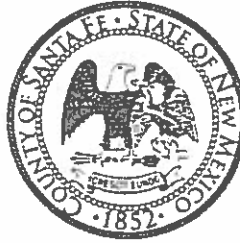


Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

**CASE NO. PCEV 14-5480
VACATION OF EASEMENT
HOMEWISE, INC, APPLICANT**

ORDER

THIS MATTER came before the Board of County Commissioners (BCC) for a hearing on March 24, 2015, on the Application of Homewise, Inc., (Applicant) for approval to vacate three (3) private access and utility block easements totaling approximately 0.31 acres in accordance with the Santa Fe County Land Development Code, Ordinance No. 1996-10 (Code), Article V, § 5.7 (Vacation of Plats). 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 conclusion of law:

1. The Applicant requests approval to vacate three (3) recorded private access and utility block easements (the Easements) totaling approximately 0.31 acres.
2. The Easements are located within the Tessera Subdivision-Phase One, within Sections 17 & 20, Township 17 North, Range 9 East.
3. The Easements were created through the Tessera Subdivision Phase One Residential Subdivision Plat recorded on April 5, 2007, as instrument No. 1477739 in the Santa Fe County Clerk's Office.
4. The Easements are depicted on Exhibit 4, the proposed plat, details A, B, and C. Detail A pertains to the vacation of .13 acres which abuts Lots 25, 24, 23, and 22. Detail B

depicts the vacation of .09 acres which abuts Lots 43, 44, and 45. Detail C depicts the vacation of .09 acres which abuts Lots 83, 84, 85, and 86.

5. The Applicant acquired Lots 1-10, 21-24, 26-34, 36-53, 55-69 and 71-88 of Phase One of the Tessera Subdivision by warranty deed recorded as instrument No. 1683091 in the Santa Fe County Clerk's Office on the 28th day of September 2012. The Applicant also acquired lot 25 as instrument No. 1754051, lot 54 as instrument No. 17544052 and lot 70 as instrument No. 1754053. The deeds transferring these three additional lots were recorded in the Santa Fe County Clerk's records on the 30th day of December 2014.
6. The Applicant proposed that upon approval of the easement vacation, the Applicant would submit an application for a lot line adjustment, which would incorporate the land from the vacated easements into the adjoining affordable lots.
7. As required by the Code, in advance of the hearing on the Application, the Applicant provided a certification of posting of the hearing, confirming that public notice posting regarding the Application was made for twenty-one days on the property, beginning on 10th day of February, 2015. Notice of the hearing was published in the legal section of the New Mexican on February 17, 2015, as evidenced by a copy of that legal notice which is contained in the record. Receipts for certified mailing of notices of the hearing were also contained in the record for all adjacent property owners.
8. Article V, Section 5.7.1 (Cause) of the Code provides that:

Any final plat filed in the office of the County Clerk may be vacated if:

- a. the owners of the land proposed to be vacated sign an acknowledge statement, declaring the final plat or a portion of the final plat to be vacated, and the statement is approved by the Board; or
 - b. the Board finds that a plat was obtained by misrepresentation of fraud and orders a statement of vacation to be prepared by the County.
9. Article V, Section 5.7.2 (Action) of the Code provides that:

Action shall be taken at a public meeting. In approving the vacation of all or a part of a final plat, the Board shall decide whether the vacation will adversely affect the interests of persons on contiguous land or of persons within the subdivision being vacated. In approving the vacation of all or a portion of a final plat, the Board may require that roads dedicated to the County in the final plat continue to be dedicated to the County.

10. Article V, Section 5.7.3 (Filing) of the Code requires that, "[t]he approved statement declaring the vacation of a portion or all of a Final Plat shall be filed in the Office of the County Clerk."
11. Staff recommended approval of the request to vacate the Easements subject to the following condition: The Applicant shall file the portion of the Final Plat affected by the vacated easements with the County Clerk's Office.
12. The Applicant confirmed that no property owner or utility company would be adversely affected by the easement vacation.
13. At the public hearing, there were no members of the public who spoke either in favor or in opposition to the Application.
14. The Applicant contacted all the appropriate utility companies that would have utilities within the Easements. The Applicant has provided correspondence from Century Link, NM Gas Company, PNM, Comcast Cable, Tessera Sewer Cooperative, and Santa Fe County Utilities consenting to the proposed vacation of the easements. The Applicant also provided correspondence from the Tessera Homeowners' Association acknowledging that they have been informed of the proposed easement vacations and the correspondence did not contain an objection to the requested vacations.
15. The requirements of Article V, Section 5.7 of the Code have been met and the Application should be granted.

