

Planners as Circuit Riders: Planning Assistance in Rural New Mexico



Today's Panel

- Anita Miller, Esq.
- Sandra Gaiser, AICP
- Maida Rubin
- Derrick Webb, AICP, Moderator

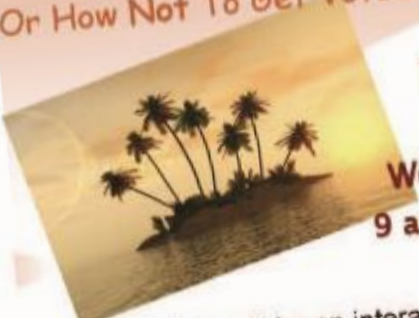


*RMLUI Annual Conference
March 16, 2017*

Overview of the Session

Mid-Region Council of Governments

**The Survival Guide To Planning -
Or How Not To Get Voted Off The Island**



**MRCOG Fall Workshop for
Planning Commissioners
Wednesday, October 22, 2008
9 am to Noon at the MRCOG Offices**

This workshop will be an interactive discussion with audience participation.

Topics will include:

- Key Ethical Considerations, including conflict of interest
- Bylaws for Planning Commissions
- Meeting Dynamics & Rules of Behavior

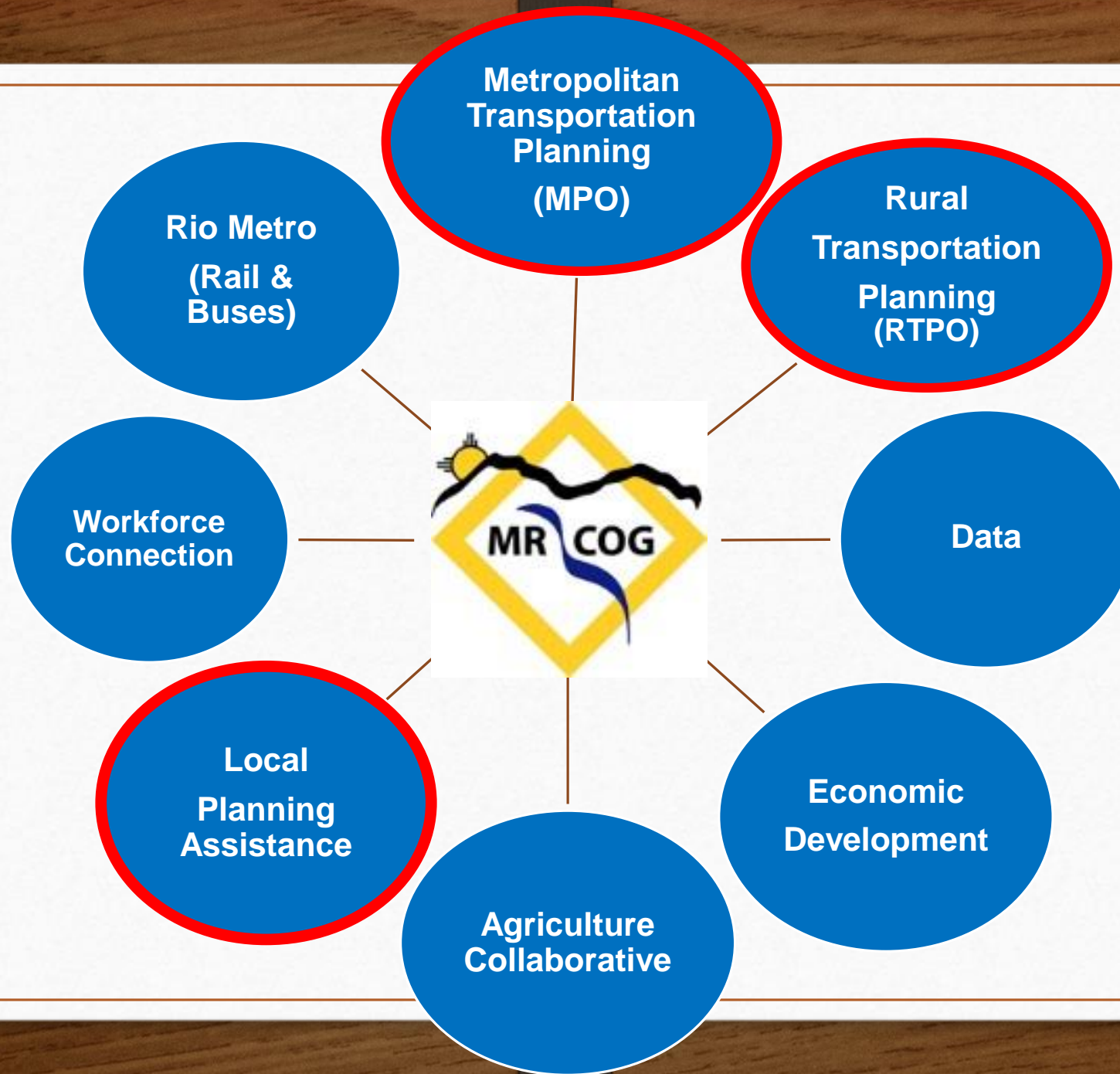
Bring your questions to the workshop or email them to Sandra Gaiser at sgaiser@mrcog-nm.gov prior to the workshop.

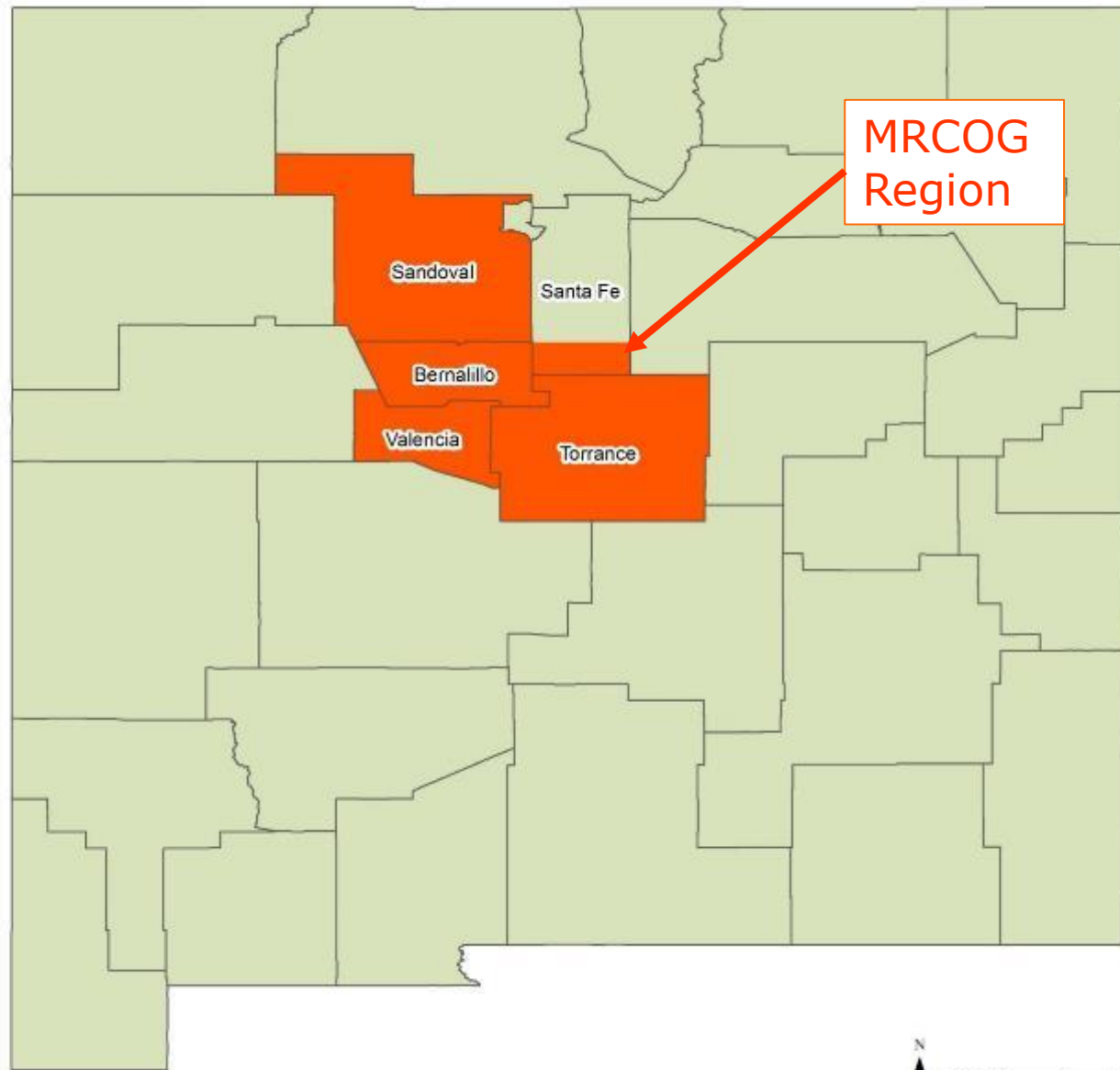
Refreshments will be provided!

