

Map of Property  
in Santa Fe County

Legend

- driveways
- Minor Roads
- Major Roads
- Parcels\_sde
- Section Lines

2011 FEMA Data

Draft Fema Data 2011

- 0.2 PCT
- A
- AE
- AO; D; X

2008 FEMA Data

- 500 Year
- 100 Year

1:2,400

1 inch represents 200 feet



WARNING:  
Two (2) foot contour data sets are  
NOT SUITABLE FOR ENGINEERING WORK  
These data are appropriate for  
PLANNING PURPOSES ONLY.

Orthophoto from 2008

Contour Interval 2 Feet

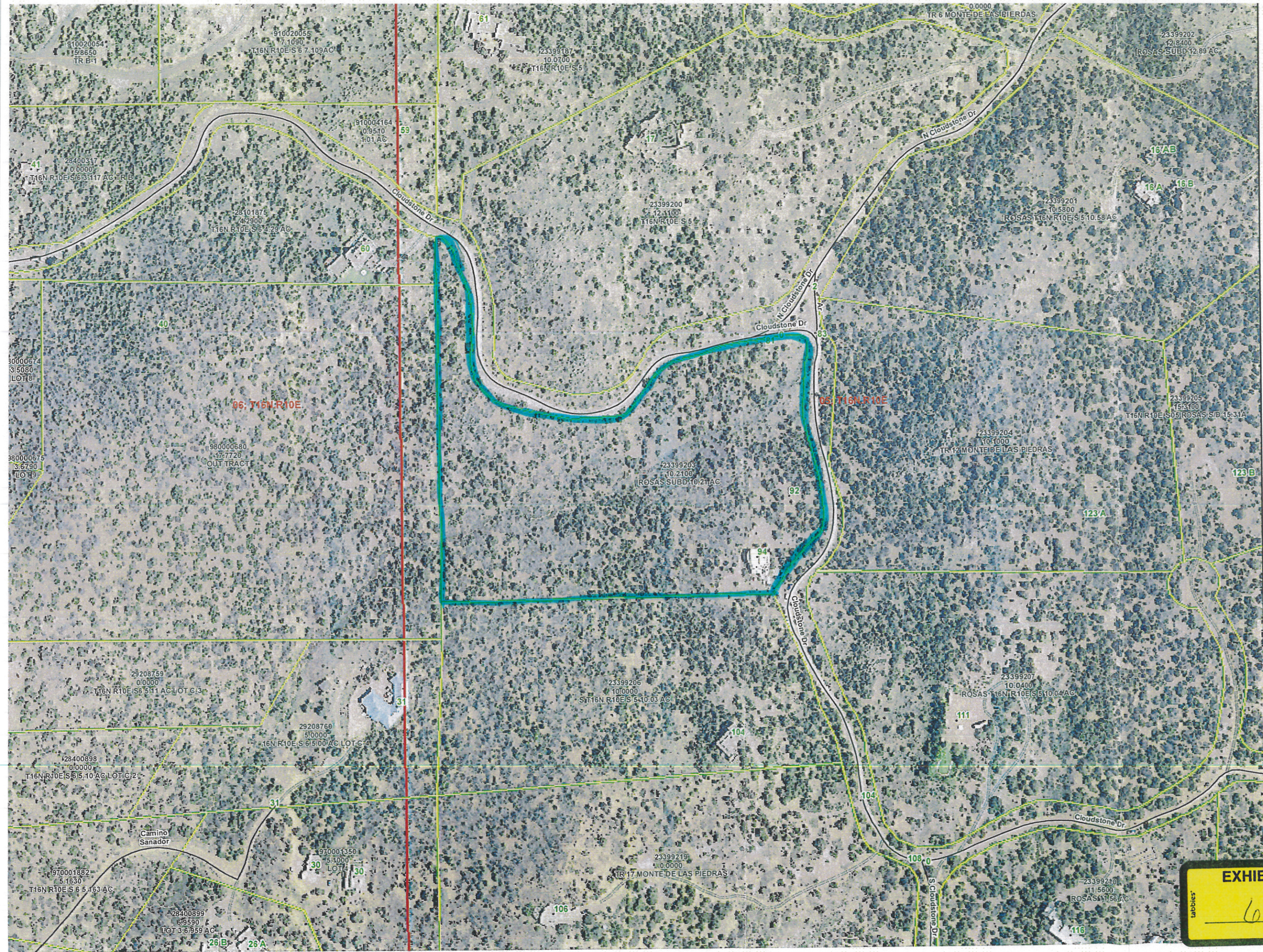
This information is for reference only.  
Santa Fe County assumes no liability for  
errors associated with the use of these data.  
Users are solely responsible for  
confirming data accuracy.



