

**PLANNING & ZONING
6:00 P.M. OCTOBER 5, 2009
EDGEWOOD COMMUNITY CENTER
26. E FRONTAGE ROAD
MINUTES**

1. Call to order.

Commissioner Wilhite called the meeting to order at 6:00 P.M.

Commissioners Present: Fleming, Wilhite, Turner, Bassett.

Commissioners Absent: Fulwiler, Jackson.

Staff Present: Ms. Mahalick A.I.C.P., Administrator

2. Approve agenda

Action: Commissioner Fleming made a motion to amend the Agenda switching Items 4 and 5.
Commissioner Turner seconded the motion. The motion carried unanimously.

3. Approve minutes of 9/8/09 & 9/21/09

Action: Commissioner Turner made a motion to approve the Minutes of 9/8/09. Commissioner Bassett seconded the motion. The motion carried unanimously.

Action: Commissioner Fleming made a motion to approve the Minutes of 9/21/09. Commissioner Turner seconded the motion. The motion carried unanimously.

**PUBLIC HEARING-QUASI JUDICIAL PROCEEDINGS
CERTIFICATION THAT PUBLIC NOTICE OF THIS MEETING HAS BEEN POSTED AS
REQUIRED:**

NOTED:_____

Ms. Mahalick certified that Public Notice had been posted as required.

STATEMENT OF PROCEEDINGS

**THESE CASES ARE BEING HEARD UNDER PROVISIONS REQUIRED BY THE
NEW MEXICO COURT OF APPEALS INTENDED TO PROTECT THE RIGHTS OF ALL
PARTIES TO THE PROCEEDINGS. REQUIREMENTS INCLUDE THE IDENTIFICATION
OF ALL PARTIES AND THEIR WITNESSES AND THE SWEARING IN OF ALL
PARTIES GIVING TESTIMONY. THE AFFECTED PARTIES WILL HAVE THE RIGHT
TO CROSS-EXAMINE PERSONS GIVING TESTIMONY.**

NOTED:_____

At this time Commissioner Turner swore in all parties to testify.

CONFIRMATION OF NO CONFLICTS OF INTEREST/EX PARTE CONTACTS.

NOTED:_____

Commissioner Fleming certified no conflicts of interest or ex parte contacts.

Commissioner Turner certified no conflicts of interest or ex parte contacts.

Commissioner Bassett certified no conflicts of interest or ex parte contacts.

Commissioner Wilhite certified no conflicts of interest or ex parte contacts.

4. Request for an extension of the preliminary plat for Campbell properties.

Verbatim

Mr. Davis Campbell and my address is 6100 Uptown Blvd. NE Suite 500 in Albuquerque. I want to start out first by apologizing, I was told by your attorney this morning when he and I spoke by phone that this meeting started at 6:30 this evening so I figured I was on time so I apologize for being a little bit in delayed here. I want to. This is a matter that you have seen before and this was sent back to the Planning & Zoning Commission by the Town Council because they determined that there was a

material change in the Plat app. and wanted you to consider that material change. Before I get into that I want to simply go back and repeat really where we are and where we have been before on this. This matter was before this body back in February of 2009 for the purpose of seeking an extension of the preliminary plat by Campbell and this body took a look at it and at that time did not approve that extension. There was a great deal of testimony about the issues that had to do predominately with water and the work that Campbell was doing before the PRC and then the subsequent work that would have to be done before the state engineers office. Just to bring you up to date the Town Council then considered this and did not grant the extension but remanded it back to you. During the time of early summer however, the PRC the public regulation commission did find in favor of the applicant saying that the water was available for use by the applicant. As you will recall there was a great deal of controversy there were many public hearings and the people who were objecting to the granting of the water rights, mainly people from Sandia Knolls, were very involved in the public processes at those other agencies. At a certain time earlier this summer the applicant determined that this was not really going to be in the public interest to continue to pursue that application because the Town of Edgewood, your body had said no we are not going to grant an extension and the Town Council likewise was reluctant to grant an extension and at that point and the other issues raised about the property rights and the water rights had a lot to do with whether the water for this subdivision could be drawn from areas within the Knolls or should be drawn from someplace else and I think that your concerns were just those when you had your hearing about this in February. AS a consequence Campbell Corporation went a different direction and they hired a company called Aquifer Science to begin the process of drilling wells and proving up wet water as well as water rights on the Campbell property itself. I am going to at this point hand you just a one page letter that's dated last week, October 2, that discusses or reports what Aquifer Science is doing on the property in terms of the drilling and how that projects has progressed. As you can see it is from Vidler Company. They are actually Aquifer Science doing business as Vidler and the letter states that Aquifer Science in partnership with Campbell Corporation is currently in the business of drilling two deep exploratory borings on the Campbell Ranch in Bernalillo County. This effort is to create a new source of water for this area and for which Aquifer Science has applied for a new ground water appropriation. The letter goes on to say we are currently drilling ahead at approximately 1725 ft and encountering red siltstones and sandstones of what we think is the geologic formation called the Chinley formation. We anticipate encountering the San Andreas limestone formation which is the first productive target zone for the well within the next two hundred to three hundred feet below the depth we are currently at. Then the author of this letter, Mr. Bushner recounts how much money has been invested in the property, in this project so far Geophysics is \$45,000.00, Consultant Over site \$85,000.00 and the well drilling alone \$453,000.00. He allows as how the drilling process is slow and he anticipates that they will reach their projected total depth of the bore hole at 4,000 ft below the surface in approximately six weeks or it will take approximately six weeks and then more information before that depth is reached to make a field decision to reduce the depth of the bore hole. So that is information I think that the Town Council wanted to know, wanted you to know, in considering the extension of this preliminary plat. As you can see there is a substantial investment by the Aquifer Science and likewise by Campbell Corporation in the pursuit of additional water. In addition to the actual drilling of the water as is mentioned in here there is an application for new ground water appropriation with the State Engineers Office. That is pending before the State Engineers office and is part and parcel of the meeting the requirement that you all asked to be met. That was back when this was initially approved 19 months ago, you said, you've got to prove up the water you've got to show that there is wet water and that you have the water rights and that process continues, that is what Vidler is doing. I'll remind you that the Ordinance that you have the Town Ordinance says that an extension may be granted by the Planning & Zoning Commission if certain conditions are met and there are two conditions one is that there has been an unavoidable delay and two that the public interest is met by the extension. We believe both of those prongs of the test have been met. Number one the unavoidable delay meaning unavoidable on the applicants part has been that the applicant went right away when you approved that plat and those conditions went right away and engaged the California Water Service Corporation

to begin the process of getting the water and applying for the required permit through the public regulation commission as well as all the other matters that needed to be done and those are documented, those are detailed in documents that you have from previous hearings but particularly with respect to the water they went right away to get those things done. You also have a binder that we provided early on and is part of the record of this hearing and that showed the pleadings the objections the protests that were filed in the PRC hearings that took well over a year to get decided. So that delay of the water getting the water proved up and meeting the condition that you placed on the project was unavoidably delayed it was not a delay occasioned by anything that Campbell did. At this point Campbell has the, has a new strategy as you've seen to drill water on its own property and to prove up the rights on its own property. I will say that the wells that are being dug are more than a mile from the next nearest well and the next nearest well is a Campbell well also. So these are not in areas that we believe will be impacting any other, any other formations and certainly those are decisions that are made by the State Engineers office. So number one the delay has been unavoidable and number two, this is in the public interest the extension is in the public interest. It's remarkable how much public input there has been in this process not only here at the Planning & Zoning, but at the Town Council, at the PRC at the State Engineers office, where we understand there are protests being filed already, and each of these entities has public hearings. You have public meetings you have public input sessions and so on and those are all in the public interest. Now I recall being here several months ago and Commissioner Turner asking what is the public interest, can you define the public interest. I think the public interest varies on these kinds of things but one thing I am pretty certain of and that is that it's in the public interest that the public gets to participate in these processes and the public has participated fully in this process both at the Town of Edgewood as well as before the Public Regulations Commission and it appears now that the public wants to have more participation in this process and will do so at the State Engineers Office. So the public interest is met when the public has meaningful input into this process and I think that that's what has gone on here and that's what continues to go on here and we expect that with this new application that we will have a great deal of public interest, public process, public hearings going on and that we submit is part of the public interest and so we think that for that reason the interest of the public, it meets the public interest criteria that is stated in your Ordinance. The other thing I will point out is that in your subdivision Ordinance for the Town of Edgewood, the definition of preliminary plat is a map of a subdivision of land conforming with the requirements stated herein that is submitted to the proper review authority for purposes of preliminary consideration and approval. The subdivider achieves vested rights to subdivision upon preliminary plat approval. So something that we have talked about before that is when you submit a preliminary plat and it is approved as it was by this body in December of 2007, that the developer achieves vested right meaning that they have the right to rely on it and they expend money on behalf, in reliance on that project. You have heard and you have seen that there are substantial amounts of money have been spent in reliance on the preliminary plat. Not only the money we talked about tonight in Mr. Bushner's letter but in the record that we have submitted previously you have seen large amounts of money that we have spent on behalf and in reliance of the preliminary plat. So that is really three points that we want to make first that we meet the requirements of the Ordinance by having the project the reason that we are here asking for an extension is that this project has been unavoidably delayed number two the extension is in the public interest and number three that Campbell has acquired vested rights to this subdivision by virtue of your own Ordinance and by New Mexico Law. I am prepared, Mr. Chairman, to answer questions of the Commission

Commissioner Wilhite: May I start the questions. My understanding that until the water is proved up there will be nothing done with the PID or the Department of Transportation highway access or any of those other points that we have required.

DC: No that's not exactly it the PID was tabled by the Town Council of Edgewood some 4 years ago and still sits on the table with the Town of Edgewood. The application that was submitted was deemed complete in April of 2005 by Ms. Mahalick and it was tabled by the Town Council pending their additional kinds of work. Now several things have changed, initially that PID talked about Police

services, fire and EMS services now the Town has its own Police Department and there is some question as to whether a new PID would contain, would have a police department kind of expenditure within it but at the present time based on the record as we have it the PID was tabled here at the Town Council and has not been removed from the table. The other matter of which you refer when you talk about transportation you will note that in the letter that we submitted to Chairman Fulwiler February 24th 2009, we included a rather substantial list of expenditures of work that was already done by Campbell in pursuit of this approval in pursuit of the preliminary plat and moving to the final plat those are at the bottom of page three in that letter dated February 24 which is part of your record. There were twelve items of expenditures in matters that were moving forward at that time and as I said there are a lot of other activities but this was sent back to you I think to consider the only thing that's different which is the water the water issue the fact that it's coming from a different source than what had been originally approved by this body.

Commissioner Wilhite: Questions.

Commissioner Turner: Mr. Chairman I had two questions and I would also like to clarify Mr. Campbell's recollection, I believe the person who asked for a definition of the Public Good was Councilor Rita Simmons, it was not me.

DC: Oh I apologize.

CT: That was from the Council Meeting.

DC: Ok, ok.

CT: We are both women and so I understand.

DC: Maybe you both sit in the same chair too.

CT: Right, right. I did have a couple of questions for you about you said one of the reasons that you are asking for an extension is that you believe you have achieved vested rights based upon the Town of Edgewood Ordinance, can you tell me if that's the 1999 Ordinance or the 2005 Ordinance.

DC: That's your present Ordinance.

CT: Am I correct in understanding though that the legal framework that the Town deals with Campbell Corporation is through the development agreement which uses the 1999 Ordinance.

DC: There is a Development Agreement, there is 1999 Ordinance in the Development Agreement it talks about the 1999 Ordinance as being the operative agreement. However, I am not at all certain that we can choose what law we are going to follow when what we've got right now is a preliminary plat an extension of a preliminary plat that is before you in 2009 and you've got a set of laws that does specifically say that you have granted preliminary plat approval. I will also point out that the 1999 Ordinance has no definition of preliminary plat and when the law is silent as to a point then we have to look to the current law to see what that definition would be.

CT: So then am I correct in saying that you are asking this Commission to deal with this based on the 2005 Ordinance rather than the Ordinance that is specified in the Development Agreement.

DC: No I am not. And that actually mischaracterizes what I just said. What I said was that in 1999 the Ordinance had no definition of preliminary plat you can look through here and find no definition.

CT: I understand that

DC: By not having a defined term we have to figure out what is that defined term and the closest we get to that is in the 2005 Ordinance which the Town operates under right now. So I am saying it is perfectly proper for us to use a defined term and use that definition of that defined term when that term is lacking. I also want to point out that vested rights can be obtained not only when the Town says that they are obtained, as in the 2005 Ordinance, but New Mexico Law says that vested rights are obtained when two things happen, One, when the government gives it's approval and two when that approval is relied upon by the person. For example, if you were to issue a building permit and somebody goes off and starts building their house and spending money in reliance on that they have attained vested rights in New Mexico, even if Edgewood didn't have it in its Ordinance they would vested rights and that is exactly what's happened here with the approval of the preliminary plat and the expenditure of substantial amounts of money in reliance on that plat.

CT: So you believe you have met the legal criteria for establishing vested rights.

DC: In both ways. Both from a statutory as well as from a court law basis.

CT: May I shift gears and ask a question about the water wells. Are these test wells that are being drilled at the present time then.

DC: They are.

CT: They are test wells then. And.

DC: I mean what they call them are exploratory borings, to me, I mean in English I think that means test wells.

CT: Right so this agreement is for prospective water rights. I guess my question here is what exactly do you have to show that you have water that could eventually be used to provide a subdivision, do you have a water company do you know how much water you will have available.

DC: The answer is we have what you have seen here which is you asked us to go about the process of proving this up. We proved it up with respect to the other water rights at least we got the PRC to agree that the area could be served. But there was still such public opposition and controversy to that that we said no that does not seem to be in the public interest we need to go with a different route and so this and you see it is dated October 2, and he is talking about an ongoing project that is. Now, and so if we had all the water if we had the wet water and the water rights all determined I suppose we would be here asking for a final plat and not an extension of a preliminary plat. But obviously the reason we are here is because those elements have not been met despite our best efforts to meet them.

CT: Thank you.

KM: Just as a clarification you just said that because of the opposition to the water company serving Campbell Properties that Campbell did not believe it was in the public interest to continue that way.

DC: Well that is

KM: I think that is.

DC: There certainly, that was an element of it. The fact that there continued to be great public controversy and not a lot of public interest in having that pursued from the area called Sandia Knolls that we looked at it and said no there ought to be a different way to go about this if the opposition is that it is going to impact. Which you heard here by the opponents that it is going to impact adversely the wells in Sandia Knolls then lets find some place else to do this. So yes in that sense it was meeting what the public said their interest was.

KM: Thank you.

CW: Mr. Fleming.

CF: Well you might have answered the question I was going to ask which dealt with why you're switching your water source. If I am to characterize your answer in a sentence I think it is because the neighbors didn't approve of this source is that just a quick summary.

DC: That's too quick a summary I think. The fact is that the neighbors didn't approve it, however, the PRC did approve it did ultimately say that the company could serve them that water.

CF: I understand that. That's why I am curious as to why now there is a pivot, pivoting to a different source.

DC: Well the PRC wasn't the end of that determination in fact after the PRC ruled that way there was still going to be a determination and an application through the State Engineers Office with continued issues of service and water rights, so.

CF: So it wasn't secured.

DC: It has not been secure and that is why this is done.

CF: Ok.

DC: I don't mean to say that by getting PRC approval we were at the end of the road but that we were looking at as you do what was the public interest and the public interest seemed to be to not have this water drawn from the Sandia Knolls area and rather have it drawn from Campbell's own property.

CF: Is there any indication that this new source will provoke the interest of the public.

DC: Yes there is some indication that it will.

CF: Ok well I will pivot now. This is a question for Ms. Mahalick. Can you refresh my memory, as part of the pre-plat the original pre-plat approval are the terms of the development agreement between Campbell and the Town, essentially was that agreement on the table. I was needing to be satisfied for this to go forward. You'll have to forgive me I am on fourteen hours or so.

KM: Pre-plat approval do you mean as part of the discussions between the engineers.

CF: No I am going through this development agreement and I am curious about some things.

KM: What I would ask is since you have Mr. Campbell on the stand that you finish with your questions to him.

CF: Ok I'll go to section 6 of the development agreement and this might have been an issue that could have been addressed that Commissioner Turners question could have addressed it says that the Town and Campbell shall review annually the parties respected compliance with this agreement. It would seem to me that at some point during this review it would have been decided on which zoning Ordinance applied.

KM: There has never been a review of the development agreement.

CF: What.

KM: You heard me. There has never been an annual review of the Development Agreement.

CF: But it says right here.

KM: I know it does. It has never taken place.

CF: Alright.

CW: Any other questions Mr. Fleming.

CF: One more time, never taken place.

KM: Never.

CF: Whose responsibilities is it to initiate these reviews.

KM: Well originally when the Development agreement was signed it would have been whoever was in the office and that would have been Mr. Moe. After that there was periodic work done on the PID but there has been no review of the Development Agreement. Not by the Attorney nor by Campbell. If you will remember during the December 2008 initial preliminary plat discussions with Mr. Henderson he was unaware that the terms of the agreement had not been fulfilled. He was the drafter of the agreement.

CF: Which obviously these conditions still exist.

KM: He stated that the development agreement would not be time expiring document at that time. Commissioner Schober asked about that because it indicates in there that there are certain time lines and indicated that it would not expire in his opinion.

CT: Might I interject a question there. Would this be for the development agreement, I understand there is an expiration date on the PID once it is initiated. Is that correct.

KM: That would be once it is initiated. The reason it was tabled was for certain nominations and then administrative transitions and those things have never been clarified.

CF: Are you suggesting Ms. Mahalick that the state of the PID is like nebulous. That we don't know where its at.

KM: The PID.

CF: Yes.

KM: We could bring it forward to Council and the Council could determine but at this time the PID and some of the information that the new administration received that had been agreed to verbally was not what the new administration would interpret as the enhanced services. And that is part of the reason that it ended up being tabled.

CF: I am reviewing my packet here and there is a letter from G & D LLC Consulting Engineers November 27th 2007 requested approval conditioned upon establishment of PID.

KM: Yes sir.

CF: And that has not taken place.

KM: Campbell never came forward with the necessary modifications for Bernalillo County Services but G & C had agreed that in their discussions with Campbell that that would be done as a condition with plat approval.

CF: And the state of that currently is.

KM: Campbell has had a transition on their administrative staff and they have never come forward with anything since the prelim.

CF: Incomplete.

KM: It is incomplete, yes sir. It would be difficult to establish the PID prior to needing the services prior to having the preliminary plat at a point where they had the necessary water, electricity and gas to spend the money to establish it and I believe that is what you have heard.

DC: Correct.

CF: So you are saying this is linear and not simultaneous you can't do this simultaneous.

KM: Well according to what has happened with their time line and the PRC court case that's part of their defense and perhaps the applicant wasn't ready at the time because water wasn't really secured.

DC: Mr. Chairman there are a number of things that have to happen before you have a PID. Including having the Town of Edgewood approve the PID. I mean and that's not been done and in addition to that you have a whole host of all these other things including what we have been talking about tonight with the water, water rights and so on it's not a question of whether it's simultaneous or sequential you can't have what is needed to fund a PID, to establish a PID without some of the infrastructure that we are stuck on talking about tonight.

CF: I understand that Mr. Campbell I am just concerned it seems that there has been. It just concerns me that there has been no dialogue apparently and I realize there are limits to how far one can progress given the circumstances it is just a little disconcerting.

DC: Mr. Chairman may I respond.

CW: Yes sir.

DC: The instructions that this body that this Planning & Zoning Commission gave were a series of instructions on December 11, 2007 and you said to go out and do these things. You said to go out and get water availability. You said to road analysis. I mean it is a two page document and it is basically a too do list that Campbell must go and do.

