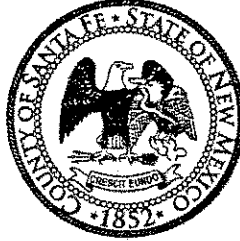


Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

DATE: January 31, 2018

TO: Board of County Commissioners

FROM: Vicki Lucero, Building & Development Services Manager *VJ*

VIA: Katherine Miller, County Manager
Penny Ellis-Green, Growth Management Director

RE.: Resolution No. 2018-_____, A Resolution Confirming The Land Use Administrator's Determination That The Extraterritorial Zoning Authority Order For Case No. 07-4400, Culver Request, Henry Culver, Applicant, Granted The Applicant Relief From A Previously Approved Condition Of Approval Of A Variance.

ISSUE

On November 29, 2007, the Extraterritorial Zoning Authority (EZA) granted approval of a variance request by Henry Culver to allow the grade of a driveway to be 21% which exceeds the required 11% in order to extend a road through the property to remove dead pinion trees and to provide additional access for a future home-site (EZ Case # V06-4290). As part of that approval, the EZA imposed conditions, one of which required secondary emergency access through Cloudstone Drive.

On November 29, 2007, the EZA heard a subsequent request from Henry Culver (EZ Case # 07-4400), wherein Mr. Culver requested relief from the previously approved condition requiring secondary emergency access. The minutes from the November 29, 2007, EZA meeting reflect that the EZA granted approval to remove the previously approved condition.

The EZA approved a Final Order intended to reflect their decision. The Order was recorded with the Santa Fe County Clerk on March 20, 2008. The Order incorrectly stated that the Application was denied.

REQUESTED ACTION

Staff requests that the BCC confirm the Land Use Administrator's determination that the Order in EZ Case # 07-4400, was an order granting relief from the condition of approval of the variance requiring a secondary emergency access.

ATTACHMENTS

Resolution No. 2018-_____, A Resolution Confirming The Land Use Administrator's Determination That The Extraterritorial Zoning Authority Order For Case No. 07-4400, Culver Request, Henry Culver, Applicant, Granted The Applicant Relief From A Previously Approved Condition Of Approval Of A Variance.

Attachment A-November 29, 2007 EZA Meeting Minutes

**SANTA FE COUNTY
RESOLUTION NO. 2018- _____**

**A RESOLUTION CONFIRMING THE LAND USE ADMINISTRATOR'S
DETERMINATION THAT THE EXTRATERRITORIAL ZONING AUTHORITY
ORDER FOR CASE NO. 07-4400, CULVER REQUEST, HENRY CULVER,
APPLICANT, GRANTED THE APPLICANT RELIEF FROM A PREVIOUSLY
APPROVED CONDITION OF APPROVAL OF A VARIANCE**

WHEREAS, the Santa Fe Extraterritorial Zoning Authority (EZA) adopted Santa Fe Extraterritorial Zoning Authority Ordinance 1997-4 (EZO) establishing zoning regulations for the extraterritorial zone on August 26, 1997, and the EZO was recorded with the Santa Fe County Clerk on September 26, 1997;

WHEREAS, Henry Culver, in EZ Case No. V06-4290, obtained a grant of variance from the EZA to allow a road grade of 21% in order to extend a road through the property, conditioned on various things, including a requirement that he provide secondary emergency access through Cloudstone Road.

WHEREAS, on November 29, 2007, the EZA heard EZ Case No. 07-4400, Culver Request, Henry Culver, Applicant, wherein Mr. Culver sought relief from conditions of approval of the aforementioned variance condition;

WHEREAS, the real property which was the subject of that Application was located at 2117 B Foothills Road, within Section 6, Township 16 North, Range 2 East.

