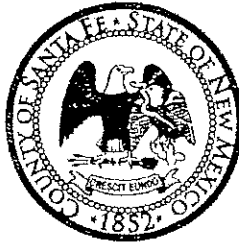


Henry P. Roybal
Commissioner, District 1

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

**CDRC CASE # Z/PDP/FDP 15-5130 ASHWIN STABLES
ASHWIN STABLES MASTER PLAN ZONING, PRELIMINARY AND FINAL
DEVELOPMENT PLAN
DON ALTSHULER, APPLICANT**

ORDER

THIS MATTER came before the Board of County Commissioners (Board) of the County of Santa Fe (County) for hearing on November 10, 2015, on the Application of Don Altshuler (Applicant) for Master Plan Zoning, Preliminary and Final Development Plan approval to allow an Equestrian Facility on 2.71 acres. Present at the hearing was County Staff Member and Case Manager, Jose Larrañaga; Applicant accompanied by his Agent, James W. Siebert & Associates; and six members of the public who spoke in opposition to the Application. The Board, having reviewed the Application, supplemental materials, Staff report, and having conducted a public hearing, finds that the Application is well-taken and is granted. The Board makes the following findings of fact and conclusions of law:

1) The Applicant submitted all requirements necessary for a Master Plan Zoning, Preliminary and Final Development Plan application in accordance with Ordinance No. 1996-10, The Santa Fe County Land Development Code (Code), Article III, § 4.4, Article V, § 5.2, Article 5, § 7.1.3, Article V, § 7.21, and Santa Fe County Ordinance 1998-16 (Other Development), which were required to request the Equestrian Facility. In advance of hearing on the Application, the Applicant met all notice requirement in accordance with Article II, § 2.4.2 of the Code.

2) The owner acquired the property by warranty deed recorded on February 14, 2006 as Instrument # 1420118 in the records of the Santa Fe County Clerk. The property is located at 10 Heartstone Drive, within Section 4, Township 17 North, Range 9 East, Commission District 2.

3) The Property is currently a 7.74 acre parcel. The Applicant will divide the 7.74 acres into three lots, with two 2.5 acre residential lots and a 2.71 acre Equestrian Facility lot. On the Equestrian facility parcel all permitted existing structures will remain which include: a 706 square foot residence located above a 4 horse barn (2,250 square foot); a 8 horse stable (1,960 square foot); a 4 horse stable (648 square foot); a hay barn (1,035 square foot); a covered arena (9,946 square foot); and a maximum of 12 horses to be boarded. The structures when created were permitted by the County and have been used by the Applicant for personal use.

4) On July 16, 2015, the County Development Review Committee (CDRC) held a public hearing on the Application and recommended approval of the application, with a maximum of 16 horses to be boarded at the Equestrian Facility with staff's conditions and the addition of condition f:

f) The Applicant shall meet fire flow requirements by moving the hydrant within 1,000 feet of the fire staging area for this site.

5) As a result of public concerns raised at the CDRC public hearing regarding the water budget's accuracy for 16 horses, the County's Hydrologist re-analyzed the water budget and determined that the 0.25 acre foot per year allotment is appropriate for 12 horses rather than 16. Additionally, under the incoming The Sustainable Land Development Code, stables and other equine facilities with up to 12 horses will be allowed as a permitted use in this area. It is important to note, that CDRC was not apprised of the change in the water budget or the change from the maximum allotment of horse to 12 when they recommended approval.

6) The Santa Fe County Land Development Code, Santa Fe County Ordinance 1996-10 (Code) governs the requirements for this application; the most relevant areas identified in the Code are as follows:

a. Santa Fe County Ordinance 1998-15, § 8.1, amending the Code states, “[s]ubject to the requirements of this Section, all uses not otherwise regulated by the Code are permitted anywhere in the County provided a request for zoning approval is granted per Article III...” Horse stables and equestrian facilities are not regulated by the Code, making them subject to this Ordinance.

b. Article III, § 4.4, Design Standards and Review Criteria, states: “[i]n addition to the other requirements of the Code, the following standards and criteria will be applied in the review process:”

Article III § 4.4.1, Submittals

a. To zone or re-zone any parcel for a commercial or industrial non-residential district a master plan shall be submitted. Submittals and procedures for master plans are set forth in Article V, Section 5.2.

c. Article V, § 5.2.1.b, Master Plan Procedure, 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 subdivider 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.

d. Article V, § 7.1.3.a, Preliminary Development Plans, 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.”

e. Article V, § 7.2.1, Final Development Plan Submittals, states:

A final development plan conforming to the approved preliminary plan and approved preliminary plat, if required, and containing the same required information shall be submitted. In addition, the final development plan shall show, when applicable, and with appropriate dimensions, the locations and size of buildings, heated floor area of buildings, and minimum building setbacks from lot lines or adjoining streets. Documents to be submitted at this time are: proof of ownership including necessary title documents, articles of incorporation and by-laws of owners' association; required disclosure statements; final engineering plans and time schedule for grading, drainage, and all improvements including roads, water system, sewers, solid waste, utilities; engineering estimates for bonding requirements; development agreements; and final subdivision plats, if required.

7) On November 10, 2015, the Board held a public hearing on the Application. Staff made a presentation, the Applicant's Agent spoke in support of the project, and members of the public Barry Shrager, Don Miller, Rebecca Schneider, Tamara Rymer, Audry Stein-Goldings, and Ron VanAmberg spoke in opposition to the Application.

8) Staff determined that the Application is comprehensive in establishing the scope of the project. The level of detail provided in the Application was sufficient for a review of the Master Plan Zoning, Preliminary and Final Development Plans. As required by the Code, the proposed Preliminary Development Plan substantially conforms to the proposed Master Plan and the Final Development Plan conforms to the Code. The Application has satisfied all submittal requirements. The reviews from State Agencies and County staff established that the Application is in compliance with all State requirements, Ordinance 1998-15, and the Code. Staff recommended approval of the Application and recommended the following conditions for approval, which includes the CDRC's added condition f:

- a. The Applicant shall comply with all review agency comments and conditions as per Article V, § 7.1.3.c.
- b. Master Plan, Preliminary and Final Development Plan with appropriate signatures, shall be recorded with the County Clerk as per Article V, § 5.2.5.
- c. Horse manure shall be removed on a weekly basis and taken to the regional landfill for burial. This shall be noted on the Master Plan/Development Plan.
- d. Maximum amount of horses to be stabled at facility shall not exceed 12. This shall be noted on the Master Plan/Development Plan.
- e. Water restrictive covenants, restricting the water use to 0.25 acre feet per year, shall be recorded along with the Final Development Plan. Meter readings shall be submitted to the County Hydrologist on a quarterly basis. If the water use exceeds 0.25 acre feet per year the number of horses

allowed to be stabled on the facility shall be reduced. This shall be noted on the Master Plan/Development Plan.

f. The Applicant shall meet fire flow requirements by moving the hydrant within 1,000 feet of the fire staging area for this site.

9) The Agent spoke in favor of the Application, demonstrating that the property is surrounded by open space and that in order to comply with the 12 horse limit the Applicant will remove four stalls and convert them into a storage space. Additionally, the Applicant agreed to all recommended conditions.

10) The public opposition identified four major issues with the Application: 1) spot zoning, 2) water allotment, 3) the facility not having regular hours of business, and 4) disease and air quality concerns regarding West Nile Virus and manure piles.

11) Regarding spot zoning, Staff addressed that because Equestrian Facilities and Stables have been historically allowed in our County and all of these Facilities come in under Other Development, which has a stringent submittal process, this is not spot zoning. Equestrian Facilities and Stables are allowed anywhere in the County and in the incoming Sustainable Land Development Code these facilities will still be allowed anywhere in the County as long as an Applicant meets the Code requirements.

12) The legal test for spot zoning was determined in *Waston v. Town Council of Bernalillo*, 111 N.M. 374, 378. This is a two-fold test: 1) A factual examination of the surrounding area, size of the parcel, and benefit of the zoning change (a 3 factor evaluation), and 2) is the use compliant with the comprehensive plan. Part 1 of the test evaluates three factors: a) if there disharmony with the surrounding area; b) what is the size of the area rezoned; and c) whether the rezoning primarily benefits the property or the community.

