

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

CASE NO. V 15-5160

**VARIANCE OF ORDINANCE NO. 2007-02, SECTION 10.6, VILLAGE OF AGUA FRIA ZONING DISTRICT, DENSITY AND DIMENSIONAL STANDARDS
SUSAN J. STOKES, APPLICANT**

ORDER

THIS MATTER came before the Board of County Commissioners (BCC) for hearing on September 8, 2015, on the Application of Susan J. Stokes (Applicant) for a variance of Ordinance No. 2007-02, (Village of Agua Fria Zoning District), Section 10.6, (Density and Dimensional Standards), to allow the creation of three (3) lots on 3.826 acres, more or less, utilizing an on-site well and septic system rather than Community Water or Sewer. The BCC, having reviewed the Application, supplemental materials, staff reports, and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted subject to conditions, and makes the following findings of fact and conclusions of law:

1. The Applicant requested a variance of Ordinance No. 2007-02, Section 10.6, Village of Agua Fria Zoning District, Density and Dimensional Standards, to create three (3) lots on 3.826 acres, utilizing an on-site well and septic system rather than Community Water or Sewer.
2. The property is located within the Agua Fria Low – Density Urban Zoning District, at 4745 Rivers Edge Lane, within Section 32, Township 17 North, Range 9 East.
3. The Applicant acquired the real property by warranty deed recorded on the 6th day of October, 1989, in Book 661, Page 294, in the records of the Santa Fe County Clerk.

4. In February, 2004, the Applicant was issued a permit for a second dwelling unit on 4.972 acres. The Applicant was allowed to connect to the City of Santa Fe Sewer System River trunk line via a 4 inch private sanitary sewer lateral subject to seven (7) conditions, which included the condition “[i]f the property is ever subdivided, an 8 inch diameter sanitary sewer mainline extension will be required.”

5. On March 3, 2010, the Applicant submitted an Application for a Summary Review Subdivision to create 4 lots on 4.972 acres. The Application was reviewed and approved. Prior to recording the plat, the Applicant was required to provide an all-weather access road to all proposed lots, connect all 4 lots to City sewer service, sign water restrictive covenants, provide a disclosure statement and submit a shared well agreement.

6. Lot 1 and Lot 2 are currently vacant. The Applicant is trying to sell Lot 1. Lot 3 has a residence that is serviced by a septic system. Lot 4 has a residence that is connected to the City of Santa Fe Sewer System, and therefore is not part of the variance request.

7. The property is located within the Village of Agua Fria Zoning District, in the Low-Density Urban Zone where the minimum lot size is 2.5 acres per dwelling with 0.25 acre-feet per year water restrictions. Lot size may be reduced to 1.0 acre per dwelling unit with Community Water or Sewer and may be further reduced to 0.50 acre per dwelling unit by connecting to both Community Water and Sewer.

8. The Applicant requested a variance of Ordinance No. 2007-02, Section 10.6, Village of Agua Fria Zoning District, Density and Dimensional Standards, to allow the creation of three (3) lots on 3.82 acres, utilizing an on-site well and septic system rather than Community Water or Sewer.

9. Noticing requirements were met as per Article II, Section 2.4.2, of the Code. In

advance of a hearing on the Application, the Applicant provided certification of posting of notice of the hearing, confirming the public notice regarding the Application was made for twenty-one (21) days on the property, beginning on August 18, 2015. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on August 18, 2015, as evidenced by a copy of that legal notice contained in the record. Receipts for certified mailings of notices of hearing were also contained in the record for all adjacent property owners.

10. The applicable requirements under the Santa Fe County Land Development Code, Santa Fe County Ordinance No. 1996-10, (Code) which governs this Application are:

a. Article II, Section 3, Variances, of the Code 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, an applicant may file a written request for a variance. A development review Committee may recommend to the [BCC] and the [BCC] may vary, modify or waive the requirements of the Code upon adequate proof that compliance with a 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 and safety.

b. Article II, Section 3.1 concludes that, "[i]n no event shall a variance... be recommended by [the] Development Review Committee nor granted by the [BCC] if by doing so the purpose of the Code would be nullified."

c. Article II, Section 3.2 states, "[i]n no case shall any variation or modification be more than a minimum easing of the requirements."