April 18, 2012

EXHIBIT

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February 15, 2012

Santa Fe County Land Use Department  
P. O. Box 276  
Santa Fe, NM 87504  
Attention: Mr. Wayne Dalton

Re: Permit No. 10-189, 94 Cloudstone Drive, Santa Fe, NM 87505 -- Guest house constructed under such Permit may have been converted into a second dwelling unit in violation of applicable density regulations under Santa Fe County Code

Ladies and Gentlemen,

I am the owner of the residence at 111 Cloudstone Drive, Santa Fe, NM. The purpose of this letter is to bring to your attention that, on information and belief, the owner of 94 Cloudstone Drive, Mr. Jay Jay Shapiro, has constructed, or plans to construct, a second dwelling unit on his property in violation of applicable density regulations under the Santa Fe County Code, and to request that your office make an inquiry into the matter.

Approximately two to three years ago Mr. Shapiro mentioned to me that he planned to build a guest house on his property at 94 Cloudstone Drive, and that he intended to live in the guest house while renting out his main house on the property to someone else. Shortly thereafter, Mr. Shapiro submitted architectural plans for a guest house to the Architectural Committee of our mutual homeowners association, Monte de las Piedras Rosas Homeowners Association (herein the "Homeowners Association"). Although the architectural plans did not include an area labeled as "kitchen", the plans included an area that was obviously intended for a future kitchen and was next to an area on the plans that was for dining. Given Mr. Shapiro's stated intention to live in the guest house while renting out the main house, the President of the Homeowners Association, Mr. Lee MacLeod, in connection with approving the architectural plans, sent a letter to Mr. Shapiro reminding him that under the Covenants of the Homeowners Association "no portion of any Lot (other than the entire Lot) shall be leased for any period" (i.e., a homeowner cannot rent out one structure on his/her Lot and live in another structure on his/her Lot). The Covenants also provide that "Lots may only be used for single family residential use" and that "all laws, orders, rules, regulations or requirements of any governmental agencies having jurisdiction thereof relating to any portion of the Property shall be complied with . . ."

Mr. Shapiro is currently nearing completion of his guest house. In January of this year, Mr. Shapiro approached me at a store wanting to talk about his guest house. He once again informed me that he wanted to live in his guest house while continuing to rent out his main house. I reminded Mr. Shapiro that to do so would violate the Covenants of the Association. I also informed Mr. Shapiro that it was my understanding that under applicable Santa Fe County density regulations, two dwelling units are not permitted on a property the size of his (approximately 10 acres). Mr. Shapiro responded that the County did not actively enforce such density regulations. I advised Mr. Shapiro that, if the decision were mine to make, I would not agree to his using his guest house as a second dwelling unit. However, I recommended to him that, if he wanted to seek a waiver of the Covenants, he should contact Mr. MacLeod, the President of the Homeowners Association. He subsequently met with Mr. MacLeod. He

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EXHIBIT

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informed Mr. MacLeod that he wanted a waiver so as either to live in the guest house himself or to rent the guest house to a second tenant, in both cases while continuing to rent out his main house to his existing tenant. Mr. MacLeod after consulting with the Association's counsel got back to Mr. Shapiro and advised him that it would not be possible to waive the Association's Covenants as requested by Mr. Shapiro without amending the Covenants themselves, and that the Association in no event could consider any amendment of the Covenants that would conflict with the density regulations of the County. Indeed, the provision in the Association's Covenants prohibiting a homeowner from renting out less than the entire Lot is in harmony with the density regulations of the County.

