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BOARD OF COUNTY COMMISSIONERS

SANTA FE, NEW MEXICO

REGULAR MEETING

APRIL 13, 1999

**Paul Duran, Chairman
Richard Anaya, Commissioner
Joe Griñé, Commissioner
Marcos Trujillo, Commissioner
Javier Gonzales, Commissioner**

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April 13, 1999

This regular meeting of the Santa Fe Board of County Commissioners was called to order at 5:05 p.m. by Chairman Paul Duran in the Santa Fe County Commission Chambers.

Roll Call preceded the Pledge of Allegiance and indicated the presence of a quorum as follows:

Members Present

Commissioner Paul Duran, Chairman
Commissioner Joe Griñé
Commissioner Richard Anaya
Commissioner Marcos Trujillo
Commissioner Javier Gonzales

Members Absent

[none]

IV. INVOCATION

An invocation was given by Father Pretto of San Isidro Church.

V. APPROVAL OF AGENDA

CHAIRMAN DURAN: Are there any changes or amendments to the agenda?

DAVID WOLF (County Manager): Mr. Chairman, there's one item that's requested to be added. It's item VIII. A. 1. It's added to read, "Request authorization to publish title and general summary of an ordinance amending and restating Ordinance No. 1999-3 providing for an improvement district property tax and general obligation bond special election."

CHAIRMAN DURAN: Okay, are there any other changes or additions? If not, I'll entertain the motion to approve.

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Commissioner Griñé moved to approve the agenda as amended. Commissioner Gonzales seconded and the motion passed by unanimous [3-0] voice vote. [Commissioner Gonzales was not present for this vote.]

VI. APPROVAL OF MINUTES: March 30, 1999

CHAIRMAN DURAN: Any changes or additions?

Commissioner Trujillo moved to approve the minutes of the March 30, 1999 meeting as submitted, and Commissioner Griñé seconded. The motion passed by unanimous [3-0] voice vote. [Commissioner Gonzales was not present for this vote.]

VII. AWARDS AND PRESENTATIONS

A. Certificate of Appreciation Award

ROBERT ANAYA (Housing Division): Mr. Chairman, members of the Commission, when I took this position about eight months ago we had a lot -- we still have, I should say, a lot of challenges ahead of us to bring the Housing Authority up to being a high performer as determined by HUD. There's a lot of things that we have on our plate, including the development and the home sales plan, our family self-sufficiency program, the Section VIII program, public housing program and new and other innovative programs that we're going to begin to move into over the course of the next year and several years to provide services to the constituents and the citizens of Santa Fe County.

One of the things that's been ongoing, however, has been the family self-sufficiency program. The family self-sufficiency program is a program that was set up throughout housing authorities across the state and the country to provide families with an opportunity to move from public housing or Section VIII in this particular case, on to self-sufficiency. And Dody Salazar, whom I'd like to recognize, heads up the family self-sufficiency program at the Housing Services Division. And what they do is they integrate partnerships throughout the community with the community college, with the Equal Opportunity Employment Commission, with the Labor Department, with family service organizations, counseling services and many other social services organizations work with Dody and people who are interested in getting into the family self-sufficiency program. They have a five-year plan that's put together.

In that five-year plan, they set out what their goals and objectives are going to be over the course of that next five years, with the ultimate objective being moving from public assistance in this case, to self-sufficiency. And it's a difficult task and it's a difficult project to work on. It was started in 1995 and now here we are in 1999 moving into the year 2000

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we're going to start to recognize some families that are finally coming to the end of the program.

I don't want to take too much of your time up, but I think this is a very important, crucial time for the Housing Authority and for families like this. Although the numbers are not large, it's important that we take individuals like the Perez family behind me and acknowledge that they've worked hard and struggled to achieve some goals and common objectives and become self-sufficient. When John Perez signed up for the family self-sufficiency program in 1995, he had trouble. He had family situations that he needed to work out. He was a single parent of two kids, two young boys who are seated behind me. And he was employed part-time and going to school full-time.

He got into the FSS program and he decided that he wanted to work towards a degree, and Associate's degree to eventually go work for the Intel Corporation and which he achieved that objective. And as he achieved getting that degree and is now knocking at the door at Intel saying, I finished and I'm ready to start my new career. Meanwhile, he's been raising four boys with him and his partner together, working towards their common objective.

Within the Section VIII program, money is set aside monthly to help provide an opportunity for home ownership. From 1995 to the present -- and he had one year left on his program and he left early, but he left early for a good reason. He left early because he wanted to establish home ownership. So without saying anymore, I'd like to give John an opportunity to come forward. John is moving on to self-sufficiency, him and his partner in raising his family. He's going to move on and eventually get a job at Intel. I told him that we're going to give him all the support he needs to do that.

John's also agreed to come back to the Housing Authority to help us to move forward, to help other families realize that they can also achieve this objective of self-sufficiency. Before the Commissioners present the certificate, John would like to come forward and say a few words.

JOHN PEREZ: My name is John Perez and I'd just like to say thank you for starting the program. It's really helped me quite a bit. In 1992, my first wife passed away. I was really struggling. I was working two jobs and trying to raise two boys and I just wasn't making ends meet. When I got in the program, I decided I would go to school and try to better myself and with the help of paying the partial rent and helping to find a decent home, I was able to graduate and get my degree and now we're about a week away from moving into our own home. I would have never made it this far without the help of everybody here, basically, for approving the program and keeping it running. It's a great program and it can go a long way. I'd just like to say thank you.

CHAIRMAN DURAN: Congratulations, John. It's nice to know that with a little bit of hope that there are people out there that have the initiative to take that to another level and better themselves. On behalf of the Board of County Commissioners, we'd like to present this certificate of recognition to you.

Thank you, Robert, for bringing this before us.

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VII. B. Y2K Preparedness, presentation by James Leach, City/County Emergency Preparedness Coordinator

JAMES LEACH: Thank you, Chairman Duran and Board of Commissioners. I'll be pretty brief. I just wanted to come to give you an idea of what is being done in the Y2K area. The federal and state levels, I passed out a very small packet to you. It's a report from the American Public Power Association, has to do with electric utilities around the country. If you read that you'll see that electric utilities are not in as bad shape as we thought they were going to be. As a matter of fact the other presentation or the other papers I gave you, there's a quote from the Department of Energy, Bill Richardson, says that they believe that the electric grids are going to withstand Y2K.

PNM echoes that and says that we are probably not going to have a lot of power problems at the Y2K time. The City and County preparedness, the County is the area you're concerned with, of course. I have here also Andrew Chavez, the ASD Director, and Agnes Oakley, program analyst with the MIS Division to help me answer any questions you might have there. Computers are well on the way to being tested. Y2K has lost some of the mystique, if you will that we thought it had about eight months ago. There have been some great strides taken in preparation and testing and correcting problems in the computer areas. We are, however, concerned about the awareness level of the populace and the individual and family preparedness.

One of the pieces of information is this one, a Y2K information on preparedness and Mr. Chavez has enough of those to pass to everyone in the audience. [Exhibit 1] The County Manager has agreed that it would be a worthwhile program to present to all County employees. It's a training program. It's very short in duration, an hour to an hour and a half and we see that it's something that we should do for the County employees so that while they're on the job, if they follow the steps we give them they should be assured that their families are taken care of. Their minds won't have to be on their family, they can be on their jobs.

Some of the things that I'd like to highlight in there: We recommend, especially if you have to evacuate your home that you have a stock of food. Not a year's supply, not two year's supply, but about three days. This is the same recommendation the American Red Cross makes. Keep some extra cash on hand, but don't go take all your money out of the bank. Banks are becoming more and more compliant. They are assuring us that they'll be up and operational. Their ATMs will be working on the first of January.

If you're concerned about fuel for your vehicles, go ahead and fill them up a few days before so you have plenty of gas. Plan on some alternative cooking devices just in case you do loose power, but don't do something unsafe like charcoal inside the house. Do it

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outside. And keep extra blankets and coats and hats and so forth available, because if this thing surprises us, you're going to need to be warm. Anyway, those are available. I have done presentations in a number of local neighborhood associations and most of those associations appreciate the effort but they're waiting to hear what their elected officials have to say about Y2K. Not about whether it's going to be hard or difficult or if it's going to be easy, but to make them aware that it could be a problem and they should be making some preparations just in case.

If you make preparations and you have a disaster you're in good shape. If you don't make them and you have a disaster you could be hurting. And if you make the preparations and nothing happens, you haven't hurt yourself at all. So we are advocating individual and family preparedness and we would like to ask -- I understand and I may be wrong about this that there was a resolution already introduced about family and individual preparedness? So what we would like to ask to have you do for your constituents is make some kind of public notice that while you don't know what Y2K may bring, you do advocate that people be prepared and that people do try to contact people like the Red Cross, like my office to get information on preparedness issues.

And if there are any questions, I will entertain them.

CHAIRMAN DURAN: Any questions of Mr. Leach.

COMMISSIONER TRUJILLO: I have a question. Mr. Leach, what is the extent of your communication with the communities? Are you on an as-called basis, or are you going to set up meetings out in rural areas and communities to educate the public about preparedness and Y2K?

MR. LEACH: I have been on an as-called basis but at the last meeting that I was at I received information on a group that keeps track of all of the neighborhood associations in the county and I am contacting them and we are going to put into action a neighborhood preparedness plan for the whole city and county of Santa Fe. So it will be a wide-spread family preparedness plan that we'll be trying to put out.

COMMISSIONER TRUJILLO: I'd like to see, I guess, maybe not be available, but schedule meetings throughout the county on a regular basis between now and the end of the year to educate the community, the public on the issue of Y2K. Not on an as-called basis, but schedule a meeting in Chimayo and the Pojoaque Valley and Edgewood so that the community knows what the issues are going to be.

MR. LEACH: Certainly, and I would be available for that or working with your own committee on Y2K, could arrange for others to be. There's a lot of demand, a lot of call for these kinds of things and it's more, probably, than one person could handle. But you're right, we could set up meetings and see what kind of response we get. We also have on our agenda to visit the City Council with this same request, because we've had the same request from citizens in the city. They want to know what the City Council and the Mayor have to say. So we are trying to get the political leaders in the area to come out in favor of preparing for the worst and hoping for the best, basically.

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COMMISSIONER ANAYA: Mr. Chairman, just a matter of information. Of course this was heard by me through the grapevine from what I consider a pretty good source from St. Vincents Hospital is that they're even allocating a certain area. They're contemplating allocating just for emergencies as far as shelter is concerned and they're doing an extensive Y2K preparation effort, St. Vincents Hospital. Hearing it from a pretty good source coming from St. V's.

MR. LEACH: Yes, we're also working with one of the vice presidents up there. We're putting together a meeting of all medical facilities throughout the area including nursing homes, nursing businesses that supply nursing for home care and all the hospitals in the area to make a resource manual so we know exactly what we have medically for Y2K and for other disasters also.

COMMISSIONER GONZALES: Mr. Chairman, I apologize for coming into your presentation late. I was looking through though the information that you were passing out and a lot of it seems to center around mechanical devices and basically, midnight in the year 2000 that all the electrical supplies or the sources are going to be working. Do you know what the status is of the PNM Y2K compliance is? And I know it's not just about PNM because apparently all the power is interconnected throughout the region, maybe throughout the southwest from what I understand, or parts of the country.

So is there a reason why you're focussing, really targeted on dependency on electricity in this information?

MR. LEACH: Sure. Most of everything we have functions because of electricity or off of electricity. Our computers, our gasoline pumps, our hospital equipment, our communications, everything that we have basically, functions because of the availability of electricity.

COMMISSIONER GONZALES: Is there a concern though that the industry isn't going to be ready for the year 2000?

MR. LEACH: No. And that's what I was saying. Not only has the Department of Energy gone public -- I was at a seminar in Dallas last month, and they had representatives from every federal agency and the Department of Energy was represented and they told us that the power grids are in great shape that they will be up and running in the year 2000 that the Y2K changeover or rollover will not bother them. PNM, in their recent meetings that we've had around the state have kind of echoed that. They are still working, but rather than worry about embedded chips, they're not trying to dig them out, they're just taking whole pieces out and replacing the whole piece rather than looking for the chip, just in case.

So power, six months ago power seemed to be the biggest issue, we didn't think it was going to be functional but now that picture has changed drastically. It's been almost a complete reversal. Some rural co-ops may have some problems but that's the biggest problems they're anticipating at this point.

COMMISSIONER ANAYA: Mr. Chairman, on the same note.

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Commissioner Gonzales and I last night, we had to close and after midnight, we go home and sit down, then around 1:30 in the morning we experienced like three different power surges. And I think I had read earlier that this was going to be the week that PNM was going to utilize to experiment on shifting the grid or whatever they do as far as electrical power sources are concerned. Perhaps last night was one of those experiments.

MR. LEACH: It could well have been. I was not aware of it personally.

COMMISSIONER ANAYA: Three in one night. Just information.

CHAIRMAN DURAN: Thank you very much, Mr. Leach.

VII. C. Presentation on Santa Fe County's Growth Management Plan, Part II, "The Districts" and set a schedule for public hearings

JACK KOLKMEYER (Planning Director): Thank you, Mr. Chairman, and good evening, Commissioners. We're very happy to finally be here after about a year and a half since you passed the Part I, "Policies" back in December of 1997. This is the second part of the County's General Plan, known as the Growth Management Plan, The Planning Districts. The purpose of our presentation this evening, it's not a presentation of the plan. It's to go over the items that you have and to discuss with you a schedule and a procedure for adoption of the plan.

I'd like to though first start by thanking Judy McGowan for just a spectacular job that she did on putting this plan together. We think it's perhaps one of the best county plans in the country right now. It utilizes a lot of traditional concepts and new ideas, a lot of very creative thinking and mostly, it's a culmination of a lot of good listening on everybody's parts -- yours, ours, lots of people in the community. We've all listened to each other. We took a lot of time to go through the concepts and the problems that came up and really spent a lot of time working through this plan, and it's I think to the commendation of everybody that we really took our time to do it this way.

I'd also like to thank the General Plan Steering Committee because they're the ones that started it. I'm reminded because I saw Mr. Eduardo Vigil back there and he was one of the original members. Even though we came a long way away from some of the meetings that we had, we feel we still are adhering to a lot of the principles.

The document looks like this. Deborah, they all got copies of it? You all should have a copy. There's a number of copies up here on the front desk for people in the public. We only made up a limited number today but we'll make sure that there are plenty available as we move through. There's actually a companion piece to the document, and it's the Highway Corridor District Plan. We were not able to, because we had an extra meeting for the highway corridor district, we changed a number of the graphics in that document. We weren't able to have that for you today, but actually the Highway Corridor District Plan

travels along with this as it's part of the General Plan and we'll have that available for you at the meeting on the 27th. We actually should have that finished next week.

What we'd like to do today is make sure that the Commission is familiar with what is in this document. I'll just go over the Table of Contents basically.

COMMISSIONER ANAYA: Mr. Chairman, Jack, before we go on, I'd just like to recognize the presence of the Representative Rhonda King, who's in the audience and welcome to the County Commission.

MR. KOLKMEYER: Actually, Rhonda was also a member of the General Plan Steering Committee too. I didn't see her come in. If you'll turn to the Table of Contents, you'll get a very quick idea of what's in this plan. We have a section in there going over the objectives and the rationale for why we put this plan together, comments on zoning and the costs of sprawl, issues that have come up repeatedly over the last year, particularly what is zoning all about in the county, what does it mean and what is all this business about sprawl and how does it relate to Santa Fe County.

We also thought it was important in this second part to really go into a bit more detail about the setting, the landscape of the county as it really is the context and the basis on which all of the development and preservation of open space and where roads go and all the important issues. So we took a little time to add slightly more context at the front of this document. The rest of the document, the planning districts, Part II, comes from the direction that you gave us back when we adopted the December 1997 policies was to look at the county and to come up with some ideas of how we could restructure certain portions of the county in a way that if we had to make things different in those areas, that we could work in more unique ways. Particularly since the basic context of the county is really two districts, a rural district and the Estancia Basin District.

As you may recall, we had lots and lots of conversations with constituents from the Estancia Basin that it was a different part of the county and it needs to be recognized and they need to have the opportunity to do their own plan if they so choose, just the way that we went through that with the traditional communities. So the basis of this part of the General Plan is dividing the county into two parts, a rural district and the Estancia Basin District.

The next piece that's important, and we've actually accomplished a lot of this already is the traditional and contemporary communities. As you may recall, the traditional communities, we decided that there would be no changes that would occur in the traditional communities unless they chose to make change themselves. And that's why, as a result of those policies, we passed the Community Planning Ordinance. We now have community plans going in eleven of our communities, which is really pretty extraordinary. And when you think about our trip to Portland and remember that one of the basic elements of the Portland metro area plan was neighborhood planning, it wasn't just a growth boundary and growth and no-growth, it was really that every neighborhood and every community in there did a plan, and that was the basis for the metro area.

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We've actually set that in motion now. We have problems with it. It's not easy doing these plans and it won't be easy to adopt them and get through them, but that's the point. It's to hear what our communities say to us so that we can really consider what the problems are more carefully and go through that. This idea of contemporary communities. You were confused about that at first. You all kept asking, Well, what do you mean by that? I think there are new communities developing in our county. Edgewood, Eldorado, these are communities that are transforming themselves into towns and we actually are now at the front end of being able to say we can offer some assistance and some planning assistance to those communities.

The next item is the new community district. We also realized that we have traditional communities, we have contemporary communities that have emerged and we also have to develop communities that we haven't even thought of yet. And we struck on this idea of a new community district. And the one that we are proposing -- a new community district, basically is a place where we can recreate villages. Where we can try to recreate traditional communities rather than have just subdivisions. Subdivisions are not necessarily villages or communities. They can be, but there's something about the idea of a village that has mixed use, it has commercial, residential, public uses, that is the very backbone of Santa Fe County. And if there's anyway that we can try to bring that into the present and into the future, that's an opportunity that we should not let slip away.

We have some detailed work now that we've done. Some detailed research that we've done for the first of those new community districts, which will be called, which we are proposing to be called the Santa Fe Community College District. We think the community college has developed and set a focal point for future development in an area where we can create new villages, particularly with the assistance of Rancho Viejo and the State Land Office. You'll see that we have now pretty much laid out a fairly good outline of where the roads should be in that area, where village centers can be. There's a map that's here in front of you, what those two orange stars show where we have to potential for two new railroad depots to be able to really try to utilize that rail line that's there, connect roads and trails to that and we think this is maybe one of the -- again, most unique possibilities for new villages again in the country.

We hope that you spend some particular time in reviewing that aspect of it. The highway corridor district, you don't have that plan here with you today, but you can see on the map that we have established that corridor district, and again, that was at the insistence of the Commission, particularly the efforts of Commissioner Gonzales to bring that Highway Corridor District Planning Group together and Chairman Duran for hanging in there with it. That was a remarkable experience. It started off very rough but it involved City Councilors and County Commissioners and people from the city and the county and it really showed that we can do planning together. This is regional planning. The Highway Corridor District Plan is regional planning for the metro area region between the city and the county. It's a very, very important document, you don't have it yet, but you'll see that the amount

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of work that went into it, and a wonderful plan came out of it. So we can go over that in some detail with you too.

And finally, the last portions of the plan are all about our relationship with the City of Santa Fe and other Extraterritorial issues, particularly regarding Española and the new town of Edgewood. We have been challenged and over again, to find ways to work, particularly with the City of Santa Fe and to solving some of the growth problems that have presented themselves to us. And we think that our plan lays forth not only an outline for the County, but a system in which the City can integrate its plan without much difficulty. But these are very difficult issues because they involve the Extraterritorial Zone. We have to make changes, or we are proposing, let me say, that changes be made in the Extraterritorial Zone. We're not even certain how we go about doing that yet.

But we think there needs to be an urban area boundary, designated urban growth areas that are currently in the county outside the city limits. There's the highway corridor, there's the need to do something in the airport area. We're suggesting we look at a whole district over there called the airport development district. We have the highway corridor district and the community college district. So in other words, we're setting up, if you will, sort of a piece of a puzzle that allows us to do planning and contain or expand as we need to, over the next twenty years.

That's basically the plan. What we'd like to -- and we don't particularly want to get into discussions about it this afternoon, unless you want to --

COMMISSIONER TRUJILLO: Jack I just have one comment on the Extraterritorial areas, I think we're missing the Native American community. In Española, the Santa Clara Pueblo, outside of Santa Fe there's Tesuque, a pueblo that's also adjacent to this area, so I think you need to probably include them in regional planning.

MR. KOLKMEYER: Yes. Mr. Chairman, Commissioner Trujillo, there's no question about that and I think you'll see if you read through the document, we mention pueblos frequently as we did in the policies that we adopted in 1997. In fact for the first time on our maps -- speaking of the maps, I'd also like to take just a moment to thank GIS staff. The maps are really fantastic. The GIS here is really moving along. But for the first time, we've actually identified the pueblos on the maps. I think little by little we're recognizing that. And then the regional planning sections of the policies that we adopted in some of the areas as you read through you'll see that we mention that.

Again, the problem that we face, and I think that's what we're looking at with this plan is how do we work with the pueblos and what are the mechanisms for us to do that? We're ready for that challenge as well. If I may, what I'd like to do next --

COMMISSIONER GONZALES: I just have a quick question on the elements you talked about, the open spaces and trails plan, the economic development and transportation and utilities corridor plan. I'm assuming at some point, as the open space committee comes through and they start designating and voting and they make their recommendations we'll see those districts begin to develop, but what about economic

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development districts, where you have -- we're trying to do that with our economic development park out on 14, but that's not the only area in the county that would be an ideal place for a heavy concentration of business.

So is there going to be a point in this process that the Commission will actually be able to designate an economic development zone so that -- I've got mixed feelings about the commercial nodes but I don't think that should be the only area that we encourage economic development. I think that we need to look at other areas around the county where we could have a heavy concentration. At what point do we have that discussion?

MR. KOLKMEYER: Mr. Chairman, Commissioner Gonzales, I think that's again -- we'll really get into that in some detail because when you mention these element plans it's not to say that we haven't done a certain amount of work, let's say in housing or in economic development or water. This is a suggestion as really you're alluding to that we really need to start putting things together in a better fashion. For example, if you look at the economic development planning portion that we have under the element plans on page 76, it says locations for new business centers will be mapped.

So you're exactly right. We think we need to get on to this. But there's also the issue of the new villages will incorporate new commercial development too. The Airport Development District is an effort to say there's an area where certain economic development can occur that we keep kind of shying away from because it's a difficult area, with Airport Road and a hodgepodge of development and a certain uncertainty about the EZ. And our General Plan is saying just what you're suggesting: Let's just go after it and let's do it. There's areas in the Edgewood area and the Estancia Basin that are probably appropriate to certain amounts of economic development that we haven't really looked at yet with the residents of the Estancia Basin.

Same with the northern communities too. As we -- we've established a really good relationship, we think, with Española, the City of Española, and it's time to work with them as they develop this whole new era for Española. There are economic development opportunities for residents up there as well. So we view the economic development plan as being like that, as to really pulling a whole lot of elements together.

COMMISSIONER GONZALES: And recognizing that in new community districts or in contemporary communities we're going to have a different type of economic development that we would possibly in other areas where we might be able to have a heavier concentration of economic development. For instance, our park is 60 acres, that's going to be all commercial. It's going to be all, hopefully, businesses that are generating jobs. And then possibly in Rancho Viejo in their village district they're going to have the ability for lighter and smaller type businesses to be able to support people to be able to live and work in a community or whatever might be.

So that's what we're talking about, right? Having the ability to recognize that there are different areas of economic development that we need to plan and prepare for?

MR. KOLKMEYER: Yes, sir, that's correct. Again, with our relationship

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with the City of Santa Fe, that's a crucial issue because those pink areas on the map that you see there that are the urban growth areas that we are recommending, Airport Road for that particular reason is very critical. We need to develop new neighborhoods along Airport Road, not just one development after the other and then ten years later look back and say, oh, we didn't build a shopping area in the right place or we didn't have employment in that area. So again, the idea that you suggest, economic development is a theme that we really need to pay attention to in that area as we develop it.

COMMISSIONER GONZALES: So, just moving along then on the other parts of the elements, as far as the utilities corridors and the transportation corridors go, there's going to be a discussion about how that's going to be, right? We're talking about - especially the utilities corridors. As growth occurs in the regions outside of the city and you see the US West and the PNMs needed to haul in their lines. Is that the idea? And also Sangre de Cristo and Santa Fe County Water Company. Are we going to actually designate these corridors so you just don't have this piecemeal type of infrastructure and utilities going throughout the county?

MR. KOLKMEYER: Yes, Commissioner, that's exactly what we want to do. It's not part of this plan but the instruction will be yes, now go do that piece. In the highway corridor is another good example too. You said go do that and we did it. Now we'll have to decide which one we want to do next. Is it Route 14? Is it 285 down to Lamy? Is it the portion between Pojoaque and Española? There's a corridor we probably ought to be paying attention to as a result of the plan. Those are things then that your planning division can go and do that work with other staff and we can devote our time, instead of now doing all the conceptual work, to actually going to create those kinds of plans.

COMMISSIONER GONZALES: But when you're talking about utility plans, though, there'll be actual specific utility corridors, right?

MR. KOLKMEYER: Yes.

COMMISSIONER GONZALES: So we don't have them just moving wherever. Because I think a lot of people, especially in the new communities and the contemporary communities often wake up one day and they're having a fight, like we're dealing with now with the powerline that's moving in. If we can establish what these corridors are going to be, where they logically can be and where they make sense for the type of growth that we want up front then at least there's an awareness of what can be coming in.

MR. KOLKMEYER: Yes sir. That's our intention.

COMMISSIONER GONZALES: Thank you.

COMMISSIONER TRUJILLO: In the area of economic development, I saw in the paper this weekend what Pojoaque Pueblo is proposing to do in that area, have an industrial park. They're planning another hotel, 75 more apartments. I think our plan needs to be congruent with what's happening in the Native American communities, because what

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they're doing is going to impact non-Native Americans and our infrastructure.

MR. KOLKMEYER: Yes, we have a track record now of having been able to work on some water issues with the pueblos and Park and Ride, while it's halted for the moment, it involved Pojoaque Pueblo to a great extent. So we think we have the precedent to be able to do some work with the pueblos, particularly in the northern portions of the county, that we haven't taken advantage of in the past.

