

**SOUTHERN SANDOVAL COUNTY ARROYO FLOOD CONTROL AUTHORITY
(SSCAFCA)**

**MINUTES OF OCTOBER 17, 2005
BOARD OF DIRECTORS SPECIAL MEETING**

CALL TO ORDER.

The special meeting of the SSCAFCA Board of Directors was called to order by Dub Yarbrough, Chairman, at 1:07 p.m.

ROLL CALL OF DIRECTORS.

Directors in attendance were John Chaney, Steve House, Donald Rudy, and Dub Yarbrough. Bernard Metzgar, SSCAFCA's attorney, David Stoliker, Executive Director, and members of the public were also present.

PLEDGE OF ALLEGIANCE.

The Board was led in the Pledge of Allegiance by Dub Yarbrough.

APPROVAL OF AGENDA.

A motion was made by Donald Rudy to approve the Agenda as presented. It was seconded by Steve House and passed unanimously.

ANNOUNCEMENTS.

Announcements were made by Dub Yarbrough that all electronic devices needed to be turned off during the meeting.

EXECUTIVE DIRECTOR'S REPORT.

1. **Action/Discussion of Rio Rancho Drainage Impact Fees.**

Mr. Stoliker stated that the City is asking for SSCAFCA's support with regard to its drainage impact fees. The drainage fees apply to antiquated platting only; the City is not proposing any drainage impact fees on existing or proposed development. There is a distinction in the report between regional drainage and local conditions. It looks like SSCAFCA would continue to address the regional flows greater than 500 cfs and the local would be addressed by the City. There is no definition of what proportion of the drainage impact fee goes to which category. Mr. Rudy stated that the City has also exempted anything having to do with crossings, culverts, bridges, etc. since these fees are included in roads. Mr. Chaney stated that he would find it hard to support impact fees if those proportions of the fees that go toward regional drainage aren't controlled by SSCAFCA. Mr. Rudy stated that nothing that the City does should be allowed to constrain either SSCAFCA's design or its implementation of regional flood control.

Mr. Castillo, of AMREP, stated that it is obvious that the actual impact fees that the City is charging needs to be addressed. These include the cost of roads, off-site water and sewer. In terms of drainage, he stated that anything that the City does should not impact SSCAFCA's ability to control drainage on a regional basis.

Mr. Matt Spangler, of AMREP, stated that his concerns were that the plan is based on concrete lined channels. He agrees with SSCAFCA's plan to make the arroyos more natural and somewhat park like. The City's numbers are based on a wholly different concept. His second concern is double charges. If the City is charging an impact fee, he assumes that means SSCAFCA can't have any exactions for those same lots, because otherwise it's a double tax. It was his understanding that SSCAFCA was going to bring together a committee to discuss drainage standards used to calculate different flows. That hasn't yet happened, but it's important because if those numbers reduce the flows that would reduce the amount of drainage improvements required and, in turn, lower the impact fees. He stated that he thought SSCAFCA was also going to look at alternatives to having 100% of the water flow down the arroyos and that it was going to look at having either on-site ponds, or neighborhood ponds, to detain some of the water. If the owner of a lot pays the impact fee for drainage improvements, why should he pay another tax to SSCAFCA? Ostensibly, he has already paid his share of the drainage improvement. His concern is that there is a double taxation on the property with these impact fees.

Bo Johnson, of Curb Inc., stated that they look forward to having a more even method of allocating costs beforehand. If it is better defined, it is less confrontational. He supports what has been said before and looks forward to working out the details and getting some good infrastructure built.

Mr. Rudy stated that the City's calculation of what it costs per unit to provide the concrete lined channel comes out to \$17,000 per lot rather than \$4,000. There were many manipulations of the data to get to \$4,000 and he is very concerned that SSCAFCA will give people the impression that if they pay \$4,000 for a lot that it will completely cover all of the costs of providing flood control for the whole area. People will then object to SSCAFCA's assessment, a big fraction of which is for maintenance, not for further construction and SSCAFCA will have trouble floating bonds in the future. Mr. Rudy stated that if you hard line the upper third, then the calculations and capacities for the lower third are not adequate.

Director Conkling arrived at 1:25 PM.

