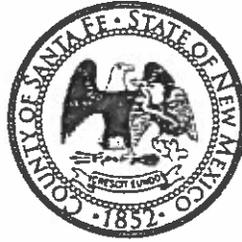


Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. PCEV 14-5320

MISCELLANEOUS

BRIAN AND SUSANNE CARLSON, APPLICANT

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on October 14, 2014 on the Application of Brian and Susanne Carlson (hereinafter referred to as "the Applicant") for approval to vacate a platted forty-seven foot (47') wide private open space and drainage easement on 2.55 acres and relocate the open space within the subject property. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicant requests approval to vacate a portion (3300 sq. ft.) of the platted forty-seven foot (47') wide private open space easement, and requests authorization to relocate the open space component of that easement on one lot totaling 2.55 acres.
2. Notice of the hearing was published in the legal notice section of the Santa Fe New Mexican on September 23, 2014, as evidenced by a copy of that legal notice contained in the record. Receipts for certified mailing of notices of the hearing were also contained in the record for all adjacent property owners.

3. The plat upon which the easement proposed for vacation and replat initially appeared was a 2000 Land Division for DA/SH Family Trust of Lot 2D for the purpose of creating two residential lots. The subject plat was approved by the Extraterritorial Zoning Commission and recorded at Book 452, page 006 of the records of Santa Fe County. The plat reflects a forty seven foot (47') wide open space and drainage easement.

4. The Applicants are the Trustees of the Brian and Susanne Carlson Revocable Trust, and the trust owns Lot 2D-A, as reflected on the Special Warranty Deed to the subject property recorded in the Office of the Santa Fe County Clerk as Instrument #1418051.

5. 7 Camino Hasta Manana (Lot 2D-A) has a residence and a studio located on the property. The forty-seven foot (47") wide private open space and drainage easement runs through a portion of the residence, driveway, wall and studio, as evidenced by a printout from google earth, as well as aerial photographs of the property.

6. The subject property (Lot 2D-A) is a legal lot of record, which was created through a Division of Land in August of 2000.

7. The Application does not propose relocation of the drainage easement, but does request authorization to relocate the open space easement to the north east portion of the property.

8. Staff recommended approval to vacate a 3300 sq. ft. portion of the existing forty-seven foot (47') wide drainage easement and relocate a 3300 sq. ft. portion of the platted private open space easement that runs through the portion of the residence, driveway, wall and studio. Staff recommends the following conditions of approval: The Applicant shall file the portion of the Final Plat (Lot 2D-A) affected by the vacated easement and the relocation of the open space easement with the County Clerk's Office; and the area for the relocation of

open space must be equal in size to the open space that will be removed from the existing 47' easement.

9. The Applicant was in agreement with all staff's conditions.

10. Nobody spoke in favor of or in opposition to the application.

11. Article V, Section 5.7 of the Land Development Code states in part: "In approving the vacation of all or part of a final plat, the Board shall decide whether the vacation will adversely affect interests of persons on contiguous land or persons within the subdivision being vacated".

12. Article V, Section 5.7.1 of the Code provides as follows:

"Any final plat filed in the office of the County Clerk may be vacated or a portion of the final plat may be vacated if:

a) The owners of the land proposed to be vacated sign an acknowledgment statement, declaring the Final Plat or a portion of the Final Plat to be vacated, and the statement is approved by the Board; or

b) The Board finds that a plat was obtained by misrepresentation or fraud and orders a statement of vacation to be prepared by the County."

13. Article 5, Section 5.7.3 of the Code provides that "[t]he approved statement declaring the vacation of a portion or all of a final plat shall be filed in the office of the County Clerk."

14. Article V, Section 5.7 of the Code may only pertain to vacation of subdivision plats. To the extent that vacation and relocation of a platted easement on a lot outside of a subdivision is not governed by the aforementioned Code provisions, the plat amendment still requires County authorization prior to vacation or relocation.

15. Under the Code, the Land Use Administrator is tasked with review of submissions related to Type III subdivisions containing five (5) or fewer parcels of land, as well as Type V subdivisions containing five (5) or fewer parcels, by Article II, Section 2.3.1(a)(vii) and (viii), a review which includes consideration of proposed easements. Article III, Section 2.4.2(a)(1) addresses the requirement that land be divided by plat, and Section 2.4.2(b) sets forth the submittal and review requirements, including the requirement that the plat graphically show all public and private rights-of-way or easements reviewed by the County. Article III does not contain a requirement for a drainage easement such as the subject drainage easement.

16. The authority to initially approve a plat includes the authority to approve modifications. Given that the County must evaluate the easements as part of the land division approval process, it is incumbent upon the owner of the property to seek County authorization before altering the plat establishing the easements. To read the Code as allowing plat modifications without County approval after a land division has been approved by the County, would render meaningless the requirement that property owners secure County approval of the land division. This would undermine the public welfare, by allowing private parties to nullify requirements designed to protect public health and safety.

17. In addition to administrative platting processes, the CDRC, through Article II, Section 1.2.2 of the Code, is vested with general authority over platting in addition to its authority over subdivisions, further supporting the County's practice of deciding cases pertaining to plat amendments.

18. Further evidence of the need for County approval of the vacation and relocation of a platted easement can be found at Article II, Section 2.3.1(a)(v) of the Code, which grants the Land Use Administrator explicit authority to take action regarding plat amendments, separate and

apart from the authority she has over Type III subdivisions containing five or fewer parcels. Plat amendments are defined at Article III, Section 2.4.2(a)(6) as “a minor change or correction to a plat, prepared by a licensed surveyor or engineer, which does not constitute a division of land, lot line adjustment, family transfer, or consolidation.” Under the Code, the administrative process provides less stringent noticing requirements than a public hearing before the BCC, a distinction which creates some reluctance to process plat amendments involving vacation of easements benefitting neighboring properties through the administrative process.

19. While pursuant to Article II, Section 2.3.1.a(v), this Application might represent a minor change to a plat which the Land Use Administrator has discretion to resolve rather than forwarding to the BCC, the Land Use Administrator would have been making the same determination as the BCC, which is whether the Application complies with the requirements set forth in the Code. That determination would have been subject to appeal to the CDRC pursuant to Article II, Section 2.3.4.b. Any decision regarding the Application made by the CDRC would have been appealable to the BCC pursuant to Article II, Section 2.3.4.c. Given that the matter could ultimately have been decided by the BCC, the decision of the Land Use Administrator to decline to exercise her discretionary review authority and instead forward this matter directly to the BCC is authorized by the Code. Moreover, the BCC hearing was a more rigorous process because of the more extensive noticing requirements for matters taken before the BCC and because of the opportunity for public input on the application.

20. The New Mexico Subdivision Act makes no distinction between private easements and other easements when granting authority to the BCC to vacate all or a portion of a plat. The Code makes no distinction between private easements and other easements when authorizing the BCC to vacate all or a portion of a plat. The plat which is proposed for partial vacation in these

proceedings was approved by the now defunct Extraterritorial Land Use Commission (EZC), is subject to vacation or partial vacation by the BCC.

21. The written statement submitted by Applicant, coupled with the proposed plat and the requirement to record a plat in conformance with this Order, suffices to meet the requirement that the Applicant submit an acknowledgment statement, declaring the Final Plat or a portion of the Final Plat to be vacated.

22. Vacation of this private easement will not adversely affect interests of persons on contiguous land or persons within any subdivision.

23. After conducting a public hearing on the request, the Board of County Commissioners hereby approves the request to vacate a portion (3300 sq. ft.) of the platted forty-seven foot wide private open space and drainage easement at 7 Camino Hasta Manana (Lot 2D-A), and the request to relocate the vacated open space to the north east portion of the property, subject to the conditions recommended by staff as set forth in paragraph 8 above.

WHEREFORE the Board of County Commissioners of Santa Fe County hereby approves the request to vacate and relocate the designated portion (3300 sq. ft.) of the platted forty-seven foot (47') wide private open space easement and the request to vacate the designated portion (3300 sq. ft.) of the drainage easement, both of which run through the residence, driveway, wall and studio at 7 Camino Hasta Manana (Lot 2D-A), within Section 5, Township 17 North, Range 9 East (Property") subject to the staff conditions as set forth in paragraph 8 above. The motion to approve the vacation and re-location passed by a 5-0 vote, with Commissioners Anaya, Mayfield, Chavez, Holian and Stefanics voting in favor of the motion.

IT IS SO ORDERED

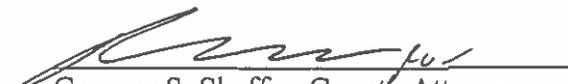
This Order was approved by the Board of County Commissioners of Santa Fe County on this
__ day of _____, 2014.

By: _____
Daniel W. Mayfield, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to form:



Gregory S. Shaffer, County Attorney

**XII. B. 2. BCC CASE # PCEV 14-5320 Brian and Susanne Carlson
Vacation of Easement: Brian and Susanne Carlson, Applicants,
(Sommer, Karnes & Assoc, LLP) Joseph Karnes, Agent, request
approval to vacate a platted open space and drainage easement on 2.55
acres. The open space easement will be relocated on-site. The property is
located at 7 Camino Hasta Manana, within Section 5, Township 17
North, Range 9 East, (Commission District 2)**

CHAIR MAYFIELD: [Recites the caption] And I love the name of the road.

MIGUEL ROMERO (Development Review Specialist): Good evening, Commissioners. The subject lot was created on August 17, 2000, through a Division of Land and is recognized as a legal lot of record. There is currently a residence and a studio on the property, which was permitted and approved by Santa Fe County pursuant to the Code.

The 47-foot wide private open space and drainage easement runs east to west through the property. The Applicant has provided a proposed plat that shows the 47-foot wide private open space and drainage easement running through a portion of the residence, driveway, wall which is located in front of the residence and studio. The Applicants state that they recently discovered that the residence and studio that were permitted by the County and constructed on the property encroach into the easement. The Applicants also state that these encroachments affect the marketability of the property. Therefore, the Applicants request to have 3,300 square feet of the open space that runs through the structures relocated to another portion of the property and 3,300 square feet of the drainage easement that runs through the structures vacated.

The Applicants state in the letter of request that no other property will be affected by the vacation of a portion of the drainage easement or relocation of a portion of the open space easement. .

In 2000, when the lot was created, the subject property was located within the Santa Fe Extraterritorial Zoning District and therefore under the jurisdiction of the Extraterritorial Zoning Ordinance. The EZO required that all proposed divisions of land were required to preserve no less than 30 percent of the entire tract as permanent open space .

Staff Recommendation: Approval to vacate a 3,300 square feet of the portion of the existing 47 foot drainage easement and relocate the 3,300 square feet portion of the platted private open space easement on one lot totaling 2.55 acres.

Staff supports the vacation of 3,300 square foot of the drainage easement that runs through the portion of the residence, driveway, wall and studio and the relocation of 3,300 square feet of the portion of the open space easement that runs through the portion of the residence, driveway, wall and studio without any alteration of the remainder of the easement, subject to the following conditions. Can I enter these into the record?

CHAIR MAYFIELD: Please.

[The conditions are as follows]

- 1: The Applicant shall file the portion of the Final Plat affected by the vacated easement and the relocation of the open space easement with the County Clerk's Office.
2. The area for the relocation of open space must be equal in size to the open space that will be removed from the existing 47 foot easement.

And I stand for any questions.

CHAIR MAYFIELD: Thank you, Mr. Romero. Commissioner Chavez, please.

COMMISSIONER CHAVEZ: Mr. Romero, so the easement, is it a utility easement or just access?

MR. ROMERO: It is open space and drainage.

COMMISSIONER CHAVEZ: Oh, okay. Thank you. Thank you, Mr. Chair.

CHAIR MAYFIELD: Thank you, Commissioner Chavez. I'll go to the applicant. Does the applicant wish to provide any comment? You're not Mr. Karnes.

KARL SOMMER: No, I'm doubling for him tonight. He has the night off. You don't swear lawyers in anymore. My name is Karl Sommer. My mailing address is Post Office Box 2476, Santa Fe, New Mexico.

Just briefly, this property is under contract for sale and the reason I raise that is this is the last matter before the closing can occur. Normally, what you have is your findings of fact and conclusions of law come back to you and then the appeal period starts. And we can't close this transaction until the appeal period is done. That would be 60 days. And I think the normal process for you all is to get your findings of fact back probably in about 30 days. I'm wondering if you could authorize staff to bring them back to you at your next hearing so we could start that period running at your next meeting on your consent agenda or whatever agenda – however, you handle those matters on your agenda. I don't know if they're consent or not. But I know you have broken your agendas into handling certain administrative matters and land use matters and your land use matters, I think, are every other agenda generally and I'm asking if you could authorize staff to bring back the findings of fact and conclusions of law on your next agenda. I'm not sure it would normally get there.

Aside from that, we agree with all the conditions of staff and we don't have any other points to make. And if you would see fit to allow them to do that, I would be most appreciative. Thank you.

CHAIR MAYFIELD: Thank you. This is still out for public comment. Is there any other members of the public wishing to provide any comments. Seeing none this portion of our comment period is over. Commissioners? Commissioner Chavez.

COMMISSIONER CHAVEZ: I would move for approval.

COMMISSIONER ANAYA: Second.

COMMISSIONER CHAVEZ: And discussion.

CHAIR MAYFIELD: Commissioner Chavez.

COMMISSIONER CHAVEZ: I do see that in the staff report it does mention the vacation of a 3,300 square foot drainage easement but it doesn't say anything about open space. So if we could just have that language in there, would that be okay?

MR. SOMMER: It doesn't mention the open space?

COMMISSIONER CHAVEZ: No, not in –

MR. SOMMER: We're going to relocate the open space to the north so it's actually not getting vacated.

COMMISSIONER CHAVEZ: Okay, wait a minute. It actually here, Karl, I apologize. In one paragraph it only mentions the drainage easement but in the first condition it says, the Applicant shall file the portion of the Final Plat, Lot 2D-A affected by the vacated easement and the relocation of the open space easement with the County Clerk's Office. So that does it. It's there.

MR. SOMMER: We're going to record a new plat with County Land Use approval.

COMMISSIONER CHAVEZ: Got it, so we're okay.

CHAIR MAYFIELD: Thank you.

COMMISSIONER HOLIAN: Mr. Chair.

CHAIR MAYFIELD: Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Mr. Chair. I have a question, would it be feasible to get the final order out by the next BCC meeting? Is that a possibility? Because we aren't going to have a meeting in early November.

VICKI LUCERO (Building & Development Services Manager): Mr. Chair, Commissioner Holian, the packet material for the next meeting is actually due tomorrow and I don't know that we would be able to have the meeting minutes from this meeting in time to be able to put together the final order.

COMMISSIONER HOLIAN: Okay, thank you.

CHAIR MAYFIELD: Thank you. What's the pleasure of the Commission, please?

MR. SOMMER: May I add one thing, I'm sorry. Sometimes I have been able to expedite the preparation of the minutes for the portion of the meeting that we're talking about. If that's the only hold-up if we had those to you tomorrow and we could get those, is it possible to get this done?

CHAIR MAYFIELD: Mr. Sommer, I'm respectfully not going in that debate. If you can work that out with staff and staff can have this working with our contractors who provide those minutes for us however, that works its way out. If it's on the next meeting, it's on the next meeting and respectfully if it's not because of time constraints. But I'll ask that you work that out with staff and other parties.

MR. SOMMER: I guess the only thing is if the Board will allow it. I guess what I'm hearing said is that if they can get it done, great. If they can't, then they can't. But I think it's a Board issue as to whether you would allow it on your next –

COMMISSIONER STEFANICS: Mr. Chair.

CHAIR MAYFIELD: We would have to pay for expedited minutes and I don't think this Commission is in a position to pay for expedited minutes.

MR. SOMMER: No, no, I would.

COMMISSIONER STEFANICS: Well, Mr. Chair, I would like to know from Mr. Shaffer if that's – if an outside party is allowed to pay for one of our functions?

MR. SHAFFER: Mr. Chair, Commissioner Stefanics, it wouldn't be the ordinary course but what I'm hearing from the Board is that it's not an insurmountable problem for it to be on the next agenda if that's possible and we'll work out the details as to whether that's possible with the County Manager's office and the applicant, I think is the direction. And consider whether or not minutes can be expedited and if so who can properly pay for that.

CHAIR MAYFIELD: Thank you, and just some follow up for me, what about the Commission having to approve our minutes; does that have to be pre-fact or post-fact?

MR. SHAFFER: Mr. Chair, I don't think that the – the order reflects the factual and legal basis for the Board's decision so I don't know if it would be insurmountable for that to come back before the minutes. But, again, that's really at the discretion of the Board as to whether it wants to do that or whether it wants the order to come back with the minutes.

CHAIR MAYFIELD: Thank you. Commissioner Stefanics, are you okay with that? Thank you. Commissioners, again, we have a motion and a second on the request that is in front of us, the vacation of the easement.

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

CHAIR MAYFIELD: I have not given any direction so far, but I think we kind of heard it.

MR. SOMMER: We'll work it out.

CHAIR MAYFIELD: Thank you, Mr. Sommer. Let me ask one question, I will. Mr. Romero, who's case was that? Mr. Romero, how long has this been in process? When was this initially filed?

MR. ROMERO: The application was submitted on August 27th.

CHAIR MAYFIELD: Okay, thank you so much.



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. V 14-5240

VARIANCE

JULIE LOPEZ, APPLICANT

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on October 14, 2014 on the Application of Julie Lopez (hereinafter referred to as "the Applicant") for a variance of Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow a driveway on a lot that does not meet all-weather access requirements. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicant requests approval of a variance of Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow a driveway on a lot that does not meet all-weather access requirements on property located at 12 Calle Dos Puentes Road, within Section 2, Township 20 North, Range 9 East ("Property").

2. If the variance sought by Applicant is granted, the Development Permit Application will be processed administratively pursuant to the Santa Fe County Land Development Code (the Code), Article II, Section 2.1 and other relevant provisions.

3. Ordinance No. 2008-10 provides that at no time shall a permit be issued for a new dwelling unit, site, lot, parcel or tract of land intended for placement of a habitable structure or creation of a lot where the site is absent all weather access.

4. Article 4, Section 4.6(J) of Ordinance No. 2008-10 establishes the following prerequisites for granting a variance of the all weather access requirement:

A. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

B. Variances shall only be issued upon, (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, the creation of a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

5. As required by Article II, Section 2.4 of the Code, the Applicant posted a public notice board on the property for twenty one days beginning on the 28th of July, 2014, advertised the hearing in the Santa Fe New Mexican, and sent out certified letters to adjoining property owners.

6. The lot was created in 1968 and is a legal non-conforming lot because it was created before the Code took effect in January of 1981. The Applicant intends to construct a driveway to access buildable area on the lot.

7. No lesser variance than that requested would afford Applicant access to the property because there is nothing short of building all weather access that would address the occasional risk associated with accessing the property by a driveway which crosses a 100 year flood plain.

8. Access to the subject property would be off of Calle Dos Puentes which is a dirt roadway located within a FEMA designated Special Flood Hazard Area, which may be frequently impassible during inclement weather, and is not all weather accessible. The driveway to the property also lies within the FEMA designated special flood hazard area and has been in existence for numerous years. The driveway runs along the entire frontage of the property and there would be no place to relocate the driveway outside of the floodplain. Improving the driveway would not guarantee access to the property because the road would likely be inaccessible during a major flood event. Failure to grant the variance would result in exceptional hardship to the Applicant in that she would be required to build an all weather access at great expense to herself which would be inaccessible to her during periods of inclement weather.

9. In light of the legal non-conforming lot which will continue to utilize Calle Dos Puentes regardless of the determination in this matter, and provided notice is given to future owners of the property through a deed note which provides that access does not meet Santa Fe County access requirements, no substantial additional threats to public safety will result from the

granting of the requested variance, nor will the granting of the variance create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

10. According to 2008-10, Article 4, Section 4.6(J)(c), “[a]ny applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.” In this case the proposed residence is not located within the one hundred year flood hazard area and thus the lowest floor elevation is planned to be above the base flood elevation.

11. Ordinance 2008-10, Article 4, Section 4.6(H), provides that “variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.” Given that the residence is not going to be placed within the one hundred year flood hazard area and the improvements will be a driveway, there will be no changes to the flood hazard area, no increase in flood levels during a base flood, and no additional threats to public safety as a result of approving the Application.

12. The Floodplain Administrator recommended denial of the requested variance.

13. Following a hearing on the Applicant’s request for a variance, the CDRC, at its August 21, 2014 meeting, recommended approval of the variance request.

14. Pursuant to Section 4.6(G), this Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of Ordinance 2008-10.

15. Staff recommended imposition of the following conditions if the Application was granted:

A. Water use shall be restricted to 1.00 acre foot per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office. **(As Per Article III, § 10.2.2 and Ordinance No. 2002-13).**

B. The Applicant must obtain a development permit from the Building and Development Services Department for the driveway and dwelling unit. **(As Per Article II, § 2).**

C. The Applicant shall comply with all Fire Prevention Division requirements at time of Development Permit Application **(As Per 1997 Fire Code and 1197 Life Safety Code).**

D. A restriction must be placed on the Warranty Deed regarding the lack of all-weather access to the subject lot. This restriction shall include language as follows: the access to this property does not meet minimum standards set forth by County Ordinances and Code. Site access including access by emergency vehicles, may not be possible at all times. **(As Per Ordinance # 2008-10).**

16. In support of the Application, the Applicant agreed with the conditions recommended by staff.

17. At the October 14, 2014 BCC meeting, no members of the public spoke in opposition to the Application.

18. Ordinance 2008-10, Section 4.6(G) authorizes the BCC to "attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Ordinance."

19. Pursuant to Ordinance 2008-10, Section 4.6(C), “any person or persons aggrieved by the decision of the Board may appeal such decision to a court of competent jurisdiction within thirty days of the Board’s decision.”

WHEREFORE the Board of County Commissioners of Santa Fe County hereby approves the request for a variance of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow a driveway on a lot that does not meet all-weather access requirements on property located at 12 Calle Dos Puentes provided that the Applicant complies with the conditions as stated in Paragraph 15. The BCC hereby directs the Floodplain Administrator to report the granting of this variance to the Federal Emergency Management Agency. The motion to approve the Application passed by a unanimous vote of 5-0.

IT IS SO ORDERED

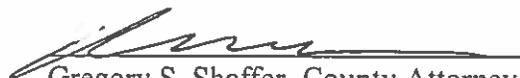
This Order was approved by the Board of County Commissioners of Santa Fe County on this ____ day of _____, 2014.

By: _____
Daniel W. Mayfield, Chair
Board of County Commissioners
of Santa Fe County

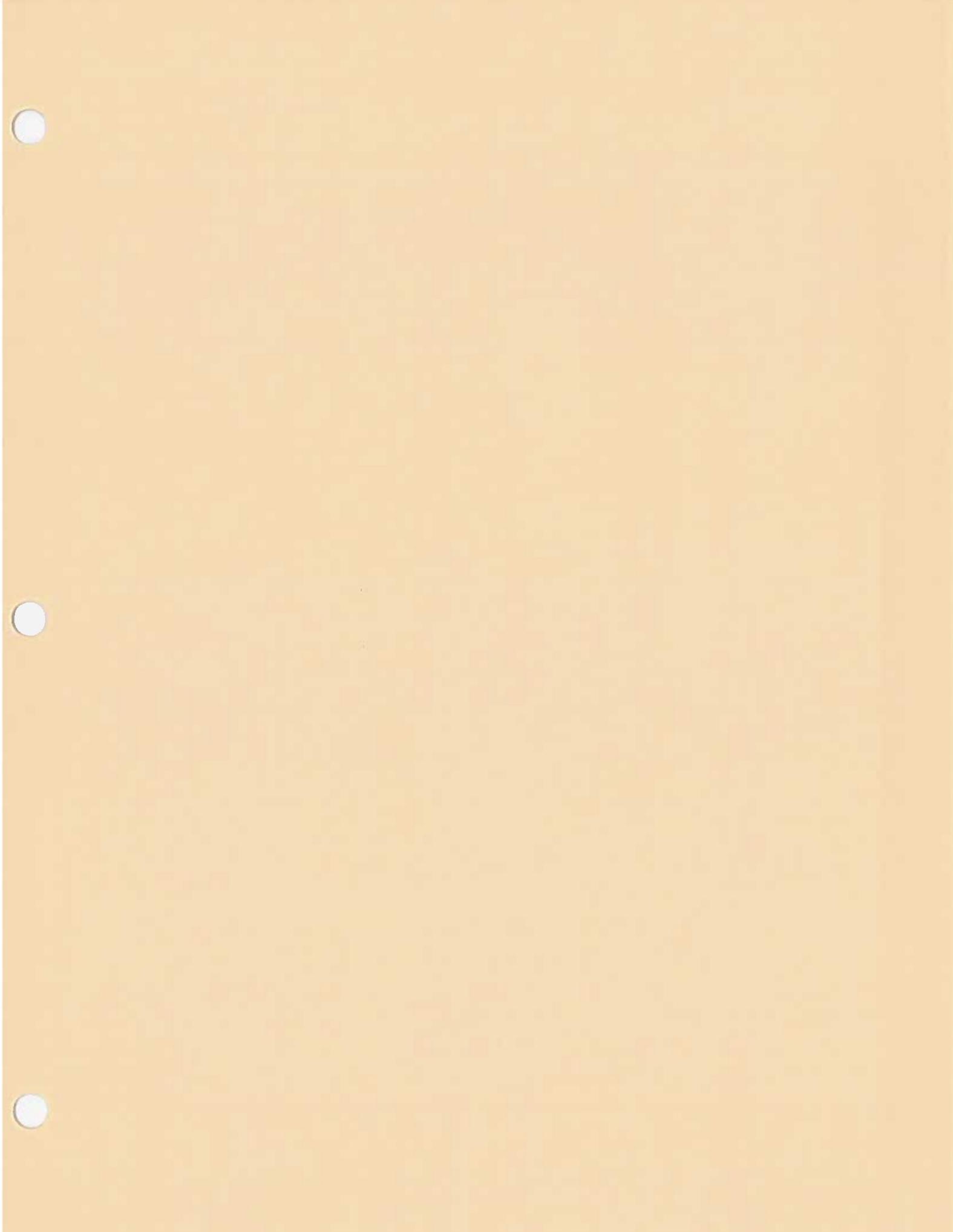
Attest:

Geraldine Salazar, County Clerk

Approved as to form:



Gregory S. Shaffer, County Attorney





Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. APP 14-5031
APPEAL OF COUNTY DEVELOPMENT REVIEW COMMITTEE'S DECISION
MAURILIO & AMANDA CALDERON, APPELLANTS

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on June 11, 2014, on the appeal of Maurilio & Amanda Calderon (hereinafter referred to as "the Appellants"), appealing the County Development Review Committee's (hereinafter referred to as "the CDRC") decision to deny a request for a home occupation business development permit allowing a welding business. The BCC, having reviewed the appeal and supplemental materials, staff reports and having conducted a public hearing on the appeal, finds that the appeal is well-taken, and the decision of the CDRC should be overturned and the permit request approved, and makes the following findings of fact and conclusions of law:

1. The Appellants request that the BCC overturn the CDRC's decision to deny application #AHBL 13-4076, granting a home occupation business development permit.
2. The subject property is owned by the Appellants as joint tenants and is legal lot known as Tract A-2, "Land Division for XLR Tract A within S.E. ¼ of S.W. ¼ of Section 10, T. 16 N., R. 9E, N.M.P.M., Santa Fe County, New Mexico." located at 8 Ernesto Road, within Section 10, Township 16 North, Range 10 East.
3. On November 5, 2013 the Appellants applied for a home occupation business development permit pursuant to the Santa Fe County Land Development Code, Ordinance 1996-10 (the Code). The Appellants sought to use 832 square feet of their 1,950 square foot metal garage for their welding business.

