

**PLANNING & ZONING COMMISSION
6:00 PM. MARCH 16, 2009
EDGEWOOD COMMUNITY CENTER
26 E. FRONTAGE ROAD
PRELIMINARY AGENDA**

1. Call to order

All Commissioners confirmed their presence by roll call, Doyce Wilhite, Tim Fleming, Rey Fulwiler, Janelle Turner, and John Bassett. Also present was Mr. Marcus Rael, Town of Edgewood, and staff member Ms. Karen Mahalick.

2. Approve agenda

Action: Commissioner Fleming made a motion to approve the Agenda. Commissioner Wilhite seconded the motion. The motion carried unanimously.

3. Approve minutes of 03/02/09

Action: Commissioner Fleming made a motion to approve the Agenda. Commissioner Wilhite seconded the motion. The motion carried unanimously.

PUBLIC HEARING-QUASI JUDICIAL PROCEDURE

CERTIFICATION THAT PUBLIC NOTICE OF THIS MEETING HAS BEEN POSTED AS REQUIRED:

NOTED: KM

STATEMENT OF PROCEEDINGS WAS READ INTO THE RECORD AND CONFIRMED BY STAFF.

CONFIRMATION OF NO CONFLICTS OF INTEREST/EX PARTE CONTACTS

NOTED: All Commissioners confirmed no ex-parte communication or conflicts of interest with the exception of Commissioner Wilhite who asked that it be noted that he owns property in the airpark and therefore has a conflict with items number 5 and 7.

At this time Mr. Marcus Rael, Town Attorney, swore in all parties to testify.

4. Campbell Preliminary plat extension Campbell Ranch. SU-2007-12, Bulk Land Plat of Village Two and SU-2007-11-Minor Subdivision, the Orchards at Campbell Ranch.

(VERBATIM)

David Campbell - his law firm represents Campbell Ranch and that in the records it was one year ago tonight that this preliminary plat was approved by the Town Council and was heard by the Planning and Zoning Commission on December 11, 2007 and was later appealed to the Town Council where it was denied. He stated that he was here to request an extension of time for the Preliminary Plat to allow time to turn this into a Final Plat and meet the requirements for the code for such a grant based on Section 8B, 4D of the Subdivision Ordinance. This portion states that approval of a preliminary plat is effective for one year unless extended by the Planning and Zoning Commission based on a finding that

1. The delay has been unavoidable.
2. The extension is in the public interest.

Mr. Campbell -it was his intention tonight to show that the delay was unavoidable and that the extension is in the public interest. He asked to start this evening by noting that following the last discussion he provided a series of booklets, three ring binders that included a letter dated February 24, and a series of other documents and he hoped that they had been provided to all the Commissioners and that they had had a chance to look them over. By looking at the requirements for an extension included the two elements previously stated, but they also refer to the subdivision code, specifically at what is written with respect to Preliminary Plats. Mr. Campbell referred to the Definitions Section 5Q defining preliminary Plat as follows.....

Plat, Preliminary, 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 sub-divider achieves vested rights to subdivision upon preliminary plat approval. Vested rights means, rights that are granted and assured and really cannot be taken away. One way to have vested rights is to have a definition of preliminary plat like the Town has, which says that once you have a preliminary plat you have vested rights. Another way to get vested rights if you did not have this definition would be to look at what Courts say vested rights are and in New Mexico they say vested rights are a grant of approval for instance a building permit, or in this case, a preliminary plat followed by the expenditure of resources in reliance on that approval. For example, if a builder were to pull a building permit and begin to build a house that was permitted those rights have been vested and the government cannot come in and rescind your permit because of the expenditure of resources, likewise with the preliminary plat. They believe that the Town Ordinance states that you have vested rights when you have preliminary plat, what that means is that they can go out and begin doing the process that is required to mature it to a Final plat and expend resources and then it is not then possible for the Town to pull or rescind that those vested rights. Mr. Campbell stated that he would list the expended resources of Campbell Ranch later in his testimony and that by a simple reading of the Town's own Ordinance this preliminary plat has by definition vested. And secondly, even if the Commission does not go by their own definition, he will show in a series of listings matters that have been going on in the one year since this preliminary plat was done, and the level of expenditure and the level of resources that have been expended by Campbell Corporation in this. There are twelve items listed, on page 3 of their letter, beginning with the hiring of Smith Engineering. Some of the items listed were done in anticipation and preparation of the preliminary plat. Some things have been done in reliance on the plat. The town provided a laundry list of things to be done with respect to this preliminary plat. At the bottom of page 1 of the approval letter, it stated that Campbell needed to demonstrate a sufficient supply of potable domestic water for any proposed

subdivision of land at the time application is made for any preliminary plat approval and in accordance with applicable Ordinances. So what the town was requesting that certain things be done including the proving up the water for this subdivision. He stated that they had provided a number of different documents that show exactly what Campbell did to attempt to fulfill that requirement. First they went to the New Mexico Water Services Company and requested that the process for obtaining the confirmation that was requested by the Town be started. They went to the public regulations commission and filed a number of pleadings and this has been a very contentious process because some of neighbors have gone to the PRC and stated that Campbell can't prove up their water, and at this point that case is continuing and is still to be decided by the hearing officer. Therefore, one of the things the Town has requested is still in the process all be it a slow process. It is his intention to show that this delay has been unavoidable. Another thing he wished to point out from the list of things that must be done was that a PID be created and be in place to plan, design, engineer, and construct the infrastructure for this area. He stated that it was his understanding that at this point Campbell Corporation has filed with the Town of Edgewood, the necessary documents to form a PID and at some point in the past the Town asked if they could take some time to create a PID policy and that there is still not a PID Policy in place for the Town. But he stated that he could be mistaken and Ms. Mahalick could confirm or deny this but there has been no advance of the PID application that was submitted by Campbell Ranch. This cannot be considered a delay that is attributed to Campbell Corporation. At this time Mr. Campbell asked for testimony from Mr. David Able.

Mr. Able stated that he represented Campbell Corporation as legal Council. When he joined Campbell at the beginning of 2008 the company was in the middle of negotiations with Bernalillo County and he resumed those negotiations to prepare an intergovernmental agreement for emergency and fire services. As part of the negotiations he asked that the agreement be triggered upon final plat approval. As a policy, Bernalillo County does not like to do this because they have to allocate resources in expectation of providing these services. As a result of the issues related to the water they have been holding this agreement in expectation of resolving the matters with the PRC and the office of the State Engineer. Once those are resolved they will bring the services agreement to the Town of Edgewood for its review and approval and at that point it will go back to the County for their approval and then there will be a finalized agreement. The status right now is that they are waiting for the water issues to be resolved before they have an opportunity to bring it to the Town of Edgewood.

Mr. Campbell stated that Mr. Able has once again testified that this issue that is before the PRC is a large enough issue, an important enough issue, and it is taking enough time and that this had really contributed to the delay in getting this project done in a one year time period. Again if it were not being adamantly litigated it probably would not have

taken so much time but this is something that could not have been foreseen and is does not have to do with Campbell's action but instead is an unavoidable situation that has created delays in this. Mr. Campbell stated that for a number of reasons the delays have been unavoidable and there have also been a series of very expensive and important things that have been done during this time period awaiting the resolution of the water issue and he has listed those in his letter to the Commission. He also asked to point out that the Town of Edgewood, like other Municipalities, has an interest in having effective, fair policies. He believes that this goes to the second reason that everyone is here tonight and that is that this extension is in the public interest. If a Government says that you have this right, you can go about your business and in fact, gives us a list of things that we must do, we think that it is a fair process for the Town to give them that list and then give them the time to do the things that are on that list. If the Town didn't, if it said that you must get these things done in a short period of time, which it turns out that one year was a short period of time, then they don't think that that is the kind of fair process that the town has or should have. In fact he thinks that it would be not fair and would not be following the kind of deliberate action that the Town has asked for. Also he believes that the filing of this preliminary plat and the objections to the preliminary plat, the fact that it was appealed and that some of the same people who appealed the preliminary plat when it left Planning and Zoning and went to the Town Council are some of the same people who are opposing the grant of the water and he likens this to somebody running a race and then not being allowed to finish the race, actually having their shirt being held so that somebody else may win and this does not reflect the kind of fairness that the Town of Edgewood is interested in promoting. He believes that the extension of this site development plan is in the public interest and should be done. He asked to state as a final matter, that this body back in 2007, the Town Council, Town Staff, including legal staff have invested a great deal of time and attention to this matter and to not grant this extension and basically say to an applicant, nope sorry, you did not make it by one year from today, therefore you are out of luck, really is a waste of public resources it wastes the time that the Commission put into it, it wastes the staff time and all of their time and the Town has no good reason not to grant the extension particularly when as they have shown, number 1 the delays are not attributed to Campbell not doing anything and number 2 the grant of the extension would be in the public interest. He stated that he would take questions at this time.

Commissioner Fleming asked if prior to the initial preliminary plat approval in December 2007 if Campbell was aware of any dispute regarding the water rights or use of water that Sandia Knolls association is concerned about now.

Mr. Campbell stated that he was unaware whether they knew or didn't know about any challenge to the water, but certainly the Town of Edgewood and this body, when you wrote your decision in December 2007, you said that Campbell had to demonstrate that kind of availability of water and that is what they have done.

Commissioner Fleming responded, alright.

Mr. Campbell continued, that is what they are in the process of doing.

Commissioner Fleming stated that in regards to the letter presented by Mr. Campbell, he did not know how to read the vested right argument. Any developer that comes before this Commission and then before the Council is going to have invested some amount of resources in development. One of the cases that their letter quoted, used the ambiguous phrase, considerable sum, Railey vs. California, once a builder secures a building permit and expends a considerable sum of money in reliance on it, may acquire a vested right. Commissioner Fleming stated that what confounds him is that he does not know what a considerable sum is and that is going to vary from one developer to another.

Ms. Rael asked to interject for a moment stating he wanted to be sure that the Commission understands the difference between what Mr. Campbell is saying in his letter and what the Courts in New Mexico have held as Mr. Campbell sites a case in California and that is not law in New Mexico. The Courts in New Mexico have held that in order to have a vested right in a subdivision the developer must have complied with all requirements necessary for Final Plat and that they have held also that if you have only applied for a preliminary plat that you do not have a vested right and this case is somewhere right in the middle as they have already been granted a preliminary plat but they have gotten all the way to Final plat approval and there is not a holding in New Mexico which stated that they have a vested right at this point in time. Mr. Rael stated that he wanted to clarify what the case law in New Mexico is for the Commission.

Commissioner Fleming thanked Mr. Rael for the clarification.

Mr. Campbell asked for the case site from Mr. Rael.

Mr. Rael stated that in the El Dorado case the New Mexico Supreme Court held that a developer that had complied with all the requirements for Final Plat approval did have a vested right and cited the Los Brasos case in New Mexico number 168 and in that case the court of appeals held that simply submitting a preliminary plat application did not grant the developer a vested right therefore this case was right in the middle.

Mr. Campbell stated that if this had been completed they would be here before the commission with an application for final plat approval and the other thing that is not addressed in the cases is the language found in the Town Ordinance that states, when you have a preliminary plat the subdivider achieves vested rights upon preliminary plat approval.

Mr. Rael asked Mr. Campbell if he would agree that the annexation and development agreement that was entered into between the Town of Edgewood and Campbell Farming Corporation governs this development and this proceeding.

Mr. Campbell responded stating that it was certainly the basis on which they were here, but if he is asking whether it supersedes the Town Ordinances, he would probably say no it does not.

Mr. Rael asked to bring to his attention Section 4 Paragraph 1, Rules for Development, in which the Town of Edgewood and Campbell Corp. agreed that the applicable rules for development “shall be those rules, regulations, ordinances and official policies of the Town relating to zoning, subdivision, and development which are enforced on the effective date of this agreement. Any change in the applicable rules enacted by the Town after the date of this agreement shall not be applied to the Campbell Ranch Master Plan.” This is Section 4 Paragraph 1 of page 8 of the Annexation and Development Agreement. Mr. Rael asked to remind the Commission that they would be proceeding under the 1999 Ordinance and this Ordinance does not contain that section that states the sub-divider achieves vested rights upon preliminary plat approval. He stated that as the Commission moves forward they would need to make a determination as to which years subdivision Ordinance to rely on and either way they can approve or deny but that language is not contained in the 1999 Ordinance.

Mr. Campbell asked Mr. Rael to read the definition of preliminary plat from the 1999 Ordinance.

Mr. Rael stated that there was not one.

Mr. Campbell stated that this was their conclusion that they came too as the old Ordinance does not contain a definition of preliminary plat and therefore they had to go with what the law is and the law is that the 2005 must be the effective one as the old one does not contain a definition.

Mr. Rael stated that there is a section on preliminary plat procedure and how to get those approved in section 10.

Commissioner Fulwiler asked if he was right in his understanding that it gives you the procedure for preliminary plat but does not go so far as to say that upon completing that procedure you will get approval.

Mr. Rael stated that the 1999 Ordinance does contain a section on what is required to grant an extension of a preliminary plat and that is that the Commission may grant an extension based on a finding that the delay has been unavoidable and that it is in the public interest which is how Mr. Campbell proceeds this evening but his point is simply that according to the development agreement that governs that Campbell Ranch development, the 1999 Ordinance does not contain a statement that says they absolutely have a vested right. The Commission must determine this evening whether or not they have a vested right to the development.

