



COUNTY OF SANTA FE)
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BCC MINUTES
PAGES: 179

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Deputy County Clerk, Santa Fe, NM

SANTA FE

BOARD OF COUNTY COMMISSIONERS

REGULAR MEETING

November 9, 2004

Paul Campos, Chairman
Michael D. Anaya
Jack Sullivan
Paul D. Duran
Harry B. Montoya

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SANTA FE BOARD OF COUNTY COMMISSIONERS

COMMISSION CHAMBERS

COUNTY ADMINISTRATION BUILDING

**REGULAR MEETING
(Public Hearing)
November 9, 2004 - 3:00 pm**

Amended Agenda

- I. Call to Order**
- II. Roll Call**
- III. Pledge of Allegiance**
- IV. Invocation**
- V. Approval of Agenda**
 - A. Amendments**
 - B. Tabled or Withdrawn Items**
 - C. Consent Calendar Withdrawals**
- VI. Approval of Minutes**
 - A. September 28, 2004**
 - B. October 7, 2004 (Special BCC – Property Tax Rate)**
 - C. October 7, 2004 (Joint BCC/City Council)**
 - D. October 12, 2004**
- VII. Matters of Public Concern –NON-ACTION ITEMS**
- VIII. Matters from the Commission**
 - A. Resolution No. 2004 – A Resolution Supporting Efforts of Esperanza Battered Families Shelter to Obtain Funding During the 2005 Legislative Session (Commissioners Duran & Montoya)**
 - B. Resolution No. 2004 – A Resolution Declaring Santa Fe County’s Intention to Participate in the Espanola Basin Regional Planning Issues Forum – A Water Collaborative with Government Entities and Constituents within the Espanola Water Basin (Commissioner Montoya)**
 - C. Resolution No. 2004 – A Resolution Authorizing Santa Fe County to Create a Victims Services Division within the Santa Fe County Sheriff’s Department (Commissioner Montoya)**
 - D. A Proclamation Declaring November 7, 2004, Melinda Romero Pike, Geronima Montoya, and Marjorie Muth Day and Acknowledging That They Have Been Honored as Living Treasures in Santa Fe County (Commissioner Duran)**
 - E. Request for Clarification and/or Direction From the County Commission Regarding Ordinance No. 2003-2 An Ordinance Amending Ordinance 1996-10, the Santa Fe County Land Development Code, Article V, Section 5.2 Master Plan Procedures (Commissioner Duran)**
 - F. Information on RACER (Risk Analysis Communication Evaluation Reduction) by the Los Alamos National Laboratory (Commissioner Montoya)**

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- G. **Presentation by the Santa Fe Area Homebuilders Association on the Differences between the International Building and Residential Codes and the "Blended" Building Code (Commissioner Duran)**

IX. Consent Calendar

- A. **Request Authorization to Enter into an Agreement with the Federal Bureau of Prisons to Provide Non-Secure Juvenile Services (Corrections Department)**
- B. **Authorization for 1.0 FTE Term Position for a Network Administrator for the CARE Connection Program (Health & Human Services Department)**
- C. **Resolution No. 2004 – A Resolution Requesting a Budget Adjustment in the DWI Detox Grant to Fund a Network Administrator (Health & Human Services Department)**
- D. **Request Authorization to Accept and Award a Professional Services Agreement for RFP #25-12 for Prevention Services for the Home for Good Program Based on Evaluation Rating/\$28,000 (Health & Human Services Department)**
- E. **Request Authorization to Enter into a Memorandum of Understanding with the Cundiyo Mutual Domestic Water Association for the Development of the Cundiyo Water Project/\$100,000 (Project & Facilities Management Department) TABLED**
- F. **Resolution No. 2004 – A Resolution Requesting an Increase to the Road Projects Fund (311)/Various Road Projects to Budget Cooperative Grant Agreements Awarded through the New Mexico Department of Transportation and to Budget an Operating Transfer from the Capital Outlay GRT Fund (213) for the County Match Portion for Expenditure in Fiscal Year 2004/\$328,372 (Public Works Department)**
- G. **Resolution No. 2004 – A Resolution Requesting Operating Fund Transfers from the Road Maintenance Fund (204) and the Road Projects Fund (311) to the General Fund (101) for Expenditure in Fiscal Year 2005/\$119,500 (Public Works Department)**
- H. **Acceptance of Offer Regarding, IFB #25-04, Used Public Works Equipment with Tractor Service for One 3,500 Gallon Water Truck/\$44,500 (Public Works Department)**
- I. **Acceptance of Offer Regarding, IFB #25-04, Used Public Works Equipment with Tom Growney Inc., for one John Deere Grapple Rake/Loader/\$107,620.82 (Public Works Department)**
- J. **Acceptance of Offer Regarding, IFB #25-04, Used Public Works Equipment with Wagner Equipment Inc. for One Caterpillar D4C3 XL Dozer and One Caterpillar 307B Excavator/\$119,500 (Public Works Department)**

X. Staff and Elected Officials' Items

A. Project & Facilities Management Department

- 1. **Consideration and Approval for Placement of a Water Tank on Santa Fe County's Chimayo Fire Station Property**

B. Matters from the County Manager

C. Matters from the County Attorney

1. Executive Session

- a. **Discussion of Pending or Threatened Litigation**
- b. **Limited Personnel Issues**
- c. **Discussion of the Purchase, Acquisition or Disposal of Real Property or Water Rights**

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XI: Public Hearings

A. Land Use Department

1. **Ordinance No. 2004 – An Ordinance Amending Ordinance No. 2002-13 Addressing Water Conservation for all Residential and Commercial Uses of Water within Santa Fe County to Extend the Deadline for Commercial Businesses to Comply with Indoor Water Conservation Retrofits from January 1, 2005 to July 1, 2005 and to Reduce the Maximum Violation Penalty from \$400 to \$300. Wayne Dalton**
2. **BCC Case # DP 04-5000 – Santa Fe County Hondo Fire Station. Santa Fe County, Rudy Garcia, Agent, Requests Final Development Plan Approval for the Eastern Region Headquarters Fire Station on 2.1 Acres. The Property is Located at 645 Old Las Vegas Highway, within Section 3, Township 15 North, Range 10 East (Commission District 4). Dominic Gonzales TABLED**
3. **CDRC Case #V/Z 04-5490 – Alfonz Vizolay Variance and Master Plan. Alfonz Vizolay, Applicant, Requests a Variance of Article III, Section 4.1 and 4.2 (Types and Locations of Commercial Districts) of the Land Development Code for the Eligibility for Commercial Zoning Outside of a Commercial District. The Applicant is also Requesting Master Plan and Preliminary and Final Development Plan Approval for an 8,510 Sq. Ft. Warehouse and Office. The Property is Located within the Santa Fe Metro Highway Corridor Commercial Gateway at 4 Reata Road, within the Remuda Ridge Subdivision, within Section 24, Township 16 North, Range 8 East (Commission District 3). Vicente Archuleta TABLED**
4. **CDRC Case #A/V 05-5400 – Romero Vairance. Floyd Romero, is Appealing the Land Use Administrator's Decision to Deny the Placement of a Second Dwelling on 0.35 Acres, Which Would Result in a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code. The Property is Located at 05 Don Francisco, Santa Cruz, NM, within Section 5, Township 20 North, Range 9 East (Commission District 1). Dominic Gonzales TABLED**
5. **EZ Case #DL 04-4660 – Ricardo Borrego Family Transfer. Ricardo Borrego, Applicant, Paul Rodriguez, Agent, Request Plat Approval to Divide 10 Acres into Four Lots for the Purpose of a Family Transfer. The Lots will be Known as Lot 15-A (2.50 Acres), Lot 15-B (2.50 Acres), Lot 15-C (2.50 Acres), and Lot 15-D (2.50 Acres). The Property is Located Off of Caja Del Rio at the Southwest Corner of Calle Hacienda and Paseo De Los Ninos, in the Rancho De Los Ninos Subdivision, within Section 23, Township 17 North, Range 8 East (Commission District 2). Vicente Archuleta**
6. **CDRC Case #V 04-5460 – Juan Montoya Variance. Juan Montoya, Applicant, Requests a Variance of Article III, Section 4.1 and 4.2 (Types and Locations of Commercial Districts) of the Land Development Code to Allow Commercial Use on Three Tracts of Land Totaling 13 Acres, within the Home Business Area Located within the El Valle Arroyo Seco Highway Corridor Zoning District. The Properties are Located Off Highway 285 in Arroyo Seco, within Section 30, Township 20 North, Range 9 East (Commission District 1). Wayne Dalton**

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7. **CDRC Case #S/V 02-5291 – Rancho San Lucas. Monte Alto Homes & Land Inc., Applicant, Jim Siebert, Agent, Request Preliminary Plat and Development Plan Approval for a Residential Subdivision Consisting of 29 Lots on 128.16 Acres. The Request also Includes a Variance of Article VII, Section 2.2, Table 7.1, (Liquid Waste Disposal Requirements) and Article V, Section 9.3.1, Table 5.1 (Community Sewer Systems) to Allow Conventional Septic Tank, Leach Field Systems Rather than a Community Liquid Waste Disposal System or Nitrate Removal Systems. The Property is Located Off of Spur Ranch Road in Eldorado, within the Bishop John Lamy and Canada de Los Alamos Grants, within Sections 29 & 30, Township 15 North, Range 10 East (Commission District 5). Vicki Lucero**
8. **LCDRC Case #DP 01-5014 – Santa Fe Downs. Pojoaque Pueblo Development Corporation, Applicant, Request Preliminary and Final Development Plan Approval for Phase I of the Santa Fe Downs, which Will Consist of Horse Racing, Slot Machine Casino, Concerts and Event Performances, Restaurants, Meeting and Conference Facilities, Flea Market and Parking Areas on 372.39 Acres. The Request also Includes Four Variances of the Land Development Code as Follows: A Variance to Allow a Pond Instead of a Cistern for Water Harvesting; a Variance to Allow a Monument Sign to Exceed 150 Sq. Ft.; A Variance to the Amount of Landscaping Required Along the Frontage Road; and a Variance to Limit the Type and Amount of Landscaping Required within the Parking Lots. The Property is Located Southwest of the Intersection of I-25 and SR 599, within Sections 26 & 27, Township 16 North, Range 8 East (Commission District 3). Vicki Lucero**
9. **CCDRC Case #MP 04-5440 – Santa Fe Brewing Master Plan. Lock Builders, LLC (Brian Lock), Applicant, Blaine Young, Agent, Request Master Plan Approval and Preliminary Development Plan Approval within a Designated Employment Center Zone to Allow a Brewery Facility and Restaurant, and Will Include a Newly Constructed 11,200 Square Foot Warehouse on a 3.6 Acre Tract. The Property is Located at 9885 Cerrillos Road, in the Community College District, within Sections 24 & 25, Township 16 North, Range 8 East (Commission District 5). Dominic Gonzales**
10. **CDRC Case #APP 04-5470 – Dominic Vigil Appeal. Dominic Vigil, Applicant, is Appealing the CDRC's Decision to Deny a Home Occupation Business License for a Roofing Company on 2.3 Acres. The Property is Located at 14 Sloman Court in Alameda Ranchettes Subdivision, within Section 25, Township 17 North, Range 8 East (Commission District 2). Dominic Gonzales**

XII. Adjournment

The County of Santa Fe makes every practical effort to assure that its meetings and programs are accessible to the physically challenged. Physically challenged individuals should contact Santa Fe County in advance to discuss any special needs (e.g., interpreters for the hearing impaired or readers for the sight impaired).

SANTA FE COUNTY
REGULAR MEETING
BOARD OF COUNTY COMMISSIONERS

November 9, 2004

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 3:00 p.m. by Chairman Paul Campos, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Following the Pledge of Allegiance, roll was called and indicated the presence of a quorum as follows:

Members Present:

Commissioner Paul Campos, Chairman
Commissioner Mike Anaya
Commissioner Jack Sullivan
Commissioner Paul Duran
Commissioner Harry Montoya

Members Absent:

[None]

IV. Invocation

An invocation was given by Deacon Andy Dimas of St. John's Church.

V. Approval of the Agenda

- A. Amendments**
- B. Tabled or withdrawn items**
- C. Consent Calendar items**

GERALD GONZALEZ (County Manager): Mr. Chair, members of the Commission, on your amended agendas, Section VIII, Matters from the Commission, we've added item A.

CHAIRMAN CAMPOS: Is there material or an actual resolution we could look at? It wasn't in the packet. Julian, I thought you were supposed to provide that.

JULIAN BARELA (Policy Analyst): It was a last minute item. We got it last

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Thursday.

CHAIRMAN CAMPOS: It's the first item on the agenda here.

MR. BARELA: Okay. Let me find it.

CHAIRMAN CAMPOS: Okay. What else, Mr. Gonzalez?

MR. GONZALEZ: Under the same section, item G has been tabled. Section IX, the Consent Calendar, item E a request to table. And then under Section XI. Public Hearings, Subsection A, Land Use Department, items number 2, 3, and 4, there have been requests to table those three.

CHAIRMAN CAMPOS: Is there good cause for the tablings on those land use items?

MR. GONZALEZ: I believe they weren't quite ready to come forward and I don't think we had all the staff information that we were asking for for those.

CHAIRMAN CAMPOS: Okay, Commissioners, anything that you would like to table or change on this agenda? Any Consent Calendar withdrawals? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chair, B and C. Those two go together.

CHAIRMAN CAMPOS: You want these two. Anything else? Okay, is there a motion to approve as per the recommendation of our County Manager and as per the suggestion of Commissioner Sullivan?

COMMISSIONER MONTOYA: So moved.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER DURAN: Second.

The motion to approve the amended agenda passed by unanimous [5-0] voice vote.

V. Approval of Minutes: September 28, 2004

CHAIRMAN CAMPOS: Is there a motion to approve?

COMMISSIONER DURAN: So moved.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER MONTOYA: Mr. Chair, I have a couple of corrections.

CHAIRMAN CAMPOS: Okay, these are typographical?

COMMISSIONER MONTOYA: Yes, sir. Both of them.

COMMISSIONER SULLIVAN: I do as well, Mr. Chair.

CHAIRMAN CAMPOS: And a couple from Commissioner Sullivan.

COMMISSIONER SULLIVAN: That's correct.

CHAIRMAN CAMPOS: Is that okay with you, Commissioner Duran?

COMMISSIONER DURAN: Yes.

CHAIRMAN CAMPOS: Okay, the motion as amended.

The motion to approve the September 28th minutes as amended passed by

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unanimous [5-0] voice vote.

October 7, 2004 (Special BCC - Property Tax Rate)

CHAIRMAN CAMPOS: Is there a motion to approve?
COMMISSIONER SULLIVAN: Mr. Chair, I have two typos.
COMMISSIONER ANAYA: Move for approval.
COMMISSIONER MONTOYA: I've got one.
COMMISSIONER ANAYA: As amended.
CHAIRMAN CAMPOS: With the thee typos.

The motion to approve the October 7th Property Tax meeting minutes as amended passed by unanimous [5-0] voice vote.

October 7, 2004 (Joint BCC/City Council)

CHAIRMAN CAMPOS: Motion to approve the minutes?
COMMISSIONER MONTOYA: So moved.
COMMISSIONER DURAN: Second.

The motion to approve the October 7th Joint BCC/City Council meeting passed by unanimous [5-0] voice vote.

October 12, 2004

CHAIRMAN CAMPOS: I have one amendment, correction, Mr. Chair.

CHAIRMAN CAMPOS: Typographical?
COMMISSIONER MONTOYA: Typo, yes.
CHAIRMAN CAMPOS: Okay. Is that a motion, with one typographical?
COMMISSIONER MONTOYA: Yes.
CHAIRMAN CAMPOS: Is there a second?
COMMISSIONER DURAN: Second.

The motion to approve the October 12th minutes as amended passed by unanimous [5-0] voice vote.

VII. Matters of Public Concern -NON-ACTION ITEMS

CHAIRMAN CAMPOS: Is there anybody out there who would like to come

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forward and speak on any issue that's relevant to the County? Okay, no one having come forward, we're moving to item VIII.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER DURAN: I was wondering if it might be possible to move the proclamation, item D, in front of - the first item of Matters from the Commission.

CHAIRMAN CAMPOS: If there's no objection.

VIII. Matters from the Commission

D. A Proclamation Declaring November 7, 2004, Melinda Romero Pike, Geronima Montoya, and Marjorie Muth Day and Acknowledging That They Have Been Honored as Living Treasures in Santa Fe County (Commissioner Duran)

VIRGINIA VIGIL (Commissioner-elect): Good afternoon, members of the Santa Fe Board of County Commissioners. I just have a few words to say about this proclamation and I believe Commissioner Duran will be actually enunciating the proclamation. I first of all would like to introduce to you Santa Fe County's three living treasures and I'd like to introduce them to you by asking them to please stand. Geronima "Jerry" Cruz Montoya, also Marjorie Muth, and Melinda Romero Pike.

Members of the Board of the Santa Fe County Commission, the living treasures before you deserve as many accolades as our County can possibly deliver. Each one of these ladies have distinctly and in their own unique way overcome adversity and done so by the day to day practice of virtuous lives. I was at a ceremony on Sunday where their living treasure award was presented to them and heard testimony from many people who have been witness to the lives of Jerry Montoya, Marjorie Muth and Melinda Pike. As a testament to their lives there are many adversities that each one of these women have overcome.

Just to give you one of each one of their lives, Jerry Montoya went to Santa Fe Indian School and became a victim of cultural-educational genocide when she was forbidden to speak her language and practice her culture. She overcame that by becoming a teacher and a mentor to Dorothy Dunn, working under her, and ultimately became a role model to students and adults and is an award winning artist.

Marjorie Muth, upon caring for her disabled son became an advocate for disabled persons in the classroom and the community. She also became a counselor and a teacher.

Melinda Romero Pike overcame her diagnosis of cancer to help found the local chapter of the American Cancer Society and the support group, Bridge to Recovery. Melinda's history of the Agua Fria Village is in her heart and she strives to maintain the character of that community even today by serving on the Santa Fe River Restoration Task Force.

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Members of the Board of County Commissioners, there are so many more things that could be said about these women. They are outstanding and I would just like to sum it up by saying they're not only examples of today's living treasures, but they are examples of today's heroines. They have risen above their adversity only to create a greater good for Santa Fe County. And I'll defer to Commissioner Duran on the proclamation.

COMMISSIONER DURAN: Well, ladies, I would like to thank you for honoring us with your presence today. I'm going to read the proclamation.

Whereas, in 1984 the Santa Fe Living Treasures was founded to honor the lives of elders within the Santa Fe County community who enrich the life and spirit of Santa Fe through their good works and generous deed and whose histories inspire the lives of others; and

Whereas, we honor, respect, and are grateful for the contributions that elders continue to make in our community. They enrich our lives and their work is an example of their dedication and spirit; and

Whereas in various ways, the Santa Fe Living Treasures enhance the lives of the citizens in our community, the Santa Fe Living Treasures serve unselfishly and dedicate numerous hours for the betterment of the community. We value their contributions to the community and the state of New Mexico; and

Whereas it is essential to recognize public servants who have made a difference in the lives of many people, we honor them for their service, inspiration and dignity. Most importantly we thank them for their unconditional love for our community; and

Whereas, every fall and spring, three elders from the Santa Fe County community are recognized as Santa Fe's living treasures and a public awards ceremony is held in their honor,

Now, therefore, we the Board of Santa Fe County Commissioners hereby proclaim the 7th day of November, 2004 Geronima Montoya, Marjorie Muth and Melinda Romero Pike Day.

Thank you, ladies, for your contribution to our community.

COMMISSIONER ANAYA: Mr. Chair, I want to thank Commissioner Duran and Commissioner Vigil for acknowledging these lovely ladies, and I think it's important that the Commission does acknowledge people. It's really good. So I wanted to thank you for doing that. Thank you very much.

MS. VIGIL: Thank you, Commissioner Anaya. Mr. Chair, members of the Commission, a couple of the living treasures have requested just a moment to express their gratitude to you. So I'm going to turn the mike over to each one of them, and subsequent to that, the representative from Living Treasures has a few words she'd like to share with you.

MELINDA ROMERO PIKE: Thank you, Commissioners. At this time I wish to express my thanks for this lovely, beautiful gesture and the homage and honor you are granting us to today. Thank you very much.

CHAIRMAN CAMPOS: You're welcome.

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GERONIMA MONTOYA: This is indeed an honor and I want to say thank you very much.

MARJORIE MUTH: I will just say thank you. I am pleased.

CHAIRMAN CAMPOS: Thank you, ma'am.

MARY LOU COOKE: Sirs, I'm Mary Lou Cooke. I've been working with the living treasures for 20 years. This is the first time this has ever happened. We are so delighted with your insight and with your planning for this, and with your respect. It's just wonderful. The living treasures is known all over the country and Santa Fe is known for having the first Living Treasures. There are now 350 communities that have asked for information how to start their own living treasures, and it all started here in Santa Fe. We are just so delighted to be here today. Thank you for the attention you've given to this. It's time well spent. Thanks for everything.

CHAIRMAN CAMPOS: Thank you.

COMMISSIONER DURAN: Thanks for developing this program. I think it's a wonderful thing for our community.

VIII. B. Resolution No. 2004-140. A Resolution Declaring Santa Fe County's Intention to Participate in the Espanola Basin Regional Planning Issues Forum – A Water Collaborative with Government Entities and Constituents within the Espanola Water Basin (Commissioner Montoya)

COMMISSIONER MONTOYA: Mr. Chair, as you're aware, before about two months ago I brought before the Commission the intention for Santa Fe County to continue to work as part of the intergovernmental group that began probably about three years ago. This resolution is essentially declaring that we are going to actively participate in the Española region planning forum, which has been going on monthly for about the last six months. This is something we've asked every participating government, both Pueblo and non-Pueblo to seek and hopefully obtain from their governing bodies. So with that I would answer any questions and move for approval, Mr. Chair.

COMMISSIONER ANAYA: Second.

CHAIRMAN CAMPOS: Commissioner, what kind of resources are going to be required for this project and what kind of fiscal implications or commitments are going to be asked of us.

COMMISSIONER MONTOYA: Mr. Chair, right now, it's staff resources as well as my time. In the future, when we get to the point of what we're going to develop in terms of a wastewater system, that is the number one priority right now. We'll look at how and where those fiscal resources will come from at that time. Right now, it's mainly in the developmental stages. It's really staff and my time.

CHAIRMAN CAMPOS: So when do you think this group is actually going to become active in investigating these issues?

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COMMISSIONER MONTOYA: Mr. Chair, we're actually hoping that by the next meeting we'll actually agree that we probably need to look at a regional water/wastewater authority. So if we do that, we're going to be probably introducing the legislation that was introduced last session so that we begin with something tangible to begin working toward immediately.

CHAIRMAN CAMPOS: So you're looking at Santa Fe County, Rio Arriba, Los Alamos, the Pueblos, and they're all willing to work on this together?

COMMISSIONER MONTOYA: Yes, sir.

CHAIRMAN CAMPOS: Great. That's good news. Any other questions? There's been a motion and a second. Any discussion?

The motion to approve Resolution 2004-140 passed by unanimous [5-0] voice vote.

VIII. C. Resolution No. 2004-141. A Resolution Authorizing Santa Fe County to Create a Victims Services Division within the Santa Fe County Sheriff's Department (Commissioner Montoya)

COMMISSIONER MONTOYA: I don't know if the Sheriff is here; I don't see him out there.

CHAIRMAN CAMPOS: There's no packet material from what I can tell.

COMMISSIONER MONTOYA: I just received this myself. Did you get the handout from Julian? What this resolution is, Mr. Chair, would be to develop an office where victims of crime for Santa Fe County. We're just looking right now at the Commission approving this, to give authorization to move forward with this concept. Currently we have an individual who's been providing those services. When there's a crash or a murder or something, the individual goes out and provides really kind of bereavement counseling and services for the families and the victims involved.

It is something that we would look at partnering with the City of Santa Fe and any other interested governments that would want to participate in hopefully eventually funding this as a full-time resource. Right now it's currently voluntary and I think it's something that we need to look at in terms of developing it as a funded position. And that's what's being requested. And Santa Fe County did submit a proposal to the Department of Justice, Office of Victims of Crime to request funding for this position. Unfortunately we were turned down on that application. So now what we're doing is continuing to move forward with what was in that application in terms of the concepts and see what we can do to fund it locally. So that's the intent of this resolution is to give the authorization to move forward to look at creating an office for victims of crime.

CHAIRMAN CAMPOS: Okay, any other questions or comments? Is there a motion to adopt resolution 2004-141?

COMMISSIONER ANAYA: So moved.

COMMISSIONER MONTOYA: Second.
CHAIRMAN CAMPOS: Discussion?

The motion to approve Resolution 2004-141 passed by unanimous [5-0] voice vote.

**VIII. E. Request for Clarification and/or Direction From the County
Commission Regarding Ordinance No. 2003-2 An Ordinance Amending
Ordinance 1996-10, the Santa Fe County Land Development Code,
Article V, Section 5.2 Master Plan Procedures (Commissioner Duran)**

COMMISSIONER DURAN: Thank you, Mr. Chair. At the last County Commission meeting I requested that staff place this on the agenda so that the Commission could give the Land Use Department on the interpretation of this ordinance. It seems that there are some of us that feel that prior to the submittal of a master plan that the applicant would be required to acquire water rights, transfer them and have them available at the site prior to master plan submittal.

My recollection of how the Commission moved forward on adopting this ordinance was not to require the applicant to actually go through that expense but that they could come forward with master plan approval and as a condition of any further submittals they would have to go through that expense and have water available before final. So that's the question that I think is before us today. In talking to the Land Use Department they tabled one project, the Gerry Peters project, I forget the name of it. But they tabled it because of that one particular issue. And I think that we need to discuss that amongst ourselves and develop a policy as to how we're going to apply this ordinance and what kind of impact it's going to have on master plan submittals.

CHAIRMAN CAMPOS: Commissioner Duran, are you saying that we need clarification or do we need an amendment? Is the language -

COMMISSIONER DURAN: The information that I have, and my recollection is that it's not an amendment that I'm asking, it's for clarification. To me, the ordinance is clear in that master plan approvals can move forward and the requirement that water rights be transferred and be available at the site would be a condition of that master plan approval.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chair, this ordinance was passed, as you know, to clarify the question that was in the minds of every neighbor when they were dealing with a development that was near them, and that was: Where would the water come from for the development? And in the past the ordinance had been structured so that that decision could be delayed until a later part of the application process. I think we have to come to a realization that water is the number one issue we have to deal with on land development so we might as well talk about it right at the beginning. And that was the

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genesis for that amendment to the master plan ordinance.

I think in the case of the application that Commissioner Duran was referring to on the Suerte del Sur that this process has worked pretty well. In fact the neighbors were a part of the process in learning about the water, and in fact you have, either in your packets or in front of you a letter from the State Engineer indicating that at this juncture that particular application is deficient, and also indicating that there are depletion effects on La Cienega springs as well as the Rio Pojoaque and Rio Tesuque. Now, the letter also gives remedies that the applicant can make to correct that, to provide offset water rights. And this is exactly the kind of information that we in the public need at the application stage.

I think that's very important. And I don't think any master plan should go forward until we have that. Now, a second advantage and benefit to this ordinance is that we are trying to encourage developments to get onto public water systems. If you are being served by a public water system, then there is no delay or expense involved, other than your procedures necessary to get that letter of availability from that public water system. So we are trying to encourage public water supplies and I think that's an important aspect of our long-range planning.

Beyond that, I think the question, the technical question that arises, and it's going to be different for each development, and I think we need to keep the flexibility for ourselves to analyze that. I think we can analyze it separately for this subdivision, which is over 200 units, and we can analyze it separately for one that may be a lot smaller. But the question arises as to whether the actual water rights permits need to be transferred. I think also, it's my personal opinion that we're here to protect the public, not the land developers. And I think that as a part of that we need to have as much open discussion and involvement of the public when we're talking about water and how it will impact others and how it impacts the neighbors around the proposed development.

I think all of those goals have been achieved in this language. Now, I understand Commissioner Duran's point that the question arises do we need to physically have consummated the transaction between the applicant and the State Engineer to move the water rights to a specified location. Is that, Commissioner Duran, the major issue that you're focusing on?

COMMISSIONER DURAN: Well, my understanding is that staff tabled the Suerte del Sur applicant because of your interpretation of this ordinance. And you interpreted this ordinance to say that the developer, prior to bringing their project forward - and don't get me wrong. I could care less if this project goes forward or not. What I'm more concerned about is making sure that the intent of the ordinance is preserved, because at the time that we developed this ordinance there was never any public input or discussion about whether or not an applicant was going to have to go acquire rights, go to the expense of buying them, going through the process of 18 months or two years of transferring the rights to that particular site or wherever it's going to be transferred to prior to master plan approval.

So I'm really trying to make sure that the integrity of this ordinance, and that those

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people that rely on this ordinance are protected. That the property rights are protected. And so what I am trying to make sure is that they don't have - my understanding is that they don't have to acquire the water rights. They don't have to transfer them to the site in order to get master plan approval. Master plan approval does not vest any rights in that project. It's still subject to the conditions set out by the Commission and staff.

Mr. Ross, is that not true? There is no vested right in a master plan approval. Is that correct?

MR. ROSS: Mr. Chair, Commissioner Duran, that's what the ordinance specifies. There's two ways to look at vested rights, of course. There's what the ordinance says and there's what the common law says as well. Common law says that when you acquire - someone who's subdividing property to improve that property, once you start improving the property and taking action based on approvals then rights do vest at that point. So the ordinance, what the ordinance says is that at master plan level there are no vested rights. Now, that may or may not be true depending on what actually comes out in the master plan, what's required in the master plan.

COMMISSIONER DURAN: Well, I have minutes from meetings where we had discussed this issue and Commissioner Trujillo states that he has some concern about this condition having a negative impact by mandating the hydrological studies, the purchase of water rights, prior to master plan approval. And as you recall, this ordinance really came out of - it was a hybrid of several ordinances that you tried to pass at that time. Commissioner, if you recall, you were trying to get water rights transferred as a requirement even for a four-lot subdivision.

COMMISSIONER SULLIVAN: Mr. Chair, I think we're getting a little off the subject. My question was specifically whether this transfer of the water rights was the issue. In fact, Commissioner Trujillo, as my recollection, voted in favor of this ordinance amendment.

COMMISSIONER DURAN: I think we all voted in favor of it.

COMMISSIONER SULLIVAN: I don't think you did, Commissioner Duran.

COMMISSIONER DURAN: No, I think I did.

COMMISSIONER SULLIVAN: Well, notwithstanding, I think -

COMMISSIONER DURAN: I did vote for that amendment.

COMMISSIONER SULLIVAN: Well, good. Good for you.

COMMISSIONER DURAN: I appreciate you not assuming that I voted against it. And painting a picture here that I'm trying to do something other than what I'm trying to do.

CHAIRMAN CAMPOS: Let's keep this right to the issue, guys.

COMMISSIONER DURAN: You might remind the gentleman to your right about that too please.

COMMISSIONER SULLIVAN: I think the issue is the transfer issue and the one Mr. Ross makes reference to. And quite frankly I think we've had very good

cooperation with the State Engineer's Office and I think that a reasonable interpretation would simply be this. And I'll throw this out and Mr. Chair, if Commissioner Duran would like to respond I'd like to hear it. The State Engineer has indicated what the status, has given a preliminary indication of what the status of the applicant's water rights are and the areas in which they're deficient.

COMMISSIONER DURAN: Which water rights?

COMMISSIONER SULLIVAN: This is the water rights for Suerte del Sur, which is the one you mentioned.

COMMISSIONER DURAN: But we're not talking about Suerte del Sur.

COMMISSIONER SULLIVAN: Well, you were talking about it. You brought it up with reference to that subdivision.

CHAIRMAN CAMPOS: Gentlemen, let's keep to the issue. Please.

COMMISSIONER DURAN: I want to talk about the ordinance.

CHAIRMAN CAMPOS: Please, just keep to the language that we want to interpret or amend. Let's not get into a discussion or an argument tonight.

COMMISSIONER DURAN: That's fine. Well, let's talk about the ordinance.

CHAIRMAN CAMPOS: Commissioner Sullivan has the floor. Please, Commissioner Sullivan, keep focused on the language.

COMMISSIONER SULLIVAN: I think this particular one gives us a guideline that we can use and that is that once an applicant has their water rights in a position for acceptance for filing by the State Engineer. The State Engineer said once you provide these offset - or you have an indication to us that you have control of these offset rights, then we will accept your application for filing. And let me make it clear. In terms of financial outlay, water rights can be purchased just the way the County of Santa Fe does, by option. You don't need to go out and purchase hundreds of acre-feet of water rights, and in fact, that's not the way we do it.

We option water rights. So my suggestion would be if you want some clarification here, again, following this particular letter from the State Engineer, that we set some direction, some clarification as it were, that the applicant, if the applicant needs water rights, which isn't always the case, that they then have those water rights either in hand or by option or in some way controlled, the necessary water rights, so that they can make an application to the State Engineer. That process may take six months, may take a year, may take two years, as you say, depending on where the water rights are and what their impact is and their possible impairment is.

So that would be one way that I would suggest as a clarification, to then have the public know where the water will come from, and the Commission to know, and the staff to know the necessary details for the water portion of the master plan.

CHAIRMAN CAMPOS: Commissioner Sullivan, so you're saying the language, "must submit a water permit" means that you simply would have to have ownership or an option to buy at the time of master plan application?

COMMISSIONER SULLIVAN: And that would be -

CHAIRMAN CAMPOS: Is that yes?

COMMISSIONER SULLIVAN: Yes, that would be the first part.

COMMISSIONER DURAN: There's another part to it.

CHAIRMAN CAMPOS: What's the other part?

COMMISSIONER SULLIVAN: That other part, that it would have to be accepted for filing by the State Engineer.

CHAIRMAN CAMPOS: What does that mean? Accepted for filing?

COMMISSIONER SULLIVAN: Well, just as I indicate in the Suerte del Sur, they've run a preliminary, and they indicate very clearly it's not final. And they say that not all of the water rights are being proposed can be used one for one. That there are depletions in La Cienega and in other areas.

CHAIRMAN CAMPOS: I understand that.

COMMISSIONER SULLIVAN: So as soon as the applicants provides those additional water rights the State Engineer will accept that application. So we're really not holding anything up because nothing is going to go forward until the State Engineer starts the process anyway.

CHAIRMAN CAMPOS: Okay. I have a question for legal counsel. Mr. Ross, what do you think of the Commissioner's proposed interpretation or clarification?

MR. ROSS: I'm sorry, Mr. Chair. I didn't quite hear the last part of your question?

COMMISSIONER DURAN: Mr. Chair, are you asking him to make a decision for us?

CHAIRMAN CAMPOS: No, I'm asking for his legal assessment of what Commissioner Sullivan is proposing. Did you hear what Commissioner Sullivan said?

MR. ROSS: Yes.

CHAIRMAN CAMPOS: What is your assessment?

MR. ROSS: I think it's do-able.

CHAIRMAN CAMPOS: Do-able.

MR. ROSS: Do-able. I think it can be done, but I just want to point out a risk. But before I do that, if that is going to the interpretation of the ordinance, I'm just looking at the ordinance to see the language that has to be changed to adopt that sort of an interpretation. The real issue would have acquiring an application be filed at the time of master plan approval is, let's say the application is approved prior to preliminary plat approval. Then the whole what is the vested right? comes into play.

What that means for your decision at preliminary plat approval time is that let's say the applicant expends substantial time and energy transferring other property into this property. The water rights would be transferred to the land. Then what the applicant can argue before you at the time of preliminary plat approval is that what you approved at the master plan stage must be followed when you approve the preliminary plat. In other words, if you want, at the preliminary plat stage to make changes in what was approved at the

master plan level and they don't agree with those changes, and claim vested rights as a result of the water rights transfer, then you might be in a little bit of a pickle at that point.

CHAIRMAN CAMPOS: So you're saying, Attorney Ross, that what Commissioner Sullivan is saying, you don't have to transfer the water to the property, simply have an ownership interest in it or an option to purchase, plus have an acceptable filing. Does that change your assessment as far as the vesting issue?

MR. ROSS: The vesting would occur if those water rights are actually transferred prior to preliminary plat approval.

CHAIRMAN CAMPOS: If they're transferred to where?

MR. ROSS: To the property.

CHAIRMAN CAMPOS: But all this requires is the ownership of and the expression of an intent to transfer. We know they do have some ownership interest. They're just not talking. They do have ownership of water or they have an option to purchase. Does that alleviate the vesting argument that you're making?

MR. ROSS: No, because what's being proposed is that you apply for a permit to appropriate groundwater. And that process, once it gets started will conclude at some point. And if it concludes prior to preliminary plat approval, I just want you to understand the ramifications of what you're talking about.

CHAIRMAN CAMPOS: I understand. At this point would you suggest that we amend this language to somehow deal with the words "water permits"?

MR. ROSS: The words "Water right permit" appear in the original Land Development Code and also the words "water permit" appear in this 2003 ordinance. There's no such thing as a water right permit. There's a permit you get from the State Engineer called a permit to appropriate groundwater. Attorneys basically know that that means but maybe other folks don't exactly know what that means.

CHAIRMAN CAMPOS: Well, tell us what it means.

MR. ROSS: Essentially, it's a property right guaranteed by the State Engineer that you get to appropriate and use water from a certain point. The way you get such a permit is you have water rights and you transfer them to the proposed point of diversion. Or, let's say you're using water for 100 years and you want to get a permit from the Engineer to establish once and for all your right to use that water. They issue that permit. It's like a deed and once it's issued you have that water and your rights in that water are vested.

A water right is a different sort of thing. You have to have a water right to get the permit, but they're not the same thing. So you have this phrase repeatedly in the ordinance, water right permit. It really doesn't have a meaning. That's why we have to have this discussion today. The more difficult phrase is the one in the 2003 ordinance that, Mr. Chair, you were discussing earlier, the phrase water permits. That seems to me more like what I think of as a permit to appropriate groundwater

But there is that ambiguity in the ordinance and the only way to solve an ambiguity like that is for the drafter of the ordinance, i.e., this body, to tell us what it means.

CHAIRMAN CAMPOS: Wouldn't the better solution be to amend it? To state what we mean? Everybody grapples with this interpretation. It's ambiguous. And if it's ambiguous it should be clarified through amendment, it seems to me.

MR. ROSS: It makes sense. We're doing the Code rewrite right now. And if you are to give us some direction we can either incorporate it in a Code rewrite or if you think it's urgent enough we can move towards amending the ordinance, this ordinance that's eventually going to be replaced by the Code rewrite.

CHAIRMAN CAMPOS: We had a conversation last week. I asked you about geo-hydro information. And you said that's very specific to the site. And perhaps we could work with the geo-hydro requirements to provide the information that Commissioner Sullivan feels the public should have at the time of application for master plan. Have you given that some thought. I think, Mr. Abeyta, we're going to give it a little bit of thought for today.

MR. ROSS: Those requirements are also incorporated into the master plan stage by this 2003-02 ordinance. Those requirements are already in place.

CHAIRMAN CAMPOS: That's true. But does that provide the information that Commissioner Sullivan feels is essential that the public know before or during master plan approval? Or do we need to change those requirements so the geo-hydro provides us with more information?

MR. ROSS: Well, geo-hydro provides you with information about the water that's present under the property itself. And I understand that Commissioner Sullivan is interested in not only that issue but the water rights issue, whether the person has the right to draw that water that's under their property through that well. It's a different sort of question.

CHAIRMAN CAMPOS: I understand it's a different question.

MR. ROSS: The hydrologist is here. He's looked at a lot of water rights but he certainly - and we have Mr. Utton on contract and he's looked at a lot of water rights. Certainly staff can take a stab at evaluating water rights that support applications. We can't make a definitive recommendation, I guess, to the Board. Only the State Engineer has the power and authority to say whose water rights are valid, but we can give you an idea, an opinion as to whether they're valid. And that's probably as good as it gets from staff level.

In order to get an answer out of the State Engineer, unfortunately, it can take up to two years to get a definitive answer from them on whether the water right that's being transferred from some point on the river to, say, a well in the Santa Fe Basin, whether the rights were valid where they sat, say, in the middle of the Rio Grande Valley, whether they've been used appropriately, whether the rights have been perfected and number two, whether the rights are transferable to a well in any particular basin. All those things, they are empowered to do and they do a very rigorous test and go through a hearing process and all that.

CHAIRMAN CAMPOS: I understand. Commissioner Anaya, you had a comment.

COMMISSIONER ANAYA: Yes, Mr. Chair. Sometimes I think we start twisting what we really are trying to get to. And I think the way I'm looking at it the main point is does the developer need to transfer water rights before they come into the master plan phase? Commissioner Sullivan thinks that they should. Am I hearing this correct? Yes or no?

COMMISSIONER SULLIVAN: No.

COMMISSIONER ANAYA: Then direct me where I'm wrong, because the way I'm looking at it is you're asking the developer to come in during master plan and have their water - after they drill their well and do their hydro, they have to transfer water rights to that well before they can come before the master plan. You're saying no. Now I'm confused.

COMMISSIONER DURAN: Could I answer that for you? Just to piggy-back on that for you?

CHAIRMAN CAMPOS: If Commissioner Anaya will yield the floor to you, that's fine. Otherwise Commissioner Sullivan can answer.

COMMISSIONER ANAYA: Go ahead.

COMMISSIONER DURAN: I think that Commissioner Sullivan's No is a little deceptive. It's not that he wants them to transfer them, it's that he wants them to option them - correct me if I'm wrong - he wants them to option them. An option is not free, as he stated earlier.

COMMISSIONER ANAYA: Explain option.

COMMISSIONER DURAN: An option is you have water rights and I want to buy them from you, but I don't want to buy them from you today. I want to buy them from you in two years when the State Engineer says it's okay to transfer them to my piece of property. So you have to wait two years to get your money from me and typically what happens in an option is that you don't give me that for free. The County has optioned lots of water rights, and we've paid for those options. We've paid hundreds of thousands of dollars for those options. So when Commissioner Sullivan says to you, No, he's not asking that. Because your question was based on whether or not someone would have to pay for those rights and then transfer them. They still have to pay for the option. So the fact of the matter is that there is an expense that these people have to go through, no matter who it is, prior to even having the County look at their plan.

My position is that master plan doesn't vest anything in them. In the past that's how we've dealt with it is that master plan is approved. They don't have to spend the money on full engineering. They don't have to spend the money on a complete set of drawings because that happens in the next two phases. So if they get master plan approval, then they have to go spend the money. They have to get the water rights, pay for the options. They have to pay for a complete set of working drawings. And then they submit it to us and that's when we start deliberating on whether or not the project meets the Code and doesn't have a major impact or negative impact on the surrounding neighborhood or the community as a whole.

COMMISSIONER ANAYA: Thank you, Commissioner Duran. That was the way I always interpreted it to be. I never interpreted that the developer had to go and transfer water rights to a well before master plan. So I completely agree with the fact that they don't have to transfer. They just have to tell us where they might be getting these water rights. And then when we approve that master plan, when they come back for preliminary, then they have to tell us where and who they're getting those water rights from. That's the way I always understood it. So that's simple. That's the way I understand it.

CHAIRMAN CAMPOS: Commissioner Sullivan, a couple of minutes. Very briefly.

COMMISSIONER SULLIVAN: Well, let me just clarify one thing. I'm sure the staff made a decision on whether to table or not to table based on the information they had and the recommendations from legal counsel and I'm certainly not the one that the staff looks to to determine if an item should be tabled or not. So I'll correct Commissioner Duran's false indication on that matter.

CHAIRMAN CAMPOS: Let's not go there.

COMMISSIONER SULLIVAN: Getting back to transferring the water rights. I think the issue that the public wants to know about is impairment. They want to know where you're getting the water and will that water impair or impact me. And that's what we've had tens and sometimes even hundreds of people at public hearings at the master plan stage and we've never been able to answer that question because we don't have either adequate geo-hydrological reports. As Commissioner Campos suggests, that may be a way to improve the geo-hydros and their interpretations, or we don't have any kind of response back from the State Engineer.

Now, because we do have this language, we got a definitive response back from the State Engineer and it simply said our modeling shows that you are impairing La Cienega area and you need to pick up offset water rights to make an application. I think as soon as we know that they have those offset water rights that they're ready to move forward in the master plan stage.

Now, sure, an option costs money. So does the engineering. So does the legal counsel sitting out here in the audience today cost money. That's a part of doing business. If you as a developer are going to put together a subdivision, you have certain up front costs that you're going to have to finance and I don't think it's our public obligation to make those costs zero. I think that our public responsibility is to have the public as well informed as they can be at each stage.

So my suggestion was that once we got an application that the State Engineer would accept - you don't know whether the State Engineer is going to reject it or accept it - that that would be a good definitive point that the staff would have something in hand so they would have the guidance that they need. That's I think a reasonable way to look at it and it doesn't require a great expenditure of money on the part of the applicant.

CHAIRMAN CAMPOS: Commissioner Montoya.

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COMMISSIONER MONTOYA: Thank you, Mr. Chair. I guess just a couple of comments. I guess in regard to the comment that Commissioner Duran referred to, Commissioner Trujillo's comment way back when regarding the negative impact on the applicant, I think we have to also realize that applicants are not only developers but individuals as well, and to, as he says mandate hydrological studies and reconnaissance studies do require out of pocket expenditures.

At that meeting on November 12, 2002, the comment was made that the amendment would require the submission of a preliminary water supply plan and liquid waste disposal plan, which would include the following: an analysis that will identify one or more conceptual sources of water to supply the proposed development, for example, a County or other utility well, water rights transfers, points of diversion, etc. The proposed amendment will also include language that states master plan approval does not confer - does not confer - a vested development right to the applicant or future assignee, given that said approval is solely predicated on a preliminary determination with respect to viability and conceptual integrity.