WHEREFORE, the BCC hereby approves the vacation of three (3) private access and utility block easements totaling approximately 0.31 acres within the Tessera Subdivision, Phase I. The motion to approve the vacation of three (3) private access and utility block easements was supported by Commissioners Stefanics, Chavez and Roybal. Commissioners Anaya and Holian were not present for the vote.

IT IS SO ORDERED.

This Order was approved by the Board of County Commissioners of Santa Fe County on this ____ day of _____ 2015.

By: _____
Robert A. Anaya, Chair

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



Gregory S. Shaffer, County Attorney

1. **BCC CASE # PCEV 14-5480 Homewise Inc. Vacation of Easements.** Homewise, Inc. Applicant, (Cornerstone Land Surveying), Jeffery Ludwig, Agent, Request Approval to Vacate Three (3) Private Access and Utility Block Easements Totaling 0.31 Acres +/- The Block Easements are Located in the Tessera Subdivision, Phase One, Within Section 17 & 20, Township 17 North, Range 9 East (Commission District 2)

CHAIR ANAYA: Before I let you go, Mr. Romero, Mr. Shaffer, we've had some discussion relative to vacation of easement in the past and there's been quite a bit of comments that have come back to us as to us being one of the only counties if not the only county that does this vacation of easement. Before we meet again as a land use Board for land use cases, if you could get us some background from the Class A counties, maybe, that speaks to vacation of easement and whether or not they're doing this process and whether or not we might look at other alternatives if there are any, if you could.

MIKE ROMERO (Case Manager): Good evening, Commissioners. . Homewise, Inc. applicant, (Cornerstone Land Surveying), Jeffery Ludwig, agent, request approval to vacate three (3) private access and utility block easements totaling 0.31 Acres +/- The block easements are located in the Tessera Subdivision, Phase One, within Section 17 & 20, Township 17 North, Range 9 East, Commission District 2.

The subject block easements were created through the Tessera Subdivision Phase One Residential Subdivision Plat on April 5, 2007. The applicant acquired Lots 1-10, 21-24, 26-34, 36-53, 55-69 and 71-88 of Phase One of the Tessera Subdivision by warranty deed recorded as instrument No. 1683091 in the Santa Fe County Clerk's Office on the 28th day of September 2012. The applicant acquired an additional three lots – lot 25 as instrument No. 1754051, lot 54 instrument as No. 17544052 and lot 70 as instrument No. 1754053 all recorded in the Santa Fe County Clerk's records on the 30th day of December 2014.

The Applicant stated upon approval of the easement vacation, Homewise Inc. will then be submitting an application for a Lot Line Adjustment, which will incorporate the land from the vacated easements into the adjoining affordable lots. The applicant owns all lots adjacent to the utility easement to be vacated and has verified that there are no lots with existing homes in the area where the private access and utility easement blocks are located.

The Applicant has contacted all the appropriate utility companies that would have utilities within the easement blocks or in the area of the easement blocks. The applicant has provided correspondence from Century Link, NM Gas Company, PNM, Comcast Cable, Tessera Sewer Cooperative and Santa Fe County Utilities regarding the proposed vacation of the easement blocks. All utility companies have consented to the vacation of the utility easements blocks. The applicant has also provided correspondence from the Tessera Homeowners Association acknowledging that they are in receipt of the proposed easement vacations. The applicant states that no property owners or utility companies will be adversely affected by this proposed easement vacation.

The Applicant has provided sufficient noticing by providing notice to the *New Mexican*, which was published on February 17, 2015. The applicant has also provided certified mail receipts dated February 11, 2015, and certification of posting acknowledging that the public notice has been posted for 21 days on the property.

