

Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

DATE: December 29, 2014

TO: Board of County Commissioners

FROM: John Lovato, Development Review Specialist Senior

VIA: Katherine Miller, County Manager
Penny Ellis-Green, Land Use Administrator
Vicki Lucero, Building and Development Services Manager
Wayne Dalton, Building and Development Services Supervisor

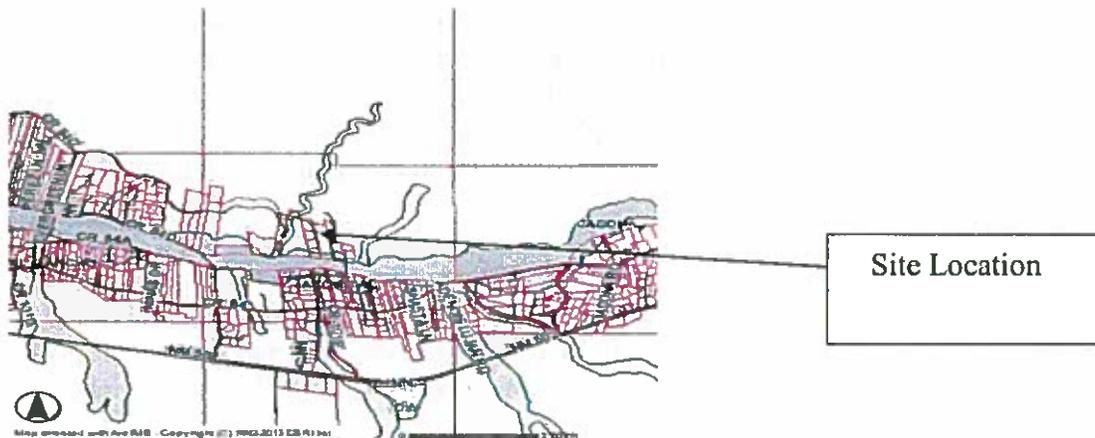
FILE REF.: CDRC CASE # V 13-5190 Minnie Walsh Variance

ISSUE:

Minnie Walsh, Applicant, requests a variance of Article III, Section 10 (Lot Size Requirements), and a variance of Article III, Section 2.4.1a.2.b (Access) of the Land Development Code, and a variance of Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow a Family Transfer Land Division of 1.195 acres into two lots. The Board of County Commissioners rendered a decision to approve this request on October 8, 2013. The BCC's decision was then appealed to District Court and the Court decision on July 31, 2014, was to remand the case back to the BCC for a rehearing.

The Property is located at 58 Arroyo Jaconita, within the Traditional Community of Jacona, within Section 11, Township 19 North, Range 8 East, (Commission District 1).

Vicinity Map:



REQUEST SUMMARY:

On December 9, 2014, the BCC reheard this case. The decision of the BCC was to table this request (Refer to BCC Minutes in Exhibit 16).

On October 8, 2013, this request came before the BCC. The decision of the BCC was to approve the request by a vote of 3-2 with staff's recommended conditions. The BCC's decision was appealed to the First Judicial District Court by Kris and Misha Peterson. The Honorable Raymond J. Ortiz remanded the case back to the Board so that the board can make specific written findings under its Land Development Code requirements and also under both prongs of the Paule case to justify the decision they made. Similarly, this is also required for the floodplain variance, for a re-representation of evidence for written findings to justify the decision and make specific findings, or to make specific findings whether or not those requirements are applicable in the first instance.

The Applicant requests a variance to allow a Family Transfer Land Division of 1.195 acres into two lots. The property is accessed by Arroyo Jaconita Road (Private Road) and Loma Encantada (Private Road). Arroyo Jaconita is a dirt/sand driving surface and is located in and crosses a FEMA designated Special Flood Hazard Area. The portion of Arroyo Jaconita Road that services the property is approximately 750 feet in length and 15 feet in width. Loma Encantada is a dirt driving surface that ends and enters the Jacona Land Grant. A portion of Loma Encantada crosses a FEMA designated Special Flood Hazard Area and is approximately 1/4 mile in length and 15 feet in width. Both Arroyo Jaconita, and Loma Encantada do not have all-weather driving surfaces and may be frequently impassible during and after inclement weather, and thereby are not all weather accessible.

Currently, there is a double wide manufactured home, a single wide mobile home, and two accessory structures (Sheds) on the property. The property is served by two onsite wells, a conventional septic system, and a split flow septic system. Article III, Section 10 of the Land Code states that the minimum lot size in this area is 0.75 acres. In order to divide the subject property into two lots, the property would have to be at least 1.50 acres. The Applicant is requesting a variance to this requirement.

In 2006, the BCC granted a two year temporary approval to allow the placement of a second dwelling unit on the property. The Applicant failed to remove the structure at the conclusion of the two year period. (Exhibit 11) The approval stated that if the Applicant sought to retain the second dwelling unit for more than two years, the Applicant was to apply for temporary approval every two years to be approved by the CDRC and report water meter readings to the Land Use Administrator by January 31st of each year.

The Applicant states the reason for this is due to the loss of her husband, and it has taken a few years for the family to focus and take the necessary steps toward making a home for her daughter's family permanent. The Applicant would like to provide her daughter and her family with an affordable place to live and provide clear title to the land so that they may build a

permanent residence. Furthermore, she would like to maintain family ties to the land where her daughter grew up.

Article III, § 2.4.1a.2.b (Access) of the Land Development Code states: "All development sites under this Section shall demonstrate that access for ingress and egress, utility service and fire protection whether by public access and utility easement or direct access to a public right-of-way can be provided and meet the requirements of this Code"

Article V, § 8.1.3 states "Legal access shall be provided to each lot and each lot must directly access a road constructed to meet the requirements of Section 8.2 of the Code. Parcels to be accessed via a driveway easement shall have a twenty (20) foot all weather driving surface, grade of not more than 11%, and drainage control as necessary to insure adequate access for emergency vehicles"

Article 4, § 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) states: "At no time shall a permit be issued for a new dwelling unit, site, lot, parcel or tract of land intended for placement of a habitable structure where the site is absent all weather access".

Article 4, § 4.6 of Ordinance No. 2008-10 states specific variance procedures and criterion that recommending and approval bodies must consider, as follows:

- A. The Board of County Commissioners (Board) after recommendation by the County Development Review Committee (CDRC) shall hear and render judgment on a request for variance from the requirements of this Ordinance.
- B. The CDRC may recommend and the Board take action on an appeal of the Floodplain Administrator's decision only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Ordinance.
- C. Any person or persons aggrieved by the decision of the Board may appeal such decision to a court of competent jurisdiction within thirty days of the Board's decision.
- D. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- E. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Ordinance.
- F. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C (2) of this Article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- G. Upon consideration of the factors noted above and the intent of this Ordinance, the Board may attach such conditions to the granting of variances as it deems

necessary to further the purpose and objectives of this Ordinance (Article 1, Section C).

- H. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- I. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

Article 4, § 4.6.J. of Ordinance No. 2008-10 states that the prerequisites for granting a variance are as follows:

- a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
Staff's response: There are no other access points to the property and the proposed access shall relieve hardship on the Applicant.
- b. Variances shall only be issued upon, (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, the creation of a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
Staff's response: Proposed access will not increase flood heights and will be an expense to the public and Applicant to reconstruct All weather access.
- c. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
Staff's response: There are no proposed structures within the designated FEMA Flood Hazard area. Any future development shall comply with FEMA and all Ordinance standards.
- d. Variances may be issued by the BCC for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
 - i. the criteria outlined in Article 4, Section D (1)-(9) are met, and
 - ii. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.**Staff's response: There is a typographical error in Section D as this does not exist in the Ordinance. All other measures will be addressed at time of Building Permit.**

Article II, § 3 (Variances) states: "Where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance." This Section goes on to state "In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified". The variance criterion does not consider financial or medical reasons extraordinary hardships.

This Application was submitted on June 6, 2013.

On July 18, 2013, the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the Applicants request by a 5-2 vote. (Minutes Attached as Exhibit 2)

Growth Management staff have reviewed this Application for compliance with pertinent Code requirements and finds the project is not in compliance with County criteria for this type of request.

APPROVAL SOUGHT: A variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow a Family Transfer Land Division of 1.195 acres into two lots, a variance of Article III, § 2.4.1a.2.b (Access) of the Land Development Code, and a variance of Article 4, § 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management)

GROWTH MANAGEMENT AREA: El Norte, SDA-2

HYDROLOGIC ZONE: Traditional Community of Jacona, minimum lot size per Code is 0.75 acres per dwelling unit. Proposal does not meet minimum lot size criterion.

ACCESS: Arroyo Jaconita and Loma Encantada

FIRE PROTECTION: Pojoaque Fire District

WATER SUPPLY: Domestic Well

LIQUID WASTE: Conventional Septic System /Split Flow System

VARIANCES: Yes

AGENCY REVIEW:	<u>Agency</u>	<u>Recommendation</u>
	County Fire	Denial
	Floodplain Administrator	Denial
	State EID	Approval

STAFF RECOMMENDATION: On October 8, 2013, the decision of the BCC was to approve the request for a variance of Article III, Section 10 (Lot Size Requirements), a variance of Article III, Section

2.4.1a.2.b (Access), and a variance of Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow a Family Transfer Land Division of 1.195 acres into two lots, with following conditions:

1. Water use shall be restricted to .50 acre foot per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office (**Article III, § 10.2.2 and Ordinance 2002-13**).
2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval. The Plat must be recorded within 18 months of approval. (**Article III, § 2.4.2**).
3. The Applicant must comply with all conditions of approval within 90 days and prior to plat approval.
4. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review (**1997 Fire Code and 1997 Life Safety Code**).
5. The Placement of more than one dwelling unit per lot and further division of the land is prohibited on the property (**Article III, § 10**).
6. The Applicant shall divide the property into two equal parcels.
7. A note must be placed on the Plat regarding the lack of all-weather access to the subject lots. This note shall include language as follows: The access to this property does not meet minimum standards set forth by County Ordinance and Code. Site Access, including access by Emergency vehicles, may not be possible at all times (**Ordinance 2008-10**).

If the decision of the BCC is to approve the request, staff also recommends the following findings of fact and conclusions of law in support of the decision:

FOF and Conclusions of Law:

Floodplain Variance

1. Portion of access that crosses the FEMA designated floodplain is off-site. Family Transfers are exempt from off-site improvements.
2. 6 other parcels utilize the same secondary access to the subject parcel.
3. 4 other parcels utilize the primary access to the subject property.
4. All-weather access affects many of the properties in the area. For this reason, staff is recommending that the floodplain section be amended in the Sustainable Land Development Code (SLDC) to require all-weather access only for major subdivisions, multi-family developments, or non-residential development over 10,000 square feet.
5. It would be an extraordinary hardship to the Applicant if they were required to construct an all-weather access due to unusual topography that would benefit everyone who utilizes the access. Moreover, applicant does not own the land constituting the 750' long and 15' wide all-weather crossing and there is no other access to the parcel.
6. The road crossing the FEMA designated floodplain is existing and no improvements are proposed so there will be no construction within the floodplain

Minimum Lot Size Variance

1. Primary Home is 2,200 square feet and the secondary home is 952 square feet. This meets the requirements of the SLDC for an accessory dwelling.
2. Strict compliance with the requirements of the Code would result in extraordinary hardship to the Applicant in that Applicant is seeking to permit one of her Daughters to divide the lot by way of small Lot Family Transfer pursuant to a variance to assist her daughter with an affordable place to reside and own, where so the Applicant's daughter has been living in a residence on the property since 2006.

3. The granting of the requested variance is a minimal easing of the Code requirement to address topography or other such non-self-inflicted conditions to allow a Family Transfer Land Division on the applicant's property and will not nullify the purpose of the Code.

EXHIBITS:

1. December 9, 2014 BCC Meeting Minutes
2. October 8, 2013 BCC Meeting Minutes
3. August 15, 2013 CDRC Minutes
4. September 12, 2006 BCC Minutes
5. Letter of Intent
6. Letters of Opposition
7. Article III, § 10 Lot Size Requirements
8. Article III, § 2.4.1a.2.b (Access)
9. Article V, § 8.1.3 (Legal Access)
10. Article 4, § 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management)
11. Article II, § 3 (Variances)
12. September 14, 2006 Conditions of Approval Memo
13. Site Photographs
14. Aerial of Site and Surrounding Area
15. Review Agency Comment Letters
16. Court Order

DRAFT

~~COMMISSIONER HOLIAN: Mr. Chair.~~

~~COMMISSIONER CHAVEZ: Commissioner Holian.~~

~~COMMISSIONER HOLIAN: I move for approval of CDRC Case V 14-5300, Cathy and Chris Stoia a variance with staff conditions.~~

~~COMMISSIONER ANAYA: Second.~~

~~COMMISSIONER CHAVEZ: So there's a motion and second with staff conditions. Any further discussion?~~

The motion carried by unanimous [4-0] voice vote.

- VII. A. 11. **CDRC CASE # V 13-5190 Minnie Walsh Variance.** Minnie Walsh, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) and a Variance of Article III, Section 2.4.1a.2.b (Access) of the Land Development Code and a Variance of Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to Allow a Family Transfer Land Division of 1.195 Acres into two Lots. The Board of County Commissioners rendered a decision to approve this request on October 8, 2013. The BCC's decision was then appealed to District Court, and the Court Decision on July 31, 2014, was to remand the case back to the BCC for a rehearing. The Property is Located at 58 Arroyo Jaconita, within the Traditional Community of Jacona, within Section 11, Township 19 North, Range 8 East (Commission District 1)

MR. LOVATO: Thank you, Mr. Chair, Commissioners. Minnie Walsh, Applicant, requests a variance of Article III, Section 10, Lot Size Requirements, and a variance of Article III, Section 2.4.1a.2.b, Access, of the Land Development Code and a variance of Article 4, Section 4.2 of Ordinance No. 2008-10, Flood Damage and Stormwater Management, to allow a Family Transfer Land Division of 1.195 Acres into two lots. The Board of County Commissioners rendered a decision to approve this request on October 8, 2013. The BCC's decision was then appealed to District Court, and the Court Decision on July 31, 2014, was to remand the case back to the BCC for a rehearing.

On October 8, 2013, the request came before the BCC. The decision of the BCC was to approve the request by a vote of 3-2 with staff's recommended conditions. The BCC's decision was appealed to the First Judicial District Court by Chris and Misha Peterson. The Honorable Raymond J. Ortiz remanded the case back to the Board so that the board can make specific written findings under its Land Development Code requirements and also under both prongs of the Paule case to justify the decision they made. Similarly, this is also required for the floodplain variance, for a re-representation of evidence for written findings to justify the decision and make specific findings, or to make specific findings whether or not those requirements are applicable in the first instance.



Mr. Chair, I can summarize the case for you or keep on going?

COMMISSIONER CHAVEZ: No, I think it would be good for you to summarize from this point on.

MR. LOVATO: The Applicant requests a variance to allow a Family Transfer Land Division of 1.195 acres into two lots. The property is accessed by Arroyo Jaconita Road, a private road, and Loma Encantada, a private road. Arroyo Jaconita is a land/dirt/sand surface and is located in and crosses a FEMA designated Special Flood Hazard Area. The portion of Arroyo Jaconita Road that services the property is approximately 750 feet in length and 15 feet in width. Loma Encantada is a dirt driving surface that ends and enters the Jacona Land Grant. A portion of Loma Encantada crosses a FEMA designated Special Flood Hazard Area and is approximately 1/4 mile in length and 15 feet in width. Both Arroyo Jaconita, and Loma Encantada do not have all-weather driving surfaces and may be frequently impassible during and after inclement weather, and thereby are not all-weather accessible.

Currently, there is a double wide manufactured home, a single wide mobile home, and two accessory structures/sheds on the property. The property is served by two onsite wells, a conventional septic system, and a split flow septic system. Article III, Section 10 of the Land Development Code states that the minimum lot size in this area is 0.75 acres. In order to divide the subject property into two lots, the property would have to be at least 1.50 acres. The Applicant is requesting a variance to this requirement.

In 2006, the BCC granted a two year temporary approval to allow the placement of a second dwelling unit on the property. The Applicant failed to remove the structure at the conclusion of the two year period, as Exhibit 11 on the previous report. The Applicant stated that they sought to retain the second dwelling unit for more than two years; the Applicant was to apply for temporary approval every two years to be approved by the CDRC and report water meter readings to the Land Use Administrator by January 31st of each year.

The Applicant states the reason for this is due to the loss of her husband, and it has taken a few years for the family to focus and take the necessary steps toward making a home for her daughter's family permanent. The Applicant would like to provide her daughter and her family with an affordable place to live and provide clear title to the land so that they may build a permanent residence. Furthermore, she would like to maintain family ties to the land where her daughter grew up.

Staff recommendation: On October 8, 2013, the decision of the BCC was to approve the request for a variance of Article III, Section 10, Lot Size Requirements, a variance of Article III, Section 2.4.1a.2.b, Access, and a variance of Article 4, Section 4.2 of Ordinance No. 2008-10, Flood Damage and Stormwater Management, to allow a Family Transfer Land Division of 1.195 acres into two lots, with these conditions listed below.

If the decision of the Board is to approve the request, staff also recommends the following findings of fact and conclusions of law in support of the decision. The findings of fact and conclusions for the floodplain variance:

1. Portion of access that crosses the FEMA designated floodplain is off-site. Family Transfers are exempt from off-site improvements.
2. Six other parcels utilize the same secondary access to the subject parcel.

3. Four other parcels utilize the primary access to the subject property.
4. All-weather access affects many of the properties in the area. For this reason, staff is recommending that the floodplain section be amended in the Sustainable Land Development Code to require all-weather access only for major subdivisions, multi-family developments, or non-residential development over 10,000 square feet.
5. It would be an extraordinary hardship to the Applicant if they were required to construct an all-weather access due to unusual topography that would benefit everyone who utilizes the access. Moreover, applicant does not own the land constituting the 750 feet long and 15 feet wide all-weather crossing and there is no other access to the parcel.
6. The road crossing the FEMA designated floodplain is existing and no improvements are proposed so there will be no construction within the floodplain

Minimum Lot Size Variance:

1. Primary Home is 2,200 square feet and the secondary home is 952 square feet. This meets the requirements of the SLDC for an accessory dwelling.
2. Strict compliance with the requirements of the Code would result in extraordinary hardship to the Applicant in that Applicant is seeking to permit one of her daughters to divide the lot by way of small Lot Family Transfer pursuant to a variance to assist her daughter with an affordable place to reside and own, where so the Applicant's daughter has been living in a residence on the property since 2006.
3. The granting of the requested variance is a minimal easing of the Code requirement to address topography or other such non-self-inflicted conditions to allow a Family Transfer Land Division on the applicant's property and will not nullify the purpose of the Code.

Thank you, Mr. Chair. I stand for any questions.

COMMISSIONER CHAVEZ: Thank you. Questions of staff.

Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Lovato if you don't know the answer you can go to someone on staff that might but I'm sure you might know it. There was temporary approval for an additional structure for a two-year timeframe. What are the parameters of a temporary approval when we grant temporary approval on a structure? What do we utilize to grant a temporary approval of a structure? There was two structures, right? Am I correct that I heard that?

MR. LOVATO: Mr. Chair, Commissioner Anaya, that is correct. There were two structures that were permitted through a variance process that was later deferred by the Board to turn into a temporary approval for a, I believe, it was a four-year period. Every two years the CDRC was to grant further approval if the hardship was necessary at the time.

COMMISSIONER ANAYA: Okay, that's all I have right now. Thanks.

COMMISSIONER CHAVEZ: I guess I'm trying to get some clarify myself on this case because we already heard it, it went to District Court and it's back here for reconsideration. The judge is asking for written findings under the County's Land Development Code; have we responded at all to the judge's request?

MS. LUCERO: Mr. Chair, under the staff recommendation we did point out some finding of facts and conclusions of law if the Board wants to grant approval of this request.

COMMISSIONER CHAVEZ: What page are you on?

MS. LUCERO: It starts on page 6 of the staff report.

COMMISSIONER CHAVEZ: Okay.

COMMISSIONER ANAYA: Can I ask another question?

COMMISSIONER CHAVEZ: Yes, Commissioner Anaya.

COMMISSIONER ANAYA: Just if I could, Mr. Chair, a follow up to his question is we approved the decision by a 3-2 vote, that was appealed to District Court. The judge said he wants us to rehear it and provide additional findings of fact and we added to our final order additional findings of fact or are you just referring to the findings of fact that he ruled that we rehear this case?

MS. LUCERO: Mr. Chair, Commissioner Anaya, the findings of fact that we established were not part of the order they were just conclusions of law that we were putting forth in front of the BCC. If you do want to approve the variance then these are suggested findings for your approval.

COMMISSIONER CHAVEZ: Commissioner Anaya, maybe we could ask staff to read those into the minutes then, the points that would clarify our findings for the judge.

COMMISSIONER ANAYA: And, if I could, Mr. Chair.

COMMISSIONER CHAVEZ: Yes.

COMMISSIONER ANAYA: I guess the other thing that I want clarity on and maybe this has to come from you, Mr. Shaffer, is there was a case heard and a decision rendered. The district judge did not overturn the case. He asked us to rehear the case with findings of fact. So in my head if he did not receive the findings of fact that we – we didn't remit any findings of fact we just remitted the final order, correct? Is that correct? Did I hear you correct Ms. Lucero that we just remitted the final order but we did not remit findings of fact to the judge?

MS. LUCERO: Mr. Chair, Commissioner Anaya, the final order was submitted to the District Court and if I understand correctly the judge's decision is there were not adequate findings in that final order to approve the variance.

COMMISSIONER ANAYA: So if I could, Mr. Chair, you then, we then expanded upon those findings of fact and those are in the packet?

MS. LUCERO: Mr. Chair, Commissioner Anaya, the final order has not been amended. These are just part of staff recommendations if the Board wants to approve the case again to adopt – these are suggested or recommended conclusions of law that the Board may want to include in their decision.

COMMISSIONER ANAYA: So and maybe it's flawed but my logic tells me that we already voted on the case and we should remit those findings before we – we shouldn't take another vote. We should remit those findings that we have in the packet to the judge for consideration based on the decision that has already been rendered not revoke the case. That's my take on it.

MR. SHAFFER: Mr. Chair, I would ask Assistant County Attorney Willie Brown to interject if I've got it wrong but the order from the court was a remand back of

the case to the Board of County Commissioners so that evidence can be represented and the Board can make specific written findings under its Land Development Code requirements and also under both prongs of a Supreme Court Case abbreviate by shorthand here Paule Case to justify whatever decision they make. Similarly on the flood plain variance the court remanded the case back to the Board for a representation of evidence and for the Board to make a decision support of detailed written findings with respect to all requirements as to the requested flood plan variance to justify its decisions or to make specific findings as to whether or not these requirements are applicable in the first instance if that is the Board's position.

So the Court has instructed that the case be reheard and I think in that remand order allows the Board if it feels as if in light of the additional evidence or the representation of the evidence to make a different decision then it would have the leeway to do that under the court's remand. Whatever decision the Board ultimately makes will result in a final order that will include findings of fact and conclusions of law that would support the Board's decision which then again could be appealed to the district court.

I hope that clarifies things, Mr. Chair.

COMMISSIONER ANAYA: I thank you, Mr. Chair, if I could.

COMMISSIONER CHAVEZ: Yes.

COMMISSIONER ANAYA: And following that logic then it would be my desire to remit the additional information that Ms. Lucero referred to in consideration of the vote that has already taken place, not a revote.

And so I would move that the original action – the original vote is sustained and that the additional information that staff is providing us today in the packet that that be provided as justification for the order and findings of fact if that's the right language.