13) Applying the legal test in this case, the Equestrian Facility is in a rural residential subdivision, which includes open space and horse trails, there are numerous homes with horse stalls in the area, and the nearest Equestrian Facility is 6 miles away at Las Campanas. Santa Fe County allows Equestrian Facilities anywhere in the County under Ordinance No. 1998-15, Other Development. In order for an application to come in as Other Development it must undergo Master Plan Zoning, Preliminary and Final Development Plan; 8 horse facilities in the County have gone through the same process. Numerous members of the community are able to board and train their horses at this facility as it is open to any community member who wants to participate. Since both Equestrian Facilities and Horse Stables are allowed anywhere in Santa Fe County this Master Plan Zoning is in compliance with the Santa Fe County Comprehensive Plan.

14) Regarding the water allotment, the County Hydrologist reanalyzed the water projections and both the Hydrologist and County Staff recommended a 12 horse limit, which was agreed to by the Applicant.

15) Regarding the hours of operation, the Board during their deliberation imposed the following condition g:

- g) The hours of operation shall be from sun-up to sun-down with deliveries of horses no earlier than sunrise and no later than 10:00 pm.

16) Regarding the manure piles, County Staff had previously imposed condition c, which is the removal of horse manure on a weekly basis. If there are violations of this condition community members may call the County and Santa Fe County Code Enforcement Officers will deal with the situation.

17) Regarding West Nile Virus the Board addressed that there is a vaccine which is given to horses to prevent West Nile and that there is no way to prevent the entire public from

West Nile when there are numerous wild animals living in our County who may have West Nile Virus.

WHEREFORE the Board of County Commissioners of the County of Santa Fe finds that the Applicant has satisfied all submittal requirements, the conditions imposed on the Applicant address the public's concerns, that this is not spot zoning. The Board hereby approves the request for Master Plan Zoning, Preliminary and Final Development Plan approval to allow an Equestrian Facility on 2.71 acres, subject to the conditions set forth in paragraph 21 above. The motion to approve the Application passed by a 4-1 vote, with Commissioners Anaya, Roybal, Holian, and Chavez voting in favor of the motion, with Commissioner Stefanics voting against the motion.

IT IS SO ORDERED

This Order was approved by the Board of County Commissioners of Santa Fe County on this ____ day of _____, 2016.

The Board of County Commissioners of Santa Fe County

By: _____
Miguel M. Chavez, Chairperson

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



Gregory S. Shaffer, County Attorney

VIII. B. 9. **CDRC CASE # Z/PDP/FDP 15-5130 Ashwin Stables. Don Altshuler, Applicant, James W. Siebert & Associates, Agent, Request Master Plan Zoning, Preliminary and Final Development Plan Approval to Allow an Equestrian Facility on 2.71+ Acres. The Property is Located at 10 Heartstone Drive, within Section 4, Township 17 North, Range 9 East (Commission District 2) [Exhibit 13: Packet from Mr. VanAmberg]**

MR. LARRAÑAGA: Thank you, Mr. Chair. Don Altshuler, applicant, James W. Siebert & Associates, agent, request master plan zoning, preliminary and final development plan approval to allow an equestrian facility consisting of a 706 square foot residence located above a four-horse barn, an eight-horse stable, a four-horse stable, a hay barn, a covered arena and a maximum of 12 horses to be boarded on on 2.71+ acres. The property is located at 10 Heartstone Drive, within Section 4, Township 17 North, Range 9 East, Commission District 2.

On July 16, 2015 the County Development Review Committee recommended approval of the request for master plan zoning, preliminary and final development plan to allow an equestrian facility with a maximum of 16 horses to be boarded on 2.71 acres. The CDRC's recommendation of master plan zoning, preliminary and final development plan approval included staff conditions, as amended, with an additional condition imposed by the CDRC that the applicant shall meet fire flow requirements by moving the hydrant within 1,000 feet of the fire staging area for this site.

As a result of the CDRC meeting and concerns raised at the meeting regarding the water budget for 16 horses the County Hydrologist reanalyzed the water budget. As a result, the applicant has amended their application to allow 12 horses instead of 16 horses. The County Hydrologist in analyzing the data agrees that 0.25 acre-foot per year allotment is in accordance with 12 horses being on the property. Additionally, stables and other equine facilities with up to 12 horses will be allowed as a permitted use under the incoming SLDC. Although 12 horses is a lesser number than the CDRC recommended in the public hearing it is important to note the CDRC was not apprised of the change in horses from 16 to 12.

The applicant's current amended request is to allow a maximum of 12 horses to be boarded on the site. The applicant requests master plan zoning, preliminary & final development plan approval to allow an equestrian facility on 2.71 acres in conformance with Ordinance No. 1998-15, Other Development, and Santa Fe County Ordinance 1996-10, the Santa Fe County Land Development Code. The equestrian facility consists of a 706 square foot residence located above a four-horse barn, an eight-horse stable, a four-horse stable, a hay barn, a covered arena on 2.71 acres. The applicant also has amended the plans to illustrate how four of the 16 existing horse stalls will not be utilized to house horses. The structures were permitted and were utilized by the applicant for personal use. The proposed facility is currently located within a 7.74-acre parcel. The applicant proposes to sub-divide the 7.74-acre parcel to create three lots consisting of two 2.5-acre

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residential lots and a 2.71-acre parcel to be utilized for the equestrian facility.

The applicant's report states: The equestrian use that is shown in this request for master plan and development plan approval will remain as it has existed for the last 15 years. Until recently Mr. Altshuler kept four of his family horses on this site. Mr. Altshuler is no longer able to ride and the horses have been sold. Some of the residents who used to board horses no longer do so. If boarding of horses from outside the subdivision is not possible, the equestrian use is not financially feasible. The use list for the property is limited to an equestrian facility including boarding of horses and its ancillary use structures and activities, such as the small residence for the stall keeper and training and instruction of riders.

Building and Development Services staff has reviewed this project for compliance with pertinent code requirements and have found that the facts presented support this request: the application is comprehensive in establishing the scope of the project; the proposed preliminary development plan substantially conforms to the proposed master plan; the final development plan conforms to the code requirements for this type of use; and the application satisfies the submittal requirements set forth in the code

The review comments from state agencies and County staff have established findings that the application is in compliance with state requirements, Ordinance No. 1998-15, Article V, Section 5.2, Master Plan Procedures, Article V, Section 7.1, Preliminary Development Plan, and Article V, Section 7.2, Final Development Plan of the Code.

Staff recommendation: Staff and CDRC recommended approval of Master plan zoning, preliminary and final development plan to allow an equestrian facility on 2.71 acres subject to the following conditions, with an amendment to condition 4 based on the changed number of maximum horses and the inclusion of condition 6 added by the CDRC. Mr. Chair, may I enter those conditions into the record?

CHAIR ANAYA: Yes, you may.

1. The Applicant shall comply with all review agency comments and conditions as per Article V, § 7.1.3.c.
2. Master Plan, Preliminary and Final Development Plan with appropriate signatures, shall be recorded with the County Clerk as per Article V, § 5.2.5.
3. Horse manure shall be removed on a weekly basis and taken to the regional landfill for burial. This shall be noted on the Master Plan/Development Plan.
4. Maximum amount of horses to be stabled at facility shall not exceed 12. This shall be noted on the Master Plan/Development Plan.
5. Water restrictive covenants, restricting the water use to 0.25 acre-feet per year, shall be recorded along with the Final Development Plan. Meter readings shall be submitted to the County Hydrologist on a quarterly basis. If the water use exceeds 0.25 acre-feet per year the number of horses allowed to be stabled on the facility shall be reduced. This shall be noted on the Master Plan/Development Plan.
6. The Applicant shall meet fire flow requirements by moving the hydrant within 1,000 feet of the fire staging area for this site.

