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BOARD OF COUNTY COMMISSIONERS

SANTA FE, NEW MEXICO

REGULAR MEETING

JUNE 13, 2000

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

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ATTEST TO:

REBECCA BUSTAMANTE
SANTA FE COUNTY CLERK

1122751
COUNTY OF SANTA FE)SS
STATE OF NEW MEXICO)
I hereby certify that this instrument was filed for record on the 12 day of July A.D. 20 00 at 9:31 o'clock a m and was duly recorded in book 1786 page 179 of the records of Santa Fe County.
Witness my Hand and Seal of Office
Rebecca Bustamante
County Clerk, Santa Fe County, NM.
Deputy

of La Mirada Water Systems, by Jim Siebert on Behalf of Michael Hurlocker. And the Staff also requests that Item IX. B. 6., EZ Case #DL 00-3053 be tabled. That's Item 6 on Public Hearings.

CHAIRMAN GRIÑÉ: Okay, so we have the Agenda amended by Staff. What is the recommendation of the Board?

COMMISSIONER TRUJILLO: I move for approval, Mr. Chairman.

COMMISSIONER ANAYA: I second it.

CHAIRMAN GRIÑÉ: Got the motion may by Commissioner Trujillo to accept the Agenda as amended and seconded by Commissioner Anaya. Any further discussions? If not, all those in favor signify by saying I. [Unanimously approved]

VI. APPROVAL OF THE MINUTES:

Commissioner Anaya moved to approve the minutes of the May 9, 2000 meeting as submitted. His motion was seconded by Commissioner Anaya and passed by unanimous voice vote.

Commissioner Trujillo moved to approve the minutes of the May 22, 2000 meeting as submitted. His motion was seconded by Commissioner Anaya and passed by unanimous voice vote. [Becky Bustamante informed the Commission that action on these minutes occurred at a previous meeting.]

Commissioner Trujillo moved to approve the minutes of the May 23, 2000 meeting as submitted. His motion was seconded by Commissioner Anaya and passed by unanimous voice vote.

VII. ADMINISTRATIVE ITEM:

A. Committee Appointment/Expirations/Resignations/Vacancies:

1. County Development Review Committee.

MS. ELLIS GREEN: Mr. Chairman, Commissioners, Barbara Vigil recently resigned from the CDRC. Her term is therefore vacant. Chairman Griñé has recommended that Mike Anaya be appointed to the CDRC and staff recommends that term begin immediately and end December 31, 2000.

Commissioner Trujillo moved to approve of the motion as submitted. His motion was seconded by Commissioner Anaya and passed by unanimous voice vote.

2. Agua Fria Development Review Committee

MS. ELLIS GREEN: Mr. Chairman, Commissioners, Lucy Chavez recently

resigned from the AFDRC and was appointed to the CDRC, her term is therefore vacant on the AFDRC and Commissioner Duran has recommended that Robert Mier be appointed to the AFDRC. There is a memo from Robert in your Exhibit A.

Commissioner Duran moved to approve of the appointment. His motion was seconded by Commissioner Gonzales and passed by unanimous voice vote.

3. Santa Fe County Fair Board

DEBORAH SALAZAR (Executive Assistant): The Santa Fe County Fair Board has had two of its members resign from their positions. The two individuals are Ms. Leslie Gumm and Mr. Mike Gallegos. The Santa Fe County Fair Board also recommends that Mr. Ed Vasquez finish out the unexpired term of Ms. Leslie Gumm. Staff requests approval of acceptance of the two resignations and also to appoint Mr. Ed Vasquez to finish the unexpired term of Ms. Leslie Gumm.

Commissioner Trujillo moved to approve of the appointment. His motion was seconded by Commissioner Anaya and passed by unanimous voice vote.

VIII. Staff and Elected Officials Items:

A. Fire Department

1. Request Approval to Issue a Proclamation Declaring Extreme or Severe Drought Conditions within Santa Fe County and Banning the Sale and Use of Fireworks, Pursuant to Emergency Ordinance 2000-4.

STAN HOLDMAN: Thank you Mr. Chairman, members of the Commission, Mr. Chairman, if I might take a couple of minutes before I present this item. On behalf of the Santa Fe County Fire Department, we'd like to extend our appreciation to the Board of County Commissioners and to the County Manager and the Staff of Santa Fe County who assisted in the Sierra Grande Operation in Los Alamos almost 3 weeks ago. We appreciate the support that we received during that time and it was invaluable to us and we'd just like the public to recognize that's important.

COMMISSIONER DURAN: Stan I think you and your staff should be recognized probably for all the hard work that you did up there. I went up there along with several other Commissioners and you were really in the trenches fighting that fire and I appreciate the work that you did on behalf of Santa Fe County.

COMMISSIONER TRUJILLO: I'd like to reiterate with Commissioner Duran has said. I think our fire department extended, put their both, left foot forward and spent many, many hours out there and saved a lot of houses and I just want to recognize the work

and your staff did. Stan, you're to be commended for that and in fact, I'd like to maybe publish that in some form, either a publication or the Rio Arriba County effort, I'd like to make sure that the community knows that our work force, our staff, also participated in that effort of the Sierra Grande fire. Thank you Stan and your crew.

STAN HOLDMAN: Mr. Chairman, Commissioner Trujillo, thank you for that. For your information, at a later time, the fire department would like to have some commemoration for those individuals in the Santa Fe County Fire Department that were intimately involved in that fire and as Commissioner Duran noted, were in the trenches that first night and for the first 3 days of the incident. And we bring that forward to you at a later date.

Mr. Chairman, in April, the Santa Fe County Commission approved Ordinance No. 2000-4 which specifically was an emergency ordinance which is declared emergency conditions in Santa Fe County. At this time we would like to advise the Commission that the Fire Department is recommending that we continue with the enforcement of this Ordinance at least for the next 30 days. That request does require formal approval of the Commission because the Ordinance was approved and was effective for a period of 1 year but for your information, we would like to make that recommendation.

On the second note, Mr. Chairman, in regards to fireworks and firework displays. There is a proclamation that we have before you. Mr. Chairman, members of the Commission, the proclamation reads:

> Santa Fe County Proclamation banning the sale and use of fireworks and fireworks displays. Whereas the Board of Commissioners of Santa Fe County has determined the existence of extreme or severe drought conditions within the boundaries of Santa Fe County and where as the State of New Mexico, through the Governor and the United States, through the President, has declared the State of New Mexico to be in a state of emergency secondary to these extreme conditions.
>
> And whereas as far danger within Santa Fe County is extreme, secondary to the existence of extreme or severe drought conditions. And whereas, the risk of life, property and the environment surely exists within Santa Fe County.
>
> And whereas fireworks or devices intended to explode or produce uncontrolled combustion as defined in the Fireworks Licensing and Safety Act, 62.C-2 as amended, and whereas a ban on the sale and the sale or use of fireworks and fireworks displays within Santa Fe County will limit the danger to public safety secondary to these conditions. And whereas the State of New Mexico's state statute 62.C.8-1 authorized local governing bodies to

ban the sale and use of fireworks and fireworks displays, now therefore be resolved by the Santa Fe County, that the Board of County Commissioners finds that a public emergency which affects the safety and welfare of its citizens and their property exists within Santa Fe County and therefore bans the sale and use of all fireworks and firework displays for the next 30 day period as allowed by law. Approved and adopted on the 13th day of June, 2000.

Mr. Chairman, members of the Commission, the Fire Department is recommending the approval of this proclamation.

Mr. Chairman, I can only speak to one specific vender within the Pojoaque Pueblo who has voluntarily stopped selling certain fireworks as a result of Ordinance 2000-4 which we passed back in April and I do not know of any other vendors on the Sovereign Nations in regards to vendors actually selling the fireworks. As you know Mr. Chairman, and Commissioner Anaya, they are Sovereign Nations and they do not have to comply with this ordinance or this proclamation.

COMMISSIONER ANAYA: It is certainly a no-brainer with the drought situation out there and I think they should respect this ordinance and I hope the message get to them that it's a temporary ban as long as we're in drought.

STAN HOLDMAN: Mr. Chairman, Commissioner Anaya, I think we all recognize the other community members in Santa Fe County. We all have a responsibility regardless of which jurisdiction we live in or occupy and we're certainly hoping that they will voluntarily comply with this proclamation.

COMMISSIONER GONZALES: In regards to counties that surround Santa Fe County and other jurisdictions, do you see that they follow in similar measures in banning fireworks. I know there have been large brush fires down in Torrence County. Clearly there's lots of concerns that what's happening in Rio Arriba with the dryness of their forests, Sandoval County, Bernalillo, are we isolated here or is there an effort by the region to ban these fireworks? And the reason being, well you know what happens to your resources when there are brush fires that spread out of control in Torrence or even with what happened in Los Alamos. Is that happening?

STAN HOLDMAN: Mr. Chairman, Commissioner Gonzales, there is a cooperative effort between the fire organizations in our adjoining counties and jurisdictions. And I can tell you, as of today, Torrence County, Bernalillo County, Sandoval County, a number of municipalities in Torrence County, Los Alamos County, Rio Arriba County, I do not believe San Miguel County has done it yet, but they intend to, have all joined in this effort to try and ban fireworks and fireworks displays through the July 4th holiday.

Commissioner Gonzales moved to approve of Proclamation. His motion was seconded by Commissioner Trujillo and passed by unanimous voice vote.

BECKY BUSTAMANTE (County Clerk): I went downstairs because we had already approved the May 22 meeting at the last meeting, so if we can just strike that from the record.

CHAIRMAN GRIÑÉ: That's fine, we'll strike it. Is that okay with the Board?

Finance Department

1. Request Approval of Disposition of County Vehicles.

SUSAN LUCERO: Mr. Chairman, Commissioners, the Santa Fe County has a total of 16 vehicles and 5 heavy-equipment assets identified for surplus. We are requesting your approval and approving this attached list of vehicles and heavy-equipment for the purpose of surplus. Upon approval, the Finance Department will notify all County departments for first review and possible transfer. The vehicles that they may be interested in and after that internal review is completed, then Finance will coordinate with the Public Works Department to take any remaining vehicles and equipment to an auction that would take place in July.

COMMISSIONER GONZALES: Susan, is there an opportunity or is there a law that prevents us from basically send up some notice to some of the rural counties in New Mexico to see they could use these vehicles. I know that we just went through a sale of some used -- I believe they're graters to Mora County. But I know that would probably be a lot of rural communities or rural counties that could probably use or take a vehicle in poor condition and try and put some money into maintenance. Can we do that prior to moving to an auction, to just try and assist some counties or are we obligated to receive a value for the vehicles?

SUSAN LUCERO: We are required because of the type of asset, to receive some type of value based on it's current resale value. And we could probably initiate the same type of think that we did like with the bladers and so on and go to an open bid process and notify these different communities if they're first interest, if they'd like to take the first bid prior to the auction, we could possibly do that.

COMMISSIONER GONZALES: I'm not sure at this point, I guess -- Becky, can I put in a request, maybe of the New Mexico Association of County Board, that maybe they look at establishing some type of auction site that counties can post available or surplus equipment. I would probably be a pretty labor intent for us to go out and find a county and I don't really want to waste the staff's time in doing that. But it would be helpful if the Association of Counties could create some type of process where we could post surplus equipment and that way counties could review it.

But the other thing that I would recommend and it might be something that see if it works, is there's all the .coms that are offering auction sites and I don't know if that might

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be a way for us to maximize the dollar that would come to Santa Fe County as opposed to just having a Saturday auction. You know, trying to put some of the material onto .coms -- the various .coms to see if those auction sites might bring in some additional reviews.

SUSAN LUCERO: Mr. Chairman, Commissioner Gonzales, I know the real issue right at this point is probably time. Public Works is getting ready to do some remodeling and re-roofing, so we are trying to get the assets out as quickly as we can and it's probably overdue at this point for us to initiate something other than what we're attempting to do here with surplus. But it is something we will consider if you so desire.

COMMISSIONER GONZALES: Well the .coms, those are pretty easy to just throw up and put a 30 day period. So, if you can look at that it might be interesting to just see if there's a route. But if we can see that. But what I'm more interested in is to see if there's a way that the Association of Counties could create some type of auction process where larger counties could put some of this surplus equipment up in rural counties across the state to benefit from it.

MS. BUSTAMANTE: Okay. We have a meeting on the 20th, so I'll bring that up.

COMMISSIONER ANAYA: Also, Susan, when these things have been sold or whatever, they're off the books, and notification to the Association of Counties multi-line pool would be advisable to take them off the inventory cause they are insured.

SUSAN LUCERO: Yes, Commissioner Anaya, every year we give a new list to our Risk Management Division prior to them taking the information to our insurance pool.

Commissioner Gonzales moved to approve motion as submitted. His motion was seconded by Commissioner Anaya and passed by unanimous voice vote.

2. **Request Authorization to Enter into a Professional Services Agreement, RFP #20-53, for Financial and Compliance Audit Services.**

SUSAN LUCERO: Mr. Chairman, Commissioners, the Finance Department had issued RFP #20-53. In April we received 2 proposals. This is for the finance and compliance audit for Santa Fe County for the period ending June 30, 2000. We received 2 proposals from 2 different firms and we are requesting authorization to award the contract in response to our RFP #20-53 to the successful offer of Bearclaw and Associates in the amount of $60,350.00, inclusive of New Mexico Gross Receipts tax.

Commissioner Anaya moved to approve RFP #20-53. His motion was seconded by Commissioner Duran and passed by unanimous voice vote.

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C. Matters from the County Manager, Samuel O. Montoya

1. **Request Approval to Create Two Term Positions for the Santa Fe Magistrate Court Screening and Compliance Program.**

ESTEVAN LOPEZ: Mr. Chairman, Linda Dutchers will make this presentation.

LINDA DUTCHER: Mr. Chairman, Commissioners, as you know the DWI Program has provided services and for Magistrate Court for screening and clerical services. There are actually 4 people there working through out program. Two of them are contractors and two are employees. We think that they program would work much more efficiently and that the lines of supervision would be more clear if all 4 were employees. The judges at the Magistrate Court agree with this and it would not cost any additional money from the County because we would use the money that had previously been designated to the contract positions for those term employees.

COMMISSIONER TRUJILLO: So this would convert two existing positions from contractor to FTEs full-time?

MS. DUTCHER: Correct, term FTEs supported by the grants or by the screening fees.

Commissioner Trujillo moved to approve creating two term positions. His motion was seconded by Commissioner Anaya and passed by unanimous voice vote.

D. Matters of Public Concern - NON-ACTION ITEMS

JIM SIEBERT: Mr. Chairman, Commissioners, my name is Jim Siebert and I'm representing Michael Hurlocker on La Mirada and it's the issue of clarification of water service to the La Mirada Subdivision. I had handed you some --

[Mr. Siebert was advised his presentation was next item on Agenda]

CAROLYN SIGSTED: My name is Carolyn Sigsted and actually Paul Duran is in the back and I wanted to congratulate Paul for a race well run. I learned a great deal and I felt very patriotic to tell you the truth. What my campaign was about was to open up county government and to try to get more citizens involved in county issues and participating. What I learned was, especially as I stood there for 12 hours at Gonzales School, one of the largest voting places, that it's one of the most difficult things about the democratic process is, in fact, getting people to participate and getting people to vote.

And I want to also honor all the people that did come to vote. I watched flocks of local traditional voters that have been voting for years and years and generations and

generations come to vote and I saw a real sense of community that I support and will continue to support and will work for. So that's what I took out of this race and I just want to be part of that community and I will stay active in county politics.

COMMISSIONER GONZALES: Carolyn, as you pursue the suggestions and certainly the efforts of, as you say, opening up county government, we certainly encourage that to happen and I think part of my frustration is that there seem to have been a common theme about county government for whatever reason needing to be opened up more and it gets a little frustrating because we go through a public notice process, we don't have the -- as I evaluate it, the different between the County and the City and why I think people see the City as something different, the Counties that there are steering committees or they have committees that review things for a period of time before it makes it up to the Council agenda and it's very different from the process here because we don't have committees that review things first.

The staff works on things and then we find it on an agenda, it's noticed, and then we're basically at the will of what the local media decide that they want to publish and to make aware. And there are some items that they do make people aware of and others that for whatever reason they choose not to, but people have judged County government based on what they read in the local media and not necessarily what we've done to try and put it out, the word.

I mean, we have the internet access now where people can access what's going on here. In short of spending money, trying to buy ads, I'm not sure what else we can do to create or toward that perception. The case and point is the issue of property tax increase and the Commission held 4 public meetings to discuss the budget crunch that existed at that time. And for whatever reason, the tax increase came up after the Commission had voted, again in the local media. But there were 4 public hearings that were noticed to discuss the finances that was a part of the discussion that that decision was going to have to come up.

The same issue with the prison. There was lots of people saying, "well it was basically not done under a public process," and I can count 4 public meetings that were done. That's more so than any other administrative, granted people may have wanted more or whatever it might be, and I can understand their difference and opinion with that issue.

But I guess what I'm saying that please continue to offer advise on how we can be open but also keep in mind that in County government, we are limited to basically how we get the word out as to issues that we're working on and the public ultimately judges us based on what they read or hear on the radio or how they receive their media. Again, it does get frustrating because we don't have the same long process that you do at the City because we don't have the committees. We see things on an agenda item after the staff has worked on it for large periods of time and then it comes in. And Commissioner Trujillo actually led an effort 2 or 3 years ago to make sure that Land Use items had 2 public hearings mandatory. And maybe that's something we need to look at for administrative items, that that takes place. And that's more so than what the City does in terms of providing an open

process so that the public can have ample opportunity to come in and discuss what they need to.

And again, it was nice not running because you could watch the election from the outside but there were times that where we felt -- or I felt very frustrated because there were basically statements made that it's a government and I'm not sure what we can do short of, again, trying to buy our own media outlet to try and get the word out. But there are constraints as to how we can disseminate information to the community as to the issues that we're working on.

CAROLINE SIGSTED: No, I didn't mean to sound critical --

COMMISSIONER GONZALES: No, no, no, I think it's healthy to be critical. I didn't want you to feel like I was being sensitive.

CAROLYN SIGSTED: I'll just share your frustration. I mean, my campaign was to try to get people enthused about County issues because I do believe this is where the action in our community is taking place and if we're going to protect what we value about our life in this region, we have to begin to educate ourselves and it's clear to me that not many people understand County politics. So I was just trying to open up County government so that we could all learn about these issues and hopefully participate. But I learned that that's a very, very difficult thing to ask of the public.

My whole adult life, I've worked towards trying to build community. That's very, very important for me whether I'm working with children or whatever I do, I try to build community. And what I saw on election day, was a sense of loyal community coming out and voting. Maybe I wasn't able to garner more folks to County politics but what I saw was a block of votes that have been voting for years and years and years and that's community and I respect that and I want to join that and that's what I'm saying.

COMMISSIONER GONZALES: And I think being critical is good too. I mean I think that's healthy from a personal point but my point was that short of exactly what you pointed out, was that it does take individuals in our communities who want to come forward to learn such, you know, the way you have and others who follow the County Commission but it's not a rise to the citizenry for whatever reason, don't follow and it's incumbent upon them to take the time to do that.

But I would also point, and again, just for the record, that what this commission has done over the past couple of years, rather than waiting for the public to come out in terms of planning, we basically developed a community planning process. I mean, we've actually instituted and have alive today, several community plans, that has actually driven the whole decision-making straight out to communities and told the public, "look, if you're not going to come down to the courthouse and tell us how you feel about land use issues, we're going to change the way we do business and we're going to go ahead and we're going to shift all of the land use decision making process into your communities so that you can have a say in your future.

And that's, for myself and Commissioner Trujillo and Commissioner Anaya have

been around for 4 years or 6 years or however long it's been, saying we want to move that down and Commissioner Duran and Chairman Griñé coming in and supporting us in trying to move to that community based planning because the issue of close government becomes a little frustrating when this County Commission has been the Commission that's actually opened up the planning process to local communities to get involved.

MS. SIGSTED: No, I couldn't agree more and I think your general plan is excellent and, in fact, that was one reason that I wanted to run to become a Commissioner was to implement that plan. I think it's very exciting and I think the communities that help in land use practices, if the information is given to the local communities, my dream is that it will start with the traditional communities and the traditional communities will lead the way in healthy practices to preserve what we value.

CHAIRMAN GRIÑÉ: Carolyn we have a long public meeting.

MS. SIGSTED: I just wanted to congratulate Paul for a very good race and I support you all.

CHAIRMAN GRIÑÉ: Thank you and since this topic came up now, I want to congratulate Paul Duran for his re-election and good luck on the general election and since one of my opponents in the audience, that was able to see himself through the primary, good luck Jack and good luck in the general election, too. And also the two parties that are out there in the audience, good luck in the general election. We move on

E. Matters from the Commission

1. Discussion of La Mirada Water System, by Jim Siebert on Behalf of Michael Hurlocker

JIM SIEBERT: Mr. Chairman, Commissioners, let me hand out this...of information. Mr. Chairman, Commissioners, to apprise you of the situation, to give you a little history on this, this is a subdivision that came before you about a year ago that originally was approved for 24 lots and then was increased through density transfer position to 50 lots.

At that time the County didn't know if there was enough water to provide for, not only the additional density, but even the original density. There's a recommendation that the developer go to the City and seek water from the City in order to resolve the water resource issue. Which he did and the City Council approved the water service boundary extension and the water to the property.

The issue that we're seeking some kind of direction on today is when we went through the process, it was always our understanding since the City would provide water, that it would be City cilium system administered by the City.

We had an understanding with Mike Hammond, before he left, the director of Sangre de Cristo, that the way it would work is that there would be a simple reverse, kind of

reverse wheeling agreement where the individual meters would be read at the residences and then that water use would be deducted from the County's allocations. The County would not result in any loss in terms of their 400 acre feet of water rights from the wheeling agreement. And I think there's still some discussion going on whether it should be a County system or whether it should be a City system and frankly my client doesn't care.

The issue is that we're trying to get water service. All the roads are in, all the utilities are in, the water's ready to simply turn 2 valves and there can be water in the subdivision.

My client sold lots and has obligations to provide water service and we still can't seem to resolve the administrative issue of how that subdivision is going to be served with water. There is one solution and thus being the La Mirada Subdivision here, this being a Stage 2, the master meter exists here. There is an alternative that a water line be installed that would parallel the existing 12 inch line that goes out and services the County development and then it would tie into the existing line and then it could be isolated from the City system could be isolated from the rest of the County system.

I think there's several concerns we have. Just one, the cost, which is about $55,000.00 to do that. Second, you're running 2 lines parallel to each other. If one has a failure to it, there's a good chance it's going to de-stabilize the other line. And the second one is that if anybody comes in to tie into this line, how do they know which line to tie into. It creates a lot of headaches, it prevents a possible interconnections that will allow for a kind of redundancy in the system.

So what we're requesting is that if we could have some kind of resolution about, administratively, how this would be processed. I think our preference is to proceed in the way we have been and that is that it would be a safe system. The City would read the meters and deduct it from the County Wheeling Agreement, which they agreed to do, and then I think the bigger is, the issue of who owns what part of the system, maybe could be handled as part of the Wheeling Agreement that the City -- a re-negotiation of Wheeling Agreement that City and County are going to have to enter into in another 2 years.

COMMISSIONER TRUJILLO: What I would like to do is listen to staff's position regarding this issue and we've got Estevan that can represent that.

ESTEVAN LOPEZ: Thank you Mr. Chairman, Commissioner Trujillo.

I think that Mr. Siebert presented correctly the history that's led up to this. Although I've got a little bit of a different perspective on a couple of things.

First of all, if Mr. Siebert and his client had an agreement with Mike Hammond as to how this would be handled, that's all well and good except that there was an understanding under that agreement that the water would flow through the County system and no one really come to the County and said, "is this agreeable to the County?" That didn't happen. The connections that ultimately did happen, the connections from La Mirada system to our system, the first one was completely unauthorized. We weren't even notified that it was going to happen, our system was shut down. When we were notified that there

was a loss of service we went out there and found the contractor in the process of making that connection.

Because they were into that already, we went ahead and let them continue the connection. The second connection we made with the understanding that first we had to come to an agreement with the City. To date, we've not come to an agreement with the City. And from my perspective, it's been a least somewhat presumptuous as to how this would work. I certainly don't have anything, any issue with the developer, Mr. Hurlocker, and him wanting to get service. But I do take issue with how this -- there's been a presumption as to how this would happen and we've been in essence put in a corner and now asked to make a simple solution where, in my estimate, for a number of other reasons including effective planning of the system so that whoever ends up running this system, if it's -- I assume that at some point in the future, it'll be a single system.

For the benefit of the future system, it would help not to mess things up any further. In my estimation, that system would be best served for all involved if it were a County system and the City just supplied the water to us. We would still provide the -- we would still pay for that water, it would be metered through our master meter and we would handle those La Mirada residents as our customers. But it's certainly within the discretion of the Board to do whatever they feel.

COMMISSIONER GONZALES: Estevan, without getting on a soapbox, this is a prime example of why it's so flawed, that we have two individual systems separate of each other and my concern is that this is the first of probably what could be many encounters between the city and the County in terms of trying to figure out water services areas and boundaries. Now we're finally moving. We've been talking about it the last 5 - 6 years about the idea of creating services areas. Well, now we're faced with reality where there's actually pipes in the ground, the City is ready to move water to a particular area, now it's an issue of jurisdiction and who's going to supply water, who's going to manage and what we see is a confrontation that is existing between the City and the County that perfectly illustrates why it...that we have 2 independent systems. But putting that statement to the side and just kind of warning this Commission that I think that unless we address -- trying to combine the systems, I think this is going to be a common practice. We need to address that issue.

But I guess my point on this particular issue, Estevan, is aren't we a little bit late in the game in trying to -- on this particular subdivision -- trying to figure out or trying to work an increase in our Wheeling Agreement with the City and servicing the actual customers out in this area, them being County customers as opposed to City customers. To me, the way I understand this, the County didn't have the water to provide La Mirada or else we would be providing them water, is that correct?

ESTEVAN LOPEZ: That's correct, we did not have enough water.

COMMISSIONER GONZALES: And then the second issue is that the City stepped in and said, "okay, we'll supply La Mirada with the water, and we'll go ahead and

take our water out there and supply them with the water." And we basically went ahead and I guess allowed that to happen. And that process has been going on and now for the County to step in and say, "okay, what we want the City to do is supply them with the water, in effect, increase our Wheeling Agreement and we'll manage it, I think the City's going to pull the plug on this. I don't see how the City is going to support that and then we're going to be left with a subdivision that we've committed taking water to that we have no water to take to it.

Isn't that confrontation going to occur? Isn't that going to be a reality that going to happen and meanwhile this developer who has followed the process this far is basically going to be left without any water to supply the people who are purchasing his lots.

ESTEVAN LOPEZ: Mr. Chairman, Commissioner Gonzales, I think it's correct, it is very late in the game to be trying to resolve this. Over a year ago, I wrote a letter to Mike Hammond proposing the solution that I've just given you as my preferred alternative. Recently with the current utility director, I asked about whether that has ever been considered. I was told, "yes, that was considered." My proposal was considered, but yet, my proposal was a "stand alone" proposal, that was just to this development. His letter says that my proposal was taken forward with another number of proposals which were rejected. I'm not sure exactly what that means in terms of the City Council's rejection of the proposal. Were they rejecting this solution? I'm not sure.

But I guess all I'm saying is, certainly an administrative solution can be had. And we can do what's being suggested by Mr. Siebert. And we would facilitate that solution. Just as easily, the City Council could also make an administrative solution that in my opinion would make much more sense from a perspective of effective utility planning. And then certainly we ought to set up a time line for discussing and resolving those service area issues. Because you're right. It could very easily just come up over and over and over again.

Just one final thought that I would leave you with. I'd ask you to consider what would happen if we, the County, had some water rights and approved a development and said, "we'll serve you water," and they just happen to be adjacent to the City system. And if we presume that we would get that connection, I'm not sure if that where that would go, but I think that's something that ought to be considered.

COMMISSIONER GONZALES: Estevan, in a perfect world, what you just described would be great, where the Council would actually see a big picture and try and figure out how we be prated and work on together on this. But unfortunately, we're just not in that environment yet. So the question is, minus that environment, what happens to an individual who has followed a process. You know, is it fair that at the end of the road they get squeezed out while the two bodies basically fight over what the big picture should be or do we have an obligation to someone who has worked in good faith to try and find the best process to complete the journey they've been on and then put our heads together with the City. So I think what you've just described is great, I'd love to hear the Council debate it

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and concur with what you indicated but I think it's going to take a lot of work on our part and their part to get to that point.

COMMISSIONER ANAYA: It seems to me, Estevan, since you know the agreements were already put forth, you know Mike Hammond went ahead and committed what he did. What I would like to see or what I think should be the proper step to take is to go ahead and honor that through the system and still pursue with the City to get this problem resolved as Commissioner Gonzales stated. It seems like in the other events it's going to surface in the future. But this now, is the first initiation step to move forward with the City to resolve those problems that are going to occur and I think we need to pursue it because all those improvements have been done, they're all in hand, monies have been expended and it's the only way to go is to fight for Mr. Hurlocker, for example, I think he's in the County and we need to move forward on this. I think we should be allowed through our system and then pursue it with the City to try and get a resolution.

COMMISSIONER DURAN: I agree. I think the appropriate thing to do here is to honor the commitment that we made to Mr. Hurlocker when we agreed to approve the subdivision based on the City provided him water. And it did several things, it got us out of a lawsuit because of some differences of opinion about the density and it also freed up 50 plus acre feet that we allocated some place else.

The other thing is now that we're in this regional planning process, water is really going to be an important issue and I think that the City is going to not work with us on increasing our Wheeling Agreement until we have found some consensus on how growth management should take place out in this regional area. And that's going to take several years. And it could turn out that we don't agree with one another and that would further complicate Mr. Hurlocker's situation. And I don't think it would be fair to make him wait for that process.

COMMISSIONER TRUJILLO: My understanding is that the County never made any commitment to Mr. Hurlocker. I think that commitment was made within the jurisdiction of the body of the EZA through a motion by Councilor Frank Montano. I think the County of Santa Fe because of limited water rights is in a precarious situation to extend service to this development. Understanding that the developer now is also in a precarious situation selling land and trying to provide a resource to the buyer that austencively ?? doesn't exist. So what I'd like to understand is where did the commitment come from. Did that commitment come from the County or from the EZA?

COMMISSIONER DURAN: Council, didn't the Council vote on extending the water out to the subdivision?

CHAIRMAN GRIÑÉ: Yes.

ESTEVAN LOPEZ: Mr. Chairman, Commissioner Trujillo, Commissioner Gonzales, I believe initially the suggestion came out of the EZA but yes, the Council has to do a utility boundary extension. So the Council actually made that commitment to provide service.

And I guess I'd like to say that certainly we'll act on the wishes of the Board. I certainly hope that we can come to the table and resolve these issues before this sort of thing comes up again because as all of you know, it gets extremely frustrating.

COMMISSIONER GONZALES: Mr. Chairman, I guess what I would suggest and I don't know if there will be concurrence by the Commission is that basically we work with the developer and with the Council so that we can do as basically what in my mind I thought we had agreed upon which was the Council would deliver water, they would be City customers, it would not effect our Wheeling Agreement and hopefully over a period of time work to where we create the one system. And I agree it's going to complicate issues, but that was a decision made when they voted to take water out into County jurisdiction and service a County subdivision. And that's not something that I think that the developer should have to pay the price for, for that type of policy decision. They acted basically in good faith.

So I guess what I'm saying or asking Staff to do is that we go down the route that I thought we were going down, which was basically allowing the City to deliver water, manage this system, have them as City customers and assure that it does not have an affect on our Wheeling Agreement. I just want to understand that the 500 acre feet will not be impacted. If you can work it where the City is willing to increase our Wheeling Agreement and allow us to have them as customers, good luck, that's great, but I don't want a process, you know, this has been in the making for 3 or 4 years, that's not how I want to do business at this County. And I think if there's a road map that someone follows, that we lay out for them, I think we have a responsibility to make sure that we honor a route that we suggested that they go down.

And in this case that happened at the EZA. The EZA told Mr. Hurlocker, through the suggestion of Councilor Montano, go to the City, if they give you water, that's great. If they can manage it, they can take care of it. I believe he did that. The City gave him the water and now at the last minute I don't want to start changing the rules of this game when it's almost over with.

So I guess I"d ask, I don't know if it's clear enough, but I'd ask that we allow Mr. Hurlocker to go forward with the City and to allow the City to manage the system and then work on the bigger policy issues at a later time, hopefully through the Regional Planning Authority.

COMMISSIONER ANAYA: This is truly the seed of the test to see if the RAP is really going to work. I think and if it's a push and shove between the City and the County, I think this is the testing that ought to get undergoing right now.

COMMISSIONER TRUJILLO: I have one question, Estevan, following along the lines of what Commissioner Gonzales is saying, what's your position regarding letting go of that service to the City? How is it going to impact the County utility and their opportunity to provide services and extensions in that area?

