



Approved November 17, 2016 (5-0)

VALENCIA COUNTY PLANNING & ZONING COMMISSION

M-I-N-U-T-E-S

October 25, 2016 @ 3:00 p.m.

PLEASE NOTE LOCATION CHANGE

Village of Los Lunas Council Chambers

660 Main Street NW, Los Lunas, NM 87031

Present

Chairman Michael McCartney

Vice-Chairman LeRoy Baca

Commissioner Robert Q. Louie

Commissioner Frank A. Gurule

Commissioner Sue Moran

Lina Benavidez-Public Works Director-Presenter (Not Voting)

Adrienne Kozacek-Assistant County Manager (Not Voting)

David Pato- Valencia County Legal Council (Not Voting)

1) Call the meeting to order

Chairman McCartney

2) Pledge of Allegiance

Commissioner Gurule

3) Approval of Agenda

Commissioner Baca asked if item 6-B is supposed to be RR-1 or RR-2 as the agenda says RR-1 and the application states RR-2. Mrs. Benavidez stated that it is supposed to be RR-2 and apologized for the confusion.

Motioned by Commissioner Louie

Seconded by Commissioner Baca

Motion passed 5-0

4) Approval of Minutes

July 26, 2016

Motioned by Commissioner Gurule

Seconded by Commissioner Moran

Motion passed 5-0

5) Swearing in of participants

Chairman McCartney

6) Action Item(s):

A) Request for Zone Change from:

Outland District (OD) to Mineral Resource District (MR)

Application: ZC #2016157

Applicant: El Paisano Ranch-Ron B. Chavez as Agent

Purpose: To allow for mineral resource extraction operations

Legal Description: T5N, R4E, Sections: 9, NMPM; Land of J.R. Chavez; N ½ of Section 7 thru 10 & 11; 5N 4N 1600 AC That Part of N ½ & W of Forrest Reservation 266 AC 12 5N, 4N the Southern 515 AC of Section 2 thru 4; Zoned Outland District (OD); Filed in Book 9, Page 150 of the office of the Valencia County Clerk.

*This property is located approximately 2.5 miles NE of Navajo Loop
This property falls within District III
County Commissioner David Hyder ♦ P&Z Commissioner Sue Moran*

Mr. Chavez: My name is Ron B. Chavez and for quite some time now my family and Mr. Cooper, who is present, from Buildology, an aggregate company out of Albuquerque have been discussing this for about three to three and half years and have been coming to an agreement. Earlier this year we started getting our paper work together for our proposal for the planning and zoning change of zoning and that is why we are here today. Our attempt is to operate an aggregate facility which would provide aggregate for just about any type of industry that uses it. Back before the Big-I was built in Albuquerque an outfit out of Arizona known as Meadow Valley, a large contracting company similar to Lafarge, came out and did tests on the aggregate because they wanted to lease my property at the time and when they did not get into the actual building of the Big-I they were gone. So we had the study done. They spent quite a bit of money on it and we have the results. Our aggregate is very high quality and is very usable for asphalt, concrete, road base and many other uses which Mr. Hooper can tell you about. I as the property spokesman for the land owners am here because it is our property and we are the ones that have to do the complying of making the road from our property twenty four feet wide from where the aggregate pit will be located down to Highway 47 which is a little over fourteen miles. It has been requested by Planning and Zoning when Jacobo Martinez was here that we had to make it a twenty four foot wide road and provide the material for that road that would keep the dust down to a very minimum. All of which we agreed to comply with. The cost of this is quite astronomical and I will be responsible for that myself. But once we build that road we want no liability as far as anyone else using that road, because even though whoever it is that works for me to build that road-because the county says they can't do it because they don't have the money-so this is the issue. We are willing to do that to get operating. Other than that, we will build the roads to specifications but we assume no liability for anyone who is driving on it should they get into an accident or whatever. We are just building the road and it will meet specs. We intend to conduct business there for at least twenty years or longer depending on what the future holds, so we are actively anticipating the movement that we get this changed to a zone change for that purpose. Do you have any questions for me?

Commissioner Moran: I actually have several questions for Lina and Mr. Chavez. First of all, the location is near the forest reservation. Does the Forest Service- have they been informed or expressed any concern about this type of development near there?

Mr. Chavez: Well it is not very near their boundary. Where the aggregate pit is going to be located is still about five miles from the Forest Service boundary. In my memory since I was knee high, and I am sixty years old now, I can remember a time when there was quite a bit of traffic up there without any dust control and as it sits today, we have an open road with twenty

four hour use of the area which has been very hard on my family and myself since my father was alive because of vandalism as well as killing livestock, shooting our windmills, and cutting our fences to a point where we had to cut the number of cattle down that we had on that site that is bounding that road that is known as Trigo Canyon Road. I don't believe there is any issue that would affect the Forest Service or anyone that goes to the forest. It is actually too far away. There won't be a noise problem or a dust problem. We won't be affecting anyone else's property in a negative way.

Commissioner Moran: Why does the legal description say that it is part of N1/2 of forest reservation, two hundred and sixty six acres?

Mr. Chavez: That very eastern part of the parcel-because that description that you are reading makes up the parcel which actually bounds the Forest Service, which is not Forest Service land, it is private land, and extends from the Forest Service boundary back to the west down here towards the valley. From where it contacts the boundary of the forest back to the west is maybe seven miles. We will be down at the western half.

Commissioner Moran: So is that the route that people would take to the old JFK Campgrounds?

Mr. Chavez: Yes that was decommissioned about fifteen years ago so there is no JFK Campgrounds. There is just an access to the forest where people can park and hike.

Commissioner Moran: In your proposed use on page four you have permanent or portable concrete batching or hot mix batching plants. Are you concerned about smell and noise and...My image of a hot mix is tar.

Mr. Chavez: For a hot mix plant for asphalt we probably will not be located there. They may extract the aggregate and move it somewhere else because it is far. I think Mr. Hooper would be better to answer that because that is his line of work. You have to be as close as possible to your delivery site because it has to be delivered at high temperature. As far the concrete goes there really isn't an odor problem with a concrete facility. And it may be the same way. They may choose to operate there, make up the concrete mix and move it down to another location where they mix it with the actual Portland cement or whatever products they use to make the concrete.

Commissioner Moran: You say they, and that means that you are the land owner and you are going to be changing this and another entity is going to be operating it?

Mr. Chavez: Yes. Buildology will be the operator.

Commissioner Moran: What types of businesses will you be...could a private citizen go up there and get a load of rock from you or is going to be primarily large business?

Mr. Chavez: I think it is primarily going to be industrial but I don't have the answer to that, you will have to ask Mr. Hooper.

Commissioner Moran: Looking at the property record it says that is currently classified as agricultural land. So you are looking to change it to commercial and all of this whole section that is on the property line?

Mr. Chavez: No the rest will still continue to be agricultural and then in the future whenever this operation is finished it will be reclaimed in stages. So what we are asking for is to go five hundred acres out and then it will be operated in sections, time sections. So when an area is at a point where it needs to be moved up that will first be reclaimed and put back to its natural habitat, planted, graded, top soil replaced. Then we would move up the five hundred acre line and begin operation there.

Commissioner Moran: Then is that section that is reclaimed moved back to agricultural?

Mr. Chavez: I don't know what the policy is for doing that, but yes it will be because I will still have cattle on the rest of that property. So I will probably be putting (can't understand) to keep the cattle out of the operation.

Commissioner Moran: So on the road issue and that the county doesn't have the resources to do this type of project, you are going to be doing it and meet the county standards, and then you are expecting then that the county will maintain this road?

Mr. Chavez: Well I think in our conversations with Jacobo Martinez we had agreed that they would maintain it as much as they could. I think at the time, I don't recall but I believe it was once a month and if we needed more than that we would fill in and grade it because we do not want it to get to a washboard or a state of disrepair or where it is unsafe for obvious reasons.

Commissioner Moran: There is a section in here that I have a problem with and that is the section on page seven that says "Valencia County will be responsible for maintaining the road and will indemnify and hold the ranch harmless for the use of the road by others. That is verbiage that I personally do not see as realistic.

Mr. Chavez: I don't understand.

Commissioner Moran: Well how can-if you are going to be the major user of that road with your heavy trucks and stuff, to have the county hold you harmless and indemnify you, I don't know if that is possible.

Mr. Chavez: I think maybe we are talking two different things.

Chairman McCartney: Commissioner Moran I think that Lina can answer that question with a little more information.

Mrs. Benavidez: Thank you sir. She did bring that sentence up to me and that will actually be an attorney question. I would think that we would need some kind of agreement between us and either Mr. Chavez or the company coming in on some type of maintenance. We will continue to do routine maintenance as we currently do on that road, but they will need to control the dust and

do as much maintenance as they can as well. But again that will have to all be upon agreement if this zone change does go through.

Chairman McCartney: A binding agreement correct?

Mrs. Benavidez: Correct.

Commissioner Moran: Has anybody talked to the City of Rio Communities or even the City of Belen?

Mrs. Benavidez: I know Jacobo was supposed to meet with them but I don't know if he ever did. I did bring it up to Mr. Skerry sometime back in just a quick discussion and as far as I know I do not know if he has received this information.

Commissioner Moran: I think DOT just did a traffic study on forty seven and it was-I can't tell you how many cars but it was significant and the cars coming from Mountainair coming back and forth are doing sixty miles an hour and for them to all of a sudden brake for a truck trying to make a turn in and out of Navajo Loop I think is a danger.

Mrs. Benavidez: I know at this point DOT will require them to upgrade that cattle guard so that these large vehicles can make that turn because I do not think they currently could, with two large semi's going through that.

Commissioner Moran: Right they are coming too fast.

Mrs. Benavidez: Right and they would probably have to do some kind of improvements into that turn just as long as it's DOT right of way. We don't have anything solid that I can think of yet from DOT but they are aware of it.

Commissioner Moran: The proposed route is to go north on forty seven, then west on Reinken, and then hit the I-25. Does the City of Belen have an issue with those big trucks coming through on their roads? Has anybody talked to them?

Mrs. Benavidez: Not as far as I know.

Commissioner Moran: On page eight on your maintenance you reference "non-hazardous solid waste generated will be placed in a trash receptacle and disposed of at the local landfill". Do you anticipate any hazardous waste? Any of the oils or any of that?

Mr. Chavez: No. I think Mr. Hooper would be better for answering that because they are accustomed to obtaining all the permits required to operate such a facility. They have done it and continue to do this on a regular basis as part of their business so if they don't have those permits and the regular inspections then they cannot operate. I would like to assure you that he is a highly respected person in that line of business.

Chairman McCartney: Commissioners I think we can save the technical questions for the gentleman he is referring to.

Commissioner Moran: Ok I just have one question of Lina. Lina, the county staff responses, particularly the concern that the rural addressor had regarding the access that cuts through several private properties-I have an issue with crossing peoples private properties and I would like to know more about that and understand that better. Also, a technical question about the fire department; are you sure the county oversees this area and not the Rio Grande Estates Fire Department? Because I think that is their district.

Mr. Chavez: It's not Rio Grande Estates.

Commissioner Moran: It is the unincorporated area but I think when the county deeded it over to the city of Rio Communities they changed the district and they have to (cannot understand) the same fire district.

Mrs. Benavidez: I cannot answer that since I do not work for the fire department and we will have to look into that for you.

Commissioner Moran: Yes double check it because then you are talking about having the Rio Grande Estates Fire Department and the city involved.

Mrs. Benavidez: Regarding Trey's comment, I was unaware that any of those roads were going through private property and if that is the case that road will need to be surveyed and put into the correct place. I know there was a section of road way that we did discuss with Mr. Chavez when we were out there. He does have what I would call a goat trail with a gate to his property. I did advise him he could not use that. The road had to go further down into the Trigo Springs turn point easement in order for all those trucks to access the property to get to the gravel pit. So there should be an established easement. They are not allowed to use that fence they originally wanted to use because that is going through private property.

Commissioner Moran: The only other question I might have is more for Mr. Foster about some drainage issues.

