

MINUTES OF THE
SANTA FE COUNTY
PLANNING COMMISSION

Santa Fe, New Mexico

March 21, 2019

I. This meeting of the Santa Fe County Planning Commission called to order by Chair Charlie Gonzales on the above-cited date at approximately 4:00 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico. Fred Raznick was welcomed to the Commission.

II. & III. Roll call preceded the Pledge of Allegiance and indicated the presence of a quorum as follows:

Members Present:

Charlie Gonzales, Chair
Frank Katz, Vice Chair [4:20 arrival]
J. J. Gonzales
Leroy Lopez
Susan Martin
Fred Raznick
Steve Shepherd

Member(s) Excused:

None

Staff Present:

Vicki Lucero, Building & Development Services Manager
Paul Kavanaugh, Building & Services Development Supervisor
Penny Ellis-Green, Director, Growth Management
Jose Larrañaga, Development Review Specialist
Tony Flores, Deputy County Manager
Eric Ames, Assistant County Attorney
Renee Nix, Fire Inspector
Jacob Stock, Community Planner

IV. Approval of Agenda

Vicki Lucero noted that there were no changes to the agenda. The agenda was accepted by consensus.

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V. Approval of Minutes: February 21, 2019

Member JJ Gonzales moved to approve the February minutes as submitted. Member Shepherd seconded and the motion passed by unanimous [6-0] voice vote. [Member Katz was not present for this action.]

VI. Consent Agenda: Final Orders

- A. Case #18-5030 Bruno's Self Storage Conditional Use Permit: Vincent Marchi, Applicant, Land Development Planning, Agent, requests approval of a Conditional Use Permit per Chapter 4, Section 4.9.6 Conditional Use Permits (CUP); Chapter 9.8, Table 9-8-15 (Use Table); and Chapter 10, Section 10.13 (Self-Storage Facilities) to allow a 174-unit self-storage facility with an office/residence totaling 33,130 square feet at full build-out on 3.09 acres. The site is within the La Cienega and La Cieneguilla District Overlay and is zoned Commercial Neighborhood (CN). The site is located at 4 Erica Road via the I-25 Frontage Road within Township 16 North, Range 8 East, Section 26, SDA-2 (Commission District 3) Approved 7-0.**

Member Martin moved to approve and Member Lopez seconded. The motion passed without opposition. [Member Katz was not present for this action.]

- B. Case #APP 18-5130 Bruce and Debbie Macallister Appeal. Bruce and Debbie Macallister, Appellant, Joseph Karnes, Agent, Request an Appeal to the Santa Fe County Planning Commission, Appealing the Santa Fe County Land Use Administrator's Decision to Approve an Accessory Structure (Permit #18-110). The Property is 1.78 Acres and Located at 1467 Bishop's Lodge Road Within Section 31, Township 18 North, Range 10 East, SDA 2 (Commission District 1). Denied 4-0.**

Member Martin moved to approve and Member Shepherd seconded. The motion passed without opposition. [Member Katz was not present for this action.]

VII. New Business

- A. CASE # CUP 18-5240 Cedar Grove Auto Repair. Shawn Meek, Applicant, requests approval of a Conditional Use Permit to operate an automotive repair and performance facility as a Medium Impact Home Occupation. The facility will occupy an existing 1,275 square foot garage/shop and 392 square foot office structure adjacent to a 3,405 square foot residence located in the Residential Estate Zoning District, at 10 Meek Road off of Hwy 344, within T11N, R7E, Section 23, SDA-2 (Commission District 3)**

Case Manager, John Lovato read the case caption as shown above and provided his report as follows.

JOHN LOVATO: On June 15, 2017, County Code Enforcement issued a Notice of Violation to the Applicant for operating a business without a business license in violation of the County's ordinances.

On January 25, 2018, County Code Enforcement filed a criminal complaint in Santa Fe County Magistrate Court alleging that Applicant violated the County's ordinances by operating a business without a business license and maintaining litter and debris on the property. To resolve these alleged violations, the Applicant removed litter and debris from the property and filed this application for a Conditional Use Permit.

On November 19, 2018, Applicant submitted the application for a Conditional Use Permit to operate an automotive repair and performance facility as a Medium Impact Home Occupation. According to the Sustainable Land Development Code, Section 10.6.4.3, Table 10-1 Home Occupations Requirements. The facility is authorized under a Conditional Use Permit if it employs no more than five employees, uses no more than 50 percent of the heated square space, has no more than 1,500 square feet of accessory building or storage, has no more than 12 appointments or visits per day, does not store more than six pieces of heavy equipment, and complies with the traffic, access, and parking requirements in Section 10.6.5, and the signage requirements in Section 7.9.10.

There is an existing 3,405 square foot residence, a 1,275 square foot accessory structure, and a 392 square foot accessory structure located on the 4.99 acre parcel. The business facility consists of the accessory structure which will be as the office building. The Applicant proposes to operate the Facility by appointment only between 9:00 a.m. and 4:00 p.m., seven days a week.

Review, the County Building and Development Services reviewed the application for compliance with the following requirements of the SLDC: a) Medium Impact Home Occupation of the SLDC, Section 10.6.4.3; b) Sustainable Design Standards, which include access, fire protection, landscaping and buffering, fences/walls, lighting, signs, road design standards, utilities, water, wastewater and water conservation, terrain management, flood prevention and flood control, solid waste; and c) agency reviews from the NMED, County Fire Marshal, County Utilities, County Planning and NMDOT. No comments from the NMED and conditional approval from the County Fire Marshal, approval from County Utilities, approval from County Planning and approval from NMDOT; and d) Conditional Use Permits, the SLDC, Section 4.9.6.5, Approval Criteria, establishes the approval criteria for Conditional Use Permits. Staff has determined that Applicant's proposed use satisfies these criteria because it will not 1) be detrimental to the health, safety and general welfare of the area; 2) tend to create congestion in roads; 3) create a potential hazard for fire, panic, or other danger; 4) tend to overcrowd the land and cause undue concentration of population; 5) interfere with adequate provisions for schools, parks, water, sewage, transportation or other public requirements, conveniences or improvements; 6) interfere with adequate light and air, and 7) be inconsistent with the purposes of the property's zoning classification or in any other way inconsistent with the spirit of the Sustainable Land Development Code and Sustainable Growth Management Plan.

Recommendation: On February 14, 2019, this Application was presented to the Hearing Officer for consideration. The Hearing Officer recommended approval of the Application with the conditions recommended by Staff.

Staff has determined that the proposed use complies with the SLDC, and recommends that a Conditional Use Permit for a Medium Impact Home Occupation should be approved for Cedar Grove Auto Repair and Performance, subject to the following conditions. And, Mr. Chair, may I enter the conditions in as part of the record?

CHAIR GONZALES: Yes, you may.

Conditions:

1. Applicant at his own expense shall record the Conditional Use Permit showing the site layout and the conditions imposed in this approval process in the office of the County Clerk as required by the SLDC, Section 4.9.6.8.
2. Applicant shall reside on the property.
3. The Application was reviewed based upon the Applicant's proposal. Any change or expansion will be required to go through the County approval process. The Application as proposed is limited to the following:
 - a) No more than the 1 resident employee is allowed.
 - b) The area of the facility including the building and exterior space shall not be expanded.
 - c) No more than two (2) appointments or visits per day is allowed
 - d) No more than three (3) vehicles associated with the Home Occupation are allowed on the property per day.
4. Vehicles associated with the Home Occupation shall be parked in the defined area on the property, and shall not be stored, parked or repaired on public rights-of-way.
5. Applicant shall provide a defined area on the property for parking spaces for the employee and customers/clients, including vehicles to be repaired which shall be accessible, usable, designed, and surfaced appropriately.
6. Applicant shall park vehicles to be repaired within an enclosed building or within the defined area not visible from public view.
7. Applicant shall not park, store, repair, or use commercial scale vehicles or heavy equipment on the property.
8. Applicant shall maintain the fence around the property in its current height and condition.
9. Applicant shall maintain the existing outdoor lights under a portal, downward-directed, and shielded, and shall not install any additional outdoor lighting fixtures.
10. Applicant may install up to 2 permanent signs not exceeding four (4) square feet each, located no more than five (5) feet above the ground on the property.
11. Applicant shall remove the existing unpermitted thirty-two (32) sign located on the northern boundary of the property abutting State Road 344.
12. Applicant shall not install plumbing in the Facility.
13. Applicant shall comply with the approved water budget of 0.08 acre-foot per year for the residence and Facility.
14. Applicant shall place rain barrels on the residence and Facility, and maintain in good working order the existing four hundred (400) cubic foot retention pond located on the southern portion of the property.
15. Applicant shall dispose hazardous waste and material generated by the Facility in accordance with applicable laws and regulations.
16. Applicant shall relocate the heater in the shop at least thirty-six (36) inches from any combustible materials.
17. Applicant shall mount one (1) 2AB10BC minimum sized fire extinguisher in the shop.
18. Applicant shall mount one (1) 2AB10BC minimum sized fire extinguisher in the office.
19. Applicant shall install a pedestrian egress door on the shop.
20. Applicant shall complete the renovation of the office.
21. Applicant shall obtain an inspection and approval of, and comply with any conditions imposed by the County Fire Department prior to use of the Facility.

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22. Applicant must obtain permits for any unpermitted structures.
23. Applicant must obtain an access permit from NMDOT prior to recordation of the Conditional Use Permit.

MR. LOVATO: Thank you very much and I stand for any questions you may have.

CHAIR GONZALES: Thank you, John. Does the Commission have any questions of staff?

MEMBER SHEPHERD: Mr. Chair.

CHAIR GONZALES: Mr. Shepherd.

MEMBER SHEPHERD: As part of the criminal complaint it says, maintaining litter and debris; could you sort of describe what that litter and debris was. How much of it was automotive versus household trash.

MR. LOVATO: Mr. Chair, Commission member Shepherd, it was a mix of all. It has since been brought into compliance and re-inspected several times as Mr. Meek has been following through with his proposals.

MEMBER SHEPHERD: Thank you.

CHAIR GONZALES: Any other questions of staff?

MEMBER JJ GONZALES: I have a couple of questions.

CHAIR GONZALES: JJ.

MEMBER JJ GONZALES: You mentioned that they had an EID permit. Did I read in here that they had to haul water to the residence, that their well was dry?

MR. LOVATO: Mr. Chair, Commissioner Gonzales, that is correct. He does have a standing application where he provides water to his property from certain areas within the County.

MEMBER JJ GONZALES: How long have they been without water and having to haul water?

MR. LOVATO: Mr. Chair, Commission member Gonzales, I'm not too sure. It is not clarified in the report and perhaps the applicant can further address that question.

MEMBER JJ GONZALES: Okay, I will ask that question to the applicant. The other question I have is I saw the following conditions and there seems to be 23 conditions attached to this application; has the applicant agreed to all of those conditions?

MR. LOVATO: Mr. Chair, Commissioner Gonzales, it was agreed upon at the Hearing Officer.

MEMBER JJ GONZALES: I'm not familiar with all the conditions but the number of conditions it seems that – I haven't seen an application like this with that many conditions. Most of the conditions are like five or six but this is 23 conditions and I would have to go through each one for you to explain them to me.

MR. LOVATOR: Mr. Chair, Commissioner Gonzales, I understand and that is the reason it is a conditional use permit in front of you here today.

MEMBER JJ GONZALES: Thank you.

CHAIR GONZALES: Any other questions of staff? Is the applicant here? Mr. Meek, do you want to give a presentation?

[Duly sworn, Shawn Meek testified as follows]

SHAWN MEEK: Shawn Meek, 10 Meek Road, Edgewood, New Mexico. I have agreed with all of the terms. I don't really have anything else to say.

CHAIR GONZALES: I have a couple of questions.

MR. MEEK: Okay.

CHAIR GONZALES: That outdoor lift that is there, is that going to remain outdoors or are you ever going to enclose it?

MR. MEEK: That is going to remain outdoors.

CHAIR GONZALES: That's going to remain outdoors; okay. Also, when you repair an automobile what do you anticipate will be the longest time you'll keep a car there for repair – will be parked in your yard?

MR. MEEK: Typically, it is one to two days. The only other time would be if it takes time to get an engine in or transmission, stuff like that, that has to be shipped in. Sometimes it can take up to two weeks, a month, just depending on the vehicle in question.

CHAIR GONZALES: Is the property fenced?

MR. MEEK: Yes.

CHAIR GONZALES: Is it just a regular fence or is it a screening fence?

MR. MEEK: Just a regular fence.

