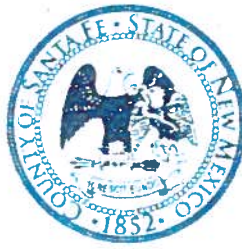


**Daniel "Danny" Mayfield**  
Commissioner, District 1

**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

**DATE:** February 12, 2013

**TO:** Board of County Commissioners

**FROM:** Miguel "Mike" Romero, Development Review Specialist Sr. *(MR)*

**VIA:** Penny Ellis-Green, Land Use Administrator *PEG*  
Vicki Lucero, Building and Development Services Manager *VL*  
Wayne Dalton, Building and Development Services Supervisor *WD*

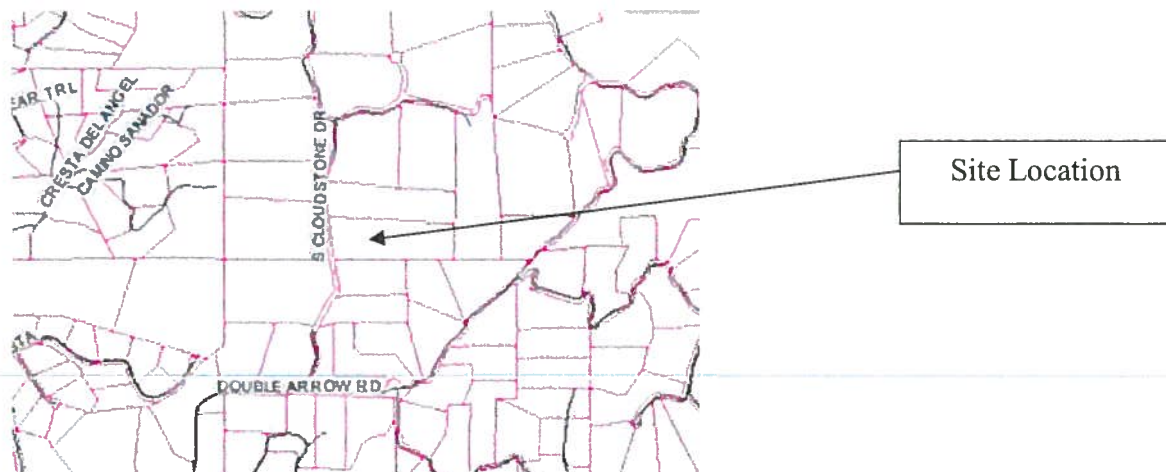
**FILE REF.:** CDRC CASE # V 12-5280 Kimberley Moseley Variance

**ISSUE:**

Kimberly Moseley, Applicant, (Rubin Katz, Ahern, Herdman & MacGillivray, P.A.) Frank Herdman, Agent, request a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 11 acres.

The property is located at 24 South Cloudstone Drive, within Section 5, Township 16 North, Range 10 East, (Commission District 4).

**Vicinity Map:**





## SUMMARY:

The Applicant requests a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 11 acres. The subject lot was created in 1976, and is recognized as a legal non-conforming lot. The property is located in the Hydrologic Mountain Zone, where minimum lot size per Code is 80 acres per dwelling unit. Lot size may be further reduced to 20 acres with water restrictions.

There are currently two dwelling units on the subject property. The structures consist of a main residence and an accessory structure that contains a kitchen and bathroom. The main residence was permitted in 1999, (Permit # 99-090). On January 22, 1999, the previous property owners were written a letter by Santa Fe County Land Use staff stating that the kitchen facilities must be removed from the existing structure (second dwelling) within 6 months of the main house being completed. This letter was agreed to and signed by the previous property owners.

On February 13, 2012, Santa Fe County Building and Development Services Department received a written complaint regarding the Applicant's second dwelling. On February 16, 2012, the Applicant received a Notice of Violation from Santa Fe County Code Enforcement for exceeding density requirements.

The Applicant states that during their search for a home, they were shown the property at 24 South Cloudstone Drive, which included a detached guest house with a full kitchen along with a main residence. The Applicant claims the guest house was advertised as being permitted with a kitchen and approved for full time occupancy. The Applicant advised the sellers that as part of their search for a home, their intension was to move their elderly parents from California, to provide assistance for them. In December 2010, the Applicant purchased the property at 24 South CloudStone Drive. The Applicant feels the purchase of the property which includes two dwelling units was misrepresented by the sellers by advertising two dwelling units.

Article II, § 3 (Variances) 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." **The variance criteria does not consider financial or medical reasons as extraordinary hardships**

**This Application was submitted on August 28, 2012.**

**On October 18, 2012, the CDRC met and acted on this case, the decision of the CDRC was tied at three votes to approve and three votes to deny. Under Commission Rules of Order**

the Application was automatically tabled until the next meeting (CDRC Minutes Attached as Exhibit 1).

On November 15, 2012, the CDRC met and acted on this case, the decision of the CDRC was to recommend denial of the Applicant's request by a 4-3 vote (CDRC Minutes Attached as Exhibit 2).

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

**APPROVAL SOUGHT:** Approval of a variance of Article III, §10 (Lot Size Requirements) of the Land Development Code.

**GROWTH MANAGEMENT AREA:** El Centro, SDA-2

**HYDROLOGIC ZONE:** Mountain Zone, minimum lot size per Code is 80 acres per dwelling unit. Lot size may be further reduced to 20 acres with water restrictions. The two proposed dwelling units exceed the number of units allowed on the subject property.

**FIRE PROTECTION:** Hondo Fire District.

**WATER SUPPLY:** Domestic Well

**LIQUID WASTE:** Alternative Septic System

**VARIANCES:** Yes

<b>AGENCY REVIEW:</b>	<u>Agency</u>	<u>Recommendation</u>
	County Fire	Denial

**STAFF RECOMMENDATION:** Denial of a variance of Article III, §10 (Lot Size Requirements) of the Land Development Code.

If the decision of the BCC is to Approve the Applicant's request, staff recommends imposition of the following conditions:

1. Water use shall be restricted to 0.25 acre feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, § 10.2.2 and Ordinance 2002-13).

2. The placement of additional dwelling units or Division of land is prohibited on the property (**As Per Article III, Section 10**).
3. The Applicant shall comply with all Fire Prevention Division requirements (**As per 1997 Fire Code and 1997 Life Safety Code**).

**EXHIBITS:**

1. October 18, 2012, CDRC Meeting Minutes
2. November 15, CDRC Meeting Minutes
3. Letter of request
4. Article III, §10 (Lot Size Requirements)
5. Article II, § 3 (Variances)
6. Site Photographs
7. Site Plan
8. Aerial of Site and Surrounding Area
9. January 22, 1999 letter from Santa Fe County
10. Fire Prevention Division Memo

Duly sworn, applicants Chris and Kathy Stoia addressed the Committee. Mr. Stoia said William Keller is his father in-law and the property is in his name. Mr. Keller is 81 and the three of them have been living together for three years and will be moving to this home together. He said enlarging the second floor will help to accommodate their father in-law's necessities.

Ms. Stoia said including the garage the home is approximately 2,700 square feet. The addition is approximately 500 square feet.

Mr. Berg said it was rather ironic that the addition is being hampered by the MSRD when a recent survey showed it was at an elevation of 7,020 feet, "20 feet less it would not be subject to these regulations.

There was no else present wishing to speak regarding this case.

Based on the information provided by the applicant, Member Anaya moved to approve the variance with staff-imposed conditions. Member Martin seconded and the motion passed by unanimous [6-0] voice vote.

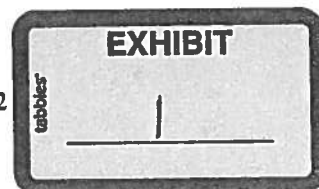
[The following case is presented verbatim]

- C. **CDRC CASE # V 12-5280 Kimberley Moseley Variance.** Kimberly Moseley, Applicant, (Rubin Katz, Ahern, Herdman & MacGillivray, P.A.) Frank Herdman, agent, request a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 11 acres. The property is located at 24 South Cloudstone Drive, within Section 5, Township 16 North, Range 10 East, Commission District 4  
*[Exhibit 3: Fire Prevention Division: Official Submittal Review 10/2/12]*

MIGUEL ROMERO: Thank you, Mr. Chair. Kimberly Moseley, Applicant, Frank Herdman, agent, request a variance of Article III, Section 10 of the Land Development Code to allow two dwelling units on 11 acres. The property is located at 24 South Cloudstone Drive, within Section 5, Township 16 North, Range 10 East, Commission District 4.

CHAIR GONZALES: Mr. Romero is your mike on?

MR. ROMERO: The Applicant requests a variance of Article III, Section 10, Lot Size Requirements, of the Land Development Code to allow two dwelling units on 11 acres. The subject lot was created in 1976, and is recognized as a legal non-conforming lot. There are currently two dwelling units on the subject property. The structures consist of a main residence and a guesthouse. The main residence was permitted in 1999, permit number 99-090. On January 22, 1999, the previous property owners were written a letter by Santa Fe County Land Use staff stating that the kitchen facilities must be removed from the existing structures which is the guest house within six months of the main house being completed. This letter was agreed to and signed by the previous property owners.



On February 13, 2012, Santa Fe County Building and Development Services Department received a written complaint regarding the Applicants' guesthouse. On February 16, 2012, the Applicant received a Notice of Violation from Santa Fe County Code Enforcement for exceeding density requirements.

The Applicant states that during their search for a home, they were shown the property at 24 South Cloudstone Drive, which included a detached guesthouse with a full kitchen along with a main residence. The Applicant claims the guesthouse was advertised as being permitted with a kitchen and approved for full-time occupancy. The Applicant advised the sellers that as part of their search for a home, their intension was to move their elderly parents from California to provide assistance for them. In December 2010, the Applicant purchased the property at 24 South Cloudstone Drive. The Applicant feels the purchase of the property which included a guesthouse and main residence was misrepresented by the sellers by advertising two dwelling units. Growth Management staff have reviewed this Application for compliance with pertinent Code requirements and finds the project is not in compliance with County criteria for this type of request.

Staff's recommendation was denial of a variance from Article III, section 10, Lot Size Requirements, of the Land Development Code. If the decision of the CDRC is to recommend approval of the Applicant's request, staff recommends imposition of the following conditions. Mr. Chair, may I enter these into the record?

1. *Water use shall be restricted to 0.25 acre-feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, § 10.2.2 and Ordinance 2002-13).*
2. *The Applicant must obtain a development permit from the Building and Development Services Department for the second dwelling unit (As per Article II, § 2).*
3. *The Applicant 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 placement of additional dwelling units or Division of land is prohibited on the property (As Per Article III, Section 10).*
5. *The Applicant shall comply with all Fire Prevention Division requirements (As per 1997 Fire Code and 1997 Life Safety Code).*

CHAIR GONZALES: Yes, you may. Do you have any questions of staff? If not, I've got a couple. Oh, I'm sorry.

MEMBER DROBNIS: Mr. Chair, is there any evidence that the kitchen was ever removed in compliance with the agreement?

MR. ROMERO: Mr. Chair, committee members, from my understanding, when Code Enforcement went out to conduct their inspection I believe that they did do an inspection of the guesthouse to find that there was a full kitchen in the guesthouse.

MEMBER DROBNIS: Was this at the time of the agreement that was signed with the previous owners?

MR. ROMERO: This was at the time of the complaint now in 2012.

MEMBER DROBNIS: All right. I understand. Thank you.

CHAIR GONZALES: Any other questions?

MEMBER KATZ: To follow up on that if I may.

CHAIR GONZALES: Mr. Katz.

MEMBER KATZ: You don't know whether the kitchen was ever removed?

MR. ROMERO: Mr. Chair, committee members, at that time, I don't know if it was ever removed, at that time of the previous homeowners.

MEMBER KATZ: Thank you.

MR. ROMERO: There was, however, a letter that was written by County staff advising that it had been removed, so at some point in time the assumption would be that staff did an inspection and observed a full kitchen in the guesthouse.

CHAIR GONZALES: Any other questions of staff? If not, I've got a couple of questions. The letter that was sent to the previous owners, is there any indication that it was re-inspected other than by notifying them by a letter?

MR. ROMERO: Mr. Chair, committee members, I can't answer that question. I don't know if at that time in 1990 whether or not staff did a follow-up of the guesthouse to see if the kitchen was removed.

CHAIR GONZALES: Okay. Thank you. I think the other question is what led to the Notice of Violation being posted at the property?

MR. ROMERO: Mr. Chair, committee members, there was a written complaint that was brought to the attention of the Building and Development Services Department.

CHAIR GONZALES: Okay. Thank you. And did you ever have any discussion with the sellers regarding that letter? Was there any discussion with the sellers?

