



Picacho Hills
Property Owners Association
PO Box 51
Fairacres, NM 88033

NEWSLETTER

Volume 26 No. 2

OCTOBER, 2010

Serving your community since 1984 • Visit Us @ www.PicachoHills.org

David Zeemont

President, Picacho Hills Property Owners Association

September 18

Summer is almost over, and, although we had better than average precipitation, we didn't experience any of those arroyo-busting thunderstorms that had us filling sandbags. Many local homeowner associations have spent considerable time and funds on improving their drainage. New management at Mansiones de Galicia and Renoir Loop has improved the look and maintenance of their streets and common areas. The County has even pitched in with significant improvements along Barcelona Ridge Road and new curbs and gutters along Via Campestre and Via Norte, a project that was long overdue. Of course, much more needs to be done. All it takes are time and money and a little engineering.

Elsewhere in this newsletter, you'll learn about the Board's plan to add considerable value to your membership in PHPOA with a discount membership card good at local businesses. This is not a one-shot deal; many of our vendors are offering permanent discounts throughout 2011. These discounts will only be offered to PHPOA members. It is anticipated that our dues levels will remain at \$55.00 for 2011 (at least for now; you may want to get your renewal payment in early). I owe a debt of gratitude to our Board members Henry Broekhoff and John Schwebke, not only for conceiving this plan, but for following through with our local participating merchants, who were very receptive to the idea.

Picacho Hills even received some long-overdue media coverage, following the Final Order of the New Mexico Public Regulation Commission in the Picacho Hills Utility Co. case. Did you see me on KFOX-TV? (my satellite was on the fritz, so I missed part of it!) I even think the SUN-NEWS article was well-written and fair, considering that I've been yammering at them for almost three years to give it the attention it deserves. Several articles also appeared in the New Mexico Independent, an on-line newspaper, following the Commissioners open meetings in August.

Continued on Page 3 . . .

**IT PAYS
TO BE A
PHPOA
MEMBER
!**

It's always a rewarding feeling knowing one is supporting an organization that serves the community in so many important ways.

Now the rewards of membership just got more tangible!

Beginning in October, a personalized identification card will be printed for each new or renewing membership. Once you pick up your ID card, you can use it to receive discounts at local merchants. Please read the insert for details and participating merchants. Details and an updated list will also be maintained on our website, www.PicachoHills.org.



Community Improvements

John Kutney, Community Improvements Chairperson

Our community continues to look ever nicer, thanks mainly to the residents who monitor and clean their areas. Let's ensure that we all participate as individuals to this continuing effort. If you are so inclined to address an area let a board member know about your intentions so you can join the Adopt-A-Road volunteers. Also, the reduced amount of construction in our area means less construction debris (please report violating construction crews to County Ordinance for prompt action).

The **Neighborhood Cleanup** is now an annual Spring event. The next one is on **April 23, 2011**.

Clean up and restoration of Picacho Hills Drive at the entrance continues on a regular basis. The triangle area and east side of the road has been improved with the addition and continuation of the lava rock areas

The County reports that the traffic light construction at Picacho Hills Drive and Picacho Avenue has been funded and awaits agreement with the State on maintenance funding. Construction contracts are scheduled to be let out in November (of this year).

Please address your ideas and concerns to the PHPOA Board for continued improvements to our community so that we can all share its beauty.

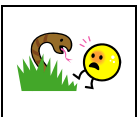


Crime in Picacho Hills

Larry Goforth, Treasurer

Picacho Hills is not immune to criminal activity, from vandalism to theft and burglary. PHPOA wants to remind everyone that it is important to call the Doña Ana County Sheriff's Dept. dispatcher and file a report whenever suspicious activity is observed. This is the only way we will get more of a patrol presence in our area. The number to call is **575 526-0795**.

As an additional measure of protection, concerned residents within a subdivision are encouraged to organize a local Neighborhood Watch program. The board of PHPOA stands ready to assist interested groups with information on how to initiate such efforts.



Got Snakes?

