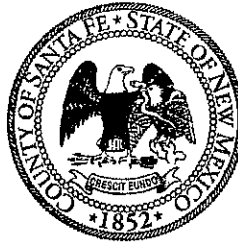


Danny Mayfield  
Commissioner, District 1

Virginia Vigil  
Commissioner, District 2

Robert Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

**CASE NO. V 12-5120**

**VARIANCE**

**ELIA GUTIERREZ, APPLICANT**

**ORDER**

**THIS MATTER** came before the Board of County Commissioners (hereinafter referred to as “the BCC”) for hearing on September 11, 2012, on the Application of Elia Gutierrez (hereinafter referred to as “the Applicant”) for a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 1.24 acres. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicant requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow two dwelling units on 1.24 acres.
2. The property is located at 13B North Horizon Lane, within Section 36, Township 17 North, Range 8 East (“Property”).
3. There is currently one dwelling unit on the property.
4. Article III, Section 10 has a minimum lot size of 2.50 Acres.
5. The subject lot was created by way of small lot family transfer on September 2, 2002, under development permit No. 98-4009.

6. Applicant intends to place an additional mobile home on the property for use by her daughter and her grandchildren.
7. Alejandro Munoz spoke in favor of the Application.
8. No one spoke in opposition of the Application.
9. In support of the Application, the Applicant stated that she is in agreement with staff's conditions.
10. Staff recommends the following conditions of approval:
  - A. Water use shall be restricted to 0.25 acre feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office.
  - B. The Applicant must obtain a development permit from the Building and Development Services Department for the second dwelling unit and the studio.
  - C. The Applicant shall provide a liquid waste permit from the New Mexico Environment Department with development permit Application.
  - D. The placement of additional dwelling units or division of the land is prohibited on the property.
  - E. The Applicant shall comply with all Fire Prevention Division requirements.
  - F. The proposed structure shall have a pitched roof, and the stucco shall match the principal unit.
11. The granting of the requested variance is a minimal easing of the Code requirements to address obstacles to placement of an additional dwelling unit on the property.

12. Granting this variance request will not nullify the purpose of the Code.

**WHEREFORE** the Board of County Commissioners of Santa Fe County hereby grants a variance of Article III, Section 10 (Lot Size Requirements) of the Code to allow two dwelling units on 1.24 acres located at 13B North Horizon Lane subject to the conditions as stated in Paragraph 10.

**IT IS SO ORDERED**

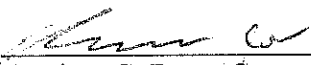
This Order was approved by the Board of County Commissioners of Santa Fe County on this \_\_\_ day of \_\_\_\_\_, 2012.

By: \_\_\_\_\_  
Liz Stefanics, Chair

Attest:

\_\_\_\_\_  
Valerie Espinoza, County Clerk

Approved as to form:

  
\_\_\_\_\_  
Stephen C. Ross, County Attorney

County Manager and attorneys for the County with regard to the UDV case, Bob Beckert, Dale Young, and Terry Wright. Not present – and I was present – not present were Commissioners Mayfield and Anaya and I would just like to make a comment that this is a very sensitive case for the County. It's probably the most sensitive one that we've ever had in years and it really could possibly affect the taxpayers of Santa Fe County and I think it's the responsibility of the Commissioners to be involved in this case. After all, we made the decision. So I think it's incumbent upon us to be present to protect the interests of our constituents. Thank you, Madam Chair.

CHAIR STEFANICS: Thank you. Is there a second?

COMMISSIONER VIGIL: Second.

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

## XVII. PUBLIC HEARINGS

### A. Growth Management Department

1. CDRC Case # V 12-5120 Elia Gutierrez Variance. Elia Gutierrez, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow Two Dwelling Units on 1.24 Acres. The Property is Located at 13B North Horizon Lane, within Section 36, Township 17 North, Range 8 East, Commission District 2

CHAIR STEFANICS: I'd like to let everybody know that on this first case we will be using an interpreter, and when you use an interpreter – I've been provided some guidelines that I'd like to go through. And these are not guidelines I've made up; these are guidelines from the interpreter and we're very happy to see Mr. Adelo here. When you speak at a hearing through an interpreter please speak slowly, speak clearly, use plain language, give the interpreter enough time to express what you said, avoid using highly technical terms, avoid using initials in English, use plain terms, use clear, precise terms, speak loud enough to be heard by the interpreter and other officials in the hearing, use terms that will be understood by an ordinary person, particularly if the defendant is from a foreign country. If you speak to a defendant do not try to scare him or her using frightening terms. To ask the defendant what happened use plain language. The judge – in this case it's the Board of County Commissioners – determines the results that occurred to the defendant.

Okay, so Mr. Dalton, I believe you have this first case. No, I see Mr. Lovato.

COMMISSIONER VIGIL: Madam Chair, may I clarify something? We're not dealing with a defendant; we're dealing with an applicant.

CHAIR STEFANICS: That's right. I'm sorry. With an applicant. Right.

JOHN LOVATO (Building & Development Services): Thank you, Madam Chair, Commissioners. There is currently a residence on the property. The subject lot was created in 2002 by way of a Small Lot Family Transfer, and was intended to be a gift from a grandparent, parent or legal guardian to his or her natural or adopted child or grandchild or legal ward. However, the lots were then sold in 2003 and 2005 to non-family members.

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The Applicant states, her daughter is a single 20-year old mother of two children and is having a hard time with high rent which she currently pays on a mobile home space. The Applicant also states she has currently had to take time off work due to an injury and has fallen into debt. The Applicant claims providing her daughter with an affordable place to reside would eliminate the need to lend her daughter money for the high rent space and would help her and her daughter with the financial and health burdens that have set them back.

On June 21, 2012, the CDRC met and acted on this case, the decision of the CDRC was to recommend denial of the Applicant's request by a 6-0 vote. Minutes are attached as Exhibit 1.

Staff Recommendation: Denial of a variance from Article III, §10 (Lot Size Requirements) of the Land Development Code. If the decision of the BCC is to approve the Applicant's request, staff recommends imposition of the following conditions. Madam Chair, may I enter those conditions into the record?

[The conditions are as follows:]

1. Water use shall be restricted to 0.25 acre-feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, § 10.2.2 and Ordinance No. 2002-13).
2. The Applicant must obtain a development permit from the Building and Development Services Department for the additional dwelling unit. (As per Article II, § 2).
3. The Applicant shall provide a liquid waste permit from the New Mexico Environment Department with the Development Permit Application (As per Article III, § 2.4.1a.1 (a) (iv)).
4. The placement of additional dwelling units or Division of land is prohibited on the property. (As per Article III, § 10).
5. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application (As per 1997 Fire Code and NFPA Life Safety Code).

CHAIR STEFANICS: Okay, so Mr. Adelo, usually what we do at this time is we have the applicants present their case. Thank you very much. So why don't you come up. Please identify your name and your address for the record.

[Duly sworn, Naomi Castillo testified as follows:]

NAOMI CASTILLO: Naomi Castillo, 13-B North Horizon Lane.

CHAIR STEFANICS: Thank you. So what is - you are the applicant?

MS. CASTILLO: My mom.

CHAIR STEFANICS: Okay. So what would you like to say?

MS. CASTILLO: Well, we were asking -- first of all I want to thank all of you guys for being here. We are asking if we could -- if I could move my mobile home onto her property because I want to continue school and I would have to take off time from work to do that and with the time I work right now I'm barely having enough. I even ask my mom to help me sometimes. And moving over there would help me because she would -- because I would pay her less money for rent and I would be able to use that money for

like other things for my kids. And I would was just hoping you guys could let me move it over there because that would make it a lot easier for me to go to school.

And recently my mom was hurt at work and she missed a lot of days and we got really – well, she got really behind on bills and that way I could help her catch up and catch up on myself. So if you guys could approve [inaudible]

CHAIR STEFANICS: Okay. Thank you very much. Commissioners, before we go to the public hearing do you have any questions for staff? Thank you, ma'am. You can sit down.

COMMISSIONER HOLIAN: I do, Madam Chair.

CHAIR STEFANICS: Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. For this mobile home that's proposed to be on the property, what septic system would it hook into?

MR. LOVATO: Madam Chair, Commissioner Holian, they will be required to go to NMED to obtain a permit.

COMMISSIONER HOLIAN: So you don't know whether they can hook into the existing septic system? They might have to build another septic system?

MR. LOVATO: Madam Chair, Commissioner Holian, that is correct. They will have to build a whole entirely new septic system.

COMMISSIONER HOLIAN: And what about – did you have anything you wanted to add?

MR. LOVATO: Madam Chair, Commissioner Holian, I was just informed by the applicants that they do have an existing septic system suitable for this. However, they'll still be required to update that.

COMMISSIONER HOLIAN: How many people would be living in the mobile home.

MR. LOVATO: Madam Chair, Commissioner Holian, it would be Elia, the daughter and the three children.

COMMISSIONER HOLIAN: And what is the water source?

MR. LOVATO: Madam Chair, Commissioner Holian, it is on a well currently, a shared well.

COMMISSIONER HOLIAN: And my understanding from reading the packet is that there are already four residences that share that well.

MR. LOVATO: Madam Chair, Commissioner Holian, that is correct.

COMMISSIONER HOLIAN: Thank you.

CHAIR STEFANICS: Thank you. Commissioner Vigil.

COMMISSIONER VIGIL: Just the one quick question for staff. I'm trying to decipher on the map, is this located in a subdivision that is named, such as Pinon Hills or adjacent to it?

MR. LOVATO: Madam Chair, it is in the vicinity of Pinon Hills but it is in a private subdivision created by family transfers and what not.

COMMISSIONER VIGIL: Is there a name for this subdivision?

MR. LOVATO: Madam Chair, Commissioner Vigil, there is no name for it.

COMMISSIONER VIGIL: Thank you, Madam Chair.

CHAIR STEFANICS: Thank you. Commissioners, questions for the staff?

Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. Madam Chair, in Exhibit 7, the site map, the proposed property that's the one that's in the black box?

MR. LOVATO: Madam Chair, Commissioner Mayfield, that is correct.

COMMISSIONER MAYFIELD: So where is the parent's existing home?

MR. LOVATO: Madam Chair, Commissioner Mayfield, it is on that parcel. The 1.24-acre parcel.

COMMISSIONER MAYFIELD: It's just not on that site map that we see right here.

MR. LOVATO: That is correct.

COMMISSIONER MAYFIELD: So where are the four subject properties sharing the well?

MR. LOVATO: Madam Chair, Commissioner Mayfield, I believe it's the 1.24, the one adjacent to that, another 1.24, and the one currently in front where it boundaries North Horizon, and also the last one on the left, I believe.

COMMISSIONER MAYFIELD: And right now there's a shared well agreement on that well?

MR. LOVATO: Madam Chair, Commissioner Mayfield, that is correct.

COMMISSIONER MAYFIELD: And I don't know if we get into this detail but does one of the property owners pay the PNM bill on it?

MR. LOVATO: Madam Chair, Commissioner Mayfield, usually in an agreement they all pitch in and they all pay their share part and any maintenance that needs to be done they all as well they pay into that.

COMMISSIONER MAYFIELD: So if this Commission decides to approve this case now we'll go to a one fifth sharing agreement?

MR. LOVATO: Madam Chair, Commissioner Mayfield, that is correct.

COMMISSIONER MAYFIELD: Okay, and just -

CHAIR STEFANICS: On that point, is not that decision about how to divide costs and bills left to the homeowners?

MR. LOVATO: Madam Chair, that is correct. It would go on all of them and typically they would have to - they would pay their share and probably they would have to pay more but -

CHAIR STEFANICS: They would work it out.

MR. LOVATO: Right. Correct.

CHAIR STEFANICS: We would not dictate to them.

MR. LOVATO: That is correct.

CHAIR STEFANICS: Thank you. Sorry. Commissioner Mayfield, you have the floor.

COMMISSIONER MAYFIELD: And I know I read it somewhere. I don't think it was an email to me. I think it was the staff CDRC case notes, but one of the neighbors, not so much they were opposed with this transfer but they were concerned with the shared well agreement. Am I right that I read that somewhere?

MR. LOVATO: Madam Chair, Commissioner Mayfield, there was and it's in the minutes.

COMMISSIONER MAYFIELD: Okay. And has that concern by that

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individual been addressed?

MR. LOVATO: Madam Chair, Commissioner Mayfield, I'm not sure if he's here in the audience tonight but as far as I know he hasn't come forward, he hasn't come into the office to further ask questions about that.

COMMISSIONER MAYFIELD: Okay. And again, just for my clarification, the subject property site, the 1.24 acres, that's what they're asking to split down even further. Correct?

MR. LOVATO: Madam Chair, Commissioner Mayfield, they're not asking to split it. They're asking to place a second dwelling.

COMMISSIONER MAYFIELD: Okay. And Madam Chair, I'm just going to ask this question and I know our attorney is out of the room right now but I'm going to ask it anyway. What we went through, the exercise we went through this morning as far as the new Land Use Code, there's arguably a proposal to allow one additional structure on a home. Are you familiar with that? Maybe we could ask Mr. Ross to come in.

VICKI LUCERO (Building & Development Services): Madam Chair, Commissioner Mayfield, that's correct. There is a provision to allow a second dwelling unit on a [inaudible] property.

COMMISSIONER MAYFIELD: So aside from this case tonight, acting on the current code we have in front of us, if that approval from the Land Use Code meets approval by this Commission at any time in the near future this would be a non-issue for us, right? This would be approved?

MS. LUCERO: If that provision of the code is approved by the BCC then yes, they would be in compliance with the new SLDC.

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

COMMISSIONER HOLIAN: Madam Chair, on that particular point.

CHAIR STEFANICS: On that point slowly.

COMMISSIONER HOLIAN: Okay. Because I asked our Land Use staff specifically about family compounds and the way that it's written in the code is that it could not be a mobile home. It could be a structured building that was in keeping stylistically with the home that's already on the property.

CHAIR STEFANICS: Commissioner Vigil, did you have something on this point? Okay. So let's finish this point. Mr. Ross, the question was asked whether the new code and the section in the code that deals with accessory structures would meet compliance in this case, because they want to move a mobile home for a family to live in it on the same property, not subdivide. Commissioner Holian's comment was that it was a mobile home and that the code language indicated that the accessory structure had to meet the style of the original home. Could you comment on that?

MR. ROSS: Madam Chair, I just talked to Penny and she says it does say that.

CHAIR STEFANICS: So I guess on this point now, is the original home that's there, is it a mobile home?

MR. LOVATO: Madam Chair, it's not a mobile home.

CHAIR STEFANICS: Okay. Thank you. So now did you finish, Commissioner Mayfield?



COMMISSIONER MAYFIELD: I'd just like to address that point in the code later. Thank you.

CHAIR STEFANICS: So Commissioner Vigil, questions for staff.

COMMISSIONER VIGIL: Yes, a staff question. John or Vicki, we have a plan called Tres Arroyos Plan that included this area. Is this a part of that plan? And if so, does this meet within the plan documents? And I don't need the answer right now if it needs to be researched but I do remember participating in the Tres Arroyos plan and did adopt that plan and that plan did include properties north of 599. I think that would be an authorizing document for this decision too, so Vicki, do you recall that plan?

MS. LUCERO: Madam Chair, Commissioner Vigil, I do and I believe that this particular property does lie within the TAP plan. Although the TAP plan doesn't address densities. It reverts back to the Land Development Code as far as densities go.

COMMISSIONER VIGIL: Okay. Does it address mobile homes?

MS. LUCERO: Madam Chair, I don't believe it does.

COMMISSIONER VIGIL: Okay.

CHAIR STEFANICS: Okay. So any questions for staff? Commissioner Anaya.

COMMISSIONER ANAYA: I'll wait until after the public input.

CHAIR STEFANICS: Okay. Thank you very much. We'll come back to you in a few minutes. We are now in a public hearing which means anyone in the public who would like to speak for or against this project is invited to come to the front. Is there anybody here on this case who would like to speak? Is there anybody here who would like to speak on this case? Come forward. And is this in Spanish or in English?

[Duly sworn, Alejandro Munoz testified as follows:]

ALEJANDRO MUNOZ: Alejandro Munoz.