WHEREAS, minutes from the November 29, 2007 EZA meeting reflect that after holding a hearing on the Application, the EZA acted to approve the Application, based in part of the fact that the Las Piedras Rosas Homeowners Association supported the Application and objected to providing secondary access to the property through Cloudstone Road;

WHEREAS, at the November 29, 2007 EZA meeting, Commissioner Chavez moved to allow the removal of the previously imposed condition and Commissioner Vigil seconded the motion, which carried unanimously;

WHEREAS, the EZA approved an order (Order) intended to reflect their ruling, which order was recorded with the Santa Fe County Clerk on March 20, 2008;

WHEREAS, the Order found that the Application was well taken and confirmed that the Applicant sought relief from the condition of approval of the variance requiring secondary emergency access through Cloudstone Road. The Order also found that there were no opponents to the Application and the Las Piedras Rosas Homeowners Association's attorney had no objection to the Application, that the Applicant had tried unsuccessfully for two years to obtain

the emergency access required through negotiations with the Las Piedras Rosas Homeowners Association, and that the Fire Marshall confirmed he would utilize the driveway rather than the emergency access if an emergency situation arose at the property;

WHEREAS, the Order included the following: "The Applicant has submitted evidence that supports granting the request. The Applicant has demonstrated the compliance with all conditions imposed on EZ case #V06-4290, except one. The denial of the request would cause the Applicant extraordinary hardship inhibiting the achievement of the purpose of the code, with very little or no gain in public safety. Additionally, the Applicant's inability to comply with the condition of a secondary emergency access is non-self-inflicted."

WHEREAS, the Order also provided that "The evidence supports the granting of the Applicants request. The evidence shows that granting the Applicants request would allow him to proceed with a Family Transfer Land Division and build a home for his daughter. Additionally, granting the request would result in a minimum easing of the EZO";

WHEREAS, the Order also, seemingly erroneously, provided that "the Application for variance is denied."

WHEREAS, the EZO has been repealed, the EZA is no longer in place and the real property located at 2117 B Foothills Road, within Section 6, Township 16 North, Range 2 East now falls outside of the Presumptive City Limits and within the zoning and land use jurisdiction of Santa Fe County;

WHEREAS, the current owner of the subject property has requested that the conflict in the order between its findings and its conclusion be recognized and that the BCC confirm that the order granted relief from the emergency access condition;

WHEREAS, the Land Use Administrator has reviewed the minutes of the EZA meeting at which the Application was acted on and has confirmed that the EZA voted to approve the Application for relief from the condition of installing an emergency access, and has determined that inclusion of the statement "the Application for variance is denied" was a typographical error and the Growth Management Department would not require the secondary access as part of the variance;

WHEREAS, the BCC concurs with the Land Use Administrator's conclusion that the Order contains a typographical error, and that the Order operates to grant the relief requested by the Applicant, namely removal of the condition of approval of the variance that required a secondary emergency access.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Santa Fe County that, as determined by the Land Use Administrator, the Order in EZ case No. 07-4400, Culver Request, Henry Culver, Applicant, was an order granting relief from the condition of approval of the variance which required a secondary emergency access.

APPROVED, ADOPTED AND PASSED this ____ day of _____, 2018.

