

**CONSTRUCTION INDUSTRIES COMMISSION
OF THE STATE OF NEW MEXICO**

MEETING MINUTES

**Minutes for the Construction Industries Commission's Regular Meeting held on
Wednesday, May 15, 2013 at 5200 Oakland Ave. NE in Albuquerque, NM 87113**

**I. CONVENE, DETERMINATION OF QUORUM AND INTRODUCTIONS:
COMMISSIONERS AND AUDIENCE**

Chairman Baker established that a quorum of the Commission was present and convened the meeting at 9:35 a.m. **ATTENDING** this meeting were:

Chairman D. Randy Baker, Representing Licensed Electrical Contractors
Commissioner Patrick Casey, Representing the Residential Construction Industry
Commissioner Kevin Yearout, Representing Licensed Mechanical Contractors
Commissioner Don Kaufman, Representing the Subcontracting Industry
Commissioner Dale Dekker, Representing Licensed and Practicing Architects
Commissioner Kenneth Wooten, Representing Practicing General Contractors
Commissioner Vince Alvarado, Representing Organized Labor

ABSENT from this meeting were:

Commissioner Renee Edwards, Representing the People of New Mexico
Commissioner Lisa Fickling, Representing the Liquefied Petroleum Gas Industry

Also attending were:

Construction Industries Division (CID) Director Katherine Martinez
Assistant Attorney General Luis Carrasco, Counsel to the Commission

II. APPROVE AGENDA

MOTION: Commissioner Yearout moved for the approval of the agenda.

SECOND: Commissioner Casey seconded the motion.

VOTE: All Commission members present voted in favor of the motion.

III. PUBLIC COMMENT

Shawn Fort, building official representing the Village of Ruidoso and Southern New Mexico Building Officials Association, expressed support for the re-adoption of the revised codes.

Joe Dudziak, a senior building inspector representing Los Alamos County, stated that he was attending the meeting on behalf of Chris Williams, the Los Alamos building official.

Mr. Dudziak expressed their support of the re-adoption of the revised codes and stated that their inspectors and contractors “depend on it” because they are “10 percent plus more efficient than 06.”

J.T. Baca, Mechanical Bureau Chief stated that Kathy Jimenez with Doña Ana County and Robert Kyle with the City of Las Cruces that had contacted him and indicated that they couldn't attend the meeting, but had asked him to reflect their position regarding re-adoption of the energy codes. Mr. Baca stated that those municipalities supported the re-adoption of the revised energy codes.

John Castillo with the City of Rio Rancho also expressed support for re-adoption of the revised energy codes.

Chairman Baker expressed the Commission's appreciation for the public input and commentary at the meeting and thanked those who provided such input and commentary. Chairman Baker advised all in attendance that any decision reached by the Commission on the question of re-adoption of codes that had been set aside pursuant to the Court of Appeal's April 4, 2013 *Memorandum Opinion* would be based solely on the record previously created and that comments made at this meeting did not constitute new evidence and would not be considered in rendering such a decision.

IV. DIRECTORS REPORT

Director Martinez reported as follows:

- Additional Plan Reviewer and Electrical Inspector will be interviewed for. Drew Chavez was hired as the CID-MHD Budget Supervisor. Mechanical Inspector John Mattics is retiring effective May 31, 2013. General Construction Inspector Lois Blocker resigned effective May 31, 2013. Clay Bailey was hire as the LP Gas Bureau Chief.
- The Division has worked hard to shorten the time it takes to process complaints and create consistency and predictability when it comes to compliance maters. The division has gone from taking to a year to work through a complaiant to an average of 4 months. This is a tremendous improvement. We have implemented internal procedures, never clearly in place before, for processing complaints, significantly shortening the time they are at the division. The case management system has also streamlined the process and has provided a much needed electronic organization tool for staff. While in the past complaints were often set to the AG's office with little to no time before the statute of limitations (sol) ran; this is no longer the case. The compliance staff and inspectors should be commended for their efforts in the significant improvements made. However, as director, I remain concerned and frustrated with how the AG office continues to handle the cases the CID works so hard to investigate for the CIC presentation and the CIC NCA vote. The AG's office continues to allow the SOL to run on many cases. Often there is little feedback, and most recently, there has been rejection of the CIC's determination to issue a NCA,

even on priority cases. This delay does a disservice to the efforts made over the last year to shortening the process and most importantly, to the citizens of New Mexico. Furthermore, denying issuing a NCA that has been voted on by the CIC deteriorates the consistency in compliance matters established by the Commission and the Division under this Administration. It also weakens the 'no tolerance; approach to beyond the scope and unlicensed activity by out of state contractors the CID and the C?IC have worked so diligently to crate. This is a matter I feel the Commission must address so that moving forward we continue on the path to protecting the citizens of this state with consistency and predictability in construction compliance.

- The CID Las Cruces office has completed its move. CID budget will be saved \$20,000 annually by this move. The office location is in a new suite in the same complex so there will be no confusion for contractors in the area.
- There has been a great deal of inaccurate coverage in the press recently regarding the KIVA E Vacant account created last spring. New accounts for inspectors are established frequently in KIVA as a regular course of business. E Vacant simply represents the inspection account covering the southeastern area of the state for a previously vacated inspector position. The creation of this account was a tool for the CID to keep the area organized and establish accountability for all inspections until a new inspector could be hire in the area. So for clarity, E Vacant was and is a management tool. It brought to light a resource and oversight problem for the Division that has been overlooked for years. E Vacant exposed neglect, created transparency, and allowed the division to establish procedures and create solutions that were completely overlooked by the past Administration. The division is completing all inspections where leadership under the past Administration recommended 'alternative inspection procedures'. These past written procedures allowed well site to go without inspections for years. CID has implemented an organized inspection sweep to complete all outstanding oil and gas inspections in the E Vacant account to address the immediate problem. The CID projects completion of inspections in the E Vacant account by June 30th. Morale is high and the inspectors are completing more inspections weekly than expected. The Division started organizing this effort long before it was discussed publicly. We have purchased GPS units for tracking the coordinates of the well site; mobilized the entire electrical bureau with each inspector either shifting to cover the areas for an inspector traveling to the oil fields, or traveling to the sites to perform at least 10 well inspections a week; provided overtime to the entire Bureau so that there is an immediate benefit for their efforts; established PO's with area hotels so that inspectors are out of pocket in expenses as little as possible; created a reporting procedure and mechanism for managing the SWEEP and tracking progress; provided training to inspectors not familiar with the oil well sites. Bureau Chief Hunt and the entire Electrical Bureau should be commended for their leadership and efforts, no criticized in resolving the oil and gas inspection issue.
- Fort Bliss, Texas disposed of and transported over 200 modular units to the State of New Mexico for housing use. The division recently provided all local jurisdictions having authority over modular permitting a procedure on how to bring the units into compliance. These requirements do not apply to modular units that are being placed on military bases. However, these requirements do apply for all other units being moved throughout the state for private use. CID complete inspections for all of the

units and determined they must be made compliant with the 2003 NMEC. Other requirements include: Obtain Planning and Zoning approval by local jurisdictions that enforce these requirements where the units are moved, these units do not have accommodations for living or dining area, modular building drainage piping system has been remove, to accommodate chassis in order to transport, the new drainage system will be required to be tested and approved.

- Procedures established since last meeting are: Red Tag Procedure, Ft. Bliss Modular Procedure, Oil and Gas Inspection Procedure.

V. OLD BUSINESS

a. Approval of March 20, 2013 Regular Meeting Minutes:

MOTION: Commissioner Yearout moved to approve the March 20, 2013 Regular Meeting minutes, as presented.

SECOND: Commissioner Kaufman seconded the motion.

VOTE: All Commission members present voted in favor of the motion.

b. Approval of April 17, 2013 Special Meeting Minutes:

MOTION: Commissioner Wooten moved to approve the April 17, 2013 Special Meeting minutes, as presented.

SECOND: Commissioner Kaufman seconded the motion.

VOTE: All Commission members present voted in favor of the motion.

Chairman Baker stated that the minutes of this meeting (May 15, 2013 Regular Meeting) will be considered and amended, rejected or approved at the next Commission meeting.