- Council of Governments in New Mexico
- Technical assistance provided by MRCOG
- Planning Commissioner Training
- Land Use Cases that shape planning in New Mexico



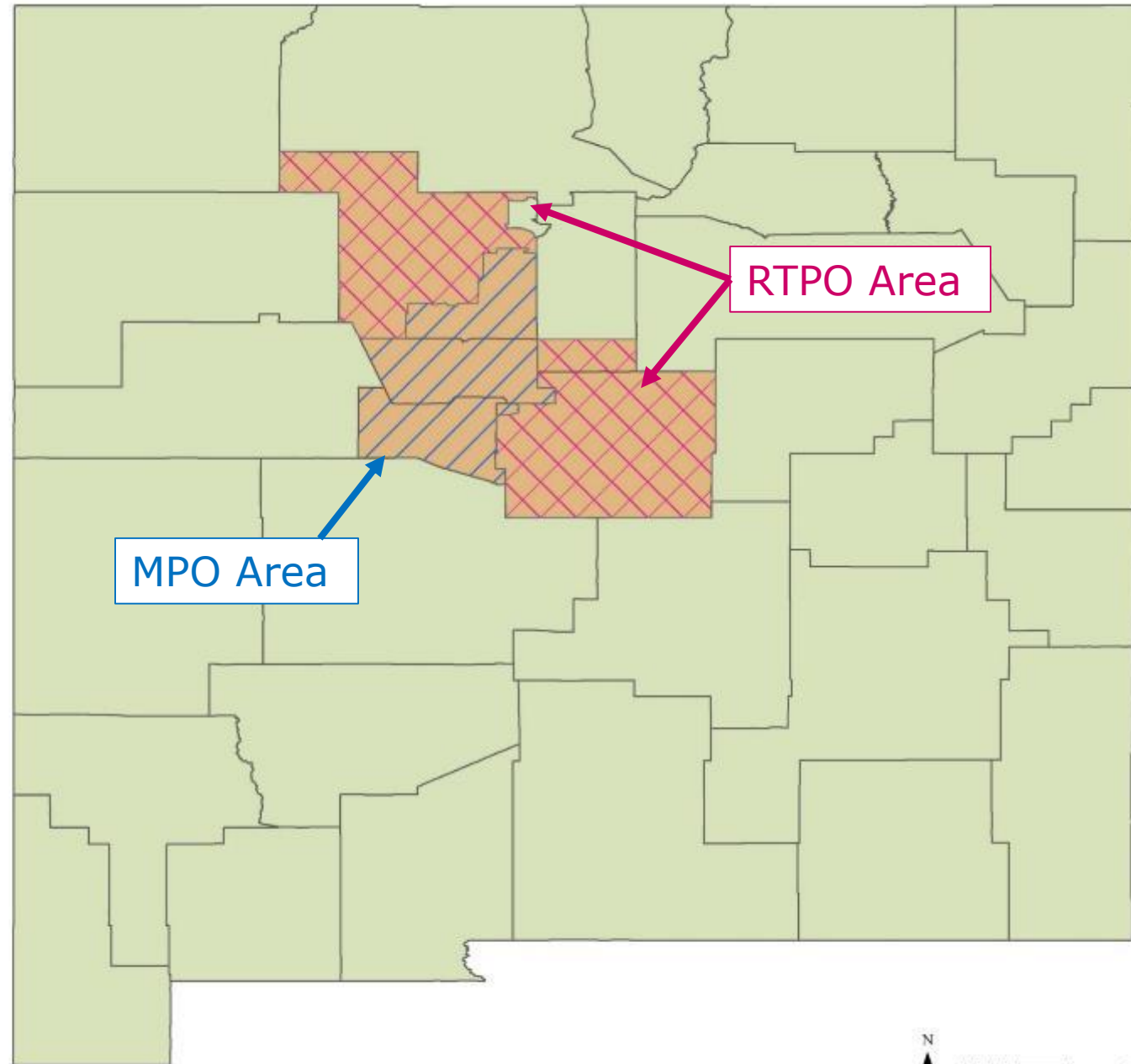






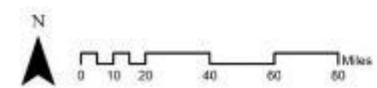
MRCOG
Region

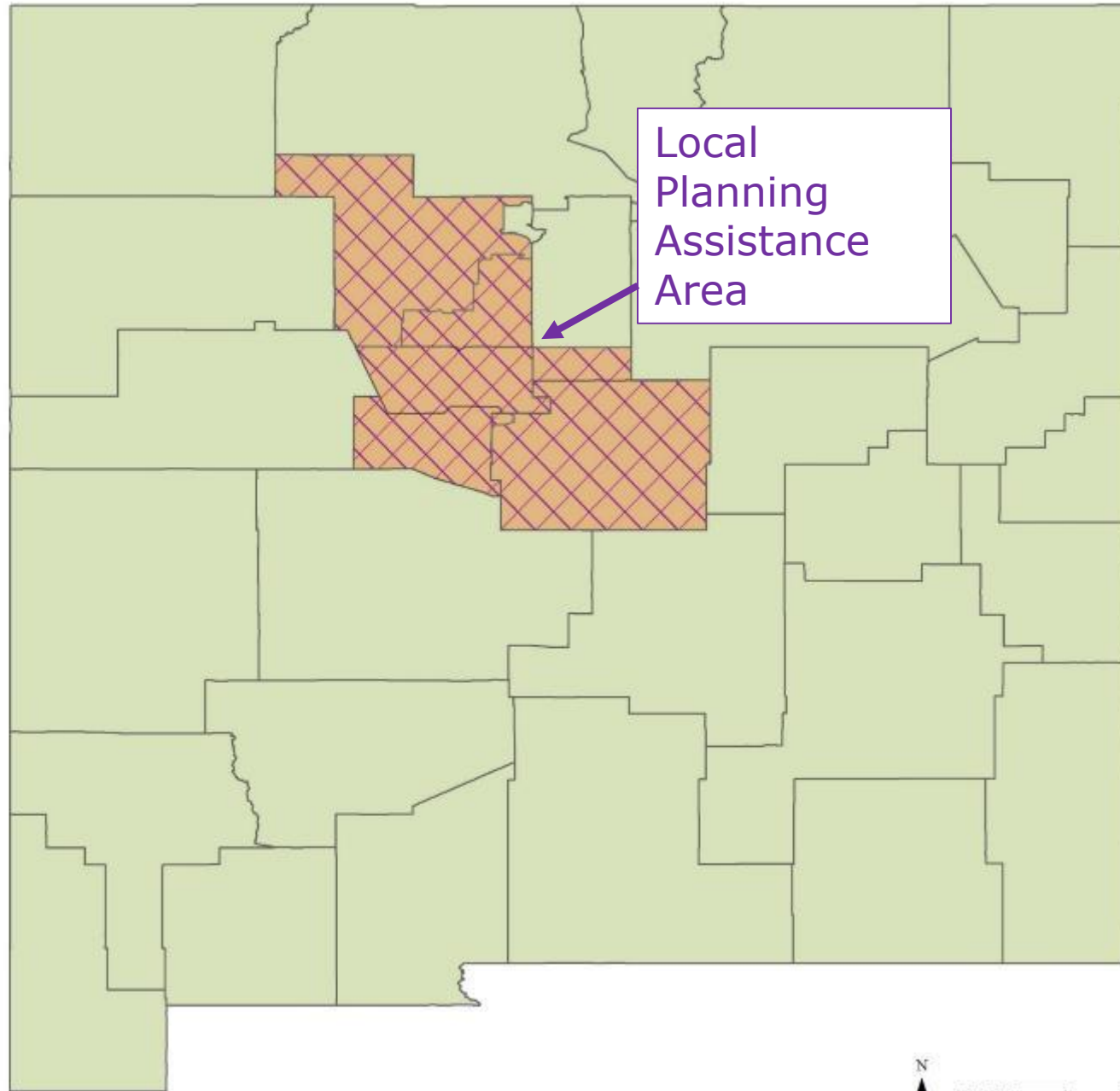




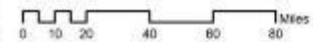
MPO Area

RTPPO Area





Local
Planning
Assistance
Area



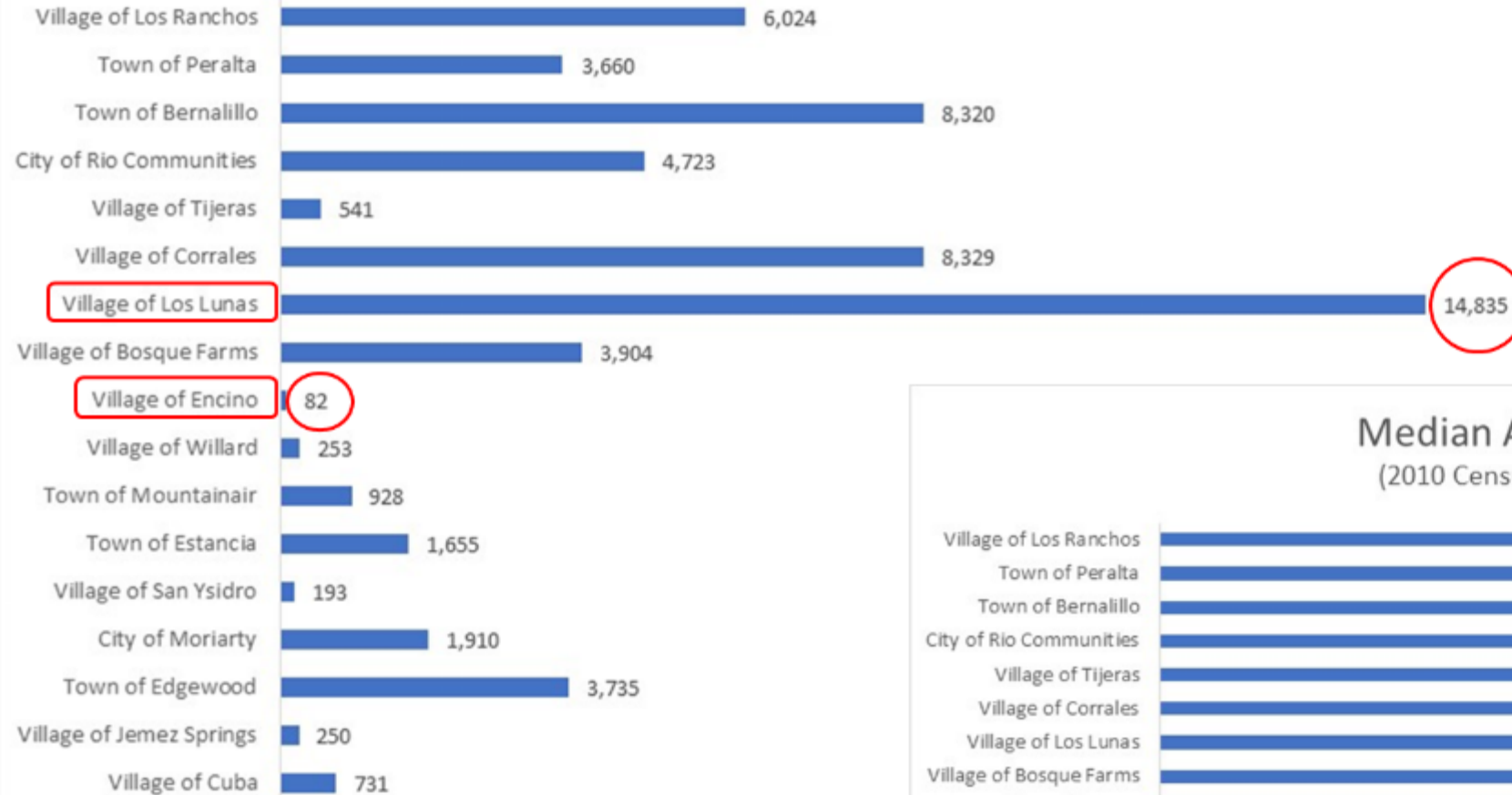
City of Rio Rancho