Commissioner Fulwiler thanked Mr. Rael.

Commissioner Turner stated that as she saw this so far the Commission had two questions to decide upon.

1. Being whether to consider this request as a statutory imperative or under our discretionary powers.

2. Whether they should be more properly using the 1999 Ordinance or the 2005 Ordinance.

Mr. Rael stated that the Commissioners review this evening is limited too, because our hands are kind of bound by the 1999 Ordinance and by the development agreement. So the review is simply whether there was an unavoidable delay and whether or not granting the plat extension is in the public interest. Those are the two questions that they need to answer this evening and this can be accomplished in a couple of ways. The Commission can find that Campbell Ranch does have a vested right in the preliminary plat extension or they can not make a determination about vested rights and solely make a determination on whether to approve or deny the request based on whether or not the delay was unavoidable and whether or not the granting is in the public interest. Mr. Rael stated that these are the parameters.

Commissioner Wilhite asked regarding their letter and vested interest, how many of those vested interests have taken place in this last year since the extension was granted. The hiring of Smith Engineering was that in this past year?

Mr. Campbell stated that all of these where the engagement took place in preparation for the preliminary plat, those engagements may be continuing and in the case of Smith Engineering, yes that is continuing.

Commissioner Wilhite asked if there had been expenditures in the last year.

Mr. Campbell stated yes.

Commissioner Wilhite asked if there had been expenditures in master plating subdivision?

Mr. Campbell stated yes there had been.

Commissioner Wilhite stated that he was assuming that everything with the exception of water have had expenditures in this past year.

Commissioner Fulwiler asked where was the list of expenses and the date that they were incurred. Oh I see it is in the very back of our booklet.

Commissioner Fulwiler asked if DISB was the distribution date.

Mr. Campbell stated that he was sorry he was not looking at the same document. He asked if it was Project Disbursements?

Commissioner Fulwiler stated yes.

Mr. Campbell stated that those would be disbursement dates and includes check numbers that were expended and he thinks this is a better answer to the question but this is only as off October 31, 2008 and does not include the last 5 months of expenditures.. If you total it up they have spent \$291,503.51 and by anyone's definition of substantial amount of money. Commissioner Fleming was asking what was a lot of money and I think that \$291,000.00 is a lot of money.

Commissioner Fulwiler stated that he wanted to go back to Commissioner Wilhites' question, when did that expense occur.

Commissioner Wilhite stated that based on Mr. Campbell's information there have been three expenditures since the extension was granted a year ago. Those expenditures are for Smith Engineering a check was written on 7-22-08, and two expenditures to SWCA Environmental Consultants. Basically what he is asking is if they had made any expenditures other than trying to get something resolved on the water which as I understand it the State Engineer had given you information prior to the extension last year that there were no water rights.

Mr. Campbell stated that in looking at the list the Commission has before them there are actually more expenditures in 2008 and since March 16, 2008 than those two. He stated that he would call their attention to the expenditure made 5-20-08 to David Toasing and Associates as we go down this list I can make it an exercise that they made these payments and I can also tell you that payments for the ????? Law Firm Which are the Attorneys who are prosecuting the PRC matter and payments to my law firm are not included on this list and I believe that it is not a complete list of the expenditures. Even if it were a complete list I would submit that this amount spent in 2008 after the Planning and Zoning ruled on this which was December 11, that is a substantial amount of money and I think anybody would find it to be so.

Mr. Rael asked to interject again stating that when the Town Council approved the preliminary plat it did not make a finding of fact or conclusion of law which would require, I guess what I am trying to say is that I believe Campbell Ranch, based on the findings of fact or conclusions of law which the Council made has the right to rely on any expenditures from December 11, 2007 and on to prove it's vested rights. I believe that Commission should take those expenditures into account as to whether or not they have made any progress because there was not a finding by Council specifically stating that they should not do that. So you can start from the December 11 date.

Commissioner Fulwiler stated that they took this before Council and the Council ruled when?

Mr. Rael stated that it was March 16, 2008, about three months later.

Commissioner Fulwiler asked if everything was still up in the air until that time?

Mr. Rael stated that preliminary plat approval had been given by the Commission it was still up in the air but it was decided by Council, the Council did not make a finding which stated that Campbell could not make a vested rights argument based on that period of time from December 11, 2007 – March 16, 2008 and the Commission should probably consider those expenditures during that time because they were made in reliance upon the approval of this Commission.

Mr. Campbell stated that it was not as if the appeal happened immediately after December 11, there is a great deal of correspondence and those of you who were on the Commission at the time remember that we did not get the appeal on this matter until sometime in February and the reason for that was that it was policy that you could appeal

only 15 days after the final minutes of the meeting at which this body acted were approved. So it was not that December 11 was the effective appeal date, by what we thought it should be it was 15 days after December 11 and we were good to go and we were quite surprised when in February we were notified that in fact no you have a different rule and that its based upon the date at which the minutes are approved from that meeting and you missed a meeting in January of that year.

Mr. Rael stated that Campbell Corp did make that argument at that meeting in March of 08 that the appeal deadline had passed however it was Town Policy that it was from the date of approval and they made it on the last day of that time but they did raise that argument at that time.

Commissioner Fulwiler asked if that was something they should have known?

Mr. Rael asked who?

Commissioner Fulwiler stated Campbell Ranch of the appeal process.

Mr. Rael - no the Town was required to make a specific finding at that hearing that it is now Town Policy that you go from the date that the minuets are approved which is the right thing to do because at that time that is when your decision becomes final but that was not clear up until the time that we had this hearing and the approval was made in March.

Commissioner Fulwiler stated ok.

Commissioner Bassett - what day was that.

Mr. Rael stated that it was March 16, 2008.

Commissioner Bassett asked if that was the date that the minutes became official.

Mr. Rael stated no the minutes were approved in February of 08 because the Minutes were not ready in January and so they approved them at the February meeting and there was a discrepancy between what our Planning & Zoning Ordinance stated and what our actual policy was so they made an actual finding that night that it is the towns' policy that it is from the date of approval of them minutes. That is when the clock starts.

Commissioner Bassett asked if that was in February and not December.

Mr. Rael stated yes which was February and so Campbell had no way of knowing and they did raise that argument at that hearing.

Commissioner Fulwiler -ok and then asked if Commissioner Fleming had a question.

Commissioner Fleming - if we choose to recognize the 2005 vested rights argument, one of the things I am concerned about is the relativity of considerable sum. That is to say that I would like to hear your opinion about what prevents this argument for becoming an automatic extension for a developer what prevents us from our law necessitating an automatic extension because any developer is going to invest some amount perhaps it is \$10,000.00 or whatever but it may be a considerable amount relative to that developer- what prevents that from triggering an automatic extension.

Mr. Campbell responded stating that it was probably the United States Constitution. Without being flip, what your dealing with here are property rights and what you are dealing with is the issue of property rights and the fact that in this Country we value those very highly and one of the important aspects of property rights are the governments regulation of those property rights and when the government says that you are allowed to do something, you have passed this threshold and you are allowed to do something. Take the example that I gave of a building permit. Once you get a building permit and its your house and you start laying the foundation and building that, and lets take out the situation which you are building it not in the way that its approved, your building it in the way that you said you were going to build it on the plans, at that point a neighbor comes in and says to the' government, you must repeal this, you must rescind or void their building permit because they are building a house there. That would be improper that would violate that persons property rights, and so what the law has done and it is based on the 5th Amendment and the property rights that we hold valuable is that it says once the government has approved this and, it's not just enough that the government has approved this and you have expended substantial resources and the test is sort of variable but once you have relied on that, then you have got those rights. Then you have to be allowed to use those rights. So there are actually a couple of parts of your ordinances, if you go to the 2005 Subdivision Ordinance that may conflict with each other.

One is it says you have got vested rights in the definitions but on the other side if you have a preliminary plat it can be taken away if you haven't converted that to a Final plat within one year.

Commissioner Fulwiler called on Ms. Mahalick.

Ms. Mahalick - on your building permit example the government though has the right to limit the amount of time it can take you to finalize and can limit your building permit for completion within one year, two years, correct?

Mr. Campbell stated that there can be, I mean obviously when you get a permit and you don't exercise it, it can go away because your rights have, you have a right but it has not vested.

Ms. Mahalick - correct.

Mr. Campbell - so that is correct. If you don't act on it then you don't have, you have the right but you do not have the vesting.

Ms. Mahalick - thank you.

Commissioner Fulwiler called on Commissioner Wilhite for questions.

Commissioner Wilhite -on a building permit you have one year to complete the project. If it is not completed in that time then you go back to the issuing agency and ask for an extension.

Mr. Campbell - right.

Commissioner Wilhite -in the case of the state you pay the initial permit fee but you must comply with all the new building codes that have taken place in the year.

Mr. Campbell - that's right. He added, I think we have a very similar situation here where the permit was granted it was used, even though unlike a house you can't go out there on the ground and say, Oh yeah I can see that you have laid the foundations, what we have laid is the legal foundations for being able to do a subdivision and those are as real and as expensive if not more expensive then laying concrete foundations.

Commissioner Fulwiler - - he had a question about their list of expenses. He asked about Rodgers & Company asking if they are a well drilling company? Rodgers & Company Supplemental well drilling, there was a large amount of money spent on rigs moved around on the property drilling wells.

Mr. Campbell -you are correct that was in 2007, \$264,000.00.

Commissioner Fulwiler stated that it was also in 2008. He asked what was that all about?

Mr. Able - it relates to our agreement with New Mexico Water Services Company. We were trying to prove that well up. We are contributing that to the water services company as part of the Sandia Knolls improvement and water extension agreement that we had entered into with them.

Commissioner Fulwiler - so this was an agreement between you and New Mexico to deepen a well and prove up water rights for New Mexico Water?

Mr. Able - it is still our well at this point but we are contributing as part of our agreement with the water services company. It is part of the process of providing water to the subdivision whether we produce the water ourselves or New Mexico Water Services company does, I don't think it really matters but the fact is that we entered into this agreement in, or were negotiating it mid to late 2007 with water services company so at the time of those expenditures the idea of contributing that well to the utility was part of the agreement.

Commissioner Fulwiler asked why were you doing that in July of 07?

Mr. Able - that it was for the development of the well, whether or not it was in anticipation of that agreement or not, I do not know.

Commissioner Fulwiler - because you did not have an agreement with them in July of 07 did you?

Mr. Able - no it was not finalized, it had been negotiated for some time but the fact of the matter is that whatever investment we made in that well will become part of this agreement with water services company. I can not testify that it was made in anticipation of, but the fact is it made that well a lot more valuable to the utility.

Commissioner Fulwiler -, so that your point here of vested right is based on expenditures, some of these expenditures are prior to having an agreement with the Town of Edgewood.

Mr. Campbell - they made sure and said that too, although they were not prior to the development agreement that we made with the Town of Edgewood as Mr. Rael has pointed out was some years previous.

Commissioner Fulwiler -, you had to prove up water.

Mr. Campbell - I believe that is in the development agreement that we are going to have to provide water to any development that we do, that's certainly an essential.

Commissioner Fulwiler asked if Commissioner Turner had a question.

Commissioner Turner - yes. She asked Mr. Campbell if she may revisit Commissioner Flemings question about time line and to set the context she quoted from the December 17, 2007 minutes on page three where it says Paul Ruso of New Mexico Water Services Company testified that improvements had been made to the Sandia Knolls water system since acquisition and that a water service agreement and permitted expansion are still being worked on with the Public Service Regulatory Commission and she had a couple of questions but the first one is, is that permit still in the works? Is it progress? Has it been completed?

Mr. Able confirmed that she was asking about December 11, 2007.

Commissioner Turner stated yes.

Mr. Able - at that time the expectation, and I will testify based on my knowledge with my working with New Mexico Water Services company. At that time the expectations was to go to the PRC and seek an extension of the service area to cover this subdivision in addition they would be seeking a point of diversion so that they could put some of their water rights into this wheatfields well that we talked about. That was done after that meeting. After filing for the extension of the service area objections were posed to the PRC regarding the ability of the water services company to use the 160 acre feet of water rights. There was an assertion that in connection with the purchase of the old utility that the PRC's order designated these water rights as not being surplus. So there was a dispute over the language.

Commissioner Fleming asked who made this assertion?

Mr. Able - it was the Sandia Knolls Homeowners association along with another group of individuals.

Commissioner Turner asked if this impediment to New Mexico water supplying water arose after your request for preliminary plat approval?

Mr. Able responded stating yes this part of it, in fact.

Commissioner Turner stated that I guess my question is, I was under the impression that this impediment existed in some form before, that that case predated your coming before the Commission.

Mr. Able -, actually not there were interpretations by individuals in Sandia Knolls that the PRC's order in 2006 restricted the water services company from using those surplus water rights anywhere else other then Sandia Knolls so the PRC advised the water services

company that it would be best to resolve that issue at the outset. So we have spent the last year, literally, trying to resolve whether surplus water rights means that those water rights are restricted only to Sandia Knolls or that they are rights owned by the water services company and they can be used anywhere. I think it was on December 16, the PRC determined that, of 2008, that those water rights were rights held by the utility and that they could be used anywhere and that they could be used as part of the service area extension into Campbell Ranch. So now we are basically back at step one where now we are, will be moving forward with the PRC to request an extension of New Mexico water Services Company utility service area to provide water service to this new subdivision.

Commissioner Turner asked, so you are going to request it, you do not yet have permission to do that. Is that fair.