Based on the foregoing, it is apparent that Mr. Shapiro, in addition to the bathrooms shown on his architectural plans, either has already installed a kitchen in his guest house, or plans to do so. Otherwise, how else could he (or a second tenant) live in the guest house, while his main house is rented out to someone else?

If my understanding is correct that the density regulations of Santa Fe County would prohibit two dwelling units on Mr. Shapiro's property at 94 Cloudstone Drive and that the inclusion of both a kitchen and a bathroom in Mr. Shapiro's guest house would constitute such structure a second dwelling, I would appreciate your office making an inquiry to determine whether or not Mr. Shapiro's guest house is in compliance with applicable County density regulations, and, if not, taking appropriate remedial action.

If you have any questions or need additional information, please do not hesitate to contact me. In addition, Mr. Lee MacLeod, the President of the Homeowners Association, can confirm to you the substance of his communications with Mr. Shapiro. Mr. MacLeod lives at 26 North Cloudstone Drive, and his home phone is 982-8744 and his cell is 780-2870.

Finally, if your office pursues an inquiry into this matter, I would prefer that you not use my name. However, if it is necessary to use my name, you may do so.

Sincerely,



Michael H. Kerr  
111 Cloudstone Drive  
Santa Fe, NM 87505  
mkerr@kirkland.com  
312-339-3251

cc: Mr. Lee MacLeod  
President, Monte de las Piedras Rosas Homeowners Association  
26 North Cloudstone Drive  
Santa Fe, NM 87505

NB A-22

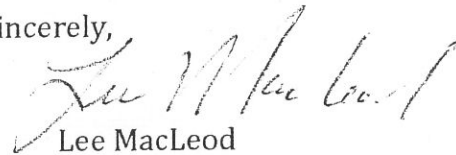
Mr. Wayne Dalton  
Land Use Planning Department  
Santa Fe County  
102 Grant Ave  
Santa Fe, New Mexico 87501

Re: Jay Jay Shapiro  
94 Cloudstone Drive  
Request for Variance

Dear Wayne,

I just wanted to correct an assertion in Karl Sommer's letter written on behalf of Jay Jay Shapiro. The Monte De Las Piedras HOA was never approached by Jay Jay Shapiro about adding a kitchen to his guest house and never approved a kitchen in Jay Jay's guest house. We simply do not have any rules that preclude a kitchen. The plans that we approved were the same plans that were approved by The Land Use Planning Department that did not show a kitchen.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lee MacLeod".

Lee MacLeod

President,

Monte De Las Piedras Home Owner's Association  
26 North Cloudstone Drive  
Santa Fe, NM 87505

NBA-23

Vicki Lucero

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From: Wayne Dalton  
Sent: Monday, April 09, 2012 9:54 AM  
To: Vicki Lucero  
Subject: FW: Permit No. 10-189, 94 Cloudstone Drive

Vicki,

For your information..

Wayne

-----Original Message-----

From: Kerr, Michael H. [mailto:mkerr@kirkland.com]  
Sent: Sunday, April 08, 2012 3:58 PM  
To: Wayne Dalton  
Subject: Permit No. 10-189, 94 Cloudstone Drive

Dear Mr. Dalton,

When we spoke in February you advised me that CID in connection with its final inspection of the accessory structure at 94 Cloudstone Drive which was constructed pursuant to the above referenced Permit, had discovered that a kitchen had been installed in such structure which was not on the approved plans and had so informed the Department of Land Use. I understand that the owner of 94 Cloudstone is now seeking a variance to permit him to have two dwellings on his property. The purpose of this email is to bring to the attention of your Department that Mr. Shapiro's accessory structure has now been occupied on a full time basis for the last several weeks. Since he had previously expressed his intention to rent out the second dwelling on his property to a second tenant (his original dwelling having already been rented out to another tenant), I can only assume that he has gone ahead and done so. I am surprised insofar as I would have thought that CID would not have issued a Certificate of Occupancy in light of his non-conforming kitchen. Further, I would also have thought that it was premature for Mr. Shapiro's new structure to be occupied as a second dwelling on his property in advance of your Department approving his application for a variance.

Please do not hesitate to call me if you have any questions.