City of Albuquerque

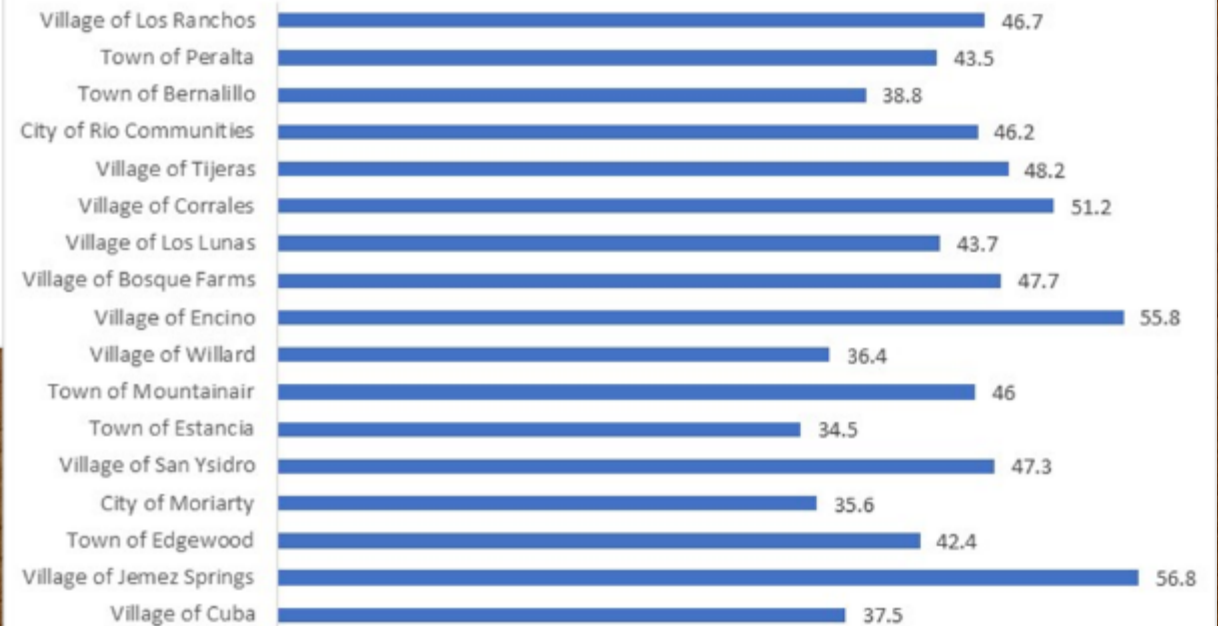


0 2.5 5 10 15 20 Miles

Population (2010 Census)



Median Age (2010 Census)

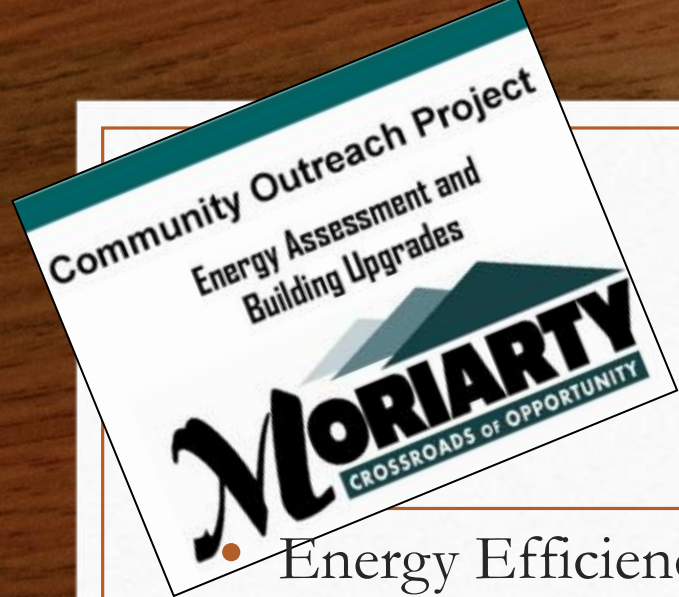






Technical Assistance

- Mapping
- Ordinance Revisions
- Comprehensive Plan Updates
- Training/Workshops



Special Projects



- Energy Efficiency Program – Moriarty
- Joint Land Use Study (JLUS) and Implementation Report– Kirtland Air Force Base & surrounding communities
- CDBG Emergency Grant
- Salt Missions Trail



Boards and Committees

- MRCOG Water Resources Board
- Kirtland/Community Sustainability Committee
- Mid-Rio Grande Levee Task Force

Mid-Rio Grande Levee Task Force



REPORT
TO THE
GOVERNOR AND LEGISLATURE
OF THE
STATE OF NEW MEXICO



December, 2009

Funding Sources

State Grant In Aid (SGIA)

- Annual Appropriation
- Divided between 7 COGs

COG membership dues

- $51 \text{ cents} \times \text{the population of the community} = \text{annual fee}$

