

BOARD OF COUNTY COMMISSIONERS

SANTA FE, NEW MEXICO

REGULAR MEETING

JULY 13, 1999

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

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This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 3:45 p.m. by Chairman Paul Duran in the Santa Fe County Commission Chambers.

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

Members Present

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

Members Absent

[none]

IV. INVOCATION

County Attorney Denice Brown gave the invocation.

V. APPROVAL OF THE AGENDA

CHAIRMAN DURAN: Mr. Montoya, are there any changes or amendments to the agenda?

SAMUEL MONTOYA (County Manager): Mr. Chairman, in your packet on the evening agenda we have provided some color codes for you. The yellow highlights would go the amended items on the agenda for today, beginning with item VII. A. 1, Resolution 1999 -- a resolution calling for combined City/County meeting to review and adopt a unified Highway Corridor Plan for lands along Interstate 25 and State

Highway 599.

We also have under VII. B. 2, Request for authorization to publish the title and the general summary of an ordinance, Santa Fe County labor management relations ordinance, which will authorize collective bargaining, establish a labor-management relations board. That is our second amendment.

Third would be VII. B. 3, Request for authorization of actuals for the County Clerk. Then we go to page 2 under E. 2. b, under the executive session. We would add Update on possible acquisition of the Hagerman well and water rights. And 2.c, which would be an update on union negotiations.

As well, Mr. Chairman, under item VIII. D. we have an ordinance pertaining to the use of County right-of-ways by utilities and other persons. That is an amendment. And I believe the last amendment would be on page 4, IX. A, which is a resolution granting a certificate and acceptance of franchise of Santa Fe Cablevision doing business as TCI. Those are the amendments on today's agenda, Mr. Chairman.

COMMISSIONER GRIÑÉ: Also, Sam, you should also go over the ones that have been tabled items so it becomes part of the record.

MR. MONTROYA: Mr. Chairman, Commissioner Griñé, also we are recommending for the County Commissioners that the following items be tabled on today's agenda: VII. B.1, which relates to authorization to publish the title and the general summary of the project revenue bond ordinance relating to proposed issuance by Santa Fe County of up to \$8,500,000 of project revenue bonds of the Villa Serena Alzheimers care facility, a 36-bed facility.

On page 2, Mr. Chairman, members of the board, item VIII. E. 1, we are requesting your consideration to table case #A 99-5061, which is an appeal on land use relevant to the property located off County Road 55 within Section 7, Township 13 North, Range 8.

Mr. Chairman, on page 4, we're also recommending item 10, MIS 99-5320, which is Mickelson Media, Incorporated, doing business as Century Communications Corporation, requesting a renewal of the cable franchise. We're requesting that that be tabled. And item 12, Mr. Chairman, Case #Z 99-5080, which relates to a storage unit request, small scale commercial in the community of Eldorado. Those are the recommendations for tabling, Mr. Chairman.

CHAIRMAN DURAN: Thank you, Sam. Are there any other amendments or changes to the agenda?

COMMISSIONER ANAYA: Mr. Chairman, I'm going to request for tabling Public Hearings, item number 13, CDRC Case #Z 99-5000, the Tesuque Business Park.

COMMISSIONER GRIÑÉ: I'll second that for discussion.

COMMISSIONER ANAYA: There's no discussion under tabling. The rationale behind it is it needs further study of the traffic impact to the Tesuque Road.

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Also, I think the coordination of the Tesuque Planning organization that is doing their own planning up there along with the General Plan, in coordination with that. I think that this should be tabled until further adequate studies and information come forth to this Commission, Mr. Chairman. With that I move for table.

COMMISSIONER GRIÑÉ: Second.

CHAIRMAN DURAN: Commissioner Anaya, would it be more appropriate to -- I'd like to hear what the merits of this case are.

COMMISSIONER ANAYA: With that, Mr. Chairman, I would yield to our attorney, Virginia, for further explanation on this.

CHAIRMAN DURAN: Further explanation of what?

COMMISSIONER ANAYA: Of the rationale behind tabling.

COMMISSIONER TRUJILLO: But she's not proposing the tabling. You're proposing the tabling, Commissioner.

COMMISSIONER ANAYA: I am. Just for further explanation. For further rationale, reasoning on my rationale for tabling.

CHAIRMAN DURAN: Thank you, Virginia, but we don't need that.

VIRGINIA VIGIL (Policy Analyst): That's fine. And you have both options, Mr. Chairman.

CHAIRMAN DURAN: Okay, those in favor of tabling, signify by saying "aye." [Commissioners Anaya, Gonzales, and Griñé voted in favor of the motion.] Opposed? [Commissioner Trujillo voted against the motion.]

COMMISSIONER GONZALES: I just wanted briefly for the record at this point to discuss why I'm in favor of tabling it. I think this is a big issue for the community and from what I understand from the lobbying effort, something they're very concerned about. I need to accept responsibility in being negligent in not being fully prepared tonight to understand fully the issues in that in what's being prepared from a community planning standpoint. I know that the community is in the process of working to develop their community plan and I think that it would helpful during this time period, even if it's in draft phase to get some ideas about where they're going with their community plan and what they're proposing for the community of Tesuque and hopefully within the time period, get an understanding of when that plan will be submitted to this Board for debate and for review and I would hope that that could happen during this time period.

And I'll commit to making sure that I fully understand the issues surrounding the case and am prepared to participate in a debate and how it's going to proceed forward. But if I could ask that of Mr. Karp If I could have that available, at least in draft form, whatever the community is doing, that would be really helpful, so I get an understanding of where they're going and where they'd like to end up. Because I think that we're going to be hearing this case before we actually vote on the community plan in Tesuque but tonight, this is number 13 on the case. It's going to be very long in to the night.

I would also request that when this comes forward, because this has such a high profile in the community that the staff notice it as number one on the agenda as opposed to last on the agenda so that people have an idea of when it's going to be heard and we have ample time early on to be able to discuss it. That's the reason why I supported the tabling, Mr. Chairman. Hopefully we'll be able to come to resolution on this fairly soon.

COMMISSIONER TRUJILLO: Mr. Chairman, I'd just like to say that this is not the first time that this case has been tabled. It got tabled with the EZC and being the representative of that area, my constituency, the community of Tesuque, Chupadero and Rio en Medio are on pins and needles regarding this proposed commercial development in that area. So if we're going to table this case I'd like to see it happen that we reschedule it as soon as possible. I'd like to see it rescheduled as a special meeting in the next couple of weeks.

It is imperative that we give the community ample opportunity to represent their position regarding this proposal. I'd like to see a special meeting scheduled as soon as possible for this proposal.

CHAIRMAN DURAN: I think that's a fair request. Does the Commission have a problem with that?

COMMISSIONER ANAYA: Mr. Chairman, I would respectfully submit that that be at the request of the applicant as to when they could come forth.

COMMISSIONER GONZALES: I agree with that, Commissioner Trujillo and I don't mind going to a special meeting. I'm gone, Commissioner Trujillo, for the next two weeks, so I don't know if I'd be able to come back and be able to visit with the community out there in that time period. So I need at least a month's time before I can move and be prepared for this. I think it's important if we're going to delegate a special meeting for this, this is an important topic. The reason I'm supporting tabling this is because I'm unprepared tonight to be able to fully discuss the merits of this case. I'd like the time to be able to do that and that's going to mean sitting down to understand where the community is going to go with the community planning process. So I can't do it in two weeks.

I'd like at least a month's time to be able to work with, to understand what the applicant wants and certainly understanding what the community wants and I guess there'd be an issue that I'd ask and, Denise, I'm not sure if this is actually just a request, it's not an appeal. Is it approved at CDRC? The decision? Or is it just a regular request? I guess the reason I'm asking that, Denise, is are we prohibited from meeting with the applicants and also with the community before this is heard?

MS. BROWN: Mr. Chairman, Commissioner Gonzales, I believe it is not an appeal. There was a recommendation by the CDRC. Because it's zoning, they have recommending authority only, so you would be the final decision maker.

COMMISSIONER GONZALES: So we have the opportunity to be able to

sit down and talk without violating any time of judicial --

MS. BROWN: Yes, you would just be required to divulge on the record the nature of your communications and with whom you met.

CHAIRMAN DURAN: My only concern about the tabling is that in the next two weeks or month or whatever time we decide to have this special meeting, that the community and the applicant get together again. I understand that they've met numerous times. For me, I have a problem when our Land Use Department is recommending approval for a project because it appears to me that it's based on what the Code -- based on the Code. I would like to ask the community that when they go back to discuss this with the applicant that you try to find a reasonable use for that property.

And I'm not certain that residential is the most appropriate use for it based on the impact of the new highway that's going in there. I think that there are a lot of other uses other than commercial that might be appropriate. I have a problem with the fact that the Land Use Department, our Land Use Department is recommending approval because it says to me that the ordinances are in place and it qualifies under the current criteria for that use.

COMMISSIONER ANAYA: Mr. Chairman, since the motion has been made and seconded and the tabling has been passed, there's no discussion under of after tabling.

CHAIRMAN DURAN: Did you want to say something, Ike?

ISAAC PINO: Yes, Mr. Chairman, just as to the timing. Our client, Ted Yamada will be away from July 25 to August 22 and we would like to at least have the opportunity to have him here for here for the meeting when it's scheduled.

CHAIRMAN DURAN: We'll be here when he comes back.

MR. PINO: Mr. Chairman, I know you'll be here. We'd like him to be here too.

COMMISSIONER TRUJILLO: Mr. Chairman, so all of us agree that it's appropriate to schedule a special meeting for this proposed development?

CHAIRMAN DURAN: That's correct.

COMMISSIONER TRUJILLO: After the August 22 time period when the developer comes back into town.

CHAIRMAN DURAN: That's correct.

COMMISSIONER TRUJILLO: My concern is that we schedule this on the agenda, we put it as item number 13, we're going to have a bunch of people from that area attend this meeting and then we're going to tell them that it's been tabled. It doesn't look very good for our scheduling, our preparation regarding the issues of the case and our responsibility. This project has been in the works for six months.

CHAIRMAN DURAN: We'll give you one more opportunity to withdraw your motion.

COMMISSIONER ANAYA: No, sir. The vote's already in.

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BECKY BUSTAMANTE (County Clerk): Mr. Chairman, point of clarification. Did you vote on the entire budget changes? Or did you just vote on 13?
COMMISSIONER ANAYA: No, we just voted on the tabling of one matter. Now I guess we move on to approval of the agenda.

Commissioner Anaya moved to approve the agenda as amended. Commissioner Griñé seconded and the motion passed by unanimous [4-0] voice vote.

VI. APPROVAL OF MINUTES: Special June 15, 1999

Commissioner Anaya moved approval of the June 15, 1999 meeting minutes as submitted and Commissioner Griñé seconded. The motion passed by unanimous [4-0] voice vote.

Regular: June 29, 1999

Commissioner Griñé moved to approve the minutes of the June 29, 1999 meetings as presented and Commissioner Anaya seconded. The motion passed by unanimous [4-0] voice vote.

Special: June 30, 1999

Commissioner Griñé moved to approve the June 30, 1999 meeting as presented. Commissioner Anaya seconded and the motion passed by unanimous [4-0] voice vote.

Special July 2, 1999

Upon motion by Commissioner Anaya and second by Commissioner Griñé, the minutes of the July 2, 1999 meeting were approved by unanimous [4-0] voice vote.

VII. STAFF AND ELECTED OFFICIALS

A. Land Use Department

1. Resolution 1999-79. A resolution calling for combined City/County meetings to review and adopt a unified Highway Corridor Plan for lands along I-25 and State Highway New Mexico 599

JACK KOLKMEYER (Planning Director): Mr. Chairman, members of

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the commission as you remember from a couple of weeks ago when we did our study session on the highway corridor district plan that that same afternoon we were given a resolution that had been passed by City Council asking for joint adoption of the Highway Corridor District Plan and you also may have seen in the paper last Sunday an editorial in the *New Mexican*, again, expressing a desire from their point of view that we move forward with a joint adoption of the Highway Corridor District Plan.

After our meeting at the end of June on the study session, staff became kind of concerned that perhaps we're still a little bit too concerned about how we're going to adopt the plan with what its content is and if we're all of the understanding of that, if there has been enough public debate, and understanding of the Highway Corridor District Plan itself. Last week we had discussions with Commissioner Duran and Commissioner Trujillo and also Commissioner Gonzales and the County Manager, this is one of the first things that he got as he came in last week, to go over this again and focus on what it really is that we need to do as the County. Commissioner Trujillo recommended to us that rather than sign the joint resolution that was presented to us from the City, that perhaps we needed to take a look at our own resolution and make sure that it clarifies the process that we wanted to see occur. So we put together this resolution for you today, which is 1999-79.

It's slightly different than the one prepared for the City but we feel that it's a really good compromise. What it lays out is that the City Manager and the County Manager should take it upon themselves to schedule a series of combined City/County meetings so we can get on with this process. The first meeting, and this is a change from the City's one, the first meeting really ought to be a study session, not a public hearing but a study session between the Commission and the City Council to go over the plan together so that both parties know exactly what's in it. If we just move forward to do some kind of an adoption process -- a presentation has never been made to the City. Therefore, this would solve that problem and you would have to sit through it again because that's the nature of the difficulty but it would also give us another opportunity to review together some of the difficulties but to do it with the City Council. Then we would have clearly stated a Point A from which we can then move forward.

Then what the City has proposed is probably right. It needs to go for review with the City Planning Commission, the EZC, the CDRC and those are simply a matter of presentations that the City and County staff would do. And then we would move to the regular adoption process that we would go through with anything which would be EZA and then it would be up to you and the City Council to decide to, at the end, do a joint meeting together for adoption or adopt it separately.

Our point here is, let's not worry about all that yet. Let's do a joint meeting together and let that help us resolve some of the problems. So that's what this resolution states.

CHAIRMAN DURAN: So, Jack, we have this joint meeting and at that

meeting we would vote on whether or not to accept the Highway Corridor Plan?

MR. KOLKMEYER: No. I think -- because that would not be a public hearing. That would just be a study session. Then you would decide a series of other public hearings that would follow that.

CHAIRMAN DURAN: Joint meetings?

MR. KOLKMEYER: They could be. I think that the joint study session is for the Commission and the Council to decide that.

CHAIRMAN DURAN: I just have a concern that we have these joint meetings and I'm not sure that the Commission -- to assume that the Commission and the City Council are going to agree on every point, I think is pretty much a stretch of the imagination.

I still don't understand why we can't go through the plan. I understand the joint study session but then after that session how do we go about adopting this plan based on our vision for the County? I'm having a hard time with that because I'm not sure that for instance the commercial node concept or the setbacks, that we'll all be in agreement with that.

MR. KOLKMEYER: That would be the idea of having this joint session together that that would be then a little clearer about what the issues are.

COMMISSIONER GONZALES: Mr. Chairman. I rise to the floor with what the Chairman is saying. I share the chairman's concern in that what would happen at the point that there's disagreement. I think that we should have this joint meeting to be briefed and to do the study of the plan. And then to actually have some type of dialogue on how we feel. My concern is that in the language where we're talking about adopting a unified Highway Corridor Plan, I do agree with the Commissioner that to find we're going to find agreement all the way on down the road of this plan or on all the points of this plan is going to be very difficult. What I want to make sure is that we progress forward and that the differences that may occur don't become the barriers from implementing a comprehensive Corridor Plan that would set forth good design standards and really set forth how growth is going to occur along these major corridors.

So, maybe I think that what we have to do is to reserve the right to be able to -- and I think this is what the Chair talked about -- to reserve the right to move forward through this planning process if there is a breakdown between the City and the County on disagreements that occur. I know that, just reading through the plan, there may be various differences in the plan between the City and the County -- or at least between myself and what the City might be advocating and not speaking for the Commission.

If there's a way we can do it to adopt the resolution, agree to hold the joint meeting, to have the study sessions and to have the dialogue but reserve the right if this process is taking too long or becomes too cumbersome or becomes very contentious between the City and the County, that we reserve the right to go forward. Because we still ultimately the EZA and BCC who hold the zoning power; is that correct?

MR. KOLKMEYER: That's correct.

COMMISSIONER GONZALES: So, I think that's the point that if the City understands that we want to work with them and hope that we find the compromise to have a good corridor plan. And if that doesn't exist that that doesn't throw up barriers to prevent us from having a corridor plan and continue to -- as we're living today and dealing with issues like the Tesuque Business Park where there hasn't been a corridor plan and then you have these kind of ad hoc commercial developments that are coming up and we're going to wake up one day and see what we see now when we go down I-25.

So I don't know if this gives us that flexibility to reserve the right to continue to go forward if there is so much disagreement that we can't go forward or are we going to be tied basically at the hip and it's just going to be this continuous, endless chasing of the tail between the City and the County to try and find some type of unified corridor plan.

MR. KOLKMEYER: Mr. Chairman, Commissioner Gonzales, those are good points. We believe that this suggestion would set that up. That's what we should find out at this meeting. If we just make the decision today, the problem here is that the City has asked us to adopt this jointly and we have not responded, by signing their resolution. So this way at least we would be responding in a very positive way by saying we want to go forward but let's start together so that we understand what the issues are not only with just the plan itself but with the adoption process and that could be worked out at that first meeting. The County Manager and I talked a little bit further about this and we think it's probably a good idea if that meeting be moderated by a neutral person so that a moderator could get both parties to be able to make some very clear decisions at that meeting about how the elected officials plan to move forward.