CHAIR GONZALES: Okay, thank you. Any other questions. Yes, Fred.

MEMBER RAZNICK: Are you familiar with the 23 conditions attached to this?

MR. MEEK: Yes.

MEMBER RAZNICK: And you are in accord with all of those conditions?

MR. MEEK: Yes.

MEMBER RAZNICK: Thank you.

MEMBER SHEPHERD: Mr. Chair.

CHAIR GONZALES: Mr. Shepherd.

MEMBER SHEPHERD: What is your automotive background?

MR. MEEK: I've gone to UTI, graduated there in '06. I've worked for several dealerships, a couple of independents and now myself.

MEMBER SHEPHERD: And the scope of automotive work you're going to do consist of what?

MR. MEEK: Pretty much anything automotive, electrical, AC, engine repairs and stuff like that.

MEMBER SHEPHERD: Body work?

MR. MEEK: No. No body work, no paint.

MEMBER SHEPHERD: Fluids, you're going to have all the usual fluids; oil, antifreeze, gear oil, transmission fluids.

MR. MEEK: Yes. All of that is hauled off by a company called Crystal Clean. They pick it up and recycle it, I guess.

MEMBER SHEPHERD: Do you currently have a contract with them?

MR. MEEK: Yes.

MEMBER SHEPHERD: Is there any fluids or liquids that they will not pick up?

MR. MEEK: None that I am aware of.

MEMBER SHEPHERD: What about batteries?

MR. MEEK: Batteries I take into the scrap yard myself.

MEMBER SHEPHERD: Tires?

MR. MEEK: I dispose of them at the County transfer station.

MEMBER SHEPHERD: So you'll do that yourself as opposed to somebody else doing that?

MR. MEEK: Yes, yes.

MEMBER SHEPHERD: And, there's no water in the shop?

MR. MEEK: Not in the shop and not in the office.

MEMBER SHEPHERD: I used to be a mechanic; you get awfully dirty as a mechanic so how are you going to clean yourself up?

MR. MEEK: Well, I have plenty of rags for that.

MEMBER SHEPHERD: And your customers who come in, do they have accessibility to a restroom while they are waiting for their car?

MR. MEEK: There is no waiting allowed. It's drop-off only.

MEMBER LOPEZ: Mr. Meek, what kind of vehicles do you work on, domestic, American cars or what?

MR. MEEK: Domestic, Asian, some European. Just small vehicles.

MEMBER LOPEZ: Thank you.

CHAIR GONZALES: Thank you, any other questions? Okay, JJ, go ahead.

MEMBER JJ GONZALES: Mr. Chair, I'd like to ask the Fire Department representative to address a couple of things.

RENEE NIX: Yes, Commissioner.

MEMBER JJ GONZALES: Thank you for coming. I read in the application that they're required to have a certain type of fire extinguishers; is that the acceptable type of fire extinguisher for any vehicle fires or anything if they happen to have a fire in the shop or anything? Have you done the review there and everything complies with your requirements?

MS. NIX: I did make another stop at the site yesterday and yes the fire extinguishers he does have in place for his shop and the office meet the requirement.

MEMBER JJ GONZALES: And what's the nearest fire department to the shop, Shann's business?

MS. NIX: We have two stations right around the corner – I would say about 3/4 of a mile we have our Cedar Grove Fire Station and then our main station is just about four more miles down the road.

MEMBER JJ GONZALES: Is that Santa Fe County volunteers or Santa Fe County paid staff?

MS. NIX: Cedar Grove is a volunteer, but our paid staff is at the 344.

MEMBER JJ GONZALES: How far is that from the shop?

MS. NIX: About four miles.

MEMBER JJ GONZALES: Okay, no further questions, thank you.

MS. NIX: Thank you.

[Frank Katz arrives at this point.]

CHAIR GONZALES: Renee, I have one question. If you had to fight a fire at his residence or his place, you guys would have to use pumpers?

MS. NIX: Yes, we would a pumper tanker shuttle for his residence and his shop.

CHAIR GONZALES: All right. Thank you.

MEMBER SHEPHERD: I also have a question for Renee. Hi Renee.

MS. NIX: Hello, Mr. Shepherd.

MEMBER SHEPHERD: On page NBA-16 in our package it talks about access fire protection and it talks about the existing driveway needs to be improved; I didn't see that in any of the conditions so I don't know where that went.

MS. LUCERO: Mr. Chair, Commission member Shepherd, that is actually what the applicant is proposing to upgrade it to which does meet our requirements so he has been working on

making the improvements. And it does meet our requirements. He is actually building it out more than what the code requires for this type of development.

MEMBER SHEPHERD: At that point in time it does not meet our requirements but the petitioner is saying that it will meet our requirements?

MS. LUCERO: It actually does meet our requirements at this point but he is actually upgrading it even beyond what we would require.

MEMBER SHEPHERD: Thank you. Thank you, Renee.

MS. NIX: Thank you, Mr. Shepherd. Thank you, Mr. Chair.

CHAIR GONZALES: This is a public hearing and I'm going to open it up. Is there anybody out there that would like to speak in favor or against this project? Being that I see nobody out there for this, I'm going to close the public hearing. Does the Commission have any other questions, discussion or motion?

MEMBER SHEPHERD: Mr. Chair.

CHAIR GONZALES: Mr. Shepherd.

MEMBER SHEPHERD: The one thing that I don't see addressed is spillage especially on the outdoor rack. You get a car up there and you start taking the transmission pan off because you're doing a transmission service and the thing starts gushing. I have been there myself. I've actually spilled that transmission fluid all over me while I was trying to get it down. Where is all that spillage going?

MR. MEEK: I have a lot of pans and that sort of thing for automotive fluids. I catch it as good as I can and it goes into the recycling barrels for Crystal Clean to pick up. Anything else that hits the ground I have like a cat litter type of stuff of automotive fluids that is utilized to soak everything up and be disposed of.

MEMBER SHEPHERD: Are any of the hydraulics underground or is all above ground?

MR. MEEK: It's all above ground, a self-contained unit. I bought it three years ago so it's a fairly new model.

MEMBER SHEPHERD: And the pad that it's on, how far does that extend beyond the lift?

MR. MEEK: The pad itself is 24 feet long and I believe 24 wide. And it sits pretty much centered in one of the concrete.

MEMBER SHEPHERD: Thank you.

CHAIR GONZALES: I have one more question too. Is the surface that you're working on, is it concrete?

MR. MEEK: Yes.

CHAIR GONZALES: Thank you. All right, again, does the Commission have any questions, discussion or motion for this project?

MEMBER LOPEZ: Mr. Chair, I'd like to make a motion to approve case CUP 18-5240, conditional use permit application, Cedar Grove Auto Repair and Performance with approval of the Hearing Officer and the staff recommendations.

CHAIR GONZALES: No other conditions? We are okay with existing conditions?

MEMBER LOPEZ: Yes, sir.

CHAIR GONZALES: Do I have a second?

MEMBER RAZNICK: Second.

The motion passed by unanimous [7-0] voice vote.

CHAIR GONZALES: Motion passes. Thank you for coming.

MR. MEEK: Thank you very much.

- B. CASE #MIS 19-5020 Cimarron Village I Convenience Store & Service Station Final Development Plan Amendment. JAKG Petroleum, Applicant, Land Development Planning, Agent, request approval of an amendment of a note placed on the approved Final Development Plan which states, “There will be no liquor sales at this location”. The site is within the Cimarron Village Planned Development District (PD-9) and within the U.S. 285 South Highway Corridor District Overlay. The site takes access from Colinas Drive, via US 84-285 and is located at #6 Colinas Drive within T15N, R10E, Section 9 & 16, SDA-2 (Commission District 5)**

MEMBER RAZNICK: Mr. Chair, I just want to put on the record that approximately 20 years ago I had the opportunity to represent Mr. Miller who is the applicant at Cimarron Subdivision which is located about a mile south of this application. It's where the veterinary clinic, Eldorado Area Water and Sanitation District is located on Alma Drive which is also the entrance to the Ridges Subdivision.

I do not have any relationship with Mr. Miller since then. I have known Mr. Miller and Mr. Martinez for all of those years and I feel that I can act impartially on this matter but I wanted to put it out if anybody in the public or the applicant has any reason to ask me to step aside I would be happy to recuse myself.

CHAIR GONZALES: Okay, thank you very much. Jose, please proceed.

JOSE LARRAÑAGA (Case Manager): Thank you, Mr. Chair. JAKG Petroleum, Applicant, Land Development Planning, agent, request approval of an amendment of a note placed on the approved Final Development Plan which states, “There will be no liquor sales at this location.” The site is within the Cimarron Village Planned Development District and within the U.S. 285 South Highway Corridor District Overlay. The site takes access from Colinas Drive, via US 84-285 and is located at #6 Colinas Drive within Township 15 North, Range 10 East, Section 9 & 16, SDA-2, Commission District 5.

The Applicant requests the removal of a note on the recorded Preliminary and Final Development Plan for Cimarron Village I. The note states, “There will be no liquor sales at this location.” The Applicant states that the parcel falls within a Planned Development District with a current recorded Master Plan that allows liquor sales, consistent with Ordinance No. 2016-9, the Sustainable Land Development Code, which allows liquor sales in a Planned Development District.

On June 26, 1995, a Master Plan was recorded for Cimarron Village which allowed restaurants and bars. On March 6, 1996, an Amended Master Plan was recorded for Cimarron Village which prohibited restaurants and bars and the sale of liquor. On July 24, 2001, Joe Miller recorded a revocation statement and re-recorded the 1996, Amended Master Plan stating that the Amended Master Plan was revoked. The revocation re-instated the 1995, Master Plan. On May 28, 1998, the County Development Review Committee approved CDRC Case # DP 98-5140, Preliminary and Final Development Plan for the Cimarron Village I Convenience Store and Gas Station.

In the minutes of the May 28, 1998, hearing, duly sworn Kathy Pilnock asked the CDRC to prohibit fast food, liquor and maintain hours from 6 a.m. to 11 p.m. Mr. Joe Miller stated, “they have reworded the Master Plan to prohibit any liquor sales on the property”. CDRC Member Louie Gonzales commented, “that with the Applicant’s prohibition against the sale of liquor on the property, he was willing to allow the Applicant to sell gas at all hours.” This was the only discussion during the Hearing on the sale of liquor at this site.

On June 10, 2008, an Amended Master Plan was recorded which allows liquor sales and restaurants with beer, wine and liquor. The 2008 Amended Master Plan is the current Master Plan for Cimarron Village.

The approval of the Preliminary and Final Development Plan for the convenience store and gas station, by the CDRC, did not include a condition not to allow liquor sales; however a note was placed on the approved/recorded Preliminary and Final Development Plan which prohibits alcohol sales on this site, in accordance with the statement from the CDRC member.

The current Amended Master Plan for the Cimarron Village Subdivision lists liquor sales as an approved use. The Cimarron Village Planned Development District is allowed the uses that are listed in the approved Amended Master Plan as a permitted use.

Ordinance No. 2016-9, the Sustainable Land Development Code, states existing approvals identified as PDs, Section 8.10.10.1 states, "in order to recognize existing approvals, that do not fit into a base zoning district, the developments that have received master plan approval prior to the effective date of this SLDC are identified on the zoning map."

SLDC, Section 8.10.10.2 states, "the approved developments shall be developed in accordance with, and governed by and restricted to the densities, uses and conditions identified on the approved master plan, plat or development plan."

Building and Development Services staff has reviewed this request for compliance with pertinent Code requirements and finds the following facts to support this request: the prohibition of liquor sales on this site was not a condition of approval by the CDRC; the Amended Master Plan allows for liquor sales on this site; the Cimarron Village Planned Development District is allowed the uses listed in the approved Amended Master Plan as a permitted use.

Staff Recommendation: Approval of the Applicant's request to remove the note on the recorded Preliminary and Final Development Plan which states, "There will be no liquor sales at this location." subject to the following condition:

1. The Applicant shall re-record the Final Development Plan which permits the sale of liquor on this site as per the 2008 Amended Master Plan for Cimarron Village.

This report and the exhibits listed below are hereby submitted as part of the hearing record. Mr. Chairman, I stand for any questions.

CHAIR GONZALES: Thank you, Jose. Does the Commission have any questions of staff?

MEMBER RAZNICK: I have a question.

CHAIR GONZALES: Fred, please.

MEMBER RAZNICK: If the prohibition on liquor had been put in as a condition, would it alter the recommendation that staff is making?