Mr. Chavez: If we could I would like to go back to the topic of the access. We do not plan to go over anyone else's private property. I have a direct connection to the county road at the north west corner of my property and at least a forty foot easement- it could be sixty-that was established when I was probably knee high. At the time that the grant sale had taken hold and I remember my father and my north neighbor, Odelio Baca, and all the property owners that were contiguous to using the same facilities and because of the times it was all ranching that went on out there and the properties were designed so that there could be access to get to the spring, which has a forty acre parcel around it, the center of it being the spring. That would be known as the Ojo Jedondillo. So everyone who had that property had a right to get to that spring. At one point in time that was the only corral anywhere and I remember the ranchers who had Forest Service grazing rights, as well as the other ranchers that had the property north and south, using - the water and the corral to brand and to move cattle out because they could load them up and

move them for sale. That was the time that we had to cease grazing on the Tome Land Grant itself because of the sale. All that had been foresighted and seen so there are many easements in place that aren't being used right now because of time. They were cut off after the sale when Horizon went in and just bladed roads everywhere. I don't believe that ever terminated any of our rights to use the property including the one that goes straight up to the Ojo Jedondillo from Trigo Springs Road. That road has been there. That road is one of the first places that I ever drove my dad's pick up sitting on his leg heading west on that road and it is next to a barbed wire fence and I recall it very well because I drove into the fence. We used many of those easements at the time and it is one of my easements. I don't use it on a regular basis but it is an easement that is my right to use because I am part owner of that forty acre spring. I am the largest shareholder in that spring so it is my right to use that road. However it doesn't mean that I have a right to make it into a road for this aggregate project. So, our intent is to come out of the northwest corner where there is an easement free and clear of the forest road and goes directly to the county road from my property. That is where we will be accessing the county road so there will not be a crossing of anyone's land.

Commissioner Moran: The last question I have for you is the hours of operation. 7 am to 7pm. It is noted in here that for the most part you will not be using high resolution lights, but you may from time to time and they will be down turned. Why do you need them?

Mr. Chavez: I think in most cases, and not to cut you off, I apologize, but in most cases a day of operation of natural light from the sun is adequate. Now there may a time if there is time constraint on a particular job, especially a government job, where it needs to be finished in a timely fashion and they may request that they operate a little later or a little earlier, I don't know. These are questions that someone in this business can answer better than I. Other than seeing a few trucks, no one would know the difference that it's an operation. This project here in Peralta and Manzano Expressway added quite a bit of traffic to the city areas-Los Lunas and Belen- because I made a note of the many, many trucks from that project going down highway 47 past my house. I don't know where they are getting their aggregate but I saw them in Belen, I saw them in Los Lunas, I saw them in Bosque Farms. They were everywhere and the highway did just fine. We are not talking about making a continuous parade that is going to interfere with any traffic. We are talking about just a handful of trucks a day, hopefully on a daily basis. Some may even exit out to the south at some point, we don't know. I know that there are a lot of things with Highway 47 that have been discussed on and off in the past like the road across the river. I understand all that because I live next to Highway 47 and I understand the way it is. Then again, there are feed trucks that are just as big and just as dangerous as this type of truck even though they are agricultural and they go up and down that highway daily, and there are dozens of them. There is also University of New Mexico traffic and all kinds of traffic. If the traffic has proper signs and maybe yellow flashing lights to advise that there is truck traffic coming out onto that highway I think it would be a great idea. I think there are a lot of things that can be done to make it a safe entrance and exit. I think that from what I have seen personally most of the truckers I saw in most of these projects lately were very safe operators and did not create a hazard by operating their trucks aggressively. I think that is the key. If everyone is following state law there won't be any problem with the little bit of traffic anywhere in the area.

Commissioner Moran: I have a few questions about the drainage.

325 **Chairman McCartney:** Commissioner please hold on. We have had about eight or nine late
326 arrivals that came in after the meeting was brought to order if you plan on testifying you need to
327 raise your right hand. (Nobody stood). So all of the people that came in within the last twenty
328 minutes are not testifying? Late arrivals that came in after the meeting started need to raise your
329 right hand. (Chairman swore in participants). Let me just inform the audience of one thing, this
330 Board that is sitting here today in regards to these two requests for zone changes is just a
331 recommending board. Either way, if we recommend denial or approval, it still goes to the County
332 Commission.

333
334 **Commissioner Baca:** I wish we had some visuals because I am not totally familiar with the area.
335 However...

336
337 **Mr. Chavez:** I have a few but they may not be complete. I brought an old topo map in if you
338 would like to see that.

339
340 **Commissioner Baca:** I would like to know who owns the land adjacent to your property.

341
342 **Mr. Chavez:** Well I think a lot of them are present that are adjacent to me. (Mr. Chavez took
343 maps to Commission podium). This right here is what we call the Trigo property which we will
344 be going up. This is where the Trigo Canyon Road is, on this line right here. It goes up to what
345 used to be the JFK Park. It turns here, goes around the hill.

346
347 **Commissioner Baca:** Is that road closed now?

348
349 **Mr. Chavez:** No it's open. It has been open now for about two years.

350
351 **Commissioner Baca:** Where the Ojo Jedondillo? Who owns that?

352
353 **Mr. Chavez:** I own the majority of it. This was set up by my grandfather when he purchased all
354 this land when he purchased all this land back in 1918 and this is all owned by shares. So even
355 though this land has been divided up, many people have the right to this. Ramon Torres who is
356 present who has a partial....

357
358 **Mr. Steven Chavez:** Mr. Chairman...

359
360 **Chairman McCartney:** Hold on, hold on. Sit down please.

361
362 **Mr. Steven Chavez:** Sir we need to keep this on the record because this is a record keeping
363 body. I can't hear what this gentleman is saying. It needs to be on the record because we do want
364 transcripts.

365
366 **Chairman McCartney:** Well don't interrupt again.

367
368 **Mr. Steven Chavez:** Thank you.

369
370 **Mr. Ron Chavez:** So this is that spring here.

371 **Chairman McCartney:** Stop right now and go back to the podium.

372

373 **Dave Pato:** Mr. Chairman if we could also make that part of the record after it is heard by the
374 Board and after the gentleman has had an opportunity to discuss it with the Board I would
375 appreciate it.

376

377 **Chairman McCartney:** Ok.

378

379 **Commissioner Baca:** Where is Odelio Baca's land on this map?

380

381 **Chairman McCartney:** They attorney cannot hear you so you cannot bring him up here to
382 discuss this. You need to turn that information in as part of the record. Kerrie will make that part
383 of the record.

384

385 **Mr. Ron Chavez:** Would you like me to show you from right here?

386

387 **Commissioner Baca:** Yea.

388

389 **Mr. Chavez:** This area here is what was called Odelio Baca and Julie Baca's property. That is
390 north of my Trigo property which is here. Then what we call the Jedondillo Lands is right here.
391 They all go up to the forest service...

392

393 **Chairman McCartney:** Ok Mr. Chavez go back and put that back on the microphone so it can
394 be on the record.

395

396 **Mr. Chavez:** Ok. All the properties involved here go up to the forest service on the east
397 boundary and they all terminate at the same common boundary line on the west side. So all these
398 properties have the same western boundary and they all have the same eastern boundary. There is
399 a property north of me that is about thirty six hundred or thirty two hundred acres, and then my
400 property which is what we call the Trigo property, which is the one we would like to get a partial
401 of that zone changed is a little over two thousand acres. I think twenty-two hundred or twenty-
402 three hundred acres, and then the parcel called the Jedondillo Land, Ojo Jedondillo Lands. That
403 is about the same size as my Trigo properties, it is a little over two-thousand acres. So that will
404 be on the south side, and the Odelio Baca part will be on the north side. Out to the west will be
405 the land purchased by Horizon. Would you like this back?

406

407 **Commissioner Baca:** No that's ok.

408

409 **Chairman McCartney:** Let's finish up the questions for Mr. Chavez before we go on to
410 anybody else, ok.

411

412 **Commissioner Baca:** I have one more question though. Mr. Chavez, are you going to-is it
413 possible to be putting that lignin on the road or is it going to be water or what is it that you are
414 going to treat the road with to keep it dust free?

415

Mr. Chavez: Well lignin sulfonate has been used successfully in quite a few places like, you may have seen it on some race tracks where you have a massive bunch of dirt being moved and yet you don't see the dust.

Commissioner Baca: So are you going to do that before you begin the process?

Mr. Chavez: Well the road has to be rebuilt because the road has been let down to a very narrow size. When I was going to feed my cattle today I had to get off into the bar ditch to let a vehicle by me and that was on the north Navajo. There are places that are wider that you can actually drive past each other, but I just happen to be in one of those spots. We are proposing making it up to a twenty-four foot wide road with bar ditches and drainage, and yes, in answer to your question, the whole thing will be treated for dust suppression. To my knowledge, and I am not the expert on this, but to my knowledge, it will be treated over probably at least on a yearly basis. The product doesn't go anywhere, but the more you add, the better it becomes. So the further and further it gets into the future it will be better and better because there is more product in there. That is my understanding.

Commissioner Baca: Just one more question. Are there any residents close by in the area?

Mr. Chavez: No. Well, there is one gentleman that I know as "Too Tall Bob", and he lives at three-eighths maybe a half mile north of the North Navajo Loop. But he does live off of that road. So he would be approximately two and a half to three miles east of Highway 47, and then about three eighths to a half mile north of the North Navajo Loop. He would not be affected by noise or dust, either one.

Commissioner Baca: Are you going to have a crusher in place?

Mr. Chavez: There will be a crusher on site. But as far as I know other than the equipment to move the raw aggregate and crush it and separate it into what they need, those are going to be questions for Mr. Hooper.

Commissioner Gurule: Yes Mr. Chairman. The operation has to obtain all local, state and federal permits right?

Mr. Chavez: Yes sir.

Commissioner Gurule: How far are you on that?

Mr. Chavez: Well, that is another question for Mr. Hooper.

Commissioner Gurule: Also it says "no blasting will take place", but then down the road here it says "all excavation including blasting". Is there going to be blasting over there?

Mr. Chavez: As far as I know there will be no blasting.

Commissioner Gurule: Is that another question for...?

462 **Mr. Chavez:** It is all alluvial fill. There are no solid mountainous boulders so I don't think so.
463
464 **Commissioner Gurule:** Also, you guys are considering a TIDD, Tax Increment Development
465 District for the County?
466
467 **Mr. Chavez:** We think that would be a great idea because that part of the county has been so
468 stagnant for so many years with so many property owners that live on or own property off of that
469 road or somewhere out in the area, including myself, ultimately that could benefit by utilities
470 such as water, sewer, and power. And then ultimately that would bring in gobs of money for the
471 county in taxes and jobs.
472
473 **Commissioner Gurule:** How many jobs are you proposing?
474
475 **Mr. Chavez:** I don't know.
476
477 **Commissioner Gurule:** That is all I have for now.
478
479 **Commissioner Louie:** On this road that you are going to actually put in, who owns the road?
480
481 **Mr. Chavez:** It is a county road. It has been a county road since I was able to recognize it so,
482 what over fifty years? I don't know when it was actually dedicated, but I do know that when I
483 was a small boy, the signs that used to be up said "County Road Number 28"? I think? (Looking
484 towards Mrs. Benavidez for answer).
485
486 **Mrs. Benavidez:** I did not know there were county road numbers back then. I have always just
487 known it as North Navajo. And since I have been there since 2008 the county has maintained it
488 and probably previous years.
489
490 **Commissioner Louie:** Do I ask you about reclamation or the other gentleman?
491
492 **Mr. Chavez:** The other gentleman.
493
494 **Commissioner Louie:** That's it.
495
496 **Chairman McCartney:** Before we go back to Commissioner Moran, Mr. Chavez, in essence in
497 Valencia County, you have Tabet Concrete and you have Duke City. They both have their gravel
498 pits. So explain to me in what capacity this would benefit this county?
499
500 **Mr. Chavez:** Well I think that the operators that I am involved with will work on a much larger
501 scale. They have more opportunity for reaching out further. Probably bigger jobs, uh.
502
503 **Chairman McCartney:** I am sure before you go any further you are aware of Duke City's size.
504 (Inaudible)
505
506 **Mr. Chavez:** Yes I know about Duke City's size and I actually have used them before to deliver
507 concrete to myself.