4. According to Article III, Section 3.1 of the Code, “[h]ome occupations are allowed anywhere in the County, provided all of the requirements of the Code are met.”

5. The requirements of Article III, Section 3 of the Code pertaining to home occupation business registrations include the following:

“3.2.1 Not more than six (6) persons, other than members of a family residing on the premises, shall be regularly engaged in work at the site of the home occupation;

3.2.2 The use of the dwelling for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 50% of the floor area of the dwelling including accessory buildings shall be used in the conduct of the home occupation;

3.2.3 There shall be no change in the outside appearance of the building or premises, nor other visible evidence of the conduct of the home occupation, except for one (1) non-illuminated name plate sign not more than nine square feet in area;

3.2.4 Parking for employees and for customers or clients of the home occupation as required by Section 9 of this Article III shall be provided off the street;

3.2.5 No equipment or process shall be used in the home occupation which significantly interferes with the existing use of property in the adjacent area.”

6. On November 5, 2013, the Land Use Administrator denied the application for a home occupation business development permit on the basis that the application did not comply with the Home Occupation Performance Standards set forth by Article III, Section 3.2 of the Land Development Code.

7. As required by Article II, Section 2.3.4b of the Code relative to filing a timely appeal, on January 17, 2014, within five days of the Code Administrator’s decision, the Appellants filed an appeal contesting the denial of the home occupation business development permit.

8. On March 20, 2014, the CDRC determined that the application did not meet all the Code requirements and denied the Appellant’s appeal, upholding the Land Use Administrator’s denial of the application, by a 7-0 vote. The CDRC based their decision on the facts used by the Land Use Administrator to deny the application:

- a. The welding business would not be incidental or subordinate to its use for residential purposes;

- b. The home owner would exceed the limitation of no more than 50% of floor area allowed for the home occupation;
- c. The equipment and process used for the home occupation would significantly interfere with the existing use of property in the adjacent areas.

9. As required by Article II, Section 2.3.4c of the Code, on May 1, 2014, within thirty calendar days of the CDRC's decision, the Appellants filed an appeal contesting the denial of the home occupation business development permit.

10. As required by Article II, Section 2.4.2 of the Code, the Appellants published a notice of public hearing 21 days in advance of the hearing on May 20th and 21st, 2014 in The Santa Fe New Mexico, the Appellants sent certified letters prepared by the Code Administrator to all property owners within one hundred (100) feet of the subject property, and the subject property had a public notice board posted in accordance with Article II, Section 2.3.2c of the Code.

11. On June 10, 2014, at public hearing, Appellants' lawyer, the Appellants, approximately 25-30 members of the public in support of the application, and approximately 20 people in opposition to the application attended the hearing.

12. The Appellants' Attorney informed the BCC that Appellant Maurillo Calderon is an artisan, the property in question is 350 yards from I-25, the area that Mr. Calderon will use for his work is surrounded by a fence, and the structure used for the home occupation is a legally permitted structure and meets all requirements of the Code for an accessory structure. The home business proposed will be less than 50 % of the area used for the residence, there are no fumes, smokes, or solvents because Appellant uses a microwire welding machine, the Fire Inspector has approved the property as long as there are annual inspections, and there are no violations with respect to the noise ordinance standards. Furthermore, in several residential areas within Santa Fe County there are welding studios, artist studios, woodworking shops, and other home businesses which use similar equipment.

13. Six members of the public spoke in support of the Appeal, arguing that the Appellants should be allowed to continue their home business because Mr. Calderon is an artisan rather than a welder.

14. David Horton spoke regarding Appellant Maurillo Calderon's work, having utilized his artisan services. Mr. Horton stated that the Appellant completed a project at Mr. Horton's home, and Mr. Horton observed Mr. Calderon welding, grinding, and buffing the installation. Mr. Horton neither smelled any fumes nor did he feel the noise would be an issue because all of the buffing and grinding is done by Mr. Calderon on the project site not at the home occupation site.

15. Christina Ornelas spoke as a fellow home occupation owner in support of Appellants' application. Ms. Ornelas stated that home businesses give New Mexicans the opportunity to save money and still make a living. In addition, she believes that the Appellants should be allowed to have a home occupation because they will follow any conditions in order to keep their business.

16. Seven members of the public spoke in opposition to the Appeal, arguing that they heard noise and smelled fumes from the welding business, and that this type of home occupation should not be allowed in a residential area.

17. Applicants agreed to limit the hours of operation of their business to accommodate concerns of the community.

18. The structure in question is in full compliance with the Code, there are no covenants restricting architectural standards where the structure is located, the structure has been insulated for sound both in the walls and ceiling, and other similar types of artisan businesses are located in Santa Fe County residential areas.

19. The BCC now concludes that the application meets all Code requirements based on the following facts:

- a. The welding business would be incidental or subordinate to its use for residential purposes after complying with the BCC's conditions;
- b. The home occupation would not exceed the 50% of floor area allowed for the home occupation after the Applicants construct a wall in the 1,950 square foot garage to creating an 832 square foot delineated area for the business, which is exactly half of the 1,664 square foot residence;
- c. The equipment and process used for the home occupation would not significantly interfere with the existing use of property in the adjacent area.

20. After conducting a public hearing on the appeal and having heard from the Appellants, the public, and having considered all materials submitted on the matter, including letters in support and opposition to the home occupation business, the BCC hereby grants the appeal and reverses the CDRC's denial of the application for a home occupation business development permit allowing an artisan welding business at 8 Ernesto Road in Santa Fe County, subject to the following conditions:

- a. The Applicants shall construct a wall across the work bay to separate the business area from the area for private use, delineating the 832 square foot area that may be used for the business.
- b. Hours of operation shall be between 9 am and 5:30 pm Monday through Friday with no work to be done on the weekends.
- c. All work shall take place within the enclosed garage.

WHEREFORE the Board of County Commissioners of Santa Fe County approves the appeal and authorizes the granting of a home occupation business development permit to Applicants subject to the conditions set forth in paragraph 20. The motion to approve the appeal, thereby reversing the CDRC's denial of the application for a home occupation business development permit, passed by a 3-1 vote with Commissioners Mayfield, Stefanics and Anaya

voting in favor of the motion and Commissioner Holian voting against the motion. Commissioner Chavez was absent from the meeting. A home occupation business license for an artisan welding business will be granted.

IT IS SO ORDERED

This Order was approved by the Santa Fe County Board of County Commissioners on this ___ day of _____, 2014.

SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
Daniel W. Mayfield, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to form:



Gregory S. Shaffer, County Attorney

COMMISSIONER ANAYA: Thank you, Commissioner.

CHAIR MAYFIELD: So, Commissioners, we have a motion and a second in front of us as amended with new suggestions. Are there any other comments? One, I just want to thank the applicants for coming forth and respecting piecemeal development, we're getting some good development in Santa Fe County and it's much needed. I understand this project, at least I believe this project could be built out in totality [inaudible] and hopefully it's going to be thriving in that corridor. It's bringing GRT to Santa Fe County which is much needed and I think you all have a good plan in front of and look forward to the continued success on this project.

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

[The Commission recessed for five minutes]

- VII. B. 6. **CDRC CASE #APP 14-5031 Maurilio & Amanda Calderon Appeal. Maurilio and Amanda Calderon, Applicants, Are Appealing the County Development Review Committee's Decision to Deny a Request for a Home Occupation Business Registration Allowing a Welding Business Located on 2.48-Acres. The Property is Located at 8 Ernesto Road, Off Rabbit Road, within Section 10, Township 16 North, Range 10 East (Commission District 4) John M. Salazar, Case Manager [Exhibit 3: Applicant supplied, code 10.6. Home Occupation; Exhibit 4: Applicant supplied, photos of the property and iron work; Exhibit 5: Applicant supplied, Vicinity map of Ernesto Road; Exhibit 6: Letter (27) in support of application; Exhibit 7: Opponent provided map and proposed order]**

MR. SALAZAR: Thank you, Mr. Chair. We're going to move west of Rabbit Road for this case from the last one.

On March 20, 2014, the County Development Review Committee met and acted on this case. After hearing testimony from residents in the neighboring Santiago Subdivision concerning noise and fumes being produced from the Applicant's property, the decision of the CDRC was to uphold the Land Use Administrator's decision and deny the home occupation by a 6-0 vote. Those minutes are in Exhibits 4 and 5).

Article II, Section 2.3.4.c of the Code states: "Any person aggrieved by a decision of a Development Review Committee may file an appeal in writing to the Code Administrator within 30 calendar days of the date of the decision of the Development Review Committee. The Board shall hear the appeal within 60 calendar days after the date the appeal is filed. The Board shall timely make and file its decision approving or disapproving the application or approving the application with conditions or modifications." The applicant has met that. We are within that time period.

The Applicant is aggrieved by the CDRC's decision and has filed an appeal to the

BCC. The Applicant's Agent, Sommer, Karnes & Associates, has stated that the appeal is based on quote, "a lack of evidence supporting the grounds stated by the CDRC for denial of the application. The motion for denial was based on the assertion that the home occupation is not a proper business for the area. The use meets all applicable criteria and there has been no showing that the business will significantly interfere with existing uses of property in the adjacent area" end quote.

On November 5, 2013, the Applicant applied for a home occupation business registration for a welding business. The Land Use Administrator reviewed the Application as it relates to the Home Occupation requirements in the County Code Article III, Section 3. The Land Use Administrator determined that the subject Application does not conform to Code requirements and denied the request per the following sections: Article III, Section 3.2.2 states: "The use of the dwelling for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants and not more than 50 percent of the floor area of the dwelling including accessory buildings shall be used in the conduct of the home occupation."

The Applicant proposed to use 832 square feet of his 1,950 square foot metal garage. He is allowed to use 832 square feet for business operations, office work, material and vehicle storage since his residence is 1,664 square feet. The Land Use Administrator has concerns that the Applicant will be unable to keep his business operations within the 832 square feet he proposed. Upon conducting a site visit, staff observed that there was no clear distinction between the area used for business and the area used for personal use.

Article III, Section 3.2.5, No equipment or process shall be used in the home occupation which significantly interferes with the existing use of property in the adjacent area. The Applicant proposed to contain all business activity within his insulated metal garage. Corporal Michael Delgado with the Santa Fe County Sheriff's Office along with BDS staff conducted a site inspection in which sound measurements were taken. Corporal Delgado took various readings from different areas of the property and concluded "that the property owner is in compliance with the Santa Fe County Noise Ordinance number 2009-11 while conducting his daily/routine business at his shop." However, BDS staff noted that while the sound generated from the business operations did not violate Public Nuisance levels, the sound does carry out to neighboring properties at a level that would not be expected among single family homes as this area is primarily residential with few businesses around.

This Application was submitted on May 6, 2014. Growth Management staff have reviewed this Application for compliance with pertinent Code requirements and finds no evidence that would justify overturning the County Development Review Committee's decision.

Staff Recommendation: Staff recommends that the BCC uphold the CDRC's decision to deny the home occupation by denying the appeal. The Applicant is looking to overturn the CDRC's decision of course, of application number AHBL 13-4076.

And I'll stand for questions, Mr. Chair.

CHAIR MAYFIELD: Thank you. Commissioners. Seeing no questions at this, Mr. Salazar, thank you. Is the applicant here? They are represented by counsel, Mr. Sommer

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KARL SOMMER: Good evening, Mr. Chair. May I approach, I have some materials I am going to use in my presentation.

CHAIR MAYFIELD: Sure, be sure to give one to Karen. If you have an extra just pass it out so the general public can see it.

MR. SOMMER: Mr. Chair, members of the Commission, I am here tonight on behalf of Maurilio and Amanda Calderon and they're sitting right her with their son, Maurilio III. This is Maurilio Calderon and Amada Calderon. In my presentation I want to tell you a little bit about them, what they propose in their application, address the criteria in the code and the presumed concerns that have been expressed in the staff report as well as at the public hearing. I believe that after we get through this tonight you will conclude and I'm hopeful that you will conclude that this business as proposed and properly conditioned will meet the code requirements of Santa Fe County code as presently configured and as you all propose.

So let me start by telling you a little bit about Maurilio and Amada. Maurilio came to this country from Mexico under a visa when he was 15 years old. He immediately went to work under that visa and of the course of 19 years he has turned himself into an artisan and the property that he and his wife Amada own is off of Ernesto Drive off of Rabbit Road just sort of west of the area you were looking at in the previous application. On the top sheet that you have, I've given you a map that shows the general location. So you have a smaller version here. So this property here is the property in question. It's out of the County's map as they sit today. It's about 350 yards from I-25, a little closer to Rabbit Road. This is Entrada Santiago and this property sits right here. I've dashed in where the driveway to the property is and where the two structures. One is a house and the other is the accessory structure. That little loop is a driveway loop on the property. These are the surrounding homes and I'll talk a little bit about that in a moment.

That's the property that Maurilio and Amanda purchased. I told you he came to this country and he has been working as a welder in various businesses and he has developed a unique skill and he has become a true artisan. And in your packet are photographs of the work that he typically does and the scale at which he does those works. Now, how about Amanda. Amanda is a native of New Mexico. She was born in Los Lunas. Her family is from Las Vegas, her mother's family is from Las Vegas. She works for the State of New Mexico. They have been married for some time now and they have three children and they're making a life for themselves in Santa Fe. Now, I will say something we can all be proud of.

What does he do for a living, he is a specialty welder. The top photograph is the garage that he built that has the two bays, not unlike many garages in Santa Fe County area. The second photograph is a photograph of the area from an adjacent property – and I'll show you where that's from. That picture, the second photograph, which is this photograph, is looking at their property from down here off of Santiago, Entrada Santiago looking that direction. So this property sits up higher than the other properties in the area. If you go to the next photograph you see Mr. and Mrs. Calderon's property from down here in this circle which is just south of the property looking that direction. You will see that there's a fence around his structure. That structure is legally permitted. It meets all the requirements of the code for an accessory structure.

2014 JUN 10 09:23 AM

The only question here tonight is can he use one bay in this structure for his specialty artisan welding business. That is the only issue that is in front of you. Not whether he is in violation of the code in terms of the building of the structure or any other structure on that property.

If you go to the next photograph, the next several photographs, if you can thumb through them you will see the kind of work that Mr. Calderon does. Interestingly, the last one is a sculpture that was put up at the Jewish Center at the intersection of San Mateo and I think it's Galisteo. He does that kind of work. He does work for residential properties. And you can see, he is a craftsman not unlike many craftsman in our community and his work is well respected throughout the community and he developed his skill on his own over many years with a lot of hard work.

What he's proposing is in his garage are two bays. Staff's measurement is that one of the bays would meet the requirement of the County code with respect to the size of a home occupation. What we are proposing in the application is that all of his activities be conducted inside that garage bay with the garage door closed. Mr. Calderon and Mrs. Calderon have since insulated that garage to create sound attenuation. Staff has said to you, Well, we can't make a clear distinction between his use in the one bay and the bay next door. Mr. Calderon would accept as a condition of approval that a wall be built in that garage to make that distinction so there is no connection between the two and that they are not readily usable for residential purposes versus the home occupation. I submit to you all that is always a question with a home occupation as a matter of enforcement. You map out an area in a home that meets the criteria but are people going to use it in accordance with that? It's very difficult. In order to insure that here the wall would make the difference. In the other bay Mr. Calderon parks his personal truck

So, staff has said to you well one of the criteria you have look at is what is the character of the neighborhood because not every home occupation in every district is the same. Let me point out to you that the opponents in this case have said that this is an industrial use and it's not appropriate for a residential area. I submit to you that is not consistent with what this County Commission has done and what County staff has done for many years. And I'll point out for you that there is Lebow welding which is located in the La Cienega area and the last map that I gave you all and you'll get to it, shows you were that is. It's right smack dab in the middle of a residential district and it is almost exactly the same in character. It is being operated today under a home occupation.

In Galisteo, I'm sure that Commissioner Anaya is probably aware of the artist studio out there by Mr. Massy. He's a long-standing member of the community and his sculptures use welding, they use grinders, they use all kinds of things. He's operating in a residential district at I think 852 Camino Los Abuelos under a home occupation. Right smack dab in the middle of Lamy you have a woodworking shop that makes specialty furniture right next to other residential uses under a home occupation. Not in a commercial district. I went through the County's list of business licenses there are more than a dozen woodworking shops that are working under home occupations that use saws, paints, all kinds of equipment, and why are we allowing that under home occupations? Because these people are artisans. Their work is specialty work. This is not welding or woodwork or art work on an industrial scale.

And the County has a history of looking at these uses in that way and adequately protecting the neighborhood from an intrusion and in this particular case you can condition this adequately to protect.

So, let's talk a little bit about the neighborhood. The neighborhood has in it a business here. A business operating here for many, many years apparently illegally but when you look at the character of the neighborhood you have to say, what is out there? There is right now an air-conditioning and heating business that is being operated in a location where there was previously a business. I don't know that the previous business had a business license. But if you look at the character of the area it's got – and this is a business in this location, I don't know if it has a home occupation or a business license it is not in a commercial district. But what is most telling about this district is it is about 400 yards from I-25 and less than that from Rabbit Road. Those two facilities carry tens of thousands of vehicles every day past this property. So what am I saying? There is a noise level in this neighborhood right now that drowns out anything that Mr. Calderon would ever do on his property. The sound ordinance has requirements and he isn't violating those requirements.

In this neighborhood as well you have people who live in this area which is on Tapia Lane who have hobbies that include welding, that include fixing of equipment. Now these people are operating out in the open and that sort of thing so what we're talking about is not a neighborhood that is absolutely pastoral or whatever. This is next to a freeway. It's got businesses in it and this business is not going to be out of character with that particularly if you condition it appropriately.

The requirements of the code are that he operate his business on 50 percent or less of the heated square footage. His house on this property is 1,600 square foot. The one bay that he would use meets that requirement. Why is that requirement there? It's there because it keeps the use of the property incidental to the residential use. You have 1,600 square feet plus one garage bay which would be 800 some square feet, that's 2,400 square feet for residential purposes and you would have 800 plus square feet as a home occupation. That criteria keeps the usage subordinate and incidental to the residential use. That's why that criteria is there. You don't just get to say, Well, you meet the space criteria and there's a requirement that you live there and both of those are being met but we're not going to say it's subordinate or incidental because we don't think it will be. There is not evidence to support that conclusion either by the CDRC or by the Land Use Administrator. This use will be and is incidental to the residential use of this property.

I've already told you that this will not produce sound particularly if there's a condition that all of the work be done inside. There are no fumes, smokes or solvents. Mr. Calderon uses a welder that, I don't know the name of it, but it's electrical and it's not torches and it's powered by electricity – what's that called -- microwire welding machine. So this idea that there's smoke and flames and solvents – that doesn't exist and that's not proposed. And I submit to you that there are many, many, many artisans in our community that use welders for all kinds of purposes without any hazard of fumes or fire hazards or the like.

Mr. Calderon's application has met every criteria. When the fire inspector went out his report is out there. He doesn't impose any particular requirements on this other than they

annually conduct a fire inspection. This property is adequate for access for emergency vehicles and it meets the standards of the fire department.

Traffic, what traffic is going to be produced by this? Mr. Calderon and one employee go to his work and work. He does his measurements; he meets his clients for the most part off this property. There is not traffic in and out of this home occupation over and above the level that you would consider for a residential use.

I think it's telling that in this particular instance, Mr. Calderon and Mrs. Calderon have here tonight lots of people who support their application. In the packet, there are many, many letter and they're all stapled together for you. Of the letters you have there 13 live in the immediate vicinity and one in particular, letter of support by this owner right here, supports this application. The closest party to his use has no problem and has told the Calderons I don't hear anything at our place. This owner, Mr. Smith, he's here tonight. He doesn't have a problem. He doesn't hear anything. He'll tell you a little bit more about the character of the neighborhood. All of these area, these properties on Tapia Lane, they have specific letters in your packet in support of this application. So where are the opponents? They're right there, right there and right there. And all further south in a subdivision called the Santiago Subdivision. The two owners up here support this application, adjacent.

Now we're not going to have everyone of the people that are here tonight speak because it will go on and on and on in favor, but I would like for the Commission to acknowledge and know who is here in support among the letters and the people who have written. If I could have the people who are in support of this application stand and just raise your hand to let the Commission know. [Approximately 25-30 individuals stood] These are all people, some of whom have signed letters, some of who work with Mr. Calderon, many of whom know these people as honest, hard working folks. The implications in the staff report that somehow you can't trust these folks is belied by the manner in which Mr. Calderon has conducted himself in our community. In the letters of support you will see the most – the largest steel manufacturers that Mr. Calderon initially learned his trade from, speaking in support of this man, their competitor. Oh, I'm sorry, go ahead and sit down.

I'd like to point out one other thing for you. In your County Code, I copied the two pages for home occupation and I think I was in front of you last month on one and we went over this, and there was a very specific question about – it was the crematorium case – there was a specific prohibition that is considered in that and it's the second page stabled there, 218, this is not a prohibited use under the County Code. If you are going to say that this is a quote heavy industrial use, you are going to put a lot of artisans out of business just because a they use a welder, a saw and sander or they paint their furniture that they make, or they paint their artwork. If that's considered a heavy industrial use then you're going to put a lot of people out of business. Under the County Code as its adopted, your new County Code, this would be considered a no impact home occupation because all of the business activity will be conducted inside the permitted accessory building. He will not have more than one employee.

He will not have people coming to his place. So under your County Code this application would be approvable administratively. I don't know if the County Manager of the Land Use Administrator would approve it but under the County Code as it is drafted this application meets that requirement. If you go further up the list in the County's code as proposed you see

2014 JUN 10 10:58 AM

that home occupations allow for the use of at least two pieces of heavy equipment on the property. That's what the code is going to allow under home occupations. We're not doing any of that.

You will hear tonight from people who support this application and I am certain you will hear from those that oppose this application. I want to keep at the forefront what the issues are. Is this incidental and subordinate? I've demonstrated to you that unquestionably it is. Second of all, is it compatible with the residential character of this particular location; it is. My reason for bringing up the other cases is not because you're bound because there's another welding company in another area and therefore you must issue this one. I'm just saying that the argument is that it's not a compatible home occupation anywhere in the County, that's not true. You all have to judge it's appropriate, it's here and whether or not you can condition it so as to preserve the policies of the code.

I would like to reserve a few comments to address comments that are made by the opposition and I'll be brief in that and I will stand for any questions and my clients certainly will answer any questions you have them here tonight. But I will at this point yield to your questions or how the chair would like to proceed.

CHAIR MAYFIELD: Thank you, Mr. Sommer.

COMMISSIONER HOLIAN: Mr. Chair.

CHAIR MAYFIELD: Commissioner Holian.

COMMISSIONER HOLIAN: Are we doing questions now or are we going to wait for the end?

CHAIR MAYFIELD: If you care for questions of staff or the applicant that's fine otherwise I'll wait -

COMMISSIONER HOLIAN: I have some questions of Mr. Sommer.

CHAIR MAYFIELD: Sure.

COMMISSIONER HOLIAN: What are the operations of this business?

MR. SOMMER: The hours of operation would be as imposed by you all from a condition standpoint. But he does not propose to operate after normal working hours or before normal working hours. We can ask him specifically, but I think 8 to 5 are the normal working hours of Mr. Calderon's business and he would accept that as a condition.

CHAIR MAYFIELD: Commissioner Holian, may I ask a question on that? So what are his current hours of operation, 8 to 5?

MR. SOMMER: They're 8 to 5.

CHAIR MAYFIELD: Thank you. And that's for fabrication?

MR. SOMMER: It's for the work that he does. Whatever he's doing there, yes.

COMMISSIONER HOLIAN: And what would the other bay of the metal garage be used for then if it's blocked off?

MR. SOMMER: -- blocked off and he uses it now just for parking his truck. He's got a personal vehicle I don't know what kind of truck it is but he parks the truck in there and inside he would build a wall from top to bottom so that you have that cross communication. It would be just for residential use, the parking of residential vehicles.

COMMISSIONER HOLIAN: Do I understand you correctly in that customers

2014 JUN 10 PM 05:15:15

that there really is a residence on the property, now it's a studio. And I ask the question of what is this commercial operation supplemental to? It's one of those discretionary language of the code that it be clearly incidental and subordinate. The code also says that no equipment or process shall be used in the home occupation which significantly interferes with the existing use of the property in the adjacent area. In staff's finding was that the sound does carry out to neighborhood properties at a level that would not be expected among single-family homes as this area is primarily residential with few businesses around. And the fact is, that you will hear from residents in the neighborhood talking about the impacts because the business has been operating. Operating illegally but it has been operating and they know what those impacts are and they're not here for fun or making up something. They're here because they now know what that impact is to the residential neighborhood.

As far as businesses being around, as you see from the map the land use has changed drastically as you come back from the interstate and this is very much a residential subdivision.

CHAIR MAYFIELD: Can you pull the mike closer please.

MR. GRAESER: I'm sorry, Mr. Chair. The land use has changed dramatically coming from the interstate. So there is really only one business in close proximity and that's up facing the interstate, number one. Number two, it's being operated illegally and that really can't be used as precedence for this business although we were concerned about the precedence of this business to be used to open others.

In that vein, Mr. Sommer mentioned a welding shop that he has in residential neighborhoods, I think the best comparison of this proposed operation was Matt Miller's welding shop down south of Eldorado that when I was at the County attorney's office, the County took enforcement of that trying to stop that seriously enough. But I did a jury trial to shut down that welding shop in a residential neighborhood, low density, single-family residential neighborhood and we were successful. And the County took that seriously and I think that's the precedence that applies directly here.

This business didn't organically grow at this location. It's not someone who started out as a hobbyist and got successful and they did better. And I think Mr. Calderon is successful and he produces lovely work but this isn't about whether they're nice people or he does nice work. It's whether this is appropriate in this location. It's a preexisting, industrial, commercial business that moved to this property and it's unfortunate that the Calderons didn't investigate the zoning restrictions on their property before they purchased it for this reason but it's really unfair for the neighbors to suffer the consequences of that mistake.

In the scale of the impacts of this business are inappropriate for a residential area, for a home occupation use. And you have letters in your file and I am sure you will hear from neighbors talking specifically about how those sounds, noise, fumes, traffic, sights impact them at their residences.

Mr. Sommer noted that this property sits up higher that actually turns out to be a problem because it's not down low where its sounds, its sights, its fumes are shielded from the neighboring properties. It's right up there on top of them coming down on them. I think I've addressed all my major points. So, we do again ask that you uphold the considered opinion of the Land Use Administrator; that you uphold the considered opinion of the County

Development Review Committee that made findings, that you listen what the neighbors have to say tonight with regard to whether this property 1) impacts them, 2) is incidental and supplemental to a residential use and that you deny the home occupation permit. Thank you.

CHAIR MAYFIELD: Thank you, applicants and opponents. And thank you guys for again asking everybody to stand up in favor or not in favor. Is there anybody from the comment wishing to comment or speak to this case? Mr. Smith. You will have to be sworn in and give your names please.

