

**SANTA FE COUNTY**  
**BOARD OF COUNTY COMMISSIONERS**  
**REGULAR MEETING**  
**June 11, 2019**

Anna T. Hamilton, Chair - District 4  
Henry Roybal, Vice Chair - District 1  
Rudy Garcia - District 3  
Anna Hansen, Chair - District 2  
Ed Moreno - District 5

SFC CLERK RECORDED 07/22/2019

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1. A. Prior to convening this regular meeting of the Santa Fe Board of County Commissioners, Commissioner Hansen moved to close the morning's special meeting at the detention center. Her motion was seconded by Commissioner Roybal and carried unanimously. Commissioner Garcia added no action was taken.

The regular meeting was called to order at 2:18 p.m. by Chair Anna Hamilton in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

**B. Roll Call**

Roll was called by County Clerk Geraldine Salazar and indicated the presence of a quorum as follows:

**Members Present:**

Commissioner Anna Hamilton, Chair  
Commissioner Henry Roybal, Vice Chair  
Commissioner Rudy Garcia  
Commissioner Anna Hansen  
Commissioner Ed Moreno

**Members Excused:**

None

**C. Pledge of Allegiance**

**D. State Pledge**

**E. Moment of Reflection**

The Pledge of Allegiance was led by Kenneth Quintana, the State Pledge by Mark Jurgens and the Moment of Reflection by Jacob Stock of the Growth Management Department.

**I. F. Approval of Agenda**

**1. Amendments**

**2. Tabled or Withdrawn Items**

KATHERINE MILLER (County Manager): Madam Chair, from last Tuesday when we posted it we've had one amendment to the agenda that we posted last

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Friday and that is under item 9, and that is Matters from the County Attorney. We added acquisition of real property, 3233 Rodeo Road as a discussion item.

CHAIR HAMILTON: Okay, great. With that, what's the pleasure of the Board?

COMMISSIONER GARCIA: Madam Chair, I'd like to make a motion for approval of the agenda. Also, if I can get the County Commission to indulge me, when item 7. B, when they arrive here if we can actually just move them forward so they can actually get back to their nice restaurant that they have out there, if that's okay.

COMMISSIONER ROYBAL: Second.

CHAIR HAMILTON: Yes. That's no problem. We can add that as an additional change. So I have a motion and a second for approval of the agenda.

**The motion passed by unanimous [5-0] voice vote.**

**I. G. Approval of Minutes: May 14, 2019**

COMMISSIONER HANSEN: I move to approve.

COMMISSIONER MORENO: Second.

CHAIR HAMILTON: Thank you. So I have a motion and a second.

**The motion passed by unanimous [5-0] voice vote.**

**2. CONSENT AGENDA**

- A. Request Approval of Three Indefinite Quantity Price Agreements, Nos. 2019-0219-A, B, C, PW/KE Between Santa Fe County and Matthews Office Supply, Veritiv Operating Company, and Prudential Overall Supply, Respectively, for the Purchase of Janitorial Supplies and Equipment, and Granting Signature Authority to the County Manager to Sign the Purchase Orders (Purchasing Division/Bill Taylor)**
- B. Request Approval of Amendment No. 2 to Agreement 2015-0074-TR/IC Between Santa Fe County and First National 1870 to Promote Banking Services, Extending the Term an Additional Two Years (Purchasing Division/Bill Taylor)**

CHAIR HAMILTON: Does anybody have anything they want further discussion on or what's the pleasure of the Board?

COMMISSIONER HANSEN: Madam Chair, I move to approve the Consent Agenda.

COMMISSIONER MORENO: Second.

CHAIR HAMILTON: Great. Thank you. Motion and a second.

**The motion passed by unanimous [5-0] voice vote.**

**3. APPOINTMENTS/REAPPOINTMENTS**

**A. Resolution No. 2019-73, a Resolution Appointing Five Members to the Board of Registration [Exhibit 1: Revised Staff Memo]**

CHAIR HAMILTON: Thank you, Steve, do you want to make a presentation?

STEVE FRESQUEZ (Board of Elections): Good afternoon, Chair Hamilton, members of the Board. Before you is a resolution appointing the Board of Registration, five members this time. Pursuant to state statute we are asking you to pass this resolution appointing these members. State law requires that the first scheduled meeting in June of each odd-numbered year, the Board of County Commissioners are required to appoint five voters who shall constitute the Board of Registration for the County. These five appointees will serve for two years and you have a list that we obtained from the current political parties that are qualified in the State of New Mexico, which is Exhibit a, which is probably the third page in your packet.

So we have some individuals from the Democratic Party, the Republican Party and the Libertarian Party. They are the only ones that furnished any voters that qualified to be appointed by the Board.

CHAIR HAMILTON: I have a couple of questions. Could you clarify some of the remainder of the process because it gave some information about you can't do more than two people from any one party, except – and then there were some exceptions in it.

MR. FRESQUEZ: Right. So the purpose of this board is to carry out the list maintenance provision in the Election Code. You are to appoint no more than two members from each political party and there were some parties that didn't have anyone that they could appoint. Their job is to delete any voter that has not appeared to vote in at least one statewide or local election in approximately four years after being designated as inactive. This list maintenance usually happens in odd-numbered years. Within 120 days of each general election the state is required to run a list maintenance of voters of the state. Any voters that appear on this list are sent to the counties. The individual counties use the Board of Registration to review this list and the Board of Registration designates the voters that will be removed from the voter list.

CHAIR HAMILTON: Yes. That's great. So are there any – so basically, you could get as much as – you need five people, so it's going to have to be two, two and one, whichever mixture of that, because you can't have more than two. Are there any exceptions we need to know about it, like are there already people on this board? Or is this a complete replacement of five people.

MR. FRESQUEZ: This is a complete replacement. The board that you picked earlier this year that did the list maintenance of 2019, they changed the law to appoint these in June of odd-numbered years. They will serve from July 1<sup>st</sup> until June 30, 2021.

CHAIR HAMILTON: And were there any further recommendations or preferences.

GERALDINE SALAZAR (County Clerk): Chair Hamilton, for the record there are current individuals on the list that are on the current one that are expiring. So

Steve, point out the ones that have been appointed for last time, please.

MR. FRESQUEZ: I believe for the Democratic Party, Clifford Rees was appointed but he was unavailable due to the legislative session. Dan Cron was also appointed.

CHAIR HAMILTON: Could you clarify unavailable? Do you mean he has not been serving on the committee at all?

MR. FRESQUEZ: He didn't serve on the committee at all due to the obligation of the legislature. So an alternate was used in his place.

CHAIR HAMILTON: Okay.

CLERK SALAZAR: Yes. Chair Hamilton, he has been on this board for some time but for the last two or three times that we've had to conduct the list maintenance – he works for the Senate during the legislative session and he has not been able to attend. So who attended the last time was Dan Cron and did Mary also – was she the chair?

MR. FRESQUEZ: No.

CLERK SALAZAR: So Dan Cron was the one. That's some information for you.

CHAIR HAMILTON: Yes, thank you.

CLERK SALAZAR: So there's a conflict that's been happening several times.

CHAIR HAMILTON: Do we expect that conflict to continue?

CLERK SALAZAR: Yes.

CHAIR HAMILTON: Okay. Great.

MR. FRESQUEZ: I believe so, because 2021 will be the 60-day session again. So we usually have the meetings in March. So that's why he was unavailable this year.

CHAIR HAMILTON: Makes sense. Thank you. So who else was in?

MR. FRESQUEZ: From the Republican Party I recognize the name of Ed Brown and Edward Gallegos was not on that list. He's now the Republican Party Chair of Santa Fe County. From the Libertarian Party, Bob Walsh was nominated but he couldn't attend so an alternate was used, but he's on the list for the Libertarian Party. And I believe those were the only ones that are currently serving.

COMMISSIONER HANSEN: Madam Chair.

CHAIR HAMILTON: Yes, Commissioner Hansen.

COMMISSIONER HANSEN: I remember when we appointed this the first time in I think 2017, we were told by the Clerk that the first two names on the list were what the parties had suggested and that was their preference, but since it seems that Clifford Rees is still their preference but he can never make the meeting, is that the problem?

CHAIR HAMILTON: Yes.

MR. FRESQUEZ: Yes, he couldn't make the meeting. And I don't think the law requires you to do it in the preference that they selected this time.

COMMISSIONER HANSEN: Right. So even though he's been unable to make the meetings, then would we put Mary Schruben as the alternate?

CHAIR HAMILTON: It's just two people from each. You don't have to

designate a member and an alternate, or do you have to designate.

MR. FRESQUEZ: I don't believe that the law provides for alternates this time. I think it just says five registered voters. And in the event that somebody cannot serve, or if a member changes party registration after the due date of appointment, another member can be appointed in his place.

CHAIR HAMILTON: Okay. So does anybody wish to do some nominations.

COMMISSIONER HANSEN: Madam Chair.

COMMISSIONER GARCIA: I have a question prior. So Mr. Rees, is his conflict only during the 60-day session? Or is it during the entire legislative session?

MR. FRESQUEZ: Yes, he requested us to change the meetings to 8:00 am in the morning and the members weren't really available at that time. So an alternate was used in his place, Commissioner Garcia.

COMMISSIONER GARCIA: So basically Mr. Rees actually, whether it's a 30-day legislative session or whether it's a 60-day session he still can't make the meetings because they're at 8:00.

MR. FRESQUEZ: Commissioner Garcia, he didn't make any provision to change his schedule, so an alternate was used.

COMMISSIONER GARCIA: Okay.

CHAIR HAMILTON: Commissioner Hansen.

COMMISSIONER HANSEN: I would like to make a nomination. I would like to nominate from the Democratic Party Clifford Rees and Dan Cron, from the Republican Party, Judith Nowers and Edward Gallegos, and from the Libertarian Party Helen Milenski.

CHAIR HAMILTON: Okay. So you want to nominate Clifford Rees, even though he's not able to attend the meetings?

COMMISSIONER HANSEN: Well, it's what the Democratic Party sent and that's what the law says.

CHAIR HAMILTON: No, actually it doesn't.

COMMISSIONER HANSEN: Oh, I thought he said.

CLERK SALAZAR: Chair Hamilton, the law has changed. The parties don't even have to submit to me nominations anymore, but out of courtesy, I said let's go ahead and ask them for nominations. So by law it's not required anymore.

COMMISSIONER HANSEN: Okay. Good.

CLERK SALAZAR: In addition to that I want to add that from the Republic Party, Mr. Edward Gallegos has been very difficult to get a hold of also. My staff repeatedly called him. We had to call the state party chair and eventually he did communicate with Steve, so that's another issue I wanted to bring up, is that he was very difficult to get a hold of.

CHAIR HAMILTON: And Ed Brown actually served.

CLERK SALAZAR: Currently, yes.

COMMISSIONER HANSEN: Thank you for that clarification. I was under the impression we were still operating under that law. So I am going to change my nomination to nominate Dan Cron and Mary Schruben, Judith Nowers and Ed Brown from the Republican Party, and Helen Milenski.

CHAIR HAMILTON: So who are your two nominations from the Republican Party?

COMMISSIONER HANSEN: Judith Nowers and Ed Brown.

CHAIR HAMILTON: Okay. Thank you for the clarification.

COMMISSIONER HANSEN: From the Democratic Party, Dan Cron and Mary Schruben.

CHAIR HAMILTON: Yes. And then Helen Milenski. Okay, so we have a motion with a nomination. Do I have a second?

COMMISSIONER MORENO: Second.

CHAIR HAMILTON: Thank you. I have a motion and a second.

**The motion passed by unanimous [5-0] voice vote.**

**3. B. Request Approval of Appointment of One Member to the Santa Fe County DWI Planning Council**

LUPE SANCHEZ (DWI Coordinator): Good afternoon, Madam Chair, members of the Commission. Today we come before you seeking the appointment of Ashley Schweizer to the DWI Planning Council. Ashley is currently the traffic safety resource prosecutor for the State of New Mexico with the Attorney General's Office so she'll be a welcome addition to the Planning Council because of the wealth of knowledge that she'll be bringing with her. And with that I'll stand for questions.

CHAIR HAMILTON: Fabulous. Yes, Commissioner Hansen.

COMMISSIONER HANSEN: I would like to nominate Ashley Schweizer to the DWI Planning Council.

CHAIR HAMILTON: Excellent. Do I have a second?

COMMISSIONER MORENO: Second.

CHAIR HAMILTON: Thank you. So I have a motion and a second.

**The motion passed by unanimous [5-0] voice vote.**

**4. MISCELLANEOUS**

**A. Request Acceptance of Grant # 19-D3189 from the State of New Mexico, Department of Finance and Administration, Local Government Division to Improve the Santa Fe Mountain Center Urban Adventure Center Building in Santa Fe in Santa Fe County in the Amount of \$84,500**

GARY GIRON (Finance Director): Madam Chair, members of the Commission, good afternoon. Santa Fe County received grant No. 19-D3189 in this past legislative session to plan, design and construct and equip improvements to the Santa Fe Mountain Center Urban Adventure Center building, which is located at 1160 Parkway Drive in Santa Fe County, in the amount of \$84,500. This is new funding that did not previously exist. And if you have any questions I'd be glad to answer them for you.

CHAIR HAMILTON: I appreciate it. It's new funding that did not do

what?

MR. GIRON: This is brand new funding for this project, to renovate this building.

CHAIR HAMILTON: I got it. Thank you.

MR. GIRON: And we own this building. The County owns this building.

CHAIR HAMILTON: Okay. So are there questions on this item? So what's the pleasure of the Board?

COMMISSIONER HANSEN: I will move to approve request acceptance of grant # 19-D3189 from the State of New Mexico.

CHAIR HAMILTON: Do I have a second?

COMMISSIONER MORENO: Second.

CHAIR HAMILTON: Thank you. So I have a motion and a second.

**The motion passed by unanimous [5-0] voice vote.**

4. B. **Request Acceptance of Grant # 19-D3195 from the State of New Mexico, Department of Finance and Administration, Local Government Division to Improve the Boys and Girls Club Facilities Owned by Santa Fe County in the Amount of \$191,250 Less the Allocation for Art in Public Places**

MR. GIRON: Madam Chair, members of the Commission, the County received grant No. 19-D3195 in this past legislative session 2019 to plan, design, construct and furnish improvements, renovations and upgrades to the buildings, parking lots, and to purchase and install security systems including cameras, and to purchase and install information technology including related infrastructure and equipment at the Boys and Girls Club facilities in Santa Fe and within Santa Fe County. The amount is \$191,250, less \$1,912.50 for the Arts in Public Places project. So that gives us a grant amount of \$189,337.50. And if you have any questions I'd be glad to answer them for you.

CHAIR HAMILTON: Are there any questions on this? What's the pleasure of the Board?

COMMISSIONER ROYBAL: Madam Chair, I'd like to move approval, and thank you, Mr. Giron, for your presentation.

CHAIR HAMILTON: Thank you. Do I have a second?

COMMISSIONER MORENO: Second.

CHAIR HAMILTON: Excellent. So I have a motion and a second.

**The motion passed by unanimous [5-0] voice vote.**

**4. C. Request Acceptance of Grant # 19-D3187 from the State of New Mexico, Department of Finance and Administration, Local Government Division for a Recovery Program Center in Santa Fe County in the Amount of \$1,500,000, Less the Allocation for Art in Public Places**

MR. GIRON: Madam Chair, members of the Commission, Santa Fe County received grant No. 19-D3187 in the 2019 legislative session to plan, design, construct, renovate, furnish and equip a facility for the Recovery Program in Santa Fe County in the amount of \$1.5 million, less \$15,000 for the Arts in Public Places project. The total grant amount is \$1,485,000. By way of note, this is phase 1 of this program seeking to build a new building. I understand the building is going to take several phases, so it's somewhere in the six to seven million dollar range.

CHAIR HAMILTON: So now interestingly, it says phase 3 improvements, and in the agenda – Mr. Giron just said it was phase 1. That's probably not material.

TONY FLORES (Deputy County Manager): Madam Chair, it's material in the sense that it's the phase 3 of the project but phase 1 of this facility. This facility is one of the many buildings that will be located on the site. And this building will have four components to us.

CHAIR HAMILTON: I understand that. Thanks for the clarification. So are there questions about this? Commissioner Hansen.

COMMISSIONER HANSEN: Madam Chair, we'll receive this money, but then we are holding on to it to wait till we have more money? Or are we going to start working? Or is this money going to the Recovery Center? How is this money going to be used?

MR. FLORES: So Madam Chair, Commissioner Hansen, this money will be put in play. As I indicated, this will be phase 1 of this new facility. We would be building this new facility on the existing property in phases, so that we would not hold this money. We would not sit on it. We would try to get accomplished what we could within the existing budget and design and build it in a way that there's room for expansion, and the ease of expansion would be built in.

COMMISSIONER HANSEN: Okay. Thank you. I appreciate that. And Tony, one more question. Where exactly is this building located? Where is this property located?

MR. GIRON: This is located at 5312 Jaguar.

COMMISSIONER HANSEN: Okay. So it's in District 2? Thank you.

COMMISSIONER GARCIA: [inaudible] South of the old McDonalds back behind the [inaudible]

COMMISSIONER HANSEN: Okay. Thank you. That's what I wanted to know. I wanted to know where it was located.

CHAIR HAMILTON: Are there other questions? What's the pleasure of the Board?

COMMISSIONER GARCIA: Move for approval.

COMMISSIONER ROYBAL: I'll second.

CHAIR HAMILTON: Thank you. A motion and a second.

**The motion passed by unanimous [5-0] voice vote.**

4. **D. Request Approval of Construction Agreement No. 2019-0138 PW/KE Between Santa Fe County and Lone Mountain Contracting, Inc. in the Amount of \$1,0049,870, Exclusive of New Mexico GRT for Construction Services Related to the Pojoaque Valley Recreation Complex, Phase III Improvements and Authorizing the County Manager to Sign and Execute the Purchase Order**

BILL TAYLOR (Purchasing Director): Thank you, Madam Chair, Commissioners. We're before the Board today for approval of a construction contract 2019-0138-PW/KE between Santa Fe County and Lone Mountain Contracting for \$1,049,870, exclusive of tax, for the construction services for Pojoaque Valley Recreation Complex, Phase 3 improvements, which involve improvements adding community amenities. Improvements include a T-ball field, additional field amenities, two playgrounds. It's in the description in the background of some of the improvements of the 11-acre parcel of property along Rio Tesuque off Oweenge Road and within Santa Fe County. With that, Madam Chair, I'll stand for any questions.

CHAIR HAMILTON: Great. Are there any questions from the Board?

COMMISSIONER ROYBAL: Madam Chair.

CHAIR HAMILTON: Commissioner Roybal.

COMMISSIONER ROYBAL: I don't have any questions but I am really happy to see this project moving forward and I really appreciate the hard work that staff has put forward on this. With that I'd like to make a motion to approve.

COMMISSIONER GARCIA: Second.

CHAIR HAMILTON: Thank you. If there's no further discussion, I have a motion and a second.

**The motion passed by unanimous [5-0] voice vote.**

4. **E. Resolution No. 2019-74, a Resolution Confirming Santa Fe County's Commitment to Fair Housing, Establishing a Citizen Participation Plan, Establishing a Residential Anti-Displacement and Relocation and Assistance Plan, Adopting a Section 3 Plan, Confirming Its Commitment to Abide by the Relevant Procurement Policies and Regulations, All as Required by the United States Housing and Urban Development Community Block Grant Program Requirements**

JOSEPH MONTOYA (Housing Administrator): Madam Chair, members of the Board, as you know, the Department of Finance and Administration and the Department of Housing and Urban Development has mandatory guidelines that we have to follow relative to fair housing issues, participation issues, Section 3 issues. This particular resolution is a resolution that you passed last year about this time just to

confirm our continuance of those kind of federal guidelines and that we are in compliance with that. And with that I'll stand for any questions.

CHAIR HAMILTON: Thank you. Any questions from the Board?

COMMISSIONER HANSEN: Madam Chair.

CHAIR HAMILTON: Commissioner Hansen.

COMMISSIONER HANSEN: I move to approve a resolution confirming Santa Fe County's commitment to fair housing, establishing a Citizen Participation Plan, establishing a Residential Anti-Displacement and Relocation and Assistance Plan, adopting a Section 3 Plan, confirming its commitment to abide by the relevant procurement policies and regulations, all as required by the United States Housing and Urban Development Community Block Grant Program requirements.

COMMISSIONER ROYBAL: I'll second.

CHAIR HAMILTON: Thank you. Motion and a second.

**The motion passed by unanimous [5-0] voice vote.**

**4. F. Request for Direction on New Mexico County Insurance Authority Joint Powers Agreement and Bylaws**

GREG SHAFFER (HR Director): Madam Chair, Commissioners, the self-insurance pools through which New Mexico counties pool their resources to cover various risks are undergoing somewhat of a reorganization, or at least that's what's on offer. Next week the County's two representatives with regard to the two existing entities, Commissioner Roybal and myself, will be asked to vote on behalf of the County with regard to that proposed reorganization. Before doing so, staff felt it prudent to brief the Board on exactly what is on offer and receive concrete direction as to the Board's wishes with regard to the proposed reorganization.

I've given you a fair amount of information with regard to the new JPA and bylaws in the memo. I'm not going to repeat everything that's contained in the memo but I did want to highlight a few things for you. First, there currently exists two separate joint power agreement entities – the Workers' Compensation Fund and Multi-Line Pool. So again, those are two separate entities that are created by joint powers agreements between member counties. The Workers' Compensation Fund covers workers' compensation risk. The Multi-Line Pool covers other risk including law enforcement coverages as well as property claims and third party claims, employment claims, what have you.

The proposal that will be considered next week at a joint meeting between the Workers' Compensation Fund membership and Multi-Line Pool membership would be to replace those two existing entities with a single entity, the New Mexico County Insurance Authority. The main reasons behind this proposed reorganization are to increase the overall solvency of the combined entity. In essence you're taking the fund balance of two separate entities and putting them together so that you have a more fiscally solvent entity. This could be significant in bad years under one line of coverage versus others. The resources of the combined entity would be available to meet the claims.

In addition, and probably more importantly, it's become increasingly more difficult to attract re-insurance or excess insurance coverages, and the thought is that

having a combined entity with combined unrestricted fund balance would make the authority more attractive for such re-insurance or excess insurance coverages. So that's the primary motivation I would say, behind the proposed reorganization.

In addition there would be a savings on administration cost, because you would be replacing two boards of directors with a single board of directors to oversee the operations of the new authority. And then finally, of probably least significance, it would clearly differentiate between the joint powers agreement and the bylaws, which is not insignificant in that the Secretary of Finance and Administration has to approve JPA amendments but bylaws do not require such approval.

So those are the primary reasons behind the proposed reorganization. The things that I would highlight relative to the process that got us here would be as follows: First, the new JPA and bylaws have been recommended by the existing board of directors of the Workers' Compensation Fund and the Multi-Line Pool. In addition, earlier drafts of these documents were slated to be considered for final approval last December but due to noticing issues that got put off until this June. That was valuable because it allowed County staff to comment extensively on the documents and most of our suggested revisions were in fact incorporated into what is in front of you now.

With regard to the documents themselves, the overall operations of the authority would be overseen by a board. Santa Fe County would be guaranteed one of up to thirteen positions on that board by virtue of being a Class A county. We get to appoint one director to sit on that board. Future amendments to the JPA as is currently the case, would not require approval by each member. Instead, amendments would be approved by a 2/3 vote of the general membership. That would be all the members of the combined entity have one voting interest at such general membership meetings. And the County can withdraw from the authority or from a particular line of coverage with 120 days notice. So again, this is not a long-term commitment by the County to a JPA entity. You're aware of some other instances where we have sort of those continuing obligations to a JPA entity. That doesn't exist in this case.

In addition, one other change that I would highlight is that the new JPA and bylaws would authorize the authority upon approval by the board of directors to extend coverages to non-county political subdivisions of the state. The thought is that this would allow us to increase the financial position of the authority and I think ultimately that will be determined by how good the underwriting is in terms of who we're offering coverage to.

I would be pleased to stand for any questions that you may have, but again, this is slated for final consideration at the combined meeting next Wednesday, June 19<sup>th</sup>, so we thought it prudent to make sure that you were aware that that was going on and ensure that we're acting in accordance with the Board's wishes. Thank you.

CHAIR HAMILTON: So nobody's hand's shooting up. I actually did have a couple of questions, because a lot of this was presented well and it seems generally positive. I wonder if you and/or the County Manager could give your thoughts on risks that might be associated with it that might be to the County's detriment. Like these are two very different types of coverage, and does it alter the kind of expertise – is the expertise still then represented? Does it change our liability in each of these? Because which kinds of insurance get what kinds of claims are very different between these two.

