

SANTA FE COUNTY

REGULAR MEETING

BOARD OF COUNTY COMMISSIONERS

February 14, 2006

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

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

Members Present:

Commissioner Harry Montoya, Chairman
Commissioner Virginia Vigil, Vice Chairman
Commissioner Paul Campos
Commissioner Jack Sullivan
Commissioner Mike Anaya

Members Absent:

[None]

V. Invocation

An invocation was given by Brendalyn Bachelor from the Unity Church.

VI. Approval of the Agenda

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- B. Tabled or withdrawn items**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

Roman Abeyta, Deputy County Manager, outlined the following changes to the agenda: Under Matters from the Commission, IX. B. the request for authorization to publish title and general summary of a truck ordinance on Agua Fria Road was tabled; the affordable housing Ordinance, listed under Staff and Elected Officials' Items, is listed to be heard at 6:00; under Matters from the County Manager, Appointment to the Regional Transit District has

been added and approval of Public Improvement Districts Guidelines was tabled; and under Public Hearings, the water recirculation ordinance was scheduled to be presented, CDRC Case #Z/DP 05-5220 (Bad Ass Coffee Company) was tabled. There was a late request to table CCDRC Case #S 01-5572, Thornburg Master Plan amendment. The Commissioners asked for amplification on the request.

DOLORES VIGIL (Land Use Administrator): Mr. Chairman, Commissioners, we feel as staff in reviewing the application that it does not affect the approval or request for approval for the phase 2 of the Thornburg application.

CHAIRMAN MONTOYA: Okay. Any other Consent items? Could I have a motion as amended?

COMMISSIONER VIGIL: Mr. Chairman, move to approve as amended.

CHAIRMAN MONTOYA: Motion by Commissioner Vigil.

COMMISSIONER CAMPOS: Second.

CHAIRMAN MONTOYA: Second by Commissioner Campos. Discussion?

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

VII. APPROVAL OF MINUTES

A. January 10, 2006

COMMISSIONER CAMPOS: Move to approve.

CHAIRMAN MONTOYA: Motion by Commissioner Campos.

COMMISSIONER VIGIL: Second.

CHAIRMAN MONTOYA: Second, Commissioner Vigil.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: One typographical correction.

CHAIRMAN MONTOYA: Okay, typographical correction for Commissioner Sullivan.

COMMISSIONER CAMPOS: Okay

COMMISSIONER VIGIL: Okay.

CHAIRMAN MONTOYA: All right.

The motion to approve the minutes of the January 10th meeting as amended passed by unanimous [5-0] voice vote.

VIII. MATTERS OF PUBLIC CONCERN – NON-ACTION ITEMS

CHAIRMAN MONTTOYA: At this point, if anyone in the public would like to come forward under Matter from the Public, now's the time to address the Commission. Yes, sir. Please come and identify yourself.

ROGER HOLDEN: Hello. My name is Roger Holden. I represent a group of people and organizations and groups down in southern Santa Fe County, Edgewood specifically, who are trying to pursue getting the governor's rodeo grounds located in the Edgewood area, southern Santa Fe County area. We are working regionally with EVEDA, Estancia Valley Economic Development Association, and the Town of Moriarty, requesting that it be located in that area.

We are pursuing it on a regional basis and we also just want to maintain our identity as Edgewood and the unique properties of Edgewood that other areas might not have, specifically, we have SASS nearby. Single Action Shooter Society, right next to us. They wish to pursue this facility as well as also the Founders Ranch, 480 acres, is trying to put on an annual chuckwagon trail ride from Santa Fe down to their facility. Part of that is the trail, getting the trails and open space integrated into that, which would also help with the rodeo grounds, having a trail, rodeo grounds, SASS, and the town Chamber of Commerce Identity Committee is working to get some kind of a theme for the town, specifically a western theme, because we have a new Walmart coming in and they wish to even work with us on the theme.

So that whole urban, western, Old West feel, we're trying to keep in the area. We made up a brochure. This is specifically about Edgewood but it also incorporates many of the facets for the entire region. I'd like to pass this out to you. As well as the High Desert Riders, which is a very pro-active equestrian group in the area. It's put out a calendar this year, so I'd like to present that to you also. And with that, that's all I have.

CHAIRMAN MONTTOYA: Thank you, Roger.

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: Yes, I just wanted to thank Roger for coming down. We're trying to get that rodeo grounds located in between or – come back up, Roger, because I know I missed one meeting that you all had. Are we still trying to get that rodeo arena next to the Edgewood area or in between the Moriarty and Edgewood area? Is that what you all had talked about?

MR. HOLDEN: We're working on a region, that general region, Moriarty and Edgewood area, because there are advantages to both.

COMMISSIONER ANAYA: This is that \$12 million? Correct? \$12 million that the governor has set aside to build a rodeo facility and we are trying to get it in the location of Edgewood and Moriarty and what we're going to try to do is put a resolution together and hopefully this Board would support it. That way it would be located possibly in

Santa Fe County or in Torrance County, but close to our county. So thank you for coming and sharing that with us, and I believe you'll keep us informed on what's happening.

MR. HOLDEN: Yes.

COMMISSIONER ANAYA: With the local groups that are interested in promoting this.

MR. HOLDEN: Yes. We have a lot of equestrian groups that are very interested. The Town of Edgewood tomorrow night is going to have a resolution. We have the Route 66 Chamber of Commerce, has endorsed it. The Chamber of Commerce of Edgewood has endorsed it. Wildlife West, SASS, and other organizations have endorsed it.

COMMISSIONER ANAYA: So maybe if you could that resolution we can try to bring it towards this Commission.

MR. HOLDEN: Excellent. Thank you.

COMMISSIONER ANAYA: Thank you, Commissioners.

CHAIRMAN MONTOYA: Thank you.

IX. MATTERS FROM THE COMMISSION

A. Recognizing and Honoring Monica Lovato (Commissioner Vigil)

COMMISSIONER VIGIL: Thank you. Monica, would you take a chair right there? This is just an opportunity to highlight Monica Lovato's experience in the area of boxing, Mr. Chairman and members of the Commission. Monica had a launch last Friday in Las Vegas, Nevada and she won in less than, I believe, 60 seconds with a knock out. Monica is a new hire in the County Clerk's office and she brings her sparring and boxing capability to the Clerk's office to continue to build and grown with a dynamite office. There is a video that appeared on national television, Mr. Chairman, and it's less than, I believe, 54 seconds and Rob Yardman has prepared that for us.

[Video footage]

COMMISSIONER VIGIL: Mr. Chairman, Monica, would you get to the podium, and maybe you can give us a little bit of a run-down of what your next matches are going to be like and where they're going to be and first of all, let me say I really want to thank you for taking on this role model status that you have for your community, for Española, and making it be a positive thing for those children and everyone there who looks up to you.

Mr. Chairman, Monica was featured in the *New Mexican*, I guess a couple of editions ago. Her and Jayla. Valerie, our County Clerk, has sort of embraced these girls who are working very hard to make a name for themselves and promote the field of boxing, and they're turning out to be exemplary employees. Monica, when is your next match?

MONICA LOVATO (Clerk's Office): The next match is March 18th. It's not a for-sure, 100 percent yet, but we're looking at March 18th in Palm Springs, California.

COMMISSIONER VIGIL: Wonderful.

MS. LOVATO: I would like to thank you, Commissioner Vigil, and I'd like to thank our County Clerk, Valerie Espinoza, for giving me the opportunity to work and come on board. I'm really enjoying it. I'm learning a lot and I love it. Thank you guys for seeing the story.

COMMISSIONER VIGIL: Thank you, Monica.

CHAIRMAN MONTOYA: Thank you, Monica, and good luck to you in your continued pursuit toward a world championship.

IX. OTHER MATTERS FROM THE COMMISSION

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Not at this time.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Nothing at this time.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: I did have one announcement. On February 25th, from 12 to 2 o'clock, the Agua Fria Planning Committee is having their first open house. They will be disclosing their planning document and there is a request that staff from Public Works, Project and Facilities, Open Space and our Water Resource Department be there, similar, Mr. Chairman, to what occurred when the Pojoaque Valley Planning Committee had their first open house. It will be an opportunity for members in the community to review the planning process and the documents that they've created thus far to make comments, to fine-tune them and to continue to move forward in their planning process. Again, that's February 25th, from 12:00 to 2:00, and I believe that it will be at the Agua Fria Fire Station. Thank you, Mr. Chairman.

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

COMMISSIONER ANAYA: Thank you, Mr. Chairman. First of all, I'd like to congratulate Monica on the success that you have done and shown the community. And that is truly taking Santa Fe County to the national level when we have people like yourself participating in those events. So congratulations.

And Happy Valentine's Day to everybody out there.

Mr. Chairman, I was at a meeting about an hour ago with some people and they were talking about ATVs and it was interesting how one of them said, Well, why don't we confiscate ATVs that are driving on private land. So I wrote that down and I wanted to bring it up to the Commission to see if that's something that this Commission would like to look at. The people that have big chunks of private land, ranching land, for example, the ATV owners are taking their bikes out and cutting the fences and riding carelessly or freely or whatever you want to call it, and it's becoming a major problem.

I know we are looking with the BLM to find out, to see if we could come up with places for people to ride their bikes or their ATVs. But I just wanted to bring it up and to really put our foot down on County property or in Santa Fe County that if you're riding your bike illegally on private land and you're cutting fences, well, heck, maybe we ought to take their bikes away and put a stop to that. But I just wanted to throw that out and see how the Commission felt about it or maybe we could have Legal look into it to see if we can do that. I just wanted to throw that out. That's all I had, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. All right. I have just a couple, to inform the Commission. The National Association of Counties has what they call a Sustainable Communities Awards Program. Santa Fe County has been nominated for the Santa Fe Community College District Plan. So we will await to see what the results may be of that particular award.

Also, just to let you all know that the DWI bills that were being introduced have essentially died in committee. We were told that there was not sufficient funds in the budget to take out from the general fund for the DWI program so I guess we need to regroup and take a look at what we actually had suggested a couple of years ago and that was that we would look at actually increasing the excise tax, the liquor excise tax, so that may be the more probably solution since maybe they didn't want to do it two years ago, maybe they'll change their mind and allow us to do it since they didn't want to give it to us this year either. So it's kind of a double-edged sword. So I don't know, whatever recommendations you all might have.

The other thing is I would like for us to look at, particularly with the drought conditions, what we can do to probably look at what level we want to look at for some water restrictions and suggest that maybe we take a look at that. I know Stan Holden, the Fire Chief, is going to be coming forward with some fire restriction guidelines or a resolution for us pretty soon. Is that right, Steve Ross?

STEVE ROSS (County Attorney): Mr. Chairman, we have something in our office right now.

CHAIRMAN MONTOYA: Okay. So maybe we could take a look at the drought and what we are in terms of the restrictions as well.

MR. ROSS: I believe, Mr. Chairman, we're in the highest stage.

CHAIRMAN MONTOYA: Are we still? So we never moved out of that?

MR. ROSS: We never left Stage 4.

CHAIRMAN MONTOYA: I thought we did.

COMMISSIONER CAMPOS: We did. I'm pretty sure we did, Mr. Chairman. You could ask Mr. Wust. He's back here and I think he presented it. He suggested that we move out of that stage.

GERALD GONZALEZ (County Manager): We also have the Fire Chief here.

STEPHEN WUST (Water Resources Director): Mr. Chairman, Commissioner Campos, that's correct. We came forward, actually at the request of the Commission because the City had reduced its drought stage to 2, I believe. So the Commission voted to follow suit.

So that's what we're in right now. If you'd like, just to note, the drought stage restrictions apply to the utility and we can also look at something in terms of an ordinance or something that would be countywide, because our stage restrictions really apply to those folks on the utility.

COMMISSIONER CAMPOS: Just one question. I don't remember ever suggesting that it should be done. I thought staff had proposed that change.

DR. WUST: Mr. Chairman, Commissioner Campos, we had a request from a Commissioner to look at what stage the City was in and to present that to the Commission. At that time the Commission agreed to match the City's stage restrictions.

COMMISSIONER CAMPOS: It was a split vote, right?

DR. WUST: Commissioner Campos, I don't remember what the vote was, but it was approved.

CHAIRMAN MONTOYA: You wanted to maintain – Gerald.

MR. GONZALEZ: Mr. Chairman, I just wanted to point out that our drought restrictions are different than our fire restrictions. We have our Fire Chief here who can also answer the question with respect to where we are.

CHAIRMAN MONTOYA: If you can just let us know what you're requesting, Stan.

STAN HOLDEN (Fire Chief): Mr. Chairman, members of the Commission, what we will be bringing forward in the form of a proposal is a request to place Santa Fe County in restrictions regarding burning, open flames, in Santa Fe County. As most of you know, our fire indices are very high in extreme areas, for humidity, for moisture content in the fire fields and the extreme conditions that we are in are also in other areas of Santa Fe County as well. Santa Fe National Forest, we're extremely concerned. To put it very bluntly, as it's been put to me, the conditions are scary. And I think the indications that we saw yesterday, late last evening, the fire down in Bernalillo County, northern Valencia County, that these fires, in these conditions with winds, as we expect them to be the remainder of this week, peaking on Wednesday, are extreme and we're very concerned. So therefore, we'll be bringing forward a resolution for your consideration very shortly.

CHAIRMAN MONTOYA: Okay. Thank you, Stan. And Steve, if you could bring one also on the water or an ordinance. However you would like to propose that to us. I think that would be good.

DR. WUST: Okay, I'll work on that with Legal, Mr. Chairman.

CHAIRMAN MONTOYA: And just the last thing is the Aamodt settlement is going to be having public hearings on February 20th and February 27th. The 20th will be at Tesuque Elementary School, starting at 5:00 and at the Pablo Roybal Elementary School in Pojoaque on the 27th, also at 5:00. So we're hoping that we can get some public consent on the proposed settlement agreement and move forward with that.

I also would like to say Happy Valentine's Day to everybody. Today is supposed to be a day of love, so I love everybody. I love you.

COMMISSIONER VIGIL: We love you.

X. PRESENTATIONS

A. Update on the Progress of the Rail Yard Park and Plaza in Santa Fe by the Trust for Public Land, New Mexico State Director Jenny Parks (Commissioner Montoya)

CHAIRMAN MONTOYA: I'd like to ask Brian Drypolcher to come up, who's with the Trust for Public Land, and give us a presentation, an update on the Santa Fe Railyard Park and Plaza. Brian.

BRIAN DRYPOLCHER: Mr. Chairman and Commissioners and County Manager Gonzalez and staff, thank you for this opportunity. My name is Brian Drypolcher and I'm program director with the Trust for Public Land. I'm partly here with apologies from Jenny Parks, my boss, our state director, who was to present and is just not feeling well today so she asked me to come on over and answer any questions you might have and make a brief presentation. So I do have a presentation here, some power point slides. I'm going to go through them quickly. I'll try to go through them quickly and then be here to answer your questions.

I would also like to extend a thanks. Back in 2003, this body authorized – I believe it was funding out of a gross receipts tax increment, an increment within that increment that had been made available for parks and open space, and there was \$160,000 earmarked at that time for the Railyard Park and Plaza to help us move forward on our project, and that kind of support is very much appreciated and I thank you.

The Trust for Public Land helped the City of Santa Fe acquire the property in 1995. And looking at this slide here you can see the full 50 acres. The property was appraised at a value of \$28 million. The City was able to acquire it for \$21 million. So that 50 acres there, it's the colored in area of this map which is the product of the Railyard master plan. Over on the left hand side is Baca Street. There's a little 13-acre parcel out there, connected with a walkway trail easement. That was secured by the City of Santa Fe that follows the Acequia Madre. Then north of St. Francis, east of St. Francis, the Railyard Park and the north Railyard property.

So that's the full 50 acres that was acquired in 1995. This is just another view and if you look at the bottom right-hand corner and look at the colored in green area. That represents about 13 acres, the green of the Railyard Park. The little arrow there pointing to the Railyard Plaza, and then a system of connecting walkways that connect from the park up to Montezuma

area on the far right. So the Railyard Park, the Railyard Plaza and the system of connecting walkways, about 12 ½ acres of new urban parklands in the center of our city. And I'll skip through these with a time line except to note that the right-hand edge of this time line, the right half, we'll be launching our capital campaign for additional private funding. Later this year, in the summer of this year, 2006, we want to break ground, although in some ways we already have. There's a lot of infrastructure work, archeological testing, and other work on the ground taking place, really as we speak, and we want to be done with the Railyard Park and Plaza in the fall of 2007.

Just some other landmarks for us have to do with our fundraising. We got \$2.6 million from the federal government, a \$2.7 million gift from Santa Fe Southern Railway, and a number of – I mentioned \$160,000 from the County. Other public and private sources we're now up to \$6.6 million in our fundraising, with a goal of a little over \$11 million. So we've got another \$5 million to go and we're working hard on that.

Just another view, kind of zooming in on the north Railyard, again with the park and the plaza, and also noting some of the activities going on around the park and the plaza and within the north railyard, with new live-work, residential housing going on across the tracks from the park. The farmers' market building a new building just north of Paseo de Peralta. Paseo de Peralta kind of cuts through the middle of the property here on the diagonal.

Right in the middle of that, really pretty a neat arts and cultural node with SITE Santa Fe contemporary art museum, Warehouse 21, the teen art center, a great place for kids in the arts or young people in the arts, Outward Elementary school is right there, the Railyard performance center, el Museo Cultural de Santa Fe, and then the future farmers' market. So in addition to the commercial redevelopment going on on the project, some tried and true and well loved cultural institutions and arts institutions and youth-serving institutions that are right there in the heart of the thing and right on the park and the future railyard plaza.

Here's a view of our plans as they're taking shape with the design in the park, the planting plan and some of the features within the park and also on the plaza. And little nodes. If you look up there on the Montezuma end on the far right, there's a little pocket park that's going in next to Jean Cocteau Theater. Also the location, as I understand it of the future State's film museum. Another view of the park. Within the park, really most of it is naturalistic landscaping with definite bias for native and xeric plants that can survive in hard times. But we do want to have a lot of shade there and shade trees so we're working real hard with our water budget to make this work in terms of creating green space and shaded space in a responsible way and a sustainable way.

There's a little performance area in the middle of the back of the park for outdoor performances. Could be Shakespeare in the Park or Movies in the Park, a children's play area, over an acre. Really new and different kinds of innovative – let's say more adventure play and creative play-oriented play area. Some formal garden area, and maybe in the interests of time, that's enough said about the built features, although I will point out because not many people know, running through the park is the Acequia Madre, so we have a 400-year old irrigation

ditch. That's one of the reasons the park is here is to preserve that ditch and provide access to the Acequia Madre and a public place where people can see it and see a working ditch. Also, the 100-year old rail line of the New Mexico Central runs right through the park and we'll be preserving that as a historic feature.

Both the Paseo, on the plaza – it's a little hard to tell on this detail. On the plaza we've laid out these trees and a shade structure running from the plaza down to Paseo de Peralta. That's a 400-foot long shade structure that's for farmers' market and other outdoor markets, festival markets, it's an open-air structure right across out in the public open space from the farmers' market future building. Everything here is laid out on these 20-foot modules. So the trees are planted 20 feet apart, the posts on the shade structure are 20 feet apart, for the simple reason that that supports the 10-foot wide, two farmers' market vendor stalls. So even though they'll have their year-round indoor market situated in the heart of the railyard, on their outdoor market days they will be on the railyard plaza and within the railyard Alameda walkway there under the shade structure that we're building.

Another feature on the plaza, right hand edge of the plaza is a water tower. That tower looking something like this, modeled in proportion and size after the water towers on the Chili Line from steam engine days, so we think it's kind of a neat architectural feature on the plaza, but it's more than just that. It's actually going to be storing 35,000 gallons of harvested rainwater when it rains again. And it will. 35,000 gallons of harvested rainwater for irrigating the park and for the trees on the plaza. We'll have a system of underground cisterns as well. So in addition to trying to be thoughtful and creative about the kinds of plants that we use, we'll be harvesting water from rooftops to help water those plants.

Under the tower there's this shape that you might recognize, a map view of the Santa Fe River Watershed. We're going to have a fountain feature under the plaza with low-flow drip emitters on the underside of the tower that drip onto the watershed map. So we're using harvested water that uses less than eight gallons a day, and that water will go into the ground and irrigate the trees on the plaza. So we're using it for irrigation and we're kind of getting maximum bang for our buck with harvested water, irrigating our trees but also, we think, kind of providing a lovely public water feature and fountain feature that should be quite delightful on a hot summer day.

Here's another view of the walkway in front of the farmers' market building with the shade structure and a little cross section view in the park, kind of going from the railroad tracks on the left to the Cerrillos Road edge out on the right. And if you look right next to those railroad tracks you'll see a little cross section view of the walkway and something I could have pointed out earlier when I mentioned that trail connection over to the Baca property, I'm sure you're all aware of the 18-mile rail trail that goes all the way out to Lamy. We're excited about hooking up the park to the emerging City trail network with the rail trail, Arroyo Chamiso trail and the Acequia Madre Trail.

Here's some more views in the park, cross section views, and a little view of the railway gardens. As I said, most of the park is more naturalistic landscaping. There will be one

area of more formal gardens with interpretation of xeric plants and places to sit in the shade, children's play area with things to climb on and things to slide down. We really want this park to be a great destination for children and families, much like the children's museum, a true destination where people want to go on Saturdays or Sundays or during the week when school is out to be with family and friends.

With that, I'll thank you again. I wanted to go through that kind of high speed. I know you're busy people, but I also want to leave any time for questions that you might have. I thank you for your past support. Hopefully your support in the future. We've got a ways to go in terms of our design and certainly our construction and also in financing the project. So any support that we can continue to have from the County, we thank you very much.

CHAIRMAN MONTOYA: Thank you, Brian. Any questions for Brian?
Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Drypolcher, how does your fundraising look at this time? You say you need about \$5 million more?

MR. DRYPOLCHER: Yes. Towards our \$11.5 million goal, we've raised \$6.6 million, so we've got another \$5 million to go.

COMMISSIONER CAMPOS: How does that look?

MR. DRYPOLCHER: Well, it's going to be hard work. We know we can do it; we're going to do it. We're over at the legislature now, working there, hoping to get some state funding out of this year's legislature. We'll be going back next year. We're working with the City to get some money out of the current CIP cycle, and we've had good support from the private sector. We really haven't gone public yet with out private oriented capital campaign. We know that that will bear fruit as we get geared up for the private side.

COMMISSIONER CAMPOS: Thank you.

CHAIRMAN MONTOYA: Okay. Any other questions? Okay. Thank you, Brian. Appreciate your coming this afternoon.

MR. DRYPOLCHER: Thanks for this opportunity.

XI. CONSENT CALENDAR

A. Miscellaneous

- 1. Findings of Fact for CDRC Case #V 05-5221 Bad Ass Coffee Variance /Approved (Land Use Department)**
- 2. Findings of Fact for CDRC Case #Z 04-5120 Luis Atencio Master Plan / Approved (Land Use Department)**
- 3. Findings of Fact for CDRC Case #V 05-5290 Vista Clara Ranch Variance / Approved (Land Use Department)**
- 4. Findings of Fact for CDRC Case #S 05-5240 Cielo Tranquilo Subdivision / Approved (Land Use Department)**
- 5. Resolution No. 2006-21. A Resolution Authorizing up to 50%**

**Pick Up of Non-Bargaining Unit Member Contributions Under
Municipal Fire Member Coverage Plan 5 (Legal Department)**

COMMISSIONER ANAYA: Move for approval.

COMMISSIONER CAMPOS: Second.

CHAIRMAN MONTOYA: Any discussion?

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

XII. STAFF AND ELECTED OFFICIALS' ITEMS

B. Sheriff's Office

1. Authorization to Publish Title and General Summary of an Ordinance Regarding DWI Automobile Seizure and Forfeiture

CPL. VANESSA PACHECO (Sheriff's Office): Mr. Chairman, Commissioners, Happy Valentine's Day to you.

CHAIRMAN MONTOYA: Are there any questions, I guess, regarding – I do have to mention that I did receive a letter from Larry Martinez who's the chair of the Health Policy and Planning Commission and they met and reviewed the proposed resolution and fully support the proposed ordinance on the forfeiture. And the DWI Planning Council has also met. I talked to Becky Beardsley this afternoon, and they also have fully supported the ordinance as well and it's interesting that they were of the notion that it should probably be after two offenses as opposed to three, but I think three is what we're proposing at this point. So are there any questions, Commissioner Vigil, Commissioner Campos.

COMMISSIONER VIGIL: Thank you. When I originally learned about this proposal there was an allocation of \$20,000 for legal fees, so I guess I'm not quite sure how that's going to work. I know that the District Attorney's office handles forfeiture claims but it's my understanding that in Tarrant County the Legal Department actually handles them. I think I'd like some input from Steve Ross with regard to that. I know that there has been some budgeted funding for it. How is that going to work through the Legal Department, Mr. Ross?

MR. ROSS: Mr. Chairman, Commissioner Vigil, we're actually following the Albuquerque model and in Albuquerque they hired an attorney and hearing officer internally to process all the claims. We don't think we're going to have the volume for that here, so I know the Sheriff presented you with a proposed budget last time, which I believe he's just going to incorporate into the regular budget process. In that proposal he proposed that we include, I believe, a half-time attorney to process claims.

