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BOARD OF COUNTY COMMISSIONERS

SANTA FE, NEW MEXICO

REGULAR MEETING

AUGUST 8, 2000

Richard Anaya, Commission Chairman

Paul Duran, Commissioner

Javier Gonzales, Commissioner

Joe S. Griñé, Jr., Commissioner

Marcos Trujillo, Commissioner

SANTA FE COUNTY

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REGULAR MEETING

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August 8, 2000

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 5:00 p.m. by Chairman Richard Anaya, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

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

Members Present:

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

Member(s) Absent:

None

IV. INVOCATION

An invocation was given by Reverend Frank Benoit from Grace Community Church.

V. APPROVAL OF AGENDA

- A. Amendments**
- B. Tabled or withdrawn items**

SAMUEL MONTOYA (County Manager): Mr. Chairman, members of the Board. There are four amendments on today's agenda, Mr. Chairman. The first is item VIII. A. 3 on page 2, and item VIII. A. 4, which is not on the agenda, Mr. Chairman, but it is an issue I would like to discuss with the Board that relates to St. Vincent Hospital relative to some new appropriations that we were just made aware of, Mr. Chairman, so I would like to add that on as item VIII. A. 4.

Mr. Chairman, the next item that is an amendment is item VIII. E. 1 under the

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County Clerk. And the last amendment is item IX. C, which relates to affordable housing density.,

Mr. Chairman, in order to proceed to the tabled items, I would like to bring to the attention of the Commission that we're recommending the tabling of item VIII. A. 2, which is a purchase agreement with the Valle Vista Water and Sewer Utilities. Item IX. A, which is a resolution granting a certificate and acceptance of franchise to the Adelpia Communications Corporation, item IX. D, which is an ordinance relating to comprehensive solid waste. And I want to point out here, Mr. Chairman, that Commissioner Trujillo had asked that this issue be placed on the agenda. However, the notice that we gave in the newspaper was given for the meeting of the 29th, so we're simply deferring it to the second meeting of the County Commission of this month. And the last, Mr. Chairman, being IX. E. 1, which is a Land Use Department item, CDRC Case 00-5320, James Kennelly. Those are the tabled items for today, Mr. Chairman.

CHAIRMAN ANAYA: Thank you, Sam. Any questions of staff? If not, then what's the pleasure?

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

VI. APPROVAL OF THE MINUTES: July 11, 2000

Commissioner Trujillo moved to approve the July 11, 2000 minutes. Commissioner Griñé seconded and the motion passed by unanimous voice vote. [Commissioner Duran was not present for this action.]

July 25, 2000

Upon motion by Commissioner Griñé and second by Commissioner Trujillo, the minutes from the July 25, 2000 meeting were unanimously approved as submitted. [Commissioner Duran was not present for this vote.]

VII. CONSENT CALENDAR

- A. Request approval of disposition of County Fire Department vehicles in accordance with state law**
- B. Resolution No. 2000-89. A resolution replacing Resolution No. 2000-78, requesting transfer from the Open Space GOB 1999 Series fund for the GOB debt service fund to budget interest revenue for debt service**

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- expenditure in fiscal year 2000
- C. Resolution No. 2000-90. A resolution replacing Resolution No. 2000-77, requesting transfer from the General Obligation Bond (GOB) fund to the GOB debt service fund to budget interest revenue for debt service in fiscal year 2000

CHAIRMAN ANAYA: Are there any bullets to be sidelined for discussion? If not, do we have a motion for blanket approval?

Commissioner Griñé moved blanket approval of the Consent Calendar and Commissioner Gonzales seconded. The motion passed by unanimous voice vote. [Commissioner Duran was not present for this vote.]

VIII. STAFF AND ELECTED OFFICIALS ITEMS

A. MATTERS FROM THE COUNTY MANAGER

1. Request authorization to enter into a water services agreement with Mr. & Mrs. Elmer Garcia

MR. MONTTOYA: Mr. Chairman, I'd like to defer to Mr. Sayre.

DOUG SAYRE (Utilities Director): Thank you. I'd like to take a minute to pass out -- there was a modification in the agreement, slightly so I need to pass out this agreement that's before you in your packet.

CHAIRMAN ANAYA: The Chair would like to recognize the presence of Commission-elect Paul Campos, who is in the audience. Hello, Paul.

MR. SAYRE: Thank you, Mr. Chairman, members of the Commission and staff. We come before you with a water service agreement with Mr. Elmer Garcia. We've negotiated this agreement based on some claims made by Mr. Garcia concerning the Valle Vista Water Utility which the County would like to acquire. Mr. Garcia's claim is based on his status as successor-in-interest to a settlement agreement entered into by the current owner of the Valle Vista Water Utility, and certain representations by the former manager of the County Water Company under this.

Under the terms of that prior settlement agreement, the Valle Vista Water Utility could be required to provide water service up to 41 lots on which property is now being developed by Mr. Garcia. It was also asserted by the former company manager with the water utility that we would be obligated to serve those.

Just to give you some discussion about this item, we're certainly interested in acquiring Valle Vista Water Utility and that's a second item on the agenda and the only reason we won't consider it tonight was there were some legal issues concerning that that we wanted to table until the next meeting. So it will come up to you in the next meeting

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about acquiring the Valle Vista Utility.

We want to identify, it's certainly important to quantify and limit potential liability to the County from the above-described claim. To that end, staff and Mr. Garcia have negotiated a proposed water service agreement that protects the County's interest and also takes into account our assessment of the strength of Mr. Garcia's case against the County. The pertinent elements of this agreement are the following: The County would only bear responsibility to provide water if it actually purchases the Valle Vista Utility. Water service would not be provided until such time as additional water rights are available to support such service. When additional rights become available, Mr. Garcia's water service needs will be given priority over all other new water rights allocations except those for replacing some expiring Valle Vista water rights.

This would be based on the date of the settlement agreement which Tony Apolaca had with Hall Syndicate when this allocation of that water became necessary. Mr. Garcia's overall water demand would be based on an allocation of .25 acre-feet per dwelling for a total of 6.25 for the 25 units proposed in the Valle Vista heights subdivision. The County's current water rights allocation calls for .31. However, in earlier agreements based on the date this was probably taking place, the water agreements we had negotiated based it on .25 acre-feet.

Mr. Garcia would pay \$12,500 per acre-foot for the water service by the County. This would be amortised on a 15-year schedule at 7 percent, but paid out over five years with a balloon payment at the end of that five years. This per acre-foot price also has precedents in earlier contracts that the County utility entered into, say with a number of the entities south of Interstate 25.

When Mr. Garcia calls upon water service to go have the option to transfer ownership of existing well and water rights to the County, he does have one well, and the County will attempt to effectuate the transfer before the State Engineer and the water rights price shall be reduced by an amount proportional to the water rights successfully transferred. Mr. Garcia will be relieved of his current contractual obligation to participate in the construction of the fire protection line along State Road 599 and I-25 frontage road, which we expect to start towards the end of this month. But he was obligated for about \$18,000, a little greater than \$18,000 on that line, and it was for fire protection for all those businesses along I-25 frontage road.

This is reasonable, given that the County purchases the Valle Vista Utility assets and adequate fire protection would be available to the subdivision through the anticipated interconnection of that system to our system. The last important item is certainly this agreement will be contingent on the County acquiring the Valle Vista Water Utility and this agreement will become null and void if the County does not acquire that system. I can take questions at this point if there are any from the Commission.

CHAIRMAN ANAYA: Are there any questions of Doug?

COMMISSIONER TRUJILLO: Doug, this agreement with Mr. Garcia is

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congruent with the overall, holistic perspective that we have in that area? So it's a win-win situation for not only Mr. Garcia but also for Santa Fe County?

MR. SAYRE: Yes, it is. The other thing is, if we didn't do this, it could come that he would file an injunction about our proceedings with the Public Regulation Commission regarding the purchase of Valle Vista. If we don't settle this issue before it goes there we could get into a long-standing approval of acquiring that system based on having this outstanding agreement that was in legal constraints. So we feel like it would be in the best interest of the County to settle this.

CHAIRMAN ANAYA: Any other questions of Doug? Doug, I've always been an advocate of the water company of course and I really think that the purchase of this serves the purpose of creating that network that we need throughout the county, so good job. It's in the right direction.

Commissioner Grifé moved to approve the agreement. Commissioner Trujillo seconded and the motion passed by unanimous voice vote. [Commissioner Duran was not present for this action.]

CHAIRMAN ANAYA: Let the record show that Commissioner Duran is in attendance.

VIII. A. 3. Resolution No. 2000-91. A resolution adopting a voluntary water conservation plan for Santa Fe County

MR. MONTROYA: Mr. Chairman, members of the Board, the community of Santa Fe, City of Santa Fe, County of Santa Fe has been experiencing a drought season, Mr. Chairman and as everyone here knows, the City of Santa Fe has imposed some conservation measures relative to water conservation to assist with the difficulties and complexities that come with no precipitation.

Mr. Chairman, the County of Santa Fe brings to you a resolution, Mr. Chairman, to ask that the residents of Santa Fe County voluntarily participate in a water conservation plan. I want to point out that the County of Santa Fe does not have a water conservation plan in place, Mr. Chairman, but we do acknowledge the severity of the problem and we are recommending, Mr. Chairman, the adoption of Resolution 2000-91 which would require the voluntary consideration by the constituents of this community to put into place the water conservation plan for the county.

Mr. Chairman, I would like to defer to Ms. Katherine Yuhas, who is our County Hydrologist, to tell you about the conservation plan and what it contains, but Mr. Chairman, in a nutshell, basically what we are bringing forth to the Commission is a recognition of the drought condition and the severity of that condition and seeking to ask our constituents to

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begin to conserve water in any way possible in order that we not come to a very serious situation where we would have to impose other types of restrictions similar to what the City has done. So with that, Mr. Chairman, I would defer to Katherine.

KATHERINE YUHAS (County Hydrologist): Thank you. Chairman Anaya, members of the Board, the plan before you, as explained, is a voluntary water conservation plan that County staff would use to promote water conservation among county residents and it gives them specific measures that they can take in their homes and outside their homes to conserve water. I realize you just received the plan. It's fairly straightforward. It's separated into two parts, inside water conservation and outside, and some examples of what's in the plan are installing drip irrigation systems rather than above-ground sprinkler systems, installing low-flow plumbing fixtures, and keeping swimming pools covered when they're not in use to reduce evaporation. So it's not things that would require drastic changes in the way people lead their lives.

CHAIRMAN ANAYA: Thank you, Katherine. Are there any questions of Katherine? Interestingly enough, Saturday morning I had the opportunity to go on a field trip up to the watershed. There were 18 of us. Commission-elect Paul Campos was there. Frank Montano from the City Council, along with Councilor Ortiz, and we had a first hand look at Nichols and McClure and Paul Campos will agree that the levels are very low.

COMMISSIONER TRUJILLO: Mr. Chairman, along those lines, I understand that the resolution is voluntary, but there's issues that permeate Santa Fe County, especially in the Las Campanas area where we have potable water being used to irrigate golf courses. How are we dealing with that and hopefully we can impress on that development, on that community, that they need to be more sensitive in the usage of water. We're an arid environment and whether there's a drought or there's not a drought, water is a scarce commodity. So we need to make sure we educate the public and that development in the usage of water.

MS. YUHAS: I think you're exactly correct, Commissioner Trujillo. Part of what I would like to use this plan for is a basis for water conservation education throughout the county. We would put it on the County website, we would distribute it with the County water bill and hopefully be out in classrooms, giving it out with development permits, that sort of thing. And as far as Las Campanas goes, I think we'll be talking with them probably.

CHAIRMAN ANAYA: Any other questions of Katherine? Thank you, Katherine. What's the pleasure?

Commissioner Grifé moved to approve Resolution 2000-91 and Commissioner Duran seconded. The motion passed by unanimous voice vote. [Commissioner Gonzales was not present for this action.]

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VIII. A. 4. Discussion of new Indigent Fund Appropriations

MR. MONTROYA: Chairman Anaya, members of the Board, thank you very much, Mr. Chairman. The next item, or the item I bring before you now does not require action today, Mr. Chairman but simply a notification to the Board of a very important topic. Just recently, Mr. Chairman, on August 3, we were advised by St. Vincent Hospital and also the state of New Mexico that there is approximately \$33 million available in additional supplemental sole community provider funds that can be utilized by hospitals around the state of New Mexico.

In particular, Mr. Chairman, these funds need to be expended or encumbered by October 1, 2000. I want to point out that these supplemental funds, what they mean to Santa Fe County is the eligibility for approximately \$8.2 million in additional supplemental funds from the Medicaid upper limit and the matching funds that would be required, Mr. Chairman, would total approximately \$2,061,000 that would need to be found and anted up, if you will, to be able to access the \$8.2 million. The reasoning for bringing it before you today, Mr. Chairman, is that there is a very, very short timeline on these funds. The matching funds need to be certified to the state of New Mexico by August 31, 2000, which basically we need to react within 20-some days within this month to see if we are able to find the matching money and bring this request before you on August 29, which is our next scheduled meeting.

As you know, we have an Indigent meeting prior to the Commission meeting at 1:00 on the 29th. I have been discussing this issue with Dr. Lucas, who is the CEO of St. Vincent Hospital, and also with the internal Indigent staff and the director of the Community Development Department. Mr. Chairman, we are very hopeful that we can bring together a package to take advantage of the extra \$8.2 million available on behalf of the indigent people of this county. However, at this point in time, as I mentioned, since we just learned of this situation, we have not been able to work out all of the mechanics, the fiduciary mechanics that are necessary to access these funds.

However, Mr. Chairman, I did want to point out to the Board that four hospitals in our network, in the sole community network, would be available to receive the additional funds, the lion's share of that money going to St. Vincent Hospital. Mr. Chairman, I would stand for any questions from the Board at this time. I just simply wanted to let you know that we would be working on this issue and that we will have a recommendation for you by the August 29 meeting.

Mr. Chairman, there is also one other possibility, that if we are able to work out all of the particular complexities to this proposal prior to the 29th, we might request of the chairman of the Board that a special Indigent meeting be held prior to the 29th, assuming that we're able to work out all of the particulars. With that, Mr. Chairman, I hope I've been clear on the issue and I would stand for any questions.

CHAIRMAN ANAYA: Are there any questions of Sam? There are none.

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Are you requesting any action at all today? Any direction?

MR. MONTOYA: No, Mr. Chairman. No action, simply a notification to you of the proposal and the amounts of money available and what we need to do in terms of a timeline.

CHAIRMAN ANAYA: Thank you, Sam.

VIII. B. MATTERS OF PUBLIC CONCERN - NON-ACTION ITEMS

CHAIRMAN ANAYA: Is there anyone in the audience that would like to address the Commission on any non-action issue? There are none.

VIII. C. MATTERS FROM THE COMMISSION

1. Resolution No. 2000-92. A resolution urging the International Trade Commission to remove trade on Mexican cement

COMMISSIONER GONZALES: Mr. Chairman, I asked that this resolution be brought forward and I'd like to ask Terry Brunner to present it. This resolution actually comes about from a coalition of counties on the border of Mexico and they're asking that we support them in this effort and I'll ask Terry to explain.

TERRY BRUNNER (Policy Analyst): Mr. Chairman, Commissioners, it's also supported by the County Executives of America, the New Mexico Department of Transportation, New Mexico State Highway Commission. For more than a decade, there's been a severe restriction, or what they call an anti-dumping order on Mexican cement in the US. It was put into place many years ago because the US cement market was having difficulty. Since that time, the US cement market, with the passage of things like the TBA-21 Act and all these federal highway programs, our market has had a hard time keeping up with the need for cement and apparently that's felt around New Mexico. State Highway Department and the Department of Transportation feel it very often. What we're urging in this resolution for the International Trade Commission to do next week when they reconsider this vote is to consider getting rid of that anti-dumping restriction and begin to allow the importation of Mexican cement to meet the cement needs that we have here in the US.

CHAIRMAN ANAYA: Doesn't that also fall under the NAFTA provisions?

MR. BRUNNER: Yes, it's part of NAFTA. The International Trade Commission became part of that NAFTA agreement and what's happened now with NAFTA is that you haven't had that free exchange of cement because you have this ten-year old order that's been hanging over their heads.

COMMISSIONER GONZALES: I think, Mr. Chairman, it really just comes down to a simple supply and demand issue. There's not enough cement in the United States

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to keep up with demand and this ten-year rule is preventing Mexican companies from being able to export out of Mexico into the United States. I'm urging support of this. This helps in lots of ways. Hopefully the Mexican economy will benefit from this and certainly our economy will benefit from having that ready access to cement. I'd like to urge passage.

Commissioner Gonzales moved to approve Resolution 2000-92 and Commissioner Trujillo seconded. The motion passed by unanimous voice vote. [Commissioner Griné was not present for this motion.]

COMMISSIONER GONZALES: Mr. Chairman, one other matter under Matters from the Commission as it relates to Agua Fria Village, I know that we're working there trying to address the repaving project. I know Commissioner Duran and I think Commissioner Trujillo has been very intricately involved in trying to address some of the concerns of the citizens, but this week, I think the three of us I saw, received a letter from either the president of the Agua Fria Village Association or the Domestic Well Association asking the Commission to consider the purchase of some property along the river bed.

This village as we all know has endured a lot in terms of development and in terms of what infrastructure and traffic has done to that community and I guess what I'd like to do, and I see Alina here from the Land Use Department, and Roman, if the Commission's okay. I know that we were allocated about \$200,000 each in our budget to try and have money available for pieces of property that didn't necessarily make it on the COLTPAC's list of properties that they want to buy, but are very important to communities and neighborhoods. From what I understand by this letter, this is a piece of property that they would like to see purchased. Again, it's along the riverbed.

With concurrence from the Commission, I'd like to direct staff to review the letter, note the property, see if we can get an appraisal done and have some options brought back before the Commission at the next County Commission meeting. Is that okay, Commissioners?

CHAIRMAN ANAYA: Is there consensus?

COMMISSIONER TRUJILLO: Commissioner Gonzales, I have a question. There is already a piece of land that has met the criteria that is being bought by the open space money, right?

COMMISSIONER GONZALES: Right.

COMMISSIONER TRUJILLO: Is this land contiguous to that?

COMMISSIONER GONZALES: I don't know. I couldn't tell. All I told the people in Agua Fria is that I would bring it forward tonight so that we have some movement on it. I remember seeing in the letter it was 18 acres. I'm assuming that it probably is contiguous, maybe, but I don't know for sure. Does Commissioner Duran know?

COMMISSIONER DURAN: It could be two. It could be the Peppard

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property on South Meadows, or it could be a piece of property that adjoins M & R Gravel. I'm not sure.

COMMISSIONER GONZALES: I think it's the one that's near the San Isidro Crossing.

COMMISSIONER TRUJILLO: So that would mean it would be contiguous.

COMMISSIONER GONZALES: It would probably be contiguous to it. So can we have some options? I'm willing to use my \$200,000 in my budget to help towards that acquisition, but I don't know if anybody else has any money left. But maybe it can be brought back for discussion.

COMMISSIONER DURAN: I haven't use up mine.

COMMISSIONER GRINÉ: I still have mine too.

CHAIRMAN ANAYA: I think we all have ours, don't we?

COMMISSIONER GONZALES: I don't know, Commissioner Anaya. I think you used yours on Pops.

CHAIRMAN ANAYA: I did? Can I borrow some more?

COMMISSIONER GONZALES: The money, just for the record, as we recall, was set up for each Commission district so that those pieces that were important to communities that didn't rank high would still have a venue to be considered by this Commission. Now this was forwarded by that association. I'm assuming that it's something that's important and I'd like to take it under serious advisement. So can we -- I guess the direction I'd like to ask Roman is that we have this brought back before this Commission with the options, whether to proceed forward or to not, that you look at our own budgets to see what monies each of us has available for these contributions, and maybe, if it's contiguous I think that's all the better because we have more land that will go for open space there in the Agua Fria area, especially along the riverbed.

I'd like you to bring that back with options for us to either proceed forward with the purchase if we concur, or to abandon it. Is that okay, Commissioners?

COMMISSIONER TRUJILLO: That's fine.

COMMISSIONER GONZALES: Alina, is that understandable? Okay, good.

CHAIRMAN ANAYA: Okay, there's consensus, then. Are there any other Matters from the Commission?

COMMISSIONER DURAN: I was just wondering if the Board might consider helping out the teen court kids that are going to some program down in Albuquerque. They need \$1,000. I think they're spending a couple days down there. Have you seen that letter, Sam? I told them that I would ask the Commission if there was a way of being able to help them out without violating any anti-donation clause.

