

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: March 12, 2013

TO: Board of County Commissioners

FROM: Wayne Dalton, Building and Development Services Supervisor *WD*

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

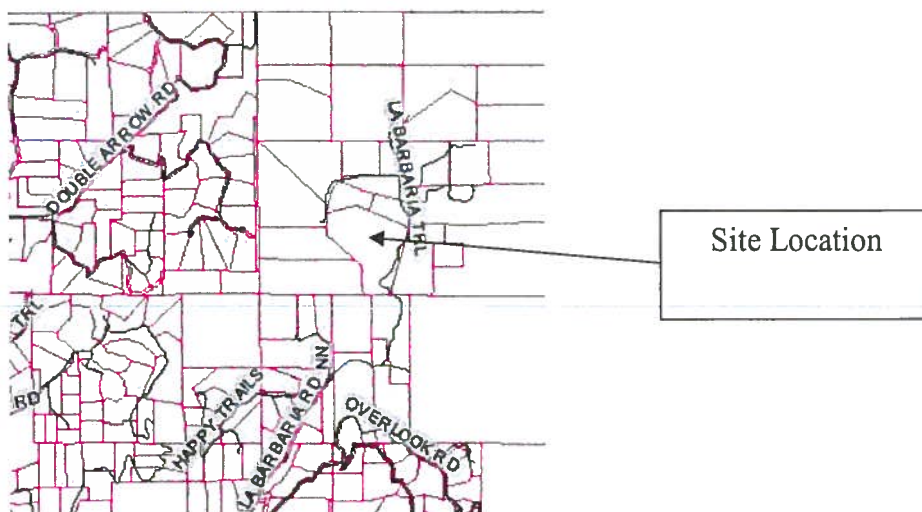
FILE REF.: CDRC CASE # V 12-5111 William Frederick Variance

ISSUE:

William Frederick Wagner, Applicant, (Sommer, Karnes & Associates, LLP), Joseph Karnes, Agent, request a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow a Family Transfer Land Division of 31.824 acres into two lots; one lot consisting of 20.990 acres and one lot consisting of 10.834 acres.

The property is located at 45 La Barbaria Trail, within Section 9, Township 16 North, Range 10 East, (Commission District 4).

Vicinity Map:



SUMMARY:

This case was originally reviewed under Section 9.8 (Mountain Special Review District Standards) of the Extraterritorial Zoning Ordinance (EZO). The Application was denied by the Land Use Administrator and the Applicant appealed that decision to the CDRC. On July 19, 2012, the CDRC met and acted on the case. The decision of the CDRC was to uphold the Land Use Administrator's decision and denied the appeal. After further review of Ordinance No. 2009-1 (**An Ordinance establishing subdivision, platting, planning and zoning rules within the presumptive city limits and within unincorporated areas of the County**), the Legal Department and staff have determined that Section 9.8 (Mountain Special Review District Standards) of the EZO is no longer in effect and the Application is governed by the County Land Development Code.

The Applicant now requests a variance of Article III, § 10 (Lot Size Requirements) of the Land Development Code to allow a Family Transfer Land Division of 31.824 acres into two lots. The subject lot was created in 1978, and is currently vacant.

Article III, § 10 (Lot Size Requirements) of the Land Development Code allows lot size to be reduced to twenty acres (20) or more with signed and recorded water restrictions and for lots created through Family Transfer, subdivision or land division. A Family Transfer under the Land Development Code is permitted from husband to wife. An immediate family member as defined in the Code is a husband, wife, father, stepfather, mother, stepmother, brother, stepbrother, sister, stepsister, son, stepson, daughter, stepdaughter, grandson, step grandson, granddaughter, step granddaughter, nephew, niece, whether related by natural birth or adoption.

The Applicant intends to gift one of the two proposed lots to his wife. The Applicant states he has no children of his own and desires to maintain the property for personal use and for his extended family and desires to create two lots. The Applicant also states, the proposed lot sizes are substantially larger than existing adjacent lots in the immediate vicinity.

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 January 18, 2013.

On February 21, 2013, the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the Applicant's request by a 5-0 vote (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 to allow a Family Transfer Land Division of 31.824 acres into two lots.

GROWTH MANAGEMENT AREA: El Centro, SDA-3

HYDROLOGIC ZONE: Mountain Hydrologic Zone, minimum lot size per Code is 80 acres per dwelling unit. Lot size can be reduced to 20 acres per dwelling with signed and recorded water restrictions and for lots created through Family Transfer, subdivision or land division.

FIRE PROTECTION: Hondo Fire District.

WATER SUPPLY: Domestic Well

LIQUID WASTE: N/A

VARIANCES: Yes

AGENCY REVIEW:	<u>Agency</u>	<u>Recommendation</u>
	County Fire	Conditional Approval

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

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

1. Water use shall be restricted to 0.25 acre feet per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, § 10.2.2 and Ordinance No. 2002-13).
2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval (As per Article III, § 2.4.2).