Dave Zeemont, President

If you have an encounter with a snake in your yard, before you reach for your trusty firearm (which is risky, un-neighborly, ill-advised and quite possibly illegal), remember that most snakes around here are not poisonous and help to keep the varmint population down.

Of course, I don't recommend getting too close to them to determine the reptile's genus and species. It would be preferable to call **Frank Bryce** instead at **647-4471**. Frank is the proprietor of Doggie Dude Ranch and Cat Farm, 1428 Burke Road. He is also President of the Humane Society of Southern New Mexico, and an experienced herpetologist (a/k/a snake charmer). Schedule permitting, he will come out and remove said snake to safer surroundings. Frank has performed this service for a number of residents of Coronado Ridge, and does not charge. Since Burke Road is quite close to Picacho Hills, Frank can respond quickly if he is available.



From the President

(Continued from Page 1)

David Zeemont

President, Picacho Hills Property Owners Association

While we're on the subject of adding value to your membership, consider that Picacho Hills Utility Company (never very far from my thoughts), by not constructing the effluent line, is denying themselves the use of the increased Phase II rates that were granted them by the Commission. Phase I rates, which are not substantially different from the previous rates, have been in effect for more than twenty months, and no foreseeable change is in sight. So, let's do the arithmetic. I just received my bill for August, 2010. It's based on water usage rates of 12,730 gallons and sewage base of 8,190 gallons. The table at right shows the various rate possibilities:

	Current Phase I	Phase II	Utility Proposed
Water	\$26.35	\$32.81	\$41.35
Sewer	38.04	49.55	68.36
Total	64.39	82.36	109.71
Monthly Difference		\$17.97	\$45.32
Annual Difference		\$215.64	\$543.84
Commodity Charges Included Taxes Not Included			

These savings are directly attributable to the efforts of the PHPOA. If not for our intervention in these cases, the utility's proposed rates would have gone into effect around January, 2008. That's a lot of value for a \$55.00 annual membership fee. When you multiply it out by our membership, or potential for membership, the savings far outweighs any legal costs that we have incurred or might incur. You can also see how much potential income PHUC is depriving itself of in not getting its capital improvements completed, something they've been ordered to do. In 2006, PHUC reported 825 water customers and 774 sewer customers. These figures also do not take into account the water and sewer usage of the Utility's largest customer, Picacho Hills Country Club, who are charged the same rates. By way of comparison, a name that's been in the news lately, Moongate Water Company, would currently charge \$30.48 for water service only. (They have no sewage facility.)

For our members who have stood by the PHPOA these last few years, I hope that this is ample justification, and yes, a reward for your support. For those of you who have chosen not to join, why not? We represent all of Picacho Hills residents in this struggle.

Thanks again.

Dave

As you know, the Picacho Hills Property Owners Association Newsletter is available online at www.PicachoHills.org. If you would prefer to view it online rather than receive this "dead tree" edition three times each year, we will notify you by email when each new edition has been posted to the site. One click on the link in your email and you'll be reading the neighborhood news on your computer screen. Send your request by email to

PHPOANews@aol.com.



The “Rezoning” Disposition

Dave Zeemont, President

In late July, residents of the Pueblo Gardens subdivision in Picacho Hills were surprised to find in their mail a “Notice of Public Hearing”, before the County Extra Territorial Zoning Commission, of a proposed zone change request for approximately 100 acres from the intersection of West Picacho Ave, along Picacho Hills Drive, and continuing east of their homes. The zoning request asked that two ten acre parcels on each side of Picacho Hills Dr. be zoned EC-3 Commercial, and that the remaining eighty or so acres be zoned ERM-7, allowing an average of 5,000 square foot lots. Since only those properties within 200 feet had to be served by law, the rest of Picacho Hills had no inkling that there was a huge change being proposed for the land along our major thoroughfare. As if this weren’t enough, the ETZ meeting was called for August 19, 2010, barely three weeks from the delivery date of the letters.