VI. NEW BUSINESS

a. Possible re-adoption of revisions to building codes:

MOTION: Commissioner Alvarado moved that the Commission readopt the revisions to the New Mexico Energy Conservation Code, Title 14, Chapter 7, Part 6 of the New Mexico Administrative Code (hereafter, "NMAC"); the New Mexico Plumbing Code, Title 14, Chapter 8, Part 2 NMAC; the New Mexico Mechanical Code, Title 14, Chapter 9, Part 2 NMAC; and the New Mexico Electrical Code, Title 14, Chapter 10, Part 4 NMAC which the Commission had previously adopted at its June 10, 2011 public meeting, and which were subsequently set aside and remanded to the Commission for reconsideration, a new vote, and a statement of reasons for the vote, preferably in written form, by the New Mexico Court of Appeals in Southwest Energy Efficiency Project, et al. v. New Mexico Construction Industries Commission, et al., Case No. 31,383,

consolidated with 31,384; 31,385; and 31,386, and any subsequent amendments thereto.

SECOND: Commissioner Kaufman seconded the motion.

DISCUSSION: Commission members read prepared written statements or made oral statements explaining their individual reasons for supporting or not supporting re-adoption of the revisions to the building codes that were set aside by the Court of Appeals. In addition, the Commission's counsel posed questions to each Commissioner asking them to further elaborate on their stated reasons and inquiring of the Commission, as a whole, whether they were in agreement with each Commissioner's stated reasons. Those statements, questions, and the Commissioners' responses are recorded, verbatim, below and continue to page 24 of these minutes.

COMMISSIONER CASEY: This is just a statement that I've prepared as to the reasoning behind how I'll be voting, so I'd like to kind of read this. Unlike some Boards and Commissions, the Construction Industries Commission is made up of people with direct experience and knowledge of the industry which it regulates. Each of us on this CIC has decades of hands-on experience in the specific portion of the construction industry that we have been appointed to represent. Because of this experience, each of us can be undoubtedly considered to be an expert in our areas of construction. Additionally, a majority of us have been owners of small businesses that have been impacted by several code adoptions over the past two decades, and are therefore experts on the economic impact of the so-called Richardson codes including the enhanced energy code on each of our areas, and on the overall construction industry.

As an expert in residential construction, my life experiences are what led me to accept or reject public testimony and give it the proper weight necessary without feeling the need to discuss it in open session. I think most, if not all of the other Commissioners, also felt it was not necessary to express their understandings of the construction industry that governs how we do our business. However, today apparently those of us who are not used to expressing ourselves publicly are required to do so when adopting code changes. So here I am today, to publicly state my reasons, as an expert in residential construction, and as a representative on the CIC for the residential construction industry, for repealing the Richardson codes and replacing them with the base codes.

In the interest of full disclosure, at the time of the June 2011 vote, I did vote "no" for adoption of the base code, not because I wanted to keep the Richardson codes in place, but because I wanted to stay on the 2006 codes which had been implemented in July of 2010. However, we're way past that issue now, and I believe we must support the current codes to ensure stability in the industry.

At the public hearings on June 2, 2011 there were many comments both for and against the proposed building codes. We also received numerous written comments. Many of these comments contained general statements such as the enhanced 2009 energy code will save homeowners money, or that the enhanced codes cost more to build. As these statements are very general and broad, there is no way to know how these conclusions were obtained. However, some of the comments offered specific assertions which I will attempt to address.

Many comments stated that the enhanced 2009 energy code would save home owners \$14 a month or about \$168 a year and it would save home owners a total of \$66 million over 10 years.

The \$14 a month figure comes from a “study” by the Southwest Energy Efficiency Project that is seriously flawed and un-scientific in its methodology. The study utilized modeling of specific homes to both the base 2009 Energy Conservation Code and the enhanced 2009 Energy code and comparing energy use. The testimony presented based upon the SWEEP study must be rejected and given no weight during deliberation for the following reasons.

These figures are based on perfect conditions in a computer model which almost never happens in real life. Energy use is largely determined by lifestyle. Two different families living in identical houses may have drastically different energy consumptions based on how they live their daily lives. Likewise, homeowners who are very conservation-minded can obtain energy savings in any house they live in. Oftentimes efficiencies gained on paper have the opposite effect in real life. For instance, installing an on-demand water heater, while more efficient on paper, can actually use more energy because much longer showers can now be had because there is an endless supply of hot water.

In order to reach the 66 million mark we would have to build 7,143 homes a year for the next 10 years and every one of those homes would have to be built to minimum code standards. There have not been that many homes built in a year since 2007 in New Mexico according to the US Census Bureau. Since not all homes are built to code minimums that number would have to be much higher. Therefore, reaching the claimed 66 million in savings is extremely unlikely.

In creating the data for the “study,” SWEEP did not survey all licensed GB98 or GB02 builders in the state, nor even in just one county. Instead, SWEEP asked for volunteers from among those builders who had come to one of the Code Revision Committee Meetings. There were only three companies that submitted data – all of whom were based in the Albuquerque area, within Climate Zone 4. Because of time limitations placed upon the code adoption process, SWEEP was precluded from mailing written surveys. As a result, the “study” was so limited as to render it statistically invalid.

There were also comments stating that replacing the enhanced code with the base 2009 IECC would lead to code conflicts between the codes. No testimony was presented by any person to substantiate this assertion.

The 2009 IECC, IRC and IBC are written by the same code body and are designed to work together. The electronic and mechanical codes are amended to fix any conflicts between the codes and if conflicts are discovered they are fixed through amendments. The codes are extremely complicated and even the best written codes contain minor conflicts which must be addressed. Without testimony to provide specific sections of the various codes that allegedly conflict, and the reasons why those conflicts could not be corrected in subsequent amendments, the comments at public hearing on this issue must be rejected from consideration.

Comments stating that homes built under the enhanced energy code are comfortable to live in are also unsubstantiated, and must be rejected from consideration in deliberations. Comfort is a personal choice so there is no way to quantify a general statement like this.

There were two general comments made on the economics of the codes. One is that the enhanced codes would create jobs and put more money back into the economy. The other is the enhanced codes will make housing more expensive, creating less of a demand for new home thus hurting the economy. My personal experience from previous code adoptions have proven the first comment to be inaccurate, but the second comment is valid and should be given great weight. Here are my reasons for rejecting one while accepting the other:

First off, a home built to the enhanced codes required a minimum amount of extra labor to build. Most of the extra costs come from required materials. This means there would not be a

big gain in employment from this. The actual amount of money spent in the local economy due to energy savings is impossible to tell based on my previous comments about energy consumption. The fact is these homes built to the enhanced codes do cost more to build. Nobody has disputed that fact. The amount of increase is also hard to determine as there are many factors that go into the price of a house. Design, location, and personal preferences determine what the increase in cost will be and every home may be different. However, anytime the price of a product increases there is a risk demand will go down. Raising the price of a home by just a little bit may mean a potential homebuyer will no longer qualify for a mortgage. Since appraisers generally do not give credit for energy efficiencies, and since appraisals are coming in at or below what it cost to build a new home, any price increase may have to be made up in the down payment, so even if the potential home buyer still qualifies for the mortgage they may no longer be able to afford the down payment. Even if they can afford the increase in the down payment, it will mean the new homeowner now has less money to spend in the economy in the short term.

The important thing to remember about building codes is they are minimum codes. There is nothing stopping a potential homebuyer from buying or building a home which goes well above the code minimum. Most of the homes I build or work on are 50 percent better than the base codes. There are also fewer homes built to code minimums. New homebuyers are much better informed on energy efficiency. Customers building custom homes are building the most efficient homes they can afford. Even entry level tract housing is being built to Build Green New Mexico and LEED-H standards in many cases due to tax credits available. It is important to take pricing into consideration when enacting new codes since typically homes built to code minimums are bought by lower income families who can least afford prices to rise.

It has also been stated that the New Mexico Homebuilders Association (NMHBA) supported the enhanced codes. I am currently the President of New Mexico Homebuilders Association and at the time of the July 2010 vote by the prior CIC to adopt the Richardson codes I was President of the local affiliated HBA in Silver City. At the time NMHBA stated they would support the codes with a few stipulations: One, any reference to residential sprinklers be removed. Two, that there be a true performance path to show compliance; and three, that implementation be delayed for two years to allow the economy to recover. None of these stipulations were included in the regulations that were subject to the CIC vote for adoption of the Richardson codes, so it is a misrepresentation of fact to state NMHBA supported the adoption of those codes. While it was true there was a performance path of sorts in the enhanced code, that path still had several mandatory requirements that made it unworkable in most situations.

