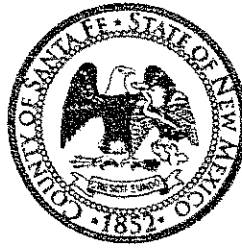


Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

**CASE NO. APP 16-5151
HEARTS WAY RANCH APPEAL
RICHARD BANK APPELLANT**

ORDER

THIS MATTER came before the Santa Fe County Board of County Commissioners (BCC) for hearing on January 10, 2017, on the Appeal of Richard Bank, (Appellant) appealing the Santa Fe County Planning Commission's decision to grant Heart's Way Ranch, Susan Carter, Property Owner, JenkinsGavin, Design & Development Inc., Agents, three variances of Ordinance 2015-11, the Sustainable Land Development Code (SLDC), to allow a retreat facility consisting of 2 casitas, a yoga area, and a main residence on 39.5 acres. The three variances are of: Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5%; Chapter 7, Section 7.11.2, Table 7-13, to allow the overall grade of the driveway to exceed 10% in three separate locations in order to get to the casitas and main residence; and Chapter 7, Section 7.11.2 Table 7-13, Local Road Design Standards, to allow access from offsite roads that do not meet Code requirements. The 39.5 acre property is located at 34 Sendero de Corazon, via La Barbaria Trail, within Section 9, Township 16 North, Range 10 East (Commission District 4), SDA-3.

The BCC, having reviewed the Application, staff report, the Hearing Officer's recommendation, and the Planning Commission's decision, and having conducted a public hearing on the Application, finds that the Application is well-taken and should be approved resulting in

denial of the application for three variances, and makes the following findings of fact and conclusions of law:

1. On May 27, 2016, the Applicant submitted an Application for the following variances:
 - A. Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5%;
 - B. Chapter 7, Section 7.11.2, Table 7-13, to allow the overall grade of the driveway to exceed 10% in three separate locations in order to get to the casitas and main residence; and
 - C. Chapter 7, Section 7.11.2 Table 7-13, Local Road Design Standards, to allow access from offsite roads that do not meet Code requirements.
2. The site is within the Rural Fringe Zoning District and is zoned as Rural Fringe (RUR-F). Appendix B for the SLDC designates a retreat as a permitted use within the RUR-F Zoning District.
3. The variances pertain to a 39.5 acre tract (the Property) which currently holds a 3,651 square foot residence, two casitas (1,100 square feet each), a 1,000 square foot garage, a 750 square foot workshop, and a 400 square foot carport. All structures were permitted, although one casita was permitted as a studio and later converted into a casita without a permit. The driveway exceeds grade, as do portions of the access roads. Additionally, the driving surface of the access road, La Barbaria Trail, does not meet the 20' driving surface required by the SLDC. The driveway is 14', with various pull-outs, and has a grade in excess of that allowed.
4. The Applicant proposed utilizing the property for their own residence and as a retreat for women who have completed a substance abuse rehabilitation program.

5. As required by the SLDC the Applicant presented the Application to the Technical Advisory Committee on May 19, 2016, in compliance with the SLDC.
6. The Applicant then noticed a public hearing in accordance with the SLDC and presented the Application to the Hearing Officer on August 25, 2016.
7. Following the public hearing the Hearing Officer recommended approval of the requested variances. The Hearing Officer's order, recommending approval of the Application, was recorded on September 2, 2016.
8. The matter was then properly noticed and presented for action to the Santa Fe County Planning Commission (Commission) on September 15, 2016.
9. The Commission was unable to approve the Application on September 15, 2016. The Commission tabled the matter and on October 20, 2016, acted to approve the Application for all three variances. That decision was memorialized in the Final Order recorded with the Santa Fe County Clerk's Office on October 25, 2016.
10. On December 5, 2016, Mr. Richard M. Bank, Ph.D. (Appellant), within thirty working days of the date of the Commission decision, timely filed an appeal objecting to the granting of the three variances.
11. Notice requirements were met as per the SLDC, Chapter 4, Section 4.6.3., General Notice of Application Requiring a Public Hearing. In advance of the hearing on the Appeal, the Appellant provided an affidavit of posting of notice of the hearing, confirming that public notice posting regarding the application was made for fifteen days on the Property, beginning on December 23, 2016. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on December 26, 2016, as evidenced by a copy of that legal notice contained in the record. Notice of the hearing was sent to owners of land within 500' of the subject.

12. The following SLDC provisions are applicable to the variance requests in this case:

- A. Chapter 7, Section 7.11.6.6 which provides that “[G]rades at the approach of intersections shall not exceed five percent (5%) for one hundred (100 linear feet prior to the radius return of the intersection, excluding vertical curve distance.”
- B. Chapter 7, Table 7-13 Rural Road Classification and Design Standards (SDA-3) requires a 10% or less grade for the driveway to the Property;
- C. Chapter 7, Section 7.11.2, Table 7-13, Local Road Design Standards, requires offsite roads to have a 20” driving surface.

13. Chapter 14, Section 14.9.7.4, Variance Review criteria states:

“A variance may be granted by only a majority of all the members of the Planning Commission (or the Board, on appeal from the Planning Commission) where authorized by NMSA 1978, Section 3-21-8(C):

- 1. Where the request is not contrary to public interest;
- 2. Where, owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the applicant; and
- 3. So that the spirit of the SLDC is observed and substantial justice is done.”

14. The Applicant argued in favor of the variances as follows:

- A. The request is not contrary to the public interest because the driveway will primarily be used by the property owners for access to the single family residence, and by four to six retreat guests to access the two casitas that provide overnight accommodation, all of which were constructed prior to regulation, and which have fire protection measures already constructed.
- B. The Property comprises very steep terrain and compliance with the SLDC grade requirements for the driveway would damage the terrain and be prohibitively expensive. Widening La Barbaria Trail or managing the grade issues might be impossible.
- C. The spirit of the SLDC is observed and substantial justice done by minimizing adverse environmental impacts that reduction of the driveway grade would cause while satisfying the requirements for emergency access and life safety. The variance encourages the spirit of Section 1.4.2.11 of the

SLDC which encourages local small businesses in order to support balanced, vigorous economy.

15. The record contains letters of support and opposition to the Application, as well as testimony both in favor of and against the application. Those in favor spoke to the need for local business, the adequacy of La Barbaria Trail and the significant improvements to address fire safety associated with the driveway serving the property. Opposition focused on the inadequacy of La Barbaria Road and Trail, the fire hazard in the area, a desire to keep the area residential, and the risks associated with increased traffic in the area.
16. The Appellant addressed the following justifications for concluding that the variance criteria were not met by the Application:
 - A. There are no special conditions such that a literal enforcement of the SLDC will result in unnecessary hardship to the Applicant. The Applicant can utilize the property as a residential property without the need for variances, and thus there is no hardship to the Applicant in denying the variances. The Applicant's decision to purchase a residential property for a commercial purpose is a self-inflicted hardship.
 - B. Granting the variance would be contrary to the public interest:
 - a. La Barbaria Trail has widths in some places that are only nine feet and even La Barbaria Road does not meet the 20' minimum road width required by the Fire Department for emergency vehicle access.
 - b. The traffic study was incomplete, and the traffic impact of the proposed development will exceed what is reflected in that report.
 - c. Visitors may smoke, creating a fire hazard.

- d. There is a steep hill on La Barbaria Trail which must be navigated to access the property.
- e. Thirteen of nineteen property owners on La Barbaria Trail oppose the variance.

17. Staff opposed the variances and provided sufficient analysis and evidence to inform our decision regarding whether the variance criteria were met by evidence in the record:

A. Given the difficulty of widening the road or reducing the road grades to comply with the SLDC, the property should not be developed for a non-residential purpose.

B. Granting the variance would be contrary to the public interest due to the following safety concerns:

1. The property is in an Extreme Wildland Fire Hazard Area. The Fire Department conditioned their support for the Application on having access roads in compliance with SLDC road standards, including a 20' driving surface, rather than approval of variances of those standards.
2. Access may not be possible in inclement weather due to the steep slopes.
3. Increased traffic will result from the use of the residence as a retreat, and the road is not equipped for increased traffic.
4. The road does not meet minimum required road width.
5. While residents know of the risk of living in the canyon, and choose to accept that risk, customers of the Hearts Way Ranch may not recognize the risk they assume in coming to the property.

18. Denying this variance will not afford other property owners in the vicinity the right to use their property in a manner which is denied Applicant.

19. The recommended approval from the Hearing Officer, and the approval from the Planning Commission did not address the Fire Department's requirement that La Barbaria Trail have a 20' driving surface.

20. The variance requests are contrary to the public interest.

21. There are no special conditions of Applicant's property which makes literal enforcement of the SLDC result in unnecessary hardship to the Applicant.

22. The spirit of the SLDC is observed and substantial justice is done when the safety concerns raised by the road conditions and fire hazards of this area are recognized and the SLDC requirements designed to address those safety concerns are honored. Contrary to the Applicant's assertion, if the variances were granted, the approval would not satisfy the requirements for emergency access and life safety.

23. The Application to allow a retreat facility consisting of 2 casitas, a yoga area, and a main residence on 39.5 acres with a variance of Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5%; a variance of Chapter 7.11.2, Table 7-13, to allow the overall grade of the driveway to exceed 10% in three separate locations in order to get to the casitas and main residence; and a variance of 7.11.2 Table 7-13 Local Road Design Standards to allow access from offsite roads that do not meet Code requirements should be denied as the Property Owner does not meet the Variance Review Criteria as set forth in Chapter 4, Section 4.9.7.4.

WHEREFORE the BCC hereby grants the Appeal. The Application to allow a retreat facility consisting of 2 casitas, a yoga area, and a main residence on 39.5 acres with a variance of Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5%; a variance of Chapter 7.11.2, Table 7-13, to allow the overall grade of the driveway to exceed 10% in three separate locations in order to get to the casitas and main residence; and a variance of 7.11.2 Table 7-13 Local Road Design Standards to allow access from offsite roads that do not meet Code requirements, is denied.

IT IS SO ORDERED.

This Order was adopted by the Commission on this ____ day of _____, 2017.

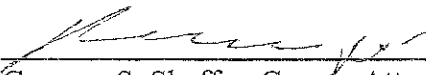
THE SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS

Henry P. Roybal, Chairperson

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



Gregory S. Shaffer, County Attorney

VICKI LUCERO (Building & Development Services): Mr. Chair, can I just get clarification? Did that motion include staff's recommended conditions?

CHAIR ROYBAL: Yes it did. The motion included staff's recommendations. Thank you.

- VIII. A. 2. **BCC CASE #APP 16-5151 Heart's Way Ranch Appeal.**
Richard Bank, Appellant, is Appealing the Santa Fe County Planning Commission's Decision to Grant Heart's Way Ranch, Susan Carter, Property Owner, JenkinsGavin Design & Development Inc., Agents, Three Variances of the Sustainable Land Development Code (SLDC) to Allow a Retreat Facility Consisting of Two Casitas, a Yoga Area, and a Main Residence on 39.5 Acres. The Property Owner Requested a Variance of Chapter 7, Section 7.11.6.6 to Allow the Grade of the Approach at the Intersection to Exceed 5 percent, a Variance of Chapter 7.11.2, Table 7-13, to Allow the Overall Grade of the Driveway to Exceed 10 percent in Three Separate Locations in Order to Get to the Casitas and Main Residence, and a Variance of 7.11.2 Table 7-13 Local Road Design Standards to Allow Access from Offsite Roads that Do Not Meet Code Requirements. The 39.5-Acre Property is Located at 34 Sendero de Corazon, Via La Barbaria Trail, Within Section 9, Township 16 North, Range 10 East, SDA-3 (Commission District 4) [Exhibit 5: Planning Commission Staff Report; Exhibit 6: Letters Supporting Appeal; Exhibit 7: Applicant's Road Photographs; Exhibit 8: Applicant's Driveway Photos; Exhibit 9: Letters Supporting Application; Exhibit 10: Lofton Letter; Exhibit 11: Mr. Deuschle's Submission of Carter Email]

[Commissioner Anaya joined the meeting telephonically for this case.]

JOHN MICHAEL SALAZAR (Case Manager): Thank you, Mr. Chair. Richard Bank, appellant, is appealing the Santa Fe County Planning Commission's decision to grant Heart's Way Ranch, Susan Carter, property owner, JenkinsGavin, Design & Development Inc., Agents, three variances of the Sustainable Land Development Code (SLDC) to allow a retreat facility consisting of two casitas, a yoga area, and a main residence on 39.5 acres. The three variances are of Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5 percent, Chapter 7, Section 7.11.2, Table 7-13, to allow the overall grade of the driveway to exceed 10 percent in three separate locations in order to get to the casitas and main residence, and Chapter 7, Section 7.11.2 Table 7-13 Local Road Design Standards to allow access from offsite roads that do not meet Code requirements. The 39.5-acre property is located at 34 Sendero de Corazon, via La Barbaria Trail within Section 9, Township 16 North, Range 10 East, Commission District 4, SDA-3.