3. Further division of each Tract is prohibited; this shall be noted on the Plat. Only one dwelling unit shall be permitted on each lot (**As per Article III, § 10**).
4. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review (**As per 1997 Fire Code and NFPA Life Safety Code**).

EXHIBITS:

1. February 21, 2013, CDRC Minutes
2. Letter of request
3. Article III, §10 (Lot Size Requirements)
4. Article II, § 3 (Variances)
5. Site Photographs
6. Proposed Plat of Survey
7. Aerial of Site and Surrounding Area
8. Fire Prevention Memo
9. Letters of Opposition

D R A F T

- VIII. B. **CDRC Case #V 12-5111.** William Frederick Wagner, Applicant, (Sommer, Karnes & Associates, LLP), Joseph Karnes, Agent, request a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow a Family Transfer Land Division of 31.824 acres into two lots; one lot consisting of 20.990 acres and one lot consisting of 10.834 acres. The property is located at 45 La Barbaria Trail, within Section 9, Township 16 North, Range 10 East, (Commission District 4)

Wayne Dalton gave the staff report as follows:

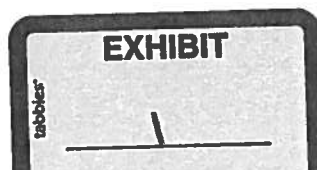
“This case was originally reviewed under Section 9.8, Mountain Special Review District Standards, of the Extraterritorial Zoning Ordinance. The Application was denied by the Land Use Administrator and the Applicant appealed that decision to the CDRC. On July 19, 2012, the CDRC met and acted on the case. The decision of the CDRC was to uphold the Land Use Administrator’s decision and denied the appeal. After further review of Ordinance No. 2009-1, the Legal Department and staff have determined that Section 9.8 of the EZO is no longer in effect and the Application is governed by the County Land Development Code.

“The Applicant now requests a variance of Article III, § 10 of the Land Development Code to allow a Family Transfer Land Division of 31.824 acres into two lots. The subject lot was created in 1978, and is currently vacant. Article III, § 10 of the Land Development Code allows lot size to be reduced to 20 acres or more with signed and recorded water restrictions and for lots created through Family Transfer, subdivision or land division. A Family Transfer under the Land Development Code is permitted from husband to wife. An immediate family member as defined in the Code is a husband, wife, father, stepfather, mother, stepmother, brother, stepbrother, sister, stepsister, son, stepson, daughter, stepdaughter, grandson, step grandson, granddaughter, step granddaughter, nephew, niece, whether related by natural birth or adoption.

“The Applicant intends to gift one of the two proposed lots to his wife. The Applicant states he is unable to have natural children of his own and desires to maintain the property for personal use and for his extended family and desires to create two lots. The Applicant also states, the proposed lot sizes are substantially larger than existing adjacent lots in the immediate vicinity.”

Mr. Dalton said 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 indicated staff was recommending denial of a variance from 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 lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk’s Office (As per Article III, § 10.2.2 and Ordinance No. 2002-13).



2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval (As per Article III, § 2.4.2).
3. Further division of each Tract is prohibited; this shall be noted on the Plat. Only one dwelling unit shall be permitted on each lot (As per Article III, § 10).
4. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review (As per 1997 Fire Code and NFPA Life Safety Code).

Karl Sommer, legal counsel for the applicant, explained that when the case was heard previously it was believed that some of the regulations of the Mountain Special Review District had not been repealed. Subsequently, Legal staff decided that they had been. Mr. Wagner is now asking for a simple variance under the provisions of the County code. He said it meets all the criteria of the code as established by the Board of County Commissioners and the only thing they are asking for is a density variance from the minimum lot size of 20 acres for a family transfer. The land, just over 30 acres, is the sole and separate property of Mr. Wagner, who wishes to give part of it to his wife. Three or four years ago the family transfer density requirement was ten acres so a variance would not have been required at that time.

Reading from the code, "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," Mr. Sommer noted that the CDRC regularly recommends denial of variances and the BCC goes on to approve them, such as in the cases of Elia Gonzales, Lawrence Maes and Carla Cavaliere. This achieves the purpose of the code in that it allows someone to transfer property to a family member.

Mr. Sommer said the BCC is approving variances based on "administrative glosses" and applying the code from that.

Appearing for residents in the La Barbaria Trail neighborhood, Chris Graeser distributed citations from the Land Development Code. *[Exhibit]* He agreed that the original interpretation of the variance request that was denied on the basis of family definition was incorrect and this request comes with higher legal standards. He said the variance request should now be denied because it is a bad idea to increase density in an area with problematic access, particularly if there were a fire. While this property is larger than many of the area lots, it's also smaller than many of the lots, which range up to 400 acres. The average lot size on La Barbaria Trail is 49.15 acres.