ESTEVAN LOPEZ: Mr. Chairman, Commissioner Trujillo, we can certainly

accommodate, certainly, what Mr. Siebert is asking for and what Commissioner Gonzales is suggesting. We can accommodate it. The impact that it has is primarily from a planning perspective, had it been our customer, we would have been planning this system differently so that we could loop the line and add operational flexibility for the entire customer base downstream of that. It changes things and it makes things a little bit more administratively burdensome in that customers -- there's going to be a mix of customers as to whether they're County customers or City customers, we're have to do some accounting for the usage by those customers. There may be some questions where if say a line break that's on our system but it affects that system, that portion of the system, customers that are affected by that line break -- there may be confusion as to who exactly needs to take care of that sort of thing. So all of those things. But certainly I think that I hear what direction the Commission has given and we'll make that happen and I certainly will continue toward a resolution.

COMMISSIONER TRUJILLO: In fact I'm concerned with this piecemeal foundation that this implementation, if you will, were put in place. And I think it's imperative that we work with the City to make sure that we look at the water in the region from a holistic standpoint instead of this piecemeal implementation. And there's no understanding of overlapping the jurisdictions and things like that.

ESTEVAN LOPEZ: Mr. Chairman, Commissioner Trujillo, that's exactly my concern, as well, and I don't think neither the County nor the City are doing justice to their customers if we continue to do our business that way.

COMMISSIONER DURAN: I think that the County participated as much as anyone else in creating this problem of piecemeal development of this water system. Maybe we'll learn a lesson that next time that when development in the County goes to the City for water, that we would have some insight into what other steps we need to take to ensure that our system maintains its integrity and that we can provide service as you, Estevan, in your department feel that needs to be provided out there. So this is a learning for all of us.

COMMISSIONER GONZALES: A couple of other issues that matters from the Commission, just for communication to the Commission, I had a meeting with the Mayor last Wednesday. Talked about a couple of issues, 1) the RPA is scheduled for May 29th, is that right, June 29th, Estevan, is that correct? June 29th, the RPA meeting.

ESTEVAN LOPEZ: That's correct Commissioner, the first RPA meeting has been scheduled for June 29th at 7:00 p.m.

COMMISSIONER GONZALES: One of the issues that we had talked about with the Mayor was -- and I wanted to throw this out so that all of you could consider it and see if this is the route that we'd like to pursue in our efforts to try and do more collaboration with the City, was to begin to combine the lobbying efforts for the region from both the State and Federal level. We know that Federal lobbyists, as we know it today, I guess Senator Dominici office announced a $600,000.00 grant that's coming into I believe the northern -- it's actually coming into Santa Fe County to deal with water issues, is that right

and waste water issues, liquid waste.

And also last year there was a $600,000.00 grant that was given -- that Udall had announced and that money is supposed to be coming to the County and from what I understand in a couple of months, that we're actually going to get a check, is that right, Estevan?

ESTEVAN LOPEZ: Mr. Chairman, Commissioner Gonzales, I think the reference is to the same $600,000.00 grant --

COMMISSIONER GONZALES: I thought it was a different grant is what I understood.

ESTEVAN LOPEZ: My understanding is that it's the same one. Initially when we heard about it from Mr. Udall, that was the first step in the process, then we had to submit a budget and all of the paperwork to really demonstrate how that money would be managed. We've done that and the notification that we recently received was notification that that paperwork has been accepted.

COMMISSIONER GONZALES: I guess my point is that there may be an opportunity for the City and the County to collaborate in Federal lobbying efforts to come into the region and then also do some collaboration with the State and so the Mayor was open to that idea. That's just been floating around so whatever thoughts you guys could provide would be great.

And then Estevan, we had talked briefly about El Rancho de las Golondrinas, they're in the process of working on their system, upgrading their systems and their waste water system and I'd like to see what we can do to either provide them with support, cause I know that that's what part of bond money is for, to take into traditional community for these issues or see if the County can step in and actually manage a waste water system in that area. Which I would probably feel better if we were doing it as opposed to Golondrinas doing it because we're in the business of doing that and they're not. So can you contact and begin to have the discussions with the Rancho and I believe Becky can provide you with the contact names and who to discuss with. Can you bring that back for the Board at least for discussion over the next month or two.

COMMISSIONER TRUJILLO: Along the lines of Commissioner Gonzales is saying, the Teen Center in Northern Santa Fe County has also become a regional facility. Senator Binghaman earmarked, allocated $232,000.00, so any many sort of regional communication or cooperation, I'd like to see the City of Espanola and Rio Arriba County also invited to the table.

CHAIRMAN GRIÑÉ: Also, I'm going to add one and Deborah, for the June 27th meeting, make sure that you put there for the change of chairmanship. So it will start in July, okay. And if there is no further discussion, we'll move on. We'll go on to:

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F. Matters from the County Attorney
1. Executive Session.
a. Discussion of Possible Acquisition of Real Property or Water Rights.
b. Discussion of Pending or Threatened Litigation
c. Limited Personnel Matters

CHAIRMAN GRIÑÉ: Do we need one, Deborah?
BARBARA MULVANEY (Deputy County Attorney): Yes, we do, Mr. Chairman.

Commissioner Anaya moved to go into executive session to discuss the matters delineated above. Commissioner Gonzales seconded the motion which passed upon unanimous roll call vote with Commissioners Anaya, Griñé, Trujillo, Gonzales and Commissioner Duran all voting in the affirmative.

[The Commission met in executive session from 6:15 to 7:00.]

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

IX. Public Hearings:
A. **Ordinance No. 2000-8, An Ordinance Creating a New Article XIV, Traditional and Contemporary Community Zoning District, and Incorporating Zoning Standards and Regulations for the Los Cerrillos Community Zoning District (Second Public Hearing).**

ALINA BODKE: Mr. Chairman, Commissioners, this is the second public hearing for an ordinance that would create a new Article XIV as A Land Development Code to Establish Traditional and Contemporary Communities Zoning District. As also part of this ordinance that is before you this evening, the velocity of community zoning district would also be adopted and incorporated. This district lays out zoning districts are supported by the community plan, as well as, performance standards for both residential and commercial uses in the community.

The Commission adopted the Los Cerrillos Community Plan in October 12, 1999 and this ordinance establishes zone -- tradition and contemporary communities zoning district

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could also support the Community Plan.

CHAIRMAN GRINÉ: Okay, this is the second public hearing. I don't know why they wouldn't be to extend too much on it because we've heard probably most at the first hearing. But anybody still wishes to speak before the Commission on this ordinance go ahead.

DR. WILLIAM KUCHAR: My name is Dr. William Kuchar. I briefly want to thank you, thank Alina especially, the condition and of the people from the Commission. It's been a hard process for us because it has been a process where we've had to learn to work together and I think it's been a tremendous asset to all of us because we've had to make compromises, we've had to listen to other sides and so forth. We've come a long way and again, without the cooperation and the support of the County we wouldn't get to be here today. And I just want to thank everybody.

CARLOS QUINTA: My name is Carlos Quinta. I'm a member of the Village of Cerrillos and I've been with this process since it started two plus years and it's been a long process but it's been a very, very good process and I just want to say thank you to Alina and the Commissioners for getting us to this point, thank you.

Commissioner Gonzales moved to approve Ordinance 2000-8 as submitted. His motion was seconded by Commissioner Trujillo and passed by unanimous roll call vote as follows: Commissioner Grine, Jr., Commissioner Anaya, Commissioner Duran, Commissioner Gonzales amd Commissioner Trujillo all voting for.

B. Land Use Department Items:

1. **EZ Case #S 00-4490. The Village of Rancho Viejo, Unit 1. Rancho Viejo De Santa Fe, Inc. (Bob Taunton, Vice President), applicant os requesting authorization to proceed with a master plat procedure, which would allow submittal of a master plat for the purpose of administrative approval of 27 affordable lots as a sub-phase within unit one. The property is located off Richards Ave./Avenida Del Sur intersection within the five-Mile Extraterritorial District, Section 20, Township 16 North, Range 9 East (Commission, District 5). Joe Catanach**

JOE CATANACH: Thank you, Mr. Chairman, Commissioners, as stated the applicant is requesting authorization to do a master plat. And if a master plat procedure is allowed tonight, this applicant will proceed to submit a master plat to the EZC in a development plan. And this will be for 27 lots and the master plat would just show a conceptual lot layout. It doesn't actually platted lots. In which case, once the seller and the buyer have decided on a lot, then they would submit a plat to the administrative staff and we would sign off on a separate plat for one or several lots.

But this procedure provides flexibility for the seller and the buyer based on market demand. And as it goes, this master plat would be for what was called Tract G within the Village at Rancho Viejo and Unit 1, to permit an administrative approval of 27 residential lots for affordable housing. And Tract G was initially designated for a public school site or for commercial community uses or additional residential density in the event that the Santa Fe Public School District prefer an alternative site. The Public School District has determined that a school site within the WindMill Ridge Subdivision Phase is more appropriate. So thus the Public School is no longer interested in this particular site and this is the tract of land that Rancho Viejo is requesting authorization for a master plat.

The intent for a residential development on this Tract G is consist with the Plat Development Plan for a mix/ use subdivision phase as it was approved for the Village of Rancho Viejo and the total residential density consisting of 334 units will be maintained. That will not change. These 27 affordable lots, they got an overall approval for residential lots and for live/work units. These 27 affordable lots are actually coming from the total number of lots -- units that were allowed for the work/live units. So I think there was a total of 63 work/live units. And so these 27 residential lots would be coming out of those work/live units and right now Rancho Viejo marketing and demand for these lots is greater than it is for the work/live units and Staff is recommending that authorization be granted to proceed with the master plat.

COMMISSIONER TRUJILLO: Joe, does the developer have to augment their water bank or water rights to provide water for this, now new, residential development.

MR. CATANACH: No, like I say, because the total number of residential units will not be changing from what was initially approved by the Board. So the water proposal that was approved for the Village of Rancho Viejo isn't changing.

COMMISSIONER TRUJILLO: Is the density going to be different or --

MR. CATANACH: No, the density would not change. We would still have a total of 334 residential units except there would be less work/live units now.

COMMISSIONER TRUJILLO: Less what?

MR. CATANACH: Work/live units or live/work units rather. Because that's where these 27 lots are coming out of. They're coming out of the total that was allowed for the live/work units.

COMMISSIONER TRUJILLO: The overall scope of the project will remain the same then?

MR. CATANACH: Yes, Commissioner.

COMMISSIONER TRUJILLO: Thank you.

CHAIRMAN GRIÑÉ: Is the applicant here? Ike?

[Duly sworn, Ike Pino testified as follows]

CHAIRMAN GRIÑÉ: Ike, are you in full agreement with Staff's recommendation?

IKE PINO: Mr. Chairman, we are.

CHAIRMAN GRIÑÉ: Are there any other speakers or questions on this case?

Commissioner Trujillo moved to approve EZ Case #S 00-4490 as submitted. His motion was seconded by Commissioner Anaya and passed by unanimous voice vote.

2, **CDRC Case #V 99-5400. Osmundo Herrera Variance. Osmundo Herrera, applicant, requests a variance of Article III, Section 10 (lot size requirements) of the Land Development Code to place a second dwelling unit on 0.87 acres. The property is located off County Road 84G in the traditional community of Nambe, within Section 10, Township 19 North, Range 9 East (Commission District 1). Frank White.**

FRANK WHITE: Thank you Mr. Chairman, Commissioners, Osmundo Herrera, applicant, requests a variance of Article III, Section 10, Lot Size Requirements of the Land Development Code, to allow a second dwelling unit on .871 acres. The property is located within the traditional community of Nambe, off County Road 84G within Section 10, Township 19 North, Range 9 East (Commission District 1). Mr. Chairman, or whoever's going to be stepping in, would you like for me to give a brief summary of the report or just skip to the recommendation?

CHAIRMAN GRIÑÉ: Just a brief summary highlighted preferably.

FRANK WHITE: Article III, Section 10 of the Land Development Code states that the minimum lot size in traditional communities is .75 acres per dwelling unit. There are currently two homes and two separate systems on the property. The property is served by a shared well. In 1970, a second home was placed on the property and was removed in 1982. In 1992, a second home was moved onto the property and is currently on site. Between 1982 and 1992, only 1 dwelling existed therefore the legal non-confirming status for two dwelling units was lost.

The applicant states that he was in the Navy from 1984 to 1990 and was unaware of the County regulation.

Recommendation: Staff recommends that the intent of the code is to set minimum lot size in this area at .75 acres per dwelling unit. Therefore, Staff recommends that this request for variance be denied. The decision of the CDRC was to recommend approval of the variance with the following conditions and if you may, I can enter the conditions into the record.

COMMISSIONER TRUJILLO: Frank, this is a family transfer, the lot?

FRANK WHITE: Mr. Chairman, Commissioner Trujillo, it is not a family transfer. It's to allow 2 dwelling units on the property.

COMMISSIONER TRUJILLO: Under the apparent intent of the code, it's going to be conveyed to an offspring, the son, right, so that would be a family transfer.

FRANK WHITE: Mr. Chairman, Commissioner Trujillo, this is not going to conveyed to Mr. Dennis Herrera, the applicant.

COMMISSIONER TRUJILLO: It's going to remain one parcel.

FRANK WHITE: It's going to remain one parcel.

COMMISSIONER TRUJILLO: And does the status quo is that there is an existing mobile home there since 1982. So no disruption to traffic, to liquid waste, to water usage, to anything like that since 1992 when that mobile home was situated on that lot, is that correct?

FRANK WHITE: That is correct, Commissioner, and it's been an existing residence and the unit is a mobile home that the applicant has on there since 1992.

COMMISSIONER TRUJILLO: Okay, thank you.

COMMISSIONER DURAN: Frank, so the problem is that because one was moved off site, it lost it's legal non-conforming status, is the what happened?

FRANK WHITE: Mr. Chairman, Commissioner Duran, that is correct, he lost his non-conforming status. He had to replace the unit within one year. So he failed to do so and there was a period of 10 years that elapsed.

CHAIRMAN GRIÑÉ: Is the applicant present? Please come forward.

Duly sworn, Denn. rera testified as follows] .

CHAIRMAN GRIÑÉ: Dennis, you agree with all the conditions that are set forth by the EZ or by the CDRC, I'm sorry, do you agree with those conditions?

DENNIS HERRERA: Well, I would like address one of the conditions. I'm not sure which one exactly it was. It was the issue of no further permanent structures. And I fully understand Mr. White in his role for the County that he would not want no more permanent structures on the property.

I asked my father for the favor of letting me live on his land. And he agreed and I don't know what future plans he had for his property. But I would feel bad if it was my fault that he couldn't never add on to his house or whatever he might choose to do. Or limiting his further use of the land. This will be the house that I'm going to be living in the rest of my life and I would like personally to have a garage, also, because my second job is as a mechanic and it's also my favorite hobby.

So I would respectfully request that you would drop that condition. Or if you choose not to, as an alternative, I would suggest that you alter it to read, no unattached permanent structures so that I could -- that's all I have.

COMMISSIONER TRUJILLO: I think the intent of this condition does not preclude you from adding on to your house. I think what they're saying here is for another house, another residence in the same piece of land. But it will not preclude you from having a garage or another room or going with a second story, as long as you follow the code, the Rules and Regulations of the Santa Fe County. I think the intent here is that another house, another residence will not be situated in the same piece of land.

DENNIS HERRERA: Right, I have no problem with that.

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CHAIRMAN GRIÑÉ: So is that the end.

DENNIS HERRERA: So I accept all conditions.

COMMISSIONER DURAN: I just have further clarification. Though Condition No. 3, No Additional Permanent Structures to be Erected on the Side to Support Either Dwelling, what we're doing, sir, is clarifying that to say that he can have a pertinent structure that's allowed to single family residents?

FRANK WHITE: Mr. Chairman, the intent was that when the CDRC granted this, it was on a temporary basis and so that it would remain temporary. That condition would be in place so that there isn't anything permanent added to it so that it remains temporary. So it had to do with the approval of the CDRC which was temporary approval.

COMMISSIONER DURAN: Temporary approval of the siding of the second dwelling. Okay, Mr. Herrera, I have a question. Under a single family residence situation, you have the ability to have a main house, a studio guest house, and garage, as a pertinent structure. So would that be -- I can see where staff is going with this, where the CDRC went with this, that they don't want to have like 2 guest house, 2 more guest houses, 2 more garages, at some point, you should be able to kind of let us know what is the most -- how much more would you intensify the use of the property so that we can --

DENNIS HERRERA: Mr. Chairman, Commissioner Duran, I actually need to correct what I actually stated. The CDRC actually approved it as permanent, so I don't know why they carried it with that condition. But that is why Staff has originally recommended that condition because the recommendation was for temporary, but Frank just informed that the CDRC's approval was actually for permanent so it's up to the Board whether or not they want to just remove it completely.

COMMISSIONER DURAN: I just have one last, why don't we change #3 to say that no additional dwelling units will be erected on the site.

COMMISSIONER TRUJILLO: I think that's covered by the code already. We don't have to put it as a condition. There a limitation --

COMMISSIONER DURAN: Then let's remove it entirely.

COMMISSIONER TRUJILLO: Let's remove it entirely.

COMMISSIONER DURAN: Okay. Keep in mind CDRC has already approved it as a permanent structure.

COMMISSIONER TRUJILLO: And we've heard Mr. Dennis Herrera state that that's where he want to spend his life to live, to reside. So, yeah.

COMMISSIONER ANAYA: Okay, it seems to me, Commissioners, this kind of falls under the auspicious of family transfer. But I guess the procedure is a little different but I'll leave it at the pleasure of the Commission.

COMMISSIONER DURAN: Any other speakers?

Commissioner Trujillo moved to approve CDRC Case #V 99-5400 without Condition #3

as submitted. His motion was seconded by Commissioner Duran and passed by unanimous voice vote.

3. **CDRC Case #A/V 00-5181. Theodore Peperas Variance. Theodore Peperas, applicant, requests a variance of Article III, Section 10 (lost size requirements) of the Land Development Code to place a second dwelling unit on 1 acre. The property is located north of the intersection of Old Las Vegas Highway and County Road 51, within Section 11, Township 15 North, Range 10 East (Commission District 4). Frank White**

FRANK WHITE: Thank you, Mr. Chairman, Commissioners, Theodore Peperas, applicant requests an appeal to CDRC's decision to deny a request to allow a second dwelling unit on one acre which was zoned a variance of Article III, Section 10, Lot Size Requirements of the Land Development Code.

The property is located north of intersection of the Old Las Vegas Highway and County Road 51 within Section 11, Township 15 North, Range 10 East. Article III, Section 10 of Land Development Code states that a minimal lot size in this area is 40 acres per dwelling unit. There are currently 2 homes that exist on the property. The property is served by a shared well. The applicant states that the mobile home is currently and relocating the applicants would constitute a breach of contract.

Recommendation: Staff recommends that the intent of the code is to set minimum lot size in this area of 40 acres per dwelling unit based on Article III, Section 10 of Land Development Code. Therefore, Staff recommends the denial of the appeal and requests a variance. The decision of the CDRC was to deny the appeal and recommend now the request of variance. If the decision of the BCC is overturn the CDRC's decision and grant a variance, the Staff recommends the following conditions: And if you may, I can enter the conditions into the records. There's going to be a correction on Condition #8. It should read at the very end instead of "set forth by the County Development Review Committee," it should be Board of County Commissioners. Thank you.

CHAIRMAN GRIÑÉ: Frank, is the applicant present? Please come forward.

[Duly sworn, Theordore Peperas testified as follows]

THEODORE PEPERAS: My name is Theodore Peperas. Distinguished Commissioners, I'm here before you today, requesting a variance on the following premises, the mobile home has been out there since 1987, my wife and I resided in that home while we built the house that we're currently living in.

In addition to that, my wife and I live by ourselves. Our family has grown up and they've moved out of the house. Another key component why I'm requesting this is because there's only 3 people that currently are living in that mobile home. If the Board decides not to grant approval of this, I would feel obligated to provide housing for them so that it would

make any difference in water usage, if they were living inside my house or they were living in a separate unit that's on my house.

In addition to that, we are committed and invested in this community, I was born and raised in Santa Fe, grew up in Santa Fe. All the people that have come in here to support the request for the variance are from the community of Canoncito and/or family members. And they are all in support of my request.

To minimize the impact to the water usage, we have purchased a membership to the Canoncito Water Association. The meter has already been placed, we are in the process of getting approval from my neighbors to bring the water through their property and up to our property.

In addition to that, we have zeroscape, our water usage is very minimal. We have one septic system, so there's no additional demands that are going to be placed on that.

Initially, when my father-in-law purchased the property, he purchased that property so he could convey it to his children. Much the same as most of the people that have gotten up there to speak before the Board today, and basically our forefathers came to this country with conviction, commitment, and an unending passion to open up opportunities of a better way of life. A life that they would have freedom of choice, and where people were treated equally.

Mr. Frank White indicated that the ordinance has changed over there and it requires 40 acres of property for 1 dwelling. Basically a lot of the local people feel that that is an unrealistic dream, you're taking away our dream by having 40 acres. The average acres costs $50,000.00, anywhere from $36,000.00 to $50,000.00. If you multiply that $50,000.00 times 40 acres, that is $2,000,000.00 before there is any ground breaking. That is unrealistic for local people.

CHAIRMAN GRIÑÉ: Mr. Peperas, are you in agreement with all the conditions imposed?

THEODORE PEPERAS: Yes sir, I am.

COMMISSIONER GONZALES: I have a question of the applicant. As to the question that the chair asked whether you were in agreement with the conditions that the Staff, and I was reading while you were talking, some the testimony that you gave at the CDRC meeting and it didn't sound like you were necessarily in agreement. And I just want to really clarify this. The Staff is stating that if we overturn the CDRC's decision and grant you a variance, that the applicant will remove the second home when the current rental contract expires. And from what I understood from your previous testimony, you had indicated that you prefer to make that decision at the time that the contract expires, is that correct?

THEODORE PEPERAS: That is correct, sir.

COMMISSIONER GONZALES: So that's one condition that you don't agree with the Staff on.

THEODORE PEPERAS: That is correct, sir.

COMMISSIONER GONZALES: Provide a revised environmental department liquid waste permit for both homes with the correct lot size shown. If such a permit cannot be obtained within 60 days of BCC approval, the second dwelling shall be removed immediately. I'm assuming that you're not agreeing with that either.

THEODORE PEPERAS: That is correct.

COMMISSIONER GONZALES: No additional permanent structures to be erected on site to support either dwelling unit until second dwelling unit is removed.

THEODORE PEPERAS: I would not be in agreement with that either, sir.

COMMISSIONER GONZALES: That the existing driveway would continue to serve both homes.

THEODORE PEPERAS: I'm in agreement with that.

COMMISSIONER GONZALES: You agree with that?

THEODORE PEPERAS: Yes.

COMMISSIONER GONZALES: The mobile home is not to be placed on a permanent foundation.

THEODORE PEPERAS: I'm in agreement with that. But that's another decision that I feel I should have.

COMMISSIONER GONZALES: Right.

THEODORE PEPERAS: The opportunity to make myself so, no, I would like to make that decision myself.

COMMISSIONER GONZALES: And it looks like six utilities on the mobile home are to be removed upon removal of the mobile home, so that in the event that you decide to, if this Commission grants your request, if you decide to remove the mobile home from the property, would you be in agreement of capping the utilities so that they couldn't serve another dwelling.

THEODORE PEPERAS: Definitely.

COMMISSIONER GONZALES: Then it says, "failure to comply with all conditions shall result in administrative revocation of the variance." That would only be subject to the conditions that the Commission passes. And that's basically standard, I'm assuming, is that right Roman? That that revocation would occur anyway if there are conditions that are put on here that the Commission does if they don't comply with.

ROMAN ABEYTA: Mr. Chairman, Commissioner Gonzales, that's correct, that would be subject to whatever conditions the Board decides to impose.

COMMISSIONER GONZALES: And then it states here, #8, the final condition, "applicant shall sign a temporary density/area variance conditions of approval affidavit accepting the conditions of approval as set forth by the CDRC. The CDRC did not approve this, is that right?

ROMAN ABEYTA: Mr. Chairman, Commissioner Gonzales, the recommendation from the CDRC was denial so that would only be relevant if you decide to approve this on a temporary basis.

COMMISSIONER GONZALES: Okay.

FRANK WHITE: Mr. Chairman, Commissioner Gonzales, that was also reworded early and should read, Board of County Commissioners.

COMMISSIONER GONZALES: So then if I understand the applicant correctly and I'm not sure if you have -- can you provide the applicant with what I just read? Do you have a copy of the conditions?

FRANK WHITE: Commissioner Gonzales, no I don't.

COMMISSIONER GONZALES: From what I understand, you're basically stating the one, out of the 8 conditions, which you are accepting is #4, and your accepting #6, which state that the utilities supplying the mobile home are to be removed upon removal of a mobile home. So you're basically agreeing that if, in the event, you decide to remove the mobile home, that you'll cap the utilities and prevent other structures from coming in?

THEODORE PEPERAS: That is correct, Commissioner.

COMMISSIONER GONZALES: So those are the two conditions that the Staff -- just to go along with the chair had asked originally whether you agree with staff's conditions based on what I've read on your previous testimony at the CDRC, it looks like those are the 2 that you're only agreeing to.

THEODORE PEPERAS: That is correct.

COMMISSIONER GONZALES: Just for clarifications again, you're also indicating that they community water system will is supplying both units, is that right?

THEODORE PEPERAS: Yes sir, that is correct.

COMMISSIONER GONZALES: And that's coming from a community well that is monitored and regulated and all the such?

THEODORE PEPERAS: No sir. We have a well on the property that we're currently using. We are bringing in the community service.

COMMISSIONER GONZALES: You will be bringing it in?

THEODORE PEPERAS: Yes sir, that's correct.

COMMISSIONER GONZALES: Is that a part of the conditions here that have been set forth or is that just something that you're doing on your own?

THEODORE PEPERAS: I'm doing that on my own.

COMMISSIONER GONZALES: Would you agree to have that attached to this, that you will hook up to a community water system while you have the dwellings in place?

THEODORE PEPERAS: Definitely, because I'm doing that anyway.

COMMISSIONER GONZALES: Okay, thank you.

COMMISSIONER DURAN: Can I have a show of hands to know how many people are here for this? Is there anybody in the audience that would like to speak against this proposal.

Commissioner Gonzales moved to overturn the decision of the CDRC and to grant the

variance with conditions as follows: 1) that the existing driveway will continue to serve both homes; 2) that the utilities supplying the mobile home are to be removed upon removal of the mobile home, 3) and that the applicant will hook up to the community water system to serve both units. His motion was seconded by Commissioner Anaya and passed by unanimous voice vote.

COMMISSIONER TRUJILLO: I would just like to say that I see Senor Rios out there in the audience and he's a patriarch of the family and he's left a legacy in this community of being a steward of the land, you know, there's by no search of the imagination has he exploited any of his land and the way he conveys it to his offspring. So I want to commend you for that Mr. Rios.

COMMISSIONER ANAYA: Again, Mr. Chair, this is the auspicious true dignity family type of transfer situation.

4. **CDRC Case #A 00-5201. Canyon Vista Appeal. Canyon Vista, applicant. Kevin McCauley and Jim Ali, agent, would request an appeal of the County denial and Committee decision not to Recognize the 8 BLM Lots as Legal Lots of Record. The property is located East of State Road 14, within Section 13 and 14, Township 14 North, Range 8 East (Commission District 3) Penny Ellis Greene.**
[Additional staff packet attached as Exhibit 5200 "1"]

PENNY ELLIS GREENE: Mr. Chairman, Commissioners, in 1923 the subject property was conveyed by -- to Elizabeth Henderson and that's included in your Exhibit E. The property was conveyed to Canyon Vista in 1996 with the property described in bearing and distances and also as described in the 1923. In January, 2000, a lot line adjustment between the remaining acreage and the subject -- and on contiguous land was approved leaving a total of 387 acres within the subject property. That was described as and the applicant claims that 8 lots exist, described as Lot 1, the Southwest quarter, Northwest Quarter of Section 13, Lots 1, 2, 3, and 4, South part of the Northwest quarter, the South half of the northeast quarter of Section 14.

The applicant is requesting that these be considered legal lots of records. It is the position of the Commission that the 8 pieces of land are not separately legal lots of record, that they are not clear, to the applicable County code and created in accordance with the code. It is typical that land conveyed from the United States is reference to these lot. However, these lots are identified to facilitate the conveyance of public lands, they're not the same as legal lots of records and do not legally divide lands for the purposes of the code.

This method of surveying and conveyance has been recognized by Court as being separate from creating legal lots of record. Mr. Chairman, Commissioners, Vicky has just

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handed out some additional information to you. This includes several letters of objection to this appeal. I would also like to address and issue that was raised at the last CDRC meeting and within the objection letters. And is regarding an appeal of a driveway permit which is being issued on this property.

During both CDRC and BCC appeal hearings, the applicant's agent testified that there were only 3 legal lots of record. This was part of a discussion throughout those hearings. I've handed out both CDRC and BCC minutes which indicate this. I've also handed out 3 plans. At the time of the appeal hearing, the 3 lots are showing on the first plan. The subject patent is shown in pink, there's another patent shown in blue and shown in yellow is another additional 10 acre lot. We rectify those as 3 legal lots of record.

The second plan show the lot line adjustment, those showing 3 legal lots of record in this area. And the third plan shows where the applicant is now stating and requesting that there are, in fact, 8 lots within the subject property and these are all shown in pink.

I've also handed out recent caselaw regarding BLM laws. Recommendation: It is Staff's position that this one legal lot of record of 387 acres in size. The decision of the CDRC was to deny the applicant's appeal. With prudent water supply the applicant may legally divide land into 3 lots following current code requirements. Thank you.

COMMISSIONER TRUJILLO: Penny, by going from 1 legal lot of record, 300 and whatever acres, to 8 lots now, isn't that now a new set of requirements, is this considered now a subdivision?

MS. ELLIS GREEN: Mr. Chairman, Commissioner Trujillo, the applicant is stating that these were -- are legal lots of record already and the -- order subdivision. However, a year ago, the applicant at that point was stating that this was -- the...was one legal lot of record which is why we approved a driveway permit for these 3 lots.

If, in fact, there's 8 lots here, a driveway permit would not be sufficient. It would require a road permit. And we've also been in litigation through this, as well.

COMMISSIONER TRUJILLO: Plus all the other subdivision requirements for water and liquid waste and everything like that?

MS. ELLIS GREEN: Mr. Chairman, Commissioner Trujillo, if the applicant were to create these through a subdivision now, they would have to prove adequate water, road requirements, access and things like that.

COMMISSIONER DURAN: -- the plan for the driveway, his plan was only to have three lots.

MS. ELLLIS GREEN: Mr. Chairman, I handed out some BCC minutes to you -- actually, if I can skip down to the CDRC minutes, the applicant's agent stated that the 600 acres is divided into three parcels. Also, in the BCC minutes I've tabbed some pages for you and highlighted some pages throughout there were both Commissioners and Mr. McCawley say these are three lots. And that is the three lots shown in the first plan that I've handed out. The subject patent is shown in pink another patent in blue and a 10-acre tract shown in yellow.

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The applicant's position is now that a portion of this patent is eight legal lots of record.

COMMISSIONER DURAN: If he was to be granted these eight lots, wouldn't -- I mean the access he was granted at that time was based on it only servicing 3 lots. Has he talked to you at all about changing the access?

MS. ELLIS GREEN: Mr. Chairman, Commissioner Duran, no, I haven't spoken to the applicant regarding that. If eight lots were recognized tonight at that point the applicant would need to get a roadway permit instead of a driveway permit and meet the requirements for a roadway permit.

COMMISSIONER DURAN: But using the road that we approved for 3 lots?

MS. ELLIS GREEN: I believe that would gain access to the eight lots. It seems to be located in that area.

Thank you, Mr. Chairman. Thank you, Penny.

CHAIRMAN GRIÑÉ: Any other questions of staff.

COMMISSIONER GONZALES: Mr. Chairman. Penny, so if anyone else out there wanted to come forward with an eight lot subdivision there would be a list of requirements. Five or more you have to do certain things to be able to receive a plat that shows eight legal lots.

MS. ELLIS GREEN: Mr. Chairman, Commissioner Gonzales, that's correct. They would need to make an application, development plan and a plat looking at everything from liquid waste disclosures statements, water supply, fire protection, access --

COMMISSIONER GONZALES: And is the applicant representing here tonight because they're BLM lots or that they're stating that they're BLM lots and they should be recognized as such from the county as legal lots; they can circumvent any process that anyone else would have had to go through to have the same number of lots?

MS. ELLIS GREEN: Mr. Chairman, Commissioner Gonzales, that's correct. The applicant has submitted only for a boundary survey, and that's an administrative approval that doesn't require proof of adequate water or any of the other requirements that if you were doing an eight lot subdivision you would have to submit.