Mr. Able - the PRC has determined that the utility can use those water rights to service Campbell Ranch.

Commissioner Turner asked if it would be the State Water Engineer that would give the permission to expand your service area.

Mr. Able - the PRC, and by the way we are not a party to this action but we are relying on the water services company because they committed to provide us water so it is their dispute to deal with but the water services company is now in front of the PRC seeking an expansion to the service area in order to provide water like they committed to.

Commissioner Turner -, so it is in progress it is not yet complete.

Mr. Able - yes it is in progress in fact the hearing is scheduled for May 28 and 29th to hear the extension request.

Commissioner Turner - she had just one more question.

Mr. Able - and again this issue was brought at the request of the PRC in order to have it resolved so that they could avoid any future litigation was unanticipated by both the water services company and Campbell.

Commissioner Turner -right. So this was in progress at the time the Commission in December of 2007 approved the preliminary plat, so the minutes aren't really accurate?

Mr. Able- no it wasn't, it was filed in May of 2008

Commissioner Turner - ok.

Mr. Able -the minutes may be incorrect but I know it was later in 2008.

Commissioner Turner -the minutes don't specifically say but I am assuming then that New Mexico Water Services did provide you with a will serve letter at the time that you brought forth the request.

Mr. Able - yes.

Mr. Campbell - this is part of the file in the preliminary plat.

Mr. Rael -Mr. Chairman that letter was provided November 13, 2007, would you also agree if you know, would you tell us whether or not that application had been filed with the OFC the application for supplemental water?

Mr. Able - he was not certain if it had been filed yet, New Mexico Water services is responsible for that we then talked about how many acre feet should be requested as a point of diversion, what the need of the utility would be in the case of mechanical failures and that sort of thing I am not one hundred percent sure if it has been filed yet but it will be filed very shortly.

Mr. Rael asked if the New Mexico Water Services Company currently operate just the on well then.

Mr. Able -he thought they had one production well but I believe they also have 6 other smaller well sources but from my dealings with them they felt it was important to have a larger, deeper supplemental well.

Mr. Rael asked if there was anyone here from New Mexico Water Services Company tonight.

A comment was heard from the audience.

Mr. Rael asked the gentleman to please come forward to the microphone.

Mr. Mark Manzuto a resident of Sandia Knolls stated that he was also a protestor to the OFC case and that they did file an application for the well.

Commissioner Fulwiler asked when that was.

Mr. Manzuto - that it was about two months ago.

Mr. Rael asked if Mr. Manzuto protested that application.

Mr. Manzuto - yes and that it has not been resolved yet.

Mr. Rael thanked him.

Mr. Campbell - you seem to be asking about whether hen we came in for our preliminary plat approval whether we had a reasonable expectation that we had water, and we did, because we provided as yow saw the will serve letter from New Mexico Water Service Company for water services so I think there was no question that you properly gave a preliminary plat but you also conditioned it on making sure that we could prove it up.

Mr. Rael -right, and I have one more question then for Mr. Abell if you would be so kind. Have you, is there water currently to the subdivision site at this time or are you still in the process of working with New Mexico Water Services Company.

Mr. Abell - our intention is for the Water Services company be our distributor of water to the site. Now do we have other water sources on the property, the answer to the that I believe is yes, but.

Mr. Rael - what water services do you have to the property.

Mr. Abell -that there are a number of wells on the Ranch but I am not an expert on water.

Mr. Rael - I guess I should state wells that will provide service to the future subdivision or is there anything there at this point on the property.

Mr. Abell - the only one that he was aware of is the one that we have been discussing, this wheatfields well to New Mexico Water Services Company as a supplemental water source.

Mr. Rael asked if this was located on the property.

Mr. Abell - it was located on the property.

Mr. Rael –what about any negotiations with Entranosa Water. Have you conducted any negotiations with Entranosa.

Mr. Abell - not recently I am not aware of what the discussions were prior to my arrival at Campbell although I know that there were negotiations with Entranosa.

Mr. Rael asked when Mr. Abell arrived at Campbell.

Mr. Rael stated that it was January 2008. He added that one thing he would like to point out also is that New Mexico Water Services company as well has relied to a substantial degree on the preliminary plat and had expended an considerable amount of money for it's efforts in furtherance of this expansion of its service area into Campbell Ranch and approval of the supplemental well in addition to the litigation in the dispute regarding these water rights. From my Knowledge I believe that the Water Services Company, we have been sharing legal expenses and they are approaching \$70,000.00 so we are not the only entity relying on the preliminary plat in connection with our business.

Mr. Rael stated that he had some questions for Mr. Campbell.

Commissioner Fulwiler -. He asked Mr. Rael if a vested right if there is one, does it preclude applicable application of Ordinances rules and regulations of the municipality or the state?

Mr. Rael - that he was not sure that he understood the question.

Commissioner Fulwiler - well we gave them conditional preliminary plat approval and they have not met some of these conditions, so they are saying they have a vested right I am wondering if that precludes these conditions that we laced on them

Mr. Rael - the answer was no in my opinion. First of all you need to make a determination as to whether or not they have a vested right and you can approve or deny even if they do not, but secondly, I mean that Mr. Campbell is correct in that if our 2005 Ordinance does create a little bit of a problem because we have an affirmative statement in here that says that once they have a preliminary lat that they do have a vested right in the subdivision, so that would go to the. That kind of fills that gap that the current state court cases have. I mean it is right in the middle it fills that gap so the question is whether. The first question you need to find is whether or not they do have a vested right. And the next thing is hat is they do have a vested right does that preclude you from putting conditions on preliminary plat approval. My advice to the Planning & Zoning Commission would be no but it will be challenged. If somebody comes forward, the way that this 2005 Ordinance is written and asks for preliminary plat approval there is already a finding here that they have a vested right and so that would be challenged by that person if you were to deny a preliminary plat extension.

Commissioner Fulwiler asked if it was for something that was granted prior to the 2005.

Mr. Rael - no, I am saying that the 2005 Ordinance applies to.

Commissioner Turner stated, does it in this case.

Mr. Rael - that's a determination for you to make. I have put the evidence before the planning Commission that the development agreement with Campbell Ranch states that the 1999 Ordinance is the Ordinance that applies. You have also heard evidence from Mr. Campbell that there is not a definition of a preliminary plat in the 1999 Ordinance. But I have also laid forth evidence which states that there is a section that deals with plats in the 1999 Ordinance. So the first thing that the Commission needs to decide is whether or not you are going to apply the 1999 Ordinance or the 2005 Ordinance to the Campbell Ranch development.

Commissioner Fulwiler- and your statement was that the 1999 applies from a legal standpoint.

Mr. Rael -it is my opinion that as the Planning Commissions attorney that the 1999 subdivision Ordinance applies, yes.

Commissioner Turner asked if that was on the basis of the development agreement.

Mr. Rael stated yes it was on the basis of the development agreement.

Commission Fleming asked for a two minute recess.

Commissioner Fulwiler declared a two minute recess.

Commissioner Fulwiler reconvened the meeting and asked the question of Commissioners, Town Staff and the applicant if there are any more questions regarding vested rights that they have or statements to make otherwise I'd like to move on to the unavoidable and public interest part of this discussion.

Commissioner Bassett - he had a question of the vested rights stuff. You put in your thing here about how subdivider achieves vested rights to subdivision is that subdivision the verb or subdivision the noun.

Mr. Campbell -this was a good question, it's the Towns Ordinance but I believe that it means that we proceed along those grounds to subdivide or subdividing. I think you are right, usually in English when you put the word to in front you think that the next thing is going to be a verb and it may be that this was supposed to say, "to subdivide upon preliminary plat approval", but it does say to subdivision so I think it is permission to go forward with the act of subdividing.

Commissioner Bassett- going out and doing the work.

Mr. Campbell replied yes go do the work.

Commissioner Bassett- you have got a preliminary construction schedule here that was laid out for 2008, includes earthwork, sanitary sewer improvements, drainage improvements, water improvements, curb and gutter, utility, street improvements, what's been done out there on any of that stuff.

Mr. Campbell- on those issues we have been doing what you told us to do which was to prove up the water to make sure that we can actually do this. Without water we don't get to do all of those things that are on the hardscape list.

Commissioner Bassett - why not.

Mr. Campbell - well because people are going to expect if they've got homes in that area that they are going to be able to have bathrooms, and showers, and kitchens and sinks and so on.

Commissioner Bassett pointed out, but none of these things were about building homes, they were earthwork, sanitary and sewer improvements, drainage improvements.

Mr. Campbell - sure.

Commissioner Bassett added, those are all things that have to be done, you've got a plat right, that shows that stuff on there.

Mr. Campbell responded, yes assuming that you are going to be able to do something with the plat. The preliminary plat is not an end in itself. The end is that there can be people living there and that you can actually put capital out there and build structures. So to go out and start bulldozing and doing that kind of work without having the requisite rights would be foolish, and I can tell you Commissioner Bassett that I do this kind of work on land use law all over the state and particularly in Albuquerque these days, the reason people aren't following through with their preliminary plat is because they say, the economy, nobody is buying houses we are not moving forward, we are going to let it sit. Notice that we haven't said that tonight. We've said we've been spending money in 2007, 2008, and now. We have been spending money in reliance on this to do something that by anybody else's criteria might be foolhardy in this economy, but we are doing it and so what we are asking for is the time to be able to do this sequentially as we must.

Commissioner Bassett stated, ok you've had a year and I assume that when you got approval from the Town Council, you understood that at that time you had a year to prove it up.

Mr. Campbell agreed, that is correct.

Mr. Bassett - I mean you weren't unaware of that.

Mr. Campbell- absolutely.

Mr. Bassett - in your letter a couple of different times you mentioned that that was an arbitrary thing but I think if it is stated ion there like that it's not arbitrary it's pretty clear cut.

Mr. Campbell - if I said anything about arbitrary I didn't mean that the Towns action of approving the preliminary plat was arbitrary.

Commissioner Bassett - so you agree though that by stating that you have a year to do it, it's clear, plain as day that you have one year to go out and do all the stuff associated with that preliminary plat.

Mr. Campbell- that's correct.

Commissioner Bassett, - including the earthwork, sanitary/sewer, drainage and all that.

Mr. Campbell - no sir.

Mr. Rael - The Planning & Zoning Commission and then subsequently the Council did lay conditions upon Campbell for their preliminary plat but actually doing the dirt work

and things of that nature were not some of those conditions. The conditions were along the lines of pursuing their sanitary sewer was that they proceed with wastewater permitting with NMED and that they do a wastewater and drainage study. And so those are the questions we should ask Campbell Ranch tonight not whether or not they are actually installed or laid lines yet as those were not some of the conditions in effect.

Mr. Bassett - that those are conditions of any preliminary plat.

Mr. Rael - that they probably couldn't even begin with that until final plat approval actually. They couldn't actually start laying line and things like that.

Mr. Bassett interrupted, no people do that kind of work under the preliminary.

Ms Mahalick - yes.

Mr. Rael asked if they actually laid the lines.

Ms. Mahalick - yes.

Mr. Rael -fair enough but the point is that the conditions of approval, they did not have to lay any lines.

Mr. Bassett stated, but that comes with the preliminary plat. I mean they have the right, verb subdivision to go out and actually do the work.

Mr. Rael - ok.

Ms Mahalick -for clarity, that is what G & D's letter asked for so that they could move forward on the construction plans to submit final construction plans to the Town for the purposes of moving forward to do the earthwork and to get the approvals necessary because at prelim they did not have final construction plans, final grading and drainage, final fire, all those things they were asking for prelim to move forward on those aspects.

Mr. Rael – all that being said I still think that was not one of the conditions.

Commissioner Bassett stated, understood but the idea of preliminary plat they do have the right to go out and begin doing some of this work.

Mr. Rael - ok.

Commissioner Bassett- so my question is nothing has been done, you have not turned a spade full of dirt.

Mr. Campbell - he believed that was a correct statement, without the attribution that we haven't turned a spade full of dirt, we have done the kinds of things that I said, were invisible on the site, but are just as required as any of those things and that is to lay the legal foundation and the rights foundation to move forward with this. If you don't do those things, guess how many people are going to be here protesting the grant of those kinds of things.

Commissioner Bassett- but you got that permission with the preliminary plat right.

Mr. Campbell- right but if, as we have said this has been highly contested all along, in a few minutes you.

Commissioner Bassett - what has been highly contested.

Mr. Campbell- both the grant of the preliminary plat and the subsequent actions in front of other agencies including the PRC.

Commissioner Bassett- on the water.

Mr. Campbell agreed yes on the water, exactly.

Commissioner Bassett- one component of this is correct.

Mr. Campbell - it is one component but it is a pretty important component its one that in the interest of fulfilling what you have told us we have to do, we had to do that.

Commissioner Bassett - and do the other stuff.

Mr. Campbell - and we spent over \$300,000.00 this year doing just those things, and to spend additional amounts in something that may turn out to be a fools errand is not an appropriate expenditure of money.

Commissioner Bassett –I have a question on that expenditures thing also. I did a little calculating here and what I find is that only about \$66,000.00 has been spent since you got approval from the Town Council.

Mr. Campbell - ok if you would like to go down the list we can take a look at that.

Commissioner Bassett, stated, no we don't need to do that, I mean I looked at what was spent since you got approval last March.

Mr. Campbell - no sir, we got approval December 11, 2007.