MR. ROMERO: I didn't contact the previous owners. I believe the applicant did but I have had no communications with the previous owners.

CHAIR GONZALES: Okay. Thank you. Mr. Katz.

MEMBER KATZ: Let me follow up on your questions, Mr. Chair. The letter where they said that they would remove the kitchen was part of getting permitted to build the main house; is that correct?

MR. ROMERO: That is correct.

MEMBER KATZ: And so one would have suspected that there would have been inspectors out there regularly as that main house was being built.

MR. ROMERO: That could be correct. I don't know how things were run at that time, compared to now.

MEMBER KATZ: And they were given a six-month period of time in any case to remove the kitchen.

MR. ROMERO: Mr. Chair, committee members, that is correct.

CHAIR GONZALES: Thank you. Any other questions. If not, is the applicant here?



FRANK HERDMAN: The applicant is. My name is Frank Herdman and I'm here representing the applicant. The applicant is here as well as Dr. Bill Dougherty and Mary and Harry Dougherty. And you'll hear from most of them.

Again, I represent the applicant in this case. As you have gathered this case involves the request to permit a guesthouse kitchen to remain in place where it has been, to our knowledge for nearly 20 year. And I want to emphasize to our knowledge, we're talking about a condition that has been in existence for nearly 20 years with no detriment, to my knowledge, to anybody.

This is an extremely important kitchen, as it turns out because that kitchen is critical to a living arrangement that allows Dr. Bill Dougherty and Dr. Kimberly Moseley – again, both here today – to care for and watch over Dr. Dougherty's elderly parents and that is Harry and Mary who are here as well. Dr. Dougherty and Dr. Moseley moved to Santa Fe within the last two years to work at the Christus St. Vincent Hospital where they are trauma surgeons. When they relocated to Santa Fe they searched for a home that would allow them to care for Dr. Dougherty's elderly parents. That was their plan from day one. They looked at a lot of houses and they looked at this one. Dr. Dougherty's parents are in – they're elderly. They're in their eighties. They have limited mobility and I will let them tell you more about the conditions, their current health conditions. But simply put, they're at a condition that they need somebody to watch over and care for them.

So the plan in relocating to Santa Fe was to find a property that would allow Dr. Moseley and Dr. Dougherty to live on the same property with Dr. Dougherty's elderly parents so that they could care and watch for them. They were shown this particular property at 24 South Cloudstone and it met that particular need, because the main house – their property includes the main house, a separate detached guesthouse and the guesthouse was presented to them as a fully inhabitable dwelling structure including the kitchen, bathrooms, bedrooms, etc. And it was represented to them that that guesthouse could be used as a separate dwelling unit for Dr. Dougherty's elderly parents. The sellers were aware of that particular need in the plan.

At no time were they made aware or informed of any restrictions, including the letter to which Mr. Romero has referred that was signed in 1999. So they bought the house in December of 2010 and they spent a considerable sum of money to get the guesthouse suitable for Dr. Dougherty's parents. And, again, you'll hear more from them about the changes that were made to the guesthouse as well as the physical conditions that mandated those changes. We're not talking about major changes; they were expensive. Suffice it to say that those changes were made in order to make one level floor, to swap out appliances because, for example, the gas range in the house was not appropriate because they're both on oxygen. There were other changes as well to accommodate their health conditions and their limited mobility.

So everything was going as per plan. They bought the house, they moved into the house and they were then served with a notice of violation stating that the kitchen in the guesthouse had to be removed. There was a question about that notice of violation. You may recall Mr. Shapiro, he was before you at your last meeting. You denied his variance for very good reasons and you denied his variance because, as Mr. Katz expressed his concerns, Mr. Shapiro was building a new house. He committed within the – that house was under construction. It was not a house that was built in 1992 as was this guesthouse.

He committed and he in fact signed an affidavit saying that the guesthouse would not include a kitchen. He disregarded that kitchen – I mean that affidavit. He got busted. He came before you and you know what else he did? He went around and said I think there's other people in the neighborhood who have guesthouses.

So it's not, I expect you're going to hear from him, but it's not because he's concerned about guesthouses in his community that have kitchens. We know that full well because he tried to put one in his house. So in response to the complaint that was issued by – or that was made by Mr. Shapiro, the applicants in this case received a notice of violation and they learned for the first time that the guesthouse was built in 1992. This sort of helps with the chronology. There was a permit issued in 1999 – I'm sorry, 1992, for the main house and the guesthouse. And I have the County-approved plans here with me today if anyone has any questions.

As it turns out, the owners at the time who sold the house to the applicants built the guesthouse first. They did not proceed with the main house. They then renewed or got another building permit in 1999 to build the main house. That's what we've learned since the notice of violation was served. And, then, based on this letter stating that within six months of completion of the main house they'd remove the kitchen. To our knowledge they didn't do that. They also didn't tell the applicants that they had signed such a letter and that they had failed to comply with it.

So we're asking for a variance that would that kitchen which has been there nearly 20 years to stay as it has been. And if the kitchen has to be removed and the current living condition, which is a very important living condition for this family will come to an end. And that's because Dr. Dougherty's elderly parents cannot depend on the kitchen in the main house for their living needs. Dr. Dougherty's parents – they have limited mobility and they're on oxygen. The main house is approximately 100 feet away. I've been there myself. I'm prepared to testify under oath to these facts. There are numerous steps that have to be climbed to get into the main house. And that's true no matter what entry you go in, whether it's the garage – there's actually more steps if you go through the garage than there are the front door, but there's many on both and they're hard either wood or flagstones. They're dangerous. Mary has already fallen once.

Once you get into the main house that main house has five different levels. This is in a hilly area; it's in the foothills and we know how these houses are generally constructed. They're constructed to comport with the terrain and so you expect to have multiple levels. And that's what they have. The floors are tiled. They are hard. They are dangerous. They have limited mobility, bad back and other conditions that cause that condition to be dangerous. In addition, the range, the stove in the main house is gas and so you can't be on oxygen and be in proximity to a gas stove.

So it won't work. And so if the variance is not granted then this caring relationship comes to an end. So there is a very real hardship if the variance is not granted and the problem is obviously due to circumstances over which they had no control.

And I want to get into a little legalese if you will indulge me here, because I know in the first case you had this afternoon there was a discussion and question to staff about hardship and what is the type of hardship that is recognized as grounds for a variance under the code. And I respectfully disagree with staff that it is strictly related to topography. Section 3.1 that includes the variance criteria states very specifically – let me find it here. It's in your packet materials as well. It states that 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 one, unusual topography, or other such non-self-imposed conditions.

And so the code recognizes unusual topography but it also recognizes other non-self-inflicted conditions generally as the grounds for a variance. And I expect that Committee Member Katz is aware of the case of *Paule v. Santa Fe County Board of County Commissioners*. We actually have a New Mexico Supreme Court case that interprets Section 3.1 and the very language that I just read. Again, indulge me here for a moment. I'm going to be a real lawyer, but I think that this is important, because this is the current state of the law as recognized by the highest state in this court [sic] interpreting the statute which is the basis for your decision today.

In that particular case the applicant had a piece of property. They wanted to build a cell tower. Well, the height restriction for that piece of property was 24 feet. They wanted 198 feet, because that's what they needed to meet their technological needs for that cell tower. And in this particular case, in that case the court recognized what's called a dimensional variance. A dimensional variance is a request for an exception from physical limitations. That's what we have in this case: kitchen, no kitchen. It's a physical attribute of the property. So in that particular case the Board of County Commissioners granted a variance and it was upheld by the New Mexico Supreme Court.

And one of the things that the New Mexico Supreme Court recognized as a legitimate consideration in granting the variance was the proposed use of the property, in this case the Commission – I'm reading from the case – the Commission found that the special – that were special conditions relating to wireless communications. In other words, there were special needs associated with the use of the property. And then they went on to say that the hardship, the term hardship is not defined in the code. And they said under the standard that becomes applicable to dimensional variances, multiple factors may be considered in deciding whether to grant a dimensional variance, including the economic detriment to the applicant if the variance is denied. Okay?

So in all due respect to staff, your ability to go beyond just hills, ditches, arroyos is permitted in your code and that has been recognized by the New Mexico Supreme Court.

In this particular case we have hardship I would suggest to you is different than the type of hardship you find in a lot of the cases that you find in that most of the cases that you have before you for variances are requests for a proposed, anticipated use of the property. I would like to use my property for this particular use. I want to have an extra family member. We're going to have some kids. I need more height. I need more space, etc. This is not that type of case. This is a situation where they find themselves in this predicament unbeknownst to them. They didn't make it. They bought this property with the expectation of being able to use it in a particular way and now they find themselves in that situation. So there is true extreme economic hardship. And it's not only economic; it's also emotional and it's also a hardship that will befall this family if this living arrangement is discontinued. So I submit that the variance criteria are well satisfied in this case.

I'd also just like to briefly address staff's proposed conditions for approval. I want to emphasize there is no objection to proposed condition number 1, and that is the imposition of water restriction, .25 per dwelling unit for the two dwelling units on this

house. I suspect you know full well the density requirements that have led to this regulation prohibiting kitchens within guesthouses is all dictated by water and the desire to preserve water. Staff has proposed a restriction of .25 acre-feet per dwelling unit. That gets the County where it needs to be. In other words, that provides the protection that is the motivation for the density restrictions, and we have no objection to that restriction whatsoever.

With regard to request number 2 – I’m sorry, condition #2, a request for a development permit. I want to emphasize that under the code, a development permit is only required where there’s new development. There is no new proposed construction in this case. We’re asking you to recognize the legality of a condition that’s been in place for nearly 20 years. So we would ask that – we would submit that a development permit is not required under these circumstances if a variance is granted.

Then condition number 3 is an updated liquid waste permit. I have confirmed that in the County’s files the liquid waste permit that was issued for this property was for both the guesthouse and the main house. When the property was bought in 2010 they had to have that system inspected, it meant inspections and so we would request that they not be required to incur the expense of getting an updated liquid waste permit because it is permitted for the existing condition.

Number 5 states compliance with all Fire Prevention Division requirements. You say, what’s wrong with that? Well, let me explain. Under any other circumstance, no problem. Well, in connection with this particular application the County’s Fire Department went out and they looked at the property as they do from time to time. We got a report saying that the driveway and the turnaround does not comply with County requirements. We all fell out of our seats when we got that report. I have here the County-approved plans for the guesthouse and for the main house. They all show the driveway exactly as it is today. They all show the turnaround exactly as it is today. There’s a report now that say it doesn’t comply with County requirements. Well, you can’t allow someone to build a house in accordance with plans that they submit and then 20 years later say we don’t like your driveway, even though we approved it. Even though we inspected it. So – and by the way, the main house is sprinklered. So in any other circumstance we’d say, sure. No problem. We’ll comply with fire restrictions, but that’s sort of a dead letter for us because what that means is they have to [[ Because – and there’s no way to modify this driveway, because it’s a relatively – it’s a rectangular lot; it’s a steep lot and that driveway snakes up. You can see that based on the topographic photographs that are included in your packet.

So we respectfully ask to be relieved of those conditions, 2, 3 and 5, and for all the reasons stated we request that the variance be granted. I’d like you to be able to hear from the applicants themselves and their parents. Thank you. And I stand for any questions you may have.

CHAIR GONZALES: Ms. Martin.

MEMBER MARTIN: I have a question about condition 4. Did you mention condition 4?

MR. HERDMAN: Let me see what that is.

MEMBER MARTIN: The placement of additional dwelling units.

MR. HERDMAN: There's no objection to that. Further subdivision of the lot is already prohibited in the declaration and there's no way you could fit another house up there.

MEMBER MARTIN: My other question is can you give me the citation for the Paule case?

MR. HERDMAN: I certainly may. I certainly can. It is – and I'm more than happy to share my copy if you'd like. It is 138 New Mexico 82, and the uniform citation is 2005-NMSC-021.

MEMBER MARTIN: Thank you.

CHAIR GONZALES: Mr. Katz.

MEMBER KATZ: Why is it, if there was approval of a house and a guesthouse in 1992, when it came time to build the main house after the guesthouse had been built, that there was this condition about removing the kitchen? Had the rules changed? Had the approval expired?

MR. HERDMAN: No, the rules changed. In other words, there was adoption of the density requirements in between 1992 and 1998. That's my understanding.

MEMBER KATZ: Did they lose a vested right to build the main house because it wasn't built within a certain period of time?

MR. HERDMAN: My review of the records indicates that there was a renewal of the permit and as much as I would like to share your train of thought New Mexico law says you don't have vested rights until such time as you actually proceed with construction.

So the guesthouse was made, was constructed first and it was many years later that the main house was then constructed. But be that as it may, the owners still signed, as a condition for approval for the main house that form. So it is my understanding that the regulations changed and they did make that commitment, unbeknownst to my clients.