It is also stated several times in the June 2011 public record that the enhanced codes were written by builders, architects, engineers, and other industry experts. While there is some truth to this, they had a very small window to work in, and use of the term industry experts was broadly misconstrued. The makeup of the Code Revision Committee included members of SWEEP, the Sierra Club, administrators from Energy and Minerals Division and RLD who had absolutely no experience in construction. Some on the Committee did not even know there were actually 10 different codes up for revision – not just the energy code.

In many meetings the industry was far outnumbered by CID/RLD/EMNRD administrators. Governor Richardson mandated the new code be 20 percent more efficient than the 2006 codes. The industry was forced into damage control mode to try to limit the negative effects of this mandate instead of concentrating on what they should have really been doing which is building the best possible buildings at reasonable prices for their customers. It was insinuated that homes built to the base 2009 IECC will not last and are built shoddily. This could

not be farther from the truth, and shows a lack of basic knowledge of the code. Meeting an energy code has very little to do with a home's durability or quality. There are homes all over this state and country that are well over a hundred years old that have remarkable craftsmanship that were not built to any energy code. Testimony that used this as a reason for not adopting the base code were rejected.

Most of these reasons deal with residential construction. This is because the majority of comments received dealt with residential construction. As Commissioners we were inundated by emails from out-of-state members of the Sierra Club who were horribly misinformed about the code adoption process in New Mexico, and the specifics of the energy code in particular. Because these comments were so far off base on the issue for consideration, all were rejected.

Apparently supporters of the Richardson codes thought that the number of comments submitted were to carry more weight than the quality of the comments. Code adoptions are not subject to the vote of the people where amendments are adopted just because more of the public voted for them.

In the end, my vote as a representative of the residential construction industry in New Mexico was based upon economic development issues. The enhanced energy code simply would have cost the economy of our state too much money if it had been allowed to take effect, and the base code that was presented did not include some specific amendments that I thought were important for residential construction, which is why I voted no at the time. In my opinion, this rush to adopt the 2009 codes may have hindered the economic recovery of the construction industry, which is just now beginning to show signs of improvement in a few areas of the state.

ASSISTANT ATTORNEY GENERAL CARRASCO: Commissioner Casey, which specific pieces of evidence in the record did you rely upon in reaching your conclusion concerning the possible re-adoption of the codes, and what aspects of that evidence did you find most compelling?

COMMISSIONER CASEY: Are you – I guess you're referring to which parts of the record did I use to come up with these reasonings?

ASSISTANT ATTORNEY GENERAL CARRASCO: Uh-huh.

COMMISSIONER CASEY: Well, when I started reviewing all this we were sent several CDs of the oral arguments presented at the public hearings. We were also presented with, as you can see Ken's [COMMISSIONER KENNETH WOOTEN] stack of papers there, hundreds of written statements. I actually read every one of them and I went through and I categorized them as to those who had general statements such as the code costs more or the code saves money, and those I just pretty much just threw out because there was no specifics as to why they did either/or.

So I tried to look at any of the record that had specific assertions, such as, you know, the \$14 amount or you know, other things like that and so I tried to address all those in here. There wasn't one particular record I used because there were several of them that had the same exact questions. So I tried to, instead of going through every one of the 1,300-plus written and plus all the oral comments, I tried to group them together as to each specific [inaudible]

ASSISTANT ATTORNEY GENERAL CARRASCO: Okay. Commissioner Casey, you also had alluded to the fact that you believed some of the evidence in the record had been misconstrued by certain groups or aspects or subsets of the population. Could you elaborate on that a bit more?

COMMISSIONER CASEY: Well, I think it's important – when you look at comments, a couple things to look at is number one, where do they come from, what sort of groups are sending the comments. I know we were all – I ended up getting over 4,000 I think, form letters from the Sierra Club and every one of those you can reply and I sent several replies to many of the letters asking how does the codes conflict one another and never got a single response from anybody. And so that was part of it. I think other parts such as when they talk about money savings, it's been my experience, I started building in 1984. It's been my experience that when it comes to energy consumption it's true, it's more based on how you live your life than any energy code you build to. And from my experiences, we did put in an on-demand water heater and our gas bills went up, because now my kids are in the shower for 30 to 45 minutes at a time.

So a lot of these things can be modeled on the computer to show that they're more efficient, when you get them into real-life situations they tend not to be that way. And so I based – everything I stated in this I based on my experience since 1984 and I think it's also important to realize that the homes I've built for the last eight, ten or 12 years were all high efficient, energy efficient homes. We don't – I haven't built a code-minimum home probably since the energy code came out. It's just not – when I look at the customers that we build for, with the internet nowadays customers are very well informed on energy efficiency and they want to build the most energy-efficient home that's in their budget. And so generally, the energy bill for me doesn't really affect as much because most homes we build are way, way beyond the energy code.

ASSISTANT ATTORNEY GENERAL CARRASCO: My next question I think is somewhat related to that but I think you may have some additional evidence to share on that. You referenced in your commentary that some of the comments or a number of all the comments you received from the Sierra Club you characterized as inaccurate or off base. Could you describe why you felt that way?

COMMISSIONER CASEY: Well, part of the inaccuracy came from the fact that every one of them in every letter was exactly the same, so of course everyone stated that there were going to be conflicts to the code. I've dealt with building codes since 1984 and even the most well written codes always have minor conflicts that are addressed. But there's not one single assertion in any of these letters that stated what the conflict would be. You know, IRC, the IBC and the IECC are all written by the IECC code council. They're designed to work together. And so to say that by adopting the base IECC we're going to create code conflicts flies in the face of how the IECC works. They erect these codes to work together. So I think that was a very inaccurate statement. I also think towards the end they make general comments that say that the citizens of New Mexico deserve to have the best housing available. I can't remember the exact words but you know, that's a general statement that you know, really can't be quantified. How do you quantify something like that? Because what one person considers good, another person doesn't. So – and like I say, after you're replying to several of the letters and getting no replies

back, that tells me that these people went out there and signed their name to a paper that they might not even have read or understand. So I really didn't apply any weight to any of those.

And it's the same reason why we go – as homebuilders we have an IBS show every year and they have a legislative table where they want you to send form letters. I'll never send a form letter for that reason. To me, if someone wants to comment on a letter then they need to sit down and write a letter that spells out why that problem, and if I call them I ought to be able to defend those problems. They should have that knowledge. If they're going to oppose something that we do they should have the knowledge to tell me why they oppose it. They should be able to [inaudible] whether I email them or call them or whatever. They should be able to defend their position and I didn't find any of these people that could defend their position.

ASSISTANT ATTORNEY GENERAL CARRASCO: Thank you for answering, Commissioner Casey. My next question is actually for the entire Commission. Chairman and members of the Commission, are you in agreement with the reasons set forth by Commissioner Casey on the question of re-adoption of the codes? And if you are in disagreement with any part of Commissioner Casey's reason could you please explain at this time? I guess the first question is, are you in agreement with Commissioner Casey's statements?

[General consensus]

ASSISTANT ATTORNEY GENERAL CARRASCO: And is there any part of his statements that any member of this Commission disagrees with?

[Silence]

CHAIRMAN BAKER: Does anybody else have any prepared statement they would like to [inaudible]?

COMMISSIONER DEKKER: Just try to read this. Lost my glasses. My name is Dale Dekker a practicing and licensed architect in the State of New Mexico and appointed to the Construction Industries Commission to represent the licensed and practicing architects in the state. In consideration of my vote to approve the current amended or current amended 2009 NMECC, I offer the following justification:

The International Code Council's International Suite of Codes includes the International Energy Conservation Code (IECC). The 2009 NMECC as currently adopted by the State of New Mexico, represents such a single code that addresses sustainable design and construction. The ICC suite of codes provides a uniform and integrated set of building construction codes that is recognized throughout the construction industry as the standard for building codes. That is a charge of the Construction Industries Commission to insure that uniform codes and standards are promulgated and conflicting provisions are avoided. Adoption of the base 2009 NMECC meets the goal of a uniform set of codes and standards. The previous enhanced NMECC materially diverged from the requirements of the base 2009 IECC and created conflicting provisions that can now be avoided by current 2009 NMECC.

The Construction [Industries] Licensing Act['s] purpose is to promote the general welfare of the people of New Mexico by providing for the protection of life and property by adopting and enforcing codes and standards for construction, alteration, installation, connection,

demolition and repair work. The proposed and adopted base 2009 NMECC, the current code, included provisions that promote the general welfare of the people of New Mexico by including Table 301.2, New Mexico Climate Zones Based on Heating and Cooling Days. This chart provides greater detailed information for the design and energy efficiency of buildings based on where they are located in the State of New Mexico, benefitting the general welfare of the people of New Mexico.

