

**SOUTHERN SANDOVAL COUNTY ARROYO FLOOD CONTROL AUTHORITY
(SSCAFCA)
MINUTES OF APRIL 6, 2004
BOARD OF DIRECTORS SPECIAL MEETING**

CALL TO ORDER.

The regular meeting of the SSCAFCA Board of Directors was called to order by Dub Yarbrough, Chairman, at 1:15 p.m.

PLEDGE OF ALLEGIANCE.

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

ROLL CALL OF DIRECTORS.

Directors in attendance were Mark Conkling, Richard Deubel, Donald Rudy and Dub Yarbrough. David Stoliker, Executive Director, Bernard Metzgar, SSCAFCA's attorney, SSCAFCA staff and members of the public were also present.

APPROVAL OF AGENDA.

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

ANNOUNCEMENTS.

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

DISCUSSION/PRESENTATIONS OF IMPACT FEES, SINGLE LOT DEVELOPMENT AND CAPITALIZATION OF DRAINAGE PROJECTS.

Clancy Mullins, of Duncan & Associates, out of Austin, Texas, stated that they do public sector consulting primarily. They are part of a consulting team working for the City of Rio Rancho whose mission is impact fees in general. They are updating their waste water, public safety and park impact fees and also looking at the feasibility of drainage impact fees. They have done drainage impact fees in several other communities, including Albuquerque and Bernalillo County. Albuquerque did not adopt the impact fees, but Bernalillo County did. ASCG is their drainage engineering firm; Insight Southwest is their local planning firm which will do the land use assumptions for the impact fees.

Mr. Mullins stated that the Development Fees Act is the state law in New Mexico that authorizes impact fees. It authorizes cities and counties to impose impact fees for storm water drainage and flood control improvements. It does not authorize a state agency such as SSCAFCA to impose impact fees; however, there is the potential for the City to

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enter into an inter-local agreement with SSCAFCA with regard to impact fees. In such an agreement, the City would collect the money, but SSCAFCA would be the one making the improvements. He stated that, in general, only new development pays impact fees. This is different from a storm water utility fee. Storm water utility is more like a utility rate that is paid monthly. An impact fee is assessed at the subdivision stage and when the final plat is filed. Assessment means that whatever fee schedule is in place at the time you plat, you have four years to pull a building permit under that fee schedule. Since the City has not had an impact fee, nobody has been assessed, so when the initial adoption of the ordinance comes on line, any development that hadn't pulled a building permit would be subject to the impact fee.

Mr. Mullins stated that you can't charge for existing deficiencies by trying to place the impact fees on new development. You can't fund operations and maintenance with an impact fee, only capital improvements. The fees have to be spent to benefit the fee paying development. You also need to give credit for developer installed improvements. He stated that development that is occurring on scattered lots that were platted years ago without improvements will not be eligible for any credits. The fees for single family units for drainage improvements range from a high of \$3,200.00 a unit to \$669.00. Bernalillo County's fee is fairly significant.

Mr. Mullins stated that they are in the preliminary stages of the feasibility phase with Rio Rancho right now. They have not decided exactly how to approach this or what it will cost. They have reviewed existing data, the studies that SSCAFCA has performed of the major arroyos, and some studies sponsored by the City for more local drainage improvements such as Unit 17. Based on their review, they are trying to develop an approach for how to calculate the impact fees in a reasonable way in compliance with the Development Fees Act. One of the ways they are looking at is to base the fees on existing studies by taking several representative areas and calculating what an average fee might be. Ideally, what they would like to have is a comprehensive drainage master plan to build out the entire region.

Mr. Mullins stated that in terms of the policy framework and issues that they are looking at is to do a city-wide drainage impact fee that would be within the Sandoval County portion of Rio Rancho. This could possibly be formatted as two separate impact fees. It could be formally adopted as one fee, but they could break it down so the City would know how much was for regional and how much was for local improvements. This will be up to the City Council to decide the formatting of the fee.

Mr. Stoliker stated that SSCAFCA has been invited to the City's meetings with regard to these impact fees and the reason for this meeting is to start the dialogue on what the Board wants staff to do. Mr. Deubel stated that he understands how the impact fees might be determined, but he foresees some problems because SSCAFCA is multi-jurisdictional and some developers might get upset if they are charged in the City of Rio

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Rancho, but not in the County of Sandoval, the Village of Corrales or the Town of Bernalillo.