Regards,

Michael H. Kerr  
111 Cloudstone Drive  
Santa Fe, NM 87505  
312-339-3251

Sent from my iPhone

IRS Circular 230 Disclosure:

To ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (1) avoiding tax-related penalties under the U.S. Internal Revenue Code or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

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NBA-24

May 2, 2012

Santa Fe County Land Use Administrator  
P.O. Box 276  
Santa Fe, NM 87504-0276

Re: CDRC Case #V 12-5060 – Application by Owner for Variance to Allow a Second Dwelling on 94 Cloudstone Drive, Santa Fe, NM 87505

Ladies and Gentlemen:

I am in receipt of Notice regarding the public hearing to be held regarding the above referenced Case. I am the owner of 111 Cloudstone Drive, Santa Fe, NM 87505, which is directly across from 94 Cloudstone Drive. Unfortunately I will be out of town on May 17, the hearing date, so I will not be able to attend the hearing in person. Accordingly, I am submitting this letter as my written objection to the request by Mr. Jay Jay Shapiro, the owner of 94 Cloudstone Drive, for a variance to allow a second dwelling unit on such property.

I am objecting to Mr. Shapiro's application for a variance for the following reasons:

1. **Granting such Variance Would Be Inconsistent with Public Policy.** One of the key public policies behind the density regulations of Santa Fe County is the protection of the fragile high desert eco-system in which we live by not over burdening the land and aquifers (which are under substantial stress in urban areas) with excessive development. Such density regulations were developed and enacted into law after long and careful study and analysis. A variance under such regulations should only be granted in instances where a property owner demonstrates that a compelling hardship not of his or her own making would result without a variance. Mr. Shapiro has not demonstrated hardship of any kind. Rather, all he has demonstrated is that he violated the law and now wants to be excused from the consequences of his own misconduct.
2. **Granting such Variance Would Be to Reward the Applicant, Mr. Shapiro, for Violating the Law and his Agreement with Santa Fe County.** Santa Fe County, as a condition to granting Mr. Shapiro Development Permit No. 10-189 for a detached accessory building (herein the "accessory building"), required Mr. Shapiro to enter into a Development Affidavit in which he agreed that the accessory building ***"shall be constructed as per County approved plans and shall not be converted at any time into a dwelling unit without the prior written approval of the Santa Fe County Land Use Administrator"***. Mr. Shapiro, who as a long-time architect and builder in Santa Fe should be knowledgeable of land use laws and regulations, violated both the law and his agreement with the County by building a kitchen in his accessory building (which already had two bathrooms) without prior approval of the Land Use Administrator.

Mr. Shapiro would have you understand that his violations of the law and of his agreement with the County were inadvertent. This is difficult to believe. Mr. Shapiro's lawyer in a letter to Mr.

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Wayne Dalton in the Santa Fe County Land Use Planning Department dated February 17, 2012 (the "February 17 letter") stated that:

During the final design stage for the accessory structure Mr. Shapiro, who is an architect, added an area for a kitchen, which was approved by the association. His plans submitted for permit showed his original design without a kitchen. Mr. Shapiro obtained a permit for the accessory unit, but it did not show the kitchen. He has now become aware that the kitchen was not a permissible addition to the plans without a variance. The kitchen was approved by the homeowners' association, but its lack of approval from the County Land Use department requires that he seek a variance. . .

The February 17 letter would have you believe that *"during the final design stage"* Mr. Shapiro *"added an area for a kitchen"* and that *"he has now become aware that the kitchen was not a permissible addition . . ."* This is belied by Mr. Shapiro's plans themselves – the area which has now become the kitchen (which was disingenuously labeled as "Office" on the plans) was shown on such plans as being next to an area labeled as "Din" for dining. Without a kitchen, there would be no need for a dining area. If that were not enough to show that Mr. Shapiro always intended to include a kitchen, Mr. Shapiro, before he even filed his plans with the County or the homeowners' association, told both me and the president of the homeowners' association that he intended to live in his proposed guest house while he rented out the principal residence on his property to someone else. This demonstrates that he intended from the beginning for his so-called accessory structure to have both a bathroom and a kitchen.

