

## **MEMORANDUM**

**DATE:** February 8, 2011

**TO:** County Development Review Committee

**FROM:** Shelley Cobau, CFM, Building and Development Services Manager

**VIA:** Jack Kolkmeier, Land Use Administrator

**FILE REF:** CDRC CASE # MP/PDP 09-5300 UDV Temple.

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### **ISSUE:**

Centro Espirita Beneficente Uniao do Vegetal (UDV Temple), Applicant, James Siebert, Agent, request Master Plan and Preliminary Development Plan approval for a Community Service Facility (religious institution) as defined in Article III, Section 7 of the Land Development Code (the Code), as amended. The Code was amended by Ordinance 2010-13, which defines a Community Service Facility as one which “provides service to a local community organization. These may include governmental services such as police and fire stations, elementary and secondary day care centers, schools and community centers, and churches”.

The two-phase proposal consists of a 4,660 square foot structure to be used as a temple with a 1900 square foot covered portal type structure—to be enclosed for inclusion to the temple as part of a subsequent phase (total 6560 square feet), a 540 square foot portal, a 706 square foot yurt, a 225 square foot utility room, and a 225 square foot storage building on 2.52 acres

The property is located at the southwest corner of the intersection of Arroyo Hondo Road (CR58) and Brass Horse Road (CR 58C) at 5 Brass Horse Road, within Section 13, Township 16 North, Range 9 East, (Commission District 4) (Exhibit A).

### **SUMMARY:**

The Applicant requests Master Plan and Preliminary Development Plan approval for a new religious institution (Community Service Facility) at 5 Brass Horse Road. The Applicant further requests that the Final Development Plan for the project be reviewed and approved by staff, administratively.

This case was heard by the County Development Review Committee on November 18, 2010. The decision of the CDRC was to recommend approval of this request. The CDRC's minutes from that hearing are included herein as Exhibit O.

Subsequent to the CDRC hearing, the Development Request and Phasing Schedule were revised to address computational issues with regard to square footage and to address questions posed regarding the number of phases and timing of these phases. The revised information is included herein as Exhibit P.

Also subsequent to the CDRC meeting, numerous letters from residents in the area have been received. In an effort to make the presentation and review of this staff report more comprehensive, the most recent letters have been included as Exhibit Q.

The UDV Temple Master Plan and Preliminary Plan Report prepared by James Siebert and Associates dated July 10, 2009, and architectural renderings prepared by Paula Baker LaPorte (Exhibit B), Master Plan and Preliminary Development Plans (Exhibit C) along with the Water Resources Report prepared by Corbin Consulting, Inc, (Exhibit D) and Traffic Impact Analysis prepared by Craig Watts, P.E., (Exhibit E) have been reviewed for technical accuracy and compliance with the Santa Fe County Land Development Code. Supplemental information includes an analysis of building sites in Arroyo Hondo (Exhibit F); a report regarding the impact of churches on residential real estate values (Exhibit G); and declarations by physicians retained by the Applicant regarding the effects of hoasca in the context of religious practice (Exhibit H).

The UDV is a nonprofit corporation organized under the laws of New Mexico; the UDV is a tax exempt religious organization. Ordinance 2010-13 provides that: Community Service Facilities are allowed anywhere in the County provided that all requirements of the Code are met if it is determined that:

- 7.1.1 The proposed facilities are necessary in order that community services may be provided for in the County;
- 7.1.2 The use is compatible with existing development in the area and is compatible with development permitted under the Code; and
- 7.1.3 A master plan and preliminary and final development plan for the proposed development is approved.

The Ordinance goes on to specify that submittal and review requirements are those provided for in Article III, Section 4.4, and Article V, Sections 5.2 and Section 7.

The proposed temple will contain space for religious services, a nursery, a common room, a dining room, a kitchen, two bathrooms and attic storage. The yurt will be re-erected and will be used for religious and storage purposes. Overall lot coverage, including parking, is approximately 7.5%.

The Applicant indicates in the submitted materials that the congregation at full build out is estimated to be approximately 100 parishioners; currently there are 64 parishioners. Services are to be held two Saturdays per month from 8 p.m. to 12 p.m., with two additional services each month on weekend afternoons or evenings. No private school or daycare activities are

proposed, a nursery is included in the temple floor plan, which will operate only during the services at the times stated above.