CHAIR STEFANICS: And your address?

MR. MUNOZ: It's 13B North Horizon Lane. And I would also - well, first of all, thank you for your time. I also wanted to say that we are respectful and if you guys do accept where we're going to locate it we'll make it so the closest neighbors are located on what part of the property it's located. So we won't put it in front of anybody's home or something. So I just wanted to add that.

CHAIR STEFANICS: Thank you very much. Is there anybody else from the public? This public hearing is closed. We are now back to the Commissioners' questions and comments. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, a couple questions. I might have more. But I'm looking at - I see the vote of the CDRC but I don't see the minutes of the CDRC in my packet. Maybe I'm just missing something. We usually have the minutes of the CDRC.

MR. LOVATO: Madam Chair, Commissioner Anaya, that's as Exhibit 1.

CHAIR STEFANICS: Exhibit 1. It's just a one-page front and back.

COMMISSIONER ANAYA: So, Madam Chair, I'm looking at it here. Was there - it doesn't reflect that there was any objection from the neighborhood to this case. Was there at the meeting? It doesn't show it and I don't see any other letters from anyone else objecting? Was there any?

MR. LOVATO: Madam Chair, Commissioner Anaya, there was a

gentleman who came in and he was [inaudible]. He wasn't particularly opposed to it but he was opposed to the shared well.

COMMISSIONER ANAYA: And so I want to speak, and I'm sorry. I'll try and speak slowly. But I want to speak to something that was said earlier. Steve, Mr. Ross, Commissioner Mayfield brought up a provision on accessory structures and the type of structure. Could we get into any fair housing issues associated with saying that you can have a regular structure but not a mobile home structure? I shouldn't say regular. In my mind a home is a home is a home. Theoretically, actually not theoretically, functionally, you could make a manufactured or modular structure to meet the aesthetic appearance of any structure, couldn't you? Wouldn't you agree? Could you comment on that?

MR. ROSS: Madam Chair, Commissioner Anaya, it doesn't describe putting the mobile home on as an accessory structure. It just says that the mobile home would have to be – certainly if it were a mobile home it would have to maintain the same architectural design style and character. I just looked at a picture of the home and it's stuccoed so it's possible to take a mobile home and stucco it. People do it all the time, to be in more character with the principal dwelling unit. And that would comply with this.

COMMISSIONER ANAYA: And I would agree with that. And let me just ask a question relative to the sale. This was a lot created from a small family transfer. How long was it held before it was sold?

COMMISSIONER VIGIL: One year, correct? I think it was reduced in 2002 and in 2003 it got sold. That's part of our notes.

MS. ELLIS-GREEN: Madam Chair, Commissioner Anaya, on page 2 of your report it states it was created in 2002 by way of a small-lot family transfer and both of the lots were sold in 2003 and 2005.

COMMISSIONER ANAYA: Okay. Madam Chair – and the reason I'm bringing this up is because I do think in our code, I'm a supporter of family transfers but I do think in our code –and I'm just representing my own perspective, that we do need to put time limitations on some of those. That's just my individual perspective. But that being said, this proposal is not splitting the lot any further, to restate it, it's another structure on an existing lot, but not splitting the lot any further. Correct?

MS. ELLIS-GREEN: Madam Chair, Commissioner Anaya, that's correct.

COMMISSIONER ANAYA: Madam Chair, Ms. Ellis-Green, one other question. If someone wanted to add on to an existing structure – what's the size of the existing structure again?

MS. ELLIS-GREEN: Madam Chair, Commissioner Anaya, I'm not sure of the size but they would not be prohibited from adding on an additional bedroom, bathroom, living area. They couldn't have two kitchens but they certainly could add on an additional den or family room and bedrooms, bathrooms. We don't limit the size of a house to say you can only have three bedrooms or four bedrooms. They could have a six-bedroom house.

CHAIR STEFANICS: Mr. Lovato, do you know the size of the house?

MR. LOVATO: Madam Chair, Commissioner Anaya, that is 2,400 square feet.

CHAIR STEFANICS: And do you know the size of the mobile home? Because in the code an accessory structure has to be below a certain amount.

COMMISSIONER ANAYA: And when we're done with that, in the discussion phases.

MR. LOVATO: Madam Chair, Commissioner Anaya, Commissioners, they're not sure of the size of the mobile home. They're saying it's small. A single-wide, I believe.

CHAIR STEFANICS: You have the floor, Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Ms. Ellis-Green, what is the draft limitation on size the chair refers to?

MS. ELLIS-GREEN: Madam Chair, Commissioner Anaya, it is 50 percent of the building's footprint of the principal residence or 1,200 square feet.

COMMISSIONER ANAYA: Okay. Madam Chair, I don't have any more questions right now.

CHAIR STEFANICS: Thank you. Any other questions or comments from the Commission? If not, what's the pleasure of the Commission? Commissioner Vigil.

COMMISSIONER VIGIL: I move that we approve this with these conditions: That the mobile home be stuccoed in some color and fashion and complimentary way to the home and that a pitched roof be placed on it. And that - of course the standard conditions for water and everything that's already been a part of the record. But I would - that's my motion and then I do have some comments.

COMMISSIONER ANAYA: Second.

CHAIR STEFANICS: A motion and a second. And the motion is approval with the staff conditions and to stucco the mobile home and to put a pitched roof on it.

COMMISSIONER VIGIL: Madam Chair, I'm sorry. No other units can be placed in this lot.

CHAIR STEFANICS: And no other units can be placed in this lot.

COMMISSIONER VIGIL: And all the other staff conditions.

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Yes.

COMMISSIONER ANAYA: Madam Chair, would the maker of the motion accept an additional condition that the lot could never be split?

COMMISSIONER VIGIL: I just said that.

COMMISSIONER ANAYA: Okay. Then I second it.

CHAIR STEFANICS: And the lot could never be split. Okay. So is there any further discussion or questions?

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

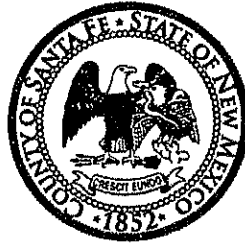
[For further discussion on the water conditions see below.]

- XVII. A. 2. CDRC Case # V 12-5090 Lawrence Maes Variance. Lawrence Maes, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow Three Dwelling Units on 10.21 Acres. The Property is Located at 85A County Road 44, within Section 31, Township 15 North,**

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

**Virginia Vigil**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

**CASE NO. V 12-5090**

**VARIANCE**

**LAWRENCE MAEZ, APPLICANT**

**ORDER**

**THIS MATTER** came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on September 11, 2012, on the Application of Lawrence Maez (hereinafter referred to as "the Applicant") for a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow three dwelling units on 10.21 acres. The BCC, having reviewed the Application and supplemental materials, staff reports and conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicant requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow three dwelling units on 10.21 acres.
2. The property is located at 85A County Road 44, in the vicinity of Southfork, within Section 31, Township 15 North, Range 9 East ("Property").
3. Article III, Section 10 provides that minimum lot size in this area is 12.5 acres per dwelling unit.
4. The lot was created in 1976, and is recognized as a legal non-conforming lot.
5. Applicant's family has multiple medical issues and members of the family were involved in a car accident with fatalities near the residence of certain family members.

6. There are currently two dwelling units on the property and an accessory structure (Garage).
7. The property also contains two uninhabitable mobile homes in addition to the existing dwellings. The Applicant intends to remove the uninhabitable structures from the property.
8. In support of the Application, the Applicant stated that he is in agreement with staff's conditions.
9. On September 11, 2012, the CDRC recommended approval of the Application.
10. Staff recommended the following conditions of approval:
  - A. Water use shall be restricted to 0.25 acre feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1, of each year. Water restrictions shall be recorded in the County Clerk's Office.
  - B. The Applicant must obtain a development permit from the Building and Development Services Department for the additional dwelling unit.
  - C. The Applicant shall provide an updated liquid waste permit from the New Mexico Environment Department with development permit Application.
  - D. The placement of additional dwelling units or Division of land on the property is prohibited. The two uninhabitable mobile homes on the property must be removed prior to building permit issuance.
  - E. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application.

11. Anna Marie Maes Hernandez spoke in favor of the Application. No members of the public spoke in opposition to the Application.
12. Strict compliance with the requirements of the Code would result in extraordinary hardship to the Applicant because of unusual topography or such other non-self-inflicted conditions.
13. The granting of the requested variance is a minimal easing of the Code requirements to address obstacles to placement of an additional dwelling unit on the property.
14. Granting this variance request will not nullify the purpose of the Code.

**WHEREFORE** the Board of County Commissioners of Santa Fe County hereby approves the request for a variance of Article III, Section 10 (Lot Size Requirements) of the Code to allow three dwelling units on 10.21 acres located at 85A County Road 44 subject to the conditions as stated in Paragraph 10.

**IT IS SO ORDERED**

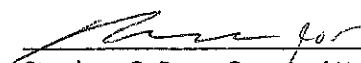
This Order was approved by the Board of County Commissioners of Santa Fe County on this \_\_\_\_ day of November, 2012.

By: \_\_\_\_\_  
Liz Stefanics, Chair

Attest:

\_\_\_\_\_  
Valerie Espinoza, County Clerk

Approved as to form:

  
\_\_\_\_\_  
Stephen C. Ross, County Attorney

COMMISSIONER ANAYA: And when we're done with that, in the discussion phases.

MR. LOVATO: Madam Chair, Commissioner Anaya, Commissioners, they're not sure of the size of the mobile home. They're saying it's small. A single-wide, I believe.

CHAIR STEFANICS: You have the floor, Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Ms. Ellis-Green, what is the draft limitation on size the chair refers to?

MS. ELLIS-GREEN: Madam Chair, Commissioner Anaya, it is 50 percent of the building's footprint of the principal residence or 1,200 square feet.

COMMISSIONER ANAYA: Okay. Madam Chair, I don't have any more questions right now.

CHAIR STEFANICS: Thank you. Any other questions or comments from the Commission? If not, what's the pleasure of the Commission? Commissioner Vigil.

COMMISSIONER VIGIL: I move that we approve this with these conditions: That the mobile home be stuccoed in some color and fashion and complimentary way to the home and that a pitched roof be placed on it. And that - of course the standard conditions for water and everything that's already been a part of the record. But I would - that's my motion and then I do have some comments.

COMMISSIONER ANAYA: Second.

CHAIR STEFANICS: A motion and a second. And the motion is approval with the staff conditions and to stucco the mobile home and to put a pitched roof on it.

COMMISSIONER VIGIL: Madam Chair, I'm sorry. No other units can be placed in this lot.

CHAIR STEFANICS: And no other units can be placed in this lot.

COMMISSIONER VIGIL: And all the other staff conditions.

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Yes.

COMMISSIONER ANAYA: Madam Chair, would the maker of the motion accept an additional condition that the lot could never be split?

COMMISSIONER VIGIL: I just said that.

COMMISSIONER ANAYA: Okay. Then I second it.

CHAIR STEFANICS: And the lot could never be split. Okay. So is there any further discussion or questions?

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

[For further discussion on the water conditions see below.]

- XVII. A. 2. CDRC Case # V 12-5090 Lawrence Maes Variance. Lawrence Maes, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow Three Dwelling Units on 10.21 Acres. The Property is Located at 85A County Road 44, within Section 31, Township 15 North,**

**Range 9 East, Commission District 5**

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Yes.

COMMISSIONER ANAYA: Could I ask a question just for clarification on the condition on the previous case? Because I think it will come up again on future cases.

CHAIR STEFANICS: Yes.

COMMISSIONER ANAYA: The concern with Mr. Ortiz should not be a concern because Mr. Ortiz can only use the amount of water which was approved on his lot. Correct? Each lot on the shared – let me restate that, because I want to be clear on this. This is important. Each lot is restricted by water use. Correct? Is there anything in our approval that – they only had the amount of water they had for the initial split, is what I'm saying.

MS. ELLIS-GREEN: Madam Chair, Commissioners, no. The condition states that water use will be restricted to a quarter acre-foot per home. When the lot was created the entire lot just had a quarter acre-foot restriction on it. So that is more, because there would be two homes. So that would be a half acre-foot.

COMMISSIONER ANAYA: So let me ask this question. The State Engineer when they issued the permit – we're not in conflict – what I want to make sure is we usually clamp down on the requirement for what use, so I just want to clarify that we're not in conflict with what the State Engineer had approved. We're still below what the State Engineer approved. Mr. Ross?

MR. ROSS: Madam Chair, Commissioner Anaya, all these wells are three acre-foot wells.

COMMISSIONER ANAYA: Thank you, Madam Chair. That's also an item we might want to take some more analysis at as we go through the new code. Thank you for the clarification.

CHAIR STEFANICS: Thank you. So on to CDRC Case #V 12-5090. Mr. Dalton is on this case.

WAYNE DALTON (Building & Development Services Supervisor): Thank you, Madam Chair. Lawrence Maes, applicant, requests a variance of Article III, Section 10, Lot Size Requirements of the Land Development Code to allow three dwelling units on 10.21 acres. The property is located at 85A County Road 44, within Section 31, Township 15 North, Range 9 East, Commission District 5.

The subject lot was created in 1976 and is recognized as a legal non-conforming lot. There are currently two dwelling units on the property and an accessory structure. Currently one dwelling is occupied by the applicant and the other is occupied by one of the applicant's daughters and grandson. The need for the third dwelling is to house his other daughter and her family. The applicant has submitted aerial photos of the property which does show that multiple structures were located on the property in 1981 and all they up to the time the applicant purchased the property in 1989. However, only two dwelling units have been on the property since 1989 and any claim to non-conforming use has been lost for any additional dwellings that existing in 1981. The property also contains two



uninhabitable mobile homes in addition to the existing dwellings. The Applicant intends to remove the uninhabitable mobile structures from the property.

The Applicant states, as a result of a physical and mental trauma that accompanied an accident as well as other medical conditions suffered by his daughter and family, a variance is needed. The Applicant further states his daughter's family passes the scene of the accident that took the life of their grandmother and that is traumatizing. His son-in-law and grandchildren suffer physically and mentally and also suffer with PTSD, post-trauma stress disorder. The youngest child suffered a brain injury and has been diagnosed with ADD, attention deficit disorder, as a result of the accident.

Staff recommendation: Denial of a variance from Article III, §10, Lot Size Requirements, of the Land Development Code. If the decision of the BCC is to recommend approval of the Applicant's request, staff recommends imposition of the following conditions. Madam Chair, may I enter those into the record?

[The conditions are as follows:]

1. Water use shall be restricted to 0.25 acre-feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, § 10.2.2 and Ordinance No. 2002-13).
2. The Applicant must obtain a development permit from the Building and Development Services Department for the additional dwelling unit. (As per Article II, § 2).
3. The Applicant shall provide an updated liquid waste permit from the New Mexico Environment Department with Development Permit Application (As per Article III, § 2.4.1a.1 (a) (iv)).
4. The placement of additional dwelling units on the property is prohibited. The two uninhabited mobile homes on the property must be removed prior to building permit issuance. (As per Article III, § 10).
5. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit application (As per 1997 Fire Code and NFPA Life Safety Code).

CHAIR STEFANICS: So questions for staff. First of all, CDRC met on June 21<sup>st</sup> and recommended approval. Is that correct?

MR. DALTON: Madam Chair, that is correct.

CHAIR STEFANICS: And staff are recommending denial based upon strict meaning of our code.

MR. DALTON: Madam Chair, that's correct.

CHAIR STEFANICS: Thank you. Other questions from Commissioners for staff before we go to public hearing or hear from the applicant? Yes, Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, this is maybe more of a procedural background for me. This case was in front of us a couple weeks ago and I believe it was tabled.

MR. DALTON: Madam Chair, Commissioner Mayfield, that is correct.

This case was tabled due to insufficient noticing.

COMMISSIONER MAYFIELD: Okay. Thank you. And then Madam Chair, I had an opportunity to speak with Deputy Manager Penny Ellis-Green, but one thing that just struck my interest was something that was said in the minutes of the CDRC case. So I'm on Exhibit 1, page 7, and I just want Ms. Ellis-Green to have the opportunity to just respond to what was written in those minutes, and I'll put it hopefully all in context. Member Anaya - CDRC Member Anaya - asked whether the new code had variance provisions for financial or medical situations. Mr. Dalton said no. Interim Land Use Administrator Ellis-Green said density-wise the new code will not differ from the existing code. She said the medical and/or financial hardships are not grounds for a variance.