COMMISSIONER VIGIL: Okay. Thank you, Mr. Chairman. No further questions.

CHAIRMAN MONTOYA: Okay. Commissioner Campos.

COMMISSIONER CAMPOS: Question for Legal, Mr. Ross. I'm looking at Section 4, titled voluntary seizure, immobilization. Your first sentence says, The Sheriff may seize a vehicle if the person arrested has been convicted of one prior DWI. Now, "may" doesn't have any guidelines, really. Does it allow complete discretion for the SO, the Sheriff's Office, to make this decision, or should we have guidelines? How would that work? If they start saying, Yes, we're going to seize your car but not your car, is that going to create any problems for us?

MR. ROSS: Mr. Chairman, Commissioner Campos, this section concerns the optional or voluntary seizure of a car. If you fit within the requirements there, in other words, if you have had one previous conviction and you're stopped again you can voluntarily, by signing a written agreement that's referred to in the next sentence, you can sign a written agreement and voluntarily acquiesce to the seizure, thus relieving the County of the remaining procedures, i.e., going to district court and getting the vehicle forfeiture pursuant to other sections of the ordinance. So this is strictly voluntary.

COMMISSIONER CAMPOS: This is strictly – Okay. It says the Sheriff may seize – it seems that the Sheriff has the discretion to seize the vehicle or not seize, but it doesn't say "shall", it says "may". Does that make sense to you in the sense that it is voluntary?

MR. ROSS: Mr. Chairman, Commissioner Campos, you see in the second sentence, the owner agrees to a voluntary seizure in writing. That's why that says "may". Ordinarily, the Sheriff would have to justify the seizure pursuant to the other sections of the ordinance. So this is completely voluntary. If the owner of the vehicle wants to elect to have his car booted and agrees to sign the immobilization agreement, then that's what's done in that particular case.

COMMISSIONER CAMPOS: And if the person says, no, I don't voluntarily do it?

MR. ROSS: Well, then you proceed with the remaining provisions of the ordinance.

COMMISSIONER CAMPOS: Okay.

MR. ROSS: However, of course, the remaining parts of the ordinance require that two prior convictions be present in order to seize the car. So under this section, the person would just be charged with DWI and that would be it.

COMMISSIONER CAMPOS: So this temporary immobilization is strictly voluntary then.

MR. ROSS: That's right. Apparently they've said they've had a number of these occur in Bernalillo County. It's very popular, apparently.

CHAIRMAN MONTOYA: On that point, Commissioner. Is a temporary immobilization an ignition interlock, or they don't specify?

MR. ROSS: It's a boot.

CHAIRMAN MONTTOYA: Okay. So just a boot and not a –

MR. ROSS: Or impoundment in our impound yard. I understand that the proposal is to get a number of boots, those big steel devices that immobilize cars to deal with the provisions of this paragraph. Commissioner Campos.

COMMISSIONER CAMPOS: The next question I have is related to Section 5, Property interest not subject to forfeiture, subparagraph A. The standard as to the owner who has knowledge. Apparently this ordinance says that if the owner lends a car to a person who is ultimately arrested for DWI that car can be taken, confiscated. It doesn't talk about an innocent lender having any defense. Are we assuming that the lender has to have knowledge that the user is intoxicated?

MR. ROSS: Mr. Chairman, Commissioner Campos, the provisions concerning lenders are in the following paragraph.

COMMISSIONER CAMPOS: Any owner or co-owner of the vehicle who did not have knowledge of nor consented to the use of the vehicle to become a nuisance, provided – I guess they can establish lack of knowledge or consent of the owner. So is it just – maybe I'm just not understanding the language but it seems to me that there is no innocent owner defense?

MR. ROSS: There is an innocent owner defense.

COMMISSIONER CAMPOS: There is? Where is that?

MR. ROSS: That's right there in that first sentence that you were just reading. So if I loan you my car and I have no reason to believe that you are either impaired or planning to get impaired, I'm an innocent owner and I can get my car back. And if I'm a lender, if I'm your bank –

COMMISSIONER CAMPOS: No, I understand that. Okay, so there is an innocent owner defense.

MR. ROSS: Right. There is.

CHAIRMAN MONTTOYA: Okay. Any other questions? What's the wishes of the Board? Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Mr. Chairman. So right now we're just – if we approve this we're publishing title and general summary, and then we have two public hearings or as many public hearings as this Commission wants, and then move from there. Correct? I'll move for approval.

CHAIRMAN MONTTOYA: Motion by Commissioner Anaya.

COMMISSIONER VIGIL: Second.

CHAIRMAN MONTTOYA: Second, Commissioner Vigil.

COMMISSIONER CAMPOS: This is to authorize publication, right?

CHAIRMAN MONTTOYA: Yes, sir. Any other discussion?

The motion to authorize publication of title and general summary of a DWI forfeiture ordinance passed by unanimous [5-0] voice vote.

XII. C. Water Resources Department

1. Request for Approval for Amendment No. 2 to the Memorandum of Understanding for Coordinated Water Resource Planning in the Estancia Basin, in Order to Provide Funding for the Estancia Basin Water Planning Committee \$20,000 (Water Resource Department)

DR. WUST: Thank you, Mr. Chairman. There is also here Doug Sayre from my department and a representative from the Estancia Basin Water Planning Group. I also have a quick little handout to give you. Doug Sayre wrote up a little summary. It showed up after the packets were due but there's a little summary of the expenditures.

Mr. Chairman, the Estancia Basin Water Planning Group was formed in coordination with a memorandum of understanding among Torrance, Bernalillo and Santa Fe counties. That MOU was signed in 95. In 2001 there was an appendix or an amendment attachment to that that funded \$10,000 from Santa Fe County as its contribution. There was a bit of other types of funding in kind and thing like that for the planning group to proceed. There was an amendment to the MOU in 2004 that provided for \$10,000 funding from Santa Fe County to help to contribute to the planning group's efforts and they are coming forward now with a request for some continuing funding. This time the request, Santa Fe County's share would be \$20,000 and that is outlined in that amendment #2 that you have in your packet. That amendment #2 follows the format of the first amendment that was done in 2004.

A request from one of the Commissioners when this came forward was they'd like to talk to someone from the council to find out what they do with the money and what their activities are, and there is someone here today who can address that. I will note one other question that came forward. Basically it took a year to get this funding request in front of the Santa Fe County Commission, but if you look at the signature page on amendment #2 you will see that Torrance County signed it in March of 2005. Bernalillo County didn't sign it until September of 2005. We didn't receive it until October or November. So it hasn't really been in our hands that long. It's just taken a long time to get through the three-county system. But it's coming forward now for a \$20,000 contribution from Santa Fe County and with that, Mr. Chairman, I'd like to bring forward a representative from the Estancia Basin Water Planning Council to address your questions and to give a summary of their activities and what they plan to do with this funding request.

CHAIRMAN MONTROYA: Okay. Any questions for Dr. Wust? Questions for – Rick Thompson. Welcome, Rick. Any questions for Mr. Thompson regarding the listing of activities, projects, demonstrating the results of funding? Commissioner Campos and Commissioner Sullivan.

COMMISSIONER CAMPOS: Just a quick question. Could you briefly tell us

what you've accomplished as an organization for the last two years?

RICK THOMPSON: Yes, sir, I can. And by the way, at the conclusion of my remarks I'll give you each a written summary of our accomplishments as well. First off, we were established officially as a three-county committee, sort of a quasi-governmental group, overseen by the County Commissions of the three counties, that being Santa Fe, Torrance and Bernalillo in 1995. The committee itself started meeting in 1993 and the whole object of the development and coming together as a committee was concern about water problems in the Estancia Basin, which is 12, 13 miles south of Galisteo. It takes up roughly, probably the bottom third of Santa Fe County.

The major community is Edgewood, of course, with Stanley being in there as well, and Moriarty being just across the county line in Torrance County. So we have folks from all three counties, government reps. Your representative is Doug Sayre. He's done a great job representing Santa Fe County government. And then we have 12 others besides Doug, as well as folks who come to our committee meetings to provide pro bono support, Chuck DuMars, the water attorney being one of them. He's our attorney.

Our main reason for existence, as I said is to address the water problems that we have down there, is to coordinate the efforts of both government and private entities. Probably our biggest success, two biggest successes in my view are one, in 1999, we were the first region to get a water plan approved by the Interstate Stream Commission. To date, as of last week, I think there's been nine other plans completed. But we're pretty proud of the fact that ours was the first to be approved and that's one of the reasons I'm here today, because it was 1999.

Another thing that we've done that we're pretty proud of is to coordinate the efforts of the four Soil and Conservation Districts that operate in our valley. As you may know, the Soil and Conservation Districts get quite a bit of funding from the federal government and the coordination of all those different projects they want to do is a pretty tough deal. There's various constituencies, farmers, ranchers, homeowners, etc. And we're pretty proud that we've been able to bring those Soil and Conservation Districts together. We have a rep from each one on our committee, and try to get them as best as we can to coordinate their different projects. It amounts to several million dollars so far.

Also money that is spent in our valley that we helped coordinate comes from the State Water Trust Fund Board. Other things that we do, one of our latest projects is to coordinate a study by Sandia National Laboratories, which takes electro – I don't have the exact word, but it uses electronic signals to measure the depth of the aquifer. It's a relatively new technology. We're coordinating a bunch of farmers and ranchers, myself being one, to install this equipment on their farm or ranch to measure the depth of the aquifer. This project is paid for by the federal government. We're just a coordinating agency for that.

The latest thing that's happened with us is that we've started an effort to update our regional water plan. It's almost seven years old. It took a couple of years to write last time and it's time for us to update it with all the changes from the State Engineer's Office, closing our basin, the tremendous controversy over exportation, which the City of Santa Fe saw a little bit

of that controversy last year, you may recall at the City Council. Feelings run pretty high on the exportation of water down there in our valley so we're trying to take a good, hard look at that.

We have \$75,000 from the state to work on that plan, the update of that plan, with another \$50,000 anticipated through the efforts of Representative Rhonda King, who's really a big supporter of our committee. The thing that is not funded by these state funds is our month-to-month administrative costs and operations. We're all volunteers. I have two staff people that work on the committee – a consultant and administrative staff, and it costs a fair amount of money to have them do the things that we need them to do. Correspondence, research, going to meetings, etc., etc. So that's really why we've asked the County of Santa Fe to help us out.

CHAIRMAN MONTROYA: Commissioner Campos.

COMMISSIONER CAMPOS: No questions, Mr. Chairman.

CHAIRMAN MONTROYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Thank you, Mr. Chairman. A couple of things caught my eye on your contract objectives and responsibilities and I wanted to see what progress you'd made on those. One of them on page 3 of your current contract under Committee responsibilities, it says investigate potential future organizational structures based on joint powers agreements, special purpose districts, regional authority or other such arrangement. We've had quite a few discussions here at the County and also with the legislature about special purpose districts and regional authorities. What has come of that, in terms of your investigations?

MR. THOMPSON: Commissioner, I assume what you're talking about is us investigating whether we thought it would be advantageous, two to three counties, for us to try to become a full-fledged commission with authority to implement water conservation guidelines and so on and so forth. Is that correct, sir?

COMMISSIONER SULLIVAN: I don't know what it is. I was just reading from one of the items in the contract that said the major responsibility of the Estancia Basin Water Planning Committee shall be described as follows, and that was one of the major responsibilities. And so I was trying to see what derived from that.

MR. THOMPSON: Yes, sir. That's what we were referring to. I believe you're looking at the memorandum of understanding from 1995. Is that correct, sir?

COMMISSIONER SULLIVAN: It's your original contract. It's Exhibit A, memorandum of understanding, which we're now amending, as I understand it, just to add money to it.

MR. THOMPSON: Correct.

COMMISSIONER SULLIVAN: So these major responsibilities are still part of your responsibility.

MR. THOMPSON: Yes, sir. I understand that.

COMMISSIONER SULLIVAN: So that's the question.

MR. THOMPSON: Right. And the answer to that is we did look at that really

closely about recommending to the three counties that this could possibly become a regional water board or a water commission with all the attendant administrative staff and responsibilities and authority that would be vested in a government entity like that, and it was the conclusion of my committee that we felt better being an advisory committee to the three counties rather than take the route of trying to become another layer of authority and – I hate to use this word – but bureaucracy, between the citizens in our valley and the state.

In our valley, probably the State Engineer's Office spends as much time as he does anywhere else, because we've got a lot of excited people down there about water. And he has someone down there all the time investigating this, talking about that, talking to people, and vice versa. People come up to see him probably every three or four days from our basin. So we decided that it would be better to stay as an advisory body rather than try to become an elected body, rather than try to become an elected body with regulatory responsibility and authority. I hope that answers your question.

COMMISSIONER SULLIVAN: Yes. Thank you. The other goal listed in that memorandum was to develop a geo-hydrologic model of the basin. Have you done that?

MR. THOMPSON: Yes, sir. What we did in that instance is we did participate in the development of a couple of models, one of which, the name I believe is the Shomaker model, and the other one is – I can't remember the name, but there is a model that's being used by the State Engineer's Office that we did have input to that he has decided is the definitive model for the discussion and apportioning of water rights in our basin. So, yes, sir, we did meet that one as well.

COMMISSIONER SULLIVAN: Okay. So it says develop a model. So you don't have your model but you –

MR. THOMPSON: No, sir. I used to be president of Entramosa Water for a number of years. This has been several years ago, which is why I was asked to be on this particular committee. And we paid to have a model developed for our basin. It cost us over a half million dollars. So that funding level is way beyond what we could possibly do through our committee.

COMMISSIONER SULLIVAN: Just one other question for Gerald. Gerald, do we have the flexibility to fund administrative costs, operating costs?

MR. GONZALEZ: Under this kind of agreement, yes, Commissioner Sullivan. In fact we have paid – we're actually in arrears two years at this point but we've paid since the outset of the plan when we first became part of the MOU beginning in 1995. So the reason that this is in front of the Board because the two-year arrearage comes up to \$20,000 and we're getting caught up by moving forward with this payment.

COMMISSIONER SULLIVAN: What's the difference in this operation and, say, the operational costs for a library in the county?

MR. GONZALEZ: The difference I suppose is that we entered into a joint MOU with Tarrant and Bernalillo counties and agreed that we would split the costs equally among the three bodies, so it's an intergovernmental agreement that we're simply carrying out.

COMMISSIONER SULLIVAN: There wouldn't be any prohibition on paying operational costs of a library in Santa Fe County if we entered into an agreement to do that?

MR. GONZALEZ: If we found the budgetary wherewithal to do that, I assume that we could do that.

COMMISSIONER SULLIVAN: Okay. It seems to appear in various discussions from time to time about whether we can fund operational costs or whether we can't fund operational costs. So as far as you understand, we can.

MR. GONZALEZ: Well, in this instance, they're charged, as you just pointed out, with providing us with additional information. To the extent that they may ultimately develop a geo-hydrology model, which I understand, down the road is an objective that they still have, we would be able to participate in that and obtain the benefits of that. And we do get periodic reports from the organization. Jim Corbin provides those periodically and if the Commission wishes, I'd be glad to pass those on as well.

COMMISSIONER SULLIVAN: Are there any other water resource committees or water planning committees that we fund?

MR. GONZALEZ: This is the only one that we've funded in this way that I'm aware of. One which may raise its head shortly, depending on what happens in the session, would be the EBPRIF, the Española Basin Planning and Information Forum. I understand the Speaker has set aside some money which if it makes it through the process would send \$150,000 to the County in order to provide funding for that effort.

And then the other one that I'm aware of, we do provide space for the LANL Water Resources Technological Assistance Office. That's in-kind support that we provide for them.

COMMISSIONER SULLIVAN: Thank you.

CHAIRMAN MONTTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Mr. Chairman. I just would like to thank Rick for coming down and coming before the body and explaining what exactly they need the money for. I appreciate that and thank the whole committee for volunteering their time. And Mr. Chairman, I do support this 100 percent, and with that, if there's no other further comments, I'd like to make a motion to approve.

COMMISSIONER VIGIL: Second.

CHAIRMAN MONTTOYA: Motion, Commissioner Anaya, second, Commissioner Vigil. Any other discussion?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN MONTTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I believe this was a presentation and an update, the way it's listed on the agenda. I don't think there's any action requested.

CHAIRMAN MONTTOYA: It says request for approval for amendment.

COMMISSIONER SULLIVAN: Oh, I'm looking at the wrong one. Excuse me. So we are approving this amendment?

CHAIRMAN MONTTOYA: Yes. Any other discussion?

The motion to approve the amendment to the MOU with the Estancia Basin Water Planning Committee passed by unanimous [5-0] voice vote.

CHAIRMAN MONTOYA: Thank you, Rick. Thank you, Dr. Wust.

MR. THOMPSON: I wanted to give you this update if that's okay. Please feel free to call me any time you'd like.

**XII. D. Matters from the County Manager
2. Update on Various Issues**

MR. GONZALEZ: Thank you, Mr. Chairman, members of the Commission. And I did want to clarify with respect to the library thing, presumably we would be getting some benefit if we entered into an agreement with some other library. So that's always subject to approval by, pass muster through the legal review. But what I did want to do by way of updates this afternoon, because we're looking at some timing issues, our new probate judge, Frank Mathew, has a wedding scheduled for 4:30. We also have present our lobby team, including our esteemed lobbyist, Roman Maes, so we can do both of those items at this time if you would like. Judge Mathew, I think, will make himself available in about ten minutes, so we're ready to do the legislative update, if you'd like, Mr. Chairman.

And as you all know, I don't need to remind you, day after tomorrow the clock ticks at noon and we're done with the session. So we have a little less than 48 hours to go with respect to the legislative session.

CHAIRMAN MONTOYA: John, how long is it going to take?

JOHN SALAZAR (Manager's office): Mr. Chairman, it won't take that long. Basically, what I've handed out to you is a list of the governor's recommendation by county. *[Exhibit 1]* We have a few on there. Three of our top five priorities are on there. The Pojoaque Valley Community Center, he's recommending \$200,000, the County fairgrounds, \$100,000, and the judicial complex, \$250,000.

Behind that, I've run a report for all the capital outlay requests for Santa Fe County. The total of capital outlay requests in the state of New Mexico was \$6,037,526,000.

CHAIRMAN MONTOYA: Is that all?

MR. SALAZAR: That's it. The total of capital outlay requests for the County is 84 requests. That came out to \$100,054,000. All our top five priorities have been accounted for. As of right now, the House is supposed to have about \$1.6 million each and the Senate is supposed to have almost \$3 million each. Those figures haven't been confirmed yet. I believe House Bill 2 still hasn't even been passed yet. It hasn't been approved. So all the capital outlay has been submitted; now we're just waiting to see what we're going to get.

CHAIRMAN MONTOYA: Okay. Any questions for John?

COMMISSIONER CAMPOS: Just a quick question.

CHAIRMAN MONTTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Salazar, you say this is the governor's recommendation?

MR. SALAZAR: Mr. Chairman, Commissioner Campos, yes.

COMMISSIONER CAMPOS: This is coming out of the governor's office, not our legislative CIP.

MR. SALAZAR: Right. Strictly governor.

COMMISSIONER CAMPOS: And he is going to recommend \$250,000 for the judicial complex?

MR. SALAZAR: Yes, Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chairman.

CHAIRMAN MONTTOYA: Senator Maes, do you have anything to add?

ROMAN MAES: I think Mr. Salazar pretty well articulated our progress report. I also have some more documents to share with you, and I think you've received my e-mails. I've made every effort to keep the Commission and also the staff very much aware of what was happening. I also would like to go over some very quick formats with you. I think the first page is pretty well stated as to what the capital outlay requests, the priorities were. Let me remind you that basically, just for Santa Fe County, we had about 96 capital outlay requests. We're also monitoring another 40 non-capital outlay bills that have an effect on Santa Fe County from basically the housing of prisoners to issues of DWI to issues related to term limits, issues related to increase in salaries. They can go on and on.

It relates to water, the rights of certain people. I think just our messages alone from the governor's office, I think we had a total of 12 that related to county government. With regard to the judicial complex, and I can tell you that I have personally visited with the governor three times. I know the County Manager, Gerald González, has met with the staff, as well as my staff, and likewise we have had the judges meet with the governor's staff, also members of the legislature, and we were hoping to be able to come out with something to the effect that we got at least \$6 million to start the project. We even got some alternative funding that you have in your packet. We gave several proposals, not only to the Speaker, but also to John Arthur Smith, who's the Senator in charge of Senate Finance. Likewise to the governor's office. We made every attempt to find alternatives, instead of just giving \$18 million.

One thing I will make mention is something like the new judicial complex requires extensive discussion with the legislators. It's a big project. Likewise the same the thing with the governor's office. I know there was a so-called priority list from the judiciary. I can't find anybody in the governor's office that's ever seen it. The dilemma was that I had the impression that the judiciary was really lobbying, something associated with Albuquerque on the court of appeals. That was their priority. We were pretty well [inaudible] on the issue of a judicial complex. But either way, I think the governor is going to be very open for discussion the next legislative session.

I also want to tell you what we did with regard to each member of our delegation. I think you've got that in your packet. We pretty well had two sponsors for each project, one in the House, one in the Senate. Some times we had two sponsors in each house for various projects and we made it a point that we were very pro-active. The dilemma that we're having, members of the Commission, is the fact that Santa Fe County has a lot of competition. We have a lot of non-profit groups that are affecting an influencing our delegation. Obviously, they have to listen to them also, and we also have a lot of special needs from each one of your districts. I can assure you that the staff worked very well. I don't think we ever had one hearing, at least I don't recall any hearing where there wasn't a member of the staff or even a County Commissioner present to testify on the issue.

And that's one thing, I wanted to thank all the Commissioners. You did very well. You're always there. Very responsive. You were there for projects that you were concerned with, and that's nice to see, where you have a County Commission that's quite active and wanting to deal with issues that affect their community and also statewide issues. I know, Mr. Chairman, yourself, I saw you testifying this morning, also speaking for a large group at the rotunda this morning. That's nice to hear because it makes our County stand out and our County does stand out.

We're hoping to have capital outlay out, at least from one of the bodies tonight if not tomorrow morning. As soon as I get it I can assure you you will have it. I'll have it scanned and e-mailed to all of you and probably have one hand-carried to our County Manager so all of you can be aware of what's happening.

Discussion of House Bill 2, it was passed out of the Senate late last night about 11:30. The House, as I understand it to this point has not accepted the amendments of the Senate, so I understand the bill is overspent by about \$23 million. I think they're going to let the governor pretty well chop it up and that's what it looks like. Obviously, if he vetoes House Bill 2, he'll also veto the pork, the capital outlay bill. That's used as hostage if they have to come back. So that's where we're at.

I just want to tell you that staff worked very well. It was very harmonious and there was never a time where I called for information and I didn't get it back. So I think we did well. And we'll find out how well we'll do in the next couple days.

CHAIRMAN MONTTOYA: Thank you. Any questions for Senator Maes?
Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chairman, I just wanted to thank the Senator for all the hard work that he's doing. We'd meet in the hallway and talk a little bit and I appreciate that, keeping me informed. And I want to thank John for calling me on all the House Bills that come forward and keeping me informed and letting me know when mine or something from the County is coming forward. So thank you very much.

MR. MAES: Thank you. Appreciate it.

CHAIRMAN MONTTOYA: Any questions? Okay. Thanks, Senator. Thank you, John, and I appreciate the e-mails as well. They're very, very helpful. Appreciate it.

Okay. Gerald.

XII. D. 1. Introduction of the New Probate Judge, Frank Mathew

MR. GONZALEZ: Thank you, Mr. Chairman, members of the Commission. I wanted to introduce to the public as well as to ourselves here at the County and yourselves, our new probate judge, which was a selection that you made at the last Commission meeting. His full name is Francis Joseph Mathew, for those who are curious, but we just call him Frank here. Now we call him Judge Frank. But for those of you who don't know, he a graduate, both undergrad and law school, from Notre Dame University, and for those of you who are Notre Dame fans, he's probably the right guy to talk to.

He's been practicing here in Santa Fe since 1979, practiced almost 25 years with the Jones, Snead, Worthheim and Wentworth firm and then he went on his own, and now he's providing assistance to us, so with that, I give you our new probate judge, Frank Mathew and he may have some words that he'd like to share with you.

CHAIRMAN MONTTOYA: Welcome, Judge.

FRANK MATHEW: Thank you, Mr. Chairman, honorable members of the Commission. I want to thank you today for placing the confidence in me that you placed in your last meeting in appointing me as probate judge. I'd like to tell you that the experience to date has been excellent. The competence and availability of County Attorney's office has made my transition into this particular position a very enjoyable experience. I'm finding the same thing with the County Clerk's office. You have very good people in this County which I know that you are already aware of. I have not had as much personal experience and my belief is you have done a fine job with your hiring practices and certainly with the means and methods by which this County is being administered.

So I thank you today and I appreciate all that you have done both for the County and in appointing me.

CHAIRMAN MONTTOYA: Commissioner Anaya, Commissioner Vigil.