MR. LARRAÑAGA: Mr. Chair, there were some handouts passed out to the Board. The first handout is a request by Mr. Ron VanAmberg to allow him to cross-

examine and all persons testifying before the BCC pursuant to the requirements for quasi-judicial proceedings. The second handout is Resolution No. 2009-2, a resolution establishing rules of order for meetings of the Board of County Commissioners tabbed as Article 5.B.3, administrative adjudicatory proceedings which describes the process for cross examination. And the third handout is materials submitted by Mr. VanAmberg. The same material is in the staff report labeled as Exhibit 15. Mr. Chair, I stand for any questions.

CHAIR ANAYA: Any questions of staff at this time? Seeing none, we'll go to the applicant. Mr. Siebert.

[Duly sworn, Jim Siebert testified as follows:]

JIM SIEBERT: Mr. Chair, Commissioners, my name's Jim Siebert. My address is 915 Mercer, Santa Fe. Let me give you a little background on this. This is a facility that was actually constructed in conjunction with the Heartstone Subdivision. The Heartstone Subdivision that sits here is -- it was accomplished through a density transfer provision. To give you an idea of how this kind of relates to the residential and to the roadway, the County has approximately 15 acres of land here that's designated open space. There is another area here. It consists of about 13 acres that is actually part of the homeowners association open space. Then there's another eight acres here, a little over eight acres that has open space designated an equestrian easement.

This particular site that the application has requested sits here. So just to reiterate, there's kind of three different types of open space. The particular project sits here in the middle surrounded by open space. This is a 15-acre tract that's part of the County open space. This is associated with the homeowners association and then there is open space that's been designated equestrian easement adjacent to the equestrian facility.

There is a lot here or is in the process of being created a lot and it's 2.5 acres and the Altshulers own that particular lot.

So to kind of --

COMMISSIONER STEFANICS: Mr. Chair.

CHAIR ANAYA: Hold on, Mr. Siebert. Commissioner Stefanics has a question on the prior document?

COMMISSIONER STEFANICS: Right. So in that map, you're saying all of the green is already open space.

MR. SIEBERT: That's correct.

COMMISSIONER STEFANICS: The orange is?

MR. SIEBERT: The orange is the application in front of you tonight.

COMMISSIONER STEFANICS: And the white, the little white piece?

MR. SIEBERT: Here. This is a lot that's being created that's currently owned by the Altshulers.

COMMISSIONER STEFANICS: Thank you very much.

MR. SIEBERT: So this is the enlargement. This is the main road into Heartstone. The Altshulers now own this lot that we described to you. They also own the lot that sits on the other side of the road. The access comes off through this lot here. The buildings consist of a covered riding arena, which is the orange color here. There is a barn, and on top of the barn there's a very small apartment. It's about 700 square feet and the caretaker that takes care of the stalls and the horses at times actually lives in that

particular unit.

The stables are here and actually inside the barn as well. There is a shed here and then additional stables here. We'll talk in just a minute about the conditions, but the one issue that came up is on the water budget was is it sufficient to accommodate 16 horses and the County Hydrologist felt like it was sufficient to handle 12 horses. We're in agreement with that condition.

One of the stalls or one of the stables that has four stalls, in order to comply with the 12-stall limit, the stalls would be taken out and that would be converted to a storage area associated with the equestrian center. Staff has looked at this. The various departments, the state agencies have looked at it. They're all in agreement that it is in compliance with the County code. We're in agreement with the conditions as stated by staff and I'll answer any questions you have.

CHAIR ANAYA: Is there any questions? Commissioner Chavez.

COMMISSIONER CHAVEZ: Thank you, Mr. Chair. On that point, Mr. Siebert, condition 5 reads, Water restrictive covenants, restricting the water use to .25 acre-feet per year, shall be recorded along with the final development plan. Meter readings shall be submitted to the County Hydrologist on a quarterly basis. If the water use exceeds .25 acre-feet per year the number of horses allowed to be stabled on the facility shall be reduced. This shall be noted on the master plan/development plan. You're okay with that?

MR. SIEBERT: The applicant is in agreement with that condition.

COMMISSIONER CHAVEZ: I know that's kind of worst-case scenario but if it doesn't pan out you can adjust.

MR. SIEBERT: Correct. You can reduce the number of horses to bring it in compliance.

COMMISSIONER CHAVEZ: Thank you.

CHAIR ANAYA: Other questions? Okay. This is a public hearing. I'm going to open the public hearing. Are there people who want to speak in favor of or against this project? If you would stand and be sworn in. Let's get everybody up at one time.

[Those wishing to speak were placed under oath.]

[Duly sworn, Barry Shrager testified as follows:]

BARRY SHRAGER: My name is Barry Shrager. I reside at 21 Diamante in the Heartstone Development which adjoins Ashwin Stables. First, could I just point out something on the maps that he just brought out? The space he referred to as open space, this is not open space. This is part of Heartstone part of our [inaudible] So this area he referred to as open space is actually Heartstone HOA space, which is zoned residential.

First of all, I'm on the board of directors on the Heartstone Homeowners Association and I am here to represent the membership of that association. Over the past few months since we first were notified of the zoning changes proposed by Don Altshuler, LLC, to change the zoning at Ashwin Stables from residential, which it is presently zoned to commercial, the HOA and board of directors had held a series of meetings. After a vote of the total membership the Heartstone HOA strongly opposes any zoning changes of the Ashwin Stables to commercial or other use designations, but to keep it as residential as it is now listed with Santa Fe County.

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Members of the home association bought their properties in this development to avoid the commercial areas of other parts of Santa Fe and Santa Fe County. We do not want spot zoning in this area nor do we want commercial development bordering our open spaces and meadows as depicted in that particular schematic. There is no commercial zoning along the Tano Road corridor. It is the desire of the residents in this area of the county to avoid the commercializations of their neighborhood. Granting spot zoning may open the door to more commercial activities in this pristine and tranquil area that is zoned residential. None of the residents of Heartstone own any horses nor do any of the residents plan on using Ashwin Stables in the near future. We do not want horses riding on our streets and the meadows that our Heartstone community granted open spaces.

We purchased our home two years ago in Heartstone community not knowing there was an illegal, commercial activity going on right next door within eyesight from my home with no compliances with the County for water meters or fire protections. Horses were being boarded and trained for commercial use by Don Altshuler and his trainer. This was not a benefit to any of the Heartstone residents but benefit only to Don Altshuler. He was conducting an illegal commercial business on land that was zoned residential.

According to the latest Santa Fe County SLDC zoning map that was adopted October 27, 2014 the area in question, Ashwin Stables, is zoned residential estate, RES-1, which means one dwelling for 2.5 acre base density. It is not commercial or listed as other property. The intended buyer of Ashwin Stables, Joan Bolden withdrew her contract when she realized the Altshulers were involved in a legal dispute with the Heartstone Homeowners Association over the ownership of a portion of the Ashwin Stables property involved in the sale.

Don Altshuler had an ad in a New Mexico paper this past Sunday listing the property, Ashwin Stables, as a boutique equestrian facility before receiving any final zoning changes from the County. Again, this property is zoned residential, one dwelling per 2.5 acres. It is the recommendation of the Heartstone Homeowners Association that this zoning change not be granted to Ashwin Stables and Don Altshuler. Thank you for your time.

CHAIR ANAYA: Thank you, sir. Just a quick question. You said you purchased a home in the area. When did you purchase the home?

MR. SCHRAGER: Two years ago.

CHAIR ANAYA: Okay. Thank you.

[Previously sworn, Don Miller testified as follows:]

DON MILLER: Good evening. I think it's still evening, isn't it. Anyhow, my name is Don Miller. I live at 45 Heartstone Drive and have lived there for ten years - nine years going on ten. And some of the following may be redundant but it's necessary to make certain points more obvious and important to the conversation. I'm going to tackle water usage only. The water uses aspect in the applicant's proposal as originally given was a gross misrepresentation, as the average horse generally drinks more than 13 gallons per day, particularly in our New Mexico heat and also when the horse is worked. Using the staff's low numbers that equates to 12 horses drinking no less than 40,000 gallons a year. Most of the horses at the barn are large and some could drink up to 18

gallons a day. Add the three rental homes, the apartment, the washing of the horses, the watering of the arenas, the barn facilities and you can see the amount of water usage created by this illegal, spot-zoned commercial barn and property split was still estimated at much less than realistic.