COMMISSIONER CHAVEZ: And I would second for purposes of discussion and I want to go back to the question that I asked of staff earlier because the Court is asking us to justify the decision that we made prior and so you've added conditions of approval that you believe will satisfy the Court's concern. I know staff did earlier but just the points that you added in conditions of approval.

MS. LUCERO: Mr. Chair, are you referring to conclusions of law that staff added in support of an approval of a variance?

COMMISSIONER CHAVEZ: Yes.

MS. LUCERO: The conclusions of law for the floodplain variance are as follows:

1. Portion of access that crosses the FEMA designated floodplain is off-site. Family Transfers are exempt from off-site improvements.
2. Six other parcels utilize the same secondary access to the subject parcel.
3. Four other parcels utilize the primary access to the subject property.
4. All-weather access affects many of the properties in the area. For this reason, staff is recommending that the floodplain section be amended in the Sustainable Land Development Code to require all-weather access only for major subdivisions, multi-family developments, or non-residential development over 10,000 square feet.
5. It would be an extraordinary hardship to the Applicant if they were required to construct an all-weather access due to unusual topography that would benefit

everyone who utilizes the access. Moreover, applicant does not own the land constituting the 750 feet long and 15 feet wide all-weather crossing and there is no other access to the parcel.

6. The road crossing the FEMA designated floodplain is existing and no improvements are proposed so there will be no construction within the floodplain

The conclusions of law for the Minimum Lot Size Variance are as follows:

1. Primary Home is 2,200 square feet and the secondary home is 952 square feet. This meets the requirements of the SLDC for an accessory dwelling.
2. Strict compliance with the requirements of the Code would result in extraordinary hardship to the Applicant in that Applicant is seeking to permit one of her daughters to divide the lot by way of small Lot Family Transfer pursuant to a variance to assist her daughter with an affordable place to reside and own, where so the Applicant's daughter has been living in a residence on the property since 2006.
3. The granting of the requested variance is a minimal easing of the Code requirement to address topography or other such non self-inflicted conditions to allow a Family Transfer Land Division on the applicant's property and will not nullify the purpose of the Code.

COMMISSIONER CHAVEZ: [speaks away from microphone]

MS. LUCERO: Mr. Chair, that's correct and if the decision of the BCC is to incorporate these they would be incorporated into the final order.

COMMISSIONER CHAVEZ: Are there any other questions to staff? Then I would like to open this to the public and ask if there are any public here tonight who would like to speak in support or opposition of this case. Please come forward.

While the public is approaching the dais I am remiss in asking the applicant if they would like to approach the Commission. If the applicant could please come forward and correct anything or add anything to the record.

[Duly sworn, Minnie Walsh testified as follows:]

MINNIE WALSH: Mr. Chair and Commissioners, my name is Minnie Walsh and I would for my son in-law, Mike Adams, to speak in my behalf.

[Duly sworn, Mike Adams testified as follows:]

MIKE ADAMS: Mr. Chair, Commissioners, thank you for hearing us. I would just like to state that we agree to the conditions of approval and those haven't changed and that I totally – my argument would be the findings of fact that the staff has presented. So I think that eloquently expresses everything that we would have say. The only thing I would mention as far as setting a precedent for other properties is that the state requires any property sizes less than 3/4 of an acre to have an advanced septic system that we already have and we will part of the regional water system. Other than that I can't think of anything else that would say our case, other than you already approved it. Nothing legally has changed in the proceeding time except that the 2008-10 ordinance has been overturned or repealed/replaced. I don't think anything has changed legally that would hurt our case and we certainly agree with the conditions and the stipulations that are being made as findings of fact, I would agree and that would be the basis of any argument I would make to you.

COMMISSIONER CHAVEZ: Thank you. Thank you for being patient.

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Ma'am.

COMMISSIONER HOLIAN: Mr. Chair, I have a question of the applicant.

COMMISSIONER CHAVEZ: Yes, go ahead.

COMMISSIONER HOLIAN: One thing that I'm a little worried about is that septic systems are really proliferating in the valley and they're getting very close together and they're getting very close to the wells. It's mentioned here in the packet that you have two septic systems already on the property and one of them is called a split flow septic system; what does that mean?

MR. ADAMS: It doesn't put any black water in the ground. It uses holding tanks. It processes the gray water and then reintroduces it into the ground. But it's totally processed. And then the black water is in holding tanks that we remove periodically. I would also notice you that in the packet originally there's a letter from the Pojoaque Pueblo Development Corporation which the Pojoaque Pueblo borders us and that there will be no further development in that area, that none is planned. That's part of the bison reserve. The Jacona Land Grant is our other neighbor to the west and they have no plans to develop that area. So we're not having if you look on the state reports, we're not having any septic issues there. We also don't have water issues right now and of course we would be part of the regional water system. So any concerns about septic systems, the state's been out the Petersons raised a concern about it and the state came out and reinspected and they found the systems are up to code and like I say, the bordering properties are not going to be developed. So all of the houses that are there are the ones that are there now.

COMMISSIONER HOLIAN: Thank you.

COMMISSIONER CHAVEZ: Any other questions for the applicant?
Thank you for catching that Commissioner Holian. Okay, I'll go now to the public, members of the public who would like to speak in support or opposition of this request?

[Duly sworn, Karen King testified as follows:]

KAREN KING: Honored Commissioners, my name is Karen King and I've lived just south of the Walshes for the past 22 years. I want to start with what I want to say by telling you a little bit about myself. I spent 22 years in law enforcement including 11 years as a special agent for the New Mexico [inaudible] and what I did was investigate illegal subdivisions in the state. And this area is most – can best be described as a checkerboard area. We've got the Jacona Grant there to the west of us or the north of us and west of us. And then we've got the Pueblo directly to the east. My property is to the south. The Petersons property is to the west – the other west. Anyway, it is a particular area that not everyone would like to live in. It's beautiful but it's very challenging. And all of us need one another. We have all helped one another. The Petersons have helped me when people were stealing property, you know, metal off of my property and called. They helped when my dog was run over to carry the dog to the car to transport it. The Walshes the same way. Mike Adams often borrows a tractor to make the road passable. And we help each other by pulling each other out. I gave a ride to one of the Peterson's tenants not long ago because she couldn't get her car in that area.

So it is an unusual piece of property but we enjoy living there. My neighbors are wonderful people and they deserve to be able to enable their family to live and stay there.

That's all I'd like to say, thank you.

COMMISSIONER CHAVEZ: Thank you, ma'am.

JOSEPH KARNES: Good evening, Chair Chavez, members of the Commission. My name is Joseph Karnes, Sommer, Karnes and Associates here tonight on behalf of Chris and Misha Peterson who live adjacent to the Walsh property.

We stand tonight in opposition to this application. I'll start by pointing out that your Growth Management staff has recommended denial of this application, although, that was not made very clear tonight. The flood plain administrator, Ms. Lucero, has recommended in her staff report denial of this application. She is here tonight. The County Fire Department has recommended denial of this application. Mr. Patty from the Fire Department is here tonight. The CDRC when they considered this application a year or so ago recommended denial of this application. And Judge Ortiz rejected this application and sent it back to you. Why? Because the order that was adopted by this Commission did not contain adequate legal findings to support the variances that this Commission decided to grant.

Now I heard earlier tonight some discussion on another case about equal treatment and equal application of this County's code to equally situated applications. I stood before you in August of this year on an application that you may recall, requesting a lot density variance for a property that had a minimum lot size of .75 acres, the same as this minimum lot size. A well respected attorney here, Lorenzo Atencio came before you. He had a property that was 1.45 acres in size. He came before you and asked for a variance to allow him to split that lot into two parcels and this Commission denied that application unanimously and properly so because the findings that are required by law and by your code could not be met. What are those findings? With respect to a land division the finding needs to be that it can be shown by the applicant that strict compliance with the requirements of the code would result in an extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted conditions. Mr. Atencio made a number of creative arguments to try and convince you that his 1.45 acre should be allowed to be split subject to a variance and you rejected it unanimously. Why? Because his lot was too small. If your code means anything at all your point .75 acre minimum lot size has to be respected unless there is a situation involving unusual topography or some other non-self-inflicted condition.

This case is worse than that. This parcel is 1.19 acres in size. Not 1.45. Mr. Atencio was .05 acres short of making the required 1.5 acres. This parcel is .3 acres short. It's far short. And I explained to you in August if you allowed your code to be abused in this way there will be a land rush of property owners who have parcels that are too small. I'd go out and buy one myself if I knew I could come in and get a lot split based on a variance. That's not what your code allows.

There was discussion earlier about recommended findings to satisfy Judge Ortiz when he sent this back to you because the findings that were adopted before weren't good enough. And what is the finding that is before you tonight? I'm going to read it to you. This is what your staff is recommending that you adopt as far as the minimum lot size variance: The Applicant is seeking to permit one of her daughters to divide the lot by way of small Lot Family Transfer pursuant so that her daughter can be provided with an affordable place to reside and own, where the Applicant's daughter has been living in a

residence on the property since 2006.

That doesn't meet your standard. That's a self inflicted condition. This applicant came and bought a property that's too small. That's not your problem. That's not my problem. That's not the Peterson's problem. That's their problem. I'd like to split my lot too so that my daughter can have a place to live. That's not a good enough reason. In bold face print in the staff report it says, the variance criteria does not consider financial or medical reasons to be extraordinary hardships. They've come before you and the only evidence they presented to you is a financial hardship. That is not good enough. That was not good enough for Mr. Atencio and that's not good enough for the Walshes and that's not good enough for any court in the State of New Mexico.

Now, I want to give you a little bit of background on this case. In 2006, it was described that there was an approval by this Commission, a previous Commission, for a temporary permit for a second unit. A temporary permit. I submit to you that there is nothing in your code to allow for a temporary permit. But in any event, back in 2006 the Commission required that the applicant come back every two years to renew that temporary permit. The applicant didn't do that for over seven years and is now coming before you to ask that you allow for a lot split. They've also explained previously and tonight that they put in a septic system and they put in a well on reliance on that temporary permit. I submit to you that that's not a reason, that's not a rationale to bootstrap a temporary approval into a permanent lot split. Who would go out and put in permanent improvements in reliance on something that was temporary? That doesn't go anywhere toward satisfying your code. The septic system may be in compliance with all of the Environment Department regulations. The well may have been approved by the Office of the State Engineer. But that says nothing about meeting the requirements of your code that the extraordinary hardship be based on unusual topography or other non-self-inflicted conditions. Those conditions don't exist here and drilling a well and putting in a septic system don't address those concerns. Those are not rationales for you to approve this application. Nor make findings to approve this application.

The applicant's approach is a recipe for making your rules irrelevant. They're asking you to ignore your rules. You didn't do that in the Atencio case and there's no basis for you to do that here tonight. The only argument that the applicant has made is that I want to have a second unit so my daughter can have her own unit on a separate piece of property that she could sell someday. That is not consistent with your code and that is not consistent with your requirements or the variance requirements.

I want to speak briefly about the flood issues because this is an important subject. I understand that your new code that has not come into effect yet would allow for people to transverse across a non all-weather access to their property but I'm not going to make this argument to you. I'm just going to read from your flood plain administrator's staff report. Ms. Lucero on August 7, 2013, said the following, I'm going to summarize. She wrote a three-page staff report that recommended denial of this application. And she said, the applicant has not provided the stormwater analysis which identifies the quality - excuse me, the quantity, depth and velocity of flows present in the crossings. The information would be needed to assess the potential danger of this crossing. Note the flow depths as little as 12 inches when velocities are considered are enough to wash away or create buoyancy of an average vehicle. This is a dangerous and sometimes deadly

situation. As a minimum the applicant should be required to provide an analysis of the depth and velocity of flooding expected at this crossing using the specified methodology in place of culverts or other conveyances needed based on the report to provide dry access for emergency vehicles. Why is that important? Because your Flood Plain Ordinance requires a finding based on evidence that the granting of the variance will not result in additional threats to public safety. What Ms. Lucero was asking for was an analysis to say when the arroyo is running, how much water is running that arroyo, how many feet is it? Is it 12 inches which is enough to wash away a vehicle? Is it 2 feet; is it 3 feet; is it 5 feet? We don't know; why? Because as Ms. Lucero said, the applicant has not provided a stormwater analysis. There's no basis upon which you can determine based on evidence that this application, this second unit if allowed to remain, would not result in what, additional threats to public safety. When the arroyo is running there are threats to public safety. Who is that threat going to be borne by? By the Fire Department? By the Sheriff's Department? By ambulances that may need to come out to the property to rescue somebody or to attend to somebody who has a problem resulting from the rains and floods and they're going to have to cross what? What kind of flood will they have to cross? We don't know. Ms. Lucero observed that we don't know because the applicant didn't comply with your rules. That's the problem here.

However, that's secondary. The first issue is you don't even get to that point because your code requires that in order for you to grant a density variance the applicant needs to show an extraordinary hardship based on an unusual physical condition or some other non self-inflicted condition. Judge Ortiz looked at the findings that you adopted previously and said, Un uh. It's not there. I can't accept this. That's why he sent it back. Your staff has done their best. They wrote some findings and they say what I read before, the applicant wants to provide a second unit for their daughter. Well, that's fine and dandy but that doesn't address your code requirement. That doesn't meet the legal requirements and for that reason this application has to be denied. And I'll make one more observation, if you approve it tonight, what is somebody like Mr. Atencio going to think or any other applicant that has been denied on the same exact type of application. In fact, Mr. Atencio is only .05 acres short. This applicant is overly .3 acres short. What is Mr. Atencio going to do, this fine attorney in Santa Fe County. He's going to charge you with discrimination. Denial of equal protection or some other creative legal theories he might come up with. Your decision shouldn't be based on who the applicant is or what their rationale is. It should be based on equal application of the law to an equally situated application. And this application has a 1.19 something acre parcel. It's .3 acres short and there is absolutely no basis in the findings that have been submitted to you, they'll fail, because we'll challenge this again. And this application has cost the County money. It's cost the applicants' money. It's cost my clients' a lot of money and time dealing with it. And what are we joking here. There's no basis at all. Somebody coming forward with a serious finding that you can make to justify the requirement in this County Code of an extraordinary hardship based on unusual topographic conditions or other non self-inflicted condition. The applicant is saying, Oh, the lot's too small and I want an extra lot for my daughter. That doesn't cut it and for that reason this application needs to be denied. Thank you.

COMMISSIONER CHAVEZ: Thank you. Any other members of the

public. I'm going to give the applicant just a few minute to respond. Okay good and then I'll let the applicant respond briefly.

[Duly sworn, Jim Roybal testified as follows]

JIM ROYBAL: My name is Jim Roybal and I'm a member of the Jacona Land Grant Board of Directors. And the Jacona Land Grant in principle would like the County Commission to stick to the 3/4 acre divisions where they are set in the traditional communities. But in this case we do not oppose this division. We recognize that there's a lot of properties in the valley that are much smaller and there's all sorts of properties that do not meet the requirements. However, our property does border their thing and we have no plans at present to develop this property but as it stands now we were proposed to have a 10 acre per house lot size for the adjacent property to this lot and in a recent hearing they wanted to increase that to 20 acres per lot size. So that seems just a little uneven even though we are within or right on the border of the traditional community to go from 3/4 of an acre to 10 acres.

Our concern was that we just maintain the same easement that they currently have. They're paying for an easement to the north and the easement across the river has never been granted by us. They just – it has been used over the years and it's just taken by grandfathered or by perpetual use. They don't have a legal easement to cross the grant property which is the river there. So that's all I have to add to this, to your consideration. Thank you for your time.

COMMISSIONER CHAVEZ: Any other member of the public who would like to speak please come forward. Sir, if you would like to approach and be sworn at the same time.

MICHELLE ADAMS: My name is Michelle Adams. I'm the daughter of Minnie that will be living on this piece of property and he does not know me. He does not know me. This is my home. And I am in need of this property to live there by my mom who is not getting any younger. The reason we moved there is because of my father's health. He has now passed away and my mom is not getting any younger. And it may not be a financial – it may be a financial at this point but my mom can't even take off a lid on a water bottle. We help her. We love her. I have no intention of ever selling that property. That is my home. And that will be given to my children, to their children and to their children. And for him to speak of me like I'm so shallow. He doesn't know me. I love my mother. I have every intention on taking excellent care of her because of love her like we did with my father. And we all share the road that he talks about the flood. We all share it. It is his access as well as it is for us.

I'm a little like – why is it okay for them and not okay for me, why? I love my mom and I have every intention of taking good care of her regardless of what they say. I will take care of my mom.

Thank you very much for your time. I appreciate being able to stand here and say that. Thank you.

[Duly sworn, Scott Peterson testified as follows]

SCOTT PETERSON: My name is Scott Peterson. I never wanted this to be a personal issue. I never wanted it to come to this. But when this first came up it was a two-year temporary use to have their trailer there. And we were concerned about it at the time but we decided not to object giving them the benefit of the doubt. We all go

through hard times but it is hard to believe that someone can forget for five years that they're there on a temporary permit and then in the meantime put in a well and a septic system on a temporary permit. We didn't quite understand that.

When we chose to build our home there it was a major investment and we obeyed all the rules and trusted everyone else including our neighbors would be made to do the same. And we trusted our County government to uphold these rules. That's all I have to say, thank you.

COMMISSIONER CHAVEZ: Thank you.

MINNIE WALSH: I can't remember the date but it's been a couple of years back. Yes, we did not follow through and the reason for that was because my husband got sick and he couldn't and he got worse and he got worse and finally he passed away. Well, if anybody has had somebody to pass away it took me – it's still taking me a long time to recover from it.

I'm not going no where but unfortunately Mr. Peterson is trying to selling his house and moving. Thank you.

COMMISSIONER CHAVEZ: Yeah, I'm going to let –

MR. ADAMS: Thank you, Mr. Chair, Commissioners. I think it's very important to mention that this is not a personal issue at all. Nobody in our family holds any animus towards the Peterson. They have their right absolutely to oppose what we're trying to do and I am completely understanding of that. I would like to address what Mr. Karnes said. Mr. Karnes is an excellent lawyer. With the Atencio case he didn't mention anything else. It's hard to believe the Commission would vote 5-0 against such a small variance if there weren't other factors involved. And like a good lawyer he's only mentioning the things that fit his position.

There's no info against the findings. He made a great argument against the previous code if 2008-10 ordinance still existed maybe there's an opportunity for that, but of course, that doesn't fit his argument. He didn't mention the fact that our property is not involved with the floodplain at all. It doesn't border a floodplain. It's 3/4 of a mile from the floodplain. That's something that needs to be brought out.

About the improvements to the property too, the County Commission stipulated that we do permanent improvement to the land. We were stipulated that we do a state approved septic system. We would do a state approved well and we would do all the other permits. I'm not sure what happened but that's the reason that we did that. We didn't do that to try and force the Commission to do it. The Commission stipulated that as part of their order back in 2006. And something else that – Mr. Karnes is an excellent lawyer and he's making the points that fit his position but the purpose of the code is to permit family transfers. It clearly says that. In fact, I've got it – Section 4.3.1.B of the Code permits transfer which do not meet lot size requirements in order to provide more affordable home sites – it's been mentioned before that this is a financial hardship issue, the code just says more affordable. That's what the code says, that we permit family transfers. In fact, in the new code there really aren't too many requirements at all except trying to prevent the fraud where people subdivide land illegally. But the code permits family transfers and I just thought those points were important to mention and I know this is really dragging on. Thank you.

COMMISSIONER CHAVEZ: In some cases land use decisions and land

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use cases just by their nature tend to be a little divisive. You know, people are very protection of their property, their personal property and their property rights and so it presents us with a challenge. I think this is one of the more challenging cases that I've experienced in the two years that I've been on the Commission. And so it doesn't make any of our jobs easier.

So I'll close the public hearing portion of the meeting and bring it back to the Commission and ask for your direction. Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I believe we have a motion and a second on the floor. I just want to make a few brief comments. I think your assessment of this case is accurate. We sit as Commissioners hearing land use cases on a regular basis and they're not easy. They're difficult cases. I don't think we have any attorneys on the Commission but I might be mistaken maybe we do. I don't think we do though. But I always continue to learn when I sit on the bench but I always go back to some fundamental precepts of, you know, why I sit here and I do anything in my power every day all the time as a Commissioner to be fair and objective in my deliberations in what I do. But I think tonight it's amazing that tonight even more emphasizes the need for us as a Commission to continue to provide mechanisms in our procedures and our policies that provide us even more latitude to do what's right and to do what we can to, where we can, help people in a responsible manner.

I respect the Petersons and their rights as citizens to hire an attorney. I respect the Walshes and their right to follow their path whatever that might be. And Mr. Karnes I can respectfully say, I can't speak for Judge Ortiz and I can't pretend to know what he thinks. I think you maybe can but I can't and I won't speak for him. I respect you, and I respect all of you. We make decisions. Whatever the decision is of the court we'll respect. Whatever the decision of my colleagues is I'll respect. But we in my estimation need to do whatever we can to help our families and also sustain a code that's responsible and it's a balance and many times it's a challenging balance. So I would leave it at that, thank you, Mr. Chair.

COMMISSIONER STEFANICS: Mr. Chair.

COMMISSIONER CHAVEZ: Commissioner Stefanics.

COMMISSIONER STEFANICS: Could you repeat the motion?

COMMISSIONER ANAYA: I made a motion to submit the findings that are presented in our packet that were, under my understanding, not presented to the judge that expand upon why the decision was made to approve the variance. And if I could restate it, we never remitted the additional items that Ms. Lucero spoke to earlier and I believe I had a second on the motion.

COMMISSIONER CHAVEZ: Mr. Shaffer, did you have a comment? I think you were holding a comment that you wanted to make earlier.

MR. SHAFFER: If I could, Vice Chair. The comment I wanted to make was that I don't read anything in Judge Ortiz' order that would mandate that the Board adopt specific findings this evening. In other words, the Court ordered a representation of the evidence and the Board to make a decision on that representation as well as the evidence that was submitted before. Ordinary course then would be for a final order including findings of fact and conclusions of law to come back at a further meeting. And so I just wanted to be clear that I don't feel that the Board is constrained to adopt any

specific findings this evening but that even if the Board were to direct to herein include some variation as a directional comment on the findings that were presented by staff you would still have a final order that would come back to the Board that would incorporate those findings of fact and any other findings of fact that the Board wanted to adopt when it acts on that final order. So it's really just a procedural note that I would offer for the Board for what it is worth.

COMMISSIONER ANAYA: Mr. Chair.

COMMISSIONER CHAVEZ: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, Mr. Shaffer, and I apologize if I'm going to be just blunt but did the judge ask us to revote again? I heard – I've heard several things from you and I heard multiple things from Mr. Karnes and others. Did Judge Ortiz ask us to revote this case? Yes or no. That's what I want to know.

MR. SHAFFER: Mr. Vice Chair, Commissioner Anaya, that is my understanding of the Board's order. That was a representation of the evidence and for the Board to make a decision based on the representation of the evidence.

COMMISSIONER CHAVEZ: So, Commissioner Anaya, if I'm reading the memo the District Court decision on July 31, 2014 was to remand the case back to the BCC for a rehearing. So in that direction we were to rehear the case and vote again even though we had already taken prior action.

MR. SHAFFER: Commissioner Chavez, I'm reading from the order. It says that some evidence can be represented and the Board can make specific findings under its Land Development Code requirements. It also [inaudible] under both prongs of the Supreme Court Case, the Paule Case, to justify whatever decision they make. So, again, I read that as being a call for any decision. It can be the same decision that was reached in the first instance but that's how I read the order. And I defer to Mr. Brown who was present in those proceedings as to whether or not that was his understanding.