MEMBER KATZ: Thank you.

CHAIR GONZALES: Any other questions? Mr. Drobnis.

MEMBER DROBNIS: Mr. Chair, I have a question for Mr. Herdman. I presume that your representation of your clients is fairly new, that it does not extend back to the time that they purchased the property; correct?

MR. HERDMAN: It does not. It certainly does not. I was engaged specifically to assist them in connection with this particular application.

MEMBER DROBNIS: Thank you.

CHAIR GONZALES: Any other questions of Mr. Herdman. If not –

MEMBER ANAYA: I have a few questions, Mr. Chair.

CHAIR GONZALES: Mr. Anaya.

MEMBER ANAYA: In the current house now, are there any sprinkler systems or anything of fire safety in there?

MR. HERDMAN: In the main house?

MEMBER ANAYA: In both of them.

MR. HERDMAN: It's my understanding there's a sprinkler system in the main house. I've also been told that there was a recent evaluation of the area by the Fire Department that included a plan for fire safety associated with this property, the construction of a pond down below. I have not had a chance to investigate that. I know

that Mr. Buster Patty may be able to shed some light on that. I don't want to speculate on that.

MEMBER ANAYA: And the size of the guesthouse is what?

MR. HERDMAN: It is a little over 2,000 – 1,200 square feet. I'm sorry. Only 1,200.

MEMBER ANAYA: 1,200?

MR. HERDMAN: Yes.

MEMBER ANAYA: Thank you.

MR. HERDMAN: You bet. And Dr. Moseley is here and Mary Dougherty. I'm advised that Harry Dougherty had to step out for a minute but hopefully he'll be back as well.

CHAIR GONZALES: Mr. Herdman, I've got a couple of questions for you.

MR. HERDMAN: Sure. I'm sorry.

CHAIR GONZALES: Have you had any discussions with the sellers regarding this matter?

MR. HERDMAN: I have had conversations and communications with sellers' counsel.

CHAIR GONZALES: And what has their response been?

MR. HERDMAN: We have put them on notice of this issue but I can tell you there has been nothing to the effect – no assurances, no offers, no proposals, no nothing that would leave us in a position to believe that there is a cure to this proposal, a cure to this predicament. So we come before you in hopes that you'll grant a variance which will permit the resolution. Nothing short of the variance will really fix this situation that would result in anything other than the family having to move out, protracted and costly litigation, on and on and on. And so with all sorts of uncertain results. But the hardship will be suffered whether that happens or not. If one has to go down that route. Why? Because you're moving elderly people out of their existing home. All of that goes with that. I submit that that's hardship in and of itself that warrants the variance in this case.

So be that as it may, our solution lies with you and we'll hope that you'll grant the variance. I stand for further questions.

CHAIR GONZALES: I had other questions also. You mentioned about doing away with staff condition number 2. I think that that is an important condition to have in this variance request. Without obtaining a development permit County staff cannot go on the property to inspect anything. So I think it's something that maybe you should reconsider.

MR. HERDMAN: Well, here's – let me explain to you my predicament, okay? This is the report that was issued by the Fire Department, and it says that you need to bring the property into compliance if there's any permits obtained by the County. So where that gets us is the house becomes uninhabitable according to the Fire Department, even though that driveway was permitted and constructed 20 years ago. So we're back in that situation. We submit -- I understand the Fire Department needs to do their job but this was approved, and so that's the problem.

The other thing is that in my experience with a development permit, it's when you're doing something, and we're not proposing to do anything to this property. We're

asking you to just leave it as it is. So if we submitted a building permit there would be nothing to inspect. That kitchen is up there. The County knows it's up there because they've issued a notice of violation. So I don't know what that development permit would be asking for. By granting this variance, we have what we need. It just seems like surplusage and I could just see administrative issues associated with this report which we respectfully disagree with.

CHAIR GONZALES: You know, I think the mere fact you're asking for a variance, I think you have to comply with some of the County conditions. That is the whole key is when you ask for a variance that allows the County to do certain things and one of the things is they put in a restriction like water use. They ask for a development permit, they ask for a liquid waste permit. They ask for a fire inspection. That is part of the thing that goes along with asking for a variance. So that is one thing why I think staff is on the correct side on this matter.

MR. HERDMAN: And let me clarify. If it was recognized that complying with the development permit is not going to entangle us in this report which says that you have to impossibly rebuild this driveway in a way that it cannot be rebuilt, even though it was permitted twice over 20 years. I don't think we have a problem with that. So if the condition is modified to say you're going to need to get a development permit but we recognize that you don't need to comply with this report. I have no problem with that.

CHAIR GONZALES: I think Mr. Patty can answer some of your questions very clearly. He does all these inspections and I think – not yet, Mr. Patty, you'll get your turn in a minute – but I think that those conditions are rather important as far as I'm concerned. I don't know how my fellow committee members feel about those conditions but I think they're important. If anybody would want to – Ms. Martin, yes.

MEMBER MARTIN: My question is to ask counsel to weigh on this. Does counsel have a position on this? On condition number 2?

MEMBER KATZ: Will that entangle them in the fire issue?

RACHEL BROWN (Deputy County Attorney): Condition number 2, in obtaining the building permit would be processed as any other building where we've required a permit after the fact when the building is constructed. Buster Patty often has alternatives to things like driveway improvements and explores those with applicants.

MR. HERDMAN: May I respond? We're not asking – this refers to a development permit, which I understand is very different from a building permit. With the County a building permit application goes to CID, they review it for compliance, with Uniform Building Code requirements, etc. This is a development permit. If I'm grading a new lot in Santa Fe County I need to get a development permit because grading is defined as development. The code says prior to any development you need to get a development permit. This house as it exists today, there was a building permit issued for it in 1992, and so we're not asking to develop, we're asking to allow the status quo to remain. And so Ms. Brown can clarify me if I'm wrong on this but the need for a development isn't even required by the code under these circumstances because no development is proposed.

If the County wants us to go through and get a development permit we're happy to do so so long as the County – we don't get entangled in this report. By the way I did speak to Mr. Buster Patty and what he told me and he can confirm this if I'm wrong but I was surprised to learn that the County – it was not until 2001 the County began, actually the Fire Department began inspecting roads for compliance with the Uniform Building

Code. And he confirmed to me that there are lots of properties out there that may or may not comply as a consequence. So I don't think that it is fair for these people to get caught up in that issue simply because we're asking for this condition to remain. The bottom line is there's a house up there, there's a guesthouse up there, there are going to be people going up that driveway no matter what.

VICKI LUCERO (Building & Development Supervisor): Mr. Chair.

MEMBER DROBNIS: Mr. Chair.

CHAIR GONZALES: Mr. Drobnis.

MEMBER DROBNIS: I have a couple of comments in response to the chair's question. I would be concerned if I were your clients at living in a property where the Fire Department has expressed concerns about being able to get their equipment into the property. If there is a fire, either a wildfire or a structural fire they're going to have to call the Fire Department, not an attorney. So if Captain Patty has suggestions for how that access to the property can be improved so that the Fire Department can render effective assistance I think it would be in the best interests of everyone that those suggestions be heard. It doesn't mean that the entire access system to the property needs to be bulldozed and replaced but there may be mitigations that can significantly improve the ability of the Fire Department to respond to an emergency.

Let me offer a second thought and that is on the issue of the building permit. The next owners of this property, whoever and whenever that event may happen would be concerned if one of the units on the property, if it appeared that it did not have a building permit and they could find themselves in a difficult situation as well.

I think it is in the interests of all concerned, both the County and your clients to make sure that all the paperwork is correctly in place, that the County has a record of what the structures look like and what they're supposed to be. Otherwise, in some years someone could make another claim and if the County has no records that show the property as it currently exists or it may have received a variance for there could be some more problems. So I think this would represent an opportunity to tidy up all the paperwork and secure your clients' future.

MR. HERDMAN: Let me just respond to that. My clients were not thrilled to receive that report. They had no knowledge. There was nothing disclosed to them regarding compliance or noncompliance. I think they operated on a presumption that they were living in a house that was properly permitted by Santa Fe County. And so they were shocked to have received that report. They don't take it lightly by any means. My point simply is that although that may be important it's in some respect – it doesn't pertain directly to the request to allow the kitchen so that these folks can continue with their living arrangement. If we weren't before you today for a variance the people would be living up there and the driveway would be as it is. We're welcome to entertain any suggestions by the County's Fire Department but to my knowledge I'm not aware that it's susceptible to modifications that could render it satisfactory to Mr. Patty. I may be wrong.

CHAIR GONZALES: Yes, Vicki.

MS. LUCERO: Mr. Chair, can I get a clarification. Did Mr. Herdman make mention of the remodel that had occurred in the guesthouse?



MR. HERDMAN: It was not a remodel. There were minor changes made to the property. For example, appliances were substituted so they could better maneuver around the kitchen: nothing requiring a permit.

MS. LUCERO: Okay. Mr. Chair, that being the case, I don't think County staff would have an issue with removing condition number 2 because of the application that we have on file for the guesthouse, for the original guesthouse, it appears that it reflects what is actually out there today. So I don't think that it needs to be amended in any way.

CHAIR GONZALES: So condition 2 can be waived?

MS. LUCERO: Correct.

CHAIR GONZALES: Okay. Thank you. What about condition 3? Do you have an opinion on that one?

MS. LUCERO: Mr. Chair, condition number 3, we've reviewed. We have a copy of the NMED permit and it appears that it was actually issued for the two units. So it appears that that permit is actually up to date at this point. So it does reflect what is currently out there so we wouldn't have an issue with deleting that condition as well.

CHAIR GONZALES: Okay. Thank you.

MEMBER ANAYA: Mr. Chair.

CHAIR GONZALES: Yes, Mr. Anaya.

MEMBER ANAYA: Along those same lines, on the septic system, when your clients purchased this property, did you guys get an inspection done on the septic system?

MR. HERDMAN: Yes, they did.

MEMBER ANAYA: And it all passed?

MR. HERDMAN: It passed, yes.

MEMBER ANAYA: Another question that I have, Mr. Chair, if it's all right with you. I'm one of the individuals that really believe in safety because of my past and what happened and stuff like, so forth. And I understand that your clients are doctors and they work in the ER. And they probably know the Fire Department very well. I believe that some of the things they're asking for is just something that would be a safety issue for your clients' parents. Am I thinking it wrong?

MR. HERDMAN: Maybe I've misunderstood. I've reviewed the report, but my understanding and I can stand corrected but that short of basically rebuilding the driveway in a way that I can't imagine is what's being proposed. But if there's something else we're happy to entertain suggestions.

MEMBER ANAYA: Is this a dollar issue or is this an issue that it was already there?

MR. HERDMAN: Well, if you – have you had a chance to see the topography here that shows the lot –

MEMBER ANAYA: I have seen it, sir.

MR. HERDMAN: So what we have is we have this. And so these are essentially switchbacks that go up the steep slope. I don't think there's an alternative to building that driveway up there. I'm going to guess that they probably built it in the way that was most suitable and the least steep at the time. I don't know for sure. But we're not talking about relatively flat lot where the driveway's not wide enough. It's challenging terrain and I can't even envision that. So, again, this was permitted by the County.

MEMBER ANAYA: Okay. I guess it's time for the Fire Department to speak. I'll have a couple of questions for them too. Thank you.

MR. HERDMAN: And I'd like you to hear from the applicants themselves if that's okay. I know I've been up here for a while but I appreciate your indulgence. Thank you.

CHAIR GONZALES: You may approach please and get sworn in.

[Duly sworn, Kimberly Moseley testified as follows]

KIMBERLY MOSELEY: I'm Kimberly Moseley. I live at 24 South Cloudstone Drive, Santa Fe. As you've heard we moved here with the intention of having a place where my in-laws, Bill's parents could live with us and be either in the same home or in a very nearby home so that we could help care for them. In looking for homes everybody was aware that this was the goal. In fact, in looking at this home Harry and Mary flew out from California to look at the home and actually met the sellers and everybody knew the plan.

There was no mention that the kitchen was supposed to have been removed ever. In fact they had somebody living in the guest home when we looked at it. We looked at a lot of homes and this suited our needs the best. It was a single level guest home whereas the main home is not. It really is not suitable for them to live. It's a lot of stairs, it has a gas range. They're both on home oxygen in the evenings and sometimes during the day so they really can't cook with a gas range which is why we changed theirs to an electric conduction range for safety reasons.

We took out – we changed the bathroom so that they could have a walk-in shower rather than having to step into a tub and risk falling. So we made a lot of changes and I don't think we can make the driveway to make it compliant because of topography. But I'm certainly open to suggestions. And we just – I really would like to ask that you grant the variance.

CHAIR GONZALES: Thank you.