Mr. Conkling stated that the Board has just authorized spending \$300,000.00 to do a quality of life study that was based on keeping all the arroyos natural. Mr. Rudy stated that the City's study on impact fees was done without SSCAFCA's knowledge.

Jim Palenick, City Administrator for the City of Rio Rancho, stated that in 1994 the City first imposed impact fees by ordinance, making the entire city a single service area. They have used impact fees very effectively over the years to provide for system level

improvements for its infrastructure. The City has been derelict in the fact that it hasn't changed or amended the impact fees in the case of roads, parks, bike trails, and public safety since they were first amended in 1994. Water and sewer impact fees were imposed in 2001. For over two years the City has employed consultants to assist them in developing a new look at the impact fee ordinance to see if changes were necessary. In this process, for the first time, drainage became a very significant issue and the issue of whether or not drainage impact fees should be imposed came into being. They have finally reached the end of the process. It is anticipated that the City of Rio Rancho will grow by approximately 11,000 people each year for the next five years. That will be about 125,000 people by the year 2010. He stated that in doing the recommendation for the drainage impact fees, their consultants did not recommend that it be across all categories of development within the community; rather, that it should only apply to those homes that are built on antiquated plats where there is no other infrastructure. The idea is that the developed master plan subdivision, i.e., Cabezon, Mariposa, etc., have already built infrastructure drainage improvements within their own plan so there is no need to impose a drainage impact fee on them. Conversely, the single lot homes built in Unit 17, etc., are not having any sort of integrated look at drainage and are not dealing with drainage on any sort of regional basis and they are not contributing in any way to solving the problem with drainage. The idea is that the drainage impact fees would only be imposed on those kinds of developments.

Mr. Palenick stated that over the last couple of years, the single lot homes are typically 25% or less of the homes that are built in Rio Rancho. About 75% of the homes would not be subject to the drainage impact fees. Right now, if you are building a single family home in the community, the total impact fees are \$6,094.00, which is broken down at \$1,547.00 for roads; \$27.00 for bikeways and trails; \$976.00 for parks; \$174.00 for public safety; \$1,230.00 for a 5/8 inch meter typical residential water use; and \$2,140.00 on typical residential waste water use. The consultants have recommended that the total go from \$6,094.00 to \$9,882.00, with the breakdown being \$2,691.00 for roads; \$32.00 for bikeways and trails; \$1,258.00 for parks; \$339.00 for public safety; \$3,264.00 for water and \$2,298.00 for waste water. The City does not believe that it can begin to impose these fees all at once and that they need to be phased in so the builders and developers don't get hit all at once.

Mr. Palenick stated that they are recommending to the City Council that the first imposition of these fees come into effect on May 1, 2006. The second phase would come into effect on January 1, 2007 and a third on January 1, 2008. The drainage fee is entirely separate and was proposed by their consultant to be \$4,465.00 for the obsolete platted lots where there is no infrastructure. They would not impose it all at once, so the idea would be that the first phase would be effective May 1, 2006, which is 40% of the fee at \$1,785.00; on January 1, 2007 it would move up to 80% of the fee at \$3,570.00; on January 1, 2008, it would go to 100% at \$4,465.00.

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Mr. Palenick stated that the City is concerned that SSCAFCA does drainage work and this fee has never been imposed before, and they are concerned as to how they will mesh. How do they impose the fee and ultimately use that money to fund drainage improvements. They are concerned how that will impact what SSCAFCA does and its financing over time and if the fee will be determined by the public to be a fee for what SSCAFCA does. The City's answer, hopefully, is clearly not. What SSCAFCA does is the larger scale, much more regional big picture drainage. The City's hope is just to begin developing a relatively small revenue stream that will begin to start funding some of the drainage work that is not being done.

Mr. Chaney stated that the City's study was based on the arroyos being hard-lined and the SSCAFCA Board has been opposed to that for quite some time. In fact, just recently, the Board has allocated \$150,000.00 to do a quality of life study with the express intention of keeping the arroyos open and natural and park like. If the premises of the City's study is based on hard-lining the drainage channels, it is in conflict with SSCAFCA's direction.

Ken Curtis, City Engineer for the City of Rio Rancho, stated that when the report refers to hard-lining, when you do impact fees, aside from projecting the growth, you have to look at your infrastructure growth also. It was simply one of the technical ways that the consultant said that the drainage could be handled. It does not require the City or predetermine that this is the answer. It is simply the mechanism to "cost out" what the improvements could be. It was simply a costing mechanism. It is not an acknowledgment that that is what the City intends to do.