On August 25, 2016, the applicant presented three variances to the Hearing

Officer for public hearing. The variances were mentioned in the caption, Mr. Chair. The Hearing Officer in support of the application memorialized her findings of fact and conclusions of law in written order in which she recommended approval.

On September 15, 2016, the Santa Fe County Planning Commission met on this case. The decision of the Planning Commission ended in a vote with three members voting in favor of the motion to approve the request, and two members voting against the motion. Under Chapter 14, Section 14.9.7.4 of the SLDC, a variance may be granted only by the majority of all the members of the Planning Commission. A minimum of four members approving it were needed. It was only three at the time. A second motion was then made to reconsider the first motion, again, it was a three to two vote.

A third motion was then made to table the request until the sixth Planning Commission member was present. That motion passed by three to two. This was tabled until the October 20th meeting. With a majority present the commission approved all three variances by a 4-2 vote. Those minutes are exhibits in your packet.

The property is, as mentioned, is 39.57 acres. It sits within the Rural Fringe Zoning area as defined by the SLDC. Chapter 8, Section 8.6.3. of the SLDC designates a retreat as a permitted use within the Rural Fringe Zoning District. The applicants' agent submitted an application for a site development plan to request a retreat. It was discovered after submittal that the approach to the intersection exceeded grade requirements of 5 percent for 100 linear feet and the grade of the driveway is 17 percent-21 percent in three locations. Permits were obtained in 1994 for a driveway with grades up to 14 percent. The approval was granted in accordance with the Extraterritorial Zoning Ordinance which allowed for grades of 15 percent. It is worth mentioning that the driveway was not constructed to the approved plans, however.

Building and Development Services staff reviewed the Site Development Plan for compliance with pertinent SLDC requirements. The driveway grade of 5 percent for 100 linear feet upon an intersection and the overall driveway grade to get to the casitas and main residence exceed the required grade of 10 percent, and offsite roads do not meet the 20-foot driving surface. La Barbaria trail is a basecourse surface with a minimum width of nine feet and a maximum width of 18 feet. The driveway that accesses the site is 14 feet in width with a base course surface and has pull out locations. Improvements were done for fire protection to include pull-outs, and two 10,000-gallon water storage tanks with a draft hydrant that was placed at the main residence.

Briefly, and the appellant can go deeper into what he mentions in his letter. Regarding the first variance to Chapter 7, Section 7.11.6.6, which does not allow the grade of the approach at an intersection to exceed 5 percent, Tortuga and Sendero de Corazon, he measured the grade at 16.5 percent and the intersection at Tortuga and La Barbaria Trail where he measured this grade at 15 percent. Regarding the second variance to Chapter 7, Section 7.11.2, Table 7-13, the appellant states at least a quarter of the driveway has an average grade of 17 percent making the distance 70 percent steeper than the SLDC allows. The appellant also states regarding the third variance to Chapter 7, Section 7.11.2 Table 7-13, Local Road Design Standards to allow access from offsite roads that do not meet Code requirements, due to width of the roadway not just to La Barbaria Trail but including La Barbaria Road, which one must take to get to La Barbaria Trail, there have been numerous mishaps with motorists and these steep, winding roads

and additional traffic could increase the risk even more. The appellant also states the fact that the subject property is located within an extreme wildland-urban hazard area and that there are fire dangers inherent within such a designation.

The applicant had addressed the variances for the Planning Commission. That's in your reports. Staff response to the applicants' review criteria response is in your reports as well along with fire review comments. Vicente handed out letters of opposition from people in the neighborhood along with the Planning Commission packet from September with all the exhibits and the staff report. So that was handed out to all of you.

Recommendation: Staff recommends granting the appeal and overturning the applicants' approved variances of Chapter 7, Section 7.11.6.6 to allow the grade of the approach at the intersection to exceed 5 percent; Chapter 7, Section 7.11.2, Table 7-13 to allow the grade of the driveway to exceed 10 percent; and a Chapter 7, Section 7.11.2 Table 7-13 Local Road Design Standards to allow access from offsite roads that do not meet Code requirements.

The Hearing Officer and Planning Commission approved the variances because they believed that the applicants met the variance criteria. If the Board decides that the applicant has met the variance criteria they may adopt the findings of the Hearing Officer and Planning Commission.

An appeal of the decision of the Planning Commission shall be reviewed de novo by the Board per Chapter 4, Section 4.5.4 of the SLDC and the Board may also make their own findings and conclusions. Mr. Chair, I'll stand for questions.

CHAIR ROYBAL: Do we have any questions from the Board?

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Go ahead, Commissioner Anaya.

COMMISSIONER ANAYA: So, Mr. Chair, the Planning Commission heard all the testimony and the feedback regarding the case and voted 4-2 to approve the variance. Is that my understanding?

CHAIR ROYBAL: I believe so. John, can you clarify?

MR. SALAZAR: Mr. Chair, Commissioner Anaya, that's correct. Initially in the September Planning Commission of last year there wasn't a majority to approve it so it was tabled until the October meeting and in that October meeting in a 4-2 vote they approved the variances for the applicant.

COMMISSIONER ANAYA: Mr. Chair and Mr. Salazar, you made a comment relative to the road not being built to what they said they were? What was that all about?

MR. SALAZAR: Mr. Chair, Commissioner Anaya, La Barbaria Road and La Barbaria Trail, they're existing roads that do not meet the requirements as set for the in the SLDC. The driving surface on some of the areas is 20 feet and it's still not wide enough. The right-of-ways are platted. It is platted right-of-way. In order to make those roads wider you would have to buy more right-of-way to meet the SLDC requirements.

COMMISSIONER ANAYA: I understand La Barbaria Road and the Trail but did you say something about in their property that they were supposed to do something or was that La Barbaria Trail?

MR. SALAZAR: Mr. Chair, Commissioner Anaya, that was the driveway when they came in initially for their permits for the structures on the property.

COMMISSIONER ANAYA: So they did not do anything to their property? I understand La Barbara Road but did they do what they said they were going to do on their driveway?

MR. SALAZAR: Their driveway was not built out to the plans. No sir.

COMMISSIONER ANAYA: Is the applicant there? Why?

MR. SALAZAR: Mr. Chair, the applicant is present, the property owner and their agent.

COMMISSIONER ANAYA: So I guess that's just one question. They turned in plans to us. Why didn't they build them to what they said they were?

CHAIR ROYBAL: I guess that question will probably be answered a little bit later so we'll keep that question. Is there any other question from other Commissioners?

COMMISSIONER HAMILTON: Yes, Mr. Chair. I have a question.

CHAIR ROYBAL: Commissioner Hamilton.

COMMISSIONER HAMILTON: So one of the issues that you've described is general fire danger and I assumed in fact the question extends to general emergency response. The Fire Department responds to wildland fires and structure fires and medical issues as well so access is an issue. I saw in the packet materials just with regards specifically to structure fire the applicants have agreed to put in a sprinkler system but I wonder if there's staff that might elaborate a little on any information with regard to the broader emergency response issues that are associated with these road variances.

MR. SALAZAR: Mr. Chair, Commissioner Hamilton, the Fire Marshal is here and he can address those.

COMMISSIONER HAMILTON: Thank you.

JAOME BLAY (Fire Marshal): Mr. Chair, Commissioner Hamilton, do you want me to elaborate on –

COMMISSIONER HAMILTON: Yes, please.

MR. BLAY: Just so you know, this was – I just became the County Fire Marshal so I'm a little bit new to this particular case but from reviewing the packet I just realized that all the – I believe there are two casitas, one main house and one guesthouse, they're all fully sprinklered. I believe they have two 10,000-gallon water storage tanks for manual firefighting. I believe that they increased the width of their driveways to the 14-foot requirement that Tim Gilmore, he was the fire inspector that reviewed this particular case – he required them to do that and it looks like they did increase the width to 14 feet.

The gate was also increased to 14 feet, so basically, as far as fire protection they have met with the code requires.

COMMISSIONER HAMILTON: Is there other discussion of general access in bad weather, for example, with non-four-wheel drive vehicles? Because in that area, that area is responded to by Hondo and then the bigger eastern region and I know the med unit is not four-wheel drive. Eldorado has the only four-wheel drive ambulance and it would have to go on a second call. And then the issue of the actual fire truck in bad weather. So was that discussed at all? Do you have any input on that?

MR. BLAY: I mentioned if that was discussed. I did a site visit today, this

afternoon. The roads were muddy. There was a little bit of snow still on the ground and I did leave my Chevy Colorado in two-wheel drive all the time and I got to every single casita and the main residence with no problem.

COMMISSIONER HAMILTON: Well, I do have one other question. It's not regarding fire. It's regarding the traffic situation. I don't know if these are individual concerns. They were mentioned and I only got to breeze through quickly the documents we were just handed, but my understanding was that there was a traffic study done and there was some finding of fact in this, but there's some concern that this would increase traffic. Could we get some clarification?

MR. SALAZAR: Mr. Chair, Commissioner Hamilton, Public Works, after doing that initial study felt that a traffic impact analysis wasn't warranted. So the applicant for the site development plan was not required to provide a TIA.

CHAIR ROYBAL: Did you have any additional questions, Commissioner Hamilton?

COMMISSIONER HAMILTON: Not at this time. Thank you.

CHAIR ROYBAL: Commissioner Hansen.

COMMISSIONER HANSEN: There was a traffic study done by Walker Engineering. Is that correct? Or am I – no? Okay.

MR. SALAZAR: Mr. Chair, Commissioner Hansen, it was a trip generation report.

COMMISSIONER HANSEN: Okay. A trip generation –

MR. SALAZAR: By the Public Works Department. It's because they've been improving that road over the years as money comes in.

COMMISSIONER HANSEN: So with that trip generation, does this facility create more traffic or less traffic in the fact that they are a retreat facility as opposed to having a residential – people living there. If each casita was rented and the home was rented, what's the weight? Is there more traffic from the retreat facility or is there more traffic from the residential?

MR. SALAZAR: Mr. Chair, Commissioner Hansen, Public Works believed that the traffic would stay the same because the guests for the retreat wouldn't be bringing their personal vehicles. It would be the vehicles that are already on the property, the vehicles for the property owners.

COMMISSIONER HANSEN: So no person that's coming to stay at this retreat, treatment center would be driving to this facility. They would all be shuttled in?

MR. SALAZAR: That is what the applicant is proposing, Commissioner Hansen.

COMMISSIONER HANSEN: Okay. For now, that's –

CHAIR ROYBAL: Commissioner Moreno.

COMMISSIONER MORENO: Thank you, Mr. Chair. Some of the concerns were about fire danger and the variability of climate. How were those addressed in your evaluation of this project?

MR. SALAZAR: Mr. Chair, Commissioner Moreno, when the site development plan came in we forwarded it to the Fire Marshal's Office for their review, especially understanding that this is located within a wildland hazard urban area. I believe – I don't know that it's extreme but I think it's moderate on their map. The Fire

Marshal's Office, when they send us a response there's a form letter that they send us and it does address things that must be done within those hazard areas. They do that for every property that we send for review.

COMMISSIONER MORENO: How frequently do they do those evaluations; annually?

MR. SALAZAR: Mr. Chair, Commissioner Moreno, I don't know how recent that map has been updated. I've been here for 15 years and they've been using that same map for a while now.

COMMISSIONER MORENO: Thank you.

COMMISSIONER HAMILTON: Mr. Chair.

CHAIR ROYBAL: Commissioner Hamilton, you had another follow-up question?

COMMISSIONER HAMILTON: Well, I have a comment and question. I think this area is a substantial – it is in my district and it is a substantial urban-wildland interface concern. What it's formal designation is aside. As a volunteer firefighter in a neighboring districts we've had many conversations and with the County Fire Chief about that area being an interface concern. Also in the staff response, if you read the beginning of the first paragraph, although tenants have moved in and out of the casitas this area is an extreme wildland fire hazard area. During inclement weather and on slopes in excess of 10 percent emergency access may not be possible due to the severity of the steep slopes. And that's a finding that's contributory to this decision. But it's not entirely consistent with what we just heard from the Fire Marshal. So I'm a little bit at a loss about how to reconcile those two issues.

CHAIR ROYBAL: And did you have any other comments?

COMMISSIONER HAMILTON: Unless the County staff maybe has some direct – or the Fire Marshal has some comment on that.

MR. BLAY: Mr. Chair, Commissioner Hamilton, I believe it's rated as an extreme wildland urban hazard area and therefore they were required to do a vegetation management plan which they have done on their property.

COMMISSIONER HAMILTON: That's good to here, but with regard to the findings of facts relevant to the slope of the roads, which the variances are addressing and access for emergency vehicles, there seems to be a difference of opinion between what's written here and what we're talking about. So that's what I was really interested in.

