

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

BCC MINUTES  
PAGES: 50

I Hereby Certify That This Instrument Was Filed for  
Record On The 22ND Day Of November, A.D., 2004 at 07:58  
And Was Duly Recorded as Instrument # **1355566**  
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office  
Deputy Rebecca Bustamante County Clerk, Santa Fe, NM  
*Rebecca Bustamante*

SFC Clerk 11/22/2004

SANTA FE

BOARD OF COUNTY COMMISSIONERS

SPECIAL MEETING

August 17, 2004

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

SANTA FE BOARD OF COUNTY COMMISSIONERS  
COMMISSION CHAMBER      COUNTY ADMINISTRATION BUILDING

---

SPECIAL MEETING

August 17, 2004 – 1:30pm

# Notice of Special Meeting

Notice is hereby given that the Board of County Commissioners will hold a study session to review Module 3 (Standards) of the Land Development Code Rewrite on Tuesday August 17, 2004 at 1:30pm in the County Commissioner Chambers, 102 Grant Avenue, Santa Fe, NM.

The Agenda is as follows:

- I. Call to Order
- II. Roll Call
- III. Approval of Agenda
- IV. Study Session on Module 3 (Standards) of the Land Development Code Rewrite – Jim Duncan and Richard Grice
- V. Public Comment on Module 3 of the Land Development Code Rewrite
- VI. Commission direction to Staff moderated by Chairman Paul Campos
- VII. Adjournment

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

SFC Clerk 11/22/2004

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

**August 17, 2004**

SFC Clerk 11/22/2004

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 1:40 p.m. by Chairman Paul Campos, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Following the Pledge of Allegiance, roll was called indicated the presence of a quorum as follows:

**Members Present:**

Commissioner Paul Campos, Chairman  
Commissioner Mike Anaya  
Commissioner Jack Sullivan  
Commissioner Paul Duran [late arrival]  
Commissioner Harry Montoya

**Members Absent:**

[None]

**III. Approval of the Agenda**

GERALD GONZALEZ (County Manager): No changes to the agenda.

CHAIRMAN CAMPOS: I thought you wanted to have a discussion on certain issues like collective bargaining, or is that not going to be discussed.

MR. GONZALEZ: We didn't get any notification in time so decision.

CHAIRMAN CAMPOS: So nothing from the Manager?

MR. GONZALEZ: No.

CHAIRMAN CAMPOS: And no Matters from the Commission? You're saying it's too late to add that to our agenda right now?

MR. GONZALEZ: It was too late for publication.

CHAIRMAN CAMPOS: Even for non-action items? Just discussion? Is there any need for Commissioner discussion today.

COMMISSIONER ANAYA: I believe some of us are leaving early.

CHAIRMAN CAMPOS: What time are you leaving?

COMMISSIONER ANAYA: 2:30.

CHAIRMAN CAMPOS: 2:30. Okay, well, let's forget that and go with the agenda. Is there a motion to approve the agenda?

COMMISSIONER ANAYA: So moved.

COMMISSIONER MONTOYA: Second.

**The motion to approve the agenda passed by unanimous [4-0] voice vote.**  
[Commissioner Duran was not present for this action.]

[Commissioner Duran joined the proceedings]

#### **IV. Study Session on Module 3 of the Land Development Code Rewrite**

RICHARD GRICE: I'll start off and make a few comments. This is the third and final module of the Land Development Code rewrite. This module includes Articles VII and VIII. Article VII is the general standards; VIII is the subdivision design and improvements standards. Also it includes the non-conforming section, Article XI, and Article XII, Violations, Penalties and Enforcement. The source for the material in these sections is your existing Code. This work represents substantially a reorganization of your existing Code.

The process we went through was to review your documents paragraph by paragraph and place them in the new organizational structure. In some cases with respect to each of these various standards it amounted to consolidating those standards from various standards of the existing Code. So the consultant did an initial edit of the document, assembled the material in that way, and then we edited. Then we looked at these sections and read it and reread it and organized it in the way that seemed most logical, putting the most important things up front. Article VII begins with a broad applicability statement which explains that this article, the standards of this article apply to all development, except as otherwise specified herein.

So literally, all the standards in Article VII apply to all development countywide except as specifically otherwise specified. So it goes on to say, No building permit, Certificate of Occupancy, development permit, site development plan or subdivision shall be approved until the applicant demonstrates compliance with the applicable standards of the section. It concludes with a statement that says in the review of any proposed development on a site - I'm on page 7.1, the first page of Article VII, Applicability. It concludes with a statement that the administrator in the review of any specific development proposal on a site-specific basis, some development standards may be deemed in applicable as determined by the administrator.

The subdivision standards are not included as a part of the general development standards because they apply solely to subdivisions. So while Article VII, let me just repeat this, Article VII applies to all development whether it is a site permit, that is a building permit, or a subdivision, the standards of Article VIII apply only to subdivisions. It didn't make sense to combine those two under the same section because these sections apply to all development, that is the standards of Article VII apply to all development; the standards of Article VIII apply

just to subdivisions.

Okay, throughout the document you will notice in orange some bubbles at the side. Those are titled Editor's notes. Those are not provisions that will survive the final printing of the document. Those are the authors' notes of clarification or question to the Commissioners and decision makers. Also throughout the document you'll notice in yellow, for example on page 7-1 in the middle of page 7-1 there's a commentary box. The commentary boxes will survive. The commentaries are not regulatory in nature. That is explained on page 1-2 in Section 1.8. It explains that commentaries are not regulatory in nature but they're intended for clarification or to provide guidance for the administrators or for the applicants in understanding the document.

The water supply and landscaping standards are two sections I'll bring to your attention that have received significant new work. Water supply –

CHAIRMAN CAMPOS: Give us a page.

MR. GRICE: That would be Article – we're going to go through it section by section. I'm just trying to give you some overview comments. But Section 7.6, which begins on page 7-13 is still substantially the same material you have now although it's been updated by your hydrologist. The landscaping standards of Section 7.16 has also seen a significant update. Otherwise, throughout the document, where there are major new ideas I've tried to identify them with an Editor's note bubble. On the side it says New Idea.

Our purpose today is to hear from the Commissioners. Hopefully, you've each had the time to review the document and have some comments. I would suggest that we go through, beginning with Article VII and go through section by section, beginning with those sections that are section numbered and take them as a whole. If we're going to get through all of Section 7 and 8 today we'll need to be fairly expeditious and so I think the way to do it would be for us to primarily focus on your comments and take it section by section as a whole and see what comments you have had in reviewing the document.

CHAIRMAN CAMPOS: Mr. Grice, how much time do you think you need to make a presentation.

MR. GRICE: I'm through.

CHAIRMAN CAMPOS: I think you have to make some comments, don't you think? Overall comments, any major comment. Is that it? You've made your comments?

MR. GRICE: Those are the major comments.

CHAIRMAN CAMPOS: How much time to you think – you have to leave at 2:30, Commissioner Anaya. Commissioner Duran are you going to be here?

COMMISSIONER DURAN: I'll be here as long as we need to be here. I'd just like to say that I think we need to take our time going through this thing and not try and do 7 and 8 today if we can only get to a quarter of 7. I have a lot of questions.

MR. GRICE: Okay. That's fine. We're prepared to work with you however is necessary.

CHAIRMAN CAMPOS: Okay, let's start. Section 7.1. Any questions, any comments from the Commission? 7.2 or 7.3? Okay. Comments, Commissioner.

COMMISSIONER DURAN: 7.3. Legal lots of record. I know that in the past there have been developments and in particular there was one called the Thornburg property. It was a ranch that had 100 or more US patents. And those patents were used to determine whether or not the ranch – how many legal lots comprised the ranch. And in looking at how you determine what establishes a legal lot of record, I don't see any mention here about US patents and I'm wondering if staff or you could talk to me about that.

PENNY ELLIS GREEN (Planner): Mr. Chair, Commissioners, they would actually meet B. They would be a parcel or tract created prior to the effective date of the Code. I think all of those patent in questions were before 1981 and therefore they would meet section B and this is from existing Code.

MR. GRICE: A patent is the same as a deed. It complies. I agree completely. It satisfies the provisions of B.

COMMISSIONER DURAN: Thank you. No other questions on that.

CHAIRMAN CAMPOS: Okay, 7.4, Easements. Commissioner Sullivan.

COMMISSIONER SULLIVAN: On 7.4.1.B, and I know this language, most of it is already there, so they may be things that are in the Code that are unclear that we should fix. It says Roads shall be privately owned and maintained. Well of course not all roads that we do are privately owned. Some come in and are dedicated to the County as a condition of their approval. How does that jibe with this sentence.

CHAIRMAN CAMPOS: Are you talking about subdivision roads or – roads outside subdivisions would regularly be public, right?

COMMISSIONER SULLIVAN: I'm not clear as to what roads would we be talking about here?

MS. ELLIS-GREEN: Mr. Chair, Commissioner, these would be all the roads created in general. What we probably need here is an exception saying unless the Board of County Commissioners accept one of those roads. It's a County owned or County maintained road.

COMMISSIONER SULLIVAN: So when would all of these road criteria apply? If someone's not doing a subdivision they would apply when?

MS. ELLIS-GREEN: It could be a subdivision, any of the exemptions, and it could be a commercial development as well. So this would be when someone is developing a property. So we're saying that the roads would be privately owned and maintained, and if we add in, unless it's approved and accepted by the Board of County Commissioners.

COMMISSIONER SULLIVAN: Okay, then I think we need to give some thought to these easement widths. 38 feet for access to three or more lots in my judgement is just not enough. Particularly if you have – and we have no requirements in here for bike lanes. When you look at the chart, if you go to page 7-6 there's a chart of various road widths and so forth. And I think charts like this are useful; I like to see as much as we can put into these charts. But in that chart for example there is no line for bike lanes. So there appears to be no requirement for bike lanes. I don't know quite how to satisfy it but I'm just suggesting that's something to think about, the requirement for bike lanes.

Also, on the second to last line, where we talk about average daily traffic, I think we should clarify that by saying projected average daily traffic as opposed to existing average daily traffic.

COMMISSIONER DURAN: Where are you Commissioner?

COMMISSIONER SULLIVAN: I'm on that chart on 5.7.7 under geometric standards. See where it says average daily traffic down near the bottom? Really what we're talking about is projected.

CHAIRMAN CAMPOS: Can we stay in 7.4?

COMMISSIONER SULLIVAN: I just had to hop over because these 20 feet and these 38 feet hop over to that chart, is the reason.

CHAIRMAN CAMPOS: You're saying 38 is not wide enough?

COMMISSIONER SULLIVAN: Correct. And it's not wide enough in many cases because we need bike lanes, but when you go to chart 7.5.7 there's no mention of bike lanes.

CHAIRMAN CAMPOS: Do they talk about sidewalks?

COMMISSIONER SULLIVAN: Not here they don't. They probably do in the subdivision section.

MS. ELLIS-GREEN: Mr. Chair, for that easement width, I think that comes from existing Code for summary subdivisions and exemptions. So that would be for a family transfer or five or fewer lots being created. This would not be the case of someone creating a 50-lot subdivision. So we need to clarify that.

COMMISSIONER SULLIVAN: I think we need to say that this only applies to whatever it is and I don't know that just because it's a family transfer doesn't mean we should have unsafe roads. I don't know that it should be applicable 38 feet for a family transfer because we're seeing pretty big family transfers. And I think the exception, I think we need to think about why the administrator would ever want the authorization to approve a reduction in a road easement less than 20 feet. Now I can think perhaps in a traditional community where for some reason we're going to accept a road. Is that what you had in mind there?

MS. ELLIS-GREEN: Mr. Chair, again this comes from existing Code. Existing Code actually only allows this for offsite road improvements. The exemption for offsite. What we've had in many cases is that existing road easement is maybe 20 foot and then we're requiring someone doing a land division to be at 24 foot. So you're going from an unimproved 20-foot wide or even smaller road easement that's existing to a 24-foot wide basecourse road. And people, especially in traditional communities have a difficult time meeting the 3/4 acre minimum, which is the minimum net acreage in order to get a septic permit. So as you start taking a larger road easement, you get smaller net sized lots.

So the administrator has in the past been able to do this for offsite roads but still required it for onsite roads. Staff didn't think that there was really any point in allowing it offsite and not onsite. But if you've got, say, a fifteen-foot wide easement that's existing offsite, then what we tend to hear from people is that if you're going from a 15-foot wide dirt wide, all of a sudden on their property they've got to build a 24-foot wide basecoursed road. And it

doesn't really make any sense for them for two or three lots, which is why we opened it up for onsite and offsite. But again, with the understanding that it's got to have a hard-packed road surface and it's got to have drainage control. And also we do look at the Fire Marshal's comments on this as well and make sure they've got turn-around as well.

COMMISSIONER SULLIVAN: The only problem I have with that theory, and allowing it now onsite as well as offsite, which is a change in what we do now, is that one of the tricks in the past has been that we do driveways. The driveways go three miles back and they go with these 15-foot easements, and then they work their way out on a serial subdivision from that driveway standard, 15 lots, they go three lots and they come back and they say, Okay, that's 15 feet. Then they come all the way back to the main highway that way. And they've done that particularly off in the Cerrillos area.

So it's what I call a serial driveway. And that's how you do it is that way. So I would suggest some thinking on that as well. If you want to clarify it that it's offsite that perhaps might help. That's all the comments I have on 7.4.

CHAIRMAN CAMPOS: Any other questions?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: Commissioner Sullivan, so your concern was the width of the road?

COMMISSIONER SULLIVAN: Number one was the general 38-foot width and then number two was the conditions under which an exception would be granted. Before it was only granted for an offsite road, but as Penny said, apparently people come in and say, Oh, gee. Well if you're going to do it for the offsite it doesn't make any sense to do it for the onsite. But what happens is, if you don't do it for the onsite -- think of it this way -- you do a long lot. You develop the furthest lot from you and if we don't make that one 24 foot, then the one next to it, when it develops doesn't have to be 24 feet, because it's only 15 or whatever. And then the one next to it doesn't have to be 24 feet.