Contracts for larger projects

- Comprehensive Plans
- Ordinances
- Special Studies

New Mexico True

Or real life planning drama in New Mexico towns



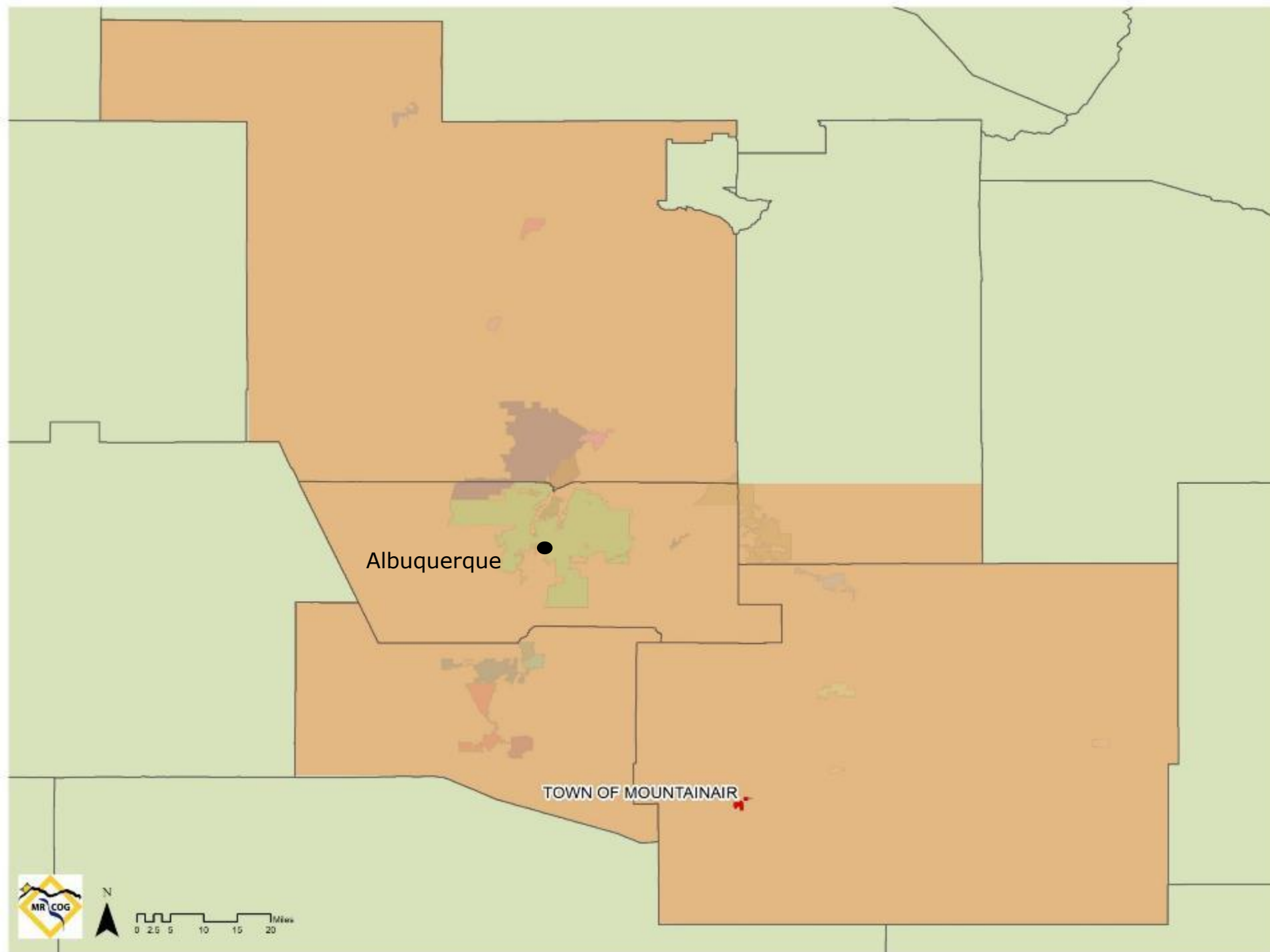
Town of Mountainair

Missing Zoning Map

Population: 928
(2010 Census)

Median Age: 46

1.5 hour drive from
MRCOG





- Misplaced only printed version of the zoning map
- Recovered 2009 map that was likely a zoning map but was unlabeled
- Worked with Planning & Zoning Commission to recreate and update map
- Public meetings
- Currently up for adoption by the Town Council



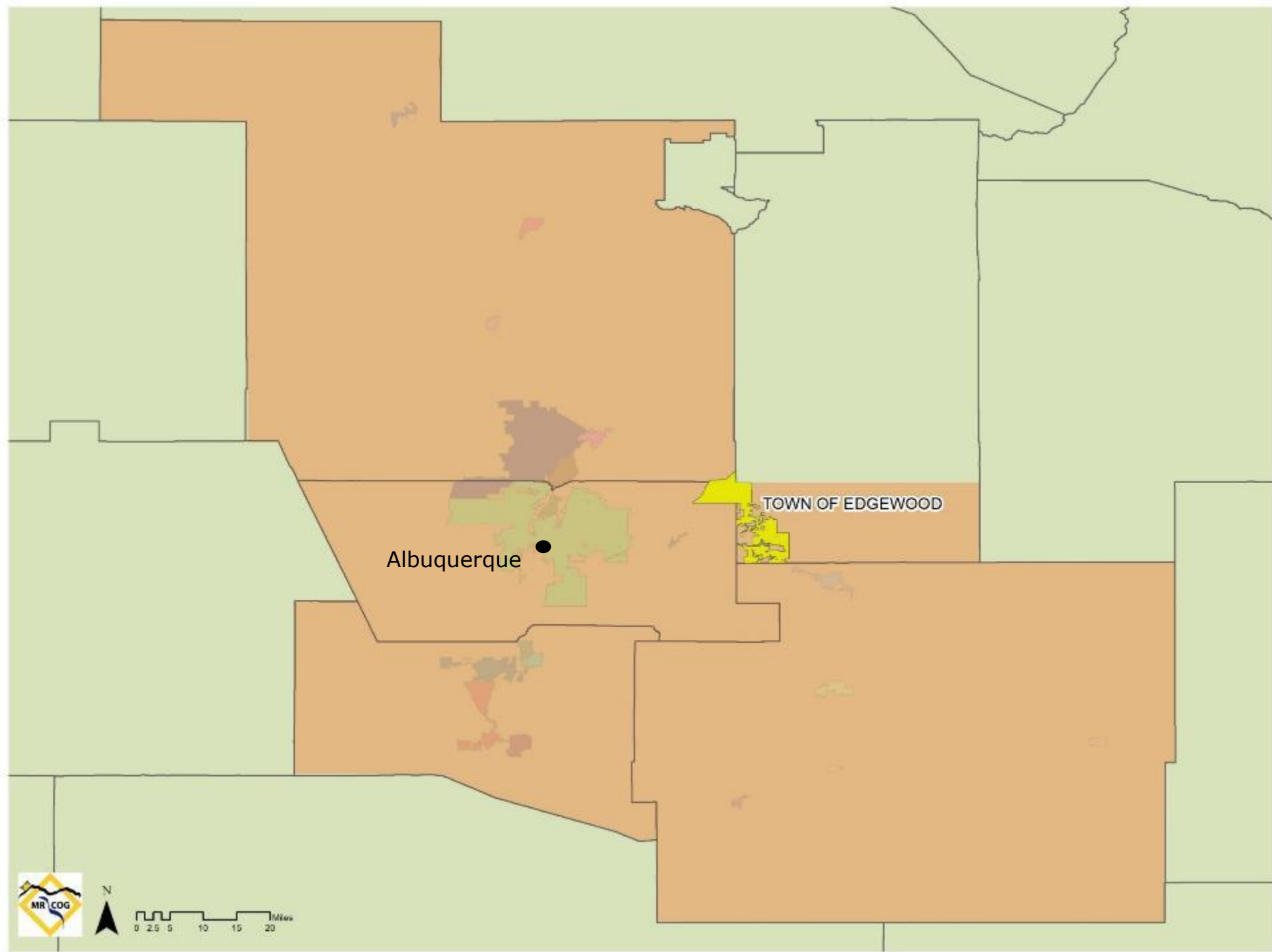
Town of Edgewood

Infill Annexation Petition

Population: 3,735
(2010 Census)