COMMISSIONER GONZALES: Reviewing the minutes concerning this issue and I'm going through it and seeing what the staff has highlighted. There was a continuous reference to three lots. In fact, I saw where Chairman Griñé in speaking to, I guess, to an individual by the name of Mr. Simmons, was saying this is not about 6 lots, this is about 3 lots. Let's stay focused on the 3 lots. I saw where Commissioner Anaya said 3 lots, I stated 3 lots and it seems that everyone was focused on 3 lots.

At that time was there any representation that there were 8 BLM lots that were out there that would subsequently be coming before this Commission for recognition? Was staff made aware of that or where were these 8 lots at the time that we were considering this because from what I remember we were all saying that the driveway is not a roadway.

MS. ELLIS GREEN: Mr. Chairman, Commissioner Gonzales, that is correct.

Throughout these minutes it talks about 3 lots and 3 lots only. The applicant in several places has said, "if there is a subdivision." The history is that when it first came in the applicant may well have put forward that here were more lots but we did not recognize, therefore, anything to do with that was withdrawn. In some places in these minutes you see 6 lots being discussed, the applicant at that point said, that's a working drawing that they were looking at some kind of subdivision. But throughout these minutes there is no discussion that in this area there are 8 legal lots of record. There is only discussion on 3 lots.

COMMISSIONER GONZALES: So if the Commission were to grant the applicant's request of recognizing the 8 lots, in terms of infrastructure and requirements, what would the applicant be required to do?

MS. ELLIS GREEN: If these were considered 8 legal lots of record, then the driveway permit would basically be void and he would need to have a roadway permit. At that point, it needs to be at least 20 foot in width and some of the driveway that is being applied for on these lots, or was applied for on these lots is only 15 foot in width. It would need to meet all local lane standards and there is grade percentages that he needs to meet, things like that.

COMMISSIONER GONZALES: So then what you're saying, if they were granted tonight they would have to come in and comply with all the county conditions that would be subject to any 8 lots that might be out there that are not BLM lots.

MS. ELLIS GREEN: Mr. Chairman, Commissioner Gonzales, only the roadway.

COMMISSIONER GONZALES: Only for the roadway?

MS. ELLIS GREEN: Not for hydrology, not for liquid waste, not for fire protection, nothing else. It would only be the roadway if you recognize these as eight legal lots of record.

ROMAN ABEYTA; Mr. Chairman, and if I many just clarify and add to that. If those requirements, those only get kicked in when you're creating the lots, things like water and sewer. So if you recognize the lots then he doesn't have to create them and we can't impose those other requirements on them. They are only required when you create lots.

COMMISSIONER GONZALES: So if we go this route, we create the 8 lots, they build the road, there's no hydrology, no fire protection so they can go sell those lots to any individual out there. It's a legal lot and if the individual doesn't have water or doesn't have proper fire protection, is there any recourse to individuals who purchase those lots other than through the county? What's the answer to that?

MS. ELLIS GREEN: Mr. Chairman, Commissioner Gonzales, no, I don't believe so. These would be legal lots of record. The applicant has submitted for a boundary survey to show these eight legal lots of record and would not be required to do anything other than to provide a road.

MR. ABEYTA: And, Mr. Chairman, Commissioner Gonzales, I believe that part of the reason or that answer is based on the fact that you're not actually creating the lots tonight, you would be recognizing them.

COMMISSIONER GONZALES: Maybe this is a question to Barbara, as it relates to BLM lots. Surely, this issue has been addressed in the past, are there lots that the federal government can create, transfer into the private hands and totally circumvent local jurisdiction? Is that -- it seems to me that that's the route that is occurring here that there is a preemption of local government laws based on federal lots that were created and sold to or given, whatever the case may be, to a private landowner; is that the right way to view this?

MS. MULVANEY: Mr. Chairman, Commissioner Gonzales, there's no caselaw in New Mexico on the BLM lots. There is caselaw throughout the country and the defining point is -- the answer to your question is sometimes the lots can be recognized and sometimes they are not. They must be lots. In this situation, they are not lots.

There is a case that came out of Idaho in March of this year and it went through this discussion and it held that the BLM lot lines did not demarcate lots for a county subdivision process. That they would have to go back and go through the subdivision process.

There is also the issue of merging and at times there were BLM lots that were defined and then if they were owned by a common ownership, they merged. There are certain kinds of lots that are recognized and certain kinds that are not.

The ones in this situation are not the type that have generally been recognized and furthermore there is a settlement agreement -- as you pointed out earlier we had litigation on this matter that concluded in April of this year when the settlement was reached. Throughout that whole litigation, it was Mr.McCawley's position and ours, we accepted his position and we were then sued by the community that there were only 3 lots. So as recently as April 3 in the settlement agreement that he signed with the community and with the county it was his position that he only had 3 lots.

The other point, in the settlement agreement there is also an agreement that the parties to the lawsuit who were if you recall, Mr. Simmons was one of them and he had come into the Commission on numerous occasions, was not allowed to object to a future subdivision of the property. So it is clear that Mr. McCawley anticipated coming back before the Commission to request a subdivision, he has not chosen that method. He has chosen to have his lots recognized.

COMMISSIONER GONZALES: So there is no question of preemption issue of federal -- the creation of the federal lots not being subject to local zoning meaning that what's been asked from us today is that we just recognize the federal lots or the lots that were recreated by the federal government and to me if we do that, we're basically acknowledging the fact that the federal government can preempt local zoning jurisdiction by the creation of these lots. You're saying that there's no caselaw in New Mexico but there is in Idaho that states that that wasn't; is that right?

MS. MULVANEY: Mr. Chairman, Commissioner Gonzales, that's correct. You also have to remember that the BLM lot line that they're requesting be recognized are historic. And they're survey lines so it's really -- I wouldn't call it a matter of preemption, it is not something that is going to come up tomorrow. It's a historical recognition.

COMMISSIONER GONZALES: Have we practiced that in this county?

MS. MULVANEY: Recognition of the BLM lot lines?

COMMISSIONER GONZALES: Yes.

MS. MULVANEY: As far as I know, the Commission had within the last year one case. There were four or five cases that were declined as far as the BLM lot lines and there is one case that was not.

But there are distinction each case which is what the Idaho case pointed out. Is that there are certain times that the BLM lot lines will be recognized as a lot but there are requirements.

COMMISSIONER GONZALES: Thank you.

CHAIRMAN GRIÑÉ: Any other questions of staff? How many people are here against it? How many are for it? Okay, the applicant please.

COMMISSIONER ANAYA: Mr. Chairman, just a point of clarification to the people out there. For the people out there is I think the question from the Chair was for approval of the entire concept of not who is for the appeal.

CHAIRMAN GRIÑÉ: I understand it. This case is on appeal though.

JIM ALLEY: My name is Jim Alley. Do you want to swear me in?

CHAIRMAN GRIÑÉ: No.

MR. ALLEY: I represent the applicant this evening, Canyon Vista, it is nice to be representing a client for a change.

My client will address you this evening on why he bought this property, what he understood from the county when he bought this property and that he wouldn't have bought it if he hadn't understood what he did understand. So he will speak truthfully on that.

The case arises from an appeal from the CDRC decision which upheld the county administrator's decision refusing to recognize eight lots of Canyon Vista comprising a total of 381 acres as legal lots of record within the definition of the code.

The issue specifically arose when Canyon Vista asked to have the lot lines adjusted on these eight lots into eight more suitable lots and all of them comprised -- this is hardly a little subdivision -- all of them are comprised of 40 acres and several of them are considerably larger than 40 acres. So we're not talking about a little subdivision here. We're recognizing lots that were created long ago and are recognized in a whole series of deeds from the time the patent was issued.

Now, I know you've been through this issue before. I've argued before you on behalf of Mrs. Barkley, and you found those lots to be legal lots of record based on the survey. You didn't find but the county recognizing legal lots of record and whole series of government created lots which passed by deal subsequently through the Thorton Ranch and

the county recognized over 100 lots as legal lots of record in that and the county just recently, County Land Use staff, has recently agreed to recognize those lots because they've been designated in prior deeds of record.

I want to keep you on focus of our claim, Commissioner Gonzales, is not that these are government created lot but that these are lots that were originally created by the government which subsequently passed on to people in the chain of title. Actually, the chain of title after a while went out and then came back to the people who conveyed to Henderson and Henderson conveyed to my client Canyon Vista in 1996.

The issue before you is, you had this issue, and it involves the definition of legal lot of record. What we're asking you to do is to follow, simply, your own code and recognize these lots as legal lots of record. I have a couple of sheets that I circled with the legal lots of record.

CHAIRMAN GRIÑÉ: I just want to say one thing to you, Jim. We were familiar with the previous cases and so I know that all titles were there, so just so you'll know.

MR. ALLEY: The definition is, "...a lot that either was created prior to the date of any applicable provision of law which required it to be approved as part of the subdivision," that's what we claim we have here. These lots were created prior to the enactment of the County Code. The County Code became effective in 1981. The section goes on to tell two ways that you can prove legal lots of record and we think we satisfy both those ways. First, proof of legal lot of record may be provided by a duly recorded plat. All right, what do we have for a duly recorded plat? Well, I'm going to pass you a copy that my client will testify that he relied on and the description in his deed that you'll see when I give you a copy of his deed. It was recorded plat 1986, excuse me, 1985 it was recorded and it was approved for filing by the County Land Use Administrator at that time and a development permit was issued.

[Mr. Alley approaches the Commission and distributes maps and plat.]

We say we have proof of a legal lot of record because there is a duly recorded plat. Now there's another way of proving legal lots of record and the county code states that it can be proved by a written instrument which adequately describes the lot and is recorded with the County Clerk. That plat qualifies that way but I want to show you some more things too.

I want to show you the deeds to my client, the person that transferred to my client -- I have two deeds that I want to show you.

COMMISSIONER DURAN: Mr. Chairman.

CHAIRMAN GRIÑÉ: Commissioner Duran.

COMMISSIONER DURAN: Mr. Alley, I have question. These lots don't have a metes and bounds descriptions and a lot has to have metes and bounds descriptions; doesn't it?

MR. ALLEY: Not necessarily.

COMMISSIONER DURAN: So what are the sizes of these lots?

COMMISSIONER GONZALES: Can you tell me what a metes and bounds survey is?

COMMISSIONER DURAN: It's when you start at a point here on the survey and then you go north 0.1 degrees 8 minutes 51 seconds west, and 1339.29. That then describes that distance and what I'm saying is that there isn't a description of this line here or this line here. So these are just arbitrary lines on this plat. So what are the sizes of these lots?

MR. ALLEY: The size of the lots, some of these are approximately 40 acres, some of them are at a 1/4 of a 1/4 section that would be 40 acres.

COMMISSIONER DURAN: Without a metes and bounds description of that line, how do we know that that's what they are?

MR. ALLEY: A surveyor can determine it from the government survey exactly what they are. It's done all the time and I believe that you've seen it. A person conveys Section 16, he doesn't have to have a metes and bounds description of Section 16, it would be prohibitively expensive.

COMMISSIONER TRUJILLO: If you do a lot split, you're going to need it.

COMMISSIONER DURAN: You have to have a metes and bounds description to describe the property.

MR. ALLEY: It doesn't say --

COMMISSIONER DURAN: That's all I wanted to bring up, Mr. Chairman.

CHAIRMAN GRIÑÉ: Okay.

MR. ALLEY: It doesn't say anything about that in the Code and I want to show you that to answer further and respond to Commissioner Duran's point, I want to show you some deeds here that refer to these lots and one of the deeds, several of the deeds, simply refer to the lots and they don't refer at all to any survey. They simply refer to the lots as determined based on the government's survey.

[Mr. Alley approach the Commission and is not picked up by microphone]

COMMISSIONER DURAN: And where's the plat 160?

MR. ALLEY: That is what you just looked at based on that one plat.

cd; But it's the same thing. It doesn't describe the lot in metes and bounds it just references the plat.

MR. ALLEY: That's true. Look at a prior deed from this woman's husband to her when they got divorced and it mentions the lot and it doesn't mention anything else. And then -- [inaudible away from microphone]

We believe and we think we have complied completely with the requirements of proof of a legal lot of record because it's a written instrument that adequately describes the lot and it's recorded to the County Clerk. So we think we have legal lots of record.

Now, you heard someone say that Mr. McCawley said there were only three legal lots on this tract. That was the county's position and that was the position we had to take

at the time this road permit was there. But he was reserving his right to claim these lots as legal lots of record and he always did. And it was actually reserved in a recorded plat when he sold the lower 200 acres because now we're only talking about the 387 acres not the original 587 acres.

[Approaches the Commission and his not audible on the microphone.]

This was the plat that was filed in November -- January 2000. It says --

COMMISSIONER DURAN: This is a lot consolidation plat.

MR. ALLEY: It says the applicant does not hereby waive his right to request the recognition in the remainder of his acreage 386.246 acres of the existence of the lots created by the US Government prior to the adoption of the County Land Development Code as individual legal lots of record.

My client, all he could because the County would only recognize three that's all he could say at the hearing but he has always reserved his right and it is a matter of public record, this is a recorded document. The County signed off on this public document too.

And I'd like to point out to you, some of you remember hearing Mitch Noonon came and he gave you a little background and he's a well known land surveyor in Santa Fe. He testified to you in a prior hearing where you found legal lots of record which were originally created by the government and which were subsequently recognized by a whole series of transferee as in this case. He said -- and your fellow neighboring county, San Miguel, they recognize all lots that were originally created by the government as legal lots of record. He said, and Rio Arriba County, not only that but they've also recognized as legal lots of record all government lots and they've actually recorded all government lots so that they become legal lots of record. And he said, and this is -- the County, since the County Land Use Staff since the County Code became effective for the first 15 years until about 1996/97, three years ago, recognized all government lots as legal lots of record and so stated in some county attorney letters including the one regarding Thorton's Ranch which I referred to earlier.

So there's no question that the County Land Use is simply unilaterally decided to change the law and not recognize the legal lots of record what has been recognized for 15 years and what has actually told my client that he'll testify to this evening, he was told by the County before he bought this land and we are simply asking you to follow your own law.

CHAIRMAN GRIÑÉ: Hey, Jim, I didn't know this case was one that we had previously been with, Jim, but it bothers me that there was a settlement on this case --

MR. ALLEY: Not this case.

CHAIRMAN GRIÑÉ: Yeah, this has been before the court already. Yes, Barbara, just said that earlier. He agreed to a settlement and that settlement was to the three lots only. He agreed to that settlement and I was unaware of that settlement. Barbara can maybe you know support that because that's exactly what it says and that bothers me.

MR. ALLEY: I don't believe it said that. But I didn't represent --

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CHAIRMAN GRIÑÉ: Well, she can same it again. He made an agreement and settled this case.

MS. MULVANEY: Chairman, Commissioners, it was Mr. Alley's law partner that represented him in that case and it is, in fact, a settlement. They talk about the property as if it is one parcel. The legal description that is included talks about as one parcel and that was as recently as April 2000. I have it here if anybody would like to look at it.

CHAIRMAN GRIÑÉ: I believe you.

MR. ALLEY: I'll let my client address that point because I wasn't present there. But my understanding from my client is that he always reserved the right and there it was sitting there and --

CHAIRMAN GRIÑÉ: This has been adjudicated and he agreed to the settlement.

MR. ALLEY: That was the only he could get the road permit.

CHAIRMAN GRIÑÉ: No, Jim. Commissioner Gonzales.

COMMISSIONER GONZALES: Mr. Alley, just a couple of questions and again I recall the night that all of us up here were led down the path that there were three lots and three lots was what it was. Everybody up here stood up against the community and said, no, it's only three lots. It's a driveway. And I feel a little bit that the wool was pulled over my eyes in that if your client knew in the back of his mind that there were eight other lots that he was going to come in and ask the County to recognize because I didn't know it that night. Your client never disclosed it to me that I recall that there were eight BLM lots that were going to come in subsequent after we recognized this driveway. I guess I'm just a little dumbfounded, why did he lead the Commission down this path to say recognize three lots, this is only a driveway and now we're coming in again and saying, "oh, by the way, I've got eight lots that were created by the BLM that I want you to recognize." That's my first concern. Personally, I've got a lot of concern because I stood up here in front of, and these are my constituents in my district, saying and that's what I believed in my heart, Mr. Alley, that I was agreeing to just three lots because that is all that was represented. And there was going to be nothing else that was going to be coming forward at least as it was stated by your client. And so I've got some credibility issues that maybe he can address that when he comes up without having to put you into that spot.

The other thing I don't understand, Mr. Alley, clearly -- I understand the need to state the law and that these have been recognized and that they're recognized in other areas and they're recognized in San Miguel and Rio Arriba County but plain and simple this is an opportunity to circumvent local zoning that is set up to protect the health, safety and welfare of its community and having stated that, why won't your client just come in and submit to a full blown subdivision review, do the requirements that everyone else in this community is required to do who has not received the benefit of having federal land passed down to them by insuring that there's proper water, access, terrain management issues are addressed.

I feel that we're short-sighting some one out there. Whether it's the community that has to live with these lots or the buy that are going to buy it by not requiring him to come in and go through the same process that anybody else would have to go through to protect the health, safety and welfare of the community.

Those are two issues that I have and I want to be honest with you and your applicant and your client, because you know I respect you very, very much through our past dealing and I know for the future dealings, and I know that you weren't involved on this early during that night, but I was and I stood up against lots of angry constituents saying it's only three lots.

And a man who is very respected in this community, Mr. Simmons, had to stand up and face an unbelievable ordeal by this Commission when he was trying to convey it was more than three lots, we're telling you it's more than three lots and we all said no, it's only three lots with the driveway. And here we are saying, okay, now let's consider eight more lots. I mean, there's a real credibility issue that is being stirred up not only by the Commission, the community and your client, that I don't think is going to go nowhere productive.

MR. ALLEY: In the first place, my client isn't asking for eight more lots in addition to the three. That was all that the county would recognize and he tried to reserve his right and he tried to do it as a matter of public record, and as a matter of public record he reserved his right.

COMMISSIONER GONZALES: But, Jim, I didn't know that and he didn't state it the night that he was here. To me, in my mind acting as a policy maker and trying to make decisions in that area, all I knew is that I was standing up for was his three lots which I honestly believed are his lots and they're legal and right and he should only to have to do a driveway not a full-blown road and that's why he was here because he didn't want to do a road. This whole body stood by him and never once that night did I know that there were eight lots in the back of his mind that he knew were BLM lots that were going to come in. Those are eight more lots in my mind and I don't know -- is it my responsibility to make sure that everything that is filed as a commission that --

MR. ALLEY; No, no of course not, no. I'll let him address you on this matter because I wasn't here on that. My understanding was though, and he asked me when we put this in the plat that was filed in January that he reserved the right and it was my understanding that he had reserved the right and made it clear to the County that he reserved the right to claim this and that he had not choice -- that the county wouldn't recognize any more than three -- so what could he do but go in and say there's three lots here because that's what the staff says. I don't think he was trying to mislead anybody. I'll let him address you on that.

COMMISSIONER GONZALES: Right, but what he could have done, and I hope he does address it, on the night that he knew that we were arguing about three lots, he could have just said I've got eight more lots that I know are going to have to be recognized

by this Commission. So we're going to get this thing addressed up front and we're going to put it all on the table. But what happened was we were led down this path of recognizing the three lots and going through probably two hours of unbelievable testimony and looking out to that constituency out there and saying it's only three lots. Trust us. It's only a driveway and all along what they keep telling us over and over in this testimony is this needs to be a road because there's more than three lots. That's the issue that I have tonight and that is what I was making that assessment on.

And that's very different from the other BLM lots and I'm reserving my right to take a look as the attorney has notified us, that we can look at it on a case-by-case basis and look when it's right to recognize and look when it's not right to recognize. On this issue, Jim, I seriously feel that I was misguided and not given the whole details when the applicant can forward and I have real concerns about that.

MR. ALLEY; I'll have him address that issue. My role here this evening was to show you and demonstrate to you under your code that these lots would qualify as legal lots of record under the definition of your code because it meets the two tests set forth, the two ways of proving them and I'll ask if Kevin McCawley wants to follow up on your questions.

CHAIRMAN GRIÑÉ: Thank you, Jim.

COMMISSIONER ANAYA: Mr. Chairman.

CHAIRMAN GRIÑÉ: Commissioner Anaya.

COMMISSIONER ANAYA: I feel comfortable going directly into the motion and still allow --

CHAIRMAN GRIÑÉ: We can't do that.

COMMISSIONER ANAYA: -- well, it's one of those times when I really feel comfortable about this. But, If we allow Mr. McCawley to speak then --

[Duly sworn, Kevin McCawley testified as follows]

KEVIN MCCAWLEY; My name is Kevin McCawley. I've had Canyon Vista with a friend and a partner in some other business ventures since 1994 and then we formed Canyon Vista and bought the property in question in 1996.

CHAIRMAN GRIÑÉ: McCawley, I'm going to ask you the same question: you signed a settlement that there was just going to be the three lots and a driveway. That's bothering me. Did you settle that lawsuit? You settled that lawsuit and it cost the county time and monetary things here and now you're trying to stand up here and trying to open it up again for another possibility for litigation and you signed that settlement.

MR. MCCAWLEY: I don't believe the settlement was for three lots, here.

CHAIRMAN GRIÑÉ: That's what our legal advice is.

MR. MCCAWLEY: The settlement was that we would --

CHAIRMAN GRIÑÉ: You're not an attorney. I want to hear from Barbara Mulvaney.

MR. MCCAWLEY: Mr. Chairman, does the settlement say only three lots will ever be created on that land?

MS. MULVANEY: It defines the property and it's an exhibit and the exhibit says, a tract of land, lot A. There are no other lots.

MR. MCCAWLEY: I'm a little confused.

MS. MULVANEY: That's exhibit A to the settlement and the settlement is dated April 3, 2000.

MR. MCCAWLEY: I'm a little confused as to why that's an issue with this. Obviously, nobody thinks that it's going to remain 387 acres for the future. So I don't quite understand what the question is.

COMMISSIONER TRUJILLO: It has to go through the appropriate protocol. Through the appropriate process.

MR. MCCAWLEY: We bought -- I went in before we purchased the property. I took the plat and 1/2 inch of abstracts and deeds, we have 11 deeds, old deeds from the patent all the way up to when we bought it in '96. And I went into the County Land Use Administrations, their office, with this plat, with those deeds and I said if we buy this property are those lots going to be recognized and they said yes, we've always recognized them in the past and I don't see any problem. And I believe it was Mr. Maez that I spoke to at the front desk that day. It wasn't his area but he said they had always recognized them and that you should be okay. And then on advice of my attorney, Roger Percino, he reviewed it and said, yea, it looks like you got 11 lots there; should be no problem.

CHAIRMAN GRIÑÉ: When was this, sir? What year was this?

MR. MCCAWLEY; That was in 1996. That was before we purchased the property. I did my due diligence. It was a lot of money and a lot of responsibility. I'm not a developer by trade. I'm a builder. I'm a hands-on kind of worker and I just decided to try this. So before we purchased the property I went into the County and said area these legal lots of record, can I just build a road and get a road permit, build a road and sell these lots? And they said, yea, that's okay.

So we went ahead and closed on the property. And then I negotiated and it took a while but I bought a 10 acre access so we'd have a direct access off the county road and wouldn't have to drive through anybody elses property. And wouldn't have any problems with that and that took a while.

Then I went in about a year or so later to get that road cut permit, the driveway permit to access our property and we -- and I went to the front desk and they said you need to talk to the county attorney to make sure he's going to recognize the lots. So I went to talk with one of the staff and I don't remember who that was at that point. I talked to Steve Kopelman in his office next door, and he looked and reviewed all the stuff that we had. He reviewed all the stuff we had. He reviewed the plat that we had and all the deeds and he said, yea, with this kind of documentation and representation, you should have these 11 lots

that we have here--that I thought I bought at the time--and so we did that. And then we went back over to finish filling out the permit at the front desk and somebody said you need to talk to Denice Brown so I scheduled a meeting with Denice Brown and Oralynn and they said the County had changed their position and that they're not going to recognize these lots and they didn't really state why but they said that I would have to go for a subdivision at that point. And they're both --

CHAIRMAN GRIÑÉ: Commissioner Gonzales.

COMMISSIONER GONZALES: When you received this guidance, did you receive anything in writing?

MR. MCCAWLEY: No, I did not. That was my mistake and my naivety with more hindsight it would have been nice if I had a letter from Steve Kopelman.

COMMISSIONER GONZALES: Did your attorney, the one that you went to, did you ask him to put down on paper a review the County Land Use code and what would be required or was that verbal also.

MR. MCCAWLEY: What I did with Roger Percino. That was all verbal, yea, he reviewed the documents. He's a local attorney here. He's been around a long time with a large firm and he reviewed all the documents and said yes, you have legal lots of record, you don't have any problem.

COMMISSIONER GONZALES: So basically, you made this large investment on some people nodding their heads and saying yes, we think that this is okay, but nothing that was ever brought before this Board or nothing that was official given by the County in writing as to how the whole process should be brought forward?

MR. MCCAWLEY: That's true. I should have done that probably. It was, in my defense, a fairly short review period. I think we had 10 days to 2 weeks to confirm the deal. The lady was wanting to close the deal in a hurry, she was ill and there was no time to go through committee meetings and reviews.

COMMISSIONER TRUJILLO: Mr. Chairman. When you found out that, when Oralynn and whoever --

MR. MCCAWLEY: Denice Brown.

COMMISSIONER TRUJILLO: -- Denice Brown told you that the County had changed their position and now you would be required to submit a full-fledged master plan or proposal for a subdivision that's when you deduct to come in and represent three lots instead of 11 lots that existed out there.

MR. MCCAWLEY: Yes, that was my understanding. I had -- that's the only thing the County would recognize so I thought that is all I had. Then I hired Mr. Alley's firm, Frank Herman at the firm and Jim Alley, and since that has happened the administration has changed at the County, once again, and since it changes fairly regularly and they seem a little more lenient on these so they thought it was appropriate to come in and get what I already thought I had when I purchased this with a lot of my money that I didn't have to spend and a lot of other people's money. It was a lot of responsibility and

I should have got things in writing but it didn't seem so crucial at the time.

COMMISSIONER TRUJILLO: So that tells me that you did understand that you were approved for three lots? That the 11 lots would have represented a subdivision.

MR. MCCAWLEY: That was the County's view at that point but like I said the County seems to have --

COMMISSIONER TRUJILLO: I think it still is the County's view that anything over five lots is a subdivision.

MR. MCCAWLEY: Well, recognizing the legal -- these old lots is a different thing that we're talking about in subdivision. Recognizing these old BLM lots that were created and handed down and divided and sold back and forth, 11 different times to 11 different people and different sizes and all using the lots description as what is to be sold with never any of them having any metes and bounds on them. They always bought it and sold it with different pieces and different people, broken apart and being put back together over the years, over 60, 70 years.

COMMISSIONER GONZALES: Mr. Chairman.

CHAIRMAN GRIÑÉ: Commissioner Gonzales.

COMMISSIONER GONZALES: Mr. McCawley, why not submit a full-blown subdivision and go through the process? Why go this route of forcing the issue of eight lots and knowing that there's a lot of credibility issues, there's a settlement issue that has been pending. I don't understand.

You as a builder, let me ask you this questions; as a builder would you buy a lot from someone how there knowing that it hasn't been tested for water, there's no terrain management issues, you don't know what the erosion might be; would you put your money on a lot like that?

MR. MCCAWLEY: People do. I bought this -- I don't see why it's a consumer protection issue when I bought it. I'm being screwed in the end --

COMMISSIONER GONZALES: That's what zoning is all about though, protecting the consumer.

MR. MCCAWLEY: I know. Then why wasn't I protected when I bought it. Why weren't these lots, from the County, clearly saying no, you're going to have to do a subdivision. I would have never bought it. I'm not a developer.

So why are we protecting the future and why aren't we protecting me at some point is what I'm saying.

COMMISSIONER GONZALES: You were protected when you were brought forward and we recognized your 3 lots and the fact that you didn't have to do a road. This whole Commission stood by your side.

MR. MCCAWLEY: I appreciated that.

COMMISSIONER GONZALES: And my point is that I think that when we were required to protect what was your right, and clearly not the requirement of the road,

we did that. But the issue now is -- there are a lot of people out there that could potentially buy those eight lots that don't know what they're getting themselves into because it has not followed the due course of the normal process that any other lot would have to be required to assure any person purchasing the lot will have clean water, proper erosion issues, good access, good fire protection, all those things. How in good conscious can we provide lots like that that haven't gone through the proper zoning process. Why won't you do that?

MR. MCCAWLEY: I believe the whole state and half the lots are old historic lots that are not created through the subdivision laws and you buy the land as it is.

COMMISSIONER GONZALES: I just want you to answer my question as far as why you --

MR. MCCAWLEY: Why won't I do it; because --

COMMISSIONER GONZALES: You don't have to lose the value of your land. You can submit through the process like anyone else.

MR. MCCAWLEY: I feel that I was misled. I thought I had this and I would have never done it having to do a subdivision. I've done a great deal of the work. I've done archaeological reviews. I've done hydrological studies, the redias are all engineered to meet County specs. Everything is done to meet County specs and if you wanted to make that a requirement to meet the eight lots; I just think it was fair that I went in an bought this property with 11 lots and now just because a different person has come into the office, they're not recognizing it. I think that's my main issue.

CHAIRMAN GRIÑÉ: Any other questions of the applicant?

MR. MCCAWLEY: Yea, and the expense. I mean I have spent a great deal on attorneys and everything with Mr. Simmons objecting to everything that I do.

COMMISSIONER DURAN: Mr. Chairman.

CHAIRMAN GRIÑÉ: Commissioner Duran.

COMMISSIONER DURAN: Mc. McCawley, when you purchased the property under the impression that there were 8 lots did --

MR. MCCAWLEY: Eleven.

COMMISSIONER DURAN: Eleven, what was the width of the road getting to these lots?

MR. MCCAWLEY: There was an existing road on the southern part of the property and the owner sold it to us, she always sold it with the idea that there were lots available, already subdivided but there wasn't a very good access to it.

COMMISSIONER DURAN: What was the width of the road?

MR. MCCAWLEY: It was just a dirt track, two tracts, maybe 15 feet.

COMMISSIONER DURAN: Fifteen feet, and when you came to the County did you ask anybody what width a road would have to be to provide access to 11 lots?

MR. MCCAWLEY: Yes, from the county regulations I realized it was 20 feet.

COMMISSIONER DURAN: And you still don't have 20 feet; is that correct?

MR. MCCAWLEY: Yes.

COMMISSIONER DURAN: I thought staff said that there were some areas in this road that were 15 feet.

MR. MCCAWLEY: I believe that there's a fork that goes to one lot that narrows down to 15 feet, which I think is permissible in the road guide.

COMMISSIONER DURAN: So access to your property right now is through a 20 foot road access.

MR. MCCAWLEY: Yes, on basecourse -- it doesn't meet County requirements now to be a road. It would have to be upgraded to be a road.

COMMISSIONER DURAN: It's just a driveway right now?

MR. MCCAWLEY: It's a driveway but I think any reasonable person would -- and I said that, I said that more than once that I was planning on keeping some of the land, my partner who has since passed away and he was thinking of keeping some and selling the remainder to recoup some of our money. So I think that it has always been stated that the property was going to be sold as different parcels. Thank you.

CHAIRMAN GRIÑÉ: Any other questions? Thank you. All those that are for; there's none. All those that are opposed? Just come up to the podium and please try to be brief because I know we're going to hear the same thing we heard the previous time.

[Duly sworn, Jeff Langford testified as follows]

COMMISSIONER GONZALES: Mr. Langford, I know you provided a letter that was provided to us earlier, so just in the interest of time, can you summarize it rather than reading it verbatim?

JEFF LANGFORD: It's similar but I want to cover a few different points and I also should say that I'm representing the views of all these other people that probably aren't going to --

CHAIRMAN GRIÑÉ: Are you going to be the only spokesman?

COMMISSIONER GONZALES: Can you move to the different points because I did have a chance to read your letter.

MR. LANGFORD: If you would bear with me because that would be more difficult because the way my mind is organized and works, but I will try.

CHAIRMAN GRIÑÉ: If you're going to be the only speaker and maybe one more, I'll give you the time.

MR. LANGFORD: This will take about five minutes.

My name is Jeff Langford. My family and I reside on property adjoining the Canyon Vista property. In the interest of saving time, I'm representing the views of a number of concerned citizens who are here tonight. With your permission I would like to ask them to stand briefly.

You should have also received a copy of my letter that has 24 signatures. I should say that those signatures are primarily and almost in the majority of people's whose property adjoin the Canyon Vista property or are within about 1/8 of a mile.