My question a little earlier was we haven't made that decision as a Board yet, if density-wise the new code will differ from the existing code. At least I don't believe we've made that determination.

MS. ELLIS-GREEN: Madam Chair, Commissioners, that's correct. That was basically explaining the first question and it was related to the new code would not have provisions for a medical or financial hardship, because by state law you can't do that.

COMMISSIONER MAYFIELD: Okay. And a follow-up question and I don't know how to state this but we get a lot of information with medical issues given to us and given to our Land Use. Now, I hear that that's not a reason, grounds for a variance. I guess it's the applicant's position if they want to disclose or share that information from us, but I guess - and I am looking at a new code. I would just hope in the future, again it's the applicant's choice but maybe that information could be pink-sheeted if it's given to us. Because I do think - again, they're the ones disclosing it, so I don't think there's any HIPAA violations there, but I just worry that worry that we're getting that type of information that's now on a public record.

MS. ELLIS-GREEN: Madam Chair, Commissioners, we can retract that in the future and delete that.

CHAIR STEFANICS: On this point though, if an applicant is choosing to identify specific medical issues, why would we retract that?

MR. ROSS: Madam Chair, under HIPAA you need a specific kind of disclosure in order to actually agree that your medical records and your medical conditions should be revealed to others, and this is not it. So unless we get a HIPAA compliant release we shouldn't put this stuff in the book.

CHAIR STEFANICS: If an applicant shares with somebody, I have cancer, which people do every day. Would you walk in my cancer walk with me? That's public information. It's when an individual self-identifies, that is outside of HIPAA.

MR. ROSS: Well, I don't know. I don't know. I'm not sure that there's enough disclosure in this case in a land use case, on the part of the applicant to meet HIPAA requirements. So first of all, it's not relevant. The statute doesn't permit medical hardships to be granted. Second of all here we are putting it in the books for everyone to see and we probably shouldn't do that. And there's the HIPAA concern.

CHAIR STEFANICS: So, I'm sorry, Commissioner, on this point then, Land Use needs to provide written guidance to an applicant to not self-identify or identify any medical issues.

COMMISSIONER MAYFIELD: Madam Chair, on that point, or unless

they disclose the HIPAA, if they sign that HIPAA form, right.

MR. ROSS: Right. HIPAA compliant release. Right. But because the statute doesn't permit granting a variance on those grounds it's hard to imagine why would accept that kind of information in the first place.

CHAIR STEFANICS: Commissioner Mayfield, you have the floor.

COMMISSIONER MAYFIELD: Madam Chair, thank you. I appreciate the dialogue we just had. [inaudible] Thank you. Those are all the questions I had. Thank you.

CHAIR STEFANICS: Thank you. Any other questions for staff before we go to public hearing? Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. So Wayne, how many people would be living in the third home?

MR. DALTON: Madam Chair, Commissioner Holian, I believe it's the applicant's daughter, her boyfriend, and three children? Husband and three children. Two children. So four people.

COMMISSIONER HOLIAN: And what is the water source?

MR. DALTON: It's a domestic well.

COMMISSIONER HOLIAN: And do you know what kind of a capacity that well has?

MR. DALTON: I don't have any documentation on the well, Madam Chair, Commissioner Holian. I don't have any documentation on the well but it is a pre-code lot and it does not have any water restrictions on it.

COMMISSIONER HOLIAN: So in principle, they could be using three acre-feet now, correct?

MR. DALTON: Madam Chair, Commissioner Holian, that could be. Yes.

COMMISSIONER HOLIAN: Thank you, Wayne.

CHAIR STEFANICS: Thank you. Is the applicant present? Would you like to come forward please? So let's have you sworn in and then we can have you introduce yourself.

[Duly sworn, Lawrence Maes testified as follows:]

LAWRENCE MAES: Thank you, Madam Chair, Commissioners for your consideration of this matter. I am the owner, Lawrence Maes, 85A-B, Southfork, Silverado. We've been out there 24 years. Our water, we've never had a problem with it. We get five to seven gallons a minute and we've never run dry. We've been very careful about our water usage. We don't have very many - we only have a couple of fruit trees that we water. The rest are all native trees, Russian olive and pinon trees. We're real conservative about the water usage out there. We're real careful about it. We know how precious water is.

All of our surrounding neighbors have remarked on the upkeep, the maintenance and the improvement on our properties. Our first mobile home that we lived in is the one that my daughter and my grandson live in. That's been on there since 1989. The one that my wife and I live in, we have - both homes are on permanent foundations. We stuccoed one of them and put pro-panel on the home that we live in and people have remarked that it doesn't look like a double-wide. It looks like a house. And we had intended to do the same thing to the single-wide, put pro-panels to match so that it doesn't look like a mobile home.

And then my daughter, all the trauma that her family and my grandson has been through. We're asking that under a hardship condition that we would be allowed to put a third mobile home on there because her MS is not going to get any better; it's only going to get worse. This way our family could help each other. We aren't having to rely on the County for help as far as Section 8 housing or – we've never asked – we've been married 42 years, my wife and I and we've never asked for any help from social services or food stamps or anything like that. We've always tried to help our kids to maintain for themselves and to help each other and that's kind of what we were hoping to do at this point in time.

CHAIR STEFANICS: Thank you. Would you like to say anything?

[Previously sworn, Anna Marie Maes Hernandez testified as follows:]

ANNA MARIE MAES HERNANDEZ: My name is Anna Marie Maes Hernandez. I'm his daughter. And I know it doesn't really make a difference to talk about my condition, but I was diagnosed having a brain tumor in November 2010 and diagnosed with MS in 2011. And my children, as you read in the minutes. They were in a car accident in April of 2011 and both my children and my husband received traumatic brain injuries from the car accident. It was a gang-involved shooting. My kids, husband and grandmother were just in the wrong place and that wrong time. And my grandmother was killed in the accident.

So my kids have basically have suffered and so has my husband. So us moving from the location where the accident happened – it happened right outside our home – would be a very big help to get out of the situation we're living in now.

My children's brain injuries are ADD. The post-traumatic stress disorder and everything that they have endured in the last 16, 17 months has been severe. So I know that this doesn't really make any difference as far as the way that statute is written, stuff like that, but I really want you to take into consideration the help that it would help us getting into a place that would be stable for my kids and help them with their injuries. My children and my youngest son, he was three, he had both legs broken; he had a brain fracture. He was in a coma. They medivaced him from Santa Fe to UNM Hospital. It was all over the news. It was on the front page of the *New Mexican*. You probably remember hearing about it. It was pretty severe.

And my condition, like my dad, said, my condition is not going to get better; it's actually going to get worse. So if you can consider all that my family's been through and what they're going to continue to go through with my decline I'd really appreciate it.

CHAIR STEFANICS: Thank you very much. Why don't you have seats up here in the front in case there's questions later. We are now in the public hearing process. Is there anyone in the audience who is here to speak in favor of or against this request for a variance? Seeing no one, t this public hearing is closed. Commissioners? Commissioner Vigil.

COMMISSIONER VIGIL: I just have one question. It probably should go to staff or perhaps the applicant can answer it, because I saw one of the conditions, if we approve this they have to remove the mobile homes that are vacant there. Wayne, are there junked vehicles? And I say junked only from a code perspective, not in a judgment way? Are there?

MR. DALTON: Madam Chair, Commissioner Vigil, aside from the

uninhabitable mobile homes, this property is in excellent condition.

COMMISSIONER ANAYA: Okay. So all the vehicles that are a part of this photo are not junked. I see four of them. Five of them, actually. It's the last photo, on page 22.

MR. MAES: All these are running. These are my grandson's. They're all running, every single one of them. None of them are junk.

MR. DALTON: Madam Chair, Commissioner Vigil, according to the applicant all those vehicles are operable.

COMMISSIONER VIGIL: Okay. Thank you.

CHAIR STEFANICS: Thank you. Other questions, comments? What's the pleasure of the Commission?

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Yes.

COMMISSIONER ANAYA: Move for approval.

CHAIR STEFANICS: I will second.

COMMISSIONER HOLIAN: With staff conditions?

COMMISSIONER ANAYA: Yes, ma'am. With staff conditions.

CHAIR STEFANICS: Further discussion?

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Yes.

COMMISSIONER ANAYA: After we vote I'll have a comment.

CHAIR STEFANICS: Okay. There is a motion and a second to approve with all of the staff conditions.

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

CHAIR STEFANICS: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, a question. There's a couple cases that I'm familiar with that I mentioned to staff a few moments ago, historically on the Commission going back to previous Commissions. I don't believe that any of these Commissioners were part of some of those decisions. But if we – like in this case we grant this variance, and we did, and it's taken to court. Not this one by any variance. Because we've had variances that have been taken to court in proximity as a matter of fact to this general subdivision area. And there's actually been some cases that over time throughout the county that have been overturned. Is there any mechanism – or maybe we should as we're discussing these with potential applicants, is there any disclosure of that type of information that we could or should provide to applicants?

I don't – I support it. That's why I made the motion. I supported this variance but I also know of situations where things have been overturned. And I'm thinking that we should probably, as a County, if we are aware of those. I mean, we can't go back in perpetuity and look at every case. But if we're aware, should there be some type of disclosure or what? How would we handle that? I just – things aren't – just because this body approves something like this it allows it to go forward but it doesn't mean that it can't be appealed and in fact decisions that this body has made have been appealed and I'm just trying to figure out, is there, Steve, anything that we have that we could have that we could inform? What's your

thoughts on it? It's making me think about a couple families in particular that had kind of similar situations or similar hardship and I would say unfortunately their cases were overturned. What are your thoughts?

MR. ROSS: Madam Chair, Commissioner Anaya, well, I share your concerns. When a case is appealed to District Court it can be very expensive and create years of uncertainty on an applicant. So I know that staff does work with the applicants and let them know that staff is going to not support the application like in a case like this because in this case it appears to be for medical reasons and we all know that under state law, under our statutes, that it has to be unreasonable hardship based on a condition existing on the land irrespective of somebody's personal, financial or medical conditions. So that obviously opens up the possibility that somebody aggrieved in the neighborhood could appeal and hold this thing up for literally years while he and the applicant go through that complex court case. So I share your concerns and I'll talk it over to Ms. Green and maybe we can do more disclosure, full disclosure, open disclosure of the consequences of these types of approvals.

On the other hand, appeals are fairly rare. We get maybe two or three a year.

COMMISSIONER ANAYA: And I appreciate the feedback and the dialogue on the record. I personally knew this family and was not an elected official and was not even a staff member here at the County but I remember that it did go through appeal and cost a lot of money and time. But this decision makes practical sense to me but there's always those circumstances that come about. So I just wanted to put that forward.

CHAIR STEFANICS: Thank you very much.

- XVII. A. 3. **CDRC Case # V 12-5160 Timothy Armijo Variance. Timothy Armijo, Applicant, Requests a Variance of Article III, Section 2.4.1a2.b (Access) of the Land Development Code and a Variance of Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to Allow a Family Transfer Land Division of 2.26 Acres Into Two 1.13-Acre Lots. The Property is Located at 19 Calle San Ysidro, in the Vicinity of La Puebla, within Section 18, Township 20 North, Range 9 East, Commission District 1**

MR. DALTON: Thank you, Madam Chair. Access to the proposed lots would be via Calle San Ysidro, a dirt road crossing a FEMA designated special low-water crossing which may be frequently impassible during inclement weather, and thereby is not all weather accessible.

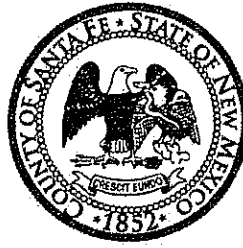
On July 19, 2012 the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the applicant's request by a 6-0 vote. Minutes are attached as Exhibit 1.

Recommendation: Due to a previous decision by the Board of County Commissioners for approval of a family transfer land division which accessed the same low water crossing and a proposed amendment to Ordinance No. 2008-10 which would not require all-weather access to properties, staff recommends approval of a variance from

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

**Virginia Vigil**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

**CASE NO. V 12-5160**

**VARIANCE**

**TIMOTHY ARMIJO, APPLICANT**

**ORDER**

**THIS MATTER** came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on September 11, 2012, on the Application of Timothy Armijo (hereinafter referred to as "the Applicant") for a variance of Article III, Section 2.4.1a.2.b (Access) of the Santa Fe County Land Development Code ("Code") and a variance of Article 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow a Family Transfer Land Division of 2.26 acres into two 1.13 acre lots. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicant requests approval of a variance of Article III, Section 2.4.1a.2.b (Access) of the Code and Section 4, Section 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow a Family Transfer Land Division of 2.26 acres into two 1.13 acre lots on property located at 19 Calle San Ysidro, within Section 18, Township 20 North, Range 9 East ("Property").

2. Article III, Section 2.4.1a.2.b of the Code states all development sites under this Section shall demonstrate that access for ingress and egress, utility service and fire protection whether by public access and utility easement or direct access to a public right-of-way can be provided and meet the requirements of this Code.
3. Article V, Section 8.1.3 of the Code states legal access shall be provided to each lot and each lot must directly access a road constructed to meet the requirements of Section 8.2 of the Code. Parcels to be accessed via a driveway easement shall have a twenty foot all weather driving surface, grade of not more than 11%, and drainage control as necessary to insure adequate access for emergency vehicles.
4. Ordinance No. 2008-10 states at no time shall a permit be issued for a new dwelling unit, site, lot, parcel or tract of land intended for placement of a habitable structure where the site is absent all weather access.
5. Article II, Section 3.1 of the Code states that where in the case of a proposed development it can be shown that strict compliance with the requirements of the Code would result in extraordinary hardship to the Applicant because of unusual topography or other such non-self-inflicted conditions or that these conditions would result in inhibiting the achievement of the purposes of the Code, an Applicant may file a written request for a variance. It further states that a Development Review Committee may recommend to the BCC and the BCC may vary, modify or waive the requirements of the Code upon adequate proof that compliance with the Code provision issue will result in an arbitrary and unreasonable taking of the property or exact hardship, and proof that the variance from the Code will not result in conditions injurious to health or safety. Section 3.1 provides that in no event shall a variance be recommended by the Development Review



Committee nor granted by the BCC if by doing so the purpose of the Code will be nullified. Additionally, it states that in no case shall any variation or modification be more than a minimum easing of the requirements.

6. The Applicant requests to divide 2.26 acres into two lots. Access to the proposed lots would be by the use of Calle SanYsidro a dirt road crossing a FEMA designated Special Flood Hazard Area, via an existing concrete low water crossing which may be frequently impassible during inclement weather, and thereby not all weather accessible.
7. Following a hearing on the Applicant's request for a variance, the CDRC, at its July 19, 2012 meeting, recommended approval of the variance request.
8. Staff recommended approval of the Application based on a previous decision by the BCC for approval of a Family Transfer Land Division which accessed the same low water crossing and an upcoming amendment to Ordinance No. 2008-10 which would not require all weather access to properties, and recommended imposition of the following conditions if the Application was granted:
  - i) Water use shall be restricted to 1 acre foot per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office;
  - ii) A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval;
  - iii) The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review;

- iv) Further division of either Tract is prohibited, this shall be noted on the Plat;
  - v) A note must be placed on the Plat regarding the lack of all weather access to the subject lots. This shall include language as follows: The access to the property does not meet minimum standards set forth by County Ordinance and Code. Site access, including access by emergency vehicles, may not be possible at all times.
9. In support of the Application, the Applicant agreed with the conditions recommended by staff.
  10. No members of the public spoke in favor or in opposition to the Application.
  11. In this case strict compliance with the requirements of the Code would result in extraordinary hardship to the Applicant because of unusual topography or other such non-self-inflicted conditions.
  12. The granting of the requested variances is a minimal easing of the Code requirements to address obstacles to divide a legal lot of record.
  13. Granting this variance request will not nullify the purpose of the Code.