Commissioner Bassett- yes you have clarified that tonight so you can add on an additional 27% to the 8% which brings you basically to 35% of that bill that you have there.

Mr. Campbell - we have actually made it easy for you to calculate if you figure that December 2007 is the end of 2007, then the column that says 2008 is added up at \$291,003.51. So if you allow us a shortened time frame that is we take out the last three weeks of December and just call it, you gave us the approval at the beginning of 2008 then the expenditures of 2008 were close to \$300,000.00.

Commissioner Bassett- but still its still only around 35-37%.

Mr. Campbell -, of what.

Commissioner Bassett -, of the \$832,000.00 and in your letter of December you had stated that \$832,000.00 figure is what had been expended, so obviously, roughly 65% of your spending came in before you got your approval from the P & Z Commission in December of 07.

Mr. Campbell – I do not feel that that really plays towards this issue of substantial expenditure. Obviously there were a great deal of expenditures and we have shown them prior to the grant of the preliminary plat. You require a lot of things for us to get a preliminary plat approved. Following that approval we spent additional amounts and as I have said earlier not all of the amounts are included in here, there is not one of the.

Commissioner Bassett-that's right because it only goes to October.

Mr. Campbell stated, that's correct it doesn't have all of 2008 and what we have done in 2009 and it doesn't have some bills that I know of, such as, bills for Consultants and

Attorney's are not listed on here. So the intent of bringing this to you was not to say I want you to do an audit of what this is, but to show you what we are required to show you is that there have been expenditures, substantial expenditures in reliance on your grant of a preliminary plat approval.

Commissioner Bassett, added, and substantial expenditures prior to that.

Mr. Campbell stated, indeed and those are not disqualified of course.

Commissioner Bassett stated, right.

Mr. Campbell- that's what it took for us to get here in the first place.

Commissioner Bassett, - what this does establish in fact you can expend a great deal of money without any approval or any plat correct.

Mr. Campbell- we did in fact spend a lot of money attempting to write the preliminary plat and subsequent then to the preliminary plat. In my world \$300,000.00 is a lot of money.

And I think in Campbell's Corporations world it is too.

Commissioner Bassett, - but like I say you don't necessarily have to have a preliminary plat in place to go and spend large sums of money on it.

Mr. Campbell- in fact, given the requirements that you have preliminary plats, you have to spend a lot of money in order to get there. Which sort of goes to out point, why would you want to have a process that requires people who want to invest in your community to spend, in this case over a half a million dollars to get a permit and then have that permit go out of existence 365 days later with no possibility of recouping that investment or in saving that kind of investment that they have made in your community. I mean that's where we did talk about, that kind of thing might be arbitrary, might be, might just be the kind of thing that you do when you want to have a fair process. And a fair process would require that you look and see, yes it did cost you a lot of money to get to the preliminary plat. And it has cost you a lot of money since the preliminary plat, we think that you need to continue investing in our community.

Commissioner Bassett- but if the preliminary plat was allowed to expire like tonight or whatever, the year from when it got approved. That doesn't stop you from going ahead from going ahead with your efforts on the water does it.

Mr. Campbell- sure it does.

Commissioner Bassett asked, how so.

Mr. Campbell- why would that effort be relevant because the first thing that the opponents will say is that your case is mute, there's no preliminary plat before the Town of Edgewood and therefore there is no need for the hearing before the PRC. You PRC can save yourself a whole lot of time, there is nothing happening there.

Commissioner Bassett - but you said that was between New Mexico Water Services Company and the PRC that you guys weren't involved in that.

Mr. Campbell -, that's correct.

Commissioner Bassett -, that's their request.

Mr. Campbell -, and the water services Company is doing this because they have the right, in fact they have the obligation to serve. They told you that they would provide water to this subdivision when you approved them over a year ago.

Commissioner Bassett - or as Mr. Rael, said, any subdivision out there. I mean they have to go to the PRC and ask about expanding their area of business.

Mr. Campbell- it's true but they are not going there with a hypothetical, we would like to someday expand our, they have actual documented approval by the Town of Edgewood that says the Town of Edgewood will allow this subdivision to go forward and that allows them to be there and to have hearings in front of the PRC.

Commissioner Bassett- so New Mexico Water Services whole case rests on this thing being extended.

Mr. Campbell -he could not speak to, I mean I wish we had Water Services people here tonight to talk about their case and what their issues are. But I can say that it is extremely important that Campbell Corporation have the preliminary plat and have the extension so that those conditions that this body placed on them can be achieved.

Commissioner Bassett- so it is a chicken egg thing, which came first.

Mr. Campbell-, I don't know, I don't think so. I think to some extent this is a very intricate, and expensive dance, and we started this some years ago with the development agreement and then last year with this subdivision and it involves a great deal of communication and cooperation back and forth with the municipality and that's why we are here and that's why we have been coming to you since last fall is to say, look this is taking us longer then we thought to do the things you want us to do, can you give us some more time and really that is all we are doing here.

Commissioner Bassett - I will stop for now, I'll have some more questions later.

Commissioner Fulwiler called on Commissioner Turner.

Commissioner Turner-yes Mr. Campbell, I have three questions for you, I hope I can keep it brief. I think that we would agree that, no matter which subdivision Ordinance we go under it is incumbent on the applicant to demonstrate a sufficient quantity of potable water. Is it your opinion that the applicant has sufficiently established that.

Mr. Campbell- that we believe that they have, in fact you believed that they had on December 11, 2007, because you were provided with evidence to that effect.

Commissioner Turner - yes I understand that. My other question, and I hope these are interrelated and it will become obvious later, has the applicant made progress on any of the other conditions that were laid down by the Planning & Zoning Commission.

Mr. Rael - Mr. Chairman we should deal with that under the unavoidable delay section, whether or not they have made any progress on the other conditions.

Commissioner Turner- well I think that it gets back to as Commissioner Bassett stated, a chicken or the egg situation here. Legally speaking the applicant has demonstrated a sufficient supply of water on the other hand this lack of progress in this area is cited for the

reasons for them not having them move forward with some of the other conditions and I think that plays into both the ideas of what is in the public interest and whether or not these delays were unavoidable. So it seems to me that it is going to be very difficult for us to unpack the fact that while legally speaking they have demonstrated this water, practically speaking it doesn't exist at this point and that is going to be an intractable delay it appears to me. You know I would be glad to defer until a later point in the hearing if you think. Mr. Rael - no we can proceed with it at this point in time, that was one of the sections that I was calling Mr. Abell up to testify tonight. Mr. Chairman at this time I can do that if you'd like.

Commissioner Fulwiler- yes please.

Mr. Rael called Mr. Abell up to testify and asked, Mr. Abell you are aware of the letter dating November 10, 2008 submitted on Campbell Ranches behalf by David Campbell to the Planning & Zoning Commission is that correct.

Mr. Abell - which date.

Mr. Rael- November 10, 2008 letter which is your request for preliminary plat extension. You are aware of it and have read that letter.

Mr. Abell- yeah, I can't recall the contents of it.

Mr. Campbell- why not ask me.

Mr. Rael- well.

Mr. Campbell - yes I have it. It's to Gary Chemistruck, vice chair of the P & Z, yes.

Mr. Rael asked, has Mr. Abell read that letter.

Mr. Abell - yeah, back in November.

Mr. Rael - I am going to ask you specific sections so you will be able to follow along.

Mr. Abell- ok that's fine.

Mr. Rael - Mr. Chairman I ask that this letter be made, well I guess it already is part of the exhibits of the hearing, but at this point I would like to ask Mr. Abell some specific questions regarding whether or not any progress has been made on some of the conditions of approval that they required. Mr. Abell what progress if any has been made on the application for the highway access permit.

Mr. Abell asked, are you citing from the letter.

Mr. Rael stated, no, some of the things I am going to ask you were based on some of the items that you laid out that you had done in reliance.

Mr. Abell- I ha no involvement in the highway, I'm sorry is it the highway traffic application.

Mr. Rael- it is the highway access permit.

Mr. Abell - highway access permit. I have had no involvement in the highway access permit so I can't testify.

Mr. Rael - do you know so you do not know whether any progress has been made on applying for and receiving the highway access permit.

Mr. Abell- no.

Mr Rael - ok. Mr. Campbell do you have any other witnesses that can provide any information this evening as to whether or not any progress has been made on the highway access permit.

Mr. Campbell - no, I am not sure what you are reading from, I am looking at your decision that is dated December 11, 2007 and, is that, are we dealing with the same document.

Mr. Rael- it is one of the conditions that laid on you as a condition of the plat

Mr. Campbell - you can just identify the document that you are.

Mr. Rael- I guess, let me just retract that question and I'll go this way, on the Planning & Zoning Commission's December 11 decision, did you, let's see. During that hearing you were asked, Mr. Abell, if the highway access permit had been applied for, which had been a condition of the platting do you know if whether or not a highway access permit has been applied for by Campbell Ranch.

Mr. Abell stated, no I have no knowledge regarding that application, whether it has been applied for or whether it has been granted.

Mr. rael asked, do you know whether or not Campbell Ranch has applied for an NMED discharge permit at this point, a New Mexico Environment Department wastewater discharge permit yet.

Mr. Abell- no I have no knowledge of that.

Mr. Rael - Mr. Campbell do you have anyone here this evening that can provide information as to whether or not Campbell Ranch has applied for a wastewater discharge permit.

Mr. Campbell- do I don't, and you are talking about drainage.

Mr. Rael- no I am talking about waste water system, one of the conditions was you apply for an Environment Department water discharge permit.

Mr. Campbell- I do not have that.

Mr. Rael- do you know if any progress has been made regarding.

Mr. Campbell interrupted, I will point out that the December 11, 2007 finding by this body said, under wastewater, discharge permit pending.

Mr. Rael - right, so I am asking you if any progress has been made on the discharge permit. Do you have any evidence to put forward this evening as to whether or not any progress has been made on the discharge permit.

Mr. Campbell- I do not.

Mr. Rael - ok. In the letter from G & D LLC which is part of the exhibits which you submitted this evening, under number tow there it states that New Mexico Department of transportation permit is required for access to NM Highway 14. That is one of the conditions of Campbell ranch Preliminary plat. You stated.

Mr. Campbell - could you show me where that is in your decision, not the G & D Letter, but the decision of December 11, 2007.

Mr. Rael, - no I am saying that it is contained in the G & D letter. The G & D LLC letter.
Mr. Campbell- ok.
Mr. Rael, - well let me just ask it this way and we can come back to.
Mr. Campbell- I mean this was, you are talking about before the grant of the preliminary plat.
Mr Rael- right but I want to go.
Mr. Campbell- I mean what it says in the G & D letter is, traffic study has been completed and we showed you earlier that we had expenditures for the traffic study and it says that upon approval of preliminary plat the applicant will submit to the NM DOT the application for the access permit which will include the completed traffic study and what we have told you is that we don't have somebody here tonight to tell you about that
Mr. Rael - whether or not it was submitted to, the permit application was submitted to the department of transportation.
Mr. Campbell- right, that is correct.
Mr. Rael- next let me ask you some questions regarding the, wait, I am sorry, let me just finish, you do have any evidence this evening as to whether or not you have submitted that permit to NMDOT. Mr Abell testified to that.
Mr. Campbell- whether we do or don't we don't have the evidence of that here tonight. We didn't bring a witness to that effect.
Mr. Rael - ok. Have you brought a witness that can testify whether or not all waste water and drainage studies have been completed, or what progress has been made in that area.
Mr. Campbell - I can not.
Mr. Rael - Mr. Abell can you testify to that.
Mr. Abell- no I can not.
Mr. Rael- Mr. Abell can you testify as to what negotiations if any there have been with Bernalillo County regarding the public improvement district.
Mr. Abell- yes, Bernalillo County after some negotiations between Campbell and Bernalillo County prepared an intergovernmental services agreement to provide fire services and emergency services to the subdivision.
Mr. Rael- and that agreement is complete, it is your testimony that it has been fully negotiated.
Mr. Abell - well to the extent that it can right now we have a form that is intended to be provided to the Town of Edgewood when the time is appropriate and that is when we have water resolved. A year ago we did not expect to be still in the process with the PRC. When we are at point in time and we have some confidence that the matters at the PRC and the OFC will be resolved, we will move forward with presenting that agreement to the Town of Edgewood.
Mr. Rael - so has that agreement been approved by the Bernalillo County Commission.

Mr. Abell- no part of the process was that the draft agreement be submitted to the Town of Edgewood, be considered and then presented to Bernalillo County.

Mr. Rael- at that time.

Mr. Abell - at that time. It has been approved by John Dauntess and his staff but not by the County Commission. Now because of the time delay I expect that I will need to go back to the County just to ensure that the numbers are accurate, At this point it is a fee for services and a monthly charge. Their budget changes from year to year o I will need to back and make sure that those numbers are appropriate for 2009. But to the extent that we have a form of agreement that is ready to go that is the case.

Mr. Rael- so it is your testimony that you are going to wait to submit that to the town until the PRC issue s resolved.

Mr. Abell- well, when we get to a point that we are comfortable that the process is moving along quickly, and I think that we may be getting to that point. I am not a water lawyer. I need to consult with New Mexico Water Services Company to determine how quickly they think the point of diversion application will be approved, but when we get to a point where we are a month or two away, maybe tow or three months then I will come to the town staff and present it to them and work with the town to get it presented to the Council. But I have been asked to follow that procedure by Bernalillo County, so it is important, we are trying to work with two different municipalities.