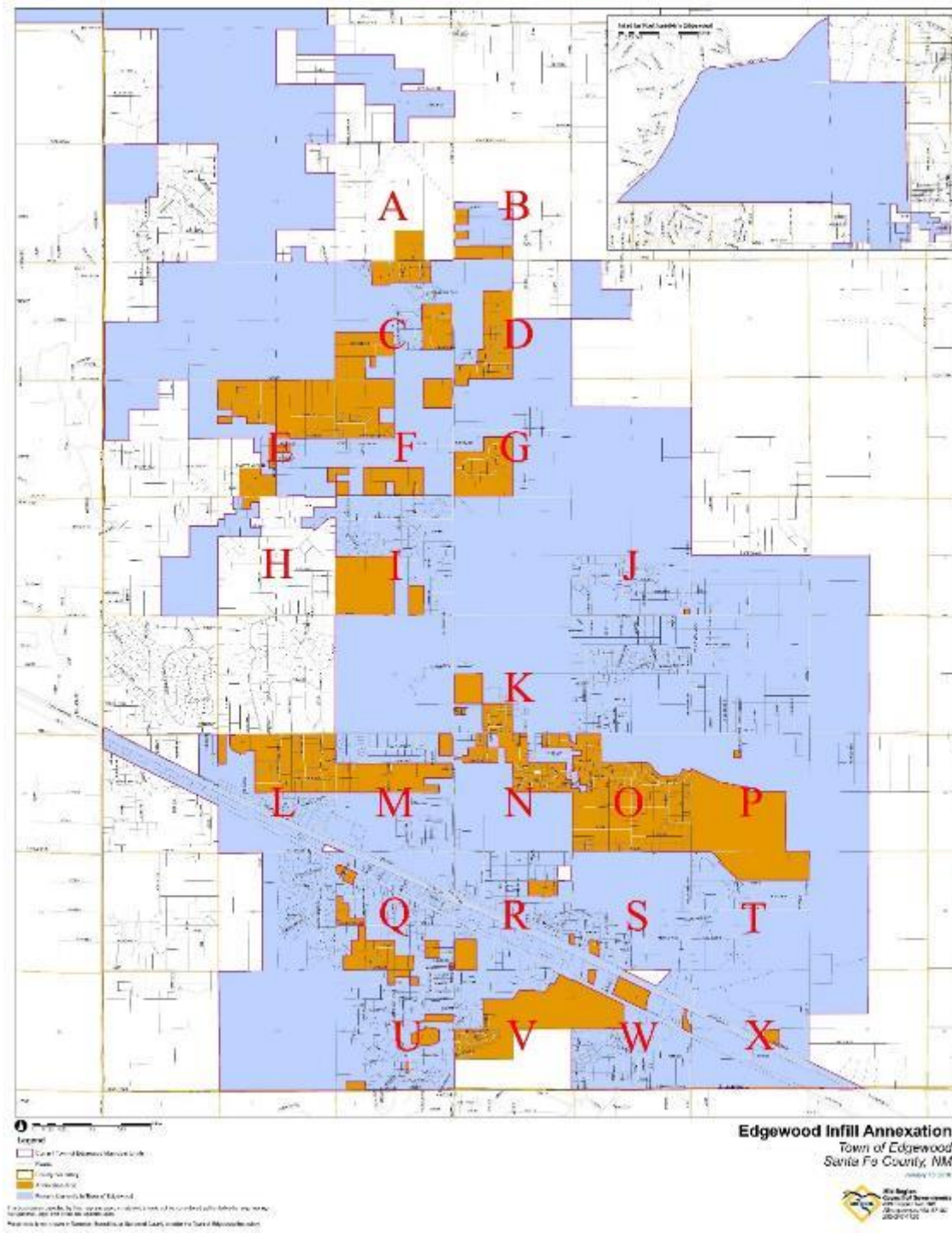
Median Age: 42.4

35 minute drive from
MRCOG





- The Town wanted to annex properties surrounded by municipal boundary
- Figure out what is legally in the Town
- Back and forth mapping with lawyer to ensure each property is accurately represented
- Currently at the Boundary Commission seeking approval



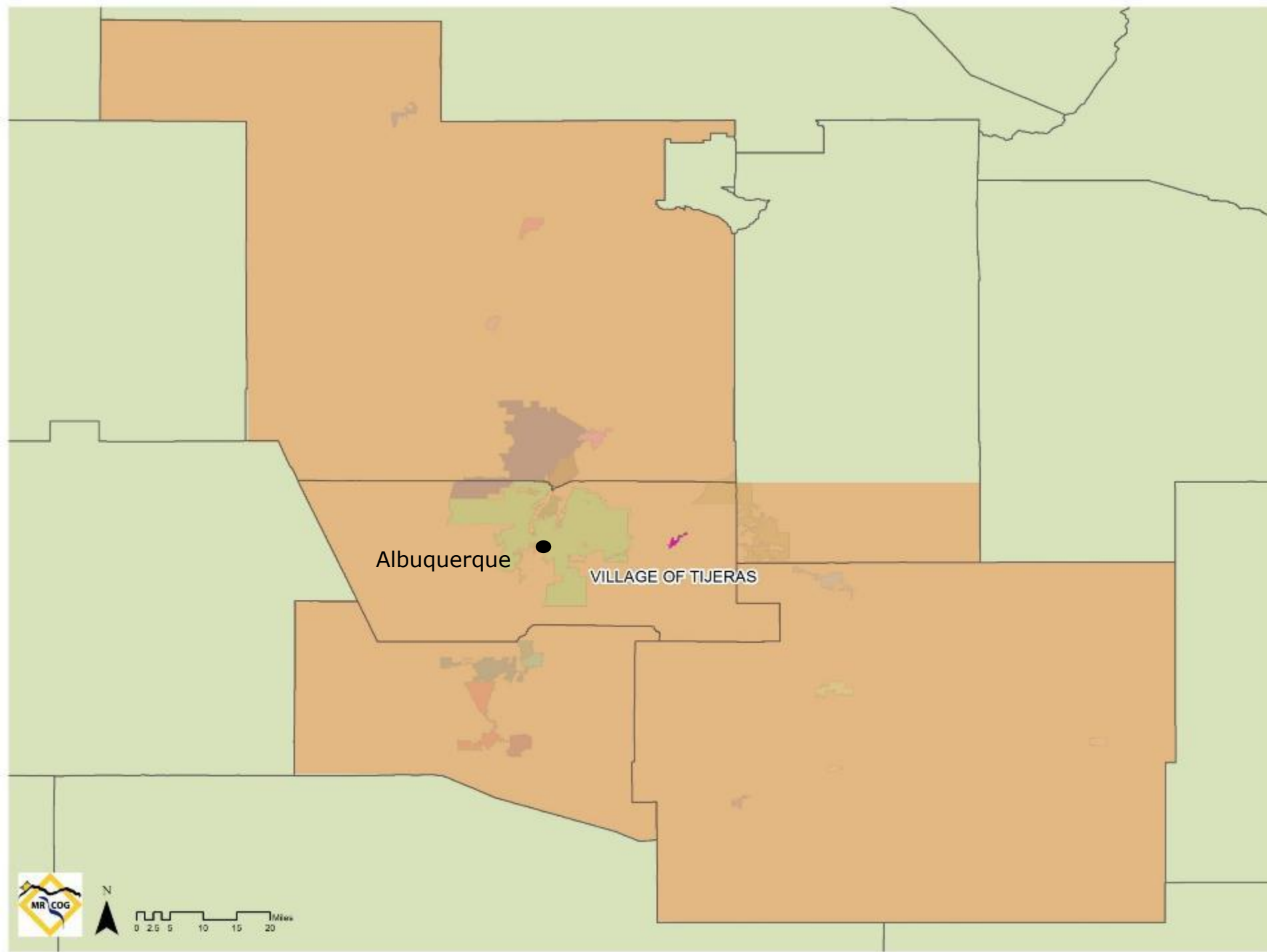
Village of Tijeras

Zoning Ordinance Overhaul

Population: 541
(2010 Census)