CHAIRMAN DURAN: Why do we need a resolution to go to a meeting with the City?

MR. KOLKMEYER: The City has already asked us to sign a resolution which we didn't.

CHAIRMAN DURAN: Why can't we just go have a meeting with them? Why do we need a resolution?

MR. KOLKMEYER: We could.

COMMISSIONER TRUJILLO: Mr. Chairman, I think that the resolution will send the message that the County wants to cooperate with the City in this effort.

This whole effort started as a joint City/County effort. We need to have this joint study session to converge on the issues and see what direction we want to go on. I think that it is important that this document be properly executed so that we can send that message to them, that we do want to open dialogue in this effort. It started as a joint City/County effort.

COMMISSIONER GONZALES: Mr. Chairman, I would just add that Commissioner Trujillo, I agree that it became a joint City/County effort but the County started this planning initiative and through dialogue we asked the City to come in and

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participate. I think that it needs to continue on that road as a joint City planning but I want to make sure occurs is that the City fully understands that if this joint effort breaks down that the County still has the responsibility to finish this effort. We started it and we need to finish it and along this road it's going to call for a series of meetings with the City Council.

But I'm concerned, and hopefully I'll be pleasantly surprised, that we're going to get into these series of meetings, Jack, and no one is going to go anywhere. And we'll continue to have these pressures of development along the corridor without any type of fixed plan that any of us feel good about.

I think the resolution is a good message to send out. I don't think that it hurts anyone to adopt the resolution but I just want to make sure for the record and clearly however we convey it to the City whether the managers talk to one another, and I guess we'll have to view it when we show up to these meetings that we hope we can come up with a unified effort but if it doesn't happen, we have the responsibility to finish this corridor plan and we'll use our zoning efforts through the BCC and the EZA to get that done.

COMMISSIONER TRUJILLO: Well said, Commissioner, I think in this time of regional planning and cooperation with the City, I think that this effort needs to be made. If it doesn't work, then the dialogue was the issue.

CHAIRMAN DURAN: Yes, Commissioner Griñé.

COMMISSIONER GRINÉ: Jack, we've had these discussions already and I think we touched here with the Chair and Commissioner Trujillo and Commissioner Griñé already that this joint meeting can come together for a study session and that we as a County or through the EZA, whatever, that we take then the plan unto the EZC and let's see what comes out of the EZC. Take it to the EZA and what comes out of the EZA then comes to the BCC and then at that point, whatever draft we have we jointly come together with the City and let's see what they have come of it. They should have been having their series of meetings already on this plan and then whenever they create one and we have our draft and they have their draft then we'll see what common agreements we have and those that we don't have then we need to discuss them.

But I think that two drafts need to come out: one from the City and one from the EZC, through the EZA and to the BCC.

CHAIRMAN DURAN: I'm all for regional planning. You know, when I get a resolution from Councilor Bushee requesting that a committee be formed comprised of three City Councilors and two County Commissioners in order to deal with our community's water resource, I become a little suspect.

I think the resolution is fine. I think that we go to the table and we discuss the highway corridor plan, but I really think that we need to make sure that we deal with the County's business as a board independent of what Councilor Bushee may have to say.

MR. KOLKMEYER: Mr. Chairman, again, this is a real regional

planning issue. Staff would like to encourage you to view this in that regard and that we do need some models for us to be able to move forward in the future in how we plan to deal with these even before we get to whatever comes out of our regional planning effort be that a regional planning authority or whatever. This is a really good issue and we would like to encourage you to keep the process moving forward.

If you'd like to amend the resolution in some regard that would be fine. But we think that the important aspect of the resolution is that we do this next meeting, that we do the study session with the City.

CHAIRMAN DURAN: What would you think if we amended item one to say that the City Manager and the County Manager are directed to schedule a series of combined City/County meetings to review the Highway Corridor Plan. Let's leave adopting the plan off.

COMMISSIONER ANAYA: Mr. Chairman, before we go into the motion here, I think what Commissioner Griñé's concern is and I think what I hear from you is all we really need is a reversal of the structure of the meetings. The first meeting should be a presentation to the EZA, perhaps the EZC and the combined effort in that direction. And then the final stages of the presentation then should be joint City Council and County Commission because of the make-up and the composition of the EZA and see then we go to the body as a whole; you see? That's what I think I hear from --

CHAIRMAN DURAN: I think that we should start with the two governing bodies and then go down.

COMMISSIONER ANAYA: But that's kind of going backwards because usually what they do in the legislature is that they start in committees and then from there they go the floor as a whole on both houses. That's usually the protocol.

COMMISSIONER TRUJILLO: We've got a product that has been compiled by the community. We've got a product that we went over the last meeting. I think we need, the City and the County need to sit down jointly and look at that product and then do the County Commission and the EZC and the CDRC and everything else. But converge on that product and then decide what we're going to do if we're going to go on by ourselves or if we're going to go on together.

COMMISSIONER GONZALES: Mr. Chairman, but I would submit that a lot of Commissioner Trujillo's issues and Commissioner Anaya and Commissioner Griñé that whatever the product is it's going to have to make it through the EZC and EZA because it's going to be in the form of zoning, whatever the standards are going to be and so if you start with the EZC and EZA and then you make it all the way to the City Council then you agree with the product and then you have to send it back to the EZC and EZA for any type of formal adoption because those are the boards that are actually going to adopt the zoning along this area; is that correct? That the EZC and EZA will be adopting the zoning from these ordinances?

DENICE BROWN (County Attorney): Yes, you're correct.

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COMMISSIONER GONZALES: So I don't think the process that staff has described is such a bad process, starting out with the City Council, but ultimately the EZC and EZA are going to have the final decisions no matter what comes forward in the process.

MR. KOLKMEYER: Mr. Chairman, just one point on that. Portions of the highway corridor are in the City so it wouldn't be just the EZA. That's part of where this gets complicated. It really does have to be adopted by the EZA, the County and the City; isn't that correct?

MS. BROWN: Mr. Chairman, Commissioner Gonzales, and Jack, the portions in the EZ area have to be adopted by the EZC and then the EZA and the portion in the County has to be adopted through recommendations from the CDRC and EZC and the portions from the City is adopted however the City adopts their ordinances.

COMMISSIONER GONZALES: And I would suspect, Mr. Chairman, that each of those areas we're going to see a lot of different products come out so maybe there will be a lot of different aspects going out.

So when you say unified highway corridor plan, Jack, there may be areas that the City disagrees with the County or the EZA on what should happen in certain areas and in their own area they may not. I don't know if you're going to have a unified corridor plan. I think that it's going to be thrown up in the air and we're going to have to go through a series of meetings to figure out how it comes down.

It seems like we're spending a lot of time on this, Mr. Chairman.

CHAIRMAN DURAN: Will you make that amendment?

COMMISSIONER GONZALES: I'd make that amendment.

CHAIRMAN DURAN: Is there a motion to amend it to just say meetings to review the highway corridor plan.

COMMISSIONER GONZALES: So moved.

COMMISSIONER GRIÑÉ: Second.

CHAIRMAN DURAN: Okay, great. So there's a motion and a second. Now, is there a motion to approve the resolution as amended?

COMMISSIONER TRUJILLO: So moved, Mr. Chairman.

COMMISSIONER GRIÑÉ: Second.

CHAIRMAN DURAN: There's a motion and a second. Any further discussion?

The motion to amend and adopt resolution 1999-79 passed without opposition.

VII. B. MATTERS FROM THE COUNTY MANAGER

- 2. Request authorization to publish title and general summary of an ordinance "Santa Fe County Labor Management Relations"**

**Ordinance" which will authorize collective bargaining and
establish a labor management relations board**

ANDREW CHAVEZ (Health & Human Services): Mr. Chairman, Commissioners, at the direction of the County Manager and the BCC, we have been meeting with representatives from both CWA and AFSCME and we have been working on the development of an ordinance that will allow for collective bargaining in the county. Two of the members of AFSCME that we've been working with are here, Evalina Marquez and Amanda [inaudible] and we're pretty close to coming up with that ordinance. At this point we are requesting that the BCC allow us to authorize us to publish title and general summary to begin the adoption process of this ordinance.

Commissioner Anaya moved approval of the request to publish title and general summary of a labor management relations ordinance and Commissioner Griñé seconded. The motion passed by unanimous [4-0] voice vote.

VII. B. 3. Request authorization of actuals for County Clerk

COMMISSIONER GONZALES: Mr. Chairman, there are several issues at the upcoming National Association of Counties Conferences that I've asked the Clerk to participate in seminars as they relate to elections in the future. It's a per diem rate and it looks like per diem rates won't cover her costs and certainly her budget so I'd ask the Commission to allow the Clerk to have actual expenses reimbursed to her for attending the National Association of Counties Conferences --

COMMISSIONER ANAYA: Second, Mr. Chairman.

The motion to approve actuals for the National Association of Counties Conference and the National Elections Conference passed by unanimous [4-0] voice vote.

VII. C. MATTERS OF PUBLIC CONCERN

CHAIRMAN DURAN: Is there anyone out in the public that would like to address the Commission on any matter?

VII. D. MATTERS FROM THE COMMISSION

COMMISSIONER ANAYA: I have none, Mr. Chairman.

COMMISSIONER GONZALES: I just wanted to bring up that I had the

opportunity to visit with Senator Domenici and requested his support with the letter that I had delivered from Jack requesting his support for the appropriation of ten million dollars to purchase easements along the Eldorado railways and the Senator agreed to look at it seriously, so hopefully, through our continuous contact with the Senator we may hopefully see that this is going to be funded. It's been authorized but it hasn't been appropriated and those are two different things in the Congress. So that's moving forward.

We're going to have a strong presence at NACO up in St. Louis. Eppie Herrera who's our Indigent Director and president of the New Mexico Association of indigent affiliates, going to be participating in several health related issues as well. I'll give you a report on that as that surfaces.

I had a chance to meet with Dr. Lucas from St. Vincent's Hospital yesterday. It was a very productive meeting. Dr. Lucas is committed to establishing a very healthy dialogue with the County. He's indicated they're very concerned about adolescent psychiatric care as is other non-profit agencies and they're I think in the process of developing a program to address those issues. So I think that's good news for our community that St. Vincent's is moving in that area. So those are just things I'd like to report to the governing body.

CHAIRMAN DURAN: Thank you, Commissioner. Anyone else?

VII. E. MATTERS FROM THE COUNTY ATTORNEY

- 1. Request authorization to enter into an easement agreement with Alamosa PCS, LLC, for a telecommunications facility in the Hondo Hills Subdivision area**

MS. BROWN: Mr. Chairman, Commissioners, the packet has a copy of the easement. The attachments are somewhat difficult to read so we have better attachments for the original agreement. But this is basically an easement that tracks a similar easement agreement we have with Western Wireless PCS to locate antennas on Sunlit Hills water tower, which is located on County property near Arroyo Hondo. And the only difference between this easement agreement and the easement with Western Wireless is that there are fewer antennas that Alamosa is proposing. They're only proposing two as opposed to the six that Western Wireless has up there. So there is a reduction in the easement, in the dollars we charged, from \$7500 a year to \$6000 a year.

Other than that, the easement agreement is identical to the easement agreement we have entered into with Western Wireless PCS.

Commissioner Anaya moved to approve the easement agreement with Alamosa PCS.

Commissioner Griñé seconded the motion.

CHAIRMAN DURAN: For discussion, Denice, how do we deal with an intensification of this use? Do they come back for permits?

MS. BROWN: Mr. Chairman, I thought this project already went through the approval project.

CHAIRMAN DURAN: Are they adding more antennas to it?

MS. BROWN: Yes. They came before you and requested to locate two antennas on this tower. It may have gone to the EZA. Do you know, Diana? Did it go to the EZA? I think it was the EZA. And one of the final conditions of approval was that they enter into a similar lease agreement, easement agreement with the County, that Western Wireless was required to enter into when they located their antennas on that tank.

Upon voice vote, the motion was unanimously approved 3-0, with Commissioner Gonzales abstaining.

- VII. E. 2. Executive session**
- a. Discussion of pending litigation in *Santa Fe County v. PNM***
 - b. Update on possible acquisition of Hagerman well and water rights**
 - c. Update on union negotiations**

Commissioner Griñé moved to go into executive session to discuss the above-named topics. Commissioner Griñé seconded. The motion passed by unanimous roll call vote with Commissioners Anaya, Gonzales, Griñé, Trujillo and Duran voting in favor.

[The Commission met in executive session from 4:30 to 5:50.]

Commissioner Anaya moved to come out of executive session, having discussed pending litigation, acquisition of the Hagerman well and water rights and union negotiations. Commissioner Trujillo seconded and the motion passed by unanimous voice vote. [Commissioner Gonzales and Commissioner Griñé were not present for this vote.]

VIII. PUBLIC HEARINGS

- A. **Emergency ordinance 1999-9. An emergency ordinance amending emergency ordinance 1999-8 to prohibit the use of engine retarders on US Highway 285 in the vicinity of the State Route 503/Nambe intersection and from the intersection of Interstate 25 to the intersection with State Route 553, on State Route 599 from Airport Road to Interstate 25 and State Route 344 from milepost 16 to milepost 17**

CHRIS GRAESER (Assistant County Attorney): Thank you, Mr. Chairman. There is a change to this that maybe didn't make it into your packet. State Road 553 is now County Road 33. We took it over some time recently. It's not reflected in the atlas yet, but that is changed in the final version of this. I just want to make a comment that the Highway Department had the signs up by the opera within half an hour of your voting on this ordinance a week and a half ago. So that's pretty good on their part.

What this does is adds a couple more areas in the county where jake brakes are prohibited. We're keeping the prohibition on 84/285 next to the opera. Item B is a technical change what previously was 502. Now it says 503 and also extends it another half a mile south of that intersection. That was at the request of the State Highway Department.

Item C prohibited jake brakes or engine retarders near Eldorado. D would prohibit them on the bypass from Airport Road out to Interstate 25. And finally E prohibits them on what was referred to here a couple of weeks ago as Heartbreak Hill. This is the request of the San Pedro Neighborhood Association. This is that very steep hill on 344 just off Highway 14.

Once again, this does have an emergency clause and enactment of this would require that the Board of County Commissioners find that use of these jake brakes constitutes a continuing danger to the public health safety and their welfare. And I have that emergency clause in there, so enacting this ordinance would declare that emergency, that danger. I'm open for questions.

CHAIRMAN DURAN: Any questions of Chris? What's the pleasure of the Board?

COMMISSIONER ANAYA: Mr. Chairman, this is a public hearing. We need, if there is public input.

CHAIRMAN DURAN: Excuse me. Is there anyone out there that would like to address the Commission on this ordinance.

COMMISSIONER ANAYA: Mr. Chairman, since we've already had a precedence on this time of hearing, I move for approval of acceptance of the emergency Ordinance 1999-9.

COMMISSIONER TRUJILLO: Second.

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The motion passed unanimously [4-0] upon roll call vote with Commissioners Anaya, Griñé, Trujillo and Duran voting in favor. [Commissioner Gonzales was not present for this action.]

VIII. B. The Planning Division staff will present Part II: "The Planning Districts" of the Santa Fe County Growth Management Plan. Planning Division staff will request the following:

- **Resolution No. 1999-80. A resolution adopting the urban area boundary (pp 67-68), the urban growth areas (joint annexation plan), the south Santa Fe growth area, the southwest Santa Fe growth area, and the Airport Road growth area (pp 68-69); and the Extraterritorial areas (pp 71-74) and the proposed element plans (pp 75-77)**

MR. KOLKMEYER: Mr. Chairman, Commissioners, thank you very much. We are actually now at the last public hearing that we've scheduled to go over the entire Santa Fe County General Plan Growth Management Plan. So we've really come a long way and we appreciate your support and your interest in sticking with us and going through it in this manner so that we have a chance to break the plan down and make sure that you understand it and the community understands it.

We're to the point today that we'll be starting on page 67 and going to the end of the document. There are several items that we're going to go over with you and then invite any public comment that we have on this. Just as a reminder, what we had agreed to do after this meeting was to come back in August and entertain amendments that would be made from any groups in the community or by you, the Commission or by the staff, so we plan to do that meeting the first BCC meeting in August. When we set this process up we also agreed that we would come back with all the studies and reports, research that has been done on the General Plan to also give that to you for that to be adopted also along with the General Plan. So we would conceivably do that all in August. So it looks like we're fairly close to being able to wrap this up.

The items that we want to discuss with you this evening really have to do primarily with our relationship with the City of Santa Fe and the residents of the county who are influenced or live within or close to the urban area. We want to start on page 67 with a brief discussion on the creation of an urban area boundary. As you remember when we went to Portland, this is where we first started to get into the discussion of urban growth boundaries and growth areas and no-growth areas and we put considerable time into thinking about all this. The result is in our General Plan we believe there needs to be some delineation between an urban area and a non-urban area. That is particularly

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in what is the City of Santa Fe and what is the City of Santa Fe to be 20, 30 years from now. Consequently, what is the County and what does that mean?

It's not to imply that there's a growth area or there's a non-growth area. In fact as we've gone through the pieces of the General Plan, you now know that outside of the urban area that we're proposing we have very clear and distinct districts where other rules and regulations will come into play that will allow the county to continue to develop in a manner which we feel and you feel is germane to the important features of the county over its history. So at issue here is the need for us to make some statement of where that difference is. Where is the urban area and where is the non-urban area? And we think at this point it's fairly simply.