Staff recommendations: Approval to vacate three private access and utility easement blocks on 0.31 acres +/-, within the Tessera Subdivision Phase 1, subject to the following condition. May I enter this into the record?

[The condition is as follows:]

1. The Applicant shall file the portion of the Final Plat affected by the vacated easements with the County Clerk's Office (As per Article V § 5.7.3).
I stand for any questions.

COMMISSIONER CHAVEZ: Any questions of staff. Thank you, Mr. Romero. This is a public hearing and I want to provide an opportunity now for anyone here to speak on this item. Seeing none, the public hearing portion is closed.

COMMISSIONER STEFANICS: Mr. Chair.

COMMISSIONER CHAVEZ: Yes, Commissioner Stefanics.

COMMISSIONER STEFANICS: I move for approval.

COMMISSIONER CHAVEZ: There's a motion. Is there a second?

COMMISSIONER ROYBAL: A second. Any further discussion? Seeing none.

The motion passed by unanimous [3-0] voice vote. [Commissioners Anaya and Holian were not present for this action.]

MR. SHAFFER: Mr. Chair, if we could just clarify before we move off that item that it was to approve with staff conditions?

COMMISSIONER CHAVEZ: Okay. Does the maker of the motion –

COMMISSIONER STEFANICS: Yes. There was one staff condition.

COMMISSIONER CHAVEZ: So the motion includes staff recommendations then? Thank you. And conditions of approval.



Henry P. Roybal
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

**CDRC CASE # Z/PDP/DP 14-5370
PNM CAJA DEL RIO SOLAR ENERGY CENTER PROJECT
PUBLIC SERVICE COMPANY OF NEW MEXICO, APPLICANT**

ORDER

THIS MATTER came before the Board of County Commissioners of Santa Fe County (BCC) for hearing on March 24, 2015, on the Application of the Public Service Company of New Mexico (PNM or Applicant) for master plan zoning, and preliminary and final development plan approval, in accordance with Santa Fe County Ordinance No. 1996-10, the Santa Fe County Land Development Code (Code), as amended by Ordinance No. 1998-15 (amending Article III § 8, "Other Development"), to allow a 5 megawatt solar electric generating facility on a 40 acre site. The BCC, having reviewed the Application, supplemental materials and staff report, and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted subject to certain conditions, and makes the following findings of fact and conclusions of law:

1. The Applicant, represented by Laurie Moye, Coordinator of Regulatory Project & Public Participation for PNM, seeks approval to allow a five (5) megawatt solar electric generating facility on a 40 acre site.
2. This Order will set forth the basis for the BCC's approval of the Application, including the following:

- A. The use proposed by the Applicant is allowed anywhere in the County;
 - B. The Application meets the criteria for master plan approval;
 - C. Applicant submitted all required submissions for this Application;
 - D. The Application established that the development will have almost no impact on the surrounding area, taking into consideration noise, water use, generation of wastewater, generation of solid waste, light, traffic, maximum height, disturbance of archaeological artifacts, slope disturbance, terrain management, signage and parking;
 - E. The property is surrounded by vacant land, is near industrial and other non-residential properties, is not highly visible, is situated close to electric infrastructure which can be used to distribute the electricity generated at the site, and is adjacent to pre-existing road infrastructure and rights-of-way for use on those rare occasions when the remotely operated facility has to be accessed;
 - F. Approval of the Application does not constitute spot zoning; and
 - G. Approval of the Application would be supported even if a determination were made that the approval constituted re-zoning because the Application comports with the Santa Fe County's comprehensive plan referred to as the Sustainable Growth Management Plan (SGMP), and is advantageous to the community.
3. The proposed site is located north of New Mexico Highway 599 and is accessed via Caja del Rio Road, within Section 3, Township 16 North, Range 8 East, (Commission District 2), and is hereinafter referred to as the Property.