**WHEREFORE** the Board of County Commissioners of Santa Fe County hereby approves the request for a variance of Article III, Section 2.4.1a.2.b (Access) of the Code and a variance of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) to allow a Family Transfer Land Division of 2.26 acres into two lots on property located at 19 Calle San Ysidro based upon the Applicant complying with the conditions as stated in Paragraph 8.

**IT IS SO ORDERED**

This Order was approved by the Board of County Commissioners of Santa Fe County on this \_\_\_ day of November, 2012.

By: \_\_\_\_\_

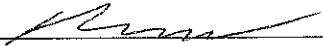
Liz Stefanics, Chair

**Attest:**

\_\_\_\_\_

Valerie Espinoza, County Clerk

**Approved as to form:**

 \_\_\_\_\_

Stephen C. Ross, County Attorney

thoughts on it? It's making me think about a couple families in particular that had kind of similar situations or similar hardship and I would say unfortunately their cases were overturned. What are your thoughts?

MR. ROSS: Madam Chair, Commissioner Anaya, well, I share your concerns. When a case is appealed to District Court it can be very expensive and create years of uncertainty on an applicant. So I know that staff does work with the applicants and let them know that staff is going to not support the application like in a case like this because in this case it appears to be for medical reasons and we all know that under state law, under our statutes, that it has to be unreasonable hardship based on a condition existing on the land irrespective of somebody's personal, financial or medical conditions. So that obviously opens up the possibility that somebody aggrieved in the neighborhood could appeal and hold this thing up for literally years while he and the applicant go through that complex court case. So I share your concerns and I'll talk it over to Ms. Green and maybe we can do more disclosure, full disclosure, open disclosure of the consequences of these types of approvals.

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MR. DALTON: Thank you, Madam Chair. Access to the proposed lots would be via Calle San Ysidro, a dirt road crossing a FEMA designated special low-water crossing which may be frequently impassible during inclement weather, and thereby is not all weather accessible.

On July 19, 2012 the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the applicant's request by a 6-0 vote. Minutes are attached as Exhibit 1.

Recommendation: Due to a previous decision by the Board of County Commissioners for approval of a family transfer land division which accessed the same low water crossing and a proposed amendment to Ordinance No. 2008-10 which would not require all-weather access to properties, staff recommends approval of a variance from

Article III, § 2.4.1a.2.b, Access, of the Land Development Code and approval of a variance of Article 4, § 4.2 of Ordinance No. 2008-10 (Flood Damage and Stormwater Management) subject to the following conditions. Madam Chair, may I enter those conditions into the record?

1. Water use shall be restricted to 1 acre-foot per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, § 10.2.2 and Ordinance 2002-13).
2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval (As per Article III, § 2.4.2).
3. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review (As per 1997 Fire Code and 1997 Life Safety Code).
4. Further division of ether tract is prohibited, this shall be noted on the Plat (As per Article III, § 10).
5. A note must be placed on the Plat regarding the lack of all weather access to the subject lots. This note shall include language as follows: The access to this property does not meet minimum standards set forth by County Ordinance and Code. Site Access, including access by Emergency vehicles, may not be possible at all times (As per Ordinance 2008-10).

CHAIR STEFANICS: Questions for staff? Okay. Let's hear from the applicant please. Come on up. Be sworn in.

[Duly sworn, Timothy Armijo testified as follows:]

TIMOTHY ARMIJO: Timothy Armijo, 19 Calle San Ysidro.

CHAIR STEFANICS: Thank you. So is there anything different you'd like to tell us?

MR. ARMIJO: No. Pretty much we can abide by what the County wants us to do.

CHAIR STEFANICS: Okay. Thank you very much. Let's go to the public hearing. We are now in a public hearing. Is there anyone in the audience that would like to speak in support of or against this request? The public hearing is closed. Commissioner Vigil.

COMMISSIONER VIGIL: Move to approve with staff conditions, Madam Chair.

COMMISSIONER HOLIAN: Second.

CHAIR STEFANICS: There's a motion and a second to approve with the staff conditions. Any further discussion?

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

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR STEFANICS: Yes, Commissioner Mayfield.

COMMISSIONER MAYFIELD: Just a quick clarification point. Is Chief Patty here by any chance? Oh, Chief Sperling's here. I'm sorry. Chief, because this came up in a past case. As a matter of fact it came up when we approved a bed and breakfast in another area of the county. But at the time with the bed and breakfast, if I recall when that case came for us, I just want to make sure there's consistency, and I'm not saying our fire department is not being consistent with the Fire Code you all adopt and make recommendations, but at one time, I think a past case with this issue with the low water crossing came in front of us and they were told that maybe they had to under the new existing construction, they had to put a fire sprinkler system or suppression system and a lot of those things have come up as far as recommendations for staff conditions.

Now, going back to that bed and breakfast case that came from us, it was kind of new to me but there are other aspects to this Fire Code. They said, look, as long as you have an exit door for each room then you don't have to have that fire sprinkler suppression system, if I recall that last case. So when an applicant comes and they're put to restrictions by you all, are they given like a disclosure sheet of, look, as long as you meet any one of these conditions you're okay?

CHIEF SPERLING: Madam Chair, Commissioner, we have a variety of different methods that we will work with with an applicant to try to meet the intent of the Fire Code.

COMMISSIONER MAYFIELD: Sure.

CHIEF SPERLING: And the most straightforward approach is often a fire sprinkler system. Sometimes there's hurdles to get there, but we do strive to be as consistent as we possibly can in the application of the code to meet the intent of the code.

COMMISSIONER MAYFIELD: And I appreciate that, Chief Sperling, but I guess what I'm getting at is, and I'm thinking of a Santa Cruz case that came up in the Santa Cruz River in Chimayo where the mandate of this Commission was to say put a fire sprinkler suppression system in your house. At no time was it said, look, if you have exit doors from each room you don't have to do that. And I just hope that we give - because I'm making an approval based on those conditions, but that we give all those choices to that applicant. They can say, look, we're going to pick A, we're going to pick B, we're going to pick C to comply with the staff condition that's being put. So I'm just throwing that out there. If you guys could explain their options of what they could do.

CHIEF SPERLING: I appreciate that. Thank you.

COMMISSIONER MAYFIELD: Thank you, Chief.

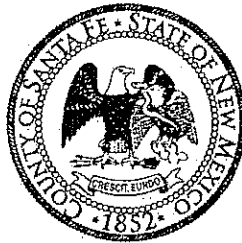
CHAIR STEFANICS: Thank you.

- XVII. A. 4. **BCC Case # MIS 12-5270 Ponderado Estates Subdivision Phase II Time Extension. Judy Ross & Ted Wegner, Applicant's, Request a 24-Month Time Extension of the Previously Approved Preliminary and Final Plat and Development Plan for a 14-Lot Residential Subdivision (Ponderado Estates Phase II) on 39.323 Acres. The Property is Located at the End of Camino Peralta,**

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

**Virginia Vigil**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

**CASE NO. MIS 12-5270**  
**PONDERADO ESTATES SUBDIVISION PHASE II TIME EXTENSION**  
**JUDY ROSS AND TED WEGNER, APPLICANT**  
**JUDY ROSS, AGENT**

**ORDER**

**THIS MATTER** came before the Board of County Commissioners ("BCC") for hearing on September 11, 2012, on the Application of Judy Ross and Ted Wegner (herein after referred to as "the Applicants") for a request for a 24-month time extension of the Preliminary Plat and Development Plan approval of the Ponderado Estates Subdivision. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing, finds that the Application is well-taken and should be granted and makes the following findings of fact and conclusions of law:

1. Article V, Section 5.3.6 of the County Land Development Code states, "An approved or conditionally approved preliminary plat shall expire twenty-four (24) months after its approval or conditional approval. Prior to the expiration of the preliminary plat, the subdivider may request, from the Board, an extension of the preliminary plat for a period of time not exceeding thirty-six (36) months."
2. Applicants obtained Preliminary Plat and Development Plan approval for Phase I on October 10, 2006.

3. On June 10, 2008, the BCC granted Final Development Plan and Plat approval of Phase II for the remaining 13 lots as well as a variance to allow driveway access off a Minor Arterial Road for two lots.

4. The Applicant now requests a 24-month time extension of the Preliminary Plat and Development Plan approval of Phase II of the Ponderado Estates Subdivision which consists of 13 single-family residential lots within a 39.323-acre area.

5. The property is located at the end of Camino Peralta, within Section 30, Township 17 North, Range 9 East.

6. In support of the Application, the Applicant submitted a letter of request, proof of ownership, and proof of legal lot of record and approved plans.

7. The Applicant states that since the BCC's approval of the Final Development Plan and Plat, due to the slow economy they have not been able to move forward with the subdivision. Their hope is that the economy will improve within the next couple of years and they will be able to put in the infrastructure and finish the subdivision.

7. There was one person from the public who spoke in regards to this Application and he was in support of the Application.

8. The Application is approved subject to the following conditions:

A. Compliance with the conditions of the original Preliminary Plat and Development Plan approval.

B. The Applicant shall communicate with the West Santa Fe Association regarding emergency access.

C. The Applicant shall consider hooking up to County water when it becomes available.



**WHEREFORE, THE BCC HEREBY APPROVES** the Application for a 24-month time extension of the Preliminary Plat and Development Plan for the Ponderado Estates Subdivision Phase II Development which will now expire on September 11, 2014.

**IT IS SO ORDERED:**

This Order was approved by the Board of County Commissioners on this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

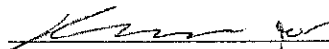
**BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

By: \_\_\_\_\_  
Liz Stefanics, Chair

**ATTEST:**

\_\_\_\_\_  
Valerie Espinoza, County Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Stephen C. Ross, County Attorney

CHAIR STEFANICS: Yes, Commissioner Mayfield.

COMMISSIONER MAYFIELD: Just a quick clarification point. Is Chief Patty here by any chance? Oh, Chief Sperling's here. I'm sorry. Chief, because this came up in a past case. As a matter of fact it came up when we approved a bed and breakfast in another area of the county. But at the time with the bed and breakfast, if I recall when that case came for us, I just want to make sure there's consistency, and I'm not saying our fire department is not being consistent with the Fire Code you all adopt and make recommendations, but at one time, I think a past case with this issue with the low water crossing came in front of us and they were told that maybe they had to under the new existing construction, they had to put a fire sprinkler system or suppression system and a lot of those things have come up as far as recommendations for staff conditions.

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CHIEF SPERLING: Madam Chair, Commissioner, we have a variety of different methods that we will work with with an applicant to try to meet the intent of the Fire Code.

COMMISSIONER MAYFIELD: Sure.

CHIEF SPERLING: And the most straightforward approach is often a fire sprinkler system. Sometimes there's hurdles to get there, but we do strive to be as consistent as we possibly can in the application of the code to meet the intent of the code.

COMMISSIONER MAYFIELD: And I appreciate that, Chief Sperling, but I guess what I'm getting at is, and I'm thinking of a Santa Cruz case that came up in the Santa Cruz River in Chimayo where the mandate of this Commission was to say put a fire sprinkler suppression system in your house. At no time was it said, look, if you have exit doors from each room you don't have to do that. And I just hope that we give - because I'm making an approval based on those conditions, but that we give all those choices to that applicant. They can say, look, we're going to pick A, we're going to pick B, we're going to pick C to comply with the staff condition that's being put. So I'm just throwing that out there. If you guys could explain their options of what they could do.

CHIEF SPERLING: I appreciate that. Thank you.

COMMISSIONER MAYFIELD: Thank you, Chief.

CHAIR STEFANICS: Thank you.

- XVII. A. 4. **BCC Case # MIS 12-5270 Ponderado Estates Subdivision Phase II Time Extension. Judy Ross & Ted Wegner, Applicant's, Request a 24-Month Time Extension of the Previously Approved Preliminary and Final Plat and Development Plan for a 14-Lot Residential Subdivision (Ponderado Estates Phase II) on 39.323 Acres. The Property is Located at the End of Camino Peralta,**

**within Section 30, Township 17 North, Range 9 East,  
Commission District 2**

MR. ARCHULETA: Thank you, Madam Chair. On October 10, 2006, the BCC granted preliminary and final plat and development plan approval for Phase 1 of the Ponderado Estates Subdivision to create one lot and preliminary plat and development plan approval for Phase 2 which consisted of the remaining 13 lots within the residential subdivision.

On June 10, 2008 the BCC granted final development plan and plat approval for Phase 2 for the remaining 13 lots as well as a variance to allow driveway access off a minor arterial road for two lots. Article V, Section 5.3.6 of the County Land Development Code states, an approved or conditionally approved preliminary plat shall expire 24 months after its approval or conditional approval. Prior to the expiration of the preliminary plat the subdivider may request from the Board and extension of the preliminary plat for a period of time not exceeding 36 months.

Article V, Section 5.4 of the code states, an approved or conditionally approved final plat approved after July 1, 1996 shall be recorded within 24 months after its approval or conditional approval or the plat shall expire. Upon request by the subdivider an additional period of no more than 36 months may be added to the expiration date by the Board.

The preliminary and final plat and development plan for Ponderado Estates expired on June 10, 2010. On December 13, 2011 the Board of County Commissioners adopted Resolution 2001-193 which found the existence of severe economic conditions and suspended enforcement of specified provisions of Article V of the Land Development Code that concern expiration of master plans, preliminary plats and final plats.

On December 13, 2011 the Board of County Commissioners also adopted Ordinance No. 2011-11 which states, the Board of County Commissioners ("the Board") may suspend provisions of Article V, Section 5.2.7 and 5.3.6 and 5.4.6 of the code upon a finding of economic necessity, which is defined in terms of a score of 100 or less on the Conference Board's Leading Economic Index® for the United States for any quarter and for three years following any such event, and the Board recognizes that these conditions are present and desires to temporarily suspend the enforcement those sections of Article V that set forth expiration of master plans, preliminary plats, and final plats for two years pending an economic recovery.

At the time of plat approval for Phase 2 of the Ponderado Subdivision the Conference Board's Leading Economic Index was 97. As of July of 2012, the LEI was 95.8.

The applicants state that due to the slow economy they have not been able to move forward with the subdivision. Their hope is that the economy will improve within the next couple of years and they will be able to put in the infrastructure and finish the subdivision. Therefore, the applicants are requesting a 24-month time extension that would render the preliminary and final plat and development plan approval valid until September 11, 2014.

Growth Management staff has reviewed this application for compliance with

pertinent code requirements and finds the project is in compliance with County criteria for this type of request. Staff recommends approval of the request for a 24-month time extension of the approved preliminary and final plat and development plan for the Ponderado Estates Subdivision Phase 2. Thank you, Madam Chair.

CHAIR STEFANICS: Thank you. Are there any questions for staff?

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Yes, Commissioner.

COMMISSIONER ANAYA: Madam Chair, we were just handed a letter dated September 4, 2012 from the board of the West Santa Fe Association and a listing of the board members' names is on there, that requests a breakaway gate for emergency rescue access. [Exhibit 6] Could you or Chief Sperling speak to the letter and comment on it?

MR. ARCHULETA: Madam Chair and Commissioner Anaya, this was approved back in 2004 and the applicant has been meeting with the neighborhood and at this time they're not – it's not a requirement to provide that access. Pinon Hills, which is the neighbor, they have access through Penny Lane, which is a new access, and so many – a crossing over Sloman Road was created for this purpose so they wouldn't have to – it's more approved if – I don't know how to say it but Sloman Road was actually improved so that it could be accessed for fire. The arroyo used to run where the Sloman Road property is and the County upgraded that crossing and then they also – the properties adjoining created an access through Penny Lane. So they don't really need this access.

COMMISSIONER ANAYA: So, Madam Chair, Mr. Archuleta, given that they just recently wrote it, where is – why are they uneasy still? Do we reach out and have more discussions with them about the concerns they reference in the letter?

MR. ARCHULETA: Madam Chair, Commissioner Anaya, maybe the applicant can answer that question.

CHAIR STEFANICS: Okay. The issue that Commissioner Anaya is talking about though, in the letter, it says the proposed egress at Penny Lane does not help those trapped in the north of the community and the proposed egress to Suerte del Sur off of northwest Calle Francisca exists on paper only. Do you see that? It's the third paragraph in the letter.