Mr. Rael, - the county has reviewed then and commented on the agreement and it is in a form that is acceptable to the County.

Mr. Abell- well John Dauntes, yes the County staff but it has not been presented to the County Commission.

Mr. Rael, - but it has been reviewed by County Legal I assume.

Mr. Abell- I assume so.

Mr. Rael, - and Mr. Dantes what is his title in the County of Bernalillo?

*****Uniteligable****

Mr. Rael- so has it been approved by Thadeus Lucero, the County Manager.

Mr. Abell- no I have only has direct dealings with Mr. Dantes, I think he is in charge of the fire and emergency services Public Safety.

Mr. Rael- Mr. Abell what is your testimony this evening regarding submitting a renewed PID application to the Town.

Mr. Abell- well I am not an expert on the PID statute but it is my understanding that the next step in the process is for the Town to form the PID. It is also my understanding that from speaking with Peter Franklin that all the basic documentation has been completed and that we would be in a position to get the PID process running basically at a time when we had an agreement with Bernalillo County.

Mr. Rael-, are you aware that the Town adopted Resolution 2005-14 and that a public hearing was held approving the formation of the PID on July 13, 2005.

Mr. Abell- yes.

Mr. Rael -ok.

Mr. Abell- that was the first step in the process. I believe there was a 90 day period for the Town to act and that was tabled for whatever reason. I was not here at the time. This is just my understanding based on my discussions with Peter Franklin who is our Attorney representing us with respect to the PID.

Mr. Rael- ok, and is Mr. Franklin here this evening.

Mr. Abell - no. Again much of the PID process is determined on whether New Mexico Water Services can provide water to the subdivision.

Mr. Rael- Mr. Chairman I will have further questions for Ms. Mahalick I'll need to put her on.

Commissioner Fulwiler- ok. Are there any further questions for the applicant or the representatives for the applicant. Commissioners, yes we can move on to the other two pronged unavoidable and in the public interest. Mr Rael when would you like to question Ms. Mahalick.

Mr. Rael- lets just ask Mr. Campbell if he has anything else to add about, I believe he has already gone through his arguments on unavoidable delay and public interest, but ask him if he has anything else to add and then we will allow the public to cross examine Mr. Campbell if they would like.

Commissioner Fulwiler -ok, Mr. Campbell do you have anything to add.

Mr. Campbell- with respect to the unavoidable nature of this, I have addressed that earlier and we addressed it in our letter, but let me also say and be brief about this that in our system of land use laws we value highly the participation of people in that process, what has been both part of the unavoidable delay and part of the public interest is the participation of a lot of people in this process. We finished here at the Planning & Zoning Commission on December 11, 2007. Three months later we had an appeal hearing before the Town Council and beginning really with the conclusion by the Town Council to grant the preliminary plat. The process for achieving these other activities especially the really big one which was if you are challenged about your water that began immediately, that began right after we were approved we went to our or our surrogates, Water Services Company went to the PRC to begin that process. We have showed you, you have series of documents here that show the contentiousness of those proceedings and the delays occasioned, not by Campbell or by New Mexico Water Services Company but by the process that we value which is a process that allows Sandia Knolls Neighborhood Association and others, to participate, in this to object, to ask for delays to ask for deferrals and to essentially bring us to the point that we are now today, where we have gone a year and not had resolution to that water question. So from the standpoint of, these are things that are in the public interest that we value which is a great deal of public participation. And you will hear it again tonight. In looking at all of the documents you will see that if

this had proceeded, and I don't want to say without objection, but if it would have proceeded in a fairly routine way that developments happen the water situation would never have been raised and we wouldn't have had this detour through the PRC it would have in fact been busy getting water service on the site within weeks and then moving forward to the other things that Commissioner Bassett points out we ought to be doing, which is moving yellow trucks on the site and digging things up and doing that sort of thing. So the issue really has been clogged by this process that we have talked about at some length tonight. So I think that from the standpoint of both the unavoidable delays that have not been occasioned by Campbell and the interest that the public has in continuing to have public hearings and a full airing of the water issue that is in the public interest and should be allowed to serve as the second prong of this test.

Commissioner Fulwiler - ok. It seems like water has been quite a slippery slope for Campbell Ranch from the very beginning, but I would like to have your best definition of public interest is.

Mr. Campbell- I think there is no one definition of what is in the public interest. What we've said is the public, which is you, has established a certain set of processes and those processes are known, they are fair, they are knowable ahead of time and they allow for people to know what to expect and when we go through a process that starts with preliminary plat and we make the expenditures that were required that we make before we get here a year ago, that's of interest to the public. That as Commissioner Bassett points out that we spent a whole lot of money, like over a half million dollars getting to that point where you would approve a preliminary plat. That is in the public interest that you have that kind of value coming to the table. This wasn't a back of the napkin kind of preliminary plat. This is something that we invested a great deal of time, expertise and money into. What that does is that assures that the public interest is going to be met, that we will have a safe, a great place for the public to live, and it is your job to insure that we follow, that we protect the public health, safety and welfare. So the expenditure of those kinds of funds both prior to the preliminary plat and after the preliminary plat are in the public interest because you don't want a back of the napkin kind of plan. Then you will have all sorts of trouble back at the end. It is also important that these matters get fully aired in the public. You have seen that, you've seen it here but what you haven't seen is that they are getting aired in other agencies around the state and I think that that is also in the public interest, so that the public has an opportunity to participate in this process. Granted, it makes it longer, it takes a lot more time to do it that way but it is better than having one sort of development czar stamp approval on a napkin for example and say yeah then go ahead. The complexity of your system is in the public interest. The dilemma with that complexity, however, is that you can't always do these things in a relatively restricted amount of time. Especially when you're doing it the first time. I think after, When Campbell Ranch has done several of these and they have moved along to different

territories and so on it won't take so long, but when you are doing the first one and you have folks who are very committed to not having that first one happen, that's when a year is simply not enough time and it is in the public interest to have this fully heard and fully aired and that's why we think that this one meets your criteria for having additional time. Commissioner Fulwiler called on Commissioner Fleming.

Commissioner Fleming- we've never, if I recall correctly from the December meeting that we have never granted a two year extension before, you are asking for two years does this constitute special treatment for Campbell.

Mr. Campbell- I don't believe so and given what you have seen tonight there are a lot of things to do, we are asking for adequate time to be able to accomplish them. I don't think this is special treatment for anybody. I don't know how many other subdivisions of twelve hundred eighty nine acres you have had come through of this nature.

Commissioner Fleming- right, are you suggesting that the original allotment of time would not have sufficed.

Mr. Campbell- no I am not, I mean as I said just a few minutes ago if this had been a more routine kind of process, I mean the water situation, had there been somebody who said, yes I can prove up this water and there were not any questions out there by a major subdivision nearby that it wasn't going to happen, I think that this would have been a, perhaps it would have been an adequate amount of time or we may have said look we need another three or four months. But in this case there is a lot.

Commissioner Fleming- the issue could be resolved by early July correct.

Mr. Campbell- well I don't know, the issue.

Commissioner Fleming -with respect to the issue of water.

Mr. Campbell -the issue of water can be resolved by July but Commissioner Bassett has pointed out that there are a number of other things that happen once that is done that need to happen on a reasonable basis also. And one more thing I might suggest to the Commission is that knowing as you do that this water situation may get resolved as soon as this summer, there may be some guidelines or some targets that you want to tell the developer they have to hit.

Commissioner Fleming- you can see how I got confused, perhaps, right, given your earlier statements using the hypothetical situation had there been no issues regarding the water this could have proceeded nominally, however you've had these issues and perhaps that is one of the reasons why we are here, however you are asking for a two year extension and that may say to some folks in the community that even without that water issue you may not have had enough time, I am just wondering, I am trying to resolve that contradiction that may arise for some folks in the community, do you understand.

Mr. Campbell- I am not sure if I hear a question there Commissioner.

Commissioner Fleming- are you suggesting that if the water issue is resolved in June could you get all the ducks in order as it were by June 2010 or July 2010 a year from that date.

Do you think that Campbell ranch will be ready for final plat approval. That you would have satisfied all of the requirements in the pre-plat agreement you will have to forgive me I am getting a little tired

Mr. Campbell- I am not an engineer and neither is Mr. Abell but given a resolution to the water thing and then a date certain after that or a period certain after that to say you have to get it done within that amount of time, lets say what you have suggested is get the water thing done and then a year that sounds like a fair way to go.

Commissioner Fleming- because, I think you know why I may be asking this I am wondering if it is in the public interest to, I am wondering if it is in the public interest to grant you your extension, we haven't done that to the best of my recollection with any other applicant and you replied, well this is a development of significant magnitude and I understand that but there is this public interest argument that we have to pay attention to. I will Silence myself and defer to anyone else at this point.

Commissioner Fulwiler called on Commissioner Bassett.

Commissioner Bassett- in your November letter of 08 you eluded to the possibility that you and the people of Sandia Knolls might reach an out of court settlement so to speak. Has there been any progress or any effort made in that direction, maybe settle the matter of the water out of court so to speak.

Mr. Abell- I will testify only to the extent of my communications with the water services Company. It is my understanding that a settlement, the idea of a settlement was proposed to them by New Mexico Water Services Company and that it was rejected by the representative. So the idea of a settlement on that right now is tabled, But Mr. Campbell makes a good point that after that November 11 letter a decision was handed down by the PRC resolving the dispute involving those water rights.

Commissioner Fulwiler - ok are there any more, yes you have one more Commissioner Bassett.

Commissioner Bassett -in that inter-government agency thing or whatever that you have going between Edgewood and Bernalillo County and stuff. There is a thing in there for Edgewood to pay an \$8,000.00 hook-up fee to hook up to Entramosa.

Mr. Campbell stated, ok.

Commissioner Bassett- I mean if Edgewood can hook onto Entramosa there why can't you guys, if they are right there and available to Edgewood.

Mr. Abell - there is nothing in the agreement with Bernalillo County that relates to Entramosa or water or anything.

Commissioner Bassett- this one here does, it's a draft proposal but duties of the Town.

Town agrees to pay the County the sum of \$8,000.00 this represents a one time hook up fee to Entramosa Water Co-op on page 2.

Mr. Abell - right

Commissioner Bassett - I mean if the water issue is killing you and they are right there and the Town can get clipped for \$8,000.00 to hook onto it surely you guys can cut a deal with them.

Mr. Campbell- we are not being asked I think, in the PRC as to whether we can hook a hose to somebody else we are being asked whether the water rights and the extension of the service area are appropriate for this subdivision and for New Mexico Water Services Company.

Commissioner Bassett - but tonight you are being asked by us if you can come up with a source of water and if Entramosa is sitting right there and you have a provision in your agreement for the Town to hook onto them doesn't that make also available there for you guys.

Mr. Abell - that there were negotiations with Entramosa but the company determined that the terms were just not feasible for the company in fact entering into a partnership with a utility that's right on the border of our property makes a heck of a lot more sense than building a pipeline to Entramosa. The other thing that I just want to point out is that this fee if any would be paid for by Campbell Corporation, it would be passed through it wouldn't be paid by the Town of Edgewood, regardless of, that's the only water apparently, possibly the only water service that the county believed was available. Again the County drafted this agreement.

Commissioner Fulwiler- perhaps there was something to do with the cost of the water, but I think we need to move here unless we have some new subjects or ideas. I would like to hear from the public, they have been sitting here very patiently and I would like those that are in favor, anyone in favor of this extension of this preliminary plat, from the public to stand up and speak. If not anyone in favor we will start with those opposed and would appreciate it as each new person comes up, if you have something a little bit different to add then the person before you that would be nice and try to keep your comments to a reasonable amount of time but we do want to hear from all of you so who would like to go first. Ok as each one comes up could they please state their name and address for the record.

Ms. Janet Winchester-Silbaugh I live at 51 Pinion Heights Road that's in the Knolls, Sandia Park, New Mexico and I did sign in. I am part of the Sandia Knolls Homeowners association and we are interveners in the PRC case, and if there was a decision that had already occurred that gives, that clarifies that the water rights currently used in the particularly designated service area can be used anywhere I'd love to see it, haven't seen it yet you may be referring to some ????(wave 27 at 1.43 sec.) out there but I didn't know about it. Water has been a big deal, you know it is a big deal. You put it your annexation agreement in 2001, right. And then so, you knew it was going to be a problem. Then in, what was it in 2006, 2007, is that when the big long, that deep well was drilled. That well was drilled when Campbell was originally going to use its own water rights to produce it's

own water. That's that supplemental well you are talking about, S2073 I believe it is. Well something happened then, Campbell withdrew their well application, and then in March of the year after that as somebody here alluded to the OFC said that Campbell did not have water rights in the Sandia Basin. So their water rights were under question. They thought they had them, I guess, based on cows and historical farming but OFC said, you know we really have to figure this out because the water rights for that many homes is a good deal different than a hundred cows going on the property. And so Campbell withdrew its well application but it had the well in the ground. After that it went to New Mexico Water and said, would you provide us water and in November of 2007 they wrote that a one sentence letter, Paul Ruzo wrote you guys that one sentence letter, that said we will provide water to 750 homes in Campbell Ranch pending application, pending approval by the Regulatory agencies. I think that was the entire letter, any way you may have it in your files. That letter quickly summarized an agreement, I don't know how many pages is that agreement 12, 16, that has a lot more detail in it between Campbell Ranch and New Mexico water, but there are a couple of really interesting things about that agreement, it gives lots of outs to New Mexico Water and interestingly enough the water agreement lasts I believe 7 years, so it's not, while it may have seemed to you all that water was a done deal, just a check off from the PRC and a check off from the OFC, water was a really squishy deal even then and if you read the contract as I would read it, I am not a Lawyer, but there are lots of outs in that agreement that I would think would indicate that everybody knew that water was a big problem. Sandia Knolls.