CHAIRMAN ANAYA: Isn't there some funding from the DWI fund?

MR. MONTOYA: Mr. Chairman, I do believe there is some discretionary money in the DWI fund. However, I think Commissioner Duran brings up a good point. We'll have to make certain that we don't have an anti-donation issue, but assuming that the

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direction from the Commission is that if we do not, that you would like to proceed with that, we can follow that through.

CHAIRMAN ANAYA: Okay, is there consensus? There's consensus. Any other matters?

COMMISSIONER GONZALES: One more, Mr. Chairman. As you know, we started our open space program a couple years ago based on a poll that was conducted of county residents. Recently, Mr. Chairman, we asked the Trust for Public Lands to conduct another poll to gauge the response from residents in terms whether they support what the County has undertaken or they don't support it so that hopefully we can make a decision as to whether to present another bond question to the voters of Santa Fe to continue the open space program.

Mr. Chairman, I'd like to ask Terry Brunner to introduce the pollsters to make a very brief presentation so that we know the poll that was submitted, because I know there's been a lot of discussion as to that poll and I think it would be helpful for us to understand and ask any questions that we might have of the poll. They know that they've got a very short period of time to make the presentation. So maybe Terry can introduce the gentlemen that are here to make the presentation.

COMMISSIONER DURAN: Excuse me, Terry. Is it possible to get a copy of that report? I have one in my office. You don't have enough to distribute right now while we talk about it? Thank you.

MR. BRUNNER: Mr. Chairman, Commissioner Gonzales, we have Ted Harrison here. He's the regional director of the Trust for Public Lands, and David Binder from Binder Research that conducted the poll several weeks ago, so I'd like to introduce them.

TED HARRISON: Mr. Chairman, Commissioners, my name is Ted Harrison. I'm the regional director for the Trust for Public Land offices here in Santa Fe. As you all know, in 1998, the electorate overwhelmingly approved a bond initiative for \$12 million to fund protection of wildlife areas, watersheds, cultural resources and open space in the county. At that time, in 1998, I think that was the highest level of voter support in the country for open space protection.

That was a stunning result, in our experience, given that the polling information that we'd done prior to the election represented a level of support in the low 60's. So we were encouraged by the polling result but when the actual vote came in, we were especially enthusiastic about the level of support for this kind of initiative in Santa Fe.

About two weeks ago, the Trust for Public Land, trying to be responsive to the fact that monies from the existing bond initiative have been either spent or nearly fully committed at this stage, in an attempt to ensure that the program continues to retain its momentum and the good work that's been done over the past two years, particularly with respect to the process that has been developed with COLTPAC in terms of deciding what properties would be acquire with a lot of citizen input and also input from experts and all of these different

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cultural and land use resource areas.

The Land Trust Alliance, which is a national organization has voted to put Santa Fe as one of five out of 148 different communities as a model community in terms of how it manages its open space program and will be highlighting the work of COLTPAC and Santa Fe County in an upcoming report on how other communities around the West and around the country manage these sorts of programs.

So given the success that Santa Fe has accomplished in terms of spending its monies on high quality land resources and cultural resources, and given the quality of work in the decision making process, we felt it was important to give you some direction, give the community some direction as to whether there was continuous support for this bond sort of program, what level of support, how much money would be allocated through the bond program, and for what purposes.

So with that as our general goals in mind we hired David Binder Research, which is a very accomplished polling research firm out of San Francisco. They've done work for us around the country and most recently in California and in Arizona. I've invited David to come join us this evening to give us a summary of his results on the open space poll. So if you bear with us, we'll make sure our technology works properly.

COMMISSIONER GONZALES: Mr. Harrison, can I ask you a quick question. In terms of Santa Fe County has been strong advocates for the Land and Water Conservation Fund, the CARA Act that's making it through Congress now will hopefully fully fund I believe the state's portion of the Land and Water Conservation Fund, somewhere I hear about \$450 million.

MR. HARRISON: Well, three billion dollars would be allocated per year for CARA for the next I believe it's ten years.

COMMISSIONER GONZALES: Right, but whatever the state's -- do you know --

MR. HARRISON: The state allocation, I think you're right; about \$45 million a year.

COMMISSIONER GONZALES: For our state, about \$45 million?

MR. HARRISON: Yes.

COMMISSIONER GONZALES: How do programs like this benefit us when trying to access money from the Land and Water Conservation Fund? Do you know historically? Are we going to be in line? Are we any farther in front of the line to get access to that money because we have an established program or a continuing program or not necessarily?

MR. HARRISON: Yes, the CARA legislation does require a local match on any of its funding. So for states such as Texas that don't have a state-wide mechanism for supporting open space or cultural resource protection, they're actually voting to opt out of the CARA funding. So for Santa Fe County or Bernalillo County, which currently has an open space fund, those two counties in New Mexico would be eligible for matching monies

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from the CARA.

COMMISSIONER GONZALES: So is it just in terms of applying for those monies, like you would any CDBG grant? How would the County, for the record, actually have access to this Land and Water Conservation?

MR. HARRISON: You know, I probably should get back to you with the details. The legislation has made its way through the Senate and is expected to go through conference after the August recess. There are specific provisions as to how cities or counties go through the application process for the matching grant, but I don't know that off-hand.

COMMISSIONER GONZALES: So potentially, if the County went forward with another \$12 million GO bond, or \$15 million, whatever we choose, if the voters support that, we could basically leverage anywhere from \$24 to \$30 million in actual money.

MR. HARRISON: I don't know off-hand what the formula is but it could be as much as that, so that you could double your money with the CARA legislation.

COMMISSIONER GONZALES: Thank you.

MR. HARRISON: So I'll now introduce David Binder.

DAVID BINDER: Mr. Chairman, Commissioners, thank you. My name is David Binder. It's a pleasure to speak in front of you today. I'm here to present the results of the survey as Mr. Harrison just mentioned to you. And in looking to make sure that we don't waste your time we're going to go through this as quickly as possible. I want to tell you first how we conducted this survey, survey methodology.

We had 400 likely voters within Santa Fe County, likely voters defined as any registered voter within the county that has a history of voting either in the last presidential election of November '96 or the November 1998 election. This was a scientific telephone survey conducted with accepted scientific techniques using random sampling. The telephone interviewing was conducted by an independent market research firm that makes the telephone calls, talks to the voters and collects their data, that is independent and does calls for pollsters nation-wide.

The survey was conducted June 28 and 29 and there was a 4.9 percent or 5 percent margin of error on this. So I want to quickly go through some of the results for you today. We started the poll just quickly asking county voters how they felt about living in Santa Fe County. Was it a great place, a good place, not such a good place, or a difficult place to live, and we found that county voters were very happy about living in Santa Fe County. 41 percent said it was a great place, 45 percent said it was a good place so adding them together we have 86 percent of the voters we talked to that were happy about living here. Only 3 percent said not a good place, and 8 percent difficult place, with another 3 percent that had no opinion on it.

We wanted to quickly move into the discussion of potential bond measures that may be on the November ballot and we provided the voters with six different items that may be on the November ballot. We do this because we've frequently found when we do these polls that when you ask a question in isolation on a spending measure it may be handled

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differently if it is not put in a context of several potential spending measures that may be on the ballot at the same time. So we did provide all six potential measures to the public and asked them how they would vote on them and here are the six.

This bar chart is divided between the people that said no on the left-hand side in the blue color and the people that said yes on the right-hand side in the red and orange color. The numbers flying onto the screen now are the proportion of people that said that they would vote yes. You can see the top, that the \$3 million bond to purchase equipment and buildings for public safety and fire prevention services was very, very popular -- 78 percent of the county voters we talked to said that they would vote yes on that.

The next one down though is the one that we're talking more about today, which is a \$12 million to renew funding for the wildlife mountain trails and historic places program in Santa Fe County. Here again we found strong support with 67 percent total, a percent of the voters that we talked to say that they would vote yes on that. The following are four measures that had somewhat lower levels of support. The pricetags on these were a little bit larger. \$40 million for a convention center, \$20 million for County Judicial Complex, \$4.5 million for public works and \$20 million for purchase and renovation of old St. Vincent Hospital. You can see there that the percentages drop into the low forties and high thirties on those four.

Again, we generally find that measures -- the support levels sometimes fall when we're talking about major edifices, building of public buildings.

We then went ahead and pursued this issue of the wildlife, mountains, trails and historic places program. We asked voters if they were -- we told voters about the 1998 bond measure and asked them whether they thought that that bond measure was a good thing or a bad thing to do, and we found overwhelming support for the 1998 bond measure. 76 percent of the people that we talked to said that that bond measure was a good thing with only 8 percent saying it was bad and 16 percent that said they had no opinion on the 1998 measure.

Then a follow-up question was Do you believe that we as a County already have enough money to purchase open spaces to protect them from development? Or do we need more money to protect open spaces from development? Here we found that 21 percent of the people we talked to said we do already have enough money, but 50 percent said we need more money to protect open spaces with a rather considerable 29 percent saying that they don't have an opinion now, but you can see here that a majority of people, even though they were told that we had the bond in 1998, say that we still need more money at this point to protect open space from development.

We then gave the voters some more information. And the more information we gave them was very similar to the language that was on the 1998 ballot. It said "Now let me give you some more information about the proposed measure to issue \$12 million in general obligation bonds to renew funding for the wildlife mountain trails and historic places program in Santa Fe County. This bond would provide funds to purchase land for open

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space and trails and to preserve historic areas, foothills, mountains, agricultural land, arroyos, river parkways, sacred sites and high desert habitats containing wildlife and native plants. It would also provide funds to improve neighborhood parks and ballfields for families and children. The program shall be subject to an annual audit and review by an independent citizen oversight committee. This would cost about \$16 per year for the owner of a home with a market value of \$150,000. If the election were today, would you vote yes or no on this proposition."

Looking at the results now, we found 73 percent of the people we talked to said that they would vote yes. The red bar here, this designates strong support, people that said they absolutely would vote yes on it. That was 51 percent. There was another 22 percent that said they would vote yes but they still might change their mind with more information, for a 73 percent total that said they'd vote yes, compared to only 24 percent that said they would vote no, and only 18 percent that said that they were certain to vote no.

Now we wanted to take a look here at the demographics and at the end of the surveys, what we do on most of these surveys, we ask people a few questions about themselves that allow us to compare answers with different demographic sub-groups. For example, there was one comparison between homeowners and renters on this question that we wanted to look at. First looking at renters, we found renters overwhelmingly supportive with 84 percent of the renters in Santa Fe County that we talked to said that they would vote yes. Only 14 percent no.

But homeowners were not that different. You look at the green bar here for homeowners and you could see a slightly lower level of support but still overwhelming support. 71 percent of the homeowners we talked to said that they would vote yes on the renewal, compared to just 25 percent that said that they'd vote no. Similarly, we wanted to look at area of residence in the county. We asked the people we talked to on the phone to self-identify where did they live. Did they live in a city? Do they live in a development near a city? do they live in a town? Do they live in a rural area or on a farm? And we looked at the results for all four of these. For people that live in a city, it was 74 percent to 22 percent in support of renewing funding. For people that lived near a city, it was 71 percent to 24 percent. For people living in a town, it was 73 percent to 24 percent, and for people that lived in a rural area or farm, it was 73 percent to 25 percent. So it's kind of a boring slide. It just shows you regardless of where you live, support for renewal of funding is very consistent.

Also we wanted to look at party affiliation and as you might expect, Democrats more than Republicans were supportive. 75 percent of Democrats said they'd vote yes compared with 23 percent no. But even Republicans, a little bit higher on the no side, but again, Republicans also in Santa Fe County are supportive of renewing funding at a 60 percent to 34 percent margin. Independents were the most supportive by 88 percent to 6 percent. We had a little bit smaller number of Independents in the sample but of the Independents we talked to, they were overwhelmingly supportive of renewing funding.

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One other thing, two other points we're going to make before we wrap it up here. We wanted to test the different levels of the bond. We started with \$12 million, but we also asked people would you change your mind if it was \$10 million? Would you change your mind if it was \$7.5 million? At \$12 million, as you've already seen, it was 73 percent to 24 percent. What we did in the surveys, if they said no, we said, well what if it was lower? What if it was only \$10 million? Would you change your mind? And here we found only 1 percent addition by moving it down to \$10 million. We tried one more time and said what if it was only \$7.5 million, and there we got it up to 77 percent. But you can see that the story here is that by reducing the level, you're not picking up that much additional support from the voters.

However, we also went the other direction, got a different story. Again, the \$12 million, as I've been telling you was 73 percent to 24 percent. We took the people that said yes at \$12 million and said what about \$15 million? What if it was a little higher? And here we found a significant drop off. It went down to 60 percent support once we raised the price tag to \$15 million. And then at \$20 million, it actually went into a majority no vote. Only 40 percent at \$20 million. So you can see here that as the bond measure increased in amount, the level of support drops.

One last point, we asked the voters, we read them a series of potential uses of funding and asked them to tell us whether it was the highest priority, a high priority, a medium priority or a low priority, and here I am showing the four highest priorities of the voters we talked to as far as protection. Number one, 86 percent of the voters we talked to said that they wanted to protect lands in our watersheds to protect clean water. 86 percent said that was either the highest or high priority. Protecting mountains and foothills was a highest or high priority to 74 percent of the voters. Then we dropped to 69 percent for sacred sites like petroglyphs and land for wildlife and native plants.

Moving to the next four, we had 62 percent that said it was a highest or high priority to protect arroyos and Santa Fe River Parkway. 61 percent for walking, running, hiking and biking trails. 59 percent for historic landscapes, and 52 percent for neighborhood parks with playgrounds and ballfields. So you can see this whole range of potential items was a highest or high priority to a majority of the voters that we talked to in Santa Fe County.

So just to quickly wrap it up here, what we found was that strong voter support exists for a new proposition to renew \$12 million for the wildlife, mountain trails and historic places program. A majority of Santa Fe County voters believe that more money is necessary to finish the job, even understanding that the 1998 measure just passed two years ago. Voters respond strongly to the need to protect watersheds. They also place a high priority on the need to protect mountains and foothills, river parkways, arroyos, historic and sacred sites.

Women more than men. Younger voters more than older voters and Democrats more than Republicans, but a majority of voters support the proposition regardless of gender, age or political affiliation, and as you saw, whether you're a homeowner or renter or what part

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of the county you live in is not a factor in support. Only fire protection and public safety was a higher priority bond measure than open space and then finally, we found that support at this point is very similar to what the 1998 poll showed. \$12 million remains the amount preferred by voters. The priorities for the types of land to be protected remain roughly the same. The only new item here is that the land in watersheds is a top priority to be added to the list. May I take any questions now?

COMMISSIONER TRUJILLO: Mr. Chairman, do you have a breakout of what the representation was of the people of the sample that you talked to between the Santa Fe urban area and the rural areas of Santa Fe County?

MR. BINDER: Yes, Commissioner. We asked people -- again, this was self-identification -- 44 percent said that they lived in the city, 9 percent in a town. We had 10 percent that said they lived in a housing development near a city or town and 34 percent that said they lived in a rural residential area. So we're about evenly split between urban and rural to use those definitions.

COMMISSIONER GONZALES: Mr. Chairman, did you get an opportunity to understand the economic profile of the sampled voters? Because I think one of the issues that continuously happens -- I know that you look at likely voters and that brings up a whole other issue. Who are the likely voters and what's the economic and demographic profile of that? And trying to really pinpoint who from the community would be supporting something of this nature. Is there any way that we would know whether this is supported by the extremely wealthy as well as those who aren't as well off as others?

MR. BINDER: Commissioner, we did not ask the income level of voters as part of this survey. Frequently voters tell us they'd rather not disclose that on a survey so we sometimes drop that off in the interests of time. However, all indications from this survey are clear that people from across the spectrum, whether we're looking at place of residence, age, gender, party affiliation, ethnic background, years of living in Santa Fe County, every measure we looked at showed pretty consistent support across this so my estimate would be that wealthy people as well as people on the other end of the income scale are relatively equal. I don't know that for sure but my estimate would be that they're relatively equal in support for this measure.

Regarding likely voters, because we are going into a presidential election cycle, which typically has the highest turn-out of any election in a four-year cycle, we cast the net as wide as possible with voters. Obviously, we did not call those people that are not registered to vote, but we think we have a very good representation of a likely voter pool.

COMMISSIONER GONZALES: Thank you.

MR. BINDER: And yes, Commissioner, I was just reminded that when we look at renters versus homeowners, that is a very good proxy of different income levels. Maybe not the highest level but we do know that people that are renters and homeowners are very similar in their levels of support.

COMMISSIONER GONZALES: Of course renters pay for it indirectly

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through their rental payment as opposed to a property tax payment.

MR. BINDER: That is correct. Yes.

COMMISSIONER GONZALES: I want to take this opportunity to thank the Trust for Public Lands and certainly your polling company because I know that this poll probably cost considerably more than what we contributed if anything. Did we contribute to this? We didn't. So obviously it did cost more than we contributed, so that certainly means a lot and certainly demonstrates your commitment to seeing this program continue and just again, a reminder to the Commission, it was the Trust for Public Land that reached out to the County a couple years ago. I had a meeting with Deb Fry and they pitched this idea and I thought it sounded good at the time. I still think it does.

I would hope that the Commission would entertain a request by the staff hopefully in the near future to present a bond question and I guess that's just a matter of us discussing it with the staff and seeing when it would be timely to come forward so we can have it prepared if the Commissioners so choose to have it go forward for the November election. Clearly, at that point, I think we are prevented, Chris correct me if I'm wrong, but I think we're prevented from actually advocating to increase taxes in a community so we certainly would rely on the Trust for Public Lands to develop some kind of marketing program to inform the community as to the benefits that this would bring. Thank you very much. We appreciate it.

CHAIRMAN ANAYA: Thank you.

COMMISSIONER DURAN: Mr. Chairman, I just have one comment. We have been talking about acquiring, perhaps the St. Vincent Hospital. We've been talking about the judicial complex. I know we've been talking about moving the County building to a new site. We had at one point agreed that what the manager needed to do was to make a list of those projects that we were hopeful of pursuing and to prioritize them. We don't want to hit the public with five or six different requests for bond money.

Although I am in favor of acquiring more open space, I'm not sure that this is the year that we forego building a new building for the acquisition of open space. I guess what I'm leading up to is I'd like to prioritize our requests, the requests that we're going to put out, the bond requests that we're going to put out to the public.

COMMISSIONER GONZALES: I was anticipating that we'd have this discussion when we have our annual retreat which should be coming up fairly soon anyways, when we set our priorities for the year. It seems to me that that would be the timely time to do that.

MR. MONTROYA: Mr. Chairman, members of the Board, I would like to point out as we discussed earlier, that in order to get any referendum question on to the ballot for November, we would need to make that decision by the end of this month. So in order to be able to bring you the potential questions, we are pursuing exactly what Commissioner Duran has alluded to. We are now preparing a memorandum that will bring to you the five or six particular areas that are feasible and then ask the County Commission

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to review that memorandum and then to prioritize them and to give us the questions that you believe should be placed on the ballot.

So we were waiting to complete our hearing schedule on St. Vincent which ended last Thursday. So we are now in the drafting stage of the memorandum alluded to by Commissioner Duran. We should have that to the Commission probably within the week.

COMMISSIONER GONZALES: That discussion will take place I guess August 29 when we decide priorities.

MR. MONTTOYA: Correct, Mr. Chairman, but we do intend to have the memorandum in the Commission's hands prior to the meeting.

COMMISSIONER DURAN: Excuse me, Mr. Chairman. What's the last date we can put something on the ballot?

MR. MONTTOYA: Mr. Chairman, I believe it's the first week in September, which would be the cut-off date for the actual calendar. So we're hoping to be able to get a decision from the Board around the 29th of August.

COMMISSIONER DURAN: And that would give you time to move on that?

MR. MONTTOYA: Correct.

COMMISSIONER DURAN: Thank you, Mr. Chairman.

REBECCA BUSTAMANTE (County Clerk): Mr. Chairman, I need to certify the ballot on September 15. It's the last day that we can get anything on a ballot.

CHAIRMAN ANAYA: I want to skip the Executive session portion of Matters from the County Attorney if it's okay with the Commission.

COMMISSIONER GRINÉ: That's fine.

CHAIRMAN ANAYA: Let's just go on with the agenda and put it at the end right before Land Use items.