MR. BLAY: Like I said, I did a site visit. My vehicle was always on two-wheel drive and I had no problem getting to all the different areas. As far as an engine, we would have to take an engine and find out if an engine full of water would be able to go up that grade. Maybe that is the reason why the former Fire Marshal, he required them to have two 10,000-gallons storage tanks on top with a draft fire hydrant as well as a hose reel that would connect to those tanks. So in theory they would not even need a fire engine up on top.

And as far as medical emergencies, our ambulances, I don't know which ones are four-wheel drive and which ones are two-wheel drive but being smaller than an engine I would assume that they would be able to go up the hill the same way that I did today. But that would have to be done by taking an ambulance over there and find out.

COMMISSIONER HAMILTON: Just for the record, Eldorado Med 3 is four-wheel drive; Hondo Med 80 is not. Or County Med 80 is not.

MR. BLAY: Thank you.

CHAIR ROYBAL: Did that answer your questions, Commissioner Hamilton?

COMMISSIONER HAMILTON: Yes.

CHAIR ROYBAL: Okay, did we have any other questions from the Board? Commissioner Moreno.

COMMISSIONER MORENO: Thank you, Mr. Chair. You said that there's an evaluation of the fire risk and who looks at those reports and would that be your office?

MR. BLAY: It would be the wildland department within the Fire Department.

COMMISSIONER MORENO: Okay. And is the process in place already for that purpose?

MR. BLAY: Correct. The County adopted a wildland urban interface code that goes along with the fire code as well as the SLDC and that is what requires the width of the roads to be 14 feet, as opposed to 12 feet otherwise. Also to have that vegetation management plan in place and I believe it is what also requires extra fire protection.

COMMISSIONER MORENO: And what happens if a property owner hasn't complied with the wildland protocol? Do you cite them, if they're not maintaining their property so that their houses and property don't burn down?

MR. BLAY: If it's a new property, obviously, it's not going to be allowed to be built unless they are abiding by the current code. If it's an existing residence and they are in that extreme wildland urban interface area, yes, we would have to cite them and put a stop-work order. But if they do what the code requires, in this case which is to widen the driveways to 14, have turnouts, have turnarounds, which they have done also, and installed the fire protection system in all the buildings they are meeting the wildland urban interface code.

COMMISSIONER MORENO: Thank you. Thank you, Mr. Chair.

CHAIR ROYBAL: Commissioner Hamilton, did you have any additional questions?

COMMISSIONER HAMILTON: I'll wait.

CHAIR ROYBAL: Okay. I think that was it from the Board as far as questions. I just want to remind the public again that we'll have a three-minute comment time limit. I would ask that we try not to be repetitive and also just say that this will not apply to the applicant or the appellant. So we're going to go ahead and have the applicant come forward and the appellant as well. And if you could please state your name for the record and be sworn in.

[Duly sworn, Richard Bank testified as follows:]

RICHARD BANK: Let me clarify some things, based on the questions that were being asked. The Fire Marshal is correct regarding the property itself with respect to meeting the requirement that the Fire Department set, but La Barbaria Trail, which unfortunately has to go – you have to go up that to get to that property has widths of only nine feet which allows only very limited access for firefighting equipment. That's

our concern. That's my concern and I think that's your concern.

So while the property is pretty safe, at least the structures, a wildfire can be dealt with and emergency access is quite limited because of La Barbaria Road or Trail. La Barbaria Road too, for that matter.

Let me read – this is from the Santa Fe Fire Department, Fire Prevention Division. This was the official development review done July 13th by Inspector Gilmore. He says that it's approved but they have to do everything that's underlined. And let me read one of the things that is underlined. Roads shall meet the minimum County standards for fire apparatus access. Roads of a minimum of 20 feet wide. There is not a single inch of La Barbaria Trail that's 20 feet wide, so that's the problem. It's not the problem with the land itself but the problem with access to the land on the private road. So that's – I hope that helps.

The other thing about fire that I would point out is those tanks were installed before the current owners were there so it was done by the previous landowner, at least that's my understanding.

As for traffic, that's controversial and I'll speak to that specifically in my remarks, but I don't think it's a done deal nevertheless.

The first thing that I wanted to do is update you on the map, this map. I don't know if you have color. You probably have gray scale. But this is the map that shows from the neighborhood all of the 19 parcels that are accessed by La Barbaria Trail. At the time that I submitted the appeal there were 11 of 14 folks who had opposed the variances. We have a couple more now and just to make sure that you're up to date there was a letter hand delivered to you by the Sheltons yesterday or at least to your staff. I don't know if you have that letter but if you don't I have a copy of the text which I can give you. The letter was dated January 4th from Jay and Katherine Shelton.

COMMISSIONER HAMILTON: Yes, sir.

MR. BANKS: You have that one. There was a second letter written by Willa Shallit dated January 5th. I'm not sure if she – do you have that one too? All right. So what we have then now is of the 19 property owners 16 have taken a public, formal position on this issue. Three have not. Of the 16, 13 now oppose the variances and support my appeal. So that's over 80 percent of the people that have taken the position oppose this retreat and my map you can see it's really pink. Yours will be dark. But the parcels owned by the Sheltons and Willa Shallit are parcels 13, which there are two of those, and parcel #12.

My voice is weird so please bear with me. Winter weather. The Sustainable Land Development Code is a lengthy document that by its own words is intended to be comprehensive and integrated suggesting to me and others that variances should require extremely exceptional circumstances. More on that in a moment. The simple fact here is that permitted uses in the code should be subject to safety standards and it's safety standards that Heart's Way Ranch wants you to waive. Consider for example the speed limit on La Bajada Hill, 75 miles per hour, which is in a sense the permitted use. Except where there's ice or snow on the road. When there's ice or snow on the road, safety takes precedence over permitted use. Safety should always take precedence over permitted use.

That was the staff's conclusion in the first round when they originally recommended denying the variance. They have repeated that recommendation here and I

suspect frankly that they are as surprised as I am that Heart's Way Ranch has made it this far. Perhaps the explanation lies in part in the fact that the principals and the representatives of Heart's Way Ranch have been operating in bad faith from the very beginning. As noted in my appeal, my wife and I were never contacted by the applicants despite the vigorous claim made by Ms. Jenkins that the applicant "reached out to every single one of their neighbors in this community."

No sign was ever posted on the public road as required by the code and the applicant was less than forthcoming in securing a waiver of the traffic impact study. They now offer a traffic impact study of their own, which literally makes no sense. I don't understand how Walker Engineering can make a comparison between three residences on the one hand and one residence and a four-room resort on the other when its data for the resort is so strikingly incomplete. But even assuming that there is some basis for the conclusion stated in its letter, the comparison must only involve guests at the resort and not the commuting employees. After all a resort will have someone at the front desk. They'll have a cleaning staff, a maintenance crew, a pool boy, servers, a bartender and daily deliveries likely as well.

Similarly, the assurances offered by Heart's Way Ranch of no additional traffic impacts completely ignores the traffic to be generated by practitioners and service providers, that is people coming up to service their clients. While they probably won't need a bartender they will have to satisfy the therapy and amenity expectations of clients spending \$15,000 a month.

Finally, once the variants are granted there is no guarantee that the clients will not be allowed access to their vehicles and no limit on the number of clients that will be served. But more telling, more telling, is what can only be described as intentional efforts to mislead the hearing officer and the Planning Commission at the public hearings. First, the land use staff mistakenly reported before the hearing officer that the grade of La Barbaria Trail met code requirements. I attempted to correct that error in my testimony referring to the big hill, the same big hill that is described in my written appeal and the grade of which is documented in the survey attached to that appeal.

Here is Ms. Jenkins rebuttal to that comment. "The big hill that was referenced, I was unfamiliar with that particular part of La Barbaria Trail and I've learned that this is beyond where Camino Tortuga forks and heads to the subject property so that no guest of the ranch would go that far down La Barbaria Trail." This statement is patently false. Anyone traveling to or from Heart's Way Ranch must negotiate the big hill. Perhaps Ms. Jenkins was genuinely confused. Perhaps she has never actually been to the subject property but she made this statement in front of the principals, both Dr. Scott and Ms. Carter as well as their attorney and no one bothered to correct her.

So the hearing officer believed that there was no grade problem, no grade variance required on La Barbaria Trail. And apparently Ms. Jenkins has not yet accepted the reality of the big hill. In her response to my appeal she simply repeats the mistaken testimony regarding the grade of La Barbaria Trail. "The only variance required relates to the width of the existing easement and roadway."

Second, when Ms. DeVargas from the County Fire Prevention Division told the hearing officer that the applicant had agreed to all the requirements addressed in Inspector Gilmore's July 13th letter, requirements which as I read to you earlier cannot be

met on La Barbaria Trail. There is no way in a 20-foot easement to create a 20-foot roadway that meets the grade requirements. So when Ms. DeVargas said that the applicant had agreed to all the requirements, neither the principals nor their representatives rose to correct that error.

Finally, before the Planning Commission, Ms. Jenkins again claimed that the Fire Department had approved the project, omitting the fact that its approval was contingent upon conditions which can never be satisfied. While we surely have different opinions about this matter it seems to me that we all have an obligation to the truth.

These two instances are critical because the order issued by the hearing officer was predicated on two falsities. One, that there was no grade problem with La Barbaria Trail and that road is a steep road, as documented in my appeal documents and the survey that's attached to them. And two, that the Fire Department had approved access for its firefighting equipment up that road which never happened.

As to the new claim that none of the clients of the ranch will be the hard-core addicted smokers predicted by the statistical evidence Ms. Jenkins taken by Heart's Way Ranch and its supporters before the hearing officer. This is from her response to my appeal. "A person who chooses to smoke would not choose a non-smoking property on which to stay when there are other options that allow a person that option." Yet the bulk of the testimony before the hearing officer, both written and verbal and offered let me note almost entirely by non-residents of La Barbaria Canyon, most of that testimony spoke to the desperate need for a retreat like Heart's Way Ranch because of the lack of alternatives. So where are the recovering addicts who smoke going to go and who are we supposed to believe?

Perhaps we should trust the words of the late Chief Justice of the New Mexico Supreme Court, the Honorable Pamela Minzner. Writing for the Court of Appeals in *Downtown Neighborhood Association v. Albuquerque* she says the following: "Variances should be granted sparingly. Only under exceptional circumstances. To do otherwise would encourage destruction of planned zoning." And here she cites *Clauser v. David*, an interesting federal case worth a brief summary and brief swallow of water.

The original plaintiff in *Clauser* purchased a residential property with the intention of converting it into a commercial law office. He then fixed up the place while seeking the necessary variance, claiming he would go bankrupt if the variance was not granted. The court in that case said the following: "Hardship if any has resulted solely from the appellee's appropriation of the property for commercial purposes without first having obtained the necessary change in zoning." Sound familiar? The original applicant in this case acquired a residential property with the intention of converting it to commercial use without first securing the necessary variances. As noted in my written appeal, hardship if any must be understood here to be self-inflicted as it was in *Clauser*.

But the more interesting question is what exactly is the hardship the applicant claims. She wants you to believe that in order to bring the roads into compliance she will have to spend a great deal of money and tear up a great deal of the countryside. But the fact is she has no legal authority to widen the 20-foot easement to widen the 20-foot easement of La Barbaria Trail or to cut and fill beyond that 20-foot limit. And because of the mountainous terrain it spans there is absolutely no way to create a 20-foot roadway meeting the grade requirements within that easement. No way, in other words, to bring

that road into compliance with the fire code or the safety standards of the SLDC.

So I ask again, what exactly is the hardship the applicant claims? Denying the variances will not burden the residential character of the property she purchased in any manner, so it can only be that she won't be able to establish her commercial retreat. But no one with property along La Barbaria Trail can establish a commercial retreat without securing a variance for La Barbaria Trail, hence there is absolutely nothing exceptional about the applicants' position or property.

The SLDC allows variances only where extraordinary and exception situations or conditions of the property result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner. This from Section 14.9.7.1. And a variance is defined as follows: Permission to depart from this code when because of special circumstances applicable to the property strict application of the provisions of this code deprive such property of privileges enjoyed by other property in the same vicinity or zone. This is from page A-43.

The purpose of this provision, the purpose of the doctrine of exceptionality is to remedy an exception, not to create one. But granting the applicant the variances she seeks will do exactly that, namely create an exception, and owing to the SLDC's definition of variance, every property owner in similar circumstances, not just along La Barbaria Trail, but in all other rural fringe zones in the county must be granted the same privileges afforded the applicant. In other words the precedent set by granting the variances in this case will permit all property owners in all rural fringe zones to disregard the road safety standards in both the SLDC and the fire code when proposing a permitted commercial development. This kind of precedent is just what Justice Minzner meant in Downtown Neighborhood when she warned of the destruction of planned zoning.

So more than just the integrity of this process thus far is in question, the integrity of the SLDC ordinance itself is at stake.