Subsequently, a representative of the owners, 4B Trust, as well as two of the principals, met with the PHPOA Board and some residents of Pueblo Gardens on August 3, 2010, to outline their proposals in more detail. Many issues came up, including the suitability of the planned residential property for that kind of density of structures; since the land is in a FEMA designated flood hazard area, and is also situated very close to the Picacho Hills Utility Company Sewage Treatment Plant. There was also concern about the proximity to present Pueblo Gardens’ homes, and whether or not the new properties would obstruct their views, and disrupt their quality of life, as well as discussion of the added traffic along Picacho Hills Dr. It was pointed out that the ten or so acres running alongside the Pueblo Gardens development was previously zoned ERM-7, which is the same zoning district as Pueblo Gardens itself. Many Picacho Hills residents, as well as those living in Pueblo Gardens, felt that they had been “sandbagged” by the application, and given no time to either study it or respond before the proposed meeting. They, in turn, asked the ETZ to postpone action on the application, which they did, putting both applications (residential and commercial) on the agenda for the September 16, 2010 meeting.

It was later learned that ETZ staff seemed to have many of the same concerns as Picacho Hills residents, and that they had recommended that the Commission approve the commercial zoning change, but disapprove the residential application at the August meeting. However, the postponement also gave the PHPOA Board time to schedule a special general membership meeting with 4B Trust, and this was held on August 26, at Picacho Hills Country Club. At the meeting, the engineer for the owners unveiled an amendment to their original proposal, which would call for a zoning change in the residential area to ERM-4, allowing for an average density of half acre lots, thereby reducing the possible home sites substantially. This change would also include that section of the property currently zoned ERM-7, thus insulating Pueblo Gardens homeowners from having a neighbor’s house back-up to their property line. All four of the principals for 4B Realty were also in attendance, and they emphasized their ties to the Picacho Hills community (one of them actually lives in Coronado Ridge). They also underscored the point that no sale of the property was planned or imminent, and that the purpose of making the applications for zoning change now was to make the property more marketable in the future, and that they had no intention of developing it themselves. It was also stated that a change in zoning is not akin to permission to build, and that any new owner would still have to go through a lengthy and arduous platting process to obtain any kind of building permits. Copies of the new proposals were distributed at the meeting and posted on the PHPOA web-site.

CONTINUED ON PAGE 6



Utilities Report

Dave Zeemont, President

As I hope you are all aware, the New Mexico Public Regulation Commission rendered its Final Decision on August 12, 2010, “IN THE MATTER OF AN INVESTIGATION OF PICACHO HILLS UTILITY COMPANY, INC. WITH RESPECT TO ITS FINANCING AND CONSTRUCTION OF A SEWAGE DISCHARGE LINE AND OTHER MATTERS”. This followed the Hearing Examiner’s “Final Recommended Decision” (RD), which was dated May 26, 2010.

I have posted the three relevant documents on our website, www.PicachoHills.org: 1) the RD issued by the Hearing Examiner (HE); 2) the Commissioners’ “Final Order” of August 12, which amended some of the HE findings and figures (most notably the fines); and 3) the “Penalties Supplement” of August 24, which clarified the amounts, structure, and time frame of the fines.

Much has been made of the appointment of a receiver to operate the utility, and the magnitude of the amounts of the fines, but a couple of points need to be emphasized. 1) The Decisions state clearly that none of the fine money may be recovered from the rate payers, that is, the residents of Picacho Hills. 2) The principal of PHUC is personally responsible for payment of 95% of the fine money. 3) The NMPRC statute regarding the appointment of a receiver is appended at the end of this article and is posted on our website under PHUC Case Documents.

There are several stipulations that the Hearing Examiner issued in her RD and that were endorsed by the Commissioners, that I think should be brought to your attention:

- The Commission voided the Promissory Notes between PHUC and the Bank of the Rio Grande, since they were not used for the purposes outlined by the Commission previously, i.e. to build the effluent line and connect the new water well.
- The Mortgage and Security Agreement wherein PHUC pledged its water rights to the Bank was also voided, as prior approval of the Commission is needed to pledge or alter any water rights.
- The Commission reiterated its permission to the Utility to borrow up to \$1,500,000 for funding of the two capital projects, and gave PHUC leave to use Phase II rates once this is accomplished.
- The Commission ordered Picacho Hills Development Corporation, as an affiliated company under its jurisdiction, to pay \$168,000., to the Utility.
- The principal owner of PHUC was ordered to pay \$13,712 to the Utility to reimburse it for payments made to his personal credit card account.
- The Decision recommended that certain aspects of the behavior of the Principal of PHUC, namely that he gave false testimony under oath, that he converted company funds for personal use, and possible witness intimidation of NMPRC staff members; be referred to the New Mexico Attorney General’s office for investigation.