And then I think the last comment that I would refer to, and this is Commissioner Varela, I'm quoting you here. The previous quote was from Roman, regarding his interpretation of that, and I believe, Commissioner at that time, this was something that you were looking at. Is that correct? You were the one that brought that up? He says here, So what I'm trying to do here is identify these at master plan approval and also to include the language about the master plan approval does not confer a vested right. I'm not trying to change anything so there's any enormous economic impact on the developer at master plan and the reason for this is that we're stating it here in this document that there is not conferred a vested right, so I don't see why they would have to bring an actual water right or anything like that at the master plan stage of approval.

My understanding, Mr. Chair, also is that whenever we get letters from the State Engineer, and Stephen, correct me if I'm wrong, is that the majority of the times they're always going to issue a negative reference in terms of any impact when these are submitted. Is that correct?

STEPHEN WUST (County Hydrologist): Mr. Chair, Commissioner Montoya, we actually had a meeting with Paul Saavedra and Mary Young at the State Engineer's and brought up this subject. And essentially, they told us that a letter, such as the one we received for Suerte is not to be expected commonly. That this was an unusual case where they would actually say whether or not the water rights could be moved or not. Generally, the way they stated to us was they're going to go through their whole process. So they don't make a ruling on impact right away. In fact, generally, the letters we receive from the Office of the State Engineer are those from their subdivision reviewers, not from their water rights group.

So it's a different group that even looks at these things. Generally, we've been getting negative comments from the State Engineer because anybody hooking up to the County or the City system, because of our whole issue with the San Juan/Chama is not

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permanent. But in terms of the impairment, they told us that they're not going to up front make a comment on that right away. So it's not going to be something we can expect from them, either favorably or unfavorably right at the start.

COMMISSIONER MONTOYA: Okay.

DR. WUST: I'm sorry. Did that answer your question?

COMMISSIONER MONTOYA: Yes, in terms of the response we're going to get from the State Engineer's Office.

DR. WUST: For that specific issue, in terms of the water rights, basically, they'll tell us, yes, these people have come forward with an application or they have a certain amount of water rights, but they said they won't commonly up front tell us whether or not those water rights are transferable, partially or wholly.

COMMISSIONER MONTOYA: And what about the impact in terms of the negative impact that we're talking about here, in terms of the other surrounding aquifers that they referred to? Rio Pojoaque, Rio Tesuque?

DR. WUST: Mr. Chair, Commissioner Montoya, that's generally what they look at in this one to two-year process when they're trying to figure out how much to transfer. For example, in Mr. Peters' case, he had Middle Rio Grande water rights. And the State Engineer, in this case up front, fortunately for us, said that there will be impairment to basins that are not applicable to Middle Rio Grande water rights and therefore he needs water rights from the Tesuque-Nambe-Pojoaque watershed and the Santa Fe Basin. That's the thing he said is not going to commonly come up front.

In terms of impairment, generally, if I understand right and Steve Ross is much better versed in sort of the definitions, but my understanding is they look at impairment more on a regional scale and how you impair other water rights holders. Looking at Commissioner Sullivan's concerns, that is how to do you affect those right around your property, those could be accommodated in a slight language change to our own Code, where currently we just say you must model the draw-down effects on your own well, and if we added to that, You must model the draw-down effects on your own well and the adjoining properties, that might address some of the concerns that were expressed by Commissioner Sullivan early, in that how you have this impact, as you state, or effect on the adjoining properties and the adjoining wells.

That's not always necessarily addressed by the State Engineer in terms of impairment, because they look at a regional aquifer type impairment and not necessarily this person's well and that person's well and adjoining property owners, but that could be accommodated in a lot of the modeling and testing that's already being done and required by our own Code with that slight language change.

COMMISSIONER MONTOYA: Okay. Thank you, Steve. Mr. Chair, just to conclude, I just think that what was said at that meeting on November 12, 2002 by Roman and Commissioner Varela, I think are in line with the way I see what this ordinance is doing.

CHAIRMAN CAMPOS: Okay, I'd like to make a suggestion and maybe

give staff some direction. Perhaps deleting the words, "and water permits" and also amending the model draw-down as far as adjoining properties. If we can do those simultaneously, I think they address Commissioner Sullivan's concern about impairment.

COMMISSIONER DURAN: You can't create an ordinance. You have to have some public hearing with that.

CHAIRMAN CAMPOS: I'm talking about direction, Commissioner. This is direction. This was not an action item tonight. I have the floor.

COMMISSIONER DURAN: I know you have the floor but you're giving them direction and I'm not through discussing.

CHAIRMAN CAMPOS: I'm suggesting direction.

COMMISSIONER DURAN: And I don't think that we're ready to suggest.

CHAIRMAN CAMPOS: Well, I'm making that, and I have the floor.

COMMISSIONER DURAN: Well, before you give direction I'd like to comment a little bit more.

CHAIRMAN CAMPOS: Let me finish so we can move on.

COMMISSIONER DURAN: Well, we're not going to move on until after I have the opportunity to discuss it.

CHAIRMAN CAMPOS: So my suggestion would be to delete the words "and water permits" and also to add additional language wherever Dr. Wust feels appropriate as far as modeling the draw-down so that we get more information as to impairment to adjoining properties. So that would be my suggestion as to direction. I think it solves the problem. I'm just talking to page 2 of the ordinance. Nine. So that would be my suggestion, Commissioner Duran.

COMMISSIONER DURAN: Mr. Ross, Commissioner Campos has suggested some language to an ordinance that hasn't had the opportunity to be, number one, published, and number two, had the opportunity for the public to comment on. So my feeling is that the direction that the chairman just gave you is not substantiated in our Code. What is your opinion on that? We're creating ordinances right off on the fly here.

MR. ROSS: Mr. Chair, Commissioner Duran, I guess the way I would interpret it is if we get that direction from you tonight, what we would do is go through the normal ordinance amendment procedure. We'd come back, put an item on the agenda to publish title and general summary of those amendments that the chair just suggested. You'd have to approve that. Then we would have our public hearings, we'd draft the language.

COMMISSIONER DURAN: Wouldn't you agree then that the direction that the chairman just gave you is different that what we're here to discuss? What we're here to discuss and make a decision on is whether or not the ordinance, as it's in our Code right now requires water rights to be transferred prior to master plan approval.

MR. ROSS: Right, and Mr. Chair, Commissioner Duran, I really think we do need some direction on the meaning of - how this body interprets that ordinance.

COMMISSIONER DURAN: I don't mind that you bring that direction

forward as an amendment and go through the process that it needs to go through, but I would like to give staff direction specific to what we came here tonight to talk about and that is that master plan approval at this particular point in time as it's written in the Code does not require the applicant to transfer water rights to the site or prove that they have water rights. That happens at the next stage. So that's the direction that I would like to give staff.

CHAIRMAN CAMPOS: And my concern with that, Commissioner, is that you can't just ignore water - you can't simply ignore that language. I think you have to amend it and to lead it so that it's clear. We can't just interpret things when there's language. My suggestion is let's clean up the ordinance.

COMMISSIONER DURAN: Well, that's what your amendment is. What we're doing today is giving staff clarification, and it's clear from the minutes of the meetings prior to the adoption of this ordinance that the intent was not to require water rights to be transferred.

CHAIRMAN CAMPOS: Whatever the intent was, there's language here that's expressed.

COMMISSIONER ANAYA: Mr. Chair.

COMMISSIONER DURAN: I'll yield the floor to Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, Commissioner, thank you. We know that it's not clear what we have here as the ordinance. So if could just give staff, and I know Commissioner Campos, Chairman Campos is giving his two cents to change this and Commissioner Duran is giving his two cents. I think that staff needs to go back and look at it and come up with some language that will keep us all on the same page. So I think that's it. No more discussion. Right?

COMMISSIONER DURAN: We have to give staff -

COMMISSIONER ANAYA: And I understand what you're trying to say, but if we need to change the ordinance then we need to get staff to look at it again and bring those changes to it and then we'll do a new ordinance.

CHAIRMAN CAMPOS: Well, I would suggest, my direction would be to change the ordinance as I suggested, plus add additional language as to modeling draw-down to adjoining properties. That would be my direction. I think that's the appropriate, cleanest way of doing this. I think - Commissioner Anaya, do you agree?

COMMISSIONER ANAYA: Yes. We're going to hear it again so we can amend it and you can give him your two cents and we'll just go for it.

COMMISSIONER SULLIVAN: I agree.

COMMISSIONER DURAN: So then your suggestion is for staff to come forward with a caption to publish title and general summary of an amendment to the ordinance that we have in place.

CHAIRMAN CAMPOS: Yes.

COMMISSIONER DURAN: Okay. That's fine. How do we - the community is out there. There is a developer out there that needs some direction on what

the Code says right now. So I'm not sure that we can legally say You have to wait until we go through this title and general summary before you can move forward on this thing. I'm not an attorney, but -

CHAIRMAN CAMPOS: Commissioner Montoya, do you have a position on this? Direction?

COMMISSIONER MONTOYA: Mr. Chair, I think as long as it's in line with the comment that I resided, that were in line with what Commissioner Varela Lopez and what Roman had, I'm fine with that, and I think what you're suggesting is doing that.

CHAIRMAN CAMPOS: Okay, so there's four people that make that suggestion so I think you have your direction.

COMMISSIONER DURAN: Could you clarify the direction for me?

CHAIRMAN CAMPOS: Let's do this as rapidly as we can to satisfy Commissioner Duran. The suggestion would be to delete the following words on page 2 of the ordinance. It would sub-paragraph.

COMMISSIONER MONTOYA: It's on line 9.

CHAIRMAN CAMPOS: Line 9 "and water permits". Delete that language. Okay? And also look at the language that Dr. Wust suggested about modeling draw-down relative to adjoining properties. And I think that's what we're doing.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER DURAN: I'm in favor of that. I'm a little concerned about what Mr. Wust is suggesting, so I just hope that when it comes forward that a full and detailed explanation of that is given to us, because what I heard is it could even be more far reaching and create a much greater impact on someone. Are you suggesting that they do a geo-hydro on the adjoining property wells?

CHAIRMAN CAMPOS: Well, that's what we'll discuss. We'll discuss that when the time comes. Or you could sit down tomorrow and talk to Dr. Wust about what he means by that. It's talking about modeling, a broader model that would address the public's concern about impairment.

COMMISSIONER DURAN: As long as you have the public hearing and you allow the public to participate in that discussion, and we don't make ordinances on the fly up here -

CHAIRMAN CAMPOS: We're not making ordinances on the fly. I'm suggesting -

COMMISSIONER DURAN: I am in favor of your direction.

CHAIRMAN CAMPOS: Okay, we've beaten that horse to death.

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VIII. F. Information on RACER (Risk Analysis Communication Evaluation Reduction) by the Los Alamos National Laboratory (Commissioner Montoya)

COMMISSIONER MONTOYA: Mr. Chair, I'd like to ask Dr. Wust to just give you a brief update on this. He's been attending these. This was something that I was invited to but he's actually participated.

DR. WUST: Mr. Chair, Commissioner Montoya, there should be in your packet a little collection of handouts that were given at the last meeting on RACER. I know they're not always the sharpest. Unfortunately, whoever designed these brochures made things in light blue and yellow and colors that didn't quite reproduce very well and they had some small fonts. But just let me quickly review this for you and why the County's involved.

Risk assessment is an analysis that's done to determine the risk to human health or the environment by contamination from various sources. Los Alamos is currently engaged in the middle of this. It's major purpose is to try to prioritize and set timing for clean-outs. The RACER is a new risk assessment process and it will in some ways fundamentally change the way they go about determining risk, which means they could go about changing the way they set priorities in terms of clean up. They're in the middle of developing the process. They've had two stakeholder meetings so far. They have meetings about two to three times a year.

As Commissioner Montoya told you, I attended the last two. I've actually performed risk assessments when I was in the Environment Department including those Superfund sites. So I'm aware of the way the system is run. And in this case Santa Fe County is an important stakeholder because any contaminant migration off of Los Alamos property could affect not only Santa Fe County constituents but if it affects the river, once we build the diversion project it could affect one of our main water sources for our utility.

So it's important that Santa Fe County stay involved in this and that's really what it is right now. We're involved as a stakeholder. We're following the process, and we're there to make sure our interests are represented and that we can provide pertinent comments as they go along.

This handout that you have here came from the second stakeholder meeting which happened about two weeks ago, I believe. They held one at Pojoaque and this one in Española. An important output of this particular stakeholder meeting was they're planning - and it's on the last page of what looks like a power point print-out. What they call the steering committee. As they go along on this there will be two main products, one is a database, and they actually have a database now with 2.5 million data points within it. That will be great benefit for the County because we are currently engaged, as you know, with a study in the Pojoaque Valley on water quality. And so access and availability of a GIS related 2.5 million data point database is very important.

It's not publicly accessible yet. It will be on the web, but they have populated internally for them. It's being used. The steering committee is supposed to oversee the direction and the process as this continues forward, both for the database of information and the risk assessment

process. The reason it's important to us as a stakeholder and it would be at the Commission's discretion how involved they would like us to get to pursue this. You can't read all the lettering but there's only one seat at the table provided for all city and county governments. There's only one seat at the table provided for all Pueblo and tribal governments. So it will be a limited attendance.

The RACER group, it's Risk Assessment Corporation whose the contractor under Los Alamos doing this, has said they may expand the number of seats if they have various governmental entities that are interested in participating. So there may be more seats available at the steering committee table.

CHAIRMAN CAMPOS: Dr. Wust, this sheet of paper we have in front of us, I cannot read the stakeholders information.

DR. WUST: Are you talking about the page with the table?

CHAIRMAN CAMPOS: The last page. Is there a listing somewhere else that I could look at?

DR. WUST: No, unfortunately, this is all I got from them and the original was a very small font and very light. This is the best I could reproduce it.

CHAIRMAN CAMPOS: So who are the stakeholders?

DR. WUST: The stakeholders are city/county governments, that's one seat; tribal, Pueblo governments is one seat; state agencies; environmental groups; they have one for general citizen participation; they have one for various other entities like acequias, land grants, people like that. By the way, this is in process, so if there are comments, we can make, and that was actually one of the comments I made at the last meeting is that it seems to be a limited number of seats for a whole lot of entities that would like some representation. And so again, they're thinking of expanding that. EPA, by the way, has a seat here. DOE has a seat here.

CHAIRMAN CAMPOS: Does LANL have a seat?

DR. WUST: LANL has a seat. Those are not voting seats, by the way. They're trying to keep this stakeholder oriented. So the organizations that are the responsible parties, like DOE and LANL have seats but they are not what we would call voting members. Although it's uncertain right now what they actually vote on because it's a steering committee.

CHAIRMAN CAMPOS: Okay. Now this is basically information only?

COMMISSIONER MONTOYA: Yes.

CHAIRMAN CAMPOS: And what happens next, Dr. Wust?

DR. WUST: Each time they have a stakeholder meeting, two or three times a year, they collect comments and they try to revise the process, because again, this isn't definitive yet. And actually, I will say here as a comment that they've been very good at that. At the first stakeholder meeting there were several comments on how they were going about some of these processes and they made some changes to accommodate that and accommodate the comments, so I believe they will go back and look at things like the steering committee and make some changes. But that's what they'll do next and they'll present the next method.

So real questions remain and I know it's sort of funky colors so it didn't reproduce really well but this large picture about how they reprioritize the clean-up priorities. There's a lot

of uncertainty in that right now so that is ongoing and we'll get an update on that at the next stakeholder meeting and then have an opportunity to make some comments.

CHAIRMAN CAMPOS: It seems to me that each county should have its own rep instead of having one rep for all the counties and cities. These are the entities that represent the local people. They're they entities that will make investments in water infrastructure and I think we should, counties and cities should have more representation. So that's my input. Any other input.

DR. WUST: I'll bring it back to them.

VIII. A. Resolution No. 2004-142. A Resolution Requesting Legislative Support for Esperanza Battered Families Shelter During the 2005 Legislative Session (Commissioners Duran & Montoya)

COMMISSIONER DURAN: Thank you, Mr. Chair. I'll go through it pretty quick. I have a resolution here in front of us which is the resolution supporting the efforts of the Esperanza Shelter for Battered Families to obtain funding during the 2005 regular legislative session. I was wondering, would any of you two like to come up and say a few words about this? Please do so. Basically the resolution is to recognize the contribution that the Esperanza Shelter, what they've done for our community. They've contributed immensely to the wellbeing of people that have experienced domestic violence. They've been in our community for 29 years and they offer counseling services and housing for anyone in need within the community. They have a capacity now to serve 40 people at any given time. The counseling program runs 23 district counseling groups per week and we are just hopeful that with this resolution it will assist them in their efforts to get more funding at the legislative session. And so I would like for the Commission to approve this resolution.

CHAIRMAN CAMPOS: Ma'am, do you have some comments?

ELLIE EDELSTEIN: I don't have any specific comments. I'm really here to answer any questions you might have. But we did present at the HPPC meeting a couple weeks ago and this is a revised resolution that we feel has support from many entities. And so we're just asking for your support. Are there any questions?

CHAIRMAN CAMPOS: Questions? Okay, is there a motion?

COMMISSIONER DURAN: I would like to move for approval of Resolution 2004-142.

COMMISSIONER SULLIVAN: Second.

The motion to approve Resolution 2004-142 passed by unanimous [5-0] voice vote.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: I'd like to recognize Pablo Sedillo who's in the

audience, with Senator Bingaman's office. Thank you for being here, Pablo.

IX. Consent Calendar

- A. Request Authorization to Enter into an Agreement with the Federal Bureau of Prisons to Provide Non-Secure Juvenile Services (Corrections Department)**
- B. Authorization for 1.0 FTE Term Position for a Network Administrator for the CARE Connection Program (Health & Human Services Department) ISOLATED FOR DISCUSSION**
- C. Resolution No. 2004 - A Resolution Requesting a Budget Adjustment in the DWI Detox Grant to Fund a Network Administrator (Health & Human Services Department) ISOLATED FOR DISCUSSION**
- D. Request Authorization to Accept and Award a Professional Services Agreement for RFP #25-12 for Prevention Services for the Home for Good Program Based on Evaluation Rating/\$28,000 (Health & Human Services Department)**
- E. Request Authorization to Enter into a Memorandum of Understanding with the Cundiyo Mutual Domestic Water Association for the Development of the Cundiyo Water Project/\$100,000 (Project & Facilities Management Department) TABLED**
- F. Resolution No. 2004-143. A Resolution Requesting an Increase to the Road Projects Fund (311)/Various Road Projects to Budget Cooperative Grant Agreements Awarded through the New Mexico Department of Transportation and to Budget an Operating Transfer from the Capital Outlay GRT Fund (213) for the County Match Portion for Expenditure in Fiscal Year 2004/\$328,372 (Public Works Department)**
- G. Resolution No. 2004-144. A Resolution Requesting Operating Fund Transfers from the Road Maintenance Fund (204) and the Road Projects Fund (311) to the General Fund (101) for Expenditure in Fiscal Year 2005/\$119,500 (Public Works Department)**
- H. Acceptance of Offer Regarding, IFB #25-04, Used Public Works Equipment with Tractor Service for One 3,500 Gallon Water Truck/\$44,500 (Public Works Department)**
- I. Acceptance of Offer Regarding, IFB #25-04, Used Public Works Equipment with Tom Growney Inc., for one John Deere Grapple Rake/Loader/\$107,620.82 (Public Works Department)**
- J. Acceptance of Offer Regarding, IFB #25-04, Used Public Works Equipment with Wagner Equipment Inc. for One Caterpillar D4C3 XL Dozer and One Caterpillar 307B Excavator/\$119,500 (Public Works Department)**

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CHAIRMAN CAMPOS: Is there a motion to approve items A through J, with the exception of B and C?

COMMISSIONER MONTOYA: So moved?

COMMISSIONER ANAYA: Second.

The motion to approve the Consent Calendar (Item E tabled) with the exception of items B and C, passed by unanimous [5-0] voice vote.

VIII. Matters from the Commission

COMMISSIONER SULLIVAN: Mr. Chair, are we doing other items from the Commission?

CHAIRMAN CAMPOS: Let's go back. Starting with Commissioner Anaya. Let's make it brief; we're running late.

COMMISSIONER ANAYA: Mr. Chair, we had a retreat last week and I just thought that everything went well. It was productive. I enjoyed being with staff for the time that I was there and I know that the staff is going in the right direction. They want to do good for the County. Roman, Gerald, some of the Commissioners were there. I think we're headed down the right path in improving Santa Fe County and I just want to say that I'm very proud of the direction that we're going and I'm very proud of the staff. You all are terrific leaders and it makes me very proud to be in this County, to be here and be part of it. When we've accomplished so many things and we're going to continue to accomplish a lot of things. And I want you all to take that back to your staff because they work very hard under your guidance and leadership. I think it turned out really well and we're moving in the right direction and it was very informative. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chair, I just had one item I'd like to just take a brief moment to express my thanks to the voters in District 5, Santa Fe County. A week ago today as you may recall we had an election and although the local elections weren't top on the list of things receiving news coverage, they are nonetheless very important to all of us here in Santa Fe County. And of course I want to congratulate those who were elected and who were unopposed, Commissioner-elect Vigil, Commissioner Campos and also our new County Clerk, Valerie Espinoza. And again, I want to thank those in District 5 who supported my re-election campaign and I will try to continue to represent you in the next four years. Thank you.

CHAIRMAN CAMPOS: Congratulations.

COMMISSIONER SULLIVAN: Thank you, Commissioner.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: Thank you, Mr. Chair. Just a couple of quick things. The North Central Regional Transit District is up and running. The bylaws have been

accepted and we have officers in place, James Rivera from Pojoaque Pueblo is our chair, Jim West from Los Alamos County Council is the vice chair, Alice Lucero from the City of Española Council is the secretary, and I believe the treasurer is County Commissioner Elias Corriz from Rio Arriba County. So it's up and running.

And my congratulations also to all of the candidates who were just elected officially now. I look forward to continued working with Commissioners Sullivan and Campos and look forward to Commissioner Vigil coming on January 1, and also the Clerk and Treasurer as well.

Mr. Chair, I'd just like to offer happy Veterans Day for all the veteranos, the veterans out there who have served our country for so long and have a good Veterans Day this Thursday.

CHAIRMAN CAMPOS: Commissioner Duran.

COMMISSIONER DURAN: I have just one quick one. Thank you, Mr. Chair. Mr. Parrish e-mailed me a copy of the report that's going to go to Judge Hall relative to our semi-annual inspection of the facility. About ten days ago or so I met with Mr. Parrish out at the jail, and of real concern to me was the fact that when those individuals – and if you recall there's been several people that have come up complaining about the process out there – but whenever an individual gets arrested and is booked, the very first thing they should be able to do – or maybe the second thing – soon after they have been incarcerated they should have the opportunity to make that phone call to someone that can help them in their time of need.

That process as it exists today out there in the jail is really poor, and in fact the phones that they have inside the cells don't have instructions on how to use it. The warden when I was there told me that there was signs on there and there were none. In any case, Greg, I just wanted to publicly say that I think this letter is fine but I don't think that you really addressed my concern as much as it should be addressed, and that is that I really want a specific procedure – and maybe you can find a way of saying it, but I really think that the phone call is the most critical thing, the most critical item for those that are incarcerated and I would just like to maybe have you change the language in your letter to state that a little bit more clearly.

COMMISSIONER ANAYA: Mr. Chair, I agree with Commissioner Duran. I think that that first phone call, I think it's very important. And I don't mean that they get one call and if they don't get a hold of anybody, that's it.

COMMISSIONER DURAN: Right.

COMMISSIONER ANAYA: I think they need to try and try and try until they get a hold of somebody to help them out. So that's the way I'm taking it.

COMMISSIONER DURAN: That's it.

GREG PARRISH (Corrections Director): Mr. Chair, the letter I sent is a draft and I'm looking for your input and I appreciate that and I'll address that issue not only in the letter but I'll also address it with the warden, following up on those signs we talked about and some other processes, possibly signage that would explain the process to inmates coming in.

COMMISSIONER DURAN: That would be good. Thank you, Mr. Parrish. That's all I have.

CHAIRMAN CAMPOS: Okay, I have a couple of comments. Yesterday

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Commissioner Montoya and I had a meeting and had a tour with some City officials of areas that they propose to be annexed, 14,000 acres. And after my discussion with these folks, it seems that what they're planning to do really invalidates all that we've done in the last few years in the Regional Planning Authority. A lot of the annexation proposal is not really necessary. Certainly we have planned for growth areas and infrastructure and with that, to me obviates the need for a lot of annexation that's being proposed by the City.

The water agreement that we negotiated with the City was premised on the RPA plan that we would have growth priority areas and it seems that the City is now taking a different position: Let's forget about the RPA, let's forget about the growth areas, let's just take the whole thing over.

So the premise of all these negotiations is the RPA plan and the growth priority areas which is something that seems to be ignored by the City at this point. I think we need legislation and some statutory language that would require the City of Santa Fe to negotiate and have an agreement with the County of Santa Fe before any annexations could proceed. Bernalillo County has that authority. I would suggest that we propose such legislation at this next 60-day session. So those are my comments. I'm concerned about what the City's doing.

- IX. B. Authorization for 1.0 FTE Term Position for a Network Administrator for the CARE Connection Program (Health & Human Services Department)**
- C. Resolution No. 2004-145. A Resolution Requesting a Budget Adjustment in the DWI Detox Grant to Fund a Network Administrator (Health & Human Services Department)**

COMMISSIONER SULLIVAN: Thank you, Mr. Chair. B and C are together. B is a request for 1.0 FTE term position for the CARE Connection and C is the budget adjustment to effectuate that. I have two concerns. One is I always have a concern when an FTE position is coming in mid-budget. And that it has to be an emergency to be that. And then secondly I see from the budget documents that we're going to take the money to pay for this administrative staff person from capital improvements, from construction money. And for several years I've been pushing hard to try to get a detox center started and moving and I wanted to have any fears that I made have allayed that this would not delay that nor would it take money away from it.

STEVE SHEPHERD (Health Division Director): Mr. Chair, Commissioner Sullivan, no, this will not take money away from our capital effort. We believe we have the money to complete our capital operations. We feel it's important for a couple of reasons to have an in-house IT person. One is this is probably one of the most valuable parts of this project and we definitely want to keep ownership and definitely have in-house knowledge that doesn't go out in case the contractor goes out. And I'll let Tony address other efficiencies with that.

TONY FLORES (PFMD Director): Mr. Chair, I can alleviate your fears about

the capital for the phase 3 implementation. We set these up in individual phases to ensure that if we can get off the ground as we spoke of at the grand opening of phase 2, so that does not take place with these funds. The efficiencies in-house, we looked at a couple of our areas. One of them was working with a private contractor, and I can't go into the specifics of the negotiations but there are line item requests regarding the budget to do the same thing that we'd be doing at a fraction of the cost. So there were some efficiencies that we could gain economically by doing this on a term, in-house position.

The second and I think most important thing is that it provides the County the ability to have control and oversight, not only of the systems that are developed for the CARE Connection, but also for the entire coordinated health complex. Although the system is set up primarily on an independent network there is some connectivity back to our home networks and we can gain some efficiencies and some implementation measures if we keep that position in-house. This is not an uncommon occurrence when we have a position that's on term that resides in another department that's supervised by my department specifically. Ms. Lopez is the IT director. We're using a similar model at Corrections for this type of position.

So there are many, many efficiencies we can have by keeping this position in-house rather than contracting it.

COMMISSIONER SULLIVAN: Mr. Chair, Tony, I appreciate that and I just have another follow-up question. I understand that originally this was to be done under contract. You say that the position was to be included in the contract negotiations for the CARE Connection facility with the contractor being the person responsible for hiring the person and you indicate that if we do it in-house it will be less expensive and more cost-effective. But what I'm still not understanding is that it also says in the budget request that funds are being removed from the capital purchases building and structures category. It would seem if you had envisioned this person as a consultant it would have been in the admin category and it wouldn't be coming from building structures. That's my concern.

MR. SHEPHERD: Mr. Chair, Commissioner Sullivan, originally we did intend to contract out this position, assuming it was going to be cheaper than we could provide the service. And it turned out it's more expensive providing it through the contractor under that proposal. So what we did is we took some money that was set aside prior to the beginning of the fiscal year within the capital budget and moved it up to take care of this. But we will be saving that money within the operating contract.

COMMISSIONER SULLIVAN: But why would we take it from the structures, the building structures category? If we had this budgeted, and now it's going to cost less than what we had budgeted for because we're going to do it in-house instead of by consultant, it would seem that we're going to save money and conversely, we certainly wouldn't need to take it from the building category.

MR. SHEPHERD: You have a point. We do have other capital monies that we think will suffice, and I'll let Tony address those further, for the completion of the CARE Connection. We do need to spend this money before the end of the fiscal year and this is an opportunity to do so.

COMMISSIONER MONTOYA: Mr. Chair, on that point, can we use capital money for employees?

MR. SHEPHERD: Mr. Chair, Commissioner Montoya, yes, we can.

COMMISSIONER MONTOYA: These aren't restricted?

MR. SHEPHERD: No, they're not. All that is required is a budget adjustment with DFA.

MR. FLORES: Mr. Chair, Commissioner Montoya and Commissioner Sullivan, for a point of clarification, I'm looking at the resolution in front of me, the money that they'd be looking at shifting is out of the DWI fund. And it's not out of our general capital appropriations that are funded for capital projects specifically. So the ones we go to the legislature for and they give us appropriations, those are specific and those cannot be spent on employees' salaries, force labor, etc. The DWI grant that they're referring to here has a more broad applicability or uses and that is an allowable use in there.

COMMISSIONER MONTOYA: Okay.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: I think - first of all I want to thank staff for looking at it both ways, either contract or working for the County and I think if we're going to save money and have somebody in there full time looking at this, because the CARE Connection is collecting data. And I think we need somebody in our department that is overseeing that constantly and not somebody by contract coming and going. I think it's important. So I move for approval.

CHAIRMAN CAMPOS: Of items IX. B and C?

COMMISSIONER ANAYA: B and C.

CHAIRMAN CAMPOS: Okay, is there a second? I'll second that. Is there discussion?

COMMISSIONER SULLIVAN: Mr. Chair, I would like to ask that we approve that with the money not being taken from capital purchases and building structures unless staff determines that we are in a position of possibly losing those funds.

CHAIRMAN CAMPOS: Is that okay with you?

COMMISSIONER ANAYA: We'll lose those funds if we don't act on it?

MR. SHEPHERD: If we don't use these funds by the end of the fiscal year we do lose them. That's why we looked for the opportunity to spend them.

COMMISSIONER SULLIVAN: I think they should be spent on the detox center first. That's what they were for.

CHAIRMAN CAMPOS: We don't want to lose the money.

COMMISSIONER SULLIVAN: Well, we want to build a detox center too. If we're running out of money why don't we get started and contract out the work and get the detox center going?

CHAIRMAN CAMPOS: We have a motion. We have a second. Commissioner Anaya, you don't want to change your motion?

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COMMISSIONER ANAYA: No.

The motion to approve Consent Calendar items B and C passed by majority 4-1 voice vote with Commissioner Sullivan casting the nay vote.

X. Staff and Elected Officials' Items

A. Project & Facilities Management Department

1. Consideration and Approval for Placement of a Water Tank on Santa Fe County's Chimayo Fire Station Property

MR. FLORES: Mr. Chair, two weeks ago under Matters of Public Concern, the Chimayo Mutual Domestic Water Authority brought forward a request to have a placement of a water tank and ancillary booster or pump house located for the development of their project. At that time staff and the Board, actually the Board directed the Mutual Domestic Association to meet and come to a consensus on the location of that tank. Subsequent to that meeting last Wednesday evening, Project and Facilities Management staff met with the association and discussed alternatives for placement of a tank and booster house, specifically addressing location, the bond that was just approved, the Chimayo fire station, etc.

Based upon those discussions we have received a consensus, a unanimous consensus that we would investigate the possibility of locating the tank and booster house at an alternate site, approximately 1000 feet away, up the street on another piece of property that's patented by the County. As of yesterday staff has received indications, and I have not been able to verify the indications of the true costs of moving that tank from location A to location B. Today, I am here to request that one, we provide an update that we did meet with the association and they met as directed by the Board. Two, there are various fiscal implications that we have been apprised of that I have not received concrete information on, specifically a statement of probably cost to be able to evaluate that and bring back a definitive request for placement of either site A or site B.

So today I was hoping merely to look at this as an updated item and that we would be bringing it back once these items are provided to the County with the cost estimates of relocating the tank. We anticipate that if we can do this in a timely fashion I can have this back on the agenda for the end of the month with a definitive recommendation from staff that the Board consider for location of the tank. And I stand for any questions.

CHAIRMAN CAMPOS: You had a meeting with the association members?

MR. FLORES: That's correct, Mr. Chair.

CHAIRMAN CAMPOS: How many people showed up?

MR. FLORES: Mr. Chair, I believe there was approximately 20 people? 25 people?

CHAIRMAN CAMPOS: And did this group of individuals represent the entire association? We got the feeling last time that there might be two groups within the association

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vying for power.

MR. FLORES: Mr. Chair, I wouldn't saying vying for power. I would say that there's been discussions from members of the association as well as the area in which the tank is going to be located at. Residents. I don't know the exact number of individuals that sit on this association. I can tell you that there was four or five voting members of the association, five members, actually, an engineering advisor and a legal advisor. And it was unanimous at that time with the vote and the motion that we look at an alternative site, provided that we can all come to an agreement as to what those fiscal impacts would be.

CHAIRMAN CAMPOS: So there is a consensus not to do it at the fire station?

MR. FLORES: Mr. Chair, at that evening there was an understanding and a motion that there was cooperation from BLM and the County that we would include the possibility of looking for dollars to assist in the funding of additional engineering costs as well as the increase in tank size. That we would change the tank site to the Headstart, and we would look at that to evaluate that. There would be a second round of talks that would deal with specifics that we were apprised of yesterday evening as to what the fiscal impacts are for moving the tank.

CHAIRMAN CAMPOS: Questions or comments?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner.

COMMISSIONER ANAYA: I'm glad that under the leadership of Commissioner Montoya that you all went back and had a meeting and now you've come to the consensus that we're going to move forward and finally decide where the tank's going to go. So I'm okay with it.

COMMISSIONER MONTOYA: Thank you, Mr. Chair. I think regarding the - a couple of things. I was called by Fred Kalish from the New Mexico Environment Department essentially telling me that if this doesn't get decided at this meeting that they're in jeopardy of losing some funding. Can you or maybe one of the association members comment on that? Is Fred Kalish here? Even better. I'd like to hear from you.

FRED KALISH: Commissioner Montoya, other Commissioners, I'm Fred Kalish. I'm with the New Mexico Environment Department Construction Programs Bureau. I'm the project manager for this particular project. Our responsibility is administering much of the funding that's involved in the project.

COMMISSIONER MONTOYA: So is the domestic water association in jeopardy of losing funding if we don't make a decision today?

MR. KALISH: I think the funding agencies are concerned. I don't believe they're in jeopardy of losing funding if this decision isn't made today. I think the funding agencies concerns are a number of concerns. One is that the development of the water system has gone through a fairly lengthy, expensive process involved in the environmental clearance for the particular design of the system as it stands today. The outcome of that environmental clearance process is an environmental assessment and a finding of no significant impact, which was drafted and is currently sitting in EPA Region VI pending issuance.

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The funding agencies feel that we're fairly late in the game to be introducing a change in location to the storage tank. The project was deemed an emergency by the Environment Department approximately two years ago and funded by the New Mexico Finance Authority in its initial stages. On top of that there is approximately \$1.4 million of governor's tax relief fund that's involved in the project at this point, with the understanding that the project was going to move along at a fairly rapid rate to deal with the emergency nature of the situation.

Our concerns are that the decision that is made to move the tank to an alternate location could result in an increase in the expenditure of approximately \$150,000 to \$200,000 in engineering and construction costs, in addition to at least \$10,000 and perhaps more costs associated with additional environmental clearance that will be required. In addition to the expense, a delay in the project I would estimate a minimum of six months. So all in all, I think you can appreciate how the funding agencies are getting concerned about it.

COMMISSIONER MONTOYA: So, Mr. Chair, and I don't know, Mr. Kalish or someone else can answer this, with the appropriation of I believe it was \$3 million, was that part of what was budgeted already, or could that \$150,000 to \$200,000 come from that appropriation that I believe was approved by Congress. Was it already signed by President Bush? Pablo, do you know? Not yet? But my question is could that \$150,000 to \$200,000 that you're talking about come from that appropriation or has it already been allocated?

MR. KALISH: I am not personally familiar with that particular appropriation.

COMMISSIONER MONTOYA: Ted, can you answer that question? Or Raymond Chavez and Manny are here too.

TED TRUJILLO: My name is Ted Trujillo. I'm the legal advisor for the Greater Chimayo Mutual Development Association. With regard to the \$3 million bill that just went through Congress, as I understand it from e-mails, President Bush did sign it. Now, we're not sure exactly what that can be used for because the language of the bill cited the fact they were talking about a regional line from Chimayo to Española as you well aware. There's a regional effort going on there. So it may or may not be able to contribute something towards the \$150,000 shortfall that we're talking about here.

If I could bring the Commissioners up to date, we did have a discussion with a couple of the community members outside now just before we came in, about the possibility of revisiting the feasibility of looking at the fire station one more time. And so I would hope - this is something Mr. Flores isn't aware of because the conversation just took place now. We're not trying to go back on any discussion but the community doesn't have all the information yet. And we just learned this afternoon that an environmental assessment, an amendment to the environmental assessment will have to be made, and before today, we were under the impression that one would not be required if it went up to the Headstart site. That imposes some delay there that we're concerned about.

So we were talking to the community members about maybe looking at a way of mitigating their concerns about that tank at that location, possibly with a lower profile or something of that sort. That discussion hasn't taken place but in the interim we hope to get into that discussion and come back with some sort of recommendation with more information and

better time lines on this so that the Commission would be in a position to be able to decide that issue.

COMMISSIONER MONTROYA: Mr. Chair, I guess my suggestion would be, Mr. Trujillo, that in light of the fact that we've already had the meeting. It's been consensually agreed that the location may be better off. The townhall meeting that I did have, there was no support whatsoever to have it at the fire station. The fact that we just passed a bond that's going to improve the fire station for Chimayo specifically to either add additional building or some groundwork or whatever the case may be, I think that really compounds the difficulty of having it at the fire station now. And I would encourage you to continue to pursue - what I have talked to staff about is that if we are required to have another environmental clearance that we look at see where we can obtain some funding from the County to help with that environmental clearance in addition to - I know the cost of the tank and the size of the tank went up when our fire chief offered to increase the size of the tank which would benefit the community because it could offer additional fire protection as well. So those are two specific things in addition to the land site that I've asked staff to look into in terms of what Santa Fe County can help and would continue and will continue to be committed to helping however we can in that regard.

So I would just hope that we could continue to move forward particularly in light of if there's a potential to lose money. And by the way, I have asked Lisa Roybal to set up a meeting with the governor so that I can tell him exactly what is going on so that there's hopefully no fear that we're going to be losing or he's going to be taking away funding from the domestic water association because that's the last thing that we want to have happen as well. So those are my comments, Mr. Chair. I'm glad to hear that there was some progress made, I guess last week.

MR. TRUJILLO: Commissioner Montoya, certainly I think there was progress made. You can spend hours on these topics and learn something almost every time you go through it. And I think that's the point we're at now. The only thing I can say about the community issues are that we're very mindful. I'm a community member there. We're not here to divide the community but we feel that in order to make an informed decision they need all the information that possibly they didn't have at that point in time. That there could possibly be some consequences to delay. We're not absolutely sure about all of these things and if we can mitigate those concerns we would hope that we could speak in a united voice and that it wouldn't really be an issue for the Commission. We're just asking for that opportunity to revisit that topic. We're not excluding the Headstart site and as a matter of fact we're looking at other sites as well, hopefully to be able to keep this thing on track.

Volunteer groups are subject to oversight by the New Mexico Environment Department, the New Mexico Finance Authority, DFA. So we have a lot of hoops that we have to jump through as volunteers. We also work with both counties very closely and we do the best we can but we do need your indulgence and support at this point in time, and hopefully we can collectively come up with the best decision in the interests of the public at large. Thank you.

COMMISSIONER ANAYA: Mr. Chair.

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CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: Real quick. If we do decide to move that tank to another location, will we be able to use that EIS study for a future fire department so we don't lose out totally? Can we use that EIS study?

MR. TRUJILLO: I wouldn't be able to answer that question but possibly Mr. Kalish might have some notion on that?

MR. KALISH: Mr. Chair, Commissioners, I think that would depend on the use that you had in mind for the fire station. The environmental clearance and environmental assessment that was performed to date on that site considered just the proposed use at that site at the time which was for a water storage tank and a booster station for a community water system.

COMMISSIONER ANAYA: Okay. Thank you.

IX. B. Matters from the County Manager

MR. GONZALEZ: Thank you, Mr. Chair, members of the Commission. Just some informational items and some reminders, and perhaps sort of a little guidance question. The special space analysis study session or the special study session on space analysis has been scheduled for November 16th at 1:30. I know that you as Commissioners are being polled at present to see what date we can set up for the housing study some time in December. In addition, we have three other study sessions that we've discussed previously and we'll continue to poll you to see what would be appropriate dates.

But we do have the follow-up on the ICIP/GRT bonding questions, the prioritization of funding based on the passage of the County's bond issues. We don't have a date yet, just advising you that we're going to have these coming up shortly and unfortunately, we're in to the holiday schedule here just about. So it's going to trying to find an hour and a half or two hours here and there.

We also have discussed having a water and wastewater study session, a study session in preparation for the legislature, so those are three study sessions that we potentially have ahead of us. Then I need to ask the Commission whether they want to cancel the December 28th BCC meeting. Traditionally we've cancelled that last Commission meeting of the year. But that's just a question that I pose. And finally, just a reminder, this coming Thursday, which is Veteran's Day, but just to demonstrate what devoted staff we have, the Water and Natural Resources Committee will be meeting. They'll be discussing the Aamodt settlement and also requests for funding forward water projects out of the County and the City. So you all would be invited to attend if you care to interrupt your Veteran's Day and if not, staff will be there representing you.

CHAIRMAN CAMPOS: What time is that?

MR. GONZALEZ: I believe it starts at 8:00.

CHAIRMAN CAMPOS: And Veteran's Day is -

MR. GONZALEZ: November 11th.

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER SULLIVAN: Gerald, we have a study session Tuesday, this coming Tuesday. Is that correct?

MR. GONZALEZ: That's correct.

COMMISSIONER SULLIVAN: At 1:30, I believe. And that's going to discuss?

MR. GONZALEZ: That's going to be - I'll let Tony address that.

MR. FLORES: That's to discuss getting the full presentation of the space analysis.

COMMISSIONER SULLIVAN: Space analysis. Okay.

MR. GONZALEZ: And that's also accommodating the district court who have asked to be allowed to be present.

COMMISSIONER SULLIVAN: Mr. Chair, I just wanted to comment that I'm fine with deferring the 28th meeting.

CHAIRMAN CAMPOS: Mr. Gonzalez, do you think that's a good idea, or should we just leave it there and cancel it if we don't have any emergencies or any urgent business?

MR. GONZALEZ: We can leave it on the schedule subject to your cancellation or we can wipe it out. It looks to me like between now and the end of the year, we're mostly going to be looking at special study sessions as opposed to an actual meeting at the end of the year, and traditionally, we've not had a lot of business to do at that last meeting in December.

COMMISSIONER ANAYA: So what time is that meeting on Tuesday?

MR. FLORES: Mr. Chair, Commissioner Anaya, it's 1:30.

COMMISSIONER ANAYA: Let me see if I have that. Okay, I've got it. And I don't mind skipping the December 28th meeting. I just don't want to say "maybe" because then we start putting things on the agenda and then we tell the applicants that it might be. I think if we're not going to do it let's say now.

COMMISSIONER DURAN: That's my last meeting. What are you doing?

CHAIRMAN CAMPOS: We're canceling you.

COMMISSIONER ANAYA: Your last meeting will be before that one.

COMMISSIONER MONTOYA: Mr. Chair, I just think that we need to - what do we have scheduled for the 23rd? Is that the affordable housing study session?

MR. FLORES: Mr. Chair, Commissioner Montoya, that was the - the plan was to have that preliminarily scheduled for the 23rd.

COMMISSIONER MONTOYA: So is it changed? So now I have one on December 7th.

MR. ABEYTA: Mr. Chair, tentatively, we moved it to December 7th so that we could get all of the Commissioners here. But we haven't confirmed with everybody that that will work. We've only confirmed with two of you right now.

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COMMISSIONER MONTOYA: Will that work for everybody?

CHAIRMAN CAMPOS: Which are you talking about?

COMMISSIONER MONTOYA: December 7th, the affordable housing study session?

CHAIRMAN CAMPOS: What time?

COMMISSIONER MONTOYA: It was originally scheduled for November 23rd, now suggested to be moved to 3:00 on the December 7th.

COMMISSIONER DURAN: I can do that. At 3:00? Yes.

COMMISSIONER MONTOYA: And Commissioner Vigil?

COMMISSIONER DURAN: I talked to her. She said she could make it.

MR. ABEYTA: Mr. Chair, yes, that would be a study session. And then there is EZA that evening at 6:00 so we will have to be done by then.

COMMISSIONER MONTOYA: Is it EZA or RPA?

MR. ABEYTA: I'm not sure.

COMMISSIONER SULLIVAN: RPA is the 23rd.

MR. ABEYTA: It's EZA. We had moved the EZA meeting.