Mr. Rael asked, let me interrupt you for just one second. Mr. Chairman it is important to remember that we have already made a determination and granted preliminary plat approval, that there was a sufficient supply of water so I would ask that you maybe clarify for public comments that they need to comment only on whether or not, the only things before the board this evening are whether or not the delay was unavoidable and whether or not the granting of the extension is in the public interest. So those are the two things that you should consider those are the two things that you should hear testimony on this evening, those are the only two things before the Commission.

Commissioner Fulwiler- did everyone hear that I hope that's going to speak, so try to keep your comments, I appreciate the history and I do have a question about that in just a moment but please go ahead.

Ms. Wincheter-Silbaum- the reason that it's important at least to me is because when the preliminary plat was applied for with the twelve month time clock running I thought it was pretty obvious it was going to take a whole long time to solve all these issues, I thought that was fairly predictable when Campbell actually applied for the plat that water was going to take quite a while to solve to get through there are two separate proceedings that we have been talking about, the PRC proceeding which continues, there is a hearing on the 26 and 27, anyway and that maybe decided that also, it may be appealed who knows what will

happen with that. I think if you look at typical PRC proceedings they take quite a while there is also a OFC. PRC, they deal with pipes and pumps, the water infrastructure itself. They don't actually deal with how much wet water is in the ground OSE? figures that out, OSE.

Commissioner Fulwiler -does this have to do with in the public interest or unavoidable.

Ms. Winchester-Silbaum - the unavoidable is that it was predictable before hand so when Campbell Ranch said that they came to you applied for preliminary plat knowing that they had twelve months, when it was pretty predictable that it would take a whole lot longer then twelve months.

Commissioner Fulwiler- and it was predictable because.

Ms. Winchester-Silbaum - because typical PRC proceedings with this complicated a water rights and water situation and utility expansion is pretty complex.

Commissioner Fulwiler - you mean even before.

Commissoiner Fleming - December.

Commissioner Fulwiler - even before they were taken to the PRC by people opposed to it, it still would have taken over a year.

Ms. Winchester-Silbaum- yes.

Commissioner Fulwiler- in your opinion.

Ms. Winchester-Silbaum- yes in my opinion.

Commissioner Fulwiler- ok, great.

Ms. Winchester-Silbaum- if you just look at typical PRC particularly of this magnitude.

Commissioner Fulwiler asked, so that is something maybe the water company knew but not necessarily Campbell Ranch might have known.

Ms. Winchester-Silbaum, - I think Campbell Ranch has been around water for a while and played with the issues I suspect that they could have figured it out as well. I don't know that I can't speak for them. I am just saying that if you read the news papers and you look at PRC processes and OSC processes you know that they go on for a long time, they are complex.

Commissioner Fulwiler- ok, alright.

Ms. Winchester-Silbaum- the reason, it is in the public, the reason we are concerned about public interest is because Sandia Knolls did protest that water application because we are really concerned about that water application. We are concerned about it for a couple of major reasons, one is that as you know Campbell is large 4,023 pretty much doubles the population of North 14, doubles it. That is a big expansion.

Commissioner Fulwiler asked, now isn't that something that is going to be decided by the PRC, as to whether they have those water rights or water available for extra use and that's not within our perview, we can't make that determination.

Ms. Winchester-Silbaum - the PRC.

Commissioner Fulwiler- I understand your grievance and your concern. I live in the East Mountains also but I don't see where that's germane to unavoidable or in the public interest.

Ms. Winchester-Silbaum- the reason I think it's in the public interest is because the Town of Edgewood is because the public cares very much whether the people in the East Mountains have enough water and so if you grant preliminary plat and encourage development when it is not clear if the resources are available there to support the development you put yourself in a position of perhaps supporting unsustainable development that might hurt other areas and that's why we believe it's in the public interest to take a broad view of these issues. Let me close with one thing. I am delighted, truly delighted to see the questions and the thoughtfulness and the background that is being put into these thoughts. You are right, water is not your issue. But on the other hand it's really important to me that with a development this huge, that will have such, such an impact on our neighborhood that you look at it very, very, very. Closely and expect Campbell to do a lot of really good planning before they come to you. So my request is that you deny the extension of the preliminary plat. That you ask Campbell, go back and get stuff done that you knew had to be done, go get your stuff in order, you can do that, that's a good thing come back to us when you have gotten those things in order, the waste-water, the traffic study, all that stuff that you knew needed to be done and then come back and resubmit your preliminary plat once you are ready to proceed.

Commissioner Fulwiler- thank you Mrs. Winchester.

Mr. Rael stated, the applicant has the right to cross examine Ms. Winchester-Silbaum.

Commissioner Fulwiler- you are right. Would you like to cross examine the applicant. Ok, who would like to speak next.

Ms. Julie Lynch testified that she lived on Lois Lane in the East Mountains which is about a half of a mile East of North 14 and Frost Road. I would request that you deny this extension and I can not comment o the unavoidable delay of all of these proceeding this is way over my head. But I can comment on the traffic that four thousand more homes will bring onto North Highway 14. I dread the thought of how many cars that would bring and the congestion that would bring and also I have a concern about the exploratory well it is about half a mile from or three quarters of a mile from my home and I am concerned that if it is used as a source of water that it will bring down the water levels at my home and my neighbors home drastically.

Mr. Rael- Ms. Lynch do you own a well, is your water provided from a well.

Ms. Lynch- yes.

Mr. Rael- and your neighbor is provided by the same well or a separate well.

Ms. Lynch- We all have our own wells.

Mr. Rael- thank you.

Mr. Campbell -that he had a question for Ms. Lynch.

Commissioner Fulwiler- go ahead.

Mr. Campbell begins speaking from the audience....inaudible.

Ms. Lynch- as in overall, yes. I believe so.

Commissioner Fulwiler- is there anyone else that is sworn in that would like to speak.

Anyone else opposed. All right Mr. Rael, you had some questions that you wanted to ask of staff.

Mr. Rael- yes I would like to ask a few questions of Ms. Mahalick. Could you please state your name for the record.

Ms. Mahalick- Karen Mahalick.

Mr. Rael- and your title. I am sorry, by whom are you employed.

Ms. Mahalick- by the Town of Edgewood.

Mr. Rael- and your title.

Ms. Mahalick- Community Planning & Development Manager.

Mr. Rael- and how long have you served in that capacity.

Ms. Mahalick -I have been with the Town since 1999 and I have been in the planning office since 2002, April.

Mr. Rael - Ms. Mahalick are you aware of the provisions contained in the Towns 1999 Subdivision Ordinance.

Ms. Mahalick- yes.

Mr Rael- are you aware of the provisions contained in the development agreement between Campbell Corporation and the Town of Edgewood.

Ms. Mahalick- yes.

Mr. Rael- would you describe your knowledge of those documents as extensive.

Ms. Mahalick- yes.

Mr. Rael- did you draft the 1999 subdivision Ordinance.

Ms. Mahalick - no.

Mr. Rael -did you draft the 2005 subdivision Ordinance.

Ms Mahalick- I helped to draft the 2005 ordinance, yes.

Mr. Rael- under the 1999 subdivision ordinance, well let me ask you this first is it your opinion that the 1999 subdivision ordinance applies to the Campbell Ranch Development.

Ms. Mahalick- as per their agreed, their development agreement, yes.

Mr. Rael- what are the conditions contained in the 1999 Subdivision Ordinance for granting an extension of a preliminary plat.

Ms. Mahalick- they have to show that it was unavoidable and that it is in the public interest, both.

Mr. Rael- to you knowledge has the Planning & Zoning Commission ever granted an extension for a preliminary plat.

Ms Mahalick, - yes.

Mr. Rael- how long was the extension granted for.

Ms. Mahalick- one year.

Mr. Rael- did the applicant make a showing that both the delay was unavoidable and that it was in the public interest to grant the extension.

Ms Mahalick- they did, yes.

Mr. Rael- what factors do you consider when making a recommendation to the Planning & Zoning Commission as to whether or not grant an extension.

Ms. Mahalick- if the applicant has moved forward in a timely manner to do some of the conditions of the final plat. If they have moved forward on their subdivision improvement agreement, on their finalized plans for the construction, if they have bonded the subdivision, and whether or not there has been any progress on any conditions that the commission may have placed on the plat.

Mr. Rael- when you look at the progresses and conditions to determine whether or not the delays were unavoidable.

Ms. Mahalick- yes.

Mr. Rael- do you look at those same items to determine whether or not the extension is in the public interest.

Ms. Mahalick- yes and additionally we look, the Planning Commission takes into consideration if that preliminary had design standards that were not compliant with the safety standards that the Commission has subsequently found to be inadequate and changed the Ordinance, then the Commission would look at that as a public safety aspect and would require the plat to change in accordance with that.

Mr. Rael- have you reviewed the application for an extension for preliminary plat submitted by Campbell Corporation.

Ms. Mahalick- I have.

Mr. Rael- in your opinion has the applicant demonstrated that the delay was unavoidable.

Ms. Mahalick- in my opinion, no.

Mr. Rael- and why is that.

Ms. Mahalick- because I believe that the applicant chose to move forward with this particular PRC case and did not move forward with any of the conditions placed by the Commission. There was no movement made from the engineering standpoint to bring the plat into compliance which was what was discussed when it was filed and we were assured by G & D LLC. that there would be further movement towards the public safety aspects, the grading & drainage was conditionally and briefly looked at by our engineers and it was not up to standard but it would be subsequent to preliminary. The fire access was not up to code and was said to be brought up upon approval of preliminary plat and they would work towards those issues for public safety. Bernalillo County addressing department had been contacted on November 17, 2007 for addressing the plat and one of the concerns was that we did not have an agreement for addressing, ours is Santa Fe County rural addressing so if we moved forward on the prelim which was the condition, it was understood that these

aspects would be worked on so there would be a rural addressing agency if there was some sort of plat finalized at some point and we don't have that. Subsequently, once the Mayor's race was decided and Mayor Stearley came on board, the draft agreement that was presented at a meeting with the Mayor and Campbell, was rejected by the Mayor as not adequate as it does not refer to police services and it was a flat rejection of the concept of only fire and EMS being on the table for the PID. We did have a PID committee, they never met and I gather from the testimony tonight that that is part of the unavoidable delay that is the Towns fault, and I disagree with that also.

Mr. Rael- have you had any further information from Campbell Corporations or their consultants regarding any progress that they have made on the grading and drainage.

Ms. Mahalick- no.

Mr. Rael -have you had any information on any progress they have made on the fire protection studies,

Ms. Mahalick- no.

Mr. Rael- any further information on the addressing.

Ms. Mahalick- no.

Mr. Rael- in your opinion, Ms Mahalick has the applicant demonstrated this evening that granting the extension is in the public interest.

Ms. Mahalick- no, I'd say the applicant has demonstrated that it is in their interest.

Mr. Rael- ok. Do you have anything else to add.

Ms. Mahalick- that I would just say that what I wrote in December still holds and I would not recommend a two year extension of the preliminary plat.

Mr. Rael- you are referring to your briefing memorandum to the Planning Commission dated December 1, 2008.

Ms. Mahalick- yes. I would further recommend that if the Commission considers anything that another extension in a year is going to cost us subsequent to that also, so these are things that while they claim that they have a vested right they can turn around, everything they have can be re-applied for in a years time also.

Mr. Rael- Mr. Chairman I no further questions for Ms. Mahalick however, Mr. Campbell has the right to cross examine her at this point.

Commissioner Fulwiler- Mr. Campbell would you like to cross examine Ms. Mahalick.

Mr. Campbell- thank you, no.

Commissioner Fulwiler- I have a question along those lines, if they reapplied are there any substantive things in the subdivision ordinance that would, maybe that's too broad of a question would they still be under the 1999 Ordinance.

Ms. Mahalick- unless they agree to change that and wish to come under the 2005 and then we would have to reach an agreement prior too. But nothing has changed that would preclude them from doing that. My only concern is that they have stated their water case, it appears that their water case might be contingent upon having a preliminary plat but again

that puts us in a position where we're weighing one water company against another and we are telling them to move forward litigating in favor of one so I didn't take that into consideration in my opinion.

Commissioner Fulwiler- can you give me your best definition of in the public interest, or an example of that.

Ms. Mahalick- I'll tell you what, I would say it's, do no harm. What serves the public and the public safety best and is it in the public's interest to continually litigate a subdivision case over and over. Is it in the public's interest to pay for Attorney fees for that purpose. Again, the applicant can reapply under the subdivision regs. so what we are doing tonight is providing the applicant a free check to move forward while we are paying for the expense and I don't think that's in the public interest. If this case is not resolved in a years time, I wager they will come forward again for another extension. We have never granted anything other then a one year and if they want to move forward, they could have moved forward with the grading and drainage, they could have moved forward with the subdivision improvement agreement. They could have organized somebody as a point of contact to move forward on the PID. The office is open, we are available to talk to anyone who wants to come in, but what we have seen from Campbell is that don't seem to have someone to do that and they are working on bringing people on board to do that.