VIII. E. COUNTY CLERK

1. Resolution No. 2000-93. A resolution amending Resolution 1999-131 changing the polling place location of Precinct 22

MS. BUSTAMANTE: Mr. Chairman, members of the Commission, this resolution is just asking for your permission to amend 1999-131 designating the polling places. Precinct 22, we used Carlos Gilbert Elementary School and we want to go back to Sweeny Convention Center. The people want to go back to Sweeny Convention Center and with your approval it will allow me to get a court order to do this.

Commissioner Gonzales moved to approve Resolution 2000-93 and Commissioner Trujillo seconded. The motion passed by unanimous voice vote.

CHRIS GRAESER (Deputy County Attorney): Mr. Chairman, the only item

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we were going to discuss in Executive session, I'm sorry, I should have jumped in a little bit earlier, was the St. Vincent. So we may not need that now and you may want to eliminate that from the agenda. That would probably be fine.

CHAIRMAN ANAYA: We won't need to go into Executive session? Is that what you're saying, Chris?

COMMISSIONER DURAN: What about limited personnel matters?

CHAIRMAN ANAYA: There's nothing.

COMMISSIONER GRINÉ: It was only St. Vincent.

Commissioner Griné moved to eliminate the Executive session. Commissioner Gonzales seconded and the motion passed by majority [3-1] vote with Commissioner Duran casting the sole nay vote.

IX. PUBLIC HEARINGS

- A. Resolution No. 2000-___. A resolution adopting the Madrid Community Plan pursuant to County Ordinance 1998-5, the Community Planning Process (First public hearing)

PAUL OLSEN (Planner): Mr. Chairman, Commissioners, I have a slight addendum. Mr. Chairman, Commissioners, my name is Paul Olsen. I'm a staff planner with the Land Use Department and I've been coordinating the Madrid Community Plan since June of this year. This evening I'd like to give a brief presentation outlining the proposed town of Madrid community plan.

The traditional community of Madrid began the community planning process in May of 1996. The community planning process was initiated to address growth and water issues affecting the community. These issues include commercial development, water supply, potable water, ground water protection, fire protection, open space protection and community facilities along with traffic and parking. The community plan has been developed through an extensive public outreach process, including mailing surveys in coordination with community organizations and community-wide meetings to identify planning issues as well as solutions.

The Madrid community plan meets the required planning elements in Article XII of the Land Use Development Code. This plan will be a tool to support the important values and visions of the community that have been expressed throughout the planning process by property owners, business owners and community members. The plan contains strong emphasis on maintaining the rural quality of life and Madrid's unique community identity.

The plan supports a diverse, mixed use commercial and residential development that currently exists in Madrid. On April 27 of this year, the County Development Review Committee recommended approval of the Madrid community plan. This evening is the first

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of two required public hearings for the town of Madrid community plan as mandated by the Santa Fe County Community Planning Ordinance.

Just a brief overview of the planning process: The community planning process in Madrid began with a community survey to assess views, opinions and issues regarding growth and development in Madrid as identified by property owners, business owners and community members. The survey was conducted between May of 1996 and June of 1997 by the Design Assistance and Planning Center at the University of New Mexico School of Architecture and Planning and Attachment 3 includes an analysis of this survey.

October, '96, the Board of County Commissioners gave approval to begin a community planning process with the traditional community of Madrid. In May of 1997 the community planning committee was elected at a community-wide meeting in Madrid. The community planning committee includes representatives of business owners, property owners, residents and renters, the Madrid Water Cooperative, and Madrid Volunteer Fire Department, along with developers and realtors, youth and other community interests. Page 3 of the plan will show you the entire committee make up.

The community planning began during the summer of 1997 and continues today with the presentation of this plan and if adopted, with implementation of the plan. Three community-wide meetings were held as part of the planning process including one on July 16 to present the plan to the community and receive comments and feedback and make final adjustments before presenting it to the Board. Also monthly and bimonthly meetings have been held by the planning committee as well as subcommittees since summer of 1997.

The completed plan presented today is the product of a four-year process outlined. The plan has nine sections, including land use, community planning boundaries, domestic water, stormwater and surface water run-off, wastewater, fire protection, youth and recreation, traffic and parking, and open space. The main intent of the plan is to protect and maintain the traditional community character, identity of Madrid while planning for future growth needs of the community.

The plan emphasizes continued commercial uses and mixed-use businesses along New Mexico State Highway 14, continuation of existing levels of commercial intensity, which mainly consists of small retail shops and galleries, protection of the town's scarce water resources, development of new water resources for community use, development of more effective water treatment facilities for the town's water supply, protection of the town's water supply from potential pollution from wastewater, enhancing the town's fire protection capabilities, addressing traffic and safety issues along New Mexico State Highway 14, maintaining and upgrading community facilities, including Madrid's Oscar Huber Memorial Ballpark, and maintaining and enhancing Madrid's open space resources, including the newly-acquired 45-acre county open space there.

The plan consists of both policies that would need to be written as ordinances, as well as programmatic policies that will not require ordinances and will be addressed through plan implementation. Policies that require ordinances are outlined on page 20 through 23 of the

plan and a summary of these potential ordinances include establishment of a commercial district which would locate commercial development along New Mexico State Highway 14. New commercial businesses would be required to hook up to the community water system or limit water consumption to .25 acre-feet of water per year, a proposed ridgeline protection guideline that would prohibit building on ridgelines that might block or disturb horizons and views surrounding the town, a requirement that all new businesses provide some type of restroom facilities for patrons, and a proposal to prohibit motor vehicles on community owned and County owned open space areas aside from necessary maintenance and existing road easements.

Programmatic policies proposed in the plan will be coordinated by community members and community organization. When possible, the County Planning Division will assist the community in coordinating programs with relevant County departments and/or state or non-profit agencies. Possible projects that may be developed through the plan include developing new water sources for the community water system as well as working to improve the existing water treatment facilities, improving availability of parking in Madrid as well as directing pedestrian traffic out of roadways, developing restroom facilities, renovation of the ballfield and grandstands, and developing both watershed catchment and aquifer recharge management plans to address erosion problems and protect the area's aquifer.

Finally, the plan proposes adoption of a revised traditional community zoning district, and I have some maps here I'd like to help explain. Also in your packets, maps 1, 2, and 3 will display. This is map 1, and this is the existing traditional community zoning district. This is map 2, and this is the proposed new or revised traditional zoning district. Within the community zoning district, traditional community zoning district and the proposed one, there would be allowed 3/4-acre density, and outside of it is the existing County homestead zone, which is 160-acre density.

COMMISSIONER GONZALES: Paul, let me ask you something real quick. Is the proposed change -- show me on the proposed change what's different as to what's currently in place now. It's hard to tell on this one.

MR. OLSEN: I think if you look in your packet on maps 1 and 2 it gives a little better view, because these maps are a little different. If you could kind of compare, say the roads through here. And the 1980 line was designed as part of the general plan and this has been revised with community input to better fit the townsite plan for the town and the inhabited areas of the town as well.

COMMISSIONER GONZALES: So did the traditional community grow? Did it grow in terms of land size?

MR. OLSEN: You know, I can't answer that directly. I believe it is slightly larger, but I don't know an exact figure.

COMMISSIONER GONZALES: So with the larger, is the plan proposing with the additional lands that are coming in that they would also be zoned for 3/4-acre size?

MR. OLSEN: Yes. And they're also already laid out in the 1975 plat. There are very small lots from the mining town. They're pretty much already there.

COMMISSIONER GONZALES: I guess my point is, what exists today that's not in the traditional community, what will exist tomorrow that is in the traditional community is going from basically homestead-sized lots to 3/4 acre lots. Is that true?

MR. OLSEN: There is some property, yes.

COMMISSIONER GONZALES: And what parts of the town would that be occurring in? I guess my point centers around the issue of infrastructure. I know that there are parts of the town that clearly are in need of more infrastructure than other parts and I didn't know if we'd be adding land at least from a standpoint today that could be supported by infrastructure.

MR. OLSEN: My understanding -- and I can't answer your question directly -- my understanding is that there is an existing infrastructure there, but I don't have that exact figure. And to answer your first question, basically, this new line down here would extend, this blue line down to here, and slightly out here. I can't answer any more directly.

COMMISSIONER DURAN: Mr. Chairman, Paul, can you tell me what the increase in the traditional community is going to be in the sense of acreage? How much acreage are we increasing that area?

MR. OLSEN: Mr. Chairman, Commissioner Duran, I don't have the exact figure for that, for increase of acreage.

COMMISSIONER DURAN: What is it now?

MR. OLSEN: Mr. Chairman, Commissioner Duran, I don't have a direct recollection.

COMMISSIONER DURAN: What is the reason for increasing this? So we can get higher densities?

MR. OLSEN: No, Mr. Chairman, Commissioner Duran, I didn't mean to imply that. The reason for addressing or changing or the boundary is to more accurately fit the topography and the geography that exists in the town. The 1980 plan, it was basically drawn as a rough rectangle over the town. This new line would more directly represent the platted area and the inhabited areas of the townsite of Madrid as well as fitting the topography of the region.

COMMISSIONER DURAN: And this is the first meeting, right?

MR. OLSEN: Correct.

COMMISSIONER DURAN: Is it possible for you to bring that information to the second meeting? The two sizes.

MR. OLSEN: Mr. Chairman, Commissioner, yes.

COMMISSIONER DURAN: I'm a little concerned about the infrastructure that's available out there. Water is scarce out there. There's a lot of wells that went dry out there. I guess we had a problem last year with the fire department being able to provide water to the fire system out there. And if we're going to increase the size of this and allow

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higher densities, I think we need to be aware of the infrastructure problems that we might have. And actually, the water resources.

COMMISSIONER GONZALES: Can I just add to that real quick, along with our request. When you determine the additional land size, if you could determine the eligible density that will be allowed under the new Code as opposed to what exists today. I think that's important that not only the Commission understand but clearly that the town fully recognizes what the impact will be of increasing the traditional community and keep in mind also though that there are areas where -- a case in point, La Cienega as you know - - where we have created a community planning boundary that is larger than the traditional community and we've created traditional historic communities that are larger than the traditional community, and they have different zoning mechanisms.

So I think that that's something that I'll be anxious to ask the residents and hear from them. Is there a request to go to higher density along the town, and following along with what Commissioner Duran was saying, is there a request to increase density and if there is, what is the plan saying about providing infrastructure to support the density where there is already existing problems with existing infrastructure. So I think those are important things that we have a clear understanding on the second public hearing as to just how much density is going to be allowed with the enlargement of the traditional community.

And it may be that we enlarge the traditional community and not allocate the zoning at this point until there is proper infrastructure. So, that's an option, but I think that's something that we need to hear from the residents as to is this what they want.

COMMISSIONER DURAN: Mr. Chairman, just one last request. When you come back at the next meeting, could you have one map that shows the boundaries of the existing and the proposed? So we can have one to look at?

MR. OLSEN: Yes. Mr. Chairman, Commissioners, to continue just a little bit more on the maps. Alina just reminded me that, again, these are different scale and I will bring a map that shows them together. And actually it is very similar land area, but I will find the exact figures as well as the densities and bring that for the next hearing.

I'd like to just continue on with proposed community planning areas that Commissioner Gonzales just alluded to, and actually, if we put these together you get kind of a picture of it. This is the proposed community planning area, and this is the zoning district and this is just the community planning area where the community plan would be in effect. And this roughly matches this zone, although it's slightly expanded to include ridgelines and topography around the town as well as the 45-acre open space property that was just acquired in the area.

That's the end of my presentation. I'd like to summarize that I think the plan is a good representation of the community's vision and values and has gone through an extensive community planning process to create the plan as is presented to you today. Thank you.

CHAIRMAN ANAYA: Thank you very much. Thank you, Paul. This is a public hearing. Would anybody like to address the Commission on this issue, please come

forward.

GAVIN STRATHDEE: Mr. Chairman, Commissioners, my name is Gavin Strathdee. I'm a 27-year resident of the community of Madrid. In 1975 the community was sold off in individual lots from being a company town, and over the last 25 years we have had many, many community planning endeavors. In the 1970's, at the time of the first sale, inherent in the sale of the properties in the town was the formation of the Madrid Landowners Association, which is functioning today as we speak.

As a condition of the sale, covenants and restrictions ran with the title deeds. Those covenants and restrictions represent the first vision statement, if you will, for the community of Madrid. In recognition of early needs in the community from the landowners association, the Madrid Water Cooperative was formed to deal with water supply and distribution. The Madrid Volunteer Fire Department was formed to deal with fire suppression and prevention, and we have since been ably assisted by the members of the Commission.

In the 1990's, as you heard, 1996, the comprehensive plan process was initiated. In 1997 a community planning committee was elected to represent inclusively the varied interests and viewpoints of all community members. Now we have arrived in the year 2000. The vision statement at the beginning of our proposed community plan reflects and is in keeping with past and present sentiment as to where we are in the community, where we would like to see ourselves and our community in the future.

We have accomplished much in the past. When the Commission adopts this community plan we will find ourselves entering a new cycle, renewing our commitment to tackle the tasks inherent in solving our commonly recognized problems to our mutual benefit and to the benefit of the community at large. I'd like to thank you for your support in the past and we look forward to a fruitful relationship in the future. If I may, I would like to address the Commissioners queries regarding the tradition, the existing traditional community area and the newly proposed traditional area.

When the County staff created the traditional area in 1980, it was formed basically as an arbitrary rectangle over the community and at that time left out considerable areas in the north and the south end of the residential area that were originally considered part of the residential area of Madrid. Our major move in requesting that this traditional boundary be changed is not per se to enlarge and bring in additional density, but in fact to incorporate people who have houses and who have properties that are already platted at a given size and have subsequently been excluded from the traditional area.

So although it appears in terms of visual sizing that we are expanding the traditional area, in effect we are seeking to return to the original 1975 Morrison plat which declared the residential area and defined it along Highway 14. Thank you for your attention. If I can answer any questions.

CHAIRMAN ANAYA: Any questions? Thank you for your input, sir.
Anyone else like to address the Commission?

JONI CONRAD-NEUTRA: Hello, my name is Joni Conrad-Neutra, Board

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and County Commissioners. I'm a 26-year resident of the town of Madrid, New Mexico and a business person. I would like to take this opportunity to express the extent of effort made within the community and by the planning community to see that the planning process was open and accessible to all parties in the community.

At the formation of the planning committee, the community as a whole in an open meeting identified specific areas of interest and concern and then elected representatives whom they believed would most effectively address those concerns. All meetings have been open to anyone who wished to participate and were extensively advertised with flyers and mailings around town. Many hours of discussion, arguments, and consensus building have been spent in the meetings over many years to arrive at the document you have before you.

This document has been presented to the Madrid community in an open town meeting and it now presented to you for your consideration. We strongly urge you to approve the town of Madrid's community plan and adoption by the Santa Fe Board of County Commissioners.

CHAIRMAN ANAYA: Thank you for your input. Anyone else? The second hearing on the Madrid planning will be heard -- I'm sorry, Robert.

ROBERT ROMERO: Good evening Commissioners, Mr. Chairman, I'm Robert Romero with the La Cienega Valley Association. I'd like to show our support for Madrid's planning efforts and I'd also encourage you to approve their community plan and also support it by using it in future land use decisions as it pertains to their community. I'm very well aware of the amount of time and effort it takes to put into a community plan. We're trying to accomplish our plan. At this point we're in the final stages of ours and we'll be coming forward in the near future.

But I would like to commend the community of Madrid for sticking it out there and completing their plan. Thank you.

CHAIRMAN ANAYA: Thank you. The second hearing will be held when?

MR. OLSEN: The second hearing will be held September 12. Would you like to address the Commission?

BRENDA FARO: Mr. Chairman, members of the County Commission, my name is Brenda Faro, and I've lived in Madrid since 1974, which is about a year before the Hubers sold the town. In 1975, as Gavin mentioned, the covenants and restrictions were created and everyone that bought property in the town was required to sign these and accept them. At that time, there was a certain area that was left out of the commercially zoned area, which is what I would like to address right now. It's the little bit of roadway that goes by the Madrid Volunteer Fire Station.

At the time that the town was sold, a good part of that roadway was not sold, and Joe Huber retained ownership of it. I believe that had it been sold at that time, he would have recognized it as a commercially zoned area or commercial district, because right after the sale of the town he leased one of the buildings in that area to a woodworking shop that made speaker cabinets, and ever since then, that particular building has been used commercially.

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Now there's a fire station back there, which is not considered commercial but is absolutely not residential. Beyond that there's an area that's used for overflow parking.

So as you can see from this map, everything in this area where it's the darkest there, where there's a dark line, it's pretty much all being used commercially or other than residential and I would like to suggest that that be recognized as a commercial area or mixed-use business, as part of the community plan, because it should be called what it is. Because I do believe the intention was to use it as that, even prior to the sale of the community, that was always light and heavy industry back in there. It's really where they kept all the coal and the train used to go back in there. So I think that should be included.

COMMISSIONER GONZALES: Can I ask you a question? Can you tell me why, and I know it's difficult to put you in this position, but why has it not been included by the community?

MS. FARO: When I asked a few of the people they said that they just didn't even think about it.

COMMISSIONER GONZALES: So this is the road that bypasses --

MS. FARO: It turns in at the Mineshaft Tavern.

COMMISSIONER GONZALES: Right past the Mineshaft you take a left and Joe's property is just a little bit down and you're saying that your property is past -- I'm talking about Joe Silvia, for the record. It's past his property? Is that right?

MS. FARO: Yes. I have some property past his property.

COMMISSIONER GONZALES: And that's the property that you want recognized?

MS. FARO: That whole area in there I would like recognized because that's what it is.

COMMISSIONER GONZALES: The reason I bring it up is because I know that when Joe came forward for his commercial redistricting and zoning, I don't know if the Commission remembers, there was a lot of community support for Joe's commercial redistricting in that area.

MS. FARO: It's always been kind of considered commercial and I believe it was just an oversight and I think it should be corrected. Another thing I would like to address in this plan is the water situation, the ongoing Madrid water problems. I understand the need for restrictions to conserve what water is available there, but I also understand that being a desert community, water is very, very important for the community to stay alive and to continue being a self-sufficient community, which at this point it sort of is.

And I fear that perhaps it will get drawn out for too long, this search for more water resources and funding to get these resources, and I would really feel more comfortable if there were a time limit put on this quarter-acre per annum restriction, perhaps two years, at which point maybe the County Commissioners can review the progress that have been made in finding new funding sources or water sources, and if little or nothing has been done in that period of time, perhaps alternatives can be sought out, such as encouraging people

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to share wells, neighborhood wells, where three or four people could hook on to the same well, because more than likely in the area, no well will produce enough water alone to really be sufficient for the entire community.

So other things have to be looked at. I would also hope that cisterns and run off ponds could be a possibility in water usage in the town. But to leave an open-ended well, nothing can happen until we get more water I think is a dangerous situation because if things don't progress, the town could die. I would really hate to see the town die. I've lived there for much too long and a part of me will always be there and always cherish it. It saddens me to think that because people just don't move forward it will die and I would like to know that there's an overseeing committee of hopefully the chairman of the Commission or something, just to make sure that it happens. That more water is there when needed.

One other comment in the draft that I have, there's some parts under the land use action that are a little vague as to whether they mean the existing businesses or future businesses. And I would just like to have it clarified in each paragraph that it does mean the new businesses and existing businesses will maintain. And it's not clarified in every paragraph and I feel that if one paragraph says this is for new businesses the others must say the same thing or otherwise there's going to be a problem.

I would like to thank this time to thank everyone who's worked for the last three years so hard in getting this together. I think it's a very thoughtful plan and I'm really glad that they did come together and do it and for the most part, I do support it except for those few things that I'm concerned about. Are there any questions?

COMMISSIONER TRUJILLO: I have a question. You brought up some issues that seemed -- did you have the opportunity to participate in the planning process?

MS. FARO: Partially. I'm out of town a lot. And a lot of time I didn't know when there were going to be meetings and when I'm in town I'm really working constantly so I don't keep up on things. So I probably did have the opportunity but neglected to go. And when I did finally, I got in the mail, like this is together and this is like, wow, I've got to get on this one and see what's going on. Thank you very much.

CHAIRMAN ANAYA: Thank you, Brenda. Anyone else like to address the Commission on this issue?

COMMISSIONER GONZALES: Mr. Chairman, could I just ask a question of Paul real quick, because we had this discussion yesterday in my office. The concept it seems to me as we talked about it that the planning committee was wanting to do was to keep all the commercial development pushed on to 14. Is that correct? And then behind 14, or behind the development, that being residential? Is that the gist of what the community wanted to do in its efforts to keep everything along New Mexico 14 zoned commercially or allowed to be zoned commercially?