Chairman McCartney: See what I am trying to get at Mr. Chavez is what does it benefit the people of this county? What I see from your application is your destination is only outside of this county. Like I said, two concrete companies in this county and both have their own gravel pits. They supply for themselves. So the only thing that you are going to do is conduct a gravel operation or a mining operation and take it out of this county.

Mr. Chavez: I don't think that is necessarily true because I know that a lot of gravel pits around the state, especially ones that a lot of people are familiar with because they may pass by them, number one are playing out and many of them will not be renewed for that type of operation, so the big players in the aggregate industry are looking for a long term, reliable source for high quality aggregate.

Chairman McCartney: I understand that sir and I can appreciate that, but I can tell you that these two companies each have over five hundred acres and half of it hasn't even been used.

Mr. Chavez: Right. But these two companies with the exception of the one located up by the mountains at the east end of what was Cordova Ranch operate out of the lower lying areas of gravel. Which, much of that gravel, when it's crushed, won't meet the standards for many types of aggregate.

Chairman McCartney: Well let me change the question sir. Belen Sand and Gravel had a pit about ten miles east of Valencia High School. Their gravel was rated at the highest level in the State of New Mexico.

Mr. Chavez: Correct.

Chairman McCartney: They are now shut down.

Mr. Chavez: That's right.

Chairman McCartney: It seems to me, and this is just a personal opinion, these out of county companies want to come in and just rape our resources and not have the people here benefit in any capacity.

Mr. Chavez: The people will benefit in Valencia County.

Chairman McCartney: How?

Mr. Chavez: Well for many reasons. There are going to be jobs.

Chairman McCartney: I am very familiar with Belen Sand and Gravel. There were five people that worked there.

Mr. Chavez: I think if you would really like to ask more of those types of questions it would be better to talk to Mr. Hooper about that.

554 **Chairman McCartney:** Commissioner Moran do you have one more question for Mr. Foster.
555
556 **Commissioner Moran:** Yes I wanted to talk about the...
557
558 **Chairman McCartney:** You can sit down Mr. Chavez. Anybody else have any questions for
559 Mr. Chavez? (There were none)
560
561 **Mr. Chavez:** Thank you.
562
563 **Chairman McCartney:** Hoss, step up to podium please. Commissioner Moran has a question
564 for you.
565
566 **Commissioner Moran:** You know where Tierra Grande is?
567
568 **Mr. Foster:** Yes Ma'am.
569
570 **Commissioner Moran:** So water runs off and any change in the mountain streams and how it
571 flows really can impact us and the roads. I want to know your opinion and have any proposals
572 been submitted to you to assure that will not change the runoff of water flow?
573
574 **Mr. Foster:** No ma'am. None of that has been submitted to me and before any work can
575 commence out there or start they have to furnish me a grading and drainage plan. It is in the
576 notes. But it is before any work can start out there. So I can review all the, what you are asking
577 for. I have to review it, from their engineer's point of view of what he is proposing.
578
579 **Commissioner Moran:** Do you have any concerns about a project of this magnitude and the
580 impact on the landscape?
581
582 **Mr. Foster:** Yea it will have an impact on the landscape and if the reclamation plan is not
583 pinpointed how it is going be put back together and all this, it will affect the landscape out there.
584 It is grazing land right now and a pretty nice area.
585
586 **Commissioner Moran:** Ok, I just wanted to make sure I knew about the status of the plans.
587 Thank you.
588
589 **Chairman McCartney:** Mr. Hooper. (Hold on just a moment Mr. Hooper). Go Ahead Mrs.
590 Benavidez.
591
592 **Mrs. Benavidez:** I would just like to clarify a question that was brought up by Commissioner
593 Moran. We did contact the Fire Department for you. Casey was kind enough to bring us this
594 map, and that district out there is overseen by District 2 which is the Rio
595 Grande Estates Fire Department. So that would have to be, probably bring them in for their
596 opinion as well or their comments.
597
598 **Commissioner Moran:** Thank you for looking into that. One more question. Tax base wise, do
599 you have any idea what this might generate to benefit the county?

600 **Mrs. Benavidez:** I don't have that information at hand.

602 **Chairman McCartney:** You can ask Mr. Hooper.

604 **Commissioner Moran:** All right. Thank you Lina.

606 **Chairman McCartney:** Please print your name so it is legible when you sign in and state your
607 name and who you are for the record.

609 **Mr. Hooper:** Thank you for the opportunity to meet with you. I would like to just spend a
610 minute so you can learn who I am. Let me just find my notes here. But first I would like to thank
611 the county staff that we worked with. I just want to say that they have been very professional
612 working with Mrs. Benavidez and Kerrie Maes and Jacobo, before he left, and Hoss and I have
613 had some opportunity. This has been a long study as Mr. Chavez said. We have looked at this
614 for a long time. We don't go into this lightly. I have been in the aggregate business my entire
615 career, thirty plus years. I am a professional engineer and I have worked in Colorado but almost
616 exclusively in New Mexico. I am pretty proud of my record. I think a lot of times people come,
617 and I am sure we are going to hear it, to say "they are raping our land". This is an industry that
618 your community needs. I acknowledge your point that there are other operations. But there are
619 different physical properties of aggregates that allow us to do some things that I believe the
620 others can't. I am very familiar with them. I worked and evaluated all of these pits at one time or
621 another. The operations that I have been involved with have won national awards. I am proud of
622 our industry. This building would not be here without our materials; or roadways or
623 infrastructure. It is a necessary thing and I know and acknowledge that the Planning and Zoning
624 people and the commissioners ultimately have to make some hard decisions because people
625 don't want it. They don't want it and I acknowledge that. But we can do this properly and I can
626 demonstrate that, I think, from my history of the operations that we have had. We have had
627 communities come and support us. I have worked in areas in Placitas. I have worked in
628 Edgewood and in Santa Fe. So I think as we evaluate this thing, you have a family that has been
629 here for multi-generations. I am committed to this industry and it will be done right. I guess I
630 will leave it to that and maybe just start answering questions. I think that a lot of them were
631 answered. Let me just kind of make a comment because I understand that the storm water runoff
632 is an issue and Hoss addressed that. Regarding the question about hazardous materials. This is a
633 highly regulated industry and the types of things we are doing are really not any different than
634 what is already approved through other existing operations, whether they are aggregate
635 operations or concrete. The only hazardous materials that are generated, not generated, but used
636 are fuel and (inaudible). Those are highly regulated obviously. If you put storage tanks in for fuel
637 you have to have them meet state specifications. There have to be minimum standards in case
638 there is leakage, that you are able to hold that and those types of things. I would like to just point
639 out all of the different things that we are going to be required to meet. On page five, first of all
640 from a safety stand point, there is what is called the MSHA, which is essentially our industries
641 OSHA. The plant cannot even operate until you have an MSHA identification and they come in,
642 and that is for the safety, not only for the employees but for anybody that comes into the site. We
643 are also required to register with New Mexico Energy and Minerals Department. They are really
644 not a highly regulatory agency, they are a recording entity who see what is going on in the
645 market and understand where aggregates are going and they compile information. New Mexico

Environmental Department is a big one. Any plants that will be operating there have to be uh, they have to have an air quality permit and they are highly regulated. We can answer any specific questions. We will be using water. It's actually going to be a minimal amount of water. The owners of the property are in the well drilling business and have water rights. The water we are proposing to use, and I have outlined some of it here in the package, are essentially for dust control on the plant. Water is still the most effective way when you have aggregates that are coming out of crushers, transferring between conveyers. You just mist it. So that is the primary use of water. For environmental dust control and then watering roads as equipment is working. So we will have to work with the New Mexico Office of Engineer, excuse me, the State Engineer, for water rights and ensure that all of that is done, but that is the owner's responsibility there. We did put down the Valencia County Fire Chief but obviously we found out that any regulations that are required by the fire department will be through Rio Grande. There was a question about our storm water runoff. We have not really approached any of these permits because it is kind of the cart before the horse. There is a lot of work to be done and I would presume if we get approval that these would all be conditions of zoning and that these would all have to be done. But essentially and operation like this would have to have a SWIPP or actually more specifically a multi-sector general permit which basically identifies all of the major flows and I am sure Hoss has a lot of experience in that. It is highly regulated that nothing either leaves the site or that is leaving the site as your monitoring it on any major rain event. I do apologize for the error. There will be no blasting in this. If there was some comment later, this is not hard rock it is alluvial material. So those permits are requirements. For us to even operate every one of those have to be in place before anything can be done.

Commissioner Gurule: How long will it take for all of these permits to be accessed?

Mr. Hooper: Well, since they are all separate and independent, I would say somewhere in the order of six months.

Commissioner Baca: Do you know if you would be taxed by Valencia County?

Mr. Hooper: Yes it's in Valencia County so it would come under the tax to Valencia County.

Chairman McCartney: Based on tonnage?

Mr. Hooper: Based on revenue.

Chairman McCartney: Ok but like I said before, I am sorry to interrupt Mr. Baca, but to clarify that tax credit. If you are hauling all of the minerals, whether it is sand or gravel, out of the county, how does Valencia County get paid for that?

Mr. Hooper: Any sale that occurs in the county that is the point of taxation. It doesn't matter where it goes.

Chairman McCartney: Let me get to the heart of it then please. If these are your trucks, there is no sale, you are hauling to another, say Bernalillo County or Socorro County. They would reap the benefit of the gross receipt tax.

692 **Mr. Hooper:** I am not an accountant. I am not sure.

693

694 **Chairman McCartney:** I am not an accountant either but I was very familiar with Belen Sand
695 and Gravel. If they hauled gravel out of the county to say Home Depot, if they haul sand or
696 whatever, the receipt was done in Bernalillo County, therefore, they got the gross receipt tax and
697 Valencia County would get nothing. That's why I go back to the same question, if you already
698 have two ores here that have gravel pits that benefit here and the money stays here, how does
699 your company benefit anybody in Valencia County?

700

701 **Mr. Hooper:** Well I guess we are a competitor just like if you allow Mc Donald's to compete
702 with Wendy's. We feel like we have more opportunities to sell. These are much better
703 aggregates. I am very familiar with what Duke City has and very familiar with what Max
704 Khienney has and was approved.

705

706 **Chairman McCartney:** What about Mr. Tabet?

707

708 **Mr. Hooper:** Tabet has most of the pits that are along that area are mostly sand pits. They
709 cannot make highly fractured face material because they do not have large enough rock. All the
710 sand pits from Meadow Lake or Danny Maestas', there are several that have been mined many,
711 many years. That rock is an inch and an half minus and you cannot make asphalt aggregates with
712 them.

713

714 **Chairman McCartney:** Are you familiar with the Belen Sand and Gravel pit?

715

716 **Mr. Hooper:** What was originally the VIA pit?

717

718 **Chairman McCartney:** Yes.

719

720 **Mr. Hooper:** Yes. And I have looked at that.

721

722 **Chairman McCartney:** That was high quality rock.

723

724 **Mr. Hooper:** It has good rock in it but the problem with it is that it has intrusions of muds and
725 clay's which are very difficult to deal with. I have looked at that. I have been in every pit around
726 here so I have seen them all at one time or another.

727

728 **Commissioner Baca:** Going back to the taxation. The county is probably going to maintain
729 those roads. We need to make sure that, we need assurance that somehow, we are able to bring
730 some of that money so the county can actually help otherwise it is going to be a liability for the
731 county. So we would like to know how much...Say you sell so many tonnage every week or
732 whatever, we would like to know how much the county is going to get. An estimation at least.

733

734 **Mr. Hooper:** I understand and I am not prepared to do that but we can certainly put some
735 projections together based on what I feel like we can do. One of the things that is real important
736 to clarify now is my understanding of the way is have always...is the point of sale is the county

receives the gross receipts. That is something that I am not familiar with if that's what was happening here. If that would help then we can put together some projections.

Commissioner Baca: We bring companies over and you know our area is somewhat lacking some financial means. What can you do to help the county? Maybe perhaps help the schools? I know some of the counties that when they do bring in good revenues, they do help the area. We just want to make sure that we get some help.

Mr. Hooper: I understand and that is a good point.

Commissioner Baca: What is your take on this?