Regarding the split of the property and the spot zoning we now have four meters, and how will they be monitored? How will they be tamper-proofed or locked, and how will fines and penalties be established for the overages? Remember, this is a residential property. It is currently an illegal horse facility and will need monitoring, unlike the self-monitoring residences, as circumstances within a business change rapidly and often.

The community does now want the monitoring responsibility, and since we have been threatened with trespassing by the developer we could not try to even monitor the facility. Does the County have the manpower and resources to handle inspections? If not, then the County should not allow something they cannot control.

Finally, we must go back to the fact that the developer has shown a propensity to operate outside of the laws. The County has previously talked to him about one serious situation and only slapped his hand. It's indicative of future behavior and the County Commissioners should take that into consideration and judgment. I'm not going to bore you with the details on the water usage. Everything that I've done I took off the net, googled, and it's as accurate as can be to my knowledge and what I was supplied with through the net. But the sum of what I have as water usage is simple. The total usage would be well over 1.5 acre-feet, or no less than two times what you have deemed correct or the amount that should be used.

The staff revised their numbers downward and our question to the Commissioners is simply, is that a reasonable consideration? Granting a zoning change where the established water use is more than twice the allowable usage, and that's a serious question.

Last, I question why we are all here when the fact that spot zoning is illegal throughout the United States and here we are discussing whether it should be allowed here in Santa Fe County. At a prior hearing the committee was neglect and should have recognized that fact and turned the applicant down at that time.

In summary, we are faced with an illegal operation applying for illegal spot zoning, creating a need for water beyond what is allowable before it is voted upon. And all of this with no methods for control and inspection. There remains only one answer to the myriad of problems and illegalities and that's a simple no.

One last quick statement, and that is the important statement about the future of water here in Santa Fe County. It is well known that the City of Santa Fe is currently in the process of attempting to legally steal water from the aquifer that supplies much of the water from Las Campanas through La Tierra across Sundance, Heartsone and Tano Road. A legal battle has already been assumed and the County, the homeowners in Tano and the Tano Road Association, as well as many other citizens and taxpayers in the county will be faced with a serious potential shortfall in the watertable. The Commissioners must recognize that they will be involved in may future litigious battles over water as the shortfall comes closer to reality. The future land plan that is under review will most probably have to be amended before approval as it virtually raises the allowable water usage for 2.5 acres to a half acre-foot or more by allowing 12 horses on

commercial or residential lots. The water future does not bode well for all of us, more reason for the County not to allow the current application to be approved if only on the basis of excess water usage. Thank you.

CHAIR ANAYA: Thank you.

[Previously sworn, Rebecca Schneider testified as follows:]

REBECCA SCHNEIDER: Good evening, Commissioners. My name is Rebecca Schneider and I reside at 10 Plano Arboledo in the Heartstone Subdivision. I'm approximately one half mile from the stables in question. After a long battle with cancer my spouse Kevin passed away in 2014. We had always planned on retiring in Santa Fe so when he passed I began looking for a peaceful and quiet home in the Santa Fe foothills, which I eventually found and closed on May 1, 2015.

A few weeks after closing I saw signs posted from Mr. Altshuler's intent to rezone the stables from residential to commercial. After further investigation I found that this was filed prior to my closing and was never disclosed either to myself, the selling or buyer's realtors, hence it was never disclosed to me as the purchaser. Since moving into the subdivision there have been several issues with the stables with excessive flies, with excessive waste not being disposed of timely, and excessive numbers of horses, more than the stable could hold.

The Heartstone community is a closely knit group of folks that have worked all of their lives to settle in a place that is a safe and peaceful environment that we can call home, free from any commercial zoning whatsoever. I would ask that you consider myself as well as other residents in Heartstone and I request that you deny the rezoning request of Mr. Altshuler to make the stables a commercial property. Thank you.

CHAIR ANAYA: Thank you.

[Previously sworn, Tamara Rymer testified as follows:]

TAMARA RYMER: My name is Tamara Rymer. I reside at 36 Heartstone Drive. Good evening, Commissioners. I'm speaking on behalf of my husband, Steve Rymer, as well as myself. We live at 36 Heartstone Drive in the Canterbury Subdivision, which is the first house into the development past the Ashwin Barn. You go through an entrance signifying that you are entering an enclosed development and it would be except there had to be an exit road for emergency purposes. Ashwin, Canterbury and Heartstone are all within this small development.

We are opposed to the approval of the requested zone change for this case. We bought in this development after seven years of searching for residential property away from commercial development. The reason being is we had a bad experience in Texas with a B&B and a nursery moving into our subdivision. We were out of any jurisdiction for zoning being out in the country and quickly learned now to make that mistake again. Now we come to find out that an illegal commercial boarding and training business had been operating at Ashwin Barn for several years before our land purchase. This was no longer the residential development we thought we had bought into. There was no disclosure from the title company because this business was flying under the radar.

In checking with the County for clarification on the Ashwin Barn I contacted Jose Larrañaga. He quickly checked his computer to find no business listing at 10 Heartstone, which is the address in question. Later Jose said they would need to rezone the barn to bring it into compliance. In an email I asked Jose does that mean rezone from residential

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to commercial. His response was yes. A copy of that email is Exhibit E-2 submitted in the brief by Mr. Ron VanAmberg.

There are several points I'd like to make regarding this zoning change. First is the noise factor. For months we had noticed at sun every morning a leaf blower was being used to clear the barn aisles. From our house, which we figure is a few hundred feet from the Ashwin Barn the high-pitched, annoying sound kept us from being able to sit under our portal for morning coffee. After complaining, they moved this activity to 10:00, only to have it bounce back again to 7:00. Furthermore, we've had issues where an 18-wheeler would back up to the Ashwin Barn, presumably to either deliver a horse or to take a horse out, at 1:00 am in the morning.

This is not normal residential activity. Upon trying to get this barn rezoned Altshuler had to put a catchment system in and he needs a hydrant within 1,000 feet of the facility, so he's never been in compliance with the Fire Marshal or the Count for water restrictions. This barn is a commercial business and he's been advertising online with a website for some time. A commercial venture is allowed only when it benefits a community. We know of maybe one Tano Road area person that boarded her horses with Bolton, the trainer. Everyone else is from outside the area. As a matter of fact, most of the support for this change is from outside of our area. The few people who are in support are either close friends of the Altshulers, their business partner, Diamond, or clients of Bolton. How does that benefit our community?

This business of Joan Bolton could have been done elsewhere in the county, such as the horse park, without disturbing the original zoning plan of this community. This can be solved very simply by going back to Don Altshuler's original plan for the barn as a privately owned residential barn. This is why the New Mexico lawmakers enacted the spot zoning law.

I'd also like to point out that the proposed stipulation that was in the package presented to the County for the Ashwin Barn state that manure removal will be made on a weekly basis. They use a dump trailer of similar size to the one that we use for our two horses, a 5 X 10 that we fill up on a weekly basis. Our Canterbury covenants require us to remove manure for two horses every two weeks. They can have 12 horses at a low average of 50 pounds of manure each per day. That's 600 pounds total per day. And if you do the math based on our requirements they should be removing the manure every other day and this is not the case.

This is a concern as we were in close enough proximity to receive their fly population. Even our vet made a comment that we were getting more than our share and felt Ashwin was where they were coming from. Which leads us to the point that there's not enough buffer between the residences and a professional horse facility. By allowing this commercial business spot into the neighborhood you force us to police it. So then, when they are in violation by riding their horses out beyond their boundary we are to contact the County. Then by the time the County gets on to check on them they're back in the barn or they've quickly gotten rid of their enormous pile of manure.