MR. ARCHULETA: Yes.

CHAIR STEFANICS: So what you said does not address all of these concerns.

COMMISSIONER ANAYA: And Madam Chair, if I could –

CHAIR STEFANICS: And we'll go to public hearing so if anybody's here they can speak, but go ahead.

COMMISSIONER ANAYA: Madam Chair, maybe the applicant can address it, because what they're asking for is an emergency gate that's only used in an emergency situation. Historically, it's a locked gate and then it's only used in the event of a fire or need for access. It's not a daily access point. So I don't know if the applicant wants to respond.

MR. ARCHULETA: Madam Chair, Commissioner Anaya, the access that

they're proposing is off of Via Tranquilo, which is a cul-de-sac that ends at the last two lots. If they were to continue to go to Calle Francisca there would be a lot of - there are slopes that are greater than 15 to 30 percent. So there's a couple of actual crossings that would have to be upgraded. So feasibly, at this point it doesn't make sense for that access to continue.

COMMISSIONER ANAYA: It would be a prohibitive cost.

MR. ARCHULETA: Prohibitive.

COMMISSIONER ANAYA: I got you.

COMMISSIONER MAYFIELD: Madam Chair, on that point.

CHAIR STEFANICS: Yes. Commissioner Mayfield on that point.

COMMISSIONER MAYFIELD: Thank you. Madam Chair, on that point, on the letter that I was reading and what Commissioner Anaya brought up, so - and I'm going to use the acronym, WSFA, the West Santa Fe Association, They are already their own developed neighborhood that this County approved?

MR. ARCHULETA: Madam Chair, Commissioner Mayfield, I'm not sure. I know that they're a recognized body but I don't think that they're an actual -

COMMISSIONER MAYFIELD: Subdivision or neighborhood. Okay. I guess the question I was asking is if that when that was approved and it may not have approval do they want the access gate to work both ways so that the folks out of this new subdivision, the Ponderado Subdivision, can exit through the West Santa Fe Association in case of an emergency? And do they also want it for the West Santa Fe Association in the case of an emergency can exit through the Ponderado Subdivision?

COMMISSIONER VIGIL: Madam Chair, maybe I can help clarify that. The West Santa Fe Association is an association made up of neighborhood associations, including city and county neighborhood associations, so this is their position on it. But it is not a subdevelopment or development per se.

COMMISSIONER MAYFIELD: Okay.

CHAIR STEFANICS: Okay, so Commissioner Mayfield, you still have the floor.

COMMISSIONER MAYFIELD: That's fine. I think that helps and Mr. Dalton is bringing a map, so I don't know if that's going to talk about it.

CHAIR STEFANICS: Okay. So we also haven't heard from the applicant yet, but go ahead and show us whatever you want to show us on this map.

MR. ARCHULETA: This is Camino Tranquilo here and it's a cul-de-sac, and then Pinon Hills Subdivision is over here. Gerald Peters' property is on the north side which would be down here. So Pinon Hills is going to have an access, the northern part of Pinon Hills will have an access through Suerte del Sur and then they'll also have an access off of Penny Lane, which is lower, on the southern part of Pinon Hills. So the people in Pinon Hills are going to have access. They'll have emergency relief, basically.

COMMISSIONER ANAYA: On that point, Madam Chair.

CHAIR STEFANICS: Yes, Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Mr. Archuleta, does the West

Santa Fe Association clearly understand the access associated with existing or approved subdivisions you just represented? Did we meet with them and have that clarification or are they potentially unaware of that access?

MR. ARCHULETA: Madam Chair, Commissioner Anaya, I believe that Ms. Ross has met with the different members of the association and I think that she can address that question.

COMMISSIONER ANAYA: Good. Thank you, Madam Chair.

CHAIR STEFANICS: Thank you. Let's here from the – yes, Commissioner Holian for staff.

COMMISSIONER HOLIAN: Thank you, Madam Chair. Vicente, how close is the water utility to this proposed subdivision now? And also wastewater?

MR. ARCHULETA: Madam Chair, Commissioner Holian, I believe the closest water is going to be to the north and that would be closer to the Suerte del Sur Subdivision. I believe there's a couple of smaller subdivisions that are in that area just north of the property that water is – do you know far, approximately? The applicant states that it's approximately 1500 feet to the Suerte property and the Suerte property is going to have community water.

COMMISSIONER HOLIAN: And does the Suerte property have wastewater as well?

CHAIR STEFANICS: Anything that goes on the record has to be spoken into the microphone.

MS. LUCERO: Madam Chair, Commissioner Holian, I believe Suerte does have their own community wastewater system or will have their own community wastewater system.

COMMISSIONER HOLIAN: Okay. Thank you.

CHAIR STEFANICS: Thank you. Let's hear from the applicant please.

[Duly sworn, Judy Ross testified as follows:]

JUDY ROSS: My name is Judy Ross and my address is 444 Rutherford Avenue, in Menlo Park, California.

CHAIR STEFANICS: So are the applicant or the representative?

MS. ROSS: I'm the applicant.

CHAIR STEFANICS: Okay.

MS. ROSS: On behalf of my husband and myself. What I'd like to show you first I think is the map that I have here. I'll pass them out. [Exhibit 7] This is the 2005 Metropolitan Planning Organization. It shows the future network for Santa Fe. And the purple area here, which is also shown on the map that you have is Ponderado Estates. So it lies between Suerte del Sur, which is the shaded area, and CR 70. And this dashed area here is Los Sueños Trail extension, which has not been built yet. So Puesta del Sol is to the left and Pinon Hills is to the right. If I bring the map maybe a little closer I can show you what they're asking about.

CHAIR STEFANICS: Okay, except everybody has to see. So you do have to be back so that they can see.

MS. ROSS: Okay. All right.

COMMISSIONER MAYFIELD: I'm following on my own map.

CHAIR STEFANICS: Okay.

MS. ROSS: Okay. All right. So if you right here it comes in from the west and about bisects horizontally the purple area. That is Via Francesca. And that's where they want the breakaway gate. And our subdivision - if you see this yellow section here, our subdivision has a cul-de-sac here and Via Francesco is over here. So there are 15 and 30 percent gradients here so if this was to be accessed, I'm concerned that people will get stuck because of the gullies and ditches here. And so the only way people travel here is they travel up, they don't travel across. So I would consider putting a gate there but I'm afraid it would exacerbate the situation and give a false sense of security.

Now if we slip back to this map, since we received approval there was an all-weather crossing placed here at Arroyo Trampas at Sloman Lane. And the breakaway gate that goes through Suerte will be somewhere along this area here. And Penny Lane that Vicente was talking about is right here. There are seven Hager parcels here and there is one lot between us and Suerte. And we agreed as a condition of approval that if County water gets within - I don't remember, within so many feet we would go on to County water. So that was a condition of our final approval. So this is kind of the topology that we're talking about here, so I think that explains what they're asking. I just got the letter yesterday so I haven't had a chance to meet with them in person and talk about what the alternatives are.

CHAIR STEFANICS: Okay. Do you have anything else you'd like to add for your application before we go to public hearing?

MS. ROSS: Yes, I wanted to show you the plat itself so you can see the Phase 1, which was platted is this red section here and Phase 2 is one public open space lot and then 12 residential lots. [Exhibit 8] The green area shows the open space, the dark green is the public open space, and the brown areas are the trails. These two trails are designated on the TAP plan.

CHAIR STEFANICS: Thank you. Any questions for the applicant?  
Commissioner?

COMMISSIONER MAYFIELD: Well, I'm going to have them for staff.

CHAIR STEFANICS: Okay. Thank you very much to the applicant. We are now in the public hearing process. Is there anyone in the audience here to speak for or against? Come on up. Besides this one gentleman is there anyone who'd like to speak? Okay, if you'd please be sworn in and identify yourself.

[Duly sworn, Ray Leonard testified as follows:]

RAY LEONARD: Ray Leonard, 10 Camino Espejo, representing the Puesta del Sol Subdivision. We are in favor of the development. Judy and Ted have worked very closely with the subdivision and we feel that it is a very worthwhile subdivision. So we're in favor of it.

CHAIR STEFANICS: Thank you very much for coming this evening. Is there anyone else in the public that would like to speak on this case? Thank you. This public hearing is closed. Commissioners, questions, comments, action?

COMMISSIONER VIGIL: Madam Chair.

CHAIR STEFANICS: Commissioner Vigil.

COMMISSIONER VIGIL: Vicente, I'm trying to find how much – what the distance was for the requirement to hook up the water. Can you recall that or can you point me to it?

MR. ARCHULETA: Madam Chair, Commissioner Vigil, I believe it was 200 feet. That's the standard that we were using back in 2006, in April.

COMMISSIONER VIGIL: Okay. I'm just finding the 100-foot discussion. So, okay. Wait a minute. Was that the applicant's understanding? That it was 200 feet?

CHAIR STEFANICS: Could we please find that in the record for the Commission?

MR. ARCHULETA: Madam Chair, that is what they EZ Code required back then, when we were using the EZ Code. It was 200 feet.

CHAIR STEFANICS: Can you find it in the minutes?

MR. ARCHULETA: Not in the minutes. No.

COMMISSIONER VIGIL: So would their conditions of approval on this include what the EZ Code required?

CHAIR STEFANICS: On page 25 Ms. Cobau says I reviewed the meeting minutes. I didn't hear that. I don't think it's that close and the current regulations and the Extraterritorial Subdivision Regs ask that they or require that they connect when they're within 200 feet, Mr. Chair.

COMMISSIONER VIGIL: Okay, Madam Chair. It seems to me that that was a clarification that Ms. Cobau made, but I don't see it as a condition of approval. But I don't think it's a problem to make it so because the applicant herself stated that it was her understanding that they would hook up within a certain amount of feet; we just didn't know what the feet were. Is that correct?

MS. ROSS: Yes. That's correct.

COMMISSIONER VIGIL: Okay. And just for clarification I want to make sure that it is a part of the record that the applicant is required to hook up to a water delivery system if they're within 200 feet.

MS. ELLIS-GREEN: Madam Chair, Commissioners, that is on page 26 at the bottom. Ms. Cobau states, So the condition 20 will be the applicant will agree to connect to County water when it becomes available. Jose just brought a copy of the TAP ordinance in here and I stand correct. The water restrictions are a quarter acre-foot. So that was an additional condition #20. And then at the very end on page 31 there is a motion at the bottom of the page and Chairman Sullivan stated and with the additional condition 20? And that's what was voted on.

COMMISSIONER HOLIAN: On that point.

CHAIR STEFANICS: Yes, Commissioner Holian, on that point.

COMMISSIONER HOLIAN: I'm just wondering whether the water, the County water utility would ever get that close, just looking at the map. Because Suerte del Sur, which seems to be right – the closest proposed development is apparently around 1500



feet away.

COMMISSIONER VIGIL: I guess the question would be how far is the Buckman Direct Diversion in line to this? Do we know?

MR. ARCHULETA: Madam Chair, Commissioner Vigil, no, we don't.

COMMISSIONER VIGIL: I'm sorry.

MR. ARCHULETA: We don't know how far it is. But when the other subdivisions come in to develop their properties they will be held to the same standard as Ponderado. If they were within 200 feet of the utility they'll have to connect. And then that will bring them closer to Ponderado. And if Ponderado, if it comes up to their property within 200 feet then they will have to connect also.

COMMISSIONER VIGIL: I have no further questions, Madam Chair.

CHAIR STEFANICS: Thank you. Questions, comments? Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. Madam Chair, for staff, going back to this secondary letter we received from the West Santa Fe Association, in the second paragraph it says, As the County has long acknowledged this is a logical place for such an egress. Has the County made that acknowledgement? Is anybody aware of that acknowledgement?

MR. ARCHULETA: Madam Chair, Commissioner Mayfield, I'm not aware of that.

COMMISSIONER MAYFIELD: Okay. And then I guess two other questions I have, Madam Chair, for Mr. Ross. Would this subdivision, Steve, need to comply with the affordable housing ordinance that was passed and then that we modified? Or was this done well before that ordinance went into place?

MR. ROSS: Madam Chair, Commissioner Mayfield, no. I believe they have an affordable housing agreement.

COMMISSIONER MAYFIELD: So they are going to need to come back and ask for modification of that based on our new -

MR. ROSS: Correct.

COMMISSIONER MAYFIELD: Modification to that, right?

MR. ROSS: Right.

COMMISSIONER MAYFIELD: They're not asking for that. Okay.

MR. ARCHULETA: Madam Chair, Commissioner Mayfield, they do have two affordable lots on this property.

COMMISSIONER MAYFIELD: Okay. Thank you. And then I guess my third question, Steven, Madam Chair. This is for the final plat and development plan, but didn't we pass an ordinance not too long ago that kind of afforded these extensions, arguably automatically because of the economic times?

MR. ROSS: Madam Chair, Commissioner Mayfield, not automatically. They still have to come and ask for an extension.

COMMISSIONER MAYFIELD: Okay. But we did pass an ordinance.

MR. ROSS: Yes.

COMMISSIONER MAYFIELD: To allow for that. Okay. Thank you.

CHAIR STEFANICS: Thank you. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, understanding the feedback that's taking place, is the applicant willing to have a conversation with the West Santa Fe Association relative to their letter? As I read it, I'm not even seeing that they're asking for infrastructure or a designated road. I don't read it that way at all. I read it as in the case of a wildfire egress point but not necessarily a road or road improvements.

MS. ROSS: Yes, I'm certainly willing to have a discussion with them. My concern was purely the practical aspects of it, since there's a trail there and there's going to be a 15-foot trail there. Can they get anywhere on the trail or is it not developed enough? Are they going to run into the ditch? Because it's a pretty big ditch. So there are practical questions that I was concerned. The worst thing would be for people to think they can get out and kind of falsely be confident about it.

COMMISSIONER ANAYA: Thank you.

CHAIR STEFANICS: Thank you. And what's the --

COMMISSIONER HOLIAN: Madam Chair, I have another question.

CHAIR STEFANICS: Yes, Commissioner Holian.

COMMISSIONER HOLIAN: I guess this is a question for Mr. Ross. If we grant this extension can we change any of the conditions, or does it have to be as is?

MR. ROSS: Madam Chair, Commissioner Holian, I think it would have to be something related to the request. In other words, I don't think it would be fair to change an underlying condition of approval or something like that, given that those are already signed, sealed and delivered several years ago.

COMMISSIONER HOLIAN: Right. For example, changing the condition with regard to the water access.

MR. ROSS: Madam Chair, Commissioner Holian, well, you might explore the options with the applicant who's here to see if there's something that she might even agree to.

COMMISSIONER HOLIAN: Well, Ms. Ross, I would like to ask you whether you would be willing to hook into the County water utility if it's say, was put in for Suerte del Sur?

MS. ROSS: Let me pass out another map and I'll answer your question. *[Exhibit 9]* We are one of the seven properties that are called the Hager properties and we have a road construction and utilities group to build the roads and put in the infrastructure. And so what we do with utilities we do as a group. So I'm certainly amenable to it. We've had discussions with Suerte about putting the pipe in initially, so we're very open to it but we backed off making a commitment to the pipe because Suerte backed off. So I would say yes for me, but I can't speak for the group. So I'm sorry I'm giving you an equivocal answer but that's the reality of seven lot owners doing something together.

COMMISSIONER HOLIAN: I see. Thank you.

COMMISSIONER VIGIL: On that subject, Madam Chair.

CHAIR STEFANICS: Yes, Commissioner Vigil.

COMMISSIONER VIGIL: Does anyone know what the source of water is for Suerte? Did they receive approval for City water or do they have a water association?

MR. ROSS: Madam Chair, Commissioner Vigil, they have a County water service agreement.

COMMISSIONER VIGIL: Okay.

CHAIR STEFANICS: Any other questions, comments? Okay. I will move for the approval of the time extension for this Ponderado Estates Subdivision, Phase 2.

COMMISSIONER VIGIL: Second.

CHAIR STEFANICS: There is a motion and a second. Any further discussion or questions?

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR STEFANICS: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Again, not a condition but I think the applicant was amenable at least to still maybe sit down and talk with the West Santa Fe Association. Maybe there's some misunderstanding and you need to clarify it with them, I would appreciate that. Thank you.

