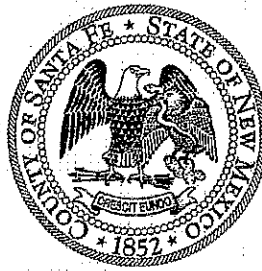


Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. V 12-5150

VARIANCE

VICTOR AND PATSY ROYBAL

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on September 11, 2012, September 25, 2012 and on October 9, 2012, on the Application of Victor and Patsy Roybal (hereinafter referred to as "the Applicants") for approval of a Land Division of 1.56 acres into two lots; one lot consisting of 0.76 acres (Tract 1-A) and one lot consisting of 0.80 acres (Tract 1-B). This request also includes a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on the proposed 0.80 acre lot (Tract 1-B). The BCC, having reviewed the Application and supplemental materials, staff reports and conducted a public hearing on the request, finds that the Application is well-taken and should be denied, and makes the following findings of fact and conclusions of law:

1. The Applicants request approval of a Land Division of 1.56 acres into two lots and a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on a 0.80 acre lot which would not meet density requirements for this area.
2. The property is located at 38 La Joya Road, within the Traditional Community of Glorieta, within Section 2, Township 15 North, Range 11 East ("Property").

3. Article III, Section 10 provides that minimum lot size in this area is 0.75 acres per dwelling unit. Lot size can be further reduced to .33 acres per dwelling unit if the property is served by community water and sewer.
4. There is currently a residence, a mobile home, two storage sheds, a carport, a greenhouse, a gazebo, a covered area and an unfinished structure to be utilized as personal storage on the proposed Tract 1-B. There is currently a residence and an accessory structure currently used for storage on the proposed Tract 1-A.
5. In 1986, the property was divided through Warranty Deed which is not the correct process for creating lots. Staff recognizes this property as a single legal lot of record. Applicants hold the deed to Tract 1-B.
6. The Applicants desired to have their daughter live on Tract 1-B in the existing mobile home. The Applicants reside in the residence on that portion of the property. Sonia Torres-Saiz is living in the residence on Tract 1-A.
7. James Mendoza spoke in favor of the Application. No members of the public spoke in opposition to the Application. Sonia Torres-Saiz did not participate in the public hearing, nor did she participate in the application.
8. Article II, § 3 (Variances) states: "Where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance." This Section goes on to state "In no event shall a variance,

modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.”

9. The Code does not authorize the granting of a variance for financial or medical reasons.
10. No evidence was presented that strict compliance with the requirements of the code would result in extraordinary hardship to the applicants because of unusual topography or other such non-self-inflicted condition or that denial of the variance request would result in inhibiting the achievement of the purposes of the Code.
11. The granting of the requested land division and variance is not a minimal easing of the Code requirements.

WHEREFORE the Board of County Commissioners of Santa Fe County hereby denies the request for a Land Division of 1.56 acres into two lots and a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 0.80 acres.

IT IS SO ORDERED

This Order was approved by the Board of County Commissioners of Santa Fe County on this ____ day of February 2013.

By: _____
Board of County Commissioners, Chair

Attest: _____
Geraldine Salazar, County Clerk

Approved as to form: _____
Stephen C. Ross, County Attorney

Commissioners face in our representative capacity when we hear from parents who say I'm desperate. I need to talk to my son. I don't think he's done anything wrong. I don't know where to go. I'm just caught up in a really contentious situation because I get asked to represent as an attorney, them and that puts me in that conflict of interest. How do I represent that defendant against the County? And I can't; it's a huge conflict. But it doesn't keep the stories from coming.

So those of you who have the expertise, and as you discussed how we can improve services, I think we need to incorporate some way of keeping the lines of communication and letting family systems be much more a part of understanding what is going on with their incarcerated family members.

CHAIR STEFANICS: Thank you, Commissioner. Thank you, Mr. Sedillo. Thank you, Warden. Thank you, Deputy Warden, and this will continue.

XVII. PUBLIC HEARINGS

A. Growth Management Department

1. **CDRC Case # V 12-5150 Victor & Patsy Roybal Land Division/Variance. Victor & Patsy Roybal, Applicants, Request Approval for a Land Division of 1.56 Acres Into Two Lots. This Request Also Includes a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow Two Dwelling Units on the Proposed 0.80-Acre Lot. The Property is Located at 38 La Joya Road, within the Traditional Community of Glorieta, within Section 2, Township 15 North, Range 11 East, Commission District 4**

WAYNE DALTON (Building & Development Services): Thank you, Madam Chair, Commissioners. On September 11, 2012 the BCC met and acted on this case. The decision of the BCC was to table this case in order for staff to get an accurate depiction of what structures are currently on the property.

On September 14, 2012 staff conducted an inspection on the property. There is currently a residence, a mobile home, two storage sheds, a carport, a greenhouse, a gazebo, a covered area, and an unfinished structure that the applicant intends to utilize as a shop/storage for tools on the proposed Tract 1-B. There is currently a residence and an accessory structure currently used for storage on the proposed Tract 1-A. Pictures are attached as Exhibit 5. Structures are depicted on Exhibit 6.

Staff recommendation: Denial of a variance from Article III, Section 10, Lot Size Requirements of the Land Development Code. If the decision of the BCC is to approve the applicants' request for a variance staff recommends imposition of the following conditions. Madam Chair, may I enter those into the record?

[The conditions are as follows:]

1. Water use shall be restricted to 1 acre-foot per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office.

2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval (As per Article III, § 2.4.2.)
3. The Applicants shall provide an updated liquid waste permit from the New Mexico Environment Department with Development Permit Application (As per Article III, § 2.4.1a.1(a) (iv).
4. The Applicant must provide proof of permits or proof that the structures on the property are legal non-conforming. If the Applicant cannot provide proof that the structures are legal, then the Applicant must obtain After the Fact development permits (As per As per Article II, § 4.5.2b Article II, § 2).
5. The placement of additional dwelling units or Division of land is prohibited on the property (As Per Article III, Section 10).
6. The Applicants shall comply with all Fire Prevention Division requirements at time of Plat review (As per 1997 Fire Code and 1997 Life Safety Code).

COMMISSIONER HOLIAN: Thank you, Wayne. Is the applicant here?
[Duly sworn, Patsy Roybal testified as follows:]

PATSY ROYBAL: Patsy Roybal.

COMMISSIONER HOLIAN: Would you like to add anything to the presentation?

MS. ROYBAL: No, I just want to see if the Commissioners will approve our decision.

COMMISSIONER HOLIAN: Okay. Thank you.

COMMISSIONER ANAYA: Madam Chair.

COMMISSIONER HOLIAN: One moment please. First of all, is there anyone from the public who would like to make a comment on this case? It doesn't seem like anybody is. So we will take questions from Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I just have one for Mr. Dalton. The primary reason we're reviewing that again was because we wanted staff and yourself in particular because you reviewed the case to go look at the site and verify the documents that we had that were consistent with what's existing at the site. Did you do that?

MR. DALTON: Madam Chair, Commissioner Anaya, yes, I did.

COMMISSIONER ANAYA: So there was no additional items there or items that we weren't aware of in the previous packet?

MR. DALTON: Madam Chair, Commissioner Anaya, what is on the property is depicted on Exhibit 6 or Exhibit 7, which is the proposed plat of survey. There are actually a couple of structures that don't exist on that property anymore from when the survey was done.

COMMISSIONER ANAYA: So you verified what the applicant said, that they were taken down was true.

MR. DALTON: Madam Chair, Commissioner Anaya, that is correct.

COMMISSIONER ANAYA: Madam Chair, I'd move for approval.

COMMISSIONER MAYFIELD: Second, Madam Chair.

COMMISSIONER HOLIAN: I have a few questions before we take a vote. Wayne, when you see the packet, it seems to me that the only structure that ever got a permit or was permitted was the mobile home on Tract 1-B. Is that correct?

MR. DALTON: Madam Chair, that is correct.

COMMISSIONER HOLIAN: So the two homes that were built never got permits. Is that correct?

MR. DALTON: Madam Chair, that is correct. The actual residence on the property has been there prior to 1981, on Tract 1-B. But the house on Tract 1-A –

COMMISSIONER HOLIAN: Never got a permit.

MR. DALTON: That's correct.

COMMISSIONER HOLIAN: How could somebody build a house without getting a permit?

MR. DALTON: Madam Chair, that happens more than you think, especially in this area. It all depends on if someone from the community would complain. In this case we didn't get any complaints on this structure.

COMMISSIONER HOLIAN: So then let me ask you about the wastewater system. Does each of the residents have their own septic systems?

MR. DALTON: Madam Chair, I believe there's a septic on Tract 1-A and there's a septic tank on Tract 1-B.

COMMISSIONER HOLIAN: That is shared by both the mobile and home and the residence. Is that correct?

MR. DALTON: That's correct.

COMMISSIONER HOLIAN: The owner is shaking his head no.

MR. DALTON: Madam Chair, according to the applicant there's two septic systems on Tract 1-B.

COMMISSIONER HOLIAN: And how about wells? How many wells exist?

MR. DALTON: Madam Chair, they're on a community water system.

COMMISSIONER HOLIAN: Oh, I see.

COMMISSIONER VIGIL: And I'm sorry, I wanted to ask, these two particular pictures that have the tiled roof, is that livable space?

MR. DALTON: Madam Chair, Commissioner Vigil, I did a site visit, looked in the door, and that's being used for storage.

COMMISSIONER VIGIL: Was there any plumbing associated with it or anything of that nature?

MR. DALTON: Madam Chair, Commissioner Vigil, I could not enter the structure, but what I observed there was no plumbing in that structure.

COMMISSIONER VIGIL: So these are like just upgraded sheds?

MR. DALTON: Madam Chair, Commissioner Vigil, that would be considered an accessory structure.

COMMISSIONER VIGIL: Okay. What's the square footage? Do you know?

MR. DALTON: Madam Chair, Commissioner Vigil, I do not know. It's an unpermitted structure.

COMMISSIONER VIGIL: Okay.

COMMISSIONER MAYFIELD: Madam Chair, on that point.

COMMISSIONER HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Dalton, both those photos are on the adjacent property. That's not on the Roybal's property. Correct?

MR. DALTON: Madam Chair, Commissioner Mayfield, that is correct. Those structures are on the proposed Tract 1-A. That is not on Victor and Patsy Roybal's property.

COMMISSIONER VIGIL: So what relevance do they have to this case then?

MR. DALTON: Madam Chair, Commissioner Vigil, because they're trying to split the property. So Tract 1-A is owned by another individual, and Tract 1-B is owned by the Roybals.

COMMISSIONER HOLIAN: Any other questions, Commissioners? Wayne, what does the Assessor's Office think is on these properties?

MR. DALTON: Madam Chair, I have not contacted the Assessor's Office regarding this property.

COMMISSIONER HOLIAN: So let me ask the owner. Are you paying property taxes on your home on Tract 1-B, plus the mobile home? Does the Assessor's Office know that those exist on your property?

MS. ROYBAL: We're paying taxes.

MR. DALTON: Madam Chair, the applicants have been paying taxes on their property since 1984, which would be pretty much the exact acreage of what they're asking for, and the other individual has been paying taxes as well on pretty much the exact same acreage as what they're asking for. This property was split by deed back in 1986.

COMMISSIONER HOLIAN: But the home on Tract 1-B was never permitted so I am assuming that the Assessor's Office doesn't even know it exists. Is that correct?

MR. DALTON: Madam Chair, that could be. It could be correct.

COMMISSIONER HOLIAN: Thank you, Wayne. Any other questions.

MR. DALTON: Also, Madam Chair, if this does get approved they're going to have to apply for building permits and that information will be sent to the Assessor's Office.

COMMISSIONER HOLIAN: So let me ask you this, Commissioner. Did you make your motion with staff conditions?

COMMISSIONER ANAYA: Motion with staff conditions. Yes.

COMMISSIONER MAYFIELD: Second.

COMMISSIONER HOLIAN: Okay. Any other discussion?

The motion tied by 2-2 voice vote with Commissioners Anaya and Mayfield voting with the motion and Commissioners Holian and Vigil voting against.

MR. ROSS: Madam Chair, members of the Commission, what happens now under our rules of order is this gets placed on the next land use agenda for a vote only because there's one member missing.

COMMISSIONER HOLIAN: Thank you.

COMMISSIONER MAYFIELD: Madam Chair.

COMMISSIONER VIGIL: Is Commissioner Stefanics coming back? She's not.

COMMISSIONER HOLIAN: Commissioner Mayfield.

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XVII. A. 7. CDRC Case # V 12-5150 Victor & Patsy Roybal Land Division /Variance. Victor & Patsy Roybal, Applicants, Request Approval for a Land Division of 1.56 Acres Into Two Lots. This Request Also Includes a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow Two Dwelling Units on the Proposed 0.80-Acre Lot. The Property is Located at 38 La Joya Road, within the Traditional Community of Glorieta, within Section 2, Township 15 North, Range 11 East, Commission District 4

MR. DALTON: Thank you, Madam Chair. In 1986, the property was divided through Warranty Deed which is not the correct process for creating lots. Staff recognizes this property as a single legal lot of record. There is currently one dwelling unit on the proposed 0.76-acre lot and two dwelling units on the proposed 0.80-acre lot, multiple sheds and a carport on the property.

The mobile home, which is occupied by the Applicants' daughter which is proposed Tract 1-B, was permitted on March 3, 2004 under Permit #04-263. At that time, a site plan and a Plat of Survey were submitted indicating a 1.6-acre parcel with an existing residence, and being that this property is located within the Traditional Community two homes were permitted. No record of permits have been found by staff for the other existing residence on the proposed Tract 1-B or for the existing residence on the proposed Tract 1-A.

The Applicants state the second home is needed for their daughter who currently resides in the home. The Applicants' daughter provides care and assistance for her mother who suffers from multiple medical conditions.

On July 19, 2012 the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the applicants' request by a 4-2 vote with one abstaining. Minutes attached as Exhibit 1.

Recommendation: Denial of a variance from Article III, Section 10 of the Land Development Code. Staff also recommends the second home be removed from the proposed Tract 1-B in order to process the Land Division Application administratively. If the decision of the BCC is to recommend approval of the Applicants' request for a variance, staff recommends imposition of the following conditions. Madam Chair, may I enter those into the record?

[The conditions are as follows:]

1. Water use shall be restricted to 1 acre-foot per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office.
2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval (As per Article III, § 2.4.2.)
3. The Applicants shall provide an updated liquid waste permit from the New Mexico Environment Department with Development Permit Application (As per Article III, §

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- 2.4.1a.1(a) (iv).
4. The Applicant must provide proof of permits or proof that the structures on the property are legal non-conforming. If the Applicant cannot provide proof that the structures are legal, then the Applicant must obtain After the Fact development permits (As per As per Article II, § 4.5.2b Article II, § 2).
 5. The placement of additional dwelling units or Division of land is prohibited on the property (As Per Article III, Section 10).
 6. The Applicants shall comply with all Fire Prevention Division requirements at time of Plat review (As per 1997 Fire Code and 1997 Life Safety Code).

CHAIR STEFANICS: Are there questions of staff before we go to the applicant? Okay. Is the applicant here? Will you come up please? Please be sworn in.

[Duly sworn, Patsy and Victor Roybal testified as follows:]

PATSY ROYBAL: Patsy Roybal, 38-A, Glorieta.

VICTOR ROYBAL: Victor Roybal, 38-A Glorieta.

CHAIR STEFANICS: Welcome. Do you have anything you want to add to the application?

MS. ROYBAL: I just want to say thank you for being here this evening and I just also want to include that my daughter has lived there eight years and she has helped me very much with my problems and it will be a very difficult hardship if she has to move her mobile home. Right now she's not even working, she doesn't have a vehicle or anything and it would really tear me apart if she has to move from there. She has been my right hand. We had a death in the family and she was like totally there for me and I appreciate that. My father had passed away and she was there for me through the whole thing and I just wanted to ask if you would request for approval for her mobile home to stay there.

CHAIR STEFANICS: Thank you. Anything, sir?

MR. ROYBAL: We'll do anything you guys want us to do. That's all I've got to say.

CHAIR STEFANICS: Okay. Thank you. Why don't you have a seat up front. This is a public hearing. Is there anybody here who wants to speak for or against this particular application? Yes, sir. Come on up.

[Duly sworn, James Mendoza testified as follows:]

JAMES MENDOZA: My name is James Mendoza. I live at 22 Magpie Road in Glorieta, New Mexico. I'm a neighbor of the Roybals here. I've known them for quite a while and I'm just really coming as a character reference. Since I've known these folks, they're the hardest people, honest people that I know. I wouldn't want better other neighbors. They're great neighbors. With the way the economy is now and everything it's tough out there and these folks are providing a place for their daughter and grandchildren to live. It would just be a tremendous blessing for them to be able to keep their house together and not be out there suffering the way the rest of the world is and we all are suffering. Thank you very much.

CHAIR STEFANICS: Thank you for coming. Is there anyone else who would like to speak? The public hearing portion is closed. Commissioners, comments, questions? Commissioner Holian.

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COMMISSIONER HOLIAN: Thank you, Madam Chair. This is a question for Wayne. It sounds like there are actually three homes if I read this correctly, two of them on the .8-acre lot and one on the .76?

MR. DALTON: Madam Chair, Commissioner Holian, that is correct. That's what's being proposed at this time.

COMMISSIONER HOLIAN: And who is -- I understand the Roybals and their daughter are living in two of the homes, I guess in the .8-acre lot, proposed lot. Who lives in the other?

MR. DALTON: Madam Chair, Commissioner Holian, that's actually owned by a Sonia Torres Saiz.

COMMISSIONER HOLIAN: So that lot was sold?

MR. DALTON: It's a complicated story, Madam Chair, Commissioner Holian. This property was originally subdivided through warranty deed and obviously, that's not the proper way to subdivide property. So everyone out there historically has thought that they own this amount of acreage which didn't come through the proper process and we only recognize it as one legal lot of record. So they've been paying taxes on these properties since 1984. They thought they were individual pieces of property but they were not because they didn't come to the County for approval.

So right now there is three dwelling units on this property. They're not two individual legal lots of record. That's why they need to come through the subdivision process. So they can't get building permits on them. They couldn't sell the properties, so right now they're trying to remedy that situation by going through the subdivision process and the reason why it's before you is because there would be two dwelling units on .80 acres.

COMMISSIONER HOLIAN: So how did the mobile home get a permit in 2004?

MR. DALTON: Madam Chair, Commissioner Holian, whoever submitted for that permit back in 04 submitted a plat of survey showing 1.6 acres, and being that this property is in this traditional community they were allowed two homes on that property. The site plan at that time only showed the applicants' residence and the proposed mobile home. The site plan did not show any other homes on that property. So that's why the County issued that permit.

COMMISSIONER HOLIAN: Was there another home on the property? Did the home on the .76-acre lot exist at that time?

MR. DALTON: Madam Chair, Commissioner Holian, I think that home came in afterwards and is not permitted with Santa Fe County. So that's another issue that we have. This person here cannot obtain any permits as well because he doesn't have a legal lot of record unless this land division goes through.

COMMISSIONER HOLIAN: Thank you, Wayne.

CHAIR STEFANICS: So, Mr. Dalton, I'm now asking -- you've just put a cloud over this. So who owns the land?

MR. DALTON: Right now, Sonia Torres Saiz owns a portion of it, through warranty deed, and the applicants own a portion of it through warranty deed.

CHAIR STEFANICS: So, Mr. Dalton, wouldn't the other owner need to be part of this if there is a request to subdivide it?

MR. DALTON: Madam Chair, the owner of the property has given notarized written consent for the applicants to make application on that property.

CHAIR STEFANICS: And Mr. Dalton, are you saying that two different owners are paying property taxes on the same piece of property but double?

MR. DALTON: Madam Chair, under our tax records they're paying taxes individually.

CHAIR STEFANICS: So are they taking a tax bill and dividing it? Or are they each paying a tax bill?

MR. DALTON: Madam Chair, they are each paying a tax bill for this amount of property that's shown on Exhibit 6.

CHAIR STEFANICS: Mr. Ross, is that legal? Would the Assessor really be – in their purview to do that?

MR. ROSS: Well, Madam Chair, they probably picked up the warranty deed and elected to treat the parcels as two different parcels. They're not the code enforcement arm of the County. It would be up to Land Use to address this particular point and they just picked it up and treated it as two separate lots, which is probably lawful.

CHAIR STEFANICS: Okay. So a warranty deed would in their eyes stand as a separate lot.

MR. ROSS: Yes.

CHAIR STEFANICS: Got it. So, Mr. Dalton, where does this other owner live?

MR. DALTON: Madam Chair, just right next door to the applicants.

CHAIR STEFANICS: On the property.

MR. DALTON: Madam Chair, that's correct. What he thinks is his own separate lot, yes.

CHAIR STEFANICS: So even if we approved this subdivide there really would be three families there.

MR. DALTON: Madam Chair, that is correct. You have two lots. One lot would have one residence on it, which is owned by Sonia Torres Saiz, then you would have one lot with two dwelling units on it, which one house would be lived in by the applicants and the other by the applicants' daughter.

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR STEFANICS: Okay. I'll listen to everybody else. Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. Mr. Dalton, this is in a traditional area and these lots can be legally subdivided to .75 apiece. Correct?

MR. DALTON: Madam Chair, Commissioner Mayfield, that's correct. And if it wasn't for the second home on the .80-acre we wouldn't be in front of you here tonight.

COMMISSIONER MAYFIELD: But Madam Chair, Mr. Dalton, I'm looking at Exhibit 6, and that Exhibit 6 – if you'll bear with me. It's hard for me to read this print. There's a residence on Tract 1-A that says Sonia Torres Saiz. And I can see it defined by the survey and that says 0.76. So that's the one residence we've kind of been discussing. Correct?

MR. DALTON: Madam Chair, Commissioner Mayfield, correct.

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COMMISSIONER MAYFIELD: Okay. So then totally adjacent, to my right it's Mr. Victor and Patsy Roybal, and that's Tract 1-B on 0.84. Correct?

MR. DALTON: Madam Chair, Commissioner Mayfield, yes, but it should be 0.80 acres.

COMMISSIONER MAYFIELD: Okay. It's still greater than .75. And there I see a residence and I see a mobile home in the very back left corner. So who owns that mobile home in the back left corner?

MR. DALTON: Madam Chair, Commissioner Mayfield, that's the applicant's daughter.

COMMISSIONER MAYFIELD: That's the one they're asking for right now.

MR. DALTON: That's correct.

COMMISSIONER MAYFIELD: So based on that and based on prior discussions today in an earlier meeting, aside from that mobile home being there the Torres Saiz property and the Victor & Patsy Roybal property with the warranty deed issue you just talked about are arguably two legal lots based on the zoning out there, which is allowed in a traditional community of .75. Right?

MR. DALTON: Madam Chair, Commissioner Mayfield, they're not legal lots but the would be allowed.