The 2009 IECC which is the basis for the current code, 2009 NMECC represents a progression toward more energy efficient buildings. It is expected that the subsequent editions of the IECC will continue that progression toward carbon neutral buildings by 2030.

The previously adopted 2009 NMECC enhanced code set a standard 20 percent higher than the 2006 IECC. The base 2009 IECC code was expected to add ½ to 1 percent in additional costs over the 2006 IECC and achieve 14 percent in energy efficiency. The base 2009 IECC was a major step up in efficiency with minimal cost. To achieve the additional 6 percent in efficiency proposed in the enhanced 2009 NMECC an additional cost of 1 to 3 percent would be required, and in my opinion this would have had a negative impact on the construction industry in our state, and that the 12 to 14 percent energy efficiency increase in the base 2009 IECC over the 2006 IECC was a major step in creating more energy efficient buildings and protects the "general welfare of the people of New Mexico."

A building code is a minimum standard. The base 2009 NMECC, the currently adopted code, raises the energy efficiency bar significantly by 14 percent. Nowhere in the code does it restrict the construction of buildings in New Mexico that exceed the minimum standard. The additional cost to achieve greater energy efficiency is a choice of the individual New Mexican who is the consumer of the buildings being built by the construction industry in our state.

The base current 2009 NMECC with its own set of New Mexico-centric enhancements and amendments is consistent with other adopted State Building Codes and provides New Mexico citizens and the construction industry with a set of uniform codes and standards where conflicting provisions are avoided.

For the above reasons I wish to reaffirm my support of the 2009 New Mexico Energy Conservation Code as adopted by the Construction Industries Commission on June 11, 2011 and placed into effect on August 1, 2011.

ASSISTANT ATTORNEY GENERAL CARRASCO: Thank you, Commissioner Dekker. With regard to the evidence you considered in reaching your conclusion concerning the possible re-adoption of the codes, how would you characterize the weight you ascribed to each piece of the evidence?

COMMISSIONER DEKKER: Well, I went through that stack of papers too, and in that was whether there was also [inaudible] in the package which was the position of the American Institute of Architects in New Mexico and their position on the New Mexico Energy Efficiency Conservation Code. It was sent on June 2, 2011. And most of my talking points were drawn from this document. I think it was very well written as the industry, it's very important to us to have a suite of codes and to avoid customized codes where they might conflict with other provisions or require undue confusion relative to their implementation. So AIA, the American Institute of Architects, is very committed as an industry group to achieve the goals of the 2030 initiative to be carbon-neutral by 2030 and the 2009 IECC base code was a code that was put in place so as to achieve that.

So the minimum code is on a pathway to achieve that goal. So that's something that's very important to our industry [inaudible]

ASSISTANT ATTORNEY GENERAL CARRASCO: As you understand them, what were the major arguments for keeping the enhanced code also known as the "Richardson Code," and why did you find those arguments unconvincing or not credible?

COMMISSIONER DEKKER: Well, I think that like Commissioner Casey that there was and is an economic consideration that we need to take into account, and again, the codes are designed in such a way that there are logical progressions and steps but there's also incremental cost, so that you don't kill the industry in the process. And I think that the original code that achieved that 12 to 14 percent energy efficiency for one-half to one percent, that's something that at the national and international code approval process was acceptable to the designers, the contractors, and the industry in general. The additional provisions of the enhanced code would have added substantial cost.

And I think that in an industry that's suffered greatly through this last recession, having lost over 20,000 jobs, to do anything or put in place a code that is so far above the minimum standard, which is already 14 percent better than the previously adopted code, would place an undue hardship on our industry and a potential for hurting the [inaudible]

ASSISTANT ATTORNEY GENERAL CARRASCO: Thank you. You pointed out a lot of good reasons there. I'm curious as to what struck you as the most important reason for readopting the codes?

COMMISSIONER DEKKER: Well, I think in relooking at all of the testimony and again, what was supplied in the 2011 is that we are a construction industry. We come from the construction industry. And that our memberships represented through their associations, just like the American Institute of Architects, the AGC – Associated General Contractors, the ABC, many groups of associations of hundreds of members support that one letter on the table representing their association. However, in the record here, probably this much of that record is either duplications or previously sent emails, emails that were just copied and signed by somebody, and this doesn't even include, I don't believe – maybe you saw some, Commissioner Casey, any letters or emails from out of state people. This was pretty much consisting of local New Mexicans who sent those emails. So I think the single most important information that was in this document from a construction industries point of view was the letters requesting and supporting the adoption of the current code we have by the associations in the construction industry at all levels and in the design industry.

ASSISTANT ATTORNEY GENERAL CARRASCO: Thank you, Commissioner Dekker. Chairman Baker and members of the Commission, are you in agreement with the reasons set forth by Commissioner Dekker on the question of re adoption of the codes?

[General consensus]

ASSISTANT ATTORNEY GENERAL CARRASCO: Is there anybody that's in disagreement?

[Silence]

COMMISSIONER CASEY: Could I ask one question though, because I guess [inaudible] I guess we're looking at readopting the codes as they were at the time of [inaudible]. So I think just the one thing that the new reference that's been in the code now, but like the climate zone tables and stuff will not be included when it's adopted at the time because at the time that we adopted these original codes those were [inaudible] and am I understanding correctly that –

ASSISTANT ATTORNEY GENERAL CARRASCO: If I can answer your question, the motion, the last clause includes adoption of any subsequent amendments.

COMMISSIONER CASEY: Oh, okay.

CHAIRMAN BAKER: Anybody else have any statement?

COMMISSIONER YEAROUT: I do. Compliments to Commissioner Casey and Commissioner Dekker. Very detailed and very concise and precise. I appreciate that. I probably could go without reading this statement but I spent a lot of time on it so I'm going to do it, but I can't say it any better than they said it.

Chairman Baker and fellow Commissioners of the New Mexico Construction Industries Commission, following is my statement of consideration of the re-adoption of the New Mexico Energy Code as adopted in 2011 as a replacement for the Enhanced 2009 New Mexico Energy Code.

In considering the 2009 New Mexico Energy Code for Adoption I believe that it is important to recognize and place a great deal of weight on the fact that any construction code is the minimum standard prescribed and does not in any way preclude more stringent and effective methods, materials or approaches to the construction of a desired building. Anyone can require or request that a higher standard or more efficient system be achieved in their home or building. I also believe that as commissioners it is our duty first and foremost to ensure that consumers and residents of New Mexico are guaranteed buildings that are safe and built to a standard so as to meet the everyday intended use of the constructed facility. In addition to these duties I also believe that it is important that we consider the real life ramifications of the decisions and codes that we put forth. In doing so with regards to the New Mexico Energy Code we must afford our businesses and our residents the opportunity to be competitive in the marketplace and to be assured of value of the product they are purchasing.

Having said that, I also believe that it is imperative that we as citizens and as industry leaders be committed to the long-term health of our environment and our prudent use of energy by whatever form it may be produced. As a businessman one of our core businesses in our company are business units is focused solely on the installation of highly efficient mechanical systems in commercial, industrial and institutional buildings. From a strictly selfish standpoint, viewing the world in a vacuum, I would like nothing better than to legislate that every building be required to have the very most efficient and expensive mechanical systems. However, as a businessman I also recognize that there has to be a buyer for my product and that buyer has to have a reason and the financial ability to buy what I am selling. In our business we frame that reason, their justification, as the ability for the cost of the efficiency measures to be able to be

paid back in a reasonable amount of time. Even when that payback period is reasonable there is still the issue of affordability.

Shelter from the elements is essential to human survival and it is important that we recognize that however well intentioned the changes may be, any change that adds a dollar to the cost of a house, an apartment, a hospital, a school or a place of business puts the ability to seek shelter from the elements out of reach on a group of people who could barely afford it in the first place.

So, Mr. Chairman and fellow Commissioners that is where I start the basis of my evaluation of the Energy Codes. There is a piece of testimony that stuck with me from the public hearings that keeps driving me back to this overreaching question of efficiency versus affordability. And forgive me as I think I have this name wrong, but I believe it was Sanders Moore, Ms. Moore testified that she was living in an apartment that was always hot or cold and there were gaps in the windows and doors that allowed air to infiltrate the apartment at a rate that made the apartment uncomfortable. The gist of her testimony is that our codes should not allow such a building to be built, and I agree, and I believe that either of these codes, the enhanced version or the current New Mexico Energy Code, will prevent that apartment from being built. But the part of the testimony that keeps ringing in my head is my wondering on why she chooses to live there. I do not know this to be true, but my assumption is that she lives there because it is all she can afford, otherwise she would move to a newer and more recently built complex. And therein lays the entire argument as I see it.