Knowing the applicant to pick and choose among the provisions of the code undermines the intention of comprehensive and integrative planning. Apparently, fostering the vitality of local businesses is the lone purpose of the code that interests her. Never mind that granting the variances sought by Heart's Way Ranch does not promote the safety and welfare of county residents with potentially devastating consequences for the surrounding property, the county and the region. La Barbaria Trail is a steep, narrow road which restricts access to all but the smallest firefighting vehicles while the threat of wildfire already extreme in La Barbaria Canyon will be significantly exacerbated by a commercial operation that by its very nature and design will attract and house hard-core addicted smokers from out of state.

CHAIR ROYBAL: Okay, you guys. Let's give him some respect.

MR. BANK: I hope you've read my documents and the research that I've presented there. Ms. Jenkins claims that they're only going to have non-smokers. That creates its own set of problem but even if they're able to do that, which doesn't seem likely, they're going to have to search everyone every day. Where was I? Moreover, the likelihood of increased traffic, and I refer again to the service providers coming to and from, commuting to and from the retreat, the likelihood of increased traffic, which brings inherent risk to vehicles and pedestrians alike, especially given the steep, narrow and twisting character of the roads will also have adverse effects on air quality and climate

change, contrary to the ethic of responsible ecological development apparent throughout the stated purpose and intent of the code. And these risks and adverse effects will only be magnified if the variances are approved, thereby opening up an environmentally sensitive neighborhood to increase commercial development which in turn would directly compromise the zoning regime of the SLDC.

As for the applicants' reliance on economic impact to satisfy the mandate that a variance observe the spirit of the code, Mr. Graeser, speaking before the Planning Commission, succinctly captured the dilemma faced by the applicant. "Either it's a business that's going to provide jobs for a lot of people, in which case there's going to be a lot of traffic going up that road, or there's not going to be a lot of traffic going up that road, but then it's not going to have much of an economic impact. You can't really have it both ways."

So I trust that you've read my appeal documents and I won't burden you with more repetition, but I will remind the Board that this is a de novo review and as such, the burden of proof again lies with the applicant for the variances. She must demonstrate all of the following. One, that her proposed retreat does not pose risks of increased traffic on substandard roads. Two, that it does not impose an increased danger of wildfire. Three, that the residential property that she purchased has exceptional characteristics that justify the sacrifice of the road safety standards embodied in the SLDC and the fire code. Four, that the use of her property solely as residence constitutes a hardship akin to a legal taking. Five, that her proposal taken as a whole observes the spirit of the SLDC, and six, achieves substantial justice. Failure to establish any of the foregoing constitutes grounds for denying the variance. Indeed, according to the letter of the code, failure to demonstrate any one would compel denial. Thank you guys for your attention. I was a little disrupted but I can live with that, and I stand for and welcome questions and would respectfully reserve a right of rebuttal.

CHAIR ROYBAL: Okay, do we have any questions from the Board for him? Not at this time, sir. Thank you.

COMMISSIONER HAMILTON: Thank you very much.

CHAIR ROYBAL: If we could have the applicant.

[Duly sworn, Jennifer Jenkins testified as follows:]

JENNIFER JENKINS: Good evening, Commissioners. My name is Jennifer Jenkins. I'm with JenkinsGavin and I'm here on behalf of Susan Carter and Dr. Shari Scott, the applicants in the Heart's Way Ranch variance applications. So I would like to – I'm just going to do a brief overview of the site development plan request that has already been reviewed and approved by the Growth Management Department and try to keep it as brief as I can, and then my clients, Ms. Carter and Dr. Scott will have a few things to share as well, and then we will wrap it up, trying to keep it as brief as we can. So I'm just going to pull up some visual aids real quick.

So this is an area of the La Barbaria Trail, an area of the La Barbaria Trail neighborhood. So this is La Barbaria Road, which you access directly off of Old Santa Fe Trail and La Barbaria Road comes out here and then it ends up into a large ranch property here. This is La Barbaria Trail here that leads into the neighborhood. La Barbaria Trail was established in a 20-foot easement in the early 1980s which was very common for kind of semi-rural access roads into subdivisions. A 20-foot easement, you see them all

over the county. And so that is an existing condition and the roadway varies, as was stated, from about at its narrowest points of nine feet all the way up to 18 feet in width on the established roadway.

So what I'm going to pass out now are actually some photographs of the road so you can just get a sense of the roadway itself. And as you can see the roadway is, yes, it is a mountain neighborhood. It's a mountain road and it is in quiet excellent condition and is cared for quite well by the road association in the neighborhood as far as road maintenance and make sure the road is safe and passable.

With respect to the variance requests, with respect to La Barbaria Trail, it is a function of the width. We have an existing 20-foot easement. As was accurately stated, we have no rights to increase the width of that easement in order to accommodate a 20-foot drivable surface. In the memos that we have from the Fire Department it is standard language that the Fire Department always requests offsite roads with a minimum of a 20-foot drivable surface but the Fire Department recognizes that that is not always possible. So they have to look at it in the context of the situation. And so what has been agreed to to compensate for the fact that we have an existing 40-year-old roadway that does not meet current standards, there are certain compensations that can be made to ensure life safety. And so that is what we worked very closely with the Fire Marshal's Office to ensure life safety on this property.

So what we have in place right now is my clients purchased the property in January of 2016. So they've owned the property just about a year. The existing structures on the property – actually let me pull up the map here. Let's just talk about the property. So the subject property is located here on this map. So now we are zoomed in and the property comprises a 3,600 square foot main residence, and these are the two casitas. They're each 1,100 square feet and there's a small little workshop space here. The property was improved and developed in 1994 and at that time the driveway, which is Sendero de Corazon, was permitted. And this was done under the Extraterritorial Zoning Ordinance, which was the governing land use document for this part of time in 1994. And this goes to Commissioner Anaya's question regarding the driveway construction at that time.

At that time driveways were permissible to be up to 15 percent in slope; the grade of the driveway could go up to 15 percent. The permit drawings that were submitted at that time, in 1994 for the driveway showed a maximum slope of about 15 percent. So as we researched this in collaboration with Land Use staff we discovered that when the driveway was constructed they didn't build it completely in accordance with the permitted plans at that time, in 1994. So we have some areas of the driveway that exceed the 15 percent that was permissible at that time and that also exceed the new regulation which is driveways should be a maximum of a 10 percent slope. So currently about 20 percent of the driveway, there are segments that exceed a grade of 10 percent.

In 2012 – these are actually images of the driveway serving the property itself – in 2012 Mr. Lofton, who was the owner of the property at that time, made some very significant improvements to the property. One is he did significant improvements to the driveway to ensure that there's a minimum of 14-foot width of that driveway, which is the requirement. It's the current code requirement that driveways must be a minimum of 14 feet, and in addition, Mr. Lofton worked closely with the Fire Marshal's Office to say

what do I need to do to ensure that my property is safe? My property is accessible? And I want to be the safest property in the area. How do I do that? And he received guidance and counsel from the Santa Fe County Fire Marshal's Office. And in response to that he developed pullout areas in accordance with fire code that would allow vehicles to pass one another. So if an emergency vehicle is attempting to access the property there are designated pullout areas which you can see in the images that I've shown you that would easily accommodate cars passing one another. And there are a series of five of those as you go up the driveway. Then when you get to the top of the driveway at the main residence, not only is there an emergency turnaround, so there is no need to back out, there are also two 10,000-gallon storage tanks of water connected to a draft hydrant up at the main residence.

So those improvements were in place when my clients acquired the property a year ago. Subsequent to that, in reviewing the application with the Fire Marshal, in recognition of we have an existing condition of La Barbaria Trail. It's well maintained road, it's a very passable road, but it's an old, narrow mountain road. And in consideration of that the Fire Marshall added additional conditions of approval, two of which are that the main residence and those two casitas must be equipped with automatic fire suppression or sprinkler systems, which is another common terminology. And what that does is that buys the Fire Department time. That if there is any kind of fire those sprinkler systems will go off and that fire will be put out.

There were also a couple areas where the Fire Marshal requested that the turning radius in a couple of areas where the driveways go off to the casitas, that those be widened out and improved and we said, absolutely. We're happy to do that. In addition, there was a requirement for a vegetation management plan, which is required when you're in a wildland area. My clients have already met with the wildland staff at the Santa Fe County Fire Department and they were incredibly pleased with the state of the property. There's a few areas where some vegetation needs to be trimmed back in terms of its proximity to structures but that work is already underway. We've already had that meeting.

So we have gone – there already were significant measures in place to ensure life safety and additional measures as a result of this application are going to be in place. Everything on this property is here. There is no new development. We have a main residence and we have two existing casitas that have historically been rented full time. Full time residents in three homes. That is not what we're proposing today. And as was stated, the Public Works Department felt that because of the nominal level of traffic that was predicted that a traffic impact analysis was not necessary for the site development plan application.

However, we thought it was worthwhile to look at – how would you compare three residences that are occupied with what we are proposing. So for the purposes of developing a traffic study the first place you go is to the Institute or Traffic Engineers, or the ITE, and they establish the trip generation numbers. If you've got 1,000 square feet or retail or you have a restaurant or you have an office building, there are national standards for how much traffic those uses generate. So they have all the land use categories. So you find your land use category, you find your square footage and then it tells you how much traffic is going to be generated.

So they don't have a category as a retreat. It's just not something they have. This is unusual. So we said, well, what's the closest approximation that we could use and we thought, you know, maybe like a resort hotel, something of that nature. And as we reviewed all the land use categories that felt like the closest approximation. And what the ITE takes into account, for example if you're looking at something like a bed and breakfast or a hotel or something they don't just take into account the guests, they take into account any staff that would be associated with that operation. So we have four – each casita has two bedrooms, so we have a maximum capacity of four to six women could temporarily reside at the property at any given time, temporarily.

As has been stated in the materials that you have, these women will not have their own cars. They will not have their – they are not getting up in the morning and going to work. They are not going to the grocery store. They're not coming back and then going out to meet friends for dinner. They're not going back and forth. It's a really important distinction.

So we looked at the traffic generation. Based upon a resort hotel which is the best, the closest thing we could come up with, but I think we could all agree that that's more traffic than what would be generated by what we're proposing with guests that are there without their own cars. The traffic generation was identical to three residences. So the assertion that this is going to result in an increase in traffic is just not true. We have maintained that from the very, very beginning. This is not an intensification of use. There is nothing in evidence that this results in an intensification of the use of this property. It is actually quite the opposite.

So I'm going to pull up another image here that I think is a little bit easier to see. So this is the site plan of the property. So this is Camino Tortuga. La Barbaria Trail kind of forks here with Camino Tortuga and it goes off in this direction to serve some additional homes. And then we have Camino Tortuga comes this way to serve these residences here, and then we have Sendero de Corazon which is the driveway that serves the property here. And these are the pullout areas that are referenced and also are reflected in the photographs that I've provided.

So I've already spoken about the fire protection measures, the ones that are existing now and the ones that will be put in place and there was a question – I don't recall which Commissioner asked it. It might have been you, Commissioner Moreno, regarding what if they don't do it? What if they don't do their vegetation management plan? What if they don't put in their fire suppression? What then? We don't have a choice. We have a site development plan approval and we have existing variance approvals as granted by the hearing officer and the Planning Commission that are conditional upon those measures being done. We have to have an inspection by the Fire Department to check the boxes that we have done everything that is required of us. So we don't get to not. That is absolutely not an option. That is a condition of this approval. We can't move forward until those measures are in place.

And while I fully respect as any resident in this type of environment – yes, you have to be incredibly cognizant of fire danger at all times. This is safest property in the area relative to access and fire suppression. And there is nothing in evidence, absolutely nothing that this retreat is going to somehow result in an increase in fire danger. There are people living in this neighborhood today. There have been people living in those

casitas historically. Yes, you have to be cognizant and cautious. This is a non-smoking property. It just is. The applicants are non-smokers. That is going to be a requirement of any guest who seeks to come here for their wellbeing and their healing.

Bear with me while I just confirm a couple of things in my notes. And lastly, with respect to the extraordinary circumstances that we are faced with, those extraordinary circumstances relate to this beautiful mountain environment. If we were to go bring, for example, the driveway and reduce that grade to 10 percent all the way up to the house, like I said, there's only about 20 percent of the driveway that is over 10 percent. The amount of environmental damage to this area, it's unnecessary and unwarranted. This driveway's been very sensitively constructed, originally, and reconstructed in 2012 to make it as safe as possible while respecting the environment that it's in, without undue damage to the vegetation, retaining walls. This is a mountain environment and it's the safest property in the area. And it will get even safer.

So with that I'm going to go ahead and have one more handout for you and then my clients would have a few words. I really appreciate your attention. Thank you very much. Let me tell you what I'm about to hand you. So I have letters of support from the La Barbara neighborhood area as well as throughout the entire community. There are 2 letters of support and petitions with 31 signatures in support of these requests. So I'm going to go ahead and pass these out to you now. So next we have Susan Carter.

CHAIR ROYBAL: Okay. Let's make sure we get her sworn in.

