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 13-5370** 

MISCELLANEOUS

THOMAS NEFF AND MARY LYNDON HAVILAND, APPLICANT

### **ORDER**

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on February 11, 2014 on the Application of Thomas Neff and Mary Lyndon Haviland (hereinafter referred to as "the Applicant") for approval to vacate a platted fifty foot (50') wide private utility and access easement on 1,279.30 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 approval to vacate a platted fifty foot (50') wide private utility and access easement on Lot 3-A. The Applicant will relocate this portion of the fifty (50') wide easement on two other parcels, which the Applicant owns, Tract 2A-2 and Lot 8. The Applicant also intends to vacate the fifty (50') wide portion of Calle San Lazaro and Vista De Santa Fe private access and utility easement that lies North to Southeast, within Lot 3-A, within Section 12, Township 13 North, Range 8 East ("Property"). This portion of the easement was already relocated and plated in 2012.
- 2. Lot 3-A, Tract 2A-2 and Lot 8 are currently vacant.

- 3. 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."
- 4. The subject property (Lot 3-A) is a legal lot of record, which was created through a Lot Line Adjustment in July of 2012.
- 5. Staff recommends the following conditions of approval: The Applicant shall file the portion of the Final Plat (Lot 3-A) affected by the vacated easements and reflecting the new easement on Tract 2A-2 and Lot 8 with the County Clerk's Office.
- 6. In Support of the Application, the Applicant agrees with staff's conditions.
- 7. No members of the public spoke in favor or opposition to the Application, however adjoining property owner Ken Rice filed a written letter of support confirming that the vacation of the easement would not negatively impact his land and that he would be adequately served by the alternative easement proposed by applicant.
- 8. After conducting a public hearing on the request, the Board of County Commissioners hereby approves the request to vacate a platted fifty foot (50') wide private utility and access easement at 300 Old Cash Ranch Road (Lot 3-A), conditioned on the Applicant complying with staff's condition as stated above.
- 9. No lots or subdivisions would benefit from the subject easement other than those owned by the Applicants and Kenneth Rice, both of whom support the vacation.

10. Vacation of this private 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 fifty foot (50') wide private utility and access easement at 300 Old Cash Ranch Road (Lot 3-A), within Section 12, Township 13 North, Range 8 East (Property") subject to the staff conditions set forth in paragraph 5. The motion to approve the vacation passed by a 4-0 vote, with Commissioners Anaya, Mayfield, Stefanics and Holian voting in favor of the motion, Commissioner Chavez was not present during the Public Hearing.

### IT IS SO ORDERED

Stephen C. Ross, County/Attorney

Th	is Order was approved by the Board of County Commissioners of Santa Fe County on this
	_day of, 2014.
Ву	: Daniel W. Mayfield, Chair
	Attest:
	Geraldine Salazar, County Clerk
	Approved as to form:

### 7. Public Hearing

- a. Land Use Cases
  - 1. BCC CASE #PCEV 13-5370 Thomas Neff & Mary Lyndon Haviland Vacation of Easement. Thomas Neff & Mary Lyndon Haviland, Applicants, Rick Chatroop, Agent, Request Approval to Vacate a Platted Fifty-Foot (50') Wide Private Access and Utility Easement on 1279.30 Acres. The Property is Located at 300 Old Cash Ranch Road, within Section 12, Township 13 North, Range 8 East (Commission District 3)

MIGUEL ROMERO (Case Manager): Good evening, Commissioners. The subject property, Lot 3-A is a legal lot of record which was created through a lot line adjustment in July of 2012. The subject property is currently vacant. The applicant intends to vacate a 50-foot wide private access into an easement on Lot 3-A that lies east to west, then proceeds north to south on Lot 40. The applicant will relocate this portion of the 50-foot wide easement on two other parcels which he owns, Tract 2-A-2 and Lot 8 as shown in Exhibit 4. The relocation of the easement will be identified on the proposed plat. The applicant also intends to vacate the 50-foot wide portion of Calle San Lazaro and Vista de Santa Fe private access and utility easement that lies north to southeast within Lot 3-A.

This portion of the easement was already relocated and platted in 2012. The applicant claims that the no other party will be adversely affected by the vacation of the easement.

Staff recommendations: Approval to vacate and relocate two platted 50-foot wide private access utility easements on one lot totaling 1,279.3 acres. If the decision of the BCC is to approve the applicant's request staff recommends imposition of one condition. May I enter this into the record?

CHAIR MAYFIELD: Thank you.

MR. ROMERO: Would you like for me to read the conditions? CHAIR MAYFIELD: Yes, please.

I. The applicant shall file the portion of the final plat Lot 3-A affected by the intended easements and reflecting the new easements on Tract 2-A-2 and Lot 8 in the County Clerk's Office.

1 stand for any questions.

CHAIR MAYFIELD: Thank you, Commissioners. Vice Chairman Anaya. COMMISSIONER ANAYA: Mr. Chair, I went to a meeting two months ago that dealt with the General Goodwin Road and there were several individuals in the audience that got up and spoke about alternate access that existed to get out of General Goodwin Road, specifically noting the Cash Ranch. And so I need to ask you – we can ask the applicants, does this request today have anything whatsoever to do with the comments that were made by those individuals about a secondary access point? And is this that secondary access that was once in place off of General Goodwin Road through the Cash Ranch?

MR. ROMERO: Mr. Chair, Commissioner Anaya, I'm not clear what -

COMMISSIONER ANAYA: You weren't there. We had about six people from Public Works and we had about 100, 120 people present at the meeting. Packed the fire station. And many people were concerned, not only about the road but about the secondary access. And so I'm seeing this now in front of me a couple months later and I'm wondering if this has any bearing whatsoever on General Goodwin Road or an access point that used to come into General Goodwin Road at some point.

MR. ROMERO: Mr. Chair, Commissioner Anaya, what I can do is I also printed up an aerial photograph a little bit bigger so I can show you exactly what's on this map and I know it's in the packet. The agent wants to add anything, clarify anything he can.

COMMISSIONER ANAYA: Yes, and I would like to hear from that applicant just on that primary question. If they want to stand up and help me address it. I just want to see if there's any relevance. I don't want to go rushing into vacating easement if there's some other access issues that could be emergency or public safety or otherwise.

[Duly sworn, Rick Chatroop testified as follows]

RICK CHATROOP: I have a long history of working as a surveyor on this property. And there was an original – not a platted easement, but it was, I guess you'd call it a prescriptive easement many, many years ago. Probably 20-some years ago that was not dealing with this location. It was a little bit north of this location. And at that time the owners had shut off access probably in 1992 to that side of the ranch this is crossing now. That was vacated many, many – like decades ago and there's been no road built or nothing that would access that. And that came off of County Road 55-B or C at that point.

COMMISSIONER ANAYA: 55-A is General Goodwin and I think -

MR. CHATROOP: And it goes on to B, C, and D for different directions. In the case of this easement, everything that was in place originally is still in place with the new easement location. As a matter of fact it's a better location because it's moved to more northerly and actually reduces the area the guy has to cross to get to his property.

COMMISSIONER ANAYA: So, just on the record, this easement doesn't affect General Goodwin Road at all.

MR. CHATROOP: No, I would not tell you, this has always been a private easement and it's going to maintain a private easement.

COMMISSIONER ANAYA: Okay. Thank you, Mr. Chair. Thank you, sir.

MR. CHATROOP: Can I bring up one other issue?

CHAIR MAYFIELD: Real quick, sir. As of now we're going to hear from the applicant on this case, so, yes, please.

MR. CHATROOP: Okay. I am the applicant.

CHAIR MAYFIELD: Yes. I didn't know if you were represented by

counsel.

MR. CHATROOP: I'm just a little concerned about the procedures here because I've done thousands if not – hundreds if not thousands of surveys that have been recorded in Santa Fe County and over all the years I've put in many, many easements crossing private property that were put in place for legal access and like in the case of this

easement, never developed as a road or built up or any other situation where there's been any change to the property. And I'm just concerned that as these keep coming up, as we're getting back into more development, with the burgeoning economy here that we're going to be here again and again and again over private roads that are being relocated. I probably have thousands of them of record out there that were not put in a good location for their construction and were subject to relocation upon the further development of the properties. And if we have to vacate every easement and come to the BCC for every one of those and the [inaudible] refers to the final plat under the subdivision section of the code. These are not subdivisions; these are land divisions that were done previously. The BCC has not reviewed these as subdivisions. They're not dedicated roadways to the County. They were private roadways. In many cases, I've put in, like I said, thousands that were never developed and intended to be relocated upon the actual plan to work with the contours, the terrain and the lot layouts of future development. And I'm just a little concerned that we're going to be coming back again and again and again, basically over a private easement location. So I just wanted to bring that up to see what we could - get it on record and see if we can do something so we're not burdening you guys with thousands of easements over the oncoming years. Obviously, you have quite a packed agenda as it stands. Thank you.

CHAIR MAYFIELD: Thank you, sir. Commissioner Stefanics.

COMMISSIONER STEFANICS: Mr. Chair, is Penny here? Are we treating this applicant any differently than we treat any other applicant?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Stefanics, the last year we've reviewed this section of the code with Legal and it's clear that it says that if a portion of a final plat is being vacated it needs to be done by the Board. In the case of an easement, if you look on page 11, which is your Exhibit 5, this easement actually accesses a lot of lots. It may not be built yet, but it could affect lot owners down the road.

COMMISSIONER STEFANICS: But to answer my original question.

MS. ELLIS-GREEN: So, no. In the last year we have been taking all of the easement vacations or note vacations on a plat to the Board of County Commissioners.

COMMISSIONER STEFANICS: Thank you very much.

CHAIR MAYFIELD: Thank you, Commissioners. This is a public hearing. Is there anybody from the public who wishes to comment? Please, Oralynn Guerrerortiz.

[Duly sworn, Oralynn Guerrerortiz testified s follows]

ORALYNN GUERRERORTIZ: Good evening, Commission. I am Oralynn Guerrerortiz of Design Enguinity. This is correct that this procedure for review of vacations of easement has just happened in the last year. It wasn't done previously. I work in probably five jurisdictions in northern New Mexico and none of them require these types of public hearings. So I'm really questioning it. I'm not being paid by anybody to be here but I really feel it's a waste of public moneys, hiring of people like Rick to be here, noticing and everything else, and it's abusing people's money who are doing things.

I'm simplifying this in a different situation. This is something that the County will now require to come to public hearing: if there's two lots and there is a road dedicated to go between the two lots, and it's a private easement that these two parties agreed to –

COMMISSIONER STEFANICS: I'm sorry. Are you representing the

client?

MS. GUERRERORTIZ: No.

COMMISSIONER STEFANICS: But you're speaking as a member of the

public.

MS. GUERRERORTIZ: Yes.

COMMISSIONER STEFANICS: Thank you. I just wanted to be clarified.

MS. GUERRERORTIZ: Yes. So this is a case where there's a dedicated easement serving these two lots. In the past, if these two parties agree to move that easement for terrain reasons or whatever reason, and they wanted to vacate that easement, it's a plat amendment. It was done administratively. It usually took a few days. Now it's taking months, noticing and public hearings. And I don't think it's in the public's interest.

I understand that if the easement has been dedicated for public use, has a public benefit, that it does need to come to a public hearing. But if it's a private easement and all the parties who are involved, whether they're utility companies or private entities, I don't think that it should be coming to a public hearing and I think that it's a waste of effort. And I know that that's how it's handled in every other jurisdiction and was handled in this community up until about a year ago. I can grant any one of you an easement on a piece of paper and it doesn't have to go through a public review. It could be recorded in the Clerk's Office. But if we decided, you and I decided we wanted to change that easement, right now I have to come back to the BCC, something you've never seen before. It's never been reviewed by the public before, but yet you're making it come back in front of the BCC. It's going to affect more parties than this little one. It actually – I have a little, little project that's going to be affected and so that's why I'm here. I'm hoping not to have to come to the BCC on that project.

So I'm asking you that you question staff on it. If it's got a public interest – yes. It should be here. If it's all private parties involved and the private parties are agreeing to this, why are we here? Why are we wasting our time. Thank you.

CHAIR MAYFIELD: Thank you. Mr. Sommer.

[Duly swom, Karl Sommer testified as follows:]

KARL SOMMER: My name is Karl Sommer. My address is Post Office Box 2476, Santa Fe, New Mexico. I'll be brief. I've been practicing real estate law for 28 years. I have never seen this process, and it has been happening in the last year. The only reason you haven't see a lot of them is because there haven't been a lot of transactions going on. I can tell you that if I have to come to the Board of County Commissioners to vacate a private easement between two private parties in the middle of a transaction, it's going to kill the deal. I can't imagine what the lenders are going to think when the Board of County Commissioners has to sign off on the vacation of a private, say, utility easement or any kind of easement that is shown on a plat that is between private parties. There are hundreds of them that are changed yearly and I've never brought one of these to the Board of County Commissioners.

So what does it add? They'll be hiring Karl Sommer. They'll be hiring Rick Chatroop. They'll be hiring these folks. And we're not talking big wealthy folks. We're talking about people who might be selling their property or giving their property to a kid who has to do a – these are people that are going to be affected. And I think it's pretty clear that if only private interests are affected there is no need for it, and it's going to become a huge problem in the private sector in dealing with transactions on a timely basis.

I don't know when Rick filed this application but he's dealing with a single property owners who's not in the middle of a transaction. But if I have a transaction that's going to close in 45 days from the time it was entered into, that deal ain't going to close. That plat's not going to get recorded. They're not going to be able to do it because they're going to vacate a private easement.

So your statute is clear and your ordinance is clear. You can't vacate a public easement without coming to you all. That's clear. Private easements, you all don't have an interest in them. Why do you want to see them? And I would just implore you to direct staff not to bring these to you and you can put a note on the plat that says the vacation or an extinguishment of private easements — or public easements will require approval of the Board of County Commissioners so that people know, and then they'll bring those to you, but if you have a note that says private easements don't have to come up here, then you'll be fine. I would implore you to keep that in mind. It's an added expense and it could be critical in the middle of a transaction and it will affect a lot of people.

CHAIR MAYFIELD: Mr. Sommer, I have a question for you in your experience and I'll use my own personal plat as an example. So I have an easement and it serves a couple different families, but on that, for the example you just posed, I had to come and get County approval to have that easement into my home. And I'm hearing what you're saying but I don't see why the County shouldn't be aware of that also if I had to get that initially done on my plat.

MR. SOMMER: If you're dealing with a public easement or a — CHAIR MAYFIELD: It's not public; it's private.

MR. SOMMER: It should not have come to the Board of County Commissioners for approval.

CHAIR MAYFIELD: Okay. I see what you're saying. It didn't come to the County Commissioners. It went to Land Use.

MR. SOMMER: Right. Land Use staff can sign off on the plat saying no public interest is implicated here, but you raise a good question. What are you going to do when you have people who come before you and they say, well, we're vacating a purely private easement, and someone from the public, a total stranger to the deal gets up and says, oh, well, I don't want you to do that. Let me tell you why. Because I would like you to make them keep that there, even though they don't have the right. Now you're deciding a private property issue? It just – it's fraught with a lot of problems. Thank you.

CHAIR MAYFIELD: Vice Chairman Anaya, please.

COMMISSIONER ANAYA: Mr. Chair, Karl, I've got a quick question for you. I've got a private easement that goes through four or five different property owners before it gets to my parcel. What if those four or five property owners decide they want to close that easement? When does an easement become public, I guess is my

question. If those five property owners, before they got to my house, doing what you're saying, said, well, we're going to close the easement off. Even if I – then it becomes a legal issue for me, that I have to invest my own dollars in a district court or a magistrate court or somewhere to say, wait a minute. I have an agreement in place for that easement. So clarify that and help me understand that. That's a real life example. I've got five property owners that I have an easement to go through the property for ingress and egress. If those five got together and say we don't want to do it anymore, where does that leave me?

MR. SOMMER: Well, it leaves you with a very, very strong legal case to stop them.

COMMISSIONER ANAYA: That's going to cost me money.

MR. SOMMER: But that's not going to involve the County one way or the other.

COMMISSIONER ANAYA: No, no. Follow me through it. So those five property owners, under the terms you just provided, could close the easement.

MR. SOMMER: No. They can't.

COMMISSIONER ANAYA: Well, they could, and they I'd have to go to court to change it, wouldn't I?

MR. SOMMER: That's correct.

COMMISSIONER ANAYA: That's going to cost me more money. So help me understand.

MR. SOMMER: So I guess then you're then going to be – let's take the converse of what you're saying. So the answer to your question directly is if the people over whose property your access easement goes decide one day I'm going to cut you off, you have to go to court. No doubt about it. If it's a private easement and there's no public easement. So that's just the way the law works. Let's do the converse. These five guys get together and they come to you and they said, well, they've cut my easement off. Now, you're going to have people coming to the Board of County Commissioners and saying, hey, you need to send your legal team out there to stop them from doing that.

Now the public is going to pay your legal fees to enforce your private rights? That's the situation that you raise by that. If it's a private right you have a private remedy. If there is a public right being affected you have a public remedy. Everybody has a public remedy.

COMMISSIONER ANAYA: If I, in legal terms, when does an easement go from being a private easement to a public easement? When it goes to a public facility?

MR. SOMMER: No. When there is a dedication, irrevocable dedication to public use. That's one way.

COMMISSIONER ANAYA: For what though?

MR. SOMMER: It could be for almost any purpose.

COMMISSIONER ANAYA: For building?

MR. SOMMER: It could be for access. It could be for utilities. It could be for recreational purposes. The purposes of an easement is different than the character of the easement. An easement is public when it has been irrevocably dedicated to the public,

or it has been condemned by the public as an easement, or the public has used it in a prescriptive fashion for more than ten years. And when I say prescriptive –

COMMISSIONER ANAYA: Let me – let's go to that. I like that you brought that up. If there's not a hearing in a public forum to determine whether – I still want to learn more about what you're saying because I don't want to add extra work, but on the other hand there are circumstances where an easement could have been granted though a private mechanism but has been utilized as a public purpose. And if it's ceased and stopped the only way you're going to know that is when it gets closed. And if the only avenue for rebuttal is to go to court, well, we know how the judicial system works. Let's be frank. And how drawn-out and long things take. So understanding what you're putting forth, you can have a property owner that's been utilizing it or a public person that's been utilizing it that would never have any say until way after the fact or way after the closure. So I think there's a – it's not as simple as you're putting it forth.

In your two-lot example, that's relatively simple. But in a multi-lot situation where an individual accessing a parcel where they might not even own a property – maybe they're accessing a national forest, it gets a little more complicated. Maybe there's degrees of what we review and maybe that's what we need to talk about.

MR. SOMMER: And I think that the point you make, every one of the examples that you've made, Commissioner, involve a public right. And when you say, hey, wait a minute, there are lots of situations where the public has been using a way to the point where it's recognized almost universally that it's a public way, should they be able to vacate that, just by signing a plat with nobody else involved? Again, you're dealing with a public right and there is a process for doing that and it is – if you want to try and vacate an easement like that you have a hell of a lot more to go through than just the Board of County Commissioners. But again, every example that you've pointed to is in some realm public in nature. And I don't have any qualms about that.

COMMISSIONER ANAYA: I think the [inaudible] we can talk about it at a later date but the thing we're going to have vet is there are many parcels out there where there are probably private under the letter of a private easement but have been public for many years and the only notice requirement is to get here and where people would have a voice to get up and raise an issue. Otherwise it would be left only to the courts, and that's where I think maybe we can have some discussion and maybe there's degrees that are – the less intensive ones we don't waste time but on broader parcels or multi-tract parcels or potential public access points, I think we need to be very cautious about just leaving that only in the hands of whoever initiated the easement or whoever we think may have initiated the easement. But thanks for giving us some feedback. Thank you, Mr. Chair.

CHAIR MAYFIELD: Are there any other members from the public? The public hearing is closed. Mr. Ross, I have a question. On some of the examples that were brought up tonight, Penny, and even with Commissioner Anaya, but what he brought up we go into degrees of what would have to come in front of you on this Commission. Is that a requirement we have now in our new Sustainable Land Development Code?

MR. ROSS: Mr. Chair, that whole distinction is completely – what you just heard about public-private distinction doesn't exist. I've got the Subdivision Act right here and I'll just read it to you. The Subdivision Act requires that this body in the case of a final plat filed in the office of the County Clerk consider – I'll just read it to

you. In approving the vacation of all or a part of a final plat the Board of County Commissioners shall determine whether or not the vacation will adversely affect the interests of persons on contiguous lands or persons within the subdivision being vacated. It's exactly what Commissioner Anaya was talking about. In this statute there's no distinction between public easements and private easements. The idea being if there's a final plat you must consider whether the vacation of an easement, public or private, will affect anybody. And that's what Land Use is trying to do. The new code is the same on this issue. Because it's statutory.

CHAIR MAYFIELD: Thank you, Mr. Ross. So what I'm hearing our County Attorney say is that does have to come in front of the Commission. Well, Karl, I'm not going to take your comments from way back there. And this part of the public hearing right now I'm going to go to Commissioner Stefanics first.

COMMISSIONER STEFANICS: Thank you. Do we have the – is the public hearing closed?

CHAIR MAYFIELD: Yes.

COMMISSIONER STEFANICS: Okay, thank you. Mr. Ross, I heard what you read from the Subdivision Act but I have some concerns about why we are doing this, and I see no problem in approving this and moving it along. So I just want to be clear about that. But if we have never done this except for this past year we have now set a new standard for property owners and it's going to affect many, many people who have no clue that they have to deal with this. And we are dealing with many, many lots that are undeveloped that will probably still sit there until we get to an exquisite economy where something is done.

So I'm really kind of confused out – not kind of, I am confused about why we would do this. It really is just creating another burden for a property owner. And it's not – I have a different perspective than Commissioner Anaya; I don't think it's hurting anybody, especially if it's not developed.

MR. ROSS: Mr. Chair, Commissioner Stefanics, it's in the Subdivision Act, so for subdivisions it's mandatory. I don't see anyway around that. If we were doing it otherwise throughout the years we were doing it wrong.

MS. ELLIS-GREEN: Mr. Chair, Commissioner Stefanics, I also got corrected by my staff and Katherine Miller that it's been at least three years that we have been doing this. Since I've been working in the Growth Management Department as the director we have been doing this. In addition, I would again draw your attention to Exhibit 5 on page 11, this actual easement is actually access for about 60+ lots, so about 60+ lots have the ability to use this easement. The plat that was done prior had about 40 lots using these easement. By coming through a public hearing process this has been advertised, certified letters have been sent out. These people have the right to stand in front of you say, no, the new easement doesn't follow the correct alignment that I can utilize, or it will adversely affect me. And from the State Subdivision Act, that is what the Board is making a determination on.

Now, my staff has looked at this. They've looked at the whole road layout and from that they have determined that we can support this easement vacation. But if there wasn't an alternative access to all those other lots we would not be in front of you supporting this. We would be recommending denial of that. But again, it's something that

is done in a public setting. Notice has been done and we're making a determination tonight that alternative access has been granted to all of those lots that are shown on page 11. There's a lot of lots there. Also an issue was brought up that a final plat is only required for a subdivision; that is not correct. A final plat is any final plat that gets through out code is defined as any final plat that gets recorded, whether it's done through a family transfer or a subdivision.

So that is a final plat and the Subdivision Act says that we will determine that there's no adverse impact. So if we – if years and years ago, if we had been doing this administratively, I believe that that was an incorrect reading of the Subdivision Act and of our code. It's been in our code for a long time. We should do these in a public meeting.

CHAIR MAYFIELD: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, we've got to work with the parameters of our code and the Act, but if there's a way we can have discussions about how things are approved and how it's processed as to not have as an adverse impact, I want to have those discussions. And so I would ask us to – we're not changing it, but if there's a process that we can figure out that's more expedious for smaller decisions that come to the Board then I want us to review it and I think Mr. Sommer and others might be willing to participate in discussions associated therein. So, thank you.

CHAIR MAYFIELD: And for staff, and then I am going to go back to the public members really quick. But Penny or Steve, what if the applicant came in and just provided an affidavit saying, look, we want to put this on the record, an affidavit. We're not going to impact any other adjacent properties that access this, and if it went to court later, as Commissioner Anaya brought up, there's an affidavit on file by that applicant. I don't know. I guess that would be more of a legal question for Steve, and/or and then hearing Commissioner Anaya's concerns or questions, if this is accessing a - if a private lot is accessing say, a national park, BLM land. I think you would have to have in consideration of talking with those groups, and that's what Mr. Sommer was saying, just because you access that land on BLM's point doesn't mean that's where they want you to access that land at. If it was a mile down the road where you vacated an old easement. So I think that's why it is important that everybody is informed. But I do see that we do this all the time on family transfers where - and I've seen it on this bench, where I see Chief Patty in the audience, we're coming on a private lot family transfer and we're telling these folks, well, you've got to make your road 20 feet wide to allow two fire trucks to go through it, and you're going to have to improve this whole road, that's on a private road for somebody to get to their house also.

So I do see both sides of this but I would want to try to make it less cumbersome on the applicant, respecting costs that are involved and I just don't know if there's an expedited process we could have with staff on this. Steve, do you want to respond to any of that?

MR. ROSS: Mr. Chair, you asked about an affidavit and an affidavit is required.

CHAIR MAYFIELD: Oh, so it is required already? Okay. And Steve, if in that affidavit somebody missed something or said, and then somebody was potentially landlocked and couldn't get to that property – they would have to go to court though, right? Commissioner Anaya gave that example. He was the last person on that lot and if

four people came in front and said, hey, we want to vacate this administratively and staff didn't pick up that there was one lot at the very end, or an undeveloped lot that nobody ever talked about that had access off of that private agreement, because we don't know what every private agreement is, is that person that signed that affidavit on the hook, even if that person has already sold that property and they're long gone?

MR. ROSS: I don't know. It would depend on what the situation was, what the relationship was between sellers and it's all very complicated. But the applicant has the duty in the first instance to submit the affidavit to you and you have a duty to look at it and make those determinations I described earlier.

CHAIR MAYFIELD: Thank you, Commissioners. And I guess we'll go back to the public on this, but if you guys could keep it really brief, please. Maybe a minute, two minutes apiece.

MR. SOMMER: Very briefly. The regulation that was cited to is out of the Subdivision Act. Not every plat is a final plat under the Subdivision Act. So the idea that every plat is a final plat, if you can imagine, if you interpret every plat as a final plat for purposes of that, every note, every other change, any modification to every single plat because it got recorded as a final plat is going to come in front of you - isn't going to work.

CHAIR MAYFIELD: Thank you, Mr. Sommer.

MS. GUERRERORTIZ: I would just bring up two points. The example I gave there, that simple one? I have a case in front of staff right now that's even simpler, clearer cut, that there is no public interest. There's no other lots involved, and I've been told I have to come to the BCC. And I'm telling you it is as clear cut as possible showing there's no other interests involved. And again, I will remark that there is no other jurisdiction that is taking this approach and so they're all working under the same state laws. I don't understand how Santa Fe County is unique in this. Thank you.

CHAIR MAYFIELD: Thank you, Commissioners. Well, we have a case in front of us. Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, maybe we're the only county doing it right.

CHAIR MAYFIELD: Thank you. Maybe we as a Commission and with applicants and all parties have a little work group on this and see if we can come up with something that's amenable to all parties, to keep expense down for everybody. I'm kind of all for that, knowing our new code too. Commissioners, we have a case in front of us. There's no more public comment. Public comment's been closed. Do we have a motion for the case?

COMMISSIONER HOLIAN: Move for approval.

COMMISSIONER ANAYA: Second.

CHAIR MAYFIELD: We have a motion for approval and a second.

The motion passed by unanimous [4-0] voice vote.





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 13-5250

VACATION OF PLAT NOTE

THOMAS WAGNER, APPLICANT

### <u>ORDER</u>

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on February 11, 2014, on the Application of Thomas Wagner (hereinafter referred to as "the Applicant") for approval to vacate a plat note that requires roadway improvements on Lots 2A-1 and 2A-2 prior to development of the property on 40.01 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 approval to vacate a plat note that requires roadway improvements on Lots 2A-1 and 2A-2 prior to development of the property. The property is located at 67 Camino San Marcos, Off Goldmine Road (CR 55), within Sections 3, 4, 9 & 10, Township 13 North, Range 8 East ("Property").
- 2. The subject lot consists of 40.01 acres and was created on September 2, 2009, by way of Family Transfer for Sharon Thams Carter. Tract 2A-2 was deeded to Sam Carter Jr. on September 2, 2009, and was then sold to the Applicant on October 23, 2009. The property is currently vacant.

- 3. At time of Plat recordation, a note was placed on the Plat which states: "Prior to issuance of Development Permits for dwellings on lots 2A-1 and 2A-2, Camino San Marcos roadway and drainage crossing within lot 2A-2 shall be upgraded to County all-weather standards". Camino San Marcos crosses a drainage easement on the subject property. The drainage easement is not a FEMA designated Special Flood Hazard Area and the all-weather requirement is not relevant as there is no floodplain crossing and the note referenced on the Plat is related to a floodplain.
- 4. 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.
- 5. Staff recommends the following conditions of approval: i). The Applicant shall re-file the Family Transfer Land Division Plat for (Sharon Thams Carter of Tract C Lot 2A) without note # 15 with the County Clerk's Office: ii). The Applicant shall comply with all Fire Prevention Division requirements at time of Development Permit Application.
- 6. In Support of the Application, the Applicant agrees with staff's conditions.
- 7. The vacation of the plat note regarding the roadway and drainage crossing upgrades will not adversely affect interests of persons on contiguous land or the owner of the subject property.
- 8. No members of the public spoke in favor or opposition to the Application. After conducting a public hearing on the request, the Board of County Commissioners

hereby approves the request to vacate a plat note that requires roadway improvements on Lots 2A-1 and 2A-2 prior to development of the property.

WHEREFORE the Board of County Commissioners of Santa Fe County hereby approves the request to vacate a plat note that requires roadway improvements on Lots 2A-1 and 2A-2 prior to development of the property located at 67 Camino San Marcos, Off Goldmine Road (CR 55), within Sections 3, 4, 9 & 10, Township 13 North, Range 8 East (Property") subject to the staff conditions set forth in paragraph 5. The motion to approve the vacation passed by a 4-0 vote, with Commissioners Anaya, Mayfield, Stefanics and Holian voting in favor of the motion. Commissioner Chavez was not present during the Public Hearing.

### IT IS SO ORDERED

This Order was a	approved by the Board	of County Co	ommissioners o	of Santa Fe Co	ounty on this
day of	, 2014.				
By:	Mayfield, Chair				
Daniel W. N	iayneid, Chair				
Attest:					
Geraldine Sa	lazar, County Clerk				

Approved as to form:

Stephen C. Ross, County Attorney

four people came in front and said, hey, we want to vacate this administratively and staff didn't pick up that there was one lot at the very end, or an undeveloped lot that nobody ever talked about that had access off of that private agreement, because we don't know what every private agreement is, is that person that signed that affidavit on the hook, even if that person has already sold that property and they're long gone?

MR. ROSS: I don't know. It would depend on what the situation was, what the relationship was between sellers and it's all very complicated. But the applicant has the duty in the first instance to submit the affidavit to you and you have a duty to look at it and make those determinations I described earlier.

CHAR MAYFIELD: Thank you, Commissioners. And I guess we'll go back to the public on this, but if you guys could keep it really brief, please. Maybe a minute, two minutes apiece.

MR. SOMMER: Very briefly. The regulation that was cited to is out of the Subdivision Act. Not every plat is a final plat under the Subdivision Act. So the idea that every plat is a final plat, if you can imagine, if you interpret every plat as a final plat for purposes of that, every note, every other change, any modification to every single plat because it got recorded as a final plat is going to come in front of you – isn't going to work.

CHAIR MAYFIELD: Thank you, Mr. Sommer.

MS. GUERRERORTIZ: I would just bring up two points. The example I gave there, that simple one? I have a case in front of staff right now that's even simpler, clearer cut, that there is no public interest. There's no other lots involved, and I've been told I have to come to the BCC. And I'm telling you it is as clear cut as possible showing there's no other interests involved. And again, I will remark that there is no other jurisdiction that is taking this approach and so they're all working under the same state laws. I don't understand how Santa Fe County is unique in this. Thank you.

CHAIR MAYFIELD: Thank you, Commissioners. Well, we have a case in front of us. Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, maybe we're the only county doing it right.

CHAIR MAYFIELD: Thank you. Maybe we as a Commission and with applicants and all parties have a little work group on this and see if we can come up with something that's amenable to all parties, to keep expense down for everybody. I'm kind of all for that, knowing our new code too. Commissioners, we have a case in front of us. There's no more public comment. Public comment's been closed. Do we have a motion for the case?

COMMISSIONER HOLIAN: Move for approval.

COMMISSIONER ANAYA: Second.

CHAIR MAYFIELD: We have a motion for approval and a second.

The motion passed by unanimous [4-0] voice vote.

a. 2. <u>BCC CASE # PCEV 13-5250 Thomas Wagner</u> Vacation of Plat Note. Thomas Wagner, Applicant, Requests

Vacation of a Plat Note That Requires Roadway Improvements on Lots 2A-1 and 2A-2 Prior to Development of the Property. The Property is Located at 67 Camino San Marcos, Off Goldmine Road (CR 55), within Sections 3, 4, 9 & 10, Township 13 North, Range 8 East (Commission District 3)

WAYNE DALTON (Case Manager): Thank you, Mr. Chair. The subject lot consists of 40.1 acres and was created on September 2, 2009 by way of family transfer for Sharon Thams Carter. Tract 2-A-2 was deeded to Sam Carter, Jr. on September 2, 2009 and was then sold to the applicant on October 23, 2009. The property is currently vacant. At time of plat recordation a note was placed on the plat which states, Prior to issuance of development permits for dwellings on Lots 2-A-1 and 2-A-2, Camino San Marcos Roadway and drainage crossing within Lot 2-A-2 shall be upgraded to County standards.

Camino San Marcos crosses a drainage easement on the subject property. The drainage easement is not a FEMA-designated special flood hazard area and the all-weather requirement is not relevant as there is no flood plain crossing and the note referenced on the plat is related to a flood plain. The applicant states he's requesting removal of the plat note due to him not being in a position to upgrade Camino San Marcos all-weather standards. The applicant also states that he has received an engineer's cost estimate for the improvements and it would be in excess of \$50,000, a cost which is prohibitive for what he considers to be his driveway. At this time the applicant simply wishes to use the road as-is for access to his future residence.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR MAYFIELD: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, Mr. Dalton, in recent months we've had applicants with a very similar issue in different parts of the county where we have put an additional note on the plat that speaks to the applicant understanding the ramifications of not having an all-weather access in the event of an emergency or fire situation. Are we including that notation on this if this is approved?

MR. DALTON: Mr. Chair, Commissioner Anaya, no, because that only pertains to properties that cross floodplains or have a floodplain crossing on their property.

COMMISSIONER ANAYA: Because it's an arroyo – going back to some of the other cases, are we only doing that if it's a designated floodplain? If it's an arroyo but not necessarily designated a floodplain? You're saying we're not doing that anymore?

MR. DALTON: Mr. Chair, Commissioner Anaya, if it is within – if it does cross a FEMA-designated special flood hazard area that is required within the ordinance to put that language in as a condition of approval, or on the plat, regarding emergency vehicles that may not get on that property at certain times in inclement weather. So that only pertains to properties that are actually crossing floodplains or have a floodplain on their property.

 $COMMISSIONER\ ANAYA:\ Thank\ you,\ Mr.\ Dalton.\ Thank\ you,\ Mr.$ 

Chair.

CHAIR MAYFIELD: Thank you, Mr. Dalton. You have some staff conditions or recommendations also?

MR. DALTON: Yes, Mr. Chair, thank you. Staff recommendation: Approval of the removal of plat note that requires roadway improvements on Lots 2-A-1 and 2-A-2 prior to development of the property subject to the following conditions. Mr. Chair, may I enter those into the record?

CHAIR MAYFIELD: Please, and if you'd read them in I'd appreciate that.

MR. DALTON: 1) The applicant shall refile the family transfer land division plat for Sharon Thams Carter of Tract C, Lot 2-A without note #15 with the County Clerk's Office as per Article V, Subsection 5.7.3. 2) The applicant shall comply with all fire prevention requirements at time of development permit application, and that's as per 1997 Fire Code and 1997 Life Safety Code.

Thank you.

CHAIR MAYFIELD: Thank you, Commissioners. Mr. Dalton, I'm going to ask one quick question also of staff before I move to the public hearing portion. So this property is located at 67 Camino San Marcos. That is a County road or a private road?

MR. DALTON: Mr. Chair, that is a private road.

CHAIR MAYFIELD: Okay. But it's off of Gold Mine Road, County Road

MR. DALTON: Correct.

55.

CHAIR MAYFIELD: So my question to staff is is all-weather access provided on all portions of Goldmine Road? County Road 55?

MR. DALTON: Mr. Chair, I can't answer that question. I know there are some low-water crossings on County Road 55.

CHAIR MAYFIELD: Are they all-weather?

MR. DALTON: There's, I believe, a dip section on County Road 55, right at the beginning, and Camino San Marcos, all the drainage crossings have culverts that are adequately sized. This is the only section on Camino San Marcos that has this issue without culverts place on the road.

CHAIR MAYFIELD: Thank you. Do we have the applicant here tonight?
MR. SOMMER: Mr. Chair, my name is Karl Sommer and you have my
address from previously, and I'm here on behalf of Mr. Wagner who is here with me. He
is the applicant. We'll stand for any questions and I think that the staff conditions are
reasonable and we accept them.

CHAIR MAYFIELD: Thank you, Mr. Sommer and thank you, applicant. This is a public hearing. Are there any members from the public that wish to comment on this case? Seeing none, this portion of the public hearing is closed.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR MAYFIELD: Commissioner Anaya.

COMMISSIONER ANAYA: I move for approval.

COMMISSIONER HOLIAN: Second. With staff conditions?

COMMISSIONER ANAYA: Of course, Commissioner Holian. Yes, with staff conditions.

CHAIR MAYFIELD: Thank you, Commissioners. There's a motion and a second on the floor. Again, I will just bring this up, because I bring it up all the time with

the Sustainable Land Development Code and everything else. We put conditions of all-weather crossings on every applicant. Some times it comes in front of this Commission and yet we don't have all-weather crossings on the County roads that are accessing their properties. So I just wish, Commissioners, that that could be something looked at and considered by staff and our Fire Department. I'm just saying that I believe I've been a big proponent of the County needs to lead by example and if we put these conditions on staff that we need to abide by ourselves on our County roads.

COMMISSIONER STEFANICS: Mr. Chair.

CHAIR MAYFIELD: Commissioner Stefanics.

COMMISSIONER STEFANICS: I happen to know this road quite well. Commissioner Javier Gonzalez first had it chip-sealed and then Senator Phil Griego had it paved in two different five-mile sections, so it's in pretty good condition.

CHAIR MAYFIELD: I'm sure. And this was just more of a blanket statement for all roads in the county. You've heard me say that many times. We have a motion and a second on the floor.

The motion passed by unanimous [4-0] voice vote.





Daniel "Danny" Mayfield Commissioner, District 1

Miguel Chavez Commissioner, District 2

Robert A. Anaya Commissioner, District 3



Kathleen Holian Commissioner, District 4

Elizabeth Stefanics Commissioner District 5

> Katherine Miller County Manager

### Memorandum

To:

Santa Fe County Board of County Commissioners

Through:

Katherine Miller, County Manager

of keron Rachel O'Connor, Director, Community Services Department

From:

Lupe Sanchez, DWI Program Coordinator

Date:

February 20, 2014

Subject:

Resolution 2014 – A Resolution Requesting A Budget Increase To The

Alcohol Programs Fund (241) To Budget A Reversion Grant Awarded

To The DWI Program / \$147,225

### Issue:

Request approval of a Resolution to make the budget adjustment to the Local DWI Fund, increasing the current budget by \$147,225.00 through a Reversion Grant awarded to the DWI Program. The Reversion Grant requires that all funds be expended by June 30, 2014.

### **Background:**

Local DWI (LDWI) funds provide the bulk of the funding for the Santa Fe County DWI Program. These funds are generated from excise tax on the sale of alcohol, collected by the New Mexico Department of Taxation and Revenue, and administered by the Department of Finance and Administration (DFA). The Reversion Grant allows for Santa Fe County to apply for LDWI funds reverted back to DFA by the DWI program, Santa Fe County was awarded \$147,225.00.

County Staff developed the application and incorporated suggestions from staff and the DWI Planning Council. This Resolution was endorsed by the DWI Planning Council.

### Staff Recommendation:

Staff recommends the approval of this resolution.

102 Grant Avenue, P.O. Box 276, Santa Fe, New Mexico 87504-0276, 505-986-6200, FAX: 505-995-2740 www. Santafecounty.org

### RESOLUTION 2014 -

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Whereas	, the Board of C	County Commiss	sioners meeting	Whercas, the Board of County Commissioners meeting in regular session on	, did request the following budget adjustment:	budget adjustment:
Departmo	Department / Division: Community Services/HHSD	Community Servi	ices/HHSD	Fund Name: DWI Program		
Budget A	Budget Adjustment Type:	Increase Budget	dget	Fiscal Year: 2014 (July 1, 2013 - June 30, 2014)	June 30, 2014)	
BUDGE	BUDGETED REVENUES: (use continuation sheet, if necessary)	S: (use continuatio	n sheet, if necess	ary)		
FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	REVENUE	INCREASE	DECREASE
241	0476	371	0400	State Grants / DWI-Prevention	147,225	AMOUNT
TOTAL (	TOTAL (If SUBTOTAL, check here	leck here			147,225	
BUDGE	BUDGETED EXPENDITURES: (use continuation	ITURES: (use cc	ontinuation sheet,	sheet, if necessary)		
FUND CODE XXX	DEPARTMENT/ DIVISION XXXX	ACTIVITY BASIC/SUB XXX	ELEMENT/ OBJECT XXXX	CATEGORY / LINE ITEM	INCREASE	DECREASE
241	0476	464	5003	Professional Services / Contractual	147,225	AMOUNT
TOTAL (i	TOTAL (if SUBTOTAL, check here	eck here //			147.225	
Requesting	Requesting Department Approval:	proval: JULA	Ma	Title: Department Director		Date: 2/24/14
Finance D	epartment Appro	val: Carolit	Sawie	Finance Department Approval: (Auglich gandlug Bate: 2) 26/14 Entered by:	D	Date:
County Ma	County Manager Approval:	Lathred	Wille to		Ä	Date:

Date:

Updated by:

RESOLUTION 2014 -

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Community Services/HHSD Dept/Div:\_\_ Name: Joyce Varela DEPARTMENT CONTACT:

Phone No.: 992-9843

DETAILED JUSTIFICATION FOR REQUESTING BUDGET ADJUSTMENT (If applicable, cite the following authority: State Statute, grant name and award date, other laws, regulations, etc.):

- The DWI Program is requesting an increase to the budget to include a DWI Reversion Grant that was awarded to the program through the Department of Finance and Administration (DFA). This grant will be utilized to expand services and promote public awareness in regards to DWI within SF County. • 1) Please summarize the request and its purpose.
- a) Employee Actions

FOSHIOH THE			
Position Type (permanent, term)   Fosition Line	A ACT TOWNS		
	Action (Add/Delete Position, Keclass, Overtime)		
	Line Item		

b) Professional Services (50-xx) and Capital Category (80-xx) detail:

or for NON-RECURRING (one-time only) expense\_ 2) Is the budget action for RECURRING expense

### RESOLUTION 2014 -

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No.: 992-9843	rity: State Statute, grant name and award
Phone	autho
	licable, cite the foll
Community Services/HHSD	BUDGET ADJUSTMENT (If applicable, cite the following
Dept/Div:	R REQUESTING
e: Joyce Varela	ETAILED JUSTIFICATION FOR REQUESTING BUI
ame:	ET.

date, other laws, regulations, etc.):

- 3) Does this request impact a revenue source? If so, please identify (i.e. General Fund, state funds, federal funds, etc.), and address the following:
  - a) If this is a state special appropriation, YES \_\_\_\_ NO \_\_\_ If YES, cite statute and attach a copy.
- Does this include state or federal funds? YES X NO If YES, please cite and attach a copy of saturate, if a special appropriation, or include grant name, number, award date and amount, and attach a copy of an award letter and proposed budget. 9

Grant Name: DWI Grant Agreement Grant Amount: \$147,225.00

Grant No. 14-D-J-G-27 Date Awarded: February 11, 2014

- If YES, please cite and attach a copy of supporting documentation (i.e. Minutes, Resolution, Ordinance, etc.). Is this request is a result of Commission action? YES ত
- d) Please identify other funding sources used to match this request.

RESOLUTION 2014 -

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Santa Fe County that the Local Government Division of the Department of Finance and Administration is hereby requested to grant authority to adjust budgets as detailed above.