Of course nothing is ever really simple, but as simple as we can make it. There's a map up here for people in the audience if you can't see this one up here. But we believe that the urban area -- we have some very good elements working with us. One of them is the interstate, which clearly can become a separation between an urban area and a non-urban area. We believe that's the southern boundary that loops around past Old Pecos Trail and goes down to around the area of El Gancho on that side.

The other thing that is working to our advantage is that we have the bypass that goes up that is another kind of delineating factor that can be used to separate an urban area and a non-urban area. And we think that it should be on the west side of the city. That's another boundary. And it follows along up to the northern boundaries up to Tesuque, leaving the traditional community of Tesuque out, and then down around the foothills area and back. And we are recommending that that be adopted as the future urban area boundary.

Now one of the questions it raises to people in the community is well, what does that mean? It means that inside that area there's a lot of undeveloped areas and a lot of neighborhoods that, in a community such as Agua Fria that 30 or 40 years ago were really considered to be rural. That's changing, but there still needs to be some consideration for a variety of developments that can occur, some of which would be more intense than others. But that's an area that both the City at this point has expressed and we believe it's true, that will be subject to urban services in the future - sewer, water, transit, and more than likely, to a change in their densities. In other words, they would have the urban characteristics, the more compact, higher density characteristics that the areas to the outside, although even in the districts that we have, the Community College District and the Airport District there would also be opportunities there for more compact development, but then again that's true already in places like La Cienega and Tesuque. So that area will become more urban in the future.

Relative to that, the other piece we think needs to be delineated here is that inside that urban growth area then, how should it develop? And our General Plan is recommending that where the City has the future land use map, which you've probably seen before that recommends very specific densities that occur in that area and that the

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City annex.

Ours is slightly different but similar. We think that the area inside that urban area boundary does need to be designated for growth into the future, but it should be very carefully planned between the City and the County right now and should be planned as future neighborhoods. On the map that you have in front of you they're shown as areas one, two and three. Area one is the area that is south of Villa Linda Mall. Area two is that area which is south of Tierra Contenta, and Area three is the Airport Road District. All of these areas will be developed in the future so what we're recommending is that we designate those growth areas and we work along with the City in a regional planning effort and create specific plans for them in the area, in each area, with the assumption that probably they will be annexed by the City at some point.

The problem is what happens between now and when they're annexed. We think some changes should occur, that some areas should remain the same, perhaps they should be low density. Other areas might need to be more dense and we can change all of that through the existing Extraterritorial Zoning Ordinance that we have right now. There's provision in there for creating village districts and neighborhood districts and they haven't been used. They never have been. Have they ever been used? Has a village district ever been created through the EZO? So we have a mechanism that's already there that has never been used.

We can accommodate that and everybody in the areas would know when they would be slated for annexation or if they wouldn't be, so they would take out some ambiguity from the situation that exists right now. One thing that we want to make clear, that our plan is recommending, however, is that Airport Road, the area from Cerrillos and Airport Road out to 599, should be our first priority as a planning area. Not that it be annexed entirely first, but that it be planned first. We need to work with the City to do specific planning for Airport Road. And again, we can get on with it through the existing EZO and our General Plan is recommending that there be three growth areas, that the Airport Road area be the one that is designated for immediate planning with the City.

There are three of them -- the south Santa Fe growth area, the southwest Santa Fe growth area, and the Airport Road growth area. And that is basically the first portion of our plan. We want to also discuss with you our recommendations for the two-mile boundary. We're recommending some changes to that and also the element plans that would go along with this plan that suggest some planning for the future. But maybe we ought to answer any questions you might have about the urban area boundary and the growth areas before we proceed.

CHAIRMAN DURAN: I have one question, Jack. Why is page 70 omitted from discussion?

MR. KOLKMEYER: Why is page 70 omitted? You did that the last meeting. That's the Airport Development District. We went over that and the

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Community College District at the last meeting.

COMMISSIONER TRUJILLO: Mr. Chairman, what is the City saying about -- how are they looking at these boundaries? The urban area boundaries? Do we know?

MR. KOLKMEYER: Yes sir, we do. That's the City's future land use plan and basically it's pretty much the same. The urban area boundary is pretty much the same, except they cross to the other side of the highway where we follow right along the highway. They include the Downs, the old race track, the municipal airport and the MRC as part of their urban area. They also have a portion up there along Las Campanas which they include in their urban area boundary. Then I think it's fairly much the same.

Our reason for differing with them on these issues is we have delineated the Airport Development District as a discrete planning district, not as part of the City's urban area. Because it's really -- we can make the argument we need to plan that jointly. Whether it's urban or not remains to be seen and the Municipal Recreation Complex is not really an urban area; it's a recreation area and we argue that that for the time being, for the foreseeable future should stay outside of the urban area. And then we're fairly similar on that.

The other difference is the City shows a fairly detailed zoning scheme for the areas around Tierra Contenta and south of Villa Linda Mall but they don't show that same kind of detail north of Airport Road. In other words, one could assume from the City's future land use map that they don't view that as an immediate area of concern as they do for the other portions of the urban area. We differ with them fairly strongly on that issue. We think that's number one. That's the area where we have the problems that need to deal with jointly.

Other than that thought, we agree that there should be an urban area and we agree that there should be growth areas in that, so in a sense we concur with them on the picture, but we differ slightly on the details.

COMMISSIONER TRUJILLO: And the important thing is that the County play an integral role in the planning of this area so there's the appropriate transition that takes place out into the county and within the urban area.

MR. KOLKMEYER: That's absolutely correct and again the assumption from this is that the City's going to plan it and they're going to do it and they have densities already determined. Our point of view is exactly as you just said: we should be doing this together.

CHAIRMAN DURAN: Thank you. Any other questions of Jack?

MR. KOLKMEYER: The next part, Judy will talk with you briefly about the Extraterritorial areas and we'll go over our recommendations for the changes in the two-mile.

JUDY MCGOWAN (Senior Planning): Mr. Chairman, Commissioners, I'll briefly as I can go through this part because I know it's been a long time already this

evening. But the final map and the draft is between pages 72 and 73 and it's a proposal for the two-mile Extraterritorial Zone. But I want to back up a little bit to remind you that these pages, 71 through 74 talk about Extraterritorial areas. We need to remember that there area at this point, three Extraterritorial areas in Santa Fe County. And not forget because the most prominent one is the City of Santa Fe that there's these other areas and issues and concerns that need to be dealt with also.

Obviously, Santa Fe is the most obvious one. It's the most developed Extraterritorial area. It's the only one where we have a JPA creating an EZC and an EZA. And it also has a fairly long history of planning. There was an Extraterritorial plan that was adopted in 1988 by the EZA and by the Board of County Commissioners and by the City Council. There is a subdivision regulation that was adopted by the Board of County Commissioners and the City Council, and then an Extraterritorial Zoning Ordinance which was a joint adoption also and adopted by the EZA. So there's a long history of cooperation despite the bickering and the jousting over issues that goes on. There is a long history of cooperation around the City of Santa Fe.

And what we've laid out in the plan is just some issues that we think need to be addressed and resolved for each of the Extraterritorial areas. For Santa Fe those issues area first of all, that we've adopted some elements or are proposing to adopt some elements in the County Growth Management Plan that will probably require amendments to the Extraterritorial plan that we've just out. That that is going to need to happen for the highway corridor, for the urban growth boundary and for the urban growth areas. And also for the Community College District.

We've laid out some options that we haven't asked you to choose yet but to consider how that might be dealt with, ranging from adopting the County General Plan and automatically amending the EZ plan, to dumping the EZ plan entirely and having the City and County adopt each others' general plans and just be done with the third plan in between. I'm sure in the process of talking with the City in this regional planning that you'll come up with an option that will be workable.

The second proposal that's in there is the proposal to amend the two-mile Extraterritorial Zone. And this has come up in response to a request from the City once again because primarily of the Tierra Contenta annexation where that at the present time exists outside of the two-mile map. And there is a process already on the books for amending the map and this is the proposal that we've come up with from County staff for that amended map. And it is different from what the City proposed.

What we tried to do was take into account a two-mile distance where we could from the City's boundary, including especially the Tierra Contenta annexation, and use where we could section lines, grant lines and community boundaries to determine where that two-mile boundary should be. So one of the major things we've done was recognize that there area communities there who may not want to be in the two-mile Extraterritorial Zone of the City of Santa Fe. It's a little hard to follow.

I believe if you start down in the Arroyo Hondo/Seton Village area -- we're not proposing any amendments to the boundary. It already exists beyond the two-mile in that area and we're not proposing any changes along there. We would adapt the boundary through the Rancho Viejo area and that south of I-25 area to section lines at approximately a two-mile distance. And then when we get across I-25 to La Cienega, we're trying to keep the two-mile out of the immediate planning area for the La Cienega area. And it follows the airport boundary and follows then the Cieneguilla Grant boundary and up to some section lines kind of stair-stepping up section lines on the west side there to stay mostly out of that west side planning area because there is a community plan effort that's going to be going on there also. And then rejoins the existing two-mile boundary.

And we've made no changes until we get up to Tesuque. And because Tesuque is now a traditional historic community it's no longer inside the Extraterritorial Zone. And we have proposed that Los Caminitos, which is north of the Village of Tesuque be deleted from the Extraterritorial Zone, because with the addition of Tesuque as being under the County jurisdiction now, that area is now totally physically separated from the rest of the Extraterritorial Zone. So that is definitely a change from what exists now.

Also to acknowledge that Agua Fria, even though it's inside the two-mile otherwise, is also not part of that Extraterritorial Zoning District.

COMMISSIONER TRUJILLO: Judy, the buffer zones of the two-mile and the five-mile, do they begin at the urban boundary? Do they begin there?

MS. MCGOWAN: No, the way the statute reads is that there is a concurrent zoning jurisdiction between a city and a county that for this size city, for two miles, starting at the city limits. And the legal position has long been that that two-mile doesn't automatically change with an annexation, because you are in a sense changing a zoning district, and that requires individual property owner notice and amendment to maps and all those kinds of things. So that two-mile boundary has not changed automatically over time with each annexation.

The five-mile boundary also starts at the city limit, but that one changes automatically with an annexation because you're not changing the zoning designation of any property. We also laid out some issues in there that need to be considered when looking at the two-mile boundary, and I'm not going to go into those, just list them. One of them is representation, which has been a legal issue in the past. I know the City would like to have three members on the EZA or the dominant majority on the EZA but the reason it's the other way is because of voter representation, the one man-one vote rule comes in to play to a certain extent.

And to remember that the county residents who live within that two-mile district can't vote for City Councilors on the EZA and the City Councilors are making decisions and it's a touchy issue.

COMMISSIONER GRINÉ: But Judy, also but that was done by the state

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legislature, in order to adopt EZA's throughout the state. So actually it's by statute. Right?

MS. MCGOWAN: Yes. The majority of the county representation on the EZA is by statute and it's for that reason, because the County Commissioners are the elected officials in that area and the City Councilors are not. That's the purpose.

CHAIRMAN DURAN: Any other questions of Judy?

COMMISSIONER GONZALES: I have a quick question as relates to the Extraterritorial Zone. Is this for property for subdivisions that are occurring in them? Or the type we'd like to see? Is this an appropriate time to ask those questions about what's happening in the Extraterritorial Zone? Or what the Growth Management Plan will call for for the type of subdivisions? My case in point in the Extraterritorial Zone, we're talking about high density, open space, models, that are used for those kind of developments that we'd like; is that right? Is that what we're going to pursue in the Extraterritorial Zone?

MS. MCGOWAN: I think our position is that in -- the County Growth Management Plan is being approved right up to the city limit. So the policies that you're approving for the Community College District or the Airport Development District, for the rural district and for the urban growth areas will be the adopted County policy on development patterns in subdivisions for those areas.

COMMISSIONER GONZALES: So for the policies, the ordinance supports the policies then, right?

MS. MCGOWAN: That's correct. And my point is that means that at some point the Extraterritorial plan either has to be amended or repealed and another plan asserted there in the portions where it doesn't agree with this plan.

COMMISSIONER GONZALES: Would a case in point be -- we can move forward.

CHAIRMAN DURAN: One of the things I've talked to Jack about recently was neighborhood districts which are in the EZ which really haven't -- we really haven't use that. That might be a way to deal with development within the EZA.

MS. MCGOWAN: There are a number of options in the existing codes and plans for the Extraterritorial area that could address some of the policies that you've adopted for growth management that just have never been used and could be used.

Just real briefly, Española, of course, we have a joint powers agreement whereby the County Codes are in effect up to the city limits and the County does all the administration. But there are a number of issues up there that we need to be working with Española on, including the corridor and water and wastewater issues. And we have the new municipality of Edgewood, which also now will have an Extraterritorial area. Because it's small, it won't have a zoning area but will have a joint platting area. At some point a joint powers agreement may need to be worked out with Edgewood over how that is handled. That's it briefly.

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CHAIRMAN DURAN: The element plans, are you going to touch lightly on what those points are?

MS. MCGOWAN: Very quickly. The elements plans are really, what these are about is these are issues or concerns that need more detailed planning, need more information developed, they need some continuing research and some more problem solving. That could be done over the life of this growth management plan for whatever that is. I'm assuming twenty years; it may be shorter. Some of these we need to recognize. There's a whole list of them and some of these in fact are already underway and may be done in pieces and not as each one.

They would be proposed to be adopted as they get completed as additions to the Growth Management Plan. The first one is open space and trails plan. That one is underway now with the COLTPAC Committee and will be coming to you for adoption towards the end of this year, I believe. Water resource management plan -- there are several efforts that are underway. I don't know if there's an official one yet, but maybe those could be brought together and the water company is doing some planning. There's also the regional planning that's going forward under the Interstate Stream Commission.

Santa Fe County Housing Plan is one that the planning staff feels is very important to do, because if we're going to be truly concerned about providing affordable housing for residents, we need to have developed a lot more information in order to be effective about providing that housing than we currently have. And hopefully the census that's coming up in the year 2000 will provide some of that information and we'll be able to move forward on that. Because what we're talking about with housing is not just public housing but also being able to provide continuing middle class housing for residents in the area.

Economic development planning, some of that is underway. More can happen. I believe the Airport Development District will be somewhat a form of economic development planning also, but we need to remember that there's other areas of the county that haven't been looked at yet and probably would like some attention, such as the southern part of the county, for economic development planning.

Capital improvements plan, we have an ICIP which prioritizes projects for state funding. What the capital improvement plan anticipates is a broader structure where you would look beyond just state funding to all different kinds of funding sources, public and private, in order to implement some of the things that we're moving forward with, and in order to leverage County funds so that we get a better return and can accomplish more things.

Transportation plan is also one that's probably going to be piecemealed buy it's moving forward. ARTF is one element of that and that will be coming to you hopefully, for final approval in August. It's moving along. Transit needs to be looked at. There is some rail planning that is starting and needs to be continued and Park and Ride is an element that needs some continuing attention, as well as possibly some arterial layouts for

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other parts of the county, not just immediate to the City of Santa Fe.

Utilities corridor plan is also one that -- there area probably a few simple issues with that. One is that the County needs to have a role in deciding where some of these utilities corridors happen, especially if you're having a more active role in where the major development is going to happen, and also how utilities get installed. PNM at least is working with the City and the County right now on something that may become an element of that. Those are the element plans.

CHAIRMAN DURAN: Thank you, Judy. Are there any questions of Judy or Jack? This is a public hearing. Is there anyone out there in the audience that would like to address the Commission relative to this resolution?

HELEN WUNNICKE: My name is Helen Wunnicke. The address is P.O. Box 16081, Santa Fe, 87506. My title is the Area Development Committee Chair for the Tiempos Lindos Homeowners Association. We're out on Morning Drive. We're in Agua Fria. We're in the EZ. And really all I'd like to say, Mr. Chairman and Commissioners, is that we really support the planning processes. We are an area that's very interested in being a part of the process. We have a lot to offer. We know the area. We've certainly had a lot of dealings with many of the neighborhoods over the last year on various development issues.

I'm simply here to say that we're over there. We appreciate the effort. We want to be involved and we in fact are starting to be involved, it appears with what may be a unique planning process for a large tract of land that's adjacent to our subdivision which you know as the South Meadows property and it looks like between talking with the developer and the County and various parties that we may actually be able to enter in to a kind of a planning process that you're talking about here, having to do with the County, elected officials, developer, and neighborhood people.

So we're very hopeful and I know that there's been a lot of discussion actually with you gentlemen, with County people as well as with myself as a representative of our area and homeowners association. It looks like we're actually going to be able to do this. I don't know that anybody knows exactly how we're going to do it, but I think all parties agree that it is to the best benefit of everyone. The neighborhood, the larger area, we can develop in a way that actually benefits the community and that is viable for the developer and that we can all work together from the get-go to really do a good planning process that's going to work for everybody and everybody can save money and time and headaches and that we really can do something that's quality.

So thank you for your involvement and thank you, Mr. Chairman, Commissioners, for your time and also to County staff and everyone involved. We think it's exciting and we look forward to working with everyone.

CHAIRMAN DURAN: Thank you very much.

Commissioner Griñé moved to approve Resolution 1999-80 and Commissioner

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Trujillo seconded. The motion passed by unanimous [4-0] voice vote.