The second issue is that granting the variance would be illegal under the code and under state statute. He pointed out this is not a "heart-wrenching story" as is sometimes heard; "they just want to be able to divide this lot." The Wagners have two other houses in Santa Fe and one in Albuquerque, thus the spirit of the zoning ordinance is not being observed, nor are the goals and policies of the comprehensive plan, since this area has low suitability for development.

Duly sworn, Jay Shelton *[Exhibit]* stated his property abuts that of the applicant. He stressed that granting the variance would be injurious to health and safety. Due to the fire danger

any additional people would have a negative impact and set a bad precedent. There is only one road in and out of the area.

Under oath, Sandra Valley speaking in opposition, said she has lived in the area since 1997 and has around 30 acres. She moved there because she wanted to be in a rural setting. Water is an issue: her well pumps only one gallon per hour. She and her husband have been willing to put up with the inconveniences of the bad road in order to live in the country. Additionally, she said it is an issue of justice.

Mr. Sommer said there is no claim about the physical condition of the land. "The County Commission has established a standard when applying this section of the code for variances in family transfers...it relies on that last phrase of the code that says these conditions would result in inhibiting the purposes of the code in family transfers."

Member DeAnda asked if there was a hardship in this case. Mr. Sommer said the inability to divide the land creates a hardship to the family except where there are extraordinary circumstances that militate against it. He said it was difficult to reconcile the application of the code with the ultimate decisions, but they do constitute a standard. Member DeAnda noted that the use and benefit of the lot is not really being split. Mr. Sommer agreed the issue of hardship is often difficult to discern.

Member Anaya moved to deny the request in CDRC Case #V 12-5111 per staff recommendation. Member Martin seconded and the motion passed by unanimous [5-0] voice vote. [Member Katz was not present for this action.]

SOMMER KARNES & ASSOCIATES LLP

Mailing Address
Post Office Box 2476
Santa Fe, New Mexico 87504-2476

Street Address
200 West Marcy Street, Suite 133
Santa Fe, New Mexico 87501

Telephone: (505) 989.3800
Facsimile: (505) 982.1745

Karl H. Sommer, Attorney at Law
khs@sommer-assoc.com
Joseph M. Karnes, Attorney at Law
jmk@sommer-assoc.com

Mychal L. Delgado, Certified Paralegal
mld@sommer-assoc.com

James R. Hawley, Attorney at Law
Of Counsel
Licensed in New Mexico and California
jrh@sommer-assoc.com

January 18, 2013

Wayne Dalton
Santa Fe County Growth Management Department
102 Grant Avenue
Santa Fe NM 87504

Re: William Frederick Wagner Family Transfer/ Density Variance Application

Dear Wayne:

Per our discussions and on behalf of William Wagner, this letter addresses the application for a family transfer or in the alternative, a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow a family transfer land division of 31.824 acres into lots of 20.99 and 10.83 acres. The property is located at 45 La Barbaria Trail.

Mr. Wagner acquired the subject property on October 13, 2004. The attached deed confirms that he took the property as a single man. He married Nadine Choppin Wagner on September 6, 2008. He desires to gift one of the two lots to her.

The Wagners are unable to have natural children and desire to maintain the property for use of them and their extended family and desire to create two lots, which lots sizes are substantially larger than existing adjacent lots and lots in the immediate vicinity.

Please let me know if you need any additional information.

Sincerely,


Joseph M. Karnes



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

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

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

→ SECTION 10 - LOT SIZE REQUIREMENTS

10.1 Relationship of Lot Sizes to Water Policies

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

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

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

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

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

BASIN FRINGE ZONE: Same as Basin Zone.

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

MOUNTAIN ZONE: Same as Homestead Zone.

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

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

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

10.2 Calculation of Minimum Lot Size

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

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

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

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

Where:

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

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

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

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

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

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

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

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

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

10.2.2 Calculation of Use

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

The Code Administrator shall maintain an application form upon which are listed potential water conservation measures. This form shall indicate the effect of each conservation measure 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.