COMMISSIONER GONZALES: Can I just real briefly comment on that real quick, because the Commission brings up an important point in that in dealing with the Native American communities. We saw what happened when we did have a relationship with Nambe Pueblo and they went and they leased, I guess a 300-foot tower to AirTouch and all of a sudden that went up without any type of public hearings. You hear all kinds of things on what the Native Americans are planning on doing and it's nice of Pojoaque to lay their vision forward so people understand what they'd like to do.

I understand that Nambe was looking on putting a high-density type residential piece right there in the area of Cuyamungue, where they wanted high-density mobile homes in that community. We need to be very proactive as we hear that and step in and visit it, understanding that there are limits as to what we can influence to occur on Native American communities. As Commissioner Trujillo indicated, there's a lot of private lands around those Pojoaque lands if you do have a high-density mobile home community that goes in right in there in Cuyamungue.

I'm not sure how we do that. We talked about establishing some type of council but somehow we need to sit down with the Native Americans and find out really what are your plans and what would you suggest for us to do in this area and try and begin some type of effort because, again, I think we're all concerned about waking up one day and all of a sudden a decision has been made and everyone having to live with that decision without any consultation or any type of public process that went into making that decision.

MR. KOLKMEYER: That's really important, Commissioner. It also makes me again want to emphasize that we've gotten into these conversations about regional planning as if they really only involve the City of Santa Fe and Santa Fe County. Santa Fe is part of a region that for a lot of different reasons, may stretch from Los Alamos to Albuquerque in some regards. And we need to view regional planning based on regional issues. So this issues can stretch in different directions. They might be economic development, they might be transportation. They may be issues that start at Pojoaque and go to Los Alamos and not have anything to do with for example, the City of Santa Fe.

And I think the point that you raise is a good one, because we need to be very clear about what the issues are that we're working on and who is involved in each of those issue and make sure that we're in communication with all the right partners.

COMMISSIONER GONZALES: Well, I'd like to make a suggestion, and maybe Commissioner Trujillo can offer some guidance, in that we actually be proactive and either invite ourselves or ask to be invited to appear before the tribal councils in presenting

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the General Plans to them and beginning that dialogue. I think it's incumbent on us to ask them to let us be a part of their process rather than them asking us. So I yield to Commissioner Trujillo on this, but I know that we're all busy but I think this is an important move that we make in reaching out to them and saying, Here's what we plan on doing. Tell us what we can do to either make it better or what you're doing so that we can work together.

COMMISSIONER TRUJILLO: I think that like you mentioned, Commissioner Gonzales, we have talked about putting in place the Santa Fe County Native American Council to open dialogue, to sit around the table to talk about issues and present what's happening in Santa Fe County, development and all that sort of stuff in a two-way form of communication. But yes, I agree we need to go before the council, before the tribes and represent to them what Santa Fe County is planning to do regarding the General Plan.

MR. KOLKMEYER: My I use that as a segue? Relative to that, that sets it up, how should we adopt our plan here? There's some very difficult pieces here. We need to make sure that we all know what we're talking about and have the dialogue that we need, and then have a moment or two to make sure that we got it all, and then to involve anybody else that we need to to make sure that they've heard it. So if you look at the memo that we gave you, second page, we think that the overall growth management plan has a number of sections in it. This is kind of conservative and it's just a suggestion and we do need to talk about it with you this afternoon.

But we think that there's a way that we could probably do several sections at a time. We can do, starting in May, do several things in May, several things in June and several things in July. And adopt each piece as we go along. And then in August make sure we've -- August might be a very good time for us to example visit the pueblos and we would be in agreement about what our plan is at that point, and then sit down and talk and visit with the City at that point, the pueblos, anybody else that we need to, and then come back in September and adopt the entire document.

For example, if I might, in May, just to give you the idea what we're working with here. The basic idea is the last time we did this, we gave you a 150-page document and we went from one page to another and back and forth and we all got confused at several occasions and there were a lot of moments when we weren't all really clear what we were talking about and it got a little confusing. So we wanted to change it this time and suggest that let's just take it a piece at a time, then, because it lends itself to that, starting with the big pieces.

So for example, in May, what we could do is come back and just adopt the rural district and Estancia Basin District concepts as an official map. Then we have that piece. You could also authorize us then to amend the Land Use Code at that point for any modifications which need to be made in that rural district. And then authorize us to begin to work with the Estancia Basin District residents to do a plan and a zoning ordinance for that area, if a plan is needed. Of course, things have changed a little bit there with the

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creation of Edgewood. So we need for those people from the Estancia Basin-Edgewood area to be able to come forth at a public hearing and talk with us again about what it is. Do they still want to do a plan. Do you still want to do that?

Again, to lump it this way we think might be a good idea. And then -- I have to go over all these with you, but in June, in July, there would be very kind of specific things. We're suggesting this is one option. We could try and do the whole piece all at once if you wanted but I wanted to have a conversation with you this afternoon about how you would like for us to move forward with this plan.

Because we also have to spend considerable amount of time with the City in talking about these growth management plans and ideas that we're bringing forth. Because again, the idea for an urban area boundary and urban growth areas is not new. That was recommended in the 1988 Extraterritorial Zoning Ordinance. We just never did it. So now, several people have said, Well, the EZA is outdated. We don't think it's outdated if we haven't even done what it directed us to do almost 20 years ago. In fact we think that maybe it's time to just look at it and to update some of these things and make some changes.

But that's going to be a dialogue, it's going to be a very serious one so we need your guidance on how you'd like for us to move forth now with the adoption of this.

COMMISSIONER GONZALES: Mr. Chairman, well, I think the way you presented it seems a pretty reasonable and allows time for the staff to work each segment at a time properly. A couple of things I want to bring up. One, we know for a fact that we haven't been properly noticing the people in the Estancia District as to the meetings that are coming up. That was basically found out. So if we're going to do this, we need to make absolutely clear and sure that there are proper notifications that are done in the areas.

Then the other thing I would ask Denise is, I'm assuming that when we talk about amending and voting on this, I think we should do two public hearings just to make sure, because it's such a big plan. I know that we're prevented from making decisions outside of the courthouse in the outlying areas of Santa Fe County, but would we be allowed to hold one of those hearings in the outlying area and then actually, when we're voting on the Estancia District, do that during the second hearing over here? Because I think we need to go to Edgewood to hold one of these hearings rather than asking them to come down here and we possibly need to go up to Chimayo and that area and hold a public hearing. But is there a way that on the second hearings that we're holding when we're adopting these districts to actually do it here and still be meeting the legal requirements?

DENISE BROWN (County Attorney): Mr. Chairman, Commissioner Gonzales, I think you're talking about the restriction that the Board of County Commissioners has to hold its office in the County seat. You can go out to other areas and hold meetings there. I think you're finally decision making probably has to occur here. But yes, I don't think there's anything that would prohibit you from going out, taking input, having open discussions in other places other than the City of Santa Fe.

COMMISSIONER GONZALES: So we could have a public hearing out there

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and then the second hearing have here. So I would really recommend that we do that and that we do visit how our notifications are done because I know that they've shown on a couple occasions that they weren't notified on a couple of the developments that were occurring here and I think that's really crucial to earning the people's trust who don't necessarily receive the *New Mexican* or the *Albuquerque Journal*. So I would recommend that we do that.

I think that the course that you presented is very fair, especially since the fact that we're just talking now to the City about regionalization. That's going to take a month, two months. It's nice that you're giving us lots of time to work into that rather than pushing that debate now in May or June. So I would support you in keeping it back to July or August.

MR. KOLKMEYER: Mr. Chairman, Commissioner, also, do you think that we do this at regular BCC meetings or are these special public hearings? I guess that's another issue. Because again, in the summer with people gone -- or it may be a good time, but if we have a lot of special meetings where we're in to the summer with a lot of meetings. One suggestion that was made, for example, was maybe we start BCC meetings an hour earlier, simply to do some of these General Plan items through the summer. Or we could do special meetings or we could do them at the BCC meetings. So that's something else we need a little guidance on from the Commission.

COMMISSIONER TRUJILLO: I guess I'd like to see them done at special meetings.

COMMISSIONER GONZALES: We know one of the meetings will be a special meeting because we're going to have to go to Edgewood for the first hearing out in the communities wherever they are. The second hearing -- it doesn't matter to me.

COMMISSIONER GRINÉ: It doesn't matter to me either.

COMMISSIONER GONZALES: Maybe we can see if we can extend our meeting, see if that works and if it doesn't, go to special meetings on the second when we actually vote. I don't know.

COMMISSIONER GRINÉ: I would like to make a recommendation that we hold the second meeting on this week of the month, which is the first Tuesday. We don't start until five, we could start as early as three or four o'clock.

COMMISSIONER GONZALES: I would support that initially and see how that's going. If we're seeing that the debate is taking much longer and it's moving into the other business of the County, I think we need to be quick in moving those second meetings to a special date so that people who are here for regular business by the Commission aren't having to wait til late hours of the night before their business is heard and I think that's probably what Commissioner Trujillo is concerned about where people come in and have to wait around for their regular business. But maybe if we start at three in the afternoon we'd be done by five. It may be just a two-hour hearing. I don't know. I wouldn't mind starting early either.

MR. KOLKMEYER: We'll coordinate it with the County Manager and other

staff members as we need to and try to put something together, but is the general sentiment that we should get rolling on this in May, then?

COMMISSIONER GONZALES: Absolutely.

MR. KOLKMEYER: And there's some really juicing parts in here so you should read it.

COMMISSIONER GONZALES: I'm sure there is.

MR. KOLKMEYER: I would be happy to entertain any other questions. Otherwise, that's it and we'll have plenty of copies available for the public and please tell your constituents to call us with comments.

COMMISSIONER GONZALES: Is this on the Internet?

MR. KOLKMEYER: No, it was just done this afternoon at 4:38.

COMMISSIONER GONZALES: Can we get this on the Internet?

CHAIRMAN DURAN: I'm sorry I wasn't here. What did you decide about the process? When do we begin public hearings?

COMMISSIONER TRUJILLO: We're going to follow the schedule.

MR. KOLKMEYER: We're going to try and follow that schedule and possibly have some of the -- Commissioner Gonzales has suggested we do one meeting in Edgewood for sure, and then that perhaps we start some of the BCC meetings a little earlier and devote an hour or so earlier before the BCC meeting to discussion of the General Plan.

COMMISSIONER GONZALES: When we actually start adopting the districts using the two-hearing process where one hearing is spent in the communities where those districts are going to be implemented and the second hearing is actually back here on the day of the BCC meeting for an earlier start time.

MR. KOLKMEYER: Thank you very much for your confidence in the work that you're doing and all the support that you've given us. We really look forward to working through this with you.

COMMISSIONER GONZALES: I know we've got to move on, but Mr. Chairman, if I could just ask for a one-minute update on the Open Space and Trails Committee and how it's coming on.

MR. KOLKMEYER: I wasn't at the last meeting so I'm not able to tell you, but the group basically has now broken up into committees and they've begun to identify elements for the open space plan in general. There's a workshop coming up for different community groups to be able to present a potential project. You're going to appear at the next meeting on the 28th. Again, it was a little sluggish. It was a big group to organize but there's a lot of enthusiasm and we should be rounding the bend now, probably over the next two to four months to be able to really start to focus on some projects and the development of a plan. Those are the two things that we needed to work towards.

COMMISSIONER GONZALES: And also congratulations on the seminar that you held on the transfer of development rights. I've heard from several people who were there. It was just a phenomenal workshop and probably something we need to do again and

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make sure that at least a couple of us show up. I know you urged us to do it and we couldn't do it, but I heard it went great and look forward to that as a tool.

MR. KOLKMEYER: Thank you. I think you'll see a couple points in the plan again where we used to just talk about TDRs, kind of as some philosophical or conceptual thing and now we know that it has the potential to work in Santa Fe County. We're looking forward to trying it.

CHAIRMAN DURAN: Jack, I have a question. As you go forward with adopting these districts, are we going to be isolating those portions of the Code that we need to amend, like the EZO and just the County Land Use ordinances?

MR. KOLKMEYER: Mr. Chairman, the answer is sort of yes and no to some of them. As we adopt the rural district, for example, that big piece, there are recommended changes for that whole big piece, so the Code could change at that point as we adopt that. As we get into the Extraterritorial area we think the concept need to be very clear. But in some cases that could be fairly rapid, like to adopt a Highway Corridor District, that's going to take some Code amendments too. It's sort of more by pieces now than all at once, and it depends on what pieces that we start with.

CHAIRMAN DURAN: Well, if we adopt this plan, wouldn't it require that the ordinances be adopted or amended at the same time?

MR. KOLKMEYER: Not necessarily. For example, if we adopt this plan, this plan just says, Create an airport development district, for example. We don't have the Code for that yet. We would need to do that. If you adopt the Highway Corridor District Plan, that Code, there are a lot of Code elements in there that could be adopted right away. It really depends on the piece. That's why we wanted to take some time to go over this, so there's a relationship of the Land Use Code, so the needs for change become really apparent. And in some cases it will be fast. Some things we could change right now. Other things we need to maybe wait and make sure what we all understand what changes need to occur.

CHAIRMAN DURAN: Okay, so the changes would occur, in some instances and in some instances wouldn't require any changes?

MR. KOLKMEYER: We'll probably need to talk about that in some detail. But the answer is sort of yes.

CHAIRMAN DURAN: Because my understanding is that there are a lot of things in the Code that I think we need to revisit, not only as it relates to our General Plan but just how we're using them in today's world when they were adopted quite some time ago.

MR. KOLKMEYER: Yes. Not forgetting that our first plan was done in 1980 and that's the whole point of doing it. The more that we can do all at the same time, whatever point in the time line that that is, probably would be the most expedient way to do it.

CHAIRMAN DURAN: Any questions of Jack. Thank you, Jack. Thanks, Judy. We're looking forward to it.

VIII. STAFF AND ELECTED OFFICIALS

A. Matters from the County Manager

- 1. Request authorization to publish title and general summary of an ordinance amending and restating Ordinance No. 1999-3 providing for an improvement district property tax and general obligation bond special election**

ROBERT STRUMOR (Bond Counsel): Mr. Chairman, members of the Board, Robert Strumor, pleased to be serving as your bond counsel. Two weeks ago, we appeared before the Commission to have an ordinance adopted calling for a special bond and tax election for the Rancho Viejo improvement district and it appears that we were a little bit aggressive on our time schedule. We were calling for an election on June 1 and it appears that we need to work out a few of the details of the election process, specifically, what we're doing tonight is asking for authorization to publish a notice of intent to amend and restate Ordinance 1999-3, which would be considered for public hearing at the May 25 meeting of the BCC. We don't have to pick the election date tonight, but we're proposing mid- to late-August or possibly at the latest, early September.

Just a little bit of background, this item ties very directly into your last item. The election that is proposed is only for the Precinct 70 landowners within the Rancho Viejo improvement district, and within essentially what's Phase 1 and Phase 2. So the total number of voters would be -- the corporation owns approximately 275 of the lots and they've sold about six lots. So it's not a general bond election for the entire county or even the district and the sole questions are whether to impose that improvement district property tax and to authorize the issuance of the bonds.

So what we're asking for tonight is essentially to reschedule it to give time for possibly a work session if requested. The Secretary of State's office has been contacted by our office and by the Clerk's office and they've agreed to cooperate and help us work out any details that we may need to and if the Commission believes that a work session would be helpful, we have representatives of Rancho Viejo willing to participate. Obviously we would participate. People in Arizona that have worked in these districts which are very similar to the one that's being proposed.

So basically, it's a request for a little more time. This is the first time in the state's history that this particular district election has been held and there's a few growing pains to deal with and with the Commission's consent, we can still achieve the result, have another public hearing scheduled and go forward having all of the details worked out. And I stand for any questions.

CHAIRMAN DURAN: Any questions of Mr. Strumor? If not, what's the pleasure of the Board?

Commissioner Grifé moved to approve the request to publish title and general summary

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of an ordinance amending Ordinance 1999-3. Commissioner Gonzales seconded and the motion passed by unanimous [4-0] voice vote.

VIII. MATTERS OF PUBLIC CONCERN - NON-ACTION ITEMS

BECKY BUSTAMANTE (County Clerk): I'd like to address the Commission under Matters of Public Concern. Mr. Chairman, members of the Commission, for the record, I would like to comment on what was just brought to you before. The ordinance was an illegal ordinance and I felt that --

CHAIRMAN DURAN: I'm sorry, Becky, it was what?

MS. BUSTAMANTE: The ordinance that -- there wasn't really a misconception or a misunderstanding in regard to the ordinance that we were just asking to amend earlier. I felt that I had not been included in it and I felt that it was going to be an illegal election. And I thank you for bringing this up again, but I really feel that the way it was brought up to you this evening is not accurate. Thank you.

COMMISSIONER GRINÉ: Becky, you said it's not accurate?

MS. BUSTAMANTE: Well, I've never been consulted but I feel that they jumped the gun and stuff. I don't think that was really right. I really feel that had I not caught that, had I not reviewed it at the very last minute, we would have not -- you would have been doing something in violation of the law. And I just really want that to be reflected that I really want for the Commission to make sure that somebody is reviewing these ordinances and that the County Attorney and the staff should be reviewing them, because it hadn't been reviewed and I caught it and that's why we're here today. Thank you.

MR. STRUMOR: With all due respect, and I have utmost respect for the Commission and the Office of the County Clerk, we believe the ordinance was legal and proper and appropriate in every way and every legal manner. But as an accommodation to concerns that were raised by the Clerk, who will have to hold the election, it was felt rather than to rush in to an election in June, that we should discuss all the details and seek the input of the Secretary of State. But I definitely would state for the record that everyone is entitled to their opinion as to legality. We are engaged to review and approve legality and we stand on the legality of the prior ordinance. Thank you.

COMMISSIONER GONZALES: Mr. Chairman, could we just assure, as the election moves forward that the clerk is consulted all the way through and allowed to be a part of the process rather than -- if I understand the Clerk, she's reviewing things after things have been noticed or approved, especially when it comes to the elections. We just need to make sure that she's a part of the process as we devise it, especially on this new one, because it's the first time we've done it in Santa Fe County. I would just ask that you, Mr.

Strumor and David's office and Denice's that as we progress forward that the Clerk is an active participant in all the discussions we have concerning this discussion.

MR. STRUMOR: Thank you. I would only state that it was our intention from the beginning that the Clerk was to be involved and through whatever missed communication that occurred, and I do apologize if I was a part of that, but it was never our intention to leave the Clerk out of the process.

COMMISSIONER GONZALES: Just as long as, as we go forward that she's a part of it. Thank you.

CHAIRMAN DURAN: Thank you, Becky. Is there anyone else out there in the public that would like to address this Commission? Please step forward and state your name for the record.

GERRY POWERS: Mr. Chairman, Mr. Commissioners, my name is Gerry Powers. I live in the south county area. And I just wanted to follow up on Commissioner Gonzales' comments with regard to non-publication of notices in the south county area. We recently had several public hearings and an amendment to the Land Development Code that did not get published in some of our newspapers down there. So we would like to make a request to get an amendment to the Open Meetings resolution that would require publication and notices of all County matters in newspapers in general circulation in the south county area as well as the city of Santa Fe so that the citizens in our area could also be informed as to public matters and not be excluded from the public process.

CHAIRMAN DURAN: I thought we already dealt with this, Gerry. I'm in agreement with you, but I thought that we were already doing that.

MR. POWERS: Well, we've talked about it several times and there have been three separate times when it was promised that they would be published in the south county area but no amendment of the Open Meetings resolution was actually made. And then for whatever reason, the publication stopped happening in the south county area, and we brought it up again, so there have been about three of those occurrences. And we'd actually like to request an amendment to the resolution that would require it as opposed to just an informal instruction to staff.

COMMISSIONER GRINÉ: Mr. Chairman, I did check into this, Gerry. I think what we probably need to do, like your request, regardless if there's any item that doesn't affect the south side of the county, that you still want it publicized. I think that's what we need to tell staff. Because right now, I think the only time is going to those publications, it's only when there is something that is on the south side of the county. So I think we should do it every month, just publicize it.

MR. WOLF: Mr. Chairman, Commissioners, I believe it's our practice to publish notice of the meetings. I don't believe we actually publish the entire agenda in the different papers, primarily due to cost. At least that's been the practice.

CHAIRMAN DURAN: I think it's our obligation to inform the public at any cost. I can't imagine that it costs that much money.

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MR. WOLF: Mr. Chairman, it's fairly expensive when we have to pay by the word to publish the entire agenda. One thing that we're doing is including our agendas on the website now. All the different agendas for the different meetings. There's access available that way with minimal cost to the County that's available to everybody.

MR. POWERS: It's not really the agendas that we're really concerned about. It's the Santa Fe County Water Management Resources Plan public hearing, was not published in the south county area, the notice of that hearing. So it's specific items that are somehow being dropped out and amendments to the Land Use Code.

CHAIRMAN DURAN: David, the City publicizes in the paper, whenever there's a City Council meeting, they have a list of what's on the agenda. Isn't that adequate? You're not asking us to publish the ordinances?

MR. POWERS: No sir. We're just asking for notice of the meetings so we're aware of when there's a public hearing. For example, on the Santa Fe County Water Management Resources Plan, there was no notice of that in any of our newspapers.

CHAIRMAN DURAN: Once a week would be adequate.

MR. WOLF: Mr. Chairman, sounds like in this specific instance, somehow the actual meeting wasn't noticed. Is that what I'm hearing?

MR. POWERS: That's correct.

MR. WOLF: That's our intent, it to make sure that the meetings are noticed. So we'll make sure that that's taken care of as we go forward.

MR. POWERS: I appreciate it. Thank you very much.

CHAIRMAN DURAN: Is there anyone else out there that would like to address this Commission?

VIII. MATTERS FROM THE COMMISSION

COMMISSIONER TRUJILLO: I've got one for Denice. Becky found and retrieved for us the Joy survey and gave it to legal for interpretation, for review for making a recommendation on as to what it all says. What's the status of that?

MS. BROWN: Mr. Chairman, Commissioner Trujillo, Cheryl was working on that matter for you and unfortunately I don't know how far she got on it. She did leave me a closing memo that I haven't had a chance to read yet and her last day was I believe last week. So I will need to get back to you on that, but I will find out as soon as I can how far she got and if she reached any conclusions.

CHAIRMAN DURAN: What is the Joy agreement?

COMMISSIONER TRUJILLO: The Joy survey is the 1933 patent survey that demarks Indian and un-Indian land in the Pojoaque Valley and northern Santa Fe County.

MS. BROWN: I can let you know, Commissioner, at the next meeting where we are on that, if not before.

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COMMISSIONER TRUJILLO: Thank you, Denice.

COMMISSIONER GONZALES: Is there anyone here from Public Works? Can we start asking staff at Public Works to attend these meetings. Especially in the case of subdivision review. I'll just hold off on my question and talk to David afterwards.

VIII. MATTERS FROM THE COUNTY ATTORNEY

MS. BROWN: Mr. Chairman, Commissioners, I haven't had a chance to put it into memo form but we did get a response this week. It actually came back late last week, I believe, from the Attorney General's Office on the letter you directed me to send asking for clarification on how specific our agenda needed to be. They are reading it more leniently now, the Open Meetings Act, than they had before and basically have said that the way that we are noticing our meetings is fine. It's perfectly appropriate for you to have Matters from the Public, Matters from the Commission, Matters from the County Manager, those types of things without specifically delineating the matter that's going to be discussed.

So they gave us a thumbs-up on the way we've been doing business, and I just wanted to pass that on to you.

CHAIRMAN DURAN: Okay, I have ten matters I'd like to bring up.

MS. BROWN: They did, however, caution that we should try as much as we can, because it serves the public to notice every item we think we will be discussing. They also caution that matters that aren't specifically noticed, we should not be taking votes on those issues. We can discuss them, give direction to staff, but you as an official body should not be making motions and taking votes on those types of matters if they weren't specifically noticed.

CHAIRMAN DURAN: I do have one thing, David. I got a call from the Mayor the other day, who requested that the Commission or this body give our water department the go-ahead to start working on some regional planning issues and guidelines that we would adopt. I guess out of that water resource meeting that we had, we had all agreed that it was time for the City and the County to start working together on the water policy issues. So I'm just wondering if you could follow up on that.

MR. WOLF: Mr. Chairman, I will. That's great. I'll get with Estevan, the Utilities Director and we'll coordinate with the City and start working on the issues at a staff level and we can keep you up to date on where we're at.

CHAIRMAN DURAN: Anything else?

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IX. PUBLIC HEARINGS

- A. Ordinance No. 1999-4. An ordinance amending and replacing Ordinance No. 1998-4 declaring a moratorium on new subdivisions serviced by Eldorado Utilities Inc. and encouraging conservation measures within the Eldorado Utilities Inc. service area (second hearing)**

JACK FROST (County Hydrologist): Thank you, Chairman Duran, Commissioners. This is the second hearing. Staff is requesting approval and renewal of the ordinance on the moratorium on new subdivisions in the Eldorado service area. We discussed this last hearing. We did invite suggestions from the public on this and there are a couple of suggested exemptions I'd like to put before you and then go through a couple of changes based on staff review of that.

So I just passed out some suggested exemptions that were brought forward and rewritten by staff but there are a few more comments I need to go through. Just as an overview, we're looking at inserting possibly two exceptions or one of two exceptions that make allowance for in case one, an applicant has successfully transferred in water rights or permitted wells to the utility. The applicant could enter the land use approval process after they successfully completed a transfer per the State Engineer process. I can support this idea because I do believe it possibly will encourage finding new water resources or bringing new water rights, which is an improvement for all at the utility.

May I suggest the following three changes in the text here though? First, on the fourth line. This line reads "...will dedicate to the utility as a condition of initial staff review..." Insert a comma, delete the adjoining word "approval."

COMMISSIONER GONZALES: Excuse me. Can you go over that again, Jack? Your hand-out?

MR. FROST: Yes, of item one, fourth line. "...will dedicate to utility as a condition on initial staff review," and delete "approval." And the sixth line of that same paragraph, "...supply for the particular development being proposed" instead of approved. Insert "proposed" delete "approved."

Finally, the next to the last line "...Engineer for any water rights transferred or wells permitted excluding instead of ~~neglecting~~ domestic wells. Those are the changes suggested for item one.