CF: Uh-huh.

DC: I don't know that dialogue is so required with this as much as performance of these various items is required. So we get out, we work on these things and a year later actually less than a year later we came back to you and said we are doing pretty good but we haven't got this finished we have not got our to do list done can't you give us an extension and that was last February that we were here before you. Now it's October and we are still asking for the same extension. Can't we get an extension to so what it is that you asked us to do. So in terms of dialogue and terms of development agreement we are just trying to meet what you told us to do.

CF: I am appreciative.

DC: Thank you.

CF: However, there are some things that seem to be independent of that. There is a list of concerns, there is again a note on the packet, highway traffic concern not addressed. Is that something could have. Traffic concerns not addressed is that something that could have taken place independent of water concerns.

DC: I am not seeing where you are reading that sir.

KM: I think he is reading from an old staff report.

DC; I am looking at a

CF: it is a time line right there.

KM: The updated time line.

CF: Yes.

KM: It's a modified old staff report from the. I think it is originally from December.

CF: Ok so has there been any. Has there been any, well there's a bunch of things here.

DC: Staff reports are not directive, what was directive was what you wrote to us dated December 11, 2007 that talks about the requirements that you placed on this preliminary plat. That is what we have been working on. We really don't work on staff reports.

CF: I am not suggesting that you did. However, it is a concern of this body, things like traffic flow, public safety, etc. And it is something that we need to ask questions about so can you address any of these issues now. We have notification here that there is public safety fire code compliance Campbell has not resolved the original problem that the preliminary plat was not in compliance with fire code. Is this something you can discuss.

DC: Sure we can.

CF: Ok.

DC: We would be glad to. If you would turn to page three of my letter of February 24 to you we list twelve matters.

CF: Could you please read the twelve matters I don't have any of that.

DC: Sure sure. It says since the Town's final approval the developer has taken numerous actions in preparation for and in reliance on the preliminary plat approved by the Commission and the Council. Had the preliminary plat not been approved these steps would have been inappropriate.

1. Hiring of Smith Engineering for the waste water and draining study.
2. Hiring of G & D LLC Master Platting of Subdivision including civil engineering.
3. Hiring of Harwick Engineering for the development of a traffic study.
4. Engaging in negotiations with NM Water Services Company to provide for the water service pursuant to the preliminary plat.
5. Cooperation with NM Water Services Company in the PRC hearings or proceedings.
6. Payment of half of the NM Water Services Company legal fees and costs related to the PRC and other regulatory matters necessary for the expansion of the service area and water rights.
7. Engagement of Lawyers to develop land use plans including covenants and restrictions.
8. Engagements of EDAW Land Planning for assistance on the land planning.
9. Performance of well water testing in the subdivision.
10. Cooperation and negotiation with Bernalillo County regarding public improvement.
11. Cooperation and meetings with Town of Edgewood Police Department to begin formulation of police services arrangements.
12. Legal fees and staff engagement in connection with the PID district establishment.

CF: And what is.

DC: That was as of February of 2009 now we are 8 months beyond that.

CF: Right.

DC: And I.

CF: And what is the status of traffic study for example. Do we have any numbers is there something I can look at. That's what that's.

DC: Yeah yes we didn't bring those tonight this was sent, this was sent back to you by the Town Council for review of the changed circumstance which was the new location for the water. Now if what you are requesting on the remand that we got is a re-presentation of the preliminary plat that's, that wasn't what we understood tonight to be for. We understood that this was remanded by the Town Council for addressing the changed circumstance not the existing circumstances.

CB: Mr. Chairman unless you've got something.

CT: Mr. Bassett could I ask a question first.

CB: Sure.

CT: I, Mr. Campbell's testimony raised a question that I would like to ask Ms. Mahalick about his understanding of what was going to take place tonight. Ms. Mahalick at a previous meeting during calendar review did this Commission ask you to forward to the applicant a request for certain information.

KM: You did.

CT: Can you specify the information we asked for.

KM: You asked that any new documentation be presented prior to September 21 and I sent an email to Mr. Campbell which he acknowledged receipt of that states that request.

CT: Ok and was any of that information that we requested forwarded to you by the applicant.

KM: No he handed out the letter tonight.

CT: Thank you.

KM: And you will notice that the letter is dated October 2.

CW: Mr. Bassett.

CB: Mr. Campbell as I understood it from the meeting of September 2 was it with the Council that coming back to us this is to be a de novo hearing a brand new one is that correct.

DC: No that is not my understanding. My understanding was that the Town Council said that because there was a change in the source of the water that they wanted you to hear about what that change was and to consider the preliminary plat with that change in mind. And because, and the reason for that was that the last time you met on this the focus was on the water and the focus of the public comment was on the source of the water and the water rights and the questions had to do with how is it that you don't have this done in years time. And the answer was that we don't have it done in a years time because it takes more then a year when you have all the public hearings that we have been going through in Santa Fe with this. So I think the Town Council believed that by you seeing that there is a different approach on the water that you would consider that in rendering a decision about whether this was unavoidably delayed and whether it is in the public interest. Those two things. But I don't, I really don't think that they sent it back to you to do a re-hearing of the preliminary plat. That clearly is not what the Town Council said and it is not what we understood the Town Council to be ordering. If today what you are saying is you want a full presentation on the Preliminary plat as if it was de novo if it was something new, then I would request that you give us that instruction so we can go about that but were in a process right now that deals with an extension of an existing preliminary plat and there are two requirements for us to show. Both of which we have shown. One, unavoidable delay and two that it is in the public interest.

CB: Well Mr. Campbell I understood it to be a de novo hearing tonight.

CF: Chair. See if I can. Ms. Mahalick can you instruct us on the Town Councils instructions regarding the nature of this meeting. I mean is it de novo or not.

KM: It is my understanding that from the discussion that night that the Attorney Marcus Rael believes that there was new evidence that should be considered that considerable changed the circumstances of the preliminary plat and requested that the Council remand this back for consideration of the evidence.

CF: So no would be the answer. It is not.

KM: It is not de novo he is not to put on the complete defense.

CF: Ok.

KM: He is simply to present and you are to decide. One of the things that I would point out is that in the Town accepting the application for a subdivision and under the terms of the development agreement we did accept the application because as with other plats we had a letter of intent to serve by a water company

DC: Right, right.

KM: And the development agreement states that Campbell shall demonstrate sufficient supply of potable domestic water for any proposed subdivision of land at the time application is made.

Therefore, with a request for an extension what he is doing is he is submitting evidence of a potable water supply that he believes is applicable.

CF: So in light of what you have said. You would therefore suggest that we concern ourselves only with issues pertaining to water acquisition.

KM: That is what you're tasked to do.

CF: Ok well lets stick to that so.

KM: It doesn't matter what's in the paper.

CF: OK

CW:I don't even read it anymore.

CF:Alright, so, then, lets focus this here. Chair.

CW: Do we have any further questions of Mr. Campbell.

CB: Well if it is all just the water issue I guess he said that here tonight he's got an application before the State Engineers.

CF: Ok.

CB: Did you have something to say.

CF: Well I want to go back to the development agreement section H, Item one section H I guess we would call it. It says Campbell shall demonstrate a sufficient supply of potable domestic water for any proposed subdivision of land at the time application so made with the Town for any preliminary plat approval. And in accordance with applicable Ordinances and policies of the Town. So the question, I

would ask of Mr. Campbell is do you believe that Campbell has demonstrated a sufficient supply of potable domestic water for this subdivision.

DC: Campbell has provided you with evidence that the potable water is being pursued and that application has been made for the water rights. So both wet water and legal water is being pursued. We are not here for the approval of a final plat.

CF: I know.

DC: Nor are we here for approval of a subdivision, we are here for the approval of an extension of the preliminary plat to allow us to continue the process that you asked us to continue to start on.

CF: I agree with that.

DC: So what we are asking in the interest of fairness you have given us a task, give us the time to do the task.

KM: Could I ask a question. Based on your last statement give us the time to accomplish the task. That is a pretty open ended statement. You might not be able to find water in a year or two years or three years.

CF: Well this is why I want to harken back to this.

KM: Does the applicant believe that there should be no timeline.

DC: No, no. That's not what we are saying. What we are saying is that we are actively pursuing this.

KM: Correct.

DC: That which has taken the amount of time has not been the drilling or the finding the water. That which has taken the time is going through the administrative processes required by the State of New Mexico both the PRC and the State Engineers Office and when that is compounded with the intense public interest that there has been in this so I mean.

KM: Right.

DC: There has been. Those are the delays that have been occasioned that are not the responsibility, haven't been caused by the applicant.

KM: Correct. But if one were to accept your vested rights argument which basically goes toward a different type of case in New Mexico then would you argue that there be no timeline.

DC: Again I never said don't give us any timeline, we are asking for a twenty four month extension of the preliminary plat.

KM: From the date of expiration.

DC: From now. No from now.

KM: From now.

CF: From now.

CW: Ms. Mahalick who signed the commitment letter for water originally on the preliminary plat application.

KM: It was the New Mexico American Water Services. New Mexico.

CW: That's the one that's been trying to get it through the PRC.

KM: Was trying to yes sir.

DC: Correct.

CB: And apparently Mr. Chairman, succeeded. Is that correct Mr. Campbell.

DC: It succeeded with the PRC and had yet to do the State Engineers Office which also was being protested by the same people that were protesting at the PRC.

Audience: That's not true. I'm sorry.

CT: Out of order.

CW: You're out of order. You will have a chance. Ms Turner another question.

CT: If I can remember it at this point. You had a letter from a water company that you provided to the Planning & Zoning Commission when you applied for preliminary plat approval is that correct.

DC: That's correct.

CT: Are you still using that letter to say that you have to demonstrate that you have a supply. Because the way I read this development agreement is doesn't say Campbell shall actively pursue it says Campbell shall demonstrate and there is a little bit of difference there.

DC: Yea. We met the requirement that you had when that letter was presented. We believe that we met that requirement by demonstrating because you know it was a responsible water services company that signed that letter on their letterhead and said so. But you added additional requirements beyond what you have just read that included. The Town does not approve water systems New Mexico Environment Department approval and compliance must be achieved. It says that letter dated November 27, 2007 is requesting conditional preliminary of the plat pending approval by the Town of water supply system. Then you go on to say the Town doesn't approve water systems. So I think in order for us to meet that requirement I mean certainly the letter itself meets the requirement but.

CT: But is it still current. I mean the point is you've got a different system and I would like to harken back, you brought up the issue of public good. You know the Town Ordinance, the development agreement all say that when you come forward to develop a property you shall provide assurance that you have a sufficient water to serve that development and I think that Harkens back to the public good because without water you can't really have a viable plan and, and so, you know I. I do want you to know that I appreciate the fact that, you know putting conditions and having applicants meet conditions does entail the spending of money and I do think that raises a larger philosophical question about approving preliminary plats with lots of substantial fairly significant conditions, but that has already been done. That's water under the bridge.

CF: So to speak.

CT: But I do think this water is.

CF: That was bad.

DC: Water under the bridge.

CT: Unintentional, but I do think that we do need to look at, because, like I said before, I am repeating myself, actively pursuing water and being able to demonstrate a sufficient supply are two very different things and I think that the public good, that we need to zero in on that. How much confidence do you have that you can do this in a reasonable amount of time. That's kind of what I'm, I've gone too long on the question. What kind of timeline do you anticipate for getting approval from the State Water Engineer.

DC: Again we are asking for an adequate amount of time and right now we are estimating that it could take two years given the history that we have had with the protests just before the PRC. If that kind of public interest, if you will, continues we expect that there will be a series of hearings, there will be a series of public meetings. There will be hearing officers and that could take quite a while. If this was being done in an administrative capacity where we simply went in and asked them to sign this and give it back to us, we would be done in a heartbeat. But that is not the way that this is being done. It's being done in the public interest and in the public domain and so estimating. I mean would we have estimated nineteen months ago when you approved this that it was going to take over a year to prove up the water, that water services company said they had right then, well heavens no. We would not have predicted nineteen months later that we would not have been able to prove that up to you and so, that's, that's that first a prong of the test that is it is unavoidably delayed. If we weren't having a public process here and at the PRC and at the Town of Edgewood Council and at the SE at the State Engineers Office we would be done with this a long time ago, but that is not the case we are doing this the way we must do it in the public interest and in the public process.

CT: That raises a further question I am concerned we have a bit of a moving target here I believe it was approximately 10 months ago that your first came to planning & Zoning ask asked for a 24 month extension so you are here tonight and I believe I heard you respond to Ms. Mahalick saying you want 24 months from tonight so that would in effect give you 34 months of extension and so we, I.

DC: Sure.

CT: This is kind of a metamorphism here.

DC: But again it is not our moving target, we have, we've had the same request for extension before the Town of Edgewood, either the Planning and Zoning or the Town Council for, by my count six different public hearings each of which happens within a successive month. So you know we were here in February we were here in March, we were here in April, May, June, I think we skipped July we were here in August. We were here back in September and now we are here in October. So, I

mean just to get through the Town of Edgewood's process added six months, no more than that February is the second month this is so 8 months to our process.

CT: Right.

CT: Excuse me Mr. Campbell

DC: So, yes.

CT: Don't I recall that the applicant did request a delay at one point in that process that it wasn't entirely Town of Edgewood process that.

DC: I don't know have a recollection of that there was a moment where there was not a full Town Council present and we appeared and one of the Commissioners was absent and we did ask that we be entitled to a full hearing by a full Town Council. So if that's what you are referring to yes we did.

CT: I. I'm actually referring earlier in the summer to the fact that it was on the Agenda and then tabled but that is beside the point. Mr. Chairman, thank you for indulgence. I think I will just wrap it up I will return to the focus of my concern here. Can you give a reasonable time limited demonstration that you have achieved a sufficient water supply or can you, or would it be more accurate to say you are actively pursuing the water at this point.

DC: I

CT: As opposed to having actually achieved it.

DC: I stand on the letter that you have here which says that they are having success and that by their professional opinion that they believe that it is to be successful.

CT: So that you are making progress in securing the water but you have not yet secured it. Would that be a fair.

DC: There are two parts to securing the water

CT: Right.

DC: One is the drilling for the wet water.

CT: Right.

DC: And the second is the application for the legal water through the State Engineers Office. What the letter said this effort is to locate a new source of water in this area and for which Aquifer Science has applied for a new ground water appropriation. There have been no hearings before the State Engineering Office on this new application. But they are currently in the process of drilling two deep exploratory borings on the Campbell ranch property and at those depths they have told you what they are encountering and that they reasonable believe that that's to be successful.

CT: So if I said you are actively pursuing and making progress on this matter that would be a fair.

DC: Again, I think the letter that we have submitted for the record speaks for itself. I don't know that a characterization by me or by the Commission can speak louder than what the letter says.

CF: I would actually like a characterization. I think I need that kind of guidance. I. It says we have hit some strata of this kind and this kind and it doesn't tell me, it doesn't tell me, we have this amount of water for this scale of development or anything like that I would really appreciate that. I wouldn't mind hearing a characterization of it if you can provide it. If you can't I understand.

DC: I have provided the letter.

CF: Ok.

DC: I am not an engineer. I am not a water driller but I present. I prevent, I've presented.

CF: Please understand we are under the same constraints as well.

DC: Well we are providing you what the Town Council asked us to provide you which is the evidence. We can't make up evidence you know.

CF: And I am not suggesting that you should.

DC: What we have said is. What we have said is here's where we are at and please give us some more time to conclude this process.

CF: Here is what I am suggesting. I am a physicist and I would appreciate guidance with this. I would like to know and absent that I felt a little uneasy. I would like to have some firm numbers that says I understand what it is saying but I don't know how to extrapolate beyond that. And not being a geologist or a hydrologist or a water Engineer I would appreciate the guidance. So I was just saying if you could provide it I would be thankful. If not I understand. That's all.

CB: Mr. Chairman. I have a couple of questions maybe.

CW: May we have a motion to take a 5 minute recess.

Action: Commissioner Fleming made a motion to take a five minute recess. Commissioner Turner seconded the motion. All Commissioners voted aye. The motion carried.

CW: I call this hearing back into order. Mr. Bassett I believe you have the floor.

CB: Mr. Campbell I guess we have established here tonight that this is not a denovo hearing but just a remand on the one issue here the water is that correct.

DC: That is my understanding Mr. Commissioner.

CB: I don't know that I share that but anyway we will go with that. Anyway if it is a remand then some of these issues you've raised were settled I think in March. The vested rights we decided we went with the 1999 subdivision Ordinance which doesn't speak to them which leaves the unavoidable delay and the public interest. So if it is just the issue of the water and you have already stated tonight that you don't have water in hand tonight, is that correct.

DC: Mr. Commissioner what we have is two things, one is that we pursued the initial request that you, the initial service letter in the way that you have asked us to do and that is that we took it through the PRC process and got an approval to serve from that well and then we made a different decision because that continued to be a controversial and difficult decision. And one in which this body even turned down our preliminary plat because you felt like it hadn't been properly done and that there was that kind of public controversy and we went a different direction and that direction includes the letter that you have tonight. So yes we are attempting to meet the requirements that were laid by this body on December 17, 2007 and which. I don't believe Commissioner Bassett you were on the P & Z at that time but I have the minutes from that meeting that said that, what it was that you were asking for us to do which was to show that the water existed.

CB: So then the questions on this remand would just be basically the intersection of your clients quest for water from the PRC and the State Engineer whoever else handles water and this plat.

DC: I am not sure I understand that statement. You say it is the intersection of plat and the various agencies.

CB: Well you have us meeting here tonight to reconsider the question of the water and as sit was in March, I believe I asked you that then why is this plat important to it. Now let me explain to it. My family has water rights we have property I am familiar with most of the older families around here that have property and water rights. They got those water rights without need of a plat. I don't see why we need to keep approving this plat so you can go hunt water rights up. In other words, can't you pursue your hunting the water that you have here with this gentleman and his drilling rig and what not without need of this plat. The plat is costing the Town time and effort and I don't think it's in the public interest. Why do we need to keep approving this plat when what you're essentially setting out to do is get water rights. You can do that without a plat. I mean there is nothing to stop you and your client from going and getting water rights. All the stuff you are pursuing with the State Engineer can be done without need of a plat.

DC: And if you are talking about sort of generically out there in some sort of ideal situation that may well be the case. If somebody had lived on the land for years and years and all that they really wanted to do was to show that they had water rights that's fine. But from the standpoint of a company that has come in invested millions of dollars into the process that's required to subdivide and to get a preliminary plat done. The economics of having water is essential to be able to move, to move those lots and so they're, I think intricately tied together in the fact that you've approved a plat and now we are showing that the water is there and that the water rights are there. Without that plat, without the preliminary plat there is almost no incentive to simply go on an academic exercise to see if you've got the water rights. These are tied together and they are essential. Now submitted when we first came here in December of 2007 we submitted a right to serve letter. Normally, and I have done this for 23 years all around the state of New Mexico, normally that service letter is adequate for any preliminary plat. It is done by a responsible utility who says we can serve this. But the Town of Edgewood wasn't satisfied with that. You said, no we want you to prove that. Which goes beyond most requirements for that. That you look behind, if you will, the notice to serve letter that we obtained.

CB: But that comes right out of your agreement here. Back to what Commissioner Turner was saying about demonstrating a sufficient supply.

DC: Right and that's.

CB; That's not something that we dreamed up.

DC: That letter, No No. But that letter demonstrates a sufficient supply. The letter that was submitted with the preliminary plat demonstrates a sufficient supply. And the reason we are back here tonight is because your Town Council said, look there's been a change, you've got a different provider. You went through all of that, granted for nineteen months, now and now you've got a different situation ask the P & Z to consider that. So that's why we are here.

CB; And so what we are considering then is that you've I guess made application to do some test boring out there. Is that correct.