11. The applicable requirements under Ordinance No. 2007-02, (Village of Agua Fria Zoning District,) which governs this Application is:

a. Section 10.6(1) states: 'Where adequate water is available, minimum lot area may be reduced by employing water conservation measures and reducing water use. Further reductions may be achieved by submitting proof of adequate long term water availability, connecting to community water, community sewer or both (W&S), all in accordance with Article III,

Section 10, Lot Size Requirements of the Code or, such additional density bonus and lot size provisions of County Ordinance 2006-02, Affordable Housing.”

12. The Applicant submitted a denial letter for Water Service from the Agua Fria Community Water System, a letter requesting sewer service from the City of Santa Fe, an Engineer’s Cost Estimate for the cost of connection to the City Sewer System and a letter of support from the Agua Fria Village Association.

13. The Applicant has asserted that a variance is needed in order to make the property more practical to develop and sell.

14. At the public hearing before the BCC on September 8, 2015, staff recommended denial of the Application, and suggested the following condition if approval were granted:

a. The Applicant must amend the Plat of Survey to remove the condition stating: “These lots are subject to using the City of Santa Fe Sewer System. No individual waste water system shall be allowed” and the Applicant shall submit the plat with the new language for staff review and record the Plat in the County Clerk’s Office.”

15. In support of the Application, the Applicant stated that she is in agreement with the conditions.

16. At the public hearing, there was no one from the public to speak for or against this case. The Agua Fria Village Association submitted a letter of support for the project.

17. At the public hearing the Applicant stated that compliance with the Code would exact a hardship because she would not be able to afford to connect to the City of Santa Fe Sewer System and sell the remaining lots.

18. Granting this variance request will not result in conditions injurious to health or safety, it will not nullify the purpose of the Code, and it is a minimal easing of the Code.

WHEREFORE the Board of County Commissioners of Santa Fe County hereby approves the variance of Ordinance No. 2007-02, Section 10.6, Village of Agua Fria Zoning District, Density and Dimensional Standards, to allow the creation of three (3) lots on 3.826 acres, utilizing an on-site well and septic system rather than Community Water or Sewer subject to the staff condition set forth in paragraph 14. The motion to approve the variance passed by a unanimous 4-0 vote, with Commissioners Roybal, Chavez, Holian and Stefanics voting in favor of the motion. Commissioner Anaya was not present for the vote.

IT IS SO ORDERED

This Order was approved by the Board of County Commissioners of Santa Fe County on this _____ day of _____, 2015.

By: _____
Robert A. Anaya, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to form:



Gregory S. Shaffer, County Attorney

language. So if I can get the permits so that I can start the utility work and then fix the road when I'm done – because I don't want to do it twice is what I'm saying.

COMMISSIONER CHAVEZ: Right. Well, I want to defer that question to staff because it is spelled out in one of the conditions of approval but I'm not sure – I want staff to respond to that question.

VICKI LUCERO (Building & Development Services): Mr. Chair, just to clarify, the condition says that the requirements will need to be completed at the time of development permit application. So we would actually issue the permit for the utilities and for the site improvements before we issued the permit for the residence. So we would issue two separate permits.

COMMISSIONER CHAVEZ: Okay. So then if I read the condition 6 it says all road improvements must be constructed prior to the issuance of the building permit for the third dwelling. So you're saying that the permits for road improvements will be separate from the building permit.

MS. LUCERO: That's correct, Mr. Chair.

COMMISSIONER CHAVEZ: So, Mr. Tercero, does that help? That would help you, right?

MR. TERCERO: Yes. Thank you.

COMMISSIONER CHAVEZ: Sure. So then I'll close the hearing portion and bring it back to the Commission. I'll go ahead and make a motion to approve this request. On this case with staff recommendations. So I want to ask the applicant again. You agree with the six staff recommendations? [Mr. Tercero nods in the affirmative]

COMMISSIONER ROYBAL: I'll second.

COMMISSIONER CHAVEZ: Okay. There's a motion and a second. Any further discussion? Seeing none.