You kind of addressed the representation thing, so the coverage and the liability – those were the things I was just curious about.

MR. SHAFFER: Madam Chair, Commissioners, relative to the expertise involved, the board of directors does operate as a high level policy setting body. It functions significantly through the services of an administrator, and currently the administrator is and is expected to continue to be the New Mexico Counties. So the administrator who is providing underwriting on the Workers' Comp side and on the Multi-Line Pool side is the same entity. It's New Mexico Counties. So I believe that that expertise likely exists.

I think that the unknown is more with regard to our underwriting of non-County governmental entities. I don't have any reason to believe that they don't have the capabilities to do that, but nonetheless, that is new territory I think for the authority to venture into.

The other risk to the pool – it's the flip-side of being large and having combined assets is that you have combined liabilities and so there is the risk that a bad year on one line of coverage could negatively impact the overall solvency of the authority, whereas now, those are separate. I don't know if the County Manager has anything that she'd like to add to that.

MS. MILLER: Madam Chair, I think Greg pretty much highlighted it. I think NMC believes that it will actually make the ability to get re-insurance, particularly on Multi-Line, something I talked about earlier, for large claims easier. They're struggling with that. There's only been one re-insurer who's even been willing to provide coverage so I think that by combining the pools I think it will make it more attractive to get other re-insurers. But it does bring Workers' Comp into that area of risk – it's predominantly law enforcement and jail claims that have made the Multi-Line Pool a struggle overall. It's not been property insurance, and it's not even really been law enforcement on the Sheriff's side that are the large claims that threaten the pool's solvency, it's typically jail management.

And they're doing multiple things to try to counter that in making sure that counties are accredited, or they don't have certain types of coverage. But I think on the whole they believe it will be more efficient and make the fund more attractive for re-insurers.

CHAIR HAMILTON: Thank you. Are there any other questions? In terms of direction, I certainly think this sounds pretty well thought out and a good idea. Anybody else have opinions? Commissioner Hansen.

COMMISSIONER HANSEN: I can make a motion –

CHAIR HAMILTON: This is just for direction. Do we need a motion?

COMMISSIONER HANSEN: I support this.

MS. MILLER: Madam Chair, you could make a motion. What it does is it basically gives Greg the knowledge that the Board supports it so as a voting member on the board he has the backing of our Board.

CHAIR HAMILTON: Commissioner, I'm happy to entertain a motion.

COMMISSIONER HANSEN: Okay, so I make a motion that we move forward with the combination of the joint powers agreement and the bylaws to combine the two boards.

COMMISSIONER ROYBAL: I'll second.

COMMISSIONER GARCIA: Madam Chair, I have a quick question of Mr. Shaffer.

CHAIR HAMILTON: Commissioner Garcia.

COMMISSIONER GARCIA: Really quick, there's 33 counties in the State of New Mexico, how come there's only 28 signing to this agreement? Do you know?

MR. SHAFFER: Madam Chair, Commissioner Garcia, that would be due to the fact that some counties opt to cover their risk through other means. I don't have memorized the list of participating entities. I do believe, for example, that Los Alamos County is insured through the municipal pool, due to its unique status as a Class H county, and I believe that there may be a few other counties that opt for coverage on the open market. I apologize; I don't have that information top of mind.

MS. MILLER: Madam Chair. Commissioner Garcia, I know that Lea County is not a part of the pool. San Juan County is not part of the pool. Rio Arriba County is not part of the law enforcement side but I don't know if they're on the Worker's Comp side. So there are a few of them who – and we for a while were not part of the Multi-Line. For five years we actually went out on the open market and had insured independently with One Beacon, I think, for about five years. So there are a few counties that choose not to be a member of the pool, and that's likely if – and the reason we didn't for a while is that we found better pricing on the open market. And we actually do get a broker that is supposed to do due diligence and always compare what rate we're getting for Workers' Comp or Multi-Line law enforcement with market rates. And at one point they were about even, so we moved back to the New Mexico Counties pool. But for – I want to say from about 2008n to 2013 or so we were not members of the pool and not signers on the JPA either.

CHAIR HAMILTON: Thank you. Are there other questions? So if there's no further discussion I have a motion and a second.

**The motion passed by unanimous [5-0] voice vote.**

**5. MATTERS OF PUBLIC CONCERN**

CHAIR HAMILTON: Is there anybody here from the public who would like to address the Board? Once again, is there anybody here from the public who would like to address the Board? Seeing none, I'm going to close Matters of Public Concern.

**6. MATTERS FROM THE COUNTY MANAGER**

None were presented.

**7. MATTERS FROM COUNTY COMMISSIONERS**

**A. Commissioner Issue and Comments, Including but not Limited to Constituent Concerns, Recognitions and Requests for Updates or Future Presentations**

CHAIR HAMILTON: Any Commissioners have – Commissioner Hansen.

COMMISSIONER HANSEN: Thank you. I want to mention that Reunity Farm has opened in District 2 and on June 4<sup>th</sup> we had a ribbon-cutting. It was actually a hose cutting with shears. It was really fun. It was a great day because San Ysidro had it rain until 6:00 and then it cleared. There was a great turnout and it was a wonderful event, and it is so great to see the community farm up and operating once again in District 2. They are open, they have a farm store and they are open for business. And then this Saturday they are going to have the grand opening party from noon till 3:00 where people can come and see all the incredible vegetables that are being grown and visit and hang out. It's a beautiful, beautiful place. They've done an amazing job and plus they have the compost area there that Reunity Resources has created, so not only can you buy vegetables and see this beautiful farm but you can get compost also. So that's really exciting. It is also highlighted in our AgriGate program in the Planning Department so that's a wonderful thing to have, the community farm back up and running. It's called the Reunity Farm.

Then also I've had a couple of complaints about shooting out on the El Camino Real de Tierra Adentro Trail near the Buckman/Las Campanas area. People seem to be shooting at 4:00 am in the morning and it's becoming quite close to people's homes. I have reached out to try and speak with BLM. BLM has a new field director up in Taos, which is the area we're in. His name is Mark Johnson. I reached him and we had a long conversation about what is possible for us to do and he stated that we have an agreement with the Sheriff's Office to patrol that area but they don't even have a ranger at their BLM office. So they wanted to meet with us. I suggested that possibly Commissioner Garcia and I could meet with them, since we both have shooting areas in our districts. We don't have any real shooting ranges and that's something that possibly we need to look into developing.

Then in La Tierra, I have been getting a lot of concerns about broadband and the lack of broadband and I think that is an ongoing issue in the county in the rural areas and something that we continually need to work on. So maybe we could have a presentation or an update on the things that we have been doing in the county to encourage broadband. I think that might be helpful to our constituents to know that we are working with REDI-net and we are working on other projects to try and get broadband out in the more rural and suburban areas.

And then lastly, I wanted to just remind people that the Next Generation Water Summit, which we are a part of it, Santa Fe County, is happening from June 12<sup>th</sup> to 14<sup>th</sup> at the Santa Fe Convention Center and the June 14<sup>th</sup> day is free to local residents and Congressman Ben Ray Lujan will be speaking at the Next Generation Water Summit on the 14<sup>th</sup>. So I hope people can attend. Their schedule and the events that they have going on is really amazing.

And also with that I wanted to let people know that I have been reappointed to the

City of Santa Fe River Commission and the River Commission will be having a meeting at the Next Generation Water Summit on the 13<sup>th</sup> also. So please come out and join us there and I'm honored to continue to serve on the River Commission since the river does not really know where it lives in the city or the county. So thank you very much.

CHAIR HAMILTON: Thank you. Other Commissioners? Well, I wanted to bring up, reminding everybody but especially the Commissioners that the Neighbor to Neighbor Food Drive is having their kickoff reception on Thursday, June 20<sup>th</sup>. I think we've all been invited. That's at the Food Depot from 5:30 to 7:00 and that's something I know everybody here has gotten incredibly strongly behind. The Food Depot itself does an incredible job feeding the hungry and supplying regular meals and really serving the community. This food drive gives them an incredible boost and Santa Fe County has done a great job, and the City as well, helping them out. So I think there are things going on in everybody's Commission district, so I just wanted to bring that up as a reminder.

And a couple of weeks ago the City and County had a joint City-County water meeting. We talked about conservation. It was actually a very productive meeting. And I think these sort of meetings are leading to some real efforts to work together on various levels of water planning, in this case conservation which is once again, goes across political boundaries and can be very helpful. So are there any other announcements from Commissioners?

COMMISSIONER HANSEN: Madam Chair, I just want to once again thank Pablo Sedillo for the tour today at the detention center. It is very enlightening to go out there. It was really hopeful and interesting to hear people's involvement in the Matrix program and how they are moving forward and how women and men in the detention center really want to be sober and get off of drugs and I think that what we're doing with this Matrix program to help people change their lives is a good thing and I look forward to seeing it continue. So thank you.

COMMISSIONER MORENO: Amen.

7. **B. Recognition and Acknowledgement of Black Bird Saloon for Receiving the Edible New Mexico 2019 Local Hero Award for Best Restaurant, Greater New Mexico**

This was postponed to a future meeting.

8. **MATTERS FROM OTHER ELECTED OFFICIALS.**

CHAIR HAMILTON: Seeing none we can entertain that as needed.

**9. MATTERS FROM THE COUNTY ATTORNEY**

- A. Executive Session. Limited Personnel Matters, as Allowed by Section 10-15-1(H)(2) NMSA 1978; Board Deliberations in Public Hearing(s) on the Agenda, as Allowed by Section 10-15-1(H)(3) NMSA 1978; Discussion of Bargaining Strategy Preliminary to Collective Bargaining Negotiations Between the Board of County Commissioners and Collective Bargaining Units, as Allowed by Section 10-15-1(H)(5); Discussion of Contents of Competitive Sealed Proposals Pursuant to the Procurement Code During Contract Negotiations as Allowed by Section 10-15-1(H)(6); Threatened or Pending Litigation in which Santa Fe County is or May Become a Participant, as Allowed by Section 10-15-1 (H)(7) NMSA 1978; and, Discussion of the Purchase, Acquisition or Disposal of Real Property or Water Rights, as Allowed by Section 10-15-1 (H)(8) NMSA 1978, including:**
- 1. Regional Water System Related to Aamodt Settlement**
  - 2. Acquisition of Real Property – 3233 Rodeo Road**

BRUCE FREDERICK (County Attorney): Madam Chair, we're requesting to go into executive session to discuss the items mentioned in agenda item 9. A and pending litigation.

CHAIR HAMILTON: Thank you. So can I have a motion?

COMMISSIONER HANSEN: I move that we go into executive session.

CHAIR HAMILTON: Do I have a second?

COMMISSIONER MORENO: Second.

CHAIR HAMILTON: Thank you. So I have a motion and a second. Can I have a roll call please?

**The motion to go into executive session pursuant to NMSA Section 10-15-1-H (2, 3, 5, 6, 7, and 8) to discuss the matters delineated above passed by unanimous roll call vote as follows:**

Commissioner Garcia	Aye
Commissioner Hamilton	Aye
Commissioner Hansen	Aye
Commissioner Moreno	Aye
Commissioner Roybal	Not Present

[The Commission met in closed session from 3:15 to 4:15.]

Following motion, second and vote, the Commission returned to open session and immediately recessed until 5:00.

10. PUBLIC HEARINGS

- A. **CASE #18- 5131 MacAllister Appeal. Bruce and Debbie MacAllister, Appellants, Joseph Karnes, Agent, are Appealing the Santa Fe County Planning Commission's decision to Approve an Accessory Structure (Permit #18-110). The Property is 1.78 acres and is Located at 1467 Bishops Lodge Road within Section 31, Township 18 North, Range 10 East, SDA-2 (Commission District 1) [Exhibit 2: Applicants' Request for Tabling; Exhibit 3: Appellants' Power Point Presentation]**

JOHN LOVATO (Case Manager): Madam Chair, Commission members, before we begin, Ms. Lucero is handing out a request from the applicants requesting tabling as they are out of the country and they're requesting I believe until August 9<sup>th</sup>.

CHAIR HAMILTON: Can you provide any further information on this?

MR. LOVATO: This is what you're being handed out, and there's a response also from the applicants addressing all the appellants' criteria that they had in there, in the actual memo as exhibits. The appellants do not appear to be agreement with the actual request for tabling by the applicants, and therefore it's up to the Board whether you would like to move forward with this today or appease the applicants' request for tabling.

CHAIR HAMILTON: So what's the pleasure of the Board?

COMMISSIONER ROYBAL: Madam Chair.

COMMISSIONER HANSEN: Commissioner Roybal.

COMMISSIONER ROYBAL: The appellants – right now basically they disagree with what the County has decided and staff has decided. Is that correct?

MR. LOVATO: Madam Chair, Commissioner Roybal, that is correct.

COMMISSIONER ROYBAL: I think that right now, I don't know that it would be appropriate to really wait any longer, being that we do have basically the argument is basically that they don't agree with what staff has recommended and staff is here today. Is that correct?

MR. LOVATO: Madam Chair, Commissioner Roybal, that is correct.

COMMISSIONER ROYBAL: I'd like to hear from my other Board members but I think that I would be fine with moving forward today.

CHAIR HAMILTON: Commissioner Hansen.

COMMISSIONER HANSEN: I'm find with moving forward.

CHAIR HAMILTON: Mr. Frederick, it seems like the staff is present to present factual information to us, which is what we need to hear. Do you concur with that?

MR. FREDERICK: Madam Chair, so that tabling is at your complete discretion. What's at issue here is that staff made a decision; that's what's under appeal here. Well, actually the Planning Commission decision is under appeal. It's a *de novo* appeal. The applicants do have the burden of proof. In a *de novo*, even though it's an appeal the applicants still have the burden of proof. Staff is here to defend their decision and I'm not sure if staff has a recommendation on tabling or not so I'd like to hear from staff whether they would want to table this or not.

CHAIR HAMILTON: What's your preference?

COMMISSIONER ROYBAL: I'd like to hear from staff as well, but I would also like to know – well, let's hear from staff first and then I'll give my comments.

VICKI LUCERO (Building & Development Supervisor): Madam Chair and Commissioners, as I had handed out, the applicants actually submitted a letter. I know it's a lengthy letter. We just received it this afternoon, but that's their response to the appeal. So I think it's at the Board's discretion whether or not they feel that with that information they want to move forward, but staff is here to answer questions and address the staff's recommendation and the recommendation of the Planning Commission.

MR. FREDERICK: And Madam Chair, just let me add for the record that the request came, I think Friday –

CHAIR HAMILTON: The letter is dated Sunday the 9<sup>th</sup>.

MR. FREDERICK: Okay. So it's a last minute request for tabling, so I don't think there's a due process issue. I think it's entirely at your discretion.

CHAIR HAMILTON: Well, if the other Commissioners are in agreement we can move forward with this.

COMMISSIONER ROYBAL: Madam Chair.

CHAIR HAMILTON: Yes, Commissioner.

COMMISSIONER ROYBAL: One question I do have is did the applicant have any concerns with staff's recommendations?

MR. LOVATO: Madam Chair, Commissioner Roybal, I don't believe they did at all.

CHAIR HAMILTON: Okay, so we'll be able to get factual information from you. Can you then proceed with introducing the case?

MR. LOVATO: Thank you, Madam Chair. On January 31, 2018, County staff received a complaint regarding the unpermitted structure at 1467 Bishops Lodge Road. On February 9, 2018, County Code Enforcement issued a Notice of Violation to Mark Hopkins for unpermitted development. Mr. Hopkins moved a 600 square foot horse stall/metal building to a different portion of his property without a permit.

On February 21, 2018, Mark Hopkins filed for a development permit. County staff later deemed the permit incomplete. Mr. Hopkins was required to submit a drainage study on the arroyo to provide proof that the arroyo flow was under 100 cfs which would allow the structure to be closer than 25 feet pursuant to Chapter 7.17.5.2.6.

On May 17, 2018, Santa Fe County filed a criminal complaint against Mark Hopkins in the Santa Fe County Magistrate Court for unpermitted development as he had still not submitted the required drainage study for a permit. On May 30, 2018, Mr. Hopkins submitted drainage calculations from a Professional Engineer.

On May 30, 2018, a permit was issued to Mark Hopkins to move a 600 square foot accessory structure on his property. Mr. Hopkins chose to locate the structure five feet from the northern boundary of his property which complies with requirements of the Sustainable Land Development Code, Chapter 9.5, Tesuque Community Overlay District. There is also an arroyo on the property and the SLDC requires a minimum 25-foot setback from all arroyos with a flow rate of 100 cfs. Mr. Hopkins submitted drainage calculations from a Professional Engineer which stated the flows were less than 100 cfs. Therefore, a setback is not required

On April 6, 2018, Bruce and Debbie MacAllister filed an application for an appeal of the Land Use Administrator's decision to grant the accessory structure permit. The appeal was submitted within the five days allowed by Chapter 4, Section 4.5.2 of the SLDC. Mr. Hopkins was made aware that an application was filed to appeal the permit for the proposed structure.

On September 20, 2018, the Santa Fe County Planning Commission met and acted on the appeal of the permit. The Santa Fe County Planning Commission denied the appeal and upheld the Santa Fe County Land Use Administrator's decision to approve the accessory structure Permit #18-110. On March 25, 2019, The Final Order for Bruce and Debbie MacAllister was recorded.

On May 2, 2019, Bruce and Debbie MacAllister filed an application for an appeal of the Planning Commission's decision which was submitted within 30 calendar days of the final development order by the Planning Commission allowed by Chapter 4, Section 4.5.4 of the SLDC. Mr. Hopkins was made aware by phone that an application was filed to appeal the permit for the proposed structure.

The applicants are basing their appeal on these three subjects: One, the horse shed is located within 25 feet of an arroyo with a 100- year flow rate demonstrated to be in excess of 25 cubic feet per second (cfs) in violation of SLDC §7.17.5.1.1; and, two, The horse shed has been placed in a location that substantial evidence demonstrates is prone to periodic flooding, in violation of SLDC §7.17.5.2, which states, "Any area of periodic flooding shall be identified as a no-build area and shall be included within a drainage easement." And three, the horse shed is demonstrated by appropriate experts to be absolutely unable to meet the one-hour fire resistive rating required of any accessory structure located within 50 feet of a habitable structure in the High Hazard Zone of the Urban Wildland Interface Zone, as required by Urban Wildlands Interface Code, Ordinance numbers 2001-4 and 2001-11.

The appellant references the SLDC, Chapter 7, Section 7.17.5.1, which states, no fill shall be placed in natural drainage channels and a minimum setback of 25 feet shall be maintained from the natural edge of all streams, rivers, or arroyos with flows exceeding 25 cubic feet per second during a 100-year frequency storm, 24- hour duration. This applies to setbacks for the placement of fill dirt, not for the building setback. Fill dirt was not placed near the drainage area and all requirements of the SLDC were met. Therefore, county staff issued a permit.

There is no flood data of periodic flooding with either the State, County, or Federal agencies. In fact, a detailed study was redone and approved on December 4, 2012, by FEMA. It was determined that this drainage is not within a FEMA Designated Flood Hazard Area. FEMA is concerned with 100-year storm events and this area was not mapped. In addition, the appellants' engineer, Paul McGinnis, has provided a drainage analysis. In both instances, using 3.44 inches, the amount of rainfall for a 100-year/24 hour event was calculated at 80cfs. Using 4.0 inches and Rational Method of Analysis results an estimated 93.9 cfs. In both studies, Mr. McGinnis chose to use the higher number, and in both cases the numbers Mr. McGinnis calculated were under 100 cfs. This confirms that Mr. Hopkins met the requirements of the code, as setbacks are not required if the flow is less than 100 cfs.

The Fire Marshall has reviewed this application. Due to the size of the structure and construction material used. The Fire Marshal did not express any concerns. The Fire Marshal has stated the metal material the accessory structure is constructed with meets the requirements as set forth in Ordinance No. 2001-11.

Recommendation: Staff recommends that the BCC uphold the Santa Fe County Land Use Administrator's decision and the Santa Fe County Planning Commission's decision to approve permit # 18-110 to allow the accessory structure to remain in its current location. The permit as approved was based on the approved site plan, and a drainage report which established that the arroyo drainage is under 100 cfs. Therefore, a setback is not required from the arroyo. Furthermore, the structure is not located on fill and Fire Prevention has no concerns with fire rating on the accessory structure.

Thank you, Board. I stand for any questions.

CHAIR HAMILTON: Thank you. So at this point, before we let the appellants speak and then open for public comment, are there any questions at this juncture?

COMMISSIONER GARCIA: Madam Chair, I have a question.

CHAIR HAMILTON: How far – what is the setback now?

MR. LOVATO: Madam Chair, Commissioner Garcia, it's about 17 feet.

COMMISSIONER GARCIA: Seventeen feet. And Madam Chair, is the structure actually built on a permanent foundation or not on a permanent foundation?

MR. LOVATO: Madam Chair, Commissioner Garcia, it is on a temporary foundation.

COMMISSIONER GARCIA: And then also in regards to the mention of periodic flooding, who's to determine whether there's periodic flooding or not. Do we know? Because I've never seen that.

MR. LOVATO: Madam Chair, Commissioner Garcia, usually there's evidence, high water marks, there's local records that you can obtain from State DOT. There's also from federal FEMA and the County keeps records at some point. We know certain drainages that are hazardous and we don't have anything on this particular area.

CHAIR HAMILTON: So for clarity, it mentions specifically designation of FEMA floodplains in Santa Fe County as the evidence for flooding or lack thereof. Is that the appropriate reference?

MR. LOVATO: Madam Chair, Commissioners, when they do the studies they take certain areas and not every area is mapped but they use best available data. If not they did a detailed study on that drainage. Neither of these methods were done on this drainage.

CHAIR HAMILTON: Are there other questions from the bench? Okay, so is the appellant present and would they like to make a statement?

JOSEPH KARNES: Good evening, Chair Hamilton, members of the Commission. I'm Joseph Karnes with Sommer, Karnes and Associates here on behalf of the appellants, Bruce and Debbie MacAllister, who are present tonight. Mr. MacAllister is going to give about a ten-minute power point presentation illustrating the basis for our argument, and then I'm going to follow without about five minutes or so of follow-up and then we'll stand for any questions you may have and actually Ms. MacAllister may want to add a few more words as well, and then we'll stand for questions.

So Mr. MacAllister, we've coordinated with Matthew, who I understand is ready to help with getting the power point presentation going.

CHAIR HAMILTON: Thank you.

MR. KARNES: Thank you.

BRUCE MACALLISTER: Madam Chair, if it pleases you I'd like my wife to speak first.

CHAIR HAMILTON: Either way is just fine. Thank you. Come on up.

[Duly sworn, Debbie MacAllister testified as follows:]

DEBBIE MACALLISTER: Debbie MacAllister. Good afternoon. Thank you for your time. I appreciate – it will be immediately obvious I am not a public speaker. My husband and Mr. Karnes are much more polished speaking before a group and it's a daunting task for me. But I wanted to speak to you from the heart. I wanted you to see the human face. We are Debbie and Bruce. We're long-time residents of Tesuque. We are not native New Mexicans. We have lived in the state for – my husband for 49 year, myself for 45 and we call this home.

We love our home. We love Santa Fe and we are very, very attached to our property in Tesuque. We've lived there for 33 years now. We bought the house as a young couple with not much money. It was definitely a fixer-upper and we've spent most of our lives fixing up and loving this house. We know that your property owns you as much as you own the property and that we will not be here forever. We consider ourselves stewards of the land and we respect it. We respect the many forces of nature that we deal with. We know we're in a high flood hazard area and a high fire hazard area. We are very, very concerned about the safety and future of our own home and the safety of our neighbors downstream who have been affected several times by this flooding arroyo.

We feel like the development that has happened there endangers all of us. I've worked in the area of design and drafting, seeking permits for over 30 years and invariably the toughest spot that any of us can get through is the final approval by the Fire Department. It's always been a bottleneck. Everything can go smoothly until you get to that point and it's always full of surprises.

So I know the Wildland-Urban Interface Code very well. It's a simple document. It's very clearly written. It's not hard to follow. But I feel like from the get-go this application did not go through the Fire Department because it was deemed a structure that was 600 square feet or less. But the code says that in addition to that being an exception that if the building is within 50 feet of a habitable structure it needs to go through the Fire Department for a review. And there needs to be a determination that the building can withstand the threat of a fire.

Urban-Wildland fires generally are spread by flying embers and so one of the biggest concerns that we have is with penetrations through the walls of the building. My husband will go into this in greater detail with his power point presentation but this being a horse shed it is designed for ventilation. It's to keep an animal safe and comfortable with plenty of airflow. It has two four-foot wide doors with four by four foot openings, open grills, no mesh. Not only can air flow in for the horses but embers can flow either from fee and hay inside the barn or from a fire on the exterior.