DC: No we have made application for the water rights but we have actually invested somewhere over a half million dollars.

CB: Yea but I mean you had to get a permit from the Engineer to do that test drilling didn't you.

DC: Of course.

CB: So you have done that. You've got them out there I guess drilling like he says here they are at 1725' right now.

DC: Right.

CB: But basically in March you made the thing that you had to get this PRC approval and all that. Why would you then turn around. I mean, you said you decided it caused too much uproar but you went through all that effort and expense and you got what you wanted from them.

DC: No as a matter of fact we didn't. We were turned down by this body in February of 2009.

CB: No I mean from the PRC.

DC: Well but I mean we didn't, we didn't have an extension of a preliminary plat because of the, because of the denial that was this body. So.

CB: Right.

DC: So you go back and you think, gosh, what are we going to do now. I mean we don't have an extension by the Planning & Zoning Commission of the preliminary plat. Yes we may have a PRC approval but what good is that if we don't have a plat. So here we are coming back and saying look we are continuing work on this we are continuing to spend a great deal of money on this and the. I think the Town Council said yea you really are. You need to go back and talk to those Planning & Zoning people whose biggest concern was that we were taking water from people who said it was their water and it wasn't, it didn't belong to us. Now there is no question that this well is being dug in Campbell property not using somebody, some, some lands or water that other people claim.

CF: If I may. What are the impediments to re-applying.

DC: That all. That, that at this point we have, we have spent substantial amounts of assets on this preliminary plat and as I said earlier whether you go, whether under your current ordinance or whether you go under the last Ordinance, or whether you go under New Mexico Law dealing with vested rights, we have met the requirements to have the vested rights in this plat. Now.

CF: Well, well if I understand from the last hearing.

DC: But I haven't got. That was a wind up.

CF: That was something.

DC: For your question.

CF: Well that was something.

DC: Well do you want to let me answer.

CF: Well actually, I'd actually like to ask you a question. Do you recall from the deliberations from this body, perhaps it was February or March. This body received advice from the, our Town Attorney that vested rights issue was something that did not apply here. He cited, if memory serves because my memory is always, like anyone else's, suspect, but citing the 1999 Zone Ordinance. Now I am not a Lawyer and I, I rely on the Town Council, or our Town Attorney I should say for advice in these matters and I take his advice. But I guess what, the question that vexes me, is there is this progress going on the PRC, which to a degree was resolved in favor of Campbell. Under, during which the time

in which, and you can correct me and I would appreciate it if you do. Under, under which the time that this, that the denial of extension was undergoing appeal is that correct.

DC: We have been appealing this ever since you denied it on February 7th yes.

CF: That's right. It seems to me that you are armed now with a, would you characterize it as a victory with the PRC or a success something that you win. Something that.

DC: Again I am not characterizing it. What happened was that there was an approval.

CF: Right

DC: At the PRC.

CF: But, see, what. But and I by victory I simply mean it furthered the goals of the development that's all. Did the, did the resolution at the PRC further the goals of the development.

DC: It furthered not necessarily the goals of the development but it furthered the completion of the requirements placed on this by this very body the Planning & Zoning Commission of the Town of Edgewood on December, in December of 2007.

CF: Right.

DC: It. You gave us that task. We completed that task, or at least that part of that task.

CF: That part to a degree.

DC: Well we completed that part of that task being the PRC. Now we never anticipated that it would have taken as long as it did. But why did it take that long. The reason it took that long is because of the public interest.

CF: No, now I understand.

DC: The public interest in attending and participating in hearings, in protesting those hearings, and in protesting that application.

CF: Right I understand, but I think, and if, if I may speak on behalf of the Commissioners, is always dangerous. I think that from what I am hearing your and if I was to characterize Commissioner Turners response, you are asking this body to take, I think you said you provided a right to serve letter back in 07 is that correct.

DC: December of 07.

CF: 07.

DC; When we first considered this an approval.

CF: Demonstrating that you had sufficient water, that's fair, is that fair to say.

DC: The letter speaks for itself. It says that Water Service's Company would serve this area.

CF: And now, now we are at this point where this Commission doesn't have that rather we have this letter that I received today, well a few hours ago and which you and I could perhaps both agree the we really don't know how to this, not being a chief hydrologist, chief hydrogeologist. So I think, I think perhaps some of the concerns that a citizen might have with the Town of Edgewood, maybe a citizen would be concerned that well went from, well we have this letter demonstrating some number, some unit, volume unit that can be supplied for this development and now instead of that letter we are going forward with, well we have these exploratory efforts ongoing and they may produce results, they might be good, but it's certainly not as good as what we had. Now a citizen could voice that, that concern and they may be justified I don't know. So I guess were, I guess were at the point where, I don't have any further questions.

DC: Can I respond then to his comments.

CF: Sure.

DC: What we are asking for is not that you approve a final plat and say.

CF: I understand that.

DC: And say that this is ready to go and you can start construction. What we are saying is we are asking an extension because two elements are met. One is that the delay in achieving.

CF: Unavoidable.

DC; This is unavoidable.

CF: And is public interest.

DC: And number two that it is in the public interest.

CF: But.

DC: And we have met those requirements that's what's required here. We're not saying we're all done. We are not saying that we have.

CF: I understand that, I appreciate your statements, and I do understand.

DC: Mr. Chairman, I don't know how the meeting gets done but normally what we do to have a good record is we get asked a question and then we respond to the question.

CW: I agree.

DC: And I'd like that.

CF: Ok please forgive me. I'm sorry I was just trying to haste some things along I know people.

DC: I appreciate it but I am concerned that we have a proper record.

CF: That's fine.

DC: Of this hearing.

CF: I was actually doing that I the public interest, because these things tend to go on so you must forgive me. Again, so harken back to the development agreement it does say Campbell shall demonstrate a sufficient supply of domestic water for any proposed subdivision of land at the time application is made with the Town for any preliminary plat approval in accordance with applicable Ordinances and policies of the Town. How would you suggest I weigh that with respect to the two arguments you have made with respect to unavoidable delay and public interest. If you were a Commissioner, how would you, how would you weigh this against what you are saying. I want to know.

DC: We provided at the time of the preliminary plat we provided the notice of service the right to serve letter to you. That letter was challenged. That letter was challenged for nineteen months or there abouts and it was determined that in fact that there was a right to serve by that company in that area by the PRC. But that did not appear to be the final word in that situation because there were still challenges before the State Engineers Office that had to do with whether or not that was going to reduce. That the use of those wells would reduce the water level for people who were already relying on that water source and that was, that was something that was going to litigated essentially with the State Engineers Office. So at that point, again, based on having a preliminary plat and having the need to show you that this was there, we took additional steps. We took them as quickly as we could, especially in light of the fact that this body had already disapproved a preliminary plat, and yet we went out and said, look lets, lets take this from a different perspective even though the PRC says that you have a right to serve here, and that requirement was met, lets take into account what it is that the people in the Knolls subdivision have been saying to us and lets actually draw this water out far, far from them in an area that will not threaten their wells and that will be in as we could see it, the public interest. And so we started that process and this report that you have today is admittedly an interim report that says we are working on it. Look we are spending over a half a million dollars in working on this and we expect to have some results within a few weeks. Why because we are here for an extension of the preliminary plat not for a final plat. So we are here to ask you to give us more time to do exactly what it is that you asked us to do nineteen months ago.

CF: Ok.

KM: Could I.

CF: Yes.

KM: You made the comment that you are not here asking for a final plat so that you can start construction. The purpose of the preliminary plat is the construction of the infrastructure improvements, that's the purpose of the bonding agreement that was supposed to be moved forward on. So prelim is when construction can begin. So just for clarification in the process. The other thing, this letter, I think it would behoove the Commission to ask for back up documentation. It says Aquifer Science has applied for a ground water appropriation. Was it granted.

DC: No it's simply been applied for and there are 280 protests filed.

KM: They applied for but went ahead and drilled.

DC: No.

KM: They don't have a permit but they are drilling. It says we are currently drilling ahead.

DC: No they are drilling properly for their exploratory borings that they have got going.

KM: So you could produce documentation for the Commission that they have applied and that they have the right to drill.

DC: I have produced the documentation that I have available tonight.

KM: But at another meeting. If the Commission desired that backup documentation that could be obtained.

DC: If Vidler can provide that then they will provide that if that is a request but it doesn't sound like it is going that direction ma'am.

KM: You never know.

CW: Ms. Turner you have a question.

CT: Yes I would like to take this out of the realm of what's happened in the past with regard to water and I would like to focus specifically on the issue of granting an extension to a preliminary plat. I do not have a great deal of experience on this body with doing that. I have voted to grant an extension one time in the past. I did so, on the basis primarily for two reasons. The first was that the applicant did agree to produce an updated will serve letter with regard to water, the applicant had also made substantial progress with the conditions that had been imposed with the granting of the preliminary plat and so the question that I have for you tonight Mr. Campbell are you able on behalf of the client to issue a current will serve letter that meets the current policy that the Town, that this Commission asks of the applicants.

DC: I am not geoscientist, I don't. So I can not issue a will serve letter cause I am not qualified to do that and the letter that we have provided you is the letter that. Is the only letter that we've got tonight. So if you are asking for something this evening the answer to that is no.

CT: Did Ms. Mahalick forward you our will serve form.

KM: No.

DC: No, I don't believe so.

CT: So you are not in a position then to.

DC: No we were.

CT: Your applicant does not have a will serve letter from a water company that states that they have.

DC: We were asked by the Town Council to come back to you with an update on where we are on the water situation.

CT: Ok.

DC: Which is what we have done. It. We have not provided you tonight with a will serve letter. I cannot do that but I will say that we have made substantial progress and if you need documentation of that beyond what we have already given you we can certainly give you documentation of substantial progress. Which is by the way contained in this letter.

CT: You do understand though that, that as a body we are obliged to follow procedures and precedent that we have established in the past I would like to call your attention to the fact that when we have done this in the past we have had an applicant who was in a position to produce an updated will serve letter and they also had, had, were able to demonstrate some quantifiable measurable progress on the conditions that had been laid out and so I think you. I just wanted you to, you know, be aware that that's where I am thinking there.

DC: Yea, I appreciate that I appreciate that I think that we have over the course of the eight months that we have been before you on this simple, this simple extension of the preliminary plat had a lot of discussion about the substantial progress we've given you documents to show that and we have also, I think shown that we have relied on your preliminary plat to make those expenditures.

CT: Thank you.

CW: Mr. Campbell when you abandoned your commitment to serve water and did away with it and started in this other direction. Did you in effect negate what we had agreed with when we issued the preliminary plat. If you were coming with a new application for preliminary plat tonight it wouldn't be granted because you don't have the will serve letter or any form of water commitment.

DC: I don't believe that it was either abandoned, your characterization of that or that it was somehow relinquished that process, that PRC approval still exists and is still an approval. However we have and this is why the Town Council sent us here was that we have changed the strategy to not draw water

from a place that's near. You've heard the objections and you'll hear them again tonight that somehow this draws down or that the wells that we had draw down too much of the ground water from the people who are already served by it. So we have not abandoned it but we have changed the strategy and we are showing you what the Town Council wanted us to show you which is that there is a different strategy that this is updated and we are moving forward. And if you, if what you are saying is gosh we were perfectly fine with your will serve letter back, that we approved in December of 2007, you know then we wouldn't have been through all that we have been through in the last nineteen months but but obviously you weren't ok with that because you turned us down in February of 2009.

KM: One thing, a point of clarification. It wasn't only water that it was turned down and if you look at the minutes you will find that there was testimony that there had not been further progress or that Mr. Able was unable to answer the question about further progress on the conditions that the Commission had set on the plat so it didn't hinge just on water. There were other conditions that the Commission reviewed.

DC: We understood that. We understood that you were concerned about all of that. What we also understood was that the objections that were coming from the public were those about the water and the strenuous opposition that we found at the PRC only concerned the water and that was what the testimony before you was that evening.

KM: Correct, but that is not the only thing in the record. So just so.

CW: Mr. Campbell to the best of my recollection, the best I remember we basically decided to leave the water issue to the PRC because it is really not our bellywick. What we were concerned with was the other numerous things. That nothing had been done while you were trying to get water. Once you received that preliminary plat you had authorization to do a lot of things that were not done and I think you will find that's the basic reason you were turned down in February.

DC: I just know that the reason that we are hear tonight is because your Town Council told us to come here and talk to you about the water.

CW; And I appreciate that, I appreciate the fact that you are trying to do something to pulling the water from the Sandia Knolls and I commend you for that I am not sure that we have the right answer yet but I think you are headed in the right direction and I commend you for that. But we are in a position right now where if you were applying for the preliminary plat tonight we couldn't give it to you because you don't have water.

DC: And that's the difference in what I have said and that is and what I hear you saying is we are not here to get the preliminary plat or to get a final plat we are here to tell you an update on progress vis a vie the preliminary plat that you have already given and ask for your indulgence for additional time. The other question I have that keeps bubbling up is how is the Town of Edgewood harmed by a, the extension of this preliminary plat. There really is no, as Ms. Mahalick said, she spending virtually no time in discussion or work on this and aside from the hearings that we have had with you highly paid volunteers, what, you know, that, that's been the nature of this and so from the public sector is not harmed by us continuing to attempt to get the extension. I don't see the harm and that's sort of another way of looking at what is the public interest. The public interest is met when we are having months worth of public hearings and going through a very, very deliberate process to do what it is that you have asked us to do. That is public interest but the other way you can look at it is that there is no public harm here either by granting the extension and allowing this to move forward.

KM: Could. May I, Chairman.

CW: Yes.

KM: I'd like to feed off of that a little bit and I would like the Commission to ponder one question. Is it in the public interest to pay for repeated appeals that cost the applicant nothing but the Town Attorney fees. So you do have to weigh that decision.

CF: There is also a precedent.

KM: There is precedent but I am telling you I the public interest that.

CF: Well I understand.

KM: This has bounced back and forth so that is something you have to weigh. You can't just negate that. So from that standpoint he has a valid point. Is it in the public interest and you will have to

answer that question that was posed to him originally. What is in the public interest and that is part of what you'll have to weigh tonight.

CW: Ms. Turner you have a question.

CT: Yes Ms. Mahalick, what is the purpose for having expiration dates on preliminary plats.

KM: Well generally speaking the process is that the applicant come in, he has a product that is ready to move into construction, they get the infrastructure in place they bond it and that was agreed to the 125% that is in the development agreement and it's, again it is part of the subdivision regs. They move forward with infrastructure, they have plats that now they can bring you, we have a lot, we have the infrastructure, you saw it tonight. We have easements, roads, all the improvements on what we said we would do. Then they come back and you look at what they present if it is substantially in compliance with the original prelim then you are mandated to approve that final plat, That is their vested right.

CT: Ok, but that's assuming that they have made some infrastructure.

KM: What they have to do what is necessary per the Ordinance to put those improvements in place.

CT: Thank you.

CW: Mr. Campbell I think Ms. Turner hit a valid point earlier. We feel like we are trying to hit a moving target and the date just keeps moving further on out. And I wonder if wouldn't be better to just forget about extensions and let you re-apply when you get your act together.

DC: Well Mr. Chairman with respect to having an act together this is a very substantial, very complex subdivision and set of, set of development requirements that, as we have demonstrated, and the record will show that we have been working on this we have been expending a great deal of effort on this and we believe that we are entitled to an extension. Not just that we are entitled to it but that, but that we meet the requirements that you have for this. Now when you talk about a moving target, again I will say we first applied for this, we applied for the extension before the 12 months was up. The 12 months was up in May, in March and we applied for this extension back in January. We had our hearing here in February and we have been in one form or another before the Town of Edgewood for the last 8 months. Again, I don't want to be disrespectful or irresponsible but those delays are not occasioned by Campbell Ranch. When in order to do the process through the Town of Edgewood, we are here every month for eight months. That doesn't seem right. And so if you say gosh it's a moving target that's fine but from February when this body disapproved this the one thing we did was appeal that determination and it has been in some form or another before the Town of Edgewood for 8 months without, without an extension of a preliminary plat. Therefore, I mean theoretically what are we supposed to do without a preliminary plat. It is all on appeal so it is all in some sort of beurocratic place that I am not sure what our rights are when we don't have the extension of the preliminary plat and yet we go out as I have shown you tonight and spend a half million dollars plus all of the money that was being spent on the PRC hearing and everything else. So you have given us a substantial task to perform. A year as it turns out was not adequate time in which to perform it. Even the additional eight months on top of that has not turned out to be a substantial, enough time because that is how long this has been before the Town of Edgewood. We are asking for your fair consideration of a 24 month extension of this preliminary plat and there is no harm to the Town of Edgewood and it meets the two criteria for which you should give that, and that is, I know you can repeat it with me, that, that, that we, that we have been unavoidably delayed and it meets the public interest. Mr. Chairman thank you very much.

CW: Mr. Bassett you had a question.

CB: Well is was just basically a comment or a question, however you want to put it but, since we are here to night on the water one more time for effect. What you need, what you are pursuing is a letter from the State Engineer granting you some number of water rights and a place of location where they can be used. I know that. Correct.

DC: Two things, wet water and as you described it legal water.

CB: Right. But this effort here can go on. I mean it's, you've got your permit. Your out there I guess doing it not.

DC: Right.

CB: Ok. The bigger deal is that you are looking for that letter from the State Engineer granting you some number of water rights and a place to use them. Correct.

DC: That would be correct.

CB: And do you have that with you here tonight.

DC: Do I have the State Engineer letter.

CB: Do you have that here with you tonight.

DC: I have brought you what I have here tonight.

CB: No no do you have from the State Engineer, the Office of the State Engineer, do you have here tonight a letter from the State Engineer granting you some number of water rights and a place for the allocation of those water rights.

DC: I do not.

CB: You do not have that tonight.

DC: I just said that, and and, and the premise however, that you made that somehow that's the only way that you have water rights is an incorrect premise. You earlier said Commissioner Bassett that your family has had water rights here forever and you haven't had to go get those proven or documented by the State Engineers office.

CB: We have.

DC: Ok and, but, but, you don't, one does not have to do that. One can simply use the water and have a continuous use of the water and there are a number of different ways that you can have water rights.

CB: Right you can go buy them from somebody. Ask for them to be relocated.

DC: You can do any of those things and so the thing that we are here for tonight, the extension of the preliminary plat does not require that there be a letter from the State Engineers Office. There is a requirement that this be, that we have been unavoidable delayed and that we have, that we have shown that the public interest is there.

CB: Well because, because you don't have that letter that's what you are going for correct.

DC: Well we have. I'm sorry.

CB: Well I mean in other words the reason you are here is your telling us that your in the process of going after this letter from the State Engineer.

DC: We continue to be in the process of doing exactly what you asked us to do which is to go get, to go prove up those rights. Now, if, and I used this analogy when I was here in February and I'll use it again if the Town of Edgewood has a fair process, it would not allow a, lets use a track example, a race to be run where you shoot the starting gun and somebody is allowed to hold somebody else jersey so that they can't get started. And that's in fact what is going on when you have, when you make a requirement that says go get this and you know that that go get. That going getting this involves dozens of people if not hundreds of people who are protesting that and going to take months as was happening with the PRC hearing and as now appears to be happening with the SE, with the State Engineers Office here and it's not a fair.

CB: So the same, the same group of people pretty much going to be opposing you at the State Engineers Office.

DC: Pretty much, pretty much.

CB: Right so basically it turns on the fact that if we are tonight to decide whether or not you have the water we can say fully to ourselves you don't have it.

DC: No you can say.

CB: Not tonight.

DC: You can say we do. When we submitted this we showed you a will serve letter and we got through the PRC process and because that was insufficient for you February and because it seemed to continue to be insufficient for the people of the area we have gone a different direction and the Town Council asked us to bring that different direction to you tonight.