The second item, which is not necessarily linked to the first and submitted for your consideration, regards allowing an adaptation of an existing proposed or rather approved, an existing approved legal lot of subdivision, adapting water already allocated or assigned to different lots within that development, allowing that same amount of water, equal to or not to exceed. The concept there is that an applicant could potentially move their water around within their proposed development to change a commercial application. So the idea here is that showing a little flexibility for commercial applications in legal lots of record.

COMMISSIONER GONZALES: Mr. Chairman, Jack, I guess I have a

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couple of questions. One, looking at item one that you've proposed seems pretty fair to people who have been bogged down by this issue but I guess my question to you is what's the goal of the moratorium? What was the end result? I was going to state, what I understood it to be is to be sure that there was an adequate and long-term water supply for the community of Eldorado.

MR. FROST: Yes sir.

COMMISSIONER GONZALES: This seems to offer an exemption from the moratorium without achieving that objective.

MR. FROST: This suggestion would only be successful, Commissioner, if an applicant discovered a new source of supply and successfully received approval from the State Engineer to use that water or if an applicant purchased water rights and received approval to move them to one or another of the wells in the greater area.

COMMISSIONER GONZALES: The second part is what I don't understand because if I'm understanding, the issue out there is wet water and the fact that because of the geographical nature of the Eldorado area it's difficult to have wet water. What I've always understood is that the long-term supply, the way to achieve long-term supply in Eldorado is to import water in there and we just wouldn't find it there. Are you saying that it's realistic for someone to have water rights to transfer into the Eldorado area and then there appear more wet water than what there is right now? I'm a little lost there?

MR. FROST: Possibly because of the recent drilling and development work that the utility has done, they may actually have found more water. But I would point out first this was a suggestion from outside parties that I've tried to work with and the applicant would only, based on these transfer possibilities, be able to enter the land use review and approval process after successfully completing this. So there still would be a 100-year test of water availability applied subsequently.

COMMISSIONER GONZALES: Let me ask you this. Again, this seems reasonable, of what we would ask of anybody that they assure that there's a long-term water supply that there's adequate water rights. But I'm a little confused after two years how something as simplistic as this can come up and possibly can affect, really can give us an ability to do away with the moratorium if we just amended our Code to require this of every subdivision in the Eldorado area. That they have to come up with water rights that equal physical wet water or they found a long term water supply that was accepted by you and the State Hydrologist.

MR. FROST: Mr. Chairman, Commissioner, you're pointing out some ambiguities to this suggestion. And I don't have all the answers to that, nor do I necessarily endorse this. But I do agree that it might encourage some of the aggrieved applicants to take some initiative on their own part.

COMMISSIONER GONZALES: And again, I think this is a pretty reasonable request, but if this was passed by the Commission, are you feeling that there's safety measures in place that would assure that there wouldn't be a further deterioration of the

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water supply by allowing new subdivisions to come in with water rights or with a new source of water that we wouldn't jeopardize existing conditions in the Eldorado area where people are currently hooked up to the water system?

MR. FROST: Mr. Chairman, Commissioner, that would require, if they met this test, still require a site-specific investigation and a review of how it fits the whole water picture out there.

COMMISSIONER GONZALES: And assuming that those tests were met, you're saying that it could be reasonable that we wouldn't further adverse the population out there, as far as the water conditions?

MR. FROST: Mr. Chairman, Commissioner, it's a possibility. It would have to be studied site-specifically. But we are encouraging and looking for new resources. The County is. The district is. The utility has taken some initiative in that direction.

COMMISSIONER GONZALES: So what you're saying by creating this tool, possibly you'll have private individuals who will actually join in that effort to find new resources.

MR. FROST: Mr. Chairman, Commissioner, I think so. I think this possibly could encourage that.

COMMISSIONER GONZALES: On the second issue, are you basically stating that if there's a land use application that's already been approved, that as long as they don't exceed what their approved water requirements are, they could alter it for other uses?

MR. FROST: Yes sir. Mr. Chairman, Commissioner, with a commercial application, in securing an approval from the County there is a use list. There's an issue out there right now regarding creating a theater complex. The use list had in mind smaller retail operations. I don't know how this will solve that particular problem because there's also the case of not having a legal lot of record there at this time. But there's a lot of more generally zoned commercial property salted around in the greater development and it's possible that for example, a party could possess two smaller commercial lots and they would like to do a lot line adjustment and combine and they could potentially keep their water budget the same as the sum of the two individual projects. And there's a bit of awkwardness in how the moratorium treats that now.

So of the two, I see how the second suggested exemption might fit some needs out there right now.

COMMISSIONER GONZALES: I guess I'd ask, has the County Attorney's Office reviewed the language here? Would you like to make an opinion about it?

MS. BROWN: Mr. Chairman, I've reviewed it about three and a half minutes ago while we were sitting here during the meeting. And I think, Commissioner, you're raising a number of good points. We have not had a chance as staff to even discuss this with each other. Unfortunately, the proposed changes, my understanding from Jack, came in very late before the meeting. So I didn't look at them until Jack's presentation.

We could perhaps move forward tonight with the ordinance as proposed, unless you

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have other changes to it, and address these two issues as an amendment after we've had a chance to discuss them, think about them. The issues you're raising are all good issues, and bring them forward as proposed amendments to this ordinance if we think they're appropriate.

COMMISSIONER GONZALES: These amendments seem just on the face very reasonable amendments. Assuming that safeguard are built in that will assure that we don't further jeopardize that community out there and that we continue on our overall goal to finding a long-term water supply for the community of Eldorado. If those internal controls aren't in there, if there isn't a process in place to assure that, if this is just a way to create exemptions then I've got concerns. Is there an issue with us being able to table this tonight and allowing you to have a chance to look it and -- who submitted this? Eldorado Utilities?

MR. FROST: Mr. Mark Conklin.

COMMISSIONER GONZALES: To visit with Mr. Conklin and whoever else is proposing this and understanding what their idea is. Because I want to know those answers. I want to know if you can take water rights and transfer them to Eldorado Utilities and then all of a sudden wet water appeared down in that area. And that's what I've always been under the assumption why we haven't moved on this moratorium is there's no physical wet water there. That the idea of being able to pull water rights in, but we're concerned during the droughts that their wells just aren't pumping to the capacity.

If you review this and you say, yes, there's actually a process in place that will create more wet water and we can establish a process that will assure that any new subdivision is going to use all new water and things like that, then it's something we can seriously debate, whether we support or not, I don't know. But if you're not prepared to offer any type of real consideration at this point I don't know if we can, but it does seem like something we should at least look at and debate. So if we were to table it, does it jeopardize the ordinance?

MS. BROWN: Mr. Chairman, Commissioner Gonzales, it does in the sense that the prior ordinance will expire before we would be able to adopt this new one, so we would have a gap.

COMMISSIONER GONZALES: How long?

MS. BROWN: I believe the prior ordinance expires -- well, it would be about 30 days because we'd be off by another 30 days, so we'd have about a month gap with no ordinance in effect, basically.

COMMISSIONER GRINÉ: Mr. Chairman, I offer that we go ahead and adopt the ordinance as it's been in the past and then allow another meeting, after staff reviews it, whether we should make these amendments as Denise requested so we don't have that gap there.

CHAIRMAN DURAN: Is that a motion?

COMMISSIONER GONZALES: It's a public hearing.

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CHAIRMAN DURAN: Any other questions of Jack? Thank you, Jack. Is there anyone out in the public that would like to address the Commission on this issue? Please step forward and state your name for the record.

MATTHEW SPANGLER: My name is Matthew Spangler. I'm here on behalf of Eldorado Utilities. My address is P.O. Box 15698, Rio Rancho, New Mexico, 87174. Mr. Chairman, members of the Commission, I'm here to give you a status report on the utility, what's been accomplished during the past year and also to let you know that the utility would request that the moratorium is not continued, based on the work that's been done throughout the year.

I want to address five areas with regard to the utility: water storage, water production, fire protection, a new line extension policy, and then finally, water conservation. With regard to water storage, the utility during the past year has completed two new storage tanks, which bring the total storage volume for the utility up to 2.5 million gallons of water, approximately. These storage tanks fully complete the utility's storage requirements for all projected build-out into the future. The storage system is now complete and will meet all the needs that we can project in Eldorado Utility's franchise area to build-out.

So you can understand this a little better, the storage system has enough water so that if all the wells were turned off, there would be enough storage to supply the customers from three to five days without any production at all during that time.

With regard to water production, the utility is able to produce in excess of the amount of water needed to meet its current demands. Last year, as you know you receive monthly production reports, the utility used 461 acre-feet of water. The utility's capacity for production currently is far in excess of that amount. Also, during the year, the utility has drilled and completed and tested an additional well which is well #14. This well, based on the testing that we've completed, can produce an additional 150 gallons per minute of water. This equals approximately 240 acre-feet of water. And to put that in terms of what it means for supply, it's approximately an additional 900 homes.

This well has not been put on to the system, but we are in the process of hooking it on to the system. It has been tested actually at an excess of the figure I gave you. That figure is a conservative figure based on our testing. In addition, the utility is studying the two other experimental wells that exist to see if they could be added on to the system in the next year.

With regard to fire protection, which was a concern of this Commission over the past few years, during 1998 the utility successfully tested each of its fire hydrant. Each fire hydrant was tested and passed at least once during the past year. Certain of the fire hydrants which were critical for evaluating the system were also tested a second time and passed a second time during the year. So we've basically completed all testing during 1998 and we've also scheduled and will do the same thing during 1999 so that we're fulfilling testing obligations.

We've also during the year drafted a new line extension policy. The pertinent part

of the policy which you would be interested in is that the policy requires, would require if passed, a developer to dedicate water rights to the utility in connection with a line extension to a new subdivision. We submitted this policy to County staff previously and have received comments from staff on the new line extension policy. We're studying the comments that staff has given us to see how we can incorporate them into the policy that the utility arrived at. The utility hopes that the public hearing process -- this will have to go through a public hearing -- that the public hearing process would begin some time in the early summer of this year.

Finally, with regard to water conservation, the utility is working with the Eldorado Water and Sanitation District to attempt to alert the community to needs for water conservation and to hopefully conserve water in the Eldorado area in the upcoming year.

For these reasons we feel as though the moratorium is not necessary at this time and we'd like you not to continue it. With regard to these amendments which were proposed, I'd also like to say that the utility would support these amendments for these reasons. The first amendment concerning the additional water rights, seems to the utility to be helpful not only to the utility but to the entire community in Eldorado. What it does, on its face what it would do, is it would encourage private individuals to bring new water to the system. This can only benefit the people who are there and also the utility's ability to serve. So we would be in favor of the first amendment.

With regard to the second amendment, this would also be favored by the utility for the fact that it would allow development in areas where development is approved but where for one reason or another the approved development doesn't fit with the projected use. That's what we have and I'm also available for any questions that you would have, if I can help you to understand better this system or what we've done during the past year.

CHAIRMAN DURAN: Are there any questions of Mr. Spangler?

COMMISSIONER GONZALES: I just have a question. You're talking about the new well that you're getting ready to bring on line that will provide the additional water that you're saying will help address the issues of long-term adequate supply? Is that correct?

MR. SPANGLER: Yes it is.

COMMISSIONER GONZALES: So has that well been reviewed by our County or by the State Engineer? Do you have logs of it?

MR. SPANGLER: It has not. It has been tested and we're putting together the test report and it will be out shortly and our plan is to give it to both Mr. Frost and to the State Engineer at the same time.

COMMISSIONER GONZALES: So wouldn't it be -- I understand you wanting us to lift the moratorium but wouldn't it be more prudent by the Commission to hold off on lifting it until you supplied all the data and all the logs so that the County and the State Hydrologist could review it for its adequacy and possibly make a positive recommendation on lifting the moratorium as opposed to doing it now without any type of review. You're asking us to do something very difficult and it's basically to go on data that

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we have not had a chance to review or comment on and removed this two-year moratorium.

MR. SPANGLER: I understand your point and it's well taken but my presentation is that even without that well, we have sufficient water to meet the needs. I brought up the well so that you would know that -- the concern that has been expressed previously and has been expressed to me by Mr. Frost and by some of you, is what about the long-term future. And so I wanted you to know that we've done another well and it has tested positively and there will be additional water.

COMMISSIONER TRUJILLO: One question. You said that you've demonstrated that there is an ample supply of sustainable water. Where are you getting the water from if in the past it's shown that some of those wells are going dry, that there's a limited amount of water and that the whole hydrology is deficient in that area. Where's that water coming from?

MR. SPANGLER: The water's coming from the existing wells that Bldorado Utilities has. In addition, since the time of the first moratorium, we've constructed an additional supplemental well, which is well #13. Well #12 has been added, although that's a small well, but it has been added, and from those wells our engineers calculate that we have sufficient water to meet the needs of the population in the area.

COMMISSIONER TRUJILLO: Has the County been privy to that data?

MR. SPANGLER: Yes, the County is privy to that data. Obviously, there's a disagreement with regard to the opinions. But yes, all that data has been made available to the County for some time.

COMMISSIONER GONZALES: Mr. Chairman, may I add just a follow-up on that. It's been two years. Why is it that all of a sudden we're seeing these production wells. You guys were out there looking and looking and looking and now you've finally found a series of wells that you feel comfortable with? I'm a little concerned that these wells didn't show up six months after the moratorium was put into place.

MR. SPANGLER: These wells have been a part of a process. Originally we drilled four exploratory wells, which we did shortly after the first moratorium. Of those four exploratory wells, we brought one on line within a short time after the moratorium. That was well #13 that I just mentioned to Commissioner Trujillo. That has been on line for over approximately I thin two years or more. We've now brought a second exploratory well, or we're now in the process of bringing it on line. It's been outfitted and prepared. Then our plan is to bring the third one and then the fourth one.

So I'm not disagreeing with what you're saying but what I'm trying to express is that this is a process and we feel that we've been doing it in the time table that it allows.

COMMISSIONER GONZALES: Thank you.

CHAIRMAN DURAN: I just have a couple things. I think the real issue here, whether or not the wells are producing -- I think the real issue is we're real concerned about the depletion of the aquifer out there. And I don't see how lifting the moratorium based on any information you've brought forward today is going to get me to a point where

I'm comfortable with allowing more lots to come on line and the fact that depleting the aquifer is going to be greater because of these lots.

I don't understand why your organization can't explore the possibility of extending the County water line out in that area. There are a lot of lots out there that AMREP still owns. There's a lot of property out there that could be developed at a higher density than ten acres -- I think that might be the minimum out there. And I can't see why there can't be a special assessment district created for these lots that are coming on line, so that those lots that are created would pay for the extension of that line.

I know just enough to get myself in trouble but it seems to me that I'm going to have a hard time approving more lots out there without having water coming from another area rather than underground because I really thing that once you start doing that, everybody's water is in jeopardy.

MR. SPANGLER: Chairman Duran, may I speak to that? Shortly after the first moratorium ordinance was in place, some of the Commissioners at that time suggested that we hook to the County system, that the utility hook to the County system. I personally, along with several other people explored that with the then manager of the County utility. We were told -- and we were seriously considering doing that as an alternative to the moratorium. We were told at that time that the County could not provide us with the water. We could build the line, but the County could not give us the water. If that's change, we will definitely -- if that is not the case at this time, we would definitely explore that further.

We were attempting to come to some agreement on that but we were told there was no ability to help us there.

CHAIRMAN DURAN: Again, I think if you were to find some way of assessing the cost of acquiring the water rights, because we need water rights, and providing for the extension of that line, that that seems to be a reasonable solution to the problem rather than trying to convince us that adding more lots or allowing more lots isn't going to have any impact at all on the aquifer, which is pretty questionable. And in the drought years, there are wells that have gone dry. I don't know. It's a pretty complex situation but maybe there's a not so complex solution to it.

MR. SPANGLER: I will commit to explore that again with the County Water District and see if maybe that is a viable solution.

CHAIRMAN DURAN: Thank you. Is there anyone else out there that would like to address the Commission? Please step forward and state your name, Mr. Dayton.

DON DAYTON: Mr. Chairman, Commissioners, I'm Don Dayton, a member of the Eldorado Water and Sanitation District Board. I would like to clarify two points in the previous testimony. Well #14, while it is very welcome, is a supplemental well. There's no water rights attached to well #14. The State Engineer has never granted water rights. It can only be used to supplement certain other declining wells. And the same goes for well #13 which is also being used as a supplemental well. So they do not result in any additional water other than to replace water that is being lost in other permitted wells.

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So I think that is very important. Also a second issue. The comments on the extension of a water line to the County. Our district is very supportive of that. In fact we have a study underway now by Molsen-Corbin to look at possible extensions and we've worked very closely with the County Director of Utilities and the City both. We think that is the only solution in the future is to join with the County and the City in a regional water plan. We think in the long range that is going to be required. Thank you.

CHAIRMAN DURAN: Thank you sir. Please step forward.

DOLORES BROCK: My name is Dolores Brock and I live in Eldorado since 1974. Mr. Commissioner, Commissioners, in 1974 we were the twelfth family out there. There was plenty of water. That's changed a lot in the last years and continually over the years we've heard that there is insufficient water to support the people that live there now. And consistently we have more and more growth, more and more hook-ups. And yet every year, last month Mr. Frost said their recommendation was there is insufficient water for those of us that are there now. I would strongly urge the Commissioners that the people that are there now should come first before anyone else. The priority lies with us.

Frankly, for years off and on now I have been living with buckets in my sink and in my shower and I'm unwilling to make all these efforts to conserve water as a lot of people do in Eldorado so more people can hook up. And I would really urge the Commissioners, and I'm very happy to hear what you've said, Mr. Chairman, about the aquifer, because we are depleting the aquifer. We're mining it and I don't care how many wells they sink, I think it's all coming out of the same pot. And I hope you approve the moratorium as it is now. Thank you.

CHAIRMAN DURAN: Thank you. Is there anyone else out there? Okay, if not, what's the pleasure of the Board?

COMMISSIONER GRINÉ: Move for approval of Ordinance 1999-4 as it exists now.

COMMISSIONER ANAYA: Second. Does that include, Commissioner, no amendments as proposed by Jack Frost?

CHAIRMAN DURAN: But it is my understanding that we are open for further discussion on any amendments at a later date after there's been some discussion and review of these recommendations.

COMMISSIONER GONZALES: Mr. Chairman, I would add a third option in there and it's what the chair has discussed tonight on the extension of a line out that way. And I'm not sure, David, what kind of conversation we need to have with the utility district, with Eldorado Utilities on that, but it just seems to me that there's a growing number of parties here that are trying to solve this problem who agree with Chairman Duran that it may be best that the County haul a line out there figuring out where the sources of water will come after that. Because just because you have a water line that extends out to Eldorado doesn't necessarily mean that you're going to have an abundance of water that's flowing out there as well. So that does bring many other issues that we need to discuss as well.

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But I do think that if as Matt has indicated that's he's ready to talk about this again, obviously they're looking for an expedited solution, I think the district's looking for an expedited solution. I think that the community out there is very concerned with the solutions that have been offered so far. Maybe that's something that we need to fill on the plate of Estevan and Jack and really seriously look at that again and see if that's going to be an option, because we need to understand if that's the direction we're going to go eventually or not. And if we're not, we need to eliminate that from an option and make proper decisions, or if it is, we need to focus on it and see how we can make it a reality and start dealing with this moratorium because this moratorium cannot go on forever.

Eventually we're going to have to make a decision as to what's going to happen to growth out in that area and the only way we're going to do that is to do some serious studying of the options that are out there, begin to eliminate those that we just don't want and focus on those that we think we can accomplish. I do think that there's some responsibility on our part now for the benefit of that community to begin to identify some other alternatives that the Chairman has talked about tonight to see if they can be a reality or not. So can we send that with the direction as well, Mr. Chairman?

CHAIRMAN DURAN: Sure.

MR. WOLF: Mr. Chairman, Commissioner Gonzales, Commissioners, I'll get with Estevan and then we'll coordinate. We'll discuss this and we'll pursue this as an option. Our issue is we have a certain number of water rights that are for the most part committed, although the build-out hasn't been committed so we have an immediate short-term availability of actual wet water but not the long-term source of supply at this time. But it's sure worth pursuing as an option.

COMMISSIONER GONZALES: I think we would still have the policy in place that requires any developers in Eldorado to bring the whole issue of water rights. But then we run into the problems of our wheeling agreements and we're already at capacity on those wheeling agreements. So even if someone does bring water that we can take through the pipes that is all proper, it may not be allowed under the agreements we have with the City of Santa Fe because we've already maxed out on our capacity to deliver. So there's all those things that I think we need to talk about. We just need to pick up the discussion and begin to talk about it. We haven't done that yet. Let's get that started.

CHAIRMAN DURAN: The other thing is that the City might look at this as a revenue source and if you explain it to them that way, maybe they would buy into it. We've had public comment; we're in the middle of a motion now. So if there's no more discussion --

COMMISSIONER ANAYA: Mr. Chairman, I believe that the length of the extension of this moratorium is for an additional year, and I do go along with Commissioner Gonzales to go ahead and move forward and try to address that critical issue that's been held back for two years now in the Eldorado area. I think we should move forward and try to accomplish some kind of conclusion to this moratorium.

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MS. BUSTAMANTE: Mr. Chairman, it's an ordinance and we have to take a roll call vote. And before we do the roll call, just for a point of clarification, the ordinance that I have now that's been approved by legal is the one that you're going to sign this evening? Is that correct?

CHAIRMAN DURAN: That's my understanding.

COMMISSIONER TRUJILLO: There's no amendments.

Upon roll call vote, Commissioner Anaya, Commissioner Griñé, Commissioner Gonzales, Commissioner Trujillo and Chairman Duran all voted to extend the moratorium.

CHAIRMAN DURAN: Any of you who have any ideas on how to deal with these issues, please get a hold of David and he'll get you in touch with Estevan and our water department and you have our commitment that we'll work with you to take care of this problem that we have out there.

IX. LAND USE DEPARTMENT ITEMS

- B. **CDRC Case #MIS 97-5161.** Joe Maestas Reconsideration of a Condition. Land Use Administrator, applicant, requests the reconsideration of a condition which required Mr. Maestas to utilize County Road 88B to access his land division to allow the use of County Road 88C for access to the property. The property is located within the La Puebla traditional community, off County Road 88C, within Section 4, Township 20 North, Range 9 East

PENNY ELLIS-GREEN (Review Specialist): Mr. Chairman, Commissioners, in 1996, Mr. Maestas submitted an application for a land division to create five lots on 7.048 acres. It was staff's position that the land division was in accordance with Code requirements and the Land Use Administrator approved the land division.

In 1997, Mr. and Mrs. Vigil, who are Mr. Maestas' neighbors, filed an appeal of the Land Use Administrator's decision. This appeal stated that the Maestases did not have the right to use County Road 88C. The appeal was denied by the CDRC. The Vigils then filed an appeal with the BCC. On September 9, 1997, the appeal was upheld by the BCC and a condition was imposed which required Mr. Maestas to use only County Road 88B for access to the lot split.

Mr. Maestas appealed this decision to District Court. In May of 1998 a settlement agreement was entered into and was signed by the BCC and Mr. Maestas. That is attached in Exhibit "D." The last BCC decision in a public hearing was to impose a condition that

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Mr. Maestas use only County Road 88B for access. Therefore the Land Use Administrator requests that the BCC reconsider this condition in light of the settlement agreement.

Required action: It is staff's position that this land division is in accordance with the Land Development Code. Staff recommends removal of the condition which restricts access to County Road 88B only, thus allowing Mr. Maestas to also use County Road 88C for access to the land division.

CHAIRMAN DURAN: Are there any questions of Penny?

COMMISSIONER TRUJILLO: One question. You say that this went through litigation?

MS. ELLIS-GREEN: That is correct.

COMMISSIONER TRUJILLO: And the determination of the judge was that the access to this land, or this road is recognized as a County road?

MS. ELLIS-GREEN: Mr. Chairman, Commissioner Trujillo, I believe that a settlement agreement was entered into and that is attached in Exhibit "D" and that settlement agreement says that Mr. Maestas can use 88C.

CHAIRMAN DURAN: Okay, if there's no questions of Penny is the applicant here? Would you like to say something about your case?

[Duly sworn, Janice Ahern testified as follows:]

JANICE AHERN: Mr. Chairman and members of the Commission, my name is Janice Ahern and I assisted the Maestas with the appeal at District Court. We actually don't have anything to offer today to the Commission unless there's some questions. And Mr. and Mrs. Maestas are here this evening as well and we would be available for questions. We just ask your approval of the settlement agreement. Thank you.

CHAIRMAN DURAN: I just have one, Janice. It's kind of hard to really figure this subdivision plat out but does the property, when the divisions were planned, is it easily accessible from both roads?

MS. AHERN: No, it is not. Mr. Chairman and members of the Commission, 88C is the road that has historically been used by the Maestas family since, actually Mr. Maestas, I believe was raised in the house, so it has been used from the forties on for access to their home. These other divisions are for their family members and the lay of the land is such that 88C is necessary to reach tracts A, B, C, D and the southern part of E. The way the land goes up, 88B, there's a distance, but there's some terrain issues and expense issues.

CHAIRMAN DURAN: Okay, I see it know. Any questions? Okay, this is a public hearing. Is there anyone out in the public that would like to speak against this issue? Please step forward.

[Duly sworn, Eduardo Vigil testified as follows:]

EDUARDO VIGIL: My name is Eduardo Vigil and my address is Route 1, Box 16-A, Santa Cruz, New Mexico. Mr. Chairman, members of the Commission, respectfully, I don't come forward to either speak in favor or in opposition to this. I simply

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want to clear up some points that were made. This road, as it exists, has not served this property since the 1940's. This property has been served by the original inhabitants of the home that now Mr. and Mrs. Maestas live in and that was Mr. Maestas' father and mother. And the original road that served this property was what is now called 88B. It parallels the Santa Cruz River.

This road that is being called a County road, I object to it being called a County road. It is not a County road. There are other property owners who this supposed County road goes through that also oppose. They chose not to be here this evening. I would like to ask the Commission that in the future, when the Commission adopts roads as County roads, that the owners of the property that these adopted County roads go through, are informed that they're going to be made County roads and that their property is effectively going to be condemned and taken as a County road.