MR. OLSEN: Mr. Chairman, Commissioner Gonzales, yes. The intent is to create a commercial zoning district along New Mexico Highway 14 and that would be the area where commercial zoning would be possible and permitted. It also encourages mixed

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uses and residential uses throughout the community.

COMMISSIONER GONZALES: So in the community's discussion, when there was discussion about commercial development behind 14, or away from 14, can you describe for us why they would not be willing to consider other properties as the lady indicated she wants to be considered for commercial development.

COMMISSIONER GONZALES: Mr. Chairman, Commissioner Gonzales, yes, there was an extensive planning process and believe there were several discussions. I of course was not present for all of these discussions. My understanding is not only does the present planning committee agree that commercial zoning should be maintained along there to not allow commercial development to not proceed into residential areas, but it's also included within the covenants and would like to be included within the proposed plan, that commercial zoning be allowed only along the highway to maintain a distinct and separate commercial district from the residential district. And there was extensive public participation.

COMMISSIONER GONZALES: So the covenants do not allow for commercial zoning? Is that what you're saying?

MR. OLSEN: That's correct.

COMMISSIONER GONZALES: So legally, if the Commission allowed for commercial zoning and the covenants don't allow for it, what happens then?

MR. OLSEN: Mr. Chairman, Commissioner Gonzales, I can't answer that.

COMMISSIONER GONZALES: I think that's something we need to consider whenever we pass zoning in areas that conflict with homeowners' covenants.

MR. GRAESER: Mr. Chairman, Commissioner Gonzales, you're absolutely right. Anything that applies for development would have to comply both with County zoning and with covenants to the extent that covenants are enforced.

COMMISSIONER GONZALES: And it's just a matter of who would enforce the covenants, right?

MR. OLSEN: Correct.

COMMISSIONER GONZALES: So if it's a County zone and they're not in compliance with that, the County would enforce it. If it's homeowners' covenants, it would be the responsibility of the homeowners to enforce the fact that there cannot be commercial in this area?

MR. GRAESER: Correct. And it's probably worth noting that the covenants can change if the landowners association decides they want to change them.

CHAIRMAN ANAYA: Thank you. Anyone else? Please come forward.

HUGH HACKETT: Commissioners, ladies and gentlemen, as a relative recent arrival in the town of Madrid, I can't claim 26 years, barely one and a half in the town. The issue which I think is uppermost in most people's mind is the continuing survival of the town as a community. As an outsider, and from what I've heard here this evening, being a desert community, water appears to be the priority here. The quality of water in

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Madrid, and the quantity is in pretty poor supply. I think anyone who's ever tasted it will agree, it's quite a memorable experience.

There are various empty lots available in the town of Madrid. They are not being developed commercially because there's not enough water to do so. Various people who have built properties in the town and they find selling them is relatively to nearly impossible because when people see the situation they back off immediately. There are commercial spaces available on the main street which nobody will touch because the water supply isn't there. We've had a couple of business people come through the town who were willing to open various businesses, and were flat out refused and told sorry, you can't do this. And it really has had a detrimental effect upon the community.

It's very difficult to convince people that change is necessary. It can't stay the way it is and we do require water to survive. Another point I'd like to raise, and I've heard water being mentioned here on a number of occasions tonight as a priority. In my ignorance I'm just going to raise this subject. I don't know if anybody here knows anything about it, but there is a dam the Corps of Engineers built west of Cerrillos on the Galisteo. That was built in 1961 and it's still there.

Every time we get this great deluge which occurs at this time of year, all of it just goes down and enters the Rio Grande. I'm aware that various different bodies and various treaties, agreements are made with the water rights in the Rio Grande, but we as a community here in Santa Fe appear to need water. We heard some very well intentioned plans, such as underground watering, catchments and everything else, and these are all very well and good and they're well intentioned and they work in a limited way. But I think if the drought continues in the Southwest, either on a cyclical basis or ongoing even as it is or it gets worse, which I hope it doesn't, I think a more proactive plan for the survival, not only for Madrid but for Santa Fe.

I'm not sure of the demographics. I'm not sure of your population growth or its projections, but it would appear to me that perhaps somebody could look into developing that. Does anybody here know anything about it? Whose control it's under or where we could go to look at it?

COMMISSIONER GONZALES: Mr. Chairman, we are in fact -- I'm not sure to the point you brought up -- but the County is involved in creating a regional water plan that would look at all the resources that are available. Certainly Madrid creates a huge challenge for the County because of the limited water supply. It's not just a matter of drilling in Madrid, as you know, and trying to go down, as you know. It's a very difficult area and the County's going to have to become very innovative along with the town in trying to figure out how we create the long term supply of water. But we do have, within our own utility department, people looking and trying to develop that long term supply. So whenever you get an opportunity to come into the Land Use Division with our water director, he would be the individual who could talk to you a little bit more about what the County is looking at in that area in terms of trying to create a sustainable water source that not only

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is sustainable but that is actually a healthy water source.

MR. HACKETT: This would be an interesting development, because not only would it supply water if it's feasible, but it would also be a great recreational and tourist attraction. The nearest lake is Cochiti, which is way west of here, and to have that right beside what is becoming now like a national park with the purchase of this parcel. Some BLM land borders it. It's like a very logical step to move in that direction.

COMMISSIONER GONZALES: If you ever get an opportunity to come down and sit down with our staff --

MR. HACKETT: I would very much like to opportunity to do so.

CHAIRMAN ANAYA: Thank you very much. Next speaker, please. Sir, you've already spoken. If you have any rebuttals, can you save them for the second hearing.

COMMISSIONER GONZALES: Mr. Chairman, he's the leader of the town on this issue.

CHAIRMAN ANAYA: I think it's rebuttal that he's trying to address and that should be taken home and digested and brought up at the second hearing. Please continue.

JOE SILVIA: Good evening, Commissioners. My name is Joe Silvia I live in the townsite of Madrid, as we pronounce it there, for approximately 21 years or so. And I oppose the approval of this plan, even though a lot of people have worked hard over the last three years and I commend them, I feel that it's so very close to approval. However, there are some very important issues that need to be readdressed and refined and one of them is the extension of the boundaries.

There was a survey done in 1975, I believe, and I understand the opposition to the arbitrary square in the 1980 Code, because that's just simply a square drawn and in some cases the line is as wide as some of the properties when you blow it up to scale. However, presently, the Madrid Water Co-op can't even provide water to its own existing area, even though it's smaller than what is comprised of the town itself. I have some support for extending it to include things like the ballpark, for instance, that was left out. Also, the County property that is now housing the fire station, that is not really within that zoning. That was somehow left out.

It simply needs to be adjusted. But to extend it to the ridges, just to be able to control the growth on the ridges would be ludicrous in some sense because there's no way the community would be able to supply water to those areas. As Commissioner Gonzales has addressed, there really is no infrastructure out to that area and some of those areas should be left more in the present County zoning policies as I understand them.

There are a number of issues, and I'm not sure this is the time to address each individual issue. I just would like to go on record as opposing the plan as written and if we do have time, I would touch on some of the issues in a more extended manner.

COMMISSIONER GONZALES: That's what tonight is for.

MR. SILVIA: One is reiterating what one of the other oppositions was was

the zoning itself restricting it to Highway 14. Again the County is in partnership with the townsite on their fire station property, which is on Fire House Road. Recently, I believe two years ago, a zoning was granted on a piece of this property which I own as Gypsy Plaza for a seven-unit commercial community use property. Now, at that time that was not considered within the townsite of Madrid. However, there isn't very much on that road itself that is residential. At the very end of that road there is a sound studio which is a home occupation. There's Gypsy Plaza and its parking. There's a one-acre vacant lot. There's the fire station and Mineshaft Tavern is adjacent to that property, and the Sin Nombre Building which is a commercial operation also.

That only leaves a one-acre parcel which actually would be very appropriate for addressing the future parking needs of Madrid. The owner of that property has actually considered doing that. However, it would lock that piece of property into being restricted to residential, and being left in an area where everything else is commercial, or community use, which is what the fire department falls under. I do know it can get very noisy on that street and very heavy with traffic with fire trucks and other vehicles. I don't think it would be a very appropriate place to have a residence.

That's one of the issues. The locking out of other areas of the community for commercial use when historically the mining town used a lot of different areas that were not directly associated with Highway 14 as commercial areas or as industrial areas.

Another point would be the area that addresses the hook-ups of commercial water and I believe you'll find that under Attachment 1, Land Use Actions. Commercial water use, the town would like to restrict new commercial establishments to hook up to a water system that presently has a moratorium that is without approach. It's gone well into, I would estimate, about four years where there are no new water hook-ups.

If you were lucky enough to have a large enough parcel, greater than 3/4 of an acre, you could drill a well, but then you would be limited to a quarter acre-foot. According to the present County Code and the about to be newly adopted County Code, it says that unless a hydrologist can prove adequate supply. That is not included in this proposal. So I strongly recommend that you look closely at this part of the area that they're planning to restrict.

The third point is franchise. In this area they want to leave out franchises. Now, I find something interesting happening in Madrid in my twenty years there. I haven't been there even as long as some of the people on the committee. When I arrived there, there were about twenty people. Now I understand there are about 400 to 450 people. A number of them are operating very successful businesses, and in some instances, I could cite three cases, they have extended to other areas. I know that the Blue Rose has operated in Madrid, which is a garment-printing, artist-based business that now has a location in Santa Fe. My wife has a business that originated in Madrid two years ago, and we now have a location in Santa Fe.

Now whether or not this may become a franchise, or anyone else's business may

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become a franchise, the question comes down to the language of the limitations. So once I franchise my business I have to leave Madrid? is the question. In fact, McDonalds started in a little town somewhere and became a franchise and that's how business itself starts. The way I read this, if I open a third business in another area and I decide to franchise, then I have to leave Madrid because technically, I am a franchise. So I would highly recommend looking at the wording and addressing -- it does have a very strong note saying "need further definition of franchise" and it probably should just be struck from the plan itself.

The final point I'd like to address is the fire protection. Again, this may just be an issue of language. However, in another area of the plan they specifically state new or existing or grandfathered businesses, which this particular draft eliminates that term. It says, "Commercial and mixed-use businesses shall meet fire protection requirements." I know that a lot of the businesses that exist today in Madrid couldn't possibly have the budget to install a sprinkler system or even meet some of the more stringent requirements for fire protection. So this particular area would have to be also addressed and scrutinized as to dealing with our grandfathered businesses and also businesses that are existing and also home occupation businesses, which Madrid has a very high concentration of.

My final note is to say again that I oppose the approval and that there should be more work done on the plan. I know that three years have gone by and I myself have attended a number of the meetings over the last three years. This particular committee has changed members numerous times as the attrition rate of Madrid afforded and new people came in and some left and sometimes you walk into a plan and you don't know what was happening before and there are new ideas. I have been keeping abreast of this plan as it has been developing and I haven't really seen much of this go out to the public for addressing on the four points that I mentioned.

CHAIRMAN ANAYA: Thank you very much sir. Anyone else that hasn't addressed the Commission?

DIANA JOHNSON: County Commissioners, everybody that's here, I call myself, my husband and I, the oldest newcomers to Madrid. We got there before Joe Huber's birthday, Cinco de Mayo in 1973. It's a place that we decided is pretty special and we hang in there. I have to respond first to Mr. Silvia's comments. Many of them aren't clear because he's reading a copy that went to the community before we had our community meeting, or as we had our community meeting. We had another master plan meeting and firmed up some of the issues that he's seeing are just not appropriate. So read your copies and think about what he said. There are some points that are a little bit of mud between the wind-up and the copy that was handed out when there was the community meeting and people came and there wasn't a lot of disapproval.

The first thing I think, I'm dumbfounded that all of this conversation is happening here tonight. The meetings have been going on and on and on and everybody's welcome and I personally have posted meeting notices all over town all these years. Copies have been available and posted that they were available for people to peruse, so it's not been anything

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secret. So that's the first real upset with what's taking place here tonight. It should have happened on our turf rather than yours.

In terms of your questions about adding acreage to Madrid, the only amount of land that is added to the traditional zoning, the part that would allow for housing. The part that goes to the ridges doesn't allow for housing. That's just a protection area. We're not restricting houses building up there. They weren't part of the plan. Anyway, the only growth in that acreage in that traditional zoning area resulted from the 1980 County rectangle and during the period of time between that time and our bringing the master plan, the County permitted properties.

They were being developed. The part of the community of Madrid now, so we adjusted out boundaries just to add on just those parts that the County had permitted that was beyond our traditional residential boundary and was added as a result of being some extra space that was within the rectangle. It really makes a difference and we didn't add any property that you didn't add, if you follow me. That one's critical in terms of communication, I think and your question of the growth.

The other thing is the matter of the growth and the covenants. Like them or not we've got them and it takes 100 percent of the membership to change them. That's why it's so critical. It just doesn't seem like the County -- and he said it -- make a different ruling than the covenants that went with the purchase of the piece of property. And that is something that the community has to deal with as a community. It's not really an issue for the County Commissioners to deal with. I think those are the stickiest issues I heard coming out that I thought might really confuse you. Thank you. Any questions?

CHAIRMAN ANAYA: Thank you very much. Anyone else?

CHRISTOPHER HODGE: My name is Christopher Hodge. I'm also known as Woofy Bubbles. I have a business. I'm an artist in Madrid. I've been on the water board for about four years and I've been involved with the greenbelt open land purchases, etc. and some of the master planning, which has gone over four years.

A huge problem is this 100 percent agreement by the landowners for any issues of change in the covenants. I just want to say that basically, we as a water cooperative are working very assiduously in trying to create new options, more water, and unfortunately, as you all know, we absolutely rely on funding and the help from our Senators and Congresspeople and unfortunately we have not had their ear recently, in the last few years. So we are kind of stuck in our situation and it has put the pressure on the town and that's a major drawback. Thank you very much.

CHAIRMAN ANAYA: Thank you for your time. Anyone else? Again a reminder that the second hearing will take place and you can come back with any rebuttals. That's when the action will take place and that will be the second Tuesday of next month. Thank you very much everybody.

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IX. C. Ordinance No. 2000-___. An ordinance amending Ordinance No 1997-10 to replace Article III, Section 10.5, Affordable Housing Density Bonus for new development with the service area boundaries of the Santa Fe Water Company, of the Santa Fe County Land Development Code

ROBERT ANAYA (CHED Director): Mr. Chairman, Commissioners, the proposed amendment before you is a progressive amendment in my opinion, a progressive amendment to change an ordinance that the County Commission in 1997 wanted to put in place to further promote affordable housing in Santa Fe County. The ordinance before you has several key points, but to summarize, the intent is to clarify, simplify and expand in some cases, the proposed ordinance.

Clarify the terms, the requirements and the conditions, the intent. Simplify some of the administrative and technical interpretations of the ordinance, and expand the ordinance to allow for potential affordable housing development outside of the water company district. These are a few of the key points that are listed within the ordinance and in summary I would just like to also have you refer to Exhibit A, which is the first attachment to the ordinance, that deals with the definition of affordable housing.

Just for clarification sake, if you look at that chart, you'll find that here in Santa Fe County, what's deemed affordable is somewhat high in proportion to the actual incomes. If you look at a family household size of one at or below 60 percent of the area median income, that's an income of \$24,900. If you go on down that chart you'll see that for a family of four, at or below 60 percent of the median income, that income is \$35,600. It progressively moves up as you go through the income stream, and if you go all the way up to 81-100 percent of the income, you'll find that someone at 100 percent of the median income here in Santa Fe, in the Santa Fe area, is supposed to be making \$41,500.

I would also point out that the attachment that you were just passed out is a construction standard that we would like to attach as part of the affordable housing ordinance to ensure that the quality of product that would be produced under the ordinance would be meeting high standards and those of the Construction Industries Division and above and beyond. So we clearly specify within that ordinance what those requirements would be.

Exhibit C, I'm going to defer to Roman Abeyta to discuss some of the Land Use issues and concerns that must be brought about relative to this ordinance, but I'd first like to just back up once again and say that the key provisions would be expanding the use of the affordable housing ordinance outside the water company district, simplifying the definition of density bonus while providing options for people who are willing to do affordable housing developments to either do three units per acre or four units per acre, depending on how much affordable housing is provided.

Within the ordinance amendment itself you can find the breakdown of some of those proposed income limits that we are proposing at this time, and that's on page 3 of the ordinance. That breaks out what the requirements of the developers would be if they were

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going to do an affordable housing development. Also, just another important note, any developments within the affordable housing ordinance would have to have 50 percent of the parcel that's to be developed designated as open space. So they would only be doing development on half of the proposed site. So with that, I think I'll defer to Roman to address some of the concerns relative to the land use general plan.

ROMAN ABEYTA (Deputy Land Use Administrator): Thank you, Robert, Mr. Chairman, Commissioners. Attached in your packet as Exhibit C are excerpts from the 1999 Santa Fe County Growth Management Plan, which references the opportunities for the locations of higher densities, including affordable housing in the county. Please note that as community plans are being completed and adopted they are including provision of affordable housing. It is proposed that the new community district, the Community College District, will have a required affordable housing component as part of the zoning. However, other community and district plans are not yet complete.

Mr. Chairman, at this time I'd just like to provide for the Board specific amendments that are proposed in the ordinance. As Robert stated earlier, 50 percent of the land area has to be dedicated as open space, whereas the original ordinance required 60 percent. The other 50 percent can be developed with up to three to four units per acre, but half of those homes have to be affordable and the amended ordinance provides you a definition of affordable and a breakdown of the different income ranges that you need to provide homes for.

COMMISSIONER GONZALES: Roman, in the 50 percent open space, would that include roadways and easements required for roadways, or is that going to go into the other side of the developable end?

MR. ABEYTA: Mr. Chairman, Commissioner Gonzales, it wouldn't include roadways because we would like to encourage clustering of these developments. You can put utility infrastructure that's underground in that open space, but roadways would not be included in that 50 percent.

COMMISSIONER GONZALES: Seems to me that last time that we had had this discussion we talked about the different options and design standards that would be available. You could either cluster one part of let's say 100 acres, throw everything, in this case you'd throw everything on 50 acres. Is that right? Which would be 200 homes on 50 acres and 50 acres open on the other side. Is that correct?

MR. ABEYTA: Mr. Chairman, Commissioner Gonzales, you don't have to divide the property in half. You can disperse your open space throughout the development.

COMMISSIONER GONZALES: That's what I wanted to make sure remains flexible is that you would be able to put the 200 homes, enjoy the full property and in between have some walking areas, bike paths, green belts, things like that, that could all, in the aggregate, meet the open space requirements.

MR. ABEYTA: The ordinance provides for that flexibility. To continue with the changes or the amendments, under the original ordinance, in determining your density

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bonus you had to calculate the percentage of affordable units you were providing times a provided bonus factor for the income ranges you're providing homes for, times the number of entitled units. So again, with this amendment you just be given a flat density of either three to four units to the acre without having to go through this calculation.

Another change is in the original ordinance you were required to utilize the County water utility. With this amendment, a developer can create his own community water system or utilize the County's or another community water system. Some minor revisions consists of eliminating the 25-lot minimum. In the original ordinance there was a requirement that your development had to be 25 lots or larger. If your development isn't as big, or you don't have as much land, you can take advantage of this ordinance with only 15, 10, 20 units, rather than needing 25.

Another revision allows for the participation of other community housing development organizations that the County Housing Director of the County Housing Authority would allow to participate. The Housing Director also has a role in implementing and enforcing this ordinance, whereas in the original ordinance, all the enforcement and implementing was put directly on the Land Use Administrator. Again, this amendment calls for the Housing Director to participate in implementing this ordinance also. I stand for any questions the Commission may have.

CHAIRMAN ANAYA: Any questions of staff?

COMMISSIONER TRUJILLO: I have one question. So how does that represent, what position is Land Use taking regarding the changes to the ordinance?

MR. ABEYTA: The Land Use Department had several meetings with Robert Anaya and actually helped make the revisions. Land Use Department supports the proposed amendments.

CHAIRMAN ANAYA: Any other questions of staff? This is a public hearing? Is there anyone in the audience that would like to address the Commission?

ROBERT ROMERO: I think the community of La Cienega does have some concern over this regarding our community plan. It is not yet completed and we are concerned on how it will impact it. Also, I would like to ask the question as to if this 50 percent open space also include non-buildable areas, I can also see a potential for a developer taking advantage of this ordinance to get higher densities for an area where housing isn't feasible because of the arroyos, the floodplain, the hillsides. So that is a major concern.