Mr. Hooper: I am not prepared to give you numbers right now because I would be shooting off the top of my head, but I will be glad to work on some calculations and what we think we could generate for you. One of the things that I have always done and we would be willing to participate on donations on materials to public entities. It makes sense. You can't give away everything but I have always helped with schools, particularly schools, and even churches. It is part of the world that we are living in.

Commissioner Louie: Reclamation. When you are actually processing the rocks, are you digging a hole or are you stripping or?

Mr. Hooper: I am glad you asked that question because this is probably one of the most unique geological things with sand and gravel that I have experienced. We don't intend on digging any holes. These are very high hills that we are essentially going to go in and grade. We are not going to take them all the way down. We are basically going to recreate them just down to a lower level. As part of the reclamation plan we would accept conditions based on your approval that we have an acceptable mining and grading plan before we even start. It is a very ideal way to do it because when you create holes they are hard to deal with ultimately.

Commissioner Louie: So you are actually going to remove the topsoil and just start?

Mr. Hooper: Yes. Very minimal overburden. The topsoil-there is some two to three feet typically and you have to clean off vegetation obviously before you do any mining processing. So any topsoil would be saved for future reclamation for fine alignment and then we would work with you on identifying what are the species and plants that we want to go ahead and put back in that would complement the existing site.

Commissioner Louie: I noticed you're going to bring in material to fill in.

Mr. Hooper: No it would all... Typically in any operation there are some excessive materials, usually the dirt that is within the gravel. You can use that in a base course type material but you overproduce that and so that would be used back into reclamation as well. No imported material will be brought in for reclamation.

782 **Commissioner Louie:** It says “mined areas will include unsalable materials which may be a
783 mixture of oversized or unprocessed rock, sand, re-processed materials and topsoil”.
784

785 **Mr. Hooper:** Right but that is all from the site. Nothing brought in. That is just excessive
786 materials that are produced.
787

788 **Commissioner Louie:** Hardened cement and things like that?
789

790 **Mr. Hooper:** No. No. All the natural aggregates. There wouldn’t be any concrete or anything
791 like that.
792

793 **Commissioner Louie:** About how many trips a day do you foresee?
794

795 **Mr. Hooper:** We were initially thinking that we would have about four trucks an hour.
796 Obviously as time goes that may change but. On page six we have estimated kind of our traffic.
797

798 **Commissioner Louie:** 28. And that is round trip?
799

800 **Mr. Hooper:** Correct.
801

802 **Commissioner Louie:** Access and egress off the road onto the public highway. Are you going to
803 use 47?
804

805 **Mr. Hooper:** That is going to be the primary; it’s really the only way to get out of there, yes.
806 Onto North Navajo. So Highway 47 on North Navajo which is across from Rio Communities.
807 Essentially it is 12 or 13 miles to the site. Which, we have made the obligation to widen the road.
808 We worked with the county and they met with the highway department or spoken with the
809 highway department. We are going to have to widen the cattle guard, it is going to be a double
810 cattle guard, and has to be widened to 24 feet.
811

812 **Commissioner Louie:** And then you are going to work your way over to I-25?
813

814 **Mr. Hooper:** Yes. 25 or 40, wherever the jobs are.
815

816 **Commissioner Louie:** And are you going to use Reinken? Or are you going 47?
817

818 **Mr. Hooper:** Yes. I did have that in the submittal, if you have that. It is on page 10. It is not a
819 very good copy but it does show that it is going to into Belen as the primary route.
820

821 **Commissioner Louie:** Do you know the load that road can take?
822

823 **Mr. Hooper:** It is capable of handling the loads that the trucks are going to have.
824

825 **Commissioner Louie:** Any dust going to be down that road?
826

827 **Mr. Hooper:** We have proposed to use the lignint sulfonate which is-I provided all the technical
828 information and I can get that to you to. It is essentially used for heavy haul roads and mining
829 operations.

830
831 **Commissioner Louie:** I am talking about Highway 47 and Reinken.

832
833 **Mr. Hooper:** Oh that is all paved.

834
835 **Commissioner Louie:** Are the trucks going to be covered?

836
837 **Mr. Hooper:** Absolutely. Everything is tarpped.

838
839 **Commissioner Louie:** That is all I have got.

840
841 **Commissioner Baca:** I have one more question Mr. Chair. You said that you are going to get
842 about three or four truckloads per hour perhaps. How are you basing that assumption? Do you
843 already have a contract?

844
845 **Mr. Hooper:** No sir. I am very familiar with the market.

846
847 **Commissioner Baca:** So we just take your word?

848
849 **Mr. Hooper:** Well no and obviously when you start a business, you know how many
850 hamburgers are you going to sell? How many tons are we going to sell? It is kind of the same
851 thing, but I have a good handle on it so I would say that that's a reasonable amount.

852
853 **Commissioner Baca:** So you have already done research or is just your experience that dictates
854 what you think they might have?

855
856 **Mr. Hooper:** Yes.

857
858 **Commissioner Baca:** What could help us to make this decision so that we know more or less.
859 Because I know we have to kind of rely on your honesty but we have to be sure that I can totally
860 rely on it. Perhaps it would be good if I had something concrete that will help me out on deciding
861 on my vote.

862
863 **Mr. Hooper:** There are several things. One, and I acknowledge that there are other pits, but this
864 is a growing community. (Could not understand) somewhat stagnant but we are hoping to start
865 seeing some more growth. This ensures quality aggregates for the long term. The sites that you
866 are talking about-I think there are some problems with them and I can talk more specifically
867 about them. I think that this ensures that you got a site for building hospitals, and schools and the
868 question was raised, "is this for residents?" Absolutely. We sell to everybody. If someone want
869 to come in and get a pick up or you want it delivered to your house, some landscaping
870 aggregates. So I think that from a county stand point this is going to grow. Where are you going
871 to put your sand and gravel operations? The best place it is, far away from everybody. Because
872 nobody wants them around and I acknowledge that. We are prepared to spend lots of money to

873 build this road that is currently being used so there is value for the county to improve this road
874 and also for the adjacent landowners. It will lower the cost of materials. Currently there is no
875 asphalt produced in this area. Albuquerque Asphalt just finished the Military Highway? The one
876 in front of the landfill?

877
878 **Chairman McCartney:** Manazo Expressway.
879

880 **Mr. Hooper:** Manzano Expressway, I'm sorry. All that had to come from Albuquerque. They
881 are looking at a closer site. I am talking to them because they are a high quality contractor, to
882 ensure that you could get a lower cost of asphalt materials here in the market. Concrete-there are
883 several producers and have been off and on and that is not a problem. There will be gross
884 receipts and I will talk to my accountant to find out because what you explained to me earlier
885 surprises me. There will be employment. We are assuming a minimum of 10 people
886 immediately. That does not include truckers who are necessary for our industry. That doesn't
887 include all the vendor opportunities. We are going to be needing fuel, we are going to be needing
888 supplies, office supplies, and we will be working with local vendors on that. And last and I kind
889 of re-iterate this but, essentially, the county is getting improvement to a road that needs it.
890

891 **Commissioner Moran:** You said four trucks an hour. If your open from 7 am to 7 pm that is 12
892 hours. That would be 48 trucks one way and 96 trucks round trip.
893

894 **Mr. Hooper:** Yes one every 15 minutes. And you know those hours-the only reason I put that in
895 there-sand and gravel operations start early. Nobody likes to (could not understand). There may
896 be times for maintenance like if a crusher goes down. Then you have to call Wagner Equipment
897 and come in and do this, but typically aggregate operations are run 8-9 hours a day.
898

899 **Chairman McCartney:** I just have a couple of questions Mr. Hooper. What is the exact name of
900 your company?
901

902 **Mr. Hooper:** I actually have three companies. This one is called Buildology. It started in 2001.
903 We are right at the Big I in Albuquerque.
904

905 **Chairman McCartney:** The way I... your presentation on page 6, between trucks, work
906 vehicles just the traffic estimate, between the a.m. enter and the a.m. exit and the p.m. enter and
907 the p.m. exit that comes out to 126 runs a day. The question was asked by Commissioner Moran
908 if anybody has talked to the City of Belen?
909

910 **Mr. Hooper:** Not to my knowledge.
911

912 **Commissioner Moran:** Or Rio Communities?
913

914 **Chairman McCartney:** Or Rio Communities? Because this definitely affects them because that
915 is the only way to get to Highway 25, Interstate-25. I think they need to be part of this discussion
916 because those are the most impacted people. And 126 vehicles a day in and out that definitely
917 affects both those locations. And you know them not knowing about this and then say
918 hypothetically it was approved or disapproved, all of a sudden they start seeing 126 trucks, or cut

919 that in half, 60 something trucks a day coming through the city. Belen is a very poor city, trust
920 me on that one, there is no doubt about it. And seeing all these dump trucks and double haulers
921 coming through the streets of Belen, whether they go South to Interstate 25 or they go North, that
922 is a huge impact. I just want to make that comment for the record that you folks need to do your
923 homework about all of these people that are being impacted sir. It is hard for this Board to make
924 a decision without you having done any of this work.

925

926 **Mr. Hooper:** I understand where you are coming from and I guess we have relied on the county
927 who represents Belen as well...

928

929 **Chairman McCartney:** No sir they do not.

930

931 **Mr. Hooper:** Oh, they do not?

932

933 **Chairman McCartney:** Belen is its own municipality, as is Los Lunas, as is Rio Communities.

934

935 **Mr. Hooper:** I see. But they are all within the county?

936

937 **Chairman McCartney:** They each have their own planning and zoning. They each have their
938 own council. The county basically covers the unincorporated area of the county. And when this
939 impacts the municipalities, you need to deal with them also. That is the point I am trying to
940 make. Nobody thought about the poor people coming down Reinken or that overpass and the
941 railroad. That's a huge hazard. Trust me I live there.

942

943 **Commissioner Louie:** Are you going to bring in anything into the facility? You are going to mix
944 asphalt correct?

945

946 **Mr. Hooper:** Basically, we don't anticipate doing that. Part of the mineral resource district
947 allows that once its approved for this operation it's also approved at least as the current
948 regulations as written for concrete and asphalt.

949

950 **Commissioner Louie:** Do they mix latex in asphalt?

951

952 **Mr. Hooper:** No it is basically oil. They have polymers in them. All the new asphalts have
953 polymers in them.

954

955 **Commissioner Louie:** So are they going to be stored at that facility if you decide to do asphalt?

956

957 **Mr. Hooper:** If they were they would be stored there yes.

958

959 **Chairman McCartney:** Anybody else? Thank you Mr. Hooper.

960

961 **Dave Pato:** Mr. Chairman if I might and I apologize for interrupting, but pursuant to the
962 Battershell Process set forth in Battershell vs. the City of Albuquerque, the appellants to the zone
963 change have an opportunity to cross examine the applicant and to ask any questions they have of

the applicant before they present their case. So I would ask the Board open it up to the opponents to ask Mr. Hooper they have in respect to the application.

Chairman McCartney: Mr. Pato, thank you for being here.

Mr. Pato: Thank you so much and I apologize for being tardy.

Chairman McCartney: What we usually do is give the opponents an opportunity to make their points and then we call the applicants back up to respond.

Mr. Pato: Under the Battershell case traditionally the opponents are permitted to, and again the courts make clear, the opponents are permitted to ask the applicants certain questions to elicit that testimony to clarify the testimony. So I ask again...

Chairman McCartney: Ok we will follow your advice sir.

Mr. Pato: Thank you I appreciate that.

Commissioner Baca: (could not understand)

Chairman McCartney: Hold on, we are going to find out here in just a second. Does anybody else want to speak on behalf of this application?

Mr. Dolan: My name is Daniel Dolan and I am the attorney for Mr. Chavez and have a couple of pints I would like to make.

Chairman McCartney: You weren't here earlier were you? Did you get sworn in?

Mr. Dolan: I was sworn in when you swore in the second group of people.

Chairman McCartney: Ok. Is that fine Mr. Pato?

Mr. Pato: Yes Mr. Chairman.