So the way it's done is you develop the furthest lot and then you move forward on these three-lot serial subdivisions until you've got to the highway and eventually had 15 or 20 units and they're all under the road categorization of driveway. And they're all on these 15, 12-foot dirt roads, because nobody had to build a 24-foot road, starting with the very furthest lot from the road. And that's how you do it. And it seems to me we shouldn't be doing that. We should require that 24-foot, sure it doesn't make sense but what you'll find is next year, the owner will go and the next adjacent lot will develop. And at that point in time, that one should be 24 feet and on out until you get to the road, to the main road. I don't know if it clarifies but that's what I'm thinking.

COMMISSIONER ANAYA: No.

COMMISSIONER SULLIVAN: No? I knew it.

COMMISSIONER ANAYA: Right now, you're asking for how many feet?

COMMISSIONER SULLIVAN: Right now we're asking for 20 feet. We used to ask for 20 feet offsite. Is that right, Penny?



MS. ELLIS-GREEN: We used to be able to reduce it if it was offsite.

COMMISSIONER SULLIVAN: Reduce it to 20 feet offsite. And that's the way, from the 38. But now they've changed it to they can reduce it to 20 feet anywhere along the subdivision. So what happens is just what I said. You have a big long subdivision like this, and this is the road down here. This lot is developed first up at the end. It's got a great big long dirt road down here, and you say Well, that's only a 15-foot dirt road, why should I have to build a 24-foot road up here, way up here. It doesn't make any sense. Because I've got all this - 24-foot road, this is all a 15-foot road. So we approve it with a 15-foot road up.

Then the next thing happens, the next year is then they do this piece. And this piece doesn't have - now they say, Well, this is only 15 feet, why do I need 15 feet down here? And then the same way with this one and the same way with this one and the same way with this. So we have a serial road, which should have been 24 feet in the first place, because now we've got 20 homes along it. Before we only had three up here and now we've got 20 and we end up with requests for maintenance and taking over the road because it's too narrow. It's too late to get an easement because we'd have to purchase it.

COMMISSIONER ANAYA: So they just need to follow the Uniform Fire Code. Correct? And what is that?

STAN HOLDEN (Fire Chief): Twenty-four feet.

COMMISSIONER ANAYA: Twenty-four feet.

COMMISSIONER SULLIVAN: Well, that would - in order to do that then you would eliminate this exemption, right? And I'd be in favor of that but I understand there are cases where there might be some justification for doing that. Of course if there were that could come to the BCC and the BCC could decide on a case by case basis.

COMMISSIONER DURAN: Mr. Chair. I was just going to ask you, Jack, maybe that's the way we do it then. Why don't we - right now it's 20 feet, right? You can go to 20 feet? Why can't we keep it at 20 feet and if there is any request for a narrower road, that it has to be brought to the Board of County Commissioners for their review. And then at that point we can actually see what is happening so that administratively a road less than 20 -

COMMISSIONER SULLIVAN: I think at less than 24 it can't be approved.

COMMISSIONER DURAN: I think it should be less than 20.

COMMISSIONER SULLIVAN: Okay.

COMMISSIONER DURAN: I think 24 is in the Code right now, and I've had plenty of situations where 20 has - the Fire Marshal has signed off on 20. Well, not plenty, but a couple.

COMMISSIONER SULLIVAN: Well, and that depends on the length too. A 20-foot road 100 feet long is one situation; a 20-foot road 1500 feet long is another situation.

COMMISSIONER DURAN: I agree.

JOE CATANACH (Development Review Division Director): What I would want to add to this discussion is that, what I think we need to also look at is that this language is indicating the width of the road easement, it's not indicating the width of the roadway within that easement. So I think we need to understand we have an easement and then we have a road

within that easement. And when we talk about 24 feet, and we talk about 20 it seems like we're talking about the width of the roadway, not the width of the easement. So again, what I would add to this discussion is that we have an easement width and we have a roadway width.

COMMISSIONER ANAYA: Good point.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER DURAN: Jack, I agree with you too. I think we definitely need to set aside some space for bike lanes on major arterials. I wouldn't say so much as in a cul-de-sac or in something that's just several lots but definitely we need to create a system of bike trails along our major arterials.

CHAIRMAN CAMPOS: Okay, I have a question on 7.4.4, Trail Easements. Are there any legal issues here? It says basically that they shall be recognized and required by the County. Is there a takings issue?

MR. GRICE: I think that trails are best – there could be. There could be. The best way to require trails is to make them consistent with an adopted plan. You should adopt a specific plan and require dedication of trail easements in conjunction, consistent with those plans, as a part of future development. One of the things that I have done in some cases in the past, in some different codes in the past, is to build in a provision that provides an opportunity for an applicant that does not feel that his development needs or benefits from a trail to appeal that, to make his case and ask for an exemption from that, because there is some case law that would suggest that if a development doesn't use or need or benefit from a trail that to require a trail could be found as a taking.

So I would say in summary that the best way to do it is to require dedication consistent with adopted plans. This language, where it says otherwise recognized or required, that's a little shaky. And secondly, we might also build in a provision for an applicant to appeal based upon a lack of benefit to him for that trail.

CHAIRMAN CAMPOS: I think we need some input from legal staff also, the next time we talk about this. Okay, section 7.4.6, Cross-access easements. Any questions? Okay, let's go to 7.5.

COMMISSIONER DURAN: Mr. Chair, could you not please go so fast? Cross-access easements. I do have some.

MR. GRICE: Do you need an explanation?

COMMISSIONER DURAN: I just have on 7.4.6, number 3, The property owner shall provide appropriate documentation of a good faith effort to extend the access easement through all immediately abutting properties. If such an effort fails, a portion of the easement on the subject site shall be developed and designed to ensure future connection to the neighboring properties. In some cases it's impossible to get an access easement through an immediately abutting property. So I understand it says will make a good faith effort. I guess my question is what is a good faith effort? How long of a period of time are you going to give someone to make a good faith effort?

MR. GRICE: Those are precise matters that are left to the administrator to

determine. They are appealable. If the applicant doesn't agree with what the administrator concludes on that point there's a process for him to appeal it.

COMMISSIONER DURAN: So then it becomes a variance?

MR. GRICE: No, it becomes an appeal.

COMMISSIONER DURAN: An appeal of -

MR. GRICE: An appeal of the administrator's decision. In other words, you're questioning the specific documentation. There's a wide variety of potential documentations, or not a lack thereof that an applicant might present. What typically would happen is an applicant would come in and what we would frequently happen - let me rephrase it - is an applicant would come in and not have documentation at all but simply represent that it can't be done. And so this does require some documentation, some paper trail, some evidence that he has contacted those landowners and they have specifically rejected his request. The variety of potential documentation adequacy is obviously tremendous so the administrator must be left with the ability to determine the adequacy of that documentation.

COMMISSIONER DURAN: I guess my concern is that I'm going to sit down with the Land Use Department for, let's say, a 24-lot subdivision.

MS. ELLIS-GREEN: Commissioner, this is just for non-residential uses, so it's just for commercial development. It's not for residential. So this would be, for example, if I had a commercial -

COMMISSIONER DURAN: Where does it say -

MR. GRICE: Paragraph 1.

COMMISSIONER DURAN: Non-residential land use.

MS. ELLIS-GREEN: So if I was developing my parking lot for non-residential and Roman had an adjacent piece of property, I would try and get an easement to go into his property. The people leaving my property, my commercial property wouldn't have to get onto the main road and then into the adjoining property.

COMMISSIONER DURAN: Okay, what if I told you I'm not interested in talking to you about an access easement through my property? I don't know what I'm going to do with my property yet.

MS. ELLIS-GREEN: Then in that case, I'd present it to the Land Use Administrator that I have contacted you and requested it and you've said no.

COMMISSIONER DURAN: So I come in and tell you I tried to talk to my neighbor and he won't even return my call. Or he said he's not going to do it. What do you require of me, the applicant, to prove to you that I have had this conversation?

MR. GRICE: Appropriate documentation.

COMMISSIONER DURAN: What's appropriate documentation?

CHAIRMAN CAMPOS: Maybe an affidavit.

MR. GRICE: It could be an affidavit. It could be a series of letters, correspondence.

CHAIRMAN CAMPOS: You made the contact.

COMMISSIONER DURAN: It would be an affidavit signed by myself. Okay. I

guess all I'm worried about is that we're going to be – what we're trying to do is impose a requirement for someone who's not even part of this to get someone to participate in this and that would be by signing an affidavit that he's not going to.

MR. GRICE: I think some of these things you really have to have confidence in your administrator, in their intelligence, their ability to make rational decisions and the guidance they get from the Board of County Commissioners on issues like this. And beyond that I'd encourage you to – have you ever been in a Walmart parking lot and you wanted to get to the commercial shopping center next door and there's not a way, just for example, not that Walmart does this. But occasionally an old development you'll find there's no connection between one parking lot and another.

COMMISSIONER DURAN: I understand the reason for putting it in there. My concern is not the reason but the process of requiring me to go out there and get someone to give me an easement.

MR. GRICE: The requirement is that you dedicate an easement and maintain it for a period of time. Then if it turns out to be useless then there's –

COMMISSIONER DURAN: But I have to get my neighbor to sign an easement I don't think should be a requirement of me as an applicant. I think I can make the call and try to explain it to him, but if I call him and he says I don't care what you do with your property. Or you can't get a hold of the guy, or he doesn't return your calls, that shouldn't be – that requirement shouldn't be imposed upon me.

MR. GRICE: That's why there's a provision for the administrator to waive it.

COMMISSIONER DURAN: Where does it say that?

MR. GRICE: Paragraph 5.

COMMISSIONER DURAN: But it says Where unusual topography and site conditions would – it doesn't say that. It doesn't say what my concern is.

MS. ELLIS-GREEN: Mr. Chair, Commissioner, if you had contacted your neighbor and your neighbor said no, I would assume that staff would then confirm that with the neighbor and at that point, that would be your good faith effort. We would ask you to stub out or to plat an access to join there then if he then developed commercial in the future then he would be required to connect to your development.

COMMISSIONER DURAN: Well I think the good faith effort needs –

MR. GRICE: The last sentence of paragraph 3 says if such effort fails, the portion of the easement on the subject site shall be developed and designed to ensure future connections.

COMMISSIONER DURAN: Okay. I think I made my point. Thank you.

CHAIRMAN CAMPOS: Okay, Mr. Gonzales.

CHARLIE GONZALES (Code Enforcement): Chairman Campos, Commissioners, I just wanted to make a correction here on section 7 before we go any further. I'd like to on page 7-2, on 7.4.2, Drainage Easements, I'd like to be a little bit more specific there and add acequias in there. Thank you.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: Charlie, are acequias considered drainage easements?

MR. GRICE: Water courses, certainly. They are certainly water courses but acequias is more specific. It doesn't hurt to add it.

CHAIRMAN CAMPOS: Okay, let's go to 7.5, Roads and Driveways. Any questions? Commissioner Sullivan.

COMMISSIONER SULLIVAN: On 7.5, I'm concerned about A.3 up near the top under 7.5.1, Other land divisions may be exempt from road construction standards at the discretion of the administrator. When does that happen?

MS. ELLIS-GREEN: Mr. Chair, I believe those are things like lot line adjustments and the exemptions to the Sub Regs and that is existing Code.

COMMISSIONER SULLIVAN: I understand all these are existing Code. You don't need to keep repeating that. But I think we can improve the existing Code where it's understandable. So would it be useful to list those here or a list of circumstances?

MR. GRICE: That's why there's a cross reference, Commissioner Sullivan. If you have, as I do in front of me, page 10-25, that entire section A through M is a list of subdivision exemptions. One of the objectives we have had throughout this document is to identify the best place to say each thing and to say it only once, thereafter to cross reference to it.

COMMISSIONER SULLIVAN: I don't have 10 with me here.

MR. GRICE: Otherwise the document would be much bigger than it is.

COMMISSIONER SULLIVAN: What are the general situations?

MS. ELLIS-GREEN: Mr. Chair, there's a 35-acre parcel of property for agricultural purposes, apartments, offices and stores within one building, divisions within a municipality, divisions for oil, gas, mineral, water rights, division of land by court order, division for grazing or farming activities, division for lot line adjustment, a burial plot is another one. The family transfer, a division for security of mortgages or liens.

COMMISSIONER SULLIVAN: See, that's what I - I think we went through 10 before, didn't we? That was one of the earlier ones.

MR. GRICE: That was Module 1.

COMMISSIONER SULLIVAN: But I certainly would like the Commission to think why we would exempt the road standards for family transfers, why we would or may exempt the road construction standards for family transfers, and why we would do it for court ordered subdivisions. Because a division of land is court ordered as a result of a divorce or something like that, that's fine. We understand that. But why should they be exempt from safety standards for road construction? If they come in and use that - we just had one last Commission meeting for a lot division? It was divided into 14 lots.

COMMISSIONER ANAYA: Hardship.

COMMISSIONER DURAN: There is such a thing.

MR. GRICE: I was asking, I thought it was state statutory, but I'm told it's not. We could exclude, specifically exclude - I think you make a good point. We just specifically

exclude the court ordered one and the family transfer.

COMMISSIONER SULLIVAN: Anyone can appeal.

MR. GRICE: You obviously don't need them for a lot of these like farming and burial plots, etc. But the ones where you're actually creating parcels, they shouldn't be exempt.

COMMISSIONER SULLIVAN: Any case where there's a hardship or a land hardship as opposed to a personal hardship, someone can come and appeal. Isn't that true? Correct me if I'm wrong. That's true for the entire Code.

MR. GRICE: Right.

COMMISSIONER SULLIVAN: So where we have something that's a unique circumstance I think we have to leave that open to an appeal. But we don't have to build everything in there. So maybe give some thought to that. And then down under 7.5.2.C, Roads serving two or fewer lots may be treated as driveways. Now the driveway standards are abominable. And here again we get into these serial driveways where they just tack onto each other and tack on to each other. Is there any way to tighten that up? I can understand for two lots all you need is a driveway. But when they become tacked onto each other, you have this three-mile long driveway that only meets driveway standards.

MR. GRICE: There is a way to tighten it up.

COMMISSIONER SULLIVAN: Is there a way?