, 2014. Approved, Adopted, and Passed This\_

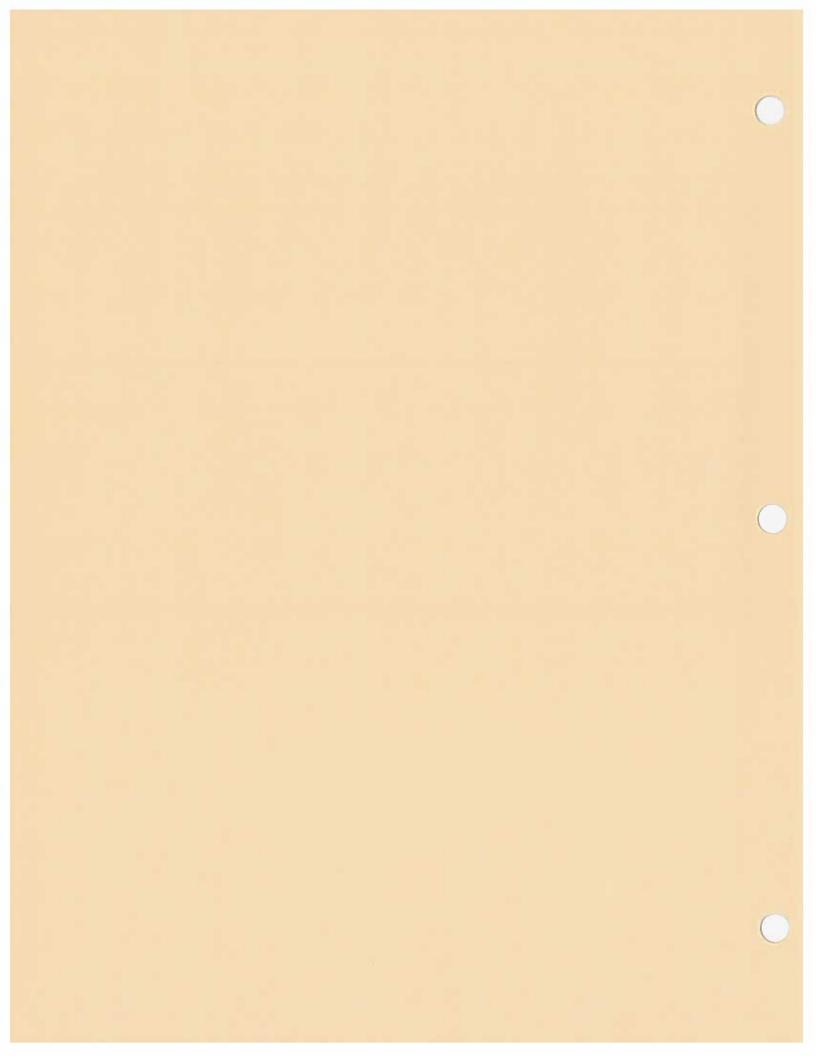
Santa Fe Board of County Commissioners

Daniel W. Mayfield, Chairperson

ATTEST:

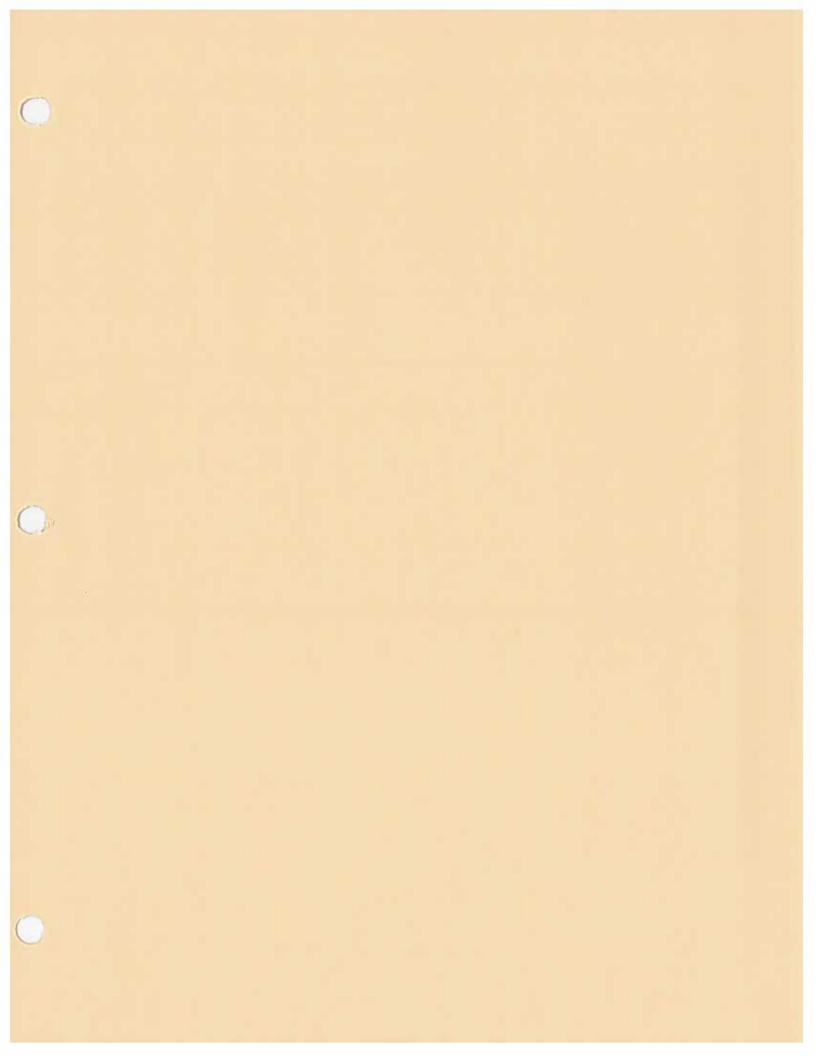
Geraldine Salazar, County Clerk

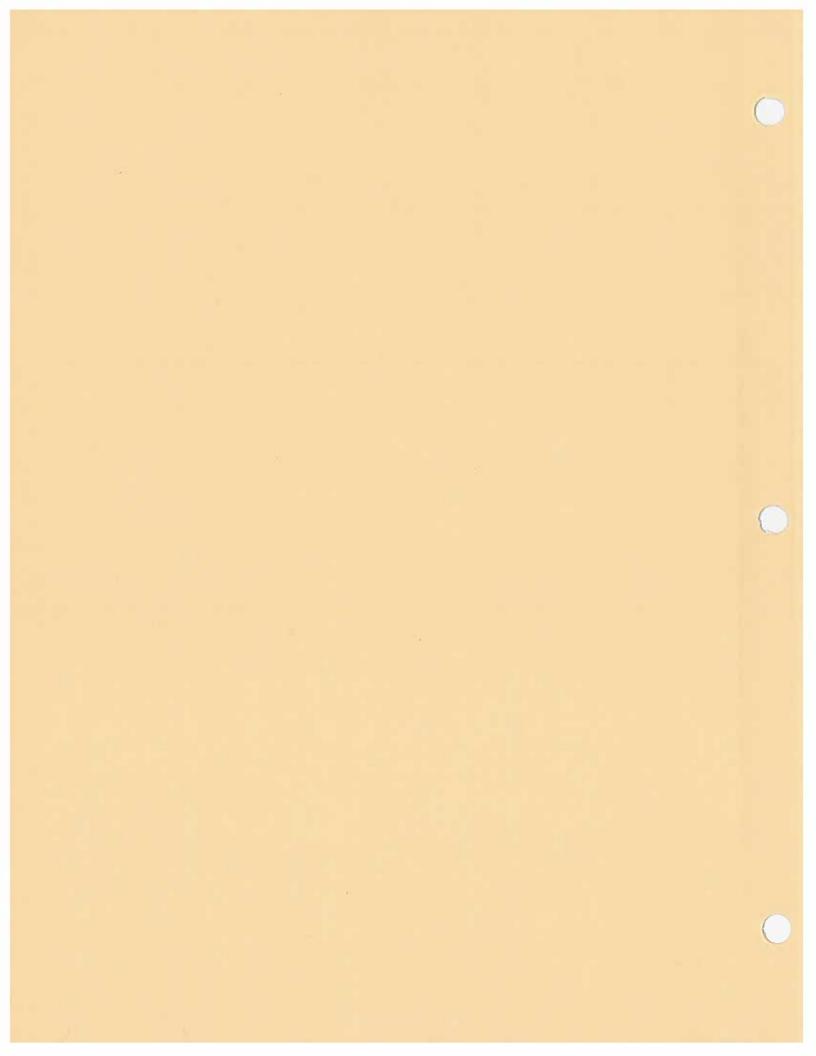




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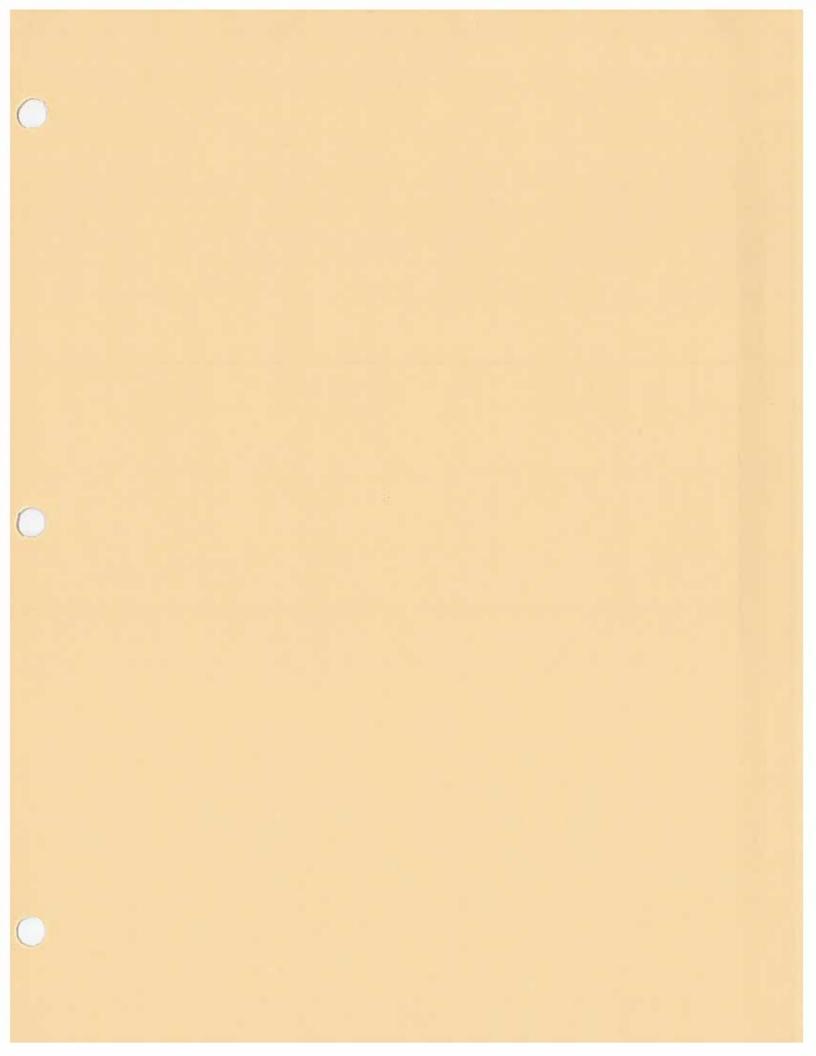
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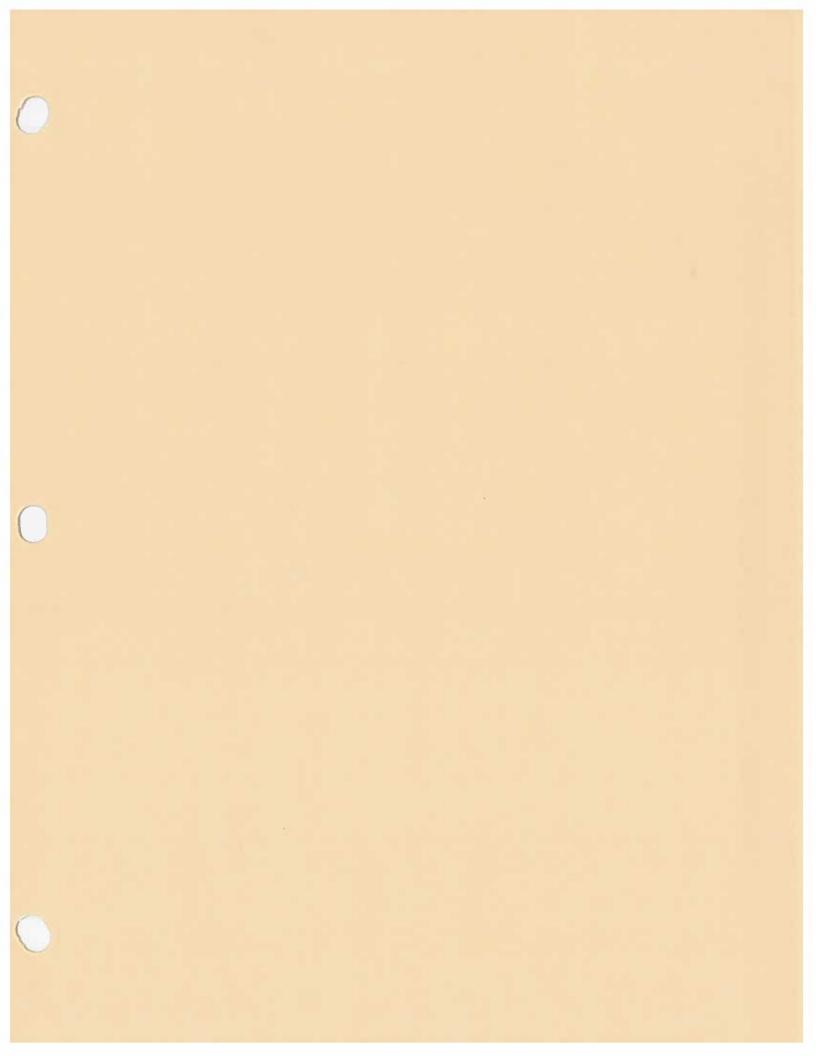
IV. Matters of Public Concern

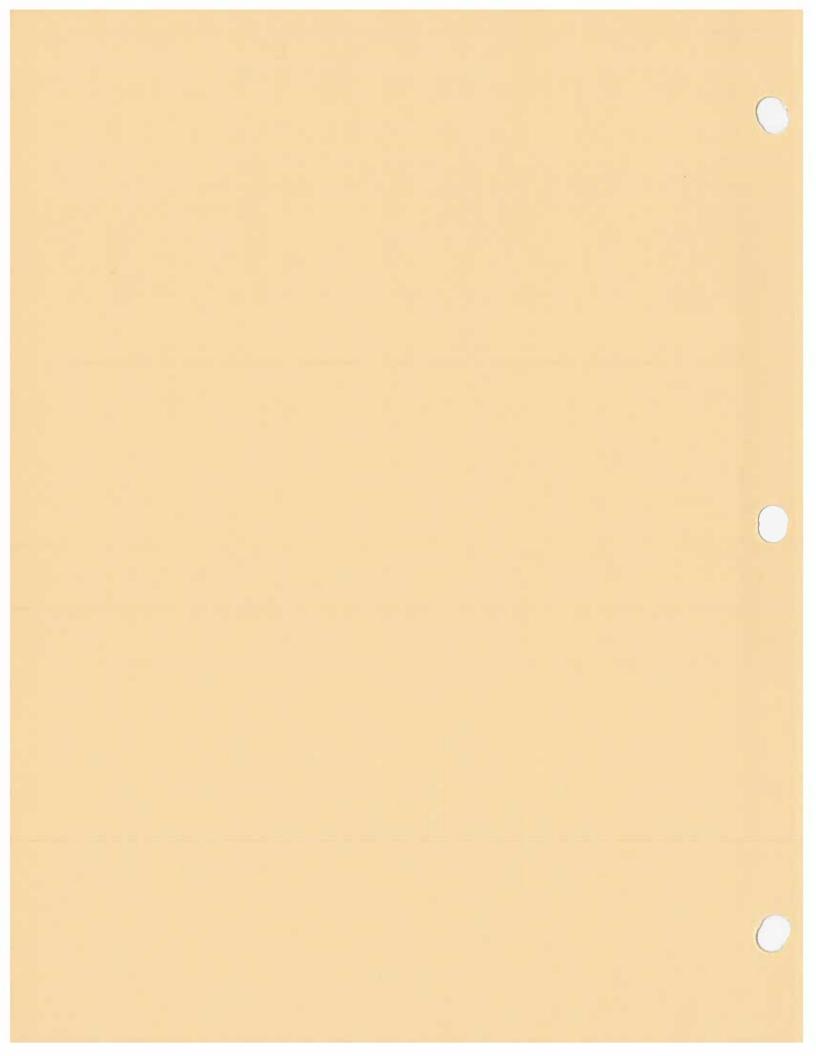
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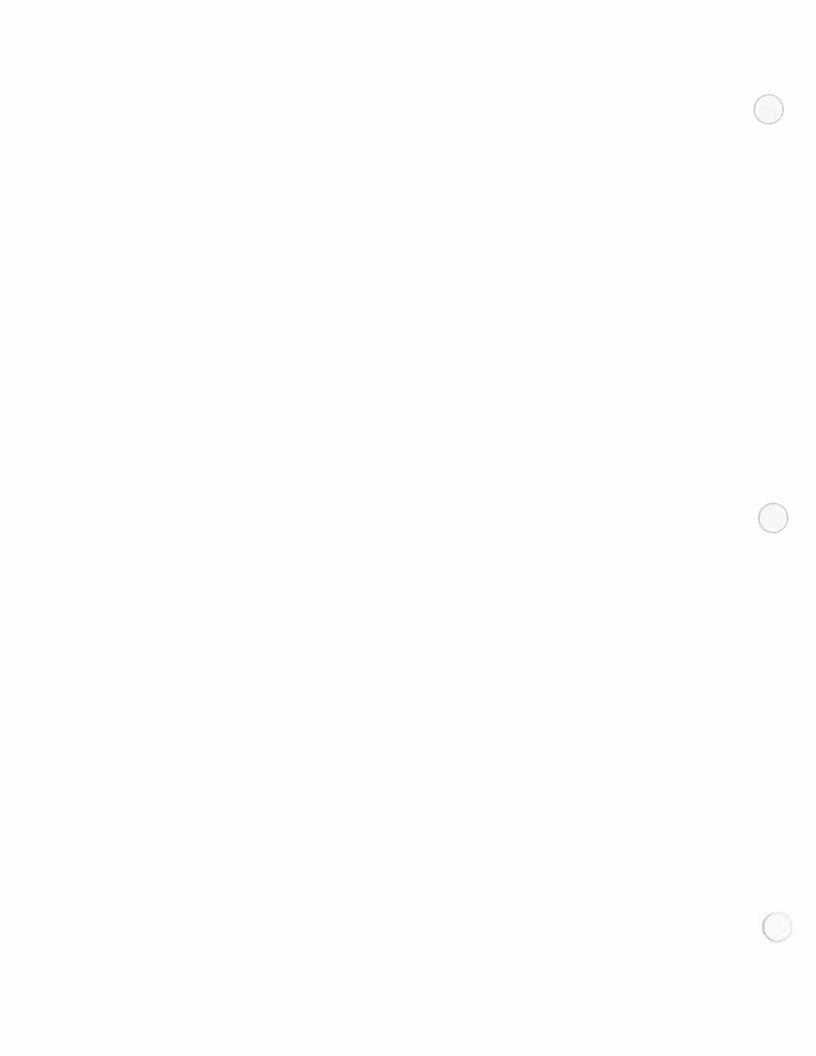


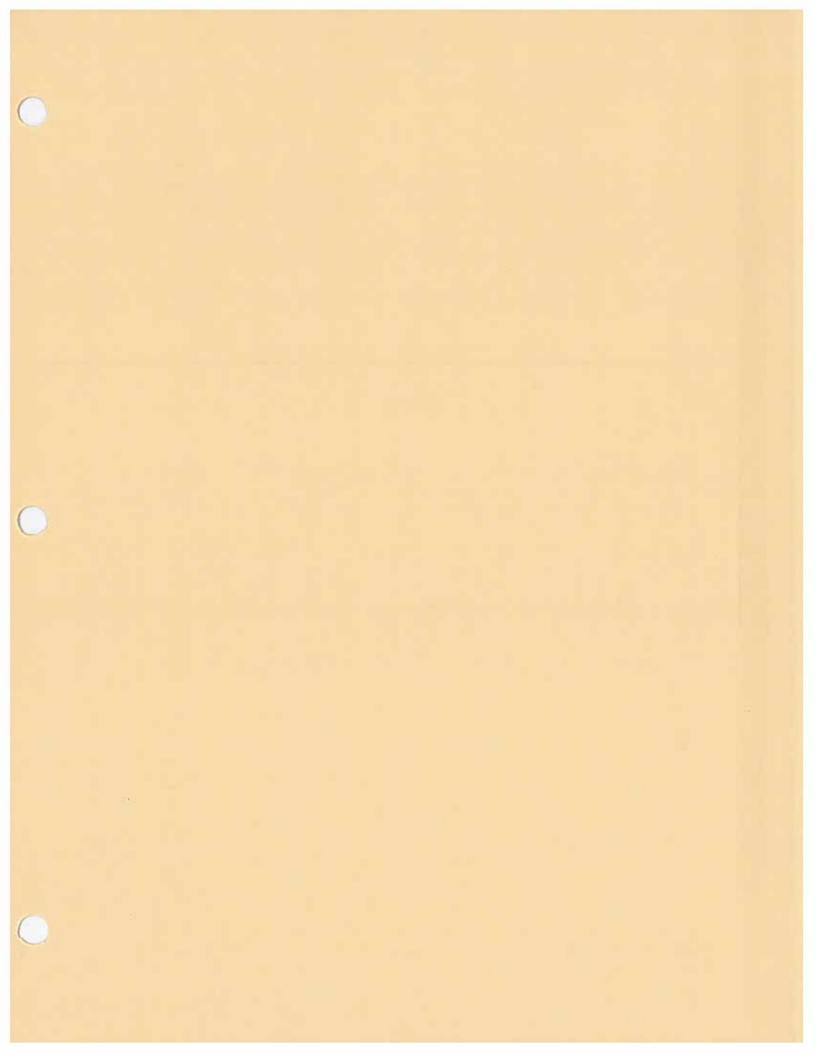


- V. C. Matters from the County Manager
  - 1. Legislative Update
  - 2. Miscellaneous Updates







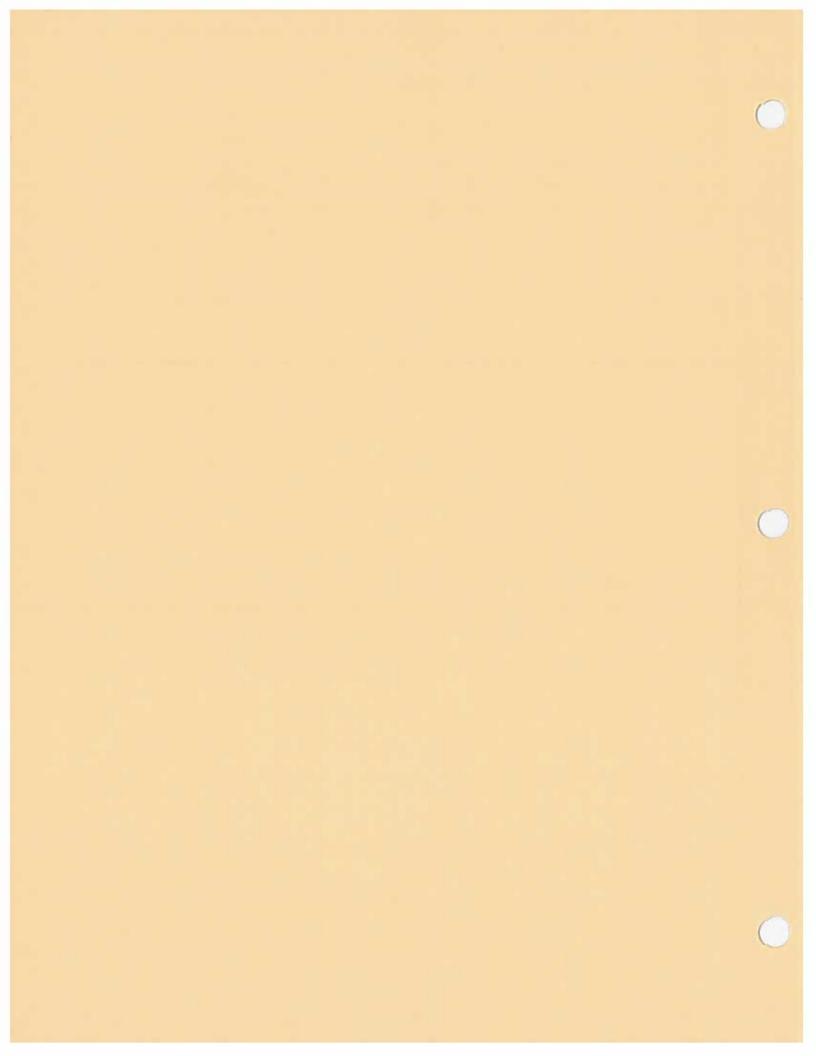




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#### Daniel "Danny" Mayfield Commissioner, District 1

Miguel M. Chavez Commissioner, District 2

Robert A. Anaya Commissioner, District 3



Kathy Holian Commissioner, District 4

Liz Stefanics Commissioner, District 5

> Katherine Miller County Manager

DATE:

February 25, 2014

TO:

**Board of County Commissioners** 

FROM:

Miguel "Mike" Romero, Development Review Specialist Sr.

VIA:

Katherine Miller, County Manager

Penny Ellis-Green, Land Use Administrator

Vicki Lucero, Building and Development Services Manager

Wayne Dalton, Building and Development Services Supervisor

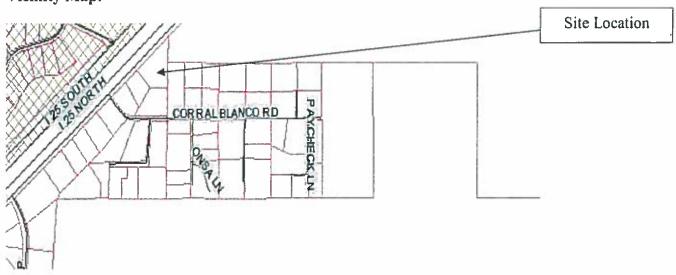
FILE REF.: CDRC CASE # V 13-5350 Joseph Lujan Variance

#### ISSUE:

Joseph Lujan, Applicant, Requests A Variance Of Article III, Section 10 (Lot Size Requirements) Of The Land Development Code To Allow Three Dwelling Units On 2.371 Acres.

The Property Is Located At #27262 I-25 East Frontage Rd, In The Chuck Taylor Subdivision, Within Section 4, Township 15 North, Range 8 East (Commission District 5).

#### Vicinity Map:



#### **SUMMARY:**

The Applicant requests a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow three dwelling units on 2.371acres. The subject lot was created in 1977, and is recognized as a legal non-conforming lot. There are currently three dwelling units and two accessory structures on the subject property. The Applicant states their residence was constructed shortly after the purchase of the property in 1977, an aerial photograph from 1981, shows only one residence on the property. A pre-code home would not have received a development permit. A 1992, aerial photograph shows that an addition was added to the main residence, a detached garage was constructed for the main residence and a single wide mobile home (second residence) was placed on the property where the Applicant's son resides. The addition was not permitted by Santa Fe County. A 2001, aerial photograph shows that the Applicant's daughter had already moved her manufactured home (third residence) onto the property without a Development Permit from Santa Fe County. An aerial photograph from 2005, shows that the Applicant's son had constructed an addition to his residence (second residence) and built a detached garage without permits from Santa Fe County.

According to the Applicant, approximately 16 years ago the Applicants daughter moved her manufactured home onto the property due to a divorce and financial hardship. The Applicant along with his son and his daughter all reside in their individual homes on the subject property.

On September 27, 2013, the Applicant applied for a Development Permit for roof mounted solar panels to be placed on his residence. On October 24, 2013, Santa Fe County Code Enforcement conducted an inspection at the Applicants residence pertaining to the Development Permit Application and observed multiple dwelling units and accessory structures on the property. During the inspection Code Enforcement staff reviewed the Application to find that the Applicant only listed one residence on the Development Permit Application. At that time Code Enforcement issued the Applicant a Notice of Violation for Unpermitted Development and Exceeding Density.

In 1991, the Applicant requested a variance (CDRC # V 1991-1) to allow two dwelling units on 2.37 acres. At that time staff recommended recognizing the lot as 2.5 acres so the Applicant could qualify for a Family Transfer. The BCC approved the variance for a Family Transfer and to recognize the lot as 2.5 acres with the following staff conditions (Refer to BCC Minutes in Exhibit 9).

- 1. Mike and Henrietta Lujan can only divide the property for family transfer purposes or through the approval of a positive geohydrology report.
- 2. Both mobile homes will need to be properly skirted and anchored as per state mobile housing guidelines.

- 3. Installation and location of the mobile homes must meet all applicable state and county ordinance standards.
- 4. The variance will be for a second dwelling unit only, changes deviating from this approval will not be allowed unless approved by the CDRC/BCC.
- 5. A County development permit must be obtained from the Land use Department prior to placement of the second dwelling unit.
- 6. The mobile home will need to meet fire separation requirements as required by the State and County Fire Marshals.
- 7. Any improvements or modifications made to the existing septic system, or the installation of a new system, must meet all applicable CID/EID requirements prior to issuance of a mobile home permit. An approved septic tank permit must be submitted, prior to issuance of a mobile home permit.
- 8. Water restrictive covenants be imposed for each dwelling unit/lots if created, not to exceed .25 acre feet of water usage per year per lot and installation of meters to monitor water usage. Annual reports must be provided if determined necessary by the land Use Department.
- 9. All inoperable vehicles and debris must be removed from the property within a reasonable period of time not to exceed 3 months from the date of approval.
- 10. The second dwelling unit (mobile home) should be cited on the property so as not to adversely impact the view of adjacent property owners.
- 11. That a plat be prepared by a certified surveyor for the family transfer lot.

Since that time, the Applicant has not moved forward with the Family Transfer nor has he complied with staff conditions or obtained a development permit.

The Applicant has been informed by staff that they can still move forward with the small lot family transfer. However, the Applicant now states that rather than divide the property, it is their intention to move forward and request a variance to allow three homes on their property.

Article II, § 3 (Variances) of the County Code states: "Where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance." This Section goes on to state "In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified." The variance criteria does not consider financial or medical reasons as extraordinary hardships

This Application was submitted on November 8, 2013.

On January 16, 2014, the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the Applicants request by a 4-2 vote. (Chair Drobnis abstained.) (Minutes Attached as Exhibit 1).

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

APPROVAL SOUGHT: Approval of a variance from Article III, §10 (Lot Size

Requirements) of the Land Development Code.

GROWTH MANAGEMENT AREA: El Centro, SDA-2

**HYDROLOGIC ZONE:** Basin Zone, minimum lot size per Code is 10 acres per

dwelling unit. Lot size may be further reduced to 2.5 acres

with signed and recorded water restrictions.

FIRE PROTECTION: La Cienega District.

WATER SUPPLY: Domestic Well

LIQUID WASTE: Holding Tank Treatment System, Approved by NMED for

three homes (Date of Record: June 1, 1977 and September

26, 1998).

**VARIANCES:** Yes

**AGENCY REVIEW:** Agency Recommendation

> County Fire Approved with Conditions

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

The decision of the CDRC was to recommend denial of the Applicant's request. If the decision of the BCC is to approve the Applicant's request, staff recommends imposition of the following conditions:

1. Water use shall be restricted to 0.25 acre feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the

- County Clerk's Office (As per Article III, § 10.2.2 and Ordinance 2002-13).
- 2. The Applicant must obtain a Development Permit from the Building and Development Services Department for all structures on the property (As per Article II, § 2).
- 3. The placement of additional dwelling units or Division of land is prohibited on the property (As Per Article III, Section 10).
- 4. The Applicant shall comply with all Fire Prevention Division requirements at time of Development Permit Application (As per 1997 Fire Code and 1997 Life Safety Code).
- 5. All Junk Vehicles, Litter and Debris must be removed from the property (As Per Ordinance 1993-6 and Ordinance 1993-11).
- 6. The Applicant shall comply with all conditions of approval within 90 days.

#### **EXHIBITS:**

- 1. January 16, 2014, CDRC Meeting Minutes
- 2. Letter of request
- 3. Article III, §10 (Lot Size Requirements)
- 4. Article II, § 3 (Variances)
- 5. Site Photographs
- 6. Site Plan
- 7. Aerial of Site and Surrounding Area
- 8. Review Agency Letter
- 9. 1991 Staff Report with BCC Minutes

#### IV. <u>ELECTION</u>: CDRC Chair and Vice Chair

Member Katz nominated Dan Drobnis for the position of CDRC Chair, Member Roybal seconded the nomination. Member Drobnis was elected Chair by unanimous voice vote with Member Drobnis abstaining. [Member Anaya was not present for this action.]

Member Katz nominated Susan Martin for the position of CDRC Vice Chair. Member Gonzales seconded. Member Martin was elected Vice Chair by unanimous voice vote with Member Martin and Chair Drobnis abstaining. [Member Anaya was not present for this action.]

#### V. <u>APPROVAL OF AGENDA</u>

Ms. Lucero informed the Committee that New Business item C, CDRC MIS 13-5390, Louie Rael Exemption, has been tabled due to applicant's improper notice.

Upon motion by Member Katz and second by Member Martin the agenda was approved [5-0] as amended. [Chair Drobnis did not vote and Member Anaya was not present for this action and arrived immediately thereafter.]

#### VI. APPROVAL OF MINUTES: December 19, 2013

Member Katz moved to approve the December minutes as submitted. Member Martin seconded and the motion passed by unanimous [6-0] voice vote with the Chair not voting.

#### VII. <u>NEW BUSI</u>NESS

a CDRC CASE # V 13-5350 Joseph Lujan Variance. Joseph Lujan,
Applicant, Requests a Variance of Article III, Section 10 (Lot Size
Requirements) of the Land Development Code to Allow Three
Dwelling Units on 2.371 Acres. The Property is Located at #27262 I-25
East Frontage Road, in the Chuck Taylor Subdivision, within Section
4, Township 15 North, Range 8 East (Commission District 5)

Wayne Dalton provided the staff report as follows:

"The subject lot was created in 1977, and is recognized as a legal non-conforming lot. There are currently three dwelling units and two accessory structures on the subject property. The Applicant states their residence was constructed shortly after the purchase of the property in 1977, an aerial photograph from 1981 shows only one residence on the property. A 1992, aerial photograph shows that an addition was added to the main residence, a detached garage was constructed for the main residence and a singlewide mobile home was placed on the property

EXHIBIT

where the Applicant's son lives. None of these structures were permitted by Santa Fe County.

"A 2001 aerial photograph shows that the Applicant's daughter had already moved her manufactured home, which is the third residence, onto the property without a Development Permit from Santa Fe County. An aerial photograph from 2005, shows that the Applicant's son had constructed an addition to his residence and built a detached garage without permits from Santa Fe County.

"According to the Applicant, approximately 16 years ago the Applicant's daughter moved her manufactured home onto the property due to a divorce and financial hardship. The Applicant, along with his son and his daughter all reside in their individual homes on the subject property.

"On September 27, 2013, the Applicant applied for a Development Permit for roof mounted solar panels to be placed on his residence. On October 24, 2013, Santa Fe County Code Enforcement conducted an inspection at the Applicant's residence pertaining to the Development Permit Application and observed multiple dwelling units and accessory structures on the property. During the inspection Code Enforcement staff reviewed the Application to find that the Applicant only listed one residence on the Development Permit Application. At that time Code Enforcement issued the Applicant a Notice of Violation for Unpermitted Development and Exceeding Density.

"In 1991 the Applicant requested a variance to allow two dwelling units on 2.37 acres. At that time staff recommended recognizing the lot as 2.5 acres so the Applicant could qualify for a Family Transfer. The BCC approved the variance for a Family Transfer and to recognize the lot as 2.5 acres with staff conditions and you can refer to BCC Minutes attached as Exhibit 8. Since that time, the Applicant has not moved forward with the Family Transfer nor has he complied with staff conditions. The Applicant has been informed by staff that they can still move forward with the small-lot family transfer. However, the Applicant now states that rather than divide the property, it is their intention to move forward and request a variance to allow three homes on their property."

Mr. Dalton stated that the Growth Management staff has reviewed this Application for compliance with pertinent Code requirements and finds the project is not in compliance with County criteria for this type of request. Staff recommends denial of a variance of Article III, §10, Lot Size Requirements, of the Land Development Code. If the decision of the CDRC is to recommend approval of the Applicant's request, staff recommends imposition of the following conditions:

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

- 2. The Applicant must obtain a development permit from the Building and Development Services Department for all structures on the property (as per Article II, § 2).
- 3. The placement of additional dwelling units or division of land is prohibited on the property (as Per Article III, Section 10).
- 4. The Applicant shall comply with all Fire Prevention Division requirements at time of Development Permit Application (as per 1997 Fire Code and 1997 Life Safety Code).
- 5. All Junk Vehicles, Litter and Debris must be removed from the property (as Per Ordinance 1993-6 and Ordinance 1993-11).
- 6. The Applicant shall comply with all conditions of approval within 90 days. [Condition added by staff during report.]

Duly swom, husband and wife, Joseph and Henrietta Lujan of 27262 I-25 East Frontage Road, Santa Fe, appeared before the CDRC. Ms. Lujan said her husband suffers from PTSD. She assured the CDRC that it was never their intent to disregard Santa Fe County's requirements but "we just had to do what we have to do." She said she was confused by the 1977 requirements and they were appearing before the CDRC to do whatever is necessary to maintain the structures on the property.

Speaking to Ms. Lujan, Member Katz said he understood the County granted a lot split providing for two residences, one on each lot. He asked whether that was not sufficient for them at this time. Ms. Lujan responded that that was possible; however, they currently have three residences on the property and they were at the CDRC's mercy with what to do.

Member Katz asked whether any of the homes were manufactured and could be relocated and Ms. Lujan said her daughter's home is but they have improved it over the years and would be difficult to move.

If the applicants followed through with the previous lot split approval could a guesthouse be added to the lots, asked Member Gonzales. Mr. Dalton said the approval was a small-lot family transfer, dividing the property into two lots allowing one residence per lot.

Joseph Lujan said the trailer required remodeling because it was falling apart. He said there was a metal shed on the property that fell apart and a garage was constructed in its place. He said it was never their intent to willfully disobey the ordinances of the County and he was never advised that he was in violation until he came forward for the installation of solar panels on one of the houses.

Mr. Lujan said there is one well on the property with 3 acre-feet that satisfies their needs. Each unit has its own septic system and are individually metered for utilities.

Duly swom, Vincent Salazar, Santa Fe expressed his support for Mr. Lujan. He said there was enough land for the residences for the applicant to take care of his family. He urged the CDRC to support the variance.

Mr. Lujan said he read the conditions and while he would try to abide accomplishing them within 90 days it would be challenging. He requested 120 days.

There were no further comments from the public.

Member Gonzales moved to approve CDRC #V 13-5350 with staff imposed conditions and allowing 120 days for compliance. Member Anaya seconded. The motion failed by majority [3-4] voice vote with members Drobnis, Katz, Martin and Booth voting against.]

Member Katz moved to deny CDRC #V 13-5350. Member Booth seconded and the motion to deny the variance passed by majority [4-2] voice vote with Members Gonzales and Roybal voting against. [Chair Drobnis abstained.]

Mr. Dalton advised the applicants that this item will be on the March  $11^{th}$  BCC agenda.

Ms. Lucero advised the Chair that according to committee procedures the chair was permitted to vote. Chair Drobnis said he preferred not to vote unless it was necessary to break a tie.

B. CDRC CASE # V 13-5340 Vincent Salazar Variance: Vincent Salazar, Applicant, requests a variance of Ordinance 2002-9 (La Cienega /La Cieneguilla Traditional Community Planning Area and La Cienega Traditional Zoning District), Section 6.4.3 to allow two dwelling units on 1.00 acre. The property is located at 73 Camino Torcido Loop, Within Section 17 & 20, Township 16 North, Range 8 East (Commission District 3)

Mr. Dalton reviewed the staff report as follows:

"The subject lot was created on January 8, 1968 by subdivision, and there is currently a residence and a garage on the property. The garage was permitted in 1999 and is being converted into a dwelling unit. On August 16, 2013 Building and Development services received a complaint regarding unpermitted development. On August 19, 2013 code enforcement conducted an inspection on the property and issued a Notice of Violation for exceeding density.

"The Applicant states his son is attending Santa Fe Community College pursuing an education in nursing. The Applicant further states he has another son and his family is residing in his house which interferes with his son's education and study time. The Applicant also states he cannot afford to pay for housing for his son so that he can continue his education and concentrate on achieving his goal of graduating.

Mr. WAYNE DUTY Smith fe County Brilding & dulaprent Seevices P.O. BOX 276

11-08.13

RE: Request For a 2nd Virinouse

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when perchasing over property in 1977, it was we intent to their own children by doing a finishy Transfor For each of them, we had two children, when we had two children, when we had, unfortunately we ded not proceed before 1981. Due to un For seen Circum otonices beginned over control. It became a hordship for my droughter the was in the freezess of boing through a divorce, through A Live trainly, impending bronkruptsy, and howhere to turn, like my proceed we recover to belp.

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with State County requerements. This was not done perfeculy, but
through Lack of oversight. We will fer hish you with what we have
in our possession. We endower to reach Common ground with
your requirements.

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

- 9.2 Multiple use projects shall calculate cumulative parking needs for each type of use in the project to be developed.
- 9.3 Minimum size of parking space shall be 300 square feet which includes the parking stalls and aisles.
- 9.4 Commercial, industrial, other non-residential and large scale residential uses shall provide for handicap parking.

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

#### SECTION 10 - LOT SIZE REQUIREMENTS

#### 10.1 Relationship of Lot Sizes to Water Policies

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

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

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

## 10.1.2 <u>Water Policies Governing Lot Sizes Where Developments Will Not Utilize Permitted</u> Water Rights

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

BASIN FRINGE ZONE: Same as Basin Zone.

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

MOUNTAIN ZONE: Same as Homestead Zone.