Mr. Dolan: My name is Daniel Dolan and I am a Bar Certified Environmental Lawyer. I have my office in Albuquerque. I know Mr. Chavez from other matters that I have done for him in the past. This is a highly regulated industry. The environment department is going to have a major impact on it. They will be doing the storm water prevention pollution plan. They will be managing the reclamation plan and bond and requirements, financial requirements for this facility to be reclaimed and revegetated. Dust will be the Air Pollution Bureau and they will model the emissions from this plant from the time it is operational pressure works and minimize the amount of dust to state standards before the ever leave the premises. They will also address the dust control on both the haul road as well as the premises itself and the crusher itself. In addition, mines and minerals will have some impact in how the gravel is mined and the activities that are there, and as Mr. Hooper pointed out, Mine Safety Administration-MSA-is responsible for OSHA type activities, safety activities. And they are coordinated with the state OSHA as

1010 well. The only other important comment I want to make was, and I have worked with some sand
1011 and gravel operations and a concrete plant in the southern part of the state, and that is the point of
1012 severance. This is a Valencia County company so everything they sell will generate revenue for
1013 Valencia County. If Home Depot decides to buy a large quantity of gravel and store it for sale,
1014 the point of severance is where the tax is paid. That is not a transaction at Home Depot that is a
1015 transaction at the gravel pit itself. So all funding will come to the county here and there won't be
1016 any splitting or partial pieces. I would be glad to address any environmental concerns anybody
1017 has.

1018
1019 **Commissioner Baca:** I have one more question before you continue. What percentage of the
1020 taxes will the county get? Is there a percentage that you can give us?

1021
1022 **Mr. Dolan:** If it's in the county the county would get all of the gross receipts tax.

1023
1024 **Commissioner Baca:** In terms of percentages how much is that?

1025
1026 **Mr. Dolan:** I am not sure what the split is between the state and the counties. There is, the state
1027 gets gross receipts and then the county gets a piece of the gross receipts tax. But I am not sure
1028 what that percentage is. I am not a tax lawyer.

1029
1030 **Chairman McCartney:** To follow up on the question, what if it is sold out of the county?

1031
1032 **Mr. Dolan:** It doesn't matter if it is sold out of county because the point of sale is the gravel pit
1033 itself. So the gross receipts are generated in Valencia County, they go to Valencia County and
1034 state out of that location. Where the money comes from to make that transaction doesn't really
1035 matter.

1036
1037 **Commissioner Baca:** Well it matters to us because we would like to make sure that we get our
1038 share and that's why we are asking that because it really matters to us. We don't want to get like
1039 0.03 percent when we are going to be maintaining the road. It's very important to me.

1040
1041 **Mr. Dolan:** I understand that and one of the points that Mr. Hooper was trying to make was that
1042 the company is going to bring the road up to a county standard and then continue to maintain that
1043 with the lignin sulfonate. They will also be required to maintain the road from the environmental
1044 perspective by the State of New Mexico and the Environmental Department. So if there are any
1045 dust complaints that come up on that road, the environmental department will go directly to the
1046 company and say "you have to fix that problem". This has been an issue in Southern New
1047 Mexico along Las Cruces and farther East and the Environmental Department comes and makes
1048 routine inspections of those quarries and mining operations to make sure they comply with all of
1049 the air regulations and all of the operational regulations. In fact the air section, the air bureau
1050 with the environment department is one of the most active environmental agencies in the state.
1051 They have a very extensive fine situation and are really on top of dust control elimination by
1052 watering and polymers and are a very careful organization. I am a chemical engineer myself. My
1053 Masters Degree is in Air Pollution Control, so I know a fair bit about that.

1055 **Commissioner Gurule:** How are the sales going to be monitored at the pit? How are you going
1056 to monitor how much money you make up there?
1057

1058 **Mr. Dolan:** As everybody does, you know when your money has to come in at a business they
1059 have checks and transfers and credit card purchases and all of that goes into corporate coffers
1060 and then the corporation has to file its state tax return just like everybody else does.
1061

1062 **Chairman McCartney:** Aren't you required to have a set of scales?
1063

1064 **Mr. Dolan:** Absolutely and those scales can certainly be monitored. As a matter of fact the
1065 environmental department monitors the scales because the amount of money that they collect for
1066 reclamation plan is sometimes based on the total amount of material removed. In addition
1067 sometimes the amount of material removed affects the emission standards from the Air Pollution
1068 Department.
1069

1070 **Chairman McCartney:** Mr. Foster do you have a comment?
1071

1072 **Mr. Foster:** Yes. This gentleman said that the storm water runoff will be handled by the State
1073 Environmental. Last week, two weeks ago this agreement was just made that the county is
1074 working on their MS4 permit. That is me. I want the letter from CID saying they are going to
1075 take charge of your stuff. Here is my card.
1076

1077 **Mr. Dolan:** Got it.
1078

1079 **Chairman McCartney:** Thank you Mr. Foster. Before I ask Mr. Pato a question I want to see if
1080 there is anybody else that wants to speak on behalf of this application? Let the record show that
1081 no one else wants to speak in support of this application. Mr. Pato I have a question for you. In
1082 essence what you are saying based on that case law, Mr. Hooper will be up here and the other
1083 members of the public who oppose it can come up and stand side by side at the podium correct?
1084

1085 **Mr. Pato:** That's right. But Mr. Chairman just for the purposes of establishing the rules of the
1086 length of this meeting you can direct the questions come through you and you ask the questions
1087 you prefer. It requires that you create an opportunity to cross exam. But you get to decide as the
1088 Chairman how that cross examination is going to look. So again if you don't-if it becomes
1089 confrontational-if you...
1090

1091 **Chairman McCartney:** We can just stop it right there?
1092

1093 **Mr. Pato:** You have them go through you as well.
1094

1095 **Chairman McCartney:** How many people want to speak opposing this application?
1096

1097 **Steven Chavez:** I would like to cross examine Mr. Hooper very briefly regarding the Ordinance.
1098

1099 **Chairman McCartney:** Alright, Mr. Hooper if you would step back up this is Mr. Chavez.
1100 Please state your name and who you are working for.

1101 **Mr. Chavez:** Yes, sir. Thank you Mr. Chairman. It's very good to see you to. It's been about 15-
1102 16 years, and Commissioner Gurule as well and the other Commissioners-Thank you. My name
1103 is Steven Chavez. I am an attorney, I have been practicing law in Valencia County for over 20
1104 years and I am also a professional land use attorney and I advise the City of Albuquerque
1105 specifically as well as many other municipalities throughout the state on land use issues and
1106 zoning specifically. Mr. Chairman is very familiar with this Zoning Ordinance as well as the MR
1107 District because this MR District was created when Mr. Chairman was an official with the
1108 County at that time. So I would like to ask Mr. Hooper some questions regarding his application.
1109

1110 **Chairman McCartney:** Please step up to the podium Mr. Hooper.
1111

1112 **Mr. Chavez:** Sir, I am going to show you what you have marked as exhibit D in your
1113 application. This is your reclamation plan, is that true? Take a look at it. Is that your reclamation
1114 plan that you submitted to the county?
1115

1116 **Mr. Hooper:** Yes. We submitted this. I am not saying that this is a complete reclamation plan.
1117

1118 **Commissioner Baca:** Excuse me. What page is that on?
1119

1120 **Mr. Hooper:** Page 20.
1121

1122 **Mr. Chavez:** Page 20 of Mr. Hooper's application.
1123

1124 **Mr. Hooper:** But yes that is part of our submittal.
1125

1126 **Mr. Chavez:** Is that the entire reclamation plan that you submitted to the county as part of your
1127 application or is there another part to your reclamation plan that you haven't submitted?
1128

1129 **Mr. Hooper:** That is all we have submitted.
1130

1131 **Mr. Chavez:** Ok. So that is your complete reclamation plan. Have you reviewed the Zoning
1132 Ordinance regarding the MR District requirements?
1133

1134 **Mr. Hooper:** Yes.
1135

1136 **Mr. Chavez:** Ok. So you are familiar with those requirements. So has that reclamation plan been
1137 approved by the State of New Mexico?
1138

1139 **Mr. Hooper:** No.
1140

1141 **Mr. Chavez:** Now, in that reclamation plan does it show that all excavations are going to be
1142 back-filled, contoured or terraced or put to use shown on the reclamation plan which is
1143 compatible with final depth and slopes within the excavation site? Do you have that information?
1144

1145 **Mr. Hooper:** I would ask you to repeat that please.
1146

1147 **Mr. Chavez:** Ok. Are the depths and the slopes of your reclamation plan disclosed in your plan?
1148
1149 **Mr. Hooper:** They are not defined.
1150
1151 **Mr. Chavez:** Ok. Thank you.
1152
1153 **Chairman McCartney:** Mr. Chavez just a moment. Kerrie can you hear Mr. Chavez ok?
1154
1155 **Kerrie Maes:** Yes sir. Thank you, sir.
1156
1157 **Mr. Chavez:** Is the plant order and sequence of your reclamation plan, is that disclosed in the
1158 plan that you provided in exhibit D?
1159
1160 **Mr. Hooper:** Not specifically, no.
1161
1162 **Mr. Chavez:** How come? You are aware that that is a part of the zoning requirement, correct?
1163
1164 **Mr. Hooper:** It was my intention to have a generic reclamation plan and making the final
1165 reclamation plan comply with the requirements.
1166
1167 **Mr. Chavez:** You are aware that the application for a Zone Change requires a complete
1168 reclamation plan correct?
1169
1170 **Mr. Hooper:** I am not.
1171
1172 **Mr. Chavez:** Now with regard to the roadways. Have you provided evidence demonstrating that
1173 the roads, bridges and culverts on all the routes to and from the proposed facility are able to
1174 support the project loadings? Have you shown that information in your application?
1175
1176 **Mr. Hooper:** There are no culverts.
1177
1178 **Mr. Chavez:** That doesn't answer my question sir.
1179
1180 **Mr. Hooper:** Can you repeat it then?
1181
1182 **Mr. Chavez:** Certainly. Have you shown in your application, or provided evidence,
1183 demonstrating that the roads, all the roads, in Valencia County that you intend to access, bridges
1184 and culverts, (apparently there are no bridges), culverts on the routes to and from the proposed
1185 facility, are they able to support the projected loadings? Is that information disclosed in your
1186 reclamation plan or in your application?
1187
1188 **Mr. Hooper:** I believe it is but I am not sure.
1189
1190 **Mr. Chavez:** Where is it?
1191
1192 **Mr. Hooper:** There are no bridges and no culverts so I guess it doesn't apply.

1193
1194 **Mr. Chavez:** Where in your application does it disclose the loadings of the roads, and the
1195 loadings of the trucks?
1196
1197 **Mr. Hooper:** Well we are proposing to improve the roads to the county standards and so until
1198 that is done the roads that are there doesn't apply.
1199
1200 **Mr. Chavez:** So what you are telling me is that you haven't provided that information to the
1201 county in your application, correct?
1202
1203 **Mr. Hooper:** I assume so.
1204
1205 **Mr. Chavez:** Isn't it true that the tonnage of the vehicle that you intend to load and transport
1206 through Valencia County are anywhere from 15 tons to 25 tons?
1207
1208 **Mr. Hooper:** Correct.
1209
1210 **Mr. Chavez:** That is not disclosed in your application is it?
1211
1212 **Mr. Hooper:** I would have to review it. Off the top of my head I do not know.
1213
1214 **Mr. Chavez:** Ok. Have you disclosed the acceptable load limits that are placed on the local
1215 roads? Have you included that information in your application? The load limits of the roads that
1216 you intend to use?
1217
1218 **Mr. Hooper:** No.
1219
1220 **Mr. Chavez:** Have you disclosed any information regarding any wells in the area of your
1221 excavation project?
1222
1223 **Mr. Hooper:** I think there is one well identified that is part of the owners property but that is the
1224 only one.
1225
1226 **Mr. Chavez:** Ok. Now have you disclosed that there are any other surface water bodies such as
1227 the Ojo that we discussed earlier, that we heard in discussion earlier? Is that in your application?
1228
1229 **Mr. Hooper:** No.
1230
1231 **Mr. Chavez:** Are you aware that that surface body of water is on my client, Mrs. Rita Padilla's
1232 property?
1233
1234 **Mr. Hooper:** I don't know Mrs. Padilla so, no, I am not aware of that.
1235
1236 **Mr. Chavez:** Near her property?
1237
1238 **Mr. Hooper:** I am not familiar with her property.