COMMISSIONER MAYFIELD: Okay. So they'd be allowed. Okay. So knowing that we now – well, I shouldn't say we're potentially going to allow an adjacent home on a property that's of legal record. This kind of falls into this adjacent dwelling. What was the term again? Accessory structure. So arguably, that's how I'm kind of looking at it. It would just be an accessory structure to that smaller lot, which would be allowed if we approve this in the new code.

MR. DALTON: Madam Chair, Commissioner Mayfield, that's my understanding. That's what was discussed earlier, yes.

COMMISSIONER MAYFIELD: Thank you. That's all the questions I have. Thank you.

CHAIR STEFANICS: Thank you. Commissioner Vigil.

COMMISSIONER VIGIL: Following that line of discussion, I'm looking at Exhibit 8, if you would turn to that exhibit. The same lot that was referenced by Commissioner Mayfield, the 0.80 that you clarified, could you identify each one of those structures. There's one that's 38? It looks larger than all the others. What is that?

MR. DALTON: Madam Chair, the structure on the lot that's labeled 32-A is the structure that's owned by Sonia Torres Saiz.

COMMISSIONER VIGIL: I'm looking at 38.

MR. DALTON: Right where it says 38 is the applicants' residence. And then you can see where the mobile home is located.

COMMISSIONER VIGIL: Right. I see where the mobile home is located. But there are other structures in front of the mobile home and to the other side. What are those? Are those all sheds?

MR. DALTON: Madam Chair, that's correct. Carports and sheds.

COMMISSIONER VIGIL: They're non-livable sheds? Were those permitted?

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MR. DALTON: Madam Chair, Commissioner Vigil, no, they are not permitted.

COMMISSIONER VIGIL: And so where the mobile home is situated there seem to be structures adjacent to it. Are those also sheds?

MR. DALTON: Madam Chair, Commissioner Vigil, according to the applicant, yes, they are sheds.

COMMISSIONER VIGIL: So how many sheds are there on this property?

MR. DALTON: Madam Chair, Commissioner Vigil, the applicant says three. Have you removed any at all? Madam Chair, according to – Madam Chair, Commissioner Vigil, according to the applicant there's three sheds on the property and two of them have been removed since this aerial photo was taken.

COMMISSIONER VIGIL: Okay. So this aerial identifies at least six. Are you following me, with the ones that are below the residence on the other side of the road? You're saying those are all sheds also. And this is not next to the mobile home but south of the residential property.

MR. DALTON: Madam Chair, Commissioner Vigil, yes, I'm following you and the applicant says two of those structures are now gone and I would believe the two closest to the road.

COMMISSIONER VIGIL: Okay. So the other two structures that are right in the boundary line, in front of the mobile, those are also sheds?

MR. DALTON: Madam Chair, Commissioner Vigil, yes. One is a shed and the other one was a structure that the applicant was building and when this issue came up I stopped him from building that structure.

COMMISSIONER VIGIL: Okay. And what – right next to the mobile home there appears to be a structure, one in front of it and adjacent to it, next to a vehicle. What are those structures?

MR. DALTON: Madam Chair, Commissioner Vigil, those appear to be vehicles; the applicant doesn't know what they are.

CHAIR STEFANICS: On this point, have you been out to the property?

MR. DALTON: Madam Chair, I myself have not. I sent a code enforcement officer out there to take pictures.

CHAIR STEFANICS: Thank you.

COMMISSIONER VIGIL: Madam Chair, I'm just not real clear that I understand how many structures are actually there. That's the only comment I have.

CHAIR STEFANICS: Thank you. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Mr. Dalton, I'm counting, outside of this request I'm counting seven immediate property owners' lots. We sent letters to all of the adjacent property owners around this parcel?

MR. DALTON: Madam Chair, Commissioner Anaya, yes. The applicants sent certified letters to anybody that was 100 feet from the property boundaries, excluding rights-of-way.

COMMISSIONER ANAYA: I'm looking in my packet again, Madam Chair. I don't see any – did we have any comments or feedback? I don't see any reflected in the CDRC minutes or letters. Did we receive any?

MR. DALTON: Madam Chair, Commissioner Anaya, I have not received

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any phone calls or any letters regarding this application.

COMMISSIONER ANAYA: Madam Chair, Mr. Dalton, outside of the area that I counted with six parcels. I just marked them on the map. Do we go beyond those boundaries any? Or just the immediate property owners? Is it just the immediate property owners adjacent?

MR. DALTON: Madam Chair, Commissioner Anaya, are you talking about noticing requirements?

COMMISSIONER ANAYA: Noticing, yes.

MR. DALTON: The applicants, by code the applicants are required to notice anybody within 100 feet of their property boundary.

COMMISSIONER ANAYA: Okay. I don't have any further questions, Madam Chair.

CHAIR STEFANICS: Thank you. Are there any other questions or comments? Commissioner Vigil.

COMMISSIONER VIGIL: I don't know how the other Commissioners feel about this but I don't feel we have an accurate depiction of what this property actually looks like as it was represented to us that a lot of these structures have been removed subsequent to this aerial. And because we don't have a current aerial or a current view of what the property actually looks like it's difficult for me to move forward with this because I think some of the conditions of approval would probably require that the applicant be in compliance with what I count to be more than five sheds, actually six maybe. So I think I'd like to ask the Commission if they'd consider that we table this until we have an accurate depiction of what the property currently looks like.

COMMISSIONER ANAYA: On this point, Madam Chair.

CHAIR STEFANICS: Yes, Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Commissioner Vigil, I don't feel that way. I think that the actual item in District 3 where Mr. Dalton, as I understand it and reading the requirements, Mr. Dalton is going to have to verify the structures and compliance with code, and so I don't feel that way. I would even if, Madam Chair, Commissioner Vigil, if it helps I would even add that as a part of the motion, if given the opportunity. So I would move for approval with staff conditions and compliance with code requirements and prior permitting similar to the item we previously approved.

COMMISSIONER MAYFIELD: Second, Madam Chair.

COMMISSIONER VIGIL: Which would mean that the applicant would only be entitled to how many sheds, Wayne? One?

MR. DALTON: Madam Chair, Commissioner Vigil, an applicant can have as many accessory structures as they please on their property but they have to go through the permitting process. So there's no limit to the number of sheds a person can have on their property as long as they're permitted with our office.

CHAIR STEFANICS: Okay. On this point, I've brought this up before in past years and maybe my colleagues on the right haven't been here when I've done this, but I don't think we should be hearing any cases that a staff person hasn't visited, especially if there's controversy surrounding it. When we look at this, and we're providing a lot of variances. And we're really dependent upon the staff to say it's true what's in the paperwork. And I think Commissioner Vigil's bringing up something valid, and I don't

know. Penny, are we just too short-staffed to do that? I've brought this up other years.

MS. ELLIS-GREEN: Madam Chair, Commissioners, we have been sending staff out and I believe staff try to attend all of their sites. But I would imagine on this one Wayne didn't have the time to visit this site, but we will make sure that the staff planner goes out to every site in the future.

CHAIR STEFANICS: Well, I do think there's a difference between the planner who presents to us and the code enforcement staff. Because the code enforcement staff has different eyes and they're not doing the presentation to us. It's the same way as if Captain Patty is doing one versus Chief Sperling is doing one. It's like we need to know what did you see and is it okay? So I do have that concern as we go forward. We do have a motion. We have a second. Do we have further discussion besides my angst?

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Yes.

COMMISSIONER ANAYA: I guess just on that point, I think that is a valid point and I think that the fact that in the condition and in my motion will have to review and assure that they're in compliance with code and they're permitted covers that and I would say based on the decisions that we made previously, not only tonight, but - that's all I'd say. Thanks, Madam Chair.

MR. DALTON: Madam Chair, Commissioners, I apologize. I usually like to get out to all my sites as well, but I didn't have a chance to get out here to this property.

CHAIR STEFANICS: Thank you. And Mr. Dalton, my comments aren't just about you. It's a standard.

MR. DALTON: I understand.

CHAIR STEFANICS: So other questions, comments? Commissioner Vigil.

COMMISSIONER VIGIL: I'm not confident in moving forward on this case. It seems like there's so much density and they're requesting more with already unknown amounts of density and we're relying on a GIS picture that I'm told doesn't accurately reflect the current status, so I probably won't be able to vote in favor of this, Madam Chair.

CHAIR STEFANICS: I just thought of another question that really came from your comment. The applicants came for permits willingly or after there was a complaint lodged?

MR. DALTON: Madam Chair, the applicants' surveyor came in with a survey, and that's how this whole issue started.

CHAIR STEFANICS: Repeat that again.

MR. DALTON: Madam Chair, the applicants' surveyor came in here with a survey, first of all to recognize these parcels as legal lots of record.

CHAIR STEFANICS: I understand now. Okay. Thank you.

COMMISSIONER ANAYA: Madam Chair, on that point.

CHAIR STEFANICS: Yes, Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, on that point, the other thing I read in the case is that I think the applicant is trying to make a difficult situation right. I really do. I guess I - Madam Chair, Commissioner Vigil, if Mr. Dalton were to go - I guess just based on my motion, since I made the motion, if Mr. Dalton goes out there, verifies the structures, keeping in mind there is no limitation on sheds. Does that satisfy

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some of your concerns? As far as density in traditional communities, this density is not uncommon with every single traditional community that I'm familiar with. Galisteo, Cerrillos, Madrid, Chimayo, La Puebla. I mean the densities aren't extreme. I guess would that, if we held off and he took pictures and brought some assurances, would that help?

COMMISSIONER VIGIL: Actually, that was going to be my motion and I suggested that at the onset that we consider holding off on making a decision on this case until we have an accurate depiction of what their property currently looks like and I think that would give us a stronger sense – at least it would give me a stronger sense of confidence that we could move forward on that. So that would have been my recommendation to just have Mr. Dalton come back to us, give us an idea of what the property actually looks like now and I'd have a better [inaudible]

COMMISSIONER ANAYA: Madam Chair, my desire, my motion is to help these people that I believe are trying to do the right thing and respecting Commissioner Vigil's comments, I have no problem with the density. I'll withdraw my motion. Does the seconder have to accept the withdrawal, Madam Chair?

CHAIR STEFANICS: They have to agree. Unless –

COMMISSIONER MAYFIELD: Madam Chair, could I ask a question?

CHAIR STEFANICS: Yes.

COMMISSIONER MAYFIELD: Madam Chair, I think our County Surveyor, maybe in a different capacity was a surveyor on this piece of property. I don't know. Mr. Ludwig, were you the surveyor on this property?

MS. ELLIS-GREEN: Madam Chair, it's actually on page 16 of your packet. I was just about to point that out. A survey has been done by Mr. Ludwig and it does identify where sheds are on the property.

COMMISSIONER MAYFIELD: Okay. So I'm just going to ask him while he's here if I can. Are there sheds on this property, Mr. Ludwig?

MR. LUDWIG: Madam Chair, Commissioner Mayfield, there were, at the time I did the survey, there were a couple sheds on the property that I do depict on my survey. There was also a dog shed that may be something showing up on the aerial that may look like a dwelling but it's a four by four plywood dog house is what it is. Other than that there's a small woodshed and other than that I'm not aware of any accessory structures other than that. Other than the one that Mr. Dalton spoke about that he asked him to stop work on it.

COMMISSIONER MAYFIELD: Okay. Thank you, Mr. Ludwig. All I'm going to say, staff and Mr. Dalton, if it's possible, and I know you guys do a great job of trying to get out to all these properties, but can you – I mean we have the capability to bring a current picture, an aerial picture, from what's on file downstairs in our GIS mapping. Maybe in the future on all these cases can you guys just put the most current map and date that map. If it was done in 2008 or if it was done in 2010, but maybe we could just have a current aerial depiction of that map, what the County has on file, the last map of record, aerial. If you guys could do that I would appreciate that.

Madam Chair, and hearing and to withdraw from my second, I don't have a problem withdrawing from my second upon staff's verification of this property, I just would ask that it come to the next BCC meeting.

COMMISSIONER ANAYA: Madam Chair.

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CHAIR STEFANICS: Commissioner Anaya

COMMISSIONER ANAYA: Madam Chair, I would motion to table this case to the next regular BCC meeting and await staff's review and submittals for that meeting.

COMMISSIONER VIGIL: I'll second that.

CHAIR STEFANICS: Okay. There's a motion and a second to table till the next BCC land use meeting.

COMMISSIONER ANAYA: Regular meeting.

CHAIR STEFANICS: Regular? That's the administrative one?

COMMISSIONER ANAYA: Yes. Administrative.

CHAIR STEFANICS: Steve, Mr. Ross, any problem with that?

MR. ROSS: Madam Chair, no. I think you could direct that that occur. We could perhaps put it at the end of the agenda to make sure the public can attend.

CHAIR STEFANICS: Okay. The motion is to table until the next regular BCC meeting which would be September 25th. That's two weeks.

COMMISSIONER VIGIL: Madam Chair, may I just clarify that, that Mr. Dalton, even based on the survey there is verification of other structures in this property. If you could just verify every structure and its purposes, that would be very helpful.

MR. DALTON: Madam Chair, Commissioner Vigil, I will do that.

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Yes, Commissioner Anaya.

COMMISSIONER ANAYA: Actually, we can vote on it and then I have a comment.

CHAIR STEFANICS: Okay. So any further discussion on this.

The motion to table passed by majority [4-1] voice vote with Commissioner Holian casting the nay vote.

CHAIR STEFANICS: Commissioner Anaya, you had a comment?

COMMISSIONER ANAYA: Madam Chair, Commissioner Holian, did you want to vote on it tonight? Madam Chair, Mr. Ross, for accessory structures, I have a question. Pre-code is 1984 – this isn't for this case. This is just generally. If there's a structure on a property that's pre-code, as part of the submittal, we can change whatever we want because of the – we could request to have it removed or modified because of the change in use that's being proposed in the plat, whether it's a land use subdivision or a use for commercial use or – do you understand what I'm asking?

MR. ROSS: Madam Chair, Commissioner Anaya, I think so. If it's a pre-code structure it's a non-conforming structure and so then the rules about non-conformities would apply, which means in the current code you can't expand a non-conforming structure more than 50 percent, and in the draft new code the rules are essentially the same. If you make too many changes or you abandon the structure or something like that, then, boom, the protection for the structure goes away.

COMMISSIONER ANAYA: So, Madam Chair, Mr. Ross, if someone's proposing a lot split and they have a pre-code structure, can we mandate they take it out?

MR. ROSS: Madam Chair, Commissioner Anaya, probably not.

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COMMISSIONER ANAYA: Interesting. Interesting.

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR STEFANICS: Yes.

COMMISSIONER MAYFIELD: Just another general question. Mr. Dalton kind of brought this up and Mr. Ross, I think I've talked to you about it. But as far as an adjacent structure, if somebody goes and buys a tuff-shed, goes and buys a tin shed from Sears, or they buy one of these carports that they sell on arguably every street corner for \$799, the existing code requires that individuals get a permit from the County for that structure. Correct?

MR. ROSS: Madam Chair, Commissioner Mayfield, yes.

COMMISSIONER MAYFIELD: So, and now I'll even go a little out there. If somebody builds a tree house on their property, does the existing code require that they get a permit to build that tree house on their property? Say, 100 square feet?

MR. ROSS: Madam Chair, Commissioner Mayfield, there's a -

MS. ELLIS-GREEN: Madam Chair, Commissioners, it is considered development, but we usually follow what CID does which is over 500 square foot.

COMMISSIONER MAYFIELD: Over 500 square foot.

MS. ELLIS-GREEN: So I guess that would be a fairly large tree house.

COMMISSIONER MAYFIELD: Okay.

MS. ELLIS-GREEN: Sorry. It's 120 square foot.

COMMISSIONER MAYFIELD: Madam Chair, I guess my point is that I know we talked about it a little earlier today but these are one of the things I'm going to want to talk about in the new code, for what that's worth. Thank you.

CHAIR STEFANICS: Thank you. Commissioner Vigil.

COMMISSIONER VIGIL: Wayne, where the residence is there's three sort of ancillary or auxiliary structures that look like they may have been additions. They don't seem to have access to the main residence. Could you, when you do a site visit, identify what each one of those three residences are? And Jeff, you may already know. I was going to ask you about it. But since you're going to do a site visit - and I'm looking at the survey and look where the residence actually is. To the right of it, there are structures also and those don't seem to have access to the residence. Maybe they do. I don't know. Just clarify those.

MR. DALTON: Madam Chair, Commissioner Vigil, yes, I will.

COMMISSIONER VIGIL: Thank you.

CHAIR STEFANICS: Okay. Thank you. Anything else?

COMMISSIONER ANAYA: Madam Chair, I do have one more thing.

CHAIR STEFANICS: Okay.

COMMISSIONER ANAYA: I want to make a comment, a couple comments. Working on the end of my second year I want to say that relative to the land use cases and working with residents of the community, I want to thank my colleagues for the work, because I always think my colleagues, you guys have always been amenable to working with people and clients, and I also want to thank staff. I know sometimes I know I ask questions that are maybe confusing at times but I appreciate the clarifications and I appreciate the work that you guys are doing and not only working in the meetings now but out with the clients and on the cases to give the public the best information you possibly

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can. So I just wanted to make that comment. Thank you, Madam Chair.

CHAIR STEFANICS: Thank you.

- XVII. A. 8. CDRC Case # V 12-5200 Robert & Bernadette Anaya Variance.
Robert & Bernadette Anaya, Applicant's, Talia Kosh (the Bennett
(TABLED)

XVIII. ADJOURNMENT

Having completed the agenda and with no further business to come before this body, Chair Stefanics declared this meeting adjourned at 9:30 p.m.

Approved by:

Board of County Commissioners
Liz Stefanics, Chair

ATTEST TO:

VALERIE ESPINOZA
SANTA FE COUNTY CLERK

Respectfully submitted:

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

Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

**CASE NO. CDRC V 12-5180
VARIANCE OF ARTICLE III, SECTION 4, COMMERCIAL AND INDUSTRIAL
NON-RESIDENTIAL DISTRICTS
JOSEPH AND HOPE ROYBAL, APPLICANTS**

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on August 14, 2012, on the Application of Joseph and Hope Roybal (hereinafter referred to as "the Applicants") for a variance of Article III, Section 4, Commercial and Industrial non-residential Districts, of the Land Development Code (hereinafter referred to as "Code"), to allow commercial zoning outside of a designated commercial district on 3.98 acres. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicants' request a variance of Article III, Section 4, Commercial and Industrial non-residential Districts, of the Code, to allow commercial zoning outside of a designated commercial district.
2. The project is located southeast of the Village of Cuyamungue, east of the US 84-285 frontage Road, between Exit 176 and Buffalo Thunder Road, at 22 B Mystic Lane, within Section 28, Township 19 North, Range 9 East, (Commission District 1).

3. Following a hearing on the Applicants' request for a variance, the County Development Review Committee, at its June 21, 2012 meeting, recommended approval of the variance request.
4. Article II, Section 3 (Variances) states where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance. This Section goes on to state that in no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.
5. Article II, Section 3.2 (Variation or Modification) states in no case shall any variation or modification be more than a minimum easing of the requirements.
6. Article III, Section 4.1 (Purpose and Intent) states that Commercial and industrial non-residential land uses are permitted only in zoned districts of various sizes and locations in the County of Santa Fe. Non-residential districts specifically for commercial or industrial land uses are established in order: to permit intensive development of selected land uses at designated locations; to avoid strip commercial and industrial patterns of development along highways, arterials, collectors, and local roads of the County; to protect the function of the County's highways, arterials, collectors, and local roads by controlling the number of access locations to commercial and industrial use

areas; to prevent the preemption of prime areas for commercial or industrial development by residential development; to protect existing and future residential development from encroachment of non-residential uses; to provide the opportunity to master plan non-residential use areas, so that adequate fire and police protection may be provided and appropriate infrastructure constructed.

7. The Applicants' request a variance to allow commercial uses to be located outside a designated commercial node. The Applicants' state that this site is suitable for commercial uses for the following reasons: the Buffalo Thunder interchange could be considered a qualifying intersection as a Major Center District; a significant portion of the property is located within the required 2,500 foot radius used for inclusion in a Major Center Node; commercial businesses have consistently operated on the site; the site is contiguous or in close proximity to properties that are used for commercial or non-residential activity.
8. Ordinance No. 2008-5 (Pojoaque Valley Traditional Community District) vacated the existing commercial nodes and designated mixed use districts.
9. The neighboring properties with commercial or non-residential activities are State and Pueblo owned and the County has no zoning jurisdiction on these parcels.
10. The granting of the requested variance is a minimal easing of the Code to allow commercial uses to be located outside a designated commercial node.
11. Granting this variance request will not nullify the purpose of the Code.

12. On behalf of the Applicants Jim Siebert testified in support of the variance.
13. No member of the public spoke in regards to the Application.
14. Staff recommended the following condition for approval of the Application:
 - a. The Applicant shall submit, in a timely manner, a request for Master Plan Zoning to the Building and Development Services Department (As per Article III, § 4.1.1.6).
15. After conducting a public hearing on the request and having heard from the Applicants, the Board of County Commissioners hereby finds that a variance of Article III, Section 4, Commercial and Industrial non-residential Districts, of the Land Development Code, should be approved conditioned on the Applicant complying with Staff recommendation as stated above.

IT IS THEREFORE ORDERED that the Application is approved, and the Applicants are allowed a variance to allow commercial zoning outside of a designated commercial district on 3.98 acres.

I certify that the Application was approved by the Board of County Commissioners on this _____ day of _____, 2013.

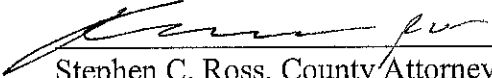
The Board of County Commissioners of Santa Fe County

By: _____
BCC Chairperson

ATTEST:

Geraldine Salazar, County Clerk

Approved as to form:



Stephen C. Ross, County Attorney

- XV. A. 4. **CDRC Case # V 12-5180 Joseph & Hope Roybal Variance. Joseph and Hope Roybal, Applicants, James Siebert (James W. Siebert and Associates, Inc.), Agent, Request a Variance of Article III, Section 4 (Commercial and Industrial Non-Residential Districts), of the Land Development Code to Allow Commercial Zoning Outside of a Designated Commercial District on 3.98 Acres. The Property is Located Southeast of the Village of Cuyamungue, East of the US 84-285 Frontage Road, Between Exit 176 and Buffalo Thunder Road, at 22 B Mystic Lane, within Section 28, Township 19 North, Range 9 East (Commission District 1)**

MR. LARRAÑAGA: Thank you, Madam Chair, Joseph and Hope Roybal, applicants, James Siebert agent, request a variance of Article III, Section 4 of the Land Development Code to allow commercial zoning outside of a designated commercial district on 3.98 acres. The property is located southeast of the village of Cuyamungue, east of the US 84-285 Frontage Road, between Exit 176 and Buffalo Thunder Road, at 22 B Mystic Lane, within Section 28, Township 19 North, Range 9 East, Commission District 1.

On June 21, 2012, the County Development Review Committee met and acted on this case. The decision of the CDRC was to recommend approval of the applicants' request for a variance.