The code says that its purpose and intent is to mitigate the threat to life and

property from the intrusion of wildland fire exposures, for exposures from adjacent structures, and prevention of structure fires spreading to wildland fuels. This is a point that I feel very strongly about and there seems to be a lot of conflicting opinions between people with a legal background and the County staff as to the language of some of the other provisions. I think they're also very important. But I just wanted to express my wishes that the part regarding the fire safety is taken very seriously. Our Fire Chief is an honorable man. I have nothing but the greatest respect for his profession. I had to see his time taken up with administrative duty, but it's vitally important if we are going to adopt this code that we read all of it and we take all of it seriously. So that's part of what I wanted to say.

I also wanted you to know that we're not people of infinite means. We are a middle class family. Our children went to the local public schools. They went to the local state colleges. We've recently retired. We finally paid off our home after 30 years of a mortgage and we're hoping to enjoy our retirement. We've had 17 months of a lot, lot of expenses and time to try and press our point on this. And I don't think we're fools. I think we – we're not just in it to win it for the sake of winning it. We think that we're right and we hope that you'll take our presentation seriously, take it to heart, and keep in mind also that the last meeting that we had before this group that we were left with the impression and they were as well that the horse shed would be moved and it has not been. So thank you very much.

CHAIR HAMILTON: Thank you.

[Duly sworn, Bruce MacAllister testified as follows:]

MR. MACALLISTER: Bruce MacAllister. Madam Chair, members of the Board, with your permission, I can guarantee I can go through this faster if I can give you a hard copy.

CHAIR HAMILTON: That's wonderful. Thank you.

COMMISSIONER GARCIA: Madam Chair, just really quick, for the gentleman. Mr. MacAllister, can you tell me where 1467 Bishop's Lodge Road is? Is it by Bishop's Lodge? Is it by the White Rock?

MR. MACALLISTER: So you know where the Beasley estate it? It's got the big white board fences and the horses. It's about a mile north of Tesuque Elementary, and from the Scottish Rite Cathedral it's almost five miles out into Tesuque. So it's in the heart of Tesuque. It's south of the Elementary. I'm sorry.

CHAIR HAMILTON: Thank you.

COMMISSIONER HANSEN: Madam Chair.

CHAIR HAMILTON: Yes.

COMMISSIONER HANSEN: So from the Beasleys you're a mile north?

MR. MACALLISTER: From the Beasleys we're almost immediately across the street.

CHAIR HAMILTON: Okay. . So if you know where the Beasleys' is that gives you a good location. I'm going to set myself a timer here and move very crisply through this. As both the County staff and Mr. Karnes have stated, what we basically have is three issues. We're not here to talk about – this is not a neighbor to neighbor dispute. This is one reason why I am delighted that the Commission has decided to move forward, because this is really an issue where we're here to urge you to support

the decision of the Planning Commission which had concluded that these provisions apply, but didn't feel the need to enter an order because their understanding was that our neighbors, Mr. Hopkins and Ms. Vernold, had agreed to voluntarily relocate the barn.

So we're not really here to appeal a denial as much as we're here to seek enforcement of an understanding, now with a little more clout because the Board of the County Planning Commission understood that the Hopkins had agreed to move the shed, and that's in your package and that was included in the staff report.

So quickly what we're going through is three provisions. One is a very clear provision that says in no uncertain terms that no fill shall be placed in the natural drainage. That's not talking about fill next to a drainage; it's no fill in a drainage and a minimum setback of 25 feet shall be maintained from the natural edge of all streams, rivers and arroyos with flows exceeding 25 cubic feet during a 100-year frequency storm. We have uncontroverted evidence from three hydrologists that that arroyo flows at anywhere between 39 at the minimum estimation to over 90 at the maximum estimation. But every one of the hydrologists agree that it flows at greater than 25 cubic feet per second.

So we're asking you to simply enforce the clear language of this provision as the County Planning Commission had determined it applied, and simply enforce your own code. We're not here because we're in disagreement with neighbors; we're here to urge you for the protection of all of us in the county to enforce the code. These are provisions that we rely on.

The second issue would be the prohibition of building on an area prone to flooding. We have submitted overwhelming evidence that was never controverted by either the County or anything submitted by the Hopkins, including the testimony, the sworn statements of six neighbors, additional letters from the previous owner of our property, a retired judge, a couple of physicians, emergency room doctors that all attest that they've seen this arroyo flood periodically.

And the third thing is the fire code which my wife has touched on and I'll go through and show you what our expert established.

So those are the three points. This is the property in question. You can see a before picture where during the flood you can see in the lower right hand picture the property where the barn currently is is completely inundated and you can see water running from that property down onto our property in the foreground of that lower right-hand picture. The left shows you where that barn is now, which is right in the path of that flood. Additionally, as the staff has indicated, this is not a barn that's anchored to a permanent foundation. It's set on little paving stones, 12" by 14".

And to meet the setback, the original placement encroached on the property line. To meet the setback we witnessed the Hopkins drag that barn with a truck. So imagine what flood waters at up to 288,000 pounds of pressure, as the hydrologist indicates, will do.

So moving quickly through this, this is a picture of the last flood. You can see the standing haystack. The County argues that it was just a flood caused by a plugged culvert. Well, this picture is taken 265 feet upstream of that culvert, so you can see the water was flowing well and flowing over the property. By the way, for points of scale, that's a 1965 Plymouth under that tarp; it's a big car. So that lets you know how big the

haystack is.

The Santa Fe Planning Commission agreed that the setback applied. I've given you the exact language, and I'd also note that other counties – this is not unique to Santa Fe County. Bernalillo County actually includes a more stringent provision that says an arroyo a quarter of the size of this arroyo requires a 25-foot setback. This arroyo drains about 41 acres. In Albuquerque or in Bernalillo County they'd require a setback from a 10-acre drainage.

This is the language – and I'm just going to jump over to Commissioner Katz. I don't think that's anything we did decide regarding placement of fill in that provision. In fact we decided the opposite, that that provision does apply. So we're here to urge you to enforce what the County Planning Commission agreed, which was that that language that I showed you and I wrote to you applies. It's clear on its face. In addition, as Mr. Katz will explain further, if there is a conflict between provisions, the SLDC itself requires that you resolve that by picking the more conservative language.

So let me talk about periodic flooding. What we've submitted to you, and I'm not going to burden you by going through all of this in detail, I show you the video of the last flood, that's one of three that we've witnessed at about that same scale since we've lived there. So these are not even 100-year events; these are about 10-year events. Sworn affidavits that you have from neighbors, some of whom will speak tonight, that they have been damaged and flooded by this same arroyo, letters from others that attest that they too have witnessed this arroyo flood.

And so let me give you an idea of the scale of this arroyo. This is panning the arroyo. It's a 41-acre drainage. It's visible from space. You can see the arroyo there. That little blue spot is our house. This is the neighbors' house, and that arroyo there and everything that runs into it is this arroyo. It is a big arroyo. Where it's not deep, it's wide. That's about 50 feet wide as you see on slide 13. Where it's not wide it's still four times as wide as it is when it hits the Bishop's Lodge Road, but it's deep. It can be more than 30 feet deep in places. It is capable of a huge flow. It's cut cliffs of up to 50 feet and there's places upstream – this is all, by the way, taken just upstream of the Hopkins property line. This is right in the middle of that arroyo.

And this shows you, the picture on the left shows you the type of drainage. It's sparse vegetation. So when it rains, it pours. It dumps into that arroyo quickly. It all is channeled down into this little channel which the County came by and after the last flood, bermed up. It is about only three feet wide at that point after having been 20 feet wide upstream. In addition, Mr. Hopkins, in moving the shed, cut the banks of that arroyo and actually did place fill in the arroyo for his convenience to get back and forth across the arroyo. And this is exactly, I would note, where the water came over and inundated that whole set of property and our property in the last flood, in 2015.

So now I'm going to show you – and by the way, this is where berms have been cut down, and now I'm going to show you what happens with this arroyo. This is the last major event in 2015. You can see that's where the barn is located. You can see water inundating that, inundating our property. You can see the original location of the barn, and you can see the rolling haystacks, and you can see it coming over our property, all the way down our drive. It flooded four other properties down Bishop's Lodge Road.

So let me just play that one more time for you.

And in conclusion as to the flooding, the language of the code doesn't say it has to be designated as a FEMA flood zone for a designated drainage. It simply says areas of periodic flooding shall be designated as no-build zones. It doesn't mention anything about FEMA. It doesn't say anything about studies. We believe we've submitted copious evidence that this property floods. This is the aftermath of that particular flood. You can see how it completely filled that drainage basin, and this is the exact location of the barn. You can see how it's washed out over the banks of that location.

And I'm going to just quickly jump through the fire information. So setback, flooding, fire code. The fire code says detached accessory structures located less than 50 feet from a building containing a habitable space shall have exterior walls constructed with materials approved for a minimum of one-hour rated fire restrictive construction. We've provided in your package expert analysis, in fact the last two pages of your package include the email from the expert, John Pate, who's a licensed, registered architect. He's the vice president of architecture for the local engineering firm of Molzen-Corbin, Adelmo Archuleta's engineering firm. And he says – and I should have put quotes around this second paragraph. Detached accessory structures are governed not only by the Urban Wildlife Interface Code but by special construction regulations when within 50 feet of habitable space. Structures must be built of approved, minimum foot one-hour rating.

So we've got a clear code requirement, what do we have there onsite? We have, Mr. Pate indicates a steel superstructure that's not protected and has no code-approved method of fire protecting the structure. Counterintuitively, steel is actually a horribly non-fire-resistant material. It melts. It buckles. It's actually what brought down the Twin Towers, was uninsulated steel exposed to the heat of the flame. The wood-based sheathing is not a fire barrier and the thin metal sheet veneer does nothing to make it fire-resistant. The openings, as my wife mentioned, don't comply with the code. The design meant for air circulation is counter to fire restriction, and based on all of the considerations he indicates, and these are just a few of them. You've got them all in your package. He knows of no simple way for this structure to obtain one-hour fire resistance.

Now let me just make this simple for you. Look at these barn doors. Those are 48 by 48. That's a vertical penetration. You can see there's also other penetrations in the structure. If you look closely at the pictures you can see it's uninsulated, unprotected wood inside. The maximum penetration by comparison would be the small square that has to have screening and fireproofing and could only be 12" by 12".

So to have two of these doors on either side of this barn and a comparable one of the other side, how is that going to stop fire? That one's really just kind of a common sense one. Okay?

So this is what happens to these sheds. People think, oh, metal is fire resistant, but metal actually opens up and buckles and then it draws this fire in. And this is exactly what unsheathed steel will do in the event of a fire. It's horribly non-fire-resistant.

So in conclusion, we're not asking for variances. We're simply asking you to look at the clear language of your code in this three areas and enforce the code, the code that you passed to protect us all. We're simply asking you as the County Planning Commission did to try to enforce the code. We're talking about exposing neighbors to the threat of floods and a non-anchored building coming down the arroyo, and when asked

by the Planning Commission if they could easily move the structure to meet the 25-foot setback Ms. Vernold indicated under oath, yes, we can. The Planning Commission took them at their word and that's the only reason they wanted to avoid a direct order, to just avoid putting the staff in conflict with the Commission and things like that. They thought they'd reached an easy answer with the Hopkins agreeing to move the structure.

Unfortunately, the Hopkins, similar to what they've done at the last minute now, have not revoked them. We asked them if they were going to follow through. We got no answer.

So if the County doesn't enforce these clear provisions in Tesuque, how can they enforce them anywhere? So finally, in conclusion, we'd ask within 30 days of the ruling, please order the removal of this building. Please, for the benefit of all us and the enforcement of your code, have Mr. Hopkins restore the terrain in the County-installed berm that the County put effort and resources in to install in the first place. And please have your staff follow up and ensure compliance. Promises were made; promises were ignored. We're here to beg you to help us get out from under this sword of Damocles of this risk of fire and flood that we've been living with now for 18 months. So thank you very much for your time and attention. I sure appreciate it.

CHAIR HAMILTON: Thank you very much.

MR. KARNES: Thank you, Chair Hamilton, members of the Commission.  
Again, Joseph Karnes.

CHAIR HAMILTON: Do you have a question right now?

COMMISSIONER GARCIA: Yes, just once again. Sorry about that. Once again, Madam Chair, 1467, is that your clients? That's where the barn's located at.

MR. KARNES: And the MacAllisters are next door to the north.

COMMISSIONER GARCIA: They're south.

MR. KARNES: To the north of the Hopkins' residence. I'll be relatively brief. Thank you, Chair Hamilton, members of the Commission. As Mr. MacAllister described, we're here for two primary purposes. First, to achieve a relocation of the horse shed at least 25 feet away from the edge of the arroyo, and second to achieve a proper reading of in particular the setback requirement of your code, which applies throughout the county and we feel this is a very important clarification to make, given what we perceive to be a misinterpretation by staff of the meaning of that section.

I can be very brief though. The real question before you as far as the setback goes, what does the setback apply to? Does it apply to placement of fill? Or does it apply to placement of structures? Your code gives us the answer. In the middle of the board there, a setback is the minimum distance from the property line to where a structure may be built. It defines what a setback is for you, and it establishes the minimum required yard and governs placement of structures on a lot. The code defines what a setback is. Nowhere in the code does it express that there is a setback for placement of fill. So that's the short answer to the primary issue before you.

Now, the Planning Commission – I want to elaborate a little bit about what happened at the end of the Planning Commission meeting. At least some of the Planning Commission members understood and I think we're trying to create a solution here that did not involve contradicting staff's interpretation, and achieved the MacAllisters' goal of having the horse shed relocated. And I'm just going to read to you a little bit from the Planning Commission minutes from September 20<sup>th</sup> of last year. Member Anaya asked to

Ms. Vernold, the applicant, My question to you is what are the possibilities of moving the building to the 25-foot setback? Ms. Vernold replied, There's room on the area to do that – on their property. Member Anaya said, You could do that? Uh huh. Easily? Yes. They could easily relocate the shed.

That led the Planning Commission to expect and believe that they would do that. Commissioner Grey followed up and she said if the Hopkins have agreed to, in addition move to the 25-foot setback then I'm confused as to what rules are being broken. Chair Katz followed up and he said I guess I seek counsel from staff. My sense and my view is that the permit should not have been granted for where it is. It sounds very hopeful that it can be moved to a place that will comply with the 25-foot setback. Commissioner Katz was talking about the structure. He clearly read the code consistent with the definition of a setback; it's all about the structure.

Member Anaya followed up and made the motion. He said, Mr. Chair, I'd like to make a motion on Case #18-5130, MacAllister Appeal, to approve staff's recommendations to uphold the Land Use Administrator's decision as submitted. Now, as just a neighborly suggestion, I would ask that you did move to 25 feet to make everything kosher. That is my motion. Mr. Chair, it's up to you. The Planning Commission proceeded to vote four to nothing in favor of that motion. Everyone's understanding was that these folks were going to move the shed and comply with the setback requirement. I submitted a letter soon after the Planning Commission meeting at the start of October following up and saying, hey, we'd appreciate you following through on what the Planning Commission did, the vote that they took. I got no response. And it wasn't until January of this year that the draft findings were presented to the Commission and Commissioner Katz again spoke to the issue, and this is important. It indicates what the Planning Commission felt they did. He said, "Looking at the proposed findings and conclusions I have a problem," Mr. Katz said. "On paragraph 56 the Commission finds that the setback requirements in Section 7.17.5.1" – the top section on the board – apply only to the placement of fill, as you heard Mr. Lovato say tonight. "I don't think that's anything that we did decide. In fact, I think we expressed the exact opposite thought. And it was only because the applicant agreed to move it back 25 feet from the edge of the arroyo, that it was approved the way it was. And so I think that these findings and conclusions need to be reworked."

Unfortunately, the findings and conclusions were reworked; they were adopted without that requirement and that's why we filed the appeal and we're here today.

Now, Mr. Hopkins and Ms. Vernold didn't move the building and they actually provided us – if they had moved it, and the Planning Commission thought they were going to do, we wouldn't be here today. But we would have been left with what we believe is a misinterpretation of a very important section of your code that has to do with the protection of public health, safety and welfare.

Under staff's interpretation, there's no setback whatsoever for arroyos that flow during the 100-year flood at 110 cfs. As you saw in the videos, that's a lot of water. 100 cfs is 750 gallons per second. That's 45,000 gallons per minute. That is a 15-foot wide by 30-foot long by four-foot deep swimming pool going down this arroyo every 18 seconds. And obviously, that arroyo is not very deep and it cannot hold that amount of water; that's why it floods. No, it's not a FEMA designated floodplain. That applies to larger

arroyos. It applies to rivers. The Tesuque River.

So the setup that's in the code – this is your code; you wrote this; you adopted this. Arroyos that flow less than 25 cfs – there's no setback requirement. The code does not speak to them; they're exempted. They're small arroyos. The large ones are handled by the FEMA floodplain. What we're talking about is what I would call medium-sized arroyos. They could cause serious damage, and your code, your general plan, actually speaks directly to these issues and I need to read to you the section of the general plan which says, "Flood hazard areas are subject to periodic inundation that results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. These flood losses are caused by development in areas prone to inundation that increase flood heights and velocities, and when inadequately anchored, damage uses in other areas."

You saw photos of that structure. It's not anchored. It's not on a foundation. That is a light structure. It's plywood with a thin veneer of metal on the outside. If and when a flood comes, that is going to become a boat. It's going to be going downstream directly to Bishop's Lodge Road into the culvert that backed up during the last flood, during 2015. This is important stuff we're talking about because if your staff's reading of the code holds, you can have people building right up to the edge of these arroyos anywhere in the county. There are many, many of this size, this medium-sized arroyo in the county.

I handle a lot of land use applications. I might have a client come up to me at any time and say, hey, I don't have much room on my site. I need to build my structure right next to the arroyo. That's the only room I've got. And under that reading of the code, they could do it.

I read – there was an article back a couple years ago when this County was talking about coming up with a new logo, and as part of that – I'm reading from the New Mexican, the two tag lines for the logo were also suggested: "Stand on higher ground" for government purpose. "Stand on higher ground." That makes a lot of sense. And in this case, building on higher ground makes sense.

I do a lot of camping and backpacking, and they tell you, hey, you have a nice spot down here, a dry creek bed. They say don't sleep there. At night, if it rains, you might have a flood coming through there. You don't sleep in the low ground; you sleep in the high ground. You build on the higher ground. That's where your setback requirement requires: build on the higher ground.

Now, this is a matter of statutory interpretation. This is your code that we're trying to help gain clarification on. There's two sentences there. There are two clauses, this and that. No fill shall be placed in a natural drainage channel. That's one thing. You can't place fill in a natural drainage channel. If there was a period there and you started the next sentence, because these are two thoughts, the next sentence is, and a minimum setback of 25 feet shall be maintained from the natural edge of all streams of this type. It's this and that. If you wrote in your code that you've adopted that a minimum setback for fill of 25 feet shall be required, we wouldn't be here today. But it doesn't say that and you can't read the word fill into the second clause, especially when you have a definition in your code of what a setback is. It's right there in black and white. Setbacks apply to

structures.

Now, ironically, if we were in a FEMA floodplain area, FEMA doesn't let you build anything within the floodway, where the water flows; you don't build there. You can build in the floodplain where the water pools up, if you raise the finish floor elevation one foot above the flood level. So what do you do? You put fill and you build your structure on top of it. What staff's reading would have is you can't put fill, you can't raise your structure up, which common sense would dictate you do, under staff's reading, no you can't put fill, but what you can do is you can build your structure right up to the edge of the arroyo. Doesn't make any sense; it's contradictory to what the FEMA requirements are.

Now to just finish up, I won't elaborate, but as far as the periodic flooding, it's troubling to us that we have sworn affidavits from people who have lived in this community for a long time. They have been subjected to periodic flooding. We have people who live immediately downstream on the west side of Bishop's Lodge Road. They've been flooded periodically over the years. They have suffered property damage and their sworn testimony was ignored in the decision in the staff report that you have before you.

You've seen the video of the catastrophic flood in 2015 and there was commentary in the staff report that, well, last year, 2017, we had the 1,000-year flood. And it was actually right before the Planning Commission hearing in September. And I remember that day vividly. We were in the middle of this. We had filed our appeal. And I called my clients the next day and I said, what happened? Did you get flooded? And they said, thank goodness we did not. The arroyo was flowing right up to the top, the flood was right up to the top of the arroyo. But as we all know, we can apply common sense here. We all live here. Monsoon events are intense and they're focused. We all know this. You can see the rain over there – it's not raining here, but right over there it's raining. And what happened during that July day when the 1,000-year flood hit? Less than a mile to the south as the crow flies, Big Tesuque Canyon flooded. I heard that five horses perished. There was substantial property damage. My clients and their neighbors who live just downstream, they dodged a bullet.

But to say that because they were lucky and didn't get flooded on that occasion means that this arroyo doesn't periodically flood – that doesn't add up, and that's not the case. You're going to hear tonight testimony tonight from people who have been periodically flooded. We also have the hydrologist's report that was submitted by Paul McGinnis. Unfortunately, he couldn't be here tonight. He's a hydrologist. We know that this entire area, when you're near an arroyo, that's what we're faced with. These are very intense storms. That's what a monsoon is. Just because they were lucky enough not to get flooded last July doesn't mean that this arroyo doesn't periodically flood. It absolutely does.

And again, what we're talking about here is a serious issue that your code, your general plan, that I read to you from, and your code, provides reasonable requirements to protect public health, safety and welfare. A 25-foot setback from an arroyo that carries 100 cfs, several football fields of water, several swimming pools, excuse me, of water every minute, that's serious business. And that's why your code adopted it the way you did. And what we're here to do is stand up for a common sense reading of your code.

That's why we're here today.

So we would appreciate your decision to require that this shed be relocated to comply with the code, and provide a clearer direction to members. Not just people here but the whole county, of what this section means. Setbacks apply to structures is pretty simple. We'll stand for any questions you may have. Thank you.

COMMISSIONER ROYBAL: Madam Chair.

CHAIR HAMILTON: Commissioner Roybal.

COMMISSIONER ROYBAL: I did want to ask, is this area identified by FEMA? Is that what I heard you say?

MR. KARNES: It's not identified by FEMA.

COMMISSIONER ROYBAL: Okay, and so –

MR. KARNES: So this code section applies specifically to areas that are not identified by FEMA as FEMA floodplains.

COMMISSIONER ROYBAL: I believe I heard you mention FEMA earlier. Is that correct?

MR. KARNES: Yes. What I was talking about is for areas that are within designated FEMA flood areas, what they require is that if you're in the floodplain, not the floodway where the water flows, but if you're in the floodplain where it pools up, you have to put fill to raise up your structure at least a foot above the flood level. So my point was that in those areas – this isn't one of them – in those areas you do the exact opposite of what staff's reading of that code section would require.

COMMISSIONER ROYBAL: And I know that to get flood insurance, you really do need to have an area identified by FEMA. Is that correct?

MR. KARNES: I couldn't – I'm not familiar with the specifics of flood insurance. I think you can buy flood insurance for wherever you're at. I'm not sure of that. But again, what we're talking about here is interpretation of Section 7.17.5.1. The main question before you is does that section, does that word "setback" apply to placement of fill? What are you trying to protect by saying you can't put fill within 25 feet of an arroyo?

COMMISSIONER ROYBAL: One of my questions is in the area of – I guess most conventional areas, a lot of time they would give you a strip of land that would go from the river to the County road. A lot of these strips of land are 60, 70 feet wide. And so in a situation where you have an arroyo running next to a piece of property, that would almost deem that property unbuildable with a setback that far that hasn't been identified by FEMA. Would you agree with that? You're looking at about 20 feet there of buildable area. Twenty feet by whatever distance. And those exist throughout our country right now. And so my question would be in those areas, those areas wouldn't be buildable except for that size of structure.

MR. KARNES: So Chair Hamilton, Commissioner Roybal, I have two responses to that. Initially, your code section is your code section. It applies. It applies to structures. And you have a variance process built into your code. If the physical circumstances of your property don't allow you to meet a code section, you can apply for a variance. As we know, that's a discretionary decision of the Planning Commission in the first instance, and that provides relief for those situations where the configuration of the property or the features of the property don't allow you to meet – basically it's to deal

with that kind of a hardship.

Second of all, the other thing you can do, as in a FEMA area, a floodplain area, is build up. Build your structure higher so that it's out of the flood area. But the primary answer, Commissioner Roybal, is that you apply for a variance. That's not out of the ordinary. We apply for variances all the time. That's why you have that section built into the code. And it doesn't change the fact. This is your code. You adopted this code. And to say that a setback applies to fill only and not to structures, that doesn't jibe with the plain language of Section 7.17.5.1 or your definition of setbacks. Thank you.