WILLIE BROWN (Assistant County Attorney): Good evening, Mr. Chair and members of the Commission and I was in court along with Mr. Karnes and I did hear the Judge's verbal instructions and then we came to an agreement as to the proposed order which the judge signed. By all intents and purposes I interpret what the judge id in remanding the case back for a full rehearing, which you did, you heard from both sides. You gave anybody who wanted to speak to speak including all members of the audience. And at the end of that because you're an elected body you can only make decisions by a quorum present and a vote and in no uncertain terms in the remand order it says a couple of times, it uses the word "to make a decision." So I would interpret that to make a decision that you have to vote on it. That you can't just remit findings of fact.

COMMISSIONER STEFANICS: Mr. Chair.

COMMISSIONER CHAVEZ: Yes, Commissioner Stefanics.

COMMISSIONER STEFANICS: I move to table until the January meeting.

COMMISSIONER HOLIAN: Second.

COMMISSIONER CHAVEZ: There's a motion –

COMMISSIONER ANAYA: Mr. Chair, we already had a motion on the floor. I'll pull my motion. I want to remove my motion if you're okay as the seconder.

COMMISSIONER CHAVEZ: I'll withdraw my second. But I think a

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tabling will actually superseded will it not? And there's no discussion.

The motion to table carried by unanimous [4-0] voice vote.

COMMISSIONER CHAVEZ: Thank you all for your patience and we'll continue the discussion.

VIII. Concluding Business

A. Announcements

COMMISSIONER ANAYA: He was just here. Commissioner-elect Roybal was here. Did he step out? I just wanted to thank him for coming to the meeting today and acknowledge that he was here.

B. Adjournment

Having completed the agenda and with no further business to come before this body, Chair Mayfield declared this meeting adjourned at 7:50 p.m.

Approved by:

Board of County Commissioners
Robert Anaya, Commissioner

ATTEST TO:

GERALDINE SALAZAR
SANTA FE COUNTY CLERK

Respectfully submitted:


Karen Farrell, Wordswork
453 Cerrillos Road
Santa Fe, NM 87501



CHAIR HOLIAN: Mr. Scott, can you be sworn in, please?

[Duly sworn, Andrew Scott testified as follows:]

ANDREW SCOTT: We share the West Santa Fe Association's concerns and are committed to creating and maintaining that type of establishment in those particulars that are set forth in the letter.

COMMISSIONER CHAVEZ: So on one specific point you would agree to beer and wine only and not a full-service bar?

MR. SCOTT: When we last spoke, and we still, to this day are not committed to or convinced that spirits are necessary in that establishment for it to be viable. We're still obviously in the preliminary stages of the business development model and execution but no, it is not inherently – it is not necessarily the case that spirits will be served in this establishment.

COMMISSIONER CHAVEZ: But are you saying that as a minimum you would like to have beer and wine?

MR. SCOTT: Absolutely. I think it's very important, as is stated in the letter, for the effort to be viable.

COMMISSIONER CHAVEZ: Okay. Thank you. Thank you, Madam Chair.

CHAIR HOLIAN: Is there a motion?

COMMISSIONER STEFANICS: I'll move for approval.

COMMISSIONER CHAVEZ: Second, and I would like to –

CHAIR HOLIAN: Is there any further discussion?

COMMISSIONER CHAVEZ: I would just like to present this hard copy for the minutes. Do you have it? Okay. [Exhibit 4]

CHAIR HOLIAN: Any further discussion? There is a motion and a second for approval of BCC case MIS 13-5280.

The motion passed by unanimous [5-0] voice vote.

- XVIII. A. 2. CDRC CASE # V 13-5190 Minnie Walsh Variance. Minnie Walsh, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) and a Variance of Article III, Section 2.4.1a.2.B (Access) of the Land Development Code and a Variance of Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to Allow a Family Transfer Land Division of 1.195 Acres Into Two Lots. The Property is Located at 58 Arroyo Jaconita, within the Traditional Community of Jacona, within Section 11, Township 19 North, Range 8 East, (Commission District 1)

VICKI LUCERO (Building and Services Division): Thank you, Madam Chair, I'll be presenting tonight. The applicant requests a variance to allow a family transfer land division of 1.195 acres into two lots. . The property is accessed by Arroyo Jaconita Road, which is a private road, and Loma Encantada which is also a private road. Arroyo Jaconita is



a dirt/sand driving surface and is located in and crosses a FEMA designated Special Flood Hazard Area. The portion of Arroyo Jaconita Road that services the property is approximately 750 feet in length and 15 feet in width. Loma Encantada is a dirt driving surface that ends and enters the Jacona Land Grant. A portion of Loma Encantada crosses a FEMA designated Special Flood Hazard Area and is approximately ¼ mile in length and 15 feet in width. Both Arroyo Jaconita, and Loma Encantada do not have all-weather driving surfaces and may be frequently impassible during and after inclement weather, and thereby are not all-weather accessible.

Currently, there is a manufactured home, a single-wide mobile home, and two accessory structures on the property. The property is served by two onsite wells, a conventional septic system, and a split-flow septic system. Article III, Section 10 of the Land Code states that the minimum lot size in this area is 0.75 acres. In order to divide the subject property into two lots, the property would have to be at least 1.50 acres. The Applicant is requesting a variance to this requirement.

In 2006, the BCC granted a two-year temporary approval to allow the placement of a second dwelling unit on the property. The Applicant never followed up with conditions of approval. The Applicant was to apply for temporary approval every two years to be approved by the CDRC and report water meter readings to the Land Use Administrator by January 31st of each year.

The Applicant states the reason for this is due to the loss of her husband, and it has taken a few years for the family to focus and take the necessary steps toward making a home for her daughter's family permanent. The Applicant would like to provide her daughter and her family with an affordable place to live and provide clear title to the land so that they may build a permanent residence. Furthermore, she would like to maintain family ties to the land where her daughter grew up.

This application was submitted on June 6, 2013. On July 18, 2013 the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the Applicant's request by a 5-2 vote. Growth Management staff have reviewed this application for compliance with pertinent code requirements and finds the project is not in compliance with County criteria for this type of request.

Staff recommendation is for denial of the variance of Article III, Section 10, Lot size requirements, a variance of Article III, Section 2.4.1a.2.b, Access, and a variance of Article IV, Section 4.2 of Ordinance No. 2008-10 to allow a family transfer land division of 1.195 acres into two lots. If the decision of the BCC is to approve the Applicant's request staff recommends the following conditions be imposed. Madam Chair, may I enter those conditions into the record?

CHAIR HOLIAN: Yes, you may.

[The conditions are as follows:]

1. Water use shall be restricted to .50 acre-foot per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office (Article III, § 10.2.2 and Ordinance 2002-13).
2. A Plat of Survey meeting all County Code requirements shall be submitted to the

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- Building and Development Services Department for review and approval (Article III, § 2.4.2).
3. The Applicant must comply with all conditions of approval within 90 days and prior to plat approval.
 4. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review (1997 Fire Code and 1997 Life Safety Code).
 5. The Placement of more than one dwelling unit per lot and further division of the land is prohibited on the property (Article III, § 10).
 6. The Applicant shall divide the property into two equal parcels.
 7. A note must be placed on the Plat regarding the lack of all-weather access to the subject lots. This note shall include language as follows: The access to this property does not meet minimum standards set forth by County Ordinance and Code. Site Access, including access by Emergency vehicles, may not be possible at all times (Ordinance 2008-10).

COMMISSIONER CHAVEZ: Thank you. I stand for questions.

CHAIR HOLIAN: Are there any questions for staff? Seeing none, is the applicant here? If there is anything that you would like to add please come forward and be sworn in.

[Duly sworn, Minnie Walsh testified as follows:]

MINNIE WALSH: Madam Chair, Commissioners, my name is Minnie Walsh and I have my son-in-law, Mike Adams, he will speak on my behalf.

[Previously sworn, Mike Adams testified as follows:]

MIKE ADAMS: My name is Mike Adams, 58 Arroyo Jaconita. I do have some comments to make with your indulgence. To be clear, my mother-in-law's purpose is to request a family property transfer of the 1.19 acres that belongs to her to my wife Michelle and I for the purpose of building a new home on a permanent foundation so that we may live in close proximity to my mother-in-law, a widow, and help maintain and care for her and her property. I'll restate. Mother's purpose is to divide the 1.19 acres so that we might be able to build a house on a permanent foundation as a family transfer, that we might maintain our ties to the community and be able to help my mother-in-law just so she's not alone out there.

The history of the case, in 2006 the BCC granted us permission for a second dwelling to be placed on the property. This was a temporary permit but with permanent provisions such as a state-approved septic system and I must admit that kind of confused us and me in particular. The Walsh family always intended to split the property permanently so the temporary part of the provision was misunderstood as far as having to reapply when permanent facilities had been approved.

In 2008 before the process could be completed John, Minnie's husband, passed away. This caused an obvious sidetracking of the process and also in 2010 my mother-in-law lost a grandson in a tragic accident. This again took our family's attention away from the matters at hand. There's some legal issues I would like to consider as far as the lot side. As we're requesting a property division under the conditions of a family transfer it is our contention that the following facts should be considered. There is a provision for lots smaller than $\frac{3}{4}$ of

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an acre in the code, Section 10.3.3, covering traditional communities of which we are considered. Lots as small as 10,000 square feet, a little over a third of an acre are permissible under certain conditions related to community water and sewage utilization, local land use and utility plan.

It is our contention that the fact that we are a part of the Aamodt settlement, which includes a regional water system and have an advanced septic system which infiltrates no nitrates, only treated graywater, gives us compatibility with that standard. In the event that the Commissioners are not swayed by that argument, the fact that we have two state-approved septic and two federally and state-approved wells on the property presently would lead us to relevant judicial precedent, and I would cite the case of the *Incorporated County of Los Alamos v. Montoya*. I have the details if anyone's interested in them.

The court of appeals instruction in *Gold v. Santa Fe County* in 2001 is that the local ordinances should not permit an act that general law prohibits, or prohibit an act that the general law permits. According to this judicial precedent, the State Environment Department, which actually issues permits for septic systems according to density and other factors, has allowed two systems for our lot size. The State Engineer and by legal court order the federal government have also allowed two wells on the property. If applying the standard of *Gold v. Santa Fe County* the fact that the federal and state governments are satisfied that density requirements have been satisfied it would seem unreasonable to prevent the division.

Also, the area we are in will not see further development as it is land-locked by the Jacona Land Grant and the Pojoaque Pueblo. The pueblo plans no development on the adjacent land as it is their buffalo preserve. There's a letter to that effect with the rest of the permit application. [Exhibit 5] It is also worth noting that nitrate levels in the soil in that area are not an issue according to the County website.

Now, the variance for access I believe is a hardship. I would like to note that we have agreed to all the stipulations, the seven stipulations the County issued if you do grant the variance. This includes the Fire Department's three stipulations – a ten-minute fire suppression system, widening of the access roads to uniform standard, and providing a turnaround for the large trucks. The Fire Department also made it clear that they will attempt to reach the property no matter the conditions. It is also worth noting that it would take a minimum of 15 minutes to reach the property through El Rancho, no matter the weather or road conditions. This is why the ten-minute fire suppression system is crucial.

There are mitigating factors that render the all-weather access ordinance an unreasonable hardship. The access point and road is not on our property. In fact the crossing is through gated, privately accessed land with posted no trespassing signs. We have a legal easement agreement but it is impossible for us to control the land. We have had productive discussions with most of the other 11 families and two renters that rely on Arroyo Jaconita and Loma Encantada for access about some improvements that we may be able to undertake, but these would still have to be agreed to by the Jacona Land Grant. This is the very definition of hardship, as we are landlocked and have no control to effect any changes no matter how willing.

There are several common sense arguments also. We are but two of 11 families and two renters whose sole access is by Arroyo Jaconita and Loma Encantada. Also, the recent

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rains showed us that having an all-weather road is not much benefit when many historic arroyos in the area are flooding. Just as recently as September County Road 84 was closed in several places by the authorities because the all-access paved road was impassable due to flooding arroyos. We were able to traverse the floodplain crossing in question and the other arroyo crossing on 84-C but not County Road 84.

These are just the realities of living in a rural area, which we accept. I would like to mention too there was opposition to our application at the CDRC meeting, and I wanted to clarify some things. At the CDRC hearing one actual neighbor and one area resident voiced their opposition to the variances. Chris Peterson who is our direct neighbor has mailed a letter to the County expressing his opposition to the variances. His reasons were as follows: There has been no attempt to improve the property and the entire rationale for the property division is to build a new home on a permanent foundation with landscaping. I can understand Chris' concern over property values with their own house for sale but they lived in a single-wide trailer before they built the very nice home they live in now, and it seems reasonable that we should have the same opportunity. The septic system they thought was inadequate but it's been re-inspected by the State and it is up to the codes.

The population density increase, we've already been there for seven years; we're not actually increasing the population density, and it sets a precedent for similar small divisions and I think that our case is extremely unique. Chris' father, Scott Peterson also voiced identical concerns. Chris also retained a lawyer who contended that we had an illegal well on the property and in reviewing relevant state laws and after discussion with Steve Massovich, who's the Aamodt water master, the facts are that the two wells on the property are both part of the final disposition of the Aamodt settlement. They are both therefore legal as far as the state and federal governments are concerned. He even suggested that the property division would be desirable as it would bring the permits into conformity with the Aamodt settlement.

Also, area residents Bill and Mary Ogle voiced their opinion that since they were unable to obtain a building permit we should not be allowed to either. I would like to respectfully point out that the Ogles' situation is very different from ours. Even though there is no record they ever actually applied for a permit the County representative that they dealt with relayed to me that they were initially told they would be denied a permit because their house is actually in the external limits of the Special Flood Hazard area, the arroyo crossing and that's why they would be denied a permit. They do not gain access to their property through Loma Encantada, so their issue is one of property unsuitability, not access or lot size. After a search of County records it is also true that they have never requested a variance or a permit. I feel confident if they had requested a hardship variance the County would have granted it with conditions.

I'd like to read – the Commissioners were given six letters of report and if it's okay can I read them to you?

CHAIR HOLIAN: Mr. Adams, we do have them here and we can read them.

MR. ADAMS: Okay. Well, in conclusion, something that I think is very important to me personally and to my mother-in-law. There's a lot of talk of legalities of it and the access and the different codes. But the whole reason why we're requesting this as a family transfer, and if you look at the County code it says the purposes of the family land

transfer is to maintain local cultural values by perpetuating and protecting a traditional method of land transfer within families, especially within the traditional communities, which we live in. And to permit transfers of lots which do not meet the lot size requirements of the code from grandparents, parents, or legal guardians as a one-time gift to a child or grandchild in order to provide a more affordable home site for these adult children. And I would ask the Commissioners that I believe that that's a moral imperative. There's something that goes beyond more than just an ordinance that was enacted in 2008. Family transfers are a tradition that goes back generations in northern New Mexico and I believe that because it's so important to the culture that there should be a very compelling reason for denying such a request.

CHAIR HOLIAN: Mr. Adams, let me ask you this. Is Mrs. Walsh in agreement with the proposed staff conditions, including no further lot splits?

MS. WALSH: Yes, I am.

CHAIR HOLIAN: Any questions for the applicant? Commissioner Mayfield, do you have questions, or do you want –

COMMISSIONER MAYFIELD: If there's anybody else that wants to speak first before I ask my questions.

CHAIR HOLIAN: Okay. This is a public hearing. Is there anyone here from the public who would like to speak about this case, either in favor or in opposition? Please, if any of you are not attorneys please can you stand up and be sworn in at once, and then when you come forward, state your name and address for the record. Please come forward to address the Board. Who would like to start?

[Duly sworn, Karen King testified as follows:]

KAREN KING: Madam Chair and esteemed Commissioners, my name is Karen King. I've lived next to these guys for the past 21 ½ years and they're very good neighbors. I don't see why they should be denied what the rest of us want, equal justice under the law.

CHAIR HOLIAN: Thank you, Ms. King. Who's next.

[Duly sworn, Michelle Adams testified as follows:]

MICHELLE ADAMS: Michelle Adams. I also live at 58 Arroyo Jaconita. Madam Chair, Commissioners, I'd just like to state that I have wonderful plans for our property and it's just a matter of -- there's a process that needs to be taken and I'm in charge of all the yard stuff so my commitment is to make it very lovely and there's a gentleman by the name of James Ludy Construction out of Albuquerque that when this is all said and done the process is obviously -- it will start and so there's weeds now and I would surely not leave it like it is but there are plans to make it very beautifully. Thank you.

CHAIR HOLIAN: Thank you, Mrs. Adams. Who would like to speak next.

JOSEPH KARNES: Good evening, Madam Chair, members of the Commission. My name is Joseph Karnes, Sommer, Karnes and Associates. I'm speaking tonight on behalf of Chris and Misha Peterson who live next door to the Walsh property at 19 Loma Encantada. Chris Peterson is here present this evening. And also present are Chris' parents, Scott and Eva Peterson who live nearby at 25 Loma Encantada. We stand in opposition to the application this evening and we agree with the recommendations made to

you by the Growth Management staff, the floodplain administrator and the Fire Chief and the CDRC's recommendation that this application be denied because it does not meet any of the criteria for granting either the lot size variance or the access variances that have been requested.

As you well know, the applicant has the burden to demonstrate that grounds exist to satisfy the variance criteria and I know that you have lot size variance requests come before you on a fairly regular basis. The applicant has the burden of showing that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of the unusual topography or other such non-inflicted condition, or that these conditions would result in inhibiting the achievement of the purposes of the code. Staff explains in bold face print the variance criterion does not consider financial or medical reasons as being extraordinary hardships.

You've read the staff report. You've had the report from the CDRC and the recommendation. You've heard from the applicant this evening. The applicant has not demonstrated any hardship relating to the physical characteristics of the property. They simply have a desire to have a second residence become permanent on the property and that is it. Their issue is the lot is too small. The staff report says clearly, contrary to the applicant's representation that the minimum lot size in this area is .75 acres. They need an acre and a half to have two lots and they have not demonstrated any physical criteria that constitutes that extraordinary hardship with respect to the lot size.

Typically in these types of applications that's the end of the story. There's simply not grounds present here for you to find that an extraordinary hardship exists and that variance criteria are satisfied. As has been discussed in the staff report and by the applicant, in addition to that you shouldn't confuse the issue. This application initially rises or falls based on the request for the lot size variance, but in addition to that it's been explained that there are serious access issues for this area. Eleven or so was mentioned property owners are facing the lack of all-weather access that is a serious problem. The Fire Department in their staff report observed that the Arroyo Jaconita actively floods at various times of the year. In fact this summer, both in August and a couple of weeks ago in September, the arroyos were running and there were serious issues getting to properties in this immediate vicinity, including my clients' property.

One could say, and it was said at the CDRC meeting that, well, these people all live here and deal with that situation, so what's the problem? Well, the problem is that these people aren't here asking you for a variance. There's a big difference. In fact others that you hear from tonight have – and they'll communicate themselves, but they have been before the County trying to get a building permit and they have been denied. The precedent of not making a bad situation worse has already been set in your County code and in the decisions you've made in the past. To get a variance for the access requirements to be allowed to cross arroyos that don't have all-weather crossings again requires a finding of extraordinary hardship. And if the floodgate was opened here, no pun intended, and every lot in this area doubled in density, the existing access problems would worsen, both emergency vehicles getting into properties when the arroyos are running and residents trying to get out. You'd be making a bad situation much worse and you could expect more applications if this particular

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application was granted.

Again, the applicant attempted to describe the road hardship but they can get into their property. The applicant explained that Mr. Peterson constructed a nice home on his property; he did. He constructed one home on his property. He didn't come to you asking for a variance to construct two homes on a lot that was not large enough, and that's exactly what this applicant is asking you to do. They're asking you to take an extraordinary step and grant both a lot size variance and an access variance. Your Fire Department, your floodplain administrator and the CDRC all recommended against this and I urge you to follow their recommendations.

And I'll point out one more thing. The floodplain administrator identified in her staff report that in cases where somebody requests a variance to the access requirements, they're required to submit a floodplain analysis. They're required to come in, they have the burden to come in and demonstrate to you via evidence from an expert what their proposal is going to do with respect to the floodplain. There's nothing in your staff report. There's nothing in your case file. The applicant simply didn't submit that information. Rather, they came to you and said this is what we want to do, and we speak of justice and moral imperatives and so forth and we ask you to do it on some sort of equitable basis. That's not the law here. Your obligation is to apply the variance requirements and the criteria set forth therein to this application, and I submit to you that none of the criteria have been satisfied.

We ask that you consider the recommendations of your staff and the CDRC and deny this application. I'll stand for any questions you may have.

CHAIR HOLIAN: Thank you, Mr. Karnes. I have a question. Is any part of this property in the floodplain?

MR. KARNES: I think that's a question for staff. I do not know whether the property itself is in the floodplain.

CHAIR HOLIAN: Vicki, do you know whether any part of the lot is in the floodplain?

MS. LUCERO: Madam Chair, the actual property itself is not within the floodplain. It's just the access that crosses the floodplain.

CHAIR HOLIAN: Thank you. Is there anyone else who would like to come forward to speak from the public?

[Duly sworn, Mary Ogle testified as follows:]

MARY OGLE: Good evening, Commissioners. Thank you. My name is Mary Ogle. My address is 343-B County Road 84-C, Jacanita, and I we have property right next to the Loma Encantada Road that crosses a very large arroyo and we were to have been allowed to build on that property the Fire Department came out, sent a marvelous young fire assistant chief or whatever, or assistant whatever she was, and she explained that we would not be able to use the access that we usually use to get on our property which is due to the Jacona Grant and up the arroyo and into our property because the trucks would not be able to negotiate that sandy arroyo at all. So that's the same arroyo that just - to the north of our property. Our property isn't on the Loma Encantada Road, which is the really the road that the Walshes would have to be able to cross, or the Fire Department would have to, or any other emergency vehicles would have to be able to cross. So that arroyo, when it runs, it completely takes out

the road and so the Fire Department told us we would actually have to build a big huge culvert and have a 20-foot wide road that would then come off of that road and onto our property. And we felt that that was a good reason to not try to pursue getting a building permit. And it made sense to us.

My grandfather in Las Vegas, New Mexico was volunteer fire chief for many decades so I learned early about fire protection and all of that. And we hadn't thought of that. So I would say that the road, the Petersons – Chris Peterson and his father, try to always fix that road so that it will stay passable and have done an extra Herculean effort this year with big boulders and bringing in a truck with big boulders to try to fix that road where the arroyo comes through. It just took it out with the last rain and it had been taken out before that so this time they did all this extra work so it was twice this year that even with all their extra work, and they worked very hard just the two of them and anybody they can hire. We have never helped and I've never actually seen anybody else help fix that road. I believe that John Walsh when he was alive did help try to maintain that road as I recall.

So it's a big job for more than one family. It requires a lot of money to put in a huge culvert, tens of thousands of dollars we understand, and that only takes care of part of the problem. We would have had to, in our case, also put the 20-foot road across the northern part of our property so that the emergency vehicles could get there.

So we feel strongly that having been told that this was not a safe or a good idea to just let it go and so we did. We have no further plans to ask for any building permits. Even if you were to grant these three variances I doubt if we would continue because of the cost and also because so much of the land would be torn up and the arroyo is already at such great risk, so I plan native plants all the time and seeds to try to help the environment. Thank you very much. Do you have any questions?

CHAIR HOLIAN: Thank you, Ms. Ogle. Any questions? Is there anyone else who would like to speak? Mrs. Walsh, you will have a chance to respond. I'm asking if there's anyone else from the public who would like to speak.