VIII. C. Ordinance No. 1999-___. An ordinance amending Ordinance 1999-10, Article III, Section 2.3.6, Height Restrictions for Dwellings or Residential Accessory Structures, Article III, Section 4.4.4.F 13b, Screening and Buffering for Residential Uses, and Article X, Definitions of the Santa Fe County Land Development Code to create height standards for walls and fences for residential uses (first hearing)

MS. MCGOWAN: Mr. Chairman, Commissioners, this is indeed the first public hearing on this so there will be, in addition to this, a hearing before CDRC on July 29 and a second public hearing which is tentatively scheduled for August 10 before the board. The hearings have been noticed in both the *New Mexican* and in the *East Mountain Telegraph* so that the word could get out to the south part of the county also. The Board authorized the development of this ordinance at its last meeting and we talked a little bit at that point about the reasons for it. Mostly the concern was raised that some quite tall fences and walls were being built and cutting off people's view, neighbors' views and potential sunlight, and that we need to consider some height limits.

We've tried to come up with a fairly straightforward ordinance but when we get to the issue of development permits it gets a little complex. And I also want to note that already today, we've been getting feedback from people so there may be some amendments that would come forward via the CDRC before the next public hearing, some issues that have been raised that seem to be valid things and could be positively dealt with.

The ordinance is pretty simple. Section 1 is a new section that would create some height standards for walls and fences and also sets out which walls and fences would need development permits and which ones would not. The reason for that is primarily to limit the costs and the time that would be required for fences that we really don't need to regulate any way or do a development permit for it in any way. I have a presentation that kind of addresses some of these issues. I don't want to go line by line through the ordinance, so I'll just speak to it very generally and then do the presentation and then we can talk about some questions if you have any.

Section 2 of the ordinance, which is on page 2 of the draft, essentially just asserts that residential development -- this would be for larger subdivisions -- also conform to the height standards for residential uses. It also says that if you're in a non-residential development that's adjacent to residential that you'll have an eight-foot height limit on walls that are screening, so that you don't end up with ten and twelve-foot blank walls adjacent to residential uses.

The final section, Section 3 of the ordinance is definitions some of which don't

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exist right now. One is we've just amended the definition of structure to say that fences and walls indeed are structures and that in certain instances would require development permits from the County. Then we've done a definition for wall that is very general, I hope. Basically, it's a solid, upright barrier, usually constructed of but not limited to concrete block, adobe brick or stone, used to enclose or screen areas of land. We're not including walls of buildings in this definition.

Retaining walls, simply a wall for holding in place a mass of earth. And then fence, opaque. Opaque fence, the term is used throughout the Code right now in the sections of the Code, especially for non-residential uses where you're using a fence or a wall to buffer or to reduce the width of your landscape buffer around your non-residential use. There's no definition in there now so we've come up with what we hope is a very simple definition. It's similar to wall, but it's a barrier constructed to enclose or screen areas of land, of solid material and/or in such a manner that the area enclosed cannot be seen clearly through it. For example, a coyote fence or a chain link fence with slats are opaque. Barbed wire and pole fences are usually not opaque. Hopefully, that's simple and clear. We tried to stay away from real legalistic wording because that confuses everybody and it's hard to defend.

So I'd like to do the little presentation if I could right now and show you what's out there for walls and what the proposed standards are. [Exhibit 1]

CHAIRMAN DURAN: Judy, I have a question please. In the ordinance, 2.3.6d number 2. The height of pedestrian door or gate portals built into a wall or fence shall not exceed nine feet. And if you go to your example on the third page, you have an existing wall which is a traditional method of building the wall with the gate, you have 9'10" -- existing walls, heights of older walls are generally lower. Door or gate portals are a traditional feature. So my question is, if we limit this to nine feet, are we going to be doing away with a traditional construction technique, or the way people build their walls?

MS. MCGOWAN: We talked about that in staff. We don't believe so. All these height limits are subject to discussion and can be amended up the final time when you approve the ordinance. The one I think you're referring to is the Santuario and that's a double gate that's wider what a normal gate would be for a residence, I believe. Many of the ones I looked at and measured out in the county are indeed nine feet high.

CHAIRMAN DURAN: I think this is a really beautiful architectural element to that structure. If we're going to limit it, it would seem to me we would limit it to a height where we would still be able to preserve this type of architecture. So why didn't we say 9'10"? If that's what it is.

MS. MCGOWAN: To be honest, we were looking at the average of what I had seen out there. So if we need to amend this to make it taller in certain cases, that can be done.

CHAIRMAN DURAN: Okay, thank you.

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MS. MCGOWAN: I do want to say one thing. I want to congratulate whatever staff member fixed the sound system because we can hear you tonight and we couldn't before.

COMMISSIONER GRINÉ: That was Ish.

MS. MCGOWAN: This is real short. The reason I did this, first of all it's more fun than writing an ordinance. Second because it seemed like a real good way to just simply convey what we're proposing. If you change the standards, get amended, it can all be changed real easily. But we went out and surveyed styles of walls and fences in the county. So there's just a few preparatory things to talk about there. There's a huge variety of stuff that all exists side by side right now and we don't want to impede that happening. There's coyote fences. And it's interesting also because the fences and walls seem to be different in different communities. There's a definite style from community to community.

These are some walls in the northern part of the county. There's a lot of barbed wire. Some masonry, painted words, it's one of my favorite ones right there. Metal pole and barbed wire. Of course this is real prevalent for the bulk of the county. These portals are also prevalent throughout the county wherever you have masonry walls and sometime even coyote walls. Just from the basis of the brief survey, it does appear to be true that for the most part, the older walls and fences are lower than newer ones, for whatever reason. As I pointed out, the doors of these gate portals are a traditional feature. I think it's probably related to who was doing the labor of building the wall.

This is the most common fence type in the county, barbed wire with your metal posts or cedar posts or railroad ties. It's dramatically the most prevalent one. Masonry walls are really in the minority. And we're proposing that you would not have to come get a permit for anything like a barbed wire fence or an open pole fence. This is the height standard that's in the draft ordinance right now and we're proposing six foot at the property line and eight foot if you set it back 25 feet from the property line.

COMMISSIONER ANAYA: Judy, what's the reason behind allowing two feet more if it's a 25-foot setback? Is there any rationale behind that?

MS. MCGOWAN: Just that if you're set back from your neighbors -- well, there's a couple of rationales. One is you're less likely to have visibility problems right on the street right away, at corners and those kinds of things if you're set back with a taller wall. And also the shorter wall at the property line would impede less with your neighbors' sunlight and views. So if you're set back, that's not as much of an issue.

COMMISSIONER ANAYA: And it also tends to miniaturize the further away it is.

MS. MCGOWAN: Yes. Especially in this drawing. This is an actual wall that's out there. It doesn't show very well, but that's a four-foot adobe wall that has to be at least 100 years old and we're proposing anything four feet or shorter for a wall also not be required to get a permit. This is a coyote fence that's covered with vines. It

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has a masonry portal and it meets the proposed standards. It's six foot in the fence part and it's eight feet tall in the gate portal. So they can be built at less than nine or ten feet. And that is right on the property line.

This is one that's taller. It's eight feet adobe and then the portal is ten feet tall. That is also right on the road. This is one of the most complicated rules that's in there. I hope this illustration helps explain it a little bit. In the Code right now there is a maximum height limit of ten feet for a retaining wall, but we all recognize that there are slopes where you would need more than ten foot of retainage or a real common type of wall, especially in the villages where the lots are close together is a short retaining wall with a wall or a fence on top of it surrounding your yard.

So what we're proposing is that, since there's a ten-foot tall limit right now on any retaining wall, that there also be a ten-foot tall limit on any retaining wall combined with the wall above it, as a property enclosure or a yard enclosure. That's pretty tall. Then if you need more than that, that you step back and do another retaining wall or step your property boundary wall in further, so that you're not confronted with say a 16 foot wall right at the edge of the property when you combine a ten-foot retaining wall and a six foot wall or fence. This is an illustration of a series of walls that exists in the community out there right now that corresponds to that rule.

The overall height is almost 13 feet, but they've broken it up into two sets of walls. The first one is a concrete and stone retainer, topped by a very short free-standing wall. And then there is an area that's actually in this instance probably nine or ten feet of land area. It's got orchards planted in it and then there's another six-foot wall behind that. That's how they've achieved stepping up the hillside and maintaining their privacy at the same time.

COMMISSIONER GRINÉ: Is that in Madrid?

MS. MCGOWAN: This one is in Chimayo.

COMMISSIONER TRUJILLO: Judy, essentially what this ordinance is going to do, it's going to put in place some regulation as far as height is concerned. It's not going to change the permit process. You're not going to put in place any more permit requirements or any more reviews than is already in place now, right? The reason that I proposed this ordinance was because I was getting some complaints from my community that fences, picket fences were going up ten and twelve feet and it was disrupting or obscuring views and essentially the sky's the limit. So based on that, I brought this forth and I think you did an excellent job in defining how fences and walls and things like that can be regulated and take place.

My concern is, and I read it in the *New Mexican* this morning is that barbed wire fences would require permits. I just saw on the view graph here that they won't require permits.

MS. MCGOWAN: That's correct.

COMMISSIONER TRUJILLO: So I'm trying to make sure that we're not

going to augment the requirements that are in place now, or increase the ubiquitous bureaucracy.

MS. MCGOWAN: We are increasing the permit requirements in limited cases. But you're correct. We're trying to clearly say in the ordinance that if you're doing a barbed wire fence or a pole fence that's not opaque, that you can see through, don't come in for a permit. There's been a proposal that we should look at those if they're going to cross access easements, and that could be talked about also in the amendment process or in the review process, especially with CDRC.

Right now, we don't actually permit all walls and fences. We look at retaining walls. They are permitted right now. So there will be an increased requirement because what we're saying here is that if you're building a fence that's higher than six feet, a wall that's higher than four feet, you really need to get a County permit. Or any wall or fence that's going to cross a drainageway where you might interfere with drainage or create a flooding problem you should get a permit. But aside from that, we're not requiring permits.

CHAIRMAN DURAN: Any other questions of Judy? This is a public hearing. Is there anyone out there that would like to address the Commission concerning this ordinance. This was the first hearing. We'll have one more. Thank you very much.

VIII. D. Ordinance No. 1999-__ . An ordinance pertaining to the use of County right-of-ways by utilities and other persons (first hearing)

TOM DOMINGUEZ (Traffic Engineer): Mr. Chairman, Commissioners, we brought this before you as a first hearing and as a draft, an ordinance pertaining to the use of County right-of-way by utilities and other persons. [Exhibit 2] When final action is taken on this ordinance, it will be repealing Ordinance 1994-2, which currently is titled Regulations of Excavation and Restoration on County rights-of-way. When it was done, it was vague in scope and it was pretty much unenforceable in some areas.

As some of you Commissioners realize in your districts, we're having a lot of failures in the roads because of lack of compaction. We're having a lot of maintenance nightmares because of lack of compaction. So what this has done, has been drafted up to put a little more teeth into it. I'll spare you all the reading of the ordinance and you can look at the table of contents and go through it.

Basically, the first part would be the legalese about it, referencing the jurisdiction that the Board of County Commission has to regulate uses and charge fees for use of the right-of-way. It goes through definitions and the application process with some conditions on the use of the right-of-way. I think the biggest change you'll see in this policy versus the other one is going to be in the cost. What we've done, and we've

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brought this forward some time back about a year or two ago, looking at the possibility of starting a County soils lab which last year we undertook and we hired a guy that was 25 years federal highways has come in and started up a lab and has really progressed with it.

Currently we're able to do soils testing, asphalt testing and concrete testing. So what we've done in this ordinance is the fee structure, the way it is changed is currently it's a \$50 permit fee and then each utility or person doing work within the rights-of-way is responsible for taking out and contracting some compaction results. What we've done, and we have met with the different utilities on several occasions, let them know that this would be here this evening in draft form. We have a scheduled meeting, which is a standing meeting tomorrow that I'll be distributing the same draft for comments from all of them. But the big change is they will no longer be required to submit compaction results because they have not been doing so in the past.

What we're doing is including the permit fee to be the application fee as well as the testing because we're equipped to do that right now. So instead of the \$50 fee which is in place right now, it will go up to \$250 for the initial 500 square feet and that regulates from a minimum of 12 inch trench up to 24 inches by 48 inches deep. Any trench that would exceed 24 inches in width or 48 inches in depth would have an initial fee of \$350 per 500 square feet and then there's an additional charge per square foot after the 500 square feet and that would increase. It would be thirty cents for an additional square foot for the narrower trenches and we're looking at probably forty cents a square foot on the wider trenches.

COMMISSIONER TRUJILLO: Tom, this is an out-of-pocket expense for who?

MR. DOMINGUEZ: This is for the utilities.

COMMISSIONER TRUJILLO: For the utilities. Okay. And they're required to do a more extensive study and an assay of soils and validate compaction?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, currently, what's in place is any permittee that takes an application from the County in regard to excavation and restoration is required in Ordinance 1994-2 to do their work but to hire outside consultants to come in and in order to get the proper compaction, there's a series of tests that have to be run. The names are like Proctor's gradations and so on, maximum moisture. What they do is, you have to know all those values in order to figure out the compaction. What's happening now is a lot of these people are just paying the \$50 application fee, going back and just putting the dirt back in the hole and that's why we're seeing a lot of failures now.

What we're offering now is instead of making them farm it out to a consultant, we'll do the actual testing because we're equipped to do it. I believe the going rate nowadays, it appears to be an average of \$300 per test for a consultant to do it. We feel pretty comfortable saying for \$250, which would be if we looked at it as the original \$50

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fee and the additional \$200, which would save them approximately \$100, we'll go do the testing and we'll do the compactions.

We're looking at ensuring that the County gets a proper job done.

COMMISSIONER TRUJILLO: That is a real problem.

MR. DOMINGUEZ: It is.

CHAIRMAN DURAN: Okay, are there any questions of Tom? Is there anyone out there in the public that would like to address this issue, address the Commission? If not, this is the first public hearing. Thank you very much, Tom.

MR. DOMINGUEZ: Thank you, and we'd appreciate any comments that you might have.

VIII. E. LAND USE DEPARTMENT ITEMS

1. **CDRC Case # Z 99-5280. St. Cloud Mining Corporation. St. Cloud Mining Corporation requests a variance to the reclamation requirements of Article XI of the County Code for the purpose of clearing and closing a portion of the existing San Pedro Mine. the property is located off State Road 344 within Sections 21, 22, 27 and 28, Township 12 North, Range 7 East**

ROMAN ABEYTA (Review Specialist): Thank you, Mr. Chairman, members of the Commission. Mr. Chairman, would you like me to read the entire staff report or just staff's recommendation?

CHAIRMAN DURAN: Just staff's recommendation.

MR. ABEYTA: Thank you, Mr. Chairman. Based on the unusual circumstances surrounding this case and the willingness of the applicant to clean up and close this mining area, the CDRC on May 27, 1999 recommended that the variance be granted subject to the following conditions:

1. The applicant must submit proof from the NMMMD that the approved mining permit for the 162-acre mine site has been changed and reduced to reclamation on 15 acres.
2. The applicant must submit a letter from the NMMMD that all financial assurance and clean up will be in accordance with the 1993 New Mexico Mining Act and NMMMD will be responsible for the monitoring and enforcement of the financial assurance.
3. A progress report must be submitted to the County Land Use Department on a regular basis.

Thank you, Mr. Chairman.

CHAIRMAN DURAN: Thank you, Roman. Are there any questions of Roman? Is the applicant here? Would you like to step forward and address the

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Commission please?

[Duly sworn, Mark Adams testified as follows:]

MARK ADAMS: My name is Mark Adams. My address is 123 E. Marcy Street, Suite 101. I'm the attorney for the applicant, St. Cloud Mining Corporation which proposes to do voluntary closure and clean-up work at the old San Pedro mine, which is about a mile east of Golden. As Mr. Abeyta's report indicated, this project was unanimously approved by the County Development Review Committee in its May meeting, subject to three conditions which require St. Cloud to operate in strict compliance with the 1993 New Mexico Mining Act and the regulations adopted under the act relating both to permitting and to financial assurance.

The work will be done under supervision by the Mining and Minerals Division of the New Mexico Energy, Minerals and Natural Resources Department. Mr. Doug Land who is the director of the Mining and Minerals Department is here and he can answer any questions the Commission may have. The project has been approved by the San Pedro Neighborhood Association, which is the neighborhood association in that area as a way to get the mine closed and cleaned up.

The variance is required because the County Code does not address mine closure and clean-up. It contemplates an ongoing mining operation and this is the opposite. This is the shut down of a mining operation. Mr. Pat Freeman, who is the president of St. Cloud Mining Corporation is also here and can answer any questions that the Commissioners may have.

CHAIRMAN DURAN: And you are in agreement with the staff recommendations?

MR. ADAMS: Yes sir.

CHAIRMAN DURAN: Any questions of the applicant?

COMMISSIONER TRUJILLO: Is this a reclamation?

MR. ADAMS: Yes. What it will involve is removing the movable property and the mine, an old mill, other physical property, generators, things like that. Sealing off the mine opening to prevent people from getting in there and getting hurt with opening left so the bats which live in the mine can get in and out, and reclaiming a tailings area by covering it with dirt and reseeding it and replanting it.

COMMISSIONER TRUJILLO: And what's going to happen in the area after it's reclaimed? Is it going to be left in its condition for mining?