COMMISSIONER ROYBAL: Okay. And then as far as placement of the structure is at this point in the videos that you've shown, is that actually where the structure is at, or is that off a little bit? Where exactly is it?

MR. KARNES: Mr. MacAllister knows exactly how far it is from the edge of the arroyo.

COMMISSIONER GARCIA: Madam Chair, just on that note, also, can you actually go up here on the slide show to page 14, 16, 18 and 20? So 14 is actually the arroyo, correct?

MR. MACALLISTER: Correct.

COMMISSIONER GARCIA: The drainage.

MR. MACALLISTER: That is the actual arroyo. That's just upstream

COMMISSIONER GARCIA: Page 16 is also the same.

MR. MACALLISTER: That's the same arroyo. Those pictures are all taken immediately upstream on the very arroyo in question.

COMMISSIONER GARCIA: So this picture, number 20 right here that shows the barn, is that the same drainage that comes down?

MR. MACALLISTER: That's the same drainage and you can see what's happened to it. Yes, sir. The shed, the barn, is located – has not been moved since any of the pictures that we showed in this were taken and it's actual distance from the natural edge of the arroyo, using the term in the code, is ten feet. So it encroaches on the setback by 15 feet. The Hopkins moved it originally because in their view it was an eyesore. That was the County's language as the Hopkins reported it to them. They have seven acres. It's not one of these little sliver lots. They have seven acres to choose from, so they indicated that they could move it easily, and they have lots of options to do that.

COMMISSIONER ROYBAL: Okay, I realize that they can move it to another piece of the property. I'm just looking at somebody that doesn't have the opportunity and somebody that does have the opportunity, do we make it more difficult for somebody that has the opportunity versus somebody that doesn't. And in a sense, I want to make sure that we're being fair across the board to all our constituents.

MR. KARNES: Chair Hamilton, Commissioner Roybal, my response to that would be all property owners are subject to the County code. The County code doesn't allow any leeway here. You need a 25-foot setback from the edge of arroyos of this size. That's what the code requires and that applies to structures. And I just – the last thing all say is –

CHAIR HAMILTON: But that's arguable. There's a piece of the code that gives specific setback, that specially refers to a different piece of the code. I don't know why we would have two contradictory things in two different pieces of the code.

MR. KARNES: And I'm not sure I understand the idea, but contradictory things?

CHAIR HAMILTON: Well, a part of the code that gives a setback for structures and part of the code that refers to fill. The two separate sections.

MR. KARNES: And I would submit to you that that section where it says a minimum setback of 25 feet, that does not refer to fill. And the word "setback" is defined in the code.

CHAIR HAMILTON: That's what you're saying.

MR. KARNES: So that's what we're saying. I'm positing to you that that's our argument is that that's the sensible way to read this code. And I don't understand where there might be a contradiction.

CHAIR HAMILTON: I'll get Vicki up to read that in a minute.  
Commissioner Hansen.

COMMISSIONER HANSEN: So once again, they agreed to move the shed?

MR. KARNES: Commissioner Hamilton, member Hansen, Mr. Katz at the January 17<sup>th</sup> hearing of this year said it was only because the applicant agreed to move it back 25 feet from the edge of the arroyo that it was approved the way it was. And so I think these findings and conclusions need to be reworked. That's Mr. Frank Katz' words.

CHAIR HAMILTON: If I'm not mistaken, to your point, from the piece you read out of the testimony, the question put to them was is it possible? And they said yes. And is it easy, and they said yes. So there was never, as far as I can see, a requirement put in or an agreement made. It was a question of whether it was a possibility, and made as a suggestion.

MR. KARNES: Thank you, Commissioner Hamilton. Two responses. One, they were sitting right over there, the applicants, sat by as the Planning Commission had its discussion. They didn't say anything. They had the opportunity to stand up say, just wanted to make clear to you, we're not moving that shed. They didn't do that. They sat back and – I've read it a couple times now. Clearly the Planning Commission thought there was an agreement. Mr. Katz said it was only because the applicant agreed. Those aren't my words; those are Commissioner Katz' words.

MR. FREDERICK: Madam Chair, if I may. Whatever, just like individual Commissioners, whatever an individual member of the Commission may have said, what the Commission did as a legal matter is set out in their order. So if that requirement is not in their order it's not a requirement. The order finds that the application is well taken, that is the permittees' application, denies the appeal and grants the application after the fact. That's the operative language. But, in addition, this is a *de novo* appeal. It actually doesn't matter. Now, that may be evidence that because the Planning Commission minutes are in the record here, there's evidence in the record that the shed's easy to move, but there's no requirement standing that they do that.

CHAIR HAMILTON: Thank you. Commissioner Hansen.

COMMISSIONER HANSEN: So why – I know you might not be able to answer this because they are not here, but why did they move the shed originally?

MR. KARNES: This isn't my words. According to staff, and it was in the

staff report, Mr. Lovato, his staff report, he reported that he was told by Mr. Hopkins that they moved it – it was closer to Bishop’s Lodge Road originally, and they moved it because it was “an eyesore.” They bought the property in January of last year and by February, I think the start of February, within about a month, they had relocated the shed without a permit to more or less its present location.

COMMISSIONER HANSEN: Do they have horses?

MR. MACALLISTER: Madam Chair, Commissioner, my understanding is they live elsewhere in the county at the moment and they do have horses and their intention is to relocate their horses to the new property when they finish remodeling the property.

COMMISSIONER HANSEN: I just didn’t see any, so I was just curious. Then in these pictures, with the water running and the arroyo flowing, is the shed in the waterway of those? Was that before they put the shed there? Will the shed get water in it?

MR. MACALLISTER: If the water flows where it flowed in the 2015 flood, and in fact the banks of the arroyo have been cut even lower now, that area where the shed is located will be inundated. It was in the pictures, before they placed the shed there, all of that property was eroded and underwater, and that shed will be right in that waterway.

COMMISSIONER HANSEN: Then on page 18, it looks like there’s a house on the left. Where is the shed from that house?

MR. MACALLISTER: The house on the left of the banks there is our house, and you can see how the County had bermed up the left side of that arroyo all the way to where it comes out. Mr. Hopkins, when he moved the shed over there cut those banks, those berms down. So now there’s no protection between us and our downstream neighbors and that arroyo. When it comes out it makes two sharp turns and is kind of pointing right at us as it comes out of that exit. And the County had tried to deal with that by building the berms originally.

COMMISSIONER HANSEN: Was this berm built under a 404 permit? The Army Corps of Engineers?

MR. MACALLISTER: Commissioner Hansen, I’m not aware of what the conditions of that were. The County road maintenance crews came in with the permission of the previous property owner and bermed that up as part of the reconstruction after that 2015 flood, but I can’t answer that.

COMMISSIONER HANSEN: Okay. Thank you.

CHAIR HAMILTON: Thank you. Are there other questions at this juncture from the bench?

COMMISSIONER MORENO: I have some.

CHAIR HAMILTON: Yes, Commissioner Moreno.

COMMISSIONER MORENO: Thank you, Madam Chair. I think the problem started when there was no permit. You don’t – if you don’t live long enough you can see that problems come a mile away. And I don’t really have much sympathy here for doing something that was, in my opinion, not having seen the lay of the land, but that it was going to be problematic one day or another day. So I think I’ll leave it at that.

COMMISSIONER ROYBAL: Madam Chair.

CHAIR HAMILTON: Just real quick. I want to make sure that I’m clear.

This shed was an existing structure on the property that they moved to this location. Is that correct?

MR. MACALLISTER: Commissioner Roybal, that is correct. It was moved from a grandfathered location on the opposite side of the property, probably about 20 feet away from Bishop's Lodge Road, well away from any arroyo, well away from any habitable structure, and then moved without a permit, cutting through the arroyo, and then placing it up without any notice. And it was originally placed within 3.8 feet of the property line.

COMMISSIONER ROYBAL: Thank you for that. And I just want to add, before I was Commissioner, if I had a structure similar in size, or a size that I would need a permit, I would actually not really know as a constituent that I need to get a permit to move it to a different location on my property, because I would have felt, I already got the permit originally to build it and so I think that's something that maybe the County needs to work on with constituents to make sure they understand that. So I know that's something – I think some of us here might have a shed on our property that we thought, well, if we're going to move it over 10, 15, feet, do we have to get a permit? We wouldn't know that. So that's something that we really need to work with our constituents to make sure they know that.

CHAIR HAMILTON: Just for the record, I wanted to clarify – so are you disagreeing with your hydrologic expert with respect to flow in the arroyo? Because you referred to it as clearly flowing at least 100 cfs, whereas the report we have is they determined that the flow was less than that.

MR. KARNES: No. Excuse me. I would like to clarify, Chair Hamilton. I was presenting an example. An arroyo that flows at 100 cfs, regardless of where it's at in the county, that's how much water that is.

CHAIR HAMILTON: Right. But this arroyo flows less than this.

MR. KARNES: According to our hydrologist, Mr. McGinnis, I believe it was about 93 cps at the peak flood stage. So 7 cfs less than 100. And you saw the flow on the video.

MR. MACALLISTER: And assuming that we pick the low figure that the Hopkins presented, the lowest level would be 39.9 cubic feet per second.

CHAIR HAMILTON: I got that. Yes.

MR. MACALLISTER: And if you see the flood, and you look at the volume of that, if that's 39 cubic feet per second, does the County really not want to control arroyos up to 100 cubic feet per second if a 39.9 event can do that kind of damage and flood our neighbors and flood us at that level. So this is why we see the structure as being three categories. Less than 25 cubic feet per second – no regulations. Over 25 cubic feet but less than 100 cubic feet, this regulation applies. Over 100 cubic feet this regulation and review for other floodplain regulations apply.

So the categories of the code are not really in our view in conflict. They actually just set up a cascade. And in addition I point out, if you were to view them in conflict, you have clear language in your own code that says you take the most conservative interpretation.

CHAIR HAMILTON: I want to give our Fire Marshal to say a few words about this, because I know you reviewed this and if you wouldn't mind I would really

appreciate it.

JAOME BLAY (Fire Marshal): Madam Chair, Commissioners, I would like to clarify that the code, the Wildland Urban Interface Code as adopted by Ordinance 2001-11, at the time that this permit application took place, was not violated at any time. And I'm going to explain why. If you look at – well, you don't have the code in front of you, but Chapter 5, Special Building Construction Regulations, under Section 1: General, it says that buildings and structures located within urban-wildland interface areas, not including accessory structures, shall be constructed in accordance with the fire code, the building code, and this code. So that's one point.

And the other point is in reference to detached accessory structures, it says that detached accessory structures located less than 50 feet from a building containing habitable space shall have exterior walls constructed with materials approved for a minimum of one-hour fire-rated, or rated fire-restrictive construction. Heavy timber, log wood construction – and this is the important part – or constructed with approved non-combustible materials on the exterior side. Upon review of this permit I realized that by having metal exterior walls it met the Wildland Urban Interface Code.

CHAIR HAMILTON: Thank you. Appreciate that. Are there other questions? And remember, there'll be time for questions in addition after the public hearing. So first, Commissioner Garcia, and then Commissioner Hansen.

COMMISSIONER GARCIA: Well, Madam Chair, just a couple of comments, questions, possibly, quotes. Somebody mentioned, Madam Chair, possibly common sense flooding. About 13 more days from now, June 23<sup>rd</sup> there was actually a flooding in my district. Actually everything that went into La Cienega – horses, whatever else you could imagine was in the arroyo. So I understand whenever we talk about flooding and the importance of flooding, as Paul and a few engineers brought to my attention many, many years ago as to the importance of FEMA, and sometimes whenever FEMA gets in there, FEMA's maps were last updated, 1988 was the last time they were updated and recently in the last three, five years, actually they've been updated. Possibly FEMA did not catch this arroyo, possibly did, they didn't, but nonetheless it's not regulated by FEMA, which you definitely understand what FEMA is.

In regards to the 25-foot setback, right now the structure is 13 feet from the arroyo, so we're looking at another seven, eight more feet, and so is your objective actually to – is it aesthetics? Or is it to just get rid of the entire barn? Or is it to move it back seven more feet? What is your ultimate objective goal? Because seven more feet, to me – or are you concerned that the barn's going to get flooded? Because seven more feet is from here to there.

MR. MACALLISTER: Right. Our objective is not to do with aesthetics. People can argue about aesthetics but the code doesn't address aesthetics. Our objective is when that barn was moved to that side, and it's built unanchored, and in the very last of your supplemental materials you'll see how the barn, when it was pulled off its anchors, it's just setting on these little bricks. Our objective is to eliminate the risk to us and to our downstream neighbors who are all here eager to speak up, from being flooded by that arroyo, because the berm was now cut down, to be placed at risk of fire because our expert clearly looks at that and says that is not a one-hour approved – the thin metal does not make it one-hour approved.

So our objective is to not be flooded by this barn coming over onto our property with a wall of water, to not be flooded because the berm's been cut away, to not see our neighbors flooded because the barn washes down and blocks out the culvert, and to not be exposed to wildland fires because this structure is holding inherently flammable stuff like hay and is not, by any stretch of the imagination, a one-hour fire-rated structure. You saw the doors. You see those big, unshielded openings, there's no way that's a one-hour fire-rated structure.

We submitted evidence from you from an expert that does this for an engineering firm every day for his living. So our objective is just to see that the code is enforced, and what that actually means is there is no place on this little triangle between our property and that arroyo for that barn. So the actual impact is yes, that barn needs to be relocated across on the other side of the arroyo. Somewhere – because you can't move it and meet the 25-foot setback without being on our property where it currently is. You can't just pull it away from the arroyo, okay? Further north on to our property – there isn't room. He's already right at the five-foot setback line, which itself violates the fire code.

But out point is, what that means is, he's got to take the structure back to where it was on somewhere else on his seven acres of property.

COMMISSIONER GARCIA: So Madam Chair, so is your property to the left?

MR. MACALLISTER: That's correct.

COMMISSIONER GARCIA: On that line right there.

MR. MACALLISTER: You can see the fence line, that's roughly the property line. The property is a little bit to the south of that fence line.

CHAIR HAMILTON: Commissioner Hansen.

COMMISSIONER HANSEN: So I understand from reading some of this stuff that we just got from the MacAllisters that the culvert was blocked up. Who is responsible for this culvert that got blocked up?

MR. MACALLISTER: That is a County road and it's the County's maintenance responsibility. But I'd also note that the arroyo came over the banks 200 and 300 feet upstream of that culvert. So it wasn't just because the culvert flooded that caused that 2015 flood. But of course it's important to keep those culverts properly sized and clear.

COMMISSIONER HANSEN: Okay. That's all I have for now.

CHAIR HAMILTON: Thank you. Commissioner Garcia, on page 7, middle of the page, staff responds, Tesuque was one of the main regions that was restudied through FEMA in 2012, and then it goes to give some information. That was something I pointed out. At this point I think I will open the proceedings for public comment. How many people are here who would like to speak to this issue? Can you raise your hand? Okay, great. If you guys can move to the front and anybody is welcome to speak. And can you get sworn in by our Clerk.

[Duly sworn, Lynn Pickard testified as follows:]

LYNN PICKARD: My name is Lynn Pickard and I am the co-chair of the Tesuque Valley Community Association. So I am here representing our community organization, which is a recognized community organization by this Board of County Commissioners. Madam Chair, members of the Commission, we have a mailing list of

about 200 people. I think there are about 800 people or 800 houses in the Tesuque Valley so we're broadly representative of the Tesuque Valley. We have a board that consists of 11 members and one of our board members, Jean Boyles is here with me. We have a Land Use Committee that interfaces with the County on land use issue, and that's also consisted of 11 members and one of the members is Margo Cutler and she's here with me.

So I am authorized to speak on behalf of the community, and there are two points that I would like to make. First is that we all work very hard and we work with the County to try to come up with our Tesuque Community Plan and try to get it consistent with the Sustainable Development Code. And we think it's really important for you to follow the code. I'm not going to tell you what I think the code says. That's up to you to decide. But what we want you to do is to make your best legal judgment of what the code says and what the reasons behind the code are, and to make sure the people in the valley and throughout the county follow the code. That's the first point I would like to make.

The second point I'd like to make has to do with these after-the-fact permits, and I appreciate the County Attorney Frederick saying that this is a *de novo* hearing. But what happens a lot in my experience is that somebody does something, and then County staff comes and then tries to bend over backwards and make it okay. And then it comes to you all and you wonder what to do. And maybe it's a close call, you don't know what to do. Who's burden is it? And so what I would like to see you do is truly exercise your *de novo* responsibilities and act as though this is the first time the applicant, the person who moved the barn, is asking you, is this okay? Without any deference to what staff might have done, without any deference to anything else. You're just making your own decision. And with that I will either stand for questions or sit down.

CHAIR HAMILTON: Thank you.

COMMISSIONER GARCIA: I have a quick question, your honor, justice, thank you for being here this evening. Can you let me know what you just said again as in to make your own decision, opinion?

MS. PICKARD: When you sit as a *de novo* board, I'm just saying this based on my past experience. I'm no longer licensed. I'm certainly not a judge or justice anymore. But *de novo* means that you review it as though nothing has happened before. So if it is *de novo*, you look at the wording and you say what does that mean to me? Not what has staff said, not do I think that staff's determination is reasonable. Is it reasonable to you? Do you think that the words are what one person says it means or another person says it means?

COMMISSIONER GARCIA: Thank you.

MS. PICKARD: And the same thing with the facts. If you've got conflicting experts you decide which expert you think is more credible, has more experience, that sort of thing.

COMMISSIONER GARCIA: Thank you.

CHAIR HAMILTON: Thank you.

[Duly sworn, Judy Goolsby testified as follows:]

JUDY GOOLSBY: I'm Judy Goolsby and my husband and I live at 1474 Bishop's Lodge Road which is directly across from the MacAllisters' property. And last time I came I had a written out speech but tonight I thought I'm just going to tell you a

couple of things. We have been full-time residents in that house for 15 years. In over that time we have developed the property to add to its value, to make it comfortable for us and our family, and we are on the west side of Bishop's Lodge Road. And if you want to know where that arroyo goes, it goes right through our property into the Big Tesuque River which runs right behind our home.

And everything we've done from day one, we have gotten permits. We followed the codes. We built at one point a bunkhouse over our garage. It had a limit on height. No problem. We were going to put one sink in a bar area and when we sent the permit in they said, no, you can't have the sink because it looks like a kitchen and you don't have a big enough property, and we said, okay. So we don't have a sink. So we fill coffee pots in our bunkhouse when we have family there with the bathtub or the sinks in the bathroom, which is fine. I'm seeing that sounds silly but I'm saying that all the rules, if there's a rule then you follow it. It's what I've told my children, it's what my grandchildren know, and I live in Tesuque and love it there and if there's a rule, we have followed it.

Now, that arroyo runs under Bishop's Lodge Road and it cuts our property into like thirds. Two thirds of it is where our home and my studio and other things are. The garage. And then the arroyo runs there to the river. And then there's another third of our property that goes over. So basically, on either side of that arroyo, there's 25 feet on one side – actually, it's 30, because when we got the information from the engineers, when we started building some things on our property, and they said you can't be this – you have to be further here when we had the plans at the planning stage, so we moved it over. So there's probably 60 feet, 25, 30 on one side, 40 on the other, of that arroyo, so there's plenty of room for it to run.

In 2015 that water came down from across the road in such force that we have a substantial iron gate that's covered with latillas and it did this to that gate. It went like that. Every bit of our landscaping was gone into the river. Steps to the river were gone. All – everything. It did not get in our house, thankfully, but even though it didn't, it did somewhere between \$15,000 and \$20,000 worth of damage that is not covered by insurance because it's not covered by flood and it's not covered by homeowners because it's water coming down this way.

Now we have flood insurance because the river behind us, that's what it is. And we are in the FEMA floodplain, I suppose. We at one point, several years ago, had to go through a whole serious of getting altitude checks, getting engineers coming out, getting surveys, having FEMA engineers come out to see if we were going to be in the higher rate for flood insurance. And we luckily were high enough up, away from the river, that we did not have to.

But I am saying that when I look across that road and I see that barn structure there, sitting on little blocks, as Mr. MacAllister said, and I know how much water came down and what it did to our property, I can see that thing coming down with the water and blocking that arroyo and it will not just flood our landscaping, my home and other people's homes, I'm worried that they'll be gone and it will just be a mess.

So I'm just asking you if you could just follow what the code says and the job is, I think and we appreciate everything that you do to do that so that we protect people that are already here, people that are coming down the line and families down the river from us as well. So I'll stand for questions.

CHAIR HAMILTON: Great. Thank you very much. So just to make sure, is there anybody else here who wishes to speak? Okay, so I'm going to go ahead and close public comment. I wanted to ask one other question. It seems from some things that were said, one of the concerns is increasing flooding from the lack of the berm, not from the structure. Is that – and it seems to me that those are two separate issues. So for clarity – if you would like to speak to that but it seems to me that the fact that the berm was taken down is more of a concern, the structure is not going to increase the flooding, the lack of the berm increases the flooding, that's a separate thing that may be addressed separately.

MR. MACALLISTER: Madam Chair, two points. First of all, the existence of the structure in an area known to flood and carry that wall of water itself increases the risk, because the structure, if it stays in place will deflect water and spread that water in an unpredictable way, and if it doesn't stay in place, as Ms. Goolsby pointed out, it poses its own dire hazard. Secondly, as to the berm, if the Hopkins want to use that property they're going to be going back and forth over that arroyo, and you saw that picture where they've cut that bank down right at the highest point there.

So the berms that were removed, even if you put a berm back it's likely to be cut again and again. And trying to berm that up with that barn in place still doesn't address the periodic flooding. It still doesn't address the setback, and it certainly doesn't address the clearly applicable fire code requirements. Thank you.

COMMISSIONER ROYBAL: Before you leave, sir, can you tell me – I know that you guys indicated you lived in this area a little over 40 years, how many times does that arroyo run? Does it run yearly or is it on occasion? Or how often?

MR. MACALLISTER: Commissioner Roybal, it runs yearly. It overflows it's banks about every eight to ten years in a significant way. Since we have lived there – we moved in – I grew up here in Santa Fe up off of North Hill but we've lived in Tesuque since 1986. It's flooded significantly and flooded other neighbors and us at least three times since 1986. So it is periodic.

COMMISSIONER HANSEN: Madam Chair.

CHAIR HAMILTON: Commissioner Hansen.

COMMISSIONER HANSEN: So if they said they could move the barn or the shed, where can they move it? Because you just explained that they couldn't move it the 25 feet because then it would go towards your property line? I'm confused.

COMMISSIONER ROYBAL: Can we bring up the slide that shows the actual arroyo and the structure?

MR. MACALLISTER: Our position – we don't have a recommendation for specifically on their property. That's where they'll be going back and forth.

COMMISSIONER GARCIA: Slide 20, Madam Chair.

MR. MACALLISTER: Now this particular shot here shows you – you can see that the barn – I measured it at 10 feet. The County measured it originally, when it was still encroaching on our property it was at 17 feet. So you see that here's the arroyo, here's the property line. You see there's this little sliver of property here. There's nowhere on that property where it can be 25 feet from the arroyo and not also encroach within the 50-foot setback for the fire or the five-foot setback for our property. So where they would need to move it is back where it was or elsewhere on the rest of their seven

acres of property. They own property that goes way up behind their house. They own a large tract off to the right here that's flat and level and could house that barn.

And we witnessed them move the barn in the first place. It took one man a day and a half to move it. It is not – what he did was he disassembled each of those panels. They just bolt together. It's not a huge burden on the Hopkins to relocate that to a legally acceptable location on the property. They have lots of land in question. Again, as Commissioner Roybal pointed out and I know because I have worked up in northern parts of the county and in Rio Arriba County. There are all these sliver properties. This is not a sliver property. This is a big, wide property that runs for several hundred feet on Bishop's Lodge Road. There are lots of alternative placement options.

CHAIR HAMILTON: Thank you. Vicki, could you – because I feel like I want everybody to be able to hear this – could you address the section that talks specifically about setbacks for accessory structures or structures from arroyos?

MS. LUCERO: Madam Chair, Commissioners, the section that Mr. Karnes referred to that states no fill shall be placed in natural drainage channels and the minimum setback of 25 feet shall be maintained from natural edge of all streams. Staff has always interpreted that and consistently imposed that as meaning fill. Not a setback to a building but a setback for if you're placing fill. There again on – there's another section that we refer to when we're calculating the building setback and that is the section in regards to the erosion, which states that if the flow rates are more than 100 cubic feet per second then they're required to set it back 25 feet, and in this case, per the three drainage studies that were done, all of them stated that they were less than 100 cubic feet per second, so we did not require a setback.