4. The Property is part of a 160 acre tract which will be divided by the owner in order to complete the sale of property to Applicant if this Application is approved.
5. The current owner of the Property acquired the 160 acre tract, which includes the Property, by warranty deed recorded on April 16, 1995 as Instrument # 1152069 in the Santa Fe County Clerk's records. Applicant is authorized by the property owner to pursue this Application, as evidenced by a copy of a purchase agreement for the Property.
6. The solar facility is proposed to consist of solar tracking panels, which will be configured in long rows oriented north-south. Each row of panels will be approximately 210 feet in length (the row length varies depending on the amount of developable area) and will rotate together, making adjustments as the panels move to track the sun east to west. The solar modules will be mounted on a ground mounted rack. The height of the top of the panels at full-rotation (90 degree range of motion) will not exceed seven feet from the natural grade. The site will contain approximately 20,000 panels on approximately 24 acres of the 40 acre site. The site will also house five power converters (9' 11" in height, 14' 10" wide, and 4' 10" deep) and one switchgear facility (7' 10" in height, 12' 8" wide, and 4' deep). A distribution line will be extended to the site for the delivery of the electricity being generated by the facility. For safety and security reasons the facility will be enclosed by a chain link fence (7 feet high) with three strands of barbed wire totaling eight feet in height.
7. The facility will be operated remotely, and will only be visited as needed for maintenance or repair.

8. Applicant must install the solar generating facility to meet its 2015 Renewable Energy Plan. The facility is part of a utility distribution system designed to provide the community with a source of clean, renewable energy to support growth and economic development in the area.
9. The Applicant held an open house on the Application, and notice of the open house was sent to ten adjacent property owners, three of whom attended the meeting. Concerns regarding the appearance of the proposed development were discussed at that meeting.
10. On December 18, 2014, the County Development Review Committee (CDRC) held a public hearing on the Application. Following the public hearing, the decision of the CDRC was to recommend approval of the Application subject to conditions proposed by staff. The recommendation passed by a vote of 4 in favor and one opposed to the Application. Member Gonzales recused himself from the case.
11. On January 15, 2015, the CDRC Meeting was cancelled due to a lack of a quorum; therefore, the December CDRC minutes were approved by the CDRC at their February 19th meeting and recorded on February 20, 2015.
12. The Application was scheduled for a public hearing before the BCC on February 10, 2015. Prior to the February 10, 2015 BCC public hearing, Applicant requested that the Application be tabled. The March 10, 2015, BCC Public Hearing was postponed, due to a lack of a quorum, and the Public Hearing was rescheduled for March 24, 2015.

13. Notice requirements for the public hearing were met as per Article II, § 2.4.2 of the Code. In advance of a hearing on the Application, the Applicant provided a certification of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for twenty-one days on the property, beginning on January 20, 2015. Staff confirmed that the posting was properly accomplished. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on January 20, 2015, as evidenced by a copy of that legal notice contained in the record. Receipts for certified mailing of notices of the hearing were also contained in the record for all adjacent property owners.
14. The notice was specific as to the nature of the Application and read as follows:

“Notice is hereby given that a public hearing will be held to consider a request by Public Service Company of New Mexico for Master Plan Zoning, Preliminary and Final Development Plan approval to allow a 5 megawatt electric solar facility on a 40 acre site. The property is located north of New Mexico Highway 599 and takes access via Caja del Rio Road, within Section 3, Township 16 North, Range 8 East (Commission District 2).”
15. On March 24, 2015, the BCC convened a public hearing on the Application. Staff presented a staff report with exhibits to the BCC, the Agent for the Applicant presented material and testified in support of the Application, and the BCC heard testimony from the public.
16. Mr. Charlie Dorame, Governmental Affairs Pueblo of Tesuque, testified that after meeting with the Applicant and conducting a site visit, the Pueblo of Tesuque was in support of the Application. He reported that there are no archeological findings

of any significant effect or tribal cultural properties in the immediate area of the proposed project.