The applicants request a variance to allow commercial uses to be located outside a designated commercial node. The applicants state that this site is suitable for commercial uses for the following reasons: the Buffalo Thunder interchange could be considered a qualifying intersection as a major center district; a significant portion of the property is located within the required 2,500 foot radius used for inclusion in a major center node; commercial businesses have consistently operated on the site; the site is contiguous or in close proximity to properties that are used for commercial or non-residential activity.

A County Business Registration was assigned to the property for New Mexico Trees in 1996 and expired in 2007. No other business registrations have been issued to this site. The neighboring properties with commercial or non-residential activities are State and Pueblo owned and the County has no zoning jurisdiction on these parcels.

Article III, Section 4.1 states commercial and industrial non-residential land uses are permitted only in zoned districts of various sizes and locations in the County of Santa Fe. Non-residential districts specifically for commercial or industrial land uses are established in order: to permit intensive development of selected land uses at designated locations; to avoid strip commercial and industrial patterns of development along highways, arterials, collectors, and local roads of the County; to protect the function of the County's highways, arterials, collectors, and local roads by controlling the number of access locations to commercial and industrial use areas; to prevent the preemption of prime areas for commercial or industrial development by residential development; to protect existing and future residential development from encroachment of non-residential uses; to provide the opportunity to master plan non-residential use areas, so that adequate fire and police protection may be provided and appropriate infrastructure constructed.

Article II, Section 3 states, Where in the case of proposed development, it can be

shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance. This Section goes on to state, In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.

Article II, Section 3.2 states, In no case shall any variation or modification be more than a minimum easing of the requirements.

Growth Management staff has reviewed this application for compliance with pertinent code requirements and finds the project is not in compliance with County criteria for this type of request.

Staff recommendation: Denial of a variance from Article III, Section 4 Commercial and Industrial Non-Residential Districts of the Land Development Code, to allow commercial zoning outside of a designated commercial district on 3.98 acres.

If the decision of the BCC is to approve the applicants' request, staff recommends imposition of the following condition. May I enter that condition into the record?

[The condition is as follows:]

1. The applicant shall submit, in a timely manner, a request for Master Plan Zoning to the Building and Development Services Department (As per Article III, § 4.1.1.6)

MR. LARRAÑAGA: Thank you, Madam Chair. I stand for any questions.

CHAIR STEFANICS: Thank you. Is the applicant here? Why don't you do your presentation and then we'll go to public comment.

COMMISSIONER VIGIL: Madam Chair.

CHAIR STEFANICS: Just a minute. We have a staff question.

COMMISSIONER VIGIL: Could you just check? You may not have the answer to this. Are any of those other plats in that node, were they granted through a variance process, do you know?

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, the existing commercial development that's out there?

COMMISSIONER VIGIL: Yes.

MR. LARRAÑAGA: Most of that existing commercial development is pueblo land. Buffalo Thunder, we don't have jurisdiction on that so we didn't see any of the development review.

COMMISSIONER VIGIL: Okay. So none of it went through any of our approval process.

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, that's correct.

COMMISSIONER VIGIL: So there's Nambe and Pojoaque as part of this, right? They both own property there is what I'm asking.

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, I believe so, and there's also a state piece where they have a yard right across the street.

COMMISSIONER VIGIL: Okay. Thank you very much.

CHAIR STEFANICS: Thank you. Any other questions for staff before we go

to Mr. Siebert?

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR STEFANICS: Yes.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Larrañaga, on your proposal, or excuse me, on your summary memo that you provided, of knowing why we allow commercial districts, why we don't, but this is a mixed-use district from the Pojoaque Planning Commission, correct?

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, this is outside of the -

COMMISSIONER MAYFIELD: Okay, so [inaudible] So I guess my other thoughts of what's presented here are some of the reasons, for safety out on the highway, this whole corridor is done off a frontage road. So there's only so many access points now off of that corridor by about two or three different bridges. So I know exactly where this property is, and as a matter of fact, our maps are wrong because they're saying that there's an adjacent Pueblo of Pojoaque structure in front of it. That's arguably Nambe's gas station and everything else. It's not the Pueblo of Pojoaque's; it's Nambe's. But I guess my whole point is that whole corridor is behind a frontage road right now so it does not have direct access onto the highway anymore. So I just wanted to let that be known.

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Commissioner Anaya, question for the staff?

COMMISSIONER ANAYA: No, I just wanted to move for approval.

COMMISSIONER MAYFIELD: Second.

CHAIR STEFANICS: We haven't done - we need the presentation from the applicant. We need the public hearing. Sorry. Mr. Siebert.

JIM SIEBERT: I would accept that motion.

CHAIR STEFANICS: Okay, then you can make it very short, your presentation, because I have to go to public hearing.

MR. SIEBERT: Madam Chair, Commissioners, my name is Jim Siebert. My address is 915 Mercer.

[Duly sworn, Jim Siebert testified as follows:]

MR. SIEBERT: Just a clarification in terms of the approval of the CDRC, it was a unanimous decision on the part of the CDRC to approve this. To give you the kind of locational area, this is the interchange, and what I've drawn on here is a 2,500-foot limit that would be traditionally the location for the major center district. This is the golf course, this is the frontage road, this is Mystic Lane. The property in question is just here. This is the Pojoaque Pueblo administrative office. This is the Nambe Pueblo center. It has a gas station, convenience store and it has all commercial uses in that particular area. Then this is the State Highway Department construction now is here. This is actually a lot, a vacant mobile home and according to Joe Roybal it's been vacant for quite some time.

The property was historically used by New Mexico Trees and it began about 1976, and was used continually until the time that Joseph Roybal with Thompson Wells bought the property. This is kind of an indication of the uses that are near or adjoining it. The hatched grid is Thompson Wells, the solid red is pueblo lands that are commercial. The green is - this is also the construction yard for the golf course, construction yards for the State Highway

Department. There is a use here that's kind of a mixed commercial/industrial where they work on vehicles.

I think the unique situation, this is not really part of the zoning of the village itself. It's really outside the zoning for the village. We feel that it would in fact fall under the County code with regard to the distance from a qualifying intersection. The majority of this property, as you can see, falls within that commercial node. And I'll answer any questions you may have.

CHAIR STEFANICS: Thank you. Any questions for the applicant?
Commissioner Vigil.

COMMISSIONER VIGIL: Thanks. Mr. Siebert, who owns the property beyond the boundaries of Mr. Roybal's property? Are those all privately owned?

MR. SIEBERT: Right. In the pink tone?

COMMISSIONER VIGIL: Further south on the map.

MR. SIEBERT: This is pueblo land. It's arroyo. It's Pojoaque Pueblo land.

COMMISSIONER VIGIL: Are there any other lots or plats within that area that are privately owned?

MR. SIEBERT: This tract here is approximately one acre that it has the name of Peter Watts to it but according to Joseph, since he's been there it's always been just an abandoned mobile home.

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR STEFANICS: Yes. Question for Mr. Siebert.

COMMISSIONER MAYFIELD: Thank you. Madam Chair, Mr. Siebert, but going south though, that's where we have, I guess like an arts and crafts commercial building. There's also Gabriel's Restaurant. We approved a while back that gentleman that has a building to store his trucks going down that road.

MR. SIEBERT: I'm not sure about that. This is principally an arroyo here. Unless - this map is two years old so things may have changed.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Siebert, your client is just down the road from that, that you came to the Commission a couple months ago.

MR. SIEBERT: Oh, no, no, no. That's further down

COMMISSIONER MAYFIELD: Okay. So, Madam Chair, Mr. Siebert, the residential area is kind of going more towards the east?

MR. SIEBERT: Yes. The residential is here really.

COMMISSIONER MAYFIELD: And all those residents have been served notice?

MR. SIEBERT: Yes, they have. Actually, Mr. Roybal has talked to them personally.

COMMISSIONER MAYFIELD: Thank you. Madam Chair, staff, are there any conditions put on this?

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, there is the one condition, which was entered into the record but I'll read it out: The applicant shall submit, in a timely manner, a request for master plan zoning to the Building and Development Services Department.

COMMISSIONER MAYFIELD: Thank you, Madam Chair.

CHAIR STEFANICS: Thank you. Let's go to public comment. This is a public hearing. Is there anyone here to support or oppose this project? Okay, the public hearing is now closed. There was a motion to approve and a second. Discussion, questions from the rest of the Commission?

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Yes.

COMMISSIONER ANAYA: I just wanted to apologize for jumping in there. I read the packet and saw the discussion in CDRC and saw the condition contained therein and those approvals, but I definitely don't want to jump the gun on the public, so thanks for realigning us.

CHAIR STEFANICS: No further discussion?

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

- ~~XV. A. 5. CDRC Case # V 12-5200 Robert & Bernadette Anaya Variance.
Robert & Bernadette Anaya, Applicants, Talia Kosh (the Bennett Firm), Agent, Request a Variance of Ordinance No. 2007-2 (Village of Agua Fria Zoning District), Section 10.5 (Village of Agua Fria Zoning District Use Table), to Allow a Towing Business on 0.70 Acres. The Property is Located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East (Commission District 2) [Exhibits 2 & 3: Letters of Opposition]~~

~~MR. LARRAÑAGA: Thank you, Madam Chair. Robert & Bernadette Anaya, applicants, Talia Kosh, agent, request a variance of Ordinance No. 2007-2, Section 10.5 to allow a towing business on 0.70 Acres. The property is located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East, Commission District 2.~~

~~On June 21, 2012, the County Development Review Committee met and acted on this case. The decision of the CDRC was to recommend denial of the applicants' request for a variance.~~

~~The applicants request a variance to allow a towing business as a special use under Ordinance No. 2007-2, § 10.5, Village of Agua Fria Zoning District Use Table. A special use is an allowed use which is subject to master plan and development plan approval by the Board of County Commissioners. The use as a towing company falls under the category of vehicle service not listed which is not allowed as a use as outlined in the commercial use category within the Traditional Community Zoning District.~~

~~The applicants state, The towing business has been in operation since 1989 at the current location and the property has been in the family for generations. The ability to operate the business with eight towing vehicles on the site provides a community service in response time to emergencies.~~

~~The applicant's were issued a notice of violation of Ordinance No. 1992-3 on February 9, 2012, for operating a business without a county business registration. It was~~

Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

**CASE NO. CDRC V 12-5:
VARIANCE OF ORDINANCE
DISTRICT, SECTION 10
TABLE
ROBERT AND BERNAD**

XII.

A.3

**E OF AGUA FRIA ZONING
IA ZONING DISTRICT USE**

NTS

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on August 14, 2012 and November 13, 2012, on the Application of Robert and Bernadette Anaya (hereinafter referred to as "the Applicants") for a variance of Ordinance No. 2007-2, Village of Agua Fria Zoning District, Section 10.5, Village of Agua Fria Zoning District Use Table, to allow a Towing Business on 0.70 acres. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicants request a variance to allow a towing business as a Special Use under Ordinance No. 2007-2, Section 10.5, Village of Agua Fria Zoning District Use Table. A Special Use is an allowed use which is subject to Master Plan and Development Plan approval by the Board of County Commissioners. The use as a towing company falls under the category of "Vehicle service not listed" which is not allowed as a use as outlined in the commercial use category within the Traditional Community Zoning District.

2. The project is located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East, (Commission District 2).
3. Following a hearing on the Applicants' request for a variance, the County Development Review Committee, at its June 21, 2012 meeting, recommended denial of the variance request.
4. Article II, Section 3 (Variances) states where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance. This Section goes on to state that in no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.
5. Article II, Section 3.2 (Variation or Modification) states in no case shall any variation or modification be more than a minimum easing of the requirements.
6. On August 14, 2012, the Applicants stated that the towing business had been in operation since 1989 at the current location and the property had been in the family for generations. The business started with 2-3 tow trucks on the family property and expanded to 8 tow trucks varying in size. The trucks were being parked across from their residence. As the property was developed, by family members, the trucks were moved to different locations on the family property.

Eventually the trucks were moved to the back portion of the lot currently owned by the Anayas. The ability to operate the business with eight towing vehicles on the site provides a community service by improving response time to emergencies.

7. On August 14, 2012, Merit Bennett and Talia Kosh, on behalf of the Applicants, submitted material and testified in support of the variance.
8. On August 14, 2012, on behalf of the Applicants eight (8) members of the public spoke in favor of the variance.
9. On August 14, 2012, four (4) members of the Public spoke in opposition to the variance.
10. After conducting a public hearing on August 14, 2012 on the request and having heard from the Applicants and members of the public, the Board of County Commissioners tabled the request for the variance so that this issue could go through mediation.
11. Santa Fe County retained Rosemary Romero as a mediator.
12. On November 13, 2012, the BCC reviewed the Application and supplemental materials as well as staff reports including a summary of the mediator's findings.
13. On November 13, 2012, Rosemary Romero, the mediator hired to facilitate the mediation between the Anayas' and the neighbors, testified that due to reluctance, refusal and/or timing, mediation between the parties involved was not possible.

14. On November 13, 2012, the Applicants answered questions posed by the BCC.

15. The granting of the requested variance is a minimal easing of the Code.

16. Granting this variance request will not nullify the purpose of the Code.

17. After conducting a public hearing on the request and having heard from the Applicants, the Board of County Commissioners hereby finds that a variance of Ordinance No. 2007-2, Village of Agua Fria Zoning District, Section 10.5, Village of Agua Fria Zoning District Use Table, to allow a Towing Business on 0.70 acres by recognizing the towing business as a Special Use under the Village of Agua Fria Zoning District Use Table, should be approved conditioned on the Applicants presenting a Master Plan to the BCC, within eight (8) months of the November 13, 2012 hearing (July 9, 2013).

IT IS THEREFORE ORDERED that the Application is approved, and the Applicants are allowed a variance of Ordinance No. 2007-2, Village of Agua Fria Zoning District, Section 10.5, Village of Agua Fria Zoning District Use Table, to allow a Towing Business on 0.70 acres as a Special Use subject to Master Plan Zoning and Development Plan approval, by which approval must be sought, by the Board of County Commissioners, no later than July 9, 2013.

I certify that the Application was approved by the Board of County Commissioners on this _____ day of _____, 2013.

The Board of County Commissioners of Santa Fe County

By: _____
BCC Chairperson

ATTEST:

Geraldine Salazar, County Clerk

Approved as to form:



Stephen C. Ross, County Attorney

CHAIR STEFANICS: Thank you. Let's go to public comment. This is a public hearing. Is there anyone here to support or oppose this project? Okay, the public hearing is now closed. There was a motion to approve and a second. Discussion, questions from the rest of the Commission?

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Yes.

COMMISSIONER ANAYA: I just wanted to apologize for jumping in there. I read the packet and saw the discussion in CDRC and saw the condition contained therein and those approvals, but I definitely don't want to jump the gun on the public, so thanks for realigning us.

CHAIR STEFANICS: No further discussion?

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

- XV. A. 5. CDRC Case # V 12-5200 Robert & Bernadette Anaya Variance.
Robert & Bernadette Anaya, Applicants, Talia Kosh (the Bennett Firm), Agent, Request a Variance of Ordinance No. 2007-2 (Village of Agua Fria Zoning District), Section 10.5 (Village of Agua Fria Zoning District Use Table), to Allow a Towing Business on 0.70 Acres. The Property is Located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East (Commission District 2)
[Exhibits 2 & 3: Letters of Opposition]

MR. LARRAÑAGA: Thank you, Madam Chair. Robert & Bernadette Anaya, applicants, Talia Kosh, agent, request a variance of Ordinance No. 2007-2, Section 10.5 to allow a towing business on 0.70 Acres. The property is located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East, Commission District 2.

On June 21, 2012, the County Development Review Committee met and acted on this case. The decision of the CDRC was to recommend denial of the applicants' request for a variance.

The applicants request a variance to allow a towing business as a special use under Ordinance No. 2007-2, § 10.5, Village of Agua Fria Zoning District Use Table. A special use is an allowed use which is subject to master plan and development plan approval by the Board of County Commissioners. The use as a towing company falls under the category of vehicle service not listed which is not allowed as a use as outlined in the commercial use category within the Traditional Community Zoning District.

The applicants state, The towing business has been in operation since 1989 at the current location and the property has been in the family for generations. The ability to operate the business with eight towing vehicles on the site provides a community service in response time to emergencies.

The applicant's were issued a notice of violation of Ordinance No. 1992-3 on February 9, 2012, for operating a business without a county business registration. It was

determined by staff that this type of business activity was not allowed within the Agua Fria Traditional Community under Ordinance No. 2007-2.

On July 12, 1989, the applicant made application to allow a small-scale commercial vehicle impound yard on this site as a special exemption of the Extraterritorial Zoning Ordinance. On August 28, 1989 the Extraterritorial Zoning Authority denied the Applicants' request and ordered the Applicants to discontinue all commercial activity on the site.

Article II, Section 3 of the County Code states: Where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance. This section goes on to state, In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.

Article II, Section 3.2 states: In no case shall any variation or modification be more than a minimum easing of the requirements.

Growth Management staff thoroughly reviewed the application for compliance with pertinent Code requirements and found the application is not in compliance with County criteria for this type of development. Staff has conceptually reviewed the site for zoning requirements as a special use and has determined that further variances may be required for this site to meet master plan/development plan criteria.

Staff recommendation is denial of a variance from Ordinance No. 2007-2, Village of Agua Fria Zoning District, Section 10.5 Village of Agua Fria Zoning District Use Table, to allow a towing business as a special use under the Zoning Use Table. Madam Chair, I stand for any questions.

CHAIR STEFANICS: Are there questions for staff? Commissioner Vigil.

COMMISSIONER VIGIL: Does this comply with the Agua Fria plan? Have you had an opportunity to do that evaluation?

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, no, not to the plan. It doesn't comply with the ordinance.

COMMISSIONER VIGIL: Thank you.

CHAIR STEFANICS: Any other questions for staff before we go to the applicant?

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Mr. Larrañaga, could you talk again -- and I'm reading back through some of what you just went through- but relative to the length of time that the company's been in business, and restate when the violation was issued. Has it been in place since 1989? Is that correct? Has the business been in place in that location since 1989?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, that's what the applicant states. The notice of violation was issued February 9, 2012. That's when we had a complaint and an officer went out there and saw that they were running a business without a business license.

COMMISSIONER ANAYA: Has the County – and I thought you mentioned we had issued some other violations? Have we issued other violations preceding February 12th of this year?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, not to my knowledge. In 1989, that's when the applicant made application to the EZO for a special exemption to have a towing – to have a storage yard and parking yard there and they were denied. One of the letters, exhibit 8, where they were supposed to take the cars out of there as an impound yard.

COMMISSIONER ANAYA: So we provided a notice for them to take the cars out in 1989 for an impound yard? The County did?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, that's correct. It was after a denial from the Extraterritorial Zoning Authority.

COMMISSIONER ANAYA: So then we only followed up on that and 23 years later in February of this year we got another complaint and we followed up with a code enforcement violation. Is that what it was?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, of course I wasn't here in 1989 but they followed up and made them take out all the cars. Some of the aerials, they covered a lot more than what their property is, .70 acres as an impound yard, and then we recently got a complaint back in February, January/February of having the tow trucks. They don't have any more, that I know of – they're not using it as an impound yard as you can see from the newest aerial. It's all filled up with residential houses and different lots on that area.

COMMISSIONER ANAYA: So, Madam Chair, Mr. Larrañaga, did the County ever, prior to February of this year, issue any violations for a tow truck business?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, not to my knowledge.

COMMISSIONER ANAYA: Thank you.

CHAIR STEFANICS: Anything else for staff before we go to the applicant? Okay, is the applicant here? Please come forward and be sworn in. Okay, anyone who is going to speak for the applicant needs to be sworn in, so yourself or others.

MERIT BENNETT: I'm counsel for the applicant.

CHAIR STEFANICS: So is anyone else going to speak for the applicant except yourself?

MR. BENNETT: I think counsel will and also Mr. Anaya will speak.

CHAIR STEFANICS: Okay. So anyone who's not counsel – are rules are different for counsel, correct, Steve? They're bound to the word. Okay, so anybody on this group who's not an attorney would you please stand and be sworn in.
Dddgroup.

CHAIR STEFANICS: Okay, so when you speak, we're going to need you to say your name, your full name and your address so it goes into the record. And why don't you start off with your introduction. I missed your name. I'm sorry.

MR. BENNETT: Merit Bennett.

CHAIR STEFANICS: Oh, Merit Bennett. Okay.

MR. BENNETT: Good evening. Thank you for taking this time to hear the

case of the applicant. First, in response to Mr. Larrañaga's comments with respect to the decision in 1989 regarding not having an impound lot on this property. That decision was obeyed. This is not about an impound lot. The Anayas were conducting a towing business. They were since 1989 to this date at this location. At that time they did make application to store some of the vehicles that they had towed when they would go to the scene called by the State Police, County Sheriff's Office or City Police, they would oftentimes – drunk drivers, they would have to tow an impounded vehicle and impound it. And yes, they were making application to be able to impound those vehicles on this particular property and their application was denied.

In response to that denial the Anayas then established another offsite impound lot where they have been since 1989 towing the vehicles that are impounded to that lot and they're stored and warehoused at that lot. The impound lot question has nothing to do with this application, just to be clear, because that, as we already know, that petition was denied for those reasons. It presents a whole different issue within a community area than conducting a family business. So this is not that, just to make clear.

The Anayas have owned this property. They're fifth generation family, have owned this particular property on Ben Lane for probably as long as we've been here and they have been landowners. Their family compound has been in the Agua Fria Village for that period of time. In 1989 Mr. Anaya purchased an existing towing company, Padilla's Roadrunner Wrecker Service. This is Anaya's Roadrunner Wrecker Service, purchased an existing towing company that had been grandfathered in in 1981 by the Agua Fria Village Ordinance. So there already was an existing towing company that I believe, according to Mr. Anaya had the same number of vehicles as the Anayas currently park at their location.

This towing company consists of eight vehicles of varying sizes and capabilities and in order to perform a varying degree of tasks for state, local, federal, our City and our County. These services include anything from towing a vehicle from the scene of a crash or a drunk driver is stopped, to recovering vehicles that have gone down ravines or into riverbeds or off the road during ice storms or whatever, and some of these vehicles have very large weight capacities and degrees of difficulties in extracting them from various hazardous positions. And the Anayas are really the only towing company in northern New Mexico that can accommodate all of these needs of state and local authorities.

So they're called constantly, and this is a constant, 24/7 business. They have a contract with the County to provide 24/7, 365 days a year service and that contract I will discuss later. It's in the exhibit book that you've been provided.

As a part of this obligation to keep the community safe and perform activities that are vital to our community they run a 24-hour business and as a result, most of these vehicles are not always on the property at the same time. This is 24/7. On average they have about four vehicles that are parked on this property. There's plenty of room on this property to park the vehicles and I will discuss that with you in a minute. There's adequate ingress and egress. They've been doing this for 23 years, safely. There's never been any safety incident at all in this neighborhood caused by one of their emergency tow truck vehicles in the last 23 years, which I think is really remarkable.