Mike Castillo, of AMREP, asked if they were looking at impact fees as they exist and updating those also. Mr. Mullins stated that that was part of the process and that they are looking at water rights as well. There will be public hearings and meetings with regard to the entire process, however, there is no schedule set as of this date. He stated that there would be no distinction in ordinance between platted lots and lots that are undergoing the subdivision process. He stated that if a lot is part of a development where major improvements have been made for drainage, then that lot would be eligible for credits for the value of those improvements. Mr. Mullins stated that it is possible that the credits could be retroactive. If a developer had made improvements prior to the drainage impact fee going into effect, there is generally a provision for pre-ordinance credits where the developer has made improvements. He stated that their primary contact is with planning, but they are also working with public works and other departments.

Mr. Mullins stated that they would be able to assess the impact fee on lots that are already platted. He stated that they are subject to the other impact fees right now. He stated that the City can only impose impact fees within the city limits. There is no mechanism for being able to address imposing fees outside the city limits. He stated that if a special assessment district is funding the same kind of improvements that the impact fee is designed to fund, then there would need to be credits for that because they are for developer installed improvements. He stated that if the assessments are for local improvements, you could potentially still charge an impact fee for regional improvements. Mr. Mullins stated that the Fort Collins storm water utility is about \$6.00 per month on a typical home. About half of that goes to capital improvements.

Mr. Stoliker stated that since the bond issue failure, he has had several meetings with others to figure out how SSCAFCA should address these issues. From those meetings, he has come up with what some of the issues are. These issues are outlined in the handout. The first is that the current system to address storm water flooding has two problems. One is that it appears to be creating inequities between development types; Single lot development verses subdivision development. Rio Rancho Estates has been largely subdivided into single lots. In Corrales, almost everything is built out. In Bernalillo, everything west of the river is in large, unplatted areas and will be developed as a development that will be replatted. When that is done, SSCAFCA will be able to go in there and exercise some authority and control over that so that drainage will be taken care of. There is no form of drainage control over the single lot developments that are currently platted. Mr. Deubel stated that, at the moment, without imposing any impact fees, SSCAFCA has no control. However, by imposing impact fees, some control can be gained. Mr. Stoliker stated that major subdivisions are controlled because SSCAFCA has the ability to go in and exert that control by the subdivision laws. What is built through the subdivision process appears to be working very well. The special assessment district also

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seems to work very well. Mr. Stoliker stated that the second issue is the loss of the bond funds to correct deficiencies. SSCAFCA had used that money to help with existing deficiencies.

Mr. Stoliker stated that several solutions have been discussed. One is blighting. The City of Rio Rancho just blighted Unit 16, which from SSCAFCA's standpoint, pushes it into a development issue over which SSCAFCA has control. Another possibility is impact fees, such as is being discussed now. One solution is policy changes and enforcing the on-lot ponding. To do this, SSCAFCA would need to look at doing easements or drainage covenants. The next is legislative funding which might solve some of the single lot development problems. Bonding would be the best solution because you would have the protection now and pay over time. Bonds are a proven system and something SSCAFCA is used to doing. The problem is the voters have rejected the last two bond elections.

Mr. Stoliker stated that Howard Stone had prepared an analysis for the Montoyas Arroyo which shows the total drainage costs for the Montoyas. As it is today with no on-lot ponding, \$57 million would be needed to build the facilities. With on-lot ponding, it will cost \$42 million. Mr. Stone stated that he had been asked to look at the effects of on-lot ponding should they be removed from the model. The model used for the Montoyas is fairly conservative and includes free discharge from the single lot developments, recognizing at the time that SSCAFCA couldn't exercise any control over those individual lots. He assumed 10% imperviousness on the lots mainly because of the roadway impacts and everything else would be historical flows off those lots. By doing that, it made a substantial difference with respect to the number of ponds required if they use the detention dam lot option on the Montoyas Arroyo. It went from six detention dams to two. The two remaining dams would be the Montoyas Sportsplex Dam Site and the Lomitas Negras Dam Site.