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

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

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

#### 10.2 Calculation of Minimum Lot Size

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

Acre Feet Use (Year) x acres

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

Where:

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

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

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

**BASIN ZONE:** 

0.1 acre-feet per acre per year

**BASIN FRINGE ZONE:** 

.02 acre-feet per acre per year

**MOUNTAIN ZONE:** 

.0125 acre-feet per acre per year

HOMESTEAD ZONE:

.00625 acre-feet per acre per year

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

BASIN ZONE:

10 acres

BASIN FRINGE ZONE: MOUNTAIN ZONE:

50 acres

80 acres

**HOMESTEAD ZONE:** 

160 acres

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

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

#### 10.2.2 Calculation of Use

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

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

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

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

BASIN ZONE: 5 acres
BASIN FRINGE ZONE: 25 acres
MOUNTAIN ZONE: 40 acres
HOMESTEAD ZONE: 80 acres

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

BASIN ZONE: 2.5 acres
BASIN FRINGE ZONE: 12.5 acres
MOUNTAIN ZONE: 20 acres
HOMESTEAD ZONE: 40 acres

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

- 10.2.4 Special Standards for Calculation of Water Availability for Metropolitan Areas
  Special standards which set forth limitations on water availability for metropolitan areas shown in Code Map 12, 14, and 15 are set forth in this Sub-section.
  - a. Standard Values of Water Availability

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

BASIN ZONE: .25 acre feet per acre per year
BASIN FRINGE ZONE: .05 acre feet per acre per year
MOUNTAIN ZONE: .0125 acre feet per acre per year

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

METRO BASIN ZONE: 4 acres
METRO BASIN FRINGE ZONE: 20 acres
METRO MOUNTAIN ZONE: 80 acres

#### b. Adjustments for Water Conservation

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

BASIN ZONE: 2.5 acres
BASIN FRINGE ZONE: 5 acres
MOUNTAIN ZONE: 20 acres

## 10.3 Exceptions to Minimum Lot Size Requirements

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

## 10.3.1 Metropolitan Area - Community Water Systems

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

BASIN ZONE: 1 acre
BASIN FRINGE ZONE: 2.5 acres
MOUNTAIN ZONE: 5 acres

## 10.3.2 Agricultural Areas

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

#### 10.3.3 Traditional Communities

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

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

#### 10.3.4 Urban Areas

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

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

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

#### 10.4 Density Transfer

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

### **SECTION 11 - IMPORTING OF WATER**

#### 11.1 Location Requirements

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

#### 2.5 Zoning

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

## 2.6 Subdivisions

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

## 2.7 Other Requirements

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

## SECTION 3 - VARIANCES

## 3.1 Proposed Development

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

## 3.2 Variation or Modification

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

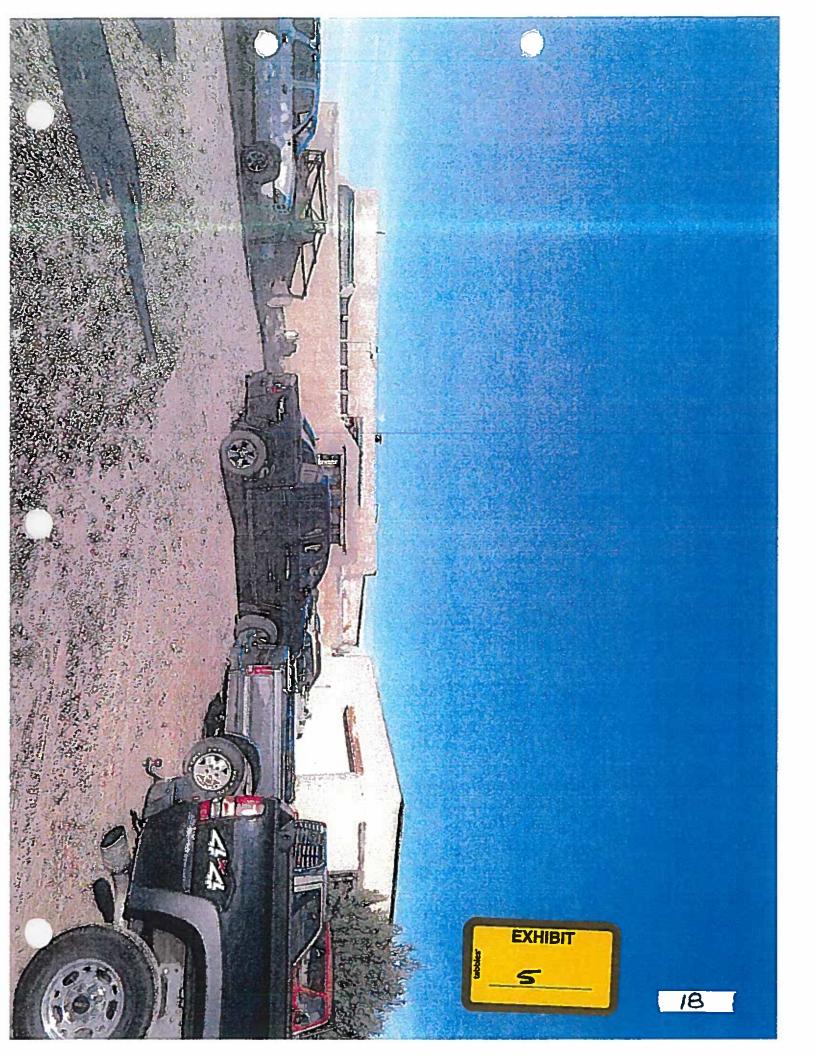
## 3.3 Granting Variances and Modifications

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

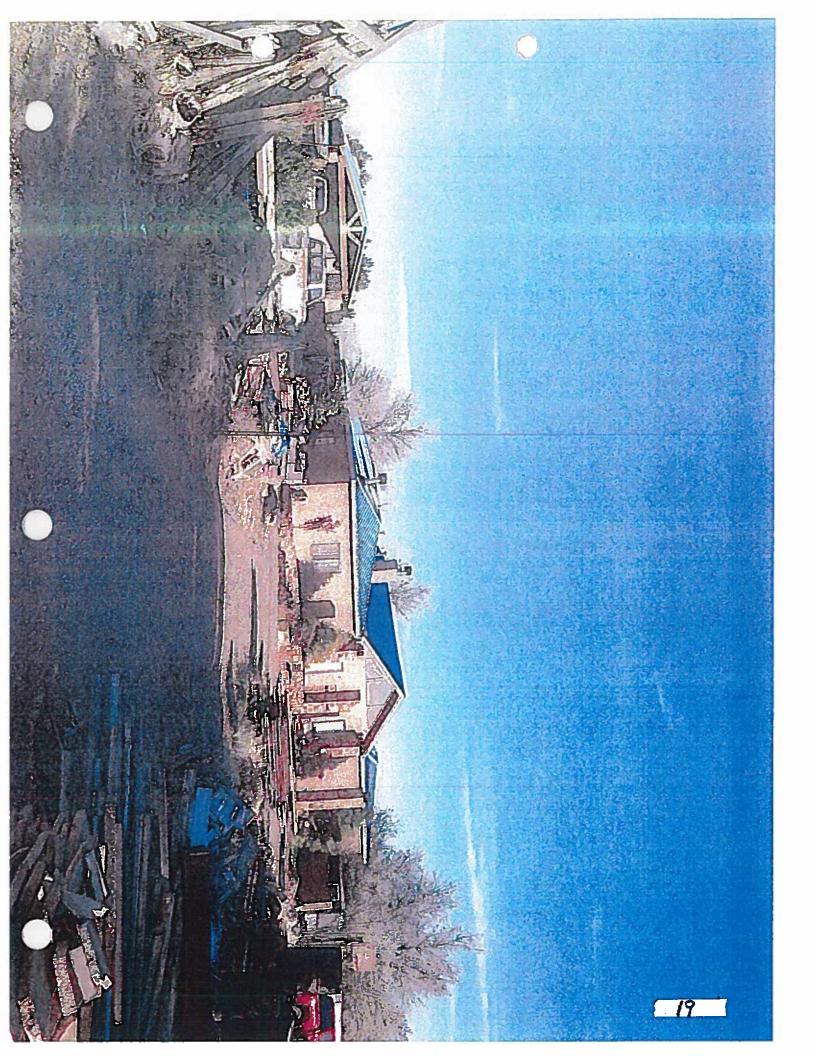
## 3.4 Height Variance in Airport Zones

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

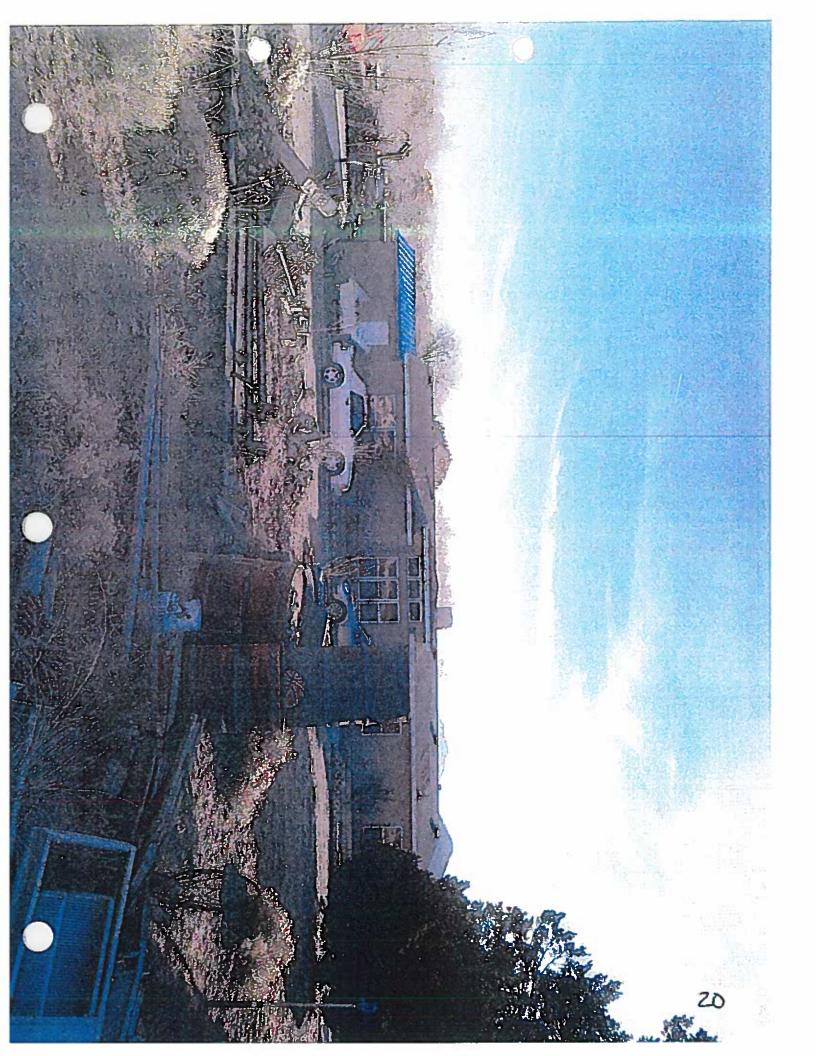




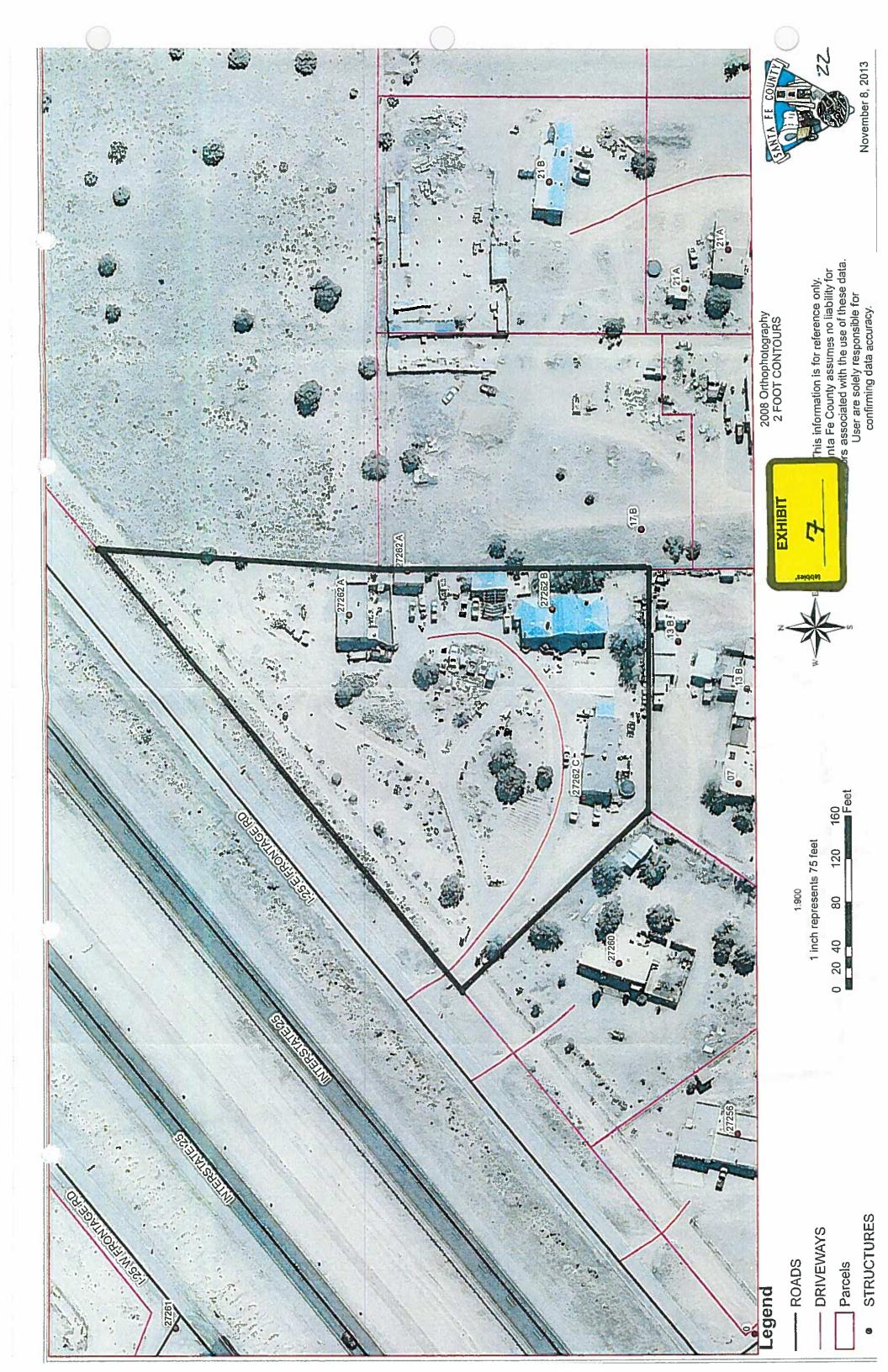
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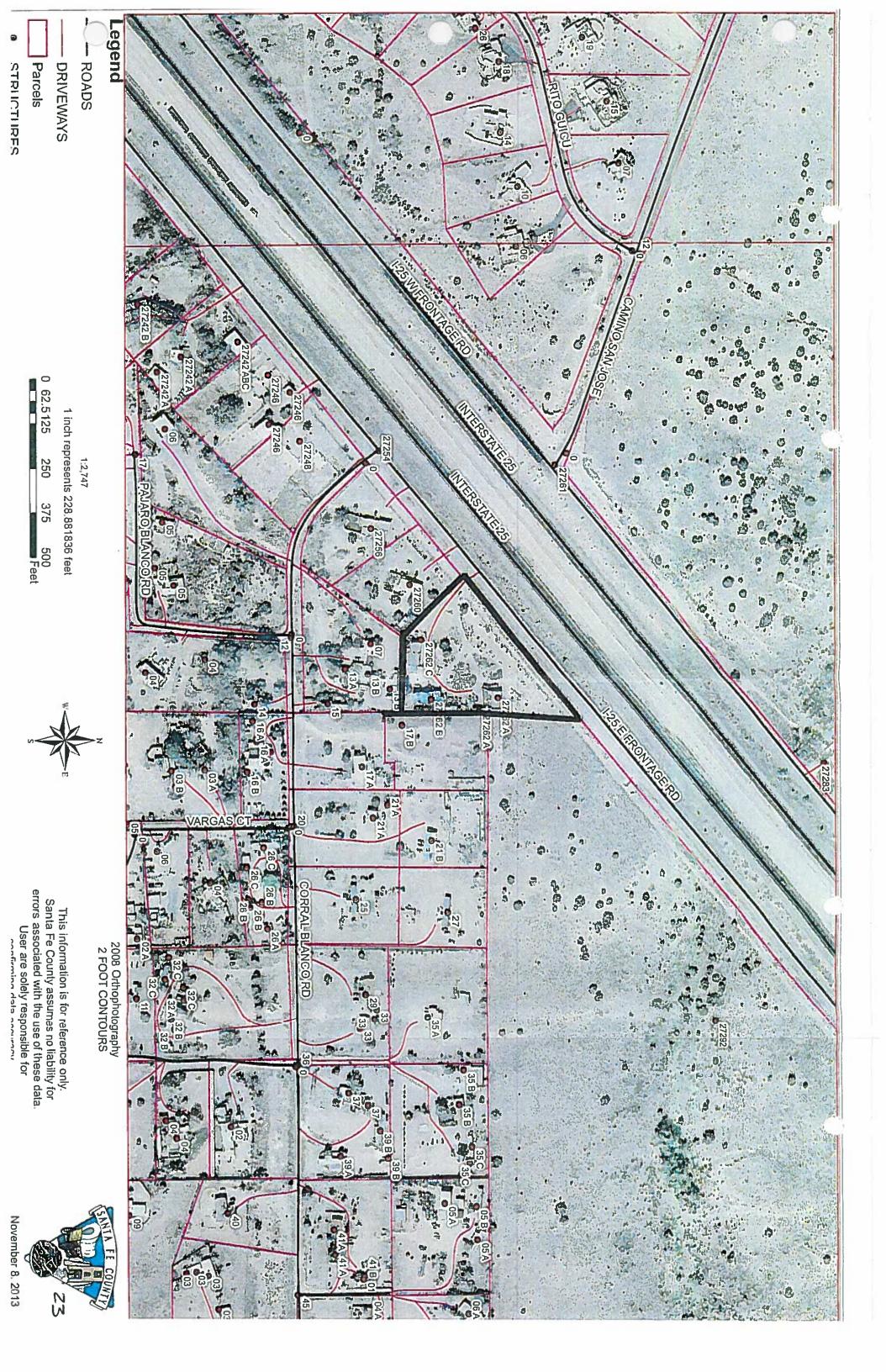


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3.





From:5059923073

Page:1/7

Daniel "Panny" Mayfield Commissioner, District J

Miguel Chavez.

Commissioner, District 2

Robert A. Anaya Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics Commissioner, District 5

> Katherine Miller County Manager

# Santa Fe County Fire Department Fire Prevention Division

F				<u> </u>
		O	fficial Development Review	
	Date	12/17/2013		
	Project Name	Joseph Mike L	ujan	
	Project Location	27262 I-25 Ea	st Frontage Road, Santa Fe, New Mexico 87508	
	Description	Variance of Ar	ticle III section 10 – # of dwelling units Case Manager M	ike Romero
	Applicant Name	Joseph Mike L	ujan County Case # 1	3-5350
	Applicant Address	27262 I-25 Ea	st Frontage Road Fire District L	a Cienega
		Santa Fe, New	Mexico 87508	
1	Applicant Phone	505-474-6033		
	Review Type:	Commercial   Master Plan	☐ Residential ☒ Sprinklers ☐ Hydrant Accep ☐ Pretiminary ☐ Final ☒ Inspection ☒	tance []
	Review Type.	ĺ	· — · —	Cot Spill [
١	Project Status: Ap	Wildland   proved	☐ Variance ⊠ Approved with Conditions ⊠ Denial ☐	
	has reviewed the	above submi	Code Enforcement Bureau of the Santa Fe County Fire l ttal and requires compliance with applicable Santa Fe es and resolutions as indicated:	
	Fire Department	Access		
			e Department Access and Water Supply of the 1997 Uniforn current standards, practice and rulings of the Santa Fe Cou	
	• Fire Access La	anes		
	or other approved	notices shall	Access Roads. (1997 UFC) When required by the Chief, appose provided and maintained for fire apparatus access roads ruction thereof or both.	
	• Roadways/D	riveways		
			ion 902 - Fire Department Access of the 1997 Uniform Fire current standards, practice and rulings of the Santa Fe Cou	

www.santafecountyfire.org

The existing driveway does not meet the minimum County standards for fire apparatus access roads within this type of proposed development. The plan shows a 20' wide driveway. This driveway shall be County approved all-weather driving surface of minimum 6' compacted basecourse or equivalent. Minimum gate and driveway width shall be 14' and an unobstructed vertical clearance of 13'6'. The turn-around located at the house shall meet Santa Fe County Standards for a fire department turn-around of a 14' wide driving surface with inside turning radius of 28'.

## Street Signs/Rural Address

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

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

All access roadway identification signs leading to the approved development area(s) shall be in place prior to the required fire hydrant acceptance testing. Said signs shall remain in place in visible and viable working order for the duration of the project to facilitate emergency response for the construction phase and beyond.

## · Slope/Road Grade

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

There are no slopes the exceed 11%.

## Restricted Access/Gates/Security Systems

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

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

## Fire Protection Systems

• Automatic Fire Protection/Suppression

This office highly recommends the installation of an automatic fire suppression system as per 1997 Uniform Fire Code, Article 10 Section 1003.2.1 and the Building Code as adopted by the State of New Mexico and/or County of Santa Fe. Required automatic fire suppression systems shall be in accordance with NFPA 13 and 13D Standard for automatic fire suppression systems. It is recommended that the homeowner contact their insurance carrier to find their minimum requirements.

#### Fire Alarm/Notification Systems

Automatic Fire Protection Alarm systems are highly recommended per 1997 Uniform Fire and Building Codes as adopted by the State of New Mexico and/or the County of Santa Fe. Required Fire Alarm systems shall be in accordance with NFPA 72, National Fire Alarm Code for given type of

systems shall be in accordance with NFPA 72, National Fire Alarm Code for given type of structure and/or occupancy use. Said requirements will be applied as necessary as more project information becomes available to this office during the following approval process.

## • Fire Extinguishers

Article 10, Section 1002.1 General (1997 UFC) Portable fire extinguishers shall be installed in occupancies and locations as set forth in this code and as required by the chief. Portable fire extinguishers shall be in accordance with UFC Standard 10-1.

Portable fire extinguishers are highly recommended to be installed in occupancies and locations as set forth in the 1997 Uniform Fire Code. Portable fire extinguishers shall be in accordance with UFC Standard 10-1.

## Life Safety

Fire Protection requirements listed for this development have taken into consideration the hazard factors of potential occupancies as presented in the developer's proposed use list. Each and every individual structure of a private occupancy designation will be reviewed and must meet compliance with the Santa Fe County Fire Code (1997 Uniform Fire Code and applicable NFPA standards) and the 1997 NFPA 101, Life Safety Code, which have been adopted by the State of New Mexico and/or the County of Santa Fe.

## General Requirements/Comments

## Inspections/Acceptance Tests

Shall comply with Article 1, Section 103.3.2 - New Construction and Alterations of the 1997 Uniform Fire Code, inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal.

The developer shall call for and submit to a final inspection by this office prior to the approval of the Certificate of Occupancy to ensure compliance to the requirements of the Santa Fe County Fire Code (1997 UFC and applicable NFPA standards) and the 1997 NFPA 101, Life Safety Code.

#### **Permits**

As required

#### **Final Status**

Recommendation for Final Development Plan approval with the above conditions applied.

Renge)Nix, Inspector

Code Enforcement Official

Through: Chief David Sperling

File: DEV/VAR/JosephmikeLujan/121713/LC

Cy

Buster Patty, Fire Marshal (N)
Calch Mente, Land Use
Applicant
District Chief La Cienega

File

## SANTA FE COUNTY MEMORANDUM

1

DATE

APRIL 9, 1991

TO:

BOARD OF COUNTY COMMISSIONERS

PROM:

COUNTY LAND USE STAFF

Subject:

MIKE AND HENRIETTA LUJAN ARE REQUESTING A VARIANCE OF THE COUNTY'S DENSITY REQUIREMENTS IN ORDER TO ALLOW THE PLACEMENT OF TWO (2) DWELLING UNITS (MOBILE HOMES) ON APPROXIMATELY 2.371 ACRES. THE PROPERTY IS LOCATED WITHIN THE CHUCK TAYLOR SUBDIVISION, BLK. 2 LOT 14 AND IS LEGALLY DESCRIBED

AS T15N, R8E, SECTION 4, SANTA FE COUNTY,

NMPM.

The decision of the CDRC at their regularly scheduled meeting of March 28, 1991 was to recommend that the lot be considered 2.5 acres and a family transfer be allowed.

BACKGROUND: The property as described in this zoning request under the subject matter, is accessible from the east side I-25 frontage road. The property has been owned by Mr. & Mrs. Lujan since 1977.

The proponents are requesting a variance of the County's density requirements to allow the placement of a second mobile home on the 2.371 acre lot. The property lies within the basin hydrologic zone where the minimum allowable lot size is 2.5 acres with water restrictions. Lot sizes below 2.5 acres to a minimum of 1.25 acres are allowed through the family transfer provisions.

Because the described lot size is below 2.5 acres by approximately 0.13 of an acre, or 5,662.8 sq. ft., it left the applicant with no other alternative but to seek a variance in order to establish two (2) home sites on their property. They feel it is only a minimal easing of the Code requirements and that similar densities have already been established within the surrounding area. If approved it would afford them the opportunity to provide their daughter a place to live.



BCC "Lujan Request" April 9, 1991 Page two

Water source available is an on site well, and liquid waste disposal will be handled by an EID approved septic system.

There is enough acreage to handle the additional discharge from a second dwelling unit if approved.

Pursuant to the variance criteria of the Code, the Committee members should determine if the requested variance is justifiable under the criteria as outlined.

## SECTION 3 - VARIANCES

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

- 3.2 VARIATION OR MODIFICATION)
  IN NO CASE SHALL ANY VARIATION OR MODIFICATION BE
  MORE THAN A MINIMUM EASING OF THE REQUIREMENTS
- 3.3 (GRANTING VARIANCES AND MODIFICATIONS)
  In granting variances, and modification, the CDRC may require such conditions as will, in its judgement, secure substantially the objectives of the requirements so varied or modified.

RECOMMENDATION: In light of the facts as presented, and that the request could be considered a minimal easing of the Code requirements. Staff is recommending approval of this request with the following conditions:

BCC "Lujan Request" April 9, 1991 Page three

- Mike and Henrietta Lujan can only divide the property for family transfer purposes or through the approval of a positive geohydrology report.
- Both mobile homes will need to be properly skirted and anchored as per state mobile housing guidelines.
- Installation and location of the mobile homes must meet all applicable state and county ordinance standards.
- 4. The variance will be for a second dwelling unit only, changes deviating from this approval will not be allowed unless approved by the CDRC/BCC.
- A county development permit must be obtained from the Land Use Department prior to placement of the second dwelling unit.
- 6. The mobile home will need to meet fire separation requirements as required by the State and County Fire Marshals.
- 7. Any improvements or modifications made to the existing septic system, or the installation of a new system, must meet all applicable CID/EID requirements prior to issuance of a mobile home permit. An approved septic tank permit must be submitted, prior to issuance of a mobile home permit.
- 8. Water restrictive covenants be imposed for each dwelling unit/lots if created, not to exceed .25 acre feet of water usage per year per lot and installation of meters to monitor water usage. Annual reports must be provided if determined necessary by the Land Use Department.
- All inoperable vehicles and debris must be removed from the property within a reasonable period of time not to exceed 3 months from the date of approval.
- 10. The second dwelling unit (mobile home) should be cited on the property so as not to adversely impact the view of adjacent property owners.

11. That a flat be frequent by a Surveyor for the family trouper lat. 29

Board of County Commissioners Regular Easting April 9, 1991 Page 64

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COMMISSIONER ANAMA: I see no problem with this so I move for approval of transfer of ownership, liquor license

CHAIRMAN CHAVEZ: Before we get into a notion, can I just ask -- see if there's anybody that's in favor or against this? It doesn't seem like there's any but just -- at this time, is there anybody in the audience that would like to speak in fevor of this request? Nobody? Is there anybody in the audience that would like to speak against it? Okey,

Andience that would like to speak against it? Okey, Commissioner Anaya.

COMMISSIONER ANAYA: Okey, thank you, Mr. Chairman. I move for the transfer of oil license.

COMMISSIONER GRILL: Oil?

COMMISSIONER RODRIGUEZ: Well at least, Mr. Chairman, at least he didn't call that the uniform commercial code; it was the uniform fire code. That was really something.

CHAIRMAN CHAVEZ: I believe we have a motion. Do we have a merond?

COMMISSIONER PLATTS: I second it.

CHAIRMAN CHAVEZ: It has been noved and seconded that
We go ahead and approve the request of transfer of liquor
license number 4016. Is there any further discussion? If
there's no further discussion all those in favor signify by
saying "aye." All those opposed say "no." Motion carries and
the liquor license number 4016 is approved as presented.

CDRC Case No. V 91-1. Hike and Henrietta Lujan. Requesting a variance of the County's density requirements in order to allow the placement of two dwelling units (abbile homes) on approximately 2.371 acres. The property is located within the Chuck Taylor Subdivision, Blk. 2, Lot 14, and is legally described as TISH, RSE, Section 4, Santa Pe County, Wards. 11. d. HMPH. [Exhibit 3]

MR. CHAVEZ: Hr. Chairman, members of the Commission. I'll deviate a little bit from the report here. The decision of the CDRC at the regularly scheduled meeting of March 20, 1991 was to recommend that the lot, that this lot be considered at 2.5 acre parcel for the purposes of family transfer. The request by Hr. and Mrs. Lujan was -- they originally purchased this piece of property. They were under the impression it was a 2.5 acre parcel. Once it was surveyed, it turned out that the parcel was 2.3 and it was short approximately 5,662 square feet, in order to -- for a combined total or in order to make it a combined total of 2.5 acres.

Board of County Commissioners Regular Masting April 9, 1991 Fage 85

726356

Staff felt now what the Lujans wanted to do the to either have approval to park a second unit on there. They are in an area where two and a half acres is the minimum. Now under a family transfer, if the lot was considered two and a half acres they would be allowed to family transfer half of that creating two one and a quarter acre lots. The CDRC and staff -- well, staff did recommend that we felt it was a minimal variance being that it was only short 5,000 square feet. The CDRC agreed with staff's recommendation and instead of allowing the applicant to park two mobile homes, their decision was to consider this a 2.5 acre or recognize it as a 2.5 acre parcel, therefore, giving the applicant the option of being able to do a family transfer and splitting this lot in half for the purpose of a family transfer. The conditions that staff recommended and that were imposed by the CDRC is:

1. Hike and Henrietta Lujan can only divide the property for family transfer purposes or through the approval of a positive hydrology report. In this case if it's approved the family transfer -- if the CDRC decision is upheld for recommendation.

Both mobile homes will need to be properly skirted and anchored as per state mobile housing guidelines.
 Installation and location of the mobile home must

meet all applicable state and county ordinance standards.

4. The variance will be for second dwelling unit only.
Changes deviating from this approval will not be allowed unless approved by the CDRC or BCC.

5. County development permit must be obtained from the

Lanu unit. Land Use Department prior to placement of the second dwelling

The mobile home will need to meet all fire separation

cequirements as required by the state or county fire marshal.

7. Any improvements or modifications made to the existing septic system or the installation of a new system must meet all applicable CID and BID requirements prior to issuance of a mobile home permit. An approved septic tank permit must be submitted prior to issuance of a mobile home permit.

8. Hater restrictive covenants will be imposed for each dwelling unit lot if created, not to exceed 1/4 acre foot of water per year per lot and installation of a mater to modifier mater usage. Annual reports must be provided if determined necessary by the Land Use Department.

necessary by the Land Use Department.

9. All inoperable vehicles and debris must be removed from the property within a reasonable period of time not to exceed three months from the date of approval. There are some inoperable vehicles on the property. The applicant has agreed to remove them.

The Later

Board of County Commissioners Regular Heeting April 9, 1991 Page 86

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10. The second dwelling unit should be sited on the property so as not to adversely impact the view of adjacent property owners.

The 11th condition that we would like to place should this request be recognized as a 2.5 acre lot would be that a survey plat be prepared and approved by the Land Use office prior to recording for the purposes of family transfer. Thank you. CHAIRMAN CHAVEZ: Thank you, Gil. Is there any

questions from staff?

COMMISSIONER RODRIGUEZ: I have no questions.
CHAIRMAN CHAVEZ: No questions. In either Hr. Mike
Henrietta Lujan in the audience? Could we get you to come up to the podium

[Having been duly sworn, Mrs. Henrietta Lujan testified as follows)

MRS. HENRIETTA LUJAN: My name is Henrietta Lujan.
CHAIRMAN CHAVEZ: Are you familiar with the 11
conditions that were imposed by ctaff?
MRS. LUJAN: We received a letter. And I think there
were only 10 when we received it. Let me make sure. Our
intent from the very beginning was just to provide a place for
our daughter to live. So we will meet any conditions that the
county wants us to meet. I was — when I attended the review
committee the chairman was the one that pointed out that we ask
the county that we can divide the property in case my daughter
wanted to sell her half or whatever, and we didn't know that at
they go ahead with that and the county agreed with that. So
we'll do whatever they tell us to do.
CHAIRMAN CHAVEZ: Good. Is there any questions of
Hrs. Lujen?

Hrs. Lujan?

V

Hrs. Lujan?

COMMISSIONER GRILL: Mr. Chairman, I'm curious.

Henrietta, you haven't gotten any opposition from your neighbors for placing two mobile homes?

MRS. LUJAN: No, ma'am. Everybody has them out there. In fact, there is an adjacent property owner that has less acreage than us that has two homes on, you know, less land than what we're asking for.

COMMISSIONER GRILL: Mobile homes?

HRS. LUJAN: Yes. I just need to clarify something on number 11, Gil. Does that mean that before you get a mobile home permit to do whatever we need to do. We need to do that --
HR. CHAVEZ: [Speaker not at microphone] was to either recognize the lot as two and a half acre parcel for the purpose of her being able to do a family transfer. That would allow her to be able to split into one and a quarter, two one and a quarter acre lots for a family transfer, allowing her one unit on each lot. Now if that isn't done, then what you are

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granting her is a variance to be allowed to exceed the density requirements because she is allowed one unit on two and a half acres. Now the decision of the CDRC was to recognize it as a two and a half acre parcel for the purpose of a family transfer in which case the variance is no longer valid and the CDRC felt they wanted to get away from the variance in not allowing two mobile homes on two and a half acres, but instead recognize it as a two and a half acre lot and in that case she could do the family transfer and both mobile homes would be allowed without family transfer and both mobile homes would be allowed without

a variance. CHAIRHAN CHAVEZ: CHAIRHAN CHAVEZ: Gil, in that same light then, how did you come up with the 2.371 acre, if that's the case? Was that --

HR. CHAVEZ: Well, what we would do -- the lots -what you're doing, you would recognize it as a two and a half
acre lot. In actuality it's 2.3 so half of that would be what
would constitute the two lots. I mean there's no way she can,
unless she bought tha 5,000 acres to make it two and a half,
she just doesn't have it. So what they're doing is recognizing
this as a two and a half acre parcel or recognizing it as being
the minimum lot size in order to allow her to do the family
transfer. But in actuality she's got 2.3 acres, just a little
above 2.3 acres. So when she splits it, you're going to be
looking at 1.1 acres instead of the one and a quarter.

CHAIRMAN CHAVEZ: Okay, does that answer your
question, Mrs. Lujan? Any other questions?

CHAIRMAN CHAVEZ: If there is no other questions,
thank you. At this time what is the pleasure of the
Commission? Oh, I'm sorry. Is there anybody in the audience
that would like to speak in favor of this request? Is there
anybody in the audience that would like to speak against it?
There is none, so at this time what is the pleasure of the
Commission?

Commission?

COMMISSIONER ANAYA: Nr. Chairman.

COMMISSIONER ANALY H. Challed.

CHAIRMAN CHAVEZ: Commissioner Anaya.

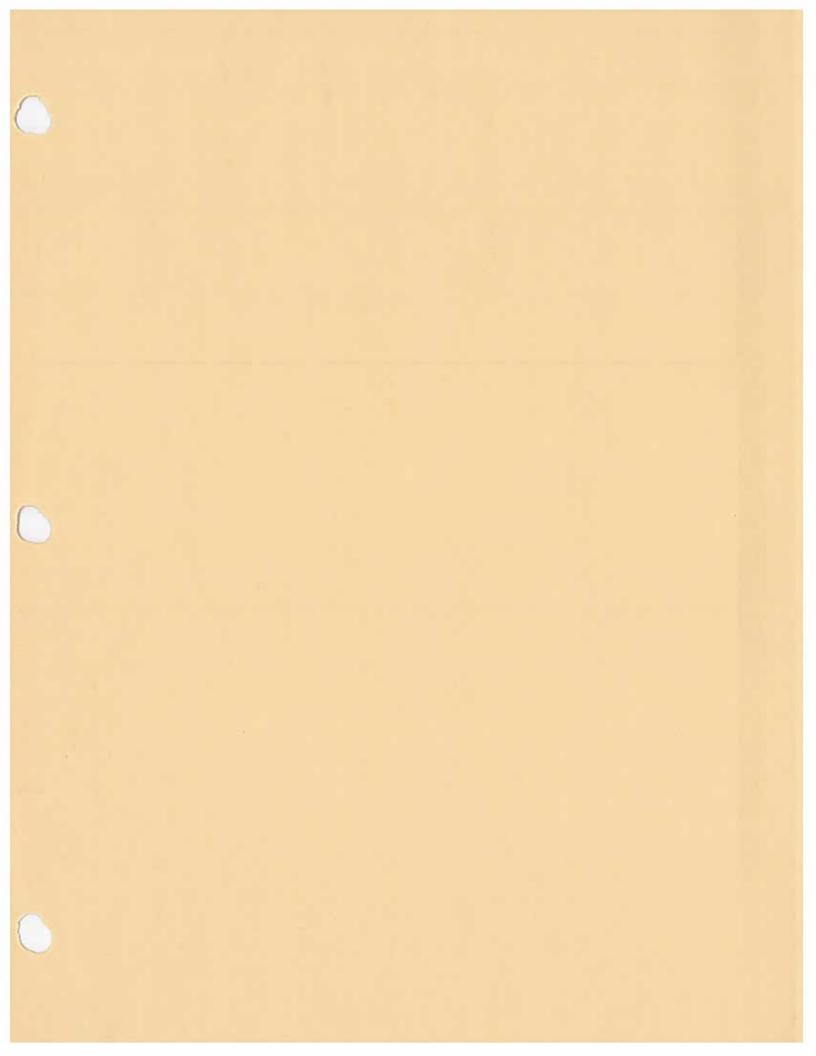
COMMISSIONER ANAYA: I move for approval of this
proposal subject to the conditions imposed by staff and the one
amended condition, number 11.

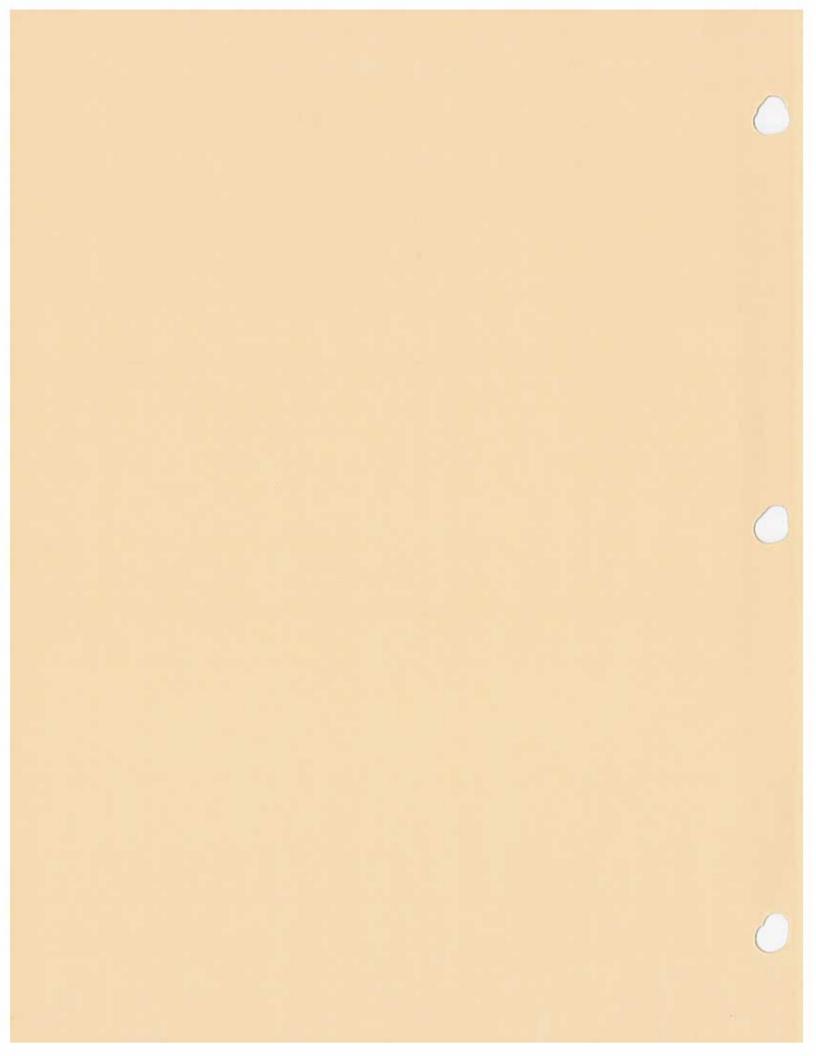
CHAIRMAN CHAVEZ: We have a motion. Do we have a

second?

COMMISSIONER GRILL: Second.

CHAIRMAN CHAVEZ: It has been boved and seconded that we go shead and approve this request with the 11 conditions that were imposed by staff. Is there any further discussion? If there's no further discussion all those in favor signify by saying "aye." All those opposed say "no." Hotion carries and your request is approved.





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

Miguel M. Chavez Commissioner, District 2

Robert A. Anaya Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller County Manager

DATE: Feb

February 14, 2014

TO:

**Board of County Commissioners** 

FROM:

John Lovato, Development Review Specialist Senior

VIA:

Katherine Miller, County Manager

Penny Ellis-Green, Land Use Administrator

Vicky Lucero, Building and Development Services Manager Wayne Dalton, Building and Development Services Supervisor (L.D.)

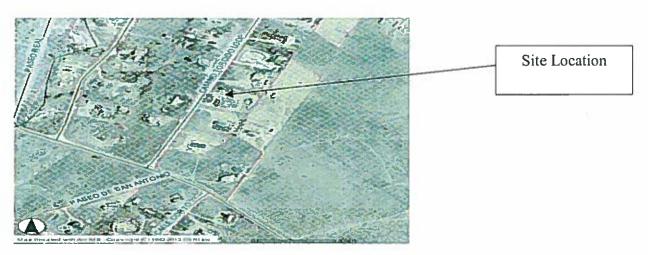
## FILE REF.: CDRC CASE # V 13-5340 Vincent Salazar Variance

## **ISSUE:**

Vincent Salazar, Applicant, requests a variance of Ordinance No. 2002-9 (La Cienega /La Cieneguilla Traditional Community Planning Area and La Cienega Traditional Zoning District), Section 6.4.3 to allow two dwelling units on 1.00 acre.

The property is located at 73 Camino Torcido Loop, Within Sections 17 & 20, Township 16 North, Range 8 East, (Commission District 3).

#### Vicinity Map:



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#### **SUMMARY:**

The subject lot was created on January 8, 1968, by way of subdivision, and there is currently a residence and a garage on the property. The residence and garage were permitted in 1999, and the garage is now being converted into a dwelling unit. On August 16, 2013, Building and Development Services received a complaint regarding unpermitted development. On August 19, 2013 Code Enforcement conducted an inspection on the property and issued a Notice of Violation for exceeding density requirements and construction without a permit.

The Applicant states, his son is attending Santa Fe Community College pursuing an education in nursing. The Applicant further states, he has another son and his family residing in his house which interrupts with his son's education and study time. The Applicant claims, he cannot afford to pay for housing for his son so that he can continue his education and concentrate on achieving his goal of graduating.

Article II, § 3 (Variances) of the County Code states: "Where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance." This Section goes on to state "In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified." The variance criteria does not consider financial or medical reasons as extraordinary hardships

This Application was submitted on December 6, 2013.

On January 16, 2014, the County Development Review Committee met and acted on this case. The decision of The CDRC was to recommend denial of the requested variance with a 4-2 Vote. (Exhibit 1)

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

APPROVAL SOUGHT:

Approval of a variance of Ordinance No. 2002-9 Section 6.4.3 of the La Cienega/La Cieneguilla Traditional Community Planning Area and La Cienega Traditional Zoning District to allow two dwelling units on 1.00 acre. The proposed additional dwelling unit exceeds the number of dwelling units allowed on the subject property.

GROWTH MANAGEMENT AREA: El Centro, SDA-2

HYDROLOGIC ZONE: Basin Fringe Zone, minimum lot size per Code is 50 acres

per dwelling unit. Lot size can be reduced to 12.5 acres per

dwelling unit with proof of a 100 year water supply through a geohydrologic reconnaissance report, and application of water use covenants. If adequate 100-year water supply and no impairment to neighboring wells is proven by an on-site geohydrologic well test, land may be further divided to a maximum of 2.5 acres per dwelling unit.

FIRE PROTECTION:

La Cienega Fire District.

WATER SUPPLY:

Shared Domestic Well.

**LIQUID WASTE:** 

Conventional Septic System. (Pending approval from New Mexico Environment Department). It is not known whether a permit can be obtained from NMED due to lot size

requirements.

**VARIANCES:** 

Yes

STAFF RECOMMENDATION:

Denial of a Variance of Ordinance No. 2002-9, Section 6.4.3 of the La Cienega /La Cieneguilla Traditional Community Planning Area and La Cienega Traditional Zoning District, to allow two dwelling units on 1.00 acre.

If the decision of the BCC is to approve the Applicant's request for a variance, staff recommends imposition of the following conditions:

- 1. Water use shall be restricted to 0.25 acre feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 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).
- 2. The Applicant must obtain a Development Permit from the Building and Development Services Department for the additional dwelling unit. (As per Article II, § 2).
- 3. The Applicant shall provide an updated liquid waste permit from the New Mexico Environment Department with the Development Permit Application (As per Article III, § 2.4.1a.1 (a) (iv).
- 4. The placement of additional dwelling units or Division of land is prohibited on the property. (As per Ordinance 2002-9, § 6.4.3).
- 5. The Applicant shall comply with all Fire Prevention Division requirements at time of Development Pennit

- Application (As per 1997 Fire Code and NFPA Life Safety Code).
- 6. The Applicant shall comply with all conditions of approval within 90 days.

#### **EXHIBITS:**

- 1. January 16, 2014 CDRC Minutes
- 2. Letter of Request
- 3. Ordinance No. 2002-9 § 6.4.3
- 4. Article II, § 3 (Variances)
- 5. Site Photographs
- 6. Site Plan
- 7. Aerial of Site and Surrounding Area

Mr. Lujan said he read the conditions and while he would try to abide accomplishing them within 90 days it would be challenging. He requested 120 days.

There were no further comments from the public.

Member Gonzales moved to approve CDRC #V 13-5350 with staff imposed conditions and allowing 120 days for compliance. Member Anaya seconded. The motion failed by majority [3-4] voice vote with members Drobnis, Katz, Martin and Booth voting against.]

Member Katz moved to deny CDRC #V 13-5350. Member Booth seconded and the motion to deny the variance passed by majority [4-2] voice vote with Members Gonzales and Roybal voting against. [Chair Drobnis abstained.]

Mr. Dalton advised the applicants that this item will be on the March  $11^{th}$  BCC agenda.

Ms. Lucero advised the Chair that according to committee procedures the chair was permitted to vote. Chair Drobnis said he preferred not to vote unless it was necessary to break a tie.

B. CDRC CASE # V 13-5340 Vincent Salazar Variance: Vincent Salazar, Applicant, requests a variance of Ordinance 2002-9 (La Cienega /La Cieneguilla Traditional Community Planning Area and La Cienega Traditional Zoning District), Section 6.4.3 to allow two dwelling units on 1.00 acre. The property is located at 73 Camino Torcido Loop, Within Section 17 & 20, Township 16 North, Range 8 East (Commission District 3)

Mr. Dalton reviewed the staff report as follows:

"The subject lot was created on January 8, 1968 by subdivision, and there is currently a residence and a garage on the property. The garage was permitted in 1999 and is being converted into a dwelling unit. On August 16, 2013 Building and Development services received a complaint regarding unpermitted development. On August 19, 2013 code enforcement conducted an inspection on the property and issued a Notice of Violation for exceeding density.