[Duly sworn, Charles Smith testified as follows]

CHARLES SMITH: My name is Charles Smith. I run C. Smith Construction Company and my address is 2 Entrada de Santiago. I've been living there about 15 years, me and my wife and my family. As accordance to this map that gentleman has shown, my house is directly almost right behind where his shop is at and I hear nothing. I smell nothing. If they're complaining about noise, I've got a backhoe; they would hear that more than they'd hear the welding shop. I've got my neighbor across the street who has a skid-steer, he uses that just as much as I do to build and the noise doesn't bother us.

I mean, you're talking about businesses on this map, you've got a taxidermy right in the front. You've got a landscaping shop right in front. They don't make no noise, they don't bother me. The welding shop don't bother me. Mr. Calderon has asked me in the beginning when he first got there, I don't know [inaudible] but that's his information, but he asked us that he was building a shop. So he was very honest with us and he always has been I respect the man for him being honest with me since day one.

As far as the businesses if you look at every shop pretty much I've built over there, you have garages surrounding everybody is doing from mechanics to construction to welding to landscaping, taxidermy, you got the Tapias, I mean we can go on and on the whole surrounding area.

The association we have no part of. We Montoya, Peterson, James Peterson, Mr. Calderon, the Tapias we have no part of the association whatsoever. This is an association that has nothing to do with us. We don't interfere with them. They have things that they're doing and I don't go around and say, okay, you're growing a green house, you're growing a plant from somewhere else, and that should be a concern. I have my own things that I do on my own property. As far as what's happening right now, I think you have to approve Mr. Calderon's application because he didn't do nothing wrong. And as far as the neighbors and the so-called pollution he's putting out, you've got I-25 right there. That's putting out more than anything. You got calls going up and down the street, you've got asphalt, you got everything else that going to hit. As far as talking about noise, my kids make more noise in the surrounding area than anybody else's. So as far as the noise coming from the welding shop, I don't think so.

I would recommend to the Board of Commissioners if you guys would approve that. And being me right next door to Mr. Calderon's shop so the rest of the people are too far away and they don't have as much noise that I've endured in the time that I've been there and the time that he's running that shop. Thank you.

2014 JUN 10 11:38 AM

CHAIR MAYFIELD: Is there anybody else from the public wishing to comment? Just so I can see by a show of hands who all would like to comment tonight? Okay, thank you, can you all stand up and be sworn in at one time.

[Duly sworn, John Redd testified as follows]

JOHN REDD: Mr. Chair, Commissioners, thank you, my name is John Red and I reside at 12 Traviesa de Camilo East. I'm the president of the Santiago Subdivision Road Users Association. And I'd like to read into the record the names of people who couldn't be here tonight and asked me to put their names in: Judy Armijo, Justin Armijo, Lisa Armijo, Navidad Baca, Gloria Baca, Jake Baca, Jerome Baca, Brian Bachicha, Douglas Brenner, Andrew Drome, Michael Gonzales, Peter Johnson, Barbara Larson, Susan Parks, Sam Shaw, Eddy Vigil, Mary Ellis-Vigil, Orlando Vigil, and Rosalie Vigil.

I want to say first of all that metalworking is my family business. My father for 25 years manufactured cutting dyes in the State of New Mexico and his dye shop was located in a zoned industrial park in Sandoval County. So I am familiar with working with stainless steel and I'm familiar with working with metal.

Now the subdivision in which we live has been in existence since the early 1980s. Three generations of residents have grown up there and there are 22 lots and it's a quiet and entirely residential family neighborhood.

In summary the reasons that we oppose the proposal of Adonai Custom Ironworks Incorporated is because it's not a home business in either the letter or the spirit of the County code and what this is is an attempt to place an existing industrial business onto a residential lot. And this will call irreversible harm to our neighborhood both in terms of quality of life and our property values. On some of these pictures in your packet, but on February 21, 2012 there was a notice of development permit posted on the property that said single-family residence at 8 Ernesto Road. And we reviewed the plans and found that that plans included at the very top of the hill that overlooks our entire subdivision it actually looks down upon the spire of Santa Maria de la Paz and is visible from a long ways around. The first structure that the Adonai Custom Ironworks erected on the site is this quote garage. Which they had referred to as a garage with our neighbors. And it's 1,950 square feet. It's one of the largest structures in the neighborhood. And as you can see it overlooks the entire subdivision, that's in one of the pictures I put in the packet and Adonai Custom Ironworks is a well established limited liability corporation prior to the purchase of this residential property. Their facebook page has 247 photos of their work and they produce large-scale, high end, ironwork. So in terms of commercial activity on the site since the metal building was erected there's been noise, smoke and fumes, sounds of metal working at all hours of the day or night including weekends, heavy equipment movement and noise of workers.

So just to go over what happened with this application, as soon as the quote garage was erected metal working activity started there without any kind of permit and it was only after there were complaints to the County and a subsequent inspection by the County that the owners were cited by Code Enforcement Officer of November of 2013 for operating a business without a permit and it was only at that time when there had been a complaint and code violation that the owners applied for a Home Business Occupation. And I think if there hadn't been complaints in the first place we might not be here.

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We think that the County Code 3.22 involving the use of the dwelling for a home occupation being clearly incidental and subordinate to its use for residential purposes clearly does not apply in this case. The large metal working shed is the dominant feature on the property. Secondly, in County Code 3.23 there should be no change in the outside appearance of the building or premises nor any other visible evidence of the conduct of the home occupation. That's clearly not the case. There are metal working objects including a large lift that have been visible to surrounding lots and are taller than the fence.

Secondly, and probably most importantly or thirdly, sorry. The County Code 3.25 says that no equipment or process shall be used in the home occupation that significantly interferes with the existing use of property in the adjacent area. And as you hear from our neighbors there have been significant interferences with living in the neighborhood which is the activity in the adjacent properties since they started commercial activity on the site.

And, first of all, speaking of noise quiet is an integral part of the rural neighborhood's character and it's a major source of our home's value. And I would just want to say that Adonai's Ironworks has already been cited for operating its noisy business without a license and people, in fact, noticed it because of noise and fumes.

I want to refer specifically to a fire issue from the website www.santafe.nm.gov there's a section called welding and cutting which includes the following statements: 1) quote, there is also the ever present chance of fire, end quote. Second quote, welding hazards pose an unusual combination of safety and health risks. By its nature welding produces fumes and noise, gives off radiation, involves electricity or gases and has the potential for burns, shocks, fire and explosions. That's from Santa Fe. So then the fire risk involves having this activity in a residential area that is served by a volunteer fire department that is located 6.4 miles away.

So in summary, Adonai Custom Ironworks Incorporated is not a quote – may I? May the record reflect that I was interrupted. Thank you.

CHAIR MAYFIELD: Sir, please, just continue please.

MR. REDD: In summary, Adonai Custom Ironworks Incorporated is not a quote home business in either the letter or the spirit of the County Code. The owners intended from the beginning to move an existing industrial business onto a residential lot and this will call irreversible harm to our neighborhood both in quality of life and property values.

So we request that the Commission deny the appeal by Adonai Custom Ironworks and that you affirm the decision of the Land Use Department and the subsequent unanimous decision of the Development Review Committee and this business should be located in appropriately zoned location in Santa Fe County. Thank you.

CHAIR MAYFIELD: Thank you, sir. Who else would care to comment? Yes, I know there are a few folks. Everybody, please just allow folks to make their comments without any interruption. Please, I would appreciate that, thank you.

[Under oath, Melanie Koch testified as follows]

MELANIE KOCH: My name is Melanie Koch, hello. Thank you for taking the time to review this one more time. I live in the property – our corners touch. We are right here. We are very close. The shed has the two bays that open up to us and I'm sorry but I come from a family of welders and I know what that is. They can say that they're doing a

2014 JUN 10 09:38 AM

little tig welding or whatever but there is stink and fumes that come down there. I can't even be outside my yard. So that is a little bit of a deceit. But there's been a little bit of that going on.

Okay, so we live in the top end. Mrs. Calderon in her statement at the last hearing said her dreams were crushed. If they had built their welding business in the appropriate area of town designated for such a business she wouldn't have that problem. And it is our dreams that have become a nightmare because our property values for sure looking at that, you can't how could I possibly have a realtor show somebody and they hear that noise. Excuse me, I live right there. I hear. I see it. I smell it. And that is not increasing the value of land for sure not or anybody else's. We are very much close to it. And we've heard music. We've been metal fabrication. We've heard pipes drop, clanking, the fumes – I mean it is unbearable. And the last time they said they would close the doors, well, I think OSHA might be pretty interested in that because when you have welding you're suppose to have the fumes blown away for the workers' health, safety – that's coming right straight down the alley. Right down to our property so that there's no fumes, stink, I'm sorry. Charlie must be deaf and can't smell either. I'm sorry.

CHAIR MAYFIELD: Ma'am, please refrain from comments about other people, please to yourself.

MS. KOCH: I'm sorry. At any rate, we are taxpayers in a residential area and the permit restriction of this kind of business are in place to protect us. We would like to have the same laws that we follow and respect to be enforced to these people who are creating a, you know, not a good situation for us. Thank you.

CHAIR MAYFIELD: Thank you, ma'am. Next please.

[Previously sworn, Rebecca Lowndes testified as follows]

REBECCA LOWNDES: My name is Rebecca Lowndes. I live at 14 Entrada de Santiago. I am next door to the Calderons and Charlie Smith is my other neighbor. He's a good neighbor. I like Charlie. I know what goes on around his house. I see his kids –

CHAIR MAYFIELD: Would you just comment on the case in front of us tonight, please?

MS. LOWNDES: That's what I'm doing. Thank you.

CHAIR MAYFIELD: Thank you.

MS. LOWNDES: When the vacate property next to my home was built I was told by the gentleman that I talked to across the property line that he was building a garage. What I got was a 1,950 square foot metal building. The kind of garage that you might see on Siler Road. My house is 1,440 square feet. It is lower down and small than the big metal building. You can see if from the entry to my driveway. There is absolutely no question that my property value has gone down just by having the building there. If I go to sell my house, the first thing someone is going to ask when they come to look at it is, what's that big metal building. If I can tell them, oh, it's the neighbors they park their boat, their RV, okay, potential buyer could say, I don't want to be here or that's fine by me. But if I tell them it's a welding shop; that it's a commercial, light industrial enterprise, it's a whole different situation. I do not live in the Santiago Subdivision. I live in the county along with Charlie Smith and most of the other people who raised their hands to support the appeal.

I am against the appeal and hope that you will uphold it. Thank you for your time.

CHAIR MAYFIELD: Thank you.

[Previously sworn, Teresa Sandoval testified as follows]

TERESA SANDOVAL: Good evening. My name is Teresa Sandoval and I am here today in support to Mr. and Mrs. Calderon. Actually, my address – my daughter lives on 33 off of Rabbit Road on Galisteo and I'm there most of the time because of my grandkids. But as far as Mr. Calderon I have known him to do excellent work and I feel that he is an asset to our community. I don't foresee any problems arising by him having his home and business in the same areas. I just feel like you guys just approved what was that 86, 68 acres, there's going to be a lot of noise there, you know. And this man is a good man and he needs to place to live. Live and let live, you know. And that's all I've got to say right now. Thank you for listening.

CHAIR MAYFIELD: Thank you, Ms. Sandoval.

[Previously sworn, Jacqueline Vigil testified as follows]

JACQUELINE VIGIL: My name is Jacqueline Vigil. My husband's family lives at 33B Old Galisteo Road a couple of streets down from Mr. Calderon's business. We contracted with Adonai Custom Ironworks Inc to make us three custom gates for our courtyard. We had a picture of what we wanted and Mr. Calderon said he could make them. He gave us the proposal and within two weeks they were constructed, installed at our home. Mr. Calderon was very professional and very trustworthy. He was a blessing since we had a terrible experience just weeks before with a welder who was supposed to make us these same gates.

My husband and I get so many compliments on our gates. My mother liked ours so much she had him make her two gates at her home as well and couldn't be more happy. We are all for this business, Adonai Custom Ironworks Inc. Anybody who does business with Mr. Calderon will not be disappointed. I know firsthand how important it is to find trustworthy people. Also you get a custom product produced in a timely manner. These are things that come rare these days. My husband and I will continue to recommend Mr. Calderon and his business to others. Thank you.

CHAIR MAYFIELD: Thank you, Ms. Vigil. Anybody else wishing to come forward.

[Previously sworn, Ekkehard Koch testified as follows]

EKKEHARD KOCH: My name is Ekkehard Koch. I live on 13 Traviesa de Camilo and we are caddy-corner to Adonai Ironworks operations.

You know, I admire anybody that runs a business and I admire Mr. Calderon and his family for wanting to better themselves but those businesses should be operated in the correct environment. There's definitely noise. There's definitely smell and it is just not acceptable for a residential neighborhood like this one is.

You know this business can operate very well, and I'm sure they do excellent work, but I know that my nephew went up there one day to just kind of see what they're doing before this all started and they told my nephew that they were just doing stuff for their friends. So they hid the fact that they were running a commercial business out of there. I personally, I don't like to be deceived like that. And I ask you to deny this application

because this was an existing business that was moved there. It is unfortunate that they made the choice to put this business in a residential neighborhood where it probably doesn't belong. You know the building is not equipped with commercial standards for this kind of stuff. It is equipped as an auxiliary building and to move an existing business in there, to me is deceitful. And I admire, again, the business ownership. I've owned three software businesses myself but put things in the proper place. And I'm sure that I would enjoy being a customer of ironworks, they look like they're doing a great job.

CHAIR MAYFIELD: Sir, could I ask you to spell your name for the record please.

MR. KOCK E-K-K-E-H-A-R-D is my first name. And K-O-C-H is my last.

CHAIR MAYFIELD: Thank you. Sir.

[Previously sworn, David Horton testified as follows]

DAVID HORTON: My name is David Horton. I can't speak to the neighborhood issues because I don't live in the neighborhood. I live in Santa Fe County. I just wanted to support -- I just bring up a couple of things related to my personal experience related to the work that Mr. Calderon does because number 1, when I needed to have a project done I went out and looked at what was available by the quote-and-quote industrial -- am I talked too loud?

CHAIR MAYFIELD: Speak into the mike, please.

MR. HORTON: Oh, okay. I went out looking for an industrial production for a gate, for example for my home. I couldn't find anything worth looking at which would make at least the neighborhood I live in look worse. And I was fortunate enough to find this gentleman because he is an artisan and the only thing I want to throw into this is my personal experience with his work, first its beauty. But second of all, he certainly did part of the welding on site at my home. I certainly did not experience any -- I was out there, present, I did not have any issues or see anything related to fumes. The other thing that catches my ear based on what I've heard and what I've observed this gentleman to do is when he brought this custom gate to my home it was not completed in the sense that he save the buffing to smooth off edges, et cetera, because it involved grinders to do it at my home as opposed to subjecting his neighbors to that.

So, given my whole support [inaudible] of what the prior lady or two back said we are fortunate to have this man in this community of Santa Fe to have his work available. And I guess what I get concerned about is when we are -- when we're facing what we're facing throughout the country of lots of people struggling to make it today and we're only looking at what's going on in our little hemisphere, I think we're all going to hurt ourselves in the long run. So, I mean, and I've heard, and I'm almost done, I've heard a lot of speculation about what if he'd have done this and what if he had done that -- you can say the same thing when it comes to moving into a community that has strict homeowners regulations. If you choose not to do that, you know, sometimes you have to face these things. But I guess, the last thing I'll say is, I just have observed that I think this gentleman does try to respect the people that he works for, certainly I observed that myself, but based on where he did his work and how he tried to operate, I got the sense he was trying to respect the environment around him otherwise --

2014 JUN 10 PM 5:30:00

So the last thing I would throw out is that I think he is a very honest man and it seems to me that if there can be some criteria which I've sat through this whole thing tonight and I wasn't expecting to be here this late, and I'm sure you weren't either, I saw a sense of putting restrictions on things seemed to allow people to work things out. And this – I think if you all put some kind of restrictions that might meet the concerns that were expressed he would be a man who would honor that.

Pardon me?

CHAIR MAYFIELD: Thank you.

MR. HORTON: Thank you.

CHAIR MAYFIELD: Not to bring any levity to this case tonight, but this is an early night for us, just so you all know. Is there anybody else from the public wishing to comment on this case? Mr. Mackey.

[Previously sworn, Marlin Mackey testified as follows]

MARLIN MACKEY: Good evening, my name is Marlin Mackey.

Commissioners, I want to thank you for the opportunity to come and talk to you about this situation. First of all I oppose this business because of the nature of the business, the size of the business, how it was built and where it will probably go from here in relationship to the single house community that we have right next to it. I've lived in this community since 1996 and most of the people in the audience, there were 20 names that were read that live in that community, and there are 20 of us here tonight so there's 40 people who are opposing this. And why do we oppose it? First of all when they built the building it's the size of this room. It's two stories. So when we talk about 1,800, 1,900 square feet and you go up double, that's a 4,000, relative 4,000 square foot building and it was built right on the edge so it overlooks the entire subdivision we're talking about. All those 40 people who say, no, I don't like that. And because of the situation of the building any smoke, any fumes, any sparks goes right down the hill and will destroy that community. There are houses right next to it. Some of the people who have houses a little bit further off they're not in that same location. They're sideways to the house up by Rabbit Road and they're level. We're not in that situation. We're below it so it's going to come right down on us. I have a two story house that I've living in and whenever this building this size was put up it blocked my complete view of the mountains and the reason I bought the house is because I can see the mountains from the second floor. I don't know that I'll have that any more so it reduced my property value and the interest of looking out – same way with a lot of the other people there.

When it first went up we were wondering what in the world are they going to put in there for that size of structure. There's no house there. It was just the building. And as we learned as we went forward they were going to put a welding shop in there. And I've done welding myself, I lived on a family ranch and I did welding myself and stuff. We used some of the same materials and stuff that they're talking about today. And it does create things that I would not want to have exposed out in our community. You can close the doors and this and that but I think it's still going to come out there. And I don't want that liability for our full community here.

Now, your staff, very good staff, they went out. They looked at it. They did an inspection. They had noise people come out there. They looked at it and they did an

inspection. They turned it down. Then they went to the appeals process. So they went to the next level and I was at those meetings. Went to the next level and people sitting right here in this room. We went through this whole process and the decision was unanimously with that group that this is the wrong business for that location. This is a family community, a housing community. They have this huge structure which once if you ever approve this you can't control it anymore. No matter how many walls you put inside of it whenever a person starts operating a business in a 2,000, two-story building is going to be up for grabs.

I have a two-story garage in my house there and I could put in the size of this building I could put 10 or 12 cars in there, not just my two. Because my two car garage is for two cars. It's not 2,000 square feet. I think that your staff has done a good job with the analysis. They looked at all the different aspects of it. The committee that we talked to you before you guys, they did a good analysis. There was a lot of portions that took a lot of time and they finally came to a conclusion that it's the wrong business for that location. You can't control the size of the business. It does create noise. I've heard the noise and I don't live right next them. I live a little ways down the area there.

I think you ought to uphold what your staff in their evaluation has done. What the whole community around there is saying that this is the wrong business there. They can use this business, it does very good welding work, do this business someplace in an industrial park not in a housing community. Thank you.

CHAIR MAYFIELD: Thank you, Mr. Mackey. Is there anyone else in the public wishing to comment tonight? Yes, please, we've got two more. How many more people wish to speak tonight? Three. Have you been sworn.

[Previously sworn, Bernadette Redd testified as follows]

BERNADETTE REDD: Bernadette Redd. I guess I want to speak to the issue of what the actual issue is. This is not really about the merits of welding.

CHAIR MAYFIELD: And your name, ma'am?

MS. REDD: Bernadette Redd.

CHAIR MAYFIELD: Bernadette –

MS. REDD: Redd R-E-D-D. I don't think that this is at all about the merits of welding. Welding is a terrific occupation. I don't think anybody has a problem with that. What the 20 of 22 families in the Santiago Subdivision have a problem with this where it's located. You have to see this. Our subdivision, we face this big hill and on top of that big hill now is this warehouse. It's like looking at a Wal-Mart where we looked at pinon trees before. It is in the Calderon's backyard but it is in all of our front yards and that is the problem that we have with it. And we can't control it. The accessory structure is bigger than their primary residence. I mean that's very odd. It's not incidental to what's going on up there. It has – the more successful that business is, the more – the worse it will be for the people below them. The teachers and the construction workers and all the other working people that are down below. Their lives will be worse off mainly because their property values will drop even more than they have already by just having that building up there. Thank you.

CHAIR MAYFIELD: Thank you, Ms. Redd. Ma'am.

[Previously sworn, Christina Ornelas as follows]

REC'D CLERK RECORDED 5/13/14

CHRISTINA ORNELAS: Thank you, Commissioner. I'm Christina Ornelas and I'm a citizen here of New Mexico. We have a home visit also running from my home. My husband is a contractor and I knew the family for many years, the Calderons, that they're only trying to make a living. I know a lot of times it's hard to say what's going to happen in our lives, in our family and our kids. We're trying to make it better for our kids and obviously he has the opportunity to be able to work as a welder and not only that to be able to be legal and every respect of the law that's here in Santa Fe with the home business. And, also, to be legal also in respect of paying our taxes. We have a right also in no matter what wherever we live but we also have the right also to fight, to make a difference. To be able to make our own lives and make our own business, home-based business. I know that a lot of things are coming of the harm that's going around in the air. If you come to think about it, I-25 is full of traffic going and coming. The fumes are already there in the air. And there's a lot of things that we have to look more better to make our society better. And not only that they are a family that is trying to make a life and be respect every law that they have – the way that we have. We have done business here in Santa Fe for 20 years. We go the opportunity to go ahead and do it from our home which helps us to save a lot of money where we won't have to go run to another place like industrial place to have our vehicles and our stuff that we have for concrete.

But what I want to say is that they're citizens – you know, legal here. They're paying their taxes. They do what they have to do. They respect their neighbors. To me and my point of view I don't see that the welding, the building, you know, everything that they're saying is a problem. There has to be more than that but you know I come in and I see them and I see that they're trying to make a living. You know, they're not being on welfare or any other stuff or asking anybody else for offerings to help them. They're trying to make a living here in the United States no matter what. And what I want to say is that being in home business operator with the concrete business it's helped us out a lot to be able to run our business from our home. We do live in a residence where there's a lot of homes. Most of the time the value of your home, one way or the other, is going to go down no matter what even if they go and park something else there. It will go down. Right now what we need to see is how this family is struggling to be able to make it better for themselves and their kids. And I know, this is my first time talking, but this is what I feel in my heart that no matter what they're making an effort. They're trying their best and they're trying to respect every law that is come that we have to respect. And also they've been with us for many, many years that – they're beautiful people. They have a personality that they get along with whoever comes around them. But obviously, like some people – it's hard to say. You know, we live all together here in Santa Fe. We have to make a difference but we have to learn to love each other and be a little – do what we have to to help each other out. And like I say, I am – that's why I felt like I had to say something because I run a business from my home and thank god I haven't had any problems with the neighbors or anything like that with our vehicles that we have. But I respect the laws. If they come and tell me you can't have this, I come and take it off my yard. But, like I say, we're citizens. We pay taxes. We do what we have to do to respect everybody so on my behalf if you could look it over and find it in your heart that you could give them the opportunity to be able to continue. That's what I'm here to say. Thank you.

2014 JUN 10 10:57 AM

CHAIR MAYFIELD: Thank you. Yes, sir, in the back.

[Previously sworn, Miguel Garcia testified as follows]

MIGUEL GARCIA: My name is Miguel Garcia. I'm a contractor here in Santa Fe and the Calderons have been doing work for me for quite a few years. I've known him for a long time. She pretty much said everything that I was going to say so – other than that. He's really responsible, reliable with the work he does and it's hard somebody like that to get your work done on time so you can finish your projects on time. But she pretty much beat me to everything I was going to say. That was it.

CHAIR MAYFIELD: Thank you, Mr. Garcia. Is there anybody else from the public wishing to comment on this case? Seeing none, this portion of our public hearing is now closed. We will afford the applicant some response time, brief --

MR. SOMMER: Mr. Chair and members of the Commission, I would like to address just some of the issues. There was an indication that Mr. Calderon got cited. He didn't get cited. Code Enforcement came out and said, I think you need to go get a business license. He was never cited. He didn't receive a citation. Staff confirmed for me moments ago that they've never seen a citation. So that's not right.

One of the things that has been brought up many times and probably from both perspectives and maybe it's not an issue but maybe it is an issue. You've heard a lot of people get up here and say Mr. Calderon is responsible, he's honest. You've heard other people get up and say, well, he's deceitful, he's this – and that's really kind of character traits that you're talking about. Is it relevant in this application? I'm not sure. In the last application I think Commissioner Anaya made, one, an astute observation but also came up with a solution that worked. He made an observation, he said, I don't think anybody acted with malice here. Meaning, judging from what happened and what he heard, was there fraud going on, was there – that was relevant to your consideration in the case and I think rightfully so because you must rely on the people that you grant things to whether they're going to live up to your expectations and your conditions.

In this case Mr. Calderon has been doing this work for 15 – 19 years and before that for years. His health isn't at risk. He's in fine health. He wouldn't do what he is doing if he was putting himself at risk. He's got three small children. He's cognizant of what he's doing and this idea that there's something unhealthy going on is just not supported. Let me go back to the very issues that you heard here tonight. I said that I will address the things that are raised.

I heard five separate people say, before they got into the use, god, if you could see this thing on the hill. If you could just see it. One man got up here and said it's as big as this room. Maybe to him it is as big as this room. But it isn't as big as this room. It's not half the size of this room. It's not as tall. It's not as big. It's not as wide. But to them, what they see is offensive. I heard five people say what they saw. They didn't buy this property. They moved into a subdivision where buildings like this are not allowed. In Arroyo Hondo, in your district, there are lots of metal buildings that are used for animals, they used for equipment. There are places in this community where metal buildings are not allowed. This is not one of them.

2014 JUN 10 PM 05:30:00

The woman next door said if a realtor comes what am I suppose to tell them about this metal building. What if she was tell them, there's an artist that works there. This person does sculpture. Would that be allowed under your code? I submit it would. Would that run off buyers? Probably not. Would it involve welding and grinding and that sort of thing? Yes, could you condition that use so it wasn't offensive? Yes you could.

In this particular instance part of the objection is that these people don't control what went on this property. They didn't buy it and they don't have the right to control it. This structure complies with the County Code in all respects; size, location, everything. It's permitted. That is not the issue how it looks.

The last thing I'd like to point out to you is staff said to you it – or Mr. Graeser said to you, it can't be run in an incidental fashion. That conclusion is absolutely unsupported. It is subordinate in size and it has two people working there. It is by definition subordinate in use.

To say that it cannot be operated in a subordinate fashion is unsupported. That's taken out of thin air and you are asked to say that's what you should conclude. That's why we're here tonight because the code requirement that it be smaller in size. That it be limited to a number of employees and traffic means that it is subordinate.

I submit to you that this application is approvable under your code and properly conditioned can protect the interest of the community that surrounds it. Walling off the interior so that there is no communication between the two is one. Requiring that all the activity in the business be conducted inside with the door close is two, which are conditions that they are willing to accept. You were told that the County went out and did an inspection. They had him do his work outside so they could measure the sound and it didn't violate the code. You can require that he do it inside the building to attenuate any sound that is created.

I think the issue of fumes is a non-issue. I submit to you that this is an important case both for the Calderons and for our community at large. It's important to them, obviously, because it's how Mr. Calderon makes his living and he can do so in accordance with your laws. It's important to this community generally because we live in a community of artisans and if we are to tell our artists, our artisans, our workers who as Mr. Smith – he runs a company and you know what, he fixes his equipment on his property legally with a welder, with a grinder in the things that he needs to do. And that's not out of character. We are telling those people that the County Code doesn't support your use. And I think that that runs counter to what the purpose of the home occupation is as in your new code, it says, The purpose of this section is to stimulate economic development in the County and promote energy efficiency by promoting home occupations.