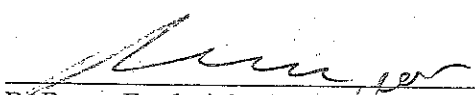
BOARD OF COUNTY COMMISSIONERS

Anna Hansen, Chairperson

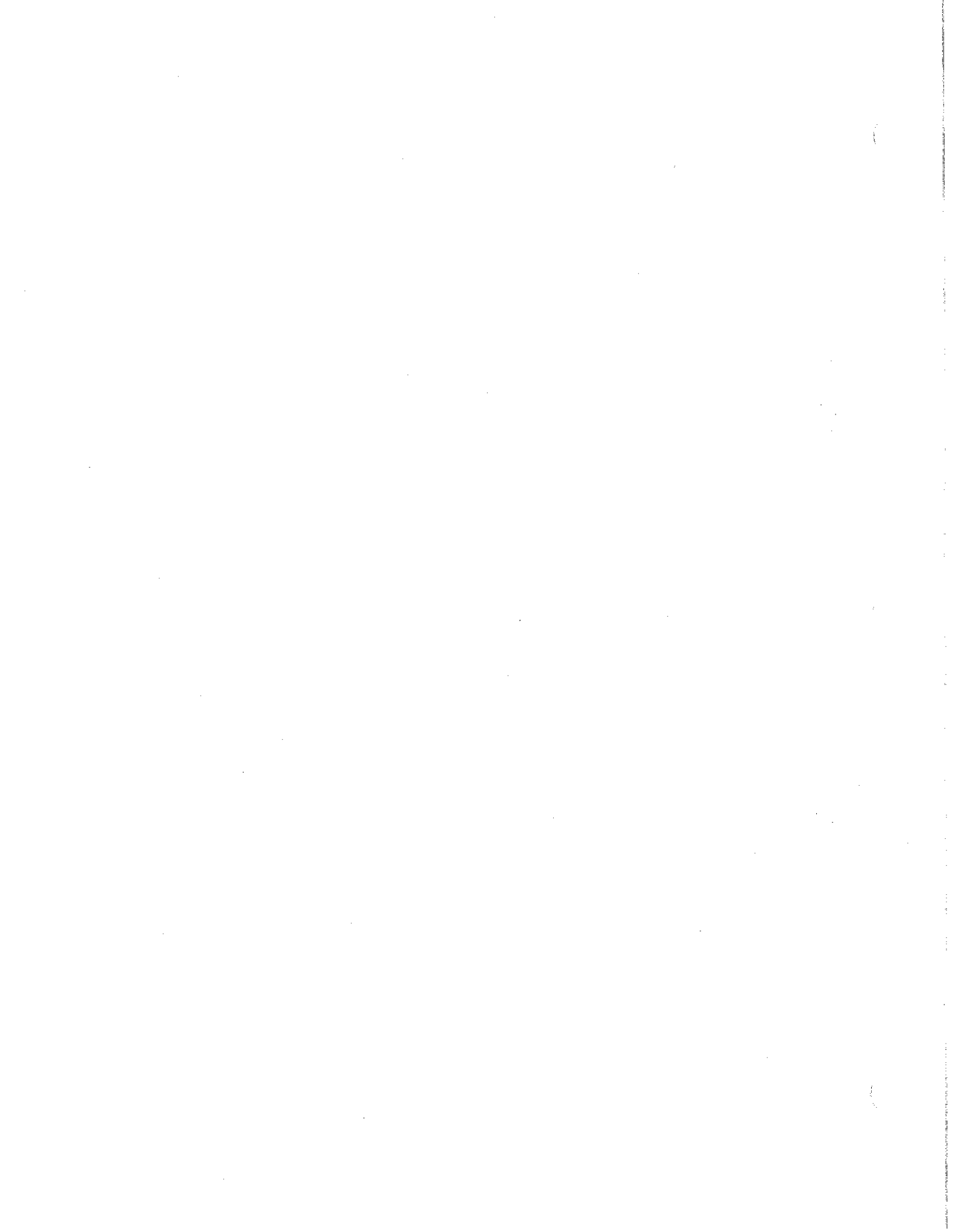
ATTESTATION:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



R. Bruce Frederick, County Attorney



Commissioner Vigil asked if this lot would require a variance wherever the building envelope was located and Ms. Lucero said that was true.

Commissioner Vigil asked if there was an issue with regard to emergency vehicle access. Ms. Lucero said most of those issues were settled at subdivision approval and the house is sited near the main road.

In response to Commissioner Campos' questions about the view, Ms. Lucero said the structure will definitely be visible from Old Santa Fe Trail. Condition 3 requires additional screening. Commissioner Campos asked if reducing the portales would reduce the visual impact. Ms. Cobau said the portals were principally on the non-view sides of the building.

Referring to previous minutes, Councilor Dominguez said there was a question regarding the driveway exceeding the grade. Ms. Lucero said the driveway profile shows the grade being 11 percent maximum, which does not exceed Code.

There was no one from the public wishing to speak.