Mr. Stoliker stated that Clint Dodge put something similar together for the Black Arroyo and the Venada Arroyo. The difference in the Venada goes from \$72.9 million, as it is in the Watershed Management Plan, to where if there is on-lot ponding, it drops to \$62 million. If SSCAFCA holds all of the ponding up to the 100 year event, it goes to \$46 million. Mr. Conkling stated that the change in the model would address the inequities that flow out into everybody's project. Mr. Mullins stated that there are communities that have requirements that you don't release anything beyond historic flows and still impose impact fees. At the very minimum, if you are going to require development to put in regional retention structures, you will need to give credit for the value of the improvements.

Mr. Yarbrough stated that the special assessment districts that he has seen have not incorporated ponds in their projects. Mr. Stoliker stated that if a subdivision would like to come in and do a special assessment district to address drainage, that would be great for SSCAFCA because SSCAFCA could address it and take care of it. He stated that a special assessment district is a voluntary commitment. Mr. Yarbrough stated that if you

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had a special assessment district trying to correct the localized problems, they would have to address the flow coming from above. Mr. Stoliker stated that state law says that you are supposed to be able to pass all that flow through your site. He stated that if it is a development or a single lot, they're talking about making sure that there are no additional flows coming off of the property with on-lot ponding.

Larry Blair, former Executive Director of AMAFCA, stated that there are probably 500 communities in the United States that are now using a storm water utility. The concept is one that is similar to water and sewer utility which is that you pay for the service you receive. In the storm water utility, you pay for the amount of storm water runoff that you are generating from your property. Everybody pays a base charge, but the amount of runoff created generates a rising scale of additional revenue that you pay. This is perceived as a very fair way of assessing a tax on those who generate the most runoff. It is a totally different concept and only works on a regional basis, so you have to have an authority overseeing it. This would require changes in SSCAFCA's legislation and a totally involved public relations campaign to convince people that it is worthwhile. The thing that would really have to be sold is that the storm water utility rate totally replaces any other taxes that might be charged currently. Mr. Blair stated that SSCAFCA would have to get the other governments within its jurisdiction to yield the current taxes also.

Mr. Blair stated that there are opportunities to incorporate the water quality aspect into this issue. Mr. Blair stated that the single lot developments could be brought into this umbrella, but that it would have to be in SSCAFCA's legislation and in the set-up process to establish the utility. An existing lot that was not built upon would go from no tax on storm water until such time as they caused an impact, outside of a base charge. Mr. Blair stated that if SSCAFCA wanted to have the ability to bond, it still would be paying off the bonds with revenue. The big difference is that revenue bonds don't have to go to the voters. Mr. Yarbrough stated that SSCAFCA is still behind on this issue because it still needs to construct facilities to make this system work. Mr. Blair stated that, as time went on, and SSCAFCA caught up with the situation, it could then pay as you go into the program. Mr. Blair stated that, at one point, AMAFCA was interested in a utility, but the Board changed and the interest changed, so it hasn't been discussed recently. AMAFCA went to the Legislature some years ago and asked if they could go to a pay as you go program. Instead of having to bond projects and go to the voters every two to four years for approval, they would establish a mil levy and built up a bank account and started paying for their projects that way. The Legislature was very clear in telling them that they would not change AMAFCA's legislation to allow that and they want AMAFCA to go back to the voters every few years to get approval for the program.

Mr. Blair stated that in 1972, AMAFCA passed its first drainage resolution which called for ponds on individual lots. AMAFCA struggled with that program for about eight years and it was changed completely in 1980 and done away with because it was impossible to police. You could require the homebuilder to do such a pond on the lot, but

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future homeowners move in and fill in the hole. Mr. Deubel asked if Mr. Blair had any idea the cost of a firm analyzing the economics of creating a storm water utility as opposed to the way SSCAFCA does business now. Mr. Blair stated that he doesn't have those numbers with him, but imagines that it would be in six figures. There are only two to three firms in the nation who are really competent at doing that. As such, they command a premium on their consultant fees. If such a utility is created, Mr. Blair believes that SSCAFCA would have to transfer all of the assets of each jurisdiction into that utility, including storm sewers, dams, channels, etc. In older communities on the Eastern seaboard, you have combined sewer facilities. He does not know how to do a combined storm and sanitary water system. Mr. Blair stated that the utility has a lot more authority and options than you do in strictly an ad valorem tax operation where you have only an operations and debt service mil levy.

