exchange agencies. Together they have over 5800 resorts. The timeshare resort one purchases at determines which of the major exchange companies can be exchanged through. Both RCI and II charge membership fees and exchange fees. They also bar members from renting weeks they have exchanged for.

Timeshare owners may also arrange a direct exchange, this requires locating a timeshare owner with the location and weeks both mutually desire. This form of exchange is rare but since it can save in exchange fees it is often sought after. Several bulletin boards have been created to help timeshare owners meet others and swap.

Timeshare takes different forms depending on who is selling it. The vast majority is one week of ownership, i.e. 1/52 year, but some developers sell point based systems that are a different form of vacation currency that allow hotel stays, car rentals, and stays at large networks of resorts.

Ownership

Types of ownership

Fixed, Floating and Rotating Weeks

Ownership is often sold as weeks, the use of these weeks can be fixed, floating or rotating weeks.

Fixed Week Ownership

The most basic timeshare unit is a fixed week; the resort will have a calendar enumerating the weeks roughly starting with the first calendar week of the year. As an owner you may own a deed to use a unit for a single specified week. For example week 26 normally includes the Fourth of July Holiday. If you owned Week 26 at a resort you could use your week every year.

Floating

Sometimes a timeshare is sold as floating weeks. The ownership will be specific on how many weeks you own and from which weeks you may select for your stay. An example of this, a timeshare may be a floating summer week where the owner may request any week during the summer season generally weeks 22 through 36. In this example there would be competition for prime holidays such as the weeks of Memorial Day, Fourth of July and Labor Day. The weeks when schools may still be in session would not be so high in demand. Some floating contracts exclude major holidays so they may be sold as fixed weeks.

Rotating

Some timeshare is sold as rotating weeks. In an attempt to give all owners a chance for the best weeks the weeks are rotated forward or backward through the calendar so one year the owner may have use of week 25, then week 26 the next year and then week 27 the year after that. This method does give each owner a fair opportunity for prime weeks but it is not flexible.

Deeded vs. Right to Use

A major difference in types of timeshare ownership is that between deeded and right to use contracts. With deeded contracts the use of the timeshare resort is usually divided into weeklong increments and these are sold as fractional ownership and are real property. As with any other piece of real estate you may use your week, rent your week, give it away, or leave it to your heirs. Whilst this form of ownership can offer additional security to the owner as a form of physical ownership, deeded timeshare ownership can be as complex as outright property ownership in that the structure of deeds varies according to local property laws. Leasehold deeds are common and offer ownership for a fixed period of time after which the ownership reverts to the Freeholder. Occasionally, leasehold deeds are offered in perpetuity however many do not convey ownership of the land but merely the apartment or 'unit' of accommodation.

With right to use, the timeshare purchaser has the right to use the property in accordance with the contract but at some point the contract ends and all rights revert to the property owner. In other words, the right to use contract grants the right to use the resort for a specific number of years. In many countries there are severe limits on foreign property ownership, so this is a common method for developing timeshare resorts in countries such as Mexico. Disney Vacation Club is also sold as a right to use. Care should be taken with this form of ownership as the right to use often takes the form of 'club membership' or right to use the reservation system. Where the reservation system is owned by a Company not in the control of the owners, the right of use may be lost with the demise of the controlling Company.

Vacation Clubs

Vacation clubs are organizations that may own timeshare units in multiple resorts in different locations. Some clubs consist only of individual weeks at other developer's resorts. They are sold both as deeded or right to use and club members may reserve vacation time at any of the owned resort units based on availability. Vacation clubs cater to a wide range of economic backgrounds and income levels.

Points Programs

Resort based points programs are also sold as deeded and as right to use. Points programs annually give the owner an amount of points equal to the level of ownership. The timeshare owner in a points program can then use these points to make travel arrangements within the resort group. Many points programs are affiliated with large resort groups offering a large selection of options for destination. Many resort point programs provide flexibility from the traditional week stay. Resort point program members, such as Worldmark (<http://www.wmowners.com>), may request from the entire available inventory of the resort group.

Exchange company point programs are not a method of ownership nor are specifically associated with one resort or resort group. With the exchange company points programs the members may be limited to exchanging for weeks deposited by other members.

A points program member may often request fractional weeks as well as full or multiple weeks stays. The number of points required to stay at the resort will vary based on a points chart. The points chart will allow for factors such as:

- The popularity of the resort;
- The size of the accommodations;
- The number of nights;
- The popularity of the season;
- and the specific nights requested.