These orders do seem a little contradictory, for on the one hand the NMPRC is ordering that they seek a receiver for the Utility, but on the other hand, they are allowing the Utility the ability to comply with previous Commission orders, and properly borrow the funds to complete the capital improvements.

CONTINUED ON PAGE 6

The “Rezoning” Disposition (Continued from Page 4)

Many Picacho Hills residents still did not seem satisfied, and voiced their opinions privately to the four sisters, so they decided to withdraw the residential zoning change application at the September 16 meeting, and only request a zoning change for the commercial area at the present time. This would give them a better opportunity to work with the county drainage and engineering departments towards determining a sustainable number of units for this parcel. Unfortunately for them, the ETZ Commissioners, despite the recommendation of their Staff, turned down the entire commercial zoning change request, by a vote of 4 to 1. This decision may be appealed to the Las Cruces Extra Territorial Zoning Authority (ETA), and the applicants have given every indication that they will do so.

Utilities Report (Continued from Page 5)

In a way, the task of the NMPRC is just beginning. The Commission has no power to appoint a receiver under its own authority, it must petition a local court (in this case Dona Ana County District Court) to appoint and administer a receivership. In this time of reduced State budgets, it means either sending one of its own attorneys down here (they are all based in Santa Fe), or hiring a local law firm to represent them. They also seem to have no special power of collecting the fines imposed, other than going to court the same as any other creditor. As of this writing, \$35,000, of the fine money is currently due. The Principal of PHUC has repeatedly stated that he will not pay any fines, and has challenged the Public Regulation Commission’s authority to levy them or to regulate certain aspects of utility operations.

He has also stated that he will appeal the Commission’s decision. According to NM State Law, appeals of NMPRC cases can only be made directly to the New Mexico Supreme Court. This seems to be one promise he intends to keep, as I have received a copy of a “Notice of Appeal” to said court, which appears to be filed in a proper and timely manner. However, I am advised that while the appeal process is going on, which could take months, or even over a year for the Supreme Court to hear the case and render a decision, the stipulations of the NMPRC remain in force; unless the Supreme Court itself issues a stay of execution of the orders. This requires the acquiescence of the NMPRC, to which I doubt they would agree.

The NMPRC is not the only State agency with which PHUC has had adverse dealings. On May 24, 2010, the New Mexico Environmental Department (NMED) issued an “Administrative Compliance Order”, fining the Utility \$85,850., for violations of the New Mexico Water Quality Act in regards to its Discharge Permit. This is as a result of the Utility pumping raw sewage into the holding areas at Picacho Hills Country Club, without previous treatment by the sewage plant. This is something that many people (especially golfers) noticed and complained about. Our thanks to the ownership of PHCC for complaining and aggressively pursuing this serious health matter with the NMED. The Club has also been active in its complaints to the NMPRC, which is how we found out about the NMED order. Fortunately for our public health, NMED advises that upon re-inspection, all of the serious infractions have been dealt with. The Utility has also filed a notice for a hearing, and is currently negotiating with the NMED for a reduction in the fine.

So where does this all leave us? PHPOA has taken active participation in the proceedings before the NMPRC, to say the least, and the Commission, it appears, has taken heed. Now it is up to them to follow through on its own findings and stipulations. Interestingly, these proceedings very rarely mentioned our water and sewer rates. The Principal of PHUC now complains that he was not given adequate rates to construct the effluent line. This is after publicly stating any number of times, in 2009, that the line was going to be built imminently. If so, he is appealing the wrong case. The rate case was decided on October 30, 2008, and, of course, Phase I rates are still in effect.