MR. ADAMS: No, the mine operation is gone. To start up new mining would require a whole permitting process under the state statute. The mine is for our practical purposes, gone. It will be sealed up except for bats.

CHAIRMAN DURAN: Thank you very much. This is a public hearing. Is there anyone out there that would like to address the Commission concerning this issue? If not what's the pleasure?

COMMISSIONER ANAYA: Mr. Chairman, I move for approval of this

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proposal before us and it's got quite a history behind it because going back to the CDRC days when I was there the mining issue was one of the hottest issues going in those days and reclamation wasn't even conceived -- well, it was conceived but it wasn't really materialized in those days and I think it's an honorable situation what St. Cloud is doing in that particular area. I'm sure that the Reverend Stan Waldron is very happy with this issue. So I proudly move for approval, Mr. Chairman.

COMMISSIONER GRINÉ: Mr. Chairman, I'll second that and that's CDRC Case #Z 99-5280.

The motion passed by unanimous [4-0] voice vote.

- VIII. E. 3. **CDRC Case #V 99-5160. Herrera Appeal/Variance. Flaviano and Celia Herrera, applicants, request a variance of Article III, Section 10 of the Land Development Code to allow for a family transfer land division to create two lots on 0.5645 acres. The property is located south of State Road 503 in the traditional community of Nambe, within Section 10, Township 19 North, Range 8 East**

VICKI LUCERO (Review Specialist): Thank you, Mr. Chairman, Commissioners. The property is located within the traditional community of Nambe. Article III, Section 10 of the County Code states that the minimum lot size in traditional communities is 3/4 of an acre per dwelling unit.

COMMISSIONER GONZALES: Vicki, can we ask you just to move to the recommendations.

MS. LUCERO: Sure. Recommendation: The decision of the CDRC was to grant the appeal of the Land Use Administrator's decision and to recommend approval of the variance request to allow two lots on .5645 acres with the following conditions which have just been handed out to you.

1. The applicant must comply with the State Environment Department regulations concerning the septic systems for these size lots, and submit permits prior to plat recordation.
 2. The plat shall have a disclosure stating that regulations of the State Environment Department as well as their approval of these lots.
 3. If the regional wastewater system becomes available in the future and the service lines are within 200 feet of the property, the applicant will connect immediately.
- Staff recommends that the BCC deny the variance request as it does not meet County Code requirements for lot size.

CHAIRMAN DURAN: Vicki, is the situation -- is it pretty much what it's

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been for some time? There are two residences on there?

MS. LUCERO: That's correct, Mr. Chairman. The applicant states that the second mobile home was there about twenty years ago. The first has been there since 1943. Each has its own septic so nothing's changing except they want to divide the lot.

CHAIRMAN DURAN: And how do they get their water?

MS. LUCERO: They each have their own well on the property.

CHAIRMAN DURAN: And the well is far enough away from the septic systems?

MS. LUCERO: I'm not sure if it meets the requirements of the State Environment Department, but they will have to -- they will have to go and update the permits and make sure everything is legal as far as the State Environment Department goes.

COMMISSIONER TRUJILLO: You said they're mobile homes? They're houses, right? Permanent structures?

MS. LUCERO: That's correct.

COMMISSIONER TRUJILLO: They're two permanent structures.

MS. LUCERO: That's correct.

CHAIRMAN DURAN: Any questions of Vicki? Is the applicant here? Would you like to come up and say a few words?

[Duly sworn, Steven Herrera testified as follows:]

STEVEN HERRERA: My name is Steven Herrera, Route 1, Box 37, Santa Fe, New Mexico. No, we don't have too much to say. We don't object to the conditions that you people have proposed. Other than that, if you have any other questions.

CHAIRMAN DURAN: So you agree to the conditions of CDRC?

MR. HERRERA: Yes we do.

CHAIRMAN DURAN: And staff? Any questions of the applicant? Thank you, Mr. Herrera. This is a public hearing. Is there anyone out there that would like to address the Commission concerning this case, either for or against?

[Duly sworn, Mr. Vigil testified as follows:]

MR. VIGIL: I'm [inaudible] Vigil from Nambe. And my address is Post Office Box 3241, Santa Fe, New Mexico, 87501. And I'd like to thank you people for seemingly you're going to allow these people to have that residence there. They're my neighbors. They're very good neighbors and I think, because of our traditional ways in Nambe and all in our valley, we should help people like them, especially people that have a history. I used to know Flaviano Herrera's grandfather that used to go to mass two miles from the church. He'd walk all the way with his cane when he was 105 years old, the faith he had and I'd like to give you people a little history about him. He was a buffalo hunter. He'd ride his horse right next to a buffalo, jump on the buffalo and with his dagger he would kill the buffalo while riding the buffalo.

So that's the type of people these people are. Brave people, good people, and I want to thank the Commission.

CHAIRMAN DURAN: Thank you. So there's no one out there that would like to address the Commission. What's the pleasure of the Board?

Commissioner Trujillo moved to approve CDRC Case #V 99-5160 and Commissioner Anaya seconded.

MS. LUCERO: Mr. Chairman, for clarification, is that with the conditions of CDRC?

COMMISSIONER TRUJILLO: With the conditions of CDRC that were agreed upon by the applicant.

COMMISSIONER ANAYA: Yes.

The motion passed by unanimous [4-0] voice vote.

- VIII. E. 4. **EZ Case #S 97-4570. Valle Vista Heights. Elmer Garcia requests final plat and development plan approval of Phase 2 consisting of 13 lots in accordance with the approved master plan. the property is located off State Road 14 within Section 26, Township 16 North, Range 8 East**

MR. ABEYTA: Thank you, Mr. Chairman, members of the Commission. Recommendation: On June 10, 1999, the EZC recommended final plat approval subject to the conditions one through ten as listed in the staff report. And Mr. Chairman, I would ask that those be entered into the record as written.

CHAIRMAN DURAN: That's fine. Thank you.

[The staff conditions are as follows:]

1. Compliance with review comments from the following:
 - a. County Subdivision Engineer
 - b. County Public Works Department
 - c. County Fire Marshal
 - d. State Environment Department
 - e. State Highway Department
 - f. & g. added see motion
2. Road names and rural addressing must be approved by the County Public Works Department prior to recording the final plat.
3. The final homeowners documents and disclosure statement must be recorded with the final plat.

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4. The developer must pay the solid waste fee in accordance with the subdivision regulations (\$43.00) per lot, prior to recording the final plat.
5. A financial guarantee acceptable to the County shall be posted for the purpose of extending the County water from State Road 14 to the East Frontage Road for fire protection.
6. The final plat must have a note stating that all lots are subject to the Santa Fe County Fire and Rescue impact fees.
7. The developer must construct a recreational park for the residents of the subdivision. The park shall include amenities such as benches, children's playground equipment, etc. [modified]
8. The covenants must address, but not be limited to the following:
 - a. Maintenance of roads
 - b. Maintenance of septic systems [not applicable]
 - c. Solid waste disposal
 - d. Water restriction of 0.25 acre-feet per year per lot
9. The subdivision will be subject to the following conditions:
 - a. Lot owners, their successors and assigns shall agree to connect to the County water system when service is available
 - b. Shared wells will be required
 - c. The shared well system shall be designed to meet the minimum fire flow requirements of the subdivision if County water is not utilized
 - d. At the time the connection is made to the Santa Fe County water utility, landowners, their heirs, successors and assigns, agree to disconnect from any domestic wells and to discontinue use
 - e. Lot owners shall dedicate a 15-foot wide utility easement along all lots for infrastructure water distribution lines.
10. Prior to recording a final plat, the developer must submit an engineer's cost estimate with financial surety for all required improvements (street and traffic signs, pedestrian trail). Include schedule of compliance projecting time period for completion of improvements. Upon completion, submit a certification by a registered engineer that improvements have been completed according to the approved development plan.

CHAIRMAN DURAN: Are there any questions of Roman? Thank you, Roman. Is the applicant here?

[Duly sworn, Jim Siebert testified as follows:]

JIM SIEBERT: Mr. Chairman, Commissioners, my name is Jim Siebert. My address is 915 Mercer, Santa Fe.

CHAIRMAN DURAN: Mr. Siebert, are you in agreement with the recommendations of staff and the EZC?

MR. SIEBERT: Yes, we are.

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CHAIRMAN DURAN: Are there any questions of the applicant? Did you want to say anything?

MR. SIEBERT: I know it's been a long meeting and I'll just answer any questions you may have.

CHAIRMAN DURAN: It's a public hearing. Is there anyone out there that would like to address the Commission concerning this case? If not what's the pleasure of the Board?

Commissioner Anaya moved to approve EZ Case #S 97-4570 and Commissioner Griñé seconded. The motion passed by unanimous [4-0] voice vote.

COMMISSIONER TRUJILLO: I'd just like to say if there any people from Tesuque that have arrived that that case has been tabled.

COMMISSIONER GONZALES: Mr. Chairman, before Oralynn starts I understand in reviewing the cases before us that EZ Case #S 96-4341, #S 99-4520, and #S 99-4530 are procedural issues, that the individual applicants are requesting the Commission to grant, and I'd ask if appropriate that we consider these issues all at once rather than individually having to go through, being that it's the same issue.

CHAIRMAN DURAN: Well, I have a question, just a legal question. If there are people that have concerns about any individual item, do they just come up?

[Remarks made by County Attorney Brown were inaudible.]

COMMISSIONER GONZALES: Couldn't we, Denise, if there's one of these areas that we don't want to support the procedural issue when we make the recommendation to pull that out and state that?

MS. BROWN: It's just a matter of you all being clear [inaudible]

CHAIRMAN DURAN: Is there anyone out there in the audience that has anything to say about any one of those cases? Concerning the procedural process?

KARL SOMMER: Just if the applicants are here.

ORALYNN GUERRERORTIZ (Subdivision Engineer): There's no conditions they need to agree to.

Commissioner Anaya moved to hear the three case simultaneously. Commissioner Griñé seconded and the motion passed by unanimous [4-0] voice vote.

- VIII. E. 5. **EZ Case #S 96-4341. Frijoles Village, Phase One. Frijoles Village, Ltd. Co. (Arthur Fields, Managing Partner) applicant is requesting authorization to proceed with a master plat procedure, which would allow submittal of a master plat for a**

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portion of a mixed use subdivision phase, to permit administrative approval of a lot layout for a specified number of lots based on market demand and conditions. The property is located off State Road 599

VIII. E. 6. EZ Case #S 99-4520. Las Campanas Limited Partnership. Applicant is requesting authorization to proceed with a master plat procedure, which would allow submittal of a master plat for a portion of a mixed use subdivision phase, to permit administrative approval of a lot layout for a specified number of lots based on market demand and conditions. The property is located off Camino La Tierra

VIII. E. 7. EZ Case #S 99-4530. Rancho Viejo de Santa Fe. Applicant is requesting authorization to proceed with a master plat procedure, which would allow submittal of a master plat for a portion of a mixed use subdivision phase, to permit administrative approval of a lot layout for a specified number of lots based on market demand and conditions. The property is located off Richards Avenue

MS. GUERRERORTIZ: Gentlemen, all these applicants, Frijoles Village, Las Campanas and Rancho Viejo are requesting approval to move forward with a master plat. The first phase as they come to come you ask for authorization to allow them to do that and then it goes through the process from EZC up to you for approval of that plat. So again, it's just a procedural method.

What happened was Frijoles Village came in and said, these are our lots but we know we're going to change them. Staff said wait a minute. You know you're going to change the lot lines. There's a different process that works better. I think we also talked to Las Campanas about that and Rancho Viejo learned about it. It's just a better process when you don't know exactly where your lots are going to be because you're doing townhomes or condos or something like that and this is a process that we used ourselves for the County Business Park. So today we're asking again for authorization to allow them to apply to make application for master plats.

CHAIRMAN DURAN: So the applicants are here? Do you have anything you would like to add? Okay, this is a public hearing. I'll ask once more. Is there anyone out there that would like to address the Commission concerning these three cases? If not, what's the pleasure of the Board?

Commissioner Grifé moved to approve authorization of procedures for Frijoles Village, Las Campanas, and Rancho Viejo. Commissioner Anaya seconded and the motion passed by unanimous [4-0] voice vote.

- VIII. E. 8. CDRC Case #V 99-5180. American Spirit Homes Sign Variance. Tino Gallegos, applicant, requests a variance of Article VIII, Section 7.14 of the Land Development Code to allow for a 176-square foot sign. The property is located on Erica Road west of the intersection of I-25 and SR 599, within Sections 26 and 27, Township 16 North, Range 8 East**

PENNY ELLIS-GREEN (Review Specialist): Mr. Chairman, Commissioners, Article VIII, Section 7.14 states that commercial buildings may have two identification signs which will not exceed 70 square foot in size.

COMMISSIONER GONZALES: Mr. Chairman, Penny, could we just ask you to go to the recommendations?

MS. ELLIS-GREEN: Sure. Staff's recommendation: Staff's position is that this application is not in accordance with Article VIII, Section 7.14 of the County Land Development Code or the Highway Corridor draft plan. Staff's recommendation and the decision of the CDRC was to recommend denial of the variance, based on Article VIII, Section 7.14 of the Land Development Code which only permits a 70-square foot sign. If the decision of the BCC is a denial of this variance, staff recommends that the existing sign be removed within 30 days. Thank you.

CHAIRMAN DURAN: This does not meet the recommendations that have been considered, that have been brought forward by the Highway Corridor Committee?

MS. ELLIS-GREEN: Mr. Chairman, Commissioners, this does not meet the current Code or the Highway Corridor draft plan.

CHAIRMAN DURAN: And it exceeds it by how much in the existing Code?

MS. ELLIS-GREEN: The current Code allows a 70-square foot sign and this would be 176 square foot. The Highway Corridor draft plan would allow a five-foot high 20-square foot in size monument sign, and a wall mounted sign of 25 square foot.

CHAIRMAN DURAN: Since I have the floor first, I think that it's important that this Commission really think about how this is going to impact the recommendations that are coming forward. This is twice what is allowed?

MS. ELLIS-GREEN: Mr. Chairman, it is more than double what is allowed under current code and about seven times more than what would be allowed for a wall mounted sign under the Highway Corridor plan.

CHAIRMAN DURAN: I just think it sets a bad precedent for us to permit this to happen. Any questions of Penny? Thank you, Penny. Is the applicant here?

[Duly sworn, Tino Gallegos testified as follows:]

TINO GALLEGOS: My name is Tino Gallegos. My address is 10 Erica Road, Santa Fe. Gentlemen, we are in the I-25/Highway 599 commercial district. We are approximately 1000 feet away from I-25. That is really the only high-traffic area that goes by our business. We're quite a way away from visibility by any passing automobiles. About a year ago -- over a year ago actually -- in discussion with the Land Use Department we were told that we could apply for a variance. And it is my understanding that a variance means exactly that.

What your ordinance calls for, if they're not sufficient for your uses, of course you ask for a variance. I understand that we can now have two 70-square foot signs, which would be 140 square feet. That really is not that far apart from where we're at. By those pictures that I have submitted to you, you can see that there is nothing that is ruining the visibility for anybody. We don't have any neighbors in the area except a business that's up above us and that's about it. There's a three-acre vacant lot between us and the frontage road.

We started our variance procedures over a year ago. We got to the point that we actually put our notification in the *New Mexican*, I think it was last July. But somebody dropped the ball; we never came to a hearing. Again, we are asking approval of this variance. This sign is really very integral for the existence of our business. It's really a professional sign. It's just white and blue. Quite permanent really. We would appreciate an approval. Thank you.

CHAIRMAN DURAN: Mr. Gallegos, looking at the photographs here, you have to admit that this is the only structure that is polluting the view corridor there and for the last nine months that we've been working on the highway corridor we've been trying to preserve that scenic corridor and this thing really stands out. It's right there on the horizon, the base of the mountains.

MR. GALLEGOS: There are other signs in the area. You have Canyon and a couple of other mobile home dealerships that have signs up there. They're not quite this large, of course. They're a lot closer to I-25 than we are.

CHAIRMAN DURAN: We have to stop some time.

MR. GALLEGOS: I understand that.

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

COMMISSIONER GRINÉ: Mr. Chairman, Mr. Gallegos, how long has this sign been up there?

MR. GALLEGOS: I think it went up end of August.

COMMISSIONER GRINÉ: Last year?

MR. GALLEGOS: Yes.

COMMISSIONER TRUJILLO: Mr. Chairman, from staff, do we

understand what the rationale on the signs that are recommended or proposed by the Highway Committee? Do we know what the rationale is behind the size of those signs and why the Corridor Committee is recommending that size of signs? This is a commercial area; signs need to be conspicuous to attract potential customers. If it's not - I'd like to understand what the rationale is for the signs that are being proposed by the Corridor Committee.

MS. ELLIS-GREEN: Mr. Chairman, Commissioner Trujillo, I haven't actually been involved in the Highway Corridor draft plan but my understanding is it's due to visibility. They were trying to reduce the visibility of signage in the area of the highway corridor.

COMMISSIONER TRUJILLO: Is this designated a commercial area?

MS. ELLIS-GREEN: This is a major center commercial district, yes. Just for clarification, a number of months ago, another mobile home sales lot came in and requested a variance from the BCC. That variance was not acted upon. They have a 70-square foot sign. They are on the other side of the interstate and their position was that they were not visible either. So they are actually at the moment in conformance with the County Code with a 70-square foot sign.