CB: Mr. Chairman I guess we ought to hear from the rest of the people.

CW: The gentleman in the white shirt back there had a comment earlier.

Audience: I am sorry I spoke out of turn, I apologize.

CW: Do we have any questions for Mr. Campbell from the people in the audience and if we do let's try to keep it as short as possible if something has already been covered once please don't try to cover it again. You will need to come up here state your name and your address.

TN: Thank you for the opportunity my name is Tina Nennoff I am from 19 Via Entrada in fact I am no where near Sandia Knolls. I am in San Pedro Creek Estates on an individual water well. I am right uphill from the well that is being drilled right now and at 300' we have water and we have water we can show you data on so my first concern is that at 1700' feet you have no data. I find that incredibly difficult to understand let alone somewhat insulting to the committee. So just in my comments Campbell has owned the land for decades if not centuries, there is water knowledge of the entire area both on the east side and west side of North 14. They want to develop the area, I suggest they follow the example of Paako in which they also were fought by the residence of the area where they then decided to ship the water in. In effect pump the water in so that the water extraction did not directly effect the people on individual wells. That is not only Sandia Knolls though Sandia Knolls has been directly affected in the past that is also La Madera citizens, it is also San Pedro Creek Estates Citizens. So the movement of the drills, of the wells is actually directly downhill from two very large communities that will be affected. It is not just a water source it is an aquifer it isn't a huge aquifer that is replenished from much of the run off from Sandia Mountain so effect, directly drilling up to 4000' deep in an area less than one mile, as the crow flies, will directly affect individual property owner wells. There is just no getting around that and if you can't state that at this point having owned the land for decades if not centuries I strongly encourage clarification on that statement before any commission whether it's the PRC or the city of Edgewood. In direct contention with some of the statements that Mr. Campbell said earlier, I do not believe he has satisfied the issue of public interest. It is public acknowledgement that people are disappointed but it has not served anyone's interest by them continuing to drill. People are disappointed, they are allowed to be disappointed because it directly affects their property and their property values. Now while Campbell Ranch has graciously spent half a million dollars in this pursuit, it is a drop in the bucket for the corporation. That is not a drop in the bucket for property values for citizens near by. Half a million dollars is a legitimate value of decrease for people rights in that area if their wells run dry. And I believe that is about as much as I wanted to say. I do believe there are issues of public harm that have not been addressed. There are enormous water trucks driving in and out of that property all day long. They are affecting traffic on North 14. They are affecting the road condition it was just recently repaved. They are affecting the public ambiance, to say the least because they have a got a huge spotlight on this 200' tower that you can now see for miles. And those are just initial things. So you have traffic, you have water affects you have road affects you have attorney fees you have peoples personal time being wasted here and this is issues that just keep going around with one assumes the hope the Commission or the PRC or the citizens will just be warn down and I guess I am here to say that I am just starting. Thank you.

KM: I need to ask you a question. Ok. One you made a statement there's a spotlight on the drill.

TN: Yes.

KM: All night long.

TN: Yes with a big flag on top and now there is two more and there is some reflector now.

KM: And these stay on all night.

TN: Yes.

KM: And the drilling does that go on all night.

TN: That I am not sure of one would assume because there are trucks coming and going. They are the really big water trucks. I don't know for sure, it is private property, if I am allowed to I would like to go inspect it myself personally but I would recommend that the Commission goes and pays a site visit before they make any decision.

KM: Ok but you do see the light all night.

TN: Oh yea I see it right from my kitchen window.

KM: Ok thank you.

CB; Ma'am are you party to one of the protestors at the State Engineers Office.

TN: That's right I guess I have to pay some money to voice my continued opinion right.

CB: Are you familiar like what, are you familiar with the group effort or just your own effort.

TN: In don't know any group effort I've just submitted my name I understood that I had a deadline to submit my name and address.

CB: And have you heard anything back from.

TN: I just got a recognition letter stating that my name has been registered that my name is on the list and that I think I have to pay a fee for to be continued updated as to what is going on.

CB: Thank you.

TN: My address is on the list, and I think I have to pay a fee for to continue to be updated as to what's going on.

CB: Thank you.

TN: Alright thanks, oh yeah.

CF: I just have a question. You outlined where you live relative to the development. Could you just go over that again.

TN: Sure. Do you know where the site is?

CF: Uh huh.

TN: Okay, so you are going up North 14, there is the open space on your right hand side that would be the east side. On the west side are the 3 entrances to Paako, the 3rd one being the golf course. The next left hand turn is Via Entrada. That goes into San Pedro Creek. That entire community is a private development, 10 acre lot minimum. Everyone is on a private well.

CF: Alright.

TN: And then after that comes the overlook. La Madera is the community, also on wells, and that is the turn right at the community center and the school, and that heads west and then north, sort of around Paako.

CF: Okay. Thank you.

CW: Any further questions?

CB: Well. Mr. Campbell, do you have any questions for her?

CF: Yeah.

TN: Just for the record, I am actually a chemist, and I do a lot of water study work at Sandia Labs. So I would also like to see the report personally. I would like for it to be made public if possible.

CW: Gentleman in the white shirt back there. Please state your name and address if you would please sir.

Jeffery Albright: Good evening chairman and commissioners. My name is Jeffery Albright. I am an attorney with the law firm of Lewis and Roca, LP, and I am a Water Law Attorney. By way of a little bit of background, I am the Water Law Attorney for Bernalillo County. I have been doing their water rights work for about a dozen years now. I would like to, first of all raise this so I do not have to bend down. My Masters is in Electrical Engineering, so the Mechanical Engineering may be beyond me here. Great, okay, that will work. Thanks. Perfect. I would like to make some clarifications and perhaps some corrections to what my colleague Mr. Campbell has presented to the commission this evening. First of all, I would like to give a little bit of background with regard to 2 of the issues. I am not going to get into the vested rights issue, but I would like to address the unavoidable delay and also the public interest and how Bernalillo County ties into this. Obviously a good portion of the Campbell Ranch area is in Bernalillo County, and there have been numerous discussions between Bernalillo County and the Town of Edgewood with regard to such things as firefighting capability. And we have service to Sandia Knolls which already exists out there. With respect to the avoidable vs. non-avoidable or unavoidable issue, I think logically it just falls apart as far as what was stated before in that certainly there was nothing that precluded Campbell Ranch from taking this approach with Aquifer Sciences before they pursued the attempt at the Public Regulation Commission. Whether that was a choice that was consciously made by them that they could have made 12, 14, 18, 24 months ago. They could have certainly gone to Aquifer Sciences out of Nevada, and pursued that route to get water via that route as opposed to getting it through New Mexico Water Service Company. I think they chose New Mexico Water Service Company because they probably felt it would be quicker, and perhaps more efficient to do that, but I cannot speak for Campbell, so again I

will leave that to Mr. Campbell to address for Campbell Ranch. With regard to the PRC, it does bring me to the PRC proceeding, and I think there has been a gross misrepresentation of what has happened at the PRC. Initially the New Mexico Water Service Company applied for a line extension. Now a line extension, for those of you. And besides just water rights I do represent water companies before the PRC, Water and Sanitation Districts. I represent the City of Santa Rosa, the City of Fort Sumner, some people down in Fort Seldon, some farmers out west, some people with about 10,000 acres and some small farmers down in Lemitar who own about 10. So I have done a lot of water rights for a lot of different people and have had numerous proceedings at the Public Regulation Commission. They initially started out by requesting a line extension. A line extension is simply to extend the service of New Mexico Water Service Company into a portion of Campbell Ranch. It was not the entire portion; it was only 1 small piece of the Campbell Ranch Subdivision, or at least what was planned as a subdivision. The County of Bernalillo attempted to intervene, and that intervention was objected to vigorously by New Mexico Water Service Company. Campbell was not formally in the proceeding, although everyone knew that New Mexico Water Service Company intent was to provide service to Campbell Ranch. Bernalillo County succeeded in gaining intervention in that proceeding and was an active participant in that proceeding. At which time as part of this process, or during this process New Mexico Water Service Company attempted to then get clarification. When we objected to the line extension, and by the way a line extension would just be an administrative approval. Normally those do not go through formal hearings. They do not go through proceedings. They are looked at by the engineer who is assigned to the PRC, that would have been Mr. Steve Schwepke, who actually alerted us to the fact that there was this line extension. And so at that point is when Bernalillo County decided it was important and also necessary, because of the firefighting implications and other things, to take a look at what was going on with this proposed line extension. About the same time this was occurring New Mexico Water Service Company decided they were going to ask for a clarification of a previous decision by the PRC related to a ruling about the water rights and whether or not they were allocated strictly for Sandia knolls or exactly what that meant. There was some language that was ambiguous and part of the proceeding was to resolve that ambiguity. Again, with requesting a clarification there was a request made that it just be ruled upon without a hearing without a proceeding, and both our denial or our request, the objection to our intervention and this approach certainly we would deem to be in the public interest. Fortunately the PRC ruled in favor and allowed us to intervene along with other folks. A hearing examiner, Carolyn Glick, was assigned at the proceeding, and that is the proceeding we have been involved in. The PRC has not approved, despite everything you have heard, the PRC has not approved that New Mexico Water Service Company has sufficient water to serve all of Campbell Ranch. There have been a couple of orders that have been issued. There has been a narrowing of the scope. It was determined, however; by an order, not by a final order, but by an order that New Mexico Water Service Company did have authority to serve outside of the Sandia Knolls area. At which time a bench request was issued, fairly recently within the last 2 months, to New Mexico Water Service Company to provide details and evidence with regard to what service area they believe they are required to serve. There are some sections and some individuals outside of Sandia Knolls subdivision plat as it is platted with the County of Bernalillo who do get water service from New Mexico Water Service Company. So I think there has been a misrepresentation that the PRC has approved it. The commission has not a recommended decision at findings of facts and conclusions of law have not been proffered by Carolyn Glick, by the hearing examiner. We still have hearing scheduled up through January, on this proceeding and the PRC commissioners have not made a final ruling in the case. I suspect that they will find that they do have authority to serve outside of their area, but as to whether or not there is sufficient water to serve Sandia Knolls as outlined in their Certificate of Convenience and Necessity and all of Campbell Ranch is a finding that has not been made. And we are suspect, or our position is that we don't believe there is sufficient water that has been allocated to NMWSC. But again that is for the PRC to determine sufficient water to serve everyone in addition to the additional area. So a couple of orders have been granted, but no final decision, no recommended findings of facts and conclusions of law by the hearing examiner to the commission. The commission has not ruled and issued a final order.

CF: Mr. Chair may I ask a question.

CW: Maybe, let him finish first.

CF: Oh well I might lose this. So.

Jeffery Albright: That is alright, I will field the question now if it is convenient.

CF: Well okay, yeah. I appreciate that because it really serves me well, cause, like I said if I lose my train of thought. So you are saying the PRC has approved that the New Mexico Water Service Company can serve outside of Sandia Knolls, but to what degree still has not been decided. Whether they can supply this development, the Campbell Ranch development in question is still up in the air.

Jeffery Albright: Sure. Let me try to clarify that a little bit. You have a hearing examiner much like an Administrative Law Judge in some states. It would be like, somewhat like the, somewhat like the Planning and Zoning Commission who would hear evidence or at least hear, get documents, take a look at what has been presented before them, normally it is a single person. They are an attorney who is familiar with the subject area. And she has issued a finding, a determination in narrowing the scope that the water rights in the previous decision that was being looked at has made a determination that those water rights can be used to serve outside of Sandia Knolls. She has not made a finding that there are sufficient water rights to serve the entire Campbell Ranch Subdivision. There is not even certain, whether or not there are sufficient water rights as to how much property and land could be served outside. One of the things she has asked for, evidence, just like you asked for documents to take a look at. Is that she has gone back and asked New Mexico Water Service Company to provide her and rest of the people in the proceeding with documents and plats that show what their Certificate of Convenience of Necessity, the thing that initially blessed them as a water company covered. What areas it covered and what the extent of that service is. Now there is some latitude in the provisions that usually allow for at least a ½ mile beyond the designated area for companies to serve. There are a couple of areas outside of that ½ mile that are currently being served, so she has found that they do have the right to use that water outside of the Sandia Knolls area. It is not limited solely to Sandia Knolls, but the extent of that use and whether there is sufficient water to serve outside is still in question. And maybe, again I cannot speak for Campbell, but maybe one reason why they decided on this alternative approach to try to drill to get enough water and get the State Engineer to approve so that they are guaranteed of having sufficient water to serve the entire development. There was also uncertainty as to whether the existing water rights that New Mexico Water Service Company has would be sufficient for areas within the certificated area that have not yet been billed out, for lots that have not been developed and have not been supplied with water even though the lines may run by in the street they do not have hook-ups or lines run. So that is all part of, and it does get very complicated, and these are reasons why this took so long. I did not want either the Commission or anyone else to be misled that, that, that this was, that there were not some attempts made to, for the public not to be fully involved in this. At least from our prospective, from Bernalillo County's prospective actual intent to try to keep us out of the proceedings.

CF: Thank you for sharing.

Jeffery Albright: And so, as I say, we have hearings right now that continue up through January, and a few of the dates are still a little bit vague. There is some addition testimony, supplemental testimony, rebuttal testimony which just means give and take, it is sort of like cross examination. And all of that gets pre-filed as opposed to being done at a physical hearing. They may or may not base it upon the written questions and answers or they may have something just like this where we are subject to cross examination from different witnesses. We have had our hydrologist, the Bernalillo County hydrologist involved with this as well to take a look at some of these things. With regards to the aquifer size drilling what was presented here was correct. The normal process is for them to file an application. They do get a permit to drill; usually these are called exploratory wells. They are drilled to see whether or not they can or can't get water. That is an initial step that has gone through, but there is a protest out there to the actual appropriation of water, and that is where the 280 people come in. Bernalillo County is a protestant in that, again I will have more information on that to share with you in a minute. I noticed that the owner of New Mexico Water Service Company has also filed as a protestant in their application as one of the 280. Now at some point in time I think the lady said

she had to continue to pay, had to pay something. There is a \$25.00 fee, that once, on September 18, the office of the State Engineer sent out a list of everybody who has protested. And there I think, Mr. Campbell had it about right, there were about 280 protestants on that. If resolution cannot be achieved with all of those protestants and the application, then it gets assigned to the hearing unit of the office of the State Engineer. At that time they will assign a date and you have to pay \$25.00 in order to remain in the case. If you don't, and a lot of people probably won't, that 280 will be significantly less because some people will not pay or they won't pay on time. If you are a day late in paying the \$25.00 fee it is not appeal able and you are kicked out. There is no appeal process. The New Mexico Court of Appeals had a case on that where a person was a day late, and they said no. The rule is what the rule is, and so for those who fail to pay on time it is an absolute bar to participating in the protest. So that is where we are at with that, September 18, the list was sent out, and again that was subsequent to the last hearing we had before this group went before the City Council. One of our concerns, and I am going to pass these out. Unfortunately I only have 1 color copy, so this probably ought to go in the official record. These are just for the Commission consideration. I will explain what you have here in a minute. The first was uh, is this dark one, and I apologize for the quality of it. But it shows the Bernalillo County application. You will see a stamp on the side, State Engineer, this was actually filed as part of our application. We had proposed to drill a well 400 feet deep to provide water the Vista Grande Community Center as well as the ballparks and fields up there. I do the open space property, when I said Bernalillo County, I do not represent the Albuquerque Bernalillo County Water Utility Authority the ABCWA, but I do the water rights for the open space properties for Bernalillo County. So this was our application. The big ring that you see around it. And let me just orient you a little bit. You will see rout 14 that sort of goes up just to the lower right of S2361. It shows up a little bit better on the other map of the one with the 4 wells, the Aquifer Science wells. The big circle that circles that 2361 is a 10,000 foot circle. That is what the State Engineer used in their assessment to see if any wells were affected in the area. I think Mr. Campbell earlier referred to 5,000 feet. Odds are likely that they will look at a 10,000 foot, at least, consistent. This was a well for 30 acre feet. Actually in think it was about 31 if memory serves me correct. 31 acre feet, and it did show that 2 wells within that 10,000 foot area were going to be negatively affected by the well. Our application was denied by the state Engineer, and that was for 31 acre feet of water down at 400 feet. Now I will admit that in the 2361 application, if you go there, look at the record extensively, they do indicate that the potential for drilling deeper was there. And simply for 30 acre feet it was not cost affective for Bernalillo County to pursue that, and we get our water from Entramosa. We decided it was cheaper to go ahead and purchase the water and buy it outright than to spend the money on the well and to drill deeper than the 400 feet. But at 400 feet there were at least 2 wells that were adversely affected, and those are in the report that you are welcome to take a look at. The second drawing that I have handed you shows the 4 wells. The circles around the wells are what are in the actual application. These are the Aquifer Science wells, and those are the 2,000 foot circles that were in the application. Now the application, one of them talks about a deep well potentially down to 4,000 feet. Interestingly enough, the other 3 wells that are part of that 4 well contingent don't have a depth specified. One can presume that they may be to same depth, although it just reads up to 4,000 feet. So it is not clear whether they will be shallow wells or deep wells. It is a clarification that certainly needs to be made. And it may have just been oversight in the application, I don't know, but it certainly is something that we noticed when we were going through the applications. And again, those 4 wells, not individually but collectively, the applications are for 1,500 feet. So the 4 wells collectively, that means either a single well could pump up to 1,500 feet if it had the capacity to do that based upon diameter size, hydraulic lift, all of those things, the horsepower, or all 4 together 1,500 feet but they could not exceed that. So collectively the 4 wells together would be for an application of 1,500 acre feet per year. So I wanted to share that information with the Commission. As I said Bernalillo County is a protestant. I have not looked at all the other protestants. We did find it interesting that the owner of the New Mexico Water Service Company filed as a protestant based upon potential impact on their existing wells to the application. So I just wanted the Commission to be armed with that information or have that information at their disposal. I encourage them to pull up either the Public Regulation Commission

reports, and if you folks desire I can certainly give you a time line of all of the filing or dockets on the Public Relation Commission site and you can get the latest orders and status on that proceeding as well as anything out of our own filing at 2361. I would like to point out 1 final thing. There was an application that was previously submitted by Campbell Ranch that had been withdrawn prior to the submission of the Aquifer. And this also was an application that was withdrawn prior to the PRC proceeding. So I do not know if you folks were aware of that or not, but there was an application originally for a single well application that was later withdrawn. I stand for any questions.

CW: Questions from the Commission.

CB: Uh, yes. You say you do not know why that was withdrawn? It was just there, but there is not record anywhere of why it was withdrawn.

Jeffery Albright: It states that it was withdrawn, but it is not clear as to the reasons why it was withdrawn. Again I could speculate, but it would only be speculation. It occurred fairly shortly before, just time wise, before the line extension policy was filed at the Public Regulation Commission, or about the same time.

CB: Now on the Public Regulation thing, suppose the hearing officer finds that New Mexico Water Services has enough water, like say in January they make a finding that they do have so many acre feet. Would it be possible for Campbell then to go back to them and restart with them or?

Jeffery Albright: It is certainly possible, although I don't know how the fact that they are a current protestant in the OSE proceeding would prevail. Now they could always withdraw their protest of the OSE at that point.

CB: Right.

Jeffery Albright: It certainly would be feasible. That thought has crossed my mind as well. That if they get that ruling that says yes you have sufficient water, and oh by the way you have sufficient water to serve the entire Campbell Ranch development, they might be inclined to do that. I think it is unlikely that given the numbers and things that have been looked at, I think it is unlikely that they would find that they would have sufficient water to serve the entire Campbell Ranch development which, I do not know what Campbell Ranch would do. Again I can't speak for them. They might try to get part of it or phase 1 phase 2 depending how much water they would get. It is certainly a possibility. They could.