We are horse owners and have been in the horse business for almost 30 years. I've been a board member of the capital area quarter horse association and have been involved in enough aspects of the horse industry to know that taking horses that have been disciplined in arena work out for a trail ride is still training. This group has been riding

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out beyond their boundary and will continue to do so. Why are you putting the responsibility on the residents of this development to keep them in check? Why does the County set up the rules and ordinances when you don't have a viable plan to enforce them? This started out as a small, private residential barn, told to us was part of our development and for development use and it has grown historically to an illegally operated facility. How can you grant approval to anything that has been doing this? If you say this is okay, then realistically you are telling Santa Fe County to go ahead, start your business, and we'll deal with it later.

I'd like to refer you to Exhibit H from the brief that Ron VanAmberg presented to you. This is a zoning map of the Tano Road area showing the area is residential. Please find the dot and arrow in red showing the approximate location of the Ashwin Barn. There is no other commercial zoning for miles, but essentially this map is incorrect, because by approving this commercial barn you're already changing the map. In Austin, Texas, they don't allow commercial horse facilities into most residential neighborhoods because they want to protect the integrity of the original zoning plan, but here, why doesn't that matter? You're talking about destroying the structure of the zoning map you've been taking so long to make work. Why bother having a zoning map if you're not going to adhere to it? What's the point?

By showing this map with its zoning areas in place and online in the County website you're advertising to the work that Santa Fe has distinct residential areas. You're telling all of us Texans, Oklahomans, Californians and others that have helped keep this economy alive for the last few years to come on over, buy our real estate, move into our residential areas and then, oh, by the way, a commercial business will be coming in next door to you.

So what you have advertised to the world as residential, isn't. Sounds like false advertising to me. You the County are in conflict with yourselves. You show zoning maps but you don't want to offer a system based on your own appendix charts that work with the zoning map. They're not congruent and viable with each other. You can't put forth a zoning map showing residential zoning then pop in commercial businesses and still call it residential zoning via the map. This is what is happening in this town and the trend needs to stop before beautify historic Santa Fe is trashed out. And by allowing commercial businesses into areas that are not designed for them, just because you want to make sure that the horse industry is allowed to grow, you're shooting yourselves in the foot. Why bother promoting the horse parks and large equestrian centers if you're not going to do the things that help keep them viable?

The horse training and boarding businesses can be located in those larger facilities without the long-term effects of what you would allow to happen in an untouched residential area. This is wrong on so many levels and I implore you to consider the future of the county by what you do here. Thank you.

CHAIR ANAYA: Ma'am, did I hear you say you've been here 30 years, that you're at that property? Did you say 30?

MS. RYMER: No, I've been in the horse business for over 30 years. I have been on the property - I've owned the property for two years.

CHAIR ANAYA: Two years. Thank you. And if we could, if we could not be redundant with the comments please, I would appreciate it.

[Previously sworn, Audrey Stein-Goldings testified as follows:]

AUDREY STEIN-GOLDINGS: Okay. First I'd like to read to you a testimony of Nancy Berry and Tony Buffington who aren't here today but have provided very important information I think you should here.

CHAIR ANAYA: Ma'am, if this is other information from another individual I'm going to allow it to be put on the record, but I want to have you make your comments that you've stated. Okay?

MS. STEIN-GOLDINGS: They've already submitted this to Jose and received permission to have it read.

CHAIR ANAYA: So these are on the record. I'll let you summarize it but I don't you to read this entire thing and then get into your comments.

MS. STEIN-GOLDINGS: I'm sorry. I don't understand.

CHAIR ANAYA: If you could make a summary of their comments that are in and then provide your comments. Then go ahead and focus on your comments.

MS. STEIN-GOLDINGS: Well, I think I would have put this in my comments if I had known because they have such important information. So I'd like to just get started. Because I really am not prepared to give a summary of it because it's very detailed and includes a lot of legal information. I'll start at a point that makes sense. Okay. Prior to the July 16th CDRC meeting on the zoning change application we submitted an email to Mr. Jose Larrañaga detailing our concerns and reasons for opposition to the change, which is included in the CDRC packet. We also traveled to Santa Fe for the September 8th BCC meeting but the applicant cancelled on the day of the hearing. We are unable to travel back to Santa Fe for today's hearing and have asked that our testimony be read by Audrey Stein-Goldings.

We carefully reviewed the packet material for this BCC meeting and noted the new limitations and conditions placed on the application as well as clarification regarding the use of the property. These changes appear to be in response to the brief submitted to the County Attorney by Mr. Ronald VanAmberg on our behalf of several residents of the Heartstone and Canterbury subdivisions. While we appreciate the intent of these limitations in our view they have not gone far enough. First, the BCC packet material does not mention and do not appear to take into account that the BCC will be voting to approve a zoning change taking place in a neighborhood currently embroiled in a legal dispute with the applicant related to his failure to properly deed 48 acres of subdivision land to the Heartstone Homeowners Association. This dispute relates to the open space land on three sides of the Ashwin Stables.

On September 4, 2015, just four days before the originally scheduled BCC meeting the applicant made multiple transfers of land that had never been properly deeded to the HOA. The 8.6 acres of land referred to as the equestrian easement area was transferred to Altshuler LLC. This is property that should have been our property and he deeded it to himself to make this exchange, to make this commercial land work for him and a sale. Applicant also executed a deed attempting to transfer the 18 acres of County-designated open space to the County. However, we were advised the County refused to accept the transfer.

On October 8, 2015, Michael Patcho, an attorney representing the Heartstone HOA against Mr. Altshuler sent a letter to Karl Sommer, counsel to the applicant,

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outlining demands of the HOA and this matter has yet to be resolved. Given the significant dispute taking place between the Heartstone Homeowners Association and the applicant we ask that the BCC consider the wisdom of a zoning change within a neighborhood already in legal turmoil.

A second issue not reflected in the BCC packet materials is the fact that Ashwin Stables currently operates a website advertising its service and this website represents that the stable has five miles of riding trails for its clients to utilize. It takes only a quick look at the Heartstone Subdivision plat to realize that the land associated with this permit application could not possibly contain five miles of riding trails. It is clear that Ashwin Stables has used and intends the continued use of the surrounding open space which is subject to a Heartstone HOA restrictive covenant prohibiting commercial activity on HOA premises. The applicant has previously admitted 4.5 years of illegal commercial equestrian activity taking place at Ashwin Stables. It is important for the BCC to know that as soon as the community became aware of this illegal, long-standing commercial activity they objected immediately and forcefully.

Given the applicant's long-standing disregard for the rules of law we submit that if the BCC were to approve this permit you will effectively be consigning the Heartstone neighborhood to a future of constant monitoring and vigilance to ensure that Ashwin Stables does not seek to utilize for its business operation land subject to Heartstone's restrictive covenant prohibiting commercial activity. The applicant's current website marketing lots for sale in the Heartstone community states this meadow known throughout the region is prized for its pastoral quality and will remain open in perpetuity. A pristine meadow is central to the beauty of our community and residents don't want to see this meadow damaged by clients of an equestrian business we are unable to control.

A third issue to consider is community reaction to this permit application. Since the CDRC hearing the community became aware of applicant's failure to properly deed land to the HOA and community opinion has shifted to strong opposition. A recent vote held by the Heartstone HOA with the results that families are overwhelmingly opposed to this proposals to change the Ashwin Stables' zoning to non-residential equestrian use. While we are not aware of a formal vote by the Canterbury HOA it is our understanding the Canterbury families are also overwhelmingly opposed to the zoning change. More so than our Tano Road and Sundance neighbors it is the Heartstone and Canterbury residents who are most immediately impacted by whatever takes place at Ashwin Stables as we pass by the stables each and every time we drive into and out of the neighborhood or go to the mailbox to check our mail our guests drive by the stables on the way to their homes.

As your constituents we ask that you do the right thing, not for the applicant who needs the zoning change to sell his land but do the right thing for the residents who remain in the neighborhood. Do the right thing for the county and the environment.

Now I'd like to go and proceed with my testimony if I might. I am Dr. Audrey Stein-Goldings, licensed to practice medicine in the great states of both New Mexico and Texas. I currently live at Heartstone immediately adjacent to the stables. I did not know when we bought a house here a couple of years ago that zoning changes were flagrantly disregarded by the Altshulers at Ashwin Stables subjecting the community to risks regarding sanitation and health. The stables population density of horses was illegally

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expanded without permission from the County prior to our move into the home but there was no way for us to know that.