I submit to you that this application is approvable and I appreciate the time and attention that you've allowed all of us here tonight. Thank you.

CHAIR MAYFIELD: Thank you, Mr. Sommer. Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Mr. Chair. I have some questions for Mr. Salazar but I want to make a few comments first. You know we've had several cases in the past year, few months even, that have actually dealt with home occupations. And this isn't about the emotion. This is about whether or not something is allowed with the existing code or the future code. And I think the work is beautiful. I think everybody should have the opportunity to work but we just denied a couple of businesses and

told people they had to move their businesses over the past few months and some people won't be able to have a business because of our decisions and other people are going to have to move it. So I just want to point out to the audience that I appreciate all the emotion pro and con but this is really about what's in the code and what's allowed.

So, Mr. Salazar, was there a permit for this building?

MR. SALAZAR: Mr. Chair, Commissioner Stefanics, there is a permit, a building permit for this building. It was permitted along with two other structures. A studio which the applicant is currently living in and a main residence which would consist of about – a little over 2,000 square feet.

COMMISSIONER STEFANICS: So, it was clear how large this building was going to be when it was permitted?

MR. SALAZAR: Mr. Chair, Commissioner Stefanics, that is correct. It's 1,950 square feet –

COMMISSIONER STEFANICS: What's the height?

MR. SALAZAR: 15 feet.

COMMISSIONER STEFANICS: 15 feet so that meets code?

MR. SALAZAR: Yes.

COMMISSIONER STEFANICS: Okay, so on the properties around what's the average size of the lots around this property?

MR. SALAZAR: Mr. Chair, Commissioner Stefanics, they are all about 2.5 acres in that area.

COMMISSIONER STEFANICS: Including this one?

MR. SALAZAR: Yes.

COMMISSIONER STEFANICS: And, Mr. Chair, Mr. Salazar, are there other large garages or metal buildings this size on any of these lots that you accessed either by aerial or by vision yourself?

MR. SALAZAR: Mr. Chair, Commissioner Stefanics, when I went out there in November for the site inspection this was the only metal building I saw in that area but I did not go into the Tapia Estates which is east of this. It's possible that there could be some in that area. But a metal garage or shop, whatever people would like to term it, is not unusual for us to permit in Santa Fe County.

COMMISSIONER STEFANICS: So, Mr. Chair, Mr. Salazar, in the new code where would welding fit in in terms of occupations?

MR. SALAZAR: Mr. Chair, Commissioner Stefanics, we were discussing that and Penny and I said it would fall in the use table under is it a custom trades person?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Stefanics, we do have special trade contractor but I think that's more of a painter, plumber, electrician so it may fall under there. I would have to look under the standard use classifications. Otherwise the light industrial structures, it could fall under that as well in the use table.

COMMISSIONER STEFANICS: Okay, so, Mr. Chair, Penny, I'm going to switch it to you a minute. I live out by the Houser Foundation and the Houser Foundation does model sculptures and then cast them. And they're very, very large sculptures. They're in a residential neighborhood. As that permitted?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Stefanics, yes, that did a master plan, a development plan a number of years ago under I believe the other development section of the code.

COMMISSIONER STEFANICS: So if anyone else wanted to do something like what the Houser Foundation is doing in my area, would they be allowed to do it?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Stefanics, under the current code it would be a similar type of use. It would be a similar type of procedure which would be master plan development plan. Under the proposed code, we'd have to look at the use list and see whether or not – what the zoning district is and whether the use is allowed as a permitted conditional use or not a use that is allowed in that district.

COMMISSIONER STEFANICS: So, Mr. Chair, Penny, in the new code in this particular neighborhood that we're talking about tonight, if you had new applications for businesses that did not meet the traditional home occupation, what would be the County's response?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Stefanics, for this type of business in this area, I don't have the zoning map in front of me, but if it's a 2.5 acre minimum it's probably the residential estate and light industrial uses would not be allowed in that area.

COMMISSIONER STEFANICS: So, Mr. Chair, Penny, would a new individual have the opportunity to come forth to request a variance?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Stefanics, the correct way for them to move forward would be to ask for a rezoning on their property. And ask for their property to be zoned as possibly commercial general – though actually, our light industrial is only allowed in industrial and planned development districts. So it may be an industrial rezoning.

COMMISSIONER STEFANICS: Thank you, Mr. Chair. I might have questions later.

CHAIR MAYFIELD: Thank you. Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, Commissioners, members of the public, Mr. Salazar, everyone present, I think the first comment I'm going to make is just a general comment but something that I'll follow up on more as we have more discussions about where things fall as far as definition. But having spent time doing electrical work myself, construction work, building construction, plumbing, welding those are all similar skill sets and classifications and I don't see a deviation from what an electrician does from a use of materials standpoint and even tools or even a plumber or even a carpenter in any big deviation to what this gentleman is doing and I think maybe that's something as a Commission we need to continue to discuss.

When I first saw the caption on the case and I heard the term of welder – there's different levels of welding. There is very intensive industrial, what I would call industrial larger scale construction welding that goes on and even larger scale and I think Commissioner Mayfield used the term, fabrication, which I might come back to a few times as I make a few comments. But I was going to pull it up on line to look at your website. When I see the pictures of what you're doing and I take into consideration some of the

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reference – Commissioner Stefanics, I hadn't given much thought to Houser but they do rather large construction indoor and outdoor that are large in scale. And Mr. Massey was suggested, John Massey in Galisteo who also does fabrication and welding.

I do agree that artists are in all forms and I would even put forth that artists are electricians and plumbers and carpenters and every level of construction and I think sometimes our minds maybe get skewed into thinking things in terms of an industrial site of facility that builds – you know, when I think of industrial I think of a manufacturing plant. A large-scale company that is fabricating large buildings on site and shipping them portable construction to schools or other facilities. I don't think of gates or decorative models or chairs that a carpenter might make or a woodcrafter might make in their home or their garage. So I think there is some thoughts that get skewed when we have discussions.

So as I'm listening I had some other questions for staff relative to the area but I think it came out in the discussion that in this particular area, and correct me if I'm wrong, Mr. Salazar, there are no restrictions by covenant per se in these parcels where this property exist. Are there any restrictive covenants that are filed in the County that deal with these properties and if there are if could let me know what those are I would appreciate it.

MR. SALAZAR: Mr. Chair, Commissioner Anaya, on this particular property there are not any covenants restricting architectural standards, landscaping standards, nothing of that sort. It falls under the County Land Development Code.

COMMISSIONER ANAYA: Appreciate that. And the other thing that came up and I think it was mentioned earlier several times in the discussion was the size. I clearly get and gather that the individuals in the Santiago Subdivision or many of them, I don't know that every single one of them have a concern, but many of them are concerned about the size of the structure and the type of materials that the structure was built out of but that facility is there to stay based on the code and based on the construction and there are no provisions for us to make any choice or change to that factor. Correct, Mr. Salazar?

MR. SALAZAR: Mr. Chair, Commissioner Anaya, that's correct. It meets the County Land Development Code in its height and under our accessory structure ordinance it's under 2,000 square feet. It's not unheard of in the County to have an accessory structure bigger than the principal dwelling unit.

COMMISSIONER ANAYA: Mr. Salazar, Mr. Chair, Mr. Salazar, I appreciate that. Some of the other things, just some comments, I too was thinking back over the last three and a half years, Commissioner Stefanics, that you've been on this Commission longer than I have but I was thinking back on the three and a half years that I've sat in this chair and I can't think of one – I can't think of one and Penny if there's one and I'm speaking out of turn, but I can't think of one business that I've voted to close. I can't think of one. We had a business in the Agua Fria area that we had based on their size took a vote some time back to try and limit the size and there was a lot of controversy over that issue. We've had several other home occupations that came in for variance, Windmill Water comes to mind. But I haven't in my seat voted in favor of closing any businesses. We got a crematory last meeting, at the land use meeting where there was a functional business and they wanted to expand their business to another use but I think unless I missed it, I'm pretty sure that that business still continues to function. They just can't add the additional crematory component.

And I say those things clearly and methodically because it is my perspective and feeling that the code that we're adopting now and that we're moving towards in my parts of the County not all but in many parts of the County, provides opportunities for people to work out of their homes and to actually start businesses.

Having lived in this County my entire life, I'm frustrated to see how many of my friends and my neighbors and my families have moved away from this community. And I think that it's important for us to grab onto what business is and what it can be and have people that maybe have been hiding, frankly, in their homes and in their neighborhoods for fear of retaliation in trying to perform a business to have them to have a code and have provision where they can actually come forward and tell us what they're doing as opposed to hiding.

And, so, I absolutely, unequivocally, fully respect, you, Ms. Ellis-Green and the staff and the review you did. That was the other thing I looked at. I looked at the Sheriff Department; we have a noise ordinance. The purpose of the noise ordinance is to evaluate noise. And when it raises to a certain decibel that that's the level of nuisance. The point of those monitors is to curtail any business – or that matter, the ordinance doesn't just address businesses. The noise ordinance addresses decibels of noise whether it's a business or whether it's a neighbor that is being too loud. I know I heard many people referring to Mr. Smith, everybody is picking on Mr. Smith in the front, but if Mr. Smith's equipment was operating at a level too high and somebody had a concern – well, then his equipment could be evaluated. So it's not just businesses that that particular ordinance is talking to. It's any of us that do our business whether it's personal or for trying to make resources to pay the bills, I guess, is the way I look at it.

So that said, I respect everyone. But I'm going to make a motion to approve the appeal with some conditions. The first condition that I would offer is that a wall will be constructed in the middle of the garage and that there be a clear delineation between the two sides of the garage. I'm also going to make a recommendation that the office hours be limited to 9, 9 a.m. to 5:30 p.m. with no work on weekends. That's the other condition that I would offer. There was another suggested condition I thought but it escapes me. Was there another one, Mr. Salazar that you can recall?

MR. SALAZAR: Mr. Chair, Commissioner Anaya, I believe it was that all work would take place inside the garage.

COMMISSIONER ANAYA: I would add that as an additional condition that all work would take place inside the facility.

Mr. Salazar, in our home occupation license section we list, or Ms. Ellis-Green, we list all of the requirements associated with the home occupation. The number of employees, I believe and other factors. Can you just speak to some of those things that the applicant and this is any applicant that applies for a home occupation accepts when they apply for the home occupation could you just list some of those before I go any further?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Anaya, yes, they are included in your packet on page 8 and any home occupation needs to sign and initial that they have read these and will comply with these. No more than six people other than family members residing on the premises shall be engaged in work. No change of the outside appearance of

the building or premises or evidence of the conduct of the home occupation except for one non-illuminated nameplate sign no larger than 9 square foot. Use of the dwelling shall be clearly incidental. No more than 50 percent of the floor area of the dwelling shall be used for the conduct of the home occupation. Shall not involve operations or structures not in keeping with the residential character. No equipment or process shall be used in home occupation which interferes with the existing use of the property, e.g., noise, vibration, glare, fumes, odor, electrical interference. No traffic should be generated by the home occupation in greater volumes than would be normally expected in a residential area. Parking for employees and customers or clients of the home occupation shall be provided off street. One parking space for employee plus one per 400 square foot. Home occupation should be located in the same lot as the permitted principal use of the structure. Primary sales of goods in connection with the home occupation shall be that which is prepared or produced on the premises.

COMMISSIONER ANAYA: Thank you, Ms. Ellis-Green. Mr. Salazar, were there others that were suggested as far as potential conditions?

MR. SALAZAR: Mr. Chair, Commissioner Anaya, I believe we've covered all of the ones that I've heard including what's in the code.

COMMISSIONER ANAYA: So, Mr. Salazar, if you'd help me restate those conditions. A wall between the facility to separate the two sides – and if I might add, I do have one question before I finalize my motion. Mr. Calderon, is the scope of – is the size of – what is the largest – I see the structure that you built, the art piece that you built that is somewhere in the City. What is the norm of the size of the work that you typically doing? Is it typically gates and –

MR. SOMMER: Do you want him sworn in?

COMMISSIONER ANAYA: Yeah, I think so.

[Duly sworn, Maurilio Calderon testified as follows]

MAURILIO CALDERON: My name is Maurilio Calderon and I live at number 8 Ernesto. The most bigger gate it is 16 feet longer for 5 feet and a half, something like that for the bigger pieces. Actually, the more pieces I do – is 26 inches, if it is longer we make in sections so that's not bigger pieces.

COMMISSIONER ANAYA: And window –

MR. CALDERON: And the [inaudible] open arms like 6 foot by 8 foot something like that.

COMMISSIONER ANAYA: And how much of your business is generally the sizes we saw in the picture? What would you say, what percentage of the work is what we saw?

MR. CALDERON: The percentage is doing security windows, small gates and guardrails is almost all that I have. And it small pieces not big pieces.

COMMISSIONER ANAYA: Okay, thank you, Mr. Chair.

MR. CALDERON: Thank you.

COMMISSIONER ANAYA: So, so my motion is to approve the appeal to have the wall constructed in between the facility, to – help me out, Mr. Salazar, it's getting late.

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MR. SALAZAR: Office hours 9 to 5:30, no weekends, all work takes place within the facility.

COMMISSIONER ANAYA: I think that's it, huh? That's my motion, Mr. Chair.

CHAIR MAYFIELD: I'll second that motion. Any further discussion?

COMMISSIONER HOLIAN: Mr. Chair.

CHAIR MAYFIELD: Commissioner Holian, please.

COMMISSIONER HOLIAN: Thank you, Mr. Chair. I really think that Mr. Calderon does beautiful work and I really respect that he works so hard to support his family. But I'm going to have to vote against this. I am inclined to trust staff's recommendation and observations because they after all went out to the site to look at the facility. And I will also note that the CDRC considered this case in some detail and they unanimously denied the request for the home business. And I will note that the metal garage is a rather large, industrial looking building. So I just wanted to explain my vote.

COMMISSIONER ANAYA: Commissioner Stefanics.

COMMISSIONER STEFANICS: Mr. Chair, Mr. Salazar, is the existing garage metal building insulated?

MR. SALAZAR: Mr. Chair, Commissioner Stefanics, it is. The applicant had – when I went out there in November the walls had been insulated. Since then the ceiling as been insulated as well.

COMMISSIONER STEFANICS: Insulated for heat or insulated for sound?

MR. SALAZAR: Mr. Chair, Commissioner Stefanics that did it mostly for sound. But the type of insulation, I'd have to refer that to the applicant.

COMMISSIONER STEFANICS: Okay, so in your opinion, Mr. Salazar, the insulation that was put in was to mitigate the sound.

MR. SALAZAR: That's correct.

COMMISSIONER STEFANICS: Thank you.

CHAIR MAYFIELD: Thank you, Mr. Salazar and thank you Commissioners for all the questions. So my understanding one is that the area that this is at it's – the builder is permissible. It was permitted by Santa Fe County. The residence has been permitted and there's going to be another accessory structure that has been permitted; it may not have been built yet.

MR. SALAZAR: Mr. Chair, they are currently living in the studio that was permitted. They're in the process, from what I've been told, of breaking ground for the main residence. Once, within 30 days once that main residence has been constructed staff will have to conduct a final inspection on the studio to insure that it's not a second dwelling unit on the property.

CHAIR MAYFIELD: Okay. So, again, it seems like the applicants have complied with any permitted use for the structures that are there. As far as the home occupation business license, I know that we have our current code that we're dealing with but we also have our new code and I guess kind of hand-in-hand with both of those. But we've afforded a lot of permissible uses for home occupation under the new proposed code under different structures, correct? I don't know if you can elaborate on that or Ms. Ellis-Green

would care to. But I do believe that a home welding occupation was a permissible use or will be a permissible use under our new code.

MS. ELLIS-GREEN: Mr. Chair, it would be down to the design standard and in the home occupation it does say that there shall create no noise, vibration, glare, fumes or odors detectable to the reasonable sensory perception outside the boundaries of the property. So that could come into play. It's going to depend on the location, the size of the property, the type of building, all of those things. Staff would do a site visit and would determine whether or not there was any noise that could be heard.

CHAIR MAYFIELD: So, again, not this specific, Ms. Ellis-Green, but, I mean, with future impact to the code of home occupation businesses, I mean, are we going to be putting artisans out of business? I mean we have, I mean Santa Fe – I mean our economy thrives on our arts' community and there's a lot of artists that use all kinds of canvasses for their art production. You know, Mr. Calderon could even change his fabrication from gates to just being strictly art. And that's one thing that I'm concerned with is where we're going with our new code if we basically could be putting artists out of business from trying to do any type of that production from their own home. So that's just food for thought in how we move forward with the code and our zoning maps.

Currently, this area is in SDA1?

MR. SALAZAR: Mr. Chair that is correct. El Centro, SDA1.

CHAIR MAYFIELD: Could you give, just if we have a listening audience still, or at least for the record what an SDA area is please?

MS. ELLIS-GREEN: Mr. Chair, Commissioners, it's our sustainable development area one which is where we would see primary growth.

CHAIR MAYFIELD: Primary growth, okay. And then this area is it for mixed use? Is it afforded for mixed use also, just knowing that I have this map in front of me and I see just not a primary residential, I see a lot of mixed use out here. So how is this area zoned right now?

MS. ELLIS-GREEN: Mr. Chair, Commissioners, there is no comprehensive zoning through the County right now.

CHAIR MAYFIELD: Okay.

MS. ELLIS-GREEN: On the proposed zoning map, I do not believe that this area is proposed to be zoned mixed use. I believe it is one of the residential based zoning districts.

CHAIR MAYFIELD: Okay, but that's still for the public to come and comment on correct?

MS. ELLIS-GREEN: Mr. Chair, Commissioners that is correct.

CHAIR MAYFIELD: Thank you. Thank you, again, Commissioners, thank you for all your questions. I have no more of staff. Mr. Michael Salazar thank you for your time and staff thank you for your time and everybody thank you for your patience tonight with us.

We do have a motion and a second on the floor.

The motion passed by majority [3-1] voice vote with Commissioner Holian voting against and Commissioner Chavez not present.

VIII. CONCLUDING BUSINESS

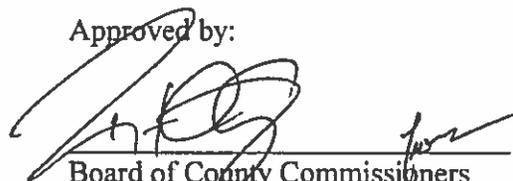
A. Announcements –

Mr. Shaffer announced that the Rockology case begins at 4 p.m. in the City's Convention Center and the building is reserved until 11 p.m.

B. Adjournment (Action Item)

Upon motion by Commissioner Anaya and second by Commissioner Stefanics, this meeting was declared adjourned at approximately 10:05 p.m.

Approved by:



Board of County Commissioners
Daniel W. Mayfield, Chair

ATTEST TO:


GERALDINE SALAZAR
SANTA FE COUNTY CLERK
7-29-2014



Respectfully submitted:


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

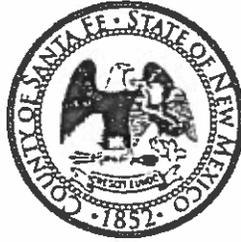
FILED 07/29/2014



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. APP 14-5041
APPEAL OF COUNTY DEVELOPMENT REVIEW COMMITTEE'S DECISION
MICHAEL VELARDE, APPELLANT

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on May 13, 2014, on the appeal of Michael Velarde (hereinafter referred to as "the Appellant"), appealing the County Development Review Committee's (hereinafter referred to as "the CDRC") decision to approve a request for an amendment to an existing home occupation business development permit to allow an onsite pet crematorium. The BCC, having reviewed the appeal and supplemental materials, staff reports and having conducted a public hearing on the appeal, finds that the appeal is well-taken, and the decision of the CDRC should be overturned and the permit request denied, and makes the following findings of fact and conclusions of law:

1. The Appellant requests that the BCC overturn the CDRC's decision to approve application #MIS 14-5040, allowing an amendment to a home occupation business development permit to allow for a pet crematorium.
2. The subject property is located at 40 Vista del Monte, within Section 25, Township 16 North, Range 8 East, a residential lot in a residential neighborhood.
3. As she had previously done unsuccessfully in 2008, on December 17, 2013 the owner of the subject property, applied for an amendment to her home occupation business development permit, to allow installation and operation of a pet crematorium. The current

application was submitted pursuant to the Santa Fe County Land Development Code, Ordinance 1996-10 (the Code).

4. According to Article III, Section 3.1 of the Code, “[h]ome occupations are allowed anywhere in the County, provided all of the requirements of the Code are met.”

5. The requirements of Article III, Section 3.2 of the Code pertaining to home occupation business registrations include the following:

- “3.2.1 Not more than six (6) persons, other than members of a family residing on the premises, shall be regularly engaged in work at the site of the home occupation;
- 3.2.2 The use of the dwelling for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 50% of the floor area of the dwelling including accessory buildings shall be used in the conduct of the home occupation;
- 3.2.3 There shall be no change in the outside appearance of the building or premises, nor other visible evidence of the conduct of the home occupation, except for one (1) non-illuminated name plate sign not more than nine square feet in area;
- 3.2.4 Parking for employees and for customers or clients of the home occupation as required by Section 9 of this Article III shall be provided off the street;
- 3.2.5 No equipment or process shall be used in the home occupation which significantly interferes with the existing use of property in the adjacent area.”

6. On January 17, 2014, the Land Use Administrator denied the property owner’s December 17, 2013 application for the home occupation business development permit on the basis that the application was not substantially different than an application submitted in 2008 and did not comply with the Home Occupation Performance Standards set forth by Article III, Section 3.2 of the Land Development Code.

7. As required by Article II, Section 2.3.4b of the Code relative to filing a timely appeal, within five working days of the Administrator’s decision owner filed an appeal contesting the denial of an amendment to her existing home occupation business license.

8. On February 20, 2014, the CDRC determined that the application did meet all Code requirements and approved the home occupation business development permit based on the following facts:

- a. The County Development Review Committee found that the Land Use Administrator's findings of fact relied on erroneous information;
- b. The requested use of the property in the December 17, 2013 application does comply with the Home Occupation Performance Standards set forth in Article III, Section 3.2 of the Land Development Code.

9. As required by Article II, Section 2.3.4c of the Code, on March 21, 2014, within thirty working days of the CDRC's decision, Appellant as an aggrieved person, filed an appeal contesting the CDRC approval of an amendment to the existing home occupation business license.

10. The proposed use does not conform to Article 3, Section 3.2.5 of the Land Use Code.

11. During the hearing, Case Review Manager John M. Salazar, explained that the original request by the property owner, Rachael Tapia, had been submitted in 2008, the application had been denied. The property owner then appealed the denial. The appeal went to the First Judicial District Court, D-101-CV-2008-00887, where Judge Daniel Sanchez denied the appeal and upheld the denial of the application for an amendment to a home occupation business license.

12. In 2008, when the BCC denied the property owner's application, they found that the application did not comply with the Code.

13. In Judge Sanchez's Memorandum Opinion the court found that, although the property owner provided an Emissions Comparison from B & L Systems regarding the crematorium, the crematorium may cause pollutants in the air and these pollutants may be detectable through odor and fumes. Secondly, the Judge stated a crematorium does not keep with the residential character of the neighborhood because there are no other crematoriums in the neighborhood.

14. The only difference from the property owner's 2008 application and the current application is the crematorium will be attached to the house instead of a separate structure.

Both applications demonstrate an increase in the square footage of the existing residential property. The B & L Systems, Inc. BLP 500/150 Animal Crematory Incinerator is the same incinerator that was proposed in the 2008 application.

15. At public hearing on the appeal, Patty Montes Burks spoke in support of the appeal. Her concern was with regard to the crematorium equipment, which the Land Use Administrator was concerned with in the initial denial of the property owner's application. Ms. Montes Burks stated there should be concern regarding the crematorium equipment reaching 1600 degrees in an area that is surrounded by pine trees, wood, brush, and houses, and she requested that the BCC to address the neighborhood's safety.

16. Also, at the public hearing, Karen Brown in support of the appeal raised the issue that she along with her parents and others in the area suffer from respiratory problems so they are concerned with the air particles that will be left in the air when an animal is cremated. She believes this will affect everyone with respiratory issues.

17. The necessity of constructing additional square footage to house the crematorium, although proposed as an attached facility, fails to meet the requirements of Article III, Section 3.2.3 of the Code, which prohibits any change in the outside appearance of the building.

18. In light of the safety hazards posed by the heat generated by the crematorium, and the possible pollutants as previously recognized by Judge Sanchez, the Application does not meet the requirements of Article III, Section 3.2.5 of the Code because the equipment and process will significantly interfere with the existing residential use of property in the adjacent areas.

19. After conducting a public hearing on the appeal and having heard from the Appellant, the property owner's lawyer, the property owner herself, three people in support of the appeal and having considered all materials submitted on the matter, the BCC hereby grants the appeal and reverses the CDRC's approval of the application for amendment of a

home occupation business development permit allowing a pet crematorium business at 40 Vista del Monte in Santa Fe County.

WHEREFORE the Board of County Commissioners of Santa Fe County hereby grants the appeal of the County Development Review Committee's decision that reversed the Land Use Administrator's determination to deny a request for amendment of a home occupation business development permit. The motion to approve the appeal, thereby reversing the CDRC's approval of the application for amendment of a home occupation business development permit passed by a 3-1 vote with Commissioners Anaya, Stefanics and Chavez voting in favor of the motion and Commissioner Mayfield voting against the motion. The requested modification to the home occupation business license to allow for a pet crematorium will not be granted.

IT IS SO ORDERED

This Order was approved by the Santa Fe County Board of County Commissioners on this ___ day of _____, 2014.

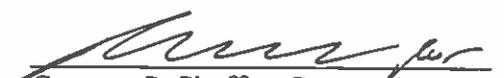
SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
Daniel W. Mayfield, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to form:



Gregory S. Shaffer, County Attorney

County itself needs to step it up and provide those all-weather crossing accesses and make that investment before we go out and ask each individual community member to do. We've all heard that many, many times. It's late, so thank you.

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

VIII. B. 5. **CDRC CASE #APP 14-5041 Michael Velarde Appeal. Michael Velarde, Applicant, is Appealing the County Development Review's Decision to Approve a Home Occupation Business Registration for a Pet Crematorium on 2.5 Acres. The Property is Located at 40 Vista del Monte, within the Valle Lindo Subdivision, within Section 25, Township 16 North, Range 8 East (Commission District 5)**

JOHN M. SALAZAR (Case Review Manager): Thank you, Mr. Chair. On February 20, 2014 the County Development Review Committee heard and acted on Case #A 14-5040 in which Rachel Tapia appealed the Land Use Administrator's decision to deny a home occupation business license which would allow an onsite pet crematorium. The decision of the CDRC was to overturn the Land Use Administrator's decision and allow the pet crematorium as a home occupation by a 6-0 vote. You can refer to those in Exhibits 8 and 9.

Article III, Section 2.3.4.c of the code affords anyone aggrieved by a DRC decision the opportunity to appeal to the Board. The appellant, along with two other neighbors is aggrieved by the CDRC's decision and has filed an appeal to the BCC. The appellant has stated that such a use is inappropriate for a residential area. We have some case history with this. In August of 2007 the applicant submitted an application for an amendment to an existing home occupation. The applicant requested permission to install an incinerator on the property in order to expand into a pet cremation business. Currently her business license is for a home office. She does pick up deceased pets or vermin that are affecting people's gardens or their properties and disposes of them in a different facility.