CB: I have another, sort of a hypothetical. You're a water lawyer. Does it strike you odd that they would make all that effort with the PRC to get all of that and then drop it?

Jeffery Albright: Only, I mean it did initially. I mean I did not understand why they had gotten so far when they actually then decided to withdraw. There could be a number of reasons, both financially and otherwise because of the transactional fees and legal costs and so forth. I think from a practical point of view the information that has been given so far in my opinion; New Mexico Water Service Company does not have enough water to serve the entire Campbell Ranch development. And so with the premise they were either going to have to forgo providing additional water. I think Mr. Campbell is right as well. I think there are still some issues that the OSE would need to resolve, the Office of the State Engineer, because they were taking part of this well was going to supplement the system in Sandia Knolls. At least it was advertised as subsidizing although we could not get them to give us the plans and things. But it was going to provide additional water service there as well as a portion of Campbell Ranch. And I just don't think, based on my experience and knowledge, I just don't think there was enough water there to serve their whole development. I think that is why they went the other route. Personal opinion only though. I do not have any facts other than the documents we had the PRC on the number of water rights, the number of customers and future customers to base that on.

CB: Thank you.

CW: Mr. Fleming.

CF: Mr. Albright are you representing the protestors?

Jeffery Albright: I am representing Bernalillo County.

CF: Oh, you are representing Bernalillo County, Okay. Thank you.

Jeffery Albright: I do not represent any of the other protestants.

CF: Okay, I just wanted to be clear. Um, I don't have anything else.

CW: Ms. Turner.

Jeffery Albright: And I will say that regardless of where the water does end up coming from, there is still the question of firefighting capability in that area, whether it comes out of the 4 new wells or out of the old wells. I mean Bernalillo County is still on the hook because I do not think the county manager and Bernalillo County and Edgewood have resolved all of that yet. I think that is still a work in progress.

CW: Ms. Turner, question.

CT: Yes sir. You have appeared before the OSE in the past quite a bit, or I take you have.

Jeffery Albright: Yes, before. I have had dozens and dozens of water right transfer cases. I have appeared before the OSE hearing division in cases. I have had a couple of appeals to district court. None to the court of appeals or the Supreme Court.

CT: Okay. Then given the number of protests that have been filed in this case, do you have any sense of what kind of time line we are looking at. Is this a matter of 1 year, 2 years, 5 years, before this could be reasonably expected to have a ruling issue.

Jeffery Albright: I would think given the number of protests and the potential wells and hydrology that could be affected, I think Mr. Campbell's request for 2 years is probably right on the cusp. I mean I would say 18 months to 2 years, but it could very easily go a little bit over. And that presumes that it is resolved at the office of the State Engineer and that it is not appealed. I mean right now I have a case in which there are no protestants that is before the State Engineer. It is with a small water company down south, who are trying to get their water rights resolved with the State Engineer. The State Engineer is the only party to it. We started it about 3 months ago, and we do not have a hearing scheduled until March. And there are no protestants involved.

CT: Right. What is the OSE makes a determination is that is something that can be appealed to like the state District Court.

Jeffery Albright: It can get appealed, and it is appealed to De Novo to the state District Court. So they basically will take a look at it. And what they have been doing, the De Novo and water rights cases have been a little bit, its not quite like taking everything for the first time. They hear everything for the first time, but they do rely upon what is in the record as far as the evidence that is in the record. But it is considered a De Novo appeal, where they do not base any of their findings on the finding previously.

CT: Thank you. That is all the questions I had.

CW: Ms. Mahalick.

KM: I have a question. Do you have any knowledge of the prelim on an area plat being used by New Mexico Water in the PRC case.

Jeffery Albright: I am sorry, ask your question again.

KM: You were saying that they were looking at the plats that have been established. And I just wondered was the preliminary plat ever utilized by the water service company as a basis for requesting water rights and service in that area, if you have any knowledge of that.

Jeffery Albright: I don't believe it was, but I don't have first hand knowledge. I can tell you we had great difficulty in going back and getting the certificated area and the original plats, because they went back to 19 like 66, 1970. They were late 60s early 70s when, and about 3 companies removed, 3 or 4 companies removed from the current company in trying to get that. The PRC initially could only find, and even at the end of the day, they could only find like 2 out of the 3 pages that went with the plat. The stuff was down in the basement and just extremely difficult to find. And the company was having trouble coming up with some of it as well.

KM: Thank you.

CW: Any further questions from the Commission. Cross examine Mr. Campbell.

DC: Yeah, yeah thank you.

JA: Sure.

DC: I think what I heard you say about avoidable verses unavoidable delay was that Campbell created its own delay because it really could have gone to Aquifer Science to begin with. Is that what you were saying.

Jeffery Albright: Well, that is certainly one possibility. I mean the other is that I never understood why they withdrew their application for the initial well. I mean obviously there were some reasons there that it may have been done. It is not clear as to why that was done. There were several things in my mind that obviously I was not privy to the information and did not know. But they did not make a lot of sense to me as a water attorney water utility guy.

DC: Have you been following the Zoning and Entitlement work here in the Town of Edgewood on this case.

Jeffery Albright: Only with regard to the annexation. I was aware of the annexation, I have not been following the rest of the.

DC: With respect to this preliminary plat that is the subject of this hearing.

Jeffery Albright: No I have not.

DC: Okay.

Jeffery Albright: I did attend though the last meeting, and the City Council hearing that referred it back here.

DC: I think you also said that the fact that Water Services Corporation objected to the intervention of Bernalillo County showed that they did have the public interest in mind. Is that a fair characterization.

Jeffery Albright: That is a fair characterization. And I think it is not only objecting to the intervention which, of course they are entitled to do that legally. I think from the fact that we provide firefighting service up there was not, which we made known. We made known at the time of our intervention as one of our concerns. To me that would demonstrate the concern about public interest. They chose to object. They certainly have the right to object. I am not challenging their right to object to our intervention, I am just saying that I think between trying to get the line extension through and then trying to get a clarification on a previous order without filing a petition without going through, in fact they were directed then to file a petition to allow intervention by people was a little bit, was not, I think it was disingenuous.

DC: Thank you for that. The last question is, right now where does Bernalillo County Fire Department draw its water from in that area.

Jeffery Albright: Um, that is. They do have some fire stations in the East Mountain area. I don't have. You have some hydrants out in the Sandia Knolls area.

DC: you are saying fire stations.

TN: Well ours comes from San Pedro Creek. San Pedro Creek is Aquifer water.

Jeffery Albright: And some of it is trucked in water. But I do not know the detail. Although I have a meeting with the fire chief coming up.

DC: Then Bernalillo County, is what you are saying, already has its fire fighting capability for the existing infrastructure.

Jeffery Albright: They have firefighting capability, but they do not have firefighting capability for extending that beyond the current areas.

CW: Any questions from the public. Does someone else have something to say.

MM: I do. I was wondering if the.

CW: If you would come up to the.

MM: Sure.

Jeffery Albright: Thank you.

MM: Thank you.

Mike Mosley: Hi I am Mike Mosley. I also live at 19 Via Entrada in Sandia Park, and I think what I have just heard that concerns me a little bit was the mischaracterization of the PRC approving available water. The gentleman that first spoke tonight representing Campbell, Mr. Campbell, I think I heard him more than once represent that in fact the PRC had issued approval that there was sufficient water. And although we have heard that that is not the case, and in fact that it is probably not going to be settled until January and I am wondering if the Commission is concerned at all about that. Isn't that an important argument that you were relying on.

CW: I personally did not understand it that way, but.

Mike Mosley: I guess the answer.

KM: I think that is more of a rhetorical question. I do not think the Commission as a whole can speak without either deliberating and responding to your question, so it would be a rhetorical.

Mike Mosley: uh huh. Well I just thought it was a significant misspeak in that, I was wondering if the Commission would want to address that significant misspeak at some point.

CW: Do we have any questions from the Commission.

CT: Mr. Chairman. May I continue. Thank you. As the Chairman said, I did not get that sense from Mr. Campbell remarks and I would like to ask the Chairman if it would be appropriate to allow Mr. Campbell to clarify what he did say.

DC: I think what Mr. Mosley was saying was that somehow the PRC makes the determination about the sufficiency of water, and that is not the job of the PRC. The job of the PRC was to, as it does with many companies regulated utilities, is to make determinations about service and whether one can serve a given territory or a given population. It has really nothing to do with sufficiency of water or that determination. So if there was some misunderstanding of that or the various roles that I may have led to, then I apologize. But I do not think I did mischaracterize that because I know what the PRC does, and I know what the State Engineer's office does. And this matter of sufficiency of water as Mr. Albright pointed out has a lot to do with the SEO but not anything to do with the PRC.

CW: The lady in the turquoise necklace.

Leah Lee: Hello my name is Leah Lee and I live at 3 Canyon Rd. in the Knolls, and I back up against the Campbell Ranch area. I am really concerned. I have met with Robert Gately a couple of times and also Jim Linderman. We are part of the New Mexico Horse Project, and we are really grateful that the Campbell Ranch has allowed the horses to be there and preserved. These horses date, they have DNA dating back to 1600, and they are a quickly vanishing species, breed of horses. And it is wonderful to see them out there. I moved out to the Knolls about 15 years ago for that view, and right now I look out at, I do not know how tall that tower is, which incidentally seemed to come in under cover of darkness. I may be wrong, but that is when I first noticed its lights blinking and blaring, and we were kind of really alarmed that the horses were being taken off the property by somebody. Horse rustling was going on or something until we saw this tall tower which is kind of a huge industrial complex. There are semis and buildings and it is quite an eye sore from where we live and not that far away at all. I appreciate what the other people have said in terms of impact on the neighbor's quality of life, and I know Mr. Campbell has talked about the money spent on developing this property, 1/2 a million dollars, millions of dollars. Well there are billions of dollars that people have spent on houses there, the public has spent on houses their homes. And moving there for the lack of density and the beauty and the nature and the peace and quiet and clean air. Which will be destroyed if we have this small city going up there. I really question what the public interests are and why there are so many protests if everybody is going to be served by this. Also my own concern about fire, we had the fire company come to our house to rescue a cat out of our chimney. And they were really glad to come to our house. A whole group showed up to look at the mass destruction of trees out there from the drought, and they are frankly, I said well what can we do. They are frankly very scared for us. There is not much you can do here. It is really a bad situation here for you with all these dead trees. Well we have talked to Campbell Ranch and tried to make a request to them about even for free having people from the horse project and neighborhood come and cut a sloth along the fence line to make a fire break because there is one exit out of the knolls and many people would not make it out of there including animals too. It is really quite a terrifying place, and to see the kind of disrespect and disregard for human life and not calling back, not even calling back, not answering our requests. We had trees falling down on our fence damaging our fence. I mentioned this there was no response. I cut the trees at my own expense and with myself to get them off the fence which was breaking. So if this is any indicator of Campbell Ranch's concern about the public and their neighbors and the impact, what impact would a new city have you know, and what kind of responsibility would they take in terms of traffic control, pollution, noise, you know, and things like fire hazard. To me that was very upsetting. That we are right there at the very, very end of the road. You know, I said what should we do. Should We go lay down in the arroyo, should we get into our ponds. They said no you would boil and you would fry. You know, so I think we have one water/fire hydrant at the beginning of the Knolls. And

when there was a fire a few months ago people, you know the trucks could not get through. So if you have hundreds of people trying to drive out the trucks cannot get in, I would think proactive consideration by the Campbell Ranch for the safety of their surrounding neighbors, especially when it was offered to cut the trees down for free would be something that people interested in the public interest would pay attention to. Um, so I would like the Commission to consider if truly this is in the public interest to continue on with this process. And many people there are very, very busy. You know I teach at the University in Valencia, UNM in Valencia and I am gone 12-14 hours a day. When I come home I do not have a lot of time to go and keep track of all of these meetings. This is the first one I have been to. I have not heard about many of them. People that are in my neighborhood who has not bordering the Campbell Ranch have not heard about this meeting. I have been talking to them about it as well, but this is a small showing of people, you know and there are many people. I haven't heard of anybody in the whole East Mountains that is excited about this new city being built. That is all I have to say and thank you for listening.

CW: Questions from the Commission.

CB: No I do not have any, but I wanted to wait.

Leah Lee: Pardon.

CF: You have raised some issues, and I have a question of Ms. Mahalick. I spoke about this 2 hours ago, 2 hours ago I guess. We have a note here that does site a failure to resolve fire code issues. Can we speak to that.

KM: When we do a plat, one of the fire service companies has to review the plat. If it is Santa Fe County, who we have our JPA with, we would send it to Santa Fe County for comment on the roads and the proposed water and the water flow and the water lines, etc. With this one, part of the condition of approval was the Bernalillo County Fire have input on the proposed plat and the drawings in order to know what exactly they required. What road widths would be appropriate, line extensions, as far as what is on North 14 available, what size they wanted for the water lines and locations of the hydrants. Um, I do not know what their code is, and I do not propose to approve plats without the Fire Service Company reviewing them.

CF: There was an issue raised regarding the indigenous horse population I believe. There was a development, there was a section in the annexation and development agreement about open spaces dedication.

KM: That has never been followed through with. There was no open space dedication.

CT: May I ask a question. Wasn't that open space dedication one of the premier, I do not know.

KM: it was very key to Mr. Chemistrucks approval of the annexation, and he was quite excited about the preservation of the mountains.

CT: Attractive reasons of. Exactly. And so I recall that as well from attending those meetings. And you are saying that this dedication has never taken place then.

KM: That is correct.

CT: Have there been any discussion about this, or has this.

KM: No.

CT: So this is like the annual review. It is sort of lying fallow.

KM: With the PID.

CT: With the PID.

CW: Any other questions from the Commission. Mr. Campbell.

DC: No.

CW: Anybody in the public. Do you have a question or do you want to speak.

JH: No I was going to speak.

CW: Okay.

Joanne Hilton: My name is Joanne Hilton, and I am a hydrologist. I have been representing Sandia Knolls in the proceedings. I think all the points that I wanted to make have been said, pretty much here, and I am just going to be really brief because it is late. There is just 1 thing that I wanted to clarify. For the vertically challenged, thank you. There was some discussion at the council hearing that perhaps the concerns of Sandia Knolls were resolved by moving away from their water system to

these new wells. And one of the concerns from a hydrologic stand point all along that Sandia Knolls has had is really whether there is sufficient wet water to serve new development without impairing the existing users. Not to go into details tonight, because this is not place to decide that. But it is very complex hydrologically, with fracture flow and just the fact that these wells have moved slightly further away really does not resolve the central concern. That there has not been enough study and characterization to know that there definitely will not be impairment to existing users. So that remains a concern.

CW: Any questions from the Commission. Mr. Campbell. Or I am sorry Jeff.

CB: So it is your opinion that there is enough fracturing and stuff over there that the drilling that they are proposing could in fact endanger surrounding wells.

Joanne Hilton: What. I think it is a possibility and it has not yet been, there has not been enough characterization or study or review. And of course the OSE is the proper process for that. So we don't, just by the fact that it is not the exact same Sandia Knolls system, some of these wells are very close to the Sandia Knolls wells. So it still remains a concern whether or not there will be impairment to that system and we have not seen any data or characterization. There only, you know if they drill a few wells it is difficult to understand the complex fractured relationships. So at this point the concern is not alleviated.

CB: Have you testified at other State Engineer meetings on matters like these.

Joanne Hilton: I work for the State Engineer. I have testified at the PRC hearing. I did not testify specifically at the OSE proceedings.

CB: But you think when it comes time that there will be quite a bit of discussion over matters like this.

Joanne Hilton: I think there will be. I think it, it, it is not a simple hydrologic environment and it is difficult to characterize to the point of no impairment. I think that the State Engineer's own technical staff will be reviewing those issues carefully in considering the depths of the wells and whatever data is available.

CB: Thank you.

CW: If you have one well at 400 feet and another one at 4,000 feet are they pulling from the same Aquifer.

Joanne Hilton: Not necessarily.

CW: But they could be.

Joanne Hilton: If there is a hydrologic connection, even if you have a deep well you can affect shallower wells. If they are hydrologically not connected then you would not. And that is a complex situation and generally you would have to have a number of wells and study them over a period of time to be able to make a good judgment about that.

CW: Mr. Campbell.

Mr. Campbell: You worked with the State Engineers office. You work for the Sate Engineers office is that right?

Joanne Hilton: I work as a consultant to them.

DC: You heard Mr. Albright earlier say that his reason was, and it would be at 18 months or more for the hearings in this matter before the State Engineers office. Would you agree with Mr. Albright on that.

Joanne Hilton: Yes. I mean I cannot speak for them of course, but based on my knowledge of previous hearings it is a lengthy proceeding.

DC: Thanks.

KM: I have one question. Which basin are these wells proposed to be drilled in.

Joanne Hilton: The Sandia basin.

KM: And Paako is part of the Sandia Basin.

Joanne Hilton: My understanding. I am not prepared to speak on their behalf, but it is that Paako, the physical location, is in the same basin, but that they are getting their water from Entramosa which is over here.

KM: Is in the Estancia basin.

Joanne Hilton: Which is in the Estancia basin. that is correct.

KM: And is there any problems moving water from one basin like that to another now if someone were to put in an application.

Joanne Hilton: There could be, you know. I would not be able to make a blanket statement about that. It is being done. It is possible, but there may be issues and concerns that would come up.

KM: But there is not state statute that has changed since Entramosa started serving Paako.

Joanne Hilton: Not that I am aware of.

KM: Mr. Albright, are you aware of anything?

Mr. Albright: Currently the way the law reads is that you are allowed to have inter-basin transfers only if you can physically move it from one basin to another. So for example if the basins are hydrologically connected. And again, I am not a hydrologist, but I do have some fluid courses in thermodynamics and some experience.

Mr. Albright: But what will happen if the basins are hydro logically connected, for example the Sandia basin is considered to be hydro logically connected although remotely to the Rio Grande basin, it is sort of like a sub-basin. And so if they are hydro logically connected then you could in theory have a water rights transfer from one basin to the other. If you are transferring from the Entramosa basin to Sandia, then you have to physically move it from one basin to the other. For example right now I am involved down at Fort Sumner with the Interstate Stream Commission in a protest against some folks who are trying to move 7,000 acre feet of water a year from the area of Fort Sumner to the City of Santa Fe. Um, a 350 million dollar pipeline project being funded by some folks in Europe. So we are protesting that, but the statute allows for that if it is approved. So we are looking at the impairment and what impact it has on the existing aquifer down there in Fort Sumner and what impact it might have on the transmissivity, the rate at which water flows for the city wells. Because they are taking it out of the same level as the city wells down there. So it is allowed still by statute. There are some moves afoot to change the statutes to prohibit inter-basin transfers. So you hear from the State Engineer "no it is not allowed unless you can physically move it from one to the other".

KM: Okay. Thank you.

CW: Do you have a question Ms. Turner.

CT: Yes ma'am, I am sorry I forgot your name.

Joanne Hilton: Joanne Hilton.

CT: Um, you. We have heard tonight some concern that these deep wells may have an affect on some of the shallower wells nearby. Is the state of knowledge about the hydrology of this particular area sufficiently well developed that people can make a statement; you know with a fair degree of confidence about what will or won't happen for these wells.

Joanne Hilton: I don't think that we can come up with a definitive answer tonight. It is being studied. It is more difficult to characterize when you have a complex fracture flow. You may be draining from one fracture for a time, and as your cone of influence gets larger have some shifts in water levels. But there, I think the proceeding for that is the OSE hearing, and that is where those kinds of issues will be considered and vented and we don't know the answer at this time.

CT: Correct. So that will be something that we couldn't take up then tonight. We couldn't even consider it.

Joanne Hilton: I don't think that would be your job. No.

CT: It seems to me that it is outside of our. In any case. But thank you.