Doug Collister, of High Desert Investment Corp., stated that they have proposed for the half acre and one acre lots where a majority of the property itself is not disturbed that they create ponds within those lots outside of any walled areas to minimize the effects on the arroyo systems. There is ponding at the property boundaries of Mariposa to make sure that they are releasing the appropriate amounts of flow and doing the water quality types of things that they need to do. That is the approach they have taken at High Desert where they do on-lot ponding on half acre and one acre lots. It is always outside of the yards so that the ponds are visible. They have an association that inspects them and reviews the plans to approve them. They have found that on the one acre lots it is very effective and has, thus far, kept the arroyo system in very good shape. Nonetheless, they still have major de-siltation and water quality ponds that those arroyos flow into. On the half-acre lots, it is a quasi, on-lot ponding system because of the size of the lots, it becomes more difficult to accommodate the detention and retention ponds. They also do a back up system where they have conventional storm drains within those streets for those lots. That run-off is taken to ponds where it is released and treated appropriately. They don't try it on anything smaller than a half-acre lot and they don't allow it in yards. The association at High Desert has a full-time person who reviews plan sets as they come in. Each of the ponds is inspected as it is constructed. This works well, but it requires some vigilance and some cost. They have inspections of the arroyo systems every three years, which shows where problems might lie and they are addressed right away.

Mr. Collister stated that it is helpful to have a strong homeowners association to assist with these issues. He stated that infrastructure of the larger lots is designed to sheet flow flows and keep them as natural as possible. They place building envelopes on each of these lots where the home can be built. The building envelope is sited to do a number of different things, and among those is to minimize impact on historical drainage patterns. Their covenants allow for sheet flows and cross lot drainage.

Mr. Cliff Spirock, of Community Sciences, working with AMREP on some projects, urged SSCAFCA to consider keeping the current SSCAFCA drainage policy in mind and

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how it may change as SSCAFCA evaluates each option. The last thing the developers would like to see is a contingent drainage policy.

Mr. Glen Walters, a citizen of Rio Rancho and a candidate for House District 60 in November, stated that some of these issues deal with the State Legislative process and that he is interested in finding out a lot more about what SSCAFCA's issues, problems and plans are to see how they might work with what he might be doing.

Lisa Fenner, of Dain-Rauscher, stated that one of the things that came out of the breakfast meeting a few days ago was the need for partnerships between all of the entities. She wanted to stress that they support this interaction where everybody acts in partnership. They don't want SSCAFCA to discard the whole general obligation bond election issue and would like to see that kept as an option, but they also want SSCAFCA to see if there are ways to supplement that by looking for non-traditional sources of revenue. She stated that, by looking at SSCAFCA's outstanding bonds, there are questions in her mind as to what would happen to SSCAFCA's obligations with the bonds, and what would happen to the structure of SSCAFCA if a utility were to be formed. There is no question that capital could be raised through the issuance of bonds from a stream of revenue that could be created by those types of fees that could be charged by the utility. She stated that an ad valorem tax, which SSCAFCA operates now, is regarded by the credit communities as being more secure. The process with doing this as a user fee is a little more time consuming and cumbersome and the governing body would have to have the political will to raise rates and do what they needed to do in the event people become delinquent. With property taxes, there are recourses to take the land if people are delinquent.

Mr. Stoliker stated that all the entities agreed that partnering was a good thing. They did talk about the issue of bonding and that maybe SSCAFCA shouldn't reject it entirely. They would also like to have something that works across jurisdictions.

Mr. Ken Curtis, of the City of Rio Rancho, stated that the City is required every five years, by State law, to review its impact fees. The City asked Duncan and Associates to look at drainage impact fees. This is not about the large development; it is about the antiquated plats. He stated that impact fees are required to be used for system improvements. Impact fees do not pay for residential streets. When the City builds a larger highway or arterial street, those are system improvements and the large developers all get credit for those improvements. He would expect any of the large, master planned communities to pay very few impact fees. He stated that Cabezon, in Unit 16, is paying very few impact fees, but they are creating substantial system improvements. He stated that special assessment districts can be voted on. He stated that he doubted that the SAD's would help with regional issues. They must show that they increase the value of the individual lots, that's why the improvements are locally driven. If an SAD improves your local road, drainage, brings you local drinking water and sewer service, it improves the

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value of the underlying land. If you build a regional pond, that really doesn't increase the value of the individual lot.