Commissioner Fulwiler- ok.

Commissioner Turner- I have two brief questions and I don't know if this would go to Mr. Rael or Mr. Mahalick. Is it customary for Municipalities to give two year extensions on preliminary plats.

Ms. Mahalick- I can tell you in reviewing, when we did the review for the extensions and when we looked at others, Rio Rancho's was one year, Corrales was one year, and I did not look at Los Lunas'.

Commissioner Turner- the other question I had was that the extension was in the public interest, in your opinion is that a both, and/or either situation.

Ms. Mahalick- both.

Commissioner Fulwiler - are there any more questions from Commissioners, from Mr. Rael, comments or questions.

Mr. Rael- I just wanted to clarify one thing for the Commissioner and that.

Commissioner Fulwiler- before you speak I just want to say we are now closing this to public comment unless you.

Mr. Rael- yes I am sorry, Mr. Campbell has the right to rebut if he would like to, anything that was said.

Commissioner Fulwiler- I don't consider them the public but go ahead.

Mr. Campbell- I will not take very long but I did want to respond to the comments from the public. I felt that MS. Winchetser-Silbaums comments really went to the point that this really was an unavoidable delay. What she told you was that this was, that we should have

known somehow a year ago that this was going to take more than a year even in the best of circumstances, that this was predictable ahead of time, was her words that it was going to take longer from the beginning. I suppose if it was predictable ahead of time we probably should have asked for a couple of years back then, however you don't allow that in your Ordinance, you only say your allowed one year. So we are here on something that Ms. Winchedter-Silbaum said was predictable ahead of time. Also she spoke about this being 4,000 lots issue tonight, we are really dealing with 92 lots. The only thing that is in front of you is a 92 lot sub-division. Ms. Lynch, same thing and I asked her this to be sure, and she said yes it is about 4,000 lots and we are here tonight and the only thing that's in front of you is a preliminary plat for 92 lots that was approved a year ago it is not 4,000 lots. Any of those preliminary plats for any future sub-divisions would likewise have to come here and God help you. So, and with respect to Ms. Mahalicks' comments she seems to have picked out certain things that she normally gets to see here. Like grading and drainage, fire protection, rural addressing and so on. I think in the normal course of her job she probably rarely participates with the PRC or with issues of water. And I think what she is saying is that this has not come across her desk but it has and your instruction been, has gone to other agencies and not necessarily Ms. Mahalicks desk on these things. So for all of those reason, and the other thing to, having to do with the public interest, I don't think the public in interested in an expeditious process that is done without public input or that is somehow stamped off on by somebody with out any input. And the public interest is being met tonight by having a public hearing like this and it has been met throughout the year by having the series of activities and events and involvement at the PRC and in other agencies. It sounds like we are going to have some involvement at the State Engineers office as well. So in closing I really would implore this Commission to look at what Ms Winchester-Silbaum said and agree with her that a year ago we should have known that this was going to take longer then it has and Sandia Knolls has had something to do with how long it has taken because they have had that type of participation that is in the public interest. We think it is in the public interest that you grant an adequate extension. And if it is not two years then grant us adequate time to make the adjustments and to make the Final plat that you have asked us to make. Thank you very much.

Mr. Rael- Mr. Chairman I would like to add just one thing that I would like entered into the record this evening and that is the order on briefs and New Mexico Water Services Company's motion to strike issue before the Public Regulation Commission in Case Number 8-00177-UT. This order was issued by the PRC on December 16, 2008. And I just wanted to point out that we have had some testimony that their may not have been an order but I wanted to just read the findings from the hearing examiner and it states, and I quote, "Accordingly the hearing examiner finds that the Commission in case number 05-002-08-UTE, did not rule that New Mexico Water Services Company may only use the water rights obtained from IUC in IUC's then existing service area." End quote. So that is

the decision of the PRC which finds that the ruling did not intend for the water rights to only be used in that then existing service area. So that is the order that clarifies the issue that you have heard all the testimony about. I just want to get that out for the record.

Commissioner Fulwiler- thank you.

Commissioner Fleming- well procedurally where do we go from here.

Commissioner Fulwiler- well I was going to ask Mr. Rael on this motion that we need to draft here, or someone, do we rule on the, or make a motion regarding the vested rights or do we make it regarding the unavoidable and the public interest.

Mr. Rael- if the Commission is going to find, well I guess. I am wondering whether or not we should go into a closed session so I can give you some advice as your Attorney and that is up to the Commission as to.

Commissioner Fleming- Mr. Chair I move that we go into closed session.

Action: Commissioner Fleming made a motion to go into closed session.

Commissioner Wilhite seconded the motion.

Commissioner Fulwiler- I think we need a roll call vote on that.

Roll Call Vote started and was interrupted: Commissioner Wilhite voted aye

Commissioner Fulwiler asked, you had a reason on that as stated by the Attorney.

Mr. Rael responded, right so we are going to go into an executive session so that I can provide some, as the Commissions Attorney, to provide some legal advice regarding the testimony before the Commission this evening.

Commissioner Fleming asked, should I withdraw my motion and rephrase it.

Mr. Rael stated, just restate it. I guess I restated the reason as I just concur with that.

Commissioner Fleming stated, ok I'll summarize simply by saying that I move that we go into closed session for legal council.

Action: Commissioner Fleming made a motion to go into closed session.

Commissioner Wilhite seconded the motion.

Commissioner Fulwiler stated, ok a roll call vote.

Roll Call Vote: Commissioner Wilhite voted aye. Commissioner Fleming voted aye.

Commissioner Fulwiler voted aye. Commissioner Turner voted aye.

Commissioner Bassett voted aye. The motion carried unanimously.

Commissioners reconvened:

Commissioner Fulwiler stated, I am going to entertain a motion to go back into public hearing.

Commissioner Fleming stated, I move that we return to public hearing.

Action: Commissioner Fleming made a motion to return to public hearing.
Commissioner Wilhite seconded the motion.

Roll Call Vote: Commissioner Wilhite voted aye. Commissioner Fleming voted aye.
Commissioner Fulwiler voted aye. Commissioner Turner voted aye.
Commissioner Bassett voted aye. The motion carried unanimously.

Commissioner Fulwiler stated, I want to affirm that the only thing we discussed in this private session was the preliminary plat extension for Campbell Ranch the two Agenda Items that SU2007-12 and SU2007-11 and at this point I will entertain a motion from one of the Commissioners.

Mr. Rael- Mr Chairman have we taken a vote on whether or not to come back into executive session?

Commissioner Fulwiler -yes it was a roll call vote.

Mr. Rael- ok it was a roll call vote, ok, I guess I am tired.

Commissioner Wilhite stated, Mr. Chairman I would make a motion that we give the extension for one year from the approval of the water; if the water is approved within the next year. Beyond that I would ask that all other earlier requirements be completed within the next six months.

Mr. Rael- so Commissioner just to clarify your motion. When you say one year from approval of the water, you mean, do you mean one year from a final order in the PRC, in the request for New Mexico Water Services Company to extend their service area to this sub-division.

Commissioner Wilhite- yes.

Mr. Rael continued, so that is very clear and also Commissioner to further clarify your motion, you are saying that you would like the conditions that were previously imposed upon Campbell Ranch for preliminary plat, for them to be, for them to show progress to the Planning & Zoning Commission or to the planner I guess, to the Planning Department within six months of the date of this motion.

Commissioner Wilhite- yes.

Mr. Rael- ok

Commissioner Wilhite- six months from tonight.

Mr. Rael- six months from today. Thank you Commissioner.

Commissioner Fulwiler-do I have a second. And then we will have discussion.

Commissioner Turner stated, I will second for purposes of discussion.

Action: Commissioner Wilhite made a motion that we give the extension for one year from the approval of the water, if the water is approved within the next year. Beyond that I would ask that all other earlier requirements be completed within the next six months. Commissioner Turner seconded for discussion.

Commissioner Fulwiler- ok, would you like to contribute to the discussion Commissioner Turner.

Commissioner Turner- Commissioner Wilhite you mentioned a date from the ruling of the PRC, could you specify again what you mean.

Commissioner Wilhite- my motion was for extending the preliminary plat to one year from the date of the ruling from the PRC to expand the water service into this area, providing that the extension approval is given within one year from tonight.

Commissioner Turner- ok.

Commissioner Wilhite- if it is not given within one year from tonight, then the preliminary extension expires.

Commissioner Turner- so then the beginning date both for the securing of the water and the, for moving forward on the conditions would begin tonight.

Commissioner Wilhite- yes.

Commissioner Turner- according to your motion tonight.

Commissioner Fulwiler- I have a question about the six months now that Mr. Rael mentioned that moving forward, making progress, I think you mentioned something about getting it completed or what was your wording exactly.

Commissioner Wilhite- I said getting it completed but Mr. Rael was correct in that we need to have some action on those items within the next six months. In my opinion nothing has been done in the last year with the exception of the water. And it is not in the public interest, in my opinion, to keep dragging this thing out just waiting for something to happen on the water.

Commissioner Fulwiler- then who will determine whether progress has been made.

Mr. Rael- I guess the planner.

Commissioner Fulwiler- at her sole discretion. That's something that they can work out.

Commissioner Fleming- Ms. Mahalick mentioned earlier that there would be. I am interested in the costs this plan has outlined to the Town, yes.

Ms. Mahalick- to the Town. It wouldn't; these would not impose any costs to the Town. These are costs that the developer will incur with design.

Commissioner Fleming- ok.

Ms. Mahalick- now any costs on subdivision submittals and design approvals, the Ordinance allows the Town to bill for those services back to the developer so if he submits

a construction improvement plan then I submit it to the Engineer, the engineer signs off and I can turn around and bill the applicant for those, as per the Ordinance.

Commissioner Fleming stated, so this sets a six months from this evening on satisfying the other requirements that Ms. Mahalick outlined an hour ago.

Mr. Rael- for showing progress.

Commissioner Wilhite- showing progress on the other issues.

Commissioner Fleming -what constitutes progress.

Mr. Rael- that was going to be the question, just asking Ms. Mahalick. Does she want to say significant progress, does she want to say progress, I guess you would trust to Ms. Mahalick's judgment as the Town Planner, that they are going to submit evidence that would show that they have made progress on those items and that they will complete them before the, you know the preliminary plat extension expires but that in the next six months they are showing progress to her and it would be, I guess, in her judgment as to whether or not progress has been shown.

Commissioner Fleming- and then what happens if Ms. Mahalick finds no evidence of progress.

Ms. Mahalick- in six months I have to bring it back to you.

Mr. Rael- and in six months you would bring it back and decide whether or not they have made progress and if you decide that it has not then the preliminary plat extension, I believe that Commissioner Wilhite's intent is that the extension would expire at that point.

Commissioner Wilhite- yes.

Mr. Rael- ok.

Ms. Mahalick- so really it is incumbent upon me to bring it back in six months time to report what has taken place.

Commissioner Wilhite- yes.

Mr. Rael- well it is incumbent on Campbell to show you first and then you would come back.

Ms. Mahalick- yes.

Commissioner Fulwiler- so this would be September roughly, September 15 or 16 which I think the hearing on the water is late May and then someone mentioned that it would probably be another 30-45 days after that so late June or mid July, if they are going to wait until they get their water approval then they are going to really need to get cranking after the mid July date or start it before.

Commissioner Fleming- and then what happens for what ever reason the hearing is delayed.

Commissioner Bassett- well then they have to go to the State Engineer then. The venue shifts from.

Mr. Rael interrupted, but they will still have to show that whether or not the July hearing comes or not they will still have to show progress on the other conditions under

Commissioner Wilhite's motion, they will still have to show progress on the conditions either way.

Commissioner Wilhite they will have to show progress on the other conditions within a 6 month period from tonight.

Mr. Rael- from tonight either way.

Commissioner Wilhite- that being presented to Ms. Mahalick and her bringing it to us, for us to make that determination.

Mr. Rael- right, whether or not the water is resolved.

Commissioner Wilhite- whether the water is resolved or not. If the water is not resolved from one year from tonight then it expires as well.

Commissioner Bassett- now does that also include the ordinary stuff on the preliminary plat, the dirt work and that or do these just.

Mr. Rael-, I guess it would be the conditions of the preliminary plat approval.

Ms. Mahalick- right, they don't have to put it in the ground.

Mr. Rael- right.

Ms. Mahalick- in other words you could for a sub-division improvement agreement, you could actually bond the whole project for x amount of dollars two years out. You don't have to go out there and put the lines in.

Commissioner Bassett- but they would need to make progress on that sub-division development agreement.

Ms. Mahalick- yes they would have to move forward on.

Commissioner Bassett- on bonding and that sort of stuff.

Ms. Mahalick- correct. They would have to do their access. They would have to do their construction plans and we would have to agree on a sub-division improvement agreement and the terms of the PID.

Commissioner Bassett- all within six months.

Ms. Mahalick- it's doable.

Commissioner Fulwiler -if it was customary for administratively, Mr. Rael have you seen this in other Towns where the towns planning and community director has that type of authority.

Mr. Rael- yes, Mr. Chairman, for example in Albuquerque, City of Albuquerque preliminary plat extensions are granted administratively they do not have to go before the Planning and Zoning Commission. They are granted by the planner and then the applicant has the right to appeal that decision to the Planning and Zoning Commission but the granting of the extension or denial can be done by the planner.

Commissioner Fulwiler- ok.