COMMISSIONER ANAYA: So we're talking the 7th?

COMMISSIONER MONTOYA: Yes.

COMMISSIONER ANAYA: Okay, what time do you want us?

MR. ABEYTA: 3:00.

CHAIRMAN CAMPOS: Works for me.

COMMISSIONER ANAYA: And that's housing?

COMMISSIONER MONTOYA: Yes.

COMMISSIONER DURAN: Affordable housing, right?

CHAIRMAN CAMPOS: Yes.

COMMISSIONER ANAYA: And EZA's at 6:00?

MR. ABEYTA: Yes.

COMMISSIONER MONTOYA: Mr. Chair, the other one I would suggest that we try to schedule before the winter break is the ICIP and the bonds. I really think we need to move on those as soon as possible. Those are critical.

MR. FLORES: Mr. Chair, Commissioner Montoya, there's actually two of them that I feel are critical before the end of the year. One is listing the priorities of ICIP/GRT discussion. And then the second one -

COMMISSIONER MONTOYA: So we can do all that collectively instead of separate.

MR. FLORES: Collectively. I was thinking that now we can combine them since the bond is passed and we've completed a strategy now with the bonds. But the other one that's probably as critical this year is based upon a discussion today is setting up the initiative priorities for the session, having the discussion in December and then having the follow-up in January right before we go off, because I heard today a couple of issues that we need to look at legislatively during the session. So those are two key study sessions that I feel are important in

the month, early part of December and we may be able to combine them into one meeting, maybe dedicate two hours, 2 1/2 hours maybe to one issue and the other part of it would then be for the legislative initiatives. So we could do an afternoon, maybe a working lunch through the afternoon.

COMMISSIONER MONTOYA: What about the 14th, Mr. Chair? We have a BCC at 3:00. Can we come early that day, maybe?

MR. GONZALEZ: We could do a working lunch.

CHAIRMAN CAMPOS: We're looking at discussing two major issues though. So we would have to probably start in the morning, take our lunch break, coming back at 1:30 and working to about 2:45, take a break, do the regular BCC. That's a long day. Is that what you want to do?

COMMISSIONER MONTOYA: I don't know.

CHAIRMAN CAMPOS: Are you talking about the ICIP/GRT discussion? We could come here at 1:00. That would give us two hours. Would that be enough?

MR. FLORES: Mr. Chair, the two issues go together. One is the ICIP/GRT because that will establish exactly what projects we'd be bringing before the session, as well as giving the Board an idea of how the GO is going to be utilized. The second one is just as important. It's setting up the types of initiatives that you spoke about today for the processes. The later we get into December on those two issues we will be further behind when we have to prepare the bill drafting on those initiatives.

CHAIRMAN CAMPOS: Are you saying that we should do it in November instead, or very early December?

MR. FLORES: That would be my suggestion.

CHAIRMAN CAMPOS: Okay. So let's go to early December. Should we do this now? Tony's suggesting that we need to do it sooner.

COMMISSIONER MONTOYA: Sooner than the 14th?

CHAIRMAN CAMPOS: Yes. As early as possible. November or very early December.

MR. FLORES: We had this discussion, Mr. Chair, Commissioners, two weeks ago and we had conflicts of scheduling with at least two or three of you on different times that you'd be out.

COMMISSIONER MONTOYA: Well I'm not going to be here Tuesday for the space analysis. I won't be in town.

COMMISSIONER DURAN: Will you be here on the 8th? We already have a housing meeting on the 7th.

COMMISSIONER SULLIVAN: Not two days in a row.

CHAIRMAN CAMPOS: Let's not spend any more time on this. Why don't you poll us.

MR. FLORES: We can do that.

CHAIRMAN CAMPOS: Anything else?

MR. GONZALEZ: That's all I had, Mr. Chair.

X. C. Matters from the County Attorney

1. Executive session

- a. Discussion of pending or threatened litigation
- b. Discussion of possible purchase, acquisition or disposal of real property or water rights

Commissioner Montoya moved to go into executive session pursuant to NMSA Section 10-15-1-H (7, and 8) to discuss the matters delineated above. Commissioner Anaya seconded the motion which passed upon unanimous roll call vote with Commissioners Anaya, Campos, Duran, Montoya and Sullivan all voting in the affirmative.

[The Commission met in executive session from 5:05 to 6:45.]

Commissioner Anaya moved to come out of executive session having discussed only the matters outlined in the agenda, and Commissioner Sullivan seconded. The motion passed by unanimous 4-0 voice vote. [Commissioner Montoya was not present for this action.]

XI. Public Hearings

A. Land Use Department

1. **Ordinance No. 2004-7. An Ordinance Amending Ordinance No. 2002-13 Addressing Water Conservation for all Residential and Commercial Uses of Water within Santa Fe County to Extend the Deadline for Commercial Businesses to Comply with Indoor Water Conservation Retrofits from January 1, 2005 to July 1, 2005 and to Reduce the Maximum Violation Penalty from \$400 to \$300**

WAYNE DALTON (Special Projects Coordinator): Thank you, Mr. Chair. An ordinance amending 2002-13 addressing water conservation for all residential and commercial uses of water within Santa Fe County to extend the deadline for commercial businesses to comply with indoor water conservation retrofits from January 1, 2005 to July 1, 2005 and to reduce the maximum violation penalty from \$400 to \$300.

On October 21, 2004 the CDRC met and acted on this ordinance. The decision of the CDRC was to recommend approval of the ordinance. In order to mitigate financial strain on businesses required to retrofit their facilities to meet Ordinance 2002-13, the deadline is proposed to be extended from January 1, 2005 to July 1, 2005. According to NMSA 1978 Section 4-37-3CA Santa Fe County may not assess a fine exceeding \$300. Therefore the maximum penalty fee listed in ordinance 2002-13 should be reduced to \$300.

Recommendation: Staff recommends approval of this ordinance.

CHAIRMAN CAMPOS: Questions for Mr. Dalton? Okay, this is a public hearing. Anyone here who would like to address any issue raised by this proposed ordinance? Okay, no one having come forward, the public hearing is closed. Is there a motion to approve Ordinance 2004-7?

COMMISSIONER DURAN: So moved.

COMMISSIONER ANAYA: Second.

The motion to approve Ordinance 2004-7 passed by unanimous [4-0] roll call vote. [Commissioner Montoya was not present for this action.]

- XI. A. 5. EZ Case #DL 04-4660 – Ricardo Borrego Family Transfer.
Ricardo Borrego, Applicant, Paul Rodriguez, Agent, Request Plat Approval to Divide 10 Acres into Four Lots for the Purpose of a Family Transfer. The Lots will be Known as Lot 15-A (2.50 Acres), Lot 15-B (2.50 Acres), Lot 15-C (2.50 Acres), and Lot 15-D (2.50 Acres). The Property is Located Off of Caja Del Rio at the Southwest Corner of Calle Hacienda and Paseo De Los Ninos, in the Rancho De Los Ninos Subdivision, within Section 23, Township 17 North, Range 8 East (Commission District 2)

VICENTE ARCHULETA (Review Specialist): Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Just summarize the report.

MR. ARCHULETA: Yes, sir. On October 14, 2004 the EZC recommended approval subject to staff conditions. The 10-acre parcel is currently vacant and is located within the Basin Fringe Hydrologic Zone. The minimum lot size in this area is 50 acres per dwelling without water restrictions or 12.5 acres per dwelling with a quarter acre-foot water restriction. This area allows for the creation of 6.25-acre lots for family transfer. A geo-hydro report was submitted which demonstrates water availability to create 2.5-acre lots.

Staff recommendation: Increasing the number of lots as proposed within the Rancho de los Ninos Subdivision does not change the development standards for required improvements as they currently exist. The proposal is in accordance with the Land Development Code for a family transfer land division that is exempt from subdivision regulations, including definition of immediate family members and applicable regulations of the Extraterritorial Subdivision Regulations for development standards. Staff recommends approval subject to the following conditions. May I enter those into the record?

CHAIRMAN CAMPOS: They are so entered.

[The conditions are as follows:]

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1. The applicant must record water restrictive covenants simultaneously with the plat of survey imposing .25-acre ft. per year per tract. Water meters for each subject parcel must be installed to monitor water use. Annual water consumption reports must be submitted to the County Hydrologist by October 31, of each year.
2. A shared well agreement must be approved by the county and executed prior to plat recordation. The plat must indicate shared well easements.
3. The private easement that extends off Paseo de los Ninos must be developed meeting SFC Common Roadway Standards, prior to recording the plat of survey or the applicant must provide Santa Fe County with a certified engineers' cost estimate to develop the access. A financial guarantee acceptable to the County in the amount of the approved cost estimate must be included.
4. The applicant must contact Rural Addressing for assignment of addresses for the proposed lots. Addresses must be added to plat.
5. EZO regulations require a solid waste fee be assessed for all newly created parcels. The fee for this subdivision is \$172.00.
6. A retention pond in accordance with Santa Fe County Regulations will be required for all lots at time of development.
7. The portion of road easement that extends through the platted area must be granted for public use.
8. Easements for all natural drainage ways must be provided.
9. The applicant must obtain approval from NMED for the proposed liquid waste disposal plan.
10. Compliance with Fire Marshal review, including a turnaround that is adequate for emergency vehicles.
11. The applicant must submit Family Transfer Affidavits and Deeds of Transfer to be recorded simultaneously with the plat of survey.
12. The applicant must address all minor corrections by the County Subdivision Engineer as shown on the plat of survey and terrain management plan. These plans may be picked up from Vicente Archuleta, Development Review Specialist within the Land Use Dept. These plans must be resubmitted with the Mylar prior to recordation.

CHAIRMAN CAMPOS: Okay, questions for Mr. Archuleta? This is a public hearing. First of all, we have the proponent. Who is that, Mr. Borrego? Paul Rodriguez. You're the agent?

PAUL RODRIGUEZ: Yes, sir.

CHAIRMAN CAMPOS: Do you have anything else to add?

MR. RODRIGUEZ: No, I don't.

CHAIRMAN CAMPOS: You accept all the conditions?

MR. RODRIGUEZ: Yes, we do.

CHAIRMAN CAMPOS: Okay. Public hearing. Anybody out there who wants to speak for or against this application? Okay, no one having come forward the public hearing

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is closed. Is there a motion?

COMMISSIONER ANAYA: Move for approval.

COMMISSIONER MONTOYA: Second.

CHAIRMAN CAMPOS: With conditions?

COMMISSIONER ANAYA: With conditions.

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER SULLIVAN: On other family transfer's we've made some - we've included limitations that these transfers do in fact go to immediate family and that they retain those for a period of time. I don't see that in the conditions. Was that considered in this, Vicente?

MR. ARCHULETA: Mr. Chair, Commissioner Sullivan, these lots have adequate roads and everything so according to Mr. Borrego, these lots will be transferred to this children and one to his wife and they will not be sold. This is one of their conditions, that they keep the lots in their family.

CHAIRMAN CAMPOS: But is it a condition stated here?

MR. ARCHULETA: Mr. Chair, no, it's not.

CHAIRMAN CAMPOS: Are you suggesting that it maybe should be. Is that what you're suggesting?

COMMISSIONER SULLIVAN: Yes.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER DURAN: Those family transfers that had a requirement that there was a hold period attached to the approval were family transfers that came forward with a variance, with some variance criteria. This is a standard family transfer that meets all the Code requirements. I don't think that it's necessary to attach that as an additional condition.

CHAIRMAN CAMPOS: The condition as to hold time?

COMMISSIONER DURAN: Right.

CHAIRMAN CAMPOS: What about the condition that they be deeded to family members?

COMMISSIONER DURAN: I think that's part of the Code, is it not?

MR. ARCHULETA: Mr. Chair, Commissioner Duran, that's correct.

CHAIRMAN CAMPOS: Okay, so that's already required.

MR. ARCHULETA: That's correct.

COMMISSIONER SULLIVAN: Mr. Chair, I guess I would disagree with Commissioner Duran. The minimum lot size in this area is 50 acres. We're going down to, because of the family transfer to 2.5 acres. If there was no variance why would they come here at all? I realize that the EZ has approved this but in general the EZ approves all of these and at some point in time I think we need to be sure that family transfers are used for what they're supposed to be used for, which is for family transfers.

COMMISSIONER DURAN: The caption doesn't say variance. Is there a

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variance request attached to this?

MR. ARCHULETA: Mr. Chair, Commissioner Duran, no there's not. The reason this came forward was because this was in a pre-approved subdivision. So anything that's in a BCC pre-approved subdivision has to come back for approval.

CHAIRMAN CAMPOS: Okay. There's a motion. There's a second with conditions.

COMMISSIONER DURAN: What was the motion?

CHAIRMAN CAMPOS: Motion to approve with conditions 1 through 12.

COMMISSIONER DURAN: Okay.

The motion to approve EZ Case #DL 04-4660 passed by unanimous [5-0] voice vote.

- XI. A. 6. **CDRC Case #V 04-5460 - Juan Montoya Variance. Juan Montoya, Applicant, Requests a Variance of Article III, Section 4.1 and 4.2 (Types and Locations of Commercial Districts) of the Land Development Code to Allow Commercial Use on Three Tracts of Land Totalling 13 Acres, within the Home Business Area Located within the El Valle Arroyo Seco Highway Corridor Zoning District. The Properties are Located Off Highway 285 in Arroyo Seco, within Section 30, Township 20 North, Range 9 East (Commission District 1)**

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER MONTOYA: I need to recuse myself on this case.

CHAIRMAN CAMPOS: Okay. Please summarize

MR. DALTON: Thank you, Mr. Chair. Juan Montoya, applicant, requests a variance of Article III, Section 4.1 and 4.2 of the land development code to allow commercial use on three tracts of land totaling 13 acres, within the home business area located within the El Valle Arroyo Seco Highway Corridor Zoning District. The properties are located off Highway 285 in Arroyo Seco, within Section 30, Township 20 North, Range 9 East (Commission District 1)

On September 16, 2004, the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of a variance of Article III, Section 4.1 and 4.2 of the land development code to allow commercial eligibility on three tracts of land totaling 13 acres, within the home business area located within the El Valle Arroyo Seco Highway Corridor Zoning District. Article III, Section 4.1 of the Code states that commercial and industrial non-residential uses are permitted only in zoned districts. The applicant's property is located within the home business area of the El Valle De Arroyo Seco Highway Corridor Zoning District

therefore only small-scale commercial uses can be conducted on the property where the proprietor of the home business resides. The home on the subject property must be the proprietor's primary residence.

The applicant states that he intends to change the use on his property in order to expand his private catering business that he has had for more than thirty years, to a commercial small-scale restaurant over 2,000 square feet. The applicant also states that he would like to accommodate the future growth in the area by establishing low-water use businesses such as a gallery, a jewelry store, and a parking lot for commuters or lot rental space.

The applicant states that there are many commercial businesses in the area such as Presbyterian Medical Services, a Day Care Center, Santa Fe Winery, Ben Lujan's commercialized property, a Mobile Home Park, and an equipment sales establishment.

Recommendation: Staff's position is that this application is not in accordance with Article III, Section 4.1 and 4.2 (types and locations of commercial districts) of the Land Development Code, the applicant's property is located within the home business area designated within the El Valle De Arroyo Seco Highway Corridor Zoning District which, only allows small scale businesses to be conducted on property which the owner resides. The El Valle De Arroyo Seco Highway Corridor Zoning District does have a designed commercial area this property does not lie within this commercial district. Staff recommends denial of the requested variance.

CHAIRMAN CAMPOS: Questions for Mr. Dalton?

COMMISSIONER DURAN: Mr. Chair, Mr. Dalton, what kind of uses surround the subject property?

MR. DALTON: Mr. Chair, Commissioner Duran, there's quite a bit, like I stated in the report. There's Presbyterian Medical Services, day care centers. Santa Fe Winery. There's equipment sales establishment, mobile home park.

COMMISSIONER DURAN: And are all those found within the boundaries of the commercial district of the Arroyo Seco Community Plan?

MR. DALTON: Mr. Chair, Commissioner Duran, all those businesses are actually located near the property, which would be in the home business area. The commercial district of the El Valle de Arroyo Seco is further north.

COMMISSIONER DURAN: So those businesses that you just mentioned are not in - they're in the home occupation but not the commercial?

MR. DALTON: That's correct. They're in the home business area.

COMMISSIONER DURAN: Home business area.

MR. DALTON: That's correct.

COMMISSIONER DURAN: And the reason that staff is recommending denial - is the use that he's proposing not covered under the home occupation?

MR. DALTON: Mr. Chair, Commissioner Duran, the use he's proposing is actually covered within the home business area. He would be allowed to have a restaurant not to exceed 2,000 square feet. But the applicant would like to have a restaurant exceeding 2,000

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square feet.

COMMISSIONER DURAN: So the winery that is in there, how does that qualify as a home occupation and not under a commercial use?

MR. DALTON: Mr. Chair, Commissioner Duran, that actually does not – that particular business was actually there before the ordinance was adopted in that area. Therefore it's non-conforming.

COMMISSIONER DURAN: So then staff's recommendation is to not allow – to uphold the residential use on this property when everything around it is non-residential.

MR. DALTON: Mr. Chair, Commissioner Duran, it's staff's position that this property is located within the home business area of the El Valle de Arroyo Seco Highway Corridor Zoning District so the applicant would be able to have a home business on the property, but would not be allowed to have a full-blown commercial development on the property.

COMMISSIONER DURAN: He wouldn't be able to have a full-blown commercial business which his neighbor right next to him has the right to do?

CHAIRMAN CAMPOS: Can we go on?

COMMISSIONER DURAN: No, I'm asking him a question.

CHAIRMAN CAMPOS: It's in your report. He's already talked about it.

MR. DALTON: Mr. Chair, those neighboring properties are actually, either they've come in for zoning before the ordinance was adopted or, like I say, legal non-conforming businesses.

COMMISSIONER DURAN: Okay. Thank you. Thank you for your patience, Mr. Chair.

CHAIRMAN CAMPOS: Any questions for Mr. Dalton?

COMMISSIONER SULLIVAN: Mr. Dalton, the zoning of the El Valle de Arroyo Seco Highway Corridor Zoning District has a commercial center. Is that correct?

MR. DALTON: Mr. Chair, Commissioner Sullivan, it actually has a commercial corridor which is further north of this property.

COMMISSIONER SULLIVAN: How far north of this property is it?

MR. DALTON: I would say maybe about a mile. The actual corridor itself starts at County Road 88.

COMMISSIONER SULLIVAN: About a mile away, give or take.

MR. DALTON: Yes.

COMMISSIONER SULLIVAN: Is the applicant proposing uses at this time for all of the property?

MR. DALTON: Mr. Chair, Commissioner Sullivan, he's actually proposing a restaurant and maybe an art gallery, a parking lot. He's proposed those types of uses.

COMMISSIONER SULLIVAN: Does he have specific uses that will use up the 13 acres?

MR. DALTON: At this time, Mr. Chair, Commissioner Sullivan, he's just proposing a restaurant, galleries, jewelry stores or parking lot, or rental space.

COMMISSIONER SULLIVAN: These are options. What I'm getting at is there some specific business that he's ready to build or ready to develop?

MR. DALTON: Mr. Chair, Commissioner Sullivan, at this time I believe he's ready to build his restaurant.

COMMISSIONER SULLIVAN: The restaurant. So that's the one that's immediately on the horizon.

MR. DALTON: Mr. Chair, Commissioner Sullivan, I believe so.

COMMISSIONER SULLIVAN: And the rest of the 13 acres, he's asking for a commercial zoning so that he could either develop it or I assume sell it.

MR. DALTON: That is correct. If this variance is approved it would give the property the potential of becoming commercial. It would not actually commercialize the property. He would have to come in for master plan and development plan. Which would come forward to the Board.

COMMISSIONER SULLIVAN: I understand. But it would constitute a commercial zoning, is that correct?

MR. DALTON: It would give it the potential of being commercial.

COMMISSIONER SULLIVAN: Okay. Thank you.

CHAIRMAN CAMPOS: Other questions?

COMMISSIONER DURAN: Just one more.

CHAIRMAN CAMPOS: A short one.

COMMISSIONER DURAN: Real short. If it was to be approved as a commercial site, would it not have to conform to the architectural guidelines and other restrictions set out in the Arroyo Seco plan?

MR. DALTON: Mr. Chair, Commissioner Duran, that would be correct. It would have to conform with the plan and with the Code.

COMMISSIONER DURAN: Thank you. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Okay, applicant or representative, please come forward.

[Duly sworn, Carla Montoya testified as follows:]

CARLA MONTOYA: Carla Montoya, Route 11, Box 71-4, Santa Fe, New Mexico.

CHAIRMAN CAMPOS: Are you the only one to speak? Your name, sir?

[Duly sworn, Juan Montoya testified as follows:]

JUAN ELISARIO MONTOYA: Juan Elisario Montoya, and I reside at 19 M Drive, Española, New Mexico.

CHAIRMAN CAMPOS: Please proceed. Do you have a statement? Go ahead and make your argument on behalf of the request to grant a variance.

MS. MONTOYA: Okay. I'd like to say good evening. I am Carla Montoya, lifetime resident of Arroyo Seco, New Mexico. I am here today at this public hearing to announce the intentions for my family to request a variance to change the zoning status of our property from residential property to commercial property. I would like to give a brief history

of the acquisition of this property.

In 1963, my dad purchased the first acre, which had a residential home already built on it with a well. Then in 1966 he purchased a five-acre tract that was adjacent to the first acre and this had a residential home built on the property with an existing well. In 1971 he built his residential home where he resides now. In 1985 he purchased another three acres. This did not have a dwelling but he later developed a trailer space and drilled a well. The last purchase was done in 1999 for another four acres that was completely developed. This land had a studio apartment with a well. The total of these properties amounts to 13 acres that my dad has been able to acquire in the course of 36 years.

Now, there is a reason why my dad invested in these properties and that reason is because he saw that this area would eventually develop into a community that would need certain economic developments such as a restaurant, office rental space, an art gallery and other commercial uses that are listed in the ordinance. For the purpose of this presentation I will focus on the food and beverage business because of my dad's involvement in the food service industry, which he is still licensed to operate.

My dad's forte is cooking. He has operated a catering business for over 40 years. After years of being a chef at the Bishop's Lodge, he moved on to the Holiday Inn and then operated the Red Rooster in Pojoaque as his own business. He then set up the culinary arts program at Northern New Mexico Community College and was head of the Culinary Arts Department there for six years. He retired shortly after that and he continued to do his catering. To fully expand on his catering he has done out of his home, his desire has been to open up his own restaurant on his property. This request for a variance is not the first time that family has approached Santa Fe County to get this property commercialized. Back in the 1980s my family expressed an interest to change the zoning status from residential to commercial but the then County Commissioner stated he did not want Highway 285 to become a "Cerrillos Road".

Based on that statement, it was never pursued to try and get the property commercialized. However, since then, I have noticed constant growth within and along Highway 285. Several businesses have been developed near our property. For instance, a day care was just recently built within the past two years and that's adjacent to our property. This brings us to our request for the variance. All the businesses that surround our property, and the growth in population and proposed highway construction in the future clearly indicate that inevitable changes will occur along Highway 285. For those specific reasons we would like to request a variance in order to establish a food and beverage business, plus other businesses such as an art gallery, rental office space for businesses such as a beauty shop, road-side stands, a bank, dental office, post office, bed and breakfast, fitness facility or a senior center.

Several businesses surround our property, as I mentioned, the day care center. And this is actually the map of the Arroyo Seco Valley. This is from Santa Fe County Ordinance 2003-7. According to this legend, the orange shades are commercial. Our property is located right here adjacent to the day care that was just recently built. We're right next to a trailer court. Across the highway is a real estate and horse breeding business. Further down from that is Meyer's Steel. There's the Santa Fe Winery, Ben Lujan's property and across the highway is

Tag Enterprises. Further down, less than half a mile is Dave's Cabinets, and J.S. Camper Shells.

So there are several businesses in the Arroyo Seco Valley that adjoin the property that we wish to change to commercial property. Immense growth in traffic and home building has taken place along the corridor that the New Mexico Department of Transportation has recognized the need to expand the highway. Our business will be productive, environmentally clean and non-threatening. The community in Arroyo Seco needs a restaurant that is conveniently located. The restaurant will be like no other in the area. We will serve the community with healthy cuisine suitable for diabetics and other health-conscious people.

My dad's concerns for the community are demonstrated in a few documents that I brought. He received a fellowship from the Ford Foundation and it says, "You've been chosen as one who shows promise of leadership capacity and who shows a concern about improving human resources and conditions in your community and region. We expect that the fellowship will help you to enlarge your knowledge and perspective and to explore various leadership styles beyond your present experiences. This should contribute not only to your personal growth but should also increase your effectiveness when you return to your community."

He was also a participant in which he got an award from Governor Bruce King at the time and that was to enhance the potential for greater rewards in tourism and better livability in the state of New Mexico. And he received a certificate also from the Environmental Improvement Agency.

As a result of the proposed food and beverage business, the community of Arroyo Seco will be able to have a place to go and eat. Commuters between Santa Fe and Española will have a place to enjoy good food. A food and beverage business will contribute to the economic development that already surrounds our property. As traffic along Highway 285 continues to grow the need for economic development is inevitable. Our intentions are to change our residential property to commercial property in order to start a food and beverage business. I hope that I have been able to convey our request for a variance. The impact of our proposal to the community of Arroyo Seco will be of great service in many various ways without disturbance to the surrounding neighbors. Thank you.

CHAIRMAN CAMPOS: Thank you. Mr. Montoya, do you have something to add?

MR.MONTOYA: Commissioner Campos, Commissioner Anaya, Commissioner Jack Sullivan, Commissioner Paul Duran, I'd like to make some very important points here on this particular request. The number one thing is that I want to share with you something that expresses my way of change as time goes. And there's no way we're going to stop that. I use a team of horses for this. It's been my life and that's reality and the truth. My first experience on that corridor was in 1938. I was 8 years old. As I remember there was very little traffic. In fact the Ford Model-A was the main vehicle on the highway. And as we went to Española with my dad we had to buy - I won't go into a lengthy - but we were building a home and he had to get the materials and we had to go by wagon. We didn't have any way.

But anyway, as I want to express the main thing, the main idea is change. Because I

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remember the speed limit was 35. The highway would go up that way and then you had double lines, no passing, or a single line, no passing. There were other changes there that I'd like to see. Why is the Ford always black. Every one of those were black. And like I said, the speed limit, all those things were a big change. Now, as I was coming, it's not Ford Model-A but it's Mustang, Pinto 4 x 6, you name it. Colors? Any color. That's all changed. And that's why I tell you there's no way we're going to stop that. If I have seen all those things in 66 years, what is it going to be 66 years from now? I don't know, but it's tremendous. Not a single home - now there's I don't know how many homes there.

Businesses, none of them. Now we have them. With that in mind I hope that I can get a variance. And I'm going to show Exhibit A as we look at it. You should have it in your packet. I brought it in Friday. Pictures. And it shows the property on the north end looking at that house with the little garage. You see the garage door. Now inside, as we go - this is almost 2 1/2 acres or more. But I'd like to show you on Exhibit B what's in side that garage. Inside that garage I've had my equipment stored for over 20 years. Now we always say that your tools and all that is your bread and butter, right? But as it is now, I can't even afford margarine.

It may seem funny, but it's not funny. This is the truth and the reality. And based on that, I have lost income. Because as you say, we go back to Exhibit A again, you can see the white lines, you can see the homes, the same property. It's strictly frontage. It's commercial. If you look at the third photo there, you can see the house, that's the last one I built, is on two levels. At the back level of the house there's over 2 1/2 acres that's level. Then on the bottom level is about I'd say at least a half acre, then it goes up to the arroyo.

Based on that that you see there, there's no way that we can say that that is not commercial property, but I have been denied that. I think I have been denied the right and the privilege to do what I really want to do. Now, to end this or get the final, saying I'd like to start off with a comment about the community days that have been held at the Arroyo Seco Fire Department, and pay compliment to the community members that put it together. It's real nice. And I hope that some of those people are here. Those social events were well attended by the residents of Arroyo Seco. The residents of that community fair were introduced with the future corridor of Arroyo Seco plus other exhibits that were of interest to the community.

To me this event was impressive because there was social interaction among the residents. I experiences the satisfaction of meeting new neighbors that had never seen that before. And to me, this is the real meaning of neighbors meeting neighbors. I would estimate that there were about 200 persons and I know that there's more than that living in Arroyo Seco that attended the community day. Based on that, maybe 200, we were lucky if we ever got 20 residents to attend a meeting. We were lucky. So that means we had what percentage of the community representing Arroyo Seco? One percent, and that was including me. So we had to go down to 999 point some.

Now this is what we say that democracy or rule by the people, that's exactly what it was. Every meeting that I attended since I have lived in Arroyo Seco in that community. Therefore I felt that this type of representation is not totally in agreement with a majority of the residents and it was not a majority of the people that put this ordinance together. For that

reason, at those meetings I never say yea, nay, yes, no to any of the issues that were discussed, for a very particular reason. Those meetings were not well represented.

And I knew that eventually I would have to be doing exactly what I'm doing now. Now, for the last item of this, what I have to say. I'd like to thank these people that vote the opposition or the negative letters about me not being allowed to have that variance. First I'd like to address the letter of Nancy Williams. Here's what I have to say. There's no way there's going to be a traditional thing in Arroyo Seco. No way. Traditional means you're going to hand thing from one generation over to another. You know that. So it's not going to happen. Today we have population increase, we have traffic. Business is going.

And to Katy Allison. Her concern was about the home business. Well, I have five homes there and I'm already grandfathered. But I look at this idea, if I want to be with one foot in the four corners, think of Colorado, New Mexico, Arizona and then my head, the fifth one, looking up, where am I? I don't want that.

The next thing I had was from the Meyers and that was the posting of the yellow sign. Those concerns that I have already addressed, and I'm not going to go into that. You know, Mr. Dalton is my witness and he stood up here. When I asked him, he told me where to put the sign and he told me you put it in the middle of the property, and I did that. However, I'm not blaming him for anything, because he doesn't know where the middle of the property is, and it was going to be a thing far from the highway. There's like a ravine or dip, arroyo. Well, it was constructed by the highway for drainage anyway. And I knew that was not going to be the place, but I didn't argue with him because I told him I have at each end of the property is private driveways, easements, that I can post the sign and you can see it from the highway.

But I did what I did and then the Meyers started calling that I was depriving them and so on, so Mr. Dalton told me move the sign, so I did, and I placed it on one of the places that I had intended to before. It's close to the highway. They can drive up to that private easement, back up and continue.

The Paules, their concern was the water issue. And that's one thing we have to be concerned, and so am I. But I have no problem with that because there's five wells in that property. There's five wells. The other thing is that I am a member of the Pojoaque Water District and a member of the Santa Cruz Water District, and also a member of the Cuatro Villas Association. Now, if for any reason I would have to transfer surface water rights for underground water rights I would do it but I don't foresee that necessity now, at this point.

Okay, he was concerned about the arroyos, but as I mentioned before, those things you saw there, those were leveled at one time. They're not arroyos anymore, what you just saw in the exhibit. But at one time those were arroyos. Now those are words. Then the property I bought, the last property. So I don't see any concern on that being arroyos there.

The one other issue was the domino effect. He talks about the domino effect. In other words if I start this, what's going to happen? Well, I don't foresee that because I am in the middle of both, south end businesses and north end businesses. And to begin with, we have at the south end commercial properties and there's nothing anyone can do to stop that because that's Indian land. Automatically, that's commercial.

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So as being a domino, I am right in the middle where I am trying, or I want to do this, I hope you make it affordable to do it, is to bring, connect the north end and south end of businesses. That's what I would be doing. Now the one issue that gets me is this one and that is testing the ordinance and the system. There's no way that I'm going to do that. I think I have better morals and discipline than to do that. I'm very, very - like I told you, I believe in that team of horses, the truth and the reality.

So in reality what I'm doing here is requesting rights and privileges that I am entitled for my business, since I was neglected being grandfathered in at the time I should have been, because we have Conley grandfathered in. We had the old Arroyo Seco grandfathered in, but I wasn't. Okay? Now I want to express that these are the only community members of Arroyo Seco that opposed my request for the variance and have no opposition other than that or the CDRC.

In conclusion I hope that I have fully addressed my colleagues' concerns and I'd like to say change will either happen negatively, it's going to happen, or in an well planned way. Before I ask the County Commissioners' support for my request as I have presented it. Thank you.

CHAIRMAN CAMPOS: Thank you, sir. Any questions for Mr. Montoya.

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER SULLIVAN: Mr. Montoya, just one question. The home businesses ordinance allows restaurants if you live on the property. So have you thought about going ahead and getting your restaurant going right now as it is apparently zoned now to allow that?

MR. MONTOYA: Yes, I have no problem with that. However, that's not where I want it now, because I know that I have a better choice for parking, obviously, but it has to be worked on. It has to be graded. It has to have drainage, all the things that go with it, but I want it on the last property that I bought. We bought that in 1999, about four or five years. And that's what I'd like to do. No, not on the present. And the home business is not really good enough for me because I can't - the quality of service and all that, it will not suit my purpose.

COMMISSIONER SULLIVAN: You mentioned grading. I would assume that restaurants, diners and coffee shops would include some grading.

MR. MONTOYA: Yes, it would be on the same property. That corridor is -

COMMISSIONER SULLIVAN: I guess what I'm getting at, in the same way arts and crafts galleries are also permitted under the home business categories. Is your problem that you're not going to continue to live on the property?

MR. MONTOYA: Well, it states there in the ordinance that you have to live on the property.

COMMISSIONER SULLIVAN: You have to own the property, not in it but on it. On the same property where you have the business is my understanding. Staff can correct me if I'm wrong.

MR. MONTOYA: I had a different understanding of that.

COMMISSIONER SULLIVAN: Oh, you think you have to live in the building? Could we get some staff clarification on that?

MR. DALTON: Mr. Chair, Commissioner Sullivan, the applicant has to reside on the property where the business is located.

COMMISSIONER SULLIVAN: On the property, but they don't have to live in the building. It's not like a home business where you have to live upstairs and your business is downstairs.

MR. DALTON: No, the applicant would be allowed to have a separate structure not to exceed 2,000 square feet. But he does have to have the primary residence, where he lives, on the property.

COMMISSIONER SULLIVAN: His primary residence can be whatever size he wants, right?

MR. DALTON: That's correct.

COMMISSIONER SULLIVAN: Yes. But it's not like a cottage industry type of thing. He can live on the property. Okay. Thank you. So you still plan to live on the property, is that correct?

MR. MONTOYA: Yes. However, excuse me. If you follow that, there's a limitation on what you can use for space. I don't want to be limited to that.

COMMISSIONER SULLIVAN: Yes. I understand. But it seems to me that maybe you could get started. It allows up to 2,000 square feet which would be a pretty good size restaurant. That would be the size of a complete house. It allows galleries and bookstores and grocery stores and greenhouses, nurseries up to 2,000 square feet. Allows bed and breakfast establishments. I'm just wondering, your feeling is that you're going to have a restaurant bigger than that. Is that your reasoning?

MR. MONTOYA: Definitely. Definitely. Then see with this, I'm rolling the catering service that I have now into that business, in order to have both.

COMMISSIONER SULLIVAN: Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Any other questions? Do you have a question?

COMMISSIONER DURAN: I just have one question.

CHAIRMAN CAMPOS: Question or statement?

COMMISSIONER DURAN: I'm not sure. Let's see what it turns out to be.

CHAIRMAN CAMPOS: Or speech.

COMMISSIONER DURAN: I just think that a kitchen is about 1500 square feet.

COMMISSIONER SULLIVAN: You've got a heck of a lot bigger kitchen than I do. I'm going to come over to your house, a 1500 square foot kitchen.

COMMISSIONER DURAN: For a restaurant, a 2,000 square foot restaurant is a fast food place. Not a restaurant.

COMMISSIONER SULLIVAN: I don't think it was a question.

COMMISSIONER DURAN: Yes, it was.

CHAIRMAN CAMPOS: People, anybody who wants to speak for or against it, please come forward. We want your comments to the point, to the issues, and that's it. So please come forward. Everybody, we'll swear you in at one time, for or against. Just brief, to the point, okay? We don't want long speeches. Come on up, everybody.

[Duly sworn, George Rivera testified as follows:]

GOVERNOR GEORGE RIVERA: Good evening, Commissioners, Mr. Chair. My name is George Rivera. I'm from the Pojoaque Pueblo. I'm the Governor of Pojoaque Pueblo, and I'm here standing in support of the proposal. Mr. Montoya is our next door neighbor. Our boundary is just a few feet, a few hundred feet away from his boundary and as he mentioned, all of that area along the highway is potentially commercial zoned and I feel that with all the development that's already happened from our boundary to his boundary and then beyond that into Arroyo Seco it's pretty much commercial, whether it's his property singled out as not commercial for whatever reasons.

This is a commercial area and it's become established as one and just like Arroyo Seco, Pojoaque and all the other small communities in northern New Mexico are growing they are going to need these things that are being proposed here by Mr. Montoya - restaurant, barber shop and some of the other basic necessities for a community. Currently many of those people come to Pojoaque for their services. We don't feel that this would be a bad thing for us, the competition is necessary. When the highway comes through they're going to work with the Pueblo on insuring that the highway is developed safely to handle these commercial businesses that have been put in place just north of our boundary and within our boundary. So I stand in support of it.

CHAIRMAN CAMPOS: Thank you, sir. Okay, let's try not to repeat and let's keep to the issues. Please state your name and your address.

[Previously sworn, Ed Lucero testified as follows:]

ED LUCERO: My name is Ed Lucero. I'm an Arroyo Seco resident. 17 Camino Arroyo Seco. I'm here to speak in favor of Mr. Montoya. Mr. Montoya is a very highly respected and honored man in our community. His restaurant would benefit our area immensely. We only had one restaurant in the area and that's long gone. And this will benefit the whole bunch of us.

As far as representing our area, Mr. Montoya did mention that the Arroyo Seco Association is self-appointed and doesn't represent -

CHAIRMAN CAMPOS: That's not an issue.

MR. LUCERO: But it doesn't represent the majority.

CHAIRMAN CAMPOS: Please stick to the issues.

MR. LUCERO: That is.

CHAIRMAN CAMPOS: It's not an issue.

MR. LUCERO. Okay. Thank you.

CHAIRMAN CAMPOS: Thank you.

[Previously sworn, John Montoya testified as follows:]

JOHN MONTOYA: John Montoya. I reside at 5 M Drive. Just to keep it short,

I am in support of this variance and I'd like to see that take place. It's a property that's a good potential commercial for business.

CHAIRMAN CAMPOS: Thank you, sir.

[Previously sworn, Loyola Montoya testified as follows:]

LOYOLA MONTOYA: My name's Loyola Montoya. I reside at 5 M Drive and I fully support commercializing the property of Mr. Juan Montoya.

CHAIRMAN CAMPOS: Thank you. Next.

[Previously sworn, Doris Montoya testified as follows:]

DORIS MONTOYA: Doris Montoya, 169 Camino del Rincon. And I totally support commercializing this property because then I will be able to do something I love and make my husband happy and have a job.

CHAIRMAN CAMPOS: Thank you.

[Previously sworn, Irena Velarde testified as follows:]

IRENA VELARDE : Good evening. My name is Irena Velarde and I also reside in Arroyo Seco and I fully support this endeavor here.

CHAIRMAN CAMPOS: Thank you.

[Previously sworn, Pablo Romero testified as follows:]

PABLO ROMERO: My name is Pablo Romero. I live in Arroyo Seco also, Ojito Drive. My wife and I have been married for 46 years. And 46 years ago, Mr. Montoya catered our dinner for friends, family and guests. And he did a superb job. Just a great meal. Mr. Montoya has always helped young people. He has helped associations. I know because I belong to one, and he's always there to help. One thing you can count on Mr. Montoya is whatever he puts up will be clean and respectable. He is a very respectable person and I fully approve and I am giving my voice to him being allowed to go commercial on this property. Thank you.

CHAIRMAN CAMPOS: Thank you, sir.

[Previously sworn, Bruce Laws testified as follows:]

BRUCE LAWS: My name is Bruce Laws. I sold one of the properties that Mr. Montoya is talking about developing, back in '98 or '99. My folks had a large estate there consisting of between 50 and 75 acres. A lot of that property was commercial. The property that adjoins Mr. Montoya has been grandfathered in as commercial businesses. They've been there a considerable amount of time. I find it very disconcerting that it's so difficult for a small business man to go into business. The way our economy stands at the present time people have to work together. Mr. Montoya is an outstanding member of the community. I have enjoyed working with him. I admire him as a hard-working person. He's done an awful lot for the community. I think this would be great for the community. When I sold that property to him I inquired with Penny Ellis-Green as to whether or not it would ever be zoned commercial, which I was informed that it most likely would not be, however, within the next year that childcare center was developed as a state run facility or subsidized by the state and that whole corridor in there is going to turn into a huge commercial area.

The Indians can do anything that they want. They recently cleared 65 acres across from

the Dreamcatcher which –

CHAIRMAN CAMPOS: That's not an issue, sir. Please stay to the issues.

MR. LAWS: Thank you. Well, I am in support of what Mr. Montoya is wanting to do and there are commercial businesses that surround him. I would appreciate it if you would take into consideration his variance.

[Previously sworn, Reyes Gonzales testified as follows:]

REYES GONZALES: My name is Reyes Gonzales. I am a businessman there. I manufacture camper shells. Rio Grande Camper Shells. I've had the business since 1960. I moved into Arroyo Seco in the early seventies, and Mr. Montoya has always been a very good man. He's a good Catholic and he knows exactly what he's going to do. I hope that all of you can go with him to get that land to where it should be.

CHAIRMAN CAMPOS: Thank you, sir.

[Previously sworn, Dennis Duran testified as follows:]

DENNIS DURAN: My name is Dennis Duran. I own New Mexico Vigas in Arroyo Seco, which a variance was granted to me approximately a year and a half ago, or a year ago, coming up on a year. I purchased some property from one of the Laws also, which was a construction yard. It took me a year and a half to get the approval for my operation for manufacturing house logs. And I've known Juan Montoya since 1960-something. And I wholeheartedly am behind him in his efforts to open up a restaurant. That means I can go down the street and have lunch. The area does need an eatery there that's close, with a name. So I wholeheartedly approve and hope you also approve. My family does and my neighbors do also. Thank you very much.

CHAIRMAN CAMPOS: Thank you, sir.

[Previously sworn, Lupe Garcia testified as follows:]

LUPE GARCIA: Lupe Garcia and I reside in Arroyo Seco. I've been a businessman there for 20-some years, since 1977, '78. I believe in the Commission, the government to promote and enhance opportunities for especially local people to develop their properties into commercial businesses if they please. And so I'm a proponent for small business development in that area. I've known Mr. Montoya also for many, many years. Having said that, I support this request. Thank you very much.

CHAIRMAN CAMPOS: Thank you, sir.

[Previously sworn, Dave Gallegos testified as follows:]

DAVE GALLEGOS: I'm Dave Gallegos. I live and have a business there. I own Dave's Cabinets which is across the street and a little ways down. I support Mr. Montoya wholeheartedly. I don't think that because I'm a small businessman and I know how difficult this process is because I had to go through it in '86 or '87. And Juan is just trying to make a living, basically. I've gone through the process so I know what he's going through. I support him. The other thing is that he's surrounded by commercial and I don't think he should be penalized by whatever the new ordinance is. I think it's kind of a penalty to him through no fault of his own, so I support him 100 percent.

CHAIRMAN CAMPOS: Thank you, sir.

[Previously sworn, Archie Velarde testified as follows:]

ARCHIE VELARDE: My name is Archie Velarde from Arroyo Seco. I was initially responsible for starting the Arroyo Seco community board. I didn't follow through with the board that I'll admit at this time, but my purpose at that time was to bring in - we saw Arroyo Seco growing and we needed some services that still are not there, like sewers, water, etc. A lot of that stuff hasn't been accomplished because there's been some resistance within the community it seems to change and development and this is evidenced, I think by the rebuttal of Mr. Montoya's application.

I see that ordinance as being obsolete or flawed. And the reason I say that is because Arroyo Seco is a boom town and you can evidence that by - there's a casino at the north end of Arroyo Seco and a casino at the south end, and all this has brought about tremendous changes within the area. It's flawed because it's a boom town. It's flawed because it calls for what they call a traditional community. Arroyo Seco is not a traditional community, far from it. When you're in the middle of two casinos, you're non-traditional all together. And when the state approved the pact for the casinos they opened up a Pandora's box, you might say. This is known that this change was inevitable. And because of that I do request that you relook at that ordinance and how it is affecting the community.

I also want to emphasize that Mr. Montoya is right in the middle. Everything around him is commercial, and I'm talking large commercial areas. Like for instance there's a steel company there. They've got material laid down all over the place, so you know it's darn well commercial. And it's kind of a pity that Mr. Montoya has been left out. I highly encourage you to approve this request. Thank you very much.

CHAIRMAN CAMPOS: Thank you, sir. Okay, the public hearing is closed.
Discussion or comments from the Commission.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER DURAN: It seems to me that Mr. Montoya has a considerable amount of support from his neighborhood. I agree with the statement that there really isn't much traditional about Arroyo Seco. My father lived there for quite some time and having been in the real estate business for the last 25 years, the first property I sold was in Arroyo Seco. So I'm familiar with how that community has developed over the last 25 years. The biggest thing for me is that with his neighborhood and his neighbors, his community and his neighborhood behind this effort or this request, I'd like to make a motion -

CHAIRMAN CAMPOS: Just comments right now.

COMMISSIONER DURAN: That's my comment.

CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, from the testimony that I heard Mr. Montoya is no stranger to this community. He was born and raised in the area. Traveled through this Arroyo Seco for many, many years. In 1963 he purchased some property there 41 years ago and built a residence on it. With the vision of probably some day opening up his own restaurant. In 1966 he then purchased some property right next to it, probably with a vision of

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opening up a restaurant for himself. In 1971, he purchased some more property right next to it with a vision. In 1985 he purchased three more acres with a vision that some day he would open up a restaurant. In 1999 he purchase four more acres with a vision.

He has worked hard and I guarantee you if there was probably some more property there he's probably purchase that too. He's put in his time cooking, teaching cooking, and I think that it is time for him to have that opportunity to have his own restaurant. So, Mr. Chair, if Commissioner Duran has made a motion, I'll second that.

CHAIRMAN CAMPOS: There's no motion on the floor. Commissioner Sullivan, comments.

COMMISSIONER SULLIVAN: Mr. Chair, I think I got my questions answered, thank you.

CHAIRMAN CAMPOS: Okay, let me ask a question of Mr. Dalton. The El Valle de Arroyo Seco Highway Corridor Zoning District, when did we pass that?

MR. DALTON: Mr. Chair, I believe that was last year.

CHAIRMAN CAMPOS: Last year. And I assume Commissioner Duran voted for it. It was unanimous, wasn't it?

MR. DALTON: Mr. Chair, I'm not too sure on that.

CHAIRMAN CAMPOS: Did you vote for it, Commissioner Duran?

COMMISSIONER DURAN: Why don't you stick to the point?

CHAIRMAN CAMPOS: Did you?

COMMISSIONER DURAN: I don't remember.

CHAIRMAN CAMPOS: Did you forget? Okay. I think we all voted for it. We went along with the community. We had a discussion. We adopted it. And now the question is do we respect it or do we give a variance right up front for a huge change, 13 acres. That's a lot of land that would be commercial as opposed to home businesses. It's a huge change. And I can't support it. Is there a motion.

COMMISSIONER DURAN: Mr. Chair, move to approve the request for a variance with staff conditions. I think this is a use that has been afforded to his neighbors. I also believe that the plan, like all plans, are never perfect and this Board has the authority and the obligation to review the facts and amend those plans or grant variances to those plans.

CHAIRMAN CAMPOS: Is that a motion?

COMMISSIONER DURAN: I'm making a statement, if you don't mind.

CHAIRMAN CAMPOS: Okay.

COMMISSIONER DURAN: This Board has the obligation to review the facts and to grant variances when they are deemed appropriate. So my motion is to move for approval with staff conditions.

CHAIRMAN CAMPOS: There's no staff conditions, is there Mr. Dalton?

MR. DALTON: Mr. Chair, there's none.

CHAIRMAN CAMPOS: This would just be the variance. Then they would have to come back for a plan, right?

MR. DALTON: Correct.

CHAIRMAN CAMPOS: That's when the conditions would come into play.

COMMISSIONER DURAN: I stand corrected. Move for approval.

CHAIRMAN CAMPOS: Commissioner Anaya, you're seconding?

COMMISSIONER SULLIVAN: Discussion, Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I've had a problem on prior approvals of designating land for commercial, simply rezoning, which increases the value of the land for later land sales. And that seems to be a potential here as well and may also be a potential once the highway comes through in terms of the value of the land being greater. I'm wondering – again, we're dealing with a 13-acre parcel of land. Everyone seems to feel that it would be nice to have a good restaurant in Arroyo Seco and I'm a little confused about the map on Exhibit B. There's apparently three parcels of land and maybe Mr. Dalton can help me. Which way is the highway? Is the highway where it says site plan, or is that on the other side?

MR. DALTON: Mr. Chair, that would actually be on the right hand side of the paper.

COMMISSIONER SULLIVAN: Highway's on the right hand side.

MR. DALTON: Right.

COMMISSIONER SULLIVAN: Then where along the highway would the restaurant – some of these little squares on this drawing, this sketch, are houses, I guess. What are these little squares?

MR. DALTON: Mr. Chair, Commissioner Sullivan, those are actually homes on the property.

COMMISSIONER SULLIVAN: There's five homes on the property?

MR. DALTON: That's correct.

COMMISSIONER SULLIVAN: Okay, so there's five homes that I assume various family members live in. Okay. And where would the restaurant be?

MR. DALTON: Mr. Chair, I believe the applicant has stated on the last piece of property so that would be towards the bottom of the paper and I don't know if the applicant

COMMISSIONER SULLIVAN: The one down towards the bottom?

MR. DALTON: I believe that's what the applicant stated.

COMMISSIONER SULLIVAN: Is north up here towards Española?

MR. DALTON: Yes, north would be where it says site plan.

COMMISSIONER SULLIVAN: Okay, so that's toward Española. So the south end shows, and that snaky line through there, that's the arroyo. Is that correct?

MR. DALTON: That's correct.

COMMISSIONER SULLIVAN: Okay, so there's a house on the other side of the arroyo, so they must have to cross the arroyo to get to the house. Is that right?

MR. DALTON: I believe so.

COMMISSIONER SULLIVAN: And then on the front is where he's thinking about doing his restaurant, on that first parcel. Would it be possible to deal with only that first

parcel in this motion or this variance request?

CHAIRMAN CAMPOS: Commissioner, when you say the first parcel, are you talking about the one at the bottom of the page?

COMMISSIONER SULLIVAN: Correct. The one at the bottom of the page.

CHAIRMAN CAMPOS: Where Mr. Montoya would like to have a restaurant.

COMMISSIONER SULLIVAN: Correct.

CHAIRMAN CAMPOS: How many acres is that lot at the bottom?

MR. DALTON: Mr. Chair, I believe that's four acres, a little over four acres.

CHAIRMAN CAMPOS: Four acres. Okay. Now, Commissioner Sullivan, are you suggesting a friendly amendment to restrict this to the bottom four-acre lot?

COMMISSIONER SULLIVAN: I'm thinking out loud on it, Mr. Chair. Of course it's entirely up to the maker of the motion and the seconder. But I'm thinking is this - in your report it says, the third parcel consists of 4.65 acres and also has an existing residence. Is that the one we're talking about?

MR. DALTON: Mr. Chair, Commissioner Sullivan, I believe so.

COMMISSIONER SULLIVAN: Okay. If that's where he's thinking about having the restaurant, and these other things may come in the future and they may be needed. And they may raise some economic development in the area and some jobs, which is good. But I'm just having a problem on this blanket zoning changes which in my mind often results in land speculation. Any comments you want to add to that, Mr. Dalton? No. Maybe, Mr. Montoya, could you comment on that? Does that help you? It wouldn't give you everything that you want, but my question is does it help?

MR. MONTOYA: No, it doesn't. No, it doesn't.

COMMISSIONER SULLIVAN: It doesn't help you at all?

MR. MONTOYA: Something's better than nothing, I'll tell you that way. Because I think the last parcel that I bought would be the one to consider to work on then.

COMMISSIONER SULLIVAN: Is the last one the 4.65-acre one?

MR. MONTOYA: Yes, 4.1 something. Yes. That's the last one I purchased.

COMMISSIONER SULLIVAN: Mr. Chair, I'd be supportive, at this point in time, not saying that Mr. Montoya couldn't come back as his plans develop in the future, I could support the rezoning of that parcel with the intent that he's going to develop these local businesses that he says he'd going to.

CHAIRMAN CAMPOS: Mr. Montoya, may I ask you a question? This is almost a five-acre lot. I would assume that that would be sufficient for you to have your restaurant.

MR. MONTOYA: That one that we're talking about, yes.

CHAIRMAN CAMPOS: You could have a restaurant the size you want it with enough parking.

MR. MONTOYA: Yes. Any size, yes.

CHAIRMAN CAMPOS: Okay, there's a suggestion on the table.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER DURAN: I've been considering the immediate plans that the applicant has for his property that I would accept your amendment. I consider that a friendly amendment. And if he comes forward at a later date with specific uses we can discuss it then. You guys can discuss it then.

COMMISSIONER SULLIVAN: We'll consult with you.

CHAIRMAN CAMPOS: Okay, Commissioner Anaya?

COMMISSIONER ANAYA: Well, I'm trying to save him the hassle of coming back again because I know that's going to be – they're going to redo that road over there. They're going to have a frontage road on there. It is going to be commercial. And I don't see the harm in doing these three lots, these 13 acres right away, because they're going to come back and that is a commercial area. And when they put the new road through there and the frontage and a whole new interchange, which I know they're going to do, I think that we should save him the time and the energy because this is coming before the Commission, and I've done it, is a very stressful thing on a family. Very stressful.

CHAIRMAN CAMPOS: So you're not going to do it?

COMMISSIONER DURAN: Before you say no, before you say no, my only concern is that if you say no, then it's two to two and they have nothing.

COMMISSIONER ANAYA: I know, but I just wanted to share my point. But I'll go ahead and accept that amendment.

CHAIRMAN CAMPOS: Okay, so the motion now is to approve the southern-most lot, which is 4.65, for commercial. Mr. Dalton, is that a correct statement of the motion?

MR. DALTON: Mr. Chair, that would be correct.

CHAIRMAN CAMPOS: Okay, any further discussion?

The motion to approve the southern-most 4.65 acres in CDRC Case #V 04-5460 for commercial zoning passed by unanimous [4-0] voice vote. [Commissioner Montoya had recused himself from this action.]

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- XI. A. 7. CDRC Case #S/V 02-5291 – Rancho San Lucas. Monte Alto Homes & Land Inc., Applicant, Jim Siebert, Agent, Request Preliminary Plat and Development Plan Approval for a Residential Subdivision Consisting of 29 Lots on 128.16 Acres. The Request also Includes a Variance of Article VII, Section 2.2, Table 7.1, (Liquid Waste Disposal Requirements) and Article V, Section 9.3.1, Table 5.1 (Community Sewer Systems) to Allow Conventional Septic Tank, Leach Field Systems Rather than a Community Liquid Waste Disposal System or Nitrate Removal Systems. The Property is Located Off of Spur Ranch Road in Eldorado, within the Bishop John Lamy and Canada de Los Alamos Grants, within Sections 29 & 30, Township 15 North, Range 10 East (Commission District 5)**

VICKI LUCERO (Review Supervisor): Thank you, Mr. Chair. Monte Alto Homes and Lands, Inc., Maryann Stickler, applicant Jim Siebert, agent, request preliminary plat and development plan approval for a residential subdivision consisting of 29 lots on 128.16 acres. The request also includes a variance of Article VII, Section 2.2, Table 7.1, (Liquid Waste Disposal Requirements) and Article V, Section 9.3.1, Table 5.1 (Community Sewer Systems) to allow conventional septic tank, leach field systems rather than a community liquid waste disposal system or nitrate removal systems. the property is located off of Spur Ranch Road in Eldorado, within the Bishop John Lamy and Canada de Los Alamos Grants, within Sections 29 & 30, Township 15 North, Range 10 East, Commission District 5.

On September 16, 2004, the CDRC met and acted on this case. The decision of the CDRC was to recommend approval. On January 9, 1996, the BCC granted master plan approval for an 85-lot residential subdivision on 218.06 acres. The applicant is now requesting preliminary plat and development plan approval for the first phase of the development which consists of 29 lots on 128.16 acres, with lots ranging in size from 1.72 acres to 5.14 acres. The number of lots approved for phase I as part of the master plan was 49. The applicant has reduced the number of lots in order to comply with the requirements of the Eldorado Moratorium.

Variance: The applicant's request also includes two variances of the Land Development Code. These are variance of Article VII, Section 2.2, Table 7.1, and Article V, Section 9.3.1, Table 5.1, Community sewer systems, to allow conventional septic tanks and leach field systems rather than a community liquid waste disposal system or nitrate removal system.

Under the original application the applicant was requesting a variance for length of cul-de-sac. However, since then, they have redesigned the cul-de-sac to a looped road and that's why the variance is no longer needed.

This request was reviewed under the Eldorado Moratorium and the Land

Development Code for access, water, fire protection, liquid and solid waste, terrain management, lighting and signage, archeology, school impact, and open space.

Recommendation: The applicant is requesting variances to allow conventional septic systems rather than community liquid waste systems, or advanced treatment units with nitrate removal as required by Code. The County Hydrologist has reviewed this application and does not support the requested variances. Therefore staff recommends denial of the variances.

The application is in accordance with all the other requirements of Article V, Subdivision regulations of the County Land Development Code, and with the Eldorado Moratorium. The decision of the CDRC was to recommend approval of the variances requested, and preliminary development plan and plat approval, subject to the following conditions. Mr. Chair, may I enter the conditions into the record?

CHAIRMAN CAMPOS: They are so entered.

[The conditions are as follows:]

1. Compliance with applicable review comments from the following:
 - a) State Engineer
 - b) State Environment Department
 - c) Soil & Water District
 - d) State Department of Transportation
 - e) County Hydrologist
 - f) Development Review Director
 - g) County Fire Marshal
 - h) County Public Works
 - i) State Historic Preservation Office
 - j) Santa Fe Public Schools District
 - k) County Technical Review Division
2. Water use on this property will be restricted to 0.25 acre feet per year per lot. Water restriction covenants must be recorded with the final plat. A water meter must be installed for each residence and annual reading must be submitted to the County Hydrologist.
3. The standard County water restrictions, final homeowner's documents, and disclosure statement must be recorded with the final plat.
4. Road names and rural addressing must be approved by the County prior to recording the final plat.
5. The applicant will submit Homeowner's Association Bylaws, Articles of Incorporation, Water Covenants, Disclosure statement, restrictive covenants, and maintenance agreement for staff review and approval with the final plat application.
6. The applicant shall submit a financial guarantee, in the amount approved by the County, for all improvements including fire protection, road improvements, drainage improvements, retention ponding and landscaping/re-vegetation prior to grading permit issuance. The financial guarantee for landscaping and revegetation

- will be kept until plantings have taken, for a minimum of one year.
7. The development plan and plat with appropriate signatures shall be recorded with the Clerk's office.
 8. All staff redlines shall be addressed. Original redlines must be returned.
 9. This application is subject to final review and inspection by the County Fire Marshal. The applicant shall comply with all Fire Marshal requirements.
 10. The applicant shall pay a fire review fee in the amount of \$725.00 in accordance with Santa Fe County Resolution No. 2003-47, prior to recordation of the Final Development Plan.
 11. All utilities shall be underground. This shall be noted on the plat, covenants and disclosure statement.
 12. Each lot owner will be required to comply with the County's water harvesting requirements (Ordinance No. 2003-6). A water-harvesting plan shall be submitted with building permit application. This shall be noted on the plat, covenants, and disclosure statement.
 13. Homeowners association shall contract with a properly licensed company for removal of solid waste on a weekly basis. This shall be noted in the covenants and disclosure statement.
 14. A letter of commitment from EDU and proof of water right transfer will be required with the Final Plat application.
 15. Detailed engineering drawings for the all weather drainage crossing on Spur Ranch Road will be required with Final Plat application.
 16. The developer will share an equitable financial responsibility for maintenance of Spur Ranch Road with Tierra Colina and Rosa Linda Subdivisions.

CHAIRMAN CAMPOS: Question about Spur Ranch Road. Is this the road that's in really bad condition that we've talked about numerous times?

MS. LUCERO: Mr. Chair, I believe that it is a basecourse road.

CHAIRMAN CAMPOS: Is this the same road that we have had trouble with it because it's in bad condition and people complain about trouble getting in and out and no maintenance? Is this the same road? Okay, nobody knows. I think it is. Any questions of Ms. Lucero? Commissioner Sullivan.

COMMISSIONER SULLIVAN: Vicki, is this 29 units, is this the ultimate density of the project or is the first phase?

MS. LUCERO: Mr. Chair, Commissioner Sullivan, this is the first phase of that development. Originally, phase 1 was approved for 49 units but they've got it down to 29.

COMMISSIONER SULLIVAN: And how many units will ultimately be built, could be built?

MS. LUCERO: They were approved, the entire master plan was approved for 85 lots. So they could potentially go up to 85 once the moratorium is released but at

this point they've brought it down to the 29 for the first phase so they could stay beneath the moratorium guidelines.

COMMISSIONER SULLIVAN: Okay. Because I was reading part of the minutes and so forth and they indicated for 29 lots that it was uneconomical to build a sewer system and I don't know whether that's true or not but of course that is what the Code requires. If they were to get up to 80-some lots they would actually be larger than the Gardner development that we approved. I think it had 60-some lots that had a community sewer and water system. Okay. Just thinking out loud. Thank you very much.

CHAIRMAN CAMPOS: Commissioner Sullivan, is this the Spur Ranch Road that's been talked about before?

COMMISSIONER SULLIVAN: Yes. It varies in its quality.

CHAIRMAN CAMPOS: At this point, where the subdivision would access Spur Ranch Road, would they have a bad road to access?

COMMISSIONER SULLIVAN: Well, I think there's been a request from the Tierra Colinas homeowners that there be a road maintenance agreement with the subdivider and I think that was one of the conditions, wasn't it, Vicki?

MS. LUCERO: Mr. Chair, Commissioner Sullivan, yes. It's condition number 16.

COMMISSIONER SULLIVAN: So I've always felt that that road should be brought up to County standards by the adjacent subdividers but that hasn't been the decision of the Commission. It's been simply to require that each developer enter into a road maintenance agreement with the other, the Rosa Linda Subdivision.

CHAIRMAN CAMPOS: But didn't one developer agree to bring it up to County standards at one point early on?

COMMISSIONER SULLIVAN: No. I don't remember.

COMMISSIONER DURAN: Mr. Chair.

COMMISSIONER SULLIVAN: Sir.

COMMISSIONER DURAN: I think it was - oh, gosh, I forget his name. But I think they agreed to contribute to the maintenance of the road under a road maintenance agreement with Tierra Colinas. Isn't this close to that same subdivision that we approved. Do you remember the guy's name that came forward? He did ten-acre lots? 12.5-acre lots?

JOE CATANACH (Review Director): That was Rosa Linda Subdivision, R.J. McMillan.

COMMISSIONER DURAN: McMillan. Right. And he agreed to participate in the maintenance of that road as part of his approval, did he not?

MR. CATANACH: That's correct. And that's consistent with condition 16 that we referenced.

CHAIRMAN CAMPOS: As I understand it there's also a request from some folks out there that this road become a County road and it be brought up to County standards by the County. There's a memorandum circulating that I've seen. I guess they

want the County to pay for bringing it up to County standards and it would be a lot of money.

COMMISSIONER DURAN: One other question. How many more subdivisions out there have to contribute to this road to have the money available to bring it up to County standards. Excuse me, how many lots is this?

CHAIRMAN CAMPOS: Twenty-nine.

MS. LUCERO: Correct.

COMMISSIONER DURAN: And McMillan did – how many lots did he do?

MS. LUCERO: I don't recall.

CHAIRMAN CAMPOS: This is phase one of an 85-lot subdivision proposed.

MR. CATANACH: The Rosa Linda was not a very big subdivision. It was not over 24 lots.

COMMISSIONER DURAN: Right. Do we know how much it would cost to pave that road? Or to bring that road up to County standards?

MS. LUCERO: Mr. Chair, Commissioner Duran, at this point I don't have the figures for that.

COMMISSIONER DURAN: Joe, do you remember when he came up what that cost was?

MR. CATANACH: To pave that road?

COMMISSIONER DURAN: Or to bring it up to County standards.

MR. CATANACH: County standards as far as basecourse surface? I don't recall the –

COMMISSIONER DURAN: I don't either. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Any more questions of Ms. Lucero? Could the applicant come forward.

COMMISSIONER DURAN: Oh, here's the guy that will have that answer.

[Duly sworn, Jim Siebert testified as follows:]

JIM SIEBERT: My name is Jim Siebert. My address is 915 Mercer. What I'd like to do is hand out two exhibits. They may be in your packet.

CHAIRMAN CAMPOS: What are they about, Mr. Siebert?

MR. SIEBERT: One is a petition actually supporting the development from adjoining neighbors or residents in the area. [Exhibit 1] and the other is a letter from Maryann Stickler who is the owner of the property and the developer just stating that she would work with the Tierra Colinas association to create an equitable maintenance of the roadway. [Exhibit 2]

CHAIRMAN CAMPOS: The petition is about what?

MR. SIEBERT: The petition is actually in support of the subdivision, reducing it from 49 lots to 29 lots.

CHAIRMAN CAMPOS: Okay.

MR. SIEBERT: Let me clarify one issue about the number of lots and the phasing. Maryann Stickler actually owns 128 acres which is everything you see within the subdivision. She does not – there was another tract that was part of the original master plan approval, she doesn't own that. That's owned by Pat Coughlin. So the properties that Maryann Stickler owns will be 29 lots and never more than 29. The original subdivision approval that was granted several years ago actually is 49 lots and this was actually approved several years ago. So she has made a commitment to never develop more than 29 lots where she had the ability originally to develop it at 49 lots.

The other issue I'd like to discuss is the one of the variance from the community sewer system. What I'd like to point out is by going to 29 lots versus the 49 lots the average density is about one dwelling for 4.4 acres. So it's significantly lower than it was. What's happened is, what's caused the variance that any time you drop below 2.5 acres you're required to have a variance from the community sewer system. We could comply with that requirement. There's seven lots in here, the interior lots are less than 2.5 acres. We could literally comply with that requirement by just simply adjusting some lots, making them bigger. And then a variance would not be required from the County Code standards.

The reason we're requesting the variance, that all that accomplishes is to reduce the area of the open space and force them more into – this is a floodplain area, force more into the floodplain area by doing so. So there's really – we would still have 29 septic tanks. We could comply with the literal requirements of the Santa Fe County Land Development Code. But we'd still end up with 29 septic tanks. So that's the reason that we're requesting the variance from the community sewer standards.

The other thing I'd like to point out is that Maryann Stickler has been working with the neighbors for several years now and the petition was something actually she did not solicit herself. It's something that was offered by the neighbors in the area. And Maryann Stickler, I'll answer any technical questions you may have. Maryann Stickler would also like to –

CHAIRMAN CAMPOS: A few questions before you shift gears here. Do you accept all conditions, one through 16?

MR. SIEBERT: Yes.

CHAIRMAN CAMPOS: No objection?

MR. SIEBERT: No objection.

CHAIRMAN CAMPOS: Okay, Ms. Stickler, do you have a brief comment to make?

MARYANN STICKLER: I'd just want to give a bit of history about what has happened between the time that my parcel of land, which is 128 acres, was given master plan approval for 49 lots and now, and that was in negotiation with the County which was going quite successfully to create 24 residential lots to be hooked up to the Eldorado water system and set aside the rest of my acreage for a potential second phase to be developed at a later time based on water availability at that time. Rather than perpetuate the very long-standing work and effort of my both the County and my consultants and

myself, I decided to try to go forward with the plan that would reduce density on this property with a final plan, with full build-out at 29 lots and abandon the prior approval of 49 potential lots.

This brings the density of my portion of Rancho San Lucas more into conformity with the surrounding subdivisions of Tierra Colinas, Tierra de Casta and Ranchitos de Santa Fe, and also to develop some larger lots around the entire perimeter of my parcel, giving a little more view protection which has been limited now because of the loss of some of the pinon trees due to the bark beetle blight. So really the whole landscape has changed in the time that this property had been master plan approved. So I revisited it, redesigned it basically from scratch and tried to address both the visual corridor concerns as well as of course the wastewater, the drinking water and the road access concerns, to a satisfaction of the neighbors.

CHAIRMAN CAMPOS: Ms. Stickler, if you wanted to go 49 lots, could you get that much water from EDU?

MS. STICKLER: I have had an application into the State Engineer's Office for about three years for the assignment of water rights with a report on supporting the water supply from a well that I drilled at my expense on the property that would have supported 49 lots. Upon the approval of the final subdivision and development plan for Rancho San Lucas I will be giving a well and water rights associated with that well to EDU as part of an agreement to be hooked up to EDU. They get the same well as they would have gotten if I'd gone forward with the 49 lot plan.

CHAIRMAN CAMPOS: Do you have enough rights to water from EDU to do 49 units?

MS. STICKLER: Well, what I've done is I've actually amended my request to the State Engineer's Office to transfer only enough water rights to the well to support the 29-lot subdivision because I didn't want to purchase more water rights than I needed. I did have under contract enough water rights for all 49 lots but I have since waived the purchase of the excess water rights to what I need to support the 29 lots plus the 20 percent surplus which is required by the moratorium.

CHAIRMAN CAMPOS: Well, I would argue that we want more density if you're on EDU and on a community wastewater system and less. What you're proposing is more sprawl and if you have the infrastructure and you could put 49 units on that infrastructure efficiently with good roads and water and wastewater, why not do that?

MS. STICKLER: I would have loved to, Chairman Campos. I'm tired, frankly, and I think this is just the easiest way to get this project done.

CHAIRMAN CAMPOS: I just don't favor the sprawl concept, especially out in the Eldorado area where you have enough water. We do have a water system out there and it should be used efficiently. That's just a comment.

MS. STICKLER: Well, the neighbors have asked from the beginning -

CHAIRMAN CAMPOS: I understand what the neighbors are asking. I just have a different idea about that. Okay, any other questions or comments?

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Go ahead.

COMMISSIONER DURAN: I disagree with your comment that sprawl is taking place out there. I think they have a water issue out there and to promote more homes just taxes the system out there and I think this is a reasonable request. So I disagree with your analysis of the application.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Thank you, Ms. Stickler. This is for Jim. Jim, in looking at the State Engineer's report, he says that there is one completed well, RG 72-559 that exists in the aquifer that the developer proposes will supply the subdivision. This well did not recover from the pump test performed on the aquifer. This indicates that the aquifer is limited in extent and the water in storage is diminishing. This leads the Office of the State Engineer to conclude that any predictions of its long-term capabilities will have a high degree of uncertainty. This is the well that you would be - is this the well that you would be transferring to EDU?

MR. SIEBERT: Correct.

COMMISSIONER SULLIVAN: Then I was looking at the CDRC minutes and Member Holian brought up this same question at that meeting. And the response was that that was for - what they had in front of them at the time was for a 49-lot subdivision and that since then the applicant had scaled it down to a 29-lot subdivision. But the July 19th letter that I just read from was the revised letter for the 29-lot subdivision. So they apparently still seem to feel that way. So I just want to get your comment on why you feel that your interpretation differs from the State Engineer's on the capacity of that well?

MR. SIEBERT: Mr. Chair, Commissioner Sullivan, we have Mustefa Chudnoff here who is with Glorieta GeoScience who is familiar with the project and I'm not a hydrologist so I'm going to ask him to -

COMMISSIONER SULLIVAN: Before you do that, let me ask if Mr. Wust would give a staff response to that, because I believe your response was, or your evaluation was that there is a 100-year water supply available under the parcel or under the tract as you go through the calculations. Was that correct?

DR. WUST: Mr. Chair, Commissioner Sullivan, that is true, but only for the 29 lots. That's actually - originally, the evaluation was for the full 49 or whatever, and they did not demonstrate sufficient water availability and that was one of the reasons it came back with a reduced number of lot sizes. There was further modeling and testing done and it did demonstrate sufficient water availability for the 29-lot subdivision.

COMMISSIONER SULLIVAN: Right. I saw your analysis in there that it came up with 7.1 acre-feet or something like that. But how does that jibe with the State Engineer's comment that the well didn't recover from the pump test. We're talking about the same well, aren't we?

DR. WUST: Mr. Chair, Commissioner Sullivan, actually, you'll see that in my evaluation too. That's the lingering concern that it never came back to its original

water level, although the pump test and the various saturated thickness and yields and things like that suggest there was sufficient water availability but there was that lingering concern that it had not recovered it's water level to the original level and that's an ongoing level.

COMMISSIONER SULLIVAN: So there's some limitation to the modeling here that sometimes we have to take into account.

DR. WUST: Mr. Chair, Commissioner Sullivan, that's correct. It's probably due to the fact that if you read through the history of the hydrology reports and then my analysis is that they drilled into a fracture zone and that is of limited extent. And it seemed apparent when they did the pumping test that they reached the edge of that higher yielding aquifer that is the fracture zone and the aquifer outside of that fracture zone is much lower yielding and much lower transmissivity and so what you see is an effect of that, I believe.

COMMISSIONER SULLIVAN: So then with our analysis, or yours, that it does meet the requirements of the 100-year water, then once the water rights were obtained of course and transferred. I understand they already are obtained and transferred to EDU, along with the 20 percent reserve, EDU then becomes the owner of that well and it goes onto the overall EDU system. Is that correct?

DR. WUST: Commissioner Sullivan, that's correct.

COMMISSIONER SULLIVAN: So then if this well poops out, I assume the 29 families in this subdivision are going to still want water. Where does that water come from?

DR. WUST: Well, if they're hooked up to the system they will get it through the system just like any other community water system. They'll have multiple sources, just like the County does or the City. And that if one well creates a problem then the system itself should be hopefully viable as a whole. For example, using the Lamy well in EDU, it produced 40 percent of the water during parts of the year and now it produces almost nothing. So they drilled supplemental wells and all that to make up for it. What I don't know under the moratorium, just because I haven't read that particular piece of it at the moment is that if they bring in more water rights than the County has agreed to showing a 100-year water availability, if that's the total amount that gets to be transferred over to EDU or if they're limited to what they can demonstrate 100-year water availability to the County's satisfaction. But that's a question of the moratorium. I don't know how the language reads.

COMMISSIONER SULLIVAN: Okay. I think Ms. Stickler just testified that she intended to transfer the minimum that was required, obviously. No sense transferring more than you need. One last question then, Jim. On the sewer, you indicate that that would be too expensive to put in a sewer system and you mention also that the 29 lots are on the one side of the arroyo. So if you did build these additional lots and move to this 2.5-acre configuration where you wouldn't need the variance, then you'd have to go on the other side of the arroyo. Is that right?

MR. SIEBERT: Well, what we could do is just simply extend some of the lots into the arroyo. It would become a non-buildable area but that would be away.

COMMISSIONER SULLIVAN: You mention something about an extensive arroyo crossing being required if you did that.

MR. SIEBERT: No, we wouldn't have to develop – that was one advantage of taking the 29 units and clustering them all on one side of the arroyo.

COMMISSIONER SULLIVAN: No, I understand that. But if you went with the different configuration that we were talking about is where I was getting to which would not require the variance, where you wouldn't have as much open space. You'd have to go on the other side of the arroyo.

MR. SIEBERT: No, not necessarily. You could probably – that would be one option. We could accomplish that by crossing the arroyo and putting lots on the other side. But it would probably be more reasonable just simply to encroach on the open space to the point where we have on the other side of the arroyo.

COMMISSIONER SULLIVAN: And what would be the cost of sewerage the lots, putting in a sewer system?

MR. SIEBERT: Well, my guess as kind of a round number is you're probably looking at about \$10,000 a lot for a community sewer system.

COMMISSIONER SULLIVAN: Okay. And these lots would sell for how much?

MR. SIEBERT: Commissioner, I'm not sure of that. I don't do that. I'm a planner.

COMMISSIONER SULLIVAN: Okay. Have there been any studies on preliminary designs, cost estimates on what it would cost to sewer it?

MR. SIEBERT: No, we have not looked at the community sewer option at this point. Obviously, when it was 49 lots it would have been on a community sewer system. Now that it's 29 lots we forego that option.

COMMISSIONER SULLIVAN: But other than your guestimate of \$10,000 a lot there's nothing –

MR. SIEBERT: We have done no engineering evaluations of the facility requirements for a community sewer system.

COMMISSIONER SULLIVAN: So if that were true, that estimate, then that would be \$290,000 to put a sewer system in.

MR. SIEBERT: Correct. My guess is you're probably looking at \$290,000 to \$350,000.

COMMISSIONER SULLIVAN: Okay. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: Jim, what would the ramifications be if the variance was denied?

MR. SIEBERT: We would simply redesign the lots so that no lot was less than 2 1/2 acres. We have run the percolation tests and the soils are suitable for septic

tanks on lots of the sizes were proposing and we are in conformance with all NMED standards.

COMMISSIONER MONTROYA: Okay. Thank you.

CHAIRMAN CAMPOS: Any other questions. Okay, this is a public hearing. Anybody out there like to speak for or against? Okay, no one having come forward the public hearing is closed. Any questions or comments from the Commission?

COMMISSIONER SULLIVAN: Mr. Chair, I'd just like to add that we have a Code and the Code indicates over a certain number of lots we put in a community sewer system or nitrate removal system. It's not even required to do a community sewer. It can be advanced treatment units with nitrate removal. I don't see why we just don't do that if it's \$290,000 or if it's half of \$290,000, if they're advanced units, I don't see any compelling argument that dictates this variance. Thank you.

CHAIRMAN CAMPOS: Another comment, it's the same comment, Mr. Siebert and Ms. Stickler, is that I think it should be 49 lots, not 29. I think the County is being asked to invest a lot of money out there in a water system. The community will own its own water system, probably within the next few months. If we're going to invest all that money we can't invest it in sprawl and this is what you're proposing. So that is my comment in our discussion here. Any other comments?

MR. SIEBERT: Mr. Chair, may I respond to that?

CHAIRMAN CAMPOS: Any other comments?

COMMISSIONER DURAN: I'll yield the floor to Mr. Siebert.

MR. SIEBERT: I think the issue is, you heard from Mr. Wust regarding the review. This has been under hydrologic review for years now and I think Maryann Stickler has just come to the point that she would rather reduce the density and not argue over what kinds of geo-hydrologic analysis that she has to continue to do. So the intent is - she just simply could not accomplish a higher density even if she wanted to. I think that's my point here.

CHAIRMAN CAMPOS: So the reduction is not just voluntary; it's a lack of ability to have water for these 49 lots.

MR. SIEBERT: Perhaps if she went out and drilled another two wells and did more geo-hydrologic testing she could prove that. But she is at a point in her life where that's not what she wants to do.

CHAIRMAN CAMPOS: Dr. Wust, any comments on that? There has been a long-standing discussion, I assume, with the applicant here about water availability, EDU. Could you just give me a little context?

DR. WUST: Mr. Chair, sure. There actually was another well out there and it collapsed or something so it wasn't useful. But the geologic evidence suggests that as I mentioned before that the current well is drilled in a fracture zone and outside of that fracture zone the characteristics of the aquifer degrade, possibly quite a bit. And therefore there's no way - the only way to demonstrate the sufficient water availability over the entire acreage would be to drill a new well to demonstrate that and that hasn't been done

and since the geologic evidence suggests that the characteristics degrade outside the fracture zone then that is what we need to use to make a realistic estimate of the water availability and Mr. Siebert's right. The applicant could go out and drill another well but that doesn't necessarily mean that they'll demonstrate more water. They could easily go out there and confirm that the aquifer isn't as good and prove up that there's limited water availability in that area.

CHAIRMAN CAMPOS: So basically, EDU is not really going to supply them with any water? They are going to supply themselves from their own wells?

DR. WUST: Mr. Chair, under the moratorium ordinance, they have the option to make a deal with EDU and bring a well over and hook up or to provide their own water system and that is the option that's being pursued.

CHAIRMAN CAMPOS: Their own water system.

DR. WUST: Yes, Mr. Chair.

CHAIRMAN CAMPOS: I thought there was mention of EDU providing water in this case.

DR. WUST: I believe they're using their own.

CHAIRMAN CAMPOS: Does EDU have a line out there?

DR. WUST: I may be confused now, Mr. Chair.

COMMISSIONER DURAN: Mr. Chair, my understanding is that they're transferring the rights that they have to this well to EDU and EDU is going to provide them water. Is that not true?

MS. LUCERO: Mr. Chair, Commissioner Duran, that's correct. They do have a well on the property.

COMMISSIONER DURAN: So they're not developing their own system. The aquifer that EDU is tied into is the same aquifer that this well is in and they're transferring that right to drill out of their well to EDU's well. So there is no impact because it's still in the same aquifer.

COMMISSIONER SULLIVAN: That's not quite right because they, under the ordinance, they put their well into the EDU system. In other words, their well becomes now a part of the EDU system.

COMMISSIONER DURAN: So they're going to actually pump from their well?

COMMISSIONER SULLIVAN: You got it. And they're going to pump from other EDU wells as well if this well doesn't produce. So that's the intent.

COMMISSIONER DURAN: It becomes part of the system.

COMMISSIONER SULLIVAN: Correct. It becomes part of the whole EDU system, so the question is, if I'm adding 29 houses, if I'm adding 49 houses, can this well produce 49 houses worth of water? And the answer is no.

CHAIRMAN CAMPOS: Or the system.

COMMISSIONER SULLIVAN: Or the system.

CHAIRMAN CAMPOS: They're connected to the system, but the system is

tapped out.

COMMISSIONER SULLIVAN: The system is tapped out so it's the incremental analysis that Mr. Wust has to make is will this well add 49 units worth of water to the system and that answer was no. So then he did another analysis and said it would work for 29 units, except we have this little problem that after they pumped it it didn't recover. So what does that mean.

COMMISSIONER DURAN: Well, let me ask you, it didn't recover -

COMMISSIONER SULLIVAN: To its existing level before they started pumping it.

COMMISSIONER DURAN: Do they pump it at a different rate for 49 lots than they do for 29? Or is it -

COMMISSIONER SULLIVAN: You'll have to ask Mr. Wust that.

DR. WUST: Mr. Chair, Commissioner Duran, the pump test is just done at a rate designed to stress the aquifer to tell you about the aquifer characteristics. So it's not pumped at a rate to supply any certain number of units, it's pumped at a rate to stress the aquifer because that's how you develop these characteristics and generally the pump test is done at a higher rate than you expect to use it to supply any number of homes.

COMMISSIONER DURAN: So the recovery rate really had nothing to do whether that well is capable of producing water for 49 or 29 lots. The recovery is just a function of the test.

DR. WUST: The recovery rate - you look at the curve and the way it rises. That was not an issue. The recovery rate seemed to be confirming what the pumping showed in terms of the aquifer characteristics. The difference is it never recovered back to its original water level.

COMMISSIONER DURAN: And it never has to this day, or it just hadn't during the period of time that the test -

DR. WUST: The last piece of data that I saw, which was a couple of years I think after the pump test was done it had not. I don't know if it has to date. Even when they hook up to EDU though, under the moratorium they have to show sufficient water availability in their well. Even if they're trading it over to EDU, and that's where the 49 to 29 difference still came in.

CHAIRMAN CAMPOS: Okay. I guess we've had enough discussion. Any more questions or comments? Is there a motion?

COMMISSIONER SULLIVAN: Mr. Chair, we're only dealing with a variance here, not the subdivision. Is that correct? The variance for the wastewater. Is that correct?

CHAIRMAN CAMPOS: They're asking for preliminary plat and development plan for a residential subdivision consisting of 29 lots on 108 acres.

COMMISSIONER SULLIVAN: I would move to accept the staff's recommendation for approval of preliminary plat and development plan with the requirement that -

CHAIRMAN CAMPOS: With conditions?

COMMISSIONER SULLIVAN: With conditions and the requirement that a sewer system be included as recommended by the staff.

CHAIRMAN CAMPOS: Okay, is there a second?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER MONTOYA: What about the variance?

CHAIRMAN CAMPOS: Commissioner Sullivan says -

COMMISSIONER SULLIVAN: Deny the variance. Staff recommended denial of the variance which only pertained to the wastewater portion of the project. So that was my recommendation to accept the staff's recommendation to deny the wastewater portion of the variance but to approve the subdivision preliminary plat and development plan.

COMMISSIONER MONTOYA: Second.

COMMISSIONER DURAN: So are you requiring a wastewater system or not?

CHAIRMAN CAMPOS: Yes.

COMMISSIONER SULLIVAN: Yes.

CHAIRMAN CAMPOS: There's a second. Any further discussion?

The motion to approve CDRC Case #S/V 02-5291 passed by majority 3-2 voice vote with Commissioner Duran and Commissioner Anaya voting against.

CHAIRMAN CAMPOS: Commissioner Duran, you suggested that we should move the Dominic Vigil appeal up a little bit?

COMMISSIONER DURAN: Oh, yes. Thank you for reminding me. I was just wondering if the Commission would mind bringing that forward. I think the next two cases might take some time and there are a lot of people from the surrounding neighborhood that came here to participate and I know that the longer we stay here the less people are here to participate.

CHAIRMAN CAMPOS: How many people are there that would like to testify in that case? Just raise your hand. What do you think? If there's no objection, let's move it up. Is that okay?

XI. A. 10. CDRC Case #APP 04-5470 – Dominic Vigil Appeal. Dominic Vigil, Applicant, is Appealing the CDRC’s Decision to Deny a Home Occupation Business License for a Roofing Company on 2.3 Acres. The Property is Located at 14 Sloman Court in Alameda Ranchettes Subdivision, within Section 25, Township 17 North, Range 8 East (Commission District 2).

DOMINIC GONZALES (Review Specialist): Thank you, Mr. Chair. Dominic Vigil, applicant, and Karl Sommer, agent request an appeal to the County Development Review Committee’s decision to deny a home occupation license for a roofing business on 2.3 acres.

On September 16, 2004 the CDRC met and acted on this case. The decision of the CDRC was to deny a home occupation business for a roofing business on 2.3 acres. Article III, Section 3.2.3 of the Land Development Code states the use of the residence for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants. Not more than 50 percent of the floor area of the dwelling including accessory buildings shall be used in the conduct of the business, there shall be no change in the outside of the building or premises or other visible evidence of the conduct of a home occupation except one non-illuminated nameplate sign. Construction walls, fences, sheds, studios or other accessory structures to provide for storage of materials and equipment are allowed as long as the floor area limitation of 50 percent of the residence including accessory buildings are met. The home occupation shall not involve operations or structures not in keeping with the residential character of the neighborhood. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood. Parking for employees and for customers and clients shall be adequate.

Recommendation: Staff recommends denial of the appeal based on a letter from the Land Use Administrator dated August 12, 2004.

CHAIRMAN CAMPOS: Questions of Mr. Gonzales? Okay, applicant, representative. Please state your name and address.

KARL SOMMER: My name is Karl Sommer. My address is Post Office Box 1984, and I have with me here tonight Mr. Dominic Vigil.

DOMINIC VIGIL: My name is Dominic Vigil. I live at 14 Sloman Court, Santa Fe.

CHAIRMAN CAMPOS: Do you intend to testify?

MR. VIGIL: Yes.

CHAIRMAN CAMPOS: We’ll have to swear you in.

MR. SOMMER: When we get a little further along.

[Mr. Dominic Vigil was placed under oath.]

MR. SOMMER: Members of the Commission, this case is about a young man, Mr. Dominic Vigil, his wife, Jessica, and their family. They were born, raised, live

and work here. And the case is principally about whether this family or any family in a similar situation in this community is going to be allowed to do exactly that, which is to be born, raised, live and work here, under the Code. That's what this case is fundamentally about.

What we intend to show is to tell you what Dominic and his family has done on the property that is the subject matter of this appeal. To show you that Dominic has met every criteria of the Code relating to home occupations as that has been interpreted and applied in this county for years. We intend to show you that the Land Use Department in this year alone has issued and allowed home occupation permits for this exact same business in the county for businesses very similar to this, construction company businesses, under home occupations and those cases met the criteria of the Code. And we intend to address the accusations and allegations of Mr. Vigil's neighbors to demonstrate that what's being said is actually not what's going on out there.

But first I'd like to have Mr. Vigil tell you in his own words why he brought the property, what he did to investigate the purchase of the property, how he's been using the property and how he intends to use the property in the future. And then I'd like to go through, Mr. Chair, the remainder of our presentation, the Code requirements and the other things that I just mentioned.

CHAIRMAN CAMPOS: Just so that we're focused and to the issues.

MR. VIGIL: I bought this land on 14 Sloman Court, had a house built on it already, and I was looking for a while for a place where I could live and also have my business. So that's what I specifically told my realtor, which was having for me to look for a place. So she had found me this place. I really liked it and she said that everything was okay. She showed me the covenants and the Code and so forth and that the home occupation was allowed according to the restrictive covenants.

So I came over to the County and found out what it was and so forth and they told me what I needed to do and I closed on the land. I took all my trucks over there and everything and I was given a violation from the County for not applying for a home occupation license prior to moving my stuff there. And so I told them that I'd take care of that and I also started to built a fence, which I didn't have a permit for and so forth. So I got the permit for that. I finally got everything straightened out with the County and they gave me a paper which stated how I could get approved and what circumstances I needed to fit into to be approved.

And I feel that I do fit into those circumstances. Just a few months ago another roofing company was approved for the same situation, same - lives in the county, has the same home occupation code and he was approved. So I figured I don't see where I'm wrong in trying to do this. I don't employ more than - at times there has been about six employees but usually on an average daily basis about three. According to the Code you can have up to six employees. You can even have a backhoe, a large piece of equipment, which I don't have. I do have - I have commercial, large dump truck. Yes, I do have a roofing kettle, and they state that there's a lot of tar smell and so forth and that's not true.

We don't even do hot tar roofing every day. It's more of the torch applied system. We use the kettle maybe once, maybe twice a week. And when I do use it, I don't heat it up over there at my place. We take it to the job site. It's heated up there and it will stay there until it's cold the next day. And you cannot smell any fumes or anything from the kettle when it's cold. It's just like if you're smelling a paved road. You cannot smell it. Unless it's hot. That's the only way, and it's never on the property when it's hot.

So that's why I'm here. That was my whole intention of purchasing this property. If I get denied I don't know what I'm supposed to do but I'm just trying to comply with the Code.

MR. SOMMER: Let me ask you, Mr. Vigil - I'm going to hand out a map. [Exhibit 3] If you could describe for the Commissioners what's on this map and how it relates to what you do on the property.

MR. VIGIL: Okay, out here, I have outlined where the fence is. This is where I have the fence, where I keep all the equipment. In the back there, that's the storage shed which I have built and it's about a 600 square foot building and it's less than 50 percent of my residence.

MR. SOMMER: What lot do you own?

MR. VIGIL: Lot B.