We cannot afford as a state to legislate or regulate that only the wealthiest will be allowed to, or afforded the opportunity to, have the all so important shelter we require. If the costs of buildings go up beyond a reasonable value proposition, then the rents and cost go up and people like Ms. Moore eventually will not be able to afford a place to live, or shop, or go to school or receive medical treatment. I believe the New Mexico Energy Code as Adopted in 2011 presents a very balanced remedy to the issues facing Ms. Moore and many of our population, by guaranteeing them comfortable and efficient shelter but still allowing for that shelter to be affordable.

The enhanced code did several things that would have significantly changed the cost of mechanical systems for homes and buildings, the efficiency requirements of 92 percent on gas fired furnaces would have made the use of packaged equipment obsolete on most facilities. The construction methods and designs in New Mexico are predominately packaged equipment, moving away from this would have changed the designs such that a completely different type of system would have to be used and that system would cost \$8 to \$12 more a square foot to construct depending on the size of the facility. Now, the real problem here was not the 92 percent efficiency as such, even now the manufacturers are moving towards that efficiency. The problem was, and is, because the Enhanced Code requirement was so much more efficient, manufacturers were not yet building that equipment so the cost of meeting that requirement was such that it was unfeasible. What the Enhanced Codes did to New Mexico was akin to surrounding it with water and making it an island. It all of the sudden made it significantly more expensive to build than other places because of the restrictions. Now, as we, as an industry, move closer to the 2011 Energy Code the manufacturers are developing those products so that they will be more affordable and readily available. I could go on with examples of cost vs. availability vs. affordability but the real issue here is that we have to create a balance between efficiency and affordability and if that balance is not kept then a significant portion of our populations will not be able to afford the basic necessity of shelter. I believe that the New

Mexico Energy Code as adopted in 2011 allows that balance to be achieved. The code was, and is, a significant increase in efficiency over the previous code – not the enhanced code but the code prior to that one, and it provides for very efficient and safe construction of homes and apartments and buildings at a price at which value can truly be achieved. We will get to and surpass the efficiency requirements of the Enhanced Codes, but like it or not, New Mexico is not a big enough player in the economy to lead this charge, we have to let the industry and the county and other, larger states lead this or the cost become prohibitive.

Mr. Chair and fellow Commissioners I appreciate your indulgence in listening to me over these many minutes and I support the re-adoption of the New Mexico Energy Codes as previously adopted in 2011.

CHAIRMAN BAKER: Very good. Thank you.

ASSISTANT ATTORNEY GENERAL CARRASCO: Thank you, Commissioner. I found your reference to Ms. Moore's testimony very interesting, but I'm curious as to which other specific pieces of evidence did you rely upon in reaching your conclusion concerning the possible re-adoption of the codes, and what aspect of that evidence did you find compelling?

COMMISSIONER YEAROUT: Well, Commissioner Casey and Commissioner Dekker already mentioned the letters and the form letters and what they said, what they didn't, which ones were substantiated, which ones were not. But most of my experience that I made the determination on is the work that we did through various associations, specifically to try to determine what the codes really would cost us in building facilities. And what it became apparent was there are some buildings that just could not be built, and these are not buildings that are substandard. These are not buildings that are inefficient. It's just that from the time the change to the enhanced codes would not allow, for instance, standard tilt-up construction, concrete construction. They would not allow us to use package roof-top equipment on mechanical systems. We would have to go to split systems or hot water heating or whatever it might be.

And so it would just completely change the type of facilities that this type of systems that were currently being designed. And the New Mexico codes as we currently have them and that we adopted in 2011 were more efficient, significantly more efficient than the 2006 codes that we were operating under. However, they still allowed us to be able to buy the materials that we needed that were built by the manufacturers.

ASSISTANT ATTORNEY GENERAL CARRASCO: Thank you. As you understand them, what were the major arguments in favor of keeping the enhanced codes, also known as the Richardson Codes and why did you find those arguments unconvincing or not credible?

COMMISSIONER YEAROUT: Well, I think the one that really hits with me and Commissioner Casey mentioned it is the assertion that there would be – that the savings that would accompany the increased efficiency. And that is our business. We sell efficient systems. We upsell to efficient systems, and we are always playing payback versus first cost gain and what that is. And from our perspective, which we do this every day, from our perspective the changes that were being asked for, the cost increases, could not be – especially in the commercial industry, not on a housing site. But in the commercial industry the changes that were being asked for, the cost

increase to go to that more expensive system, compared to the efficiency that would be achieved by it, exceeded the life expectancy of the piece of equipment by twenty years.

So what happens is you spend all of your time paying for this more efficient piece of equipment. Just at the time you get it paid for it broke, or is broken or inefficient or doesn't work anymore, so you start the cycle all over again. It just does not make any sense from a financial standpoint for the smaller efficiencies that you get and like I said, we play that game all day long in our industry on how what is the system that you can install that gives you the best payback, shortest payback?

ASSISTANT ATTORNEY GENERAL CARRASCO: I'm curious also, were there any pieces of evidence that helped you lead to your conclusion on whether the code should be readopted by the Commission, which you considered in the last several weeks but had not considered prior to the court's decision?

COMMISSIONER YEAROUT: No. I don't think I have anything specific. I have to tell you. I really – and I don't know what Ms. Moore was trying to state but what I heard in the testimony was that the only buildings that certain people can afford are bad buildings. And if all we do is increase the cost of those buildings then they're not going to be able to afford anything. And we have to be able to allow them to have the shelter that we require. We value that shelter. And that's really the driving force is the economic aspect that Mr. Dekker played on.

ASSISTANT ATTORNEY GENERAL CARRASCO: Thank you, Commissioner Yearout. Chairman and members of the Commission, are you in agreement with the reasons set forth by Commissioner Yearout on the question of readoption of the codes?

[General consensus]

ASSISTANT ATTORNEY GENERAL CARRASCO: Is any Commissioner in disagreement with any part of Commissioner Yearout's reasons?

[Silence]

CHAIRMAN BAKER: Does anybody else have any prepared statement? Any comments?

COMMISSIONER WOOTEN: I have some comments but not a prepared statement.

CHAIRMAN BAKER: Okay. Comments are welcome.

COMMISSIONER WOOTEN: All right I'll start by some of my fellow Commissioners have pointed out their experience in the industry. Collectively, we're looking at quite a few centuries of experience in the construction industry. I personally, and I want to preface this by saying I'm not against adopting the code, but I do want to ask some questions about why things have changed from our last meeting. But I want to give a little background first so bear with me.

Personally, I was born into the construction business. I'm a third generation contractor in the state of New Mexico. My grandfather, my father, myself have all been in building. I've been building since I was big enough to reach the gas pedal on a forklift. So the experience is

great and I've seen the changes in the codes, the level of efficiencies that follow along with technological advances. However, I would like to know why, if at our April 17th special meeting we voted to request a rehearing for the appeal, we set at that time June 10th special meeting for the purpose of revisiting these codes, why are we today voting on these codes, outside of what we agreed to at our last special meeting on April 17th? So I don't know who that question would be directed to. You, Mr. Chairman? Or –

ASSISTANT ATTORNEY GENERAL CARRASCO: I think there might be a little bit of misunderstanding. My understanding of what transpired at the April 17th meeting was as you pointed out, you directed counsel to file a motion for rehearing, which is completed, and to direct the Construction Industries Commission to gather information to allow this Commission to come to its reasoning on whether they would readopt or not readopt the code. At that point I think we had discussed setting a special meeting for May 10th.

COMMISSIONER WOOTEN: June 10th.

ASSISTANT ATTORNEY GENERAL CARRASCO: June 10th. And in subsequent conversations with the Chairman and other considerations we decided it would be best to just wait until the regular meeting, which had already been identified to the public as occurring on May 15th and it was only a period of a few days. So what happened was we thought we were going to call a May 10th special meeting but since we had already put the public on notice that the next meeting of the Commission would be May 15th we felt that the advantages gained by those four extra days weren't really all that valuable so we just thought it would be best to include it as an agenda item at the May 15th regular meeting.