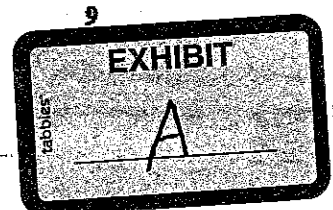
Commissioner Vigil asked staff to elaborate on the concept of "minimal easing". Ms. Lucero stated they were able to eliminate some variances requested in the original proposal and to reduce others. This was the only location appropriate for building. "We felt they were meeting the Code the best they could." Ms. Cobau added staff originally requested stepping down the hill, but that was precluded by the applicant's physical condition. Ramps would have been too long. In view of the medical condition and the minimized disturbance staff felt this was reasonable.

Commissioner Vigil moved to approve Case # V 07-4240 as recommended by staff, with conditions, with findings relating to the special circumstances peculiar to the land and that this is a minimal easing of the ordinance. Commissioner Campos seconded and the motion passed by unanimous [5-0] voice vote.

- 2. **EZ Case # MIS 07-4400 Henry Culver.** Henry Culver, Applicant requests relief from a previously imposed condition of approval requiring secondary access to the subject site. The property is located at 2117 B Foothills Road within Section 6, Township 16 North, Range 10 East. (2-mile EZ, District 4)

Jose Larrañaga gave the following staff report:

"The Applicant previously requested and was granted a variance (EZ case #V06-4290) of Article 902.2.2.6 of the Uniform Fire Code 1997 Edition to allow a road grade to be 21 percent which exceeds the required 11 percent grade for the purpose of removing dead trees from his property.



"The Applicant is now requesting relief of a condition imposed on EZ case #V06-4290 Culver Variance. The condition States "The Applicant must provide secondary emergency access through Cloudstone Road as per recommendation of the Santa Fe County Fire Department." The Applicant states that for two years he has worked with the Monte de Las Piedras Rosas Homeowners Association to obtain emergency access to his property via Cloudstone Road. The Homeowners Association has declined the Applicants request. The Applicant also states that his intention has been to create a home site for his daughter and to use the new driveway as access for the dwelling.

"Prior to the approval of EZ case #06-4290, staff and the Applicant consulted with the Santa Fe County Fire department and an inspection was made. The Fire Marshal concurred that there was an extreme fire hazard on the 13-acre parcel due to numerous dead trees and was in support of the request as long as the Applicant could provide a secondary emergency access off of Cloudstone Drive which is a private road.

"The property consists of 13 acres and has one existing residential unit. The current access to the property is directly off Foothills Road, via Old Santa Fe Trail. The primary request of the applicant was to extend his personal driveway to the back of the property in order to remove dead trees that were infested by the bark beetle, which is an extreme fire hazard. The Applicant also requested to extend the road for a future home site for the applicant's daughter.

"The Applicant applied for and was granted a permit for the construction of a driveway on October 2006. The Applicant has constructed a paved driveway and has cleared out the dead pinion trees meeting the requirements of approval of EZ case #V06-4290.

"The Applicant's plan is to submit for a family transfer land division and build a home for his daughter. Commissioner Anaya in his motion to approve EZ case #V06-4290, stated that the Applicant would have to return to the EZA for approval to build or divide on the property.

"The Applicant subsequently made the required application and on June 8, 2006, the Extraterritorial Zoning Commission met and acted on case #V06-4290 Culver Variance. The decision of the EZC was to recommend approval of the request for a variance of Article 902.2.2.6 of the Uniform Fire Code 1997 Edition to allow a road grade to be 21 percent, which exceeds the required 11 percent grade with staff conditions.

"On August 31, 2006, the Extraterritorial Zoning Authority met and acted on case #V06-4290 Culver Variance. The decision of the EZA was to approve the variance of Article 902.2.2.6 of the Uniform Fire Code 1997 Edition to allow a road grade to be 21 percent, which exceeds the required 11 percent grade with staff conditions.

"The Applicant states that this condition imposes a hardship, but as recorded and evidenced in the July 8, 2006 EZC minutes and again in the August 31, 2006 EZA minutes the Applicant was fully aware that secondary access off Cloudstone would be required."

Mr. Larrañaga gave the staff recommendation as follows: The existing driveway exceeds the required 11 percent grade and does not meet the requirements of the Uniform Fire Code and Section 3.5.3.G.4 of the ESR. The condition imposed on EZ case #V06-4290 for secondary emergency access was implemented for the Applicants personal safety and the safety of the community. Therefore staff recommends denial of the Applicant's request for relief from the condition to provide secondary emergency access through Cloudstone Road.