That business license was given to her in August of 2007. So the cremation process takes place at the Santa Fe Animal Shelter. The applicant proposed this use in order to provide clients a more personal experience with their deceased pets since it is currently possible that the client could receive not only the remains of their pet but also the remains of other animals as the Santa Fe Animal Shelter uses a community kiln in order to cremate animals.

In 2007 the Land Use Administrator denied this request. The property owner appealed the decision to the County Development Review Committee. The CDRC upheld the Land Use Administrator's decision. This was then appealed to the BCC and the BCC upheld the decision of the CDRC. The property owner then appealed to the First Judicial District Court of New Mexico in which the BCC was affirmed by Judge Daniel A. Sanchez. The standards upon which Judge Sanchez made his decision were based upon criteria from the Extraterritorial Zoning Ordinance, which was repealed in 2009.

Since these standards no longer apply the applicant was afforded the right to reapply

2014 MAY 13 PM 3:33

under the Santa Fe County Land Development Code. A similar request for amendment to the existing home occupation business registration was submitted by the applicant in January of 2012. The 07 request proposed a separate, detached structure for the crematorium while the 2012 request had the structure attached to the dwelling unit. The application was denied by the Land Use Administrator citing the decision rendered for the applicant's 2007 submittal.

Land Use staff did not receive a notice from the applicant nor her agent regarding a desire to appeal the Land Use Administrator's decision at that time so on December 17, 2013 the applicant's agent submitted a new application requesting an amendment to the existing home occupation similar to the 12 submittal. Staff reviewed the materials submitted, which included a letter of intent, acknowledgement of the home occupation criteria, development permit application, business registration application, vicinity map, a letter from the New Mexico Environment Department Air Quality Bureau, which was dated January 17, 2008, a site plan, a floor plan of the proposed structure and a report by the manufacturer on emissions testing on the proposed crematory incinerator.

Staff also reviewed the findings from the BCC 2007 request and determined that the subject application was pretty similar and that the application was not substantially different from the 2007 nor the 2012 applications. Therefore this request was denied as it did not comply with the home occupation performance standards set for by Article III, Section 3.2 of the code, which states no equipment or process shall be used in the home occupation which significantly interferes with the existing use of property in the adjacent area.

The Land Use Administrator also determined that a decision rendered by the First Judicial District Court is not something that could be overturned administratively, and the proposed use could negatively impact neighboring properties with the smoke emitted from the incinerator. Under the Sustainable Land Development Code the use of a crematorium as a home occupation would be prohibited. The approval that's sought for this application is to overturn the CDRC's decision, which approved application AHBL 14-5040.

Staff recommends that the BCC approve the appeal and uphold the Land Use Administrator's decision to deny the home occupation. I'll stand for questions, Mr. Chair.

CHAIR MAYFIELD: Mr. Salazar, thank you. Vice Chairman Anaya.

COMMISSIONER ANAYA: Mr. Shaffer, it will get better. Welcome back to the County. You worked here for a while, so you understand the dynamics. My question ties not to this proposal but to the fact that District Court did render a determination on this decision after a County process. Does that have credence to the determination that we have before us? Because it's the same submittal in nature?

MR. SHAFFER: Mr. Chair, Commissioner Anaya, as I understand it from the Land Use Administrator, the historic practice is not to preclude serial submissions by land use applicants. As I understand it it is a matter that's addressed in the SLDC. There is a prohibition on submitting the same application I think for a period of two years but the current practice is not to give that preclusive effect to decisions of either the Board or the District Court. The idea is the same. If the Board acts and someone doesn't appeal then that should be a final decision as well. It doesn't seem that the involvement of the District Court necessarily changes the analysis.

So again, to sum up, as I understand it the current practice does not prohibit serial submissions on the same matter.

COMMISSIONER ANAYA: Well, again, let me ask the question a different

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way. When people come to a land use case that they are on the losing end or the winning end, they always have an avenue of appeal beyond the Board of County Commissioners and that's District Court. And that's predominantly what's happened. And then beyond District Court they can go to appeals court and then ultimately they could go all the way to the Supreme Court.

But historically, we've acknowledge and informed people they always have that right. And in this case, for this submittal, that right was exercised beyond the determination we made and then it was upheld at District Court. So what you're saying is the fact that a case is approved here in this adjudicatory process that we have really has no bearing beyond our approvals what someone else does or some other court or hearing officer may do, we're only concerned with our ordinance and laws and those determinations aren't of our interest, I guess is what I'm asking?

MR. SHAFFER: Mr. Chair, Commissioner Anaya, I think the point I was trying to make and I think it answers your question is that your action is final if it's not appealed. But if it's appealed and it's upheld by the District Court and it's not further appealed it's still final. And so whatever action you take once it runs its course, either through not being appealed or being appealed to District Court it's a final action. I guess what I'm articulating based upon the information I received from the Land Use Administrator is we have not established as a position that we are going to give preclusive effect to previous final actions and do not preclude subsequent submissions. And that is a matter that is being addressed in the SLDC in terms of prohibiting that sort of application or reapplication, at least for a period of two years. I hope that answers your question.

COMMISSIONER ANAYA: I think it does and I appreciate your additional clarity. Thank you, Mr. Chair.

CHAIR MAYFIELD: Thank you. Just a couple questions and hopefully they're not off-topic for staff. One, are there any crematoriums within the country right now, for either pet or humans?

MR. SALAZAR: Mr. Chair, this is one called Braemar. It's off of Old Santa Fe Trail. Old Las Vegas Highway.

CHAIR MAYFIELD: Is anybody aware of any in the City of Santa Fe?

MR. SALAZAR: I'm not aware of any, Mr. Chair. And also, I did mention in the report there is the one at the animal shelter as well.

CHAIR MAYFIELD: Unless I'm wrong, I think there's one for humans at Berardinelli, off of Luisa Street.

MR. SALAZAR: That's right, Mr. Chair. There is Berardinelli's. It is for human beings, however.

CHAIR MAYFIELD: Second question. Either the code or if it as the proposed Animal Control Ordinance, right now animals can be buried in somebody's yard. It could be a horse, if somebody wants to bury in their yard, four feet underground. We don't ask for them to be in boxes. You just put the loved animal, the pet into a pit, correct?

MR. SALAZAR: That's correct, Mr. Chair.

CHAIR MAYFIELD: And that's in our proposed code or in our current ordinance?

MR. SALAZAR: Mr. Chair, that's not in the current Land Development Code. I don't believe it would be in the Sustainable Land Development Code.

CHAIR MAYFIELD: I just know we had discussion on this and I brought it up. I don't know, maybe, if it's in the new proposed Animal Control Ordinance or in the code. But I just wanted folks to know that, that right now, if anybody needed to inter a pet that they could just do it in their yard right now in the ground. Thank you. I'm going to go to the public hearing.

COMMISSIONER STEFANICS: Mr. Chair.

CHAIR MAYFIELD: Excuse me. Commissioner Stefanics, I apologize. You were on the list.

COMMISSIONER STEFANICS: That's all right. Mr. Chair, Penny, the new Land Use Code, when it becomes effective after the zoning maps, etc., has the no-impact, low-impact. Would this pet crematorium meet either condition for a home occupation? From my reading it would but is there anything that would prohibit it?

PENNY ELLIS-GREEN (Land Use Administrator): Mr. Chair, Commissioner Stefanics, it would not fall under a home occupation because there's specific language that says a crematorium is not allowed as a home occupation.

COMMISSIONER STEFANICS: So we have identified it as an excluded business.

MS. ELLIS-GREEN: Yes, I believe we have. Yes. I can go and check. I'll go and get my copy and confirm that.

COMMISSIONER STEFANICS: Okay, so, let me follow up, why would we have excluded it when we have other businesses in the county already?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Stefanics, what was put in there as exclusions are the type of home occupations that have caused issues in the past. I don't know how the pet crematorium on Old Las Vegas Highway was approved. The one at the animal shelter was approved through a development plan; it wasn't a home occupation.

COMMISSIONER STEFANICS: Well, Mr. Chair, I know that the one on Old Las Vegas Trail has been there for years and years and years and years, because I and people before me have used it many years ago. I mean, 30, 40 – people have used it for years. So that's what's – that's why I'm wondering why we would have excluded it. This may or may not be the right neighborhood to do this, but why we would have excluded it in our land use code. So we don't have a rationale?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Stefanics, it's just due to issues that have been caused in the past and it was probably the earlier denial of this as a home occupation.

COMMISSIONER STEFANICS: But we have an earlier approval for one. We have them here in the county.

MR. SALAZAR: Mr. Chair, Commissioner Stefanics the one on Old Las Vegas Highway, upon researching it for this case, it was something that was done administratively I believe in the early 90s.

COMMISSIONER STEFANICS: It was before 90s. I moved here in the 80s.

MR. SALAZAR: Okay. I'd have to research it but it has been quite some time though and that was done administratively.

COMMISSIONER STEFANICS: Okay. We also have, as the chair indicated, we have a crematorium right in the city for people. So I just would like to understand a little bit more. I thought when I first looked at this that maybe there was some environmental or

2014 MAY 13 09:51 AM

water quality issues, but I don't see anything in our application denial around those issues. In fact the state said we don't have any requirements for this type of business. So I'm trying to understand the standards. So maybe we could go on with other testimony or comments but I just have big questions about our standards. Thank you.

COMMISSIONER ANAYA: Thank you, Commissioner Stefanics.
Commissioner Chavez.

COMMISSIONER CHAVEZ: Well, Commissioner Stefanics, I don't know if this changes any of your thought process but in our packet on the last page, right before the staff recommendation, it does state that Growth Management staff has reviewed this application for compliance with the pertinent code requirements and finds no evidence that would allow a crematorium as a home occupation. So I think that staff's thought that out and I guess – so you're questioning whether our criteria is –

COMMISSIONER STEFANICS: And what are our standards.

COMMISSIONER CHAVEZ: Could staff respond to that?

MR. SALAZAR: Mr. Chair, Commissioners, Article III, Section 3.2.5, it is very vague in what it says but it does state, no equipment or process shall be used in the home occupation which significantly interferes with the existing use of property in the adjacent area. And while the Land Use Administrator was deliberating this, through those deliberations and consequently through her decision, she felt that this was going to significantly interfere with the existing use of properties around Ms. Tapia's property.

COMMISSIONER ANAYA: Commissioner Chavez.

COMMISSIONER CHAVEZ: No, that's good.

COMMISSIONER ANAYA: Commissioner Stefanics.

COMMISSIONER STEFANICS: So, Mr. Chair, when I heard that we were going to be dealing with this and I think I'm going to be interested to hear from the applicant, and I think it's significant whether the applicant wants to go up against the neighborhood. I think that's an issue. But I went back to Braemar and I thought, I'm going to go, I'm going to see what I remember about the property, if there's any smells, if there's any odors, go up to the area. And the one – the difference that I see in terms of the property is one is wooden and set back up on Old Las Vegas Highway and this is much more open property. We don't have a lot of trees down our way. And so it is a much more open space.

But not only did I go up to check myself, I asked other people who lived around the area and it's been there so long that it's a non sequitur. But that's why I still want to go back to standards. And I do think that we have to have some standards. It's kind of like what we did with churches and schools being places of community service. And how we had that big debate about it. And I don't know that we've had a debate about what should be a home occupation and not. Because I certainly don't remember it in the past couple of years. So I'll be interested to hear the rest of the conversation today. Thank you, Mr. Chair.

COMMISSIONER ANAYA: Mr. Chair, the applicant is – it's their opportunity to present. The applicant on the appeal and then we'll have other comment. I'll turn it back over to you, Mr. Chair.

[Duly sworn, Michael Velarde testified as follows:]

MICHAEL VELARDE: Good evening, Mr. Chair and Commissioners. I hope I can get to this quick so we can all get home to our families. My name is Mike Velarde. I live on 35B Camino Bajo. I've been a resident there for 25 years. My dad's also a resident.

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He's 86 years old. He's too old to be here tonight. I also had a lot of people here with concerns but if you look at the time, they all went home.

I'm appealing the pet crematorium, me as well as a lot of residents have a problem with it. The same questions were brought up in 2012 when this was vetoed here. Air quality, pollution, property values – they're all legitimate questions. My business has been brought into this conversation. I run a septic service out of my business, out of my property for 25 years. It's one truck. That's it. The gentleman that's representing Mrs. Tapia, at the last meeting, which was with the CDRC, said I was running a porta-potty business. There's two different things. A porta-potty business would have 125 porta-potties sitting in their backyard. That's a problem I have one truck; that's it.

I don't work out of my property. I park my truck there and I leave every morning. I have a bunch of signatures that were signed by all the residents [Exhibit 12] and like I said before, they were here to express their concerns. The time has gone by. All I have to say is we have – nothing has changed from 2012 to now except for growth. You have Rancho Viejo Business Park. You have Rancho Viejo residents. You have Turquoise Trail residents. You have Santa Fe Skies RV Park. You have all kinds of development around you that has grown in three years. So nothing has changed.

We're here talking about the same old thing again. I feel that I'm wasting my time when I could be with my family, here to voice my concerns. And I know it's getting old. I don't know what else we have to do to rectify this situation. I have neighbors that were fuming and upset. They wanted to be here but most of them are elderly and their concerns was what is air quality. They have emphysema, they have asthma, what's that going to do to them if they're sitting out in their backyard barbecuing in the afternoon?

My last question to you folks, would you like a pet crematorium in your backyard? That's all I have to say. Thank you, Mr. Chair, Commissioners.

CHAIR MAYFIELD: That's the applicant. We will open this up for public comment. Do we have any members of the public wishing to comment?

KARL SOMMER: Mr. Chair, my name is Karl Sommer. I'm here on behalf of the applicant for the permit and various questions have been raised and I'll get to the questions right away so it's pertinent. How did this get in the SLDC? I'll tell you how it got there. The original draft of the SLDC, when Jack Kolkmeier was working on it, had the three tiers that Commissioner Stefanics remembers. I submitted language related to this particular issue. Staff took it in and the next thing I knew it was excluded, right after we made our submission. There have been no other cases except this case, like this.

It was excluded without debate, without discussion, and it came after we made a request so that her application could be considered fairly. And the question because the no-impact, low-impact and then you go into a public hearing process. And we addressed that particularly. That's how it got in the code; that's when it got in the code and there was not a single word of debate anywhere along the way.

The second thing is going to the question that, Mr. Chair, Commissioner Anaya, asked, which was about the precedential value of the court case. That court was looking at language under the EZC. We're looking at under the code. You all interpret the code in many instances very differently than you do the other. She has the opportunity to make this application in front of you all. Those are the questions that you all have raised. So let's go to the specifics of why the CDRC approved this.

mount animals that have been killed in their home. They might be small animals; they might be big animals. Would you want that in your backyard? Well, I'll tell you, it's going on in our backyards. It doesn't have the factor that we're talking about here, where, ick, I don't want a dead pet. Well, these are members of people's families that are being disposed of in a dignified way.

What are the impacts that she's going to have on the community? No greater than the impact that her current home occupation has. Right now, when she gets a call, she leaves. She does her work and she comes home. If this is allowed, she will get a call, she will leave, she will come back and that will be part of her work. She doesn't employ anybody. She meets the criteria of a home occupation. What she doesn't meet is the sensibility of a few neighbors. I submit to you there is a much broader community the sensitivities of which are not offended by this use and we would stand for questions related to this. But I believe that under the code, the County code, there is no issue legally and that you have the discretion to approve this application and give Ms. Tapia the opportunity to continue to serve our community in a very important way. Thank you.

CHAIR MAYFIELD: Mr. Sommer, thank you. After Commissioner Chavez looks at this could we get it – Penny, could someone from staff please make some copies and we get that over to our court reporter. Thank you. Commissioner Stefanics.

COMMISSIONER STEFANICS: Mr. Chair, I have a question for Mr. Sommer and the applicant. Is there any – I didn't see anything, but is there any kind of documentation from a professional regarding air quality. I know about the state permit standards; there are none, but is there anything in here?

MR. SOMMER: Yes, there is. There is the manufacturer's specs that were submitted to Air Quality as well. The manufacturer's specs tell you exactly how this machine works and what particulates and non-particulates are emitted. None of them rise to the level of any regulatory issue. So I don't know if you have it there in your packet. It's in the packet that I got.

COMMISSIONER STEFANICS: Okay. So Mr. Chair, Mr. Sommer, I don't see in here any kind of photo of the actual property. I see diagrams and plans. Is there, in relation to other properties?

MR. SOMMER: May I approach with a couple of photographs we have?

CHAIR MAYFIELD: Please.

MR. SOMMER: This is looking from Ms. Tapia's property towards the Ortiz Mountains, and you can see, there's Mr. Velarde's home right there in the left of center. Those are two similar photographs. That characterizes this neighborhood. These are lots 2 ½ have acres large. There is nobody within 100 feet of her home and the Velarde property is well over 100 yards way.

COMMISSIONER STEFANICS: Thank you very much.

CHAIR MAYFIELD: Thank you. Commissioner Chavez, please.

COMMISSIONER CHAVEZ: I don't know where this fits but I'm just going to read it anyway, and this is a letter that actually I guess was received in May 24th, Karl Sommer's office. It's addressed to Rachel Tapia. It says Dear Ms. Tapia, this letter is in response to your request for confirmation that an air permit for Loving Animals Service is not required. Currently the department is not requiring a permit for a crematory, however, this may change in the future if the department determines that permitting such facilities is

necessary or if a federal regulation from the Environmental Protection Agency is issued that requires such a permit. So there doesn't seem to be much thought put into the permitting process, even though the manufacturer's equipment might say it's okay, but I think the New Mexico Environmental Department, the Air Quality Bureau is not issuing permits for crematory at this time.

So I think that –

MR. SOMMER: They don't have any requirements for it.

COMMISSIONER CHAVEZ: But it tells me that maybe they should, because I think it just seems that there should be more thought put into this, for me anyway. But I just wanted to mention this for the record. Thank you, Mr. Chair.

CHAIR MAYFIELD: Thank you, Commissioner Chavez.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR MAYFIELD: Vice Chairman Anaya.

COMMISSIONER ANAYA: Mr. Chair, I have some other questions. The first question I'll ask you, Mr. Sommer, is there were some comments you made relative to the allowance of this type of business in the home occupation. Did I hear you correct? Did you say you submitted language to the County staff during the SLDC process? You had some document you submitted that said that this business should be one of the businesses considered as a home occupation. Did you say that or did I hear you wrong?

MR. SOMMER: Mr. Chair, Commissioner Anaya, what I said was when we saw the first draft we added some language that would address the compatibility. It did not address the crematorium saying it's allowed. What we did was we added some language, and specifically on this issue, so that it could be addressed by the administrator. And the next thing I knew it was disallowed.

COMMISSIONER ANAYA: What I want to say to that point, and thank you for clarifying what you submitted and what your conversation was. What I do recall explicitly was that with the home occupation business license discussion and the SLDC, we had several conversations in these chambers, but additionally, we went out into the communities with home occupation in hand, in tow, to the entire county. We took meetings to Galisteo. We took meetings to Edgewood. We took meetings up north. Just on the home occupation, because as I recall, the home occupation was one of the first items that the Commission was trying to discuss and come up with some options and kind of float our process, if you'll recall, Commissioner Stefanics. We wanted to figure out how the process was going to work. And so when we came back from those comments staff had a lot of back and forth discussions and deliberations, and then they started bringing forth specific occupations.

And we published those occupations and then we said, what else? We talked about existing businesses that maybe didn't have a license. We talked about what you said earlier, low impact versus high. Or somebody said, I don't want to put words – but I guess the operative point for me was that we went through a deliberative process and we actually sat there and listed out businesses. And then in the public hearing process we went back again and said, have we captured those? Because I know it was my intent and I think the intent of my colleagues to evaluate home occupations to have as broad a brush as we could, but that we would take that out for input. Do you recall some of those? Were you part of that part?

MR. SOMMER: Not part of that, Commissioner. I wasn't part of those discussions in terms of the community outreach, going to those hearing. I was not.

2014 MAY 13 PM 03:00:00

COMMISSIONER ANAYA: So for me, as I'm listening to the case and looking at the past case that went to District Court and this item, it's not just about the equipment in itself or the air quality of the equipment or what the Environment Department does or doesn't do. It's about the fact that we've gone through this process of saying what's a mixed-use area and what's a commercial area and what's a home occupation area? So those are some of the things that are going on in my mind, not that the emissions or potential emissions might be dangerous, whether they are or they aren't, but the process we went through to evaluate and say what's commercial? What's mixed use? What's home occupation? Was pretty deliberate. I just want to say.

We did go through a deliberative process that included not just staff but included many, many community members. So I think that if I was sitting in the shoes of the Land Use Administrator I would have taken into context many of those things. I don't know that you – did you, Ms. Ellis-Green, as you were thinking about this particular case? I don't want to put words in your mouth.

MS. ELLIS-GREEN: Mr. Chair, Commissioner Anaya, yes. We also had a previous denial on almost the same case from the Board of County Commissioners, so when the decision was made to deny this application, all of that was taken into consideration. Just to expand on the discussion about the SLDC process, we produced, or I produced a document as we went through the public hearing processes of adoption and that specific section of the code under home occupations was included in every document that was brought forward because we actually changed a section in there regarding heavy equipment. And so that section reads: roofing, towing businesses, construction yards, porta-potty leasing, vehicle leasing, crematories, auto paint and body shop or heavy industrial uses aren't permitted. So there's a number of those.

They are dealt with in another area, which is the use table of the Sustainable Land Development Code. And on that use table, crematory facilities are allowed as permitted uses in the ag-ranch, the rural, rural fringe, planned development districts and industrial districts. So there are areas that we designated that we believe that that kind of facility would be relevant to hold those kinds of businesses and not done as a home occupation. All those other businesses that are listed are also in the use table and are dealt with as where you can do those uses as either permitted or a conditional use, but not within any areas of the county in a home occupation.

So it was very deliberate as we went through that and a lot of those businesses are businesses that when they're done on a small piece of property through an administrative home occupation approval have in the past caused problems and caused concern from the neighbors. And so they were addressed specifically in the use table of the SLDC.

COMMISSIONER ANAYA: Thank you, Mr. Chair and Ms. Ellis-Green. And I know we're running late but I do want to ask this of you, Mr. Sommer, if you can help me and maybe the applicant can help as well. I'm familiar with Braemar. I've been there several times myself and I have to say to Commissioner Stefanics' comments relative to fume emissions or anything like that. I've never experienced that in the times that I've been on that site, actually known one of the managers that is one of the operators of that facility. I went to school with the gentleman that helps run that.

But that aside, at Braemar – I think it's Braemar, there's a kennel there. They have a kennel there. They hold animals. Relative to the proposal that we have in front of us, help me

COMMISSIONER STEFANICS: Okay. So is this property address in the Community College District?

MS. ELLIS-GREEN: Yes. I believe it's in an existing neighborhood of the Community College District.

COMMISSIONER STEFANICS: Okay. So the Community College District is mixed use. Is that correct?

MS. ELLIS-GREEN: Commissioner Stefanics, in general it's a mixed-use area but there are different areas. There are neighborhood centers, there are village centers, there are employment centers. But in general, yes, the CCD is a mixed-use area.

COMMISSIONER STEFANICS: Okay, so Mr. Chair, Penny, it's come to my memory that in Oshara we had approved live-work spaces. Would this occupation or this business be eligible to be in one of those live-work?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Stefanics, again, I would want to take a look at the use table that is in the Community College District Ordinance. I believe Vicente's just gone to get that.

COMMISSIONER STEFANICS: Okay. So Mr. Chair, Commissioners, where I'm going with this is we might not be ready to make a decision on this. We might really need to get through the land use code and clarify where things can be. And I'm hearing that we're not really there yet. So I just want to put that out and see who else wants to comment. Thank you very much.

CHAIR MAYFIELD: Thank you. Question for the applicant or for staff. John Michael, what would the hours based on a home occupation license be of this business? Hours of operation?

MR. SALAZAR: Mr. Chair, typically, on a home occupation the hours are set on a case-by-case basis depending on what's being applied for. Ms. Tapia might - if there were conditions placed on the hours of operation for her she might recall that.

CHAIR MAYFIELD: I'm not trying to put you on the spot but currently under home occupation license, maybe Ms. Ellis-Green can answer this, don't we have core hours? Seven to seven? Eight to eight?

MR. SALAZAR: Mr. Chair, our land development code doesn't really have any specifics as to what the hours of operation should be. As staff, we do our best to implement decent hours of operation for these home occupations so someone's not running their air compressor at 10:30 at night. In general, most applicants, they'll give us a list of the hours that they're proposing to operate and they all fall in typically within an 8:00 to 5:00 timeframe.

CHAIR MAYFIELD: That's all I have for now, Commissioners. Commissioners, anything else? This is a public hearing. Would anybody else from the public care to comment on this? Please, come forward.

[Duly sworn, Patty Montes Burks testified as follows:]

PATTY MONTES BURKS: Good morning, Commissioners. It's time for my makeup. I'm way past due my makeup. My name is Patty Montes Burks. I've lived in Valle Lindo for 35 years, built my house there. Saw covenants there when I was given the property by my dad. I've run a business out of my home, self-employed as a graphic designer. It was just me. I didn't have any employees. I didn't bother, I don't think, anybody, unless maybe the light from my window at 12:00 at night, just burning the midnight oil on jobs. But right

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now I'm a Community College employee. I just got home Friday night and encountered a Capital company receptacle truck. It's a large truck. It's one of those ones that picks up the dumpsters, the metal dumpsters. It's mechanical and it's big. And it met me right at the corner of where I was going home and it was coming from her residence.

I don't know if that had anything to do with this business at all. I'd like to know that because we have a small, little rural road that we took the time to negotiate a dead-end on one side and a dead-end on the other and I'm seeing a Capital receptacle truck coming around the corner. That's just the kind of equipment we didn't want to see on that road. It was just going to be a local road. So that's my first question.

My second question on this is that I understand that Rachel – I like being self-employed. I don't have anything against self-employment, but I believe that she's only been in the neighborhood, she purchased that house seven years ago and I've been here 35, 37 years. So there's a 100-foot width, approximately of this parcel. I have – I want to totally disagree – I'm sorry, with Commissioner Stefanics who is our Commissioner. This is not an open parcel. It is a house that's set back just a little bit from the road, Vista del Monte. It's covered. You cannot see the house very well, because it's got large, dry pine trees. It's covered all the way around. So there is a fire hazard, when you consider your packet, because I saw it. I looked at it before this meeting and the equipment itself runs 1600 degrees. It can consume 500 pounds of carcass. She is – I saw the packet and I'm just perplexed at how her application can include a plat layout of the proposed plan for her business. That little slab of 20 by 20 housing a 10 by 10 metal shed attached to the house. You tell me, would you like to live in a house where an incinerator reaches 1600 degrees. You're covered with pine trees from the very front door. That's posing a major hazard. It's only 100 feet on both sides to her neighbors. Wood, brush, she doesn't clear her property. It's not cleared.

There's a paved road, a paved driveway so that is huge for me. That's a huge issue for me. I think that the storage of animals, because she says she's going to pick up animals that are trapped. Trapped animals, pet animals, any call that she gets, she'll pick it up. Is it a diseased – how do handle that in a manner that it should be handled? I think that the packet also has some very – very old data on the emissions, on the state approval or it's kind of like a nebulous approval saying, well, no don't at the time – at this time we don't offer a license for that but in the future it may change. Well, that was 2012. And I understand that it was stamped in Karl Sommer's office as having received a copy for this case. So it's outdated material. I just can't overemphasize the lack of true data to make a good decision or even approve this kind of thing in a residential area.