I'm not here to speak against the ordinance. I think affordable housing is needed in Santa Fe County, but there is some concern. Thank you. Are there any questions?

COMMISSIONER GONZALES: Mr. Chairman, that's a good point to address. Because I know in Santa Fe where there's lots of terrain issues and lots of flood plains, whether that would be a part of that or not.

MR. ABEYTA: Mr. Chairman, Commissioner Gonzales, the ordinance does allow the developer to utilize those areas as open space, but the ordinance is very clear that when you calculate your allowed density, you cannot include any of that open space land.

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So in other words, if you have 100 acres, you're only allowed to calculate half 50 acres. Whereas in the other ordinance, if you had 100 acres, you could utilize all 100 acres in determining the amount of units you're entitled to. So he can utilize that as open space, but he can't utilize it in calculating his density.

As for Mr. Romero's concern regarding the La Cienega community plan, the community plan that they develop in La Cienega could have their own standards and they could develop their own required or allowed density in their community planning boundaries. There's still the flexibility in the general plan that they don't have to be subject to this. If they want to be more restrictive, they would be able to should the Board support that proposal.

COMMISSIONER TRUJILLO: Mr. Chairman, does that mean that this ordinance cannot supersede what the community decides through the community planning process?

MR. ABEYTA: Mr. Chairman, Commissioner Trujillo, that's correct. The community plan will supersede this ordinance.

CHAIRMAN ANAYA: Did you hear that Robert? Anyone else in the audience like to address the Commission on this issue?

DOUGLAS OTTERSBERG: Mr. Chairman, members of the Commission, my name is Douglas Ottersberg. I am a resident of Agua Fria. I work for a company called Affordable Housing Associates, which is basically my wife and I. As you can guess, there's probably not a lot of business for us in Santa Fe in the affordable housing arena. I applaud the efforts. Anything that we can do. I work every day trying to put things together for folks. Anything we can do is severely needed as you well know.

Sitting here tonight, it appeared to me that we're working at cross purposes at times. At one hand, we as a community collectively want to take a supply of land out of the arena so that it can't be developed on, and while I agree that there's areas that should never be developed, what happens, supply and demand kicks in, the land that is left, prices go up.

When we do that, there's only a couple choices if we want to make things affordable and it all comes down to this. If you've got land, the only way I can make it affordable is if you're going to cut your price and that's not going to happen. It all comes down to the buck. The problem that I see is that there is land available, but to be taking advantage of places that do have a water system and also have sewer, that aren't that many large parcels that can take advantage of such things as the ordinance talks about as schools, plazas, those size parcels are in relatively few hands.

That leaves a five-acre piece here. Two acres over here. Maybe ten, twenty acres. So basically what we should maybe consider doing along with this, as I read through this quickly today, it proposes three to four units on an acre on half the land. I haven't met an owner of land yet that's going to take 50 cents on the dollar. He wants 100 percent of the money for that land, yet a developer, or that owner can only utilize half of it to put houses on. So therefore, the resulting land cost, as some of you probably know ends up being

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double what it could be.

Based on the numbers, I just did some quick calculations here, based on what I see in the paper and MLS, by the time you get done with the project, you're looking at \$40,000 to \$60,000 just for lot costs with land and improvement in it. What kind of home are you going to put? I'd like to stay under \$100,000 in this town. I can't do it. The last one I did was 1700 square foot on a 5,100 square foot lot in an existing subdivision, and that was \$125,000. And I struggled to get it in at that.

One of the things that perhaps wasn't addressed here that on parcels that can be utilized for this, and most of them are smaller, perhaps we should also look at perhaps putting together, like you mentioned the cluster developments, or mixed density developments, where suitable and where it meshes with the community plan, like I've asked to help out with the southwest sector plan. Down there I know that there's several owners that would like to do something like that. So I don't think that in some areas three to four units is going to cut it. That will remain open land because nobody can afford to put anything on it.

With that, now I'm going to put on my hat as a board of director of the New Mexico Manufactured Housing Association. I did look in the construction standards book that was mentioned as Schedule C. There's not one mention of a home that 40 to 50 percent of New Mexicans call home. Not because they have to, because they want to. I've been on a crusade lately to find out why manufactured homes are not used in any affordable housing projects in this county. It can't be because people don't like them. Just drive around and you'll find that they're there.

There are developers that are using them now. Big, large companies like Centex are buying manufactured home manufacturers. We have two plants in New Mexico, and I would like to see if perhaps, does this ordinance exclude a developer that wishes to utilize manufactured homes or modular homes in construction? That's not been addressed there, so I would like to bring that up as a board member of that organization, and with that, I'd like to thank you for your time and applaud you for your efforts to get affordable housing in Santa Fe County.

CHAIRMAN ANAYA: Thank you.

COMMISSIONER DURAN: Mr. Chairman, I have a question for Robert. Does this manual that you want to attach to the ordinance exclude manufactured homes?

MR. ANAYA: Mr. Chairman, Commissioner Duran, the manual before you does look at just conventional housing but our intent, conventional stick-built housing if you will, but our intent of the ordinance is not to exclude manufactured housing and we will be working on doing -- on expanding the manual to include manufactured housing. The reason that it's not in this document right now is that one of the things and concerns that we have relative to developers coming in to do developments is, we do want to allow manufactured housing and just to clarify there are some affordable housing groups in this community. Santa Fe Community Housing Trust, Neighborhood Housing Services, that have utilized

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affordable housing revenue to infuse into manufactured housing products.

But we do want to include that in this document, but we also want to be cautious that we don't allow for substandard housing. And one of the things that happens with manufactured housing many times is some of the specifications, there's an entirely separate set of rules and regulations that the state of New Mexico provides for manufactured housing, we just want to make sure that the product is a quality product, and there are quality manufactured housing products out there and we will be moving towards providing those amendments within this document to be able to allow for that in the ordinance.

Just one other point of clarification I guess if you will. I do agree, I would appreciate, number one the fact that the gentleman who spoke previously advocating for affordable housing in Santa Fe County, and I would just say that one of the things that this Commission has tried to do already with the first affordable housing ordinance is to bring to the forefront an opportunity for affordable housing outside of the city limits of Santa Fe. When we look at the density issue, at first glance it appears that Santa Fe County is allowing for a lot higher density or more density than can maybe be withstood, but I think that to put it in practical terms, if we're talking about three units per acre, we're talking about lots that are going to average over 14,000 square feet.

If we just take some of the affordable housing developments that have been done in the city of Santa Fe on 7,000 square foot lots, we can all see that what we're trying to do is also create a good, livable space for these families and give them a choice that they make whether they want to stay in Santa Fe in the city limits in a quality development that's been done here, that's on 7,000 square feet, or provide them with a choice to live on a 14,000 square foot lot somewhere out in the community.

And I think when you talk about economies of scale and he was talking about the bucks and the wallet, when you start looking at what it costs to build roads on a 100-acre site, and you start to seclude that to 50 acres, your development costs, your infrastructure costs go way down. Our current ordinances that are in place now only allow for 2.5-acre sites. What we're talking about here is cluster type development that's going to reduce in many ways the cost of that development which will provide some of the return profit that a developer will need to make the project good. So with that, I would stand for any other questions.

CHAIRMAN ANAYA: That's a good point.

COMMISSIONER GONZALES: Mr. Chairman, Robert, what the Commission has tried to support innovative ways for lowering costs of infrastructure and I don't know if it's appropriate to reference that in this, or make a venue in this affordable housing to make some of these tools available. The case in point is legislation that was passed that allows large landowners to create assessment districts, having GO bond elections to pay for infrastructure and basically using government credit to lower the costs of development with the hopes that that is going to be passed on obviously to the property owner because much of what a property owner pays is in fact those enormous infrastructure

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costs of building those roads over 100 acres and putting in the water pipes and the whole deal.

Rancho Viejo has been the one community so far that has actually used this tool to lower the costs of infrastructure. I guess what I would do is one, look and see if it has a place in this ordinance, and two, see how we obviously monitor to make sure that what the developers are saving by using this mechanism is really being passed on to the purchaser of the home. And that may allow us to go even further. Because as anyone knows who develops property, there's a big difference between a four percent or a five percent interest rate and a twelve percent. And that goes a long way, but that spread needs to be passed on to the home buyer, not taken up by the developer.

MR. ANAYA: Mr. Chairman, Commissioner Gonzales, the point is well taken and we will pursue what ever mechanism we need to help put into place not only ways to get infrastructure there but as a county, us actively pursuing other mechanisms of federal subsidies to leverage with existing developers and I think that's the intent of all the Commissioners. I know Commissioner Duran has expressed that interest as well, for us to progressively go after other ways and other resources. One thing that's not in the amendment that you have before you today that we will be putting in, Mr. Chairman, Commissioner Gonzales, is on an annual basis we'll be providing for developers what the standard product is based on construction standards, including manufactured housing, and what the maximum cost during that year is.

So we're going to give them what the product is and annually update that so that we make sure that we get a good product and we make sure that the consumer, Santa Fe County citizens are getting affordable housing and the biggest bang for that buck.

COMMISSIONER DURAN: Mr. Chairman, for me affordable housing not only means keeping the value of the land down so that homes can be built that are affordable, but it's also to allow for pre-manufactured homes and modular homes to be sited on these developments, provided that the overall plan of the development is one that promotes home ownership, pride of ownership and those kind of things. So I have a little concern that if this gentleman says that this manual that you are attempting to attach to the ordinance puts some major restrictions on the ability of modular homes, pre-manufactured homes to be incorporated into this ordinance, being able to be built within the guidelines of this ordinance, I'm not sure I'm in favor of attaching this thing right now, waiting for your department to amend it so that it meets the criteria.

I would much rather go forward with this ordinance, based on the understanding that the homes that are going to be placed on these developments are going to meet the state standards for housing, which means R-values and all of that, which I would think that the manufactured home industry already incorporates into their building process. I'm just concerned that we're attaching this 150-page document to an ordinance, we've already realized that the ordinance that we have in place right now has not promoted any affordable housing or allowed us to even review a request for it.

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I'd like for us to consider looking at this ordinance and then as the projects come forward, we're going to have to fine-tune them.

COMMISSIONER GONZALES: Mr. Chairman, Commissioner Duran, the Commissioner brings up a good point in that the manufactured industry, if I understand correctly, is regulated by the state of New Mexico through its Manufactured Housing Division. I'm assuming that that division is still up and operating. And wouldn't it be just as appropriate to reference in the ordinance that if there is a development that comes forward with manufactured housing or pre-manufactured or modulars that the County will maybe attach those industry guidelines that already address I think what you're trying to do here.

I don't think that the state has a division that assures that stick-built homes are going to be built of at least some minimum criteria that would benefit the consumer or benefit whoever's purchasing the homes. So minus that, I can see the value that this has but I also agree with Commissioner Duran. I don't want to leave out any opportunity to provide different types of housing, so maybe what we do is attach the guidelines or attach the criteria that the state has set forward for modular homes or pre-manufactured homes, attach that to the ordinance and say those are the requirements, obviously, that the County is going to -- I don't know. Maybe that's a duplication of effort because it's already going to be required.

COMMISSIONER DURAN: Mr. Chairman, the reason that I would like to go forward without your construction standards handbook, Robert, is that it's a known fact that stick-built homes cost more to build. When we're talking about affordability, it's not just affordable, it has to deal with the size of the home. A 1300 square foot affordable home versus a 1700 or 2000 square foot modular home offers a totally different type of lifestyle to the person that's trying to achieve home ownership. I just don't want the handbook to be so restrictive that we kind of chip away at the intent of the amendment which was to provide not only affordable housing but quality living in terms of space, and factoring the standards that you feel are necessary for construction.

MR. ANAYA: Mr. Chairman, Commissioner Duran and Commissioner Gonzales, I guess I would just say that Ralph Flores, our project manager, who actually put some time into this document, we were trying to be more consistent and concise with what revenues that we get from the federal government and how they're spent and if the Commission would like to just attach the state code. I think basically the document that you have before you is the state code. We'd be more than happy to just refer to the state regs.

The document itself, we also utilize for our CIAP program, our other federal funds that we get for the Housing Authority. But if that's what the direction is, without a doubt we can make an amendment and refer to the state regs. I would just ask the Commission to allow us to look at, when we get to the manufactured housing section, if we could be able to look at some of the provisions within that section to maybe allow for a little better faucet, a water heater, maybe that has a longer warranty because in some of those cases, you do get a product that will meet specifications, minimum specifications for the state of New Mexico that personally, myself, I wouldn't accept and I wouldn't want to put an affordable housing

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client in a position where they were going to have a water heater that was going to give them problems or a faucet that could give them problems.

So if we could at least look at some of those and maybe upgrade some of those areas so that we ensure that we have good R-values, but also don't take away from the intent of the ordinance which is to make it affordable not only for the client but also the developer to be able to do it as well.

CHAIRMAN ANAYA: Okay, any questions of staff? Is there anyone else that would like to address the Commission that hasn't spoken yet. All right. That concludes the public hearing portion of our agenda tonight.

IX. E. LAND USE DEPARTMENT ITEMS

- 2. CDRC Case # 98-5723. Canyon Vista Driveway Variance.**
Canyon Vista LLC, applicant, Harold Moya, agent, requests a variance of Article VII, Section 3.4.1c of the Land Development Code to allow for a driveway to disturb 30 percent slopes in four separate areas with a total disturbance of 5,498 square feet. The property is located off County Road 42, within Section 13, Township 14 North, Range 8 East

PENNY ELLIS-GREEN (Review Specialist): In 1996, a permit was issued for a driveway to access this property. This permit was then appealed by a neighbor. One reason for the neighbor's appeal was that the proposed driveway route was visible from State Road 14 and the Garden of the Gods area.

On January 29, 1999, the CDRC denied the neighbor's appeal but conditioned an alternative route for the driveway be found. This condition was then removed by the BCC, and the neighbor then filed an appeal to district court. In April 2000, a settlement agreement was endorsed by the district court which required Canyon Vista to request a permit for the alternative route, which required a variance of the slope disturbance.

The Code allows 30 percent slopes to be disturbed in three isolated occurrences of no greater than 1,000 square foot each. The proposed driveway will disturb four isolated occurrences of 30 percent slope totally 5,498 square feet. Staff has reviewed the application and conducted a site visit. The alternative route crosses more 30 percent slopes than the original location. However, it is less visible from State Road 14. The original location was very visible and in order to meet an 11 percent grade, a cut will be required on a hillside that is visible from State Road 14 and the Garden of the Gods area.

The Santa Fe County visual resource analysis and a treasured resource identified views from State Road 14 and the Garden of the Gods as viewpoints and public-nominated spaces.

The recommendation: The decision of the CDRC was to recommend approval of the

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variance request subject to the following four conditions, and Mr. Chairman, may I enter the conditions into the record?

COMMISSIONER GRINÉ: You may, Penny.

MS. ELLIS-GREEN: Thank you.

[The conditions are as follows:]

1. Rock outcroppings are not to be disturbed.
2. The final drainage and grading plan is to be approved by Land Use Staff.
3. All existing trees that will be removed or relocated shall be flagged for inspection and approval by Land Use staff.
4. Minimal screening may be required on any portion of the driveway which is visible from State Road 14, to be approved by staff.

COMMISSIONER GRINÉ: Any questions of staff?

COMMISSIONER DURAN: I just have one. This variance was before us - the applicant was before us a while back asking for additional lots. Is that correct?

MS. ELLIS-GREEN: Mr. Chairman, Commissioner Duran, that's correct. This was first in front of you to hear an appeal by the neighbor for the driveway. And that was back in 1999.

COMMISSIONER DURAN: Right.

MS. ELLIS-GREEN: A few month ago, the applicant was in front of you to request BLM lots to be recognized. You denied that. So this driveway is to access the existing I think two or three lots that are out there now that the County recognizes.

COMMISSIONER DURAN: Which we recognized when he first came up, right?

MS. ELLIS-GREEN: That's correct. Not the eight BLM lots that were in front of you a few months ago.

COMMISSIONER DURAN: When he was before us several years ago we recognized the fact that he had three lots, was it three lots?

MS. ELLIS-GREEN: Mr. Chairman, Commissioner Duran, I think it was two or three lots at that time.

COMMISSIONER DURAN: But at that time a road wasn't in place?

MS. ELLIS-GREEN: That's correct.

COMMISSIONER DURAN: So now he's coming in to build the road and needs a variance to get there?

MS. ELLIS-GREEN: That's correct.

COMMISSIONER DURAN: Okay. Thank you.

COMMISSIONER GRINÉ: Any other questions of staff? If not, is the applicant here?

[Duly sworn, Harold Moya testified as follows:]

HAROLD MOYA: My name is Harold Moya. I'm the agent for Kevin

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McCauley and Canyon Vista. We would like to add that the conditions of approval, we do agree with the conditions of approval. Also, I believe Mr. Simmons is the immediate neighbor most affected by this driveway, he's here tonight and he's in favor of this alternate route. The areas that we've asked for for the variance are four isolated areas which are on the 30 percent slope. However, in order to provide this route, a more direct route, which would be more obtrusive to the Garden of Gods, we do have to come in some areas that are 30 percent slope.

I think this is possibly the best alternative considering all the situations. I would like to turn it over to attorney Frank Herdman who has some legal history on this property which might be beneficial.

COMMISSIONER GRINÉ: Mr. Moya, I don't think that's necessary if the applicant is in agreement with all the conditions and if staff has no problems already and you guys have accepted them. Is that okay?

MR. MOYA: That would be fine. Thank you.

COMMISSIONER DURAN: Mr. Chairman, what if you heard public comment and let the attorney make his point if there's any major problems.

COMMISSIONER GRINÉ: We'll open it up to public hearing and see what comes out of it and then if it's necessary for rebuttal we'll allow your legal staff. Any questions of the applicant? Anybody in the public would like to address this case? Come up sir and give your name and address for the recorder.

[Duly sworn, Mark Simmons testified as follows:]

MARK SIMMONS: Mark Simmons is my name. I'm here tonight to strongly support Mr. McCauley's and Canyon Vista's request for this variance. As the staff indicated, approval of this variance will provide protection for the viewscape for the Garden of the Gods, one of the major scenic attractions on Highway 14 and the County's own planning documents provide that the Garden of the Gods is a high priority site for the protection of that viewscape.

Plus, as you know, on June 15, the federal government designated Highway 14 as a national scenic byway further underscoring the value of protecting the landscape. With this approval, should you choose to approve this variance tonight, everybody will benefit, including the County and the general public. So I would strongly encourage this Commission to consider favorably the request that's before you. Thank you.

COMMISSIONER GRINÉ: Thank you, Mr. Simmons. Anyone else in the public want to address the Board? Okay, I don't think it's necessary for rebuttal unless the Commissioners want.

Commissioner Trujillo moved to approve the variance on CDRC Case #98-5723, with the conditions and Commissioner Duran seconded. T.

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- IX. E. 3. **CDRC Case #MIS 99-5722. Joe Miller Clarification.** Joe Miller, applicant, requests clarification of the Board of County Commissioner's decision to require an archeological report for a land division to create 16 lots by 140-acre exemption. The property is located east of US 285, south of Lamy, within Cañada de los Alamos and Bishop John Lamy Grants, Townships 14 and 15 North, Range 10 East

FRANK WHITE (Review Specialist): The decision of the BCC was to grant the appeal with the condition that the applicant submits an archeological report prior to the conveyance or development of these lots. This should be noted on the plat and within a deed restriction. The applicant is now requesting a clarification of BCC's decision to require an archeological report. Based on the March 14, 2000 BCC minutes, this is Exhibit A of your packet, Commissioner Duran stated, and I quote, "I would like to grant the appeal by Mr. Miller provided that a deed restriction and a note on the plat be prepared and recorded stating that upon the conveyance or development or prior to the conveyance or development of any of these lots, that an archeological study will be performed. And it doesn't have to be all of it, but just whichever you are selling. I understand it's going to cost \$50,000 to do all of that 2,800 acres but perhaps on 140 acres it would only cost several thousand. So it would be to your option whether to spend it all at once or to do it when your heirs convey this property. I really think that it is our duty to protect those archeological sites, and you know that those are some of the significant sites out there in that area. So that would be my motion."

Commissioner Trujillo seconded the motion. Motion passes. Recommendation: It is staff's interpretation that the decision of the CDRC was to require the applicant to submit an archeological report prior to the conveyance or development of these lots. This should be noted on the plat with a deed restriction.