MR. GRICE: Yes. Take for example page 7-6, at the top under subparagraph D, Local Lanes, Places and Cul-de-sacs, we could add another paragraph. There's two paragraphs there now, one and two. Two circumstances. Number one says Where a lane, place or cul-de-sac serves zero to 29 dwellings, the right-of-way is 38 to 50 feet. We could add one above that that says, in the same circumstance, where it serves five or fewer dwellings, the right-of-way can be 38 feet for example, and where it serves more than five dwellings it has to be 50 feet. Then it would be a rigid number based upon the cumulative number of dwellings served on that driveway.

COMMISSIONER SULLIVAN: I see what you mean. I imagine that would work.

MR. GRICE: I think that would work. You would create some hardships. You would create some situations where what had gone before, where people had lesser standards before and are no longer able to meet the new standard it would render some property undevelopable.

COMMISSIONER SULLIVAN: I don't know that we can legally do that.

MR. GRICE: You can legally apply uniform road standards. That's been upheld in numerous states. You can apply uniform standards to development and they will stand.

CHAIRMAN CAMPOS: Even if it renders the property -

MR. GRICE: Absolutely. Absolutely. If they don't have enough sufficient access to meet your standard they don't have the access. Just like water or sewer or any of the other standards. So if development doesn't meet your standards, that's what standards are about, is a development obligated to demonstrate compliance with the standards in order to expect approval. I made a note to do that, to add that paragraph.

COMMISSIONER SULLIVAN: If you think that's – we don't have the time to wordsmith each sentence, I'm just throwing things out for the staff to consider and bring it up. On the next page, Chapter 7.5 where it says subdivision access, page 7-5, where it says Access Requirement. I think there's a type in there. Access to new subdivision shall be provided to the newest road, road, state or federal highway.

MR. GRICE: You don't think we need two roads there?

COMMISSIONER SULLIVAN: No, but I do think you need public in there.  
Public road.

MR. GRICE: Okay.

COMMISSIONER SULLIVAN: Now, here you're talking about subdivision access. In subdivisions, they refer back to this road section, right?

MR. GRICE: Right.

COMMISSIONER SULLIVAN: While we have a section on subdivisions, this road section does apply to subdivisions.

MR. GRICE: Yes, that's right.

COMMISSIONER SULLIVAN: This is where you find the information.

MR. GRICE: We included it here because in addition to applying to subdivisions it also applies to non-residential developments. It's site-specific.

COMMISSIONER SULLIVAN: I understand. So you've got subdivisions taken out. That's fine. Down under 7.5.6, again, every place you see ADT, I'd suggest projected be put in there – within the proposed subdivision and the projected average daily traffic. Otherwise, if you're developing a subdivision and you're out there now, the average daily traffic is zero, if it's vacant. Once you develop it the average daily traffic may be 1500 vehicles a day. So you've got to design for what you're projecting, not for what's there now.

CHAIRMAN CAMPOS: I have a question about 7.5.5. You talk about access to the nearest public road. My question is what is our current standard as far as connecting subdivisions to public road. Is there a lack of clarity on that or do we have a standard that is clear?

MS. ELLIS-GREEN: Mr. Chair, I think when you do a subdivision you have to prove that you have legal access to a public road.

CHAIRMAN CAMPOS: Access, is that what you're talking about, or improvements?

COMMISSIONER SULLIVAN: That's a different – number one, we want to be sure that the access is to a public road. And we ran into this case with another case before where the requirements should be that the access to the public road is constructed to County standards. And that may require the developer to improve that road to County standards, which makes sense if you have 500 vehicles a day going from A to C and you have to traverse B to get there, then you still need that same level of safe road in area B as you do in area A.

We did have a lack of clarity in that. There's apparently somewhere in these regs, in this ordinance, a get-out provision that says you can just have a compacted dirt road or something like that and I forget where that is. Is that in this area, Roman? Or Penny?

MR. ABEYTA: Mr. Chair, that is part of what we just went over in the beginning about the offsite. The Code talked about offsite, about the 20-foot. That's on 7-2, Exception. That's existing language that – or that language came from existing language in the Code that applies to offsite roads.

COMMISSIONER SULLIVAN: Yes, but that was brought up under the Gardner Subdivision and you just said or Penny just said that that was mainly for family transfers and that was brought up as the reason not for bringing the access road to the Gardner Subdivision up to County standards. And that's an 80-unit subdivision. And it was this section that was used as the excuse for not bringing that road up to County standards.

MR. ABEYTA: Mr. Chair, I don't recall for Gardner. I know there was a subdivision that we recently had out in Eldorado that there was a dispute on the offsite road and we looked into the Code and it said that offsite improvements could be reduced if you had that hard-packed.

COMMISSIONER SULLIVAN: Okay. You're right. It was Eldorado. It wasn't Gardner. Gardner agreed to put gravel on the road, I think. It was just easement width that was inadequate there. But you're right. It was out in Eldorado. This same situation. But that was a subdivision. That wasn't a family transfer. How come this applied?

MR. ABEYTA: That section of the Code applies to all roads. What it says is you've got to have access to a public road, not adequate access or access that meets standards, existing Code just says you have to have access to a public road.

COMMISSIONER SULLIVAN: I sure would ask that you take a harder look at this hard-packed dirt. Hard-packed dirt is just dirt. We need something better there. I understand we are talking about a three-mile access, but bear in mind the reason developers go three miles away from the highway is because the land there is cheaper.

MR. GRICE: Commissioner Sullivan, it sounds like we need to tighten this exception up so that it only applies to very small scale developments. I would bring to your attention also page 8-4, also in this module, section 8.5.2, Offsite Improvements, Subdividers. So this section applies to subdivisions. May require construction of improvements to existing offsite facilities. That's pretty broad.

COMMISSIONER SULLIVAN: I had that marked too. That's real broad. That says may and it doesn't really tell – let me just summarize. What we need to tell any subdivider is you have to construct offsite roads to the nearest public road to County standards, unless there's a compelling reason not to do so, in which case the subdivider can come in and ask for an exception the way they do on a lot of things.

COMMISSIONER DURAN: That's what they did in that Eldorado case.

COMMISSIONER SULLIVAN: No, they didn't have to in Eldorado. It was already in the Code. They just cited this section of the Code.

COMMISSIONER DURAN: No, they had to. Land Use came up and said that there's a requirement there.

COMMISSIONER SULLIVAN: Yes, but then they backed off.

COMMISSIONER DURAN: No, but because they had made an agreement



with the adjoining property owner to bring it up to a level better than what it was but less than the County standards, the Commission granted approval.

COMMISSIONER SULLIVAN: I understand. And that was the Commission's discretion to do that.

COMMISSIONER DURAN: Right.

COMMISSIONER SULLIVAN: But I don't think we should write that in the Code. I think what we should write in the Code is you bring it up to subdivision standards, then if there's an exception it's up to the Commission to make that decision.

COMMISSIONER DURAN: Right.

CHAIRMAN CAMPOS: Okay, let's go on. 7-6, Commissioner Sullivan you had some comments?

COMMISSIONER SULLIVAN: It's actually on 7-5 and 7-6. Some other things to think about. All of these descriptions, arterial roads, collector roads and so forth, are really incorporated in this chart.

MR. GRICE: Yes, they are. So they're in a text format and in a -

COMMISSIONER SULLIVAN: Okay, the problem is they're not repeated. For example, like under arterial roads, it doesn't mention that you have to have basecourse. But in the chart in arterial roads it just says you have to have paving so many inches. It doesn't say you need basecourse. And likewise with the other roads. So you run into this problem of trying to be sure your chart's the same as your text. And it might just be easier, again, just a thought, to put it all in the chart.

MR. GRICE: I've never seen a chart that you could put everything in the chart. Section 7.5.8, page 7-10 talks about basecourse. The point of - really, the construction standards, the technical construction standards, basecourse, subgrade and aggregate and those kinds of specifications, those are typically, in most codes they're not in the Land Development Code at all. They are in a separate, technical subdivision construction.

COMMISSIONER SULLIVAN: I saw your comment on that and I don't disagree with that but what we have here is for example, under arterial roads, it says Asphalt paving is required, minimum depth of five inches, etc. It doesn't say anything else. But when you go to the chart it tells you you also need basecourse.

MR. GRICE: Also, I think if you go to section 7.2, New Mexico construction standards, it explains that all these standards apply.

COMMISSIONER SULLIVAN: I can read this as this is requirement for a collector road or an arterial road. And then I read the chart and it asks for something else. Which controls?

MR. GRICE: The most restrictive in all cases control. There's a provision in the very first section, very first article.

COMMISSIONER SULLIVAN: Why not just eliminate the ambiguity? Either make all that written section the same as the chart -

MR. GRICE: I would take out all references to basecourse, the technical specifications. My opinion is the Land Development Code should be written for developers,

that is the guy that pays the bills. The guy that buys the land, conceives a subdivision and goes through the process. But the construction standards are for a different group of people. They're for the contractors. So to me, all references to basecourse requirements, this by no means, Section 7.5.8, by no means covers it all.

COMMISSIONER SULLIVAN: Well, that's fine. Then take it out. Take the amount of asphalt out. Take everything out.

MR. GRICE: To communicate to a developer that the right-of-way is going to be 38 feet wide or 50 feet wide and he's going to have a paved surface, that communicates to the developer. The technical specifications of what goes underneath that, the compaction levels, those just belong in a separate set of standards is my recommendation to you.

COMMISSIONER SULLIVAN: Basecourse is expensive too if you don't have to put it down.

MR. GRICE: It is, but you can't very well put down asphalt without basecourse.

COMMISSIONER SULLIVAN: It's done.

MR. GRICE: Well, if you have adopted construction standards.

COMMISSIONER SULLIVAN: Well, that's my suggestion. You can argue that.

MR. GRICE: I'll make a note to.

COMMISSIONER SULLIVAN: My last point on this section. Excuse me, Charlie. I think Charlie has a comment.

MR. GONZALES: I would just like to also mention and remind the Commissioners that we also have a County standard detail sheet, so this chart, and the text should also match with our standard detail sheet as well.

COMMISSIONER SULLIVAN: Maybe you could work with them on that Charlie and kind of - there should be one level of clarity as to what goes on here, whether it's in a chart or whether it's in text or whether it's an appendix.

MR. GONZALES: Yes, Commissioner, we'll compare and match it all up, so that it's all matched up together.

COMMISSIONER SULLIVAN: The last question or comments I had, Mr. Chair, on page 7-6, I talked about the bike lanes and using the word projected, and that is under shoulder width. Now, the comment that I had is that in our road standards, we don't, at least in this Code, talk about a shoulder width. We say 12-foot driving lanes or 11-foot driving lanes. We don't talk about a shoulder width. I think we need at least some shoulders in there. Some three-foot shoulders. Here in the chart we talk about 13 and 15-foot shoulder widths, but I don't think those are shoulders. I don't think that's the right - I think if you add those up that equals the total easement width. If you take the driving lanes and add these to the driving lanes then you come up with the total easement width. I'm on page 7-6, right in the center where it says shoulder width. I think there's a difference - 13-foot shoulders, you don't even see that on interstates. That's a pretty wide shoulder.

But on the other hand, in our standard details we don't even mention shoulders. We say

12-foot driving lanes and that's it. Well, that's enough for a car to drive but it doesn't include the shoulder. So we really need to talk about a shoulder and I don't know where this 13 and 15 feet come from because that's a pretty big shoulder. That's wider than the driving lane.

CHAIRMAN CAMPOS: Are you talking about bike lanes also, Commissioner?

COMMISSIONER SULLIVAN: I think bike lanes should be added -

CHAIRMAN CAMPOS: In the shoulder?

COMMISSIONER SULLIVAN: Well, it's not clear whether that's there and as Commissioner Duran said, you don't need bike lanes on every road. Only on certain designated collectors or arterials. So I'd like some clarification on what that shoulder -

MR. CATANACH: Mr. Chair, Commissioner Sullivan, just a point of clarification. I think when we looked at that, and let's take a small road, a local road. I think we were calling the bar ditch the shoulder.

COMMISSIONER SULLIVAN: Yes, that's what I mean. That's not a shoulder.

MR. CATANACH: That may not be the way to do it.

COMMISSIONER SULLIVAN: That's a ditch.

MR. GRICE: Commissioner Sullivan, if you look on page 7-7, what you just said is illustrated, particularly the minor arterial drawing shows a six-foot shoulder then it has the entire 15-foot width, the terms have been used interchangeably in the past.

COMMISSIONER SULLIVAN: You can see the six-foot shoulder doesn't comply to the 13-foot shoulder.

MR. GRICE: No, the 13 is on the one above, the collector.

COMMISSIONER SULLIVAN: Well, the one above doesn't even use the word shoulder.

MR. GRICE: Okay. We'll work on that.

COMMISSIONER SULLIVAN: Again, not to poke holes here but I think we should clean up our terminology.

CHAIRMAN CAMPOS: Poke some holes there, Jack.

COMMISSIONER SULLIVAN: Okay, you want to poke holes. All right.

CHAIRMAN CAMPOS: This is what we're doing today.

COMMISSIONER SULLIVAN: Let's clean up the terminology. But the bottom line of this is not just to point out that the Code is inconsistent in some areas but is to add the concept that not only do we need driving lanes, we need shoulders.

MR. GRICE: Okay, we see how to fix that. Thanks. Thanks for pointing that out.

CHAIRMAN CAMPOS: Okay, we're at 7.5.7, page 7-6, then we have the diagrams, the schematics, the local roads. Any comments on that page, 7-7. Okay, 7-8.

COMMISSIONER ANAYA: 7-7.

CHAIRMAN CAMPOS: Comment.

COMMISSIONER ANAYA: Yes, what do you mean by child-proof under the septic tank, on 9? It's 7.7 -

CHAIRMAN CAMPOS: No, not 7.7, page 7-7.

COMMISSIONER ANAYA: Oh. 7-7. Is that where you're at?

COMMISSIONER SULLIVAN: We haven't gotten to the septic tank yet.

CHAIRMAN CAMPOS: Okay, any comment on 7-7? 7-8?

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: 7-8?

COMMISSIONER SULLIVAN: Down at the bottom under Intersections, what is a RU district?