There are acequias in the area that a mayordomo used to follow the acequia. And that road used to actually go out into BLM land and reenter the Santa Cruz land grant private land. It reentered the Maestas' property from BLM property. An adjacent property owner closed that access to the BLM and then the Maestases had no choice but to exclusively use this particularly road that goes through my parents' property. There are other roads in the La Puebla traditional community that area in similar contestment and will in the future be in a similar situation.

In 1980, this road was adopted as a County road. My parents were never notified that a road going through their private property was going to be designated and is, as far as the County is concerned, a County road. I thank you for your time.

CHAIRMAN DURAN: Mr. Vigil, were you in court, did you tell the judge that you didn't agree with him?

MR. VIGIL: I didn't tell any judge --

CHAIRMAN DURAN: Because it was the judge that made the determination. That's my understanding.

MR. VIGIL: A judge made a determination in 1980 that this was a County road? It was an agreement my parents, I think agreed with the Maestases in exchange for an easement that they grant an adjoining property owner to the east of them, a Mr. Ted Lopez. His property was isolated by Mr. Maestas back in approximately 1986 time frame and in exchange for Mr. Maestas and Mrs. Maestas granting an easement to Mr. Ted Lopez, my parents agreed to allow the Maestases to go through their property to access this development that they're proposing.

COMMISSIONER ANAYA: I'm happy to hear that you're not testifying either for nor against.

MR. VIGIL: No, I'm just asking the Commission that when they're adopting County roads in the future to do a little bit more thorough investigation as to the real specifics involved in the County roads that you're adopting. Don't just look at a map and make approximations, but know that it is in fact a County road or not before you adopt the

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road as a County road. Thank you for your time.

CHAIRMAN DURAN: Is there anyone else out there that would like to address this issue? What's the pleasure of the Board?

Commissioner Trujillo moved to approve the Land Use Administrator's request to withdraw a condition and Commissioner Anaya seconded. The motion passed by unanimous [3-0] voice vote. [Commissioner Gonzales was not present for this vote.]

- IX. B. 2. CDRC Case #Z 99-5050. Bishop's Lodge, Phase IV(b). Land Lease R.E.I., applicant, Steve Flance, agent, requests a variance of Article VII, Section 3 of the Santa Fe County Land Use Development Code for disturbance of slopes in excess of 30%. The property is located off of Bishop's Lodge Road, within Section 5, Township 17 North, Range 10 East

ROMAN ABEYTA (Review Specialist): Thank you, Mr. Chairman, Commissioners. The applicant received final approval from the CDRC on March 25, 1999 for Phase IV(b) of the Bishop's Lodge, which consists of 21 units on 3.5 acres. For access, a 20' wide paved access road will extend from two existing roads within the resort. The proposed road becomes a 14' one-way as it loops around the guest units. The purpose of the one-way is to limit the amount of steep slope disturbance. However, the roadway will still encroach into areas in excess of 30% slopes.

Approximately a total of 11,000 square feet of 30% slope will be disturbed in three different locations.

Recommendation: On March 25, 1999, the CDRC recommended approval of the variance subject to the following conditions:

1. The applicant must address review comments from the following:
 - a. County Engineer
 - b. County Hydrologist
 - c. County Public Works Department
 - d. County Fire Marshal's Office
 - e. State Highway Department
 - f. State Environment Department
2. All disturbed areas must be revegetated.
3. Submit an engineer's cost estimate and letter of credit to ensure completion of proposed improvements
4. Applicant shall submit a letter addressing erosion and pollution control measures at the Tesuque Creek.

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Thank you, Mr. Chairman.

CHAIRMAN DURAN: Any questions of Roman?

COMMISSIONER ANAYA: I have none, Mr. Chairman.

CHAIRMAN DURAN: Thank you, Roman. Is the applicant here? Please state your name for the record. Do you have anything to add, Steve, or is it pretty self-explanatory?

[Duly sworn, Steve Flance testified as follows:]

STEVE FLANCE: I think it's self-explanatory. We agree with the staff position. This was a pre-existing condition when the preliminary plan for this portion of Bishop's Lodge was approved in 1992 and 1993. And then the Code changed, so we found ourselves in a non-conforming situation with a few minor sections of this one portion of an internal roadway. So we've asked for the variance to comply with the requirements of the new Code, which changed, I think in 1996.

CHAIRMAN DURAN: Any questions of Steve?

COMMISSIONER ANAYA: No, just that I was on CDRC when that proposal came before us way back. What, 1985?

MR. FLANCE: That was the original submittal, yes.

COMMISSIONER ANAYA: And you're in agreement with all the conditions imposed by staff?

MR. FLANCE: Yes, Commissioner.

CHAIRMAN DURAN: Any questions of Steve? This is a public hearing. Is there anyone out there that would like to address the Commission concerning this issue? If not, what's the pleasure of the Board?

Commissioner Anaya moved to approve CDRC Case #Z 99-5050 with staff conditions and was seconded by Commissioner Grifñé. The motion passed by unanimous [3-0] voice vote. [Commissioner Gonzales was not present for this vote.]

IX. B. 3. EZ Case #V 98-4721. Moore/Blakeslee Variance. Isaac Pino, agent, requests a variance to the Extraterritorial Subdivision Regulation roadway standards. The property is located off Camino Delilah within Section 9, Township 17 North, Range 9 East (two-mile EZ District)

OLIVER GARCIA (Review Specialist): Thank you, Commissioner Duran, Commissioners. Recommendation: During a site visit, staff found that there is adequate room to construct a 20-foot road without disturbing any improvements as the road would curve around these. Some trees will need to be removed. On April 8, 1999, the EZC recommended that that variance be denied and the applicants be directed to upgrade the

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existing roadway to a minimum of 20 feet.

Thank you, Mr. Chairman. Also, I have a sketch here of the road I would like to show you.

CHAIRMAN DURAN: I'd like to see it please. The blue line is --

MR. GARCIA: The blue line is far as what the County standard could be, the minimum which is 20 feet and the red, over here is 14, that's what it is, the width of the road now. This is measured every 25 feet.

CHAIRMAN DURAN: And the applicant is asking for --

MR. GARCIA: To stay within 15, 16 feet. That's the width now, 15, 16 feet. Our engineer technician measured every 25 feet.

CHAIRMAN DURAN: And this would only access two lots?

MR. GARCIA: No, there's more lots. There's more people that live there in the area. It's on Camino Delilah. And he lives right here at the end. This is Camino Delilah.

CHAIRMAN DURAN: Isn't there a guy named Cohen who's building over here?

MR. GARCIA: Yes, Cohen is over here. Miller is over here.

CHAIRMAN DURAN: Are there any questions of Oliver? Is that all you had, Oliver?

MR. GARCIA: That's all, Mr. Chairman. Thank you.

CHAIRMAN DURAN: Is the applicant here.

[Duly sworn, Isaac Pino testified as follows:]

ISAAC PINO: My name is Ike Pino, 1660 Old Pecos Trail, Suite A-208. Mr. Chairman, as Oliver told you we're here asking for a variance on the road width for Camino Delilah. I want to give you just a little bit of background, a little bit more detail to support our case asking for the variance.

Mr. Chairman, the road exists. This is part of the Vistas Las Campanas Subdivision and the Moores, Carl Moore and Sandy Blakeslee are the last two people to come in asking for a lot split on the end of Camino Delilah. They're not developers; they're just lot purchasers who are building their home right now as a matter of fact on the lot and they're the last people in on the street. So the street has been there since the first person who bought a lot went in there to build it.

Now, when the first person went in there to build the road these were all five-acre lots. The requirements for a five-acre lot subdivision are different from those for a 2.5-acre lot subdivision. So the road that all of these people have split lots on have been on a road that was built for 5-acre lots. Mr. Moore now is being asked to widen the road to County standards that would be more commensurate with 2.5-acre lots. However, part of our problem is the precedent and the fairness with respect to that. Now, with respect to the precedent, it's important to note that the last lot split that happened that was recorded less than a year ago was the lot adjacent to theirs, immediately to the west of theirs. And one

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of the conditions of approval, and one of the discussion points at the EZC was that that road would be widened by that particular individual. It didn't happen.

Yet that lot split plat was recorded. And so in come the Moores and now they're being asked to go ahead and widen this road in a fashion that the person who was supposed to have done it to begin with didn't. There were issues of safety brought up during the discussion at the EZC. Oliver didn't expound on those. One of the things that was brought up in the record was that if the County doesn't have this road widened to the proper width that there could be liability. I would submit that you have the liability today. If the Moores were to walk out of here today and forget about this whole lot split business the road is still going to be 13 feet wide in some places and 16 feet wide in other places and it will be there because the County failed to do things or didn't ask for certain things or things didn't happen in the past. So you have the liability now.

And one of the roads that you have to use to get to this street, incidentally, is Fin del Sendero. And I don't have to tell you what condition Fin del Sendero is in right now, or what width it is at the bottom of it, and that's been a situation that has been in the improvements stages that we're aware of for at least two years and I don't know when or if that will ever happen, but when it comes to fire safety issues, the Fire Department has to negotiate that piece of Fin del Sendero before they even get to Camino Delilah. Hopefully that won't be an issue down the road.

But nevertheless, there's an incongruity there when we're talking about fire issues on Camino Delilah and it not being wide enough, but we have that bottleneck down there on Fin del Sendero which you have to pass through to get to Camino Delilah.

With respect to the fairness issue, and we want to expound on this just a little bit. Mr. Moore and Ms. Blakeslee are the last two in on it. They're being asked to widen the road. And the plan that the County came up with, incidentally, the County did a nice job on this and they did demonstrate that the road can be widened to 20 feet and indeed it can. And we're not saying that it can't. Our whole issue is that Mr. Moore is being asked to be the person to provide that widening when others probably should have, and he should be contributing a proportionate share. So we think that indeed the geometry and the widening can occur and there would be some trees removed but it brings up one other issue that we have to bring up and that's the neighbors.

The neighbors are very clear and they have submitted letters to the County and I have some copies of letters from some of them here today for the record that are asking that this road just be left as it is. And they're feeling that because right now there are only four residents but there is a potential for up to eight. They're feeling like the number of people that could potentially live there aren't sufficient where there's going to be a need for a 20-foot wide road. They've asked and I'd like to give these to the Clerk for the record that the road be left at its current width.

So we have four items. We have the precedent, we have the safety, we have the fairness, we have neighbors, all of which point to, we feel, leaving the road the way it is.

We're not looking at this as a technical matter, and we're not going to argue with staff that this technically can't be widened; it can be widened. There's a fifty foot easement there and they've done a nice job of going out and showing us precisely where it could be widened. We're asking the Board of County Commissioners to allow the variance because Mr. Moore is not a developer. He just bought a lot and he's trying to split it just like everybody else did, and he's asking to be treated the way everyone else was treated on that road, and that's not to have to provide an improvement that they didn't have to provide.

Perhaps one way to handle this, ultimately, if it is a huge issue for the County, is that perhaps the County gets involved in the widening as well, and that the other neighbors get asked to pay any proportionate share of that widening and the Moores would certainly kick in their part and the County could help out with the issues about the tree removal and things that the neighbors are almost certain to bring up if the Moores are going to have to get involved in doing the road widening.

Mr. Chairman and Commissioners, those essentially are the points that we want to make supporting our request for the variance and we'll stand for any questions.

CHAIRMAN DURAN: Any questions?

COMMISSIONER GONZALES: Mr. Chairman, I apologize for coming in late on this. A question for staff, Oliver can you address the issue of the other lot splits that occurred. Was this condition not required of the other lot splits that occurred on this road?

MR. GARCIA: It was conditioned before but I think I should hand this over to my subdivision engineer, Oralynn.

COMMISSIONER GONZALES: Was it conditioned, you're saying, on the other lots that have been subdivided?

ORALYNN GUERRERORTIZ (Subdivision Engineer): Mr. Chairman, Commissioners, I'm not sure if I guess there was a possible total of eight residents out there. I don't know if any others had the condition but Jane Moore did. Jane Moore is near the end of this road and she split her lot into two pieces. One lot accessed this road and the other lot accessed a road to the south. And I believe staff considered it in her case, a driveway situation, because there was just a single lot off of each road. That's the only explanation I can find for why the road wasn't developed to standard.

But there was a condition and the project was approved, finally, without that condition being met.

COMMISSIONER GONZALES: Without the condition being met?

MS. GUERRERORTIZ: Yes sir.

COMMISSIONER GONZALES: So the other subdivisions that occurred on the road, again, I'm sorry, I didn't understand. Did they occur without this condition?

MS. GUERRERORTIZ: Mr. Chairman, Commissioners, I'm unaware of the requirements that were set on those, but it wasn't too many years ago that things could be divided and not have these types of conditions. So I'm just not sure. It definitely happened. Well, I'm not sure.

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COMMISSIONER GONZALES: So can the staff understand the applicants' concern about the fairness issue and the fact that they're basically coming in now and based on the fact that they're at the end of a process, we're asking them to contribute to the upgrade of a road when that hasn't been done with similar?

MS. GUERRERORTIZ: Certainly, Mr. Chairman and Commissioners. I do understand that there's a concern for fairness or that there's an issue of fairness. I also recognize that there have been a lot of roads in this neighborhood that have been developed to this standard. Other people who have done lot splits and who had to build a 20-foot wide road. And so there's a fairness on that too. Why did those people have to build a 20-foot wide road where the Moores don't. I understand though that it just doesn't look good and it would be best if we were consistent.

MS. BROWN: Can I just add to that, Commissioner? It points out one of the difficulties that we have and that you all have in our ordinances. At what point do you make someone build a wider road? If I'm the first person on a road, do you say, look, we know you're going to have neighbors, so before you even get a building permit, we want a 20-foot wide road? It's a difficult decision at what point you require a road to be widened if there isn't a need yet. Do you do that before the need exists, anticipating that it will happen some day? The system that we have come up -- and you'll see this throughout our Code and we deal with this all the time is that we use numbers. Numbers of lots, to trigger you into having to do a sewage system. And unfortunately, when you hit that number you're the lucky person who triggers those requirements.

We haven't figured out another way of doing it. There's obviously a downside to saying no development will occur until everything's developed to the maximum possible standard when the subsequent development may not happen. But it is a difficulty that we deal with all the time.

COMMISSIONER GONZALES: And I appreciate that and I think a couple of years ago, you helped us start addressing that by creating more requirements on the lot splits that were created in the EZ to assure that there was good access because what we were finding out, especially in the La Cienega area that a series of these lot splits with improper access and poor roads and things of that nature. So I understand why this is important and I know how difficult it can be.

So do I understand the applicant right, and Mr. Pino, that you have to use Fin del Sendero to get to Camino Delilah?

MR. PINO: That's right.

COMMISSIONER GONZALES: And I guess I want to ask Denise and maybe Chairman Duran, this has been a long time. I know that there are some very frustrated people who we've continuously told be patient, be patient. We're working on it. We're working on it. And now it's gotten to the point where I don't think they believe us. And I just don't know, and again, I wish Larry was here or someone from the road department, but when we're going to move to actually upgrading this road and assuring that

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the developers meet their obligations and we have a safe road which I know you all look at before you approve these little lot splits. How far away are we from this?

MS. BROWN: Mr. Chairman, Commissioner Gonzales, we met earlier, Chairman Duran and the County Manager and myself met with Larry earlier today and discussed this very issue. My understanding from Larry is that our target date is July 1. We do have a budget shortfall. The neighbors put up \$90,000. The total project will cost upwards of \$145,000. That difference we have budgeted for in the new fiscal year. It is not in this year's current budget. We expect to start construction on the road on July 1.

CHAIRMAN DURAN: We'll be pushing dirt around July 1?

COMMISSIONER TRUJILLO: Has the condemnation been completed?

MS. BROWN: Mr. Chairman, Commissioner Trujillo, we actually have not condemned the property yet. We're in the preliminary stages before you condemn property you are required by statute to try to purchase that property voluntarily, and we're still in that negotiating phase. There are three affected landowners. We're hoping that we will be able to do that and won't be required to resort to a court action. We will do that if we need to do that.

COMMISSIONER TRUJILLO: So if we have to condemn, it will be longer than July before the road is actually widened?

MS. BROWN: Actually, no, Commissioner. That litigation will just involve the amount that we have to pay for the property, but the right to actually go in and do the construction will not be affected by whether or not we solve those financial issues.

CHAIRMAN DURAN: Correct me if I'm wrong. My understanding is that Larry is going to give the property owners until the end of April to come up with some solution and if not, then the condemnation process will begin and will be completed by July 1 when we'll have funds to pay everybody off and start construction.

MS. BROWN: Mr. Chairman, that's correct. The condemnation won't be completed by what we need to get into the property will be completed by that time.

CHAIRMAN DURAN: Right. The minute you file the condemnation we can go on to the property.

MS. BROWN: That's correct.

COMMISSIONER GONZALES: I have a question of the applicant and Oliver. So the current road is 15 to 16 feet wide, Oliver, is that right? And what's the requirement?

MR. GARCIA: Twenty feet.

COMMISSIONER GONZALES: You want it to go to 20 feet?

MS. GUERRERORTIZ: Mr. Chairman, correction, that road is 13 feet in locations. I think the map in front of you might show that.

MR. GARCIA: Thirteen, fourteen, fifteen. It varies.

COMMISSIONER GONZALES: And you want it to go to twenty feet, Oliver? Is that right?

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MR. GARCIA: Yes, sir.

COMMISSIONER GONZALES: I guess my question to the applicant is basically, you're stating that this is an unreasonable request because no one else along the road has been required to that. Is that right?

MR. PINO: That's part of it, Mr. Chairman and Commissioner Gonzales. Also we feel that the actual use of the road as a cul-de-sac, as a 1000-foot cul-de-sac that does not connect to any other street, does not lend itself to high traffic anyway. We realize though that the Code has ADTs that dictate certain road widths. Nevertheless, though, we feel that with the eight potential residents the traffic will never rise to that level. We submitted the issue of the safety and the liability that the County has today with that.

COMMISSIONER GONZALES: With Fin del Sendero, or with Delilah?

MR. PINO: With Delilah.

COMMISSIONER GONZALES: You're stating that we do have a safety issue right now on Camino Delilah because --

MR. PINO: What I was suggesting, Mr. Chairman, was that during the EZC testimony it was suggested that there is liability if the County allows a substandard road to be left by the Moores or by anyone else on that street. What I'm suggesting is that if they walked away from the lot split today and didn't do anything, you'd still be left with a road that's 13 feet wide in some place and still have that liability anyway.

COMMISSIONER GONZALES: Can I ask you what the condition of the road is?

MR. PINO: Mr. Chairman, by and large, the road's in pretty good condition. It does have a gravel surface on it and it does have a bar ditch with some culverts crossing under some of the driveways.

CHAIRMAN DURAN: I just have one question. Is there a road maintenance agreement in place right now?

MR. PINO: Mr. Chairman, that's in the covenants, yes.

CHAIRMAN DURAN: So all the property owners along Camino Delilah have agreed to participate in the maintenance of that road?

MR. PINO: In the maintenance, Mr. Chairman, which is different of course, than the construction.

CHAIRMAN DURAN: Because I was out there about a month or a month and a half ago and the road wasn't that great.

MR. PINO: Well, if you want to compare it to Fin del Sendero, it's in great shape.

CHAIRMAN DURAN: There's a lot of stuff that's not in great shape but that's not the point.

[Mr. Garcia provided the Commission with pictures of the road.]

MS. BROWN: Mr. Chairman, just one point of clarification. We've been talking sort of in terms of whether this condition should be imposed or not. Just for

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clarification, we're talking about a variance, they're requesting the removal of a condition that they agree to four months ago when they came and asked for a lot split. So we're not deciding whether or not to impose it but whether to remove a condition they agreed to.

MS. GUERRERORTIZ: And Mr. Chairman, you might want to get some testimony from the Fire Marshal on why he thinks the 20-foot road is appropriate because that rule really does come from the Fire Marshal.

COMMISSIONER ANAYA: Mr. Chairman, Orallynn, or anybody out there, is there any potential of this road being extended further east for any development going beyond these boundaries of the site boundaries?

MS. GUERRERORTIZ: Mr. Chairman, Commissioner Anaya, no, I do not believe so.

COMMISSIONER ANAYA: So it would be a constant cul-de-sac then.

MS. GUERRERORTIZ: That is correct.

COMMISSIONER ANAYA: That to me is a factor also.

CHAIRMAN DURAN: I'd like to take that back. The road looks great. Those were taken this week, last week? Okay, good. It looks fine.

COMMISSIONER GONZALES: Can you remind me of the case we had off of West Alameda where there was a variance request for us to not require the road to be widened? We had sent the two opposing neighbors into mediation on this issue. The Commission basically went ahead and allowed for a narrower road to be constructed at the opposition of the Fire Marshal as well as in this case. Can you remind me of that situation?

MS. GUERRERORTIZ: Yes, that was the Rob Althouse lot split and the final settlement agreement on that was a 16-foot wide road.

COMMISSIONER GONZALES: As opposed to the 20-foot that was recommended? Thank you.

CHAIRMAN DURAN: Any other questions of the applicant?

COMMISSIONER GONZALES: Yes, just the one obvious question I wanted to ask the applicant. You've agreed to this and you're asking that it be rescinded? And then the other question that I would ask, I guess my concern too is that -- while I think it's fair and reasonable that Mr. Moore buy a five-acre lot and split it as many other people are doing, if the Commission allows -- first of all, I want you to address why you're asking us to remove it. If we do allow for you to remove this condition, would you agree to notifying or having some kind of disclosure statement that the road does not meet County standards and is short of that and the Fire Marshal opposes it, so that whoever's buying that understands that this is a road that is not up to standards and it could be a safety issue?

MR. PINO: Mr. Chairman, Commissioner Gonzales, to your first item, indeed we did agree, when we came to the EZC and we worked with Orallynn and the neighbors, as a matter of fact, right before the meeting. The original County condition had been to go to 22 feet, was it, or 24? Twenty-four feet. And there was great concern among the neighbors that there would be too many trees taken, et cetera. So we met with Orallynn

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prior to the EZC meeting that night. There were about five or six neighbors here and the agreement was cut at that time, that we would go down to twenty feet.

Checking in with the neighbors after the fact, because I wanted to know, and we believed that the road was pretty close to 20 feet at that time anyway. So everybody was pretty content and saying We can do that, because the road's probably there now. So Carl and I went out to measure the road and we found that it was 15 feet and much to our surprise it wasn't 20 feet, it wasn't nearly as wide as it was going to have to be.

So we checked with some of the neighbors, because they were very much in agreement to go to the 20 foot wide so that they would not be impacted. I can only stand up here and tell you that they told us that because that's all I can do. I don't have affidavits or anything like that. But they agreed to that because they thought that they were pretty close to the 20 feet at that time.

Realizing that we would have to widen anywhere from five to seven feet, they had the same concerns about the trees being removed and some of the driveways being affected. So yes, we did agree to it at first, and in fact my first inquiry into the County was whether we could come to the EZC and ask for that condition to be removed and it was the County staff's finding that no, we were in variance territory, which we agreed with and that's why we applied for the variance. So it was after the fact. That's true.

As to putting something in a disclosure statement as to the condition of the road, the width of the road and it's compliance with Code, I don't believe that that would be a problem necessarily. I'm not sure that that translates into any liability for my client. It's simply telling whoever would buy that lot that was split that this is what the condition of the road is and this is what the County requirements are and these are what some of the potential liabilities are, and disclosing something like that I don't believe would be particularly a problem.

CHAIRMAN DURAN: Any other questions of the applicant? This is a public hearing. Is there anyone out there that would like to address this issue? Please state your name and address for the record.

[Duly sworn, Bobby Lee Trujillo testified as follows:]

BOBBY LEE TRUJILLO: My name is Bobby Lee Trujillo, 1000 Paseo de Peralta. I own some property up on Camino Delilah. In fact, Camino Delilah is named after my daughter. I think that one of the issues that's come up after the fact, and I wasn't involved in the first couple of hearings, but I think some of the issues that have come up is there are certain utilities set in the street, J-boxes, transformers. Some of the neighbors have built right up to the street and have entries and stuff and I think what's happened for these folks is that they've gone up there and found out that to widen the road it's not an inexpensive task.

They're probably going to have to be moving, depending on how the road gets widened, there are transformers and J-boxes and like I say, other entries, decorative entries to the houses that are built out there so they're in a situation where they're wondering which

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way do we go and who do we not piss off and who do we piss off and what's the least inexpensive way to do it. So I think that's one of the problems.

Right now, for instance, the entire road crossing past my land, the entire road is in on my land. We've got a 25-foot center line easement on either side of the road. Well, the way the road meanders, the entire road is in on my side and I've got transformers and J-boxes right up to the road. So if they're wanting to go in towards my property to acquire this 20-foot, it would be quite costly. First of all, I wouldn't be happy about it because the entire road is already in my property and none is across the street. But if they're going across the street, then it would have to be messing with somebody's driveway and decorative entry and stuff like this, so I just wanted to throw that out. I think there's more involved than trees. I think trees is a big issue as well, but there are utilities and stuff like that so that they would have to be moved and I think it's pretty expensive and I think that's one of the big problems. Thank you.

CHAIRMAN DURAN: Any questions of Mr. Trujillo?

HANK BLACKWELL (Fire Marshal): Mr. Chairman, members of the Commission, first, I surely understand the position of the Moores and historically the dilemma that they're faced with. And so, given that caveat, I think I'd be remiss as Fire Marshal if I didn't bring up a couple of points, just so you have those points to base your decision.

First of all, one of the difficulties is we have Code changes as try to move with development and with new Codes, we update our Codes and as you all so appropriately did, we did update the fire codes in September of 1998 and sometimes we have changes there and sometimes people -- we've had several developers get caught with those Code changes and sometimes that's the nature of trying to keep our codes updated.

As far as risk, one of the statements was that there are only eight homes there. And I can't tell you how many times the Fire Department has responded to a single isolated mobile home that's been on fire or a need for medical services on a single unit, maybe isolated by miles from someone else. So we don't really look at it in terms of numbers. We look at it in terms of need, both medical and fire and rescue. And we also look at that in terms of accessibility and accessibility to us means time. And that's the product or the commodity that we sell to people in the County. That gives a margin of safety not only to the public but also to our firefighters as well.