COMMISSIONER GRINÉ: Thank you, Frank. Any questions of staff?

COMMISSIONER DURAN: Mr. Chairman, so Frank, what is it about the motion that the applicant doesn't understand?

MR. WHITE: Mr. Chairman, Commissioner Duran, staff feels that it's very clear that an archeological report is required. That was emphasized by the Board and of course the applicant is going to need to address that.

COMMISSIONER GRINÉ: Thank you, Frank. Any other questions of staff?
Joe Miller, applicant.

[Duly sworn, Joe Miller testified as follows:]

JOE MILLER: My name is Joe Miller and I live off 285 just south of Lamy.

COMMISSIONER DURAN: Mr. Chairman, I was just wondering, Mr. Miller, what is it about that motion you don't understand?

MR. MILLER: I understand the motion very clearly, and I did prepare a

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statement to put on the plat. I've got copies of it here; I'd like to give it to you. But the staff objected to this particular wording.

COMMISSIONER DURAN: Would you give our attorney a few seconds?

MR. MILLER: Sure.

COMMISSIONER DURAN: So you're okay with the language, right Joe?

MR. MILLER: Yes. This is the language that we proposed to put on it, but the staff refused to accept this. They said we could not -- I don't know why not -- quote the Code on our plat. This is also the same wording that we're going to put on as a deed restriction, covenants.

COMMISSIONER DURAN: I think, for me, it seems to be that there's a conflict here that you'll agree to the archeological report submitted to the Santa Fe County Land Use Department for review and approval and that happens before any conveyance or transfer, but then you go on to say "to the extent required by the Santa Fe County Land Development Code." Well, the Code requires something different? Isn't that correct?

MR. GRAESER: Mr. Chairman, Commissioner Duran, I believe that we're getting into kind of a circular issue here because the last time this issue came up there was a dispute between Mr. Miller and staff as to what the Land Development Code required. So all this does is sets us up to argue that same issue once again.

COMMISSIONER DURAN: Why don't we just end it where it says, "For review and approval" and scratch it from "to the extent required by the Santa Fe Code." I remember that. We spent an hour and a half arguing about -- I think you had your attorney here arguing that point. Do we want to discuss it for another hour?

MR. WHITE: Mr. Chairman, if I may, Commissioner Duran, that is what staff is requiring. That's a good suggestion and we support that.

COMMISSIONER DURAN: Thank you, Mr. Chairman.

CHAIRMAN ANAYA: Are you done? Joe, go ahead.

MR. MILLER: Well, the reason we want to quote the Code so that there's no question about the requirements of the Code. The requirements of the Code are pretty specific. Especially, if you look at Section 3.2.12 we quoted first. It starts out -- an archeological study consists of a reconnaissance study first. You survey the area. And then if you find any archeological sites, then they have to be treated. The archeological study starts with reconnaissance, and we're quoting the Code there because reconnaissance, the Code states that the reconnaissance has to be done on the land that it to be disturbed. And we've got no problem at all doing the archeological study on the land that we will disturb.

And this is what the Code is very specific in this. The next one we quoted was 3.7, which states that there's a maximum funding for this and we want to be sure that we are protected by the maximum funding. The maximum funding is 2 percent of the value of the project that is on the permit, and we want to stick to that. We want to follow the Code and that's why we quoted the Code in there. We wanted to be protected by the maximum

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funding and we also wanted to be protected to where we only have to do the archeological studies on the land that's to be disturbed.

COMMISSIONER DURAN: Mr. Chairman, with all due respect, Mr. Miller, this is the same argument that you made last time and I don't think that it's fair for you to come up here and argue the same point. I think the motion is very clear that whenever you're going to convey one of those parcels, or if you're going to transfer it to another entity -- that's the same as convey -- or transfer those tracts that it's our responsibility that whoever buys that lot is buying a lot that has had some archeological done on it, so that when they go in to get a building permit and find out that you sold them a piece of property where there's an archeological site right where they thought they were going to build, that they're protected.

We're only doing this to protect the public. We're not doing this to make you spend your money.

MR. MILLER: Well, I understand. We want to protect the archeological sites ourselves. There's no question about protecting them. But when you got to look at protecting these, you got to look at who benefits from this protection. The biggest part of the protection is the Office of Cultural Affairs, the Historic Preserves, the university, all the amateur and professional archeologists, the County itself. They all benefit from these archeological studies and if we find sites and we have to set them aside and donate them to the County, they're the ones that benefit by this.

All we're asking is that, we think that just because we're the property owners, we shouldn't have to bear the burden of their benefit. The Code's very, very, very clear on this. I'm not asking to get away from the Code; I'm asking to follow the Code. And what staff is saying, no, we're not going to follow Code. You have to do an archeological study on the entire project whether you disturb anything or not.

Now if we want to transfer this land into a trust or something, we'd have to do an archeological study according to what the Code says. Or not according to what the Code says, but according to what staff says. If I should die and my wife die and this goes on to the kids, it's conveyed to them, they'd have to do an archeological study. That's not fair when you pass within a family, or pass it into a trust or something, that you do an archeological study. The Code doesn't require it. The Code protects the property to some extent in that they only require an archeological study if you're going to disturb some of that land.

CHAIRMAN ANAYA: Let me ask a question of staff. Frank, is what he says true? If he's going to transfer it to his family, he's obligated by the Code to have an archeological study for them to have their inheritance?

MR. WHITE: Mr. Chairman, there's two ways to get to an archeological study. One way is through a subdivision, which Mr. Miller is not. And one way is through an exemption. And he's in a 140-acre exemption and that requires an archeological study. And the developer is the one that needs to take the burden of this.

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CHAIRMAN ANAYA: My question was if he was to transfer it to his kids, is he still forced to do this?

MR. WHITE: Mr. Chairman, this is not a family transfer. It's a 140-acre exemption.

CHAIRMAN ANAYA: My question was if he transfers it to his family.

MR. WHITE: I believe he's unable to transfer it to his family in this situation.

CHAIRMAN ANAYA: Really? Why not?

MR. ABEYTA: Mr. Chairman, if I may clarify. If Mr. Miller were to revise his application and actually come in and request a family transfer, then an archeological survey may not be required, but he's not requesting a family transfer. His request was for a 140-acre exemption which required an archeological survey.

CHAIRMAN ANAYA: Okay. That's a clarification. Thank you. Is there anyone in the audience that wants to speak for this proposal?

MR. MILLER: I wonder if I could clarify something though.

CHAIRMAN ANAYA: Joe, we've been through this. We've heard everything. We know the Code backwards and forwards.

MR. MILLER: Then I wish you would follow it.

CHAIRMAN ANAYA: We think it is being followed. Do you have anybody in the audience that wants to speak in favor of your proposal? Can I have a show of hands of those in the audience that want to speak against this proposal? There's no one. What is the pleasure?

COMMISSIONER GRINÉ: I was going to make a motion.

COMMISSIONER TRUJILLO: Mr. Chairman, let me ask a question. Why is staff so adamant about not including the Santa Fe, or citing the Santa Fe County regulation or Code in the deed? Why are we so adamant about not doing that? It's totally congruent with the Code as it exists in Santa Fe County. Why can't we cite it?

COMMISSIONER DURAN: Maybe another part of that would be -- can I add something else to that because it might clarify it. What if we record it this way, is there any possibility that he can convey this property out to anybody without having to do an archeological? Would this allow him to interpret the Code in such a way that he would not be required to do the archeological?

MR. ABEYTA: Mr. Chairman, Commissioner Duran, the concern is that this interpretation of this section of the ordinance is different from ours. If we put this on here, we're going to be back here again when the land is conveyed and someone needs to do an archeological survey. We'll be back before this Board, asking for clarification as to what type of archeological survey is going to be required. That was our concern with putting that language. But if the Board chooses to do that, they can do that. We'll be back here again arguing what that means.

COMMISSIONER TRUJILLO: Can we further stipulate in there, cite the

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Code and say, "As interpreted by Santa Fe County"? We won't be able to deviate from the Code. The Code exists; we have to adhere to it. Can we indicate in there that as interpreted by Santa Fe County?

MR. ABEYTA: Mr. Chairman, Commissioner Trujillo, that's fine with staff.

MR. GRAESER: Mr. Chairman, Commissioner Trujillo, if I may add, if we could just get staff, if they're prepared to say on the record tonight, exactly what would be required, then maybe this question would be settled. And then, if that was the case then this language would probably be acceptable because then we would have an interpretation on the record, if the Commission agrees with it of what that Code requires.

COMMISSIONER TRUJILLO: Because we're not in the position to play interpretation games. We have a Code that we need to adhere by and the entity that is implementing it and interpreting the Code is Santa Fe County.

MR. GRAESER: Mr. Chairman, Commissioner Trujillo, I agree with you and I'm not sure if I'm setting up Development Review Staff or not, but if they're prepared to say on the record what would be required, then the Commission could decide whether they agree with that or not and we could just get this over with.

COMMISSIONER DURAN: Mr. Chairman, let's say that you put this language in there and it's on the plat. So he conveys the lot to somebody and they read this and realize they have to have an archeological report. Isn't that what someone would have to do? You'd have to provide them with an archeological report, is that correct?

MR. MILLER: On the land that they're going to disturb, yes. And as long as that report doesn't cost us any more than 2 percent of their development costs. See there's two things we quoted on there. The Code's so clear on this. I don't know why we don't just follow the Code, as it says, as it's written. That's all I'm asking.

COMMISSIONER DURAN: Two percent of their development costs?

MR. MILLER: It says 2 percent of the cost -- it's in capital letters -- maximum funding limit. It says in no case shall the applicant be required to spend more than 2 percent of the value of the proposed development as shown on the development permit. It's clear. This Code is so clear that I don't know why we don't just say, look, just follow what -- these words, words mean things and these words are simple. Anybody that's --

COMMISSIONER DURAN: Joe, let me ask you just one question. So, development costs, that's the cost of the lot and any improvements?

MR. MILLER: No, the cost of the development. The development pertaining -- on the permit. As shown on the development permit. And you get a development permit for a house or something and if it's \$10,000 or \$100,000 they have to pay up to 2 percent of that, as shown on the permit.

CHAIRMAN ANAYA: Let's let Frank answer that.

COMMISSIONER DURAN: If I -- if you don't mind -- so if I bought the lot from you to hold for ten years, you could give it to me without having to provide an

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archeological survey because I don't have any development costs. I'm not going to do anything. You're going to give me a title insurance policy and I'm going to go back to New York.

MR. MILLER: Well, if you're going to disturb anything --

COMMISSIONER DURAN: And you haven't lived up to your part of the deal.

MR. MILLER: If you're going to disturb any of it you'll have to do an archeological study on the area disturbed. The Code says -- it's very clear on that. It says reconnaissance study on the area that is to be disturbed. It's too clear to be confusing. It's just as clear as crystal.

CHAIRMAN ANAYA: Frank, go ahead.

MR. WHITE: Mr. Chairman, if I could clarify that. Mr. Miller is referring to the 2 percent as maximum funding. That only refers to the treatment plan. That has nothing to do with the reconnaissance survey. It's only treatment plan in case of archeological sites are found. It has nothing to do with the reconnaissance survey.

CHAIRMAN ANAYA: What's the pleasure of the Commission?

COMMISSIONER DURAN: Mr. Chairman, I'd like to make a motion that we uphold the original motion, and that if the language that Joe wants to attach to his plat ends at "...the Santa Fe County Land Use Department for review and approval." Period. That that would be -- he could record his plat. If he wants to add that then he can't record the plat.

I recall, Joe, asking you at that last meeting --

CHAIRMAN ANAYA: Do you need a second on that?

COMMISSIONER GRINÉ: Second.

CHAIRMAN ANAYA: Second for discussion.

COMMISSIONER TRUJILLO: So what is the language that he's going to include?

COMMISSIONER DURAN: We'll just say prior to development, conveyance or transfer of these tracts an archeological report will be submitted to the Santa Fe County Land Use Department for review and approval. I guess we could say, "for the tract being conveyed or transferred." I remember we had a conversation about this and you told me that you didn't want to go spend \$50,000 on an archeological survey on all the property, but that you didn't mind doing it per lot whenever you conveyed it.

MR. MILLER: This is the truth. [inaudible] so it made it about \$80,000 or \$90,000 for this survey. Then, on top of that, any sites we have, we can put anywhere from \$50,000 to \$100,000 on each one of those archeological sites, excavating them and recording them and writing down all that we find in them. We could get over half a million dollars in an archeological study for here.

CHAIRMAN ANAYA: Okay, Joe, we're in the middle of a motion and discussion. I'm going to cut your discussion off.

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COMMISSIONER DURAN: So the motion is to uphold the motion that we made before, and allow Mr. Miller to add language to the plat which says, "Prior to development, conveyance, or transfer of these tracts, an archeological report shall be submitted to the Santa Fe County Land Use Department for review and approval for that parcel being conveyed or transferred."

CHAIRMAN ANAYA: Okay, does everybody understand the motion? Okay, there's a motion and a second. Is there any further discussion? If not, all in favor signify by saying "aye." [Unanimous 4-0] Opposed? Motion carries.

MR. MILLER: Can I get a clarification on that? That will mean that we're going to be required to do an archeological study --

CHAIRMAN ANAYA: Any time you sell a lot and it goes into development

--

MR. MILLER: We will not be guaranteed the protection of the Code then.

CHAIRMAN ANAYA: Joe, if you need more clarification, go to staff.

- IX. E. 4. EZ Case #S 99-4281. Santo Nino de Felipe. Jim Siebert, agent for Ray and Yolanda Reynolds, requests final plat approval for a 20-lot residential subdivision on 7.83??? acres in accordance with the approved master plan for Santo Nino de Felipe. The property is located off Airport Road within Sections 6 and 7, Township 16 North, Range 8 East in the two-mile EZ District

VICKI LUCERO (Review Specialist): On July 27, 1999, the EZA granted master plan and preliminary development plan approval for a mixed-use development on ten acres. The development consists of a 20-lot residential subdivision on the north side of the property and three commercial buildings on two tracts adjacent to Airport Road. At this time, the applicant is requesting final plat approval for the subdivision only.

CHAIRMAN ANAYA: Okay, are there any questions of staff? Thank you, Vicki. Is the applicant present? Please come forward.

[Duly sworn, Jim Siebert testified as follows:]

JIM SIEBERT: My name's Jim Siebert. My address is 915 Mercer. I'd just like to state for the record that we agree to all conditions as stated by City and County staffs and I'll answer any questions you may have.

CHAIRMAN ANAYA: Are there any questions of Jim Siebert? Is there anyone in the audience that would like to speak either for this proposal, against this proposal?

Commissioner Griné moved to approve EZ Case #S 99-4281 and Commissioner Trujillo seconded. The motion passed by unanimous voice vote.

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COMMISSIONER GONZALES: Jim, just for the record, I wanted to make sure, can you make sure the rest of the developments you bring are as easy as this one is? The last one was a little difficult.

IX. E. 5. CDRC Case #A 00-5271. Robert Powell and Steve Alger Appeal. Robert Powell and Steve Alger, appellants, request an appeal of the CDRC's decision to grant approval for a wind generator 35 feet in height on 16.78 acres (CDRC Case #MIS 00-5270). The property is located off Calle de Megan, north of Los Cerrillos, within Section 16, Township 14 North, Range 8 East

MR. WHITE: The appellants state that the applicant's residence is not currently in compliance with the provisions of the Santa Fe Land Development Code, and that the applicants are in violation of a memorandum of understanding with Santa Fe County for the construction of the residence. The appellants state that Thomas and Ieva Wright have failed to satisfy many of the memorandum's conditions and as a result they are not currently in compliance. They believe that it was inappropriate for the CDRC to grant the requested permit approval for a wind generator while the applicants were in violation.

This is Exhibit D. This is a letter of appeal. The appellants claim that the applicants failed to submit a report as required under Article III, Subsection 2.3.6c of the Code. This should be Exhibit E, not F in your packets. The applicants were required to submit a report explaining why the height of the requested structure is necessary for proper function.

Furthermore, at the CDRC hearing, under oath, the applicant stated that he does not need a 35-foot high generator. The appellants believe that the CDRC's approval of the unnecessarily high wind generator was inappropriate and should be reversed. The appellants state the wind generator is not reasonably necessary and will have a very adverse impact on the neighboring properties. Electricity is available to the applicants via underground line, and because the applicants' property is located on or near a ridgetop, a 35-foot high tower is certainly not required for wind generation.

The appellants state that the ridgetop sits between two rocky outcroppings that form the beginning of a large canyon. The canyon and the outcroppings act as a natural amplifier for any noise created on the applicants' property. The air turbulence and generator noise would amplify to the detriment of the neighboring properties. The ridgetop nature of the applicants' site will also amplify the visual impact of the proposed tower and generator.

Recommendation: It is staff's position that this proposed wind generator meets County Code requirements and the applicant is not in violation of the Land Development Code. Staff recommends that the BCC uphold the CDRC's decision to grant development permit #MIS 00-5270.

Mr. Chairman, Commissioners, Mr. Wright has submitted a letter of response that

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has been handed out to you. Mr. Wright will address this letter when the Board finds it to be appropriate. Thank you.

CHAIRMAN ANAYA: Thank you. Are there any questions of staff? Thank you, Frank. Is the applicant present? Please come forward.

[Duly sworn, Bryan Biedscheid testified as follows:]

BRYAN BIEDSCHEID: My name is Bryan Biedscheid. I'm the attorney for appellants Steven Alger and Robert Powell, appealing the CDRC's grant of the requested tower permit. Mr. Chairman and committee members, I have a couple of exhibits here to distribute if I may. One set of exhibits was actually provided to me earlier by Susan Brennan, who was received notice of this proceeding. She's a neighboring property owner. She showed up and she had to leave and I told her that I would distribute these if it was acceptable to you. May I distribute? Thank you.

Mr. Chairman and members of the Commission, the first is simply an affidavit from John S. Alger, known as Steve Alger, one of the appellants, stating his reasons for objection as he had to be away and could not do so this evening himself, and I will get to the second exhibit in just one moment. It's an excerpt from the transcript of the CDRC proceedings. The bottom line, there's a number of technical legal arguments made in the letter of appeal from the CDRC decision. They boil down to the following, that is that the County's handling of this matter prior to the CDRC decision, that is, accepting the permit application of the Wrights to put up a 35-foot structure when they were in fact not in compliance with the Code, not having satisfied the memorandum of understanding, that that was improper.

The County has a policy, and frankly I think that most would agree it's a very good one, about not accepting applications, permit applications when the applicant is not in compliance with the Code. That in this case would appear to have been violated. The memorandum of understanding, we would further state, is in fact the unlawful granting of a variance in this case, without public hearing and notice. The memorandum seeks to come up with ways in which the unlawfully high dome, which you can see in the color photographs provided by Ms. Brennan. That dome was built without proper permit, and the County came to an agreement with the Wrights regarding this structure and how to bring it into compliance. That's the memorandum of understanding.

In fact, the applicants have not complied with that yet. So in fact, under the terms of the memorandum, they're out of compliance. The practical purpose of our objections to this is that the Wrights at this point have been working on this dome for approximately four years. As you can see from the pictures provided, in fact it's not near completion. There are all sorts of trailers out there. The terms of the memorandum haven't been complied with, and we strongly feel that the County needs to make sure that the Wrights need to get into compliance and complete what they've started before they start building additional structures. That's the real concern behind this is that this is another expense, another project, and they won't finish what they've started.

COMMISSIONER GRINÉ: Mr. Chairman, if I'm hearing you right, are you

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representing the applicant?

MR. BIEDSCHEID: I represent the appellants.

COMMISSIONER GRINÉ: Oh, this is an appeal. All right. Go ahead.

MR. BIEDSCHEID: I understand why you'd be confused if you thought I was representing the Wrights. So that's the purpose of our objections to the memorandum of understanding, and frankly, we don't think that the acceptance of the application, the Wright's application, or the memorandum of understanding will stand up to judicial review in the court, and my next argument is why we don't need to get to that judicial review.

And that is that the application itself was insufficient. At the CDRC hearing, the application of Article III, 2.3.6 was discussed. That is the portion of the Code that I understand you all know very well, that deals with what you have to show if you want to put up a tower or accessory structure greater than 24 feet. Three major components have to be shown. That the requested structure is reasonably necessary to be on the proposed site, the applicant needs to demonstrate that the requested height of the structure is the minimum height necessary for the proposed structure to function properly, and finally, they need to address how the proposed structure is going to impact neighboring properties.