MS. ELLIS-GREEN: Residential Urban. So it would be the existing urban district.

COMMISSIONER SULLIVAN: Do we have that defined somewhere?

MR. GRICE: Yes, we do. All the districts are defined on the first page of the use regulations in a chart that explains their name and their symbol.

COMMISSIONER SULLIVAN: And their symbol. Okay, so RU is there?

MR. GRICE: Yes.

COMMISSIONER SULLIVAN: Okay. Thank you.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER DURAN: On same page, 7-8, F.2, Cul-de-sacs. No, E, Dead-end Roads. Same pages. Dead-end roads shall not exceed 500 feet in length to the beginning of the cul-de-sac radius or other turn-around. The CDRC may approve greater lengths not to exceed 1000 feet. It seems to me that in the last few years we've had a number of developments that have come in that have exceeded that 1000-foot requirement. Does the Code still allow for an individual to come forward to request a - would that be a variance to that requirement? Because I know that's what they've been in the past, haven't they?

MR. GRICE: They could still apply for a variance.

CHAIRMAN CAMPOS: Would it be a variance or an exception? Because a variance wouldn't seem to apply, by definition.

COMMISSIONER DURAN: A variance wouldn't apply to what?

CHAIRMAN CAMPOS: This kind of a situation. It seems the authority, the administrator of some sort to make adjustments or modifications as required by some physical necessity.

MR. GRICE: Isn't there a provision for a waiver? I believe there's a provision for a subdivision standards waiver somewhere.

COMMISSIONER DURAN: I know in one particular case the road exceeded 1000 feet because of the terrain that we were dealing with. There was a big hill and there was property over here and they had to access it around the mountain to get to the other developable property. And I think that was a variance. It was that Tesuque Ridge Subdivision.

MR. ABEYTA: Mr. Chair, Commissioner Duran, in that case that was a variance. Under existing Code there are not waivers. It would have to be a variance. But under the new Code, something like that may qualify as a waiver that could be granted by the

administrator.

COMMISSIONER DURAN: So it's a waiver instead of a variance.

MR. ABEYTA: It may be. Because there is going to be a waiver provision in the new Code.

COMMISSIONER DURAN: Because correct me if I'm wrong, we're trying to get away from variances, right? We're trying to have it done administratively or at another board, the Board of Adjustments. Are we still trying to put a Board of Adjustments together?

MR. ABEYTA: Yes. And it's not that we're trying to get away from them it's that we're trying to – they need to meet the definition like Chairman Campos stated for a variance. If they don't then it's actually another request, like a waiver or a rezoning, something like that.

COMMISSIONER DURAN: Even those decisions could be appealed where they're granted or approved, to the Commission.

MR. ABEYTA: Yes.

MR. GRICE: Okay. I found it. It is in the subdivision section and it's in the right place. In the subdivision section there are general requirements and under General Requirements there's a provision for the CDRC to grant waivers. The correct area for that is that in no case shall a waiver be approved that is contrary to consumer protection purposes or subdivision regulations, jeopardizes the public health and safety, creates financial burdens or liabilities for the public. So if they meet those criteria, a waiver could be granted.

COMMISSIONER DURAN: And if they don't meet those criteria then –

MR. GRICE: A waiver could not be granted.

COMMISSIONER DURAN: But they could appeal the denial of the waiver.

MR. GRICE: Yes, I suppose they could appeal any decision of the CDRC, could be appealed to the Board of County Commissioners. So it would be an appeal but not a variance.

COMMISSIONER DURAN: Okay. As long as they can get to us somehow.

CHIEF HOLDEN: Just to make a note for clarification, Marshal is spelled with one L and in several places in the document, including in 7-8 it's spelled with two LL's.

MR. GRICE: We'll do a search and replace and correct them all.

CHAIRMAN CAMPOS: Not acceptable, gentlemen. 7-9. Any questions from the Commission?

COMMISSIONER ANAYA: What's reserve strips?

COMMISSIONER DURAN: They have that in Dallas. You find that at the end of the cul-de-sacs.

MR. GRICE: That was at the end of a subdivision where a situation where property reserved a strip of property at the end of a road and doesn't – the road should go to the property line so there can be a continuity of roads. The roads can continue. Reserve strips would be where a property owner or a subdivider reserves a strip, sometimes two feet – I've seen it two feet – that denies access to the adjacent neighbor to do the road system. I haven't found the section. That's just to prevent someone from circumventing and undermining the

intent of the whole – look at section 7.5.3, Road Layout, and 7.5.4, Relationship to adjoining roads and railroads. For example, 7.5.4 says The arrangement of roads in a development shall provide for the continuity or appropriate projection of existing roads in surrounding areas in accordance with road plans. This section, the reserve strip provision would back up this provision I just read, preventing a subdivider from circumventing, from undermining the effective ability to enforce that provision by reserving a piece of property not dedicated for a road.

COMMISSIONER DURAN: And so that the extension of utilities couldn't be prevented.

MR. GRICE: The extension of utilities could be prevented, extension of roads could be prevented. You could landlock property from accessing with the public road system.

COMMISSIONER ANAYA: Okay. Thank you.

MR. GRICE: The worst case I ever saw of that was where a property owner developed a shopping center, a mall, was allowed to build a road all the way around the perimeter of the property. And he reserved a one-foot strip all the way around the entire perimeter of the property, so none of the surrounding property owners, who were obviously impacted by the presence of this mall couldn't access it and make commercial use of the frontage they had along the road.

COMMISSIONER ANAYA: Do we want to put that in here or do we want to get rid of it?

COMMISSIONER DURAN: We want them not to be able to do that.

MR. GRICE: I don't think you want reserve strips maintained.

COMMISSIONER ANAYA: But then they'll know about it.

COMMISSIONER DURAN: Actually, I don't think they know much about it here.

MR. GRICE: They wouldn't think of the idea.

CHAIRMAN CAMPOS: Okay, page 7-10, Road Lighting, P. You're saying Road lighting is required for safety purposes in the following circumstances: 1, 2, 3. Who's going to pay for all this electricity?

MR. GRICE: I'm not sure I have an answer for that.

MR. ABEYTA: Mr. Chair, I don't think we want it at this time, because we're having that problem now with existing subdivisions that want the County to pay for that.

CHAIRMAN CAMPOS: Sometimes we need lights. Sometimes we don't need that many lights and we need to figure out who's going to pay for them. It's a fiscal impact on the County if we're taking these on all the time.

MR. GRICE: This language or something very similar comes from your existing regulations. It doesn't mean it's right. Some – you could add a provision here that requires that new developments will include a provision for the long-term cost of road lighting.

MR. ABEYTA: We need to work on this.

CHAIRMAN CAMPOS: Otherwise we have to have a budget line for all these things and we've got to figure that in every year.

TONY FLORES (PFMD Director): I would also echo the same concerns on this particular item. Both Public Works Department and PFMD are responsible for utility payments for intersection improvements that we currently have at different locations throughout the county and that is a fiscal impact. So as we continue to develop and require these that impact will grow and it's increasing every year as we currently talk.

CHAIRMAN CAMPOS: Okay. There's an editor's note in orange. The orange comment, Mr. Grice, you say editor's note, blah, blah, blah. Do you want to move this stuff? To me that's something you guys need to decide. If it's technical, that's your criteria anyway. So I think you should move it if you want to. Makes sense I think, based on your own standards. Is there any objection to that, editor's note on 7.5.8, Construction Standards?

COMMISSIONER SULLIVAN: Move them all. Either do it or don't.

MR. GRICE: We either need to put all the construction standards in the document or take this out.

CHAIRMAN CAMPOS: We already decided that. We decided to take it out.

MR. GRICE: Okay.

CHAIRMAN CAMPOS: 7-11, Driveway Standards? 7-12? 7-13, Water Supply?

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER DURAN: The standards of this section are intended to ensure the availability of an adequate water supply to serve new development over the long term without negatively affecting properties in accordance with water rights permits. That's part of the Code right now, is it not? Is the hydrologist here? Is that part of the Code right now, Steve? It seems like it would be. Then 7.6.2.A.1, Maximum allowable density and the minimum lot area requirements of base zoning districts are not automatic. But they are based then, the minimum lot requirements are based on the geo-hydro reports that would allow them to get to minimum densities, correct?

STEPHEN WUST (County Hydrologist): That's correct.

COMMISSIONER DURAN: So the geo-hydrology reports are still going to be the document that's going to provide you the information to determine whether or not there is adequate water in a particular zone to allow for the minimum lot.

DR. WUST: That is correct, Commissioner. This is a little stronger in that it's saying throughout the document that if we have information - actually the original Code, says vague terms like based on other information, but this says that if we have specific information for your lot, we will use that to determine water availability and therefore lot size instead of falling back on some general assumptions. If we have more information we want to use that.

COMMISSIONER DURAN: When do the general assumptions become insufficient, I guess is my concern. Right now we have, there's a lot of data out there that you have in boxes that need to be mapped out or available that could be used to determine the adequacy of water in any particular area. My only concern is that in the past, because geo-hydros are not cheap. They're like \$8,000. And on a two- or three-lot subdivision that could

be, or a lot split. Maybe three or four lots, you could spread the cost of that out but on a piece of property where a family is trying to – I'm not talking about family transfers but just someone who bought the property a long time ago for an investment and we have proof from other geo-hydrological reports done in the area that there is sufficient water, I guess my concern is that we would still require them to do a geo-hydro even if we were relatively sure that there was water in that area.

[Commissioner Montoya left the proceedings.]

DR. WUST: Commissioner, there's still a provision here for minimum lot size standards. That's still in here. I don't think it's this section. It was Article III, Section 10. I don't know what it is now. Where we said if you use .25 acre-feet of water then your minimum lot size in a particular hydrologic zone is the size and that's still there. The other thing is there remains the provision of a reconnaissance report which doesn't include a pump test, which doesn't include the modeling and so it's not the \$8,000 level, it's the calculation based on your well log. And knowing the things around you, like you said, the other hydro reports that have been done around you, which by the way, we're putting into a filing system now and they are accessible.

COMMISSIONER DURAN: Oh, are they?

DR. WUST: Starting now.

COMMISSIONER DURAN: Well, my only concern about this whole section, Mr. Chair, is that there is a lot of technical data in this that I can't really tell what is being proposed as a change to the existing Code so that I can ask a question why we're changing it, so that I can fully understand why it needed change, why a change is needed. And I guess what I'd like to do is maybe have a study session on this water supply section and the hydrology requirements and have other knowledgeable hydrologists have some input into this because this is a time where water is very critical and I think there's a lot of control and – I wouldn't say control but you really have a lot of – you have the ability to make or break a subdivision based on your interpretation of the water requirements. I just want to make sure that – please don't get this wrong, but I just want to make sure that they are standards that are reasonable in the industry that you're in and that are reasonable for us to impose on the growth management principles that we're adopting.

CHAIRMAN CAMPOS: Let me suggest something. Why don't we go on a break until 3:00. If there's no objection, come back at 3:00 and then go to RPA at 4:30. So maybe work until 4:00.

COMMISSIONER DURAN: That's fine.

CHAIRMAN CAMPOS: Maybe 4:10. Let's take a break.

COMMISSIONER DURAN: Can he answer that for me?

CHAIRMAN CAMPOS: It's going to be a long answer.

DR. WUST: I can give you a quick –

COMMISSIONER DURAN: I don't want a quick answer. I want an answer to



what I asked you please. If you want to take a break go ahead and take a break. You can take one. I would like for you to answer that for me please.

DR. WUST: Commissioner, first off, the major change here is that it's incorporated in the Code, the procedures that are currently in the hydrology appendix to the Code. And further detail, technical detail on how to do that procedure, so that the basic procedure remains. It hasn't changed from what's in the hydrology appendix to the Code. It's not changing the procedure that's currently practiced in geo-hydro reports and reconnaissance reports for the water availability calculation. It's just more detail and more specificity on the procedure.

That was an attempt to try to make it so that there isn't a fight all the time of people trying to guess how to interpret the hydrology regs. So it really hasn't changed a lot. It put it into the Code and it removed from the Code what is currently there which is a lot of let's call it background explanation. It talked a lot about we assume in this hydro zone it's this, therefore we think about this water availability, etc., etc. And a lot of that was removed. That was one of my recommendations based on having written regulations for the State Environment Department where they usually suggest to us there that the procedure - you don't sort of explain a thing. You just say this is what we're doing and this is how we do it and then there's background information if someone would like to see how you came about that particular thing.

So that's the part of the Code that was kind of removed. It didn't really make any difference in the procedure. It was just a lot of explanatory material. So what's been put into the Code are again more specificity on what's currently in the hydrology appendix to the Code. Your question about whether other hydrologists have had comment on this, I actually did send my first draft out to a number of hydrology consultants that submit reports to the County.

COMMISSIONER DURAN: Good.

DR. WUST: And I did receive comments back from several. Also the Office of the State Engineer had several comments. The short answer is they were okay with almost all my technical aspects, for example, specific yields, dividing the specific yield to different lithologies, which is actually currently practiced. That's one of those things that was not in the hydrology appendix to the Code but is a better technical procedure that fulfills what the hydrology appendix asks for to begin with and actually those numbers came out of standard text books on the subject, and I have received comments back from several hydrology consultants and the Office of the State Engineer on that very subject.

COMMISSIONER DURAN: And they are pretty much in agreement with your recommendations?

DR. WUST: Yes, I believe they are. And one of the consultants, I actually went to his office and had several hours with him and his staff on the subject. The Office of the State Engineer, Liza at least, she asked for copy so it would part of the record, to show their comments. Actually, the most common comment was to make more strict the specific yield of clay and shale, which don't yield much water. If anything, I was asked to be more strict than what I did. But the procedure on dividing it by lithology, which originally it was, if you look at the hydrology appendix it was broad assumptions which zone you're in. And that was smarter.

As you said, we have, as you said, a lot more information. So it makes more technical sense to base yields on knowing the lot units that you're already and we based that on the well log.