COMMISSIONER ANAYA: Madam Chair, on that point.

CHAIR STEFANICS: On that point.

COMMISSIONER ANAYA: On that point, just relative to some of the comments made about as the County has long acknowledged, if the fire department could be part of that discussion from a strategic planning perspective and maybe Chief or some other staff is aware of – go ahead, ma'am.

MS. ROSS: The County was involved in that and the fire department – not this gentleman. I can't remember his name, and several other staff people looked at it and decided it was not a good location for emergency egress. So the County has been involved. If you guys would like the record of who said what and when I probably can find them for you, if that would alleviate some of your concerns.

COMMISSIONER ANAYA: Madam Chair, I'm sorry. You're name again?

MS. ROSS: Judy Ross.

COMMISSIONER ANAYA: Madam Chair, Ms. Ross, I think that would be helpful and I also think it would be helpful to just maybe have the Chief involved to help allieve some of the concerns associated with the whole area and evacuation and access and egress.

MS. ROSS: And I have a letter from the former Fire Chief so I can forward that to him. Thank you.

CHAIR STEFANICS: Thank you. Other questions, comments? There is a motion and a second for approval of this time extension.

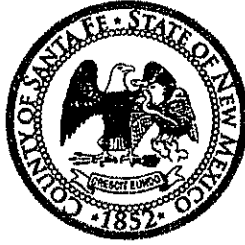
The motion passed by unanimous [5-0] voice vote.

- XVII. A. 5. CDRC Case # V 12-5250 Carla Cavalier Variance. Carla Cavalier, Applicant, Requests a Variance of Article III, Section

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

**Virginia Vigil**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner, District 4*

**Liz Stefanics**  
*Commissioner, District 5*

**Katherine Miller**  
*County Manager*

**CASE NO. V 12-5250**

**VARIANCE**

**CARLA CAVALIER, APPLICANT**

**ORDER**

**THIS MATTER** came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on September 11, 2012, on the Application of Carla Cavalier (hereinafter referred to as "the Applicant") for a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow a Family Transfer Land Division of 25 acres into three 8.30 acre lots. The BCC, having reviewed the Application and supplemental materials, staff reports and conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicant requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow a Family Transfer Land Division of 25 acres into three 8.30 acre lots.
2. The property is located at 25 Sandoval Lane, in the vicinity of Edgewood, within Section 11, Township 11 North, Range 7 East ("Property").
3. Article III, Section 10, provides that minimum lot size in this area is 160 acres per dwelling unit. Lot size can be reduced to 40 acres per dwelling unit with signed and recorded water restrictions.

4. The subject lot was created in 1978, and is considered a legal non-conforming lot.
5. There are currently two dwelling units, a garage and a workshop on the property.
6. The Applicant seeks to divide the property as her father intended among three siblings.
7. In support of the Application, the Applicant stated that she is in agreement with staff's conditions.
8. Staff recommends the following conditions of approval:
  - A. Water use shall be restricted to 0.25 acre feet per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1, of each year. Water restrictions shall be recorded in the County Clerk's Office.
  - B. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval.
  - C. Further division of each Tract is prohibited; this shall be noted on the Plat. Only one dwelling unit shall be permitted on each lot.
  - D. The Applicant must provide proof of permits or proof that the structures on the property are legal non-conforming. If the Applicant cannot provide proof that the structures are legal, than the Applicant must obtain After the Fact development permits.
  - E. No sale of lots for a term of a five year period.
  - F. The Applicant shall comply with all Code requirements.
9. The Applicant committed to remove the existing abandoned dwelling on the property.

10. No members of the public spoke in favor or in opposition to the Application.

11. Strict compliance with the requirements of the Code would result in extraordinary hardship to the Applicant because of non- self-inflicted conditions.

12. The granting of the requested variance is a minimal easing of the Code requirements to address obstacles to divide a legal lot of record.

13. Granting this variance request will not nullify the purpose of the Code.

**WHEREFORE** the Board of County Commissioners of Santa Fe County hereby approves the request for a variance of Article III, Section 10 (Lot Size Requirements) of the Code to allow a Family Transfer Land Division of 25 acres into three 8.30 acre lots subject to the conditions as stated in Paragraph 7.

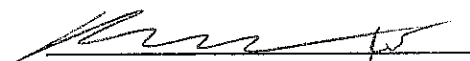
**IT IS SO ORDERED**

This Order was approved by the Board of County Commissioners of Santa Fe County on this \_\_\_ day of November, 2012.

By: \_\_\_\_\_  
Liz Stefanics, Chair

Attest:  
\_\_\_\_\_  
Valerie Espinoza, County Clerk

Approved as to form:

  
Stephen C. Ross, County Attorney

COMMISSIONER VIGIL: Does anyone know what the source of water is for Suerte? Did they receive approval for City water or do they have a water association?

MR. ROSS: Madam Chair, Commissioner Vigil, they have a County water service agreement.

COMMISSIONER VIGIL: Okay.

CHAIR STEFANICS: Any other questions, comments? Okay. I will move for the approval of the time extension for this Ponderado Estates Subdivision, Phase 2.

COMMISSIONER VIGIL: Second.

CHAIR STEFANICS: There is a motion and a second. Any further discussion or questions?

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR STEFANICS: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Again, not a condition but I think the applicant was amenable at least to still maybe sit down and talk with the West Santa Fe Association. Maybe there's some misunderstanding and you need to clarify it with them, I would appreciate that. Thank you.

COMMISSIONER ANAYA: Madam Chair, on that point.

CHAIR STEFANICS: On that point.

COMMISSIONER ANAYA: On that point, just relative to some of the comments made about as the County has long acknowledged, if the fire department could be part of that discussion from a strategic planning perspective and maybe Chief or some other staff is aware of - go ahead, ma'am.

MS. ROSS: The County was involved in that and the fire department - not this gentleman. I can't remember his name, and several other staff people looked at it and decided it was not a good location for emergency egress. So the County has been involved. If you guys would like the record of who said what and when I probably can find them for you, if that would alleviate some of your concerns.

COMMISSIONER ANAYA: Madam Chair, I'm sorry. You're name again?

MS. ROSS: Judy Ross.

COMMISSIONER ANAYA: Madam Chair, Ms. Ross, I think that would be helpful and I also think it would be helpful to just maybe have the Chief involved to help allieve some of the concerns associated with the whole area and evacuation and access and egress.

MS. ROSS: And I have a letter from the former Fire Chief so I can forward that to him. Thank you.

CHAIR STEFANICS: Thank you. Other questions, comments? There is a motion and a second for approval of this time extension.

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

**XVII. A. 5. CDRC Case # V 12-5250 Carla Cavalier Variance. Carla Cavalier, Applicant, Requests a Variance of Article III, Section**

**10 (Lot Size Requirements) of the Land Development Code to Allow a Family Transfer Land Division of 25 Acres Into Three 8.30-Acre Lots. The Property is Located at 25 Sandoval Lane, in the Vicinity of Edgewood, within Section 11, Township 11 North, Range 7 East, Commission District 3**

MR. DALTON: Thank you, Madam Chair. There are currently two dwelling units, a garage and workshop on the property. The Applicant's sister resides in one dwelling and the other is vacant. The Applicant intends to divide the property into three tracts; one tract would have two dwelling units and the other two tracts would be vacant. If this Application is approved, the vacant dwelling will have to be removed from Tract 3. Staff can find no evidence of permits for the two dwelling units, garage or workshop.

"The Applicant states her father has owned the property since 1978, and now would like to divide the property equally between his three children in order to provide them with their own parcel of land.

On July 19, 2012 the CDRC met and acted on this case. The decision of the CDRC was to recommend denial of the Applicant's request by a 4-3 vote. Minutes are attached as Exhibit 1.

Staff recommendation: Denial of a variance from Article III, §10 (Lot Size Requirements) of the Land Development Code. If the decision of the BCC is to recommend approval of the Applicant's request, staff recommends imposition of the following conditions. Madam Chair, may I enter those into the record?

[The conditions are as follows:]

1. Water use shall be restricted to 0.25 acre feet per year per lot. A water meter shall be installed for each lot. Annual water meter readings shall be submitted to the Land Use Administrator by January 1<sup>st</sup> of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, § 10.2.2 and Ordinance No. 2002-13).
2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval.
3. Further division of each tract is prohibited. This shall be noted on the plat. Only one dwelling unit shall be permitted on each lot as per Article III, § 10
4. The Applicant must provide proof of permits or proof that the structures on the property are legal non-conforming. If the Applicant cannot provide proof that the structures are legal, than the Applicant must obtain after-the-fact development permits (As per As per Article II, § 4.5.2b Article II, § 2).
5. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review. (As per 1997 Fire Code and NFPA Life Safety Code).

CHAIR STEFANICS: Thank you. Are there questions of staff from the Commission?

COMMISSIONER VIGIL: Madam Chair.

CHAIR STEFANICS: Yes.

COMMISSIONER VIGIL: I noticed that part of the conditions of approval



did not require that these tracts not be reduced any more, or am I missing that? Okay. It's condition 3.

MR. DALTON: Yes.

CHAIR STEFANICS: Any other questions to staff? Is the applicant here? Would you like to come up please? Let's get you sworn in.

[Duly sworn, Carla Cavalier testified as follows:]

CARLA CAVALIER: Carla Cavalier, 25 Sandoval Lane.

CHAIR STEFANICS: Great. Thank you. So is there anything you would like to add?

MS. CAVALIER: I'd like to just add that my father has owned the property since 1978 and prior to that his father owned the property, so the property has been in the family for 50-some years, probably a lot longer than that. My father's father passed it down to him and he wanted to pass it down to us, which he on February 16<sup>th</sup> of this year he warranty deeded it over to us. We started this process and unfortunately on August 19<sup>th</sup> he passed. So he was not able to see the complete process go through. But we have not at any time in the 50-some years has the property been sold and we have no intentions of selling it. We'd like it to remain in the family and pass it down to the remainder of the family. We are willing to abide by all of the stipulations or conditions or anything that you all impose on us. We do not have any issues with that. Like I said, we do not intend to sell the property and we will be here for many years to come.

CHAIR STEFANICS: So you are indicating that you could accept all the conditions?

MS. CAVALIER: We are willing to accept all the conditions and we are in the process even prior to you imposing the conditions. We are willing to do that as well.

CHAIR STEFANICS: Thank you very much. Questions for the applicant? Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. Would you then agree to another, an additional condition to not sell any of those lots for five years?

MS. CAVALIER: Yes, ma'am. No problem with that at all.

COMMISSIONER HOLIAN: Thank you.

CHAIR STEFANICS: Anything else for the applicant? Okay. Thank you. Why don't you have a seat. This is a public hearing. Is there anybody here to speak in favor of or against this particular application. Anybody want to speak for or against? This public hearing is closed. Comments, questions from the Commission?

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Yes, Commissioner Anaya.

COMMISSIONER ANAYA: I would move for approval with the additional condition that the property, lots not be sold for a term of five years that Commissioner Holian brought up.

COMMISSIONER MAYFIELD: Second, Madam Chair.

CHAIR STEFANICS: Thank you. There's a motion and a second. Any further discussion?

COMMISSIONER VIGIL: I have a question.

CHAIR STEFANICS: Commissioner Vigil.

COMMISSIONER VIGIL: Wayne, with regard to the actual dwellings on

this property. Are they to code?

MR. DALTON: Madam Chair, Commissioner Vigil, according to the pictures, no they are not. There is a picture, page 18, there's a couple of RVs on the property that need to be removed. I've already discussed that with the applicant. Page 19, that is a structure that needs to be demolished and removed from the property.

COMMISSIONER VIGIL: Is that part of the conditions of approval that they comply with all code requirements?

MR. DALTON: Madam Chair, Commissioner Vigil, it's not a condition of approval. If this does get approved tonight I will meet with the applicant onsite and let her know what needs to be removed from the property and permitted on the property.

COMMISSIONER VIGIL: Great. So if there's anything that's not up to code that would be remedied in this process? Or do we need to include that as part of the conditions of approval?

MR. DALTON: Madam Chair, Commissioner Vigil, we can include them as part of the conditions of approval. The only structure that I've seen that may not be up to code would be the picture on page 23, which is the barn or garage structure.

COMMISSIONER VIGIL: And a lot of that code requirement could be removing - taking several trips to a landfill?

MR. DALTON: Madam Chair, Commissioner Vigil, yes, that could be, or to demolish a portion of the structure and permit the portion of the structure that maybe be structurally sound and usable. Because half of that structure to me does not look like it's usable.

COMMISSIONER VIGIL: And also on page 22 there seems to be - is that a gas or butane container?

MR. DALTON: Madam Chair, Commissioner Vigil, yes, that's what it does look like and that structure on page 22 is the structure that's in condition #3 I think it is that needs to be removed.

COMMISSIONER VIGIL: Would the maker of the motion be willing to include a condition that the applicant must comply with all code requirements?

COMMISSIONER ANAYA: Yes, Madam Chair. I guess the comment I would make is that the staff work with the applicant in dealing with those issues, that they don't end up having to demolish everything. I don't think that would be equitable or fair or reasonable. So I would ask staff to work with the applicant on salvaging what they could. I guess just a comment on that. I think that's something that we haven't had a whole lot of discussion on in previous cases and it's something I guess we need to look at always for health and safety reasons and I know you do that on a regular basis in the evaluation of other buildings. So I'm okay with it in that context, Madam Chair, Commissioner Vigil.

COMMISSIONER VIGIL: And I would just say in a lot of cases staff comes forward with that recommendation but it wasn't a part of this, so I'd like to include it.

CHAIR STEFANICS: On that point, I just would assume that we would always have the standard to code as we proceed forward with any projects though. I think it's a requirement that we impose upon others. So we have a motion, we have a second. You had a request for an additional?

COMMISSIONER VIGIL: And the maker of the motion agreed to it. I just wondered if the seconder would also agree?

CHAIR STEFANICS: You agreed, Commissioner Anaya. Did you agree, Commissioner Mayfield?

COMMISSIONER MAYFIELD: Madam Chair, what am I agreeing to?

CHAIR STEFANICS: That the standards meet code. That the future standards meet code as this project proceeds. Is that the intent?

COMMISSIONER VIGIL: Yes.

COMMISSIONER MAYFIELD: But I also heard the motioner ask that staff work with the applicant. I guess my question would be on page 22, my assumption is that that's the actual dwelling unit.

MR. DALTON: Madam Chair, Commissioner Mayfield, yes, that is the abandoned dwelling unit on the property. That will have to be removed.

COMMISSIONER MAYFIELD: Okay. So that's going to have to be going down.

MR. DALTON: Madam Chair, Commissioner Mayfield, that is correct.

COMMISSIONER MAYFIELD: So, Madam Chair, Mr. Dalton, is there an actual house that we have a picture of on this property?

MR. DALTON: Madam Chair, Commissioner Mayfield, there is not a picture of the actual dwelling unit that the applicant's sister resides in. This structure was utilized for the applicant's father.

COMMISSIONER MAYFIELD: And now the structure's abandoned. So, Madam Chair, Mr. Dalton, I'm just going to ask through go back to a couple pages. So the page with the two mobile homes, [inaudible] there's a blue and white mobile and then I guess the shell of an RV next to it, or the shell of a camper trailer.

MR. DALTON: Yes, Madam Chair, Commissioner Mayfield, those are old recreational vehicles that must also be removed from the property.

COMMISSIONER MAYFIELD: So you're asking for those to be removed. Nobody's living in the blue and white trailer.

MR. DALTON: No. Those are actually being used for storage is my understanding.

COMMISSIONER MAYFIELD: Okay, and then on the next page, page 19, I mean it has a 911 rural addressing sign on it, 25-A that I can see from here. Is that a home?

MR. DALTON: Madam Chair, Commissioner Mayfield, that's the abandoned home on the property. That's the same structure as the picture from page 22.

COMMISSIONER MAYFIELD: Okay. So this is what doesn't meet code?

MR. DALTON: Madam Chair, Commissioner Mayfield, right now the two abandoned RVs do not meet code. The structure on page 23 -

COMMISSIONER MAYFIELD: Let's talk about page 19 please.