CHAIRMAN DURAN: I was on the Highway Corridor Committee and the whole thing about the size of signs was so that we could preserve the scenic corridor. I realize this thing has been up since August but it wasn't permitted and I think it's our responsibility to uphold the recommendations that are coming before us by the Highway Corridor Committee, especially when we're dealing with the main reason we created the committee which was to preserve the scenic corridor. That whole thing was created -- the initial thought was to create some design standards and to prevent the proliferation of big signs and all that other stuff. I realize this is a commercial district, but why can't you come up with something smaller that works?

MR. GALLEGOS: A smaller one will not work. I've got nothing against small signs if it's visible. But definitely, even a 70-square foot sign is not visible. I think that you gentlemen should consider that we are in a commercial district. Without visibility, what good does a sign do?

CHAIRMAN DURAN: So where's this thing located exactly?

MR. GALLEGOS: It's off the frontage road, right north of the downs, on Erica Road.

CHAIRMAN DURAN: And you're right in a commercial designated center?

MR. GALLEGOS: Yes.

CHAIRMAN DURAN: Any further questions of the applicant?

MR. GALLEGOS: We'd sure appreciate, because like I say, it's very viable to our business. There's five families that make a living out of this business, not counting other independent sub-contractors that do a lot of specialty work for us. Thank

you.

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

[Duly sworn, Chris Leibman testified as follows:]

CHRIS LEIBMAN: Chris Leibman, 6 Cielo Rosado. Yes, I came to speak out against the request for the variance. I was also a member of the Highway Corridor Committee. This really is not consistent with what we were trying to achieve in the highway corridors to maintain the viewshed, among other things. Clearly, it's a very large and obtrusive sign and we would urge you not to approve the variance.

I think it's also important to point out that while there may be existing signs in the corridor, if you should adopt the Highway Corridor recommendations as they currently exist, many of those signs would then become non-conforming signs. It's not to say that people would have to go take them down, but rather if they came in for a request for a modification of their property, there would be an opportunity to even eliminate those signs.

I'm sensitive to the fact that the applicant feels he needs it for his business, but I would suggest that the damage to the viewshed is large enough that maybe he should pursue some other means of advertising his business and go with a sign that's less obtrusive. I think that's essentially all that I have to say about that.

CHAIRMAN DURAN: Thank you. Is there anyone else out there?

[Duly sworn, Bob Taunton testified as follows:]

BOB TAUNTON: Bob Taunton, 312 Lomitas Street, Santa Fe. I think Chris is -- well, I was also on the Highway Corridor Committee and I think Commissioner Duran and Chris stated really what some of our intentions were in developing some of these guidelines. The comment I wanted to make and some of you know that I lived for quite a while in the Phoenix area and actually lived in Scottsdale. I watched the sign ordinance that Scottsdale and also Tempe introduced and of course there was a great deal of disagreement on the part of many of the business owners, but over time, the signs became monument signs.

They became signs on buildings. The pole signs disappeared and whatnot. And the conclusion today is that the businesses are every bit as visible as they were with the larger signs. The clutter of the signs is gone and the livability of the streetscape is so much better. I recognize this may be a hardship for the applicant but I wanted to offer that comment as well.

CHAIRMAN DURAN: Thank you, Bob. Is there anyone else out there that would like to address the Commission? What's the pleasure of the Board?

COMMISSIONER ANAYA: Mr. Chairman, I'm going to move for approval of this variance and allow the existence of this sign. It translates into a 22 by 8-foot sign. One of the specific questions when Judy McGowan was addressing the wall issue, one of the questions I asked, why the setback and allowing a two-foot variable

between a six-foot and eight-foot wall and one of the questions I asked was why, because the deeper it is, the smaller it becomes as far as the perception is concerned, Mr. Chairman. I believe that this holds true with this particular sign, Mr. Chairman. Move for approval.

COMMISSIONER GRINÉ: I second for discussion.

CHAIRMAN DURAN: Commissioner Anaya, you can't even see the mountain behind that sign at the frontage road, so how can what you're saying have any validity?

COMMISSIONER ANAYA: The business is already in existence. As many times as I've traveled that road I still haven't seen that. I haven't spotted that. It was brought to my attention.

CHAIRMAN DURAN: Any further discussion?

COMMISSIONER GRINÉ: I just want to make a comment that, you know the big sign that is supposed to be advertising the race track out there is much larger than this and yet it's not even advertising the race track anymore. It's only advertising gambling. So I don't see any problem why we shouldn't help somebody who is already trying to make a business run and work. That's all I have to say.

CHAIRMAN DURAN: Anyone else? There's a motion, there's a second. Those in favor, signify by saying "aye." [Unanimous 4-0] Opposed? Motion carries.

VIII. E. CDR Case #MIS 99-5310. Santa Fe Cablevision Company. Santa Fe Cablevision Company, doing business as TCI has requested renewal of their cable television franchise. TCI serves the Eldorado and Santa Fe areas

- **Resolution No. 1999-81. A resolution granting a certificate and acceptance of franchise to Santa Fe Cablevision DBA TCI, the ultimate parent corporation of Telecommunications, Inc. to operate a cable television system with the greater Santa Fe area of Santa Fe County**

MS. GUERRERORTIZ: Mr. Chairman, thirteen years ago the BCC approved a franchise for TCI. They pay us currently 3% a year, which works out to almost \$24,000 last year for using our right-of-ways. What we've got before us tonight is a request to extend that again. Current Code allows up to 20 years and the proposed resolution that's attached is for a 20-year franchise granting TCI the ability to provide cable service and it is a non-exclusive franchise, so they can have overlapping franchises with other cable companies. I stand for any questions.

COMMISSIONER GRINÉ: Does anyone have questions of Oralynn? Is the applicant here? Do you have any comments to make to the Commission?

[Duly sworn, Lanae Juffer testified as follows:]

LANAE JUFFER: My name is Lanae Juffer. I'm the area manager for TCI of New Mexico, and I would just like to thank the County for allowing us the past 15 years to serve the residents and hopefully get approval for the next 20. I'd be happy to answer any questions you might have.

COMMISSIONER GRINÉ: Any questions? This is a public hearing. Anybody in the audience want to speak on this case? If not, what's the pleasure of the Board?

Commissioner Anaya moved to approve Case #MIS 99-5310 and Resolution 1999-81 and Commissioner Trujillo seconded. The motion passed by unanimous voice vote. [Chairman Duran and Commissioner Gonzales were not present for this vote.]

VIII. E. 11. CDRC Case #Z 99-5190. Alamosa/Sprint PCS - Eldorado Site. Alamosa/Sprint PCS, applicant, Omni America, agent, request 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 with the Cañada de los Alamos Grant, Township 15 North, Range 10 East

MS. ELLIS-GREEN: Mr. Chairman, Commissioners, the recommendation of staff and the decision of the CDRC was to recommend master plan zoning with 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 plan.
2. The antennas will be painted a brown-green camouflage color. All colors will be reviewed and approved by staff prior to construction permit issuance. The applicant will maintain the color and repaint the antennas as necessary and needed in the future.
3. The master plan development plan will be recorded with the County Clerk's Office.
4. If the technology changes and these antennas become obsolete, they will be removed by the applicant. This will be noted on the master plan.
5. A Knox lock entry system will be installed on both the gate to the equipment compound and the gate to the open space area to be approved by the Fire Marshal.

Thank you.

1674496

COMMISSIONER GRINÉ: Any questions of Penny? Is the applicant here? Do you have any comments to make to the Commission?

DIANE DEL RUSSO: No, sir.

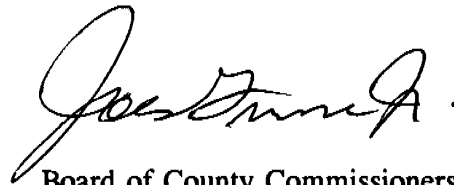
COMMISSIONER GRINÉ: This is a public hearing. Anybody in the audience want to speak on behalf of this case? If not, what's the pleasure?

Commissioner Anaya moved to approve CDRC Case #Z 99-5190 with conditions as recommended by staff. Commissioner Trujillo seconded and the motion passed by unanimous voice vote. [Chairman Duran and Commissioner Gonzales were not present for this vote.]

ADJOURNMENT

Chairman Duran declared this meeting adjourned at approximately 7:35 p.m.

Approved by:



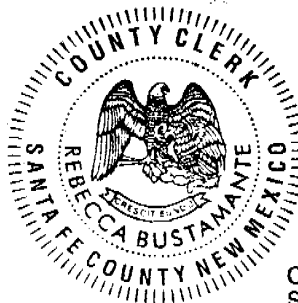
Board of County Commissioners
Paul Duran, Chairman

Respectfully submitted:


Karen Farrell, Commission Reporter

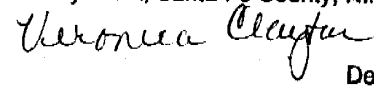
ATTEST TO:


REBECCA BUSTAMANTE
COUNTY CLERK



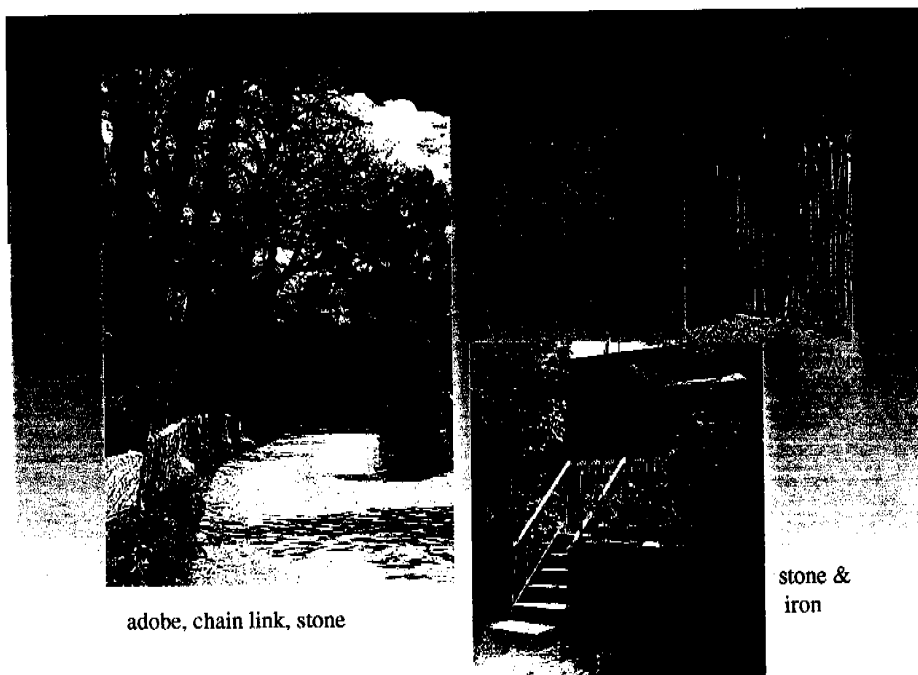
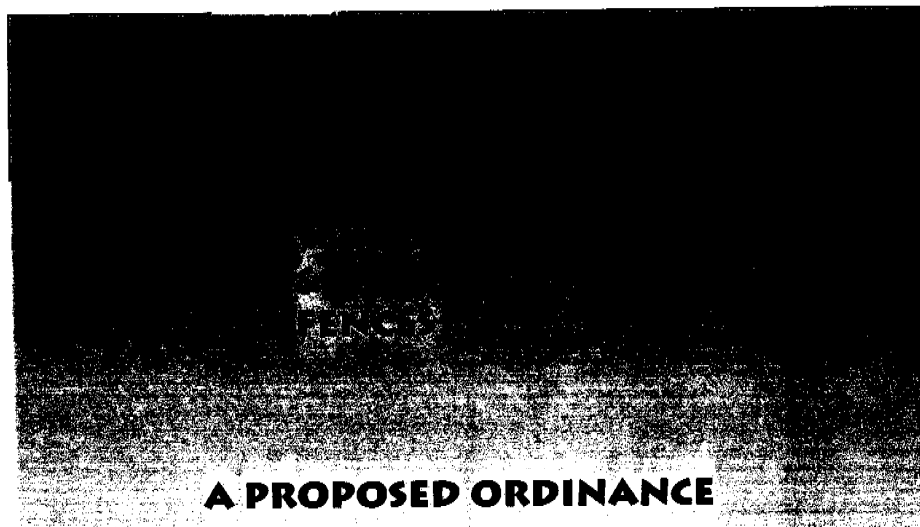
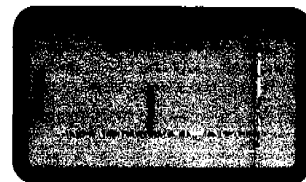
COUNTY OF SANTA FE) SS
STATE OF NEW MEXICO 10861026
I hereby certify that this instrument was filed
for record on the 13 day of Aug A.D.
19 99, at 9:16 o'clock a m
and was duly recorded in book 1674,
page 450 - 525 of the records of
Santa Fe County.

Witness my Hand and Seal of Office
Rebecca Bustamante
County Clerk, Santa Fe County, N.M.


Deputy



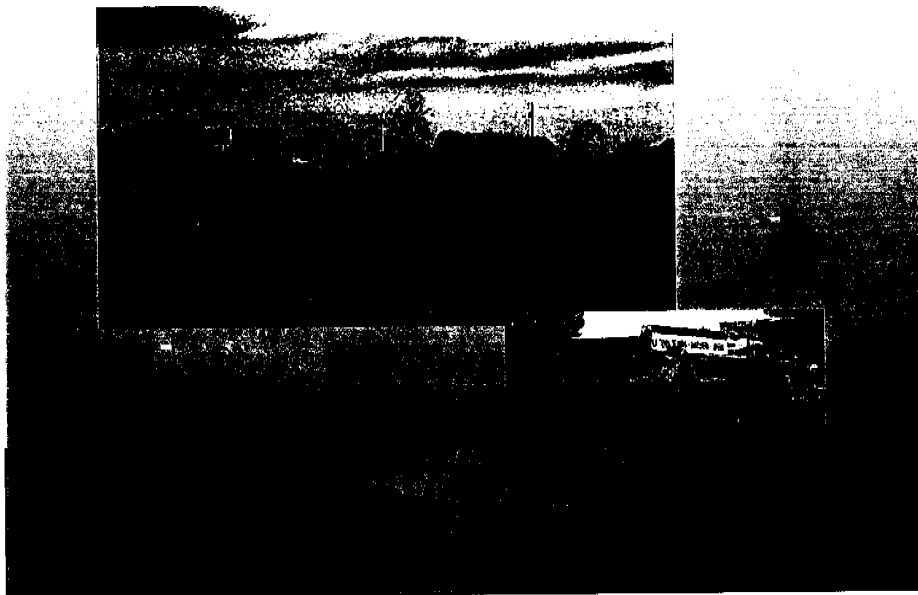
1674497



adobe, chain link, stone

stone &
iron

1674498



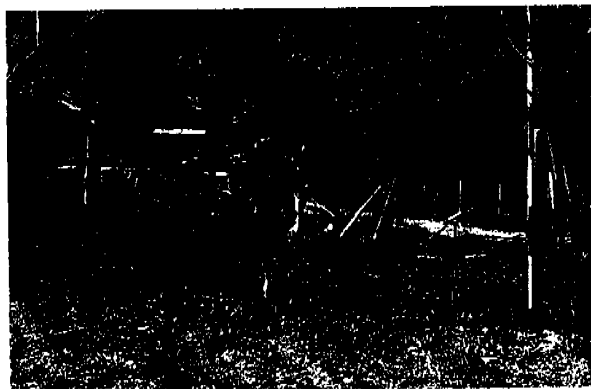


Existing walls

- Heights of older walls are generally lower.
- Door or gate portals are a traditional feature.