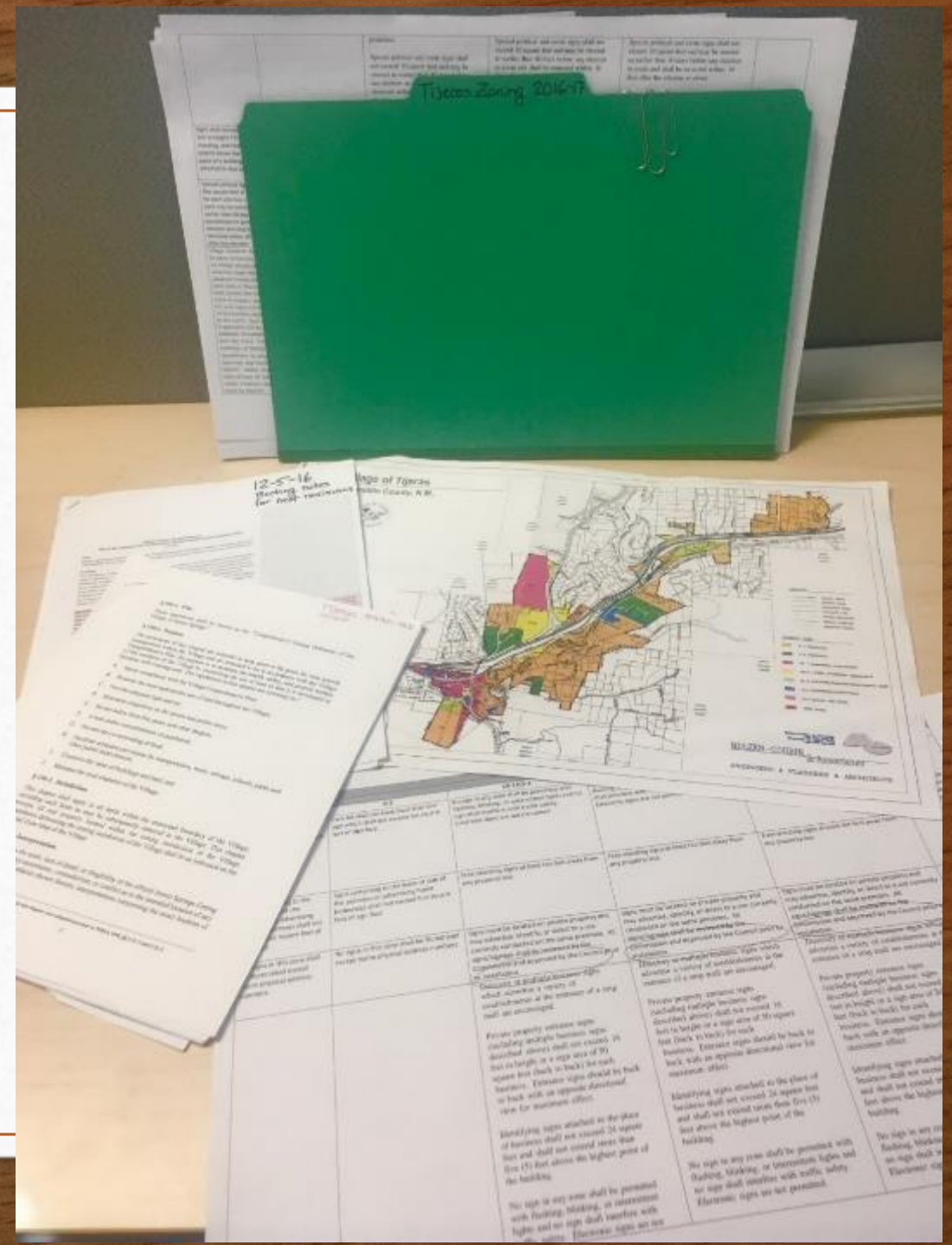
Median Age: 48.2

25 minute drive from
MRCOG





- Village Council proposed eliminating Planning Commission
- We met with the Mayor and Commission upon request
- Then asked to meet with Planning Commission
- Currently rewriting zoning ordinance and updating their zoning map





Planning Commissioner Training



**Mid Region Council of Governments
Planning Commissioners
Training Workshop**


Thursday, May 17, 2012


Nuts and Bolts of Planning
Find out what's new and improved in the Planning Commissioners toolbox.


Topics:

- Role of the Planning Commissioner
- Proposed Changes to Comprehensive Planning Laws
- Zoning to Preserve Water

Date: Thursday, May 17, 2012
Time: 9am to Noon
Location: MRCOG Board Room
Address: 809 Copper Avenue NW, Albuquerque




 Please RSVP Sandra Gaiser at sgaiser@mrcog-nm.gov or call 505-724-3645 by Tuesday, May 15. There is no charge for this workshop. Refreshments will be provided.



PLANNING COMMISSION TRAINING

Town of Bernalillo

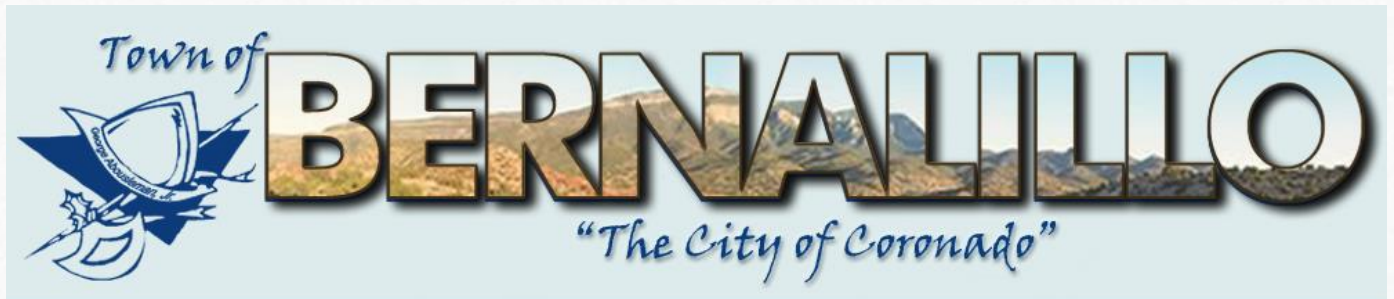


Sandra Gaiser, AICP, Regional Planning Manager
Maida Rubin, Regional Planner

February 22, 2017

Town of Bernalillo Commission Training

- Planning Director asked MRCOG staff to provide special training to Planning Commission
- Provided a safe space to discuss issues with their issues, such as making motions, ex parte, conflict of interest
- Resulted in Planning Director revising Commission packets.



Annual Planning Commission Workshop

Examples of Topics

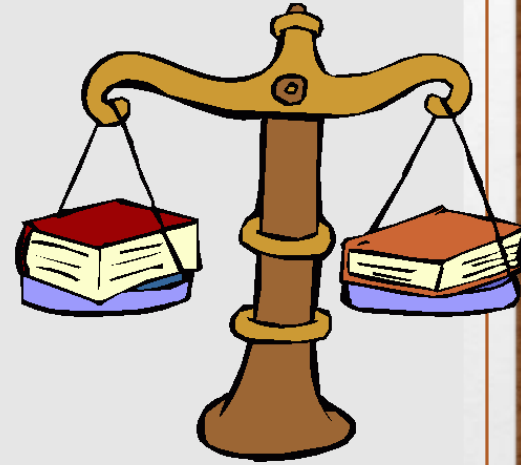


- How to run effective meetings
- Legal Issues
- Zoning & the Comprehensive Plan
- Due Process
- Transportation & Land Use
- *LID* (Low Impact Development)
- Permitting Tiny Houses

Special Topics

Two Important Land Use Cases

Battershell
&
Albuquerque Commons



Battershell



State ex rel. Battershell v. City of Albuquerque

108 N.M. 658

Details

- Battershell operated an adult bookstore in Albuquerque for several years
- In 1986, Battershell purchased property zoned M-2 to relocate the bookstore
- Owners requested a Conditional Use Permit, the Zoning Officer approved the CUP
- Decision was appealed to City Environmental Planning Commission (EPC)
- **At EPC, petitioners requested the right to cross-examine witnesses – the request was denied**

Battershell cont.