During religious services, sacramental consumption hoasca tea, is an integral part of the religious ritual. Hoasca is mildly hallucinogenic, and the Applicant has submitted affidavits from physicians regarding its short-term hallucinogenic effects on parishioners. The affidavits indicate that “the effects of hoasca lasts for approximately four hours during which time the individuals who take the sacrament remain oriented and aware of their surroundings” and the affidavits describe in detail anticipated reactions of individual participants. (Exhibit H) The UDV has stated that careful measures are taken during and after services to ensure that no one exits the property until the effects associated with the consumption of the hoasca tea have subsided. The information regarding the use and influence of hoasca was provided in an effort to quell the concerns of neighbors and to address staff concerns regarding public health, safety and welfare that exists if persons drive after consuming hallucinogens.

The Applicant further states in the Development Plan Report that the project will be submitted in two phases:

- Phase One: Utility and access infrastructure, 450 sq. feet of storage area in two separate structures, a 706 square foot yurt, a 24’ high, a 4660 square foot temple, and a 1900 square foot timber frame roof structure with no walls, and a 540 square foot portal. This initial phase is slated for completion within 18 months of permit issuance.
- Phase Two: Enclosure of existing 19000 square foot portal, for inclusion to overall Phase One temple structure to be completed within 6 months after obtaining building permit

### **Referenced Code Sections**

Article III, Section 7 (Community Service Facilities) of the Code, as amended by Ordinance 2010-13, states: “Community service facilities are facilities which provide service to a local community organization. These may include governmental services such as police and fire stations, elementary and secondary day care centers, schools and community centers, and churches”. Section 7.1 of Article III (Standards) states: “Community service facilities are allowed anywhere in the County, provided all requirements of the Code are met, if it is determined that: (i) the proposed facilities are necessary in order that community services may be provided for in the County; (ii) the use is compatible with existing development in the area and is compatible with development permitted under the Code, and (iii) a master plan and preliminary and final development plan for the proposed development are approved.

Article V, Section 5.2.1.b of the Code states: “A master plan is comprehensive in establishing the scope of a project, yet is less detailed than a development plan. It provides a means for the County Development Review Committee and the Board to review projects and the sub-divider to obtain concept approval for proposed development without the necessity of expending large sums of money for the submittals required for a preliminary and final plat approval.”

Article V, Section 5.2.1.c of the Code states: “The master plan submittal will consist of both plans and written reports which include the information required in Article V, Section 5.2.2. A typical submittal would include a vicinity map, a plan showing existing site data, a conceptual

environmental plan with written documentation, a master plan map, a master plan report, a schematic utilities plan and the phasing schedule. Maps and reports may be combined or expanded upon at the discretion of the applicant to fit the particular development proposal as long as the relevant information is included”

Article V, Section 7.1 (Development Plan Requirements) of the Code states: “A preliminary development plan may be only a phase or portion of the area covered by an approved master plan, so long as the preliminary development plan substantially conforms to the approved master plan”

Referenced Code is included in Exhibit I.

### **The Religious Land Use and Institutionalized Persons Act (RLUIPA)**

The Religious Land Use and Institutionalized Persons Act restricts local governments from exercising land use authority in such a way as to impose a "substantial burden" on the religious exercise of a person, religious assembly or institution, unless the government justifies the burden as furthering a compelling governmental interest and is the least restrictive means furthering the compelling interest. The Act also contains nondiscrimination provisions, which prohibit land use regulations that disfavor religious uses relative to nonreligious uses or that unreasonably exclude religious uses.

The statute is highly controversial and questions have been raised about its constitutionality.

If the statute is constitutional, the following issues will have to be addressed during decision-making in this matter. First, whether application of the land use regulation at issue (the Land Development Code) creates a substantial burden on the religious exercise of members of the UDV church or the church as a whole. Second, if a substantial burden exists, whether the requirements of the Land Development Code further a compelling interest and whether there are less restrictive ways to address the substantial burden on the free exercise of religion than those chosen. Third, whether the Land Development Code disfavors religious uses when compared to secular uses, or whether the Code unreasonably excludes religious uses.

It should be noted that, in the 2006 case of *Gonzales v. O Centro Espirita Beneficiente Uniao Do Vegetal*, the United States Supreme Court found that RFRA (a predecessor of RLUIPA) precluded regulation by the United States Government of its sacramental tea, hoasca, because the government conceded that the regulation substantially burdened its free exercise of religion, and that the federal Controlled Substances Act did not constitute the least restrictive means of addressing the concerns that motivated RFRA. The United States conceded in that case that the use of hoasca tea by UDV in its exercise of religion was "... a sincere exercise of religion ..."

### **SUMMARY OF PUBLIC COMMENTS:**

Numerous letters, both in support and in opposition to this project have been received by the Land Use Department.