[Duly sworn, William Ogle testified as follows:]

WILLIAM OGLE: Madam Chairperson and Commissioners. I'm William Ogle and I just wanted to second what my wife has said. We have – we did try. We talked with the Fire Department. We talked with the – I think it was the zoning board here and found that there are several families that are affected by not being able to have all-weather access and therefore not able to get building permits in that area, and I think that if this is an issue that the families in the county should work together to try to resolve the all-weather access rather than granting individual variances. Thank you very much.

CHAIR HOLIAN: Thank you, Mr. Ogle. Is there anyone else from the public that would like to speak?

MS. OGLE: May I say one more thing?

CHAIR HOLIAN: Sure.

MS. OGLE: About when I say the road was taken out, there is a drop-off of anywhere between I would say two and four feet, just straight drop-off when that arroyo comes through on each side. Or it's certainly on one side; maybe not quite that much on the other side. Just to give you an idea of what we're up against with that. That's on the Jacona

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Grant land, by the way, that road. Thank you.

CHAIR HOLIAN: Thank you, Mrs. Ogle. Is there anyone else from the public that would like to speak? Seeing none, the public hearing is closed. Mrs. Walsh, would you like to respond.

MS. WALSH: I've lived there for 30-something years and it is sometimes the road can be a problem, but I wouldn't give it up for nothing. The view there is absolutely beautiful. And there's others, about ten families in my area right there that use that road. The Ogles don't use that road. And I'm not going nowhere. I'm staying there. So I don't mind the inconveniences some times, because all my family lives there and I'm not going nowhere. Thank you.

CHAIR HOLIAN: Thank you, Mrs. Walsh. Yes, Mr. Adams.

MR. ADAMS: Could I address a couple things?

CHAIR HOLIAN: Sure.

MR. ADAMS: Going back to what Mr. Karnes said, obviously the reason why we request these variances is because the letter of the law is against us, but I think that the main issue is, if you go back to *Gold v. Santa Fe County*, the legal precedent is there that the County shouldn't make a law that prohibits something the state allows. The state has allowed our population density. We have legal septic permits; we have legal wells, the state has no problem with out population density. I think that that legal precedent is very strong and I think that would counteract Mr. Karnes' argument.

The other thing that is to me so important to emphasize besides the nature of the family transfer is that this is a private – the Jacona land grant, it's a – we have a legal easement but we are limited in our ability to control that access point. Now, we've had very constructive discussions with many of the families. I would welcome working with the Petersons and anyone to try to see what we can do. I think the Jacona Land Grant would be receptive to certain things, but it is an extreme hardship not to do any of it. If my reading of the code is correct it's a non-self-inflicted hardship. It's the nature of the land. My mother-in-law was there for years and years before the ordinance in 2008 was enacted. And I just – I understand the nature of the new permits but I believe those are cogent arguments. Thank you very much.

CHAIR HOLIAN: Are there any questions for staff or the applicant?
Commissioner Stefanics, then Commissioner Mayfield.

COMMISSIONER STEFANICS: Thank you, Madam Chair. Steve, I have a couple questions I think for you. If this variance were to be granted, then any of the other entities that either have not applied or were denied administratively could reapproach the County with their request. Is that correct?

MR. ROSS: Madam Chair, Commissioner Stefanics, you mean other persons?

COMMISSIONER STEFANICS: Yes.

MR. ROSS: Well, I suppose anything we do could suggest to people that they could file an application and seek the same thing that somebody else did. In other words, is it a precedent? It's not what I would call a legal precedent but it's certainly a factual precedent.

COMMISSIONER STEFANICS: And the second question, Madam Chair, is even under our new codes this wouldn't be approved. Is that correct?

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MR. ROSS: Madam Chair, Commissioner Stefanics, certainly the density would be an issue under the new code just like it is under the current code. The all-weather access issue is supposed to be treated differently in the new code than it is in the current code. In other words, an applicant like this seeking a single lot division wouldn't necessarily be required to provide all-weather access but somebody providing five or more lots would be. And that's an artifact of our current floodplain ordinance. But certainly the density would be the same problem we currently have.

COMMISSIONER STEFANICS: Thank you very much.

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, thank you and everybody who's here tonight, thank you. I guess Commissioner Stefanics broached a couple things I was going to talk about. One, recently in our ICIP and our CIP plan I have talked about our all-access crossings for the majority part of all northern Santa Fe County and I think this Commission has heard me pretty loud on that. So 84-C should also be being addressed in that plan, because it's a concern to me. So hopefully that will be being addressed also. But Mr. Ross, as far as what Commissioner Stefanics said and with what the applicants are asking for right now, and I do have the potential new code that we're going to be looking at next Tuesday in front of me. So if we look at 10.4 right now as far as an accessory dwelling unit, this potentially could fall right in line with an accessory dwelling unit as it's going to be proposed to this Commission.

As I'm reading it today I see Ms. Ellis-Green right here. I don't want to get off topic right now but depending what this Commission does with this tonight or not, I guess if they waited a week or two, maybe it would be a little longer than that they could just come back in and apply for an accessory dwelling unit on this property. Am I wrong with that, Ms. Ellis-Green? If this Commission approves it as it's written and proposed.

MS. ELLIS-GREEN: Madam Chair, Commissioners, the new code does propose accessory dwelling units. It does allow those. There is a square footage limitation and I don't know the square footage of these existing homes.

COMMISSIONER MAYFIELD: So Commissioner Stefanics just kind of put that out there.

MS. ELLIS-GREEN: Madam Chair, Vicki just reminded me, Madam Chair, Commissioners, that they're actually asking to divide the land. So an accessory dwelling unit would be different. It would be on one piece of property, a main house and a smaller second accessory dwelling unit.

COMMISSIONER MAYFIELD: Okay. So that would be without the land division. But any home could ask for an accessory dwelling though, if there was not the land division, it's a clear distinction of the land division.

MS. ELLIS-GREEN: Madam Chair, Commissioners, that is on our use table as accessory uses in all zoning districts, all residential zoning districts.

COMMISSIONER MAYFIELD: Regardless if it's in a traditional community at ¾-acre or whether we have our biggest land at 40 acres in Commissioner Anaya's district.

MS. ELLIS-GREEN: Madam Chair, Commissioner Mayfield, it's 160 acres.

COMMISSIONER MAYFIELD: Bigger than I thought. Thank you. So I just

wanted to let that out there also, if there wasn't the land split that there could be potential accessory dwelling. And hasn't this Commission already taken some action on variance requests anticipating the potential of an accessory dwelling? And I would go to Mr. Ross on that.

MR. ROSS: Madam Chair, Commissioner Mayfield, I don't remember accessory dwellings. Maybe Penny does, but we certainly have taken action in anticipation of the floodplain restrictions we were talking about. All-weather access.

COMMISSIONER MAYFIELD: Different for a single-family residence versus like a subdivision.

MR. ROSS: Right.

COMMISSIONER MAYFIELD: And I'm hearing concerns from both sides and from the attorney that was just here. But 84-C is that low-water crossing. But I just also heard from the applicant also that there could be access and looking at the maps that are provided to me, and I'm very familiar with the area, Arroyo Jaconita also. But you all, and this is a question I guess for the applicant, you do have an easement from the Jacona Land Grant to get into that back side, and I do see that as far as one of the restrictions or excuse me, as far as one of the requests from our Fire Marshal's office, that they would ask for an emergency access easement?

MR. ADAMS: I'm not sure I understood the question.

COMMISSIONER MAYFIELD: Let me just go to a page back here. I'm on - from our Fire Department, excuse me. I'm on our Santa Fe County Fire Department Fire Prevention Division. There's an alternate access to the property via the Santa Fe County Road 84-C through the Jacona Land Grant. So you do all have an easement through the Jacona Land Grant?

MR. ADAMS: Yes, Commissioner, we do.

COMMISSIONER MAYFIELD: And is that a permanent granted easement that you can use all the time?

MR. ADAMS: Yes. We pay for it every year.

COMMISSIONER MAYFIELD: Okay. And Mr. Adams, maybe through Ms. Walsh, do you all - are you part of the Jacona Land Grant?

MR. ADAMS: We're not part of it.

MS. WALSH: No, we're not.

COMMISSIONER MAYFIELD: Oh, but you do have that access easement through the Jacona Land Grant.

MS. WALSH: We all do that live in that area.

COMMISSIONER MAYFIELD: Okay. So you do not always have to go through then Arroyo Jaconita.

MS. WALSH: No, we don't. We have two ways to get in there. The Pojoaque River or the road in the back.

COMMISSIONER MAYFIELD: Right. And I do see here that Pojoaque Pueblo gave you all a letter also. So on that, and I guess this might be for our Chief Patty, and I know that you probably got a promotion there somehow, Chief Patty. Sorry if I keep missing it. So do - and do they put like a lock - I don't know what that's called? A Knox

lock? On that gate, or is there even a gate on that, on the land grant road?

MS. WALSH: The land grant did not put the lock there.

COMMISSIONER MAYFIELD: So there's just a full road that they can go on?

MS. WALSH: That's up to us if we want to put a lock on it. It's gated but –

COMMISSIONER MAYFIELD: Let me ask the Chief.

CHAIR HOLIAN: Marshal Patty.

COMMISSIONER MAYFIELD: Marshal. Thank you. Thank you for the promotion. So Marshal, on that, if it's gated, I don't know if it's locked but there would be a – what's that word?

BUSTER PATTY: Madam Chair, Commissioner Mayfield, you're correct. What it would be if they were to gate that second access it would be required to have a Knox lock placed on that. That is for Fire Department access only. They could have their lock on their also so that they could come and go, but it would be designated as an emergency ingress-egress only for our purposes.

COMMISSIONER MAYFIELD: For yours.

MARSHAL PATTY: Right. And it's for a dwelling in there, it would have to be a minimum 14-foot wide and meet grades and low-water crossings, all-weather driving surface.

COMMISSIONER MAYFIELD: But again, Madam Chair and Marshal, but hearing the applicants, you all have permanent use of that if you so choose to use that all the time.

MARSHAL PATTY: Sorry?

COMMISSIONER MAYFIELD: This was for the applicants. The applicants, you all have permanent use of that easement as long as you keep your payments up.

MR. ADAMS: Yes, Commissioner.

COMMISSIONER MAYFIELD: Thank you. Madam Chair, that's all I have for now. Thank you.

CHAIR HOLIAN: Commissioner Anaya, and then Commissioner Chavez.

COMMISSIONER ANAYA: Madam Chair, just statements. If I say anything inaccurate, Mr. Ross, you can chime in if you want to. This Commission and prior Commissions have approved variances associated with the size of a lot, going below lot sizes that are within the code, and this Commission and prior Commissions have also provided variances associated with crossing and whether or not they're all-weather or not and provided conditions. The difference that this Commission has done in particular associated with those crossing is made notations on the plat and there's been specific conversations and clarity to those applicants that they're understanding that they're taking on a responsibility and a liability that could be beyond service for emergency access.

The other thing I would point out is that on the record, we have said on many occasions that the County has ourselves roads that are County roads that are all-weather areas that when it floods, when it rains – I can think of several in my district. General Goodwin Road washed out completely where it was inaccessible at all, a County road, that we ourselves have many roads that during inclement weather are impassable. So Madam Chair,

on those notes I just make those comments for the record. Thanks.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: Thank you, Madam Chair. I wanted to also touch on the all-weather crossing or the low-water crossing, because we have a combination of those types of crossing and as Commissioner Anaya pointed out the all-weather crossings can get inundated with water and are impassable. So they're not a foolproof solution. Unfortunately a lot of our roads and our waterways sometimes are one and the same. And they meander and they cross each other's paths. And when you have a storm event, the water doesn't discriminate; it makes its own path. It doesn't care if there's an all-weather crossing or if there's a road. It will undermine that if there's enough water in that event.

And so we're going to have to continue to deal with that and Commissioner Mayfield referenced the new code and even though we would hope that the County would be able to provide the financial resources to make all the improvements we do have a provision in the new code in Chapter 12 that is the public improvement district concept where we would be asking individuals, individual homeowners in a case like this to impose a public improvement district to establish a public improvement district for said improvements like all-weather crossings. It's going to place a financial burden on you for a while but once those improvements are paid for then the debt is satisfied. So I just wanted to bring that to our attention because the resolution declaring intent to form a district would only take 25 percent support of those individual property owners. It may not be the best solution but it is an option that I think we're going to have to pursue in the future. I just wanted to point that out as a future reference because I don't think that it's realistic for us to think that we are going to be able to provide all of the improvements. Thank you, Madam Chair.

CHAIR HOLIAN: Any further discussion? Commissioner Mayfield.

COMMISSIONER MAYFIELD: And I know the case law at hand but I know we've also on some other land use cases we've talked about the potential impact of a new code. Madam Chair, Attorney Ross or Director Ellis-Green, on our new code, where are we talking about family transfers in the new code?

MS. ELLIS-GREEN: Madam Chair, Commissioners, that would be in the subdivision chapter, which is Chapter 5, under the exempt divisions.

COMMISSIONER MAYFIELD: Okay. So I'm just going to look at that. So just give me a general overview of what you're proposing in Chapter 5 for family transfers.

MS. ELLIS-GREEN: Family transfers are an exemption to the State Subdivision Act and so they're listed as one of the exemptions.

COMMISSIONER MAYFIELD: Okay, so maybe as it would be applicable to this case that's in front of us tonight. Would it be –

MR. ROSS: Madam Chair, Commissioner Mayfield, that provision is not too different than the current rules because that's state statute and we're powerless to change that. So some of the things that are relevant to this discussion are the changes to the floodplain ordinance and low-water crossings, the requirement for all-weather access that previously was applicable – or it's currently applicable to any application like this.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Ross, that's fine. So the case that Mr. Adams referenced, excuse me, Madam Chair, Mr. Ross, the case Mr. Adams

referenced a little earlier tonight. Could you give me maybe a little background if you have any?

MR. ROSS: Madam Chair, Commissioner Mayfield, that principle is not the law as far as I know. He's talking about a general pre-emption of local laws when the state acts to regulate in a similar but unrelated field. We have explicit and express authority to regulate the general police power for the public health, safety and welfare and to regulate against public nuisances, and the zoning authority which is extremely broad. All these regulations that they're chafing at here were enacted under the zoning authority and the state does not regulate zoning and it's not pre-empted by the state. There are ancillary regulations concerning installation of sewage, septic tanks and liquid waste facilities that have their own requirements for acreage. So for example if you're going to put in a conventional sewage system NMED regulations require you to have 1.25 acres. But that doesn't mean that the County must allow a lot of 1.25 acres. That's simply the minimum acreage on which you may place a conventional septic system. So those kinds of things, they really don't affect density rules that might be established under zoning.

COMMISSIONER MAYFIELD: And Madam Chair, Mr. Ross of Ms. Ellis-Green, are we looking at the advanced systems within our new code also or no?

MR. ROSS: Madam Chair, Commissioner Mayfield, advanced systems are encouraged but there's not necessarily a requirement of an advanced system. What is encouraged is hooking up to public water and wastewater where they're available or where they might be available in the future. So you may hook up to a conventional septic system but if the County or some other entity arrives on your street with centralized liquid waste disposal you'll be required to hook up.

COMMISSIONER MAYFIELD: Thank you. And a question for the applicant, Madam Chair. Do you all have an advanced system right now on your --

MR. ADAMS: Yes, sir. We do.

COMMISSIONER MAYFIELD: And question, Madam Chair, for applicants. You have two wells that have been permitted by the OSE?

MR. ADAMS: Yes, sir. They're part of the Aamodt settlement.

COMMISSIONER MAYFIELD: Well, as far as the Aamodt settlement, they've been dug. Just tell me what you mean by the Aamodt settlement. There are so many different things about the Aamodt settlement.

MR. ADAMS: I'm sorry. Yes, they're both legally permitted at the federal level. They have legal state permits that are recognized by the Aamodt decision.

COMMISSIONER MAYFIELD: Okay. So you have wells that have both been permitted through the OSE and recognized by the OSE?

MR. ADAMS: Yes.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Adams, and are those wells, are they post-82? One might be a pre-82?

MR. ADAMS: My mother-in-law's well is pre-moratorium. Ours is not; it was drilled in 2007. As part of the settlement though we both have -- we get half of an acre-foot a year. So the pre-moratorium, when I talked to Mr. Massovich, he said that's kind of out. He said everybody's going with a half-acre. So each well is limited to a half-acre.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Adams, you had a permit from the OSE and even the County to drill that 2007 well?

MR. ADAMS: Yes.

COMMISSIONER MAYFIELD: Okay. And then Madam Chair, Mr. Adams, you also, your septic systems – I heard you, they're registered through the OSE also?

MR. ADAMS: Not the OSE but the –

COMMISSIONER MAYFIELD: I'm sorry. The Environment Department. Thank you. And they're advanced systems again, right?

MR. ADAMS: Well, one system, my mother-in-law's system is a conventional system, and then the system we have is an advanced treatment, the split-flow system. The state and the literature should have been in the packets. They claim are effective down to a quarter-acre. So that's why they have the two systems on there for the 1.19 acres.

COMMISSIONER MAYFIELD: And Madam Chair, Mr. Walsh, knowing what the new – I don't know if you're familiar with the – if you're following with the proposal of the new Santa Fe code. It's been out there. We've put a lot of publicity on what the potential new Santa Fe code is going to do, and understanding that we live in a traditional community, at least the area that we're all in is .75, and I don't know if it's online right now, our code, as far as the accessory dwellings. Have you all looked at that? Would you all be satisfied with doing something like that, of having the existing home and then doing, if this Commission again approves what the County staff would be recommending to us or proposing to us, accessory dwelling structures without that actual lot split?

MR. ADAMS: Well, the reason why we want to do a lot split is because we seek to build a new house with a mortgage. We want to secure the land so that we can build a new house and have a mortgage and those type of things. An accessory dwelling would basically be kind of like an extension of what we're doing now, and I suppose that if that's the best we can do we would prefer to be able to build a permanent new house on the land.

COMMISSIONER MAYFIELD: That's all I have for now, Madam Chair.

COMMISSIONER ANAYA: Madam Chair.

CHAIR HOLIAN: Yes, Commissioner Anaya.

COMMISSIONER ANAYA: I move for approval with the following conditions: Water use shall be restricted to .50 acre-foot per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. 2) A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval. 3) The Applicant must comply with all conditions of approval within 90 days and prior to plat approval. 4) The Applicant shall comply with all Fire Prevention Division requirements. (1997 Fire Code and 1997 Life Safety Code). The Placement of more than one dwelling unit per lot and further division of the land is prohibited on the property. The Applicant shall divide the property into two equal parcels. Then, as I referred to earlier, a note must be placed on the Plat regarding the lack of all-weather access to the subject lots. This note shall include language as follows: The access to this property does not meet minimum standards set forth by County Ordinance and Code. Site Access, including access by Emergency vehicles, may not be possible at all times (Ordinance 2008-10).

COMMISSIONER CHAVEZ: Madam Chair, I'd like to second that motion and ask the applicant if they're in agreement with all these conditions of approval.

MS. WALSH: Yes, I'm in agreement.

COMMISSIONER CHAVEZ: Thank you. Thank you, Madam Chair.

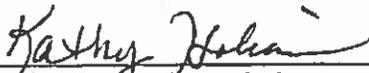
CHAIR HOLIAN: There's a motion and a second. Any further discussion?

The motion passed by majority 3-2 voice vote with Commissioners Anaya, Chavez and Mayfield voting in favor and Commissioners Holian and Stefanics voting against.

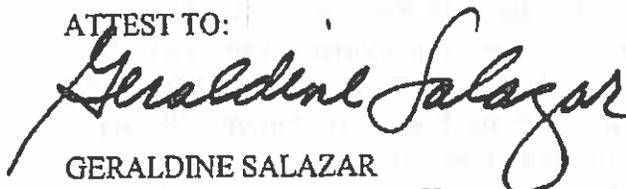
XIX. ADJOURNMENT

Having completed the agenda and with no further business to come before this body, Chair Holian declared this meeting adjourned at 8:45 p.m.

Approved by:


Board of County Commissioners
Kathy Holian, Chair

ATTEST TO:



GERALDINE SALAZAR
SANTA FE COUNTY CLERK

11/12/2013



Respectfully submitted:


Karen Farrell, Wordswork
453 Cerrillos Road
Santa Fe, NM 87501

SFC CLERK RECORDED 11/14/2013

V. APPROVAL OF MINUTES: July 18, 2013

The Chair referred to a few spelling errors and Member Martin noted an omission. [The corrected minutes were filed.]

Member Martin moved to approve the July minutes as corrected. Member DeAnda seconded and the motion to approve the corrected minutes passed by unanimous [6-0] voice vote. [Member Anaya was not present for this action and arrived directly thereafter.]

VI. CONSENT AGENDA: Final Order

- A. CDRC Case #MIS 13-5180 John DePrimo Radio Antenna. John DePrimo, Applicant, Requested CDRC Approval to Allow a Radio Antenna 45' in height on 5 acres. The property is located at 136 Sunlit Drive West, within Section 9, Township 16 North, Range 10 East (Commission District 4). Approved 7-0.

Member DeAnda moved to approve the consent agenda as published. Her motion was seconded by Member Martin and passed by unanimous [7-0] voice vote.

VII. NEW BUSINESS

- A. CDRC CASE # V-13-5190 Minnie Walsh Variance. Minnie Walsh, Applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) and a variance of Article III, Section 2.4.1a.2.b (Access) of The Land Development Code and a variance of Article IV, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow a Family Transfer Land Division of 1.195 acres into two lots. The Property is located at 58 Arroyo Jaconita, within the Traditional Community of Jacona, within Section 11, Township 19 North, Range 8 East, (Commission District 1)

John Lovato, case manager, presented the staff report as follows:

"The Applicant requests a variance to allow a Family Transfer Land Division of 1.195 acres into two lots. The property is accessed by private roads Arroyo Jaconita Road and Loma Encantada. Arroyo Jaconita is a dirt/sand driving surface and is located in and crosses a FEMA designated Special Flood Hazard Area. The portion of Arroyo Jaconita Road that services the property is approximately 750 feet in length and 15 feet in width. Loma Encantada is a dirt driving surface that ends and enters the Jacona Land Grant. A portion of Loma Encantada crosses a FEMA designated Special Flood Hazard Area and is approximately 1/4 mile in length and 15 feet in width. Both Arroyo Jaconita, and Loma Encantada do not have all-weather driving surfaces and may be frequently impassible during and after inclement weather, and thereby are not all-weather accessible. Therefore, the Applicant is requesting a variance.



“Currently, there is a manufactured home, a single-wide mobile home, and two accessory structures on the property. The property is served by two onsite wells, a conventional septic system, and a split flow septic system. Article III, Section 10 of the Land Code states that the minimum lot size in this area is 0.75 acres. In order to divide the subject property into two lots, the property would have to be at least 1.50 acres. The Applicant is requesting a variance to this requirement.

In 2006, the BCC granted a two-year temporary approval to allow the placement of a second dwelling unit on the property. The Applicant never followed up with conditions of approval. The Applicant was to apply for temporary approval every two years to be approved by the CDRC and report water meter readings to the Land Use Administrator by January 31st of each year.

“The Applicant states the reason for this is due to the loss of her husband, and it has taken a few years for the family to focus and take the necessary steps toward making a home for her daughter’s family permanent. The Applicant would like to provide her daughter and her family with an affordable place to live and provide clear title for the land so that they may build a permanent residence. Furthermore, she would like to maintain family ties to the land where her daughter grew up.”

Mr. Lovato stated that Growth Management staff have reviewed this Application for compliance with pertinent Code requirements and finds the project is not in compliance with County criteria for this type of request. Staff recommends denial of a variance of Article III, Section 10, Lot Size Requirements, a variance of Article III, Section 2.4.1a.2.b, Access, and a variance of Article IV, Section 4.2 of Ordinance No. 2008-10, Flood Damage and Stormwater Management, that would allow a Family Transfer Land Division.