CW: Any other questions from the public. Questions or comments.

CFoster: Questions sir.

CW: Okay.

Chris Foster: My name is Chris Foster. I live at 25 Airhead Dr. Mr. Campbell has seemingly, to me at least, consistently conflated public interest, critical issue here, with some sort of public notice. And some of you here on the board have used public good. Could I get a brief sense of the boards interpretation of these seemingly varied interpretations.

CW: Oh boy.

CT: Who wants to go first?

CT: I'll give it a go.

KM: I would question any of you from trying to issue a comment on behalf of the whole commission. We had this issue the last time also, and there have been a number items raised tonight about whether it serves the public interest. So you have heard various facts that people believe would actually appeal to that.

CT: Can I ask Mr. Foster a question. Is that okay Mr. Chairman.

CT: Mr. Foster, are you referring to the legal definition of public good or maybe the equivocation of public interest as in public concern verses a legal definition.

CFoster: I really wouldn't want to get right down to the strictures of the law on this one. It would seem to be available to a certain amount of interpretation and depend basically on the boards good faith application of that interpretation of where the public's interest lies in this. If it is something beyond mere notice, mere participation in a process that perhaps they do not have as much control as they might think.

CT: I would like to suggest that you stay long enough once we stop taking public comment and public testimony. Then we will go into the deliberative phase, and at that point you will probably hear us talking more to the issues that you've raised.

CFoster: Thank you.

CW: Any other comments or questions from the public. Any comments or questions from the staff or commission.

KM: Not me, no.

CT: Mr. Chairman, can we request a very brief break. I hate to ask a second time.

CW: Sure we will take a 5 minute break.

KM: Are you closing the floor to public comment before your break.

CT: Could we delay that. Lets give the chairman a chance to decide.

KM: Ok.

CW: Since there were no responses we will close the public comments at this time. Back after break.

CW: We are going to come back into order at this point and time. I am going to open it up to discussion to persons who have any comments. Do you need to deliver a staff report.

CF: I guess the thing I'm questioning as we are going through this is um, essentially we have 2 avenues to go down. Whether we, the Town Council has asked us to look at just this issue. I don't know about you as we are going through this, but in some ways I think as Commissioner Tuner has pointed out. I feel uncomfortable that we are being asked to forget some of the things we have discussed and were unhappy with back in February. So, however; we have our direction, and I am prepared to just look at the water issue, however; like I said there were issues raised at that time that very much, that time frame that it was pointed out were also consequential to the decision that was made. So we are in some sense being asked to forget about that. Is that a correct interpretation.

KM: No sir. Those conditions still stand.

CF: Okay.

KM: They don't go away.

CF: Well that is why I was feeling a bit uncomfortable, so I guess as we proceed with this deliberation I am looking for some direction. And your statements provided me a bit if guidance there. But I am willing to start with the water issue if folks are prepared for that.

CT: Would this be an appropriate time to ask staff for their recommendations or comments.

CW: Yes most definitely.

KM: First of all let's look at the precedence of the water issue. We have the Hillcrest master plan that has a master plan in place, and there is identically, there is a case pending before the PRC. We approved 5 plats in the Hillcrest master plan on the basis that they are 5 acre lots that could apply for wells. They have the water rights. If Hillcrest were to come forward they would have to show some sort of ability to serve. Whether it is resolution of the PRC case or whether it is the formation of a new water company. And what you have before you tonight is a letter from, allegedly, a water exploratory service company stating that they have applied for a groundwater appropriation. There is no backup documentation to this letter. They say they have currently moved ahead and they are

drilling. There is no issued permit, and you heard the attorney state that you would have to have a permit in order, an issued permit in order to drill.

CF: Mr. Albright.

KM: Yes sir. Mr. Albright. So I would suggest to you that you look for a filing from the applicant of documentation for the necessary application and the permit. The other thing you have heard is that the applicant Campbell properties is requesting a 2 year extension from tonight. The only request for or application that we have every received from Campbell Ranch is November of 2008, for an extension. Therefore if you were to consider an extension it would be from the original requested extension or the applicant would have to reapply for the extension from tonight, but we never received that request. That was verbal.

CF: So to go forward on the 2 year extension, the clock is 10 months into it already, approximately.

KM: Ah, you could look at it that way. And that would be the application that I have in the file was dated from November.

CF: Okay.

KM: We have conditionally approved subdivisions that have shown the ability to A. Put in a well, which is part of the discussion with the well service company, the Office of the State Engineer, the citizens that are served by the surrounding areas and the testimony of Mr. Albright tonight. So those things need to be weighed in light of our previous precedence. And I think you can see the cautionary note on allowing the plat to move forward when you don't have, as we have done in the last year, you don't have a definitive letter stating this is what can be served, there are the water rights, this is the amount we have at this time. So you can see the error of how we began in 1999 and 2000 and the precedent that we set. Campbell came in under the 1999 development agreements, so you have to weigh whether or not what you have in front of you is sufficient given the precedent that has been set. Now you heard tonight that the definition of preliminary is being taken from the latter subdivision or ordinance, but that they have not waved their rights under the initial that was agreed to in the development agreement. And the request tonight is not to wave all conditions of the preliminary plat that was placed upon Campbell properties, but to allow for an extension of a 2 year time frame in order to accomplish those. I think one of the two most important conditions in that, 1. was that all aspects of the development agreement be fulfilled. And the second one was that the bonding required of the subdivision, and that is in the development agreement also, that the 125% bonding of the infrastructure costs be established. Now those things, it is really imperative that we start to move forward on what has been agreed with Campbell Ranch, and those are 2 aspects that are key and have not been done. They do not need to resubmit their grading and drainage plan. They do need to continue to work on the PID, but they do need to work forward on these key aspects because we are in limbo as long as there is no dialog back and forth. The dialog has to also be opened up with Bernalillo County and the neighboring residents.

CF: How could the. If one takes the position that the delay was unavoidable, um, well I guess what I am asking is how does all of the aspects of the development agreement hinge on water. What I am asking is what aspects can occur simultaneously that either did or did not occur, what ones hinged on water.

KM: Well first of all Bernalillo County Fire could review the proposed plans and submit comments. There would be a fee, because we do not have a JPA with them. So they could take a look at it. They could send back comments. Are the cul-de-sacs there appropriate size. Are the narrow roads that are being proposed, do they meet the Bernalillo Count Fire Ordinance requirements. Because what you heard tonight in testimony was that Sandia Knolls has insufficient access in case of emergency in two way traffic. So you do not want to create a situation where you have a public safety of a subdivision that we are in the process of looking at. So comments from Bernalillo, that could be achieved. The PID, we could move forward with the PID and bring that back to council. It is an issue that the town could move forward on. The problem with Campbell Properties has been turned over in administration. We originally dealt with Lenderman and Able and Veronica. I understand those people have left the company. We do not know who the contacts are other than Mr. Gately at this time. Those things could be reestablished. But the conditions of the plats are still imperative that

those conditions move forward even if they are seeking information on water. They may not be able to ever achieve the water they want.

CF: Right. So what you are suggesting is that there could be quick movement on fire compliance, PIDs things like that?

KM: There could be movement. There could be information obtained, there could be reviews obtained so we knew where does this stand in the codes that would affect them. I cannot send Campbell Properties plat to Santa Fe County. They have no jurisdictional authority. And I do not have a JPA with Campbell could turn around, as they have done before, and enter a dialog with Bernalillo Fire and get some review.

CW: Has Campbell ever signed the corrected plat.

KM: No sir. They never submitted the corrected plat.

CW: Those are bigger problems to me than the water is. And it is the reason we turned it down before. I can't see that anything has changed in that respect, and we have gone backwards on the water.

CB: That is what I see. I mean, The thing about the unavoidable delays in that, they sort of chose this way of doing it. And like to get the PRC to agree with them and then they dump them. Like you said that kind of goes backwards. I mean now we are back to square 1 or square 0 even.

CW: The water situation held up everything. Nothing happened after that.

CB: And it was Campbell's choice to not move in these other issues until they had settled the water issue. So I mean they kind of shot themselves in the foot in a way. If they had acted on the other issues we could then look at it and say, well they have made some progress here. They made the choice, and not unreasonably maybe, but they made the choice to not do anything pending the outcome of the water. And, I mean that is their choice.

CW: When there is something as insignificant as submitting a plat with a signature on it that has never been done.

CB: Yeah.

CT: Yeah.

CT: That is not follow through.

CF: Now, now, as I recall from the last, perhaps it was the hearing in Spring of 2009, we discussed that there is precedent for extensions of this length.

KM: There is no precedence for 2 years.

CF: Oh.

CT: But we have done an extension within the past year have we not?

KM: For 1 year, yes. And we do have some plats that have become void for lack of activity and the market.

CT: Okay.

CT: I see.

CF: This might be an unfair question. How many times has P&Z granted an extension in the 10 year history of the town I realize that is unfair, but.

KM: With the exception of Campbell, every time it has been asked for.

CF: Okay.

KM: So maybe 3.

CF: 3. Okay.

CF: And do you recall what the magnitude of those developments were.

KM: We had the property that was located to the west of Horton, Stone, oh it has changed.

CT: Is it Hilltop. Hilltop.

KM: Pardon.

CT: Was it Hilltop.

KM: Hilltop Estates. He came forward once and requested due to market conditions, um. We had one where the Danser properties out to the east side, relatively large. Most of the red that you see on the east side of the map. He was unable to come to terms with how he wanted to develop and how he wanted his development agreement to move forward. And that property, he ultimately decided that he

would just allow it to lapse and void out because he could not make a determination and he could not move forward so he did not bring it forward.

CW: How many have lapsed and voided out in that time frame, the time the town has been in existence?

KM: It has been with the recent market conditions, and Hilltop now has them, they're beyond their time limit. I understand the property owners have defaulted, so it has changed hands. Cheyenne Estates that is the one up on Frost Road and 344. Another financial difficulty and they have time voided. They did not come forward and request an extension. The Danser property, because they could not make a decision, they voluntarily allowed it to lapse. We had discussion with them, but they just agreed to let it lapse. And off the top of my head I think there is one more that I just cannot remember. Um, Olsen's property down by Section 34. It had some very rocky access areas that could never be agreed on. He was to bring that back for some final width improvements, and that just went away.

CF: I guess my next question is, is um, how do we look at extensions. And I am going to try to speak in an analogy. That is once, it, it seems to me that, uh, Commissioner Wilhite pointed out that, and (Coughing and inaudible) with respect to water we have gone backwards. Whereas we had a right to serve document letter, we now have this report delivered to us this evening. I guess my question to myself and for this party is that once a pre-plat has been established, once that initial proof is there do we upon request for extension weight that any less. Of course with the case of water we are going back a little. I would call it a foot in the door. Once you have your foot in the door does the door remain open.

CT: Mr. Chairman can I ask for clarification for Commissioner Fleming.

CF: Yeah sure, sorry.

CT: Are you saying, are you asking if that original Will Serve letter is still valid?

CF: In some sense, I guess I am because, I, I was thinking about what has been said here. And as was pointed out with this document here we wouldn't be able to grant a pre-plat approval. For an extension do our standards, are they now lower. Even also considering the fact that as the attorneys both discussed that PRC's final statement regarding the volume of water that can be supplied to this development is still not forthcoming. Which casts the initial water, uh, water source with New Mexico essentially back in the state we found it back in the spring time. So.

KM: What you are asking, I think if I can summarize is, to date we have 4 subdivisions with smaller lots. These are smaller lots. These are not 5 acre lots. 4 subdivisions, we have asked for a letter from a reputable water company that they are able and willing to serve. And that letter, if it is the water company we accepted that as our standard. What you have before you is a letter from a well drilling company, much like if I were to contract with a well drilling company to put a well in on Section 16 to service something. So, this is not the same standard that we have accepted previously for subdivisions.

CF: So we do a disservice to the town by accepting that.

KM: That is what you have to make the determination.

CF: Alight.

KM: It is different from what you have historically approved.

CF: Okay so if we, then the choice with respect to water is if we have this letter from Vidler, which, which um, could be viewed as not up to our standard. Or we have the original Right to Serve letter from New Mexico, from New Mexico Water, whose apparently sources are still under, under some doubt. If I am summarizing this correctly. That is that there is still some question whether New Mexico could supply the Campbell Ranch Development in question with the amount of water necessary.

KM: I believe that is the testimony you heard tonight.

CF: Yeah well I am also thinking out loud. So, so um, If anyone else has something to contribute to the issue, you know, now we are back to, to discussing water. If I missed something or if there is anything you feel is appropriate about this letter we received this evening or.

CW: Let me ask if I fully understood you right.

CF: Okay.

CW: If we are going to require a sufficient supply of potable water in order to issue the preliminary plat to start with shouldn't we require that for a renewal or an extension?

CF: That is the question that I raised.

CW: That is what I was hearing. I just wanted to make sure.

CB: I think it answers itself.

CF: Right.

CF: Right, so that is why I am saying does the standard decrease when one grants an extension, your honor. And I think you would come under the position that maybe it doesn't. I would be inclined to agree because there would not be much sense in enforcing the higher standard in the first place. So it is up to this body to decide if we have evidence before us that shows that Campbell has demonstrated uh, uh, an amount of, well I am looking for the development agreement to find the exact language. Here it is. So, it is before us to decide, among other things, to decide if Campbell has demonstrated a sufficient supply of potable, domestic water for this, for any proposed subdivision of land at the time application is made with the town for any preliminary plat approval. If our standards remain the same upon extension, then we have to apply, upon considering the extension, then we have to apply the same standard. And if you feel that reasoning is incorrect let me know. I think you might already agree with that so I won't beat that dead horse. Um, so there is then other issues raised, let's see. The PIDs and fire compliance could be accomplished in perhaps several months maybe.

KM: It's possible.

CF: Okay so we could cut the benefit of the doubt there and say that those things could get done if there is proper motivation, I guess. Um, um, the corrected plat, yeah, I don't know what to say about that.

CW: We have several things that probably should be included in any motion. 1 is for evidence of the application for water from the State Engineer.

CT: Uh, huh.

CW: Another one is the application for the extension was originally filed in November. DO we use that as a start date or do we use tonight as a start date? The infrastructure costs should be bonded and set up ready to, at least bonded. Something should be discussed at least about the open space area that was supposed to be dedicated. A traffic study could go on at this point in time and then submit a corrected plat for a signature.

CT: Yeah.

CT: Mr. Chairman.

CW: Yes.

CT: I had a number of concerns I would like to lay out before we get to the point of making a motion, and I will try to be brief. Mr. Campbell at this hearing and past hearings has made um, a point of talking about unavoidable delays. And I find trying to get a handle on that somewhat subjective, but it seems to me that there is something of a logical contradiction in saying that you have a Will Serve letter that you have proved or demonstrate a sufficient supply of water and then come back and ask for an extension based on the fact that you have failed to follow through on securing those water rights. Um, I am also troubled to, by the fact that we are putting ourselves at risk or establishing unequal standards between the applicants. And I think that we need to be very careful to follow. We don't have a lot of precedent on renewing or extending plats, but we do have some. I think we need to be very careful that we follow established policy. Um, I am a little bit concerned here, my focus, I appreciate a lot of the technical testimony that we have been offered tonight, but for me it all comes back to what the ordinance and what the Development Agreement say. And again, to beat a dead horse I will quote again, Campbell shall demonstrate a sufficient supply of potable domestic water. Mr. Campbell has said that they are actively pursuing it, but I cannot say to any degree of certainty that those two are synonymous. I think that, you know, I think that they are pursuing this. I think that they are definitely putting a lot of money and time into it, but they are still in very preliminary stages. I think that the documentation of the letter we were given tonight is not sufficient for us to make a decision. You know, I, I don't feel comfortable granting the application based on the information that

we have been given in this letter tonight. Um, another thing that I am concerned about is the lack of progress in other areas, on dedicating the open space, the PID, um, and the submission of the corrected preliminary plat. I mean these are all things that would show that this is indeed a preliminary plat that has some real existence. And I have found, it seems to me, that in all the arguments we've seen that this preliminary plat is largely hypothetical. We have not been shown anything that we can measure, that we can see, um. We have heard a lot about water litigation, and it goes back again, I am being tedious here, to the ordinance. You cannot say that you have a sufficient, that you have demonstrated a sufficient supply of water and then use a failure to secure that water as an unavoidable delay for asking for an extension. Because it seems to me that the water is foundational. It is a necessary precondition in the ordinance. Um, I am concerned as well that even when, no matter where you start the clock running, that 24 months is probably not going to be sufficient. So we will find, if we grant this we will find ourselves, we will just be putting, kicking the can further down the road, as Mr. Henderson said last year, yet again. And I am not sure if doing that is in the public interest. As Mr. Campbell said, they have been back, you know, before the Town of Edgewood numerous times. We seem to be in this circular motion of procedural uncertainty. And I think it would be in the public interest to resolve that. I have a public safety concern here as well. It has to do with fire protection. I think the fact that we haven't moved forward with Bernalillo County on this is something that should be, it is an indication that we need to stop and think about this a little bit more. Um, I am also concerned about the lack of documentation, as I mentioned earlier, with this letter from Aquifer Science. I do not feel, as Commissioner Fleming has said, if we were to accept this as a basis for granting an extension it would be lowering our standards of what we expect of other applicants. And the final thing that I would like to say, I mentioned earlier in the evening, I have a little bit of a philosophical problem that I have noticed with granting preliminary plats or granting other requests with significant, expensive, time consuming conditions. I think that we need to stop and deliberate as a body before we impose conditions. If they get to be numerous, large, onerous, then we might do well to think that this is a sign that this request is premature and that we should hold back. I would like to see any conditions that we impose on a motion be of a minor sort. If we're going to have to make major conditions I think that right there is a de-facto admission that perhaps this shouldn't go forward. And I have blabbered enough.

CB: No, you made very good points Janelle. I would agree with basically everything you said. Uh, this thing has come in premature. I have tried since I have been looking at this, since I got on the Commission here to understand why it is that they cannot go find their water and not have to have this plat accompanied everywhere. They tell me that it has to be there because you have to demonstrate to these, either PRC or State Engineer, that you are out there trying to do something so this is why I need the water rights. Like I told Mr. Campbell, my family's got water rights. I am familiar with the process for getting them. You don't have to go in there with a plat in hand and say here is why I need this water. It just does not work that way. The easiest way for them to have over come the unavoidable delays was to come in the door with the water in hand. Virtually everybody else that we see come in here has figured that out. Get the water then come in. It is not rocket science. They have taken a different route. I understand that the P & Z in 2007 took them in good faith that they had the letter from New Mexico Water Services, and that was the standard they applied well we have the Will Serve letter. It hasn't worked out. And to the public interest thing, Mrs. Mahalick is right, the town is putting out money to stay and follow all of this. The twists and turns it takes, and it's costing them something. And that is not in, the Town of Edgewood the people here, it is not in their public interest. Public interest can be read a lot of ways as the gentleman back there wanted to know. Uh, you know, bottom line it's costing the town time and effort to do this, to follow all of this. To pay Mr. Rael, etc, etc. That is not what this is about. This is about they get their stuff in order and then they come see us. As staff has pointed out, we have had other subdivisions here, for whatever reasons expire, their preliminary plats. That is the way I kinds see this 1 year thing. It will expire automatically unless great, you know, pretty good effort is put out to keep it going. This goes back to these other issues here. The PID, the access permit, the fire safety code, uh, even the thing here the dedication of the open space. This is all little stuff, in a way, that could have been taken care of and would have

demonstrated on the face of it, effort. And like I say, they made a decision, somebody back at Cooperate made the decision to let's pursue the water. We will let the rest of it sit, because the rest of it is moot anyway if we don't have the water. Well that is good thinking I guess, but then you tie yourself to the fate of finding the water. Tonight they do not have the water. They are pursuing it. Mr. Campbell, on behalf of his client brought us in a progress report stating where they are at depth wise, how much they think they have spent, and so on and so forth. But that does not rise to the level of what we now expect from an applicant in the way of commitment on water. They're saying they're going to do it themselves, that there would not be a letter of commitment from a water company because they are going to supply it themselves. We have heard testimony from other people here tonight that it is going to be a long drawn out slugfest at the State Engineers office. It seems pointless for us to be drug along for the ride. Our question tonight is whether or not to extend this subdivision. It has been drawn into this larger fight on the water. And as they have pointed out, several people that is not maybe our bailiwick. I know it is the hinge issue for Campbell but our standard needs to be, do you have the water when you walk in the door. And I realize in this particular instance that it got off, you know, not that start. They took it on good faith, the P & Z in 2007, that they had what was required, and I think the time they have been allotted has demonstrated to them and everybody else that they have not been able to seal the deal on the water. And because of that, at their volition, not anybody else's. Nobody else has prompted them not to do these other things that were asked for. They did not do these other things.