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We are not necessarily opposed to the subdivision of Canyon Vista property. However, Canyon Vista's appeal tonight represents yet another effort to do an end run around the code and the rights of adjoining property owners. Consequently, we support the two previous decisions by the County not to recognize 8 BLM lots as legal lots of record. Knowing that Canyon Vista wants to create a subdivision in our neighborhood, all we ask is that they conform to the regulations set forth in the Land Development Code.

In the past, Canyon Vista has hired planning consultants who are familiar enough with the code to take advantages of weaknesses in the code. I speak specifically of the approval of the so-called "driveway." I will not drag all of that issue up here tonight. It is sufficient to say that recent developments lend credibility to our earlier arguments.

Since approval of the driveway, Canyon Vista has formally surveyed at least 11 lots and I think you have a picture of the corner of lot 7 and lot 11, that's on my property line as well. And so 200 previously inaccessible acreage out of their original 587. That tract qualifies for a type 5 or summary review subdivision which translates to minimal requirements and minimal public review.

Now they are claiming that they have 8 lots that are deserving of recognition. That claim is contemptuous of the entire process. During the previous hearings regarding the drivweays, Canyon Vista consisted stated, under oath, that their entire property was comprised of three lots. This was also confirmed by land use staff, and reiterated by members of the CDRC and the Commissioners. There are over 20 references to this stipulation contained in the minutes. It seems inconceivable that they would take the position that they now have 8 lots and we consider this sufficient justification to deny the appeal. Yet they persists in this claim.

The county attorney has done a good job of addressing the issue of whether the lots in question should normally be recognized as legal lots of record. My own view is that Canyon Vista's legal arguments strives to take advantage of confusion over commonly used words that have very narrow meaning when used in certain context. More specifically, they claim that the word lot though it is used in the strict context of the public land survey system or PLSS, is synonymous with lot or legal lot of record as defined in Article X of the land use code. By looking at definitions it is easy to determine that this is not the case. Hence, a lot is a subdivision of a section which is not described as an allocated part of that section but which is designated by number, such as lot 2. A lot may be a regular or irregular shape and its acreage varies from that of regular subdivisions. In other words, lot is one of several terms or nomenclature used within the PLSS to describe the location of property. The term lot as used in this context shares no resemblance with any other definitions of the word including those used by the County and the legal profession.

Though I won't read them hear tonight, I have attached pages which attempt to explain the PLSS and it's terminology. However, it is important to recognize that the purpose of the PLSS has always been to facilitate the description of land or more accurately the description of its location.

On the other hand, Canyon Vista would have us believe that in 1785 the federal government implemented a program to assist 21st century developers in overcoming adversity in the form of land use regulations. Of course, this program was to benefit the owners of special land. If you were the nearby owner of a simply described section of land such as 640 acres, you would simply not qualify for this program because basically you would just be one lot because the simplicity of your legal description.

Seriously, if you are inclined to overturn the two previous decisions and begin recognizing these types of lots please consider that this action would set a precedent which would likely cause the same scenario to be repeated throughout the entire county. It is logical to assume that there are many properties throughout the County which incorporate these types of lots into their legal descriptions.

In conclusion, we respectfully urge the Board of County Commissioners to deny, with just cause this appeal and advise Canyon Vista to embrace the requirement of the County Land Development Code. Thank you for your consideration.

CHAIRMAN GRIÑÉ: Yes, thank you, sir. Next.

[Duly sworn Perry Lovelace testified as follows]

PERRY LOVELACE: Honorable Commissioners, my name is Perry Lovelace. I'm the president of the Santa Fe South Cooperative Association. We have a 24 member subdivision that was put through and we conform to all the County issues. Our south border is contiguous to much of the north border of Canyon Vista development. We are directly affected. All of our arroyos go into Canyon Vista's land.

I was here and I've written letters for the record and I've testified in April of '99 about the driveway. The whole community knew and there was a widely circulated plat that there was a division going on here. And I respect your memories especially that of Commissioner Gonzales regarding that, thank you, Mr. Commissioner, regarding that night that we spent here.

The driveway is now in. I have walked every inch of it. There are two arroyos that are blocked, bulldozed dam which have filled up last August with the rains. The coyotes used to come up those arroyos right in front of the arroyo in my house and they haven't been up for a year since the driveway was in. And I'll bet you that the driveway so happens to serve each one of those 11 lots, coincidentally, I'm sure.

Let's face it, this is a carefully designed land grab to make a few people very rich and I guarantee you that they will be back, Canyon Vista, will be back and they're going to push every loop hole and bend every technicality they can to try to push this development through without due process.

Thank you for your time.

CHAIRMAN GRIÑÉ: Jim, do you want to rebut for a few minutes?

MR. ALLEY: A couple of minutes.

I'd just like to make a remark about the comments of Mr. Langford and the gentleman that just testified. Typical of people that get here, they all regard somebody else's

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open space as their land. I've experienced it myself. Mr. Langford has 60 acres that he divided into four 15 acre lots. This fellow here is in a subdivision who just testified that has 5 acre lots on the north boundary and here we are talking about 40 acre lots. That's 2.5 times the size of Mr. Langfords' lots and we're just asking that they be recognized. Lots that over 40 acres and some that are considerably larger. So I can't understand why these people would be objecting except to try and force him through the subdivision process and then they'll know -- and how will that protect their land except they force these people to go through something that they didn't think they had to under the law.

CHAIRMAN GRIÑÉ: Thank you, Jim. No, I'm sorry, that is all the input.

COMMISSIONER ANAYA: Jim, that's actually the truth that they testified to. They want you to go through the processing.

Mr. Chairman, I'm going to move, if I'm in order, that we uphold the decision of CDRC and deny this appeal.

COMMISSIONER TRUJILLO: Second, Mr. Chairman.

CHAIRMAN GRIÑÉ: We've got a motion by Commissioner Anaya and second by Commissioner Trujillo. Any further discussion?

Upon unanimous voice vote the motion to uphold the CDRC decision was approved.

CDRC CASE #DP 00-5260 Eldorado Transfer Station. Santa Fe County, applicant, agent, requests preliminary and final development plan approval for a 5,625 square foot transfer station building to enclose the existing transfer station facilities, on 14.65 acres. This application also includes a request for a variance of Article III, Section 4.4.4.c of the County Code to allow for a portion of the building to be 36 feet in height. The property is located east of US 84, within Section 20, Township 15 North, Range 10 East.

MS. ELLIS GREEN: Mr. Chairman, Commissioners, on May 25, 2000, the CDRC granted the request for development plan approval to enclose the existing transfer station. The applicant is requesting a variance to allow a portion of the transfer station building to be 38 foot in height. This will allow trucks to move through the transfer tunnel with refuse which has been dumped at the station. The building elevations are attached.

The applicant states that the proposed improvements will make the transfer station cleaner and safer.

Required action, the BCC should review the attached material, consider the recommendation of the CDRC and take action to approve, deny, approve with conditions or table for further analysis.

Recommendation, the decision of the CDRC was to approve the variance request. County conditions:

1. The applicant will submit the following prior to construction permit submittal:
   a. signage details meeting code requirements
   b. parking detail, spaces shall be defined
   c. lighting details, all lights shall be shielded
   d approved septic tank permit
2. All utilities must be underground.
3. All redline comments will be addressed, original redlines will be returned. The drainage and grading plan is to be approved by the Development Review Division Director drainage calculations prepared by a registered Professional Engineer are to be submitted and approved prior to construction permit submittal.
4. The applicant shall record the development plan with the County Clerk's office.
5. The building shall be an earthtone tan or green color as approved by staff.
6. Within 60 days of project completion, the applicant will conduct a trash cleanup program on surrounding property and construct a fence around the operation area.
7. Compliance with the applicable review comments from the following:
   a. NMED
   b. State Highway Department
   c. County Development Review Division
   d. County Fire Marshal
   e. County Public Works

CHAIRMAN GRIÑÉ: Thank you, Penny. Any questions of Penny?
COMMISSIONER DURAN: No questions.
COMMISSIONER GONZALES: No.
CHAIRMAN GRIÑÉ: We are the applicant --
JILL HOLBERT (County Solid Waste Coordinator): Mr. Chairman, Commissioners, we agree with the CDRC conditions and have absolutely no problem.
CHAIRMAN GRIÑÉ: Thank you, Jill. Any questions? Anyone in the public want to address this case? If not, what is the pleasure?

Commissioner Anaya moved for approval as presented with conditions. His motion was seconded by Commissioner Duran and passed by unanimous voice vote. [Commissioner Gonzales was not present for this action.]

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EZ CASE DL 00-4260 James and Lena Hands. Richard Morris, agent for James and Lena Hands, requests plat approval for a family transfer to divide 6.02 acres into three tracts. The described property is located off Calle Carla, within Section 25, Township 17 North, Range eight East within the five-mile EZ District.

OLIVER GARCIA: Thank you, Mr. Chairman, Commissioners, staff recommendation at the regularly scheduled meeting of April 13, the EZC recommended approval of the request subject to the following conditions:

1. Driveway to Lot 11C must be relocated further north as approved by County Public Works. Lot 11A and Lot 11B must access off Calle Carla Road.
2. The applicant must record water restrictive covenants simultaneously with the plat of survey imposing .25 acre feet per year per tract. Water meters for each subject parcel must be installed to monitor water use. Annual water consumption reports must be submitted at the County's request if and when deemed appropriate.
3. The applicant must contact Rural Addressing for assignment of addresses for the proposed tracts. Addresses must be added to plat.
4. EZO regulations require a Solid Waste Fee be assessed for all newly created parcels. The fee for this subdivision is $129.01.
5. The applicant must prepare and submit covenants for the use and development of the property to be reviewed and approved by the County.
6. The applicant must submit Deeds of Transfer to be recorded simultaneously with the plat of survey and include family members' names on plat.
7. The applicant must obtain approval from NMED for the proposed liquid waste disposal plan.
8. Compliance with Fire Marshal review.
9. The applicant must address all minor corrections by the County Subdivision Engineer as shown on the plat of survey and terrain management plan. These plans may be picked up from Oliver E. Garcia, Development Review Specialist within the Land Use Department These plans must be resubmitted with the mylar prior to recordation.

CHAIRMAN GRIÑÉ: Any questions of Oliver?

COMMISSIONER TRUJILLO: No questions.

CHAIRMAN GRIÑÉ: Thank you. Is the applicant here? Take the oath.

[Duly sworn, James Hand testified as follows]

JAMES HAND: James Hand.

CHAIRMAN GRIÑÉ: Are you in full agreement with all staff conditions?

MR. HAND: Yes.

CHAIRMAN GRIÑÉ: Okay, any questions of the applicant? Is there anyone that wants to speak for or against? Mr. Hand, do you have anything you wanted to say?

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MR. HAND: No.

Commissioner Anaya moved approval as submitted with conditions. Commissioner Trujillo seconded and the motion passed by unanimous voice vote.

EZ CASE S 97-4572. Valle Vista Heights Subdivision. Elmer Garcia request preliminary and final plat and development plan approval of Phase III consisting of 9 lots in accordance with the proposed master plan for 25 lots on eight.35 acres. The property is located off SR 14, within Section 26, Township 16 North, Range eight East within the five-mile EZ District.

MR. ABEYTA: Thank you, Mr. Chairman and members of the Commission. Recommendation on May 11 from EZC, they recommended that the final plats be denied; however, should the BCC decide to grant final plat approval staff recommends conditions 1-7 as provided in staff report.

CHAIRMAN GRIÑÉ: Thank you, Roman. Any questions of Roman? If not, Elmer?

[Duly sworn, Elmer Garcia testified as follows]

ELMER GARCIA: Elmer Garcia, 1415 Santa Cruz, Santa Fe.

CHAIRMAN GRIÑÉ: Elmer, are you in agreement, full agreement, with the recommendations from staff?

MR. GARCIA: Yes, I am.

CHAIRMAN GRIÑÉ: And you're okay, too, with that, Roman?

MR. ABEYTA: Yes, Mr. Chairman.

CHAIRMAN GRIÑÉ: Okay, are there any questions of the applicant?

COMMISSIONER TRUJILLO: I have no questions.

CHAIRMAN GRIÑÉ: Thank you, Elmer. Okay, anyone in the public wish to address this case?

[Duly sworn Ray Romero, testified as follows]

RAY ROMERO: Chairman, Commissioners, as long as the water table doesn't affect the water table in our area. It has been noted by the State Engineer that those Via Vista wells are affecting our water table and we are in an emergency situation right now. So as long as they're going to utilize County water I don't have any objection to it.

CHAIRMAN GRIÑÉ: Thank you. Anybody else in the audience?

Commissioner Anaya moved to reverse the decision of the EZC and move for approval of the proposal subject to the staff conditions. Commissioner Trujillo seconded and the motion passed by unanimous voice vote [Commissioner Gonzales was not present for this action.]

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EZ CASE #S 00-4270. Santos Subdivision. Andrew and Lucinda Leyba, applicants, Cipriano Martinez, agent, requests preliminary and final development plan and plat approval for a 9-lot residential subdivision on 71.65 acres. The property is located at the northeast intersection of Caja del Rio Road and Camino de Rey, within Section 23, Township 17 North, Range 8 East within the five-mile EZ District.

MR. ABEYTA: Thank you, Mr. Chairman. Staff's recommendation on May 11th, the EZC recommended preliminary and final plat approval subject to the conditions as listed in the staff report:

1. Compliance with applicable review comments from the following:
   a. State Engineer
   b. NM ED
   c. Soil & Water
   d) State Highway Department
   e) County Hydrologist
   f) County Development Review Director
   g) County Fire Marshal
   h) County Public Works
   i) County Archaeologist
2. Submit terrain management plan providing retention/detention of post development drainage from road construction and demonstrating that post-development drainage flowing off property is not exceeding per-development drainage flowing off property.
3. Final homeowner documents subject to approval by staff and shall include but not be limited to the following:
   a) Terms and conditions for shared wells
   b) Road maintenance agreement
   c) Prohibition of guesthouses
4. Approval of road names/rural addressing
5. 100 foot open space setback shall be dedicated to the homeowners association as common area.
6. Final plat shall include but not be limited to the following:
   a) Compliance with plat check list
   b) Prohibit driveway access of Caja del Rio
   c) Delineate 100 foot radius setback for septic systems from cluster wells.
   d) Adequate vicinity map
   e) Signature lines for utility companies and committees
   f) Jurisdiction statement for City and County
   g) Right-of-way dedication width for Caja del Rio
   h) Reference recorded covenants binding on property.

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7. At development plan stage the applicant must submit engineered road plans to be reviewed and approved by County staff.
8. Submit solid waste fees as required by subdivision regulations.
9. Submit cost estimate and financial surety for completion of required improvements as approved by staff.

CHAIRMAN GRIÑÉ: Thank you, Roman. Any questions of Roman? Is the applicant here?

[Duly sworn Andrew Leyba testified as follows]

ANDREW LEYBA: Andrew Leyba.

CHAIRMAN GRIÑÉ: Mr. Leyba, are you in full agreement with all the conditions imposed by staff?

MR. LEYBA: Yes, sir.

CHAIRMAN GRIÑÉ: Okay, is there any questions of the applicant? Any one in the audience want to speak for or against this case? If not, what's the pleasure?

Commissioner Trujillo moved approval of EZ 00-4270 with conditions. Commissioner Anaya seconded and the motion passed by unanimous voice vote. [Commissioner Gonzales was not present for this action.]

EZ CASE #S 00-4280 Roybal Subdivision. Glen and Audrey Roybal, applicants, are requesting preliminary and final development plan and plat approval for a 7-lot residential subdivision on 17.88 acres. The property is located at the northeast intersection of Caja del Rio Road and Camino de Rey, within Section 23, Township 17 North, Range 8 East within the five-mile EZ District.

VICKI LUCERO (Development Review Specialist): Thank you, Mr. Chairman, Commissioners. The proposed subdivision is located directly south of the Santos Subdivision which you just heard.

The applicants are requesting approval of a 9-lot residential subdivision. The property was originally part of a three lot subdivision and the applicant is proposing to divide one of these parcels in seven residential lots ranging in size from 2.51 acres to 2.77 acres.

Recommendation, the decision of the EZC was to recommend preliminary development plan and plat approval for a nine lot residential subject division subject to the following conditions:

1. Compliance with applicable review comments from the following:
   a. State Engineer
   b. NM ED
   c. Soil & Water

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d) State Highway Department
e) County Hydrologist
f) County Development Review Director
g) County Fire Marshal
h) County Public Works
i) County Archaeologist

2. Submit terrain management plan providing retention/detention of post development drainage from road construction and demonstrating that post-development drainage flowing off property is not exceeding per-development drainage flowing off property.
3. Final homeowner documents subject to approval by staff and shall include but not be limited to the following:
   a) Terms and conditions for shared wells
   b) Road maintenance agreement
   c) Prohibition of guesthouses
4. Approval of road names/rural addressing
5. 100 foot open space setback shall be dedicated to the homeowners association as common area.
6. Final plat shall include but not be limited to the following:
   a) Compliance with plat check list
   b) Prohibit driveway access of Caja del Rio
   c) Delineate 100 foot radius setback for septic systems from cluster wells.
   d) Adequate vicinity map
   e) Signature lines for utility companies and committees
   f) Jurisdiction statement for City and County
   g) Right-of-way dedication width for Caja del Rio
   h) Reference recorded covenants binding on property.
7. At development plan stage the applicant must submit engineered road plans to be reviewed and approved by County staff.
8. Submit solid waste fees as required by subdivision regulations.
9. Submit cost estimate and financial surety for completion of required improvements as approved by staff.

CHAIRMAN GRIÑÉ: Any questions of Vicki? Okay, the applicant please.

[Duly sworn, Glenn Roybal testified as follows]

GLENN ROYBAL: My name is Glenn Roybal and my address is 715 Navara Way in Albuquerque.

CHAIRMAN GRIÑÉ: Mr. Roybal are you in agreement with the staff recommendations?

MR. ROYBAL: Mr. Commissioner, yes I am.

CHAIRMAN GRIÑÉ: Okay. Any questions or speakers on this case?

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Commissioner Anaya moved approval with staff conditions. His motion was seconded by Commissioner Duran and passed by unanimous voice vote. [Commissioner Gonzales was not present for this action.]

CDRC CASE # DP 00-5140 U.S. West: US West, applicant, requests preliminary and final development plan approval for a cellular facility on the existing water tank at the National Guard Armory. The applicant is also requesting a variance of Article III Section 4.4.4.c. of the Land Development Code to allow for the antennas to be mounted 152 feet high. The property is the National Guard Armory, within Section 2, Township 15 North, Range eight East and Sections 34 and 35, Township 16 North, Range 8 East.

FRANK WHITE (Development Review Specialist): Thank you, Mr. Chairman, Commissioners, the applicant is requesting approval for a five flat directional antennas; two-6 inches wide by 102 inches in length, mounted at a height of 152-feet, two-eight inches wide by 56 inches in length, mounted at a height of 150-feet, and one 2 foot diameter microwave dish mounted at a height of 130 feet. The proposed antennas will not exceed the height of the existing water tank and will be painted to match the tank. The antennas will be mounted on the northwest, southwest, and southeast support legs of the water tank. The equipment rack and microwave cabinet will be located on the ground near the water tank.

The decision of the CDRC was to recommend approval of the variance to allow the antennas to be mounted at 152 feet in height.

The decision of the CDRC was to grant preliminary and final development plan approval subject to the following conditions:

1. All Staff redlines will be addressed, original redlines will be returned with final plans.
2. The antennas will be painted to match the existing water tank, all colors to be reviewed and approved by County Staff prior to the issuance of the permit.
3. The development plan will be recorded in the County Clerks office.
4. If the technology changes and these antennas become obsolete they will be removed by the applicant. This will be noted on the development plan.
5. Knox Lack entry systems will be installed on all gates to the site, to be approved by Fire Marshal.

CHAIRMAN GRIÑÉ: Any questions of Frank?

COMMISSIONER TRUJILLO: Yes, does the community know what's going on here, the immediate adjacent residents?

MR. WHITE: Mr. Chairman, Commissioner Trujillo, all the people within

100 feet of the property have been notified. And there has been no objection.

COMMISSIONER TRUJILLO: I have a concern with the proliferation of these antennas all over the country side, especially on Indian land where they circumvent the code and they go up overnight. Aesthetically the impact the community. Some of these companies do not have any sensitivity to the needs of the immediate residents and I just want to make sure that the community has the opportunity to voice their position regarding these sorts of infrastructures and these sorts of antennas. I guess we're going to be seeing them from now into the future and they're not pretty things to look at.

TOM DOMINGUEZ (Subdivision Engineer): Mr. Chairman, if I could just briefly. When Commissioner Duran was chair he had sent out a letter that the Highway Department notify us of any new submittals on cell towers. We have since been meeting with them and we have another letter that was prepared on behalf of Commissioner Gonzales to the same effect. The state is doing that and they are notifying us now. We are making them aware of any private individual that goes through has to meet our county code be it 24 foot height, unless it is in the commercial district.

COMMISSIONER TRUJILLO: Thank you, Tom.

COMMISSIONER DURAN: Mr. Chairman. I have one question, Frank. So the antennas are going to be mounted on an existing water tank and they are going to be how much higher than the tower?

MR. WHITE: Mr. Chairman, Commissioner Duran, I believe the water tower is close to 200 feet and the antennae will be mounted at 150 feet.

COMMISSIONER DURAN: So they will exceed the height of the water tower?

MR. WHITE: That is correct.

COMMISSIONER DURAN: Is there a limitation as to preventing co-locators from locating on this tower?

MR. WHITE: Mr. Chairman, Commissioner Duran, there is not a limitation at this point. It is an existing water tank. So staff is merely supporting this variance and use of the tank.

COMMISSIONER DURAN: So if the use was intensified by a co-locator wanted to locate on the tank, they would have to come back before this board again?

MR. WHITE: They would have to come in for a development plan approval and if they're requesting a variance it would have to come before the BCC, yes, that is correct.

COMMISSIONER DURAN: Can we make a requirement or condition that any co-locator whether it comes in for a variance or not would have to gain board approval. I only say that because there was a tower off Alameda where there was an intensification of that use by co-locators and things started looking pretty ugly.

COMMISSIONER TRUJILLO: I agree.

COMMISSIONER DURAN: Okay, so I would like to make that

recommendation as a condition if this things gets approved.

MR. WHITE: Mr. Chairman, Commissioner Duran, the applicant does not own the property. This is US West so do you want to place this condition on the property owner?

COMMISSIONER DURAN: Well, US West is getting a use permit from who?

MR. WHITE: National Guard Armory.

COMMISSIONER DURAN: So we can't really impose that on him. Okay, never mind.

Tom, can we let the state know that. In our correspondence with the state can we ask them to consider the intensification of these towers to come back before us to prevent the proliferation of these satellite dishes --

MR. DOMINGUEZ: Mr. Chairman, Commissioner, I believe that if an applicant were to get permission from the Guard to use the tower, if they were meeting the height requirement at 24 feet it would not be an issue that needs to come before the body according to code. If they were going above that then it would be a variance and they would have to come in.

COMMISSIONER DURAN: Maybe just as a Commission we can write a letter to the state.

MR. DOMINGUEZ: We do have the prerogative to write them in addition to this letter to the National Guard also and ask them to extend the same courtesy to us too.

CHAIRMAN GRIÑÉ: Any other questions of staff? Thank you Frank.

[Duly sworn, Jim Service testified as follows]

JIM SERVICE: Jim Service, 400 Tijeras, Suite 550, Albuquerque, New Mexico 87106.

CHAIRMAN GRIÑÉ: Jim, are you in agreement with the conditions imposed by staff?

MR. SERVICE: Yes, Mr. Chairman, we are.

CHAIRMAN GRIÑÉ: Any questions of the applicant? Anyone else wish to speak on this case.

[Duly sworn, Patricia Peppler testified as follows]

PATRICIA PEPPLER: My name is Patricia Peppler. You need an address? PO Box 718, Cerrillos, New Mexico, 87010.

Mr. Chairperson and Commissioners, I am currently involved in that state highway right-of-way tower that will be 150 feet high at La Bajara Hill. It's currently designed right behind the rest area. I spoke with Larry Sisneros and he never attempted to contact the owners discussing that they were even going to put up a tower. It's already been approved so that is that and there's not much I can do.

But I will tell you was that I found out that the State Highway doesn't have to comply with the height variance; is that my understanding?

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CHAIRMAN GRIÑÉ: That's true.

MS. PEPPLER: And they also don't have to give public notice of what they're doing out there on the right-of-way; is that also true?

CHAIRMAN GRIÑÉ: Probably so.

MS. PEPPLER: Well, I have instructed the State Highway Department that we have currently are in the process of serving that property line right behind the rest area and the frontage road and there seems to be a discretion of 10 feet. I then hired Bohannon and Huston to come in and survey the property. It concludes that the state right-of-way highway fence line is inside of our property 10 feet. If that is the case, then the tower will not have enough room to be located there.

So, I guess I'm saying that until due process is done, that we can prove the boundaries of La Bajara Ranch and the right-of-way for US West because if they --

CHAIRMAN GRIÑÉ: Ma'am, I think we need to stay focused to this case. You're completely somewhere else.

MS. PEPPLER: Okay, well, 152 feet on a water tower if the deal falls through at La Bajara then this tower will not be able to receive whatever is necessary to go over the hump so you can okay this but it might not work.

CHAIRMAN GRIÑÉ: Thank you. Anybody else in the audience? If not, what are the wishes.

Commissioner Duran moved approval. Commissioner Anaya seconded and the motion passed by unanimous voice vote. [Commissioner Gonzales was not present for this item.]

[The Commission took a 10 minute recess.]

CDRC CASE # Z 98-5552. Sunrise Springs Amended Master Plan. Megan Hill, applicant, Jim Siebert, agent, requests a master plan zoning amendment for an expansion of a resort type use to add 40 lodging units (totaling 19,640 square feet), a spa facility (12,000 square feet), fitness facility (1,200 square feet), maintenance building (1,300 square feet), laundry building and car shed (1,200 square feet) and one cart shed (400 square feet.) This application also includes replacing an existing swimming pool with a new pool and hot tub and reopening a restaurant to the public with the sale of liquor with meals. The property is located south of County Road 54, within the traditional community of La Cienega, in Section 28, Township 16 North, Range 8 East

[Staff report attached as Exhibit 98-5552 "1"]

MS. ELLIS GREEN: Mr. Chairman, Commissioners this case was tabled at the last BCC meeting. The proposed master plan which was heard by the CDRC and denied by the BCC was for the uses that were listed in the caption. After several community meetings the applicant has proposed the following changes to the master plan and the letter and plans addressing these changes are attached in your Exhibit J.

Phase 1 would now be 20 casitas lodging units, including spa building reduced in size from 12,000 square foot to 8,400 square foot. A pool enclosure for the existing pool which will eliminate the new larger pool. Laundry facility at 1,600 square foot to expand the existing laundry and eliminate a separate 1,200 square foot building. A new driveway west of the existing entrance. A green house of 400 square foot which is an expansion. A cart shed of 400 square foot; reopening of the restaurant, replacement of 1,000 square foot storage building, improvements remodeling of the existing building and include in the existing and old lodging rooms within the atrium building, installation of ditch irrigation system, modification to parking lot, wastewater system and maintenance building. The applicant also proposed to reopen a restaurant and bar and allow liquor sales within the restaurant.

Phase 2, the applicant states now that the development plan application for phase 2 will not be submitted for one year after phase 1 construction is complete. This will allow time to evaluate traffic, water, and wastewater treatments conditions.

Phase 2 will consist of 17 casita lodging units. A fitness facility of 1,200 square foot, and one hot tub.

The decision of the CDRC was to recommend master plan zoning amendment to the original proposal for additional uses within the Sunrise Springs facility subject to the following 12 conditions. And, Mr. Chairman, could I enter those into the record? [See Exhibit 98-5552 "1"]

CHAIRMAN GRIÑÉ: That's fine, Penny.

MS. ELLIS GREEN: Thank you.

CHAIRMAN GRIÑÉ: Any questions of staff?

COMMISSIONER DURAN: Mr. Chairman.

CHAIRMAN GRIÑÉ: Commissioner Duran.

COMMISSIONER DURAN: I've got just a couple. Penny, the new pool replacing the existing pool, is it going to be smaller?

MS. ELLIS GREEN: Mr. Chairman, Commissioner Duran, the applicant is now proposing to enclose the existing pool.

COMMISSIONER DURAN: Thank you, excuse me.

MS. ELLIS GREEN: They had been proposing to put a larger pool there and then enclose that. But they are now proposing keeping the existing pool and enclose that.

COMMISSIONER DURAN: Okay.

COMMISSIONER GONZALES: Mr. Chairman.

CHAIRMAN GRIÑÉ: Commissioner Gonzales.

COMMISSIONER GONZALES: Penny, as to the issue raised in phase 2 that the applicant states that the development plan application for phase 2 will not be submitted for phase 2 will not be submitted for one year after the phase 1 construction is complete; and the idea being that it would allow time to evaluate traffic, water, and wastewater treatment conditions. I guess, my concern to that issue is and I guess we can address it with the applicant, would be that -- from what I understand from this phase is that the idea would be that there would be an evaluation period to study the impacts of traffic, the impacts of groundwater and wastewater issues and the intensity and basically assess the overall development to date, prior to coming back for phase 2 is the way I understood the issue between the La Cienega Valley Association and the applicant. And it doesn't state very clearly that there will be some type of formal analysis submitted to the County or to the community prior to even the request to come forward for that evaluation. And I guess what my concern is that after one year, the applicant comes in and proceeds forward without any type of formal type analysis as to what the impacts the development has had on the community and I think that is the expectation of what the community may have in that that type of process would occur. So -- is that anywhere else or could that be moved into the conditions if this was approved tonight that there could not be a submittal for phase 2 until some type of independent analysis was done and submitted to the county and the community for review and input?

MS. ELLIS GREEN: Mr. Chairman, Commissioner Gonzales, the applicant tonight is requesting master plan for phase 1 and phase 2 so you would be approving the concept of this many units. What they have stated to staff is that before they submit a development plan application, which would include a traffic analysis, water budget, those things, before they submit that for phase 2, they will wait one year after phase 1 has been constructed so that they can get the latest figures of the population, who's using the resort and things like that placed into their submittals for phase 2.

But they are here tonight asking for master plan for phases 1 and 2.

COMMISSIONER GONZALES: Why is that?

MS. ELLIS GREEN: Mr. Chairman, Commissioner Gonzales, that was in their original application which was for master plan approval and after working with the neighbors they submitted us a request to amend this application saying that they request phase 1 and phase 2 approval for master plan.

COMMISSIONER GONZALES: So in the first submittal it was for 40 lots with no phasing.

MS. ELLIS GREEN: Forty lodging units.

COMMISSIONER GONZALES: Forty lodging units, no phasing.

MS. ELLIS GREEN: Correct.

COMMISSIONER GONZALES: And then in this submittal it's for 37 lots; is that right?

MS. ELLIS GREEN: Correct.

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COMMISSIONER GONZALES: Broken over two phases.

MS. ELLIS GREEN: Right.

COMMISSIONER GONZALES: Phase 2 which is 17 lots would not go underway until there was an analysis that was performed as to the impacts.

MS. ELLIS GREEN: That's correct.

COMMISSIONER GONZALES: And then at that point, the Commission could determine whether it was negative enough to deny the development or not. I guess my concern is, this is an issue that I would like to talk to the applicant's agent about.

MS. ELLIS GREEN: For phase 2 you would get up to date water use reports hydrology reports, traffic impact analysis so that we would be able to see what the result of phase 1 was. Tonight, if you approve the master plan for phase 1 and phase 2 you're approving the concept and --

COMMISSIONER GONZALES: You're zoning for 47 or 37 units.

MS. ELLIS GREEN: Correct, including the fitness facility and hot tub in phase 2. You're giving the conceptual zoning for that.

CHAIRMAN GRIÑÉ: Are you through? Commissioner Duran.

COMMISSIONER DURAN: Penny, who makes the determination as to whether or not the traffic study or the water impact has had a negative impact on the community?

MS. ELLIS GREEN: Mr. Chairman, Commissioner Duran, when an application comes in, that application is sent to the State Engineer's Office, the County Hydrologist, State Highway Department and Public Works Department and they will review -- for example, the State Engineer will review the hydrology and water budget. The Highway Department and Public Works Department will review the traffic impact analysis and staff will also review those applications in accordance with the county code and then we would make a recommendation to the CDRC.

Just one other point of clarification --

COMMISSIONER DURAN: You would make recommendation to the CDRC?

MS. ELLIS GREEN: Correct.

COMMISSIONER DURAN: And then would it come to the Board of County Commissioners for final?

MS. ELLIS GREEN: No, it would not. The development plan would only be heard in front of the CDRC. So if phase 1 and phase 2 are approved tonight then the phase 1 development plan will go through the CDRC and when that has been built out, one year later they would be able to apply for development plan of phase 2 and that would go to CDRC for review. It would not go to the Board, unless the Board requested that in a condition of approval.

COMMISSIONER DURAN: So tell me again, who would review the traffic?