The other question I have is, okay, if she gets an approval to do what I consider a high – an industrial use. It's an industrial use that has gone beyond the spirit of a home occupation license. How does that tax assessment come back? Does she get taxed as a resident or does she get taxed as a business? These are the things that we need to consider.

And I really want to commend Penny and her staff. They've been working hard and trying to get these things tightened up. And I've seen the permitted uses and I agree with them and I very much so agree that this use is unacceptable, it's inappropriate for – it's an established neighborhood. There are people that signed a petition. I don't know how many we finally got, but they are true neighbors that believe that this is a residential area. She needs to go somewhere else where the County can give her a license to run an adequate business for this type of business, for this type of use.

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I think I covered it. I just want to commend Penny and the staff. They worked really hard to get these codes written and they're to protect us. And the other, I guess the big thing, right here, right now, is that since 2008 she's been wanting to get an approval and she's got denials. And when I saw – I wasn't able – I was out of town. I wasn't able to make the CDRC meeting. But they barely opened their binder. It looked like they barely opened their binder. There was no one here to defend the neighbors for that meeting, and they never addressed or for the record that there were any objections. I had written a letter because I knew I was going to be out of town at a conference. I wrote the letter, submitted it. It was never presented for the record. And I think John Brown and Mike Velarde also wrote letters. So it feels like we were really blindsided by the CDRC and that's why Mr. Brown paid the amount that he did to appeal this to you tonight. Thank you.

CHAIR MAYFIELD: Thank you. Ma'am, please.

[Previously sworn, Karen Brown testified as follows:]

KAREN BROWN: My name is Karen Brown. I'm related to the alleged John Brown; that's my husband. I'm afraid that the family couldn't be here this evening. Florence Ruth says to say Hi, Liz. Flossie goes to bed very early and so does John. But on behalf of the Brown family – John, Willie, Flossie, myself, my two boys. We all live on the ranch there, we were never even notified that this was going to happen. It was brought to our attention by a neighbor on the opposite side of her residence. Apparently, we don't count. Although the winds blow our way.

We've been there for a long time. Flossie's parents homesteaded the land in 1935. We're not newcomers. We didn't just show up yesterday. I've been there for 34 years; my husband born and raised. He is an honest to goodness local Santa Fean. We don't want this. Flat out. Just the simple facts. We don't want it. I did a little bit of research online. The EPA says that it does put off air particles that do affect people with respiratory problems. I have a respiratory problem. The winds blow my way. I have allergies. Severe allergies. I take 365 days a year an anti-histamine and in the spring and fall I take nasal spray, eye drops and an inhaler. I come from Illinois. We don't have these weeds. And she's going to add something to the air that can affect a person with a respiratory problem. That doesn't sound well for me.

I also am part owner of Santa Fe Skies RV Park. Now, granted, some of those vehicles that come into the park are diesels and they do emit gasoline, just like the people driving in and out of her house, my house and everybody else's house and Highway 14, so I can't see where that's really a valid point. These people come to this area as tourists. We pay a lot of money in Santa Fe County taxes and in Santa Fe County lodgers' taxes. These people come here to see the beautiful city of Santa Fe and they suddenly realize they're at 7,000 feet above sea level. They have a respiratory problem. You add to this those particles in the air that also affect people with a respiratory problem.

Now I know he said that the manufacturer says, any manufacturer will tell you whatever they want you to hear because by golly they want to sell that equipment. I know because I worked for Capital Scrap Metals Recycling Center and Auto Parks for 24 years. We had an aluminum smelter. Now, the manufacturer swore that that smelter didn't put off any emissions. Yeah, well, it was a good sell. However, the EPA came out and tested that smelter and said that it did put off emissions and it was shut down.

What I would ask of you, if you decide to do this, I think it's time that you put some rules on these types of businesses, where they are tested regularly for water, air, anything. But

they need to come under some kind of testing. You have no regulations. I looked that up too. You have no regulations that say, can/can't, does/doesn't, limitations. I couldn't even find it for the state of New Mexico. Are we that backwards that we can't set down and say here's what you can do and here's what you can't and here's what has to be, so I kind of leave it in your hands to maybe set forth some kind of regulations accordingly.

I wanted to also mention that Mike Velarde washes his trucks out at night. Do you think he wants to sleep in the same area as those stinky trucks? He's not stupid, he washes the truck at night before he parks it in the backyard. So I dare say, emissions from Mike's truck, probably minimal.

I also wonder what other animals. I heard rodents, dead pets, pesky animals – what does that include? Does that mean you get to cremate a skunk? A pig? A cow? A horse? I just wonder how many other things are being cremated out there. And what does this do to my property values? Say somebody comes along and says, oh, yeah, there's a pet crematorium next door, in case you want to know. Again, we're back to that same question. Do you want it in your backyard? Well, I may not but the next person may be really highly opposed to that, and you do have a very large neighborhood there.

The Turquoise Trail Subdivision – yeah, that's a pretty big neighborhood. We went door to door. We got signatures. I don't know how many signatures we got because we didn't count them up. We just know there were a whole lot of people in that particular neighborhood that didn't want it. We also know there are people who stay in our RV park on a regular basis, visiting nurses, traveling nurses, stay for 90 days. They kind of become a resident. They were opposed to it. So there's a lot more people out there that don't want this than do want this. Thank you.

[Previously sworn, Paul Krumbacher testified as follows:]

PAUL KRUMBACHER: Commissioner and Commissioners, Mr. Chair, my name is Paul Krumbacher. I'm a neighbor. I live over the hill in the Valle Lindo little valley. The northwest corner of my property abuts to the southeast corner of her property. I've lived here for about 20 years in that particular area. Before that I lived down in Santa Fe. But it's a nice little valley, has probably 30 homes or so in it and it is a valley so you can kind of tell what people are doing on holidays. If they have a barbecue or something it drifts down to – even some of the some drifts down to what you're doing or where you are. So I guess my objection is that I don't really want particulates drifting down to my area. I have some allergies; my wife has allergies. So that's when it was objected to the first time around and the Commissioners voted to not let it go up, I thought that was the end of it but I guess we're doing this again. So thank you very much.

CHAIR MAYFIELD: Thank you, sir. Do we have any other members from the public wishing to comment on this case before us tonight? Thank you. Seeing none we'll go back to Mr. Sommer, please.

MR. SOMMER: I'll be very brief. Let me address something that's been said over and over again, about the State Environment Department. I am in touch with the State Environment Department Air Quality Bureau on a regular basis. The last time I talked with them about this issue was February 2014 to see whether or not they had implemented any program to establish any regulations; they have not. And they have no program planned. So this isn't out-of-date information. They get tired of issuing letters that say, hey, we don't regulate this.

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The second thing is I note for you that your SLDC doesn't apply to this application. The application is under the current County code and the only issue is the equipment. I also note that the SLDC doesn't have a minimum lot size. It has a zone. There are zones that it's allowed. If I have a quarter acre lot in this zone it's a permitted use. So are we talking again about the impact? Or are we talking about the perception. The code as you have drafted it and the code as you are going to draft it doesn't deal with lot size and the distance or the location. I could have a one-acre lot, a quarter-acre lot and if I have a P in the column in that district I can use it. What's the logic there? I'll tell you what the logic is. It isn't the use that's the problem; it's the perception.

Just one last thing about property values and we could debate that all night long. Your code doesn't say your job is to protect their RV park's value or her value. The code says that you are to apply the regulation, and the only regulation in front of you deals with the equipment. We'd stand for any questions you might have that might have been raised by the testimony.

CHAIR MAYFIELD: Thank you, Mr. Sommer. I will go back, as long as there's nothing else that we have to go over that's been stated, to Mr. Velarde. Mr. Velarde, does the applicant on this appeal have anything else you care to add? Thank you. I'm going to go to Vice Chairman Anaya. Excuse me. I'm going to close this portion of our public hearing. It's now closed. Thank you.

COMMISSIONER ANAYA: Mr. Chair, I don't think this is a simple case. I don't know that we've had a simple case today or for a long time. But I will say that I think acting in the interest of the code and acting based on prior information and the current code is what our Land Use Administrator seems to have done thus far and I think that in looking at the deliberations of the prior Commission and some of the comments made on that particular case and given that there isn't a position in our new code that explicitly lays out this business, that might change. I don't know, Commissioner Stefanics, maybe there'll be other communications and other information that we might have where we maybe would have this in the new code under a home occupation, but I don't think it came up in those deliberations. It's not in there now.

Based on that fact I would move to accept the appeal.

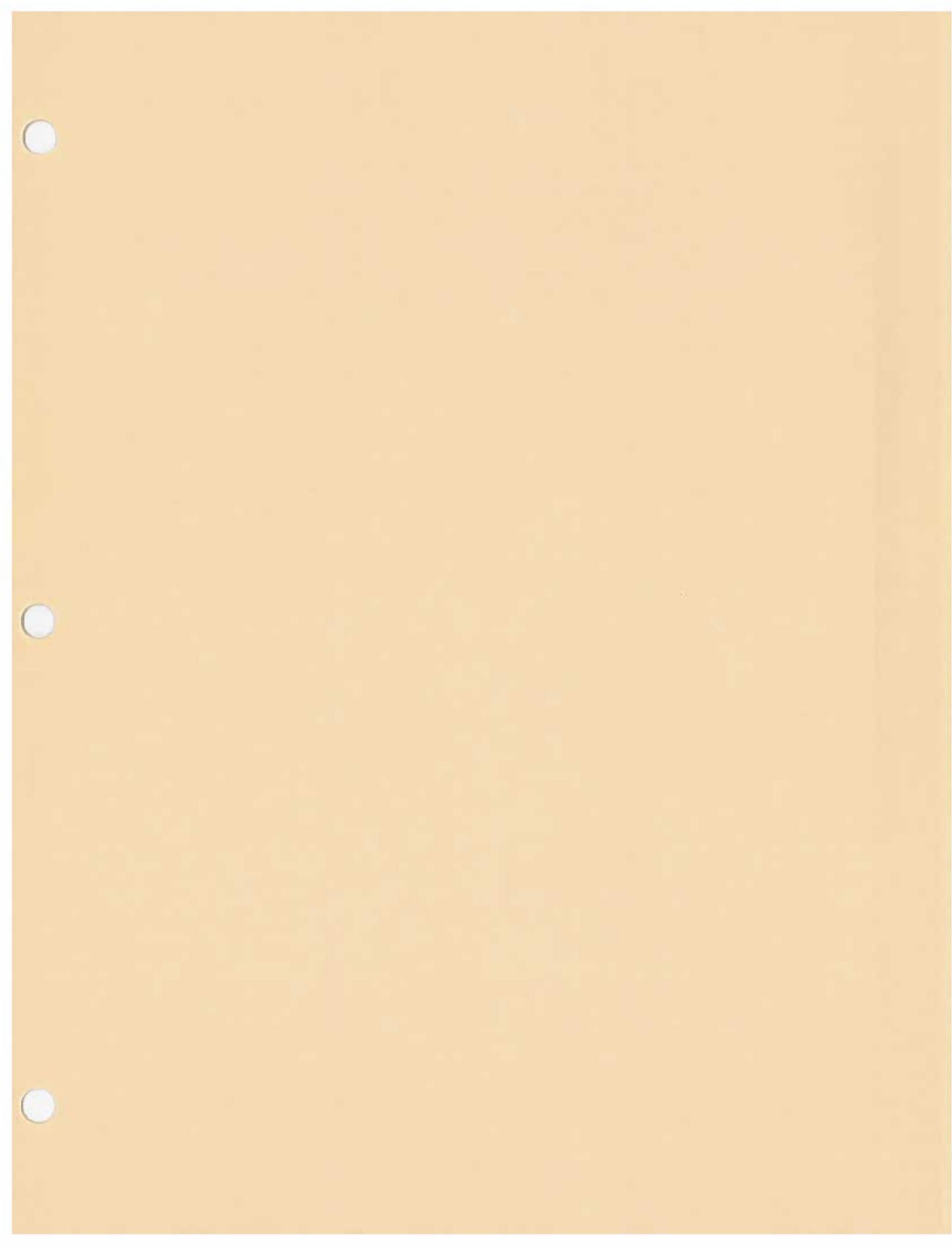
COMMISSIONER STEFANICS: Mr. Chair.

CHAIR MAYFIELD: Commissioner Stefanics.

COMMISSIONER STEFANICS: I will second that, and my rationale is after listening and consideration I don't think we have clarity for a home occupation for this versus light industrial. And I was trying – when I asked the questions about where this could be located I think that that remains a big question mark in my mind. And so the reason I'm seconding the motion to approve the appeal is because until we have clarity I don't think we can even identify where this should be. And that's why I asked questions earlier about standards. I think we need some standards. Thank you, Mr. Chair.

CHAIR MAYFIELD: Thank you, Commissioner Stefanics. Commissioners, seeing no other discussion we have a motion and a second in front of us to accept the appeal.

The motion passed by unanimous [3-1] voice vote with Commissioner Mayfield casting the nay vote. [Commissioner Holian was not present for this action.]



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. PCEV 14-5110

VACATION OF EASEMENT

HEATHER McCREA, APPLICANT

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on May 13, 2014 on the Application of Heather McCrea (hereinafter referred to as "the Applicant") for approval to vacate a platted twenty foot (20') wide water pipeline right of way easement and tank site easement on two lots totaling 8.80 acres. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicant requests to vacate a platted twenty foot (20') wide pipeline right of way easement and a tank site easement on two lots, (Lot 1) and (Lot 3) at 448 N.M. 592, in Santa Fe County, New Mexico.
2. In advance of a hearing on the Application, James MacCreight provided a certification of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for twenty one days on the property, beginning on May 12, 2014. Additionally, notice of the hearing was published in the legal notice section of the Santa Fe New Mexican on April 22, 2014, as evidenced by a copy of that legal notice contained in the record.

3. Applicant established ownership of the subject property by presenting a Warranty Deed recorded as Instrument 1390694 in the Office of the County Clerk of Santa Fe County on July 27, 2005.
4. Aerial photographs of the property were presented to the BCC, as well as a 2009 Preliminary Plat of Survey Showing Waterline and Tank Easement and a 2008 Summary Review Subdivision Plat. Applicant also provided a Preliminary Plat of Survey Showing Waterline and Tank Easement dated March 28, 2014. The water line and tank easements were established on the property by the 2008 plat which was recorded in Book 675, pages 038-040 on February 14, 2008, a plat approved by the Santa Fe County Land Use Administrator.
5. The subject lots (Lot 1) and (Lot 3) are legal lots of record, which were created in February of 2008 by the Summary Review Subdivision Plat referenced above.
6. Applicant submitted a written statement requesting that the plat be partially amended to vacate the water line and tank easements. Applicant intends to relocate those easements to underlie the existing water line and tank.
7. Ordinance 1996-10, Article V, Section 5.7.2 (the Land Development Code hereinafter referred to as the Code) states that “[i]n approving the vacation of all or part of a final plat, the Board shall decide whether the vacation will adversely affect interests of persons on contiguous land or persons within the subdivision being vacated”. That provision comports with the New Mexico Subdivision Act, NMSA 1978, Section 47-6-1 et seq., and specifically Section 47-6-7 pertaining to vacation of plats, which grants the BCC authority to vacate plats filed with the county clerk.

8. Article V, Section 5.7.1 of the Code provides as follows:

“Any final plat filed in the office of the County Clerk may be vacated or a portion of the final plat may be vacated if:

- a) The owners of the land proposed to be vacated sign an acknowledgment statement, declaring the Final Plat or a portion of the Final Plat to be vacated, and the statement is approved by the Board; or
- b) The Board finds that a plat was obtained by misrepresentation or fraud and orders a statement of vacation to be prepared by the County.”

9. Article 5, Section 5.7.3 of the Code provides that “[t]he approved statement declaring the vacation of a portion or all of a final plat shall be filed in the office of the County Clerk.”

10. Article V, Section 5.7 of the Code may only pertain to vacation of subdivision plats.

To the extent that vacation and relocation of a platted easement on a lot outside of a subdivision is not governed by the aforementioned Code provisions, and to the extent these lots are not part of a subdivision, the plat amendment still requires County authorization prior to vacation or relocation.

11. Under the Code, the Land Use Administrator is tasked with review of submissions related to Summary Review Subdivisions (Type III and Type V subdivisions) such as the one that created Lots 1 and 3, by Article II, Section 2.3.1(a)(vii and viii), a review which includes consideration of proposed easements. Article III, Section 2.4.2(a)(1) addresses the requirement that land be divided by plat, and Section 2.4.2(b) sets forth the submittal and review requirements, including the requirement that the plat graphically show all public and private rights-of-way or easements reviewed by the County. Article III, Section 2.4.2(b)(3) requires “all lots created under this Section

shall be provided with adequate access for ingress and egress, utility service, fire protection, and emergency services . . .”

12. The authority to initially approve a plat includes the authority to approve modifications. Given that the County must evaluate the easements as part of the land division approval process, it is incumbent upon the owner of the property to seek County authorization before altering the plat establishing the easements. To read the Code as allowing plat modifications without County approval after a land division has been approved by the County, would render meaningless the requirement that property owners secure County approval of the land division. This would undermine the public welfare, by allowing private parties to nullify requirements designed to protect public health and safety.
13. In addition to administrative platting processes, the CDRC, through Article II, Section 1.2.2 of the Code, is vested with general authority over platting in addition to its authority over subdivisions, and that authority further supports the County’s practice of deciding cases pertaining to plat amendments, including amendments to vacate easements, for property outside of a subdivision.
14. Further evidence of the need for County approval of the vacation and relocation of a platted easement can be found at Article II, Section 2.3.1(a)(v) of the Code, which grants the Land Use Administrator explicit authority to take action regarding plat amendments, separate and apart from the authority she has over Type III and Type V subdivisions containing five or fewer parcels. Plat amendments are defined at Article III, Section 2.4.2(a)(6) as “a minor change or correction to a plat, prepared by a licensed surveyor or engineer, which does not constitute a division of land, lot line

adjustment, family transfer, or consolidation.” Under the Code, the administrative process provides less stringent noticing requirements than a public hearing before the BCC, a distinction which creates some reluctance to process plat amendments involving vacation of easements benefitting neighboring properties through the administrative process.

15. Finally, pursuant to Article III, Section 2.3.9(b)(2), any application for a development permit must meet the Code requirements pertaining to utilities, including the requirement that “utility trenches shall be placed within easements in or adjacent to road or driveway easements or rights-of-way except where alternate locations are required for gravity flow of water or sewer or where a significant reduction in line length and terrain disturbance would be achieved by cross country easements and trenching.” Given the importance of the placement of utility easements, it follows that once platted, a utility easement cannot be relocated or vacated absent County approval.

16. While pursuant to Article II, Section 2.3.1.a(v), this Application might represent a minor change to a plat which the Land Use Administrator has discretion to resolve rather than forwarding to the BCC, the Land Use Administrator would have been making the same determination as the BCC, which is whether the Application complies with the requirements set forth in the Code. That determination would have been subject to appeal to the CDRC pursuant to Article II, Section 2.3.4.b. Any decision regarding the Application made by the CDRC would have been appealable to the BCC pursuant to Article II, Section 2.3.4.c. Given that the matter could ultimately have been decided by the BCC, the decision of the Land Use Administrator

to decline to exercise her discretionary review authority and instead forward this matter directly to the BCC is authorized by the Code. Moreover, the BCC hearing was a more rigorous process because of the more extensive noticing requirements for matters taken before the BCC and because of the opportunity for public input on the application.

17. The New Mexico Subdivision Act, NMSA 1978, Section 47-6-1 et seq., and specifically the aforementioned Section 47-6-7 pertaining to vacation of plats, grants the BCC authority which it has utilized in the past to vacate plats filed with the county clerk, and that grant of authority is not limited to plats of subdivisions. Santa Fe County has established a framework within which to vacate subdivision plats by virtue of and Article V, Section 5.7 of the Code and has additional provisions within the Code authorizing amendments and vacation of plats.
18. The New Mexico Subdivision Act makes no distinction between private easements and other easements when granting authority to the BCC to vacate all or a portion of a plat. The Code makes no distinction between private easements and other easements when authorizing the BCC to vacate all or a portion of a plat. The plat which is proposed for partial vacation in these proceedings was approved by the Santa Fe County Land Use Administrator. A plat approved by Santa Fe County is subject to vacation or partial vacation by the BCC.
19. On the subject property, there is an existing County Fire Station located on lot 1 and placed both within and outside of its platted easement.

20. The Chupadero Mutual Domestic Water Consumers Association has a water tank and water pipeline located on lot 1 and lot 3, neither of which is within the easement platted for those facilities and now proposed for vacation.
21. Santa Fe County Resolution No. 2012-131 resolves to expand the service area of the Santa Fe County Water Utility to incorporate the service area of the Chupadero Mutual Domestic Water Consumers Association, and to ultimately take over that Association's infrastructure and assets. The take-over of the Association's infrastructure and assets cannot move forward until the Association has valid easements for its infrastructure.
22. The Applicant testified that no other property owner will be impacted by vacation of the easements, provided new easements are platted underlying the existing water pipeline and water tank.
23. The Preliminary Plat of Survey Showing Waterline and Tank Easement dated March 28, 2014 suffices to meet the requirement that the Applicant submit an acknowledgment statement, declaring the Final Plat or a portion of the Final Plat to be vacated.
24. Staff recommended that the Application be granted because it complied with pertinent Code requirements and asked that the Applicant be required, as a condition of approval, to file the portion of the Final Plat (Lot 1) and (Lot 3) affected by the vacated easement with the County Clerk's Office.
25. In support of the Application, the Applicant agreed with staff's conditions.
26. No members of the public spoke in favor or opposition to the application.

27. After conducting a public hearing on the request, the Board of County Commissioners hereby approves the request to vacate a platted twenty foot (20') wide pipeline right of way easement and tank site easement at 448 AB N.M. 592 (Lot 1) and (Lot 3) conditioned on the Applicant complying with staff's conditions as stated above.

28. The Application is well taken and should be granted.

29. Vacation of the pipeline right of way easement and tank site easement will not adversely affect interests of persons on contiguous land or persons within any subdivision.

WHEREFORE the Board of County Commissioners of Santa Fe County hereby approves the request to vacate the platted twenty foot (20') wide pipeline right of way easement and tank site easement at 448 N.M. 592 (Lot 1) and (Lot 3), within Section 5, Township 18 North, Range 10 East (Property"), subject to the staff conditions set forth in paragraph 24. The motion to approve the vacation passed by a 4-0 vote, with Commissioners Anaya, Mayfield, Stefanics and Chavez voting in favor of the motion, Commissioner Holian was not present during the Public Hearing.

IT IS SO ORDERED

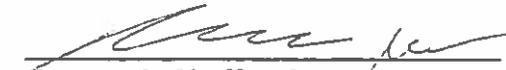
This Order was approved by the Board of County Commissioners of Santa Fe County on this ___ day of _____, 2014.

By: _____
Daniel W. Mayfield, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to form:



Gregory S. Shaffer, County Attorney

together. I don't know if we can look at the agricultural aspects of that also please.

COMMISSIONER ANAYA: Yes, I think we should just have a broad discussion, items of concern.

CHAIR MAYFIELD: Thank you so much. Commissioner Anaya, do you know when that's going to happen?

COMMISSIONER ANAYA: I don't, Commissioner, but I will work with you and with staff and with other business owners as well as people that have concerns about – or that want to keep the wage ordinance the way it is, to coordinate something and make it public and notice on the internet and as best we can to get as many people involved as we can.

CHAIR MAYFIELD: Thank you so much. Thank you again. Is there any other person that needs to bring a matter to our attention through Public Matters for tonight. Okay, we're going to probably close that up because it's already 10:00. Thank you.

VIII. B. 2. **BCC CASE # PCEV 14-5110 Heather McCrea Vacation of Easement, Heather McCrea, Applicant, Santa Fe County, Agent, Request Approval to Vacate a Platted Twenty-Foot (20') Wide Pipeline Right of Way Easement and Tank Site Easement on Two Lots Totaling 8.80 Acres. The Easement Will Be Relocated on-Site. The Property is Located in the Traditional Community of Chupadero at 448AB NM 592, within Section 5, Township 18 North, Range 10 East (Commission District 1) [Exhibit 8]**

MR. ROMERO: The subject property consists of two legal lots of record, which were created in February of 2008; Lot 1, which consists of 3.80 acres and Lot 3, which consists of 5.00 acres.

There is currently an existing County Fire Station and a twenty-foot wide pipeline right of way easement and tank site easement for the Chupadero Mutual Domestic Water Consumers Association, with a water tank located on lot 1 and lot 3. The twenty-foot wide pipeline right of way easement and tank site easement runs parallel east to west onto Lot 1 and Lot 3 as indicated by the recorded plat. The Applicant wishes to relocate the easements east to west parallel to the Fire Station on Lot 1 and Lot 3, where the pipeline and water tank are currently situated.

Santa Fe County Resolution No. 2012-131, a Resolution incorporating the Chupadero Mutual Domestic Water Consumers Association, was approved by the Board of County Commissioners on September 25, 2012. Santa Fe County shall take over ownership and maintenance of the Chupadero Water Association's assets. All easement locations need to be in place and accurate, prior to Santa Fe County taking over the existing water line.

Staff recommendation: Approval to vacate and relocate a platted twenty-foot (20') wide pipeline right of way easement and tank site easement on two lots totaling 8.80 acres, subject to the following condition:

1. The Applicant shall file the portion of the Final Plat (Lot 1) and (Lot 3) affected by the vacated easement with the County Clerk's Office (As per Article V § 5.7.3).

I stand for any questions.

CHAIR MAYFIELD: Thank you. Commissioners, are there any questions? This is a public hearing. Do any members of our public wish to comment on this case? Come up front, please, whoever would like to comment.

[Duly sworn, Jack Miller testified as follows:]

JACK MILLER: Jack Miller, 01AB Road, Santa Fe. It's actually Chupadero. I have board-signed affidavits accepting this agreement to change the easement and I'm not a board member; I'm the watermaster. I'm speaking for the board. But I want to thank the County Commission for considering us, for helping us with our mutual domestic and this will expedite it somewhat. And then we're looking forward to a new tank site and new permanent well. We've had very intermittent well service and I've even had to ration people. So want to thank you.

CHAIR MAYFIELD: Thank you, Mr. Miller. Sir.

[Duly sworn, Tom Kelly testified as follows:]

TOM KELLY: I'm Tom Kelly. I have offered a place for the new well and tank for the Chupadero – I guess Chupadero/County or Chupadero Water Association, whatever it will be. Anyway, I'm also bordering Chupadero and I've asked if I could be a part of the community. Land Use decided it might be best if we just split the lot so I'm proposing that you allow me to split the lot.

CHAIR MAYFIELD: Sir, tonight we're just asking for a vacation of an easement.

MR. KELLY: And I'm offering an easement, yes. Also an easement and a spot for the well and tank. It seems to be the best location. The head of the last water board said –

CHAIR MAYFIELD: Sir, we're a little off topic. Mr. Romero, if I can just ask for one second, there's not a lot split in here. We're just asking for a vacation of an easement tonight.

MR. KELLY: I think that's the next agenda.

MR. ROMERO: Mr. Chair, Commissioners, it's just regarding to the relocation, vacation of the easement.