So those are the kinds of things that are put in. That doesn't change the overall procedure. It doesn't change the overall approach that's currently in the Code, which refers to the hydrology appendix. It just gives more technical detail. I believe it's a cleaner procedure again because nobody's guessing. How do I interpret this? It's a little more straight forward procedure and it's laid out especially when you use specific yields for different lithologies based on the well log. Anybody should be able to look at that well log and say, Okay, I can figure out where my yield is coming from from seeing that well log. It was an attempt to make the procedure more streamlined.

COMMISSIONER DURAN: I only bring it up because you know we've had a couple people that have somewhat have questioned some of your decisions on a few things. And I just want to make sure that when we adopt these new water policies that they're watertight, so that you are – just so that nobody can question the Code. Because it really is going to be more and more of an issue for the Commission in the future as developers come forward with new subdivisions, new projects that are going to be – the Code's going to be a little bit tougher because of the water requirements.

DR. WUST: Well, Commissioner, there are two items that I will specify that have not been practiced in the past. One of which I've gotten pretty good agreement on among the hydrologists, one of which I've gotten, I'll admit, a totally divided opinion from various hydrologists. And this includes, by the way, I was able to consult with a hydrologist in Minnesota who helped work with one of the standard text books on well analysis and that was through the generosity of the new Los Alamos – what do they call themselves? The Water Information Office, Charlie Nylander, gave me that opportunity. And I'll just say very quickly, the first one, we're now drilling, and this comes from, as you've said there's more growth now, there's more drilling. People are going deeper. They're drilling bigger wells. As we go deeper we get into what's known as confined aquifers. The specific yield of a confined aquifer, and this is in all the text books, is very, very different, no matter what the lithology, from the specific yield of an unconfined aquifer, which traditionally we've always drilled in because we've never drilled that deep.

That is a major change. It's the same change in the equation. It's a totally different specific yield number. That's one pretty much all the hydrologists agree. And it's in all the text books. There's not a real issue with that. The other was and it's the one you're referring to, how many sands above the top screen do you get to count? And that, I think there's a way to resolve that. It's really getting the language tight. It comes from trying, in my professional opinion, to fulfill the obligations of the hydrology appendix of the Code as traditionally packaged, and that is how do you calculate how much water you really have that you can get to as you go through.

We don't want wells to dry out in 20 years. And that was my attempt to say, if there are sands that are totally separated from the screen, you'll never tap that water unless you redrill the well and rescreen it. Should you really be counting that? And I was trying to fulfill again the

approach of the hydrology appendix because an analogy, the hydrology appendix in the Code specifically says you cannot count any part of the aquifer below the bottom of your well. And someone could always come back and say, Well, I can make my well deeper. Well, that's true, but the approach was to say what can you get to from what you've drilled? And if you want to be smart, drill your well deeper. And that's all this was saying. If you really want to tap those sands, screen them.

That again, there's a long argument. It's interesting, the fellow in Minnesota who helped with the text book, his approach was, he just said, You know, you never know. You've got to do all these myriad calculations and pump test to even show it one way or the other. So I got a really mixed review on that one.

COMMISSIONER DURAN: We can talk about that more. You were right. It was a long question. A long answer, to a short question.

CHAIRMAN CAMPOS: I have a couple of questions about the water. Basically, I think what Commissioner Duran asked, have you changed substantively what you assessed, the hydrology report? Have the formulas changed?

DR. WUST: The formula has not changed, Mr. Chair, and I have not changed it from the way I had substantively addressed it. I've made some changes from the way previous hydrologists had looked at it. Whether it's substantive or not, I guess is how you ask people but I've always based it on a technical approach and trying to do it the best technical way possible. To give you one example from the past, we used to just say whatever the water level is to the total depth of the well is what we called saturated thickness. Well, this is two or three hydrologists before me, got smarter and said, that's really not a good way to look at it because the water levels can rise and that doesn't necessarily represent saturated thickness, especially in a confined aquifer, that's not true at all. And so we don't calculate that way; we calculate it based on the different thickness of the lithology as stated in the well logs.

CHAIRMAN CAMPOS: The question is then do you need to redraft or rewrite the Code so that it's consistent with you interpretation of what you're doing currently?

DR. WUST: Well, that's the way the Code is.

CHAIRMAN CAMPOS: Is that the way it's written now?

DR. WUST: Yes.

CHAIRMAN CAMPOS: You're say you applied it differently or interpreted it differently. Didn't you just say that?

DR. WUST: Well, what I'm saying, Mr. Chair, is that the hydrology appendix to the Code, which is what everybody based their stuff on, where the equation is, the specifics of how to actually go about the details of that equation were not laid out. And so those are the things that varied through time with different technical interpretations.

COMMISSIONER DURAN: So you made up you own then?

DR. WUST: No, Commissioner, I did not. What I did was try to put into the Code more specificity. That of course relates to how I was interpreting -

CHAIRMAN CAMPOS: So that's the questions. You are putting more specificity as to the interpretation. Or you've been interpreting and now it's going to be more

specific and clearer to apply if anybody wants to just say, Okay, this is the Code, this is the appendix. Here it is. It's all spelled out.

DR. WUST: The procedure. More specificity as to the procedure. That's how I would phrase it.

CHAIRMAN CAMPOS: You're comfortable with the formulas as written?

DR. WUST: Well, that was a discussion, I'll bring that up. That was a discussion about basically changing it. Jay Lazarus for example proposed a matrix where you base everything on your pump test. Of course that would require a pump test everywhere. In our discussion of that it went back to a similar kind of discussion that Commissioner Duran brought up with moving the swimming pool requirements to a different part of the Code. That's such a substantive change that it really should, if we wanted to that it's like reinventing the wheel, we need to pull that away from this whole Code review and so what I've tried to do is incorporate into the Code review only those changes which would clarify and update and detail what the procedure already is.

So if we're trying to reinvent the wheel, I agree with Commissioner Duran. That's when you need to pull back and say, Maybe we out to pull that whole section out and do the Code rewrite and then do the whole public comment on that. So what we tried to do is stay within the procedures that already exist. So what everybody's used to and that's what everybody's been getting their developments approved on. So it really is - I wouldn't call it substantive changes because I'm just trying to approach it in a more technically sound manner but still within the framework that's already been used.

CHAIRMAN CAMPOS: You said the State Engineer said that they would recommend a stricter way of applying the formula. Did I get that right?

DR. WUST: It's one term of the formula and that is the specific yield. That's the amount of water that a given rock will give up as you pump the well. Things like shale don't give up water very easily. Sands give them up pretty easily. I put in a very low specific yield for shales and clays. Several hydrology consultants as well as the Office of the State Engineer suggested just making those terms zero. It's kind of a mixed bag because if you have a very thick well that's through shale, you will get a little water out of it. So is it fair to eliminate all possibility? But the truth is if you have a mix of sand and shale, the shale's going to contribute nothing compared to the sand. And so it's appropriate in those instances to have a zero. It's not appropriate if you have your own house well, for example. I know people who do and they go through 300 feet of shale. They can get just enough for themselves into a storage tank.

I don't have any problem making that zero, making it more strict like that because it is more reasonable for what we drill through.

CHAIRMAN CAMPOS: It's my inclination to be stricter because this is about consumer protection. Is there really water here for 100 years? That's the question. And if there isn't the consumer is injured. So I think if we have the stricter standards we're likely to protect consumers in a better way. So just a comment. Any other comments?

MR. ABEYTA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

MR. ABEYTA: I just need to point out what I think is a significant change of practice and Steve could correct me if I'm wrong, but right now, it's current practice that if you have ten acres in the basin, you can go down to 2.5 acres by just adopting water restrictions. The new Code will require a hydro to go to 2.5. In the basin fringe, same thing. You can go to 12.5 acres right now with just water restrictions. The new Code will require a hydro report. And that's the same thing with family transfers. To do a family transfer right now you just need water restrictions. Now, you're going to have to do a geo-hydro or a reconnaissance for a family transfer.

CHAIRMAN CAMPOS: Do you feel that's inappropriate, Mr. Abeyta?

MR. ABEYTA: The hydrologist feels it's appropriate. I don't feel - maybe not in some areas, like the basin it may not be. I don't know if I've seen very many hydrology reports denied in the basin. But maybe in the basin fringe and homestead where it is drier it may be appropriate, mountain area. But in the basin, I don't know. But that's just based on what I've seen.

DR. WUST: Mr. Chair, if I may, I believe that someone pointed that out to me and I think that was a way we worked out the minimum lot size and I'd gotten a good suggestion and that was now the Code says, Here's the minimum lot size, assuming, and again, this is all this background explanation I feel we eliminated for clarity. Based on one acre-foot of water. But now the County policy is you only get .25 acre-feet of water per house.

CHAIRMAN CAMPOS: Or less. With all the new technologies. We're showing that we can do it from maybe .18, .17.

DR. WUST: But that's the way the minimum lot size is worked on.

CHAIRMAN CAMPOS: Those are the assumptions.

DR. WUST: If you use water restrictions to go down to .25 it's a smaller lot size, as Roman said, down to 10 acres in certain zones. So an excellent suggestion, I would have no problem with that. It wasn't a thing where I'm trying to make people do hydro reports, but as long as we're accepting as policy a .25 acre-feet usage, then the minimum lot size could easily be just the standard minimum lot size that size. In other words 2.5 acres in the basin, 10 acres in the basin fringe, assuming a .25. That would get rid of this requirement. I think we just put in the chart the biggest minimum lot size when my suggestion was we make it whatever is equal to the .25 lot size because that's what our policy is right now.

If the administrator is okay with that, I thought that was a good suggestion to eliminate this issue. If you understand what I'm talking about.

CHAIRMAN CAMPOS: Okay. Any questions from the other Commissioners?

COMMISSIONER ANAYA: Are we eliminating that? Are we eliminating the hydrological study?

MR. ABEYTA: Mr. Chair, Commissioner Anaya, that's up to the BCC. Currently, we don't require it if you agree to a quarter acre-foot of water. You can go down to 2.5 in the basin or 12.5 in the basin fringe, 20 in the mountain and 40 in the homestead.

COMMISSIONER ANAYA: I like it like that.

COMMISSIONER DURAN: I'd like to leave it that way too.

DR. WUST: I believe that was the intent, Mr. Chair. I think it just translated when we put -

CHAIRMAN CAMPOS: I think staff should look at this carefully. There may be areas outside the basin where it's not appropriate where we may want to do geo-hydros as you mentioned. Because water availability is unpredictable. Commissioner Sullivan.

COMMISSIONER SULLIVAN: Then if you took the basin 10 and brought it down to 2.5, then what would you do - would that include water saving measures or not?

DR. WUST: Commissioner Sullivan, that would be based on an assumption of no more than .25 acre-feet per lot. It's the same as in the current Code where it says if you agree to a water restriction of .25 acre-feet per lot then the minimum lot size is 2.5 acres in the basin.

COMMISSIONER SULLIVAN: Okay, but if they agree to - the applicant will agree to anything. They sell the lots and then they move to Florida. But do we also require water saving, water restrictions, such as no swimming pools and low-flow toilets and so forth, in order to achieve that .25?

MR. ABEYTA: Mr. Chair, our current covenants already have requirements. It says you have a .25 water restriction, plus swimming pools are prohibited. Certain other things are prohibited or required to meet that .25.

CHAIRMAN CAMPOS: Is .25 indoor use only?

MR. ABEYTA: No, it also includes outdoor. And it limits the size of lawns, things like that so that you can meet the .25.

COMMISSIONER SULLIVAN: I think there may be some confusion then that if you - what's the purpose of the language that says that you can reduce the minimum lot size, which is ten acres in the basin, by going to water saving measures? What we need to do is make the water saving measures mandatory or make the chart to say lot size, assuming water saving measures.

MR. ABEYTA: Yes. That's what we would have to say. That it assumes water savings measures.

COMMISSIONER SULLIVAN: If they don't want to adopt water saving measures then they're back to the ten.

MR. ABEYTA: Yes.

COMMISSIONER SULLIVAN: So we could do it that way. I don't have a problem whether it's 2.5 or 10, as you say, if the ten was based on usage of one acre-foot a year. Now, what do you do with the individuals that come in and say, Well, I'm agricultural. I'm going to use .25 for me, and I'm going to use .5 for my horses and livestock. How do you handle that?

DR. WUST: I'd have to defer to -

COMMISSIONER SULLIVAN: This is the ranchette gambit. If you do it this way, how do you handle it where they separate out usage for livestock and usage for residential? Do you still limit them to .25 regardless?

MR. ABEYTA: Mr. Chair, no. We won't let you go down to that adjustment. We would include all your water usage including livestock. So you may have to do a hydro in that case to prove you have enough water. So it would be more than .25. You would need .36, .40. And if all you want to do is a water conservation restriction, then you may not be able to have the livestock.

COMMISSIONER SULLIVAN: So somehow that chart would make that clear. In other words, suppose I wanted a 2.5-acre ranchette, and I was willing to go down in my landscaping and my domestic use, but I'm also going to have six horse and three Guinea fowl and what have you, which are going to use more than that. But I'm not down to 2.5 acres anymore.

MR. ABEYTA: right, Mr. Chair, Commissioner Sullivan. The Code's not clear but existing practice is that we make you submit a water budget and we have the hydrologist look at it and verify that you can indeed have both. You could have the quarter acre-foot water restriction plus the livestock. And if you can't, then you need to do a hydro report and prove more water than a quarter acre-foot to have both. You won't see the 2.5-acre ranchettes without providing water, basically, because our bottom line is .25 is only enough for a residence and anything additional you've got to prove you've got the extra water.

CHAIRMAN CAMPOS: What if they do a five-acre ranchette in the basin? Then they can go to .5?

MR. ABEYTA: Yes. You can go to .5. Then we'll look at a water budget and can you fit everything under .5. If you can't then you need to prove you've got more water than .5.

CHAIRMAN CAMPOS: Okay. Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, Roman, if you're for example, in the Edgewood/Stanley basin where you know there's water and they're going to do exactly what Commissioner Sullivan, you'd still make them prove water?

MR. ABEYTA: If they were going down to 2.5 acres, yes. Because all the Code says is that in the basin, there's only enough water for one dwelling for every 2.5 acres of land, provided that all of those lots are restricted to a quarter acre-foot. So you would still have to - to get more than that on 2.5 acres, you would have to prove that there's more water.