MS. ELLIS GREEN: The Public Works Department and the State Highway

Department.

COMMISSIONER DURAN: And the water would be just the State Engineer?

MS. ELLIS GREEN: And the County Hydrologist.

MR. DOMINGUEZ: Mr. Chairman, Commissioners, it is within your prerogative if you want to add a condition to assure that they submit an updated traffic report and an updated water analysis as part of phase 2 submittal.

COMMISSIONER DURAN: Mr. Chairman, my only concern is that the CDRC they are not elected officials with any really fiduciary responsibility to the community. Whereas, we do have that and it just would seem appropriate that this body would have the ability to review the findings that were submitted to the entity that you just mentioned.

COMMISSIONER GONZALES: So, Mr. Chairman, just to piggyback, so as a matter of a condition could it be, Tom, that it is in our purview that we would require an interim period there where the analysis prior to submittal of the second phase to the CDRC, that the BCC would have to review the analysis and approve as to its form meaning that prior to going to the CDRC our findings would have to be that there hasn't been a detrimental impact to the water supply. That there hasn't been an increase to the nitrate problem as a result of the wastewater system in place, and the traffic that is being generated is not adversely impacting the community. I mean, could there be some kind of, you know, phase inbetween where this would be brought before the Board and we can -- and the Board would be able to, if they affirm that the analysis is proper and hasn't had a detrimental impact, go ahead and allow it to go forward to the CDRC if we determine that through the analysis that it has had a detrimental impact that we could prevent it from going to the CDRC?

I mean, what's to and this may be a legal issue, if they're zoned for 37 units and there is an analysis that we've done that says the other 17 units is going to be of some detrimental impact to the community, and the applicant disagrees with that, what happens at that point? If our analysis is different than what the applicant has stated? Will they still be allowed to go to the CDRC and go through that proper channel because they've been zoned for the 37 units or what kind of protection is there in place?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Gonzales, it is also within your purview to put a condition that wise or to have them come back before the Board of County Commissioners for development approval.

MS. ELLIS GREEN: Mr. Chairman, Commission, if I could add to that: you could request that they come back for development plan approval for phase 2 or there are two phases in front of you tonight and you could recommend master plan approval for phase 1 and recommend that phase 2 comes back in front of you.

CHAIRMAN GRIÑÉ: Any other questions of staff? Thank you, Penny. Is the applicant -- Jim.

[Duly sworn, Jim Siebert testified as follows]

JIM SIEBERT; Mr. Chairman, Commissioners, my name is Jim Siebert and I'm representing Megan Hill the owner of Sunrise Springs.

I'll be one of three principal speakers. Rosanna Vazquez who is an attorney has been helping out in terms of the community meetings and some of the negotiations would like to speak and then Megan Hill would like to give you a little background and history of Sunrise Springs.

When you acted on this last time there was concerns about, first of all proper notice and meetings with the community and as I stated previously, Rosanna will go over those meetings. Some of the other issues were wastewater, water use and traffic and I'd like to address the more technical aspects and how some of those issues have been addressed.

We also have with us tonight, Mike Ogden, the owner of Southwest Wetlands and the engineer for the wastewater system and Jay Lazarus with Glorieta Geoscience who has done the geohydrological evaluations.

In terms of the wastewater let me say first of all that there is a discharge plan that has been approved by NMED. And it includes the modification and expansion of existing facilities. The plant will be upgraded to 12,000 gallons a day capacity. The present during maximum occupancy at Sunrise Springs, the maximum flow has been around 3,000 gallons a day. So you can see that there is considerable excess capacity.

In terms of the improvements themselves, the more significant improvements to the wastewater system will be a reconstruction of the existing sand filter. It's got several years on it and needs to be taken out and replaced with new sand. There will be a trickling filter that will be installed on the north side of the Arroyo Hondo for additional treatment facilities and then each building or building cluster will have a separate septic tank system where the initial settling will take place. And one thing that I think is unique in this system is that there is a redundancy built into it. You have an initial septic tank system and you have a trickling filter system where you go through another process before it is lifted up to the sand filter, then you go through the sand filter and then you go on to a cleansing basin and then from the cleansing basin it goes into for use for irrigation purposes.

In terms of the monitoring what will take place and this I think takes in some of the issues of how we beginning to determine what the impacts are. There will be quarterly water quality tests that are taken. It's taken by an independent agency that is paid by Sunrise Springs but the results are sent directly to NMED. The applicant or Sunrise Springs does not even get a chance to review those results before they go to NMED. So they are strictly an independent evaluation. And the test takes place both in the ponds themselves and there are three monitoring wells around the site and what happens is that those monitoring wells go in at various depths and locations into the aquifer and that is tested for nitrates and various other contaminates. And once again that is done on a quarterly basis.

In terms of the water, there was a concern last time about the extraordinary water use that occurred in 1999. I was unaware of it then at the meeting, but what occurred was there was a break in the water line. The water line break was right in the vicinity of the ponds

and there is kind of a natural spring that comes up and it's difficult to identify what is spring and what was the break. Finally, it got to the point that it erupted and then it became very evident. But there was considerable loss of water that occurred in 1999 because of that accident.

There are sufficient water rights to accommodate the proposed development without the necessity of bringing in additional water rights. One of the issues that we have discussed is the use of treated effluent. One thing that happens now is that there is so little treated effluent that is going through the wastewater system that when it goes into the ponds it basically just evaporates out of the pond before it can be reused. As there is additional effluent that flows into the purification ponds or the cleansing ponds then that water will be used for irrigation purposes for landscaping.

There will be annual water readings that will be submitted to the State Engineer's Office and the County. And then in the actual conditions themselves, you'll notice that staff is not taking any chances and if the water use is greater than what is permitted by the water rights, then the restaurant would actually have to be closed down in order to bring that in line with the available water rights. It's an extraordinary measure that we feel will not be necessary.

In terms of water conservation, there will be notices placed on each table in the restaurant informing patrons that water will be served only on request. Notices will be placed in the rooms that linens will be changed every third day unless requested by the occupant. Restaurant linens will be washed in Santa Fe and not at Sunrise Springs. All existing toilets will be changed over to 1.6 gallon-type toilets, that's a requirement of new construction, but for the existing toilets we'll -- the proposal is to change those out as well. And then once again, as treated effluent becomes available it will be used for irrigation purposes, for landscaping. Portions of the grass below the pond there is a rather extensive area that was used for grass in the south of the pond between the pond and the Arroyo Hondo, that will be removed and replaced with xeriscape planting. And then there will be special treatment in the hot tubs and the spa facility for the filtration and purification and reuse of the water so that the tubs are changed on a fairly infrequent basis.

In terms of traffic, the one thing that is occurring in the overall program with Sunrise Springs is the concept to provide guests of Sunrise Springs with a variety of facilities so that it does serve more as a retreat. You don't have the same need to leave to go other places. So the idea of what you approved previously was the arts and crafts center and the idea is that you provide arts and crafts there. You provide for yoga and you provide for dance facilities. You have a restaurant and you have a spa facility and you reduce the need to actually leave the site itself.

The other thing that Megan has proposed is that there would be two vans that would be purchased or leased. The idea is that those vans would be used to pick up guests and drop guests off at the airport and also be available to deliver them around for visits to Santa Fe and other areas of the region.

One thing that we did is that right now the Desert Academy is located at Sunrise Springs and we were just trying to do a comparison of what the traffic generation is from the Desert Academy and how will that compare to the proposed uses that you have in front of you. And the calculations was that in the AM hours it has been estimated that there will be fewer traffic coming in and out during the AM hours as compared to the Desert Academy and then in the PM hours it will be slightly greater than what occurs at the Desert Academy today. And once again, I think the idea is that these type of activities spread their traffic generation throughout the day. They're not a peak hour generator so they're not conflicting with the normal peak hour traffic that occurs from say 7 to 9 AM and 4 to 6 PM.

The other thing that is being done to improve the safety of the access is that there is presently one access in the Sunrise Springs. What we're going to do is take that existing access, that will be in an entry only and then at the far west end of the property we're going to create another access that is an exit only and the reason for that is that we have much greater sight distance at the west end of the property than we do at the present location which will improve the ability to access especially exit onto Los Pinos Road.

In terms of what has changed from the last plan. I think that Penny has been over it pretty well but let me just reiterate some of those things. The existing pool will be retained. We're not going to modify that and there will be an enclosure put over the pool. The idea is to provide an access from the spa to the existing changing room and that will in itself help to reduce some of the evaporation rate from the pool.

Three of the casita units, there was originally 40 units proposed, we're down to 37 right now. So three of the original units have been eliminated. We have proposed six living -- six additional living units in the atrium building. The reason for that is that these are more affordable units. They're shared. They have shared bathrooms. They are facilities that have always existed out there and the plumbing is in place and there is no structural changes required to the building. We're simply re-instituting the previous use.

The spa will be reduced from 12,000 to 8,400 square feet. The separate laundry of 1,200 square feet has been eliminated and has been incorporated into a 600 foot addition to an existing structure.

Phase 1 will be 20 casita units only in terms of the actual new casita units. And then I think let me go over a little more carefully what our intent was with Phase 2 where you would have an additional 17 casita units and the fitness center which are the main elements of phase 2. For a period after one year there would be various impact evaluations conducted. Let me tell you what those would be. There would be a traffic generation -- traffic impact analysis prepared and that would determine AM and peak PM peak hour periods and 24 hour periods and their impact on Los Pinos Road. And that would be prepared in conformance with the New Mexico State Highway Department standards. They have a very definitive way that you prepare those.

There would be monthly and yearly water reports provided to the State Engineer's Office and to Santa Fe County. There would be monthly and annual readings of the

wastewater discharge and the information that is provided to NMED. We would make arrangements through NMED to forward that same information in terms of water quality testing to the County.

In terms of the process, let me just clarify that the idea is that we would make -- once we do the evaluation, we would have additional community meetings before we go to Phase 2, there would be additional community meetings. At those community meetings that information in terms of the impacts would be presented during those particular community meetings.

The other issue that came up is how does the Board of County Commissioners have oversight in terms of when it would come back for Phase 2 that the evaluations have been conducted properly and that there has been a proper assessment of the impacts. And what we propose to do is to bring the development plan -- we would agree and stipulate to the condition, to bring the development plan back to the BCC for your review at the time that we would submit Phase 2 development plan.

We are in agreement with all of the conditions as stated. There is just one clarification and this condition number 6 that says, "The applicant will obtain FEMA approval of a letter of map amendment prior to any grading or construction within the existing designated flood hazard area. This will be noted on the master plan." I've talked to our engineer and what we are doing in Phase 1 is nothing that would require a letter of map amendment. There is no filling that will take place and there is no structures that will take place within the present flood plain limit. So we would request a change in the wording that would read, "A letter of map amendment prior to any grading for construction of buildings within existing designated flood hazard areas." In other words, we would not be allowed to do any fill or any construction of any buildings within the present flood hazard limits.

With that, let me have Rosanna speak to you about the community meetings.

CHAIRMAN GRIÑÉ: Thank you.

COMMISSIONER GONZALES: Can you just repeat what condition that was?

CHAIRMAN GRIÑÉ: That was number 6.

BEVERLY GARCIA: Are we entitled to cross-examine as this is a quasi-judicial hearing.

CHAIRMAN GRIÑÉ: No, not yet.

Thank you, Jim. Did you have something further you needed to say Commissioner Gonzales?

COMMISSIONER GONZALES: I just have a couple of questions of Jim. Just on the testing issue, I know that you're going to do this and I know that you indicated but you were going to provide and go back to the community with some of the results but, I guess as you're doing the quarterly testing that you were talking about earlier in your presentation that you were going to supply to EID or the Environment Department; I guess I would request that those periodic tests be made available to the County Land Use

Department and also to the La Cienega Valley Association or whatever other interested parties -- if this goes through.

Then as to the secondary exit that you had talked about, I know that there were some people that were concerned that the secondary exit last time that was being proposed was going to go through a neighborhood and I'm wondering are you still proposing the same exit?

MR. SIEBERT: I think there is some confusion. Let me show you the plan. I think the confusion was in the crossing of the Arroyo Hondo. This is CR52 or Las Estrellas and the concern was that with the crossing that is being developed here of the Arroyo Hondo that that would then become an alternative access. That is not the case. This will be gated and we have worked out with the fire department and Knox locks arrangement that will be part of that to arrange for access.

COMMISSIONER GONZALES: So where is the entrance and the exit?

MR. SIEBERT: The secondary access that entrance/exit that we're describing, this is the existing access to Sunrise Springs and this will be changed to an entrance only and then at the west end of the property here where there is an existing vacant parcel that would be an exit only and the reason for that is that the crest of the hill sits right about here and it doubles the sight distance that is available along Los Pinos Road.

COMMISSIONER GONZALES: Okay, then with what's being proposed through this Phase 1 and Phase 2, what color is Phase 1 there?

MR. SIEBERT: This is phase -- the green is Phase 1 and the --

COMMISSIONER GONZALES: So it's more towards the back end of the property first?

MR. SIEBERT: Correct but they're all really at the back end and then the orange color is the remaining 17 casita units and then a green house and fitness center over here would be part of phase 3 as well.

COMMISSIONER GONZALES: Okay and where is the wetlands going to go?

MR. SIEBERT: The wetlands is really a cleansing pond and maybe I should just let Michael Ogden speak to the wastewatear system.

[Duly sworn, Michael Ogden testified as follows]

MICHAEL OGDEN: I'm Michael Ogden, O-G-D-E-N. The wastewater treatment system that is being proposed and upgraded here is based off an existing system relying on a sand filter and storage pond and land application. The sole new element of the treatment system is a trickling filter. There are no wetlands. The trickling filter will add additional treatment capability to the system to allow it to handle the increased capacity. The basis for the treatment system is these elements, primary treatment and septic tanks, a trickling filter, a sand filter, detention ponds or storage ponds that allow for significant additional treatment and then land application.

COMMISSIONER GONZALES: Do you monitor the process all the way through?

MR. OGDEN: Yes. There's an operator. The State requires a licensed operator and he's actually here this evening. That's Dan Mullenberger he is a licensed operator and he is required to report the results of any failures of the system. Monitoring is done by an independent testing laboratory and reported directly to the State and to Sunrise Springs operators.

COMMISSIONER GONZALES: So what area of the property is this actually located?

MR. OGDEN: Most of it is across -- you can see on this map here. Here's the developed area here and this is the existing sand filters that are being rebuilt and here's the storage pond. This is a land application area and then the rest of the land application area will be the irrigated site. In other words, the water is getting reused. It's going to be used twice instead of just once.

COMMISSIONER GONZALES: So you're going to treat the water once on that side of the property, which would be the --

MR. OGDEN: The sand filter.

COMMISSIONER GONZALES: -- the east or what part of the property would that be?

MR. OGDEN: Yes, that would be the east side.

COMMISSIONER GONZALES: Okay, you'll treat it there and then you'll pipe it up to the property --

MR. OGDEN: It flows down hill and this is up hill. It flows down hill and the storage ponds and then goes in through a pump to the irrigation system on the site.

COMMISSIONER GONZALES: So when you talk about lining the system -- so are you lining so there's no seepage that --

MR. OGDEN: That's correct. The sand filter will have new liners and new sand put in it. The pond is in good shape and that has liners in it and that's part of the original design for the system. The one new element which is on the old site is the trickling filters. They are basically small 6 foot diameter trickling filters.

COMMISSIONER GONZALES: Have you tested the current water quality on the property?

MR. OGDEN: I have not. But I have seen the results from the laboratory.

COMMISSIONER GONZALES: And what are the results from the laboratory?

MR. OGDEN: I'll need to ask Dan to tell me what they are.

COMMISSIONER GONZALES: They meet the New Mexico ED requirements?

CHAIRMAN GRIÑÉ: If you're going to ask him more additional questions then give him the microphone.

COMMISSIONER GONZALES: I'm trying to assess what the current water quality on the property?

MR. OGDEN: Okay, let me answer that one. I know that Dan is in compliance because I've seen the data I just don't remember what it is. The requirement is based upon a land application which is 200 pounds of nitrogen per acre per year. So during the irrigation system [sic] if this water was actually applied, if there was enough of it to do it, it would meet that requirement but he's never had enough water to actually land apply it. But they do test the pond water now and it does meet that requirement, i.e., 200 pounds of nitrogen per acre, per year.

COMMISSIONER GONZALES: Okay, and I apologize that I don't understand the technical. But the issue is that the Environment Department has determined through the testing that there are not health risks that the current system is acting properly and not raising nitrate levels to the level that could cause health risks to the community around there.

MR. OGDEN: That's correct. Yes, that is correct.

MS. GARCIA: Mr. Chairman, when will we be given the opportunity to cross-examine?

[Legal staff responds away from the microphone at this point.]

CHAIRMAN GRIÑÉ: Do we have legal here to give us a clarification?

MS. GARCIA: If she's saying that this is not a quasi-judicial hearing, that it is an administrative hearing.

MS. MULVANEY: This hearing falls under procedure for action item and this is the applicant's presentation and the public is not a party to it at this point.

MS. GARCIA: Under --

CHAIRMAN GRIÑÉ: Beverly, that's enough. No.

MS. GARCIA: I need to say something for the record.

CHAIRMAN GRIÑÉ: You can state it for the record.

MS. GARCIA: According to the Supreme Court case and --

COMMISSIONER DURAN: Mr. Chairman, I think this lady is out of order.

MS. GARCIA: -- cross-examination in a quasi-judicial hearing and I just wanted to note my exception and my objection for the record.

CHAIRMAN GRIÑÉ: That's fine.

MS. GARCIA: I have to preserve this record in order to appeal this case.

CHAIRMAN GRIÑÉ: That's okay. Proceed, Rosanna.

ROSANNA VAZQUEZ: Good evening, Mr. Chairman, Commissioners. I'm here to talk to you a little bit about the community effort that Megan Hill, Sunrise Springs on behalf of Jim Siebert and all the employees of Sunrise Springs have done for purposes of getting the correct information with respect to this amendment master plan

Community information and spreading the truth has been something that is a part of Sunrise Springs. Megan Hill has owned this property for approximately 31 years and Sunrise Springs has been in La Cienega for 21 years.

In order to get the information with respect to the amended master plan there were

two meetings held with La Cienega Valley Association. The first meeting was held on April 4th and the second meeting was held on May 21st. Each of these meetings were publicized and information was sent out to the community in order for everybody to attend.

At those meetings, the information that was given to you tonight by Mr. Siebert and all the associates working with respect to the wastewater and the traffic impact, all that information was given to the Valley Association and the public that attended. The two phases that were proposed here were discussed as well.

The meetings were publicized by the Valley Association not Sunrise Springs. In addition to the Valley Association meetings there was an additional meeting held at Sunrise Springs. That meeting was held on April 11. In order to get proper notice of that meeting, there were 1,100 notices sent out to the residents of the La Cienega area. There were six signs placed throughout the La Cienega area inviting everybody to come to Sunrise Springs. There was a tour given of the area. Mr. Siebert was there to present all the information that he has again, presented here today. Unfortunately, there were not that many people who attended. We are thankful for the 30 to 50 people who did attend.

Beyond that we have had several meetings with individuals and small groups, Mr. Siebert; myself; Megan; her assistant, Linda LaVan, in order to get out the correct information with respect to this amended master plan. Over 100 people were contacted by myself in the La Cienega area in order to also make sure that if any questions or concerns were still about with the residents that we would be able to answer those questions.

Megan, as a part of this community, has tried through Sunrise Springs and will continue to try to be a member of this community. In that vane, you can look at her past and realize that her promise to the community are not empty promises.

For the last 20 years the La Cienega Valley Association Volunteer Fire Fighters have used the Sunrise Springs water for the purpose of fire protection in that area. It is one six sources in that area that provides water and two of those hydrants are on Sunrise Springs.

She has also agreed to improve that fire protection that will cost thousands of dollars and will benefit the entire community. She is going to improve the water delivery capacity system and she is going to construct a booster. In addition she will build a bridge across the arroyo for purposes of emergency access. All of this is our community benefit, Mr. Chairman, Commissioners. Impact fees from this construction project alone will total over $18,000. Those impact fees will impact the La Cienega Valley Fire Association as well.

In the past, she has opened up Sunrise Springs for purposes of community meetings, without charging fees. She has had community membership at discounted rates for residents and their children. In the past, Sunrise Springs paid approximately $10,000 to have a natural gas line brought over to La Cienega and that was paid to PNM. The agreement at the time with PNM was if over 50 people hooked-up that Sunrise Springs would get their money back that they had invested with that line. Over 50 people did not hook-up, but that is still available to the residents of La Cienega. And, again, that was an investment that was done for her property and as a community member.

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Giving to the community is an everyday obligation and I think that she has followed through with that and her acts will continue.

During the Los Alamos fire and the evacuation I don't know if you, that there were many evacuees from Los Alamos housed at Sunrise Springs. The families were housed as well as the pets were housed there.

Last year, during the grass fire out in La Cienega, there was a group meeting at Sunrise Springs during the grass fire, the employees as well as all of the people who attended the resort assisted in stopping the grass fire in that area. After that, as a thank you, everybody received meals and drinks to order to promote community and give thanks to people who were so hospitable who came there.

I want to talk a little about some of the other community benefits that are going -- that have been presented. Many of them are set out in the plan that you have before you that was given to you by Mr. Siebert. Probably the biggest and most beneficial of these benefits is what is being done in respect to the environmental and natural resources in the area. We've already talked about the water. She has agreed to take care of the environment and allow the water runoff to run into the Arroyo Hondo to allow recharge of that water. When trees are taken down for construction, as in the past, trees are put back up. The water conservation measures of another form of protecting the environment. Those have been related to you by Mr. Siebert.

Protection of natural resources extends to the wastewater treatment plant that is already gone through in-depth. And the monitoring of water quality through the wells. All of these things fall in line with the draft La Cienega plan that has been submitted to you for your approval. All of these things fall into the goals that the people of La Cienega and Cienguilla area want for their community.

The last biggest thing that is being promoted here is the community benefits is jobs. When this Commission turned down the jail, it gave a direction to the community and that direction was to provide jobs to this community. Meaningful jobs that could come to the residents of this area. I believe that the job was 300 jobs in 30 days. Well, I submit to you here today, Commissioners, that there are in fact jobs that will be promoted through this development. Construction alone employs 30 to 50 people and that does not include the subcontractors. That does not include all of the equipment workers as well. Average salary for those jobs is approximately $30,000 a year which breaks down to about $15 per hour. The new Sunrise with the proposed changes will employ an additional 60 to 80 people. It currently employs approximately 50 people. This is the greatest gift to a community as a neighbor.

There were some community concerns that were addressed and I would like to go through those quickly. One of the concerns was noise. And Megan and Sunrise Springs have agreed to stop the music at no later than 10 PM on the premises so there can be quiet in the evening and the neighbors are not disturbed. The restaurant will close at 10 PM. Alcoholic beverages will only be served with meals. There will be no packaged liquor sales

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on the property.

The last thing that I would like to address to you is that there was a petition handed out to the residents of the La Cienega area and this was a petition that was opposing the Sunrise Spring expansion. I was not able to get a copy of the petition with the names in order to contact some of those people concerned to be able to address those concerns myself on behalf of Sunrise Springs. I did, however, get a copy of that petition. The petition begins by saying that. "Expansion does nothing for the local residents and it is in opposition of the quality of life that we are trying so hard to preserve in this rural and farming community. Through the introduction of three large scale commercial kitchens." I'll begin with that. There is one commercial kitchen and that is in the restaurant. There are two smaller kitchens. One in the Willow, which is an existing building and an existing small residential type kitchen. And another in the arts building which if you walked in it is there to serve sandwiches. Two, ".. a full-scale spa that will require excessive use of water." That has already been explained exactly the full-scale spa has been reduced and that there will not be an additional pool. That the pool that is built will be covered so that it loses less water through evaporation. It's already been addressed that there will be limited hydro therapy and that they are attempting always to recycle water by using effluent in the garden in every way that they can through their process. Number three, "a swimming pool designed to accommodate hotel level occupancy," I believe that I have already addressed that. Number four, "increased traffic flow in and around our rural village and narrow road." As Mr. Siebert has explained to you, there will be two, an exit and an entrance in order to work with some of the sight distance problems on that road. There will be vans that will be either subleased or owned for the purpose of bringing in residents -- I mean bringing in people who come to visit in order to reduce the traffic in that area.

Next element is, "more noise in the immediate vicinity...a resort hotel that already makes it difficult to enjoy the sounds of nature due to loud music and noise generated at the existing facility." I believe that I've already addressed that with the limitations on the restaurant and the music use. A "full-scale liquor license that will increase the potential for drug driving on the narrow roads within our community." Ms. Hill has had a liquor license in the past. You may recall that what came before the CDRC was a request for Desert Academy to move onto the property. At that time the liquor license was stopped in order to have a school on the property one could not have a liquor license on the same property. This is not a new liquor license. This is something that she has had in the past that will begin anew. And I do believe that we have limited liquor to meals as well.

"A commercialized zoning that will eventually increase property taxes and make land unaffordable as has happened on Canyon Road and most areas of Santa Fe." No, Mr. Chairman, Commissioners, there has already been zoning on this property. This is an amended master plan for purposes of going forward with the development plan.

I bring this up, Mr. Chairman and Commissioners because I believe that Sunrise Springs through Megan Hill and the employees who are here today, have attempted every

way that they can to promote the good things about Sunrise Springs. To promote the actual master plan. In that vane, my last point, our communications with the Valley Association. In your packet is our communications with the Valley Association. The Valley Association has given their approval of this project limited to Phase 1 which is the 20 casitas. They have agreed to reserve judgement with respect to Phase 2, the additional 17 casitas, after they can look at actual impacts on this property. We have agreed to do that.

On behalf of Megan and myself I cannot thank the Valley Association enough for its assistance with respect to this project. There are some other conditions that we agreed to and I gave Mr. Romero for the Valley Association today a letter agreeing to the conditions of approval. One very important letter in there was the easement agreement for the La Cienega Ditch Association and Ms. Hill has agreed to give perpetual access for purposes of cleaning the ditch to the La Cienega Ditch Association. That easement agreement has been reviewed by Mr. Raymond Romero and has been given to his lawyer for approval. One other thing that is very important in those conditions of approval is the water recharge for Arroyo Hondo which I've already discussed.

Mr. Chairman, Commissioners, I thank you for your time. I respectfully request that when you deliberate this master plan, keep in mind that this master plan will have very good impact and benefit to the area of La Cienega.

Last, I just want to submit to the record a letter dated June 13, which I believed was faxed the Commissioners from Linda LaVan. She is an employee of Ms. Hill for 21 years. I'd would like that submitted to the record and I'll stand for questions.

COMMISSIONER GONZALES: Mr. Chairman.

CHAIRMAN GRIÑÉ: Commissioner Gonzales.

COMMISSIONER GONZALES: Rosanna, currently are there any residential units on the property? Does Ms. Hill reside on the property?

MS. VAZQUEZ: Mr. Chairman, Commissioners, no she does not at this time.

COMMISSIONER GONZALES: Are there any other residents on the project?

MS. VAZQUEZ: Mr. Dan Wallenberg who is the manager, lives on the property.

COMMISSIONER GONZALES: Okay, thank you.

CHAIRMAN GRIÑÉ: Any other questions of Rosanna.

MS. GARCIA: I would again like to request to cross-examine --

CHAIRMAN GRIÑÉ: No, you can't.

MS. GARCIA: Thank you, Mr. Chairman --

CHAIRMAN GRIÑÉ: Do you have any other speakers, Jim?

COMMISSIONER GONZALES: Ms. Hill, in the interest of time and I know that it is important to state the history but it is getting late and I just would ask you to be brief.

MEGAN HILL: I don't know how to edit at this point, but I'll read fast.

[Duly sworn, Megan Hill testified as follows]

MEGAN HILL: 1469 Upper Canyon. My name is Megan Hill and I am the owner of Sunrise Springs. I want to tell you I began Sunrise Springs 21 years ago and why I think that it is good for the La Cienega Community.

In 1969 my husband, Jim Hill and I first came to the valley which still resembled the rural agricultural valley that I understand is historical. Together we formed and ran a business in Santa Fe, Hill Gallery of Contemporary Arts. My philosophy with regard to the gallery was essentially the same that it is for Sunrise Springs. And that is that beauty and creativity are before our eyes if we choose to focus upon it. I represented local artists in the decade of Hills Gallery we helped launch a number of careers.

In 1979 I translated my love of the valley and especially that of Sunrise Springs into that of a hospitality business designed specifically to celebrate the beauty of the land.

Our project is built around our teaching and meditation garden. The hospitality business has precedent in La Cienega [inaudible] where 18th Century [inaudible] at Los Golondrinas and perhaps earlier El Alamo less than 100 yards from Sunrise. Both offer accommodations and comfort to tradesman and other travelers from Mexico to Santa Fe.

The general design of Sunrise was inspired by the newest neighbor to El Alamo, a combination of green roofs and shutters and red La Cienega earth. It has been our intention to make the buildings as harmonious with the landscape as possible. Our mission statement is "to provide an oasis and exquisite retreat in the modern world for people to pursue regeneration and creative purpose." This is essentially what I have been striving to do for the past 21 years. The path has not been easy. In the late '80s we were forced to close due to financial problems. In the early '90s I lost my brother, John Lloyd, and my husband, Vincente Romero, in the same year. It has taken some time for me to gather the financial resources to gain this staff of expertise to make Sunrise Springs whole. Our need for expansion is not capricious. It is the result of a carefully thought out business plan with an emphasis on destination amenities that will provide reasons for our guest to visit and remain at Sunrise for the duration of their stay.

Over the years Sunrise Springs has employed hundreds of people and we have always been an equal opportunity employer and [inaudible]. I have employed Anglo, Hispanic, Native American, African American, Russian, Japanese, and Afghans. These people have been Christian, Jewish, Islamic, and Buddhist. We are far from being elitist and we have hosted many service groups. Elder Hosts, Community and Indian Legal Service, New Mexico State Department of Human Services Division, State Library, Department of Energy, KUNM, Hillside Community Church and New Vistas to name a few.

The diversity is the strength of Sunrise and the Valley Association. I spoke on behalf of granting La Cienega an independent historical status precisely because the language embraced people of all sorts living and working together, which does speak for the valley I moved into 31 years ago. Such diversity necessities goodwill and patient negotiations to reconcile differences and set priorities.

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It is ironic to me that largely it is the most recent members of the community who have stirred passion and resentments in regard to Sunrise Springs.

This case has been criticized upon false and incomplete information as well as character defamation. An approach such as this has a larger affect on the valley which is to divide it and eventually lead to disempowerment. Intimation and fear are not the way I hope to see the valley go. A growing population is a fact worldwide and it affects every community including ours.

I am an individual owner and Sunrise is my financial risk. I have put in infrastructure that I believe to be unparalleled in the community. We have met with the Valley Association on three formal occasions and hosted three open houses at Sunrise Springs to address any concerns of our neighbors. For our last meeting, April 11, 2000, we mailed out over 1,100 invitations to La Cienega and La Cieneguilla residents. People who attended the meeting overwhelming supported Sunrise Springs. As this is historical precedence for hospitality in the Valley with both Las Golondrina and El Alamo, we feel that Sunrise Springs is a good [inaudible] for the community of La Cienega. We have provided fire protection. Free or reduced rates on meeting spaces and we paid $10,000 to the Gas Company of New Mexico to bring natural gas down the road as an alternative option for the community.

I do realize that I'm repeating things that have been said. During the past -- so I'm kind of jumping. We do offer a community day and classes and during the past 2.5 years, I've spent $300,000 preparing all the documents and information in order to stand before you tonight. I have hired numerous professionals who have spent countless hours on behalf of the project and have come up with solutions to address concerns of traffic, water use, and the reopening the restaurant. We are about to spend thousands more putting in a booster pump for the fire protection system and to upgrade our waste disposal system to accommodate the increased use.

Personally, I prefer the valley the way that it was too; however, La Cienega and Cieneguilla have grown immensely with all the additional subdivisions and trailer parks. We have to recognize that this is a reality and as I own 69 acres known as Sunrise Springs, it is probably one of the few areas left that have not been chopped up into 1 to 5 acre parcels and that has teaching gardens as a part of our central focus.

The airport, the prison, the potential race track revival are all areas of massive growth penetrating our aquifers. It is easy to blame and to be excited by fear. It is more difficult to persevere and to stand behind that which has been demonstrated to work for the community not against it. Most of us have a limited amount of energy and I suggest that we come together as a community to protect our interests. Hospitality includes part of a community and providing the community meaningful and beneficial contributions. I have been a member of the community. As a member I have attempted to do that.

I appreciate your time and hope for approval of this project because this is a good one.

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CHAIRMAN GRIÑÉ: Thank you, Megan. Any questions of Megan? Thank you. Did you have any other speakers, Jim?

MR. SIEBERT: No, I see the hour is getting late and we will stand.