There are similar cases again. There's a case that we're looking at right now in Tesuque, which is a family lot split. In that lot split the road length is about the same and the width and the changes are about the same and we're asking that family as just one family basically, to widen the road to 20 feet for about 400 and 500 yards as well. That should come before you probably within about a month.

CHAIRMAN DURAN: Hank so does nothing less than 20 feet work for fire protection?

MR. BLACKWELL: Oh, no, Mr. Chairman, and we have some of those

issues of flexibility. The end result has to be a certain level of accessibility in fire protection. For instance, we've talked about some of the developments with residential sprinkler systems, with certain types of accessibility, with certain types of fire protection in terms of water. Those are kinds of issues can in an end result help us with accessibility and still save us the same kind of time.

CHAIRMAN DURAN: So relative to this particular situation, are you saying that you can't get a fire truck back there?

MR. BLACKWELL: No, not at all. We can get a fire truck back there, but several items. When the road is narrow, that slows us down in terms of response time.

CHAIRMAN DURAN: When this road is narrow or when other roads are narrow?

MR. BLACKWELL: This road as well, because the only way we can get water back to that house is with what we call a tanker shuttle because there's no fire protection systems there. Especially with a dead-end or a cul-de-sac. What that means is that we've got to go to the end of the road where the fire is with one tanker, drop basically a portable swimming pool and dump our water into that pool to start pumping from it. Then that tanker goes back to a water source and we've got to shuttle. And if we don't have that two-way accessibility what we've got to do is meet head on and find a way to turn around or pull off the road and basically what that does is it just reduces our response time and our ability to get to that fire quickly. We tend to be more sensitive now because of the season that we're facing as well.

I just want to bring those items before you, not really in deference to the Modres and their predicament, because it's something I surely understand, but I think it's going to be something we see more and more often as far as our urban interface issues as well as some of those tanker shuttle issues.

COMMISSIONER GONZALES: Mr. Chairman, just a quick question for Hank. That condition exists right now. What are we doing to address these types of conditions that exist where if you get a fire call right now in that area, you're going to be limited anyway. That's not to say that we just go ahead and allow just a number of houses to go up there, but I think we need to focus on the fact that that road, whether we approve the split or approve the condition or not is going to stay narrow for probably a large majority of the road. Or are we asking them to improve the entire road up to where it needs to be, or just the section that relates to their property?

MR. BLACKWELL: I believe it's about 1,000 feet.

COMMISSIONER GONZALES: So I understand the need to really catch these on the front end and why it's important that this Code requires a 20-foot width of the road or 24 feet, but right now it just seems in this particular situation as Chairman Duran indicated, how are we going to be able to, with this applicant to fix the fire concern we have on that road as it exists today? How would that condition that you're asking us to impose, or that the staff is asking us to impose, 1,000 feet, increase response time and everything

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else that you had talked about when that road goes on.

MR. BLACKWELL: Mr. Chairman, Commissioner Gonzales, I think those are again salient points and I'm not sure I have an answer on each and every one of these situations. Quite frankly, not that I want to take the easy way out, but I think that's why you're sitting in those chairs because you've got the hard decisions to make and I don't envy you your position. But I think I would be remiss again if I didn't tell you, part of my job is again, one of education and constantly bringing these things forward so that no matter what you choose to do, you choose to do that based on having as much data as possible in terms of doing that.

Part of that again, is looking at each and every one of these situations. I think one of the things that you have asked me to do is look at -- to have some tunnel vision, in essence, in terms of public safety. And that doesn't mean that that's always going to win or that's always the most logical or feasible answer, but it's still my job to so advise you.

COMMISSIONER GONZALES: I appreciate that. Thank you.

CHAIRMAN DURAN: I think the problem basically exists, originates from the Code that we're following. I understand that we do this by a certain number of lots trigger certain improvements, but I'm wondering if in the future we can kind of second guess this type of situation and where there are people that come in for lot splits and lot approvals, subdivision approvals, we try to anticipate more lots being brought forward for approval and have the approval have a condition in it that when it reaches a certain number of lots, that they agree to be assessed, along with the person that triggers that last lot or that one lot, so that people like the Moores can expect other property owners to kick in and they have agreed to it as part of their approval process.

I know it doesn't do any good for us today, but maybe that's something we could bring forward soon. Why don't we change that?

COMMISSIONER GONZALES: And I think to a large degree that staff does try to anticipate, when they look at road permits, they're seeing a lot of private land and Orallynn is probably anticipating there are several cuts that will be occurring. So to a large extent I think that's happening but I think your suggestion, Commissioner, is a good suggestion in that there's probably -- I don't know if it's something Denise can draft up that attaches, there's a trigger in there that whenever they file their plats, their going to file with the easements to go to 24 feet and they won't have to make that compensation until there's a number of lots that go into place and then it has to become widened. It does seem what the Chairman has offered seems to be a reasonable way what Denise has indicated is a tough situation but it does require us to get in front of the Code and change it before other people come in and fall into the same situation that the Moores are in.

MS. BROWN: I think that's probably a good idea, that we could on something like that. And you're right, Commissioner Gonzales, we do try to anticipate that. This road, for instance, is a platted 50-foot easement, anticipating that there's a possibility that the road would need to be widened. so we do try to anticipate those needs. But we

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haven't addressed the issue of who then pays for the road when it's actually built and that may be a more equitable mechanism.

CHAIRMAN DURAN: Well, let's finish the public input process. Is there anyone else out there that would like to address this issue?

[Duly sworn, Dave Pike testified as follows:]

DAVID PIKE: My name is Dave Pike. I reside at Route 6, Box 105, Agua Fria. Commissioners, if I may, I'd like to speak just to the issue. I'm a resident of the Village of Agua Fria and we are in the process at this point in updating our fire protection system to accommodate the needs of the community. And in hearing this discussion, we find that in our community, particularly, we have narrow driveways that are as narrow as ten feet. As part of this discussion we would be very concerned about how you all make decisions regarding fire protection, in granting approvals and not granting approvals of roads and we are going to be encountering those same issues as the applicant in this point in time, although I have nothing to do with their particular issue at this point other than fire protection and I know it does hinge on what we're going to be dealing with in our community.

So we are very concerned about how we're going to protect the community in terms of accessibility for fire. Some of the roads are 10, 12, 14 feet wide. And it's a real concern to us and there are existing structures there, buildings, homes that are old and historical and it makes it very difficult so to some degree it's quite unique to be able to work these kind of issues out I think. I think on certain special conditions I think you have to look at that and address them accordingly. So I just wanted to make a comment about that, because I know we're a traditional community and there are other traditional communities that probably have the same kind of problem. So I would just make that point. Thank you for your time.

CHAIRMAN DURAN: Thank you.

[Duly sworn, Carl Moore testified as follows:]

CARL MOORE: Carl Moore, 811 St. Michaels Drive, Santa Fe. I'm honestly appreciative of all the time you've taken for this issue. And all the time that staff did and the work they've done to show us this evening how we could adjust that road. I sincerely mean that. I do feel some obligation to explain why we put you to this trouble, given that we agreed to that ordinance earlier. Mr. Pino explained it in part, but we've never been through something like this. This is new for us. As Mr. Pino explained, right following the last decision we went out to the road and measured it.

We also heard from our neighbors that our neighbors just did not want that changed. They gave us all the reasons, they didn't want to lose this tree here and that improvement there. We didn't know what to do about that, given that we thought that the road was close to the 20 feet because probably we didn't know how to measure it. We didn't know from point to point. We probably included the ditches in our measurement. We didn't know how to measure it. And it looked like a good road and everybody was saying that they wanted

it to be that way.

So we asked the County, Mr. Pino did, a County inspector to come out and look at the road and he came out and looked at the road and he said that the road seemed fine. So the reason we went forward was because we had that encouragement from their system. Now whether he did it right or not, all we know is when a County inspector went out and said the road was fine so that's why we thought not to create the discomfort of the decision among the neighbors that the road was fine and we were going to leave it along. That's why we put you to this trouble. I appreciate the opportunity to explain that.

CHAIRMAN DURAN: Thank you. Okay, is there anyone else out there that would like to address the Commission? If not, what's the pleasure of the Board?

COMMISSIONER GONZALES: Mr. Chairman, I move that we remove the condition to widen the road, and replace that with a condition that requires the applicant to disclose on their plat that the road does not meet County standards and that there are some issues of fire protection, that whoever the buyer is needs to be aware of. Any type of disclosure that will inform any future property owner as to the condition of the road and what it may mean for safety issues.

COMMISSIONER ANAYA: Mr. Chairman, second. And obviously, what Commissioner Gonzales has stated there is in lieu of the findings of fact.

COMMISSIONER GONZALES: That's correct.

COMMISSIONER ANAYA: So for disclosure, I think that's plenty adequate without having to address the findings of fact, if I'm not mistaken. So I'll second, Mr. Chairman.

CHAIRMAN DURAN: For discussion, I'd also like, if this passes, I would like for that agreement to be a recorded document with the County Clerk's Office so that when a title commitment is prepared that it shows up. Any further discussion? Those in favor, signify by saying "aye." [Unanimous 4-0] Opposed? Motion carries.

- IX. B. 4. CDRC Case #A/V 99-5030. Lovette Appeal/Variance. Carl and Carol Lovette, applicants, request an appeal of the Land Use Administrator's decision to deny a permit for a second home on 1.25 acres which would result in a variance of Article III, Section 10 of the Santa Fe County Land Development Code. The property is located west of County Road 88D in Santa Cruz, within Section 4, Township 20 North, Range 9 East

MS. ELLIS-GREEN: Mr. Chairman, Commissioners, on February 8, 1999, Carl and Carolyn Lovette requested a permit to put a second home on 1.26 acres. The permit was denied by the Land Use Administrator as the parcel did not meet the minimum

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lot size requirements of the Code. The applicant currently lives on the property is requesting a second home for their son and his family. The applicants state that their son and his wife have both had medical problems and that their son is still unable to work due to health problems.

Recommendation: The decision of the CDRC was to recommend approval of a variance of Article III, Section 10 of the Land Development Code to allow for two homes on 1.25 acres, subject to the following conditions:

1. A temporary issue will be issued for a period of two years to be approved for consecutive two-year periods by staff. The applicant at that time must prove that the hardship still exists.
2. The septic system will have nitrate removal and a maintenance contract.

And Mr. Chairman, Commissioners, given the cost associated with nitrate removal system and that the recommended permit is only temporary, staff does not feel that the advanced system is warranted. The applicant has submitted a permit issued by the Environment Department for a septic system to serve both homes. The Environment Department did not require a nitrate removal system, and staff recommends that condition 2 be deleted. And the septic permit is attached to your packet in Exhibit "D."

CHAIRMAN DURAN: Any questions of Penny? Is the applicant here? Do you have anything to add to what Penny said or would you like to say anything?

[Duly sworn, Carolyn Lovette testified as follows:]

CAROLYN LOVETTE: I'm Carolyn Lovette. I live at 115 Placitas in La Puebla. I wrote a letter, practically stating what Penny just said. The cost of that nitrate system is just -- for a two-year variance is going to cost us like \$8,000 to \$10,000. And if we had that kind of money, we could move the home on to something else anyway. We felt Mr. Trumbull had put us through the percolation test and everything and I really feel his expertise was good enough to decide whether we need to put a nitrate system in there. If you go through all the required steps that the state and the County require, I feel like that should have been enough. We are at this point still in need and hopefully it will be gone, but I don't know when.

CHAIRMAN DURAN: Any questions of Ms. Lovette? Is there anyone out there that would like to speak to this issue?

Commissioner Trujillo moved to approve CDRC Case #A/V 99-5030. Commissioner Grinë seconded.

MS. ELLIS-GREEN: Mr. Chairman, for clarification, is that with condition one and two, or just condition one?

COMMISSIONER TRUJILLO: With condition one. We deleted two.

COMMISSIONER GRINÉ: Right.

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CHAIRMAN DURAN: Thank you. Thanks for catching that.

Upon voice vote, the motion passed unanimously [2-0]. [Commissioner Anaya and Commissioner Gonzales were not present for this vote.]

- IX. B. 5. CDRC Case #Z 98-5710. Rancho Jacona. Eugene and Sheri Tepper, applicants, request master plan zoning with preliminary and final development plan approval for four additional units within an existing lodging facility. The property is located north of County Road 84 in Jacona within Section 11, Township 19 North, Range 9 East**

VICKI LUCERO (Review Specialist): Thank you, Mr. Chairman, Commissioners. The applicant is requesting master plan and development plan approval for an existing lodging facility and four additional casita units on 21.535 acres. There is currently a main house, a staff house, six casita units, two barns, one storage building for equipment and supplies and several sheds for livestock and feed on the property.

Recommendation: The decision of the CDRC was to recommend master plan zoning with preliminary and final development plan approval for a lodging facility with the following conditions. Mr. Chairman, may I enter the conditions into the record?

CHAIRMAN DURAN: Yes, we'll just enter them into the record thank you.

[The conditions are as follows:]

1. The master plan/development plan will be recorded with the County Clerk.
2. The applicants must prove that existing landscaping provides an adequate buffer. If it is insufficient a landscaping buffer will be required.
3. The fire hydrant shall meet all minimum requirements per County Fire Marshal. Engineered drawings detailing the hydrant system shall be submitted for review and acceptance to the County Fire Department. The draft system and fire hydrant shall be in place, operable and tested prior to the start of any building construction. The developer shall notify the Fire Prevention Division when the system and fire hydrant are ready to be tested.
4. The applicant will call for a final fire inspection by the Fire Marshal prior to occupancy of the proposed expansion.
5. All improvements will be in place prior to building permit issuance.
6. The applicants must provide retention ponding for the entire project, to be approved by the County Subdivision Engineer.
7. Covenants restricting water use to 3.0 acre-feet per year must be recorded with the master plan. The well must be metered and annual water reports must be submitted

- to the County Hydrologist.
8. The project may be served by two separate septic systems. A discharge permit shall be obtained if required by the State Environment Department. The applicant must connect to the regional wastewater system if and when it becomes available.
 9. Compliance with the applicable review comments from the following:
 - a. State Engineer
 - b. State Environment Department
 - c. County Fire Marshal
 - d. County Public Works
 - e. County Subdivision Engineer

CHAIRMAN DURAN: Any questions of staff?

COMMISSIONER TRUJILLO: Yes, I have a question. What sort of liquid waste system exists in this area for this project?

MS. LUCERO: Mr. Chairman, Commissioner Trujillo, there is currently one septic system which consists of three septic tanks and a leach field with a distribution system and they're proposing to install another septic system which will serve the additional units.

COMMISSIONER TRUJILLO: Can you explain, or Oralynn, if she's here, a discharge permit and what that entails?

MS. LUCERO: It's staff's position that the addition of the four units would cause the wastewater flows to exceed 2,000 gallons per day, so staff would recommend that the entire project be served by a centralized wastewater system, and a discharge permit would be required. However, the CDRC changed that condition as part of their recommendation to allow the applicant to use two separate septic systems and they would be required -- a discharge permit from the State Engineer's Office is they required it.

COMMISSIONER TRUJILLO: I'd like to see that condition included if I make the motion for this project.

CHAIRMAN DURAN: We're talking about your special topic -- wastewater.

COMMISSIONER TRUJILLO: I was asking for you to explain the discharge permit and what that means and I think Ms. Lucero explained it, unless you want to add anything.

MS. GUERRERORTIZ: I didn't hear her whole explanation, but if you're satisfied, I'm sure she knows our rules now, so I'm sure she covered it.

COMMISSIONER TRUJILLO: Thank you.

CHAIRMAN DURAN: Vicki, I was going to ask you a question. Is it your understanding that the applicant is in agreement with all your recommendations?

MS. LUCERO: Mr. Chairman, the applicant was in agreement with all of the conditions that were recommended which included the one on the wastewater system, that it would be served by two separate septic systems, the one that was imposed by CDRC.

CHAIRMAN DURAN: Great. Thank you very much. Is the applicant here?

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Would you like to come and address the Commission please. Would you like to add to staff's explanation of the project?

[Duly sworn, Sheri Tepper testified as follows:]

SHERI TEPPER: Sheri Tepper, Jacona Ranch. Mr. Chairman, Commissioners, we are in complete agreement with the recommendations of the Land Use Committee. We have no problem with any of their recommendations at all. We have brought with us tonight site plans and elevations if you'd like to see them. We won't trouble you with them if you don't want them.

CHAIRMAN DURAN: Are there any questions of the applicant?

COMMISSIONER TRUJILLO: What's your position, Mr. Chairman, on a central liquid waste system?

MS. TEPPER: The problem with the central liquid waste, sir, was the system was designed, that we have now, was designed two years ago. It was a very expensive one that we put in to handle the current property. The property slopes from County Road 84 down to the Pojoaque River. The new units are going to be added at the high end. It's a 21-acre property. Getting the liquid waste from the location of the new units down to the old field would be somewhat cumbersome and it actually is fairly close to an arroyo and we do not want to increase the effluent at that location.

The new units are under a flat field of about eight acres extent and it's perfect to put the infiltrators under. So we asked for an exception so that we could have it with two separate systems, and that system has been engineered and the permit has been granted.

COMMISSIONER TRUJILLO: As you know, that area, northern Santa Fe County, the Pojoaque Valley is proliferated with individual wells and individual septic tanks and there's a major problem of contamination of the water table in that area.

MS. TEPPER: That's my understanding, yes sir.

COMMISSIONER TRUJILLO: Right now, there's a study taking place for a design of an infrastructure to capture liquid waste in that whole region, including Española and areas north. Do you agree, would you agree that if that infrastructure is put in place, if you would immediately connect to that infrastructure?

MS. TEPPER: We will agree that we will connect such of our houses as we can, sir. Some of them lie very low. And I don't know whether -- we'd have to see the infrastructure just to know whether we could connect to it. But certainly any part that we could connect to it we would do so. And we so specified to the Land Use Committee.

CHAIRMAN DURAN: Any other questions of the applicant?

CHAIRMAN DURAN: Is there anyone out there that would like to address the Commission concerning this issue? What's the pleasure of the Board?

COMMISSIONER GONZALES: Move for approval as presented.

COMMISSIONER ANAYA: Second.

COMMISSIONER TRUJILLO: Discussion.

CHAIRMAN DURAN: There's a motion and a second for discussion.

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Commissioner Trujillo.

COMMISSIONER TRUJILLO: I would still like to include the condition of a centralized liquid waste system for this project as a condition if we approve this development.

CHAIRMAN DURAN: And that would take place when?

COMMISSIONER TRUJILLO: That would take place at the development stage.

COMMISSIONER ANAYA: Mr. Chairman, as a second I would move to amend my second to include Commissioner Trujillo's concern.

CHAIRMAN DURAN: How about the maker of the motion?

COMMISSIONER GONZALES: I guess my question for staff, is that a recommendation of staff? Is it something that's realistic that the applicant will be able to do? Because right now there's an existing, there's already an existing facility there, right? They're just asking for an expansion. Is that correct?

MS. LUCERO: Mr. Chairman, Commissioner Gonzales, they are asking for an expansion. Staff did recommend that a centralized wastewater system be use. It was the CDRC that changed that condition to allow them to use two separate septic systems.

COMMISSIONER GONZALES: Did they indicate why the CDRC did that?

MS. TEPPER: Perhaps is if I showed you the maps that would be helpful. The new system that we put in two years ago to handle all of the buildings that were there - the six rental units, the main house, the laundry, all of this new system with three tanks and a dosimeter system and a very large infiltrator system lies down here. These new units are going out here. This is a flat field. The system that has already been designed and been given a permit, will go out into this flat field. To the west of those houses.

It's big. It's dry. The crop of grass that we get over the infiltrators on the current system is marvelous and they have tested our water that comes out of that system and they have found that it is equal to the quality of the water that comes out of the Santa Fe sewage system. So it does the job. I am confident that the one they designed for the new units will do the job equally well. Trying to get -- we can't put a new system up above, because we'd have to pump waste uphill. That means it would have to go down below and you're putting it very close to the river at that point.

CHAIRMAN DURAN: Ms. Tepper, how many -- on 21 acres, how many actual dwelling units do you have?

MS. TEPPER: For year-round dwelling or for people who are coming for vacation? These are vacation houses.

CHAIRMAN DURAN: Dwellings. Ones that have kitchens and baths?

MS. TEPPER: They all have kitchens and baths.

CHAIRMAN DURAN: And how many are there total?

MS. TEPPER: How many are there now?

CHAIRMAN DURAN: How many will there be?

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MS. TEPPER: Twelve.

CHAIRMAN DURAN: So you're well within the allowable density?

MS. TEPPER: Yes sir.

COMMISSIONER TRUJILLO: Your concern is that if you bring the liquid waste and your proposed development to the existing state of the art system that it will compromise the environment along the river?

MS. TEPPER: That was the feeling of the people on the committee. Yes sir.

COMMISSIONER TRUJILLO: But you said that the water is filtered so that it is as clean as the water coming out of --

MS. TEPPER: We have a limited space sir, where we can put it, and we've got it full. That's my point. There's a limited place to put the infiltrators. They lie in this area, right down here. You can't put them down here, because this pasture down here is in the flood plain. So they lie on an elevated spot, right in there. It's fairly small. We bought those three acres just to put this system in. There's no real way we can make that any bigger or make it handle any more than it's handling now.

COMMISSIONER GONZALES: So you're saying that it's already reached it's current capacity without the additional units.

MS. TEPPER: Without the additional units.

COMMISSIONER GONZALES: And if the Commission imposes you to put in a new centralized system, you'd basically have to abandon that system and put in a whole brand new one?

MS TEPPER: I don't know where we'd put it, sir. You can't pump sewage uphill.

COMMISSIONER ANAYA: Well, you can, but it's costly.

MS. TEPPER: All those drain down into the system that we just put in two years ago, which was a very costly system.

COMMISSIONER TRUJILLO: So you've got a state of the art system to serve the units downhill.

MS. TEPPER: Down there.

COMMISSIONER TRUJILLO: And you've got permits to do the liquid waste at the proposed area.

MS. TEPPER: Up there.

COMMISSIONER TRUJILLO: Now if we impose a condition that when the infrastructure goes along the road, or if it's ever available then this proposed development will then connect to those lines.

MS. TEPPER: That condition is already in the recommendations sir and we have agreed to it.

COMMISSIONER ANAYA: One more point of clarification. You have agreed to hooking up to a potential County sewer system, should there be a County sewer system. You have agreed to that, is that what you just stated?

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MS. TEPPER: With all the units that we can. Nobody has told us yet whether they will put sewage up hill, but certainly with these new units, those would be joinable, yes, because they're on the level.

COMMISSIONER ANAYA: And with the strength in number it would be more cost-effective for everybody in the area should that sewer system in the north materialize.

MS. TEPPER: I think everybody thinks that it will, yes.

COMMISSIONER TRUJILLO: A question of staff, did staff take into consideration when they made the recommendation on the centralized septic facility, the feasibility, the cost, and all of that?

MS. GUERRERORTIZ: Mr. Chairman, Commissioner Trujillo, I'll go ahead and try to answer that because I'm sure the condition probably came from me. No, we didn't consider the cost. I know it's technologically feasible but I suspect that it would be required to do a more advanced system. This is just a septic system with a dosing tank. If the total discharge is more than 2,000, they'd probably have to add some kind of aeration system and it would result in having to buy more equipment. Ballpark estimate -- \$12,000, \$15,000.

COMMISSIONER ANAYA: And that would be a requirement of state statute?

MS. GUERRERORTIZ: Yes, if this single system ends up producing more than 2,000 gallons then that will come from the state, that requirement.

COMMISSIONER ANAYA: Mr. Chairman, I'm going to retract my amendment.

COMMISSIONER TRUJILLO: It's only \$12,000? This is a commercial business. It's making a lot more.

MS. TEPPER: No, it's not making a lot more, sir.

MS. GUERRERORTIZ: Mr. Chairman, Commissioner Trujillo, it is a commercial business, but they're producing typical domestic waste. They're not producing anything different from what you might produce at your own home, so I think that that's a reasonable value that would be expected for a system here.

COMMISSIONER TRUJILLO: But the volume that is being produced is a lot more than a residence. It's a commercial business.

MS. GUERRERORTIZ: Correct, sir.

COMMISSIONER TRUJILLO: And there's a profit. And again, the issue is that that area is in dire need. The water quality is in bad shape. There's major contamination in that area. So we need to do everything possible to protect the whole community there.

MS. GUERRERORTIZ: Mr. Chairman, Commissioners, you may want to consider requiring advanced systems and not requiring them to be centralized but maybe having two advanced systems. Just an option, which will produce a better quality effluent,

reduce the nitrogen and reduce the bacteria and fecal coliform and everything else and produce a much better quality effluent.

COMMISSIONER TRUJILLO: I'd like to change my condition to include advance systems.

CHAIRMAN DURAN: Well, there's a motion on the table. Does the maker of the motion want to amend his motion at all?

COMMISSIONER GONZALES: Yes, I'd support that. I think for any commercial development in an area where we have high nitrate problems that at the minimum we could have an advanced system. I'm concerned about going to centralized because I just don't know we know enough about how this would work but I think certainly if there can be an advanced system there should be.

COMMISSIONER ANAYA: I'll accept it as a second. Also, I'd stipulate in there that the agreement has been reached that should the sewer system materialize in the north, which we're working on it really hard, I know that, that the applicants have agreed to tap into our system in the future.

CHAIRMAN DURAN: Orallynn, do you have a point of clarification?

MS. GUERRERORTIZ: Again, I assume you're talking about the new system will be an advanced system that will reduce nitrogen. Is there any concern about the existing system? Did you want to make any conditions on that existing system or just leave it the way it is?

CHAIRMAN DURAN: Is it in conformance with EPA guidelines and standards?

MS. GUERRERORTIZ: Mr. Chairman, Commissioners, that is a permitted system that met the NMED requirements at the time it was permitted and I'm assuming it meets it today. But I also will assume that it is producing nitrogen, probably at a rate of 54 milligrams per liter and the standard that you've just applied on the new project would require 14 milligrams per liter, much less.

COMMISSIONER GONZALES: It's not my intent to go after the existing one.

CHAIRMAN DURAN: Okay, there's a motion and a second. Any further discussion? So we're clear what the motion is? Those in favor signify by saying "aye." [Unanimous 4-0] Opposed? The motion carries.

If you have any questions, get with Orallynn or Vicki and she'll get you going the right direction.