[Duly sworn, Bill Dougherty testified as follows]

BILL DOUGHERTY: Bill Dougherty. I also live at 24 South Cloudstone. I was asked to come here to upgrade the trauma program. I am very interested in safety and I did burn surgery for the better part of 25 years. Ran burn centers, worked in a pediatric burn center and started by own pediatric burn center, and I have a tremendous amount of respect for the safety and the issues that come from our Fire Department. I worked very closely with them in many of our cities in the United States.

I don't want to repeat everything that Kim said but having my parents close, being there for them, being a medical doctor I direct their care along with Kim and it's just a very important relationship and it was something that we planned in moving here, to set them up and it's just extremely important to us.

On a personal note, the main house has sprinklers in it and only one percent of the dwellings in the United States have sprinklers, so I was very happy that we had them, and I guess it was a requirement to change between the two building times. So I do have concerns that I shared but I think at the time – this is the way I understand it – when they permitted our driveway they weren't bringing up the same rigs and other things and that may have changed over time. But cement trucks come up there. Our gas truck, the UPS truck. So certainly an ambulance or an evacuation would not be hampered by that I don't believe. But the large rigs and water and other things that would be required may be too

large. I also believe that the topography makes it very difficult. It looks like they did as much as they could to squish the driveway into the property that we had and it would require a huge change if not a tunnel or something. I don't know. I have no idea. An elevator. I had no idea how we could change it. Again, both Kim and I are open to doing whatever we can to enhance that because we are interested in safety.

CHAIR GONZALES: Thank you very much. Any questions of the applicant?

DR. DOUGHERTY: Would you like to hear from my parents or have we taken up enough of your time?

MEMBER ANAYA: Mr. Chair.

CHAIR GONZALES: Yes, Mr. Anaya.

MEMBER ANAYA: I'd just like to speak to the applicants on their safety issues and I totally agree with you 100 percent. I know where you're coming from. Some of the things that I'm reading in the fire safety, and I guess the Fire Department is going to be able to speak on behalf of this. It seems like we definitely don't want you to throw your parents out. We all have parents and we all love ours just as much. And I understand – I'm not going to speak on behalf of the rest of the – my colleagues up here, the commissioners, that – I'm sorry. I lost my train of thought there. Okay, Mr. Chair. I pass.

CHAIR GONZALES: Thank you, Mr. Anaya. Mr. Drobnis.

MEMBER DROBNIS: I had a question for the attorney, for the attorney for the County if that is appropriate at this time. That is you have heard Mr. Herdman's discussion regarding the nature of a hardship as regards a condition for a variance. Do you have an opinion on that?

DEPUTY ATTORNEY BROWN: The board is tasked with determine whether the variance request fits within the variance requirements, and whether this is a non-self-inflicted situation that requires a variance for topography or other non-self-inflicted reasons, and whether proper due diligence was done during this buying process or not is for you to evaluate.

MEMBER DROBNIS: Thank you.

CHAIR GONZALES: Mr. Katz, do you have a question?

MEMBER KATZ: No.

CHAIR GONZALES: Mr. Patty, would you explain your report to us please?

BUSTER PATTY (Fire Department): Mr. Chair, committee members, I think I can clarify a lot of this. The code was not in existence – the 1998 code, the 1997 code that was adopted in 98 was not in existence when this driveway was built in 1993. There was no code. So that's why that driveway got built like it was.

Then the house that was built in 1999, we were not doing inspections on residential houses. Even though the code was adopted in 1998 we didn't do residential inspections so we would have never seen this.

In the conditions, condition number 5, we need to – as the Fire Department, we need to change the wording to that a little bit. And what we're talking about is applying any of the applicable requirements of the Fire Code, 1997 Uniform Fire Code that can be applied, is what we would be asking for. We know that we looked at the driveway. I'm not an engineer so I'm not going to say that it can't but I don't see how physically the driveway could be changed from what it is right now. Maybe a little work could be done

in widening. But the driveway, what's there right now is going to be existing. But what we can do is the residential house, the large home that was built, the second home, it does have a sprinkler system in it but we don't know anything about it. We don't know if there's been any inspections done on it, if it's been retested. This is the kind of thing that we would like to see, that we would like to be able to apply any codes that could pertain.

There's that part of the code that is Article IX in Section 902 that when, due to topography, which this is very obviously a problem with this driveway, that the Fire Chief can require additional fire protection when it can be applied. The one is fire sprinkling. We thought about the other house that is not sprinklered, the small house. But the code actually reads that anything over 1,500 square feet. Well we find out that that's only about 1,200 square feet, so there again, with the 902, if we can't gain access, we could require that but I don't see that that's going to be that detrimental since we have the large structure that is sprinklered right now, but we would like to have, require some kind of testing by an outside sprinkler source, sprinkler company. This is the kind of thing we're looking at.

It's not just fire but we also have to get up there with an ambulance and I'm not aware of a storage tank that was talked about at the bottom. I'm not really sure. That may have come from the Hondo Fire District. They may have talked to them about it but I'm not aware of that. But a storage tank for water isn't going to do a whole lot for us there because we can haul the water to meet NFPA level 42 requirements to that piece of property, because it doesn't do any good if we have water at the bottom but we can't get up that road anyway.

The way the road is right now – we're not going to say that we're not going to get there. They dial 911 and we're going to do everything we can. Our guys will even walk up the hill if they have to. But to meeting the code, the way our letter was written, it doesn't meet the code so this is where the denial comes in and then if you grant the variance, we would like to have some input on maybe the traffic at the top of the hill. We were up there the other day there was one car parked in the driveway. If there was two or more cars parked inside that driveway then we would be totally unable to turn around. So little restrictions that we can work with the applicant to make things a little better than what it is. Because there's no way to even turn the access around at the top to change it. There's just no room.

CHAIR GONZALES: Is there room for a turnaround that you require?

CAPTAIN PATTY: No, Mr. Chair, there is no room up there to change what they've got right now. We would have to do – we could turn a piece of equipment around up there with I'd say a four or five point turn, which is not a legal turn, but we can do it. But it doesn't meet the code. So that's why the denial of code comes in, and then you approve it and we do what we can to make it the best we can by implementing the 902.

CHAIR GONZALES: Any questions of Mr. Patty?

MEMBER ANAYA: Mr. Chair.

CHAIR GONZALES: Mr. Anaya.

MEMBER ANAYA: Mr. Patty, I have one question I guess. You're talking about equipment going up to this road, and I'm assuming that you're talking about the huge tankers; is this correct?

CAPTAIN PATTY: This is correct. In a case like this we probably wouldn't take tankers up there because once we get up there we're not going to be able to turn them around. A tanker doesn't do any good at the top of this hill if there's not an engine up there already to pump that water. There's not room for two pieces of equipment. We'd probably be laying hose up that long driveway and pumping it up the hill.

MEMBER ANAYA: Would you be able to take smaller tankers up there?

CAPTAIN PATTY: This is where we'd have to do a fire pre-plan as part of the changing fire code, requiring a fire pre-plan with the Fire Department up there to come up with a plan of how we are going to do this.

MEMBER ANAYA: Thank you, sir.

MEMBER DROBNIS: Mr. Chair, Captain Patty, how would you suggest wording a condition that would take into account the application of those parts of the code which can be done and apply a variance to the others? What sort of wording would you suggest?

CAPTAIN PATTY: Mr. Chair, committee members, on recommendation number 5 I would leave the wording to the same, the applicant shall comply with all Fire Department division requirements as per 1997 Uniform Fire Code and Life Safety Codes that can be applied.

MEMBER DROBNIS: I believe I heard you talk about a fire pre-plan. Would that be a place to insert?

CAPTAIN PATTY: That would be part – that's in the code. So that's already in there so we could say, okay, we're going to do a fire pre-plan, or a vegetation management plan, which there's not a lot up there. So, for example, testing the sprinkler system schedule, an annual testing on the sprinkler system that exists. Condition of looking at the grading on the road that it's maintained on an annual basis.

MEMBER DROBNIS: Thank you.

CHAIR GONZALES: Any other questions of Captain Patty? If not, thank you, Captain Patty. Dr. Moseley if you wanted your parents to speak that would be fine, if not they don't have to. You made a very compelling argument here. It's a very hardship case. We're very moved by this situation that you're in and it's hard for this committee to deal with a lot of those things especially when maybe there was a little bit of – great misrepresentation of this situation. That is not easy to deal with. Anything else, Mr. Herdman?

MR. HERDMAN: Mr. Chair, I just wanted to say that the applicants are encouraged by Mr. Patty's comments and suggestions and they support the condition he recommended and they look forward to working with him. Safety is of paramount importance to them.

CHAIR GONZALES: Okay, thank you. This is a public hearing. Is there anyone in the audience wishing to speak for or against this case please step forward and get sworn in.

[Duly sworn, J.J. Shapiro testified as follows]

J.J. SHAPIRO: J.J. Shapiro, 90 Leaping Powder. Maybe you recall, I was in front of this board a few weeks ago with the same variance. I'm not telling you how to vote or asking you how to vote. I would just like an equal playing field whether I'm wearing a Dallas Cowboy shirt or Cincinnati Bengals, you can't throw a pass over the

line of scrimmage; it's illegal. The same owner came up to me when I was drawing my plans and told me he had a variance for his kitchen in his guesthouse. That was represented to me. The homeowners' president told me that person had a variance for his guesthouse. Based on that I put in my kitchen.

I just want an equal playing field. When Mr. Patty came out for me for a non-conforming on my plans, I revised my plans. I widened my driveway. I cut down mature pinon trees to get an approval from Mr. Patty. These are hard times for all of us. What was true in 1984 is not the economic and financial position we have today. Many children and parents are moving in with their appropriate siblings or parents.

I am for this variance, don't get me wrong. The water issue is an issue. In regards to my plans I do have a sprinkler system. I was never asked. I put it in on my own; it was not required. I am using less than half of the allowable water based on my last three year's use.

So I'm asking this board whatever you decide it should be for me and for them.

And I have one other note. I think that pretty well sums up my feelings and it is unfortunate that I did not have Mr. Herdman in my corner. I asked him. But he had to withdraw because my neighbors – because his firm had represented one of the people on the board so he had to withdraw. So maybe my presentation would have been just as eloquent before as Mr. Herdman's is now.

If it's possible, I would like a uniform approval for both my kitchen as well as their kitchen in the same neighborhood for the same reasons. Thank you.

CHAIR GONZALES: Thank you. Mr. Anaya, do you have a question?

MEMBER ANAYA: No, not a question. I guess I'll wait until after the comments are closed.

CHAIR GONZALES: Any other members of the audience wishing to speak for or against this case. Seeing none, the public hearing is closed.

Do we have any discussion of the committee? Mr. Katz.

MEMBER KATZ: I salute very much Dr. Dougherty's parents. They obviously did a very good job in raising their son that he is taking such good care of them. And I salute the good doctor and his wife for their concern. I can only hope that my children will do as well.

I do have a slippery slope problem and it does seem to me that the remedy is really against the seller not against changing the rules. I am familiar with the case that Mr. Herdman cites and I think that the reasoning on the cell tower is that in order to provide services in that kind of a hilly area part of Santa Fe the laws of physics required that the cell tower be at a certain height. So it was not self-inflicted. The laws of physics really aren't self-infliction. It was the technology that required that and the topography that required that height.

Were we to deny the variance my understanding is the consequence would be probably that you would go back to looking at one of the other houses you had looked at and maybe didn't like as much but there certainly are plenty of houses in the Santa Fe area that have a house and a guest house and a single flat guest house and would suit – it would be inconvenient. It would be infuriating. I can certainly understand that and I think we have to weigh that but I don't see that the Code really allows us to make an exception because the seller misrepresented the facts to you. And, where the solution is really unfortunately to move. I mean one could question the wisdom of buying a house

up that steep, steep hill with elderly parents that may well need ambulance and it does snow here and such. But that was the choice you made but these are other issues. Thank you.

CHAIR GONZALES: Thank you. Mr. Anaya.

MEMBER ANAYA: Mr. Chair, I'd like to make a recommendation, please, if I may. And I'd like to make a recommendation stating that with staff's conditions as amended and the Fire Department's pre-inspection of a fire plan and that's working out with the Fire Department and the owners as communicated earlier in this discussion.

CHAIR GONZALES: Do you want to put that in the form of a motion?

MEMBER ANAYA: I thought I just did.

CHAIR GONZALES: You said recommendation.

MEMBER ANAYA: Oh, I'm sorry. I'd like to make a motion. I apologize.

CHAIR GONZALES: Go ahead, Mr. Anaya.

MEMBER ANAYA: I'd like to make a motion to approve with staff's conditions as amended and the Fire Department's pre-inspection and the fire plan worked out through the Fire Department and the owners.

MEMBER VALDEZ: I second.