The motion passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]

- VIII. C. 2. **CDRC CASE #V 15-5160 Susan Stokes. Susan Stokes, applicant, Requests a Variance of Ordinance No. 2007-02, Section 10.6 (Village of Agua Fria Zoning District, Density And Dimensional Standards) to Allow the Creation of Three (3) Lots (Lot 1-1.642 Acres, Lot 2-1.010 Acres, and Lot 3-1.174 Acres) on 3.826 Acres, More or Less, Utilizing an On-Site Well and Septic System rather than Community Water or Sewer. The Property Lies within the Agua Fria Low-Density Urban Zone (AFLDUZ) Where the Minimum Lot Size is 2.5 Acres per Dwelling. The Property is Located within the Village of Agua Fria Zoning District at 4745 Rivers Edge Lane, within Section 32, Township 17 North, Range 9 East (Commission District 2)**

VICENTE ARCHULETA (Case Manager): Thank you, Mr. Chair. On

Dimensional Standards, to allow the creation of three lots on 3.826 acres, without community services. The decision of the CDRC was to recommend approval subject to the following condition:

1. The Applicant must amend the Plat of Survey to remove the condition stating: "These lots are subject to using the City of Santa Fe sewer system. No individual wastewater system shall be allowed" and the applicant shall submit the plat with the new language for Staff review and record in the County Clerk's office.

Thank you, Mr. Chair.

COMMISSIONER HOLIAN: As I understand it, there are going to be three lots created. Is there another lot in question here as well that has a dwelling unit on it that is neighboring to these lots? Or is it just the original lot is now being divided into three?

MR. ARCHULETA: Mr. Chair, Commissioner Holian, there's already one lot. The lots – there's already actually two lots. Lot #4 is its own lot which was created with a summary review subdivision. So now the applicant is requesting that the other – the additional three acres be subdivided into three lots with – well, let me take that back. They did a summary review subdivision and created the four lots and now what she's requesting is to be allowed to connect the three lots – not to connect the three lots to community water or community sewer.

COMMISSIONER HOLIAN: So there are two dwelling units, however, on the property. Are either of those dwelling units on one of the three lots that would be created?

MR. ARCHULETA: Mr. Chair, Commissioner Holian, yes, there are. I believe it's Lot 3 and Lot 4 that have the dwelling units on there.

COMMISSIONER HOLIAN: Would all four, if there were residences built on the other two lots, would all four residences share the same septic system and the same well?

MR. ARCHULETA: Mr. Chair, Commissioner Holian, no. They would have their own individual septic.

COMMISSIONER HOLIAN: So two of the lots – so there would actually be four septic systems?

MR. ARCHULETA: Commissioner Holian, just three. Lot #4 is already connected to the sewer. That's the closest to the trunk line.

COMMISSIONER HOLIAN: Oh, right. Okay. And has the Environment Department come out and said that if there were septic systems put on the other three lots that they would be in compliance?

MR. ARCHULETA: Mr. Chair, Commissioner Holian, the lot sizes are more than what the Environment Department would require so at the time of building permit they would be subject to bringing in the septic permits.

COMMISSIONER HOLIAN: And they couldn't build until they had the permit, correct?

MR. ARCHULETA: That's correct.

COMMISSIONER HOLIAN: Thank you, Vicente.

COMMISSIONER CHAVEZ: So, Mr. Archuleta, so they're using – it's an onsite well and septic system, but the onsite well, will that still be a shared well?

already in existence on the property. So the one was connected to the sewer because it was very close to the river, and at that time we were very involved with restoring the river and it sort of made sense not to be a septic system that close to the actual river itself. The other residence was there since 1988 and was on a septic system, just to clarify what you had brought up, Commissioner.

So when the subdivision was put in effect those two residences just stayed the way that they were and I did not realize, to be honest, that I would have to actually put in the sewer system in order to finalize the subdivision. I thought that I could do it as new construction occurred. And so when I started looking into the permitting and I realized that I needed to put this sewer system on the whole property it became a burden. There was absolutely no way, because the estimate that I have submitted is for one line; not for three. So it became really financially impossible. And the only other thing that I would like to mention is that when the Agua Fria Village got involved with their planning code and revising the new code actually for the land use plan update I was part of that committee and the Agua Fria Village actually has recommended that the area that I live in be able to do exactly what I'm asking for, that the density can be increased in the area with having a shared well or community water. And they are recommending a minimum of one acre. And all of these lots are over that minimum, because I had very close to five acres, 4.9 or something. So they are all over the one-acre minimum that Agua Fria is actually asking to put into their new code for this area.

And the other thing is that at the TAP community planning meeting it was stated that the new Sustainable Land Development Code had a provision stating that the County can certify it will not provide sewer services within the next five years to an area the landowner developing a property can be held harmless from the mandate of having to hook up to a community sewer line when it is within 200 feet. So all of that is sort of going in the direction of the variance that I'm requesting.