COMMISSIONER WOOTEN: I'm a true believer in lessons learned and the lesson I've learned from this is that we need to do it right. Our job, in my opinion, our mandate as a Commission is to create parity and consistency within the code so that there is no question. I also sit on the – as Commissioners we also sit as hearing officers for the code compliance hearings and one of the biggest things I hear as a hearing officer is consistency and parity. We need to fix that in the current division is working towards creating that consistency and if we spend a bunch of time in my opinion litigating our codes that doesn't lend itself to consistency. And I'll go back and I'll read from the minutes of the April 17th meeting. It's item V(a), the motion by Commissioner Fickling. Commissioner Fickling moved that the Commission direct its legal counsel that the following motion for rehearing in accordance with Rule 12-404 NMRA seeking clarification as to which codes are currently in effect and redirecting the Construction Industries Division to compile information to allow the Commission to prepare a statement of reasons for the adoption of the revised codes on June 10th. I just read it wrong. Never mind.

So I was under the impression at our special meeting that we were going to revisit the codes. As you can see, that's a tremendous amount of paperwork. I received the agenda last week, last Wednesday, a week from today, a week prior to today. We were here the following day for a special hearing. The following day I was tied up in meetings because I'd missed two days worth of work out of a week. I just want to make sure that we do it right so that we don't end up in this same position again, because we've got other important matters that we need to discuss.

This is the record from the appeal and in many cases it references the fact that we didn't state our reasons during the June 10, 2011 meeting, that we issued a statement or that Chairman Baker issued a statement at the following meeting. The court says that was too late. Several of us, and I applaud you. I agree with everything you said, but I would like for the rest of us to have the opportunity as well to compile written statements. Because at this point the information that I have is mainly anecdotal and observational and not supported by scientific fact or statistical information. I can relate that to you. I don't know how much weight it's going to have on the record, but I want to make sure we do it right.

COMMISSIONER CASEY: So I guess my obvious question – are we doing it right? Does this work?

CHAIRMAN BAKER: At this point in time it looks like we're doing it right, so I guess we can proceed. Does anybody else have any statements?

COMMISSIONER WOOTEN: I would like to point out a few of the reasons again why I am in support of this. Don't get me wrong. I voted – I actually made the motion that we vote on it on June 10, 2011. I believe in it. I just want to be able to support my beliefs with substantiated evidence. Anecdotally, Commissioner Casey pointed out that many houses are built to the base code or beyond. I personally built my home well beyond the base code. Multi-zone HVAC equipment in my home, digital controls to provide individual control by room to create some of those efficiencies. Higher than required insulation factors in the walls, R-60 walls, R-60 roof. Everything well beyond what the base code would require. And the end result of that is the cost of my home – I couldn't build it today for what it's worth. It would be 20 percent in excess of what it's worth, what the appraised value would come in at.

And not everybody can afford to build homes that are super energy efficient. That's evidenced by Ms. Moore's statement and your assumption. I would make the same assumption. She lives in that apartment because that's what she can afford. There's a tremendous number of people that work for me that couldn't afford to buy a new home if we were to go to this enhanced energy code and allow it to go forward. Additionally, there were problems with the enhanced code and the way it was published. If for no other reason, we need to repeal that code for those reasons, where what was voted on by the original CIC changes were made after the fact and if we allowed that code to go forward we would be in this exact same position we're in today.

So while we were being pro-active in repealing that code, we didn't take the next necessary step which is what we're trying to do today and elaborate our reasons. So if you would like I know CID has gone through and compiled a list. I can do that myself and enter it into the record in a written statement at a later date as to changes between what was originally adopted by the CIC and what was actually published.

ASSISTANT ATTORNEY GENERAL CARRASCO: I think you'd be more than welcome to do something like that. One alternative I'll offer you here and I think it gets to what the concerns you were addressing is that in addition to the statements that are being made today, I would work to synthesize those, put them together in a written form. You could submit any reasons that you feel weren't addressed today and I'd be happy to incorporate those. Those written reasons will then come before this Commission at the next meeting and the Commission will be free to amend, revise, reject, approve those statements. So I think there is still, in addition to we're

doing today, which I believe is legally sufficient, there's also this kind of back-stop effort also. If you feel something wasn't addressed today or you find additional evidence in your review of the record that you think is an important reason either for readopting the codes or not readopting the codes we can incorporate those into the official written statements that will be approved at a later date.

COMMISSIONER CASEY: Can I make one statement real quick?

ASSISTANT ATTORNEY GENERAL CARRASCO: Sure.

COMMISSIONER CASEY: I'd just like to bring this back. I note, Ken, that you do a lot of school and public buildings and I think one thing it's important to realize is all those buildings are built to above-code standards. All those public buildings are required to be built to a LEED silver standard which goes above the code. And so in most cases Ken's already doing that too. So I think as you at these things there's fewer and fewer buildings that are built to code minimum anyhow. So most of our buildings are already going beyond the code and so we've already realized those things without imposing them on people.

COMMISSIONER WOOTEN: I think the key to the whole thing of the energy code, because commercial construction is wholly and completely different than residential, for the most part. The institutional and commercial construction which is where our main focus is, some industrial, etc. But it's the residential code. And that's going to affect, and you could probably spell out to us what the dollar values are for residential permits versus commercial permits. I think there's a disparity there. And the number of residential permits versus the number of commercial permits. So it's going to affect the residential community on a much higher scale than it does the commercial, because any state buildings are going to be built to at least silver or above. So it's the homeowners, the residential homebuyers that are going to be affected by this more substantially. And they're the ones that can least afford it.

ASSISTANT ATTORNEY GENERAL CARRASCO: Commissioner Wooten, I want to reiterate that I appreciate your concerns about the propriety of the process here and I think given the suggestions I've offered I think we can address what you're [inaudible]. I wanted to get back to a little bit more about your reasons for your stated support of re-adoption of the code. I'm curious as to what struck you as the single most important reason for readopting the codes that were set aside by the Court of Appeals?

COMMISSIONER WOOTEN: As I stated a few minutes ago, if for no other reason, the fact that the codes were modified from what was originally voted on and heard in public meetings, and the changes that were made to it through the publication process. Because we would end up in this exact same position with different litigants and for that reason we had no choice, in my opinion, but to repeal the code, the enhanced energy code. And rather than repeal that code and go back to the 06 code we chose to go to the base 2009 IECC. Because we do see the need and the relevance in my opinion for the 2009 IECC.

ASSISTANT ATTORNEY GENERAL CARRASCO: There have been previous references by other Commissioners as to misperception and what I was curious about as to what you had any

information about, your belief about is there any reason or piece of evidence for readopting the code or readopting or not readopting the codes that you believe is overlooked or misperceived by the general public or any segment thereof?

COMMISSIONER WOOTEN: I don't know if this answers your question directly but this is a lot of paper and a lot of the comments were that 18 months were spent writing the enhanced code. That the industry experts were consulted. I believe Commissioner Casey pointed that out that that's not entirely a true statement. Whereas, the IECC, the 2009 base IECC was written by code professionals. It was written by the international code council. I can see no more compelling reason than that to adopt the 2009 IECC base code.

ASSISTANT ATTORNEY GENERAL CARRASCO: Thank you, Commissioner Wooten. Chairman and members of the Commission, are you in agreement with the reasons for re adoption set forth by Commissioner Wooten?

[General consensus]

ASSISTANT ATTORNEY GENERAL CARRASCO: Is there anyone that's not in agreement?

[Silence]

COMMISSIONER KAUFMAN: The only thing I'd like to mention is I have attended some meetings prior to coming on this Commission about the code and I felt at that time all the facts were not coming out. I think it was one-sided. And after we got on this I think Commissioner Yearout and myself showed up at one of the hearings here in this office when we weren't even on the board. We were appointed but we weren't officially on the board. And I think the testimony we got then and all the stuff that we went through back when we voted on this it was compelling to me that we needed to do the changes that we had done, again with testimony that's done with all three of them so far, four of them, information of given facts – I did not go through the numbers because I'm not that good at mechanical. I have a mechanical license; I have not done it for years. So I'm not going to profess that I know all of that. I'm relying on people in the part of the phase, and that's why we have a diverse Commission, that when something hits their field I have to rely on what they're telling me, and that's what I'm believing and the numbers that were given to me, the efficiency code – I know that equipment was not made. I checked with manufacturers myself at the time, there was equipment not even made that would even make these codes work.