MR. SOMMER: And in Lot B I see a red triangle. Describe for the Commission what that red triangle is.

MR. VIGIL: That red triangle is approximately where the fence is located, where I have my shed, which all equipment is stored in there. In that red triangle, that's where my three trucks are parked.

MR. SOMMER: How tall is that fence?

MR. VIGIL: That fence is an eight-foot fence.

MR. SOMMER: The equipment that you store, where do you store it on your property, where will you store it?

MR. VIGIL: That is all being stored in the accessory building which is almost completed.

MR. SOMMER: From any of the surrounding properties can you see what's on the inside of the fence?

MR. VIGIL: No. You cannot even see the big trucks from the inside.

MR. SOMMER: Okay. Can you see the top of the shed over the top?

MR. VIGIL: Yes.

MR. SOMMER: Is that the only thing you can see?

MR. VIGIL: That's the only thing. Yes.

MR. SOMMER: Okay, how many square feet is the shed?

MR. VIGIL: It's about 600 square feet, approximately.

MR. SOMMER: Okay. Did you get a permit for the fence?

MR. VIGIL: Yes, I did.

MR. SOMMER: Do you know whether under your covenants you're

allowed to have a fence?

MR. VIGIL: I believe so. I don't see why the permit would have been issued if not.

MR. SOMMER: Are there other sheds in the neighborhood?

MR. VIGIL: Yes. Similar structures to that. Same thing.

MR. SOMMER: Did you get a permit for the shed?

MR. VIGIL: Yes, I did.

MR. SOMMER: Did you get a permit for the fence?

MR. VIGIL: Yes, I did.

MR. SOMMER: Could you describe where initially, for the Commission, where you put the fence?

MR. VIGIL: Well, originally I put it on the wrong – it was passing over the easement here, which was originally the problem and which was my mistake. It wasn't done intentionally. So I did have it removed. Of course I had to have it removed. It wasn't on my lot. It went a little over on to Lot A, so I took it down and moved it where it was supposed to be. I had it surveyed, resurveyed again. So I moved it to where that red triangle is. And it's not as big as it's shown on here, actually, where it's drawn up. The house, it seems like the residence is real small compared to the fence. The fence is not that big.

MR. SOMMER: Describe for the Commission exactly what materials you store on the property in the shed.

MR. VIGIL: It's not really too much materials. There is some roofing rolls that are stored in there. Nails, small stuff. I usually don't store much material except what is left over from the job site I'll bring back to the yard. It's mostly just the shovels, the tools, the mops we use, the torches. It's mostly tools but yes there is some material in there but it's not – I know in one of the letters it said that they're concerned that some of the chemicals might be hazardous to the well, or – but there's nothing in that manner. It's all rolled roofing.

MR. SOMMER: I'm going to turn your attention to an e-mail that was sent to Commission by, it looks like Gunhild and Orbrey Sloman. [Exhibit 4] And I'm going to turn your attention to paragraph 4, where it says, Our lot is over several lots from Mr. Vigil that we were awoken at 5:15, 5:20, 5:25 5:40 and 5:45. Have you ever had any of your employees show up at your house at 5:00?

MR. VIGIL: Not that early. The very earliest we start at 7:00. That's in the summer and in the winter it's 8:00. I don't see why I would have my employees show up in 20 minute increments. That doesn't make no sense.

MR. SOMMER: The remainder of that sentence says that there was loud banging on metal and vulgarities being shouted. Do your employees bang on metal at 5:00 in the morning?

MR. VIGIL: No, no. I have a son. I don't see why I would allow them to be cussing in front of him.

MR. SOMMER: And it says that you were doing this to harass Ms. Ernestine Hagman. Who is she?

MR. VIGIL: She is our closest neighbor. She's the one that I've got acquainted with a little bit.

MR. SOMMER: Have you ever done anything to harass her?

MR. VIGIL: No. No.

MR. SOMMER: I'm going to turn your attention to the letter written by Ms. Hagman's lawyer saying on page 2 that recently a large truck from an industrial uniform supplier was seen delivering uniforms and supplies to the site. It was so large that it couldn't even turn around in the residential cul-de-sac in the neighborhood. Could you describe to the Commission what comes to your -

MR. VIGIL: Okay, that truck. I have that truck come. It comes once a week and it's for our uniforms. For our clothes. It's not a very large - they don't bring any supplies except for clothes. It's the size of a UPS truck, which I don't see how they couldn't turn around because the UPS truck is always in and out that street. It's the same exact size as that UPS truck. As I say, it doesn't bring supplies; it just brings our uniforms.

MR. SOMMER: Let me ask you, aside from the trucks coming in and out of the property, is there any other traffic that's generated by your business, other than your employees coming to work and leaving?

MR. VIGIL: No. No customers come to the site. It's just where I keep my trucks.

MR. SOMMER: Members of the Commission, you are fully aware of the elements that a home occupation is required to have. The Code is very specific. It says, and it has just five elements that have to be met. And those are that not more than six persons other than family members on the premises shall be regularly engaged at work at the site in the home occupation. He's told you he had no more than six employees, usually about three. So that element is met.

The use of the dwelling for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants. And not more than 50 percent of the floor area of the dwelling, including accessory buildings shall be used in the conduct of the home occupation. Mr. Vigil's residence is 1500 square feet. The shed that he's put up is about 650 square feet. It clearly meets the requirement and that's the portion of the property that is used for the home occupation and it meets that requirement. We'll demonstrate to you that the other applications that have been considered under this standard have also met the exact same standard.

There shall be no change in the outside appearance or premises nor other visible evidence of the conduct of a home occupation except for one sign. Now, what does that mean under the Code? What are the visible changes in this home occupation? The only thing that Mr. Vigil has done is put up a shed which is allowed under the Code for residential purposes, and he's put up a fence, which is allowed for residential purposes

under the Code. He has not change the appearance of his home. The only evidence of a home occupation is that there are vehicles, vehicles that come and go to the site. Now, does the Code mean that you can't have vehicles? Obviously, it can't mean that because no one would be able to meet the requirement if it meant that you could not have vehicles coming to the property.

So, a fence, a shed, a house. That is the normal appearance of a residence in Santa Fe County or is a typical appearance of a residence in Santa Fe County. So Mr. Vigil has met that requirement.

Parking for employees shall be provided off-street. He meets that requirement. Nobody's challenged that.

No equipment or process shall be used in the home occupation which significantly interferes with the existing use of the property in the adjacent area. Nothing is used on site. Mr. Vigil stores his vehicles there and stores whatever material and hand tools he has. Everything is used offsite.

The five requirements of the Code are pretty straightforward and pretty clear. And Mr. Vigil has met this. The only big difference in this case from the cases that I'm going to talk to you about is that there is an organized group of neighbors who oppose Mr. Vigil. I'm going to hand out to you, and I only went back nine months in the records. And I looked for home occupations that have been initiated in this county under this regulation by this Land Use Office. [Exhibit 5]. I'm going to walk you through them because it's important. It goes to the heart of this case.

On top is the application - excuse me. You will see the application of Ms. Virginia Padilla and LP Roofing Company. This is a home occupation application filed under our Code and it was filed on April 14th of this year. There have been no changes in the Code. Not one. If you walk through this application with me, go to page 2 of the application, you'll see that Ms. Padilla told the Land Use Department -

COMMISSIONER DURAN: Karl, there is no Ms. Padilla. What you gave us starts with Red Earth Construction.

MR. SOMMER: Okay. It's not the first one on top. It's like the third one down. I'm sorry.

COMMISSIONER DURAN: Thank you.

MR. SOMMER: It's called Padilla, Virginia A. The second page says, Will there be any company vehicles parked on the premises? Yes. In answer to the question, What vehicles does she have? One, two, three, four. Four vehicles and kettles. Mr. Vigil has three vehicles and kettles. If you go through this application even further you will see that Ms. Padilla in this application has a garage which is 1,216 square feet. You'll find that on the fifth page of the application where it says 1,216 square feet of the garage will be used for the business. And she describes in this application that she stores her materials in that portion of their 2,000 square foot garage. So the same standard that was applied to Ms. Padilla's application is being applied in this case with an entirely different result.

COMMISSIONER DURAN: Karl, could I ask you a quick question?

MR. SOMMER: Sure.

COMMISSIONER DURAN: Where is Placita de Vida and how big is Ms. Padilla's lot?

MR. SOMMER: Ms. Padilla's lot is - it is in a residential subdivision, and I can tell you the street. It's on Marissa Lane.

COMMISSIONER DURAN: It's off 14?

MR. SOMMER: Yes it is. And her lot, the property improvement report on her lot says that it is -

COMMISSIONER DURAN: It doesn't say.

MR. SOMMER: It is smaller than Mr. Vigil's lot.

COMMISSIONER DURAN: Thank you. Thank you, Mr. Chair.

MR. SOMMER: And if you read Ms. Padilla's letter to the County, to Jose Larranaga, dated July 20, 2004, he describes exactly the business that is being conducted by Dominic on his lot. If you look further through the application you will see that Ms. Padilla had some opposition from neighbors but despite that, this application for this business in this county under these standards was issued. And Ms. Padilla enjoys the rights provided by the Code despite the fact that her neighbors did not necessarily relish the fact of them having their business there.

This application is identical, identical to Mr. Vigil's application. The other two applications I've included are applications that were issued again this year under this Code for construction businesses for Mr. Bobby Garcia, and they're part of the record. I won't go through each one of them, and Mr. Robert Armijo. These gentlemen store vehicles, heavy equipment, hand tools, materials, on their properties and they meet the requirements of the Code. Each one of these. This standard has been applied in this county for years. It's the way it's been interpreted and it's the way it's been applied. But in Mr. Vigil's case, it's been denied. It's been denied because the opponents of this are pretty well organized and I'm sure you've heard from a lot of them.

The last thing that I put in your packets is the restrictive covenants that apply to this lot. It says very clearly as Mr. Vigil indicated to you that home occupations are allowed on this property. Mr. Vigil and his family brought this property with the expectation that he could use his property as the covenants say, with a home occupation under the Santa Fe County ordinances pertaining to the use. Now, we know from what I've just demonstrated and the Land Use Administrator has applied over years, that this home occupation is allowed under the Santa Fe County Code. So why are we here? We're here because Ms. Hagman and her other supporters oppose Mr. Vigil's use of the property. Unfortunately, they bought into a property that says home occupations are allowed. And the Code is pretty clear that this home occupation is allowed.

The series of letters that have come to you from Ms. Hagman's lawyer tend to demonize my client. They tend to demonize Dominic and his family for doing something that the Code allows. And I could go through each one of these letters in detail, and I'd just like to point out a couple of items in the letter. And we'll get to this one. Mr. Rouse,

who is Ms. Hagman's lawyer says, You should ask yourself, in order to decide this appeal, you need only ask yourselves one question. Would you approve the operation of a staging area for a roofing business in the backyard of your next door neighbor? That's what he says the issue is in the case. That isn't the issue in this case. The issue in the case is will the law be applied in a manner that provides for equal justice under the law. That's what it says in the law. That's what this case is about. It's about Mr. Vigil's rights under this Code to be treated exactly like everybody else has in this community, despite the fact that he has opposition.

In our community, elected officials, this Commission, the City of Santa Fe have gone on and on about economic development. And there is one theme that is beat like a drum in this community and that is we should grow the local businesses that we have. We should allow people who have businesses to thrive here. We have ordinances that are passed for that purpose and one of them is this ordinance, the home occupation ordinance.

I'd like to end by just saying this. Dominic and his wife are hard-working. They were born here and they were raised here and they're raising their family here. They've probably been listening to all of us for years talk about how we want our children to be born and if they choose to live here and if they choose to work here. They've probably been listening to that and when they bought this house, that's what they intended. Mr. Rouse says that all you have to do is ask yourselves this question: Would you allow this in your backyard or your neighbor's backyard? I submit to you that what you need to ask yourselves is do we really mean what we say? To Dominic and to Jessica. Do we mean that we want you to live here. We want you to work here. We want you to raise your family here. And we're going to provide you a means to do it and we're going to apply the law fairly to you. Or do we mean something else? Because if we mean something else, then we ought to tell Dominic and Jessica that we mean something else, and not just them, people like them that we don't mean that we want you to stay here, that the opportunity is not here.

I submit to you that the Code is clear and that we do mean what we say in this community. And that people like Dominic and Jessica and my kids and your kids do have the opportunity to live here, do have the opportunity to work here, so long as they comply with the law. Mr. Vigil and his wife are complying with the law. I ask that you uphold his appeal.

CHAIRMAN CAMPOS: Okay. It's a public hearing. Who wants to testify for or against. Please come forward. I ask you to stay focused, stay on the issue, try not to repeat each other. Please state your name and your address and be sworn in.

[Duly sworn, Gunhild Sloman testified as follows:]

GUNHILD SLOMAN: Gunhild Sloman. I live at 62-B Sloman Lane. Mr. Chair, Commissioners, first of all I'd like to say I have never even been to Mrs. Hagman's house nor has Mrs. Hagman been to mine. We do not have a personal relationship. What I wrote in my e-mail is what I observed. I did not see Mr. Vigil banging, but I was out at 5:20 on my lawn and the banging appeared to come from his property. It sounded like

pipes being slammed together. The language was what I consider, some of it was vulgar and the only traffic on the road was going up his driveway. Several cars.

There has been noise, not banging but severe noise that early because the times I wounded them up, I looked at the clock one morning, it was 5:13 and another morning my clock said 5:19. And it's the truth.

As far as being organized, protesting everything, there are several people in this room who came in front of this Commission. I have never been here to oppose anybody. The only reason I am here is because I have [inaudible] and the reason I am opposed to his business being on our road is it's a very narrow, curved dirt pitted road, and there has been two head-on collisions. Two small cars have to drive already very carefully. And his trucks are a whole lot larger than standard cars are. So it is a safety issue for our street. His trucks are.

And since Mr. Vigil started out not having proper licenses and I'm having these safety issues, I think it's every right for us to make sure that Mr. Vigil is licensed and does everything proper because the neighborhood should not be hurt by Mr. Vigil's action. Thank you very much.

CHAIRMAN CAMPOS: Ma'am, you said that there was loud noise coming from this -

MS. SLOMAN: Yes, it sounded like -

CHAIRMAN CAMPOS: On how many occasions?

MS. SLOMAN: One morning it was very, very excessive. And I went outside on my lawn and I actually even turned around. If you're familiar with the heavy pipes. I don't know what kind of equipment roofers use, but they sounded like very heavy plumbing pipes and being banged together and lifted together and the shouting was just very, very loud. And I am approximately 15 acres over from Mr. Vigil's property.

CHAIRMAN CAMPOS: Okay. Thank you.

MS. SLOMAN: But it was literally like somebody was right there. It was that noisy. It was done by multiple people.

CHAIRMAN CAMPOS: How wide is that roadway? Do you know?

MS. SLOMAN: The road actually, there's not a standard width, because there is a couple of spots where over the years some wild trees have popped up. And there was a cul-de-sac, or no, it's one of those big pipes that is put in underneath the dirt, whatever it's called. Culvert, right. And through grader or loosening up the site on the arroyo, a big portion has washed away and when you stand you can even see how much of the road has washed away. But there are several spots that are very narrow. And actually it's been my daughter who was in a head-on collision, and I believe one of the gentlemen who might have left, his wife was also in a head-on collision on Sloman Lane several years back and she was severely injured.

CHAIRMAN CAMPOS: Do you know how many feet? How wide these narrow spots are?

MS. SLOMAN: No. Like I said, I for instance, I pull over so the other car

can pass.

CHAIRMAN CAMPOS: Thank you. Okay, anybody else? Who else wants to talk?

PHIL POMONIS: You'll have to excuse me. My sight ain't too good so I have to take it easy coming up. My name is Phil Pomonis and you might say I was one of the original developers in that area of Alameda Ranchettes. In 1960 me and my partner at the time were in the Plaza Restaurant, we bought the Alameda which is now known as Alameda Ranchettes from Mr. - his name. Well, anyhow, we held that property for some 20 years. We didn't do anything with it. And then I did have some people, we brought in and we sold to them with the understanding with what they were to do with it. It was supposed to be strictly residential. We had several chances there to make quite a bit more money if we wanted to sell it in large tracts. We had one, a salvage unit wanted to go in. Another one wanted to buy 16 acres for a pig farm and stuff and we didn't do it.

And the people that we put in there, their understanding was that this was strictly for residential. And then we had the covenants and the restrictions was written in there. Was written by Robert Fox, which was considered the best real estate lawyer in the state of New Mexico and at the same time, at that time he was - later on he was connected and wrote some other restrictions for us. He was connected with Joe Sommer and Sons. They were partnerships. Well, anyhow, to verify the business. We sold a few parcels and then we kept the other and we divided it for our kids. Mr. Rosadas bought the last 15 acres there and I took the other 15 and we divided. And the thing that I have an objection on this is that the people that go in, they go in with the restrictions and the protections they think that are there. And I believe that if the Commission does not believe in restrictions, etc. and don't want to abide by them then I think they should call in the Land Use Administrator and tell them to have the developers not put any restrictions in any of these and to make it so either it's going to be a residential or it's going to be a commercial.

Like you say, you can follow the law to what limit. But what kind of a limit would you have when you have 80 some acres of people in this one subdivision all opposed to having one individual come in because, yes, he was born here and he was raised here. Well, my kids was born and raised here. I wasn't born here, but I've been here for 72 years. The only time I've left here is when I had to go into the service and go overseas during the war, in World War II. But that doesn't make it any better. But I still think when you tell people and you have them believe in the biggest investment they make in their homes that this is going to be safe for them, and then you let something like this come in and it's there, and I would like to see, as it was brought up, I would like to have Mr. Sommer to have the opportunity to have that happen to his neighborhood. Thank you.

CHAIRMAN CAMPOS: Okay. Next. Who else is going to testify? Come on up so you can sit over here instead of taking time walking up.

[Duly sworn, David Noble testified as follows:]

DAVID NOBLE: Mr. Chair, Commissioners, my name is David Noble, I live at 30 Calle Carla.

CHAIRMAN CAMPOS: Let's keep it focused to the issues please.

MR. NOBLE: I live in Pinon Hills subdivision which is adjacent to Alameda Ranchettes. I don't live close enough to Mr. Vigil's roofing operation to be directly affected by the noise and smells and so forth. Why I'm here is to say that the County has land use regulations and codes that separate industrial and commercial areas from residential areas. And Alameda Ranchettes and Pinon Hills is a strictly residential area. It's a quiet neighborhood. And when a light industry, such as a roofing company imposes itself on a quiet neighborhood like ours it is obnoxious to the neighbors. It's unfair to people like myself and my neighbors who have invested in private property for residential use because it runs down the values of our properties.

So I think that it is inappropriate for light industrial company such as a roofing company to inject itself into a quiet residential neighborhood and I request the Commission to deny Mr. Vigil's application. Thank you.

CHAIRMAN CAMPOS: Thank you, sir. Who's next?

[Duly sworn, Helga Ancona testified as follows:]

HELGA ANCONA: My name is Helga Ancona. I live on Calle Enrique in Pinon Hills. I've been living there for 15 years. And first of all, I really don't like Mr. Sommer injecting the racial element. I think that's a very unfair thing. I think our neighborhood is composed of all kinds of people, Hispanic people, I'm happy to be Brazilian, I'm supposedly Latina. There are all kinds of people of all kinds of nationalities and I think to always inject this racial card is totally unfair because we all live there because we love it. We own property there and it's all we have and if people are going to start having light industry in our neighborhood it's going to bring our values down and our houses and our land is all that we have. We are not rich people.

So, number one, many years ago, somebody who lives on Calle Carla wanted to bring in a garage and start repairing cars on Calle Carla. We all strenuously objected and he decided not to do it and gave up. There was two ladies who lived on Penny Lane who wanted to make a bed and breakfast which would have not really done any harm to anybody. Well, they were rejected. They had to give up on their project and they had to leave.

I don't see why somebody who now twice has been denied and who is bringing a business in that's not a home - it's not - he's not working out of his house doing something minor. He has a big business there with trucks and with people and with tar smells and all that. But he would be allowed to operate this business, being that the County, Mr. Charlie Gonzales, has stated that the County permits - Mr. Vigil faces no sanctions or fees from the County for the violations. He does not have a County business license and he built a large fenced compound for his trucks and roofing supplies without a County permit. Mr. Charlie Gonzales said he has been trying for years to change this around because the City doesn't allow this and the County still allows this without enforcing it. And I think it's time the County Commission changes its rules around so that our residential areas are truly residential and don't allow this kind of business. So that's all

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I have to say.

[Duly sworn, Dave Gold testified as follows:]

DAVE GOLD: My name is Dave Gold. I live at the end of Sloman Lane. I just wanted to bring up a couple of points related to the traffic. One thing that hasn't been made clear is that in addition to Sloman Lane being narrow, where it intersects with Calle Carla there's a T-crossing and it actually is misaligned so it funnels down into one lane. So in other words, if you're coming this way and you're in the right lane, you end up driving, if you drive straight, you drive into the oncoming traffic of the subsequent street. So it's a poorly designed intersection. My wife and children were almost killed there. I was the one that Ms. Sloman, who is my neighbor, was referring to. It was about ten years ago. So I am concerned about traffic.

Since the roofing company has come here my wife and both kids who are now driving have been basically run off the road by their vehicles at least once. I myself have come close to that. It is a narrow street. These are large vehicles. I don't drive that much and somehow I've encountered - because I also work at home and in fact have a home occupation. It involves me just sitting behind a computer screen with no other vehicles or anything.

The issue with the traffic is, since I don't drive very much I've somehow encountered these vehicles fairly frequently and generally had to give them leeway. This is at all hours of the day and even on a Saturday. Finally, I'd like to refer to the home occupation law which says that there shall be no change in the outside appearance of the building or premises. This fenced in area is really quite visible. It's definitely a change to the outside appearance of the premises. My understanding of a home occupation is something that basically is invisible and doesn't impact the neighbors at all. If in fact other home occupations have been approved by the County, I think that that's a mistake. But to continue to keep making mistakes strikes me as an inappropriate course of action and I'd urge you to deny it. Thank you very much.

[Previously sworn, Ruth Noble testified as follows:]

RUTH NOBLE: My name is Ruth Noble and I live at 30 Calle Carla in Pinon Hills. I think another part of the ordinance specifies that it should do no harm to the neighborhood and I think they meant visually and I think that an 8-foot protective fence really does do damage. Our neighborhood was designated as a semi-rural area so none of the lots have walls around them at all. And so this really does stick out. So I hope you would deny the request.

[Previously sworn, Dan Pomonis testified as follows:]

DAN POMONIS: My name is Dan Pomonis and I reside at 2152 Ridgeby Circle. The reason I have such an interest in this is because my family did develop this property. I originally built the house that Mr. Vigil is in now and then put a road in there as well. So that's why. I also have five acres. My sister and I both have five acres in the subdivision as well now and that's why I have such an interest. It's hard for me to believe I'm here in such a gross violation of both the County zoning regulations as well as the

subdivision covenants. It was told to me today in the City of Santa Fe that if you had a building in a commercial zone you could not even rent that to a roofing company because it would have to be only used for industrial use. And this was told to my by a person who had to evict a roofing company.

Now this is the city, but that says something about the presence of that and of course this is the county so it's a little different. I would just like to ask you if you could imagine waking up one morning and having a roofing company move in next to your neighborhood, changing the quality of your life. I'm sure that you would be upset as well. And if you allow this commercial application in this neighborhood it could very well be that the next neighborhood could be yours. So you should pay attention to that.

There are so many reasons why this roofing company shouldn't be allowed. One reason, I spent over \$10,000 to put a 20-foot road in and you keep asking about what the County road is, it's not quite 15 foot. Because when I went out there I couldn't believe I had to build a 20-foot road when the County serviced my lots with a 15-foot road. I spent \$10,000 on that road and it's held up pretty good but recently, with some of the rains and with the traffic being used now with these large trucks. They have to make a wide turn at the entrance. And not there's big old pot holes. And with this rain and weather we're going to get this winter, that road is going to be ruined and I want to know who's going to spend that kind of money to repair it.

Another concern of mine is who's going to enforce these violations. Mr. Vigil continues to run his business after being denied twice without any consequences. There are other issues. There's noise pollution, the quality of life, land depreciation, safety, visual issues, all need to be addressed. For example, land depreciation. The property next to Mr. Vigil is up for sale right now and the buyer will not purchase that land, as I understand, if he is allowed to run this commercial business out of here. Need I say more? That just tells you that our land will be depreciated just because of that one thing.

My sister and I currently own five-acre lots out there and I would love to build a home out there but for the first time I don't feel comfortable because of the roofing company. And that's really sad because my family owned this property for years. They spent a lot of money, a lot of time, effort, and our intentions were to have a peaceful, quiet, safe subdivision.

Mr. Vigil has never talked with the neighbors or had any consideration for them in my opinion. In fact, the only feedback I've heard was in the *Santa Fe Reporter* where Mr. Vigil said, If you don't like the noise or the business, move to the mountains. If you allow this application, one individual will benefit, while the county, the community and the neighborhood will all lose. Please don't allow this.

[Previously sworn, Ismael Mena testified as follows:]

ISMAEL MENA: Hi. My name is Ismael Mena. I am a business owner here in Santa Fe. My family's been in the auto body repair industry for three generations. We've been in Santa Fe over 25 years. We've had our business located away from our homes. This is something that I have considered. What if I were to bring my business to

my property and put half my building up for lease, take that money and make it very convenient, cost-effective to run my operation right out of my property in the Alameda Ranchettes Subdivision.

When I first purchased there I met Danny Pomonis and from what I recall he was very selective in the people that were going to be living in that subdivision and I said to him, I've never worked on any of my cars on my property. I do it all outside of my home and this is just not the right place to be running an industrial or a commercial operation. I'm here to deny this from happening in this subdivision but I'm not opposing Dominic from making a living. I think there's a place to be running a business like that. Thank you.

CHAIRMAN CAMPOS: Thank you. Let's keep it focused and short.

[Previously sworn, Ernestine Hagman testified as follows:]

ERNESTINE HAGMAN: Oh, I'm pretty focused. It will be somewhat lengthy because I want to address several issues. At the County Development Review Committee hearing Karl Sommer, Dominic Vigil's attorney, and again tonight, has stated that the issue of the appeal was that Santa Fe County had to provide ways for young Santa Feans to earn a good living and to be able to stay within the community. I'm not Santa Fe-born. Soy nortena. But I have lived in the City of Santa Fe and it's environs since I was five years old. I graduated from Santa Fe High School.

CHAIRMAN CAMPOS: Ms. Hagman, those aren't the issues.

MS. HAGMAN: And later taught in Santa Fe.

CHAIRMAN CAMPOS: No, no, no. Please -

MS. HAGMAN: The issue is that he says that it's because we do not want to allow Dominic to earn money in this community.

CHAIRMAN CAMPOS: The question is does this comply with the Code.

MS. HAGMAN: It does not.

CHAIRMAN CAMPOS: Well, address those issues.

MS. HAGMAN: I will, sir. But you'll allow me my piece.

CHAIRMAN CAMPOS: No, address the issues, please.

COMMISSIONER DURAN: Get to the point.

MS. HAGMAN: Okay. Strictly to the point, we are also natives. We were brought up here. We were able to earn livings here. When Mr. Vigil moved in next door to us we were told it was a young couple. Some time in mid-June a large unsightly board fence was erected. We were a bit concerned. We didn't protest. We're not skilled at reading minds or the intentions of the new property owners. In late June on a Sunday as I was working in the yard a group of trucks rolled into the cul-de-sac. One truck was being pulled and another was pulling a tar pot. It was quite an impressive sight. I noticed the name of the business on the side of the truck. I went inside, wrote the number down, called. An answering machine with the name of the company responded. I left a short message.

I then went back outside and spoke to a young man who said he was Dominic Vigil. I told him about the covenants. He told me that he had sunk all his money into this

property, etc. I am sure that he has had strong family support to develop this. And he has a well equipped business. I also indicated to him that I had sunk all my money into my property for the rest of my life. I intended to settle down and live there. This is something he has publicly derided.

Now, near the close of the County Development Review Committee hearing Mr. Catanach suggested that the County could work with Mr. Vigil to help him qualify as a home occupation business. In order to do this Mr. Vigil would have to agree to have a limited number of commercial vehicles. At that time it was said one. That he would have to perhaps restrict his materials stored, the number of employees he has reporting daily and the hours of operation. In which case, does the Commission intend to hire me as an enforcement officer.

The County currently only has three Code Enforcement officers to cover the entire 1,911 square miles, or 1,223,000 square acres. Remember, he's a successful young man who has built his business up in the last six years. He's going to go forward. This matter is brought for you because this young man is insistent that he be allowed to do what satisfies his needs without regard to people who have lived in the area for a longer period. Additionally, while we have been subjected to the increased traffic and noise and the disruption of our life style, he has suffered no real inconvenience. In fact he has probably profited. He has set up a business without a business license. He built a fence which was higher than six feet without a permit. He originally built the fence on the wrong lot. He moved the fence and re-erected it and as far as we can determine there are no strong sanctions for this type of infraction of County ordinances or Code.

He was issued a notice of violation on June 30th. And during this entire time he has been allowed due process and been asked to pay nominal fees to the County. We, on the other hand, have had to endure the noise, occasional smells, and destruction of our dirt lane. We believe there would be fewer of these cases if the County ordinances had some genuine sanctions for these violations, sanctions which would protect the rights of property owners in the residential areas. His lawyer has couched the issue as one of granting local young people an opportunity to make a living in a high-cost city. We did that. We made a living in this city. We raised two kids in this city.

Dominic Vigil, doing business as Enchantment Roofing, Incorporated, has a full-scale light industrial operation at the end of this cul-de-sac. It's a very short cul-de-sac of only .14 mile long. The nature and amount of traffic generated is intrusive and disruptive of a quiet life style. It will also be very hard on the road, which was built by the subdivision creator, a road which must be maintained by the property owners, and here again, we will be assessed an undue financial penalty. His operation will use the road up to three or perhaps more times the frequency of our residential needs, but we will be responsible for its more frequent maintenance. His vehicles are heavier and more destructive to the road than passenger vehicles and the vehicles of his suppliers and service people are also bigger and heavier than what is generally seen at a residential property. And if you'd look on page five of the material I sent to you earlier today, you will see a

picture of Prudential Overall Supply. It's a fairly large vehicle.

By definition, a home occupation should be secondary to the residential use of a home. We do not oppose having young people from Santa Fe remain in Santa Fe. We do not deride the way Dominic Vigil has chosen to make his living. My husband has been in the construction trade most of his life as was his father. Honest work is to be applauded, but just as there is a season for every purpose, there is a place for this type of business in an industrial park or other commercial property. The hours, the question of toxic materials, the nature of the traffic and the possible fire hazard generated by this business have no place in a residential zone at the end of a very short cul-de-sac. Thank you.

[Previously sworn, Brendan Murphy testified as follows:]

BRENDAN MURPHY: Mr. Chair, Commissioners, my name is Brendan Murphy. My business address is 123 East Marcy Street. I'm here mainly because Owen Rouse couldn't be here due to an illness. In order to keep this short I'm just going to say that we'd just like to reaffirm and adopt as my comments the statements made in the letter of November 1, 2004 from Mr. Rouse.

CHAIRMAN CAMPOS: Thank you, sir. Anybody else?

EDWARD RIVERA: Hello. I'm Edward Rivera. I live in Pinon Hills Subdivision. I've been a licensed general contractor here since 1984 and I've lived out in Pinon Hills since, I think 1987. I decided not to base my business in Pinon Hills just out of consideration for my neighbors. I don't think - there are clear advantages to having a business in town and I'm opposed to this home occupation at this location but I'm not opposed to the business.

CHAIRMAN CAMPOS: Thank you, sir. Anybody else. Okay. That's the end of the public hearing.

MR. SOMMER: Mr. Chair, may we have a chance to respond briefly to some of the things that were said?
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CHAIRMAN CAMPOS: I'm going to give you a couple of minutes. I want you to stay to the issues.

MR. SOMMER: I will keep it very direct. The issue of the fence. A fence of this size and in this location is allowed under the Code for a residential use. The complaint here is that Mr. Vigil has built a fence. Well, Mr. Vigil is allowed to build a fence, with or without a business, he has a permit for an allowed use. That is not what the Code means about visible change in the residence. Mr. Vigil, with or without a business, will have a fence and if the objection is by the neighborhood that they don't like the fence, well, they bought into a neighborhood where covenants don't prohibit the construction of fences.

Mr. Vigil bought into a neighborhood that says you can have a fence and that's what he built. It says you can have a shed, and that's what he built.

COMMISSIONER MONTROYA: Mr. Chair.

CHAIRMAN CAMPOS: Do you have a question of Mr. Sommer?

COMMISSIONER MONTOYA: On that point, was that fence and the shed built with a permit?

MR. SOMMER: They both have permits.

COMMISSIONER MONTOYA: They both have permits.

MR. SOMMER: To be clear, the fence was initially put up without a permit because Mr. Vigil didn't know he needed a permit. He came and he got a permit and put the fence with the permit required. So he has a permit for the fence and the shed.

COMMISSIONER MONTOYA: Okay.

MR. SOMMER: I didn't want to mislead you. Initially it was not built with a permit.

COMMISSIONER MONTOYA: Okay. Thank you.

MR. SOMMER: The last point I'd like to make is this. These covenants say that the Code is what governs. These covenants that apply to this lot, that apply to Ms. Hagman's lot, which they bought into say, if you can get a home occupation, you can do it on this property. And they said, It isn't fair. It isn't fair to have Mr. Vigil have a business here. Well, these covenants say you can have a business. The only question before you is does Mr. Vigil meet the Code? And I ask you to look seriously at the applications that I put in front of you and ask yourselves do they differ in any material respect? Is this County now going to tell every small contractor who stores his materials and his vehicles, you can't do it the way we're allowing you to do it. I submit to you the Code is clear. This County has a long-standing application of this ordinance, and it is to allow home occupations, with certain regulations, like Mr. Vigil's. Thank you.

CHAIRMAN CAMPOS: Thank you. Okay, that ends the public hearing. Comments, questions from the Commission?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: How did this come to our attention?

MR. CATANACH: Chairman Campos, Commissioner Montoya, I believe this came in as a complaint to Code Enforcement. The applicant had occupied the property without a business registration.

COMMISSIONER MONTOYA: Okay. And since the complaint has come in, has the applicant applied for a business license?

MR. CATANACH: It's on hold pending the appeal.

COMMISSIONER MONTOYA: Mr. Chair, Joe, how are the home occupations being violated?

MR. CATANACH: Mr. Chair, Commissioner Montoya, I believe that the discussions I've had with the County Attorney is that it becomes an issue of compatibility within a neighborhood. And certainly compatibility could be different in one part of the county compared to another part of the county, and these are discussions that I'm having with the County attorneys to again get a better perspective on compatibility and how that's applied fairly to this property owner as well as other property owners.

COMMISSIONER MONTOYA: So is he violating the home occupation standards?

MR. CATANACH: Well, one of the criteria is that the home occupation shall not involve operations or structures not in keeping with the residential character of the neighborhood. And again, I guess certainly residential character and compatibility could be subjective, if Steve Ross agrees with that and again, I'm trying to understand discussions I've had with the County attorneys regarding this matter and how the County works with other property owners in the county.

COMMISSIONER MONTOYA: Okay. Thank you. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Who else wants to ask a question. Commissioner Duran.

COMMISSIONER DURAN: I think that Joe hit the nail right on the head and that is the home occupation shall not involve operations or structures not in keeping with the residential character of the neighborhood. And I've dealt with home occupations here at the County for the last eight years, and prior to that, eight years with the City at the Board of Adjustments. Home occupation, in those 16 years of experience was never intended to allow industrial uses to be introduced into neighborhoods. And that's exactly what this use is doing.

At the EZA last month we denied a wrecker service that was basically doing the same kind of thing that you're doing, Mr. Vigil. Large vehicles, diesels, coming in at all times of the day and it really destroyed the very fabric of the neighborhood, which is what I believe your roofing company is doing. I think that the home occupation was not intended, again, to allow industrial use, but rather to allow those individuals who are interested in pursuing a home occupation that is compatible with the neighborhood, it gives them that opportunity. And I don't believe that you are in harmony with the intent of the home occupation.

CHAIRMAN CAMPOS: Any other questions or comments? Commissioner.

COMMISSIONER ANAYA: Mr. Chair, Commissioners. First of all I want to compliment that Mr. Vigil at a young age is starting a business and it seems like it's a successful business. And this is a very difficult situation for us. But personally, after hearing the testimony, this is going to change the residential character of the neighborhood. And you starting out at a young age and trying to get your business going, well, that's good. That's really good. And I know you're going to do well and I know you're going to succeed. But to put this in this residential neighborhood just doesn't seem to fit. I hear the concerns of the neighbors; I would probably have the same concerns. If it was a different occupation maybe I would tend to favor that. But it's a roofing business. Nothing against roofing businesses, but you're dealing with heavy trucks. You're dealing with the smell of tar. And that's what the neighbors are concerned about.

So I'm not in favor of this at all and I think that there's other places for this to happen. Thank you.

CHAIRMAN CAMPOS: Thank you. Commissioner Sullivan: Okay, is there

a motion?

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER DURAN: Move to uphold the Land Use Administrator's decision to deny the appeal.

COMMISSIONER ANAYA: Second.

CHAIRMAN CAMPOS: Second. Is there any discussion?

The motion to deny the appeal in CDRC Case #APP 04-5470 passed by unanimous [5-0] voice vote.

- XI. A. 9. **CCDRC Case #MP 04-5440 – Santa Fe Brewing Master Plan. Lock Builders, LLC (Brian Lock), Applicant, Blaine Young, Agent, Request Master Plan Approval and Preliminary Development Plan Approval within a Designated Employment Center Zone to Allow a Brewery Facility and Restaurant, and Will Include a Newly Constructed 11,200 Square Foot Warehouse on a 3.6 Acre Tract. The Property is Located at 9885 Cerrillos Road, in the Community College District, within Sections 24 & 25, Township 16 North, Range 8 East (Commission District 5)**

CHAIRMAN CAMPOS: Commissioner, Santa Fe Brewing master plan seems like it would be short. Do we want to do that before the Santa Fe Downs?

COMMISSIONER SULLIVAN: Yes.

CHAIRMAN CAMPOS: Any objections?

MR. GONZALES: Thank you, Mr. Chair. On October 7, 2004 the CCDRC met and acted on this case. The decision of the CCDRC was to grant approval of a master plan/ preliminary development plan approval within a designated employment center to allow a brewery facility and a restaurant and will include a newly constructed 11,200 square foot warehouse on 3.6 acres. This application was reviewed for the following: existing development, zoning, adjacent properties, access and parking, terrain management, water, liquid and solid waste, fire protection, landscaping, signage and lighting.

On October 7, 2004, the CCDRC met and acted on this case. The decision of the CCDRC was to grant approval of a master plan/ preliminary development plan approval with final development plan to be approved administratively, within a designated employment center zone to allow a brewery facility and restaurant and will include a newly constructed 11,200 square foot warehouse on a 3.6-acre tract.

Staff's position is that this proposed master plan/development plan is in

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conformance with the Community College District Ordinance. Staff recommends master plan/development plan zoning approval with final to be approved administratively subject to the following conditions. Mr. Chair, may I enter these conditions into the record.

CHAIRMAN CAMPOS: They are so entered.

[The conditions are as follows:]

1. Compliance with applicable review comments from the following:
 - a. State Engineer
 - b. State Environment Department
 - c. State Department of Transportation
 - d. County Hydrologist
 - e. Development Review Director
 - f. County Public Works
 - g. County Technical Review Division
 - h. County Fire Marshal
 - i. County Utilities Department
2. The master plan will be recorded with the County Clerk's office.
3. All staff redlines will be addressed, original redlines will be returned with final plans.
4. The applicant shall submit an access permit from the Department of Transportation with the development plan submittal.
5. The applicant shall comply with the water harvesting requirements of Ordinance # 2003-6. A water-harvesting plan shall be submitted with the final development plan application.
6. The applicant shall convert the domestic well located on the property to commercial as defined by the State Engineer's office prior to development plan submittal.
 7. The applicant shall submit a liquid waste permit for the Brewery and a Discharge Permit as approved by the Environmental Department with Development Plan.
8. The applicant shall comply with all Fire Marshal requirements. The applicant will request a final fire inspection prior to occupancy of the building.
9. Compliance with minimum standards for lights and signs.
10. Compliance with 50 percent open space. Provide park Area consisting of a minimum of .33 acres, with benches and landscaping.
11. Landscape buffer along west property line. Parking shall not be located within landscape buffers.
12. Road frontage landscaping shall be 50 percent evergreen.
13. The maximum uninterrupted length of proposed building façade shall be 50 feet.
14. Submit cost estimate and financial surety for completion of requirement improvements.
15. Business registration prior to occupancy.

CHAIRMAN CAMPOS: Okay, is the applicant present? Please step forward

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and state your name and your address.

BRIAN LOCK: My name is Brian Lock, Santa Fe Brewing Company.

CHAIRMAN CAMPOS: You're authorized to be here and represent the company?

MR. LOCK: Yes. I'm the president/owner.

CHAIRMAN CAMPOS: Okay. There are 15 conditions. Do you agree with those?

MR. LOCK: Absolutely.

CHAIRMAN CAMPOS: Okay. This is a public hearing. Anybody out there want to speak for or against this? Okay, the public hearing is closed. Is there a motion?

COMMISSIONER DURAN: Move for approval.

CHAIRMAN CAMPOS: With conditions?

COMMISSIONER DURAN: With conditions.

COMMISSIONER MONTOYA: Second.

CHAIRMAN CAMPOS: Discussion?

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I had a couple of questions. I met last week, I want the Commission to know I met last week with Brian Lock who provided me some information on the development. I have a question and this would be for the staff. I see very little in here in terms of plans. I see a little sketch. And I see a memorandum from Charlie Gonzales, Technical Review Director that says the grading and drainage plan does not conform to County Code and staff requires all engineering prior to development plan approval. And I see a letter from the architect relating to master plan approval and a master plan approval report. It doesn't seem to me that we're at the stage here for a preliminary development plan. It seems that we have some concept drawings and the very rudiments of a master plan.

We do have the water issue addressed through the Santa Fe County Utilities Department. [Exhibit 6] That's refreshing for a change. We've been through that in some depth this evening. And we also have testimony in the Community College Development Review, which is on page 9, with Mr. Catanach saying the levels of submittals were not of the detail required for preliminary development plan. So why is the staff recommending preliminary development plan approval?

MR. GONZALES: Mr. Chair, Commissioner Sullivan, I was not here to put the packet together, my packet together for the BCC case. The applicant did come in the next day or the next week from the Community College District meeting and did hand out an updated development plan and they are working on the grading and drainage. That is completed. And staff does have that. But I do have the updated development plan reports. I just noticed today that the original master plan submittal was in the packet.

COMMISSIONER SULLIVAN: So we don't have any development plan information in the packet that I can see, and I'm glad to hear that you have it, but it's not

in front of us for approval here tonight, other than in the cover memorandum. I think we certainly can – I think this needs to come back to the BCC. I think we can certainly move it forward at the master plan level. I do want to comment – let me get back and ask a question of Mr. Lock again. Thank you, Dominic.

I've had a complaint from a resident in the Vista Ocaso Subdivision since you and I talked last week about the parties that have been going on there. And the drinking and the cars lined out on Dinosaur Trail and the bottles thrown on the side of the road, and general noise and commotion of that. Is this something that goes on regularly or every Friday night? Is this part of you brewing business? I'm a little confused as to whether you're operating a restaurant or a brewing business.

MR. LOCK: No. The primary intent of the business is to manufacture and distribute beer off the premise. If that did indeed incur, it probably was a very occasional thing. It might have been a private party that we had out there on that occasion. There might have been some cars on that Highway 14. I think that this project, if it is approved would obviously prevent any complaints from happening because we would be moving further away from any residential areas that might be affected. Nor do we plan on having any private parties on a regular basis that might indicate that kind of thing to happen.

COMMISSIONER SULLIVAN: There is going to be a restaurant as part of this?

MR. LOCK: There is going to be a restaurant. Right. The main intent for this building project and the new facility is strictly a manufacturing facility. So essentially, just brewing the beer, bottling it there and then distributing it off the premise.

COMMISSIONER SULLIVAN: Right. And I understand that. It sounds like you have a good little business going and we're glad to see that you're able to expand it and take advantage of that market. But Mr. Chair and whoever the maker of the motion is, I really feel at this point what we have in front of us, based on the staff's recommendation inside the packet, that we're looking at a master plan.

MR. LOCK: I think we have given the preliminary development plan and the master plan in the packet. I don't know why it wasn't forwarded necessarily to you by tonight. We do have those final plan and preliminary site development plans here.

COMMISSIONER DURAN: This Exhibit F isn't it, Commissioner?

COMMISSIONER SULLIVAN: What I have, it says master plan report. Right after Exhibit E, it says master plan report, Santa Fe Brewing. Then it has a sketch of the location. It has photographs and it has a sketch map as Exhibit F. That's certainly not a preliminary development plan by any stretch of the imagination.

MR. LOCK: I think that we've gone through this plan for about the last six months trying to get everything in order so that we were able to come before you and get approved for the preliminary site development and the final master plan approval. We've done all the engineering. We've run the numbers through an engineer for the runoff. That documentation is here.

COMMISSIONER SULLIVAN: I appreciate that you've been working on

that and you've done that but I don't see any of that. There's no engineering report in here. There's no engineering drawings. There's just master plan information. Maybe there's something else that the staff is reviewing on the grading and drainage plan to get it into compliance. It sounds like we're a little premature for a preliminary development plan to me.

COMMISSIONER DURAN: Well since the chair and co-chair aren't here, I'll take charge.