If I had known 16 horses lived literally next door to me I would not have moved here. It is interesting that the bylaws of Heartstone, much of it written I believe by Mr. Altshuler himself, forbid us from having more than two dogs in our homes, but Don Altshuler thinks it's okay to have 16 horses on property next door. It is not. The Altshulers told us they are moving from the community, so they won't be subject to the health hazards related to the horses, the need to meter the water, install fire hydrants and the increased population density of horses all put us at health risks which I would like to discuss further with you.

Now that the Altshulers want to sell the property they have to get it right with the County, which they should have done years ago. Permission should have been sought prior to operating a 16-horse stable equestrian center in a residential zone. There is no one in the vicinity of the stable who uses the stables currently or would ever use the stables except the Altshulers themselves in the remote past. The [inaudible] growth of commerce was not done as a service to the community but a way for the Altshulers to line their own pocket. Regarding their claim that it adds to our pleasure living in a pastoral environment, I don't need to live next to a stable with 16 horses to be thankful every morning that I live in Santa Fe because of its glorious beauty. I love my dog but I don't want to live next to a kennel either.

I prefer that the Altshulers were compliant with the County regarding residential zoning limits because, well, that's what law-abiding people should do. Do not reward them for defying the rules.

At the last hearing regarding rezoning I was shocked and dismayed to find out the violations discovered by the authorities that are currently going on at Ashwin and have passed under the radar of the County for years. One, there was no water meter. By now you've heard several neighbors express worry about our water supply. I am grateful the County has restricted it to a maximum of 12 horses based on their research that 16 is over the limit that the environment can sustain. Don Miller has already presented to us that the water requirements are vast for 12 horses and even this restriction is not enough. We are listed under the Santa Fe ordinances as a very high wildland urban hazard area. Please take that into account.

Two, there are no fire hydrants on the property. Twelve horses plus all that hay in the desert, this is a fire hazard, a fire waiting to happen. It seems particularly irresponsible to subject all of us who live next door to this fire hazard. This has been going for years under the stewardship of Mr. Altshuler and Ms. Bolton who have not been concerned about this fire hazard, either for us or for their horses.

Three, a high density of horses adds to the risk of zoonosis, animal-borne diseases that infect humans. I can speak on this as an expert since I'm a medical doctor and have written articles about Lyme disease and have lectured on this tick-borne disease. I co-authored an article with the Texas Department of Health when I lived in Dallas which appeared in Texas Medicine. In fact Lyme disease has been reported as an emerging infection here in New Mexico as well.

As a medical doctor I know the risk of living too close to a large number of horses. I would not have chosen to live here if I had known there were 16 horses living in

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a high-density area essentially in my backyard. Comparing us to Las Campanas as the Altshulers have suggested to the homeowners is simply stupid. There the stables are far from where the residents are so families are not subjected to exposure to a high density of horses 24/7. Aside from fecal contamination and sewage in horse droppings, 12 or 16 horses harbor a large population of fleas, ticks, flies, mosquitoes and there is an increase in rodent population. Runoff from manure piles and horse paddock areas are rich with contaminants to our streams and drinking water supply.

Tamara has already discussed the poor manure handling practices she has witnessed at the Ashwin Stables. Two other well-known diseases on the rise here in New Mexico would include the plague and West Nile virus. People usually get plague from the bit of rodent flea that is carrying plague bacteria. With the large amount of extensive rainfall we have received recently mosquito populations can be expected to increase, and there is a potential for West Nile virus cases of both people and horses throughout the state, according to Dr. Paul Ettestad, the New Mexico State Department's public health veterinarian.

Symptoms of West Nile Virus, a new invasive disease can include stupor, disorientation, coma, tremors, convulsions, muscle weakness, paralysis and death. There is no medication to treat or vaccines to prevent West Nile Virus infection. Most importantly people over 50 years old and those with other health issues I might add are at higher risk of becoming seriously ill or dying when they become effective. One hundred percent of families at Heartstone and Canterbury, the adjacent areas to Ashwin stables are over 50 years old, so we are more vulnerable to the morbidity and mortality due to the West Nile virus. Hantavirus pulmonary syndrome is a severe respiratory illness that kills 36 percent infected. It is caused by the Sin Nombre virus and also endemic to New Mexico. It is transmitted by infected rodents through urine droppings or saliva. Humans can contract the disease when they breathe in aerosolized virus. Blowing manure can be a vehicle for infection to us, and I've already discussed with you the manure situation that Tamara has photographed for you and you have documentation that there are huge piles of manure that are present at Ashwin Stables that can cause ill health and death.

None of us here at Heartstone, I repeat none of us use the stable and all of us are at retirement age. The majority of families at Heartstone and Canterbury adjacent to the stables do not want the area to be rezoned. The stable was not expanded to meet the needs of the community and in fact puts the community at risk due to poor sanitation, fire and disease. As Tamara said, there is no buffer between us and the stables. There should be a large buffer between senior citizens and the stable that contains either 12 or 16 horses.

The County told us about these serious infractions at Ashwin during the last hearing by requiring the water to be monitored and fire hydrants to be installed. Since Mr. Altshuler and his manager who is the person he intends to transfer the stable to overlooked the fact that the stable was not safe and up to code I fear for the future here since we do not have access to its daily operations to double check that they remain in violation. Already the community has seeing a clamping down on our movements into the area and have been warned of trespassing.

In summary, proposed rezoning is contrary to the needs of the seniors who live here and is in fact detrimental to our health. I am glad in one way Mr. Altshuler petitioned for rezoning in that we now know what is going on at the stables. Hopefully,

you will help us return the land back to its intended residential zone designation. This is a beautiful, fragile environment where we live and we must protect it. This has already been broached today by other homeowners. Please do not allow the rezoning. The development of the stables to its current size has been a disgrace. It doesn't serve the community at all and in fact puts us in harms' way. Mr. Altshuler requested spot zoning which we've already discussed is illegal in the state of New Mexico. By conducting a business in this residentially zoned area for years now it has only benefited his pocket.

Once sold it still won't be needed or desired by this community. The stable business will, if legitimized rather than operating clandestinely under the radar of the County change the tenor of the area most assuredly. This business is not harmonious with our housing community and will stick out like a sore thumb to those of us who live there.

On a personal note I have a sister who lives in downtown Chicago and she can walk from her condo on the 29th floor to supermarkets, drug stores, go to the movies and catch a bus. She loves it. But living in the big city was not my dream. For those of us who moved to Heartstone we didn't bargain for business in our backyard of any kind, and, as a doctor I would not have chosen to live adjacent to a stable housing 12 or 16 horses. I appreciate the audience of our esteemed panel tonight who have listened to our testimonies and I thank each and every one of you. Thank you.

CHAIR ANAYA: Thank you.

RON VANABERG: May it please the Commission, I'm Ron VanAmberg. I'm an attorney and represent several of the people who are here and some who are not here - Tamara and Steve Rymer, Marilyn and Don Miller, Audrey and Barry Schragger, Rebecca Schneider. I've been trying to unravel exactly how it is that we've gotten to where we are where we have the staff recommending a spot zoning within a residential zone which would simply drop a commercial zone in the middle of this residential zone. It's totally antithetical to the whole concept of zoning, which is an organized and reliable and stable method for establishing where uses are going to be, rather than what is being promoted here which is essentially chaos where at any moment someone can come in and say that they want to make a particular use of their property and instead of applying for a variance, which is what they should be doing and what this should be about, they apply for a master plan rezoning, which has a rather innocuous ring to it but effectively is a rezoning of a piece of property which then allows whatever multiple uses are permitted in the particular rezoning that they have obtained.