COMMISSIONER ANAYA: Yes, thank you, Mr. Chairman. Judge, I know you were marrying somebody today. How did that go?

JUDGE MATHEW: It went well. We've had two weddings today. One couple, the first couple were from out of state. They were on their way to Tucson to be married. Their car broke down. They bicycled down there this afternoon for a wedding. The second couple were from Santa Fe County. I think we've had two successful marriages.

COMMISSIONER ANAYA: Welcome aboard.

CHAIRMAN MONTTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Mr. Chairman, members of the Commission, Mr. Mathew, I think I'm honored that you're on board. This Commission is looking towards far more professionalism, fair and equitable resolutions to the decisions we make, and when your

interest was expressed in this position I was particularly interested because I know your background, your impeccable reputation in the legal community and I know what an asset that will be to the citizens of Santa Fe County when you assist them, not only through marriages but through the probate issue. Thank you for all that I know that you will be bringing to this position

JUDGE MATHEW: Thank you, Commissioner.

CHAIRMAN MONTOYA: Any other comments, questions? Judge, I'll just add welcome also to Santa Fe County, and having had the personal experience of knowing you before I know that the probate position is going to be in great hands for the next 11 months, so thank you for agreeing to do that and being of service to Santa Fe County.

JUDGE MATHEW: Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Gerald.

MR. GONZALEZ: I just wanted to point out that Judge Mathew's new office is collocated with our County Clerk, who is the clerk for the probate court and we want to thank her for really taking on that responsibility in a large way and making sure that he's found the accommodations that he needs for his operations.

CHAIRMAN MONTOYA: Great. Thank you, Valerie. Appreciate it. Gerald, you're still on the show here.

MR. GONZALEZ: I'm going to turn it over to Roman at this point.

XII. D. 4. Appointment to the Regional Transit District

MR. ABEYTA: Mr. Chairman, we have an appointment to the Regional Transit District. We had made appointments the last meeting to the RPA and different committees that the Commission sits on and we left off the appointment to the Regional Transit District. So we need one member from the Commission to be appointed to that.

CHAIRMAN MONTOYA: Members of the Commission, if there's no objection – I know Commissioner Sullivan expressed some interest, but if you really want it, I'll give it up. If not, I'm willing to stay serving on it.

COMMISSIONER SULLIVAN: It's up to the Commission, Mr. Chairman. I discussed it with Jack Kolkmeyer and he thought it would be a good idea that I become more active in it because of the Eldorado – discussions about the Eldorado commuter line. So since you seem to have a lot of chairmanships on your plate at this time, I'd be glad to do it. It's entirely up to this Commission.

CHAIRMAN MONTOYA: Okay. That's fine. I'll be glad to relinquish that. So I'll make a motion to nominate Commissioner Sullivan to the RTD.

COMMISSIONER CAMPOS: Second.

CHAIRMAN MONTOYA: Any discussion? Any other nominations?

COMMISSIONER VIGIL: I'd like to see a resume, Mr. Chairman.

COMMISSIONER ANAYA: Yes, I do too.
COMMISSIONER SULLIVAN: Me too.

The motion to appoint Commissioner Sullivan to the RTD passed by unanimous [5-0] voice vote.

COMMISSIONER SULLIVAN: Mr. Chairman, I have a question for Roman.
CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Roman, I know you've been out and I'm glad to hear your family is better, your son is better and I know you've been out of pocket for a while. We talked a month or two ago about getting a report back on the hybrid cars. I think we had scheduled that for the end of January admin meeting and again I know you were out at that time. Can we shoot for that at the end of this month?

MR. ABEYTA: Mr. Chairman, yes. We'll put that on the agenda for the meeting on the 28th.

COMMISSIONER SULLIVAN: Okay. Thanks.

CHAIRMAN MONTOYA: Okay. Commissioner Campos.

COMMISSIONER CAMPOS: Just a follow up. Mr. Abeyta, is this part of the committee, our internal County committee, and they're going to report on multiple issues, right? Not just hybrids?

MR. ABEYTA: Mr. Chairman, Commissioner Campos, yes. They're going to report on multiple – and they for sure will have a report on the hybrid vehicles. Maybe not all the items we're looking at but we'll let you know about everything we're looking at and have some information on hybrid vehicles specifically.

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

CHAIRMAN MONTOYA: Gerald.

MR. GONZALEZ: Mr. Chairman, having labored so hard at your first Commission meeting we're now at a Commission meeting where we can break maybe half hour early for executive session and a bite to eat so I'm going to pass it over to our County Attorney. I just want to thank everybody for working so hard on the agenda.

- XII. E. Matters from the County Attorney**
- 1. Executive session**
 - a. Discussion of pending or threatened litigation**
 - b. Limited personnel issues**

MR. ROSS: Mr. Chairman, we do need to go into executive session.

CHAIRMAN MONTOYA: Okay, to discussion pending or threatened litigation –

MR. ROSS: All I have on my list is pending or threatened litigation unless somebody would like to discuss something else.

CHAIRMAN MONTOYA: I would like to discuss limited personnel issues.

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

[The Commission met in executive session from 4:30 to 6:00.]

Commissioner Sullivan moved to come out of executive session having discussed only the matters outlined in the agenda, and Commissioner Campos seconded. The motion passed by unanimous voice vote.

XIII. PUBLIC HEARINGS

A. Housing Department

- 1. Santa Fe County Ordinance No. 2006-2. An Ordinance Requiring Affordable Housing In Projects and minor Projects Developed within the Central Area of the County, Creating the Position of Affordable Housing Administrator, Providing for Enactment of Affordable Housing Regulations, Providing for Incentives to Ameliorate the Cost of Providing Affordable Housing, Ensuring Long-Term Affordability, Providing for Alternate Means of Compliance and Means to Address Hardship Situations, Amending Ordinance Nos. 1996-10, 1997-03, 2000-13, 2001-7, and 2002-1, Repealing Section K of Ordinance No. 2002-12, and Repealing Ordinances No. 1997-02, 1997-10 and 2000-11**

MR. GONZALEZ: Mr. Chairman, I'll go ahead and open up. I want to thank not only the Housing Department, Robert, Duncan, Mike Loftin from Homewise and Emily and a number of the other folks out there in the community who provided us input. Judy McGowan from our Planning Department who has been very instrumental in putting together what we have presented, and of course our legal staff led by Steve Ross.

You have before you a draft of the ordinance which went out last week after a lot of internal discussion that took place at the staff level pursuant to your direction [audio difficulties] incorporating all the suggestions that you had provided us with and [audio difficulties}

Since the time of the draft that's been circulated to you and sits in front of you we've continued to work with it and continued to refine it. We have I think a number of suggested changes that have emerged from the discussions that we've had not only internally with staff but also with the other folks who have been working with this ordinance for some time. So what I will do is turn it over to Steve Ross to lead you through that, but I also understand that we may have some proposed amendments coming from the Commission side as well.

One thing I did want to point out, as you know, tonight you have before you the ordinance and you also have before you a draft of the proposed regulations. The ordinance requires us to put the draft in front of you but obviously, we still will have to match the draft regulations to the ordinance once you've adopted it. So there are a number of reserved places within the proposed – or the draft for the regulations that are awaiting decisions that you will be making this evening.

One other piece of the ordinance that you see posted in front of you, about half-way down the room, is the map that goes along with the ordinance. The map outlines the area that would be covered by the ordinance. One thing I did want to point out as we've been drafting it and putting it together, there is a color on there that is not yet described in the color scheme that was circulated to you, and that's the area that is covered by the pueblos. That's a little problematic in a sense because, as you know, those are checkerboard areas and they're actually in-holdings within the pueblo boundaries that would be subject to the ordinance. So at the appropriate time, I think from the staff's standpoint, we would entertain an amendment simply to amend the map and indicate where the colors outlining those pueblo areas that affordable housing might be required in those areas, depending on whether they're pueblo holdings or non-pueblo in-holdings. With that introduction, Mr. Chairman, members of the Commission, I'll turn it over to you, but we stand for questions and I know Steve is also prepared to lead you through the provisions of the ordinance.

I guess the last thing I want to say is – and it's a total aside, but I just want to wish my wife a happy anniversary on this our anniversary day.

COMMISSIONER ANAYA: Happy anniversary.

CHAIRMAN MONTROYA: Happy anniversary.

MR. GONZALEZ: Thank you.

CHAIRMAN MONTOYA: Steve, just for clarification purposes, there were two copies. One had nothing on it, and then the other one says adoption draft. What's the difference between the two?

MR. ROSS: Mr. Chairman, they're identical. One is an underlined, strike-out version of the other.

CHAIRMAN MONTOYA: Okay. That's all I could tell. So which one are you going to go over? The striked version or the –

MR. ROSS: Well, you could look at either of them and follow along. It's probably easier to look at the clean version because the strike-out version has gotten a little bit intense visually, but they're the same. They should be identical.

CHAIRMAN MONTOYA: What is the pleasure of the Commission? Why don't we take questions now for Steve? Commissioner Sullivan.

COMMISSIONER SULLIVAN: I think I'd like Steve to go through some of the changes that have been recommended if we could. Take us through those and – some of them I know are typographical.

MR. ROSS: Mr. Chairman, the big changes in this draft are the result of what we think we heard at the last meeting. What we think we heard at the last meeting are that incentives, the incentives that are in the ordinance, should apply broadly to lots of developments so as to encourage affordable housing. As a result of that change, there have been a lot of changes made to the ordinance to get to that goal. We eliminated the service levels. Remember how we had the four service levels and they were a little bit confusing. When you – those service levels appeared in the ordinance when in an earlier draft we talk about trying to distinguish between projects that could receive incentives and projects that would not, and encourage smart development and things like that through the incentive process.

What we discovered when we sat down to visit it about this was that if you really look at that picture without any limitations on incentives you really had no need for service levels. So we thought we would clean up the ordinance and get rid of those. So the big changes you'll see are there's no service levels in the definitions, and the requirement section is a little bit simpler. We've reverted to an earlier version of the draft in Section 4 that simply states that 30 percent of affordable housing is required.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Could we go major point by major point and allow some discussion after each major point?

MR. ROSS: Sure.

COMMISSIONER CAMPOS: Mr. Ross, one of the discussions that we had at the last meeting, that we didn't want to provide incentives for sprawl, and my idea had always been that limiting some of these benefits to developments that actually had a water system and a wastewater system was very important. And it was my impression after the last meeting that there was strong consensus for that position. And it seems to me that this is a huge change on

the service levels. That's my impression from the last meeting and I'm just curious if this indeed is going to result in a situation where we are providing incentives for sprawl because we're providing all incentives for minor developments.

MR. ROSS: Mr. Chairman, Commissioner Campos, what we discovered when we sat down and talked about this at staff last week was that it was very difficult to control sprawl in an affordable housing ordinance. We thought a less clumsy tool for doing that is certainly the Land Development Code. That was part of the discussion. The other part of the discussion was the service levels really didn't, as I described earlier, make any sense if there were nothing to apply them against. If everyone can get all the incentives that are available to their particular kind of development, of course every development isn't going to get every incentive, just by the nature of things.

For example, one of the big incentives is the water incentive, but you can only get that if you're within the County's water utility service area. So that means the Community College District or the northwest sector. All other developments aren't going to have that available to them. Some of the other incentives are not going to fly broadly either. You'll see that – does that answer your question, Commissioner?

COMMISSIONER CAMPOS: Not really, because I think the consensus of the Board was with the service levels, and then staff made a huge change, and that is my concern. I don't know if other members of the Commission had the same issue but I it caught my attention.

CHAIRMAN MONTROYA: Any other discussion on service levels?
Commissioner Sullivan.

COMMISSIONER SULLIVAN: Just a quick comment. I had that initial problem with eliminating the service levels and particularly because as we define it as now, as long as you have community water you're eligible for the incentives. Whereas before, the first two service levels also included wastewater. So we've eliminated that. But then the flip-side of that is that the controlling mechanism for water and wastewater is, as Mr. Ross says, the Land Use Code. And so if they have community water or Santa Fe County water then they are – and get into affordable housing, they may fit into the size of a development where they do need wastewater regardless. And depending on where they are, if they're in the Community College District they need it anyway, where a lot of this will occur.

So it seems to me that it's most important to have public water service and wastewater would follow along with the economics. That requiring the wastewater at this stage might actually impede the affordable housing proposals coming forward, because wastewater is a lot more expensive to provide than water, than community water. So that was the big change that I saw, was the dropping of the wastewater. Other than that, the dropping of the service areas didn't seem to matter much. As Steve said, once you decide other than the 100 to 120 percent, the incentives are essentially available to all levels of development.

COMMISSIONER CAMPOS: Okay. Well, I thought it was a major change. The definition of a community water system now under Section 3.I is basically just a group of

wells with some water rights. And it's not a real water system or real wastewater system. It was my idea to really focus all the major incentives on the growth areas and the areas that did have full utility service. Thank you, Mr. Chairman.

CHAIRMAN MONTTOYA: Okay. Any other discussion on service levels? Steve, go ahead to your next major point.

MR. ROSS: All right. I think the next major point, once again, as a result of the staff discussion, this wasn't the discussion that we had in front of you. In getting this thing ready for this meeting, we had a discussion that we've only had once before and that was last summer, and that concerned the smaller developments and the lack of incentives available for smaller developments. By smaller developments, I mean essentially 10, 15, 16-lot subdivisions. And the concern with those types of projects is that in most cases, the Land Development Code does not require those types of development to be on community water, and sometimes it doesn't require them to be on community wastewater either. So as a result, it's very difficult to get incentives to developments like that, and yet we were requiring 30 percent affordable housing, the same as everybody else.

We've had concern that was expressed, we've expressed it from time to time during the meetings with you about this, but we haven't made any changes to the ordinance. The big change that you'll see that reflects our discussions about that is in Section 4.A, where we're recommending that we use the dividing line that's in the Land Development Code already. It's kind of a natural dividing line and the dividing line is at 24 lots, where below that number, community water systems are not required and above that number, they are. So we propose to use that number to separate the big developments from the little developments for purposes of the ordinance. And the smaller developments will have a reduced requirement for affordable housing on the theory that they're not going to be able to have as many incentives and we want to avoid the situation where we're taking something from somebody without giving them the ability to recover that in some way.

So you'll see that in that Section 4.A, we're recommending that major projects are subject to the 30 percent requirement and minor projects are subject to a lesser, 16 percent requirement. Now then corresponding to that, you'll find down in the incentives, that a density bonus is available to those types of developments, minor developments, if they go ahead and even though they're not required to, go ahead and use a community water system. And also incorporate clustering concepts into their project.

So that's the other big, major change. If you want me to stop there.

CHAIRMAN MONTTOYA: Questions? Commissioner Anaya then
Commissioner Vigil.

COMMISSIONER ANAYA: Thank you, Mr. Chairman. I like that change, Steve, on the 16 percent. I think that's more equitable and fair. Thank you, Mr. Chairman.

CHAIRMAN MONTTOYA: Okay. Commissioner Vigil.

COMMISSIONER VIGIL: Thank you, Mr. Chairman. Steve, in looking through the rules and the regulations, there's some specific examples. If there's a certain

amount of housing units, then a certain amount is required. What if the percentages don't work out? Do we still have it available in the ordinance that if there's a percentage that is calculated with regard to the smaller units that that gets taken care of in some other manner, either through an alternative means of compliance?

MR. ROSS: Mr. Chairman, Commissioner Vigil, the alternative means of compliance are not restricted to major projects. They're available to all projects.

COMMISSIONER VIGIL: Okay.

MR. ROSS: So if you decide that for some reason it's infeasible to do something in any project, you can always propose to provide funds to the County to help it's housing programs or provide property or do off-site affordable housing. Those are some of the things the alternative means of compliance section is trying to do. It's not restricted to major or minor projects.

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

CHAIRMAN MONTROYA: Okay. Go ahead, Steve.

MR. ROSS: I'm just looking through to see. I think those are the major philosophical changes. Oh, it is a major change. The other thing that we did was move the energy efficiency incentive from where it was previously, which was in the alternative means of compliance, which presented us with kind of a Hobson's choice. If you provided an energy-efficient development then you'd be relieved of the obligation to provide affordable housing completely. And a lot of us – we had some discussions with Commissioner Campos about this. A lot of us thought that didn't really make any sense. So we moved it and created an incentive out of it. That's set forth there in Section 10. We left the verbalization for what you qualify for an energy incentive to the regulations because this is an emerging field, the standards are just evolving. Energy efficiency has been around for a while; there's been a lot of discussion about that, but there's also the LEED standards and some other green building standards that are evolving and they're going to change rapidly. It's easier to change and respond to those changes in the regulations than it would be to amend the ordinance.

We punted all that stuff over to the regulations. You'll find that they've started to deal with that in the draft regulations and will continue to flesh that out.

CHAIRMAN MONTROYA: Any questions on it? Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Ross, as far as the tax incentives that are available for energy efficiency, there's federal and now with the Richardson administration is proposing an additional, I believe, for solar. Have you investigated that issue of federal incentives for energy efficiencies?

MR. ROSS: We've looked at it a little bit and we've asked for some information from Mr. Sardella who's in that field. He's trying to provide us with information on the federal tax breaks that are available. My understanding from what I've heard about the governor's proposal is that it's not restricted to affordable housing, it's merely a tax break for solar.

COMMISSIONER CAMPOS: Anybody who does solar energy gets a

significant tax break. Thirty percent of –

MR. ROSS: Thirty percent up to I think \$9,000, is what I read in the paper. So it's a significant incentive and one I assume anyone can take advantage of. We'll have to see how it's written. So perhaps if someone developing property provides solar in connection with the development they may be able to take advantage of a significant tax break.

CHAIRMAN MONTTOYA: Okay. Anything on Section 11, Steve?

MR. ROSS: Mr. Chairman, I have a lot of typos and small changes that I can go through, but perhaps maybe I'll just try and find out – just scroll here and see if I can remember if there's any other major changes. I don't think there are. I think those were the major proposed changes. Now, in terms of going through some of the other changes, at Commissioner Sullivan's request, I wrote him a memo yesterday which has a number of changes and I think you have that on your desk. That's the one. Some of these are just errors and others of them are proposals that he has that we've discussed and I've verbalized for him.

In Section 2, these are definitely – the changes proposed in Section 2 are definitely clean-up changes. We've left out the words “and northern”. They're not on the paper you have. We're trying to catch up with some of the changes we've made recently, and if you recall the ordinance originally only applied to the central part of the county. We've since extended it to the north. We're picking up those omissions as we find them. There should be an “and northern” in Section 2. It's not shown here. But the important change here is there was – the last sentence of that paragraph didn't make any sense when we actually sat down and read it. And so we're proposing to delete those words: submitted for review. That contradicted the phrase immediately before there and it created some confusion about what specific approvals that this ordinance would apply to.

So, for example, if you think back from preliminary plat, as you recall the Subdivision Act in a subdivision requires you as this body to approve any final plat that's substantially in compliance with the preliminary plat. So if somebody has achieved preliminary plat status as of this point, as of the effective date of this ordinance, then this ordinance can't cover that unless the developer voluntarily agrees to have the ordinance apply. So working back from that, the additional language there just confused the issue. But that's the basic principle, that if you have a preliminary plat approved right now, the ordinance doesn't apply to you.

CHAIRMAN MONTTOYA: Any questions on Section 2? Commissioner Anaya.

COMMISSIONER ANAYA: Thank you. So the people that have master plans, this would apply to?

MR. ROSS: Yes.

COMMISSIONER ANAYA: And this was one of your changes, Commissioner?

COMMISSIONER SULLIVAN: No, that's always been that way.

MR. ROSS: This is really clean-up. The sentence was inconsistent and contradictory.

COMMISSIONER ANAYA: How many master plans are out there? Do you know?

MR. ROSS: Quite a few.

COMMISSIONER ANAYA: Quite a few?

MR. ROSS: Quite a few.

COMMISSIONER ANAYA: Thank you, Mr. Chairman.

CHAIRMAN MONTTOYA: What will happen with those master plans under this ordinance? What reaction could we get from those people with master plan approval from this ordinance?

MR. ROSS: They're going to need to do a little reworking, probably not of the master plan, but they'll have to submit an affordable housing and sign an affordable housing agreement.

CHAIRMAN MONTTOYA: Based on these regulations.

MR. ROSS: Yes. Which they can do in connection with their application for preliminary plat. We don't think this is going to require anyone to go back and revisit their master plan. They can catch up with the requirements of the ordinance during the approval of the preliminary plat.

CHAIRMAN MONTTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chairman, that was my question. They've already come with the master plan. Are they going to have to go back and redo. Apparently they are. They're going to have to go back and redo – oh, they're not?

MR. ROSS: No, Mr. Chairman, Commissioner Anaya, we don't think they're going to have to repeat anything they did at master plan. We think they can do it all in connection with the next phase of approvals, which is preliminary.

COMMISSIONER ANAYA: But they're still going to have to – they'll have to do it.

MR. ROSS: Yes.

COMMISSIONER ANAYA: They'll have to change what they already had in mind in terms of master plan, they'll have to change it at the preliminary stage to include affordable housing.

MR. ROSS: Yes, but the master plan is very general and vague. So it locates in general things on your property that you're planning to do and it provides you with the zoning necessary to do those things. When you come in for preliminary then, sure, you're going to have to identify where the affordable housing is, either there or in the agreement. But we don't think, because of how general the master plan generally is that you're going to have to repeat any of that, merely because we passed this ordinance.

COMMISSIONER ANAYA: What would be – just to kind of think of it – if I purchased a piece of property ten years ago and I was coming for a master plan, I got master plan approval and then all of a sudden we throw the affordable housing at it, and you didn't work that into your calculations. Is that going to affect their project?

MR. ROSS: Mr. Chairman, Commissioner Anaya, you are going to have to take a look at all of that stuff in connection with your next approval. You are going to have to rethink it and you are going to have to work through the numbers and you will have to take a look at the incentives and see which may apply. You'll have to do all that stuff.

COMMISSIONER ANAYA: Thank you.

CHAIRMAN MONTTOYA: Section 9, Steve.

MR. ROSS: Okay, Section 9 B. This is a suggestion of Commissioner Sullivan, which makes a lot of sense to me. It pertains to how a minor project can earn a density bonus. His suggestion we replace the "or" between the two choices with an "and". So in order to get a density bonus, a minor project would have to both utilize a community water system and incorporate clustering concepts. And then on E, this is in the category of things that were left behind. I've discussed a couple of those areas where the changes to the ordinance that have occurred over the last six months, we haven't rooted out some of the little technical glitches and this is one of them. This is the section that permits the Board to award a larger density bonus under certain circumstances than is already permitted.

The way this was written, it left a five percent gap so that the 15 percent that you see written there and the 20 percent limit that's tacked onto the end on paragraph E is just a catch-up with work that's already been done to the remainder of the ordinance.

CHAIRMAN MONTTOYA: Okay. Any questions on Section 9 B or E?

MR. ROSS: So you'll be able to increase density between 15 percent and 20 percent if the Board approves. That's what that says and that's what that should have said all along. Shall I go on to Section 10.

CHAIRMAN MONTTOYA: Excuse me. Commissioner Campos.

COMMISSIONER CAMPOS: 2. B, for the Commission's discussion, I think 2 B does provide incentives for sprawl by providing increased density. So that's something I think that needs to be looked at. Thank you, Mr. Chairman.

CHAIRMAN MONTTOYA: That one will be on a case-by-case basis, right?

COMMISSIONER CAMPOS: That's in E. I was talking about B. Because it does allow increased density in perhaps the wrong places.

CHAIRMAN MONTTOYA: Okay. Section 10.

MR. ROSS: Section 10. This is the paragraph I was just describing. Remember we moved the energy efficiency incentive from alternative means of compliance into the incentive section, and the suggestion is that we clarify that section so that requires a project to provide energy efficiency measures within the whole project in order to take advantage of the energy efficiency incentive.

CHAIRMAN MONTTOYA: Okay.

MR. ROSS: I don't know if that was implicit in what was there before but certainly if this language is approved it's very, very clear.

CHAIRMAN MONTTOYA: Questions on Section 10? Okay, Section 16.

MR. ROSS: Section 16. Remember, this is the – Section 16 H. describes how

you can take advantage of incentives if you utilize an alternative means of compliance. So for example, if you propose to provide your affordable housing off-site, and that's approved in connection with the requirements set forth above H, then the question would arise whether you could take advantage of any of the incentives offered for that off-site housing. And I remember at the last meeting, it was the suggestion of the Board that we keep that a discretionary decision on the part of the Board. So I drafted some language last time, because in essence, unfettered discretion is probably not something that's wise to put in an ordinance because it's very difficult to defend unfettered discretion. I thought I should put some factors in this particular paragraph that you would consider when you're deciding whether to let folks take advantage of an alternative incentive for when you're providing alternative means of compliance.

So what I came up with is this phrase that when you're considering that you could grant incentives when – only in the situation when economic infeasibility would result to the project, or if the Board of County Commissioners finds other relevant factors dictate that the ordinance should be applied. So there were two things, two possibilities there originally as drafted. One, if you show that your project wouldn't be feasible without an incentive, then you could get incentives, or two, if some other relevant factor that you were considering permitted you to exercise that judgment, then you could award it in that case also.