[Duly sworn, Susan Carter testified as follows:]

SUSAN CARTER: I'm Susan Carter. Good evening, Commissioners. It's an honor to be here. I'm Susan Carter and this is my partner, Shari Scott behind me. My partner, my best friend for more than 42 years. Shari's spent her entire career in health care as a registered nurse, therapist, nurse practitioner in psychiatry and a doctor in family counseling as well as a first responder. And I have spent mine in non-profit management. Together we share 56 years of accumulative sobriety, both seeking a meaningful way to end our corporate careers and being single and self-supporting we wanted to invest in helping women find what we have been so graciously given – freedom from addiction.

We wanted to establish a small, sober-living environment for women who have completed treatment but needed a place to heal, a sanctuary for four to six sober women, a property where no alcohol or drugs, tobacco or firearms would be allowed, a quiet place where women could feel safe and come home to themselves in a way they never knew they could.

We bought 34 Sendero de Corazon back in January of 2016 after conducting three months of due diligence on the property and on creating a business such as this, including ensuring the proper zoning, multiple visits with the County Fire Marshal, seeking legal counsel on all aspects of both business and the property, and conducting inspection after inspection on the safety of the property. Unfortunately, before we got afforded the opportunity to meet with all the neighbors to explain our plans, rumors and misinformation spread like poison ivy. Neighbors were told we were opening a detox and treatment facility for drug and alcohol addicts. They were told not to meet with us when we requested individual meetings. Attorneys were hired and it escalated to a point of no return.

Inflammatory language is being used about a commercial entity now being allowed to exist in La Barbaria Canyon, like we're trying to erect smokestacks. There will be no new development on our property, other than possibly slight improvements on the main house. Our residential property will remain a residence, operating a business as so many others do in our neighborhood right now. We bought the property with divine intent and were fully transparent in our plans. We are here to discuss three road variances we need to secure to move forward with our County staff approved site development plan. The staff and County Planning Commission do not recommend modifying the roads to fit the County code as I'm sure you understand even more than I do.

So please uphold their approval, and to reiterate, other permissible situations such as short- or long-term rentals, what Ms. Jenkins said, present much more risk than four to six sober women at a time on 40 acres. Commissioners, we hope that you will not let these variances stand in the way of the healing work we hope to do on this amazing 40-acre property in La Barbaria Canyon. Thank you for your attention and your consideration of this request.

And if it's okay, I'd like to read one letter into record. It's from the former owner of Sendero de Corazon who I actually bought the property from regarding the road. Would that be permissible?

CHAIR ROYBAL: Yes.

MS. CARTER: This comes from Craig Lofton who owned the property right before I did. Is that okay? Dear Honorable Commissioners, I'm writing in support of Susan Carter and Dr. Shari Scott, PhD, the applicants in the Heart's Way Ranch request. I was the previous owner of the property they now own. I support their efforts to establish a retreat under the guidelines of the County Sustainable Growth Management Plan to transition women after rehab back to productive lives, families and careers. People who help others put their lives back together should be commended and supported.

As the previous owner of the property I personally invested significant time and money to improve the condition of both La Barbaria Trail and Sendero de Corazon. When my wife and I purchased the property in 2012 we found La Barbaria Trail neglected and in extremely poor condition. It was an eroded, pot-holed washboard that was very unpleasant to drive on. Passage on the road was less than safe at times because it seemed to be an obstacle course where resident drivers were challenged to maneuver from side to side at high speed to avoid pot-holes, ruts and washboards.

I contacted the road association's manager, Catherine Joyce Coll, and asked if it could be improved. Catherine recruited me to focus on the road improvements while she paid attention to fire mitigation, her real interest. I accepted the offer, confident I could effectively manage significant improvements to the road that all members of the La Barbaria Road Association would appreciate. I hired Red Line excavating to grade and install high quality basecourse, water and roll the road. After that was accomplished I implemented a regular maintenance and repair program to keep the road in good condition.

The road association paid for a majority of the work but I paid Red Line with my own money to grade and roll the road on more than two occasions. I received very favorable feedback on Red Line's work on La Barbaria Trail. Everyone I spoke to appreciated the improvements we made to our neighborhood road. There was one curious

dissent, however. One person I talked to told me there was a neighbor who expressed their displeasure with the improvements because the road was now too good and would encourage tourists to invade the neighborhood.

I cannot help but think this is in large part representative of what it is behind the appeal before you now. We made significantly more improvements to Sendero de Corazon. Red Line moved literally hundreds of yards of surface material to reduce the grades in the steeper areas, widened the drive, dug drainage ditches, installed new culverts and installed the highest quality basecourse material on top of it all. We built five new pullouts and a turnaround for fire equipment to Fire Department specifications. We also installed several dozen railroad ties in a vertical position alongside the driveway as a guardrail safety system.

We performed the work on Sendero de Corazon for two reasons. First, comfort and safety, and second, in anticipation of a major remodel to the main house. Our architect met and consulted with County fire officials and brought them to the property to walk the drive to get their assessment and recommendations. We completed a majority of the recommendations from those meetings. Admittedly it was a real challenge to balance getting the drive totally compliant with newer County codes, not defacing the natural setting of the national forest, and controlling the high cost of the work. We accomplished our goals. When we lived up there UPS and Fedex delivered packages to us nearly every day in large delivery trucks. Pecos Petroleum and Amerigas delivered propane in large tanker trucks. I rented the largest 26-foot box trucks from Penske and Enterprise on five separate occasions to move household goods and shop equipment. We drove two 10,000-gallon water tanks up the hill as part of our water purification and fire safety projects. Clearly the roads work for all the residents of La Barbaria.

While living on Sendero de Corazon I plowed snow in our drive and occasionally on La Barbaria Trails, Owl Creek and Camino Tortuga. A few decades ago I paid my college expenses plowing snow. I enjoyed it. Plowing the area several times gave me a good sense of the condition of the roads and the drives. In my opinion, Sendero de Corazon is in the best condition of all of the drives on La Barbaria Trail and is in better condition than La Barbaria Trail. I appreciate the Board's consideration of this matter. I hope when you balance the merits of the Sustainable Growth Management Plan and Sustainable Land Development Code with the challenges posed by the natural environment you vote to uphold the variances granted to Heart's Way Ranch. Respectfully, Craig Lofton.

Thank you so much.

MS. JENKINS: So in closing, there's just one more element I wanted to address and this is the question of precedent. These variances have been approved by the Planning Commission. Does that set some sort of precedent, which means any request that comes forward in the future has to be approved. If that was the case then there wouldn't be a need for this process. This process would have no meaning. It is the County's policy: Every application must stand on its own merits. Every application is unique and must be reviewed in accordance with the processes that are laid out in the SLDC.

I don't get to stand up here and point to some road variance that might have been granted in some other part of the county as a basis for this approval. These approvals

were granted thoughtfully and carefully by the hearing officer and your Planning Commission. It was stated that staff had recommended denial of the variances which is absolutely true. It is also a Land Use policy. They always recommend denial of variances every single time. And that is the context in which that recommendation is made.

So, no, we do not establish some carte blanche precedent from the granting of these variances. Every application has to go through the process on its own merits and that's what we did. Thank you very much for your time and attention. I really appreciate it.

CHAIR ROYBAL: Okay, I'd like to say thank you to our applicant and our appellant for all the information and your presentations. I want to move into the public comment. Can we have a show of hands on who would like to comment today on this issue? Okay, and if we can have everybody come forward in the rows so we can go ahead and swear you all in at the same time. And remember when you come to the podium you have to state your name and your address.

[Those wishing to speak were placed under oath.]

[Duly sworn, Dr. John Kitzmiller testified as follows:]

DR. JOHN KITZMILLER: My name is Dr. John Kitzmiller. I live at 97 LaBarbaria Road. I want to speak in support of granting the variance for Heart's Desire Ranch very strongly. I believe that the issue of traffic is specious. There will be less traffic then when having guests use that property. The opposing gentleman was inflammatory in his remarks and he was not correct in saying that there was no public sign. I saw it myself when I went up to investigate the roads in that area. There was a big public notice sign of what was coming forward.

As a physician to women for my lifetime career, now retired, I strongly support the wisdom of having this healing treatment recovery center. It's not a rehab. It's for alcoholic women who are finished with rehab in sort of a halfway safe, peaceful place, inspiring to go to. La Barbaria Canyon is a very, very spiritual landscape and it's a highly appropriate use to establish this variance. Thank you.

[Previously sworn, Harmon Houghton testified as follows:]

HARMON HOUGHTON: Commissioners, I'm Harmon Houghton. I'm a local business man, have a publishing company and coordinate a lot of events in communities around town. I've recently met the new owners of Heart's Way Ranch and did visit it right before Christmas in a two-wheel vehicle, had no problems navigating the hill that's being described in only a two-wheel drive.

I'd like to deconstruct the previous gentleman that gave the well researched diatribe in his message into five words, for the same of brevity, which is Not In My Back Yard, and from the little bit that I've known about the two principals of the property they're both career healthcare givers and healthcare business people. They are two females that have gone out on their own and created a center that will serve others and by no means can two casitas be construed as a luxury hotel, and if you go to the property itself, there are no luxury hotel amenities. There are no swimming pools. There's no bartender. There's no concierge. It is structured to be a healing center. And I think what we're facing is a little bit of discrimination because the two principals do not fit necessarily the model of the landowners of that property, which is a battle that's been fought many times through Commission and zoning, most all of them lose.

So I would urge the Commissioners to approve the variances and allow the healing center to go on and constructively become members of the community. Thank you very much.

[Previously sworn, Maeve O'Neill testified as follows:]

MAEVE O'NEILL: Hello. My name is Maeve O'Neill. I'm at 25 Vista Point Road in Santa Fe. I am the CEO of the Life Healing Center, which is right across the highway from this property. We are a residential treatment center for alcohol, drug use and mental health issues. And I just wanted to say, as a licensed professional counselor and licensed chemical dependency counselor I find some of the language used earlier very offensive to clients who are protected by the ADA and we should not speak about them in such a way as was spoken earlier.

I have been working in this field for 30 years. I've seen lots of stigma, lots of judgment about people in long-term recovery and I think it's really important to remember Life Healing Center opened 20 years ago here in Santa Fe and our founders, Bill and Ann Snyder fought a four-year battle to get the program approved. Luckily it was approved and we have since served thousands of lives, saved thousands of lives, many of them from New Mexico and several, many, from Santa Fe. So without the program there they would not have perhaps survived their addiction or the mental health issues.

When we opened 20 years ago we fought the battle. We won it. Since that time we've had no issues. There's been no wildfires. There's been no danger to the wildlife. We've only saved lives. And we are a 40-bed smoking facility. So we don't have nearly -- we don't have the issues that people are fearful of based on the stigma that was presented earlier. Our clients come to us from New Mexico, from Santa Fe and lots of other places and many need the services that Heart's Way Ranch will provide. We need a continuum of care that provides support and long-term resources for people in recovery. That's how we will save lives and change more lives. The folks that you all serve are the lives that we will help. So we feel what Heart's Way Ranch is a critical piece of the continuum of care and we hope you will approve it. Thank you.

[Previously sworn, James Deuschle testified as follows:]

JAMES DEUSCHLE: Good evening. My name's James Deuschle. I live at 7 Owl Creek Road. I live right across the ridge from the applicants' proposed facility. I have no problem with the concept that this noble cause that they have, that they're very well qualified. That's obvious from their résumé that's part of their original application. I think what's critical is not to lose sight of the main objection that I think most of the resident of this what is really a box canyon. There is only one way in and one way out and that's a private, very narrow road with trees growing in and rocks. You have to drive up it to appreciate it.

And it's a unique situation in that it's a private road and there's only some of us that have to maintain it due to the history of the way this thing was developed. Not all of the people that inhabit the canyon are legally required to maintain this road. I am and several other people are. We have a legal liability. There's a covenant that runs with our property to maintain this road. It has no guardrails. Occasionally it has bit pot-holes until it gets resurfaced. I'm not saying it's a super dangerous road but you can appreciate we have to maintain it. We're legally required.

So if we have commercial use and let's concentrate for a second on that. These people it's my understanding are going to charge \$15,000 a month for their clients. This is a business. Once you grant this variance if you do that anybody else who owns property in that canyon can make the same pitch and it could be for another noble cause. That's not -- it's not a Not In My Back Yard syndrome; it's not on my private road syndrome. It is not appropriate to open this box canyon up to commercial development and I guarantee you it will happen if you do this and grant this variance. It might not happen tomorrow but it will happen in the future and it will be very difficult to stop it.

One last point. I'm running out of time, is that a statement was made about bad faith of the applicants. It's been brought to my attention there was an email sent out by the applicants to the family and friends stating that they wanted them to come out here in a show of force before you all to support them and to encourage contact with the Board of County Commissioners to persuade you all to vote for this variance. I think this is totally inappropriate. You also note that the email states that the supporters of the Heart's Way Ranch will be given a surprise gift of some kind. What I don't know; it doesn't state, but there's some sort of incentive to show up here tonight and raise a ruckus. Thank you.