Details

- EPC overturned the Zoning Officer & denied the CUP
- Appealed to City Council, Council referred case to Land Use Planning & Zoning Committee
- Committee - recommended to Council to affirm the denial of the CUP
- Battershell appealed to district court
- 1987, District Court adopted findings of fact and conclusions of law and dismissed petitioners appeal (upheld denial of bookstore)



Quasi-Judicial Proceedings

State ex rel. Battershell v. City of Albuquerque, 108 N.M. 658, is the basis for procedures for quasi-judicial hearings:

- All persons giving oral testimony, including staff, shall be sworn-in, and testimony shall be taken on oath or affirmation.
- Parties are allowed to present evidence.
- Allow cross-examination of all persons testifying before the Commission.
- Rebuttal evidence can be presented by opposing parties.
- Cross-examination of a witness may be directed through the Chair of the Commission.



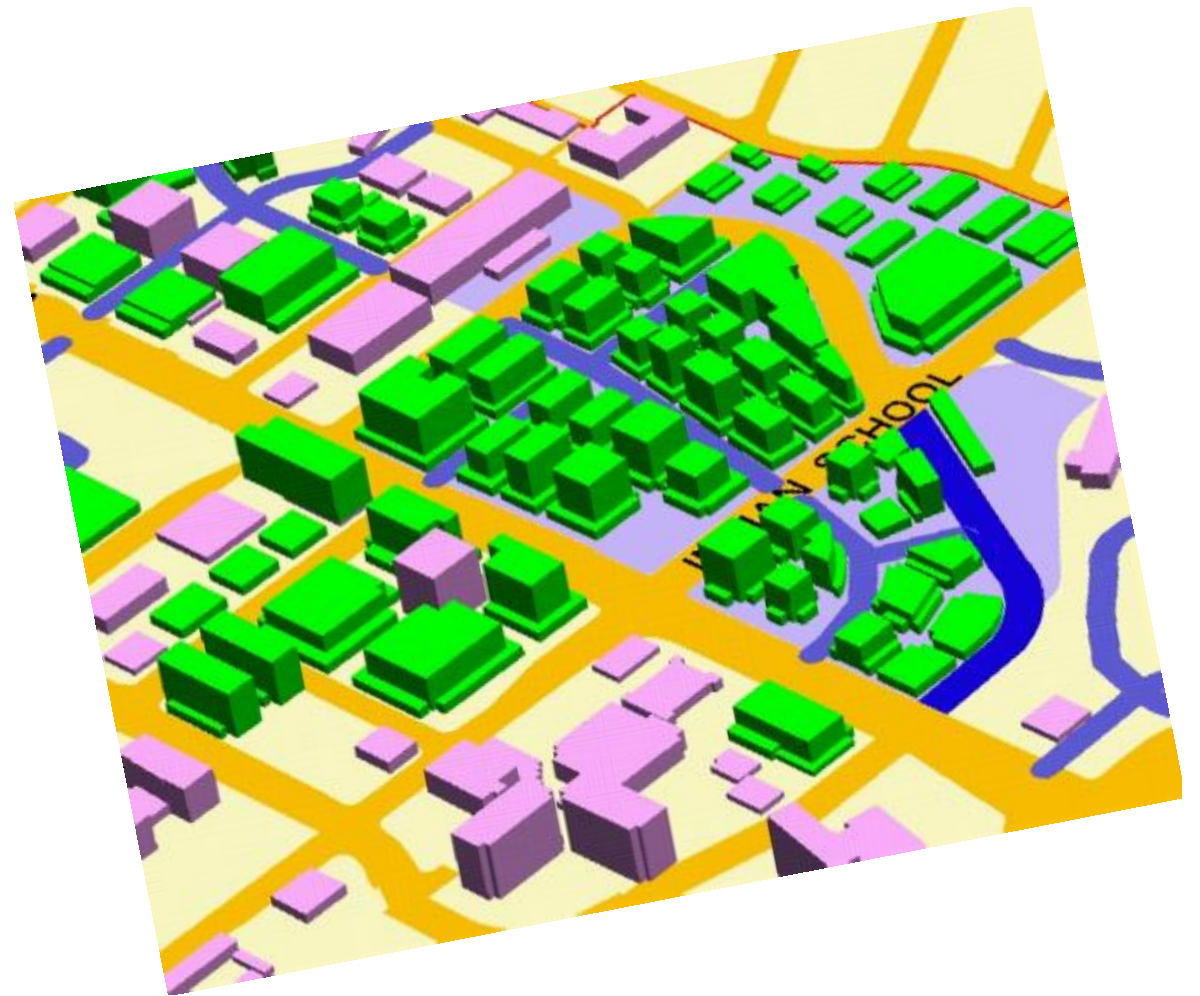
Albuquerque Commons Partnership vs. City of Albuquerque



1994 ACP Proposed Development



City's Conceptual Plan for development
consistent 1995 Uptown Sector Plan



Decision in Uptown Zoning Case Will Have Major Legal, Financial Implications for City

-Albuquerque Journal 4/16/2008

Most Costly City of Albuquerque Zoning Change

- 13-year old lawsuit, 2008 NM Supreme Court reversed Court of Appeals
- Supreme Court set aside \$8.3 million jury verdict in favor of Albuquerque Commons Partnership
- \$8.3 million verdict, plus interest, fees & other costs could cost City more than \$10 million

Albuquerque Commons Partnership vs. City of Albuquerque

- 1994 – Albuquerque Commons Partnership submitted to City of Albuquerque for property in the Uptown Sector Area
- February 1995, City placed moratorium on all developments to study air quality & deferred action on Commons plan
- June 1995, City adopted new sector plan, still deferred action
- July 1995, Albuquerque Commons goes to court
- Spring 2003, jury found for Albuquerque Commons and awarded \$8.3 million in damages
- City appealed
- Court of Appeals overturned District Court decision
- Albuquerque Commons appealed to NM Supreme Court

New Mexico Supreme Court Decides Feb. 18, 2008

- The city's uptown rezoning action was quasi-judicial, not legislative because it effected only 6% of the Uptown property and only 3 property owners.
- No difference between text amendment and map amendment.
- Retains "change and mistake rule" plus.

Conclusion

- Be sure to follow Procedural Due Process in all land use proceedings.
- If any of the elements of due process are denied to any interested party, be it the applicant, a neighbor, or a neighborhood association, regardless of the merits of the decision of the governing body, that decision has the potential to be reversed.
- Albuquerque Commons Partnership v. City Council of the City of Albuquerque, 144 N.M. 99, 184 P.3d 411 (2008). The New Mexico Supreme Court ruled for the property owner, finding a violation of due process because a Councilor talked to an opponent of the project, and also because the case was treated as “legislative.”
 - The Court also found that since only one property was at issue, with only one property owner affected, the case was quasi-judicial.
 - The City Attorney had advised the Council that the case was legislative, and there was no formal “hearing” held. Since then, Albuquerque and other jurisdictions treat all zone changes as quasi-judicial.

Redeveloped Site





Questions?

Thank You!

Mid-Region Council of Governments

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