And the suggestion is that that latter part of the sentence that provides discretion if other relevant factors are present be stricken. So that's Section 16.

CHAIRMAN MONTROYA: Questions? Okay.

MR. ROSS: Another part of Section 16, this is probably more in the line of clean-up of the ordinance. As you recall, to get an alternative means of compliance, you can make a cash payment or dedicate property to the County. In another place in the ordinance, we say that if you do that, we have to determine that the value of either the cash or the property that you're proposing to dedicated would have been of greater or equal value than the affordable housing that otherwise would have been provided. That wasn't set out here. It was set out some place else in the ordinance, so as clean-up, we're proposing to add this to clarify that if you make a cash payment or property it's got to be roughly equivalent to or greater than the amount of affordable housing that would be lost from being excused from this requirement of the ordinance. So that's that change.

The next one is in Section 12. This is another clarification. As you recall, Section 12 gives you an incentive which provides relief from water utility connection charges and Commissioner Sullivan and I agree. We thought it would be prudent to make it clear that that doesn't mean that you're relieved from the cost of creating a line extension project. If you recall, in our standard water service contracts, the person desiring water service has to bring the water from the nearest County utility infrastructure to the development and then provide the necessary piping within the development and then later dedicate all that infrastructure to the County so that the County can provide water. He thought, and I agree, that it was prudent to make sure that the cost of providing an infrastructure are not part of this incentive.

Any questions on –

CHAIRMAN MONTTOYA: Any on Section 12? Okay.

MR. ROSS: In the final change in this particular section is that an emergency be declared and have the ordinance take effect when recorded in the County Clerk's office.

CHAIRMAN MONTTOYA: Where is this going to be placed?

MR. ROSS: That would be placed all the way at the bottom. You see the very last page where the ordinance says "Passed and enacted this 14th day of February 2006", it would follow that immediately.

CHAIRMAN MONTTOYA: Okay. On page 13. Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Chairman, what criteria do you have to meet to have an emergency clause in your legislation?

St: That is the criteria. That is right out of the statute.

COMMISSIONER CAMPOS: It requires a declaration but does it require a factual basis? What is your factual basis? Can you just declare anything an emergency and say

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MR. ROSS: It has to be necessary for the public peace, health and safety.

COMMISSIONER CAMPOS: What kind of cases or ordinances in the past have used this language and been executively defended?

MR. ROSS: Well, the usual situation in which these are used is things like what we were discussing earlier with the fire chief. Increased fire danger or a bridge is out, or something along those lines. But what constitutes the public peace, health and safety is really your judgment.

COMMISSIONER CAMPOS: Unfettered?

MR. ROSS: Pretty much. It's legislative discretion. It's not unfettered as you know.

CHAIRMAN MONTTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Mr. Chairman, Steve, this emergency clause, I guess I'll call it, would be effectuated upon filing with the Clerk's office. Correct?

MR. ROSS: Upon recordation.

COMMISSIONER VIGIL: Okay. If we file the ordinance and we really don't have the rules and regulations actually fully developed, what does that do to us?

MR. ROSS: Mr. Chairman, Commissioner Vigil, I think that as long as there's not a great deal of time that elapses between the effective date of the ordinance and the approval of the regulations, we're okay. I think if a long period of time goes by without having regulations, there's a substantial number of requirements in the ordinance that require regulations to give them effect. We have draft regulations in there. They're close. I think that with some more work we could bring them back to you at the next meeting or perhaps the following meeting after that if that doesn't work. But it is important to have them in place because it gives the price points and all the other things. An individual could file an application now and start working through the process, even without the regulations, in effect. But not for very long, obviously.

COMMISSIONER VIGIL: And Mr. Chairman, Steve, when does that bring forth the proposed draft for the rules and regulations? I've seen the preliminary draft.

MR. ROSS: I don't really know what the plans are immediately, but I think we could do it very quickly.

ROBERT ANAYA (Housing Director): Mr. Chairman, Commissioner Vigil, I was just talking with Mr. Sill, who's been helping us draft them along with Mr. Ross and we think that we, if not the next meeting as Mr. Ross says, the meeting after that, which would be the first meeting in March at the latest. We feel confident we could have them completely finished. But Mr. Ross is correct in saying they're close. We do have some other technical things we want to make sure are right before we bring the final, but within the next two meetings we feel we could have them completely done.

COMMISSIONER VIGIL: And Mr. Chairman, Robert, maybe you might be able to answer this. This is one of the concerns I've had and I'm confident that we're moving forth with a product that has had significant amount of input from all communities, but are the rules and regulations also going to go through the same process as the ordinance did?

MR. ANAYA: Mr. Chairman, Commissioner Vigil, I think that relative to the regulations, if that's the pleasure of the Board, we would absolutely do that. But I think we have stayed consistent with what we achieved in the Community College District, which we do have workable regulations within the Community College District now. We haven't had any major deficiencies with those, so we basically took those as the foundation and I think given that I think we will have a clean set of regs. But if it's the desire of the Commission for us to have some additional input then we would definitely honor that.

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

CHAIRMAN MONTROYA: Okay. Any other questions? If not, this is a public hearing. If there's anyone who would like –

MR. ROSS: Mr. Chairman, it actually is not a public hearing.

CHAIRMAN MONTROYA: Oh, it's not a public hearing? It's just advertised as a public hearing.

MR. ROSS: No, it's not advertised as a public hearing. It's advertised as the meeting during which you will consider the adoption of the ordinance.

COMMISSIONER CAMPOS: But we can take public comment if we wish. Or not?

CHAIRMAN MONTROYA: My notice says public hearing to be heard at 6:00. So maybe that was a misprint.

MR. ROSS: Yes, it is a misprint.

CHAIRMAN MONTROYA: So just ignore that. This is not a public hearing.

COMMISSIONER SULLIVAN: The original agenda, Mr. Chairman, just said consideration and possible adoption, and then when we got the revised agenda today, it read, in moving it to 6:00, somehow public hearing appeared there.

CHAIRMAN MONTROYA: Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Ross, what do you suggest we do? Staff's intent was not to have this a public hearing, but simply for deliberation, yet we have made some changes that were – that may be deemed significant by some.

MR. ROSS: Mr. Chairman, Commissioner Campos, it wasn't advertised as a public hearing but you can certainly, if you chose, to take some comment.

COMMISSIONER CAMPOS: And if we did not advertise it as a public hearing, is there any problem with us considering that tonight? The ordinance itself.

MR. ROSS: No, the ordinance was advertised as considering – the ordinance was advertised for adoption.

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: I don't have a problem hearing from the residents or whoever's out there.

CHAIRMAN MONTTOYA: Is there any objection?

COMMISSIONER VIGIL: No.

KARL SOMMER: Mr. Chairman, I'll be very brief. My name is Karl Sommer and I'm here on behalf of two clients that have very specific requests related to the ordinance that you're considering, and I'll be very brief. They relate to Section 2, the applicability section. I'd like to address just two circumstances which I think are unique. I have some language drafted that I'd like you all to consider relating to the applicability at this point.

CHAIRMAN MONTTOYA: Karl, this doesn't take into account the proposed changes from Commissioner Sullivan.

MR. SOMMER: [Inaudible] The language that you have in front of you is from this document, Section 2, which I think is the one you were dealing with that Steve was working off of. I don't know specifically whether Commissioner Sullivan – I was out of the room, if those changes were made while I was out of the room. I'm not sure.

COMMISSIONER SULLIVAN: Mr. Chairman, let me clarify that. It doesn't make those changes. If you look above his highlighted area, where it says preliminary plat submitted for review. That's still there. And the problem that Mr. Ross and I looked at there was that anything could be submitted for a review. You could submit your driver's license and it didn't really give a factual basis for delineating whether or not a project became effective under the ordinance. So Mr. Ross drafted that language that's in Section 2. I didn't draft that language. The "submitted" was the problem word there. Excuse me.

MR. SOMMER: Mr. Chairman, it's not germane to my – I have no objection to the clarification made of taking out the language "submitted". The question I have is, and this Board of County Commissioners knows, there has been a moratorium in place on 285/84 for almost six years now, going on – excuse me, five years, and there has been a couple of projects out there that have been subject, that have master plan approval that have been subject and not being able to move forward. And at the time of the submission of those, of the ordinance on the moratorium, those property owners, and there are two. I represent one who

has a small subdivision at master plan. They were told they'd be able to pick up where they left off.

This ordinance significantly changes the economics of these small plans and the applicability of that ordinance to a set of property owners who have gone through a process, spent a heck of a lot of money and have not been able to go forward, not because they delayed, or they didn't do something, or they revised. They haven't been allowed to submit anything for six years. It is patently unfair to now subject their plans at this point to a 30 percent requirement and the language I've drafted deals with that situation.

The other is, as you all know, there is one project here tonight in front of you that has an approved affordable housing plan for the entire project that has City water. The City water requirement means that we had to go get an approved plan at the City. So as it stands tonight, the Turquoise Trail affordable housing plan has been approved for the entire project by this Board of County Commissioners and by the City of Santa Fe. That plan halves our prices in the entire project to \$310,000 and below. So we're going to meet the County's affordable housing 15 percent requirement and we're going to meet the City's affordable housing requirement that everything in the subdivision must be priced below \$310,000. Those plans are in place, and all of the planning, the infrastructure, the financing, has been predicated on that particular approved plan. To now subject a development that has relied upon the plan at the City, which they're going to stick us with, and we must comply with because we signed it, and it actually meet the policy of your all's ordinance I think, one, has a legal issue, but I think it also has a fairness issue.

Let me tell you about the policy that you all have enunciated. I think that this Board of County Commissioners has time and time again said that they would like to see housing in Santa Fe County that would be affordable to people who work here in our police, fire, emergency workers, teachers. Most of those people are in two-income households and don't qualify for the affordable housing requirements. Their incomes are too high; they're above the median income. That means they can't qualify for affordable housing. The next step up in Santa Fe, the median house prices is \$470,000. These people are living, as you all know, in Las Vegas, Española, Pojoaque, Rio Rancho, Albuquerque. This project is Longford homes, a project which is Turquoise Trail, is meeting your workforce housing and we intend to bring that to the market this year.

Because of that we agreed with the City to an affordable housing plan that caps our prices at \$310,000 and below. So we have the full range of housing beginning at the County's lowest affordable housing rate, maxing out at \$310,000 and everything in between. That is and meets the policies that this Board of County Commissioners has enunciated over and over again. To apply a 30 percent requirement on top of that changes the whole ball of wax of this project. We can't raise prices. We can't recover the cost. It makes the project very, very difficult to make it work.

The unique circumstances that relate to that project is that it has City water and it has City sewer, and that's why those requirements were imposed. The language I've put in front of

you deals with those two situations without changing the effect of your ordinance in a general fashion. As I told you, there are only two projects I know of subject to the moratorium in the Eldorado area and they will continue to be subject to the moratorium until this Board lifts that, and then second of all, there's only one project that is on City water, outside the City subject to an approved affordable housing plan and that's the one I'm dealing with here tonight.

So we would request that you clarify that. I don't think it's this Board's intention to be punitive to anybody. It's the Board's intention to provide affordable housing and I think there's a fair way to do that and an economical way to do that without letting the horse out of the barn. I would stand for any questions that you might have regarding the amendments that we have requested and I don't believe that they are significant in their impact.

CHAIRMAN MONTOYA: Discussion on this suggested amendment.

Commissioner Campos.

COMMISSIONER CAMPOS: Have you submitted this to our legal staff before this meeting?

MR. SOMMER: I have not been able to meet with Mr. Ross about them.

COMMISSIONER CAMPOS: This is the first time you've submitted them.

MR. SOMMER: Yes. To Mr. Ross, yes.

CHAIRMAN MONTOYA: Okay. Any other questions? Commissioner Vigil and Commissioner Sullivan.

COMMISSIONER VIGIL: I would just defer a little bit to our legal staff with regard to this, and I think I'm going to echo some of the sentiments of the other Commissioners by saying I think when we do have a moratorium in place we do have to actually consider it with regard to the issues that we enact and whether or not they adversely impact what we've already put into place. Steve, do you have some preliminary responses to this proposal?

MR. ROSS: Mr. Chairman, Commissioner Vigil, when we put together the applicability section, you'll see that we intended it to apply broadly to every development we thought could be reached by the ordinance. You certainly can retreat from that position, but that's what staff did when we put it together was make it broadly applicable to everything that was pending to ensure that it had the broadest impact. This is certainly something that you could consider and I've looked through it quickly. It would do what he says it does.

COMMISSIONER VIGIL: And do we know – perhaps this is a question for Land Use, exactly how many developments would be affected by this? I believe, Mr. Sommer you referenced two, but perhaps –

MR. SOMMER: I did the research myself and I was able to find two master plans that were recorded in the 285/84 corridor that have been stopped and not gone anywhere. So there's only two there. And there is only one development in the entire county that has City water to it, subject to an approved plan, and that's this plan. So it's a total of three developments that are in those situations. I know Judy probably has more experience in the moratorium area, but I went through and I found two recorded master plans and one of

them is the Rancho San Lucas plan and the other one, I didn't catch or remember the name of it but it's a little further in. The rest of those projects don't have approved master plans and they've been subject to a moratorium. So you're not talking about opening the floodgates to lots of projects being exempt from this ordinance, and I'm not asking for that.

I think that Commissioner Anaya stated it well. Are these clients going to have to come back in? Absolutely. Somebody's who's got an approved master plan that's been sitting for five years is going to have to recalculate, resubmit, redo everything, and they will have to do so not by reason of their own delay. There are many projects that get master plan approval and then they do nothing. Those are the kind of people that are subject to the vagaries of the changes in the law. But somebody's who's stuck there and can't do anything, I think it's patently unfair.

CHAIRMAN MONTROYA: Commissioner Vigil.

COMMISSIONER VIGIL: I'm done. Thank you.

CHAIRMAN MONTROYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Just on the Turquoise Trail plan. The first phase of Turquoise Trail – correct me if I'm wrong, Karl, has an approved master plan for both phases. Correct?

MR. SOMMER: That's correct.

COMMISSIONER SULLIVAN: Okay. And the first phase is currently under construction. Is that correct?

MR. SOMMER: That's correct.

COMMISSIONER SULLIVAN: Okay. So the first phase has an affordable housing plan in place already with the City and the County. Correct?

MR. SOMMER: The entire project has an approved affordable housing plan over the entire project with the City and the County.

COMMISSIONER SULLIVAN: Okay. You have an affordable housing agreement with the County already, on the second phase?

MR. SOMMER: We have an affordable housing plan that's approved with the County, and our agreement is to be heard tonight related to that final subdivision.

COMMISSIONER SULLIVAN: Right. Now, so if your second phase, which brings it up to 512 units were approved tonight for preliminary and final, then this ordinance that we're considering now wouldn't be applicable to you.

MR. SOMMER: I would agree with that.

COMMISSIONER SULLIVAN: Mr. Ross, would you agree?

MR. SOMMER: And if it is not approved tonight, it will be applicable to us.

COMMISSIONER SULLIVAN: Probably. Depends on when we record it.

The question is, if they're coming in tonight for preliminary and final approval on the balance of the project of Turquoise Trail –

MR. ROSS: What the effect of the ordinance would be? It would depend on whether the ordinance was effective as of the date of preliminary plat approval. The way that

the ordinance is drafted right now, that's the activating event. Preliminary plat approval, once it's granted, you're exempt from the ordinance.

COMMISSIONER SULLIVAN: Right. So we don't have an ordinance yet, and the earliest that the ordinance could be recorded with the Clerk would be tomorrow.

MR. ROSS: Right.

COMMISSIONER SULLIVAN: So the first phase has already been approved; they're already under construction. So that's not even an issue. The second phase is up for approval tonight for both preliminary and final. If that occurs, then they're not subject to the ordinance. Would be that your thinking?

MR. ROSS: The ordinance might not apply to them.

COMMISSIONER SULLIVAN: Might not apply. So on that, I think Turquoise Trail, from what I see, is not affected. And the other projects that are on the moratorium, I certainly defer to Mr. Ross on those because of whatever the effects of the moratorium are.

MR. SOMMER: Mr. Chairman, if I could bring up one thing and then I'll conclude if I may. The Turquoise Trail is subject to a binding agreement at the City. So if we're tabled tonight for any reason on Turquoise Trail, we still have an agreement with the City. We can't do anything about that. We have City water. Our project depends on it and that's why I'm here in front of you. I would not presume that you all are going to do one thing or another on Turquoise Trail tonight and that's why I'm standing in front of you. I hope you will approve it and grant preliminary and final approval, but if you don't, then I have a problem with the City, which I've already agreed to, and I think we've met your policy. So that's why I'm in front of you.

The only other thing that I'd like to say is –

CHAIRMAN MONTROYA: Commissioner Anaya has a question.

COMMISSIONER ANAYA: Thank you, Mr. Chairman. If we approve the affordable housing ordinance, does it go into effect today, or is there a 30-day period, or do we have to wait until we adopt the regulations, and then they would go into effect at the same time? That's my question.

MR. ROSS: Mr. Chairman, Commissioner Anaya, it depends on whether you're enacting the emergency clause or not. If you do not enact the emergency clause the normal procedure would be – bear in mind we're trying to follow two statutes. This is a hybrid ordinance. It's both a zoning ordinance and not a zoning ordinance. So we're following two sets of statutes. It needs to be recorded in the County Clerk's office, and then because it has some zoning attributes through the density bonus, it needs to be published in the newspaper. Once it's published, then it becomes effective.

MR. SOMMER: If I may conclude. It relates exactly to the emergency clause. Many people have been working for many months on this emergency and if you think about the emergency clause, what it does is it makes the ordinance effective tomorrow. It was not published as an emergency ordinance, and I would bring that to your attention. There was no

notice anywhere that the Board of County Commissioners was going to declare an emergency on this subject. I don't think the public has had adequate notice of that. But, if it becomes effective in a month, what can happen in a month? Someone can submit a plan by your own ordinance that would still apply to them if they submit between now and the time it becomes effective. So the emergency clause really doesn't get you anything additional that you're not going to get otherwise. I don't believe there is an emergency. I think that people have worked hard on this and this is a bit of surprise to many of us who have been following it.

I have clients who were willing to deal with it. There were changes here tonight and most of them are okay with us, but the emergency clause says it's effective tomorrow. Nobody had notice of that and I don't think that there is a valid emergency. That's my opinion. Thank you very much.

ROSANNA VAZQUEZ: Good evening, Commissioners. I would request two changes and this language just came to me and have not gone over it with staff so I'm presenting it to this Board and to staff at the same time. It's under Section 13, Reduction of lot size for affordable units, and it begins with the second line. Steve, do you know where I am? The second line, we would request deletion of. It's with Santa Fe County approval, designated affordable lots when approved may be clustered. We wanted to change that language to read With development plan approval, smaller affordable lots may be located in compound, village or other settings of similar market lot sizing. What this will accommodate, Commissioners, are subdivisions that have average lot sizes of 2.5-acre parcels, and you're going to create smaller affordable lots, and it's going to be difficult for infrastructure reasons.

COMMISSIONER VIGIL: Mr. Chairman, Rosanna, I'm having a hard time – are you talking about Section 13 of the ordinance? Reduction of lot size for affordable units?

MS. VAZQUEZ: Yes.

COMMISSIONER VIGIL: Where – you said on the second line, there's a reference to Santa Fe County? I'm not finding it.

CHAIRMAN MONTOYA: Nor am I.

MS. VAZQUEZ: Mr. Chairman, I'll give this to my client to look at while I talk to you about my other issue.

COMMISSIONER SULLIVAN: I think, Mr. Chairman, I'm just guessing. We'll find out when Rosanna comes back. We've had this discussion before from Mr. Borrego and he had testified before that he doesn't like the term "reasonably dispersed" in Section 13. He wants to be able to cluster the affordable housing units. While we have an incentive in the ordinance for clustering; that's a good idea. Then the question becomes should you cluster all the affordable housing units in one place and make them all in one place, or should they be dispersed throughout the project. I think clustering is a good idea. It does save infrastructure costs. I wouldn't favor clustering all the affordable housing units in one place. That's this reasonably dispersed comment that's in here now that I think is what Mr. Borrego had testified before on. That's my recollection anyway.

COMMISSIONER CAMPOS: Mr. Chairman, it was clear. I think the

Commission consensus was reasonably dispersed was the appropriate way of doing this, whether you have clustering or not.

COMMISSIONER SULLIVAN: I thought so too, but we'll see if that's what Ms. Vazquez comes up with. But that's my recollection from Mr. Borrego's former testimony.

COMMISSIONER VIGIL: And if I could just further clarify that, when you use the term reasonably dispersed, you're not excluding clustering.

CHAIRMAN MONTOYA: Okay. Rosanna, was that –

MS. VAZQUEZ: Mr. Chairman, Commissioners, I'm going to let Mr. Jim Borrego deal with that issue. I have one more issue, and that is what happens – and I have a question – what happens to projects that are in the process now, that have submitted for preliminary plat and plan approval under this ordinance? With the changes that Steve Ross has made.

CHAIRMAN MONTOYA: With the changes that are –

MS. VAZQUEZ: Section 2, under applicability. By taking out the language “submitted for review”. You have existing preliminary plans and plats that have gone through the process, gone through the review process, have engineered – have done all the engineering for the roads and the infrastructure, and are going through the process now, what happens to those applications that are in the process right now?

CHAIRMAN MONTOYA: Steve.

MR. ROSS: Mr. Chairman, once again, the way it's drafted right now, the only types of developments that are exempt from the requirements of the ordinance are approved preliminary plats. Everything else is subject to it. So that would mean applications, that would mean master plans that have previously been approved. Everything else is subject to it. We don't have to do it that way but that's just a way that it's been set up. Now, the language “submitted for review” was inconsistent with the previous phrase that says that the ordinance applies to each application for approval of master plan, preliminary development plan or preliminary plat.

Looking at that, I realized that those two phrases were inconsistent and chose to delete the one, but certainly that last phrase there is the operative phrase. In fact that last sentence. It says what stage of the approval process this ordinance applies to and what it doesn't. So that's an important decision. Once again, right now, you're essentially vested for purposes of this ordinance only if you have preliminary plat approval, as of the effective date of the ordinance. Now that could be a while, depending on whether you adopt the emergency clause or not, but if it's not declared an emergency, it could be a little while before the publication is accomplished. But as of that date, whenever that is, then folks will be subject to it the way it's currently drafted, except if they have an approved preliminary plat.

MS. VAZQUEZ: Mr. Chairman, Commissioners, this is really – it's not a question of vesting, because Mr. Ross is correct on the legal issue of vesting. It is really a question of fairness. At this point you have submitted preliminary plans and plat applications that have gone through the process. At the time that these applications were submitted, there

was no requirement, or there was a lesser requirement or no requirement for affordable housing. These projects have spent considerable sums of money with engineering and application fees to get to the point where we are now. To require an application of this ordinance would just be unfair.

I'm asking you today, under that applicability section, to not take out the "submitted for review" because I don't believe that that is inconsistent. I think what that allows you to do is apply this ordinance prospectively, in a forward manner. It allows you to apply the ordinance to any submittals that are coming in after the effective date of this ordinance. But it is really a question of fairness, Commissioners, the issue that you raised, Commissioner Anaya. What happens to these applications when they're coming in. And I would ask you to keep that language in, "submitted for review" after the effective date of this ordinance, for purposes of fairness. Thank you.

CHAIRMAN MONTOYA: Thank you.

COMMISSIONER VIGIL: Mr. Chairman, Ms. Vazquez, are you saying that the language "submitted for review after the effective date of this ordinance" is actually language submitted for review before the Board of County Commission irregardless of what developmental stage it is?

MS. VAZQUEZ: Mr. Chairman, Commissioners, I actually don't interpret the sentence that way. "Submitted for review" to me means submitted to County Land Use for review by Land Use, applicable agencies, and going before this Board. So it would catch every application that is submitted. Let's just say you enact the emergency clause, which I don't believe is an emergency as argued by Karl, but let's just say you enact it tomorrow. Every application that came in after tomorrow would be subject to that requirement. That would provide people with sufficient notice with regard to the requirements of it.

At this point, there hasn't been really any notice. As you know, this affordable housing ordinance has gone through many, many changes. And many of us who work with developments that are coming in have tried to follow those changes. But it is very difficult to submit an application and get review on something when there is no ordinance. That's what I'm asking you to take a look at. I'm asking you to be fair to the applications that are in the process now, and keep that language in there on applicability.

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

CHAIRMAN MONTOYA: Okay. Any other public comment? We'll take one more.

JIM SIEBERT: Mr. Chairman and Commissioners, my name's Jim Siebert. I know I'm coming late to the process, but I'd just like to have you take in a cautionary note. I notice that the ordinance has a lot of similarities to the City of Santa Fe's ordinance, and I've been working with that ordinance and I find it has some significant flaws to it, not only in terms of - I think what the staff is finding is that it's difficult to implement both in practice and administration. I had a case in particular where my client, who's fifth generation Santa Fean did a subdivision on his own land, was trying to give a lot to the daughter, and they made it so

difficult just from a procedural standpoint that she's finding it almost impossible to build on the land that has been in their family for the last 200 years.