With regard to Mr. Shapiro only *"now"* becoming aware that the kitchen was not a permissible addition, that is difficult to believe in light of Mr. Shapiro status as a long standing and experienced architect and builder in Santa Fe. If anyone should be familiar with the County's land use regulations, including the density regulations and what constitutes a "dwelling," it should be Mr. Shapiro. It is not as if he inadvertently overlooked the density requirements. To the contrary, he entered into an agreement with the County in which he specifically agreed that his accessory building *"shall not be converted at any time into a dwelling unit . . ."*. Any person on the street, but especially an experienced architect and builder, would know that a structure with an entry portal and hall, two bedrooms, two bathrooms, a kitchen, a living room area, a dining room area, a den, a portal for entertainment and five fireplaces constituted a "dwelling unit".

With regard to the assertion in the February 17 letter that *"the kitchen was approved by the homeowners' association"*, that too is not the case. The president of the homeowners' association has separately provided the Land Use Planning Department a letter making it clear that the homeowners' association at no time approved a kitchen for Mr. Shapiro's accessory structure. To the contrary, the covenants of the association require owners to comply with all applicable laws and regulations. Further, the association notified Mr. Shapiro that his plan to live in his guest house while renting out the principal residence on his property to someone else would violate the association's covenants.

Based on the foregoing, it seems apparent that Mr. Shapiro's violation of the density regulations of Santa Fe County and of his written agreement were not inadvertent. To now grant him a variance would be to condone his misconduct.

3. **Other Properties in the Area with Accessory Guest Houses Should Not Constitute a Basis for Granting a Variance.** It may be argued by Mr. Shapiro that the existence of other accessory guest houses on properties in the area should constitute a basis for granting his application for a variance. If all one had to do to get a variance under a land use regulation was to show that someone else in the past had received a variance, then very quickly such regulation would become meaningless. Rather, any request for a variance should stand or fall on the merits of the particular facts and circumstances of the individual case. Certainly there are other properties in the area which have accessory guest houses. However, unless Mr. Shapiro has reason to know that such guest houses are non-conforming with applicable laws and regulations, this should not be an issue. Most of such guest houses were built many years ago at a time when the laws and regulations were different – there is no reason to suppose that they did not comply with applicable laws and regulations at the time they were built. To the extent that an owner of any other accessory guest house should need to apply for a variance to have two dwelling units on his/her property, then his/her application should be judged on the merits of the particular facts and circumstances of his/her case.

4. **The Granting of Mr. Shapiro's Application for a Variance Would Adversely Impact Other Homeowners.** One of the principal attractions to ownership of a home in the Monte de las Piedras Rosas homeowners' association is the semi-rural character of the area, with each lot being 10 or more acres and with occupancy limited to a single family in one dwelling. As matters currently stand, no more than 24 dwellings can be built on the properties comprising the association. When Mr. Shapiro first mentioned to me approximately two years ago that he was planning on building a guest house on his property so that he could live in it while continuing to rent out the principal residence on his property, I explained to him that I was opposed to his doing so on the basis that if everyone else in the association followed his example the semi-rural character of the area would be dramatically changed. The very quality which attracted homeowners to the association in the first place would be lost. I also explained to him at the time that to do so would violate applicable County density regulations (explaining to him that under such regulations he could not build a guest house with both a kitchen and a bathroom) and the association's covenants. He went ahead and did it anyway – thumbing his nose at the County, at the homeowners' association, and at his neighbors.

5. **Continuation of Improper Conduct.** Mr. Shapiro has not even waited for the Santa Fe County Land Use Administrator to make a determination on his application for a variance before proceeding with his plans. Rather, Mr. Shapiro, in violation of the applicable density regulations and of his agreement with the County and in violation of the covenants of his homeowners' association, has gone ahead and created a separate street address for his accessory structure (it now has a permanent marker showing "92" Cloudstone Drive) and has rented it out as a stand-alone dwelling separate from the principal residence on his property. Mr. Shapiro's lawyer in his February 17 letter asserts that Mr. Shapiro's guest unit is

"subordinate in . . . use to the principal dwelling unit". That is not supported by the facts. To the contrary, Mr. Shapiro now has two, stand-alone dwelling units on his property, each of which has a separate address and is rented out to a separate tenant.