This business is operated by Robert and Berna, his wife. Berna sits in the house and take the dispatch calls. They don't have any signage out on Agua Fria and their son Robert

has been a part of this business, has grown up there and is now working with his dad helping manage the vehicles and the employees they need to drive the trucks. In addition, some of the employees who drive these trucks take them home with them, so that's another reason you'll never find more than four trucks on this property at any give time, is because some of the employees take them home. But there has to be a core number of trucks on the property to be able to respond and to perform the services.

For example, for the County, in their contract they require 60 minutes onsite response time from the call. Anywhere within the county that require that those vehicles be immediately accessible so they can get in the vehicles and go to the scene of a crash or something. Also, as you can imagine, the emergency responder, the lower the time of response the more likely you're not going to have somebody die on you or sustain a serious or disabling injury. So the service that they perform is really kind of a unique business service to this community that is other than just selling goods in a wholesale-retail or in a retail shop. And so consideration should be given for that.

Robert's been a volunteer firefighter for most of his life. He was the chief of the local Agua Fria volunteer force for five years. The Anayas even housed one of the volunteer fire trucks on their property for a year in 1992. This is a family of service to the community. Over the last 23 years they have received community recognition and awards. You can go to tab 8 in the notebooks, and I will warn you about these notebooks. When you get to tab 5, tab 5 has subtabs one through 32 attached. So you don't want to get lost in 1 through 32 which is attached to tab 5. So when I say go to tab 8 you have to bypass that collection of 1 through 32 that's attached to tab 5, and then go on to tab 8 in this notebook. This is a recent, 2012 nomination by the Chamber of Commerce for an outstanding business award in this tab. This is again major tab 8, following the tabs 1 through 32, and it goes to 6, 7, and then 8. Also in this tab is a recent note from Robert Schilling who you may know is the Chief of the New Mexico State Police. Thanks so much for the tow and taking care of me last week. You're a great guy and run a great company. Enjoy and thanks for taking care of my troops out here. This is the type of business that's been operated in Agua Fria Village that improves this important community service.

I indicated that they currently have a contract with Santa Fe County. We've attached that as tab 6. Again, you're going to have to bypass the 1 through 32 of tab 5 to come to -- I'm sorry. I take that back. The County contract is under tab 9. So you need to go to tab 9, again, bypassing 1 through 32 in tab 5, to tab 9, is the County contract. It runs from the 2nd of June 2009 to the 1st of June 2013. You'll be able to locate it. In this contract you can see that the Anayas are required by the County to provide emergency wrecker and towing and related services. I'm now looking at page 1 of the contract's scope of work, subparagraph C. The contractor shall provide emergency wrecker and towing and related services 24 hours per day and seven days per week, 365 days per year at the request of the Santa Fe Sheriff's Office.

The contract -- and go down to E. The contractor is allowed a maximum 60-minute response time for contractor's tow truck to arrive at the arrest location. Response time begins upon receipt of notification of request for services by the Santa Fe Sheriff's Office.

So to park these vehicles somewhere else, out away from their property and have to go to get the vehicle at some other location and then respond would then be very difficult in some cases in some parts of the county impossible. So that's another reason that they've been

operating this tow business on their property for the last 23 years is so they can provide that type of emergency response that's not only required by local law enforcement, it's required by the community to literally save lives.

Just to orient you to the property, I'm going to direct your attention to tab 4. This is the tab 4 that's before the tab 5 that has the 32 tabs in it. If you go to tab 4, the last page of tab 4 has a survey map of the Anaya's property on Ben Lane. This is the Anaya's compound and you will see to the left of this fold-out survey, Agua Fria Street and the yellow marked roadway is a dirt road and that is called Ben Lane, and it cuts through the middle of the Anaya family compound that has been there for now five generations. The Anaya's, Bernadette and Robert, own two portions of this property. The first portion as you come down Ben Lane is on the right. That is their residence. The next portion is on the left and that is an open area, a large open area, you're going to see photographs of that in a moment. And at the far end of that open area there is a line here which has been marked here as the Romero wall. This is where the neighbors to the right, on the right of this survey had erected a wall to provide them with privacy for between their property and the Anayas' property and presumably their trucks.

We believe this wall to have been built within the last ten years. You will see a circle where it's indicated that the Anayas park one or more of their trucks when they are unoccupied or unused in this big open area that is designated with the hatch marks as going to the Anayas at the end. There's no structures on it. It's an open area with a huge turnaround and you'll see photographs of that where large vehicles can come in, in order come into this lane and then back out somehow. They can come in and they can turn around no matter what size of the vehicle, around in this big circular area in the back, and then exit, and this is a question that's also been raised about fire access, access to the fire vehicles in and out of this property in case of fire. I will also discuss that as well.

In order to further orient you as to what we're talking about, if you could go to tab 3. This is right at the beginning of the book, tabs 1, 2, 3. This is another fold-out and this is an aerial view, I think from Google Earth, looking down onto their property. This again will help you orient as to what we're actually talking about. As you can see on the left side of this fold-out is again Agua Fria Road, and as you come up to - you see the number 5 that's circled down in the lower left-hand corner, if you then proceed on Agua Fria a little further, the first road on the right is Ben Lane and you can see it lightly marked Ben Ln. And you'll see where that traverses.

You'll see as you come into the road on Ben Lane then you first jog to the left on Ben Lane, then it straightens out and goes down past a large structure with a white roof on it. That's the Anayas' home. The purple roofed structure is their garage. So you will pass that down to the #11 that has been circled. That is the same circled area that I just directed your attention to on the plat survey. That's where the Anayas' vehicles are parked. So you can see, if you're standing on Agua Fria Road and you look to the right, or northward, you cannot see those trucks because the road, Ben Lane, is hooked to the left and then straightens out again. So all you can see if you're a commuter or passerby on Agua Fria is nothing. It's a residential area and the trucks are parked way back down on the end.

You can see that straight white line just to the right of the circled #11 and that is the wall that was constructed by the Romeros who are the chief complainants in this case.

They're the ones who initiated this review, if you will, 23 years after the Anayas began doing business there. That wall was erected by them and to the right of them is their compound. And we'll see pictures of their compound where they conduct a business of their own. They rent property, apartments to people. And so we'll talk about that a little later.

So this is one way to help you orient to the total environment. With respect to the character of the surrounding community, the Anayas are not the only business in this immediate locale. As you can see on tab 3 that we just looked at those circled numbers are all businesses. Every one of them are businesses within this very immediate vicinity. And what we've also done, if you now turn to tab 5, which has the multiple 32, 33 exhibits attached to that, these are the businesses within a quarter mile of the Anayas' driveway, along Agua Fria, along and near Agua Fria in this area. And if you look, we've identified 32 businesses within a quarter mile in the Agua Fria Village of the Anayas' home and business.

And attached -- those tabs are photographs of each of these businesses that are numbered within Exhibit 5. We provide the numbers, then you can go to these subtabs and you can see a little bit more about the businesses being conducted here. And there are just a few of these businesses that I would like to direct your attention to.

If we can go to subtab 3 of Exhibit 5, this is photographs of the Rodriguez Brothers Sand and Gravel Company. And as you flip through the pages, if you go to the second page of the exhibit, you will see this is a major business. Far greater activity involving large trucks, sand and gravel trucks. Go to the third page, the third photograph, we've got four trucks side by side, a very substantial size, similar in size to the Anayas' towing vehicles. There's another view of the Rodriguez Brothers Sand and Gravel. Several views, you can see the extent of this business. And this business is located in the immediate vicinity of the Anaya's business. This is on that Exhibit 3 fold-out. This is one of those businesses that is right there next to the Anayas' business. On Exhibit 4 it's business #3, circled #3. As you can see it's within hailing distance of the Anayas' -- where they park their trucks. You can actually see it from where they park their trucks.

If we jump to subtab 8, this is Scott's Garage. Talk about impound lots, it looks like an impound lot. Scott's garaging a lot of cars here, a lot of vehicles. So this is the impound lot type situation that naturally the Agua Fria Village was seeking to avoid in 1989, but this is what it then looks like.

If you go to tab 9, this is within a very short distance of Ben Lane. This is the Padilla Bingo Buses business, where they operate bingo buses that transport people to and from their bingo hall. If you go to subtab 12, this is Santa Fe Concrete. This is as you can imagine utilizing very large concrete trucks that tow large concrete trailers that are very heavy and occupy a lot of space and movement within the [inaudible]

Exhibit 13, August Construction Company, and if you'll just thumb through the photographs, you'll see -- you're going to get the flavor of the character of this community and how what the Anayas are doing here is consistent with that character. If you just thumb through these photographs you get a quick picture of it.

If you go to subtab 15, we have Cassidy's Landscaping. Again, multiple vehicles parked here. So of them with large trailers and plowing vehicles for landscaping, small tractors.

If you go to Exhibit 23, sub-exhibit 23, this is the property of Mr. Larrañaga's brother,

where they hold rodeo events on at least a monthly basis, and when they have these rodeo events they have over 200+ people come with their vehicles, families and that creates blockage of traffic, quite a stir in Agua Fria Village and I don't believe Mr. Larrañaga's been investigating them lately.

Number 26 is a combination of businesses. This is owned – these are four businesses owned by four brothers, all located within the same general area. Padilla's Towing, Quality Towing, A-1 Towing, and Tony's Towing, all belonging to the four brothers, and they have an impound lot in addition to towing facilities. So if you just look through some of these photographs you can see that there's a lot more going on here than there is on the Anayas' property.

Subtab 27 is another wrecker service. This is the Flores Wrecker Service and again an impound lot. So they're storing vehicles on these properties as well as storing their own tow vehicles, they're storing other people's vehicles on these properties.

Subtab 28 is Chavez Septic. Again, large septic vehicles. You all know what those look like when they pull up to drain a septic tank. This is the character of this portion of the Agua Fria Village. This is the character of their family businesses that's being conducted there.

29 – 29 is the Romero property, and we've looked at that on the plat. This is the property of the people who have initiated this proceeding in fact. As you can see, the first photograph is looking from the Agua Fria River towards – this is the Romero compound. The Romero compound is blocked by trees that run along the wall that they built and the Anaya property is out of view in this photograph. It's on the other side of the Romero compound. The next photograph is a shot of the compound. Again, there's no view of the Anayas' property from this perspective, from the river perspective. Then if you go down about four photographs you come to a photograph of part of the Romero compound that is the apartment business, the rental business that they conduct on their property.

The next photograph and the third to the last photograph of sub-exhibit 29 is a view, an elevated view of the Romeros' garage – now, this is on the back side of the photos you were just looking at, and what you can see here is you can see the wall that they have constructed, which by the way, the right-hand portion of this wall – what you see on this side of the wall is the Anayas' property, that open area, part of the open area I was talking about. That wall blocks the easement of Ben Lane. The easement of Ben Lane as I showed you on that plat, goes through that wall. That wall has been blocked by the Romeros, and there's been no vacation of the easement that's been recorded of record. So that easement has been blocked. So if the Anayas wanted, or a fire truck needed to get through from Agua Fria to the river or any structure along the way, ordinarily, if that easement were open like it should be, they would go right along that easement and keep on going, but at some point the Romeros blocked this.

The next photograph is again another photograph of their compound and again, you can't see Anayas' vehicles, you can't see anything on the other side of their wall, which is on the opposite side of this photograph. And yet another photograph.

CHAIR STEFANICS: So, Mr. Bennett, are you almost finished so that we can hear the rest of your applicants?

MR. BENNETT: Yes. I'm getting – I just wondered if you could direct your

attention to exhibits 30 and 31. We've got more construction companies and Santa Fe Frame and Auto, again, large vehicles. Let me try and move a little faster.

CHAIR STEFANICS: Right. And just remember, you'll have a chance to answer questions as they come up after the public hearing as well.

MR. BENNETT: Okay. The other thing I would just like to bring up quickly is I think I've pretty well discussed the character of the surrounding community, is if you look at tab 11, it's entitled, and this is in right at the back and it has six subtabs. It's the last major tab with six subtabs, and it's the table of contents to this, tab 11 is entitled to impeachment of opposition. And Ms. Kosh, my colleague is going to discuss the legal issues surrounding all of this including the issue regarding the ingress or the access to the Anayas' property and the other homes in that vicinity by a fire truck. So I'm not going to discuss that.

But at the hearing before the land use committee where this application was denied, I believe 5-1, there was some testimony given by opponents to the Anayas' application that was not quite accurate. For example, tab 1 of tab 12 – excuse me, I take that back – tab 2. Rosemary Medrano testified that this business use was a bane to her ownership of property in that area. Well, if you look at – as it turns out, Ms. Medrano only owns vacant land near the Anayas and Ms. Medrano lives on Botolph Road. And what we have here is a photograph of her residence on Botolph Road, there's a mailbox, 2904, and the last photograph in this is the vacant land that she claims is impaired or its use impaired by the Anayas operating of their business.

The other thing that is of note, it was at the hearing of Robert and Diane Roybal testified that they – actually, if you go to the last tab of this book, tab 6, there are two pages of the testimony given at the last hearing that I would like to direct your quick attention to. The last page, which is the last page of this notebook, talks about Robert and Diane Roybal's testimony. Ms. Roybal says she neighbors the Anaya property and her kitchen window looks out to their trucks. This is true, but she doesn't live there. She – her property is, number 1, not within 100 yards of the Anayas' property, and number 2, she lives in Rio Rancho and she rents out this property. So the impression was given to the committee that she was somehow offended by the view out of the kitchen window.

The other testimony that I want to draw – while we're on this exhibit is the status of Mrs. Romero, who is one of the, or the – her and her husband are the main complainants against the Anayas' ability to operate their business. Some of the things she said, on page 25 of the testimony, which is the second to the last page of this book. She said the Anayas are being investigated by DOT because it's dangerous for those big trucks to turn off Lopez Lane onto Agua Fria. It's not true. It's simply not true. There's no investigation by DOT of anything and Mr. Anaya can testify to that if necessary.

Ms. Romero said – all of these are highlighted. One of Anayas' tow trucks was last registered in 2006. It was not insured, knocked down her wall in January. Now, that reference is to why we're here. What happened was that wall between the Romero property that I pointed out to you, which is the end of the Anayas' property, it was an adobe wall that was erected by the Romeros within the last ten years, one of the Anayas' trucks accidentally backed into and collapsed a portion of it. And that's where all of this came from. The Anayas did have insurance and were trying to get the wall repaired, wanted to get it repaired. The truck damaged it. And got an estimate out and were all ready to go and an agreement to get it

repaired and hire somebody to do it when a demand was made for \$7,000 by the Romeros to pay for the wall, which was of course totally exorbitant.

But the Anayas were insured, but they had a deductible. So they were trying to fix the wall within their deductible which they had to pay anyway, so this is what happened. We're sitting here tonight because of that incident.

Then Ms. Romero questioned Mr. Anaya's business ethics and was concerned that he has not been paying taxes while he continues to the deterioration of Agua Fria. Mr. Anaya pays his taxes, property taxes and –

CHAIR STEFANICS: Okay, we're kind of diverting from the presentation here.

MR. BENNETT: Okay, well, you can see this in here, which is important. The last thing about impeachment is the way that this has been handled by Mr. Larrañaga. I met with Mr. Larrañaga right at the beginning of this and he told me that the business in his office is essentially complaint-driven. So if you're not complaining then he's not going to make sure that you're complying with whatever rules that are out there that the County has. So all he does is respond to complaints. And this was one. And so he responded to this complaint and not only responded to it, inappropriately responded to it. He comes on to the Anayas' property. There's an affidavit from Mr. Anaya here. He will come on to the Anayas' property for really no good reason other than to drive up and down Ben Lane and sit on Mr. Anaya's property. He has told other supporters or neighbors of Mr. Anaya, family members, that if you support Mr. Anaya's application that your property taxes will go up. We have that in Mr. Anaya's application. Bernadette's brother was actually told that, that if you somehow support this you're going to have to actually give up property. I think they're talking about creating a hammerhead where one doesn't need to be created.

So there's been personal influence into this when at the same time all of these other businesses, including his brother's rodeo is not being vetted for compliance with the County's rules and regulations. So I would move, at least I'd have this motion on the record that Mr. Larrañaga and the land use Commission that was investigating this application be disqualified and that their input into this be stopped from making the arguments they're making. This petition should be denied. But all of that documentation is in this notebook. There are legal issues that I'm sure the Commissioners want to hear about briefly. My colleague, Ms. Kosh, will advise you of those.

CHAIR STEFANICS: Thank you. So let's here from Ms. Kosh and the applicants, and then if the Commissioners have questions now they might ask them, or then we'll go to the hearing of the pros – the opponents and the supporters, and I'm going to ask Mr. Larrañaga in a few minutes to speak, as well as Chief Buster Patty. Ms. Kosh.

TALIA KOSH: I'll try to be brief. County Commissioners, I'm Talia Kosh and I represent Robert and Bernadette Anaya. [inaudible] shorter version of what is in tab 2, their letter of request and the supplement to that. So what is the issue here? Parking up to eight towing vehicles, but really at most times, moments of the day and night, about four and dispatching those vehicles from their residence.

First I'm going to talk about, going to demonstrate how the Anayas are grandfathered in and therefore no variance is needed. Second, in the alternative, I will demonstrate the current use of the property is a permitted use consistent with the character of Agua Fria

Village Association. And I will also demonstrate that the current use of the Anaya's property has not resulted and will not result in any conditions that are injurious to health or safety.

We've already touched briefly on emergency response concerns so I'm going to say a few things about this, but the ability of their towing service, which has written and verbal agreements with several government agencies to respond quickly to emergencies is a public interest concern. Regularly, the Anayas are called by emergency responders who have no other towing company alternative due to the Anayas' range of towing option. This came into play recently. I'll just give you a couple of examples. When the Anayas were called in the middle of the night by emergency dispatch in northern New Mexico about four hours away from Santa Fe because there were no other towing services that would be able to handle a large wrecked semi truck off of a major highway. Again, recently the Anayas moved a City garbage truck that had crashed into a riverbed and no one else could get it out of the riverbed.

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR STEFANICS: Commissioner.

COMMISSIONER MAYFIELD: Just real quick. The Anayas have a Class D?

MS. KOSH: Yes, Class D. Also, even Barbara Salas, the Chief of the fire department has given me permission to tell you that Robert Anaya and his business are incredibly valuable to the community and have trucks that perform services that no other towing company can perform.

Also, there's just a few constitutional issues that I'd like to touch on. Finding a site to lease and park most of these eight towing vehicles offsite from their property would be prohibitively expensive and would effectively destroy their ability to make a living in the tow truck business after 20 year of service. Further, as a tow truck business in a new place the Anayas would have an even more difficult time to get a variance because they would not be faced with a situation which I'll discuss briefly where the use could be deemed permissible within the Agua Fria Village Association and this would effectively shut down their business.

Should the use be disallowed by this Commission this would effectively be an arbitrary denial of equal protection, treating the Anayas differently from similarly situated businesses and individuals. Also this differential treatment would have no rational basis as the Anayas have been using their property without issue for over two decades. Further, the Anayas have many contracts with governmental enforcement agencies and other private parties and these contracts would be nullified by this denial, and that is also a denial of the fundamental right to make a livelihood and the right to contract for personal employment.

I'm going to quote from a United States Supreme Court case. Nothing is more clearly settled that is beyond the power of the state under the guise of protecting the public arbitrarily to interfere with business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them.

Further, in support of this I'm going to just talk briefly again about how the Anayas are grandfathered in. Mr. Bennett already discussed how the business was purchased, and I'd also like to draw your attention to tab 6, which is Mr. Mee's letter from the Agua Fria Village Association. It's the major tab 6. It's a letter from William Mee, the president of the Agua Fria Village Association. I'll call it AFVA. Mr. Mee states that also, and I'm quoting, also during the community planning process a number of businesses which have industrial land uses not compatible with residential land uses were grandfathered in, such as Anayas'

Wrecking, L & L Portable Toilets, etc. He lists several businesses.

According to the AFVA, the Anayas' Wrecker business has been grandfathered in along with many other businesses, so many that he did not even begin to list all of the businesses that are grandfathered in within this village. Also, they're very much a part of this traditional and contemporary community of the Agua Fria zoning district, and in going back to William Mee's letter, he states parking Anayas' Road Runner Wrecker Service towing vehicles also have been parking them consistent with running their business at 2253 Ben Lane is not inconsistent with the character of Agua Fria Village and there are many mixed-use, family-run businesses within the village. This effectively demonstrates permissible use.

So the only objections to the Anayas' towing business should have been made when the Agua Fria Village Community planning process was occurring from 2003 to 2006. As Mr. Mee states in that same letter, during this process it would have been reasonable to discuss any objections to the Anayas' Roadrunner Wrecker Service land use as being incompatible with the residential land use around it. However, I recall no such objections or protests. This is also in his letter. Neither the Romeros nor anyone else who currently stands in opposition to the towing vehicles ever made objections during this time, even though they were a part of this planning process and they could have easily voiced their objections. They should now be stopped from making such objections after over two decades of the Anayas parking their towing vehicles.

Just quickly, I'd like to point out that the Anayas' use of the property is also consistent with the Santa Fe County Sustainable Growth Management Plan. This mixed-use case is not out of character for that plan and according to the plan, compact mixed-use development served by adequate facilities are a priority. Due to 2.2.4.1 of this plan mixed uses provide for a variety of uses within traditional neighborhood and village type settings and they're integral to achieving appropriate land use and transportation goals and objectives. And the Anayas [inaudible]

I also like to point out a few more statements by the Agua Fria Village Association because I think it's appropriate here. In their blog they state that the residents of AFVA are committed to maintaining their traditional way of life and protecting their independence from Santa Fe. As the Agua Fria Village Association states in its blog there is no need to better understand traditional communities in rural areas and the slow and steady growth they have had as each generation comes of age and wants to do their own thing.

Further the Agua Fria Village Traditional Community is based on three main elements: centralized purpose, cultural function, and mixed uses. The mixed uses is an integral part of the Agua Fria Village Association. Residents have extended families to provide for, childcare and supervision. Many residents are from multi-generational families that have been on their land for years. A goal of the AFVA is to pursue a diverse and sustainable local economy for traditional communities. The Anayas are exactly this type of family and business discussed in the AFVA blog. They also provide multiple family members with employment opportunity, daily childcare. They are the quintessential Agua Fria Village family business.

The Agua Fria Development Review Committee would normally be the proper authority to bring this issue to. At the current time the AFDRC is on hold, according to meeting minutes from the Agua Fria Village meeting minutes since April 2, 2012. That's

attached as an exhibit to the supplement. These minutes also state that the AFVA, the Agua Fria Village Association will be taking on the role of Agua Fria development review. These minutes also state that the AFVA took on the new role of planning for the THC area. This means that development is reviewed and approved by the AFVA, then mixed use becomes permissible use.

These minutes clearly demonstrate, along with Mr. Mee's letter that the AFVA is standing in place of the AFDRC has previously approved all the Anayas' business uses of their property as mixed use. Therefore a variance is not required to continue this permitted use of the property for just parking their vehicles and taking calls for their business. I'm getting close to the end.