CHAIRMAN GRIÑÉ: How many people are for this project? And how many people are against? I'm hoping that not each one of you wants to speak because we're going to be here real late hours.

I think I'll let the people that are for; if you can get a guest speaker for your group and then the ones that are opposed.

MR. SIEBERT: Mr. Chairman, there was an issue of safety that came up and we have Mr. Ortega who is a security officer and has been a security officer at Sunrise Springs for 10 years and I think that he would just like to very briefly like to address what has been done to make sure that the activities that occur at Sunrise are safe.

CHAIRMAN GRIÑÉ: Okay, Jim. Mr. Ortega.

JIM ORTEGA: I'll be very brief.

[Duly sworn, Jim Ortega testified as follows]

JIM ORTEGA: I own High Sierra Security Company and I've done security for all the functions and activities at Sunrise Springs for the last 10 years. These include conferences, workshops, *bar mitzvahs*, weddings, art shows -- and during those 10 years I've never heard or witnessed any type of behavior unbefitting the philosophy of Sunrise Springs, which is to provide an area where friends and family members can come together and join the festivities in a serene atmosphere.

Megan Hill and Linda LaVan and Susan Parsons have always conducted themselves in a very highly professional manner and expect no less from their employees, guests and also myself as the security agent for their place.

They've always conducted themselves in high esteem in booking their functions and activities. I've never had to literally throw anybody out. The behavior is proper. The noise is controlled. And I'm there, we're there for all the controls concerning proper behavior.

And I have the utmost respect for these people and anything on the contrary would be ludicrous.

CHAIRMAN GRIÑÉ: Thank you, Mr. Ortega. Is there anyone else that wants to speak for.

ROBERT ROMERO: Good evening, Commissioners. Do I need to be sworn in?

RECORDER: Yes, you do.

[Duly sworn, Robert Romero testified as follows]

ROBERT ROMERO: My name is Robert Romero. I reside in La Cienega and as you all know I am president of the La Cienega Valley Association.

Rosanna had mentioned that they recently met with us as early as April this year. To be truthful with you we have met with Sunrise as early as April last year, if not earlier regarding this project and this master plan.

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We came before the Commission with a moratorium approximately at that time last year and Megan with her project was one of the only applicants that was willing to put of her project until which time we had a chance to work on the community plan. We then agreed to approve of what would have been the first phase of this project which was the arts and meditation building -- center, which is now complete. Which is kind of revamped this project into a different type of a phasing program which now we're looking at two different phases of what would be I guess what you would call commercial residential.

So what my point is, is being that we've -- you know, we've been working with Sunrise for over two years on this project and we have done our best to inform our community about it although we have been involved in several other development aspects over the year and we may not have done that to the best of our ability. But granted, I think Sunrise as gone over and out of their way to inform the community. They've placed ads in the *New Mexican*, they've placed signs on their property. They've contacted the association. The association meets once a month, the first Tuesday of the month, at 7 pm, at the community center of La Cienega and any issues pertaining to the community and any community members whether they are dues paying members of the association are more than welcomed to attend these meetings and bring their issues before the board of the La Cienega Valley Association for consideration.

But as a result of our meeting with Sunrise and negotiating with them and also the result of some community members who are adamantly opposed to this project we did manage to get some genuine community benefit in writing toward our community and we did come up with a position to support the first -- which is now the first phase of this project which is the 20 initial units. Although, it is our impression that this project for the final phase will come before this Commission for final review, I think that we would like to see that as a condition rather than the CDRC because you are the elected official of this County and our community. So we think that would be more than adequate and I think that that would be our request that that would take place.

At this point in time, I think that Sunrise has come forth and offered some benefit to the community although some of that has yet to be demonstrated we would really like to see some time to evaluate this project as it progresses to determine our position on the last final phase. We do take some issue with the final phase. At this point in time, if it was going to move forward we would probably more than likely oppose the final phase because most of the units that are being proposed in that phase lie within the flood plain and there is also some issue around water availability we understand that there are numerous conditions placed upon this project by County land use staff which I think has also been a result of the involvement of the community, La Cienega Valley Association. Our goal is to strive to reach some sort of compromise and consensus in the community. That's not always possible. I do respect and understand the position of the opposition of this project. But our position is to recognize also that our community is growing and we need to accommodate positive growth.

CHAIRMAN GRIÑÉ: Thank you, Robert. Any questions of Robert? No, okay, thank you.

MR. ROMERO: I would just like to make for the record clear that we are not supporting this project in its entirety just phase 1.

CHAIRMAN GRIÑÉ: Yes, thank you.

[Duly sworn Wanda Padilla testified as follows]

WANDA PADILLA: Good afternoon. It's late and I'm going to be very quick. Just briefly how I got involved in this, I was a participant at a spiritual retreat at this facility about one month ago. That's when I read the public notice about what was going to happen with expansion. I got really excited about it because it's a beautiful building, beautiful facility, the gardens and everything. And our spiritual group there just loved it.

I live in La Cienega. I've been out there four years and it's my home I plan to live there the rest of my life. And I was given a petition at a function that I went to maybe a week later, and I read the petition and I said let me investigate because this doesn't look right. And I went to get information on my own because I thought the expansion was an excellent idea. The information that I got about the petition was that it was a lot of misunderstanding and a lot of miscommunication. I got good information and right now listening to the presentations and all the work that has been done -- frankly, I don't understand the resentment for this project. That's my position. I just Megan for the first time tonight so I have no connection.

I'm just a citizen supporting this project especially Phase 1. Let it come back before you all elected officials before we go forward. And with all the studies of the experts I think will give you the data and satisfy whatever concerns that have been raised.

The last point that I want to raise is, I don't know if you all remember but I was up here speaking against the immigrant prison and I remember the charge about jobs. So that struck me when I looked at the whole plan and I thought there are going to be jobs there. And jobs, the kind of jobs that we like in our community. So I'm not here as I was before against the project. I'm here for this project because are the kind of jobs that I think are good for the community and the facility I think is good for the facility and as a resident and user of that facility, I stand with the Valley Association in support.

CHAIRMAN GRIÑÉ: Thank you, Ms. Padilla. Anybody else for?

[Duly sworn, Craig Anderson testified as follows]

CRAIG ANDERSON: My name is Craig Anderson and I live adjacent, very close to the Sunrise Spring development. I've lived in La Cienega since 1989 and I operated a business in La Cienega prior to selling that business and I live right down hill from the ponds that hold the effluent water that has been held there and I've had some questions about that. I spoke with Robert Romero. I've spoken with Jim Siebert. I've spoken with Megan directly. I find these people to be very community minded. They're the kind of people that you can discuss issues with. I think also it just seems to me like the kind of project that we

in the community would want to support.

I can think of other developers that we have had to deal with out in La Cienega that have no community sensibility that are not interested in what the community thinks or feels. I just want to put my 2 cents in.

I also wanted to thank you, Mr. Chairman and Commissioners, for passing the traditional status for La Cienega. I think that was very commendable on your part and I commend you for that.

CHAIRMAN GRIÑÉ: Thank you. Anybody else for?

[Duly sworn, Adam Gonzalez testified as follows]

ADAM GONZALEZ: I've worked at Sunrise Spring for about four months and it took me a long time to find a job where I found happiness and peace with everyone I work with. The thing about Sunrise Springs is that we are about peace and love and anyone that comes here feels that. They all feel harmony with each other.

I believe what Megan is trying to do is for the good of the community and I like to hope it is for the best but what I have seen and from the short time I have been there, is nothing but good and all we are is about, like I say, peace and harmony to everybody.

I just hope we can come to conclusion and let her go on with her plans. And that's all I'd like to say. I just wanted to say that.

CHAIRMAN GRIÑÉ: Thank you.

MR. GONZALEZ: Thank you very much.

CHAIRMAN GRIÑÉ: Thank you. Anybody else for? Okay, if not, we're going to move to those that are opposed. Raise your hands if you're opposed. Okay, there are 10.

COMMISSIONER TRUJILLO: There's another one back there.

CHAIRMAN GRIÑÉ: Okay, 11. I'm going to count to 11 then we're going to stop. Please line up and that way we won't lose any time okay.

[Duly sworn, Beverly Garcia testified as follows]

BEVERLY GARCIA: My name is Beverly Garcia and I live in La Cienega. It's really hard to follow a project for which has already spent $300,000 admittedly spent on it. We as opposing neighbors of this expansion, don't have $300,000 to employ an attorney, a planner, an engineer, a wetlands expert, all of this stuff.

I think you're going to have to listen to me a little bit longer because I've had to take the concerns of a number of community members and roll them into this presentation and I hope that you will have a little bit of concern and understanding for the residents who don't have that kind of monetary support.

I'm just curious to know and I did not hear any of the Commissioners ask this, but of those people here present supporting this project, I wonder how many of them are employees of Sunrise Springs and have a vested interest in it. I wonder how many of them live in La Cienega and I wonder how many of them are personal friends or employed in some other way by the owner of this resort. Those are things that I wonder but since we

aren't entitled to cross-examine, I guess I'll never know the answer to those things.

I was prepared to make a presentation and to also do some cross-examination here. It has long been my understanding from a slue of lawyers in this town and from people who have practiced before the New Mexico Supreme Court that there was always the entitlement of cross-examination in a quasi-judicial hearing. That right has been denied here tonight and it is really sad. It reminds me of a Kafka story -- it's really sad.

There was some testimony presented to you -- I have to deviate from what I said since I wasn't entitled to cross- examine.

COMMISSIONER DURAN: Excuse me, Mr. Chairman.

CHAIRMAN GRIÑÉ: Yes, Commissioner Duran.

COMMISSIONER DURAN: Could you please speak into the microphone. I can't seem to hear anything that you're saying. Thank you.

MS. GARCIA: I was hoping that this wasn't falling on deaf ears in more ways than one. What I'm saying is that I'm going to have to deviate from my prepared text because I wasn't entitled to cross-examine so there were some things that were said that I'm going to just have to propose the information in another way.

I have met with a representative of the Environment Department that regulates the discharge water permit for Sunrise Springs. In that meeting I was told that the total land application that would be available here is for .87 acres of alfalfa, plus 3.5 acres of surrounding landscape. It is my understanding that there has never been any land application used of effluent water used at Sunrise Springs. I would wanted to know if that was really true; I wanted to have that verified.

They talk a lot here about preserving and conserving but it's my information from the Environment Department that that kind of land application has never taken place here. If such a land application would take place, they would have to mix that effluent with potable spring water. I don't have any information from the file or from any testimony that has been introduced here, how much potable water would be used.

We heard Mr. Siebert say that the discrepancy that was pointed out in the last meeting that we had here about the water availability, or the water -- the water available to Sunrise Springs was far exceeded by the proposed use according to what's in the file and according to the applicant's very own figures. They just didn't mesh. Tonight Mr. Siebert says that the reason for that is that they now have suddenly discovered that there has been a leak in some pond there. There is nothing to verify that. I don't -- I'm not saying that it isn't true. I don't know. I'm just saying that there is nothing to support and substantiate that and it just seems to me to be an afterthought of an excuse. I would think that technical staff would delve more deeply into something like that because the discrepancy was not a minor one that we pointed out at the last hearing.

Ms. Hill said one thing here tonight about character defamation that really disturbed me. I don't know Ms. Hill. I've never met her personally. I've seen her here and that's the extent of it. I saw her at one private meeting in a home that she walked out of. So I

really don't know her and I don't know what her character is or isn't. And I can tell you this, that I personally have not defamed her character in any way nor have I heard anyone else do it. So I don't know what these innuendos are all about but a lot of insinuations are made here.

I was the one that prepared the petition that Ms. Vazquez took apart piece by piece by piece or attempted to. Those were all valid concerns in the community and a number of them still are. But you need to remember that this hearing process started, as far as I know, a few months ago. I came here and there were all sorts of assertions about the La Cienega Valley Association supporting and not supporting this thing. I myself have talked to Robert Romero and he told me he personally opposed this thing. I came here and reported that to you that night. He told me that in a phone conversation. I mean apparently he's got amnesia. But he did oppose it at that time. And now they've changed their mind. Now they're taking a formal position on it.

But all I'm saying is that a lot of different assertions were made here that night. I promised you that I would go back to the community and try and find out what the community thought about this. Conducted a petition drive and we got 200 signatures in this drive and I was able to locate a prior petition with 131 names on it when the first expansion was made to you by Sunrise Springs some time ago. There are a few duplicates on this but not too many. This petition is still valid as far as I'm concerned. The only meaningful thing that has been changed here is that they have decided not to build a new swimming pool. From what I heard here tonight, rather than proposing 40 units they are now reducing it by 3 to 37. But then I think I heard Mr. Siebert say later that he was requesting an additional 6 units in another part of the development so that makes it even higher than the 40 units. Now they're back up to 43 the way I count it.

So I don't think that we said anything wrong in this petition so I really don't know what Ms. Vazquez point was. But I would like to give you a copy for the record of 331 signatures here of people that do oppose this project with the main overall complaint that I heard as we went door to door, and I was involved in the gathering of almost every one of these signatures, and it took some time each day after work to do that, was that people do not want the rural nature of their community to change. And that was the major thrust of behind it.

I'll give you all these handouts at the same time so I won't waste your time. That will be handout number 1 that I have here ready for you. [Copies were not made available to the recorder.]

I have a second handout here which is a copy of a handout prepared by the La Cienega Valley Association. It was placed on my windshield when I came out of Mass one morning in La Cienega and it reads, "Public hearing on traditional historic designation for the villages of La Cienega and La Cieneguilla. Please attend and support the preservation of our historic communities and rural way of life. Tuesday, May 9, 6:30 at the County Commission Chambers." At the bottom it reads, "La Cienega Valley Association preserving

our rural way of life." That seems to be the motto of this association that is supporting this commercial expansion in this rural farm community. I just find that to be such a contradictory position, especially since this association has been vehemently opposing the use of additional effluent water by Las Campanas for their golf course. They're saying that they're opposed to this kind of expansion, well then how can we have it in La Cienega talking out of that side of our mouth but we're going to oppose it on the other side of town. I mean these kind of contradictory positions don't mesh with me, but maybe they do with the Commission.

But my point in reading this public notice is to show that it is giving notice to people in the community about the traditional status hearing that is taking place here on May 9th and saying absolutely nothing about a Sunrise Springs proposal that was also going to be heard here the same night. But was later postponed by you or deferred to another day. The La Cienega Valley Association has not been consistent in its notice. When it has an interest in something it's moving flyers all over that community since I've been there. When they don't want to give notice about something, it's not in there. This could have been incorporated in this case notice very easily and that will be the second hand out that I'll give you to show you want kind of community notice has been given.

Let me go back to the prepared text here. I have to bring this up because so much has been said about the support of the La Cienega Valley Association. The applicant has attempted to paint a picture of a disgruntle few who oppose this development. Throughout our petition drive I heard from many members of the community that they had lost confidence in the association because they were supporting this development and because it meets in private to make its decisions without any participation from the community at large. When the association recently attempted to hold an election of its officers a few weeks ago, it was unable to do so because of poor attendance. It was my understanding as of today, that the membership had 18 paid members. I ask Robert Romero tonight before the hearing began how many paid members he had in this association and he told me it was 24. So what we've got here is a petition with 313 names and we have a board that has a following of 24. I don't think that that really is a consensus of what the community feels in this case.

The signatures on the petition are the community consensus and it is not favorable to this development. The developer hasn't had to negotiate with the community simply because the association's board has been [inaudible]. One board member told me that he had no choice but to favor this development because the board fears that Megan Hill has sufficient financial resources at her disposal to sue the board. I don't want to use the board member's name, but he's in the back of the room and the person that said that knows who they are. I tried to convince him that a vote against this development was not sufficient grounds for a lawsuit but I was unable to separate him from that position.

Mr. Siebert has in the file that I was able to get access to today, a May 25, 2000, report that tells something about this proposal. From the time of the open house meeting where Jim Siebert reported a minor reduction from 40 to 37 units more concessions have

been made by the developers. I just saw his exhibit J and read it today. I didn't know the extent of what those concessions had been until today. But the classification remains the same. It is still for a resort hotel that can be expanded and expanded. From my reading of this document, the developer is holding to an expansion of 37 units only reducing the development by three. As one of the Commissioners earlier pointed out, when added to the 40 or more units that are already out there, and that's what I think they already have, we're looking at about a 100 room hotel for La Cienega. I get the impression that some people still look upon this development as a retreat center or a bed and breakfast type operation: it is a hotel. It looks like a hotel. It walks like a hotel. It is a hotel.

The developer has offered to hold off on building about one-half of the units until a year after the first phase is completed. But the offer says nothing about the second phase being subject to the public hearing process. I think that the least that could be done is that it be subject to County Commission scrutiny at a public hearing so that the very residents that are affected by it can be heard.

I don't think that it is too much to ask that the second phase be subject to this public hearing. Anyway if the second phase is denied, the Commission can always reconsider the case, again and again and again, until they get it right. So I don't understand what the fear is about a public hearing. But the way it is presently worded the second phase could take place based on traffic reports that are generated by Jim Siebert or his subcontractors is a pretty sharp move if you let them get away with it.

The developer has offered two vans to reduce traffic in the area. Well, almost every downtown hotel has a van or two to transport its guest in and around downtown but that doesn't reduce the traffic very much.

It's a convenience for guests that probably wouldn't have a car to begin with. They fly into the airport and any upscale hotel expects for someone to pick them up from the resort in which they're staying and they drive them to and from and they generate some transportation for them in and around town. That's the state-of-the-art today and I don't really know how much traffic it'll reduce in La Cienega. I don't expect too much.

And speaking of traffic, as far as I know, there still has been no traffic study done on this project. The developer is proposing, I guess by the numbers that I have before, of a 100 percent expansion of the rooms and still no traffic study has been required. I mean, don't we do that anymore? Traffic is a major issue here and it is serious particularly in scale of the full-scale license that is being proposed for the hotel.

Regarding liquor license restrictions, the applicant states that beer and wine or liquor will only be served with a meal. Presently there is no liquor license under Sunrise Springs or Megan Hill's name that is registered at the Alcohol and Gaming Department. I checked again as late as this morning. If liquor is being served there now for receptions, weddings, or the like, it is most likely being done under some kind of a special use permit, I was told, or the license is in some other name. But in any event, in talking with the hearing officer, Joe Baros, at the Alcohol and Gaming Division -- the hearing officer at Alcohol and Gaming

told me today that any agreement that is being proposed by the applicant to serve liquor, beer, wine only with meals would not be binding. It won't be binding on the license fees. It won't be binding on this owner or any future owner because local governing bodies cannot restrict the use of a liquor license. Licenses are issued in different categories and I won't bore you with the examples I was going to at one time. But the concession or offer that is being made here tonight by the applicant, Megan Hill, that we shouldn't be concerned about liquor sales and drunk drivers because liquor would only be served with meals is a meaningless promise. That could not be enforced by the County or the residents. Maybe your attorney will say otherwise. I've been shot down on everything I've tried to propose here by your attorney.

Regarding past performance and financial ability to perform, today's newspaper says that Sunrise Springs is "financial ailing." I don't know if that's true or not. But that's what the paper said today. I have a copy of that in the handouts, too, that newspaper article. It may be that the trust wants to see a level of financial return on this development that it considers financially viable. Again, I don't know.

I don't know how financially sound this proposal is because that information is not available to me. But I do know that if the trust is going to pull the plug on this investment if it doesn't make money, that the Commission should be very careful about approving this expansion. We could be left with a white elephant here. It has all the markings, to me, of a get ready for resale operation if it doesn't cut a substantial profit. And in such an event, the liquor conditions would not be enforceable against a future owner anymore than they will be against Megan Hill. And since this isn't a planned unit development the new owner could expand the hotel to its fullest potential.

The reason that I bring up the trust is because I received a call from the trust officer from Megan Hill's personal trust I guess, from First National Bank, who tried to assert pressure on me to not oppose this project. I think that is going pretty darn far.

I hope that your attorneys and other staff will agree with me that past performance are legitimate topic for you to consider in reviewing a development. But since we've disagreed on what I thought were some pretty basic canons in the past, I really don't know what their position is tonight. But the land owners who are immediately adjacent to Sunrise Springs and another who is the owner of property once removed, have had some unfortunate experiences with Sunrise Springs. These landowners attempted to meet with Megan Hill and Jim Siebert in a private home where only five people were present. Ms. Hill interpreted their candidacy and attempt to be honest with her as a personal attack and she abruptly left the meeting within minutes after it started. Since then, rumors have abounded that Megan Hill was personally attacked at that meeting. That certainly wasn't my perception of it but since then the phrase "personal criticism" or "personal attack" keeps resurfacing. In fact, I heard it again this afternoon from a newspaper reporter.

Some pretty good mileage is being gained from that incident but I do still believe that the developer's past performance is a legitimate concern in this case. The Baca family that

owns 30 acres on both sides on each side of Sunrise Springs has advised me, has asked me to read this letter to you. I've got so many miscellaneous handouts -- give me a second. This letter is from their attorney and they live out in California and they're back in town now but for the funeral of their mother and so they are not here tonight. There attorney is a Thomas Savoca in Venice, California, the landowners are Sylvianna Baca Van de Water and Arturo Baca. The letter from the attorney reads:

"Dear County Administrator --"

and incidentally, they said they sent a similar letter before when the hearing first came up but it was never read and apparently, you as the Commission were never made aware of it and they were quite upset about that.

> "I have been consulted with serious concerns by adjacent land owners, Sylvianna Baca Van de Water and Arturo F. Baca, concerning the property sought to be expanded by Megan Hill. Numerous concerned landowners and residents of La Cienega area have also expressed concerns towards these expansion of Sunrise Springs due to the impact the expansion would have on the rural agricultural zone. This expansion has been a hotly contested issue over the years. It's not just now that the people have opposed this expansion. They opposed the other one as well. Marked with opposition by the above two adjacent landowner as well as other residents. Sunrise Springs has been advised over the years and as noted in my December 1, 1998 letter, of more than a year ago that a tank exists that rises several stories and in addition to being unsightly, is an attractive nuisance to taggers and graffiti makers and vandals. No measures have been taken to correct the tank which is an open pit containing black water and emitting a health hazard. The open tank continues to emit odors to adjacent landowner. The lack of maintenance to this open pit has been noted in the past and remains a concern to the above named landowners and continues to present a risk to persons on or near the pit. The open nature of this pit can allegedly constitute a dangerous existing condition on the property which can carry the standard of a strict liability should somebody be injured or even suffer death as a result of the continuing condition and the risk of the tank. Suitable management of Sunrise Springs remains a concern to area residents. In the past, drug paraphernalia has allegedly been discarded and continues from time to time, to be discarded outside the north side of the gate and onto the adjacent property fence lines. Calls in the past h ave bee made of the Sheriff's Department concerning the incidents. Concerns still remain that this conduct will continue in the absence of professional management and supervision of the premises. Loud noise and music continues to be heard at late hours and would likely to be increased should the development plan be approved. Large trucks have been noted to frequent the Sunrise Springs property in the past and have continued to make

deliveries in disregard of tonnage restrictions. The large trucks combined with the weight of deliveries are too heavy for the existing road surfaces which have continued to deteriorate -- but he doesn't know you paved it last week --

COMMISSIONER DURAN: Mr. Chairman.

CHAIRMAN GRIÑÉ: Yes, Commissioner Duran.

COMMISSIONER DURAN: Mr. Chairman, I would like to say something. Beverly, I think that it is our obligation to hear your testimony. But I think that you are taking advantage of this body. I think your filibuster approach to making your presentation here is not fair to the rest of the people that want to speak. I would like for you to kind of wrap it up if you could in respect to this body and the people here to hear the case.

MS. GARCIA: Commissioner Duran, you know that I haven't taken in the aggregate near as much time as these four people did as a primary presenter here.

COMMISSIONER DURAN: All the thing that --

MS. GARCIA: For you to say that I'm filibustering this case is not true.

COMMISSIONER DURAN: What you have -- this is all hearsay that you're entering into the record.

MS. GARCIA: This is a direct letter from their attorney, which they asked me to read into the record.

COMMISSIONER DURAN: Which is hearsay. It's his opinion.

MS. GARCIA: In this hearing you have to have primary testimony and a letter from them sent to you is not acceptable? I didn't know that.

COMMISSIONER DURAN: All I'm saying is that a lot of what you are saying, in my opinion is hearsay. And I would appreciate it if you would get to the point. You are obviously opposed to the project and --

MS. GARCIA: I'm not only opposed to the project a lot of other people are and --

COMMISSIONER DURAN: Then why don't you let the rest of them speak.

MR. DOMINGUEZ: Mr. Chairman, Commissioners.

MS. GARCIA: All of these people have not come here tonight and as you know, a lot of the people who live in the rural community aren't capable of getting up before the body especially a body that appears to be as hostile as this.

There's one other item that I haven't mentioned, but I won't present any more to you. But I would like to say that I think that it is completely appropriate to ask you Commissioner Duran and you Chairman Griñé and also you Commissioner Gonzales if you have had any *ex parte* discussions Rosanna Vazquez?

MR. DOMINGUEZ: Mr. Chairman, Commissioners, if I could at this point; that letter is part of your packets as Exhibit I.

CHAIRMAN GRIÑÉ: We know that.

MS. GARCIA: Well, I didn't know if it had been made a part of it or not and

they asked me to read it into the record.

COMMISSIONER GONZALES: And I'll be happy to state for the record that I have not had *ex parte* communications concerning the projects.

MS. GARCIA: How about you?

CHAIRMAN GRIÑÉ: I haven't either.

COMMISSIONER DURAN: Mr. Chairman, neither have I.

MS. GARCIA: No discussions at all with Ms. Vazquez? I'm not going to say anymore. I think you have probably heard enough and you've already made up your mind.

CHAIRMAN GRIÑÉ: The material you're reading us we've got in our packets.

MS. GARCIA: You didn't have anything that I said to you tonight, besides that letter, in your packet.

CHAIRMAN GRIÑÉ: Yes we do.

MS. GARCIA: My presentation?

CHAIRMAN GRIÑÉ: Not your presentation but the letter you're reading. We already have them in our packet.

MS. GARCIA: I did not know that and maybe you didn't know it either until it was pointed out to you by Mr. Duran. I don't know Mr. Griñé.

COMMISSIONER TRUJILLO: I think we should let Beverly continue. Besides the letter, if you have any more information to add we --

MS. GARCIA: I think that for the record the level of hostility that has been exhibited by this Commission already speaks loudly and clearly for itself. I mean it happened in the prior meeting and I don't think I really care to continue. I've put in a lot of time and tried to, because I've had free time. I have to work for a living like everyone else here, almost everyone else here. And it takes an awful lot of time to do that research and to be cut short just shows to me again that a lot of people that we elect to office have never had any experience in working with the community and --

COMMISSIONER ANAYA: Beverly, go ahead and finish. Finish your presentation and keep it clean, please.

MS. GARCIA: You know, Commissioner Anaya, I appreciate that, but I don't even know where my presentation is now. I've been so rattled by the rude interruption.

I just wish Commissioner Duran that you would have lost too.

CHAIRMAN GRIÑÉ: The next speaker. Okay, yes, Karen, we'll do a mass swearing in.

[Duly sworn, Delfina Ulibarri testified as follows]

DELFINA ULIBARRI: Okay, I hope everybody hears me and I hope I wake everybody up around here. My name is Delfina Ulibarri and I am not a public speaker. So please understand that.

I want you to know that I own some 35 acres on Los Pinos Road. That is one property away from Sunrise Springs. The Bacas own the other one and they own a lot more than 35 acres, Beverly. They own about 120. So let me tell you that she was right on the letter of which this gentleman here said that she was. Mr. Baca told us and so did Mrs. Van der Water told us that she had that letter.

I am against this project simply because I want peace and quiet in our community. The music there gets pretty darn loud. The traffic is a little too much for our road. I call it our "horse and buggy" road because it's just a two-lane, one for the right and ones in the left. So what else would you call it but a horse and buggy trail. I am also concerned -- that was my traffic concern.

I am also concerned about the water pollution. I was a member of the association. I stopped paying my dues for the simple reason that the community is never -- we never know what is going on in our community. We like to know on important issues like this. I never found out about this, what's going on now, until March/April for the last meeting. That's when I found out what was going on and then I got busy and went with Beverly wit her petitions.

So let's not forget that this is a rural residential farming community and I hope that you folks will vote against it. I thank you very much.

CHAIRMAN GRIÑÉ: Thank you. Next speaker.

[Duly sworn, Troy Nothwang testified as follows]

TROY NOTHWANG: My name is Troy Nothwang and I'm here representing Vista Land Homeowners Association. They've painted a real beautiful picture for you of Sunrise Springs and it is a beautiful area. I am not denying that. La Cienega and La Cieneguilla are very beautiful. Why doesn't Megan Hill live there?

CHAIRMAN GRIÑÉ: Please speak into the microphone.

MR. NOTHWANG: My question was why Megan Hill does not live in the vicinity. A neighbor to me is somebody who lives in the vicinity and doesn't go there just to run a business and use our resources to make money. That is not a neighbor to me. It's going to cost her an awful lot to keep this business going and I can imagine the thousands and thousands of dollars that she is spending. The 15 percent that she's going to give us off her recreation is nothing. It's a slap in the face to me. It doesn't mean anything to me.

I also am concerned about the water, the contamination of the water. The traffic situations. There are not even any shoulders on the roads out there a two-lane horse and buggy trail, that's all it is. They repaved it from Sunrise Road to the racetrack for some reason they got the money. I'm on the Roads Commission, the County Road Commission and that was number 8 priority. Where the money came from to repave that road I do not know but it got there somehow.

There is no benefits to our community. They're menial task jobs; you know that. All it is, is a way to make money for Megan Hill. It does not help the traditional historical area. It's going to run us into the ground where none of us can afford to go there that live there,

none of the residents can, and it's going to turn out like Canyon Road, downtown Santa Fe. We can't afford to go there, I can't go eat in their restaurants. Go to their dances, hear their bands, blah, blah, blah.

As representative of Vista Land Homeowners Association, I hope you oppose this for the simple fact that it is not right for our community. Thank you.

CHAIRMAN GRIÑÉ: Thank you. Next speaker.

[Duly sworn, Alan Gurevitch testified as follows]

ALAN GUREVITCH: My name is Alan Gurevitch: G-U-R-E-V-I-T-C-H. My mailing address is PO Box 756, Los Alamos. I am a resident of the Vista Land Homeowners Association in La Cieneguilla and I'm also the vice president.

I personally oppose tonight's proposal before you on a few points. Right now we have critical water issues in the area and I don't believe that we have resolved it. We're also in debate with the Santa Fe City Council on the Las Campanas use of the water. We're in a critical water issue in our community.

Traffic congestion, it has been brought up to this Commission this evening about the road. It is a horse and buggy road. There is no sighting. There's a very dangerous curve nearby the Sunrise Springs -- the egress and ingress to the facility mitigates only that. It doesn't mitigate traffic. You will have increased traffic in the area and nobody can argue against that. You can say that the traffic will get onto and off of Los Pinos faster but the traffic congestion will be higher in the area and I oppose it also for that reason.

The liquor license concerns me greatly. The curve near CR 56 near the San Antonio Church gets creamed I'm guessing twice a month. And the Forest Guardians have to go out there and fix up the T-post barb-wire fence. I have grave concerns about more liquor consumption and then driving on CR 56.

The petition against the expansion and I was involved in collecting that petition. The main focus of the people who signed that was they were opposed to the expansion of Sunrise Springs. We have approximately 101 lots of 2.5 acres each. So we're at 250 acres and we're at about 60 percent of on-site living and of that approximately 60 landowners, my guess is that about 40 out of those 60 signed the petition. So we're at about 66 percent that are opposed to the expansion of Sunrise Springs. I wanted to bring that to your attention. Those area just some numbers there.

Vista Land, although we are part of the greater valley association, and we just received the historic traditional status, we're not quite tied into the valley association yet. I do want to tell you that from what Beverly was saying, the notices have been extremely sporadic. So the fact that you have a majority here in favor and not so many against, the sporadic has been very disturbing to both the president and myself. Both of us did not receive notices about the open house information either. So there is a very, very sporadic nature. We have several communities. We have Vista Land, we have racetrack, we have upper La Cienega -- we're not quite tied together yet. So, I would ask you all to take the petition very, very strongly because it is very difficult for a lot of people to be here at 11

o'clock at night especially the viejos.

So, finally the last couple of points, Councilor Duran, I do want to say that you mention at the very, very beginning that you have to have a responsibility to the community. I thought that was a very important comment that you made. When this discussion first started out the Commissioners brought up a very important point that was very disturbing to me. I'm not quite sure about the relationship between the CDRC and the Commissioners and who is going to be able to overrule who and stuff. You really need to take that in very carefully. I'm not really that involved with your rules of order and that concerns me greatly because I'm here to tell you that the only issue at hand tonight is for you to vote on this case and this case is for the master plan that you are voting on and I oppose the master plan. This is the issue before you tonight, the master plan. Not expansion or developing or what percentages, it's the master plan is before you and it is extremely large and that concerns me.