COMMISSIONER MONTROYA: I'm in charge.

COMMISSIONER SULLIVAN: Is that seniority?

COMMISSIONER DURAN: I was just wondering, Joe, do you have the plans there?

MR. CATANACH: Mr. Chair, Commissioners, there was substantial follow-up regarding the level of submittals between the Community College meeting and this meeting and I can assure you that the plans are at a preliminary level. Drainage was brought up and the drainage, the new building is going to collect roof drainage in cisterns. So the drainage that's being collected in surface is the parking lot drainage and the drainage coming off the existing building. But I wanted to clarify that in fact there had been substantial follow-up with these applicant submittals and what you have in the packet - and I apologize. It does not reflect that but there was substantial follow-up.

COMMISSIONER SULLIVAN: Okay. Well, maybe we can compromise here, Commissioner Duran. Did you make a motion?

COMMISSIONER DURAN: I did, but I was going to ask, can't we catch all this in final?

COMMISSIONER SULLIVAN: No, we need to catch this where it's caught. But maybe what we can do is go ahead and call it preliminary development plan but add a stipulation that it come back to the BCC. Because I don't know. Would this normally come back to the BCC?

MR. CATANACH: No. Staff is comfortable with the review and the conditions, but certainly that's the Board's discretion.

COMMISSIONER SULLIVAN: Let's do it that way.

COMMISSIONER DURAN: I would accept that.

MR. LOCK: What we were requesting was final development approval being done administratively through Joe and Dominic and that was with the respect of the CCDRC's recommendation. So that was our intent for this meeting.

COMMISSIONER SULLIVAN: But we don't have even preliminary level stuff in our packet here. But I think if Joe is comfortable that he's got it in process there, that we could certainly go ahead and call it master plan/preliminary development plan with that stipulation.

COMMISSIONER DURAN: When did you expect to have final?

MR. LOCK: I was hoping that this was the final.

COMMISSIONER DURAN: No, final would have to be approved at staff.

MR. LOCK: Administratively.

COMMISSIONER DURAN: When did you expect that administrative approval to come?

MR. LOCK: As soon as we'd complied with -

COMMISSIONER DURAN: What date? That doesn't help me. I need a date.

[Duly sworn, Justin Young testified as follows:]

JUSTIN YOUNG: My name is Justin Young. I live at 10 Dehaven, Santa Fe, New Mexico.

COMMISSIONER DURAN: Before you continue answering that question, what I'm trying to do is if we approve Commissioner Sullivan's amendment to the motion, and if you thought that you were going to get approval relatively soon administratively, and we approve this motion, which when it comes to us for final, I'm trying to find out if you even have the ability to do that in December because we're not going to have a land use meeting in December. Correct?

MR. YOUNG: That causes some real problems for us do to the existing lease for Santa Fe Brewing that's existing now.

CHAIRMAN CAMPOS: The land use meeting is the first meeting in December. It's the last meeting that we're canceling.

COMMISSIONER DURAN: Oh, okay. Right. So then you would come before us on the 7th of December.

MR. YOUNG: Really, any delay from the way we had presented this in the beginning creates some hardship for us due to the existing lease where Santa Fe Brewing is now, has a time frame on it, and due to conditions of being able to do construction out there in the winter, doing the site work and the concrete work and so we're really on a time crunch right now. We've been working, as Brian said, for six months to get to this point right now. I would ask that if nothing substantially changes with what you've seen now, even though it is at a preliminary stage that you would trust that the staff would be able to make the determination that all of the Code - we're not asking for any variances. We're not asking for any consideration on anything. And that staff would be able to determine that we have adequately addressed all of the issues regarding the Code.

COMMISSIONER DURAN: I could live with that, if the second can.

COMMISSIONER MONTOYA: That's fine.

COMMISSIONER ANAYA: What was the motion?

COMMISSIONER DURAN: The motion was to approve with staff recommendations, staff conditions. And Commissioner Sullivan, because there wasn't substantial detail of the plan he wanted to add that the final would come before us, whereas it was planned just to get it done administratively.

COMMISSIONER ANAYA: So there's a motion with conditions and it would just be approved administratively.

COMMISSIONER DURAN: Right. Provided that staff makes the

determination that there's not been substantial changes to what they've been discussing since the CCDRC meeting, and what has been proposed to us tonight, which it not a bunch but sufficient. Based on what staff just said.

COMMISSIONER ANAYA: Is there a second to that?

COMMISSIONER DURAN: Yes.

CHAIRMAN CAMPOS: There's a motion and a second to approve with staff conditions. No follow-up BCC final. Is that right?

COMMISSIONER DURAN: Unless staff determines that -

CHAIRMAN CAMPOS: There are significant changes that need reconsideration. Okay, do we understand the motion?

The motion to approve CCDRC Case #Z 04-5540 passed by majority 4-1 voice vote with Commissioner Sullivan voting against.

MR. LOCK: Thank you, and Jack, we'd be glad to show you the plans as a courtesy.

COMMISSIONER SULLIVAN: The issue is not what you need to show me as a courtesy. The issue is what has to be brought before the public. When we approve something in a preliminary plan level, not only we but the public has to be able to see it so they can come and testify in favor or against it. When that submittal is insufficient and vague, as this one is, then the public is denied that opportunity. That's the issue.

MR. YOUNG: As vague as it is, we're sticking exactly to what's shown there in concept. Thank you very much.

- XI. A. 8. **LCDRC Case #DP 01-5014 – Santa Fe Downs. Pojoaque Pueblo Development Corporation, Applicant, Request Preliminary and Final Development Plan Approval for Phase I of the Santa Fe Downs, which Will Consist of Horse Racing, Slot Machine Casino, Concerts and Event Performances, Restaurants, Meeting and Conference Facilities, Flea Market and Parking Areas on 372.39 Acres. The Request also Includes Four Variances of the Land Development Code as Follows: A Variance to Allow a Pond Instead of a Cistern for Water Harvesting; a Variance to Allow a Monument Sign to Exceed 150 Sq. Ft.; A Variance to the Amount of Landscaping Required Along the Frontage Road; and a Variance to Limit the Type and Amount of Landscaping Required within the Parking Lots. The Property is Located Southwest of the Intersection of I-25 and SR 599, within Sections 26 & 27, Township 16 North, Range 8 East (Commission District 3).**

MS. LUCERO: Thank you, Mr. Chair. Pojoaque Pueblo Development Corporation, applicant, request preliminary and final development plan approval for Phase I of the Santa Fe Downs, which will consist of horse racing, slot machine casino, concerts and event performances, restaurants, meeting and conference facilities, flea market and parking areas on 372.39 acres. The request also includes four variances of the land development code as follows: a variance to allow a pond instead of a cistern for water harvesting; a variance to allow a monument sign to exceed 150 square feet; a variance to the amount of landscaping required along the frontage road; and a variance to limit the type and amount of landscaping required within the parking lots. The property is located southwest of the intersection of I-25 and SR 599, within Sections 26 & 27, Township 16 North, Range 8 East (Commission District 3).

On October 20, 2004, the LCDRC met and acted on this case. The decision of the LCDRC was to recommend approval.

On October 7, 2004, the applicant conducted a community meeting with the La Cienega/La Cieneguilla community to present their proposal in accordance with the La Cienega ordinance.

On August 14, 2001, the BCC granted master plan zoning approval to allow for recreational/non-residential uses at the Downs at Santa Fe on 321 acres to be developed in two phases. The applicant is now requesting preliminary and final development plan approval for phase I, which will consist of the following:

- Horse racing to begin in mid-2006, in which up to 1500 horses may be present during the racing season. Associated simulcast race betting and casino slot gaming would begin in mid-2005.
- Concert & event performances such as circuses, carnivals, and rodeos in which

temporary stages would be set up for each performance and festival seating would be used to accommodate the public. Portable concession stands would be used and portable toilets would be provided.

-Open Air Markets

- A total of four restaurants, two full-service restaurants one of which will seat 150 patrons and will operate throughout the day and another which will be a high quality restaurant open only in the evening and will seat 75 patrons. Two fast food restaurants will operate in the grandstand areas during racing season.

-Meetings and conferences will be held in the stadium building. There will be approximately 7,100 square feet of meeting room space.

-Existing paved parking areas will be repaired. There will be a total of 2,662 paved parking spaces.

Variances: The applicant is requesting four variances of the Land Development Code as follows:

1. A variance to allow collection of roof drainage in a lined pond rather than in a cistern. The applicant states that the amount of water collected in the pond is a mere 20 percent of the water used per day for irrigation purposes, therefore, the water would be used up before any evaporation could occur.
2. A variance to allow a monument sign to exceed 150 square feet. The Downs is proposing to utilize the existing rock ground sign located off the I-25 Frontage Road. The applicant states that the sign is a historic symbol of the Downs, and is unobtrusive but serves to identify the activity behind it.
3. A variance to the internal landscaping required in the parking area. The applicant has agreed to put in the necessary landscaping for the parking areas. However, their proposal is to install landscaping only in the primary parking lot at this time. In the interest of water conservation, they are requesting that landscaping in the secondary lot not be required until two years after the Certificate of Occupancy has been issued. They state that the secondary lot will not be utilized until the site is open for racing or special events.
4. The applicant was also requesting a variance to the amount of landscaping required along the frontage road, however, after re-examining the existing landscaping it appears that the requirement has already been met. Therefore, a variance is not required.

Recommendation. The applicant is requesting three variances of the Land Development Code. In regards to the variance to allow a collection pond for rainwater harvesting rather than a cistern staff feels that it can support this variance due to the fact that there would be very little if any evaporation from the pond given how quickly the water will be used.

In regards to the variance to allow them to utilize the existing sign with some renovations, which exceeds the 150 square feet allowed by code, staff feels that since the sign is already there and has been in existence for the past 30 years, more or less, this

request can be also be supported.

As far as the variance for parking lot landscaping, staff can support this request with the understanding that if the secondary parking area is used at any time prior to the landscaping being installed the County will require a financial guarantee.

It is staff's position that this application is in accordance with all other regulations of Article III, Section 4.4. of the Land Development Code and conforms to the La Cienega/La Cieneguilla Plan and Ordinance.

Staff's recommendation and the decision of the LCDRC was to recommend preliminary development plan approval with final development plan approval handled administratively subject to the following conditions. Mr. Chair, may I enter those conditions into the record?

CHAIRMAN CAMPOS: They are so entered.

[The conditions are as follows:]

1. All redline comments will be addressed; original redlines will be returned.
2. Final development plan with appropriate signatures shall be recorded with County Clerk.
3. The applicant shall submit a cost estimate and financial guarantee, to be approved by the County Land Use Department, for removal of all manure and unpermitted trash prior to issuance of building permits. All manure and unpermitted trash shall be removed by December 9, 2005.
4. A noise study shall be conducted at the first concert event to determine noise levels and mitigation measures, if required. If noise levels exceed code regulations and cannot be mitigated to conform, certain uses may not be allowed.
5. The applicant shall notify the Fire Marshal's office, the Sheriff's Office, the State Highway Department and the State Police one month prior to all events.
6. The applicant shall be responsible for all costs related to traffic control during all events.
7. The existing well shall be metered. Annual meter readings shall be submitted to the County Hydrologist by September 30th of each year. The County shall have the right to verify the readings. The applicant shall connect to the County Water System when it is available within 200 feet of the property.
8. The well shall be registered by as a Public Water Supply. Documentation shall be submitted prior to building permit issuance.
9. The applicant shall submit a discharge permit and design of the wastewater treatment facility prior to building permit issuance. A food preparation permit will required prior to occupancy.
10. The applicant shall submit access permits from the NMDOT (I-25 Frontage) and County Public Works (CR 54) prior to building permit issuance.
11. All existing and new lighting shall be shielded. A lighting analysis will be required with the final development plan. Details and cut sheet of all light fixtures including staging areas and portable lighting shall be submitted with the final development

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- plan.
12. The applicant shall identify fire access lanes, and Knox lock and submit an emergency access plan.
 13. Final placement of hydrants shall be coordinated with the County Fire Marshal prior to installation. All hydrants shall flow at 1000 gallons per minute with a 20-psi residual pressure.
 14. The existing structure must meet current code requirements and may require a sprinkler system. Building designs shall be submitted to the Fire Marshal for review and approval.
 15. The applicant shall dedicate one lane of the main access road for emergency access and shall identify a base coursed emergency access road from CR 54.
 16. The applicant shall employ security during all major events to ensure that event goers do not trespass or park on adjacent residential properties or adjacent roads.
 17. The applicant shall agree to provide an easement to the Ditch Association upon presentation of an agreement between City of Santa Fe and the Association for acquisition and use of effluent.
 18. All outdoor activity shall cease by midnight.
 19. All signage shall meet Code requirements.
 20. A permit to reinstate the waste water treatment facility shall be submitted prior to building permit issuance.
 21. Locations of dumpsters shall be designated on the final development plan. A contract from a solid waste disposal service shall be submitted prior to occupancy.
 22. An archaeological survey will be required prior to the disturbance of any new areas.
 23. Lot coverage shall not exceed 60 percent of the total lot area.
 24. Business registration will be required prior to occupancy.
 25. The applicant will be required to submit a financial guarantee, in an amount approved by the County, for all improvements including fire protection, roads, retention ponding and landscaping prior to recordation of the Final Development. The financial guarantee for landscaping and revegetation will be kept until the plantings have taken, for a minimum of one year after installation.
 26. Compliance with the minimum standards for parking lot landscaping.
 27. Drip irrigation systems will be required for all proposed landscaping.
 28. Compliance with applicable review comments from the following:
 - a) State Engineer
 - b) State Environment Department
 - d) State Department of Transportation
 - e) County Hydrologist
 - f) Development Review Director
 - g) County Fire Marshal
 - h) County Public Works
 - i) Technical Review Division

29. Financial surety for parking lot landscaping.
30. Advertising of off-site business is prohibited.
31. All necessary approvals associated with each specific use must be obtained by the applicant.
32. A 50/50 mix of evergreen and deciduous trees is required along the proposed berm.
33. The applicant must submit a development agreement for participation in the cost of future traffic improvements including traffic signals at the intersection of County Road 54 (Los Pinos Road) and the I-25 frontage road.
34. The applicant must provide traffic control to Los Pinos Road, Entrada La Cienega, and Las Estrellas during special events.
35. The applicant shall submit a back-up plan for water use for irrigation purposes.

CHAIRMAN CAMPOS: Questions?

COMMISSIONER DURAN: I have a question.

CHAIRMAN CAMPOS: Statement? Speech?

COMMISSIONER DURAN: No, no. These are real questions. Looking at the recommendations, Vicki, number 3 states that the applicant shall submit a cost estimate or financial guarantee to be approved by the County Land Use Administrator for removal of all manure and unpermitted trash prior to the issuance of building permit. And when you go to number 25, it states the applicant will be required to submit a financial guarantee in an amount approved by the County for all improvements including fire protection, roads, retention ponds and landscaping prior to recordation of the final development.

I'm wondering if there would be a problem - because often times from the recordation to the actual issuance of the building permit there is a lapse of time there. They may not even apply for a building permit for some months after final development, and that means that the final guarantee, which has to be paid for, is in place with - it's not necessary to have it in place at that point. But I do think it's necessary to have it in place when they start turning up dirt or they start doing something based on the building permit. So I was wondering, would you agree that that would be an acceptable change to paragraph 25?

MS. LUCERO: Mr. Chair, Commissioner Duran, number 25 is actually a standard condition that we impose on all projects to require them to submit a financial guarantee before they record.

COMMISSIONER DURAN: Before they record.

MS. LUCERO: Before they record.

COMMISSIONER DURAN: Okay.

COMMISSIONER MONTROYA: For the building permit?

COMMISSIONER DURAN: No. Okay, I have a problem with that. And then the only other one I have is if you go to number 30, you have advertising of off-site business is prohibited. I consider that to be a restriction of trade and a violation of the first

amendment. And would be opposed to that as a condition. I don't understand why was that placed on that.

MS. LUCERO: Mr. Chair, Commissioner Duran, the County Code prohibits off-site advertising. So it wouldn't necessarily be advertising for the Downs, but if they wanted to advertise for some other business at another location it's prohibited by ordinance.

COMMISSIONER DURAN: Oh, that's in the ordinance?

MS. LUCERO: It's the in County Code. Yes, sir.

COMMISSIONER DURAN: Okay. Well, we can discuss that later. Thank you. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Vicki, back I recall a couple years ago when we went through the first master plan on this there were restrictions put on the hours of operation for the special events. I think it was midnight or something of that sort. Are those still in the conditions or in the approvals or what was the outcome of that?

MS. LUCERO: Mr. Chair, Commissioner Sullivan, there is a condition. It's condition number 18 that states that all outdoor activities shall cease by midnight. That was the condition that was part of the master plan.

COMMISSIONER SULLIVAN: Okay. I see it now. Thank you. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: Mr. Chair, just regarding number 30. So that means, because the Pueblo has other businesses, they wouldn't be able to advertise the Cities of Gold Casino, or Pojoaque Supermarket, or anything that's related to their business enterprise?

MS. LUCERO: Mr. Chair, Commissioner Montoya, that's correct. They wouldn't be allowed to advertise that's not there on the site, on the specific site.

CHAIRMAN CAMPOS: Outdoor advertising, right?

MS. LUCERO: Outdoor advertising. Yes, that's specific to the ordinance.

COMMISSIONER MONTOYA: So they would have to come for a variance request in order to get that so they could advertise for off-site businesses then?

MS. LUCERO: Mr. Chair, Commissioner Montoya, that's correct. Yes.

COMMISSIONER MONTOYA: Okay. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Okay, applicant or agent? Governor, please state your name, address, and we're going to swear you in.

[Duly sworn, Governor George Rivera testified as follows:]

GOVERNOR RIVERA: My name is George Rivera, Governor of Pueblo of Pojoaque, Route 11, Box 71-2, Santa Fe, New Mexico, 87506.

CHAIRMAN CAMPOS: Governor, do you accept all the conditions set forth by staff?

GOVERNOR RIVERA: Mr. Chair and Commissioners, thank you for

staying up late and dealing with us. I appreciate your time. We do have a couple of issues. Number 25 on the financial guarantee for improvements prior to recordation of final development plan, our concern is that in developing this complex, large project, such as trying to put together compacting with the state, licensing with the state on horse racing, building a casino and then opening the racetrack a year later, we are asking if we can have language that reads "prior to issuance of a building permit" which would be closer to us actually building the facility. We are not opposed to putting up the financial guarantees. It's just that we feel that we may have it hanging out there for some time prematurely.

CHAIRMAN CAMPOS: Have you discussed this with our staff and raised this concern before tonight? Mr. Catanach?

MR. CATANACH: Chairman Campos, Commissioners, we had discussions certainly about language, about when certain things would be required and I don't recall if we specifically talked about this condition 25 and the question was asked, or the response was that that is a standard condition but I want to explain that it's more standard when a bond is being required for a subdivision plat. The subdivision plat is what allows a developer to start selling lots and this is not a subdivision plat. So I want to clarify that in fact it's standard procedure to require the bond before you allow a subdivision plat to be recorded in order that a developer can start selling lots. This is not the same thing.

This is just making a development plan public record when you record it. So in fact, allowing the bonding prior to issuing the building permit is acceptable.

CHAIRMAN CAMPOS: So why didn't you guys have that language in here before tonight?

MR. CATANACH: Mr. Chair, we discussed a number of things and when certain things would be required and I don't recall if we discussed this particular condition.

CHAIRMAN CAMPOS: Okay. Governor, what else?

GOVERNOR RIVERA: Mr. Chair, advertising off-site business is prohibited. Once again, the sign has been there for 30 years. We have advertised our other businesses on that sign. We've also loaned it to different non-profits to advertise their issues. We're currently working with New Mexico State Highway Department and building them a billboard on our property. The need for signage there for our businesses and for getting the message out to people is necessary. At a minimum I would ask if we could get a variance on that. That we would be able to use the sign for advertising other things until the facility is permanently developed at which point we would not want to advertise off-site business. But in the meantime it would sit there with two blank sides to it and I don't think that would look very well. But I do think that there's some good that could come out of it and if we could use it temporarily until our development is done and then at that point it will become a permanent sign for that development.

CHAIRMAN CAMPOS: Ms. Lucero, do you have any comments to that, reference condition 30?

MS. LUCERO: Mr. Chair, as I mentioned before, the Code is specific to say that off-site advertising is not allowed. So in order for them to come forward for a

variance, I don't know if maybe legal would want to respond to this but this request wasn't noticed for any type of off-site advertising variance and I think they would have to go through the proper procedures for that.

CHAIRMAN CAMPOS: One, there's no notice, and two you're asking to be treated from everybody else because this rule has been applied in the county for a long time. That's the way I see it. Okay, so you accept all other conditions, Governor?

GOVERNOR RIVERA: Yes, and I want to say thank you to the staff and Santa Fe County for the cooperation on this. Thank you.

CHAIRMAN CAMPOS: Thank you, sir. This is a public hearing. Anybody wants to be for or against it? Ma'am, you want to come forward. Sir, you want to talk about it, in the plaid shirt and the closed eyes? Come on up so we can swear you in.

[Duly sworn, Christine Sanchez testified as follows:]

CHRISTINE SANCHEZ: Christine Sanchez, 212-B Los Pinos Road. What I'm against is the road, the entering and stuff like that. This is one of my main concerns. When the Downs were there before, my family had almost been hit quite a few times. We've had to wait on Los Pinos - now it's called Los Pinos but before it was 54 or 56. But waiting there, it was more than 15 minutes. Sometimes it would be a half hour waiting to get out.

CHAIRMAN CAMPOS: To get onto the frontage road?

MS. SANCHEZ: Yes. And that was when the Downs was there. Now there are more people. There's more neighbors around the Downs. Las Estrellas is right next to the entrance of the Downs and I think there's another road. I can't think of the name right now. But they have suggested that they're going to put in an extra lane. I know there's going to be liquor served there at different times, whether it's the racing or the restaurant, but when we had it, when it was just the two roads that it is now, people were passing left and right and they were serving drinks then.

My concern is if I save even one life that is more than enough for me. I just would want you guys to be thinking about that. I know they said they're going to have somebody, I don't know if it's engineering or what it is to see the flow of traffic. But in my day, in my lifetime I've never seen somebody that's paying for this and that company coming back and saying, No. This isn't a good solution. So much traffic coming in. It's going to impact our community.

Another thing is the four-foot berm that they have said they wanted to put up for noise. Right now you can hear I-25 where I live. So to me, I can imagine whenever there is horseracing or anything like that the noise level is going to be higher. I was told that just talking here is 50 whatever it is, decibels. It's way higher. If I hear the highway from where I live I imagine this other stuff would be a lot louder. I don't think a four-foot berm would cut the noise or the trees that they want to put up. Something else has to be done.

For the roads, they had told us that maybe they would give us stickers on our cars so that if the sheriffs or the state police, whoever was going to direct traffic, whenever they saw that sticker they would let us go by right away. I don't think that's a good solution. To me even that extra road they want to do, the extra lane is just a band-aid. That's my opinion. The time, 12:00, I think is kind of late only because at the time when the Downs was there

there were no people around. Now there's people up to their fence line all the way around. I was just in Atlanta, Georgia, there for a concert, and their time limit was 11:30 and they were a big residential area. So I think if other towns and even the City of Santa Fe for the rodeo grounds, everything has to end at 10:00 because they're trying to be respectful to their neighbors. If it's the drag, whatever it is that they have there it has to be closed by 10:00 period, no ifs, ands, or buts.

Another thing that I'm concerned about is the pollution, the light pollution. There's going to be a lot of light out there. I don't think anybody has said anything about that. But we are a small community and I think that should be addressed. We want to be good neighbors and they're coming into our community and they said they were going to be helping out with like a community center or something. Well, saying it and doing it are two different things. I don't think they have written anything down exactly what they wanted to do.

We want to keep our community. It is a small community. We already have Las Golondrinas, the traffic from them and the traffic from Sunrise Springs. The roads have not been improved with those two that are right there on Los Pinos Road. This is going to be a lot more traffic. I just feel that we're not going to be - we're not Las Vegas and we need to be toned down a little bit. We're the community of La Cienega. We need your help, and every time I come to a meeting, whether we stay late. Tonight is a late night. I don't want to be forever, but I always look at the sign up here. Protection of property, religion and language. I think that's what you guys are here to do. I understand that it's their property. They want to develop it but I think it just needs to be toned down a little bit for our community.

Like they said, they've come back I think a couple of times for the manure and they're putting up money for it to be taken away. In all good conscience, in all good conscience, I have to say this that they made a compact with the state and they have not abided by their commitment. And I just want to ask you why do you think that they would commit and do what they said they were going to do to you if they haven't done it for the state.

I love my community and I'm not saying that there can't be progress, but I think the things I brought up, and I think because we are a little community, I hope you guys will protect us and I want to say thank you very much for your time. Thank you.

CHAIRMAN CAMPOS: Thank you, Ms. Sanchez.

EDWARD A. RIVERA: Again, Edward A. Rivera. I am all for the development of the Downs at Santa Fe. It has a long history. I think a lot of people don't realize that it is a part of the community and when it closed it also impacted the community. Some people had to move away from Santa Fe when the Downs closed because their livelihood left so they followed the tracks to other cities. I think the County can make this work. There are racetracks in other cities that are right inside the city itself, in Los Alamos, in Phoenix and other cities. And I'm sure it will be a success and it makes good economic sense. I'd be glad to see it open again.

CHAIRMAN CAMPOS: Mr. Catanach, do you have a comment?

MR. CATANACH: Mr. Chair, I haven't been out on the property since before they came in for a master plan amendment and the question has been asked more than once if

the chain link fence has been installed around the manure pile. The Fire Marshal had a concern that there should be a chain link fence installed to keep kids out of that area and I believe we asked the Downs the question and the response was yes, but the question keeps coming up. I see Ed is nodding.

CHAIRMAN CAMPOS: Governor, has that been installed?

GOVERNOR RIVERA: Yes. Allan Mosely told me it was, so it was. I haven't seen the manure pile in a while but I understand it's almost gone.

CHAIRMAN CAMPOS: Okay. Great. Ms. Lucero, access to homes. As Ms. Sanchez asked, there were long waits to be able to get onto the frontage road when there were events at this site. How do you address that from the County perspective?

MS. LUCERO: Mr. Chair, the applicant did provide a TIA regarding the traffic and I believe the recommendation of the TIA was that deceleration lanes and an acceleration lane be constructed for traffic exiting the facility and traveling northbound. It also recommended improvements to upgrade the access to comply with State Highway Department access manual with the right turn deceleration southbound and a left turn deceleration lane northbound into the facility. I believe the applicants are in agreement with this. We sent this out to the Highway Department for review and we have not yet received a response. The Public Works Department did review the application and they made some comments regarding County Road 54.

I also understand the Fire Marshal had a concern regarding emergency access, so the applicant has agreed to dedicate one lane for emergency use only.

CHAIRMAN CAMPOS: Okay, there's also condition 34, the applicant must provide traffic controls to Los Pinos Road, Entrada La Cienega and Las Estrellas during special events. Okay, so the other issues, the berming and the noise level. What if it turns out that the noise is much higher than we expect today? What authority do we have to go in there and regulate as a County to protect the residents in the area?

MS. LUCERO: Mr. Chair, there is a condition regarding noise.

MR. CATANACH: I think it's number 4.

MS. LUCERO: Yes, Mr. Chair, it's condition number 4 that a noise study shall be conducted at the first concert event to determine noise levels and mitigation measures if required. If noise levels exceed Code regulations and cannot be mitigated to conform certain uses may not be allowed in the future.

CHAIRMAN CAMPOS: Okay. What about the midnight close time? Is that too late if you're in a situation like this?

MS. LUCERO: Mr. Chair, that was actually a condition that was imposed on the master plan when they came in at that time, and that pertains to outdoor activities, so concerts and other special events need to cease by midnight.

CHAIRMAN CAMPOS: All outdoor events.

MS. LUCERO: All outdoor events.

CHAIRMAN CAMPOS: By midnight. Don't you think that's a little late?

MS. LUCERO: I know that the community had raised some concerns

regarding that even if outdoor activities cease by midnight people wouldn't actually be leaving the facility until one or two o'clock in the morning. That may be late to have people out there in traffic.

CHAIRMAN CAMPOS: What about the light issues? Lighting. Do you have a condition that regulates that? Number 11 - shall be shielded, lighting analysis shall be required at the final development plan. Do you feel that's adequate to protect the residents?

MS. LUCERO: I believe so. Mr. Chair, the applicants have actually submitted a preliminary lighting analysis and from what they submitted it seems to comply but they will need a more detailed one at final development plan.

CHAIRMAN CAMPOS: Final development does not come back to us?

MS. LUCERO: Mr. Chair, staff's recommendation and the recommendation of the LCDRC was that that would be handled administratively.

CHAIRMAN CAMPOS: Okay. Any other questions? Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I just want to thank the LCDRC for doing a great job in terms of asking a lot of questions to the applicant and straightening out a lot of the concerns that they had. And I want to thank Christina and Edward for showing up and voicing their concerns. And a lot of those concerns are addressed in the conditions. I want to ask a question to the Governor and one of the main concerns that I have, Governor, is that no activities would start - and I just want to reaffirm it to the public, that no activity would start in this area until all the manure is gone, removed. And I just want to hear it from you that you're still looking at it the way we're looking at it.

GOVERNOR RIVERA: Yes, Commissioner. Yes, we're agreeing to that condition and the condition is that all the horse manure will be removed.

COMMISSIONER ANAYA: Okay.

GOVERNOR RIVERA: I don't know if there's anything else out there.

COMMISSIONER ANAYA: I appreciate that, because that's one of the main issues that was brought up from the beginning and I appreciate that.

GOVERNOR RIVERA: And we understand that it is actually no violation that we have created that requires us to remove it. We did it at the request of the neighbors, so that's a point I wanted to make clear, that there's absolutely no violation out on that property.

COMMISSIONER ANAYA: And I understand that and I appreciate that that you are doing that. Other than that I think that this has been an ongoing process. I think we've come to - this is going to be good economic development. I hate to just see this building just rot, just fall down. I'm glad to see we're going to repair it and we're going to have some activities there. But I want you to be really concerned about the issues that for example Christina brought up and that is the road issue and making sure it's safe when people are exiting or entering Los Pinos Road and into the Downs. So I think it's been a long, long process. I think it's going to be a good thing. I just want to thank everybody for working on it and bringing the issues, and finally coming together on this.

Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Any other questions?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: I think it's important and I lot of times we don't learn things that we should learn in school because we're not taught, number one. And I think, I can see that to hear it over and over in my district about Pojoaque Pueblo, why aren't they paying to the state? Governor, would you mind, I think it's important that we educate people in terms of why exactly that's the case, that the sovereign Pueblos don't have to pay in those compacts unless they're willing to do so. If you wouldn't mind briefly, just explaining.

GOVERNOR RIVERA: Commissioner Montoya, thanks for asking that question. It's actually an issue I've been dealing with for about ten years. The Pueblos in New Mexico are sovereign governments that aren't subject to tax. And what the compacts are requiring is basically a revenue sharing that exceeds any other tax in New Mexico. We are in one of the most important law suits for Native Americans and states in the country. It's the only lawsuit of its kind in the country. And the only way we got it into court is by having the state sue us.

So in order to protect tribal sovereignty we had to take action to force us to be sued, to take us into court so that we could have our day in court and prove that charging the tribes in order to get a compact is illegal, both under federal law and under the state constitution. Thank you.

COMMISSIONER MONTOYA: Thank you, Governor. I'll yield to Commissioner Sullivan.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I just had a quick question for staff. You say that the staff is going to administratively approve the final development approval, but the memorandum here indicates that we're being requested to approve preliminary and final development plan approval. Vicki, can you explain that to me?

MS. LUCERO: Mr. Chair, Commissioner Sullivan, the applicant was requesting preliminary and final development plan approval. After reviewing the application, staff was just recommending preliminary in order to allow the applicant to address the conditions that we've imposed, And once those have been addressed then the final would be approved or handled administratively.

COMMISSIONER SULLIVAN: I see. So what you're asking the Commission for tonight is only preliminary development plan approval.

MS. LUCERO: That's staff's recommendation, yes.

COMMISSIONER SULLIVAN: Okay. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Any other questions or comments?

COMMISSIONER MONTOYA: Mr. Chair, I'd like to move for approval.

CHAIRMAN CAMPOS: I have some question.

COMMISSIONER MONTOYA: Could I make a motion and then you can ask a question.

CHAIRMAN CAMPOS: Well, I'd rather not have a motion until all the questions are talked about.

COMMISSIONER MONTOYA: Okay. You can do it either way, I guess.

CHAIRMAN CAMPOS: Governor, on number 18, it says all outdoor activities shall cease by midnight. Would you be opposed to an additional clause that would say this may be amended by the BCC for good cause?

GOVERNOR RIVERA: I'm talking with my staff about that and we feel we've gone to the residents and we've discussed what it is that we would be doing. I don't foresee this being a regular basis, but I think that it passed the local scrutiny already and that's why we're submitting it as-is.

CHAIRMAN CAMPOS: So you're saying you would not agree to that.

GOVERNOR RIVERA: I would prefer to keep it as-is.

CHAIRMAN CAMPOS: Okay. Is there a motion?

COMMISSIONER MONTOYA: Mr. Chair, if there's no other questions, I'd like to move for approval of the preliminary development plan, with the amended language on number 25 that would read prior to issuance of building permits, and then on number 30, if we could limit that or implement that at the time that the business begins, which would be in 2006, that advertising off-site businesses would be prohibited.

CHAIRMAN CAMPOS: I think the issue there is jurisdictional. There's no advertisement as to a variance. Therefore we would have no authority at this time to consider that request. I think that's what staff indicated earlier.

COMMISSIONER MONTOYA: Oh, is that correct?

COMMISSIONER DURAN: It is somewhat. I think what Commissioner Montoya is suggesting is that until they actually start using the property, if the motion passes, they would be able to use it for other advertising. I think that's different than a variance to use it after they start operating out of there.

CHAIRMAN CAMPOS: I guess, Mr. Catanach, could you address that issue. Or Mr. Ross?

MR. CATANACH: If I understood that, that the sign that's advertising Cities of Gold would be allowed and then - it would be allowed until they actually occupy, open for business. And then the question came up that then they would advertise I guess the Downs on that sign. But it's not just an issue of the business advertising on that sign. It's an issue of if the sign's structure itself meets standard. So I think if the applicant would like to continue to advertise Cities of Gold and if in fact the sign doesn't meet standards for size of sign and height, that this applicant would come back for a variance and clarify what they are going to advertise on that sign and what the dimensions of that sign are. If that sign meets sign standards.

CHAIRMAN CAMPOS: Mr. Ross. I know it's late.

MR. ROSS: Mr. Chair, I don't think there's a need for a variance because

the sign is grandfathered right now and until what's approved here actually begins operation I don't think there's a violation of Code necessitating a variance. If that's the motion. The intent of the condition on the sign parameters anyway, so I think at some point they'll have to address those as well, if the sign is non-conforming under the new requirements.

COMMISSIONER DURAN: Second.

COMMISSIONER SULLIVAN: What was the first condition?

CHAIRMAN CAMPOS: The first amendment was number 25, saying that the financial guarantee would have to be put up before building permit.

COMMISSIONER MONTOYA: Prior to issuance of building permit.

CHAIRMAN CAMPOS: Prior to issuance of building permit as opposed to I guess sooner. That's number 25. And then 30, what language -

COMMISSIONER MONTOYA: Advertising of off-site business is prohibited until 2006? Is that what I heard maybe the date of occupancy? Is prohibited after -

CHAIRMAN CAMPOS: Until the property is open for business? We're just talking about that one particular sign, right? We're not talking about other signs. We're talking about the particular sign that exists can be used for off-site advertising until this business opens in 06?

GOVERNOR RIVERA: I'm not an attorney but I think the language without the day is probably safer, to just say that until it opens for business and becomes a permanent sign.

COMMISSIONER DURAN: I'd agree.

CHAIRMAN CAMPOS: Now any other comments or suggestions.
Commissioner Sullivan.

COMMISSIONER SULLIVAN: I think midnight is too late. It takes so long to get the cars out of that place, particularly if one lane is going to be dedicated for emergency access which it well should be. I just feel that that is quite an imposition. If you took this condition literally, then it would be okay. All outdoor activity. That would mean the gates are locked and everyone was going home. That would be okay. But you know that's not what's going to happen. What's going to happen is that the events are going to continue until midnight.

CHAIRMAN CAMPOS: The concert ends.

COMMISSIONER SULLIVAN: The concert is going to end and then you're going to have an hour and a half of cars and honking and drinking and what have you and carousing until everybody gets out the gate. I just feel personally that that's a valid point brought up here this evening that that should be cut back perhaps to 11:00.

COMMISSIONER MONTOYA: What time does a concert end? I've never been to one.

COMMISSIONER SULLIVAN: That's the problem. They never seem to end. They move from the concert to the parking lot to the highway.

COMMISSIONER DURAN: Days. How long did Woodstock last? Did you ask the applicant if 11:00 would be acceptable to him?

CHAIRMAN CAMPOS: I want to say I do share that concern but I also want to state the concern I stated earlier about having some, reserving for the Commission some authority to amend the cease time in the future if there's good cause for that. That gives us flexibility to regulate something that might get out of control. Governor?

GOVERNOR RIVERA: How about 12:01?

CHAIRMAN CAMPOS: How about 10:00.

GOVERNOR RIVERA: I think 11:30 wouldn't make a difference if that will help in any way. I think a concert probably ends probably at the latest at 11:30. It depends on how good they are and if they get an encore or not.

CHAIRMAN CAMPOS: Well, they have to start earlier then.

GOVERNOR RIVERA: But I think 11:30 would be acceptable, but I go back to my original point is that we have dealt with the local community and got this passed as 12:00. But we would come down to 11:30. That's meeting half way.

CHAIRMAN CAMPOS: If we start at 10:00 then you meet us half way at 11:00. It depends where you start. I agree. I think that 11:00 is a good time to close shop. And I think we need to reserve some authority. I think that's a friendly amendment to end by 11:00 and allow the BCC authority amend cease time if justified by good cause. That way we can keep control of this and make sure that this doesn't get out of control and that the community's protected.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: I would have a problem with the 11:00 but I guess I would want to know how the Tingley Coliseum operates. I've never been to a concert either.

COMMISSIONER DURAN: I don't remember if I've been or not. It's late.

COMMISSIONER ANAYA: Are they getting out at ten? Are they getting out at eleven? Or what are their restrictions. I'd like to see what Tingley does, what Popejoy Hall does. I'd like to hear that. But for the sake of the residents in my district, I don't have a problem with 11:00 but I think we should revisit that later and if it doesn't turn into a problem then I don't have a problem with that either.

CHAIRMAN CAMPOS: So you're saying 11:00 and reserving the authority of the BCC to make an adjustment if there's good cause in the future? What about that? Who's the maker?

COMMISSIONER MONTOYA: I would agree with 11:30 and then your language.

COMMISSIONER DURAN: And the seconder agrees.

CHAIRMAN CAMPOS: 11:30 plus language to reserve the authority?

COMMISSIONER MONTOYA: Because that covers you.

CHAIRMAN CAMPOS: If things are getting out of hand we can still

change it to 11:00 later in the future. Okay. We have a motion. We have a second. It's been amended. Number 18 has been amended to 11:30 with language allowing the BCC to regulate the cease time if there is good cause in the future.

The motion to approve LCDRC Case #DP 01-5014 with conditions as amended passed by unanimous [5-0] voice vote.

ADJOURNMENT

Chairman Campos declared this meeting adjourned at approximately 10:50 p.m.

Approved by:

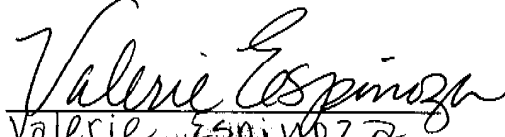


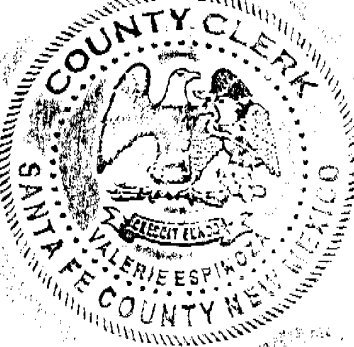
Board of County Commissioners
Paul Campos, Chairman

Respectfully submitted:

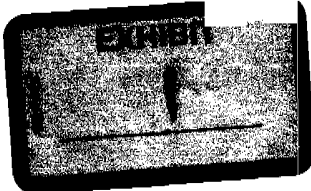

Karen Farrell, Commission Reporter

ATTEST TO:


Valerie Espinoza
SANTA FE COUNTY CLERK



SFC CLERK RECORDED 02/03/2005



To: County of Santa Fe
 County Development Review Committee
 Board of County Commissioners

Re: Rancho San Lucas Subdivision located on Spur Ranch Road

We, the undersigned, support reducing the number of lots from the currently approved 49 to the proposed 29 as presented by Monte Alto Homes on August 29, 2004.

Print: Name	Street Address	Subdivision
Horst Schroeder	15 Camino Caballos	Tierra de Cacto
Patricia Mathews attorney in fact for	21 Camino Caballos (Vacant Lot #10)	"
Richard Robinson	24 Camino Caballos	Tierra de Cacto
Douglas Wilkes	26 Camino Caballos	Tierra de Casa
Tom Brooks	28 Camino Caballos	" " "
Joe Luman	34 Camino Potillo	Ranchitos
Edmund	26 Camino Potillo	Ranchitos
JOAN FOX	52 CAMINO POTILLO	CANONITO O SF
Felic Fuentes	10 Camino Caballos Spur	Tierra de Cacto
Barbara C. Colman	18 Camino Caballos Spur	" "
Elizabeth Driscoll	1 Camino Caballos	" "
JEFF McCAFFREY	44 Camino Potillo	Ranchitos de S.F.
ROSE MAE DEBARI	28 Camino Caballos	Tierra de Cacto
Linda Strong	#5 Camino Potillo	Ranchitos de SF
David Brightstein	" "	" "
Luis Reynolds	26 Camino Potillo	Lamy NM 87546
DAVID	1 Camino Caballos	" "
James Walker	26 Camino Caballos Trail	Los Caballos
HOWARD E FNER	30 Camino Caballos	Tierra de Cacto
Carolyn Chen	30 Camino Caballos	Tierra de Cacto

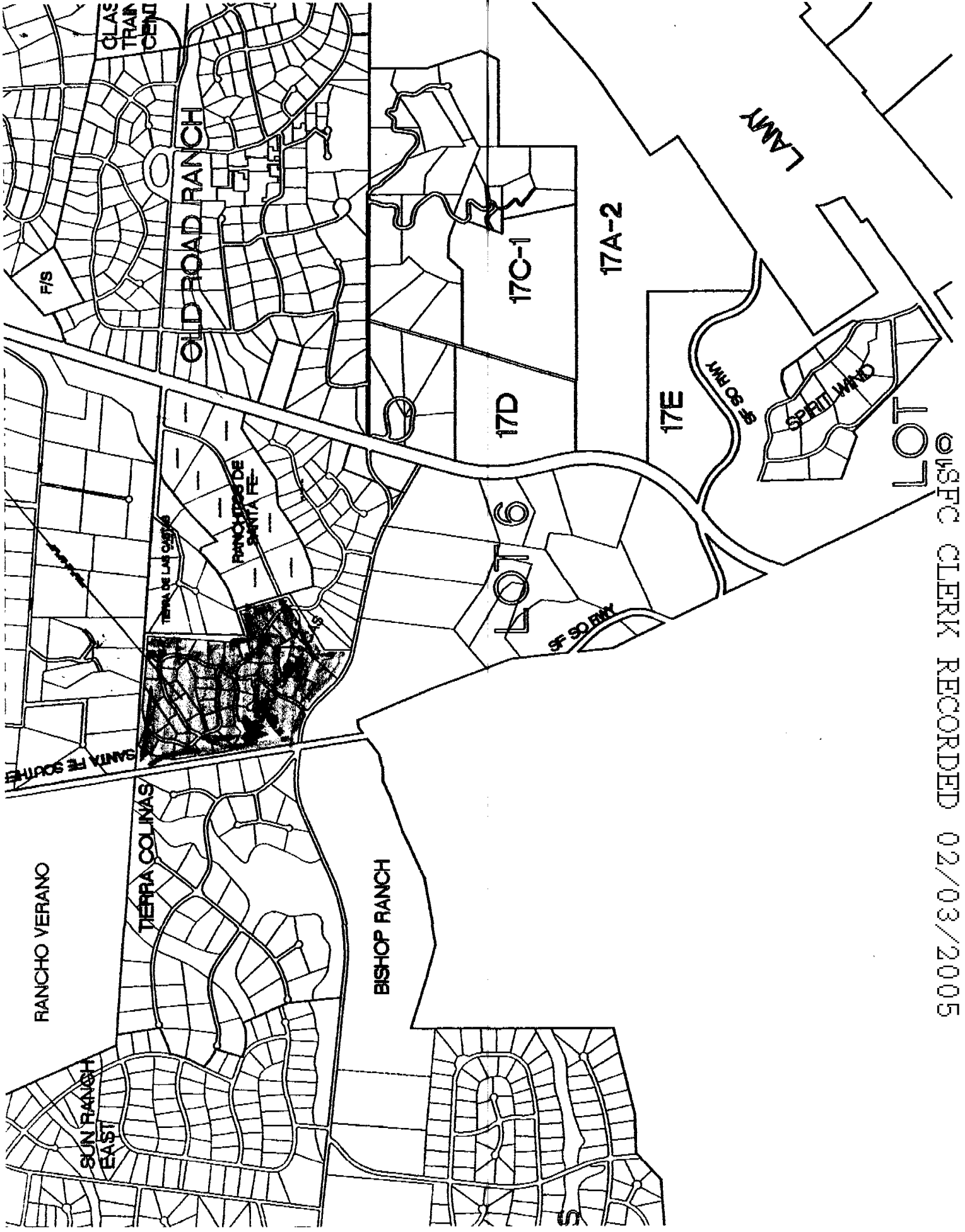
SFC CLERK RECORDED 02/03/2005

Rancho San Lucas Subdivision
 Monte Alto Homes

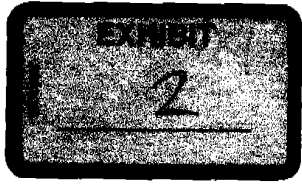
August 31, 2004 Attendees:

Print: Name	Street Address	Subdivision
LIBERT VIGIL	11-675 BOX 307	RANCHITOS D. SF.
Doc Lumsden	34 Camino Potrillo	Ranchitos De Santa Fe
Eddie Reynolds	26 Cam Potrillo	RANCHITOS D. S. F.
Erk Fueter	10 Camo Caballos Spu	Tierra De Costa SF
JEFF McCRORY	44 Camino Potrillo	RANCHITOS DE SF
HOWARD EBER	30 Camino Caballos Spur	Tierra de Costa
Carolyn Eber	"	"
DRAISCOL	1	"
Louellen Crawford	24 Cam. Caballos	"
JOAN FOX	52 CAMINO POTRILLO	RANCHITOS D SF
Horst Schrader	15 Camino Caballos	Tierra de Costa
Patsy Matthews	15 Camino Caballos	" "
ROSEMARIE BAGINI	28 Camino Caballos	Tierra de Costa
Tom Brooks	28 Camino Caballos	Tierra de Costa
Joellen Schilmoeller	27-A Caballos Trail	Los Caballos.
Linda Strong	#5 Camino Potrillo	Ranchitos de SF
Barbara Colman	19 Cam Caballos	Tierra de Costa.
Donain Lytle	26 Camino Caballos	" "
Charles Waldick	26A Caballos Trail	Los Caballos Tr

SFC CLERK RECORDED 02/03/2005



01SFC CLERK RECORDED 02/03/2005



Tierra Colinas Homeowners Association
36 A Camino Loma Seco
Santa Fe, NM 87540

September 15, 2004

Re: Petition to approve Rancho San Lucas, CDRC CASE # S/V 02-5291
Attention, VICKI LUCERO, case planner

Dear Commissioners,

This letter is being written by the board of the Tierra Colinas Homeowners Association on behalf of its members. We protest the approval of Rancho San Lucas unless the commissioners agree to make Rancho San Lucas, as a condition of approval, enter an agreement with Tierra Colinas to contribute to the costs of maintaining the part of Spur Ranch road we both share. This is both fair and consistent with the decision you made recently making the Rosa Linda Subdivision CDRC #S-04-5050 as a condition of approval, enter a road maintenance agreement with us because of there shared use of Spur Ranch Road.