17. J. Leroy Arquero, Governor of the Pueblo de Cochiti wrote to Commission Chairman Robert Anaya and advised that after consulting with Applicant regarding the Property and the proposed development of that land, the elders of the Pueblo determined that the solar site did not cross the path of the Tesuque-Cochiti Trail, and therefore no objections to the project were submitted.
18. Mr. Doug Campbell from PNM, testified regarding Applicant's use of glyphosates to control weeds at solar facilities and Applicant's willingness to use alternative methods of weed control as a condition of approval.
19. Ms. Kimberly Griego Kyle, Board Chairman of Santa Fe Green Chamber of Commerce, testified in support of the application because of the renewable energy that it will generate and the jobs that it will create.
20. Teresa Seamster provided written comment in strong support of the Application on behalf of the Rio Grande Chapter of the Sierra Club. The Sierra Club supports the project because it provides electricity with no use of water, no air pollution and no water contamination.
21. Jim Walters wrote to the Santa Fe County Land Use Administrator to ask that the Applicant take precautions to protect any populations of burrowing owls that might be disrupted by the development of the Property. Mr. Walters advised that burrowing owls are listed as a "Bird of Conservation Concern" by the U.S. Fish and Wildlife Service. The Code does not prohibit Applicant's proposed development because of the burrowing owl, however to the extent any federal

laws and regulations govern this topic, we have been given no reason to doubt that Applicant will abide by all such laws and regulations.

22. Mr. Scott Hoeft, from the Santa Fe Planning Group speaking on behalf of the current owner of the 160 acre tract, testified in support of the Application. Mr. Hoeft confirmed that the owner of the 160 acre tract is poised to divide the property in order to sell the forty acres to the Applicant once the Application is approved. In response to concerns about archeological sites on the Property, he asserted that the New Mexico Historic Preservation Division (HPD) had informed him that the Property is clean of archaeological sites. He responded to concerns expressed by the opponents about possible road alignments, confirming that the 100 foot wide easement for Old Cochiti Road would be constructed with a much narrower driving surface than 100 feet, and could be aligned to ensure appropriate intersections with adjoining roads at the stage of development when alignments are evaluated.
23. Dr. Claus Benkert, general manager of Charyb LLC, the company which acquired 200 acres adjacent to the Property from the Bacas, submitted a written objection to the Application based on his understanding that the properties had been zoned rural residential. He was primarily concerned about the appearance of the development.
24. Mr. Mathew Baca and Mr. Phillip Baca, represented by attorney Ronald Van Amberg (hereinafter the Bacas), testified in opposition to the Application, raising concerns about roads, zoning procedures, notice, and archeological sites.

25. Mr. Hoeft pointed out that the Bacas sold all land they owned adjacent to the Property last year. A warranty deed transferring ownership of two tracts of land from Phillip L. Baca and Thomas L. Popejoy, as Co-Trustees of the Antonio J. Baca Revocable Trust to Charyb KG German limited partnership, and recorded on July 16, 2014 confirmed that assertion.
26. The Santa Fe County Planning staff reviewed the Application and confirmed that the facility would be consistent with the SGMP adopted by Santa Fe County in Santa Fe County in Resolution No. 2010-210 and 255 and with the Sustainable Land Development Code which is adopted but not yet in effect. Chapters 2 (land use element), 3 (economic development element), and 7 (renewable energy and energy efficiency element) of the SGMP all confirm overarching policies targeting green industry, businesses that deploy renewable energy technologies, infrastructure development that includes renewable energy to keep the local economy advancing, and efforts to foster green grid infrastructure. The Property is within the growth area of the County, is likely to be within a mixed use non-residential zone once this area is zoned, and would therefore be intended for light industrial and commercial uses. The SGMP also emphasizes the increased need for energy provided by Applicant, the need for a local electric supply, the importance of large-scale solar generating facilities, and the likely development of utility scale solar energy projects.
27. The Property will be accessed via the existing fully constructed Caja del Rio Road onto Old Cochiti Road, a right of way granted by the Bureau of Land Management. The County Public Works Department reviewed the access and

road components of the Application for conformance with the Code and supported the Application. Old Cochiti Road has been in existence since at least 1994. A portion of the road is already paved, and Applicant will place six inches of compacted base course twenty feet in width on the easement from the end of pavement to the end of the Property.