Also the current use of the vehicles existed during the planning process in meetings from 2004 to 2006. The Anayas' use of the property was also approved by the AFVA. And the County's plan also speaks - the County will honor existing community plans and ordinances and support community planning and in this vein the County should honor this process and procedure.

Also, in the alternative, should the Board of County Commissioners find that the Anayas current and past use of the property is not permissible use and is not grandfathered in it should be considered a conditional use of the property which the AFVA could also review. So now we're just getting to the variance argument. As briefly as I can, but it's also very important as a part of the agency's recommendations. The variance is not needed by should the Commissioners find that the storing of eight towing vehicles not be permitted or conditional then we are requesting a variance. And the only vital part of that is the parking of the eight vehicles. The Land Use Development Code does not specify a maximum use of commercial vehicles that can be on the property at a given time, so on its face there's no specific violation of this code.

Multiple factors may be considered in deciding whether to grant a variance, including the economic detriment to the applicant. If the variance is denied the financial hardship created by any work necessary to come into strict compliance, and the characteristics of the surrounding neighborhood, which we've already discussed.

As you've seen, even without the pre-approval of the AFVA the characteristics of the surrounding area make it appropriate to grant this variance. The commercial businesses have evolved over time to create a more mixed use, commercial and industrial area. The Romeros who are the ones who brought this complaint utilize a completely different road to access their house and cannot see any vehicle enter or exit the Anayas' property or Bens Lane. This does not affect them.

Granting the variance would result in a net public benefit and public benefit is another factor that may be considered in the granting of a variance. The agency's recommendations that the entrance to Ben Lane not meet fire code and the only option for the Anayas is to give up a hammerhead are not accurate. The hammerhead option is not required and should be the last alternative considered. Bens Lane meets all requirements and is up to code. It is clear from the photos Bens Lane meets the requirement of a 20-foot entrance. It's actually over 20 feet. Further access does not meet the required 28-foot radius is also inaccurate and you can see the photos on tab 7 that we've actually taken measurements of that area. To save time we don't have to go through those.

CHAIR STEFANICS: You are reviewing pretty much what we have in our book, so was there anything else that you'd like to say and then I'll go to the applicants?

MS. KOSH: Yes, there's a few more things.

CHAIR STEFANICS: Briefly. Briefly.

MS. KOSH: So the reason that the hammerhead is not necessary, number one a fire hydrant should be considered. There's a fire [inaudible] currently in Bens Lane. If that were replaced by a fire hydrant there would be no issues. No one would have to give up any property. This would be the most non-invasive solution to the problem at hand. If that is not possible – currently it's not even necessary because a fire truck, as you can see from these photos can complete a turn without having to use a hammerhead, without having to back up. The second alternative should be that that utility easement is opened up. There have been no vacations of easements recorded. That means it wasn't properly done. In fact the existence of this easement when the survey of the land was taken was vital to how the land was surveyed, and why a hammerhead was not created or considered in the first place.

In order for the easement to be vacated permission has to be granted by all the affected owners and the Anayas were most certainly affected by this and now they're being asked to give up land for this hammerhead, and they were never given notice of this. So at the very least that easement should be considered in lieu of the hammerhead. And that's all I have. Thank you.

CHAIR STEFANICS: Thank you both for your thoughtful remarks, Now, Robert and Bern Anaya, correct? Do either of you want to make a statement? If you'd like to now is your time. Please.

[Duly sworn, Robert Anaya testified as follows:]

ROBERT ANAYA: Basically, what we're asking is so we can park our trucks on the property that we own. We've been doing it for 23 years and we'd like to continue doing so. We're not asking for anything else; we're not asking for commercial buildings and commercial zoning, just permission to have the trucks there and have them for our availability when needed when I need to go out and provide service, be it to a motor vehicle accident or a seizure for the Sheriff's Department, whatever it is, I need my access to be there. So we're asking the County. Thank you.

CHAIR STEFANICS: Thank you very much for that statement. Before we go to public comment I'd like to hear, Mr. Larrañaga, would you please come forward. And for the record, would you please state whether you do or you do not have a conflict in this case.

MR. LARRAÑAGA: Madam Chair, I do not have a conflict in this case. This was brought by code enforcement. I did not issue the notice of violation on the property. All I did was bring it in as a variance.

CHAIR STEFANICS: So in relation, what I'm asking you, Mr. Larrañaga, is a conflict has been identified with your relative in the area carrying out a business. So could you address why you feel you do not have a conflict with this case in relation to those remarks, for the record.

MR. LARRAÑAGA: Madam Chair, for the record, that is my brother. He's been doing that for over 20 years and he is in the city limits.

CHAIR STEFANICS: So being in the city limits you do not feel that we have any purview or what? What is your – where is not your conflict?

MR. LARRAÑAGA: Madam Chair, they listed several businesses, some of which are master planned, some of which are non-conforming, some of which I'm dealing with actually right now. The conflict that they listed is my brother having a roping arena that's been around for 20 years. He has a jackpot once a month, about 40 to 60 people, and he's always had steers there. He has practice twice a week. I don't see where there's a conflict on his property. I don't own the property –

CHAIR STEFANICS: So the issue is his property is in the city.

MR. LARRAÑAGA: Correct.

CHAIR STEFANICS: Thank you. That's where the conflict doesn't arise. Mr. Patty, could you come forward please? Mr. Patty, just in general, and other Commissioners might have questions, do you have anything that you want to add? You have a fire report in here in our book on pages 63 and 64. Anything that you want to highlight or bring to our attention?

BUSTER PATTY (Fire Department): Madam Chair, Commissioners, when this was brought to the Santa Fe County Fire Department for review for the variance for the commercial use we reviewed it like we do any other commercial business and that basically is for access or any kind of fire requirements per the 1997 Uniform Fire Code. In the 1997 Uniform Fire Code it explicitly states what size the fire lanes are to be, what the turnarounds, what the lengths of the turnarounds are. We've mentioned several times before, anything over 150 feet long then does require a turnaround.

There is on their property, on the Anayas' property, on his private property in the area where he turns his trucks around, yes, we can turn around, but it is not designated as a fire turnaround, if it got built on then the turnaround was gone. We re-reviewed and went out there and had a look at the property outside of a cul-de-sac turnaround, that was in our original letter, a hammerhead could be built to be able to turn around in this lot. It is a problem if we have to drive down in there, even if they placed a hydrant. You pull the hose off the back of the truck. So if we pulled down in there we have to turn around somewhere, hook on the hydrant and pull out. Otherwise we have to back back down in there, which is more than 150 feet long.

The access going in off of the main road is what we measured was just a little bit under 20 feet but there is no radiuses on the turns. That is also in the Uniform Fire Code of 28-foot inside radiuses on a 90 degree turn, on a 20-foot wide road. If the road was wider then those radiuses would be cut shorter.

CHAIR STEFANICS: Thank you. There might be further questions for you so stick around. Okay, we're now at that point – how many people are here to speak in support of this application? Okay, so let's hear the supporters first. Are there four or five people who wish to speak? Whoever would like to speak in support would you please come up so you can all be sworn in together, and then we'll go to the opponents in a minute. So there's five of you, right? Anybody else who wants to be sworn in at this time?

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CHAIR STEFANICS: So when you speak please identify yourself by name and address for the record and stay right up here and make it as short as you can. Let's hear. We're very happy that you're here to comment. This is part of the public process.

[Previously sworn, Robert Anaya, Jr. testified as follows:]

ROBERT ANAYA, JR.: My name is Robert Anaya, Jr. My address is 2253 Ben Lane, Santa Fe, New Mexico, 87501. Basically, the only thing – business operations we do out of that area – my father owns the company. That's obvious. We're just asking to park our trucks there, answer our phones, keep our books, that's it. Our storage facility for the cars we tow in is at 2876 Industrial Road. It's in the city. We meet all city requirements for that. For the past 23 years we've just been parking our trucks there as we take them home and that's about it. As for an eyesore, I don't think they're ugly but those are my trucks, so it's my preference.

As for safety, those trucks are as big as any fire truck going down the road so if it's unsafe for my trucks to be driving down the road it's unsafe for the fire trucks to be going down the road. So if it's a problem for our trucks to get up and down Agua Fria whatever way then Agua Fria needs to be widened up because the fire trucks, garbage truck, all them run down those roads too.

So as for the difference in them, the only difference is our trucks are owned by us and not a government. They're there to provide a service for you, anybody out there. If you need our service we're there for you. We provide service 24/7. Not now because we're here but other than that they're always available – day, night, 24 hours, Christmas, Thanksgiving. You name it, we're there. So, thank you.

CHAIR STEFANICS: Thank you very much. Yes sir.

[Previously sworn, Antonio Montoya testified as follows:]

ANTONIO MONTOKYA: Hello. My name is Antonio Montoya. I live at 2010 San Ysidro Crossing right there in the village itself. I seen the damage of the wall. I offered to fix it. The estimate was way out of line. I said, hey, I can do that for \$300, \$400. I've known Robert Anaya and his family for many years. As a matter of fact both sides of the family. He's not only a personal friend but a lot of these emergencies he would call me to go and help him. So now that my profession is so low, because I do remodeling, I do a lot of masonry.

So I offered to fix the wall and I told them, hey, I can do it for as low as \$350, \$400. He has all the material and everything. It could have been done in a timely fashion without any incident or anything else. So I think it's a shame, because I give him a lot of respect for the things that he does for the community and for me, and my brothers, he's helped us out with just work. Because right now, I'm facing – if I don't get no work eventually I'm going to be homeless. So he provides much more on a personal level, and I just want to make that known. Especially on his emergency services that no other wreckers here in Santa Fe or even 100 miles closer. I mean Albuquerque is the closest one. And when he calls me I promised that I would be there for him. And that's why I want to be here. Thank you.

CHAIR STEFANICS: Thank you very much for coming. Yes, sir.

[Previously sworn, Charles Smith. testified as follows:]

CHARLES SMITH: Yes, my name is Charles Smith. I run C. Smith Construction Company. My address is #2 Entrada de Santiago, Santa Fe, New Mexico, 87508. Robert Anaya asked him to go give him a bid, which I did and I went to do the job and I was chased off by the – I guess [inaudible] or whatever, by him, and he actually threatened my guys. Which we actually walked off at the time, due to the fact that we don't to see fighting or anything going on because of that. Since then, [inaudible] about what's

happening. I feel it's unfair that you guys, 23 years come out to take something away from them that's actually provided a good service for this community and he's been there to help each and every one of us. And everybody's been helped once in a time.

So I don't think that what you guys are looking at – I mean just to look at the truth and see the person for what he is. And his business is a good business and it should be around and left the way it is. It ain't hurting nobody. It never has, whatever the case may be with his family, should be just between them. Robert Anaya is really good people and his business has been very supportive for the community and for [inaudible] Anyway, he's been there for us; we should be there for him. That's why I'm here tonight. Thank you.

CHAIR STEFANICS: Thank you very much. Yes, sir.

[Previously sworn, Mario P. Montano testified as follows:]

MARIO P. MONTANO: Hi. My name is Mario P. Montano and I live at 28-B Prairie Dog Loop, which is right across from Agua Fria park. Obviously, this is my uncle and auntie. It's been in the family, obviously, my whole life, 29 years. I do like he just said, 23 years he's had his business, always looking up to him as far as dedicating his time. Leading a different life than a lot of kids did here in New Mexico, in Santa Fe, it was basically Santa Fe, small community, not really not much to do. He provides a service as far as his time and to the school, with us growing up. He just does a positive impact as far as me growing up in a positive way. So I just think what you said, in 23 years, one complaint and all of a sudden it's just an uproar out of basically nothing. You know what I mean? So I just want to say I support him and I love my family. So thank you.

CHAIR STEFANICS: Thank you very much for coming. Yes, ma'am.

[Previously sworn, April M. Anaya testified as follows:]

APRIL M. ANAYA: Hi. My name is April M. Anaya. I'm a daughter of Robert and Bernadette. My address is at 3019 Primo Colores, Santa Fe, 87507. I would just like to say I'm in support of my family because we have had 26 years of my life, 23 years was all I had with them before they started this business. They have run it 24/7, 365 days a year. I've given up many birthdays, many holidays, just so my dad could be out there serving the community, and now I'm giving up my brother as well. So I'm just here asking that they can continue to keep their trucks, which they are beautiful trucks; they are not eyesores and, on their property, which they have been like I said for 23 years. So I'm just in supportive of them.

CHAIR STEFANICS: Thank you very much. Yes, sir.

[Previously sworn, Patrick Romero testified as follows:]

PATRICK ROMERO: Hello, my name is Patrick Romero. I'm in support of the Anayas' business. I understand it's late and I'll be very brief. I ask for five seconds of your time. Turn around and reflect upon the drawing and the writings on the wall behind you. It states equal justice under law, and I do realize and understand this used to be the old courthouse. But it says protection of property, religion and language. Madam Chair and County Commissioners, you have the opportunity here today to protect someone's property. Please do so. Please be in support of this.

CHAIR STEFANICS: Thank you very much. How many people are here to oppose the application? Could you raise your hands? Okay. And are there – there were six people who spoke in support, are there six people who want to speak in opposition? No, you

have to be on the record, so just a minute. Anybody who wants to speak in opposition please stand up and come forward so you can be sworn in. We're going to keep it to six since there were six on the other side. So we've got six. Great.

[Members of the audience wishing to speak were administered the oath as a group.]

CHAIR STEFANICS: So if you'd please introduce yourselves by name and by address and we'd love to hear what you have to say.

[Previously sworn, Patrick C de Vaca testified as follows:]

PATRICK C DE VACA: My name is Patrick C de Vaca. I live at 2249 Ben Lane. I'm Bernadette's brother and Robert's brother-in-law. I just wanted to set things straight. The property they're showing towards the back, their property is on the left and my property is on the right of theirs, where they say there's supposed to be an easement. I don't know what arrangements my grandma made or my grandpa made [inaudible] when we were young. That's up to them. But if they knew then [inaudible] an easement there, it's not affecting their property, it's affecting mine.

CHAIR STEFANICS: Okay. Thank you very much.

MR. C DE VACA: That's all I needed to say.

CHAIR STEFANICS: Okay. I appreciate your being here to say that. Very much. And what's your address again?

MR. C DE VACA: 2249 Ben Lane.

CHAIR STEFANICS: Okay.

[Previously sworn, Georgia Romero and Henry Romero testified as follows:]

GEORGIA ROMERO: Georgia Romero, 5124 Avenida de Sesario.

HENRY ROMERO: Henry Romero.

MS. ROMERO: I guess the first thing we should clarify is the easement that Mr. Bennett brought up. Back in 1987 there was a quiet title deed signed by the courts against – for Bernadino Sandoval. And the easement was personal to him so when he died we legally had the right to build this – well, we fenced it off first. To fence off the property so that no one could die. It was actually our property. We paid for even the easement on the land. So then in 1989 Mr. Anaya cuts the fence while we're at work and throws in like 20 cars. So we're the ones that reported him the first time that he was denied and he was hauling – he had a stack of wrecked cars and I think he had like six tow trucks at the time.

Again, back in like November – between September and December, all of a sudden we noticed these big trucks against our wall, and every day, every time they would take these trucks out, they would tap our wall to stop. Well, one day our wall said, no more. On January 13th. They put a 23-foot gap, which is about the size of what the podium you're on, 6 feet by 4 inches. There's photographs in your packet that show his tow truck backed into our wall. To get it fixed, you heard statements from all these people and Mr. Bennett, and at the last meeting they said they could have fixed it for \$200, \$500, well our insurance, home insurance had to fix it and it came in at over \$7,000.

I have insurance paperwork to prove it. Mr. Anaya has evidently received it. Otherwise he wouldn't come up with the figure of \$7,000. And then if you look at your packets from the County, the County packet, there should be pictures of what it looked like when the – when they went in and cited them for illegal parking and for not having a business license or a variance on the property, it was loaded with towed cars and Mr. Anaya corrected

himself. At the last meeting they kept saying eight trucks. There's actually ten. Mr. Anaya corrected himself at the last meeting. He said there were ten tow trucks between 20 and 30 feet long.

Today I went out there and I looked. There were nine vehicles, two trailers, an RV and seven tow trucks and two of the tow trucks are parked in that 30-foot or 20-foot easement that they keep talking about. He constantly parks cars there. They're talking about a utility easement. Mr. Anaya blocks our gas meter with his vehicles. They're his personal tow trucks, which I think is tow truck #2 on the list he gave the County. On that list he lists eight trucks and he says there are two drivers. And yet his attorney wants to say that only four trucks are there at all times. It's not just four trucks.

These trucks run 24 hours a day, seven days a week, 365 days a year. The only difference is these tow truck drivers take a day off. The immediate area, the immediate neighbors, we don't get a day off. They also testified at the last meeting that they don't let these trucks run for hours; they do. We have the diesel fuel fumes. We have dirt. We have fighting. We have lights. We have noise. There is no safety. And the road they come down off of Ben Lane, to get there you have to come off of the four-way stop on Agua Fria and Lopez Lane. So they turn into Agua Fria, come down to go, drive into Lopez Lane, but before they do that they have to go into the left lane because their trucks are so big they can't make the turn. Then they back up into the traffic.

What happens when a school bus hits that? An emergency vehicle? One of these fire trucks? A police vehicle? People run the four-way stop all the time. We're going to have a person beheaded just on Agua Fria itself. It's not wide enough to accommodate the size of trucks they're driving.

On top of that, the truck that hit our wall, it's WD6187 is the license plate number. It hasn't been licensed and it hasn't been registered since 2006. It's still on the road constantly. To get down from Lopez Lane just onto Agua Fria we witnessed that truck making three vehicles that were going up Agua Fria towards town, had to back up to let that truck go down the road. Then they go down the road and again, into that left lane, backing up and going down into Ben Lane.

We have reviewed the piece of property and the fact that he has to have that 100-foot radius, and if you look at the plat, just looking at the plat, you know they don't have the property with a 100-foot radius that the fire department wants, plus the ten trucks they want to park there.

Another issue we're having is the rodents, which is going to even get worse because we were doing the feral cat program for the Santa Fe County. Last year we had 27 cats fixed. We trapped and had them fixed. We were feeding them; they were fine. They have been poisoned. And we've taken them in to be euthanized because they're stumbling back into our yard. So now we really have a problem because all these cats are gone that weren't bothering anybody. And the majority are coming from the other side of the Anaya wall.

If you could just give me a second here. When they talk about this plat, this map that they showed you, we're over here by number 11 and you see between 7 and 11, that's the middle of that property. Technically, that's the property they're talking about. They're talking about this property over here by number 11, against our wall, because the property's been subdivided. That's when he started to park trucks there.

MR. ROMERO: He hasn't been owner for 23 years.

MS. ROMERO: He hasn't been doing it legally for 23 years because in 1989 in this same room by the committee and told that he had 45 days to pull out the wrecked cars. Well, he never bothered to get a business license. He never bothers to get any kind of permit to park trucks there. So yes, he's been there probably for 23 years some of the trucks, but there are no towed vehicles. This is a picture they're saying from 2005. So where are all these things that he's talking about. But now he's all the way back against the privacy wall that borders our property. There is not enough room for a turnaround and there's not enough room for ten trucks. There's no way he can do a master plan or a development plan. There is no place. There is no more room.

And it wouldn't hurt him to relocate and get himself the proper parking lot that he needs but he's afraid of variances some place else. These people on the internet make \$500,000 a year is what they're recording as income. And the nuisance – this is what they are. It's the unlawful or irresponsible use of one's own property in a manner that causes such inconvenience, annoyance or discomfort as to injure or damage the rights of an other person or the public in general.

We have people with asthma, emphysema, living there. We have small children running in their tracks. They burn down that road, Ben's Lane. They peel out. They make dust. They're abusive to all the neighborhood. You can't hang clothes out on your clothesline, because I have a clothesline right next to the wall, which will show in the picture where he knocked down our wall. And if you look at the plat again, he doesn't measure up. He doesn't have it. He just doesn't have it.

We are sixth generation on our land and we did buy from Bernadette Anaya's grandfather. My great grandchildren will be seventh generation. And we take a lot of pride in what we did. We built a beautiful home. We donate to the community. We're in the Agua Fria Association also. We've done everything we have to to make a better life for us and our family. We have title insurance. We have an abstract on our property and the reality of it is they've just outgrown the area. They just don't fit there. They started out with six small tow trucks. Now he's got two sleeper trucks, a big truck that hauls semi-trailers. And he's not only parking in that location, he also parks up on Prairie Dog Loop, right behind Nancy Rodriguez. All those semi-trailers and junked buses, and everything – the burnt cars, everything else is his.

He's got a lot there; he's got a lot behind our house. He's got a lot on Industrial Road which he testified was 1 ½ to 2 acres. It's only .4 of an acre and it's packed. Vehicles in that lot have not moved since January.

But this isn't about what he provides to the community. He does nothing for Agua Fria. He hasn't been licensed. He pays no taxes.

CHAIR STEFANICS: Could you summarize?

MS. ROMERO: Excuse me?

CHAIR STEFANICS: Could you summarize, like end your comments? Because there are other people waiting.

MS. ROMERO: Okay. This isn't about what the – the safety issues is what they're bringing up. It's a variance for a residential area with ten residents that he has to come right past their house with a 20-foot easement to the very back property. The fire department

can't get in there as Mr. Patty testified. It's not about the safety issue. It's about the variance. That's what we're here for, if he qualifies for a variance or not. If he's able to develop this land or not, if he should get his variance tonight, which is an impossibility. We're not giving him any land. No one else here is. No one is selling. Thank you.

CHAIR STEFANICS: Thank you. Did you want to say something, sir?

MR. ROMERO: Just the fact that we don't have nothing against – we have no objections to what they want to do. Bernadette is my cousin and to me she is my cousin, my blood. We've been family for years and her grandfather sold that property to me. He came to my property – I asked him when we first got married in 1966 if he's sell me property. He said, no, mi hijito, park your trailer there. You don't have to pay me. Just park it. I said no deal. I want to own. So we let it go at that. Seven years later he came to knock on my door and asked me, ¿todavía quieres comprar? Do you still want to buy? Yes. Vamos. He paced off what he wanted. He buried a stake. I had it surveyed and I have the [inaudible] in there that we paid him for four years, the payments that he wanted. The way he wanted it down. He only wanted so much a month, but he wanted it his way. So I honored that. He's my great uncle. My great grandfather owned that property before my Tio Benjamino owned that property, my grandma owned it first. They swapped properties. By handshake. I bought that property from my tio.

My great grandfather, I named that road, Avenida de Sesario, in honor of my great grandfather, because I stand proud on this earth. And I protect my family, my daughters, my grandkids. This is their future. This is why I'm standing here, to protect my family like he stated. We're here to protect our family. Well, fine. I have nothing against what they're doing but they're not doing it properly. As they say, 23 years? Negative. Only in the past couple years they've been parking up against my wall. And they say it's not an eyesore. Well, maybe it's not an eyesore but it is affecting my view. That's why I had to construct that type of wall that I did, for privacy. We have a personal clothesline that we use, because we're nostalgic. We're still from the old school. We hang our clothes on the clothesline.