If, however, the CDRC is to recommend approval of the Applicant’s request, staff recommends imposition of the following conditions:

1. Water use shall be restricted to .50 acre-foot per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk’s Office (Article III, § 10.2.2 and Ordinance 2002-13).
2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval (Article III, § 2.4.2).
3. The Applicant must comply with all conditions of approval within 90 days and prior to plat approval.
4. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review (1997 Fire Code and 1997 Life Safety Code).
5. The Placement of more than one dwelling unit per lot and further division of the land is prohibited on the property (Article III, § 10).
6. The Applicant shall divide the property into two equal parcels.

7. A note must be placed on the Plat regarding the lack of all-weather access to the subject lots. This note shall include language as follows: The access to this property does not meet minimum standards set forth by County Ordinance and Code. Site Access, including access by Emergency vehicles, may not be possible at all times (Ordinance 2008-10).

Mr. Lovato confirmed that the applicant obtained permission for the temporary placement of a second dwelling. He identified the temporary dwelling as a single-wide that had previously been the permanent dwelling on the property.

Member Katz asked about the allegation that the second well on the property was not noted within the application. Mr. Lovato said NMED inspected the property and for some reason the second well was not part of his report – either NMED failed to note it or the well was drilled after the inspection. He suggested the applicant may be able to answer that question.

Speaking as the County's Floodplain Administrator, Ms. Lucero stated that she recommended denial of the request since the site is absent all-weather access and crossing to the property and it may be frequently impassable. She said both accesses to the property cross 100-year floodplains.

Member Drobnis asked about the applicant's failure to renew the two-year permit. Ms. Lucero said the County approved several two-year temporary applications at the time this applicant received that approval. She said the code does not and did not address temporary approvals and it is no longer a procedure being followed. Granting renewal of the temporary dwellings varied on a case-by-case basis.

Member Drobnis expressed his concern that a two-year temporary permit issued in 2006 has continued for seven years without renewal and only now comes to the County's attention when a new application is submitted.

Responding to Member Anaya's question regarding access or ingress to property during bad/rainy weather, Fire Marshal Patty said there was a recent call where EMS could not cross an arroyo. He mentioned that one of the accesses across the Jacona Land Grant could be widened to improve it. He said fire and rescue will make every attempt to reach the property.

Mr. Lovato identified the advanced septic system as superior to the conventional system. A conventional system serves the main residence and the advanced system serves the second dwelling.

The applicant, Minnie Walsh, and her son in-law, Mike Adams were duly sworn.

Mike Adams said the advanced septic system is actually a split-flow system whereby no nitrates penetrate the groundwater. He said there were nine families that access the crossing. The rear access referred to as the big dip is only used when the river is flooding which occurs for an hour or two at a time.

Mr. Adams said he understood that there were compliance issues; however, their focus at this point is to receive a family transfer. The 2006 temporary permit addressed a financial family hardship and since moving on the property he and his wife have been able to prepare the area by installing the advanced septic system, utilities and drilling a well.

Mr. Adams recited the family transfer section of the Code and said the advanced septic system and their willingness to hook up to the regional water system when available makes their request qualify within the Code. The purpose of the Code, stated Mr. Adams, is the success of the community and granting this application will do that.

Mr. Adams said the single-wide would be replaced once the new home is built.

Ms. Lucero clarified the request was for variances to the lot size and all weather access to allow for the family transfer. If this application is not approved, the applicant will need to comply with the original conditions when the temporary permit was received.

Appreciating the difficulties of losing a family member, Member Katz pointed out to the applicant that he is here before the County asking for variances when in the past he did not carry through with the conditions of the temporary permit. Ms. Walsh responded that her husband had been sick for years before he died. She said it has only been very recently that she is able to straighten out her life and needs her children on the property because her health is failing. Mr. Adams assumed responsibility for not renewing the two-year temporary permit stating his father-in-law's death was very difficult for the family.

Member Katz said he was not prepared to ignore the County's rules regarding access.

Mr. Adams said the low-water crossing at CR 84C affects at least 50 families. He said the dip in the crossing can be an issue even during dry weather. "It's a fairness issue," stated Mr. Adams. He couldn't see how granting the variance could be injurious to his neighbors and he was willing to accept the risks that come with living in the county.

Mr. Adams said if approved they would meet all seven conditions.

Joseph Karnes, legal counsel for Chris and Misha Peterson, adjacent residents of the subject property, said he supported the staff recommendation to deny the variances. The application does not meet any of the criteria for granting the variances. The applicant bases the request on financial hardship and the desire to live on the property – this does not meet the Code requirement of an extraordinary hardship relating to the physical condition of the property. The grounds for granting the variance do not exist in this request.

Mr. Karnes noted that the Floodplain Administrator has recommended denial based on access and that decision for denial can only be overturned if there is a error. There is no error here. Fire Department representative Victoria DeVargas stated in her

report that the two arroyos actively flood at various times during the year and slope issues exist in this application.

Member Roybal pointed out that Mr. Karnes' clients use the low water crossing and it should not be grounds for denial. He understood how the applicant missed renewal of the temporary permit as well as the meter readings.

Member Martin asked whether Mr. Karnes received a response from the State Engineer regarding the well that was not disclosed to the OSE. Mr. Karnes said he has spoken with OSE counsel and a response is in the works.

Duly sworn, Mary and Bill Ogle, neighbors to the applicant, said they requested a building permit through the County and it was denied based on access. She said the County laws are important for the protection of the integrity of the environmental.

The public hearing was closed and Mr. Adams returned to the podium where he said the fairness of the law was important to him. He was surprised to hear of the Ogle's experience and said the rules need to be revisited.

Member Katz said the request did not address the variance criteria and in terms of equity since the Ogles did not receive a building permit for reasons of access and in terms of the betterment of the community, the Ogles do not want the variances granted.

Regarding CDRC Case V 13-5190, Member Katz moved to deny the variances on the basis of the facts. Member Drobnis seconded the motion. The motion passed by majority [5-2] voice vote with members Anaya and Roybal voting against.

B. CDRC CASE # Z/PDP/FDP 13-5070 95-B Ranch Road, Master Plan, Preliminary & Final Development Plan. Paul Reynolds & Tamara Andrews, Applicants, Jenkins/Gavin, Agent, request Master Plan Zoning, Preliminary and Final Development Plan approval to allow a horse boarding facility on 12.5 Acres ±. The property is located at 95-B Ranch Road, within Section 21, Township 15 North, Range 10 East, (Commission District 4). [Exhibits 1-3: Support letters; Exhibit 4: Graeser Law Firm letter dated April 26, 2013 – representing concerned neighbors – included were six letters dated June 11, 2013 addressed to different County divisions; Exhibit 5: Photo from opponents' property; Exhibit 6: August 10, 2013 letter to Commissioners from Bill Graveen opposing the request]

Member Katz recused himself from this case.

Mr. Larrañaga presented the staff report as follows:

“The Applicants request Master Plan Zoning approval to allow a horse boarding facility. The proposed facility will be completed in two phases. The request also

hearing is closed. What are the wishes of the Commission?

COMMISSIONER SULLIVAN: Move for approval.

CHAIRMAN MONTOYA: Motion by Commissioner Sullivan for approval.

COMMISSIONER CAMPOS: Second.

CHAIRMAN MONTOYA: Second, Commissioner Campos. Discussion?

The motion to approve CDRC Case #V 06-5330 passed by unanimous [5-0] voice vote.

- XII. A. 11. CDRC Case # A/V 06-5250 John and Minnie Walsh Appeal. John and Minnie Walsh Applicants, Request an Appeal of the County Development Review Committee's Decision to Uphold the Land Use Administrator's Decision to Deny the Temporary Placement of a Second Home on 1.19 acres. The Property is Located at 58 Arroyo Jacona, within Section 11, Township 19 North, Range 8 East, (Commission District 1) [Exhibit 6: Pojoaque Map; Exhibit 7; Exhibit 7: PPEC Letter]

MS. COBAU: Mr. Chairman, members of the Commission, on June 15, 2006, the CDRC met and acted on this case. The decision of the CDRC was to uphold the Land Use Administrator's decision to deny temporary placement of a second home on 1.19 acres. The property is located within the Basin Hydrological Zone where the minimum lot size is 10 acres per dwelling unit. Lot size may be reduced to 2.5 acres per dwelling unit if the applicant signs and records water restrictions.

There is currently one home, a septic system and one well on the property. The applicants have applied and been approved for an advanced septic system to serve the second dwelling. The applicants state that they have purchased a new home to replace the older dwelling on the property. The existing dwelling would be moved to another point on the property to be lived in by their daughter and her family. The applicant states that their intentions are to alleviate a financial hardship their daughter and her family would incur by the high prices they are forced to pay in rent.

Recommendation: On June 15, 2006 the CDRC met and acted on this case. The decision of the CDRC was to uphold the Land Use Administrator's decision to deny temporary placement of a second home on 1.19 acres. Staff recommends denial of the requested appeal based on Article III, Section 10, Lot size requirements of the Land Development Code which states that the minimum lot size in this area is 10 acres per dwelling unit. Lot sizes may be reduced to 2.5 acres per dwelling unit with water restrictions. If the decision of the BCC is to approve the request, staff recommends that the following conditions be imposed. Mr. Chairman, may I enter the conditions into the record?



[The conditions are as follows:]

1. A temporary permit will be issued for a period of two years, to be approved for consecutive two-year periods by the CDRC. The applicant at that time must prove the hardship still exists.
2. Water use shall be restricted to 0.25 acre-foot per dwelling. A water meter shall be installed for both homes. Annual water meter readings shall be submitted to the Land Use Administrator by January 31st of each year. Water restrictions shall be recorded in the County Clerk's office.
3. The applicant shall submit a liquid waste permit approved by the New Mexico State Environment Department for the second dwelling.
4. The applicant must follow all other building permit regulations.
5. The existing driveway shall serve both residences.
6. Failure to comply with any of these conditions shall result in administrative revocation of the permit.

CHAIRMAN MONTOYA: Okay. Questions for staff? What significance does the Mike Adams appeal have to this case?

MS. COBAU: Mr. Chairman, Mike Adams is the son-in-law of John and Minnie Walsh and he is acting as their agent. He lives in the home.

CHAIRMAN MONTOYA: Okay. Any other questions for staff?

COMMISSIONER VIGIL: Mr. Chairman.

CHAIRMAN MONTOYA: Commissioner Vigil.

COMMISSIONER VIGIL: Does this qualify in any way for a family transfer? That's not what's being proposed, right?

MS. COBAU: Mr. Chairman, Commissioner Vigil, that's not what's being proposed here, so as a consequence it doesn't qualify as a family transfer.

COMMISSIONER VIGIL: And there's a temporary permit requested here?

MS. COBAU: That's correct. However, I believe the applicant will clarify that when he speaks.

COMMISSIONER VIGIL: Okay. Thanks.

CHAIRMAN MONTOYA: Okay, other questions for staff? Hearing none, if the applicant would please come forward.

[Duly sworn, Mike Adams testified as follows:]

MIKE ADAMS: Mike Adams. Mr. Chairman, Commissioners, there are some things that I'd like to clarify and add to the staff report that I don't think are very clear. One of the things is the advanced septic system is already approved for us to use one of those and in talking to the man I dealt with they said they've been very successful in lot sizes as small as a quarter acre. So I believe the issue of septic and environmental contamination is not a relevant one. We are asking actually for a permanent variance, permanent permission to build the second dwelling there.

I have an exhibit. The property is partially in the traditionally community and it's

just kind of like a line arbitrarily drawn, a few feet of it are in the traditional community and the rest of it isn't and the Land Use made the decision that that means the whole thing is not in there. But I do have an exhibit, a map of the planned development where the property will be part of the traditional community. You can also see exactly how it kind of got stuck out, so if I could approach you guys.

As you can see, the property is right at the very corner. I think the line was just kind of arbitrarily drawn right through the front of it. So that's one of the things to see, that's going to be part of the traditional community. It already borders, in fact it's partly in the traditional community. That's one of our requests is that you would just grant the rest of the property to be part of the traditional community.

That brings me to my third point – and I have another exhibit for you. There's not going to be any development in this area. We border the Pojoaque Pueblo and I have a letter from the Pueblo to the effect that they're not going to develop it. They call it their bison free range. So they're keeping that area reserved strictly for the buffalo to run. So if I could approach and give you this exhibit.

That brings me to my fourth point. It would be a tremendous financial hardship on us for you to rule against us because I'm a pastor and I'm on a fixed income. My wife and I are very committed to serving in northern New Mexico but because of the fact I'm on a fixed income buying a house would be very, very difficult. So this is an opportunity for us to have a house. We've got access to land and we can meet these requirements. It would be a great, great benefit to us.

CHAIRMAN MONTOYA: Okay. Any questions for the applicant?

Commissioner Vigil.

COMMISSIONER VIGIL: You're requesting a temporary permit. Could you explain that?

MR. ADAMS: That was the Land Use decision. I was always asking for a permanent variance. It would be our intention to live out there from now on if you agree.

COMMISSIONER VIGIL: And are you looking to place a mobile home?

MR. ADAMS: Yes, a three-bedroom dwelling.

COMMISSIONER VIGIL: What currently exists there? What's the dwelling that currently exists there? There is a double-wide three-bedroom and then the other dwelling that we would like to occupy is a single-wide three-bedroom that my in-laws had on the property and we would permission of the Land Use Department move it to another point on the property, depending on the outcome of this. So there's one dwelling that's occupied and hooked up to the well and septic system and there's one that's just being stored right now.

COMMISSIONER VIGIL: And what your hope is that this lot split occurs so that that second unoccupied mobile home becomes an occupied home.

MR. ADAMS: The primary dwelling for us.

COMMISSIONER VIGIL: So there will be two mobile homes on this.

MR. ADAMS: Right.



COMMISSIONER VIGIL: Thank you. I guess I'm done, Mr. Chairman. Do you conduct any services on site or are your services, your pastoral services conducted elsewhere?

MR. ADAMS: If we use it as a primary dwelling we would very much use it because we do what you call small-group Bible studies. Right now, we're not living there so obviously we're not doing anything there. But everywhere where our primary dwelling place is is always available and plus, being a pastor sometime we take people in and different things like that.

MS. COBAU: Mr. Chairman, Commissioner Vigil, I would like to clarify that this is not a land division. It's an application to place two homes on 1.19 acres. There's no land division involved.

CHAIRMAN MONTTOYA: Any other questions for the applicant? If not, this is a public hearing. Is there anyone who would like to speak on behalf of or in opposition to this case, would you please come forward and be sworn in.

[Duly sworn, Michelle Adams testified as follows:]

MICHELLE ADAMS: Hello, my father and my mother is John and Minnie Walsh and I am there daughter and my husband and I are pretty much committing ourselves to being a pastor and making ourselves available to the community and our whole lifestyle is changing. And my father is also in poor health and it just makes sense in my heart that I could provide that to help my mom and my family that I'd be close by and help whatever. My dad's health is deteriorating so it's not just for low-income situation but there's a responsibility of being nearby. Thank you.

CHAIRMAN MONTTOYA: Thank you, Michelle. Anyone else like to come forward? Seeing none, this public hearing is closed. What are the wishes of the Commission? I have a question. How many individuals will be living in your residence?

MR. ADAMS: Four.

CHAIRMAN MONTTOYA: Four. So it's you two and two kids.

MR. ADAMS: Yes, we have two kids.

CHAIRMAN MONTTOYA: And then in the other residence it's -

MR. ADAMS: Two, my in-laws.

CHAIRMAN MONTTOYA: Okay. And as I understand, you'll be on that one septic system.

MR. ADAMS: No. There's an existing septic system.

CHAIRMAN MONTTOYA: So that will still be used.

MR. ADAMS: Yes, that will be used for the other house and what we're going to do is use, if you approve it, the advanced treatment system, which as I've said the state said is effective. They've used them on lot sizes as small as a quarter acre.

CHAIRMAN MONTTOYA: Okay. Any questions? Commissioner Vigil.

COMMISSIONER VIGIL: Staff is recommending that a temporary permit be issued to be reviewed every two years. Would you be amenable to that?

MR. ADAMS: Yes.

CHAIRMAN MONTOYA: What are the wishes of the Commission?

COMMISSIONER ANAYA: Mr. Chairman, I move that we approve this on a two-year temporary basis where staff reviews it and is there conditions?

CHAIRMAN MONTOYA: Yes, and that's actually one of them.

COMMISSIONER ANAYA: With conditions.

COMMISSIONER VIGIL: And I believe that the recommendation from staff was that it be reviewed by the CDRC to identify whether or not the hardship still exists. Is that what the intent on your motion was, Commissioner Anaya? I will second that.

CHAIRMAN MONTOYA: Okay, a motion and a second. Further discussion?

The motion to approve CDRC Case #A/V 06-5250 with conditions passed by unanimous [4-0] voice vote. [Commissioner Campos was not present for this action.]

- XII. A. 12. CDRC Case # V 06-5460 Santa Fe County Public Works Facility. Santa Fe County Project and Facility Management Department, Paul Olafson Agent, Request a Variance of Article III, Section 4.4.4c (Maximum Height) of the Land Department Code to allow a 27' Vehicle Washing Station, a 27'-4" Vehicle Service Garage and a 100' Wind Turbine, which would Exceed the Allowable Height of 24' to Allow Construction of a New Public Works Facility on 45.76 acres. The Property is Located on the NM State Road 599 Frontage Road, within Section 2, Township 16 North Range 8 East (Commission District 2) [Exhibit 8: CDRC 8/17/06 Minutes; Exhibit 9: Opposition Letter]

CHAIRMAN MONTOYA: Maybe we should table this one.

MS. COBAU: Mr. Chairman, members of the Commission, Santa Fe County Projects and Facilities Department requests a variance of Article III, Section 4.4.4.c of the Land Development Code in order to allow a 27-foot vehicle washing station, a 27-foot 4-inch vehicle service garage and a 100-foot wind turbine for the new Public Works facility.

The Public Works Facility will be located on a 45.76-acre site surrounded primarily by state-owned properties and privately owned and operated commercial and light and heavy industrial uses, just north of Airport Road off the NM 599 frontage road. And there's a map in Exhibit C.

Article III, Section 4.4.4c of the Code states that "Structures shall be limited to a maximum height of 36 feet from the highest point of the surface of the ground at the perimeter of the structure in major or community center districts."

Letter of Intent requesting a family property transfer and division

I, Minnie Walsh would like to subdivide and transfer part of my 1.195 acres of land. We are requesting a subdivision and transfer of approximately 0.30 acres located at 58 Arroyo Jaconita to my daughter Michelle Walsh Sanchez-Adams and my son-in-law Michael Adams.

I would like to transfer the land for the following reasons;

- 1) Help my daughter and her family establish a permanent dwelling. They need clear title to the land to build a house on the property.
- 2) Help my daughter's family maintain their ties to the community through their church ministry and other connections (work in Pojoaque, school, etc.)
- 3) Maintain our family ties to the land my daughter grew up on and be physically close to me.

In 2006, we were granted a permit to place a second home for my daughter's family on the site. We had intended to do the transfer in 2008, but my husband John passed away in June of that year. It has taken a few years for our family to focus on taking the steps towards making a home for my daughter's family permanent.

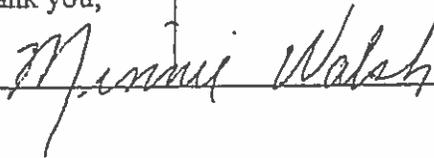
My daughter and her family have complied with the state requirements for their advanced septic system and well. They also have approved electrical and propane connections.

The property division will allow them to place a home on a permanent foundation.

Our family appreciates you time and consideration in this matter.

Thank you,

Signed, Minnie Walsh





SOMMER KARNES & ASSOCIATES LLP

Mailing Address
Post Office Box 2476
Santa Fe, New Mexico 87504-2476

Street Address
200 West Marcy Street, Suite 133
Santa Fe, New Mexico 87501

Telephone: (505) 989.3800
Facsimile: (505) 982.1745

Karl H. Sommer, Attorney at Law
khs@sommer-assoc.com
Joseph M. Karnes, Attorney at Law
jmk@sommer-assoc.com

Mychal L. Delgado, Certified Paralegal
mld@sommer-assoc.com

James R. Hawley, Attorney at Law
Of Counsel
Licensed in New Mexico and California
jrh@sommer-assoc.com

November 12, 2014

Board of County Commissioners
c/o John Lovato, Case Planner
Santa Fe County
102 Grant Avenue
Santa Fe, NM 87501

Re: Minnie Walsh Variance Request – App V-13-1590
58 Arroyo Jaconita (the “Subject Property”)

Dear Commissioners:

On behalf of Kris and Marsha Peterson, I am writing to address again a substantive public safety issue that should be resolved before the Walsh application is considered by the Commission.

In reviewing the original variance application, County Floodplain Administrator Vicki Lucero stated that the applicant has not provided a Stormwater Analysis, which is required by the County’s Flood Damage Prevention and Stormwater Management Ordinance (the “Ordinance”). As a result, there was no basis to evaluate the safety of access to the Subject Property in times of flood for ordinary and emergency vehicles. (August 8, 2013 memo to John Lovato, copy attached)

Ms. Lucero stated that the lack of all-weather access is a “**dangerous and sometimes deadly situation**” and “at a minimum, the applicant should be required to provide an analysis of the depth and velocity of the flooding expected at this crossing using the methodology and techniques of the Ordinance, and place a culvert or other conveyance as needed based on the report to provide dry access for emergency vehicles.”

To date, the applicant has not complied with the Floodplain Administrator’s requirement. Despite multiple requests, including my letter dated August 27, 2014 (copy attached), County staff has not required the applicant to prepare the analysis and has not provided any response or explanation for why the Floodplain Administrator’s report regarding a circumstance that would subject emergency personnel and private individuals to an increased risk of harm has not been imposed on the applicant.



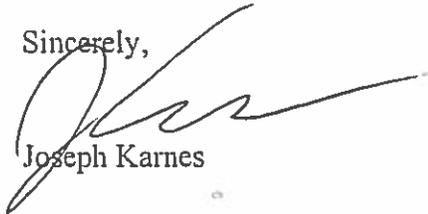
SOMMER KARNES & ASSOCIATES LLP

While some homes in the area are not served by all-weather access, that circumstance in no way justifies placing more people at risk or ignoring the Ordinance requirements explained by the Floodplain Administrator.

As Ms. Lucero stated in her report "notably, death during flash flood events are surpassed only by hurricane fatalities, and more deaths occur nationwide from flood related deaths (sic) than any other natural disaster." The applicant is requesting you to take an action that would put not only themselves, but public safety personnel at greater risk and has ignored the Floodplain Administrator's determination that a flood analysis is required. Given the serious public safety issues at stake, dismissal of the issue by Staff and the Commission would be both illegal and bad public policy.

We request that Staff either require that the applicant to prepare a flood analysis prior to consideration of the application by the Commission or address in its staff report the basis for not following the Floodplain Administrator's direction and the Ordinance requirements.