[Previously sworn, Sandra Rowley testified as follows:]

SANDRA ROWLEY: I'm Sandra Rowley. Honorable Commissioners, my husband, Ken Rowley and I and our daughter and her husband own the entire northern border of the land between Susan Carter and Shari Scott's 40 acres. We have been their neighbors since January of 2016 and have welcomed them into our community. We can walk to each other's houses which has enabled us to get to know them very well. Susan and Shari are honest, forthright, trustworthy, intelligent and honorable. We enjoy their company and are very fortunate to have such extraordinary women as our friends, and they are always there when we need assistance.

When Susan and Shari moved in they tried to reach out to each and every property owner and tenant in our neighborhood to visit with them, inviting them to their home to discuss their plans. While they're our neighbors who embrace them and their project, only two other neighbors who signed the letter attached to Mr. Bank's appeal agreed to meet with Susan. The others who signed the appeal, the letter attached to the appeal. Have never met or been up to her property. How could they possibly have enough information to sign the letter attached to that appeal? And how do they know that the information that they do have is true?

She and Shari wanted so much to befriend their neighbors and be a positive addition to the La Barbaria neighborhood. So much misinformation has been spread about Susan and Shari and Heart's Way Ranch. For instance they are not proposing a treatment, rehab, or clinical facility. Two, assumptions have been made about their motivations being non-altruistic. How can someone say that about two women whom they've never met? They have no idea what their motives are. None of us know, can ever know, what's in another person's heart.

And then opposition claims that their four to six guests will be lighting fires and traumatizing the wildlife, when our own neighbors are throwing lit cigarettes, butts in the forest. I mean I've seen it. I have seen it many times. And are shooting guns to intimidate these single women. They have been harassed and treated very poorly by a handful of

very loud and ugly neighbors. When Susan and Shari paid their \$500 neighborhood road dues and asked that the dues be restricted only to road maintenance, the chair of the organization returned her check saying she, and I quote, "could not accept checks with restrictions on their use" because she knows the monies were being used to pay for an attorney to fight Shari and Susan and other uses that weren't specified in the road maintenance agreement.

This situation has gotten out of hand. Ken and I share a driveway with an opposing neighbor, who oppose Shari and Susan. After the Planning Commission approval, we had large rocks thrown in our driveway so we couldn't even drive down our driveway. Many times. Usually we just moved them but one day the rocks were so big that we had to get two met out in our neighborhood to come and move them from the driveway. Shall I stop? I've just got a few more sentences.

CHAIR ROYBAL: Just go ahead and just try to wrap it up.

MS. ROWLEY: Okay. It's just a little bit. Okay. Thank you. We have lived on our mountain for 19 years and want Susan and Shari to be our neighbors. We want them to own and operate their quiet place of healing right next door to us and the variances in question are perfectly fine just the way they are. Please, Honorable Commissioners do not override the Planning Commission's decision to approve the road variances. This is the issue and this is the only issue in question. Not the inflammatory remarks and assumptions that are being made about the impact that this non-threatening project will have on our neighborhood. Oh, please, let us get back to the caring, compassionate group of neighbors we used to be. Thank you.

CHAIR ROYBAL: Thank you. Okay, next.

[Previously sworn, Diana Rasche testified as follows:]

DIANA RASCHE: Hello, Commissioners. I'm Diana Rasche and I live at 9 La Barbaria Road. I'm a neighbor in the La Barbaria Canyon. I'm speaking to support Heart's Way Ranch in their strive to open their facility. I have to tell you that coming from the Midwest, the high fire danger of that area freaked me out, of course after we had bought the property. We hosted a meeting with Kry's Nystrom, I believe is her name and with the wildlife fire people and I invited people from the neighborhood to attend that meeting. Susan Carter was the first one to walk in. I didn't see some of these other people. I posted a sign on the post boxes to let people know.

I would like Susan Carter to be my next-door neighbor because I tell you – and she's not; we're farther down the canyon towards Old Santa Fe Trail. Her property, if everybody in that neighborhood took care of their property like she has and like the owner before and did what they did in mitigating fuel for fires and ensuring that the property is safe, we'd be in the safest neighborhood in the whole area.

I guarantee there's neighbors up there that do not know what they're up to, and that's their right. A lot of people are friendly and a lot of people don't want to be bothered, but if everybody was like the people that own Heart's Way Ranch it would be a good place to be living, let me tell you. And a safe one. And they're going to be in a transparent bubble because that's the only way that they can function if they get approved. And I just want to ask you guys to approve their project. Thank you.

[Previously sworn, Jan Patterson testified as follows:]

JAN PATTERSON: I'm Jan Patterson. I live at 6 Starfire Lane in District 4. Thank you for hearing me today. I'm going to preface my brief remarks to let the Commissioners know that I am in complete support of Heart's Way Ranch. I believe the compassionate and practical mission of the ranch is in complete keeping with Santa Fe's reputation as a professional healthcare center. But I also wish today to support the approval process that has taken place to date, namely the permission historically granted to Heart's Way but the rural fringe zoning district. But additionally, the site development management department approval and the approval for the requested variances by the Planning Commission.

I am certainly in accord with the opposition's legal right to disagree with these decisions and to request that they be reversed, but in my eye, the appeal is based on opinion, not new and irrefutable evidence. Perhaps most disturbing is that these opinions include calling into question the veracity and integrity of the officials on these decision making bodies with the opposition insinuating that ulterior motives and persuasive money and connections were involved. That these decisions were made by qualified individuals who considered all elements of the proposal is critical, not just to Heart's Way but to the development and management of all growth proposals for the county and the city.

This is the process we have in place, to manage our local development opportunities, and frankly, to besmirch the decision makers is to me a desperate, not a rational platform. But further to this, and me being critical I would like to note, Commissioners, is if there was ever a time in history for us to trust and have faith in established due process in all levels of government, unless there was a clear, absolute and evidence otherwise it is now, as we are confronted at our federal level with dismaying ambiguity, indifference and irresponsibility in our regard for the rule of law. I thank you. I trust in the fair and responsible resolution to the future of Heart's Way Ranch in Santa Fe. Thank you.

CHAIR ROYBAL: Thank you. Next speaker.

[Previously sworn, Reese Said testified as follows:]

ANN REESE SAID: My name is Ann Reese Said and I live at 3005 Monte Sereno Drive in Santa Fe. And I'm here in support of Heart's Way Ranch and will just briefly mention that I too have been a marriage and family therapist for over 30 years. I respectfully ask the Commissioners to uphold the approval given by the hearing officer and the Planning Commission who thoroughly reviewed and vetted the application for variances to allow the approved use. In addition I would just briefly add that I have known Susan Carter and Dr. Shari Scott for many, many years and it is my good fortune to have known them and my pleasure to stand up here in front of you to let you know and vouch for their integrity, their transparency, their conscientiousness to every project they undertake. Thank you for considering and listening to me and I so hope that the variances are approve. Thank you.

CHAIR ROYBAL: Thank you. Next speaker.

[Previously sworn, Andrew Alt testified as follows:]

ANDREW ALT: Commissioners, it is a pleasure to be here this evening. My name is Andrew Alt. I'm a nearby neighbor. I live on the Santa Fe Trail. In addition I'm an active hiker in our beautiful geographic zone down Santa Fe Trail and eastwards

into the foothills north of St. John's College, the cityscape, as well as down through La Barbara Canyon. I know it well. I've seen it in all seasons. I've seen it for its very special environmental strength. The spirit that has been spoken to in that land, it's an incredible spot. It's a place that will change people's lives, and I will say it does change people's lives.

I want to bring up a key point that speaks to precedent. We're all here because new zoning permitted the establishment of retreat areas in the county. And it so happens this area we're speaking of tonight is one of those zones where approval was given for these sorts of things. With that in mind, with all the effort, the vision, and the courage it took to create those new steps and embrace that future I would ask that we sometimes take a bigger picture, a bigger view, of what can be. Sometimes it's frightening to walk into the new, but we always seem to be able to handle it and usually we build and we grow and we nurture people that need this sort of care and long-term concern. So I am for what's happening at Heart's Way Ranch. The area is special for it and I think we as a county and we as a city can be the richer for it. So keep it simple – I'm a supporter. Thank you.

[Previously sworn, Deuschle testified as follows:]

KATHY DEUSCHLE: Hello, my name is Kathy Deuschle. My husband James and I purchased a property on Owl Creek Road about three years ago as a second home knowing it was in a residential as opposed to mixed use, residential-commercial neighborhood. If it had been otherwise we wouldn't have bought it. If we knew that Santa Fe County would change the allowable usage and in this case and up to this point brush aside the road requirements in place for commercial development we would have looked elsewhere.

Purchasing this home required much of our savings so it had to be a sound investment. Like most people, James and I value a clear separation between our home life and the commercial world. Given our neighborhood's steep terrain, historic significance and proximity to the national forest, it just felt like common sense that it would remain wholly residential. Unlike us, most of the property owners using our common, privately maintained road live here year-round and work or are retired from decades of working in Santa Fe. Among other occupations, our small neighborhood includes a variety of educational professionals and business owners who employ many local people. They have raised families here and the contributions they have made to the health, prosperity and quality of life here are substantial and based in fact. Shouldn't the wishes and informed opinions of these long time residents receive a more weighted considerations than the wishes and opinions of Susan Carter and Shari Scott, relative newcomers, who can as of yet, offer only seductive promises.

I understand and support policy that creates a vibrant local economy but it's unjust and unreasonable to bend the rules and insist that we accept change to the fabric of our community that ignores the informed opinion and wishes of just about all of us. It's unjust and unreasonable to insist that we who are dependent on and responsible for our private road bear an increase in traffic, maintenance, road hazard and a rural nuisance for the benefit of commercial enterprise. Should the County force us to integrate commercial development into the fabric of our domestic lives they will have acted in an overreaching and intrusive manner.

The common opposition letter, the individual opposition letters, and the testimony presence of neighbors here today is evidence that the overwhelming majority of residents along La Barbaria Trail want our neighborhood to remain wholly residential now and into the future. I respectfully ask you to respect our wishes by denying Heart's Way Ranch the variances they seek. Thank you.

[Previously sworn, Liz Sheffield testified as follows:]

LIZ SHEFFIELD: Hi. My name is Liz Sheffield. I live at 17 Camino Delilah, Santa Fe. First, I would like to just state that I am offended to hear that it was suggested that these women were basically promising gifts for support. I just really don't believe that. Number two, what is the point as to whether the water holding tanks were installed prior to the current owners owning it? What is the point? They're there. The suppression and water holding tanks surpass anything that I have ever seen in Santa Fe. I'm a realtor. I drive all over the county. The roads are the best I have ever seen. They are very safe and the fire suppression that is in place is the best I've seen.

This is difficult and heartbreaking. This is the fourth time I've stood here and to continue watching such mean-spirited opposition to the creation of this sober living environment. I have heard over the course of this long process many preposterous claims. I have heard again and again that "addicts" are more likely to smoke and therefore will burn the canyon down. I have heard that women from Dallas would not know what to do if they encountered a mountain lion. I guess really it would be wise for the County to consider closing the entire mountain range to all types of use – hiking, camping, sightseeing, including driving, because of the added risk, and since we need to protect our mountain I suppose we all need to pray that lightning does not strike and burn Santa Fe County down. That's how preposterous it seems to me that these arguments are.

It's interesting to me, in reality the entire property could really be rented short-time on a continuous basis, unrestricted, to any sort of individual or group – wedding parties, fraternity parties, family reunion, bachelor parties – the list goes on and on. This is not their intent. I wonder how many cars will be driven and how many cigarettes would be smoked if this were the case; this is not the case. I bring this up to point out the ridiculous and absurd nature for the basis of this opposition. Really, I think the opposition is: they just don't want it in their neighborhood and they are trying to come up with reasons, silly reasons, that it should not be allowed.

Seriously, we're talking about providing mature women an environment that is quiet, peaceful and tranquil, an environment to read, meditate, and generally have some time to get their feet back on the ground.

CHAIR ROYBAL: If we can wrap it up, I'll allow it for you to wrap up but you did run out of time. Could you turn the mike back on.

MS. SHEFFIELD: We're talking about providing mature women an environment that is quiet, peaceful and tranquil, an environment to read, meditate and generally just have some time to get their feet back on the ground and create a path towards continued health and sober living. This program is designed to get these women just that. We're talking about six adult women at the most at any given time. It is my understanding these women will not have cars.

This is a very personal issue for me. I have experienced firsthand the desperate need for a place like this. My partner was in an alcohol rehabilitation facility. She did not

smoke. Never did. Her professional counselor strongly advised that she needed to go to a place just like what we are talking about. She needed a healthy place, a healthy place that would provide space and time to transition back to her life and to her home here in Santa Fe. She needed some tools to help her along the way. There was no place for her to go. Ten months later she relapsed and took her life. This is very personal to me. Sorry. I know if she had a place to go like this she would be alive today.