MR. DALTON: Page 19, right now, that's a dwelling unit. It doesn't meet density because there's already an existing dwelling unit on the property that the applicant's sister residents in.

COMMISSIONER MAYFIELD: Okay. I'm sorry. So there is a dwelling unit then and this is it.

MR. DALTON: That's correct.

COMMISSIONER MAYFIELD: Okay. So that's fine. We're not asking

them to remove that.

MR. DALTON: Madam Chair, Commissioner Mayfield, no.

COMMISSIONER MAYFIELD: Thank you, Mr. Dalton. So then on page 20, the barn?

MR. DALTON: Madam Chair, Commissioner Mayfield, that will have to be permitted, because I can find no record for any permits ever being pulled on this property.

COMMISSIONER MAYFIELD: So they need to come in and ask for a permit on that.

MR. DALTON: That's correct.

COMMISSIONER MAYFIELD: Okay. And then on page 21, I don't know if that's the same barn or corrals, or if that's a different one.

MR. DALTON: Madam Chair, Commissioner Mayfield, that's the same structure.

COMMISSIONER MAYFIELD: Okay. And then on page 23 you're asking them to remove that whole structure.

MR. DALTON: That's correct.

COMMISSIONER MAYFIELD: Madam Chair, let me just ask this question and the applicant may be agreeable to this, but if they can get CID to give them a certificate of occupancy on that or do you already know that won't happen?

MR. DALTON: Madam Chair, Commissioner Mayfield, that is a dwelling unit and if we allow them to keep that on there they would be exceeding density. So that's why the structure needs to be removed from the property.

MS. ELLIS-GREEN: Madam Chair, Commissioners, just a clarification. What they're asking to do is to create three lots, and one of the lots would have an existing house and this abandoned house on it.

CHAIR STEFANICS: So did you hear the clarification from Penny?

COMMISSIONER MAYFIELD: I apologize because I was listening to Commissioner Anaya.

MS. ELLIS-GREEN: Commissioners, what they're asking for is to create three lots and one of the lots would have the house that's being resided in and the abandoned house on it. And therefore what we're stating is that if you create three lots you can only have one house per lot. So that means that the second dwelling unit would have to be removed from the lot that's created.

COMMISSIONER MAYFIELD: But they're just creating another lot, right?

MS. ELLIS-GREEN: They're still going to be creating two additional lots that are vacant. So they could change, I guess, property boundaries and put the existing house on one lot, this house on another lot and one additional vacant lot.

MR. DALTON: Madam Chair, Commissioner Mayfield, the applicant does not chose to adjust any property boundaries. She wants it as is and she's in agreement to remove that dwelling unit.

COMMISSIONER MAYFIELD: Okay. If the applicant's in agreement.

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Yes.

COMMISSIONER ANAYA: On that point.

CHAIR STEFANICS: Yes.

COMMISSIONER ANAYA: Is the applicant -- is there any alternative where it's not a dwelling unit? They may have to tear down part of the shop or part of the barn, but this could be used as a shop if it's not a dwelling unit.

MR. DALTON: Madam Chair, Commissioner Anaya, this structure was originally a mobile home, and the way we look at is once a mobile home, always a mobile home.

COMMISSIONER ANAYA: I don't have any more questions, Madam Chair.

CHAIR STEFANICS: Thank you. We have a motion and a second with conditions. Any further discussion or questions?

COMMISSIONER VIGIL: I just needed clarification if the seconder was in agreement with the --

COMMISSIONER MAYFIELD: Yes.

COMMISSIONER VIGIL: Okay.

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

- XVII. A. 6. **CDRC Case # V 12-5130 Joseph & Anna Garcia Variance. Joseph & Anna Garcia, Applicant's, Request a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow a Small Lot Family Transfer Land Division of 2.5 Acres Into Two Lots. The Property is Located at 3 Avenida Pita, within Section 10, Township 15 North, Range 10 East, Commission District 4 [Exhibit 10: Fire Marshal's Report]**

MR. DALTON: Thank you, Madam Chair. The subject lot was created on February 11, 1985 under development permit #85-96. There is currently one dwelling unit on the property. The Applicants state they are requesting a variance for many reasons. Their son and daughter-in-law were born and raised in Santa Fe where they received their education. They are both active members of the working community and their son is an active member in the Army National Guard. The Applicants would like to be able to share something that was worked hard for with their son, daughter-in-law and grandchildren. The Applicants further state their son and daughter-in-law pay high rent and live in an unsafe neighborhood and would like his daughter-in-law to live close, so they are looked after while his son is deployed and away on trainings. Furthermore, the Applicants state that they can help with childcare and later on in life will need assistance of their own.

On June 21, 2012 the CDRC met and acted on this case. The decision of the CDRC was tied at three votes to approve and three votes to deny. Under Commission rules of order the application was automatically tabled until the next meeting. Minutes are attached at Exhibit 1.

On July 19, 2012 the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the applicants' request by a 4-3 vote. Minutes attached as Exhibit 2.

**Daniel "Danny" Mayfield**

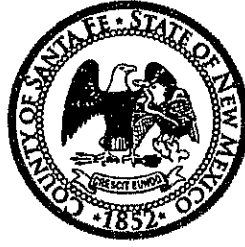
*Commissioner, District 1*

**Virginia Vigil**

*Commissioner, District 2*

**Robert A. Anaya**

*Commissioner, District 3*



**Kathy Holian**

*Commissioner, District 4*

**Liz Stefanics**

*Commissioner, District 5*

**Katherine Miller**

*County Manager*

**CASE NO. V 12-5130**

**VARIANCE**

**JOSEPH AND ANNA GARCIA, APPLICANTS**

**ORDER**

**THIS MATTER** came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on September 11, 2012, on the Application of Joseph and Anna Garcia (hereinafter referred to as "the Applicants") for a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow a Small Lot Family Transfer Land Division of 2.516 acres into two lots. The BCC, having reviewed the Application and supplemental materials, staff reports and conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicants request a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow a Small Lot Family Transfer Land Division of 2.516 acres into two lots.
2. The property is located at 3 Avenida Pita, within Section 10, Township 15 North, Range 10 East ("Property").
3. Article III, Section 10 provides that minimum lot size in this area is 80 acres per dwelling unit. Lot size can be reduced to 20 acres per dwelling unit with signed and

recorded water restrictions. Lot size can be further reduced to 10 acres via Small Lot Family Transfer.

4. There is currently one dwelling unit on the property.
5. The subject lot was created on February 11, 1985, under development permit No. 85-96.
6. On July 19, 2012, the CDRC recommended approval of the Application.
7. In support of the Application, the Applicants stated that they are in agreement with staff's conditions.
8. The Applicants desired to have their son live on the property.
9. Absent a lot split the Applicants would not be able to place a mortgage on the property to finance a second dwelling on the property.
10. The following conditions of approval were recommended:
  - A. Water use shall be restricted to 0.25 acre feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1, of each year. Water restrictions shall be recorded in the County Clerk's Office.
  - B. The Applicant must obtain a development permit from the Building and Development Services Department for the additional dwelling unit.
  - C. Further division of either tract is prohibited; this shall be noted on the Plat. Only one dwelling unit shall be permitted on each lot.

D. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review.

E. All litter, debris and junk vehicles shall be removed from the property prior to Plat recordation.

F. No sale of lots for a term of a five year period.

11. Lisa Toya and Eddie Rivera spoke in favor of the Application. No members of the public spoke in opposition to the Application.

12. The granting of the requested variance is a minimal easing of the Code requirements to address an obstacle to division of a legal lot of record.

13. Granting this variance request will not nullify the purpose of the Code.

**WHEREFORE** the Board of County Commissioners of Santa Fe County hereby approves the request for a variance of Article III, Section 10 (Lot Size Requirements) of the Code to allow a Small Lot Family Transfer Land Division of 2.516 acres into two lots subject to the conditions as stated in Paragraph 10.

**IT IS SO ORDERED**

This Order was approved by the Board of County Commissioners of Santa Fe County on this \_\_\_ day of November, 2012.

By: \_\_\_\_\_  
Liz Stefanics, Chair

Attest: \_\_\_\_\_  
Valerie Espinoza, County Clerk

Approved as to form:  \_\_\_\_\_  
Stephen C. Ross, County Attorney



CHAIR STEFANICS: Yes.

COMMISSIONER ANAYA: Is the applicant – is there any alternative where it's not a dwelling unit? They may have to tear down part of the shop or part of the barn, but this could be used as a shop if it's not a dwelling unit.

MR. DALTON: Madam Chair, Commissioner Anaya, this structure was originally a mobile home, and the way we look at is once a mobile home, always a mobile home.

COMMISSIONER ANAYA: I don't have any more questions, Madam Chair.

CHAIR STEFANICS: Thank you. We have a motion and a second with conditions. Any further discussion or questions?

COMMISSIONER VIGIL: I just needed clarification if the seconder was in agreement with the –

COMMISSIONER MAYFIELD: Yes.

COMMISSIONER VIGIL: Okay.

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

- XVII. A. 6. CDRC Case # V 12-5130 Joseph & Anna Garcia Variance.  
Joseph & Anna Garcia, Applicant's, Request a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow a Small Lot Family Transfer Land Division of 2.5 Acres Into Two Lots. The Property is Located at 3 Avenida Pita, within Section 10, Township 15 North, Range 10 East, Commission District 4 [Exhibit 10: Fire Marshal's Report]**

MR. DALTON: Thank you, Madam Chair. The subject lot was created on February 11, 1985 under development permit #85-96. There is currently one dwelling unit on the property. The Applicants state they are requesting a variance for many reasons. Their son and daughter-in-law were born and raised in Santa Fe where they received their education. They are both active members of the working community and their son is an active member in the Army National Guard. The Applicants would like to be able to share something that was worked hard for with their son, daughter-in-law and grandchildren. The Applicants further state their son and daughter-in-law pay high rent and live in an unsafe neighborhood and would like his daughter-in-law to live close, so they are looked after while his son is deployed and away on trainings. Furthermore, the Applicants state that they can help with childcare and later on in life will need assistance of their own.

On June 21, 2012 the CDRC met and acted on this case. The decision of the CDRC was tied at three votes to approve and three votes to deny. Under Commission rules of order the application was automatically tabled until the next meeting. Minutes are attached at Exhibit 1.

On July 19, 2012 the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the applicants' request by a 4-3 vote. Minutes attached as Exhibit 2.

DRAFT

Recommendation: Staff recommends denial of a variance from Article III, Section 10 of the Land Development Code. If the decision of the CDRC is to recommend approval of the Applicant's request, staff recommends imposition of the following conditions. Madam Chair, condition number two really doesn't apply to this case but I do have a condition that should be applied to this case. And that condition should read: [see condition two]

1. Water use shall be restricted to 0.25 acre-feet per year per home. A water meter shall be installed for each residence. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office (As per Article III, § 10.2.2 and Ordinance No. 2002-13).
2. The Applicant must obtain a development permit from the Building and Development Services Department for the additional dwelling unit. (As per Article II, § 2).
3. Further division of either tract is prohibited; this shall be noted on the Plat. Only one dwelling unit shall be permitted on each lot (As per Article III, § 10).
4. The Applicant shall comply with all Fire Prevention Division requirements at time of Plat review (As per 1997 Fire Code and NFPA Life Safety Code).
5. All litter, debris and junk vehicles shall be removed from the property prior to Plat recordation (As per Ordinance No. 1993-6 and 1993-11).

CHAIR STEFANICS: Thank you. Is the applicant here? Would you come forward please? Great. Would you be sworn in please?

[Duly sworn, Anna Garcia testified as follows:]

ANNA GARCIA. My name is Anna Garcia and I reside at 3 Avenida Pita.

CHAIR STEFANICS: Thank you. What would you like to add?

MS. GARCIA: I don't really have anything to add. I just would like for you to please accept our request and we are willing to comply with any of the recommendations.

CHAIR STEFANICS: Great. Do either of the family members have anything you'd like to say?

[Previously sworn, Joseph Garcia testified as follows:]

JOSEPH GARCIA: My name is Joseph Garcia, 1299 Zepol Road, Santa Fe, New Mexico, 87504, Space #140. First and foremost I'd like to thank you all for your time and consideration into this variance. As a resident of Santa Fe, New Mexico, I was born and raised here. The property in question is where I was raised. As an active member of this community I pray that you do pass these variances. A lot of times as a military member we're called out to provide certain things for the community and for our country and there's been several times at our house where we currently reside has been broken into, vandalized.

I for one am concerned for the safety of my wife and my children during these times and approving this variance would allow my wife and children to be closer to my family and better taken care of. We are aware of the stipulations that are set in place by the Board of County Commissioners and Land Use and we're more than willing to abide by all

stipulations set forth by the County to ensure compliance with all rules and regulations involved. And again, I just thank you for your time and consideration in this matter.

CHAIR STEFANICS: Thank you very much. Sir, do you want to say anything? No? Okay. Yes, questions for the applicant. Yes, Commissioner Vigil and then Commissioner Holian.

COMMISSIONER VIGIL: I just wanted to ask the applicants if they wouldn't be willing to comply with the condition that this property wouldn't be sold within a five-year period.

MR. GARCIA: Absolutely.

COMMISSIONER VIGIL: I'd like that to be part of the conditions if we go forward with an approval.

MS. GARCIA: Yes, we're willing.

COMMISSIONER VIGIL: Thank you, Ms. Garcia.

CHAIR STEFANICS: Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. Have you considered just putting a second home onto the property and leaving it unsplit?

MR. GARCIA: We have considered it. Unfortunately, at the time financial – I know financial burdens isn't considered and taking into consideration this type of thing, but financial burdens on our part would not enable us to have the funding to be able to build or put an additional home on the existing land. So therefore by subdividing the land it enables us to outright own our own property to be able to make the improvements such as brand new septic tank according to rules and laws and regulations and codes and so on and so forth and that would enable us to do that. Otherwise, we're in the same boat. We have land without the ability to live on it.

COMMISSIONER HOLIAN: So what you're saying is is that you couldn't borrow the money for your improvements if you didn't own the land. Correct?

MR. GARCIA: Exactly.

COMMISSIONER HOLIAN: Okay. Thank you. And then I have a question for Wayne. I noticed that if this were split into two the lot sizes would be way, way less than what the minimum lot size allowed in that area is, which is I believe ten acres, even with a family lot split. I'm wondering if there are other lots in that area that are this size.

MR. DALTON: Madam Chair, Commissioner Holian, if you look at Exhibit 8, lots within this subdivision that was approved back in 1984, most of those lots raise from five acres to 2.5 acres and if you look on the other side of Old Las Vegas Highway there are a few lots in there that are actually an acre and a quarter, which would be the same size that the applicant is proposing. So there are lots in the area that are this size that the applicant has proposed.

COMMISSIONER HOLIAN: Okay. Thank you, Wayne, and I think Ms. Garcia wanted to comment on that.

CHAIR STEFANICS: Okay. Other questions? This is a public hearing. Is there anyone in the audience who is here to speak for or against this particular application? Please come on up. Anybody besides this young woman? Okay. Everybody who's going to speak on this please come on up so you can all be sworn in at once.

[Duly sworn, Lisa Toya testified as follows:]

LISA TOYA: My name is Lisa Toya. I reside at 4 Avenida Pita. I am the

daughter of the applicant. I am in favor of the applicant. My family and I have lived in Santa Fe our entire lives. It would be beneficial for all parties involved. My brother, his wife and his children currently live in a mobile home park that has been proven to be unsafe for the children. The request is a concern for their safety as well as for assistance for our terminally ill parents. My brother and his wife are willing to assist with the upkeep of the property for our parents, the one they reside on as well as for themselves. And they will be close should the need arise.

CHAIR STEFANICS: Thank you very much.

MS. TOYA: Thank you.

CHAIR STEFANICS: Yes, sir.

[Duly sworn, Eddie Rivera testified as follows:]

EDDIE RIVERA: My name is Eddie Rivera. I reside at 2201 Gloriente, Santa Fe, New Mexico, and am asking that you please approve the property transfer. My daughter is the daughter-in-law, and like my son-in-law stated, their home has been broken into several times. Also my grandchildren don't know what it's like to be able to run free and ride their bikes because the amount of traffic, the speed that occurs in the mobile home park they reside in. And if you approve the transfer, the variance, they'll get to enjoy their childhood. So I'm asking you to please approve it. Thank you.