MR. LARRAÑAGA: Mr. Chair, Commissioner, if it would have been put in as a condition it would have had to go through a separate process since it is a PD, a planned development district, and it may have had to have gone through a conceptual plan to add that condition onto it. So, yeah, it would have had a different process to get that condition – or that use into the PD.

MEMBER RAZNICK: And how would have that process had been different?

MR. LARRAÑAGA: They would have had to have gone through a conceptual plan to amend the plan development to allow that use.

MEMBER RAZNICK: If it was discussed back in the CDRC hearing is it just an error at that hearing that it was not made a condition since it was discussed by Ms. Pilnock and Mr. Gonzales and acknowledged by Mr. Miller that would be no liquor sales?

MR. LARRAÑAGA: I can't speak that it was error. Just going straight off the minutes of what was discussed that was the only discussion on the entire hearing.

MEMBER RAZNICK: Their notice has been put on 285 for how long now of this hearing?

MR. LARRAÑAGA: It went up 15 days prior to this hearing.

MEMBER RAZNICK: To your knowledge has the County received any inquiries from the public concerning this application?

MR. LARRAÑAGA: I received one phone call from the vice president of Dos Griegos Homeowners Association –

MEMBER RAZNICK: From what?

MR. LARRAÑAGA: The Dos Griegos Homeowners Association and once I explained what the applicant was requesting he said they shouldn't have a problem with it and there were no other letters no other phone calls.

MEMBER RAZNICK: Do you recall that gentleman's name?

MR. LARRAÑAGA: I do not.

MEMBER RAZNICK: So that was the only inquiry from the public from president of the Dos Griegos HOA?

MR. LARRAÑAGA: The vice president, yes, that's the only inquiry that came to my office.

MEMBER RAZNICK: And this application affects the area that is the gas station right now; correct?

MR. LARRANGA: That's correct.

MEMBER RAZNICK: Okay, thank you, Mr. Chair.

CHAIR GONZALES: Thank you. Any other questions of staff? Okay, is the applicant here to make a presentation?

SUSAN ODOM: Mr. Chair, Commissioners, my name is Suzanne Odom. I am the attorney for the applicant, JAKG Petroleum. I'd like to make one little point of clarification, JAKG Petroleum leases the land from Joe Miller and is the applicant here and they operate the station. Danny Martinez is also here in case you have any questions of the owner and owner's consent for this application.

I think that staff has done a very good job of briefing this issue but on the issue of community response to this, I actually reached out directly to the main Eldorado Community Association and I'm drawing a blank –

MEMBER RAZNICK: Eldorado Community Improvement Association?

MS. ODOM: Yes. I reached out directly. I spoke with their general manager and asked to please be alerted if there were any concerns with this application and volunteered that we would meet with anybody who had any concerns to discuss them with them. And, I also reached out to Kathryn Toll who is the head of the US 285 Corridor Coalition. Incidentally, that's the association that spoke out against it originally. And I have not received any word back despite a phone call and an email to please contact me if there was any concern.

But with those brief comments I would like to introduce my clients, the managing partners of JAKG, Jay Amon and Kevin Grady, and we collectively stand for questions.

CHAIR GONZALES: Does the Commission have any questions of the applicant?

MEMBER RAZNICK: So if I understand you correctly, you contacted the general manager for the Eldorado Community Improvement Association, you received no communication from what is commonly called the ECIA nor any communication from any board of director from the ECIA?

MS. ODOM: That is correct. And when I spoke with the general manager, I want to say her name is Julie, she did mention that several staff members actually were there when they got the notice of this hearing and actually expressed support for the change.

MEMBER RAZNICK: Could you say that again please, a little louder?

MS. ODOM: The general manager mentioned that there was staff members present when this application came in and they opened the mail on it and people actually expressed support for the change.

MEMBER RAZNICK: Thank you.

CHAIR GONZALES: Any other questions for the applicant?

MEMBER JJ GONZALES: Mr. Chair.

CHAIR GONZALES: JJ.

MEMBER JJ GONZALES: I've got a couple of questions. How many gas stations does JAKG operate in the area?

MS. ODOM: I'm going to turn that question over to Kevin Gandy. He is the operations side.

[Duly sworn Kevin Gandy testified as follows]

KEVIN GANDY: Kevin Gandy, 1708 Winding Hollow in McKinney, Texas.

Yes, sir, we have three stores that we operate in the Santa Fe/Albuquerque area.

MEMBER JJ GONZALES: Where are those stores located; is that Phillips 66 or what's your brand?

MR. GANDY: Phillips 66 Fuel. We have one in Pecos. We have one in Los Lunas and we have the one in Eldorado.

MEMBER JJ GONZALES: And how many of those locations sell liquor?

MR. GANDY: One, the Pecos location.

MEMBER JJ GONZALES: What is as far as margins go, what is the breakdown between a station that sells liquor and a station that sells gasoline and your mini-mart or whatever you have on 285?

MR. GANDY: Well, the norm for a convenience store is, at least in New Mexico, alcohol will actually be about 28 to 30 percent of your sales. And so in a non-store, it's nothing. So it is a significant sales increase for those that do have their license.

MEMBER JJ GONZALES: And another question. Right now you operate the Eldorado store 24 hours a day?

MR. GANDY: No.

MEMBER JJ GONZALES: How many hours a day?

MR. GANDY: It's 5 a.m. to 10 p.m. seven days a week.

MEMBER JJ GONZALES: And if you're allowed to sell liquor there would you increase the hours or would it be about the same?

MR. GANDY: No, it would be the same hours.

MEMBER JJ GONZALES: I'm kind of concerned about all the high profile cases with drunk drivers in the Eldorado area. I don't know if you're familiar, if you're from this local area or where you're based at, but they had some horrific DWI cases there and I'm very concerned about having more liquor sales on those stations that maybe just deal with transient drivers going through, they need a six-pack they get to Pecos or Las Vegas. I am very concerned about that.

MR. GANDY: Well, we are too. Myself, as a partner in JAKG, I'm the operating partner and I have actually operated over 3,400 stores around the country and have had over 3,000 alcohol licenses in my name. So I'm very diligent about – because my name is on all of those. So we

actually do internal stings or internal checks ourselves. So between ourselves and the local authorities that do their own checks, at least once a month our stores are actually checked which is the best way to keep everything in line. We have policies and procedures for employees. Every new hire has to go through certain training before they even get to start on a clock behind a register. So we take it all very seriously.

MEMBER JJ GONZALES: I have another question. In the stores that you operate, how many times have you cited for selling alcohol to minors or over the limit customers?

MR. GANDY: I've never had one over the limit and I've had around 10 in my 35 years of selling to a minor.

MEMBER JJ GONZALES: So you think you're prepared to have another layer of regulations on your station because you're selling liquor? Is that something you're comfortable with in this area?

MR. GANDY: Yes we are. You know, we sell liquor, it's a big portion of our sales. It's actually about 45 percent of our sales at the Pecos store which is the next county and I'm not familiar with the county's name. At the Pecos store, it's the only one that sells alcohol in the entire county. And so we sell a lot there. We've had no problem and will not have any problem because we're very diligent about it.

We also used to have an operation in Española that sold alcohol before it closed down and went out of business and we had no incidents there either.

MEMBER JJ GONZALES: Well, the Pecos area, the demographics there is different. It's a village. Eldorado, you know, people just don't stop by there. There's a grocery store there that sells liquor, restaurant that sells beer and wine. And the people that would come to your store would be the ones that want to fuel their cars and then move either to 285 or east to Las Vegas.

MR. GANDY: Correct.

MEMBER JJ GONZALES: And I'm just concerned about more liquor sales in that area.

MR. GANDY: Well, I will say one thing on the Pecos store, it is a small village, a small town, but actually the majority of our sales are from the visitors that come up there that doing the fishing and the hunting and things and the camping and hiking. We've noticed that and we've had that store for almost two years. In fact, we realized the majority of our sales are to all the visitors in the area. Right now we're actually down in sales because there is – they've had a drought so it has restricted the visitors. So that impacts our business a lot. But that store also sells fuel. All of my locations around the country sell fuel and we are, again, we are extremely diligent about all of that. And we have never had an incident in my 35 years in over 3,400 stores of selling to anybody who is already inebriated and shouldn't be buying.

MEMBER JJ GONZALES: Thank you. Thank you, Mr. Chair.

MR. GANDY: You're welcome.

CHAIR GONZALES: Thank you, JJ. Does the Commission have any other questions of the applicant?

MEMBER RAZNICK: Yes, I do.

CHAIR GONZALES: Fred, go ahead.

MEMBER RAZNICK: Are you aware of the number of fatal traffic incidents at the intersection of Avenida Eldorado and Highway 285?

MR. GANDY: No, sir.

MEMBER RAZNICK: There have been several over the years especially due to people not slowing down as they are heading south on 285.

I just want to volunteer that for the last five, six, seven years I maintain – partake in the Adopt a Road program within Eldorado. Over the years and it is increasing, the biggest things that we pick up adjacent to the road are small shot bottles. It used to be trash from fast food outlets but now it is the small shot bottles. Whether they are residents or because you do have close to 2,700 homes physically in Eldorado, service industry people coming in and out of Eldorado and my concern is right now the only place in the immediate area that you can buy the smaller bottles would be at the Agora grocery store. This would give another outlet for people to purchase that type of alcohol and in my observations and I may be wrong, I guess you could go through your records, but I think because of the cost of the fuel that the station charges, that the majority of Eldorado residents prefer to go to town. My gut is that the majority of your gasoline traffic is transient traffic and I am really concerned because I know the community is trying to work with the Highway Department to alter the speed limit or put additional signage up onto 285. Just recently the past and I think she was the chairperson of the Democratic Party for Santa Fe County was making a right-hand turn coming out of Avenida Vista Grande and was killed by a truck that did not slow down for a red light and I see that over and over again. I've had a very dear friend of mine make a left-hand turn coming out of Avenida Vista Grande onto 285 and got broadsided by a car. Now I can't tell you that in either of those incidences that alcohol was involved but I do have a genuine concern about that specific location opening up another venue for people to stop in and down a shot or two and go on their way and not be observant of what's going on in traffic. 285 is a very heavily trafficked area, and, in fact, I've even seen not too long ago the WIPP trucks starting to come down to 285.

MR. GANDY: Well, a couple of things if I may. Number one, there is no consumption on premise and we're very very strict about that.

MEMBER RAZNICK: I'm not talking about consumption on premises. But people come in get gas, buy a small bottle, get in their car, down it and then they're going to come across 285 to make a service call to residents within Eldorado or Dos Griegos or Belicia, you name it. That is my concern or turning either way to the highway.

MR. GANDY: And as far as our mix within our store, what we have realized now – we have been there since 2012 and we look at our mix constantly because it helps us with marketing the store with the right products to have in there and things and actually, a little less than 60 percent of our trade is actually our business is workers, landscapers, but they're workers. They come in in the morning and lunch are actually the biggest times. Our slowest time of the day is after 2 o'clock in the afternoon.

CHAIR GONZALES: Any other questions of the applicant? Are you going to be selling minatures and half-pints and pints?

MR. GANDY: Yes, that would be behind the counter non-self serve.

CHAIR GONZALES: Any other questions? This is a public hearing, anybody out there that wants to speak in favor or against this project? I don't see anybody. Okay, I'm going to close the public hearing

Does the Commission have any questions, discussion or motions? Anybody? Any other questions?

MEMBER RAZNICK: I have a question of staff?

CHAIR GONZALES: Okay.

MEMBER RAZNICK: What happens if there is no motion?

ERIC AMES (Assistant County Attorney): If there is no motion, sir?

MEMBER RAZNICK: Nobody is stepping forward to a motion to approve or deny; what happens if that continues?

MEMBER KATZ: I'll make that question moot by making a motion.

CHAIR GONZALES: Thank you, Frank.

MEMBER KATZ: I would move in case number Miscellaneous 19-5020 Cimarron Village Convenience Store, I would move to follow the recommendation of staff and approve the application as submitted with the conditions as listed.

CHAIR GONZALES: Do I have a second?

MEMBER LOPEZ: I'll second.

The motion passed by majority [4-3] roll call vote with Commissioners Raznick, Shepherd and JJ Gonzales voting against.