28. Opponents expressed concern about the alignment of Old Cochiti Road and what they referred to as the historic Cochiti Trail. The opponents confirmed that they had access to all of their properties even if Applicant built the proposed solar facility.
29. The Santa Fe County Fire Prevention Division reviewed the Application and recommended approval subject to the development complying with Article 1, § 103.3.2-New Construction and Alterations of the 1997 Uniform Fire Code.
30. There is no on-site water required for this type of development; nor will there be solid waste created on the Property.
31. No on-site liquid waste system is required for this type of development. The New Mexico Environmental Department (NMED) reviewed the Application and had no comments other than a concern related to the proposed weed control, to ensure that the herbicides used are approved for this type of application and that they are applied using methods to avoid run-off or off-site drift.
32. PNM confirmed that it contracts for weed control using a certified weed control specialists and they are willing to comply with the Board's direction that herbicides with glyphosates not be used.

33. The Property contains slopes less than 15%, and minimal disturbance is expected. The disturbed area will be reseeded with native vegetation. The facility complies with Article VII, § 3, Terrain Management. The Applicant's proposed site plan shows existing topography and vegetation. Disturbed areas will be reseeded and the reseeded is reliant on rain fall to take root. The facility will have minimal runoff from any storm event. Therefore, the submittal is in conformance with submittal requirements and complies with Article VII, § 3.4.6 and Ordinance No. 2008-10, Flood Damage Prevention and Stormwater Management.
34. The facility will have a PNM sign not to exceed 16 square feet (4'x4') to be mounted on the chain link fence at the entry of the site. The sign will not exceed 5 feet in height with a set back from the property line of 5 feet. The signage element of the Application complies with Article VIII (Sign Regulations).
35. No outdoor lighting is proposed for this development.
36. No parking is proposed for this development and there will be no impact on schools because the development has no residential component and generates negligible traffic.
37. The 40 acre parcel is currently vacant and is bordered on all sides by vacant land. It has never been the subject of a zoning or development process under the Code. The State Archeological Center lies approximately 0.5 miles to the east of the site and a sand and gravel mining operation lies approximately 0.5 miles to the south of the site.

38. The Application sought master plan approval, which is evaluated pursuant to the criteria set forth at Article V, § 5.2.4 (Master Plan Approval) of the Code. All criteria were addressed by the Application. The Application also sought preliminary development plan approval, which is governed by Article V, § 7 (Development Plan Requirements) of the Code. There are 29 submittal requirements all of which were met, and only one of which was contested by the opponents of the project.
39. Opponents questioned whether Applicant had met a submittal requirement of Article V, § 7.1.2(a), evidence of legal lot of record. In that regard, Applicant provided proof of ownership of the 160 acre tract of land, and a fully executed real estate purchase agreement between the owner and Applicant for a forty acre lot, proposed to be created through a summary subdivision. The sale may not be completed if the project described in the Application is not approved, and so the lot has not yet been created. The proposed development will not result in split zoning because the master plan will only apply to the 40 acre lot to be created. We find that Applicant has met the submission requirement set forth at Article V, Section 7.1.2(a) of the Code. Applicant has already prepared the plat to divide the 160 acre parcel into four forty acre lots, and will move forward with that process upon approval of the Application. The division of five or fewer lots is an administrative process governed by Article II, Section 2.3.1a.vii which can be completed after approval of a master plan and prior to recordation of the final plat.

40. The Application sought final development plan approval, which is governed by Article V, § 7.2 (Final Development Plan) of the Code, which states:

The final development plan shall be submitted to the County Development Review Committee accompanied by a staff report. The County Development Review Committee shall review the plan and make a determination as to its compliance with the County General Plan and Code. The County Development Review Committee may recommend changes or additions to the plan as conditions of its approval. The final development plan as approved by the County Development Review Committee shall be filed with the County Clerk. The approved final development plan becomes the basis of development permits and for acceptance of public dedications. Any changes in the plan must be approved by the County Development Review Committee.

Here the final development plan is before the BCC for approval because it was submitted simultaneous with the master plan and preliminary development plan, both of which required BCC approval.