CHAIR STEFANICS: Thank you very much. Is there anyone else in the audience that's here to speak on this case? Thank you. The public hearing is closed. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I would move for approval with the additional condition that Commissioner Vigil brought up relative to no sale of the lots for a term of five years.

COMMISSIONER MAYFIELD: Second, Madam Chair.

CHAIR STEFANICS: Thank you. There's a motion and a second.

Questions, comments? Commissioner Vigil.

COMMISSIONER VIGIL: Madam Chair, we just received the official legal review from the Santa Fe Fire Department [Exhibit 10] I don't know if the applicant has had a chance to see it but I know that part of the conditions of approval were that they comply with the recommendations by the fire department and I'm just wondering if they're still of that position. Were they able to see this, Wayne?

CHAIR STEFANICS: So, Commissioner Vigil, your question is, is the applicant ready to accept these conditions?

COMMISSIONER VIGIL: Yes.

CHAIR STEFANICS: So we need somebody to speak into the record about that.

MS. GARCIA: Yes, we are.

COMMISSIONER VIGIL: Thank you.

CHAIR STEFANICS: Any further questions or comments. There is a motion and a second for approval with the conditions from staff and the fire conditions.

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

**THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

**CASE NO. MP/PDP 09-5300  
UDV TEMPLE, APPLICANT  
JAMES SIEBERT, AGENT**

**REVISED ORDER**

**THIS MATTER** came before the Board of County Commissioners (“the Board”) for lengthy public hearings on June 14, 2011 and July 12, 2011 on the application of the O Centro Espirita Beneficente Uniao do Vegetal in the United States (“the Applicant”), represented by Mr. James Siebert, for approval of a Master Plan and Preliminary Development Plan of a community service facility (“the Application”) pursuant to Ordinance No. 1996-10 (the Santa Fe County Land Development Code), as amended. The Board issued a written order on October 26, 2011, which denied the application. However, the Order’s findings were not supported by competent evidence and there was a substantial risk that the Order was not generally consistent with the Religious Land Use and Institutionalized Persons Act (“RLUIPA”). The Applicant subsequently filed a civil lawsuit in the federal District Court for the District of New Mexico, Cause No. CV-12-105 JB/LFG alleging violations by the Commission of the Applicant’s rights under the First and Fourteenth Amendments to the United States Constitution and under RLUIPA. The Board and the Applicant then agreed to attempt to mediate a settlement agreement. Neighbors and opponents of the application requested to participate in the mediation between the Board and the Applicant. The Board and Applicant agreed that it would be appropriate and desirable for the opponents and neighbors to participate in the mediation and informed the neighbors and opponents that they were welcome to participate. On November 5,

2012, shortly before the mediation was to take place, however, the neighbors and opponents, through their attorney, informed the Board and the Applicant that they chose not to participate in the mediation. On November 8, 2012, the parties to the litigation reached a proposed settlement agreement, subject to consideration and approval by the Board. On November 13, 2012, the Board of County Commissioners considered and approved the proposed settlement agreement (copy attached). The Board will grant approval of the application, as indicated below, predicated upon additional conditions agreed to in the Settlement Agreement, which necessitate certain changes in the final order. The Board of County Commissioners, having reviewed the Settlement Agreement, Order, Application and staff reports and having previously conducted two public hearings where members of the public and persons with an interest in the outcome of the matter had ample opportunity to present evidence and other views concerning this matter, and having agreed to the Settlement Agreement on November 13, 2012, and the additional conditions agreed to therein, **FINDS:** (i) that the Settlement Agreement, and the additional conditions set forth therein, addressed many of the concerns that led to the denial of the application, (ii) that the Board should grant the request for approval of a master plan and preliminary development plan as originally submitted and as modified by the terms of the settlement agreement and the existing and agreed-upon staff recommendations; (iii) that County staff should administratively approve the final development plan; (iv) that the recommendations of staff, staff's experts and the applicant's witnesses and experts, should be and are accepted as competent and consistent with the outcome reflected in this revised order; (iv) the Board's Order of October 26, 2011 should be vacated in its entirety and should have no further force and effect; and (v) this Order shall be substituted for the October 26, 2011, Order.

**IT IS THEREFORE ORDERED** that the application is hereby granted, and the previous Order in this matter, dated October 26, 2011, shall be and hereby is vacated in its entirety, including specifically the factual findings and conclusions reached, and shall have no further force and effect and shall have no value as precedent for future applications of the Applicant or any other applicant.

**IT IS ALSO ORDERED** that the application in question is approved upon the following conditions:

1. All Staff redlines shall be addressed, and original redlines will be returned with final plans for Master Plan.

2. The Applicant shall comply with all requirements of the New Mexico Environment Department, the State Historic Preservation Division, County Fire Marshal, Public Works and County Utilities Department, which includes the following:

a. Kitchen facilities must be approved by the NMED and appropriate food service permits must be obtained;

b. Automatic fire suppression is required;

c. Site address shall be clearly posted;

d. 28' radius curb returns must be provided;

e. Site triangles (30') must be maintained at both entrances;

f. A Road Construction/Road cut permit must be obtained from the Department of Public Works;

g. The secondary access from Arroyo Hondo road must be paved with 3" of plant mix bituminous pavement;

h. No parking signs shall be placed on Arroyo Hondo Road as required by Public Works;

3. The Master Plan and Preliminary Development Plan, with appropriate signatures, shall be recorded with the County Clerk.

4. It shall be noted on the Master Plan and on the Final Development plan that the nursery will only be utilized during services and events.

5. The Landscape, Lighting and Signing Plan indicates placement of flag poles near the temple entrance. Flag poles may not exceed 24' in height, and the banners placed on these flagpoles may be considered signage and must comply with the square footage restrictions for signage and placement of signage outlined in Article VIII of the Code. A separate sign permit will be required for all signage on this parcel.

6. The proposed trash enclosure must be fully screened with a 6' opaque enclosure and gated. The location as proposed does not provide adequate access for trash removal vehicles and the enclosure must be relocated on the Final Development Plan.

7. Additional comments made by staff or other agencies, if any, must be addressed at the time of Final Development Plan submittal.

**IT IS ALSO ORDERED** the following additional conditions set forth in the Settlement Agreement shall also apply:

1. All services shall be conducted inside the proposed temple. The applicant shall be permitted on occasion to conduct services in the proposed courtyard provided the proposed courtyard is walled in.

2. Services and number of attendees at the property shall be limited to those described in the attached Exhibit 1. In addition to routine, local church business meetings, the applicant shall be permitted no more than three (3) administrative meetings a year which shall precede one of the regular services described in Exhibit 1. Attendance at these administrative meetings shall be limited to no more than 81 persons. Attendees and services shall not be permitted to exceed these numbers unless applicant applies for and receives County approval.

3. All conditions of approval previously recommended by County land use staff to the Board of County Commissioners that are not inconsistent with this document shall apply.

4. The applicant shall be issued a final development permit administratively upon request.

5. Water shall be supplied to the property by the County, the County will provide a fire hydrant at the property, and the applicant shall become a County water customer.

6. Liquid waste shall be managed by a package sewage treatment plant on the premises provided by the County whose design is to be approved by the applicant, with approval not being unreasonably withheld. Maintenance and operation of the plant shall be the responsibility of the applicant.

7. A yurt or greenhouse shall not be erected on the property.



8. No additional structures will be erected on the property for five (5) years. At the expiration of five years, the applicant is authorized to erect a caretaker's residence on the property as described in the original application for master plan and preliminary development plan.

9. Applicant shall construct a wall to shield the parking lot. Location, type and height of the wall shall be subject to approval of the County, with approval not unreasonably withheld. Approval shall be made administratively through County land use staff.

10. Ingress and egress to the property shall be as described in the master plan and preliminary development plan submitted to Santa Fe County, except that if the applicant locks the premises during services, a means of egress is provided and a Knox lock is provided so that emergency services have access to the property.

**IT IS SO ORDERED:**

This Order is approved by the Board of County Commissioners of Santa Fe County on this \_\_\_\_ day of November 2012.


**THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

By \_\_\_\_\_  
Liz Stefanics, Chair

**ATTEST:**

\_\_\_\_\_  
Valerie Espinoza, County Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Stephen C. Ross, County Attorney

## Settlement Agreement

The parties have mediated this matter on November 8, 2012 before mediator Leslie C. Smith, retired federal magistrate judge. As a result of this mediation, the parties agree to resolve OCentro Espirita Beneficente Uniao Do Vegetal, U.S.A., Nucleo Santa Fe and the Aurora Foundation (PLAINTIFFS), v. Board of County Commissioners of Santa Fe County, United States District Court for the District of New Mexico, Case No. 12-CV-00105 JB/LFG, as follows:

1. PLAINTIFFS shall be permitted to build a temple at 5 Brass Horse Road, Santa Fe NM as described in their master plan and preliminary development plan submitted to the County of Santa Fe Land Use Department and presented to the Board of County Commissioners, subject to the following conditions:
  - a. All services shall be conducted inside the proposed temple. PLAINTIFFS shall be permitted on occasion to conduct services in the proposed courtyard provided the proposed courtyard is walled in.
  - b. Services and number of attendees at the property shall be limited to those described in attached Exhibit 1. In addition to routine, local church business meetings, Plaintiffs shall be permitted no more than 3 administrative meetings a year which shall precede one of the regular services described in Exhibit 1. Attendance at these administrative meetings shall be limited to no more than 81 persons.
  - c. All conditions of approval previously recommended by County land use staff to the Board of County Commissioners that are not inconsistent with this document shall apply.
  - d. This agreement shall be subject to approval by the Board of County Commissioners prior to becoming effective, and shall provide appropriate notice of the meeting during which this agreement is considered. If approved by the Board of County Commissioners, Plaintiffs' Master Plan and Preliminary Development Plan shall be approved, and UDV shall be issued a final development permit administratively upon request.
  - e. The County shall bring county water to the property line of the proposed temple and PLAINTIFFS shall hook up to county water and will not use the well on the property. County will install a fire hydrant for fire protection for the proposed temple. PLAINTIFFS shall become a County water customer.
  - f. The County shall install a package sewage treatment plant on the premises with the design to be approved by UDV with approval not being unreasonably withheld. Maintenance of the plant shall be conducted by a licensed contractor as selected and paid for by PLAINTIFFS.
  - g. PLAINTIFFS agree it will not erect a yurt or greenhouse on the property.
  - h. PLAINTIFFS agree that for the next 5 years it will not erect any additional structures on the premises. At the expiration of 5 years PLAINTIFFS shall be authorized to erect a caretaker's residence on the property as described in their original master plan and preliminary development plan submitted to Santa Fe County.

- i. PLAINTIFFS shall construct a wall to shield the parking area. Location, type and height of the wall shall be subject to the approval of the County, with approval not to be reasonably withheld. Approval to be made administratively through County Land Use staff.
- j. Ingress and egress to the property shall be as described in the master plan and preliminary development plan submitted to Santa Fe County, except that PLAINTIFFS agrees, if it locks the premises during services that a means of egress is provided and that a Knox lock is provided so emergency services have access to the property.
- k. An order rescinding the October 26, 2011, order shall be adopted by the Board of County of Commissioners; the form and content of the order is attached hereto as Exhibit 2.
- l. The Board of County Commissioners shall pay Plaintiffs' attorneys fees in an amount to be agreed to by the parties. Failing an agreement on the amount of fees to be paid, the parties agree to submit the issue of the amount of fees due to the plaintiffs to the court for determination Defendant does not question plaintiffs' prevailing party status.
- m. Upon approval of the settlement agreement, plaintiffs shall relinquish their claims for damages and dismiss with prejudice the above captioned lawsuit and shall sign a standard release of any and all claims.

Robert W. Becker  
 Robert Becker, Attorney for Defendants

Stephen C. Ross  
 Stephen C. Ross, County Attorney

Elizabeth Stefaniacs  
 ELIZABETH STEFANIACS, SF COUNTY CHAIR

Katherine Miller  
 Katherine Miller, SF County Manager

Pat Jackson  
 PAT JACKSON  
 PRESIDENT, NUCLEO SANTA FE

Jeffrey Bronfman  
 JEFFREY BRONFMAN - Vice President UOU-USA  
 President Aurora Foundation

Ms. Lawyer  
 Ms. Lawyer

**APPROVED AND RATIFIED:**

**THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

By *Liz Stefaniacs*  
Liz Stefaniacs, Chair

ATTEST:  
*Valerie Espinoza*  
Valerie Espinoza, County Clerk

APPROVED AS TO FORM:  
*Stephen C. Ross*  
Stephen C. Ross, County Attorney

DATE:  
11-13-2012



**HOURS OF RELIGIOUS SERVICES & ACTIVITIES**

Type of Service	Projected Services/year	Projected Max. Members/Event	Service Hours (4 hrs typical duration)	Day
Type 1	22	100	8pm	1 <sup>st</sup> & 3 <sup>rd</sup> Saturdays each month
Type 2	8	100	8pm	About 8 per year
Type 3	6	35	1pm - 10 pm	Any day of the year
Type 4	6	16	1pm - 10 pm	Any day of the year
Type 5	6	9	10am-10 pm	Any day of the year
Type 6	3	20	1pm - 8 pm	Weekend afternoons
Type 7	2	60	1pm - 8pm	Any day of the year
Type 8	5	45	Noon	Sundays no more than once every 60 days
Workdays	8	25	Daylight hours	One Saturday each month

*Exhibit 1*

~~DRAFT~~

THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY

CASE NO. MP/PDP 09-5300  
UDV TEMPLE, APPLICANT  
JAMES SIEBERT, AGENT

*STAFFS  
PREVIOUS CONDITIONS TO BE  
ADDED*

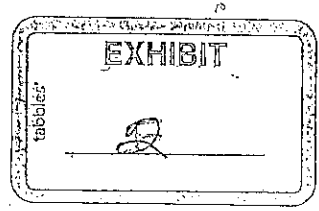
*W. J. [Signature]*

*the [Signature]*

ORDER

THIS MATTER, having come before the Board of County Commissioners ("Board") for public hearings on June 14, 2011 and July 12, 2011 on the application of the Centro Espirita Beneficente Uniao do Vegetal in the United States ("the Applicant"), represented by Mr. James Siebert, for approval of a Master Plan and Preliminary Development Plan of a community service facility ("the Application") pursuant to Ordinance No. 1996-10 (the Santa Fe County Land Development Code), as amended, <sup>The Commission issued</sup> and a written order having been issued on October 26, 2011, which denied the application, <sup>The order was incorrect, not supportable by competent evidence,</sup> and the Applicant having subsequently filed a civil lawsuit <sup>for unsubstantiated improper</sup> in the federal District Court for the District of New Mexico, Cause No. CV-12-105 JB/LFG, which was resolved by settlement in the Settlement Agreement and Release of Claims ("the Settlement Agreement"), on [date], which Settlement Agreement provided for an alternative location for the subject community service facility and renders the application and order in the present case moot,

And the Board of County Commissioners, having reviewed the Settlement Agreement, Order, Application and staff reports and having previously conducted two public hearings, FINDS that the Settlement Agreement and Release of Claims renders the proceedings in this



matter moot, and that the Board's Order should be vacated in its entirety and to have no force and effect.

**IT IS THEREFORE ORDERED** that the Order in this matter, dated October 26, 2011, shall be and hereby is vacated in its entirety, including specifically the factual findings and conclusions reached, and shall have no further force and effect and shall have no value as precedent for future applications of the Applicant or any other applicant ~~through application of the doctrine of collateral estoppel or otherwise.~~

**IT IS SO ORDERED:**

This Order is approved by the Board of County Commissioners of Santa Fe County on this \_\_\_\_ day of \_\_\_\_\_, 2011.

**THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**

By \_\_\_\_\_  
Liz Stefanics, Chair

**ATTEST:**

\_\_\_\_\_  
Valerie Espinoza, County Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Stephen C. Ross, County Attorney