CF: Are you suggesting that that faces an issue of good faith.

CB: A little bit. I think it does because essentially in 2007 they made a deal with the town. In bargaining good faith the town took them up on it. And for them not to even do something as simple as coming back with a corrected preliminary plat, I mean, you know that is pretty small. You think, you know.

CF: No I understand.

CB: The interest that they have to come repeatedly demonstrates that they really, really, really really want this, but ignoring a simple thing like that seems to say, well, we really really want it, but we just need to get the water issue settled, so you help us settle that. And I do not think it is in our place as this commission I don't think it is anywhere in our ordinances that we supply help in this instance like this, in an instance like this where we become party to finding the water. Either they have it or they don't. In other words if that has not been the standard, then starting tonight we need to begin making it the standard. Either you have the water or you don't have the water. If we would pass this tonight it sets the precedent thing, it says to anybody else coming along well you can come in with maybe half the stuff you need and we will just work with you from there. In, in my observation of the Town of Edgewood over these last 10 year, sometimes they have done stuff like that to their detriment and to the detriment of the people that got caught up in it. And, you know, like I say, if that has not been the standard, I am sorry, but maybe we ought to start pushing that towards the standard and raising the bar to where it is the standard. So anybody else coming along says well, Campbell couldn't pull it off. When you go through that door in that little community center you have to have that water in hand. Based on that, I mean, it is going to be tough for me to see any other way around it.

CT: Mr. Chairman could I ask a question?

CW: Yes.

CT: Would you agree that the ordinance in the development agreement are very clear? That water is a necessary precondition.

CB: I am, I agree with that.

CT: Whether or not past practices of the town, I mean can't really go back and re-do anything, but it seems to me that we have an obligation to follow the development agreement and our ordinances first and foremost. Everything else follows from that. And I think that to me is the necessary.

CB: That was pretty much drilled into us, and it is not ambiguous here where it says about the sufficient supply of potable domestic water.

CW: Ms. Mahalick has there ever been a preliminary plat issued without a commitment letter from a water company, or has there ever been a review or an extension on a plat without a commitment letter from a water company.

KM: No. with the extension you have asked for a renewed water service commitment letter and the preliminary plats, anything that, as I said, if they are smaller lots water service company letter of commitment has always been requested.

CW: In other words we would not be setting a precedent if we wanted more than a letter that says we are at 1,750 feet still to go.

KM: Right. Correct. You would not be setting a precedence if you were to state that the letter from the drilling company was not in compliance with the development agreement or the ordinance requests.

CW: Any other comments.

KM: As an option that you may want to think about, what you could do, is you could table the meeting tonight. You could get the draft minutes. You could have the draft minutes to review everything that was stated tonight. You could come back at the next meeting and issue a decision with your findings.

CT: So we would continue the hearing.

KM: You could continue the hearing until the next meeting and issue your decision with the findings after you have reviewed the record. You cannot discuss it in the interim, which poses a problem for you all because people will ask, but it is an option. And I heard a heavy sigh from the audience.

CT: That is a, Ms. Mahalick that is a legal option. I understand that.

KM: It is an option for you.

CT: Doesn't it present, because of the potential for ex partaking indication a of impropriety.

KM: That is why I cautioned you.

CT: One of the things that seemed to me that came out in the council meeting which this was remanded to the Commission was the nature of our findings. And I don't remember who mentioned that. I believe it may have been an applicant's appeal of the decision.

KM: I believe the applicant did characterize the findings.

CT: Okay.

CT: Is it of your opinion that we have done enough discussion now that you can compile a list of findings.

KM: Oh I think you all could compile your own given what you have had very detailed points. You could do your own; I just wanted to make sure you did understand you had that option.

CT: Are there any, Mr. Chairman, I would like to know get a sense from the Commission do we have any you know, unsureness about what the procedure should be.

CB: The only question I have on the thing, I am sitting here thinking about it, is that we may have jumped the gun a little bit. I think Mr. Campbell is due some rebuttal to all the stuff that was said. I think he gets a chance to rebut it. Is that correct, or.

CW: I'm not sure.

CB: In other words we closed the public comment part of it, but perhaps all them people got up I think he is due a rebuttal or something.

CT: Cross examination.

KM: I think in previous meetings we have allowed the applicant to have a final say.

CW: Would you have comments you'd like to make Mr. Campbell?

DC: Yeah. You had that break and you sort of gaveled it and said no more public comment. And then I think when you came back you started a discussion, and I actually did have some notes and things that I wanted to respond to the people who spoke. I want to take you back to why we're here. Um, I thought that the public comments, especially Mr. Albright's comments were kind of a primer on water rights. I mean, it gives you a view of the kinds of things that the State Engineers Office is going to end up hearing about and discussing. And, um, it is all very interesting, the only problem is that is has nothing to do with the zoning hearing that you are conducting tonight. Not the zoning, the subdivision hearing that you are having tonight. Um, it is not, or tonight should not have been water. Either

sufficiency or quantity or whether or not the water rights were there or where or not someone's water rights were being impaired. This was not an impairment hearing. The really, and I again at the risk of repeating this, beating this dead horse, you really had to deal with whether this was an unavoidable delay or/and that it was in the public interest. When you listened to Mr. Albright, all he had to say about unavoidable delay was that gosh, Campbell should have gone to Aquifer Sciences at the beginning, but they did not do that. And, you know, you can play that game all day long, would have, could have, should have. Gosh in retrospect, yeah I guess you should have gone and drilled deep wells to begin with instead of trying to pursue something closer to Sandia Knolls. I do not think that that truly deals with whether this delay was unavoidable or not. Um, you have heard the complexity, because this turned into somewhat of a water hearing tonight, you heard the complexity of the issues that will go on outside of this room and outside of the Town of Edgewood. And I understand you have an interest in wanting to make sure that gosh, that this all gets done in 1 year because that is what the ordinance says, but I have not heard a good reason why that 1 year is some sort of magic time limit or that there is some harm in allowing an applicant to take the required time to do what is necessary. Yes, indeed they, Campbell presented a Will serve letter to begin with. Commissioner Fleming's question was very good. Is that still a valid letter. Well as far as anyone else is concerned it is still a Will Serve letter. It should have sufficed for all of her purposes, because as Ms. Mahalick says we always get a Will Serve letter when we approve preliminary plats. And you don't end up going behind that letter and having to investigate whether or not that will serve letter means what it says, or that utility, but in this case somehow you did. In this case somehow it had to take this additional loop through the PRC and through the State Engineers Office, and you've got, and that was I think the cause of the delay. The fact that you did not sit and simply accept the fact that there was a Will Serve letter in the file that in every other case you accept as a proper statement. So when you talk about unavoidable delay, what we have seen here is an absolutely unavoidable delay where we've gone through these loops outside and within the Town of Edgewood on procedural issues, public hearings and so on. Now, uh, uh, Mr. uh. Mr. Chris, Chris is his first name.

DC: Chris foster said well, I want, I think there is some confusion about what is the public interest, what's the public good and so on, and that is the 2nd part of this prong. The public interest is served when you have a full airing of these kinds of things. If we were to have gone in and simply applied administratively and not had any kind of public process, I put before you that that would not have been in the public interest. Where you don't allow people to have input, to make their comments, to be considered in a setting like this. The problem is there are, by my count, 4 setting like this now. If you don't count your own staff. You've got PNZ. You've got the Town of Edgewood Council. You've got the PRC including their hearing officer and you have the State Engineer's office. Those both create the delay, but they also create the opportunity to participate and have the public interest addressed, else you wouldn't, or you might not even think about, gosh, there is a water, there is a fire suppression angle to this, as we all heard about tonight. Gosh there is a diminishment of the wells. So what you've got is a requirement that you've placed on Campbell in December 2007, that given the approach to this and given the addition players that had to be played, that had to be heard from in this it was an unavoidable delay. It could not have been done in the year that you gave to do it. It has not been done in the 19 months that you gave, that we have to today. And by the testimony of both the hydrologist Ms. Hilton, and the water lawyer Mr. Albright won't be done for another 18 months to 2 years. And none of that is avoidable kind of delay. It should not be placed on Campbell that somehow the public interest requires that you have hearings and that you participate fully in allowing people to have their say and have their protests and so on. So I think both of these things have been met, have been sufficiently met, adequately met. Again tonight is not the time to talk about whether there is sufficient water or whether somebody's right are impaired or anything else. That is going to go on someplace else. But that is the cause of the unavoidable delay that we have not been able to move past the whole water issue. Is that it is being protested at every turn. And those protests are taking part as Mr. Albright characterized it on behalf of Bernalillo County who he calls the public. And he says Bernalillo County is the public and therefore we have to be heard. Well that is fine, they can be heard. They will be heard. But by his own calculation they won't be fully heard and the thing

resolved at the State Engineer's office for 18-24 months. So that is why we ask for 18-24 months. Give us the time to do the things that you've asked be done. I have nothing further.

CT: Mr. Chairman.

DC: I think that was my closing statement.

CT: Thank you. Thank you Mr. Campbell. Mr. Chairman. I would like to make another couple of comments. I do not want to denigrate a lot of the testimony that has been given to use here tonight including some of Mr. Campbell's characterization of what the town has asked him to do. With all due respect to everyone who has spoke here tonight, I think the vast majority of this testimony, while it is valid, well intentioned and very well reasoned, it misses the central point here. Our job as Planning and Zoning Commission is to apply the ordinance, the development agreement as expressed through the development agreement and nothing else. And I think it is a necessary precondition that applicants be able to demonstrate a sufficient supply of water. And in the absence of that it is going to be very difficult to do. Now the legal, there is the complication with the legal problems with obtaining the water, but we also have along with that the lack of progress on other areas that are not contingent upon obtaining the water. There is also this lack of progress feeds into, I think, a very significant public safety issue and that is the fact that Bernalillo County has not been brought into the fire safety considerations. And I think that we need to remember, we need to narrow the scope and remember what our job as a commission is to do. We are not the PRC. We are not the OSE, and we are not here to decide technical issues. We are here to, to uh, apply the ordinance, the developmental agreement and also to uh, we have a commitment in our policy to set a single standard for all applicants here. And I think that that is what we need to remember here.

CW: Any other comments from the Commission. The staff.

KM: No sir.

CW: I would entertain a motion.

CB: Doyce do you have that list of yours.

CT: Yeah.

CB: That would be a good starting point. Hopefully we can follow that pretty good.

CW: Can you read it John.

CB: Um, Is that one, oh infrastructure must be bonded. Uh, what's that other one?

NCB: All open space, the traffic.

KM: Those are all conditions of the previous, uh, uh.

CB: Would you, let me ask the staff, would you go back over all of that, or we just delegated to the one issue of the water tonight

KM: you are delegated, by council, to review the changed circumstances.

CB: Which would be the water, basically right.

KM: Yes.

CB: In other words, uh, the other stuff here.

KM: Everything else stands. If you were to move forward and grant an extension you would basically move forward with the same conditions, compliance with the development agreement, compliance with all aspects of the ordinance, and issuance of a letter from a water service company for as you did with the December 07.

CB: Well Janelle, you want to take a crack at it.

CT: I do not know. I have put my foot in my mouth quite enough for one evening I should think.

CB: Tim.

CF: Alright. So this body has been um, uh, say requested on the part of the Town Council to make all our motions in the affirmative, so in keeping with that I will make the following motion.

KM: Could you explain to, would you explain what that means so that everyone in the audience is on the same page because there was a question about that previously also. When a motion was made, a positive motion was then turned down.

CF: Yeah, it, it just, it, uh, okay. It just means that the statements I am going to make uh, uh, oh how can I put this. Will grant object A under conditions B and will require a yeah vote for it to pass. I guess that's about as abstract as I can get.

KM: Correct.

CT: Could I offer some clarification Mr. Chairman.

CW: Yes.

CT: What it is, is that we have a request before us to take some action. And our governing body has instructed us to make all of our motions in the affirmative, which means that we have to move to grant the application. Now we can grant that as, you know, without comment, or we can add conditions to it. But the point is that we cannot move to deny a motion. We have been instructed not to do that. And we have adopted that as policy.

KM: In other words you would not make a motion that would say I move to deny the requested subdivision of 2.5 acres on Pinon Rd. to be divided into 2 lots. You would say I move to approve the subdivision of 2.5 acres on pinon Rd. And if you disapproved it you would all vote as you disapprove or approve.

CW: Basically what this does is avoid confusion with double negative further down the road.

CT: uh, huh.

KM: Exactly.

DC: If I can ask, how then do you do your findings. If what you've said is you're voting against the motion.

KM: We have historically come back at the next meeting with the findings for approval based on the record.

DC: So it is the opposite of every finding for approval is what you are actually claiming I mean this. I raised this issue the last time when you voted on this, and the reason is an affirmative motion does not mean that you have to agree with the application. An affirmative motion could be I affirmatively vote to deny, or move to deny the application, and then you have findings in support of that motion.

KM: Yes, exactly, I understand, but I have a council that has directed them that they are not to make those motions. And they have been very clear on chastising when that happens.

CT: Right.

KM: I understand, I understand what you are saying.

DC: You really can't get to findings that will be determinative or that will be instructive to the next bodies, because including in court, a court can't look at your findings now because you will have voted down whatever it was that you had as findings. So you adopted no findings essentially, which that violates the New Mexico law. You are supposed to make a written decision with findings that support the decision made, so.

KM: The written decision can be filed at the next meeting though.

DC: It is not about timing, it is about how you're doing it. I made this objection last time, and I am making it for the record again.

KM: I know.

CT: Uh, huh, right. Mr. Chairman could I please say something.

CW: Yes.

CT: Mr. Campbell I would like, you know, we, I personally you know understand the point that you are trying to make, but you have to understand that we have instructions to follow, so that is what we have been doing.

DC: Then there is a procedural flaw in your system however; that will unfortunately _____inaudible_____.

KM: Unless you can so put it together.

CB: Mr. Shakespeare.

CF: That is about 180° from where my talents lie, Um, alright.

CT: Mr. Chairman, can I ask Commissioner Fleming a question?

CW: Yes.

CF: Commissioner Fleming, um, have you, how familiar are you with, have you done any formal logic or of positive and negative statements.

CF: Are you speaking about.

CT: No, no, no. Categorical logic actually, you know. What exactly is a positive motion, because I think there Well.

CF: You see we're at odds, we're at odds with 2 things now.

CT: Right.

CF: But, you, I know, we have been directed to do.

CT: We have basically been directed not to bring the request forward as done in both on that, yay or nay.

CF: Okay, I speak personally about this. I was chastised for, for making a negative motion for the very reasons you say. Back on, I think it was December. December with respect to the development, because I wanted the developer to know and fully appreciate why this decision was made. I appreciate your position there and um, I would like to do what I would like to do.

CT: However, we have adopted a policy to the contrary.

CF: Yeah, and so in light of that, look I will take a crack at it, but if, if, if an amendment will, if you feel one needs to be made then please do so.

Action: Commissioner Flemng: So I am going to move that we grant Campbell Ranch an extension based on the following conditions. And I will lay out the time frame in a moment, um, I will do it actually piece by piece that the issues with respect to fire compliance and Bernalillo County are resolved on the order of 3 months from this meeting. That Campbell, the submitted, the corrected plot uh, submitting in the same time frame of 3 months from now. More over that the bonding with the infrastructure follows a 3 month time scale, and that the open space dedication occurs in the same time scale. And I do not think I have covered fire compliance, or did I. I am starting to lose it. Yes I did. Finally that Campbell Ranch provides a letter of service from a water company on the order of 6 months. Okay, I'll let that stand and I am open to amendments.

CT: May I offer a friendly amendment Mr. Chairman.

CW: Uh, yes.

CT: I'd like to specify that that water letter be in accordance with the letter currently being required of applicants.

CF: Very well. I accept that.

CB: Mr. Fleming I would offer a friendly amendment on the acquiring an NMDOT access permit.

CF: Thank you, thank you, alright.

KM: So let me see if I understand what you are saying. You are putting together a motion that says you would like all previous conditions to stand with a new time lime given them, and although you were only tasked for the issue of considering the water and the new development your, in your motion reiterating previous conditions also.

CF: As we discussed earlier. We can't ignore what this body found back in February.

KM: Okay.

CF: Is it a concern.

CB: Does that answer the water issue. That is what we were tasked with.

KM: Well do you believe that from the motion I would surmise that you do not believe that the letter you were handed tonight is sufficient.

CF: My motion, no, my motion is based on the prior letter and if I understood the testimony this evening correctly that this decision uh, by the PRC regarding the volume of water which can be supplied to Campbell Ranch should be rendered by the winter time, probably in January.

KM: So then you don't believe that the facts in the case have changed significantly to warrant the extension of a preliminary plat based on the facts that you heard tonight.

CF: Well here, let me take it from the top. I do not believe this letter constitutes the necessary conditions for a preliminary plat approval.

KM: So you don't believe that letter is sufficient evidence to extend the plat.

CF: Correct. And I could make that has a statement to my motion. That this is not, I do not consider this sufficient.

KM: I do not think, you can think about it, but do you need to put new conditions upon the applicant or do you need to simply look to the evidence that was filed to ascertain and therefore simplify your motion.

CF: Uh.

CW: As Chair, I am not allowed to make a motion am I.

KM: Technically you are, but being that you are acting I would suggest that you don't.

CB: Can he give some suggestions.

CW: Yeah.

KM: Sure.

KM: Unless, unless Commissioner Fleming does not want to withdraw, you have a motion on the floor.

CF: I'll withdraw. I'll withdraw it, and we will proceed again.

CT: Mr. Chairman what do you think are the pertinent points here that ought to be included.

CW: Everything else we have already covered basically the issue tonight is the water, and I think we should make a motion, something to the affect that the evidence we were given tonight was not sufficient to prove water and we are requesting some sort of proof of water that is acceptable within a certain time frame.

CB: So you would answer the question given to us by the council that a motion would be something to the affect of, on the issue of water which we were tasked with tonight. Make a motion that the evidence presented to us, in fact if we are going to go positive on it, is sufficient to warrant granting an extension of time to this preliminary plat.

CF: Where does that leave the other issues I, I mean this is something I raised at the beginning of the deliberation, is do they still apply if we don't include it in the motion. So that is why I went through the litanay that I did.

CB: Well I guess maybe the way to address that would be to say something to the affect that, given all of the other conditions that were previously placed and tasked with the job of determining whether or not a new situation has arisen on the water front that we find that there's in the positive there is evidence here to warrant granting an extension of the preliminary plat. Something like that maybe?

CF: Alright. I, I don't know if I'm happy with that.

CB: Let me take a crack at it. Lean back

CF: Alright.