COMMISSIONER CHAVEZ: Okay. Thank you. So seeing there are no other members of the public here this evening to speak on this case I'll close the public hearing portion of the meeting and I'll go ahead and make a motion to approve the request for a variance on this Case #2007-2 [sic].

COMMISSIONER HOLIAN: Second.

COMMISSIONER CHAVEZ: There's a motion and a second. Any further discussion? Seeing none.

The motion passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]

MR. ARCHULETA: Mr. Chair, did that include staff's condition?

COMMISSIONER CHAVEZ: Yes. There's the one staff recommendation. Yes.

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

Office of the County Attorney

CDRC CASE # ZMXT 13-5360

BUENA VISTA ESTATES, INC. & ROCKOLOGY LLC

ORDER

THIS MATTER came before the Board of County Commissioners (BCC) of the County of Santa Fe (County) on the Application of Buena Vista Estates, Inc. and Rockology LLC (collectively, Applicants) for zoning approval to create a new mining zone under Article XI of the Land Development Code for the extraction of construction materials. The BCC, having considered the Application and proceedings in this matter, the applicable ordinances, and the written argument of Applicants' attorney, finds that the Application should be denied, without prejudice to Applicants' ability to submit a new application for new zoning under Article XVII of the Land Development Code or then applicable ordinance, and makes the following findings of fact and conclusions of law:

I. FINDINGS OF FACT.

1. The Applicants requested creation of a new mining zone pursuant to Article XI of the Land Development Code for the extraction of construction materials.
2. The 50 acres +/- of land that are the subject of the Application are owned by Buena Vista Estates, Inc. and are located east of Interstate 25 and south of Waldo Canyon Road, within a larger tract owned by Buena Vista Estates, Inc. (the Property).
3. Applicants' proposed extraction activity requires blasting and would affect 10 or more acres of land.

4. The BCC held public hearings on the Application on June 11 and August 12, 2014.

5. On September 16, 2014, before taking final action on the Application, the BCC enacted Ordinance No. 2014-8, entitled “An Emergency Interim Development Ordinance Imposing a Twelve Month Moratorium on Development Approvals or The Issuance of Development Permits for Specified Developments of Countywide Impact”. The short title of Ordinance No. 2014-8 is the DCI Moratorium Ordinance.

6. The DCI Moratorium Ordinance imposed a countywide moratorium on the acceptance or processing of applications for, or issuance of, Development Approvals or Development Permits related to the following Developments of Countywide Impact (DCIs): landfills, junkyards, and sand and gravel extraction activity requiring blasting. [Ordinance No. 2014-8, Section 4 and Section 6.]

7. More specifically, during the effective period of the DCI Moratorium Ordinance, Section 6.2 of that ordinance prohibited existing and filed applications for Development Approval or a Development Permit related to a covered DCI from being “further processed or acted upon by the [BCC] or other County committee, commission, department, or official”.

8. The effective period of the DCI Moratorium Ordinance was September 16, 2014, to September 16, 2015. [Ordinance No. 2014-8, Section 11.]

9. In the DCI Moratorium Ordinance, the BCC found that a twelve month moratorium was necessary, essential, and reasonable to allow for the creation of regulations for the covered DCIs that would replace the ones the BCC had found to be

non-existent or inadequate to meet the special regulatory needs of covered DCIs. [Ordinance No. 2014-8, Sections 3.1, 3.2, and 3.4.]

10. On August 12, 2015, the BCC established those regulations by enacting Ordinance No. 2015-7, “An Ordinance Amending the Land Development Code to Add a New Article XVII, Developments of Countywide Impact to Regulate Landfills, Junkyards and Sand and Gravel Extraction of a Certain Scale and Make Amendments to Other Articles of the Land Development Code Related to the New Article XVII”.

11. The new Article XVII of the Land Development Code enacted by Ordinance No. 2015-7 applies countywide to landfills, junkyards, and “any sand and gravel extraction operation that affects 10 or more acres of land or extracts more than 20,000 tons of earth materials, or utilizes blasting.” [Land Development Code, Article XVII, Section 2 and Section 10.2.1.]