IX. B. 6. CDRC Case #Z 98-5780. Hacienda Montana de Oro Bed and Breakfast. Max and Andrea Contreras, applicants, request master plan zoning with preliminary and final development plan approval

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**for a nine-room bed and breakfast to host small group meetings.
The property is located west of County Road 55, southeast of State
Road 14, within Section 13, Township 13 North, Range 8 East**

MS. ELLIS-GREEN: Mr. Chairman, Commissioners, the applicants are requesting approval for a nine-bedroom bed and breakfast facility to host small group meetings in the fields of history and culture on 64 acres. The applicant estimate groups will range in size from six to 18 people. Most groups would stay two to three days, although single day meetings may occur. The business will be open six to eight months of the year. Six rooms will be furnished as bedrooms. The three other rooms will be able to be configured as either a bedroom or a meeting room.

Recommendation: Staff's recommendation and the decision of the CDRC was to recommend master plan zoning approval with preliminary and final development plan approval for a nine-bedroom bed and breakfast subject to the following twelve conditions. And Mr. Chairman, can I go ahead and enter those conditions into the record?

CHAIRMAN DURAN: Please.

[The conditions are as follows:]

1. The applicant will request a final fire inspection prior to occupancy of the building.
2. All improvements, including parking areas, liquid waste, fire protection and retention posing, will be in place prior to occupancy of the building.
3. Engineered plans for the water storage tank and draft hydrant will be reviewed for approval by the Fire Department.
4. All outside lighting on the property will be shielded.
5. All staff redlines will be addressed. Original redlines will be returned with final plans.
6. The dumpster will be screened on all four sides by a solid wall or fence and a solid gate.
7. The applicant will submit an approved food preparation permit from the Environment Department prior to building occupancy.
8. The applicant will submit an approved discharge permit from the Environment Department prior to building occupancy.
9. The restaurant is for use by bend and breakfast guests only.. This shall be noted on the master plan.
10. Water use is restricted to .6 acre-feet per year. Water restriction covenants will be recorded by the applicant with the master plan/development plan. Annual water meter readings will be submitted to the County Hydrologist.
11. The applicant will record the master plan/development plan with the County Clerk's Office.
12. A business license is required and shall not be issued until all of the above conditions have been met.

CHAIRMAN DURAN: Are there any questions of Penny? Thank you, Penny. Is the applicant here? Would you like to address the Commission, tell us a little bit about your project?

[Duly sworn, Andrea Contreras and Max Contreras testified as follows:]

ANDREA CONTRERAS: Andrea Contreras, 1124 Goldmine Road, Cerrillos.

MAX CONTRERAS: Max Contreras, same address.

CHAIRMAN DURAN: Do you folks agree to the recommendations as outlined by the Land Use Department.

MR. CONTRERAS: Yes.

MS. CONTRERAS: Yes we do.

CHAIRMAN DURAN: Is there anyone out there that would like to address this Commission concerning this issue?

Commissioner Anaya moved to approve CDRC Case #Z 98-5780 with the conditions as presented and Commissioner Grifé seconded. The motion passed by unanimous [4-0] vote.

CHAIRMAN DURAN: Congratulations.

COMMISSIONER ANAYA: Good luck to you.

IX. B. 7. CDRC Case #A 98-5722. Marc Simmons Appeal. Marc Simmons, applicant, is requesting an appeal of the Santa Fe County Development Review Committee's decision to grant development permit #98-740, Canyon Vista LP driveway permit. The property is located off of County Road 42, within Section 13, Township 14 North, Range 8 East

MS. LUCERO: Thank you, Mr. Chairman, Commissioners, if I could just do a brief summary to clarify the application. The appellants have two major issues. The first is that they were denied due process because of the original permit application was lost and they were unable to view it. However, Mr. Simmons and Ms. Silver, who was one of the attorneys from the last appeal, both had the opportunity to see the application before it was lost. The original engineering plans were not misplaced and they've been available to the public but yet we haven't received any people requesting to see them.

Also the second issue was that the appellants state that the neighbors did not receive adequate notice for the request for the driveway permit and a road permit does require public notice, whereas a driveway does not. In accordance with our rules a driveway is not considered a road unless it serves four or more structures. This request was for a driveway

to access three lots.

Recommendation: The decision of the CDRC was to deny the appeal of development permit #98-1643 and uphold the Land Use Administrator's decision to grant the permit with the following conditions:

1. The alternative route as specified in the drawing be used if feasible. If it is not feasible it must come back to the CDRC and the BCC for a variance.
2. The applicant, Canyon Vista, must address safety concerns off of County Road 42 with a sign on the existing gate that states that it is a private route. The existing gate must be maintained.

Staff's recommendation is to uphold the Land Use Administrator's decision and grant the driveway permit as the alternate routes cannot meet County Code requirements.

CHAIRMAN DURAN: I have a question of legal. Is it your opinion that due process was violated?

MS. BROWN: Mr. Chairman, no. Due process involves the right to -- no, it is not my position.

CHAIRMAN DURAN: Then why is this before us? If the applicant, if the person that was issued the building permit for the road went through every process why is that we're here instead of him taking it to court?

MS. BROWN: Mr. Chairman, because it's been the policy of this Commission to allow members of the public to appeal decisions of the Land Use Administrator.

CHAIRMAN DURAN: Okay, thanks.

COMMISSIONER GRINÉ: Are you sure of that?

MS. BROWN: We can change that policy if you'd like to do so and let us know in the future.

CHAIRMAN DURAN: We'll do it another time. Any questions of Vicki? Thank you, Vicki? Is the applicant here? The appellant?

[Duly sworn, Marc Simmons testified as follows:]

MARC SIMMONS: Marc Simmons, Box 51, Cerrillos, New Mexico. Mr. Chairman, we come before you this evening with some very serious issues and we hope the hour's not too late and you're too tired to consider them fully. In the interests of efficiency and speeding up the process here, saving the Board some valuable time, I'm going to compress quite a few difficult points and telescope it. Back at the CDRC meeting on January 28 when we first presented this appeal and it was turned down, we had a large number of people to testify and it was a lengthy discussion and the whole thing ran for two hours and we of course we anticipate we can avoid a horror like that again tonight. And one way we can do that, we gave you an advanced submittal, which we hope you all had a chance to look over and that provides some needed background so we feel comfortable that you probably know a little bit about this issue before we start.

My neighbor Dave Tedlock filed the original appeal to go before the CDRC and he

carried it there January 28. I was there in support of him as were many others. When it was turned down, he immediately announced, it was published in the paper the next day, that he would be appealing to the BCC and a few days later when he learned that the date was April 13, tonight, he knew that his business -- he owns his own business -- would not allow him to be in Santa Fe that night. We discussed it and I had worked closely with him so we agreed that I would carry the next stage of the appeal.

After that was decided, a total of 26 names were affixed in a kind of class action appeal to this Board, made up of neighbors, local residents, contiguous property owners, who felt as we did originally that proper procedure had not been followed in this. As a result, we come before you tonight. As I say, it's a cross section of people. It's a class action appeal. It includes two builders who have properties adjacent to this development and a long-time Santa Fe realtor, Mr. James Russell. None of these people, that I am aware of, is trying to stop this development. All we're hoping is to see the County Code properly administered and our rights protected at the beginning of this large project by a development company.

The basis of our appeal tonight is two-fold. Our first complaint and contention is that the Code Administrator should not have granted Canyon Vista a driveway permit when in fact it was a local road designed to connect originally six tracts and a parcelling of almost 600 acres. And our second complaint is that the complete, accurate, and lawful record of this development has not been available to neighbors who needed it and thus we feel we were denied due process and full disclosure under the law.

We think also that this matter, given the nature of it, should have been -- we should have been provided with public noticing. So these are our two strong, really right and left punches, which we believe justify granting our appeal tonight. Punch number one, our first complaint is about this driveway. Canyon Vista testified before the CDRC January 28 that his driveway would serve three lots or tracts. The driveway sprawling over 2 1/2 miles over its 600-acre tract. However, at the CDRC hearing, Ms. Guerrerortiz, and I'm quoting her words, it's in the minutes. "Roads serving two or fewer lots may be treated as driveways." And her words come straight out of Article III of the Code. It is clear, therefore, that under the Code, Canyon Vista should have applied for a road and not a driveway permit. It has too many lots. And we think the CDRC should have disallowed the permit right there when this matter came up and Ms. Guerrerortiz gave her opinion.

Besides, when Canyon Vista originally applied for a driveway permit back on November 18, it submitted a topo map showing its proposed driveway, connecting six lots, not three. The topo map as submitted for this permit showed six lots and 16 buildable areas. I obtained a copy of that topo map just before Dave Tedlock and myself filed our protest. That was in mid-November and then about a month later, December 16 I went into the Land Use Office and I purchased the full roll of 25 driveway maps that Canyon Vista had submitted with its application. I have those maps here and I have that original topo map showing the 16 lots.

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I took those maps home and went over the 25 maps and I saw at once that the topo map showing the driveway and six tracts had been replaced in the file by a plain topo map showing no driveway and no parceling. The substitution of maps apparently had occurred after the permit was issued and after we filed our protest. But we can't say exactly what the timing was because all the records were subsequently lost. In any case, whatever the timing of the substitution of the maps was, the fact is that not until the CDRC meeting of January 28 did we learn that Canyon Vista had changed its proposal from six to three lots or tracts. At the CDRC meeting, before the CDRC meeting, during the meeting, nor since, have we ever seen a topo map or site plan of record that shows the three lots.

So the two points I'm making here are these: First, Canyon Vista's proposed driveway, as near as we can tell, did not qualify as a driveway. Hence, the permit it received was not valid. And number two, the permitting record seems to have been probably improperly altered after the fact. We can't tell because again the records are now not available. But whether it was improperly or properly altered, we had no knowledge of this change after the permit had been issued and we neighbors went before the CDRC without knowledge that it had been changed from the original six tracts to the three tracts. Hence again we're saying that our rights of due process and full disclosure, which is a very basic legal principle, that those were violated.

And it looks like to us, and again we're having to guess, but it looks like the reason for improperly granting a driveway permit instead of a road permit was simply to try to circumvent the public notification requirement. And that resulted in 20 adjacent property owners -- that's how many property owners touch this development property -- 20 adjacent property owners as a result of this were denied protection that we're entitled to under the Code. There's no question that that happened. We can't say exactly whether that was the original intention or not, but we say we did not have proper notification.

Now, that's our punch number one on the driveway, which you see from what I just said, we believe was illegally permitted. Our punch number two is even stronger. Remember that the Code Administrator, in Article II, Section 1 is required to keep copies of each application and development permit that is filed in that office. Those records, those documents form part of the lawful public record. Unfortunately, a large part of those documents were not preserved as required by the Code, that is by law. Including, especially, the vital driveway permit application. The developer supposedly submitted a permit application November 18, which would have included a number of documents, the actual form, the permit application document, the payment fee form and some twelve to fifteen pages of statistics on the proposed driveway.

The trouble is nobody outside the Land Use Office has ever seen that document in spite of repeated requests to see it starting back in November and continuing up -- well, the last time I asked was last Thursday. I think I heard in the staff report that we had seen it originally before it was mislaid. I did not see it, nor anybody I know has seen that document. We have doubts maybe, that it every existed. That can't be proved now one way

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or the other. It's been gone since mid-November.

So if it did not exist, in fact, and there's no way to prove that, but if it didn't exist, this was illegal from day one. You've got to have that application. That was a critical document in everything that followed and we didn't have it available, because this enters into the question does this development have a driveway or a road so that's an extremely important legal record. It was unavailable to us throughout this whole process and we don't think that's legal.

Then there's the matter of the site plan or topo map which ought to show, the one that originally showed six and then apparently was changed to three, if it was changed to three, there ought to be a topo map in the file showing the three lots that came before the CDRC.

COMMISSIONER GRIÑÉ: Mr. Chairman, I'd like to ask you if there were originally six and now you just have a suspicion that there's three?

MR. SIMMONS: I have a map here showing six. Would you like to see it?

COMMISSIONER GRIÑÉ: Is that for real, though? Is that for real, Diana?

MR. SIMMONS: It was originally. Because I went into the Land Use Office the day I discovered that this was in the offing. They were preparing to grant the permit. Fortunately, I said let me see the file, that the maps would have showed up --

COMMISSIONER GRIÑÉ: Just a minute. I want to hear from the Land Use Director.

MR. SIMMONS: Excuse me. I thought you were addressing me.

COMMISSIONER GRIÑÉ: I sure hope you don't keep us here for two hours on this subject.

MS. LUCERO: Mr. Chairman, Commissioner Griñé, he did originally come in with the plat showing six lots but those were not legal lots of record so we made him take that out of there, so he wasn't approved for any of that.

COMMISSIONER GRIÑÉ: Okay, so it's not legal right? Never been filed, right? Okay, then I wouldn't go any further on that. It was six and now it's three.

CHAIRMAN DURAN: So what is it now? Is it three?

MS. LUCERO: Yes, it's currently three lots.

COMMISSIONER GRIÑÉ: If it's three, then we shouldn't be here tonight with this case, because it's a driveway.

MR. SIMMONS: I've read the Code. I have a legal right to be here and make my presentation.

COMMISSIONER GRIÑÉ: It's fine. You can make your presentation. If now, it's definitely constituted as a driveway, we have don't have to go through the permitting process.

MR. SIMMONS: Well, I'm making the case here and you're supposed to weigh it and see whether I'm right or wrong. You're trying to cut me off before I've even made my case.

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COMMISSIONER GRINÉ: It's three. It's not six now.

MR. SIMMONS: Here's the map.

CHAIRMAN DURAN: Go ahead and finish your presentation, Mr. Simmons.

COMMISSIONER GRINÉ: Don't make it that it's six anymore. It's three.

MR. SIMMONS: I'm acknowledging that. Yes. Let me finish and then we can answer this. My point on this is that we never knew it was three and we got to the CDRC and testified under oath without knowing that it was three. We were laboring under the assumption, the map we had gotten early in the process was still the map of record, and had no knowledge that there was supposedly another map of record. We never saw a map of record. I can tell you I saw the files --

COMMISSIONER GRINÉ: It's three now. Let's stay with the subject that it's three. And you give us the reason why you're here today to appeal.

MR. SIMMONS: I'm trying to.

COMMISSIONER GRINÉ: Basis on what? Because you can't be based on six. There's not six anymore. It's only three.

MR. SIMMONS: The reason I'm bringing up six is we went into the CDRC without being informed that it was three. We didn't know that until we arrived.

COMMISSIONER GRINÉ: Why are we here then if it's three?

MR. SIMMONS: Because three's not legal either, according to Ms. Guerrerortiz. I just quoted you, the Code says you can have two lots for a driveway. If you go to three, then it's a road.

COMMISSIONER GRINÉ: Is that true, Oralynn?

MS. GUERRERORTIZ: Mr. Chairman, Commissioners, the section I was referring to that talks about two lots may be off a driveway is under the land division section. I don't know if it's totally applicable here frankly. The section where it actually defines a driveway as something that serves two or fewer lots is under the section that's called exemptions and land divisions and the process to review those projects. In this case, there were no lots being created. It was just a grading permit that was being requested. It's the only place in the Code that actually talks about driveways, frankly. It's the only place I know they're referred to but I don't know if it's directly applicable honestly. I'd say it's questionable.

COMMISSIONER TRUJILLO: And the three lots were existing lots?

MS. GUERRERORTIZ: The are existing lots, sir.

COMMISSIONER ANAYA: Okay.

CHAIRMAN DURAN: Mr. Simmons, please get to the point. Thank you.

MR. SIMMONS: There are a whole series of legal issues here. I'm trying to bring them up sequentially, so if I could finish and I'd be glad to answer when I complete my testimony.

CHAIRMAN DURAN: Please proceed.

MR. SIMMONS: In any case, we believe that there were two documents, the

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permit application and the topo map showing the lot splits that were not part of the original file when this permit application was made. That's the crux of the whole thing. We're trying to find out what documents were there when the permit was requested and then when the permit was granted. Those become the documents of record. And there's complete confusion there, and there's the missing permit application. That's gone, and that was critical to our appeals in this case, and that's my point.

And then to compound the problem and make matters worse, the week before the CDRC meeting, when we were preparing to testify, the entire vertical file containing the history of Canyon Vista's previous dealings with the County, including the record of its serious legal problem with the County, that whole file disappeared and has not surfaced to this day. So the main part of the public records with regard to this whole permitting process are gone; they're not available. Everything is gone, apparently, except the roll of 26 maps. They were too bulky to be in a file cabinet and file folders. They stayed behind and so that roll of maps is still part of the record.

So neighbors who planned to testify before the CDRC in support of Dave Todlock's original appeal, went to the Land Use Office to review the record and were told it was gone, it had been misplaced. It mysteriously disappeared. They did not have access to that record.

CHAIRMAN DURAN: I have one question. I have a question for Craynn. If the applicant came today to the Land Use Department, would anything be different than what's in existence out there right now? The width of the road --

MS. GUERRERORTIZ: If you're asking me if the road would be permitted?

CHAIRMAN DURAN: Yes.

MS. GUERRERORTIZ: The road met the Code requirements and it could be permitted, sir.

CHAIRMAN DURAN: And it would be permitted today?

MS. GUERRERORTIZ: Yes, sir.

CHAIRMAN DURAN: So the fact of the matter, the fact is that there isn't a public record doesn't make any difference -- it may make a difference to you, Mr. Simmons. I'm not saying it doesn't make a difference to you because obviously it does. But the current situation, nothing would change. It would still be the same thing based on our current Code.

MR. SIMMONS: Well, there's a definite permitting process provided in the Code. I quoted to you earlier that the Code Administrator is required by the Code, and I think that's a legal record --

CHAIRMAN DURAN: We just heard the Land Use Administrator say that the process wouldn't change at all.

MR. SIMMONS: It would continue to be illegal?

CHAIRMAN DURAN: No one's saying it's illegal. You're the only one

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saying it's illegal.

MR. SIMMONS: I'm trying to make this case.

COMMISSIONER GRINÉ: It's not illegal so I don't know what you're arguing for. It's not illegal. It wouldn't change. You just heard it from staff.

COMMISSIONER GONZALES: Mr. Chairman, if I could, if we could allow Mr. Simmons to finish. I know you're trying to get to the point --

MR. SIMMONS: I am.

COMMISSIONER GONZALES: -- and I think the issue that Mr. Simmons is talking about is that he's got a difference of opinion of what the Administrator and the Attorney has indicated and I think he's trying to make that point to the Commission and I'm asking us to weigh that objectively.

CHAIRMAN DURAN: I understand that, Commissioner, but how long do we have to listen to someone who is not in agreement with our Code. I think there's a reasonable amount of time that you should have to try to -- you're not going to convince us, because we're going to go with the Code and our staff, but how long --

MR. SIMMONS: I'm here to defend the Code and I'm saying the Code was violated and --

COMMISSIONER GRINÉ: It was not violated. You just heard that it wouldn't change.

COMMISSIONER GONZALES: If we can just ask Mr. Simmons to continue, understanding that he has disagreements with our administrators and I think we can finish this fairly soon. I think Mr. Simmons wants to get to the point on this issue.

MR. SIMMONS: Well, it isn't that long. I don't see that I'm holding you up. We consider these very serious issues. We've got 28 people here who believe they should have been notified and we're just trying to make the case.

COMMISSIONER GRINÉ: I don't see 28 people out there.

MR. SIMMONS: No, they signed our petition --

CHAIRMAN DURAN: Let's let him finish so we can move on.

COMMISSIONER GONZALES: Thank you, Mr. Chairman.

MR. SIMMONS: My point was that neighbors who went in to the Land Use Office preparing to testify under oath in this courthouse needed to see the record because most of them had not heard about any development or driveway. There had been no notification and so they came in. They have not had the opportunity to assess impacts on their own property. There were impacts, as noted in the staff report. Two impacts were granted by the CDRC and that was by a miracle because we found out, David Tedlock and I and got two in quick and then one was accidentally -- another property owner mentioned one as it went by.

In any case, the neighbors went in and were told by the Land Use Office the record was not there. That included doctors Candace and Chris Benyei from Connecticut who own 40 acres on the south side on the now south boundary of this development. The first they

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knew about any driveway or any development on this 600 acres is when they received David Tedlock's notification of his appearance before the CDRC on January 28. They phoned David Tedlock and said, "What's this all about? We know nothing about it." He told them. They said we should fly out from Connecticut so we can appear before the CDRC and support your appeal. We didn't have a chance to examine the records to see if there's an impact on our property. Our property overlooks this development.

They've owned this property for ten years, been county taxpayers for ten years. This is going to be their retirement home. They're very concerned about it. They flew out from Connecticut to attend the CDRC. They came a day early. Went into the Land Use Office to review the records so that they would know what they were talking about when they testified under oath before the CDRC. Were told the record was mislaid and there was nothing to see. They did see the maps. And they mentioned this. This is recorded in the minutes that they did not have access to the full legal record.

So the upshot of the records being lost was that we all had to prepare testimony --

COMMISSIONER GRINÉ: Mr. Chairman, I've got to stop him. You're making so many allegations here and you're actually putting our staff that they are losing records.

MR. SIMMONS: The records aren't available. I've explained, I've tried from day one to see the permit application that this subdivider provided. And I've not seen it to this day and that's the key --

COMMISSIONER GRINÉ: Who's subdividing? There's no such thing right now that's going to be subdivided.

MR. SIMMONS: Well, I would say three lots that the CDRC approved for this driveway is a division, it's a lot split.

COMMISSIONER GONZALES: We were under the impression, Mr. Simmons, that those are existing lots. Was there an application for a three-lot subdivision that you're presenting here?

MR. SIMMONS: They're putting in a driveway and the driveway has to go somewhere.

COMMISSIONER GONZALES: Did the three lots, Mr. Simmons, exist before the permit was requested?

MR. SIMMONS: We've never seen the permit. We don't know what it said. Nobody knows.

COMMISSIONER GONZALES: Let me ask the staff the question. Dalynn or Vicki, did the three lots exist prior to the request for a driveway permit? That's a question for the staff, Mr. Simmons.

MS. LUCERO: Mr. Chairman, Commissioner Gonzales, the three lots did exist before the application for the driveway.

COMMISSIONER GONZALES: So has there ever been in conjunction with this permit a request for subdivision of any part of this land?

MS. LUCERO: No, there has not.

COMMISSIONER GONZALES: Mr. Simmons, I think what the Commission is trying to do is stay focused on the issue at hand. This is a driveway permit that you're appealing and moving up to allegations of loss of the application and the issue that there's a subdivision and we really want to stay focused on the merits and it seems to us that what our staff has indicated and our legal counsel has provided to us is that the staff has acted properly, that there was proper notification, due process was not violated and the fact that a subdivision has not occurred. That there are three lots that existed prior to the request for a permit. And if I understand the staff properly is whether it was driveway permit or a road permit, those are all issues that don't require publication. I think it just requires a submittal by the applicant of some type of application to receive that. Is that correct?

MS. GUERRERORTIZ: Mr. Chairman, Commissioners, actually a road construction permit does require noticing.

COMMISSIONER GONZALES: Okay, then so then the issue is that when the application came in for a driveway permit, the staff reviewed this and what you're saying --

MS. GUERRERORTIZ: We reviewed it as a driveway.

COMMISSIONER GONZALES: When I'm listening to you, we're trying to get to the point of the issue, in my mind, whether this should be a road or a driveway permit. If you're asking us to go back and start all over again, that's one issue that you need to state very clearly. But to me in my mind, what I'm hearing is whether this should be a road permit or whether this should be a driveway permit. And I guess what I want to know from the staff is that, if the staff made the call that it should have been a road permit, then there was a whole series of other things that the applicant would have had to have done, including notifying the neighbors. Is that right?

MS. GUERRERORTIZ: Mr. Chairman, Commissioners, it's our understanding that there's how many homes back there? I think the perspective from the applicant that brought it in was that it was a driveway. They wanted a driveway to access the property. They weren't building the road. And staff did accept that. But there could be an argument saying that this was a road.

COMMISSIONER ANAYA: Mr. Chairman, it should be acknowledged at this time that Mr. Simmons -- and this should be emphasized, rather, that Mr. Simmons has agreed that the three lots are existing, which service the request of this driveway as presented.

CHAIRMAN DURAN: You know what, I think that the facts are here, Mr. Simmons, you have three more minutes to finish your presentation. And I'm going to keep close watch on it.

MR. SIMMONS: I'm sure you will. Our final point is that in fact the Code states that notification of all affected property owners and posting of notice will be required for roads and driveways accessing more than one property. And that occurs over in

residential uses under reviews. Maybe your staff will say that doesn't apply here, doesn't have general application. However, in the absence of specific and separate set of standards or regs on driveways, I think any stray references like this help us understand the intent of the Code. There is nobody on our list of 28 people and surrounding property owners who thinks that this is a driveway.

The developers, planners said at the CDRC meeting, it's in there, in the minutes and it was quoted in the newspaper the next day that in fact they will build a driveway and then move in and raise the standards and build a road for a future subdivision. Once the driveway's in the impacts have already occurred. That's our problem. And there were impacts. By accident, we got in and got two of those impacts modified, but the other people did not have the opportunity since there was no noticing to file an appeal, including the people from Connecticut who came out here and they did not have the opportunity either.

CHAIRMAN DURAN: Mr. Simmons, I'd just like to say that when a subdivision does occur out there, the public will be notified, the property owners will be notified.

MR. SIMMONS: But if they upgrade the driveway, it's just a few inches less than the road and then they go out there and make it wide enough for a road and then ask for approval and do the public notification, by then it will be too late because the impacts will already have occurred. The impact --

CHAIRMAN DURAN: Thank you, Mr. Simmons.

COMMISSIONER GONZALES: I have a question.

MR. SIMMONS: Nobody has done an inspection of this property. If there was, I didn't see it in all the files that are lost. And I don't think there was a site visit.

COMMISSIONER GRINÉ: We've got staff right behind you and I think they'll say otherwise.

MR. SIMMONS: I beg your pardon.

COMMISSIONER GRINÉ: Staff right behind will say otherwise than what you're claiming right there.

MR. SIMMONS: Well, I don't know. I just never saw any inspection report.

COMMISSIONER GRINÉ: They don't have to tell you.

MR. SIMMONS: Well, we're kept in the dark again.