I noticed that – at least the last version I looked at – that there is a review section. It will be reviewed on an a semi- or annual basis. My hope is that maybe after six months or a year, you would do that, hold a hearing on it and see how exactly effective it is. I think you're going to find that you're going to have problems very similar to Santa Fe and my guess is in the next few months, the City of Santa Fe will probably be revising their ordinance. Thank you.

CHAIRMAN MONTOYA: Okay. Jim.

JIM BORREGO: Mr. Chairman, County Commissioners, sorry for the confusion. On Section 13, page 7, immediately after "dispersed throughout project" I'd like consideration of a sentence stating, With development plan approval, smaller affordable lots may be located in compounds, village or other settings of similar market lot sizing. That way they're not just grouped by themselves. This would help in areas where we have 2.5, 3 and 5-acre lots.

CHAIRMAN MONTOYA: Three and five acres?

MR. BORREGO: On subdivisions or developments that have 2.5, 3, 5, 10-acre lots. But I think that the key word here is of similar market lot sizing. So that if it is a compound or village, you've got a greater density of affordable housing in there, but they're not stuck off by themselves. They're with most other market lot units of similar size.

CHAIRMAN MONTOYA: Okay. Questions? Commissioner Vigil.

COMMISSIONER VIGIL: Mr. Chairman, and Steve Ross, whoever would like. My understanding is the ordinance actually does that without the additional language. Am I correct, Mr. Ross?

MR. ROSS: Mr. Chairman, Commissioner Vigil, I stepped out for just a second. What's the question?

COMMISSIONER VIGIL: Mr. Borrego has made a recommendation that we not restrict – could you restate it?

MR. BORREGO: Right now, the ordinance states, Section 13 says that affordable lots shall be reasonably dispersed throughout the project. That means that if you've got a large project with 2.5 and 5-acre lots and whatever mix, and you reduce the size of an affordable lot, when it is reasonably dispersed, you could end up with a small affordable lot amongst the grouping of three-acre lots. What I'm saying is that when the development plan is approved, during many situations, you could have clusters or compounds or village settings where you could be able to locate these smaller affordable lots and they wouldn't be dispersed among these larger lots. What I'm saying is they'd be amongst similar market lot sizing. They would be market lot.

CHAIRMAN MONTOYA: So Jim, again, could you read the language that you're proposing?

MR. BORREGO: With development plan approval –

CHAIRMAN MONTOYA: And this is after “throughout the project”. Right?

MR. BORREGO: Yes.

CHAIRMAN MONTOYA: After “throughout the project” and then –

MR. BORREGO: Smaller affordable lots may be located in compounds, village or other settings of similar market lot sizing.

CHAIRMAN MONTOYA: Did you get that Steve?

MR. ROSS: Mr. Chairman, I think Mr. Abeyta is trying to get it.

COMMISSIONER SULLIVAN: Mr. Chairman, as he’s writing that down, the only question I would ask of Mr. Borrego is similar market lot sizing – let’s say if you have 2.5 and 3-acre lots and so forth, and smaller lots are only your affordable lots. Would that language if it were in there permit the clustering of all the affordable housing smaller lots together?

MR. BORREGO: No, but it would seem, if you’ve got a village or a clustering or a compound, the ordinance right now says that 30 percent of those would be affordable. With this additional language, what that allows you to do is to move smaller lots, which should be dispersed amongst your five and three-acre lots, you could relocate those to the compound where there is lot sizing of comparable sizes.

COMMISSIONER SULLIVAN: Well, my question is, suppose the only lot sizes that you had that were smaller were the affordable lots, and the rest were the three-acre lots. Then wouldn’t all of your affordable units fall in the same place?

MR. BORREGO: That’s why I included the wording, with development plan approval. That way we don’t fall in where you’ve clustered all the affordables into one corner of the project. They should be reasonably dispersed if you have no compound or village setting or smaller lot sizing, of market lot comparable sizing, I should say.

COMMISSIONER SULLIVAN: So what you’re saying is if, somehow, if I understand, Mr. Chairman. Is if I had – let’s just say the affordable lots were a half-acre. If I had other lots that were market lots that were half-acre, I want to put all those together. I want to put my affordable lots and all my market lots together, all the half-acre lots in a compound.

MR. BORREGO: Correct.

COMMISSIONER SULLIVAN: Not in the middle of three-acre lots or dispersed among the others. If all my lots that were a half-acre were affordable lots –

MR. BORREGO: Then it makes no difference.

COMMISSIONER SULLIVAN: Then what would you do? Then you would disperse them?

MR. BORREGO: Yes. Then we would disperse them.

COMMISSIONER SULLIVAN: Okay. I’m not sure I read your language that way but I understand what you’re saying.

CHAIRMAN MONTOYA: So what are the wishes of the Commission? Would you like to take this on?

COMMISSIONER VIGIL: I’d like to get a response from Steve.

MR. ROSS: On the last topic? I guess my preference would be if the issue with that paragraph – first of all, remember that Section 13 only applies to minor projects, 24 or less, the way the ordinance is currently set up. So it's not going to apply to larger projects where you might have some complex issues. If you want to adopt a suggestion, I think maybe because the words that are being used in the proposed amendment really don't hook up with the Land Development Code, I would suggest that you just delete the whole last part of that sentence. The part that imposes the reasonable dispersal requirement in the first place. I think early on, maybe it was that folks not be encouraged or required to put all the affordable housing in one place. But that seems to be what Mr. Borrego would like you to consider doing is permit affordable housing to be placed in one place. So I would suggest that maybe a fix that wouldn't disturb any of the other things that we have implicated in this ordinance, such as the Land Development Code, just delete – if you adopt that change – just delete the whole thing.

COMMISSIONER CAMPOS: Delete the whole section?

MR. ROSS: No, no. From “so long as”. And just delete to the end.

CHAIRMAN MONTOYA: So it would be a period after Environmental Department. Period.

MR. ROSS: That's right.

CHAIRMAN MONTOYA: And then strike all the rest of that sentence to the end of project. Or are you suggesting deleting the next line as well, the reduction, ending with code?

MR. ROSS: No, I wouldn't think that that would be something you'd want to delete.

CHAIRMAN MONTOYA: Okay. So just the rest of that sentence, ending with “project”.

MR. ROSS: Mr. Chairman, before we go into the adoption phase of the meeting, do you want me to go through some of the other typographical changes that we've identified? There's one that's a little bit more than a typographical change that I want to call your attention to, and maybe I should have talked about this before. Take a look at Section 5. That section was written at a time when minor projects were from five to ten units and you'll see there that the percentages that were used in that section were based on 30 percent and they're also based on a minor project that only consists of ten lots. So you can see what the intent here was was for smaller projects that don't have a lot of lots and therefore can't supply housing in all the various different categories. It was pre-selected there. The problem with this paragraph is that we've changed the requirement for minor projects in the draft that you had before you to 16 percent and so Section 5, the way it was, actually increases the requirement for five or six or seven or eight or nine-unit projects, instead of decreasing it as we had intended. My suggestion would be just delete the whole Section 5.

CHAIRMAN MONTOYA: Okay. Anything else?

MR. ROSS: There are a number of typographical errors. I can go through them with you, or maybe I should go through some of them. In the definitions section under

appreciation.

COMMISSIONER CAMPOS: What section is that?

MR. ROSS: Section 3.

CHAIRMAN MONTOYA: Letter G.

MR. ROSS: Letter G. You'll see there's a phrase in there that says less the amount of the affordable mortgage or lien. Of course appreciation is in the increase in value of property. I don't know how this language got in there but it's not correct. So that phrase should be deleted.

COMMISSIONER CAMPOS: The entire phrase?

MR. ROSS: Yes. Less the amount of the affordable mortgage or lien.

COMMISSIONER CAMPOS: That phrase.

MR. ROSS: Yes. And there's a similar phrase later on that I was also going to recommend be deleted. Before we get to that though, if you look at Section 6 B, the affordable housing – 6 B 8. Since we moved the energy efficiency stuff to an incentive and it's no longer in alternative means of compliance, that subparagraph has to be deleted. It doesn't make any sense there.

Then in Section 9 E, there's a typo. Well, we talked about this one earlier. We don't need to deal with that. There's a suggestion in Section 10 that we delete the last part of the first sentence that starts, In addition to, that was a bit confusing.

And then in Sections 11, 12, 13, these sections refer to incentives and we used the wrong phrase to refer to the subject of that sentence. It should be – like for example, on the last line of Section 11 where it says affordable unit, it should say affordably priced housing unit. That same change should be made every time that phrase appears in 11, 12, and 13.

Okay, then Section 16 A 1, it says that you provide affordable units outside the project within central Santa Fe County. Remember we changed the map so it's both central and northern.

COMMISSIONER VIGIL: It is there.

MR. ROSS: Is it there? Okay. And this one may be there also. 16 D, at the end of that first really long sentence, about halfway down the paragraph, there should be a "not" between "shall" and "apply". That may be there.

And in Section 18 A, there's a very confusing phrase in there which I propose to delete. If you look 2/3 of the way down, it says, at the time of initial sale. After that is says, as determined by appraisal and the date of any subsequent sale or refinancing. That's not correct. So we propose to delete that phrase, as determined by appraisal on the date of any subsequent sale or refinancing.

COMMISSIONER CAMPOS: To the very end of the sentence?

MR. ROSS: No.

COMMISSIONER CAMPOS: Just to refinancing?

MR. ROSS: Yes. Just to refinancing. And then in B there's a provision that I think must have been left over from an earlier draft. You'll see at the end of the first sentence,

maximum target housing price. If you left that in there, someone who sells an affordable unit to the County as a result of the exercise of our right of first refusal, would actually sell that to us at a loss. So instead of using that phrase, current maximum target housing price, it should read that a buyer could sell it to the County at the then fair market value of the affordable unit.

Okay, here's the reference. In 18 C, here's the other parallel reference to the affordable mortgage or lien. At the end of the first long sentence there, it has a phrase right at the end of it that says, less the amount of the affordability mortgage of lien. That should be stricken like the earlier one was. And I think those are the end of the changes.

Mr. Chairman, one other thing. We definitely need to change the map and refer to those areas we discussed earlier, the light purple. And what we suggest is adding a key that says something like pueblo lands may be required to provide affordable housing. They're not identified on the key right now; they're just sort of light purple colors out there. It's unclear whether the ordinance would apply in there or not. And it wouldn't apply to pueblo lands according to the applicability paragraph. But we propose to add an additional key for those items. It identifies those as pueblo lands but also adds the phrase "may be subject to provisions of the ordinance".

CHAIRMAN MONTOYA: That are within the pueblo lands.

MR. ROSS: They're within the four square leagues, right. There's a ton of in-holdings, some of which may be subject to the provisions of the ordinance.

CHAIRMAN MONTOYA: Steve, you know that I've advocated for the inclusion of the northern part. Maybe that may be one piece that – I can't think of any large tracts of land within that pueblo, in those pueblo holdings that are going to fall under this ordinance. Maybe beyond that, but not within the pueblo boundaries.

MR. ROSS: Mr. Chairman, I missed that again. Sorry.

CHAIRMAN MONTOYA: I'm suggesting that maybe we exclude that purple piece from this ordinance.

MR. ROSS: Exclude the four square leagues of pueblo land?

CHAIRMAN MONTOYA: Right. Judy.

JUDY MCGOWAN (Senior Planner): Chairman Montoya, there could be a problem with that because then that would exclude them from being receiving sites, for affordable housing also. If you look at where development has been happening that would be affected by this ordinance, we went back and looked at – we actually sat Joe down and made him cough up the information. But we looked at all the subdivisions over five lots that have been approved in the last three years and almost all of them are within the Five-mile Extraterritorial Subdivision platting area of Santa Fe. There's only been about four projects outside of that area – two in the Eldorado area, one in the Village of Agua Fria. So maybe just three.

But if you exclude those in-holdings from the ordinance then they would not be able to be receiving sites for workforce housing or affordable housing. I understood that was one of the things you wanted to be able to achieve in that area.

CHAIRMAN MONTOYA: Yes, it is. I don't know in that particular area specifically. I wasn't maybe designating that one, but looking at that area specifically. I don't know that there's a whole lot of places that could be receivers of some other affordable housing site.

MS. MCGOWAN: You're correct. There probably are not a lot of properties but there may be one that we don't know about. And also, just looking, I'm citing statistics for what's happened in the last three years. Most of the developments, which is a big change for Santa Fe County, most developments of six lots are more are also happening on water and sewer. Between 80 and 95 percent of the dwelling units approved in the last three years are on water and sewer. So there aren't at this point, there have not been a lot of projects that wouldn't be on water and sewer. Now, as we all know, those trends can change.

CHAIRMAN MONTOYA: Okay. What are the wishes of the Commission?

COMMISSIONER SULLIVAN: Mr. Chairman, this is a suggestion at this point.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I see a couple of separate issues that maybe we should deal with. I think we're certainly at the point where we can adopt this ordinance. I think in the first set of changes that Mr. Ross went through, some of which I worked with him on. The only one that seemed to have some questions raised was on the emergency clause at the end.

CHAIRMAN MONTOYA: And on Section 2 also.

COMMISSIONER VIGIL: Right.

COMMISSIONER SULLIVAN: Yes, I was going to get the attorney's ones. And then on Section 2, insofar as whether we say you're not applicable to the ordinance, just on the basis of submitting it to the staff as opposed to submitting it to the BCC. I think that could be reworked to submit to the BCC. Then we know that staff has gone through it and it's now ready for approval as opposed to just submitting something on the back of an envelope. I think can work on it. So that's – so the first would be emergency. And then it would be how we deal with that one.

Then the next one would be the issue that Mr. Sommer brought up, two issues, one dealing with the Turquoise Trail project and the other dealing with the moratorium projects. So those seem to be – and then all of the housekeeping changes I think that Mr. Ross made, those seem to be compatible with the ordinance. So my suggestion would that just one by one, we go through those things, if you think that's appropriate and we just discussion them and if there's for example, not a consensus to emergency, then we just move on to the next issue and discuss that.

CHAIRMAN MONTOYA: Okay. So let's start with that. Is there a consensus that this is an emergency or not on the second page, number 7,

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: This is certainly an urgent matter in a lot of ways. An emergency from a legal perspective, I don't think it's an emergency. And as Mr. Sommer raised, I don't know if Mr. Ross agrees but there was no notice that this had an emergency provision attached to it.

CHAIRMAN MONTOYA: Okay. Commissioner Vigil.

COMMISSIONER VIGIL: I was just going to ask Mr. Ross what his assessment was on that.

MR. ROSS: Mr. Chairman, Commissioner Vigil, it certainly wasn't advertised. This is the first time that the emergency clause has been discussed. That's true.

COMMISSIONER SULLIVAN: Mr. Chairman, my suggestion would be we just delete that and move forward with 30-day notice and so be it.

CHAIRMAN MONTOYA: Okay, so we'll delete that. It's not an emergency. So then the next one on Section 2. Do we include the language as proposed by Mr. Ross.

COMMISSIONER SULLIVAN: It was proposed by Mr. Ross, not me.

CHAIRMAN MONTOYA: Regarding that first section. Or do we want to take a look at what Mr. Sommer has provided in terms of his amendment?

COMMISSIONER VIGIL: On Section 2, Mr. Chairman?

CHAIRMAN MONTOYA: On Section 2.

COMMISSIONER VIGIL: I believe it was Ms. Vazquez that recommended we not remove the last –

CHAIRMAN MONTOYA: Right.

COMMISSIONER VIGIL: So I guess I'm not knowing what Mr. Sommer's amendment was.

COMMISSIONER SULLIVAN: He added something.

CHAIRMAN MONTOYA: He gave us –

COMMISSIONER VIGIL: Was that in Section 2?

COMMISSIONER SULLIVAN: But he didn't have any problem with the submitted or in or out. His issue wasn't is the submittal in or out.

COMMISSIONER VIGIL: So there's two issues.

CHAIRMAN MONTOYA: Right.

COMMISSIONER SULLIVAN: Correct. There's two issues with Mr. Sommer and there's one with Ms. Vazquez.

CHAIRMAN MONTOYA: Pretty much though, one that Mr. Sommer gave us is as is in the draft that we received, plus all the highlighted area. It includes none of the changes that were discussed by Steve Ross.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: One alternative, Mr. Ross, would be preliminary submitted for – if we said submitted to the BCC, after the effective date of this, rather than submitted for review. Would that fit into that sentence structure? In other words,

leaving what you have there, let me just read what it would read. This ordinance shall apply to existing approved master plans and shall apply to each application for approval of a master plan, preliminary development plan or preliminary plat submitted to the BCC after the effective date of this ordinance.

MR. ROSS: Mr. Chairman, Commissioner Sullivan, we're drawing a line, so whenever we draw a line people are going to fall in on either side of it. We could easily verbalize something where the ordinance doesn't apply here, before the Board of County Commissioners for approval, prior to the effective date of the ordinance.

COMMISSIONER SULLIVAN: I'm just throwing out a suggestion. I think the way it's written is good. I think it says shall apply to each application for approval of a master plan, preliminary development plan or preliminary plat. When that application is made, I don't quite frankly see much difference between saying that and saying submitted for review. I think we're basically talking about essentially the same thing.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Chairman, I agree that the proposal for deleting "submitted for review after the effective date of the ordinance" is appropriate.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: I think I agree with Commissioner Campos.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: I'm confused. Okay, I agree with that, Commissioner.

CHAIRMAN MONTOYA: Okay, so then pretty much we're all in agreement then that Section 2 as amended by Steve Ross is appropriate. Then the next question would be, do we include the language that's being proposed by Mr. Sommer?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: I'd like to have an evaluation from staff, from Legal or Land Use on that particular – if you've had an opportunity. If not, it could be submitted later as an amendment if it's not clear right now. But do you have comment now? I know it was submitted late in the game.

MR. ROSS: Mr. Chairman, Commissioner Campos, just off the top of my head, I think the last concept, and that is the projects that are subject to an approved affordable housing plan, that may not be affected by the ordinance anyway. I haven't thought it through completely. The other concept is to accept from the provisions of this ordinance those master plans that have been delayed because of the application of the Eldorado moratorium. Certainly the choices you make right now are important. Applicability is always a big thing. Those master plans as you recall under the moratorium ordinance have been held in abeyance. They don't time-expire like master plans usually do. They're viable until the moratorium is lifted and then they can be processed. I don't think that makes them subject to changes in the Land Development Code that occur during that period but it prevents them from expiring by

operation of time. So if you wanted to exempt them from the requirements of this ordinance, you certainly could.

COMMISSIONER CAMPOS: Can you evaluate the pros and the cons so we could –

MR. ROSS: Well, I guess a pro would be that the moratorium ordinance has exacted a pretty severe toll on their projects and their plans for many, many, many, many years and exempting them from the provisions of this ordinance might help address that problem. The con of course is that you wouldn't get affordable housing out of those projects.

COMMISSIONER CAMPOS: And the other issue is actually how much land is included in this exemption to have to – how many acres. It could be huge.

MR. ROSS: I don't think we can tell you how many acres but we know there's a small handful of master plans. A small number of them.

CHAIRMAN MONTOYA: About three is what we're estimating. More?

MS. MCGOWAN: Mr. Sommer may not be aware that the master plans that are inside the corridor that are zoned neighborhood or village mixed use also would be complying with this ordinance because it has a residential component. So there are more than that. I'm really not aware of what the status of all the master plans are in the moratorium area. There are those in the corridor, the Plaza de Amistad, the two Cimarron Villages, and the Agora, which is not fully developed, and there are also those that are purely residential developments that are not right along the corridor. I'm not really clear what the status of some of those are. A couple of those were very large acreage.

COMMISSIONER CAMPOS: Okay, so it seems to me – Mr. Ross.

MR. ROSS: Mr. Chairman, Commissioner Campos, you can also look at Section 17 which is designed to address some of these issues, not specifically the moratorium areas but problems that crop up as a result of the application of this ordinance in general. That's a section that talks about hardship exemptions from the ordinance. And certainly folks in the moratorium area might be able to justify an exemption from the ordinance from either of those two grounds that are listed.

CHAIRMAN MONTOYA: So that would cover essentially the concerns on the language proposed by Karl.

MR. ROSS: The difference would be, in Mr. Sommer's language they wouldn't be subject to the ordinance at all, but if you did not include that language they would still have the right under the ordinance to claim a hardship under Section 17.

COMMISSIONER CAMPOS: Economic infeasibility.

MR. ROSS: Economic infeasibility or the second ground which is the inability to accomplish their goals, essentially, within a reasonable period of time.

COMMISSIONER CAMPOS: That seems to be appropriate and it would cover it, it seems to me. So that just leaves the last: are subject to the approval of affordable housing plan with Santa Fe County or the City of Santa Fe. Does staff feel that that would be an appropriate exemption?

MR. ROSS: Mr. Chairman, Commissioner Campos, we're still trying to figure out your last question. Can you maybe rephrase it for us?

COMMISSIONER CAMPOS: Okay, we're looking at the Sommer amendment, the proposed amendment to Section 2, we're looking at the very bottom of that paragraph. And it concerns, are subject to an approved affordable housing plan with Santa Fe County or the City of Santa Fe.

MR. ROSS: Mr. Chairman, Commissioner Campos, I'm still not 100 percent clear that this ordinance would change an approved affordable housing plan that's been approved by either this body or whoever the normal approval authority is under the Community College District Ordinance. I'd have to go look at that ordinance to assess that. My gut reaction is it wouldn't, but he's raised an interesting issue. As a result of passing this ordinance we are eliminating the ordinance in the Community College District that's been on the books for quite some time and there are some projects that have been approved.

COMMISSIONER CAMPOS: Do you think you need more time?

MR. ROSS: I think I need more time to address that.

COMMISSIONER CAMPOS: Okay. So that would be something that could come forward as an amendment later on?

MR. ROSS: I could certainly look at it.

CHAIRMAN MONTTOYA: We can leave that open then.

COMMISSIONER CAMPOS: So we leave it basically as is. And if this becomes an issue I think Mr. Sommer can approach Mr. Ross and staff and have a discussion and we'll have further time to evaluate and they can make a recommendation at some time to think about it.

CHAIRMAN MONTTOYA: And then what about the other one by – on Section 13 by Jim Borrego? Because this is for minor projects it wouldn't impact the lots?

COMMISSIONER SULLIVAN: Mr. Chairman, here's some more language. I don't say I'm supporting him, just here's some language trying to paraphrase what Mr. Borrego was saying. So long as the affordable units whose lot sizes are reduced pursuant to this Section are reasonably dispersed through the project, unless clustered in similar sized market rate units. No? Yes? You don't like it?

COMMISSIONER CAMPOS: I don't quite understand it. I kind of like the language as is.

COMMISSIONER SULLIVAN: Well, I like the language as is but I was just trying to do some altering of the language in case the majority of the Commission felt there was some benefit to that. That's all.

COMMISSIONER ANAYA: I like that.

CHAIRMAN MONTTOYA: I think what you said is what he was trying to capture.

COMMISSIONER SULLIVAN: It is, once I understood what he was getting at. If there's no market rate units – what we don't want, I think, as a Commission all the

affordable housing in one place and I don't think that's what Mr. Borrego is proposing. But if there are market rates units of a similar size, let's say, 900 square feet, he's saying can I cluster those with the affordable housing so they're all together with the 900 square foot units as opposed to putting 900 square foot units with the 2400 square foot units.

COMMISSIONER CAMPOS: I think the language already covers that. I don't think you need additional language to accomplish what Mr. Borrego is proposing.

COMMISSIONER SULLIVAN: You don't think so?

COMMISSIONER CAMPOS: No. As long as the affordable unit sizes are reduced and are reasonably dispersed. I think that covers it.

COMMISSIONER SULLIVAN: It's just a suggestion. I like the way it is but I just threw that out as an alternate.

CHAIRMAN MONTTOYA: Is this something that could have more –

MR. ANAYA: Mr. Chairman, Commissioners, just a clarifying comment, if I could. Relative to the section of reasonably dispersed, this language is utilized in the current Community College District as it stands and I believe Commissioner Vigil is correct with the intent of the language as it exists still allows for clustering of developments and in fact, the thing that we're careful to watch on by staff is to ensure that there's market and affordable clustered together in that process. The language as it stands and the practice which Santa Fe County has used in the implementation of the Community College District Ordinance already applies that. So I believe the intent of what Mr. Borrego is bringing up is already within the context of the language in front of you.

CHAIRMAN MONTTOYA: So we don't need to change it?

MR. ANAYA: Mr. Chairman, that's my point.

CHAIRMAN MONTTOYA: Okay. And that was your point too.

COMMISSIONER CAMPOS: That was my point.

COMMISSIONER ANAYA: And mine too.

CHAIRMAN MONTTOYA: And yours. Everybody's point.

COMMISSIONER VIGIL: I thought of it first.

COMMISSIONER SULLIVAN: Let the record show Commissioner Vigil thought of it first and second.

CHAIRMAN MONTTOYA: So essentially then that would take care of any of the proposed changes. I guess the only one in question would be the final sentence that I would like to leave open for discussion that Mr. Sommer proposed regarding that, and are subject to approved affordable housing plan with Santa Fe County or the City of Santa Fe. I think that's still to be determined, right?