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

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

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

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

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

10.2.4 Special Standards for Calculation of Water Availability for Metropolitan Areas

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

a. Standard Values of Water Availability

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

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

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

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

b. Adjustments for Water Conservation

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

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

10.3 Exceptions to Minimum Lot Size Requirements

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

10.3.1 Metropolitan Area - Community Water Systems

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

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

10.3.2 Agricultural Areas

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

10.3.3 Traditional Communities

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

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

10.3.4 Urban Areas

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

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

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

10.4 Density Transfer

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

SECTION 11 - IMPORTING OF WATER

11.1 Location Requirements

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

2.5 Zoning

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

2.6 Subdivisions

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

2.7 Other Requirements

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

→ **SECTION 3 - VARIANCES**

3.1 Proposed Development

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

3.2 Variation or Modification

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

3.3 Granting Variances and Modifications

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

3.4 Height Variance in Airport Zones

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

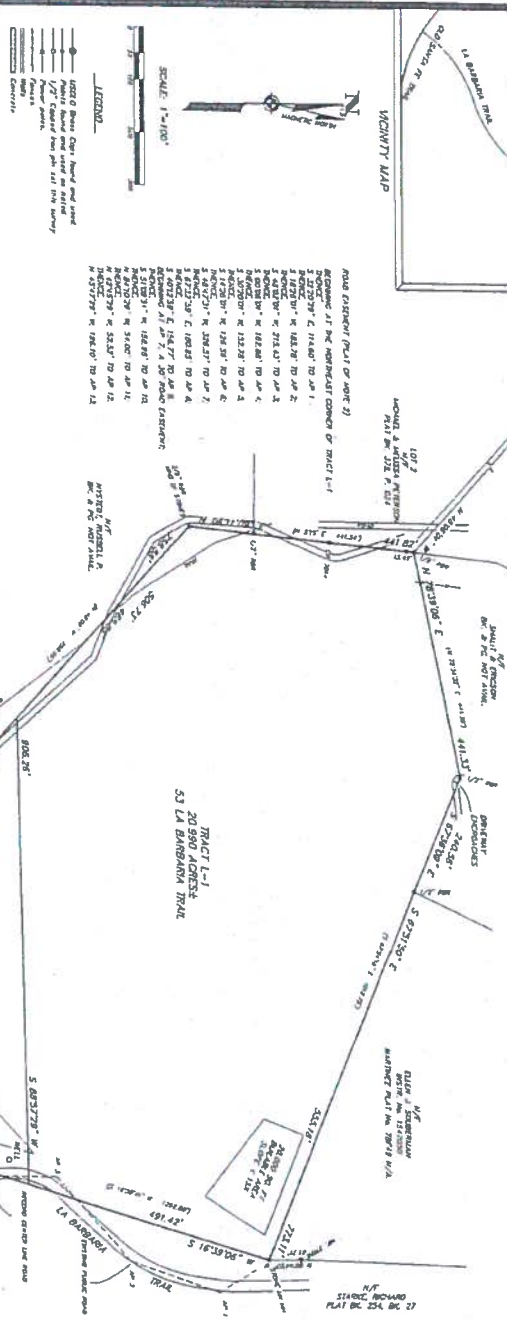






SANTA FE COUNTY APPROVAL NOTES AND CONDITIONS
APPROVALS

DATE	TIME	TO	FROM	REMARKS
2025/11/11	14:00	11-2030	11-2030	DEPARTMENT PERMIT No. 11-2030

[illegible]

RELEASE UNDER E.O. 14176
 DATE _____
 STATE OF NEVADA
 COUNTY OF CLATSOP
 THE FORECLOSURE INSTRUMENT WAS ACKNOWLEDGED BEFORE
 ME AND _____ DAY OF _____ 2013