CHAIR MAYFIELD: So, sir, would you care to comment on the vacation of the easement?

MR. KELLY: No.

CHAIR MAYFIELD: Okay. Thank you. This is still a public hearing. Are there any more questions or comments from our public wishing to comment on this case? Seeing none, this portion of the public hearing is closed. Mr. Romero. I just want to add that Santa Fe County has been working with the community of Chupadero to help sustain and bring in an adequate water supply though the water system. I believe that the vacation of this easement is necessary to hopefully accomplish that task. I don't see anybody from our Public Works Department here, so with that, I will move for approval of vacation of easement.

COMMISSIONER STEFANICS: Second.

CHAIR MAYFIELD: We have a motion and a second, Commissioners.

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

VIII. B. 3. **BCC CASE # PCEV 14-5120 Heather McCrea Vacation of Easement. Heather McCrea, Applicant, Request Approval to Vacate a Platted Twenty Foot (20') Wide Private Ingress/Egress and Utility Easement on One Lot Totaling 2.50 Acres. The Easement Will Be Relocated on-Site. The Property is Located in the Traditional Community of Chupadero at 64A Paseo Encantado NE, within Section 6, Township 18 North, Range 10 East (Commission District 1)**

MR. ROMERO: The subject property is a legal lot of record, which was created through a Family Transfer/Land Division in July of 1998. There is currently a residence on the subject property which was constructed in 2000, Permit 00-235, by a previous property owner. The residence was constructed on the private ingress/egress and utility easement, which gives access to 64B Paseo Encantado NE which is Lot 2 causing the easement to run through a portion of the residence. The Applicant wishes to vacate the twenty foot wide private ingress/egress and utility easement that runs north to south on the property and relocate the easement 50-115 feet to the east of its current location.

The neighbors have expressed concern, and object to the relocation of the easement. Staff recommends that the portion of the easement that runs through the residence be vacated and relocated around the residence and tie back into the existing easement, causing minimal change to the private ingress/egress and utility easement. This does not remove access; it relocates the easement and would ensure that the easement continued onto the objecting neighbor's property in exactly the same location as currently platted.

Staff recommendations: Denial to vacate and relocate the entire platted twenty foot wide private ingress/egress and utility easement on one lot totaling 2.50 acres. Staff supports the relocation of the easement around the existing structure without any alteration of the remainder of the easement, subject to the following conditions:

1. The Applicant shall file the portion of the Final Plat (Lot 1) affected by the vacated easement with the County Clerk's Office (As per Article V § 5.7.3).
2. Staff recommends Approval to vacate and relocate the portion of the ingress/egress and utility easement that runs through the portion of the residence.

If I may, after discussion with our Legal Department, staff recommends that an additional condition be imposed, which would be:

3. The adjacent property owners affected by the vacation and relocation of the private ingress/egress utility easement shall sign the final plat prior to recordation to signify their agreement to vacation and relocation of the easement.

I stand for any questions.

CHAIR MAYFIELD: Mr. Romero, maybe in my packet I just don't have #3 in here.

COMMISSIONER CHAVEZ: The third was added.

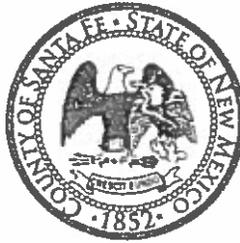
CHAIR MAYFIELD: It was just added? So can you repeat that again,



Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. V 14-5150
VARIANCE
LORENZO ATENCIO, APPLICANT

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on August 12, 2014 on the Application of Lorenzo Atencio (hereinafter referred to as "the Applicant") for a variance of Ordinance No. 2008-5 (Pojoaque Valley Traditional Community District), § 12.5 (Density Standards) to allow a Land Division of 1.45 acres into two (2) lots; one lot consisting of 0.75 acres and one lot consisting of 0.695 acres. The BCC, having reviewed the Application, supplemental materials, staff reports, and having conducted a public hearing on the request, finds that the Application is not well-taken and should not be granted, and makes the following findings of fact and conclusions of law:

1. The Applicant requests approval of a variance of Ordinance No. 2008-5 (Pojoaque Valley Traditional Community District), § 12.5 (Density Standards) to allow a Land Division of 1.45 acres into two lots; one lot consisting of 0.75 acres and one lot consisting of 0.695 acres.
2. The subject property was created in 1995 by way of land division and is a recognized legal lot of record consisting of 1.45 acres, which is located in Santa Fe County at 10 Frances

Lane, within Section 7, Township 19 North, Range 9 East ("Property"), within the Traditional Community of Pojoaque, New Mexico.

3. The 1.45 acre parcel currently has a 3,462 square foot home on the lot.
4. Pojoaque Valley Traditional Community District specifies a minimum lot size under Ordinance No 2008-5, § 12.5 (Density Standards) of 0.75 acres per dwelling unit.
5. At the Public Hearing before the BCC on August 12, 2014, staff recommended denial of the requested variance.
6. In the event the Application for a variance was approved, staff recommended imposition of the following conditions of approval:
 - a. Water use shall be restricted to .50 acre feet per year per lot. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office.
 - b. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval.
 - c. Further Division of land is prohibited on the property. This shall be noted on the Plat.
 - d. The proposed vacant lot may be subject to utilizing an advanced liquid waste disposal system in conformance with NMED requirements. This shall be noted on the plat.
 - e. The Applicant shall comply with all Fire Prevention Division requirements at time of plat approval.
7. Article II, Section 3.1 of the Code 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 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 [BCC] and the [BCC] 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.” Section 3.1 concludes that, “In no event shall a variance...be recommended by [the] Development Review Committee nor granted by the [BCC] if by doing so the purpose of the Code would be nullified.”

8. Article II, Section 3.2 states, “In no case shall any variation or modification be more than a minimum easing of the requirements.”
9. The Applicants stated, they do not have an extraordinary hardship because of unusual topography or other non-self-inflicted condition, instead, asserted that compliance with the Code would result in an arbitrary and unreasonable taking of property or exact a hardship and claimed that a variance from the code would not result in conditions injurious to health or safety.
10. The Applicants stated, they have a valuable piece of property and it is not worth anything to them because they cannot use it or sell it. Further, Applicant asserted that the nature of the community, neighborhood, as well as the health and safety of the community would not be affected if the variance was allowed.
11. At public hearing, Guy Eden, Joseph Karnes on behalf of Mr. and Mrs. McDougal, Harlod Sexton, Sylvia Sexton, Frank Sena, and Maddie McDougal spoke in opposition of the Application.

12. Guy Eden, stated it was the intent of the original owner, Frances Gomez who split the pasture into 1.44 acre lots, to deliberately create lots that were less than 1.5 acre, so that they could not be split into 0.75 lots. Her intent was to preserve the nature of the pasture area. He also spoke regarding the septic systems and the EPA requirements of increased field area due to the clay-like soil which requires extended field area to percolate the clear water out of the septic system. Furthermore, a covenant was imposed on the lots that there should only be one home per lot.
13. Joseph Karnes, on behalf of Mr. and Mrs. McDougal, spoke in opposition to the Applicants' variance request, addressing the Applicants assertion of a taking, and that in order for there to be a taking there must be a diminution of value of substantially all the economic value of the property. The Applicants have a house on the lot, which the Applicant asserted is beautiful and which they enjoy, thus, there is no diminution of value instead there is a request to bend the rules. Mr. Karnes also spoke of the potential for precedential effect throughout the county in a decision to approve the lot split, which would encourage developers to find properties close to 1.5 acres and then request subdivision variances.
14. Mr. and Mrs. Sexton through a letter (Exhibit 4), spoke in opposition to the variance due to the impact on the water supply. In their letter they assert that an additional septic system on the property could affect the area's wells and that drilling another well would impact the area's water supply.
15. No evidence was provided by the Applicants presenting extraordinary hardship due to unusual topography or non-self-inflicted conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code. The Applicants, instead, agreed that none of these results are at issue in the matter before the BCC.

16. No evidence was provided by the Applicants that compliance with the Code provisions will result in an arbitrary and unreasonable taking of property or exact a hardship, and proof that a variance from the Code would not result in conditions injurious to health or safety. The Applicants single assertion regarding a hardship or taking of the property is they would like the revenue from selling the 0.695 size lot and that not being allowed to do so was a waste. Community members through their opposition to the Applicant's requested variance offered some reasons to deny the variance which could be injurious to their health and safety as supported by their concerns regarding water supply overuse and contamination.
17. Granting this variance request will nullify the purpose of the Code, and could result in conditions injurious to health or safety.

WHEREFORE the Board of County Commissioners of Santa Fe County hereby denies the request for a variance of Ordinance No. 2008-5 (Pojoaque Valley Traditional Community District), § 12.5 (Density Standards) to allow a Land Division of 1.45 acres into two lots; one lot consisting of 0.75 acres and one lot 0.695 acres located at 10 Frances Lane, Santa Fe County. The motion to deny the variance passed by a 5-0 vote, a unanimous decision.

IT IS SO ORDERED

This Order was approved by the Board of County Commissioners of Santa Fe County on this ___ day of _____, 2014.

By: _____
Daniel W. Mayfield, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to form:



Gregory S. Shaffer, County Attorney

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and utility easement and relocate as a thirty-eight-foot wide public access and utility easement on another portion of the property totaling 0.901 acres, subject to the following condition. May I enter these into the record?

CHAIR MAYFIELD: Please, and read them in, Mr. Romero.

MR. ROMERO: Condition #1: The Applicant shall file the portion of the Final Plat, Lot 5, affected by the vacation and relocation of the easement with the County Clerk's Office.

I stand for any questions.

CHAIR MAYFIELD: Thank you. Commissioners, any questions of staff? Seeing none, this is a public hearing, do we have any one from the public or the applicant that wishes to comment on this case tonight? Kind of saw a head shake back there so the applicant is here tonight. Anybody else from the public wishing to comment on this? Seeing none, this portion of our public hearing is now closed.

COMMISSIONER HOLIAN: Mr. Chair.

CHAIR MAYFIELD: Commissioner Holian.

COMMISSIONER HOLIAN: I move for approval of BCC Case #PCEV 14-5220.

COMMISSIONER CHAVEZ: Second.

CHAIR MAYFIELD: I'll second that, I'll make the motion. It's in my district, but with that, Commissioners, seeing no other comments.

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

- VIII. B. 3. CDRC Case # V14-5150 Lorenzo Atencio Variance. Lorenzo Atencio, Applicant, Requests a Variance of Ordinance No. 2008-5 (Pojoaque Valley Traditional Community District), 12.5 (Density Standards) to Allow a Land Division of 1.45 Acres Into Two Lots. The Property is Located At 10 Frances Lane, within the Traditional Community of Pojoaque, within Section 7, Township 19 North, Range 9 East (Commission District 1) [Exhibit 10: Quitclaim deed; Exhibit 11: Letter to property owners; Exhibit 12: Aerial views; Exhibit 13: McKay letter; Exhibit 14: McDougal memo; Exhibit 15(Applicant's exhibit AA): Plat of lot; Exhibit 16 (Applicant's exhibit BB): Plat of survey]

JOHN LOVATO (Case Manager): Thank you, Mr. Chair. The subject lot was created in 1995 by way of a land division and is recognized as a legal lot of record. There is currently a residence under construction on the property. A permit for a 3,462 square foot home was issued on October 3, 2013.

The Applicant states a variance is needed due to his medical condition. The Applicant states he can no longer maintain the 1.45-acre parcel and wishes to sell one of the lots he is proposing to divide. The size of lots will be 0.725 acres each and the Applicant

further states the size of lots to be created is close to the minimum 0.75-acre lot size and will not impact potential buyer's health, safety, or welfare.

Ordinance No.200 8-5, Subsection 12.5, Density Standards, states the minimum lot size in the Pojoaque Valley Traditional Community District is 0.75 acres per dwelling unit.

On June 19, 2014 the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the applicant's request by a 6-0 vote. As attachment it's Exhibit 1. At the June 19, 2014 CDRC meeting five members of the public spoke in opposition to the variance request with concerns of private covenant violation, septic setback concerns and the property not meeting the minimum lot size requirements.

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

Staff Recommendation: Staff recommendation and the decision of the CDRC was to recommend denial of the applicant's request to allow a variance from Ordinance No. 2008-5, Pojoaque Valley Traditional Community District, Section 12.5, Density Standards, to allow a Land Division of 1.45 acres into two lots. The applicant failed to present any evidence of the need for a variance that pertains to an extraordinary hardship he is suffering because of unusual topography or other non-self-inflicted condition, or that these would result in inhibiting the achievement of the purposes of the 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 0.50 acre-feet per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, Section 10.2.2 and Ordinance No. 008-05).
2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval (As per Article III, Section 2.4.2).
3. Further Division of land is prohibited on the property. This shall be noted on the plat.(As per Article Ordinance No. 2008-5, Section 12.5).
4. The proposed vacant lot may be subject to utilizing an advanced liquid waste disposal system in conformance with NMED requirements. This shall be noted on the plat.
5. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat Review (As per 1997 Fire Code and NFPA Life Safety Code).

Thank you, Mr. Chair and I stand for any questions.

CHAIR MAYFIELD: Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Mr. Chair. Thank you, John. When the subject lot was created in 1995 was there a notation put on the plat that further division of the property would be prohibited?

MR. LOVATO: Mr. Chair, Commissioner Holian, it was not noted on the plat. Later on, a separate document was filed with the Clerk's office with these covenants.

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COMMISSIONER HOLIAN: Thank you.

CHAIR MAYFIELD: [inaudible]

MR. LOVATO: Mr. Chair, I don't believe that portion is in the packet.

CHAIR MAYFIELD: [inaudible] When was that filed with the County Clerk's Office?

MR. LOVATO: Mr. Chair, that was filed in 1994, I believe. Or 95.

COMMISSIONER STEFANICS: Mr. Chair.

CHAIR MAYFIELD: Commissioner Stefanics.

COMMISSIONER STEFANICS: I'd like to ask Mr. Shaffer a question.

CHAIR MAYFIELD: Sure.

COMMISSIONER STEFANICS: Mr. Shaffer, did we not just have a case in district court that overturned one of our decisions because we did not uphold some covenants?

MR. SHAFFER: Mr. Chair, Commissioner Stefanics, I'm not aware of a case that –

COMMISSIONER STEFANICS: I'm specifically speaking of the ECIA.

MR. SHAFFER: I don't believe that the court ruling ultimately had to do with the covenants vis-à-vis the County code. My understanding of the law in New Mexico is that private covenants are not a matter for consideration by local zoning boards. Those are between the private parties to which they apply, and that the matter in front of the Board should be considered on the merits based upon the Land Development Code.

COMMISSIONER STEFANICS: Well, Mr. Chair, Mr. Shaffer, I believe that we made a decision here, it was a split vote, about a woman subdividing her property and the ECIA took it to court and won. And they have covenants against subdividing the properties, the lots.

MR. SHAFFER: Mr. Chair, Commissioner Stefanics, I'm familiar with the case in general, but as it's been described to me I don't believe that the court's ruling was based upon the covenants vis-à-vis the County's decision. It was rather based upon the Land Development Code and the criteria for a variance.

COMMISSIONER STEFANICS: Okay. So, Mr. Chair, Mr. Shaffer, could you check on that, because I think that would be relevant to this decision. Thank you.

MR. LOVATO: Mr. Chair, if I can –

CHAIR MAYFIELD: Really quick, Commissioner Chavez. Do you have an answer to that?

MR. LOVATO: Mr. Chair, it was in 2004.

CHAIR MAYFIELD: So it was filed in 2004.

MR. LOVATO: Mr. Chair, that is correct.

CHAIR MAYFIELD: Thank you. Could I see a copy of that? Have that provided to the Commissioners? Thank you. Could we ask that copies be made of this please? Thank you. Oh, here it is. What page is it on? This is what you just passed out.

MR. LOVATO: Mr. Chair, it's on the quitclaim deed. It is noted on the bottom in the recording block.

CHAIR MAYFIELD: Thank you. Commissioners, at this time are there any other questions of staff? Commissioner Chavez.

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COMMISSIONER CHAVEZ: One page of the packet, under liquid waste –
CHAIR MAYFIELD: Excuse me. Whatever we're talking about could we make sure that all applicants and/or individuals concerning this case have a copy of it please. Thank you. Commissioner Chavez.

COMMISSIONER CHAVEZ: So under the section of liquid waste, the paragraph explaining that, it says a house with more than two bedrooms will require a split flow or advanced treatment system. And so your staff recommendation is suggesting that the subject property utilize an advanced liquid waste disposal. So is the split flow or advanced treatment system, is that consistent with what your staff recommendation is?

MR. LOVATO: Mr. Chair, Commissioner Chavez, that is correct.

COMMISSIONER CHAVEZ: Okay. Thank you, Mr. Chair.

CHAIR MAYFIELD: So right now we will go to the applicant. Is the applicant here? Mr. Atencio please. Come on up please. Mr. Atencio, if you need, that mike can be taken back to the seat.

[Duly sworn, Lorenzo Atencio testified as follows:]

LORENZO ATENCIO: Mr. Commissioner, Commissioners, Mr. Chair. My name is Lorenzo Atencio. With me, my wife, Yvonne Atencio Luna. And with us also is the designer-builder for our house, Arch Sproul. We are here on a piece of property that's 1.455 acres in size. It's in the community of Pojoaque. It's located close to the Guadalupe Church. It's located close to the Pojoaque Mid-High. It's located close to the sports fields. It's a very nice piece of property. It was part of a pasture in the family for generations probably. It belonged to Ms. Frances Gomez. This property has great views. It – we have an aerial photo of it in Exhibit 7 of the handout prepared by the County. And it's a very valuable piece of land.

When we bought it a couple years ago it was listed at \$150,000 for the lot. But it's not 1.5 acres so we can divide it into two parcels according to code. I have a couple of exhibits for the Commission that I'd like to – and I'd like to have it marked at Exhibit 1.

CHAIR MAYFIELD: [inaudible]

MR. ATENCIO: Exhibit AA. How about that? [Exhibit 15]

CHAIR MAYFIELD: [inaudible]

MR. ATENCIO: Okay. This surveyor's map shows what the property looks like, where the house is located, how the property would be, how the lot would be split if the variance is granted. The surveyor has shown on the left the portion that's colored in yellow, that's how much the lot is short. We're talking about a sliver of land. It's a sliver that's seven feet wide.

Now, my wife and I want to split this lot because we really can't do too much with it due to my handicap and we'd like to sell it so that somebody could use it. It's not wasted. We have a hard time keeping up with the weeds. What – let's see. The recommendations was that – recommendations were that the application for a variance be denied because there – let's see. There was no showing of an extraordinary hardship because of unusual topography or other non-self-inflicted condition, or that these conditions would result in inhibiting the achievement of the purpose of the code.

I submit to you that the committee that reviewed this used the wrong test, because we have not applied – we're not saying that we have an extraordinary hardship because of the

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unusual topography or other non-self-inflicted condition. We're arguing that the lot size is close enough to the .75 acres that it's in substantial compliance with the code. And I cite – I call the Commission's attention to the original report submitted by Mr. Lovato, which contained a copy of the variance ordinance which reads – give me a minute – sorry about that.

CHAIR MAYFIELD: You're fine, Mr. Atencio.

MR. ATENCIO: I found it. It says, in Section 3, entitled variances that – and I want to read the relevant part on the ordinance. 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 the code provisions at issue would result in an arbitrary and unreasonable taking of property or exact hardship and proof that a variance from the code will not result in conditions injurious to health or safety. In other words, the test here is whether not granting a variance is going to result in a taking of our property. And the test is whether if you don't grant the variance – sorry. If you grant the variance is it going to hurt anybody. So is it going to defeat the purposes of the ordinance? And the purposes of the ordinance are to maintain a rural type community. In other words the density. If the variance is granted and we add – is it going to affect the density of the community? If the variance is not granted is it going to hurt the community or is it going to hurt us, the applicants?

We have a valuable piece of property here and at this point it's worth nothing to us because we can't use it and we can't sell it. And if the – we're asking the Board to grant us a variance because it will not affect the community nature of the area, the neighborhood. You have, like I said, the aerial photograph that shows how homes are spaced in this area. If the house was built on this lot that is .695 acres, it's not going to change. I'm sorry. If this variance is granted the protesters to the north of our lot will not be any closer to any house. They're still be over 100 feet away which is farther than some of the homes in that area.

And there is no covenant regarding the lot size. If you look at the covenants that have been provided to you they refer to having trailers on the property, because they don't want the properties to depreciate, the property value to go down. The State Environment Department has stated the property can be developed within the state ordinances relating to safety and health. If – so regarding the private covenants, what covenants there may be, and I submit that there is no covenant regarding the minimum lot size, whatever covenants there are are irrelevant because they were not approved by the Board, the Commission. They were not approved by the Commission originally. So the Commission really has no jurisdiction over these covenants. And like I said, they really don't talk about a minimum lot size anyway.

I believe that's all I have at this point. I would an opportunity to rebut anything presented by the protesters.

CHAIR MAYFIELD: Thank you, Mr. Atencio. Any questions of the applicant, Commissioners? This is a public hearing. Mr. Atencio, at this time there are no questions but you will have the opportunity to come back up.

MR. ATENCIO: Thank you. Thank you for your patience.

CHAIR MAYFIELD: Thank you. So this is a public hearing. Anybody wishing to provide public comment on this case. Just so I can see by a show of hands, how

many folks are willing to provide – let me go really quick here. Mrs. Atencio, do you want to provide as an applicant or just as a commenter?

YVONNE ATENCIO: As an applicant.

CHAIR MAYFIELD: Okay, so I'm going to leave it still for the applicant.

Mrs. Atencio, please.

[Duly sworn, Yvonne Atencio Luna testified as follows:]

MS. ATENCIO: I just want to say that I'm Yvonne Atencio Luna and just a quick background. We bought this land a year and half ago and shortly thereafter we got married and this is where we're starting a new life. We thought about splitting the lot to help us out. I was hoping – we have two neighbors. There are a lot of people here but we only have two that border on us, and I went and spoke to the Sextons. At that time in their home they were very – I thought they were supportive. They didn't say no. I told them that we would like their support and the McDougals have been – Mr. McDougal is a little ill and he's not been very warm, so I kind of counted him as a no.

But we came and talked to Mike Romero about what he thought about us splitting, our chances and what he thought and the County was very supportive. We wouldn't have gone forward with this if we hadn't thought that there was some support in that there wasn't a lot of opposition. So I just want to – that's what I want to point out to you, that we're just – we didn't come up with this and try to shove this down our neighbors' throats. We had the intention of being a good neighbor. We want to be happy in our retirement there. And I'm sorry that we're all here. Thank you.

CHAIR MAYFIELD: Thank you, Mrs. Atencio. Again, we'll reserve the applicants for rebuttal. Well, sir – you're part of the applicants? Okay, please. Yes, sir. Please.

[Duly sworn, Arch Sproul testified as follows:]

ARCH SPROUL: My name is Arch and I'm the builder-designer of their house, and I'm like to make a correction. The house, heated, is under 2,500 square feet so when they say 3,300 that's not true. And so I've worked with my clients on this house and the design. The lot, we set it up so that we put in an advanced sewage system, one very similar to what I won about four years ago with the parade of homes. I won a green award for it. It's a system that will have no impact whatsoever. You could use it in your landscaping which my former client did and it will not have an impact on the lot and that's a very important factor here.

I'm also a developer of subdivision in Santa Fe where we have 15-foot backyards and five foot on the sides. This has got a tremendous amount of area here to deal with and if you put a house in the middle of it there's practically no impact whatsoever on the other neighbors. We're only talking on this road there – there are three houses. There will be four. This is not a high impact area. This isn't 70 or 80 homes or 100 homes. It's four homes. You know, you're talking no traffic whatsoever. You're talking lots of space between the different houses. It's – I don't see why they can't have this. That's all I have to say.

CHAIR MAYFIELD: Thank you. Mr. Archer or Mr. Atencio I'm going to ask a couple questions on the exhibit that was handed to us. Are you familiar with this exhibit. Mr. Archer?

MR. SPROUL: Yes, that I am.

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CHAIR MAYFIELD: So for me, and I don't know if any individuals who are going to comment on this case have a copy of that exhibit or not but if we could make one available to them. Thank you. So just for my clarification, on the exhibit that was just handed out to us by Mr. Atencio. We have the existing easement that's on the left-hand side as I'm reading it, and then to get to Tract 2B they're going to kind of – I guess their point of ingress is going to be down that 25-foot buffer?

MR. SPROUL: Yes. Correct.

CHAIR MAYFIELD: So, but there's a setback for a ditch. So how can you put a driveway down a setback?

MR. SPROUL: The ditch is in the very back. The access for it is right off of the road. If you look, it's between the McDougals' property and the Atencios' property. That's the access.

CHAIR MAYFIELD: Sir, I have this ditch looking like an L or a 7.

MR. SPROUL: Yes. Correct.

CHAIR MAYFIELD: So I was seeing a 25 – I don't know what our code is. I asked for this to be put in our code on our acequia setbacks. I think it's 7 or it might be 14 feet on each side as far as setbacks for our acequias. So right now I'm looking at this as a 25-foot setback all the way around. This would be access into their property?

MR. SPROUL: Correct. Yes, it is.

CHAIR MAYFIELD: So if you have to have a 25-foot setback how are they going to get that driveway running? I guess, let's see. Here's a scale north, that's going to be running east to west. How are they going to fit a driveway in there?

MR. SPROUL: Well, could they not – there's not something like an easement for access to the lot that the Atencios can give?

CHAIR MAYFIELD: I just didn't see it in this design that was handed to us.

MR. SPROUL: Yes, all I know is that the surveyor, Anaya, was the one who did this. And we depend on our surveyors to give us what is the normal route. If there's a question about that I'm not aware of it.

CHAIR MAYFIELD: So the easement into Tract 2B would then be through the Atencios' property?

MR. SPROUL: Correct. If they needed to give more, if the setback is a problem then they can give an easement.

CHAIR MAYFIELD: And then my – two other questions. So I'm looking at the document, with the septic tank, the leachfield runs into the proposed lot split area?

MR. SPROUL: Yes, that it does.

CHAIR MAYFIELD: And that's going to be a shared advanced system by both parties?

MR. SPROUL: Yes. The access would be such that you would go to the back. On those advanced systems they have to be dealt with once a year. They have to be – you know.

CHAIR MAYFIELD: And then as far as – I don't see a potential well location on this.

MR. SPROUL: There's one well that would be shared by both.

CHAIR MAYFIELD: Thank you. That's all I have for now. Commissioners, any questions of the applicant?

VICKI LUCERO (Building Services Division): If I could just clarify, the 25-foot setback would be a building setback, but they would be allowed to put driveways or roadways within that area.

CHAIR MAYFIELD: What's our setback provision in the code on acequias?

MS. LUCERO: It would be 25 feet, but it would be for buildings or structures.

CHAIR MAYFIELD: Okay. I thank you. But the driveway could be placed there.

MS. LUCERO: Yes, that's correct.

MR. SPROUL: So therefore that means that the road or having that would not be a problem then, correct?

CHAIR MAYFIELD: So then on this building site here what's the amount of acreage right in there, knowing that you have to have a setback from that acequia? Excuse me, from the –

MR. SPROUL: The new one would be 1.445 acres. I'm sorry. .695 acres, so that's why we're asking for the variance.

CHAIR MAYFIELD: Yes, sir, but that's inclusive of the 25 perimeter setbacks. So I'm just saying what's the amount of acreage for the allowable building site?