1239
1240 **Mr. Chavez:** Where is the archeological survey for this project? Have you provide that in your
1241 application?
1242
1243 **Mr. Hooper:** We spoke to Jacobo and he said it was not necessary so we did not pursue it.
1244
1245 **Mr. Chavez:** You were told that a zoning requirement was not necessary to include in your
1246 application?
1247
1248 **Mr. Hooper:** We basically just followed what we were told.
1249
1250 **Mr. Chavez:** You didn't follow what the Ordinance requires?
1251
1252 **Mr. Hooper:** If it requires that we do-did not do that. Yes.
1253
1254 **Mr. Chavez:** So you didn't do any research and analysis of the Archaeological Records
1255 Management System?
1256
1257 **Mr. Hooper:** No sir.
1258
1259 **Mr. Chavez:** Did you provide a one hundred percent BLM class 3 ground survey? That's a
1260 Cultural Survey? Did you provide that in your application?
1261
1262 **Mr. Hooper:** No.
1263
1264 **Mr. Chavez:** Did you research and provide an analysis of that research from the State Engineer
1265 of Cultural Properties?
1266
1267 **Mr. Hooper:** No.
1268
1269 **Mr. Chavez:** And are you aware that these three things are requirements for your application for
1270 a Zone Change?
1271
1272 **Mr. Hooper:** Apparently not. No.
1273
1274 **Mr. Chavez:** Now I understand in your application-I am almost finished, thank you for the time-
1275 I understand in your application that you intend to manufacture concrete, correct?
1276
1277 **Mr. Hooper:** It is a possibility I mean that's, the Mineral Resource District allows.
1278
1279 **Mr. Chavez:** Very true. It's actually part of your application that you are going to, that you
1280 intend to possibly manufacture concrete and store concrete on the property site, correct?
1281
1282 **Mr. Hooper:** Correct.
1283

1284 **Mr. Chavez:** Ok. Are you also aware that that is not a permissive use in the MR District, it is a
1285 Conditional Use?
1286 **Mr. Hooper:** I am not.
1287
1288 **Mr. Chavez:** Did you apply for a Conditional Use Permit in the MR District?
1289
1290 **Mr. Hooper:** I did not.
1291
1292 **Mr. Chavez:** Thank you. No further questions.
1293
1294 **Chairman McCartney:** Thank you Mr. Chavez. Anybody else?
1295
1296 **Mr. Dolan:** Mr. Chairman, I would like to re-cross on this.
1297
1298 **Chairman McCartney:** Mr. Pato?
1299
1300 **Mr. Pato:** If you are so likely or so willing to indulge in their re-cross certainly you are welcome
1301 to do that.
1302
1303 **Chairman McCartney:** Commissioners?
1304
1305 **Commissioner Baca:** Yes I would allow it.
1306
1307 **Chairman McCartney:** Go ahead sir.
1308
1309 **Mr. Dolan:** Thank you Chairman. Just a couple of questions for Mr. Hooper. Your application
1310 here today was a full reading of the Planning and Zoning Commission regulations and rules was
1311 it not?
1312
1313 **Mr. Hooper:** Correct.
1314
1315 **Mr. Dolan:** And you produced your draft plan knowing that all of things would have to be re-
1316 approved by the State of New Mexico in much greater detail with consulting engineers,
1317 documents, calculations, and information back and forth between those engineers and the State
1318 of New Mexico in order to get any of these approvals, is that correct?
1319
1320 **Mr. Hooper:** That is correct.
1321
1322 **Mr. Dolan:** So the Planning and Zoning Commission here, if they granted you a permit, you
1323 would still have to produce all of this documentation that Mr. Chavez is saying is missing in your
1324 application would you not?
1325
1326 **Mr. Hooper:** Absolutely.
1327
1328 **Mr. Dolan:** And that information would then be going back to the Planning and Zoning staff for
1329 their approval would it not?

1330 **Mr. Hooper:** Yes.

1331

1332 **Mr. Dolan:** Let me ask you a couple of quick questions, not to belabor the point but, the
1333 questions that he asked about the size of the trucks, um , those are standard trucks are they not?
1334 They are nothing unusual?

1335

1336 **Mr. Hooper:** They are all state legal trucks, yes.

1337

1338 **Mr. Dolan:** And about the wells. When you make your application for water rights to do dust
1339 suppression, you will have to go before the State Engineer and do all of the calculations, find an
1340 engineer that knows where those wells are and see what the impact is from the water withdrawal
1341 that you are going to extract, right?

1342

1343 **Mr. Hooper:** That is correct.

1344

1345 **Mr. Dolan:** So that all of those wells will be protected, is that not true?

1346

1347 **Mr. Hooper:** Yes.

1348

1349 **Mr. Dolan:** The BLM Ground Survey, would you be doing that in advance of even having a
1350 consideration from the Planning and Zoning Commission? I mean that is a pretty expensive item
1351 is it not?

1352

1353 **Mr. Hooper:** It is and we would be prepared to do that. It was my understanding that that was
1354 not a requirement, but it is an obvious oversight.

1355

1356 **Mr. Dolan:** And as well, the State Cultural Properties Department, if they had any interest you
1357 will provide information to them and they can examine cultural sites and you will provide
1358 documentation to them about the area if there are cultural items and sites found on the premises?

1359

1360 **Mr. Hooper:** Yes.

1361

1362 **Mr. Dolan:** Is this an application to do a concrete plant at this point?

1363

1364 **Mr. Hooper:** It isn't. We put it in there and I might have misinterpreted, I thought that under the
1365 MR District, that if you are approved that it is also approved for concrete and for asphalt. This is
1366 really-we are just trying to get the sand and gravel.

1367

1368 **Mr. Dolan:** Now one of the first questions that was asked, was about your reclamation plan, and
1369 you said that it was a draft. It is not a final plan, it is not a plan that is approved by the state. You
1370 would anticipate that there would be numerous changes and requirements imposed on you in
1371 your reclamation plan would you not?

1372

1373 **Mr. Hooper:** And those contours and final contours and maps that you would use for your
1374 reclamation plan, those are going to be generated by the engineer you will hire after you gain

1375 some approval from the Planning and Zoning Commission and you will be back before them
1376 with those approvals will you not?

1377
1378 **Mr. Hooper:** That is correct.

1379
1380 **Mr. Dolan:** No further questions. Thank you Mr. Chairman.

1381
1382 **Chairman McCartney:** Anybody else that would like to ask Mr. Hooper questions? Step up and
1383 say your name for the record sir.

1384
1385 **Mr. Carpenter:** My name is Richard Carpenter. One question I would like to ask them is about
1386 the traffic. Why was your plan to come up 47 and through Belen? Do you know that from 7-7
1387 you are going to be hitting a lot of schools letting out and a lot of traffic? Why didn't you plan on
1388 going down 47 and then hit 60 and then go North or South? That is one. Two, somewhere along
1389 here I heard something about that there is no bridges or culverts. Well they run underneath
1390 Reinken Avenue, the irrigation ditches. So you are going to be crossing, one, two, three that I
1391 know of. And those I see every day, plus the bridge over the railroad tracks, which handles a lot
1392 of kids in that area crossing. I think that whole delivery system is kind of dangerous. Third, you
1393 said something here, your company is located in Albuquerque, right, did you not say that?

1394
1395 **Mr. Hooper:** Yes.

1396
1397 **Mr. Carpenter:** I am asking, I would like the experts to answer for me, if you generate sales out
1398 of Albuquerque that is where tax money is going to be spent. That is where you are being
1399 supervised. That is all I have to say.

1400
1401 **Chairman McCartney:** Thank you Mr. Carpenter. Would you like to respond Mr. Hooper?

1402
1403 **Mr. Hooper:** I am not sure what to respond to.

1404
1405 **Chairman McCartney:** Is there anybody else who would like to ask Mr. Hooper a question?
1406 Thank you for your time Mr. Hooper. Would anybody like to speak?

1407
1408 **Ms. Padilla:** Thank you for the opportunity to speak. My name is Andrea Padilla and I own land
1409 next to where this is going to take place. I have I guess three comments/questions. Number one
1410 again was what he just asked him about. Your business is based in Albuquerque. Why do you
1411 have to have a gravel pit here? Isn't there anything available in Bernalillo County? East, West,
1412 somewhere that would be closer to your business? Number two-...

1413
1414 **Mr. Hooper:** Should I answer the questions as we go?

1415 **Chairman McCartney:** Yes. Go ahead and let him respond ma'am and then you can go on to
1416 number two.

1417
1418 **Mr. Hooper:** Aggregates are very difficult to find. They are becoming depleted in the
1419 Albuquerque area. I work all over the state with different operations. Sand and gravel is not
1420 readily available in Albuquerque.

1421 **Ms. Padilla:** Secondly you were asked how this is going to benefit Valencia County. And it was
1422 brought up that you need to ask if it benefits Belen and Rio Communities. But we also have to
1423 ask how is going to benefit me? I am a land owner right there next to it. I don't think it is going
1424 to benefit me. It is going to hurt me. It is going to hurt my property rights. If we do have growth
1425 like some people say we are, maybe one day I might want to do something with my land out
1426 there. I don't think that anybody is going to be interested knowing that there is this thing next to
1427 me.

1428
1429 **Chairman McCartney:** At this time Ms. Padilla let me interrupt you. Do you have any
1430 questions for the gentleman?

1431
1432 **Ms. Padilla:** That was kind of a statement question. The third one is have you seen the roads in
1433 Belen? They can't even maintain the roads now. How are they going to maintain them with all
1434 these trucks going on them? We need to talk to those communities before anything is done.
1435 Thank you.

1436
1437 **Chairman McCartney:** Would you like to respond Mr. Hooper?

1438
1439 **Mr. Hooper:** No response.

1440
1441 **Chairman McCartney:** Anybody else? Mr. Chavez?

1442
1443 **Mr. Chavez:** No questions just a quick closing argument.

1444
1445 **Mr. Pato:** I anticipate that the opponents to the application have an opportunity to present their
1446 case and to be cross examined by the applicant after the cross examination of that, so I don't
1447 know if this is what you are proposing to do at this time.

1448
1449 **Chairman McCartney:** Mr. Pato, there is nobody else that wants to speak in opposition.

1450
1451 **Mr. Pato:** Ok, perfect.

1452
1453 **Chairman McCartney:** Let the people you are representing Mr. Chavez finish and then you can
1454 make a closing argument.

1455
1456 **Mr. Chavez:** Absolutely, thank you. And what I would like to do actually is speak since I am up
1457 here and then let my client speak.

1458
1459 **Chairman McCartney:** And then you won't speak again?