So I would like to see this come back and at the very minimum broken up. But this master plan is huge and it concerns me greatly that if you vote "yes" for it, then there's issues with how we're going to monitor traffic and stuff and it seems that it is just railroaded into the project's phase 2.

So I have real concerns about both phases being in this master plan. So, again, thank you very much.

COMMISSIONER TRUJILLO: I have a questions, Mr. Chairman.

CHAIRMAN GRIÑÉ: Commissioner Trujillo.

COMMISSIONER TRUJILLO: How long has Via Vista existed in La Cienega?

MR. GUREVITCH: How long has Vista Land?

COMMISSIONER TRUJILLO: The subdivision that you're talking about.

MR. GUREVITCH: My gosh, it's I'm guessing it goes back to the '70s. That's my guess because the Vista Land concept subdivision from what I remember in my covenants, I believe the covenants are dated in the '70s, if I'm not mistaken.

COMMISSIONER TRUJILLO: So my conjecture is that Vista Land Subdivision also contributed to water and liquid waste and traffic and all those sorts of problems in the area, that the community has to deal with even up to today. These aberrations that were created by many developments going on in the area.

MR. GUREVITCH: I would agree with you in part, except, just to mention that this was a one-time decision of the developers, the original owners, of the grant area and they broke it up into 101 2.5-acre lots and it has been like that for 30 odd years.

So your point is well taken that, yes, the development is occurring but the people that owned the land at the time that is was broken up they've owned the land or they have passed it on. So, yes, we are slowly growing our community but this was done, it was maximum 2.5 acres, 101 lots and it was set. And not to mention the fact that there's I believe your argument is interesting except to mention that I believe that there is a difference between

commercial and residential. I mean this is a commercial expansion that you all are voting on and residential use of land I see it as apples and oranges, respectfully.

COMMISSIONER TRUJILLO: The point that I am trying to make is that the development needs to be harmonious and make sure that it addresses the health, safety and quality of life of the community regardless of whether it is residential or commercial. And there has been rampant development going on in that area.

MR. GUREVITCH: When you say development, are you referring to the building of homes or the splitting up of lots?

COMMISSIONER TRUJILLO: Building of homes, splitting lands, subdivisions --

MR. GUREVITCH: Okay. I disagree with that statement because as far as I know the land was divided up -- it was there. If you were developing land -- I'm sorry, if you are building a home it's on a personal basis not a large commercial application. So I still see it as different, in my personal opinion.

CHAIRMAN GRIÑÉ: Thank you.

MR. GUREVITCH: Thank you, Commissioners.

CHAIRMAN GRIÑÉ: Next speaker, please.

[Duly sworn, Christine C. Sanchez testified as follows]

CHRISTINE C. SANCHEZ: My name is Christine C. Sanchez. I own land in Cienega and I live in Santa Fe and own a home there too. I'm opposed to this for the simple reason that when is enough enough?

My family has owned land there in La Cienega since New Mexico was a territory. Our land has been passed down in our family just to our family. And I hope that you guys would go and see that we are inbetween Sunrise Springs and Los Golondrinas and that road is used to the max. Anymore is too much. I have almost gotten hit turning into our road to get into our land and we have put enough easement for us to get a car in there to park and to have room and it's is still not enough. The people do not go with the speed limit. We do want to watch all of our water.

Our kids will not be able to go into the swimming pool because Megan was asked if our kids could use her swimming pool and the answer was no.

I just don't agree with it and I want you to know that my family has been there since the territory time and I don't agree with it. Thank you.

CHAIRMAN GRIÑÉ: Thank you. Next speaker.

[Evon Angel, testified as follows]

EVON ANGEL: Hello, my name is Evon Angel and I'm concerned we're talking about conditions of approval and I think you know that we have been lied to out there in the community about conditions of approval and things that were never met. Talking about the traffic, I ride on that road. I take my children to school. In the mornings I am being passed. The speed limit is between 25 and 35 mph on that road and I followed somebody one day they passed by going about 50 mph and now I think it is because they

were worried they were going to be late for work and they went to Sunrise Springs. And here I am talking about the conditions and, sure, they paved our road. That's nice. It was very unexpected to all of us because we all wanted it paved.

I'm concerned about the traffic. As a resident I think we're a little bit more respectful to that road and how we drive on that road and how the school buses are stopping and letting our children off there as to employees and there's going to be more employees and their guests.

Thank you.

CHAIRMAN GRIÑÉ: Thank you. Next speaker.

[Duly sworn, Daniel Cde Baca testified as follows]

DANIEL Cde BACA: My name is Daniel Cde Baca. I was born and raised in La Cienega, that's been 68 years. I am opposed to this project. The traffic is pretty bad on that road and also Mr. Siebert mentioned about moving the entrance to the westside area I don't think it will do any good because there's a hill right there where Sunrise Road is and I've almost got in an accident many times from the people coming in and out of there. And also what Robert Romero said, he said he's for it, but the reason he said he's for is, is that his dad has some mobile homes over there that are real eyesores. He's got probably six families living three mobile homes and they're taking care of a lot of the water too. And the wastewater is what's getting to me.

That's all I have to say.

CHAIRMAN GRIÑÉ: Thank you. Next speaker.

[Duly sworn, Sofia Ulibarri Trujillo testified as follows]

SOFIA TRUJILLO: Yes, my name is Sofia Ulibarri Trujillo and I reside at 7 Paseo de Ulibarri. I would like to mention that Mr. Baca and Mrs. Van der Water could not be here tonight because, I don't know how many of you have lost a parent, I have and I know that I wouldn't be able to be here a couple of days before I'm burying my mother or my father.

They are opposed to it. I am reiterating that to you. Because I don't think that anybody here in this room would be here at that time. So please take their letter into consideration as opposing this.

I oppose this also. Not only because of the traffic but because of the fact that anybody knows that if you come to Santa Fe you're not just going to stay in a resort. In Santa Fe people want to come downtown. See the museums. See the oldest capital in the world. They're not going to come just to stay inside of a resort. And also, to mention that why would you want to expand something when visitation is considerably down in our area? And I think everybody knows that because the taxes haven't been coming in. But also the road improvements has been but it will not be -- it is not sufficient enough. It was just an overlay. The surface elevations on that are wrong. If you try and drive it, it goes away from you so if somebody is driving too fast down that road after having too much to drink with dinner at some people do, they can lose control and kill many people. You know,

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depending on who is there and if somebody is riding their bike down the road and whatnot.

But I would also like to say that my family has been there six generations. I'm one of the youngest of the fourth generation. I have children growing up there and I want them to grow up in the area that I grew up. And it should be the same area. And I'm not saying that Sunrise Springs -- it is a very beautiful place but I think it is large enough and those are my concerns.

CHAIRMAN GRIÑÉ: Thank you. Next speaker. According to my count, there are supposed to be three more. No more.

The public hearing portion stops. Rosanna, closing statement.

COMMISSIONER TRUJILLO: I have a question from the audience. Beverly alluded to the fact that most of the people here were employees of Sunrise Springs; is that right?

CHAIRMAN GRIÑÉ: Can you folks stand that ones that are employees. Just those that are employees.

COMMISSIONER TRUJILLO: And do the people that reside in the La Cienega Village? How many reside in the community of La Cienega? None of you, okay.

CHAIRMAN GRIÑÉ: The public hearing is over and Rosanna you may make the closing statement.

MS. VAZQUEZ: Mr. Chairman, Commissioners, I will be brief. There's been some criticism as to whether there was sufficient notice given to the citizens of La Cienega and there has been criticism linked to the valley association with respect to that and I think that Robert addressed that. I would like to make a point, however, that there were 1,100 notices sent out to La Cienega residents with respect to public meetings that were held at Sunrise Springs. There were attempts to obtain copies of the petition with the names of the people who are opposed to this project in order for this group, myself, Jim Siebert, Megan to contact those people and meet with them individually and answer some of their questions and address some of their concerns. We were not able to obtain a copy of that petition.

The letter that was referred to that was in your packet from Mr. Van der Water -- excuse me, I'm sorry, Mrs. Van der Water, was in the packet for the previous application that came before you. That letter and their concerns were responded to by Sunrise Springs and the graffiti that had painted on the tank has been covered over.

There has been a lot of comments as to concerns about traffic, concerns about water, concerns about wastewater and concerns about the development. That is why Megan and all of us have agreed to come before the BCC for approval on all of these things. That's why we have agreed with the Valley Association and the County that all of the impacts be looked at once we have a year of study to be able to have actual impacts that we can look at and then address those concerns. Those are concerns of this applicant as well.

The last comment that I would like to make is with respect to sight distance concerns

on Los Pinos Road. There were some sight distance concerns and based on that we did make the exit out of Sunrise Springs up close to the top of the crest in order to have more sight and better sight distance so that we could lessen the potential traffic and any potential accidents.

That's it. Thank you very much.

CHAIRMAN GRIÑÉ: Thank you, Rosanna. What's the pleasure of the Board?

COMMISSIONER DURAN: Mr. Chairman.

CHAIRMAN GRIÑÉ: Commissioner Duran.

COMMISSIONER DURAN: I'd like to move to uphold the CDRC recommendation to approve CDRC case Z 98-5552 with staff recommendations and adding one more.

13. A year after phase 1 is complete, when the applicant goes out and makes the assessments on the impact of traffic that it has had and the use of the water, that those findings come back to the Board of County Commissioners for their review and their approval for Phase 2 of the project.

So that way this body has the right to review it and the public has the ability to have their input into that process.

CHAIRMAN GRIÑÉ: I've got a motion to approve with an addition condition. Do I have a second?

COMMISSIONER GONZALES: Mr. Chairman, second for discussion.

Commissioner Duran, could we add onto that that there would be not only a review process that would take place in a public hearing but that the Commission would have to have a finding of fact that prior to proceeding forward with phase 2, that we would have to determine through the public process that the analysis shows that there has not been any impacts and until that happens, phase 2 cannot proceed forward.

My concern is that, yes, they can bring it forward and then proceed to the CDRC and I just want to make sure that if we determine after our own independent analysis that to further expand it would cause harm to the community or further impact that basically we could stop it at that point and they cannot proceed forward to phase 2 until this body or some future body says that the conditions have changed such that the community can support that additional impact.

So what I'm asking is that the Commission would have to act as a body favorably to any analysis that is brought forward prior to phase 2 being initiated.

CHAIRMAN GRIÑÉ: Okay.

COMMISSIONER DURAN: And prior to it going before the CDRC.

COMMISSIONER GONZALES: Right, right. So phase 2 cannot be initiated, meaning it could not even go to the CDRC until we act on the analysis.

COMMISSIONER DURAN: Sure, I accept that amendment.

COMMISSIONER GONZALES: And we've done this, just a quick reminder,

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in the Village of Cerrillos we're requiring that Cerrillos Gravel needs to come back and state any type of environmental impact prior to them being able to proceed forward with operations. So we have done this with other developments as a matter of practice.

CHAIRMAN GRIÑÉ: Any other discussion? We've got a motion for approval with the county conditions and an additional condition by Commissioner Duran and seconded by Commissioner Gonzales. Any further discussion?

All those in favor signify by saying "aye."

[Commissioner Duran, Commissioner Gonzales, Commissioner Trujillo, and Commissioner Anaya all voted "aye."]

CHAIRMAN GRIÑÉ: The "ayes" have it.

MR. SIEBERT: Mr. Chairman, just for clarification on condition number 6 because it is something that we really can't comply with and it is not necessary. We asked that it was grading for construction of buildings within existing designated flood hazard areas.

CHAIRMAN GRIÑÉ: Is there any problem with that, Paul?
COMMISSIONER DURAN: No.
COMMISSIONER GONZALES: No.
CHAIRMAN GRIÑÉ: There's no problem. So you've got that.

ADJOURNMENT

Chairman Griñé declared this meeting adjourned at approximately 11:20 p.m.

Approved by:

Richard D. Anaya

Board of County Commissioners
~~Joe S. Griñé, Jr.~~, Chairman
Richard D. Anaya

Respectfully submitted:

Karen Farrell

Karen Farrell, Commission Reporter

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ATTEST TO:

Rebecca Bustamante

REBECCA BUSTAMANTE
SANTA FE COUNTY CLERK

1122751

COUNTY OF SANTA FE) SS
STATE OF NEW MEXICO)
I hereby certify that this instrument was filed for record on the 12 day of July A.D. 20 00, at 9:31 o'clock A m and was duly recorded in book 1786 page 179 of the records of Santa Fe County.
Witness my Hand and Seal of Office
Rebecca Bustamante
County Clerk, Santa Fe County, N.M.

Marcella Salazar
Deputy

Commissioner, District 1

Paul Duran
Commissioner, District 2

Javier M. Gonzales
Commissioner, District 3





Richard D. Anaya
Commissioner, District 4

Joe S. Griñé, Jr.
Commissioner, District 5

Samuel O. Montoya
County Manager

MEMORANDUM

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DATE: June 13, 2000

TO: Board of County Commissioners

FROM: Penny Ellis-Green, Development Review Specialist III

VIA: Estevan Lopez, Land Use Administrator

FILE REF: CDRC Case # Z 98-5552 Sunrise Springs Master Plan Amendment

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ISSUE:

Megan Hill, applicant, Jim Siebert, agent, requests master plan zoning amendment for an expansion of a resort type use to add 40 lodging units (totaling 19,640 sq. ft.), a spa facility (12,000 sq. ft.), fitness facility (1,200 sq. ft.), maintenance building (1,300 sq. ft.), laundry building (1,200 sq. ft.) and a cart shed (400 sq. ft.). This application also includes replacing an existing swimming pool with a new pool and hot tub and reopening a restaurant to the public with the sale of liquor with meals.

The property is located south of County Road 54, within the traditional community of La Cienega, in Section 28, Township 16 North, Range 8 East (Commission District 3).

SUMMARY:

On December 8, 1998 the BCC approved a master plan for an additional arts and meditation building at Sunrise Springs. On April 20, 1999 the CDRC approved the development plan for this building. The applicant is now requesting an amendment to the previous master plan to add 40 lodging units, a spa facility, fitness facility, laundry, maintenance building, two cart sheds, replacing the swimming pool and to reopen a restaurant/bar to the public within 3 phases.

Existing Uses
Existing uses already approved on this property are as follows:

- Administrative offices, 2,420 sq. ft
- Living Center, includes 3,400 sq. ft of meeting/conference space, the restaurant/bar area and 8 lodging units
- Manager's Residence, 2,743 sq. ft

- The Willows, 4,220 sq. ft of meeting/conference rooms and a kitchen/dining area for groups
- Garden Rooms north, 16 lodging units 10,200 sq. ft 2 story building
- Garden Rooms south, 16 lodging units, 10,200 sq. ft 2 story building
- Swimming Pool, with dressing and shower room areas
- Hot Tubs, Sauna, Locker room
- Moon House, 1,728 sq. ft conference rooms
- Office/Resource center, 2,400 sq. ft
- School, Desert Academy High School uses office and conference room/meeting rooms north of the ponds area, the lease expires in 1999 and may be extended. When the lease is terminated the buildings will be utilized for lodging and meeting rooms as described above
- Arts/Meditation building and tea ceremony room (360 sq. ft.), 7,770 sq. ft two story building with studio/gallery space on the first floor and conference/meditation rooms on the second floor.

Proposed Uses/Structures – Original Application
The proposed master plan which was heard by the CDRC and denied by the BCC was for the following uses:

Phase 1 - 1 year timeframe

- 40 lodging units totaling 19,640 sq. ft. Single story buildings configured as single units, each unit for two people, no cooking facilities are proposed. This is to include four maid's rooms and three studios. Some of these units may be constructed in Phase 2.
- Spa Building, 12,000 sq. ft. single story building to include showers, hydrotherapy room, 8 massage and physical therapy rooms, reception area, 2 watsu tubs and 2 hot tubs.
- Swimming pool and hot tub. The existing swimming pool will be replaced by a 25-foot by 60-foot by 5-foot deep pool. The hot tub will be 3-foot deep and 10-foot in diameter.
- Laundry building with cart shed, totaling 1,200 sq.ft. single story building south of the proposed lodging units.

Phase 2 - within 2 years

- Fitness center, 1,200 sq. ft. attached to the existing Willows building, to include a weight room and classroom for exercise and fitness instruction.
- Greenhouse, 1,000 sq., ft. adjoining the existing Willows Building.
- Maintenance buildings, 1,300 sq.ft. maintenance building and a cart shed (400 sq. ft.) to be located south of the managers residence.

When the Desert Academy School moves out of the property:

- Re-opening of the restaurant/bar, to be leased to a second party to operate. 1,309 sq. ft. inside the building and 1,230 sq. ft outside area. The applicant states that beer and wine or liquor will only be served with a meal.

Proposed Changes Due to Neighbor Concerns
After several community meetings the applicant has proposed the following changes to the master plan, a letter and plans addressing these changes are attached in Exhibit J:

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Phase 1

- 20 casita lodging units, reduced from 40 requested in original phase 1
- Spa building reduced in size from 12,000 sq. ft. to 8,400 sq. ft.
- Pool enclosure for existing pool eliminating the new larger pool
- Laundry facility of 600 sq. ft. to expand the existing laundry and eliminate a separate 1,200 sq. ft. building
- New driveway west of the existing entrance
- Greenhouse, 400 sq. ft. expansion
- Cart shed, 400 sq. ft.
- Re-opening of the restaurant
- Replacement of a 1,000 sq. ft. storage building
- Improvements/remodeling of existing buildings including the lodging units within the atrium building
- Installation of ditch irrigation system
- Modifications to parking lots and waste water system
- Maintenance buildings

The applicant proposes to reopen the restaurant/bar and allow liquor sales within the restaurant. There is currently a school leasing the same building. While the school occupies the site the applicant will not be allowed to apply for a liquor license.

Phase 2

The applicant states that a development plan application for Phase 2 will not be submitted for 1 year after the phase 1 construction is complete, this will allow time to evaluate traffic, water and waste water treatment conditions.

Phase 2 will consist of:

- 17 casita lodging units
- Fitness facility, 1,200 sq. ft.
- One watsu tub

The applicant has also submitted a list of community benefits to be provided by Sunrise springs (Exhibit J).

The Sunrise Springs meeting and conference rooms and other facilities may be used by either day guests or overnights guests. Sunrise Springs caters mainly for larger groups. The restaurant/bar will be open to the public.

Adjacent Properties

The property is bound on the north and south by County Road 54 and County Road 52 respectively. There are residential properties to the east and west of this project.

Access

Sunrise Springs is accessed from County Road 54, which lies north of the site, this is a paved County Road. An emergency access leads south across the 100 year floodplain to County Road 52, this will be gated at the County Road. The emergency access road is being upgraded as part

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of the construction of the arts and meditation building. The road will be 20-foot wide with basecourse, a concrete dip section will cross the arroyo, this plan has been reviewed by the Fire Marshal.

The applicant's revised proposal includes the construction of an additional driveway for traffic leaving the property at the northeast corner of the property which has improved sight distance. The existing driveway will be used as an entrance only.

A Traffic Impact Analysis was submitted with this application, as part of the previous submittal the applicant was required to move their signage out of the line of sight for the driveway.

Terrain Management
Drainage from the developed area generally runs south, towards the arroyo. The applicant proposes a total of seven detention ponds to hold excess storm water. A number of lodging units are shown within the existing limits of the 100-year floodplain. The applicant is proposing to apply for a Letter Of Map Amendment (LOMA) with FEMA to move the flood plain boundary, no grading or construction permits will be issued until this LOMA is granted.

Landscaping
The site already has extensive landscaping around the ponds and main administrative complex and along the floodplain to the south of the developed area. Additional trees are proposed along the east and west boundaries and around the new parking area at the northwest of the site.

Water
The applicant states that two wells currently serve the development. The water budget estimates a total of 9.536 acre-feet is required for domestic/commercial use and 8.496 acre-feet for landscaping use. The State Engineer's Office and the County Hydrologist have reviewed this application and state that the applicant has not proven 100 year water supply but does have water rights to support the project. The applicant has signed an agreement with the County Utilities Department to hook onto the Santa Fe County Water Company when this becomes available and be subject to the La Cienega Watershed Conditions.

The applicant has registered the wells as a public water supply with the Environment Department as required by the previous master plan approval.

Liquid Waste & Solid Waste
Septic tanks are installed at each building, sewer lines then run from the tanks to a lift station where the effluent passes through a sand filter and then into holding ponds. The applicant has revised the existing discharge permit allowing discharge of up to 12,000 gallons per day, this has been approved by the Environment Department.

The applicant has located 2 screened dumpsters within the development. The applicant contracts with Environmental Control Inc. for solid waste disposal.

Parking
The applicant is proposing a total of 195 spaces for all uses, these will be located throughout the development near the lodging units and around the main administrative/conference area.

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Lighting
The applicant's plan shows pole mounted lights existing around the north parking area. Detailed lighting information will be required with the preliminary development plan submittal.

Fire Protection
There are three existing fire hydrants on the property, one to the south by the 50,000 gallon storage tank at County Road 52, one at the County Road 54 main entrance and one dry hydrant which drafts water from one of the ponds, to the north of the exercise track. The applicant proposes one additional dry hydrant south of the Willows Building and two additional hydrants to the south and west of the new lodging units. Eight-inch lines run to these hydrants from a 50,000 gallon water storage tank on the south of the property by County Road 52. These hydrants will be required to produce 1000 gallons per minute.

This application has been reviewed by the Fire Marshal who requires a sprinkler system within the lodging units. All other buildings will be subject to detailed plan review by the Fire Marshal to determine if additional fire protection is required. The applicant is also required to provide defensible space around the buildings, fire access lanes and the emergency access road is to be maintained.

REQUIRED ACTION:

The BCC should review the attached material, consider the recommendation of the CDRC; take action to approve, deny, approve with conditions or modifications or to table for further analysis of this request.

RECOMMENDATION:

The decision of the CDRC was to recommend a master plan zoning amendment for additional uses within the Sunrise Springs facility subject to the following conditions:

1. No liquor license will be acted upon while the school use exists on this site. If a liquor license is issued at this site, the school use will be deleted from the use list. No package liquor sales may take place.

2. This master plan is subject to the water agreement between Sunrise Springs and the County Utilities Department recorded in Book 1674 Page 774-776 in the office of the County Clerk.

3. The proposed lodging units will be sprinklered. Final fire protection plans will be reviewed for approval by the Fire Marshal. All other buildings will be subject to detailed plan review by the Fire Marshal to determine if additional fire protection is required.

4. Fire hydrants shall be in place, operable, tested, and approved prior to building construction. Final placement of all fire hydrants shall be coordinated with the County Fire Marshal prior to installation. The applicant will identify fire access lanes, defensible space around the buildings, Knox Lock cabinets on all gates and buildings, to

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be approved by the Fire Marshal. The emergency access road will be maintained at all times.

5. All lighting within the development is to be shielded, detailed lighting plans will be submitted with the preliminary development plan.

6. The applicant will obtain FEMA approval of a Letter Of Map Amendment prior to any grading or construction within the existing designated flood hazard area. This will be noted on the master plan.

7. The master plan will be recorded with the County Clerk.

8. No structures will exceed 24 foot in height.

9. All redline comments will be addressed, redlines will be returned prior to master plan recordation.

10. The applicant will submit written confirmation from a professional engineer that the improvements to the wastewater treatment system have been constructed prior to any permit issuance.

11. The applicant will meter both wells and document water use. Annual water meter readings will be submitted to the County. If this project fails to meet the permitted water rights budget the applicant must either acquire more water rights or take measures to limit water use. Two years of exceeding the water rights will result in the closing of the restaurant to the public and limiting the number of months the facility can be open.

12. The wastewater treatment plant will be designed to handle grease and oil from the restaurant and the water from the hot tubs and swimming pools.

ATTACHMENTS:

Exhibit A – January 27, 2000 CDRC Minutes
Exhibit B – January 27, 2000 CDRC Memorandum
Exhibit C – Reviewing Agency Comments
Exhibit D – Developer's original report and plans
Exhibit E – Water agreement and La Cienega watershed conditions
Exhibit F - Vicinity Map
Exhibit G – Letter from Valley Association
Exhibit H - March 14, 2000 BCC Minutes
Exhibit I – Letters of objection from neighbors
Exhibit J – Developer's revised proposal

Jefferson M. Langford, et al
RR2 Box 433
Santa Fe, NM 87505

May 30, 2000

Hand Delivered

Board of County Commissioners
Old Santa Fe County Courthouse
102 Grant Ave.
Santa Fe, NM 87501

1786179

Re: CDRC Case # A 00-5201 / Appeal of the decisions by the Land Use Administrator and the CDRC not to recognize 8 "BLM lots" as legal lots of record.

Dear Commissioners:

My family and I own and reside on property adjoining the Canyon Vista property. Our position regarding the above referenced case is shared by many of our neighbors who will also be impacted by the proposed development. We are cooperating on this letter in the interest of efficiency.

We are not necessarily opposed to subdivision of the Canyon Vista Property. However, we strongly object to Canyon Vista's ongoing efforts to circumvent the requirements and intent of the County Land Development Code while denying adjacent land owners their rights of notice and public review. We should feel confident in the expectation that the entire property will be developed in accordance with the Code. If not, then for what purpose does the Code exist?

Canyon Vista is, once again, seeking special consideration based on specious claims. I am referring to their recent assertion that their property is comprised of eight "BLM Lots". The Commissioners may remember that, during the hearings pertaining to the "driveway", Canyon Vista consistently stated under oath that their property was comprised of only three (3) lots and this position was also confirmed by the Land Use Staff. We do not see how they are justified in claiming that all along they have had eight (8) or more lots. We believe this circumstance, alone, is sufficient justification to deny the appeal.

The County Attorney has done a good job addressing the issue of whether the "Lots" in question should normally be recognized as Legal Lots of Record. My own view is that the basis of Canyon Vista's claim is that the word "Lot", though it is used in the strict context of the Public Land Survey System (PLSS), is synonymous with "Lot" or "Legal Lot of Record" as defined in Article X (definitions) of the Land Use Code. By looking at definitions, it is very easy to determine that this is not the case.

According to the BLM Glossaries of Surveying and Mapping Terms, a Lot is "a subdivision of a section which is not described as an aliquot part of the section, but which is designated by number, e.g., LOT 2. A lot may be regular or irregular in shape and it's acreage varies from that of regular subdivisions." In other words, "Lot" is one of several terms, or nomenclature, used within the Public Land Survey System (PLSS) to describe the location of property. The

term "Lot", as used in this context, shares no similarities with any other definitions of the word including those used by the County or the legal profession. 1786179

Both the Land Use Department and the CDRC have correctly refused to recognize these so called "Lots". Their decisions were based on solid legal interpretation by the the County Attorney. If the Commissioners are inclined to overturn the two previous decisions and begin recognizing these types of "Lots", the Commissioners should consider that this action would set a precedent which would likely cause this same scenario to be repeated throughout the entire County. It is logical to assume that there are many properties within the County which incorporate these types of "Lots" into their legal descriptions.

In conclusion, we respectfully urge the Court of County Commissioners to deny, with just cause, Canyon Vista's appeal and advise Canyon Vista to embrace the requirements of the County Land Development Code as it pertains to their planned subdivision.

Respectfully,

Jefferson M. Langford

The following signatures are those of neighbors referred to in paragraph 1. of this letter:

Shellie E Jackson
SHELLIE E JACKSON
P.O. Box 28441
Santa Fe, N.M. 87592

Jennifer A. Smith
Jennifer A. Smith
P.O. Box 6342
Santa Fe, NM 87502

C M Halasan
CORAZON M. HALASAN
PO Box 15093, SF, NM 87506

Don Marr
Don Marr
60 Don Jose Loop Santa Fe 87505

Perry Lovelace
PERRY LOVELACE
57 Don Jose Loop, SF 87505

Michael S. Shapiro
MICHAEL S. SHAPIRO
81 Don Jose Loop
Santa Fe, NM 87505

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Jane N Gregg
Jane N Gregg
El Don Jose Loop
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Mike Sharter
157 County Rd. 42 S.F.

Donna A. Herring*
Donna A. Herring
197 County Rd 42, SF 87505

William E Ruckman
William E Ruckman
118 Co Rd 42 SF 87505

Cynthia Rucker
#118 Co Rd 42

Deborah M. Salsman
Deborah M. Salsman
Rt. 2, Box 437 SFNM 87505

Steven R Salsman
Steven Salsman
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Christopher S. Stopka
Christopher S. Stopka
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Cathy Creelling
Cathy Creelling
110 County Rd 42 S.F. NM 87505

Amy L Crumpacker
Amy Crumpacker
Rt 2 Box 410 SF NM

Buck Dant
Rt. 2 Box 310 R.D.
Santa Fe, NM 87505

Mary Sobolig
103C County Rd 42, SF NM 87505

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Robert C. Balcer
26 Don Jose Loop
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Laura Gulotta
30 Don Jose Loop
Santa Fe NM 87505

* President, San Marcos Association

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Paco Mitchell
PACO MITCHELL
30 Don Jose Loop
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Nina Sammons
NINA SAMMONS
59 DON JOSE
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Linda Jacobson
LINDA JACOBSON
192 County Rd 42
Santa Fe, NM 87505

CANDACE R. BENYEI, PH.D.
Rainbow's End Road, Cerrillos, NM 87010

June 10, 2000

1786179

Javier Gonzales, Commissioner
Santa Fe County
P.O. Box 276
Santa Fe, NM 87504-0276

Dear Commissioner Gonzales,

As an owner of land contiguous with Canyon Vista property, I urge you not to grant the petition of Canyon Vista, LLC in its attempt to subdivide its 387 BLM "lots" for the purpose of additional sale and development.

As I am certain you are aware, the Land Use Office, the CDRC and the County Attorney have all ruled that Canyon Vista's BLM "lots" do not count as legal lots of record. This is because the intent of the original survey designation was not subdivision, but simply a sub-classification of parcels of land that, because of uneven boundaries, were not true quarter-quarter sections as required by the Federal Survey Statute as amended in 1832.

In addition, we fail to understand why any Santa Fe officials would back further development at this time, given the current predictions of water shortage, particularly in the geographic area in question.

Furthermore, it seems to prove itself out, time after time, that unchecked development of the sort proposed, frequently benefits outside moneyed investors, while doing disservice to the local long time residents who make the community viable. In the 30 years we have been part of Santa Fe, we have watched vast changes that have disenfranchised those persons who have been the foundation of Santa Fe culture, while the special interests of a growing moneyed majority seem to hold sway.

On the occasions I have sat in the Commission Chambers, I have been impressed by the Frederico M. Vigil fresco that depicts a history of "war, peace, and promises not kept." My sense is that the fresco's purpose is to remind us of something. We have created laws in the hope of insuring equal justice for everyone. Let us not once again subvert them in the interests of a powerful few.

Sincerely,

Candace Benyei

notification of any of the neighbors nor any posting. In this case, there was absolutely no notification of this 2.5 miles of road that is being referred to by the applicant as a "driveway."

Further, Mr. Tedlock contended that he was not convinced the driveway meets County Code.

The Vice Chair informed the speaker that the driveway permit was issued on a property that has not been subdivided. He said if the land were subdivided in the future, the driveway would have to meet subdivision requirements. He asked the appellant if he would accept the alternate route.

Member B. Vigil said she was very interested in more than an alternative route but also why the adjoining landowners view the driveway as a road.

Vice Chairman Martinez said if the appellants both agreed to the alternative route then the only remaining issues would be setbacks and buffers.

Member B. Vigil said the problem with the alternative route is other landowners may be impacted and are not aware of the appellants' arrangement with the developer. She said there appeared to be notice and due process issues that require addressing.

Mr. Tedlock said he was contacted by Canyon Vista's planner Harold Moya who asked him to drop the appeal in exchange for moving the road. He said he did not agree to that because there are a number of other property owners in the area concerned about the road and the entire subdivision.

Responding to Member B. Vigil, Mr. Tedlock said he was aware of the alternative route and although he has not walked it, it does appear to make sense.

Acknowledging that the alternative route may address some of the problems, Mr. Tedlock said it still appears a developer is submitting subdivision plans under a driveway permit. This 2.5 mile road is not a driveway but access to a subdivision. He said after the appeal period lapses, the developer could build out the road and it would be too late for concerned residents.

Member Moya recommended hearing from Canyon Vista prior to questioning the appellants.

Duly sworn, Harold Moya representing Canyon Vista stated that this evening's issues are quite simple. "We applied and were granted a driveway permit." The alternate route meets the requirements to preserve the Garden of Gods views and protects the viewscape.

While Mr. Tedlock's calculation of the length of the driveway was accurate he failed to note that the 600 acres is divided into three parcels, stated Mr. Moya. The driveway permit allows for access to a buildable site on each of the three parcels. He said there a legal issue with an easement that Canyon Vista is not able to use and the access serves the lots.