So I ask again to please allow these three variances to be granted. These three variances stand in the way of the creation of something really positive and really good for society and for Santa Fe. In my opinion it will in no way have any type of negative impact on the neighbors or the neighborhood. Thank you for your consideration.

CHAIR ROYBAL: Thank you. Next speaker.

[Previously sworn, Catherine Joyce Coll testified as follows:]

CATHERINE JOYCE COLL: My name is Catherine Joyce Coll and I live at 83 La Barbaria Trail and I've been the neighborhood association president for the last -- I don't even know -- seven, eight, nine years. And there've been so many inaccuracies in some of the testimony today and I'm going to ignore it because most of what's been said doesn't speak to the issue before us, which is whether it is reasonable to grant these variances. And I think the new Fire Marshal probably isn't as aware as those of us who live there of the fire danger and my husband and I have lived up there 15 years.

My husband died two years ago and at least every two years we've had neighborhood association meetings with fire chiefs there to speak to us. Not only that, most of us go to the meetings held at the Fire Department buildings when the Fire Department holds them. And it's not true that that's the safest property in the neighborhood. Almost every one of us has gotten a grant from the federal agricultural department and done very serious fire mitigation on our properties. And it's also not true that they have the safest driveway because most of us have fairly flat driveways.

And all five of our last fire chiefs have told us clearly and unequivocally that if there is a major wildland fire they probably won't be able to get up to our neighborhood. First of all half of La Barbaria Trail is so narrow one car has to pull over for another to pass. The fire chiefs had told us that not only can they never get a large fire truck up, we've had two fires up there and what they did was bring up those oversized pickup trucks and had water tankers parked at the bottom of the road. They've said that we'll probably have to shelter in place, that they can't send fire crews up into our box canyon because they can't be assured of getting them out, especially with the fluky winds in our main canyon and then the little canyons that come in.

So it seems to me that granting variances for a commercial enterprise absolutely makes no sense. And I did reach out to Susan when she moved in. I actually took her to dinner at La Fonda and she told me what she wanted to do. I had taken a neighborhood vote. I had taken a neighborhood vote and I told her that the neighbors were opposed. And I was sorry. And I didn't dislike her in the least. Our objections are that it's inappropriate for the area that we live in and very few New Mexicans could pay \$15,000 a month. This is designed for Texas women that are friends of these two women, not for New Mexicans.

[Previously sworn, Ken Rowley testified as follows:]

KEN ROWLEY: Evidently, we have people living in La Barbaria Canyon that don't realize it's risky to live in the mountains.

CHAIR ROYBAL: Sir, hold on one second. Can you state your name for the record and also your address?

MR. ROWLEY: Ken Rowley. Okay, you're trying to make me ashamed; I don't want to tell you. Anyway, we've got people living up there in La Barbaria Canyon that don't realize there's risk involved in living in these mountains. I'm not used to public speaking; it scares me. But anyway, they're living in the mountains and these risks, they aren't resolved. They cannot be resolved.

Now, I want you honorable Commissioners, you patient, you tolerant souls. First I've got to apologize because a while ago I burst out and said something I probably shouldn't have. Father, forgive me for I have sinned. I thank you for allowing me though to express my thoughts and feelings about the appeal previously approved variances of Heart's Way Ranch. There's been so much said regarding these three variances and many other comments that don't pertain to the three bumps in the road.

Regarding Professor Bank's appeal, I find it very well written, intellectually expressed and certainly deserving of an A. It is very objective in every sense of the word but except for the part talking about the three variances is totally irrelevant. Excessive. Misleading. Confusing. About the issue of three bumps in the road. It does fit well the holy temple of intellectualism but may promote the blind assertions of the superiority of one approach over another, perpetuating misunderstanding, fear and hostility.

Robert M. Hutchins, he was chancellor of the University of Chicago, once said and I live this; it's a good quote. It goes like this. It's good to be serious but be serious about serious things because even a monkey wears an express that would do credit to any college sophomore but the monkey is serious because he itches. Our itch is only the three variances. That's all it's about. A lot has been said about –

CHAIR ROYBAL: Sir, your time has run out but if you could wrap it up I'll allow a little bit longer. Yes, just a little bit longer but go ahead and wrap up, sir.

MR. ROWLEY: – that would last longer than your lifetime and mine reminding us that this could have been prevented by simply granting three variances. The wisdom of this would certainly outweigh any intellectual argument to appeal the already approved variances. My thought and feeling is that the wisdom of you Commissioners, yes, your wisdom –

CHAIR ROYBAL: Thank you, sir. If you could wrap up.

MR. ROWLEY: I'm very sorry you don't get to hear the rest of this.

CHAIR ROYBAL: Thank you. We really appreciate it.

MR. ROWLEY: We'll meet afterwards.

[Previously sworn, Duchess Dale testified as follows:]

DUCHESS DALE: That's a hard act to follow. Good evening. My name is Duchess Dale. I live at Park Plaza in Santa Fe, New Mexico. Thank you, Commissioners for the opportunity to speak, for your patience and tolerance. I'm here to support and request your sustained approval of the variances in regards to Heart's Way Ranch as has been previously determined. I would like to concur with two of the previous speakers who addressed the inflammatory and prejudicial comments of stereotypical assessments, not only to Susan and to Shari but towards prospective residents at Heart's Way Ranch.

To me this implies a level of fear and ignorance that extends itself beyond concerns about traffic or wildlife. And then I must address one topic for which I take personal umbrage. Dr. Banks and a gentleman previously mentioned the phrase "bad faith" twice and that steps in my personal as well as my professional territory as I stand before you as Susan Carter's minister and to that which I am legally and spiritually allowed to say I can attest to her integrity, her intention to her practicing what we teach and preach as unconditional support and service, which does not include even the inference of parting gifts for any of the genuine endorsements of the people who believe in what she and Shari stand for, what they want to bring to this community of Santa Fe, to Heart's Way Ranch in the support for women who are looking for another chance. Thank you, Commissioners. God speed.

CHAIR ROYBAL: Next speaker.

[Previously sworn, Ginger Clark testified as follows:]

GINGER CLARK: Greetings. My name is Ginger Clark. I'm a 27-year resident of Happy Trails which is off La Barbaria Road and I'd like to rebut a couple things I heard. I personally have been a first responders to accidents, head-on accidents over the 27 years, although I'm not an EMT or a doctor a healthcare professional, you do what you can when neighbors are in trouble. I have gone through two floods where La Barbaria Road was impassable. One was when we were building our house 27 years ago and one was about 15 years ago. And truly it was impassable. Culverts had been ripped out. There was deep holes. A neighbor lost his Fiat which overturned and that's a lot of water.

And I'm concerned to the point I've met with Commissioner Hamilton regarding that road and the issues with it. I'm just concerned that more traffic and more chances for accidents will develop. I would like to see the road and usage study. Was one completed is a question I have, but La Barbaria is a dangerous road. It's a box canyon and I would think that the Commissioners would want to put a little more research into this proposed Heart's Way Ranch. It's a noble cause and I'm supportive of that cause but there are issues that need to be taken into consideration. Thank you very much for the time. I appreciate your insight and your decision.

CHAIR ROYBAL: Next speaker.

[Previously sworn, David Nagler testified as follows:]

DAVID NAGLER: My name is David Nagler. I live in La Barbaria Canyon. Good evening Mr. Chair and Commissioners. I might say I've lived there for 20 plus years and I feel bad about the inflammatory language on both sides of this discussion. I have to say thought that most of the advocates here this evening don't live in our canyon and I would daresay most of them are not familiar with our canyon. I certainly have no quarrel with the aims of the Heart's Way Ranch. It's a noble idea. I've met Susan Carter and Shari Scott briefly. I am not impugning them as neighbors. I am not impugning their intent.

The roads, however, are a mess. The Fire Marshal was up there yesterday. Well, at 2:00 in the afternoon on a dry day the roads are passable. That's fine. I'm concerned about danger and access in the snow and the mud and the dark. I've lived there 20 years. Two or three times a season I tow somebody out of ditch or off the side of the road or call a wrecker because I can't deal with it with my full-size four-wheel drive Dodge pickup.

Commissioner Hamilton was at a meeting October 26th chaired by Paul Kavanaugh of Santa Fe County Public Works to discuss paving more of County Road 67F. That's La Barbaria Road that leads into La Barbaria Trail, and he noted that the whole area is FEMA floodplain and the wetlands subject to the Corps of Engineers' oversight and it's fraught with problems and engineering issues. Is that your recollection, ma'am?

So lastly, again I have no quarrel with a facility to help people that need healing. It sounds noble, it is noble. But the whole reason government entities have zoning and engineering standards is for a reason. The SLDC requires variances meet a test of extraordinary and exceptional and in this location, I would ask you, what's extraordinary and exceptional that justifies it. And I'll leave a minute for anybody else who wants to talk. Thank you.

CHAIR ROYBAL: Okay, next speaker. Is there anyone else that would like to speak to this matter? Sir, have you been sworn in, sir?

[Previously sworn, Jay Shelton testified as follows:]

JAY SHELTON: My name is Jay Shelton. I lived up there -- we are immediate neighbors of this property. We've lived up there for 35 years. I think we were the first folks to be up there who are still there. As many other people have said I have no problem with the proposed business. It's needed, but that's not the issue. The issue is the road variances and I'm very concerned about safety, primarily fire safety. I will add that there have been five accidents that I can think of on the roads in the time that I've been there.

But I'm really concerned about the fire safety. The more people who are up there the more chances a fire might get started. The more people who are up there the more likely -- I guess my nightmare is the Fire Department can't get in. There's a fire that's raging. We're all trying to get out and the more people in a panic exit scene. More people are trying to use roads that are too narrow and have grades and we'll have a pile-up and people will be stuck and you won't even be able to drive out.

The degree to which these roads are out of compliance -- I was interested to learn recently is huge. It's not a percentage of a percent or two. It's a huge degree of non-compliance, both in terms of width and in terms of slope, and it's over many locations and it's over fairly long lengths at the locations. It's not a bump in the road; it's pretty serious. There is no place in Santa Fe County that has higher risk of fire danger. Part of it is that there is only one way out. If there ever was a place where road variances should not be granted for fire safety it is where we live. I would ask you please to make the environment as safe as you can for us by not doing anything that encourages development and additional activity up there. We've had lot division proposals in the past which have not gone through for the same basic reason. It is a dangerous place to live. Thank you.

CHAIR ROYBAL: Thank you. Do we have anybody else from the public that would like to comment? Come forward, sir. Have you been sworn in also?

[Previously sworn, Adam Horowitz testified as follows:]

ADAM HOROWITZ: Good evening. My name is Adam Horowitz and I have been in La Barbaria Canyon as a resident almost as long as the Sheltons. I moved there in 1989 and I built my own house with my own hands that took me ten years to build. So I have a very strong attachment and familiarity with the area, which I hope

counts for something. I've walked that valley hundreds of times and I'm very familiar with the roads, with the whole terrain, with the fire danger and I have to tell you I have lived in terror, year after year when there's a drought, which tends to be most of the time now, waiting for the big fire when we are trapped. And as Catherine Coll said, the Fire Department – and I've had Fire Department employees, or volunteer fire department, I guess they're not employees, tell me that if there's a fire they're probably not coming because they don't want to get stuck. It's one way in and one way out.

This isn't like other places, rural fringe, in the county where there are different access points. It's one narrow, windy, steep road and in and out and I have been stranded and not been able to get out of that canyon many times in the 27 years I've lived there. And the idea that there's no accidents is untrue. This big hill that has a 20 percent grade or whatever it is, I have been blocked both ways on that hill by cars sideways, cars on their side, and even a car upside down that turned over because they couldn't stop on the ice and went up on the embankment and rolled over and blocked that road. And a lot of people talk about, the road is fine for two-wheel drive. Well, not in the snow. And in the snow it's a whole different story. So that's one thing. I see my time's running out and I'll be diligent about that.

The other thing, all this talk about the nobility of this facility is all true. How long will they own it? And what happens when they sell it? I have seen so many people come and go in that canyon in 27 years, buy and sell property, and when they sell that property as a commercial treatment facility or rehab facility – whatever they call it, who's going to buy it? And what are their standards going to be? And how are they going to vet their people? And I asked somebody on the County Planning Commission, well, if somebody wants to take heroin addicts, the next owner – I'm not talking about the current applicants, or convicted felons, no problem.

CHAIR ROYBAL: Go ahead and finish up, sir. I'll allow a little bit longer.

MR. HOROWITZ: Very brief. I don't want to address the intent of the current applicants. People come and go. They sell their property, they sell it to somebody else. Once the precedent has been set and it's a commercial facility, the next owners will do what they want. And it could be in a year; it could be in five years; I don't know. But let's not make this a personal thing. It's about the precedent and who are the next owners going to be and what's going to drive them. So that's it. Thank you.