This is the most common fence type

- Would NOT require a permit under Ordinance





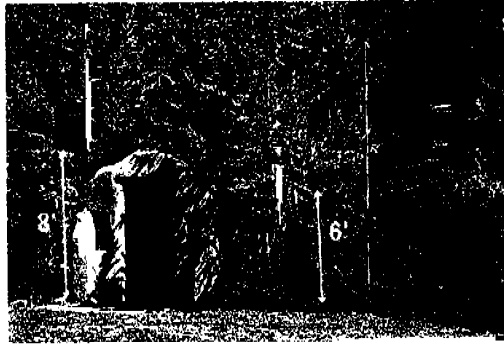
Proposed Height Standard for Residential Walls & Fences

- 6' high at property line
- 8' high if set back 25' from property line

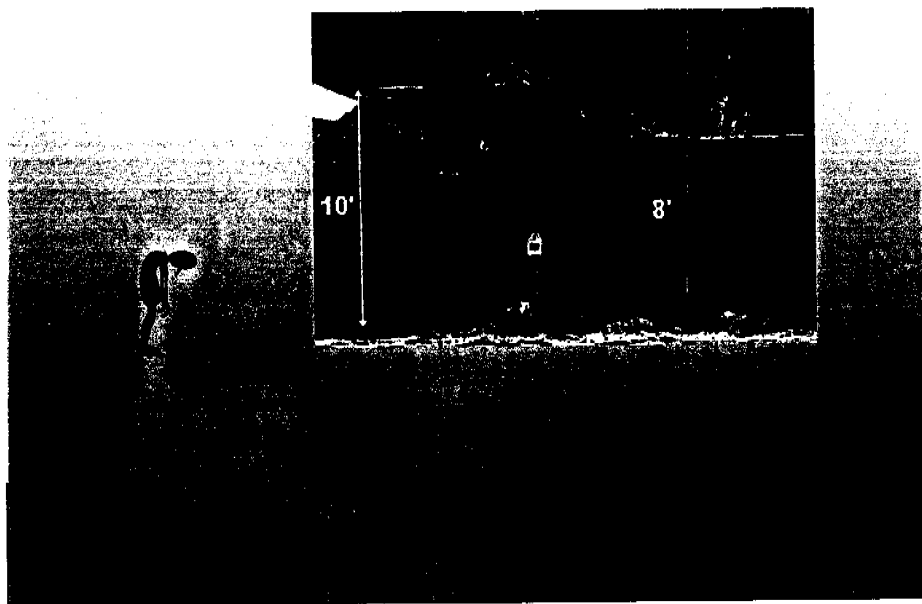


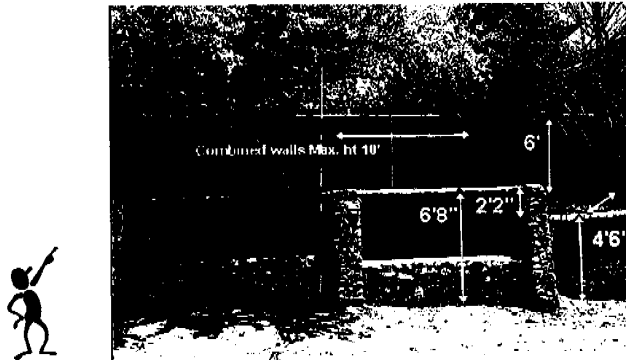
Walls of 4 feet or less would NOT require a permit.

1674501



This coyote fence & door portal
fit the proposed standards.



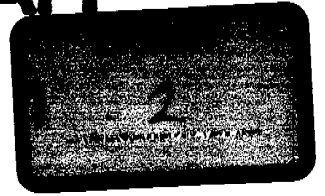


Proposed standard for wall combined w/retaining wall

- Total height of 10' for each structure
- Multiple retaining walls offset when more than 10' is needed

DRAFT

1674503



SANTA FE COUNTY, NEW MEXICO

ORDINANCE NO. 1999-

**AN ORDINANCE PERTAINING TO THE USE OF COUNTY RIGHT-OF-WAY
BY UTILITIES AND OTHER PERSONS**

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ORDINANCE NO. 1999-**AN ORDINANCE PERTAINING TO THE USE OF COUNTY RIGHT-OF-WAY
BY UTILITIES AND OTHER PERSONS****SECTION I: GENERAL POLICY AND GOALS OF ORDINANCE:**

Santa Fe County (hereinafter "County") owns, maintains, or is responsible for approximately 600 miles of right-of-way, including but not limited to, roadways and easements, within the unincorporated areas of the County. From time to time, utilities and other persons desire to occupy, use, construct or excavate within the County right-of-way.

The Board of County Commissioners has the statutory authority and responsibility to make such orders concerning County property, including right-of-way, as it may deem expedient. NMSA 1978, Section 4-38-13. The Board of County Commissioners must grant the use of County-owned property pursuant to New Mexico statutes and the New Mexico Constitution. In the absence of specific statutory provision to the contrary, the Board of County Commissioners "represents the County and has the care of the County property and management of the interest of the County in all cases where no other provision is made by law." NMSA 1978, Section 4-38-18.

The New Mexico Constitution requires that the County receive full compensation for the use of its property. "Neither the State nor any County, school district or municipality, except as otherwise provided in this Constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation..." New Mexico Constitution, Article IX Section 14.

While regulated public utilities are "authorized to place their pipes, poles, wires, cables, conduits, towers, piers, stations and other necessary fixtures, appliances and structures, upon or across any of the public roads, streets, alleys, highways and waters in the state," such use of County property is "subject to the regulation of the County Commissioners...." NMSA 1978, Section 62-1-2. Additionally, non-regulated mutual domestic water associations and water and sanitation districts also require access to County right-of-way. The Board of County Commissioners wishes to foster the continued expansion of utility service throughout the

unincorporated areas of the County. The Board also wishes to provide that the County be compensated for the reasonable costs involved in the use of the right-of-way, for administrative expenses incurred in the processing of the necessary permits, as well as for the required monitoring of the progress of the work and protection of the public health, safety and welfare. Further, NMSA 1978, Section 62-1-3, the Board of County Commissioners is authorized to impose charges for reasonable actual expenses incurred in the granting of such right-of-way use to a utility for use of County rights-of-way. Harmonizing the language of Article IX, Section 14 of the New Mexico Constitution with the aforementioned statutes, it is manifest that the County must take the proper steps to ensure that utilities and other persons wishing to use County right-of-way compensate the County for actual reasonable expenses relating to the use of the County's property.

Therefore, pursuant to the conditions of this Ordinance, the Board of County Commissioners will require parties wishing to use County right-of-way to compensate the County for all of the County's reasonable costs incurred directly and indirectly in permitting the use of County right-of-way, including, but not limited to, the costs of mapping, managing, and coordinating the use of the right-of-way by the various parties, along with the administrative and general costs related to processing applications for use of the right-of-way and the enforcement of the terms of this Ordinance.

Further, the Board of County Commissioners will require utilities or persons using County right-of-way to adequately indemnify, hold harmless and defend the County against all possible claims of loss or damage arising out of the use of the right-of-way.

All uses of County right-of-way must be coordinated to ensure the maintenance of public health, safety and welfare pursuant to NMSA 1978, Section 4-37-1; to allow the Board of County Commissioners to the extent permitted by law, to prioritize the use of County right-of-way; and to achieve County goals. It is a goal of the Board of County Commissioners to reduce the possibility of unnecessary duplication and economic waste in the use of County right-of-way and to use and grant the use of its right-of-way consistent with the best interest of the County and its inhabitants. Therefore, consistent with New Mexico law, the County may deny any application for use of County right-of-way that the Board of County Commissioners finds would or may interfere with an existing use of the right-of-way by those utilities which have valid Permits

issued by the County, or which have entered into a Right-of-Way Use Agreement with the County, pursuant to terms of this Ordinance. In addition, consistent with New Mexico law, the Board of County Commissioners may deny any application for use of County right-of-way that the Board finds would or may duplicate the County's own planned or actual use, would negatively affect a County purpose or project, or may be harmful to the health, safety and welfare of the public.

Nothing in the Ordinance should be construed or interpreted to affect or to impair the jurisdiction of the New Mexico Public Utility Commission or other statutorily-created agency having jurisdiction over public or non-public entities or to affect or to impair a regulated public utility's rights and obligations under the New Mexico Public Utility Act, NMSA 1978, Section 62-3-1 et seq, or any other State act.

The Board of County Commissioners adopts this Ordinance and establishes herein the administrative process utilities and other persons must follow to gain permission to use County right-of-way, and the engineering and design standards a utility must satisfy to perform any work or place any facilities within the right-of-way and the fees to be paid therefor.

SECTION II: DEFINITIONS:

Actual and reasonable expenses:

All expenses directly or indirectly incurred by the County related to permitting the use of County right-of-way by utilities or persons, including but not limited to, the costs of mapping, managing, and coordinating the use of the right-of-way by the utilities or persons, along with the administrative and general costs related to the processing of application of use of the right-of-way, and the enforcement of the terms and conditions of this Ordinance, and any other cost or expense reasonably associated with the maintenance of the rights-of-way in a manner that protects the health, safety and welfare of the public.

Applicant:

Any utility or person required to obtain a Permit pursuant to the terms and conditions of this Ordinance.

County:

Santa Fe County or the Board of Commissioners of Santa Fe County, as the context requires.

Emergency:

Any situation necessitating excavation, use of, or entrance onto, the County right-of-way for the purpose of locating a problem area or to make repairs in a facility when circumstances are such that delay in correcting the problem or making the repair would present a substantial and real threat of injury, would harm the health, safety and welfare of the public, or would likely result in serious property loss or damage.

Excavation:

A hole, trench, ditch or depression in a right-of-way resulting from the removal or moving of the pavement, or dirt or other material. Not a substructure opening.

Facility:

Any pipe, pipeline, tube, main, service vent, vault, manhole, meter, regulator, valve, conduit, pole, line, cable, anchor, structure, or object of any kind, type, manner or character, whether listed herein or not, which is or may be lawfully constructed, left, placed or maintained upon, along, above, across, under or within the right-of-way.

Permit:

Permit issued by the County pursuant to the terms and conditions of this Ordinance which allow the use of County right-of-way by utilities and other persons.

Permittee:

An applicant whose Permit request has been approved and who holds a valid Permit.

Person:

Any individual, estate, trust, utility, receiver, association, subdivision of the state, cooperative, club, public or private corporation, company, firm, partnership, joint venture, syndicate, municipality or any other entity.

Public Place:

All property owned by or maintained by the County, including but not limited to, streets, highways, alleys, planes, sidewalks, plazas, parks, easements, curbs, and drainage way, which constitute County right-of-way.

Right-of-way:

1674509

See above definition of Public Place.

Right-of-way Administrator:

The individual designated by the County Manager to administer the County Right-of-Way Ordinance and the County right-of-way Permit operation to include, but not limited to, the receipt, review, processing, approval or denial of Permit applications, approval and denial of administrative variances and maintenance of County right-of-way records.

Right-of-way Use Fee:

Fee paid by utilities or persons utilizing County right-of-way pursuant to the terms and conditions of this Ordinance.

Right-of-way Use Agreement:

Agreement entered into between utility and County for utility use of County right-of-way.

Service Hook-up:

Any excavation, not exceeding the width of the affected County right-of-way, necessary to allow a single meter hook-up for a single property owner to tie into an existing utility line for the purpose of securing utility service, but does not include line extensions.

Substructure:

Any facility located below the surface of County right-of-way.

Substructure opening:

An opening into a lawfully permitted substructure, the top of which is required to be flush with the adjoining surface within County right-of-way, and which is constructed so as to permit frequent utilization, without requiring the removal of pavement, dirt, or other material, while maintaining the health, safety and welfare of the public.

Use:

Performance of work with and/or occupation of County right-of-way, including but not limited to, the excavation of materials, boring, maintenance and checking of substructures and substructure openings; and/or the use of the right-of-way to place any facility thereon or therein.

Utility:

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Person, as defined in the Ordinance, whose primary function is the provision of certain services to the public or third parties, which services include but are not limited to, electrical, gas, water, wastewater, and telecommunications services.

**SECTION III: RIGHT-OF-WAY USE PERMIT APPLICATIONS:
 REQUIREMENTS, FEES, ISSUANCE/DENIAL, AND APPEAL**

- A. Any person or party wishing to obtain a Permit from the County pursuant to this Ordinance must submit the following information to the Right-of-Way Administrator:
1. The name, telephone number, address, and place of business of the applicant and his/her Engineers and/or Contractors;
 2. A detail drawing and written description of the location and dimensions of the proposed use of the County right-of-way, including a plan view and cross-section of the proposed use, which are sufficient to indicate the placement of any facilities or to locate the work to be performed; (1 complete set shall be submitted for review).
 3. The method by which the proposed use within the right-of-way will be accomplished, including an estimate of the amount of time required to complete any actual work to be performed within the right-of-way including backfilling and removal of all obstructions, materials and debris, and restoration of the surface. The applicant's authority to use the County right-of-way shall be limited to the purposes and work plan specifically authorized by the Permit;
 4. The purpose and function of any facility to be located within the right-of-way;
 5. All road crossings on paved roads shall be performed by boring rather than excavating, except where boring is not reasonably justified as determined by the County. In situations where the applicant wishes to perform a road crossing by excavation in lieu of boring, the applicant shall provide written justification therefor to the Right-of-Way Administrator. Some examples of conditions where boring may not be justified are lack of adequate room in the County right-of-way to operate boring equipment; boring on gravel or dirt roads.

- B. In all cases where the work to be done in the County right-of-way is to be done by a utility, the utility must be the Applicant.
- C. The applicant shall be required to provide proof of adequate insurance in an amount satisfactory to the County indicating that the applicant has sufficient insurance to protect both the County and the applicant for any and all claims or damages arising out of bodily injury, including death, to any party including the applicant, and his employees and agents and the County employees and agents, and from claims for damaged property, which may arise out of, or result from, the applicant's use of County right-of-way, including completed or ongoing operations performed within the County right-of-way. At a minimum, the policy coverage and limits shall be those set forth in §41-4-9 NMSA. To simplify this requirement, Utilities that operate in the County may file with the Right-of-Way Administrator a copy of the Utility's master or applicable insurance policy which provides the above-delineated coverage. Such policies must be refiled yearly. The Utility is obligated to provide the County with notice of cancellation of its policy, if that event should occur.
- The applicant must agree to defend, hold harmless, and indemnify the County and its officers, agents and employees, against all claims, losses and damages to persons or property on account of or resulting from the intentional or negligent conduct on the part of the Permittee in the Permittee's use of County right-of-way, or any work, duties, or obligations performed pursuant to the terms of this Ordinance and the duly issued Permit.
- D. No Permit shall be issued until proof of adequate insurance has been provided by the applicant to the Right-of-Way Administrator. No Permit shall be issued until the applicant signs agreements required by the county or its insurance carrier to signify the applicant's willingness and ability to defend, indemnify and hold the County harmless as required by this Ordinance.
- E. Upon receipt of the application, and, except as specified hereinafter set forth, the County will review the request. The Right-of-Way Administrator will verify the information provided in the application and will process the application through relevant County departments. The application will be further reviewed to determine

if it is consistent with the terms and conditions of this Ordinance and will not impact upon or impair other permitted uses or planned projects and is not detrimental to the health, safety and welfare of the public.

- F. The Right-of-Way Administrator will also review the work plan to determine whether the use of the right-of-way can be accomplished pursuant to the engineering and construction standards set forth in the Ordinance, and as may be amended and promulgated by the County in the future, and set forth in subsequent Ordinances or Resolutions.
- G. In most cases, within a maximum of 10 working days of receipt of the completed application and non-refundable application fee, the Right-of-Way Administrator will notify the applicant by regular mail and/or by telephonic transmission of the acceptance or denial of the application. If the application has been approved, the applicant will be notified in writing of the terms and conditions of the Permit, including the right-of-way usage fees. The Permit will be valid only upon payment of all applicable fees. Where the proposed project is expansive or complex, as determined by the Right-of-Way Administrator, more than 10 days may be required. In that event, the Administrator will notify the applicant and will inform the applicant of the estimated additional time needed.
- H. Except as otherwise specifically provided for in this Ordinance, the fees which are hereinafter set forth, usage fees shall be based upon the square feet of right-of-way to be used by the applicant. Table A reflects the fees for trenching and all uses of the right-of-way placed below ground level.

TABLE A

WIDTH AND DEPTH	FEE PER SQUARE FEET
12" by 36" to 24" by 48"	\$250 initial 500 Square Feet *
any greater width and depth	\$350 initial 500 Square Feet *
	* \$.30 per additional square foot

The charge per lineal foot for placement of facilities in the right-of-way above ground level shall be a minimum fee of \$150.00 for the first 90 lineal feet, and a fee of \$1.50 per lineal foot thereafter.

If, concurrent with the installation of a new utility line, service connections are being made to customers from that new line, there will be no additional fee to be paid for each hookup. The fees paid for the Permit and square foot usage shall include those said service connections.

- I. The County reserves the right to waive the fee for work done within the County right-of-way, for work performed at the request of the County or for a County project.
- J. For projects that will require a deviation from the nature, scope or amount of right-of-way use envisioned within this Ordinance, the County reserves the right to exact higher fees which will be mutually agreed upon by the County and the applicant.
- K. As an alternative to payment up-front on each project for which it seeks a permit, a utility operating in the County may establish a credit account with the County under which it would be billed monthly for charges incurred in the previous month with payment due within 30 days after billing. This credit arrangement may be withdrawn by the County in the event that a utility becomes delinquent in its payments to the County or in the event that a utility continues to be in violation of this Ordinance after notice of violation. If the County is required to commence litigation against a utility to collect unpaid and delinquent balances, the County shall have the rights and remedies available to it by New Mexico statute, including the award of prejudgment interest and of attorney fees.
- L. Further, a utility involved in a project which is being funded by State or Federal grants and/or loans may apply for a Permit without the up-front payment of fees upon showing that the Permit needs to be acquired as a condition of approval and/or receipt of the public funding. In such a case, payment of the fees due the County will be deferred until the public funds are available for the project.
- M. An Applicant may appeal the denial of a permit to the Board of County Commissioners pursuant to the procedures set forth in Section XV: Appeals, of this Ordinance.

SECTION IV: CONDITIONS OF USE OF COUNTY RIGHT-OF-WAY

- A. Except as otherwise provided in this Ordinance, no utility may commence any use of County right-of-way unless and until a Permit for such use is first obtained from the

County. Ordinarily, Permits shall be valid for 90 days. However, if a longer period of time is necessary, the Permittee may submit a written request for additional time justifying the additional requested time.