Mr. Shapiro's lawyer in his February 17 letter also cites the fact that Mr. Shapiro's second dwelling is smaller than the principal residence on his property and is in keeping with the character of the neighborhood as a reason to support his application for a variance. Such a standard would render the County's density regulations meaningless.

For all of the reasons stated above, Mr. Shapiro's application for a variance should be denied.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,



Michael H. Kerr  
111 Cloudstone Drive  
Santa Fe, NM 87505  
knectics@gmail.com  
312-339-3251

✓ Cc: Mr. Wayne Dalton  
Land Use Planning Department  
Santa Fe County  
102 Grant Avenue  
Santa Fe, NM 87501

July 29, 2012

Mr. Wayne Dalton  
Land Use Planning Department  
Santa Fe County  
102 Grant Ave.  
Santa Fe, New Mexico 87501

Dear Mr. Dalton,

Initially, I would like to apologize for taking up more of your time regarding Jay Jay Shapiro's guest house at 94 Cloudstone Drive. I believe we are both after the same thing, which is to bring Jay Jay into compliance with County density rules. It would be very helpful to have someone with expertise explain the time line with respect to his request for a variance for the kitchen in the guest house. I attended the first CDRC meeting and my wife the second meeting, but his request was tabled each time. My understanding, after talking to Bill Dougherty, who I believe spoke to you after the second meeting, is that Jay Jay needs to address problems with his driveway before he can ask for the variance. Is there a time limit in which he needs to deal with the driveway? Currently, he appears to have rented the guest house and the main house to separate families which violates our covenants, as well as what I assume to be the density rules of Santa Fe County. The girl living in the guest house, refers to Jay Jay as her landlord and there is another couple who seem to be living in the main house. If there is an actual time line which will force Jay Jay to bring his driveway into compliance and require him to then get a variance for his kitchen, which we assume he will not receive, then there is probably no point in our pursuing him legally for his violation of our covenants. The removal of the currently illegal kitchen should preclude his being able to rent both houses separately. However, if he is able to play a waiting game indefinitely, then we will have to look into legal action against him. Any light you or your office can shed on this situation would be very helpful.

I can be reached at 505-982-8744(H), 505-780-2870(C) or at n.macleod@att.net

Sincerely,



Lee MacLeod

President, Monte De Las Piedras Rosas Homeowners Association

NBA-29

DEVELOPMENT AFFIDAVIT

I/WE Jay Jay Shapiro, being the owner(s) of tract/lot 11, located in Section 5, Township 16 North, Range 10 East, N.M.P.M. Santa Fe County, New Mexico, be first duly sworn and under oath, do hereby swear or affirm the following:

1. The undersigned are the owners of the above referenced lot;
2. The undersigned understand that the Development Permit No. 10-189 is being issued for DETACHED ACCESS RDG
3. The undersigned owner or their successors agree that the ABOVE listed in item No. 2 above shall be constructed as per County approved plans and shall not be converted at any time into a dwelling unit without the prior written approval of the Santa Fe County Land Use Administrator.
4. The undersigned owners agree this Affidavit will accompany all conveyance documents if the property is transferred in the future.

FURTHER Affiant saith not.

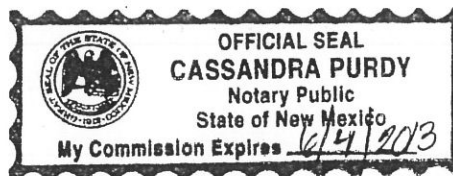
Jay Jay Shapiro  
Owner's Signature

\_\_\_\_\_  
Owner's Signature

STATE OF NEW MEXICO )

)ss

COUNTY OF SANTA FE )



The foregoing instrument was acknowledged before me by the person(s) whose name(s) appear above, on this 13<sup>th</sup> day of May, 2000.