2000
 1999
 1998
 1997
 1996
 1995
 1994
 1993
 1992
 1991
 1990
 1989
 1988
 1987
 1986
 1985
 1984
 1983
 1982
 1981
 1980
 1979
 1978
 1977
 1976
 1975
 1974
 1973
 1972
 1971
 1970
 1969
 1968
 1967
 1966
 1965
 1964
 1963
 1962
 1961
 1960
 1959
 1958
 1957
 1956
 1955
 1954
 1953
 1952
 1951
 1950
 1949
 1948
 1947
 1946
 1945
 1944
 1943
 1942
 1941
 1940
 1939
 1938
 1937
 1936
 1935
 1934
 1933
 1932
 1931
 1930
 1929
 1928
 1927
 1926
 1925
 1924
 1923
 1922
 1921
 1920
 1919
 1918
 1917
 1916
 1915
 1914
 1913
 1912
 1911
 1910
 1909
 1908
 1907
 1906
 1905
 1904
 1903
 1902
 1901
 1900
 1899
 1898
 1897
 1896
 1895
 1894
 1893
 1892
 1891
 1890
 1889
 1888
 1887
 1886
 1885
 1884
 1883
 1882
 1881
 1880
 1879
 1878
 1877
 1876
 1875
 1874
 1873
 1872
 1871
 1870
 1869
 1868
 1867
 1866
 1865
 1864
 1863
 1862
 1861
 1860
 1859
 1858
 1857
 1856
 1855
 1854
 1853
 1852
 1851
 1850
 1849
 1848
 1847
 1846
 1845
 1844
 1843
 1842
 1841
 1840
 1839
 1838
 1837
 1836
 1835
 1834
 1833
 1832
 1831
 1830
 1829
 1828
 1827
 1826
 1825
 1824
 1823
 1822
 1821
 1820
 1819
 1818
 1817
 1816
 1815
 1814
 1813
 1812
 1811
 1810
 1809
 1808
 1807
 1806
 1805
 1804
 1803
 1802
 1801
 1800
 1799
 1798
 1797
 1796
 1795
 1794
 1793
 1792
 1791
 1790
 1789
 1788
 1787
 1786
 1785
 1784
 1783
 1782
 1781
 1780
 1779
 1778
 1777
 1776
 1775
 1774
 1773
 1772
 1771
 1770
 1769
 1768
 1767
 1766
 1765
 1764
 1763
 1762
 1761
 1760
 1759
 1758
 1757
 1756
 1755
 1754
 1753
 1752
 1751
 1750
 1749
 1748
 1747
 1746
 1745
 1744
 1743
 1742
 1741
 1740
 1739
 1738
 1737
 1736
 1735
 1734
 1733
 1732
 1731
 1730
 1729
 1728
 1727
 1726
 1725
 1724
 1723
 1722
 1721
 1720
 1719
 1718
 1717
 1716
 1715
 1714
 1713
 1712
 1711
 1710
 1709
 1708
 1707
 1706
 1705
 1704
 1703
 1702
 1701
 1700
 1699
 1698
 1697
 1696
 1695
 1694
 1693
 1692
 1691
 1690
 1689
 1688
 1687
 1686
 1685
 1684
 1683
 1682
 1681
 1680
 1679
 1678
 1677
 1676
 1675
 1674
 1673
 1672
 1671
 1670
 1669
 1668
 1667
 1666
 1665
 1664
 1663
 1662
 1661
 1660
 1659
 1658
 1657
 1656
 1655
 1654
 1653
 1652
 1651
 1650
 1649
 1648
 1647
 1646
 1645
 1644
 1643
 1642
 1641
 1640
 1639
 1638
 1637
 1636
 1635
 1634
 1633
 1632
 1631
 1630
 1629
 1628
 1627
 1626
 1625
 1624
 1623
 1622
 1621
 1620
 1619
 1618
 1617
 1616
 1615
 1614
 1613
 1612
 1611
 1610
 1609
 1608
 1607
 1606
 1605
 1604
 1603
 1602
 1601
 1600
 1599
 1598
 1597
 1596
 1595
 1594
 1593
 1592
 1591
 1590
 1589
 1588
 1587
 1586
 1585
 1584
 1583
 1582
 1581
 1580
 1579
 1578
 1577
 1576
 1575
 1574
 1573
 1572
 1571
 1570
 1569
 1568
 1567
 1566
 1565
 1564
 1563
 1562
 1561
 1560
 1559
 1558
 1557
 1556
 1555
 1554
 1553
 1552
 1551
 1550
 1549
 1548
 1547
 1546