NMPRC Statute § 62-13-15: Appointment of Receiver

“Whenever the commission determines, after notice and hearing, that a public utility is unable or unwilling to adequately service its customers or has been actually or effectively abandoned by its owners or operator, or consistently violates the rules or orders of the commission, the commission may commence an action in the district court of the county where the utility has its principal office or place of business for the appointment of a receiver to assume possession of its property and to operate its system upon terms and conditions in accordance with the provisions of the Public Utility Act, commission rules and orders of the court. Upon the order of the court, the receiver may issue receiver's certificates to provide funds to operate, repair, improve or enlarge the public utility. Unless otherwise provided in the court order, payment of the receiver's certificates is a first lien on the real and personal property of the public utility. The court shall prescribe the certificate's form, term and rate of interest. Receiver's certificates are exempt from the operation of any law that regulates the issuance or sale of securities of public utilities.”



Your PHPOA Board of Directors and Committees

President	Dave Zeemont	523-0913	mudjob@live.com
Vice President	John Schwebke	527-0238	jschwebke@prodigy.net
Secretary	(Open)		
Treasurer	Larry Goforth	527-1707	lydlar@earthlink.net
Directors	Henry Broekhoff	524-1022	hbndesign@aol.com
	John Kutney	525-8470	john.kutney@comcast.net
	Judith Miller	524-5969	halcyonknl@aol.com
	(2 open positions)		

Calling all Civic-Minded Residents
 We invite you get involved and help shape the future of our community. Call any one of us!

Budgets/Planning/Website

Larry Goforth
Dave Zeemont

Hospitality

Judith Miller
Hospitality Representatives

Membership

Henry Broekhoff
All Board Members
Hospitality Committee Members

Community Improvement/Roads/ETZ

John Kutney
Dave Zeemont
Adopt-A-Road Volunteers

Newsletter (Open)

All Board Members

Directory (Open)

Bob Oheim
Nancy Fuller

Covenants/Safety/Security (Open)

Nancy Fuller
David Wright

Utilities

Dave Zeemont
Paul Gradwohl

Fund Raising
John Schwebke
Pat Anderson

Nominating (Open)

All Board Members



Upcoming Dates to Remember

These Events and More are Posted at www.PicachoHills.org

February 2 – 8 Winter Newsletter
February 5 PHPOA Newcomers Social
February 6 For the Love of Art
 12 – 4 at the Amador House
 For Residents and Guests

March 8 PHPOA Annual Membership Meeting
April 17 – 23 Spring Newsletter & Directory
April 23 Annual Neighborhood Cleanup

The PHPOA Board meets monthly on the first Tuesday at 3:30 at Picacho Hills Country Club. (call to confirm).

If you moved into Picacho Hills after January, 2010, save the date of **Saturday, February 5, 2011**. This will be our 6th Annual **Newcomers Social**, sponsored by the Picacho Hills Country Club and the Picacho Hills Property Owners Association. Enjoy Chef Darrell's wonderful appetizers and complimentary wine. Meet other newcomers and our Hospitality Representatives and learn more about your neighborhood, city and the PHCC.



Check Your Membership Status On-Line

Larry Goforth, Treasurer

Here's a quick and easy way to check your PHPOA membership status: visit **www.PicachoHills.org** and click on the **Members** link. Click on **2010** to see if you're a current member and then click on **2011** to see whether you're already a member for next year. (Membership for dues submitted October through December is extended thru the following year).

The PHPOA was chartered on June 12, 1984 for the purpose of representing the owners of Picacho Hills property in matters affecting the community as a whole: upgrading and maintaining our roads, intervening in utility rate changes, conducting beautification projects, addressing safety and security concerns, reviewing Doña Ana County ETZ, new sub-division and master plan proposals, changes and variances and any other subjects that may impact our neighborhood environment and property values. We also publish a directory of homeowners which is distributed every year in April. We thank you for your time and support.