"The Applicant states his son is attending Santa Fe Community College pursuing an education in nursing. The Applicant further states he has another son and his family is residing in his house which interferes with his son's education and study time. The Applicant also states he cannot afford to pay for housing for his son so that he can continue his education and concentrate on achieving his goal of graduating.



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

Mr. Dalton stated that staff recommends denial of a variance of Ordinance 2002-9, Section 6.4.3 to allow two dwelling units on one acre. If the decision of the CDRC is to recommend approval of the Applicant's request, staff recommends imposition of the following conditions:

- 1. Water use shall be restricted to 0.25 acre-feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 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).
- 2. The Applicant must obtain a development permit from the Building and Development Services Department for the additional dwelling unit. (As per Article 11, § 2).
- 3. The Applicant shall provide an updated liquid waste permit from the New Mexico Environment Department with the Development Permit Application (As per Article III, § 2.4.1a.1 (a) (iv).
- 4. The placement of additional dwelling units or Division of land is prohibited on the property. (As per Ordinance 2002-9, § 6.4.3).
- 5. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application (As per 1997 Fire Code and NFPA Life Safety Code).
- 6. The Applicant shall comply with all conditions of approval within 90 days.

Member Katz asked whether the garage could be turned into a non-dwelling studio. Mr. Dalton said that was possible and it would be limited to having either a kitchen or bathroom but not both.

Previously swom, Vincent Salazar corrected the staff report noting the house was permitted and built in 1999 and the garage constructed in 2006. He provided history about his son's education and explained that he currently shares his home with three young grandchildren and their parents and it not a conducive environment for studying. The garage was converted to an apartment to help him continue his education. He mentioned another son who is presently homeless.

Member Katz pointed out to the applicant that the garage could serve as a study/studio for his son. Mr. Salazar said he understood and in the event the variance is not granted he would consider that option.

Previously sworn, Joseph Lujan said he fully supports Mr. Salazar's request.

Duly sworn, the applicant's brother, Michael Salazar, 1067 Willow Way, Santa Fe, said his brother has suffered financial hardships and merely wants to do what's right

for his family. Mr. Salazar said he serves as a deacon at the Catholic church and has been working through those channels to help find shelter for his brother's homeless child.

Under oath, Ignacio Salazar, father of Vincent and Michael, said in 1991 he applied for a similar variance when Vincent needed a home. The BCC approved the variance and he contended that action set a precedent. He noted there have been many variances of this nature in the area where he lives.

Duly sworn Tomas Jimenez, Vincent Salazar's son, stated that his father, although not a blood relation, has been there for him since the beginning. He provides a loving home and has always provided for the family. His father has helped him financially over the years in pursuing his dream of being a nurse. Trying to study in a home with three young children has been very difficult.

Michael Salazar returned to the podium and said his brother has raised these children as his own.

There was no further public input.

Member Katz commended the entire Salazar family. His concern was setting the precedent and the importance of upholding County rules. He appreciated the student required an appropriate study environment and that could be accomplished by converting the garage into a studio.

Member Katz moved to recommend denial of CDRC Case V 13-5340. His motion was seconded by Member Martin and passed by majority (4-2) voice vote with Members Roybal and Gonzales voting against and Chair Drobnis abstaining.

Mr. Dalton said converting the garage into a studio is handled administratively. This application will go before the BCC on March 11<sup>th</sup>.

#### B. Petitions from the Floor

None were presented.

#### C. Communications from the Committee

Member Roybal advised the Committee that he recently bid a proposal for the Nambe Community Center and he would continue bidding on County projects. Ms. Brown said with disclosure and abstention on voting matters where there is a financial interest she saw no problem.

I am requesting a variance, So my son can continue his education. My son is enrolled in the SFCC where he is working on a degree for nursing. He is hoping to get into the nursing program within the next two semesters. At this point he may not have time to hold a full time job, due to the time that he has to attend school, do homework, and start working on clinicals at the area hospital, or a hospital in another city. I currently have one of my other sons, his wife, and their three children living in my household, so for him to attempt to concentrate and do the amount of homework that he needs to do is almost impossible.

At this time I cannot afford to help my son pay for his education, and pay for a residence. I do have the structure in place, to privide my son the opportunity to have his own space to be able to study and be comfortable while doing this. My son won't have to worry or stress about paying rent or any type of utilities. He will be able to concentrate fully on his schooling to start off his career.

Thank you for your cosideration,

Vincent Salazar

73 Camino torcido Loop

Santa Fe N.M. 87507



plan approval where such approval is required, at the time of adoption of this Ordinance, shall comply with this ordinance. This Ordinance and standards may be amended from time to time.

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Zoning Density: 6.4

### Traditional Community Zoning District:

Maximum density is three quarters of an acre per one dwelling unit (.75 acre). Density adjustments must follow requirements as outlined in Article III, Section 10 and Article VII, Section 6 of the Code, as amended, along with all requirements outlined in this ordinance. The maximum density shall not be increased even when community water and sewer systems are provided except where density transfer is used to protect sensitive lands or preserve community assets as described in Section 6.6 and gross density is maintained. Note: the Traditional Community Zoning District is located within the Traditional Historic Community boundary but the .75 acre zoning density applies only in the Traditional Community Zoning District. See attached map b.), La Cienega Traditional Community Zoning District.

#### 6.4.2 Basin Zonc:

Maximum density in the Basin Zone shall be ten acres per one dwelling unit (10 acres). With proof of 100 year water supply through a geohydrologic reconnaissance report, and adoption of water use covenants (See Attachment 1), the maximum density may be increased to one dwelling unit per 2.5 acres. Density adjustments above one dwelling unit per 10 acres must follow requirements as outlined in Article III, Section 10 and Article VII. Section 6 of the Code, as amended, along with all requirements outlined in this ordinance. The maximum density shall not be increased even when community water and sewer systems are provided except where density transfer is used to protect sensitive lands or preserve community assets as described in Section 6.6 and gross density is maintained.

#### Basin Fringe Zone: 6.4.3

Maximum density in the Basin Fringe Zone shall be fifty acres per one dwelling unit (50 acres). With proof of 100 year water supply through a geohydrologic reconnaissance report, and application of water use covenants (See Attachment 1), the maximum density may be increased to one dwelling unit per 12.5 acres. If an adequate 100 year supply of water, and no impairment to neighboring wells, is proven by an on-site geohydrological well test, land may be further divided to a maximum of 2.5 acres per dwelling unit. Density adjustments above one dwelling unit per 50 acres must follow requirements as outlined in Article III, Section 10 and Article VII, Section 6 of the Code, as amended, along with all requirements outlined in this ordinance. The maximum density shall not be increased even when community water and sewer systems are provided except where density transfer is used to protect sensitive lands or preserve community assets as described in Section 6.6 and gross density is maintained.

#### Homestead Zone: 6.4.4

Maximum density in the Homestead Zone shall be one hundred and sixty acres per one dwelling unit (160 acres). With proof of 100 year water supply through a geohydrologic reconnaissance report, and application of water use covenants (See Attachment 1), the maximum density may be increased to one dwelling unit per 40 acres. If an adequate 100 year supply of water, and no impairment to neighboring wells, is proven by an on-site led to a minimum of 2.5 acres per geohydrological well test,

2.5 Zoning

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

2.6 Subdivisions

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

2.7 Other Requirements

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

# SECTION 3 - VARIANCES

▶ 3.1 Proposed Development

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

3.2 Variation or Modification

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

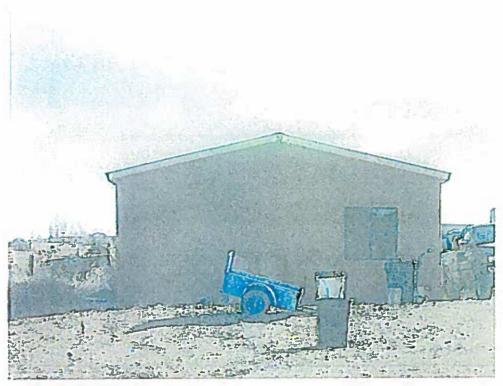
3.3 Granting Variances and Modifications

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

3.4 Height Variance in Airport Zones

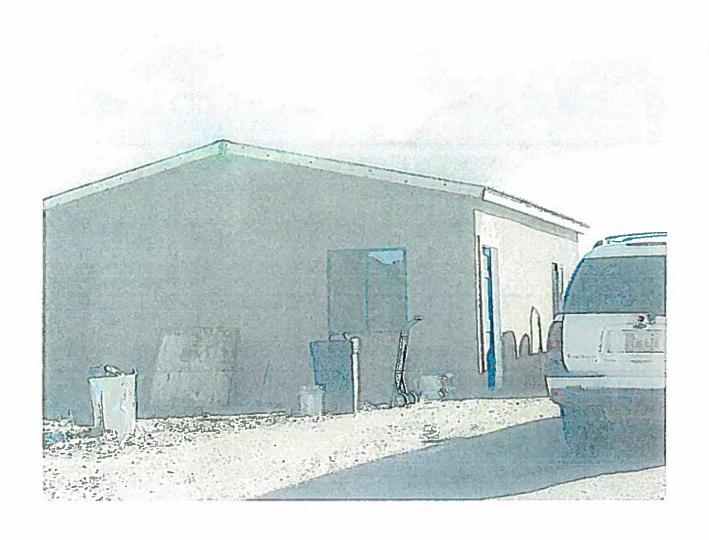
All height variance requests for land located with approach, Transitional, Horizontal and Conical surfaces as described within Map #31 A, incorporated herein by reference, shall be reviewed for compliance with Federal Aviation Administration Regulations. The application for variance shall be accompanied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

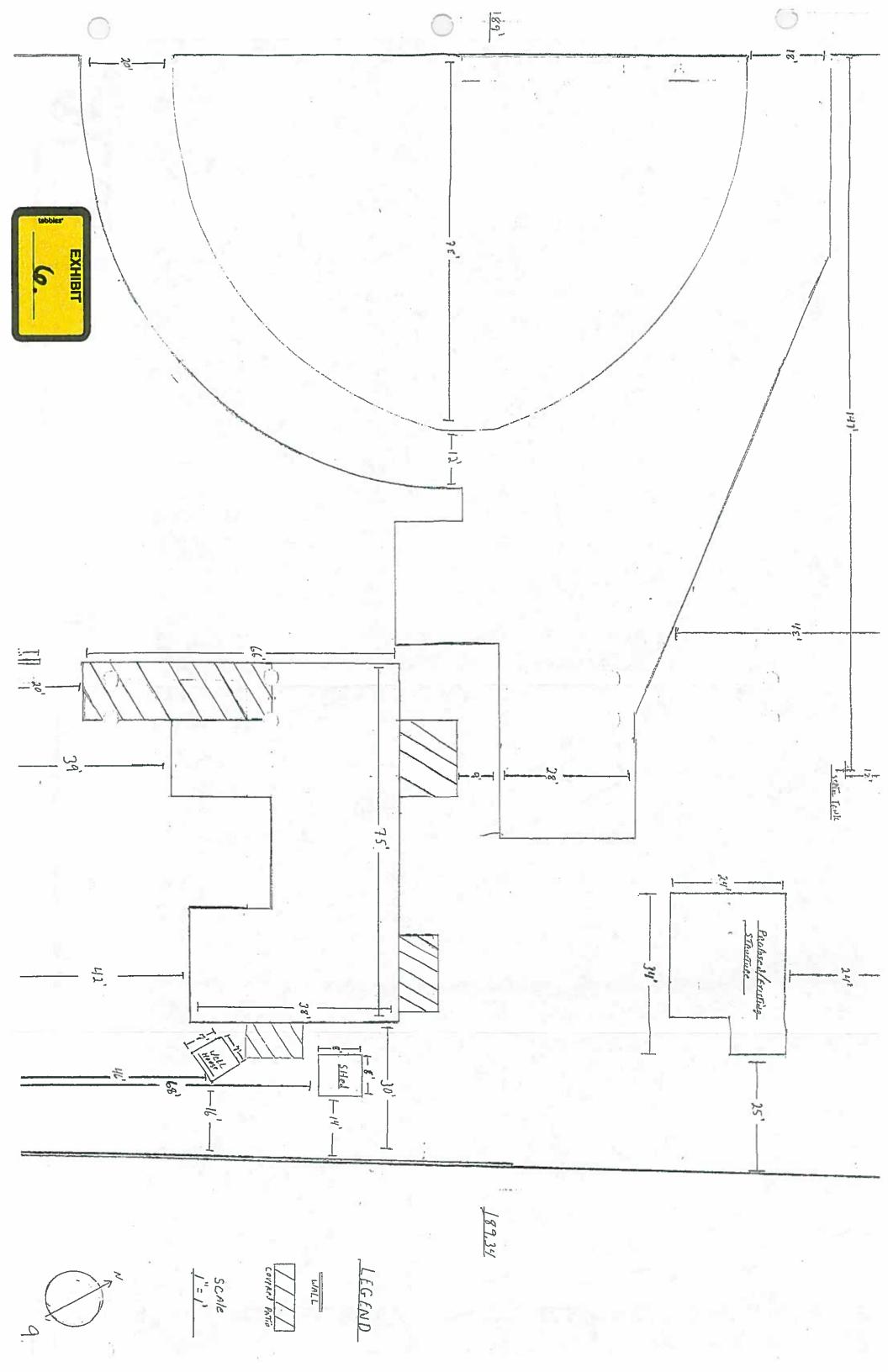


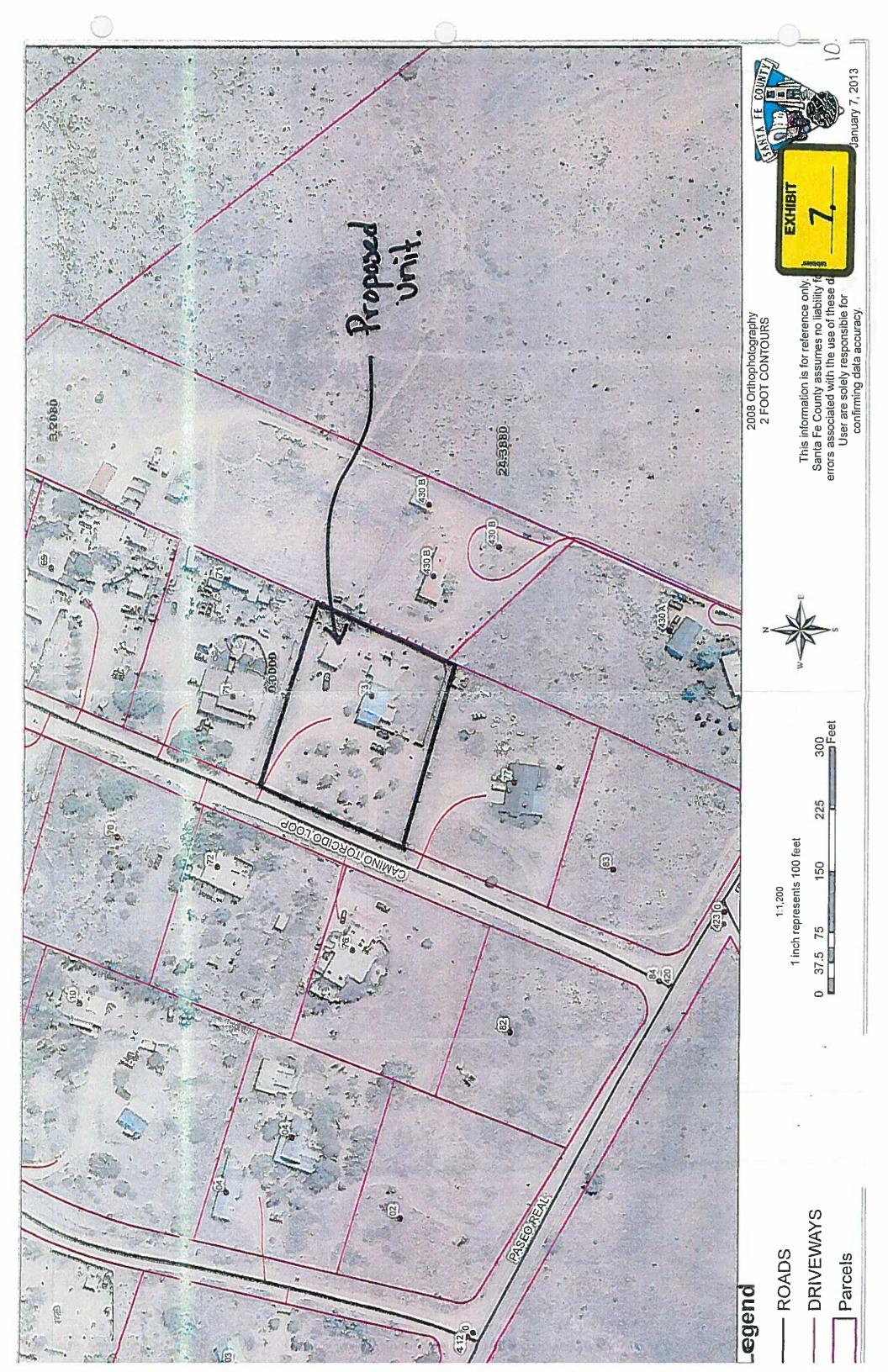


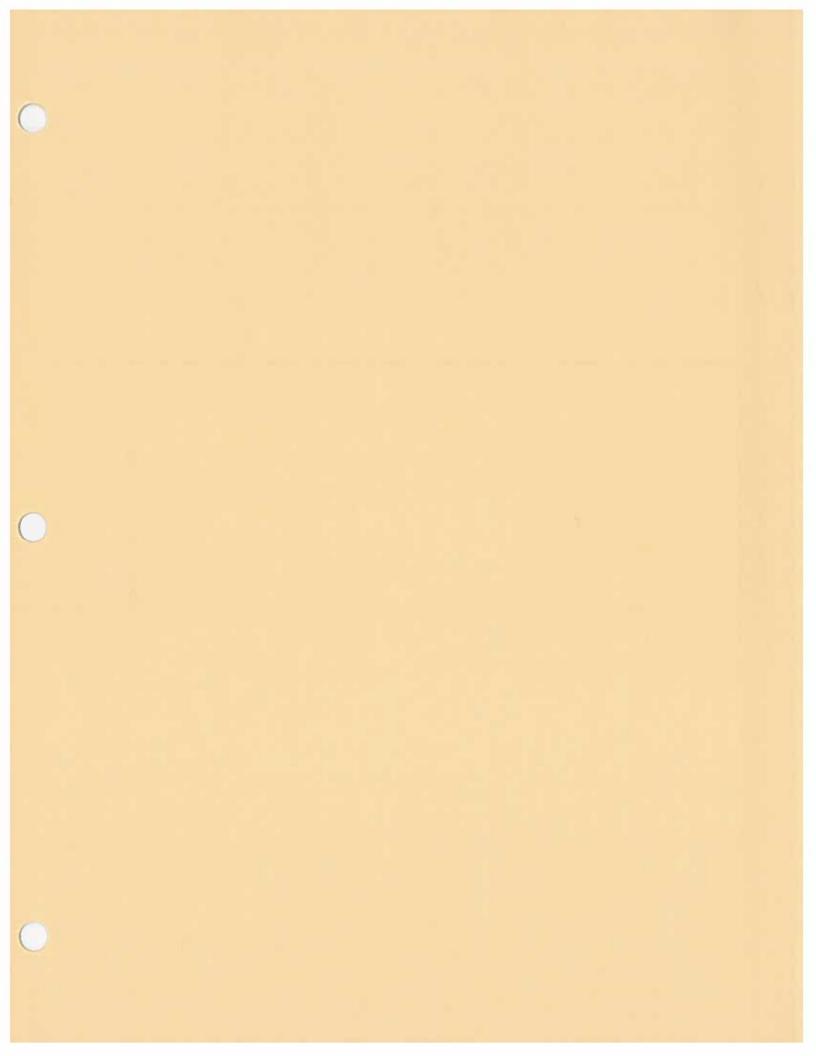


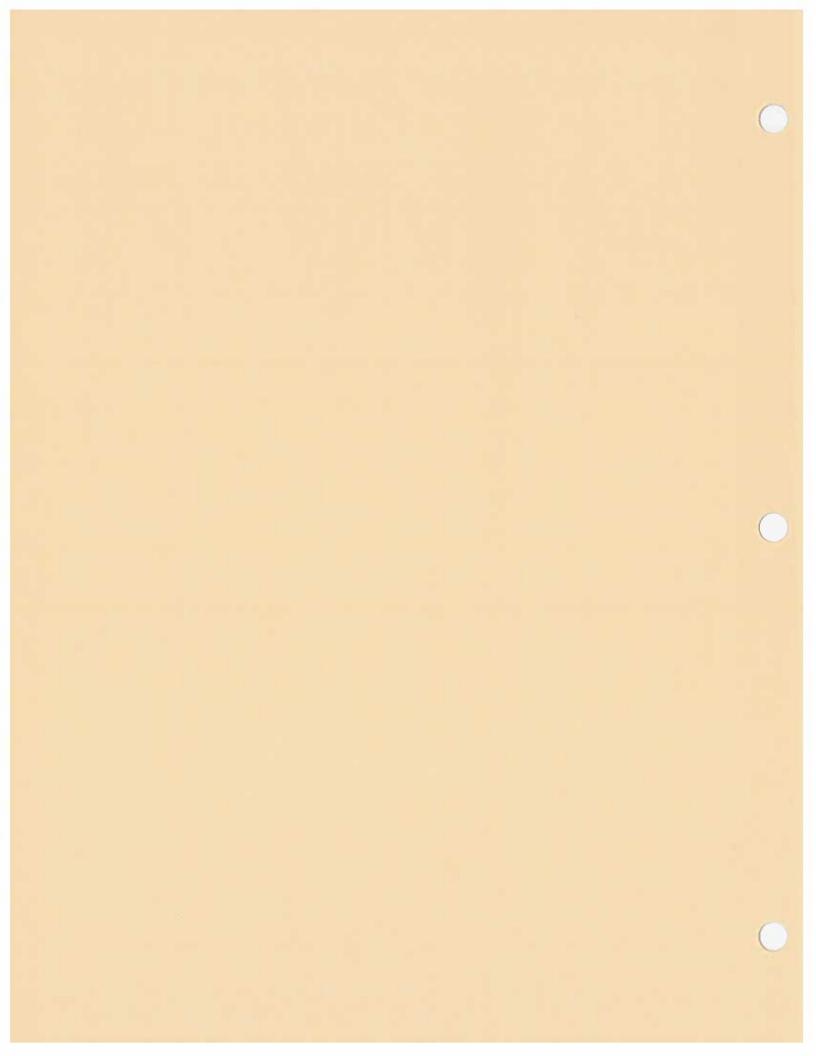












#### Daniel "Danny" Mayfield Commissioner, District 1

Miguel M. Chavez Commissioner, District 2

Robert A. Anaya Commissioner, District 3



Kathy Holian Commissioner, District 4

Liz Stefanics Commissioner, District 5

> Katherine Miller County Manager

DATE:

February 24, 2014

TO:

**Board of County Commissioners** 

FROM:

John Lovato, Development Review Specialist Sr.

VIA:

Katherine Miller, County manager

Penny Ellis-Green, Land Use Administrator &

Vicki Lucero, Building and Development Services Manager V 7-Wayne Dalton, Building and Development Services Supervisor w

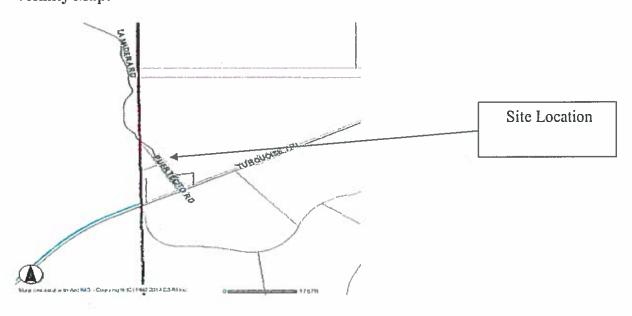
FILE REF: CDRC CASE # V 13-5400 Tod Amon Variance

#### **ISSUE:**

Tod Amon, Applicant, requests a variance of Article V, Section 8.1.3 (Legal Access) of the Land Development Code to allow a road that does not have all weather access and does not meet the required 20' width to access a driveway to a property consisting of 18.46 acres.

The property is located at 29 Puertecito Road, within the vicinity of Golden, within Section 19, Township 12 North, Range 7 East, (Commission District 3).).

## Vicinity Map:



102 Grant Avenue · P.O. Box 276 · Santa Fe, New Mexico 87504-0276 · 505-986-6200 · FAX: 505-995-2740 www.santafecounty.org

#### **REQUEST SUMMARY:**

The Applicant requests a variance to allow a driveway to access a buildable site on 18.46 acres. The access is located off of Puertecito Road which is a private road that does not meet County Road standards of having a 20' wide driving surface and it crosses a drainage way through a low water dirt surface. Puertecito Road ranges from 15'-20' feet in width throughout the length of the road, is approximately 1 mile in length, and enters Sandoval County.

Article V, § 8.1.3 states "Legal access shall be provided to each lot and each lot must directly access a road constructed to meet the requirements of Section 8.2 of the Code. Parcels to be accessed via a driveway easement shall have a twenty (20) foot all weather driving surface, grade of not more than 11%, and drainage control as necessary to insure adequate access for emergency vehicles".

Article V, § 8.2.1c states "local lanes shall be constructed with two 10' driving lanes with a minimum right of way of 50' and constructed with 6" of base course".

The Applicant states he has contacted several Professional Engineers and has received quotes for costs of construction of a crossing and states he cannot afford to construct a bridge or place culverts for the crossing. The lowest quote for this project was \$116,000 and the highest was \$225,000.

Article II, § 3 (Variances) of the County Code states: "Where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance." This Section goes on to state "In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified". (The Variance Criteria does not consider financial or medical reasons as extraordinary hardships).

This Application was submitted on December 27, 2014.

On February 20, 2014 the County Development Review Committee met and Acted on this Case. The Decision of the CDRC was to recommend approval of the variance request. (Vote 6-0)

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

APPROVAL SOUGHT:

Approval to construct a driveway on 18 acres, which due to offsite conditions would require a variance from Article V, Section 8.1.3 (Legal Access)

GROWTH MANAGEMENT AREA: Galisteo, SDA-3

**VARIANCES:** 

Yes

**HYDROLOGIC ZONE:** 

Homestead Hydrologic Zone, minimum lot size per Code is 160 acres per dwelling unit. Lots size can be reduced to 40 acres with signed and recorded water restrictions. The subject lot was created in 1979 and is a pre-code lot.

**ACCESS:** 

Via 15'-20' roadway (Puertecito Road) and dirt low water crossing, which does not comply with minimum Code criteria.

FIRE PROTECTION:

Edgewood Fire District.

WATER SUPPLY:

Domestic Well

LIQUID WASTE:

Conventional Septic System

STAFF RECOMMENDATION: Denial of a variance from Article V, Section 8.1.3 (Legal Access) to construct a driveway from Puertecito Road which does not have adequate drainage control and does not have 20' driving surface.

> If the decision of the BCC is to approve of the Applicants request for a variance, staff recommends imposition of the following conditions:

- 1. The Applicant must obtain a development permit from the Building and Development Services Department for the driveway and residence. (As per Article II, § 2).
- 2. The Applicant shall comply with all Fire Prevention Division requirements at time of Development Permit Application (As per 1997 Fire Code and 1997 Life Safety Code).

#### **EXHIBITS:**

- February 20, 2014 CDRC Minutes
- 2. Letter of request
- 3. Article V, § 8.1.3 (Legal Access)
- 4. Article V, § 8.2.1c
- 5. Article II, § 3 (Variances)
- 6. Site Photos
- 7. Aerial of Site and Surrounding Area

VII. D. CDRC CASE # V 13-5400 Tod Amon Variance. Tod Amon, Applicant, requests a variance of Article V, Section 8.1.3 (Legal Access) of the Land Development Code to allow a road that does not have all weather access and does not meet the required 20' width to access a driveway to a property consisting of 18.46 acres. The property is located at 29 Puertecito Road, within the vicinity of Golden, within Section 19, Township 12 North, Range 7 East (Commission District 3)

Mr. Lovato gave the staff report as follows:

"The Applicant requests a variance to allow a driveway to access a buildable site on 18.46 acres. The access is located off of Puertecito Road which is a private road that does not meet County Road standards of having 20' wide driving surface and it crosses a drainage way through a low water dirt surface. Puertecito Road ranges from 15'-20' in width throughout the length of the road, is approximately 1 mile in length, and enters Sandoval County.

"The Applicant states he has contacted several Professional Engineers and has received quotes for costs of construction of a crossing and states he cannot afford to construct a bridge or place culverts for the crossing. The lowest quote for this project was \$116,000 and the highest was \$225,000.

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

Mr. Lovato said staff was recommending denial of a variance from Article V, Section 8.1.3 (Legal Access) to construct a driveway from Puertecito Road which does not have adequate drainage control and does not have 20' driving surface. If the decision of the CDRC is to recommend approval of the Applicants request for a variance, staff recommends imposition of the following conditions:

- 1. The Applicant must obtain a development permit from the Building and Development Services Department for the driveway and residence. (As per Article II, § 2).
- 2. The Applicant shall comply with all Fire Prevention Division requirements at time of Development Permit Application (As per 1997 Fire Code and 1997 Life Safety Code).

Member Katz noted that the map in the packet shows the two alternate accesses going over the same arroyo. Mr. Lovato said the wording is not correct. He added six miles go through Sandoval County. Chair Drobnis pointed out that the picture of the mailboxes implies many people live off the road.



Duly sworn, Tod Amon indicated unusual topography is involved. Puertecito Road is one of the few roads that connect Highway 14 with I-25 which makes it a major road, although it is rough. He referred to a letter in the packet from Jason Clark, Road Manager for Sandoval County which states that the part of Puertecito Road in Sandoval County is maintained by them; only the last quarter mile is in Santa Fe County. Sandoval County occasionally maintains that section as well as a courtesy. He explained that one of the possible crossings shown on the map would require a bridge or very large structure. An estimate of cost starts at \$116,000. He said he would do his best to maintain his part of the road.

Member Booth asked if his driveway would be up to County standards and Mr. Amon said it would. He added the road has been in existence since the 1800s.

Member Gonzales asked how large his property was and Mr. Amon replied 18 ½ acres. Most of his property is north of the arroyo and he needs to access it somehow. This is the first hurdle before building.

There was no one from the public wishing to speak.

Based on the testimony heard Member Katz moved to approve Case #C 13-5400 with two staff conditions. He noted many people used the road. Member Anaya seconded and the motion carried by 6-0 voice vote.

Tod Amon 15 Vega Rd Sandia Park, NM 87047 December 13, 2013

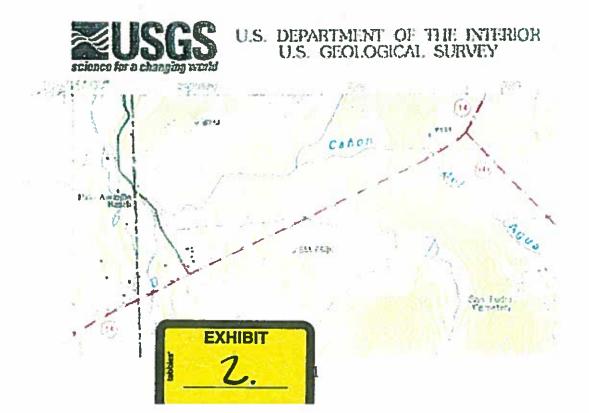
To: Santa Fe County

### Summary:

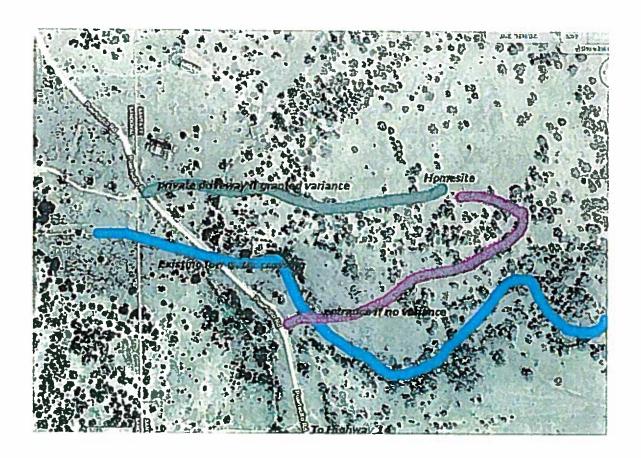
I am writing seeking permission to situate a private driveway north of the Canon del Agua crossing of Puertecito Road so as to allow me to move forward with plans to build a modest home on 18 acres of land I own in Santa Fe County. If granted, I will access this driveway and my property from Highway 14 using the existing low water crossing of the Canon del Agua on Puertecito Road (situated on my property) and from Interstate 25 using existing maintained Sandoval County roads.

## Background:

My wife and I are the owners of "Tract B Lands of Louis E. Kerschion" platted on August 17, 2011 as document number 1642841. The west boundary of the property is the line between Sandoval and Santa Fe county. The property is located approximately 3 miles south of Golden NM and can be accessed via State Highway 14 and Puertecito Road. The parcel is located approximately 1500 feet down Puertecito Rd. from Highway 14. A portion of Puertecito Rd. is contained within my property and a part of the road contains an existing dry water crossing of a large arroyo, the "Canon del Agua".



The preceding photo shows Highway 14 and Puertecito Rd (unmarked). My property is located to the east of where the road and the county line cross. Almost all of my property is north of the Canon del Agua – e.g., I must cross it to access my property from Highway 14, which is the most convenient means of access (it is less than half a mile from the highway). The figure below shows (roughly) both the road I would like to construct if my request for a variance is granted and my only other alternative – constructing my own crossing of the Canon del Agua. During a courtesy pre-inspection on October 18th, 2013 John Lovato from the Santa Fe County Building and Development Services department along with his supervisor and Fire Captain Buster Patty walked my property and indicated that both road options were very feasible – the only concern was the existing low water crossing of the Canon del Agua on Puertecito Road.



#### Research

After the courtesy pre-inspection I retained the services of engineer Cory Pierce and have attached his letter containing his findings with regards to the arroyo (prior to meeting with him I didn't even realize it had a name) and the feasibility of building a private crossing to support access to my property. Of particular note is that the drainage basin is over 5 square miles in size and that there are numerous very large

culverts underneath Highway 14 (at various locations) that all feed into the arroyo. I came to discover that a New Mexico land grant is even name for the Canon del Agua arroyo. On my behalf he contacted several commercial firms that supply materials for bridges of this size and has provided several cost estimates, based on his firm's experience, for construction of my own crossing of the arroyo. For a crossing of this size and magnitude it is difficult to obtain more detailed pricing because more engineering work would need to be completed based on a detailed topographical analysis of the proposed crossing site, and only after this work has been completed would contractors be able to provide better cost estimates.

After I received this information from Mr. Pierce I retained the services of engineer Oralynn Guerrerortiz from Design Enginuity to provide another opinion. Her letter indicating that Mr. Pierce's data and estimates appear reasonable is also attached. If anything, she suggested the cost estimates from Mr. Pierce might be too low.

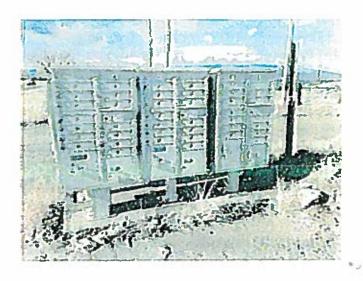
#### Safety

l appreciate very much the efforts of the county's many departments who do so much to help ensure public safety. I don't see myself as a risk taker or someone who typically would seek permission to avoid rules and regulations put into place to ensure not only my safety but the safety of future homeowners and county residents. I am the president of the Southwest Artist Blacksmith Association (http://www.swaba-ahana-chapter.org/) and we teach safety and I put it into practice every time I use my forge and metal-working equipment.

I have found out from local residents that typically once or twice a year there is enough water crossing Puertecito Rd. at the arroyo (which contains not even a single culvert) so as to require a high clearance vehicle. I believe that most emergency vehicles who serve this area would have high clearance and thus this would not usually be a problem. Of course the vast majority of the time there is no water in the arroyo or road at all. I do believe that in the event of a 100 year flood, or 100 year snow storm, access to my property could be quite difficult, from both Highway 14 and Interstate 25.

#### Puertecito Road

There are currently many residents who live off of Puertecito road and utilize the existing low water crossing to access Highway 14. I visited and spoke with Mr. Makita Hill from the Sandoval County Planning and Zoning department but was not able to obtain an estimate regarding how many residents there are. The mailboxes at Highway 14 may provide the best estimate. Of course these mailboxes serve a few residents with nearby houses that do not cross the arroyo but surely some residents further down Puertecito also do not have a mailbox.



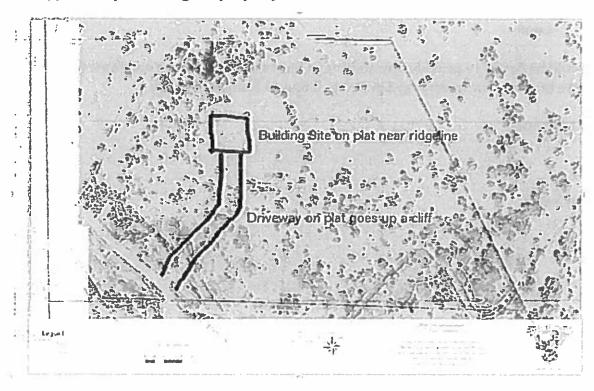
Puertecito Road receives a lot of regular traffic and is also used to support the new pipeline being constructed. I believe Puertecito Road is well over one hundred years old but have been unable to obtain definitive proof of this assertion. I have attached an email from Mr. Jason Clark, the road manager for Sandoval County. Sandoval County is currently maintaining Puertecito Road to the Santa Fe County line and has been for a long time: "over a period of continued maintenance the maintained roadway becomes the County's through prescriptive rights" but even more interesting to me is the fact that Mr. Clark noted: "Currently Sandoval county has from time to time graded and provided snow removal to the Santa Fe County portion of Puerticito to allow for school bus access and EMS vehicles to access La Madera and the residents via Puerticito Road."

Almost all of the property and residences served by Puertecito Road lie in Sandoval county. As a result, and perhaps as a matter of practicality, Sandoval county is at times maintaining the less than half a mile of road that lies in Santa Fe county. The existing dry water crossing of the Canon del Agua arroyo may not be ideal but it is currently serving a small community of people and being partially maintained by Sandoval County.

I believe at some point in the future (perhaps an agreement between the counties) it is possible that the arroyo crossing could be improved in the best interests of the public. Given that the arroyo crossing is on my property I certainly would be most amenable to providing additional easements, granting right of way or ownership, etc., as needed, to facilitate this future state – granting me a variance would result in my having a strong self interest in seeing such a future state come about and indeed I would likely undertake some regular maintenance on the low water crossing to help ensure my own access to my (future) residence. I should mention that replacing the low water crossing with a bridge is non-trivial because of the needed width and topography – essentially there is a long and gradual decent into the crossing and a somewhat gradual climb up out of it... the cost for improving Puertecito would be very substantial, something that only a public agency or large developer could contemplate.

#### Costs

The cost of a private crossing of the Canon del Agua is, for me, very prohibitive. Property values in the area are not high (homes are very modest) and a \$100,000 or more expenditure merely to allow access would simply not be a wise financial decision even if moneys were available. When I purchased the property I knew that the plat showed a private driveway crossing the arroyo. However, I also knew that the county had a limit on the slope of a driveway and the plat showed a driveway utilizing a slope of much more than 15% grade. The home site shown on the plat also might violate rules regarding placing homes on the top of ridgelines. I created the image below (superimposing the plat and GIS data I obtained from Santa Fe County) before purchasing the property.



I showed this image to Mr. Lovato and asked whether or not I would have to construct a driveway and use the building site shown on the plat. When he assured me that the plat was not requiring me to use the marked building site or put a road up a cliff, I mistakenly failed to investigate further both the cost of crossing the arroyo as well as my ability to utilize the existing low water crossing. My wife and I both love the land we purchased and, though we have already spent more money than I would have expected simply to investigate the possibility of our own crossing, are hopeful that my mistake will not force us to give up this dream.

#### Conclusion

Thank you for reviewing my request. I do not know what precise criteria you use when deciding to grant a variance however I believe that one or more of the following factors in my case should be persuasive:

- 1) The prohibitive cost of a private crossing.
- 2) The prominence of Puertecito Road and a consideration of its past and future
- 3) The fact that access to my property is available from 1-25 using dirt roads maintained by Sandoval County (thus bypassing the low water crossing on my plat).
- 4) The fact that many residents of Sandoval County are already using Puertecito Road to access their properties from Highway 14 and I seek only to do the same.

I would be happy to provide any additional information you need and hope for a future that sees me becoming a proud resident of Santa Fe County.

Best Regards,

-Tod Amon

8.1.2 The Santa Fe County Master Plan For Roads

- a. Pursuant to 3-19-9 N.M.S.A., 1978, the Santa Fe County Master Plan for Roads establishes the general location of existing and proposed highway and arterial roads for the purpose of assuring a coordinated system of roads in Santa Fe County.
- b. The Santa Fe County Master Plan for Roads may be amended by resolution from time to time to accommodate changing or changed conditions.
- 8.1.3 Legal access shall be provided to each lot and each lot must directly access a road constructed to meet the requirements of Section 8.2 of this Article. Parcels to be accessed via a driveway easement shall have a twenty (20) foot all weather driving surface, grade of not more than 11%, and drainage control as necessary to insure adequate access for emergency vehicles.
- 8.1.4 Dead end roads may not serve more than thirty (30) dwelling units, except that the Code Administrator with the concurrence of the Fire Marshal may approve the development of more than thirty (30) lots on a dead end road. The Code Administrator may require a second access for any development with fewer than thirty (30) dwelling units where issues of public health, safety and welfare exists.

8.1.5 Coordination of Roads With Surrounding Property

- a. The arrangement of roads in a development shall provide for the continuation or appropriate projection of existing or proposed highway or arterial roads in surrounding areas according to the Santa Fe County Master Plan for Roads, and shall provide reasonable means of ingress and egress to surrounding property.
- b. Where land is subdivided into large tracts or where there is a potential for further subdivision or development of subsequent phases exists, the proposed development shall be designed to provide for a coordinated road system for the entire tract.
- c. Where it is in the public interest to establish a right-of-way or access to property which adjoins a proposed development, the right-of-way shall be extended to the boundary of the property which is the subject of a development application. The right-of-way shall either be dedicated to the County or granted to the Owner's Association, subject to a conditional dedication governed by Article V, Section 8.1.9. Such right-of-way shall be designated on the master or phase development plan and on the plat as a public access.

8.1.6 Access to highways and arterials; buffering requirements

- a. Where a proposed subdivision contains lots abutting or adjacent to an arterial or highway, it shall be planned so as to avoid having lots having frontage on said thoroughfares.
- b. The subdivision shall be laid out to have a minimum number of intersections with arterials or highways, and where appropriate, shall provide at least two separate points of ingress and egress to assure adequate access, and shall be designed for all weather conditions. Driveways from lots shall access local roads and may access collector roads on a limited basis as approved by the County Development Review Committee.
- c. Where the subdivision is traversed by or is adjacent to a state or federal highway, and in addition to these regulations, the subdivision must satisfy the New Mexico State Highway Department Regulations Covering Design and Construction of Driveways on Non-Controlled Access Highways in New Mexico, a copy of which is on file in the office of the Code Administrator for public inspection.
- d. Where a subdivision borders on or contains a railroad right-of-way or a limited access highway right-of-way, a parallel road or frontage road may be required at a distance suitable for the appropriate use of the intervening land. Such distances shall also be



which schedule is on file at the Office of the Public Works Director and the Land Use Office.

- 8.1.12 Construction of roads or other required improvements may be phased according to a schedule that is part of an approved master or development plan.
- 8.1.13 Local roads shall be laid out so that their use by through traffic will be discouraged.

#### 8.2 Road Design

Construction and design standards shall be according to sound engineering practice as follows:

#### 8.2.1 Classification of Highways, Streets and Roads

#### 8.2.1a Arterial Roads and Highways

A major arterial road or highway has from two to six driving lanes, may be divided with a median, and has sufficient additional right-of-way to provide for turning lanes and additional width at major intersections. Major arterials have an average daily traffic of more than 5000 vehicles and a minimum right-of-way of one hundred feet (100'). A minor arterial road has an average daily traffic of 2000 to 5000 vehicles, serves 200 to 1000 dwelling units or lots, and has a minimum right-of-way of sixty six (66) feet. Asphalt paving is required for major arterials at a minimum depth of five (5)inches and for minor arterials to a minimum depth of four (4) inches. Separated driving lanes or park-ways are encouraged. See Appendices A, B.1, B.2 and B.3 for further detail.

#### 8.2.1b Collector Roads

A collector road has two (2) twelve (12) foot driving lanes. It serves 61 to 199 dwelling units or lots and has an average daily traffic volume of 601 to 1999 vehicles and a minimum right-of-way of fifty (50) feet; paving shall achieve a minimum depth of three (3) inches. See Appendices A, B.1, B.2 and B.3.