COMMISSIONER ANAYA: Right now if you get a 72-12 permit, how many acre-feet can get with that?

MR. ABEYTA: The State Engineer will allow up to three acre-feet, but you're not given the three acre-feet as I understand it. It's you're allowed to use up to three acre-feet. As part of our zoning enforcement, we restrict that water to a quarter acre-foot. You can stay at ten acres and have your one acre-foot.

COMMISSIONER ANAYA: Why do you say one acre?

MR. ABEYTA: Because you're staying at ten acres.

COMMISSIONER ANAYA: Let's say I have ten acres and I go get a 72-12 permit, I get three acre-feet.

MR. ABEYTA: No.

COMMISSIONER ANAYA: They've reduced it to one.

MR. ABEYTA: We'll reduce it to one and maybe Steve could address what the State Engineer gives you in the three acre-feet question.

DR. WUST: Commissioner, there's actually a couple of issues there. One is that the State Engineer actually is trying to change that and they have in the critical management areas. They do more restrictive than three acre-feet. The second thing is that the Office of the State Engineer says themselves that three acre-feet is not just that you get to use it. They make assumptions about indoor use and outdoor use, things like that. And it's not a water right; it's a permit for appropriation. Even when it comes to water rights the State Engineer's Office calculates water availability differently than the County does in our Code and we always have.

In that sense, the State Engineer looks at – this is not for domestic wells but I think it's related when you do water rights – can that well produce that much water that won't impair others and draw down your water level too much. The County looks at it the way the County Code is written and says Do you have that much water in the aquifer that you can tap in you well that will last you for 100 years, in storage, water in storage. We're looking at a different approach to the water. But the domestic well permit is just a potential to appropriate that's given by the State Engineer and that's given by the state law allows that.

The County permit system says it's fine what the State Engineer says. You may be able to legally get out of that well but if you want your permit we're restricting your water use. So we do it as a use restriction. The state just looks at it as an appropriation permit for your domestic well.

COMMISSIONER ANAYA: So what I'm hearing is that the State Engineer will give you a three acre-foot a year permit, and if they come to the County and we issue a permit for them to build a home on those ten acres, we restrict it to one acre.

MR. ABEYTA: Yes.

COMMISSIONER ANAYA: And if you divide that ten acres into 2.5, then we restrict it to a quarter acre.

MR. ABEYTA: Yes.

COMMISSIONER SULLIVAN: Alternatively, I think you have it exactly right, Commissioner. If you wanted to use all three acre-feet and you were in the basin zone then you would need to have 30 acres. So you could get the 72-12-1 well permit. You could use three acre-feet, but you'd have to be on 30 acres.

MR. ABEYTA: Right. But you could also do a hydro report, do a geo-hydro and prove you have three acre-feet.

COMMISSIONER SULLIVAN: Prove that under your ten acres there was –

MR. ABEYTA: And you could use three acre-feet.

COMMISSIONER ANAYA: You could use three acre-feet on ten acres.

COMMISSIONER SULLIVAN: If you did a geo-hydro.

COMMISSIONER DURAN: If you did geo-hydro.

COMMISSIONER SULLIVAN: If you did a geo-hydro.

MR. ABEYTA: Otherwise it's one acre-foot.



COMMISSIONER ANAYA: Okay. Yes, you're right.

COMMISSIONER SULLIVAN: You need 30 acres to use three acre-feet.

COMMISSIONER ANAYA: If you didn't have to come to the County and get a permit you could. But if you didn't have anything on the land. Okay, I get you.

MR. ABEYTA: Plus, I want to add that this going down to 2.5 acres in the basin, 12.5 in basin fringe, that only applies to land divisions and family transfers. Subdivisions of five or more lots, you've got to do a hydro regardless of where you're at and what your lot sizes are because you're a subdivision. That's the existing process and it will be the same after the new Code is adopted.

CHAIRMAN CAMPOS: Mr. Catanach.

MR. CATANACH: Mr. Chair, thank you. I just want to clarify that what the County restricts is the 72-12-1 domestic well permit. Where you have properties that have substantial farming and substantial livestock, those are usually separate agricultural water rights that our water restrictions don't affect. Our water restrictions only affect the 72-12-1 domestic well permit, not anybody that has separate agricultural water rights. Those are not affected by our water restrictions.

DR. WUST: If I might interject, Mr. Chair. It's not quite applicable at all times. What the Code currently says and I believe it's going to remain, it says if you have a certain amount of water rights that are not domestic well permit, which aren't real water rights, that may be used to show water availability. It's not a requirement that it has to be used to show water availability nor that a requirement on the County to perfectly accept those, but we have had cases of development where they have transferred water rights to their well and they still do a geo-hydro report and need to show water availability because again, the State Engineer calculates those movements of water rights to a well differently than the County Code looks at water availability because we base it on, again, water in storage under your property, which is not the way the State Engineer looks at it. And so for larger developments - smaller developments I think it's usually been just if they bring in water rights and the State Engineer is happy with that then the County's been okay. If it's larger developments they still perform a geo-hydro report and show that they have the water availability under their property, whether or not they're transferring water rights.

CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: Let's say - let me tell you. I'm going to give you an example and you tell me yes or no. A little ranch, 50 acres in Stanley or somewhere in Santa Fe County. You went and you've got a 72-12. They give you the three acre-feet. You came to the County to get a house on that 50 acres, but you wanted to have livestock. Are you still reduced down to one acre, or can you say one acre for the house, one acre for the livestock? How does that work?

MR. ABEYTA: Mr. Chair, the only time that we would really get into the water restrictions is when you divide the property. When you come in for a building permit we're not going to impose a water restriction. It's when you create new lots that you get water restrictions imposed.

COMMISSIONER ANAYA: Okay, let's say there were two lots at 100 acres.

MR. ABEYTA: Let's say you had 100 and you divided it two fifties, we'll restrict you to at least an acre-foot. One acre-foot per lot.

COMMISSIONER ANAYA: But what if he wants to have livestock?

MR. ABEYTA: We would ask for a water budget to show that you can have livestock and the home on that one acre-foot and you're not exceeding that.

COMMISSIONER ANAYA: But what if you do?

MR. ABEYTA: He can do a geo-hydro report and prove that he's got more water.

COMMISSIONER ANAYA: And would it be –

MR. ABEYTA: And whatever he proves with that he could use that amount of water for water purposes.

COMMISSIONER ANAYA: Okay. Thank you.

CHAIRMAN CAMPOS: Commissioner Duran.

COMMISSIONER DURAN: I have a procedural question for staff. How do you perceive the adoption of this Code rewrite? The Commission is going to go through it and then – is this actual document available to the public right now?

MR. ABEYTA: The module is available to the public. What would happen is this is the third and final module. We'll put together a consolidated draft, a new Code, one Code book and then we would have to discuss with the Board how you want to proceed with adopting it.

COMMISSIONER DURAN: And how to you perceive this process taking place, knowing that in the past when we've had ordinance changes and significant changes to the Code, what we've done is had public hearings and taken, like the general plan was adopted section by section and it had considerable input from the community. And my thinking is I'm sure that that's what we would want to do with this particular document because it is going to have some significant changes that I believe the community needs to be a part of. And I hope that's how staff and our consultant perceives the adoption of this document.

MR. ABEYTA: Mr. Chair, Commissioner Duran, what we'll do is we'll – once we're done with this study session on the third module, then we're going to have to go back and look at how we adopted the general plan and other large documents and come back to the Board with a draft plan of how we should proceed. And then allow you guys to give us input and direction and then take it out based on whatever direction we finally agree to.

COMMISSIONER DURAN: Well, I'm sure we'll see the wisdom of getting public participation in this. Thank you.

CHAIRMAN CAMPOS: Mr. Abeyta, when do you think – what is our goal as far as adopting this reorganized ordinance?

MR. ABEYTA: Mr. Chair, our goal was to have a new Code by the end of the year, the end of this year. This is the third and final module. It still may be possible but I'm not sure. It just depends on how much public output you want us to get. How many public meetings you want to have out in the community.

CHAIRMAN CAMPOS: As I understand this is mostly reorganizing as opposed to introducing major concepts.

MR. ABEYTA: Yes. There are some but not that many.

CHAIRMAN CAMPOS: Not that many. Okay, let's go on. We only have maybe another 35 minutes. On page 7-13, any more questions? Okay, 7-14?

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER DURAN: 7.6.3.B, Water supply plans for proposed subdivisions of six lots and greater shall be submitted by the administrator to the New Mexico Office of the State Engineer. Where did we get this six lots from? Is that in the Code now?

MR. ABEYTA: Mr. Chair, Commissioner Duran, yes. I believe it's existing Code now.

COMMISSIONER DURAN: Okay. Thank you. No more on that page.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: On 7-13, go back a page. The bottom of that page it says All subdivisions required to have community water systems as listed in 7.5.8. 7.5.8 has to do with roads, construction standards for roads.

MR. GRICE: I think that's a reference to 8.4. I think it's now a reference to 8.4. It's just we moved some things around. We'll fix them.

COMMISSIONER SULLIVAN: So which one was it?

MR. GRICE: Section 8.4.

COMMISSIONER SULLIVAN: 8.4?

MR. GRICE: It's in the subdivision section. It's a general statement about, it comes from your existing Code about requirements for water and sewer, water and liquid waste disposal, that is, for subdivisions.

COMMISSIONER SULLIVAN: Okay. Thank you.

[Commissioner Anaya left the proceedings.]

COMMISSIONER DURAN: Mr. Chair, I have to leave too, so we've lost our quorum.

CHAIRMAN CAMPOS: You'll be here for the RPA?

COMMISSIONER DURAN: Yes. I need this hour before the RPA.

CHAIRMAN CAMPOS: Okay. I'd like to continue, just talking about this, even though we've lost our quorum, the study session.

COMMISSIONER DURAN: I'm not sure - I think that would be fine but when we all get back to meet again we need to start at where we left off.

CHAIRMAN CAMPOS: Well, you need to catch up.

COMMISSIONER DURAN: I don't think that works that way.

CHAIRMAN CAMPOS: I know it doesn't work that way.

COMMISSIONER SULLIVAN: We're going to change the Type I, II, and III

subdivisions as well, while we –

COMMISSIONER DURAN: I think that the next section is pretty complex. We need to have a full Commission here.

CHAIRMAN CAMPOS: This has been scheduled for a long time and you have to make some time available for really important stuff like this. We have people coming from out of town. We have 15 people from staff. So maybe the Commissioners have to be a little more flexible, a little more committed.

COMMISSIONER DURAN: We only have three Commissioners here. And the other two – I think it's critical that the other two are here to discuss the issues.

CHAIRMAN CAMPOS: Okay, before we waste any more time on it let's go to 7-14.

COMMISSIONER DURAN: I'm leaving, Mr. Chair, and you don't have a quorum. So I would like –

CHAIRMAN CAMPOS: We're not voting on anything.

COMMISSIONER DURAN: I'd like a legal opinion on whether or not the discussion on this module can continue without a quorum.

COMMISSIONER SULLIVAN: We could also have public comment. We have a public comment section.

COMMISSIONER DURAN: Mr. Gonzalez.

MR. GONZALEZ: Essentially, you're talking about functioning out of the meeting quorum, but that does not preclude the Commissioners from remaining to discuss the issues that are there. It doesn't make it an official meeting. The meeting ends when the quorum is lost.

COMMISSIONER DURAN: And when we convene to discuss this module again, we start off where the quorum was lost?

CHAIRMAN CAMPOS: If you get three votes you can start there. Okay, let's go.

COMMISSIONER DURAN: I'll stay for the discussion then.

CHAIRMAN CAMPOS: You're going to stay?

COMMISSIONER DURAN: For a little bit more.

CHAIRMAN CAMPOS: Okay. Good job. 7-14. Questions? Okay, 7-15?

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER DURAN: Top of the page, letter e, The developer shall provide sufficient potable water for full development of all properties within the proposed development. That's in the Code right now, correct? And while you're looking for that, All distribution mains shall be a minimum of six inches. I believe – I guess what I'm trying to get to is what has changed, what is different in this from what is existing? And I thought that water rights were required in subdivisions that had 24 parcels or more. Did we take it down to 20?

MR. ABEYTA: Mr. Chair, for the question regarding the 20, that's been existing, that was an amendment that was done in '98, I believe. That took it down to 20 if any

one of which is two acres or less in size. So right now, you can do up to 24 lots that are 2.5.

COMMISSIONER DURAN: Two and half acres or less?

MR. ABEYTA: Two acres or smaller. Right now you can do 24 2.5-acre or above, up to 24, and water rights won't be required until you get to 25 or more lots.

COMMISSIONER DURAN: Okay. Thank you. No other questions.

CHAIRMAN CAMPOS: I have a question on 7-15, top of the page, f. It says If the development is in a traditional community the community water system shall be designed to minimize the use of local water resources. What does that mean? Minimize use of local water? Are you talking about importation? I assume that's all -

MR. ABEYTA: Mr. Chair, yes, it's referring to importation.

CHAIRMAN CAMPOS: Shall be designed to minimize - what does that mean? Shall be designed, Mr. Abeyta? Are we going to have lines connected out to the County water system or what?

MR. ABEYTA: Mr. Chair, that could be a possibility. I don't know if the hydrologist has any comments on that.

CHAIRMAN CAMPOS: Is that existing language, Mr. Abeyta, do you think?

MR. ABEYTA: We're going to look to see if it exists.

DR. WUST: There's some language similar to that -- I didn't write this, but I recall there's some language similar to that either in the County general plan or where it talks about traditional communities.

CHAIRMAN CAMPOS: Let's look at this more carefully so next time we know what that means. Any other questions? Okay, let's go to 7-16, questions?

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER DURAN: I'm not sure if I have one except number 2, top of the page, 7.6.4.2, Existing Community Water Systems. No, I'm okay. No questions there. Thank you.

MR. ABEYTA: Mr. Chair, the previous comments are existing language.

CHAIRMAN CAMPOS: Precisely existing language. Okay. Commissioner Sullivan, any questions?

COMMISSIONER SULLIVAN: No.

CHAIRMAN CAMPOS: Okay.

COMMISSIONER SULLIVAN: Well, just one.