Sincerely,



Joseph Karnes

SOMMER KARNES & ASSOCIATES LLP

Mailing Address
Post Office Box 2476
Santa Fe, New Mexico 87504-2476

Street Address
200 West Marcy Street, Suite 133
Santa Fe, New Mexico 87501

Telephone: (505) 989.3800
Facsimile: (505) 982.1745

Karl H. Sommer, Attorney at Law
khs@sommer-assoc.com
Joseph M. Karnes, Attorney at Law
jmk@sommer-assoc.com

Mychal L. Delgado, Certified Paralegal
mld@sommer-assoc.com

James R. Hawley, Attorney at Law
Of Counsel
Licensed in New Mexico and California
jrh@sommer-assoc.com

August 27, 2014

Penny Ellis-Green, Land Use Director
Santa Fe County
102 Grant Avenue
Santa Fe, NM 87501

Re: Minnie Walsh Variance Request – App V-13-1590
58 Arroyo Jaconita (the “Subject Property”)

Dear Penny:

I am writing you on behalf of my clients Kris and Misha Peterson, who own and reside on property adjacent to the Subject Property. Per the attached Order, District Court Judge Raymond Ortiz directed that the BCC decision on the application be remanded for re-presentation of evidence before any further consideration takes place. Because the application is facially defective and cannot be approved as a matter of law, my clients request that the Growth Management Department reject the application and require that the property owners remove the second dwelling unit from the property before a date certain within the next three months.

If the Department is not prepared to take this action, then as a prerequisite to further consideration of the application, we request that the Department require the applicant to prepare and submit a Stormwater Analysis, as required by the County Code and the County Hydrologist.

The Petersons, who live next door to the Subject Property, have suffered substantial negative effects to their property value and quality of life while the second unit has been illegally maintained on the Subject Property for the past 6+ years. Given the facts, law and passage of time, the County should require that the second unit be removed from the Subject Property.

1. **Background.** The applicant owns a 1.19 acre parcel in an area where the minimum lot size is 0.75 acres per dwelling unit. In 2006, the BCC approved a second dwelling on the Subject Property on a 2-year temporary basis, subject to conditions, despite the fact that the County Code contains no provision authorizing approval of such a temporary use.

The temporary permit was issued for a period of two years and required the applicant to submit for re-approval every two years and prove that the hardship upon which the temporary placement of the

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second home was originally granted. The applicant failed to make the required submittal in 2008 or thereafter. Instead, the applicant proceeded to treat the “temporary” second unit as permanent and proceeded to apply for and obtain a permit for the second well from the State Engineers Office and a second septic permit from the State Environment Department – without telling either agency that they were issuing permits for a temporary dwelling unit that was being illegally maintained.

In 2013, the applicant audaciously attempted to bootstrap the water and septic improvements into a rationale for turning the now illegal temporary dwelling into a permanent dwelling and to subdivide the substandard lot. The applicant applied for variances to the lot size requirement, the all-weather access requirement and the flood damage and stormwater prevention requirements to allow for a lot split.

Both staff and the CDRC concluded that the application could not be approved because the application did not meet the standards for any of the three requested variances. Nonetheless, the BCC approved the application on a 3-2 vote. Following the Peterson’s administrative appeal, in August of 2014, Judge Ortiz ordered that the BCC vacate its decision to approve the application and accept further evidence before taking any further action.

Based on the following, the BCC cannot legally approved the application and the County should require the applicant to remove the “temporary” second dwelling from the Subject Property.

2. **There are No Circumstances Under Which the Lot Size Variance Can be Approved**

As stated in the staff report for the original variance application: “**The variance criterion does not consider financial or medical reasons extraordinary hardships.**” (AR 78, emphasis in original) Rather the threshold test for a lot size variance applicant is whether “it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the code... .” (Art. II, §3.1)

In its original variance application, the applicant relied *exclusively* on claimed financial hardship as the basis for the request. (AR 81) This is insufficient to satisfy the threshold prong of the *Paule* test, which addresses ONLY the physical conditions of the property. It is not surprising that the applicant did not identify any unusual topography or other non-self-inflicted condition giving rise to an extraordinary hardship. *Paule v. Santa Fe Cnty. Board of Cnty. Comm’rs*, 138 N.M. 82, 92 (NM Sup.Ct. 2005)

The simple reality is that the property is too small and any resulting “hardship” is personal to the applicant. The applicant already has one legal dwelling unit on the property and no legitimate basis exists to find a hardship that satisfies the threshold criteria.

Consistent with the BCC’s recent denial of the recent lot size variance request submitted by Lorenzo Atencio (Case # V1405150), there is no legally recognizable basis on which a lot size variance can be granted for a parcel that is less than twice the minimum lot size. The County should not waste taxpayer resources entertaining such un-approvable applications.

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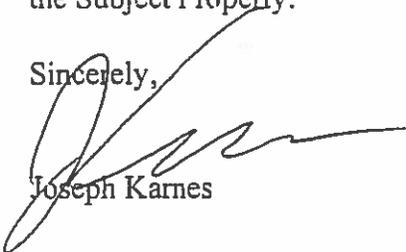
Owners of property less than twice the minimum lot size have paths forward if they want to achieve a lot split. They can either enlarge the size of their parcel via a lot line adjustment with a willing neighbor or they can apply to the County for a rezoning. Otherwise, they must abide by the rules. Any decision that allowing a lot size variance where the parcel is less than twice the minimum lot size runs the risk of not only being judicially rejected, but also encouraging the many owners of property in Santa Fe County in the same circumstance to come forward with their own lot size variance applications.

3. **If the Application is to be Considered, the Applicant Must Submit a Stormwater Management Analysis.** In reviewing the initial application, County Floodplain Administrator Vicki Lucero noted that the applicant has not provided a Stormwater Analysis, which is required by the County's Flood Damage Prevention and Stormwater Management Ordinance (2008-10, the "Ordinance"), sections 5.2 and 5.11. (AR 108-109) As a result, there was no basis to evaluate the safety of access to the Subject Property in times of flood for ordinary and emergency vehicles. Ms. Lucero observed that the lack of all-weather access is a "dangerous and sometimes deadly situation" and stated "at a minimum, the applicant should be required to provide an analysis of the depth and velocity of the flooding expected at this crossing using the methodology and techniques of the Ordinance, and place a culvert or other conveyance as needed based on the report to provide dry access for emergency vehicles." (AR 109)

The County has no ability to allow a variance application to the all-weather access requirement to be considered absent provision of a Stormwater Management Analysis. "A Stormwater Management Analysis will be required for all land disturbance activity, regardless of the nature of the activity." (Ordinance 2008-10 §5.2) Given that the second residence has remained in place for more than 6 years following expiration of the "temporary" approval, it cannot be treated as a legal use. Both the second residence and access to the Subject Property must be evaluated in the Stormwater Management Analysis before any further consideration by the CDRC or BCC.

Based on the foregoing, the proper course of action is to reject the application and carry out an enforcement action against the applicant requiring that the second dwelling unit be removed from the Subject Property.

Sincerely,



Joseph Karnes

Cc: Greg Shaffer, County Counsel

Kristoffer and Misha Peterson
19 Loma Encantada
Santa Fe, NM 87506

July 2, 2013

Santa Fe Land Use Commissioners

RE: CDRC Case # V 13-5190
58 Arroyo Jaconita Family Transfer

We have examined the documentation for the above Case. We wish to object strongly to the proposed parcel split at 58 Arroyo Jaconita. It was our understanding that the current mobile home was a temporary living situation. We have to wonder, how long is temporary? (CDRC Case # APP 06-5250) Upon placement of the mobile home and for many years after there has been no attempt to maintain the structure or surrounding property. Therefore, resulting in an eye sore for the neighborhood and ultimately affecting the quality of the surrounding properties. Our property and home are located directly adjacent to the above parcel and we have to question both erosion hazards and septic issues that might affect surrounding topography and wells. When we purchased our property we made an investment in rural country living. By definition rural living constitutes low population. In closing we believe that the parcel split and current state of the property are a detriment to the area; we are against the parcel split at 58 Arroyo Jaconita.

Sincerely,



Kristoffer and Misha Peterson

RE: CDRC Case # V 13- 5190

58 Arroyo Jaconita Family Transfer

We are against the split of that parcel for the following reasons:

1. It was understood that current use was to be "TEMPORARY" and therefore we had no objection to the second mobile home being placed, given how nice Minnie's home has been kept. However, no attempt has been made to improve the appearance of the second mobile home or its surrounding area, and it has become an eye sore and a detriment to the neighboring properties. The second mobile home has been there roughly seven years, how long is temporary? (See CDRC Case # APP 06-5250 enclosed)
2. We also question the legitimacy of the current septic system and worry about the impact of the increased sewage on neighboring wells. It may not even be possible to have a well and septic on such a small lot given the fact that an arroyo takes up a considerable portion of the lot.
3. There is no permanent all weather access to this site or others in the area or any scheduled or regular maintenance to these easement accesses. Increasing density would be a burden to First Responders. Why create a new parcel that does not adhere to current County Policies regarding access?
4. Allowing this split would be a precedent for others to seek property splits into substandard size parcels, adversely affecting the rural setting of the area, which has been in the Pojoaque Valley's long term plan to preserve.

In conclusion, our current County Land Use Ordinances deal quite clearly with these issues, and we see this case as a poor candidate for a variance. Therefore, we are against the approval of splitting the 1.195 acre parcel into two .597 acre parcels.

We would like to be informed about the outcome of this case. Thank You.

Scott Peterson



Eva Peterson



25 Loma Encantada

Santa Fe, NM 87506

SOMMER KARNES & ASSOCIATES LLP

Mailing Address
Post Office Box 2476
Santa Fe, New Mexico 87504-2476

Street Address
200 West Marcy Street, Suite 133
Santa Fe, New Mexico 87501

Telephone: (505) 989-3800
Facsimile: (505) 982-1745

Karl H. Sommer, Attorney at Law
khs@sommer-assoc.com
Joseph M. Karnes, Attorney at Law
jmk@sommer-assoc.com

Mychal L. Delgado, Certified Paralegal
mld@sommer-assoc.com

James R. Hawley, Attorney at Law
Of Counsel
Licensed in New Mexico and California
jrh@sommer-assoc.com

July 31, 2013

Office of the State Engineer
Co/ Steve Mastevich
PO Box 21502
Santa Fe, NM 87504

Re: Report of Violation

Dear Mr. Mastevich:

I am writing to advise you of a violation of State law involving two Section 72-12 wells being permitted and constructed on one lot and to request that the Office of the State Engineer takes action as necessary to ensure compliance with applicable State law.

Attached as Exhibit A is a copy of the plat for certain property consisting of 1.19 acres owned by Minnie Walsh located in Jaconcito, Santa Fe County, New Mexico (the "Property").

Attached as Exhibit B is a copy of the OSE file for RG-38560, which was applied for by John P. Walsh, approved and drilled on the Property in 1982.

Attached as Exhibit C is a copy of the OSE file for RG 88512, which was applied for by Mike Adams, approved and drilled on the Property in 2006.

It is apparent that Mike Adams (who is not the property owner) failed to disclose to the OSE the existence of a well on the property when he submitted his application for RG 88512.

The second well is particularly relevant given the pending application before Santa Fe County for a Family Transfer which, if approved, would divide Property into two lots, with a well and a dwelling unit on each lot. (Exhibit D) The County application identifies only RG 88512 and fails to identify the well serving the existing dwelling unit in the southerly portion of the Property.

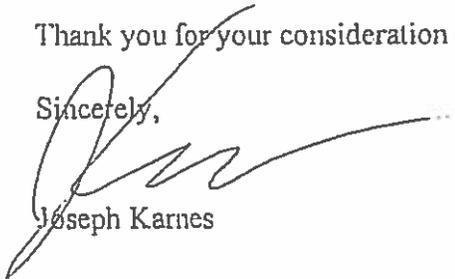
The Santa Fe County Development Review Committee is scheduled to consider the Walsh application on August 15, 2013. We would appreciate your response to this letter and an indication of the actions that you will be taking in advance of that meeting.

Sommer, Karnes & Associates, LLP

OSE
July 31, 2013

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joseph Karnes', written over the word 'Sincerely,'.

Joseph Karnes

TYPE OF USE	NUMBER OF PARKING SPACES
Retail Centers	1 per 1 employee plus per 200 sq. ft
Restaurants, Bars	1 per 1 employee plus per 150 sq. ft.
Gas Stations	1 per 1 employee plus 1 per 300 sq. ft of garage space.
Industrial	1 per employce plus 1 per 500 sq. ft.
Small Scale Centers, Home Occupations	1 per 1 employee plus 1 per 400 sq ft of commercial space.
Large Scale Residential, Institutional, Residential Resorts	2 per dwelling unit
Churches, auditoriums, theaters, arenas, spaces used for public assembly	1 for each 4 seats
Uses not listed	As determined by the County

- 9.2 Multiple use projects shall calculate cumulative parking needs for each type of use in the project to be developed.
- 9.3 Minimum size of parking space shall be 300 square feet which includes the parking stalls and aisles
- 9.4 Commercial, industrial, other non-residential and large scale residential uses shall provide for handicap parking.

History: 1980 Comp. 1980-6, Section 9, Parking Requirements was amended by County Ordinance 1990-11 adding requirements for auditorium uses, multiple uses and handicap access.

SECTION 10. SLOT SIZE REQUIREMENTS

10.1 Relationship of Lot Sizes to Water Policies

The General Plan sets forth the policy that future population growth in the County should be supported by adequate long term water availability and concentrate population growth in Urban and Metropolitan Areas and Traditional Communities. Development within these areas will generally be served by one or more regional water systems, or community water systems. Development outside of the Urban, Metropolitan Areas and Traditional Communities using domestic wells (Section 72-12-1 wells) should consider estimated long term water availability and protect water resources for existing County residents having domestic wells. Development may also be permitted if the applicant for a development permit demonstrates that he/she has water rights, excluding rights permitted under 72-12-1 NMSA 1978 or 75-11-1 NMSA 1953, recognized and permitted by the Director of Water Resources Department of Natural Resources Division of the State of New Mexico which are approved for transfer by the Director of Natural Resources Division to the site of the Development, and the permitted water rights are sufficient to support the proposed development.



10.1.1 Water Policies Governing Lot Sizes Where the Development will Utilize Permitted Water Rights

Applicants seeking a development permit may base their application on water rights authorized and permitted by the Director of Water Rights Division of the Natural Resources Department of the State of New Mexico, (with the exception of water rights permitted under Section 75-11-1 NMSA 1953 or 75-12-1 NMSA 1978). The applicant shall provide evidence that he/she owns or has an option to purchase the permitted water rights in an amount adequate to meet the needs of the development as shown by Article VII, Section 6.6.2, Water Budgets and Conservation Covenants. Any development permit approved and issued by the County shall be expressly conditioned upon the applicant obtaining final non appealable order or final non appealable approval from the Director of Water Rights Division of the Natural Resources Department of the State of New Mexico authorizing the change in use and change in point of diversion to meet the needs of the proposed development. The minimum lot size permitted by this Section shall be 2.5 acres, unless the proposed development is within an Urban, or Metropolitan Area or a Traditional Community, in which case further adjustments of the lot size shall be permitted as provided by Sections 10.4, 10.5.2 and 10.5.3.

10.1.2 Water Policies Governing Lot Sizes Where Developments Will Not Utilize Permitted Water Rights

BASIN ZONE: Minimum lot size shall be calculated based upon ground water storage only. Water that is in storage beneath the lot in the Basin Zone may be depleted over a 100-year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 100 year supply of water without consideration of recharge of the ground water.

BASIN FRINGE ZONE: Same as Basin Zone.

HOMESTEAD ZONE: Minimum lot size shall be calculated based either upon ground water storage or recharge of ground water, but not both. Water that is in storage beneath the lot in the Homestead Zone may be depleted over a 100 year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 100 year supply of water. Calculation of recharge in any specific case shall be done in a manner approved by the County Hydrologist. Recharge should be sufficient to supply water over a 100 year lifetime. However, applicants should be aware that studies done in the development of the General Plan indicated that in most areas of the Homestead Zone minimum lot sizes based on storage in this zone would be larger than those based on recharge.

MOUNTAIN ZONE: Same as Homestead Zone.

METROPOLITAN AREAS-BASIN AND BASIN FRINGE: For Basin and Basin Fringe zones within a Metropolitan Area as shown on Code Maps 12, 14 and 15, it is anticipated that regional water systems will eventually be developed. Therefore, water that is in storage beneath a lot within a Metropolitan Area may be depleted over a 40 year lifetime. The lot must be large enough to have ground water in storage beneath the lot for a 40 year supply of water without consideration of recharge of the ground water.

METROPOLITAN AREAS-HOMESTEAD AND MOUNTAIN ZONE: For Homestead and Mountain Zones within a Metropolitan Area, the minimum lot size shall be calculated based either upon ground water storage or recharge of ground water, but not

both. Water that is in storage beneath the lot in the Homestead Zone may be depleted over a 40 year lifetime. The lot must be large enough to have a ground water in storage beneath the lot for a 40 year supply of water. Calculation of recharge in any specific case shall be done in a manner approved by the County Hydrologist. Recharge should be sufficient to supply water over a 40 year lifetime. However, applicants should be aware that studies done in the development of the General Plan indicated that in most areas of the Homestead and Mountain Zones, minimum lot sizes based on storage in these zones would be larger than those based on recharge.

10.2 Calculation of Minimum Lot Size

Calculation of the minimum lot size under Section 10.1.2 shall be determined by the formula:

$$\frac{\text{Acre Feet}}{\text{Use (Year) x acres}}$$

Minimum Lot Size (Acres)=Water Available in acre feet per acre/year

$$\text{MLS} = \frac{U \times \text{acres}}{A}$$

Where:

MLS is the minimum lot size in acres; it is the size of a lot needed to supply anticipated water needs.

U is the anticipated water needs for the lot; it is the use of water which will occur from the intended development of the lot, measured in acre-feet per year. The standard values listed for A were derived using the procedures set forth in the water appendix of the Code. The standard value for U is set forth in Section 10.2.2. A is the amount of water available in the aquifers which are beneath the lot, measured in acre-feet per acre per year using recharge or storage as described in 10.1.2.

10.2.1 Standard Values for A and Adjustments. The standard values for A shall be as follows:

<u>BASIN ZONE:</u>	0.1 acre-feet per acre per year
<u>BASIN FRINGE ZONE:</u>	.02 acre-feet per acre per year
<u>MOUNTAIN ZONE:</u>	.0125 acre-feet per acre per year
<u>HOMESTEAD ZONE:</u>	.00625 acre-feet per acre per year

The minimum lot sizes which result from the use of these standard values are as follows:

<u>BASIN ZONE:</u>	10 acres
<u>BASIN FRINGE ZONE:</u>	50 acres
<u>MOUNTAIN ZONE:</u>	80 acres
<u>HOMESTEAD ZONE:</u>	160 acres

The standard values of A may be adjusted if the applicant submits a hydrology report, either a detailed report (see Section 6.4 of Article VII), or a reconnaissance report (see Section 6.7 of Article VII). Values of A determined in such reports shall be reviewed by the County Hydrologist, who shall recommend to the Code Administrator whether or not

the value is reasonable, and if not, shall recommend a value appropriate for the use in determining minimum lot size.

The actual value of A used shall be based on the information submitted by the applicant, by the County Hydrologist or by others submitting information. If water conservation measures are used, as provided in Section 10.2.4b, and an actual value of A is determined, in most cases minimum lot sizes will be reduced below those listed in Section 10.2.1. However, applicants are advised that because of varying geologic conditions in Santa Fe County there is no assurance that a hydrology report will determine that the water supply in an area is more abundant than indicated by the standard value of A. In cases where the actual study shows a value of A which is less than the standard value (that is, there is less water available than assumed by the standard value), minimum lot size requirements may be increased beyond those indicated in this Section.

10.2.2 Calculation of Use

U shall have a standard value of 1.0 acre feet per year per dwelling unit for residential use. For all other uses U shall be equal to the actual anticipated consumptive use for the development. The standard value for residential use may be adjusted if an applicant proposes to utilize water conservation measures. There shall be no adjustments for conservation in Urban, Traditional Community and Agricultural Valley Areas.

The Code Administrator shall maintain an application form upon which are listed potential water conservation measures. This form shall indicate the effect of each conservation measure on the value of U. As a minimum, the measures shall include: restrictions on use of water for irrigation purposes (including watering of lawns, gardens and shrubbery); restrictions on use of water for swimming pools; restrictions on the number of bathrooms per dwelling unit; restrictions on garbage disposal units, devices which reduce the utilization of water by appliances, kitchen fixtures, and bathroom fixtures; and pressure-reduction devices on in-coming water lines.

Any applicant who uses the application form as a basis for proposing conservation measures shall be allowed to reduce U in accordance with the effectiveness of the measures proposed. The maximum reduction in U which shall be considered achievable using this approach shall be a reduction of U to no less than 0.25 acre feet per year per dwelling unit. An applicant who proposes water conservation measures sufficient to reduce U to less than 0.25 acre feet per year per dwelling unit shall be required to prepare a water conservation report. See Section 6.6 of Article VII.

The actual value of U, and the minimum lot sizes which result, will depend on the conservation measures proposed by the applicant. In general, applicants who substantially restrict the use of irrigation (lawn and garden) water will be assumed to have a U of 0.5 acre feet per year per dwelling unit, while those who further restrict other types of water use will be assumed to require even less water. For reference purposes, the following lot sizes would be allowed if U is equal to 0.5 acre feet per year per dwelling unit.

<u>BASIN ZONE:</u>	5 acres
<u>BASIN FRINGE ZONE:</u>	25 acres
<u>MOUNTAIN ZONE:</u>	40 acres
<u>HOMESTEAD ZONE:</u>	80 acres

For reference purposes, the following lot sizes would be allowed if U is equal to 0.25 acre feet per year per dwelling unit.

<u>BASIN ZONE:</u>	2.5 acres
<u>BASIN FRINGE ZONE:</u>	12.5 acres
<u>MOUNTAIN ZONE:</u>	20 acres
<u>HOMESTEAD ZONE:</u>	40 acres

- 10.2.3 Special Standards for Calculation of Use for Small Scale Commercial Development
Special standards which set forth specific limitations on use for small scale commercial developments are set forth in this subsection. Applicants who propose small scale commercial development are required to prepare a written estimate of water use. The value of U shall be determined by that estimate unless otherwise determined by the Code Administrator. The Code Administrator shall have on file, a list of standard water consumption requirements for commercial activities. The applicant may use these figures in lieu of the written estimate of water use. Applicants may use standardized values for A as set forth in Section 10.2.2. or they may submit a hydrology report which contains an actual estimate of A for the land which is to be developed.

- 10.2.4 Special Standards for Calculation of Water Availability for Metropolitan Areas
Special standards which set forth limitations on water availability for metropolitan areas shown in Code Map 12, 14, and 15 are set forth in this Sub-section.

a. Standard Values of Water Availability

Because the policy for water management in Metropolitan areas allows for depletion of storage over a 40 year period, standard values for A are as follows:

<u>BASIN ZONE:</u>	.25 acre feet per acre per year
<u>BASIN FRINGE ZONE:</u>	.05 acre feet per acre per year
<u>MOUNTAIN ZONE:</u>	.0125 acre feet per acre per year

The minimum lot sizes which result from the use of these standard values are as follows:

<u>METRO BASIN ZONE:</u>	4 acres
<u>METRO BASIN FRINGE ZONE:</u>	20 acres
<u>METRO MOUNTAIN ZONE:</u>	80 acres

b. Adjustments for Water Conservation

For the division of land into four (4) or less lots, the minimum lot size may be adjusted using the procedures set forth in Section 10.2.2. For reference purposes, the minimum lot sizes which result if U = 0.25 acre feet per year per dwelling unit or commercial use are:

<u>BASIN ZONE:</u>	2.5 acres
<u>BASIN FRINGE ZONE:</u>	5 acres
<u>MOUNTAIN ZONE:</u>	20 acres

10.3 Exceptions to Minimum Lot Size Requirements

The minimum lot sizes calculated under Sections 10.1 and 10.2 shall not apply to the areas described in this Section and the minimum lot size contained in this Section shall control.