CB: Mr. Chairman,

Action: Commissioner Bassett, I make a motion that in the matter of the extension of the Campbell Ranch Preliminary Plat extension, we have heard evidence, heard testimony tonight that I make a motion in the positive that we grant an extension to Campbell Ranch based on the evidence given us tonight, with the conditions that already were applied on the various fire compliance, corrected plats, infrastructure bond etc., and that we made a finding tonight that there was a sufficient change in the water situation to warrant granting an approval of Campbell Ranch's preliminary plat extension. Did any of that make sense.

Audience: Inaudible/

CB: Well I did not specifically say the open space, but that is, I, I did say that it would involve all of the previously listed conditions, and the open space is one of them, uh, you know we can go down the list, fire compliance, corrected plat, infrastructure bond, open space dedication, and the New Mexico Department of Transportation Access Permit. All of the conditions that have previously been applied to this request for an extension still apply but tonight we have made the finding that there was a sufficient change in the water situation to grant Campbell Ranch an extension on their preliminary plat. That is my motion.

CF: Can we have a second for discussion

CT: May I ask Mr. Bassett a question. Are you saying then with you stipulation that we are making a finding that this letter was sufficient.

CB: If we are going to follow the council guidelines of making it in the positive, I would say that yes that is what I intended.

CT: Okay, I thank you for that clarification, but I would like to state for the record that I am in disagreement with the definition of what we given what constitutes a positive statement.

CB: Yeah.

CT: Well I just want to, so, I am sorry Commissioner Fleming, I have had my ay there thank you.

CF: I understand.

CB: But did that cover everything.

CT: It did.

CB: In other words we've got in the motion that all the previous conditions are still going to be expected on all of those other issues, and tonight's findings on the water issue, that they have demonstrated enough change in it to grant them an extension on the preliminary plat.

CF: So I already seconded that.

CB: Well like for discussion, I mean do you feel comfortable with that.

CF: I guess I am comfortable with your motion. It covers the other issues that I was concerned about that I tried listing item for item.

KM: Perhaps you ought to let Commissioner Turner take a stab at some of the discussion with this because I can see a problem with making a motion, and in the motion you are finding that they are sufficient, and then the commission.

CF: Can we make a series of motions.

KM: Sure.

CF: Okay.

CB: Let me withdraw my motion then.

CF: Okay, so we are going to make a series of motions. First we are going to address the water issue.

Action: Commissioner Fleming: I move that we approve the Campbell extension for 2 years based on the fact that they have demonstrated sufficient evidence of having supplied water to this, of having met their obligation under the development agreement with the town and approval that they supply have evidence of having supply of water.

CW: Do we have a second.

CF: And that dies on the floor.

CT: I cannot second that.

CF: Okay that fails.

KM: So it dies for lack of a second, is that correct.

CB: Yeah.

CF: Yes.

CB: Where is that damn lawyer when we need him.

Laughs from everyone.

CT: He's over the.

Inaudible.

Inaudible from the audience.

CT: Mr. Chairman, when you get into technical definitions, and I you know I do not want to stir up trouble with the governing body, but there are some specific technical definitions to what constitutes and affirmative statement and a negative statement. They are fairly well established principals of categorical propositional logic, and I don't know, I am not a lawyer, I'm seeing Mr. Campbell nodding his head, I am seeing some people nodding back there, and I um, I think that those rules carry into the legal round. I think a lot of legal reasoning is based on those. I am not a lawyer, but I am a student of logic, I have been for several years, and I want to reiterate again that I am extremely uncomfortable with the direction we have been given from the governing body, because I think while it was well intentioned that is springs from a misconception of what the nature of a positive and negative statement are and how they work. And um.

CF: Do you have a suggestion, and if you could, if there wasn't the governing body to listen to.

CT: Well the problem is that, we do have a certain amount of autonomy here. The problem is that we have adopted that as part of our policy and for us to precede again our policy also opens us up to negative consequences. And I am very reluctant to kick the can down the road again, as Mr.

Henderson put it last year, however; I think we have a very real procedural problem here. And I think it might even rise to the level that we need a joint session with the governing body to hash this out with some legal opinion because I agree there is a problem with issuing findings in that respect. And I, and I have been told, and I have done some of my own research motions such as Commissioner Fleming made last year, for which he was chastised are legal in the State of New Mexico.

KM: Uh huh.

CT: And as I've said before I think that the direction from the governing body was based on a faulty premiss.

KM: And again you can, you do not have to issue a decision tonight. You can ask that the record be reviewed by Marcus. He can come back, you can make your decision and you can have a discussion.

CW: We can even make a motion to have a joint session with the governing body too couldn't we?

CT: Probably not on this because our decision could be appealed, I think that would be an error.

KM: I think you would muddy the water.

CT: I do not want to, you know, expose the commissioners to the appearance of ex parte communication and by continuing this we do open the door, so I want to caution everyone if you want to you know, we cannot talk about these kinds of matters. We have to deal with them in public, but.

KM: Do you believe you could come up with a statement for a simple motion that would do it justice.

CT: Not with the constraints that have been laid on us by the governing body and by our adoption of policy. And that is why I think it might be wise for us to see, you know, see what Mr. Rael thinks about our ability to issue findings that will stand up under the constraints that the governing body has asked us to approve.

KM: So you don't believe that a motion along the lines of I vote to approve the extension of the preliminary plat for Campbell properties based on the evidence presented tonight. You don't believe that.

CB: With all of the conditions that currently exist. Does that cover it.

KM: I am asking if you try to get too much into your motion, now during your discussion of the motion you can highlight your points for findings.

CT: But see how can I, the problem I have is how can we argue you know, make a motion that we cannot support.

KM: Because you could say in findings that you disagree with um, the color red being presented tonight as the color black. You could clarify in, but at the same time I want to caution you that if you are not comfortable with the parameters that have been placed on you, then I would say you are unable to make the necessary motion. The request for an extension could die due to the lack of a motion.

CT: Right. Can I go back then procedurally, because it seemed that when this came back from the governing body, and I apologize to the audience for stringing this out. Um, before we adopted the policy did you consult Mr. Rael and ask him about those constraints that we were asked to adopt.

KM: I can't answer. I don't remember.

CT: Okay.

CF: Alright, so if I understand you correctly, Ms. Mahalick, we can in some sense have the best of both worlds by finding a fact that takes place two weeks since.

KM: It is possible. Or you could itemize your findings during your deliberation on your motion.

CF: Okay.

CB: So if made the motion then we could take off a list of stuff that did or did not present themselves tonight.

KM: Correct. But what you don't want to say is a motion that yours said that you found there was sufficient change in water. You were stating that in your motion.

CB: Uh, huh.

KM: So in your deliberation on your motion you could put your findings this, these.

CF: And you would enter them into the record.

KM: That could be entered into the record. Yes. At the commissions request.

CB: So in other words, we could make a simple motion then take off a list of findings of what we think we found here tonight.

KM: Correct, what you heard based on tonight's record.

CB: And that would be subservient to the motion.

KM: It would be a part of the discussion in the motion, yes.

CB: And then we could vote, and the findings would be based on what we (inaudible due to someone coughing.)

KM: Correct.

CB: what we found.

KM: And those would come back to you for approval as the findings of facts based on what you say, which has been our standard practice.

CF: From October 19th.

CB: So we can try to make a simple motion to approve, not too wordy, well would you say with the conditions that currently exist on it, and then just let it go at that.

CT: Uh, huh.

CB: Then go to discussion and tick off the findings.

CT: Okay.

CF: Lets do it so, John I think your original motion might still carry water.

CB: Well I withdrew it.

CF: Well you can put it on again if you like.

CT: Would you like to redo it without the troublesome parts.

CB: Well okay, Mr. Chairman,

Action: Commissioner Bassett: I will offer this motion. The motion is approve Campbell Ranch's request for an extension of their preliminary plat based on the evidence and testimony presented tonight with all the conditions that currently exist on this plat.

CF: Uh, huh.

CW: Do we have a second.

CT: I will second for discussion.

CF: Alright, so.

CB: Now I would say lets call this our, kinda our findings. What did we find.

CF: Let's, lets go over it.

CB: Yeah, what did we find tonight?

CF: So there are some issues regarding the open space dedication. That didn't happen.

CT: Uh huh.

CB: Right. Tonight it was not so much discovered, but we have basically seen that the open space dedication never happened.

CT: Did not happen.

CB: The New Mexico Department of Transportation access permit has not been obtained. The infrastructure bond has not been undertaken with the town. The town has not received a corrected signed plat of the preliminary plat. There has been no movement on the fire safety code compliance. They have not resolved. Campbell has not resolved the original problem that the preliminary plat had with compliance with the fire code.

CF: did you mention, was there an issue regarding the corrected plot.

CT: Yeah, he just mentioned that.

CB: I mentioned that. The other thing would be the, and I guess this might go hand in hand with the PID would be the submittal of the infrastructure to Bernalillo for infrastructure approval. Given that the town does not have an agreement for subdivision approval with Bernalillo County. Something needs to be done on that, but what we are finding tonight is that essentially nothing has been done on that. So those are I guess what I would call for the record our findings.

KM: What about the evidence presented on the water.

CB: Uh, the evidence on the water. The evidence on the water that was presented to us tonight in the form of a letter from the Vidler Water Quality Company, or whatever.

CT: Aquifer Science.

CB: Aquifer science is wanting. It does not address the issue of the water in hand. It appears to be more of just a progress report on the work that is apparently taking place out on the property.

CF: It does not speak to the volume of water that would be available.

CB: Are there any other that we need to make findings on.

CT: Mr. Chairman

CW: Yes.

CT: it seems to me that with regard to the letter that Commissioner Bassett just mentioned is that it fails, in my opinion, it fails to demonstrate that they have secured the water. The testimony that we have heard said that they are actively pursuing it, but I, it seems to me that this letter does not demonstrate that they have secured the water.

CF: As per the development agreement as well.

CT: Yes as per the development agreement as well as Town Ordinance.

CF: Oh.

CB: I agree.

CW: Any further discussion.

CB: Have we missed anything Ms. Mahalick.

CB: The open space, I mentioned that.

KM: The open space, infrastructure bond, fire safety, updated preliminary plat, and evidence submitted on the water from Vidler, does not address the issue of a water service company that it fails to demonstrate they have secured the water as per the development agreement and town ordinance.

CW: The only other thing we have talked about is traffic and the Department of Transportation.

CB: I think I mentioned that. That they have not obtained the NMDOT access permit that was one of the conditions placed on it.

CB: That even goes back to GND letter of November 27, 2007.

CW: Any further discussion

CF: So we are finding that things such as open space dedication well, do you consider that failure to satisfy that was unavoidable.

CB: No.

CF: Okay. I don't think it was unavoidable as well. Do you think that the failure to satisfy the submission of the corrected plat was unavoidable.

CB: No.

CF: Okay. In fact do you think any of the other issues that you mentioned over the course of this deliberation whether it was for fire compliance, bonding of infrastructure, do you think those were unavoidable.

CB: I don't.

CF: Commissioners.

CW: I don't think so.

CT: I don't think so either.

CF: Okay.

CW: Any further discussion.

CF: That motion was made, satisfied our criteria of being made in the positive?

CB: I think so.

CF: Okay, I have no further.

CW: I will call for a roll call vote then.

CF: Okay. Tim Fleming Nay.

CT: Janell Turner, Nay.

CB: John Bassett, Nay.

CW: Doyce Wilhite, Nay.

CF: Alright.

CW: I would entertain a motion to postpone.

KM: One further one you found. You asked about the unavoidability, what about the public interest.

CF: Uh.

KM: You have 2 conditions.

CF: Right. Okay, I thought, I thought it was clear from our prior deliberations, but.

CB: Do you want us to go back over the list and address the public interest.

KM: I don't know that you have to go back over the list, but I do think you need to enter into some sort of decision as to public interest being served.

CF: Can that be, occur during the finding of fact, can we deliberate that um.

KM: You could make a motion, and then again.

CF: Okay,

Action: Commissioner Fleming: I move that we address the issue of public interest next meeting on October 19, during our approval for finding of fact for this public hearing.

CW: So we have a second?

CT: I second for discussion. Ms. Mahalick do you see any problem with us continuing the public interest portion.

KM: Well, you have an incomplete finding.

CF: Okay then, lets do it.

CB: Um, I think we ought to address it here tonight.

CT: Tonight.

CF: Okay.

CT: Also, where our remarks after we closed to public discussion not enough when we addressed them or do we, did we need a vote from the Commissioners.

KM: If you want it to be the same as the, if you want to be consistent with your first then you should do your motion accordingly. Do you believe it was in the public interest and then deliberate on what you believe.

CT: Do we need to vacate that last vote.

KM: No.

CT: Okay.

CB: Well, there is motion in the second so.

CW: There is a motion on the floor we need to vacate.

CF: Okay, I withdraw.

CB: Will that suffice.

KM: If you withdraw yeah.

CF: I did.

CT: I withdraw my second.

CF: Okay.

CT: We will start again.

CF: Very good.

CF: Alright, so this calls for another motion. So, I, I. Can I reference the prior motion.

KM: Uh huh.

CF: Okay, I will do so. Um, uh, I move that the uh, the uh, with respect to uh the uh water, I am sorry with respect to the Campbell Ranch, uh, I am losing it. With respect to the, I'm, I'm sorry, given that we, Okay.

CB: Hang on a second. Ms. Mahalick, how should we, in other words it is a motion to find what.

KM: Is it in the public interest to approve the extension of the Campbell Ranch requested extension.

CB: Okay, so that is sort of the question. Is it in the public interest to approve.

CF: Okay, I will move that the following, that it is in the public interest to approve this plat extension under consideration. So um, can I get a second.

CB: I'll second that.

CF: Okay, so we have a number of issues here that we should address.

CB: Do you want to just do them one at a time again.

CF: Sequentially.

CB: Yeah.

CW: We have a motion that has been made and seconded. Should we vote on that at this point in time and then go from there.

KM: you ought to deliberate just like you did on the last one.

CB: Yeah, that works. Let's have a discussion on the public interest motion.

CF: So there is the open space dedication issue that apparently has not taken place. You know, this agreement the development agreement called for this. I thought, this raised the issue of I am going off on a tangent here, but this raised the issue of good faith negotiation that this did not take place. Now we have talked about public interest from various angles where we apply our standards equitably. And during the course of these proceedings it has occurred to me that you know, given the precedent that the, that, I mean we have, this is very unusual request. This body hasn't seen a request of this nature. I realize I am starting to go off on to other topics, but we haven't received a request of this magnitude of this extension in its history so I guess, I'll speak generally now. If we had gone forward with it, are we applying, are we, the words escape me at the moment, but are we being are we applying our standards fairly.

CT: Mr. Chairman, may I introduce a question. Commissioner Fleming, um, I am thinking at this point that it might be fruitful for us to go through the points that we mentioned and just ask the Commission to give thoughts on whether or not the state of things is.

CF: Okay. I'm sorry. So lets go back to open space dedication. Do you have any thoughts.

CB: Um, as far as if that is in the public interest, not doing it, the development agreement is pretty plain on that and straight forward. It says they would do it if given time, and they haven't so I would say their failure is not in the public interest.

CT: I would agree. I think it is in the public interest for people to live up to their agreements and since this has not been followed through with I think that uh, that that litigates waste.

CF: Yeah, Well that is why I started talking about good faith earlier. It just raises a question.

CT: Mr. Chairman.

CW: Where are we.

CT: Yeah.

CW: We have motions made and seconded and so on.

CF: Then we have the issue of the fire compliance. That is almost self explanatory, I mean.

CB: Right I mean fire compliance is basic stuff and if they have not done it certainly that is not in the public interest to have the place burn down over there.

CT: Right, well I think you can word it positively that it is in the public interest to pursue it. It has not taken place so again it is difficult to support the notion that this would be in the public interest.

CB: Right.

CF: I think the issue of submitting a corrected plat again goes back to Commissioner Turner's issue of living up to agreements. I don't want to miss characterize you but I think that's (inaudible). Um, let me see there is the bonding of infrastructure, who wants to address that.

CB: Well on the Infrastructure bond, I mean, if no effort has been made on it, I guess as Jannelle said the thing of the positive context. Is it in the public interest that no movement has been made on that issue and I would say again that it is not.

CF: Okay.

CT: Mr. Chairman, I think we could kind of summarize all of these failures to proceed is that purpose of a preliminary plat is to allow someone to start doing things, to make progress and that we have seen on a number of points a lack of progress. And I think that lack of progress again works against the public interest instead of in favor of it.

CF: Okay.

CB: I concur.

CF: Okay that seems to be a fair summary. I am willing to let it go at that.

CW: Okay we've had a motion that has been seconded. We've had discussion so we are ready for a roll call vote.

CF: Fleming, Nay.

CW: Doyce Wilhite, Nay.

CT: Janelle Turner, Nay.

CB: John Bassett, Nay.

CW: I would entertain a motion to postpone the open space ordinance discussion the capital improvement plan, Santa Fe Fire and Rescue, the gateway sector plan and guidelines for coordination with the governing body until the next meeting.

Action: Commissioner Bassett: So motioned.

CF: Yes, I second that.

CT: I have a procedural question. Did you notice that we had left public hearing before we moved on to.

CW: No I didn't. We are now out of public hearing and out of quasi judicial procedures.

CW: And we have a motion to postpone those until the next meeting. Do we have a second.

CT: Second.

CF: Aye

CW: Aye

CT: Aye

CB: Aye

CW: I open it up now for public comments. You folks have been very patient with us tonight. Is there anything anybody would like to say.

CB: Compliments accepted.

NS: Inaudible from the audience.

CW: We are ready for a calendar update.

KM: Yup.

5. Request to subdivide of 2.5 acres in Piñon Rd., 2.5 acres to be subdivided into 2 lots; zones R-1 residential.

Ms. Mahalick stated that the applicant was not present but asked the Commission to proceed and she would forward their comments to the Applicant.

At this time the applicant was present and sworn in by Commissioner Turner.

Mr. Dominguez described the lot split that the Tarby's were requesting and stated that there were two separate dwellings that had their own water, gas, and electric and individual septic tanks. He added that he had recently sent a copy of the septic tank permits to staff for the Commissions review.

Commissioner Bassett requested a copy of the permit applications that the installer sent to EID.

He wanted to be sure that all the minimum distances have been met for the leach fields and waste and water lines. He also stated that the shed did not meet the set back requirements.

Ms. Mahalick stated that the shed did pose a problem since it is situated right on the property line but the other dwellings are grandfathered in.

Commissioner Bassett reviewed the items that the Commission had requested at the previous meeting for approval. He added that if this is successfully divided the applicant would need to get a separate UPC number for each septic system.

Action: Commissioner Bassett made a motion to approve a conditional approval based on four items:

1. Surveyor places a purpose statement on the Plat.
2. Verify the distances between the water and sewer line to the second dwelling.
3. Adjust the lot line around the shed at the Southeast corner of the first lot.
4. Within one year of the approval of this plat the owner acquire new septic permits and get everything current with the New Mexico Environment Department.

Commissioner Fleming seconded for discussion. He offered to make a friendly amendment to the motion.

Commissioner Bassett declined the amendment and withdrew his motion.

Commissioner Bassett made a motion to table this item and requested that the applicant provide the following items:

1. Surveyor places a purpose statement on the Plat.
 2. Verify the distances between the water and sewer line to the second dwelling.
 3. Adjust the lot line around the shed at the Southeast corner of the first lot.
- Commissioner Fleming seconded the motion as stated. All Commissioners voted aye. The motion carried.

6. Open Space Ordinance discussion.
7. Capital Improvements Plan/Santa Fe Fire & Rescue.
8. Gateway Sector Plan
9. Guidelines for Coordination with Governing Body.
10. Public Comments.
11. Calendar Update.
12. Adjourn.

Action: Commissioner Bassett made a motion to adjourn. All Commissioners voted aye. The motion carried.