1460
1461 **Mr. Chavez:** No I won't speak again. Most people appreciate that. Mr. Chairman and
1462 Commissioners, Mr. Hooper said "Don't put the cart before the horse". Your Ordinance requires
1463 that you put the cart before the horse. Your Ordinance requires that you have a complete
1464 reclamation plan before you consider approving a zone change and the reason why it requires
1465 that is because you know, Mr. Chairman and Commissioner Gurule, in the late 1990's we had
1466 some gravel pits that weren't lawful at the time. They were approved in the early 1990's and

came to fruition. When people in Meadowlake started complaining and bombarding the Board of Commissioner and Planning and Zoning about how these 25 ton trucks were destroying their roads. The county got involved in seven years of litigation from that. I was involved in that. Seven years of litigation, very expensive litigation, about the roads. Who was responsible for the roads. And the reason why this litigation took place is because early on the county didn't require these performance agreements, these plans that are included now in your new Ordinance. That's why you are required, or the applicant is required to submit this information when he is submitting his application for the zone change. The reclamation plan is extremely important. It is the second most important part of this plan and environmental lawyers might think it is the most important part of the plan, because we know this is a watershed area to some extent. The contours up on the east side, they have quite a few large drainage channels, runoff channels. This plan will change the contours of those drainage channels. The applicant is saying "let the state handle it". No, you don't have to do that now. You can say "No we want to see how you are going to handle it, so you have to submit this information to us before we consider your zone change application, not afterwards, because this is our county". The state won't deal with it as well as you can deal with it because this is your county. The other issue about the reclamation plan is that... My client Ms. Rita Padilla-Gutierrez owns land right next door to this site and the Ojo is on her land. It's right in the center of her land and her families land. I was wrong it is on her land sir. And we are concerned with that because that is less than half a mile, or at least we think it is less than half a mile because the application doesn't clearly meet your Zoning Ordinance for showing exactly where this project is going to take place. There is a very vague map and it doesn't show us exactly. Your Zoning Ordinance requires more specificity than that and that's because people have a right to know exactly what is going to occur on the property next door. With regards to a performance agreement, you have a right to require that the applicant provide a proposed performance for making these road improvements because they are going to be responsible for the road improvements and you have a right to review that beforehand, not after you approve the zone change. That's your leverage. To negotiate the performance agreement is the zone change. Once he has the zone change, you have lost your leverage to deal with these performance issues. One hundred and twenty six trucks per day, most of them being at twenty five tons, twenty to twenty five tons, will make significant damage to the county roads and to Trigo and to Navajo road. Those roads, if those are indeed dedicated county roads, and I am not convinced they are, but if they are indeed dedicated county roads, then you have a right to require a performance agreement to make sure that those roads are maintained. The idea of a Tax Incremental District won't work. It violates the anti-donation clause. You cannot pay them any given benefit for their project. You cannot do things for them. Unless it is a dedicated road, then you have a responsibility to maintain the roads, but the resources of Valencia County are very low and you are going to be working that road more than two times a week. I guarantee that because we have seen that with the other projects from the late 1990's and early 2000's that Mr. Chairman and Commissioner Gurule has dealt with. With regard to the manufacture and storage of concrete, that is a conditional use. It's not a clearly permissive use in the MR District. So, if you give them a zone change he can't do that until he gets a conditional use permit until after he gets the zone change. So he cannot submit an application for manufacturing and storing concrete unless he is submitting a conditional use application as well. It violates your ordinance. The other reason why a reclamation plan is so necessary is because if you look at your Comprehensive Plan under page 61, there is a map on page 61 of your Comprehensive Plan and it shows that the eastern side of this land is a sensitive, highly sensitive

1513 aquaphor, highly sensitive. It is the most sensitive kind of aquaphor we have in New Mexico. It's
1514 the same kind of sensitivity we have in the greenbelt. That's why you need a reclamation plan.
1515 Because that aquaphor is going to be impacted by changing the way runoff drains. The area that I
1516 believe, I'm guessing, the area that I believe that Mr. Hooper plans to mine, is in the less
1517 sensitive aquaphor. But I am not sure, I can't tell for sure. I am guessing. We are all guessing
1518 because we don't have the right contour maps showing that specificity that your ordinance
1519 requires. So in closing I would just like to say that your ordinance requires more, you deserve
1520 more, you should require more because it's in your ordinance, you have that right and don't wait
1521 for the applicant to submit his applications to the state. Table his application if you want or deny
1522 it now. But it is grossly insufficient, it is deficient. You have a right under the zoning ordinance
1523 to require everything is met. This is a huge project for Valencia County. He hasn't shown those
1524 things. Thank you.

1525
1526 **Commissioner Baca:** Can you site some of the areas where we can find that reclamation, uh, so
1527 we can kind of look at it ourselves. When I look at this comprehensive book and I really didn't
1528 find anything that shows that (cannot understand).

1529
1530 **Mr. Chavez:** Yes sir. I can cite you the section. I printed it off your website so I cannot cite to
1531 the exact page but I can find it for you.

1532
1533 **Mr. Pato:** It is 154.091 (h) 1-8 and (I).

1534
1535 **Mr. Chavez:** Exactly. Subsection G and subsection H deal with the review requirements, the
1536 application requirements. And as Mr. Hooper admitted in cross examination he has not complied
1537 with the zoning ordinance. Land reclamation is in subsection (G) (4).

1538
1539 **Commissioner Baca:** Can we ask our attorney if he could clarify or maybe perhaps give us a
1540 little more insight in terms of what Mr. Chavez has said. I don't know if you agree on that.

1541
1542 **Chairman McCartney:** I think Mr. Pato, what he is trying to say is what Mr. Chavez is saying
1543 is true? Did he interpret the Ordinance the way you interpret it?

1544
1545 **Mr. Pato:** That is true if you look at this 154.091 it does set forth requirements and require that
1546 they have the reclamation plan. The question before this Board is whether or not the reclamation
1547 plan, that one page plan that they submitted in their packet is sufficient and complete and I
1548 believe that to be an issue that was raised by Mr. Chavez. They did submit a plan. The question
1549 is whether or not it was comprehensive and complete.

1550
1551 **Chairman McCartney:** In essence it was not complete?

1552
1553 **Mr. Pato:** That is a determination for the Board.

1554
1555 **Mr. Chavez:** Mr. Hooper admitted it was not complete.

1556
1557 **Commissioner Baca:** That answers it. Thank you.

Chairman McCartney: Mrs. Gutierrez, state your name for the record please.

Mrs. Gutierrez: My name is Rita Padilla-Gutierrez and I am already signed in. Thank you, Mr. Chairman and members of the Board. We have heard a lot of technical stuff, Mining 101, we got it. Now I would like to at least present a personal, historical feature here with the lands that are going to be impacted. As far as my generation knows, many people in the audience, Manuel A. Baca's lands were then hand...like his father handed to him-handed over to my mother-Crisanta Padilla who then handed it over to her children. But in addition to that, there were the (could not understand) families, the Baca families, G.I. Baca, the Sanchez's. There are many families involved here in a trap of about twenty six hundred acres and each family got about eighty four to ninety acres. And those have been ancestral lands, that we, for decades, have recognized as pastoral, pristine lands that we have used through the years whether it was having livestock there, or recreating or doing whatever we needed to do knowing that we had this beautiful piece of land out on the base of the Manzano. So that is the way we know it and that's how we grew up knowing it. So now we have this situation where we think it's going to impact us. The water source as Mr. Chavez indicated, the noise levels. And Mr. Ron Chavez in his presentation made a reference to the fact that there are huge amounts of thievery going on over there. They are pulling out concrete fences and pipe fences and what not already. There is a lot of destruction going on up there and a lot of the farmers could probably tell you all the destruction and thievery that has been going on out there. And now we will have a new component of new traffic and new problems to deal with. So from my perspective, it is very personal. These are ancestral lands handed down to us for decades and I personally don't want to see any changes in it. I realize it's about money and it's about gross receipts tax, and what Valencia County is going to get and all of these things that have just been discussed. But when you bring it down to the level of the people that live there, we happen to be sandwiched in the two, Mr. J.R. Chavez and Mr. Ron Chavez now has lands that sandwich us in. That's not our problem. That's how we inherited this land and now we have to deal with this kind of thing just because we are a smaller portion than to the right or left of us. I feel very strongly that you all have to at least recognize that this is a historical, familial situation for us and it would impact us in a very negative way. Our family has thought about putting a cabin up there so we can recreate but based on everything that is going on with thievery and all of that, how can we even think about doing that? There has been some livestock there and people have grazed the land and the Ojo happens to sit on my mother's eighty six acres. It is blocked in, it's on the map and it looks like it is a separate entity all together but, no it is right on her eighty six acres. We have understood through the years that everybody has access to the Ojo. Because that is the water source and we have been good neighbors and everybody has gotten along very well. But to now have this situation. Twenty years ago we were involved in a similar situation with Mr. J.R. Chavez and we had to through great expense, families had to come together and litigate it and fast forward twenty years and here we are again with another situation that we have to deal with, with lands that we thought were good and pristine and cultural to us. We hope that you can understand that perspective. Thank you.

Commissioner Baca: Rita where is your land in respect to Mr. Chavez's. Where within the boundaries of the map?

Mr. S. Chavez: It is in that box in Mr. Hooper's map.

1605 **Chairman McCartney:** Commissioner why don't you go up to the podium to see the map.
1606 (Commissioner Baca went to the podium and Mrs. Padilla showed him where her property is
1607 located. Mr. Ron Chavez also went to the podium and the three of them looked at the properties
1608 in question).

1609
1610 **Mr. Pato:** Mr. Chairman and members of the Commission just to be clear it is the area shaded in
1611 white. Is that not right?

1612
1613 **Mr. Ron Chavez:** That spring is owned by me, her and everyone else that owns this land here.
1614

1615 **Mrs. Gutierrez:** I said it was communal.

1616
1617 **Mr. Pato:** So the area we are talking about, your property here, is that which is white over here?
1618

1619 **Mr. Ron Chavez:** She owns the property around it.
1620

1621 **Mrs. Gutierrez:** The family owns the property all around it.
1622

1623 **Mr. Pato:** Oh I see. The property being described by Mrs. Padilla is the property that surrounds,
1624 in your tab number eight, the area surrounding the white area.
1625

1626 **Chairman McCartney:** Is there anybody else that would like to speak? (There was nobody). Ok
1627 Mr. Hooper and Mr. Chavez would you like to a comment in regard to what you have heard.
1628

1629 **Mr. Pato:** This is also the opportunity cross examine Mrs. Gutierrez.
1630

1631 **Chairman McCartney:** Is that what you want to do Mr. Chavez?
1632

1633 **Mr. Ron Chavez:** No I don't want to cross examine anyone.
1634

1635 **Mr. Dolan:** I would ask that if the proceedings are...
1636

1637 **Chairman McCartney:** Let me ask you a question sir. Are you representing Mr. Chavez or Mr.
1638 Hooper?
1639

1640 **Mr. Dolan:** I represent Mr. Chavez. I would like the opportunity to make a summation if there
1641 are no further proceedings.
1642

1643 **Chairman McCartney:** I have already asked so you are more than welcomed.
1644

1645 **Mr. Dolan:** Thank you. I believe that you have the right to make a conditional approval for this
1646 application. There is particularly no specific way that an applicant with a large project such as
1647 this one is going to be able to spend hundreds of thousands of dollars and then come and say
1648 "here is all of my technical information" and ask a body such as the Planning and Zoning
1649 Commission digest that with the staff. So what we would ask that the commission do is
1650 conditionally approve this with all the permitting requirements that the staff says are necessary

and which you know are necessary-Air Pollution, State Engineer, Mining, and (could not understand) all of those application requirements. And then as those things and generated and brought back from the state agencies that have the ultimate authority to approve or disapprove of the planning activities, bring them back to the staff, let the staff review them. If the staff says it's ok-it's ok. If the staff has a question, and the applicant has no objection to the staff bringing that back before the commission, as part of the conditional use permit, of a conditional use zone change. So that the body has the right to look at it a second time after there has been a substantial compliance with all the state requirements. Because the state requirements, all the... There are going to be dozens of engineers that are going to look at this and have calculations. There is going to be much more paper than the notebook that you see before you on this application. There is going to be hundreds and hundreds of pages of material generated at the State Engineers Office. There is going to have to be a survey of the water rights and wells, and the impact of this withdrawal on all other wells and the water rights in the area. There will have to be a hearing on those water rights and an administrative law judge would be appointed by the State Engineer. So there are a lot of activities that are going to go on that can come back to the staff and the staff can let you know whether they agree that it is a good plan, it's a plan that's appropriate for Valencia County, if it is, then the zone change can go forward. If they have some question they can bring it back to you for review of the plan that the state and the applicant produces. With that, I would close and say that Mr. Chavez's arguments are either "yes" or "no", the argument really isn't "yes" or "no". This is a process not an up or down vote. This is a long and expensive process that would benefit Valencia County and benefit the community and the tax base.

Chairman McCartney: I have a question for you. Repeat your name for me please.

Mr. Dolan: My name is Daniel Dolan.

Chairman McCartney: Ok Mr. Dolan I have a question for you. Based on your summation, in essence what you are asking us to do is to recommend approval of an application that hasn't even done the basics just from the Valencia County Ordinance and its Comprehensive Plan. Is that what you are saying, sir?

Mr. Dolan: No I am saying that the application is a draft application.

Chairman McCartney: Ok you're asking us to recommend approval on a draft.

Mr. Dolan: It could never be... What I am saying is the Environment Department and the State Engineers Office are not going to give approval for the reclamation plan...