CHAIR GONZALES: Thank you. We have a motion and a second. Do we have discussion? You know what I'd like to do is to say that it was a very compelling argument made. This committee is very sympathetic to the situation. I along with Mr. Katz think that the person really responsible for this was the seller. They're the ones that put a monkey wrench into everybody's lives. You know, it comes before the committee and you're trying to ask the committee to undo something that was the fault of the sellers. The thing is this committee is just a recommending body and this case will go to the BCC and that will be scheduled with staff. Seeing that there are no other comments, we have a motion and second.

The motion tied by 3-3 vote as follows: Voting for were Members Anaya, Valdez and Chair Gonzales; voting against were Members Katz, Martin and Drobnis.

CHAIR GONZALES: Ms. Vicki, in this situation we have a tie; what is your recommendation?

MS. LUCERO: Mr. Chair, we will be bringing this case back to the next meeting when all of the members are present and it will be for a vote only.

CHAIR GONZALES: Mr. Herdman, the determination of this case was a three-three tie and this case will come to the next meeting when we have seven members present. So thank you very much.

V. APPROVAL OF THE MINUTES: October 18, 2012

The following corrections were offered: Page 3, first line: Member Martin not Martinez; Page 24, second line: choice not chose

Member Martin moved to approve the minutes as corrected. Her motion was seconded by Member Katz and passed by unanimous [7-0] voice vote.

VI. OLD BUSINESS

- A. CDRC CASE # V 12-5280 Kimberley Moseley Variance Kimberly Moseley, Applicant, (Rubin Katz, Ahern, Herdman & MacGillivray, P.A.) Frank Herdman, Agent, request a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 11 acres. The property is located at 24 South Cloudstone Drive, within Section 5, Township 16 North, Range 10 East, Commission District 4 [Deliberation and Vote Only]

Chair Gonzales recited the case caption and said this item is before the CDRC to break the tie from last month's meeting.

Member Katz moved to deny the application based on the reasons he outlined at the October 18 meeting – that it was the seller who misled the buyers. Member Drobnis seconded.

Member Anaya tendered a motion to approve the variance.

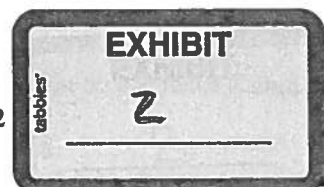
Deputy County Attorney Brown advised the Committee that would need to dispose of the first motion before considering Member Anaya's motion.

Member Anaya said he understood that the term "deliberation" in the agenda allowed the Committee to consider both approval and denial at the same time.

Deputy County Attorney Brown said only one motion can be considered at a time; however, the Committee members can voice their concerns.

A voice vote on the motion was taken and Chair Gonzales announced the motion to deny the variance passed by majority [4-3] vote as follows: Voting for the motion were Members Katz, Martin, DeAnda and Drobnis; voting against were Members Valdez, Anaya and Chair Gonzales.

Member Valdez said he had wanted to second Mr. Anaya's motion to approve the variance. Chair Gonzales said only one motion can be considered at a time and the motion to deny passed.





Member Anaya requested a revote by a show of hands. The revote revealed the results noted above.

Chair Gonzales advised the applicant that the CDRC is a recommending body and the BCC will make the final decision.

## **VII. NEW BUSINESS**

- A. CDRC CASE # V 12-5320 Jytte Lokvig Variance Jytte Lokvig, Applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow a Land Division of 10.25 acres into two lots; one lot consisting of 7 acres and one lot consisting of 3.25 acres. The property is located at 213 and 228 Ojo de la Vaca Rd., within Section 24, Township 15, North, Range 10 East, Commission District 3**

Miguel Romero, Case Manager, presented his staff report as follows:

"The Applicant requests a variance of Article III, Section 10, Lot Size Requirements, of the Land Development Code to allow a Land Division of 10.25 acres into two lots, one lot consisting of 7 acres and one lot consisting of 3.25 acres. The subject lot was created in 1976, and is recognized as a legal non-conforming lot. There are two dwelling units and a shed on the property. One residence is currently occupied by the applicant and the other residence is currently being rented.

"The residence that is currently being rented was permitted in July 2002, Permit 02-1012. At the time the permit was issued a site plan was submitted showing only the proposed structure and did not indicate any other structures located on the property. No permits have been found by staff for the other existing residence on the property.

"The Applicant states that when she first purchased the property, Ojo de la Vaca Road, which is County Road 51 was no more than a bumpy trail with minimal traffic, which didn't impede the use of their property. As population grew in the area so did the traffic. When Santa Fe County improved Ojo de la Vaca Road it included paving and widening of the road approximately twice the size of what it was. Due to the expansion of Ojo de la Vaca Road it has made the division of the land more pronounced and essentially split the lot into two unconnected entities."

Mr. Romero confirmed for Member Katz that the documentation submitted for the building permit for the rented residence did not show the existing structure the applicant lives in. The hydrological zone the property is located within has a minimum 160 acres per dwelling unit with a possible reduction to minimum 40 acres. Mr. Romero said according to the applicant the first dwelling was semi-complete when the applicant purchased the property.

# Rubin Katz Ahern Herdman & MacGillivray, P.A.

A Professional Corporation | ATTORNEYS AT LAW

Janice M. Ahern  
Frank T. Herdman  
Leonard S. Katz  
Melanie E. MacGillivray  
James S. Rubin

James B. Alley, Jr.  
*Of Counsel*

Colin T. Cameron  
Jenny F. Kaufman  
Nancy V. Nieto

August 28, 2012

Ms. Penny Ellis-Green, Interim Director  
Growth Management Administration  
Santa Fe County  
102 Grant Avenue  
Santa Fe, New Mexico 87501

**Re: Application for Variance  
24 South Cloudstone Drive, Santa Fe, New Mexico  
Dr. Kimberly Moseley and Dr. Bill Dougherty**

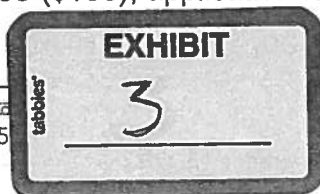
Dear Ms. Ellis-Green:

Please accept this application for a variance, which I am submitting on behalf of Dr. Kimberly Moseley and Dr. Bill Dougherty. Dr. Moseley and Dr. Dougherty are requesting a variance from those provisions in the Santa Fe County Land Development Code ("Code") that prohibit a full kitchen in the guest house that is part of the property located at 24 South Cloudstone where they reside. This would include a variance from the applicable provisions of Article III, Section 10 of the Code. They also request, as part of this application, that they be relieved of the written commitment that was made by the prior owner, unbeknownst to them, that the kitchen in the guest house be removed approximately 13 years ago. See Exhibit A. They are requesting the foregoing in order that the guest house can be used as a separate dwelling, as explained below.

## I. Application Materials

This letter constitutes the detailed letter of intent required as part of the application materials. I also enclose the following materials and payment with this letter:

1. Completed application form
2. Completed rural addressing form
3. Site plan (original site plan from construction of main house)
4. Recorded warranty deed
5. Recorded survey plat
6. Septic permit
7. Proof of taxes paid
8. Vicinity map (included on enclosed site plan)
9. \$300 for variance fee (\$150), application fee (100) and two public board notices (\$25 each)



## Rubin Katz Ahern Herdman & MacGillivray, P.A.

Ms. Penny Ellis-Green  
August 28, 2012  
Page 2

Per Wayne Dalton, the well permit for the property is already on file with the County.

If this application is incomplete in any respect, please advise me immediately. Also, please feel free to contact me if there are any questions regarding this application. My clients request that this matter be placed on the agenda for the October 18, 2012 meeting of the County Development Review Committee.

I offer the following information in support of this request:

### **II. Background**

Dr. Moseley purchased the property at 24 South Cloudstone from Dale Carmichael and Betsy Lorton in December of 2010. At that time, Dr. Dougherty had taken a job to work as a trauma surgeon at CHRISTUS St. Vincent Hospital, which required him to move to Santa Fe from out of state. Dr. Moseley subsequently moved to Santa Fe in 2012, also to work as a trauma surgeon at the hospital. As part of that move, they engaged in a search for a home in the Santa Fe area that would include a separate guest house in which Dr. Dougherty's elderly parents could reside full time and close by so that Dr. Moseley and Dr. Dougherty could care for them. Dr. Dougherty's parents were living in California at the time, and they would relocate to Santa Fe as part of this plan.

As part of their search for a home, Dr. Moseley and Dr. Dougherty were shown the property at 24 South Cloudstone, which included a main house and a separate detached guest house that included a full kitchen. The guest house was advertised and represented to them as including the full kitchen and being acceptable and permitted for full time occupancy. The sellers were made fully aware of my clients' plans to use the guest house as a residence where Dr. Dougherty's parents would reside. Dr. Moseley and Dr. Dougherty concluded that this property fit their plans, and they proceeded to purchase it with the expectation and understanding that the guest house, as advertised and shown to them, included a full kitchen, which was obviously an important factor in their decision to purchase the property.

Shortly after closing on the purchase, Dr. Moseley and Dr. Dougherty installed various fixtures and other amenities in the guest house, at substantial cost, in order to make the guest house accessible and safe for Dr. Dougherty's elderly parents. In March of 2011, Dr. Dougherty's parents relocated from Los Angeles and took occupancy of the guest house.

In February of this year, Dr. Moseley and Dr. Dougherty were shocked to receive a Notice of Violation from Santa Fe County in which they were informed that the guest house was in violation of the County's Land Development Code because the full kitchen had not been removed from that structure. They have since learned that the prior owner

## Rubin Katz Ahern Herdman & MacGillivray, P.A.

Ms. Penny Ellis-Green  
August 28, 2012  
Page 3

constructed the guest house before the main house and that when the main house was subsequently built, Mr. Carmichael and Ms. Lorton signed a letter in 1999 in which they agreed that the kitchen in the guest house would be removed within six months after the completion of the main house. See attached Exhibit A. This commitment was not made known to my clients prior to their purchase of the property. To the contrary, the property was advertised, represented and sold as having a guest house that included the full kitchen that was in place at the time they purchased it.

Thus, Dr. Moseley and Dr. Dougherty have purchased this property at substantial cost, have made improvements to the guest house to accommodate Dr. Dougherty's elderly parents, and have relocated Dr. Dougherty's elderly parents from California to Santa Fe and into the guest house, in order that Dr. Moseley and Dr. Dougherty could care for them, only to discover that the prior owners made a commitment that completely undermines the very reason they did all of the foregoing.

For these reasons, Dr. Moseley and Dr. Dougherty are requesting a variance from the density restrictions under the Code and a release from the letter signed by the prior owners in 1999, so that they may use and enjoy this property in the manner they expected, i.e., as a residence where they can reside close to their jobs at the hospital while living close to and caring for Dr. Dougherty's elderly parents.

### **III. Variance Criteria**

The following additional information is offered to demonstrate that the applicants meet the criteria under Article II, Section 3 of the Code for the granting of the requested variance:

#### ***1. Strict compliance with the Code will result in extraordinary hardship to the applicants.***

For the reasons explained above, strict compliance with the Code will result in extraordinary hardship to Dr. Moseley and Dr. Dougherty because they have purchased the property, including the guest house, with the understanding and expectation that the guest house was suitable as a place where Dr. Dougherty's parents could reside in order that Dr. Moseley and Dr. Dougherty could care for them. They have also expended a substantial amount of money by installing fixtures and other amenities in order to make the guest house safe and accessible to Dr. Dougherty's parents. They have also paid for a property that included a guest house with a full kitchen.

#### ***2. The extraordinary hardship results from unusual topography or other non-self-inflicted conditions or that the conditions would result in inhibiting the achievement of the purposes of the Code.***

Rubin Katz Ahern Herdman & MacGillivray, P.A.

Ms. Penny Ellis-Green  
August 28, 2012  
Page 4

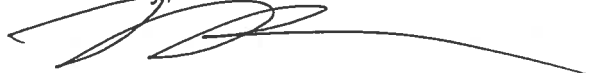
In this case, the prior owners failed to remove the kitchen from the guest house after completion of the main structure. Their failure to do so and their misrepresentation that the guest house included a full useable kitchen and would be suitable as a residence for Dr. Dougherty's elderly parents are all conditions over which Dr. Moseley and Dr. Dougherty had no control. As a result, the extraordinary hardship they would experience if a variance is not granted arises from non-self-inflicted conditions.