#### 8.2.1c Local Roads

A local subcollector road has two (2) twelve (12) foot driving lanes, serves 31 to 60dwelling units or lots, and carries an average daily traffic volume of 301 to 600 vehicles with a minimum right-of-way of fifty (50) feet. A local subcollector road has a six (6) inch minimum surface—thickness of crushed gravel base course material, provided it can be shown that such minimum thickness is adequate based on subgrade soil conditions; a plasticity index of eight (8) to twelve percent (12%) shall be provided. A local lane, place or cul-de-sac road serves 0 to 30 dwelling units or lots and carries an average daily traffic volume of 0 to 300 vehicles with two (2), ten (10) foot driving lanes with a minimum right-of-way of fifty (50) feet. Local lanes, places and cul-de-sac roads shall be constructed with the same sub-grade and base course specifications as the subcollector road. See also Appendices A, B.1, B.2 and B-3 and Section 8.3 of this Article.

#### 8.2.1d Cul-de-sacs

Cul-de-sacs (dead end roads) shall not be longer than five hundred (500) feet. At the closed end there shall be a turn around having a minimum driving surface radius of at least forty-two (42) feet for roads under 250 feet long and of at least fifty (50) feet for roads 250 feet and longer. A suitable alternative, such as a hammerhead turn around, may be acceptable if approved by the Code Administrator and the Fire Marshal. All turn around areas shall be designed to protect existing vegetation and steep terrain. There shall be a minimum right-of-



V - 24

2.5 Zoning

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

#### 2.6 Subdivisions

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

#### 2.7 Other Requirements

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

#### **SECTION 3 - VARIANCES**

#### 3.1 Proposed Development

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

#### 3.2 Variation or Modification

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

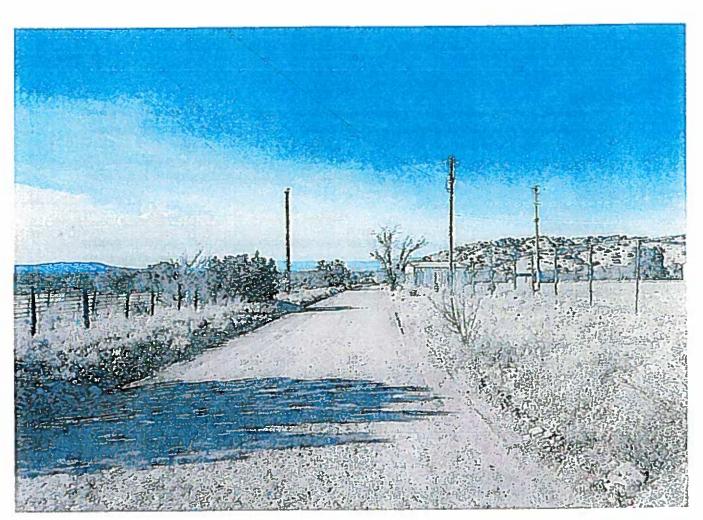
#### 3.3 Granting Variances and Modifications

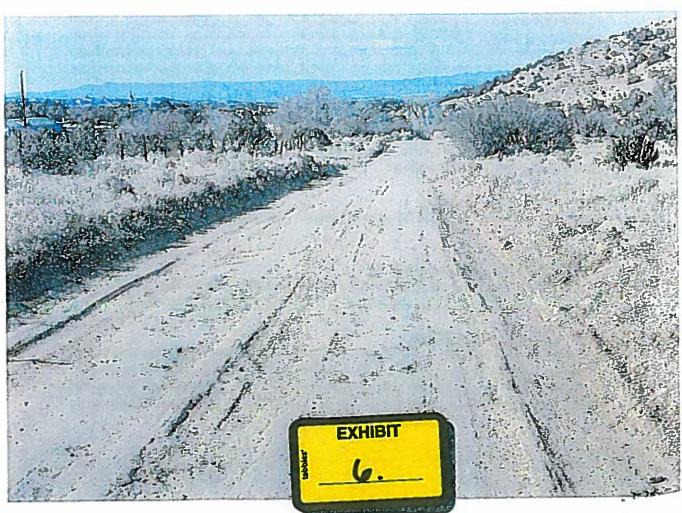
In granting variances, and modifications, the Board may require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified.

#### 3.4 Height Variance in Airport Zones

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

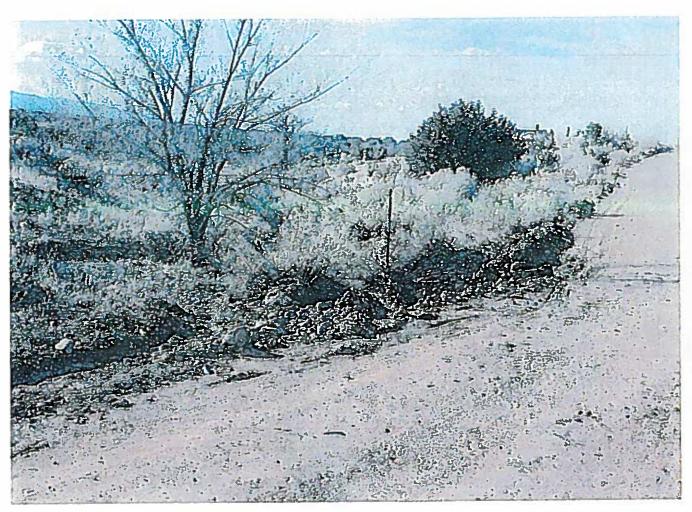


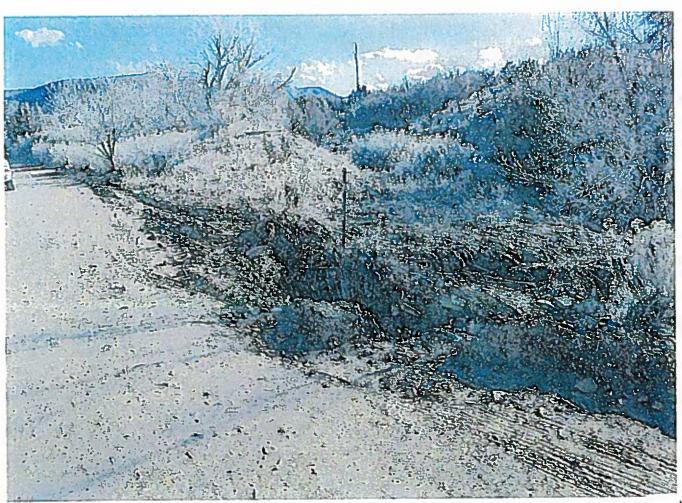


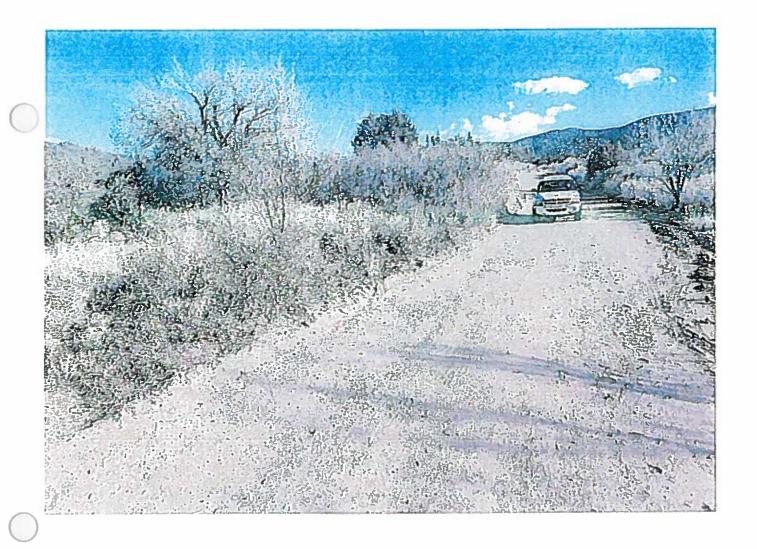


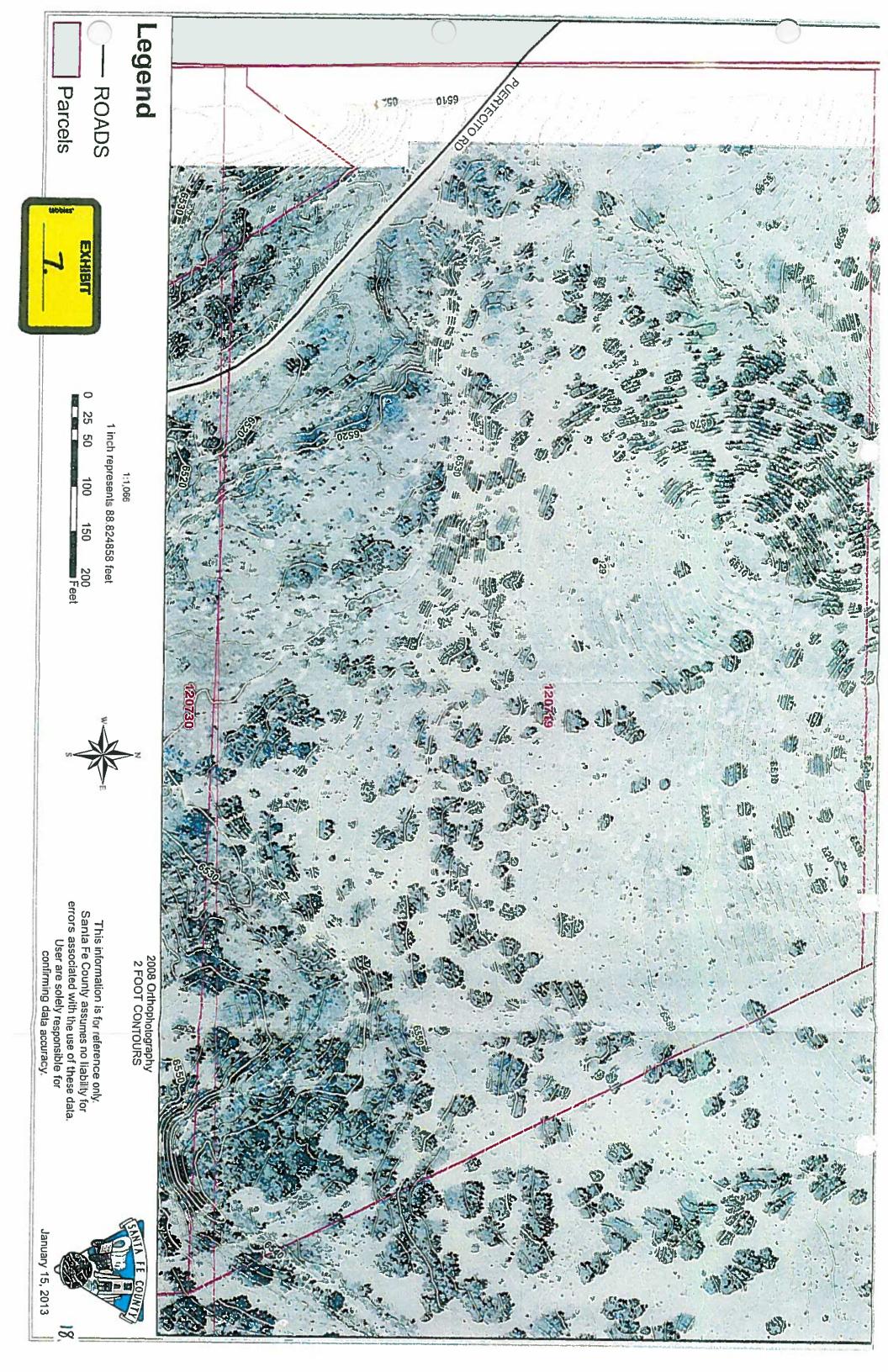
















Daniel "Danny" Mayfield Commissioner, District 1

Miguel M. Chavez Commissioner, District 2

Robert A. Anaya Commissioner, District 3



Kathy Holian Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller County Manager

DATE: February 24, 2014

TO: County Development Review Committee

FROM: John Lovato, Development Review Specialist Sr.

VIA: Katherine Miller, County Manager

Penny Ellis-Green, Land Use Administrator

Vicki Lucero, Building and Development Services Manager V Wayne Dalton, Building and Development Services Supervisor

FILE REF.: CDRC CASE # V 14-5020 Dennis & Lynne Comeau Variance

#### **ISSUE:**

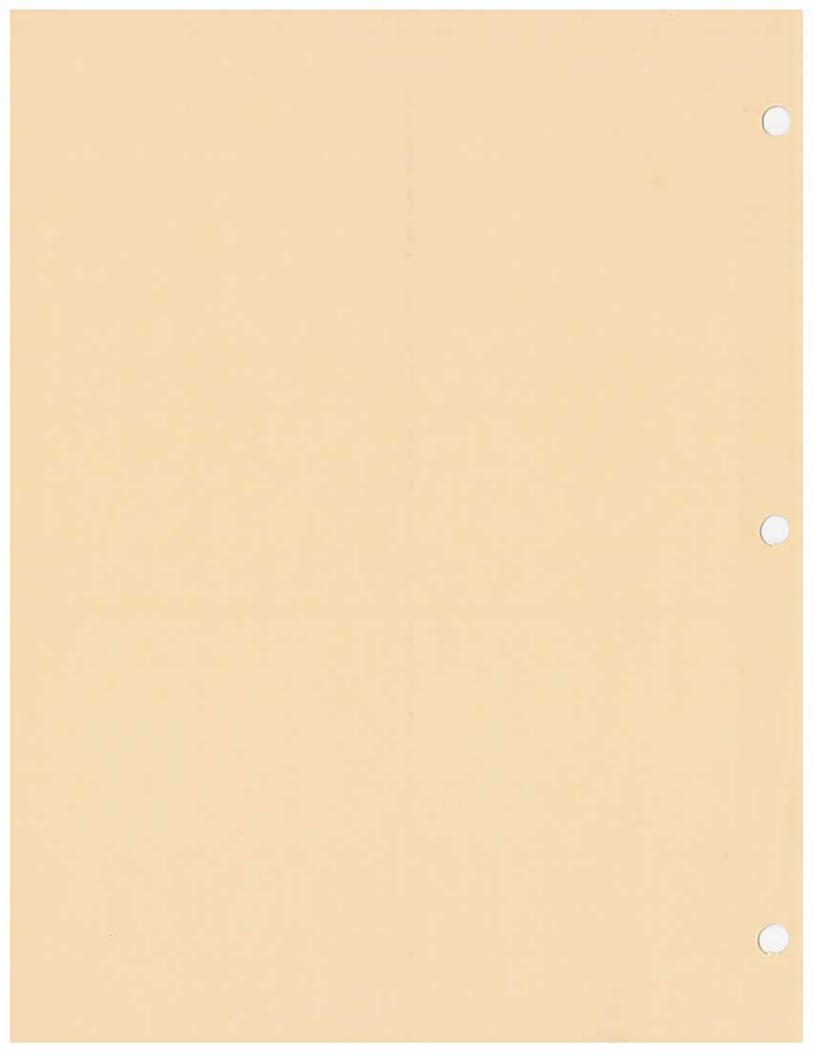
Dennis and Lynne Comeau, Applicants, request for a variance of Article VII, Section 3.4.1.c.1.c.i (No Build areas) of the Land Development Code, to allow 30% slope disturbance for an existing driveway to access a buildable area on a 66.52 acre parcel.

The property is located at 191 County Road 74 in the vicinity of Tesuque, within Section 20, Township 18 North, Range 10 East, (Commission District 1).

#### **REQUEST SUMMARY:**

This case is being tabled pending the decision of the County Development Review Committee.





Daniel "Danny" Mayfield Commissioner, District 1

> Mignel M. Chavez Commissioner, District 2

> Robert A. Anaya Commissioner, District 3



Kathy Holian Commissioner, District 4

Liz Stefanics Commissioner, District 5

Katherine Miller County Manager

DATE:

March 25, 2014

TO:

**Board of County Commissioners** 

FROM:

Jose E. Larrañaga, Development Review Team Leader

VIA:

Katherine Miller, County Manager

Penny Ellis-Green, Land Use Administrator

Vicki Lucero, Building and Development Services Manager Wayne Dalton, Building and Development Services Supervisor

FILE REF.:

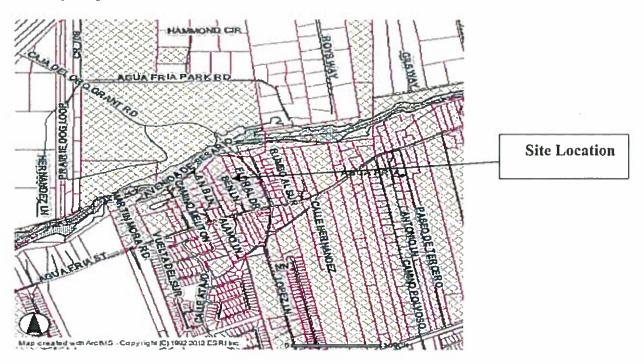
BCC CASE # MIS 13-5061 Robert and Bernadette Anaya

## **ISSUE:**

Robert and Bernadette Anaya, Applicants, William Sutherland (Sutherland Law Firm), Agent, request reconsideration of conditions imposed by the BCC for Master Plan Zoning approval.

The property is located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East, (Commission District 2).

## Vicinity Map:



	w 22	

## **SUMMARY:**

On August 14, 2012, the BCC approved a request, by the Applicants, for a variance to allow a towing business as a Special Use under Ordinance No. 2007-2, § 10.5, Village of Agua Fria Zoning District Use Table. A Special Use is an allowed use which is subject to Master Plan approval by the BCC. The use as a towing company falls under the category of "Vehicle service not listed" which is not allowed as a use as outlined in the commercial use category within the Traditional Community Zoning District.

On June 11, 2013, the BCC approved a request, by the Applicants, for Master Plan Zoning to allow a towing business on .33 acres ±. The approval included staff conditions and conditions imposed by the BCC (Exhibit 9).

On August 13, 2013, the BCC approved a Final Order with findings that the Application for Master Plan Zoning for a commercial towing business as a Special Use under the Village of Agua Fria Zoning District Ordinance Use Table (Ordinance No. 2007-2) on 0.33 acres should be approved conditioned on the Applicant complying with the following conditions: Master Plan with appropriate signatures, shall be recorded with the County Clerk, per Article V, § 5.2.5.; Preliminary and Final Development Plan shall be submitted in a timely manner, meeting all criteria set forth in Article V, § 7, to be reviewed and presented to the CDRC for consideration; the Applicant shall comply with Ordinance No. 2007-2, § 10.6 (Density & Dimensional Standards); storage of towed vehicles shall not be permitted on this site as per the 1989 decision of the Extraterritorial Zoning Authority; a note stating that the storage of towed vehicles on the site shall not be allowed shall be placed on the Master Plan; no more than three small tow trucks and two large tow trucks may be stored on the site at any given time; the Applicant shall submit Preliminary and Final Development Plan to the County Development Review Committee for consideration within 90 days of approval of the Final Order. The approved Final Order was recorded with the County Clerk's Office on August 20, 2013 (Exhibit 10).

The Applicants request reconsideration of conditions imposed by the BCC for Master Plan Zoning approval. The conditions that the Applicants request the BCC to reconsider are: the Applicants shall submit Preliminary and Final Development Plan to the County Development Review Committee for consideration within 90 days of approval of the Final Order; no more than three small tow trucks and two large tow trucks may be stored on the site at any given time; the implementation of a landscape buffer on the east side of the site alongside the platted easement; and the listing of personal vehicles that will be stored on the site.

The Applicants request that a condition discussed by the BCC concerning the listing of all personal vehicles to be stored on the site be disregarded.

Staff response: the BCC did not impose a condition to list the personal vehicles to be stored on the site; the Applicants Master Plan Submittal listed the placement of two (2) recreational vehicles, one (1) boat, two (2) low-boy trailers and other personal vehicles on the site; the site plan, submitted by the Applicants, illustrated seven (7) parking spaces for personal vehicles; the site plan illustrates a very constricted parking area for the amount of vehicles already allowed by

the approved Master Plan; to allow additional personal vehicles may impede the circulation of the Tow Trucks on the 0.33 acre site.

The Applicants state that the condition for a landscape buffer on the east side of the site alongside the platted easement will create a burden on the Applicants to safely park the tow trucks on the site.

Staff response: the site plan submitted by the Applicants illustrates an adequate circulation of vehicles on the site with the landscape buffer in place; the Applicants Master Plan submittal proposed six foot (6') walls on the north, south and west side of the site as buffers to the existing residences; a land scape buffer was proposed on the east side of the site; the proposed buffers meet the Land Development Code requirement (Article III Section 4.4.4) for landscape buffers of a non-residential use; a request to deviate from this requirement would need to go through a variance process.

The Applicants state that the condition to limit the Applicants to three small tow trucks and two large tow trucks at any given time to be stored on the site will affect the business for the following reasons: will force the Applicants to seek other property to store the remainder of their tow trucks; affect the response time to emergency calls; jeopardize the business as it currently exists.

During discussion of this case some of the comments made, by the BCC, (June 11, 2013, BCC minutes) were that limiting the Applicants to three small tow trucks and two large tow trucks at any given time to be stored on the site "balances the business interest and the neighborhood's needs" (Commissioner Chavez) and that "there was a need for compromise" (Commissioner Anaya).

The Applicants are requesting an extension of the condition, imposed by the BCC, of the 90 day requirement to submit Preliminary and Final Development Plan to the County Development Review Committee for the following reasons: to ask for relief of the above mentioned conditions imposed by the BCC; to address the requirement of the 28' radii required by the County Fire Department on the entry to Ben Lane from Agua Fria. The Applicants go on to state that if negotiations to acquire the easement needed for the 28' radii are not successful, a request for a variance of this requirement will be submitted for consideration by the BCC.

Staff's response: neither the Applicants nor the Agent for the Applicants opposed the conditions of approval of the Master Plan on June 11, 2013; the Agent for the Applicants accepted the need to make the investment for the 28' radius and accepted the implementation of the 28' radius as a condition of approval; the Final order was approved by the BCC on August 13, 2013 and recorded on August 20, 2013; the 90 days in which the Applicants were to submit a Preliminary and Final Development Plan started on August 20, 2013; the BCC approved the Master Plan on June 11, 2013 which allowed the Applicants 49 additional days from the date of approval by the BCC and the recordation of the Final Order to prepare and submit a Preliminary and Final Development Plan; the Applicants did not appeal the final decision of the BCC; the 28' radius is required by the Santa Fe County Fire Marshal based on the 2003 International Fire Code, therefore a variance cannot be granted by the BCC.

The Applicants continue to operate illegally without a County Business License. The time constraint of submitting a Development Plan and the imposition of the above mentioned conditions were required by the BCC to mitigate the affect that this type of business may have on the neighboring residences.

Article V, § 5.2.4.b.2 & 3 (Master Plan Approval) states: "the County Development Review Committee and Board shall consider the following criteria in making determinations and recommendations for approval or amendment of master plans: Conformance to County and Extraterritorial Plan; Suitability of the site to accommodate the proposed development; Suitability of the proposed uses and intensity of development at the location; Impact to schools, adjacent lands or the County in general; Viability of proposed phases of the project to function as completed developments in the case that subsequent phases of the project are not approved or constructed; Conformance to applicable law and County ordinances in effect at the time of consideration, including required improvements and community facilities and design and/or construction standards".

This Application was submitted on September 26, 2013.

APPROVAL SOUGHT:

Reconsideration of conditions imposed by the BCC for

Master Plan Zoning approval.

GROWTH MANAGEMENT

AREA:

El Centro, Agua Fria Traditional Community SDA-2.

**HYDROLOGIC ZONE:** 

Agua Fria Traditional Community, minimum lot size in this area is .75 acres and can be reduced to .33 acres with

community water and sewer.

ACCESS AND TRAFFIC:

The property takes access from Ben Lane via Agua Fria, a County Road. The Applicants have not demonstrated ownership of the easement required to create the radius required by the County Fire Marshall at the entrance of Ben Lane. The Applicants shall provide the design and easement for the access radius at Development Plan submittal.

FIRE PROTECTION:

Agua Fria Fire District. Access shall comply with Article 9, Section 902 – Fire Department access of the 1997 Uniform Fire Code inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal.

ADJACENT PROPERTY:

The site is within a residential area and is bordered on all sides by residential property.

**PARKING:** 

The current site plan illustrates a total of 8 parking spaces for 8 tow-vehicles. As a condition of the Master Plan approval the Applicants were limited to a maximum of five (5) tow trucks. In addition the Applicants propose to park 2 recreational vehicles, 1 boat, 2 low-boy trailers, a dumpster and other personal vehicles, on a 0.33 acre site. The proposed principle use of the site is to allow the storage of tow-trucks to be accessible for emergency calls. The site shall maintain a hammerhead 60' in length and 20' in width.

LANDSCAPING:

The approved Master Plan meets the landscape requirements set forth in Article III Section 4.4.4 of the Land Development Code.

STAFF RECOMMENDATION:

Staff recommends denial of the Applicants request based on the following: Two of the conditions that the Applicants request the BCC to reconsider (the Applicants shall submit Preliminary and Final Development Plan to the County Development Review Committee for consideration within 90 days of approval of the Final Order and no more than three small tow trucks and two large tow trucks may be stored on the site at any given time) were imposed, by the BCC, as conditions of the Master Plan Zoning approval for a Towing Business within a Traditional residential area in order to balance the business interest and the neighborhood's needs. It is at the discretion of the BCC to consider a change to the approved conditions;

The Applicants site plan illustrated seven (7) parking spaces for personal vehicles and the Applicants Master Plan request listed the type of personal vehicles to be placed on the site, therefore the Applicants placed this restriction on themselves. The Master Plan was approved by the BCC with these parameters as proposed by the Applicants. Approval to allow more than seven (7) personal vehicles may impede circulation within the site;

A landscape buffer between the residential and non-residential use is required by the Land Development Code (Article III Section 4.4.4). Staff's recommendation for approval of the Master Plan was based on compliance with the Land Development Code. Changes to the landscape buffer would require a variance.

## **EXHIBITS:**

- 1. Applicants Request
- 2. Master Plan Report
- 3. Drawings
- 4. Photos of Site
- 5. Aerial Photo of Property
- 6. Fire Review Comments
- 7. Article III, § 4.4.4 (Development & Design Standards)
- 8. Article V, § 5.2 (Master Plan Procedure)
- 9. June 11, 2013 BCC Minutes
- 10. Final Order Recorded August 20, 2013
- 11. Additional Information Submitted by Agent

## September 24, 2013

Re: LETTER OF REQUEST for Extension of Time for Preliminary and Final Development Plan, for Amendment to the Master Plan and for Reconsideration of the Board's August 13, 2013 Order.

To the Board of County Commissioners:

Robert and Bernadette Anaya, owners and residents of 2253 Ben Lane, Santa Fe, New Mexico 87507, hereby request an extension of time to submit their preliminary and final development plan. On August 13, 2013, an Order was entered by this Board in Case No. CDRC MP 12-5060, Robert and Bernadette Anaya Master Plan Zoning to allow a towing business.

Initially, the variance for this property was granted to allow for the storage of eight (8) tow trucks on the site on 2253 Ben Lane. However, with the August 2013 Order, the Mast Plan Zoning was granted with certain conditions that Applicants have several concerns with, as discussed herein.

Further, another concerning condition discussed at the BCC hearing on June 11, 2013, but which was not included as discussion in the August 2013 Order, which is that this Board requested that Applicants list every personal vehicle that will be stored on the site. This will create numerous problems, as discussed below. Further, Applicants cannot properly park their permitted commercial vehicles at the back of their property without reducing the number of trees that were requested by Staff.

Wherefore, Applicants request an extension of time to submit the preliminary and final development plan for the property at issue in this case and for a reconsideration of the conditions proposed in the August 2013 Order for the following reasons:

- 1. The August 2013 Order stated that: "No more than three small tow trucks and two large tow trucks may be stored on the site at any given time." Applicants respectfully request that this Board reconsider this portion of its Order on this for the following reasons:
  - a. This limitation was approved without substantial rationale and is arbitrary. The Applicants will be forced to find land to house these trucks which will require substantial time and money. There is no immediate solution to storing the trucks that have been prohibited by this condition, and therefore it will effectively put the Applicants out of business for most tow calls. Finding a place to store these tow trucks cannot be effectuated within the short amount of time given by the Board. The Board has given Applicants a substantially shorter amount of time than other applicants and imposed increased limitations. This constitutes a denial of due process, as the Applicants were given very little opportunity to respond to the arbitrary decision to reduce the number of tow trucks on the property, effectively shutting down a substantial part of their tow truck business and frustrating all of their state and city contracts with law enforcement.
  - b. The Applicants have other property that is now being Annexed to the City and is not able to be utilized for the purpose of parking their tow trucks. The Applicants have engaged in an ongoing and active search for such alternative property and there are two major obstacles to utilizing another property: (1) the Applicants would have to return to the



Board and go through the entire process again for a request of a variance for this alternative property, even if it was successfully located; and (2) all such properties that could be potentially capable of storing these tow trucks prohibited from being stored on the property would frustrate Applicants' state and city contracts with law enforcement which require the Applicants, as emergency responders, to arrive at the scene within thirty minutes of a critical accident. This requirement of "fastest response time possible under thirty minutes" would be frustrated by the conditions imposed by the Board. Applicants are relied upon for their heavy towing capacity more than any other tow truck company in Northern New Mexico, and this will jeopardize their business to not only have their trucks so far away that they can no longer take the majority of their calls. Essentially, the Board's forcing the Applicants to sell the trucks that they cannot keep on the property because there has been no extension of time allotted to assist the applicants to enable them to find a solution to this extreme conditional order, effectively putting them out of business.

- 2. This Board also requested that Applicants list every personal vehicle that will be stored on the site. While this was not in the final Order, Staff states that such a condition must be in the master, preliminary and final development plan. This will create a number of issues. The fact that a requirement exists on keeping the County apprised of every single make and model of all of the personal vehicles on their property flies in the face of fundamental land use rights, especially in such a mixed-use village, such as Agua Fria Village. Further, this will create a situation where if the Applicant switches out one personal vehicle for another, they will be in violation of these requirements and vulnerable to outsider attack on these arbitrary requirements. No land owner should have to endure such stringent and arbitrary requirements that have no rational basis attached to them and which create an undue burden on Applicants. Applicants request that this Board reconsider its condition imposed/discussed on this point and instead allow for a specific number of personal vehicles without mandating that such vehicle types be specified. Applicant respectfully requests that this Board consider that the Applicants are giving up a significant amount of land for the hammerhead that will benefit the entire neighborhood and allow room for their personal vehicles, as does most every land owner in Agua Fria Village.
- 3. The condition imposed by Staff/the Board that there must be a buffer of trees lining the East side of the property will frustrate the purpose of the proposed development as it creates a burden on the ability to park the tow trucks safely and will make it difficult, if not impossible, to utilize the land allotted for such parking. The Applicants request leave for amending the Master Plan so that the amount of landscaping is reduced so that the purpose of the development is not frustrated.

An extension of time is requested to address these issues and also the issue that the extensive efforts that have been made by applicant to address the radius requirements of the fire code applicable in this case have yielded some results but have not been sufficiently fruitful and Applicants must pursue another course of action to address the fact that this radius requirement cannot be met and no such measures can be taken to alter the radius to conform to code. Currently, Ben Lane roadway does meet the 20' wide requirement of the International Fire Code and Santa Fe County requirements. However, the radius requirements are not currently met. The Applicants were attempting to gather support from neighbors to affect and change these radius requirements in order to conform, but these efforts have failed. The Applicants are weighing

their few options and will most likely need to begin the process of requesting a variance of the fire code or another solution that will bring a resolution to this issue. Applicants have done everything requested by the CDRC and BCC up until this point, but now Applicants request an extension of time and plea that the Board assist the Applicants with an interim solution to this problem.

Thank you for your consideration of this letter of request.

Sincerely

Bernadette and Robert Anaya

Signed by:

Talia Kosh, Esq. Merit Bennett

Attorneys for Applicants

460 Saint Michaels Drive, Ste 703

Santa Fe, NM 87505

(505) 983-9834

# ROBERT AND BERNADETTE ANAYA MASTER PLAN REPORT

Updated May 2013



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#### Introduction

The subject property at 2253 and 2244 Ben Lane, Santa Fe, NM 87505, consisting of .702 acres is located in the Agua Fria Village in Santa Fe County. See Appendix F. These two parcels were initially listed as 2253 Ben Lane. The Applicants requested an additional address for the back lot of 2253, so now this back portion is listed as 2244 Ben Lane, Santa Fe, NM 87505.

A variance was granted by the Board of County Commissioners to proceed with a master plan and development plan that allows for special use within Agua Fria Village for the parking of commercial towing vehicles at the back of the property for a towing business operated by the Anayas. The master plan is hereby submitted for approval. The conditions of approval are attached as Appendix A.

## Letter of Request for Master Plan

See Appendix B

## **Project Location**

The subject tract consists of .702 acres of land located within Agua Fria Village, located at 2253 Ben Lane, Santa Fe, NM 87505. Recently, and in anticipation of the division of this single lot into two lots, in order to separate the parking area from the Anaya's residence, the back portion of this lot is now listed as 2244 Ben Lane. One can access Ben Lane from Agua Fria Road. At Figure 1 is a vicinity map showing the location of the property overlaid on a USGS map.

## Ownership and Legal Lot Record

The property is owned by Bernadette Anaya, along with her husband, Robert Anaya, who are residents of Agua Fria Village and have owned the property for over 20 years. A reduction of the plat and the warranty deed is found in Appendix D to this report.

## Master Plan Request

Master Plan approval is being requested. Initially, Master and Preliminary were requested. After conversations with Staff, and the public hearing with CDRC,, CDRC approved the master plan request. As per this approval, applicants request that the Board of County Commissioners approve the Master Plan as submitted. Within this Master Plan application, details not required pursuant to master plan requirements has been submitted by applicant, in order to give the Commission as much information as possible with regard to this request.

There will be only one phase: division of the property into two different properties, landscaping, walls, designation of hammer head, installation of minimal lighting and any other

such necessary actions required by the Code.

The Anaya master plan is conceptual, as per the Code, and focuses on the development of a parking area for up to 8 tow vehicles at the back of their property (2244 Ben Lane) when these emergency vehicles are not in use, in between dispatch calls. See Vicinity Map attached as Appendix N of the Development Plan and the Proposed Site Data, at Appendix C of the Development Plan. The calls received to dispatch these tow trucks will be received and dispatched from their residence on this same property.

As a condition for the approval of this development plan, Applicants request that the subject property be divided into two lots: (1) the lot upon which the Anayas have their current residence

(2253 Ben Lane at Appendix C). They will seek a home occupation license for this property so that they may dispatch calls from the residence and conduct administrative work and park a single tow vehicle at their home, in their off-street designated parking space. They will also continue to park their personal use vehicles at this residence, as permitted by applicable laws.; (2) the back lot of their property shall be divided from the residence (and 2244 Ben Lane at Appendix C) 2244 Ben Lane will be the subject of this development plan for designated parking, landscaping and hammer head.

The Anayas' property is naturally separated by Ben Lane and appears to be two pieces of property, when in fact, it is one parcel. The division of this parcel into two lots would ease the ability to designate the back of their property for storing and parking the tow vehicles. Ultimately, conditional upon the approval of the Final Development Plan, the properties will be divided and processed administratively and be recorded prior to final development of the project. The division of their property in this way would allow the Anayas to apply for a home occupation license for their residence, in order to continue to dispatch calls from their residence on the property. As a part of this administrative processing, Applicants will apply for a Home Occupation License in order to dispatch calls from their residence, conduct administrative work and to park one commercial truck off-street at their residence.

The Applicants will also apply for a Business License for 2244 Ben Lane, at the back of their property. This Tract is the subject of this Master Plan request.

## 2244 Ben Lane, Appendix C of the Master Plan: Proposed Site Plan:

2244 is the Location of Parking for Towing Vehicles: The subject of this Master Plan is 2244 Ben Lane only. 2244 Ben lane will be divided from 2253 Ben Lane, as stated above, and 2253 Ben Lane will be operating under a home occupation license for dispatching and receiving calls for the tow trucks. As for the back tract, 2244 Ben Lane, the location of the storing of these towing vehicles when not in use will on this portion of the Anaya's property, will occur at the end of Ben Lane along the N45'31'30'E wall which is adjacent to Henry Romero and Georgia Romero's property line. The2244 Ben Lane will be used for the following purposes: parking towing vehicles in designated spaces when not in use-up to 8 at a time, although there will be 3-5 parked there most regularly, and for parking personal and recreational vehicles.



## Parking Area Landscaping Plan:

This master plan consists of building walls and planting drought-resistant trees (honey locusts or similar type) to separate the commercial parking area from surrounding residences. The existing wall that separates the Romero's property from the Anaya's property will be lined with trees as an additional screening. See Existing and Proposed Site Date at Appendix C and F of the Master Plan. There will also be a drip system installed to supply these trees with the minimal water requirements. There will also be secured rail road ties that will be utilized as bumpers for the tow trucks. Further, there will be bollards behind each railroad tie, to further secure the area. The largest tow truck has been taken account for with regard to these measurements at 42.5 feet. These bumpers and bollards for parking will be strategically placed for correct spacing of the tow vehicles, keeping in mind the boom length and width of the vehicles. There will be sufficient room for the circulation of traffic of the tow trucks. They will be able to pull into the parking area and back up with sufficient room to do so.

Along the East and South side of the property line, walls will be constructed, as per code requirements, for screening and property protection, taking into consideration the amount of space needed for the tow trucks to park and circulate, so as not to obstruct the purpose of the development. These walls will meet height requirements.



## Personal Use Vehicles:

The Anayas will also continue to utilize any unused area between the south border of the property and the hammer head designated on the Proposed Site Plan (Appendix C to the Development Plan) for parking up to seven recreational vehicles, including the possibility of parking their two personal RVs (a Montana and a Toy Hauler), a medium sized boat (Bayliner), 2 low-boy trailers for personal use, a dumpster (2 cubic yards) and several personal vehicles. This is reflected in the site plan for designated parking spaces for personal vehicles, demonstrating sufficient circulation for both wreckers and personal vehicles.



## Landscaping Plan

The proposed landscaping plan will improve and enhance the visual quality of the subject area. It will serve to buffer or screen visually unattractive land uses from residential areas surrounding the parking area. It will shade, cool and define the proposed parking area and minimize erosion, dust and any slope instability.

This development plan consists of building walls and planting drought-resistant trees to separate the commercial parking area from surrounding residences. The existing wall that separates the Romero's property from the Anaya's property will be lined with trees as additional screening. See Existing and Proposed Site Date at Appendix C and F of the

Development Plan. There will be a drip irrigation system installed to provide these trees with sufficient and minimal water.

There will also be secured rail road ties and bollards that will be utilized as bumpers and additional safety measures for the tow trucks. The largest tow truck has been taken account for with regard to these measurements at 42.5 feet. These bumpers for parking will be strategically placed for correct spacing of the tow vehicles, keeping in mind the boom length and width of the vehicles. There will be sufficient room for the circulation of traffic of the tow trucks. They will be able to pull into the parking area and back up the trucks with sufficient room to do so.

A wall will also be constructed along the East side of the property line, taking into consideration the amount of space needed for the tow trucks to exit and enter the property, so as not to obstruct the purpose of the development.

A dumpster will be located on the property for development, and will be screened as per Code requirements.

## Walls:

Two walls will be constructed on the East side and south side borders of 2244 Ben Lane. The west wall will allow for sufficient room for trucks to enter, circulate and exit.

Hammer Head: The hammerhead will be located at the entrance to the property in question.

The contractor will be certain that the landscape treatment and improvements are designed, installed and maintained so they conform to submitted plans for landscaping. This plan promotes conservation of water through the use of drought tolerant plants, such as honey locusts. Along the North and South property lines of the parking area, within twenty five feet of a property line adjoining residential uses, screening of trees will occur. Walls will be built along the West and South side of the property to enclose the parking area from the adjacent residential areas.

## Liquid and Solid Waste Plan

No waste will be produced with regard to this request and plan. From their residence, there will be no liquid waste that will require disposal for this project. The subject property is on a community sewer system, however. No septic system will be needed for this development.

Charlie Smith Construction will be responsible for the removal of any waste material from the site, although none is anticipated. A dumpster already located on the property will be available for the collection of any trash that may occur on the property. Waste will be taken to a County transfer station, the regional landfill in Santa Fe or the Los Alamos Landfill. Mr. Smith will attempt to recycle any materials possible through public or private sources.

At Appendix M is a letter from the City of Santa Fe regarding Sewer Service for Proposed Lot Split to Create 2244 Ben Lane indicating that connection to the existing public sewer main line would be possible.

Signs and Lighting Plan

Signage: There will be no utilization of signage in this development project.

Lighting: The Applicants wish to put in a minimal amount of lighting that would conform to residential requirements for lighting. This lighting will be outdoors and designed and arranged to enhance the safety of the area during evening hours, to provide security, to protect the night sky and to prevent the spillover, nuisance or hazard effects of light and glare on adjacent locations and uses of land. There will be proper screen of lighting and will reflect code height requirements. This lighting will be solar and will not require any additional hook-ups to an electrical power source. However, this is not essential to the development plan, but would be pursued for safety and security purposes only.

The site plan demonstrates the location, mounting height, type, shades/shields so they are not directly visible from any adjacent lot. Spillover of lighting for adjacent properties shall not exceed one half of one(.50) footcandle measured at any point ten feet beyond the property line and shall be installed no higher than the surrounding buildings.

See Appendix P for a description of the solar lights used. These solar lights are Sepco, Genesis lighting, an LED lighting system. See Appenix Q for lighting levels on the property for the lights used.

Existing Conditions, Topography and Drainage

Adjoining Land Uses: The property to the North of the Applicant's property is residential and walled with no access to Ben Lane. The property to the West of the back of the Anaya's property, which is the focus of the development plan, is an empty field, owned

privately and zoned for residential. The property to the South of the Applicant's property consists of residential trailers. The property to the East of the subject property consists of Ben Lane and residential properties.

<u>Description of Terrain:</u> There is no natural terrain on the subject property for the parking area. The entire area is dirt which will not be affected by development. There are no natural grades or slopes-all is man-made.

Slope and Grading: The Slope of the subject property for the parking area goes from NE to SW at a 1%-2% slope. The proposed development will be set at the existing grade and will not be changed or affected.

The subject property is outside of the flood plain. See Appendix L to the Development Plan.

## Drainage and Detention Pond: Terrain Management Plan

This plan will protect and promote the health, safety and welfare of residents of SF County through proper landscaping, including screening, detention pond and drainage considerations. Natural drainage patterns will be preserved, and the development will adapt to the existing topography, soils and other conditions existing on the lot prior to development. The parking area will not be paved.

<u>Detention Pond:</u> The detention pond will be located at the SW corner of the property at the end of the proposed location of the hammer head. See Appendix C to the Development Plan. The proposed development will not change the grade of the property.

<u>Drainage:</u> Draining requirements will be met by proposed landscaping.

## Topography and Drainage:

No descriptive topography. No natural slope. It's all man made Graphic representation of existing topography, slopes and flood plains are depicted at **Appendix M**. There is very little slope on the lot. There is natural drainage that occurs from North to South through the property. A detention pond will be at the Southwest corner of Tract 4B. Drainage will be addressed through the proposed landscaping plan.

## Existing and Planned Utilities

There will be no utility use other than that discussed under Landscaping-Drip Irrigation in this master plan. Applicants have applied with PNM to have the telephone pole moved at the corner of Agua Fria Road and Ben Lane in Agua Fria Village. This pole is obstructing the requirements of the Fire Code regarding the turning radius requirements. Appendix G.

At Appendix N is a water bill for 2253 Ben Lane, demonstrating that a water connection exists on this property currently.

Water Budget Plan

The only water will be such use an needed for minimal drip irrigation for drought resistance trees planted along the north side of the property. Such drip irrigation is not taken into account with regard to water budget plan requirements, as the use is de minimus. There will be no other water utilized and needed for this development. The Water Budget is 0.00

2244 Ben Lane is available for hookup to community water.

Water Harvesting:

Due to the fact that no development of structures is proposed, a water harvesting plan is unnecessary.

Fire Protection and ACCESS

Access: Access to the property is from Agua Fria. The closest County fire substation to the site is within a mile from the property and would be accessed from Agua Fria Road. Water is available through Agua Fria Community Water Systems, See Appendix H.

Front access. The driveway entrance meets the 20 foot minimum width; however, access does not meet the required 28 foot radius. A hammer head is proposed in the development plan, as required by the Fire Code. A fire hydrant is within 1,000 feet as required for residential structures. Applicants have requested that PNM move the telephone pole at the corner of Agua Fria and Ben Lane to accommodate the access required for a 28 foot radius. See Appendix G.

A survey shall be conducted on the entrance at Ben Lane and Agua Fria Road to determine exact measurements.

<u>Hammerhead</u>: A hammerhead will be designated on the back lot of the Applicant's property to conform to fire code requirements

## Environmental Evaluation

The proposed development shall utilize standard techniques available in order to minimize noise, vibration, smoke and other particulate matter.

This property is outside of the flood plain. See Appendix L. Water Budget: There will be no water used for development. Water Harvesting: Due to the fact that no development of structures is proposed, a water harvesting plan is unnecessary.

Respectfully Submitted,

Talia Kosh/Merit Bennett

The Bennett Firm

460 Saint Michael's Drive

Ste 703

Santa Fe, NM 87505

Attorneys for Applicant

APPENDIX B
Letter or Request for Development Plan
Master and Preliminary

Re: AMENDED LETTER OF REQUEST for Master Plan For Anaya Development.