19

Map of Property in Santa Fe County

Legend

- ~ driveways
- ~ Minor Roads
- ~ Major Roads
- Parcel's_sde
- Section Lines

- 2011 FEMA Data
- Draft FEMA Data 2
- 0.2 PCT
- A
- AE
- AQ, D, X

2008 FEMA Data

- 500 Year
- 100 Year
- 1:3,000

1 inch represents 250

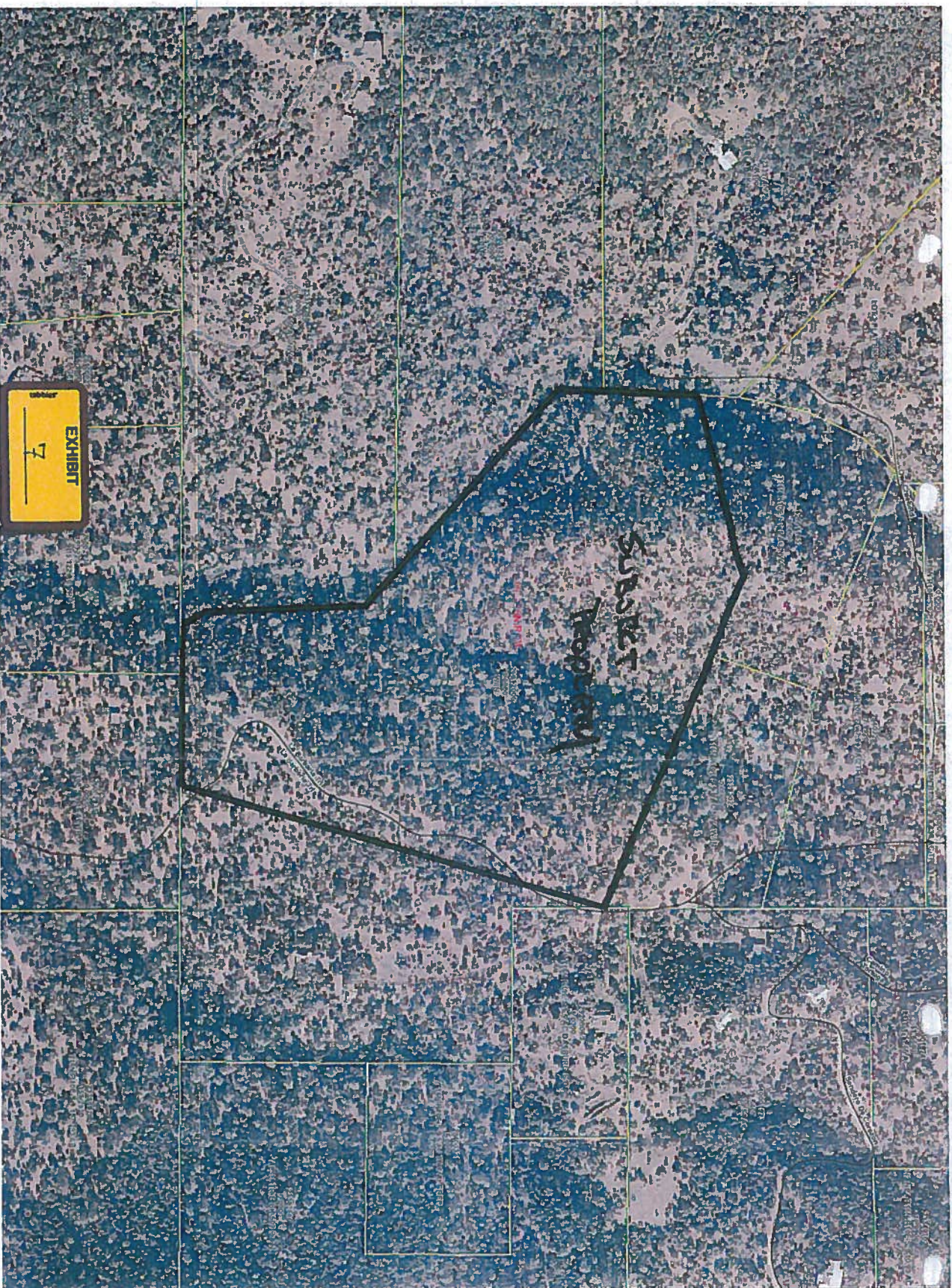


WARNING:
This (2) foot contour data with are
NOT SUITABLE FOR ENGINEERING WORK
These data are appropriate for
PLANNING PURPOSES ONLY.

Orthophoto from 2008

Contour Interval 2 Feet

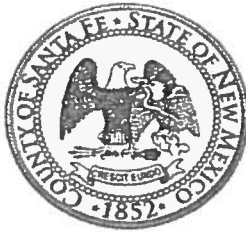
This information is for reference only.
Santa Fe County assumes no liability for
errors or omissions. Users are solely responsible for
confirming data accuracy.



Daniel "Danny" Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

Santa Fe County Fire Department Fire Prevention Division

Official Submittal Review

Date	July 12, 2012				
Project Name	Wagner, William Frederick				
Project Location	La Barbara Trail T16; R10; S9 " Extreme Wildland-Urban Hazard Area"				
Description	Small lot family transfer land division	Case Manager	V. Archuleta		
Applicant Name	William Frederick Wagner	County Case #	11-3090		
Applicant Address	304 Lomita St. Santa Fe, NM 87505	Fire District	Hondo		
Applicant Phone	Agent; 820-9200 Phillip Weigel				
Review Type	Commercial <input type="checkbox"/>	Residential <input checked="" type="checkbox"/>	Sprinklers <input type="checkbox"/>	Hydrant Acceptance <input type="checkbox"/>	
	Master Plan <input type="checkbox"/>	Preliminary <input type="checkbox"/>	Final <input type="checkbox"/>	Inspection <input type="checkbox"/>	Lot Split <input checked="" type="checkbox"/>
	Wildland <input checked="" type="checkbox"/>	Variance <input type="checkbox"/>			
Project Status	Approved <input type="checkbox"/>	Approved with Conditions <input checked="" type="checkbox"/>	Denial <input type="checkbox"/>		

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

Summary of Review

- Per submitted plat, *Special Building Permit Conditions; Development permits for building construction will not be issued until required improvements for road and emergency turn-around are completed and approved.* Final acceptance based upon the Fire Marshal's approval. (page #2)
- Properly assigned legible rural addresses shall be posted and maintained at the entrance(s) to each individual lot or building site within 72 hours of the commencement of the development process. (page #2)
- The minimum 14' wide driveway/fire access driving surface shall not exceed 11% slope and shall have a minimum 28' inside radius on curves. (page #3)
- This development location is rated within an "Extreme Wildland-Urban Hazard Area" and shall comply with all applicable regulations and ordinance 2001-11 / EZA 2001-04 as applicable for the Urban Wildland-Urban Hazard Areas. (page #3)