C. Ordinance No. 2019-__, an Ordinance Amending the Sustainable Land Development Code, Ordinance No. 2016-9, to Restate Chapter 11 (Developments Of Countywide Impact), Adopt Regulations for Mineral Resource Extraction and Processing, and Add Definitions to Appendix A

JACOB STOCK (Community Planner): Thank you, Mr. Chair, Commission members. My name is Jacob Stock, I'm with the Planning Division, and I've been working on this project along with other County staff. I'll be presenting on the proposed amendments to Chapter 11 of the SLDC concerning developments of countywide impact, or DCIs as we call the. This will be a general overview of the ordinance that we're proposing. After that, I'll request –

CHAIR GONZALES: Mr. Shepherd.

MR. SHEPHERD: Is your presentation the exact one that's in our packets?

CHAIR GONZALES: Mr. Stock, hold on. I've got one question, first of all, before we start, for the County Attorney. I was kind of concerned because on the ordinance it says changing the sand and gravel operation, or modifications to it, but we're also changing, we're modifying the DCIs. Being that that wasn't mentioned, is this legal to continue?

MR. AMES: Mr. Chair, what are you referring to specifically?

CHAIR GONZALES: The actual advertising.

MR. AMES: The public notice?

CHAIR GONZALES: Yes. The public notice. And it says developments of countywide impact of the Sustainable Land Development Code to adopt regulations for mineral resource extraction and processing and add definitions to Appendix A. And it doesn't mention anything about modifying DCIs. I just want to make sure that we're legal.

PENNY ELLIS GREEN (Growth Management Director): Mr. Chair, Commission members, the ordinance restates Chapter 11, the DCIs. So it is restating. We have existing regulations for the DCIs. The noticing that we did was pretty specific to how we were changing that section. So I'm just acting the actual text of what was noticed. So it does go through all of what we're changing in all of Chapter 11, including clarifying the application procedures for a DCI overlay zoning district and DCI conditional use permit, including review criteria, establish requirements for financial guarantees, clarifying requirements for SRAs, add requirements for plans and reports. And then it also goes on to specifically the mineral resource extraction and processing, which is the hard rock mining section.

CHAIR GONZALES: Okay. So we're safe then.

MS. ELLIS-GREEN: The legal noticing was reviewed by Legal and I think it's pretty comprehensive that it covers this. But in order for the code not to look kind of like the redline version is here, we're restating the whole of Chapter 11. And that means you can pull the old Chapter 11 and insert the new one.

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CHAIR GONZALES: Okay. Thank you very much. Okay. Mr. Stock, please proceed.

I'm sorry.

MR. STOCK: Thank you, Mr. Chair. So the presentation that I'm about to give, as I said before, it's going to be a general overview of the proposed amendments to Chapter 11 of the SLDC. The presentation is in your packet. It's also projected behind you. So after my presentation I'll request that the Planning Commission open a public hearing on the proposed amendments, and after that, I'll ask that the Planning Commission make a recommendation to the Board regarding the Ordinance to amend Chapter 11.

In this presentation, I'll start with the definition of developments of countywide impact or DCIs, the rationale for these amendments, the process of developing the proposed amendments, an overview of the amendments, and a proposed schedule, before standing for questions from the Planning Commission.

The SLDC defines developments of countywide impact as developments which place major demands on public facilities and budget, affect the environment, health safety and welfare beyond immediately neighboring properties, and create serious adverse noise, light, odor, vibration and traffic impacts on the county.

CHAIR GONZALES: Excuse me again. Do we need to go down there and sit?

MEMBER KATZ: Ours is on. I hadn't realized –

MR. STOCK: Yes. The slides are printed in your packet so you can follow along there as well. It is after Exhibit D.

CHAIR GONZALES: So the presentation up here is the same thing?

MR. STOCK: It's the same presentation. Yes, Mr. Chair.

CHAIR GONZALES: Okay. Thank you.

MR. STOCK: So DCIs currently identified in the SLDC include landfills, junkyards, and large-scale sand and gravel extraction and processing; oil and gas production is regulated under a separate ordinance; concentrated animal feeding operations or feedlots are reserved, and regulations for mining and resource extraction are addressed in the proposed amendments that I'll be detailing later on.

The Sustainable Growth Management Plan or SGMP calls for DCI regulations that protect scenic vistas and natural landscapes; environment, flora habitats, wildlife corridors and habitats; environmentally sensitive areas; wetlands, rivers and streams, and flood hazard areas; archaeological, historical, and cultural resources; and the health, safety and welfare of county residents.

The SGMP also identifies developments that may be regulated as DCIs. These are largely the same as the developments listed in the SLDC with the addition of wind farms and major reshaping of land surfaces.

Section 2.2.6.2 of the SGMP sets out the rationale for these proposed amendments. It states, "The County's regulations and standards for hard rock mining will be updated and incorporated into the SLDC as Developments of Countywide Impact." This, put simply, is what we are proposing to do with this ordinance.

The SLDC was adopted in December 2016 with Chapter 11 regulating DCIs. We were not able to complete the mining regulations at that time. Section 11.13 reserves regulations for mining and resource extraction, while regulations from 1996 remain in place. The proposed amendments introduce new mining regulations consistent with the SLDC, and in accordance with the SGMP.

Our goal in developing these proposed amendments to Chapter 11 was to create a complete and reasonable regulatory process that prevents negative environmental and social impacts; avoids long term treatment requirements; requires the operator to bear all present and future costs associated with the DCI; and establishes regulations for mineral resource extraction and processing.

The resulting amendments clarify and establish requirements applicable to all DCIs; address errors and clarify language in the chapter; clarify procedures for DCI Overlay Zoning Districts and Conditional Use Permits, which I'll go over later in the presentation; and of course establish regulations for mineral resource extraction and processing.

Staff carried out an extensive process to develop these proposed amendments. We held multiple meetings with stakeholders in the community, and received public comments during the public comment and four public meetings during that period. All public comments were recorded on a spreadsheet that's included in your packet. That's Exhibit C, I believe. In each row of that spreadsheet it includes a comment from the public, staff's analysis of the comment, and any action taken on the comment in preparing the draft of the proposed amendments that we're presenting today.

Some comments, including requests for transmission line regulations and reclamation standards independent of a new DCI, were determined to be beyond the scope of this process. Others, including increased protections for wildlife and additional performance standards for mines, were addressed in this draft.

We also reviewed mining regulations and standards from other counties and from around the world. We worked with a national expert in mine regulation, and consulted with state agencies in New Mexico charged with mine regulation at the state level.

Now, I'm going to go into a little more detail about the contents of our DCI regulations and the proposed amendments. I'll keep it pretty general. First, is the procedure: An applicant to operate a DCI in the county is required to obtain a DCI Overlay Zoning District, and all applicable federal and state permits before applying for a DCI Conditional Use Permit, which would allow someone to operate a DCI in the county. Both the overlay and the permit process have separate application requirements, which I'll go over later, and require hearings before the Hearing Officer, Planning Commission, and the Board of County Commissioners.

So, getting into the contents of the amendments. All changes are in the redlined document included in your packet. These are redlines that were created off of the version of Chapter 11 that's currently in the SLDC. Section 11.5 sets out general regulations applying to all DCIs. We identified existing regulations in Chapter 11 that should be applicable to all DCIs and brought them into this section. For example, we felt that language on existing uses should apply to all DCIs, not just particular DCIs. We also clarified some confusing language that was in the chapter. The most significant addition to this section is the section on financial guarantees. These generally ensure that the county is able to recover the cost of reviewing the application and monitoring and enforcing compliance; to recover costs to public facilities and services, and to secure an adequate financial guarantee to reclaim the site and remediate any potential damages caused by the DCI.

Section 11.6 sets out the requirements for a DCI Overlay Zoning District application and review. Much of this section was unchanged from the existing Chapter 11. The proposed amendments add to required studies, reports and assessments include requirements that the applicant demonstrate that they will not impede the water rights of others and that the cost of environmental impacts are calculated as fiscal impacts and that they have previously – the operator has previously complied with laws and regulations in other municipalities.

Section 11.7 sets the requirements for a conditional use permit. Each class of DCI has its own supplemental requirements for a conditional use permit in addition to Section 11.7, but the requirements in this section apply to all DCIs. So the supplement requirements would be in addition to this. The proposed additions to this section include requirements for proof of technical and financial feasibility to the project, a report on previous business practices, a plan for handling hazardous materials, and a plan for reducing and offsetting emissions associated with the DCI.

Performance standards are proposed as a new section in Chapter 11, setting standards for DCIs during operation once they're permitted. Some important elements of the section include: standards for the protection of water quality and quantity, the financial feasibility of the operation, and continued demonstration of compliance with air quality standards.

Getting into Section 11.14, these are supplemental requirements in addition to sections 11.1 through 11.7, applying to mineral resource extraction and processing. The design criteria are really the foundation of the mining section, These are standards applying to all mining applications, operation and closure of a mine. They are meant start as basic criteria for evaluating a mine application. This sections states that there will be no degradation of water resources, no perpetual treatment of water and other resources, and that the mine will be designed to withstand a 1,000-year flooding event.

The supplemental requirements for a mining conditional use permit are in addition again to the general requirements for all DCIs in section 11.7. Generally, the proposed amendments create a process which focuses on collecting baseline environmental conditions, modeling the potential effects of a mine on those conditions, proving a mine proposal meets the County's design criteria and standards, and providing additional financial guarantees required for a mining operation.

The application requirements are designed to follow this process that I explained in the previous slide. The require baseline data collection, project description, environmental studies, and operating, closure and reclamation plans.

The section also includes performance standards, These are standards designed to ensure compliance during mine operation and to act as contingency measures against any possible noncompliance.

So, this concludes my summary of the proposed amendments to Chapter 11. Before I stand for questions from the Planning Commission and from the public I'll briefly review our proposed schedule. Last week the Board directed staff to publish title and general summary of an ordinance to amend Chapter 11. Today, we will hold a public hearing and ask that the Planning Commission make a recommendation to the Board regarding the Ordinance. We anticipate a second public hearing before the Board on April 9th as well, and this is where the Board may consider taking action on the Ordinance.

This concludes my presentation and I'll stand for questions.

CHAIR GONZALES: Okay. Thank you very much. Does the Commission have any questions?

MR. SHEPHERD: Mr. Chair.

CHAIR GONZALES: Mr. Shepherd.

MR. SHEPHERD: As you know, I live in Madrid, coal mining town. We've got lots of piles of mining waste. Is that when somebody wants to take that mining waste away, is that considered sand and gravel, or is that considered mineral resource extraction and processing?

MR. STOCK: Mr. Shepherd, it's my understanding that that would be considered a sand and gravel operation.

MR. SHEPHERD: Because when I look at the definition of mineral resource extraction and processing on the definitions that I think were approved, the process of obtaining a mineral from earth's crust or from previously disposed or abandoned mining waste, is what it says. Including open cut mining surface operations. But the fact that it says from previously disposed or abandoned mining waste suggests that mineral resource extraction and processing includes what we call tippie piles.

MR. STOCK: So Mr. Shepherd, if you look to the definition of a mineral, it states that this does not include sand and gravel mining defined herein. So in that case if the gob piles as we call them are going to be used as aggregate then that would be, my understanding is it would defined as sand and gravel.

MEMBER SHEPHERD: Then I don't understand what this definition means, because that sounded pretty clear to me, when it says from previously disposed or abandoned mining waste. I can't think of a phrase that describes a tipple pile any clearer than that. And that's in definition C. mineral resource extraction and processing. I just need some clarification because I'm really confused as to how that is sand and gravel.

MR. AMES: It's my understanding the Land Use Department permits the definition [inaudible] than you're reading them here. The Land Use Department has made a determination it's my understanding, that those gob piles and their reclamation fall under the sand and gravel requirements, not under the proposed mining ordinance.

MEMBER SHEPHERD: Well, then perhaps that section should be deleted from this definition. If it doesn't apply it shouldn't be in the definition.

MS. ELLIS-GREEN: Mr. Chair, Commission members, the definitions are added specifically for the hard rock mining section, so they're not intended in any way to change the sand and gravel section and that's why mineral is defined and states but it does not include sand and gravel mining. So there's not an intention to change that. We will certainly look at the mineral resource extraction and processing definition to see if that does need to change.

MEMBER SHEPHERD: I'm sorry. This really is confusing. Because it says the process of obtaining a mineral from the earth's crust, which I imagine includes in Madrid's case coal, or from previously disposed or abandoned mining waste – which would come from coal. So is there something in the sand and gravel mining definition that specifically says mining waste?

MR. AMES: Commissioner Shepherd, I don't believe so, but as I said earlier, it's the Land Use Department's interpretation of the existing regulation that those gob piles are subject to the sand and gravel requirements. If the applicant or if the person who owns those gob piles wants to argue that they should be subject to the mineral resource extraction and processing requirements they certainly can do so but I believe that those requirements would be considerably more stringent than the sand and gravel.