Opposition letters cite concerns regarding water, traffic, parking, building size, security, hours of operation, parishioners leaving the facility while impaired, affects on real estate values,

neighborhood compatibility, and groundwater contamination are among the most listed concerns. Exhibit L contains copies of all letters of support received prior to the CDRC hearing in November.

Support letters include statements that the UDV members and the facility will be designed to be compatible with the neighborhood, parishioners will not leave the parcel when impaired, will be good neighbors, will not contaminate nor utilize excessive amounts of groundwater and will not impact adjacent parcels in any negative manner. Exhibit M contains copies of all letters of support received prior to the CDRC hearing in November.

Correspondence received subsequent to the CDRC hearing is included herein in Exhibit Q.

### **Review Criteria:**

#### **EXISTING CONDITIONS:**

The subject property is currently vacant and is vegetated with scant juniper and piñon cover with grass understory and has no slope in excess of 15%. The proposed lot is a legal lot of record, and the existing fencing encroaching on County right-of-way will be relocated pursuant to staff comment.

The Applicant states that the site has been utilized by the UDV members for 15 years and they have conducted baptisms, weddings, and other events without incident or impact to surrounding properties. Historically there was a non-permitted structure on the site, a yurt, which the Applicant removed at the direction of County staff.

#### **ADJACENT PROPERTIES:**

Surrounding uses are primarily rural residential; with several community service facilities located within approximately one mile of the subject property. This includes the Arroyo Hondo Fire Station, and the Academy for the Love of Learning: Seton Castle, surrounding uses are shown on Exhibit J. Lot sizes in the area range from 2.5-5 acres or larger in size, notably an 86 acre tract of land located northeast of the site is designated as County Open Space, and the owner of the nearest residence on the north side of Brass Horse Road, donated the subject property to the UDV church for their use.

#### **ACCESS:**

Primary site access is proposed from Brass Horse Road, with secondary emergency access proposed off Arroyo Hondo Road. Access has been reviewed by the Department of Public Works, as both roads are designated County roads. Brass Horse Road is currently a fourteen foot base course road which does not meet Santa Fe County standards. The right-of-way has recently been increased to a 50' right-or-way (as required by Article V, Appendix 5a) and Brass Horse Road will be widened to a 20' minimum gravel base course local lane of 20' in order to meet County standards along the northerly portion of the parcel. Intersection improvements as required by Code are being provided, and the proposed intersection design meets these requirements. Of the intersections analyzed, Old Las Vegas Highway/Arroyo Hondo; Arroyo Hondo/Brass Horse; Brass Horse/Site Entrance all three intersections currently operate at

acceptable levels-of-service during peak periods and will continue to do so in the foreseeable future. Sight distance at the intersection of Arroyo Hondo and Brass Horse was investigated and measurements taken by the Applicant indicate 455 feet of site distance north of the intersection and 485 feet on the south. These distances are nearly twice the distance required by AASHTO for the posted speed. The Applicant has submitted a Traffic Impact Analysis as required by Code, and this TIA has been reviewed by Public Works Department staff as well as by the New Mexico Department of Transportation.

**PARKING:**

Parking and onsite circulation proposed with the Application complies with Article III, Section 9 (Parking Requirements) of the Code. Churches, auditoriums, theatres, arenas and all spaces used for public assembly, are required to provide one (1) space per four (4) seats, for a total of 25 spaces in this case.

Thirty three (33) parking spaces are proposed, along with a grass overflow parking area that can accommodate an additional 18 vehicles. Aisle widths provided are 24' as mandated by the Code. Handicap parking is provided and in accordance with ADA requirements. Sheet 3 of the Master Plan shows the proposed parking and internal circulation configuration proposed.

**SECURITY**

The Code does not contain requirements for securing Community Service Facilities, nor are there specific Code criteria regarding securing controlled substances such as hoasca tea. This is an unusual case, not completely anticipated by the Code. In the period the County has reviewed this project, the Applicant has nevertheless addressed security concerns raised by County staff and the community regarding the security of the controlled substance. To limit public access the Applicant proposes to fully fence the parcel and gate both access points. The issues of security and containment of a controlled substance have been established through a settlement agreement with the Applicant and the Drug Enforcement Agency as a result of litigation. The Applicant is obligated to comply with the terms of the Settlement Agreement.

**SIGNAGE:**

A single six (6) square foot sign is proposed at the main entrance to the property. The proposed monument sign shall be set back at a minimum of five feet from property line. Staff has determined that the signage element of the Application complies with Article VIII (Sign Requirements) of the Code, a separate Sign Permit will be required prior to placement of the proposed sign.