My wife has to rewash sometimes those clothes because it was full of diesel fumes because [inaudible] if the clothes are wet and the fumes are coming over, [inaudible] she has to rewash the clothes.

On January 13th when he backed up into our wall, my wife had just removed clothes off that clothesline, and it happened within 15 minutes. She would have been under that debris. I'm sure you have a picture of our property, or our wall. If you need it I can show it to you. I don't know if you have it in your packet.

CHAIR STEFANICS: We have it.

MR. ROMERO: Okay. So that view right there. Evidence that he destroyed our table, our chairs. We used to sit out there and watch the sunset, because sit out there. That's our private quarters. Our clothesline was damaged and not repaired. Our tables and chairs were not repaired. My lawnmower. He claims that I hit him with a hammer. That's absurd. The debris was on top of my lawnmower. The pictures are evidence. The evidence is right there. What more do they need? What does Mr. Anaya need? Does he need to be grabbed by the hand and shown, this is what happened when you backed up into our wall? That's my property. And I stand proud to say that we built that home and it's not an adobe wall like he stated. It's not a wire fence either. It's 8" masonry constructed, well constructed.

Even my insurance adjustor that came by to give us an estimate, he stated that's a very structurally sound wall to have caused that kind of damage and not destroy the whole thing. The whole thing could have toppled over. But no. Negative. Between the two pilasters that are reinforced with concrete and rebar, it didn't budge it. But he's still, the insurance claim, but he put stress on the entire 80-foot span of it. That's why it came out in the photo as it did. Repair the wall, repair my table and chairs. My brother fabricated those chairs and it was a gift to me. Those are my personal property. He [inaudible] repair. He states that he wanted to repair it, he asked me for a list of materials. It happened on a Friday 13th. Over the weekend Bernadette's dad passed away so I gave him that week out of respect. I didn't bother them, I didn't go approach them. I gave them that week out of respect, because her dad just passed away. I didn't want to go put any stress on them. So I fell back. Out of my kind heart I held back.

The following Saturday I went by to ask him, I had my list. I had it in my back pocket. She asked me. Give us the list of the material and we'll pay you for the material and you fix it. When I went there to negotiate with them, they stated another version. They said, we have a friend that's going to fix it. Okay. So I left.

CHAIR STEFANICS: Okay, so we're not going to get involved in the fixing of the wall. We're here to hear your concerns about the property. So I heard about the wall and the space, so I got it.

MR. ROMERO: But like Mr. Merit said that he had never had an accident in 23 years, well that was an accident. That didn't just happen out of the clear blue, it was an accident, on my property.

COMMISSIONER VIGIL: Madam Chair.

CHAIR STEFANICS: Yes. We have three more people to speak.

COMMISSIONER VIGIL: I have a question of this particular -

CHAIR STEFANICS: Go ahead.

COMMISSIONER VIGIL: Mr. Romero.

CHAIR STEFANICS: She'd like to ask you a question.

COMMISSIONER VIGIL: I'm a very process oriented person and that's an issue that's being elevated for me. We heard testimony on part of the record that the Agua Fria Village Association did have a response to this case. Did any of you who are opposed to this attend that April meeting? Were you at the Agua Fria Village Association when apparently, to some extent, this case was discussed?

MR. ROMERO: At the Nancy Rodriguez?

COMMISSIONER VIGIL: Yes.

MR. ROMERO: I think at that time we were attending a funeral, so I really don't know. We didn't go to the meetings every month.

COMMISSIONER VIGIL: Yes, but that particular one, when there's been testimony that this case was discussed. You don't recall being there? Is that what you're saying?

MR. ROMERO: No, ma'am.

COMMISSIONER VIGIL: Okay. And your wife wasn't there also?

MS. ROMERO: No. We were at a family meeting, a family funeral. My sister-in-law's mother passed away.

COMMISSIONER VIGIL: Thank you. I just needed –

MS. ROMERO: So we didn't – we had planned to make the meeting but then we helped prepare food and all the other things.

COMMISSIONER VIGIL: Most definitely understandably. Thank you very much for answering my question. Thank you, Madam Chair. And those who testify, I'd like to know how many attended any meeting at all if in fact this project was discussed with the Village Association.

CHAIR STEFANICS: I'll ask that in a minute. Yes, ma'am. Your name?

[Previously sworn, Raquel Romero testified as follows:]

RAQUEL ROMERO: My name is Raquel Romero and I live at 1330 Camino Sierra Vista. Georgia and Henry are my parents. So my interest is obviously my inheritance to their property. I'd just like to point out that I don't feel that my parents are trying to shut down the Anayas' business and the last person who spoke on their behalf, Patrick Romero states as the wall says, equal justice under law, it's unfortunate that he can't practice the law and it's unfortunate also that Mr. Larrañaga, that his business is – what's the word that they used? It wasn't the conflict. I'm sorry. I don't remember the word that he used. Something that his business is complaint-driven. And it's unfortunate that they have to make a complaint to make people comply with the law, and I just think if you're going to run a business, do it right. So for 23 years, if you're going to practice a business and you're not going to follow the law, what everybody else has to do then maybe you shouldn't be running a business. That's just my point. Thank you.

CHAIR STEFANICS: Thank you very much. We have two more speakers please.

[Previously sworn, Diane Roybal testified as follows:]

DIANE ROYBAL: Diane and Robert Roybal, 7124 Hartford Hills, Rio Rancho, New Mexico. We're the owners right across from the Anayas' property. There's a wooden fence that divides the property and I have a few problems in regard to the attorneys' comments. Number one, it's true that they've been operating illegally for 23 years. Back in 1989 the only reason we opposed it was we were raising two young boys and they started parking cars right up against our wind fence, [inaudible] window, and they were right up against my fence. And to me, that was a very – it was a safety issue, because it doesn't take the boys very long before they jump the fence, get curious and get in the cars.

You can do everything you can to try and keep them in your yard but it's bound to happen and it did happen. I'm not going to go into that, because we're not here for that right now, but it is also true that right now we are not living on that property but we are the property owners and we have rights. And it is true that we have about three families living there that have all complained about the noise from the towing trucks, the traffic, unfortunately, and again, we're not trying to keep them for being able to operate a business. We just want everyone to come to a mutual understanding, show respect to each other and comply.

We could have come back and we could have said, okay, you guys. You told them you were running an illegal business. You have 45 days to clear it up. They didn't do it so what are you going to do about it? We could have come back here. We didn't do that. Everybody deserves the right to be able to work and provide for their family. Our problem

now here is that they're not doing that. They're not doing that and they have made it apparent – what they do, the work that they do is important. It's important to the community, but they're doing it in the wrong place. They don't have the kind of yard that they need, the space. And just like the fire chief said, there's a lot of things that we could be taking into consideration and all we want is for everyone to come to the table and find a place to have an understanding.

We did leave our property but for the first couple of years we've had family living there. It wasn't being rented out, and that's a matter of choice. We are the property owners and we need to be heard and that's why we're here. So thank you.

CHAIR STEFANICS: Thank you. Do you have anything, sir?

[Previously sworn, Robert Romero testified as follows:]

ROBERT ROMERO: I also want to say something. I'm not really opposing about this but like she said, he might have to change the zoning area for him to have that business there. And I've known the C de Vacas because I was born and raised in Agua Fria and I've known them for many years and the board asked me when we were last time why we didn't turn him in. Well, the C de Vacas are good people. They're humble people and I feel that they should say something if they really like it or not. The one of the [inaudible] said he doesn't want the roundabout. That's what we're concerned. We didn't want the roundabout to go through our property. Now he's talking about a hammerhead, and how could he afford a roundabout? How's he going to afford a hammerhead? So I couldn't see why that was brought up at the last meeting.

So that's what we were concerned, that that roundabout was going to run through our property, which is my sister's property, my sister wrote a letter, Elaine Cervantes, she's my sister, and she wrote a letter to the Board saying she's opposed to this but she don't know what it's about. But we know some others. When we first moved there, it was way before I got married, we – the C de Vacas, we were working at \$3 an hour and I know the Anayas started low, with only three trucks And we felt for him. We couldn't turn him in. We were good neighbors and we wanted to keep it that way. But then this company came about and it's turned into more turmoil and everything because we're good neighbors and we wanted to keep it that way but it's up to you guys to see what is right, if it's right for him to have these trucks parking there or not, or if they're too big.

I guess he went too big on his business. He used to stay with the smaller trucks and now that he has the bigger trucks, or he has ten trucks. I don't understand where he's going to park them. So I thank you, Commissioners, that you guys are going to do your job and we have the right to speak out, and I thank them for what they have done all these years. They have done a good job. And that's all I've got to say.

CHAIR STEFANICS: Thank you so much for coming.

MS. ROMERO: One short comment. You mentioned a meeting of the association?

CHAIR STEFANICS: There were 36 Agua Fria Association meetings and I think Commissioner Vigil wants to know how many of you attended any of those meetings to talk about –

COMMISSIONER VIGIL: No, no. That wasn't the question. There was a meeting when this project was discussed specifically, in April or something. I just wanted to

know whether there was equal representation. If there were people for and against?

MS. ROMERO: I don't think there really was, because we were never notified of that meeting. And we have been notified – we're keeping up as much as possible. And the last meeting you had, we were here by chance.

CHAIR STEFANICS: Okay.

COMMISSIONER VIGIL: Thank you very much.

CHAIR STEFANICS: Commissioner, there was a woman in the back who attended a meeting. Do you want to hear from her or not?

COMMISSIONER VIGIL: I'm happy to, please. If you'd come forward.

CHAIR STEFANICS: I'm going to end – come on up. I'm going to end the public hearing. I'm going to end the public hearing and now it's the Commission's turn and the Commissioner has asked the question and she believes, we believe this person can answer it. Then if the Commissioners want to ask questions of the staff or the applicants they will. Okay? I want to thank everybody in the audience for coming. Your comments are taken very seriously. So the public hearing is closed. We are now at the Commissioners' point for asking questions.

DONNA ROYBAL: I did not attend – I'm Donna Roybal, but I did not attend the meeting. They did not tell people that they were having a meeting for that day. What they did is they called a community meeting, and it's usually a water association meeting, but they don't tell people ahead of time that they're going to have a community meeting at the center. They're going to have a meeting at the Nancy Rodriguez Center and they tell people ahead of time what the meeting is about. Usually, it's like a water board meeting, but they don't give us notification ahead of time when they're going to have meetings about such as what they discussed about their metal wall or anything like that. Okay?

CHAIR STEFANICS: Thank you very much for coming. Okay. So, Commissioners, questions, comments? Commissioner Vigil.

COMMISSIONER VIGIL: I have a – I represent this district. The people from Agua Fria are long-standing, traditional historic villagers. There's a lot about Agua Fria Village that needs to be protected including property rights and personal business rights and everything that was brought up in the issue tonight. I did put this vote with Agua Fria Village with regard to their planning process, and it was a very long and arduous planning process. I am concerned about whether or not this complies with that ordinance and plan that we adopted after that and I have a concern also about what our fire department is saying.

I have a recommendation though. And I think and hope that you all will agree to move forward on this because it requires an agreement. This involves neighbors. This involves family. There's lots and lots of history with family neighbors. I'm going to recommend that the parties go into facilitation on this issue. I don't think we're ready to make a decision tonight because frankly, there's enough evidence here where the Commission could decide in one favor and possibly in the other. I'm not sure, because that evidence would have to be fully weighed. But what would be far more likely a successful outcome would be if these neighbors, who want to be able to work things out, and I hope that. And those neighbors who want to continue in their businesses went through a facilitation session and I think maybe the way to follow up with that is to visit with staff.

We've actually had several cases that have gone to facilitation and I will tell you,

when it comes to people in Agua Fria who are related and who have common interests, you have a better chance for success than many of the cases that we've sent to facilitation because you have a common bond. So my recommendation, Madam Chair, members of the Commission – and I heard that this case was discussed at the Agua Fria Village Association, and I do need to disclose that I heard from a proponent and an opponent, from one of each, and did not respond to them because it would be ex parte communication.

So regardless of any process you go to, the most important outcome is that you all sit down and talk around the table with a facilitator, bring out your issues, and perhaps there's ways it can be resolved. Perhaps there's even a way the issue of the fire department's concerns can be resolved. But this case is not ready in my mind to be approved or disapproved.

I would move that we table this case so that facilitation can actually occur between now and our next land use meeting. That would be fine. I'd be happy to see what the applicant has got to say, to see what this issue is, but I'm really sensing a very strong need for that to occur. And I wouldn't be surprised if you came out with a good resolution of this, at least I hope that would be the outcome would be. And that would be my recommendation, Madam Chair.

COMMISSIONER HOLIAN: Second.

CHAIR STEFANICS: Okay, there's a motion and second. Now, Commissioner Anaya, I'll take your comments, but a tabling motions –

COMMISSIONER ANAYA: That's why I was going to do a comment before the second was made. And all I wanted to ask you –

CHAIR STEFANICS: [inaudible] a tabling motion.

COMMISSIONER ANAYA: I just wanted to ask you, Madam Chair, Commissioner Vigil, I absolutely concur that there is some work that needs to be done that I believe they can do. I'm not quite sure of the logistics of facilitation because this would be the first time I would experience it on the bench here, so I'd need more clarification on what that means from staff. But what I would ask you and Commissioner Holian to consider is before we move on the tabling motion I do have some comments that might help the discussion and specific questions to staff that I would like to get answered that might help that dialogue along. But I think it is worthy to give an opportunity to see if there can be something more set up but I do tonight have some things I wanted to ask.

COMMISSIONER VIGIL: I'm perfectly willing to suspend the rules on a tabling motion and allowing all Commissioners to bring forth any issue that they think might help resolve or clarify based on the testimony.

CHAIR STEFANICS: Okay, and before I do that, Commissioner Vigil, I'm going to ask you to think about how you're going to phrase your motion because you're really doing a tabling motion with a condition and you might want a different motion. But think about that a minute. And the other issue is who would be facilitating? Because we have not in the past paid for professional facilitators here. So, Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Madam Chair. Thank you, Commissioner Vigil and Commissioner Holian. I would just re-emphasize what I think that Commissioner Vigil's comments are in line with my thought process. But I did want to ask some specific question relative to the case, and then provide some comments on the record as

one Commissioner from my perspective.

Just a comment before I ask some questions. The comment I would make is, as one individual Commissioner sitting on this bench, I would find it really difficult being quite candid with everybody in the room, to look at a business that's been in existence for 23 years, whether it's a donut shop, or anything. Construction business. Any kind of business. Understanding a lot of the sequence of events that have happened, I would have a really hard time going from that business existing to making a decision that would essentially cease the business period. I mean I'm just saying this honestly to all of you in this room and this case, that would go for anybody that would come before us. I just – I would just have a concern with that. That's why I say what Commissioner Vigil has suggested is something that I'm hopeful – like I said I don't know how the logistics would work but maybe that's even a staff mediated discussion that would help the discussion along. I don't know.

But let me just ask these questions. Mr. Bennett, I wanted to ask you a question, and if there needs to be clarification from the Anayas or anyone else I'm willing to hear that. But you say in your presentation that the towing company was purchased – the towing company started in 1981?

MR. BENNETT: No.

COMMISSIONER ANAYA: Hold on. In 1981 the Padillas – okay? – had a towing company from 1981 until it was purchased in 1989. Is that correct?

MR. BENNETT: My understanding is that as of 1981 the Padillas already had a towing company in existence and ran that towing company – I don't know how long before 1981, but ran it continuously through to 1989 when they transferred that very business that had been grandfathered in by the Agua Fria Village Association.

COMMISSIONER ANAYA: Right. But just be brief in your responses because I know there's other people that are going to ask questions. From 1981 to 1989 a towing company was operated by the Padillas in the Village of Agua Fria.

MR. BENNETT: Yes, sir. That's my –

COMMISSIONER ANAYA: Okay. So, okay. And then in 1981, 89 the towing company was purchased by the Anayas and has been operated in the same location from 1989 from to now.

MR. BENNETT: Yes, sir.

COMMISSIONER ANAYA: Okay. So, and this is for you, Mr. Larrañaga, that I think they wanted you doing some review of historical documents or issues pertaining to code enforcement and I asked it earlier but I'm going to ask it again for clarification. Are you aware of any other complaints, land use oriented or otherwise, okay, that came to the County prior to February of this last year?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya –

COMMISSIONER ANAYA: This year. I'm sorry. This current year we're in.

MR. LARRAÑAGA: On this particular site, no.

COMMISSIONER ANAYA: Okay. So towing companies, and I know my colleague to my left here is the expert on the PRC, but towing companies are regulated by the Public Regulation Commission. Correct?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, I don't know.

COMMISSIONER ANAYA: Madam Chair, Commissioner Mayfield, towing

companies are regulated by the PRC? Correct.

CHAIR STEFANICS: Yes. There's documents in our book from the PRC records.

COMMISSIONER ANAYA: So just a couple more things. Just a couple more things and a couple comments. Relative to the land use case, and I think this is helpful information that we should see more of in our packet. I went back and read the packet again. I read the letter that came from the County again, from the Land Use Administrator, and what was to cease and desist at the time which - I'm not quite sure - I see that they wanted the commercial activity and what I heard in the testimony was the cars were removed and it just puzzles me that from that letter till now there was nothing else that the County provided or did to stop any operation. I mean, it seems like there would have been more information. I'm just asking you guys to go back and look at that actual document and the discussions and what was the backup information that we could have.

Regardless of what comes out of the outcome of the facilitation, mediation, whatever the heck we call it, I would like to see more of the detail behind that particular decision in 1980 or what was the date?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, that was 1989 and I did try to find minutes, try to find something and couldn't find anything. This letter - there is a file.

COMMISSIONER ANAYA: Okay. I think those are all the comments I have for now. The comment - I made a comment at the beginning that said that I couldn't see myself from operating in a place for 23 years and then ceasing and desisting that business. By that same token, and I think this is where the comments of Commissioner Vigil have a lot of merit and a lot of standing with me is that I don't think that having a business is a carte blanche, the opportunity to do whatever the heck you want. I mean I think there are parameters. And I'm not implying that they've done whatever the heck they wanted but I think it's obvious that their business has grown over time and they have had to try and accommodate that growth over time, so that when you look at solutions, that I think we need to look at that closely. We need to analyze the space, we need to analyze the business itself, and trying to figure out what makes the most sense. But there are limitations associated with what you can do in a confined space. And I think we would be remiss if we didn't consider that there should be some limitations associated with the business.

So those are my thoughts. I look forward to seeing what comes of the discussions between the parties and I'm hopeful, as Commissioner Vigil stated that you all will be able to come up with some agreement that is mutual and that as neighbors and as family you could work through. Thank you, Madam Chair.

CHAIR STEFANICS: Thank you, Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair, and thank you applicants and also the individuals who are opposed to this. I concur also; I think Commissioner Vigil brought up a great suggestion. This is one case that would definitely warrant some sort of mediation as far as the opposing parties, recognizing this area and all areas in Santa Fe County but in particular this area and some of the documents that were forwarded to me. It's mixed use. There's private residences in this area. There are numerous businesses in this area, but I do have a couple questions and I'm just going to shoot them out.

I don't know who they're appropriate for, if they're appropriate for the applicant or for staff. But I am going to ask really quick that we go to Exhibit 3, the first Exhibit 3 from the applicant's packet. And there's a map, an aerial map that shows a lot of areas. Just so I have in my clarification, Ben Drive. Where on this map, County Road 62, and what is this adjacent road here to my right, to my left, straight up right here? What road is right in front of the circled 5?

MR. BENNETT: Circle #5?

COMMISSIONER MAYFIELD: Yes. What road is that?

MR. BENNETT: The road to the right of that –

COMMISSIONER MAYFIELD: The main paved road.

MR. BENNETT: The main paved road is Agua Fria.

COMMISSIONER MAYFIELD: That is Agua Fria. So then County Road 62 is down here in front of arguably 2 and – in between 2 and 1. Okay, so the access to this property then is accessing Ben Lane right across arguably the street from 5, off of Agua Fria Road?

MR. BENNETT: No, it's just up further from 5 –

COMMISSIONER MAYFIELD: I'm sorry. Right in front of that. In between that red and white structure.

MR. BENNETT: That's correct.

COMMISSIONER MAYFIELD: And it goes to the right in between circle 7 and where it actually says Ben Lane?

MR. BENNETT: Yes, that's correct.

COMMISSIONER MAYFIELD: Okay and then we proceed down that road and now right in that middle area I'm seeing a bunch of vehicles.

MR. BENNETT: There are some vehicles –

COMMISSIONER MAYFIELD: What are those? Are those the towing vehicles? Are those the vehicles that we're talking about now?

MR. BENNETT: Those are personal vehicles. I think they belong to a neighbor.

COMMISSIONER MAYFIELD: Well, help me out, sir. This whole area right in between where those vehicles are at that has all the tire marks, that's arguably vacant property, who owns that property?

MR. BENNETT: Who owns this property?

MR. ANAYA: That belonged to Stella Sandoval. That's my wife's aunt.

COMMISSIONER MAYFIELD: Okay. So there's vehicles parked on Ms. Sandoval's lot?

MR. ANAYA: She's given us permission to park our trucks there. Those are our tow trucks.

COMMISSIONER MAYFIELD: Okay. But now your tow trucks are move to area 11.

MR. ANAYA: That's correct.

COMMISSIONER MAYFIELD: So is there a fence or is that still an open piece of property?

MR. ANAYA: It's been developed now. It's fenced off.

COMMISSIONER MAYFIELD: Okay. So now let's go from 11 over to 6. I see there's a little entrance in that area that comes over to Entrada Fabian.

MR. ANAYA: Yes.

COMMISSIONER MAYFIELD: So is that a turnabout or is that some way that you can get your vehicles out?

MR. ANAYA: That's actually -- between the property line there is an opening that we had created to cross over to visit the sister-in-law.

COMMISSIONER MAYFIELD: But that's not for your business vehicle access?

MR. ANAYA: No, sir.

COMMISSIONER MAYFIELD: Okay. So you kind of just turn around your vehicles on area 11 and then run them back out Ben Lane.

MR. ANAYA: That's correct.

COMMISSIONER MAYFIELD: Okay. Thanks. That really helps me out a lot. So now a question for again the applicants, but that fence that was knocked down on the Romeros' property, I guess to my far right. I'm assuming that's that white wall that was right there in between the green.

MR. BENNETT: Yes, that is -- you're looking at still at that same --

COMMISSIONER MAYFIELD: I'm looking at circle 11 on the same page.

MR. BENNETT: Yes, it's just at the top edge of the circle, on the right side of the circle. See that white line that comes down to the right going from top to bottom downward to the right.

COMMISSIONER MAYFIELD: So the wall -- I'm trying to question the wall.

MR. BENNETT: It's that white line.

COMMISSIONER MAYFIELD: The wall was built on the property line? Do we know?

MR. BENNETT: Yes.

MS. ROMERO: Actually, when we first put up a fence to separate our property, it's six inches in from the original survey, and then when we built the wall that's another six inches. So we're 12 inches in from what is actually our land boundary. But he has totally destroyed the fence and already knocked down the wall.