MEMBER SHEPHERD: Thank you.

CHAIR GONZALES: Thank you, Mr. Chair. Any other questions? Susan.

MEMBER MARTIN: This is just a point of clarification on an acronym I don't know. Under 11.6.2.4, whether adequate public facilities identified in the APFSA either exist or have been funded. Can you tell me that acronym? What that stands for? Under review criteria?

MR. STOCK: Yes, I see it. Commission member Martin, the acronym there stands for adequate public facilities assessment.

MEMBER MARTIN: And that's someplace else in the document? I know it's not in one of these proposed new definitions but it is elsewhere?

MR. STOCK: It's my understanding that that would be under Chapter 6, Studies, Reports and Assessments.

MEMBER RAZNICK: Mr. Chair, I have a question.

CHAIR GONZALES: Fred.

MEMBER RAZNICK: Coming back to Mr. Shepherd's comments, why can it not be clarified so as to avoid any ambiguity which could cause additional hearings and issues to be raised, so that there is no confusion?

ERIC AMES: Commissioner, let me answer it this way. The answer to your question depends on the facts about the piles at issue. That is a matter for the application of the regulations, which the Land Use Department would do upon the receipt of a proper application. They would look at the application. Look at the facts regarding the piles or whatever the materials are that are to be processed,

and make a determination which set of regulations apply. In the abstract it is difficult for us sitting here today to change or to modify a definition to deal with a set of fact that we don't currently have before us. So I think what your question really draws on, or really highlights is the distinction between the process of writing general regulations and the process of applying those regulations.

At this point in time we are trying to write regulations to address a broad range of circumstances the details of which we cannot entirely foresee. When a case comes to the Land Use Department with specific facts that the Land Use Department can evaluate then they can determine which set of regulations should apply.

MEMBER SHEPHERD: Mr. Chair, and if an applicant disagrees then they can appeal that decision.

MR. AMES: Absolutely. And your point Commissioner, about there being more appeals, potentially, is always an issue to be considered, but that's how the process works. We start with rules of general applicability, which these regulations are, and then applicants apply and if they're dissatisfied or if the public is dissatisfied with the decision rendered by the Land Use Department then that matter will be brought to the Planning Commission then to the Board of County Commissioners if necessary to clarify whether the Land Use Department – or to confirm or deny whether the Land Use Department correctly applied the rules of general applicability.

MEMBER SHEPHERD: Thank you.

CHAIR GONZALES: Mr. Katz.

MEMBER KATZ: I'm really fuzzy on all of this being so inexpert on it but it does sound to me as though mining waste is sometimes to be treated as sand and gravel and sometimes not, and what the question that occurs to me is, well, on what basis? Are there some guidelines? Is there some rules? Is there some policy decision being made that, yes, we'll treat it as sand and gravel in these kinds of situations and we'll treat it as something else that might be more scary in another situation. And I guess it occurs to me that maybe should be spelled out someplace a little bit if it's possible.

MR. AMES: Commissioner Katz, it's an interesting concept you raise. I'm not sure that at this point in time we are in a place where we can define which types of mining waste should be regulated under which set of regulations. As I said earlier, it really is a matter of evaluating the facts regarding a particular application and then we can make the decision.

MEMBER KATZ: Is it so unclear as to – what kind of facts – someone's there who's going to look at an application and say, under this circumstance, yes and under these circumstances no. Why is that so hard to talk about?

MS. ELLIS-GREEN: Mr. Chair, Commission members, for example, the piles that are in Madrid, the question would be What are you going to use them for? Are you going to use them for sand and gravel to put on a road? Then that's probably sand and gravel. Are they coal and only coal that are going to be used for a mineral, then that falls under hard rock mining. Or are they the dirt and stone and rock that come out before you get to the coal that is going to be used for sand and gravel? So on any given situation those are the questions that we would need to ask to know which one you fall into.

MEMBER KATZ: That certainly makes it clearer for me. Thank you.

CHAIR GONZALES: So I believe what you're saying about the coal, those would be called tailings, right? The overburden that you're talking about – they're called tailings from hard rock mining? They are. Okay. All right. Thank you. Okay, anybody else have any questions?

MEMBER JJ GONZALES: Mr. Chair.

CHAIR GONZALES: JJ .

MEMBER JJ GONZALES: I've got a couple of questions of Mr. Stock. You mentioned you met with stakeholders. Now, were those people from the mining industry or were they – what do you consider a stakeholder to be?

MR. STOCK: Commission member Gonzales, there were members representing the mining industry, representing sand and gravel extraction, representing environmental groups and community groups in Santa Fe County that participated in the stakeholder process at various times in the process.

MEMBER JJ GONZALES: Okay. The other thing I have is as far as the public review. Members of the public, you had four hearings or four meetings?

MR. STOCK: Yes, sir.

MEMBER JJ GONZALES: And at the meetings, how well attended were they?

MR. STOCK: Commission member Gonzales, I don't know the exact number off the top of my head. I can tell you that we had approximately 65 comments that were recorded from the public during the public comment period and I believe our attendance was in the range of 30 to 40 people throughout the four meetings, but we also got comments from people over the phone and by email, and people who came into our office as well.

MR. AMES: [inaudible] to the County's exhibits is a spreadsheet that shows all the comments that the County received. In addition I'd like to point out that in addition to the folks that Jacob mentioned that we met with we also met with representatives of the State Minerals and Natural Resources Department and Environment Department and actually had meetings with them. We consulted with them to ensure that we had addressed issues correctly and consistently with State law and regulation.

MEMBER JJ GONZALES: Yes, I did see that and those are the questions I had. I wanted to see internal review that you did in-house and some of the people on staff. The other ones were the outside experts. I wanted to know who were the outside experts that you consulted with.

MR. STOCK: Commission member Gonzales, we contracted with Spectrum Engineering out of I believe Bozeman, Montana – an engineering firm in Montana that specializes in mine engineering and mine regulations and they've assisted states and counties to a similar capacity. So we worked with them as a technical expert as well as consulting with representatives from the State as Eric noted.

MEMBER JJ GONZALES: And how long were they on your payroll, or how long did they contract with you to do your reviews?

MR. STOCK: It's been about a year that we've been contracting with them.

MEMBER JJ GONZALES: Okay, well good. The other question I have is had a question about the cost associated with an application for mining or whatever it is, and it seems that the cost – it seems to me that they're very prohibitive as far as allowing anybody to have an application that they can maybe see something that's feasible. I see some of the costs here like they might have to build whatever facilities are necessary to conduct their business. They don't even have an application to start extracting any minerals but yet you're required to maybe improve roads, built bridges. It seems that this is very prohibitive as far as encouraging anybody to do any extracting in Santa Fe County. I mean I sat on when they did the oil and gas and that was so prohibitive to the industry that I think they just decided not to do anything in Santa Fe County. And it seems that this is very similar to that ordinance for the oil and gas. Do you have any comments on that? That's on page 4.

MR. STOCK: Yes. So Commission member Gonzales, just a point of clarification, an applicant wouldn't be required to construct roads or bridges or any public facilities for the County before being issued a permit. Those would be conditions of the permit. As far as the cost of reviewing a

permit and producing an application, staff has determined that the costs associated with not properly vetting applications is worth the effort.

MEMBER JJ GONZALES: Thank you very much.

CHAIR GONZALES: Thank you, JJ. Mr. Katz.

MEMBER KATZ: I have to admit that I had very much the exact same reaction that JJ described as I was reading through this for the first time and I said, Boy, there are a lot of regulations. Boy, there are a lot of hoops that we are asking the applicants to jump through. There are a lot of things that they have to provide, a lot of information. It will probably cost them a pretty penny. And then as I thought about it I said, well, it seems to me that what the County is asking for are exactly the kinds of information that I would want my County government to find the answers to before we allow someone to start on one of these projects and then leave the rest of us here holding the bag on cleaning it up or dealing with some of the ramifications while the project is going on. So I can understand that it does seem a little bit formidable but then thinking about the kinds of spills and whatever that we've seen so publicized recently, yes, I guess I really want the County to do that and to find out the answers to these questions. So I appreciate the work the County has done in drafting this.

CHAIR GONZALES: Susan, did you have something?

MEMBER MARTIN: I have a question for you. I think in your presentation you said you had consulted with a mining law expert. Is that correct? Did you say that?

MR. STOCK: Commission member Martin, I believe I stated that we consulted with mining experts, and so that's in reference to Spectrum Engineering.

MEMBER MARTIN: And that was the firm? Okay. Thank you.

CHAIR GONZALES: Okay, I also want to say something about the rules and stuff. I kind of agree with Frank and JJ a little bit. One thing I am concerned about is that in Santa Fe County a lot of people use basecourse. Santa Fe County, City of Santa Fe puts it as conditions of approval to build roads and stuff. I am kind of concerned that some of these tougher regulations are going to spike up the price of basecourse for everybody in Santa Fe. So with that said, does anybody else have any questions up here in the Commission?

MR. AMES: Could we address your point?

CHAIR GONZALES: Yes. Go ahead.

MS. ELLIS-GREEN: Mr. Chair, Planning Commission member, basecourse, sand and gravel is already designated as a DCI. There are already standards in the code. So what has happened here is we will be restating Chapter 11 and some of the actions that are in the individual sections for feedlots – not feedlots – landfills, sand and gravel, have been pulled forward to the front because they're relevant to every DCI, but the actual requirements for sand and gravel are already in the Land Development Code. So this is specifically adding conditions and adding regulations for hard rock mining.

CHAIR GONZALES: Okay. Nothing from the sand and gravel?

MS. ELLIS-GREEN: Sand and gravel has been amended as far as sections being pulled around, moved from one place to another, but can you confirm? This is not a wholesale rewrite of the sand and gravel section. That exists today. If you're to submit for sand and gravel it's already a DCI. It was included in our Growth Management Plan as being a DCI. It does follow the same general requirements of creating a DCI overlay and creating a conditional use permit for the DCI the oil and gas ordinance started. So it does follow that same regulation. At the moment we have landfills, sand and gravel –

MR. AMES: I don't recall off the top of my head. We have landfills, sand and gravel, junkyards –

MR. STOCK: Yes. Landfills, sand and gravel and junkyards.

MR. AMES: And oil and gas.

MR. STOCK: And oil and gas, which is in a separate ordinance. Yes.

MS. ELLIS-GREEN: The oil and gas section of Chapter 11 actually refers you to the original oil and gas ordinance. But the other three sections are already written in here. The hard rock mining section right now refers you to 1996-10, which is the old Land Development Code. It's imperative that we update it and put it into this code because it has different procedures, different bodies that are no longer in place under this code. And so when the Commissioners approved, the Board of County Commissioners approved this code they did ask us for the next section that we write, it to be the hard rock mining, so there isn't that issue about which code falls in place if somebody comes in for hard rock mining. And so that's what we're trying to do now, is to actually write that section that was reserved in the 1996 version of this code.

CHAIR GONZALES: So being that the sand and gravel is already a DCI, any changes to the DCI will impact the sand and gravel as well, correct?

MS. ELLIS-GREEN: The overall changes, as far as where findings are and what regulated for all DCIs, they have been moved around. So some have been pulled forward, so we don't need to reiterate for each section that you need this study. There are some – Jacob may be able to point you – or Eric to point you to some of the additions there for every single DCI, but in general, those are the changes that we'd make for all of Chapter 11, but in general, what we're trying to do is to actually write the hard rock mining section.

CHAIR GONZALES: So the intent isn't trying to make them any more strict?

MR. STOCK: The intent for the sand and gravel section, which basecourse would be defined under sand and gravel was not to make them any more restrictive. Most of the changes there, as Penny said, were taking pieces from the sand and gravel section and moving them forward to apply to all DCIs, so they wouldn't have to be restated. So the sand and gravel section was changed, I suppose, in some ways, but not substantively in a way that I believe would cause – it wouldn't cause any changes to the market for sand and gravel products.

CHAIR GONZALES: Okay. Frank has another question.

MEMBER KATZ: I guess my question is there's a procedure that I would have to go through today to do sand and gravel mining or whatever. Is that procedure going to be more difficult? Is it going to cost me more money? Is it going to take me more time if I do it after this is passed?

MR. AMES: Commissioner Katz, I don't believe so. As Penny and Jacob have said, the intent in revising the general DCI requirements was to clean up the organization and clarify language, not to increase the stringency of any of the applicable requirements.

MEMBER KATZ: Thank you.

CHAIR GONZALES: All right. Thank you.