***3. The granting of the requested variance will not result in conditions that are injurious to health and safety.***

The granting of a variance in this case, which would permit the existing full kitchen to remain in the guest house and the continued use and occupancy of the guest house by Dr. Dougherty's parents, will not result in any conditions that are injurious to health and safety. To the contrary, in this case, allowing the kitchen will also allow Dr. Dougherty's elderly parents to reside at the guest house in close proximity to Dr. Moseley and Dr. Dougherty and thereby receive the close care and attention that they require. Additionally, the guest house with the existing full kitchen has been in existence since approximately 1993. The main house was built in or about 1999. Thus, the guest house, with the full kitchen, together with the main house, have both been on the property for approximately 13 years. To the applicant's knowledge, there has not been any injury to health or safety arising from the presence of both the main house and the guest house with a full kitchen on the property during that period of time.

Thank you for your attention to this matter. Please let me know if there is any other information that you require in order to process this application.

Sincerely,



FRANK T. HERDMAN

Attachments

cc: Dr. Kimberly Moseley  
Dr. Bill Dougherty

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

9.2 Multiple use projects shall calculate cumulative parking needs for each type of use in the project to be developed.

9.3 Minimum size of parking space shall be 300 square feet which includes the parking stalls and aisles.

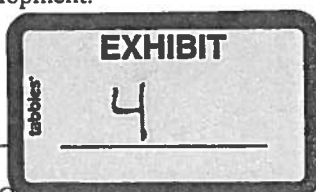
9.4 Commercial, industrial, other non-residential and large scale residential uses shall provide for handicap parking.

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

## SECTION 10 - LOT SIZE REQUIREMENTS

### 10.1 Relationship of Lot Sizes to Water Policies

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



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

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

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

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

BASIN FRINGE ZONE: Same as Basin Zone.

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

MOUNTAIN ZONE: Same as Homestead Zone.

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

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

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

## 10.2 Calculation of Minimum Lot Size

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

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

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

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

Where:

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

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

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

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

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

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

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



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

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

#### 10.2.2 Calculation of Use

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

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

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

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

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

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

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

10.2.3 Special Standards for Calculation of Use for Small Scale Commercial Development

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

10.2.4 Special Standards for Calculation of Water Availability for Metropolitan Areas

Special standards which set forth limitations on water availability for metropolitan areas shown in Code Map 12, 14, and 15 are set forth in this Sub-section.