I had a big concern with what Commissioner Wooten talked about that what was voted on in the previous Commission and was put in archives was not the same issues, and there were more than just grammatical changes of grammar, it was major totally rewritten. So I did have concern with something that was written before, changed by the time it got to be recorded in the archives that we were going to have to live with. And I couldn't live with that. And after sitting through and listening and reading the testimony, again, most, I would say almost everything I got on the email was a duplicate form letter and had no value to me what was going on. And after a while I've got to admit, I just started deleting because the first two sentences was exactly the one I read before, so I just started deleting all those. And I quit reading them because there was nothing there that would compel me to change my mind on doing the right thing.

And again, listening to all the testimony that I've had, listened to all the committees and going to one of the public hearings, I felt that we needed to make the changes we did and I agree with the adoption we made at the time.

CHAIRMAN BAKER: Does anybody else have a statement? Yes, sir.

COMMISSIONER ALVARADO: I don't have a prepared statement to disclose at this time. Unfortunately, I came on board and some of these public hearings had already taken place. I didn't attend some of those. But I agree with the adoption of the code, and again, I have to agree with Mr. Wooten, you know, because this code was written by professionals so that's where I stand and I will provide you with a statement at a later time.

CHAIRMAN BAKER: Very good. I just have a small statement. I also am a third generation electrical contractor. Unfortunately, I was forced to go to work back before there were labor laws against it. Instead of attending the YMCA or summer camp I spent a lot of times in Gallup, New Mexico working in various locations. I have seen a lot of energy efficiency in our industry and we also have tried to provide the industry with the most efficient means of power, lighting, controls. Every building we're working on now already has to meet IEEE standards on lighting, lighting controls. We've worked together on many projects with Commissioner Dekker's company and projects throughout the state.

LED lighting is really something that's taking ground throughout the industry and I think the industry will keep promoting more efficient products, but those are products that are being invented by people who are in the industry and selling those products to consumers who find those products to be more efficient and find them to be more competitive in the industry, and therefore that's what drives the market is new equipment, new systems, new building methods that are being driven not by a state or by a federal government by an industry of consumers who look out and start seeing the products being produced. And they start realizing, wow, I can get rid of the incandescent lamp and put in either a compact fluorescent or even maybe something more efficient like an LED light. And those items are becoming more efficient every day because they're not being regulated by the government; they're being introduced to the consumer. The consumer is seeing there's more of a demand for those so the demand drives the price down, so then the consumer starts purchasing that. And I think we're all starting to see the way that things have changed our lives from when I grew up, I was the remote for the TV. And now my kids are confused when they can't find the remote for the TV.

So technology helps drive that information as we go along, and I think that we're all concerned. I can tell you, I'm proud to serve with all the Commissioners on this board this year and last year because we're all leaders in our industry. We've all been very involved in this process and obviously we made some mistakes two years ago and the appellate court asked us to come back and address this, and I'm concerned too that we're doing it right and making sure that we're taking the steps so a court isn't making decisions that – we collectively have hundreds of years experience in our industry and I think we're trying to be the best stewards that we can in our industry and making the best decisions for the industry, for the people of New Mexico and for our families.

And I just wanted to go on the record that I feel that it is imperative to keep promoting the industry in any way that we can to make it more effective for the industry but that is also why I feel we have to stick with the 2009 code that we adopted. The enhanced code was just pushing

us over the edge there. It was going to affect the industry in adverse areas that I think could have set us back, especially during the time – not just because it's a burden on the consumer but it's a burden on the industry. As Commissioner Yearout said, there's some requirements for the EC Industry that had not been met yet, had not been invented yet. There were some areas in the electrical that they were trying to address. Buildings, tilt-up concrete buildings and such. There were a lot of areas where it was putting undue burden on.

As Commissioner Casey said, a lot of these areas, builders, most builders, all builders – I don't know of any builders that are trying to build an apartment where the door has a gap underneath it and the windows are single pane. You just can't do it. One, because of the codes that we have in place today, and two because consumers are getting smarter and more educated on how they make their choices. So that's all my comment today. So I appreciate you for tolerating me. Yes, sir. Go ahead please.

ASSISTANT ATTORNEY GENERAL CARRASCO: I have more questions for the entire Commission. First just as a housekeeping matter. Chairman and members of the Commission, are you in agreement with the reasons set forth by Commissioners Kaufman, Alvarado and Baker?

[General consensus]

ASSISTANT ATTORNEY GENERAL CARRASCO: Is there anyone who is in disagreement with any of those reasons?

[Silence]

ASSISTANT ATTORNEY GENERAL CARRASCO: Okay. The next question for the Commission is: Does anyone wish to elaborate on why you believe the codes set aside by the Court of Appeals are beneficial or detrimental, or why the enhanced codes, also known as the Richardson codes were beneficial or detrimental, and to whom were the beneficial or detrimental? You may not know.

COMMISSIONER CASEY: I feel that everybody's kind of responded to that already.

ASSISTANT ATTORNEY GENERAL CARRASCO: Okay.

COMMISSIONER CASEY: And elaborated.

ASSISTANT ATTORNEY GENERAL CARRASCO: Yeah. And the only other thing I had was if – besides what we've already heard here today, is there any other reason that is striking any member of the Commission for adoption or non-readoption of the codes that they want to set forth at this time?

COMMISSIONER CASEY: Could you ask that question one more time? I'm sorry.

ASSISTANT ATTORNEY GENERAL CARRASCO: Aside from the reasons that have already been asserted here, is there anything on your mind as a reason for readoption or not readopting the codes that were set aside that you want to set forth now? Or do you think they've all been

fairly covered. I'll remind you you'll also have an opportunity to assert new reasons in a written statement.

COMMISSIONER CASEY: Well, and I don't know how important this is but I'd say one reason for sure right now is these codes are already in effect and in place and everyone knows how to build to them know. So going back to a code that never fully took effect and expecting buildings that are in the pipeline being designed right now and have to go and change the designs and everything, you're looking to cost the industry not only a lot of money but possibly jobs and projects, and so I think we've proven over the last couple years that the code works quite well. So that'd be one reason. To change the codes now, you'd basically being – unless we had something – if the code was to come out tomorrow and say we're doing the Richardson codes starting tomorrow, there would be no new buildings permitted for months because they'd all have to be redesigned and we'd be talking about a major economic [de]cline for several months in the area of construction.

So I think one driving reason ought to be because we've had them in effect for two years and we've proved they work for two years and I don't see any valid reason to change at this point.

ASSISTANT ATTORNEY GENERAL CARRASCO: And would it be fair for me to say that that concern that you've identified has been – is more pressing now after the Court of Appeals decision or at this point in the decision making process than it was when the codes were initially adopted in 2010?

COMMISSIONER CASEY: Well, absolutely. Because at the time we adopted the code in 20[11] this code wasn't in effect. The Richardson code hadn't taken full effect. It wasn't passed [inaudible] So the only code that was fully in effect at the time we adopted these codes again was the 2006 code. So, yeah, so at this point that's a major point of what would be the economics at this point. It had no bearing on me at that point because neither one of those codes was in effect at the time.

COMMISSIONER WOOTEN: I'd like to kind of elaborate on that a little bit. Nature abhors a vacuum, and currently, based on the ruling by the appeals court that's exactly where we're at, because the court of appeals only said repeal the code we voted on and did not instruct us which code to go back to. And as Commissioner Casey stated, the enhanced energy code had not taken effect at the point in time that we voted and implemented the base code. So that was the whole purpose behind the rehearing was what are we supposed to do now? And that's created that consistency and parity that I spoke of that creates an incredible problem for the Division to enforce. So it's even more imperative today in my opinion than it was on June 10th.

COMMISSIONER YEAROUT: I'd like to add a little more. It's not just that. The fact of the matter is every one of us is put into a certain liability risk when this thing changes because all of a sudden at this point we're not exactly sure what code to be building to, so what if the code comes back and says we're liable for building the wrong code. It's the builder that's going to be liable. So it puts us all in a very bad liability situation at this point. So it's important for us, like Ken said to have consistent codes that we can rely on and knowing we're doing so we can limit

our liabilities as to what action we take. So every day we build without essentially knowing what code we're on we're in a bad situation.

UNIDENTIFIED SPEAKER: Just to clarify that, us all, you don't mean us as Commissioners.

COMMISSIONER YEAROUT: No. I mean the entire industry. Anybody who owns a construction company has a certain liability if we're building to the wrong code.

ASSISTANT ATTORNEY GENERAL CARRASCO: Mr. Chairman and members of the Commission, are you all in agreement with the reasons elaborated and expressed by Commissioners Casey, Wooten and Yearout?