MEMBER SHEPHERD: Mr. Chair.

CHAIR GONZALES: Mr. Shepherd.

MEMBER SHEPHERD: I did want to add a compliment. I read through all 13 pages of the comments matrix and some of them – you always get those. But for the most part they were extremely articulate and I felt that the made the section better by having those public comments. So I appreciate you doing that and I appreciate you listening to the people who were there.

MR. STOCK: Thank you, Commission member.

CHAIR GONZALES: Thank you, Mr. Shepherd. Okay, being that said, I have my comments. I have like 14, 15, comments. And I'm going to read them out and I guess what would happen is the Commissioners, when they get it they would either accept them or not. Correct?

MR. AMES: Could you clarify, Mr. Chair? You're suggesting that you're amend – suggestions for modifications to –

CHAIR GONZALES: I did my review of the ordinance, the proposed ordinance and I have comments myself. And I just want to make sure they're on the record for the Board to look at them as well, to see if they want to add them in or not.

MR. AMES: Yes, Mr. Chair. If you're going to ask the Commission to consider modifications to the Department's proposal I think you would need to do it in the form of a motion, at some point, that you're proposing to make specific changes to the proposal prior to it being approved. So if you want to review them, we might be either able to respond and to clarify, and then perhaps you can craft them into specific edits that can be part of your motion or part of a motion to approve or disapprove.

CHAIR GONZALES: Okay, well, I'm going to go ahead and read them and then we can discuss them if we need to.

MR. STOCK: And Mr. Chair, if you could please provide us with a copy of your comments afterward that would be really beneficial.

CHAIR GONZALES: You bet.

MR. STOCK: Thank you.

CHAIR GONZALES: Okay, first of all I'd like to start off with something as far as – I don't know if you know but I used to regulate, I used to work for Santa Fe County and I used to regulate the sand and gravel operations so I know this stuff pretty good. One of the things that used to come to me all the time is that – and maybe we want to consider putting this up front, in front of the mining ordinances and stuff. Maybe some kind of explanation stating that Santa Fe County does not have jurisdiction on State and federal lands. I used to get calls all the time about mining going on on State and federal lands and I'd have to go out and there and explain to them that we didn't have any jurisdiction and I'm just thinking about putting something up front, say in a note, Santa Fe County does not have jurisdiction on State and federal lands, just so when people are looking at – working with the code they know up front.

MR. STOCK: Mr. Chair, Penny's just informed me that that statement is in Chapter 1 of the SLDC.

CHAIR GONZALES: Okay.

MR. AMES: That's correct.

CHAIR GONZALES: All right. So now let's go to page 4, Section 11.4.3. The section says 11.4.3, sand and gravel extraction and processing except as specified in Section 11.10.2. If you go to 11.10.2, that's regulations for junkyards. Is that a typo or is that something –

MR. STOCK: Yes. Thank you, Mr. Chair. That is a typo.

MR. AMES: Mr. Chair, could you repeat that citation for where you found that?

CHAIR GONZALES: Yes. Section 11.4.3. Okay, let me read it again. Page 4, Section 11.4.3 references Section 11.10.2, which is regulations for junkyards.

MR. STOCK: The citation should be 10.19, which regulates small-scale sand and gravel.

CHAIR GONZALES: Thank you. Okay. Page 5, Section 11.5.6.7, number 5: Financial guarantees shall be revised at least every five years to reflect the revised estimate of the cost of reclamation. I'd like to put in there, Financial guarantees shall be revised at least every three to five years. And the reason is because it would make more sense to give staff more flexibility if they need to get a more current financial guarantee.

Okay, same page, Section 11.5.9, Inspection. After the word "permittee" I'd like to insert where it would read, after permittee insert "have access to the site in order to." So then it would read,

“Representatives of the County may at any time and at the expense of the permittee have access to the site in order to conduct inspections and/or review monitoring data to ensure compliance with the DCI conditional use permit and standards of this chapter.” And so forth. Chapter in the SLDC.

MR. AMES: Mr. Chair.

CHAIR GONZALES: Yes.

MR. AMES: Can I ask you a question about that?

CHAIR GONZALES: Sure.

MR. AMES: I agree that it's important to ensure that we have access and I believe that we do and will as a condition of the permit itself. But I would suggest that the language would have the unintended effect of changing the meaning of the section. Currently the purpose of that clause is to ensure that the permittee bears the expense of our conducting inspections. But if we were to insert the words “have access to the site in order to conduct” it would seem to mean that the permittee needs to pay for our access to the site, not for the conduct of the inspection and review.

CHAIR GONZALES: You know what? I agree with you. I would just keep that in mind because I know when I was working with the County that we used to have problems getting access to the sites, so I kind of – that was in my mind as well. So I don't have any problem with that one.

MR. AMES: Mr. Chair, that's an excellent point and I think that Land Use understands the importance of including conditions in a permit that ensure they have access to a site or to carry out their obligations under the regulations.

CHAIR GONZALES: Okay. Pages 5 and 6, Section 11.5.10, Expiration Date. Let's see. I was thinking here to add to the end of the paragraph a sentence: It is the responsibility of the applicant or permittee to renew the expired permit if necessary.

MR. STOCK: Mr. Chair, can you repeat that one more time?

CHAIR GONZALES: Sure. At the end of the paragraph add: It is the responsibility of the applicant or permittee to renew the expired permit if necessary.

MR. STOCK: Thank you.

CHAIR GONZALES: Okay. Page 6, Section 11.5.12.1, Suspension, Modification or Revocation of DCI Conditional Use Permit. Add a number 6, which states New or Recent Code Violations.

MR. STOCK: Thank you.

CHAIR GONZALES: Okay. Pages 7 and 8, Section 11.6.1.4, A DCI Overlay Plan and Report. I would like to add a number 13 which states, “A natural features map indicating locations of natural rock outcroppings, natural slopes of 30 percent and greater, floodways, floodplains, wetlands, historic, cultural, archaeological sites, artifacts, wildlife vegetation habitats, habitat corridors and other natural resources.”

MR. STOCK: Thank you.

CHAIR GONZALES: Did you get that? I can give you a copy afterwards.

MR. STOCK: We can get that on your copy, but thank you for the comment.

MR. AMES: Mr. Chair.

CHAIR GONZALES: Yes.

MR. AMES: Before we move on, could we review that proposal? I'm looking at number 7 on the list. It seems that there may be some overlap between what you proposed and what may be already there.

CHAIR GONZALES: Yes, there is and I kind of pulled it out of number 7 because I thought they were both crammed together. I think number 7 could still sit. Maybe take out the stuff that I put in this one on 13. It's just for discussion. I just thought this was missing rock outcroppings and 30

percent slopes or greater, which are no-build areas. So I wanted them to be on a separate map. I know at one time – I’m not sure if it at the City or the County and we used to call it a natural features map, for natural features. That’s what I was looking at.

MR. AMES: Okay.

CHAIR GONZALES: Okay. Page 14, Section 11.7.1.9, Additional Plans, Reports and Assessments. Okay, on this one I’d like to add a number 9 which states, “Provide a temporary and permanent stormwater pollutant prevention plan, which is also known as a SWPPP. The BMPs required in this plan will help prevent fugitive dust, soil erosion and sedimentation. This plan may need to be inserted into the terrain management plan instead.” I’m not sure if it goes in this section or in the terrain management. Usually for a SWPPP you need to have an anchor or more for a SWPPP, but I’m talking about a temporary or permanent SWPPP which doesn’t have to be regulated by the feds; it’s by the County. The City does that.

Okay. Page 14, Section 11.7.1.9.3c, Revegetation. I’d like to add to the paragraph, “The plan should indicate the method of reseeding.”

MR. STOCK: Mr. Chair, can you repeat the citation one more time?

CHAIR GONZALES: Sure. Page 14, Section 11.7.1.9.3c, Revegetation. Add a statement to the last paragraph, “The plan should indicate the method of reseeding.”

MR. STOCK: Thank you.

CHAIR GONZALES: There’s three types that I’m aware of: hydro-seeding, broadcast seeding and drill seeding. Drill seeding is more successful.

Okay, the next one is page 16, I have that one page 16, Section 11.8.1.1, General, and actually under General I have kind of too general. It says the view from all public roads, rivers, parks and adjoining residential areas shall be screened. And I’m just thinking that how would this be screened? With trees or walls? How much of the structure needs to be screened? And I just think it creates a lot more questions. I think maybe we need to kind of work on that one a little bit more.

MR. STOCK: Thank you.

CHAIR GONZALES: Page 17, Section 11.8.3, Water Resources. I think we need to either add two new – 11.8.3.12 and .13, or incorporate into the existing sections, 11.8.3.1 through sections 11.8.3.11, and I think we need to add in there, locations of existing septic tanks and leach fields, and other section for flooding, because that all affects water.

Okay. On page 18, Section 11.8.5.5, this one, it reads, “Cut slopes shall be graded to a slope no steeper than 2:1 and fill slopes shall be graded to a slope no steeper than 3:1 unless a properly designed retaining wall is used.” I think we need to go to the original requirement of any retaining walls more than three feet need to be stamped by an engineer. So this should be designed by an engineer or certified and designed by an engineer.

Okay. And then page 19, Section 11.8.11.3, I guess Penny, I can ask you this question here. This has to do with the annual monitoring report. I’m just curious on how we’re going to track that.

MS. ELLIS-GREEN: Mr. Chair, if we do have an application come in then we’re going to need to track that through staff as far as when they start and when their annual report is do, just as we track a financial guarantee of giving an applicant a 30- or 60-day notice that your reporting is due then moving forward and tracking that.

CHAIR GONZALES: Okay, so you have that covered.

MS. ELLIS-GREEN: I hope so.

CHAIR GONZALES: Okay, I have two more left here. Well, maybe three more. Pages 25 and 26, Section 11.14.4.6.4a through m, Project Description. I’d like to add – I think it ends with the letter m. I’d like to add a new letter n for staging areas.

Okay, then page 33, Section 11.14.6.6, that's terrain management. I noted this because maybe this is where we need to add what I was talking about earlier about the SWPPP requirement. So I'm thinking either one of those sections, or maybe even both if we needed to.

MR. STOCK: Yes, so Mr. Chair, Penny just pointed out to me correctly that the SWPPP, if we were to put it in the area where you first recommended it it would be applicable to all DCIs, and if we were to put it here in 11.14.6.6, it would only be applicable to mineral resource extraction.

CHAIR GONZALES: I think it should be under all DCIs. Okay, and then I would just like to make a comment also on the requirement – that's all my comments as far as – oh, I have one more. Since I've been around, a lot of ordinances have been passed and so forth, and I just want to make sure that staff has the tools to do all this stuff, so I want to make sure that in the budget that we have tools to maybe have smart levels, levels, string lines, whatever they need to do their job in the field. Tapes, shovels, whatever. So I don't know how that can get across to the Commission but I'd like to see something there for – you need to have your tools to do your job.

And then I would just like to make a statement about the requirement for the 1,000-year storm event. I just want to make sure that everybody knows that if we're going to start complying with some of these things for a 100-year storm event [sic] we're going to be looking at much larger and much deeper ponds, and I'll leave it at that.

That's all I have. This is a public hearing. Does anybody else out there have any comments or questions, please step up.

[Duly sworn, Oscar Huber testified as follows:]

OSCAR HUBER: Mr. Chair, Committee, my name's Oscar Huber. In regards to the gob piles, tailings, whatever you'd like to call them in Madrid, because I'm here to talk specifically about them, I don't understand why we don't have something in reclamation. Because quite frankly it's not a sand and gravel operation. If somebody wants to remove them from their property, isn't that reclamation? I'll put it out to you to tell me.

CHAIR GONZALES: Good question.

MR. HUBER: Because I've asked staff a number of times and don't really get an answer. So that's all I have to say.

CHAIR GONZALES: Yes, so you're curious if removing the coal tailings if that would be called reclamation.

MR. HUBER: That's what I would think it would be. It's not a sand and gravel. It's not a mining operation. It's moving it.

CHAIR GONZALES: I guess it would also depend on where you're taking it to. If you're going to take it somewhere else or keep it in Santa Fe County. I don't know. That's a good question and I can't answer it.

MR. HUBER: Unfortunately, I think it needs to be answered. In fact for that, if you're going to use it for roads, in the town of Madrid or anywhere else, would we have to be a sand and gravel operation if you're just removing it?

CHAIR GONZALES: I think at one time we tried using that for roads and I don't think it had good adhesion to it.

MR. HUBER: You did. You did use it a number of times.