COMMISSIONER CAMPOS: The suggestion I made, Mr. Chairman, was just to leave it out and have Mr. Sommer discuss this matter further and it would be subject to a future amendment.

COMMISSIONER SULLIVAN: Or put it in the regs.

COMMISSIONER CAMPOS: Or, yes, if this is something that might be

covered in the regs.

CHAIRMAN MONTOYA: Okay, and then that's what I'm suggesting, is that it be open to a future amendment. Correct? Exactly. Not that we incorporate it right now but that we discuss it and determine whether this is something that we should do then. Okay, so is everyone clear?

COMMISSIONER SULLIVAN: Mr. Chairman, if we're ready then I can make a motion.

CHAIRMAN MONTOYA: Okay, Commissioner Sullivan.

COMMISSIONER SULLIVAN: I move for adoption of the affordable housing ordinance, number 2006-02, with the changes outlined in Mr. Ross' memorandum dated February 13, 2006, excluding paragraph 7, titled New Material, which we've been referring to as the emergency clause, and the typographical corrections, which Mr. Ross pointed out to us.

COMMISSIONER CAMPOS: And deletions and additions.

COMMISSIONER SULLIVAN: There were additions that he made reference to, and I think that's all. I think we went through them all. So that would be my motion, Mr. Chairman.

COMMISSIONER CAMPOS: I'll second it.

CHAIRMAN MONTOYA: Motion by Commissioner Sullivan, second Commissioner Campos. Discussion?

COMMISSIONER CAMPOS: I have discussion.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Ross, does that motion cover our bases?

MR. ROSS: Mr. Chairman, Commissioner Campos, I think what is on the table is all the changes that I described earlier that were typographical or stylistic or required because the ordinance drafting process has moved beyond the earlier phases, plus the items in the memo, except for paragraph 7, and that seems pertinent. If that's what your intent is.

COMMISSIONER CAMPOS: That's my intent.

CHAIRMAN MONTOYA: And what about to leave open the discussion on that last sentence, the proposed language by Karl Sommer.

COMMISSIONER CAMPOS: That's not something we have to add to our motion.

COMMISSIONER SULLIVAN: I think that's something that could be direction for staff to work with the applicant on that.

CHAIRMAN MONTOYA: Okay. So that's clear then.

COMMISSIONER VIGIL: I think it's central, Mr. Chairman, that we direct staff. I'm concerned about how this does affect the plats and parcels in the moratorium area. But I'm okay with the motion as it is.

CHAIRMAN MONTOYA: Okay. So any other discussion?

The motion to approve Ordinance 2006-02 as described above passed by

unanimous [5-0] roll call vote with Commissioners Anaya, Campos, Sullivan, Vigil and Montoya all voting in the affirmative.

CHAIRMAN MONTOYA: Good job, and thank you all for your patience. I know that this has been a process that has taken a long time and a lot of work to get an affordable housing ordinance for us here in Santa Fe County. So thank you all for your help. Appreciate it.

COMMISSIONER VIGIL: Thank you, volunteers.

[The Commission recessed for five minutes.]

XIII. PUBLIC HEARINGS

B. Land Use Department

1. Ordinance 2006- An Ordinance Amending Ordinance 2002-13 an Ordinance Addressing Water Conservation for all Residential and Commercial Uses of Water within Santa Fe County to Require the Installation of Hot Water Re-Circulation Systems within New Homes (CONSIDERATION AND POSSIBLE ADOPTION)

WAYNE DALTON (Review Division Director): Thank you, Mr. Chairman. Staff was directed by the Commission to request that all new construction within Santa Fe County be required to install a recirculation pump. In order to provide a sustainable resource for all county residents and sufficient water, it is imperative that we conserve our water resources. However, since it is known that most users run directly from the tap to the sewer while waiting for hot water, it can be concluded that new homes shall be constructed to minimize that this waste. The requirement limits the amount of time necessary for hot water to reach the tap by requiring the installation of a hot water recirculation device and all new construction of single-family and multi-family residential units will significantly reduce water waste.

Recommendation: Staff recommends approval of this ordinance. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Any questions for Wayne?

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: How come you got a basket and we didn't?

CHAIRMAN MONTOYA: My wife brought it up. She loves me.

COMMISSIONER ANAYA: Mr. Chairman, I've got a couple questions, and this is to staff. This, the way you have it is for residential only, not commercial.

MR. DALTON: Mr. Chairman, Commissioner Anaya, that is correct.

COMMISSIONER ANAYA: Okay, now if I build a 1,000 square foot home, a 900 square foot home, a 3,000 square foot home, this would apply no matter where they located the hot water heater, even if it's back to back, you would still require them to put in a recirculating pump if this ordinance passes?

MR. DALTON: Mr. Chairman, Commissioner Anaya, that is correct. They would be required to do a hot water recirculation pump or some kind of other device or combination that's within this ordinance in order to get hot water to the tap within a certain amount of time.

COMMISSIONER ANAYA: Okay. That clears that up. Commissioner Sullivan said if you have a hot water that's centrally located then you wouldn't need to have a circulating pump. So that cleared that up. What about – who's going to enforce this? Do we have staff to do enforcement or how would we –

MS. VIGIL: Mr. Chairman, Commissioner Anaya, currently, the way the ordinance is proposed and written is that it would be approved or reviewed upon final inspection of the property. Currently, we don't issue out Certificates of Occupancy. The state is the one who issues out the building permit. We issue out development permits. So it might be difficult for us to go in after we've already issued out permit to enforce this ordinance for compatibility and to make sure that it's actually been done correctly.

COMMISSIONER ANAYA: So you're saying that you would have to go in after the house is constructed to check it out?

MS. VIGIL: Right. Our enforcement is very limited to do so.

COMMISSIONER ANAYA: Well, I would hope that this would be enforced prior.

MS. VIGIL: We would enforce it through the –well, actually, we don't have the ability to do so. If you would think about it, it takes a plumber or a licensed inspector to look at the plans to ensure that this would actually be in conformance and at this time we don't have that on staff.

COMMISSIONER ANAYA: So, would the state inspectors would they now look at it when they go in and inspect for plumbing that the circulating pump – it wouldn't be in at that time, but that it's plumbed for the circulating pump? Would the state inspectors do that or would we ask them to do that or have we asked them to do that?

MS. VIGIL: I understand that Mr. Dalton has tried to contact the State CID Department and I'd like him to answer that question.

MR. DALTON: Mr. Chairman, Commissioner Anaya, I have been in contact with some people from CID and they are in support of this ordinance and say they would help the County in enforcing this ordinance.

COMMISSIONER ANAYA: So are we saying that we would require our county residents to install and then the state inspectors would check to see if this is installed?

MR. DALTON: Mr. Chairman, Commissioner Anaya, that is correct. We

would have to rely on CID in order to do those final inspections.

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

CHAIRMAN MONTOYA: Okay. Any other questions? I have one regarding – it's the second page on Exhibit B, number 2. And beginning with i, it's j. 2, the instant hot water device. Which is the most efficient of those options?

MR. DALTON: Mr. Chairman, I believe in doing the research that I've done, the on-demand system would actually be the most efficient.

CHAIRMAN MONTOYA: Yes, that's what I've been told too. Can we just limit it to that?

MR. DALTON: Mr. Chairman, I believe that's up to the discretion of the Commission, whether or not they just want to have one type of design or device that one would have to install to comply with this ordinance. I believe that that would be at the discretion of the Commission.

CHAIRMAN MONTOYA: Again, my understanding is that is the most efficient, probably the most cost-effective – and that's what we're looking at here. Why have other choices that are not going to be as efficient and as cost-effective as that one? That's just a rhetorical question. Commissioner Vigil.

COMMISSIONER VIGIL: Mr. Chairman, I think based on the expert that spoke before us and at least my understanding, I think that a combination of many of these alternatives that provide for the most efficient use. While you can have an on-demand circulation system, it works more effectively when you have a centrally located water heater, and a certain amount of – I think it was six-inch piping that our expert testified for, with regard to the actual piping in that and insulation. I think if we start requiring that it just be an on-demand system we're actually creating such a limitation that doesn't allow for the builder to actually provide for the most effective use and design for energy efficiency through his own development of design.

CHAIRMAN MONTOYA: Okay. Any other questions? Commissioner Anaya.

COMMISSIONER ANAYA: Yes, Mr. Chairman, I think what Commissioner Vigil is saying is not specify to just one, to leave it open. And then I was thinking about that too. Personally, mine is timer, motor, timer, and I keep up with it. And if I wanted to do that in another home of if somebody wanted to do that in their home and they knew about it and they wanted to, they could keep track of it, that would be fine. The on-demand, I think that would also be good too, but I guess it would be up to the builder to decide which type he would want to put in, knowing that if you put in the timer one, he'd have to maintain it. That's all I have to say.

CHAIRMAN MONTOYA: Okay. So we have a staff recommendation. What's the pleasure of the Board?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: I have a question for staff on paragraph J,

Applicability. There is some language there in line 20 that I'm not quite sure I understand. Have you had an opportunity to look at that?

MR. ROSS: Mr. Chairman, Commissioner Campos, we have. I think the problem with the sentence is it's in the passive tense. So I have rewritten an active tense, and I think it makes more sense. I think the concept is that it would apply to permits for new construction of residential and multi-family dwellings that are issued after the effective date of the ordinance. So I think maybe we could make it clearer if we had that paragraph read the requirements of the subsection J shall apply only to development permits issued for initial construction of single-family and multi-family dwellings, as defined in the Santa Fe County Land Development Code, after the effective date of this ordinance.

COMMISSIONER CAMPOS: Okay.

CHAIRMAN MONTTOYA: And then striking all the rest of what you didn't say.

MR. ROSS: Yes. Replacing the text that's there with that.

COMMISSIONER CAMPOS: That entire paragraph.

CHAIRMAN MONTTOYA: Okay.

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: I can see where we're headed with this and I'm going to vote against this, because I think we just passed an affordable housing ordinance, and this is going to also, this is going to hurt those people that are trying to get affordable homes. If we pass this, that means that every single-wide, every double-wide that comes into Santa Fe County is going to have to comply with this, meaning they would have to retrofit. That adds another cost to the homeowner. I think that we continually put burdens on building a home in Santa Fe County as it is. I know we're trying to do a good thing by saving water, but I think we have already done that by putting other ordinances into effect, water conservation ordinances. I think we're meaning well, but it's just going to hurt our constituents that are out there that are going to build their own home or purchase a new home and I'm not in favor of this right now. Thank you.

CHAIRMAN MONTTOYA: Thank you, Commissioner Anaya. Commissioner Vigil.

COMMISSIONER VIGIL: Mr. Chairman, I have to respectfully disagree with Commissioner Anaya. I think that this language actually is within the affordable housing concept and the designs that we need to move forward with. In fact, if I recall correctly, just for the hot water recirculation pump, it is about \$350 for installation. This ordinance only applies to new housing. No retrofitting would be required. A \$350 investment up front in what that can save towards energy costs and the costs of water is recaptured well within the first six months of home ownership and then some, because their energy costs and water costs are so much lower than what the current systems provide. We're actually providing a sustainable, affordable component to affordable housing by this, Mr. Chairman.

CHAIRMAN MONTOYA: Any other discussion?

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: If we decided to maybe put it required on homes that are over 2,500 square feet, 3,000 square feet, then I could see this working, but right now, I don't see it working.

CHAIRMAN MONTOYA: Is this a public hearing? No, it's not. It's just for consideration and adoption.

MR. ROSS: Mr. Chairman, it is a public hearing, I'm told.

CHAIRMAN MONTOYA: Oh, it is?

MR. ROSS: I think it was advertised in the newspaper as a public hearing.

CHAIRMAN MONTOYA: Okay, so this is a public hearing. Is there anyone who would like to speak on behalf or against this ordinance, please come forward. Okay, we will close the public hearing. Now the pleasure of the Board?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I move for adoption of Ordinance 2006-03 as amended in Sections 2. J. 1 by the substitute language suggested by Mr. Ross.

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

COMMISSIONER CAMPOS: Second.

CHAIRMAN MONTOYA: Second, Commissioner Campos. Any further discussion?

The motion to approve passed by majority [4-1] roll call vote with Commissioner Anaya voting against.

CHAIRMAN MONTOYA: Wayne, thank you for your work on this ordinance and Commissioners as well, Sullivan and Vigil, I know you felt very adamant about pushing this along.

- XIII. A. 4. AFDRC Case #Z 05-5500 Las Haciendas del Alamo Master Plan – Gaynl Keefe, Applicant, James Siebert, Agent, Request Master Plan Zoning Approval to Allow a Mix of Residential Development and Low Impact Commercial Use on 2.19 Acres. This Request Also Includes a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow Seven Dwellings on the Property. The Property is Located at 4884 La Junta del Alamo, within the Traditional Historic Community of**

**Agua Fria, within Section 31, Township 17 North, Range 9 East
(Commission District 2) [Exhibit 2: Letter from State Engineer;
Exhibit 3: Letter from Agua Fria Community Water System]**

MR. DALTON: Thank you, Mr. Chairman. Gaynl Keefe, applicant, James Siebert, agent, Request master plan zoning approval to allow a mix of residential development and low impact commercial use on 2.19 acres. This request also includes a variance of Article III, Section 10 of the Land Development Code to allow seven dwellings on the property. The property is located at 4884 La Junta del Alamo, within the Traditional Historic Community of Agua Fria, within Section 31, Township 17 North, Range 9 East, Commission District 2.

The development was previously approved for commercial use as the Institute of Chinese Medicine. All additional structures and parking areas were considered as part of this commercial use. The property is located within the Traditional Historic Community of Agua Fria. The applicant is proposing to convert the existing building on the property into three dwelling units and to construct four new buildings for a total of 11 units consisting of 16,327 square feet. The four new units that are proposed for the development range in size from 1600 square feet to 1760 square feet. The development will also consist of three studios that shall not exceed 960 square feet of gross area.

Variance: The applicant is requesting a variance of Article III, Section 10 of the Land Development Code to allow seven dwelling units on 2.19 acres. The property is located within the Traditional Community of Agua Fria. Article III, Section 10 of the Land Development Code states the minimum lot size in this area is $\frac{3}{4}$ of an acre per dwelling unit. Lot size may be reduced to .33 acres per dwelling unit if the property is served by community water and community sewer. The applicant is proposing to use community water and sewer for the proposed development. Therefore, lot size may be reduced to .33 acres per dwelling unit.

Recommendation: On January 5, 2006, the AFDRC met and acted on this case. The decision of the AFDRC was to recommend master plan zoning approval to allow a mix of residential development and low-impact commercial use on 2.19 acres. This recommendation also included a variance of Article III, Section 10 of the Land Development Code. Staff recommends denial of the requested variance. Article III, Section 10 of the Land Development Code state the minimum lot size in this area is $\frac{3}{4}$ of an acre per dwelling unit or .33 acres per dwelling if the property is served by community water and sewer. However, the BCC may consider this request to be a minimal easing of the Code due to the property being shy .12 acre in allowing seven dwelling units on the property. Staff's position is that the proposed submittal is in accordance with Article V, Section 5, Master plan procedures of the County Land Development Code. Staff recommends approval for master plan zoning to allow a mix of residential development and low-impact commercial use on 2.19 acres subject to the following conditions. Mr.

Chairman, may I enter those conditions into the record?

[The conditions are as follows:]

1. Compliance with applicable review comments from the following:
 - a. State Engineer's Office
 - b. Technical Review
 - c. State Historic Preservation Division
 - d. Public Works Department
 - e. County Hydrologist
 - f. State Environment Department
 - g. County Fire Dept.
 - h. City Traffic Division – access permits
2. The applicant shall submit a letter of commitment from the City of Santa Fe stating that sewer service will be provided to the development, prior to final development plan submittal.
3. The master plan will be recorded with the County Clerk's office.
4. All staff redlines will be addressed; original redlines will be returned with final plans.
5. The applicant shall comply with all Fire Marshal requirements.
6. The maximum height of all proposed structures shall not exceed 24 feet.
7. The applicant shall comply with the water harvesting requirements of Ordinance 2003 6. A water-harvesting plan shall be submitted with the final development plan application.
8. All outside lighting shall be shielded.
9. All trash dumpsters must be screened by a 6-foot solid wall or fence.

CHAIRMAN MONTOYA: Okay, questions for staff. Is the applicant here?

[Duly sworn, Jim Siebert testified as follows:]

JIM SIEBERT: My name's Jim Siebert. My address is 915 Mercer, Santa Fe.

CHAIRMAN MONTOYA: Jim, do you have anything to add to what we've been given?

MR. SIEBERT: We are in agreement with all conditions as stated by staff. In terms of the issue of the variance, as pointed out by staff, it's a pretty minor variance of really .12 acres to bring it just out of compliance. The Agua Fria Development Review Committee has recommended the variance and the applicant has spent a great deal of time working with the community. In fact, there's a letter of support from the community regarding the project. It's the kind of project that I think they're looking for in the community. It is served by Agua Fria Water system and by City sewer. And I'll answer any questions you may have.

CHAIRMAN MONTOYA: Okay. Any questions for Mr. Siebert? Okay. This is a public hearing. Anyone who would like to speak on behalf or against this project, if you'd please come forward. Okay, seeing none, the public hearing is closed. Discussion?

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: Move for approval with conditions.

CHAIRMAN MONTOYA: Motion by Commissioner Anaya.

COMMISSIONER VIGIL: Second.

CHAIRMAN MONTOYA: Second by Commissioner Vigil. Further

discussion?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: Just I would suggest that we add to the motion that the variance criteria have been met and that this is a minimum easing of the regulations.

COMMISSIONER ANAYA: Okay.

COMMISSIONER VIGIL: I agree.

CHAIRMAN MONTOYA: Okay.

COMMISSIONER ANAYA: Thank you, Commissioner Campos.

CHAIRMAN MONTOYA: Thank you, Commissioner Campos, Any other

discussion?

The motion to approve AFDRC Case #Z 05-5500 passed by unanimous [5-0] voice vote.

- XIII. A. 5. EZ Case #S 05-4391 Turquoise Trail Subdivision North Phase – Turquoise Trail L.L.C, Tracy Murphy, Applicant, and Karl Sommer, Agent, Requests Preliminary and Final Plat and Development Plan Approval for the North Phase (Phase II) of the Turquoise Trail Subdivision which will Consist of 178 Single Family Residential Lots, 100 Multi-Family Residential Homes, and 12 Live/Work Units for a Total of 290 Residential Units on 101.49 Acres. The Property is Located within the Community College District, East of State Road 14 and North of Vista Del**

**Monte, within Sections 24 and 25, Township 16 North, Range 8
East (5 Mile EZ District 5)**

MR. DALTON: Thank you, Mr. Chairman. Turquoise Trail LLC, Tracy Murphy, applicant, and Karl Sommer, agent, request preliminary and final plat and development plan approval for the North Phase (Phase II) of the Turquoise Trail Subdivision which will consist of 178 single family residential lots, 100 multi-family residential homes, and 12 live/work units for a total of 290 residential units on 101.49 acres. The property is located within the Community College District, East of State Road 14 and North of Vista Del Monte, within Sections 24 and 25, Township 16 North, Range 8 East, 5-Mile EZ District.

On January 12, 2006, the EZC met and acted on this case. The decision of the EZC was to recommend approval of the request subject to conditions.

On September 10, 2002, the Board of County Commissioners granted master plan approval for a mixed-use development consisting of 294 residential units and 1,480,050 square feet of commercial on 224 acres known as the Thornburg Master Plan. On October 12, 2004, the Board of County Commissioners granted approval of a master plan amendment to the previously approved Thornburg master plan to allow an increase in the number of residential units to 512 and to decrease the amount of commercial square footage to 711,150. Then on September 10, 2005, the BCC granted preliminary and final plat and development plan approval for the South Phase, Phase I, of the Turquoise Trail Subdivision which consisted of 222 residential units.

This application was reviewed for the following: existing conditions/adjacent properties, access, water, fire protection, liquid and solid waste, terrain management, landscaping, archeology, open space, traffic, signage and lighting.

Recommendation: The proposed plat/development plan is in accordance with the procedures and submittals set forth in Sections 3.5 and 3.6 of the EZ Ordinance, and all requirements of the CCDO. Staff recommendation and the decision of the EZC was to recommend preliminary and final plat and development plan approval subject to the following conditions. Mr. Chairman, may I enter those into the record?

[The conditions are as follows:]

1. Compliance with applicable review comments from the following:
 - a) State Engineer
 - b) State Environment Department
 - c) State Department of Transportation
 - d) County Hydrologist
 - e) Development Review Director
 - f) County Fire Marshal (8" lines for hydrants)
 - g) County Public Works
 - h) County Technical Review

- i) Soil and Water District
 - j) State Historic Preservation Division
 - k) Sangre de Cristo Water Division
 - l) City of Santa Fe Waste Water Division
2. Final homeowner documents (covenants, by-laws, articles of incorporation, disclosure statement) subject to approval by staff and shall include but not limited to the following:
 - a) Water conservation measures.
 - b) Maintenance of roads, drainage facilities and common areas
 - c) Home owners Association shall contract for disposal of solid waste
 - d) Exterior lights
 - e) Water supply as approved by the City
 3. The applicant shall submit solid waste fee in accordance with subdivision regulations prior to Final Plat recordation.
 4. All redline comments shall be addressed.
 5. Submit a cost estimate and financial surety for completion of required improvements as approved by staff.
 6. Development plan submittals shall include but not limited to the following:
 - a) Provide additional village trail connections from district trail meeting minimum standards for width and surface.
 - b) Address project sign.
 - c) Specify drip/sprinkler irrigation system for common area landscaping, and low water landscaping.
 - d) Address streetlights.
 - e) Sidewalks shall be a minimum of 4 feet.
 7. Final plat shall include but not limited to the following:
 - a) Compliance with plat checklist.
 - b) Approval of rural addressing.
 - c) Signature lines for City water and sewer utilities.
 - d) Permits for building construction will not be issued until subdivision improvements for road, drainage and fire protection are completed as required by staff.
 - e) These lots are subject to a fire impact fee.
 - f) Cross reference for recording disclosure statement and affordable housing agreement.
 8. Submit access permits as approved by NMDOT.
 9. Submit proposed design for retention ponds as it relates to criteria for storm water management in the Community College District, prior to Final Development Plan approval.
 10. Address the regulations for a rainwater catchment system as it relates to the multi-family triplex buildings exceeding 2,500 square feet.

11. The applicant must address all minor redline comments by the County Subdivision Engineer as shown on the plat of survey and terrain management plan. These plans must be resubmitted with the Mylar prior to recordation.
12. The applicant shall install hot water re-circulation systems with all homes as per Ordinance No. 2006-3.

City Conditions:

1. Appropriate "No Parking" signage to be placed on all non dedicated parking streets.
2. Obtain any redline comments from the City subdivision Engineer and the City Waste Water Division and incorporate prior to obtaining final City of Santa Fe signoff.
3. Compliance with applicable review comments from the following:
 - a) State Engineer
 - b) NMED
 - c) Soil and Water District
 - d) NMDOT
 - e) County Hydrologist
 - f) County Fire Marshal
 - g) City Traffic Engineer
4. Parking for single-family residential units shall be increased to 2.5 spaces per detached unit with willingness by the developer to work with the City's recommendation of increasing parking for multi family units.

CHAIRMAN MONTROYA: Questions for staff? Okay, Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chairman. Mr. Dalton, on page 3 at the very top, it says water conservation features will be installed in all dwellings and xeriscaping will be encouraged. What does that mean, will be encouraged or will be required?

MR. DALTON: Mr. Chairman, Commissioner Campos, water conservation fixtures will be installed in all dwellings and the xeriscaping, staff feels should be encouraged but is not required.

COMMISSIONER CAMPOS: It's not required by our landscape ordinance?

MR. DALTON: It's not required.

COMMISSIONER CAMPOS: We do have a landscape ordinance, don't we?

MR. DALTON: Yes, we do.

COMMISSIONER CAMPOS: And that's not xeriscaping is what you're saying?

MR. DALTON: That is not xeriscape. It does refer to drought-tolerant trees and shrubs but it does not require that an applicant xeriscape.

COMMISSIONER CAMPOS: And it limits watering for those elements of the landscape to rooftop-collected water?

MR. DALTON: Mr. Chairman, Commissioner Campos, that is correct. That's one of the reasons why we implemented the water harvesting ordinance.

COMMISSIONER CAMPOS: You're encouraging to go a step further. Is that what you're saying?

MR. DALTON: Mr. Chairman, I believe that's what staff's intent is for the landscaping requirements.

COMMISSIONER CAMPOS: Okay, what about water budget? Is there a limit like we have on a lot of houses of x-acre-feet?

MR. DALTON: Mr. Chairman, I believe so, and I believe the applicant could answer that question, what they're actually restricted to per dwelling unit.

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

CHAIRMAN MONTOYA: Okay. Any other questions for staff? Karl.

MR. SOMMER: Mr. Chairman, members of the Commission, my name is Karl Sommer, Post Office Box 2476, Santa Fe, New Mexico, 87504. We agree with the conditions. We'd like to bring up one point that is rather minor. I'd like to point out that the EZC imposed a condition at the request of the City that we add additional parking so that there would be sufficient parking in addition to the County Code requirements. We've met that condition and added the additional parking and it was on a magnitude of an additional half-car per dwelling unit and we've met that requirement and satisfied the City.