I think I understand where we've gotten to this point and I suggest that this Commission ought to reverse this trend. The way it is supposed to work is you have a number of potential areas that can be zoned commercial. You've got your regional and major centers. You've got your community centers, your local village centers, you've got your neighborhood small-scale centers, and then there are a list of uses which may take place within those particular districts. There is sort of an odd provision in the code that says that if there is a use that is not otherwise regulated by the code it can be located anywhere within the county and that is apparently the problem that results in the rather strange position we find ourselves in today, which is staff promoting spot zoning.

And apparently what has happened is that if the use is not specifically the use that is being sought by the property owner it cannot be specifically found within these examples of uses found in the list within the ordinance then immediately the staff jumps

to otherwise not regulated, can be located anywhere within the county, and then they use the land use to really drive the zoning and so they say it can be located anywhere but it's a commercial use so we need a zoning so you end up with spot zoning here and spot zoning there. But that is not the way it is supposed to work.

If there is a – first of all, you do regulate commercial uses within the county and what is supposed to happen under Section 4.3.4, if the use is not found on the list then the proposed uses or use groups, either generalized or not listed as suggested to be permitted for zoning districts by the code shall be evaluated by the code administrator to determine how a proposed use or use group should be categorized. And so what you do with a horse facility is you shouldn't just be plopping down in the middle of residential areas followed by a spot zoning. The code administrator is supposed to determine what type of use and category of use this horse facility should fall into, and that in turn determines whether or not it should be in a village district or the small-scale district or whatever district. But it doesn't mean that that use is suddenly converted into a rezoning that can be placed anywhere within the county.

Section B says evaluations or interpretations of uses not listed shall be made in writing and shall state any precedent reason or analysis on which the evaluation is based and shall be kept on file in the Land Use Department. Then it continues and it says the standard industrial classification manual, US Department of Commerce latest version may be used as a reference for such evaluations. And in the submittal that I made to you I extracted a number of categories which included the various aspects of horse facilities. And so this type of activity, instead of being set loose anywhere in the county should be categorized and compartmentalized as a commercial use to be located only within the various commercial districts that either exist or can be established in this county.

My clients and every resident in this county, as established by New Mexico case law, while they don't have a property right to zoning they have a right to reasonably rely upon zoning in making determinations of where they buy, how they use their property, and what they can expect to move in next door. And this process that is currently being used by County staff really destroys that pattern and that expectation. And really, what we've got here should not be a request for a spot zoning within a residential area which is illegal, this is really and should be a request for a variance, because we have a residential zone, there is nothing authorizing a governmental entity to spot zone to allow for a particular use. Instead there should be an application for a variance and Ashwin Stables then should be brought before this Commission to try to justify why it wants a variance. And obviously, the only reason it wants a variance is not because it has its back against the wall because of certain idiosyncratic factors which is it not responsible for, it simply wants to have a use which is inappropriate in a particular location.

What I am submitting to this Commission is that what is being proposed is not supported by your own ordinance. It is not support by New Mexico case law. It is wholly inappropriate and if the applicant wants to come back for a variance that would be the appropriate application and we can deal with that at the time also. Thank you. Unless there are any questions.

CHAIR ANAYA: Are there any questions at this time?

COMMISSIONER CHAVEZ: I don't have a question, Commissioner Anaya, but I'm wondering if staff, if it would be appropriate for staff to respond to the

concept that this proposal is staff driven and it's spot zoning.

CHAIR ANAYA: First thing I'm going to do, Commissioner, if I could is I'm going to close the public hearing and I'm going to go to the Commission. Commissioner Chavez.

COMMISSIONER CHAVEZ: So that would be my question, if it's appropriate. I want staff to respond to suggestions that were made that this is staff driven and that it's some sort of spot zoning. And I guess there's different definitions of that but if you could address that, Mr. Larrañaga.

MR. LARRAÑAGA: Mr. Chair, Commissioner Chavez, under the ordinance that it falls under, Other Development, this is what we put under, let's say a bed and breakfast, a horse facility like this one presented to you tonight, and it refers you back to Article III which there has to be master plan zoning involved with it. It has to meet the commercial standards such as water, traffic, landscape, all those standards, and there are several examples in here of past horse facilities that have been processed in this matter and come to this Board and been approved through the - under Other Development for the horse facility. So we don't consider it spot zoning. It's allowed under Other Development for this type of facility.

COMMISSIONER CHAVEZ: So spot zoning then really isn't the correct term to use for this type of request, is it?

MR. LARRAÑAGA: Mr. Chair, Commissioner Chavez, no. We don't have any spot zoning.

COMMISSIONER CHAVEZ: I didn't think so. Okay. That's sufficient. Thank you, Mr. Larrañaga. Thank you, Mr. Chair.

COMMISSIONER HOLIAN: Mr. Chair.

CHAIR ANAYA: Thank you, Commissioner Chavez. Commissioner Holian.

COMMISSIONER HOLIAN: Mr. Larrañaga, it seems to me that a horse stable at which people pay to board their horses is not actually considered a commercial activity in Santa Fe County. Is that statement correct?

MR. LARRAÑAGA: Mr. Chair, Commissioner Holian, ultimately, they have to meet the commercial standards for water and obviously for traffic, parking, landscape, everything else. Water harvesting. And this particular project went through the process, got approved, recorded, ultimately they would have a commercial business license because they wouldn't qualify as a home occupation. So it would be considered a commercial business under the business license.

COMMISSIONER HOLIAN: I see. And then in the new code, however, it seems to me that actually that was a big topic of controversy was how we were going to deal with horse stables in the code rewrite. And as I understand it, horse stables, especially horse stables that only have a limited number of horses are allowed pretty much in any of the rural zones in the county. Correct?

MR. LARRAÑAGA: Mr. Chair, Commissioner Holian, actually horse facilities, commercial or private, 12 horses is under is a permitted use across all residential properties.

COMMISSIONER HOLIAN: All residential.

MR. LARRAÑAGA: So on this particular one, residential estate, this

particular case would qualify for that, meeting the criteria of the SLDC and that was stated kind of briefly in my report. Twelve horses and above are permitted and conditional on the larger parcels.

COMMISSIONER HOLIAN: Thank you, Mr. Larrañaga.

CHAIR ANAYA: Thank you for asking for that clarification, Commissioner Holian. That's a question I was going to bring up. Commissioner Chavez, do you have another item.

COMMISSIONER CHAVEZ: I do. And this goes – these points I'm bringing up actually came from concerns from people that are questioning this request and it's good that we have this debate because you have to find that balance if at all possible. So the one question that came up was enforcement. Enforcement having to do with water restrictions and the number of horses that will be stabled shall not exceed 12. And so can you talk to enforcement a little bit and how that might play out, Mr. Larrañaga?

MR. LARRAÑAGA: Mr. Chair, Commissioner Chavez, yes. Unfortunately, it is an issue. We rely on the owner of the property, whoever that may be. They might sell this property, the future owner, to submit the meter readings in accordance to the approvals. Number of horses, maybe spot enforcement, but again, the final approvals and business license, everything else is going to say 12 horses if that's how this gets approved, with water restrictions. Other things like rain catchment and so on, that will be in place prior to recordation of the master plan/development plan, but actual requirements that take further monitoring? Yes, that's hard to enforce.

COMMISSIONER CHAVEZ: Okay. So enforcement is not always easy but it doesn't have to be ignored completely. Two other concerns that came up which I think are somewhat valid. Hours of operation and the regular cleaning and removal of manure. Are those things that would be considered a commercial business license even though it has a residential setting, could there be hours of operation and a requirement that the manure be cleaned on a regular basis? And again that would go back to enforcement, but I think if it's part of the requirements, at least it's noted.

MR. LARRAÑAGA: Mr. Chair, Commissioner Chavez, yes, that's completely up to the Board to put in place hours of operation and enforcement of the manure. It's not unusual in any of these horse facilities that are listed in the packet that you go back and look at the original files and there was manure must be removed every week at 12 horses and so on. Just I did get a complaint about the manure. A code enforcement officer and myself drove out there just didn't tell anybody we were going out there and saw the manure pile and there's photos of that as Exhibit 20 in your packet also, of the facility and the horse.