COMMISSIONER MAYFIELD: And that wasn't my question. I know typically, everybody does it. I may be guilty of it but I'll say this. But on an adjoining property by law you should arguably have that five-foot buffer on the size. So that means if you guys go to mediation that could arguably be a topic of discussion of at least bringing those vehicles five feet from that wall. Yes, sir.

MR. ANAYA: After the wall incident with the accident itself what we did is we brought the footings in about eight feet and we put railroad ties. So when the back of the trucks back up, when the wheel hits the railroad tie that gives whatever the distance from the wall, so that this incident will not occur again. We do have railroad ties that have been stamped into the ground to give us that boundary so that we back up to the railroad ties, that's the distance that we're given for the wall.

MS. ROMERO: Excuse me, that is incorrect.

CHAIR STEFANICS: If the Commissioner wants to ask you something he

will. So thank you very much.

COMMISSIONER MAYFIELD: Just so I can understand this, depending on where this case goes, but thank you. So honestly, I think you guys have clarified a lot of this for me except – I'm going to ask this again. That center area that I believe you said Ms. Sandoval owns that property, there are no vehicles that you tow parked on that property, right?

MR. ANAYA: [inaudible]

COMMISSIONER MAYFIELD: Thank you, Mr. Anaya. And I guess my question is, based on some of my past experience in my past capacity, I was looking through your warrant application. The warrants do say, from the PRC, that this is for Ben Lane. I know the provisions within the Public Regulations Commission as far as having to keep an impound yard that people have access to, and I saw that in one of your packets in the back. I think it was 32 or something. Was that your impound lot?

MR. ANAYA: No, sir.

COMMISSIONER MAYFIELD: Who's impound lot is that one? It says Anaya's Towing on it. It's your guys' packet. And I may be wrong on the number; there's a lot of subtitles on here.

MR. BENNETT: Are you talking – yes, subtab 32 –

COMMISSIONER MAYFIELD: On subtab 32 it says Anaya's Roadrunner Wrecker Service. And it says it says it's storage lot 2876 Industrial Road.

MR. BENNETT: May I approach?

COMMISSIONER MAYFIELD: Sure. This one right here.

MR. BENNETT: That's Bob's Towing.

COMMISSIONER MAYFIELD: So that's not – it says Anaya's Roadrunner on the right side.

MR. BENNETT: Where is it?

COMMISSIONER MAYFIELD: So let me ask this question then. That shows an impound lot. And if you guys look at the title on this page it says Anaya's Roadrunner Wrecker, Bob's Towing, storage lot 2876 Industrial Road.

MR. ANAYA: That is correct. That's where we have our towing facility, the storage yard.

COMMISSIONER MAYFIELD: Are you sharing this facility with another towing company.

MR. ANAYA: No, we own both companies.

COMMISSIONER MAYFIELD: Okay. You own – okay, that's great. And then I'm going to go back to some minutes that were given to me in staff's packet, and I'm going to ask this question. And I am on page – let's see what page I'm on. I'm on staff's summary page and it is the second page, and it says the applicant states – so this is staff saying what the applicant stated. Oh, no. I apologize. [inaudible] I am on page 3 and the exhibit number is NBI-6. Okay, here we are. So I'm going through the second paragraph. I'm not going to read the whole paragraph but I am going to say, The Anayas utilize an impound lot away from their property to provide temporary storage for all vehicles that have been towed. However, the impound lot is vulnerable to weekly vandalism and is not an appropriate site to park the Anaya's tow vehicles.

I'm going to say again, I'm not with the Commission but it causes me concern because you also have to have a secured facility for all impounded cars to be at. And that's why I would believe that your vehicles could also be hopefully safe at an impound lot that you have that is away from your main residence. So I'm just going to throw that out there.

And I guess my other question is in hearing the testimony that was provided on both sides, is that I've been told there are no impounded vehicles at the lot on Ben Lane but I've also been told or heard that there are occasionally impounded vehicles on Ben Lane.

MR. ANAYA: No, sir, those are my race vehicles, recreational vehicles.

COMMISSIONER MAYFIELD: I'm sorry, sir.

MR. ANAYA: They're my racing vehicles. They're recreational vehicles that we use such as my camper, my boat, my racing truck that we do in the mud. You know, various vehicles that we take out and play around when we have free time.

COMMISSIONER MAYFIELD: Again, just for the record, there are no impounded vehicles or no vehicles that you're picking up on a DWI seizure or anything that would be stored at Ben Lane.

MR. ANAYA: No, sir. All the vehicles that are picked up by the seizure contract go to the police or State Police and are held in their facilities. All we utilize that is pick up and transport are those vehicles to the law enforcement wherever they want to seize them at. Our facility on Industrial Road is not adequate enough to park all my tow trucks in there. That's the reason why we don't put them there. Are entry ways that the property has is too small. It's big enough for a small truck to get in there. And basically, that's where we store accidents and stuff that we pick up for the insurance people.

COMMISSIONER MAYFIELD: So say you have Class D wrecker license.

MR. ANAYA: Yes, sir, we do.

COMMISSIONER MAYFIELD: So if you towed a fire truck – you could tow a fire truck with a Class D, where would you store that vehicle at?

MR. ANAYA: We don't store them. Vehicles of that magnitude and size get delivered to the fire department or the – where they do the repairs at Station 5 on Siler Road, or if they're badly wrecked or whatever then we would be delivering them to Albuquerque to a facility that does work on that type of equipment. But here in Santa Fe we don't store anything of that magnitude in our yard. It's not big enough.

COMMISSIONER MAYFIELD: Okay. Thank you. And then this question will be for staff and it will just be a follow-up. Mr. Larrañaga, so in the code as it exists today – and I do appreciate what the Anayas just told me, if they are keeping towed vehicles off at a secured site, but I believe that the question here is keeping their primary business vehicles at this site. I guess my thoughts though on this is that they came in for the application from the County, they came in for a business license, but arguably they have almost like a split-use business license, because of what I heard, they're doing the bookkeeping, they're keeping their primary access vehicles for towing at this site, but everything else that they're impounding and taking to a different location.

So in our current code, if somebody's running a business or doing a business and understanding that people sometimes work 24 hours a day, what are the rules as far as if you have to have a vehicle to get to point A for work that you cannot keep that vehicle on your private residence? Because I don't honestly view it almost as a commercial business being

run out of the Anayas on Ben Lane if they have that adjacent lot.

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, the Agua Fria Ordinance is the one that governs this and they have a home occupation and they have a home business. When the applicants first came in we discussed the possibilities of doing a home occupation or home business where they could have one tow vehicle on the property and still have their office and everything else at their house, which we've done in the past and allowed a tow vehicle just as long as it's screened and the signage and everything else is not visible from the neighbors. When I looked at the plat, the way the lot is configured, it's one big lot. So they still wanted to store their tow vehicles, the tow trucks on the back – everybody's calling it a lot but it's one lot. It's just shaped oddly. It was probably – I didn't process the family transfer but that was probably done so they could meet the density requirements to allow the family transfer or land division back then.

So it's one complete lot. So they couldn't qualify, showing it as a legal lot, they couldn't qualify as a home occupation by having on one part of the property, having seven, six, whatever tow trucks and then one tow truck parked on the part of the lot where the house is on where they could run their books and so on.

And the variance that's being requested is a variance of the Agua Fria Ordinance. The use list, looking at the use list and analyzing that and discussing that with other staff members and my supervisor we've – it didn't qualify under that use list. So to qualify under that use list as a special use, which a special use would need a master plan, eventually a master plan and development plan to rezone that property as a commercial use for that particular type of use, their best way was to ask for a variance. It's not a variance of the Land Development Code, it's a variance of the Agua Fria Ordinance to allow it to be recognized as a special use under the category that's stated in your packet so that they could still come forward for a master plan, preliminary and final development plan.

As I mentioned in my staff report we haven't analyzed it but a conceptual review it is a small lot, that many tow trucks, that's where they have to meet Fire Marshal requirements, they have to meet other requirements to access onto Agua Fria at the master plan process.

COMMISSIONER MAYFIELD: Okay. Thanks. Madam Chair, that's all I have.

CHAIR STEFANICS: Thank you. Commissioner Holian, and then we'll go back to your final – no issues? Okay. Commissioner Vigil.

COMMISSIONER VIGIL: Was the variance requested for the fire denial?

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, no. The variance is strictly on the fact that they do not qualify as a special use under that category for the type of business that they're operating and the use that they are using the property for. The Fire was brought into review for the use that they're using right now and that's why they reviewed it.

COMMISSIONER VIGIL: And under the current recommendation they really should consider, if all circumstances stay the same I'm hoping they can work something out with the fire department but if all circumstances stay the same wouldn't they need to request to variance once the fire department is denying if the regs are not met from their review of the case?

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, at the time of master plan they might not meet the requirements stated by Fire, as a commercial

development, I believe, and Buster can answer this, but right now he's looking at it as a commercial/residential property that's running this type of business. As a master plan it would turn into a commercial property for this type of use.

COMMISSIONER VIGIL: Okay. I think that issue might need to be really insightfully discussed in the motion I'm going to make on the facilitation. With that, Madam Chair, if I may, I move that we temporarily table pending staff arranging for a mediation with a professional mediator between the applicant and persons opposing the application. The mediation should be completed prior to next month's land use agenda, at which time staff can report on the results of the mediation. If in fact more time is required for mediation that report can be given at the next land use. That is my motion.

COMMISSIONER HOLIAN: And I'll second.

CHAIR STEFANICS: Okay. Thank you. We are on the vote. It's to temporarily table with a condition, which is allowed, and the intent is to bring this back in a month. Mr. Bennett, you had a short comment or question?

MR. BENNETT: I have a question. Before a decision is made to mediate this I have some questions about such a mediation. Number one, is there going to be input into who is the mediator? Number two, is Mr. Larrañaga going to be involved with the mediation? And number 3, who are the parties to the mediation? I know the Anayas are; they're the applicants, but is it just the Romeros? What are the limitations?

I know the likelihood of success will rise with the fewer amount of people that are involved so I'd like some clarification on that.

CHAIR STEFANICS: Commissioner Vigil, would you like to address that?

COMMISSIONER VIGIL: What I have anticipated is that the applicants and the opponents to the application be initially the principal parties of that. They will need to meet with staff. I'm not sure if they're fully familiar with what mediation is or is not. But I think there will have to be an orientation to that. I think they can talk about a consensus with the mediator. It is anticipated that a mediator who has some background in land use would be significantly helpful in this process, but when you mediate you actually are able to identify your own process, and I think the mediator can start by identifying between these two parties what the process will be and who will be involved.

And I think they become a part of that decision process. But usually it's the applicant – so that would be the Anayas, and the Romeros. Okay?

CHAIR STEFANICS: Let me add, the County has the ability to utilize State Risk Management Alternative Dispute Resolution Bureau, and they have a list of free mediators and paid mediators that can be drawn upon and have no relationship with the County or probably with you, Mr. Bennett. So there are some venues to selecting somebody totally objective for both parties.

MR. BENNETT: And who would bear the cost of a paid mediator?

COMMISSIONER VIGIL: I think when the County orders it the County is responsible.

MR. BENNETT: Thank you.

CHAIR STEFANICS: So I think we're ready for a vote.

COMMISSIONER ANAYA: Madam Chair, just one comment if I could.

CHAIR STEFANICS: Is it a question or a comment?

COMMISSIONER ANAYA: Just a comment. What's being proposed and being voted on is an opportunity to find some middle ground – bottom line. And all of you should take it as that. Thank you.

CHAIR STEFANICS: Thank you. All those in favor of the motion to temporarily table with the condition for mediation between both parties prior to the next land use case, which is a month from now please say aye.

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

CHAIR STEFANICS: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, just a note that this is still an adjudicated case and we're all bound by ex parte communication. Just so everybody is still aware of that.

CHAIR STEFANICS: That's correct.

MR. BENNETT: One other thing.

CHAIR STEFANICS: Mr. Bennett.

MR. BENNETT: With respect to that schedule, it's very difficult for me. I have out of state litigation that I'm involved with for the next month fairly heavily, and I just don't know if it's logistically possible for me to do it in a month.


COMMISSIONER VIGIL: That's a discussion you need to have with your client, I think. And the motion itself does say if the parties are not ready to come forth at the next land use they have the option of reporting that and extending it, but I don't know that we can make a decision about your availability. Thank you.

CHAIR STEFANICS: Thank you. So Commissioners, I would ask that you keep the section from the BCC book, and the entire binder that was given to you tonight, so that staff do not waste another tree. So we would have all of our materials if you keep the section from the staff BCC book and from the – and the entire book that was presented to us.

XVI. ADJOURNMENT

Having completed the agenda and with no further business to come before this body, Chairwoman Stefanics declared this meeting adjourned at 8:55 p.m.

Approved by:



Board of County Commissioners
Liz Stefanics, Chairwoman

ATTEST TO:

Staff recommendation is approval of a transfer of ownership of Liquor License No. 2792 which is currently located at 37 Fire Place. Madam Chair, I stand for any questions.

CHAIR STEFANICS: Thank you. And before we go to any questions for you from the Commission, I'd like to clarify for the record that we also discussed real property acquisition in our executive committee, so that the minutes would reflect that as well. Thank you.

COMMISSIONER MAYFIELD: Thank you, Madam Chair.

CHAIR STEFANICS: I do have a question. I realize that this is replacing something, but is this the Santa Fe Brewery or is this the restaurant?

MR. LARRAÑAGA: Madam Chair, this is the restaurant.

CHAIR STEFANICS: Okay. Thank you. Are there other questions or comments from Commissioners for staff? Okay, is the applicant here? Do you have anything you'd like to say?

[From the audience the applicant declined to add anything.]

CHAIR STEFANICS: Okay. Thank you for being here tonight. Okay, this is a public hearing. Is there anybody in the audience that would like to speak for or against this request? Anybody at all? Okay, seeing no one, the public hearing is now closed. We are on discussion or action on this case.

COMMISSIONER MAYFIELD: Move for approval, Madam Chair.

COMMISSIONER ANAYA: Second.

CHAIR STEFANICS: There is a motion and a second to approve BCC Case MIS #12-5370, Cordelia O. Roybal enterprises, LLC, liquor license.

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

- XVII. A. 2. **CDRC CASE # V 12-5200 Robert and Bernadette Anaya**
Variance. Robert and Bernadette Anaya, Applicant's, Talia Kosh (the Bennett Firm), Agent, Request a Variance of Ordinance No. 2007-2 (Village of Agua Fria Zoning District), Section 10.5 (Village of Agua Fria Zoning District Use Table), to Allow a Towing Business as a Special Use Under the Zoning Use Table on 0.70 Acres. The Property is Located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East, (Commission District 2 [Exhibit 3: Supplemental Material; Exhibit 4: Anaya Exhibits])

MR. LARRAÑAGA: On June 21, 2012, the County Development Review Committee met and acted on this case. The decision of the CDRC was to recommend denial of the Applicants' request for a variance.

On August 14, 2012, the Board of County Commissioners met and acted on this case. The decision of the BCC was to table the request for a variance pending mediation between the Applicant and persons opposing the application. Rosemary Romero was contracted by Santa Fe County to be the mediator as directed by the BCC. Ms. Romero's recommendation states: "Mediation is a process that often helps bring parties together to resolve issues in a neutral setting with 3rd party support. In this particular case, several factors indicated that this case would not be appropriate for mediation. In particular, the inability to talk directly with the parties requesting the variance proved challenging to the process; getting contact information for family members and getting calls returned from family members who did not want to be involved was difficult and the issues noted above indicated that full participation from all affected parties in a mediated process would not be possible. The lack of participation from opponents to the variance is not an indicator of interest, but of 'just not wanting to be involved' in either a mediation process or the county land use process and the potential for making things worse rather than better." The Mediator Report to the BCC is attached as Exhibit 11.

Staff has included additional information that may help to clarify some of the confusion at the August 14th hearing with respect to the testimony given by the Applicants and their Agent and the documents which were submitted by the Applicants. Attached as Exhibit 12, in your packet material are plats of the property that illustrate the change in the lot lines relative to the placement of the tow trucks on the site; dated aerials of the site which illustrate the expansion of the business, the addition of larger tow trucks and where the tow trucks have been relocated on the site; photos of the Anaya property and a response to the list of businesses provided by the Applicant. The Applicant also submitted a letter from William Mee which was presented to the BCC in support of the Application by the Agua Fria Village Association. Enclosed as Exhibit 14 is a letter of clarification from Mr. Mee. In this letter, dated August 31, 2012, Mr. Mee states: "The letter that was submitted from myself on behalf of the Agua Fria Village Association in regards to CDRC Case #V 12-5200, the Robert and Bernadette Anaya Variance, may have been misinterpreted as support for the Anaya variance or led to the conclusion that the Association had taken formal action on the case." Also, attached as Exhibit 13 is the criteria set forth in the Land Development Code which describes non-conforming use as a use of a structure or property.

Madam Chair, would you like anybody to go through those exhibits right now or do you want to save it for questions?

CHAIR STEFANICS: Let's do the exhibits right now.

MR. LARRAÑAGA: Okay. So if you could turn to Exhibit 12, where it has the plats. Exhibit 9-A as the original plat that shows Tract 4, which was .332 acres, which is the original Anaya property.

CHAIR STEFANICS: So, Mr. Larrañaga, are you entering new information into this case?

MR. LARRAÑAGA: Madam Chair, no. Most of these exhibits were brought out of the exhibits the applicant submitted. I was just clarifying how the lot started, how it expanded when there was a lot-line adjustment, how it created the lot as it is right now, and where the tow trucks started through aeriels, actually that the applicant submitted, through the years, how they expanded in the tow trucks and where they've been placed on the property, on their property and on adjoining properties, and then there's just one aerial stating – really emphasizing in color what the actual lot, their lot, what it looks like and where the tow trucks were stated. That would be 2-D. Most of these aeriels were already presented to you either by them or by staff in the prior hearing. We're just emphasizing to try to clarify the lot configuration and where the tow trucks were parked initially and where they are now, what brought this to our attention with the complaint.

CHAIR STEFANICS: Okay, so let's leave it them to questions to identify items that you might have to direct us to in the appendices or the attachments. Okay?

MR. LARRAÑAGA: Yes.

CHAIR STEFANICS: So are you ready for questions?

MR. LARRAÑAGA: Madam Chair, the rest of the report is pretty much as the original report. I'm ready for questions.

CHAIR STEFANICS: Okay. Thank you very much. Okay, to recap, you're still recommending denial. The mediation really could not occur, from your notes, due to the lack of presence of some of the parties.

MR. LARRAÑAGA: Madam Chair, that's correct. The letter from the mediator is in your packet materials.

CHAIR STEFANICS: Okay. Questions, comments from the Commission for staff? Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you. And Madam Chair, so help me again with your statement as far as the mediation. So there was active party involvement in the mediation?

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, actually I believe Rosemary Romero, the one that we got as a mediator is here in the audience. Maybe she could answer that question.

COMMISSIONER MAYFIELD: Okay. [inaudible], Madam Chair.

CHAIR STEFANICS: Okay, so before we go to Ms. Romero, are there other questions for staff, and then I'm going to ask our attorney about process. Well, let me just ask the process question first. Mr. Ross, we held a full public hearing on this earlier.

MR. ROSS: Correct.

CHAIR STEFANICS: And Commissioner Vigil, I believe it was, requested mediation. So we are not bound to a full public hearing at this time, just to questions and clarification?

MR. ROSS: Madam Chair, that's correct.

CHAIR STEFANICS: Okay. Thank you. So, since that is the case, I will put Commissioner Holian and Commissioner Vigil on the list but Ms. Romero will you come up to answer Commissioner Mayfield's questions? And thank you for being with us this evening. Did you catch his questions?

ROSEMARY ROMERO: Good evening, Madam Chair and Commissioners.
[Duly sworn, Rosemary Romero testified as follows:]

MS. ROMERO: For the record, my name is Rosemary Romero, Rosemary Romero Consulting. I am a mediator/facilitator for the City of Santa Fe and internationally as well and have 22 years experience doing mediation. So, Commissioner, to answer your question, I did watch the BCC meeting where this was sent to mediation, and the process was a voluntary process so I'm hoping that I'm going to answer the question that you asked, which was it proved rather difficult to get full participation in the process because it was voluntary. I don't think people really got it that it was – and it was nowhere stated that they would participate in mediation. I talked to every participant, every potential participant. Some said this sounds like a great idea; move forward with that, with the assumption we were going to move toward mediation, started to figure out what some of the issues were that would be addressed, but as we got closer to mediation, to the date that we had put forward, people really started to back away and even in the assessment part of the mediation, just trying to hear from people, trying to understand what the issues were, people just – they kept pushing back. This is going to cause more problems for our family than it should. There's a legal process that should be followed.

I noted I think all of them in here but to give you more of the detail people just didn't want to participate in mediation that wasn't mandatory; it was voluntary, and when push came to shove, they really didn't want to participate. I probably could have gotten three people, but in effect that wouldn't have solved the issues that were at hand. I needed full participation just given where people lived and the impact on the surrounding neighbors. I think it would have been best to have full participation and that wasn't guaranteed at all. It was not even possible.

COMMISSIONER MAYFIELD: Madam Chair, Ms. Romero, thank you for that. But how about the mediation between the two main parties, the Anayas and I believe, and I'll look at it, but the Romeros?

MS. ROMERO: Madam Chair, Commissioner Mayfield, I believe initially that the parties as noted were – the disputants were the Romeros, but in working with staff to figure out who should be involved in the mediation it was clear that there were other people beyond the Romeros that were relatives within the areas where the site was or is that should have been part of the mediation because it really was affecting everybody, and many of those were family members. So in reviewing the BCC meeting minutes of that evening where Commissioner Vigil asked for mediation, it really was broader than just the two disputants. The disputants asked Land Use staff to make it be broader than that because of the impacts to those in that area and then the Romeros who are not in that compound but were affected and will be affected by a decision made by the BCC.

So it went beyond the family members to those that were affected. I did talk to the people in the surrounding area also to see if they could be part of it, because whatever decision does get made it does affect people who are beyond that compound.

COMMISSIONER MAYFIELD: So Madam Chair, Ms. Romero, did you meet either with the Anayas or the Romeros?

MS. ROMERO: I met with the Romeros, who found the time to meet with me.

Everybody else would either — did not meet or — I did talk to them. For the Anayas, I was unable to meet with them directly. I was given direction to speak to their attorney only. So for them, I understood what the issues were, having read the packet that was given to me by staff. What I was looking for was issues that could be mediated with those that were going to be affected by the decision.

COMMISSIONER MAYFIELD: Okay. Thank you. Thank you, Madam Chair.
CHAIR STEFANICS: Thank you. Commissioner Vigil.

COMMISSIONER VIGIL: And thank you, Ms. Romero for your efforts in this. I guess my question may go to Steve. Because I know we're looking at mediation as an alternative under Sustainable Growth, because we request mediation be done by the parties can we go to a mandatory request? It doesn't seem to me that we have a rule or regulation that allows us to do that, and I think if we define a process that includes it that would give us permission at minimum to do that.