a. Standard Values of Water Availability

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

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

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

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

b. Adjustments for Water Conservation

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

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

10.3 Exceptions to Minimum Lot Size Requirements

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

#### 10.3.1 Metropolitan Area - Community Water Systems

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

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

#### 10.3.2 Agricultural Areas

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

#### 10.3.3 Traditional Communities

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

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

#### 10.3.4 Urban Areas

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

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

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

#### 10.4 Density Transfer

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

### SECTION 11 - IMPORTING OF WATER

#### 11.1 Location Requirements

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

2.5 Zoning

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

2.6 Subdivisions

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

2.7 Other Requirements

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

**SECTION 3 - VARIANCES**3.1 Proposed Development

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

3.2 Variation or Modification

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

3.3 Granting Variances and Modifications

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

3.4 Height Variance in Airport Zones

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











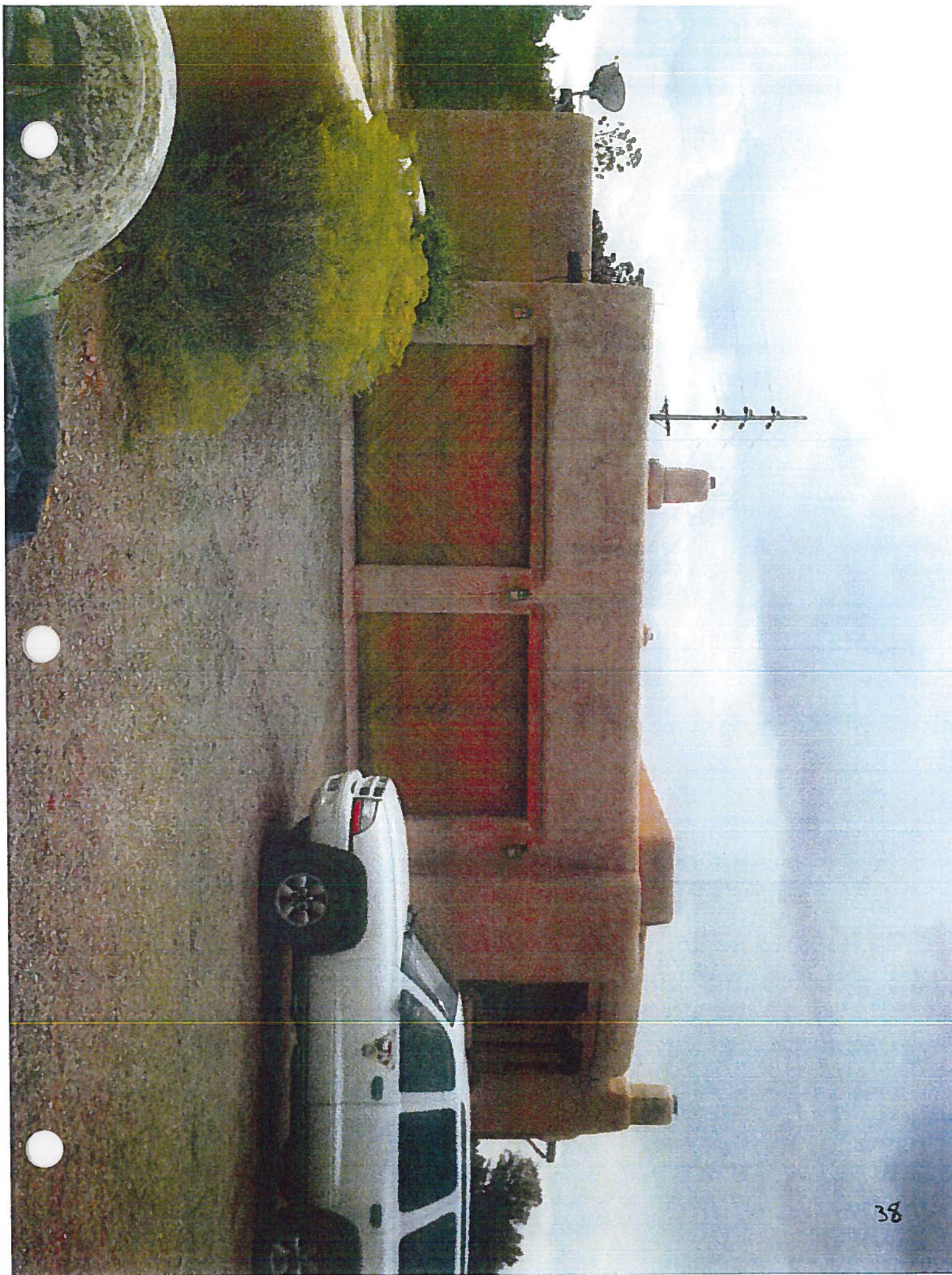






































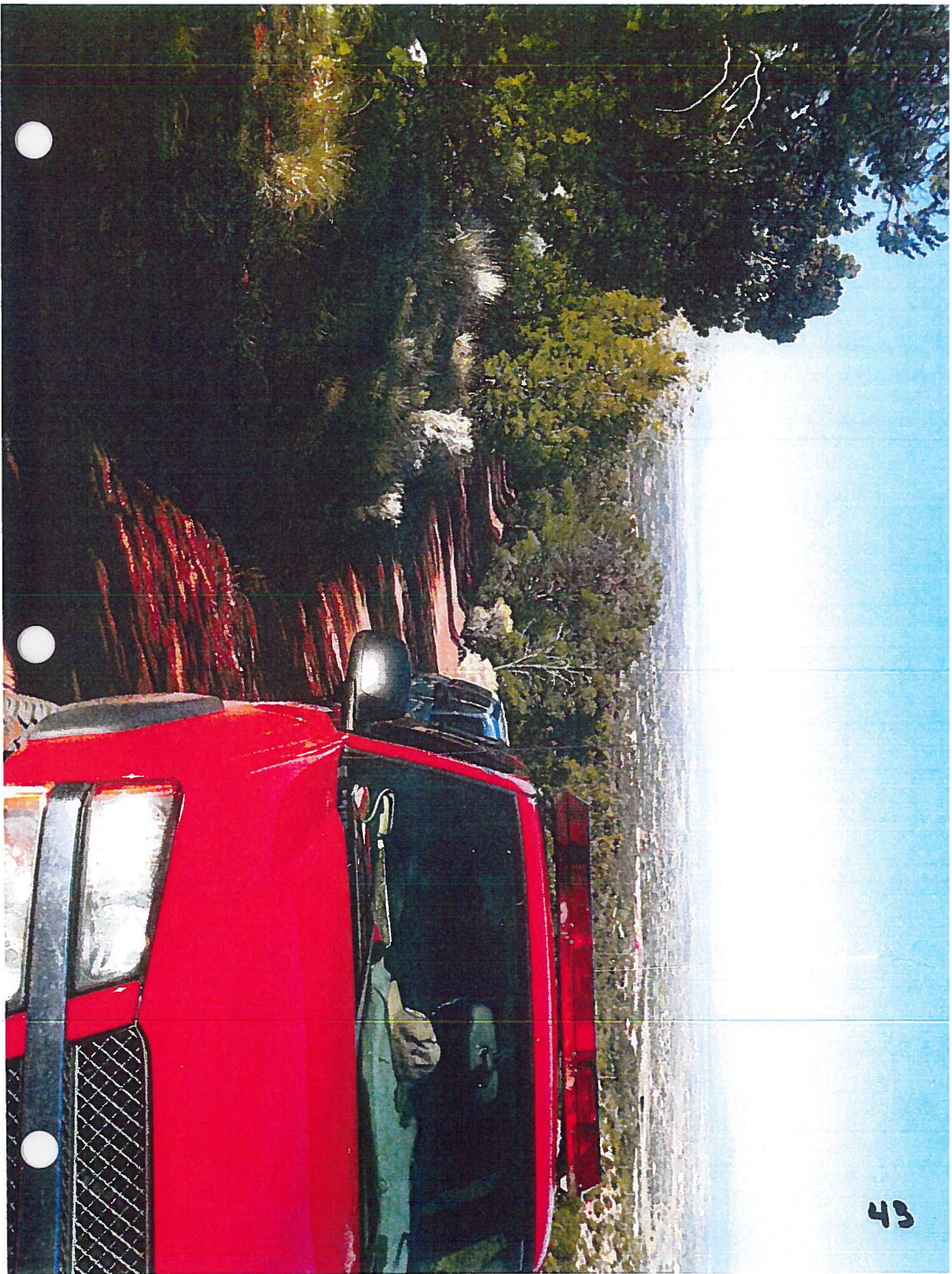








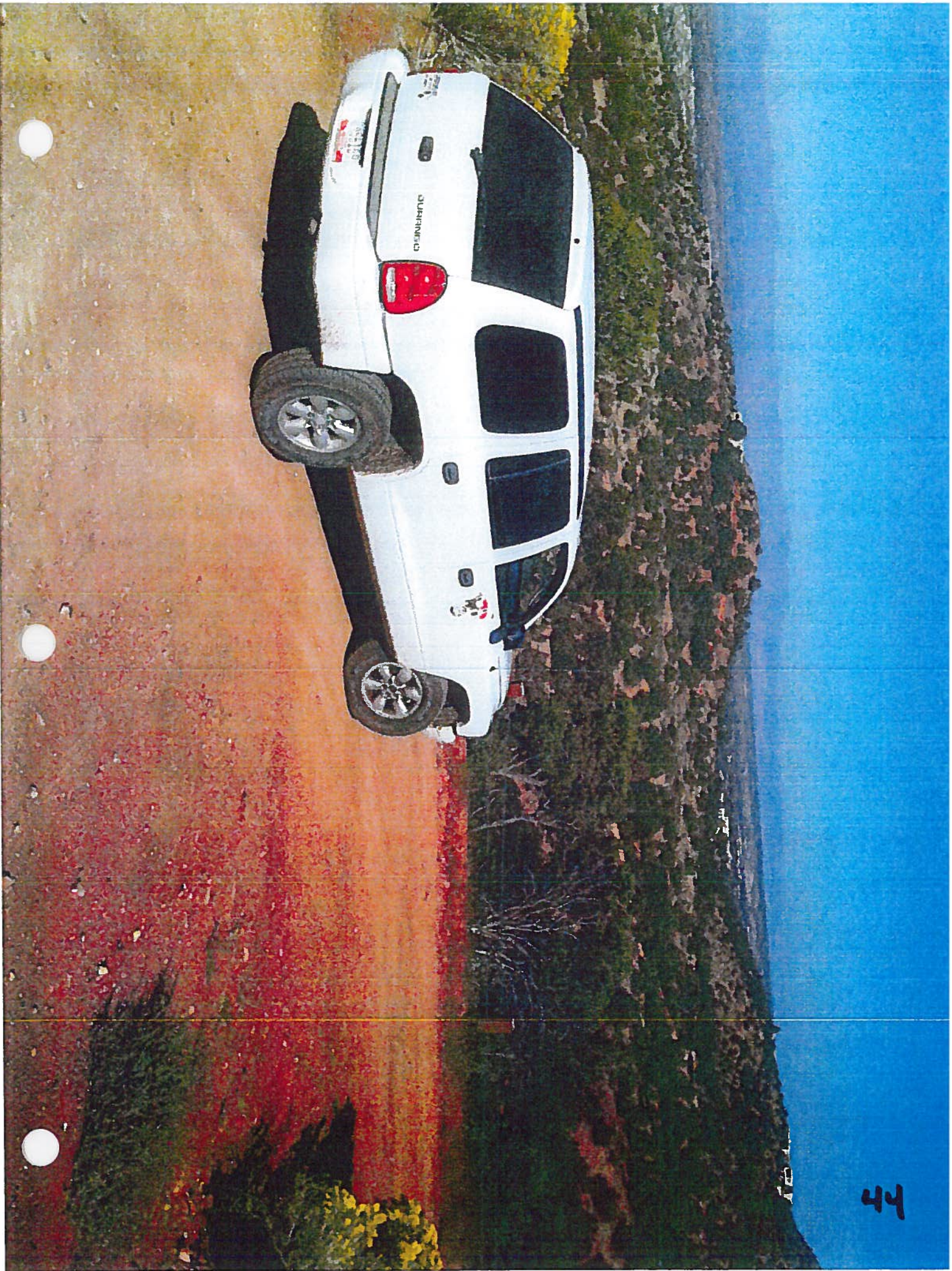
























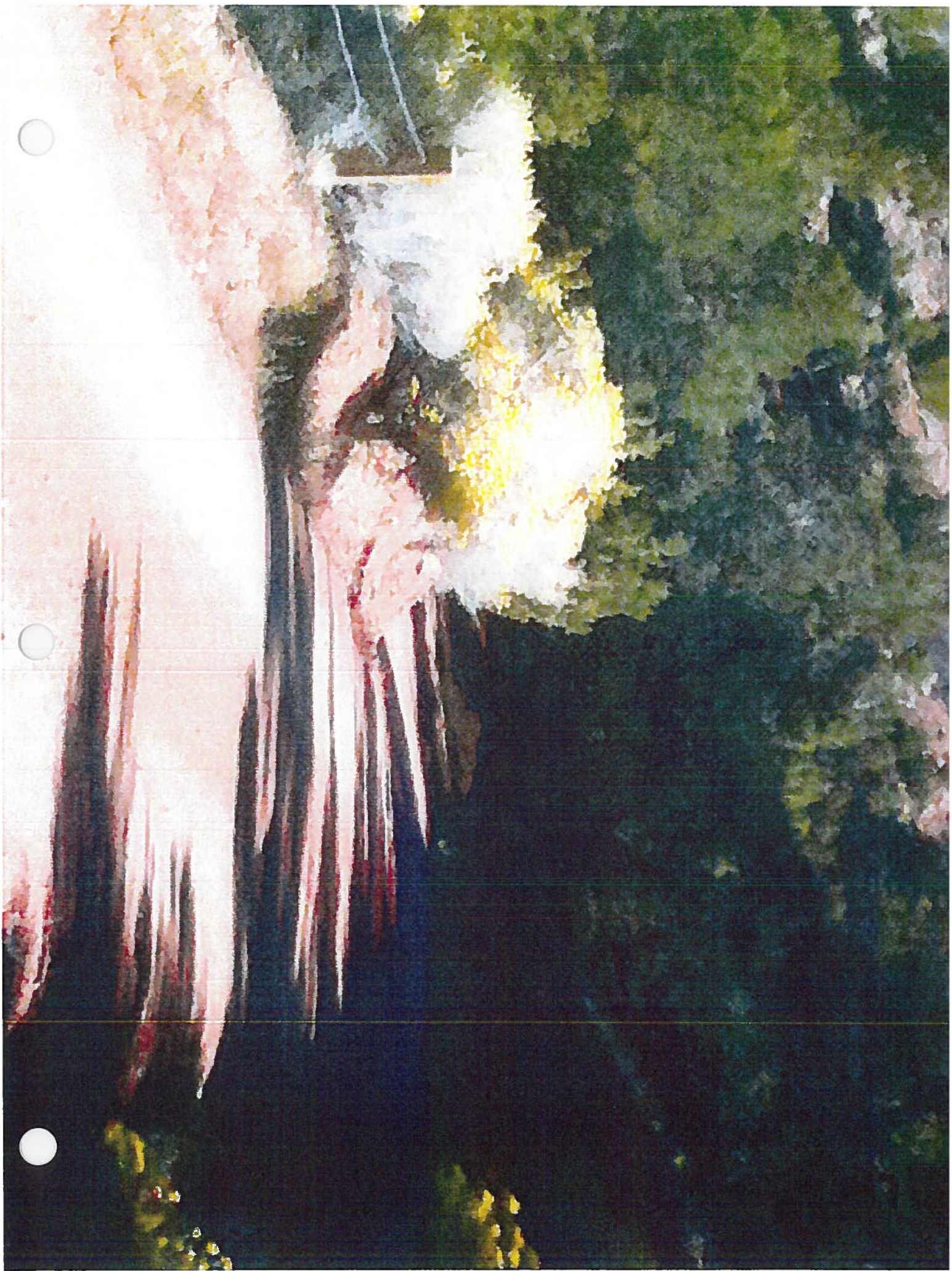












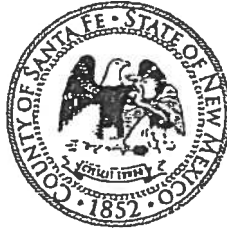




Marcos P. Trujillo  
Commissioner, District 1

Paul Duran  
Commissioner, District 2

Javier M. Gonzales  
Commissioner, District 3



Richard D. Anaya  
Commissioner, District 4

Joe S. Grifé, Jr.  
Commissioner, District 5

David Wolf  
County Manager

January 22, 1999

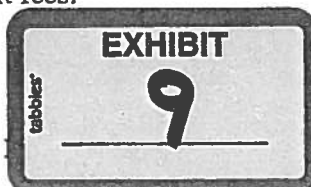
Dale B. Carmichael  
Betsy S. Lorton  
Rt. 7, Box 129-9  
Santa Fe, NM 87506

RE: Permit Application for Home

Dear Dale and Betsy:

Santa Fe County has completed review of your application for a development permit for home on Lot 23 of the Monte de Las Piedras Rosas Subdivision located in Section 5, T 15 N, R 10 E, N.M.P.M., Santa Fe County, New Mexico. The permit has been approved with the following conditions:

- Must install a water meter prior to final inspection.
- Outdoor fireplace must have a spark arrestor
- No outdoor floodlights will be permitted, all outdoor lighting shall be shielded.
- Attached water restrictions must be signed and notarize, as also the attached deed; both will have to be recorded prior to granting issuing the building permit (The deed is from you to you and duplicates your original deed which a copy has been enclosed. The deed must be recorded with the water restrictions so that the restrictions can be found by anyone doing a title search on your property.
- Lighting rods and fire suppression plans were not shown in the drawings. Both must be installed per applicable codes.
- Call for an inspection of the fire suppression system prior to covering piping (i.e. before drywall).
- County will conduct periodic inspections, to verify compliance.
- All impervious surface drainage shall be directed to retention basins.
- All disturbed areas shall be re-seeded.
- Applicant shall request a final inspection upon completion of construction.
- Pay all applicable permit fees.



- Kitchen must be removed from existing structure within 6 months of main house completion. The cook top stove and oven must be removed, but the dishwasher and refrigerator can remain

If you have any questions or comments please contact me at 986-6223. Thank you for your cooperation regarding this matter.

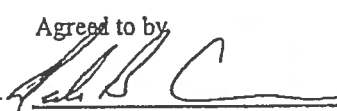
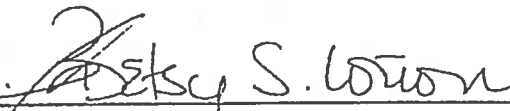
Sincerely,



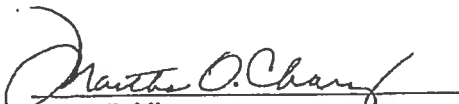
Oralynn Guerrerortiz, P.E.  
Development Review Division Director

cc: Rudy Garcia, Land Use Administrator  
Al Quintana, Building & Hydrology Division Director

Agreed to by

  1-25-99  
Dale Carmichael or Betsy Lorton Date

On this 25<sup>th</sup> day of January 1999, the foregoing instrument was acknowledged before me by the person(s) whose name(s) appear above.

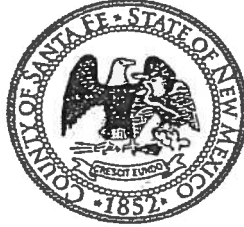
  
Notary Public

My commission expires 12/15/2001

Daniel "Danny Mayfield  
Commissioner, District 1

Virginia Vigil  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## Santa Fe County Fire Department Fire Prevention Division

### Official Submittal Review

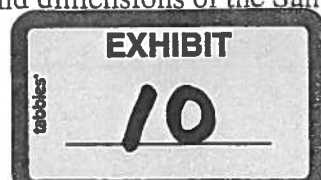
Date	Oct. 2, 2012		
Project Name	Moseley, Kimberly		
Project Location	24 S. Cloudstone Dr. T16; R10; S5		
Description	Variance; second dwelling density	Case Manager	Miguel Romero
Applicant Name	Kimberly A. Moseley	County Case #	V 12-5280
Applicant Address	24 S Cloudstone Drive Santa Fe, NM 87505	Fire District	Hondo
Applicant Phone	505-982-3610; Att. Frank Herdman		
Review Type	Commercial <input type="checkbox"/> Residential <input checked="" type="checkbox"/> Sprinklers <input type="checkbox"/> Hydrant Acceptance <input type="checkbox"/> Master Plan <input type="checkbox"/> Preliminary <input type="checkbox"/> Final <input type="checkbox"/> Inspection <input checked="" type="checkbox"/> Lot Split <input type="checkbox"/> Wildland <input type="checkbox"/> Variance <input checked="" type="checkbox"/>		
Project Status	Approved <input type="checkbox"/> Approved with Conditions <input type="checkbox"/> <u>Denial</u> <input checked="" type="checkbox"/>		

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

#### Summary of Review:

Per 1997 Uniform Fire Code, as submitted this plan is Denied because of the access slope in excess of 11%, turning radius on curves, no turnaround area at the residence for emergency vehicle operations.

- This driveway cannot meet the County standards of a minimum 14' wide driving surface and maximum 11% slope for fire apparatus access road. Driveway, turnouts and turnarounds need to be County approved all-weather driving surface of minimum 6" compacted base course or equivalent. (page #2)
- Due to the slope of the driveway and insufficient room at the top of the hill or in the driveway there is no place for creation of an area such as a cul-de-sac, K-type or hammerhead type turnaround for emergency vehicle purposes conforming to the access and turnaround requirements and dimensions of the Santa Fe County Fire Department. (page #2)



- As submitted, this driveway exceeds 11% maximum slope, has slopes as much as 19% and the curves in the driveway cannot conform to the radius requirements of a minimum 28' inside radius on 90 degree curves. (page #3)
- Prior to acceptance and upon completion of any permitted work, the Contractor/Owner shall call for and submit to a final inspection by this office for confirmation of compliance with the above requirements and applicable Codes. (page #3)

## Fire Department Access

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

### • Fire Access Lanes

*Section 901.4.2 Fire Apparatus Access Roads. (1997 UFC) When required by the Chief, approved signs or other approved notices shall be provided and maintained for fire apparatus access roads to identify such roads and prohibit the obstruction thereof or both.*

### ▪ Roadways/Driveways

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

*1997 Uniform Fire Code Article 9, Section 902.2.2.2. Surface; Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be provided with a surface so as to provide all-weather driving capabilities.*

This driveway cannot meet the County standards of a minimum 14' wide driving surface and maximum 11% slope for fire apparatus access road. Driveway, turnouts and turnarounds need to be County approved all-weather driving surface of minimum 6" compacted base course or equivalent.

Due to the slope of the driveway and insufficient room at the top of the hill or in the driveway there is no place for creation of an area such as a cul-de-sac, K-type or hammerhead type turnaround for emergency vehicle purposes conforming to the access and turnaround requirements and dimensions of the Santa Fe County Fire Department.

### ▪ Street Signs/Rural Address

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



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

Properly assigned legible rural addresses are posted and maintained.

- **Slope/Road Grade**

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

As submitted, this driveway exceeds 11% maximum slope, has slopes as much as 19% and the curves in the driveway cannot conform to the radius requirements of a minimum 28' inside radius on 90 degree curves.