COMMISSIONER CHAVEZ: That's good. And then the final thing that I have, Mr. Chair, and to staff and actually to the applicant, there's condition six that reads, The applicant shall meet fire flow requirements by moving the hydrant within 1,000 feet of the fire staging area for this site. I know that was a concern that was brought up by some of the residents as well. So would that address, at least to some degree, the concern about being able to put out a fire if that were the case?

MR. LARRAÑAGA: Mr. Chair, Commissioner Chavez, yes. One of the reasons the CDRC requested it to be as a separate condition. It was listed under the

review by the Fire Marshal as an exhibit and inside the report but they wanted it as a condition clearly stated.

COMMISSIONER CHAVEZ: Okay. So I would suggest that maybe we add at least the other two conditions of approval -- the hour of operation and the requirement that they would clean the manure on a regular basis. Okay, there already is one condition. I apologize. Condition 3, Horse manure shall be removed on a weekly basis and taken to the regional landfill for burial. This shall be noted on the master plan and development plan. The only thing would be the hours of operation that I would ask that that be considered. Thank you, Mr. Chair.

CHAIR ANAYA: Thank you, Commissioner Chavez. I know the opposing counsel had an opportunity to make comments and made comments. Does the applicant's counsel have any comments they want to make?

MR. SOMMER: Mr. Chair, thank you for the opportunity but I think that your staff has adequately covered the issues that have been raised and the questions that have been asked by Commissioner Chavez and by Commissioner Holian related to those uses so we really don't have anything to add. It would be redundant at this late hour. So thank you for the opportunity. Mr. Siebert may have something he wanted to add on the planning side of it.

CHAIR ANAYA: Mr. Siebert.

MR. SIEBERT: Just a very quick response on some of the items regarding the water use. The 13 gallons, that actually comes from the Office of the State Engineer. The County Hydrologist did further research and felt that that number was consistent with his particular research. One thing I think you need to take into account is that there is a certain history of ranching that's taken place in this area over several years and there's a large archeological site that's within the open space. What that was, it was actually the housing for the wranglers that ran cattle on this particular area. So there's a real history of equestrian use. It was viewed by the doctor that if she's correct on the relationship between disease and horses, Santa Fe County is a horse county and I think we'd all be dead.

Just, there's discussion about is this the correct process for hearing this case. My firm has handled three different equestrian centers and they've all been handled as Other Development. Other Development restricting to equestrian use and a specific site plan that details how that can be used, so with that, thank you for the opportunity.

CHAIR ANAYA: Mr. Siebert, can you restate on the water that the water amounts came from the State Engineer recommendations? Did you say that?

MR. SIEBERT: Correct. If you take a look at the papers -- the State Engineer provides papers on a variety of things and one of these papers was on water use, daily water use for horses, so that in fact did come from the State Engineer's Office. I think the other point there is that there is a condition that Commissioner Chavez pointed out that if you exceed .25 acre-feet you've got to cut back on the number of horses you have. Thank you.

CHAIR ANAYA: Thank you. I'll go to the Commissioners.

COMMISSIONER HOLLAN: Mr. Chair.

CHAIR ANAYA: Commissioner Holian.

COMMISSIONER HOLLAN: I would like to make a motion but I'd like

to make a few remarks first. I really don't believe that having a horse stable near one's home lowers the property values. I grew up in southern California. I grew up on the Pajas Verdes Peninsula and nearby where I lived was an area called Rolling Hills Estates. And it's essentially in Los Angeles city limits. And it was really a horse area. A lot of people had horses on their properties. There were a number of stables in the area and as a matter of fact, some of the most expensive land in the southern California area in is the Rolling Hills Estates. So having horses nearby is not necessarily going to lower your property values.

Secondly, with regard to the topic that was brought up about West Nile virus, that is something that's easily controlled in horses. It takes a vaccination a year and your horses will be protected from West Nile virus. I'm sorry. It's my turn to talk.

CHAIR ANAYA: Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Mr. Chair. And so it can be controlled. I think the dangers of West Nile virus are probably more from wild animals in the area. It is spread by mosquitoes and if you have deer in the area who might have West Nile virus in their blood the mosquitoes could pass it on from the deer, and nobody's going to be going out vaccinating deer. So I don't think that this is a major danger in our area.

So in any event, I would like to make a motion to approve the master plan zoning and also the preliminary and final development plan approval for the equestrian facility, with staff conditions including the extra condition setting hours of operation that was suggested by Commissioner Chavez.

COMMISSIONER CHAVEZ: Mr. Chair, I'll second the motion.

CHAIR ANAYA: There's a motion from Commissioner Holian to support the application with staff conditions. A second by Commissioner Chavez. Any further discussion?

MR. SHAFFER: Mr. Chair, if I could, we just need what the hours of operation would be.

COMMISSIONER CHAVEZ: I would be open to suggestions from staff and maybe if this has applied to any other businesses that are similar in nature.

MR. SOMMER: Mr. Chair, along the lines of the hours of operation, we think that the hours of operation related to training and those sorts of things is reasonable. However, as anybody will admit, whenever you have either a private or a training facility, you might have horses delivered at times that are not between 7:00 and 5:00 of the day, whatever you set your training as, and we'd just like to make that clear for you all that anybody who owns horses moves them when they move them, and I don't want that to be considered an operation of the facility. And just so we make that clear.

COMMISSIONER CHAVEZ: Thank you, Mr. Sommer. Mr. Larrañaga, do you have anything to add to this concept of setting hours of operation?

MR. LARRAÑAGA: Mr. Chair, Commissioner Chavez, I guess I'd just like to add that in the summer months of course they're going to start earlier and they have more daylight to be riding horses. Where it's cooler in the winter months, those hours of operation might change depending on -

COMMISSIONER CHAVEZ: Okay, what I'm looking for is some reasonable balance between that activity and the residential component, because I think

we do need to be sensitive to that. So I think that there needs to be a range. I think that there can be some winter and summer flexibility but I think it needs to be within reason for the residential component.

MR. LARRAÑAGA: Mr. Chair, Commissioner Chavez, I'm [inaudible] in coming up with certain hours. The applicant kind of suggested sun-up to sundown. You have early hours in the summer, later hours in the summer.

COMMISSIONER CHAVEZ: Okay. I wonder -- so we do have a homeowners association. I wonder if the applicant could work with staff and the homeowners association to establish some reasonable hours of operation. Is that too much to ask for?

MR. LARRAÑAGA: Mr. Chair, Commissioner Chavez, I believe we can work with that, work with the applicant and the --

COMMISSIONER CHAVEZ: Okay. Are you okay with that? Is that good for the attorney or do we need to set some specific time now and then work around that?

CHAIR ANAYA: Mr. Vice Chairman, I'm going to suggest a recommendation of sun-up to sundown with deliveries of horses no later than 10:00 pm.

COMMISSIONER CHAVEZ: 10:00 pm? I'll go with that. I think that sets some parameters. I think we can study it and if we have to adjust it we can adjust it. Are you okay with that?

CHAIR ANAYA: Is that okay, Greg, or do you want --

MR. SHAFFER: The motion as I understand it is the hours of operation would be from sun-up to sun-down with deliveries of horses no later than 10:00 pm?

COMMISSIONER CHAVEZ: Yes.

COMMISSIONER HOLIAN: As the maker of the motion, I'll agree with that.

MR. SHAFFER: And delivery of horses could be no earlier than sunrise?

CHAIR ANAYA: What's that?

MR. SHAFFER: I'm just trying to understand -- I want to make sure that we're clear on delivery of horses.

CHAIR ANAYA: I think that's reasonable.

MR. SHAFFER: Okay.

CHAIR ANAYA: And that's a recommendation to the makers of the motion. Deliveries no earlier than sunrise and no later than 10:00 pm, sun-up to sundown operational hours.

COMMISSIONER CHAVEZ: For me that's a good -- I think that's a reasonable place to start.

COMMISSIONER HOLIAN: I'm in agreement with that, Mr. Chair.

CHAIR ANAYA: There's a motion, there's a second. Is there any further discussion?

The motion passed by majority 4-1 voice vote with Commissioner Stefanics voting against the motion.

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