Ms. Guerrerortiz stated that the Code does not have a clear definition of "driveway." One of the standards sets out that two or fewer lots can be served by a driveway. There are no length restrictions and there is nothing regarding driveway cul-de-sacs. She noted that through policy a minimum width is 14' for emergency vehicle access.

Mr. Moya said he prepared the alternative route and was familiar with it. Responding to Member Gonzales, Mr. Moya said Canyon Vista was not in agreement with the setback and buffers as proposed by Mr. Tedlock. If this property is developed, Mr. Moya said it would be designed to meet Code requirements. He remarked that Mr. Tedlock is requesting Canyon Vista maintain 1,000

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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 Griñé 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

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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 GRIÑÉ: 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

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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 GRIÑÉ: 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 GRIÑÉ: 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 GRIÑÉ: 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 GRIÑÉ: 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 GRIÑÉ: 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 GRIÑÉ: 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 25 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 Tedlock'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 Oralynn. 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 GRIÑÉ: 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 GRIÑÉ: 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 GRIÑÉ: 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 GRIÑÉ: 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 GRIÑÉ: 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. Oralynn 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?

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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

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

MR. SIMMONS: I beg your pardon.

COMMISSIONER GRIÑÉ: 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 GRIÑÉ: 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, Oralynn, 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

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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 Denice. 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 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

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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, Denice?

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.

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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. It 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 GRIÑÉ: 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 600 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

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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 35 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 He'' 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 Denice 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, Denice, 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 as 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 GRIÑÉ: 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 GRIÑÉ: 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 GRIÑÉ: Can we make another motion on that?

COMMISSIONER ANAYA: Can we do it in one motion, Denice?

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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 GRIÑÉ: 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 GRIÑÉ: 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 GRIÑÉ: 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 GRIÑÉ: 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 GRIÑÉ: 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 GRIÑÉ: 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? 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?

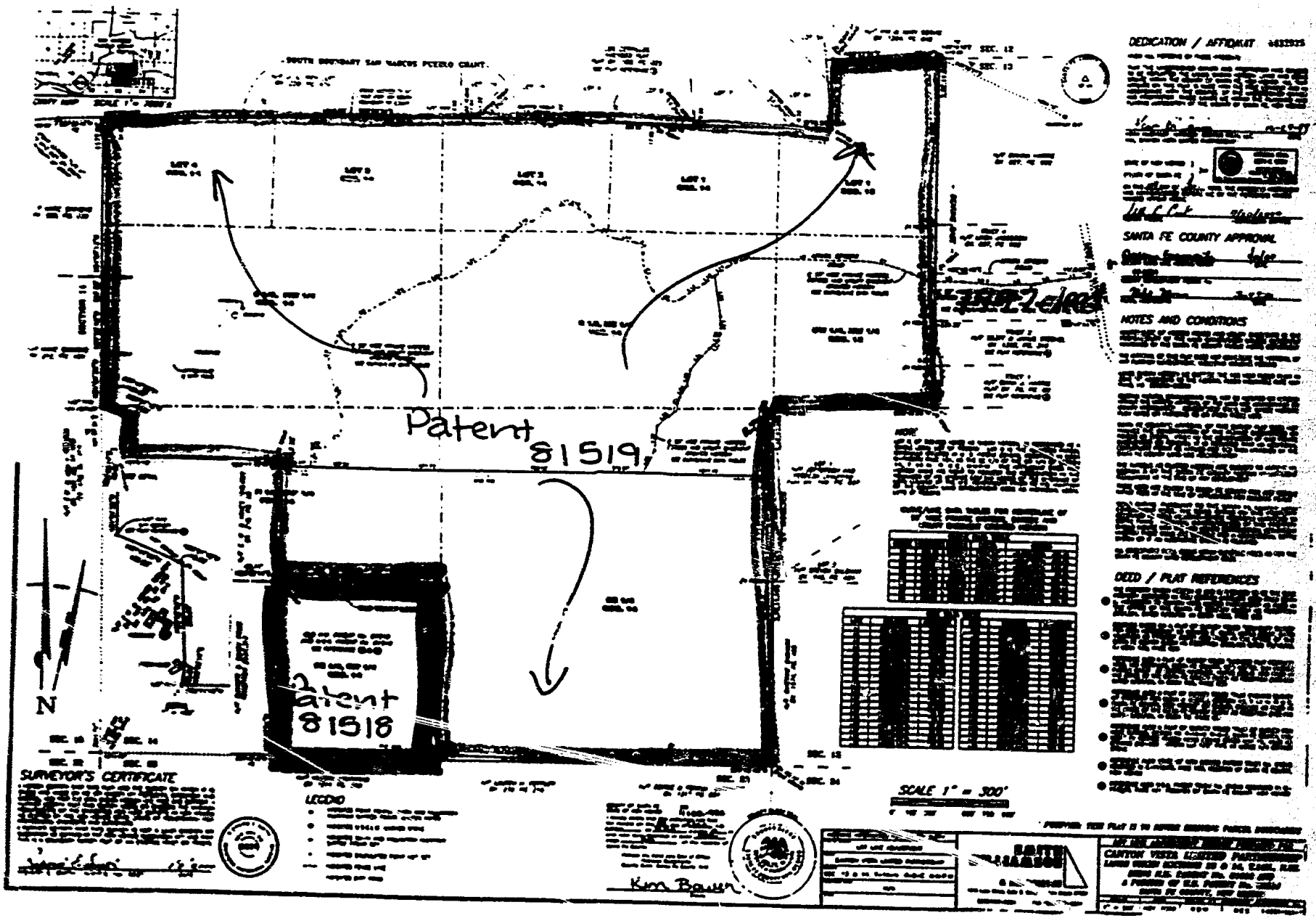
CHAIRMAN DURAN: Right.

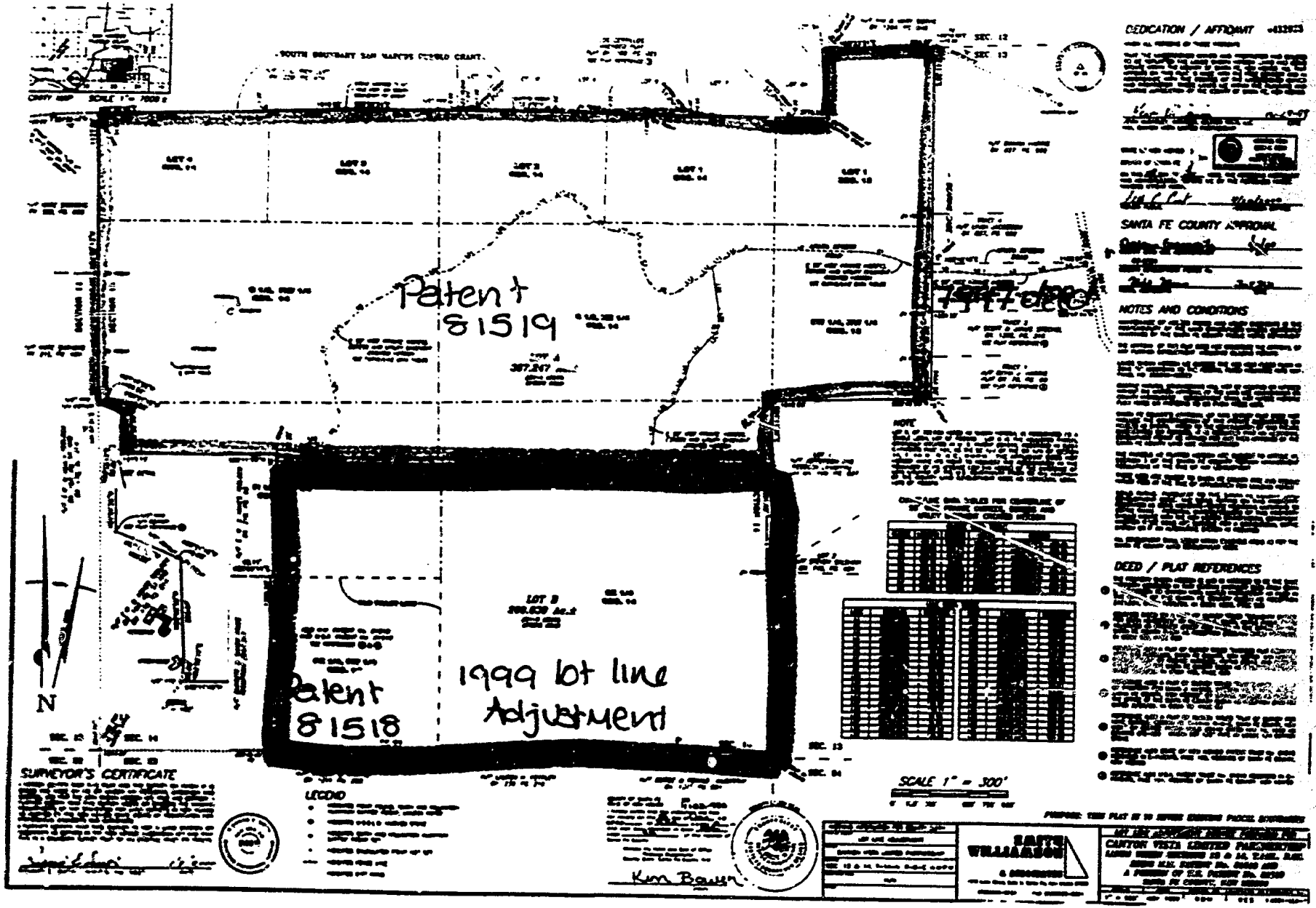
COMMISSIONER ANAYA: And by modifying, the maker of the motion struck condition one of the CDRC.

CHAIRMAN DURAN: So since there's no further discussion, those in favor signify by saying "aye." [Unanimous 4-0] Opposed? Motion carries.

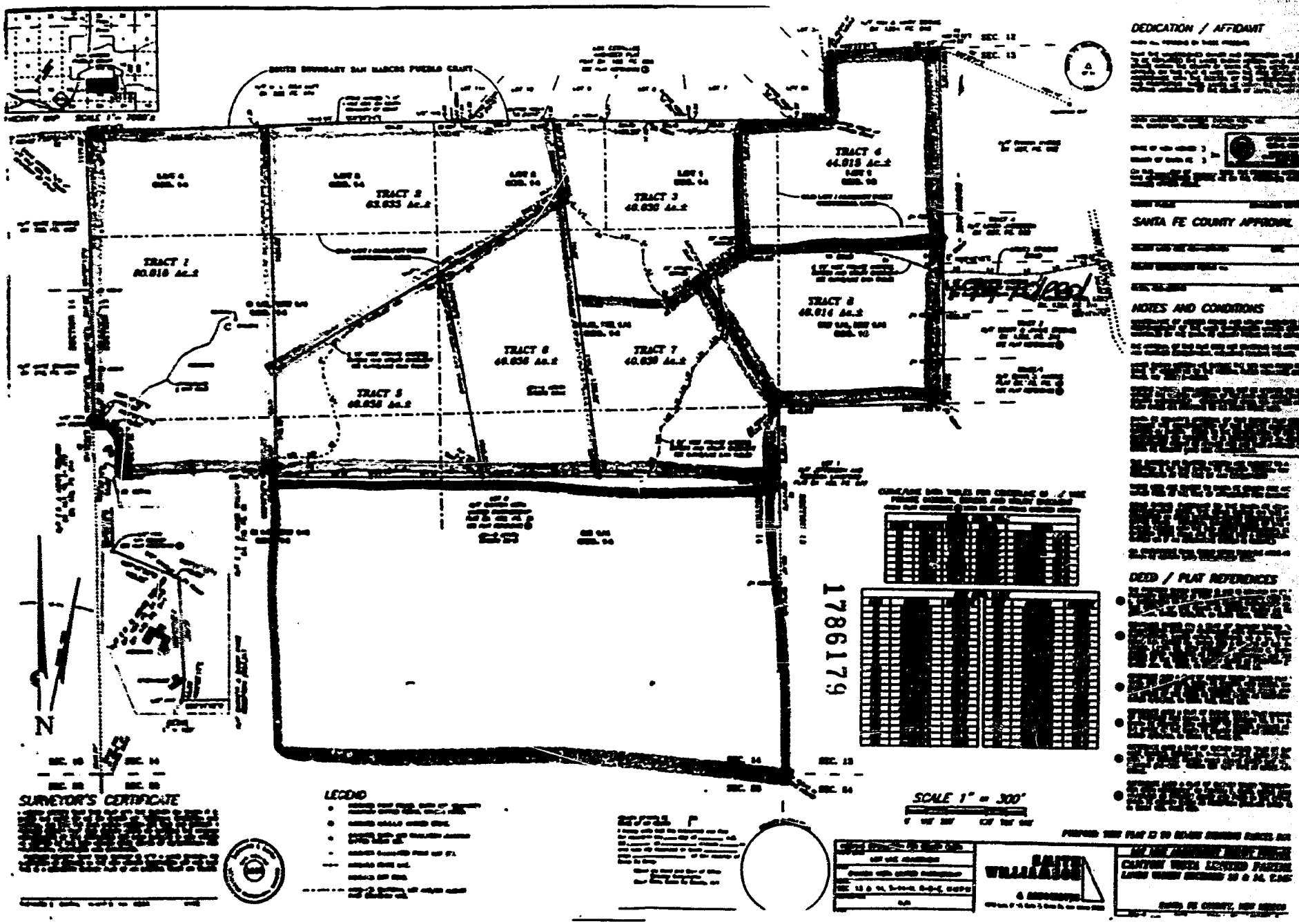
IX. B. 8. CDRC Case #Z 98-5740. Voicestream Wireless Eldorado Site. Voicestream Wireless, applicant, requests master plan zoning with preliminary and final development plan approval for a cellular facility. The property is located within the Dos Griegos open space area near the existing water tanks, 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


Patent 81519
Patent 81518
DEDICATION / AFFIDAVIT
SANTA FE COUNTY APPROVAL
NOTES AND CONDITIONS
DEED / PLAT REFERENCES
SURVEYOR'S CERTIFICATE
LEGEND
SCALE 1" = 300'
N


Patent
81519
Patent
81518
1999 lot line
Adjustment
DEDICATION / AFFIDAVIT
SANTA FE COUNTY APPROVAL
NOTES AND CONDITIONS
DEED / PLAT REFERENCES
SURVEYOR'S CERTIFICATE
SCALE 1" = 300'
N

1786179


DEDICATION / AFFIDAVIT
SANTA FE COUNTY APPROVAL
NOTES AND CONDITIONS
DEED / PLAT REFERENCES
TRACT 1
TRACT 2
TRACT 3
TRACT 4
TRACT 5
TRACT 6
TRACT 7
TRACT 8
1786179
SURVEYOR'S CERTIFICATE
LEGEND
SCALE 1" = 300'
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NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

Richard K. ROBBINS and Nancy P. Robbins, Trustees of the Robbins Trust, U/A/D 4-8-86; Gerard F. O'Connor, an Individual, Plaintiffs-Appellants,
v.
The COUNTY OF BLAINE, a political subdivision of the State of Idaho, Defendant-Respondent.

No. 24768.

Supreme Court of Idaho,
Boise, November 1999 Term.

March 17, 2000.

Landowners brought declaratory judgment action against county seeking determination that their 360-acre property consisted of six separate parcels under county subdivision ordinance. The District Court, Blaine County, J. William Hart, J., granted summary judgment in favor of county, and landowners appealed. The Supreme Court, Trout, C.J., held that: (1) federal survey map of landowners' property did not constitute valid "plat;" (2) three separate parcels merged into single parcel of land prior to enactment of county subdivision ordinance; and (3) presence of two roads on landowners' property did not render property non-contiguous.

Affirmed.

[1] APPEAL AND ERROR ⚿863

30k863
On appeal from an order granting a party's motion for summary judgment, the Supreme Court's standard of review is the same standard employed by the trial court when originally ruling on the motion. Rules Civ. Proc., Rule 56(c).

[2] APPEAL AND ERROR ⚿934(1)
30k934(1)
When summary judgment has been granted to the non-moving party, Supreme Court liberally construes the record in favor of the party against whom summary judgment was entered. Rules Civ. Proc., Rule 56(c).

[3] ZONING AND PLANNING ⚿372.6
414k372.6
Federal survey of public lands, which divided federal lands into quarter quarter sections, did not constitute valid plat of landowners' property, for purposes of determining whether property was unplatted tract of land subject to county subdivision ordinance; patent deeds conveyed only one parcel of land, federal survey map did not qualify as "plat" so as to have been validated by statute, and survey maps and subdivision plats were distinct instruments serving different purposes. I.C. §50-1315.

[4] PUBLIC LANDS ⚿114(1)
317k114(1)
Language in three separate patent deeds relating to landowners' property, which identified property being conveyed by reference to quarter quarter sections established by federal survey, conveyed only one parcel of land per deed, rather than separate 40-acre lots; language in deed, which stated "containing one hundred and sixty acres," alone indicated that description contained in deed was of one parcel, not three, and language in deed that "there is, therefore granted the tract of land above described," even more clearly indicated that only one parcel was being conveyed, not three or four.

[5] ZONING AND PLANNING ⚿372.6
414k372.6
Three separate parcels originally created by three patent deeds merged into a single parcel of land prior to enactment of county subdivision ordinance, and thus the property was subject to ordinance; property was not described in terms of separate parcels, property description on deeds in chain of title did not track three property descriptions from original patents, and instead took three original descriptions and combined them, and then described entire property by section, rather than by parcel, and original deed of conveyance and subsequent deeds all contain exact same description of single parcel of land.

[6] ZONING AND PLANNING ⚿372.6
414k372.6
Presence of two roads on landowners' property did not render property non- contiguous, and thus property qualified as contiguous tract of land subject to county subdivision ordinance; roads had never been deeded to any other party and landowners maintained fee ownership of land underlying roadways, and there was no intervening fee-simple ownership which would separate one portion of property from another.

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[7] ZONING AND PLANNING ⚿372.6
414k372.6
The word "contiguous" as used in the definition of an "original parcel of land," for purposes of county subdivision ordinance, means that the property must consist of one continuous parcel of land, uninterrupted by other parcels with different ownership, and it does not mean simply held under one ownership.
See publication Words and Phrases for other judicial constructions and definitions.

[8] COSTS ⚿252
102k252
Appellate rule governing attorney fees does not provide the Supreme Court with basis for awarding attorney fees on appeal; rather, rule simply allows Court to award fees if those fees are allowed by some other contractual or statutory authority. I.A.R. 41.
Appeal from the District Court of the Fifth Judicial District of the State of Idaho, Blaine County. Hon. J. William Hart, District Judge.

Order granting summary judgment to defendant. Affirmed.

Hawley Troxell Ennis & Hawley, Ketchum, for appellants. Edward A. Lawson argued.

Blaine County Prosecuting Attorney, Hailey, for respondent. Douglas A. Werth argued.

TROUT, Chief Justice.

*1 Appellants, Richard and Nancy Robbins and Gerard O'Connor (Robbins/O'Connor) appeal from the district court's grant of summary judgment to Blaine County. Robbins/O'Connor argue that the district judge erroneously determined that their property constituted an unplatted, contiguous tract of land that was therefore subject to the Blaine County Subdivision Ordinance. Robbins/O'Connor seek to have the district judge's decision overturned and to have summary judgment granted in their favor.

I.
FACTUAL AND PROCEDURAL BACKGROUND

Robbins/O'Connor own 360 acres of real property in Blaine County, Idaho, through which two roads cross. This property was originally surveyed and included in a survey map which was filed with, and accepted by, the Surveyor General on October 27, 1892. This map identifies the quarter section lines created as a result of the official survey. Following the completion of the federal plat, three separate Patent Deeds were issued for the property now at issue. These deeds identified the property being conveyed by reference to the quarter quarter sections established by the federal survey. Two of the patents contained four quarter quarter sections (or 160 acres) each, and the third consisted of one quarter quarter section. All three of the original patent deeds then came under common ownership in 1950. The property was transferred as a single parcel several times and was eventually conveyed in that manner to Robbins/O'Connor in 1990. Through an amended warranty deed to Robbins/O'Connor in 1993, the parties attempted to indicate that six separate parcels were being deeded of record.

On November 23, 1993, Linda Haavik (Haavik), the Blaine County Planning and Zoning Administrator, sent a letter to Robbins/O'Connor which set forth her administrative decision that the 360 acres constituted one parcel of property. An appeal was filed from this administrative decision. However, after Haavik suggested that pursuit of an application before the Blaine County Planning and Zoning Commission might render her decision moot, there was no further pursuit of the appeal.

On May 12, 1994, the Robbinses filed a complaint for partition of real property against O'Connor, seeking partition of the 360 acres. On July 11, 1994 a default judgment was entered which divided the 360 acres between the Robbinses and O'Connor. Blaine County was not a party to the action.

On October 5, 1995, Robbins/O'Connor filed an action for declaratory judgment seeking a declaratory judgment that the 360 acres consisted of six separate parcels under the Blaine County ordinance. After the parties engaged in discovery, the matter came before the district judge on the Robbins/O'Connor motion for summary judgment. After briefing and a hearing, the district judge denied summary judgment to Robbins/O'Connor and instead granted summary judgment to Blaine County. Although the district judge granted summary judgment to Blaine County on the issue of whether the Robbins/O'Connor land fell within the provisions of the Blaine County subdivision ordinance, the court expressly reserved judgment on the issue of whether Robbins/O'Connor had exhausted their administrative remedies and on Blaine County's motion to amend its answer. However, the district judge then entered a 54(b) certificate finding that there was no just reason for delay in entry of final judgment. This appeal then followed.

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II.
STANDARD OF REVIEW

*2 [1][2] On appeal fro... an order granting a party's motion for summary judgment, this Court's standard of review is the same standard employed by the trial court when originally ruling on the motion. See Smith v. Meridian Joint Sch. Dist. No. 2, 128 Idaho 714, 718, 918 P.2d 583, 587 (1996); City of Chubbuck v. City of Pocatello, 127 Idaho 198, 200, 899 P.2d 411, 413 (1995). Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c); see also Smith, 128 Idaho at 718, 918 P.2d at 587; City of Chubbuck, 127 Idaho at 200, 899 P.2d at 413. When, as in this case, summary judgment has been granted to the non-moving party, this Court liberally construes the record in favor of the party against whom summary judgment was entered. See Allen v. Blaine County, 131 Idaho 138, 141, 953 P.2d 578, 581 (1998).

III.
DISCUSSION

Robbins/O'Connor argue that the district judge erred in granting summary judgment to Blaine County on three different grounds. [FN1] First, Robbins/O'Connor contend that the district judge erred when he held that the federal survey of public lands which divided federal land into quarter quarter sections did not constitute a valid plat of the Robbins/O'Connor property. Secondly, Robbins/O'Connor argue that even if the federal survey map did not constitute a valid plat of the property, the fact that the land was originally conveyed in three separate patent deeds mandates a finding that the property consists of at least three separate parcels. Finally, Robbins/O'Connor contend that the district judge erred in finding that the Robbins/O'Connor property was contiguous for purposes of the Blaine County Subdivision Ordinance, despite the presence of the two roads which run through the property. We will address each argument in turn.

A. The Federal Survey of Public Lands Did Not Operate as a Subdivision of the Robbins/O'Connor Property

[3] The federal rectangular survey system was first established by Congress in 1785. Originally, Congress ordered the mapping of federal land into townships of six miles square. Then, in 1832, the federal survey statute was amended to provide for the mapping of land into quarter quarter sections of 40 acres each. Robbins/O'Connor contend that this division of land into quarter quarter sections created, in effect, a subdivision of the public lands into 40- acre lots. Therefore, in their view, the federal survey establishes the boundaries of lots within the Robbins/O'Connor property.

[4] In support of their argument, Robbins/O'Connor cite to Idaho cases, as well as cases from other states, which have held that the quarter section and quarter quarter section lines established by the federal survey constitute the legal boundaries of land conveyed according to the federal plats established by the survey and recorded in the General Land Office. For example in Sala v. Crane, 38 Idaho 402, 221 P. 556 (1923), this Court recognized the "familiar rule that where lands are patented according to such a plat, the notes, lines, landmarks and other particulars appearing thereon become as much a part of the patent and are as much to be considered in determining what it is intended to include as if they were set forth in the patent." Id. at 411, 221 P. at 559. Similarly, in Johnson v. Johnson, 14 Idaho 561, 95 P. 499 (1908), the Court noted that the boundary lines for the lots at issue in the case "are not set out in the patent, but reference is made to the official plat of the survey of said lands for identification of the land granted, thereby adopting the plat as a part of the instrument." Id. at 568, 95 P. 499, 95 P. at 501. However, neither of these cases addressed the issue of whether the federal plats created legal subdivisions of land. Rather, each case dealt with the question of the effect of the federal plat in establishing the boundaries of land conveyed in reference to the federal plat, usually in the context of a boundary dispute. See, e.g., Sala, 38 Idaho at 407, 221 P. at 556-57; Johnson, 14 Idaho at 568, 95 P. at 501; Vaught v. McClymond, 116 Mont. 542, 155 P.2d 612 (Mont.1945). The rule developed from these cases is simply that, when determining what exactly was conveyed by a federal patent, the federal plat, its notes, and descriptions are all incorporated into the patent and control the description of the property conveyed.

Additionally, the Robbins/O'Connor argument that the conveyance of land in reference to the federal survey map established the boundaries for the lots in their land ignores the way in which the land was conveyed to the original owners. We have previously held that, where possible, "the court should give effect to the intention of the parties to a deed ... Where the language of a deed is plain and unambiguous the intention of the parties must be determined from the deed itself...." Hall v. Hall, 116 Idaho 483, 484, 777 P.2d 255, 256 (1989); see also Bliss v. Bliss, 127 Idaho 170, 174,

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merged, even though they are held in one ownership. In support of their argument, Robbins/O'Connor urge us to follow the holding in Lakeview Meadows Ranch v. County of Santa Clara, 27 Cal.App.4th 593, 32 Cal.Rptr.2d 615 (Cal.App.6th Dist.1994). In Lakeview, the California Court of Appeals faced a similar question of whether separate parcels of property had merged by virtue of their common ownership and that court held they did not. However, it is important to note that the California Court of Appeals answered this question by applying two different provisions of the California Code to the facts of that case. The first provision expressly stated that two or more contiguous parcels do not merge simply because of common ownership. The second stated that, absent an express statement of the grantor in the deed, the fact that a deed consolidates separate legal descriptions or real property contained in one or more deeds or patents into a subsequent single deed does not alter the separate and distinct nature of the property. Because neither the Idaho Code nor the Blaine County Subdivision Ordinance contains similar provisions, we decline to adopt the holding of the California court.

Additionally, Robbins/O'Connor rely on a Kansas Supreme Court decision in Luthi v. Evans, 223 Kan. 622, 576 P.2d 1064 (Kan.1978). In Luthi, the Kansas court held that "a single instrument ... may convey separate tracts by specific description and by general description capable of being made specific, where the clear intent of the language used is to do so." See id. at 1068. Robbins/O'Connor argue that because each of the deeds (after common ownership occurred) evidenced a clear intent to convey separate parcels of property in a single instrument, the adoption of this rule would require a finding that their property consists of at least the three parcels created by the original patent deeds. However, a close inspection of the deeds in this case does not support Robbins/O'Connor's argument. In the warranty deed from Frank and Irma Knight (the first common owners) to the Struthers, the property conveyed is described as follows:

> The South Half of the Southwest Quarter (S1/2SW1/4), the West Half of the Southeast Quarter (W1/2SE1/4), and the Northwest Quarter of the Southwest Quarter (NW1/4SW1/4) of Section Twenty-Nine (29), and the East Half of the Northeast Quarter (E1/2NE1/4), the Northeast Quarter of the Southeast Quarter (NE1/4SE1/4) of Section Thirty (30), and the Northeast Quarter of the Northwest Quarter (NE1/4NW1/4) of Section 32....

*7 Because we have previously held that the federal survey map did not create legal subdivisions, it is difficult to see how this description constitutes a clear intent to convey the three original patented parcels of property as separate parcels, but in a single deed. First of all, the property is not described in terms of separate parcels; that is the deed does not say "Parcel One consisting of ..., Parcel Two consisting of ..." or other similar language. Secondly, the property description quoted above does not track the three property descriptions from the original patents. Instead, the deed takes the three original descriptions, combines them, and then describes the entire property by Section, rather than by separate parcel. Therefore, even under the holding of the Kansas court, the Robbins/O'Connor argument must still fail. Since the rule requires a clear statement in the deed and no such statement exists in the deeds at issue, Robbins/O'Connor have still failed to raise a genuine issue as to whether the deed was intended to convey a single parcel or the three original parcels. Additionally, because the subsequent deeds from the Struthers to the Schoddes and the Schoddes to Robbins/O'Connor (at least as to the original deed, rather than the amended deed) all contain the exact same description, it is clear that a single parcel of land consisting of 360 acres has been passed from the Knights to Robbins/O'Connor. Therefore, the district judge did not err in finding that the three separate parcels originally created by the patent deeds have merged into a single parcel of land.

C. The Robbins/O'Connor Property is Contiguous.

[6][7] Robbins/O'Connor argue that their property is not subject to the Blaine County Ordinance because the property does not fit within the definition of an "original parcel of land" as provided by Section 5.41 of the Ordinance because the two roads running through the property render it non-contiguous. Blaine County counters that the property does fit within the definition because "contiguous" as used in the Ordinance means one ownership, not necessarily physically connected. Therefore, in the County's view, the property is still contiguous because all of the land is held under a single ownership. However, the definition of an "original parcel of land" shows that this cannot be a reasonable interpretation of that section of the Ordinance. As mentioned earlier, the full definition of an "original parcel of land" is "an unplatted contiguous parcel of land held in one (1) ownership and of record at the effective date of this ordinance." Blaine County Ordinance, No. 77-6, 5.41. Therefore, if "contiguous" is interpreted to mean held in a single ownership, then a portion of that definition is rendered superfluous. It is a cardinal rule of statutory construction that all parts of a statute should be given meaning. See Hoskins v. Howard, 132 Idaho 311, 315,

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971 P.2d 1135, 1139 (1998); Petersen v. Franklin County, 130 Idaho 176, 181, 938 P.2d 1214, 1219 (1997). Therefore, it is clear that "contiguous" as used in the definition of "an original parcel of land" cannot mean simply held under one ownership. Therefore, the question is what was "contiguous" intended to mean in this context.

This Court has previously noted that "[i]n construing a statute, the words of the statute must be given their plain, usual and ordinary meaning." Sherwood v. Carter, 119 Idaho 246, 254, 805 P.2d 452, 460 (1991); see also Walker v. Hensley Trucking, 107 Idaho 572, 691 P.2d 1187 (1984); State v. Moore, 111 Idaho 854, 727 P.2d 1232 (Ct.App.1986). Under the normal usage of the term contiguous, the property must consist of one continuous parcel of land, uninterrupted by other parcels with different ownership.

*8 Robbins/O'Connor argue that their property cannot be contiguous because the roads effectively divide portions of the property and prevent them from "touching" each other. However, it is undisputed that the roads have never been deeded to any other party and that Robbins/O'Connor maintain fee ownership of the land underlying the roadway. Consequently, it is clear that there is no intervening fee-simple ownership which would separate one portion of the property from another. Therefore, we hold that the district judge properly concluded that the presence of the two roads on the Robbins/O'Connor property did not render the Robbins/O'Connor property non-contiguous.

D Attorney Fees on Appeal

[8] In its brief, Blaine County requested attorney fees for this appeal pursuant to I.A.R. 41. However, I.A.R. 41 does not provide this Court with a basis for awarding attorney fees on appeal. Rather, this rule simply allows us to award fees if those fees are allowed by some other contractual or statutory authority. Additionally, Blaine County has failed to support its request for fees with any argument or other authority. We have repeatedly held that we will not consider issues on appeal "that are not supported by propositions of law, authority or argument." Meisner v. Potlatch Corp., 131 Idaho 258, 263, 954 P.2d 676, 681 (1998). Therefore, we decline to award Blaine County fees on appeal.

IV.
CONCLUSION

For the foregoing reasons we affirm the district judge's grant of summary judgment to Blaine County. We award costs, but not attorney fees, to respondent.

Justice SCHROEDER, WALTERS, KIDWELL, and Justice Pro Tem WILPER, concur.

FN1. At oral argument, Robbins/O'Connor attempted to argue that the Blaine County ordinance somehow violates the enabling authority provided in the Local Land Use Planning Act, I.C. 67-6501 to 67-6537. However, Robbins/O'Connor failed to raise this issue at any time prior to oral argument. We have previously held that issues raised for the first time at oral argument are not properly before the Court. See, e.g., Mac Tools, Inc. v. Griffin, 126 Idaho 193, 198, 879 P.2d 1126, 1131 (1994). Therefore, we will not address this argument on appeal.

FN2. The third patent deed conveyed only a single quarter quarter section to Irma Knight, therefore there is no question as to how many parcels of land were conveyed in that patent deed.

FN3. This section has remained largely unchanged and is now codified as I.C. 50-1315 (1994).

END OF DOCUMENT

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