The other condition of approval was that they – staff requested another drainage pond to lessen the potential of a very deep drainage pond, and Mr. Walbridge could go into more detail on this. There was a drainage pond that had the ability to have water levels at seven feet. We've lowered that by adding another drainage pond and I think the highest level is now 4 ½ feet. So 4 ½ feet is the highest water level in any drainage pond possible. They will be fenced and the like, but we've complied with those two conditions.

We have no objections to the conditions of staff, with one exception that the design of this particular development has sidewalks of four feet rather than five feet in the overall development. That's one condition that we would like not to comply with because it changes the overall design of our streetscape. It does not affect the functionality of the design in terms of four-foot functions for a sidewalk as well as five feet. If you get down below four feet we believe it functions a little less efficiently. But with that, we agree with the conditions of staff.

I will also point out to you, earlier tonight, the affordable housing ordinance as it applies to this development, I will point out again, we have an affordable housing plan that we have already agreed to with the City of Santa Fe. It is an imposition on us that we are bound by, and that means that our prices, all of our prices, no matter what we're selling, are capped at \$310,000. So without a final development plan approval here tonight, we raised the very issue that we were trying to avoid in terms of the question. If we receive

final approval, then I won't have to go back to staff and deal with this issue of how it applies to an approved affordable housing plan. The practical effect is this: If you impose 30 percent on this development or attempt to impose 30 percent, normally, what a developer would do is go, okay, well, if I've got to fix the price on these units at a lower rate, then I've got to make it up on other market rate houses. Well, our market rate housing is topped off. We cannot raise the prices beyond what we have because we have an agreement with the City and we are bound by that agreement.

The final thing is what I'm saying is, if you approve this development tonight, final subdivision plat approval, staff's recommending approval, I believe that we've complied with the requirements, it will obviate any question that that raises. We will obviously comply. And I will remind you, we're not trying to get out of providing affordable housing, we're going to meet the County's 15 percent and we're going to meet the City's Type C requirement, and I would venture to say there are no other developments in the Community College District that are hitting these price points across the board. This development does comply with your policy and the intent of the law, and it meets your goal to provide the workforce with housing in this community.

On a final note, Commissioner Campos raised the question of a water budget. This is provided. The water comes from the City of Santa Fe and the two things – we are limited to the amount of water that they have approved under the contract and I'm not exactly sure but it is no more than .20 acre-feet per dwelling unit. It's limited there. But the other thing that I'd like to point out, though they did not have to do it, Longford Homes, and Ms. Murphy is here, went out and they did the retrofits necessary to make the City of Santa Fe's system efficient so that the water that's coming to this project is not new water. They've gone out and done the retrofits, the toilet retrofits in the community to make the City's system more efficient to allow the existing resource to be allocated here without a new water demand on the City's system.

So there is a water budget, it's limited, and they've brought their water to the table. So I think in every respect this developer is actually meeting with the intent of the Community College District, which was to put the resources, to provide housing that is affordable to a wide range of individuals, and to use the County's and the City's resources efficiently. So with that we stand for any questions you might have.

CHAIRMAN MONTROYA: Okay. Commissioner Campos.

COMMISSIONER CAMPOS: What about xeriscaping. The staff says they encourage xeriscaping. Apparently encouraging you to go beyond our own landscape ordinance. I'm not sure. What is that?

MR. SOMMER: We have in our plans a complete landscape plan that lists all of the plants and plant material that we propose. And Commissioner Campos, we are following by and large, 90 percent, most of the plants we are using are on your approved xeriscape list. We don't want to use any more water than we have to. It's expensive. I don't think the ordinance talks about what qualifies or doesn't qualify as xeriscaping, but I

can tell you our landscape architect has come up with a landscape plant list use that is almost 100 percent – it's not 100 percent, but because the community parks are a little different animal. But the on-lot landscaping that is allowed and what we're doing is mostly drought-tolerant. I would say 90 percent drought-tolerant.

COMMISSIONER CAMPOS: Okay. Another concern is energy efficiency. To me, you can't have affordable housing unless it's energy-efficient. What are you doing to make these homes energy-efficient?

MR. SOMMER: Ms. Murphy can speak directly to that, but Longford Homes is a leader in New Mexico in producing affordable housing that is energy-efficient and qualifies for all of the federal exemptions for energy efficiency in affordable housing and she can talk a little bit more to that. But we are conscious of the desire to produce energy-efficient homes because it is a component of affordability, not just for affordable housing, but for everybody who has to pay a utility bill. And I would say this: As you all know, Commissioner Ben Ray Lujan is on the EZC and he's on the PRC as well, and he raised this very issue and requested that we address that and we addressed it fully. I can turn it over to Ms. Murphy about what we do exactly.

[Duly sworn, Tracy Murphy testified as follows:]

TRACY MURPHY: Tracy Murphy, 21 Braelin, Henderson, Nevada. Regarding the energy efficiency, the homes are currently built with energy efficiency and comply with the HUD requirements to allow for our buyers, not only to have a level of energy efficiency in windows, glazing, insulation, but they qualify for a better ratio and more points on their mortgages because we do build homes that qualify based on the standards, physical standards and levels that HUD has required as far as energy efficiency.

So we do meet those as well as in a previous approval, we were asked whether we would put in the hot water circulating systems, although at that time it was not required, and we agreed that that was a very beneficial energy-efficient feature. So we are installing those in all our homes as well. And I'd like to clarify, as far as the xeriscape, Commissioner Campos, the front yards are drought-tolerant desert landscaping. And the only areas at Turquoise Trail which would have some grass are some of the park areas in terms of areas for children to play in.

COMMISSIONER CAMPOS: Let me ask you, your HUD standards, how do they compare to Energy Star standards, I think it's Department of Energy, there are some federal standards? Do you know the comparison?

MS. MURPHY: I don't. I don't know the direct comparison, other than I do know that the Energy Star takes into account glazing as far as windows, insulation, a number of factors, so that you have a whole program of energy efficiency, not just one or two items, which is also what FHA requires so that we build the homes so that the buyers pay less on their energy spending so that they can qualify for more on their mortgages because they're spending less on energy based on the way that we've built them. But I don't know exactly a specific comparison.

COMMISSIONER CAMPOS: And are you appliances water and energy efficient that you can provide to the –

MS. MURPHY: I would probably have to look at that in more detail.

MR. SOMMER: If I may, the County Code requires that we use certain water-efficient appliances already, and we are going to comply with that. So there are certain fixtures, only certain kinds of fixtures you can use and only certain kinds of equipment you can use. So we must comply with that and we will comply with that.

COMMISSIONER CAMPOS: As an example, let's say washing machines to wash your clothes. There are certain washing machines that are very efficient, and they are Energy Star, and they're side-loading and they save a lot of water and probably a lot of energy too.

MR. SOMMER: We don't provide in the house that particular appliance. All of the water fixtures we do provide and they all are water – they meet the County's requirement as to what they will allow.

COMMISSIONER CAMPOS: As to plumbing. But as far as appliances, there's all kinds of things you can do to save water and energy.

MR. SOMMER: It's just that we don't provide those appliances in the house and that's left up to the buyer to utilize.

COMMISSIONER CAMPOS: Do you have an allowance? How does that work? Do you provide the buyer an allowance to buy?

MS. MURPHY: What we do is we provide for the buyers packages, typically, where they can get a washer-dryer-refrigerator package, build it into their mortgage, finance it, at a better rate than normally they'd have to go out and purchase one.

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

CHAIRMAN MONTROYA: Okay. Any other questions for the applicant?
Commissioner Sullivan.

COMMISSIONER SULLIVAN: On the hot water recirculating, which you've already agreed to. I don't see it as a condition, but you wouldn't object to that as a condition of the approval?

MS. MURPHY: No, we would not.

COMMISSIONER SULLIVAN: I'd like to just add that, Mr. Chairman, as a condition of the approval.

CHAIRMAN MONTROYA: Number 12?

COMMISSIONER SULLIVAN: Correct. And I would just say in accordance with Santa Fe County Ordinance 2006-03. Could you explain to me – we don't have a copy of the City's affordable housing agreement in the package and Mr. Sommer made reference to Type C. Could you explain, or someone explain what that means?

MR. SOMMER: Yes. A Type C development under the City's affordable housing program means that no house is priced over \$310,000. That's what a Type C development is in the city. And in the city, that means that – Commissioners, you may recall

the City's graduated affordable housing requirements, if you came into the City and asked for a Type C development, they required no affordable housing that had to meet the area median income, a certain level, either 50, 60 or 80 percent, and the reason being was the policy of the City was they want to encourage developers to provide that housing, that mid-range housing. So that's what a Type C development is under Santa Fe's affordable housing.

COMMISSIONER SULLIVAN: So your agreement, which again, I say we don't have here, is not under the Santa Fe affordable housing ordinance, which requires 30 percent. Your agreement is under this Type C which caps your most expensive unit. Is that correct?

MR. SOMMER: That's correct.

COMMISSIONER SULLIVAN: So the maximum that you're proposing for affordable housing here is 15 percent.

MR. SOMMER: The maximum, the percentage of affordable housing that meets the County's definitions of affordable housing is 15 percent.

COMMISSIONER SULLIVAN: Yes. Okay. I was just doing some arithmetic here; I think you're one shy.

MR. SOMMER: Is it 78 versus 77?

COMMISSIONER SULLIVAN: No, it should be 44 instead of 43.

CHAIRMAN MONTROYA: Where are you at, Commissioner Sullivan?

COMMISSIONER SULLIVAN: Well, I was looking at their affordable housing agreement, which is Exhibit H.

MR. SOMMER: We're doing a total of 77. In the first phase we did 34 and in this project we're doing 43.

COMMISSIONER SULLIVAN: Yes. This hearing is only for this project tonight, right?

MR. SOMMER: Yes, but the overall percentage of 15 percent is applied to the project as a whole.

COMMISSIONER SULLIVAN: So you had more in the first phase?

MR. SOMMER: Yes. We had the extra unit you're talking about in our first phase.

COMMISSIONER SULLIVAN: So what's the total?

MR. SOMMER: It's 34 in the first phase and 43 in the second phase, for a total of 77.

COMMISSIONER SULLIVAN: Okay. And your total units is 512 then, right?

MR. SOMMER: That's correct.

COMMISSIONER SULLIVAN: All right. That answers that question, Mr. Chairman. The other question I had was on sewer service. I don't see a sewer availability letter or any reference to sewer, other than what's in your disclosure statement, that you're going to build a private sewer system which is ultimately going to connect into the City's system. I understand that connection to the City system is actually over on the other side of I-

25 by Mutt Nelson Road, is where it actually eventually connects in to the public sewer system. So all the way from Mutt Nelson Road, under I-25 to the lift station at the Turquoise Trail Park, and onto the site will be a private sewer system.

MR. SOMMER: That's correct.

COMMISSIONER SULLIVAN: Will that be maintained by the homeowners association or who?

MR. SOMMER: There has been formed a master association that includes all of the property owners, properties and property owners in the Turquoise Trail master plan area that the Thornburgs did, and that's the Forest Service property, the Harley Davidson property, all these properties, all of the properties in that area are served by that sewer system. The sewer system actually hasn't been constructed. The lift station has been constructed. The association has been formed. All of the property owners are members and it is maintained by that association. The private sewer system to which you referred, Commissioner Sullivan, is maintained by that master association.

COMMISSIONER SULLIVAN: Okay. And for that reason, I notice one of the conditions that the City has requested that I think you're in agreement with is that you will obtain any red line comments from the City's Subdivision Engineer and incorporate it prior to obtaining final City sign-off. I think that should be, also include the City Wastewater Division.

MR. SOMMER: I think you're correct, Commissioner Sullivan.

COMMISSIONER SULLIVAN: Because specifically what they need to see is an operation and maintenance agreement and they haven't seen that yet.

MR. SOMMER: Yes, I spoke to Brian Romero today about that and what he wants is, more than the association documents he wants to look into that and we don't have a problem with that.

COMMISSIONER SULLIVAN: So you don't have any problem under City condition to adding in the City Wastewater Division?

MR. SOMMER: No. No objection whatsoever.

COMMISSIONER SULLIVAN: Okay. Is there going to be curb and gutter on all the streets?

MR. SOMMER: Yes.

COMMISSIONER SULLIVAN: There will be curb and gutter? Stand-up curb or roll-over curb?

MR. SOMMER: Stand-up curb.

COMMISSIONER SULLIVAN: Okay. I'm asking that question because of the request to reduce the sidewalk with. Is there a planter's strip between the curb and the sidewalk?

MR. SOMMER: Yes.

COMMISSIONER SULLIVAN: There is. And who maintains that?

MR. SOMMER: I think they are on-lot, are they not? They're not? Are they in the road section? They're maintained by the association.

COMMISSIONER SULLIVAN: The association has to maintain those strips, and the sidewalks?

MR. SOMMER: That's correct.

COMMISSIONER SULLIVAN: In Phase 1, I don't also see an archeological report in here. On Phase 1, there was an archeological survey. One site was demonstrated as – or recommended by the State SHPO for preservation, which I understand didn't happen. What's the status on Phase 2? Are there archeological sites on Phase 2?

MR. SOMMER: Actually, the archeological report that was submitted covered the entire property, Phase 1 and Phase 2. There were two sites identified. Both of them have been mitigated in accordance with the approved plan and approved by the State of New Mexico State Historic Preservation Division.

COMMISSIONER SULLIVAN: How are they mitigated?

MR. SOMMER: The mitigation occurred through – they followed the plan, which was they recorded the data and information from the sites and submitted that information and data to the State Historic Preservation, which approved the mitigation efforts. We're talking about two areas where there were minor evidence of archeological significance. And I'm not an archeologist, but mitigation generally is the gathering of information, the recording of information and then the submission of that information in that form to the State Historic Preservation Office for approval. And they have been approved. That was done for the entire site up front. When I say the entire site, Commissioner, I mean Phase 1 and Phase 2. In our letter from July of last year indicates the proposed treatment plan. I could go through that if you'd like, in terms of what the mitigation actually was.

COMMISSIONER SULLIVAN: Okay. I understand – the mitigation I've seen is the graders out there grading the site. So I think those archeological sites are gone. Because you're under construction now. And I was just hoping that if they weren't protected by easement, which by the way, we're going to be correcting in our next Code rewrite, they were at least hopefully some significant data was made available from them.

The other question I had was I understand that the applicant intends to come forward to the County with financing through a public improvement district. Is that the plan?

MR. SOMMER: That is the idea at this point. If the County moves forward with its – what we've been waiting for. To answer your question: Yes, that is the plan to do that.

COMMISSIONER SULLIVAN: How does that affect, for example your agreement with the City or the affordability issue, if the owners of these affordable units as well as the other units are going to have to pay additional taxes for an improvement district? How does that factor in – again, I'm not familiar with the City's affordability guidelines.

MR. SOMMER: I'm not an expert in this area so I'll answer to the best of my ability. With the public improvement district financing, what that allows the developer to do is to access the capital markets for lower cost financing. The effect in this subdivision is the price of each house will be lowered by \$20,000. Without the PID, the price is raised by \$20,000.

Now, what does that mean? It means that if they have to go finance the \$20,000, they have a higher mortgage payment. If they don't, then they have a tax for it, an assessment in their tax bill.

So to the homebuyer, the reduction of \$20,000 on the purchase price means they don't have to qualify for a mortgage, but the tax payment gets factored in. It is my understanding, and like I said, I'm not an expert, it is my understanding it is more advantageous to have the price reduced by \$20,000. It makes it easier for parties to qualify, because the tax is spread out over a longer period of time, not the 30 years that the mortgage is.

COMMISSIONER SULLIVAN: But this approval tonight, your request for approval, is not contingent one way or another on that.

MR. SOMMER: That's correct.

COMMISSIONER SULLIVAN: The project will proceed if approved with or without an improvement district. Is that correct?

MR. SOMMER: That's correct.

COMMISSIONER SULLIVAN: How would we know that this \$20,000 savings goes to the homebuyer as opposed to Longford Homes?

MR. SOMMER: I remember this question from the Rancho Viejo. We will come in and we will demonstrate, and our pricing will show exactly how we're going to do it and Ms. Murphy can answer this specifically. In this project we can demonstrate the financing costs, price with the PID, financing costs without the PID, and the prices at which we'll sell these houses. So how will you know? We're going to sell them that way. Is that accurate? So there won't be – there's a savings but we can't show it to you. There's going to be a distinct difference in the price of these houses with and without that financing.

COMMISSIONER SULLIVAN: That's some thing that you'll bring forward at that time.

MR. SOMMER: That's correct.

COMMISSIONER SULLIVAN: And you will commit to that, or let me ask you: Will you commit to that as a part of the agreement?

MR. SOMMER: It is my understanding that that commitment will be made as part of the PID agreement. When I say that commitment, let me be clear. If we represent to you that there will be a reduction in the house price of \$20,000 when we get to the issue of a PID agreement and all of the factors are taken out, we will agree to that.

COMMISSIONER SULLIVAN: Is there anything that you wanted to add, ma'am?

MR. SOMMER: The County has to adopt an ordinance, and if the County says, well, you have to pay the County a million dollars.

COMMISSIONER SULLIVAN: Only \$750,000.

MR. SOMMER: It affects your ability to make commitments. But the way I understand the pro forma right now is that there is a price reduction of \$20,000 across the board on the houses. If that remains to be the case and we represent that to you at the PID

hearings, we will commit to that.

COMMISSIONER SULLIVAN: Thank you, Mr. Chairman.

CHAIRMAN MONTTOYA: All right. Any other questions of the applicant? Okay, this is a public hearing. If anyone would like to speak for or against this case, please come forward. No one. This public hearing is closed. Any other questions of staff or the applicant? Commissioner Vigil, then Commissioner Sullivan.

COMMISSIONER VIGIL: I'd like some clarification from staff with regard to the recommendation of a five-foot sidewalk versus the recommendation from the applicant to get it reduced to four-foot.

MR. DALTON: Mr. Chairman, Commissioner Vigil, the Community College District requires, in this case, a five-foot sidewalk to be constructed.

COMMISSIONER VIGIL: Okay. And the applicant has testified that with regard to the design, the four-foot sidewalk is either more compatible and the five-foot is not necessary. So is this a variance request to it or what?

MR. DALTON: Mr. Chairman, Commissioners, I don't believe this is a variance. I believe the applicant is just not in agreement with the condition that staff has imposed and I believe it may be up to the discretion of the Board, whether or not they want to approve a four-foot sidewalk instead of a sidewalk and maybe Steve can correct me if I'm wrong on that one.

COMMISSIONER VIGIL: Steve, do you have anything to enlighten us on that? A foot just doesn't seem to be so much. I'm wondering what staff's position would be.

MR. SOMMER: Mr. Chairman, I left out part of the explanation that might – and not to usurp but the College District plan has a five-foot sidewalk on a main arterial. We have one main arterial. The plan has one main arterial. All the other side streets are not main arterials. [inaudible]

COMMISSIONER VIGIL: Mr. Sommer, then would it be appropriate to say the five-foot would be applicable to your main arterial and the four-foot to the other arterials so that it would be in compliance with the ordinance?

MR. SOMMER: That would work fine. That would work fine with us.

COMMISSIONER VIGIL: Okay.

CHAIRMAN MONTTOYA: Okay, any other questions? Commissioner Sullivan.

COMMISSIONER SULLIVAN: My question was on the same issue, Mr. Chairman. I see Mr. Walbridge here. What are the ADA requirements on the sidewalks? I think four-foot sidewalks are a size of the past. It's been a long time since we've built one.

[Duly sworn, Clif Walbridge testified as follows:]

CLIF WALBRIDGE: Clif Walbridge, 1421 Luisa Street. Mr. Chairman, Commissioner Sullivan, we have ADA ramps on the sidewalks that connect sidewalks to cross streets, in accordance with the City standards.

COMMISSIONER SULLIVAN: Isn't five feet the minimum size for ADA

now on sidewalks? The minimum width?

MR. WALBRIDGE: I'm not sure. I don't believe it is.

COMMISSIONER SULLIVAN: You don't think so? Okay. I thought it was.

What are you building in phase 1?

MR. WALBRIDGE: We're doing the same thing. We have –

COMMISSIONER SULLIVAN: Four-foot sidewalks?

MR. WALBRIDGE: We have the main five-foot wide on the arterial street and then four-foot sidewalks with ADA ramps.

MR. SOMMER: Commissioner Sullivan, there are a couple of individuals, Mr. Walker and Mr. Murtaugh who are here who whispered to me that the ADA requirement is 42 inches on sidewalks and five feet for landings, 42 inches, which is three feet six inches for sidewalks. That's what I'm being told.

COMMISSIONER SULLIVAN: Okay. I'll take their word for it. You can't pass someone on a wheelchair on a four-foot sidewalk. I can tell you that, without going out in the street. That's the only question I had.

CHAIRMAN MONTOYA: Okay. Any other questions? What are the wishes of the Commission?

COMMISSIONER VIGIL: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: I move to approve this project with conditions including condition number 12 that's been added on the hot water recirculation systems, and that in County condition 6, the sidewalks for main roads be at five-foot and arterial roads be at four-foot.

COMMISSIONER SULLIVAN: Don't you mean the other way around?

COMMISSIONER VIGIL: I'm sorry. The other way around.

CHAIRMAN MONTOYA: Okay.

COMMISSIONER VIGIL: What did I say? Main roads, five feet?

COMMISSIONER CAMPOS: You just switched arterials.

MR. SOMMER: Arterials five, the others four.

COMMISSIONER VIGIL: Arterials five and neighborhoods four? Okay.

CHAIRMAN MONTOYA: Okay we have a motion.

COMMISSIONER CAMPOS: Second.

CHAIRMAN MONTOYA: Second by Commissioner Campos. Any other discussion?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I'd like to add to that the condition that we discussed about the approval of the City Wastewater Division, under City conditions, number 2, which the applicant has agreed to. So City condition number 2 would read: Obtain any redline comments from the City Subdivision Engineer and the City Wastewater Division, and

incorporate prior to obtaining final City of Santa Fe sign-off.

COMMISSIONER CAMPOS: That's okay with me as the seconder.

CHAIRMAN MONTOYA: Secunder's okay. Maker of the motion?

Commissioner Vigil.

COMMISSIONER VIGIL: I would agree with that. I'm okay with it, Mr.

Chairman.

CHAIRMAN MONTOYA: Okay.

COMMISSIONER SULLIVAN: Is the hot water in there?

CHAIRMAN MONTOYA: Yes.

COMMISSIONER VIGIL: I included that.

COMMISSIONER SULLIVAN: So that's number –

COMMISSIONER VIGIL: Twelve.

COMMISSIONER SULLIVAN: That was number 12. Okay. Thank you.

CHAIRMAN MONTOYA: Okay. Any other discussion?

The motion to approve EZ Case #S 05-4391 with conditions as modified above passed by unanimous [5-0] voice vote.

- XIII. A. 6. AFDRC Case #DP 05-5430 PNM Miguel Lujan Line Extension – The Board of County Commissioners Request Reconsideration of a Request By the Public Service Company of New Mexico Laurie Moye, Agent for Development Plan Approval (For Miguel Lujan Tap) to Allow .2 of a Mile of Newly Constructed Electrical Lines and Poles to serve the Santa Fe Area, this Also Includes a Variance of Article III, Section 2.3.6b (Height Restrictions for Dwelling or Residential Accessory Structures) of the Land Development Code to Allow Electric Line Poles to Exceed 24-Feet. The Property is Located Along Rufina Street, Between Camino de Tercero and Henry Lynch Roads, within Section 32, Township 17 North, Range 9 East and Section 5, Township 16 North, Range 9 East (Commission District 2)**

CHAIRMAN MONTOYA: This was a reconsideration that was brought about by the Board of County Commission to request reconsideration by Public Service Company of New Mexico, Laurie Moye, agent for development approval for the Miguel Lujan tap to allow .2 mile of newly constructed electrical lines and poles to serve the Santa Fe area. This included a variance for the height restrictions. Wayne.

MR. DALTON: Thank you, Mr. Chairman. On December 13, 2005, the BCC met and acted on this case. The decision of the BCC was to approve a development plan to

allow .2 mile of newly constructed electric lines and poles to serve the Santa Fe area. This approval also included a variance of Article III, Section 2.3.6b of the Land Development Code to allow electric line poles to exceed 24 feet in height.

On January 10, 2006, the BCC voted to reconsider the request by PNM for development plan approval to allow .2 mile of newly constructed electric lines and poles to serve the Santa Fe area. This request also includes a variance of Article III, Section 2.3.6b to allow electric line poles to exceed 24 feet.

Recommendation: It is the evaluation of staff that the proposed development plan and variance for construction of overhead electric lines and poles is needed to serve the Santa Fe area. However, Article III, Section 2.3.6b of the Land Development Code states the height of any dwelling or residential accessory structure shall not exceed 24 feet in height. Staff recommends denial of the requested variance. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Any questions for staff? Okay, the applicant is here. Is there anything you would like to add to what we have received in our packets?