Commissioner Vigil asked if there were any other alternatives. Mr. Larrañaga said there is a letter from the Piedras Rosas Homeowners Association denying access through Cloudstone. He reiterated that the driveway, which has some areas of 21 percent slope, was to clear pinons. In order to divide the land for a family transfer, access is needed.

Henry Culver was placed under oath and stated that Buster Patty toured the site. Mr. Patty recommended installing a sprinkler system and said the road seemed adequate and indeed safer than Cloudstone Drive in the winter. He said it was a Catch-22 situation.

Duly sworn, Karl Sommer, representing the Piedras Rosas Homeowners Association, verified access to the road was denied. He added the association has no objection to the removal of the condition or to the family transfer.

Fire Marshal Buster Patty confirmed that Cloudstone Drive also has slopes over 21 percent and Mr. Culvert's driveway is actually better. He noted the property has a City address, so the City will respond first to a 911 call. The boundary crosses the driveway. He said the Fire Department would probably use the driveway, which is well built, before Cloudstone Drive.

Councilor Dominguez asked how long the 21 percent portion of the grade is. Mr. Patty said the steepest portion is 60 to 70 feet in the middle. He reiterated that he would like to see a condition requiring sprinklering as well as a turnaround for vehicles at the building permit stage.

There was no one else from the public wishing to provide input.

Commissioner Campos asked about the repercussions of denial and Mr. Larrañaga said he would not be able to pursue a family transfer land division. Denial is recommended because the driveway exceeds the grade specified in the Code.

Councilor Chavez asked how much of the road would be used and Mr. Larrañaga said the entire driveway would be used to reach the point where the new house would be. It would strictly be a private driveway.

Mr. Culver pointed out that safety is an important consideration. Cloudstone Drive is heavily traveled whereas only three houses would be using the driveway.

Commissioner Montoya asked Mr. Culver if he would agree to sprinklering the residence and Mr. Culver said he would agree to all fire safety recommendations. He added the closest neighbor is over 350 feet away.

Given the desire to promote affordable housing and keeping families together, Councilor Chavez moved to allow the removal of the previously imposed condition. Commissioner Vigil seconded.

Commissioner Montoya asked if a condition should be added relating to the sprinklering. Mr. Larranaga said that condition could be put on the plat in anticipation of the request for a family transfer. The maker of the motion and seconder agreed to that condition.

The motion carried unanimously [5-0]

3. **EZ Case # V 07-4280 Whitener Variance.** Cleve Whitener, applicants, Courtenay Mathey, agent, request approval of a variance of Section 12.1 (Terrain Management regulations) of the Extraterritorial Zoning Ordinance to allow more than 50 percent of a proposed residence and guesthouse to be constructed on slopes of 20 percent-30 percent. The property is located at 1540 Bent Hill Road, within the Santa Fe Summit Subdivision, within Sections 8 & 9, Township 17 North, Range 10 East (2-Mile EZ, District 1)

Ms. Lucero gave the following staff report:

"On September 13, 2007, the EZC met and acted on the request for the variance on the main residence. The decision of the EZC was to recommend approval. On August 9, 2007, this case went before the EZC. The decision of the EZC was to recommend approval of variance for the guesthouse subject to County conditions. In regards to the variance requested for the main house, the decision of the EZC was to table the request and allow staff to research the timeline of events from when the Subdivision was approved to when the subdivision and terrain management regulations in the EZ went into effect.