The applicants did none of those three things, and in fact, if you will have a look at the excerpt of the transcript that I provided to you, the CDRC and Mr. Wright, under oath at the hearing, discussed in some detail the fact that he does not in fact a structure that is higher than that allowed by the Code, the 24 feet. On the first page of the transcript excerpt I provided, Mr. Wright states that he was willing to work with the neighboring property owners to locate the tower some place that was less objectionable to them. He has not done that. He also stated that in fact he did not need to put up a tower greater than 24 feet.

Once again, that does not satisfy the requirements. In addition, Chairman Martinez of the CDRC clearly seemed to understand that the requirements were not being met, and on page 31 of the transcript excerpt I showed you, he states that he's got concerns about the fact that necessity was not shown and he asked for motions addressing that problem to be put forward. And frankly, the CDRC, I feel, lost the meaning of the Chairman Martinez' words in the translation somewhere. Up until the final passage of the CDRC's motion, which you'll see on page 33, the CDRC was talking about requiring consideration of additional locations or alternate locations of the tower and somehow came up with the idea that not allowing a 45-foot tower as requested, but limiting it to 35 feet, somehow got around the requirement, the requirement that the applicant show it's necessary. It doesn't, and frankly, that's an unlawful, arbitrary and capricious granting of the application.

So for these various reasons, we're asking you all tonight, you can basically for the purposes of this ignore the fact that it's a wind generator or anything else. That's not the problem here. The problem is that these folks, the Wrights, have applied to put up a tower that is higher than the Code would require by default. They needed to get the CDRC's approval after showing these requisite elements. They did not do that. And to apply the Code as you all just stated to the last applicant, fairly, uniformly, and according to its

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provisions, in fact you all -- I think it's appropriate that you all either deny the application request, or table it so that additional locations can be considered by the neighboring property owners and County staff, that various heights be shown, and with respect to the memorandum I received today from the Wrights, addressing our concerns on appeal, once again, they provide a number of standard pamphlets from the manufacturer of the generator, talking about the benefits of various heights.

The point in this case is that this is not a general nation-wide application that you guys need to deal with here; it is a case by case analysis. And in this case, the Wrights live on or near a ridgetop. This structure, as you can see from the photos provided, is going to be much, much higher than would be contemplated if it was just on level ground. That's certainly going to add to the impact, as discussed by Mr. White. The fact that this is at the start of a canyon, which acts as a natural amplifier is going to increase the noise, and so additional locations should be considered and in fact, must be considered, and so tabling or denial is appropriate.

CHAIRMAN ANAYA: Thank you very much.

COMMISSIONER GONZALES: Mr. Chairman, a couple of questions, if I could begin the questions of staff. I'm sorry sir, what was your name?

MR. BIEDSCHEID: Bryan Biedscheid.

COMMISSIONER GONZALES: Okay, I'll move to Bryan after the questions. And the issue, comes to the issue of compliance or the fact that are the Wrights currently in compliance with the County in terms of the MOU that was established between the County and the Wrights.

MR. WHITE: Mr. Chairman, Commissioner Gonzales, Charlie Gonzales, the Permit Inspection Division Director has agreed that the applicants are in compliance with the Land Development Code.

COMMISSIONER GONZALES: Okay, so that's in dispute with the people who are appealing this.

MR. WHITE: Right.

COMMISSIONER GONZALES: Charlie, are you familiar with why they're appealing it and can you address the issue as to what the people who are appealing this are stating, because there seems to be a difference of opinion.

CHARLIE GONZALES (Code Enforcement): Chairman Anaya, Commissioner Gonzales, I was out at the site today and in regard to the memorandum of understanding, or the agreement, I would say they are in substantial completion of what they are doing. One of the issues of this house, this is a dome house, which is a custom house, which is not one of those houses that will be built in a year or two. One of the agreements, the conditions, is to do some regrading and contouring around the front of the house and plant some trees.

They are substantially complete with the grading. They need some fine tuning to be done, some top soil and so forth, and some trees to add to comply with this agreement, but

otherwise they're in --

COMMISSIONER GONZALES: From a structural standpoint, are they in compliance?

MR. GONZALES: From a structural standpoint, they are, as much as they can be doing with their inspections and so forth. Like I say, this is a different type of custom house and there's no regular time period for a house of this nature to be built in a time period. The permit was not issued four years ago; it was issued September 1997, which is three years ago.

COMMISSIONER GONZALES: So as to the issue of if it was not in compliance, would that be a proper concern of the people appealing this case, that they need to be in compliance before this consideration would be taken into account?

MR. GONZALES: Actually, I think this should probably be part of the completion of their original house because when the permit was issued for the original house, there was no utilities around and their whole intent was to have it done with solar panels to begin with. They never wanted to get on the grid at that time. As a matter of fact, we didn't give them a utility authorization when they came for the permit I issued in '97. Then as you all know, I left in 1998, when I left, when I was gone for that one year, this memorandum of understanding or agreement got into place so even myself, I had a hard time coming back in here and trying to see what this agreement was because this agreement that they made themselves, I have questions about it, how that's going to comply with the Code at all myself.

COMMISSIONER GONZALES: So is this like, what's the standard height of a windmill that you would see out there?

MR. GONZALES: In that area, 24 feet.

COMMISSIONER GONZALES: So we see out in a range of windmills, about 24 foot?

MR. GONZALES: Right. And one thing I'd like to remind you all is that visual impact is from public roads and public streets. It's not from house to house. So visual impact would not be an issue on this.

COMMISSIONER GONZALES: Bryan, let me ask you a question in relation to Mr. Wright's testimony before the CDRC where he stated that if the neighbors would prefer to not have a 45-foot tower, they would be willing to break the tower in half to put two 24-foot towers, would your clients be in favor of the two 24-foot windmills as opposed to one 35-foot wind generator?

MR. BIEDSCHEID: Frankly, Mr. Chairman, Commissioner Gonzales, we haven't been provided with sufficient information even to figure that out. And that's part of the problem. At this point, they are -- with respect to the two 24-foot towers, frankly, I don't know that that's any better than one 35 or 45 in terms of impact. The point being that with respect to this application and tower, we don't think they should be able to put up anything at this point. And I respectfully differ with staff's interpretation of this

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memorandum of understanding and the rest. In point of fact as was alluded to but not, I don't think, made clear, this building, construction was started in an unpermitted fashion, an unlawful fashion. And this memorandum of understanding was entered into in an attempt by the County to bring this building into some sort of compliance.

Generally the Code allows, I believe, two years from the date of issuance of the permit to complete the project. At this point, the Wrights have been working on this done now for approximately four years. Now, there is power available to the site. They have a solar array up on the site, which I frankly don't know if that's even permitted or not, in terms of if a permit was ever obtained for that. I don't know if that's lawfully constructed.

Right now, there are trailers out there and have been out there for some time. This is a burden on the property that needs to be straightened out and so before we even get to addressing two 24 versus 35 or 45 or whatever, or the location, our first standpoint is this application should be denied until all of the terms of the memorandum are satisfied. In fact, if you look at the memorandum, you will see that it states -- it is Exhibit A to the appeal. And basically it states that these folks, the Wrights will be deemed in compliance with the County Code provisions upon meeting all of the conditions listed above.

So the County clearly thought at that point in time, when it entered into this agreement without hearing or notice to the public, that these conditions needed to be met prior to these folks, the Wrights being in compliance with the Code. And that is exactly what we're asking the County to stick by. Despite our dispute about the legality of this memorandum, we do think that for the purposes here it should be binding on the applicants, the Wrights.

COMMISSIONER GONZALES: I just have a question of staff. Again Frank, being as this is in excess of 24 feet, is this a variance that was brought forward to the CDRC?

MR. WHITE: Mr. Chairman, Commissioner Gonzales, this is not a variance. This requires of course CDRC approval at 45 feet and that would be up to the applicant if they wish to pursue that. In this case, they were approved at 35 feet.

COMMISSIONER GONZALES: So the Code allows for towers up to 45 feet in the County?

MR. WHITE: Up to 45 feet. That's correct.

COMMISSIONER GONZALES: So Frank and Charlie, we've done a review -- because I know that we're pretty critical on applicants that come in who want to change the use of zoning or want to add something to the property, that we always go in and do a thorough review and make sure that the property is in current compliance with County Codes. The staff is saying now on the record that this property is in compliance with the County Code and the request that's being brought forward by the Wrights to allow for the wind generator -- is that what it's being referred to? A wind generator? To allow for a wind generator, is in compliance with the Code?

MR. WHITE: That's correct, Commissioner Gonzales.

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COMMISSIONER GONZALES: So in the determination by the person who is appealing it, or the individuals that are appealing it, or the issue is that you just don't want to say, basically, a 35-foot windmill on the property? Or is it an issue of you disputing the County's claim that the property owner is in compliance with the Code?

MR. BIEDSCHEID: Well, both, actually. We certainly dispute that conclusion on the part of staff that they're in compliance. I think that the agreement or memorandum of understanding, certainly on its face states that they are not because they have not complied with the provisions. With respect to our objections to the wind generator, there are three primary ones. First of all, as I stated, the Wrights have failed to bring themselves into compliance with the Code and have taken four years -- double the time that would have been allowed if they had actually gotten a permit as they should have before they started the project. They've been working for four years now and still have an unfinished dome.

So rather than allowing them to spend additional money and put additional things up on their property, probably to go unfinished as well for another four years, we're saying, County, please rein this in. Limit this current development until they've completed their obligations that currently exist. So that's one.

The second is there is a visual component and I take some difference with Mr. Gonzales' interpretation because what Mr. Gonzales is saying is correct in terms of a variance. When you're asking for a variance you have to show that it would be a hardship on you and in terms of arguing against a variance, you need to show that views are from County or public roads as opposed to neighboring properties. It's not a valid argument normally. But, 2.3.6 actually, once again, it's a Code provision. It's not a variance per se, but it states what these folks need to show.

And one of the elements that is unlike a variance is element c of 2.3.6. It states, "One of the elements to be considered, how the proposed structure will impact on neighboring properties." This is different from the standard variance language. So the Code differs on this topic. If you're going to put up a structure in excess of 24 feet in height that's an accessory structure of any kind, then you need, as the Board or the CDRC should have, you need to take into account the impact on neighboring property. So I think that the analysis is different. Mr. Gonzales would be absolutely correct if this was a standard variance, but it's not.

And in fact, because this is on or near a ridgetop, this tower, the height of this tower is amplified. The effect on the neighboring properties visually is very much amplified, and even more importantly, because the nature of the area is rural, there are horses, all the rest. These animals don't like the noise that's created by the turbulence of windmills and the rest and the neighbors don't either. And in fact, where this is on a ridgetop at the head of a canyon that acts as a natural amplifier, that's going to be a greater hardship than one might normally expect on neighboring property owners. That must be considered.

COMMISSIONER DURAN: Mr. Chairman, it seems to me that what we're

here to make a decision on is whether to uphold the CDRC's decision or to appeal it. If our Land Use Department or if our staff is telling us that the project is in compliance and the applicant or the appeals feel it is not, that's a different issue. Our staff has told us it's in compliance. I think the decision is whether or not we're going to uphold the CDRC's decision or not.

CHAIRMAN ANAYA: That's correct.

COMMISSIONER DURAN: I think all this other stuff that you're bringing up is irrelevant to this, especially when staff tells us that they've inspected the site and believe that they are in compliance. So if you have a difference of opinion, I think that you have the right to come forward in a different forum, in a different case to make that claim.

MR. BIEDSCHEID: Mr. Chairman, Commissioner Duran, if I could just respond briefly and that is to some extent you're absolutely correct. Obviously, our remedy if the CDRC decision is upheld is to go seek judicial review and that's absolutely correct. The reason that what I brought up I don't feel it is irrelevant is two-fold. First of all, in the transcript testimony that I provided you with tonight, the applicants under oath are stating, we'll try a different location. We'll try different heights. We will do what we need to do to come up and provide -- we'll come up with evidence that this is reasonably necessary. That has not been done.

So in fact, the CDRC's decision has not been complied with in and of itself. Second, if you read this transcript, it's clear that the CDRC's decision was legally untenable and perhaps we need to go to court and prove that, but frankly, you all are in a power, position tonight and have the authority to table this until we can work with the applicants, the Wrights, and staff to come together to some sort of agreement, and we're not unwilling to work with staff and applicants. It's simply the fact that this has not been done right to this point. And there's never going to be another chance as good as this one to table this and give us some time to work it out.

CHAIRMAN ANAYA: Are you done, Commissioner Duran?

COMMISSIONER DURAN: I have one last question. If this is tabled, how are the Wrights getting power to their home right now? And if it tabled, does that mean that the generator has to cease being used, that they have to find another way of getting power until they work this out with you? Or could they use that until an alternative site could be found? Or, if you discover that you can't work anything out and it comes back for us to review.

MR. BIEDSCHEID: Commissioner, Mr. Chairman, in fact wind generator is not installed at this point. It has not been installed and the applicants have been chugging along at what we find an unsatisfactory slow pace working on their home. So in fact, I don't think that this is any sort of hardship on the applicant Wrights, and in fact, compared with the alternative options of seeking injunctions and judicial review and other contexts, I think it's the least burdensome option to all parties involved.

As for working with the County staff, I can tell you that we're somewhat flexible.

I cannot guarantee that we will agree with what comes up and in that event, I imagine we would come back here to iron out the differences then. And staff would present their opinions once again and once again they would be granted a lot of deference. But at this point I think it's inappropriate and frankly a disservice to all parties involved to approve this CDRC decision.

CHAIRMAN ANAYA: Thank you very much.

COMMISSIONER GONZALES: Just a question of staff real quick, just help describe this for me. Is this, if I'm visually trying to think about what this is, is it a windmill? Or is it different from what a windmill is?

MR. WHITE: Mr. Chairman, Commissioner Gonzales, it's a wind generator. It's similar to a windmill but it's not as wide at the base. So it's very narrow, it's probably maybe this wide at the base.

COMMISSIONER GONZALES: So, what's the design like?

MR. WHITE: I believe I have some photographs if you'd like to see.

COMMISSIONER GONZALES: Let me see the photographs, and I guess I would ask you Bryan, windmills are a part of rural landscape all across the country. I guess I don't necessarily understand how a windmill or a wind generator could be -- I need to look at the views, but could be an eyesore if again, all across rural lands these have been part of the landscape for generation of power, for traditional generation of power. Which I guess I would ask you client, do they respect the Wrights' choice to decide how they choose to generate their power and should that be dictated to them just because there is a power grid that's available to them.

MR. BIEDSCHEID: Mr. Chairman, Commissioner, as I said before, from our viewpoint, the fact that this is a wind generator is somewhat irrelevant. The fact that this is a project that has proceeded along unlawfully for some time now, these folks aren't in compliance and they need to come into compliance before the start constructing anything additionally.

COMMISSIONER DURAN: I kind of object. You keep on referring to this property not being in compliance when our staff has already said that they are. And not only that, maybe they don't have the financial ability to build this house as quickly as you would like for them to build it. What's wrong with someone taking some time to build their house based on their finances. I just object to you keep on referring to a comment, to a statement that -- you're making a statement that they're not in compliance and we already have staff telling us that they are in compliance.

CHAIRMAN ANAYA: Can I have a show of hands of people in the audience that this legal counsel is representing? You're appealing it? You're the appellant? You don't have enough of legal counsel here?

MR. BIEDSCHEID: Do you have any more questions, or I can sit down and allow my client to speak.

COMMISSIONER GONZALES: I think we're zeroing in on trying to figure

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out what the issue is here. Thank you.

[Duly sworn, Robert Powell testified as follows:]

ROBERT POWELL: Gentlemen, I know it's late. My name is Robert Powell. I live at 172 Wolf Road, directly adjacent to the property and as I might add, upwind. So I'm 80 feet below the base of their house, the Wrights' dome residence. I really have no objection to wind generation. I investigated it strongly myself when I moved there nine years ago. I was told, however, by three separate wind generator people that there wasn't enough wind. So I went to solar panels, put up six solar panels, generated enough power to stay off the grid for seven years. Not a lot of power but enough for a single man to stay off the grid for seven years.

Mr. and Mrs. Wright began this construction, as he said, several years ago, and when they began the dome construction, I have done some construction myself and it was pretty easy to see that the dome was taller than 24 feet. So I filed a complaint with the County, in fact with Mr. Gonzales, in June of 1998 when I originally filed my first complaint.

This complaint was met with the fact that Charlie left pretty soon thereafter and this was turned over to several different people. My major concern is that this property, specifically the wind generator, if located, if allowed to be located in any place that they choose to locate it, could be 90 feet tall, could be 60 feet tall, because of the variance in the grade of the property. If they put it on top of the ridge, you perhaps can see in Exhibit C, I don't have it before me but I think you'll see it goes up a ridge and you'll see a series of solar panels, which by the way, they use now as I understand it for generating electricity. And as I understand it, the wind generator is only to be used to generate enough electricity to run an alternative septic system pump that I was told drew about 250 watts, is about all it did.

I'm as concerned about the noise as anything. Certainly visual impact has something to do with your property value when you're looking up 80 feet, then 30 feet, they 35 more feet, you're looking up close to 100 feet before you see the top of it. I don't like that, but I believe there's not much I can do about it. But I am concerned with the noise. And the noise factor comes directly up the canyon. If Mr. and Mrs. Wright are on their deck talking, I can hear their conversation, every word. I can hear everything that goes on on that property, the smallest radio.

I don't know if any of you have ever heard a wind generator but there's a certain amount of turbulence that's more than a windmill. And I would like to have more studies done on the amount of noise that it will send up the canyon. And that's my major consideration at this point. I met with Commissioner Grifé at one point on this matter. We had a whole lot of coming and going, Charlie going and coming, etc. So I think it got misunderstood.

I have here an undated copy of a memorandum of understanding. I don't think it ever did have a date on it but it was between Mr. Graeser and the Wrights and I didn't see it until I asked if anything had been done. I made another complaint several months after

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Mr. Gonzales left and nothing essentially was done about that. I would just like to make sure that my property isn't beaten down by any kind of noise. I'm not looking to live near the Taos buzz or hum or whatever it's called up there. And I would ask the Commission to please consider looking into the noise of this thing before we go any further and perhaps the location of the wind generator, whether it's 35 feet or 45 is not the point. Thank you very much.

CHAIRMAN ANAYA: Thank you, Mr. Powell.

MR. ABEYTA: Mr. Chairman, if I may clarify for the Board. Regardless of the memorandum of understanding or whether or not this application or the permit, the construction was deemed complete, staff would have given a permit for electricity for the applicant so that he could complete the improvements that are required as part of this memorandum of understanding. I just wanted to make that clear for the record, whether it be a wind generator or a standard utility authorization for PNM, the applicant stated he needs this wind generator for electricity and he needs electricity to finish the construction of this home. And that's part of the other reason why staff allowed this to go forward.

CHAIRMAN ANAYA: Thank you for the clarification, Roman. Charlie?

MR. GONZALES: Chairman Anaya, Commissioners, I'd like to clarify a couple issues. One thing I don't know if people realize here is that when a permit is issued, before the people actually move into it, there is a final grading and drainage inspection or a final terrain management compliance inspection that's required. Upon this time when I get out there to do this final inspection, right now they're in substantial completion with the grading. They're doing a lot of grading, recontouring around the property out there.

But at this time I will definitely make sure that this agreement has been complied with at the same time as we're doing this terrain management, which the terrain management, no one's really mentioned it, required retention ponds and all that other stuff that goes with the building permit application. So at that time, when I do this, I will definitely make sure that everything has been also taken care of.

I'd also like to address the situation about trailers and so forth out there. Right now, they're kind of using it as a staging area and those are the workers that are there. It's not like a living area. Those will be moved out also as soon as the house is complete. Another issue that this came up on the memorandum of understanding or agreement, is that the requirement was for trees for screening. Well, the trees that were required in this agreement were trees that aren't even natural or native to the property, and actually the trees that should be up there should be actually natural trees that belong in that area.

So there's a few discrepancies in this agreement that are kind of fuzzy, and I just wanted to clarify that. Also, one thing I do definitely want to clarify. The appellant stated something about near or on a ridgetop. As per the Code, it does not fall under the ridgetop category. A ridgetop category is 30 percent slopes and greater on two sides and as per Morrie Walker was the engineer that did the slope analysis on that, it did not fall under the category of being a ridgetop. Thank you.

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CHAIRMAN ANAYA: Thank you. Anyone else speaking for the appeal? Please come forward.