EXHIBIT

8

- Prior to acceptance and upon completion of the permitted work, the Contractor/Owner shall call for and submit to a final inspection by this office for confirmation of compliance with the above requirements and applicable Codes. (page #4)

Fire Department Access

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

- **Fire Access Lanes**

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

- **Roadways/Driveways**

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

Per submitted plat, Special Building Permit Conditions; Development permits for building construction will not be issued until required improvements for road and emergency turn-around are completed and approved. Final acceptance based upon the Fire Marshal's approval.

Roads and driveways shall meet the minimum County standards for fire apparatus access roads within this type of proposed development. Driveway, turnouts and turnarounds 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".

Any required turnarounds shall incorporate an area for emergency vehicle purposes such as a cul-de-sac or K-type or hammerhead type turnaround conforming to the access and turnaround requirements and dimensions of the Santa Fe County Fire Department.

- **Street Signs/Rural Address**

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

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

Properly assigned legible rural addresses shall be posted and maintained at the entrance(s) to each individual lot or building site within 72 hours of the commencement of the development process.

▪ Slope/Road Grade

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

The minimum 14' wide driveway/fire access driving surface shall not exceed 11% slope and shall have a minimum 28' inside radius on curves.

▪ Restricted Access/Gates/Security Systems

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

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

Fire Protection Systems

Automatic Fire Protection/Suppression

Due to the remote location, the lack of water and the possibility of a residence being made inaccessible due to the condition of the single road access in inclement weather, for life safety and property protection this office highly recommends the installation of an Automatic Fire Suppression system meeting NFPA 13D requirements in any future construction.

It is also recommended that the homeowner and/or property owner contact their home insurance carrier to find out more information on minimum requirements for coverage.

Assistance in details and information are available through the Fire Prevention Division.

Urban-Wildland Interface

SFC Ordinance 2001-11, Urban Wildland Interface Code

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

▪ Building Materials

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

▪ **Location/Addressing/Access**

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

Per SFC 2001-11 / EZA 2001-04 Chapter 4, Section 3.2 Roads and Driveways; Access roads, driveways, driveway turnarounds and driveway turnouts shall be in accordance with provisions of the Fire Code and the Land Development Code. Roads shall meet the minimum County standards for fire apparatus access roads within this type of proposed development.

▪ **Vegetation Management**

It is recommended that the development also have a vegetation management plan to establish fire-safe areas and to minimize the threat and occurrence of fire in the urban wildland interface areas. Assistance in details and information are available through the Fire Prevention Division

General Requirements/Comments

▪ **Inspections/Acceptance Tests**

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

▪ **Permits**

As required

Final Status

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


Name, Inspector


Code Enforcement Official

7-18-12
Date

Through: David Sperling, Chief/Fire Marshal

File: DevRev/H/Wagner/071212

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

24

Dr. Jay Shelton
50A La Barbaria Trail
Santa Fe, NM 87505
505 988 3996 hm
505 699 1234 cell
jshelton@newmexico.com

Feb. 20, 2013

Wayne Dalton

Re: William Fredrick Wagner Family Transfer / Density Variance Application

Re: Tomorrow's hearing

Mr. Dalton,

I have a medical appointment tomorrow afternoon that may prevent me from getting to the hearing on time, and hence I want to communicate to you my feelings on this matter.

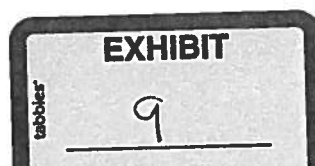
I own and live on abutting property on the east side of the property in question. You may recall I've been in to see you (many months ago) about this matter

My wife and I are opposed to watering down acreage minimums.

I know this is primarily a legal issue, and I am not an expert in such matters. But if there is any uncertainty or discretion within the legal realities, I would urge you to consider the wildfire safety issue.

This region of the county is rated in the very highest risk category. Adding more residents increases the risk to all of us even more because of two factors. 1) There is only one road that serves us. In the event of a panic evacuation, residents will be racing down this road likely with poor visibility due to smoke and possibly even flames. I worry about accidents blocking other residents from driving out – one-car accidents due to panic speeds and poor visibility, and multi-car accidents involving fire and sheriff vehicles trying to come in on the same road, or even residents who are unwisely trying to rescue a pet or... at their homes. Portions of the road are effectively one lane – we pull over to let opposing traffic go by; so one disabled vehicle can block the road. The point is that the more people trying to use the road in an emergency, the more likely it is that none of us will be able to get out due to such accidents.