There is flexibility as well as complexity in point programs.

Important Note on Ownership

- With any of the above mentioned ownership methods, a timeshare owner is legally and contractually *tied* to that ownership.
- A timeshare owner has rights, responsibilities and legal obligations. Once the timeshare contract is made it is not easily ended.
- These contracts and obligations belong to the timeshare owner until the timeshare is sold or ownership is transferred through some other means.

Rescission Period

In many developer contracts (and often required by government statutes and/or regulations) there may exist a

Rescission period. The Rescission period outlines how many days after a timeshare purchase, from a developer, that a buyer has an opportunity to change their mind and cancel the purchase. The Rescission period is usually only a few days long and the buyer must follow the cancellation procedure exactly or risk the request to rescind being ignored.

Types and sizes of timeshare units

Timeshare properties tend to be apartment-style units ranging in size from studio units (with room for two) to three and four-bedroom units. These larger units can comfortably house large families. Timeshare units normally include fully equipped kitchens with a dining area, dishwasher, televisions, VCRs and more. It is not uncommon to have washers and dryers either in the unit or easily accessible on the resort. Kitchens are equipped to the size of the unit, so that a unit that sleeps four should have at least four glasses, plates, forks, knives, spoons, and bowls so that all four guests can sit and eat at once.

Timeshare units are usually listed by how many the unit will sleep and how many the unit will sleep privately.

- Sleeps 2/2 would normally be a one bedroom or studio
- Sleeps 6/4 would normally be a two bedroom with a sleeper sofa

Sleep privately refers to the number of guests who will not have to walk through another guests sleeping area to use a restroom. Timeshare resorts tend to be strict on the number of guests per unit. Unit size can effect demand at a given resort where a two-bedroom unit may be in higher demand than a one-bedroom unit at the same resort. The same does not hold true comparing resorts in different locations. A one bedroom with a great location may still be in higher demand than a resort with less demand. An example of this may be a one bedroom at a great beach resort compared to a two bedroom unit at a resort located inland from the same beach.

The concept of vacation timeshare has also been extended to luxury items such as planes and luxury cars.

Scope of timeshare industry

Today's timeshare industry includes over 5000 resorts worldwide, for a total of 11 million timeshare "intervals" that have been individually sold to nearly 7 million families around the world. There are timeshare resorts around the world. Global timeshare sales total over \$9 billion annually. ARDA, American Resorts Development Association, reported that in the USA, as of January 1, 2005, there were 1668 timeshare resorts serving 3.87 million US households. Ownership has increased in the USA 16.2 percent in 2004 and 13.8 percent in 2003.

There exists a resale industry for the resale of timeshare intervals. Many of these can be found searching the Internet as well as an active market in the online auction sites such as that on eBay. Most management companies of individual timeshare resorts also have on-site resales offices which an assist you in selling your timeshare or purchasing additional weeks at the resale price. Some entrepreneurs allow donation of a timeshare for tax benefits.

Pros and cons

The timeshare industry has been widely criticized and even sometimes likened to a travel scam^[1]. Unlike the customary renting arrangement, where the customer decides every year on the quality and price of accommodations, timeshare requires to make a major payment up front. There exist doubts as to whether timeshare buyers ever recover the money spent.

There are also some complaints that owners have to return to the same resort every year, but there exist several companies that enable timeshare owners to exchange their weeks into literally thousands of resorts around the world. There are a growing number of independent timeshare exchange organizations available to timeshare owners.

Other complaints include issues surrounding the yearly maintenance fee. Some critics talk of ever escalating fees that mean owners cannot afford to keep their weeks due to financial pressure.

One of the major benefits of the product is the fact that vacation timeshare is real property. Resort developers purchase land in a location and develop a timeshare resort. They are actually selling consumers deeded weeks of real property at a specific location, meaning customers can do what they wish with the weeks they own. This flexibility includes the opportunity to rent out weeks that are not used or indeed to lend them to friends or family.

Persons interested in purchasing a timeshare are strongly advised to look online at the secondary market listings for the development they are interested in. Developers put a very large mark up on new inventory and a new owner will find the resale value of their timeshare to be half or less of what they purchased it for. It is also very helpful to have this information in hand **before** going into any timeshare sales presentation.

Like any other product, timeshare exchange is subject to the law of supply. This should make the exchange mechanism a fair and meritocratic system. For example if a timeshare owner deposits a studio apartment in low season that owner is unlikely to be able to exchange into a villa during a country's high season. In practice the major exchange companies have proprietary exchange formulas that add complexity to the system. The study of and issues revolving around exchanging are beyond the scope of this article and should be researched before making any timeshare purchase.