CHAIR ROYBAL: Thank you. Is there anybody else that wishes to comment? Anybody else from the public? Okay. We have one other. Have you been sworn in, sir? Yes. And is there anybody else that would like to talk tonight after him. If we could come forward.

[Previously sworn, Bruce Velick testified as follows:]

BRUCE VELICK: My name is Bruce Velick and I live in La Barbaria Canyon. I'm on the board of the Overlook Homeowners Association. First, I'd like to say that I wish our roads were as nice as the roads up to Heart's Way Ranch. Granted, in the winter all of the roads there require proper vehicles. I think the roads up to Heart's Way Ranch and the people that live up there would be wise to post a sign as we do, advising cars in inclement weather not to drive up there in a two-wheel drive vehicle.

But I really think the issue of calling out that it's really about allowing them, meaning Heart's Way Ranch to do what they want to do and not making this about – I grant, you need to decide about the variance. But really, this is not about people saying what if the next person comes along and – what if the client is not allowed the variance and they rent to two casitas to heroin addicts, or to smokers. All of the what-ifs should not be your concern beyond the variance and those variances I thought were properly addressed by the Planning Commission and I simply hope that you would concur with that. Thank you very much.

CHAIR ROYBAL: Thank you. Is there anybody else from the public? One more time, is there anybody else? Okay, I'm going to close the public comment, but we had a request for a rebuttal, so I'm going to allow a rebuttal from the appellant and from the applicant, but I do want to emphasize that we don't want to go over issues that have already been presented, so if you have new information that's what I would allow for you to say. And of course I would also like to limit it to six minutes.

MR. BANK: I would say a couple things. First, the approvals – and I am repeating this – were based on false information.

CHAIR ROYBAL: Sir, if that's intentional, can you please not do that? Okay, sir. Continue please.

MR. BANK: Again, the approvals were based on false information. Everyone is saying who supports the proposal that everything was considered. It wasn't considered. They didn't consider the grade of La Barbaria Trail. They didn't consider the width of La Barbaria Trail in terms of the fire code. So those approvals are suspect. They aren't solid.

I would also say that part of the reason for that was what I call bad faith, which is a legal term, not a spiritual one, and this letter or these emails suggest another piece of that, where they advised their – or encouraged their supporters to contact you all in violation of the adjudicatory nature of this proceeding. They wanted them to contact you before this meeting, and that is unethical. I wonder if their due diligence that they say they practice extended into looking into the rules for this procedure. I don't think it did because of if it did then it certainly is bad faith. But in any event it's unethical to do what they did.

Since I don't have a lot of time let me focus on two areas. The traffic study – if you look at this traffic study that they submitted and you look at the resort which they used to compare to the two casitas, it says that there is only going to be one vehicle going in in the morning and one vehicle going out in the evening. A resort with four people with employees only has one vehicle going in and one vehicle going out? And if you look at that table there are zeroes all over it and it says a zero indicates data not available. They don't have any data that supports the idea that the traffic is not going to increase. And in fact common sense tells us people are paying \$15,000 a month. They're not going to want to do their own laundry. They're not going to want to cook their own meals. They're not going to want to fix their own toilets. Somebody has got to do that and there are going to be people coming up to that facility.

They did not mention any employees until pressed by the hearing officer. And that to me constitutes bad faith.

The last thing I want to talk about is – I really want to talk about a number of things but I'll just focus on exceptionality. People mention the rule of law. That's what I'm all about. I read the code. What they're asking for is for you to sacrifice the law, to change the law to suit their purposes, which of course you can do and there are restrictions in the code that say when you can do it and when you shouldn't. They have to demonstrate exceptional conditions of their property and then they have to link that to a hardship. So I'm just going to read from Justice Minzner again, some from Downtown Neighborhood Association. These are all quotes from her. "The ultimate question to be answered is whether the applicant has shown unnecessary hardship. In answering this question the body considering the variance must resolve several factual questions. The first question is whether the partial is distinguishable from other property that is subject to the same zoning restrictions." Every property in La Barbara, off of La Barbara Trail is subject to the same zoning restrictions, which in their due diligence they didn't note that that road did not meet County standards.

Let me continue with what she says. Unnecessary hardship, which must be linked in the factual sense to some unique property on their land. She says unnecessary hardship has been given special meaning by courts considering a zoning authority's power to grant a variance. It ordinarily refers to circumstances in which no reasonable use can otherwise be made of the land. She of course can use the land as a residential property. Nothing in the code prevents that. The exact showing necessary to prove unnecessary hardship varies from case to case. However, it is clear that a showing that the owner might receive a greater profit if the variance is granted is not sufficient justification for a variance.

So she has no hardship here. She has no exceptional characteristics of the property, no hardship that she can link to it, so according to the code she is not entitled to these variances. That's what the law says and I hope that the rule of law is what you follow.

Since I have 30 seconds, let me talk a little bit about fire. No, let me talk about precedent. If you grant this variance how can you deny this same variance to someone else in that neighborhood? You can't. Not without going to court and spending lots of money. How can you say that you are not opening up that whole canyon to commercial development? Which will destroy its character. Could I have few more seconds?

CHAIR ROYBAL: Yes. Go ahead and wrap up, sir.

MR. BANK: What they were arguing is that that road's been there a long time so it's sort of grandfathered in. Well, it's been a residential community forever, so why can't we grandfather that in? That's the point. We want to preserve our neighborhood as a residential neighborhood. We're not opposed to their intentions. We're opposed to a violation or a rejection of the safety standards that are embodied in the code which serve to protect everyone.

And finally, to the comment about the road association, they objected to the road association in the first couple of hearings and – and it's not a legal association. So there's no way to guarantee maintenance on that road. There's no way, until there are formal agreements, and I spoke to that in my appeal document so I'll just let that stand. Thank you.

CHAIR ROYBAL: Thank you.

MS. JENKINS: Thank you very much, Chair Roybal and Commissioners. I will be brief. Just a few elements I would like to address. We completely respect the sensitive environment that is this canyon. We respect the concerns about wildfire. And there is nothing before you to demonstrate that these two casitas being occupied part time by guests at this retreat is in any way increasing wildfire danger. It's just not before you. A person occupying those casitas is a person occupying those casitas. If they are full-time residents renting those casitas for their homes as has historically been the case, or if we have guests there not all the time. There's not going to be guests there all the time.

We respect the concerns about an increase in traffic. It's a really good thing. These guests will not have their own cars. There's nothing before you to demonstrate in any way that what is being proposed here is going to increase traffic. If those casitas were rented full time, as has historically been the case, yes, that is trips back and forth to work, to the grocery store, to town, whatever it may be.

Significant fire safety measures have already been implemented on this property and additional ones are a condition of its use for the proposed retreat.

With respect to – there's been a lot of comments about this \$15,000 a month figure. I have no idea where that came from. Susan and Shari are developing their plan for the property. That information is – again, it is misleading and it has not been established yet. So I just wanted to put that on the record that that did not come from the applicant.

And with respect to the email that went out, the applicant is precluded from reaching out to the Planning Commission or the County Commission when they have a case before Santa Fe County. Absolutely. That is ex parte communication; it's inappropriate. Your constituents, if they chose, are absolutely – it is permissible for them to reach out to their Commissioners to express their opinion as they have done here tonight in public testimony. So I think there's an important distinction there. I have not reached out to any of you. My clients have not reached out to any of you, because that would be inappropriate. But your constituents, the public, has every right to make their opinions known.

And with respect to the question of exceptionality, we talk about the rural fringe zone. The rural fringe zone is all over Santa Fe County. It's not just about comparing this property to the people next door. It's about comparing this property to other rural fringe zoning areas all over Santa Fe County. There's lots of it. So with respect to exceptionality I think it is best stated in the Planning Commission's final order justifying their approval of these requests, and I quote. "An extraordinary and exceptional situation has been demonstrated due to the steep terrain of the property and the avoidance of scarring the hillside to reconstruct the driveway, which is well constructed and contains fire protection measures. It would be difficult or impossible to widen La Barbaria Trail, and prohibitively costly, or to change the grade of the intersection at La Barbaria Trail as it is an existing road constructed many years ago with inadequate easement. Denying the variance would hinder the spirit of the SLDC and fostering local businesses."

And with that I really do appreciate your patience and your attention this evening and I'd be happy to stand for any additional questions. Thank you very much.

CHAIR ROYBAL: Okay, did we have any additional questions or comments from the Board? Public comment is closed so is the any additional questions

from the Board or comments? Not at this time, so I would welcome a motion or some sort of comment. I defer to the Commissioner of that district and I know it's a very difficult decision right now and I don't know. It's a heck of a one to cut your teeth on for your first meeting.

COMMISSIONER HAMILTON: I appreciate that consideration. Thank you, Mr. Chair. This is – there's a lot here that is important information that's been presented that isn't necessarily related to whether a variance of the SLDC code is granted. I think – so let me say that I think there – outside of the question, slightly to the side of the question of the road variances themselves, the work the Heart's Way Ranch have done, their intention in doing this and the service it would provide, they're wonderful things. I think they're very desirable things.

But I think the issue that we have to decide has to do with when it's appropriate to grant a variance to the Sustainable Land Development Code and what that code is trying to achieve in putting in these overarching considerations. And I'm not sure that we have reason beyond what County staff has researched and recommended to go against this County staff recommendations which are that the extraordinary circumstances for granting the road variances haven't really been met, that the concerns about the safety that these codes are supposed to protect are still concerns and that includes the fact that La Barbara Road and La Barbara Trail are narrow and that in discussions, my understanding from what's been presented and what was presented in the appeal is that the previous Fire Marshal suggested this would be appropriate if the road met the County standard, if the road was improved to that condition, and that was La Barbara. And that's not the case.

In addition that, there is this consideration of demonstration of extraordinary harm based on, so that you grant a variance when it's a minimal variance and when not granting the variance would otherwise prevent any appropriate use of the property. And so I guess on those bases I would – if it's appropriate at this time I would conclude that the appeal should be upheld in accordance with staff recommendations.

COMMISSIONER ANAYA: I'll second that, Mr. Chair.

CHAIR ROYBAL: Okay. We have a motion and a second. A motion from Commissioner Hamilton and a second from Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Yes, sir. Go ahead, Commissioner Anaya. You have a comment?

COMMISSIONER ANAYA: Yes, Mr. Chair. Just under discussion. I want to say a few things on the record. I think there was a lot of comment and I think there was maybe some emotion on both sides that maybe overstepped the bounds of what I think is reasonable, but that being said, I think there's a couple simple comments I want to put on the record.

People that choose to live in La Barbara Canyon choose by their own volition to purchase the property there, to build homes there, to go in and out of a one-way road and I can speak to and vouch for that that area in the event of a wildfire will be a mess and it will be a very dangerous place. That being said, those people that are residents that purchased to live there do that of their own volition and their own choice. When we talk about as a Commission making exceptions or variances which I voted for many variances

as a Commissioner, but you have to take into consideration with those variances what are you putting the public to if it relates to a business, and I think that's the differentiation.

Not the number of people. I think Ms. Gavin, JenkinsGavin brings up well that as far as the number of people it's essentially going to be similar and the same. But the difference is, from my perspective, going to what Commissioner Hamilton is talking about, is safety issues associated with public safety and the fact that it's a business now and that we as a Commission are affording a business to go into an area that we knowingly know is a very difficult and challenging area.

That being said I respect comments on all sides, both sides. I think some of you maybe pushed the envelope a little but that happens when you're talking about your property and things you believe in. So I respect that things kind of move and push that envelope. But that simple fact of safety and the change from a residence to a business brings me concern in that particular area. Thank you, Mr. Chair.

CHAIR ROYBAL: Thank you for your comments, Commissioner Anaya, and I'd like to add by just thanking everybody here tonight and for coming and presenting and sharing your feelings on how this should proceed. It takes quite a bit for you guys to be here till 8:00 at night and provide your comments. We do appreciate that. Is there any other comments from the rest of the Commission? Seeing none, so we do have a motion and a second so I'm going to call for a vote. Can you repeat the motion?

COMMISSIONER HAMILTON: Yes. The motion is, for the reasons discussed to uphold the appeal. So a vote in the positive is for the appeal.

MR. SHAFFER: Just to be clear, if I could, Mr. Chair, Commissioner. It's to uphold or grant the appeal and deny the variances.

COMMISSIONER HAMILTON: Yes, sir.

CHAIR ROYBAL: And your second, is that your understanding, Commissioner Anaya?

COMMISSIONER ANAYA: Yes.

CHAIR ROYBAL: Okay, so we have a motion and a second.

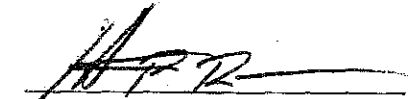
The motion passed by unanimous [5-0] voice vote.

IX. CONCLUDING BUSINESS

- A. Announcements**
- B. Adjournment**

Having completed the agenda and with no further business to come before this body, Chair Roybal declared this meeting adjourned at 8:09 p.m.

Approved by:


Board of County Commissioners
Henry Roybal, Chair