MR. ROSS: Madam Chair, Commissioner Vigil, we weren't planning on requiring mediation except in those cases that were selected for mediation, in which case it would be required. So it wouldn't be required of all cases. You're probably not even asking that. You're probably asking whether it can be made mandatory. That's how they do it in Albuquerque and we were planning on proposing that model.

COMMISSIONER VIGIL: Okay. But we don't have currently anything that directs them to do it.

MR. ROSS: Not in the current code, there's nothing on this topic at all.

COMMISSIONER VIGIL: Okay. I just think it's unfortunate that the parties did not choose to mediate. Mediation is an alternative dispute resolution particularly created for neighbors and neighbors are the ones that have to live with the consequences which really the best alternative for both the neighbors to understand each other's position and to try to come to a compromise for those positions. That is what my motion hoped for. I don't think you can mediate with attorneys. If you were put in a position where you couldn't mediate unless you spoke to attorneys, that's not a mediation. Attorneys are trained advocates in an adversarial setting. They are not representing their clients in mediation unless their clients give them a directive to compromise. But apparently that wasn't given at all. So I can see the difficulty in trying to mediate this case. I think that's very unfortunate because that really puts this Commission in a position of having to make a choice that's either up or down, that people are either going to happy or unhappy with, whereas mediation would have brought a better outcome. I'm very disappointed. Thank you.

CHAIR STEFANICS: Thank you. Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. I have a question from you, Jose, and I think this is on Exhibit 12 which I think was in our packet, which I think was new material as compared with the packet that we had last time. Is that correct? Exhibit 12, with the aerial views?

MR. LARRAÑAGA: Actually, Madam Chair, Commissioner Holian, it's revised material. It's the same material that was in your packet, actually, like I mentioned. It's material that was brought by the applicant originally. I just used it to show the history and so on.

COMMISSIONER HOLIAN: So I just wanted to clarify something. Because in 2008 it looks like there were no tow trucks on the property in question, and then in 2011 there were tow trucks on the property. So when did they start parking tow trucks on that property? I'm looking at aerial 2-G in Exhibit 2 in our packet, not this big fat one but the one that we had at home.

MR. LARRAÑAGA: Yes, Madam Chair, Commissioner Holian. The clearest aerial is Exhibit 2-C under that same Exhibit 12. You'll see some tow trucks and you'll see Ben Lane on Tract 1, that's labeled Tract 1, so that's the clearest one that has tow trucks on it. And you are correct in stating that out on the outlined property in 2-E the tow trucks weren't on their property; they were on somebody else's property, right across from their home. I think this was created because part of the questions brought up was since they've had tow trucks there for years, what brought them to our attention was because it went to the back of their property, where they were originally parking the tow trucks. Now there's mobile homes there. The people that own the property, relatives of the Anayas have put mobile homes in there and so on so they moved the tow trucks back on their property on the back side and the Romeros live to the north of them on that wall that separates where they live and that's what brought in the complaint.

COMMISSIONER HOLIAN: So do you know what year they started parking the tow trucks?

MR. LARRAÑAGA: Madam Chair, I believe it was in the nineties, early nineties, according to –

COMMISSIONER HOLIAN: Well, it looks here like in 2008 there were no tow trucks on the lot in question.

MR. LARRAÑAGA: Yes, that's correct. On the lot in question, somewhere between 2008 and 2011 they started. I don't know exactly what year.

COMMISSIONER HOLIAN: And then I gather that the route that the tow trucks take in going to where they park is along where this yellow line is. Is that Ben Lane?

MR. LARRAÑAGA: That's exhibit –

COMMISSIONER HOLIAN: I'm looking at Exhibit 2-G, but it doesn't have Ben Lane marked on here.

MR. LARRAÑAGA: Madam Chair, on 2-G, that's correct. That's Ben Lane.

COMMISSIONER HOLIAN: But there's a yellow line that goes from Agua Fria to where the – and that's where they go in and out of that parking lot, correct?

MR. LARRAÑAGA: Correct.

COMMISSIONER HOLIAN: And is that an easement for the trucks? I mean, is that an official easement for vehicles to go up and down that lane?

MR. LARRAÑAGA: Madam Chair, Commissioner Holian, that's an easement for the property owners to go. It's a private easement for all the property owners to go through to get to their properties, Ben Lane is. This is a whole family tract which brothers and sisters live on and that was an easement that was created for everybody to use to get to their properties.

COMMISSIONER HOLIAN: Okay. Thank you, Jose. And then I have a question for Captain Patty. Captain, could you repeat what your findings were with regard to

access for the fire department in the case of an emergency to this place where the two trucks are parked?

BUSTER PATTY (Fire Department): Madam Chair, Commissioner Holian, Ben Lane is wide enough, the whole general road is wide enough, which meets the minimum fire code of 20-foot wide. The entrance off of Agua Fria doesn't have any radiuses. It has a telephone pole and a wall that would have to be increased a little bit. We did meet with the applicants and their attorneys last week and explained that. And at the end of the road on that piece of property they would have to create a hammerhead. It doesn't have to be a cul-de-sac but there has to be a place to put a hammerhead to turn around for a commercial operation.

COMMISSIONER HOLIAN: So that would be possible to actually make those modifications?

CAPTAIN PATTY: It is possible if they choose to.

COMMISSIONER HOLIAN: Okay. Thank you, Captain.

CHAIR STEFANICS: Thank you. Any other questions for staff.

COMMISSIONER VIGIL: I -

CHAIR STEFANICS: Commissioner Vigil.

COMMISSIONER VIGIL: Mr. Larrañaga, and I was trying to dig through all of these. I didn't have these notebooks priorly. There has been increased use of this property. This is the first time it's come to our attention. Is that correct?

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, that's correct.

COMMISSIONER VIGIL: Do you have any history of that increase of use and what it was for?

MR. LARRAÑAGA: Madam Chair, no. This came in as a complaint. If you go down Agua Fria you can't really see what's back there so I guess in our defense as far as code enforcement and watching over Agua Fria unless it came in as a complaint we wouldn't know.

COMMISSIONER VIGIL: So it's fair to say the increased use just never got complained about, prior to this case.

MR. LARRAÑAGA: Madam Chair, that's correct, until they moved the tow trucks back to the back of the property. Yes.

COMMISSIONER VIGIL: Okay. Thank you, Madam Chair.

CHAIR STEFANICS: Thank you. Other Commissioners. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, for the record, how many years has this business been in operation, Mr. Larrañaga?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, I have no idea. The area show it since the early nineties that there were tow trucks in there. The business has never been registered with Santa Fe County. That's what they got cited for was running a business without a business license.

COMMISSIONER ANAYA: If the Anayas could come forward and just answer that question for me. How many years have you been operating in that area.

[Duly sworn, Bernadette J. Anaya testified as follows:]

BERNADETTE ANAYA: Bernadette J. Anaya. We have been in business

since February 14, 1989.

COMMISSIONER ANAYA: Okay. Thank you very much. Madam Chair, either yourself or someone else in the family. Are you willing to – it doesn't matter. Are you willing to adapt the property access on the fire hammerhead that Commissioner Holian just brought up the Fire Marshal for?

MS. ANAYA: Yes.

TALIA KOSH: I'm Talia Kosh, attorney for the Anayas.

COMMISSIONER ANAYA: Madam Chair, I think if the answer is yes – the answer is yes?

MS. KOSH: Yes.

CHAIR STEFANICS: Okay. That's all he wanted.

MS. KOSH: And I have answers to other questions and I'd also like to respond –

CHAIR STEFANICS: Okay, if you're asked we'll call you up so you might as well stay in the front row. Commissioner Anaya, you have the floor.

COMMISSIONER ANAYA: Madam Chair, I would move for approval with conditions represented by Commissioner Holian to make sure that they're adequately reflected on the record, with other staff conditions presented.

COMMISSIONER MAYFIELD: Second, Madam Chair.

COMMISSIONER VIGIL: Madam Chair, I'd like to comment on that.

CHAIR STEFANICS: Yes. There's a motion and a second to approve with conditions from Commissioner Holian and staff. Commissioner Vigil.

COMMISSIONER VIGIL: It scares me but the area I represent is being proposed by a different motion than I think the way it should be because as the representative of Agua Fria Village the greatest message that I have been received is that this area, this village, cannot preserve its historical back, its historical character because there are many violators of the current code, and many of these violators don't even come to the County, they just act in their own way.

Many of the business, and there are quite a few businesses in Agua Fria that actually occur and got grandfathered in before we had the code. Now that we have the code and we're able to gain some control over the development and the growth of this community the balance that needs to occur at this point in time is the preservation of the historical village. And I don't think that that preservation will occur if we allow far more activity in the village that was not intended to be there. It's currently zoned already; it's got a specific zoning, and I do agree that we need to help our communities and the members of our community to promote economic development but it has to be done in an appropriate way, and that is you come before the cc. You come and you get your business license. You come and you look at any kind of zoning change that might need to occur, and that's the way it's done. It isn't done in violation of the code, and it isn't done in a way that all of the neighbors and the village is coming to their representative and saying, this is exactly why we went through a planning process. This is exactly why we wanted control of our future.

So it really concerns me that, number one, the mediation didn't occur. And I have to ask Mr. Anaya why he didn't mediate.

[Duly sworn, Robert M. Anaya testified as follows:]

ROBERT M. ANAYA: Robert M. Anaya. We did and we were all for it. The problem was the mediator and the Romeros didn't want to meet with us because we had an attorney.

COMMISSIONER VIGIL: Okay. You would mediate with your attorney present, yet the mediator's requirements are that there is no attorney present for mediation.

MR. ANAYA: We weren't told that. We were willing and ready to meet. It never happened. It never happened.

COMMISSIONER VIGIL: That's not what was represented tonight.

MS. KOSH: May I read an email to you?

MR. ANAYA: I need you to hear the email because it was given to her telling us what was going on.

MS. KOSH: It just shows our willingness. If I just may read this because --

COMMISSIONER VIGIL: I will have to have the mediator respond to that. So I didn't want this to be a he said-she said, Madam Chair. I think we have information here. The mediation and the willingness to mediate, I just wanted Mr. Anaya's response, Madam Chair. That's all I need.

CHAIR STEFANICS: Okay. Thank you. I have a question for Mr. Larrafiaga please. Mr. Larrafiaga, does the business have a second property? Where it stores vehicles?

MR. LARRAÑAGA: Madam Chair, yes. The business has one on Industrial Road, within the city limits.

CHAIR STEFANICS: Okay. Thank you very much. That's all I need to hear. There is a motion -- Yes, Mr. Larrafiaga.

MR. LARRAÑAGA: If I may, Madam Chair, just to clarify, the variance is to allow them to be recognized as a special use under the Agua Fria ordinance. If they get approved of this variance they still will have to come in for a master plan, preliminary and final development plan under that ordinance and under the County code. So at master plan they would have to meet the requirements of master planning, zoning -- traffic impact analysis, water budget, the things that Mr. Patty talking about, at master plan.

CHAIR STEFANICS: So Mr. Larrafiaga, based upon what you're telling us and what is there now, could the existing layout of the business on the property possibly pass code requirements?

MR. LARRAÑAGA: Madam Chair, without reviewing all of it, it possibly can. The access, as Mr. Patty stated, that's somebody else's property. I don't know if they'll meet the requirements of the radiuses. Again, in my report I state that the staff has conceptually reviewed the site for zoning requirements for a special use and it was determined that other variances may be required. So we won't know that until the submit for the master plan process, and see if they meet all the requirements.

CHAIR STEFANICS: Thank you. Mr. Ross, I have a question for you. If this preliminary request was granted, is the County setting an expectation that following applications will be approved?

MR. ROSS: Madam Chair, you mean following applications by this applicant?

CHAIR STEFANICS: Yes.

MR. ROSS: It's setting the stage for – well, it's eliminating a – it's allowing them to start the process, the way I understand it. So they can start the process. It doesn't set any necessary precedent for future steps, no. But they can't even start the process without a variance under the ordinance.

CHAIR STEFANICS: Okay. Anybody else that would like to speak or ask questions before we – Yes, Commissioner Vigil.

COMMISSIONER VIGIL: So actually, this is just the beginning of a variance. They probably would need to come to us for further variances, correct?

MR. ROSS: Madam Chair, Commissioner Vigil, I don't believe they need further variances, but they need a variance in order to be able to start through the rest of the steps.

COMMISSIONER VIGIL: So if they increase their use and their density and they actually get what they're requesting tonight, and they want to change something, that is going to require a variance?

MR. ROSS: Madam Chair, Commissioner Vigil, perhaps Penny or Vicki can jump in.

COMMISSIONER VIGIL: I think probably the answer was stated by Mr. Larrañaga, but it's going to be difficult to assess that without knowing what the requests are. But the fact is that a variance may set a precedent for further variances if a variance has been granted for a particular property to move forward in this direction. I'm making a statement, Penny, I'm not asking for your comments.

CHAIR STEFANICS: So are there any other questions or comments? So Commissioner Anaya, would you restate your motion?

COMMISSIONER ANAYA: Madam Chair, I made a motion for approval with the condition relative to the fire noted by Commissioner Holian and the staff conditions contained on the case, if there are any. Are there any?

CHAIR STEFANICS: There were no conditions provided.

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, there were no conditions, just a recommendation for denial.

CHAIR STEFANICS: Okay. So we have a motion and a second. I will make a comment. I believe that if we pass this we will have a full vetting of the next step in a public venue and it won't be positive. And I'm just saying what I believe, because I believe that the community has several concerns. I believe that there would have to be a lot of reconfiguration of the property. There would have to be easement and access from a neighbor and several other things. So if I support this, I just want to go on record as saying that does not mean I would support the next plan that comes forward because it seems like there are many problems with it right now. So that's why I was asking Mr. Ross about setting any precedents for further action. Are there any other comments?

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Yes. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I want to make sure I understand what you just said and Steve, maybe you can clarify, or Penny, whichever one of you. This action allows the business to continue functioning and they've functioned for 23 years or

gives them an opportunity to get a license to function as they've function. I do not want – let me be explicit. I do not want this Commission to set a precedent to say after 23 years of business functioning that now we're going to close it down. There's still additional process if this is approved that the chair is referring to that needs to be vetted. Is that what you just stated, for clarity's sake?

CHAIR STEFANICS: I am, Commissioner, and it is possible that if approval is given today for this variance that when they come back with – what's next? Master plan?

MR. LARRAÑAGA: Master plan.

CHAIR STEFANICS: Master plan, that they might not get approval for the master plan because it might not meet our code.

COMMISSIONER ANAYA: This continues to afford them the opportunity to go through that process. If they do not get this approval today then they have to cease and desist operations?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, that's correct.

COMMISSIONER ANAYA: Okay. Thank you, Madam Chair. There's still an additional process coming forward that will be vetted that this Commission has to hear and then make a decision on.

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, yes, the master plan process, preliminary and final development plan, meeting all code requirements.

COMMISSIONER ANAYA: Thank you, Madam Chair.

CHAIR STEFANICS: Thank you. Commissioner Vigil.

COMMISSIONER VIGIL: You're saying that if we vote against it there's a cease and desist order on them?

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, no. We have a notice of violation for operating a business without a business license. So if they get denied to be recognized as a special use under the Agua Fria ordinance to go forward with the master plan, if they can't get a business license, they would have to – if they keep on going we would have to file them into court and the court would decide to move them out. But yes, they would have to stop business because they're not doing it per code requirements in their business license.

COMMISSIONER VIGIL: So all that's required at this point in time is for them to continue operating their business with a business license and then come back with a master plan. Is that correct?

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, not entirely. We can't issue a business license because they need to qualify through this variance as a special use to qualify to go forward under the Agua Fria Ordinance for a master plan, to zone the property for that type of use.

COMMISSIONER VIGIL: Is that correct? Those consequences are dire. Mr. Ross, he's actually saying if we choose not to allow this variance that in fact the applicant can't continue their operation of their business unless they get a business license?

MR. ROSS: Madam Chair, Commissioner Vigil, they need to get a business license, sure, but what this is is concerning land use, use of the property. And under the ordinance my understanding is a very truncated, very strange process which will not be this

way under the new code, but in order to even get the zoning that they need they need to first get the variance, which is what they're asking for right now. When you hit the master plan step you're going to be assessing whether the proposed use of the property is consistent with the plan and consistent with adjoining uses, whether it should be rezoned for this use. With a use variance it's a very high standard to meet. But if they don't get this step accomplished, irrespective of the business license they don't have the proper zoning to do what they're doing on the property and they would have to stop doing it. That's how it works. The new code will be much simpler, I assure you, on the issues like this.

COMMISSIONER VIGIL: Okay. Thank you.

CHAIR STEFANICS: Thank you. Any further questions or comments. Okay, we have a motion and a second on approval. Let's read the right language here. Is to request a variance of the ordinance to allow a towing business as a special use under the zoning use table on .70 acres. Now, Mr. Ross, this seems like we are approving a variance to continue on.

MR. ROSS: Madam Chair, it's a very strange part of the existing Land Development Code and that's why there are all these questions I know are coming because it seems like why would you have a variance and then not deal with the zoning at the same time. But that's the way it works. It should not establish a precedent but it would check off a box that they would need to even file for a zone change on the property.

CHAIR STEFANICS: So I guess I do still have another question. Mr. Larrañaga or Penny. So let's say this gets approved this evening. This process could take how long for the next level, the master plan to come back to us to be approved?

MR. LARRAÑAGA: Madam Chair, master plan, preliminary development plan and possibly the final could be all rolled into one it could take four to six months for them to go through the process. They submit for all the master plan requirements. That would be reviewed by County staff and state entities, just like any other master plan. We'd create a report with all the reviews. If they meet all the requirements then it would go out to the County Development Review Committee for –

CHAIR STEFANICS: So if this were to take four to six months and we have a new code that comes out during that period of time, I don't believe this would qualify under the new code in that area.

MR. ROSS: Madam Chair, one of the advantages of the new code is there will be a zoning map and you will make the decisions concerning the – at least preliminary decisions concerning all this zoning at the time you deal with the map. And so – well, that's true; I'd forgotten about that. This is in the Agua Fria plan so it would be taken up later when all those plans are addressed. But at some point you'll be looking at the whole community as a whole and be able to make a better informed decision on this kind of application I would think.

CHAIR STEFANICS: Commissioner Vigil.

COMMISSIONER VIGIL: Having participating in the planning process of Agua Fria Village, the special use exception was not intended to really create far more usage for the village with regard to increased either density or usage of commercial vehicles or commercial transactions. As a matter of fact, special use was identified to look at some of the

new potential businesses that would be coming into that village. I guess, and I'm sorry, Mr. Anaya, you've probably gathered by now I'm going to have to not vote in favor of this because I hope you understand that I represent the village as a whole with regard to this and their concerns have better than this and it's tugged at my heart, because the villagers concerns are Agua Fria has always been dumped on, and really I preach that all over the place because one only needs to drive from the city all the way down to the other limits of the village and you'll see where you have a water tower next to one of the oldest traditional historic churches.

You have a statue-like, castle-like structure next to one of the most historical homes in the state. You have the Camino Real ending there next to businesses that have cropped up that include CPA business, tax businesses, used car sales. Nobody was really helping the villagers out at one point in time until the code went into place. And nobody was really helping them out until they took it upon themselves to empower themselves to create their own destiny through their planning process. And their planning process doesn't only have the mission of allowing special uses, not increased usage. And that was specifically stated with other businesses that are there.

So you also are my constituent. I hope you can understand where I'm coming from with this. I really need to represent what's in the best interests of the processes that have been put in place since I have represented this area. Thank you, Madam Chair.

CHAIR STEFANICS: Thank you. This is not a public hearing. I'm sorry.
Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Commissioners, I think we should not make light of the fact that this business has provided livelihood, money and resources and food on the table for a family. And I think I even said it on the record at the last meeting when we had the last hearing. I think I even told the Anayas and I'll tell them again that as this evolves through the process there may be a scaled down version of what you've evolved into, but to put you in a position of not having that opportunity is where I have my frustration as a Commissioner and I would hope that a majority of the Commission would take into consideration that this is about family, livelihood and that there's still a process by which there's going to be a review and analysis of the site and what can and cannot be done with additional recommendations to go along with fire recommendations and others but that this gives you that opportunity to continue through that process and doesn't end it here tonight. Thank you.

CHAIR STEFANICS: Commissioner Anaya, would you be open to an amendment that would indicate that the master plan would need to come forward prior to six to eight months? If it passes?

COMMISSIONER ANAYA: I would accept that as an amendment, if the seconder will accept it.

COMMISSIONER MAYFIELD: Second, Madam Chair.

CHAIR STEFANICS: Okay. Let's say eight months, maximum.

COMMISSIONER ANAYA: I would accept that, Madam Chair.

CHAIR STEFANICS: So the reason, Commissioners, I'm making that amendment is that if this is a livelihood that has to be adapted, changed, relocated, there is a

period of time in which to do that or in which to make drastic changes to the business. Any further comments? And I truly do appreciate Commissioner Vigil's comments for the community. I also appreciate that this is the family's livelihood, but unless there's going to be drastic changes it's not going to go forward anyway.

So we have a motion, we have a second, we have an amendment. All those in favor of the amendment first, please say aye.

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

CHAIR STEFANICS: Okay, so there is an amendment adopted. Now we are back onto the motion with the amendment that if this is approved, this variance, that the master plan would have to come back to us before the end of eight months.

The motion passed by majority [3-2] voice vote with Commissioners Anaya, Mayfield and Stefanics voting with the motion and Commissioners Holian and Vigil voting against.

CHAIR STEFANICS: Thank you very much. It's 3-2. You have eight months.

[Commissioner Vigil left the meeting.]

~~XVII A. 4. **BCC CASE # MIS 07-5502 Apache Springs Subdivision Extension. Beverly Chapman, Applicant, Joe Ortiz, Agent Request a One-Year Time Extension of the Preliminary and Final Plat and Development Plan Approval for the Apache Springs Subdivision. The Property is Located at 87 Camino Valle, within Section 10, 11, 14, and 15, Township 15 North, Range 10 East, (Commission District 4)**~~

~~VICKI LUCERO (Case Manager): Thank you, Madam Chair. On December 14, 2010, the BCC granted approval of a two-year time extension of the Preliminary and Final Plat and Development Plan for the Apache Springs Subdivision. On May 13, 2008, the BCC granted Preliminary Plat and Preliminary Development Plan approval for the Apache Springs Subdivision which consisted of 16 residential lots on 40 acres.~~

~~On November 18, 2008 the BCC granted Final Plat and Development Plan approval for the Apache Springs Subdivision.~~

~~Article V, Section 5.3.6 of the County Land Development Code states, An approved or conditionally approved preliminary plat shall expire twenty-four months after its approval or conditional approval. Prior to the expiration of the preliminary plat, the subdivider may request, from the Board, an extension of the preliminary plat for a period of time not exceeding thirty-six months.~~

~~Article V, Section 5.4.6 of the Code states, An approved or conditionally approved final plat, approved after July 1, 1996 shall be recorded within twenty-four months after its~~