41. The review comments from the New Mexico Environment Department, New Mexico State Historic Preservation Division and County staff establish that this Application is in compliance with State requirements and the Code, including: Ordinance No. 1998-15 (Ordinance amending Article III § 8 "Other Development"); Article V, § 5 Master Plan Procedures; and Article V, § 7.2 Final Development Plan.

42. Article V, § 5.2 (Master Plan Procedure), § 1.b provides:

"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."

Thereafter, the submittal requirements are contained within § 5.2.2 (Master Plan Submittals) and include: a vicinity map; existing site data; a conceptual environmental plan when appropriate; master plan maps showing the proposed development in sketch form; a phasing schedule if applicable; a schematic utilities plan; and a master plan report. Applicant's Master Plan submittal met all of these requirements.

43. Master plan reports must address archaeological sites associated with the property, and the Applicant submitted reports and letters confirming that the requirement was met. The record reflects that the New Mexico State Historic Preservation Division (HPD) reviewed the archaeological report by Marron and Associates for this Property and determined that the archaeological report identified one cultural resource site and three road/trail segments. All of these cultural resources were recommended not eligible for inclusion on the National Register of Historic Properties or the New Mexico Register of Cultural Properties. HPD concluded that no historic properties would be affected by the undertaking. Additionally, HPD reviewed the June 9, 2009 letter from the Office of Archaeological Studies, raised by opponents as a basis for rejecting the Application. That letter describes the excavation conducted on a different property and found the letter did not change their view regarding the Property.
44. The Code addresses regulation of utility infrastructure under Ordinance No. 1998-15, which amended Article III, § 8, "Other Development", of the Code, to clarify the process for developing land for a utility. The relevant provisions of Ordinance No. 1998-15 provide:

“Subject to the requirements of this Section, all uses not otherwise regulated by the Code are permitted anywhere in the County provided a request for zoning approval is granted per Article III, except for utility lines which may be approved administratively per subsection 8.3.7 set forth below. Such uses specifically include, but are not limited to utilities, parking facilities, and cemeteries. Notwithstanding the fact that these uses are permitted, a development permit is still required.”

Article III, § 8.2 provides that development standards and criteria and submittal requirements are set forth in Article III, § 4.4, which in turn refers to Article V, § 5.2 for submittal requirements.

45. There is no comprehensive zoning in Santa Fe County, although zoning has been established in the Community College District and certain community districts. The Property is not within an existing zoned area, and the Application is therefore a request for zoning. The property has never been the subject of a zoning application or development application. Utilities are allowed anywhere in the County. The Code addresses regulation of utilities under Ordinance 1998-15, which amended Article III, § 8, “Other Development”, of the Code, to clarify the submission requirements for utilities. To obtain authorization for a solar facility such as that proposed, the Applicant must obtain master plan zoning pursuant to the Code as amended by Ordinance No. 1998-15. Given that utilities are allowed anywhere in the County, and given that this is a request for zoning, any references to rezoning in the Application or elsewhere in the record are erroneous. The criteria for master plan zoning are set forth at Article V, § 5.2.4:

- “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;
 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;
 6. 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.”
46. Approval of the Application does not constitute spot zoning for the following reasons:
- A. The approval applies to a parcel that will be 40 acres in size and complies with the SGMP for the reasons stated in Paragraph 26.
 - B. The project does not harm neighboring properties, and is not inconsistent with surrounding properties, because it generates no noise, will not generate traffic once it is built, does not use water, generates no onsite liquid waste, does not require parking, has no outdoor lighting, and has minimal height because the solar panels will be only 6 feet, 8 inches, more or less, off of the ground.
 - C. The Property is surrounded on the south by vacant land and in close proximity to a gravel plant and a light industrial area, as well as the State Archeological Center.

D. The approvals granted hereby do not grant a discriminatory benefit to the Applicant or the owner of the subject property because other applicants and property owners would be entitled to seek and obtain similar approvals.