To Whom It May Concern:

Robert and Bernadette Anaya, owners and residents of 2253 Ben Lane, Santa Fe, New Mexico 87507, hereby submit this letter of request as part of their application for Master Plan and Preliminary Development Plan pursuant to the variance of Ordinance No. 2007-2 (Village of Agua Fria Zoning District), § 10.5 (Village of Agua Fria Zoning District Use Table), that was granted by the Board of County Commissioners, to allow a towing business to park their vehicles on this property, as a Special Use under the Zoning Use Table on 0.70 acres. See Ordinance attached as Appendix A to the "Anaya Master Plan and Preliminary Development Plan," (hereinafter referred to as the "Development Plan").

## Statement of Facts and Purpose of Letter of Request:

## Background:

The Anayas' family towing business has created many relationships with emergency responders over the years and stand ready to respond at any hour of the day or night to such community emergencies, including calls from New Mexico State Police Department, the Santa Fe Police Department, the Bureau of Indian Affairs, the NM Department of Transportation, Tesuque Tribal and other governmental organizations. It is necessary that the Anayas be permitted to continue to park up to 8 tow vehicles on their property, as they have done since 1989, in order to be able to respond to any emergency call in a timely fashion. Should the Anayas store their tow trucks off site, the time it takes to travel to retrieve these towing vehicles could mean the difference between whether or not a life is saved or important government property is preserved. Often, emergency responders, such as the fire department and various law enforcement agencies, cannot get to victims or those in exigent and dire circumstance without the assistance of a tow truck company with the versatile capability offered by the Anayas. For a complete description of the history of this project, please see Anayas' "Letter of Request for Variance" dated May 11, 2012.

In fact, the Anayas have a very unique towing capacity that only a few other tow truck companies in the entire State of New Mexico possess. In all of Northern New Mexico, only the Anayas have the unique capacity to tow and/or recover very heavy loads, which means they are the first towing company called by several government agencies, to respond to unique emergency situations. The quick access to their vehicles at the back of the Anaya's home makes their vehicles available for emergency calls at any time of day or night. Should the Anayas' store their vehicles away from their home, this would effectively destroy their ability to respond to such emergency situations and make it impossible for them to carry out their contracts and agreements with these governmental agencies. This would injure and effectively destroy the Anayas' towing business.

## SCOPE OF REQUESTED DEVELOPMENT:

The Anayas' master plan is focused around their development of a parking area for up to 8 tow vehicles at the back of their property, no labeled as 2244 Ben Lane, Santa Fe, New Mexico, when these vehicles are not in use, in between dispatch calls. See Vicinity Map attached at Figure 1 of the Master Plan and the Proposed Site Data, at Appendix C of the Master Plan. The calls received to dispatch these tow trucks will be received and dispatched from their residence on this same property. See 2244 Ben Lane, Appendix F of the Development Plan.

## Division of Property. Conditional Upon Approval of Development Plan:

In order to better effectuate and simplify the commercial zoning of their property and to park these tow trucks, conditional upon the approval of the Development Plan, the property at issue, 2244 Ben Lane (Appendix F) will be divided into two lots, 2253 Ben Lane and 2244 Ben Lane 4B at Appendix C to the Development Plan. The total amount of acreage for both of these tracts together is .702 acres. 2253 Ben Lane would be a total of .332 acres and 2244 Ben Lane would be a total of .370 acres. Both properties have water and sewer hook-ups, and because of this, the tract size can be as low as 1/3 of an acre.

Dividing the property into two lots will more easily and naturally separate the land into commercial and residential lots. The Anayas' property is naturally separated by Ben Lane and appears to be two pieces of property, when in fact, it is one parcel. The division of this parcel into two lots has been preliminarily affected and these two pieces of property are now labeled 2244 and 2253 Ben Lane. This division conditional upon the acceptance of the final development plan, would ease the ability to designate the back of their property for storing and parking the tow vehicles. Conditional upon the approval of the Master Plan, the properties will be divided and processed administratively and be recorded prior to final development of the project. The division of their property in this way would allow the Anayas to apply for a home occupation license in order to continue to dispatch calls from their residence on the property. As a part of this administrative processing, Applicants will apply for a Home Occupation License for 2253 Ben Lane, in order to dispatch calls from their residence, conduct administrative work and park one commercial truck off-street at their residence.

The Applicants will also apply for a Business License for 2244, at the back of their property. 2244 Ben Lane is the subject of this Master Plan.

## 2244 Ben Lane, Appendix C of the Development Plan: Proposed Site Plan:

2244 Ben lane is the Location of Parking for Towing Vehicles: The subject of this Development Plan is for 2244 Ben Lane only. What is now currently 2253 Ben Lane will be divided, as stated above, and the residence will remain as 2253 Ben Lane and will operate under a home occupation license that will be applied for as a condition to the approval of this development. As for 2244 Ben Lane, the location of the storing of these towing vehicles when not in use will be at the back of the Anayas' property, and is located end of Ben Lane along N45'31'30'E wall which is adjacent to Henry Romero and Georgia Romero's

property line. The tow trucks will be parked along this wall in designated parking spaces. See Appendix C to the Development Plan.

2244 Ben Lane will be used for the following purposes: parking towing vehicles in designated spaces when not in use-up to 8 at a time, although there will be 3-5 parked there most regularly, and parking personal and recreational vehicles. See Appendix C to the Master Plan.



## Parking Area Landscaping Development Plan:

This master plan consists of building walls and planting drought-resistant trees to separate the commercial parking area from surrounding residences. The existing wall that separates the Romeros' property from the Anayas' property will be lined with trees as an additional screening. See Existing and Proposed Site Date at Appendix C and F of the Development Plan. Along the wall where the tow trucks will be parked, there will also be secured rail road ties that will be utilized as bumpers for the tow trucks. Bollards will also be utilized. Appendix C. The largest tow truck will establish the length of this measurement at 42.5 feet. These bumpers for parking will be strategically placed for correct spacing of the tow vehicles, keeping in mind the boom length and width of the vehicles. There will be sufficient room for the circulation of traffic of the tow trucks. They will be able to pull into the parking area and back up, with sufficient room to do so.

A wall that conforms to the Code will be built along the East side of the property line, taking into consideration the amount of space needed for the tow trucks to exist and enter the property, so as not to obstruct the purpose of the development. Appendix C.

#### Walls:

Two walls will be constructed on the south side of 2244 Ben lane, behind the hammer head and on the east side of the property. Appendix C.



## Personal Use Vehicles:

The Anayas will also continue to utilize any unused area near the hammer head designated on the Proposed Site Plan (Appendix C to the Development Plan) for parking their recreational vehicles, including the possibility of parking their two personal RVs (a Montana and a Toy Hauler), a medium sized boat (Bayliner), 2 low-boy trailers for personal use, a dumpster (2 cubic yards) and several personal vehicles.

<u>Hammerhead</u>: A hammerhead will be designated on the back lot of the Applicant's property to conform to fire code requirements. Appendix C.

<u>Description of Terrain:</u> There is no natural terrain on the subject property for the parking area. The entire area is dirt which will not be affected by development. There are no natural grades or slopes-all is man-made.

Slope and Grading: The Slope of the subject property for the parking area goes from NE to SW at a 1%-2% slope. The proposed development will be set at the existing grade and will not be changed or affected. Appendix C.

## Drainage and Detention Pond:

<u>Detention Pond:</u> The detention pond will be located at the SW corner of the property at the end of the proposed location of the hammer head. The proposed development will not change the grade of the property.

Drainage: Draining requirements will be met by the proposed landscaping.

<u>Lighting:</u> The Applicants wish to put in a small amount of lighting that would conform to residential requirements for lighting. This lighting will be outdoors, solar and designed and arranged to enhance the safety of the area during evening hours, to provide security, to protect the night sky and to prevent the spillover, nuisance or hazard effects of light and glare on adjacent locations and uses of land. As these lights will be solar, there is no need to connect said lights to an electrical source. See Appendix P for a description of the solar lights used. These solar lights are Sepco, Genesis lighting, an LED lighting system. See Appenix Q for lighting levels on the property for the lights used.

The subject property is outside of the flood plain. See Appendix L to the Development Plan.

<u>Signage</u>: There will be no utilization of signage in this development project.

Water Budget: There will be no water used for development.

Water Harvesting: Because no development of structures is proposed, a water harvesting plan is unnecessary.

<u>Liquid Waste Disposal Plan</u>: There will be no liquid waste that will require disposal for this project. The subject property is on a community sewer exists on the property, however.

Agua Fria Village Review: The Anayas were on the Agua Fria Village Association Agenda for February 4, 2013. The Anayas presented at this Association Meeting through their attorney, Talia Kosh, Esq., and presented in detail the proposed development plan herein. See Appendix E.

## Noise and Air Quality Issues:

Noise and Air Quality concerns shall be addressed by the landscaping plan.

## Access and Fire Code:

The access to the development is from Agua Fria road onto Ben Lane in the Agua Fria Village. The closes County fire substation to the site is within a mile from the property and would be accessed from Agua Fria Road. Water is available through Agua Fria Community Water Systems. See Appendix H. The driveway entrance meets the 20 foot minimum width; however, access does not meet the required 28 foot radius. A hammer head is proposed in the development plan, as required by the Fire Code. A fire hydrant is within 1,000 feet as required



for residential structures. Applicants have requested that PNM move the telephone pole at the corner of Agua Fria and Ben lane to accommodate the access required for a 28 foot radius. See Appendix G of the Development Plan.

On the other corner of Ben Lane and Agua Fria, a wall has recently been built that is in violation of Fire Code requirements and is a fire hazard as it completely obstructs all visibility from Ben Lane when turning onto Agua Fria at 2261 Ben Lane. The wall also encroaches upon an easement. A complaint for this violation is to be filed with the County and measures to re-build this wall to Fire Code is conditional on this development plan. Applicants will request that this wall be re-built to conform to the fire code. Rounding off the corner of the wall and taking off several feet from the corner of the wall would be sufficient to meet code requirements. A survey will be conducted of this access road to determine exact measurements.

<u>Traffic Assessment:</u> The acceptance of a traffic assessment, in lieu of a traffic study, has been approved. See Appendix M to the Development Plan.

Thank you for your consideration of this letter of request.

Sincerely

Bernadette and Robert Anaya

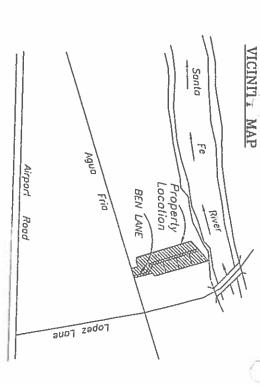
Signed by:

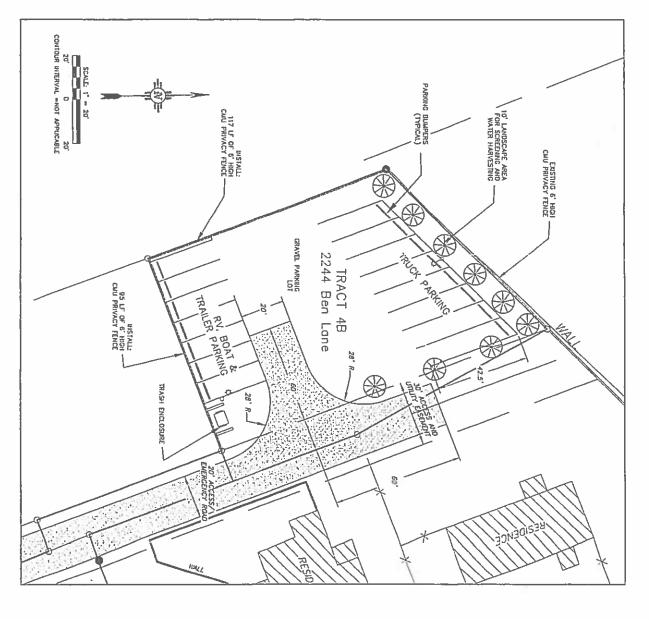
Talia Kosh, Esq.
Attorneys for Applicants
460 Saint Michaels Drive, Ste 703
Santa Fe, NM 87505
(505) 983-9834

Luminoire Schedule 10 FT OFF PROP LINE PARKING LOT\_Top\_1 Ť QLy BEACOH CEH-F-60-E-700-VOLTACE-74-MF Lamp; 145 System Walt LED Type IV Area Light of 70 feel above finished grade: Description fl-conde Units 0.23 0.50 414 0 002 Min

On Site Lighting Calculation Summary CalcType

VICINITY MAP N.T.S.





MASTER

2. NO PORTION OF THIS PROPERTY IS WITHIN THE 1GO YEAR FEMA FLOOD PLANT AS SHOWN ON MAP 35349-CO3940 DATED JUNE 12, 2009 1. UPON CONSTRUCTION OF ANY BUILDING, CONNECTION TO THE COUNTY WATER AND WASTEWATER COLLECTION SYSTEM IS REQUIRED.

GENERAL NOTES

SAIR OF KNY MEDICA

FARE OF KNY MEDICA

RECORD ON THE THAT THIS DOCUMENT WAS SUBMITTED FOR RECORDED IN BOOK AT AT PACE

NO WAS RECORDED IN BOOK OF ANTA FE COUNTY

MITMESS MY HAND AND SEAL OF OFFICE VALENCE ESPINIOSA

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REQUIRED OPEN SPACE PROVIDED PARKING SPACES ₩/W 9 SPACES 0.339 Acres±

LOT SIZE SITE DATA

J747 SQ.FT.

AS NOTED

D-

REVIEW DEPARTMENT SIGN-OFF DATE WASTEWATER MON'T. DIV WATER SERVICES SUBDIVISION ENG. STHEETS TRAFFIC FIRE DEPARTMENT

ANAYA PROPERTY AGUA FRIA, NM SHEET TITLE: MASTER PLAN

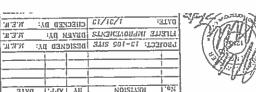
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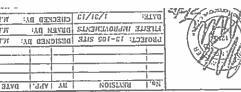
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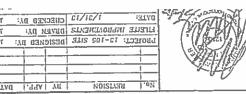
Civil Engineering . Water Resources . Traffic Engineering

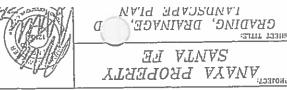
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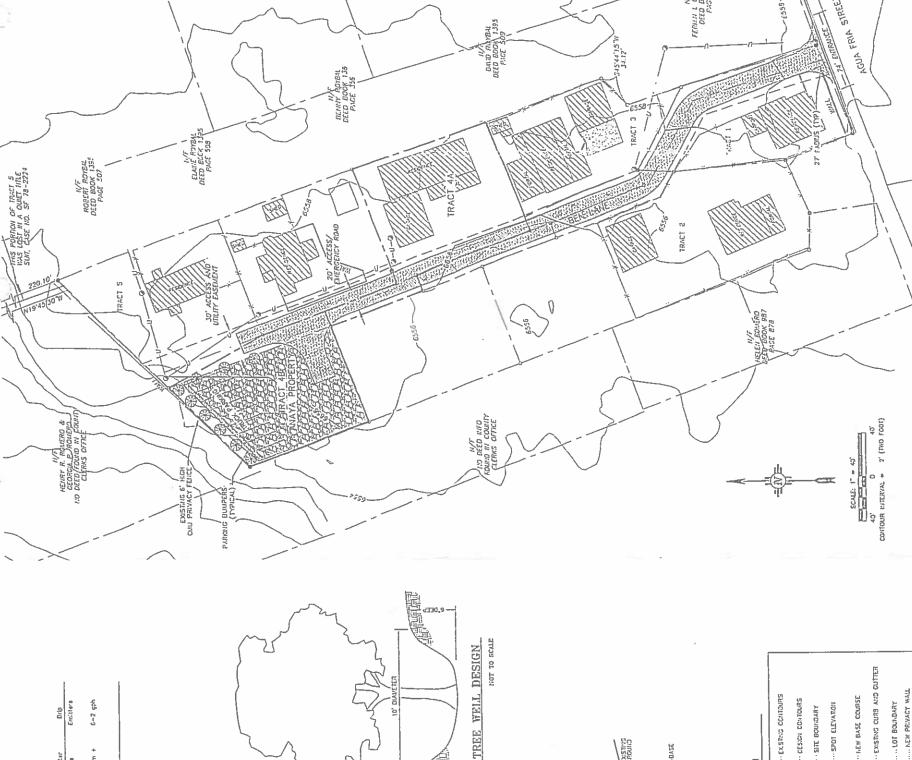
505-829-7690 FAX 505-629-3539 E-MAIL civil@walkerengineering.net

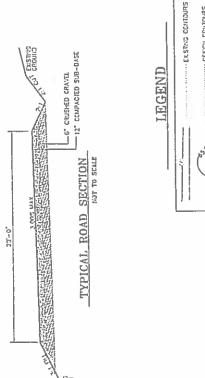














NEW PRIVACY WALL LOT BOUNDARY SPOT ELEVATION

PLANT LEGEN

Scientific Name Common Name

Symbol

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6-2 gph Woter Use .cr/.or 2° Cal

Caditaia triocanthos Honey Locust

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Project No: 13-105 Date: 2772013

Stormwater Draisage Cakedations Profect: Agya Professy

Walker Engineering 905 Cantos Serra Viza Santa Fe, NY, 67301

Developable Arra: 0.34 Acres 14777.00 Sq.Ft.

Area (SF.) 14747.00

Description

C.A | Rain

Description

Discussive Calculations

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Pand Volume Required

Area (Ae.) 0.05 0.29

Description

Proposed Land Use

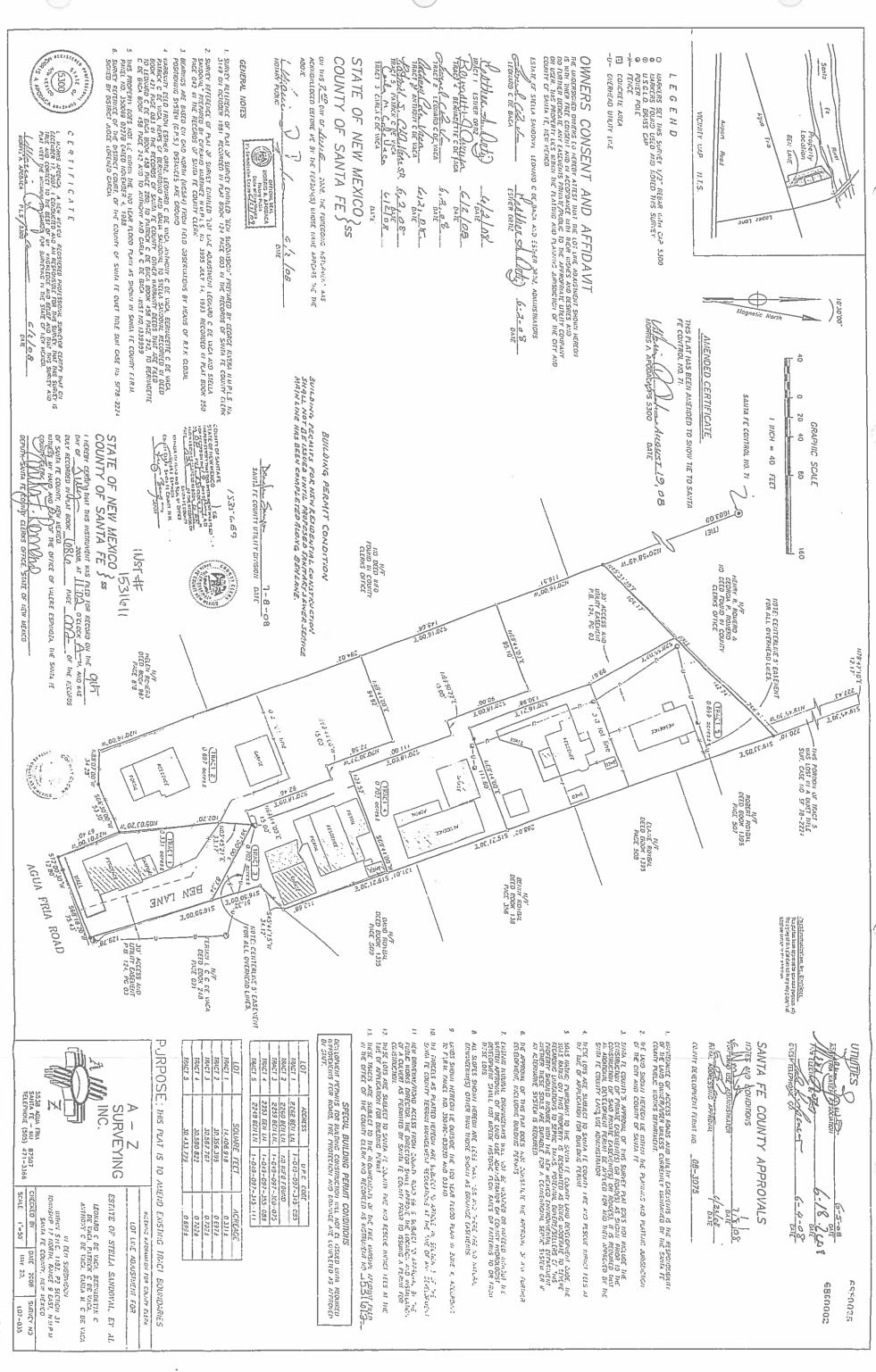
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Walker Engineer

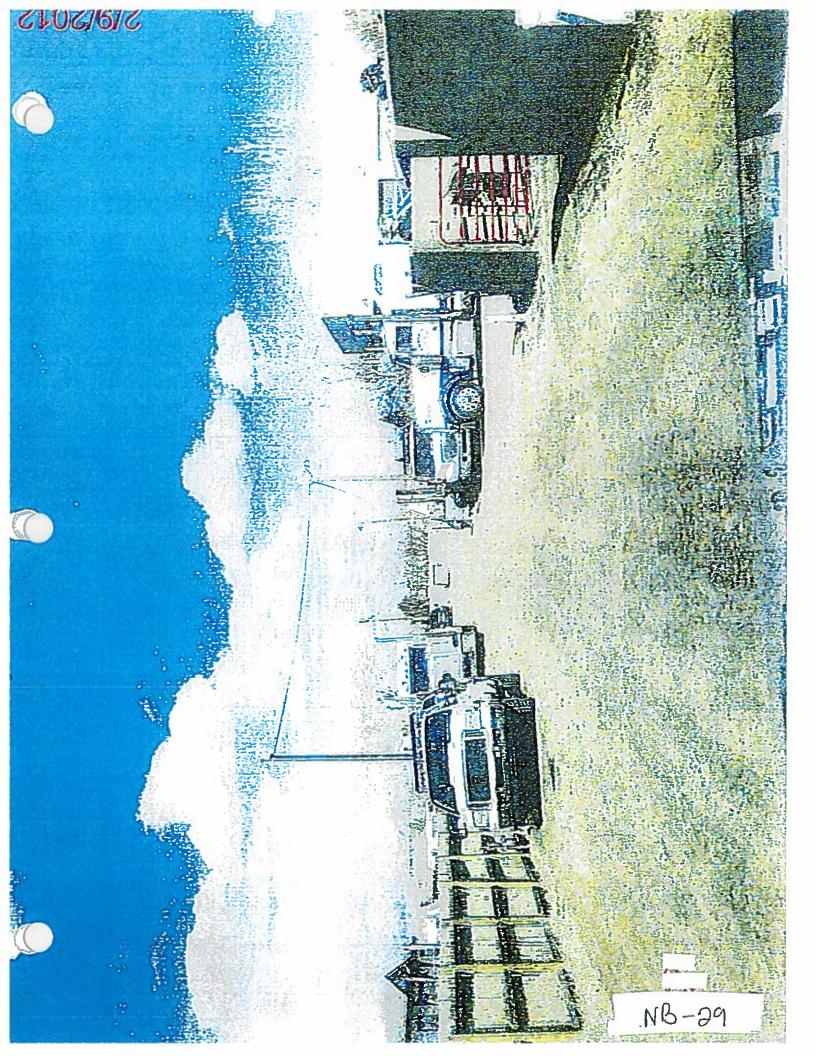
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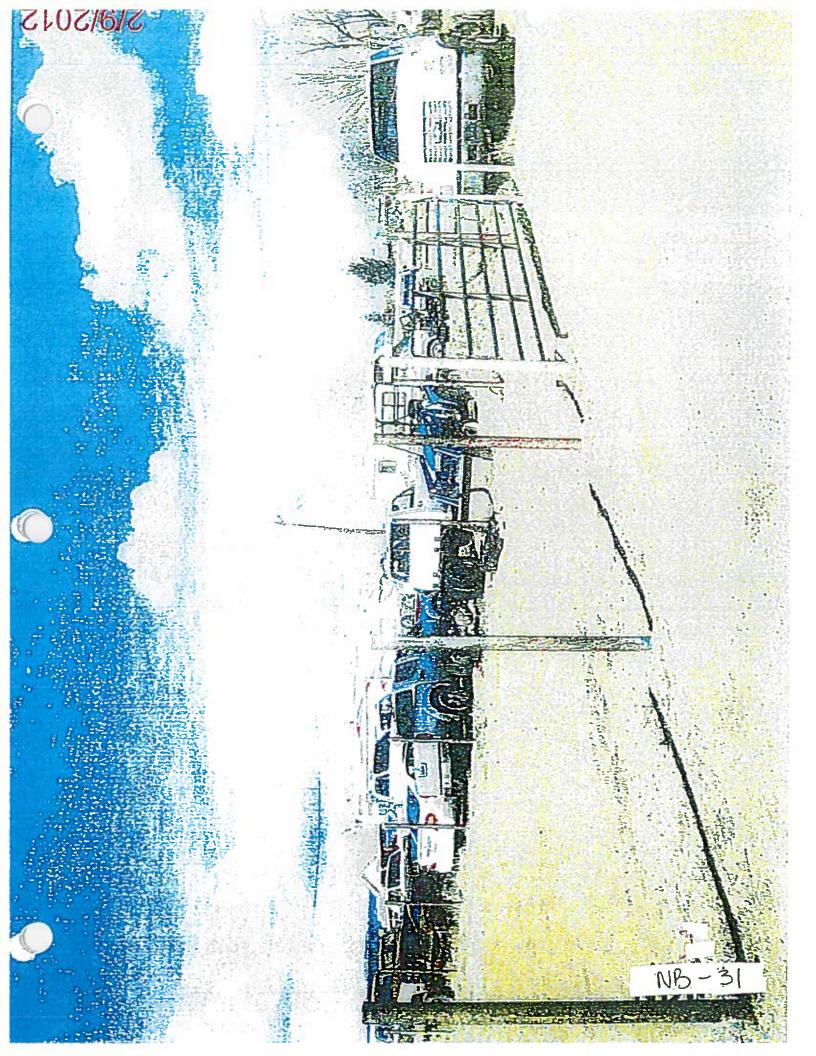






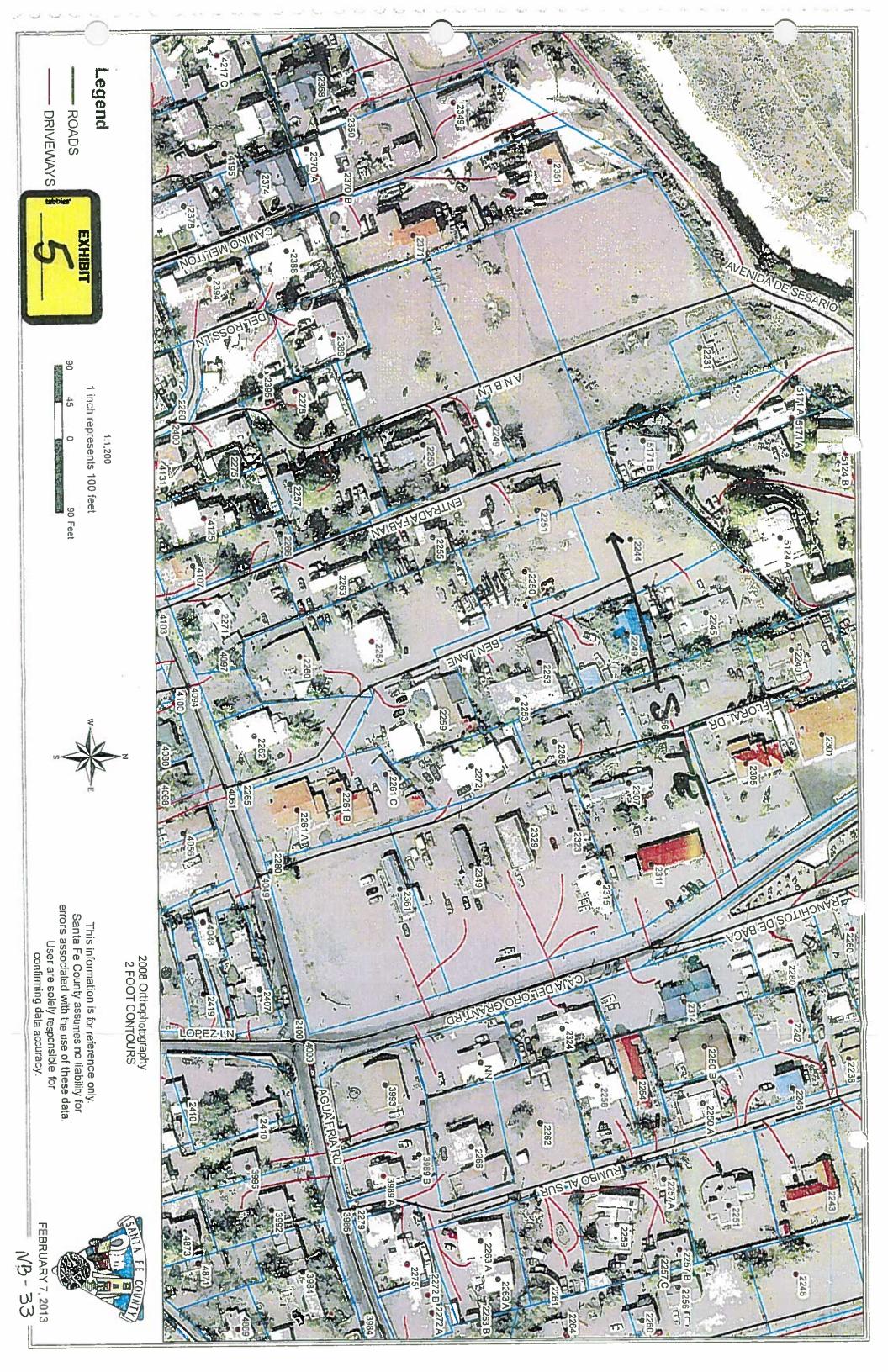


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Daniel "Danny" Mayfield Commissioner, District 1

Miguel Chavez Commissioner, District 2

Robert A. Anaya Commissioner, District 3



Kathy Hollan Commissioner, District 4

Liz Stefanies Commissioner, District 5

> Katherine Miller County Manager

# Santa Fe County Fire Department Fire Prevention Division

Official Development Review						
Date	03/27/2013					
Project Name	Robert & Bernadette Anaya					
Project Location	2253 Ben Lane, Santa Fe, New Mexico 87507					
Description	Master Plan & Preliminary Development Plan	Case Manager	Jose Larranaga			
Applicant Name	Robert & Bernadelte Anaya	County Case #	13-5060			
Applicant Address	2253 Ben Lane	Fire District	Agua Frla			
	Santa Fe, New Mexico 87507					
Applicant Phone	505-470-6621					
Review Type:	Commercial ☒ Residential ☐ Sprinklers ☐ Master Pian ☒ Preliminary ☒ Final ☐	Hydrant Ac Inspection ⊠	ceptance  Lot Spilt			
Wildiand ☐ Variance ☐  Project Status: Approved ☑ Approved with Conditions ☐ Denial ☐						
The Fire Prevention Division/Code Enforcement Bureau of the Santa Fe County Fire Department has reviewed the above submittal and requires compliance with applicable Santa Fe County fire and life safety codes, ordinances and resolutions as indicated:						
Fire Department Access						
Shall comply with Article 9 - Fire Department Access and Water Supply of the 1997 Uniform Fire Code inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal						

## Fire Access Lanes

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

## Roadways/Driveways

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



Ben Lane roadway does meet the 20' wide International Fire Code and Santa Fe County requirements. The proposed hammerhead turnaround meets the 1997 Uniform Fire Code requirements as shown in master plan & preliminary plan page D1.

The proposed entry from Agua Fria Street into Ben Lane meets the 1997 Uniform Fire Code requirement as shown in master plan & preliminary plan page C1

# Street Signs/Rural Address

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

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

#### Slope/Road Grade 0

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

There are no slopes the exceed 11%.

# Restricted Access/Gates/Security Systems

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

## Hydrants

Shall comply with Article 9, Section 903 - Water Supplies and Fire Hydrants of the 1997 Uniform Fire Code, inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal.

Section 903.4.2 Required Installations. (1997 UFC) The location, number and type of the fire hydrants connected to a water supply capable of delivering the required fire flow shall be provided on the public street or on the site of the premises or both to be protected as required and approved. Hydrant localion meeting residential flow requirements of 500 GPM is within 1000ft.

# General Requirements/Comments

# Inspections/Acceptance Tests

Shall comply with Article 1, Section 103.3.2 - New Construction and Alterations of the 1997 Uniform Fire Code, inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal.

The developer shall call for and submit to a final inspection by this office prior to the approval of the Certificate of Occupancy to ensure compliance to the requirements of the Santa Fe County Fire Code (1997 UFC and applicable NFPA standards) and the 1997 NFPA 101, Life Safety Code.

As required

# Final Status

Recommendation for Master Plan and Preliminary Development Plan approval with the above conditions applied.

Renge Nix, Inspector

3-27-13 Date

Through: Chief David Sperling

File: DEV/Robert& Bernadette Anaya/032713/AF

Buster Patty, Fire Marshal
Jose Lamanaga, Land Use
Applicant
District Chief Agua Fria

File

- 3 create a buffer or screen for storage or parling areas; and
- 4) take advantage of solar gain in winter months. See also the setback requirements set forth in Section 4, Design Standards.

## c. Parking Lot Accation.

Parking lots shall be placed or offented on a site:

- 1) to the rear or side of buildings (or both); and
- 2) to encourage pedestrian safety and convenience.

## d. Terrain Management

All development of a lot, tract or percel shall be done in accordance with Article VII. Section 3 of his Code.

History. 1980 Comp. 1980-6. Section 4.4.3 was amended by County Ordinance 1990-11 adding all new material for site planning standards.

## 4.4.4 Development and Design Standards



# a. Screening

Outdoor storage, parking and loading areas which are visible from public roads or from abutting public lands or residential areas shall be screened. Such screening may be landscaping, walls, fencing, building placement, berms, or any combination thereof. For landscaping plans and standards relating to screening see Sub-section f.

## b. Buffer Zones and Setbacks

- 1) Proposed non-residential districts or uses that adjoin parcels on which dwellings are located within 100 feet of the property line adjacent to the parcel on which the use is to be located shall be set back 100 feet from the property line in major or community center districts and 25 feet in local or small scale districts. The 100' setback area may be used to meet the off-street parking requirement of Section 9 of Article III except that no parking may be provided within twenty five (25) feet of the property line in Major and Community Center Districts and five (5) feet from property lines in Local and Small Scale Districts. In the setback area, existing vegetation shall be preserved and natural topographic features, planting, building placement, walls, fencing, earth berms or landscaping or any combination thereof, shall be used to keep buildings, parking or outdoor storage unobtrusive.
- Alternatives to the 100 foot setback are specified in Article V, Section 8.1.4 e. 1-
- 3) Side and rear yard setbacks shall apply only to lots at the edge of a non-residential district. Zero lot lines (no setback) for building placement may be allowed, if fire resistive construction between buildings is provided directly adjacent or adjoining on interior property lines.

## c. Maximum Height

Structures shall be limited to a maximum height of thirty six (36) feet from the highest point of the surface of the ground at the perimeter of the structure in Major or Community Center Districts and to twenty four (24) feet in height in Neighborhood or Local Center Districts.

#### d. Parking

Compliance with the parking standards set forth in Article III, Section 9, is required.



## e. Maximum Lot Coverage

Maximum lot coverage for all structures for any development shall not exceed thirty percent (30%) in major or community center districts or twenty percent (20%) in neighborhood or small scale center districts.

## f. Landscaping

## 4.4.4 f. 1) Purpose and Intent

Landscape treatments are applicable to all development for the following purposes:

- (a) To assure that new development creates an amenity and improves and enhances the visual quality of an area:
- (b) To buffer or screen visually unattractive land uses from roadways and residential areas;
- (c) To shade, cool and define large parking areas;
- (d) To define the separate function of thoroughfares and other land uses:
- (e) To minimize erosion, dust and slope instability;
- (f) To assure that landscape treatment and improvements are designed, installed and maintained so that they conform to submitted plans or master plans for landscaping;
- (g) To preserve both native vegetation and landscapes and to protect the visual and structural integrity of hillsides or steep or mountainous areas from the effects of development by revegetation of disturbed areas; and
- (h) To promote conservation of water through the use of drought tolerant plant materials and xeriscape techniques.

## 4.4.4 f. 2) The landscaping requirements of this Code are cumulative; applicants shall meet:

- the standards for minimum area on a development site (Sections 4.4.4 f 4, 9, and 10); plus
- any required road frontage area (Article III, Sections 4.4.4 f 10 and 13 and Article V, Sections 8.1.4); plus
- landscaping for parking lots (Sections 4.4.4 f 11), plus
- landscaping for drainage ponding areas (Article VII, Section 3.4.6 f); and
- revegetation (Article VII, Section 3.4.5),

except where specific substitutions or adjustments are provided for in these regulations.

## 4.4.4 f. 3) Native Vegetation; Preservation

## (a) Intent

It is the intent of the Code to protect and retain native vegetation and landscapes for all development. Native trees, shrubs and other natural vegetation stabilize steep slopes, retain moisture, prevent erosion, provide habitat for wildlife, play a role in the prevention of air and noise pollution and enhance natural scenic qualities.

- (b) Limitations on grading and clearing.
  - (1) Grading shall be limited to the development site within the Buildable Area on a lot or tract
  - (2) Clearing of existing native vegetation shall be limited to approved development sites. No significant tree may be removed from slopes greater than thirty percent (30%).

III - 29

fulfill the proposals contained in the subdivider's displacing statement and in determining whether or not the subdivider's provisions for a subdivision conform with County regulations.

# 4.8 Common Promotional Plans

The Code Administrator will review proposed applications to determine whether there is a common promotional plan to subdivide a property. If it is determined that the land division does constitute a common promotional plan, the project shall comply with the procedures an sided for in this Autele V.

# SECTION 5 - PROCEDURES AND SUBMITTALS

## 5.1 Pre-application Procedures

Prior to the filing of an application for approval of a preliminary plat, the subdivider shall confer with the Code Administrator to become acquainted with these subdivision regulations. At this pre-application conference, the subdivider shall be advised of the following:

- Submittals required by the Code.
- 2. Type and/or class of the proposed subdivision.
- Individuals and/or agencies that will be asked to review the required submittals.
- 4. Required improvements.
- 5. Conditions under which Master Plans and Development Plans are required as described in Sections 5,2 and 7.
- 6. A determination will be made as to the appropriate scale and format for plans and plats and as to the appropriateness of applicable submittal requirements.

## 5.2 Master Plan Procedure

## 5.2.1 Introduction and Description

- a. Master plans are required in the following cases:
  - All Type I, Type II, and Type IV subdivisions with more than one development phase or tract;
  - ii. As required in Article III for developments other than subdivisions; and
  - iii. Such other projects which may elect to apply for master plan approval.
- b. A master plan is comprehensive in establishing the scope of a project, yet is less detailed than a development plan. It provides a means for the County Development Review Committee and the Board to review projects and the subdivider to obtain concept approval for proposed development without the necessity of expending large sums of money for the submittals required for a preliminary and final plat approval.
- c. The master plan submittal will consist of both plans and written reports which include the information required in 5.2.2 below. A typical submittal would include a vicinity map, a plan showing existing site data, a conceptual environmental plan with written documentation, a master plan map, a master plan report, a schematic utilities plan and the phasing schedule. Maps and reports may be combined or expanded upon at the discretion of the applicant to fit the particular development proposal as long as the relevant information is included.

## 5.2.2 Master Plan Submittals

a. <u>Vicinity Map.</u> A vicinity map drawn at a scale of not more than 2,000 feet to one inch showing contours at twenty (20) foot intervals showing the relationship of the site to its general surroundings, and the location of all existing drainage channels, water courses and water bodies located on the parcel and within three miles of the Parcel.



The locations of all Federal, State, or County Roads within one thousand (1000) feet of the parcel shall be shown. In addition, location of future highways and arterials as designated on the appropriate master plan for roads in the County (see 3-19-9 N.M.S.A. 1978) shall be shown.

- b. Existing Site Data. A description of existing conditions on or adjacent to the site. Maps shall be at a scale of one (1) inch to one hundred (100) feet or other appropriate scale as determined by the Code Administrator and shall include the following:
  - Boundary lines: bearings and distances. The error of closure shall be of a third order survey, and no discrepancy between computed and measured distances shall exceed one (1) part in 1,280 parts;
  - 2) Easements: Location, width and purpose;
  - 3) Streets or Roads on and immediately adjacent to the tract, name and right-of-way width:
  - 4) Utilities on and immediately adjacent to the tract;
  - 5) Owners of record of unplatted land and existing subdivision plats by name and recordation, together with owners of record for affected lots shall be shown for property within one-hundred (100) feet of that tract not including public rights-of-ways.
  - 6) Title and certificates: Present tract designations according to official records in the County Clerk's Office, title under which the proposed development is to be recorded with name and address of owner, notation stating acreage, scale, true and magnetic north arrow, U.S.G.S. datum and benchmarks, if any, certification of the engineer or land surveyor licensed in accordance with the laws of the State of New Mexico who prepared the plat.
  - 7) Proof of legal access from a county or state road as required by the Code.
- c. Conceptual environmental plan shall include, when appropriate:
  - Graphic representation of existing topography, natural features, slopes, and floodplains,
  - 2) Soils maps and reports (SCS)
  - 3) Recreational and/or open space plan, or landscape concepts,
  - 4) Liquid waste disposal plan, and
  - 5) Water Supply plan.
- d. Master plan map(s) showing the proposed development in sketch form, including:
  - 1) Proposed major vehicular and pedestrian circulation system.
  - 2) Designation and description of proposed land uses, including information about residential uses by type, area and density, and information about office, general commercial and industrial uses by area and intensity of development. Mixed uses shall not be prohibited.
  - 3) Logical and natural boundaries defining development limitations, and
  - 4) Any proposed sites for schools or other community facilities.
- e. A phasing schedule shall be included in the master plan giving a general description of each phase of the development.
- f. A schematic utilities plan showing location, locational cross sections, and approximate line sizes. It is recognized that there may be changes in the final utilities plan due to the requirements of utility companies or final engineering plans and specifications.

g. Master plan report which includes the following:

 A general description of the project, existing development on the parcel, location, adjacent properties, acreage, lot coverage, access, traffic impacts, terrain management, soils, landscaping, outside lighting, parking, signage. water: liquid waste, solid waste, archaeological sites and fire protection measures;

2) If appropriate, market analysis and economic impact report which address demand projected sales and build-out, identifies a trade area sestimales area sales and potential, and identifies the scale and extent of local competition.

 Preliminary fiscal impact estimates of net local public costs, including capital outlay and operating expenses, and revenues attributable to the proposed project.

4) Preliminary environmental assessment, which identifies the possible effects of proposed development on natural resources or natural features. This may be combined with Section 5.2.2.c of this Article.

 A written preliminary traffic report prepared by a licensed traffic engineer or other qualified expert acceptable to the Code Administrator.

6) Description of concepts for restrictive covenants proposed for the development if applicable, outlining the areas and extent of restriction or regulation. Detailed covenants are not required at this time.

7) Schools impact report. A written report which projects the effects the proposed project will have on public schools, and which includes:

the proposed number, size, and price of residential units within the project;

a description of the project's target market; and

 where applicable, any special educational needs of the project's school-aged residents.

The report will also identify the schools that service the area of the proposed project and their boundaries, the transportation available to those schools, and a list of any pending or approved residential developments within those schools boundaries. Copies of the schools impacts notice shall be submitted to the school district in which the project is located and to the Code Administrator.

5.2.3 Master Plan Review

The master plan shall be submitted to the Code Administrator or his authorized representative with a written application for approval. The Code Administrator will review the plan and submit analysis, written comments and a recommendation to the County Development Review Committee and the Board. Master plans shall be reviewed by the County Development Review Committee which shall make determinations regarding compliance with the County General Plan or the Extraterritorial Plan and the Code and shall forward the plan to the Board with the Committee's recommendation. The Board may adopt, amend, supplement, or reject the County Development Review Committee recommendation.

5.2.4 Master Plan Approval

a. The approved master plan shall show the area of residential use and general density measured in dwelling units per acre of land, less dedicated or conveyed rights of-way, and the area and intensity of commercial and industrial use measured in gross square feet of building area or maximum gross floor area ratio. These shall constitute the maximum permitted number of dwelling units and maximum permitted area and intensity of commercial or industrial use.

The County Development Review Committee and Board shall consider the following criteria in making determinations and recommendations for approval or amendment of master plans:

1. Conformance to County and Extraterritorial Plan;



- 2. Suitability of the site to accommodate the proposed development;
- 3. Suitability of the proposed uses and intensity of development at the location;

4. Impact to schools, adjacent lands or the County in general;

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- 5. Viability of proposed phases of the project to function as completed developments in the case that subsequent phases of the project are not approved or constructed.
- Conformance to applicable law and County ordinances in effect at the time of consideration, including required improvements and community facilities and design and/or construction standards.