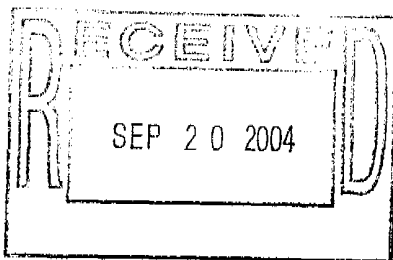
The Tierra Colinas Homeowners Association has been forced to maintain Spur Ranch Road between Highway 285 and the Santa Fe RR tracks even though we do not border this 1 mile section of road. We need this road for access and share this road with other homeowners on Spur Ranch Road but they have refused, with the exception of a few small contributions to help maintain the road. We have no legal means to compel these other homeowners to contribute to the maintenance costs. At present we have contracted with Borrego Sand & Grave to maintain our interior roads, 2.35 miles plus Spur ranch to Junipero, 1.5 miles [the end of our sub-division] once a month. Because of our recent agreement with Rosa Linda subdivision we share the costs of maintaining our shared portion of Spur ranch, split proportionately between their 15 lots and our 50 lots.

We believe the county would create an unjust burden upon the 50 Tierra Colinas property owners, and the 15 Rosa Linda property owners if the Rancho San Lucas development is approved without accepting the financial responsibility for maintaining there shared portion of Spur Ranch Road. Therefore we respectfully submit that no further development be approved unless an agreement with Tierra Colinas [and Rosa Linda] is agreed upon or if the county agrees to take over maintenance of Spur Ranch Road.

Sincerely,

President TCHA, John Latka
TCHA Board
Tierra Colinas Homeowners Association

SFC CLERK RECORDED 02/03/2005



Roberta A. Armstrong
Victor A. Webster
4293 Trading Post Trail South
Afton, Minnesota 55001-9645
651/436-5921 (home)
651/436-8716 (home office)
612/670-4309 (cell)

September 9, 2004

County Development Review Board
Santa Fe County
c/o Manager's Office
102 Grant Avenue
Santa Fe, NM 87504

Re: September 16 Agenda
CDRC CASE # S/V-02-291-
Rancho San Lucas

Dear Sir or Madam,

As owners of 12.5 acres on Silver Saddle Road (just off Spur Ranch Road) on which we intend to build a permanent residence within 3 yrs, we write to voice our concerns regarding the above request.

While we do not have access to these plans we do have concerns regarding the types of usage and development that might occur.

The property we own, and the properties of our close neighbors, are all under restrictive covenants (e.g., height, color, style, water usage, animals, trailers, accessory buildings, landscaping, and setbacks). We have a strong desire to maintain the views and quality of the neighborhood.

We strongly recommend that the CDRB closely review the covenants proposed for Ranch San Lucas to ensure that the value of our property and that of other adjacent homeowners is protected. A well done development in that area will be an asset to the County. We will be unable to attend the hearing as a result of distance and times so hope you will accept this written input.

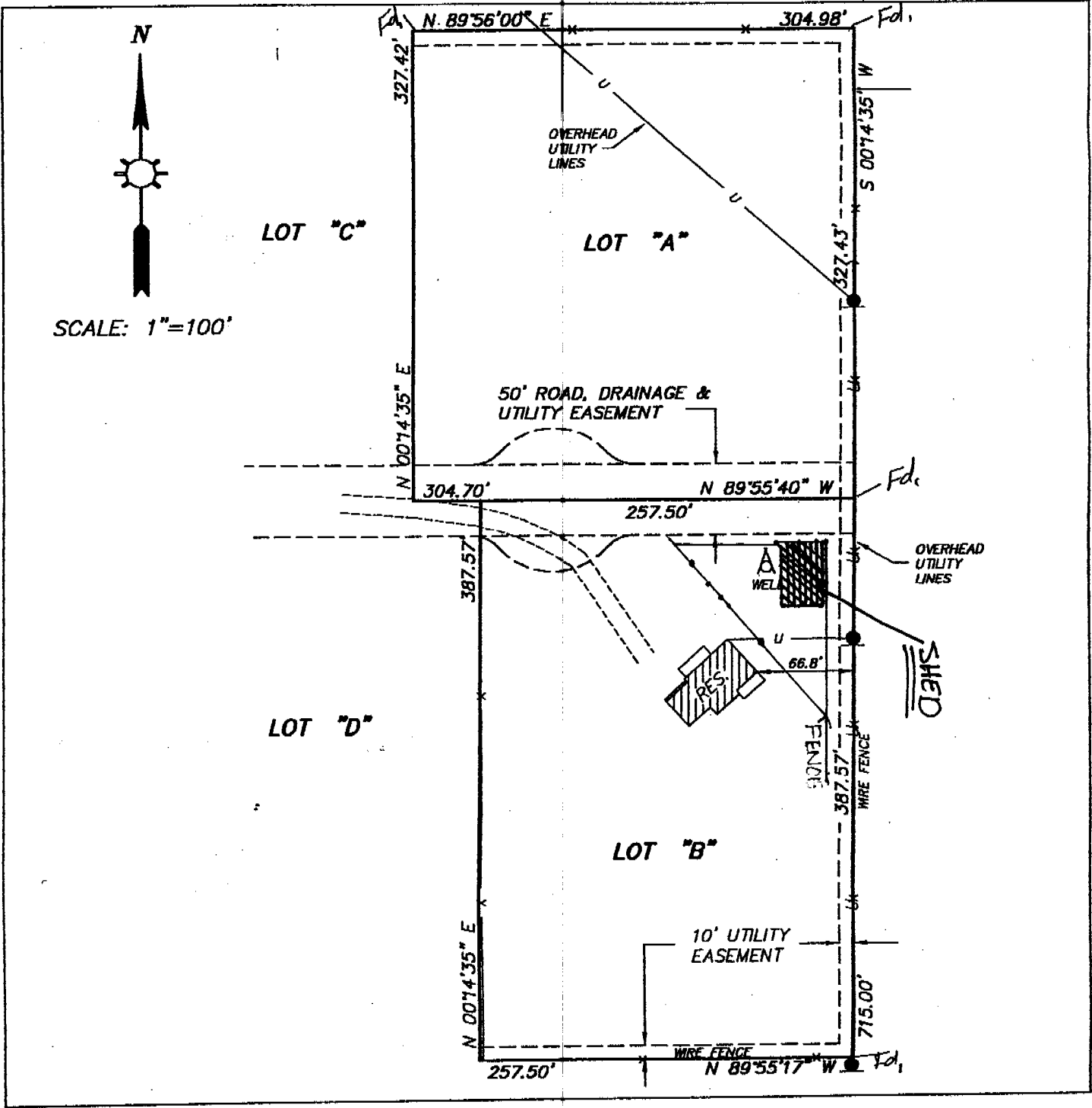
Sincerely,

Roberta Armstrong

Al Webster

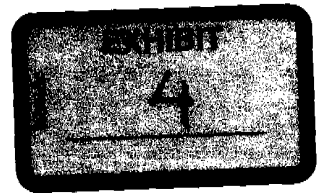
cc: Michael Scott

SFC CLERK RECORDED 02/03/2005



SFC CLERK RECORDED 02/03/2005:947

Improvement location is based on previous property surveys. No monuments were set. This tract is subject to all easements, restrictions and reservations of record which pertain.



Rubin Katz Law Firm

A Professional Corporation | ATTORNEYS AT LAW

November 1, 2004

James B. Alley
Janet Clow
David F. Cunningham
Frank T. Herdman
Leonard S. Katz
Owen C. Rouse III
James S. Rubin

Melanie E. MacGillivray
Brenden J. Murphy
Shelby E. Robinson
Elege Simons

Donald M. Salazar
(1947-2003)

Dolores Vigil, Land Use Director
Board of County Commissioners
Santa Fe County
102 Grant Avenue
Santa Fe, NM 87504

Re: CDRC Case No. APP04-5470 - Appeal of Dominic Vigil

Dear Ms. Vigil and Members of the County Commission:

The above appeal filed by Dominic Vigil relates to business activities which he proposes to carry out on Lot B of the Alameda Ranchettes Subdivision. This firm represents Melvin and Ernestine Hagman, Daniel Pomonis and Ismael Mena, who are the owners of other lots in the Alameda Ranchettes subdivision. They oppose his appeal and ask that it be denied on the following grounds:

Mr. Vigil proposes to run a roofing business from his home, with its attendant trucks, equipment, tools and tar pots. In fact, what he is proposing is not a "home occupation" at all, because the work is not done either in the home or in any accessory structure. It is done at various job sites around the County.

The proposed business activities violate Section 3.2.2 of the Land Development Code. These activities constitute the use of the property as a staging area for construction trucks, equipment and employees, who arrive from off-site, assemble their tools and equipment, and depart in convoys of vehicles in the early hours of the morning to perform work somewhere other than the residence. They then return in the evening and store their tools, equipment and vehicles and check out of work and return home. In essence, as many as six (6) workmen commute to and from this staging area on a daily basis. They are not engaged in "work at the site of the home occupation." Their activities are in no way confined to the "floor area of the dwelling," as they do much of the work in the yard, on the roads, and at other job sites to which they travel. The "use of the dwelling" is clearly not "subordinate to its use for residential purposes." The workmen do not even have to enter the "dwelling" on the premises, as their activities are purely industrial and commercial, and are completely unrelated to any "residential" use.

SFC CLERK RECORDED 02/03/2005

Ms. Vigil
November 1, 2004
Page 2

The proposed business activities violate Section 3.2.3 of the Code. There has been a substantial change in the outside appearance of the building and premises as a direct result of the business activities of the owners. The owners have erected a large fenced enclosure; they have begun to erect a large steel building next to the residence to serve solely the industrial and commercial uses of the business; they provide daily and repeatedly visible evidence of the conduct of the business in the form of workers commuting to the site, trucks and equipment coming to and from the site. Recently, a large truck from an industrial uniform supplier was seen delivering uniforms and supplies to the site. It was so large that it could not even turn around in the residential cul-de-sac in the neighborhood.

The proposed business activities violate Section 3.2.4 of the Code. The trucks and equipment which are assembled and operated at the staging area in the morning and which return in the evening produce a level of noise which prevent the occupants of other dwellings in the neighborhood from even being able to sleep, much less enjoy a quiet breakfast or a peaceful moment outside after work. Decibel readings have been taken by residents of neighboring lots, with resulting readings as high as 90 decibels – the equivalent of standing next to a gasoline lawnmower in operation, or standing 3 feet from a foodblender. The tar pots used by this roofing business also exude noxious and offensive odors on a daily basis which sicken and repulse nearby residents in their homes.

The roofing business would also generate substantially more and heavier traffic than a "home occupation" using the same number of employees. A few employees going to the site in the morning and leaving in the evening would generate two (2) trips per employee. The employees of this roofing contractor come and go twice as many times per day as that. In addition, the type of traffic is substantially more onerous. Instead of a few passenger vehicles, the employees of this roofing business come and go in convoys of large trucks, which you can see in the attached photos, taken from the Hagman residence. The result is a much higher volume of noise, and a much more severe deterioration of the roads in the area than would result from mere passenger vehicles.

The undersigned has personally researched the zoning and land use ordinances of at least fifty (50) cities and counties across the continental United States. It is safe to say that not a single one of them would recognize the operation of a roofing business from a metal building and yard as a "home occupation." If this County chooses to do so, it will represent a breakdown of land use regulation in this area, and will devalue residential property in the entire County because of the precedent. No one would be comfortable buying property in a quiet rural neighborhood, knowing that any day another contractor might move in next door and use his yard, too, as a staging area for his trucks, employees and equipment.

SFC CLERK RECORDED 02/03/2005

Ms. Vigil
November 1, 2004
Page 3

The operation of a roofing business in a residential subdivision destroys the residential character of the subdivision. It turns a place dedicated to rest and relaxation into a light-industrial work park.

To decide this appeal, you need only ask yourselves one question: would you approve the operation of a staging area for a roofing business in the back yard of YOUR next door neighbor?

Sincerely,



Owen C. Rouse III

cc: Mr. and Mrs. Hagman
Daniel Pomonis
Ismael Mena

SFC CLERK RECORDED 02/03/2005



SFC CLERK RECORDED 02/03/2005



SFC CLERK RECORDED 02/03/2005

David R. Gold

November 8, 2004

Santa Fe County Commission
Santa Fe County
Santa Fe, NM

Re: CDRC App-04-5470

Dear Commissioners,

I am writing concerning the appeal of an application for a roofing company on Sloman Lane as a Home Occupation and to urge you to follow the lead of the CDRC and deny the appeal and the application.

My understanding of the Home Occupation Rule is home businesses are supposed to have little or no impact on surrounding residences. I feel the proposed use completely violates this rule. Further, I feel there are a number of enforcement difficulties that will result if this is approved, even with strict conditions.

- **Noise Impacts:** This business begins loading heavy equipment and machinery early in the morning. Apparently the noise is loud enough to wake neighbors ¼ mile away. This is unacceptable, even on an occasional basis, let alone daily. This level of noise is inappropriate even if the loading times were moved to a more reasonable hour.
- **Material Storage and Odors/Fumes:** It is not clear what materials will be stored here or how they will be used. Will neighbors be dealing with toxic fumes or odors from asphalt and other products? How will chemicals leaks, etc, be monitored and controlled? This is an area where residences rely on wells. Contamination is an issue. Also the current storage "facility" has a major visual impact.
- **Traffic:** Sloman Lane is a narrow street with an extremely bad connection near Calle Carla. It is dangerous with just existing users. I am concerned about additional traffic, especially routine traffic with large vehicles on a narrow road. My wife and child were run off the road by a truck associated with this company, and I have all had a few close calls.
- **Enforcement:** How will any conditions be enforced? Even if type of storage, numbers of trucks, and hours of operation are limited, there is no county mechanism or manpower to monitor and enforce compliance on an ongoing basis. Ultimately this will create a burden for neighbors.

This application is completely inappropriate for a residential neighborhood. It belongs in a commercial or even industrial area. Please **DENY** this application and the appeal.

Thank you,

- David Gold -

70 Sloman Lane

SANTA FE, NM 87507

505-471-3974

SFC CLERK RECORDED 02/03/2005

Subject: RE: Hearing Enchantment Roofing

Date: Sun, 7 Nov 2004 19:23:56 EST

From: SFStgTransfer@aol.com

To: cgonzales@co.santa-fe.nm.us

Dear Mr. Gonzales;

I am writing to you in regard to the County Commission hearing scheduled for Dominic Vigil owner of Enchantment Roofing.

My husband and I own and reside on Sloman Lane. We would like to go on record and let you know we are opposed to Mr. Vigil being granted a business license on Sloman Lane for the following reasons.

- 1) One of our main concerns is Sloman Lane being a narrow dirt road, which dead ends. Even under normal conditions two cars have to slow down considerable or pull over in certain spots that they can safely pass each other without one of them ending up in the ditch. Mr. Vigil's roofing trucks are considerable larger and on several occasions I have observed them driving in the middle of the road, which could cause a head on collision with traffic coming from town. During the recent rains these trucks caused considerable more damage than our cars do as far as deep. Pinion Hills is partially paved and our road is no longer grated on a regular basis.
- 2) My husband and I own Santa Fe Storage and Transfer a Public Regulation Commission regulated business. As a business owner we also oppose Mr. Vigil being granted permission. We have abided by the law and obtained any and all permits and authorities prior. Mr. Vigil in blatant disregard to the rules and laws of the County has been operating an illegal business. We feel you as a County Commissioner also have an obligation to protect the general public in the County from illegal business operators. Our experience having been in business for 30 years is that illegal operators generally do not carry Worker's Compensation Insurance, do not pay Gross Receipt Taxes, or underreport their income which translates into a tax loss, they do not carry liability insurance. When employees become injured on the job the general public has to pick up the expense through the indigent fund and most important of all, their customers have no recourse for shoddy work since they are not members of any local organization such as the Chamber of Commerce or the Better Business Bureau which allows disputes being arbitrated. Since Mr. Vigil doesn't even own the property a dissatisfied customer can't even go to court and file a lien against the property.
- 3) Sloman Lane is a nice quiet county Lane which has lots ranging from +2. acres to 12 acres. This neighborhood is zoned residential and should remain residential. If Mr. Vigil is granted soon others will follow. Covenant and restrictions were filed with the County Court for a reason. If the County Commissioners chose to grant Mr. Vigil permission we as your constituents have to wonder why were we asked in the first place to place and pay for covenances to be put on these lots?
- 4) Mr. Vigil claims to have 5 employees then some of his employees must somehow manage to drive more than one car to work. Our lot is over several lots from Mr. Vigil's lot yet we were awoken at 5:15, 5:20, 5:25, 5:40, 5:45 by someone on his lot banging metal on metal and vulgarities being shouted. We assume this was done to harass Mrs. Ernestine Hagman not realizing that the noise traveled right to our open window and was loud enough to waken us, again I point out there is a minimum of 15 acres between us and Mr. Vigil's place.
- 5) The County needs laws and funds which give the Commissioners authority to order an illegal business to cease to exist, pay for enforcement personal, and grants authority for the County if necessarily to take any violators to court.

Sincerely yours,

Gunhild and Orbrey Sloman
62 B Sloman Lane
Santa Fe NM 87507

H: 505-471-8962

SFC CLERK RECORDED 02/03/2005

Dominic

From: <nmrealty@juno.com>
To: <Hmontoya@co.santa-fe.nm.us>; <Pduran@frenchx2.com>; <Manaya@co.santa-fe.nm.us>; <Pcampos@co.santa-fe.nm.us>; <Jsullivan@co.santa-fe.nm.us>; <dgonzale@co.santa-fe.nm.us>; <rabeyta@co.santa-fe.nm.us>; <cgonzales@co.santa-fe.nm.us>
Sent: Monday, November 08, 2004 4:10 PM
Subject: Appeal of Denial of Permit request 04-965: Request for a Home Occupation Business license by Dominick E. Vigil d.b.a. as Enchantment Roofing Services at 14 Sloman Court, Santa Fe, NM87507

WEST SANTA FE ASSOCIATION

Att: Board of County Commissioners

Re: Appeal of Denial of Permit request 04-965: Request for a Home Occupation Business license by Dominick E. Vigil d.b.a. as Enchantment Roofing Services at 14 Sloman Court, Santa Fe, NM87507

Dear Sirs :

You are scheduled to hear the appeal of Dominic Vigil d.b.a. Enchanted Roofing Services on November 9, 2004, at 5:00 P.M. The original Permit Request number is 04-965. The West Santa Fe Association offers the following position paper respectfully requesting your denial of Mr. Vigil's appeal. Following our position paper is the text of the Denial of Proposed Development Permit Application, Permit # 04-965, Home Occupation Business License, for Enchantment Roofing Service as written by Mr. Roman Abeyta, Land Use Administrator (with copies to Joseph Catanach, Development Review Director, Jose E. Larrañaga, Development Review Trainee.) We gratefully concur with Mr. Abeyta's considered opinion and respectfully request denial on appeal, per the following:

In the matter of Permit request 04-965: A Request for a Home Occupation Business license by Dominick E. Vigil d.b.a. as Enchantment Roofing Services at 14 Sloman Court, Santa Fe, NM87507, in the Alameda Ranchettes subdivision adjacent to the subdivision known as Pinon Hills, near the intersection of County Road 70N and 599;

The respondent, Dominic E. Vigil, was issued a citation by Santa Fe County on 6-30-04 for operating a business not in compliance with county residential zoning codes at the above address.

The West Santa Fe Association takes the position that the above business, which operates several roofing trucks and crews, cannot in any way be considered a home business and we strongly oppose the issuance of a Home Business license which can set a precedent for commercialization of historic residential areas including, but not limited to, Alameda Ranchettes, Pinon Hills, Puesta del Sol and the prime residential development areas to the West including Las Campanas, La Tierra and those properties and subdivisions represented by the Santa Fe Well Owner's Association.

We therefore respectfully ask that you deny the application for a business license of the respondent, Dominic E. Vigil, and further that he be required to comply with all pertinent residential zoning codes.

11/9/2004

SFC CLERK RECORDED 02/03/2005

In addition, it is noteworthy that the above business is also in violation of Restrictive Covenants recorded with the County of Santa Fe in the State of New Mexico on August 5, 1993, at 10:30 A.M. and duly recorded in Book 954 pages 189-190.

It is also noteworthy that the above business is in further violation of county residential code by virtue of a fence of a type and size that is prohibited by said county residential code.

Finally, it is noteworthy that we believe said fence to be constructed not on the property it surrounds, but on the county access easement that, as a result, cannot meet the county requirements for ingress and egress of emergency vehicles, thus possibly placing the county at risk of legal action.

Yours Respectfully,

Peter Hayes, Secretary

For the West Santa Fe Association

August 12, 2004

Mr. Dominic Vigil
#14 Sloman Court
Santa Fe, New Mexico, 87507

Dear Mr. Vigil:

Subject: Denial of Proposed Development Permit Application, Permit # 04-965, Home Occupation Business License, for Enchantment Roofing Service.

We are denying administrative approval of your proposed Home Occupation Business License. This license cannot be administratively approved, because the proposed business involves operations not in keeping with the residential character of the neighborhood. Traffic created by this business generates greater volumes than would normally be expected for this residential neighborhood. Equipment and process of this business significantly interferes with the existing use of property in the adjacent area. The fence (screening in place) and vehicles are a change in the outside appearance of the premises and is visible evidence of a business operation. These items are clear violations of the County Land Development Code, Article III, Section 3.

You have the right to appeal this decision. An appeal should be filed within five (5) working days (by August 18, 2004, 4:00 PM). To file an appeal, you must fill out a development permit application, provide a letter stating why you are appealing the decision to deny approval and pay a \$75.00 application fee. You must then take care of legal noticing in the paper and be present at the public hearing before the County Development Review Committee (CDRC).

You can contact Wayne Dalton at 986-6360 to schedule an appointment to proceed with the appeal process.

Sincerely,

11/9/2004

SFC CLERK RECORDED 02/03/2005

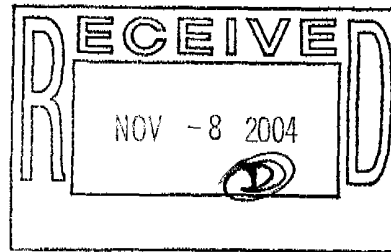
Roman Abeyta
Land Use Administrator

cc: Joseph Catanach, Development Review Director
Wayne Dalton, Development Review Specialist
Jose E. Larrañaga, Development Review Trainee

SFC CLERK RECORDED 02/03/2005

November 7, 2004

Dolores Vigil, Land Use Director
Santa Fe County
102 Grant Avenue
Santa Fe, NM 87504



RE: Enchantment Roofing

Dear Ms. Vigil,

I am writing to you in regard to the County Commission hearing scheduled for Dominic Vigil owner of Enchantment Roofing.

My husband and I own and reside on Sloman Lane. We would like to go on record and let you know we are opposed to Mr. Vigil being granted a business license on Sloman Lane for the following reasons.

- 1) One of our main concerns is Sloman Lane being a narrow dirt road, which dead ends. Even under normal conditions two cars have to slow down considerable or pull over in certain spots that they can safely pass each other without one of them ending up in the ditch. Mr. Vigil's roofing trucks are considerable larger and on several occasions I have observed them driving in the middle of the road, which could cause a head on collision with traffic coming from town. During the recent rains these trucks caused considerable more damage than our cars do as far as deep. Pinion Hills is partially paved and our road is no longer grated on a regular basis.
- 2) My husband and I own Santa Fe Storage and Transfer a Public Regulation Commission regulated business. As a business owner we also oppose Mr. Vigil being granted permission. We have abided by the law and obtained any and all permits and authorities prior. Mr. Vigil in blatant disregard to the rules and laws of the County has been operating an illegal business. We feel you as a County Commissioner also have an obligation to protect the general public in the County from illegal business operators. Our experience having been in business for 30 years is that illegal operators generally do not carry Worker's Compensation Insurance, do not pay Gross Receipt Taxes, or underreport their income which translates into a tax loss, they do not carry liability insurance. When employees become injured on the job the general public has to pick up the expense through the indigent fund and most important of all, their customers have no recourse for shoddy work since they are not members of any local organization such as the Chamber of Commerce or the Better Business Bureau which allows disputes being arbitrated. Since Mr. Vigil doesn't even own the property a dissatisfied customer can't even go to court and file a lien against the property.
- 3) Sloman Lane is a nice quiet county Lane which has lots ranging from +2. acres to 12 acres. As County Commissioner you are aware that if one is granted the next business soon will follow. This neighborhood is zoned residential and should remain residential. Covenance and restrictions were filed with the County Court for a reason. If the County Commissioners chose to grant Mr. Vigil permission we as your constituents have to wonder why were we asked in the first place to place and pay for covenances to be put on these lots?
- 4) Mr. Vigil claims to have 5 employees then some of his employees must somehow manage to drive more than one car to work. Our lot is over several lots from Mr. Vigil's lot yet we were awoken at 5:15, 5:20, 5:25, 5:40, 5:45 by someone on his lot banging metal on metal and vulgarities being shouted. We assume this was done to harass Mrs. Ernestine Hagman not realizing that the noise traveled right to our open window and was loud enough to waken us, again I point out there is a minimum of 15 acres between us and Mr. Vigil's place.
- 5) The County needs laws and funds which give the Commissioners authority to order an illegal business to cease to exist,

SFC CLERK RECORDED 02/03/2005

pay for enforcement personal, and grants authority for the County if necessarily to take any violators to court.

Sincerely yours,

Gunhild K. Sloman

Gunhild and Orbrey Sloman
62 B Sloman Lane
Santa Fe NM 87507

H: 505-471-8962

SFC CLERK RECORDED 02/03/2005

EXHIBIT
5

HOME OCCUPATION

DEVELOPMENT PERMIT APPLICATION (short version)

CONTROL # 04-395 APPLICATION DATE: 4/6/04 ISSUE DATE: _____

APPLICANT INFORMATION

OWNER NAME: ARMIDO ROBERT A.
(LAST) (FIRST) (MIDDLE)

NAME OF BUSINESS: RED EARTH CONSTRUCTION CO.

BUSINESS ADDRESS: LOMA MANANITA 3A SANTA FE NM 87501
STREET OR P.O. NUMBER CITY STATE ZIP

MAILING ADDRESS (if different from business address): P.O. Box 3247 Santa Fe, NM 87501

HOME PHONE: (505) 455-3462 WORK PHONE: (505) 690-1125

NATURE OF BUSINESS: BUILDING CONSTRUCTION

PROPERTY INFORMATION

PROPERTY OWNER NAME: ROBERT + ANITA ARMIDO

LEGAL DESCRIPTION - TOWNSHIP: 19 N RANGE: 9 E SECTION: 5 PROJECT TYPE: A H B L

PROPERTY LOCATION ID: _____ TAXES PAID: (N) _____

WATER RESTRICTIONS RECORDED AS Book 734 Page 12 ACRE FEET ALLOTTED: N/A

WELL METER SERIAL #: N/A WELL METER READING: _____

ADDITIONAL COMMENTS:

FOR OFFICE USE ONLY

DEVELOPMENT PERMIT NO. _____ LAND USE DEPT. REVIEW: APPROVED _____ DENIED _____

DA 7/16/04
LAND USE DIRECTOR OR DESIGNEE DATE

COMMENTS: _____

SFC CLERK RECORDED 02/03/2005

HOME OCCUPATION / BUSINESS REGISTRATION
PRELIMINARY QUESTIONNAIRE

NAME: ROBERT ARMISTO DATE: 4/6/04
BUSINESS NAME: RED EARTH CONST. Co., INC.
PHYSICAL ADDRESS: LOMA MANZANITA 3AB - SANTA FE, NM 87501

1) Please describe the type of business to be conducted. Give a brief description of how the business will be operated.

GENERAL CONSTRUCTION

2) How many employees other than yourself? 1

3) Will there be any company vehicles parked on the premises?
If YES, please describe. YES NO
- VAN
- DUMP TRUCK/trailor
- BACKHOE

4) Will there be any outdoor storage?
If YES, please explain. YES NO
Open shed to shelter
vehicles

5) Will there be any traffic generated to or from the home occupation area?
If YES, please explain. YES NO

6) Will there be parking needed for the home occupation/business?
If YES, please explain. YES NO

7) Will there be a sign posted on the premises? YES NO

COMMENTS: _____

SFC CLERK RECORDED 02/03/2005

**HOME OCCUPATION
DEVELOPMENT PERMIT APPLICATION**

CONTROL # _____ APPLICATION DATE: _____ ISSUE DATE: _____

APPLICANT INFORMATION

OWNER NAME: _____
(LAST) (FIRST) (MIDDLE)

NAME OF BUSINESS: _____

BUSINESS ADDRESS: _____
STREET OR P.O. NUMBER CITY STATE ZIP

MAILING ADDRESS (if different from business address): _____

HOME PHONE: () _____ WORK PHONE: () _____

NATURE OF BUSINESS: _____

PROPERTY INFORMATION

PROPERTY OWNER NAME: _____

LEGAL DESCRIPTION -- TOWNSHIP: ___ N RANGE: ___ E SECTION: ___ PROJECT TYPE: A H B L

PROPERTY LOCATION ID: _____ TAXES PAID: (Y/N) _____

WATER RESTRICTIONS RECORDED AS - Book _____ Page _____ ACRE FEET ALLOTTED: _____

WELL METER SERIAL #: _____ WELL METER READING: _____

PLEASE DESCRIBE THE FOLLOWING

1) WHAT ARE THE ACTIVITIES INVOLVED?

CONSTRUCTION

2) WHAT TYPES OF MATERIALS AND EQUIPMENT ARE TO BE USED?

*BACKHOE - DUMP TRUCK + TRAILER
BUSINESS UNITS*

3) WHAT METHODS OF OPERATION DO YOU PLAN TO FOLLOW?

*I CONTINUE TO KEEP MY PROPERTY FREE OF
CONST. MATERIALS AND KEEP EVERYTHING COVERED
& OUT OF SITE TO MY NEIGHBORS*

4) OTHER THAN MEMBERS OF YOUR FAMILY, HOW MANY EMPLOYEES WILL BE ENGAGED IN THE HOME OCCUPATION?

NONE

SFC CLERK RECORDED 02/03/2005

5) WHAT IS THE TYPE OF PRODUCT TO BE PRODUCED, SERVICED OR REPAIRED?

NONE

6) WILL THERE BE ANY MECHANICAL AND/OR ELECTRICAL EQUIPMENT NECESSARY TO THE CONDUCT OF THE HOME OCCUPATION? IF SO, PLEASE DESCRIBE.

NONE

7) DESCRIBE THE AMOUNT, LOCATION AND METHOD OF STORAGE OF SUPPLIES AND/OR EQUIPMENT.

BARN ~~SHED~~ SHELTER FOR UTVS
& BACKHOE

8) DESCRIBE THE LOCATION OF PARKING FOR THE HOME OCCUPATION?

SHELTER FOR EQUIP.

9) WHAT TYPE AND AMOUNT OF TRAFFIC DO YOU ANTICIPATE TO BE GENERATED PER DAY? WILL THE BUSINESS BE CONDUCTED ON AN APPOINTMENT BASIS?

One To Two Vehicles Per Day

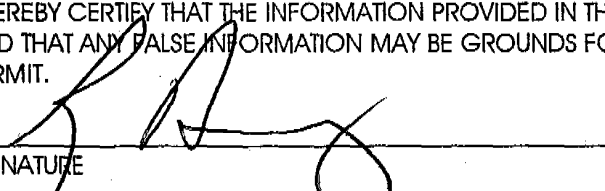
10) WILL THERE BE A SIGN POSTED ON THE PREMISES? IF SO, PLEASE STATE SIZE & LOCATION. (ATTACH A SKETCH OF THE SIGN SHOWING DIMENSIONS AND WHAT LOGO IT WILL HAVE ON IT.)

YES - Size By South Lee County

APPLICATION CERTIFICATION

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED IN THIS APPLICATION IS TRUE TO THE BEST OF MY KNOWLEDGE AND THAT ANY FALSE INFORMATION MAY BE GROUNDS FOR DENIAL OR REVOCATION OF THE HOME OCCUPATION PERMIT.

SIGNATURE



DATE

5/3/04

FOR OFFICE USE ONLY

DEVELOPMENT PERMIT NO. _____

LAND USE DEPT. REVIEW: APPROVED _____ DENIED _____

LAND USE DIRECTOR OR DESIGNEE _____

DATE _____

COMMENTS: _____

SFC CLERK RECORDED 02/03/2005

**HOME OCCUPATION
APPLICATION PACKET (short version)**

AS PER THE COUNTY LAND DEVELOPMENT CODE, ARTICLE III, SECTION 3, AND THE EXTRATERRITORIAL ZONING ORDINANCE, SECTION 5-B-4-d, HOME OCCUPATIONS ARE PERMITTED ANYWHERE IN THE COUNTY, PROVIDED THE FOLLOWING STANDARDS HAVE BEEN MET:

- Not more than six (6) persons other than members of a family residing on the premises, shall be regularly engaged in work at the site of the home occupation; (if in the EZ-2, not more than two (2) persons other than members of a family residing on the premises).
- There shall be no change in the outside appearance of the building or premises, nor other visible evidence of the conduct of the home occupation, except for one (1) nonilluminated name plat sign not more than nine square feet in area; (if in the EZ-2, one (1) nonilluminated name plate not more than one square foot).
- The use of the dwelling for the home occupation shall be clearly incidental and subordinate to its use for residential purposes of its occupants, and not more than 50% of the floor area of the dwelling including accessory buildings shall be used in the conduct of the home occupation.
- The home occupation shall not involve operations or structures not in keeping with the residential character of the neighborhood.
- No equipment or process shall be used in the home occupation which significantly interferes with the existing use of property in the adjacent area (e.g. noise vibration, glare, fumes, odors, electrical interference).
- No traffic shall be generated by such home occupation in greater volumes than would normally be expected in the residential neighborhood area.
- Parking for employees and for customers or clients of the home occupation shall be provided off the street (one (1) parking space per employee plus one (1) per 400 sq. ft. to be used for the home occupation).
- The home occupation shall be located on the same lot as the permitted principal use of structures or on a contiguous lot in the same ownership.
- Primary sale of goods in connection with the home occupation shall be that which is prepared or produced upon the premises.

ACKNOWLEDGMENT

I hereby acknowledge that I have read the above standards and fully understand what is required of me to operate a home occupation business.

Signature 

Date 4/6/04

SFC CLERK RECORDED 02/03/2005

SANTA FE COUNTY

ACCOUNTS RECEIVABLE

ACCT# 12656

BUSINESS REGISTRATION APPLICATION

DATE ENTERED 7/16/04

INITIALS

NAME OF BUSINESS: RED EARTH CONSTRUCTION CO. PHONE NO. 455-3462

BUSINESS ADDRESS: LOMA MANZANITA 30 SANTA FE, NM 87501

MAILING ADDRESS (if Different): P.O. Box 3247 - SANTA FE, NM 87501

RENT PROPERTY _____ OWN PROPERTY

* If renting, submit a NOTARIZED letter from the present property owner acknowledging permission to conduct business on the premises.

NAME OF PRINCIPAL OWNER: ROBERT & ANITA ARMijo

TYPE OF OWNERSHIP: SINGLE PROP. PARTNERSHIP _____ CORPORATION _____

OTHER (describe) _____

IS THIS A HOME OCCUPATION? YES NO _____

NEW MEXICO GROSS RECEIPTS TAX NUMBER: 02-168921000

DESCRIPTION OR NATURE OF BUSINESS: BUILDING CONSTRUCTION

A business registration fee of \$35.00 will be assessed at time of approval, and thereafter, before March 15 of each calendar year. A late fee of \$10.00 will be assessed on ANY untimely payment. Business Registrations are effective from date of issuance through the end of the calendar year. Thereafter, registrations are effective from January 1 through December 31 of each year.

SIGNATURE OF APPLICANT

DATE OF APPLICATION 4/6/04

FOR OFFICE USE ONLY

DEVELOPMENT PERMIT NO. 04-395 WITHIN EZ-2 _____ NOT IN EZ BOUNDARIES

TOWNSHIP 19N RANGE 9E SECTION 5 COMMISSION DISTRICT 1

FEE PAID \$35.00 BUSINESS REGISTRATION NO. 12656

RECEIPT NO. 1021 PROCESSED BY Jose E. Larranaga

FIRE HAZARD POTENTIAL: HIGH _____ MEDIUM _____ LOW

LAND USE DIRECTOR [Signature] DATE 7/16/04

COUNTY FIRE MARSHAL ON File DATE 6/24/04

COMMENTS: _____

SFC CLERK RECORDED 02/03/2005

RED EARTH CONSTRUCTION COMPANY

Santa Fe County Land Use Dept.
P.O. Box 276
Santa Fe, NM 87504
June 3, 2004

Re: Application for a Home Occupation License

To Whom It May Concern:

This letter is in reference to the Application I submitted to the Land Use Department on April 6, 2004.

I have been a licensed Contractor in the State of N.M. since 1975 and have been running my small construction company from my home in Santa Fe County since that time. I have been at my present location for 14 years. My home and yard consist of a 2900 square foot home and 1200 square foot garage for personal use on 1.50 acres in Pojoaque. My office is in my home and measures 10' x 8'. I do not meet with clients at my home.

My materials and tools are stored in a metal building of approximately 20' x 10', or 400 square feet.

I have a covered carport for business vehicles. It is 64' x 24' in size.

My vehicles for business use are; a dump truck and trailer, and backhoe. I keep the backhoe in one of the carport bays.

I have a Chevy van for tools and a second empty one which I do not use at this time. They are both stored in the carport.

I also own a flatbed truck which I use primarily for yard work at home and occasionally for business.

My family and I strive to keep our yard neat and our neighborhood well maintained. Our vehicles are clean and are kept out of sight as much as is possible.

If further information is needed, please feel free to contact me at home, 455-3462, or on my cell at 690-1125.

Sincerely,


Robert A. Armijo
Red Earth Construction

SFC CLERK RECORDED 02/03/2005

Santa Fe County

04/06/04

To Whom It May Concern:

I HAVE BEEN IN BUSINESS
IN SANTA FE COUNTY FOR
25+ YEARS.

I AM A GENERAL CONTRACTOR.
BUILDING HOMES - ADDITIONS - AND
COMMERCIAL PROPERTIES.

I HAVE A ROOM IN MY
HOME FOR MY OFFICE.

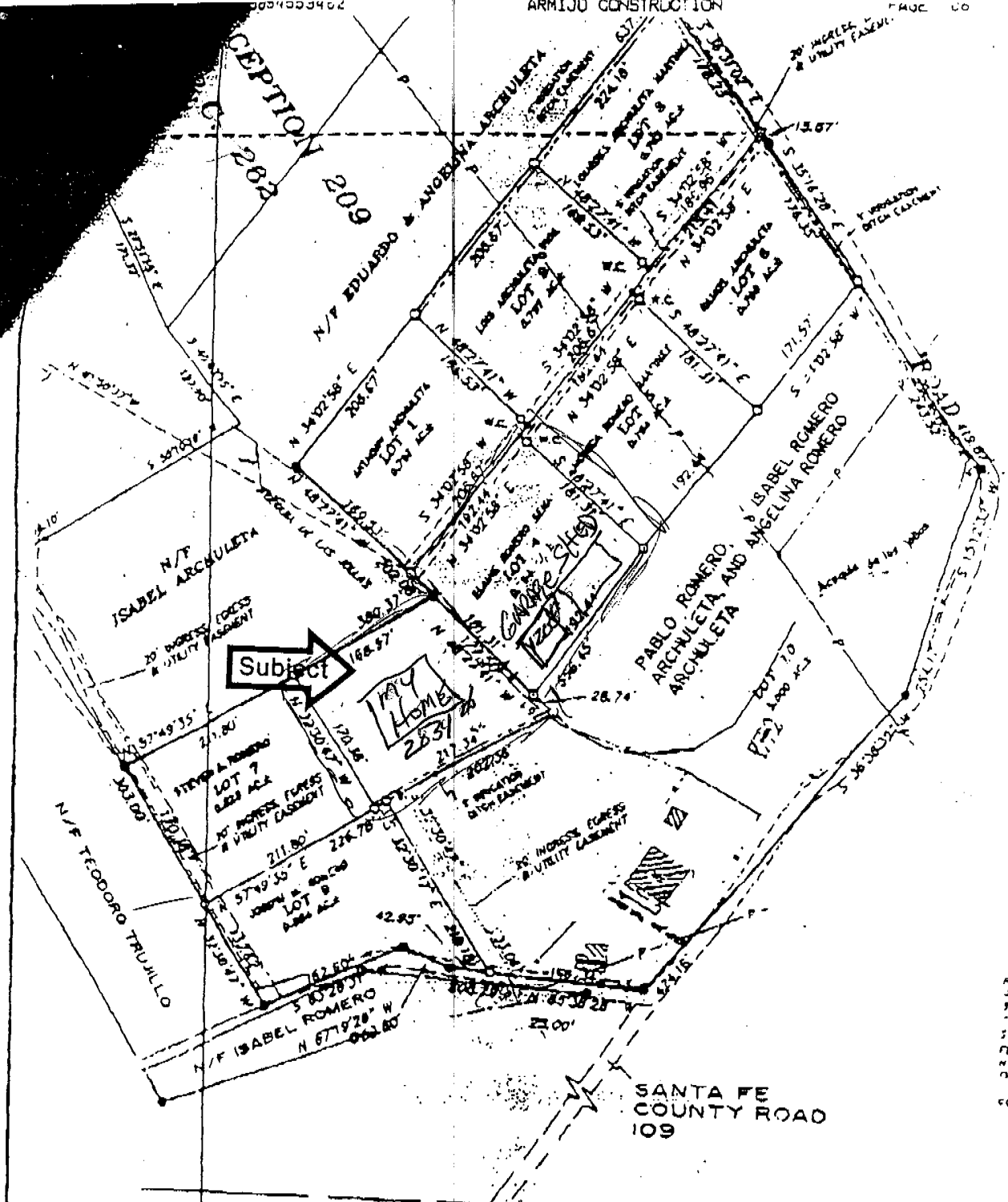
I DO NOT ALLOW EMPLOYEES
OR CLIENTS TO MEET ME
THERE. I LIKE MY HOME
PRIVACY.

WE DO NOT ALLOW CONSTRUCTION
TRAFFIC IN AND OUT.

OUR CONSTRUCTION VEHICLES ARE
ONLY DRIVEN BY MYSELF. AND
ARE NOT USED ON A DAILY BASIS.

THANK YOU
Robert Armijo

SFC CLERK RECORDED 02/03/2005



Subject

NEW HOME 2834

GARAGE SHED

Home 2834 \$
 Garage Private 1200 \$
 CAR PORTS 1000 \$
 SHELTER

SFC CLERK RECORDED 02/03/2005

Santa Fe County Land Use Office
Santa Fe, NM 87504

April 28, 2004

Attn: Roman Abeyta

Mr. Abeyta,

I am writing to you to voice my concern over the business permit for RED EARTH CONTRUCTION. I have sent a letter to Mr. Jose Larranaga and Charlie Gonzales listing my concerns. I have also sent a copy along with this letter.