Mr. Rudy stated that he didn't find in the calculations the cost of getting water from the homeowner to the arroyos. He would like to know how that will be handled and how much of the impact fee will be required to provide that. Mr. Palenick stated that the City deals with drainage from any individual private property owner delivery to the road. Once it gets there, it's in the larger system, which takes it to an inlet or an arroyo. Nothing would change and that's why they use the two localized plans. He stated that he still thinks that there is plenty of land for development which won't require hard-lining of any channels.

Mr. Rob Anderson, of the City, stated that the City is 103 square miles right now and only 19% to 20% of the property is developed. To add 50,000 people within the next five years will take up approximately ten square miles. Most of the City's development is happening in the much more densely developed master planned kinds of areas, which the City is encouraging. The way they have proposed the drainage impact fees is that not only are they entirely justifiable in paying for appropriate infrastructure, but another good result of this is that the City is creating more of an economic incentive not to build on the single/obsolete lots without doing drainage planning. Right now, they are only paying \$2,700.00 per lot in impact fees because they are not paying water and sewer. But if the drainage impact fee is added to the other impact fees, those impact fees are virtually in line with

what they are in the developed subdivision. The City is hoping that this is an economic incentive built into this plan.

Mr. Conkling stated that both entities have ongoing activities and are headed in the same direction. In the course of the City merging into its goals, there was really no place for the SSCAFCA Board to really understand what was happening. SSCAFCA has substantial taxpayer funds in a planning process to create what SSCAFCA believes could be the largest park in New Mexico. The idea was to link up with major developers, the City and SSCAFCA, all of the arroyos in the entire jurisdiction in a way that is master planned and creates trails and access for the public. He stated that SSCAFCA learned through its own studies that there were some deficiencies in its drainage assumptions and it had to do with SSCAFCA's use of the full development criteria for generating costs. SSCAFCA knows that the City is not enamored of on-site ponding because of the difficulty of policing the problem. He can't pin down how the costs were arrived at. Mr. Palenick stated that it is the City's belief that, if anything, they were on the low side of the costing.

Mr. Ken Curtis, of the City, stated that when they took the Venada, Black and Montoyas, the purpose behind it was to get a cost. With the land subdivided, there is some belief that there is a right to development; therefore, it could all develop as platted. If the plans are inaccurate it really doesn't matter because they are trying to come up with a current cost per acre, and then generically apply that to development. The City does not control development. Development will come where the people with the money determine it should be. Mr. Conkling stated that he does not want the SSCAFCA Board, or the City, to build things they don't need just because they started with assumptions that aren't true. When a developer comes in and starts to do its master plan, they must assume full upstream developed forever, which is not really a true picture.

Mr. John Kolessar, of the City, stated that it is the City's intent to coordinate the impact fees 100% with SSCAFCA. There is no plan outside of what has been done together. If SSCAFCA were to change its assumptions, SSCAFCA would be part and parcel to any planning move the City would make. The fear that the City would build something that would not be consistent with whatever assumptions SSCAFCA is making is not likely under this scenario. He stated that there is a five year update to the City's CIP.

Mr. Palenick stated that the City uses the regional plans for part of the cost analysis. By definition, the justification for the impact fees has a regional and a localized component. There is one table in the report that names the SSCAFCA approved plans as a contributing portion of the cost and the localized plans, which is the best breakdown to date. They had to recognize on-going capital bonds, which is the difference between total cost and net cost. There is an adjustment because you cannot charge impact fees if SSCAFCA has a bond out there to make an improvement. A service unit is an impervious acre. Mr. Conkling stated that it would make some sense if that proportion of money coming into the City that is devoted to the regional part of the impact fees goes directly to

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SSCAFCA. Mr. Palenick stated that the City is willing to have that sort of discussion and it makes a great deal of sense. He stated that in no way should this request for drainage impact fees be construed as damage to SSSCAFCA, or a way to cut back its services. If anything, it should help provide SSSCAFCA other opportunities in the future. The City doesn't want to jeopardize either SSSCAFCA's current revenue streams or its ability to function. The City is simply looking for other ways to inject revenue to do projects that desperately need to be done.