The old code, the language in the old code for fill was very similar to this one and we've always interpreted it that same way.

CHAIR HAMILTON: Have you had conflicts like this between those two? Any other experience where a conflict between these two has been brought up?

MS. LUCERO: This would be the first time that anybody addressed that there's a conflict. Staff is under the opinion or has taken the interpretation that there is not a conflict. One refers to fill; one refers to building setbacks. Like I said, we've enforced it. That's what we've enforced. Anytime anybody comes in and wants to build a structure within 25 feet of an arroyo, we let them know that they would have to do a drainage analysis and in most cases people don't want to go through the expense so they just meet the 25-foot setback.

CHAIR HAMILTON: Okay. Thank you very much. So I would like to suggest we go into executive session to deliberate this. I would entertain a motion. Mr. Frederick, could you suggest what we could do?

MR. FREDERICK: Motion to go into executive session to deliberate on this matter.

COMMISSIONER ROYBAL: So moved.

CHAIR HAMILTON: Do I have a second?

COMMISSIONER MORENO: Second.

CHAIR HAMILTON: So we have a motion and a second. Can I have a roll call please?

**The motion to go into executive session pursuant to NMSA Section 10-15-1-H (3) to discuss the matter delineated above passed by unanimous roll call vote as follows:**

Commissioner Garcia	Aye
Commissioner Hamilton	Aye
Commissioner Hansen	Aye
Commissioner Moreno	Aye
Commissioner Roybal	Aye

[The Commission met in closed session from 6:43 to 7:21.]

Commissioner Garcia made the motion to come out of executive session and Commissioner Roybal seconded. The motion carried unanimously.

Commissioner Garcia moved to table Case #18-5131 in order to be able to get more information regarding the incidence of periodic flooding, using as reference old federal, state and County records in addition to the evidence of neighbors. He suggested 45 days as an adequate time, thus avoiding the need to hire consultants or engineers as would be necessary in a 60- or 90-day delay. There were seconds by both Commissioner Moreno and Commissioner Hansen.

**The motion passed by unanimous [5-0] voice vote.**

MR. FREDERICK: So I think rather than a tabling this would be a continuance.

COMMISSIONER GARCIA: That's part of my recommendation.

CHAIR HAMILTON: So I was actually asking the County Attorney if there's a framework that we're required to work within with respect to a timeframe to get some guidance.

MR. FREDERICK: First I would ask staff to remind me when the landowners, the applicants, said they would be available for a hearing.

CHAIR HAMILTON: After August 9<sup>th</sup>.

MS. LUCERO: Madam Chair, Commissioners, the applicants said they would be back on August 9<sup>th</sup>.

CHAIR HAMILTON: And I'd like to have the input from staff on a timeframe to get this kind of information.

MS. LUCERO: Madam Chair, I believe that staff could have that information by the time the applicant returns, so for the August – I believe it's 13<sup>th</sup> BCC meeting.

CHAIR HAMILTON: Is that acceptable to the motion maker?

COMMISSIONER GARCIA: Yes.

CHAIR HAMILTON: And to the second?

COMMISSIONER MORENO: Yes.

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COMMISSIONER HANSEN: Yes.

CHAIR HAMILTON: Thank you. Does that seem a reasonable timeframe for gathering information? Thank you. Are there any additional questions or points? Thank you. I think this concludes this piece of business. So thank you very much.

MR. FREDERICK: I'm sorry. I stepped out and I was distracted. Was there a motion? Yes, there was a motion and a second and a vote to continue?

CHAIR HAMILTON: Yes, there was a motion and a second –

MR. FREDERICK: Okay.

CHAIR HAMILTON: And then the motion makers and the seconds and the vote all accepted your clarification –

COMMISSIONER GARCIA: Within 45 days and also to bring to the August Board of County Commissioner meeting.

CLERK SALAZAR: Okay, so you tabled – you made the motion to table?

CHAIR HAMILTON: No, the motion was corrected and was accepted as a continuance because we've heard – we're not tabling anymore. We've heard – we had a hearing, so it's a continuance to bring specific additional information. That was clarified by the County Attorney.

MR. FREDERICK: So it's a continuance to August. When do you usually hear land use cases? First Tuesday of the month? Okay. Like this one. Okay. That's perfect then.

CHAIR HAMILTON: August 13<sup>th</sup>. Is that correct? Thank you.

**CONCLUDING BUSINESS**

- A. Announcements
- B. Adjournment

Commissioner Hansen moved to adjourn and Commissioner Roybal seconded, and with no further business to come before this body, Chair Hamilton declared this meeting adjourned at 7:29 p.m.



ATTEST TO:

*Geraldine Salazar*  
GERALDINE SALAZAR  
SANTA FE COUNTY CLERK

Approved by:

*Anna Hamilton*  
Board of County Commissioners  
Anna Hamilton, Chair



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss BCC MINUTES  
PAGES: 108

I Hereby Certify That This Instrument Was Filed for Record On The 22ND Day Of July, 2019 at 08:37:50 AM And Was Duly Recorded as Instrument # 1891690 Of The Records Of Santa Fe County

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

SEC CLERK RECORDED 07/22/2019

Respectfully submitted:

  
Karen Farrell, Wordswork  
453 Cerrillos Road  
Santa Fe, NM 87501

SFC CLERK RECORDED 07/22/2019



GERALDINE SALAZAR  
 COUNTY CLERK  
 (505) 986-6280  
 gsalazar@santafecountynm.gov

~~AGE~~ **EXHIBIT** 3A  
 tabbles  
 1

RIA L. TRUJILLO  
 Deputy Clerk  
 6535  
 vltrujillo@santafecountynm.gov

**MEMORANDUM**

DATE: May 29, 2019  
 TO: Board of County Commissioners  
 VIA: Katherine Miller, County Manager  
 FROM: Geraldine Salazar, Santa Fe County Clerk *Geraldine Salazar*  
 CC: Steve Fresquez, Chief Deputy Bureau of Elections  
 Theresa Atencio, Elections Administration Supervisor  
 RE: **Resolution No. 2019-\_\_\_\_\_, A Resolution Appointing Five Members to the Board of Registration**

**ISSUE:** At its first regular scheduled meeting in June of each odd-numbered year, state law requires the Board of County Commissioners (BCC) to appoint (i) five voters, who shall constitute the Board of Registration for the County.

**BACKGROUND:**

*What the Board of Registration does.* The purpose of the Board of Registration is to carry out the list maintenance provisions of the Election Code and The National Voter Registration Act of 1993. That is, to delete any voter who has not appeared to vote in at least one statewide or local election in approximately four years after being designated as "inactive". A voter is initially designated as "inactive" based on a mailing to confirm the voter's address.

New Mexico conducts its list maintenance procedures through the Office of the Secretary of State, which contracts with a National Change of Address (NCOA) program vendor. The entire state voter file is run against the Postal Service's records. Any registered voter whose name appears on the Postal Service records is sent a confirmation card.

The confirmation card ensures that the postal records are correct. If the voter has moved, they are flagged on the county file as "inactive". Only after a voter has been inactive from the date of the confirmation notice until after the second general election, not appeared to vote in any election (including school, municipal and special elections) and failed to reregister during that period of time, are they deleted from the file. If a voter reregisters to vote at a new address, or appears to vote in any election, they are restored to active status.

Voters are never deleted from the voter registration files solely for non-voting. The intent of Congress when it passed the National Voter Registration Act was that, once registered, a voter stays registered for life, unless they move to another county or state, have not been released from the obligations imposed by the court as a result of a felony conviction or have been declared incompetent by a court. Also, voters who are scheduled for deletion from the file are noticed sixty days prior to deletion, so they may be restored to active status if there is an error, or if they need to update their registration.

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*How Board of Registration members are appointed; limits on the number of members that may be of the same political party.* The County Clerk's Office solicited letters of interest from the general public and recommendations from Santa Fe County's political party chairs for consideration by the BCC. Exhibit A contains the names of individuals who have submitted letters of interest and recommendations from the political party chairs who meet the qualifications listed below.

The BCC is required to appoint five members who meet the following qualifications:

- "members of the board of registration shall not during their service be county employees, elected officials or candidates for public office, and not more than two members of the board of registration shall be members of the same political party at the time of their appointment; provided that:
- "a member of the board of registration shall not have changed party registration in the two years next preceding the member's appointment in such a manner that the member's prior party registration would make the member ineligible to serve on the board of registration"; and
- "a member of the board of registration shall not continue to serve on the board of registration if the member changes party registration after the date of appointment in such a manner to make the member ineligible to serve on the board of registration."

NMSA 1978, § 1-4-34(B).

**REQUESTED ACTION:** Santa Fe County Clerk Geraldine Salazar respectfully requests that the BCC appoint five members to the Board of Registration and adopt the subject resolution with the members names added to the signed and recorded version of the resolution.

**Exhibits:**

Exhibit A – List of Qualified Individuals Interested or Recommend for Appointment to the Board of Registration

Exhibit B – State Statutes Concerning Board of Registration

Exhibit C – Proposed Resolution Appointing Five Members to the Board of Registration

**List of Qualified Individuals Interested or Recommend for Appointment  
to the Board of Registration**

**Democratic Party**

1. Clifford M. Rees
2. Dan Cron
3. Mary Schruben

**Republican Party**

1. Judith Nowers
2. Edward Gallegos
3. Ed Brown
4. William Modahl

**Libertarian Party**

1. Helen Milenski
2. Bob Walsh
- 3.
- 4.
- 5.

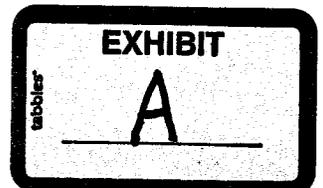
**Green Party**

- 1.
- 2.
- 3.
- 4.
- 5.

**Constitution Party**

- 1.
- 2.
- 3.
- 4.
- 5.

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### 1-4-28. Cancellation of registration; change of residence; notice.

A. The secretary of state, county clerks and boards of registration, in compliance with the federal National Voter Registration Act of 1993, shall remove from the official list of eligible voters the names of voters who are ineligible to vote due to change of residence.

B. The secretary of state shall conduct a general program that identifies voters who may no longer reside at their address of registration. This program shall use information supplied by the United States postal service national change of address service. This program may also include, among other practices, identification of voters whose official election-related mail is returned and periodic mailings to voters to verify continued residency at their address of registration, provided such practices are uniform, nondiscriminatory and in compliance with the federal Voting Rights Act of 1965.

C. Between ninety and one hundred twenty days before the next general election, the secretary of state shall send to each voter who it appears has changed address from the voter's precinct of registration a notice, sent by forwardable mail, that shall include a postage prepaid and pre-addressed return card. The notice shall state that:

(1) if the voter did not change residency, the voter should return the card no later than twenty-eight days before the next general election;

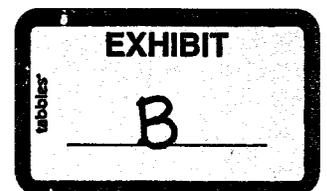
(2) if the voter does not return the card, the voter may be provided an opportunity to update the voter's registration address before the voter casts a ballot in any election during the period beginning on the date of the notice and ending on the day after the second general election that occurs after the date of the notice;

(3) if the voter does not vote in any election during the period beginning on the date of that notice and ending on the day after the second general election that occurs after the date of the notice, the voter's registration may be canceled; and

(4) if the voter has changed residence within the same county, the voter should complete the place on the return card for the voter to indicate the address of the new residence and a request to have the voter's registration moved to that address in the same county.

D. If the voter returned the card indicating a new address and the address is:

(1) in the same county, the county clerk shall correct the official list of eligible voters in accordance with the change of residence information obtained on the return card; or



(2) in another county, the county clerk shall forward the return card to the appropriate county clerk, who shall process the change of residence as a new registration in the county.

E. No later than the fifteenth day of March following a general election, the board of registration shall review the list of eligible voters. The board of registration shall direct the county clerk to cancel the registration of any voter who has been sent notice in conformance with this section and who:

(1) has failed to respond to the notice sent in conformance with this section and has not voted or appeared to vote in any election during the period beginning on the date of the notice and ending on the day after the second general election that occurs after the date of the notice; or

(2) has confirmed in writing that the voter has changed residence to a place outside the state.

**History:** 1953 Comp., § 3-4-26, enacted by Laws 1975, ch. 255, § 46; 1979, ch. 48, § 1; 1985, ch. 197, § 1; 1993, ch. 314, § 24; 1993, ch. 316, § 24; 1995, ch. 198, § 11; 2008, ch. 58, § 2; 2011, ch. 137, § 36; 2019, ch. 212, § 54.

#### ANNOTATIONS

**Cross references.** — For the federal National Voter Registration Act of 1993, see 42 U.S.C. § 1973gg et seq.

For the federal Voting Rights Act of 1965, see 42 U.S.C. § 1973 et seq.

For determination of voter's death, see 1-4-25 NMSA 1978.

For determination of voter's insanity, see 1-4-26 NMSA 1978.

**The 2019 amendment**, effective April 3, 2019, revised the provisions related to voter eligibility following a change of residence; in Subsection C, deleted Paragraph C(5), which provided guidance to voters who want to remain eligible to vote following a change of residence outside of the county; in Subsection D, added the introductory clause and new paragraph designation "(1)", in Paragraph D(1), added "in the same county", after "information obtained on the", deleted "prepaid and pre-addressed", after "return card", deleted "to a new address in the same county, and such names shall not be removed from the list of eligible voters for reason of change of residence", and added new Paragraph D(2); and in Subsection E, after "place outside the", deleted "county" and added "state".

**The 2011 amendment**, effective July 1, 2011, required the secretary of state to identify voters who no longer reside at their registration address and to give such voters notice between ninety and one hundred twenty days before an election directing the voter to provide the voter's current address and informing the voter of the consequences of not providing the information; required county clerks to correct the list of voters in accordance with the information provided in the responses to the notice; and required the cancellation of the registration of any voter who has not

responded to the notice or voted during the period from the date of the notice to the day after the second election since the date of the notice or who has changed residence to a place outside the county.

**The 2008 amendment**, effective February 29, 2008, deleted former Subsections A through E that provided for the cancellation of voters who failed to vote and added new Subsections A and B.

**The 1995 amendment**, effective April 6, 1995, in Subsection A, substituted "statewide or local election" for "general election or one primary election", and inserted "after being placed on an inactive voter list"; substituted "four-year period, establishing an inactive voter list and providing notice of inactive status to voters on the inactive voter list" for "two general elections" in Subsection B; rewrote Subsection E; and deleted Subsection F prohibiting stamping the certificate "cancelled" until the end of the 60-day period.

**The 1993 amendment**, effective June 18, 1993, substituted "certificate" for "affidavit" throughout the section; in Subsection A, substituted "in at least one" for "at the last", and "or one" for "and", inserted "in a four-year period", and deleted "affidavits of" preceding the first occurrence of "registration"; in Subsection B, inserted "least once in" and "two", and made a minor stylistic change; and, in Paragraph (E)(2), inserted "two" and "least one of", and made a minor stylistic change.

**Compiler's notes.** — Since the following opinions were rendered, the 1979 amendment has substituted "last general election" for "last two general elections" in Subsections A and B and substituted "the last general election" for "either one or both of the last two general elections" in Subsection E(2).

**Legislative intent.** — The legislature intended that whenever a person fails to vote in two general elections that such person's registration should be canceled. The legislature provided that an additional check should be made if the election affidavit would cause the board of registration to doubt that it was properly marked, and if the pollbook showed that the party had "voted in one of such elections, the registration was not to be canceled." 1957-58 Op. Att'y Gen. No. 57-281 (opinion rendered under former law).

**Voter may retain registration upon giving legitimate reason for failure to vote.** — A person who failed to vote at the last two preceding general elections may upon giving a legitimate reason retain his original registration without cancellation, since such person could re-register immediately after the cancellation. 1943-44 Op. Att'y Gen. No. 44-4550 (opinion rendered under former law).

**Legislative intent.** — The legislature intended that whenever a person fails to vote in two general elections that such person's registration should be canceled. The legislature provided that an additional check should be made if the election affidavit would cause the board of registration to doubt that it was properly marked, and if the pollbook showed that the party had "voted in one of such elections, the registration was not to be canceled." 1957-58 Op. Att'y Gen. No. 57-281 (opinion rendered under former law).

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### **1-4-29. Board of registration; county clerk; failure to cancel; duty of the secretary of state.**

A. If the board of registration or the county clerk of any county does not cancel registration certificates as required by law, the secretary of state shall investigate the registration records, election returns and other pertinent records of that county and file a petition with the district court for the cancellation of the certificates of those persons as the investigation determines should have been canceled by the board of registration or the county clerk.

B. In such a proceeding, the court shall determine the cost of the investigation, and if it finds that the board of registration or the county clerk did not cancel certificates of registration in the manner provided by law, shall enter judgment against the county for the cost of the investigation.

**History:** 1953 Comp., § 3-4-27, enacted by Laws 1975, ch. 255, § 47; 1979, ch. 24, § 3; 1993, ch. 314, § 25; 1993, ch. 316, § 25.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1975, ch. 255, § 47, repealed former 3-4-27, 1953 Comp., relating to cancellation of registration, failure to vote and notice, and enacted a new 3-4-27, 1953 Comp.

**1993 amendments.** — Identical amendments to this section were enacted by Laws 1993, ch. 314, § 25 and Laws 1993, ch. 316, § 25, both effective June 18, 1993, which substituted "certificates" for "affidavits" throughout the section. The section was set out as amended by Laws 1993, ch. 316, § 25. See 12-1-8 NMSA 1978.

**Compiler's notes.** — The following opinions were rendered prior to the 1979 amendment of 1-4-29 NMSA 1978. Cancellation now is grounded upon failure to vote in the last general election rather than the last two general elections.

**Cancellation for failure to vote not discretionary.** — Cancellation of registration for failure to vote in the previous two general elections is not discretionary but an absolute duty. 1961-62 Op. Att'y Gen. No. 61-135 (opinion rendered under former law).

**Where person has registered twice and failed to vote.** — Where a person has registered twice, the first registration being subject to cancellation because the person has not voted in the last two general elections under this registration, the older registration should be cancelled. Once the older registration is cancelled, the newer one is valid. 1961-62 Op. Att'y Gen. No. 61-135 (opinion rendered under former law).

### **1-4-30. Cancellation of registration; voter's request.**

A. The county clerk shall cancel a certificate of registration upon the request of a voter only for the following reasons:

(1) when the voter changes the voter's registered residence address to another county within the state;

(2) when the voter moves to another state; and

(3) upon the written request of the voter.

B. A written request by a voter to cancel the voter's registration shall be in writing and subscribed before a registration officer or a person authorized to administer oaths or on a form prescribed by the secretary of state.

C. The voter's certificate of registration shall be deemed canceled upon receipt by the county clerk of the request when the request is for the reasons specified in Subsection A of this section.

**History:** 1953 Comp., § 3-4-28, enacted by Laws 1969, ch. 240, § 86; 1975, ch. 255, § 48; 1993, ch. 314, § 26; 1993, ch. 316, § 26; 2011, ch. 137, § 37.

#### **ANNOTATIONS**

**The 2011 amendment**, effective July 1, 2011, permitted county clerks to cancel a voter's registration upon the written request of the voter.

**The 1993 amendment**, effective June 18, 1993, substituted "a certificate" for "an affidavit" in Subsection A; deleted "affidavit of" preceding the first occurrence of "registration" and made a minor stylistic change in Subsection B; deleted "affidavit of" preceding both occurrences of "registration" in Subsection C; and, in Subsection D, substituted "certificate" for "affidavit" and corrected a misspelling of "canceled".

**1-4-31. Repealed.**

**History:** 1953 Comp., § 3-4-29, enacted by Laws 1969, ch. 240, § 87; 1975, ch. 255, § 49; 1979, ch. 24, § 4; 1993, ch. 314, § 27; 1993, ch. 316, § 27; repealed by Laws 2011, ch. 137, § 110.

**ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 137, § 110 repealed 1-4-31 NMSA 1978, as enacted by Laws 1969, ch. 240, § 87, relating to cancellation of registration, effective July 1, 2011. For provisions of former section, see the 2010 NMSA 1978 on *NMOneSource.com*.

**1-4-32. Cancellation of registration; duties of county clerk; retention of records.**

A. When a registration is canceled, the county clerk shall remove, endorse and file the original certificate of registration according to procedures prescribed by the secretary of state.

B. Canceled original certificates of registration along with any written application of the voter for cancellation or other pertinent orders or certificates shall be retained for six years and then may be destroyed; provided that such records may be destroyed prior to the expiration of the six-year period with the approval of the state records administrator and upon their being properly microfilmed and stored.

**History:** 1953 Comp., § 3-4-30, enacted by Laws 1969, ch. 240, § 88; 1975, ch. 255, § 50; 1979, ch. 24, § 5; 1987, ch. 249, § 12; 1993, ch. 314, § 28; 1993, ch. 316, § 28.

**ANNOTATIONS**

**1993 amendments.** — Identical amendments to this section were enacted by Laws 1993, ch. 314, § 28 and Laws 1993, ch. 316, § 28, both effective June 18, 1993, and both approved April 8, 1993, which deleted "an affidavit of" and made a related stylistic change in Subsection A, and substituted "certificate" for "affidavit" in Subsection A and "certificates" for "affidavits" near the beginning of Subsection B. The section was set out as amended by Laws 1993, ch. 316, § 28. See 12-1-8 NMSA 1978.

**1-4-33. Repealed.**

**History:** 1953 Comp., § 3-4-31, enacted by Laws 1969, ch. 240, § 89; 1975, ch. 255, § 51; repealed by Laws 2019, ch. 212, § 284.

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## ANNOTATIONS

**Repeals.** — Laws 2019, ch. 212, § 284 repealed 1-4-33 NMSA 1978, as enacted by Laws 1969, ch. 240, § 89, relating to board of registration, county chairman's list, effective April 3, 2019. For provisions of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

### **1-4-34. Board of registration; board of county commissioners; appointment.**

A. The board of county commissioners shall, at its first regular scheduled meeting in June of each odd-numbered year, appoint five voters who shall constitute the board of registration for the county; provided that a class B county as defined in Section 4-44-1 NMSA 1978 shall appoint three voters who shall constitute the board of registration for the county.

B. Members of the board of registration shall not during their service be county employees, elected officials or candidates for public office, and not more than two members of the board of registration shall be members of the same political party at the time of their appointment; provided that:

(1) a member of the board of registration shall not have changed party registration in the two years next preceding the member's appointment in such a manner that the member's prior party registration would make the member ineligible to serve on the board of registration; and

(2) a member of the board of registration shall not continue to serve on the board of registration if the member changes party registration after the date of appointment in such a manner to make the member ineligible to serve on the board of registration.

C. In the event that a position on the board of registration becomes vacant for any of the reasons described in Section 10-3-1 NMSA 1978, the board of county commissioners shall appoint a replacement who shall qualify pursuant to Subsection B of this section and serve until the expiration of the original term.

**History:** 1953 Comp., § 3-4-32, enacted by Laws 1969, ch. 240, § 90; 1975, ch. 255, § 52; 1981, ch. 136, § 1; 1995, ch. 124, § 5; 2019, ch. 212, § 55.

## ANNOTATIONS

**Cross references.** — For voter defined, see 1-1-5 NMSA 1978.

For boards of registration, not more than two members to be of same party, see N.M. Const., art. VII, § 1.

**The 2019 amendment**, effective April 3, 2019, revised the duties of the board of county commissioners, and revised the requirements for members of the board of

registration; in Subsection A, after "meeting in", deleted "February" and added "June", after "appoint", deleted "three" and added "five", and after "registration for the county"; added "provided that a class B county as defined in Section 4-44-1 NMSA 1978 shall appoint three voters who shall constitute the board of registration for the county"; in Subsection B, after the subsection designation, deleted "No" and added "Members of the board of registration shall not during their service be county employees, elected officials or candidates for public office, and not", after "more than two", deleted "of the three persons appointed to" and added "members of", and after "time of their appointment; deleted "provided that if a major party has no registered, qualified elector who is able to fill the position, a registered, qualified elector from another major party may be chosen by the county clerk" and added the remainder of the subsection; and deleted former Subsections C and D and added a new Subsection C.

**The 1995 amendment**, effective January 1, 1996, rewrote Subsection B which read: "Two of the three persons appointed to the board of registration shall be members of each of the major political parties respectively at the time of their appointment."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 25 Am. Jur. 2d Elections §§ 183, 188.