CHAIR GONZALES: I don't remember what happened but I remember at one time – I don't know if it was experimental or how that happened but I remember at one time we did use it.

MR. HUBER: Okay. That's my question.

CHAIR GONZALES: Okay. Well, thank you very much. Any other?

[Duly sworn, Roger Taylor testified as follows:]

ROGER TAYLOR: My name is Roger Taylor. I'm a resident of Galisteo, New Mexico, and I'm the president of the Galisteo Community Association and the vice president of the Turquoise Trail Regional Alliance. So my comments here will really focus on the National Scenic Byway, which is the Turquoise Trail. We were part of the stakeholder group, our organization, as well as legal representation for the S Turn Ranch up in the Ortiz Mountains, and Pete Dronkers from Earthworks who is also a mining expert. So a lot of those comments came from our group.

We want to commend the County and especially the planning group for the time and the process, the listening and the incorporation of a lot of our additions. And we certainly appreciated the expense and the time duration of having the Montana experts, the consulting group as part of this. If we think about, and I heard a couple of comments that I was going to address so I appreciated that from some of the Commissioners here. I understand that this is a tightening, if you will, and so some of it could look a little extra costly, a little more prohibitive.

If you think about the mining that has occurred in the Turquoise Trail area in the past, where it was last populated, less touristy, different businesses, which were predominantly around Cerrillos and Madrid and Golden. Those were pretty extractive and intensive. They've left – everyone talks about the scar that you can see on the mountains in the summertime in particular when the light is right. We now have a very, very thriving tourist industry on the Turquoise Trail. Madrid certainly brings in a huge revenue and Cerrillos is revitalizing and the Turquoise Trail is a major attraction for the County and the City.

So we want to be careful about any hard rock mining that might come back. You might say most of that's played out, however, there is still a large area where the old gold mine was processed that is now owned – I think it's on its third iteration of a major foreign conglomerate. It's now a Canadian-Australian company. They haven't mined, although they've looked into it, because it is not currently cost-effective with the cost of gold on the market. That doesn't mean they wouldn't come back. You have to think about – and I appreciated that you brought this up, Mr. Chair and Commissioner Katz – the ramifications to the existing populations and businesses, and the image also of our community, etc. and where we focus our industries – tourism and service – and what those ramifications might be if some of that large-scale mining came back.

I think that the strengthening and some of the additional regulations that have been put in are necessary, and our group certainly supported that. If you think about what's going on with the King Gold Mine today, and the devastation and cost that has, you think about the tens of thousands of open pit mines and regular mines that are not addressed or can't be addressed because of lack of funding. They have major ramifications, not for just now, but the future and for future generations.

So this is an important ordinance. I really commend the County for the time and the participation and the writing that's been put into this, and we would really encourage that this be given a favorable pass to go on to the County Commissioners. Thank you.

CHAIR GONZALES: Thank you. Anybody else want to speak? Please come forward.

[Duly sworn, Matthew Lane testified as follows:]

MATTHEW LANE: Matthew Lane, 2329 Santa Barbara, Santa Fe, 87505. In the past I've been a consultant and so I've reviewed a lot of applications or prepared a lot of applications for types of operations that would be covered under this ordinance. And so as I was reading through it, if a company were to come in they would be looking at how much is this going to cost me to prepare an application? I think that the ordinance is really protective of the environment, really comprehensive and it includes a lot of different aspects, not just the environment but social justice and things like that. Infrastructure.

So if a company came in and wanted to be a good neighbor and comply with all of the things that are in this, I think you could get most of the way by looking at all of the application. But there's some parts in here that you'd run into and you wouldn't know how much cost it would be in order to undertake one of these projects because I don't think the regulations are very clear. For one, it asks for the applicant to pay for any consultants or anything like that that would be required on the County's behalf to review that application.

So in other state applications, maybe the applicant would be asked to pay for the application but based on like a point system or something like that. There'd be some sort of scale where the applicant would have some idea of how much money they would have to put up front in order to pay for the regulatory body to review that application. In here it's very vague and it doesn't really say exactly how much that person would have to put up. Where would those consultants come from? Is there a cap on it? I mean, you could run up a million, two, five million in consultants reviewing an application that would far exceed what the applicant is paying just to prepare the application. So some sort of clarification in there about how much the County or how much would actually be required. Maybe that's already in there.

MS. ELLIS-GREEN: Mr. Chair, Commissioners, if I could address that. We have a separate fee ordinance, and what that says right now is that there's a \$10,000 cap per review. If we were to amend that and increase that we would have to go through a public hearing to do that.

MR. LANE: Okay, so everything – that would be the maximum. It would \$10,000 for review of the application and review of the annual reports?

MS. ELLIS-GREEN: Let me just clarify that. That would be \$10,000 per review that we did. So if we had a separate review of the financial report, and a separate review of say, the water report, they could each be \$10,000. But it wouldn't be like in the millions. And if we were to increase that per report we would have to come through public hearing to do that.

MR. LANE: Maybe you can answer this too while you're right there. Is there a regulatory review timeframe of how long the County would have to review an application before it was approved or denied?

MS. ELLIS-GREEN: Mr. Chair, Commissioners, there are standard procedures in the Land Development Code that talk about how long we've got to state that an application is complete and then to go to reviewing agencies. There's then Land Use facilitation that can happen and there's some timeframes related to that, and there's probably an additional timeframe if we need to go out for review. But in general, the reviewing agencies get between 30 and 60 days to review.

MR. LANE: Thank you. I guess that would need to be clarified, because if each one's a different report, how many different reports could actually be reviewed at \$10,000 apiece. The second question I had, and maybe we could just clarify this, which is under 11.8.11.2, which has to do with the annual reports. And it says – I'm reading, "After reviewing the report the administrator shall recommend and the Board shall determine after a hearing whether the DCI conditional use permit should be suspended, revoked or modified." It seems like maybe that would be up for debate after some violations have occurred or something. That would seem like if I had a client that would bring a lot of uncertainty if every year your permit was under review but whether it could be approved or not.

So maybe there was an intent there and I'm misreading that. That could be clarified.

CHAIR GONZALES: I think that also has to do with the applicant, when they're doing their work, if they're like, for example, I know at one time we had a sand and gravel operation that was going on and the whole time – it was a permitted on – and then when we looked into it he had actually jumped out of their acreage and they weren't – I think they were only supposed to have their staging

area in a certain area and then they jumped out of their acreage. And so then we had to come before the Board of County Commissioners to suspend their permit.

MR. LANE: I see.

CHAIR GONZALES: And so when issues like that come out – am I correct, Vicki?

MR. LANE: If it read if after review of the annual report there was a violation, then they could be suspended or amended but as it reads right now it just seems like it's going before a hearing every year.

CHAIR GONZALES: That's more for the annual report.

MR. LANE: And so I think that – and I appreciate a lot of the clarifications, I just think if someone was coming in as an applicant they'd want a little bit of clarity here as far as what it would be. And some of the financial clarifications, the \$10,000, that's a huge – I was unaware of that so I appreciate that. And then there's timeframe for approval. And then that last one about annual reports and the annual review of that report. What would be in order for revoking a permit or asking for a new permit? What would trigger that? So those are my comments.

CHAIR GONZALES: Okay. Thank you.

MR. LANE: Thank you.

CHAIR GONZALES: All right. Okay. Penny, I have a question. When was the last – do we have any – what's the most recent sand and gravel operation that was permitted? Do we have anything recent?

MS. ELLIS-GREEN: Mr. Chair, that would actually a question for probably Vicki or Paul. I think early 2000s.

CHAIR GONZALES: Early 2000s?

MS. ELLIS-GREEN: Yes.

CHAIR GONZALES: Okay. I was just curious.

MS. ELLIS-GREEN: Like between 2005, 2010, I believe.

CHAIR GONZALES: So you haven't done a lot a since I left. I mean as far as –

MS. ELLIS-GREEN: We had one large application that was – I don't know if it was actually denied or withdrawn.

CHAIR GONZALES: But you haven't had any hard rock ones for a while.

MS. ELLIS-GREEN: No, we haven't had hard rock. No.

CHAIR GONZALES: Okay. Thank you. Okay, this was a public hearing. Do I need to close the public hearing first I guess? Okay, so I'm going to close the public hearing. I'm sorry. Do we still have another speaker? Okay, I'll retract closing the public hearing. Come forward.

MS. ELLIS-GREEN: Mr. Chair, if I could just clarify that last point on 11.8.11.2, I think that the intent of that was that the annual report would only go to the Board if there was an issue. So we will work with Legal to clarify that and make sure that that is correct.

CHAIR GONZALES: Okay. So I think I was off on that one too. Okay, thank you. Please come forward.

[Duly sworn, Katharine Fishman testified as follows:]

KATHARINE FISHMAN: That's Katharine Fishman, and I'm at 6405 St. Ann's in Albuquerque, 87111. I'm Katharine Fishman and I'm the owner of the Waldo hard rock quarry. It's a sand and gravel quarry in Santa Fe County. And I did attend a couple of the hearings regarding the mineral resource extraction and processing regulations just to make sure that the sand and gravel was not included in some of those regulations.

But I still have concerns about the fact that sand and gravel that is being produced for construction would be subject to these DCI uses. And I understand from today that they are already

subject to these DCIs. But as an operator of an existing materials supplier I know for a fact that if I had to go and apply for these DCI zoning overlays and conditional permits I wouldn't do it. There's not enough margin or profit in sand and gravel being used for construction materials to warrant the costs that are associated with these DCIs, given all these different studies and experts and different reviews that have to go on in order to just permit a sand and gravel mine.

And I think there's a big oversight here on how that impacts the County in terms of sand and gravel that is used for construction. I understand that these regulations probably sound good in terms of hard rock mining like gold and silver and other things that have large margins, that have a huge profit margin. We've got to keep sand and gravel at a price that the County can afford, that the New Mexico Department of Transportation can afford, so that we can build roads, that we can provide the basecourse that you want. Any kind of change in the manner of what we're producing out there would be subject to a DCI ordinance here and if we were to bring in, say, a recycle crusher to recycle materials and we exceed 20,000 tons over the lifetime that we are producing, there doesn't seem to be a qualification on the 20,000 tons of material we're subject to these rules and regulations just for bringing in a new crusher, a new manner of crushing materials.

And having to go through this process in order to do that just makes it completely cost prohibitive. You're not going to be able to attract anybody to come into Santa Fe County and produce these materials. So you're going to be looking to Rio Arriba County or to Sandoval County to buy your construction materials. So what does that do to the price of concrete? You're going to be hauling in concrete sand from Rio Arriba County or Sandoval County or Bernalillo County and that is automatically going to double the price of concrete. So what does that do to the price of affordable housing here in Santa Fe County? That's a big deal right now and you are – with these regulations the way they read right now, in terms of sand and gravel that's being processed for construction materials, it makes it cost-prohibitive to do that, and you're really going to see an impact, I think on whether anybody else besides me who's already grandfathered in is going to be able to come in and produce these materials.

I had been in negotiations for a while to expand my pit, but now with these new rules and regulations I'm not sure I can afford to do that. I actually have started the process of looking in other counties to find other locations to mine so I'm not mining in Santa Fe County. And unfortunately, it's just going to raise the cost for everybody. And I just think it's a little short-sighted to include large-scale sand and gravel and have all these restrictions placed upon them as well. We are conscious. We are environmentally conscious. We try to do things right. We try to mine in the right way. Have we made mistakes in the past? Sure. Everybody makes mistakes. It's hard to do a mining operation the way we do it and not make a mistake, go outside of a boundary here or there. But we are trying to correct all those errors and work with the County closely in terms of making our mining operation something that the County and us can be proud of.

I understand there's other mining operations out there that aren't that conscious, that leave scars that are ugly and unattractive. We don't want to be that mining company. But I just think that we kind of have to pull ourselves back a little bit and think about how those costs in these regulations are going to impact something that doesn't make a lot of money. Something that is using construction that is used for the basing materials to build our houses, to build our roads, and whether or not that's going to be feasible in the future.

One of the other things I wanted to just point out is I was actually kind of surprised that mining experts were brought in to draft these things. One of the things that just kept sticking out to me was that there's professional engineers required for just about every single plan that's here and a lot of the requirements in these regulations are not even done by professional engineers. They're done by other

types of professionals but not professional engineers. So if I was to go and submit an application and get these studies done I would have to hire a professional engineer and then the professional engineer would have to go hire somebody like Matt to do the work, and then the engineer, I guess would sign the study and submit it. But it was clear to me that they didn't understand that professional engineers don't necessarily do the work that they're asking the professional engineers to sign off on.