"The Santa Fe Summit North subdivision was approved by the BCC in 1995. At that time the Extraterritorial Subdivision Regulations (ESR) were already in effect. The effective date of the ESR was October 12, 1991. There are sections of the ESR that regulate terrain management and buildable area. Section 3.4.7 of the ESR states "at least one-half of the area designated as suitable for building shall not exceed a natural slope of 20 percent. The other one-half of

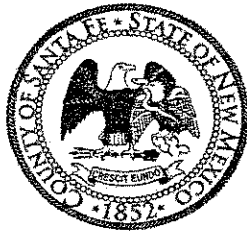




Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

DATE: January 19, 2018

TO: Board of County Commissioners

FROM: Jaome R. Blay, Fire Marshal *JRB*

VIA: David Sperling, Santa Fe County Fire Chief *DS*
Pablo Sedillo III, Public Safety Director *[Signature]*

RE: A Resolution Amending Resolution 2016-137 To Update The Employees Authorized To Enforce By The Issuance Of Citations And By Prosecution Violations Of Santa Fe County Ordinance No. 1991-7, As Amended By Ordinance No. 1998-11, The Fire Prevention Code, And Santa Fe County Ordinance No. 2001-11, The Santa Fe County Urban Wildland Interface Code.

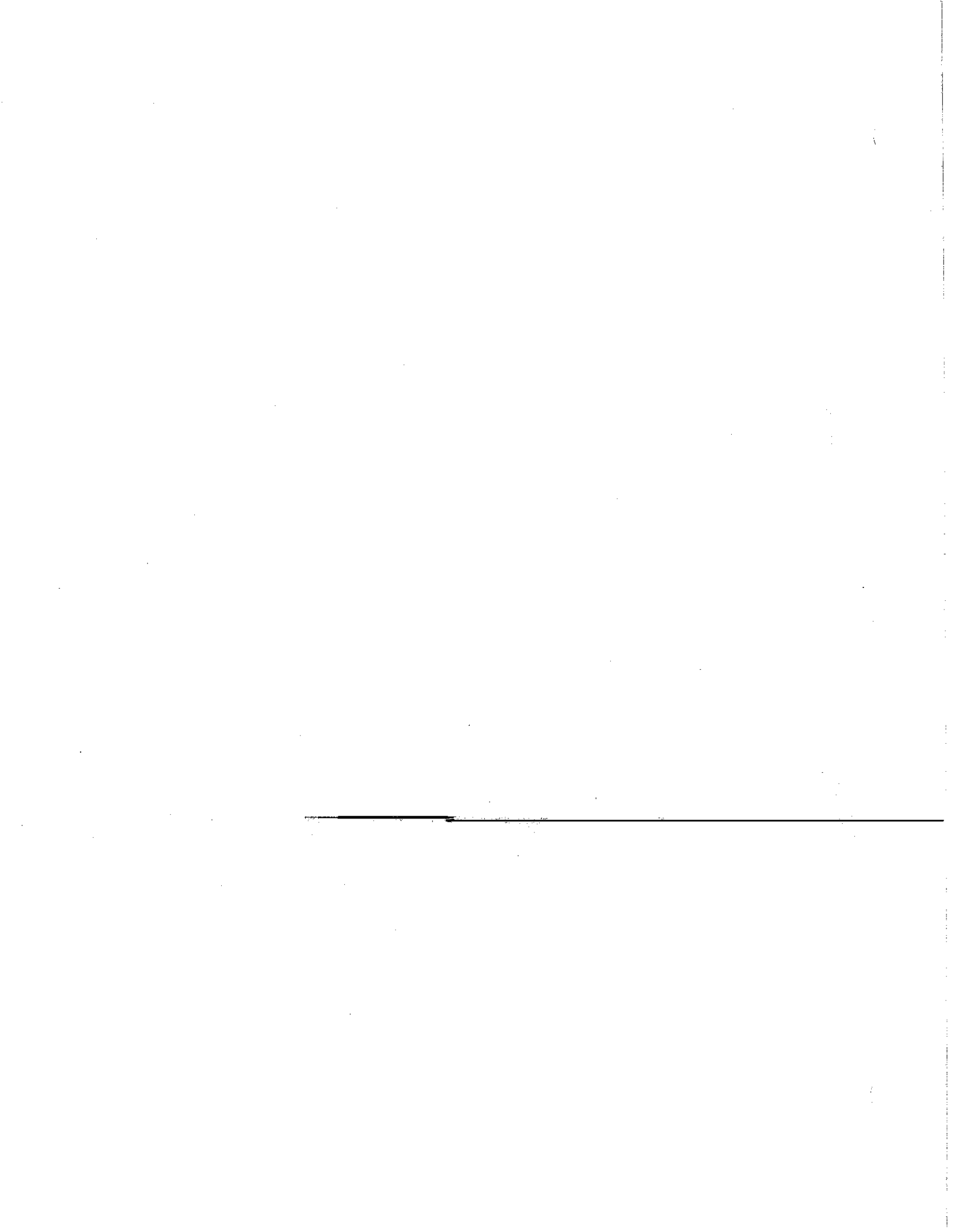
BACKGROUND:

Ordinance No. 1998-11 and 2001-11, The Fire Prevention Code and Urban Wildland Interface Code, have an enforcement and penalty section which allows for notice of violations to be issued by the Fire Department. Under NMSA 1978, Section 4-37-3 (1993) county ordinances may only be enforced by county employees who are authorized by the Board of County Commissioners. The Fire Marshal and Fire Protection Specialists are the individuals in the County who inspect potential fire and life safety hazards; therefore the Fire Marshal and Fire Protection Specialists are the best individuals to have the authority to issue citations for fire code violations.

On January 2016, the Board of County Commissioners adopted Resolution 2016-137 authorizing certain fire personnel to issue citations and prosecute violators of these ordinances. The list of employees now needs to be updated. The proposed resolution accomplishes that.

STAFF RECOMMENDATION:

Staff recommends adoption of this resolution, memorializing that the Fire Marshal and Fire Protection Specialists may enforce the Santa Fe County Fire Prevention Code and the Santa Fe County Urban Wildland Interface Code through the ability to issue citations.



**SANTA FE COUNTY
RESOLUTION NO. 2018- _____**

**A RESOLUTION AMENDING RESOLUTION 2016-137 TO UPDATE THE
EMPLOYEES AUTHORIZED TO ENFORCE BY THE ISSUANCE OF CITATIONS
AND BY PROSECUTION VIOLATIONS OF SANTA FE COUNTY ORDINANCE NO.
1991-7, AS AMENDED BY ORDINANCE NO. 1998-11, THE FIRE PREVENTION
CODE, AND SANTA FE COUNTY ORDINANCE NO. 2001-11, THE SANTA FE
COUNTY URBAN WILDLAND INTERFACE CODE**

WHEREAS, pursuant to NMSA 1978, § 4-37-3 (2016), County Ordinances may be enforced by prosecution of violations of such Ordinances in any Court of competent jurisdiction in the County; and

WHEREAS, pursuant to NMSA 1978, § 4-37-3 (B) (2016), prosecutions for violations of County Ordinances may be commenced by the issuance of a citation charging the violation by County employees who are authorized by the Board of County Commissioners to issue citations; and

WHEREAS, pursuant to Santa Fe County Ordinance No. 1991-7 as amended by Ordinance No. 1998-11, the Fire Prevention Code, and Santa Fe County Ordinance No. 2001-11, Santa Fe County Urban Wildland Interface Code, citations may be issued for violations of these ordinances and penalties imposed following successful prosecution of a violation; and

WHEREAS, by Resolution No. 2016-137, the Board of County Commissioners authorized certain employees to issue citations and enforce by prosecution violations of the Fire Prevention Code and the Urban Wildland Interface Code; and

WHEREAS, the Board of County Commissioners now desires to update the employees authorized to issue citations and enforce by prosecution violations of the Fire Prevention Code and the Urban Wildland Interface Code.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Santa Fe County that the Santa Fe County Fire Marshal and Fire Protection Specialists set forth below are authorized to issue citations for and prosecute violations of Santa Fe County Ordinances 1991-7 as amended by Ordinance No. 1998-11, the Fire Prevention Code, and Ordinance No. 2001-11 Santa Fe County Urban Wildland Interface Code:

- Jaome R. Blay
- Renee Nix
- Dominic A. Otero
- Randy J. Varela
- Edi A. Marquez

APPROVED, ADOPTED AND PASSED this ____ day of _____, 2018.


BOARD OF COUNTY COMMISSIONERS

, Chair

ATTESTATION:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



R. Bruce Frederick, County Attorney