CHAIRMAN CAMPOS: Go ahead.

COMMISSIONER SULLIVAN: Under 7.6.5.B on that page, where it says, Where developments will not utilize permitted water rights, then you have to calculate the minimum lot size by method 7.6.5.C, which is that equation. Right, Stephen? That hydrologic equation?

DR. WUST: Yes, Commissioner.

COMMISSIONER SULLIVAN: The Theiss equation or whatever it is. Is that it?

DR. WUST: It's the Theiss model. The equation is just Santa Fe County.

COMMISSIONER SULLIVAN: Just an equation. Okay.

DR. WUST: The Lee Wilson equation.

COMMISSIONER SULLIVAN: Now, tell me again where developments, what developments don't have to use permitted water rights?

DR. WUST: Those, Commissioner, are ones that's use the domestic well permits, either with individual or shared wells.

COMMISSIONER SULLIVAN: And which ones are those? Are those ones less than 24 lots? If they're using 2.5 acres?

MR. ABEYTA: Yes, and also commercial developments that are using less than an acre-foot of water, because now we have an ordinance that requires any commercial using more than an acre-foot uses water rights.

COMMISSIONER SULLIVAN: Okay. When I first read this I read it - is this all existing language, by the way?

MR. ABEYTA: Yes.

COMMISSIONER SULLIVAN: Okay. Because when I first read it I read it like, Well, if you don't want to use permitted water rights, you do this. But that's really not what you're saying. What you're saying is in the instances where permitted water rights are not required -

MR. ABEYTA: Yes, that's the latest.

COMMISSIONER SULLIVAN: Minimum lot size shall be calculated by the method, etc.

MR. ABEYTA: Right. Yes. That's it.

COMMISSIONER SULLIVAN: That would help me if this language were changed that way. Think about it. Ruminant amongst yourselves. It looked like an out clause to me.

DR. WUST: It also gives the option as I mentioned earlier which is in the existing Code that if someone instead of getting a domestic well permit, whether or not they're required to, actually purchases and brings in water rights and the Office of the State Engineer accepts those. The County may use that as sufficient water availability without making them go through the equation. That's in the existing Code right now.

CHAIRMAN CAMPOS: Just for my education, 7-16 again, top of the page, f, it says, If the development is within a declared basin the applicant shall obtain a valid water right permit. What if it's not in a declared basin, if they want to drill a well. Do they still have to file for a permit? To make an appropriation? What does that mean?

DR. WUST: That comes from - not this language but basically that's acknowledging that the Office of the State Engineer, when they declare a basin, they put restrictions on your ability to get a domestic well permit so you're required to do this. And this is in essence acknowledging that. We're not doing it for a real County reason, more so than to say that if you're in a declared basin you have to do this. That's a state requirement.

COMMISSIONER SULLIVAN: But that's just for a community water system,

isn't it? That paragraph, f, applies to doing a community water system.

CHAIRMAN CAMPOS: It seems to.

COMMISSIONER SULLIVAN: It does.

MR. GRICE: It does.

CHAIRMAN CAMPOS: Let's go to page 7-17. Questions?

COMMISSIONER SULLIVAN: Are we going to change that chart, Mr. Chair?

Did that seem to be – we were talking about that chart earlier.

CHAIRMAN CAMPOS: The chart of the standard minimum lot sizes?

COMMISSIONER SULLIVAN: Right.

CHAIRMAN CAMPOS: On page 7-17?

COMMISSIONER SULLIVAN: Right. The 10, the 2.5, and the 50 to 12.5 etc.

Does that seem to be the consensus?

CHAIRMAN CAMPOS: I don't know.

MR. ABEYTA: Mr. Chair, yes. We've got to do something different so that you can go down to the 2.5 with just the water restriction.

COMMISSIONER SULLIVAN: I just want to re-emphasize that.

MR. GRICE: I'd just point out that the additional density based on water conservation and long-term water proof is illustrated in the cross reference to section 2.7.1, but anyway, staff will work on it.

COMMISSIONER SULLIVAN: Section what?

MR. GRICE: Under 2.7.1, which is the performance districts density and dimensional standards schedule. You recall maybe seeing this flashing at you.

COMMISSIONER SULLIVAN: Oh. I don't have that here.

MR. GRICE: I know you don't anymore but that is the section, that's the base density section and it explains minimum lot area and the establishment of a base density for each district, and a slightly increased density with water conservation and an increased density with water conservation. So all this is an amplification of what's already been said.

COMMISSIONER SULLIVAN: Yes, but you're going to have to change Chapter 2 if we change this.

MR. GRICE: Okay, staff and I will work together.

COMMISSIONER SULLIVAN: And if you do change that and change everything that goes with it, I just feel it's important as I said before that the chart say standard minimum lot size assuming all applicable conservation measures are imposed.

MR. ABEYTA: Mr. Chair, we may not change this because that's, to do geo-hydro reports, even for subdivisions, Steve could correct me if I'm wrong, you still need the standard minimum lot size in doing your formula. You've got to plug it into your formula, don't you?

DR. WUST: It's got to do with the numbers we're putting in here. And again, these were from the existing Code based on assumption of one acre-foot per lot, but since we're now assuming .25 acre-feet per lot, I believe these numbers should match what the existing Code shows, 2.5 –

MR. ABEYTA: Okay, then we may change it.

DR. WUST: We can put that in, assuming the .25 acre-foot usage and all water conservation measures are adopted.

MR. ABEYTA: Okay.

CHAIRMAN CAMPOS: I have a question. Page 7-17, E.2, last sentence. In no case shall minimum lot size be adjusted below 2.5 unless the development is utilizing imported water. What is our policy as far as using imported water and smaller lot sizes?

MR. ABEYTA: Mr. Chair, in the urban area is the only place where you can go below 2.5 acres and the imported water means City or County water.

CHAIRMAN CAMPOS: But what if we have a new RPA plan and we have districts that require infrastructure and where there will be importation of water. How is this language going to affect that situation?

MR. ABEYTA: In that situation, the zoning, the base zoning would probably change. So we wouldn't be dealing with a 2.5-acre minimum. We wouldn't be dealing with basin, basin fringe type. We'd have a whole different zoning category.

CHAIRMAN CAMPOS: So that would kind of make this meaningless in that context.

MR. ABEYTA: Yes.

CHAIRMAN CAMPOS: Okay.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER DURAN: Just to piggy-back on that, imported water could not mean a water system?

MR. ABEYTA: Mr. Chair, Commissioner Duran, no. Steve could correct me if I'm wrong, but I believe imported water means City or County.

CHAIRMAN CAMPOS: What does it mean? What does imported water mean?

MR. ABEYTA: I believe it's a source other than water underneath the lot.

CHAIRMAN CAMPOS: So it's surface water.

MR. ABEYTA: Surface water that's imported.

CHAIRMAN CAMPOS: Let's say you have a subdivision here without wells, like we have at the Community College District. We say No drilling within the district but you can import water from a lot outside that district. Is that imported?

MR. ABEYTA: No, no. We're talking surface water and the Code assumes a City or County owned system because the state regulations require surface water and not just wells.

CHAIRMAN CAMPOS: That's not necessarily so. Look at the Buckman fields. It supplies the city with thousands of feet of groundwater. The City wellfields. So that's not a correct assumption. Do we have to redefine that?

DR. WUST: Mr. Chair, I think that's an excellent point that we probably should redefine that and I use a different example, the famous Estancia Basin desalination pipeline or a freshwater pipeline comes up and everybody between us and them decide they



want to hook into it and create their own little water system and get off all their wells. That's imported water and I think we should be able to accommodate that. But there's nothing in the Code right at the moment that can accommodate that and that's something I think we probably really ought to -

MR. ABEYTA: Mr. Chair, imported water is defined by the Code now as surface water from the Rio Grande or outside Santa Fe County.

CHAIRMAN CAMPOS: Outside the county. That's how it's defined presently. Well, that's something to think about.

COMMISSIONER DURAN: Outside Santa Fe County?

MR. ABEYTA: That's the existing - or surface water from the Rio Grande River. That's existing.

COMMISSIONER DURAN: We don't have surface water from the Rio Grande.

COMMISSIONER SULLIVAN: That's how Las Campanas, I guess got approved. Las Campanas has approvals based on water rights for surface water.

MR. ABEYTA: Right, but that density is still 2.5 even in Las Campanas. The overall minimum is still 2.5. But in the urban area where you're using City water you can go to below 2.5 acres.

COMMISSIONER DURAN: So you consider that imported water?

MR. ABEYTA: Yes.

COMMISSIONER DURAN: Just one last question. So don't you think that if we develop our own water system and we're using it, that system is developed based on groundwater resources, would that qualify as an imported source?

MR. ABEYTA: Mr. Chair, not under the current definition it wouldn't. But that's not to say that we can't change the definition. Plus when we do decide to serve certain areas of the county with our own system or City system, we're going to probably - the correct thing to do -

CHAIRMAN CAMPOS: The County system.

MR. ABEYTA: The County system.

CHAIRMAN CAMPOS: You said the City system.

MR. ABEYTA: The County or City, but okay, County system. When we decide to serve an area off the County system the zoning should change with that or we need to have a discussion of what impact is it going to have on the zoning because we're not talking about basin, basin fringe.

COMMISSIONER DURAN: We've got to look at that later, all right?

MR. ABEYTA: Right.

DR. WUST: Plus, Mr. Chair, that example covers, because there are provisions that say if you are hooking up to an existing community supply. And then there's another provision that if you are importing water for yourself. So hooking up to the City or County is actually a category that's covered under certain requirements.

CHAIRMAN CAMPOS: But still, even under our current system with the

hydrological zoning, what does it mean if you have imported water there? Does it mean you could go below the 2.5? Where can you go? Is it defined anywhere in the Code?

MR. ABEYTA: No. The only time you could go below is in an urban area.

COMMISSIONER DURAN: In the urban area.

CHAIRMAN CAMPOS: Is that the only time?

MR. ABEYTA: Yes.

COMMISSIONER DURAN: Do you know what? There is no such thing as imported water anymore. The City has an ordinance that does not allow for extensions in to the county for water coming from their system. So there is no such thing as imported water.

CHAIRMAN CAMPOS: Mr. Catanach.

MR. CATANACH: Mr. Chair, and we're talking about this sentence and that you cannot go below the locational minimum lot size adjusted below 2.5 and we talked about the urban area but I just want a point of clarification that this is not addressing the zoning within traditional communities where you are allowed 3/4-acre lots. So just a point of clarification that I'm not sure if it's covered in another part of this Code but a point of clarification that in fact in traditional communities the zoning does allow 3/4-acre minimum and in fact with community water and community sewer within traditional communities, under the current zoning you can go down to a third of an acre density.

CHAIRMAN CAMPOS: So that needs some work.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER DURAN: I apologize for being a thorn in your side here.

I've read the rest of it and I have no problems with it. I have to leave because I really do have something to do.

CHAIRMAN CAMPOS: You'll be here at 4:30?

COMMISSIONER DURAN: I'll be here at 4:30. So if you all want to move through this thing as much as you can. The only thing I would ask is that when you get to the fire and rescue impact fees that we think about maybe some police protection fees that might be able to help us with some of our issues. And the other thing -

CHAIRMAN CAMPOS: We've only got ten minutes.

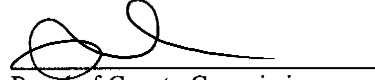
COMMISSIONER DURAN: Well, then the only thing is - then you won't get there. Okay. Thank you.

CHAIRMAN CAMPOS: I guess this meeting's adjourned. I guess we have to declare that for the record and let's continue the discussion. [Post quorum minutes attached as Exhibit 1]

**ADJOURNMENT**

Commissioner Duran left the meeting and the meeting was officially adjourned at 3:50 p.m.

Approved by:




Board of County Commissioners  
Paul Campos, Chairman

Respectfully submitted:



Karen Farrell, Commission Reporter

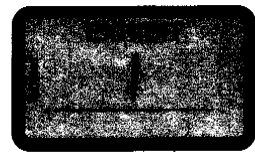
ATTEST TO:



REBECCA BUSTAMANTE  
SANTA FE COUNTY CLERK



SFC Clerk 11/22/2004



**Study session continues post -quorum**

CHAIRMAN CAMPOS: 7-18? Any questions there? Okay. 7-19? Okay.  
7-20? 7-21?

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER SULLIVAN: On 7-20, Roman or whoever can do it, can you explain again under individual and shared wells what our requirements are? Do we require shared wells or do we just think it's a good idea when the hydrologist reviews the subdivision or what's our procedure there?

DR. WUST: Mr. Chair and Commissioner Sullivan, my impression was from several BCC meetings is the Commission itself has always said they preferred shared well over individual wells, and I think that's a good policy. But whether or not you want to adopt that as a standard would have to be a Code requirement.

COMMISSIONER SULLIVAN: That's what I'm getting at is that we traditionally, the hydrologist has recommended it and in most cases the applicant comes in with a shared well because they say, Gee, that's better than drilling four wells, drill one well. I can buy into that. It gets a little complicated when they want to do lot line adjustments and splits, more splits. But it seems like we should just mandate it. Other than in B.5 at the bottom, subdivisions containing six or more lots – how does that work? Six or more lots, I know they can still use shared wells, is that correct? But like that subdivision to the north that we approved, then they have to do a geo-hydro.

DR. WUST: That's correct, Commissioner. In fact, this relates back to Commissioner Anaya's question on the three acre-feet. If they have a domestic well permit that the Office of the State Engineer allows an appropriation of up to three acre-feet and I've actually discussed this matter with the Office of the State Engineer that they can technically try to put 12 houses on it if each house is restricted to a quarter acre-foot. Not a lot of wells actually can yield that much but that's technically allowable with a shared well with a domestic well permit.

COMMISSIONER SULLIVAN: And that's why we, because not a lot of wells can yield that much, that's why we say with six or over you've got to do the geo-hydro to prove that those wells can really produce that.

DR. WUST: That's a general issue of just six or more kicks them in a whole lot of things, whether or not it's a domestic well or a shared well or anything else.

COMMISSIONER SULLIVAN: I guess my suggestion, and we can bring it up again when Commissioner Duran and the others come back is that we make it a policy in our Code that when we're dealing with these small lot subdivisions that they utilize shared wells.