47. Even if the Application did request a rezoning, a position explicitly rejected by the BCC, it is apparent that even under the case of *Albuquerque Commons v. City of Albuquerque*, 144 N.M. 99 (2008) (the Commons), the proposed development of the Property can be approved. Stability of zoning, a concept recognized in *the Commons*, is not triggered by allowing property to be used for a utility because under the Code utilities are allowed anywhere in the County. The Court in *the Commons* declined to rigidly apply a requirement that rezoning occur only where there is a change in the community or a mistake in the original zoning. *Id.* at 108. Under *the Commons*, zoning amendments are allowed where there is evidence that a change in zoning is more advantageous to the community, as articulated in a comprehensive plan. *Id.* As set forth in detail in Paragraphs 26 and 54 of this Order, the record confirms that installation of a solar facility on the Property is supported by the SGMP and is advantageous to residents of Santa Fe County. It is also worthy of repeating that the land surrounding the Property is vacant and the State Archeological Center is in close proximity, as is a sand and gravel mining operation. Placing an unmanned solar facility close to these non-residential operations is advantageous to the community. It is also worthy of note that, unlike the rezoning at issue in *the Commons*, this Application is supported by the owner of the property.
48. The Application is comprehensive in establishing the scope of the project.

49. The preliminary development plan substantially conforms to the approved master plan.
50. The final development plan conforms to the preliminary development plan.
51. The proposed use is in compliance with the uses associated with Other Development and is in accordance with the Code.
52. The BCC supports staff's recommendation of the following conditions for approval of the Application, and the Applicant was in agreement with all conditions:
 - A. The Applicant shall comply with all review agency comments and conditions, as per Article V, § 7.1.3.c. Conditions shall be noted on the master plan/final development plan.
 - B. The proposed access, to the site, shall be constructed with six inches of compacted base course and twenty feet in width.
 - C. Master plan/final development plan with appropriate signatures shall be recorded with the County Clerk, as per Article V, § 7.2.2.
53. Commissioner Holian inquired during the public hearing about the methods utilized by Applicant for weed control and then requested the additional of the following condition if the Application were approved: That the Applicant shall give direction to the entity in charge of weed control that glyphosates will not be used.
54. The application will be approved because it meets all relevant Code requirements and:

A. Solar (and other renewable) energy production is beneficial to residents of the County, as articulated in the SGMP (e.g., Chapter 7), and fosters “green grid” infrastructure;

B. There is a public need for regulated utilities, such as PNM, to develop renewable energy sources, as demonstrated by renewable energy requirements imposed upon PNM by the New Mexico Public Regulation Commission;

C. The Property is particularly appropriate for a solar energy generation facility because:

- i. The Property is not highly visible;
- ii. There is a nearby electric distribution line which can be used to transmit the generated electricity;
- iii. The facility will not generate detectable sound;
- iv. Traffic to the facility will be minimal;
- v. The property falls within an area designated as having the most potential for solar power on Map 7-1 A of the SGMP adopted by the BCC and contained within Chapter 7 of that plan;
- vi. There is an existing right of way to the property and sufficient acreage for installation of a driveway and placement of a gate to lock the facility;
- viii. The Property is a size and shape that will easily accommodate the twenty-four acres of solar panels

55. To the extent opponents raised concerns that under NMSA 1978, Section 3-21-6, approval of the Application would require a 2/3 vote of all the members of the

BCC, that statutory provision is inapplicable. Additionally, the Application was approved by four of the five members of the BCC, with one member abstaining.

56. Having established that the Master Plan conforms to the SGMP, that the site is suitable to accommodate the proposed development, that the proposed use and intensity of development is suitable for the Property, that there will be no impact to schools, adjacent lands or the County in general, that there is no phasing to this project, and given the conformance of the Master Plan to all relevant aspects of the Code, we find that the Application should be granted.

WHEREFORE the BCC hereby approves the Application to allow a 5 megawatt electric solar facility on a 40 acre site subject to the conditions set forth in paragraphs 52 and 53 above. Commissioner Stefanics abstained from the vote, while Commissioners Anaya, Chavez, Holian, and Roybal unanimously voted 4-0 to approve the Application.

This Order was approved by the Board of County Commissioners of Santa Fe County on this day of , 2015.

THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY

By: _____
Robert A. Anaya, Chair

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



Gregory S. Shaffer, County Attorney