PICACHO HILLS PROPERTY OWNERS' ASSOCIATION
MEMBERSHIP APPLICATION AND DIRECTORY INFORMATION

Send to: Treasurer, Picacho Hills Property Owners' Association, P.O. Box 51, Fairacres, NM 88033
Annual dues are \$55 per year for homeowners and \$35 for lot owners, payable to PHPOA

_____ Renewal _____ New Member Date: _____

PLEASE LIST AS YOU WANT IT TO APPEAR IN THE PHPOA DIRECTORY
(Specify whether any information should be unlisted)

Member Name: _____
(last) (first)

Spouse/Other: _____
(last, if different) (first)

Picacho Hills Address: _____ Subdivision _____

Phone: _____ Email address(es): _____

Mailing Address (if different) _____

(city) (state) (ZIP)

PHPOA
P.O. Box 51
Fairacres, NM 88033

Henry Broekhoff

Chairman, PHPOA Membership Committee

Dear Resident:

The fact that you are enjoying reasonable water and sewer rates is the result of the hard work done for you by the board of the Picacho Hills Property Owners Association (PHPOA).

Membership in the PHPOA is \$ 55.00 per year. Your payment after September 30, 2010 will make you a member through December 31, 2011. We feel the value of joining PHPOA will exceed the cost of your membership. Please allow me to explain:

*Besides the important water rate issue, the PHPOA represents the Picacho Hills property owners in other important matters: maintaining and upgrading roads (e.g. Via Norte, Via Campestre, Barcelona Ridge Road, Vista de Oro, Picacho Hills Drive); conducting beautification projects (e.g. entrance sign off Picacho Avenue, the triangle area); fire and sheriff department relations, and encouraging development of neighborhood watches, just to mention a few. You are the beneficiary of the efforts made by this organization that will increase the value of your real estate investment as well as the quality of life in Picacho Hills. Our mission statement and more information about the organization can be found at our web site, www.picachohills.org. In addition to our newsletters, delivered free to **all** residents three times a year, our annually updated Picacho Hills directory is distributed to all members of record each Spring (new owners moving into Picacho Hills are also eligible to receive an initial copy of the current directory).*

To make your decision to join an easier one, I am happy to inform you that we are establishing relationships with a number of local businesses willing to extend discount benefits to PHPOA members. Information about these merchants and the nature of their benefits are on the back of this insert and posted on our website, where the list will be updated periodically with additions or changes. After your dues payment is received, a personalized membership identification card will be available to you for use with these participating merchants.

Thanks for your support.

Henry



Bonus Time!

Henry Broekhoff, Larry Goforth
and John Schwebke
Membership and Fundraising Committees

Beginning in October, a personalized identification card will be printed for each new or renewing membership. Once processed, this ID card will be available for pickup by the member at 1606 Via Diamante by appointment (please call ahead: 527-1707). These cards are non-transferable and have no cash value.

The following businesses have agreed to extend discounts to persons who produce their valid 2010/2011 PHPOA ID card. This list will be periodically updated on our website. So it should be easy to recover one's PHPOA membership dues within a year!

* In the case of restaurants, please be fair to the wait staff and calculate your gratuity on the basis of the original bill.

Aire Serv Heating and Air Conditioning (Metal Craft)
924 W. Picacho Ave., 524-8653
√ \$25 discount off heating and cooling system tune up

Enchanted Gardens, 270 Avenida de Mesilla, 524-1886
√ 10% discount off landscaping plants, bushes and trees

Guacamole's*, 3995 W. Picacho Avenue, 525-9115
√ 10% discount off all food and drink

Johnston's True Value Hardware
1002 W. Picacho Avenue, 524-3586
√ 10% discount off all purchases

Kiva Patio Café*, 600 E. Amador Ave., 527-8206
√ 5% discount off all food and drink

La Iguana*, 139 N. Main Street
(opening soon next to the Rio Grande Theatre, 523-8550)
√ 10% discount off all food and drink

MDC Computers, 2001 E. Lohman Ave.
(Arroyo Plaza, #115), 522-7600
√ 10% discount off all purchases

Ump 88 Irish Grill*, 1338 Picacho Hills Drive, 647-1455
√ 10% discount off all food and drink