29 C.J.S. Elections § 42.

### **1-4-35. Board of registration; secretary.**

The county clerk or the county clerk's authorized deputy shall be secretary to the board of registration.

**History:** 1953 Comp., § 3-4-33, enacted by Laws 1969, ch. 240, § 91; 2019, ch. 212, § 56.

#### **ANNOTATIONS**

**The 2019 amendment**, effective April 3, 2019, removed the provision prohibiting additional compensation for the secretary to the board of registration; after "secretary to the board of registration", deleted "and shall serve without additional compensation".

### **1-4-36. Board of registration; compensation.**

Each member of the board of registration shall be paid per diem and mileage as provided in the Per Diem and Mileage Act [Chapter 10, Article 8 NMSA 1978] for nonsalaried public officers. Such compensation shall be included as an item in the regular county budget.

**History:** 1953 Comp., § 3-4-34, enacted by Laws 1969, ch. 240, § 92; 1973, ch. 4, § 2; 1975, ch. 255, § 53.

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## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 29 C.J.S. Elections § 44.

### **1-4-37. Board of registration; term; qualification.**

A. The term of office of members of the board of registration is from July 1 of an odd-numbered year until June 30 of the next succeeding odd-numbered year. Members of the board of registration shall hold office until their successors are appointed and qualified.

B. Members of the board of registration shall qualify by taking and filing in the office of the county clerk the oath required of county officials.

**History:** 1953 Comp., § 3-4-35, enacted by Laws 1969, ch. 240, § 93; 2019, ch. 212, § 57.

## ANNOTATIONS

**Cross references.** — For county officers' oaths, see N.M. Const., art. XX, § 1 and 10-1-13 NMSA 1978.

**The 2019 amendment,** effective April 3, 2019, provided the term of office for members of the board of registration; and in Subsection A, added the first sentence.

**One contemplating becoming candidate may serve on board.** — Even though a justice of the peace (now magistrate) contemplates becoming a candidate in the ensuing election, he may serve as a member of the board of registration and he would not be disqualified from doing so. 1945-46 Op. Att'y Gen. No. 46-4849 (opinion rendered under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 25 Am. Jur. 2d Elections § 90.  
29 C.J.S. Elections § 42.

### **1-4-38. Board of registration; meetings.**

A. All meetings of the board of registration shall be open meetings held in accordance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

B. All reports and other records of the board of registration shall be open to public inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

C. A person's month and day of birth, and any part of a person's driver's license number or other identifier assigned by the motor vehicle division of the taxation and

revenue department, state or federal tax identification number or social security number shall not be disclosed in any meeting or in any record of the board of registration made available to the public. This subsection does not preclude disclosure of a person's unique identifier as defined in Section 1-1-23 NMSA 1978.

D. Members of the board of registration are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978], to be paid out of the election funds appropriated to the county clerk from the county general fund.

**History:** 1953 Comp., § 3-4-36, enacted by Laws 1969, ch. 240, § 94; 1975, ch. 255, § 54; 2019, ch. 212, § 58.

#### ANNOTATIONS

**The 2019 amendment**, effective April 3, 2019, completely rewrote the section; after the section heading, deleted "The board of registration shall meet at the office of the county clerk"; and added new Subsections A through D.

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**THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY**

**RESOLUTION NO. 2019 - \_\_\_\_\_**

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**A RESOLUTION APPOINTING FIVE MEMBERS  
TO THE BOARD OF REGISTRATION**

---

**WHEREAS**, the New Mexico Election Code (Chapter 1 NMSA 1978) creates the position of Board of Registration consisting of five (5) voters in each county who shall serve from July 1 of an odd-numbered year until June 30 of the next succeeding odd-numbered year. Members of the Board of Registration shall hold office until their successors are appointed and qualified; and

**WHEREAS**, the federal National Voter Registration Act of 1993 (“NVRA”) (52 U.S.C. Sections 20501 to 20511) was enacted in part to require states to permit eligible persons to register to vote in federal elections when applying for an initial or renewed driver’s license; and

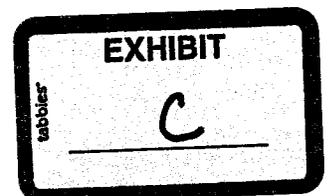
**WHEREAS**, the NVRA was also enacted to enhance voter participation in elections, to increase the number of registered voters, to ensure that states maintained accurate voter rolls, and to protect the integrity of elections; and

**WHEREAS**, the Election Code establishes the duties of a county’s Board of Registration, which include but are not limited to:

- a. reviewing the list of eligible voters following a general election in satisfaction of the NVRA;
- b. directing the county clerk, in satisfaction of the NVRA to cancel the registration of any voter who has been sent notice in conformance with Section 1-4-28(E) of the Election Code, where the voter has failed to respond to the notice and has not voted, or has confirmed a change of residence to a place outside of the county; and
- c. carrying out other list maintenance provisions of the NVRA and the Election Code; and

**WHEREAS**, the Santa Fe County Clerk’s Office solicited letters of interest from the general public and recommendations of names from Santa Fe County’s qualified political party chairs for consideration of appointment by the Board of County Commissioners (“BCC”) to serve on the Board of Registration; and

**WHEREAS**, the BCC shall appoint a five-member board of which members shall not during their service be county employees, elected officials or candidates for public office, and not more than two members of the board of registration shall be members of the same political party at the time of their appointment; provided that:



1. a member of the board of registration shall not have changed party registration in the two years next preceding the member's appointment in such a manner that the member's prior party registration would make the member ineligible to serve on the board of registration; and
2. a member of the board of registration shall not continue to serve on the board of registration if the member changes party registration after the date of appointment in such a manner to make the member ineligible to serve on the board of registration.
3. In the event that a position on the board of registration becomes vacant for any of the reasons described in Section 10-3-1 NMSA 1978, the board of county commissioners shall appoint a replacement who shall qualify pursuant to Section 1-4-34 (B) and serve until the expiration of the original term.

**WHEREAS**, the Election Code requires a board of county commissioners to appoint five (5) voters to constitute its Board of Registration at the first regularly scheduled meeting in June of each odd-numbered year; and

**WHEREAS**, membership on the Board of Registration is from July 1 of an odd-numbered year until June 30 of the next succeeding odd-numbered year. Members of the board of registration shall hold office until their successors are appointed and qualified; and

**WHEREAS**, members of the Board of Registration shall qualify by taking and filing in the Office of the County Clerk the oath required of county officials.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners that:

1. Five (5) voters, of which no more than two members shall be of the same party, are hereby appointed to serve on the Board of Registration. The five appointees are:

- |    |  |       |  |
|----|--|-------|--|
| a. |  | Party |  |
| b. |  | Party |  |
| c. |  | Party |  |
| d. |  | Party |  |
| e. |  | Party |  |

2. The members appointed to the Board of Registration shall carry out the duties required of them by the National Voter Registration Act and the Election Code.
3. The members appointed to the Board of Registration shall serve from July 1 of an odd-numbered year until June 30 of the next succeeding odd-numbered year, but each member shall hold their office until their successors are appointed and qualified.
4. In the event that a position on the board of registration becomes vacant for any of the reasons described in Section 10-3-1 NMSA 1978, the board of county commissioners shall

appoint a replacement who shall qualify pursuant to Section 1-4-34 (B) and serve until the expiration of the original term.

**PASSED, APPROVED, AND ADOPTED THIS 11<sup>th</sup> DAY OF JUNE, 2019.**

**BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

By: \_\_\_\_\_  
Anna T. Hamilton, Chair

**ATTEST:**

\_\_\_\_\_  
Geraldine Salazar  
Santa Fe County Clerk

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
R. Bruce Frederick  
Santa Fe County Attorney

**John F. Lovato**

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**From:** M H <mfh2013@yahoo.com>  
**Sent:** Sunday, June 9, 2019 7:13 AM  
**To:** John F. Lovato  
**Subject:** Re: MacAllister Appeal

Dear Mr Lovato -

As I discussed with you in person, both my wife and myself will not be able to be present for the hearing of this case on June 11, 2019. We are required to be out of the country for work at that time and we won't be able to return until August 9, 2019.

As you know, unlike the MacAllisters, we do not have legal representation. So, if this case is heard on June 11, 2019, we will be unable to defend ourselves regarding the permit that was issued by the county for moving our shed.

Because of this, we respectfully ask that the hearing of this case be postponed until we are able to be present - anytime after August 9, 2019.

Best regards -

Mark Hopkins

On May 6, 2019, at 6:14 PM, John F. Lovato <[jlovato@santafecountynm.gov](mailto:jlovato@santafecountynm.gov)> wrote:

Mr. Hopkins,

Attached is the Appeal Memo along with the exhibits. Let me know if you have any questions. This case will be heard on June 11, 2019, by the Board of County Commissioners.

Best,

John Lovato

<MacAllister Appeal - Exhibits.pdf>

<MacAllister Appeal Letter.pdf>

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Mr John Lovato  
Santa Fe County  
102 Grant Ave.  
Santa Fe, NM 87501  
(sent via email: jlovato@santafecountynm.gov)

June 11, 2019

Regarding: MacAllisters' Appeal of Planning Commission's Decision (Case No. APP 18-5130)

**To Whom It May Concern:**

This letter is in response to the MacAllisters' May 3, 2019 appeal to the Board of County Commissioners, asking the Board to vacate the Planning Commission's filed Order & the permit the county issued on May 30, 2018 to Mark Hopkins & Cynthia Vernold (Hopkins/Vernold) for moving a pre-existing shed to a different location on their property.

Hopkins/Vernold have never once acted in blatant violation of any pertinent regulations or codes with regards to the property located at 1467 Bishops Lodge Road in Tesuque. To Hopkins/Vernold's knowledge, they are not currently in violation of any regulations or codes. The MacAllisters are knowingly misrepresenting the truth with regards to many aspects of this situation.

Even before Hopkins/Vernold finalized the purchase of this property (January 12, 2018), they have worked very diligently and with the best of intentions to fully understand & be in compliance with any & all known regulations from the New Mexico Environmental Department (NMED), the Santa Fe County Sustainable Land Development Code (SLDC), the Urban Wildlife Interface Code (UWIC), and the Construction Industries Division (CID). At every turn, we have worked hard to seek clarity & compliance with all regulations.

In spite of this, the MacAllisters have continued to make numerous false accusations about the facts of this situation in an attempt to smear Hopkins/Vernold in the community & in an attempt to swing the law in their favor. They have also engaged in harassing behavior (some of which Hopkins/Vernold reported to the Santa Fe police) in an attempt to intimidate us. (Please see attached **Exhibit A** for a detailed timeline of these events.)

**SUMMARY:**

Contrary to the MacAllister's claims, the current shed location does not violate any SLDC or CID codes & it is also in compliance with the UWIC as it pertains to fire hazards.

The shed location currently conforms to **Section 7.17.5.2.6** of the SLDC (**pertaining to structures & arroyos**). **Section 7.17.5.1.1 (pertaining to fill & arroyos)** is not pertinent because it's only applicable when fill is used in, or near, an arroyo. County staff did not misinterpret these 2 sections of the SLDC. They interpreted them accurately. Prior to & during the appeal hearing before the Planning Commission, the county staff acknowledged that these 2 sections were not written as clear as they could have been, so they can appear to be in conflict with each other. But, based on the county's interpretation & the intent of these 2 sections & based on other development precedents in the county, the county indicated that it was their stance that **Section 7.17.5.1.1** only pertains to setbacks from arroyos when fill was involved & **Section 7.17.5.2.6** only pertains to setbacks from arroyos for all other development & in the particular case when a structure was involved.

Flooding in Santa Fe County has been determined through FEMA flood plane management. Special Flood Hazard Areas ("SFHAs") were identified by FEMA in a scientific and engineering report entitled "The Flood Insurance Study for Santa Fe County, New Mexico and Incorporated Areas ("FIS")," effective December 4, 2012. The subject shed is not located in a FEMA flood plane. In fact, the nearest FEMA flood plane (1% or 0.2% chance of flood) is located approximately 300 feet away from the shed's location -- to the west of the Hopkins/Vernold's property & across Bishop's Lodge Rd. When Hopkins/Vernold purchased the property, the area where the shed is currently located was not designated by anyone as an area of periodic flooding or designated as a "no-build area", nor should it be retroactively designated as such. Similarly, prior to the Hopkins/Vernold purchase, no drainage easement was indicated at the shed's location, nor should it be retroactively required.

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According to various sources, the flooding that occurred in the subject arroyo back in 2015 was caused by:  
(1) a partially obstructed culvert (located at the west end of the arroyo, under Bishop's Lodge Rd), and  
(2) large rocks & tree debris that were present in the arroyo at that time.

In 2015, the county clearly agreed with this assessment & corrected the problem by cleaning out & unblocking the culvert. They also cleaned out all the rocks & tree debris from the arroyo & removed the excess silt that had accumulated. We've also been told by various sources, and county personnel, that there has been no further maintenance done to this arroyo or culvert since 2015. To mitigate potential issues, in January 2018, Hopkins/Vernold used their Bobcat to remove some large rocks & tree debris from this arroyo. But, beyond that, they did not materially effect the arroyo in any way.

Also at the appeal hearing before the Planning Commission, the Fire Marshal was present to corroborate his stance that the shed's materials & configuration did indeed meet applicable fire codes & was also in compliance with the UWIC. Furthermore, Department of Transportation (DOT) aerial photos show the shed has been in existence on this property since at least 1973. When the shed was moved, it was not reconfigured by Hopkins/Vernold. It was also placed on the same concrete footers it has been sitting on for approximately 50 years. Furthermore, no electrical wiring or components that existed on the shed have been modified or added to by Hopkins/Vernold.

During the MacAllister's appeal hearing, the Planning Commission issued guidance to let the Hopkins/Vernold's permit for the shed stand. But, before doing so, they asked Vernold if she would be able to move the shed 25-feet from the edge of the arroyo. Vernold said she could. They then asked Vernold to consider doing this as a "neighborly suggestion". But, at no time was Vernold instructed by anyone on the Planning Commission to do so, nor was she told that the permit would only stand if she were to move the shed.

#### **BACKGROUND:**

Before buying the property, Hopkins/Vernold requested that NMED do an inspection of the septic system so we understood any potential issues & made sure we were in compliance. On January 4, 2018, MED (**Deborah Carpenter**) inspected the septic system & her inspection report indicated the septic system was composed of seepage pits & needed full replacement. We closed on the property on January 12, 2018. An NMED follow-up email from **Ms Carpenter** stated we would need to "submit a modification permit to replace the seepage pits on the property within 15 days. The work does not need to be completed within that time frame, but prior to anyone occupying the premises." On January 24, 2018, on our behalf, Richardson's Excavating submitted an "Application for Liquid Waste Permit or Registration" to the NMED showing the proposed design & location of a new septic system. This application was accepted & signed the same day by NMED (**Ms Carpenter**) & she added the note: "Provide Floor Plan When Available".

In spite of this, approximately 4.5 months later (on May 24, 2018) Hopkins/Vernold received a certified letter from NMED (**Ron Romero**) indicating we were in violation of "State Liquid Waste Disposal & Treatment Regulations". Vernold immediately contacted **Mr Romero** on the phone to find out why we were sent the violation letter. He said our neighbors, the MacAllisters, had reported us for a nonconforming septic system. When we explained that we already had an approved permit from the NMED that addressed this, he admitted that he hadn't actually looked in our file before sending the letter. So, he didn't see that we had already submitted the required permit application & had already gotten approval. He asked that we email him a formal response to his letter & include copies of all previous correspondence we had with NMED & along with a copy of the approved permit application. Vernold sent him 2 emails with all the requested information showing we were indeed in compliance. We never received any communication back from **Mr Romero**.

Four days after closing (January 16, 2018), but prior to moving the shed, Hopkins contacted the Santa Fe county for help and guidance because we could not find any regulations or codes that specifically addressed the moving of a shed. We were told to speak to **Jose Larranaga**, and Hopkins explained to him all the details about the shed (its size, location & material). Mr Larranaga told us that we did not need a permit to move a prior existing shed. He said we only needed to abide by 5-foot setback from all property lines. He said we also needed to take photos before dis-assembly of the shed to verify it was "prior existing" on the property. As required, over the next 2 weeks, we took photos of shed in its current location and we also took photos while we disassembled & reassembled the shed in its current location.

Hopkins/Vernold did not return to the property for approximately 2 weeks (until February 12, 2018). Upon returning, there were stop work notices from both the county (date February 6, 2018) and CID (dated February 9, 2018). The stop work was adhered to & Hopkins immediately went into the county offices & spoke to **Nathan Manzanares** about the stop work orders. Nathan informed Hopkins that **Mr Larranaga** was not correct & that to be in compliance, we

actually needed to get photos from the New Mexico Dept of Transportation (NMDOT) showing the shed existed in its previous location. And, if it existed there before 1981, then we did not need a permit to move it. Hopkins requested (via email to **Chris Pappas**, NMDOT) overhead photos of our property prior to 1981. **Alane Wainwright** of NMDOT responded to our email & indicated a specific NMDOT request form must be used to request these photos. Hopkins emailed him the required form the same day & **Mr Wainwright** sent Hopkins the requested NMDOT photos via email. NMDOT aerial photos show the shed has been in existence & in its original location since at least 1973.

On February 16, 2018, Hopkins took the NMDOT photos into the county & gave them to **Mr Manzanares**. **Mr Manzanares** then informed Hopkins the previous info he gave him was also not correct & that he would need a permit to move the shed because it was more than 100 sq ft. But, the fees would be less because the DOT photos verified the shed existed before 1981. Hopkins submitted the required permit application 5 days later, on February 21, 2018.

5 days later, Hopkins went into the county offices again to ask about the status of the permit. **Mr Manzanares & Paul Kavanaugh** informed him that we were now required to have an engineering water-flow study done for the arroyo to be able to place the shed closer than 25 ft. from the arroyo. Hopkins agreed to get the study done, but was leaving in the next few days for a 3-month business trip. So he clarified with **Mr Manzanares** that his trip would not cause any problems. **Mr Manzanares** indicated that since the permit was in-process, Hopkins could submit the water-flow study & finish any final details after he returned. On February 29, 2018 (3 days later) Hopkins left on his 3-month business trip.

On March 5, 2018, an engineering water flow study was completed by **Oralynn Guerrerortiz at Design Engenuity**. Vernold mailed this report to the county. **Ms Guerrerortiz** determined that the worst case flow rate of arroyo was 39cfs for a 100-year event, during 24 hours & that because this was < 100cfs & there was no required setback for the shed from the arroyo (as per the pertinent **SLDC regulation 7.17.5.2.6**).

On May 28, 2018 Hopkins returned from his work trip & he received a criminal summons in the mail from the Santa Fe Magistrate Court. The summons was dated May 23rd (postmarked May 24th) & was a "Failure To Comply With Conditions Set By Public Works". While Hopkins was away for 3 months for work, no work was done on shed. During this time, Vernold/Hopkins received no other correspondence, telephone calls, emails or texts from any government related agency regarding the property or shed (county, state, NMED, etc).

The next day, May 29, 2018, Hopkins went into county office to clarify what was going on & ask why a criminal complaint was lodged, given that we had done & were doing everything that was asked of us & in compliance with regulations. **Mr Manzanares** explained that the criminal complaint was filed because the engineering water study that was completed needed an Engineer's stamp on it to certify it. Otherwise, the county couldn't accept it. Hopkins asked why we had not been informed of this before a criminal summons was issued. **Mr Manzanares** said he thought we had been contacted by **Gene Portillo**. Hopkins asked for copies of any and all correspondence sent to us from the anone in the county and/or records of any phone calls from county to us prior to criminal complaint being lodged. **Mr Manzanares was unable to find any correspondence, notes or records of any phone calls.**

The next day, on May 30, 2018, Vernold obtained an Engineer's stamp from **Ms Guerrerortiz of Design Engenuity** on her engineer's water study/report. Hopkins submitted the stamped engineer's report in person to the county that same day to complete the request for a permit. While at the county office, Hopkins discussed the details of the permit in person with **Mr Kavanaugh** and **Mr Manzanares**. Hopkins once again requested copies of any correspondence or any record of any attempts anyone in the county had made to contact us prior to issuing a criminal summons for Hopkins on May 23rd. AT this time, **Mr Manzanares** produced a copy of a certified letter that had just been mailed out to Hopkins that morning (May 30th). This letter was back-dated to May 24, 2018. Only 1 copy of this letter was mailed & it was only mailed to the Tesuque property. No letter was mailed to us at our current residence. According to the certified mail tracking provided by the US Postal Service, this letter was not mailed until May 30th. This confirmed that, contrary to what was originally claimed, no previous attempts were made to contact us before **Mr Portillo** issued a criminal summons to Hopkins.

On May 30, 2018 both Santa Fe County & CID confirmed all outstanding items had been addressed (lighting, setbacks, arroyo flow engineering analysis, fire department coordination) & issued Hopkins the required permits for moving the shed. But, because we had already moved the shed, the permit was issued as an after the fact (ATF) permit. **Mr Portillo** also withdrew the criminal summons

The MacAllisters appealed the decision by the Land Use Administrator to grant Hopkins/Vernold a permit for moving their shed. Their appeal before the Planning Commission was originally scheduled for August 16, 2018 but at the request of the MacAllisters, it was rescheduled for September 20, 2019.

During the appeal hearing, it was discussed by all parties at various times that the decision made by the county to grant the permit hinged on **Section 7.17.5.1.1 (pertaining to fill in the presence of arroyos) & Section 7.17.5.2.6 (pertaining to other development & structures in the presence of arroyos)**. Because of the way both sections were written, they can appear to be in conflict with each other. But, based on the county's interpretation of the intent of these sections & county precedent in issuing permits, it was the county's stance that **Section 7.17.5.1.1** only pertained to setbacks from arroyos when fill was involved & **Section 7.17.5.2.6** only pertained to setbacks from arroyos when a structure or other development was involved.

The Planning Commission issued guidance to let the permit for the shed stand, but before doing so, asked Vernold if she would be able to & willing to move the shed 25-feet from the edge of the arroyo. Vernold said she could. Vernold was then asked to consider doing this as a "neighborly suggestion". But, at no time was Vernold instructed by anyone on the Planning Commission that she was required to do so nor that the permit would only stand if she were to do so.

Hopkins/Vernold met with **John Lovato & Paul Kavanaugh** the next day to make sure they correctly understood the results of the appeal and to make sure they correctly understood what they needed to do to be in compliance with everything moving forward. At that time, Vernold presented a new plan for the shed to **Mr Lovato & Mr Kavanaugh** (including a complete site plan & dimensioned drawings). These plan indicated a reconfiguration & relocation of the shed so that all parts of it would sit 25 feet from the edge of the arroyo. **Mr Lovato & Mr Kavanaugh** told Hopkins/Vernold, in no uncertain terms, that it was not necessary to move the shed or submit any new plans for the shed, because the Planning Commission had ruled in their favor during the appeal. They both further stated that the county's legal department was working on clearing up any possible ambiguities that existed between the 2 sections of the code, but that wouldn't happen any time soon. So, they had asked their legal department to write a letter detailing the county's interpretation of these 2 sections of the code & explaining the true intent of these 2 section. **Mr Lovato** said he would be including this letter with the final filing of the Planning Commission's Order. So.....

## **DETAILS DEFENDING the PERMIT**

### **Recent Extreme Weather Results (July 23, 2018):**

- Meteorologist with the National Weather Service (government experts) stated that a 1,000 yr record rainfall fell in the Tesuque area on July 23, 2018. There was record flooding along the Tesuque Creek/River & throughout many Tesuque arroyos. Government monitored rain gauges in the area recorded 3+ inches of rain in some places due to this monsoon.
- This extreme 1,000 year monsoon event did not even come close to breaching the subject arroyo. During this event, Hopkins & Vernold personally observed that the arroyo was at most approximately 25% filled to capacity. The water level at the culvert located at the end of arroyo (located under Bishops Lodge Rd) was only at approximately 50% of the opening & this culvert was partially blocked with silt at that time.
- During this extreme weather event, the shed did not produce or contribute in any way to any silting in the arroyo, or silting or damage on MacAllister's property or on any properties downstream from the arroyo.
- Clearly, based on historical reports & on recent observations, the bottle neck for the water flow from this arroyo is the culvert that run under Bishops Lodge Rd & that's located on the western edge of the property. And, the source of any flooding problems is the lack of ongoing maintenance & removal of silt & debris from this culvert & the arroyo.