DR. WUST: The one language we'd have to look at carefully is in a case where they cluster a group and then have two or three large lots. Those large lots are not always conducive to shared wells because of the distances. And so what we have seen is proposals to have a combination. You could have three or four houses on a well and then one house by itself. There's one just mainly due to topography. It was over a hill from everybody else so they proposed a combination of an individual well and a shared well, so a combination of that, I think we could fit that in the language by calling it a preference.

COMMISSIONER SULLIVAN: Often they do that with the large lots because they're planning to do family transfers, serial subdivisions and transfer those larger lots. Split them at a later date. But however you could work it out, I would rather than just saying that if the source of water will be individual domestic wells or shared wells I would say that if the source of water will be individual wells, shared wells shall be utilized unless the applicant demonstrates reasons otherwise. Something to that effect.

DR. WUST: That's fine, because I've been putting that down on my recommendations also. So that's consistent with the way we've been applying the water availability.

COMMISSIONER SULLIVAN: That's all on that.

CHAIRMAN CAMPOS: I have a question for you. We have shared wells of five or more. Isn't that a community system? And if it's a community system, don't they have to have water rights, as opposed to domestic?

DR. WUST: That's under the current Code, the definition of a community water supply. It has to do with the permit. If it's a domestic well permit it's not under our definition a community water supply. There's also state and federal definitions of a public water supply, and that's based solely on the number of people. It's got nothing to do with the type of well or the permit or anything else. And the definition is 25 or more people for 60 days or more a year.

CHAIRMAN CAMPOS: Don't we have - what's our Code provision that says that if you have a community well, five people sharing, five or more, that you have to have water rights? Don't we have something like that?

MR. ABEYTA: Mr. Chair, what it says is if you - it says all community water systems have to have water rights. But not all developments need to use a community water system. Subdivisions of five or more lots don't always need to have a community water system.

CHAIRMAN CAMPOS: They can do individual wells.

MR. ABEYTA: So you can do individual wells or even have more than four units on a well and still not qualify as a community water system.

CHAIRMAN CAMPOS: So when does community water system kick in as a requirement?

MR. ABEYTA: When you're creating lots less than 2.5 acres in size in the urban area.

CHAIRMAN CAMPOS: Okay. Let's go to 7-21. Any questions?

COMMISSIONER SULLIVAN: It also kicks in when you're creating more than 24 lots too.

MR. ABEYTA: Yes, that's right. Both size of lots and numbers. So subdivisions of 25 or more lots would require it also.

COMMISSIONER SULLIVAN: And is that the same as the EZ Code also?

MR. ABEYTA: Yes. That's the same thing.

MR. CATANACH: It's not as clear. The EZ seems to indicate in a development it's more the size of lots. It doesn't seem to indicate number.

MR. ABEYTA: But we interpret - We'll interpret it because it refers you to the County Code that we can require number also and we've always required number.

COMMISSIONER SULLIVAN: So the community water system, for anything under 24 lots is never going to happen. People are always going to make it 2.5-acre lots so they don't have to do a community water system. So let's change that.

CHAIRMAN CAMPOS: Say that again.

COMMISSIONER SULLIVAN: I said for under 24 lots we're never going to get community water systems because they're always going to make it 2.5 acres instead of two-acre lots.

MR. ABEYTA: Right.

DR. WUST: Commissioner Sullivan actually proposed some language for that and got pretty severely hammered in initial drafts. But it was to – and this was based on my experience in the drinking water program at the state, that to add to the definition of a community water supply, any system that fulfills the definition of it under the state and federal regs of a public water system. So any time you would be serving 25 or more people, you would be by definition a community water supply and therefore you would have to get the water rights.

COMMISSIONER SULLIVAN: Twenty-five or more people would still be like ten or twelve lots.

DR. WUST: It's generally considered about – I think it's about 2.7 is considered the average number of people per household. So it would be about ten homes. Something like that. Ten or eleven.

COMMISSIONER SULLIVAN: My suggestion would be to throw one of your red bullets or balloons in there with that suggested language and when we have the full Commission we'll go back to that and throw it out in front of them and say We'd like community water systems to be community water systems, just like they say.

DR. WUST: It's going to have serious public comment. The reason is that makes people get water rights and that's a valuable thing if the Commission wanted to impose it but it's a drastic change from the current Code.

COMMISSIONER SULLIVAN: I understand and the Commission may not approve it but at least it will be right there in front of us.

MR. GRICE: So what do you want the bubble to say?

COMMISSIONER SULLIVAN: Well I think probably Mr. Wust has the language. We're kind of jumping backwards. I was on individual and shared wells and then we jumped back into the definition of community wells. It was back on page 7-18 under New Community Wells and Community Water Systems. And I think maybe it goes back to the definition page.

DR. WUST: It definitely does.

COMMISSIONER SULLIVAN: I would put it in the definition of community water system, and I think what Mr. Wust is saying is that he would add that a community water system becomes applicable when it meets the state definition of a public water system as required by the state.

DR. WUST: We could include in that for residential, because like a restaurant is actually a public water system.

COMMISSIONER SULLIVAN: Okay. For residential.

DR. WUST: And so we could specifically say for residential.

COMMISSIONER SULLIVAN: And what that would mean – of course, people come in and say, Oh, well. This is just for me. I'm only going to have one person per house. So you may have to think about that and just assume ahead of time that it's 2.5 persons per house and therefore it would be ten lots.

DR. WUST: Commissioner, we already do that when it comes to water budgets. There have been people that propose additions to their houses or swimming pools and they say, Well, I live alone so I don't really use much water, but we make the assumption for a water budget because that's not a permanent state of that house, that we're going to use the average numbers. The drinking water program does the same thing. They make an assumption. If you have so many houses in a residential area, because of the variability of the number of people you have to make some assumptions on the average number of people per household.

COMMISSIONER SULLIVAN: So it might be easier to understand if we put it into house numbers, since we are using the same 2.7 standard anyway, we might as well just – people would understand better if it just said ten or twelve or eight, how many houses there are. That's controversial, but while we're at it we might as well.

CHAIRMAN CAMPOS: Okay, it seems we've fallen short of our goal of going through this whole thing by a long shot.

COMMISSIONER SULLIVAN: The rest of it's fine.

CHAIRMAN CAMPOS: The rest of it's okay, guys. It seems like we still have to have another study session to finish. We've got what? 60 pages.

COMMISSIONER SULLIVAN: There's already a whole section of public meetings. Where's that sheet on public meetings. I got a sheet that shows a whole lot of public meetings were already organized, right?

MR. ABEYTA: Yes, Mr. Chair, Commissioner Sullivan. There's meetings in Edgewood, Eldorado, Pojoaque and Stanley in the next two weeks.

COMMISSIONER SULLIVAN: On that module?

MR. ABEYTA: On Module 3.

CHAIRMAN CAMPOS: Because we lack about what? 80 pages?

MR. ABEYTA: Our meetings, we have two of them scheduled for tomorrow, one tomorrow and then the following. I was going to proceed with having those meetings and then just bring back any comments we receive.

COMMISSIONER SULLIVAN: I would, Mr. Chair, to jump ahead on an area that's near and dear to my heart, page 7-55. And that's dealing with the floodplain areas, and one which is near and dear to Charlie's heart also. And there's two things I've experienced in seeing these applications come forward that has sensitized me, and one is on the top of the page where they talk about elevating to one foot above the boundary of the floodplain. I would strongly suggest two feet for that. And that's a change and so we'd want to discuss it and disclose it to the other members of the Commission.

The second thing I think shouldn't be so controversial. There's a third thing also. The second thing is that in the criteria, we need to request that a backwater analysis be done. We don't do that.

CHAIRMAN CAMPOS: What is that?

COMMISSIONER SULLIVAN: Well, all of our requirements pertain to is the flooding going to damage potential homes on this property. So dwellings have to be

flood-proofed and the lowest floor has to be elevated one foot and you can't put wastewater facilities in the flood fringe. Things like that. Things that are safety issues on the property. What we don't look at is how does the construction of this development from a flood standpoint affect the properties that are upstream from it.

MR. GRICE: It's actually addressed in 7.13.7.C. The hydraulic properties of any flood hazard area which is projected to carry a flow of no less than 100 cubic feet per second...s shall not be modified unless the upstream and downstream effects of the modifications are addressed in the report submitted to the administrator.

COMMISSIONER SULLIVAN: What's the definition of the flood hazard area?

MR. GRICE: The flood hazard area would be the 100-year, anything within the 100-year floodplain boundary.

COMMISSIONER SULLIVAN: See, now that's the problem, is that where the backwater effects occur is in the flood fringe and not in the flood way.

MR. GRICE: The flood way, the floodplain area includes the flood fringe and the flood way. The flood way is the actual channel. The flood fringe is the areas that are subject to flooding in the time of a 100-year flood. I believe this language does do that.

COMMISSIONER SULLIVAN: In a recent application that we had we had - it says unless the upstream and downstream effects are addressed in a report. And in a recent application that we had the way they were addressed was the engineer said, We don't think there will be any problem. That was how it was addressed. And that was inadequate. So my suggestion is that they do a backwater analysis. It's a computer thing that you do. And then my third suggestion is that you deal with something wider than the 100-year flood area. The 100-year is pretty narrow and the Corps of Engineers use a maximum probably flood zone, and that's a more realistic definition of what you might flood.

Now, if there isn't a flood map, then you have to do it yourself. Is that the way it works?

MR. GRICE: That's right.

COMMISSIONER SULLIVAN: Right. Okay. Then one quick other one on 7-51, this is just a typo so this will be easy. 7.13.2.E. as in echo. That says FEMA flood elevation data is unavailable. It says date. I'm sure it's data. That's all I have, Mr. Chair.

CHAIRMAN CAMPOS: What do we want to do? Do we want another meeting, Mr. Abeyta? Do you want to think about it? We haven't covered 80 pages. Do you just want to meet with individual Commissioners? Commissioners two at a time?

MR. ABEYTA: Mr. Chair, what I can do is contact the Commission and poll everybody and then get back to you as to whether or not there's a majority that wants to continue with another study session, continue with the module.

CHAIRMAN CAMPOS: Does Mr. Grice have to be here?

MR. ABEYTA: I don't know if he does. I would leave that to him. I think

-

MR. GRICE: I'm happy to work out a time to come back.

CHAIRMAN CAMPOS: Why don't you come up with a plan because I think we do need to review it.



MR. ABEYTA: Okay.

CHAIRMAN CAMPOS: Either in small groups or a big group. We need to do this if we're going to get it right.

MR. GRICE: We did anticipate some - we have some flex trips built into the contract. Also because Mr. Duncan was unable to make it today we have an extra man-trip there.

COMMISSIONER SULLIVAN: I think it's useful, Mr. Chair. I think I appreciate the work you all are doing on this and -

MR. GRICE: I think it's probably more important that I'm here on sections other than the water section. I remember Jim explaining to you when we first started, we don't know anything about water. We organized your existing material and then turned it over to staff and then reorganized it again. The other sections are more - we've been more hands on than this section.

MR. ABEYTA: Mr. Chair, I'm going to schedule another public hearing then.

CHAIRMAN CAMPOS: Like this one?

MR. ABEYTA: Like this one.

CHAIRMAN CAMPOS: We were supposed to have public comment today, right?

MR. ABEYTA: And that's part of the reason why, so that we could have public comment on it.

CHAIRMAN CAMPOS: Anybody out there that's here for public comment? Mr. Dominguez. I guess we can't have it today because we don't have a meeting. It's been adjourned but it's part of the agenda so we need to have that.

MR. ABEYTA: I'll schedule another public hearing.

CHAIRMAN CAMPOS: We're adjourned and without a quorum.

COMMISSIONER SULLIVAN: Let him talk. He can come back again too.

CHAIRMAN CAMPOS: We've got to take a break before 4:30. Go ahead. Two seconds.

TOM DOMINGUEZ: Mr. Chair, Tom Dominguez with PNM Electric and Gas. Mr. Chair, Commissioner Sullivan, I appreciate the opportunity. I said it would be a brief comment. We just wanted to ask and confirm that you were delivered the copy of a letter from Debbie O'Callahan, our north central director. I hope you received that. It was just stating that we've worked diligently with staff on the utilities section. It appeared that on this draft that none of those comments were incorporated. We had asked staff for a meeting and we're still looking forward to an opportunity to meet with staff so we can look at that and just work through some of the issues, I guess would be the best way to put it, before it comes to you, maybe with their comment, hopefully some support.

And then the other thing was just to make a brief comment and we will comment again when you reconvene the meeting in a public setting. But the other was just to say that as the language exists, it's not that PNM is averse to the language as it is written. We understand the integrity wants to be kept countywide for keeping utilities underground. All we wanted to do was just state for the record that when we do that, we are required by the PRC to design a certain, at a minimum cost type of deal. Or minimum type cost system.

When we go to underground there's a significant cost increase. PNM is not averse to building underground systems. We just want to make the Commission aware that the mechanism in place for covering that is borne either by the regulating body that requires that, or in that case it would be the County Commission, and if the County Commission at that point would say we don't have the resources to do that, then the mechanism we have is an underground tariff and that is passed on to the constituents.

So there is a mechanism by which that would be covered and be paid. We just wanted to bring that to your attention.

CHAIRMAN CAMPOS: What do you mean by constituents?

MR. DOMINGUEZ: It would be, in this case -

CHAIRMAN CAMPOS: How far is it spread?

MR. DOMINGUEZ: The county.

CHAIRMAN CAMPOS: Just within the county.

MR. DOMINGUEZ: It would be within the county. For example, when we deal with the City, the unfortunate thing is even though it's area-specific it would be everybody in the city limits. In this case, if it's a County requirement it would be incumbent upon all the county constituents.

CHAIRMAN CAMPOS: Including city residents.

MR. DOMINGUEZ: That's correct.

CHAIRMAN CAMPOS: Okay.

MR. DOMINGUEZ: Thank you.

CHAIRMAN CAMPOS: Thank you, sir.

#### CONCLUSION

The study session ended at 4:10 p.m.

SFC Clerk 11/22/2004