2) Fires in La Barbaria Canyon need not come from the outside – they can be started inadvertently by residents in the canyon. The more residents in the area, the more likely is this cause for a wildfire.



25

And the problem in the future could get much worse. If a 10 acre lot is permitted in this case, the precedent could lead to many many more such lot divisions in the long-term future; any parcel 20 or more acres might also be split into 10 acre pieces.

Although I am not a legal expert, it appears to me that there are legal bases to deny this application:

Santa Fe Land Development Code, Section 3 Variances, 3.1 seems to say that variances are not permitted which "result in conditions injurious to health or safety".

And NMSA (1978) 3-21-5 Appeals to zoning authority, C (1) (a) seems to require that variances "are not contrary to the public interest."

This proposed lot split is clearly not in the public interest because of the increased fire risk to all residents, and the lot split would be injurious to health and safety.

I urge that this application be denied.

Sincerely,

Jay Shelton



GRAESER LAW FIRM

227 East Palace Avenue, Suite M
PO Box 220
Santa Fe, New Mexico 87504-0220

Christopher L. Graeser
Jessica B. Cooper, of counsel

T 505.424.8175
F 888.781.5968

Thursday, February 14, 2013

Wayne Dalton
Building and Development Services Manager
Santa Fe County
102 Grant Ave
Santa Fe, NM 87501

Re: Wagner Family Transfer/Variance Application, 11-3090

Dear Wayne,

Please forward this letter to the County Development Review Committee and the Board of County Commissioners, as appropriate.

We represent the La Barbaria Trail Association, and individual residents of La Barbaria Trail who oppose the Wagner family transfer/density variance application. Please see my letter of January 2, 2013 regarding the family transfer aspect of this application. This letter will address the new alternative request for a variance, which is governed by Art. II, Sec. 3 of the Code. The Wagner application does not qualify for a variance because there is no showing of extraordinary hardship or inhibition of code purposes.

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. Art. II, Sec. 3.1.

In this case, the applicants offer no evidence of an extraordinary hardship due to "unusual topography or other such non-self-inflicted conditions" and no evidence of such conditions "inhibiting the achievement of the purposes of the Code." Rather, the applicants only state that they "desire to create two lots." This is neither an extraordinary hardship nor proof that any Code purposes are being inhibited by requiring compliance with its lot size provisions.

We urge the CDRC and BCC to reject the application, as granting the request would not be in accordance with law.

Sincerely,

Christopher L. Graeser

cc: clients
Joseph M. Karnes

- 2.4.2b For all summary review subdivisions containing five (5) or fewer parcels, Sections 2.4.2a.ii. and iii. Shall be completed by the applicant at least fifteen (15) calendar days prior to the administrative decision.

History. Section 2.4 was amended by Ordinance 1996-8 to include notice requirements for most projects.

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 of 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 effect of the proposal in the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed

NMSA (1978)

3-21-8. Appeals to zoning authority; grounds; stay of proceedings.

A. The zoning authority shall provide by resolution the procedure to be followed in considering appeals allowed by this section.

B. Any aggrieved person or any officer, department, board or bureau of the zoning authority affected by a decision of an administrative officer, commission or committee in the enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or ordinance, resolution, rule or regulation adopted pursuant to these sections may appeal to the zoning authority. An appeal shall stay all proceedings in furtherance of the action appealed unless the officer, commission or committee from whom the appeal is taken certifies that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property. Upon certification, the proceedings shall not be stayed except by order of district court after notice to the official, commission or committee from whom the appeal is taken and on due cause shown.

C. When an appeal alleges that there is error in any order, requirement, decision or determination by an administrative official, commission or committee in the enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or any ordinance, resolution, rule or regulation adopted pursuant to these sections, the zoning authority by a majority vote of all its members may:

(1) authorize, in appropriate cases and subject to appropriate conditions and safeguards, variances or special exceptions from the terms of the zoning ordinance or resolution:

(a) that are not contrary to the public interest;

(b) where, owing to special conditions, a literal enforcement of the zoning ordinance will result in unnecessary hardship;

(c) so that the spirit of the zoning ordinance is observed and substantial justice done; and

(d) so that the goals and policies of the comprehensive plan are implemented; or

(2) in conformity with Sections 3-21-1 through 3-21-14 NMSA 1978:

(a) reverse any order, requirement, decision or determination of an administrative official, commission or committee;

(b) decide in favor of the appellant; or

(c) make any change in any order, requirement, decision or determination of an administrative official, commission or committee.

History: 1953 Comp., § 14-20-6, enacted by Laws 1965, ch. 300; 1979, ch. 256, § 1; 1983, ch. 160, § 1; 2008, ch. 64, § 1.