12. Among other things, Article XVII of the Land Development Code:

a. Requires application for a DCI Overlay Zoning District for DCIs subject to Article XVII;

b. Establishes application procedures for a DCI Overlay Zoning District that include, but are not limited to, an application approval hearing before a hearing officer, who must be an experienced lawyer licensed to practice law in New Mexico and who makes written findings of fact, conclusions of law, and recommendations to the County Development Review Committee and BCC;

c. Establishes submittal requirements for an application for a DCI Overlay Zoning District that are different from those required under Article XI of the Land Development Code for creation of a mining district, including, but not limited to, an

Emergency Preparedness and Response Plan related to potential emergencies that may be associated with DCI operations; an Environmental Impact Report to identify potential significant environmental effects and impacts of the proposed DCI project, identify possible ways to minimize the significant adverse effects or impacts, and describe reasonable alternatives to the proposed DCI project; and a Fiscal Impact Assessment analyzing the costs and revenues to the County associated with a proposed DCI project;

d. Establishes review criteria for creation of a DCI Overlay Zoning District different from those contained in Article XI of the Land Development Code for creation of a mining district;

e. Establishes specific operational standards and requirements for sand and gravel extraction operations authorized to operate under Article XVII; and

f. Requires, after creation of a DCI Overlay Zoning District, application for and issuance of a DCI Conditional Use Permit, which permit may be revoked or suspended for cause, including, but not limited to, failure to comply with the performance standards or conditions imposed by the DCI Conditional Use Permit.

13. Ordinance No. 2015-7 became effective on September 11, 2015.

14. On September 29, 2015, the BCC's first meeting after the DCI Moratorium Ordinance was repealed on September 16, 2015, the BCC considered this case. County Commissioner Kathy Holian made the following motion, which passed unanimously:

I move that (1) staff inform the applicants that the [BCC] has tentatively concluded that their application should be denied without prejudice to their ability to apply under Article 17 of the Land Development Code; (2) the applicants and other interested persons be given until October 14, 2015 to submit written argument to the Land Use Administrator as to whether the application should be denied without prejudice to the

applicant's ability to apply under Article 17; and (3) that this case be placed on the agenda of the [BCC's] October 27, 2015 meeting at which time the [BCC] will consider any written argument submitted and take final action on the referenced CDRC Case.

15. Applicants were informed of the BCC's September 29 action by letter dated September 30, 2015.

16. Applicants timely submitted written argument by letter dated October 13, 2015, which the BCC has duly considered.

II. CONCLUSIONS OF LAW.

1. Property owners who lack vested rights are not immune from a moratorium or zoning ordinance enacted after they submit their land use application. *E.g., Brazos Land, Inc. v. Board of County Commissioners of Rio Arriba County*, 1993-NMCA-013, ¶ 16, 115 N.M. 168; *Mandel v. City of Santa Fe*, 1995-NMCA-052, ¶ 5, 119 N.M. 685; and *Santa Fe Trail Ranch II, Inc. v. Board of County Commissioners of San Miguel County*, 1998-NMCA-099, ¶ 8, 125 N.M. 360.

2. Article XVII of the Land Development Code applies to Applicants' Application rather than Article XI of the Land Development Code.

3. Applicants' Application does not include all of the submittals required by Article XVII of the Land Development Code and did not follow the procedures established by Article XVII.

4. As applied to Applicants' Application and Property, Article XVII of the Land Development Code does not constitute downzoning as that term has been used in New Mexico appellate court cases. First, there has been no change in the zoning of the Property. The Property was not previously zoned as a mining district under Article XI of the Land Development Code. Moreover, Applicants may apply under Article XVII for

creation of a DCI Overlay Zoning District allowing large scale sand and gravel extraction utilizing blasting. Second, Article XVII of the Land Development Code does not target Applicants' Application or the Property. It is a legislative act of countywide applicability that applies uniformly to sand and gravel extraction activity regulated as a DCI as well as to landfills and junkyards regulated by the County.

WHEREFORE, the BCC hereby denies Applicants' Application, without prejudice to Applicants' ability to apply for a DCI Overlay Zoning District and, if such DCI Overlay Zoning District is approved, a DCI Conditional Use Permit under Article XVII of the Land Development Code or applicable provisions of any subsequently enacted ordinance. The motion to deny the Application passed by a 5-0 vote.

IT IS SO ORDERED.

This Order was approved by the BCC on this 10th day of November, 2015.

**BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF SANTA FE**

By: _____
Robert A. Anaya, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to form:



Gregory S. Shaffer, County Attorney