### **Setback requirement from an arroyo for fill (Section 7.17.5.1.1):**

*No fill shall be placed in natural drainage channels and a minimum setback of twenty five feet shall be maintained (when using fill) from the natural edge of all streams, rivers, or arroyos with flows exceeding twenty-five (25) cubic feet per second during a one hundred (100) year frequency storm, twenty-four (24) hour duration*

- No fill was put into the arroyo
- No fill was brought onto property
- No fill was used where the shed was relocated
- The existing dirt located at the approved building site for the shed was leveled using a Bobcat. No fill was necessary or incorporated & the site was not graded to drain into the MacAllisters' property.
- Because there was no fill, the 25 foot set-back that is required for filled areas next to arroyos that have more than 25 cfs of water flow during a 100-year, 24-hour storm event does not apply.

### **Setback requirement from an arroyo for "all other development & structures"(7.17.5.2.6):**

*Erosion setbacks shall be provided for structures adjacent to natural arroyos, channels, or streams such that: (a) a*

minimum setback of 25' shall be provided from all arroyos with flow rates of 100 cubic feet per second (100 cfs); or (b) a minimum setback of 75' shall be provided from all FEMA designated 100 year Floodplains. Setbacks from FEMA designated Floodplains may be reduced if bank stabilization or stream bed and bank stability is designed or provided by a professional engineer. In no case shall the setback be reduced to less than 25'.

- For arroyos that flow less than 100cfs in 100 year event, no offset/setback from an arroyo is required for a structure or development other than placing fill.
- As per county regulations, shed could be placed right next to the subject arroyo with no set-back. But, in spite of this, Hopkins/Vernold still located the shed approximately 17 feet away from arroyo, thus providing extra protection should any potential issues arise.

**Drainage easement required for periodic flooding (Section 7.17.5.2 & 7.18.5):**

- Flooding in Santa fe County has been determined through FEMA flood plane management. Special Flood Hazard Areas ("SFHAs") were identified by FEMA in a scientific and engineering report entitled "The Flood Insurance Study for Santa Fe County, New Mexico and Incorporated Areas ("FIS")," effective December 4, 2012, with accompanying Flood Insurance Rate Maps ("FIRM") and/or Flood Boundary Floodway Maps ("FBFM") and any revisions thereto, are hereby adopted by reference and declared to be a part of the SLDC
- The subject shed is not located in a FEMA flood plane,
- The nearest FEMA flood plane (1% or 0.2% chance of flood) is located approximately 300 feet away from the shed's location -- to the west across & across Bishop's Lodge Rd.
- The shed's location has not been designated by anyone as an area of periodic flooding, nor should it be retroactively designated as such. It has also not been designated as a "no-build area" & no drainage easement has been required, nor should it be retroactively designated as such.

**Fire Code & UWIC regulations:**

- Urban wildlife interface code is a fire mitigation document. Structures less than 600 square feet are not required to be coordinated through county Fire Department. However, the shed does meet current fire codes.
- No false information was given to the county about the shed materials & makeup. The footer diagram that was provided is a cross section and properly represents the existing structure. It is primarily made of steel components (all support beams, outside walls & roofs are painted or galvanized steel) with internal 3/4-inch plywood ONLY on the internal walls. Again, all outside walls are steel.
- The Fire Marshal performed an onsite inspection of the shed & indicated it meets all fire related requirements & the requirements of the UWIC.

**Property Line Setback (5-feet):**

- Shed was originally placed so it's western corner was 5 feet from surveyed & recorded property line & its eastern corner was approximately 15 feet from the property line. This was in accordance with the official survey that was filed and accepted by the county when Hopkins/Vernold purchased the property in January 2018.
- After Hopkins/Vernold closed on the property, MacAllisters ordered a new, different survey. Their survey indicated a slightly different property line location. After becoming aware of this survey, Hopkins/Vernold agreed to move the shed even further away from the property line, so it was at least 5 feet from the MacAllisters' newly determined property line.
- On August 18<sup>th</sup>, the shed was moved so it now sits approximately 6 feet from the recorded survey & approximately 5 feet 5 inches from MacAllisters' new survey.

**Lighting regulations:**

- Security lighting fixtures on shed and on wooden utility pole at property pre-date the Hopkins/Vernold purchase. The only modification made by Hopkins/Vernold was to replace the bulbs with 900 lumen bulbs to make sure lights were in compliance with section 7.8 and Table 7-3 of the SDLC
- A hand-held digital light meter was used to verify that spillover into the MacAllister's property did not exceed the 0.5 foot-candle requirement measured at any point on the property line (as required by 7.8.2.3).
- Fixtures are mounted in such a manner that their cones of light are directed down or toward a surface (as required by 7.8.2.3).
- None of the lights are directed towards any adjacent residential use (as required by 7.8.2.3).
- Most of the existing light fixtures in the security system are motion activated (as required per 7.8.5.3)
- None of the light fixtures are mounted at heights greater than 16 feet (as required by 7.8.2.4)

**CONCLUSION:**

As stated previously, contrary to the MacAllister's claims, the current shed location does not violate any SLDC or CID codes & it is also in compliance with the UWIC as it pertains to fire hazards.

Therefore, we respectfully request that you, the Board of County Commissioners, concur with county personel & the Land Use Adminisrator in their understanding, interpretation & intent of the current codes & regulations of the SLDC & UWIC. In doing so, we ask that you allow our permit to stand as-is & our shed to remain in its current position on our property at 1467 Bishops Lodge Rd.

Kind regards -



Mark Hopkins



Cynthia Vernold

EXHIBIT A

Affidavit by Mark Hopkins & Cynthia Vernold  
06/9/2019

Timeline & Sequence of Events:

- **Dec 28:** Before buying the property, Hopkins/Vernold requested that NMED do an inspection of the septic system so we understood the potential issues.
- **Jan 4:** NMED (**Deborah Carpenter**) inspected the septic system & her inspection reports indicated the septic system was composed of seepage pits & needed full replacement
- **Jan 12:** Hopkins/Vernold closed on the property
  - NMED follow-up email (from **Ms Carpenter**) stated we needed to "submit a modification permit to replace the seepage pits on the property within 15 days. The work does not need to be completed within that time frame, but prior to anyone occupying the premises."
- **Jan 16:** Hopkins/Vernold called county about moving the shed & were referred to **Jose Larranaga** who told us we:
  - did not need a permit to move the shed
  - only needed to abide by 5-foot setback from all property lines
  - needed to take photos of shed before dis-assembly of the shed to verify it was "prior existing" on the property
- **Jan 18-20:** Hopkins/Vernold took photos of shed in its current location and as it was being disassembled.
- **Jan 23:** Hopkins began moving shed over to its new site
  - Hopkins spoke with Debbie MacAllister at property & she said she had no problem with proposed site of shed
  - Her only concern was that she didn't want horses being located there because they would "smell bad & attract flies"
  - Hopkins explained we had no plan to have horses in shed & that we planned to use the shed only for storage. Hopkins told Ms MacAllister that we are excited to move to Tesuque & that we want to be good neighbors.
- **Jan 24 (within the NMED required 15 days):** On our behalf, Richardson's Excavating submitted an "Application for Liquid Waste Permit or Registration" to the NMED showing the proposed design & location of a new septic system. Application was accepted & signed the same day by NMED (**Ms Carpenter**). She added the note: "Provide Floor Plan When Available"
- **Jan 25:** Hopkins started reassembling shed at new site
  - Hopkins spoke with Bruce MacAllister at property & when asked, he said had no problem with site of shed. He said his only concern was that if horses were kept there it could contaminate his well
  - Hopkins reiterated again that we had no plan to have horses in shed (only storage) and that we want to be good neighbors & asked Mr MacAllister to talk to us if he had any concerns at any time.
  - Mr MacAllister described in detail the path of 2015 flood from the arroyo & indicated that no flooding occurred near the shed's location. Mr MacAllister specifically said flooding ONLY occurred near the low area (on the extreme west part of the property) near the culvert that runs under Bishop's Lodge Rd. He stated that flooding occurred because the culvert was blocked & water backed up. He stated how important it was to keep the arroyo clean of debris & the culvert unblocked. Mr MacAllister (as well as other neighbors) indicated that after the 2015 incident, the county cleaned out the arroyo & the blocked culvert to prevent a re-occurrence of the back-up. The county also modified the arroyo by removing a lot of the built-up silt, so the arroyo was deeper.
- **Feb 1:** Hopkins finished reassembling shed at new site
  - Mr MacAllister confronted Hopkins at property (he was very angry, yelling & pointing his finger) demanding that we don't have horses in the shed. He said he did some research & that according to regulations, we can't have horses within at least 100 ft from their well.
  - Mr MacAllister also threatened he would do everything in his power to stop us from having horses anywhere near his property or well
  - Hopkins tried to diffuse the situation by:
    - suggesting that angrily threatening us was not the right approach to dealing with concerns

SFC CLERK RECORDED 07/22/2019

- explaining once again that we did not plan to keep horses in the shed. We only planned to use shed for storage.
  - reiterating that we wanted to be good neighbors & that we were making sure to follow all regulations. So, if Mr MacAllister has any additional questions/concerns with what we're doing, please talk to us & we'll see what we can do to address his concerns.
- Mr MacAllister said OK and left.
- **Feb 12 (1.5 weeks later):** Hopkins returned to check on property
    - Santa Fe county notice of violation (from **Gene Portillo** - dated Feb 6th) was on the shed
    - NM state stop work notice (from **Julian Gonzales** - dated Feb 9th) was on the front door
      - \*\*NOTE: NO WORK was done on the shed after this point
    - Hopkins went into county office (spoke to **Nathan Manzanares**) about the stop work. **Mr Manzanares** informed Hopkins that **Mr Larranaga** was not correct & that we actually needed to get photos from the New Mexico Dept of Transportation (NMDOT) showing the shed existed in its previous location before 1981 & if it did exist before this, then we did not need a permit to move it.
    - Hopkins requested (via email to **Chris Pappas**, NMDOT) overhead photos of property prior to 1981.
  - **Feb 13: Alane Wainwright** of NMDOT responded to Hopkins' request via email & indicated a specific NMDOT emailed request form must be used to request these photos. Hopkins emailed him the required form the same day.
  - **Feb 15:** NMDOT (**Alane Wainwright**) sent email to Hopkins with requested NMDOT photos attached.
  - **Feb 16:** Hopkins went into county offices to provide photos from NMDOT to **Mr Manzanares**.
    - NMDOT aerial photos show shed has been in existence & in original location since at least 1973.
    - **Mr Manzanares** then informed Hopkins the previous info he gave him was not correct & that he did need a permit to move the shed because it was more than 100 sq ft. But, the fees would be less because the DOT photos verified the shed existed before 1981.
  - **Feb 20:** Hopkins called Santa Fe police (SFP) about MacAllisters trespassing on property & shutting our lights off
    - SFP met with MacAllisters & explained they couldn't trespass on our property & could not shut off our lights. Many of the pictures taken by the MacAllisters (& presented by them throughout this appeal process) are documented proof of their trespassing on our property. This is a violation of **New Mexico Statutes - Section 30-14-1 — Criminal trespass.**
    - At the recommendation of the SFP, we purchased a security camera & "no trespassing" signs & installed them on the shed & on the light pole at the property. SFP said these things would act as deterrents to the MacAllisters & also provide more proof if they continued to trespass, so they could be prosecuted.
  - **Feb 21:** Hopkins submitted all the required documents & drawings to the county to request an after the fact (ATF) development permit & he paid all required fees.
  - **Feb 26:** Hopkins went into county offices again to ask about the permit & **Mr Manzanares** informed him that we now needed to have an engineering water-flow study done for the arroyo to be able to place the shed closer than 25 ft. from the arroyo. Hopkins clarified with **Mr Manzanares** that his upcoming 3-month business trip would not cause problems with permit coordination. **Mr Manzanares** indicated that the permit was in-process & Hopkins could submit the water-flow study & finish any final details after he's back.
  - **Feb 29:** Hopkins left town on 3-month trip for work.
  - **March 5:** Engineering water flow study was completed by **Oralynn Guerrerortiz** at **Design Engenuity** & submitted to the county. Worst case flow rate of arroyo was determined to be 39cfs for a 100-year event. This is < 100cfs & thus there is no required setback for shed from the arroyo.
  - **May 24:** Hopkins/Vernold received certified letter from NMED (**Ron Romero**) indicating the property was in violation of "State Liquid Waste Disposal & Treatment Regulations"
  - **May 25:** Vernold spoke to **Mr Romero** on the phone to find out why we were sent the violation letter.
    - He said our neighbors had reported us for having a nonconforming septic system.
    - He admitted that he didn't look in our file to see that we had already submitted the required permit application & had already gotten approval. He asked Vernold to email him a formal response to his letter & include copies of all previous correspondence she had with NMED & along with a copy of the approved permit application.
    - Vernold sent **Mr Romero** 2 emails with all the information he requested & never received any communication back.
  - **May 28:** Hopkins returned from his work trip
    - Hopkins received a criminal summons in the mail from the Santa Fe Magistrate Court.
    - Summons was dated May 23rd (postmarked May 24th) & was a "Failure To Comply With Conditions Set

- By Public Works".
- While Hopkins was on travel for work, no work was done on shed. During this time, we received no other correspondence, telephone calls, emails or texts from any government agency regarding the property or shed (county, state, NMED, etc)
- **May 29:** Hopkins went into county office to clarify what was going on & ask why a criminal complaint was lodged, given that we had done & were doing everything that was asked of us & in compliance with regulations.
  - **Mr Manzanares** explained that the engineering water study that was completed needed an Engineer's stamp to certify it before it could be formally accepted by the county.
  - Hopkins asked why we had not been informed of this before a criminal summons was issued. **Mr Manzanares** said he thought we had been contacted. Hopkins asked for copies of any and all correspondence sent to us from the county and/or records of any phone calls from county to us prior to criminal complaint being lodged. **Mr Manzanares was unable to find any correspondence, notes or records of any phone calls.**
- **May 30:** Vernold obtained an Engineer's stamp (**Oralyyn Guerrerortiz - Design Engenuity**) on the engineer's report
  - Hopkins submitted the stamped engineer's report to the county to complete the request for a permit. He discussed the details of the permit in person with **Paul Kavanaugh** and **Mr Manzanares**.
  - Hopkins also once again requested copies of any correspondence or record of any attempts the county had made to contact us prior to issuing a criminal summons on May 23rd.
    - **Mr Manzanares** gave Hopkins a copy of a certified mail letter that had just been sent out to him that morning (May 30<sup>th</sup>). The letter was only mailed to the Tesuque property (not to our current residence). This letter was just mailed on May 30th, but whoever sent it had back dated it to May 24th.
    - Hopkins/Vernold confirmed with **Mr Manzanares** that, contrary to what was originally claimed by county personel, no previous attempts were made to contact us about any issues before the county issued a criminal summons and/or before we physically came into the county offices on May 30, 20018.
- **May 30:** County confirmed all outstanding items had been addressed (lighting, setbacks, arroyo flow engineering analysis, fire department coordination). County permit was granted. Because shed had already been moved, the permit was designated as ATF.
- **May 31:** NM State CID permit was granted. Because we had already moved the shed, the permit was designated as ATF.
- **June 1:** CID gave Hopkins a copy of the CID inspection results showing a status of PASS
- **June 02:** Hopkins/Vernold left the country for 7 week business trip
- **Mid-June (not sure of exact date):**
  - CID called to say the passed inspection given to Hopkins/Vernold was given in error & they went by the property to inspect the shed, but our plans were not on-site
  - Hopkins explained we would not return to Santa Fe until late July & CID said it would be fine to take care of the inspection then.
- **July 20:** Hopkins/Vernold returned from their work trip to Santa Fe
- **July 23:** 1,000 yr rain event occurred in the Santa Fe/Tesuque area, but there was NO back-up and NO flooding from subject arroyo (arroyo only filled up to approximately 25% of its capacity) Extensive flooding occurred across the street & all along the river throughout Tesuque as well as in Tesuque Village.
- **Aug 03:** Hopkins/Vernold received a letter informing them of the public hearing to address the MacAllister's appeal
- **Aug 08:** Hopkins/Vernold left for another work trip.
- **Aug 15:** Hopkins/Vernold spent \$600 to re-book airline tickets to return from work early to be able to attend the hearing on August 16, 2018. The hearing was postponed to September 20, 2018 at the request of the MacAllisters.
- **Aug 17:** Hopkins/Vernold met with county personel (**Paul Kavanaugh & John Lovato**) on site at the property to look at the shed location & external lights. This meeting confirmed that Hopkins/Vernold had placed the shed correctly -- 5 feet from the property line (as indicated by the legal survey on file with the county). However, the MacAllisters had ordered their own survey that indicated a slightly different property line. In an attempt to try & resolve this, Hopkins/Vernold agreed to move the shed even further away from the property line, so that it was at least 5 feet from the property line as indicated by the MacAllisters' survey. All outdoor lights were already in compliance with the code (pointed downwards, or at a vertical surface & 900 lumens or less). Even so, Hopkins/Vernold agreed to point them even further down, towards the ground.
- **Aug 18:** Hopkins moved the shed over, so it sat at least 5 feet 5 inches away from the MacAllisters' survey

- points. Hopkins also pointed outdoor lights more directly down.
- **Sept 20:** MacAllister appeal was heard by Planning Commission & permit was allowed to stand.
- **March 25:** Planning Commission decision was set forth in the Order & filed
- **May 3:** MacAllisters filed an appeal of the Planning Commission's Order to the Board of County Commissioners
- **May 6:** **Mr Lovato** informed Hopkins via email of MacAllisters' appeal. Hopkins met with **Mr Lovato** in person & told him both he & Vernold had to leave town on June 4, 2019 for a long business trip. Because of this, Hopkins asked for the appeal hearing to be rescheduled so both Hopkins & Vernold could be present to defend themselves. **Mr Lovato** said the request needed to be made in writing & asked Hopkins to send him an email.
- **May 27:** Hopkins/Vernold received formal notice via a mailed letter of the MacAllister's appeal.
- **June 9:** Hopkins sent **Mr Lovato** an email requesting the rescheduling of the hearing.
- **June 9:** Hopkins sent **Mr Lovato** an email requesting the rescheduling of the hearing.
- **June 10:** **Mr Lovato** sent Hopkins an email saying he would hand his emailed request to the Board & they would determine if the hearing could be rescheduled or not.
- **June 11:** Because Hopkins & Vernold were unable to be physically present during the hearing, due to work requirements, Hopkins emailed **Mr Lovato** a written response to the MacAllister's appeal.

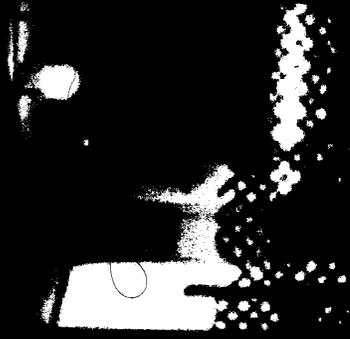
# Appeal of County Land

## Use Decision

1467 Bishops Lodge Road  
Tesuque, New Mexico

EXHIBIT  
3

Tables



The issue has been pending for almost 18 months. It has been harmful to neighbor relationships.

But we are not here for that.

Three provisions apply to our appeal situation:

1. Setback from an arroyo with a >25 cfs 100 year flow
2. Establishing a drainage easement on a location prone to periodic flooding
3. Enforcing the 50' setback requirement for a non 1-hour fire-rated structure adjacent to a structure.

An after-the-fact permit shifted responsibility from the owners to the neighbors to seek compliance with the SLDC:

In this case, the structure is placed within 10 feet of the natural edge of the arroyo.

The structure cannot meet the the applicable code requirements in its current location.

The area floods

The structure cannot meet fire code requirements

Placed anywhere north of the arroyo, the structure violates the 25' drainage setback and the 50' fire code setback.

## Arroyo setback requirement:

### 1. SLDC 7.17.5.1 states:

*“ No fill shall be placed in natural drainage channels and a minimum setback of twenty five feet shall be maintained from the natural edge of all streams, rivers and arroyos with flows exceeding twenty-five (25) cubic feet per second during a one hundred year frequency storm, twenty four hour duration.”*

Current Location of shed

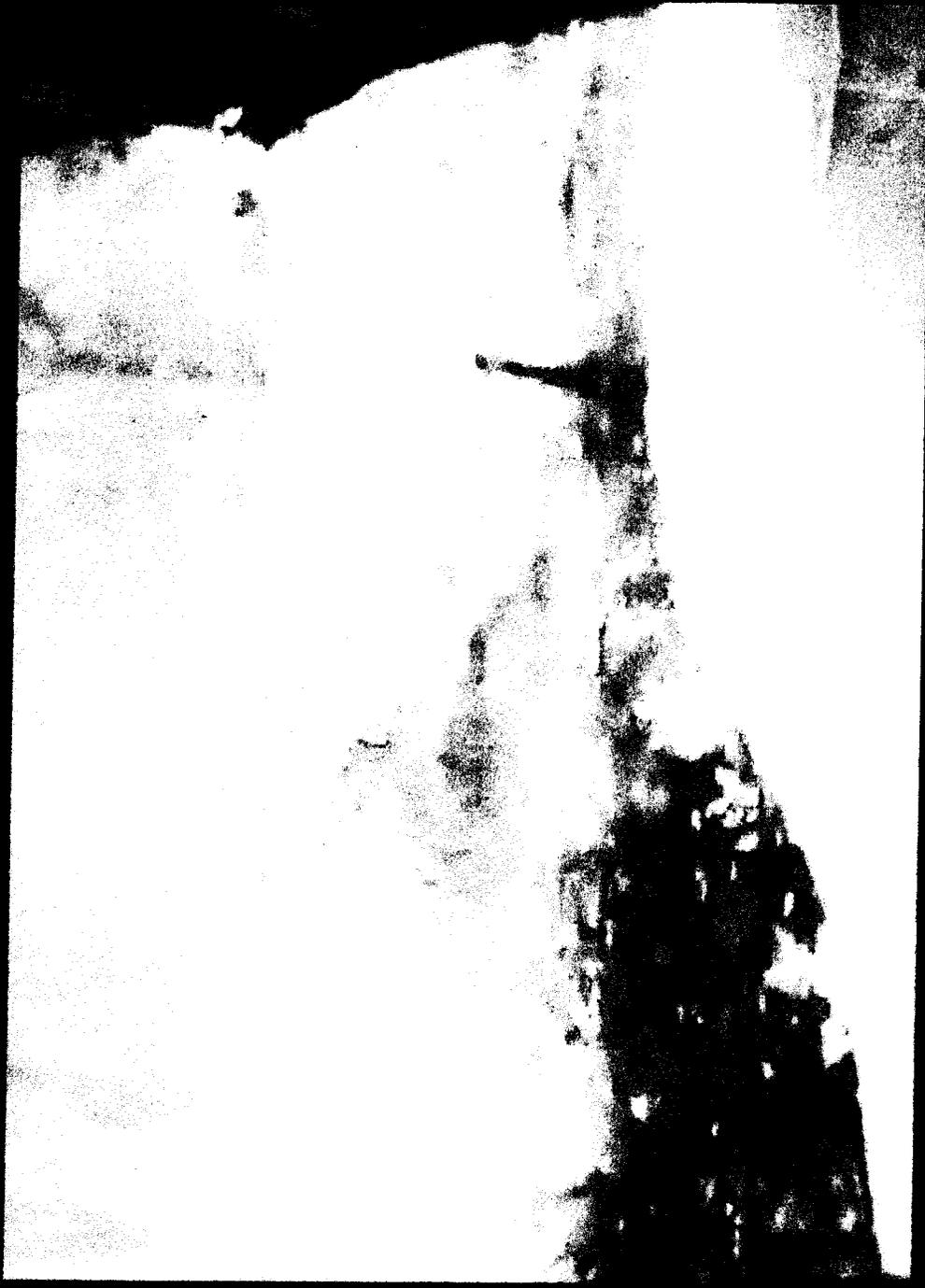


This is 265' upstream from Bishops Lodge Rd. and the culvert. A you can see (below), the arroyo flows well over its banks regardless of the condition of the culvert.

Same location during last flood event



Observe water flowing completely over the site and across the property line, inundating our property and flooding many downstream neighbors.



If this is an arroyo flowing at 39.9 cfs, does the County really have no interest in regulating setbacks until it involves flows of nearly three times this amount?

## The setback

- The Santa Fe County Planning Commission agreed that the setback applies.

See excerpts

- This provision is not unique - Comparable provisions exist in neighboring County's zoning requirements.