Professional engineers generally do not have expertise in greenhouse gas emissions. Professional engineers don't usually have expertise in hazardous materials and how they're handled. They usually aren't taking surface water, groundwater, soil samples, geochemistry, vegetation, terrain – that's not what engineers do. So maybe they were thinking of something else, but an engineer is not the appropriate professional to be hiring to do this type of work. So that's all I have to say.

CHAIR GONZALES: I have a question for you. Were you involved in any of the meetings with Mr. Stock?

MS. FISHMAN: Well, like I said, I went to – actually two or three years ago when this started I went to the first hearing and they said, well, you guys aren't going to be impacted by the hard rock minerals. You're sand and gravel. You're not impacted by any of this. And then I sent Matt and another representative to the latest round of studies on these regulations and again, it was made clear to us that it wasn't going to impact sand and gravel operations. But as I understand it from listening to Ms. Ellis-Green and the attorneys here today, the DCIs have always impacted sand and gravel operations. It's just being made more clear today that they're bringing them forward and sand and gravel is going to be subject to these things as we move forward.

I was never subject to these before with the applications that we filed for the Waldo quarry, but now that we are, it really makes you think twice about whether or not you can afford to do it.

CHAIR GONZALES: Okay. Thank you. I would just like to say I did look, when I was looking at that application I did see all these professional this, professional this, professional this and that's when I was looking – okay, they have professional for this but they didn't put an engineer for the retaining wall. And so I was looking at all that stuff together. But that would be something for the Board to look at. I mean, there's certain types of engineers but I do kind of agree, some of those requirements. I was kind of wondering, what kind of professional would you get for this. So I did kind of have those questions to myself as well. Thank you.

Okay, so I'm closing the public hearing. So what do we need to do? Do we have to do a motion on this, typically?

MR. AMES: Mr. Chair, if I can take this opportunity to address how your comments should be considered in the context.

CHAIR GONZALES: Sure.

MR. AMES: If the Commission is inclined to adopt a motion approving the proposed ordinance, I would recommend adding a statement directing the Land Use Department to incorporate your comments into the draft that we provide to the Board of County Commissioners. And that will allow us to go back to the transcript and pull from it the essence of your proposals and incorporate them into the appropriate places.

CHAIR GONZALES: Okay. Thank you. Mr. Katz.

MEMBER KATZ: Will the draft that the County Commission sees be different from this draft? Will there be some of these corrections and changes incorporated into that draft?

MR. AMES: That would be the objective, Commissioner Katz. We present a version showing the changes in response to the Commission's modifications in track change format.

MEMBER KATZ: Thank you.

MR. AMES: So that you all can see them as well, and if there was an issue it could be addressed.

CHAIR GONZALES: Okay, do we have any further discussion or any motions from the Commission? Okay, in that case I'll make a motion. I make a motion for approving for adoption of the –

MR. AMES: I believe it would be – would it be a motion to recommend?

CHAIR GONZALES: A motion to recommend adoption of the amendments for Ordinance 2016-9, incorporating my comments and I guess that would be it. Do I have a second?

MEMBER MARTIN: Second.

MEMBER KATZ: I'll add a friendly amendment to that.

CHAIR GONZALES: Sure.

MEMBER KATZ: Your comments and the other comments that were made.

CHAIR GONZALES: That's what I was thinking. Okay. My comments and the other comments as well.

MR. AMES: I apologize, Commissioner Katz. Can we get a better definition of which comment you were referring to. Otherwise we're going to be parsing the transcript and trying to determine which are comments and – which are comments that need to be incorporated and which ones are statements of Commissioners' interest.

MEMBER KATZ: My understanding is that the Chair made a number of comments and there were a lot: Oh, boy. We overlooked that, or oh, that was an error, and some that I wasn't clear. I was just assuming that staff will look at the comments that were made and bring out the cogent ones. There were some comments that members of the public made that might be worthy of bringing to the attention of the Board of County Commissioners.

MR. AMES: Commissioner Katz, I'm afraid I'm still a little unclear. There were a number of comments made, some of which were clearer than others and the only ones where we had specific proposals to change language in specific sections were the ones that the Chair raised to my recollection. I'd be concerned that we would – that we're being asked to parse the transcript to find – to evaluate comments made by other persons and somehow bring them forward even if we don't agree with them, which may well be the case. The comments that the Chair made, we listened to and when we believed it was problematic we advised the Chair and I believe reached an accommodation as to what the comment would generally address. But as for other comments that were made by members of the Commission, with all due respect, and by members of the public, those comments weren't nearly as clear and we did not respond on an issue by issue basis to clarify whether we agreed or disagreed with that comment. And so I can see a path forward for how to deal with the Chair's comments but not with anything else that any other Commissioner or member of the public might have said during this proceeding.

MS. ELLIS-GREEN: Mr. Chair, Commission members, I would add to that that there was a question about 11.8.11.2 of annual reports, whether they all go to the Board and I did state that we would look at that and clarify that. And additionally, the last speaker talked about which kind of professional engineer created reports and maybe staff can review that and see whether or not those are the relevant engineers to review those. Other than that, we did get the Chair's comments and I believe there was one that was on page 5, 11.5.9 about the inspection that upon discussion the Chair pulled that one back. But the other ones were comments that we could incorporate.

CHAIR GONZALES: That's correct.

MEMBER KATZ: I guess my reaction was that if I remember the public had made a comment I would want that to be considered by staff, and I see Penny is telling me that is true. So I'm relieved by that. I hope the public is relieved by that and that they should have some way of knowing –

gee, I had an issue; I made a comment and staff review it. Fine. And then accepted it, fine. Or I made a comment and they ignored it or they didn't find it worthy, and maybe I better hustle myself to the County meeting. I just think that a little respect is due to the members of the public.

MR. AMES: Of course. Of course. Perhaps, Commissioner Katz, with the further clarification of Penny and what you just said we can append to the current spreadsheet of public comments that Jacob has been maintaining, the comments that have been offered here. And if we don't propose a change to the Board, then we will address the comment in that spreadsheet.

MEMBER KATZ: I think that would be helpful. Thank you very much. That's a great way.

MEMBER SHEPHERD: Mr. Chair.

CHAIR GONZALES: Yes, Mr. Shepherd.

MEMBER SHEPHERD: Penny, last year Commissioner Anaya requested that the planning group look at reclamation and come up with a determination around reclamation. Did anything happen from that request from last year?

MS. ELLIS-GREEN: Mr. Chair, Commissioners, we have been working on the hard rock section, so no, we have not looked at that. But one issue about the reclamation is that the question is is it reclamation from an approved mine? Or is it an old historic mine? Which is the situation in a lot of Madrid and mining that is for the intention of using that material for sand and gravel. Vicki's staff has met numerous times with Mr. Huber regarding that and we do have a small-scale sand and gravel section of the code that he can utilize that's not a DCI. If it goes over that amount or the acreage then it is a DCI. Those areas are going to have the same impact of taking the sand and gravel along small roads that a brand new sand and gravel operation would have and staff has reviewed the reclamation there and it's not from an approved mine that we have. It's a historical mine that has now revegetated, looks like part of the landscape, and would have similar impact as whether it was that pile or this pile. And so the situation there is that there are requirements for a DCI. Actually, for several years we have been meeting to discuss what the requirements were and how Mr. Huber can make a submittal. It would certainly be a reason to give as far as why mining in that area but it wouldn't necessarily circumvent the DCI section.

So staff has looked at that and we don't have a proposal for a separate reclamation section.

MEMBER SHEPHERD: Thank you.

CHAIR GONZALES: Thank you, Penny. Okay, we have a motion on the floor. Do we have a second?

MEMBER MARTIN: I'll second.

CHAIR GONZALES: Okay, we have a second.

The motion passed by unanimous [7-0] voice vote.

CHAIR GONZALES: Thank you, Mr. Stock.

D. Petitions from the Floor

None were offered.

E. Communications from the Committee

None were offered.

F. Communications from the Attorney

None were presented.

G. Matters from Land Use Staff

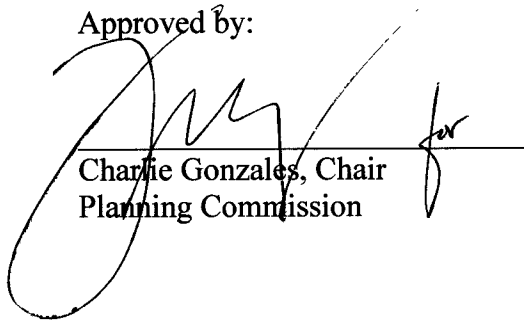
Ms. Lucero distributed a list of cases that were presented to the BCC with the Planning Commission and BCC's action. [Exhibit 1]

H. Next Planning Commission Meeting: April 18, 2019

I. Adjournment

Having completed the agenda and with no further business to come before this Committee, Chair Gonzales declared this meeting adjourned at approximately 6:30 p.m.

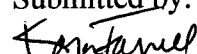
Approved by:


Charlie Gonzales, Chair
Planning Commission

ATTEST TO:


GERALDINE SALAZAR
SANTA FE COUNTY CLERK

Submitted by:


Karen Farrell, Wordswork



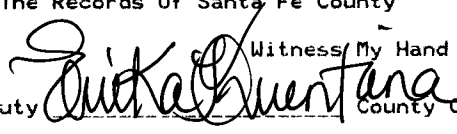
SFC CLERK RECORDED 04/19/2019



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

PLANNING COMMISSION MI
PAGES: 36

I Hereby Certify That This Instrument Was Filed for
Record On The 19TH Day Of April, 2019 at 09:10.09 AM
And Was Duly Recorded as Instrument # 1884241
Of The Records Of Santa Fe County

Deputy  Witness My Hand And Seal Of Office
Geraldine Salazar
County Clerk, Santa Fe, NM

Update on Planning Commission cases that proceeded to the BCC for Action under the SLDC:

PC- Denied 6-0

BCC-Appeal granted and variance approved 5-0



Case # SCSD 18-5190 Village At Galisteo Basin Preserve (Aka "Trenza") Conceptual Plan. Commonweal Conservancy, Applicant, Ted Harrison, Agent, Request Approval For An Amendment Of A Conceptual Plan To Allow A 36 Foot Tall Communications Tower (And Its Associated Switching Infrastructure) As An Allowed Use Within The Galisteo Basin Preserve/Trenza Planned Development District (PD-2). The Proposed Cell Tower Will Be On Lot 22 Which Comprises 468.08 Acres. The Site Would Take Access From Astral Valley Road, Via US 84-285. Lot 22 Is Located At 99 Astral Valley Road Within T15N, R10E, Section 31, SDA-2 (Commission District 3). **Jose E. Larrañaga, Case Manager**

PC-Recommended Approval 7-0

BCC-Approved for Stealth Facility use only 5-0

BCC Case # SLAP 18-5051 PNM BB2 345kv Transmission Line Project, CUP Appeal. Bill King, Appellant, Karl Sommer, Agent, Are Appealing The Planning Commission's Final Order Regarding A Conditional Use Permit (CUP) To Construct Approximately 31 Miles Of New Single-Circuit 345kv Transmission Line In Southern Santa Fe County. The Proposed Transmission Line Will Connect PNM's Existing Clines Corners 345kv Switching Station (Within Santa Fe County) To A New Switching Station Within Sandoval County. The New Single-Circuit Transmission Line Will Be Located Immediately Adjacent To The Existing BB 345kv Transmission Line On A Separate 150' Easement. The Steel "H" Frame Structures (140 Pole Sites) Will Be Constructed 120' To 150' In Height.

The Proposed 31 Mile Transmission Line Will Meander Through State Land (2.5 Miles) And Through Parcels That Are Zoned Agricultural/Ranching And Rural (31 Miles). Ordinance No. 2016-9, The Sustainable Land Development Code, Appendix B, Use Matrix, Identifies High-Voltage Electric Power Transmission Lines As A Conditional Use Within These Zoning Districts. The Proposed Transmission Line Will Run East To West Within Southern Santa Fe County, North Of Stanley And North Of Golden, Meandering Through Approximately 25 Separate Parcels Of Land, Within T 10, R 7, 8, 9, 10, 11 E, T 11, R 7, 8, 9, 10, 11 E And T 12 N, R 7, 8, 9, 10, 11 E, SDA-3, (Commission District 3). **Jose E. Larrañaga, Case Manager**

PC-Granted Approval 6-0

BCC-Appeal Denied 3-2

SEC CLERK RECORDED 04/19/2019