ROBERT CASTILLO: Mr. Chairman, member of the Commission. My name is Robert Castillo, director of Northern Operations for PNM. Because this is a reconsideration we weren't sure how you wanted to handle it. If you're interested in a short summary presentation from us we'd be more than happy to do that. We're here to assist you tonight in your deliberations. This is probably round 3. It's been somewhat of a controversial issue with respect to pole height and underground versus overhead. So I brought three experts with me to assist in any questions that you might have. I would only like to say that if you approve our request for variances, we would proceed with construction some time this summer and finish probably in the fall. If the Commission, in your wisdom you decide to vote against the variances that we've requested we would have to include an intermediate step before beginning construction and that would be for us to appear in front of the Public Regulation Commission trying to seek rate relief for the additional cost for undergrounding the project.

Once that is accomplished, we would proceed with construction. I just wanted you go be informed of that. And again, if you would like a summary presentation to refresh your memories we'd be happy to do that. Otherwise, we'll stand for questioning.

CHAIRMAN MONTOYA: Okay. Does anyone on the Commission feel they need a summary. Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chairman, I just got shocked. ???

COMMISSIONER ANAYA: I know that the Board asked to reconsider this. So what was the reason the Board wanted to look at it? I think that's where we should start.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Campos.

COMMISSIONER CAMPOS: There's really two issues. One is we do have an ordinance that requires undergrounding, and there's only one way to get around it and that's through variance. And I think we've assessed this carefully and I don't think this application can meet the variance requirements. Also, my concern is that the ordinance itself, the County

Commission a long time ago made a policy decision that these poles of this size should be undergrounded. I think we have to respect that law. I don't think we're in a position to simply ignore it, say, well, we're going to ignore it this time. If we ignore it this time I think in effect we're killing the ordinance.

If you don't like the ordinance, there's one way to do it. You can use your legislative powers to revoke it, rescind it, and say we don't have this law anymore. I think this law is important. I think we should enforce it and I don't think that PNM has met the variance requirements.

CHAIRMAN MONTTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chairman, so you're against the overhead. But are you taking in any consideration of the costs, the extra costs to the consumer?

COMMISSIONER CAMPOS: Yes. Right now, we're not sure whether this transmission line – someone is going to pay for it. The ratepayer will pay for it, whether it's in the County of Santa Fe or the State of New Mexico. We're not sure because this issue hasn't really been definitively decided by the PRC. Rule 22, as I understand it, applies only to distribution lines and allows PNM to apply – is that right, Mr. Castillo, if there is a transmission line?

MR. CASTILLO: Mr. Chairman, Commissioner Campos, you have that correct. It addresses distribution specifically. Rate 22 does mention transmission as well, but it says that we may approach the Commission and ask for relief on transmission, which we would do if this Commission turns us down on our variance request.

COMMISSIONER CAMPOS: It's our decision. We have a law. I think we're bound by it unless it meets the variance and I don't think it does. The other option is legislative. Do away with the law. I support the law.

CHAIRMAN MONTTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Mr. Chairman. When you say legislative, what do you mean?

COMMISSIONER CAMPOS: It means that we have to enact an ordinance canceling an ordinance.

COMMISSIONER ANAYA: When you say legislative –

COMMISSIONER CAMPOS: That's legislative. We put out an act of legislation and say we don't want this ordinance; we cancel it.

COMMISSIONER ANAYA: I see what you mean. I was getting ready to go to the legislature.

CHAIRMAN MONTTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Mr. Chairman, I agree with Commissioner Campos that we probably need to revisit the ordinance. I don't think we have to revoke it. I think there are some situations in which undergrounding is the more appropriate route to take but there are some situations that we need to consider with overhead. What I'm seeing tonight, Mr. Chairman, is I think a member of the AFDRC is here who probably wishes to speak, William

Mee, and I'm not too sure of any other members in the audience want to speak, but I would like to ask the chair to defer to a representative of the AFDRC in this case because this is the community that is going to be most impacted by this decision. Whether we decide to in our legislative capacity to say are we going to follow an ordinance or not follow an ordinance?

What we're actually doing is impacting the future lives of the residents who have to live with our decision, so it would be good to us to listen to that, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Any other questions for the applicant?
Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chairman, I think that would be fine to listen to the AFCRC. I recall from the previous packet that the EZC denied this unanimously. And I still don't see the minutes in here as to why. And so the question – and I don't assume that anybody asked someone from EZC to be here tonight to speak against it. Mr. Dalton, can you explain or summarize why the EZC unanimously recommended denial?

MR. DALTON: Mr. Chairman, Commissioner Sullivan, I apologize. I did not put the EZC minutes in here. The EZC minutes are actually in the EZA packet. I believe the EZC denied the request based on the ordinance requiring utilities to be placed underground.

COMMISSIONER SULLIVAN: That's a surprise. That hasn't stopped them in the past from recommending variances. I just thought we could get a little more information on that. I'd look forward to that. I just wanted to mention too, Mr. Chairman, that I did meet with the applicant and a question that I had at the last meeting, which I wanted to try to iron out with the applicant and not spend all your time tonight discussing, was really with the distribution lines, that apparently, PNM has made a deal with the local community to build, as well as the transmission line. And my concern was that the distribution lines, which are the ones underneath the transmission line, the lower ones, were visually obtrusive as well, if not more so.

And we're supposed to consider environmental and visual impacts as a part of the Code. So my question, and PNM got the answer for me was what would it cost for an applicant or a developer along the route, going the different ways with the distribution line. In other words, let me rephrase it. I have a vacant piece of land along the line now. Eventually I want to develop it with houses or a 7/11 or something. An Allsup. What would it cost me to get electric service for that development? The way it stands right now, to get service to my development, I need to have to go to Agua Fria Street or any other direction. And the cost of doing that – and this is a very approximate PNM figures – would be about \$50,000 to get electric service to my Allsup or house or whatever it would be.

If I had those distribution lines underground, undergrounded, near the pole, under the pole, somewhere in that area. It would cost me about \$7,000 to tie into that, my share of the costs of tying into that. If those lines were overhead, it would cost me about \$3,000 to tie into that line. So obviously, as a resident along the route of the transmission line, I'd like to have the aerial lines because I can tie in for \$3,000 instead of \$7,000 or instead of \$50,000. So that's a clear economic benefit to someone who is there. It doesn't eliminate the visual impact

issue but I can see why someone would want to have those lines there.

Those distribution lines aren't needed for three to five years, so PNM has made a deal with the residents in the area that they'll put the lines, even though they don't need them for three to five years, if they're overhead. If we don't approve the overhead and we go underground with the transmission line they won't build the distribution lines for three to five years. So all of this concerns me because it seems like we're making a decision which involves rates, which involves visual impacts – the benefit of which is only addressing, not the whole ratepayers but just certain property owners along the route of the line. And that's where I had the concern and that was a concern that I expressed with PNM and that was the information they gave me and I just pass it on to you.

CHAIRMAN MONTOYA: Okay. Any other questions of the applicant? This is a public hearing, so those people who would like to speak for or against this case, if you'd come forward and identify yourself and be sworn in please.

[Duly sworn, William Mee testified as follows:]

WILLIAM MEE: I'm William Mee, 1873 Camino Samuel Montoya, Santa Fe, New Mexico. Mr. Chairman, Commissioners, I'm a member of your Agua Fria Development Review Committee since 1996 and we did the very odd thing of voting for the Miguel Lujan line extension. Why would we want a big old ugly powerline in our neighborhood? I'll get into that, why we approved it in just a minute but I'd like to give you a little background first.

The Agua Fria Village and the Traditional Historic Communities areas are those long, thin strips of former agricultural land dating back to 1693. They run from basically Arroyo Chamiso at the old Villa Linda Mall to Arroyo de los Frijoles, which is near the Old Buckman Road. These five-mile long land parcels were given to Agua Fria residents by President Woodrow Wilson in 1913 by land patent. Area residents clustered their homes along Agua Fria Street so they wouldn't waste valuable farming land. The traditional pattern of land use is by family transfer.

As you know, Agua Fria is engaged in developing a land use plan that will be forwarded to the County Commission upon completion. In our land use plan, we are recognizing that many families will be transferring their land to their children and their grandchildren. This is our affordable housing plan. Additionally, we're putting a ban in the plan for any more power line corridors, there being an easement given to the powers that be in the name of the common good. Easements for three main water lines, four highways, and multiple power lines that basically, the landowners are usually unable to take advantage of even though right-of-way agents, when negotiating these easements said Be the first one in Agua Fria to have City sewer. That's what they told us in the 1960s sewer line extension. Or, Be the first to have electric lights. And that's what they told us in the 1920 power line extension for the Santa Fe Power and Light Company, the company which has now evolved to PNM?

We've had many broken promises and a lot of land taken for only a song and a dime. So in approving this Miguel Lujan line extension we had long memories from other power line

extensions put in for just the public good. It was time to negotiate a better deal. In a series of public meetings, of which I attended a dozen or so for the Project Power, we also discussed the eventual Miguel Lujan line extension and how it could be used to run a distribution line underneath to serve residents. Because no one really has that \$50,000 to hook up to that power. Additionally, if the line was above ground, the land underneath could be used for a parking lot or a catch basin for the runoff of water. But if it went underground, you couldn't use those uses on it.

Also, the idea of running a line on the south side of Rufina Street was attractive since no one really had power on that side of it. It would also result in the abandonment of the current high power line alignment along which the City of Santa Fe had planned Powerline Road, a road which residents had to mark on their plat when they subdivided or requested City water or sewer on Rufina. The Powerline Road would have divided the village in half and required a right-of-way of 66 feet and setbacks on each side of 25 feet, for a total loss of land of 116 feet. On one plat that was done in the village the requested setback was approved at 125 feet or a loss of land of 366 feet. So the deal with PNM includes the elimination of the powerline and the vacation of that easement.

So these were the benefits of the Miguel Lujan line extension, along with a monetary payment to landowners for that easement and increasing a person's property values. Based on these benefits and that we encountered no real formal opposition to those PNM plans, the Agua Fria Development Review Committee approved the line extension. And even the Agua Fria Land Use Committee had a favorable report on the plan. I'll stand for questions if you have any.

CHAIRMAN MONTOYA: Any questions for Mr. Mee? Thank you, William.
Next.

[Duly sworn, Eduardo Ramirez testified as follows:]

EDUARDO RAMIREZ: My name is Eduardo Ramirez, 417 Columbia.

[Duly sworn, Nina Quintana testified as follows:]

NINA QUINTANA: I'm Nina Quintana. Thank you for hearing us out. I happen to agree with Mr. Mee. I have a picture here of what I [inaudible] terribly ugly. I live in the area and my parents own a large mobile home park and they house 100 families with a base of four occupants and on occasion, with the larger mobile homes some have over six family members. So it's a large sized mobile home park. And I have to see that that Rufina Stretch happens to be a little bit of heaven for them. It may sound silly but it's funny, going down that road stretch without having to see the overhead lines, having the moms, and there's a lot, coming down with their kids with the carriages and having the kids go out with their bicycle, it's a wonderful thing.

We don't have a lot of that as it is going down to Agua Fria. That's completely different. You have the overhead lines and it's a lot for us to go and slow it again so for PNM to come and put on again the additional lines, it's a lot. It really is. In addition to that, the mobile home park, [inaudible] will be losing two spaces. It will be replace two families. These

are two individuals of our community, of our small mobile home park community. And we have discussed that with them and living at the mobile home park, it's the most affordable means of living in Santa Fe. I was discussing that with them in the back while we were listening to the case previous to us.

I'm here completely opposing PNM putting in overhead lines if we in fact are going to lose those spaces, we'll eventually make room for them at mobile homes somewhere else. But I'm [inaudible] I live there and I don't want to see the lines.

CHAIRMAN MONTOYA: Okay. Any questions for Ms. Quintana?

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: Ms. Quintana, I guess I'm a little confused. I think Mr. Mee was for the lines to be overhead, and you said you agreed with him, but you don't want the lines overhead; you want them underground.

MS. QUINTANA: Well, I agree that PNM – you know what? It is going on the community and the area is growing and we do need power. And I know that PNM has already started the line through the Centex property because we are [inaudible] We are going to have the large movie theater – there's a large development going up in that area where the Rufina property is. In that stretch there is approximately 1.9 miles that PNM is proposing to put overhead lines, in that one general area. I am asking that they actually go underneath and bury them. I'm just asking for that one parcel. And again, it's if they want to put them anywhere else, that is the only [inaudible] that I am asking for our residents and it's because we have discussed with them what they want and that's the only reason, really, why it is that I'm here. And I also live in the area.

COMMISSIONER ANAYA: You mentioned the two mobile homes that would be lost? Is there where a pole is going to go?

MS. QUINTANA: Yes. Because they're actually asking for additional easement. They already have the easement as Rufina cuts the mobile home park in half. So we now have Atocha South and Atocha North. So they have their easements, the utility easements but what they have requested of us is an additional easement and in that, that would actually – on those two property, into those two lots where those families reside.

COMMISSIONER ANAYA: So you're saying you would like to see it underground?

MS. QUINTANA: Underground, and that way we can – the mobile homes can be away from the lines or as mobile homes move out then we can manage somehow.

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

CHAIRMAN MONTOYA: Okay.

COMMISSIONER VIGIL: Question for her. Will you also be required to give up easements if these lines go underground? Either way, if they're underground or overground they'll probably be required to give easements.

MS. QUINTANA: Well, we were told by the right-of-way agent. They were

very quick to offer us a check and we said no. But they also told us that if in fact, they also had, PNM had the absolute right to go through condemnation and we're sorry. We're not going to be bullied. That's another reason why we're here and I didn't – there's a lot that I don't know about – there's a lot of documentation that I did request and it was just sent to me. So I have a lot of reading and catching up to do. But in the meanwhile, I did want to be heard. So I know that my father has some additional questions, but just to let you know, the right-of-way agent did approach is. He did tell us that they would reimburse us for the lots and the landscape because we have pine trees through there and they had just put in the landscape and they're all pine trees and other vegetation. They would compensate, but that's really not the point.

COMMISSIONER VIGIL: That's my last question. Thank you, Mr. Chairman.

CHAIRMAN MONTROYA: Mr. Ramirez. Thank you, Nina.

MR. RAMIREZ: [inaudible] mobile home, they actually [inaudible] an easement. I give it to them, to him, 245 feet by 200 feet. Now they're asking for [inaudible] If they put it overhead they're going to be inside of the property, the two lots that Nina mentioned that we're going to lose it. The people there, they don't want to be under there, the power line. Then if we do that, we [inaudible] If they want to do it, why don't you do it underground. Like the man said, [inaudible] to do it. [inaudible] mobile home park, it cost me \$85,000 and I did it underground and everything. Trying to do it low income for the people, but we did the best. We put it underground to the houses. We put it underground. We did the sewer line. We blacktopped everything. We did the best that we can.

Now they come in with this power line. They're going to affect view of the trailer park. They're going to affect the two lots that we're going to lose. [inaudible] which is lot 23, which they don't want to put a trailer there because [inaudible] We have the one that we call the mordida [inaudible] And what is it going to be? They're going to come and they're going to ask me to move it or they're going to come with equipment. We're going to have to remove the trees that we have there, the gas line. The water – we have a sewer line and everything that's hooked up. That's what we have. It's a problem, I know.

They come in with a lot of ideas, new ideas. The new ideas, four years ago we did the trailer park. I designed it and then gave it to an engineer and put the [inaudible] I did. I got up in the tractor and [inaudible] We've been working hard to be a good citizen and to have a little better respect. We have the trailer park. [inaudible] We then have to do it and be a citizen. We have people there a long time. [inaudible] The problem is we're losing two lots and every lot is 42 by 100, 42 by 100 twice. With gas and electricity, water, telephone, everything. I have [inaudible]

I went to the engineer, the City engineer. I went to the City Manager. I went to everybody. We're not in the county; we are in the city. They say, oh, don't worry. That's up to the contractor. We end up with, me and the contractor we end up with [inaudible] They wash the cars there. [inaudible] There's cars that go 70 miles an hour and nobody there to stop

it. And sometimes there's three or four accidents a month. Sometimes we have two or three accidents a week, because the idiots they come through [inaudible] Two days ago, on Friday, they almost hit me there. [inaudible] Thank you. I'll answer questions.

CHAIRMAN MONTOYA: Okay. Are there any questions?

COMMISSIONER VIGIL: Mr. Ramirez, I'm not clear on your testimony. Do you live in the city or the county.

MR. RAMIREZ: We are in the city. We are in the city, but the power lines go from the county. We are the tierra olvidada. We are in [inaudible]. We own from Cerrillos to Agua Fria. But we go from Cerrillos to Powerline, cut, Rufina, cut [inaudible]

COMMISSIONER VIGIL: Do you have another clarification?

MS. QUINTANA: What we were told by Fernando and Roberto Ochoa, the right-of-way agents is that one pole is going to be in the city and the other pole is going to be in the county and that it's going to extend overhead through the park, because it's going to run east-west on the south side of the mobile home park on Rufina.

COMMISSIONER VIGIL: Nina, your property, the trailer park that you're talking about, is that all within the city?

MS. QUINTANA: All within the city.

COMMISSIONER VIGIL: Okay. That becomes problematic because the variance that we're hearing tonight –

MS. QUINTANA: Is part of the county.

COMMISSIONER VIGIL: Is in the county. And the City does not have an underground ordinance like we do. The City has already granted PNM the right to build the overhead there. They don't have the same rules and regulations that we do. We do require an underground ordinance and that's what we're hearing tonight, but it only applies to the county property. It cannot apply to the city. That's a different jurisdiction. Do you understand?

MS. QUINTANA: We do now.

COMMISSIONER VIGIL: And the request is well taken but we have no authority to make a decision on it. That would have to be done by the City, and the City probably themselves may not have any authority because they don't have an ordinance like we do that requires underground.

MS. QUINTANA: Well, we certainly didn't mean to waste your time but at least we have PNM here.

COMMISSIONER VIGIL: I think it's really important because one of the issues you brought up was the easement and I think they see messages that you got across really well. Easements and condemnations are not issues that residents like to hear about but I think it should be something that –

MS. QUINTANA: [inaudible] from my understanding that portion still is held within the county, that strip, and that's what makes it so difficult is that the right-of-way – is that held within the county or is that held within the city?

COMMISSIONER VIGIL: If you're in the city –

MS. QUINTANA: That entire strip.

COMMISSIONER VIGIL: That would be city.

MS. QUINTANA: Okay.

MR. RAMIREZ: [inaudible]

MS. QUINTANA: I wouldn't have known.

COMMISSIONER VIGIL: I think that's something you'd have to work out with PNM.

MS. QUINTANA: What they're going to do is condemn then.

COMMISSIONER VIGIL: I hope not. That's it, Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Anaya, then Commissioner Sullivan.

COMMISSIONER ANAYA: The thing that caught my attention was that you said that PNM was bullying you.

MS. QUINTANA: Well, I have two agents. One individual named Fernando and the other one Robert Ochoa. They were very nice about it, but I'm just now realizing that not everybody has signed off on this and I would like to believe that we were the only ones.

COMMISSIONER ANAYA: Okay. You mentioned condemnation.

MS. QUINTANA: Yes.

COMMISSIONER ANAYA: Can PNM condemn land?

MR. ROSS: Mr. Chairman, Commissioner Anaya, they're a regulated public utility and they can condemn.

CHAIRMAN MONTOYA: Commissioner Anaya.

COMMISSIONER ANAYA: I would hope that the bullying tactic that PNM used, they'd no longer use that anymore. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I just wanted to bring up, I believe Nina mentioned the usual issues on down the road. Although they're in the city, we're only hearing tonight .2 mile that relates to this. But 1.6 mile is located within the Extraterritorial Zone, the EZ, which is City and County. The EZA heard this also and tabled the request to wait and see what the County did, because I think their indication, or at least the feeling of the members that were on the board at that time was that it wouldn't make sense to put .2 mile under ground and then 1.6 mile above ground. So no action has been taken on that 1.6 mile. Okay, the total length is 1.8 mile and it's .2 mile within the Traditional Historic Community of Agua Fria, and it's .6 within the EZA and a mile within the city. Is that right? Did I get everything right there? Good. We don't want to be incorrect.

So I think our decision on this this evening is a little more significant than just the .2 mile, because I think the EZA will take a look at what the Commission does, and that may set the direction for that .6 mile as well. Commissioner Vigil is right; there's nothing we can do about the one mile that's already been permitted by the City, because they don't have jurisdiction to require undergrounding in their ordinances. But we do have some impact on the

remainder of it, which is a total of .8 mile.

COMMISSIONER VIGIL: On that point, Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Does the undergrounding ordinance apply to the EZA? Can you clarify that for me?

MR. ROSS: Mr. Chairman, Commissioner Vigil, they have their own undergrounding ordinance.

COMMISSIONER VIGIL: And it's similar to the County's.

MR. ROSS: Similar. Yes.

COMMISSIONER VIGIL: Okay. Thank you.

MS. QUINTANA: I have a question. Is PNM its own government? Is it its –

COMMISSIONER VIGIL: PNM is a private enterprise; it isn't a government entity.

MS. QUINTANA: I'm sorry. Am I being terribly rude? I don't mean to be. It's just that we have – protection of property is what you have written there on the wall. I'm just incredibly upset. But I do thank you for the time and I didn't mean to waste the time, but it was very informative.

COMMISSIONER ANAYA: You're not wasting our time.

COMMISSIONER VIGIL: You're not wasting our time at all. As a matter of fact we appreciate you coming forth with your concerns and your genuine expressing of those. Thank you.

CHAIRMAN MONTOYA: Thank you. Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Chairman, if it's time for a motion I'd like to make one.

CHAIRMAN MONTOYA: Actually, it's still public hearing. So if anyone else would like to come forward and speak for or against this, now's the time. Okay, the public hearing is closed. Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Chairman, I would move that we deny the variance request by PNM.

CHAIRMAN MONTOYA: We have a motion by Commissioner Campos.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN MONTOYA: Second by Commissioner Sullivan. Further discussion?

COMMISSIONER VIGIL: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: I think I've stated this repeatedly. I'm not too sure if this is the case we want to test. It's true that what we're deciding tonight would be incongruent in my mind with one mile by the City overhead and then all of a sudden a .2 mile underground. I have no idea and I don't pretend to know what the EZA will do, but it doesn't make sense to me that for .2 miles, that we deny this variance, particularly because the

community members who have to live with the results of our decisions are in favor of it and also, particularly because my understanding is all of the recommendations and testing that has been done and the EMT [sic] emissions, and perhaps maybe I should phrase this in the form of a question. The Agua Fria people did testing with regard to underground lines and overhead lines and my understanding was that the result of the overhead lines showed less EMT [sic] emissions. Am I wrong about that? Can someone from the technical field respond to that?

COMMISSIONER CAMPOS: We're in a motion already.

COMMISSIONER VIGIL: I just have a question, Mr. Chairman. Can you validate that? Yes or no?

EMILY DOLMAN: Yes, we did do actual computer studies that are validated other places by test results and the EMF is lower with overhead lines than with a similar underground facility.

COMMISSIONER VIGIL: Thanks for correcting me on EMT. Mr. Chairman, I can't support the motion as it stand and I think based on the fact that we've been concerned very highly that if this does go to the PRC that the residents in your community, where you live are going to be the ones who have to pay for it, if the PRC decides to pass it on to the ratepayers. And that increases their energy costs in a time we're already paying. I cannot support the motion, Mr. Chairman.

CHAIRMAN MONTOYA: Any other discussion? Commissioner Sullivan.

COMMISSIONER SULLIVAN: A quick question for the expert that just came up, Mr. Chairman, if we could. Ma'am, is there any demonstrated health effects from EMF?

MS. DOLMAN: There are no conclusive studies showing that there are health effects. The studies continue.

COMMISSIONER SULLIVAN: So the fact that they're higher or lower, there's nothing that relates those to –

MS. DOLMAN: Directly to a health hazard.

COMMISSIONER SULLIVAN: To health effects. Thank you, Mr. Chairman.

CHAIRMAN MONTOYA: Okay. Any other discussion?

The motion to deny the variance in AFDRC Case #DP 05-5430 passed by majority 3-2 voice vote with Commissioners Vigil and Anaya voting against.

CHAIRMAN MONTOYA: I'm going to vote no [sic]. In voting no, to go along with what the EZC has decided and again, I'm disappointed that tonight I did not receive the minutes to see exactly why they voted against it, but for the reasons that they had given us prior to this meeting when we met the last time, they had voted no.

COMMISSIONER CAMPOS: Mr. Chairman, are you voting to deny the motion?

CHAIRMAN MONTOYA: I am voting to deny the variance, correct.

COMMISSIONER SULLIVAN: You need to vote yes.

CHAIRMAN MONTOYA: I vote with Commissioner Sullivan and Campos.

COMMISSIONER VIGIL: So it's 3-2.

CHAIRMAN MONTOYA: Motion carries 3-2.

XIV. ADJOURNMENT

Chairman Montoya declared this meeting adjourned at approximately 9:55 p.m.

Approved by:

Board of County Commissioners
Harry Montoya, Chairman

Respectfully submitted:

Karen Farrell, Commission Reporter

ATTEST TO:

**VALERIE ESPINOZA
SANTA FE COUNTY CLERK**