10.3.1 Metropolitan Area - Community Water Systems

Where a community water system provides water service to a development within the Metropolitan Areas, as shown on Code Maps 12, 14 and 15, the minimum lot sizes shall be:

<u>BASIN ZONE:</u>	1 acre
<u>BASIN FRINGE ZONE:</u>	2.5 acres
<u>MOUNTAIN ZONE:</u>	5 acres

10.3.2 Agricultural Areas

In the Estancia Valley Agricultural Area, minimum lot sizes shall be 50 acres for the Basin Fringe Zone and 10 acres for the Basin Zone. Adjustments for water conservation and water availability will not be allowed. In the Northern Valley Agricultural Area, the minimum lot size for lands with permitted water rights shall be five (5) acres. Adjustments to lot sizes in these areas are conditioned on the finding in each case by the County Development Review Committee that it is in the best interest of the County to convert water rights from agricultural to commercial or residential use.

10.3.3 Traditional Communities

The minimum lot size in traditional communities as shown on Code Maps 40-57, shall be .75 acres, except as follows:

14,000 sq. ft. - Where community water service and community sewer service systems are utilized, or a Local Land Use and Utility Plan is adopted.

10.3.4 Urban Areas

The minimum lot size in Urban Areas shall be 2.5 acres, except as follows:

1 acre - Where community water or community liquid waste disposal systems are utilized.

.50 acre - Where community water and community sewer systems are utilized

10.4 Density Transfer

The minimum lot sizes specified in this Section 10 shall be taken as gross figures for the purposes of determining the total number of dwellings allowed in a particular development. The arrangement of dwellings in clusters or in such locations as to take advantage of topography, soil conditions, avoidance of flood hazards, access and reduced cost of development, shall not violate the lot size requirements of the Code so long as the total number of acres per lot conforms with the requirements of the Code.

SECTION 11 - IMPORTING OF WATER

11.1 Location Requirements

Developments which import water from the surface Rio Grande or other locations outside Santa Fe County to any location in Santa Fe County designated in the Development Code as other than urban or metropolitan locations are permitted to locate anywhere in the County provided they meet all requirements of the Code, except that in lieu of the density requirements as specified in Article III, Section 10, the proposed development shall meet the following criteria.

submittal list and explanation with the development permit application form

2 Reviews

(a) Lot Size Requirement Review

The Code Administrator shall review the application for compliance with the lot size requirements of the Code

(b) Access

(i) All development sites created under this Section shall demonstrate that access for ingress and egress, utility service, and fire protection whether by public access and utility easement or direct access to a public right-of-way can be provided and meet the requirements of this Code

(ii) Installation of culverts, where applicable, shall be required at intersections of driveways with County roads.

(iii) Road Construction and/or Road Cut Permits must be obtained prior to road or driveways construction. The applicant must provide submittals for new construction pursuant to this Section 2.4.1 and meet standards as applicable and as required in Article V, Section 6, Subdivision Design Standards, and Article VII, Section 3, Terrain Management. Notification of all affected property owners and posting of notice will be required for roads and driveways accessing more than one property.

(c) Special District Review

The Code Administrator shall check the location of the proposed dwelling, and if the location of the proposed dwelling is within a Special Review District as described in Article VI, the Code Administrator shall inform the applicant of any additional submittals or reviews required, if any, and make the applicable review.

(d) Environmental Review

The Code Administrator shall inform the applicant of any additional submittals and make the reviews required under Article VII - Environmental Requirements

(e) Siting Review

The Code Administrator shall review the application for compliance with the site planning standards. Additional submittals in connection with the siting may be required, site visits to assure compliance with the standards of Section 2.3 of this Article and approval of the Code Administrator will also be required

(f) Building, Mechanical and Electrical Code Review

The Code Administrator shall cause the submitted plans and specifications to be reviewed for compliance with Article IV - Construction Codes of the Code and for engineering design



8.1.2 The Santa Fe County Master Plan For Roads

- a Pursuant to 3-19-9 N.M.S.A., 1978, the Santa Fe County Master Plan for Roads establishes the general location of existing and proposed highway and arterial roads for the purpose of assuring a coordinated system of roads in Santa Fe County.
- b. The Santa Fe County Master Plan for Roads may be amended by resolution from time to time to accommodate changing or changed conditions.

8.1.3 Legal access shall be provided to each lot and each lot must directly access a road constructed to meet the requirements of Section 8.2 of this Article. Parcels to be accessed via a driveway easement shall have a twenty (20) foot all weather driving surface, grade of not more than 11%, and drainage control as necessary to insure adequate access for emergency vehicles.

8.1.4 Dead end roads may not serve more than thirty (30) dwelling units, except that the Code Administrator with the concurrence of the Fire Marshal may approve the development of more than thirty (30) lots on a dead end road. The Code Administrator may require a second access for any development with fewer than thirty (30) dwelling units where issues of public health, safety and welfare exists.

8.1.5 Coordination of Roads With Surrounding Property

- a. The arrangement of roads in a development shall provide for the continuation or appropriate projection of existing or proposed highway or arterial roads in surrounding areas according to the Santa Fe County Master Plan for Roads, and shall provide reasonable means of ingress and egress to surrounding property.
- b. Where land is subdivided into large tracts or where there is a potential for further subdivision or development of subsequent phases exists, the proposed development shall be designed to provide for a coordinated road system for the entire tract.
- c. Where it is in the public interest to establish a right-of-way or access to property which adjoins a proposed development, the right-of-way shall be extended to the boundary of the property which is the subject of a development application. The right-of-way shall either be dedicated to the County or granted to the Owner's Association, subject to a conditional dedication governed by Article V, Section 8.1.9. Such right-of-way shall be designated on the master or phase development plan and on the plat as a public access.

8.1.6 Access to highways and arterials: buffering requirements

- a. Where a proposed subdivision contains lots abutting or adjacent to an arterial or highway, it shall be planned so as to avoid having lots having frontage on said thoroughfares.
- b. The subdivision shall be laid out to have a minimum number of intersections with arterials or highways, and where appropriate, shall provide at least two separate points of ingress and egress to assure adequate access, and shall be designed for all weather conditions. Driveways from lots shall access local roads and may access collector roads on a limited basis as approved by the County Development Review Committee.
- c. Where the subdivision is traversed by or is adjacent to a state or federal highway, and in addition to these regulations, the subdivision must satisfy the New Mexico State Highway Department Regulations Covering Design and Construction of Driveways on Non-Controlled Access Highways in New Mexico, a copy of which is on file in the office of the Code Administrator for public inspection.
- d. Where a subdivision borders on or contains a railroad right-of-way or a limited access highway right-of-way, a parallel road or frontage road may be required at a distance suitable for the appropriate use of the intervening land. Such distances shall also be

EXHIBIT

9.

V - 21

ARTICLE 4

FLOODPLAIN DEVELOPMENT PERMIT PROCEDURAL
REQUIREMENTS

SECTION 4.1 AREAS REQUIRING A FLOODPLAIN
DEVELOPMENT PERMIT

- A. For development within a designated SFHA, including lands which are traversed by, bisected by, or directly adjacent to the SFHA designated on the effective FIRM as described in Article 2, §2.2C, Article 3, §3.2 and Article 3, §3.10, a Floodplain Development Permit issued by the Floodplain Administrator in conformity with the provisions of the Ordinance shall be secured pursuant to Article 3, §3.3(B) prior to commencement of construction.

SECTION 4.2 NON-ELIGIBLE NEW DEVELOPMENT OR CONSTRUCTION

At no time shall a Floodplain Development Permit be issued for a new dwelling unit site, lot, parcel or tract of land intended for placement of a habitable structure including single family homes, residential subdivisions, modular home sites and modular home subdivisions where the site is:

- i. An alternative buildable area located outside the limits of the SFHA is available;
- ii. Unable to be removed from the SFHA through the formal FEMA map revision process described in Article 4, § 4.4;
- iii. Absent all weather access.

SECTION 4.3 PROCEDURES FOR SUBDIVISION PROPOSALS

All subdivision proposals which include area traversed by, bisected by, or directly adjacent to SFHA, including manufactured home parks and manufactured home subdivisions shall be required to secure a Floodplain Development Permit per Article 4, §4.4, and:

- A. SFHA may be used in computation of density;
- B. SFHA may be utilized to meet open space criteria;
- C. Primary and secondary subdivision access as required by County Code must be all weather access;
- D. For phased subdivisions, an overall Master Drainage Analysis shall be provided which demonstrates that floodplain management policies and stormwater management criteria will be compliant with this Ordinance and function independently in each phase, or construction of the entire conveyance system will be required in the first phase of construction.



2.5 Zoning

In connection with the review of an application for a development permit with respect to matters described in the New Mexico Statutes concerning zoning, the procedures concerning zoning matters set forth in the New Mexico Statutes, as amended from time to time, shall apply in addition to the review procedures provided in the Code. The time limits established in this Article II may be extended if required, in order to comply with the procedures concerning zoning matters.

2.6 Subdivisions

In connection with review of an application for a development permit with respect to matters described in the New Mexico Subdivision Act, as it may be amended from time to time, the procedures for review provided for in Article V of the Code and the New Mexico Subdivision Act shall apply in addition to the review procedures provided in this Article II of the Code. The time limits established in this Article II shall be extended if required in order to comply with the procedures concerning subdivision matters.

2.7 Other Requirements

The time limits set forth in this Article II shall be extended in order to comply with other provisions of the Code providing for time limits in connection with reviews and requirements under the Code.

SECTIONS - VARIANCES3.1 Proposed Development

Where in the case of proposed development, it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code, an applicant may file a written request for a variance. A Development Review Committee may recommend to the Board and the Board may vary, modify or waive the requirements of the Code and upon adequate proof that compliance with Code provision at issue will result in an arbitrary and unreasonable taking of property or exact hardship, and proof that a variance from the Code will not result in conditions injurious to health or safety. In arriving at its determination, the Development Review Committee and the Board shall carefully consider the opinions of any agency requested to review and comment on the variance request. In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.

3.2 Variation or Modification

In no case shall any variation or modification be more than a minimum easing of the requirements.

3.3 Granting Variances and Modifications

In granting variances, and modifications, the Board may require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified

3.4 Height Variance in Airport Zones

All height variance requests for land located with approach, Transitional, Horizontal and Conical surfaces as described within Map #31 A, incorporated herein by reference, shall be reviewed for compliance with Federal Aviation Administration Regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the



Harry B. Montoya
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Michael D. Anaya
Commissioner, District 3



Paul Campos
Commissioner, District 4

Jack Sullivan
Commissioner, District 5

Gerald T. E. Gonzales
County Manager

Land Use Department

September 14, 2006

Mike Adams
58 Arroyo Jacanita
Santa Fe, Nm 87506

RE: CDRC Case # APP 06-5250

Dear Mr. Adams:

On September 12, 2006 the Santa Fe County Board of County Commissioners met and acted on the referenced case. The decision of the BCC was to grant the temporary placement of a second home on 1.19-acres based on the following conditions:

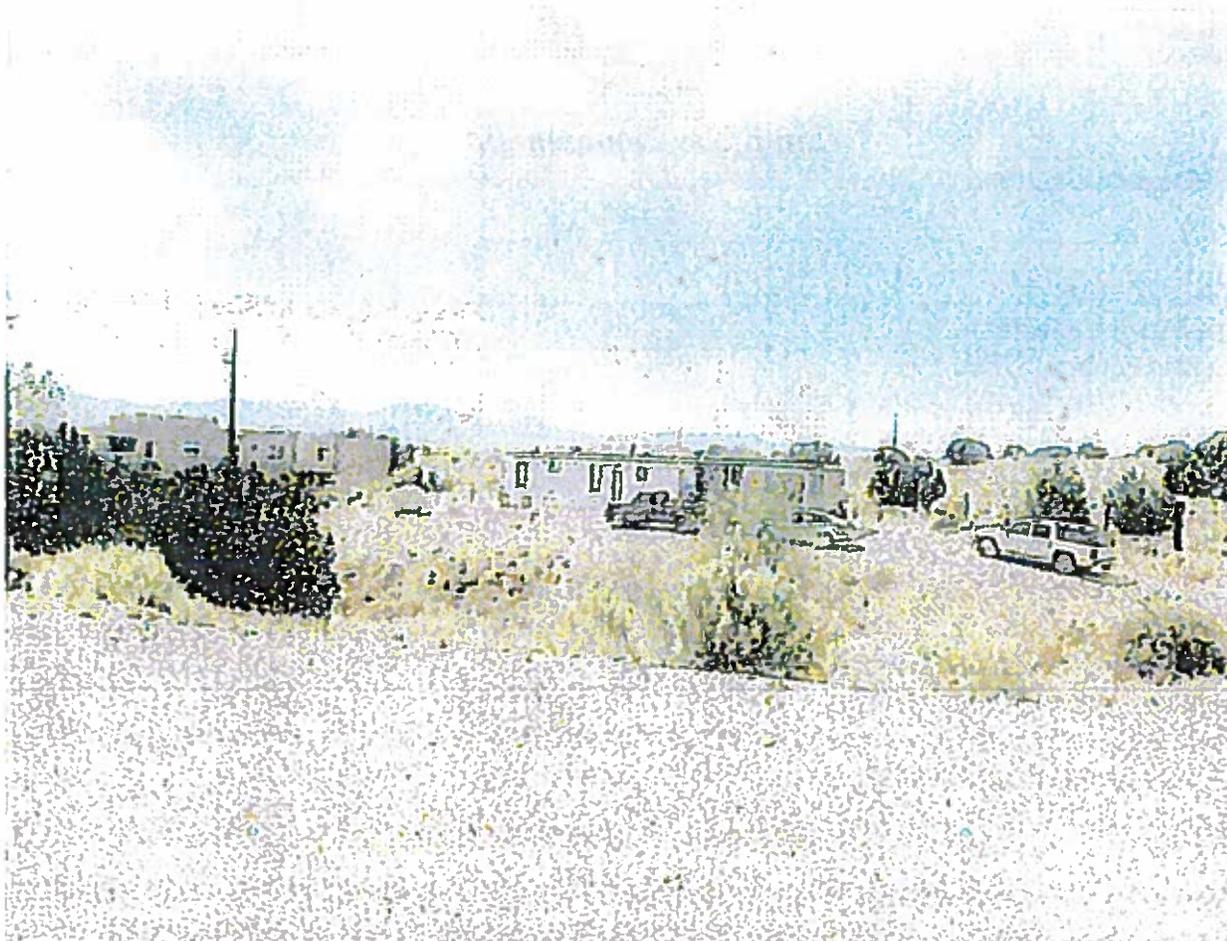
1. A temporary permit will be issued for a period of two-years, to be approved for consecutive two year periods by the CDRC. The applicant at that time must prove the hardship still exists.
2. Water use shall be restricted to 0.25-acre foot per dwelling. A water meter shall be installed for both homes. Annual water meter readings shall be submitted to the Land Use Administrator by January 31st of each year. Water restrictions shall be recorded in the County Clerk's office.
3. The applicant shall submit a liquid waste permit approved by the New Mexico State Environmental Department, for the second dwelling.
4. The applicant must follow all other building permit regulations
5. The existing driveway shall serve both residences.
6. Failure to comply with any of these conditions shall result in administrative revocation of the permit.

If you have any questions please contact me at 986-6223.

Sincerely,

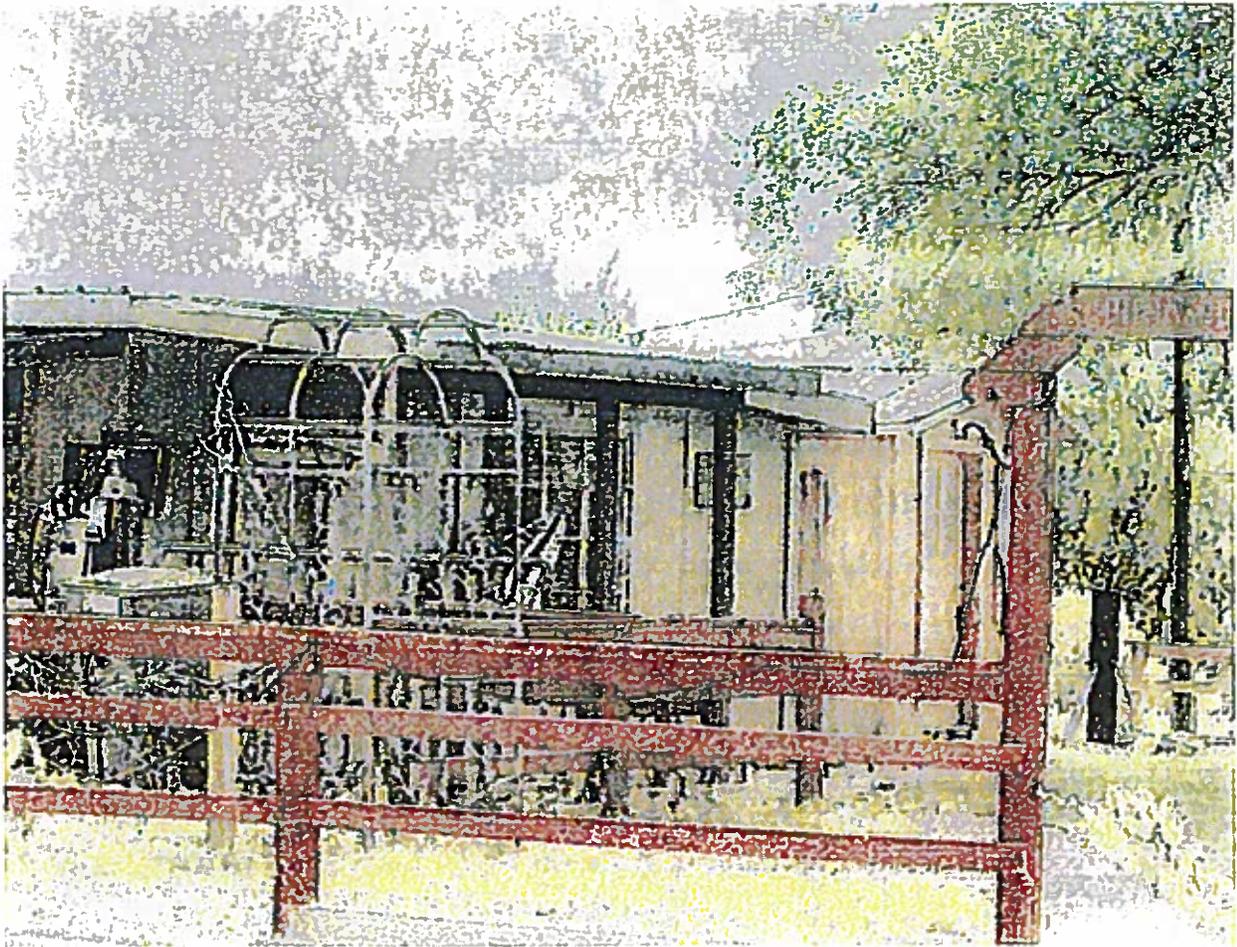
Shelley Cobau
Development Review Supervisor





Minnie Walsh
58 Arroyo Jaconita





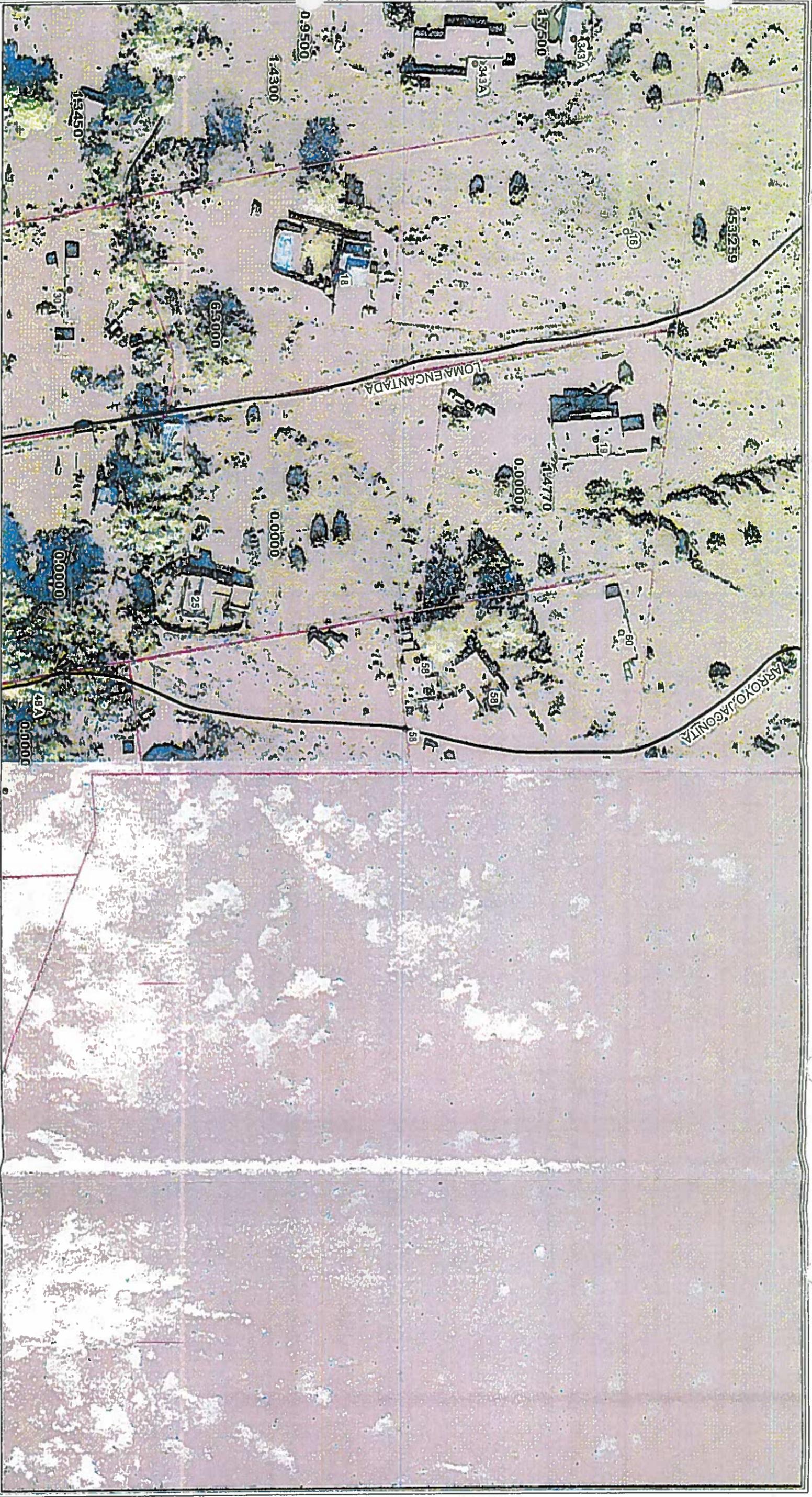
Minnie Walsh

58 Arroyo Jaconita



Minnie Walsh

58 Arroyo Jaconita



Legend

-  ROADS
-  Parcels

tabbles

EXHIBIT

14.