COMMISSIONER GONZALES: Mr. Chairman, Mr. Simmons, let me state that I appreciate the time that you've taken to try to work and bring the facts that you believe to the forefront. I'm just trying to understand your appeal. I don't want to delay this any longer. So you're questioning, whether one, it's a driveway permit, or whether it should be a road permit. Is that correct? Well, first of all, you're questioning the process that took place.

MR. SIMMONS: I'm saying the whole process appears to be illegal because the legal record was not available as required by the Code.

COMMISSIONER GONZALES: Okay, this second, which you did a very

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good job explaining what your point was. The second was the issue of whether staff should have recognized it as a road or a driveway.

MR. SIMMONS: We're only interested in that because it was crucial to any public noticing and the whole problem here is the lack of public noticing. And then when we tried to wade through that, without that, which we should have had it from the beginning, then the records weren't available. So we had two strikes against us trying to get what we were entitled to under the Code. The Code requires protecting the public welfare. It's been violated.

COMMISSIONER GONZALES: Yes, sir. We appreciate your -- I have another question of staff. We talked about this earlier tonight with Camino Delilah and the issue of addressing -- this is a driveway permit but having the ability to address up front roadways that will occur on property. I think it's reasonable for Mr. Simmons and the neighbors around to be concerned that 600 acres is going to turn into a subdivision. I think I hear from Mr. Simmons' presentation that that may be the intent of the developer or whoever's coming in to request this.

What are we doing, Orallynn, and what can we say for the record that's ensuring the protection of the neighbors around it that there will be notification? I look at this and I see 600 acres with a driveway that goes 2 1/2 miles.

MS. GUERRERORTIZ: These are big lots.

COMMISSIONER GONZALES: And the concern that if the developer wanted to sell the middle tract, not the developer, but the applicant wanted to sell the middle tract, whoever bought it was going to be buying a road that didn't meet County standards to get to that point. Because the applicant would be allowed to sell that as well. So what are we doing now just to assure that we will be able to monitor this and watch this if a driveway permit is allowed?

MS. GUERRERORTIZ: All right, we should state that when the lots were created there were no requirements to build any roads whatsoever. And so the owner of this property, Canyon Vista, is under no requirements under the County Code to build any driveway meeting any standard. But he is in fact building a driveway that would meet a County road standard.

COMMISSIONER GONZALES: It would meet a County road standard?

MS. GUERRERORTIZ: For a subdivision.

COMMISSIONER GONZALES: So right now, the driveway will meet County road standards after it's built?

MS. LUCERO: Mr. Chairman, Commissioner Gonzales, actually, it wouldn't meet the County road requirements as it is right now. The current driveway has portions of it that are 15% slope and a road permit would only allow slopes of up to 11%. The current driving surface of the driveway that was permitted ranges from 15 to 23 feet and a road would actually require you to have a 24-foot driving surface.

COMMISSIONER GONZALES: Just for the issue of the slope, this would

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never be allowed to go from a driveway permit to a full road then?

MS. GUERRERORTIZ: Unless they got a variance.

COMMISSIONER GONZALES: Unless they got a variance.

CHAIRMAN DURAN: So wouldn't it be safe to say that if there was any further division of the property, that that would trigger other road standards?

MS. LUCERO: Yes, Mr. Chairman.

CHAIRMAN DURAN: So what's wrong with making a condition of denying it, if we decide to do this, of denying this appeal, that we deny it with the condition that any further division of this property would require that the applicant meet those standards? Wouldn't that satisfy your concern? Mr. Simmons, there's nothing there we can do about the three lots that are in existence, whether there's public record or not, there's nothing we can do. But we sure can make sure that if there's any further division, which is, I hear, your main concern, that it meets current standards and that the public process at that point is met.

MS. GUERRERORTIZ: Mr. Chairman, Commissioners, I would say that under current Code, if it came in as a subdivision or summary review subdivision, the road would have to meet standards. If it came in under an exempt family transfer, you could get out of meeting the road standards.

CHAIRMAN DURAN: Well, let's make it any division, whether it's family transfer or full-blown subdivision.

COMMISSIONER ANAYA: No, I think that the Code is pretty clear, Mr. Chairman, that any further subdividing, any further proposed development that may occur on these three lots is already governed by our codes and they'll be addressed at the time of the request for expansion.

CHAIRMAN DURAN: That's fine. I can't make the motion.

COMMISSIONER GONZALES: Mr. Chairman, let me just ask again for the record because Paul asked this and it was prior to Mr. Simmons making his presentation. After listening to his presentation, which I'm sure you've reviewed whatever he submitted and reviewed the CDRC again, you feel unequivocally, your opinion in guiding this body in making the decision on the due process, is that there was no due process that has been violated? Is that what you're counseling this governing body on tonight?

MS. BROWN: Mr. Chairman, Commissioner Gonzales, yes. While it is unfortunate that the file or the original papers have disappeared, were lost, were accidentally picked up by a member of the public, we have a lot of members of the public who come through the Land Use Department. We don't know. It is not illegal for us to lose papers. That happens some times, as unfortunate as it may be. What Mr. Simmons has a right to is to know the basis for the Land Use Administrator's decision. Whether that's from a xerox copy or from someone's recollection or however that's now documented, my understanding from the Land Use staff is the file now shows the documentation on which we're relying and have relied to issue that permit. And as long as you can tell the basis for our decision, then

that's what Mr. Simmons or anyone else is entitled to know.

Why are we issuing this as a driveway permit? What is the basis for our decision and what is the documentation for that decision? Whether it's a recreation of a file or an original file really is irrelevant. It isn't good that we lose documents. We don't know what happened to them. We know that they were requested to be viewed by some members of the public. They were provided to them. Some time subsequent to those being provided to members of the public the file disappeared. It very well could have been picked up by accident by someone we don't know. But in any event, we believe that Mr. Simmons has all the documentation available to him now to understand why we made our decision and the fact that he's here tonight shows that his due process rights are protected by the right to appeal the Land Use Administrator's decision.

He has the right to come here and argue before you why the Land Use Administrator's decision was wrong. And that's where his due process rights are protected. That he has a right to come, make his arguments, be heard, and understand why we made our decision.

COMMISSIONER GONZALES: Well I wanted, before we go on, because I know that there was some discussion and I wanted to make sure that Mr. Simmons for the record states whether he felt his due process was hurt or not, because I know that there was some questioning in between and the Chairman asked you to wrap things up, but I do think that if that's the issue, if you adequately feel that you've stated your position.

MR. SIMMONS: Well, I didn't believe the 18 people who did not know about this driveway and had no way to find out, and who had impacts which could not be brought before this driveway was built, I think their due process was violated. And the fact that we didn't have prior notification as well, and I quoted you the clause from the Code that says more than one lot, there shall be public notification, we didn't have that. So we believe our due process rights have been violated.

COMMISSIONER GONZALES: Thank you, Mr. Simmons.

CHAIRMAN DURAN: Mr. Simmons, or maybe I want to say this to Denise. I think that appealing the Land Use Administrator's decision and claiming that the Land Use Department did something illegal are two different things. And what I hear Mr. Simmons saying is not necessarily that he's appealing the decision, but that we have done something illegal and against the law. That's why I question why we're even hearing this thing tonight. I understand we're trying to deal with the due process stuff.

MS. BROWN: Well, Mr. Chairman, I guess from a legal perspective it seems to me that the appeal has been sort of a moving target, because if you look in your packet, the initial appeal at the CDRC level was the location of the driveway. And my understanding is there were some changes to where the driveway would be located so that it would be less visible to the neighboring properties. Then the basis for the appeal as I read it in the file from CDRC here has changed and it's no longer the location of the driveway, but it now is that the file was lost. So it seems like we have different grounds for appeal

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that have been raised by Mr. Simmons.

Losing a file is not a decision of the Land Use Administrator that we appeal. The decision, and I think Commissioner Gonzales has tried to home in on this is we issued a driveway permit, should it have been a road permit? And the question, I believe, from Mr. Simmons is, had it been a road permit, and had you been noticed, you are here tonight to tell us what is it about a road you wouldn't want either. And that's what the right to appeal is for. I think, I agree that the real issue is whether or not it should have been a road permit and therefore they should have been noticed and then the question is, okay, if it had been noticed and then you would have come in to talk to us, tell us what you don't like about the project. You're here tonight to tell us what you don't like about the project. And this is Mr. Simmons' opportunity to do that.

COMMISSIONER GONZALES: Mr. Chairman, Denice has hit it the way I see it and I think that's before us here. I'm having a hard time following the issue of the due process when we've been counseled otherwise or the issue of the loss of files because I know that unfortunately some times that happens but what we do to repair that is also important.

MS. D. LUCERO: Mr. Chairman, Commissioners, just for the record, I'd like to state that Mr. Simmons and Mr. Tedlock, and Mr. Tedlock's attorney came in and reviewed the file before it was lost. I'd just like to reiterate that.

CHAIRMAN DURAN: Thank you. Is the opponent here? The other side?
[Duly sworn, Harold Moya testified as follows:]

HAROLD MOYA: My name's Harold Moya. I am the planner for this project. I am the applicant for Canyon Vista, who was the original applicant for this driveway. I guess I'm not here to split hairs with Mr. Simmons and actually I don't want to exchange punches with him as he described it. Mr. Simmons has raised a couple of issues. One of the issues was regarding a driveway. Whether this was a driveway or a road. I think we all agree that this is a driveway. We followed the procedures for driveway. There's no notification needed for a driveway. We did what we were supposed to do. The other issue that we'd like to address is we ask that you would of course deny this appeal, but one of the conditions that the CDRC imposed was that we explore an alternate route for an area which is considered the Garden of the Gods.

We did explore that to see whether it was feasible. Unfortunately, both of the routes that we've attempted exceed 30% slope, which would violate the Code requirements of a driveway or a road. So we'd ask tonight that you would deny their appeal and that you would impose a condition that the alternate route need not be evaluated any further. I don't know if there's any question about the original application.

COMMISSIONER GONZALES: I have a question, Mr. Chairman. Where is the applicant tonight? How come he's not here?

MR. MOYA: He's sitting right here.

COMMISSIONER GONZALES: Can I talk to him please?

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[Duly sworn, Kevin McCauley testified as follows:]

KEVIN MCCAULEY: My name is Kevin McCauley, 68 Wolf Road, Cerrillos, New Mexico, right across from the property that's in dispute here.

COMMISSIONER GONZALES: Thank you, Mr. McCauley. How long have you owned the property?

MR. MCCAULEY: We've had it just about three years exactly.

COMMISSIONER GONZALES: And you're requesting now a driveway permit to get to one section of it. Is there a reason why you didn't do it when you bought the property?

MR. MCCAULEY: Well, that's actually one of the problems we have. We have an easement that's in dispute with Mr. Simmons that crosses his property and it's for ingress and egress and he's denying the right to improve that to a safe standard of road. We took Hank Blackwell out, the Fire Marshal and he said that yes, it was nowhere near safe for anything out there to get emergency vehicles, ambulance, whatever. And so we bought, instead of fighting with him over that easement, that existing easement, which is almost a mile long itself, we bought an adjacent property that connects to County Road 42. It's a small, 10-acre piece up on kind of a pan handle thing. We bought that so we'd have our own property to a County Road and wouldn't have to deal with easements and stuff.

We thought that was a pretty clear way to do it and not to aggravate Mr. Simmons anymore by building or improving the driveway that's existing, going next to his house. So we were a little surprised when we ran into so much opposition to build a driveway across our existing property where we own everything. We spent a lot of money, a lot of effort on the engineering, to nestle the road, the driveway down in where it's least visible. It is a long driveway and somebody's going to see it but it's the least visible. We did a lot of reengineering, a lot of redrawing many, many times with Tierra Engineering, did our work for us.

And we got it in the best place we could. It's rough terrain. There's no doubt about that. And it's attractive out there and one of the concerns of ours was the terrain and so we worked on a driveway to get to the existing house. The ranch house facility has been there and that's where this disputed driveway --

COMMISSIONER GONZALES: So are you moving to the area?

MR. MCCAULEY: Well, yes. If we ever get this all cleared up. I thought it would be done by now. I was planning to build a house out there this spring for myself and my family but I don't know how much longer this is going to take.

COMMISSIONER GONZALES: Mr. McCauley, can I ask you just honestly what your intention for the property is, do you intend on subdividing it?

MR. MCCAULEY: It's an expensive piece of property and traditionally, that's what people have done. The woman we bought it from, Susie Henderson sold actually Tedlock's piece so I would assume, honestly somewhere down the line we'll sell off a portion of it to recoup some of the costs of the property. It's more than you need for a

single house. We're not movie stars we just work for a living so there's not hardly any way we can justify having almost a section of land to have our house on.

COMMISSIONER GONZALES: So knowing, I guess knowing what the intention down the line for a future subdivision, is there precautions that we take now to ensure as he comes in and applies that there's notification? And I respect your right to develop. I want to assure that you know people all across that whole area are doing the same thing but you can understand my concern.

MR. MCCAULEY: And all that is already in place. To do any kind of subdivision, there's all the notification, all the road improvements, everything are already in place. If you want to do anything, you're going to have to meet those requirements.

COMMISSIONER GONZALES: Although your road wouldn't meet the requirements for a County road, if I understand correctly.

MR. MCCAULEY: That's right.

CHAIRMAN DURAN: Portions of it wouldn't.

MR. MCCAULEY: But if we did anything further, if we sold another 40-acre lot, which is the minimum in that area, then we'd have to bring it up to those requirement, is my understanding. Right now we have existing lots and we want to have a driveway to service those. That's better than what Mr. Simmons is allowing to give us without a court battle.

COMMISSIONER GONZALES: So what you're testifying tonight is that your request if for a driveway permit to go to a primary residence for yourself.

MR. MCCAULEY: Yes. Myself or my partner. I'm not sure who's going to take the old Henderson homestead.

COMMISSIONER GONZALES: Thank you.

CHAIRMAN DURAN: Thank you, Mr. McCauley. Is there anyone else out there that would like to speak to this issue? Please come forward. Are you through with your presentation?

MR. MOYA: We just brought up the issue of denying the appeal and the other condition which CDRC had imposed which was exploring an alternate route. I wanted to clarify for this Board that we did explore an alternate route. It does not meet Code requirements and we're asking that that alternate route no longer be forced upon us. We've tried to meet with these neighbors and tried to everything we possibly can to satisfy them and unfortunately we're not doing that and they keep attacking us from different directions. We'd just like that issue clarified if possible tonight.

COMMISSIONER TRUJILLO: Mr. Chairman, I have just one question. Is this road going to deface a national landmark?

MR. MOYA: No, it does not deface a national landmark. The Garden of the Gods is in front of this, this is a backdrop for it. To answer your question how significant is this -- apparently it was significant at CDRC, but as far as tonight's appeal, it was not an issue. Mr. Simmons had not raised that in his appeal. It's an issue that appears to have

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been dropped. It was an attempt for us to be chasing our tail trying to appease the neighbors.

CHAIRMAN DURAN: Mr. Simmons, you've had your chance to speak. Mr. Simmons, I'm not asking you to speak.

COMMISSIONER GONZALES: Mr. Chairman, he's appealing this. Doesn't he have the right --

CHAIRMAN DURAN: I'm running this meeting, Commissioner Gonzales, and I believe that the facts are clear and so those of you that want to come up here and speak, if you can contribute to the facts or make them more clear, please do so.

COMMISSIONER GONZALES: Just for the record, I'd like you to know my objection to the Chairman's call.

CHAIRMAN DURAN: What objection was that?

COMMISSIONER GONZALES: That you're not allowing Mr. Simmons to respond to --

COMMISSIONER ANAYA: Point of order, Mr. Chairman. It's the other way around, Commissioner Gonzales. In this situation, it is the defense, so to speak, that has that particular right. He is the prime mover of the proposal and it's the other way around with the rebuttal. Am I correct, Denise?

MS. BROWN: Actually, Mr. Chairman, Commissioner Anaya, the party tonight that has the right to cross examine other witnesses is the appellant, Mr. Simmons. He's the one who has the right to question any of the other witnesses who speak.

COMMISSIONER ANAYA: So it's the reverse order tonight?

MS. BROWN: Right. It's his appeal. It's whoever has filed the appeal that is the party appearing before you.

COMMISSIONER ANAYA: I see.

CHAIRMAN DURAN: And I'll allow you to do that, Mr. Simmons, after we finish the public comment, if that's okay. Unless you really have a burning desire to come up now. So is there anyone out there that would like to address the Commission concerning this issue? Please step forward. And again, let me just say that I think the facts are pretty clear so if you have something to contribute, we welcome it.

[Duly sworn, Jeff Langford testified as follows:]

JEFF LANGFORD: My name is Jeff Langford. I live at Route 2, Box 433, Santa Fe, which is adjacent to the subject property. Before I start, I wanted to ask if I could just ask a question myself about something that you were discussing, Mr. Chairman, about putting requirements about future notification on the future subdivision if the appeal is denied.

CHAIRMAN DURAN: The maker of the motion could make that part of their motion. I can't make that --

MR. LANGFORD: I'm just wondering if it's procedurally correct to ask a question at this point before I have anything to offer, because I may not.

CHAIRMAN DURAN: You can do anything you want. You have the floor.

MR. LANGFORD: I just wanted to ask if the question could be raised, possibly to the staff, what the notification requirements and the review and approval process are for, I think it's what's you call a lot split that doesn't need to meet the requirements for a full-blown subdivision. Would there be a similar notification requirements and the same types of hearings and those sorts of things?

MS. GUERRERORTIZ: Mr. Chairman, Commissioners, if an application was made for any kind of land division lot split, anybody who bordered the property or is 100 feet of the property line would be notified by certified letter. The property would be posted. I don't think there's any notification in the paper, so that's it. Am I correct? I'm looking at my staff who know some of these rules better than I do. The process would require that each new lot created has a buildable site and that site is accessible and then it depends on what type of land division or lot split it is for what kind of quality road it has to be.

As stated, family transfers don't have to build off-site road improvements but most of the land divisions do require roads that meet County standards. If it's two or fewer lots or if you built it really close to the front, then it would just have to meet a driveway standard and wouldn't have to meet a County road standard.

MR. LANGFORD: Okay, I have another question. Are the members of the partnership, the Canyon Vista partnership, are they family members? Does anybody know the answer to that?

MS. BROWN: I'm not sure. I don't want to get into a back and forth here, but are you asking whether or not the partnership are related to each other or whether or not a partnership can do a family transfer?

MR. LANGFORD: Well, I guess both. One question leads to the other. I have a feeling --

MS. BROWN: I think you want to know whether they can do a family transfer and no, a partnership is not a person. A partnership doesn't have a daughter or a son or a sister or brother, so partnerships, corporations, business entities cannot --

MR. LANGFORD: Could a business entity be dissolved in order to effect a family transfer?

MS. BROWN: Yes. If property is held by an individual, then they can qualify for a family transfer.

MR. LANGFORD: Then all I really wanted to do is if I could just pass out to the Commissioners this map that was prepared from the original plans from the Canyon Vista.

CHAIRMAN DURAN: Is this showing the six lots?

MR. LANGFORD: This is showing the six lots.

CHAIRMAN DURAN: Well, this is stuff that we're not going to -- we've already talked about the six lots.

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COMMISSIONER ANAYA: Yes, we don't need to discuss this.

CHAIRMAN DURAN: Please go back to the podium.

COMMISSIONER ANAYA: That's not the issue. We've already agreed that it's only three.

CHAIRMAN DURAN: You don't have to shut up. I asked you before you spoke if you could bring some facts or help us clear the facts and what you're doing is muddying up the facts because we already talked about this. So I'm relying on you to do the right thing here.

MS. BROWN: Mr. Chairman, if I could just interject just for a moment. I think the frustration of the Commission is that they need to hear relevant evidence and I think they're feeling that the six lot issue is not relevant, so if you can explain how that's how relevant.

MR. LANGFORD: I understand. Well, first off I should say that several people here have acknowledged that they may be an issue of whether or not it's a driveway as opposed to a road, according to County Code or County requirements.

COMMISSIONER GRINÉ: You're not adding anything new.

CHAIRMAN DURAN: Let him speak.

MR. LANGFORD: But the argument -- I tried to make the argument at the CDRC meeting last time and I was extremely limited in my time because again, it's like tonight we're running long, that it is a road and not a driveway and that it was designed and engineered with the intent to serve the six lots that he intends to subdivide and I also stated that Mr. McCauley has been out to my property and talked to me and has told me that he had intent to subdivide the property so what I'm saying, basically is that this is -- it's fine to split hairs on a technicality to say, okay, there are three legal lots of record on the property, and he's saying, I've got to get over here to my house, therefore I need this road, but if anyone has seen the plans for the road -- I don't know if any of the plans are here tonight, but they are so close to meeting County specs for a subdivision road. I think there's a three or four inch difference in the width of the road base for the next level road up from the one that would be required for the type of subdivision that I think he's planning on doing.

All that is lacking is the actual basecourse material itself.

CHAIRMAN DURAN: Excuse me sir, but you did hear testimony that if he was to subdivide this property, that the process would be honored, that he has to go through a process. Sir, I'm giving you one minute more because since you've been up here you haven't contributed to any of the facts.

MR. LANGFORD: Well, I did raise an issue I think we should all be concerned about about the family transfer. All they have to do apparently, is dissolve --

CHAIRMAN DURAN: But that it is a division of the property, as I just stated.

MR. LANGFORD: That doesn't require the upgrading of the road.

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Apparently. That's what I thought I heard anyway. Anyway, that's all I have to say about it.

CHAIRMAN DURAN: Thank you very much.

COMMISSIONER GONZALES: I have a question of Mr. McCauley. I think what was just provided is relevant in the sense that in the six lots that you were planning on doing originally --

MR. MCCAULEY: That was a working drawing. That was one proposal we were thinking about.

COMMISSIONER GONZALES: Well the road you have in the working drawing exactly looks like the road that you're proposing for a driveway permit.

CHAIRMAN DURAN: I'm sorry, Commissioner, but this really is irrelevant. Why are we bringing this up?

COMMISSIONER GONZALES: Mr. Chairman, my point is to zero in on whether this should have been a road permit or a driveway permit. And I think we're all trying to really see and find our way through it and it seems to me if this was originally intended to be a road permit or a road, I don't understand why you just don't apply for a road permit and -- it seems that that was your original intention if this was a working sketch.

MR. MCCAULEY: We did many sketches of what we could do there and it's far down the line. Nothing's really decided and so right now we want to get to the property that we want to use the end where the Henderson Ranch is. We want to get there at some point in the future or to do something else and it seemed to make sense to have the drawings done at that time, I guess.

COMMISSIONER GONZALES: But if some time in the future you'd like to move this driveway into a full-blown road.

MR. MCCAULEY: Yes, if we do a subdivision. If we sell -- we might sell the whole property as it is and then not have to deal with this anymore. It's gotten to be kind of cumbersome after years of being harassed, I feel. So it's unclear what we're going to do but if it goes to a subdivision it will have to be upgraded and notified to a road and all that.

COMMISSIONER GONZALES: Thank you. And that was my point, Mr. Chairman.

MR. MCCAULEY: Was that understood?

COMMISSIONER GONZALES: That's fine. Thank you, Mr. McCauley.

CHAIRMAN DURAN: If there's anyone else who would like to speak to this issue please step forward. Ma'am, if you have nothing new to add, I'm going to ask you to sit down. I'm sorry.

[Duly sworn, Linda Jacobson testified as follows:]

LINDA JACOBSON: Linda Jacobson. I live at 192 County Road 42. My property is adjacent to the ten-acre lot that Mr. McCauley purchased to access the 60 acres. I am a little confused because from the beginning I was told by Mr. McCauley there would

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be so many lots -- four. I was told by Mr. Kavanaugh there would be 24 to 40 lots eventually and that it was already approved and that there was nothing I could do about it. And at that point, which was in October 1997, I felt that we were denied our rights to appeal.

CHAIRMAN DURAN: To appeal what?

MS. JACOBSON: Well, seeing that it would be a subdivision and considering the fact that --

CHAIRMAN DURAN: But there was no subdivision.

MS. JACOBSON: At that point it was. I was told that that's what was going in.

CHAIRMAN DURAN: But there was no submittal for a subdivision, was there? There's never been a submittal for a subdivision.

MS. JACOBSON: When I called to ask the County what was happening next to my property because there was a road being put in on my property line, Mr. Kavanaugh said that it had already been approved as a 24 to 40-house subdivision.

CHAIRMAN DURAN: Is that Mr. Kavanaugh Paul Kavanaugh?

MS. JACOBSON: Yes.

CHAIRMAN DURAN: Is that true, Paul?

PAUL KAVANAUGH (Land Use Department): No, I didn't.

CHAIRMAN DURAN: Okay.

MS. JACOBSON: Well, that's what I was told over the phone.

CHAIRMAN DURAN: But there's never been a submittal for a 20-lot subdivision.

COMMISSIONER ANAYA: I think there's a great misconception out there that approval of this road is necessarily going to grant 24 lots, 50 lots, whatever and more. And this is the basis of the whole approval. That's not true. If he wants to build a driveway that's almost up to County road standards, that's his money, it's his nickel. We're approving up to three lots, if we approve it tonight rather, if there is approval. The request before us is for three lots that are there now today. And that's what we're judging here today. If they're going to go on further to divide any further, they still have to go through the entire process again with notification to you, to Mr. Simmons and anybody else that's in the area. We have to go through that process, so you're really wasting our time at this moment on this particular proposal. Please understand that.

MS. JACOBSON: I understand that. I don't care how many houses go in there as a subdivision. My concern is that before this was even appealed or anything, there was a driveway put in in 1996 on my property line. Trees were ripped out and arroyos were filled in and the County called me asking me what was happening and I told them to call Mr. McCauley because it was his road that he was putting in.

COMMISSIONER ANAYA: On your property?

MR. JACOBSON: Next to my property, immediately adjacent, the whole

entire length of my property, 1100 feet. It turned out a year later I found out that it was never permitted until the following year. And this road was against Code. And Kelly Martinez of the County called me and asked me, told me that it was not permitted and that they were going to stop allowing him to use this road that he was putting in. It's already in. It's adjacent to my property, but it appears, if this map is true, it appears that it's not the same driveway that we're talking about tonight. It's not in the same location. I have seen the stakes on the land and they're not in the same location.