- B. A Permit shall be required for any use of County right-of-way, including but not limited to excavation within the right-of-way, boring of any substructure opening, aerial use of County right-of-way, or placement of any facility within County right-of-way.
- C. It shall be unlawful for any person or party to use County right-of-way without first securing a Permit from the County and complying fully with all the provisions of this Ordinance, and any related regulations that may be adopted by the County.
- D. All utility construction and road restoration shall be in accordance with the New Mexico Standard and Specifications for Public Works most recent edition in effect at the time of application. The County may promulgate and adopt such further additional rules and regulations as may be required to fully implement this Ordinance. Information on how to obtain copies of such rules and regulations shall be available to applicants at the County Public Works Department. In addition, all work shall be performed in accordance with State and Federal requirements including but not limited to OSHA.
- E. The Permittee is required to correct substandard work or work performed with defective materials and/or workmanship, as directed by the Right-of-Way Administrator. The Permittee must restore the street sub-base, base and surface to its original condition upon completion of the work within the right-of-way. Upon failure of the Permittee to begin repairs within 24 hours after written notice by the County and to complete the required work within a reasonable time, as determined by the County, the County shall cause such work to be done and the cost thereof charged to the Permittee. In addition, the County may declare the Permittee to be in default of the terms of the Permit, and take steps pursuant to this Ordinance to suspend the Permit.

- F. The Permittee must take appropriate measure to maintain safe and adequate passage of vehicle and pedestrian traffic as required by the County while performing any work within the right-of-way.
- G. In the event the Permittee causes damage to existing utilities or facilities located within the right-of-way, including pipe coating or other encasement or devices, the Permittee must notify the Right-of-Way Administrator or his designee and the owner of the damaged facility immediately, and take immediate steps to arrange for the repair of the damage. The Permittee is responsible for the cost of said repairs. Further, the County may declare the Permittee to be in default of the terms of the Permit and may take steps pursuant to this Ordinance to immediately suspend the Permit.
- H. The Permittee is responsible for the proper installation of any diversion or ponding devices necessary for protection of property and structures, and shall be responsible for repair or payment of damages caused to property or structures by the Permittee's failure to properly provide such devices.
- I. Prior to making any excavation or paving cut, the Permittee shall adequately barricade the area to be excavated and shall adequately provide light devices at night in compliance with the Manual on Uniform Traffic Control Devices (MUTCD). Barricading and lighting shall be maintained by the Permittee until all work has been finished, including the replacement of paving.
- J. All trenches and excavations shall have a minimum width of 12 inches unless approved by the Right-of-Way Administrator.
- K. After completing excavation within the right-of-way, the Permittee shall install all facilities at least 36 inches below the road surface, or deeper, if necessary, to meet the more stringent requirements of other governmental agencies or County Ordinances. All parallel and lateral depths shall be a minimum of 36 inches beneath ground surface.
- L. Ditches paralleling County Roads that exceed three hundred fifty feet (350) in length shall not be left open for more than seventy-two (72) hours, unless for good cause shown the Right-of-Way Administrator permits a longer period of time.

- M. All material excavated must be piled and maintained so as not to endanger the public health, safety and welfare. In order to expedite flow of traffic and to keep dirt and dust from spreading or flying, the Permittee shall use guards or other methods and/or shall water the excavation material. The Permittee shall remove all rubbish, excess earth, rock and other debris resulting from excavation work immediately upon completion of backfilling as required by this Ordinance. If the Permittee fails to do the required work, the County has the option, but not the obligation, to cause the work to be performed and to charge the cost of the work to the Permittee.
- N. Unless specifically exempted in writing, any person who trenches or excavates within the right-of-way for any purpose is required to backfill the trench or excavation as follows:
1. All trenches and ditches will be backfilled and compacted.
 2. In all trenches and excavations, the material used in backfilling must consist of the original, excavated material or other similar material, in a finely-divided form free from large lumps, large stones, rocks, pieces of old concrete, or asphalt pavement or large or wet gummy masses, and must be placed and compacted to the top of the trench or excavation. Compaction shall be in conformance with specifications of AASHTO, T-180 (American Association of State Highway and Transportation Officials) to 95% maximum density within the roadway prism, and 90% outside the roadway prism. All trenches and excavations performed through or across asphalt shall be backfilled using a 1 sack concrete slurry fill to 1 inch below existing asphalt. In the event that a temporary patch is necessary, permanent paving shall be done within 30 days.
 3. Backfill and compaction inspections shall be made by the County. In the event the compacted backfill fails to meet the density requirements of this Ordinance, or otherwise fails as evidenced by settlement of the trench or excavation, the County will notify the Permittee in writing and the Permittee will correct the defect within 72 hours, and the Permittee is responsible for the cost of the failed test, which cost shall be in addition to the right-of-way use fees provided for herein. A fee of \$50 per re-test visit will be charged to the Permittee. If Permittee fails to correct the

situation, the County has the option but not the obligation to order the work performed to meet the required density specified herein. The County may also order the replacement of all pavement destroyed or damaged as a result of the backfill failure settlement. The costs incurred by the County shall be paid by the Permittee.

- a. Testing shall be conducted by the County on every lift up to and per 250 lineal feet thereafter of material disturbed. Lifts shall be 12 inches to 18 inches in depth and/or of sufficient depth to obtain required density.
- b. Prior to any testing of compacted backfill, the Permittee shall inform the County within 24 hours of the scheduled testing.
- c. Testing shall be accomplished by a Certified County Testing Laboratory.

O. The Standard Utility Requirements are as follows:

1. Water lines shall be installed within the right-of-way parallel to the edge of pavement on the east or north side of the right-of-way outside the paved area at a minimum of 3 feet beyond the edge of the pavement.
2. Gas lines shall be installed within the right-of-way parallel to the edge of pavement on the west or south side of the right-of-way outside the paved area at a minimum of 3 feet beyond the edge of pavement.
3. Sewer lines shall be located within easements on the west or south side of the right-of-way on newly platted subdivisions or along the centerline of the right-of-way on existing roadways if an easement does not exist.
4. Water lines and gas lines shall in all cases be separated from sewer lines by a minimum of 10 feet and all other underground lines (including other existing water and gas lines by a minimum of 5 feet).
5. Each sewer, water, and gas line shall in all cases be placed in its own separate trench.
6. The utility separations as specified above shall also cover back lot easements or other easements as required. Easements shall be wide enough to allow for utility separations as specified above with all utilities being at least 5 feet inside the edge of the easement.

7. Where used, fire hydrants shall be located no closer than 18 inches from the right-of-way boundary within the right-of-way and as far as possible from the edge of pavement.
8. Where used, fire hydrants located on roadways where no curb and gutter exist shall be protected by 4" metal pipe bollards placed to allow full function of the hydrant.
9. All valves and manholes shall have a concrete collar placed at finish grade if located within a paved surface and no less than 12" below the surface if located in an area where no paving exists.
10. Water, sewer and gas mains shall be marked with tracing/warning tape installed above the pipe, 15 inches below the top of the trench in the case of gas and water, and 12 inches below the top of the trench in the case of sewer.
11. The tracing tape to be buried over all lines throughout their entire lengths shall have the following specifications:
 - a. Tape shall be 3 inches wide and shall consist of one layer of metalized foil laminated between two layers of inert plastic film.
 - b. Laminated bonding that can be separated by hand is not acceptable.
 - c. Tape shall be a minimum of 5 mils thick with a minimum tensile strength of 84 lbs per 3 inch width strip.
 - d. Tape shall be imprinted with a continuous warning message repeated a minimum of every 30 inches as follows:

Yellow colored tape:	Caution Gas Line Buried Below
Blue colored tape:	Caution Water Line Buried Below
Green colored tape:	Caution Sewer Line Buried Below
 - e. Tape shall be inductively locatable and conductively traceable using standard pipe and cable locating device for a minimum of 8 years after direct burial.
 - f. Test results showing a minimum of 8 years life and full compliance of these specifications and a sample of the tape may be required to be furnished to the Right-of-Way Administrator.

12. Replacement of pavement, when necessary, shall follow the backfill by not more than three days or not more than 1,000 lineal feet.

13. Gas lines shall at all times be separated from any other parallel underground line by a minimum of 10 feet and shall in all cases be placed in their own separate trench. When crossing other underground lines, there shall be a minimum clearance of 18 inches between the gas line and the line being crossed. The minimum specified gas line depth (cover) shall in all cases be maintained.

14. PROTECTION OF EQUIPMENT

- a. Protection of equipment that is part of the facility (risers, control boxes, hydrants, etc.) may be protected from impact as long as the impact upon the protection device is not greater than the impact if the protection device is not in place.

15. PUBLIC CONVENIENCE AND ACCESS

- a. The Permittee shall conduct and schedule his work at all times so that a minimum of obstructions to traffic and other inconveniences to the public occurs. The testing, purging, transfer of service, chlorination of lines, and backfill of each section of line shall follow the installation within a reasonable time.
- b. Where the pipeline routes cross secondary streets, the excavation shall be backfilled to provide a roadway prior to the end of the work day. Construction by open excavation across major streets and thoroughfares shall be carried and completed to approximately the roadway centerline and the trench backfilled prior to excavation across the remaining roadway section so that traffic will not be interrupted.
- c. The Permittee shall provide and set barricades and flashing lights along all open excavations and at points where the construction operation creates hazards to the public. Spacing of barricades and lights shall be adequate to insure the public a warning of the hazard, and shall be in compliance with the directions of the Manual on Uniform Traffic Control Devices and all other County, State and Federal regulations. Flares and/or lights shall be kept

burning from sunset to sunup. Barricades shall be painted and fitted with reflective paint and reflectors, respectively, to increase visibility, in compliance with requirements of the MUTCD.

16. Wire utilities shall be placed no farther than 5 feet from the edge of the right-of-way on the east and/or north side of the center of the right-of-way.
17. It shall be the responsibility of the applicant to properly conduct a construction survey and to determine the limits of the Santa Fe County right-of-way prior to any excavation.
- P. The County may make any and all inspections and random tests as it deems necessary to enforce the terms and conditions of this Ordinance. Acceptance or approval of ditching, excavation, backfilling, and restoration of surface by the County does not prevent the County from asserting claims against the Permittee for incomplete or defective workmanship or materials. The presence or absence of a representative of the County during the performance of the work does not relieve the Permittee of his/her responsibilities hereunder.
- Q. Permittee shall have available the original or a photocopy of the Permit on site at all times during construction.
- R. Permittee is required to notify the Right-of-Way Administrator to advise of the commencement date of construction at least twenty-four (24) hours prior to commencement. In addition, Permittee is required to notify the Administrator within twenty-four (24) hours of completion of construction to arrange for a final County inspection. Within thirty (30) days of completion of construction, Permittee shall furnish the County a complete set of vellum as-built drawings, with the Permit number on the drawings.

SECTION V: RELOCATION OF FACILITIES

In the event changes are made in the County right-of-way that necessitate relocation of any installation or facility, the affected utilities will receive written notice from the County and are required to contact the Right-of-Way Administrator to coordinate relocation of their facilities. Relocation of the facilities shall be completed by the utilities within a reasonable time, usually 60

days. The expense of the relocation shall be borne by the utility owner or pursuant to terms and conditions mutually acceptable to the County and the utilities.

SECTION VI: VIOLATION OF ORDINANCE

Pursuant to §4-37-3 NMSA, a violation of this Ordinance is punishable by a fine of not more than \$300 or imprisonment for not more than 90 days or both, per violation. In addition, the County may pursue other legal and equitable remedies allowed by law, including injunctive relief, in cases of unauthorized use of County right-of-way by any utility or person. In the alternative, where applicable, the County may resort to its enforcement authority under Sections X or XIII of this Ordinance.

SECTION VII: EMERGENCY USE OF RIGHT-OF-WAY

In the event of any emergency which threatens the health, safety or welfare of the public, use of the County right-of-way may be commenced without first obtaining the Permit, provided that the utility making the emergency use files such application for a Permit, as required by this Ordinance, during the first working day immediately following the date of commencement of the emergency use.

SECTION VIII: VARIANCES

A. Administrative

The County Right-of-Way Administrator, upon written application therefor, shall have the authority to grant administrative variances from the technical standards provided for in this Ordinance upon a demonstrated showing that a strict application of the established technical standards are impractical or not feasible because of:

1. Insufficient room within the County right-of-way to meet standards; or
2. Adherence to the standards would be incompatible with the nature or placement of facilities presently existing in the County right-of-way to be used; or
3. Adherence to standards is not reasonably justified based on other factors to include, but not limited to, extent of proposed project, physical conditions of the

County right-of-way or physical hardship; and that the variation in standards proposed by the applicant/permittee will not result in an inferior work product.

B. Appeals from Variance Denials

Pursuant to Section XV: Appeals, of this Ordinance

C. There will be no variances from the required fees.

SECTION IX: TREBLE FEES

Except as provided for in Section VII of this Ordinance, if a utility or person commences use of a County right-of-way or work within the right-of-way for which a Permit would be required pursuant to the terms of this Ordinance prior to the use being made, the County may require the payment of treble the amount of application and lineal fee(s) that would have been charged absent the unauthorized commencement of use of the right-of-way. The payment of treble fees shall not relieve any such utility or person from complying with all of the requirements of this Ordinance, including the filing of an application for use of the right-of-way and County review for approval or denial.

In the alternative, the County, in its sole discretion, may require the unauthorized user to remove the facilities unlawfully placed in the right-of-way.

SECTION X: CONFLICT PROVISION

In the event the terms and/or the conditions of this Ordinance conflict with those found in any other County or local Ordinance, or State or Federal Statute or regulation, the more stringent terms and/or conditions shall apply.

SECTION XI: SUSPENSION OF PERMIT

The County reserves the right to suspend a Permit for non-compliance by the Permittee with the technical standards of this Ordinance or the terms of the Permit. Immediate suspension of the Permit may occur in circumstances where the County determines that a dangerous condition has been created by the Permittee's non-compliance with the terms of this Ordinance or the Permit, which condition would threaten the health, safety or welfare of the public.

In situations where the Permittee's non-compliance with the terms of this Ordinance or the Permit does not create an immediate threat to the health, safety or welfare of the public, the County will notify the Permittee in writing of the non-compliance, and will allow the Permittee five (5) days to demonstrate compliance. In the event the Permittee fails to comply and fails to cease work, the County may seek injunctive relief to prevent the continued unauthorized use of its right-of-way.

A Permit once suspended may be reinstated by the County upon a showing of compliance by the Permittee, along with a re-application fee equal to the amount of the original Permit.

Permittee may appeal suspensions of Permits to the Board of County Commissioners, which appeal will be considered at a public hearing of the Board pursuant to the procedures set forth in Section XV: Appeals, of this Ordinance.

SECTION XII: TIME EXTENSIONS FOR PERMIT

Upon written application to the Right-of-Way Administrator, and for good cause shown, or upon the Administrator's own initiative, the Permittee may be granted an extension of time in writing for which the Permit will be valid in order to allow the Permittee more time to complete the permitted project.

SECTION XIII: APPEALS

An applicant or Permittee shall have the right to appeal an adverse decision of the Right-of-Way Administrator on any matter. All such appeals shall be made in writing to the County Manager or his designee no later than ten (10) days after receipt of written notice to the applicant, Permittee or other person of an adverse decision and must be accompanied by a non-refundable appeal fee of \$50. Appeals shall be heard at a public meeting of the Board of County Commissioners within forty-five (45) days of the filing of a written appeal and shall be quasi-judicial in nature. A decision of the Board of County Commissioners adverse to the applicant or Permittee may be taken by the applicant or Permittee to the State District Court pursuant to State District Court rules of procedure. The decisions of the Board of County Commissioners shall be based upon findings of fact.

SECTION XIV: REPEAL PROVISION

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Upon the effective date of this Ordinance, Santa Fe County Ordinance No. 1994-2, enacted by the County on April 14, 1994 shall be repealed.

SECTION XV: EFFECTIVE DATE OF ORDINANCE AND GEOGRAPHICAL SCOPE

This Ordinance shall be effective thirty (30) days after its adoption and enactment by the Board of County Commissioners and the filing of the signed original Ordinance with the County Clerk. It shall be effective within the geographical limits of Santa Fe County outside the boundaries of all incorporated municipalities.

SECTION XVI: SEVERABILITY

If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of the Ordinance are severable.

SECTION XVII: GRANDFATHER CLAUSE

The provision of this Ordinance shall not apply to the present use of County right-of-way by a utility or other person where such use was lawfully in place prior to the effective date of this Ordinance. That prior use will be governed by the terms and conditions of any prior right-of-way Ordinance in effect at the time such use was initiated. However, any expansion of or modification of that prior use or any repairs to or maintenance of that prior use will be governed by the terms and conditions of this Ordinance.

SECTION XVIII: NOTICES

All notices required to be delivered to the County pursuant to this Ordinance shall be sent, certified mail, to the following:

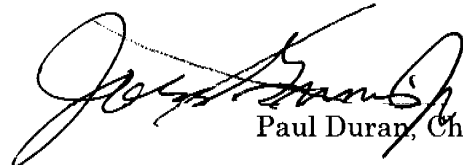
County Manager
Santa Fe County
102 Grant Avenue
Santa Fe, New Mexico 87501

SECTION ~~XXII~~ XIX: AMENDMENT CLAUSE

This Ordinance may be amended, as needed.

ADOPTED, SIGNED AND APPROVED this ____ day of _____, 1999, by the Board of County Commissioners of Santa Fe County. This Ordinance shall become effective on the ____ day of _____, 1999.

BOARD OF COUNTY COMMISSIONERS


Paul Duran, Chairman

ATTEST:

Rebecca Bustamante, County Clerk

APPROVED AS TO FORM:

Denice Brown, County Attorney