## 5.2.5 Filing of Approved Master Plan

The approved master plan with maps which has been approved by and received signatures of the County Development Review Committee Chairman and Board Chairman shall be filed of record at the County Clerk's Office.

## 5.2.6 Amendments and Future Phase Approvals

- a. Approval of the master plan is intended to demonstrate that the development concept is acceptable and that further approvals are likely unless the detailed development plans cannot meet the requirements of applicable law and County ordinances in effect at that time. Each phase of the development plan must be considered on its own merits.
- b. The Code Administrator may approve minor changes to the master plan. Any substantial change in land use or any increase in density or intensity of development in the approved master plan requires approval by the County Development Review Committee and the Board.
- c. Any changes approved by the Code Administrator pursuant to Section 5.2.6b of this Article shall be subject to the review and approval of County Development Review Committee and the Board at the time of development plan or plat approval.
- d. The phasing schedule may be modified by the Board at the request of the developer as economic circumstances require as long as there is no adverse impact to the overall master plan. (See Article V. Section 4.5)

## 5.2.7 Expiration of Master Plan

- a. Approval of a master plan shall be considered valid for a period of five years from the date of approval by the Board.
- Master plan approvals may be renewed and extended for additional two year periods by the Board at the request of the developer.
- c. Progress in the planning or development of the project approved in the master plan consistent with the approved phasing schedule shall constitute an automatic renewal of the master plan approval. For the purpose of this Section, "progress" means the approval of preliminary or final development plans, or preliminary or final subdivision plats for any phase of the master planned project.

History. 1980 Comp. 1980-6. Sections 4.4, 4.5, 5.1 and 5.2 were amended by County Ordinance 1987-1 to provide for the submittal of a master plan.

# 5.3 Preliminary Plat Procedure

# 5.3.1 Introduction and Description

5.3.1a Preliminary plats shall be submitted for Type-I, Type-II, Type-III, except Type-III subdivisions that are subject to review under summary procedure as set forth in Subsection 5.5 of this Section, and Type-IV subdivisions.

V - 6

COMMISSIONER ANAYA: Are you olay? It's in your district, Madam

Chair.

CHAIR HOLIAN: Okay. Then I will make a motion then to approve with staff

conditions.

COMMISSIONER ANAYA: Segond.

CHAIR HOLIAN: Okay. I have a motion and a second for approval with staff conditions for BCC Case #13-5150.

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

CHAIR HOLIAN: Thank you, Mike and thank you, Mr. Shrader.

Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I have a lot of questions that come in and I rely on Vicki and Wayne and Penny to answer a lot of those questions on a daily basis. And just coupling on what Commissionen Stefanics says, I think we need to make sure we're all on the same page as so what's in the recommended code and that staff is all on the same page with that because I too agree that there are some structures that are for ag purposes or small accessory structures in nature that we shouldn't be overburdening our public and shouldn't even have permits in several of those cases. To as long as we're clear across the board and everybody's singing on the same sheet of music I think that's going to be important because right now, it is required for everything. Right, Mr. Dalton?

WAY E DALTON (Land Use): Madam Chan Commissioner Anaya, that's

correct.

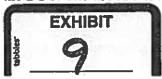
COMMISSIONER ANAYA: Thank you, Madam Chair. CHAIR HOLIAN: Thank you.

XVIII. A.

2. CDRC CASE # Z 13-5060 Robert & Bernadette Anaya Master Plan/Preliminary Development Plan. Robert & Bernadette Anaya, Applicants, Talia Kosh, Agent, Request Master Plan Zoning Approval for a Commercial Towing Business as a Special Use Under the Village of Agua Fria Zoning District Ordinance Use Table (Ordinance No. 2007-2). The Property is Located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East (Commission

District 2) [Exhibit 2: Letter of Opposition]

JOSE LARRAÑAGA (Case Manager): Thank you, Madam Chair. On August 14, 2012, the Board of County Commissioners approved a request, by the Applicants, for a variance to allow a towing business as a Special Use under Ordinance No. 2007-2, § 10.5, Village of Agua Fria Zoning District Use Table. A special use is an allowed use which is subject to Master Plan approval by the BCC. The use as a towing company falls under the



category of vehicle service not listed which is not allowed as a use as outlined in the commercial use category within the Traditional Community Zoning District.

On April 18, 2013, the County Development Review Committee met and acted on this case. The request before the CDRC was for Master Plan Zoning and Preliminary Development Plan approval. Staff recommended Master Plan approval as the request for Preliminary Development Plan was incomplete due to non-compliance with Article V, § 7.1.2.e. & § 7.1.2.j, and Article III, § 4.4. The decision of the CDRC was to recommend approval of the Applicants' request for Master Plan and denial of the Applicants request for Preliminary Development Plan. The Applicants have since altered the submittal to reflect the request for Master Plan Zoning only.

The Applicants request master plan zoning approval to allow a towing business on .33 acres. The request is to allow the storage of eight tow trucks on the site. The Applicants propose to divide the existing .70-acre parcel and create a .33-acre lot to be utilized for the towing business. The remaining lot, which is where the Applicants currently reside, will remain as residential.

The Applicants state that there is a need for the tow trucks to be in close proximity to their residence to be able to respond to any emergency calls in a timely fashion. The Applicants also state that they wish to utilize the .33-acre site to store personal recreational vehicles.

Staff's response: the .33 acre site shall maintain a hammerhead 60' in length and 20' in width, parking spaces for eight large tow trucks, and the circulation of these vehicles, landscape, retention ponds and a dumpster. To combine the placement of two recreational vehicles, one boat, two low-boy trailers and other personal vehicles with the proposed towing business may significantly hinder the business activity on the site.

Ordinance No. 2007-2, § 10 states, a Special Use is allowed only if a Development Plan and Master Plan are reviewed and approved by the Board of County Commissioners.

Article V, § 5.2.1.b states: a Master Plan is comprehensive in establishing the scope of a project, yet is less detailed than a development plan. It provides a means for the County Development Review Committee and the Board to review projects and the subdivider to obtain concept approval for proposed development without the necessity of expending large sums of money for the submittals required for a preliminary and final plat approval.

Article V, § 5.2.4.b.2 & 3state, the County Development Review Committee and Board shall consider the following criteria in making determinations and recommendations for approval or amendment of master plans. Suitability of the site to accommodate the proposed development; suitability of the proposed uses and intensity of development at the location.

Building and Development Services staff have reviewed this project for compliance with pertinent Code requirements and have found that the facts presented support the request for Master Plan: the Application is comprehensive in establishing the scope of the project; the Application satisfies the submittal requirements set forth in the Land Development Code. The review comments from State Agencies and County staff have established findings that this

Application is in compliance with state requirements, Ordinance No. 2007-2 and Article V, § 5, Master Plan Procedures of the Land Development Code.

Staff recommendation is approval for Master Plan Zoning to allow the storage of eight tow trucks, to be utilized as a towing business, on .33 acres, subject to the following conditions. Madam Chair, may I enter these conditions into the record?

CHAIR HOLIAN: Yes, you may.

[The conditions are as follows:]

- 1. Master Plan with appropriate signatures shall be recorded with the County Clerk, per Article V, § 5.2.5.
- 2. Preliminary and Final Development Plan shall be submitted within a timely manner, meeting all criteria set forth in Article V, § 7, to be reviewed and presented to the CDRC for consideration.
- 3. The Applicant shall comply with Ordinance No. 2007-2, § 10.6 (Density & Dimensional Standards).
- 4. Storage of towed vehicles shall not be permitted on this site as per the 1989 decision of the Extraterritorial Zoning Authority. A note stating that the storage of towed vehicles on the site shall not be allowed shall be placed on the Master Plan.

MR. LARRAÑAGA: Thank you, Madam Chair and I stand for any questions. CHAIR HOLIAN: Are there any questions for staff? Commissioner Chavez. COMMISSIONER CHAVEZ: Yes, Mr. Larrañaga, in your – the information that you provided in the packet, on page 4 of your amended letter/request for master plan, you stated under the category or the paragraph of access and fire code, you stated that the driveway entrance meets the 20-foot minimum width, however, access does not meet the required 28-foot radius. So in this case it seems as though we're accepting the minimum requirements, so I wanted to just raise that as a question. This is also – this language is also in Appendix H, I believe.

CHAIR HOLIAN: What page are you on, Commissioner Chavez? Is it called

NB-20?

COMMISSIONER CHAVEZ: NBA-20, actually 21. And I didn't see that, Mr. Larrañaga, in your conditions of approval. Well, maybe because we're accepting the minimum requirements.

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, this is part of the submittal from the applicant. Again, the master plan is conceptual. In the drawings they are showing conceptually that they do have, that they're going to need the 28-foot radius as you see in NBA-35. They show that, and then the access road is —

COMMISSIONER CHAVEZ: So is there a better – if you look at Exhibit 2, also, is that what you're referencing?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, that's correct. COMMISSIONER CHAVEZ: Okay, so that – the master plan in Exhibit 2, that shows the 28-foot easement then? The 28-foot radius?

MR. LARRANAGA: Madam Chair, Commissioner Chavez, correct. That's on NBA-35. Conceptually they are showing the radius on that.

COMMISSIONER CHAVEZ: Thank you, Madam Chair. That's one question I had, and then the other question I have in reading your summary, Mr. Larrañaga, there's discussion about the number of trucks in one paragraph that says eight large tow trucks and in another section it says the application shows a nine-space gravel parking lot. Can you explain that?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, yes. Originally they came in for eight tow trucks and when they brought in the drawings the drawings illustrated nine spaces where the tow trucks were supposed to park. That would be to the north side, if you look at that same exhibit on the master plan drawings on Exhibit 2. On the north side, that's where the tow trucks are to be parked, but they came in with nine spaces.

COMMISSIONER CHAVEZ: So we're really approving – the correct number of spaces would be eight then.

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, the amount of tow trucks that they're requesting is eight They're showing nine spaces but for eight tow trucks.

COMMISSIONER CHAVEZ: Okay, well, that confused me a little bit. And then in here there's language that says eight tow trucks, just simple, and then eight large tow trucks. Are they all the same size tow truck?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, they are different sizes. There are some semi-tow trucks to tow semi vehicles or semi-trucks, or larger vehicles I should say. But there are the platform trucks where they can load a car onto it.

COMMISSIONER CHAVEZ: And so the 60-foot hammerhead and the 28-foot radius accommodates the larger vehicles?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, actually the radius for the access on Ben Lane off of Agua Fria, that was actually brought up by Fire because of the width of the road, and Buster Patty is here so he could probably explain that a little better, but because of the width of the road at 20 feet they need that 28-foot radius. The hammerhead is actually for a Fire Marshal requirement also because it is a dead-end road and that way they have room to turn around their equipment in case of an emergency.

CHAIR HOLIAN: Marshal Patty, would you like to address the 28-foot radius?

BUSTER PATTY (Fire Marshal): Madam Chair, Commissioner Chavez, the 28-foot inside radius is what is actually in the code book for a 20-foot wide road entrance. As you can well see, in the city sometimes the radius on the curves is much less than that. That's because the road gets wider. As the road is wider the radius can be much less. But on a 20-foot wide road it requires a minimum of a 28-foot inside radius on the curves to accommodate fire equipment, which would in turn accommodate any size truck that he has.

CHAIR HOLIAN: Any further questions?
COMMISSIONER CHAVEZ: That's it. Thank you, Madam Chair.

CHAIR HOLIAN: Commissioner Mayfield and then Commissioner Stefanics.

COMMISSIONER MAYFIELD: Thank you. Question for staff, please. Mr.

Larrañaga, as far as the agency review, why did you contact NMDOT and what approval did they give?

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, any master plan or development plan usually goes to DOT, even though it's not off a DOT right-of-way, but automatically we send them to DOT, to Environmental, to State Historic Preservation, for their review and comments.

COMMISSIONER MAYFIELD: And just because of the business and I guess my background, would you think of contacting the PRC to see if they would have any thoughts on the business and the site location?

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, we probably won't ever send it to them. What we're looking for, again, is how it fits into the Agua Fria ordinance, how it complies with that ordinance and the Land Development Code.

COMMISSIONER MAYFIELD: Okay. That's all I had for now, Madam Chair. Thank you.

CHAIR HOLIAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Madam Chair and thank you, Jose. A couple questions. I believe that this has carried over for a while, correct?

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

COMMISSIONER STEFANICS: And we had requested that a mediation occur? I'm reading in here that Commissioner Virginia Vigil requested that.

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

During the variance process there was mediation recommended by this Board, by the Board

of County Commissioners. We did get a mediator and in the minutes it explains that the mediator was here at the hearing. The mediator said that they couldn't do any kind of mediation and that's when the Board went forward with the approval of the variance.

COMMISSIONER STEFANICS: So are you indicating, Madam Chair, Jose, that in the mediation there was absolutely no negotiation that occurred?

MR. LARRANAGA: Madam Chair, Commissioner Stefanics, there was no mediation at all.

COMMISSIONER STEFANICS: Okay. So Madam Chair, Jose, based upon some of the questions that Commissioner Chavez was asking, would it be possible as we proceed to think about conditions that would limit the number of vehicles on that property? Because I remember there was other property for storage of vehicles, but I wondering if the number of vehicles that are permitted there would appease some of the community. Has that come to any discussion?

MR. LARRANAGA: Madam Chair, Commissioner Stefanics, there hasn't been any formal discussion with the applicant as far as limiting them. I believe staff has kind of reviewed it for eight tow trucks. The applicant threw in the personal vehicles and flat bed trailers and so on. They did come up – one of the reasons we recommended denial of the

preliminary development plan at CDRC, at that point in time they didn't have a circulation plan. They have since submitted a circulation plan and proved to us that the do have room and be able to circulate those vehicles, personal vehicles and eight tow trucks on that piece of property.

COMMISSIONER STEFANICS: Thank you, Madam Chair. That's all for

now.

CHAIR HOLIAN: Any further questions for staff? Is the applicant here? Please come forward, and if you are not an attorney please be sworn in and state your name and address for the record.

TALIA KOSH: Madam Chair, Talia Kosh, attorney for the applicant.

[Robert Anaya and Bernadette Anaya were swom in.]

BERNADETTE ANAYA: Yes.

ROBERT ANAYA: Yes.

MS. KOSH: Madam Chair, Thank you. I'd just like to stress that this master plan is a conceptual plan and again Jose, Mr. Larrañaga, has spoken to the fact that currently, because we did provide a circulation plan that we do have a bit more than what's needed for a master plan and of course we have many more details to establish and provide ahead of us. But we would just like to remind the Commissioners that this is a request for master plan at this time.

CHAIR HOLIAN: Thank you, Ms. Kosh. Any further comments at this point? Any questions for the applicants?

COMMISSIONER CHAVEZ: I have -

CHAIR HOLIAN: Yes, Commissioner Chavez.

COMMISSIONER CHAVEZ: Could you tell us, of the eight trucks that you're going to have there how many are the larger trucks that you use for your larger calls or your larger vehicles?

MS. KOSH: Commissioner Chavez, that was a question that I did want to address and I want Mr. Anaya to speak to in total an explanation of all the wreckers that will be parked back there.

MR. ANAYA: Could you repeat the question, please?

COMMISSIONER CHAVEZ: Well, I just was asking, of the eight tow trucks that you're going to be parking there – I guess I'll have maybe two or three questions under that. You're requesting to park eight tow trucks there. Are those eight going to be parked there all the time? And of those eight, how many are the larger trucks and how many are the smaller trucks.

MR. ANAYA: Of the eight we have four.

COMMISSIONER CHAVEZ: Four larger trucks.

MR. ANAYA: They vary in size. They vary in size from a 20-ton wrecker to a 50-ton wrecker.

COMMISSIONER CHAVEZ: 20 to 50-ton. But are they all the same length? MR. ANAYA: No, they're not.

COMMISSIONER CHAVEZ: Okay, 20 to 50-ton. And then the other four are the smaller tow trucks.

MR. ANAYA: They're what you call your smaller to medium size tow trucks. COMMISSIONER CHAVEZ: Okay. And then are all eight parked there all

the time?

MR. ANAYA: It's hard to say all the time, but most of the time.

COMMISSIONER CHAVEZ: Okay. Well, here's my dilemma. I know that this is conceptual, but conceptually I have a hard time, with all due respect to the Anayas, with a towing company in the middle of a residential neighborhood. Because essentially, the Agua Fria Village is a neighborhood. That's how I look at it. And so my struggle is to try to balance the need for you to have your business on a property that you've owned and you've been operating that business there for I guess 20 years now – granted, without a permit. That's beside the point right now. And so I want to balance your needs with the needs of the neighborhood.

So the first question I want to ask is – and I think Commissioner Stefanics was going in that direction – I would be more comfortable allowing you to continue your business there but only permitting or allowing the small, the four small trucks to be there. Okay? That would be my preference. Then I also want to ask the applicant, because the condition of approval of the 28-foot radius was not in the conditions of approval. Are you going to be able to invest in that property to make those improvements?

MS. KOSH: Commissioner Chavez, just one comment on your first suggestion on parking the four smaller vehicles there.

COMMISSIONER CHAVEZ: Larger.

MS. KOSH: Well, not parking the larger ones is what you suggested, correct? We'd just like to remind the Commission that this variance as requested – and I understand your concerns but it was approved conditional upon our meeting all of the different code requirement which, yes, is still in front of us and we still are making attempts to secure that radius including the movement of – and an application to move the PNM pole among other issues that are still in front of us for the preliminary and final. There's a lot more detail that will have to go into this. We do understand that.

COMMISSIONER CHAVEZ: So you're accepting the need to make the investment for that 28-foot radius?

MS. KOSH: Yes, Commissioner Chavez.

COMMISSIONER CHAVEZ: And you would accept that as a condition of

approval?

MS. KOSH: I believe that that is — that that was a condition of approval moving forward with the variance by this Commission. And one other comment, just on the area in general, is there's many mixed-use, small businesses in the area and other tow trucks companies in the area so taking into account the mixed-use nature of the neighborhood that they live in, we'd just like to remind the Commissioners of that fact.

COMMISSIONER CHAVEZ: Okay. I want to ask staff a question. Mr. Larrañaga, this 28-foot easement, is it something that the applicant has to – I know that they've acknowledged that it has to be done. If we approve this and they're not able to do that 28-foot radius, then what happens?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, if the master plan gets approved – again, it's conceptual and we record that – they would have to come back with the preliminary and final development plan to go forward to the CDRC, the County Development Review Committee. With that final development plan they would have to show easement. They would have to replat the property also to split the property into two .32-acre lots, and they would have to show the radius on that with the easement. So if they acquire the easement or if they just get the easement from the property owners that would have to be shown on that plat and on the final development plan. On the plat, to separate the property to show the easement, that signature of the property owner, if they're just allowing that easement would have to be on that plat also. So basically they couldn't go forward with any kind of preliminary or final development plan without those radiuses.

COMMISSIONER CHAVEZ: Okay. I want to go back to the variance that was approved, and this is something that I kind of inherited, so bear with me. The variance granted conceptual approval to park eight tow trucks on the lot that will be designated as commercial.

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, no. The variance was to allow to be considered as a special use under the table of the Agua Fria ordinance. Now they are considered – a tow truck company is now considered a special use. Under the special use they have to come forward to the CDRC and to this Board with a master plan and also with the preliminary and final development plan, meeting all the other requirements of the Agua Fria Ordinance, and the Land Development Code.

COMMISSIONER CHAVEZ: Okay, so the number eight is only the number of trucks they're working with. That's what they run their business with, and the circulation pattern or plan that you've identified accommodates those eight vehicles.

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, yes. COMMISSIONER CHAVEZ: If they're all there at the same time?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, yes. If they're all there. I did scale it off when they submitted so they have enough – I believe each parking area is like 30 feet – I was just glancing at it now. It's about 30 feet deep and they have approximately from 40 to 50, almost 60 feet to back out or drive forward and back into those parking spaces, plus also they proved that they can accommodate some other vehicles, whether it's a mobile home or a camper trailer or whatever on the other side if they're all parked correctly and of course in designated parking spaces. At final development plan they will have to designate those parking spaces through parking bumpers, which could be railroad ties and that would designate the parking.

COMMISSIONER CHAVEZ: Okay, and then there was also a concern about safety vehicles not being able to access some of the residential properties along Ben Lane or in that general area. Will that be addressed with this master plan if it's approved?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, I believe you're talking about tow vehicles parked on Ben Lane and possibly Mr. Patty can address this as far as access. Naturally, if there's a large tow truck parked on Ben Lane it would be harder for the Fire Department to get in there with an ambulance or a fire truck or whatever the case may be, and get out, to circulate. So, yes, we would – they haven't submitted anything that they are going to park on Ben Lane. Part of that would maybe be part of the business license. If approved through the master plan and development plan the applicant would have to get a business license to stow the tow trucks there and get a home occupation for the residence so they could do their calls and receipts and everything else. Part of those conditions would be that they wouldn't be parking on Ben Lane.

COMMISSIONER CHAVEZ: Are you okay with that? Good. Okay.

CHAIR HOLIAN: Any further questions? COMMISSIONER ANAYA: Madam Chair. CHAIR HOLIAN: Yes, Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I, like Commissioner Stefanics, remember the discussion – we had several discussions related with this case and I, as reflected in the minutes, advocated that they be able to sustain their business and continue operating their business. But if you also look in the minutes at my comments I also reflected that there was also going to have to be some give and take associated with going forward and it would meet exactly the letter of what exists today. So I just wanted to offer that comment to couple with Commissioner Stefanics' comments. And the reason I make that comment is because I believe in the dialogue that we were having as Commissioners, and Commissioner Chavez wasn't here at the time, some of the compromise that was struck on the Commission was based around that premise that there would be some compromise associated with operations.

So I just want to say that on the record and articulate that if there's any tow trucks that exist in the full business, right now, today, and had existed for that period of 20 years. Or you've built up your business over time, correct?

MR. ANAYA: That's correct.

COMMISSIONER ANAYA: Okay. I just wanted to make that comment because I think it was reflected clearly by Commissioner Stefanics.

MS. KOSH: And Commissioner Anaya, if I may speak to that, the give and take and the sacrifices that need to be made to sort of accommodate the interests of the community at large. They are giving up a significant amount of space for the hammerhead for the entire community of Ben Lane, and that's space that they will not be able to build on or get back, and that benefits the entire community. So I just would like to speak to that.

CHAIR HOLIAN: Thank you, Ms. Kosh. Okay. This is a public hearing. Is there anybody here that would like to speak on this case, either in favor or in opposition? Please raise your hand. And perhaps you could all stand up and be sworn in at the same time. [Those wishing to speak were administered the oath.]

CHAIR HOLIAN: and please begin to come forward and when you come to the podium please state your name and address for the record. And please speak into the microphone.

[Previously sworn, Rosemary Medrano testified as follows:]

ROSEMARY MEDRANO: Madam Commissioner, members of the Board, my name is Rosemary Medrano and I live at 2094 Botulph Road in the City of Santa Fe. However, I do own property down in the Village of Agua Fria within 100 feet as designated for notification and anyone who has concerns. A couple of things I think that in the hearing tonight have kind of bothered me is that initially, we're talking that eight tow trucks are going to be parked on that property. Now we're hearing that they have nine space for trucks and we're also talking about spaces for recreational vehicles. So that is a concern because if this variance is granted, how are things going to change along the way. If the master plan is approved, the variance is granted. It's my understanding again that everything is in a conceptual environment right now so we really don't know what the end result is going to be. But those are concerns.

When the initial application was made my husband and I submitted a letter to the Commission addressing our concerns in total regarding the allowance of the variance for this business. I would like to take this time now to read the letter as it was issued back in June of 2012, and you should have a copy of this letter in your files. In this letter we're stating that this letter is in response to the owners of the property owners regarding a public hearing for a variance of Ordinance No. 2007-2, Village of Agua Fria Zoning District, etc. to allow a towing business as a special use under the Zoning Use Table.

We are writing to formally record out opposition to the request for a variance. Our concerns are many but for now I can think of at least nine important one. Please seriously consider the following: increased traffic congestion. Granting a variance will result in more in and out traffic flow to the business from the narrow Agua Fria Street by both business operation vehicles and personal vehicle inquiries. Safety and lifesaving events. Increased traffic flow to the business will cause increased interruption and delay of the already congested Agua Fria traffic causing safety issues for law enforcement and lifesaving emergency vehicle response teams.

Current and future property values. Granting a variance will no doubt negatively impact property values now and in the future. Area is designated as residential, and I think that's something that we need to keep in mind here and I appreciate Commissioner Chavez' recognition of that and Commissioner Vigil's recognition of that at the last hearing. Homes for families, children and the elderly. Allowing this variance will result in degrading its intended purpose. Increased noise and light pollution. Granting this variance will create

noise, light pollution undesirable disruption to living standards and unrest to the immediate neighborhood.

Generally a towing business is a 24-hour operation. As such the allowing this variance will increase activity and create undesirable loud noises, wandering vehicle night lights and tow truck flashing lights at all times during the night and the daytime, not to mention the disruption it creates to neighborhood animals and dogs at night.

Granting variance is contrary to traditional community of Agua Fria neighborhood goals. The purpose of the traditional community of Agua Fria is to maintain and nurture a comfortable and peaceful family neighborhood environment.

Dangerous and unhealthy environment. Granting this variance will create an unhealthy and dangerous environment for curious neighborhood children and adults. Junk metal, storage of vehicles brings safety and metal junk concerns. Storage of vehicles and junk metal is an ideal place to breed rodents, snakes, diseases and hazards normally not controlled by easy means. Storage of junk vehicles. Vehicles that are not claimed and/or abandoned become an eyesore and/or become ignored. These vehicles become orphans and are likely never removed from the area for years because of various reasons.

This is all documented, like I said, I the letter that was issued and brought to the County on June 7, 2012. I would like to submit a copy of that for the record. [Exhibit 3]

CHAIR HOLIAN: Yes, please give it to our staff.

MS. MEDRANO: And in closing, I would just like to say that we are in opposition of approval of the master plan and we are in opposition of granting the variance for special use. Thank you for your time.

CHAIR HOLIAN: Thank you, Ms. Medrano. Next.

[Previously sworn, Henry Romero testified as follows:]

HENRY ROMERO: Good evening. My name is Henry Romero and I am opposing this variance for many reasons, mostly for what Rosemary just mentioned. The pollution of lights, traffic, the movement of vehicles, not to mention that those tow trucks are parked within ten inches of our wall. I also understand that they indicated ten feet. They're definitely not ten feet from our wall. They're within eight to ten inches from our wall. Sometimes back when our wall was knocked down some of those booms were sticking into our own property; that's how close they were backed up. We have pictures indicating those trucks are too close to our wall, and if they approve this variance that's going to continue to go on and on and on. It's been going on for many years.

Also, not to forget, they have not been in that area, that business for 24 years like they mentioned. Actually, they were denied 24 years ago from parking junk cars and using the property as keeping old vehicles for whatever reason. I don't know. There's even a burned truck right now on that property. That's not a recreational vehicle. And then they also mentioned there's only eight tow trucks. At one time they mentioned ten tow trucks. Why they have so many trucks backed up to the wall, I don't understand that and I'm really getting upset with that tonight.

I'm sorry to say this but at this time I'm very upset with the whole situation because the County is not doing their job. You all have not done your job. The PRC has not done their job. Mr. Mayfield at one time worked for PRC. He's aware of all this that's been going on. There's just been a slap on the wrist and it continues and continues. And now I'm getting fed up with it. I'm sorry to say this, but it's true, they're not working, not to our satisfaction or the other neighbors next to the Anayas, which are my other cousins. Those people have to deal with that traffic every day on a daily basis. They have kids, they have grandkids that are back and forth. They have their pets. And that's going to continue to go on and on if this is approved.

Right now they're actually abusing us by parking those trucks that close to our wall. I'm not comfortable with that at all. That's all I have to say.

CHAIR HOLIAN: Thank you, Mr. Romero. Next.

[Previously sworn, Georgia Romero testified as follows:]

GEORGIA ROMERO: First I want to thank Rosemary for her letter because it kind of puts everything into a nutshell. We're talking about ten families. That's what the Anayas say, it affects ten families. They have over a dozen children running in that neighborhood where these tow trucks go to the very end of the property. Yes, there are other businesses in Agua Fria but they all have direct access to the road. They don't go through ten residences to get back onto Agua Fria Street. And then the mixed-use of other companies, every one of those other companies has a County license to work in Santa Fe, in the Santa Fe County area. Two companies did not and it was brought to the attention of the committee. Those two were in the city limits. Everybody else has a license.

In 1989 he was denied parking back there. That's 24 years ago, and he doesn't know he needs a license? If you look at the paperwork it just suddenly came to their attention. It did after they hit our wall. He said it was \$200 to \$500 of damage; it was \$7,000. To this day he has not settled with our insurance company. We're still out our deposit to get the wall going, to get it down. We've had all kinds of problems. They still back up, right up to the wall. I have pictures to show you where they're like inches.

CHAIR HOLIAN: Perhaps you can give the pictures to staff and they will pass them out.

MS. ROMERO: We are dealing with noise, we are dealing with toxic smoke. There's a picture of a truck there that when they turn them on they throw this big thing of diesel smoke up into the air. You can't hang clothes on your clothesline. You hear those trucks coming, I run for my life. I almost died at the last incident. By minutes, I wasn't there when he hit the wall. I had been out getting clothes off my clothesline. You can't barbeque, and the ten residences, people want to have birthday parties, they want to have graduations, they're going to have showers – it just goes on and on. You can't have anything with tow trucks coming right down in front of your house. Because all these pieces of land that are right there where they're going to be trucking are on .75 of an acre, so they're all right there on that easement.

And right now they're not only just parking – they not only park in the back over by our property, because our property runs the whole wall – I mean a wall runs the whole length of their property, of all their properties. And they park on an easement. They park in front of our gas meters. In an emergency, they're this far away from our gas meters. The gas company can't even get in there to do anything. And it's gone on and on. He testified that he parks ten feet away from the gas meters and from the wall. Well, if he lies down – what is he? Less than six feet? If he lies down the back tires of his truck are going to run over him when he backs up to park his trucks.

He said that every one of those railroad ties has been stamped into the ground. It has not been stamped into the ground. We submitted Exhibit 14 and if he is going to be approved we want truck parking blocks and bumpers, we want bollards, a six-inch minimum diameter with 48 inches above ground and two feet underground. We want evergreen trees to block. We've done our research. We know that the tree has to be planted five feet from the wall with still another five feet on the other side. We want trees every five feet scattered so that we don't have to see his trucks. And we don't want little six-foot, eight-foot trees; we want nice tall ones, ten, twelve feet trees.

That would be like 20, 21 trees because they went out there and measured off this land to cover that area. And then he wants personal recreation vehicles. We have burnt trucks. He's got wrecked trucks. He's got tires. Is all that going to go or do we have to put up with that? Because that brings rodents. And on top of rodents, last year, well the summer – not last summer but the summer before we worked with the feral cat program at the animal shelter. We had 27 cats fixed. Every one of them was poisoned. There's a picture of a dead kitten there where they just ran over it. They would get off their trucks and walk right over it and they would not pick it up.

And all this started when they knocked down our wall, because then we wanted a way to keep him off the wall, keep him out of our yard because the back end of the trucks are being parked into our yard when the wall was down. We had to get a restraining order to be able to fix out wall. Matter of fact, he said his friend was going to do it, well, that friend, when our insurance company got everything together and we got a contractor to build the wall and we got a plasterer, his construction friend hired our plasterer to go plaster for him on another job because his construction work doesn't do plastering.

So in case you decide to accept it I know there's more than eight tow trucks because he reported eight to the County originally. He reported ten to PRC, because we've been working with that. He has numerous violations with PRC because he did not report hitting our wall with damage over \$1,000. They were working without CTLs they were questioning their medical certificates for forgery. I have a report for each of you if you want it. It's been a can of worms and we're still dealing with it. It's been a year and a half. And right now, those radiuses off of Agua Fria, the people up there, the C de Bacas don't want to give them that space. They know they're not going to get it. They have to lie. They have to resurvey. All those things before anything can get done.

And then they park on that easement. They park in front of their trailer and cars have to go around them. They block driveways for the C de Bacas, for the other people on that drive. And if you're going to do this they have to have a time limit for the development plan, and a short one. They've been at it; they're not building any buildings. All they're doing is making a parking. And we're asking you please not to approve again, because it affects ten families and there's like a dozen little children running around. There are pets, elderly people.

And yes, you may know what you're doing as a driver but you don't know if you're going to hit gravel, if you're going to – if a child is going to run in front of you. What happens when someone gets hurt? And right now, they need that radius because when they drive out to Agua Fria and they're coming back into Ben's Lane, they drive forward and have to back up into the other lane, onto oncoming traffic. What happens if there's an emergency or a school bus doesn't expect for them to do that? It's putting the whole village in a lot of danger. Who tells these families it's okay for your loved one or your child or your pet to die because no one took the time to really study this and look at the conflicts and know that gradually they moved back. In 1989 they were denied. In 2002, there's a paper in your packets that says her aunt said it was okay to park trucks on her property. All of it was her property, and gradually they moved back and they moved back and they moved back.

Then they were parking on Anthony C de Baca's property. When he planned to bring a trailer in there first he reported him because he didn't have the right permits and didn't want it there. And the day they brought the trailer he parked his tow trucks in there and they had to get the police department to come in make him move his tow trucks so that he could – Anthony C de Baca, Jr. – could park his trailer.

The extra harassment that goes with this, it's uncalled for. But again, I thank you for your time and I really am asking you to put a very strict time limit on it. They've had more than enough time. They've had ten months, that was extra time that was given to the by your committee over what anybody else would have gotten.

CHAIR HOLIAN: Thank you, Ms. Romero.

MS. ROMERO: Could I just say one more thing? On the internet, because Rosemary brought this up, they advertise that they are a salvage junk yard. They not only have this property, they have one on Industrial Road, and they are licensed, they have a place to work out of. It's approved by PRC. They do have a place to work. And then they have one on Prairie Dog Loop which is over by Nancy Rodriguez Center that you can see from [inaudible] all those semis and everything else that's parked there belongs to the Anayas. They have an acre and a half there.

So it's not like this is the only place they can park, and being that it does affect ten residents, I think that the committee should really, really look at this. Thank you.

CHAIR HOLIAN: Thank you, Ms. Romero. Is there anyone else here from the public who would like to speak? Seeing none, the public hearing is closed. Would the applicant like to make any follow-up comments?

MS. KOSH: Thank you, Madam Chair. Yes. I'm not going to go through every single fact that the Romeros have brought up especially. I will refer back to the initial

application that we had for variance that discussed the incredible disputed facts that have been raised, including major slander in the community, major extortion and even the allegations of forgery. These are very serious allegations that will be addressed in separate proceedings. But I would like to remind the Commission that the variance has been approved. A lot of these discussions have already occurred in front of this Commission but I do need to respond to a few of them. And then, number one, recreational vehicles have always been a part of this requires. There's five. They're very specifically laid out in the application and those were approved to be parked on that back lot. And there is sufficient room.

And that's who basically maintain that open space that they can utilize for those recreational vehicles. There's only five. Again, yes, there are nine spaces. There will only be eight vehicles are parked there whether or not the Anayas acquire more or less vehicles. We've had many conversations about this. How many can fit back there? There will be eight parked back there regardless. There are nine spaces in the plan, that's to fill out the spaces but each space can accommodate the largest wrecker, we made sure, can accommodate the largest boom. Then we're talking about making this area safer, so yes, we are going to have bollards. Yes, we are going to have railroad ties. A lot of the other requests like having 21 trees – a lot of these are, that's a lot of trees and that's a lot of water. So a lot of these details have to be considered which I think is more appropriate in preliminary and final plan.

Again, there's no increased traffic. Nothing is going to increase. It's going to maintain the level that it is currently if not less. And they have been in business there for 24 years. When they keep referring to the other neighbors from the community, in 1989 they were denied having an area in the back where they could store wrecked vehicles. So that was taken off the table in 1989. They do not tow vehicles back there. They do have a lot. And again, in response to why they need the lot on Ben Lane to park their vehicles is because their other lot is completely full of cars. They could not fit their wreckers there, and also Prairie Dog Loop is unfenced and is subject to vandalism.

They do have a city license and they were under a misconception that that is all that they needed. That is why we are here today in part. And again, the damage amounts that have been discussed are in dispute and I think that is all I need to respond to. Thank you.

CHAIR HOLIAN: Thank you. Are there any more questions for staff or the applicant? Commissioner Chavez.

COMMISSIONER CHAVEZ: I have a question for staff. Mr. Larrañaga, the applicants and the adjoining property owners brought up an interesting concept and that is within this development or this proposal there needs to be some type of a buffer between this business activity and the residential component. I know that's going to be very hard to do because everything is so close; the lots are so small. But can you address that? I think that's addressed to some degree but just for the record, touch on that.

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, yes. In the conceptual plans that are in your packet there they are showing – well, there's an existing six-foot wall between the Romeros and this lot where the proposed storage of the tow trucks is, and the applicants have shown another block wall that would be to the west and then another

one on the south side and some landscape buffering alongside the easement. Also, the landscape, the trees, at preliminary and final we would figure out exactly how many trees they would need and so on, and that's going to have like a ten-foot buffer, and the plans they have do show bollards, so that way that protects the wall when they do back up. I would assume that the way they would use this property is they would back up the tow truck so that in the case of an emergency call they'd be able to just drive straight out. So this way they wouldn't back up into the wall; they'd hit the bollards first. And bumpers of course, railroad ties placed ten feet away from the wall so that any extension of that truck would not hit the wall.

COMMISSIONER CHAVEZ: I don't know if that's going to be enough, but I'm looking again, as I said earlier. I do respect the residential component. I appreciate that, but I also want to support small businesses as much as possible. So having said that I want to make a motion. Wait a minute. Before I make the motion, Mr. Larrañaga, a couple of other questions. Okay. So you dealt with the buffer and sort of separating that from the existing homes and that. There's no way that we can limit the hours of operation?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, the Board can put any kind of conditions on this proposal that they want but the type of business that it is, they get called at two in the morning or four in the morning.

COMMISSIONER CHAVEZ: See, and there's the rub right there, because most home occupation, if you're under the home occupation ordinance, and you're running a business like this in a residential neighborhood, you usually have hours of business, hours that you run your business. And so I had to ask, because I think that's only fair. In this case, sure, the nature of the business is going to say, well, we can't make money that way, but that's not being sensitive to the residential component completely.

So anyway, I'll move on to something else. What about the light pollution, especially at night? Can we limit that? Can there be screening on those lights or some kind of buffer to reduce that light pollution at night?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, they have proposed again, it's going to lead up to the preliminary and final development plan which they proposed. They did bring in cut sheets and lighting, solar lighting, which is lower to the ground and just kind of so you can see around the yard. Now, the lighting of the trucks, there won't be a six-foot wall around this property until they get out onto the roadway, Ben Lane, that's when you'll see the lights. And just to clarify on the business license, the zoning or the master plan that you're looking at gives them the zoning for a commercial business, so that would be a commercial business on the .33 acres, and to run the books and phone calls and stuff that they would get to go out into vehicles would be run from the home and that would be the home occupation. So in fact they would have two business licenses.

COMMISSIONER CHAVEZ: Okay. Last question. Your staff recommendation says that preliminary and final development plan shall be submitted within a timely manner. Can we impose a deadline or be specific in that area, instead of just leaving it open-ended so that nobody knows if anything is going to happen or when?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, yes. They still are running a business without a business license so it's still a violation until they get this approved and resolved. So the master plan has to be in front of this Board within a certain time limit of approval of the variance, staff was going to pretty much in a timely manner – it could be, once the master plan's recorded it could be – because it is just a tow yard. Of course submit the preliminary and final development plan to go to the CDRC, maybe within three months to go to CDRC after the recordation of the master plan seems feasible.

COMMISSIONER CHAVEZ: Within 90 days of accepting the master plan.

MR. LARRAÑAGA: Of recording the master plan. We'd have to have staff to do the final order and get all the details done for the master plan and recorded so we could probably do that by the end of July.

COMMISSIONER CHAVEZ: Okay. And then I guess – so that would take care of that. So, Madam Chair, I'm going to take a stab at a motion. I'm going to make a motion to approve the master plan with staff's recommendations but I want to modify them and add a couple. That the preliminary and final development plan would be submitted 90 days after the master plan is recorded. And then –

MS. LUCERO: Madam Chair. CHAIR HOLIAN: Yes, Vicki.

MS. LUCERO: Commissioner Chavez, the master plan would actually be valid for five years so that's technically how long they would have to record it, so it might be better to impose a timeline based on the approval of the master plan, which if that's what occurs tonight.

COMMISSIONER CHAVEZ: So suggest some language then that would be better.

MS. LUCERO: Something based on a timeline from the date of approval, not the date of recordation of the master plan.

COMMISSIONER CHAVEZ: Are you okay with that? Are we tracking? CHAIR HOLIAN: Commissioner Chavez, just so I can understand, you're saying that they have to submit the preliminary plat application 90 days from master plan approval?

COMMISSIONER CHAVEZ: Well, it would be preliminary and final CHAIR HOLIAN: Preliminary and final plat.

MS. LUCERO: Madam Chair, Commissioner Chavez, they would be required to submit both.

COMMISSIONER CHAVEZ: Okay.

CHAIR HOLIAN: Okay. Preliminary and final plat within 90 days of master plan approval. Correct?

COMMISSIONER CHAVEZ: Yes. And then my motion would only include three small trucks and two large trucks.

CHAIR HOLIAN: Three large trucks and two small -

COMMISSIONER CHAVEZ: Three small trucks and two large.

CHAIR HOLIAN: Three small and two large.

COMMISSIONER CHAVEZ: That balances the business interest and the neighborhood's needs in my mind anyway.

COMMISSIONER ANAYA: I second that.

CHAIR HOLIAN: Okay. I have a motion and a second. Do we have any further discussion? Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. Questions, a few questions for staff and for the applicant first. One, Jose, Mr. Larrañaga, as far as the variance that we approved back in August of 2012, and I was looking through my packet, but what conditions or staff recommendations did we put on our variance?

MR. LARRAÑAGA: Madam Chair, Commissioner Maysield, without looking at the minutes I believe the variance was, again, to allow this use to qualify as a special use and one of the conditions I remember was that it come back with the master plan within eight months of approval of the variance, which this month it met that requirement.

COMMISSIONER MAYFIELD: Well, I don't want to go by memory. I want to know if we put any actual conditions on there as far as working with the Romeros to fix their walls, working with -I just want to know what conditions were put on the variance.

COMMISSIONER STEFANICS: It's November and it's page 46 through 49. MR. LARRAÑAGA: I'm sorry. What pages did you say, Commissioner? COMMISSIONER STEFANICS: Madam Chair.

CHAIR HOLIAN: Yes, Commissioner Stefanics.

COMMISSIONER STEFANICS: We considered it in August. It came back to us in November of 2012 is when we approved and the motion was made by Commissioner Anaya and – it's several pages, the discussion about the motion. Things kept getting added, but if you get to the November.

CHAIR HOLIAN: NBA-135.

COMMISSIONER MAYFIELD: Okay.

COMMISSIONER STEFANICS: Down at the bottom it says NBA-130, 131, that area is when we did the motion and the conditions. It went on for pages.

COMMISSIONER MAYFIELD: I'll just read through it myself.

CHAIR HOLIAN: So, Commissioner Mayfield, the question is what conditions were put on with approval of the variance?

COMMISSIONER MAYFIELD: Madam Chair, is has the applicant complied with all conditions of the variance that we imposed at the time and has staff verified that they've been in compliance?

COMMISSIONER CHAVEZ: That's a good question.

CHAIR HOLIAN: Do we have a copy of the variance, Jose?

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, we don't put conditions on a variance. We recommend denial of a variance and therefore we don't put conditions on a variance for approval. Staff recommended denial of the variance and the only

condition as per these minutes and the final order was that they come in within eight months to present a master plan to the Board of County Commissioners.

COMMISSIONER MAYFIELD: Madam Chair and Jose -

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Typically, when variances come to me on a land use case, as I recall is this Commission will move forward with approval and we do apply conditions. And I know one of the conditions was for this to come back in front of us in eight months with master plan, but I didn't know if any other conditional approvals were given for the variance at that time. That's why I want to make sure. Because again, some photos were put up here and I know there were photos given to us last time, and one of the things, talking to the Anayas also was that they did have these other sites for their yards, and I remember that conversation. I asked that conversation if they had other facilities where they're actually keeping their tow yard because I know it was just alluded to by the Romeros of what the PRC did or didn't do, and they do, the PRC requires a yard where individuals can pick up their vehicles or not pick up their vehicles. In the minutes the Anayas, if I recall, said this is just to store their towing vehicles, not to store any of their – I don't want to even say salvaged vehicles but their recovered vehicles. They take these vehicles to their actual tow yard.

But in the pictures that were just given to us by Ms. Romero, I don't know the date of these pictures or not and I don't know if they're entered into the record of not, but I still see some pretty old vehicles on that property. So I just want to make sure that if that variance at that time said that these vehicles need to be off that property, they need to be off that property. And if they need to be moved to their storage yard then that's where they need to be moved. I want to know if staff has gone out there and assessed that and I don't know if that was a condition of our last, of our variance when we moved forward with it or if not —

CHAIR HOLIAN: Commissioner Mayfield, could I just respond to that? In reading through this it looks like the motion was to approve the variance but then there was toward the end, Commissioner Stefanics made an amendment that if this is a livelihood that has to be adapted, changed, relocated there is a period of time in which to do that. And so it was mostly the imposition of a –

COMMISSIONER STEFANICS: Madam Chair, there's language in there that says you amended Commissioner Anaya's – you put an amendment on Commissioner Anaya's – you put a different condition, and I haven't found that yet.