Cassandra Purdy  
Notary Public

6/4/2013  
My Commission Expires

NB A-30

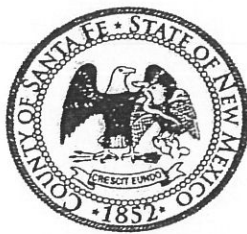
EXHIBIT

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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

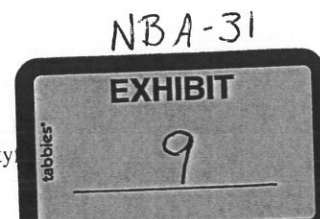
#### Official Submittal Review

Date	August 7, 2012		
Project Name	Jay Jay Shapiro		
Project Location	94 Cloudstone Drive. "Extreme Wildland-Urban Hazard Area"		
Description	Re: Denied variance – issues corrected	Case Manager	Vickie Lucero
Applicant Name	Jay Jay Shapiro	County Case #	V-12-5060
Applicant Address	94 Cloudstone Drive Santa Fe, NM 87505	Fire District	Hondo
Applicant Phone	505-699-6161		
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 checked="" type="checkbox"/> Approved with Conditions <input type="checkbox"/> Denial <input type="checkbox"/>		

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

#### Summary of Review

- Per drawings and on-site meetings with Mr. Shapiro, the previously denied driveway now incorporates an area for emergency vehicle purposes conforming to the access and turnaround requirements and dimensions of the Santa Fe County Fire Department. (page #2)
- This development location is rated within an "Extreme Wildland-Urban Hazard Area" and complies with all applicable regulations within the SFC Ordinance 2001-11 / EZA 2001-04 as applicable for the Urban Wildland Interface Code governing such areas. (page #2)
- Improvements to the property have been addressed in areas that were denied by this office in prior review. (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.*

Per drawings and on-site meetings with Mr. Shapiro, the previously denied driveway now incorporates an area 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 address is posted and maintained at the entrance to the individual lot.

- **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.*

The maximum approved slope of the driveway access/egress does not exceed 11%.

## Urban-Wildland Interface

*SFC Ordinance 2001-11, Urban Wildland Interface Code*

This development location is rated within an "Extreme Wildland-Urban Hazard Area" and complies with all applicable regulations within the SFC Ordinance 2001-11 / EZA 2001-04 as applicable for the Urban Wildland Interface Code governing such areas.

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- **Building Materials**

Buildings and structures located within urban wildland interface areas, not including accessory structures, are constructed in accordance with the Fire Code, the Building Code and the Urban Wildland Interface Code.

- **Location/Addressing/Access**

Per SFC 2001-11/EZA 2001-04, addressing complies with Santa Fe County Rural addressing requirements.

- **Vegetation Management**

The area around the studio is being thinned to mitigate the chances of Wildland fire involvement.

## **General Requirements/Comments**

- **Inspections/Acceptance Tests**

Prior to acceptance and upon completion of the permitted work, the Owner called for and submitted to a final inspection by this office for confirmation of compliance with the above requirements and applicable Codes.

Improvements to the property have been addressed in areas that were denied by this office in prior review.

- **Permits**

As required

## **Final Status**

Recommendation for Development Plan approval with the above improvements applied.

*Tim Gilmore, Inspector*

  
Code Enforcement Official

8-8-12  
Date

Through: David Sperling, Chief/Fire Marshal

File: DevRev/H/Shapirorequirements/080712

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

~~Attorney Brown stated she would review the sections to make sure what was drafted reflected the discussion and decision of the CDRC.~~

~~Member Katz moved to table approval of the findings and Member Martin seconded. The motion to table passed by 6-0 voice vote.~~

#### **VIII. NEW BUSINESS**

- A. **CDRC CASE # V 12-5060 Jay Shapiro Variance.** Jay Shapiro, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow Two Dwelling Units on 10.21 Acres. The Property is Located At 94 Cloudstone Drive, Within Section 5, Township 16 North, Range 10 East, Commission District 4

Ms. Lucero read the case caption and the following staff report:

“The Applicant requests a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 10.21 acres. The property is located in the Mountain Hydrologic Zone where the minimum lot size is 20 acres per dwelling unit with water restrictions of 0.25 acre feet per year. The 10.21-acre lot was created as part of a pre-code subdivision in 1976. At that time there were no water restrictive covenants imposed on these lots.

“There are currently two dwelling units on the subject property. The structures consist of a main residence and an accessory structure. The accessory structure which was permitted on May 13, 2010, (Permit # 10-189) showed a bathroom, but no kitchen facilities. At the time of permitting, the Applicant signed a Development Affidavit stating that the accessory structure would not be converted at any time into a dwelling unit. The accessory structure has been converted into a dwelling with both kitchen and bathroom facilities.