**ARCHITECTURAL STANDARDS:**

The Application indicates that the proposed temple will be a maximum height of 24' in accordance with the height restrictions set forth in the Code. The temple will utilize an architectural design complementary with designs used in the neighborhood, and the Application represents that the temple will be designed to resemble nearby residential structures to assure neighborhood architectural compatibility. Solar panels will be placed on the roof of the temple structure's south side, and these panels will be within the 24' height restriction. Panel location

and height will be further reviewed at the time architectural plans for construction of the structure are submitted as part of the building permit process.

**WATER:**

The UDV Temple lies within the Basin Fringe Hydrologic Zone, and water needs for the facility will be served by a private well to be located on the northeast corner of the parcel, and which will draw water from the Ancha/Tesuque Formation. All water use fixtures in the facility will be low flow and some fixtures will also be high efficiency.

The water conservation and water budget measure are consistent with Code requirements, and are compliant with Article VII, Section 6.6.2 and Section 6.6 of the Code.

The proposed water use was re-calculated by County staff as:

Indoor:	0.143 afy
Outdoor:	0.0303 afy
Total:	0.1736 afy

The Applicant's information indicated a total water budget of 0.1538 afy, which appears to contain a mathematical error. It appears that the correct figure is below 0.25 afy, and therefore the Applicant is not required to demonstrate water availability or a 100-year supply.

As indicated in the third supplemental submittal, Tab 2, page 5, the Applicant will include a well meter and agrees to a note on the plat creating the 0.25 acre foot water restriction.

Rainwater harvesting systems and an advanced water treatment system are proposed and these systems are compliant with Ordinances 2003-6 and 2008-4 (Rainwater Catchment Ordinances).

**FIRE PROTECTION:**

Fire protection will be provided by the Hondo Fire Department. Automatic fire protection sprinkler systems will be installed in the temple structure. Secondary emergency access to the site will be provided directly off Arroyo Hondo Road, this access will be equipped with a Knox Lock. County Fire Department staff have reviewed the application for compliance with all current fire codes.

**LIQUID AND SOLID WASTE:**

Correspondence from the NMED was received on 9/23/10 which indicated further information was required from the Applicant concerning the proposed liquid waste and gray water system, and NMED rescinded the Liquid Waste Permit until the Applicant demonstrated compliance with NMED regulations. On 11/10/10 the permit was reinstated by the NMED. Correspondence regarding the liquid waste system is included as Exhibit N.

Waste Management or another licensed hauler will provide pick up and disposal service for solid waste. The current practice in the area is for weekly pick up of 75 gallon bins with an automated truck and the Applicant indicates that the UDV will follow the same practice.

### **TERRAIN AND STORMWATER MANAGEMENT:**

The applicant's proposal shows slopes to be disturbed from 0% to 15%. Topography of the land appears to be fairly flat averaging in the range of 0 – 15 %. Thus the Application is in compliance with Article VII, Section 3 (Terrain Management) of the Code and Ordinance No. 2008-10, and is compliant with NPDES criterion for storm water pollution prevention prior to commencement of construction so long as the following conditions are adhered to:

1. Approved silt control measures shall be in place prior to the start of construction.
2. Areas disturbed by construction shall be re-vegetated within one year of completion of construction.
3. Temporary silt control measures erected during construction shall remain until landscaping and re-vegetation is in place.

### **LANDSCAPING:**

The Applicant proposes to place on the property in connection with development: 24 relocated piñon pine, 5 juniper, 32 apache plume, 24 Rockspray, 4 Barberry and 15 New Mexico Olives, all to be drip irrigated with reclaimed effluent and harvested rainwater. All disturbed areas will be reseeded with native grasses. Low level landscape lighting will be used to light pathways. The landscape design concepts presented are substantially compliant with Santa Fe County Land Development Code Article II, Section 4.4.f, for Master Plan and Preliminary Development Plan submittals. The Applicant must dimension all landscape areas and provide buffers along roadway frontage areas as required by Article III, Section 4.4.4f(10) of the Code at the time of Final Development Plan application..

### **ARCHAEOLOGY:**

This Application was reviewed by the New Mexico State Historic Preservation Division where it was determined that this site is located within an area with a high potential for archaeological sites. The tract is less than 5 acres and an archaeological survey and report is not required. It is recommended, not required by SHPO that an archaeological survey and report be conducted prior to the construction of the Temple and associated improvements. The Applicant has researched and provided information regarding archaeology on the site, and no pueblo, nor other significant sites were found.