CHAIR HOLIAN: Okay. Commissioner Chavez, would you like to respond or perhaps Vicki could clarify.

MS. LUCERO: Madam Chair, I was just reading through the minutes and Commissioner Anaya made the motion to approve with conditions represented by Commissioner Holian is what it says, to make sure that they're adequately reflected on the record. But I have to go back and see where there are actually conditions.

COMMISSIONER ANAYA: I could help, provide some clarity. CHAIR HOLIAN: Yes. We need clarity. Thank you, Commissioner Anaya.

COMMISSIONER ANAYA: So if you follow through with that recommendation, I asked the question, Madam Chair, made a motion for approval with conditions relative of fire, noted by Commissioner Holian and staff conditions contained on the case if there are any. Are there any? Chair Stefanics: There were no conditions provided. Mr. Larrañaga: Madam Chair, Commissioner Anaya, there were no conditions, just recommendations for denial. Then if you go to the next page it speaks to the questions that I raised that had them been voted down at that time, and I'm paraphrasing now, they would have ceased to have a functional business. Then the question was asked, this continues to afford them the opportunity to go through that process. If they do not get this approval today, then they have to cease and desist operations. Mr. Larrañaga says, Madam Chair, Commissioner Anaya, that's correct.

Mr. Larrañaga: Madam Chair, Commissioner Anaya, yes, the master plan process, preliminary and final development plan meeting all code requirements, which is exactly what we're here with master plan, not preliminary and final. So – and it's reflected in the minutes, based on those discussions the master plan is before us today and there were no conditions established or requirements. That was the purpose of this process in master plan and preliminary and final development plan approval.

So I think the motion on the table is in order.

COMMISSIONER MAYFIELD: And that's fine, but I still have a couple questions.

CHAIR HOLIAN: Yes. You still have the floor, Commissioner Mayfield. COMMISSIONER MAYFIELD: So again, going back to the site and hearing what the motion is, respecting that the Anayas have all their vehicles that they need to try to accommodate, and that this other site should not be a site for any type of storage vehicles, recovery vehicles. And I think hearing the night sky issues, the start-up vehicle issues of the community – I'm just going to say it – I wouldn't want my son woken up at 3:00 in the morning by a truck starting up or light shining in my bedroom eight. But understanding a long-standing business has been there. That's where the compromise has to take place. But looking at all these pictures that were just afforded to us, I don't know. I'm going to have to ask the applicant Are these – I'm going to call them abandoned – are these vehicles that are not being worked on, are they still on the site? Have they been cleaned up?

MS. KOSH: Commissioner Mayfield, I believe that you are viewing pictures of –

COMMISSIONER MAYFIELD: I'll hand them to you. I don't know if you've had an opportunity to see them. So I think if we can hand them -

MS. KOSH: Yes. I'll take a look at them but I'm assuming that they're pictures of the damaged wall?

COMMISSIONER MAYFIELD: No, no. They're pictures of the whole grounds.

MR. ANAYA: These are vehicles that I personally own.

COMMISSIONER MAYFIELD: Okay. And Mr. Anaya, I appreciate that because then in the request that you have, and I read it somewhere, I guess in one of the pages, so there was a request to have, say, eight towing vehicles. I think there was a request – and let me – I highlighted it somewhere. There was a request to have – here it is. I'm on the summary page and it's staff's summary page. There was a request for staff's response for eight large tow truck vehicles, the circulation of these vehicles, retention ponds, dumpsters, the combination, the placement of two recreational vehicles, one boat, two low-boy trailers and other personal vehicles. So how may personal vehicles are we talking about on the property?

MR. ANAYA: I presume about maybe ten, twelve vehicles that are personally mine, that are registered in my name. Which I have parked at my residence as well as parked back there.

COMMISSIONER MAYFIELD: I'm just going to ask this question. Are they all running vehicles?

MR. ANAYA: Yes, they are.

COMMISSIONER MAYFIELD: Okay.

MR. ANAYA: Excuse me. The only two that are not running are the two burnt vehicles that I purchased, and I purchased those to pull the motors out.

COMMISSIONER MAYFIELD: Yes, and I think that's one of the photos. I thought I saw a truck.

MR. ANAYA: Yes, there's two burnt vehicles.

COMMISSIONER MAYFIELD: Okay, well I guess Commissioner Chavez is — that may be a different issue we have to look at. And I guess that's where I was looking at some of the community concerns, having to deal with — and there's a lot of tires I saw in those pictures. Those are other issues I think for site cleanup that would have to be addressed as far as yard maintenance for the community that maybe would have concerns with that that we would have to have addressed in the master plan.

As far as from the attorney I believe, and I'm going to bring this up because it was brought up. Santa Fe County does have a water-harvesting plan and regardless of water being used or not I know this Commission has voted on water harvesting. I know that was a recommendation. You were asking that we not consider that? But I think this Commission has put that in as conditional of all of our —

MR. ANAYA: Yes, that was brought to the attention – the person that was working on the actual site plan, but due to the topography of the property, that piece of property sites higher than all the other parts of the property so we thought putting in a holding pond where the water's not going to be sitting didn't make any sense. It can be done, but it didn't make any sense.

COMMISSIONER MAYFIELD: Mr. Anaya, I would maybe agree with you on that but I know that I've kind of have this same thought on this bench but it just kind of seems standard fare for this Commission and I don't see how we can do it on one circumstance and not another one. I guess it's something for us to talk up here.

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Another question I need to ask, Mr. Anaya, do you do any maintenance of your vehicles on your site, where you, say, like repair engines or any type of –

MR. ANAYA: Yes, we do. We also race cars and we do other activities. Our ABTVs, we ride those. There's stuff that everyone else out here does and I mean I just – like everyone else, having an RV or a motorcycle or a boat or whatever, we have one. It's just our concern was when this whole master plan went into effect, how were we going to be able to utilize the property so that we wouldn't be in violation if we did. And that's why a lot of this stuff was put into this guidelines that putting together for you guys.

COMMISSIONER MAYFIELD: Okay. And I just wanted all that to be – in case there were questions asked, saying, look, later on, there's maintenance of these vehicles and everything else. That's why it's all put out on to the table. I didn't see this in this plan? Is it somewhere else in here that it wasn't mentioned? Do you have that in there? Your attorney has that in the recommendation here?

MR. ANAYA: Not that I know, sir.

COMMISSIONER MAYFIELD: Okay. That's all I have, Madam Chair. I just wanted to make sure that that was all disclosed. So I guess there's a motion on the floor.

CHAIR HOLIAN: Any further discussion? Questions. All right. We have a

motion.

MS. KOSH: Madam Chair, I'm sorry to address you. Mr. Bennett, who is also counsel for the Anayas would also like to make one comment if you don't mind.

CHAIR HOLIAN: Yes. Mr. Bennett.

MERIT BENNETT: Good evening. I wanted to lend a little more perspective that I think might be helpful for the Commission. I've known the Anayas personally for 26 years. I've known them since two years before they started this business and I now the family quite well and I'm quite close to them. There seems to be something missing from this hearing, a perspective that I think needs to be considered. If you will take note that the only opposition in this room to the Anayas' plan is are two individuals who live on the other side of the wall that they bumped into. And that's why we're here, because the Anayas backed up a truck. It bumped into the Romeros' wall. The Romeros can't see the Anayas' property. They can't see their trucks. They don't have children over there, and you have to look at that perspective. The only other person in opposition here is a person who owns property there but doesn't live there. That's the opposition now before the Commission.

There's been a mention of what is in the interest of the community. Well, let's talk about that. This business has for 24 years been pulling people out of wrecks, ravines, ditches, car crashes and they have contracts with City Police, County officials, State Police, that they're obligated to perform. And in order to be able to perform those contracts for our community and pull somebody out of trouble in the middle of the night, they have to have those vehicles, all sizes, immediately available to respond to a call from law enforcement or some other emergency force.

You have to take that into account. You can't just start to limit vehicles arbitrarily, because each vehicle is specified for a particular job. You can't just begin to put arbitrary

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hours on an operation. And if you will note also, they've never, ever, in 24 years had any accident involving any member of this community. The residents who live on the other side of the wall, with the Anayas, are not before you tonight. They're not complaining about the business that's been conducted here for 24 years. Because they all know the service that the Anayas provide to this community. And I think that's missing here, and it's important to take that into consideration, that service to the community into consideration, when you contemplate actions that will limit an ongoing business upon which this family survives and many other people survive. This is a business of service. And to limit this business — they're not asking to expand it. They're saying we will stay at this level but then to take away from it to me takes something from the community and me having known this family for this long, it just doesn't feel right as a human, and certainly as a friend of the Anayas and a friend of Agua Fria and a friend of my community.

So I would just ask the Commission to take that into consideration.

CHAIR HOLIAN: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I'm going to make one more comment. I applaud Mr. Bennett for fulfilling your obligation as a legal representative of the Anayas and making the comments that you made based on your perspective and your fees associated with your legal representation and your knowledge of this family. Commissioner Mayfield and I, when this particular issue came up, and Commissioner Stefanics, voted on a split vote, three to two to afford this process to take place that we're sitting in today. Commissioner Mayfield and I can be reflected in the minutes and Commissioner Stefanics, and all the Commission at the time asking critical questions, raising concems, bringing up compromise and other relevant issues associated with the business. No one advocated more than us that voted in the affirmative, myself being one of the ones that had probably the most to say about sustaining a business.

All that being said, had it not been for three Commissioners at the time affording the process to take place, this business wouldn't be functional. I knew from that discussion that there was going to be a need for some compromise and Commissioner Stefanics reemphasized that and that's reflected in the minutes. Commissioner Mayfield reflected that compromise, who also voted in the affirmative of other issues that may need to be addressed between preliminary and final development plat approval. I think this is an allowable motion, if it passes, that provides reasonable use of functional property and will not put this business out of business.

I think Commissioner Chavez' motion touches on all aspects of the vehicles. It allows for the small and medium size, three of them, and allows for the very large vehicles. So, respecting your perspective and your fashion that you presented it as legal representatives for the Anayas, I can only hope, but that's okay, that you would hear some of the perspective that I brought forth and that Commissioner Chavez, Commissioner Holian, Commissioner Mayfield and Commissioner Stefanics brought forth in the discussion. But this solely exists because my colleagues had enough courage to say we'll let it go to the next step but there's going to be some compromise.

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So that's the corpus of my comments and I applaud Commissioner Chavez and this entire Commission on the discussion that transpired in two very difficult and lengthy meetings where it wasn't just a couple people here. There was people on both sides. Supporting the business, a large group and there was a fair amount of people that were in opposition as well. So I respect you and I hope that whatever decision rendered that we can all respect and progress on to the next phase if that's the wishes of the Commission. Thank you, Madam Chair.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: Yes, and I didn't mean to be arbitrary at all. This is not an easy decision for me either way, because we're not going to make anybody happy. And I'm concerned about those that are not here, more than those are here, because we're not hearing from the ones that are not here but they will still be affected in one way or another. They may not know that. But I'm just doing the best I can and hope that the business can adjust and it can continue to operate there and to provide the service that they're providing. So let's call for the vote.

CHAIR HOLIAN: Thank you, Commissioner. We have a motion and a second on the floor for approval of CDRC case #Z -13-5060 with staff conditions and with the extra conditions that the preliminary and final plat application is submitted within 90 days of the master plan approval, and that three small and two large trucks may be parked on the property at any given time.

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

#### XIX. ADJOURNMENT

Having completed the agenda and with no further business to come before this body, Chair Holian declared this meeting adjourned at 9:20 p.m.

Approved by:

Board of County Commissioners

Kathy Holian, Chair

ATTEST TO:

NB-66

Daniel "Danny" Mayfield Commissioner, District 1

Miguel M. Chavez Commissioner, District 2

Robert A. Anaya Commissioner, District 3



Kathy Holian
Commissioner, District 4
Liz Stefanics
Commissioner, District 5
Katherine Miller
County Manager

CASE NO. CDRC MP 12-5060 ROBERT AND BERNADETTE ANAYA MASTER PLAN ZONING ROBERT AND BERNADETTE ANAYA, APPLICANTS

#### <u>ORDER</u>

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on June 11, 2013, on the Application of Robert and Bernadette Anaya (hereinafter referred to as "the Applicants") for Master Plan Zoning approval for a commercial towing business as a Special Use under the Village of Agua Fria Zoning District Ordinance Use Table (Ordinance No. 2007-2) on 0.33 acres. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

- 1. The Applicants request Master Plan Zoning approval to allow a towing business on 0.33 acres ±. The request is to allow the storage of eight (8) tow trucks on the site. The Applicants propose to divide the existing .70 acre ± parcel and create a .33 acre ± lot to be utilized for the towing business. The remaining lot, which is where the Applicants currently reside, will remain residential.
- 2. The property is located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East.

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- 3. On April 18, 2013, the County Development Review Committee (CDRC) met and acted on this case. The request before the CDRC was for Master Plan Zoning and Preliminary Development Plan approval. Staff recommended Master Plan approval as the request for Preliminary Development Plan was incomplete due to non-compliance with Article V, § 7.1.2.e & § 7.1.2.j (Development Plan Requirements) and Article III, § 4.4 (Development and Design Standards). The decision of the CDRC was to recommend approval of the Applicants' request for Master Plan and denial of the Applicants request for Preliminary Development Plan. The Applicants have since altered the submittal to reflect the request for Master Plan Zoning only.
- 4. Ordinance No. 2007-2, § 10.5 (Village of Agua Fria Zoning District Use Table) states: "a Special Use is allowed only if a Development Plan and Master Plan are reviewed and approved by the Board of County Commissioners".
- 5. Article V, § 5.2.1.b (Master Plan Procedure) states: "a Master Plan is comprehensive in establishing the scope of a project, yet is less detailed than a development plan. It provides a means for the County Development Review Committee and the Board to review projects and the sub-divider to obtain concept approval for proposed development without the necessity of expending large sums of money for the submittals required for a preliminary and final plat approval".
- 6. The Applicants state that there is a need for the tow trucks to be in close proximity to their residence to be able to respond to any emergency calls in a

timely fashion. The Applicants also state that they wish to utilize the .33 acre site to store personal recreational vehicles. The Applicants have operated a growing towing business in the vicinity for many years.

- 7. The Application is comprehensive in establishing the scope of the project.
- 8. The Application satisfies the submittal requirements set forth in the Land Development Code.
- 9. Merit Bennett and Talia Kosh, on behalf of the Applicants, submitted material and testified in support of the Master Plan.
- 10. The Applicants, Robert and Bernadette Anaya, spoke in favor of the Master Plan.
- 11. Rosemary Medrano and Henry and Georgia Romero spoke in opposition to the Master Plan. The opponents based their concerns on an increase of traffic on Agua Fria, accessibility of emergency vehicles, parking of tow trucks along Ben Lane, noise, flashing lights, 24 hour activity and the development being contrary to the goals set forth by the Traditional Community of Agua Fria to maintain and nurture a peaceful family neighborhood environment.
- 12. During the BCC meeting there was a lengthy discussion regarding the proposed access. The Master Plan drawings as submitted showed in concept the proposed hammerhead turn around as well as the turn radius at the intersection of Agua Fria and Ben Lane. It was stated that the Applicants would provide the required 28-foot, inside, turn radius at the intersection of Agua Fria and Ben Lane. This will be adequately addressed with the Preliminary Development Plan Application

- 13. Staff recommended the following conditions for approval of the Application:
  - a) Master Plan with appropriate signatures, shall be recorded with the County Clerk, per Article V, § 5.2.5.
  - b) Preliminary and Final Development Plan shall be submitted in a timely manner, meeting all criteria set forth in Article V, § 7, to be reviewed and presented to the CDRC for consideration.
  - c) The Applicant shall comply with Ordinance No. 2007-2, § 10.6
     (Density & Dimensional Standards).
  - d) Storage of towed vehicles shall not be permitted on this site as per the 1989 decision of the Extraterritorial Zoning Authority. A note stating that the storage of towed vehicles on the site shall not be allowed shall be placed on the Master Plan.
- 14. The BCC suggested the following conditions for approval of the Application:
  - a) No more than three small tow trucks and two large tow trucks may be stored on the site at any given time.
  - b) The Applicant shall submit Preliminary and Final Development Plan to the County Development Review Committee for consideration within 90 days of approval of this Order.
- 15. The Application for Master Plan Zoning for a commercial towing business as a Special Use under the Village of Agua Fria Zoning District Ordinance Use Table (Ordinance No. 2007-2) on 0.33 acres should be approved conditioned on the Applicant complying with Staff and BCC conditions.

IT IS THEREFORE ORDERED that the Applicants are granted Master Plan Zoning for a commercial towing business as a Special Use under the Village of Agua Fria Zoning District Ordinance Use Table (Ordinance No. 2007-2) subject to the following conditions:

- 1. The Master Plan with appropriate signatures, shall be recorded with the County Clerk, per Article V, § 5.2.5;
- 2. A Preliminary and Final Development Plan shall be submitted within ninety days of issuance of this Order, meeting all criteria set forth in Article V, § 7, to be reviewed and presented to the CDRC for consideration;
- 3. The Applicants shall comply with Ordinance No. 2007-2, § 10.6 (Density & Dimensional Standards);
- 4. Storage of towed vehicles shall not be permitted on this site as per the 1989 decision of the Extraterritorial Zoning Authority. A note stating that the storage of towed vehicles on the site shall not be allowed shall be placed on the Master Plan;
- 5. No more than three small tow trucks and two large tow trucks may be stored on the site at any given time.

#### IT IS SO ORDERED.

This Order was approved by the Board of County Commissioners of Santa Fe County on this 13 day of August 2013.

The Board of County Commissioners of Santa Fe County

By: Ally Ja BCC Chairperson

Geraldine Salazar, County Clerk

8/20/2013

Approved as to form:

Stephen C. Ross, County Attorney



COUNTY OF SANTA FE STATE OF NEW MEXICO BCC ORDER
) PAGES: 6
) ss

I Hereby Certify That This Instrument Was Filed for Record On The 20TH Day Of August, 2013 at 03:59:28 PM And Was Duly Recorded as Instrument # 1715555 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar
County Clerk, Santa Fe, NM

# MEMORANDUM IN SUPPORT OF APPLICANTS ROBERT AND BERNADETTE ANAYA'S REQUEST FOR RECONSIDERATION OF CONDITIONS CDRC CASE # 13-5060

Applicants submit this Memorandum in Support of their Request for Reconsideration, and therefore state the following:

The Anaya's have made substantial efforts in good faith to comply with the BCC's requests and mandates. However, it has recently become clear that such mandates are not possible for several reasons:

- 1. Applicants believed that they would be able to effectuate a fair and reasonable solution for all residents on Ben Lane both with their giving up land for the hammer head for the betterment of Ben Lane and for their business. They also believed that they would be able to reach an agreement with the landowners at the entrance of Ben Lane, in order to resolve discrepancies in the need to expand the entrance in order to meet the fire code requirement of a 28' radius. These efforts have failed. After retaining more experts and expending many resources to address this issue, the Anaya's have not been able to resolve the radius issue and must first resolve the fire code issues before moving forward with the preliminary and final development plans for the variance that was approved in this case.
- 2. The Anaya's were disappointed with the BCC's last conditions of approval of the variance in their August 2013 Order, wherein it states, "no more than three small tow trucks and two large tow trucks may be stored on site at any given time." The Anaya's made good faith efforts to attempt to work within these conditions, including making diligent efforts to find other land that could be developed to store the other wreckers, and have found that there are no readily available and viable options. Therefore, this condition will effectively put the Anaya's out of the tow truck business, as they will have nowhere to store their tow trucks and any possible purchase of land is not only financially unfeasible, but will also have to go through the same variance process. Further, no land is available close enough to the Anayas' residence and work that will allow them to maintain their contracts with state and



local law enforcement to be able to arrive at the scene of an emergency within the requisite window of time.

Therefore, such conditions and the inability to resolve the fire code radius requirements does not recognize and honor this family and small business' rights to continue their long-standing business and would be a taking under the Takings Clause of the United States Constitution, the Takings Clause of the New Mexico Constitution, a violation of the Federal Motor Carrier's Act, the New Mexico and the Federal Equal Protection and Due Process Clauses through the 14<sup>th</sup> Amendment and 42. U.S.C. Sections 1983 and 1988.

#### Overview: Factual and Procedural History of this Case:

- 1. Robert Anaya, Sr. and Bernadette Anaya have operated Anaya's Roadrunner Wreckers from their home and adjacent property in Agua Fria Village since 1989. They purchased the business from another businessman in Agua Fria Village, under whose ownership it was grandfathered in when the village was annexed and the subsequent zoning code was put into effect. The area where they are located is zoned for mixed-use, and like many neighbors, they operate their business from their property, and maintain an off-site storage location for vehicles that are towed and need to be stored.
- 2. The Anaya's have applied for a variance of Ordinance No. 2007-2 (Village of Agua Fria Zoning District), Section 10.5 (Village of Agua Fria Zoning District Use Table), to allow a towing business on 0.70 acres. The property is located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East, (Commission District 2). Their CDRC case number is 13-5060.
- 3. The Anaya's are fifth-generation residents of Agua Fria Village and have contributed to the community's well-being by being active members of the community association, the fire department, the planning committee and the local church. They have raised their children in the Village and provide day-care to their grandchildren from their home, where they operate their successful tow-truck company. The have been recognized as business and community leaders.
- 4. The company provides emergency towing services for individuals and holds several contracts with state, county and tribal police to provide emergency response to DWI

and other calls. In part, the reason they were awarded these contracts was their proven track record of timely responses and careful handling of towed vehicles and other property related to the accidents. Furthermore, they maintain a small fleet of trucks of varying sizes, including class D, that allow them to navigate difficult terrain and tow heavy loads. To maintain their quick response time (thirty minutes by contract, with some additional time available in extreme circumstances) and protect their tow-trucks from vandalism, the Anaya's must keep their tow trucks on the premises so that if an emergency call comes in, they can get in the proper-capacity vehicle and immediately travel to the location of the incident.

5. As is the case with many properties in Agua Fria Village, the majority of the Anaya's neighbors are extended family members with common ancestors and through marriage. In this case, the complaint of Mrs. Anaya's cousins from an adjacent property, the Romero's, started an investigation of the Anaya's code compliance, which has turned into a costly and time-consuming ordeal. During the process, they have been slandered and harassed as individuals and as a business. The stress and health concerns to the Anaya's are overwhelming as well. They have been targeted and neighbors who support their application have been lied to and discouraged from speaking out in support. Arbitrary and capricious decisions have been made by the board without proper research or factual evidence being presented.

#### **BACKGROUND FACTS**

The key facts to this case have been presented to the various county officials at multiple hearings and meetings, and are repeated here very briefly to put the Anaya's claims in context.

The plan for Agua Fria Village supports mixed-use zoning, and several other companies with large vehicles, including other tow companies, are located in the surrounding area. In 1989, the Anaya's purchased a pre-existing tow truck and wrecker company from a neighbor whose business had been grandfathered in. At the time of purchase, the Anaya's acquired the five tow trucks belonging to the previous owner. They also received the transfer of his business license, which was undated, which they believed to be equivalent to a liquor license, in that they believed all of the attending rights and responsibilities from the preexisting company would flow to them.

According to the letter of the Agua Fria Village Association, Mr. Mec, this business was grandfathered in.

The Anaya's have run their business openly and with success since 1989. They have increased to eight tow trucks, each with varying tow capacities and purposes. They do not plan to acquire any additional vehicles. The company presently provides services to individuals and the New Mexico State Police, the Santa Fe County Sheriff's Department, fire department, Sandoval County, tribal police for nearby pueblos, and other governmental entities. Their vehicles are used as part of the emergency response process, and under their contracts they are responsible to extracting and clearing roadways of all debris when called to a job.

Of particular note, the Santa Fe County Police contract for response and towing for their DWl seizures specifies a sixty minute response time to all calls, any day of the week and any time of the day. This contract can be seen as an admission that the county was aware of the Anaya's unique central location within the county and that they would have immediate access to each of their specific vehicles, depending on what requirements might be called for in any given situation. If the Anaya's are forced to relocate any of the trucks away from their property, it may interfere with their contracts due to difficulty meeting the required response times.

Given the nature of the business, the operators and employees of the company carry two way radios and cell phones for dispatch so that they can make the time needed under the contract to assist in every way possible to minimize loss of life, damage to property, and restore roadway access for other motorists. The company maintains a separate storage lot where the towed vehicles are stored, unless they are turned over to the police. This lot is located approximately two miles away from their home and primary business. If the Anaya's are forced to relocate some of their tow trucks to the storage lot, there is a strong chance of vandalism to their property. More important, the increased driving time might lead to safety risks in order to meet compliance with the contracted response times.

Like many New Mexican families, the Anaya's also maintain several personal recreational vehicles on their property for camping, boating, driving and racing. These are not affiliated with the business although they have been accused of storing towed material on their property.

It is worth noting that the configuration of the property held by the Anaya's has changed over the years, as one family elder who passed away traded out one portion of their parcel, which

was originally located directly across from their residence and on which they originally kept the trucks, for a parcel further down Ben Lane, which backs up onto the Romero's property. That lot is essential a tamped down dirt patch where the tow trucks have been moved, and where some of their personal recreational vehicles are kept. The commission has been presented with maps and photographs to make clear the layout and nature of the property in question.

Approximately ten households are located along Ben Lane. Most of the occupants are relatives of varying degrees of sanguinity. Some have crected fences or more permanent walls. Based on the placement of the walls, it appears that consultation with the county was not sought prior to building. In fact, it seems that some of the safety code concerns now placing a burden on the Anaya's as they attempt to get approval of their master plan arise from walls blocking off utility easements which were to be used as fire lanes. Further discussion of the hammerhead and fire lanes is included in the next section.

There were no accidents or reports about safety pertaining to the Anaya's tow trucks in their 24 years of operation, a fact of which they are quite proud. Then in 2012, while backing a truck into a spot which permits for quick and easy pull out, Mr. Anaya accidentally tapped the wall which the Romero's had erected in the utility easement which separates their two properties. A portion of the cinderblock wall came down on the Romero's side of the property. The Romero's filed an insurance claim, and the Anaya's consulted with a friend who builds and repairs masonry walls to find a way to make the Romero's whole. Mr. Romero told Mr. Anaya that he could accept payment of \$7,000.00 to settle the issue, which was several thousand dollars above what it would cost to repair. Testimony and letters have presented at the various committee meetings that describe long-standing animosity between the complaining Romero's and the Anaya's. The Anaya's refused to pay the inflated amount, and shortly thereafter a complaint was filed against them regarding having 'junk in the yard' and for operating their business without a license, which has deteriorated into the present situation.

#### ADMINISTRATIVE PROCESS TO DATE

In February 2012, a criminal complaint was filed against Mrs. Anaya for violation of business regulations and junk vehicles, to which she plead not guilty and the charges were dismissed.

In March 2012, the Romeros obtained a restraining order against the Anayas.

The County Development Review Committee met on June 21, 2012 and decided to recommend the applicants' request for variance be denied. At that meeting, county staff Jose Larranaga explained that the zoning ordinance was established in 1981 and the 1989 business could not be grandfathered in. A notice of violation was issued. He further noted that the applicant did not have a County business license. On the record, it was established that the applicants have licenses from the City and Department of Transportation and had applied for a County license, but was told by officials to wait until the variance process was completed.

Board of County Commissioners met on August 14, 2012 and voted to table the request for variance pending mediation between the applicants and persons opposing the request.

Santa Fe County Board of Commissioners Regular Meeting was held on November 13, 2012, and the Anaya's variance application was on the agenda.

The mediator, Rosemary Romero, filed a report with the Santa Fe Board of County Commissioners on October 11, 2013 indicating that the mediation had not occurred and would not be appropriate in this instance. The reasons cited were that many family members did not want to participate (including fear of retaliation, not wanting to air family conflicts in public, and a belief that "having an attorney involved defeated the purpose of mediation.") Although the Anaya's were agreeable to participating in the proposed mediation, they exercised their right to have their attorney serve as their main point of contact.

Santa Fe County Board of Commissioners Regular Meeting was held on June 11, 2013, and the Anaya's variance application was on the agenda. County staff recommended "approval of the Master Plan Zoning to allow the storage of eight tow trucks, to be utilized as a towing business, on .33 acres" subject to certain conditions. Commissioner Chavez later proposed the Anaya's only be permitted to maintain three small tow trucks and two large tow trucks on their property to "balance" [ ] the business interest and the neighborhood's needs in my mind anyway. He went on to say that the situation would require compromise, although it seems the only compromise requested has been for the Anaya's to give up the use of their land. Commissioner Anaya seconded the motion. In response, Mr. Bennett, counsel for the Anayas, responded that "You can't just start to limit vehicles arbitrarily, because each vehicle is specified for a particular job. You can't just begin to put arbitrary hours on an operation. And if you will note also, they've never, ever, in 24 years had any accident involving any member of this community." In the end, a motion for approval of the case with staff conditions and with the

extra conditions that the preliminary and final plat application be submitted within 90 days of the master plan approval, and that three small and two large trucks may be parked on the property at any given time was passed by majority [4-1].<sup>8</sup>

An Order was entered on August 13, 2013 granting the Anaya's Master Plan Zoning for a commercial towing business as a Special Use subject to certain restrictions: a) the signed Master Plan shall be filed with the County Clerk; b) the Preliminary and Final Development Plan shall be submitted within ninety days of the issuance of the Order, to be presented to the CDRC for consideration; c) applicants shall comply with Ordinance No. 2007-2, Section 10.6; d) storage of towed vehicles shall not be permitted on the site and shall be so noted on the master plan; 3) no more than three small tow trucks and two large tow trucks may be stored on site at any given time. 9

The Anaya's have consulted with Morey Walker to prepare a Master Plan, which is now under review. The necessary agencies have been issuing the required reviews of the Master Plan.

One issue of fire-safety has been raised which is creating great problems. Although there is a fire flush along Ben Lane, the County Planners have determined that because there is no through access along Ben Lane due to walls which have been erected which block the utility easements (and the original fire lanes) that a twenty-eight-foot hammerhead must be created at the back of the Anaya's lot to allow a large fire truck to turn around. The Anaya's have illustrated to the Commission that a fire truck could make the required turn-around in the space as it is now configured, but they continue to meet obstacles. Based on his personal experience working as the Village's fire chief and as a family of volunteers, Mr. Anaya does not see how this requirement is necessary or why as a property-owner who happens to be located on the back lot he should bear the complete burden to benefit all of his neighbors.

RESPONSE TO BCC Staff's October 30, 2013 Response to Applicants' Request for Reconsideration:

In this response, Mr. Larranaga states that "The Agent for the Applicants accepted the need to make the investment for the 28' radius and accepted the implementation of the 28' radius as a condition of approval" and that "the Applicants did not appeal the final decision of the BCC." See Staff's response, NB-3. Applicants appreciate Staff's acknowledgement of their diligent and good faith efforts to comply with each of BCC's requests and mandates. Applicants very much

wished to be compliant and work within the parameters set by the BCC and all other administrative agencies. Applicants did so attempt to work within these parameters. Recently, it became very clear that Applicants had done all they could do to try to work within these parameters, spending incredible amounts of resources to do so, and yet they had come up short. The Applicants throw themselves at the mercy of the BCC to assist them in resolving these issues that are not within their capacity to resolve and that will effectively put them out of business without the BCC's reconsideration and extension of time to attempt to address these matters.

#### **CONSTITUTIONAL CLAIMS**

## TAKINGS UNDER ARTICLE V OF THE UNITED STATES CONSTITUTION AND N.M. CONST., ART. II, § 20

As an essential element of individual liberty, the Takings Clause was included in the Bill of Rights to ensure the protection of private property from an overreaching government. 10 Federal and state laws are clear that "Private property shall not be taken for public use, without just compensation." Article II, Section 20 of the New Mexico State Constitution states "Private property shall not be taken or damaged for public use without just compensation." This is so whether there is a permanent or temporary physical occupation of the property or if regulation interferes with the character of the land at issue and the "reasonable investment-backed expectations" regarding the land's use." "[W]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." In regard to the Takings Clause, the state must provide a "reasonable, certain and adequate provision for obtaining compensation," both when property is physically taken as well as when a regulation greatly reduces the economic viability of the property. 13 The Takings Clause is "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Furthermore, the State and its subdivisions cannot claim sovereign immunity to protect itself from liability in takings cases, and the Fifth Amendment is held to be 'self-executing'. See Manning v. Mining and Minerals Division of the Energy, Minerals and Natural Resources Department et al., 140 N.M. 528, 144 P.3d 87 (N.M., 2006). Finally, it is worth noting that the Fifth Amendment has been made applicable to the states through the Fourteenth Amendment's guarantee of due process. 16

The United States Supreme Court has made explicit that each takings case should "be assessed with reference to the 'particular circumstances of each case'." In this case the Anaya's purchased a towing business that had been grandfathered in at the time the Village zoning ordinances were adopted and are believed to have been grandfathered in themselves. They have operated their business with safety and success for 24 years in a mixed-use neighborhood under a zoning plan that encourages and promotes the type of community and family-oriented business they provide. Storage of their tow trucks on their property is essential to their contractual commitments and success to provide timely responses to emergency situations. The county itself requires immediate access to their unique vehicles to respond to the varied towing situations.

As a result of a disgruntled neighbor calling in a complaint, the Anaya's have been targeted and forced to hire legal counsel, pay several thousand dollars in fees for plan drafting, advertising and postings regarding public meetings. Their neighbors and supporters have been threatened and lied to (that they would be forced to give up land or pay higher taxes if they supported the Anaya's). The Commission has arbitrarily and capriciously determined that rather than maintain their eight tow trucks on their property, they can only keep five. Furthermore, the Commission is attempting to cap the number of personal recreational vehicles they may keep on their property. Under the terms of the Master Plan, the Anaya's are being asked, solely among their neighbors, to give up property for a hammerhead to benefit the entire street as a result of other neighbors erecting walls that block the utility easements.

#### EQUAL PROTECTION & DUE PROCESS CLAIMS

The Equal Protection Clause of the U.S. Constitution's Fourteenth Amendment states "No State shall make or enforce any law which shall ... deny to any person within its jurisdiction the equal protection of the laws" and Article II Section 18 of the New Mexico Constitution states "No person shall be ... denied equal protection of the laws." Equal protection prohibits "the government from creating statutory classifications that are unreasonable, unrelated to a legitimate statutory purpose, or not based on real differences." <sup>18</sup> The threshold question in evaluating an equal protection claim is whether a law or regulation, results in dissimilar treatment of similarly-situated individuals. <sup>19</sup>

Regulations restricting the use of land must be clear and fair and apply equally to all. The N.M. Supreme Court has stated "standard-less regulation that depends on no more than a zoning official's discretion would seriously erode basic freedoms that inure to every property owner." The Anaya's would argue that to date, the reviewing agencies actions are arbitrary and capricious, that their decisions are not being supported by substantial evidence and that their actions are not in accordance with the law as it has been established by the U.S. Supreme Court and New Mexico Supreme Court. <sup>21</sup>

The Anaya's are one of several tow truck companies and other local companies that maintain heavy vehicles on their property to conduct their business efficiently. Counsel for the Anaya's believe their business was grandfathered in and/or that they have a legal non-conforming use on the property which has not been abandoned. They continue to operate their business while attempting to meet each demand the Commission is placing on them, such as contacting the utility company to move a pole so that there will be a greater turning radius onto Ben Lane.

After more than two decades of running their business safely and providing critical service to the community and state in emergencies, they are being scrutinized for a single incident involving the tapping of a wall. With each telling of the story by the Romero's the tale becomes more dramatic, invoking dead kittens and the near collapse of the wall onto Mrs. Romero while hanging the wash out to dry. Other opponents claim that children will be lured into the dangerous trucks by their mere presence.

There is no dispute that safety in the community is a rational objective for the town's zoning. In fact, the Anaya's were actively engaged in the process at the time the zoning for Agua Fria Village was being considered under the development plan in 2003-2006. They live there and have raised generations of their family there and are intrinsically invested in keeping their neighborhood and village safe. In fact, with their business they help to keep the village safe. None of their operators have been involved in on-the-job accidents. Yet because the county's zoning office is "complaint driven" the government has been drawn into a neighbor dispute which now threatens the livelihood of the Anaya's as well as their ability to enjoy their property fully. The proposed hammerhead for fire safety will severely limit their access to their property. The family has been singled out and targeted under the ordinance and the technique for enforcement. The County Commission has imposed substantial financial and emotional

burdens on the Anaya's. There is actual interference as well as injury to the Anaya's, so that they cannot use their back lot for its original intended purpose.

The Anaya's may also bring a claim under 42 U.S.C. Section 1983 showing "that the defendants must have acted under color of law, regulation, custom or usage of the State of New Mexico, and that the plaintiff must have been deprived of federal constitutional rights, privileges and immunities." According to the U. S. Supreme Court: "[t]he very purpose of Section 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights – to protect people from unconstitutional action under color of state law, whether that action be executive, legislative, or judicial." There is no dispute that the Santa Fe County Commission is acting under color of law for the State of New Mexico in its evaluation of the Anaya's variance request. The Supreme Court has made clear that a municipality may be sued under Section 1983. As explained above, the causes of action arising under Article V of the United States Constitution and related Equal Protection and Due Process Claims relate to federal constitutional rights, as well as state rights. 42 U.S.C. Section 1988 allows the court to grant the prevailing party reasonable attorney's fees as part of their costs.

#### CONCLUSION

The Anaya's would like to continue operating their business from their property in compliance with the county's zoning requirements. They have made every reasonable effort to comply with the various deadlines, notices and other hurdles as they have been brought to light. At times, they have met with contradictory instructions and then penalized for non-compliance.

They are aware that litigation is costly, slow, and unpredictable. They do not want to resort to that if it can be avoided. Rather, they respectfully request streamlined, consistent assistance and cooperation from the county entities that oversee the variance process so that they are not deprived of their livelihood and can continue to enjoy the land that their ancestors have settled.

#### PROPERTY ALTERNATES PURSUED BY ANAYA'S

- 1. Robert J. Anaya, Jr. purchased 2 pieces of property just shy of 4 acres @ Reata Road and West Frontage Road to move business. Unable to use because the city of Santa Fe annexed property and turned commercial zoning into residential. IF THE PROPERTY ON REATA ROAD IS RETURNED TO COMMERCIAL ZONING THE ANAYA'S WOULD BE ABLE TO KEEP THEIR OVERFLOW OF HEAVY EQUIPMENT ON THAT SITE.
- 2. Anaya's have looked at lots near their present storage location on Industrial Road.
  - a. They cannot afford \$1.3 million purchase price for 1.5 acres on Siler Lane.
  - b. Location on Cerillos Road at Ocate Purchase price \$2.5 million, 7 acres.
  - c. Location on Highway 14 adjacent to PNM purchase price \$960,000, 3 acres
  - d. Land on Airport and Constellation area, 2.5 acres purchase price \$1.1 million.
- 3. The Anaya's cannot afford property in Santa Fe in its inflated real estate market, nor the 25% down payment prior to potential funding.

Santa Fe County, Board of County Commissioners, Minutes of Regular Meeting of June 21, 2012.

<sup>&</sup>lt;sup>2</sup> Id.

<sup>&</sup>lt;sup>3</sup> 1d at 22

<sup>&</sup>lt;sup>4</sup> Santa Fe County, Board of County Commissioners, Minutes of Regular Meeting of June 11, 2013 at page 74. <sup>5</sup> Id. At page 89.

<sup>6</sup> Id.

<sup>&</sup>lt;sup>7</sup> ld. at page 94.

<sup>8</sup> Id. at page 95.

<sup>9</sup> Order dated August 13, 2013.

<sup>&</sup>lt;sup>10</sup> Manning at pages 89-90

Arkansas Game and Fishing Commission v. United States, 568 U.S. (2012) citing Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 435 at n. 12 (1982) and Palazzolo v. Rhode Island, 533 U.S. 606, 618 (2001).

<sup>&</sup>lt;sup>12</sup> Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415, 43 S.Ct. 158, 67 L.Ed. 322 (1922)

<sup>&</sup>lt;sup>13</sup> Williamson County Reg'l Planning Comm'n v. Hamilton Bank, 473 U.S. 172, 194, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985).

Arkansas Game and Fishing, citing <u>Armstrong v. United States</u>, 364 U. S. 40, 49 (1960). See also <u>First English Evangelical Lutheran Church of Glendale v. County of Los Angeles</u>, 482 U. S. 304, 318-319 (1987); Penn Central <u>Transp. Co. v. New York City</u>, 104, 123-125 (1978).

<sup>&</sup>lt;sup>15</sup> See also <u>In Re Held Orders of U.S. West Communications v. N.M. State Corporations Commission</u>, 943 P.2d 1007, 123 N.M. 554 (1997).

<sup>&</sup>lt;sup>16</sup> Chicago B. & Q.R. Co. v. City of Chicago, 166 U.S. 226, 235-42, 17 S.Ct. 581, 41 L.Ed. 979 (1897).

<sup>&</sup>lt;sup>17</sup> Arkansas Game and Fishing citing <u>United States v. Central Eureka Mining Co.. 357 U.S. 155, 168 (1958) (citing Pennsylvania Coal Co. v. Mahon. 260 U.S. 393, 416 (1922).</u>

<sup>20</sup> Smith v. Board of County Commissioners, 137 N.M. 280, 110 P.3d 496 (2005).

<sup>22</sup> Gomez v. Board of Education, 85 N.M. 708, 711, 516 P.2d 679, 682 (1973); cited by Chapman v. Luna, 102 N.M. 768, 701 P.2d 367 (S. Ct. 1985).

Mitchum v. Foster, 407 U.S. at 242.

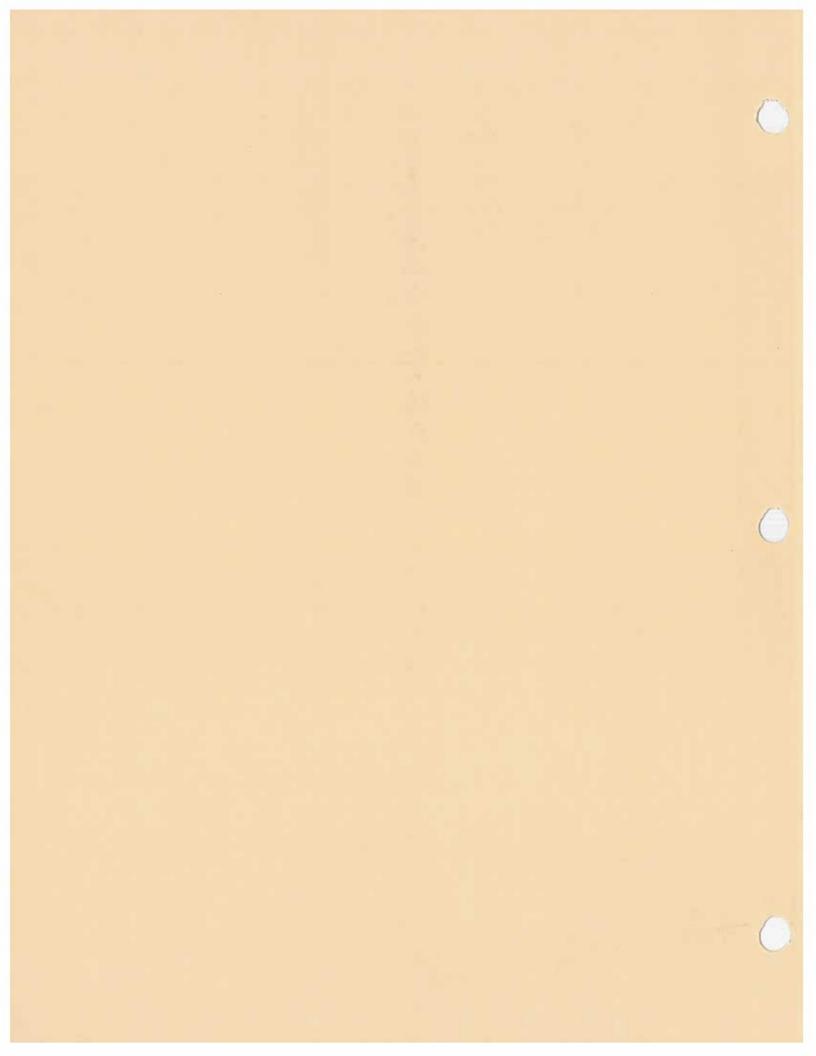
<sup>&</sup>lt;sup>18</sup> also <u>In Re Held Orders of U.S. West Communications v. N.M. State Corporations Commission</u>, 943 P.2d 1007, 123 N.M. 554, citing Madrid v. St. Joseph Hosp., 1996 NMSC 064p 35, 122 N.M. 524, 535, 928 P.2d 250, 261 (1996).

19 See Madrid, 1996 NMSC 064 p 35, 122 N.M. 524, 928 P.2d 250.

<sup>&</sup>lt;sup>21</sup> San Pedro Neighborhood Association v. Board of County Commissioners of Santa Fe County, 206 P.3d 1011, 146 N.M. 106 (N.M. App. 2009).

<sup>&</sup>lt;sup>24</sup> Monell v Department of Social Services, 463 U.S. 658 (1978).





### NO PACKET MATERIAL FOR THIS ITEM

VIII. Concluding Business

A. Announcements

B. Adjournment

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