One aspect that is little known outside of the travel industry is that timeshare companies generally have very generous compensation programs for those sales agents able to convince individuals to take a tour of their timeshare facilities (something that normally takes approximately 90 minutes). With this in mind, a crafty individual can bargain for incredible vacation deals with a sales agent if they are willing to spare a bit of time. At one time, timeshares were known for applying considerable pressure to these touring individuals to purchase (even prompting a *South Park* episode called Asspen parodying the process), though that is generally supposed to have been lessened after a backlash by customers. The movie *Once Around* provided a look at the "inside" of a timeshare company. Each timeshare has its own rules for who its willing to allow tour, and most only allow one tour per year, though this does not prevent multiple tours from different resorts. An entire industry has sprung up based around this concept, negating the need for the frugal individual to do his own bargaining.

Several people have discussed what should be the motives for purchasing a timeshare^[2]. It is important to review them based on the facts and avoiding to be trapped with false expectations.

See also

- List of house types
- Time Share Tours

External links

- ARDA, American Resort Development Association (<http://www.arda.org>) .
- ATSPI, - The Association of Timeshare Sales Professionals-International. (<http://www.timeshare-sales-professionals.org>) .
- OTE, Organization of Timeshare Europe (<http://www.ote-info.com>)
- CRDA ,Canadian Resort Development Association (<http://www.crda.com>)
- AIRDA, All India Resort Development Association (<http://www.airda.org/>)
- ATHOC, Australian Timeshare and Holiday Ownership Council (<http://www.athoc.com.au>)
- TVOA, Thai Vacation Ownership Association (<http://www.tvoa.org>)

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Category: Articles with unsourced statements

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Fractional ownership: Get a piece of a vacation home

By [Pat Curry](#) • Bankrate.com

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A second home has been called the ultimate discretionary purchase -- something that many people would like to have but no one needs. People who do own a place at the beach, the lake or in the mountains often are quick to express frustration at not being able to spend more time there. It hardly makes sense to have the expense of a mortgage, upkeep, insurance and taxes for a place you don't use more than a couple of weeks a year.

To deal with that situation, family members and friends often have joined forces to buy a place. It cuts down on the cost and everyone gets to enjoy a place that's more than just a hotel room. In 1994, a new concept debuted in the United States -- fractional ownership of vacation homes. Patterned after fractional ownership of private jets, the concept formalizes the idea of a group of relatives or buddies pooling their resources to buy a getaway place.

Fractional ownership offers individuals the opportunity to buy partial ownership of a really nice place in a resort area. We're talking chalets with walk-out skiing in the Rockies, oceanfront houses or condos, or island properties in the Caribbean and Europe, often with resort-style amenities including on-site restaurants, fitness clubs, golf courses and a concierge service.

The arrangements usually divide the ownership into fourths, eighths, or 13ths, with each owner having an equal number of days a year to use the unit. The owners buy their shares from a management company, which handles maintenance and scheduling everyone's time.

Similar to time shares

If it sounds a lot like a time share, that's because there are similarities. The more fractions that are sold, the more it resembles a time share. Both can be bought as deeded properties (some time shares are now sold as club memberships instead of time in a specific unit), and can be rented out, shared with family and friends, sold or left to someone in a will.

Like time shares or any kind of resort property, there are small players and big guns in the business. If you're in love with one locale and could see yourself going back to the same place over and over, a small company could be just the ticket. If you'd like more flexibility, some major corporations such as Ritz-Carlton, the Four Seasons, Disney and Marriott also are in the business. All of them have resorts in various parts of the country, and even in the Caribbean and Europe, with the opportunity to swap time at other destinations.


The big difference: money

The big differences between time shares and fractional ownership properties are prices, financing and fees. While time shares can be had for a few thousand dollars, fractional ownerships can run \$100,000 or more -- much more.

"We have a property in Aspen now that the quarter shares are \$1.5 million," says Doug Freyschlag, president of Denver-based Alpine Quarters. "Even at that price level, it still makes just as much sense as any other level."

With that kind of price tag, buyers aren't subjected to the "you have to make a decision today" aggressive sales pitch that is still the prevailing strategy in the time share industry. While most developers offer their own financing for time shares (the terms are akin to those of a personal loan, in the 14 percent interest range), it's generally not an option for fractional ownership properties because the purchase is too large.

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