### **REQUIRED ACTION:**

The BCC should review the attached material and consider the recommendation of staff; take action to approve, deny, approve with conditions, or table for further analysis of this request.

### **RECOMMENDATION:**

Staff concurs with the action of the CDRC and recommends approval of the application. The Application has been reviewed for compliance with the Code and staff has found that the following facts presented support the request: (i) community service facilities are allowed anywhere in the county; (ii) the Code and Ordinance No. 2010-13 recognize a church as a community service facility; (iii) the use is compatible with existing development; (iv) the application is comprehensive in establishing the scope of the project; (v) the application satisfies the submittal requirements set forth in Article V, Section 5.2.2 of the Code and Ordinance No. 2010-13; (vi) the preliminary development plan substantially conforms to the master plan; (vii) the application satisfies the submittal requirements set forth in Article V, Section 7 (Development Plan Requirements) of the Code and Ordinance No. 2010-13; and (viii) the proposed structure is necessary to provide the UDV with a permanent place of worship in a place that is highly valued by the church members. Because the recommendation is for approval, it is unnecessary to address the factors under RLUIPA described earlier.

The review comments from State Agencies and Building and Development Review Services has established that the Application is in compliance with Article V, Section 5, Master Plan Procedures, Article 5, Section 7 Development Plan Requirements of the Land Development Code, and Ordinance No. 2010-13.

Staff recommends Master Plan Zoning and Preliminary Development Plan **approval**, with Final Development Plan to be processed administratively, for the Centro Espirita Beneficente Uniao do Vegetal (UDV Temple), to allow a 4,660 square foot structure to be used as a temple with a 1900 square foot covered portal type structure—to be enclosed for inclusion to the temple as part of a subsequent phase (total 6560 square feet), a 540 square foot portal, a 706 square foot yurt, a 225 square foot utility room, and a 225 square foot storage building on 2.52 acres., subject to the following conditions:

1. All Staff redlines shall be addressed, original redlines will be returned with final plans for Master Plan.
2. The Applicant shall comply with all requirements of the New Mexico Environment Department, the State Historic Preservation Division, County Fire Marshal, Public Works and County Utilities Department, which includes the following:
  - a. Permits for Advanced Liquid Water Systems must be reviewed and approved by the NMED
  - b. Kitchen facilities must be approved by the NMED and appropriate food service permits must be obtained.
  - c. Automatic fire suppression is required
  - d. Site address shall be clearly posted
  - e. 28' radius curb returns must be provided
  - f. Site triangles (30') must be maintained at both entrances
  - g. A Road Construction/Road cut permit must be obtained from the Department of Public Works.
  - h. The secondary access from Arroyo Hondo road must be paved with 3" of plant mix bituminous pavement
  - i. No parking signs shall be placed on Arroyo Hondo Road as required by Public Works
3. Master Plan and Preliminary Development Plan, with appropriate signatures, shall be recorded with the County Clerk.

4. It shall be noted on the Master Plan and on the Final Development plan that the nursery will only be utilized during services.
5. The Landscape, Lighting and Signing Plan indicates placement of flag poles near the temple entrance. Flag poles may not exceed 24' in height, and the banners placed on these flagpoles may be considered signage and must comply to the square footage restrictions for signage and placement of signage outlined in Article VIII of the Code. A separate sign permit will be required for all signage on this parcel.
6. The proposed trash enclosure must be fully screened with a 6' opaque enclosure and gated. The location as proposed does not provide adequate access for trash removal vehicles and the enclosure must be relocated on the Final Development Plan.
7. Additional comments made by staff or other agencies, if any, must be addressed at the time of Final Development Plan submittal.

**ATTACHMENTS:**

- Exhibit "A" – Location Map
- Exhibit "B" – Master Plan and Preliminary Development Plan Report
- Exhibit "C" – Plans and Renderings
- Exhibit "D" – Water Resources Report
- Exhibit "E" – TIA excerpts
- Exhibit "F" – Building site analysis adjacent parcels
- Exhibit "G" – Real Estate Impact Report
- Exhibit "H" – Physicians Declarations
- Exhibit "I" – Referenced Code
- Exhibit "J" – Surrounding Uses Map
- Exhibit "K" – Agency/Staff Memorandums
- Exhibit "L" – Letters in Opposition
- Exhibit "M" – Letters in Support
- Exhibit "N" – Wastewater Information
- Exhibit "O" – CDRC Meeting Minutes
- Exhibit "P" – Revised Development Report Page 3
- Exhibit "Q" – Correspondence received subsequent to CDRC hearing