[Duly sworn, Kathy Pilnock testified as follows:]

KATHY PILNOCK: My name is Kathy Pilnock. I live next to the post office in Lamy, New Mexico. This property that is out here in this little canyon is property that was developed by my husband and our partners along with Gene Shelton. Some of the property we had out there we sold for the Cerrillos Hills project, but we kept some of that property, made some lots out of it. Our partner intends to live out there. I don't think we're going to live out there, but it's certainly part of our retirement and we intend to sell it.

We went to a great deal of trouble when we developed this property to put the utilities underground and the power has been brought within 400 feet of the subject property and Steve has offered to bring it closer if money's a problem, but I understand the applicants' determination is not to be on the grid.

However, I do not believe that according to the statute that has been quoted many times this evening that he has shown that a wind generator is absolutely necessary for him to live there. During the CDRC meeting, committee member Bassett who installs septic systems for a living, stated that there were comparable systems that could be used that use pumps with less electricity. Also, their own expert at the meeting stated that the noise level that would be generated by the generator was equivalent to that on a city street. Well, most of the people that are moving out here do not want to live on a city street. That is why they're out there.

I believe that visually -- I guess part of the problem is that when I went on the CDRC site visit, I said, well, maybe one wind generator isn't so bad but that kind of opens up the door for everybody to put a wind generator up there. And if that happens it's going to amplify the noise and it's really going to make that pretty little canyon kind of look like a circus or a carnival. That's one of my concerns. Because I want to be able to sell that property when the time comes for us to do that.

Also I believe the statute requires you or asks that the CDRC consider the neighbors and how they feel about it and also the size the lot. There are a number of lots out in this area or other sites where there are wind generators, where there isn't electricity that comes right to the door. I think there's a place for everything and everything in its place. I guess I don't really feel that this is the place for a wind generator. I don't believe a study's been done that demonstrates the height is necessary, or even that the generator is necessary in order to supply the electricity that the applicant needs.

So I would ask that you consider these impacts on the neighbors and the surrounding property owners and turn over the decision of the CDRC, or table it so that we can discuss location and other things with the Wrights. Thank you.

CHAIRMAN ANAYA: Thank you, Kathy. What's the pleasure?

COMMISSIONER TRUJILLO: There's still public hearing.

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CHAIRMAN ANAYA: I'm sorry. Does anyone want to address the Commission against the appeal? How many people in the audience?

COMMISSIONER GONZALES: Mr. Chairman, can we, just for those who want to come and speak, can you make sure that -- there may be people that are here in support of the Wrights, but it's important that you just focus on what the issue at hand is, whether the Commission should grant the wind generator is not and stay focussed on that as opposed to redundancy, which would be helpful. Thank you.

[Duly sworn, James Valente testified as follows:]

JAMES VALENTE: My name is James Valente. I live at 323 Tesuque in Santa Fe. I am the site supervisor of this project. I was hired a year ago to replace the old supervisor who had some problems with the dome and understanding the complexity of the structure and what was necessary. In the year that I have been on this project we have made mountains of progress towards its completion. We are -- have a tentative deadline of occupancy of September 1. That is how close we are to completing this.

My intention right now is to clarify a lot of the points that were brought forward at this time. I would also like to address the issue of the necessity of the wind production. I have two people with me today that I would like to speak and I would like permission at one point to speak. One is the electrician, one of the electricians, who has been installing and can tell you about why this system is necessary. And then we have a professional engineer who has done a study. He can tell you why the height is necessary.

So if you'll allow me to begin. First, did everybody get the letter that Tom and Ieva Wright sent? Is that already entered into the record? Thank you.

COMMISSIONER DURAN: Mr. Chairman, excuse me. Once more I'd like to say we're here to discuss specifically the wind generator, not whether the house is under construction, the level of construction it's in or anything relative to that. It has to do with the wind generator.

MR. VALENTE: I appreciate that. That alleviates a lot of my burden in disputing the problems of the memorandum, which I have been over and over with Charles, five, six times already. He has come out and we have discussed what is necessary. I make progress. He comes out. We talk again.

COMMISSIONER DURAN: You're already talking about the house.

MR. VALENTE: I just wanted to clarify that I'm willing to be happy to not talk about that. First off, the wind tower and its application is based on the Wrights' decision to implement solar power based on the fact that there was no power in that area when they started building their house. When they decided to implement a wind generator, and I have records when this equipment was purchased, there was still no power in that area. It was brought in in January, approximately, of this year, for use by Susan Brennan and Bryan Brennan who built a house across the way.

Our records show that we purchased this wind generator equipment in October of last year. It is imperative to the system, to the success of the system, because of the nature of

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DC you can't have this thing so far away that no one is around it. That is a moot point to begin with because this is a wind generator; it's not a propeller on a plane that produces a certain amount of noise. I would like to save the noise issue for after you receive information on the necessity of the wind tower and the height necessity. And on that note, I would like to introduce to you Mark Sardella, who is the professional engineer, and he will tell you what is going on with the wind generator, its proportions, and why this is necessary.

Incidentally, we did supply information to this effect with our original application and it was somehow misplaced and that information is in the packet that you have. That information was initially submitted with our CDRC application for a permit.

CHAIRMAN ANAYA: Thank you. Mark, can you come up please.

[Duly sworn, Mark Sardella testified as follows:]

MARK SARDELLA: My name is Mark Sardella. I'm at 12 MacGregor Lane in Tesuque. As Jim said, I am a registered professional engineer in New Mexico. I'm currently on contract to the state Energy Office under a grant through the DOE to do energy audits in New Mexico. So I am qualified to look at this system. I've also been in the renewable energy and on-site energy fields for about eight years now.

Mr. and Mrs. Wright contacted me over the concern of their ever shrinking wind tower. I think it started at 40 feet with the blade going up to 45, and then there was some discussion apparently about lowering the tower to 30 feet such that the blade would go up to 35 and now there's some discussion of 24 feet and obviously there's a possibility that it won't be allowed to put it up at all.

So he's quite concerned about how much power he will have without the wind generator and how he will operate his property. Let me say a couple of things about the way you do this kind of energy study. When you're hooked to the --

CHAIRMAN ANAYA: Excuse me. I think we don't need to get into that. I think we've heard enough and I'm just going to call for a motion.

MR. SARDELLA: I do have very pertinent testimony that I can give very quickly.

CHAIRMAN ANAYA: Please. Call for the motion.

COMMISSIONER TRUJILLO: What I'd like to see is how many more people want to speak against the appeal. Okay, that's the rest.

CHAIRMAN ANAYA: Okay, that's all we need to know. Let the record show that there are people in attendance that wanted to speak against the appeal. Call for the question.

MS. PILNOCK: Mr. Chairman, I have a point of order. I'd like to understand [inaudible] do we have a right to rebut it?

MR. GRAESER: Mr. Chairman, I believe that earlier it was stated that Mr. Biedscheid would have an opportunity to rebut any testimony that was presented.

CHAIRMAN ANAYA: Okay.

COMMISSIONER DURAN: Mr. Chairman, I have a suggestion please.

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Could you limit the speakers to three minutes?

CHAIRMAN ANAYA: Yes, because you're giving us an engineering course and that's not what we need to know. I think we pretty much basically know what the Code is.

MR. SARDELLA: No, I apologize, Commissioner. But there are two issues that are very pertinent to what we're talking about. One is the height of the tower and the necessity of the height of the tower has been questioned.

CHAIRMAN ANAYA: Could you give us some short and simple detail.

MR. SARDELLA: I'd be glad to, Mr. Chairman. Their power budget is only 10 kilowatt hours a month. That's less than half of what the average home in New Mexico would use. At 10 kilowatt hours a month they would require the generator tower to be 40 feet in height. There's been this discussion of the 45 feet. Again, the 45 comes when the blade comes over the top of the tower. It comes up another five feet.

So with the tower at 40 feet, they can meet their power demands of 10 kilowatt hours. When you drop the tower to 30 feet, which has already been done and they've already agreed to, they lose about half the power out of the wind generator. That drives their costs up tremendously. And with that loss of power, they have a hybrid system, so they have a gas powered generator. With the loss of power from the wind generator, they then have to run their gas powered generator.

I understand they've been running this generator for a couple of years on site and there's been no discussion of the noise of that. You've all heard a gas powered generator. They are much louder than a wind turbine. So in terms of the necessity of the tower, yes, they did need the tower at 40 feet with a 45 foot blade height. They have accepted a 50 percent penalty on the output of that generator to lower it to 30 feet. If you lower it to 24 feet you're in to turbulent wind flow and they really don't get any benefit from the generator at all. I shouldn't say not at all, but it's very limited power at 24 feet.

When you go below 30 feet over the existing terrain you get very little power out of a wind generator. The second issue that's come up is the noise from the generator. I should point out that the noise from the generator gets louder as you lower the height of the tower. That's because you get into turbulent flow and once again you get the noise. The quieter generators operate very high and they operate in the laminar air stream. I do have noise sound pressure level readings from the exact generator that they're using. The readings show that anything more than a hundred feet from the base of the tower there is no discernible measured difference between the sound coming out of the generator and the background noise. In other words, at over 100 feet from the tower you're not likely to hear it at all.

So these are the pertinent things of my testimony. One is that the noise I don't believe will be a problem and the second is the necessity of the height of the tower at 40 feet with a 45-foot blade. Otherwise, he's going to supplement it with generator power with a gas engine generator.

CHAIRMAN ANAYA: I appreciate that. Thank you. Okay we've heard of noise and we've heard of utilization.

MR. VALENTE: I would like to ask this Commission if it is clear on why this generator is necessary in terms of the power requirements of the Wrights' house.

CHAIRMAN ANAYA: You would like to ask the Commission --

MR. VALENTE: I would like to ask if you are clear on why the generator --

COMMISSIONER GONZALES: In other words, do you need to go into further explanation.

MR. VALENTE: Right. Do I need to have --

CHAIRMAN ANAYA: Mr. Biedscheid, do you have a rebuttal?

COMMISSIONER GONZALES: Not yet. Maybe the rebuttal could come after everyone speaks, Mr. Chairman.

CHAIRMAN ANAYA: Okay, we've heard of noise and we've heard of the height issue. Is there anything anybody in the public would like to add?

MR. VALENTE: Can I add something on the noise issue?

CHAIRMAN ANAYA: Go ahead.

MR. VALENTE: The noise in the area is not without --

CHAIRMAN ANAYA: He said 100 feet away you probably won't be hearing it.

MR. VALENTE: I'm talking about the other noises in the area. You hear the train.

COMMISSIONER GRINÉ: That's irrelevant.

CHAIRMAN ANAYA: That's not an issue. Does anybody have any comments to the Commission that is relevant to the issue. Can everyone come up forward and sit up front and be sworn in all at the same time so we can get our work done?

COMMISSIONER GRINÉ: Mr. Chairman, all these people indicated they were in favor of upholding the CDRC's decision. Why do we have to allow them to speak?

CHAIRMAN ANAYA: That's why I called for the question twice.

COMMISSIONER GRINÉ: I'm ready to vote on holding up the CDRC's decision.

COMMISSIONER GONZALES: Mr. Chairman, this is an appeal. We need to allow the person who's appealing the opportunity to address before it happens. The other thing is, and I appreciate where the Commission wants to go on this. If you're going to stand up just in favor of it or support because you like the Wrights and you think that that's good, that is not relevant testimony to this. The testimony that's been provided on behalf of the Wrights has been relevant, the issue of noise and the issue of relevance and the issue of the height.

Now that is relevant to the need of the towers. Anything else that anyone else is going to be providing, the Chair executes the power to basically not provide any more

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testimony, other than what the Wrights have to offer. So I think that that's where the Commission's going. If you're going to stand up and say we like the Wrights. We think they're good people. They should have this tower. That is not relevant to this. We need to state this before we go forward.

CHAIRMAN ANAYA: So is there really a need for everybody to speak? If not, we can call for the question.

COMMISSIONER GONZALES: I think the Wrights, I would like to hear from the Wrights. Are you Ms. Wright?

[Previously sworn, Ieva Wright testified as follows:]

IEVA WRIGHT: Yes, my name is Ieva Wrights and I live the Wrights. I do. I do. But the one issue that came up that was brought over and over again by the lawyer was that it's taking us so long to build. I won't talk about it, but --

COMMISSIONER DURAN: Mr. Chairman, we discussed that how long it's taken you to build your house is not a relevant issue here.

MS. WRIGHT: Good. Good. Because I wanted to make sure that that was not an issue. And basically, what I wanted to give a little background, is about a word that was used a little earlier, holistic. You said that earlier. One of the first cases. Basically, this is a hybrid system. What we saw was when I started building this dome is that I saw we had wind and we had sun, and so what I wanted to do was use those both and just have a generator as a back-up.

The problem that we're going to have as you've probably heard is that if we are not allowed to put the wind generator up, I really don't know how we're going to move in September. Because we do need the electricity. And the panels right now, that's not enough. And then to run the generator, the gasoline generator, that's not okay either. So I'm feeling really like almost scared here when I'm standing here that you have the power to decide over something that I have put my heart and my everything that I've got into this project.

COMMISSIONER GRINÉ: We have hearts too, Ms. Wright.

MS. WRIGHT: I know. I know. That's all I need to say. Thank you.

CHAIRMAN ANAYA: Please come forward. State your name for the record.

[Previously sworn, Donna Fisher testified as follows:]

DONNA FISHER: My name is Donna Fisher and I live at 2164 Highway 58 in Embudo and I'm the electrical contractor. I'll put you at rest. There is a permit on the solar panels. And the only thing I would like to say that hasn't been addressed is that one of the appellants installed the grid and I think he has a very strong vested interest there because he wants the work to install the lines.

The other thing is, a piece of material I'd like to submit written by Michael McDermitt who is in the Wind Resource Division of the New Mexico Energy and Minerals Department, and it states very clearly about the tower heights and I'll just give it to you.

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There's a couple of pages of back-up but just the first page is very succinct. Thank you.

CHAIRMAN ANAYA: Thank you very much. Anyone else?

[Previously sworn, Keith Kryder testified as follows:]

KEITH KRYDER: My name is Keith Kryder. I live at 80 County Road 59A which is just below this dome. I'm Mr. and Ms. Wrights' closest neighbor on the west side. Our properties, we have a common property line and I have no objections to this wind tower, to the height.

CHAIRMAN ANAYA: Okay. Thank you very much sir.

[Previously sworn, Otty Piper testified as follows:]

OTTY PIPER: My name is Otty Piper. I'm an electrical contractor and I just want to add quickly to the relevance of the wind generator. The wind generator is supposed to supply 1/3 to 3/4 of the power, combined with the solar panels, so if the wind generator doesn't happen they would be required to buy additional solar panels which would be an enormous hardship because it's very expensive and it would add up to a very, very big amount of money. Several thousand dollars, probably.

CHAIRMAN ANAYA: Thank you very much. Anyone else? Rebuttal?

MR. BIEDSCHEID: First of all, I just want to say, I think it's appropriate for you all to consider the fact that most of the folks you heard speak in favor, are in fact service providers or other employees of the applicants.

CHAIRMAN ANAYA: Excuse me sir. Do you have any direct questions of any of the testimony that's been given that you counter.

MR. BIEDSCHEID: No questions. I just want to state that it appears that the folks that are affected were the ones that spoke against. That's all.

CHAIRMAN ANAYA: Thank you very much. What's the pleasure of the Commission?

Commissioner Griñé moved to uphold the CDRC decision and deny the appeal. Commissioner Gonzales seconded and the motion passed by unanimous voice vote.

- IX. E. 6. CDRC Case #Z 98-5453. Leeder Commercial Reconsideration.
R.L. Leeder, applicant, Jim Siebert, agent, request a reconsideration of a condition previously imposed by the BCC restricting commercial approval for a period of three years, to allow for the approval to be for ten years. The property is located north of State Road 5999, north of the intersection of Airport Road, within Section 2, Township 16 North, Range 8 East

COMMISSIONER GONZALES: Actually, Mr. Chairman, I think we've had the chance to read this. Can you just go to the recommended action.

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MS. ELLIS-GREEN: Okay. The applicant is requesting the reconsideration to allow for a period of ten years, states that his batch plant and offices are currently located within the Village of Agua Fria. His intent is to move these to the subject property. This will take a substantial capital investment and the applicant is requesting a ten-year time frame as a reasonable period of time to off-set the costs for relocating his business.

Recommendation: It is staff's position that the two conditions imposed by the BOC conflict, and that clear direction as to the time frame of three or ten years should be given. Staff also recommends that all other previously imposed conditions of approval still apply. Thank you.

CHAIRMAN ANAYA: Thank you. Any questions of staff?

COMMISSIONER GONZALES: Mr. Chairman, I think that, unfortunately I'm not sure how this happened, that the applicant ended up having to agree to three years to have this zoning placed on his property. I don't think that it's realistic to expect that the applicant will be able to move his site, which I know we're all wanting to vacate this area and move to a different area, but I don't think that that's realistic that that will be done within the three years.

Mr. Chairman, I just ask that this Board be consistent with what we've done with other applications, and my feeling is, and I know we've got to go through the process, but my feeling is that this applicant should be allowed the ten years that everyone else has been required to be able to move their --

CHAIRMAN ANAYA: Hold on. Let's go through the process.

COMMISSIONER GONZALES: That's right. That's what I'm saying. I'm just asking that we consider that.

CHAIRMAN ANAYA: It will be considered. Thank you, Penny. Is the applicant present?

MR. SIEBERT: Mr. Chairman, Commissioners, I understand I'm under oath. I think staff has explained what the situation is. We have two different conditions, conflicting conditions on the same case and we're just requesting clarification of that particular issue.

CHAIRMAN ANAYA: Okay. There's understanding. Is there anyone in the audience that would like to speak either for or against this proposal?

COMMISSIONER GONZALES: Mr. Chairman, in terms for clarification, I'd ask that the clarification be that the applicant, R.L. Leeder, be given ten years rather than three years. The commercial designation on the property that is located north of State Road 599, north of the intersection of Airport Road within Section 2, Township 16 North, Range 8 East.

COMMISSIONER GRIÑÉ: Second.

CHAIRMAN ANAYA: Motion for amendment for ten years by Commissioner Gonzales, seconded by Commissioner Griñé. Is there any further discussion?

COMMISSIONER DURAN: Mr. Chairman, I'll do it real quick. I think I'm

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the one that actually put the three-year limit on there. But in talking to Jim the other day, the reason that we did it is that we wanted to have an area for you to move to, because that area that you're in right now has been designated a redevelopment area and whenever there is another, more suitable location for you, that you agreed at that time that you'd go there. So even though we've given you another ten years, if something happens in seven years, five years, you would still consider moving there. Is that correct.

CHAIRMAN ANAYA: Realistically though, ten years is probably --

COMMISSIONER DURAN: Well, you're probably right.

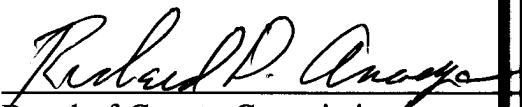
CHAIRMAN ANAYA: As long as it will take for redistricting and everything else.

The motion to set the required time to ten years passed by unanimous voice vote.

ADJOURNMENT

Chairman Anaya declared this meeting adjourned at approximately 9:10 p.m.

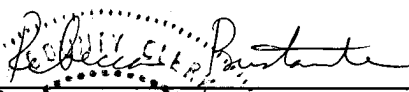
Approved by:


Board of County Commissioners
Richard Anaya, Chairman

Respectfully submitted:

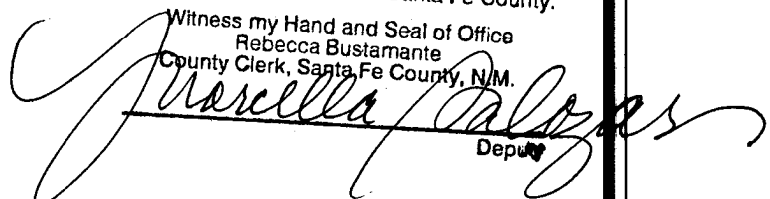
Karen Farrell, Commission Reporter

ATTEST TO:


REBECCA BUSTAMANTE
SANTA FE COUNTY CLERK



1127844
COUNTY OF SANTA FE
STATE OF NEW MEXICO) SS
I hereby certify that this instrument was filed
for record on the 30 day of Aug A.D.
20 00, at 9:54 o'clock A.m.
and was duly recorded in book 1801
page 577 of the records of
Santa Fe County.

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

Deputy