Ms. Mahalick- so six months puts us at September 21, so just FYI.

Mr. Campbell- Mr. Chairman, I just have a timing question. The last time.

Commissioner Fulwiler- can you go up to the microphone.

Mr. Campbell -yes. When we were here a year ago and there was an appeal of the grant of preliminary plat it was stated that the decision that you make is not effective until the minutes of your meeting are approved. I mean I just need to know which way it is. Your minutes of this meeting may not be approved for two weeks or a month, I don't know and if that's the rule, then would you let me know when our clock starts. I just as soon that it starts tonight and that the decision was made but there is a great deal of discussion having to do with an appeal last year where we weren't, we thought the decision was made and then it wasn't made actually until the minutes were approved, so if we could have some clarification.

Commissioner Fulwiler responded, I was going to ask that question.

Mr. Rael -in fact Mr. Chairman, a finding, an affirmative finding was made by the Town Council that the decision isn't final until it's approved by the Council. Until the minutes are approved by the Town Council, so Mr. Wilhite, Commissioner Wilhite would like to amend his motion.

Commissioner Wilhite- I would make an amendment that the clock starts running on the things we laid out earlier once the minutes are approved in the meeting of April the 6th.

Ms. Mahalick- theoretically that means I will bring you back the plat progress on October 19.

Commissioner Fulwiler- so if for some reason there is no meeting on April the 6th, that doesn't happen very often.

Ms. Mahalick- then it will move again.

Mr. Rael- it will move to the date if the next meeting.

Commissioner Fulwiler- the date of the next meeting, so it would be the date the minutes are approved.

Commissioner Bassett- Council approves our minutes.

Mr. Rael- I misspoke. The Commission, the date that the Commissioner approves the minutes of this meeting. I am used to being in front of the Council, I misspoke, I apologize.

Commissioner Fulwiler -so that's the date that the Commission, that we approve our own minutes.

Mr. Rael- yes I misspoke.

Commissioner Fulwiler- well is there anymore discussion.

Commissioner Bassett- well, so we need to find the questions on the unavoidable delay and the public interest right.

Commissioner Fulwiler- that's what this is all about.

Mr. Rael- an affirmative vote on the motion would a finding that they, that Campbell Ranch has met their burden of proving that granting the plat is in the public interest and that the delay was unavoidable. That is what an affirmative vote would mean and if the motion was to fail then you would be making a finding that they did not meet their burden

of proving that the delay was unavoidable and that the passing of the extension was in the public interest. And further you may find that they have a vested right in preliminary plat extension because that is one of the arguments that they raised, so that would be the findings depending on how you would vote. If there is any objection to how I stated that. That's fine, if not a vote will tell you what we just agreed to.

Commissioner Fleming-, no.

Commissioner Fulwiler- I have tried to put myself in the position of Campbell Ranch on this and look at it from both sides and I mean to me I would be hesitant to do a lot of the expensive things until I get the water part of it worked out. It's just me, I mean to me I think that there are some things that they could have done but there are some things that I would not have gone ahead with because of the cost, so that is just my take on it, But as far as the unavoidable part.

Commissioner Turner -Mr. Chairman, I have a question for Mr. Rael, could you, I know I am being tedious here but I am getting very tired, differentiate the difference between an aye and a nay vote on this motion with regard to the establishment of vested rights. Would an aye vote at this point, with the discussion we have had establish best that, set a precedent establishing vested rights.

Mr. Rael- no unless that is the Commission's intent but unless someone speaks up otherwise I do not believe that an aye vote would grant would say that the vested, that Campbell Ranch has a vested right and a preliminary plat extension.

Commissioner Turner- I am very concerned here that we avoid setting a precedence that we might find is undesirable at a later time in a different setting. I just wanted to be clear about that.

Commissioner Fleming- however, despite the lack of fire access nor the rural addressing, issues surrounding drainage, we would still be finding that this is in the public interest. A ye vote would affirm.

Mr. Rael- that is correct Commissioner.

Commissioner Fulwiler- ok we have a motion and a second, we've had discussion, now we are going to vote.

Action: Commissioner Wilhite voted nay. Commissioner Fleming voted nay.
Commissioner Turner voted nay. Commissioner Bassett votes nay.

Commissioner Fulwiler stated, ok.

Mr. Rael stated, they have made the decision to deny the motion.

Mr. Campbell stated, but in fact the motion was to approve on those conditions but they have not taken a vote to deny, so there has to be a motion in the affirmative.

Mr. Rael- according to the Resolution there was a motion to approve your preliminary plat request and the motion failed, therefore that's it. The preliminary plat extension was not approved.

Mr. Campbell stated, actually as a matter of parliamentary procedure, I think you need to have a affirmative motion by affirmative I don't mean that it has to pass but I mean that it has to be a motion that says we deny the action so that if there is an appeal from that, it's an appeal of a denial not an appeal of a failed approval.

Mr. Rael- that is something you are going to raise on appeal, I am sure.

Mr. Campbell- we have a request before the Town that the extension be granted.

Mr. Rael- that the extension be approved.

Mr. Campbell- no that the extension be granted and you made a motion to approve that was denied ok, but you haven't made a denial motion so as a matter of procedure you haven't denied the motion. I understand that you will probably deny it but we think that there needs to be a motion to deny and that voted on so that everybody makes their vote on that motion.

Mr. Rael- ok Mr. Chairman that is going to be up to the.

Commissioner Fulwiler- I think we should go ahead and make that motion and then.

Mr. Rael- it's the same thing.

Commissioner Turner - Mr. Chairman, I would like to put into the record though that we have in the past, that the Commission has incurred rather pointed questions from the Governing, from the Towns Governing body directing us to make our motions in this way and that we acknowledge the direction of the Governing body in this.

Commissioner Fleming- in fact there was a reprimand last month.

Ms. Mahalick -I will highlight Mr. Campbell's argument in the minutes for the Council to review also so that they understand the next phase of actions.

Commissioner Turner asked, Mr. Chairman if I may ask a question of Mr. Rael.

Commissioner Fulwiler - certainly.

Commissioner Turner - so if we do another vote on this, do you feel it is proper for us to do this at the request of the applicant are we setting a precedence that.

Mr. Rael- I don't see any major problem, I think it is the same thing. I think that Mr. Campbell and I are mincing words here. They have asked for approval they approval got denied but I think it is going to be appealed either way. This will give him one more appealable issue is that we failed to follow parliamentary procedure and that's, whether or not the Town Council is even going to decide that remains to be seen, I see no harm in doing it either way.

Commissioner Turner- I would like the public to know that there has been some debate in the town about the value of affirmative versus negative motion and there seems to be a lot of difference in opinion on the matter. I have no, if it is considered proper I have no problems with doing another vote.

Mr. Rael- it would just further for the record and Mr. Campbell's edification, the Town, prior to me becoming the Towns Attorney the Town passed a resolution that all of your votes need to be.

Commissioner Fleming- I am concerned about this also.

Mr. Rael- so you have a Town Resolution in place that states that you have to vote the way that you just did and I don't see any issue. I think Mr. Campbell may raise that on appeal but I don't know where that's going to go.

Ms. Mahalick- actually I think if you abide by the procedures you passed in your Resolution and you allow the Attorney to appeal to the Town Council based on the procedures you have adopted, you'd be better off. That way you will have a clear picture of what the Council expects in the next round.

Mr. Rael- because we do have the Resolution in place, prior to my time as attorney.

Commissioner Fulwiler stated, ok let's move on. All right.

5. Estate of Eleanor Hill, Hillcrest Master Plan Section 15, T10N, R7E, NMPM Tract H-2. 1-1Acre Lot out of a 162.94 acre tract.

Mr. Oden of Oden and Associates stated that he was the representative for the Estate of Eleanor Hill. Mr. Oden reviewed this item for the Commission listing their latest actions and items provided to the Commission.

Commissioner Bassett about the splitting out of and designation of the tracts.

Mr. Oden stated that he was attempting to prevent any confusion as to their intention.

Ms. Mahalick stated that the purpose is clear that it is for a well on a one acre site and nothing is in conflict with the Master Plan.

Commissioner Fulwiler asked about Dinkle road and the 30' dedication.

Mr. Oden stated that this information could be found on page 4 of the submittal.

Action: Commissioner Wilhite made a motion to grant the request o separate the one acre lot for the purpose of a well from the Master Plan. Commissioner Turner seconded the motion.

Ms. Mahalick asked the Commission to approve this as final to allow him to move forward on this.

Action: Commissioner Wilhite made a motion to grant a preliminary and a final to separate this one acre from the Master Plan for the purposes of a well. Commissioner Turner seconded the motion.

Commissioner Fulwiler asked for clarification of the separation.

Ms. Mahalick stated that it would set in place a one acre tract of land on the Hillcrest Master Plan and the units are concepts not tracts.

Roll Call Vote: Commissioner Wilhite voted aye. Commissioner Fleming voted aye. Commissioner Fulwiler voted aye. Commissioner Turner voted aye. Commissioner Bassett voted aye. The motion carried unanimously.

6. Conditional Use Permit for Motorcycle Sales & Service located at 1819 Hwy 333, zoned Commercial C-1.

Ms. Alice Argenbright stated that it would be a great service to the community to have this available on this side of the mountain and she described the location of the building.

Ms. Mahalick reviewed this item for the Commission and read a portion of the Zoning Ordinance. She added that she would recommend approval.

Commissioner Fleming asked about the residential land to the South.

Ms. Mahalick described the proximity of the residential are to the property in question.

Commissioner Turner about the Conditional Use permits asking if they were specific to the business not the location.

Ms. Mahalick stated yes.

Action: Commissioner Fleming made a motion to grant Conditional Use Permitting for Motorcycle Sales & Service. Commissioner Wilhite seconded the motion.

Commissioner Turner asked if the conditions recommended by staff be included in the motion.

Action: Commissioner Fleming amended his motion to include that the access issues need to be reviewed to ensure that the site does not impose a public safety concern, that this establishment is compliant with the fire regulation for Santa Fe County, that the solid waste management system is monitored to ensure that a public health risk does not occur and that waste is properly disposed of and that code enforcement will monitor for potential nuisance from engine noises. Commissioner Turner seconded the motion.

Roll Call Vote: Commissioner Wilhite voted aye. Commissioner Fleming voted aye. Commissioner Fulwiler voted aye. Commissioner Turner voted aye. Commissioner Bassett voted aye. The motion carried unanimously.

Commissioner Fulwiler stated that the commission was not going Out-of-Hearing.

OUT-OF-HEARING

Action: Commissioner Fleming made a motion to extend the meeting to allow for completion of the Agenda. Commissioner Wilhite seconded the motion. Commissioner Fleming amended the motion to state no later than 10:30. Commissioner Wilhite seconded the amendment to the motion. The motion carried unanimously.

6. Zoning request for Stone Mountain Estates, 208 acres requesting Rural Residential zoning.

Mr. Ed Cardenas discussed the Zoning request and described the history of the location in question.

Commissioner Bassett asked why he wanted to go to bigger lots.

Mr. Cardenas stated that this was the first request for Rural Residential and he was looking for input from the Commission.

Ms. Mahalick clarified that he had allocated more than the required amount for park space.

Commissioner Fulwiler asked about emergency access.

Mr. Cardenas described the location of the access.

Commissioner Fulwiler confirmed that the primary access was off of Venus Road.

Commissioner Bassett asked if Mr. Cardenas had discussed it with the surrounding property owners.

Mr. Cardenas stated that he has had discussions with the neighbors.

Commissioner Turner asked about the traffic study and any opposition feedback.

Mr. Cardenas stated not other then the traffic study.

Mr. Cardenas stated that the number lots had been reduced from 89 to 71, and that he would leave the septic and sewer issues up to the Environment Department.

Ms. Mahalick stated that it was compliant with the chapter on Rural Residential and the fewer number of lots is more palatable to the neighbors and the prelim is compliant.

Action: Commissioner Fleming made a motion to recommend to Council Rural Residential Zoning for the Stone Mountain Estates. Commissioner Bassett seconded the motion. The motion passed unanimously.

7. Homeowner's association presentation from Sandia Airpark.

Mr. Tom Eitzen gave a presentation regarding Sandia Airpark Homeowner's Association including the growth of Edgewood and safety of its residents.

Commissioner asked what precedence the Commission had for reference.

Mr. Eitzen stated that all they are asking is for a little space to allow for safety.

Commissioner Fulwiler asked what Mr. Eitzen is suggesting.

Mr. Eitzen stated something as wide as thirty feet would work.

Commissioner Fulwiler asked about distances.

Mr. Eitzen clarified the distances for the Commission in relation to the glide ratio of the planes.

8. Discussion-Edgewood Airport Overlay Zone.

Mr. Oden asked a series of questions about the over lay zones and zoning.

Ms. Mahalick responded clarifying details for Mr. Oden and the Commission.
Mr. Jon Daffer discussed his letter regarding the Hillcrest sub-division and the Overlay Zone.

9. Calendar Update, next meeting April 6, 2009

Commissioner Fulwiler reviewed the calendar and upcoming events

10. Adjourn.

Action: Commissioner Wilhite made a motion to adjourn. Commissioner Fleming seconded the motion. The motion carried unanimously.

Having concluded all matters on the agenda Commissioner Fulwiler adjourned the meeting at 10:45 p.m.

Rey Fulwiler, Chairman

ATTEST:

Karen Mahalick, Community Planning & Development MGR.