- **Restricted Access/Gates/Security Systems**

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

To prevent the possibility of emergency responders being locked out, access gates shall be operable by means of a key or key switch, which is keyed to the Santa Fe County Emergency Access System (Knox Rapid Entry System). Details and information are available through the Fire Prevention office.

## **Automatic Fire Protection/Suppression**

Due to the location of this/these residence(s), the lack of water and the possibility of them being made inaccessible due to the condition of the single road access in inclement weather, for life safety and property protection this office highly recommends the installation of an Automatic Fire Suppression system meeting NFPA 13D requirements and suggests the homeowner contact their insurance carrier to find their minimum requirements. Assistance in details and information are available through the Fire Prevention Division.

## **General Requirements/Comments**

- **Inspections/Acceptance Tests**

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

- **Permits**

As required

## Final Status

Recommendation for Development Plan **DENIAL** as submitted.

*Tim Gilmore, Inspector*



Code Enforcement Official

10-04-12

Date

Through: David Sperling, Chief/Fire Marshal

File: DevRev/H/Moseley/100312

Cy:     Applicant  
         Hondo District Chief  
         Buster Patty, Capt., Fire Prevention Div. *BP*

Official Submittal Review

4 of 4

55

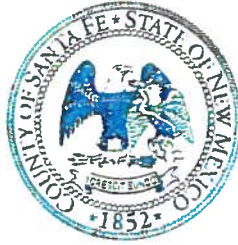




Daniel "Danny" Mayfield  
Commissioner, District 1

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

**DATE:** February 12, 2013

**TO:** Board of County Commissioners

**FROM:** Jose E. Larrañaga, Commercial Development Case Manager

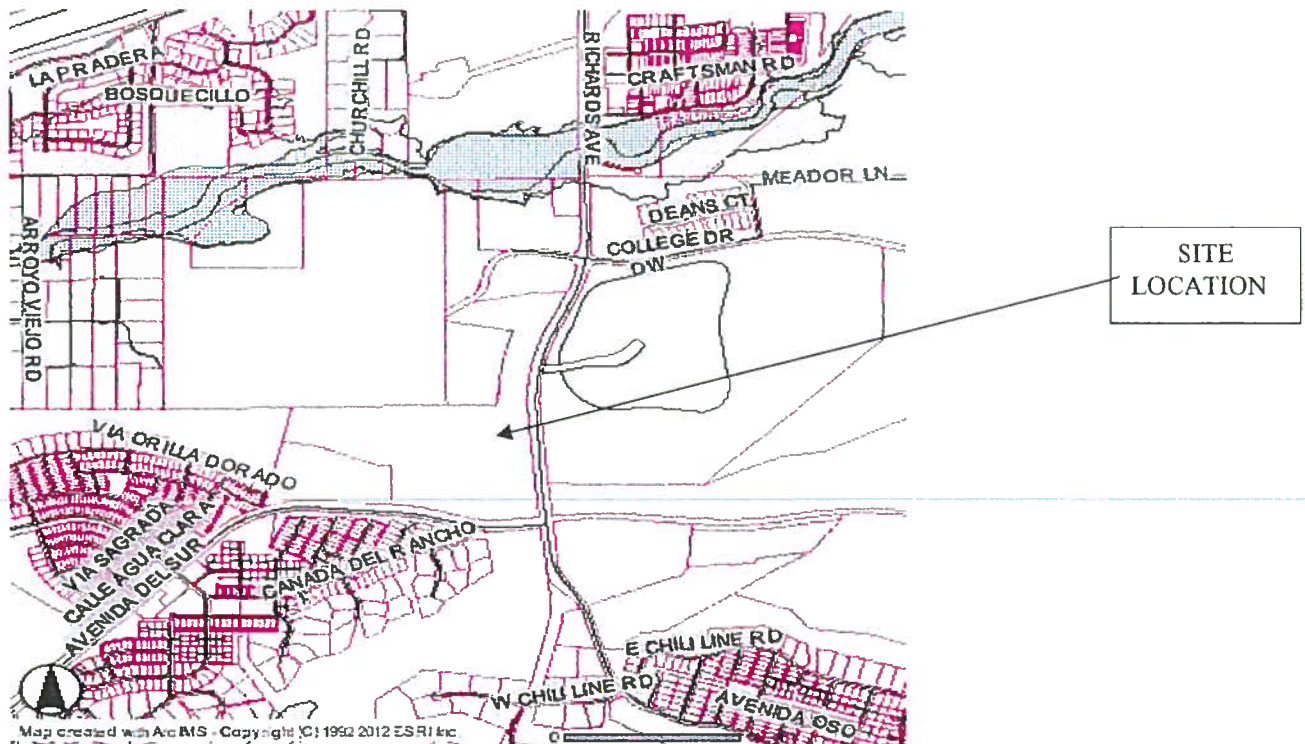
**VIA:** Penny Ellis-Green, Land Use Administrator *PEG*  
Vicki Lucero, Building and Development Services Manager *VL*  
Wayne Dalton, Building and Development Services Supervisor *WD*

**FILE REF.:** BCC CASE # MIS 12-5420 College Park Master Plat Authorization

**ISSUE:**

Univest-Rancho Viejo, LLC, Applicant, Jim Seibert, Agent, request Master Plat Authorization to allow for the creation, of a maximum, of twelve Mixed Use lots on 76.78 acres. The property is located on the corner of Richards Avenue and Avenida del Sur, in the Community College District, within Section 20, Township 16 North, Range 9 East, (Commission District 5).

**Vicinity Map:**





## **SUMMARY:**

The College Park site consists of 82.78 acres. Currently Bicycle Technologies International (BTI) is being constructed on an existing 6 acre lot within the College Park. Master Plan approval for 75.78 acres of this site was granted by way of the Village West Master Plan. 49.65 acres of those 75.78 acres are designated as an Employment Campus and Center within the Community College District. A Master Plan Amendment, of the Village West Master Plan, will be submitted by the Applicant to include proposed uses and to incorporate a 7 acre parcel, which lies outside of the approved Village West Master Plan, to the College Park.

The Applicant requests Master Plat Authorization pursuant to Article V, Section 5.6.1 of the County Land Development Code which states: "In commercial, industrial or high density residential subdivisions which are to be developed in phases or in cases where a condominium proposes to convert to a subdivision, the Board may delegate authority to the Land Use Administrator to administratively approve a specific lot layout plan when it determines that due to the size, scale or marketing requirements that approval of a plat with a specific lot layout is in the best interest of the County and developer".

If the Board approves the petition, it shall direct that the development request (Preliminary and Final Plat) be submitted to the County Development Review Committee. After such a delegation is made, the County Development Review Committee and Board shall establish development standards applicable to the subdivision as authorized by the Code and other applicable ordinances and laws, establish the maximum number of lots to be permitted, intensity of use, and required improvements, and may then approve both the Preliminary and Final Plat which will be known and designated as a Master Plat.

**This application was submitted on November 20, 2012.**

**Growth Management staff has reviewed this project for compliance with pertinent Code requirements and finds the following facts to support this submittal: the Village West Master Plan was approved by the Board of County Commissioners; the Application is in compliance with the Community College Ordinance (Ordinance 2000-12); the Application meets code criteria to allow a Master Plat Authorization pursuant to Article V, Section 5.6. of the Land Development Code.**

### **APPROVAL SOUGHT:**

Approval of Master Plat Authorization to allow the Land Use Administrator the authority to administratively approve a specific lot layout plan on 76.78 acres.

### **GROWTH MANAGEMENT AREA: SDA-1**

### **STAFF RECOMMENDATION:**

Staff recommends approval of Master Plat Authorization to allow for the creation, of a maximum, of twelve mixed use lots on 76.78 acres.



**EXHIBITS:**

- 1- Letter of Request
- 2- Village West Master Plan
- 3- Proposed Lot Layout
- 4- Article V, Section 5.6.
- 5- Community College Zoning Maps
- 6- Ariel of Site



**JAMES W. SIEBERT  
AND ASSOCIATES, INC.**

---

**915 MERCER STREET \* SANTA FE, NEW MEXICO 87505**

**(505) 983-5588 \* FAX (505) 989-7313**

**[jim@jwsiebert.com](mailto:jim@jwsiebert.com)**

November 20, 2012

Vicki Lucero  
Building and Development Services Section Manager  
P.O. Box 276  
Santa Fe, NM 87504

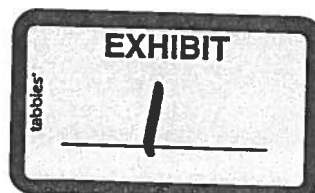
Re: Administrative Plat authorization for College Park

Dear Ms. Lucero:

On behalf of Univest-Rancho Viejo LLC, I am requesting consideration by the Board of County Commissioners for approval of a master plat authorization to allow for an administrative plat to be reviewed and approved by the Land Use Administrator pursuant to Article V section 5.6 of the Santa Fe County Land Development Code for College Park. A portion of this property had already received master plan approval through the Village West Master Plan by the County Commission at their meeting of April 11, 2006. Bicycle Technologies International (BTI) has located within College Park.

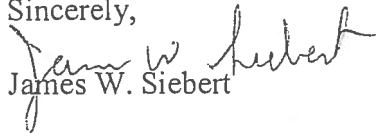
BTI has proven that it is essential to have some flexibility in the creation of lots within the Park. It is impossible to anticipate market demand and the Administrative Plat procedure allows lots to be created administratively as there is an actual user for the property. Attached as Exhibit A, is a description of College Park relative to the Community College, Interstate 25 and other geographic features in the area. Exhibit B is a description of the lots proposed within College Park. An application for this same area will be submitted to the County for an amended master plan. If the administrative plat request is approved by the County Commission the County Land Use staff will have the authority to modify the configuration of the lots to suit the requirements of the prospective lot purchaser. The development of the Park will have to take place in conformance with the approved and amended master plan.

URV 2012  
AdminReviewreq



Please place this request on the next available agenda of the Board of County Commissioners.

Sincerely,

  
James W. Siebert

Xc: Warren Thompson  
Tom Lowe

~~offer of dedication. Upon full conformity with County road construction standards, the roads may be accepted for maintenance by the County. Acceptance of offers of dedication on a summary review plat shall not be effective until the summary review plat is filed in the office of the County Clerk or a resolution of acceptance by the Board is filed in that office. Maintenance of public dedications require a separate action of the Board pursuant to Section 8.1.9 of this Article.~~

~~5.5.10 A copy of the summary review plat shall be provided to every purchaser, lessee, or other person acquiring an interest in the subdivided land prior to sale, lease or other conveyance~~

~~5.5.11 Advertising. The advertising requirements covering the sale, lease, or other conveyance of subdivided land provided in Section 5.4 of this Article V shall be applicable to summary review plats.~~

## 5.6 Administrative Approval of Lot Layout

5.6.1. Procedure. In commercial, industrial or high density residential subdivisions which are to be developed in phases or in cases where a condominium proposes to convert to a subdivision, the Board may delegate authority to the Land Use Administrator to administratively approve a specific lot layout plan when it determines that due to the size, scale or marketing requirements that approval of a plat with a specific lot layout is in the best interest of the County and developer. Before seeking approval of a plat, the developer shall first file a petition with the Board requesting that it be permitted to obtain approval pursuant to this Section. If the Board approves the petition, it will direct that the development request be submitted to the County Development Review Committee. Before final plat approval, the Board may rescind its intent to delegate if it determines that such delegation is not in the best interest of the County.

5.6.2 Master Plats. After such a delegation is made, the County Development Review Committee and Board shall establish development standards applicable to the subdivision as authorized by the Code and other applicable ordinances and laws, establish the maximum number of lots to be permitted, intensity of use, and required improvements, and may then approve both the preliminary and final plat which will be known and designated as a master plat. The master plat and all subsequently filed plat amendments shall be filed with the County Clerk. The County Clerk is authorized to accept for filing amended "master plats" approved by a signed certificate of the Land Use Administrator stating that the master plat has been approved by the Board and County Development Review Committee pursuant to this Code Section and that he has been delegated authority to approve plat amendments establishing new lots.

5.6.3 Conformance. Once the authority is delegated, the Land Use Administrator will review lot layout proposals and may approve such proposals if they are consistent with the Code and General Plan, the development plan and plat approved by the Board and County Development Review Committee, sound planning principles, the County's master road plan with applicable County policies and ordinances, and with applicable laws. After administrative approval is made, a plat amending the master plat approved by the Board and County Development Review Committee shall be filed with the County Clerk, which amended plat shall include all lots previously approved.

History. 1980 Comp. 1980-6. Section 5.6 of Article V is added material by County Ordinance 1987-7.