My concern is this original driveway that was put in, or road, whatever, because it goes on to the other property, and it's been used for that purpose, will this part of the property be reclaimed? Will this road area be reclaimed? It's ripped up quite bad. It's filled in arroyos and done a lot of damage to the land. And that was one of my reasons for supporting Mr. Simmons. I felt that a lot of the process had been subverted. To my knowledge, from what I see adjacent to my property and I felt like it would be more important if we went through the process of permitting properly for a road, because that's what's eventually going to be needed for the property. But also to reclaim the land that's been destroyed.

COMMISSIONER ANAYA: Are you advocating that they use that particular drive that you're explaining right now, or would you rather have what they are requesting tonight? As an adjacent landowner, which would you prefer?

MS. JACOBSON: Somewhere in between. The reason I'm saying that is the original road was a terrible impact on my property. It was immediately adjacent to my fence line. And if it's true, and I don't know positively, is it true that this road has been moved over, I don't know, thirty feet?

CHAIRMAN DURAN: I have no idea. Ma'am, you need to address the Commission. I really think that the driveway permit that has been issued, nothing is going to change where the road is right now. If the applicant comes in for a subdivision, that's when you can bring your concerns up, that's when you can ask for the governing bodies to adopt recommendations that are beneficial to the neighbors, to the property owners, that's when it all happens. At this point, my understanding is that we can't do anything about that, about reseeding the driveway.

MS. JACOBSON: This is not the driveway that's being permitted.

CHAIRMAN DURAN: The old driveway, right.

MS. JACOBSON: It was never permitted.

CHAIRMAN DURAN: That's the first I've heard of that. Is that --

MR. KAVANAUGH: Mr. Chairman, Commissioners, the road that Ms. Jacobson is referring to came in as a notice of violation a year ago. Charlie Gonzales worked with Mr. McCauley in bringing that road, or getting Mr. McCauley to comply. Part of the condition of approval is all of that existing road that was done prior without a permit be reclaimed.

CHAIRMAN DURAN: Part of the permit that you issued?

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MR. KAVANAUGH: The very first permit. That was like permit 98-740 I believe is the number. And that road that was graded will be reclaimed.

CHAIRMAN DURAN: Under the existing permit?

MR. KAVANAUGH: Under the existing permit, for the second road. Because they did move the road over approximately 30 feet. Part of our approval is that it's reclaimed.

CHAIRMAN DURAN: Thank you, Paul. Thank you very much.

[Duly sworn, Helen Boyce testified as follows:]

HELEN BOYCE: I'd like to take a different slant on this. Mr. McCauley has three properties. He wants to keep one for himself. He can sell two of them tomorrow. I think it's sort of precedent-setting that you can have a driveway, three lots, he will sell one piece of property tomorrow and you'll have an application to divide that particular piece into another three lots. They don't have to do anything to this driveway. It's still only three lots and a driveway. The second lot, which has been sold tomorrow or the next day, also can be divided again without improvement to the road.

It's a private owner. He is saying, You gave Mr. McCauley permission to have a driveway, three properties, one for myself, two which I will sell. That means in a very short time, once this is permitted and the driveway is in, we might have a population of twelve people driving on that corroded driveway. And I wonder if you're not, with this permit, setting a precedent that circumvents notification of the neighbors of these now nine lots with houses on it and driveways on it. Those people don't have to give notification either. Just a thought. Thank you.

CHAIRMAN DURAN: Thank you. I'd like to suggest that whoever makes the motion that they incorporate some language in there that specifically says that any further division of any of the property owned by the applicant requires public notice. Is there anyone else out there in the public that would like to address the Commission? If not, Mr. Simmons, I'm going to let you have the last word.

MR. SIMMONS: There's a very important procedural matter that came up with the request that was tacked on unexpected by the Canyon Vista planner, Mr. Moya, and that has to do with the other motion or other case that has already been approved by the CDRC. He's bringing that in. And I call your attention to the staff report. This has to do with the alternate route, which was already approved, and if you read the minutes of the CDRC you saw I brought in all of these witnesses including state officials who said it was vital to protect the Garden of the Gods, which is my property, not to have this driveway come over that high ridge.

And the whole thing was settled and the developers agreed with it. And I went with the planner and their engineer to the alternate site and they said this is doable. They signed off on that before the CDRC and the CDRC decision exists. The alternate route as specified in the drawings [Exhibit 2] be used if feasible. If not feasible, it must come back to the CDRC and the BCC for variance. So I don't think procedurally you can decide. It will

have to go back to the CDRC and they've already decided on that. I think you should take that into consideration.

CHAIRMAN DURAN: Let's get a determination on that right now. What do you think, Denice?

MS. BROWN: Mr. Chairman, I believe Mr. Simmons is correct. There was a request made to remove a condition, but we're here on Mr. Simmons' appeal. I think that while you could either grant the appeal or deny the appeal, adding conditions, those really should be considered carefully because we're really here on the appeal and those conditions should relate to the appeal issues.

CHAIRMAN DURAN: Okay, thank you.

MR. SIMMONS: And it came up, because I was accused by the developer of harassing him. But one of the things lost, of course, was the court records, the County filed two criminal complaints, criminal summons and criminal complaints and took the developer into court. Two neighbors, myself and the Price family also have pending court case for the unpermitted development, the same unpermitted development cited by the County and there are many questions still outstanding on that so that whole legal case is out there.

We thought we had strong reason for doing that since the County had already taken them to court for unpermitted development on neighboring properties.

COMMISSIONER ANAYA: Mr. Simmons, one final question. Please make it quick and to the point. Why is it that you denied them access on that easement that you -

MR. SIMMONS: He's never been denied access. He has access. What is in question is the future status. We understand from what he was saying here that he wants to turn the access across my property into a subdivision road. I've lived there for 15 years and that has always been access to a ranch property, one owner and their easement. We have part of the question in court will be whether that easement can be restricted to one or if he can have multiple splits there and parcel out that easement. We don't know that. And he's already indicated he wants to widen this road into County standards. It's a little narrow road.

COMMISSIONER ANAYA: Real quickly. I just asked for a short answer, but thank you very much.

COMMISSIONER GONZALES: One final question to staff, Mr. Chairman. Oralynn, I always try and prevent asking you questions that offer opinions on the staff side because I think it's unfair to put you in those predicaments, but I'm going to try and walk this line. We know that in the sketched proposal by Mr. McCauley that there was an intent for a subdivision and where they identified twelve buildable lots in this sketched subdivision that they had submitted to you. So we know that there has been some intent and we know from tonight's testimony that there is some future intent to subdivide. Given that, is it still reasonable for us to go ahead and uphold the Land Use Administrator to allow for a

driveway permit, knowing that we feel secure enough in our own Code that once a subdivision comes into play, all of the notifications are going to be put into place and there's going to be a full process.

Do you feel comfortable that that exists today. Because what I heard tonight by the applicant. One, he was planning or his partner was planning on using the driveway to go to a primary residence which to me, fits what the criteria should be for a driveway. But he also stated tonight that he may in the future decide that they may subdivide it because it's an expensive property. So I think we want to be reasonable, we want to be fair, but we also want to be prudent in being able to do some planning on this property and not find ourselves tonight talking to Hank saying, well, we've already been there. We've gone down that road, we should have caught this up front. You feel good about the fact that a subdivision is coming and we're going to be able to prevent these lots and Helen brought up an interesting point because you might want to possibly address because I don't know how the Code addresses that.

MS. GUERRERORTIZ: Commissioner Gonzales, there is no doubt in my mind that if this land is redivided, any more lots are created, there will be noticing of neighbors of the lot that's divided. There's no exception. On July 1, 1996, the noticing requirement got significantly stricter. When these lots were originally created they didn't exist, those noticing requirements didn't exist, but they do exist now so if this lot is modified by division, or even a lot line adjustment, there will be notification to neighbors.

COMMISSIONER GONZALES: Can you address the issue that Helen brought up?

MS. GUERRERORTIZ: Yes. If Mr. McCauley sold these three parcels to three different parties, they could approach the County and try to get different kinds of projects approved. We would of course look at projects and make sure that they are not a common promotional plan, but saying if they weren't a common promotional plan, they were working individually to create either family transfers or some other projects, they'd have to meet all Code requirements, all noticing requirements, but nevertheless, there'd be no question. Neighbors would be notified.

COMMISSIONER GONZALES: Okay, one other concern and maybe Denise can tell me if we can address this or if we can require disclosure if any of those properties are sold. I'm concerned he may need to sell the middle property, which means that access to that middle property is going to be through a substandard County road that we knew about tonight with lots that existed. How do we assure that people that purchased that property know that it is a substandard road? Can we require some disclosure on any lot sales that occur out there that it is not a standard road and they need to know it up front because I'm concerned about people making an investment out there expecting there to be a better road and Mr. McCauley, basically can walk away from it or not be obliged to bring it up to a proper standard.

MS. BROWN: Mr. Chairman, Commissioner Gonzales, I think you could

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say, if you were to deny the appeal, deny it conditioned on a requirement that, I believe, put a notice on the plat or wherever you put it when he sells any of these properties, that the road is only built to driveway standards and has not been built to County road standards and anybody who purchases the property should be aware of that fact.

COMMISSIONER GONZALES: Mr. Chairman, Denise, can we take it a step or a notch harder and say that if the property is sold that the road up to that property would be required to have a road permit and brought up to road standards so that whoever buys it will at least inherit a proper road and I think that's what we all want to assure that there is the welfare that's protected of people out there so that they would have to bring it up to some kind of road standard better than what it is?

MS. BROWN: Mr. Chairman, Commissioner Gonzales, yes, you can impose that type of condition.

CHAIRMAN DURAN: I think that's unfair.

COMMISSIONER GONZALES: Why?

COMMISSIONER GRINÉ: That's a taking.

CHAIRMAN DURAN: You're requiring -- he has a lot that's in existence right now. He has the right to sell that lot to whomever he wants to. I think notice that he is providing an access road that doesn't meet County standards is fine, but to make the person that buys it bring it up to --

COMMISSIONER GONZALES: No, no, no. That isn't what I was asking. I was asking that the applicant be required to bring it up to a standard.

CHAIRMAN DURAN: Well, that's the same thing.

COMMISSIONER GONZALES: That's who I'm trying to protect is the individual who's buying it, who's basically going to inherit a road that we know is already substandard to get into a piece of property.

COMMISSIONER ANAYA: No, the three lots are already in existence, Commissioner Gonzales. And it's an approval for the driveway of the three lots and that would be a harsh imposition as far as even protectionism for any purchasers or the existing owners that are there right now. I think that that's -- your concern would come forth on any further divisions of the property should they come forward.

COMMISSIONER GONZALES: Mr. Chairman, Commissioner Anaya, not if one of the properties is sold. If the property that's sold were the primary residence, the one lot, what this Commission is saying tonight is basically, we're going to allow -- and he should have the right to sell his property as anyone should have the right to do what they want with their property within limits. But I'm looking for the individual who is buying it, they're going to have a very substandard County road right now that basically equates to a driveway and that's it. And so I guess what I'm concerned about is for future people when they buy it then at least their welfare is protected and we ensure that if they do buy a lot that they're required to bring it up to some standard where it's a safe road to drive on. Is that unreasonable to ask?

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COMMISSIONER ANAYA: I think it's a little extreme. I do.

COMMISSIONER TRUJILLO: I think it's the least that a developer can do. They're the ones that are going to sell the land. The least they can do is provide the appropriate roads and infrastructure to get to this lot that they're selling.

COMMISSIONER ANAYA: The request before -- the lots are already there. So the bundle of rights for the sale of these are already in existence. To impose a non-inherent burden today through whatever we practice up here would not be feasible or proper. I think it's improper.

COMMISSIONER TRUJILLO: It's not any different from what we've done before. It's the developer's responsibility to provide the appropriate road and infrastructure when they're selling land.

COMMISSIONER ANAYA: He's already improving the driveway.

CHAIRMAN DURAN: Why doesn't someone make a motion? I don't want to take anything away. Are we through with the discussion?

COMMISSIONER GONZALES: Yes, I'll wait for the discussion until after the motion is made.

CHAIRMAN DURAN: I think it's fair. There were some things said that you might want to address.

MR. MCCAULEY: I'd just like to comment -- we bought the property with a substandard road that we thought we had the right to improve. It turns out we have the right to a court battle to maybe improve it. I don't see where that's different than us selling one of the three existing lots that been a lot for years, been on record for years. I don't see where the County requires anybody -- we've gone in for help from the County to improve the existing easement that we have across Simmons'. They've been no help at all to improve the road that's there. I don't see why they could require me to sell existing lots with an improved road on it. I don't know if I'm making that clear or not. The lots are there. We're not subdividing it. We're not doing anything we didn't already do when we bought the property. We bought it with a substandard road.

Nobody made that road be improved at that time. That's the only comment I had. I don't know if that's clear.

COMMISSIONER GRINÉ: Mr. Chairman, if I'm in order I'd like to make a motion. I'll make the motion that we deny the appeal and uphold the Land Use Administrator's decision and then, that's just one issue besides the other issue. That's my motion.

COMMISSIONER ANAYA: And I'll second, Mr. Chairman.

CHAIRMAN DURAN: For discussion. Do you have a point of clarification.

MS. GUERRERORTIZ: Clarification. The CDRC had two recommended conditions.

COMMISSIONER GRINÉ: Can we make another motion on that?

COMMISSIONER ANAYA: Can we do it in one motion, Denise?

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CHAIRMAN DURAN: All we're doing is denying the appeal and whatever the Land Use Administrator decided to do is in place.

MS. BROWN: They're actually appealing the decision of the CDRC. Because the Land Use Administrator's decision was appealed to CDRC and then CDRC's decision is appealed on to you. It's CDRC in your packet with two conditions.

CHAIRMAN DURAN: So the motion is basically to uphold the CDRC's decision to deny the appeal, to uphold the CDRC's decision with whatever recommendation.

MS. BROWN: Right. And those are on the second page.

COMMISSIONER GRINÉ: So if it's in order then, I'd like to take away condition number 1.

CHAIRMAN DURAN: If that's what your motion is, let's have some discussion.

COMMISSIONER ANAYA: For discussion, I will accept his amendment.

CHAIRMAN DURAN: So for discussion, I thought the problem we had by taking number one out is we may be violating the process, because it wasn't noticed.

MS. BROWN: Actually, Mr. Chairman, I misspoke earlier. I wasn't thinking at the time that we were also looking at the CDRC's decision. So you're looking at whether or not you want to approve the CDRC's decision or modify it because you always have the right to do that. So I misspoke earlier and I apologize for that.

COMMISSIONER GRINÉ: Okay, so we're striking the number one condition imposed by the CDRC and upholding the Land Use Administrator's decision to grant the permit.

COMMISSIONER GONZALES: Mr. Chairman, I'd like to offer a friendly amendment, if I may, again to ask for -- I think one thing that we've always strived to do is make sure that any road in this County has at least some safe standards to it and all I'm asking is that we ask the owner of the property that if he sells any of these lots -- right now we know that basically this road is going to be held to the standards of a driveway. None of us, I don't think, would buy a lot that basically was up to driveway standards and I would hope that we would ask him or require him to bring it up to some standard that was safe for any property owner there that was purchasing. We'd want it for any of us if we were buying the lot or any other citizen of this community who was going to buy a lot out there that they at least are entitled through our actions to have a basic road. I offer that as a friendly amendment.

COMMISSIONER ANAYA: Mr. Chairman, Commissioner Gonzales, that is exactly what their concern is about is being too overbuilt as opposed to being just a driveway and I think that's what Mr. Simmons came up and testified, Look at this big road that's being built. This is going to lead on to the division.

COMMISSIONER GONZALES: My friendly amendment is to ask

COMMISSIONER ANAYA: I would like to add this

CHAIRMAN DURAN: Wait a minute, Oralynn, what did you --

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MS. GUERRERORTIZ: Commissioners, can I also suggest -- I'm sorry, Kevin McCauley was already asked. I would suggest we might want to consider a condition that there should be a financial guarantee to ensure the reclamation of the road that's no longer going to be used. And I will say that my understanding is that Mr. McCauley has agreed to it.

COMMISSIONER GRINÉ: That would be fine.

COMMISSIONER ANAYA: Yes, absolutely. That condition should be inclusive.

CHAIRMAN DURAN: I'm sorry. Commissioner Gonzales still has the floor.

COMMISSIONER ANAYA: We're the makers of the motion. I yield to Commissioner Gonzales.

COMMISSIONER GONZALES: Thank you, Commissioner Anaya. So then I would then ask the Commission if you're not going to require Mr. McCauley to bring up the road to at least the basic safety standard for people who are purchasing the lot that we at least disclose or require there to be a disclosure on the property if he sells any of the lots, to whoever's purchasing it, that the roads are not built to County standards.

COMMISSIONER ANAYA: Disclosure as far as on the sale? That's about the same disclosure we made on the other one.

COMMISSIONER GONZALES: Right.

COMMISSIONER ANAYA: Okay.

COMMISSIONER GRINÉ: That's fine.

COMMISSIONER ANAYA: I'd also like to --

CHAIRMAN DURAN: Wait a second.

COMMISSIONER GONZALES: So if it's not brought up to County standards with the same requirements in there that we disclose the issue of fire protection to make sure that whoever's buying it is properly and adequately informed as to the standard of the road and also that it be recorded as -- Mr. Chairman, how did you say it should be recorded?

CHAIRMAN DURAN: I think there should be a recorded memorandum of some sort. Seller's disclosure. Property disclosure statement.

COMMISSIONER GRINÉ: That's fine.

COMMISSIONER ANAYA: I'm fine with that. Also, that any further divisions of any of the properties there require public notice. I think that should be stated.

COMMISSIONER GRINÉ: That's fine.

COMMISSIONER ANAYA: That's the motion.

CHAIRMAN DURAN: Do you understand the motion, Mr. Simmons.

MR. SIMMONS: I think I do. The ruling that she gave when I asked about the procedural thing on the road modification the CDRC passed, that's not in here, is it?

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COMMISSIONER ANAYA: We struck the first condition. We struck the first condition, the alternative route as specified in the drawing be used if feasible. That was struck from the motion.

MR. SIMMONS: That was a separate case and we haven't had a chance to present that to you.

CHAIRMAN DURAN: Just so that you know what the motion is. It does not include -- we struck that as a condition.

COMMISSIONER ANAYA: So that is no longer a condition.

MS. BROWN: Mr. Chairman, just one more time for the sake of clarification. I misspoke earlier. I was thinking we were appealing the Land Use Administrator's decision. This is an appeal of the CDRC's decision to this body. The CDRC's decision was to deny the appeal of the development permit 98-1643, and uphold the Land Use Administrator's decision to grant the permit with two conditions: That the alternate route as specified in the drawing be used if feasible. If it's not feasible it has to come back to the CDRC for a variance. And two, that Canyon Vista address safety concerns off County Road 42 with a sign on the existing gate that states it is a private road. The existing gate must be maintained.

You are deciding tonight whether to uphold that decision. Deny, completely overrule that decision or modify that decision. That's the decision that's being appealed.

CHAIRMAN DURAN: And that's within our right?

MS. BROWN: That's correct.

COMMISSIONER ANAYA: And what's happened, what's occurred with the motion is that we have modified it?

CHAIRMAN DURAN: Right.

COMMISSIONER ANAYA: And by modifying, the maker of the motion struck condition one of the CDRC.

CHAIRMAN DURAN: So since there's no further discussion, those in favor signify by saying "aye." [Unanimous 4-0] Opposed? Motion carries.

- IX. B. 8. CDRC Case #Z 98-5740. Voicestream Wireless Eldorado Site. Voicestream Wireless, applicant, requests master plan zoning with preliminary and final development plan approval for a cellular facility. The property is located within the Dos Griegos open space area near the existing water tanks, within the Cañada de los Alamos Grant, Township 15 North, Range 10 East

MS. ELLIS-GREEN: Mr. Chairman, Commissioners, the applicant is requesting approval for a cellular site to consist of two 14-foot high antennas within a 300

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square foot leased area and one radio cabinet within a 100 square foot leased area. It is to be located in the Dos Griegos open space area. The antennas will be mounted on four-inch diameter poles extended fourteen foot above the ground. The antennas will not exceed the pole height. The radio cabinet will be a tan color and the antennas will be a brown-green camouflage color.

Recommendation: Staff's recommendation and the decision of the CDRC was to recommend master plan zoning approval with preliminary and final development plan approval subject to the following six conditions. And Mr. Chairman, may I enter those into the record?

CHAIRMAN DURAN: We'll just enter those into the record.

[The conditions are as follows:]

1. All staff redlines will be addressed. Original redlines will be returned with final plans.
2. All colors to be reviewed and approved by staff prior to construction permit issuance.
3. The master plan/development plan will be recorded with the County Clerk's Office.
4. If the technology changes and these antennas become obsolete, they will be removed by the applicant. This will be noted on the master plan.
5. Easement documentation is to be reviewed by staff prior to master plan recordation.
6. A Knox Lock entry system will be installed on the gate, to be approved by the Fire Marshal.

CHAIRMAN DURAN: So, Penny, is it your understanding that the applicant agrees to these conditions?

MS. ELLIS-GREEN: Mr. Chairman, I believe the applicant does agree to these conditions,

CHAIRMAN DURAN: Any questions of Penny?

COMMISSIONER TRUJILLO: I have a question. What sort of communication has occurred with the community, with Cañada de los Alamos? Communication, how --

MS. ELLIS-GREEN: Mr. Chairman, Commissioner Trujillo, it's actually within the Eldorado area. Certified letters have been sent out, I believe, to 24 neighboring property owners. Legal notice has been posted on the property and on the access easement to the property and a legal notice has been place in the *New Mexican*.

COMMISSIONER TRUJILLO: So they've gotten the opportunity to represent their opinion, their position, regarding the development.

MS. ELLIS-GREEN: Mr. Chairman, Commissioner Trujillo, that is correct. And also the applicant is leasing this area from the Dos Griegos Homeowners Association, so they are in agreement with this.

COMMISSIONER TRUJILLO: Thank you, Penny.

CHAIRMAN DURAN: Is the applicant here? Please come forward and state

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your name for the record. Are you in agreement with the recommendations of staff?

[Duly sworn, Alex Romano testified as follows:]

ALEX ROMANO: Yes. My name is Alex Romano, Voicestream Wireless, 4830 Panamerican Freeway, Northeast, Albuquerque, New Mexico.

CHAIRMAN DURAN: Is there anyone out there in the public that would like to address this Commission? What's the pleasure of the Board?

Commissioner Grinë moved to approve Case #Z 98-5740 and Commissioner Trujillo seconded. The motion passed by unanimous [2-0] voice vote. [Commissioner Gonzales and Commissioner Anaya were not present for this vote.]

ADJOURNMENT

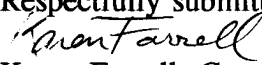
Chairman Duran declared this meeting adjourned at approximately 10:10 p.m.

Approved by:

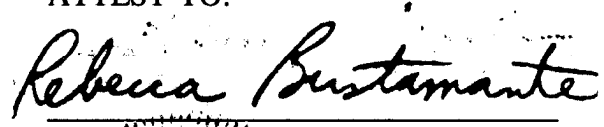


Board of County Commissioners
Paul Duran, Chairman
Joe Grine, Jr. Vice-Chair

Respectfully submitted:

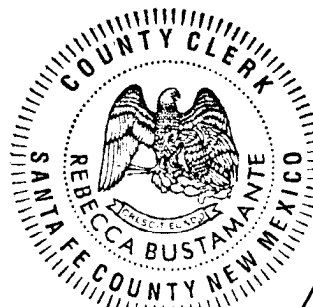

Karen Farrell, Commission Reporter

ATTEST TO:



REBECCA BUSTAMANTE
SANTA FE COUNTY CLERK

REBECCA BUSTAMANTE
SANTA FE COUNTY CLERK

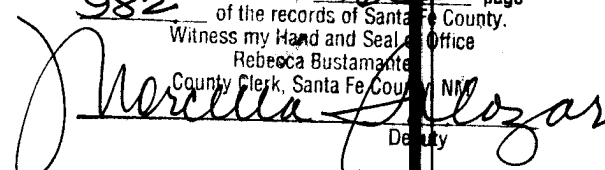


1071. 733
COUNTY OF SANTA FE
STATE OF NEW MEXICO

I hereby certify that this instrument was filed for
record on the 28 day of April A.D.
19 99 at 8:33 o'clock p.m. and
was duly recorded in book 1632 page
982 of the records of Santa Fe County.

Witness my Hand and Seal of Office

Rebecca Bustamante
County Clerk, Santa Fe County, NM



Marcela Alvarado
Deputy



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Y2K Information on Preparedness

As many of you are aware, there has been talk about what will happen when the year 2000 begins. Many older computers cannot work properly when the date changes to 2000. We at the Santa Fe County would like to provide you with some helpful information so that you can be both aware and prepared in case some problems occur.

The actual effect of the Y2K technology problem is not clear, but there may be disruptions in electrical power, food and water delivery delays, and electronic credit card transactions may not be processed. The best thing you can do is be prepared to experience a possible 7 to 10 day delay in some services. Here is a summary of recommendations the Red Cross is suggesting in case of some delays in services:

- Check with manufacturers of any electronic equipment (computers, alarm/security systems, thermostats, etc) to verify that their "embedded chip" is Y2K compliant.
- Stock several days' worth of supplies for your household. These supplies will include non-perishable foods, stored water and an ample supply of any prescription medication you need.
- Keep some extra cash on hand before December 31, 1999. Take out cash in small amounts well before December 31, as last minute lines may be long.
- Fill your automobile with gas a day or two before December 31.
- Plan on alternative cooking devices in case power fails. Please remember SAFETY FIRST and do not use open flames or charcoal indoors.
- Keep extra blankets, coats, hats and gloves available.
- Have flashlights and extra batteries ready in case there is no electric power.
- Check smoke alarms to verify if they are "hardwired" into your home's electrical circuit. If so, make sure that the backup battery is fresh.
- Make sure that you have a portable battery operated radio and extra batteries.
- If you have a portable generator, do not plug it in to your home's electrical system. Plug in the appliance directly to the generator.
- Be prepared to move to a designated Red Cross shelter for warmth and protection should there be a prolonged power outage.

We hope that this information will be useful to you. While no one knows the extent of the Y2K problems, these tips should keep you aware and prepared!

Santa Fe County