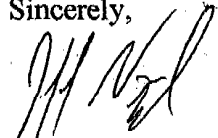
I am opposing his permit because I feel that no matter what Mr. Robert Armijo signs, he will not live up to the agreement, therefore I am asking that all of his traffic, business and other wise be directed to his residential drive way, which is at 34B Loma Manzanita. Per the plat that is on file at the Santa Fe County building it says that the users and owner must maintain the road, since Mr. Armijo has moved his business to Calle Tia Louisa, he has not done anything to help maintain the road. 90% of the traffic on this road is his and after several attempts to talk to him and his refusal to do anything but cuss me out, it has come down to me not doing anything on the road because he will just take advantage (see other letter).

This isn't just a road maintenance issue, I feel that one day my kids will be on this road and because of Mr. Armijo's lack of regard for anyone except himself, someone may get hurt and at that time it will be to late for any of us to do anything but go to court. I know I certainly do not want to have to do this, but I will to protect my family and my rights. I will be sending you a videotape if possible of the way he and his workers drive on this road

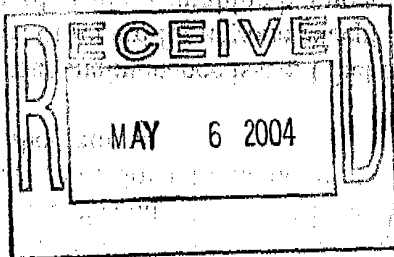
I have spoken to both Charlie Gonzales and Jose Larranaga and told them that I would be not oppose his permit if he uses his drive way for his traffic. I would also like to make this a condition to obtain his permit if possible. If this is not agreeable, then I would ask you to consider this a formal protest letter against issuing a business license.

I thank you for your time and effort on this matter and hope to hear from you soon.

Sincerely,



Jeff N. Vigil



SFC CLERK RECORDED 02/03/2005

Santa Fe County Land Use Office
Santa Fe, NM 87501

April 26, 2004

Attn: Jose Larranaga

Mr. Larranaga,

Below are a list of complaints from myself and the surrounding tenants of the road Calle Tia Louisa and a few other neighbors who have been affected by the doings of Mr. Robert Armijo and RED EARTH CONSTRUCTION.

He does not maintain the road way even though he has been asked several times and refuses to do so. The plat on file at the Santa Fe County offices clearly states that users must maintain the road. On April 6th of this year I called and spoke to Mr. Armijo personally and he said he would bring sand for the roadway. It has been three weeks since then and no sand.

There have been several times when Mr. Armijo would grade the road and take the layer he was grading into his driveway. He also used the frontend scoop on his tractor to scoop sand from the roadway and place it in his yard for a driveway for his renters.

Speeds up and down the roadway even though there are children riding their bikes and playing. There have been several times that he has made not only my kids jump from the road way to the ditch but even some neighbors that use the road for walking.

There is too much traffic on the road. I had this road built and it was for residential use not commercial. Since I talked to you last which was on or about April 20th, 2004, there have been approximately 35 cars on this road, not counting multiple trips (In and Out) of the road way. If I were to count all of the trips it would be close to 60 or 70 trips. This road is and was not built to sustain that amount of traffic and since 90% of the traffic is for him we would suggest that he use the top driveway by his residence for his business.

On this past Saturday April 24, 2004 he went down Calle Tia Louisa and torn down the cable television line and caused a power line transformer to short out. If my children and my wife had not been on our way out to help the kids fly kites we would have never know. He just drove away like nothing happened. I had to call the Jemez Coop to fix the power and I had to call Comcast to fix the cable. I stopped Mr. Armijo to ask him what he had done to fix the problem and all I got was the finger and a bunch of F*** yous.

What if my kids had been out there already and what if it was an electrical line, which is right above the cable and they got hurt. Eduardo and Angie Archuleta were also outside and saw everything that happened. They also lost a microwave oven when the transformer shorted out. He didn't bother to call them either.

All of us feel that no matter what agreement Mr. Armijo signs it will still be business as usual and as long as the county of Santa Fe continues to allow him to business this will continue to happen. This last incident is just an example of what is and will continue to happen as long as he is allowed to do business in this area. We strongly suggest that he is banned from using Calle Tia Louisa until he signs a road agreement with the rest of the people on this road way. He will still have access through his

SFC CLERK RECORDED 02/03/2005

still have access through his driveway where his residence is located, which is adjacent to our lots. We would also like to thank you for your time in this matter.

Sincerely,

Jeff & Lois Vigil 4/24/04 455-1068
Jeff and Lois Vigil Date

Lourdes Martinez 351-4012
Lourdes Martinez Date 4/26/04

Anthony Archuleta 4-26-04
Anthony Archuleta Date

Ramos Archuleta
Ramos Archuleta Date 4/26/04

Eduardo & Angie Archuleta 4-26-04
Eduardo and Angie Archuleta Date

John Guttering Date

MR Guttering abstained From
signing stating that he didn't
have an opinion one way or the other.
Plus MR Guttering has only been living
here since 11/03. J.V. 4/29/04

SFC CLERK RECORDED 02/03/2005

Armijo

Eduardo Archuleta

455-2946

Jeff Uigil's father in-law

Armijo cut T.U. Cable with back-hoe-(hauling)
Surge, burnt TV, micro-wave

Tracks, vehicles, employees coming in and
out

SFC CLERK RECORDED 02/03/2005

HOME OCCUPATION

DEVELOPMENT PERMIT APPLICATION (short version)

CONTROL # 04-277

APPLICATION DATE: 3/16/04

ISSUE DATE: 4/27/04

APPLICANT INFORMATION

OWNER NAME: GARCIA BOBBY
(LAST) (FIRST) (MIDDLE)

NAME OF BUSINESS: ~~6313 CALLE VENCCO~~ BOBBY GARCIA CONCRETE CONST.

BUSINESS ADDRESS: 6313 CALLE VENCCO SANTA FE N.M 87507
STREET OR P.O. NUMBER CITY STATE ZIP

MAILING ADDRESS (if different from business address): _____

HOME PHONE: (505) 471-6579 WORK PHONE: (505) 471-6579

NATURE OF BUSINESS: Concrete Construction

PROPERTY INFORMATION

PROPERTY OWNER NAME: Bobby Garcia

LEGAL DESCRIPTION -- TOWNSHIP: 16N RANGE: 8 E SECTION: 12 PROJECT TYPE: A H B L

PROPERTY LOCATION ID: 500009158 TAXES PAID (Y) (N) Y

WATER RESTRICTIONS RECORDED AS - Book N/A Page N/A ACRE FEET ALLOTTED: _____

WELL METER SERIAL #: _____ WELL METER READING: _____

ADDITIONAL COMMENTS:

FOR OFFICE USE ONLY

DEVELOPMENT PERMIT NO. 04-277

LAND USE DEPT. REVIEW: APPROVED DENIED _____

LAND USE DIRECTOR OR DESIGNEE

DATE 4-22-04

COMMENTS: _____

SFC CLERK RECORDED 02/03/2005

HOME OCCUPATION / BUSINESS REGISTRATION
PRELIMINARY QUESTIONNAIRE

NAME: Bobby Garcia DATE: 3/10/04
 BUSINESS NAME: Bobby Garcia Concrete Const.
 PHYSICAL ADDRESS: 6313 Calle Verano SFNM

1) Please describe the type of business to be conducted. Give a brief description of how the business will be operated.

~~Concrete~~ Concrete Construction. Receive phone calls from customers and go out to their homes and perform job duties.

2) How many employees other than yourself?

NO REFER TO ATTACHED LETTER

3) Will there be any company vehicles parked on the premises?
 If YES, please describe.

YES NO

Company work trucks (2)
 tractor and skitster

1. Chevy 3/4 tons utility white BG
 2. Chevy 1/2 ton utility white BG

4) Will there be any outdoor storage?
 If YES, please explain.

YES _____ NO

5) Will there be any traffic generated to or from the home occupation area?
 If YES, please explain.

YES _____ NO

6) Will there be parking needed for the home occupation/business?
 If YES, please explain.

YES _____ NO

7) Will there be a sign posted on the premises?

YES _____ NO

COMMENTS: _____

SFC CLERK RECORDED 02/03/2005

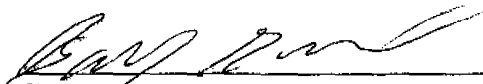
HOME OCCUPATION
APPLICATION PACKET (short version)

AS PER THE COUNTY LAND DEVELOPMENT CODE, ARTICLE III, SECTION 3, AND THE EXTRATERRITORIAL ZONING ORDINANCE, SECTION 5-B-4-d, HOME OCCUPATIONS ARE PERMITTED ANYWHERE IN THE COUNTY, PROVIDED THE FOLLOWING STANDARDS HAVE BEEN MET:

- Not more than six (6) persons other than members of a family residing on the premises, shall be regularly engaged in work at the site of the home occupation; (if in the EZ-2, not more than two (2) persons other than members of a family residing on the premises).
- There shall be no change in the outside appearance of the building or premises, nor other visible evidence of the conduct of the home occupation, except for one (1) nonilluminated name plat sign not more than nine square feet in area; (if in the EZ-2, one (1) nonilluminated name plate not more than one square foot).
- The use of the dwelling for the home occupation shall be clearly incidental and subordinate to its use for residential purposes of its occupants, and not more than 50% of the floor area of the dwelling including accessory buildings shall be used in the conduct of the home occupation.
- The home occupation shall not involve operations or structures not in keeping with the residential character of the neighborhood.
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- The home occupation shall be located on the same lot as the permitted principal use of structures or on a contiguous lot in the same ownership.
- Primary sale of goods in connection with the home occupation shall be that which is prepared or produced upon the premises.

ACKNOWLEDGMENT

I hereby acknowledge that I have read the above standards and fully understand what is required of me to operate a home occupation business.



Signature

3-10-04

Date

SFC CLERK RECORDED 02/03/2005

SANTA FE COUNTY

ACCOUNTS RECEIVABLE

ACCT# 12616

DATE ENTERED 4/27/04

INITIALS M.C.

BUSINESS REGISTRATION APPLICATION

NAME OF BUSINESS: Bobby Garcia Concrete Const. PHONE NO. 505-471-6579

BUSINESS ADDRESS: 6313 CALLE VENCEJO, Santa Fe, N.Mex. 87507

MAILING ADDRESS (if Different): _____

RENT PROPERTY _____ OWN PROPERTY

* If renting, submit a NOTARIZED letter from the present property owner acknowledging permission to conduct business on the premises.

NAME OF PRINCIPAL OWNER: Bobby Garcia

TYPE OF OWNERSHIP: SINGLE PROP. PARTNERSHIP _____ CORPORATION _____

OTHER (describe) _____

IS THIS A HOME OCCUPATION? YES NO _____

NEW MEXICO GROSS RECEIPTS TAX NUMBER: 02205125002

DESCRIPTION OR NATURE OF BUSINESS: perform concrete work

A business registration fee of \$35.00 will be assessed at time of approval, and thereafter, before March 15 of each calendar year. A late fee of \$10.00 will be assessed on ANY untimely payment. Business Registrations are effective from date of issuance through the end of the calendar year. Thereafter, registrations are effective from January 1 through December 31 of each year.



SIGNATURE OF APPLICANT

3/10/04
DATE OF APPLICATION

FOR OFFICE USE ONLY

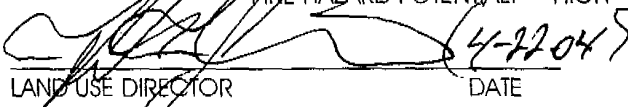
DEVELOPMENT PERMIT NO. 04-277 WITHIN EZ-2 NOT IN EZ _____ BOUNDARIES _____

TOWNSHIP 16N RANGE 8E SECTION 12 COMMISSION DISTRICT 5

FEE PAID \$35.00 BUSINESS REGISTRATION NO. 12616

RECEIPT NO. 93001 PROCESSED BY Victoria Ryo

FIRE HAZARD POTENTIAL: HIGH _____ MEDIUM _____ LOW


LAND USE DIRECTOR

DATE

On File
COUNTY FIRE MARSHAL

DATE

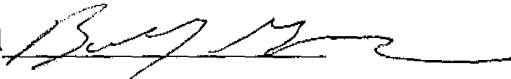
COMMENTS: _____

SFC CLERK RECORDED 02/03/2005

LETTER OF INTENT

I Bobby Garcia the sole proprietor of Bobby Garcia Concrete Const. state that I conduct my business in the following manner: whether it be with established clients or new ones, I receive a call on my cell phone or home phone and the client tells me what kind of job he has for me and what it entails, then I meet with them at the job site and give them a bid, if they agree I set up the job and then me and my employees go do the job and then payment is received usually when the job is complete .

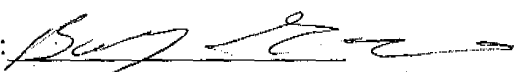
Dated 04/05/04

Signed 

SFC CLERK RECORDED 02/03/2005

Employees have parked their vehicles at my residence, but as of April 1, 2004 All employees will meet with me at the job site,

Dated: 04/05/04

Signed: 

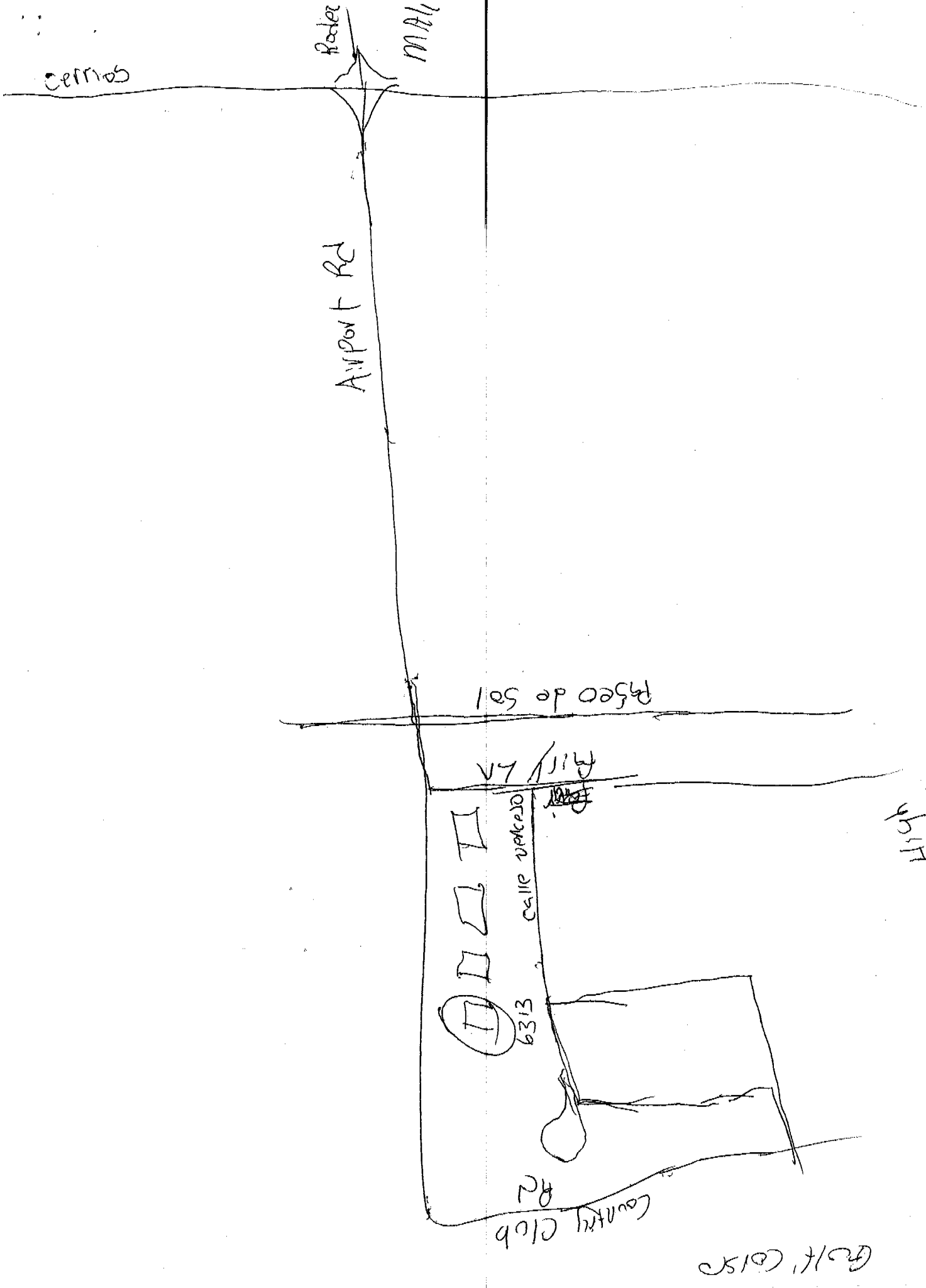
SFC CLERK RECORDED 02/03/2005

Dimensions of House at 6313 Calle Vencejo, Santa Fe, New Mexico, 87507

house and garage attached 3200 sqft

shed in back unattached 144 sqft

SFC CLERK RECORDED 02/03/2005

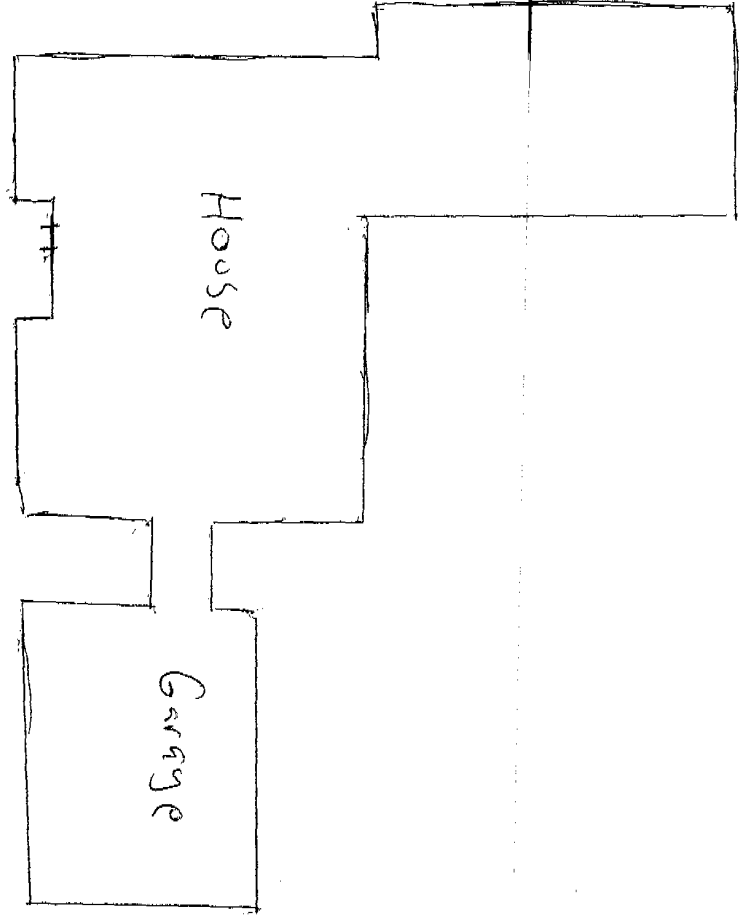


SFC CLERK RECORDED 02/03/2005

1/17

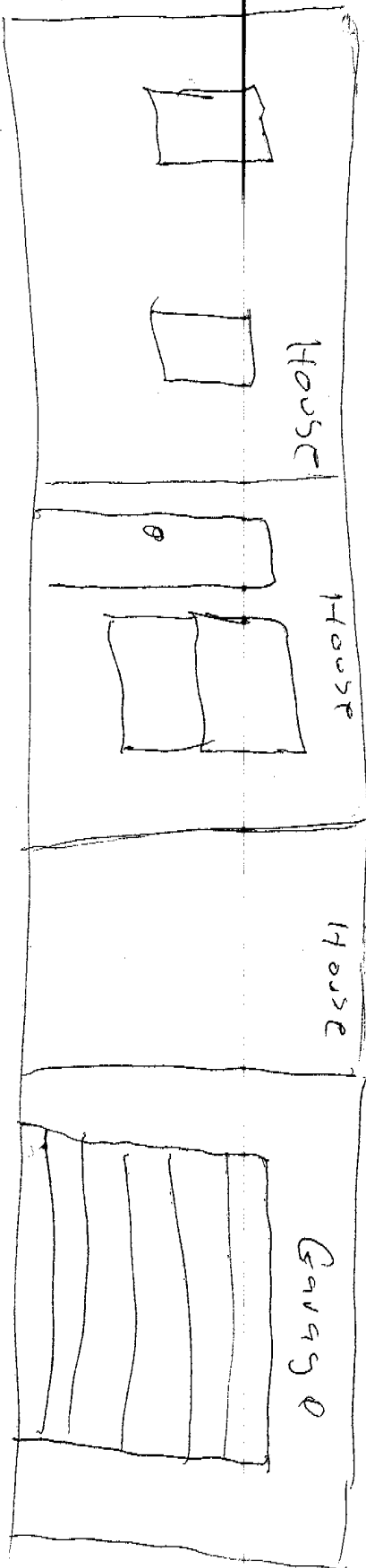
GOLF COURSE

Shed 141 Sft
Shed



House & Garage
3200 Sft

Front View
SFC CLERK RECORDED 02/03/2005



HOME OCCUPATION

DEVELOPMENT PERMIT APPLICATION (short version)

CONTROL # 04-422

APPLICATION DATE: 4/14/04

ISSUE DATE: _____

APPLICANT INFORMATION

OWNER NAME: Padilla Virginia A
(LAST) (FIRST) (MIDDLE)

NAME OF BUSINESS: L.P. Roofing Co.

BUSINESS ADDRESS: 2028 Placita De Vick Santa Fe NM 87505
STREET OR P.O. NUMBER CITY STATE ZIP

MAILING ADDRESS (if different from business address): _____

HOME PHONE: (505) 473-1991

WORK PHONE: (505) 473-1991

NATURE OF BUSINESS: Roofing Co.

PROPERTY INFORMATION

PROPERTY OWNER NAME: Virginia + Joshua Padilla

LEGAL DESCRIPTION - TOWNSHIP: 14 N RANGE: 9 E SECTION: 6

PROJECT TYPE: A H B L

PROPERTY LOCATION ID: 79209482

TAXES PAID Y N

WATER RESTRICTIONS RECORDED AS - Book _____ Page _____

ACRE FEET ALLOTTED: _____

WELL METER SERIAL #: N/A

WELL METER READING: _____

ADDITIONAL COMMENTS:

FOR OFFICE USE ONLY

DEVELOPMENT PERMIT NO. _____

LAND USE DEPT. REVIEW: APPROVED DENIED

LAND USE DIRECTOR OR DESIGNEE _____

DATE 8-28-04

COMMENTS: _____

SFC CLERK RECORDED 02/03/2005

HOME OCCUPATION / BUSINESS REGISTRATION

PRELIMINARY QUESTIONNAIRE

NAME: Virginia Padilla

DATE: 4-9-03

BUSINESS NAME: L.P. Roofing Co.

PHYSICAL ADDRESS: 06 Pine E. / 2028 Placita De Vida

1) Please describe the type of business to be conducted. Give a brief description of how the business will be operated.

2) How many employees other than yourself? 3

3) Will there be any company vehicles parked on the premises?
If YES, please describe.

YES NO

1994 2 1/2 Ton Kodiak 1978-1-ton pickup
1998 4x4 pickup Kellies
1998 1-ton pickup

4) Will there be any outdoor storage?
If YES, please explain.

YES NO

NONE Hazard materials

5) Will there be any traffic generated to or from the home occupation area?
If YES, please explain.

YES NO

6) Will there be parking needed for the home occupation/business?
If YES, please explain.

YES NO

For the Autos mentioned Above
and occupants Personal Autos

7) Will there be a sign posted on the premises?

YES NO

COMMENTS: _____

SFC CLERK RECORDED 02/03/2005

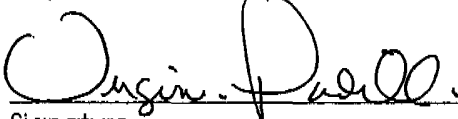
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APPLICATION PACKET (short version)**

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- Primary sale of goods in connection with the home occupation shall be that which is prepared or produced upon the premises.

ACKNOWLEDGMENT

I hereby acknowledge that I have read the above standards and fully understand what is required of me to operate a home occupation business.


Signature

4-14-04
Date

SFC CLERK RECORDED 02/03/2005

SANTA FE COUNTY

COUNTY RECEIVABLE

ACCT# 2659

BUSINESS REGISTRATION APPLICATION

ENTERED 7/29/04

TOTALS 126

NAME OF BUSINESS: L.P. Roofing Co. PHONE NO. 505-473-1991

BUSINESS ADDRESS: 06 Pine E. Santa Fe NM 87508

MAILING ADDRESS (if Different): 0028 Placita De Vida Santa Fe NM 87505

RENT PROPERTY OWN PROPERTY

* If renting, submit a NOTARIZED letter from the present property owner acknowledging permission to conduct business on the premises.

NAME OF PRINCIPAL OWNER: Virginia And Joshua Padilla

TYPE OF OWNERSHIP: SINGLE PROP. PARTNERSHIP CORPORATION

OTHER (describe) _____

IS THIS A HOME OCCUPATION? YES NO

NEW MEXICO GROSS RECEIPTS TAX NUMBER: 02167685002

DESCRIPTION OR NATURE OF BUSINESS: Roofing Co.

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Virginia Padilla
SIGNATURE OF APPLICANT

4.9.04
DATE OF APPLICATION

FOR OFFICE USE ONLY

DEVELOPMENT PERMIT NO. 04-422 WITHIN EZ-2 NOT IN EZ BOUNDARIES

TOWNSHIP 14N RANGE 9E SECTION 6 COMMISSION DISTRICT 5

FEE PAID \$35.00 BUSINESS REGISTRATION NO. 12659

RECEIPT NO. 1927 PROCESSED BY Jose E. Larranaga

FIRE HAZARD POTENTIAL: HIGH MEDIUM LOW

[Signature]
LAND USE DIRECTOR DATE 7-29-04

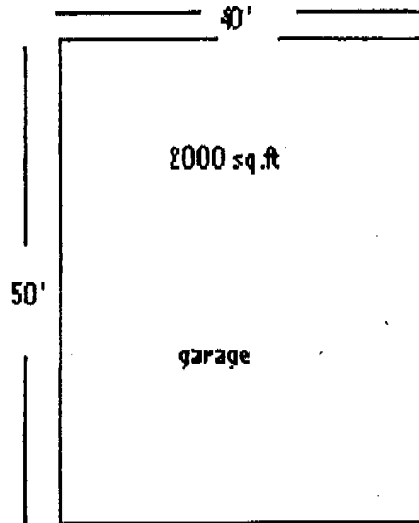
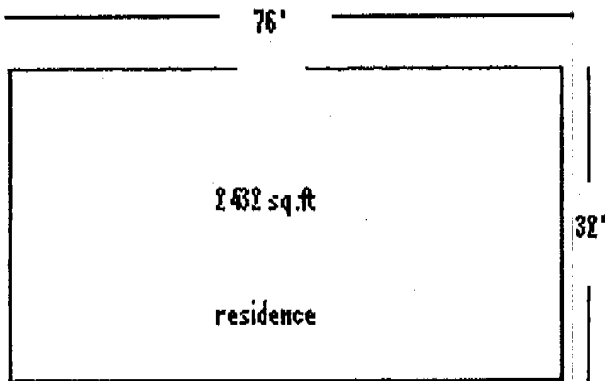
On File
COUNTY FIRE MARSHAL DATE 6/24/04

COMMENTS: _____

SFC CLERK RECORDED 02/03/2005

To - JOSE LARRANEGA
Fr. Virginia Padilla

1216 sq. ft. of garage will be used for business storage



2028 Plucita De Vida
Santa Fe New Mexico 87505
Office (505)473-1991
Fax (505)424-3158

L.P. ROOFING COMPANY

June 22, 2004

Jose Larranaga
Santa Fe County
Land Use Department
P.O. Box 276
Santa Fe NM 87504-0276

Dear Mr. Larranaga.

Here is the information requested in your letter.

- (1) 1993 Kodak 2 ½ ton commercial truck.
- (2) One trailer to haul heavy equipment
- (3) 1998 1 ton Chevy flat bed truck
- (4) 1998 4x4 pick up truck
- (5) Bob cat

1216 sq.ft. of garage that is being built will store any other equipment or material as specified in your letter.

All these vehicles and equipment are not visible from roadway. Entire yard is fenced in.

Sincerely,



Leonard E. Padilla
Dba L.P. Roofing Co.

SFC CLERK RECORDED 02/03/2005

July 13, 2004

Jose Larranaga
Santa Fe County Land Use Department
Sent Via Fax 505-986-6389

Re: Permit #04-422
LP Roofing Company
06 Pine East

Dear Mr. Larranaga,

I am writing in concern about the adverse affects LP Roofing will have, environmentally and economically, to this residential community if they are allowed to relocate their business, or a portion of their business, at 06 Pine East in Santa Fe County.

As you are aware, LP Roofing wishes to run a roofing business as a "home business". While moving out of the city limits of Santa Fe to a rural setting may imply clean, fresh country air, odors from coal tar have already been detected in this quiet, residential area. Allowing this company to run from this location means subjecting the area residents to the fume emissions from coal tar and/or other hot-applied roofing bitumen. It is well documented that exposure can result in eye tearing, skin irritation, headache or nausea, at best. It is further recommended the unpleasant symptoms be relieved by elimination of further exposure and moving the affected persons to fresh air. If the source of the exposure is located here, next to our homes, where are the South Fork/Pine area residents to go for relief?

In addition, this area has been identified as a water shortage/endangered area. Use of known ground contaminants and carcinogens in both asphalt and coal tar products, as well as cleaning solutions; will jeopardize an already fragile watershed from which area homeowners draw their well water.

Santa Fe County has already allowed for industrial/commercial zoning locations; it is not necessary for this business to be located in a residential area. As small business owners in Santa Fe, my husband and I recognize there are costs incurred in running a business outside of our home and believe that expense to be an acceptable, expected cost of doing business.

I ask you please consider the quality of life for the homeowners in this area before approving this "home/Business".

Thank you for your consideration.

Colleen Schaeffer
1 Ponderosa
Santa Fe, NM 87508

SFC CLERK RECORDED 02/03/2005

July 13, 2004

As a homeowner of the South Fork/Pine area, I object to LP Roofing being run as a "home/business" at 06 Pine East. I believe this business will create both a negative environmental and economical impact in this residential area.

Signed John W. Slauff

Address: 1 Pondeosa

Signed Susan McKenney

Address: 4 Pondeosa

Signed Michelle Hart

Address: 20 Pine E

Signed Constance E. Christner

Address: 8 Pine West

Signed [Signature]

Address: 36 PINE WEST

SFC CLERK RECORDED 02/03/2005

Signed Amend Mulgrew

Address: 36 Pine West

Signed Richard L. Blake

Address: 03 SCULPTURE

Signed HL

Address: 52 W. PINE

Signed Reddoo

Address: 05 SCULPTURE

Signed _____

Address: _____

Signed _____

Address: _____

SFC CLERK RECORDED 02/03/2005

IMPROVEMENT LOCATION REPORT

I FURTHER CERTIFY as to the existence of the following at the time of my last inspection:

1. Evidence of rights of way, old highways or abandoned roads, lanes, trails or driveways, sewer, drains, water, gas or oil pipe lines on or crossing said premises.

As shown.

2. Springs, streams, rivers, ponds or lakes located, bordering on or through said premises.

None noted.

3. Evidence of cemeteries or family burial grounds located on said premises.

None noted.

4. Overhead utilities, poles, anchors, pedestals, wires or lines overhanging or crossing said premises and serving other properties.

As shown.

5. Joint driveways or walkways, joint garages, party walls of rights of support, steps or roofs in common.

None noted.

6. Apparent encroachments. If building, projections or cornices thereof, or signs affixed thereto, fences or other indications of occupancy appear to encroach upon or overhang adjoining property, or the like appear to encroach upon or overhang inspected premises

Fences deviate as shown.

7. Specific physical evidence of boundary lines on all sides.

As shown.

8. Is property improved? If structure appears to encroach or appears to violate setback lines, show approximate distances.

Yes.

9. Indications of recent building construction, alterations or repairs.

New manufactured home in place.

10. Approximate distance of structure from at least two lot lines.

As shown.

11. FIRM Panel No. 350069-325B, Zone "X", residence does not lie within a designated 100 year flood plain area.

SFC CLERK RECORDED 02/03/2005



Allen C. Grace
SURVEYOR

NMPS NO.12443

IMPROVEMENT LOCATION REPORT

I FURTHER CERTIFY as to the existence of the following at the time of my last inspection:

1. Evidence of rights of way, old highways or abandoned roads, lanes, trails or driveways, sewer, drains, water, gas or oil pipe lines on or crossing said premises.

As shown.

2. Springs, streams, rivers, ponds or lakes located, bordering on or through said premises.

None noted.

3. Evidence of cemeteries or family burial grounds located on said premises.

None noted.

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As shown.

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SFC CLERK RECORDED 02/03/2005



Allen C. Grace
SURVEYOR

NMPS NO.12443

2028 Placita De Vida
Santa Fe New Mexico 87505
Office (505)473-1991
Fax (505)424-3158

L.P. ROOFING COMPANY

July 20, 2004

Jose Larranaga
Santa Fe County
Land Use Department
P.O. Box 276
Santa Fe NM 87504-0276

Dear Mr. Larranaga.

This small business we are trying to run is in no way a threat to the community. We are small and do not create a lot of Traffic. No customers come to this yard, no work is done within the property. This property is only used for parking our vehicles. We do not intend to make the company any larger we are just trying to help out our son so he can make a decent living for his family. The truck listed as #3 down below is used for hauling water,(personal use only.) We have a 1200 gallon tank that only fits on this vehicle, we are having problems with the well at this time and it is necessary to use this truck for water purposes. Regarding the letter your office received we understand there are a lot of people out there concerned about the air quality, I assure you we do not store anything that will seep into the ground and harm the water or into the air that will harm anyone's breathing. Our kettle is turned on at the job sites and turned off and cooled down by the time it reaches our property. Any material used for our jobs are bought on a day to day bases for each job. Nothing is stored on property; what ever material is left from each job stays on trucks and used on the next job. Nothing can be seen from the street because we are totally fenced in and we keep our yard clean. We feel we can qualify for a home occupation, and would appreciate your consideration in this matter. We will comply with any conditions to qualify.

SFC CLERK RECORDED 02/03/2005

July 20, 2004
Page 2

- (1) 1993 Kodak 2 ½ ton commercial truck.
- (2) One trailer to haul heavy equipment
- (3) 1998 1 ton Chevy flat bed truck (personal use)
- (4) 1998 4x4 pick up truck
- (5) Bob cat

The 1216 sq.ft. of garage that is being built will store kettle, non hazard materials and any of the listed equipment above. All these vehicles and equipment are not visible from roadway. Entire yard is fenced in.

Garage that is being built should be done within the next six months. Existing personal garage will store kettle for meantime.

Sincerely,



Leonard E. Padilla
Dba L.P. Roofing Co.

SFC CLERK RECORDED 02/03/2005

Buyer: Bailey C. Hanes
Seller: _____

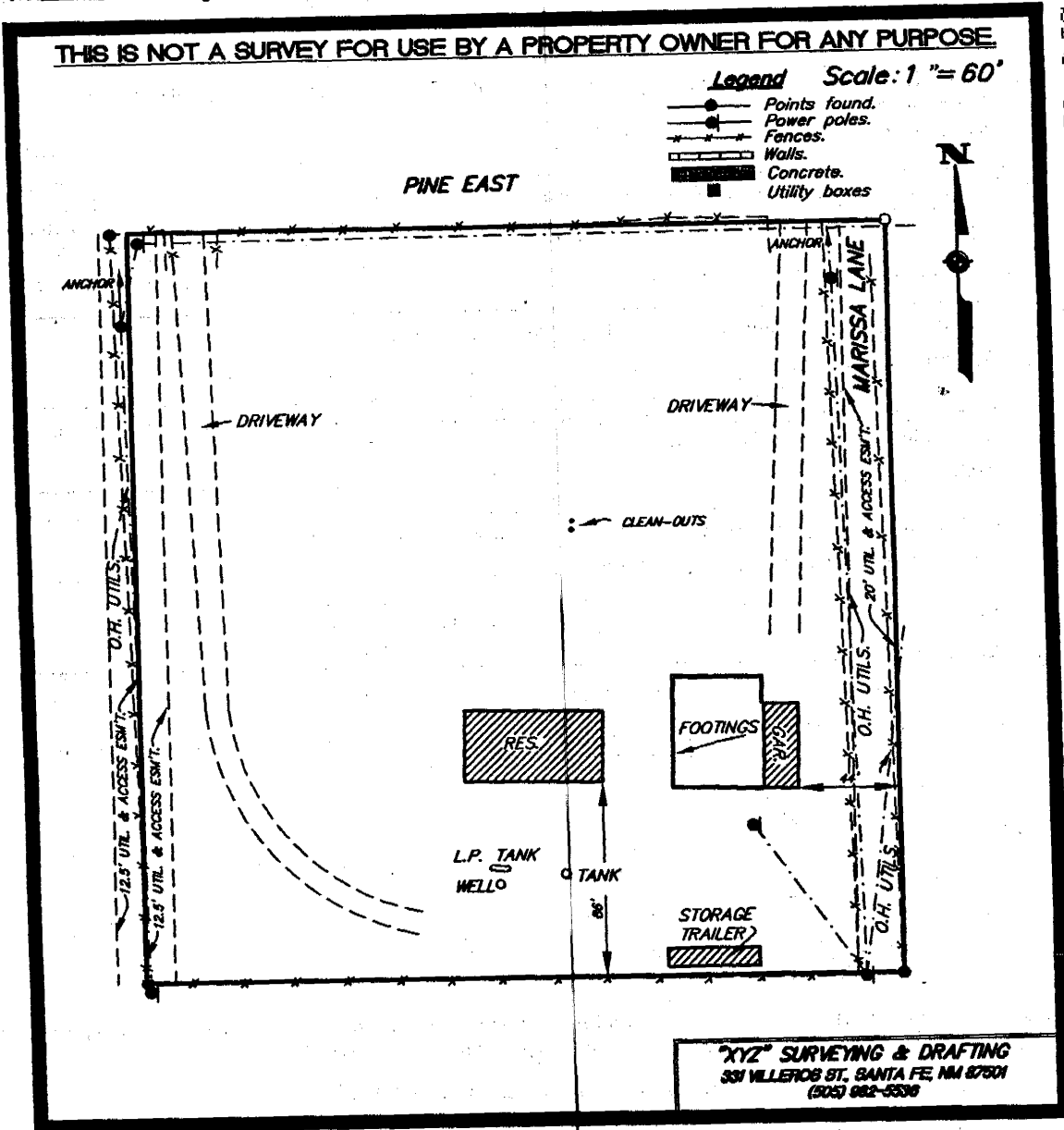
ILR No. XYZ0405

IMPROVEMENT LOCATION REPORT

THIS IS TO CERTIFY,
To Title Co.: Santa Fe Abstract Limited
To Underwriter: _____
To Lender: _____
that on February 27, 2002 I made an inspection of the premises situated
at 6 Pine East Santa Fe County, New Mexico, briefly
described as: Tract 2

PLAT REFERENCE: Bearings, distances and/or curve data are taken from the following plat.
Land Division Plat for Bailey C. Hanes, recorded in bk. 93, pg. 17.

NOTE: The error of closure is one foot for every 100,000 feet along the perimeter of the legal description as provided. Easements shown hereon are as listed in Title Commitment No. 01091761 as provided by Title Company.



SFC CLERK RECORDED 02/03/2005

Improvement location is based on previous property surveys. No monuments were set. This tract is subject to all easements, restrictions and reservations of record which pertain. This report is not to be relied on for the establishment of fences, buildings or other future improvements.

Santa Fe County Fire Department

Fire Prevention Division

Jose Larranaga
Santa Fe County Land Use Department
PO Box 276
Santa Fe, New Mexico 87504-0276

Re: L.P. Roofing Co., Virginia & Joshua Padilla – Business License Permit Application

Dear Jose,

The Fire Prevention Division of the Santa Fe County Fire Department has reviewed the business registration application submittal and the following requirements are needed for compliance:

Proper use of electrical outlets and over load protection shall be in compliance with Electric Code. Extension cords shall be used only with portable appliances.

Smoke detectors shall be installed in work areas and storage rooms.

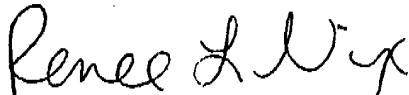
Storage or accumulation of supplies, rubbish and or vegetation is not allowed.

Storage of combustible and flammable supplies and materials shall be in compliance with 1997 Uniform Fire Code.

A 5lb ABC fire extinguisher shall be located in the vehicles, workroom and storage room and shall be maintained and inspected annually by a licensed fire extinguisher firm.

Should you have any further questions, please do not hesitate to contact this office at 992-3070. If I may be of further assistance, please call 992-3084.

Thank you,



Renee L. Nix.

Through: Hank Blackwell, Fire Marshal
Co: District Chief

954189

RESTRICTIVE COVENANTS

The undersigned DANIEL W. POMONIS, a single person, and DENISE M. WIKOFF, a married woman dealing with her sole and separate property, the owners of all that certain real estate in the County of Santa Fe, New Mexico, described as follows:

Beginning at the southwest corner of this tract from which the center of Section 25, Township 17 North, Range 8 East, NMPM, bears N 54 deg. 37' 40" W, a distance of 1141.70 feet; THENCE S 89 deg. 56' E a distance of 1045.60 feet; THENCE S 00 deg. 14' 35" W a distance of 715.00 feet; THENCE N 89 deg. 55' 17" W a distance of 757.83 feet; THENCE N 16 deg. 21' 00" W a distance of 226.10 feet; THENCE N 23 deg. 58' 00" W a distance of 545.09 feet to the point and place of beginning; all as shown by the plat of survey by Jack G. Horne, PE&LS No., 889, dated in August 1983, which plat is shown of record in the office of the Santa Fe County Clerk in Book 137, page 007.

#15
on Title
Policy

do hereby place and impose the following restrictive covenants on the aforesaid real estate (the Premises):

1. No subdivision of any lot within the Premises shall be permitted which results in a lot size of less than 2.3 acres.
2. All lots within the Premises shall be restricted to residential use only, and no commercial or industrial use shall be permitted or conducted on any part of the Premises, except that "home occupations" may be conducted when such use is in compliance with the definition of "home occupations" as stated in the Santa Fe County ordinances pertaining to such use.
3. No part of the Premises shall be used for the parking, storage or dumping of rubbish, debris, garbage, refuse, toxic material, junk and inoperable vehicles, or any other material which emits foul or obnoxious odors, or which produces noise of a level which disturbs the peace, quiet or comfort of other occupants of any part of the Premises.
4. No mobile homes shall be kept on the Premises.
5. Each and every restrictive covenant herein shall be deemed as covenants running with the land (the Premises), and shall be binding upon on all owners of lots within the Premises, their heirs, successors and assigns.
6. These covenants may be enforced by grantors and their heirs, successors and assigns or the owner or owners of any lot within the Premises. In any action to enforce these

SFC CLERK RECORDED 02/03/2005

954190

covenants, or any of them, the prevailing party shall be entitled to reasonable attorney's fees and all costs of suit.

7. These covenants may be amended by written agreement signed by the owners of at least seventy five percent (75%) of the land area of the premises, which agreement shall be recorded in the office of the Clerk of Santa Fe County, New Mexico.

Executed this 5th day of AUGUST, 1993.

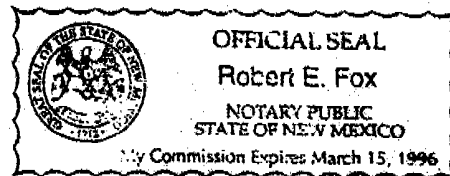
Daniel W. Pomonis
Daniel W. Pomonis

Denise M. Wikoff
Denise M. Wikoff

STATE OF NEW MEXICO)
COUNTY OF SANTA FE) ss.

The foregoing instrument was subscribed, sworn to and acknowledged before me this 5TH day of AUGUST, 1993, by Daniel W. Pomonis and Denise M. Wikoff.

Robert E. Fox
Notary Public



824 760

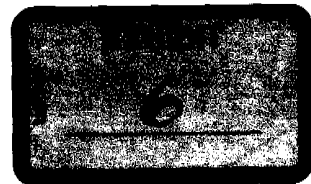
COUNTY OF SANTA FE)
STATE OF NEW MEXICO)
I hereby certify that this instrument was filed for record on the 5 day of Aug A.D. 19 93 at 10:30 o'clock Am and was duly recorded in book 954 page 189-190 of the records of Santa Fe County.

Witness my Hand and Seal of Office
Jona G. Armijo
County Clerk, Santa Fe County, N.M.

Oliver M. Aron
Deputy



SFC CLERK RECORDED 02/03/2005



October 7, 2004

Land Use Department

This is to certify that Santa Fe Brewing Co is in the service area of the Santa Fe County Utilities Department and has 2.0 acre feet of water rights to insure water service from the Utilities Department.

If you have any questions, please call 992-9870.

Sincerely,

Goldie Ledbetter, Administrative Assistant
For Doug Sayre, Acting Director

SFC CLERK RECORDED 02/03/2005