Mr. Curtis stated that if table 52 on page 55 goes into effect that is the adopted impact fee capital improvement plan. It becomes the projects that can be funded by impact fees. There are four, which is roughly 2/3 regional, 1/3 local. This will be amended from time to time. He stated that the law requires the City to use the best available adopted information with regard to costs. Every one of these reports has a date of 2003 or earlier; both property and construction costs have gone up substantially since then. If nothing else, the City is on the low side of costs due to inflationary forces. Mr. Conkling stated that once this plan is fully implemented, it looks like the City expects an income stream of \$2 million per year at \$4,465.00 per house, per antiquated plat. Mr. Curtis stated that there will be impact again based on the fact that once you impose the fees there is now an economic disincentive to not build in the antiquated plats. The likelihood is that the City will continue to see fewer homes built on those lots.

Mr. Yarbrough stated that the City is SSSCAFCA's designated agent for the smaller subdivisions. He does not know how the City will break down the small lots from the small subdivisions. He asked if they were going to have to completely replat to meet the City's or SSSCAFCA's standards.

Mr. Curtis stated that anybody who is coming in and replatting falls under the subdivision ordinances today with the City and, therefore, would get a drainage plan review and release at some historical rate subject to either the City's review as SSSCAFCA's designee on the small flows, or SSSCAFCA's review. The City meets weekly to discuss these plats. If they redevelop or resubdivide, there would be no impact fees because they would have the obligations of a full drainage study and mitigation.

Mr. Conkling stated that there is a hybrid on page 54, which is a case by case basis on development within SADs. It is clear that the hybrid is the combination of antiquated platting together with an SAD, where assessments are levied and all the utilities are put in. Recently, there have been significant improvements on drainage, including land being allocated for ponds. The hybrid behaves more like a full development than it does like antiquated plats and there really wouldn't be an additional drainage impact fee in an SAD. Mr. Palenick stated that Rob Anderson is the impact fee administrator. But, because the drainage improvements are being incorporated as if it were a new subdivision, the technical answer would be that Mr. Conkling's statement is correct. They would work to make specific determinations on each and every SAD.

Mr. Kolessar stated that a SAD is definitely used for drainage. They pull in water and sewer to get the value added to the property to justify it. The public is basically signing up in a SAD for drainage. Mr. Palenick stated that the reason the City is instituting this fee is because it is an equity issue. The lots outside of the fully developed subdivisions aren't paying anything right now. The whole intent is to equalize the economic impact across all households. Mr. Curtis stated that the City plans on doing quite a number of redevelopments in the future as well. You could have someone with antiquated platting now and for a series of years paying based on that; then, in the future, when it is turned into a redevelopment, it could be blighted, then they would have a single developer build it out as a master planned subdivision, so now it transitions from an antiquated plat to an actual master planned development. It would become very complex and extremely difficult to administer.

Mr. Rob Anderson stated that they would look at the possibility of waiving the impact fee for someone who has done the correct thing by trying to build a pond on their lot by looking at how the site performs and what improvements are put in place and what consideration the City would acknowledge. Mr. Curtis stated that right now, given the ordinance the way it has been proposed, the only reasons to waive impact fees are if it's for the City of Rio Rancho, the Rio Rancho public schools, or economic based employment for economic development. There is no current language in the ordinance that would allow a waiver as discussed.

Mr. Palenick stated that the more obvious answer is credits. Credits are explicit in state law and if somebody were to make a public improvement for a road or for drainage then they would be eligible for impact fee credits. It is done all the time on the larger subdivisions. When credits are given, it must be for system improvement, not a project improvement. If they're only dealing with the drainage for an individual lot on the lot, it would not classify itself as a system improvement. The City has had several people who have created ponds that take care of a whole neighborhood, which would clearly be creditable against those other lots; the people who built the pond would get the credit and the people who come later would pay in.

Mr. Curtis stated that the City has the authority to provide credits as long as it is a system improvement. If all you are doing is solving your own property's problem, then that is a project improvement. The instant you do an improvement that benefits more than just your property, there is clearly system improvement, and the City can credit the fees, but it cannot waive the fee.