: It includes this whole tract. It's Tract 2B. It's divided as such because the first one, the .75, because they already have a leachfield and they already have a septic tank and that type of thing. So you had to keep the .75 on the existing lot. The existing one. And so they're asking for a variance on the second one.

CHAIR MAYFIELD: Thank you. That's fine. Thank you. So we're going to go now to any – Commissioner Chavez.

COMMISSIONER CHAVEZ: I have a – just for clarification, and I think this question might go to staff. Because we have an existing private 20-foot wide ingress and egress easement on one side. I guess the east side. And then it turns the corner into a 25.69 building setback that will be also easement for ingress and egress, right? For Tract 2B, which is the new proposed tract. Right? So the easement, the way I'm following it, it goes from a 20-foot wide easement to a 25-foot wide easement.

MR. LOVATO: Mr. Chair, Commissioner Chavez, it's 25 on both sides.

COMMISSIONER CHAVEZ: But I'm reading existing private 20-foot wide ingress and egress easement.

MR. LOVATO: I do see that, Mr. Chair. You are correct.

COMMISSIONER CHAVEZ: So is it okay that it goes from 20-foot to 25 feet?

MR. LOVATO: Mr. Chair, Commissioner Chavez, that is fine.

CHAIR MAYFIELD: And that's allowable? That's acceptable by code and it's – the road width is adequate?

MR. LOVATO: Mr. Chair, Commissioner Chavez, typically we do a 38-foot easement. Given that they'd have a 20-foot driving surface it would meet code criteria.

COMMISSIONER CHAVEZ: Okay. I was just wondering because there was a difference in five feet so I just wanted to be sure that that was enough. So that question is

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answered. And then so this easement, ingress and egress easement, is it also a utility easement?

MR. LOVATO: Mr. Chair, Commissioner Chavez, I do believe so. Let me reference the file. Mr. Chair, Commissioner Chavez, it is not a utility easement. It's just a private ingress-egress.

COMMISSIONER CHAVEZ: So is there a separate utility easement then that's identified? Is there a need for a separate utility easement? Are utilities underground? I'm just trying to figure out where the other utilities are running.

MS. LUCERO: Mr. Chair, Commissioner Chavez, if I could just clarify. If the variance is approved tonight then they will have to come back in for plat approval, and at that time we will make sure that all the easements are included.

COMMISSIONER CHAVEZ: And that they're recorded and noted on the plat.

MS. LUCERO: That's correct.

COMMISSIONER CHAVEZ: Okay.

MS. LUCERO: And one other point of clarification. Since that proposed roadway is only going to be accessing one lot, it doesn't actually have to be a dedicated easement. It's just a 14-foot driveway that the code requires.

COMMISSIONER CHAVEZ: It will be a private, shared driveway basically. No, it's not a – is it a shared driveway in any way?

MS. LUCERO: Mr. Chair, Commissioner Chavez, it would not be a shared driveway, being that the proposed tract 2BA already has its own existing driveway.

COMMISSIONER CHAVEZ: Right. Got it. Right. Okay. Thank you, Mr. Chair. Thank you, staff.

CHAIR MAYFIELD: Thank you. Any other questions of staff? Seeing none, this is a public hearing. Anybody wishing to provide public comment just please come on up to the mike and be sworn in. Proponents? Opponents? Whoever cares to provide public comment on this case. If you're all going to be sworn in at once, I'm sorry. Can you all just stand up and be sworn in at once, please?

[Those wishing to speak were administered the oath.]

[Duly sworn, Guy Eden testified as follows:]

GUY EDEN: Mr. Chair, Commissioners, thank you for the time this evening. My name is Guy Eden and I'm married to Earleen Eden who was the daughter of Frances Gomez. And Frances Gomez in the latter part of her life decided to subdivide this pasture land that had been in the family for decades. And she wanted to deed it to her three children, two daughters and a son – Sylvia Gomez, my wife, Earleen, and Leroy Gomez who is Earleen's and Sylvia's brother. And at the time she decided to do that we set out the lot sizes and she deliberately set the lot size to be under 1.5 acres. She had an option to make them bigger; she had an option to make them smaller but she wanted to divide this acreage up amongst her three children and give them the most amount of acreage and still leave herself and her house enough acreage to live out her latter years.

And that's what happened. It was – we wanted to have an area where her mother and father lived that was not high density housing. This was deliberately done. Now, I own the lot

directly to the north of Mr. Atencio's lot and I, Earleen and I decided we had enough property and we're getting up in age and so we decided to sell it and we sold it to Ms. McDougal and her husband. We sold this lot to them in good faith counting on the fact that the County ordinance, the County code would protect Mrs. McDougal, my sister-in-law Sylvia, and the other owner – well, Mrs. McDougal and Mrs. Sexton, who are the two lots adjacent north and south of this one.

So we – according to Mr. Atencio there's only three lots that are affected but that's not true. There's a dwelling directly to the east of this lot belonging to Burt Ortiz. There's some land directly to the west of this parcel of land belonging to Mr. Pancho Sena, Frank Sena, and his sister, Martita Sena, and we feel that Mr. Atencio bought this lot knowing full well that the County code was such that he would not be able to divide this lot. And as I look at this plat it's obvious from the location of his house that at the time that he laid out this house he had no intention of splitting this lot, because he put this house so far to the east that it makes it very difficult to split this lot into two lots of less than .75 acres which is the County code for the size of these lots.

He is now – it appears to me from looking at this plat that they are doing their best to cram two residences into a lot that really doesn't set up well for that. The easement takes up a lot of room. The shared septic system – I know that Mr. Sproul said that they were going to put in – I believe it's a closed loop system. Yes. Okay. This property where these houses are, and Mr. Sena can verify this, this land is very clay-like and the EPA requires a lot of field line to percolate the clear water out of a septic system. As a matter of fact, when Mrs. Gomez passed away and we sold her house we almost didn't have enough property, and this is an acre and a quarter, I believe, to put in enough septic line to satisfy the EPA because they wanted 300 linear feet of septic line because of the percolation problems in this area.

One of the other problems that presents itself is the amount of water that will be available for two residences on this lot. It also – this proposed variance, this variance that Mr. Atencio has asked for, he himself admits that it's a beautiful piece of property. It would be a shame to divide it up into two lots and make it look like high density housing. The County at this time, it appears to me in the Sustainable Growth Management Plan is opting for lower density housing. They are in the process of rezoning, for instance the Jacona land grant and the County proposes that the rezone it to a lower density housing, one house per 40 acres and one house per 60 acres. So if you grant this variance to Mr. Atencio on this lot it really flies in the face of the County's attempt to hold down high density housing in the Pojoaque traditional village.

The neighbors in this area will be impacted because if you have high density housing in the middle of a suburban setting like this, it actually – if one of the other residents wants to sell their property, if they see a high density lot right in the middle of this area it will affect the property values. This land is prime land, beautiful land, grassland, irrigated land, and to grant a variance to Mr. Atencio, and I understand his desire to have one, would really impact the quality of life of the people living in this area.

I don't know if you know – I know the chairman knows this area and there's water issues, there's septic issues, there's quality of life issues. The biggest issue I think is that the County code says that you cannot split lots into lots smaller than .750 acres. This is the cutoff

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point. And when you buy a piece of property, you should know what the codes are, you should know what the covenants are, and I understand that the covenants don't hold any water, but we expected the County code to be enforced.

So I'm asking that this variance be denied to Mr. Atencio. I understand that it might be a little hard for him to take care of this property but he's built a pretty large house and a lot of the house and the yard take up his property now so there isn't much acreage left to irrigate anymore and it doesn't have to be taken care of. It's a natural grassland. If you just leave it alone it will grow grass – not as green as if you irrigate it but it will grow grass and it's a beautiful area.

So, in light of the fact that the commission that we appeared before on June 19th, and I don't know – I forget what the label for that commission is. Would you help me with that, Mr. Chair?

CHAIR MAYFIELD: CDRC.

MR. EDEN: Yes. They didn't hesitate to make a motion that this variance be denied and it was voted on unanimously that this variance be denied. And the case worker, Mr. Lovato, also recommended that this variance be denied. And we as the families of the descendents of the families that settled that area, Mr. Sena, Mr. Ortiz, the Gomezes, we ask that you deny this variance and keep this area pristine as it is right now. We do not – we would like to have this area remain the way it is and we would like for the County to enforce their code of no lot size smaller than .750 acres. Thank you very much for your time.

CHAIR MAYFIELD: Mr. Eden, I have a quick – any questions of Mr. Eden? Quick question of staff, just so I know where I'm at. I'm Exhibit 8 right now, Mr. Lovato. So on Exhibit 8, it's within that blue outline that we're talking about, right? Because right there it's saying 9.80 acres, so that was the acreage intact? Before it was subdivided to 1.244?

MR. LOVATO: Mr. Chair, what is it you exhibit are you referencing?

CHAIR MAYFIELD: I'm on Exhibit 8, page 22.

MR. LOVATO: Page 22?

CHAIR MAYFIELD: Just because the aerial doesn't show a house on this.

MR. LOVATO: Mr. Chair, it is on Exhibit 8 or Exhibit 7, it's 9.8 – it used to be the 9.8. That's a typo. It is that blue area though.

CHAIR MAYFIELD: So 9.8 wasn't the prior acreage of that after it was subdivided. So that's the 1.44, that should be 1.44.

MR. LOVATO: Mr. Chair, that is correct.

CHAIR MAYFIELD: And the house as is existing is not on this aerial, correct?

MR. LOVATO: Mr. Chair, that is correct.

CHAIR MAYFIELD: Okay. Thank you.

MR. EDEN: Can I show you one more thing, Mr. Chair?

CHAIR MAYFIELD: Sure.

MR. EDEN: Mr. Atencio said that – stated, that if there was only one house built on this one – less than 1 ½ acres that it would be a waste of land. It is never a waste of

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land to have open land around a residence. It gives you privacy. It gives you comfort and it gives you aesthetics. So I believe that putting two houses on this size of lot is not in any way advantageous to anybody but Mr. Atencio who wants to get financial gain from the sale of this property. That's it. Thank you very much.

CHAIR MAYFIELD: Thank you, Mr. Eden.

MR. EDEN: Any questions?

CHAIR MAYFIELD: No, not at this time from the Commission. Thank you.

JOSEPH KARNES: Good evening, Mr. Chair, members of the Commission. My name is Joseph Karnes, Sommer, Karnes and Associates here on behalf of Mrs. McDougal and Mr. McDougal who is not present here tonight. Mrs. McDougal is here. I think it's important that the Commission not lose sight of the one code provision that is asked to be varied here by Mr. Atencio. It is the provision that states that the applicant needs to show 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, i.e., the topography, would result in inhibiting achievement of the purposes of the code.

Mr. Atencio didn't address that provision. He didn't identify any unusual topography or other non-self-inflicted condition relating to this particular piece of property. What he told you was, it's too small. That's right. It's too small. That's his problem. His problem isn't unusual topography or some other condition of the property. Before the CDRC your staff report states that he talked about medical conditions as being one of the reasons why he's applying for this variance. Well, as staff has pointed out, medical conditions are not one of the criteria upon which a variance to the density requirements can be granted, nor is financial hardship.

Now, being the good lawyer that he is, Mr. Atencio identified another argument. He tried to go around and avoid the provision that has to be applied here and he talked about a taking of property. Now, I'm going to submit my own take on that. This is a lot that has a house on it. For there to be a taking there has to be diminution of value of substantially all the economic value of the property. He already has a house. He has, he enjoys substantial economic benefit in relation to this property. Nothing's being taken. He's asking you to bend your rules. That's what a variance is, is bending your rules and not requiring the 1.5 acres that a lot split would require and instead letting him split a lot that's 1.45 acres in size.

He also spoke to his perception of the aspect of frustrating the intent of the code and I want to point out two aspects that this application and this variance if it were granted would absolutely frustrate the purpose of the code. First of all you've already heard testimony from one of the property owners in the area. They enjoy a quality of life. They invested in this area in reliance on the County code and the rules that are applicable to this area. Granting this variance and allowing another house in this low density area, you've already heard, would have an impact on their lives. And moreover, granting this variance would have a precedential effect throughout the county. If savvy developers see that now there's suddenly a substantial compliance, if we're close to 1.5 acres we can subdivide our property, well, you can expect there's going to be a land rush. I have folks that are going to be ringing my phone off the hook saying, absolutely. Let's get something that's close so that we can split it and

subdivide piece of property that are too small. Your 1.5-acre requirement means something. It was put in there for a reason. And when the condition, when the requirement was placed in the code there could have been a de minimus or a substantial compliance requirement associated with that. The County Commission could have said, well, if you're close, that's good enough and you should be able to subdivide your property; they didn't say that.

And I'll point out there was discussion of previous litigation. Well, I had a case a few months ago, a property owner by the name of Minnie Walsh, up in Jacona, this Commission granted a density variance for that property. Just last month Judge Ortiz of the district court overturned that decision. There's no basis here. This applicant, in order to gain approval of a density variance needs to show a condition related to the unique topography of this property or other similar condition; he hasn't shown it. That's his requirement. He can't go around and find some other provision and he hasn't done that.

This requirement for an extraordinary hardship relating to some unique condition of the property has to be demonstrated. He hasn't made the effort, let alone satisfied that condition. So I urge you to deny the variance application. I'd be happy to stand for any questions you might have. Thank you.

CHAIR MAYFIELD: Are you done? Whoever would care to comment, please come forward. Nobody else? Just state your name and address. You've already been sworn.

[Previously sworn, Harold Sexton testified as follows:]

HAROLD SEXTON: I am hard of hearing. This is my wife. It's Harold and Sylvia Sexton. She's the daughter of Frances Gomez.

[Previously sworn, Sylvia Sexton testified as follows:]

SYLVIA SEXTON: Mr. Chair, we do want to present some of our feelings regarding this request for this variance. I do want to make a correction on Mrs. Atencio's statement. She did approach us. She went to visit us, and she told us that they planned to split the property and sell it. And she said we didn't say anything. We did say. We told her - my husband right away told her there is a ¾ acre ruling. You cannot build. I mentioned to her there was a covenant that my mom had set for the conditions of this property that only residence would be in each ¾ acre.

MR. SEXTON: She said each tract, and it's the tract.

MS. SEXTON: And she was told this. My husband can verify that.

MR. SEXTON: The other thing, our neighbor, Lawrence Quintana was going to come and there was an accident when we came into town. I don't know; they apparently couldn't get here. But the gist of it is he had a regular mobile home on the same type of situation and he built another house and he wanted to rent out the mobile home. He was denied because of the ¾ ruling. So he could not do it. That's what it should have been. And we had thought about building a house for our daughter because she was having a lot of marital problems and we realized we couldn't do it because the intent of the rule was you had to have ¾ of an acre. And he's proposing .69, and you've got to have some statute, some reasoning, you had a reason for the .75 and you ought to back it up.

MS. SEXTON: Thank you, Commissioners and chairman.

CHAIR MAYFIELD: Thank you. Thank you, Mr. Sexton. Is there anybody else? Mr. Sena.

[Previously sworn, Frank Sena testified as follows:]

FRANK SENA: My name is Frank Sena and I own property just east of the property in question. I would like to establish that that property was agricultural. It's been in our family for four generations. It's been agricultural the whole time. This high density building situation is not in our best interest. One of it is traffic, the other one is it will mess up our views. And I just want you to know that our family is opposed to this variance. Thank you.

CHAIR MAYFIELD: Thank you. Is there anybody else? Please

[Previously sworn, Maddie McDougal testified as follows:]

MADDIE MCDUGAL: This is not legal. My name's Maddie McDougal. I'm Barbara and David McDougal's daughter. I convinced them to buy this property several years ago when they came out here with the idea that they would have a place to end their lives in peace and quiet. They're law abiding people. And so they took it on with that idea, that they would agree to all of the covenants that was set out for them. And it now feels very unsafe that the law is not as firm and supportive as at least I thought it was.

And the idea that somebody can come and say they don't want the law to be what it is because they're not well, and I'm sorry about that. I am. But that's – when we can't do things anymore then we go someplace else and live some place where we can support ourselves or be helped. I would hope that my parents could live in this beautiful place forever.

CHAIR MAYFIELD: Thank you, Ms. McDougal. Is there anybody else from the public wishing to comment, either proponent or opponent of this case? Seeing none, this portion of our public hearing is now closed. And we'll go back to the applicant.

MR. ATENCIO: Mr. Chair, Commissioners, thank you. As I stated initially, the issue in this case is whether the granting or denying of a variance is reasonable or arbitrary. We're not here asking for a variance because I have a handicap. That's not why. We're here asking for a variance because we own this property. We have a deed for this property. That means that we can do whatever we want with this property. We can sell it if we want. I realize that that is affected by this County Commission's authority to pass ordinances and limit our rights to sell this property and the County has done that in order to maintain this rural atmosphere, rural type density. I'm not questioning the Commission's authority.

What the Commission did is it passed an ordinance to maintain the nature of the community, the density, these types of things. The thing is what the Commission is trying to do is vague and ambiguous. How do you define a rural community? How do you define low density? What the Commission did or somebody did is they picked $\frac{3}{4}$ of an acre to accomplish this and generally it does accomplish it. But it's a rough way of doing it. It's a rough estimate. Some situations, .75 minimum lot size will affect the density. In this case it doesn't. In this case nobody has said that our house is violating the County code and our house is closer to the McDougals' home than a new house on the other lot would be.

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There was a question about the water. Two houses on a well is not going to affect any water. Well, the expert hydrologists say that there are 55 million acre-feet of water in the Pojoaque Basin. One house is not going to make one bit of difference.

Now, Mr. Eden is here to protest, but he doesn't even live there. He sold his property. Now problem selling his property but he's got a problem with us selling our property. He's saying that we should – that the Commission should have strict compliance with this ordinance. That if somebody comes in with one foot under the .75 acre that that person be denied the ability to sell the property or build on the property, but .75 being a crude instrument the County also has an ordinance that allows for a variance and that's why we're here. A variance of this ordinance that says minimum lot size is .75 acres. And a variance is not based on a topographical condition that creates a hardship. The variance is based on the fact that .695, 55/1000 of an acre, is substantial compliance, that it accomplishes what the County ordinance sets out to do, to keep the density in line with the rest of the community, you have the aerial map. Some homes are closer than this new house would be to anybody.

I keep hearing the word pristine, enjoying the view and pristine. I have another image of it if I may, and I'd label this Exhibit BB. [*Exhibit 16*]

CHAIR MAYFIELD: I'm still waiting for Mr. Shaffer to give us exhibit numbers so we'll defer to Mr. Shaffer to assign exhibit numbers. I'm sorry. Mr. Shaffer is going to be giving us exhibit numbers for the two exhibits. And can you give one to the people that are in opposition please.

MR. ATENCIO: This is a plat of the property owned by Frances Gomez who was referred to, the one who owned this property and divided it equally among her children. What I want to point out is you've heard that Mrs. Gomez, Frances Gomez, intended that the lot size not be less than .75 acres, and that she felt really strong about this. But it's nowhere in writing. We see covenants regarding trailers being on this property or businesses being on this property but nothing about lot size. And what I want to point out is that if you take – at the top it says total area surveyed is 6.203 acres. And then if you take that and subtract .75 acres for the Lot A2 at the bottom, and 1.120 for the lot next to it, if you take those two add them up and subtract it from 6.203 acres you end up with 4.32 acres is the size of the pasture. And if you divide that by three – there were three children – you come up with 1.44 acres per lot. That's how this lot size was determined. Not by Frances Gomez' wishes. Frances Gomez was a smart woman and her brother was Claude Sena, a lawyer. If there was a minimum lot size that she intended she would have put it in writing. She didn't.

But furthermore the lot, the property that Mr. Eden was referring to, the property at the north end of this six-acre property, is located at the end of the pastureland. It's not on pastureland. Pastureland is right next to it. What happened is they got used to seeing this beautiful pastureland as their front yard. But they don't own it. Their brother owned it and he sold it. If they have a complaint it's their brother they need to complain against.

When we bought the property we went to meet the McDougals, introduced ourselves, and Mr. McDougal was very upset because somebody was building a house there; he didn't care. It wasn't that it was us. They were going to lose their pasture, pristine pasture view.

Now, again, the issue is the substantial compliance. Would an additional seven feet on the north end of our tract make a difference? If the Commission grants a variance for a

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seven-foot wide strip, is it going to change the character of the neighborhood? No. Is it going to make it more dense? No. And just like the County has an ordinance declaring .75 acres, it also has an ordinance allowing a variance when it's reasonable and a taking is a taking of our property, of our ability to sell the property is a taking, because it does not accomplish anything as far as the ordinance is concerned. And we're talking about other cases. I don't know about any other case. I haven't seen any other case. The only one that counts is this one.

So my wife and I are requesting that you grant this variance because that is what the ordinance requires when there is substantial compliance with the ordinance itself and the purposes of the ordinance. Thank you.

CHAIR MAYFIELD: Thank you, Mr. Atencio. Any questions of Mr. Atencio, the applicant? Seeing none, at this time, Mr. Atencio, thank you.

MR. SPROUL: I'd like to clarify something, Mr. Chair, members of the Commission. When we were putting in the septic system we dug a hole. The State Engineer came out, looked at it. We did the proper percolation for the system that we put in, and that the advanced system would not be affected because it's a closed system and it has to be pumped out yearly. And it's part of the agreement that you have to build sort of an advanced system. So it's not going to be something that's affected by percolation, etc. It's a different type of system.

And then the other argument that this is high density. I've built in the city where it was seven houses per acre. That's high density. This is not high density. There's plenty of room around each of those houses. You're talking four houses on a road going into this area. That's nothing. That's not high density. It's low density. It's not going to impact the lives of the people around it because it is low density and will maintain that. There's plenty of room around all those houses, 50, 100 feet. To the one to the side, several hundred feet. This is not high density. That's all I have to say. Thank you.

CHAIR MAYFIELD: Thank you. So for the proponents, I know that a new exhibit was introduced and there were statements made by Mr. Atencio so I will go back to the opponents and ask if they wish to rebut anything that was said or comment on this exhibit that was just provided to us. So if you could see who would like to speak on that, please, you may, Mr. Eden.

MR. EDEN: Mr. Chair, Commissioners, you know this isn't downtown Santa Fe in Pojoaque. And high density housing is housing in the traditional Pojoaque community, housing on less than .75 acres is considered high density housing in that valley. Mobile home parks have higher density. There are places that were built before this code took effect that are high density on less than $\frac{3}{4}$ of an acre, but this isn't downtown Santa Fe, this is a rural community. It doesn't have a mayor. It's not incorporated. We're living out in the country and that's why we live there.

The other thing is that Mr. – the architect for Mr. Atencio talks about a closed loop system. When I asked him about a closed loop system in my first session up here, he told me that it was not a closed loop system, that it was an enhanced system. So an enclosed loop system is where you take all the wastewater, gray and black, and treat it and don't let it out into any leach lines. Is that right?

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CHAIR MAYFIELD: Mr. Eden, if you would just address the Commission please and not –

MR. EDEN: I'm sorry. And for Mr. Atencio to say that this was not pastureland is erroneous. That place where he is now building his house was pastureland for 50 years when my father-in-law owned it. As a matter of fact there was a barn on that property that Mr. Atencio now owns. So that was pastureland. I'm sure Mr. Sena can verify that, that it was grazed for years and that's what it was.

I didn't hear a lot of what Mr. Atencio said because – due to his condition, I suppose I should say. It's very hard to understand him and I didn't understand everything that he presented, but I thought I heard him question this code that the County has for .75 acres minimum property size for building home. I think I heard him say that it was an antiquated code, that it no longer should be in effect, but the fact is that it is in effect, and we want it to be enforced. The neighbors, Mrs. Atencio said that some of the neighbors around there didn't mind that lot being split into two acres even though it didn't meet code, but I don't know of anybody in that area that would – that has told me that they're okay with it. The people that own that ¾ acre lot, if you look on this map, they own a .75-acre lot, Lot A2. They're not. They're opposed to this.

Laurie Lang, who has my mother-in-law's old house on 1.12 acres is opposed. Mr. Sena is opposed. I haven't heard from Mr. Bert Ortiz, but I would venture to say that he would be opposed. I ask you again to enforce the County code and reject this variance as the committee before you voted to unanimously to reject it and so did the case worker, Mr. Lovato. Thank you.

CHAIR MAYFIELD: So again, the public hearing is now closed and thank you all for your comments, Mr. Atencio and all of the individuals who spoke. I have a couple of questions of staff, just on some comments that were made, and whoever from staff would care to answer them would be great. So traditional communities have come into – I guess have been talked about, so the Pojoaque Valley area is a traditional community. It's also an area that has and is in compliance with a local community plan. I believe that this area is within the Pojoaque Community Plan. Is that correct?

MR. LOVATO: Mr. Chair, that is correct.

CHAIR MAYFIELD: Okay, so how did the traditional community establishment of .75 acres come to be? Because again, going back to lot sizes there's a lot of grandfathered lots out in that valley that are less than .7 acres but they are grandfathered in. So at one time, and our smallest density, and correct me, Ms. Lucero, if I'm wrong, or Mr. Shaffer, that is afforded under any size in Santa Fe County is .75 if they're within a traditional community. Correct?

MS. LUCERO: Mr. Chair, it's .75, unless they're on community water and sewer, then they can go down to .33 of an acre.

CHAIR MAYFIELD: Correct.

MS. LUCERO: And the Community College District has densities that are higher – would allow higher densities than that though.

CHAIR MAYFIELD: Thank you. So when traditional communities were established though, how did that come to be? Because I won't bring up the reason but I know another community is asking for that right now.

MS. LUCERO: Mr. Chair, the traditional communities actually came about in the 1980 general plan. There were different traditional communities were actually designated at that point, and then when the code was established in 1981 that's when the densities were established, the ¾ acre densities.

CHAIR MAYFIELD: Thank you for that, Ms. Lucero. Also, there was reference made by Ms. Lucero, if there's a central water system and/or sewer system we can go down to smaller densities. I think three homes per one acre. We know that there's been much discussion about a proposed Aamodt – I don't know if there's been a proposed sewer system in there, so just so everybody knows that, and I'm going to get to my point really quick, the County has also approved, in our Sustainable Land Development Code, accessory dwellings on structures, so everybody knows that. And it was brought up on a prior case tonight. I was going to bring this up really quick now before we take a vote on this. We're going through a zoning map right now within Santa Fe County, and we have a meeting out in the Pojoaque Valley area and who can give me that date really quick if we know it? We'll get it before you all leave. And again, it's important that communities show up to these meetings because these are the plans that the County puts forth and it would be great to have your input on them and we will be looking at a new zoning map for the area.

Commissioners, that's pretty much all I have. I don't know, Commissioners, if you have any other comments of staff or not. Mr. Lovato, I see none. Commissioners, I am going to make a motion and I am going to support staff's recommendation for denial of the applicant's request at this time.

COMMISSIONER HOLIAN: And I'll second that.

CHAIR MAYFIELD: So we have a motion, Commissioners, and a second.

The motion passed by unanimous [5-0] voice vote. [Commissioner Anaya voted after the recess.]

[The Commission recessed from 7:40 to 7:55.]

COMMISSIONER ANAYA: Mr. Chair, would you let the record reflect that I vote with the balance of the Commission on the last item?

CHAIR MAYFIELD: Yes, we will have that reflected. Thank you, Commissioner.

VIII. B. 5. CDRC Case # Z 13-5380 Elevation. (TABLED UNTIL SEPTEMBER 9, 2014)