“The State Construction Industries Division (CID) informed the County that the accessory structure was constructed as a residence after they conducted a Final Inspection. The County issued a Notice of Violation for exceeding density and the Applicant immediately came in to submit a request for a variance.

“During the final stages of design, after permits were issued, the Applicant added an area for a kitchen, which the Agent states was approved by the Homeowner’s Association. The Agent also states that the structure in question is keeping with the character of the neighborhood and the other accessory dwelling units in the subdivision, and that the Applicant’s guesthouse is smaller than the principal residence on the lot, is located near the principal dwelling and subordinate in character and use to the principal dwelling unit.”

Ms. Lucero stated staff was recommending denial of the variance. If the decision of the CDRC is to recommend approval of 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 Applicant must amend the development permit from the Building and Development Services Department for the second dwelling unit (As per Article II, § 2.1)
3. The Applicant shall provide an updated liquid waste permit from the New Mexico Environment Department with the Amended 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, § 10).
5. The Applicant shall comply with all Fire Prevention Division requirements (As per 1997 Fire Code and 1997 NFPA Life Safety Code).
6. No more than two electric meters shall be allowed on the property (As per Article III, § 10).

Chair Gonzales asked when the notice of violation was issued. Ms. Lucero said she did not have copy of the violation but she believed it was in January or February. Chair Gonzales asked why there was such a long period of time between taking out a building permit and calling for a final inspection since generally building permits are good for one year only.

Member DeAnda noted that in previous packets where this case had been tabled there was a copy of the permit stating it referred to a single family dwelling and a second dwelling was not permitted. Ms. Lucero stated that was Exhibit 8.

Duly sworn, Jay Shapiro stated he has worked as an architect for 50 years. The project took so long due to the dip in the economy. After the slab was put in the bank withdrew funding. The slab sat for over a year and the nearby homeowners complained it was an eyesore. Upon obtaining additional funds he completed the project as a dwelling unit, after receiving assurance from the prior president of the homeowners association that he could build a guesthouse with a kitchen. Of the 21 homes in the association, six have guesthouses and four of those have kitchens. He said he hoped he had contributed to the community and he hoped he would be afforded forbearance from the committee.

Lee Shapiro, under oath and wife of the applicant, said the house really was beautiful and she hoped they would approve it.

Mr. Shapiro explained the circumstances through which notice of violation came to be issued.

Member Katz expressed his concern that Mr. Shapiro specifically signed an affidavit saying he would not build a second dwelling on the property. Mr. Shapiro agreed that he was contravening County regulations but he was relying on advice from someone in the homeowners association. "I would just like to have a clean slate across the board. If I have to remove my kitchen I have no problem with that." However, he felt that the others in the area with similar circumstances should have to remove theirs as well.

Member DeAnda pointed out the committee had no way of knowing the circumstances of the other cases. Neither Mr. Shapiro nor his attorney have direct knowledge whether the others received variances or were legal non-conforming. She recommended Mr. Shapiro report those people to the Code Enforcement Division and they will deal with it.

Mr. Shapiro reiterated that he was under the impression a precedent had been set.

There being no other speakers the public hearing was closed.

Captain Buster Patty from the Fire Prevention Division indicated that Mr. Shapiro complied with the only requirement placed on him by the Fire Department, namely a turnaround. The road exceeds grade but it is legal non-conforming.

Member DeAnda moved to deny CDRC Case #V 12-5060. Member Martin seconded and the variance requested was unanimously [6-0] denied.

Ms. Lucero stated this case would be heard by the BCC, probably at the November 13<sup>th</sup> meeting.

#### **VIII. PETITIONS FROM THE FLOOR**

None were offered.

#### **IX. COMMUNICATIONS FROM THE COMMITTEE**

Member Drobnis noted that he would not be in attendance at the next meeting.

Member DeAnda thanked the committee for their support during her term as chair. She appreciated the support and attendance. She also thanked staff.

#### **X. COMMUNICATIONS FROM THE ATTORNEY**

None were presented.

#### **XI. COMMUNICATIONS FROM STAFF**

None were presented.