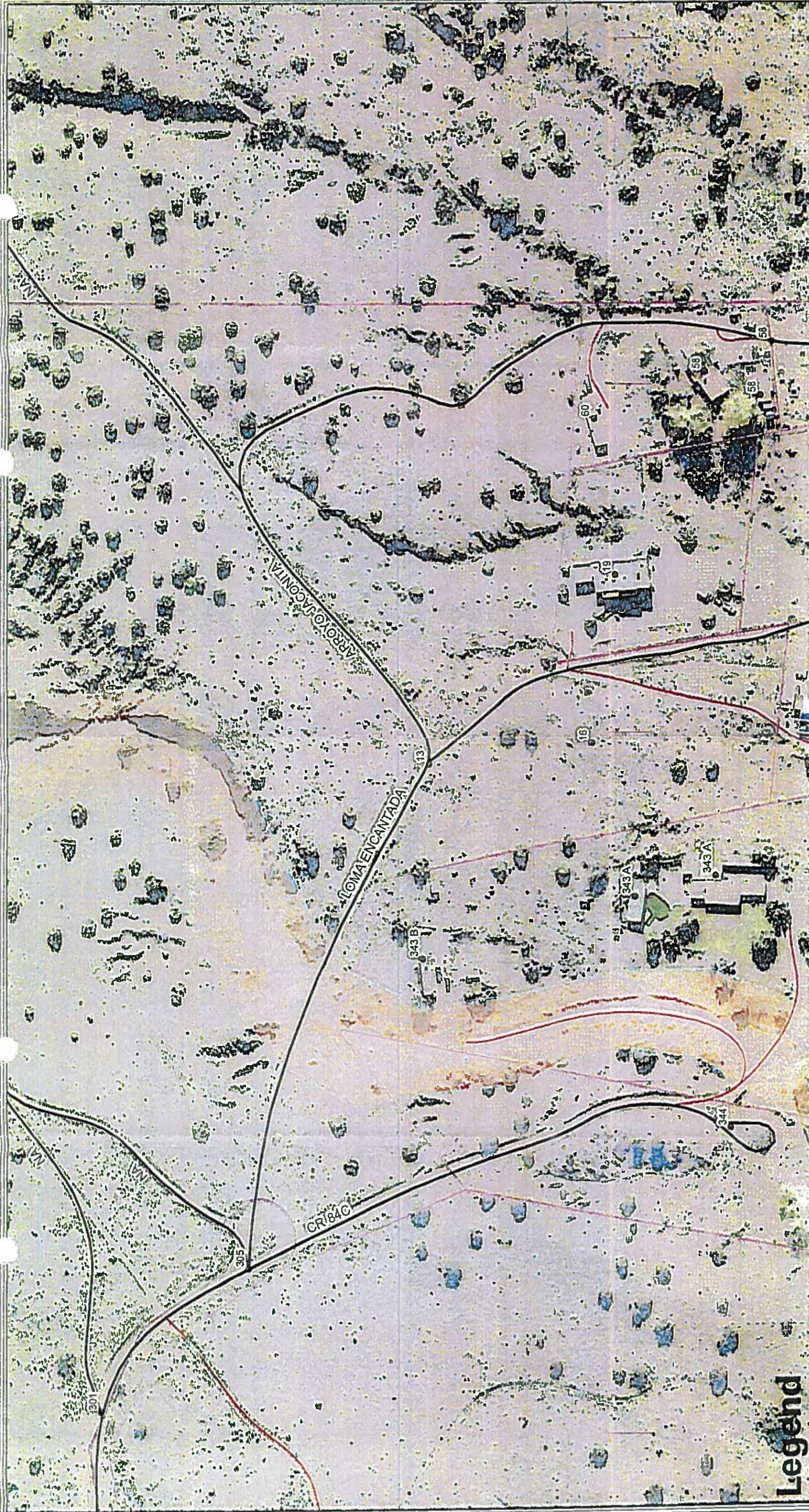


2008 Orthophotography
2 FOOT CONTOURS

This information is for reference only.
Santa Fe County assumes no liability for
errors associated with the use of these data.
User are solely responsible for
confirming data accuracy.



August 2, 2013



2008 Orthophotography
2 FOOT CONTOURS



1:1,489
1 inch represents 124.051921 feet
0 30 60 120 180 240 Feet

-  ROADS
-  DRIVEWAYS
-  Parcels

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confirming data accuracy.



August 7, 2013

Commissioner, District 1
Miguel Chavez
Commissioner, District 2
Robert A. Anaya
Commissioner, District 3



Commissioner, District 4
Liz Stefanics
Commissioner, District 5
Katherine Miller
County Manager

Santa Fe County Fire Department

Fire Prevention Division

Official Submittal Review

Date	7/18/13		
Project Name	Walsh, Minnie		
Project Location	58 Arroyo Jaconita		
Description	Variance – Family Transfer	Case Manager	J. Lovato
Applicant Name	Minnie Walsh	County Case #	13-5190
Applicant Address	58 Arroyo Jaconita Santa Fe, NM 87506	Fire District	Pojoaque
Applicant Phone	505-670-5394		

Review Type	Commercial <input type="checkbox"/>	Residential <input checked="" type="checkbox"/>	Sprinklers <input type="checkbox"/>	Hydrant Acceptance <input type="checkbox"/>
	Master Plan <input type="checkbox"/>	Preliminary <input type="checkbox"/>	Final <input type="checkbox"/>	Inspection <input type="checkbox"/>
	Wildland <input type="checkbox"/>	Variance <input checked="" type="checkbox"/>		Lot Split <input checked="" type="checkbox"/>

Project Status Approved Approved with Conditions Denial

The Fire Prevention Division/Code Enforcement Bureau of the Santa Fe County Fire Department has reviewed the above submittal and requires compliance with applicable Santa Fe County fire and life safety codes, ordinances and resolutions as indicated (*Note underlined items*):

Summary of Review

- The primary access to this property via Arroyo Jaconita does not meet the requirement of an all weather driving surface, being that it is an active arroyo and actively floods at various times of the year. (*page #2*)
- Properly assigned legible rural addresses shall be posted and maintained at the entrance(s) to each individual lot. (*page #2*)
- Property owner(s) shall contact the Santa Fe Regional Emergency Communication Center and flag this address to have an emergency access through County Road 84C. (*page #2*)
- Both the driveway and fire access have areas that exceed the 11% slope requirement. (*page #3*)



- Due to the remote location of this proposed residence, the lack of water and the possibility of this residence being made inaccessible due to the low water crossings during inclement weather, for life safety and property protection the installation of an Automatic Fire Suppression system meeting NFPA 13D requirements shall be required in future development. (page #3)

Fire Department Access

Shall comply with Article 9 - Fire Department Access and Water Supply of the 1997 Uniform Fire Code inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal

▪ Roadways/Driveways

Shall comply with Article 9, Section 902 - Fire Department Access of the 1997 Uniform Fire Code inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal.

The primary access to this property via Arroyo Jaconita does not meet the requirement of an all weather driving surface, being that it is an active arroyo and actively floods at various times of the year.

There is an alternate access to this property via Santa Fe County Road 84C through the Jacona Land Grant. If applicant can prove easement through this route, it would be designated as emergency access only and should be specified on the plat as such. This road would require minimum road improvements of widening to a minimum of 14' wide and an all weather driving surface shall be required.

A turn around meeting Santa Fe County Fire Department Access Road Requirements shall be required.

▪ Street Signs/Rural Address

Section 901.4.4 Premises Identification (1997 UFC) Approved numbers or addresses shall be provided for all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property.

Section 901.4.5 Street or Road Signs. (1997 UFC) When required by the Chief, streets and roads shall be identified with approved signs.

Properly assigned legible rural addresses shall be posted and maintained at the entrance(s) to each individual lot or building site within 72 hours of the commencement of the development process for each building.

Property owner(s) shall contact the Santa Fe Regional Emergency Communication Center and flag this address to have an emergency access through County Road 84C. This access shall also be marked so that it can be easily found by emergency personnel.

▪ **Slope/Road Grade**

Section 902.2.2.6 Grade (1997 UFC) *The gradient for a fire apparatus access road shall not exceed the maximum approved.*

Both the driveway and fire access have areas that exceed the 11% slope requirement.

▪ **Restricted Access/Gates/Security Systems**

Section 902.4 Key Boxes. (1997 UFC) *When access to or within a structure or an area is unduly difficult because of secured openings or where immediate access is necessary for life-saving or firefighting purposes, the chief is authorized to require a key box to be installed in an accessible location. The key box shall be of an approved type and shall contain keys to gain necessary access as required by the chief.*

Automatic Fire Protection/Suppression

Due to the remote location of this proposed residence, the lack of water and the possibility of this residence being made inaccessible due to the low water crossings during inclement weather, for life safety and property protection the installation of an Automatic Fire Suppression system meeting NFPA 13D requirements shall be required in future development. Assistance in details and information are available through the Fire Prevention Division.

It is also recommended that the homeowner and/or property owner contact their home insurance carrier to find out more information on minimum requirements for coverage.

Life Safety

Fire Protection requirements listed for this development have taken into consideration the hazard factors of potential occupancies as presented in the developer's proposed use list. Each and every individual structure of a private occupancy designation will be reviewed and must meet compliance with the Santa Fe County Fire Code (1997 Uniform Fire Code and applicable NFPA standards) and the 1997 NFPA 101, Life Safety Code, which have been adopted by the State of New Mexico and/or the County of Santa Fe.

General Requirements/Comments

▪ **Inspections/Acceptance Tests**

Shall comply with Article 1, Section 103.3.2 - New Construction and Alterations of the 1997 Uniform Fire Code, inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal.

The developer shall call for and submit to a final inspection by this office prior to the approval of the Certificate of Occupancy to ensure compliance to the requirements of the Santa Fe County Fire Code (1997 UFC and applicable NFPA standards) and the 1997 NFPA 101, Life Safety Code.

Prior to acceptance and upon completion of the permitted work, the Contractor/Owner shall call for and submit to a final inspection by this office for confirmation of compliance with the above requirements and applicable Codes.

▪ Permits

As required

Final Status

Recommendation for Final Development Plan Denial until the above conditions have been applied.

Victoria DeVargas, Inspector

Victoria DeVargas
Code Enforcement Official

7/16/13
Date

Through David Sperling, Chief
Buster Patty, Fire Marshal *P*

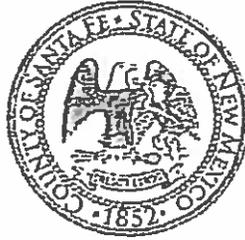
File NorthReg/DevRev/Poj/WalshMinnieVAR doc

Cy: J. Lovato, Land Use
Applicant
District Chief
File

Daniel "Danny" Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: August 7, 2013

TO: John Lovato, Development Review Specialist Senior

FROM: Vicki Lucero, CFM, Building and Development Services Department Manager, Floodplain Administrator

REF.: CDRC Case # V 13-5190 Minnie Walsh Variance

The Applicant is requesting approval to allow a family transfer land division of 1.195 acres into two lots. The proposed lots will not be benefited by all-weather access as required by Code. This application has been reviewed specifically for compliance to Ordinance 2008-10 (Flood Damage Prevention and Stormwater Management Ordinance).

Article 4, Section 4.2 states: "At no time shall a Floodplain Development Permit be issued for a new dwelling unit, site, lot, parcel or tract of land intended for placement of a habitable structure including single family homes, residential subdivisions, etc, when ... the site is absent all weather access. A Floodplain Development Permit will not be issued based upon the following:

1. Arroyo Jaconita, which is the primary access used to access the subject parcel, is within a federally mapped Special Flood Hazard Area, Zone AE. The Zone AE designation indicates these areas will be inundated by floodwater during the 1% recurrence interval storm event, or 100-year storm. This area has been studied by FEMA and Base Flood Elevations have been determined. Secondary access to the site is via Loma Encantada, which is also within a federally mapped Special Flood Hazard Area, Zone A. The Zone A designation indicates these areas will be inundated by floodwater during the 1% recurrence interval storm event, or 100-year storm. This area is unstudied by FEMA and depth, velocity and duration of inundation are not provided
2. The primary and secondary access to the site, are through dirt road low water crossings, which do not provide dry access for emergency vehicles during storm events.
3. Section 5.11 (Basis for Approval or Denial) (E) states: "Approval or Denial of a Stormwater Management Analysis (none provided by applicant), that approval may not be given when certain relevant factors are present", including "The safety of access to the property in times of flood for ordinary and emergency vehicles"
 - a. The applicant has not provided a Stormwater Analysis which identifies the quantity, depth, and velocity of the flows present in the crossings. This information would be

needed to assess the potential danger of this crossing. Note that flow depths of as little as 12", when velocity is considered, are enough to wash away or create buoyancy of an average vehicle. Additional danger arises when motorists are unable to view the driving surface and enter inundated areas. Injury or death can occur if the driving surface has been scoured away by high velocity floodwater, and unknowing motorists often attempt to cross these inundated areas without regard for the surface of the road. Notably, death during flash flood events are surpassed only by hurricane fatalities, and more deaths occur nationwide from flood related deaths than any other natural disaster. This is a dangerous and sometimes deadly situation.

- b. As a minimum, the applicant should be required to provide an analysis of the depth and velocity of flooding expected at this crossing using the methodology and techniques presented in Ordinance 2008-10, and place a culvert or other conveyance as needed based on the report to provide dry access for emergency vehicles.
4. Ordinance 2008-10 contains specific criterion that recommending and approval bodies must consider. These are copied below:
- A. *The Board of County Commissioners (Board) after recommendation by the County Development Review Committee (CDRC) shall hear and render judgment on a request for variance from the requirements of this Ordinance.*
 - B. *The CDRC may recommend and the Board take action on an appeal of the Floodplain Administrator's decision only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Ordinance.*
 - C. *Any person or persons aggrieved by the decision of the Board may appeal such decision to a court of competent jurisdiction within thirty days of the Board's decision.*
 - D. *The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.*
 - E. *Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Ordinance.*
 - F. *Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C(2) of this Article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.*
 - G. *Upon consideration of the factors noted above and the intent of this Ordinance, the Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Ordinance (Article 1, Section C).*
 - H. *Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result*

- I. *Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.*
- J. *Prerequisites for granting variances:*
 1. *Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.*
 2. *Variances shall only be issued upon, (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, the creation of a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.*
 3. *Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.*
 4. *Variances may be issued by the Board for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in Article 4, Section D(1)-(9) are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.*

Finding:

This application does not meet the standards required for the creation of lots as described in the Code and Ordinance 2008-10, and in considering the criteria for variance issuance as noted above does not meet these criteria, therefore as Santa Fe County Floodplain Administrator, it is recommended that this variance is denied based on the lack of all-weather access to the proposed lots.

Be advised that should the BCC grant approval of this variance, as noted in the federally mandated conditions for variance, FEMA must be notified of this decision as required by Federal Code of Regulations.

Should the BCC approve this case the following note should be placed on the Plat:

The access to this property does not meet minimum standards set forth by County Ordinance and Code. Site access, including access by Emergency vehicles, may not be possible at all times.

John F. Lovato

From: Bencomo, Michael T., NMENV <michaeli.bencomo@state.nm.us>
Sent: Friday, August 16, 2013 9:29 AM
To: John F. Lovato
Subject: FW: Scan - SITE EVALUATION FOR MIKE ADAMS/JOHN WALSH
Attachments: Scanned from District II Espanola Field Office.PDF

Hey John, I went out and took measurements to verify setbacks. The google earth aerial has the measurements showing the setbacks. Everything looks fine. We don't have anything to do with the well, that's a state engineer issue. But working with the engineer's office it's probably OK for them to have both wells. As I mentioned before, a Split-flow is used when too much Nitrogen is being dumped onto the property. 80% of Nitrogen in a household is in the toilet waste, so the Adams have eliminated most of the Nitrogen with their two large holding tanks.

-----Original Message-----

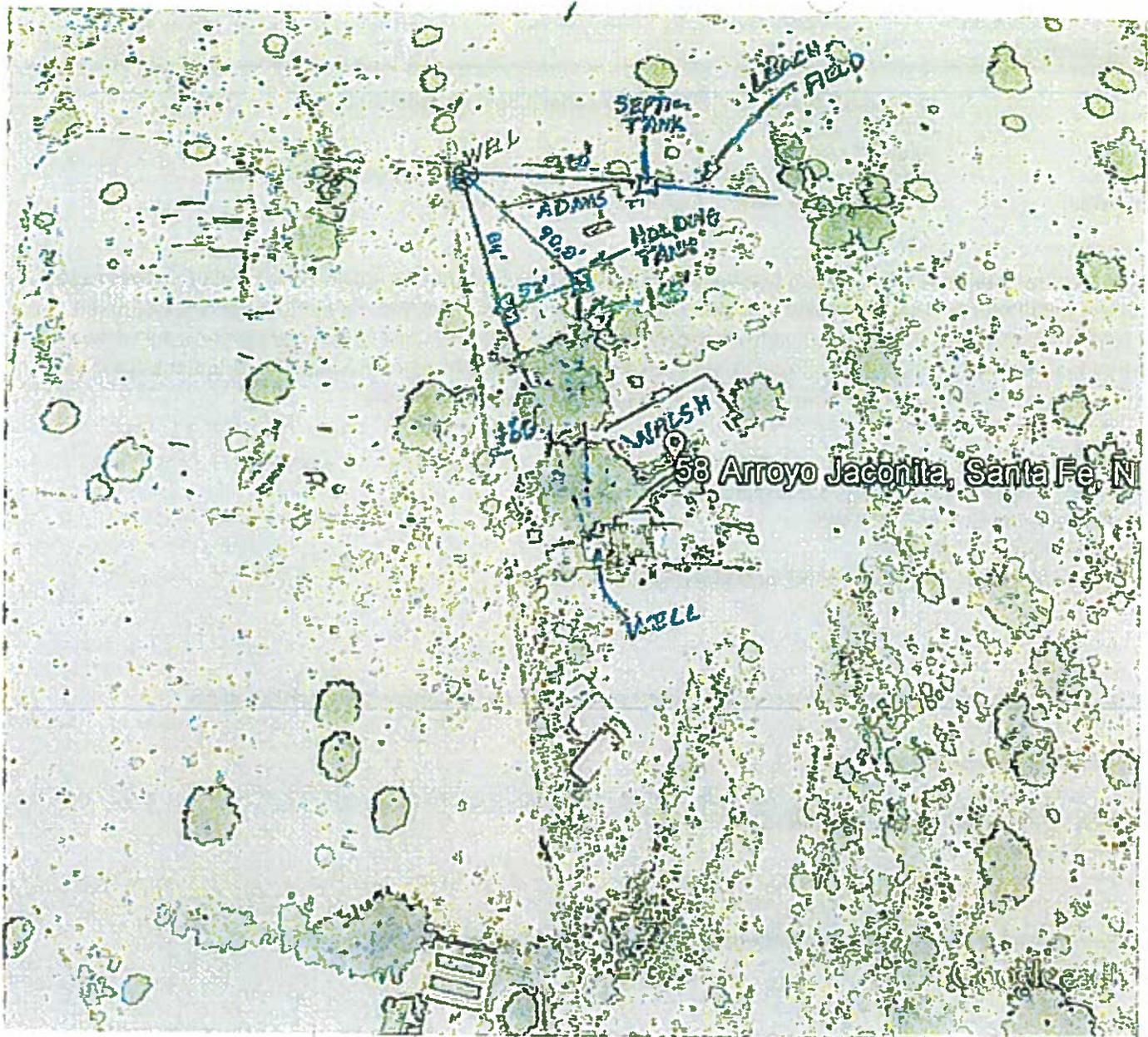
From: do2scanner@state.nm.us [<mailto:do2scanner@state.nm.us>]
Sent: Tuesday, August 13, 2013 5:15 PM
To: Bencomo, Michael T., NMENV
Subject: Scan - SITE EVALUATION FOR MIKE ADAMS/JOHN WALSH

Please open the attached document. It was scanned and sent to you using a Xerox multifunction device.

Attachment File Type: PDF, Multi-Page

multifunction device Location: machine location not set
Device Name: esxerox

For more information on Xerox products and solutions, please visit <http://www.xerox.com>



Google earth



Actual Measurements (by Michael Bencomi, 8-13-13)

$$\frac{1.64''}{3.28''} = \frac{100'}{200'}$$

$$1.1'' = 100'$$

$$\sqrt{84^2 + 52^2} = 98.79' \text{ (From Adams Well to Holding Tank.)}$$

$$\sqrt{160^2 + 52^2} = 168' \text{ (From Parents Well to Holding Tank.)}$$

100' (From Adams Well to Septic Tank)

110' (From Adams Well to Leachfield)

96.

FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

KRIS PETERSON and MISHA PETERSON,
Plaintiffs/Appellants

vs.

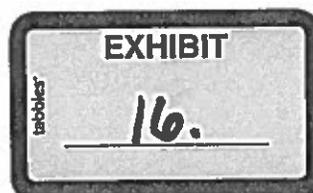
No. D-0101-CV-2013-03108

COUNTY OF SANTA FE, and
THE SANTA FE BOARD OF COUNTY COMMISSIONERS,
Defendants/Appellees.

**FINAL ORDER REMANDING DECISION BACK
TO THE SANTA FE BOARD OF COUNTY COMMISSIONERS**

THIS MATTER came before the Court on June 25, 2014 for a hearing on the merits after full briefing by the parties. Plaintiffs, Kris Peterson and Misha Peterson, were represented by Attorney Joseph Karnes; Defendants, County of Santa Fe and Santa Fe Board of County Commissioners, were represented by Willie R. Brown, Assistant County Attorney, Santa Fe County. The Court, having heard oral argument and examined the pleadings on file herein, FINDS AND ORDERS AS FOLLOWS:

1. On the appellate issue presented to this Court, a whole record review standard applies.
2. The first of two issues specifically presented to this Court for review in this case involved a lot size variance application approved by the Defendants, Santa Fe Board of County Commissioners ("Board") under Santa Fe County Ordinance 1996-10 ("Land Development Code").
3. While the record of the Board was replete with evidence presented as factors required under the Board's Land Development Code and applicable appellate case law, as well as a number of observations by certain Board Commissioners, this evidence and these observations do not amount to specific findings of the Board.
4. The second issue presented to this Court for review involved a requested variance



from obtaining a floodplain development permit that was also approved by the Board but under Santa Fe County Ordinance 2008-10 ("Flood Damage Prevention and Stormwater Management Ordinance").

5. As in the first variance, there was some evidence presented and there were some observations made by some Board Commissioners, but which did not amount to findings by the Board as a whole.

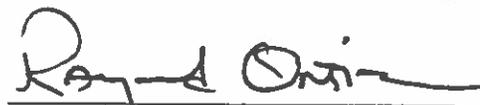
6. The standard for a floodplain variance, which is much more detailed than the standard under the Land Development Code Ordinance, requires:

(1) a showing of good and sufficient cause;

(2) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and

(3) a determination that granting a variance will not result in increased floodplain heights, additional threats to public safety, extraordinary public expense, creation of a nuisance, cause fraud or victimization to the public, or conflict with existing local laws or ordinances.

WHEREFORE, on the lot size variance, I am remanding this case back to the Board so that evidence can be re-presented and the Board can make specific written findings under its Land Development Code requirements, and also under both prongs of the *Paule* case, to justify whatever decision they make. Similarly, on the floodplain variance, I am remanding this case back to the Board for a re-presentation of evidence and for the Board to make a decision supported by detailed written findings with respect to all the requirements as to the requested flood plain variance to justify its decision, or to make specific findings as to whether or not these requirements are applicable in the first instance if that is the Board's position.


Honorable Raymond Z. Ortiz

Submitted by:

Sommer, Karnes & Associates, LLP
Counsel for Plaintiffs/Appellants

/s/ Joseph M. Karnes

Joseph M. Karnes, Esq.

P.O. Box 2476

Santa Fe, NM 87504-2076

Tele: (505) 989-3800

Fax: (505) 982-1745

joseph@sommer-assoc.com

AND

Santa Fe County Attorney's Office
Counsel for Defendants/Appellees

/s/ Willie R. Brown

Willie R. Brown, Assistant County Attorney

102 Grant Avenue

PO Box 276

Santa Fe, NM 87504-0276

505-986-6279 (Mr. Shaffer)

505-995-2713 (Mr. Brown)

505-986-6362 Fax

wbrown@santafecountynm.gov