Chairman McCartney: I am not asking about that or any state agencies. What I am asking for sir, is the basic reclamation plan.

Mr. Dolan: That's right.

Chairman McCartney: That wasn't done.

Mr. Dolan: What I am saying is that if you ask for a final plan from the applicant before the state has a shot at it they will say that you haven't given approval and they won't even review it.

Chairman McCartney: What I am trying to say sir, and please don't run around the question. I'm not mentioning any state agencies. All I am trying to get from you sir is the basic commodity of the Valencia County Zoning Ordinance. Nothing about the Environmental Department, nothing else. Just the basic.

Mr. Dolan: I think Mr. Hooper answered that. He said that it is a draft plan and the draft plan would meet the requirement of the Ordinance. The very specific pieces of the plan...

Chairman McCartney: I don't know how much better to state this but you are skirting around the question. A draft plan with the impact of this type of application does not work. That is why we have an Ordinance for Valencia County. Not for Santa Fe County, not for Bernalillo County- for Valencia County. And it states emphatically, word for word, right in this Ordinance, you don't submit a draft sir. Not a draft. Not for a zone change of this magnitude and with this impact on the people of this county. And the fact that you didn't talk to Belen or Rio Communities where your trucks will be going through, that's another negative. What I am simply saying sir is do your homework.

Mr. Dolan: I think the homework has been done. There has been adequate information and the final approval will be a combination of give and take between this Board here and the State of New Mexico. The applicant has, the applicant has a project that is generally framed out and once the State of New Mexico generates all the detailed paper work, they get the chance to review it and bring it back to you.

Chairman McCartney: Sir, again, right now, this Board up here, we are not worried about the State of New Mexico. I could care less just to be blunt. What I want to know is why wasn't the draft Ordinance followed specifically for what's required.

Mr. Dolan: I believe that it was.

Chairman McCartney: Ok. We totally disagree.

Mr. Ron Chavez: A lot of what we went on here while we met with members of the Planning and Zoning Department, we went on by some of the other pits in the area that were approved that didn't do archaeological studies and all these other things you are mentioning. We did talk to these people including Jacobo and said we will be willing to do these for sure but we want some kind of tentative approval for this zone change and then we will get and hire the engineers. I am already looking at out of pocket just to get this road done because Valencia County doesn't have the money. They have more money than me. I am already looking at a lot of money just to have this done and I understand that all of these things are ultimately requirements. All I am saying is that when we looked at all of the other pits in the area they didn't do these things. And we are willing to do them.

1741 **Chairman McCartney:** Mr. Chavez, let me interrupt you right there for a moment. How do you
1742 know that?
1743
1744 **Mr. Chavez:** We looked at the paper work.
1745 **Chairman McCartney:** There are two pits in this county that are active right now. One is in
1746 Socorro County. So that information wouldn't be available here anyway. And Ron, I have known
1747 you a long time just for the record. We are not saying nothing bad, we are just saying do the
1748 basics.
1749
1750 **Mr. Chavez:** Well, we intend to do the basics.
1751
1752 **Chairman McCartney:** That reclamation plan does not even meet first base.
1753
1754 **Mr. Chavez:** I think what Mr. Dolan was trying to tell you was that in order for anybody to take
1755 us seriously, unless I go out and hire an independent engineer which if I am working with the
1756 state, then they, you know as a citizen I am getting some of my monies worth in my taxes by
1757 having that agency come out and work this project. And they will work the project and engineer
1758 it if there is some sort of a need. And there is no need until we get some kind of tentative
1759 approval.
1760
1761 **Chairman McCartney:** You have an attorney to represent you Mr. Chavez correct?
1762
1763 **Mr. Chavez:** Yes sir.
1764
1765 **Chairman McCartney:** I would just have him look and read the ordinance.
1766
1767 **Mr. Chavez:** Ok. I am ok with that. All I am saying is that we worked on this for almost a year
1768 now, back and forth with Planning and Zoning and then we get here tonight and you call us
1769 neophytes. But we were working with your people.
1770
1771 **Chairman McCartney:** Hold on Mr. Chavez. Nobody called you anything.
1772
1773 **Mr. Chavez:** You said we came totally unprepared. We came prepared with what they said
1774 would be good.
1775
1776 **Chairman McCartney:** I am going to say this one more time for the record Mr. Pato, as I spoke
1777 to Mr. Dolan, the attorney, we are not concerned about Santa Fe, the Environmental Department,
1778 we are not concerned about any of that. We are concerned about our peoples county.
1779
1780 **Mr. Chavez:** Well I am to.
1781
1782 **Chairman McCartney:** Well, you are both getting into "you can't do this" because of the
1783 expense. Just do the basics. Just the basics. That's all.
1784
1785 **Mr. Chavez:** Ok.
1786

1787 **Commissioner Moran:** What would be the impact of tabling this? What is the consequence
1788 versus...

1789

1790 **Chairman McCartney:** I think because we are a recommending body, I think the County
1791 Commission, and correct me if I am wrong Mr. Pato, deserves the opportunity to hear what was
1792 presented here today. Do you agree sir?

1793

1794 **Mr. Pato:** Yes.

1795

1796 **Commissioner Baca:** But we do have the right to table it though.

1797

1798 **Mr. Pato:** Yes you can table it if you want to.

1799

1800 **Commissioner Moran:** What would the consequence then-whatever decision we make, pro or
1801 con or table-pro or con still goes over to the commission. Table does not go to the commission.

1802

1803 **Chairman McCartney:** Correct.

1804

1805 **Commissioner Moran:** Ok that helps me a lot. And...

1806

1807 **Commissioner Baca:** If it's tabled it will not go to the commission?

1808

1809 **Mr. Pato:** No it will not. Mr. Chairman the only consequence of it is that it denies the applicant
1810 the timely review of that process and time to review that decision. So we are talking about
1811 another thirty days out and I am just looking through the Ordinance real quick to make sure there
1812 are no time requirements to render a determination. I think we are ok for another thirty days.

1813

1814 **Chairman McCartney:** I think that being a recommending body that it should be heard by the
1815 whole County Commission. That's what I prefer anyway that way they have the opportunity.
1816 They can either reverse our decision or they can back us up.

1817

1818 **Commissioner Moran:** Seeing this is in my district, this would be my recommendation. You
1819 guys all know that I am a business booster, but I don't think that...I think that the City of Rio
1820 Communities, the City of Belen and the Rio Grande Fire Department all deserve input into this,
1821 so based on that I would recommend denying the request.

1822

1823 **Chairman McCartney:** And Mr. Pato, before I ask for a second- that would be part of your
1824 Facts of Findings and Conclusion of Law, correct?

1825

1826 **Mr. Pato:** Yes sir.

1827

1828 **Chairman McCartney:** Do I have a second to Commissioner Moran's motion? (There was not a
1829 second) I will second her motion.

1830

1831 **Commissioner Baca:** Discussion?

1832

1833 **Chairman McCartney:** Go ahead Commissioner.
1834

1835 **Commissioner Baca:** I think one of the duties and responsibilities of this Board is to actually
1836 make sure we have everything in line so that we can make a decision. We don't have all of the
1837 information. So how can we...
1838

1839 **Chairman McCartney:** Well it's not our fault.
1840

1841 **Commissioner Baca:** Well I know it's not but in order for us to make a decision we have to
1842 make it based on something.
1843

1844 **Chairman McCartney:** When you make a decision here Commissioner Baca it's based on what
1845 was presented in testimony. That's what you go by. You can't ask for more, you can't expect
1846 more. It's up to the applicant to follow the rules.
1847

1848 **Mr. Pato:** I might be able to help this discussion along a little bit. Pursuant to our Zoning
1849 Ordinance, the applicant bears the burden of proof. That is a fundamental premise that applicant
1850 bears the burden of proof and demonstrating their intent for the zone change. If you go through
1851 the Ordinance you heard the testimony presented to us today with respect to 154.091, there are
1852 those basic requirements that we have to expect of any zone change and that it's consistent with
1853 the Comprehensive Plan. That it advance the public safety, health and morals and so forth. Then
1854 there are those additional requirements which are set forth in 154.091. We spent a lot of time
1855 talking about those today. Included among those in section (H) that they provide {and again it is
1856 their burden and their responsibility} and produce that evidence that would show their
1857 entitlement and to provide the documentation, as applicable, required for application for the site
1858 design review; the plan showing the location, area, dimensions acreage and legal description of
1859 the parcel to be developed or used; provisions for landscaping and screen-planting of all parts of
1860 the site; provisions for preventing the collection and stagnation of water at all stages of the
1861 operation; they are required to show plans, profiles and cross-sections of all access roads; plans
1862 for reclamation; all plans prepared and submitted at a scale no smaller than 1 inch to 200 feet.
1863 So in order to approve this zone change, you are going to have to make a determination if they
1864 have complied with all these requirements and based on the testimony presented her today I
1865 think you guys are (cannot understand). There is additional compliance in section (I) as well.
1866 They have to demonstrate that a sufficient quality and quantity of mineral resource exists at the
1867 proposed site; {I don't know that I heard testimony with respect to that and I don't know that I
1868 recall seeing that in the packet. Again this Board is certainly at liberty to review the packet and
1869 see if that information is obtained within it}; that the approval of the zone change will not cause
1870 immediate or long-term land use conflicts that cannot be satisfactorily mitigated; a report that an
1871 archeological resources inventory survey has been completed. So this Board is then charged with
1872 making a determination as to whether or not the applicant has satisfied their burden here today.
1873

1874 **Commissioner Baca:** So can we go back and amend it? I think that would be ok.
1875

1876 **Commissioner Moran:** I would like to amend my motion to deny the request for a zone change
1877 based on the failure of applicant to provide the burden of proof that it meets the requirements of
1878 the Valencia County Planning and Zoning Requirements.

1879

1880 **Chairman McCartney:** There is no more testimony. I second the motion.

1881 **Roll Call Vote:**

1882 Commissioner Gurule votes yes.

1883 Commissioner Louie votes yes.

1884 Chairman McCartney votes yes.

1885 Commissioner Baca vote yes.

1886 Commissioner Moran votes yes.

1887

1888 Motion carries 5-0 to deny recommendation of approval of a zone change to the Board of County Commissioners.

1889

1890

1891 **Chairman McCartney:** Thank you everybody for your patience. Let's take a 5 minute recess.

1892

1893 **Mr. Pato:** Before we take a recess, I was advised that the publication provides for item B was a

1894 change from RR-1 to C-1, but instead it was intended to read RR-2 and therefore insufficient

1895 notice was provided so I am going to ask that this item be tabled until the next commission

1896 meeting.

1897

1898 **Chairman McCartney:** Ok the item is tabled.

1899

1900 **B) Request for Zone Change from:**

1901 **Rural Residential 1 (RR-1) to Neighborhood Commercial (C-1)**

1902 Application: ZC # 2016378

1903 Applicant: Ladis Romero & Evelyn Braman

1904 Address: Ladis Lane-Tract 92-A-2-C-2, Los Lunas, NM 87031

1905 Purpose: Future development of office spaces, shops, storage facility and

1906 parking space for family owned local business(es).

1907

1908 **Legal Description:** T6N, R2E, Section 16, Map 85, N.M.P.M; Tract 92-A-2-C-2, 5.42 AC,

1909 C-5-16 (Ladis Romero); Filed in Book 14, Page 240 of the Valencia County

1910 Clerk, Los Lunas, NM 87031.

1911

1912 *This property is located approximately 0.20 miles south of Tavalopa Rd. & on the south side of Ladis Lane*

1913 *This property falls within District II*

1914 *County Commissioner Alicia Aguilar ♦ P&Z Commissioner Michael McCartney*

1915

1916 **Item (B) Request for Zone Change tabled due to insufficient notice.**

1917

1918 **7) Discussion**

1919

1920 **8) Next Meeting(s):**

1921

1922 **Thursday November 17, 2016 @ 3:00 PM** (Valencia County Commission Chambers)

1923 **Thursday December 15, 2016 @ 3:00 PM** (Valencia County Commission Chambers)

1924

1925 **9) Adjournment**

1926 Motioned by Commissioner Gurule.

1927 Seconded by Commissioner Moran.
1928 Motion carries 5-0.+