See, e.g., Bernalillo County

## Planning Commission Understanding:

The Planning Commission did not draw clear conclusions during its September 20, 2018 hearing on this matter because it was the Commission's collective understanding that ruling on the MacAllister appeal became moot based on the understanding that the Hopkins agreed to move the Horse Shed at least 25 feet away from the arroyo. During the January 17, 2019 Planning Commission hearing during which a draft of the Order was considered, Commissioner Frank Katz commented on the proposed finding that SLDC section 7.17.5.1.1 applies only to the placement of fill. Mr. Katz stated "I don't think that's anything that we did decide, in fact, I think we expressed the exact opposite thought. *And it was only because the applicant agreed to move [the Horse Barn] back 25 feet from the edge of the arroyo that it was approved the way it was. And so I think these findings and conclusions need to be reworked.* [Emphasis added.]" (Minutes of 1/17/19 meeting, page 2)

# Planning Commission affirmed the setback applies:

SFC CLERK RECORDED 02/22/2019

## VII. Consent Calendar: Final Orders

A. 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. John Lovato, Case Manager

MEMBER KATZ: I have a question about it.

CHAIR GONZALES: Okay, Mr. Katz.

MEMBER KATZ: Looking at the proposed findings and conclusions, I have a problem. On paragraph 56: "The Commission finds that the setback requirements in Section 7.17.5.1.1 apply only to the placement of fill." I don't think that's anything that we did decide, in fact I think we expressed the exact opposite thought. And it was only because the applicant agreed to move it back 25 feet from the edge of the arroyo that it was approved the way it was. And so I think that these findings and conclusions need to be reworked.

VICKI LUCERO (Building & Services Manager): So Mr. Chair, we will go back and look at revising the final order. So if the Planning Commission would like to table it we'll bring it back again next month.

MEMBER KATZ: Okay. I move to table.

CHAIR GONZALES: Okay. Do I have a second to table the Consent Agenda, Final Order Case # APP 18-5130?

MEMBER SHEPHERD: Second.

**The motion to table passed by unanimous [5-0] voice vote.**

# Periodic Flooding

- states “any area of periodic flooding shall be identified as a no build area and shall be included within a drainage easement.”
- Overwhelming evidence:

Video of this exact location flooding and causing thousands of dollars damage to us and to down stream property owners.

Sworn affidavits from six long-time residents attesting under oath to the FACT that their property has been flooded by the arroyo in question.

Additional letters from the former owner of our property -- a retired judge, an emergency room doctor, and an additional long-time resident, all stating that they have witnessed the arroyo in question flood.

Photographic evidence of the size and scale of the arroyo upstream before it is funneled into a relatively small culvert at Bishops Lodge Road.

Hydrological Engineer’s report (Paul McGinnis), attesting that the arroyo channel on the Hopkin’s property is incapable of containing the predicted flow.

# The Arroyo



This is the arroyo we will be talking about. More than forty acres of drainage funneled into a 48" culvert



The arroyo can be clearly seen from space and has several branches that feed into it.



This is the arroyo just above where it enters the Hopkins' property... It's 30' deep and more than 20' wide in most of its length ... As this photo illustrates, it uses the full width for its flow.



It varies from extremely deep to very wide as it runs down its drainage.  
It's 30' deep and more than 20' wide in most of its length ...

It's a big arroyo capable of a huge flow.





It has cut 50' cliffs and undercut the terrain by 2' to 3' ...



The terrain that drains into the arroyo is sparsely vegetated and runoff patterns are extreme, with little vegetation to hold the soil and the runoff...



The arroyo makes two sharp "S" turns as it exits its canyon and enters the Tesuque Valley where it naturally wants to spread out. After two major floods (which affected four down-stream properties), at the request of the former property owners, the County installed a larger culvert and bermed up the banks of the arroyo...

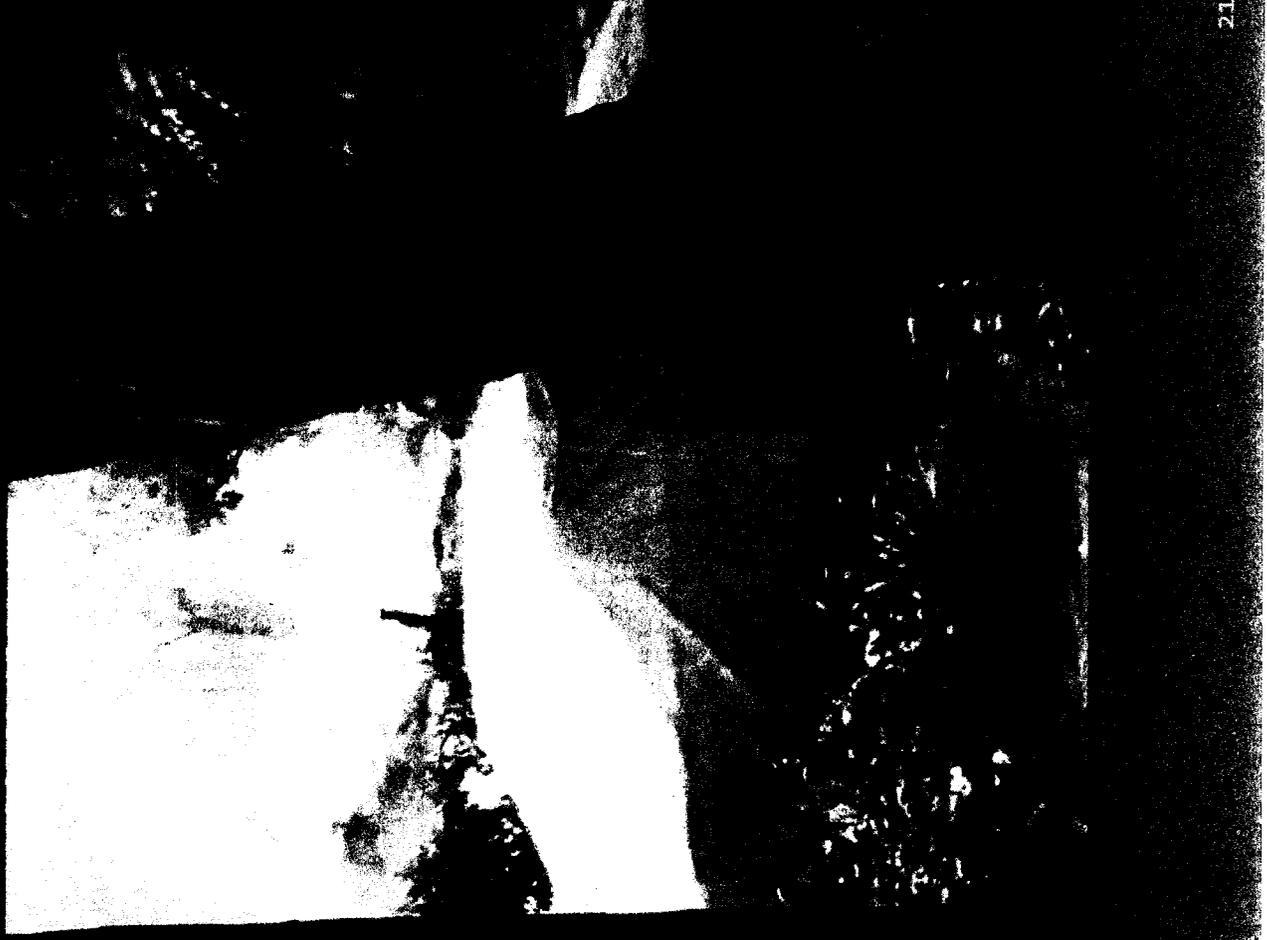


With the berm again absent, the water is free to flow over these shallow banks.



Unfortunately, the new owners came in with a "Bobcat" front loader and cut down the berms exposing all of the down stream properties to the renewed threat of flooding. He used fill gained from this action to level the barn.

# The most recent of several floods: 2015



This is the exact location of the “barn.”



Without any permit or review by the County, the Hopkins moved the barn to the exact area where the arroyo overflowed, cutting down the berms on the bank of the arroyo that the county had build after the last flood. ... This is now where the barn is placed. The arroyo fills with sand, washes over its banks, over four other properties and over Bishops Lodge Road.



Completely silted in ... leaving tons of sand and debris on our property and on several other neighbors' properties. These neighbors have provided sworn affidavits attesting to the flooding.

## Fire Code Violation

1. 7.2 applies a number of specific additional code requirements and 7.2.15 specifically requires that the Urban Wildland Interface Code (County Ordinance 2001-11) governs and must be applied.
  2. The Urban Wildland Interface Codes states:
    - “DETACHED ACCESSORY STRUCTURES: Detached accessory structures located less than 50 feet from a building containing habitable space shall have exterior walls constructed with materials approved for a minimum of one-hour rated fire resistive construction ...”
- Expert analysis, supported by photographs of the structure establish that the structure **CANNOT MEET** one-hour fire resistive ratings.

Expert Review indicates no way for structure to meet one-hour fire resistance.

- John Quinn Pate, R.A., R.L.A, Vice President of Architecture for the Engineering firm MolzenCorbin reviewed the structure and concluded:
- Detached accessory structures are governed by UWIC Special Building Construction Regulations when located within 50 feet of a habitable space. Structures must be constructed of materials approved for a minimum of one-hour rated fire-resistive construction; exterior rated walls must extend from the underside of the roof to the ground. **The modular barn is not constructed in accordance with these regulations.**

▪ **Mr. Pate further concluded:**

“The steel superstructure is not protected and has no code-approved method of fire protecting the structure,

“The wood based sheathing is not a fire barrier and the thin metal sheet veneer does nothing to make it a fire – resistance rating,

“The openings do not comply with code,

“The design is meant for air circulation is counter to fire protected design,

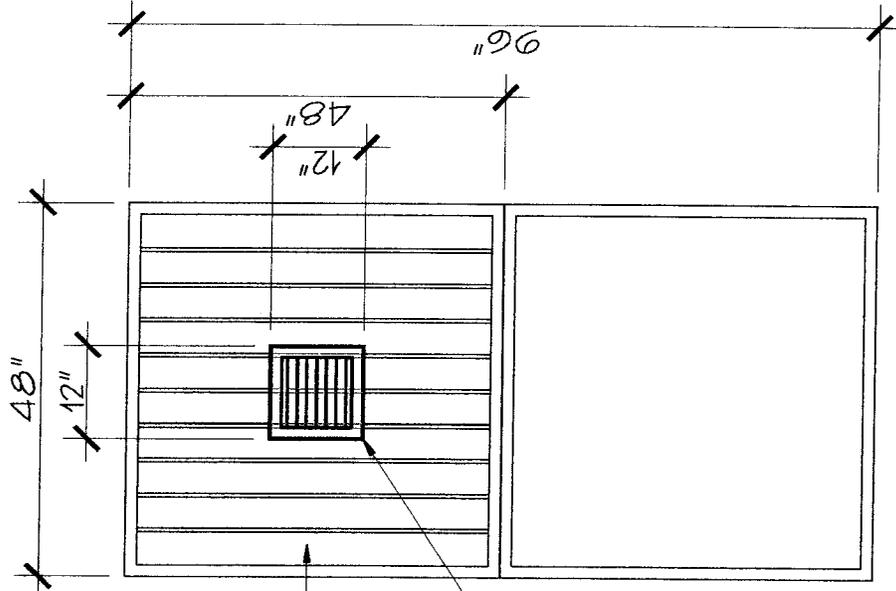
“The electrical wiring does not appear to be code compliant which exacerbates the hazard.”

- “Based on all of these considerations, I know of no simple way for this structure to attain a 1 hour fire-resistance rating as defined or required by the by the NM Building Code and the IBC.”



The structure is located within the "High Hazard Zone" of the County's Urban Wildland Interface Code. This code requires one-hour fire rated doors, windows and walls for any structure within 50' of an adjacent structure. This structure is within 22' of our home.

# Example: Fire Code Violation



EXISTING DOOR  
VENTILATION =  
2,304 SQ INCHES  
(16 SQ FT.)

PERMISSIBLE VENT  
SIZE = 144 SQ INCHES  
(1 SQ FT.)



Ironically, the “unsheathed” steel structure actually makes the structure *less fire resistant* than a structure built with large dimension timbers. Recall that it was the inadequately insulated steel that brought down the Twin Towers. This is an example of how steel deforms, opens to the air, and actually encourages fire. The Hopkins structure is within 22’ of our home – “a habitable structure.”

## Conclusion

- We are not asking for variances or exceptions. We ask only that the County apply its code.
- The code exists to protect the health and safety of County residents. Here we have a case where eight neighbors are threatened with flooding and damages versus a minor inconvenience to one neighbor.

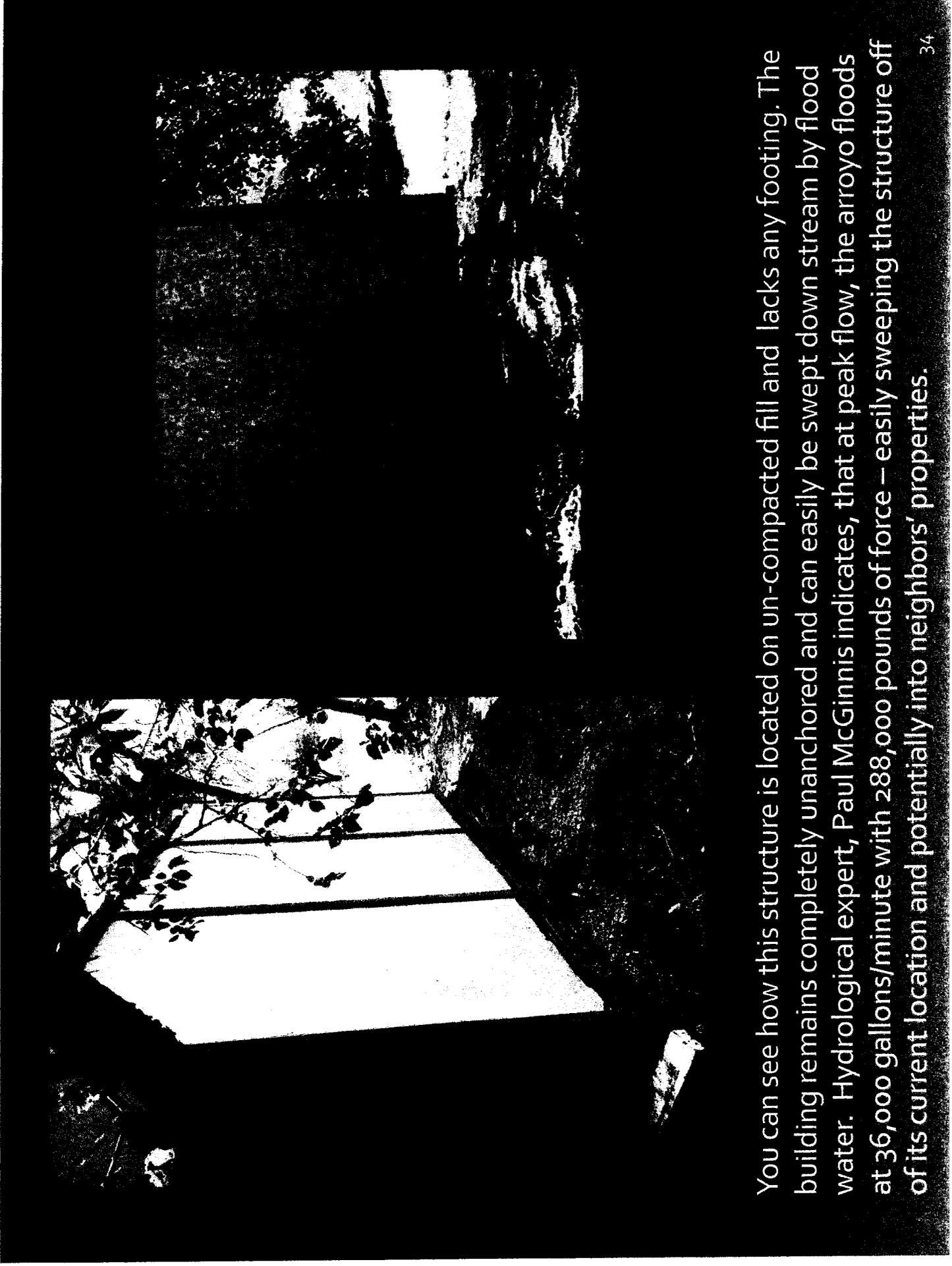
When asked by the Planning Commission if they could “easily” move the structure to meet the 25’ setback, Ms. Vernold replied “Yes.”

- The Planning Commission took her at her word and understood that they would move the shed to avoid a direct order.
- If the County doesn’t apply these clear provisions in Tesuque, they essentially become unenforceable countywide and Santa Fe County stands out in contrast to counties like Bernalillo.

# ADDITIONAL REFERENCE MATERIALS

# SLDC REQUIREMENTS

<p>Storm Drainage</p>	<p>7.17.5.1.1 SLDC</p>	<p>"No fill shall be placed in any natural drainage channels and from the natural edge of all streams, rivers or arroyos with flows exceeding twenty-five (25) cubic feet per second during a one hundred (100) year frequency storm, twenty-four (24) hours."</p>
<p>Periodic Flooding</p>	<p>SLDC 7.17.5.1 (2)</p>	<p>"any area of periodic flooding shall be identified as a no build area and shall be included within a drainage easement."</p>
<p>Fire Code</p>	<p>7.5 SLDC</p>	<p>"All development shall comply with the New Mexico Fire Code (or other applicable fire code as established by NMAC 10.25.5.8.) and the Santa Fe County Fire Code."</p>
<p>Urban Wildland Interface Code Fire Setback Requirements</p>	<p>SFC Ordinance 2001-11/ EZA2001-04 Incorporated by SLDC 7.2.15</p>	<p>"Detached accessory structures located less than 50 feet from a building containing habitable space shall have exterior walls with materials approved for a minimum of one-hour-rated fire resistive construction."</p>



You can see how this structure is located on un-compacted fill and lacks any footing. The building remains completely unanchored and can easily be swept down stream by flood water. Hydrological expert, Paul McGinnis indicates, that at peak flow, the arroyo floods at 36,000 gallons/minute with 288,000 pounds of force – easily sweeping the structure off of its current location and potentially into neighbors' properties.

## Hydrologic Reports

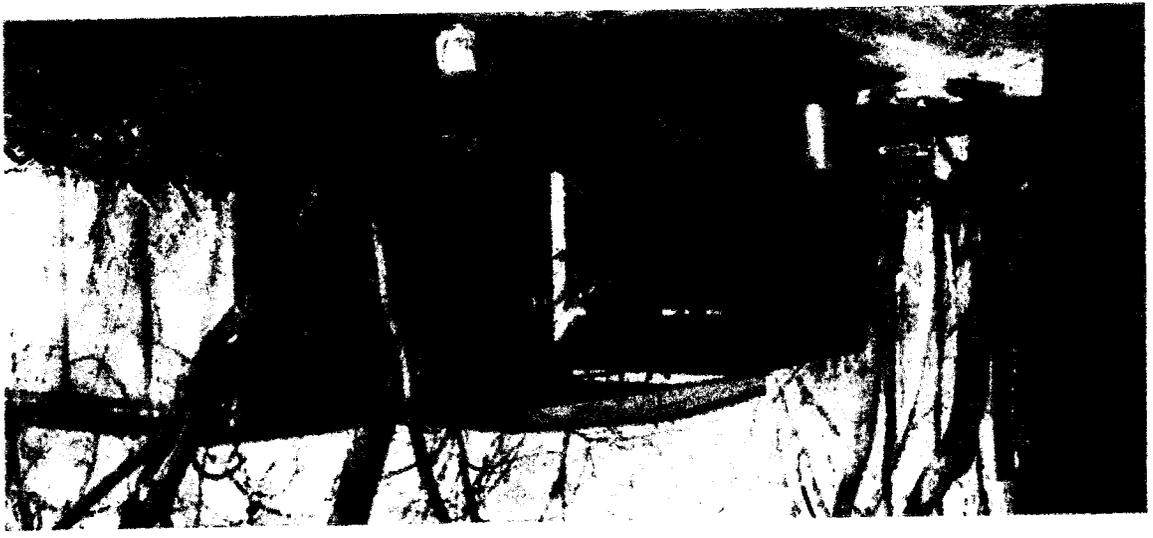
- Michael Gomez, Santa Fe Engineering Consultants  
89.06 cfs in 100 year event
- Paul McGinnis, & Associates, LLC  
93.9 cfs in 100 year event
- Orallynn Guerrerortiz  
39.9 cfs in 100 year event

From: John Pate <jpate@moizenordm.com>  
 Subject: FW: Structure adjacent to your property  
 Date: April 25, 2019 at 1:37 PM  
 To: Bruce MacAllister <bruce@bzexream.com>  
 Co: Bruce MacAllister <bruce.bzeexteam@gmail.com>, Adeldo Archuleta <darcojulete@moizenordm.com>, John Pate <jpate@moizenordm.com>

Good afternoon Mr. MacAllister:

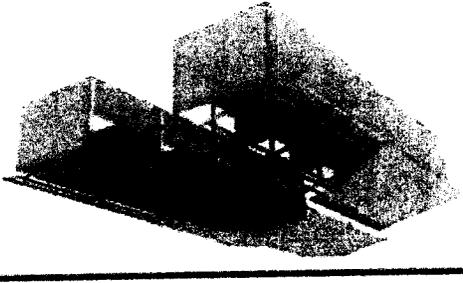
After our phone conversation and review of the photos and plat and the Willand Interface Code (UWIC) that you sent me and considering the New Mexico Building Code and by reference the International Building Code (IBC) I have the following observations:

Detached accessory structures are governed by UWIC Special Building Construction Regulations when located within 50 feet of a habitable space. Structures must be constructed of materials approved for a minimum of one-hour rated fire-resistive construction; exterior rated walls must extend from the underside of the roof to the ground. The modular barn is not constructed in accordance with these regulations.

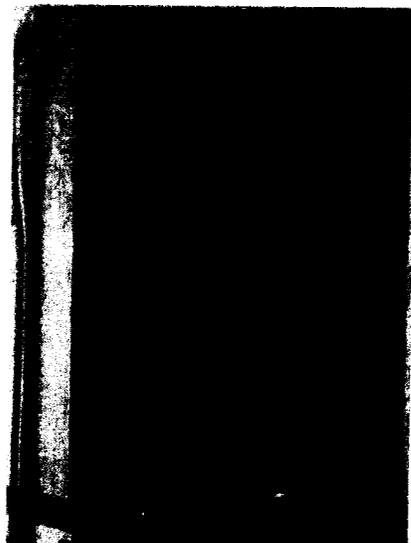


The modular barn structure has the form of a "raised center aisle" horse barn, open to allow air circulation, and is approximately 400 square feet in area. Thin-metal skinned wood panels set in steel channels form the walls. Doors are metal Dutch-style, with the upper half open for viewing and air circulation. The raised aisle's ceiling appears to be wood paneling. An electrical receptacle is mounted on a wall within the aisle.

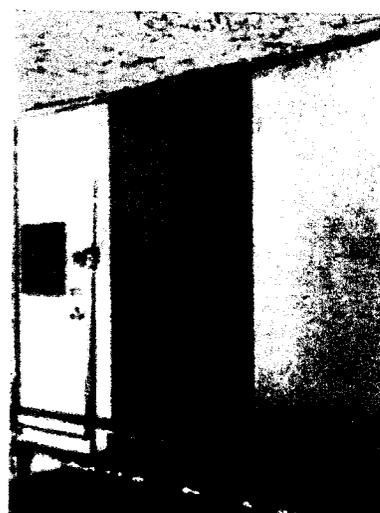
In addition to UWIC building regulation, the barn structure must also comply with the requirements of the New Mexico Building Codes. Through 14.7.2.9 New Mexico Administrative Code (NMAC), Appendix C of the International Building Code (IBC) governs the construction of Group U – Agricultural Buildings. Group U includes livestock shelters, sheds, stables, barns and other agricultural structures having a floor area of greater than 120 square feet constructed within New Mexico. The IBC requires these buildings be built of 1-hour fire-resistance rating of 1-hour when the structure is 5 feet or less from the property line.



SFC CLERK RECORDED 07/22/2019



The New Mexico Building Code, and IBC define fire-rated walls as those having a tested assembly that meets strict test procedures. Materials, penetrations, joints and protected openings are considered integral components of fire-rated wall assemblies. While the fire resistance rating of a building element, component or assembly must be established without the use of automatic fire sprinklers or other fire suppression system as part of the tested assembly, an Authority having jurisdiction may allow supplementation to or substitution of a tested assembly with an automatic fire sprinkler system. Electrical installations must be in accordance with the New Mexico Electrical code.



- In conclusion:
- The structure is too close to a property line or public right of way,
  - The steel superstructure is not protected and has no code-approved method of fire protecting the structure,
  - The wood based sheathing is not a fire barrier and the thin metal sheet veneer does nothing to make it a fire-resistance rating,
  - The openings at the eave and ground do not comply with code,
  - The design is meant for air circulation is counter to fire protected design,
  - It is used as a hay barn which is a combustible material, and