Mr. Curtis stated that the City's problem is on the dirt roads. That water comes off the private property and becomes public in a lot of people's minds. It is everybody's water and it is running down the roads primarily, or across lot lines on historical drainage. That historical flow needs improvements just to continue on. When the development comes in, it will make an impact on the system. It will be up to the City to explore that question and to decide, ultimately by public body, what that impact is on the system. They are discussing blighting of Unit 13. It was taken to counsel and was postponed for 60 days. The comment was made if they should blight the whole City. On a technical basis – absolutely! It erases the property lines and allows the City to bring everything up to current standards. Moving the lines allows over lot grading, which is an economical way to handle roads, lots and drainage. He stated that there will be blighting, there will be SAD's; there will be some development on the antiquated plats.

Mr. Conkling asked if Mr. Curtis believed that the storm water utility has the greatest degree of fairness throughout all of the landowners in Rio Rancho. Mr. Curtis stated that this is a policy decision, but he doesn't think that there is enough technical information out there to make that decision. He stated that they don't know enough about the utility, but it is potentially promising.

Mr. Conkling stated that the impact fee is imposed upon a person who is getting ready to make an impact, i.e., at receipt of the building permit. If a person owns a lot, they pay \$112 per year to SSCAFCA and doesn't really pay much attention to it. However, all of a sudden, if you had a storm water utility, conceivably 20,000 lot owners would pay \$4.00 a year and the impact fee may not happen to the person who is building a new home, except on a lesser degree to address local issues. On the face of it, it appears to spread the water across political boundaries in a more equitable way. Mr. Blair stated that the impact fee only affects you when you are beginning construction. Mr. Conkling stated that the utility could anticipate the problem of cleaning up the water in its legislation.

Mr. Deubel stated that one of the most promising aspects of what SSCAFCA is trying to do has been the level of coordination, cooperation and help between all of the political entities and the major developers. This bodes most favorable in getting some system that will work. He stated that he sees some technical issues with this matter. One of them being obsolete technical solutions, such as using an inverted crown on the roads as the major way of handling water. It also appears that what SSCAFCA is doing and the way it is set up, it is obsolete and not adequate to handle the water treatment issues.

Mr. Mike Castillo, of AMREP, stated that the major developers have expressed concern over the fairness issue of whether or not the upstream lots are carrying their fair share. AMREP still owns the major percentage of the scattered lots and has several

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solutions it would like to take to SSCAFCA's technical staff and then bring it to the full Board. These look at ways to cut the flow upstream to keep from having to build the expensive infrastructure downstream. The developers are concerned about impact fees. He is concerned about any overlap that would occur between the City and SSCAFCA's impact fees. He stated that if there is a storm water utility, does SSCAFCA even need to exist. He stated that out of 1,700, plus or minus, single family lots, with the recent storm, only one was seriously damaged, with smaller problems on about a half dozen. As a result of the work done by SSCAFCA and others, Bernalillo and Corrales are safer today than they were 25 years ago.

Les Swindle, Manager of the Town of Bernalillo, stated that they are getting ready to develop on their west side as well and it has been very helpful to have the upstream development take place, as it saves Bernalillo from having to go through a lot of the rigors SSCAFCA had to go through to establish its authority. He applauds the fact that SSCAFCA had foresight with regard to future drainage. They strongly suggest that SSCAFCA continue in whatever form it takes. Having a storm water utility is the most viable of the alternatives.

Mr. Deubel stated that most of this meeting has been about increasing revenues for building structures. He would like everyone to consider a tax break for those individual lot owners who make the effort to contain flows on the individual lots, whether they be trenches or ponds. Mr. Rudy stated that he agrees with this statement, but that he would like to work with the municipalities on that because he is not sure that SSCAFCA's total budget is big enough to have a significant impact. Mr. Deubel stated that it is more beneficial to reduce the flow at the lot level rather than build a structure to contain that flow.

DISCUSSION OF FUTURE ACTIONS.

See above.

ADJOURNMENT.

A motion was made by Donald Rudy and seconded by Richard Deubel to adjourn the meeting. It was carried unanimously. Meeting adjourned at 3:05 p.m.

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Richard Deubel

RICHARD DEUBEL
Secretary

Wm. C. Yarbrough for
WM. C. YARBROUGH
Chairman

DATE APPROVED:

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