[General consensus]

ASSISTANT ATTORNEY GENERAL CARRASCO: Anybody in disagreement?

[Silence]

CHAIRMAN BAKER: Any more comments?

UNIDENTIFIED SPEAKER: One for the record. These third generation guys – I'm a fourth generation guy.

UNIDENTIFIED SPEAKER: For the record, I'm a second generation.

UNIDENTIFIED SPEAKER: Third generation.

UNIDENTIFIED SPEAKER: I'm third as well.

CHAIRMAN BAKER: Obviously, there's a lot of experience that goes behind this and the Commission Chairman recognizes that everybody here is in their own right experts in their field or area and some experts in other areas than just their own field. But I'm glad to serve with you.

If there's no further discussion we'll proceed to the vote on the motion that the Commission readopt the revisions to the New Mexico Energy Conservation Code, Title 14, Chapter 7, Part 6 of the New Mexico Administrative Code, hereafter, NMAC; the New Mexico Plumbing Code, Title 14, Chapter 8, part 2, NMAC; the New Mexico Mechanical Code, Title 14, Chapter 9, Part 2, NMAC; and the New Mexico Electrical Code, Title 14, Chapter 10, Part 4, NMAC, which the Commission had previously adopted in its June 10, 2011 public hearing meeting, and which are subsequently set aside and remanded to the Commission for reconsideration and new vote and a statement of reason for the vote, preferably in written form by the New Mexico Court of Appeals in *Southwest Energy Efficiency Project et al. v. New Mexico Construction Industries Commission et al.*, Case #31-383 consolidated with #31-384, #31-385 and #31-386 and any subsequent amendments thereto.

VOTE: Chairman Baker conducted a roll call vote on the motion. The Commission members voted as follows:

Commissioner Vince Alvarado	Yes
Commissioner Patrick Casey	Yes
Commissioner Dale Dekker	Yes
Commissioner Don Kaufman	Yes
Commissioner Kenneth Wooten	Yes
Commissioner Kevin Yearout	Yes

CHAIRMAN BAKER: By a vote of six in favor and zero in opposition the motion passes. I, Chairman Randy Baker concur with the majority vote. CID counsel will prepare a written statement of reason based upon the statements rendered today for consideration, modification, rejection or approval at the Commission's next meeting. Do you understand?

b. Approval of Electrical Continuing Education Courses and Providers:

The Construction Industries Division recommended that the following electrical continuing education courses and instructors be approved as presented:

Electrical Vehicle Supply Equipment Installation	David Burt
Wiring Methods	Todd McGee
Theory & Calculations	Steve Cauley
Grounding & Bonding	Chris Shipp
2011 NEC Changes	Rick Castellano
PV Operations & Maintenance	Aaron Cabral, Jessie Harwell
NFPA 70E/Arc Flash Electrical Safety	Rick Simpson, Mike Miers
NFPA 70E/NEC Electrical Safety	Jim Bosshart
NEC, Commercial Electrical Load Calculations	Jim Bosshart
Introduction to Electrical Theory	Jim Bosshart
Changes of the National Electrical Code 2011	Jim Bosshart
Grounding and Bonding	Jim Bosshart
Calculations for Conductors, Terminations and Ampacities	Jim Bosshart
Electrical Installation Requirements and Methods	Jim Bosshart
Motors, Motor Circuits and Controls Article 430	Jim Bosshart
Calculations for Conductors, Conduit and Boxes	Jim Bosshart
Transformers and their Voltages	Jim Bosshart

MOTION: Commissioner Yearout moved that the courses and instructors submitted for electrical continuing education be approved as presented.
SECOND: Commissioner Dekker seconded the motion.
VOTE: All Commission members present voted in favor of the motion.

c. Requests for approval to adopt:

MOTION: Commissioner Yearout moved to adopt, as presented:
14.7.4.7(E) NMAC - Count Rumford Fireplace (Definition)
14.7.4.13(A) NMAC – Foundations: General
14.7.4.16(F) NMAC – Attachments and Connections
SECOND: Commissioner Kaufman seconded the motion.
VOTE: All Commission members present voted in favor of the motion.

Director Martinez requested that the Commission remove from consideration the approval of 14.6.6.9(B) NMAC – License Classification until the next commission meeting. The Commission elected to defer consideration of this matter until the next Commission meeting.

MOTION: Commissioner Casey moved to adopt 14.12.3 NMAC – New Mexico Modular Building Structures, as presented.
SECOND: Commissioner Kaufman seconded the motion.
VOTE: All Commission members present voted in favor of the motion.

MOTION: Commissioner Yearout moved to adopt 14.5.2.19 NMAC – Annual Permits and to direct CID to propose additional changes at a later Commission meeting.
SECOND: Commissioner Kaufman seconded the motion.
VOTE: All Commission members present voted in favor of the motion.

d. Approve Licenses Issued Since March, 2013 and April, 2013:

The Construction Industries Division recommended that the licenses and certifications issued in March and April, 2013 be ratified as presented.

MOTION: Commissioner Casey moved that the licenses and certifications issued by CID in March and April, 2013 be approved, as presented.
SECOND: Commissioner Yearout seconded the motion.
VOTE: All Commission members present voted in favor of the motion.

VII. EXECUTIVE SESSION

MOTION: Commissioner Yearout moved that the Commission close the meeting to the public and enter into an executive session to discuss the cases listed under agenda items VII(a)-(e), pursuant to NMSA 1978, Sections 10-15-1(H)(1), (3)

and (7). Such discussions pertain to the issuance, suspension, renewal or revocation of licenses, deliberation on pending administrative adjudicatory proceedings, and pending or threatened litigation.

SECOND: Commissioner Casey seconded the motion

VOTE: A roll call vote was taken. Commission members present voted as follows:

Commissioner Vince Alvarado	Yes
Commissioner Patrick Casey	Yes
Commissioner Dale Dekker	Yes
Commissioner Don Kaufman	Yes
Commissioner Kenneth Wooten	Yes
Commissioner Kevin Yearout	Yes
Commissioner Randy Baker	Yes

The meeting was closed to the public so that the Commission could enter into executive session at 12:10 p.m.

Chairman Baker re-opened the meeting to the public at 2:45p.m. He further stated that the matters discussed in the closed meeting (executive session) were limited only to those specified in the motion for closure.

VIII.

ACTION ON ITEMS DISCUSSED DURING EXECUTIVE SESSION

a. Licensee disciplinary action cases in which dismissal or closure is recommended:

MOTION: Commissioner Casey moved that the case listed as item number 1 under agenda item VII(a) (Case No. 12-2399), be closed.

SECOND: Commissioner Kaufman seconded the motion.

VOTE: All Commission members present voted in favor of the motion, with the exception of Commissioner Wooten, who abstained from voting on this motion.

b. Licensee disciplinary action cases in which issuance of notices of contemplated action ("NCA") is recommended:

MOTION: Commissioner Casey moved to issue NCA's for the cases listed as item numbers 1 through 7, under agenda item VII(b), with a Priority Level II designation.

SECOND: Commissioner Yearout seconded the motion.

VOTE: All Commission members present voted in favor of the motion, with the exception of Commissioner Wooten, who abstained from voting on this motion.

c. Attorney General's Report on Licensee Disciplinary Action Cases:

MOTION: Commissioner Casey moved to grant the respondent a hearing, contingent upon its waiver of ULA deadline, in the matter listed as item number 1, under agenda item VII(c), being Case No. 09-1334.
SECOND: Commissioner Yearout seconded the motion.
VOTE: All Commission members present voted in favor of the motion.

IX. NEXT MEETING DATES

The Commission scheduled a Special Meeting for 9:30 a.m. on June 3, 2013 at the NM Gaming Control Board in Albuquerque, NM.

The Commission scheduled a Regular Meeting for 9:30 a.m. on July 17, 2013 at the NM Construction Industries Division Office in Albuquerque, NM.

X. ADJOURN

MOTION: With no additional business pending, Commissioner Casey moved to adjourn the meeting at 2:50 p.m.
SECOND: Commissioner Dekker seconded the motion.
VOTE: All Commission members present voted in favor of the motion to adjourn.

NEW MEXICO CONSTRUCTION
INDUSTRIES COMMISSION



D. RANDY BAKER
Chairman

6-3-2013

DATE

ATTEST:



KATHERINE MARTINEZ
Executive Secretary

6-3-2013

DATE