Mr. Stone had a question with regard to the way the costs were calculated, which is with respect to reducing the amount of the impact fee by the amount that SSCAFCA has put in for improvement by bonds. He thinks that it was interpreted as being their total amount that SSCAFCA has performed just through its jurisdiction. Mr. Dodge stated that

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ASCG was the technical drainage consultant that worked with Duncan & Associates. The consultants felt that they would be double charging if they didn't lower the number for SSCAFCA improvements.

Mr. Mike Castillo, of AMREP, stated that he is still confused about the double taxation question. He stated that he is still unsure if it will be a tax by SSCAFCA and the City. Mr. Curtis stated that the pre-supposition behind impact fees is that they charge for impacts due to new development. There are always inherent existing deficiencies and those cannot be charged. This impact fee is not a double tax - they were all based on future needs for new development. Mr. Palenick stated that an impact fee is not designed to be a tax - it only comes into effect when you move to develop the lot. The problem with this impact fee is that it discourages people from buying properties. The bottom line is that the law requires that they never charge more than the true costs. Conversely, you can always charge less. If the City wants to subsidize some of the costs of roadways and public safety or drainage, it has the right to do so.

Mr. Castillo asked if, in addition to the impact fees being discussed, there was a possibility that there may be water rights impact fees and the new environmental division is looking at higher septic tank fees. Mr. Palenick stated that they looked at the water rights acquisition potential within their review of impact fees. The number was just too big to add into the fee to be able to sell it. Therefore, the impact fee is not covering the cost of water rights acquisition and they are having to deal with that in other ways.

Mr. Stoliker stated that the City is asking that SSCAFCA support the impact fee. Mr. Metzgar stated that there is no need to discuss or modify Mr. Stoliker's proposed letter to the City at this time. It is more appropriate to decide whether the Board is in support or not. Getting the final version of what is stated in the letter can be done outside of this meeting.

Mr. Palenick stated that what the City has tried to do with this process is develop a new revenue stream for drainage that neither the City nor SSCAFCA generate enough money to cover. He stated that the monies generated through this process have to be dedicated to drainage improvements. Then the City will look at priorities. If the City and SSCAFCA both agree, the impact fee funds can be used for high priority projects.

A motion was made by John Chaney to fully support the City of Rio Rancho's drainage impact fees if SSCAFCA administers those regional drainage funds in cooperation with the City. It was seconded by Steve House.

Mr. Curtis stated that ultimately the City Council has to approve any of the issues. The staff is very supportive of everything that has been discussed today. Mr. Curtis stated that the likely scenario would be some type of joint powers agreement in which the City contracted with SSCAFCA to do particular improvements using the funds. There would be some level of the fees that would be used by the City for basic overhead and

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administration. The City is independently in charge of land use and SSCAFCA is independently in charge of drainage. There are projects at both the regional and local levels. If SSCAFCA wants 100% control of the money, it must take care of the local problems as well. Mr. Metzgar stated that there is no joint powers agreement in place; rather it is a drainage policy whereby the City is SSCAFCA's agent for certain developments within the City. It does not cover city street drainage, etc. All of that responsibility is the City's.

Mr. Chaney stated that the motion should be that SSCAFCA supports the drainage impact fee and looks forward to taking the leadership on regional projects. Mr. Palenick stated that this wording gives enough flexibility to work into a JPA. Mr. Rudy suggested changing the motion to simply support the impact fees, with no other issues being involved at this point. Mr. Metzgar stated that the motion would read as, "move to support the City of Rio Rancho drainage impact fees if SSCAFCA administers the regional drainage projects." Mr. Curtis stated that to add "to be detailed in a joint powers agreement" will work fine for both sides.

Mr. Metzgar stated that the final motion should read, "move to support the City of Rio Rancho drainage impact fees with SSCAFCA administering the regional drainage fees collected as set forth in a joint powers agreement to be developed." Mr. Chaney and Mr. House agreed that the motion be amended to read as stated by Mr. Metzgar.

The motion passed unanimously.

ADJOURNMENT.

A motion was made by Donald Rudy to adjourn the meeting. It was seconded by Mark Conkling and passed unanimously. The meeting was adjourned at 3:15 p.m.

Wm. C. Yarbrough
WM. C. YARBROUGH
Chairman

John Chaney
JOHN CHANEY
Secretary

DATE APPROVED:

