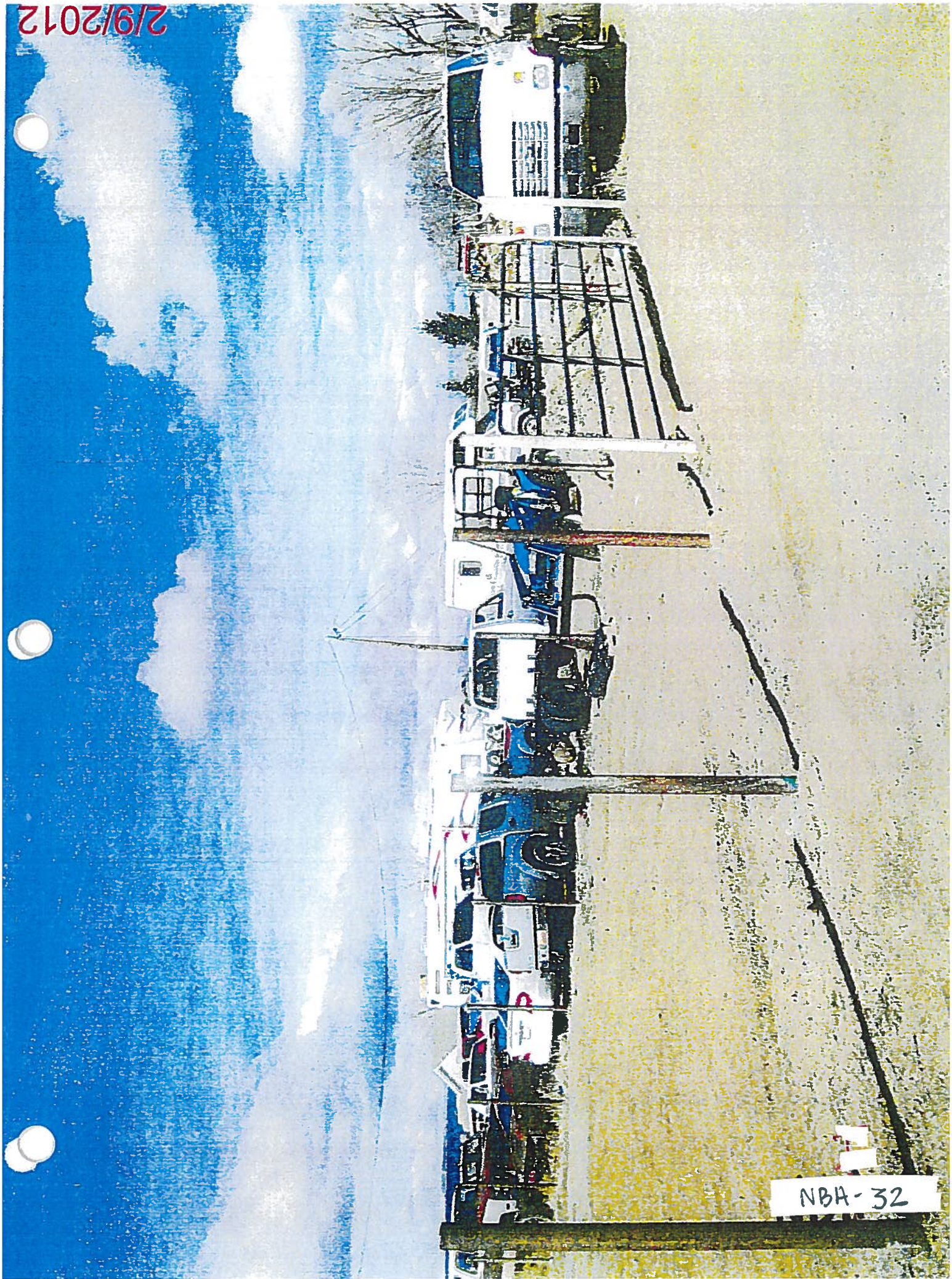


NBA-30



2/9/2012

NBA-31



2/9/2012

NBA-32



2/9/2012

NBA-33



Legend
 — ROADS
 — DRIVEWAYS

tabbles
EXHIBIT
4

1:1,200
 1 inch represents 100 feet
 90 45 0 90 Feet



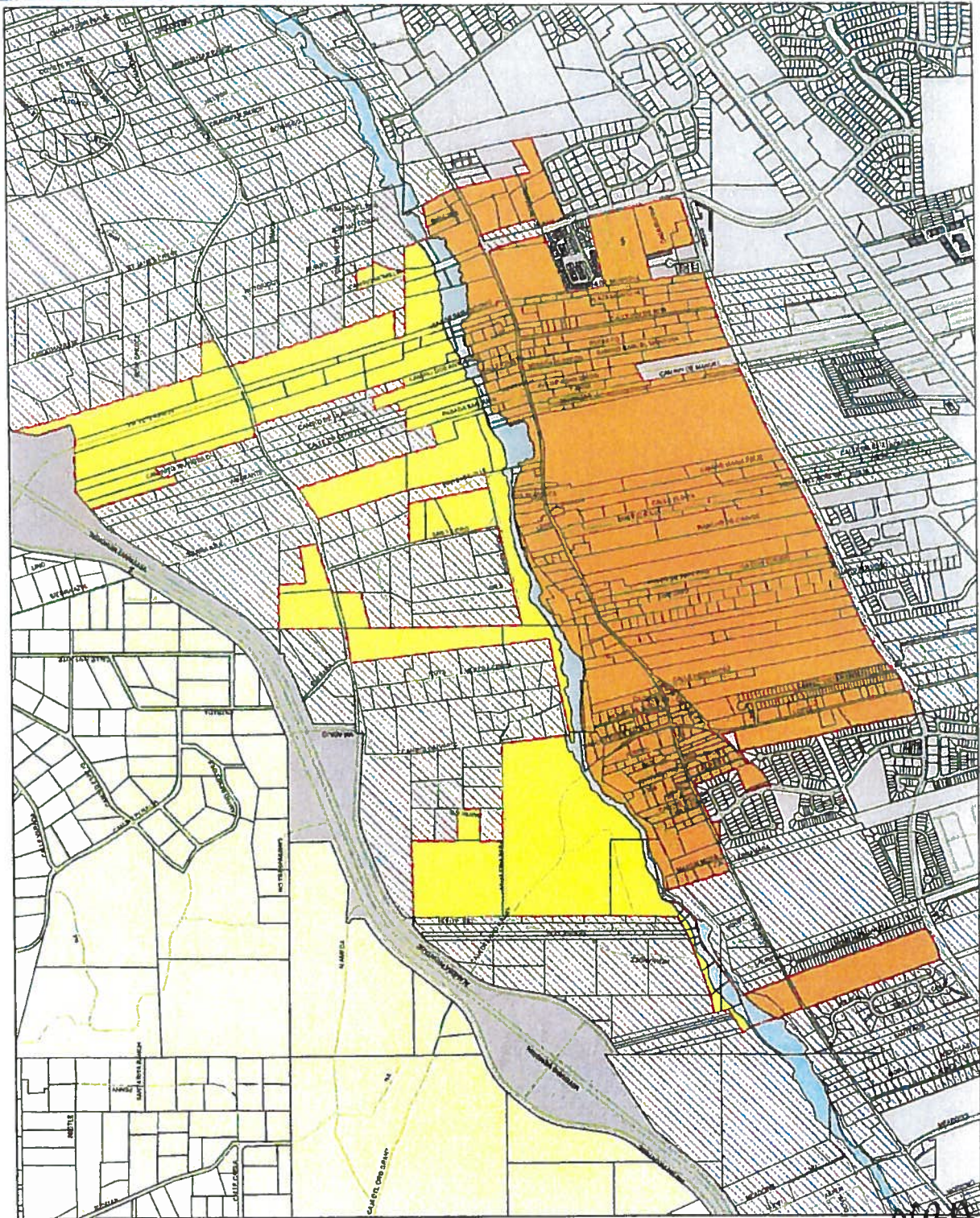
2008 Orthophotography
 2 FOOT CONTOURS

This information is for reference only.
 Santa Fe County assumes no liability for
 errors associated with the use of these data.
 User are solely responsible for
 confirming data accuracy.



FEBRUARY 7, 2013
 NGA-34

Attachment A: Village of Agua Fria Zoning District Ordinance 2007-2



Legend

- Agua Fria Low-Density Urban Zone
- Agua Fria Traditional Community Zoning District
- Village of Agua Fria Traditional Historic Community Boundary Ordinance 2006-12
- Parcels
- Tres Arroyos Zoning District Ordinance 2006-10
- City of Santa Fe Boundary (2006) Extraterritorial Zoning Area Boundary 2-Mile
- NM 599 RW
- Roads
- Santa Fe River 100 Year Flood Zone



1:13,000
1 inch equals 1,083 feet

This information is for reference only. Santa Fe County assumes no liability for errors associated with the use of these data. Users are solely responsible for confirming data accuracy.



March 13, 2007

4.4 Design Standards and Review Criteria

In addition to the other requirements of the Code, the following standards and criteria will be applied in the review process:

4.4.1 Submittals

- a. To zone or re-zone any parcel for a commercial or industrial non-residential district a master plan shall be submitted. Submittals and procedures for master plans are set forth in Article V, Section 5.2.
- b. A development plan shall be submitted for individual uses to be permitted within the district, as follows:
 - 1) Vicinity Map: A vicinity map drawn at a scale of not more than one inch equals two thousand feet (1"=2000') showing contours at twenty foot (20') intervals showing the relationship of the lot, tract or parcel to its general surroundings, and the location of all existing drainage channels, water courses and water bodies within one mile of the development site.
 - 2) Existing Site Data: A description of existing conditions on or adjacent to the lot, tract or parcel, including proof that the parcel is a legal lot of record. Maps shall be at a scale of one inch (1") to one hundred feet (100') or larger and shall include the following:
 - (a) Boundary lines, bearings and distances: The error or closure shall be of a third order survey, and no discrepancy between computed and measured distances shall exceed one (1) part in one thousand two hundred eighty (1,280) parts.
 - (b) Easements: Location, width and purposes.
 - (c) Streets on and immediately adjacent to the tract, name and right-of-way width.
 - (d) Utilities on and immediately adjacent to the tract.
 - (e) Owners of record or unplatted land and existing subdivision plats by name and recordation, shall be shown for property within one thousand feet (1,000') of that tract.
 - (f) Title and certificates: Present tract designations according to official records in the County Clerk's Office, title under which the proposed development is to be recorded with name and address of owner, notation stating acreage, scale, true and magnetic north arrow, U.S.G.S. datum and benchmarks, if any, certification of the engineer or land surveyor licensed in accordance with the laws of the State of New Mexico who prepared the plat.
 - 3) Site Plan
 - (a) The site plan consisting of a map and other drawings or documents drawn to a scale of one inch (1") to one hundred feet (100'), or larger, shall show the following:
 - (1) proposed arrangement of buildings;
 - (2) proposed off-street parking and loading facilities;
 - (3) proposed access to the site and internal vehicular circulation;
 - (4) existing and proposed landscaping;
 - (5) proposed location and type of fences, walls, and signs;
 - (6) drainage and grading plan indicating existing and proposed contours; soils and flood plain areas;
 - (7) a lighting plan;



- (8) proposed architectural treatment;
 - (9) The Buildable Area and the No Build Area(s) on each lot shall be clearly indicated by shading, pattern or comparable graphic method (see Article VII, Section 3.4.1 for Buildable Area Performance Standards.)
 - (b) The site plan shall respond to Section 4.4.3 Site Planning Standards for driveway access, building placement, parking lot location and terrain management.
- 4) Development Plan Report
The development plan report shall include all submittals pursuant to this Article III, Section 4 of the Code.
- 5) Traffic Generation Report
- a) The amount of traffic generated by the development shall not at any time impede traffic flow, or cause public roads to operate at over capacity.
 - b) If a fair and substantial showing is made that the development will increase the burden on inadequate public roads, utilities or other services, the use may be denied, or the developer may be required to undertake the full cost of improvements to the public road or other services in order to meet the test of adequacy.
 - c) A traffic report shall be prepared, signed and sealed by a registered New Mexico professional engineer, or other qualified professional as determined by the Code Administrator. Report contents shall be based upon existing traffic conditions in relation to existing road capacity and level-of-service (LOS); a projection of traffic to be generated by the development; and recommendations for mitigating any negative effects to existing road capacity which may occur as a result of new development. Where applicable, the International Traffic Engineers (ITE) Trip Generation Report 1987, 4th Ed. shall be used as a reference in calculating traffic projections. Copies of the ITE Trip Generation Report are available in the Land Use Administrators Office.

History. 1980 Comp. 1980-6. Section 4.4.1 Submittals was amended by County Ordinance 1990-11, to clarify and make additions to the submittals required of the applicant for non-residential use zoning.

4.4.2 Environmental Performance Standards

The proposed development shall utilize standard techniques available in order to minimize noise, vibration, smoke and other particulate matter, odorous matter, toxic or noxious matter; radiation hazards; fire and explosive hazards, or electromagnetic interference. The Code Administrator may refer an application to the New Mexico Environment Department for comment concerning the performance standards. If it is determined that the development will create any dangerous, injurious, noxious or otherwise objectionable condition, noise or vibration; smoke, dust, odor, or other form of air pollution, electrical or other disturbance, glare or heat, in a manner which causes a significant adverse impact to the adjacent areas, a plan shall be submitted which states how such conditions will be mitigated.

History. 1980 Comp. 1980-6. Section 4.4.2 was amended by County Ordinance 1990-11. This Section was previously 4.4.3.

4.4.3 Site Planning Standards

a. Driveway Access

- 1) All uses proposed for zoning shall share points of ingress and egress to the development site, unless it can be demonstrated that additional or separate access is required.
- 2) Spacing between points of ingress and egress shall be determined by the posted design speed and intended function of the road creating access to the development site, as follows:

<u>MPH</u>	<u>FEET</u>
25-30	200
30-35	270
35-40	315
40-45	375
45+ *	400+

* For driveway spacing at speeds greater than forty-five miles per hour (45 mph) consult Table 6, Speed Change - Lane Length Requirements, for Driveway Spacing; New Mexico State Highway and Transportation Department. Regulations for Driveways and Median Openings on Non-Access Controlled Highways.

- 3) Driveway profiles shall be submitted to assure the access is constructed to accommodate projected traffic for the uses and requirements of the Uniform Fire Code; in no case shall driveway grades exceed fifteen percent (15%).
- 4) Where additional access points are required, such points shall be located no less than three hundred feet (300') apart. Provisions for circulation between adjacent parcels shall also be provided through coordinated or joint parking systems, or other methods, as specified in the master plan.
- 5) No driveway access may be located closer than one hundred feet (100') from an intersection.
- 6) No driveway may be located closer than fifty feet (50) from the transition point of a turning lane at intersection locations.
- 7) Driveway profiles, design elements, corner clearance, and performance standards for acceleration or deceleration lanes shall conform to the New Mexico State Highway and Transportation Department's Regulations for Driveways, and Median Openings on Non-Access Controlled Highways.
- 8) Driveway design and placement must be in harmony with internal circulation and parking design such that the entrance can absorb the maximum rate of inbound traffic during a normal weekday peak traffic period as determined by a competent traffic survey.
- 9) Uses which generate more than one hundred (100) trips per day shall be required to submit an on-site circulation plan for approval and may be required to contribute to off-site improvements to mitigate the traffic hazards they create, such as, but not limited to traffic signals and acceleration or deceleration lanes.

b. Building Placement

Buildings shall be placed or oriented on a site to:

- 1) enhance the logical development of the site and its relationship to the scale and design of adjacent development;
- 2) adapt to natural topography;

- 3) create a buffer or screen for storage or parking areas; and
 - 4) take advantage of solar gain in winter months. See also the setback requirements set forth in Section 4, Design Standards.
- c. Parking Lot Location.
Parking lots shall be placed or oriented on a site:
- 1) to the rear or side of buildings (or both); and
 - 2) to encourage pedestrian safety and convenience.
- d. Terrain Management
All development of a lot, tract or parcel shall be done in accordance with Article VII, Section 3 of this Code.

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

4.4.4 Development and Design Standards

- a. Screening
Outdoor storage, parking and loading areas which are visible from public roads or from abutting public lands or residential areas shall be screened. Such screening may be landscaping, walls, fencing, building placement, berms, or any combination thereof. For landscaping plans and standards relating to screening see Sub-section f.
- b. Buffer Zones and Setbacks
- 1) Proposed non-residential districts or uses that adjoin parcels on which dwellings are located within 100 feet of the property line adjacent to the parcel on which the use is to be located shall be set back 100 feet from the property line in major or community center districts and 25 feet in local or small scale districts. The 100' setback area may be used to meet the off-street parking requirement of Section 9 of Article III except that no parking may be provided within twenty five (25) feet of the property line in Major and Community Center Districts and five (5) feet from property lines in Local and Small Scale Districts. In the setback area, existing vegetation shall be preserved and natural topographic features, planting, building placement, walls, fencing, earth berms or landscaping or any combination thereof, shall be used to keep buildings, parking or outdoor storage unobtrusive.
 - 2) Alternatives to the 100 foot setback are specified in Article V, Section 8.1.4 e. 1-5.
 - 3) Side and rear yard setbacks shall apply only to lots at the edge of a non-residential district. Zero lot lines (no setback) for building placement may be allowed, if fire resistive construction between buildings is provided directly adjacent or adjoining on interior property lines.
- c. Maximum Height
Structures shall be limited to a maximum height of thirty six (36) feet from the highest point of the surface of the ground at the perimeter of the structure in Major or Community Center Districts and to twenty four (24) feet in height in Neighborhood or Local Center Districts.
- d. Parking
Compliance with the parking standards set forth in Article III, Section 9, is required.

e. Maximum Lot Coverage

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

f. Landscaping

4.4.4 f. 1) Purpose and Intent

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

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

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

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

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

4.4.4 f. 3) Native Vegetation: Preservation

(a) Intent

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

(b) Limitations on grading and clearing.

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

- (3) Cleared or graded areas which are not built on and cut and fill areas shall be revegetated to the approximate original density and type of vegetation existing prior to disturbance. Areas to be used for recreation or park landscaping or rural agricultural uses shall be excluded from this requirement.
- (4) Any transplantable tree that will be displaced by construction shall be the primary source of new vegetation required for screening, buffering or other landscaping purposes. (See Appendix 3.C, incorporated by reference herein for tree preservation and transplanting guidelines.)
- (5) Native trees, shrubs and landscape shall be retained within any designated landscape areas set aside for buffers; retention of the natural vegetation will reduce the requirement for new planting. Native trees which are to be preserved on a development site shall be protected during construction from such hazards as damage by vehicles and equipment compaction of soils, and spills of contaminants by temporary fences or barricades erected at the perimeter of the critical root zone. Permanent installation of such techniques as retaining walls, terracing and tree wells with drainage shall be used to protect trees in areas where significant grade changes are approved.

4.4.4 f. 4) Landscaping Plan

A landscaping plan is required for all new development and shall be presented for review with either the master plan or the preliminary development plan and shall contain the following information:

- (a) a landscaping map drafted to scale describing the lot(s) or parcel(s), the development site, proposed structures and other development, the designated landscape areas, including revegetation areas; private gardens are not included;
- (b) within the designated landscape areas, including revegetation areas, the plan shall locate and label:
 - (1) existing vegetation which will be retained by type and size;
 - (2) existing vegetation which will be transplanted, or removed by type and size; and
 - (3) location, type, and size of plants to be installed;
- (c) all plant material to be retained or installed shall be located and labeled, footprinted according to the spread of the plants at maturity;
- (d) a list of the type and number of plants to be retained and installed, with common and botanical names, showing the existing size of specific trees and plants by approximate width of canopy, spread and caliper or gallon size at time of planting and the size of the plant material at maturity in height and width;
- (e) methods and details for protecting existing vegetation during construction;
- (f) the location and quantity of all other materials to be used as part of the landscape treatment; planting and installation details as necessary to show conformance with all standards;
- (g) a description of the proposed system of irrigation including the use of on-site storm water collection, drip irrigation, recycled water or other systems;
- (h) methods for protecting required landscaping from damage by automobiles and run off containing salts from paved areas;
- (i) the purpose of each plant material to be used, e.g., for screening, ornament, shade or other purpose;

- (j) a description of proposed structures or other buffering devices, such as walls, fences or earth berms, including location, height, building materials and/or exterior finish treatment which are part of the landscape treatment;
- (k) a water use budget which includes the type of vegetation, the type of irrigation system (drip, flood, or sprinkler), the area in square feet that will be planted in each type of vegetation and the irrigation application requirement in gallons per square foot per year, for each type of vegetation. See Landscape Irrigation Requirements in New Mexico, New Mexico State Engineer's Office.
- (l) an estimate of the cost of installation of the landscape materials; and
- (m) the landscaping plan submitted with the preliminary development plan for an individual use shall be in conformance with the approved master plan for landscaping.
- (n) Landscape areas shall be designated only on the development site within the Buildable Area of the lot and shown on the development plan and where applicable, the plat.

4.4.4 f. 5) Landscaping Design Standards

All landscaping shall meet the following requirements:

- (a) Proposed landscaping plans shall promote water conservation, provide planting materials that are appropriate to the growing conditions of the site, and provide buffers and landscaped areas which are proportionate to the area and height of the proposed development.
- (b) Native vegetation shall be protected pursuant to the standards of Section 4.4.4 f 3.
- (c) Landscaped areas shall be a minimum of ten percent (10%) of the approved development site. Limitations may be placed on the maximum landscaped area in order to meet water conservation requirements.
- (d) Pedestrian, bike or equestrian pathways or trails are allowed within landscape areas on street frontages provided that no plant material is eliminated and the total width of the buffer is maintained;
- (e) Parking, loading and outdoor storage are prohibited within a landscaped area;

4.4.4 f. 6) Xeriscape Principles: Water requirements shall be reduced by:

- (a) Native vegetation or introduced vegetation that is freeze or drought resistant shall be used for new landscaping in an effort to conserve water use once the plants are established. Botanical materials shall be chosen so they fit within the water budget or water use plans for the development. Plant materials, their size at maturity, how they can be used, their water use and other information is listed in Appendix 3.C, and incorporated by reference herein.
- (b) Limiting the amount of lawn grass areas:
 - (1) Lawn or turf areas shall be limited to no more than twenty-five percent (25%) of landscaped areas. Areas dedicated to recreational playfields or to the production of food crops such as vegetable gardens or orchards are not included;
 - (2) Lawn areas shall not be planted in strips eight feet (8') wide or less.
- (c) Xeriscape principles shall be followed in the design, installation and maintenance of landscaping, pursuant to Appendix 3.C, and incorporated by reference herein.

4.4.4 f. 7) Planting Standards:

- (a) A minimum of seventy five percent (75%) of an area designated for landscaping shall be developed with living plant materials including areas seeded with grasses and flowers. See references in Appendix 3.C for information and recommendations on use of water efficient planting.
- (b) Designated landscape areas or buffer zones shall be planted according to a ratio of one tree at a minimum height at maturity of twenty-four feet (24') for each five hundred (500) square feet, and one shrub of a minimum height and spread at maturity of four feet (4') for each sixteen (16) square feet.
 - (1) Where the required buffer is five hundred (500) square feet or less (for small parcels only) a minimum of two (2) trees shall be planted.
 - (2) Larger trees are required for large parking lots and buildings: see Subsections 4.4.4 f 11 and 12.
- (c) Non-vegetative landscape materials may include gravel, rock and bark mulch. Walls, fences and berms are types of non-vegetative landscape structures which may be incorporated into landscape areas pursuant to these standards.

4.4.4 f. 8) Adjustments

Minor adjustments to the landscape standards may be permitted in accordance with this subsection, subject to the approval of the Code Administrator pursuant to a site visit and provided that the modifications shall not be inconsistent with the purposes of this Section.

- (a) Adjustments will be considered for existing heavily vegetated areas or for plant materials with varying characteristics provided that:
 - (1) The ratio of living plant material to inorganic material is maintained at seventy-five percent (75%) living materials to twenty-five percent (25%) inorganic materials; and
 - (2) The living plant material is installed so as to provide a continuous visual screen or may be planted in drifts or clumps with pockets of open areas providing the sense of continuity with the street edge is maintained; and
 - (3) screening of cuts or retaining walls in steep slopes from public rights of way is maintained.
- (b) Additional trees meeting minimum planting standards may be substituted for shrubs in rural locations or where water restrictions are severe, provided that the buffering or screening function is maintained; each additional tree may substitute for fifteen (15) shrubs.
- (c) Adjustments of up to fifty percent (50%) to the width of the Road Frontage landscape area (See Section 4.4.4 f 10) will be considered where a four foot (4') high masonry wall or a six foot (6') high opaque fence or earth berm is constructed.
- (d) Plant materials required for screening of cuts, fills or retaining walls in areas of steep terrain may not be adjusted.
- (e) In other areas, the ratio of living plant materials may be reduced by fifty percent (50%) where the landscape treatment includes walls, fences or berms. Walls or fences should be located in the landscape area to accommodate the installation of the living plant materials.
- (f) Minor design adjustments may be made to the designated landscape areas on the development site to accommodate solar access for solar design as long as the substance of landscape standards for screening and buffering are met.

4.4.4 f. 9) Buffering and Revegetation for Ridgetops and Development Sites with a Natural Slope of fifteen percent (15%) or greater

Any cut slope greater than four feet (4') in height or with a grade of two and one half to one (2.5:1) or steeper, retaining walls and erosion control structures and the facades of any building visible from a public way shall be screened or otherwise landscaped as follows:

- (a) A minimum of fifty percent (50%) of the visible portion of a facade or retaining wall shall be screened; trees shall be planted or retained within fifteen feet (15') of all retaining walls to be screened and in an area no less than twenty-five feet (25') and no more than fifty feet (50') from any facade to be screened;
- (b) Trees shall be planted on the downhill side of road cuts and of fill areas. Cuts and fills may be required to be terraced and planted in order to provide screening and slope stabilization;
- (c) Top soil shall be removed and stockpiled for later use in re-vegetation of the disturbed areas;
- (d) New vegetation (trees and seeded areas) shall approximate existing vegetation in type, density, and natural pattern of occurrence on the lot; density shall be determined by an inventory of existing vegetation within the development site prior to grading;
- (e) Density in landscape and revegetation areas shall approximate the density of vegetation prior to disturbance; in no case shall density in landscape and revegetation areas be less than one (1) tree per one thousand (1000) square feet of designated area;
- (f) New trees shall be spaced at a distance equal to the the average diameter of the spread of the crown of the typical mature specimen of the species planted under similar growing conditions;
- (g) New trees shall be a minimum of six feet (6') in height, which, at maturity, will approximate the height of existing native trees and be as tall as the cut and fill or structure to be screened;
- (h) Seeded areas shall be protected by accepted horticultural practices to assure germination: See Appendix 3.C, incorporated by reference herein.
- (i) Seeding or planting may be delayed for the optimum germination or planting season, provided such delay is conditioned on the development permit and bonding or other financial warranty is secured.
- (j) Designated landscape areas for screening on ridgetops and steep terrain may be included in the minimum 10% development site landscape area required pursuant to Section 4.4.4 f 5.

4.4.4 f. 10) Landscaping for Road Frontage Areas

- (a) The width of landscape areas between the street or road right of way and any developed areas of a parcel shall be as follows:
 - Highways or Arterials - 25 feet
 - Collector or Local - 10 feet
- (b) Upon approval of the governmental agency responsible for the maintenance of the adjoining roadway, any public right-of-way between the front property line and the street may be landscaped and maintained by the property owner retaining native materials or using grass, groundcovers, or low growing shrubs having a maximum mature height exceeding two (2) feet, or be treated with a non-vegetative cover such as bark mulch or gravel. Where appropriate, such areas may be considered as part of the width of landscape areas as set forth in Section 4.4.4 f.10 (a).

- (c) Living plant materials installed in areas designated for landscaping on road frontages shall be planted so as to create the appearance of a continuous edge occasionally punctuated with dissimilar materials.
- (d) In order to avoid a tunneling effect where a development borders on a highway or arterial street or road for more than one thousand (1000) feet, developers or builders shall vary the masonry structures, fences or walls with living plants.

4.4.4 f. 11) Landscaping for Parking Lots

- (a) Except as otherwise provided in this Section f. perimeter landscape screening providing a visual buffer is required in the following circumstances:
 - (1) along the front for parking lots with more than ten (10) parking spaces or four thousand (4,000) square feet, whichever is less; and
 - (2) along the front, side and rear property lines, as applicable, where parking is located within twenty five (25) feet of a property line adjoining residential uses. Standards for landscaping the front of the lot are set forth in Section 4.4.4 f. 10, Standards for side lot landscaping are set forth in Section 4.4.4 f. 13.
- (b) Interior landscaping is required for parking lots with more than forty (40) parking spaces and/or more than twelve thousand (12,000) square feet. Interior landscaping shall cover a minimum area equivalent to one (1) parking space or one hundred sixty (160) square feet for every twenty (20) parking spaces.
 - (1) Interior landscaping shall be designed to shade the parking spaces and provide a visual break to the parking lot surface. Plant material shall consist of a minimum of one (1) deciduous shade tree and three shrubs for every ten (10) parking spaces. The shade trees shall be a minimum of one and one-half inch (1.5") caliper and six (6) feet tall and meet current American Association of Nurserymen standards at the time of planting, and have a thirty foot (30') minimum mature height, with a clear trunk at least five feet (5') above the finished grade. Shrubs shall be five (5) gallon size at the time of planting and shall have a minimum mature height of three (3) feet;
 - (2) Non-vegetative cover including but not limited to gravel or bark is required under trees where other planting is not provided.
 - (3) Interior landscaping planting islands shall have a minimum area of one hundred sixty (160) square feet and a minimum dimension of four (4) feet;
 - (4) Interior landscaping shall be uniformly distributed throughout the parking lot;
 - (5) Pedestrian pathways or sidewalk areas shall be incorporated into the parking area landscape treatment.
- (c) Large parking lots (100 spaces or more and/or 30,000 square feet in area or larger) shall provide interior planting area equal to at least ten percent (10%) of the parking lot area; and
 - (1) Interior landscaping shall be designed to shade the parking spaces and provide a visual break to the parking lot surface. Plant material shall consist of a minimum of one (1) deciduous shade tree and two (2) shrubs for every five (5) parking spaces. Shrubs shall be five (5) gallon size at the time of planting and shall have a minimum mature height of three (3) feet. Shade trees must have a clear trunk at least five feet (5') above

the finished grade to allow vehicular circulation beneath the tree canopy and shall have a minimum height at maturity of forty feet (40'); shade trees shall be a minimum of three inch (3") caliper and six (6) feet tall at the time of planting; all plant and tree sizes must meet current American Association of Nurserymen standards at the time of planting.

- (2) Non-vegetative cover including but not limited to gravel or bark is required under trees where other planting is not provided.
- (3) Larger planting islands connected by pedestrian access ways shall be provided for greater visual relief from paved expanses, to reduce high summer temperatures and to create an environment more conducive for healthy tree growth; tree planting areas must be at least eight feet (8') in any dimension; planting islands parallel to parking spaces must be at least nine feet (9') wide to allow car doors to swing open.
- (4) Tree species chosen should require little maintenance, and be able to tolerate harsh growing conditions such as sun, wind, glare, reflected heat, drought, salt and other chemicals.
- (5) Interior landscaped areas not dedicated to trees or to preservation of existing vegetation shall be landscaped with native grasses, ground cover, shrubs, or other appropriate landscape treatment.
- (6) To calculate parking lot area, all areas within the lot perimeter are counted, including planting islands, curbed areas, sidewalks, parking spaces and all interior driveways and aisles. Landscaped areas outside the parking lot may not be used to meet the interior planting requirement.

4.4.4 f. 12) Landscape Treatments Shall be Scaled

Landscape treatments shall be scaled to screen multi-story commercial, industrial, and large scale residential structures and/or buildings of 30,000 square feet or larger by:

- (a) Use of trees in road frontage areas and residential buffer areas which have a minimum height at maturity of forty feet (40'); shade trees shall be a minimum of three inch (3") caliper and six (6) feet tall at the time of planting; all plant and tree sizes must meet current American Association of Nurserymen standards at the time of planting;
- (b) Use of evergreens and canopy or shade trees should predominate in road frontage areas; ornamental trees and shrubs and smaller native trees may be interspersed in groups which simulate natural tree stands;
- (c) Placement of landscaping materials to screen the bulk of buildings and provide visual relief and protection from high summer temperature for large areas of impervious surface (buildings, paving, courtyards, etc);
- (d) Existing vegetation and native species may be retained on site and counted toward required trees and shrubs in landscape areas, but the plant reduction of Section 4.4.4 f 2. shall not apply to large scale buildings.

4.4.4 f. 13) Buffering Residential Uses from Nonresidential Uses and Roadways

- (a) Commercial, office or industrial developments located at the perimeter of nonresidential districts where there are existing residential uses may be required to provide a landscaped area and structural buffer between any nonresidential use and residential use on the side or rear lot lines. Such buffer shall consist of a six foot (6') masonry wall or fence constructed of opaque materials and a three foot (3') wide planting area. Trees and shrubs

selected for the three foot planting area may be used to create shade or visual amenity. Trailing vines for the wall may also be considered.

- (b) Screening and Buffering for Residential Uses. The requirements for screening residential areas from roadways and nonresidential uses, and for landscaping residential common open space, may include one or more of the following:
- (1) stuccoed poured concrete walls;
 - (2) stuccoed masonry walls of cement block, brick or adobe;
 - (3) earthtone masonry walls;
 - (4) rock or field stone walls;
 - (5) wood fences of materials at least 3/4 inch thick with crossbracing secured with posts on maximum eight (8) foot centers set in concrete or posts treated with preservatives set twenty four (24) inches deep;
 - (6) earth berms with shrubs and vegetative groundcovers;
 - (7) any combination of shrubs and trees which effectively creates a screen:
or
 - (8) a combination of the above. The developer may choose any of the above screening methods at his discretion.
- (c) Density of vegetation shall meet standards of Section 4.4.4 f 7, Planting Standards and 4.4.4 f 8, Adjustments.

4.4.4 f. 14) Installation, Maintenance, Inspection, Enforcement

- (a) Landscaping shall be installed for inspection prior to the issuance of a Certificate of Occupancy or Business License unless appropriate financial warranty has been approved by the Code Administrator. Also see revegetation requirements of Article VII, Section 3, Terrain Management.
- (b) A bond or letter of credit in an amount reasonably required by the Code Administrator shall be submitted if seeding or planting of required landscaping and revegetation must be delayed for optimum results. The applicant may be required to submit a cost estimate by a licensed landscape architect. Such delay shall be specified on the development permit.
- (c) All vegetation installed pursuant to an approved landscaping or terrain management plan which later dies shall be replaced.
- (d) Trees and large shrubs shall be supported after planting in such a way that the plants will not be injured by strong winds.
- (e) Responsibility for the success of landscaping installations belongs entirely to the property owner and may be subject to periodic inspections by the Code Administrator. The property owner shall be responsible for control of plant growth by pruning or trimming so that it will not interfere with the installation, maintenance or repair of any public utility, pedestrian or vehicular access or constitute a traffic hazard.

4.4.4 h. Outdoor Lighting

1) Purpose

Outdoor lighting standards are applicable to all development in the County. Outdoor lighting shall be designed and arranged to enhance the safety of areas designated for pedestrian use during evening hours, to provide security, to conserve energy, to protect the night sky and in particular, to prevent the spillover, nuisance or hazard effects of light and glare on adjacent locations and uses of land.

2) Definitions

- (a) cut-off - the point at which all light rays from the light source or luminaire is completely eliminated at a specific angle above the ground.
- (b) cut-off luminaire - a luminaire with shield, reflectors, reflector panels or other housing which directs and cuts off light rays from direct view.
- (c) footcandle - a unit of illumination produced on a surface, all points which are one (1) foot from a uniform point source of one (1) candle. A comparative measure is the brightness of a full moon which is equal to .01 footcandle.
- (d) glare - the brightness of a light source which causes eye discomfort.
- (e) luminaire - a complete lighting unit consisting of a light source and all necessary mechanical electrical and decorative parts.

3) Submittals

- (a) For all development involving outdoor lighting fixtures a lighting plan shall be submitted for master plan or preliminary development plan or Development Permit review, as applicable, showing the location, mounting height, types of luminaires, accessory equipment such as shades, deflectors or other housing controlling the direction of light on a surface and the beam direction of any luminaire. Descriptions of all illuminating devices shall include, as applicable, manufacturers' drawings showing sections and photometric data showing the angle of cut off of light emissions.
- (b) The plan shall be drawn to scale and shall also include elevations of building facades showing the location of, and shielding devices for, wall mounted luminaires and detailed drawings of the luminaires and accessory equipment to be used.
- (c) Additional submittals that may be required include, but are not limited to, preparation of a visual impact analysis for alternative types of lighting solutions for the project as those would affect and be seen from adjacent properties and public ways, a comparative analysis of performance standards relating mounting height, footcandles, footcandle levels and location for various types of lighting which could be developed for the proposed use and types of shields, deflectors and adjustments on orientation or other buffers which could be implemented to mitigate glare, nuisance or hazardous effects of any night lights.

4) Off-Street Lighting Design Standards

- (a) The use of cut-off type luminaires is required. All light bulbs and light sources shall be shielded so that they are not directly visible from any adjacent lot or public roadway. All outdoor lighting fixtures shall meet requirements for lamp type and shielding set forth in Table 3.1, Outdoor Lighting Requirements, below.
- (b) Spillover of lighting for adjacent properties shall not exceed one half of one (.50) footcandle measured at any point ten feet (10') beyond a property line.
- (c) For residential uses, no luminaire shall be installed higher than the building(s) on the lot. For all other uses and for parking lots for multi-family residential uses, no luminaire shall be installed higher than one and one half (1.5) the height of any structure proposed for development or twenty four feet (24'), whichever is less.
- (d) All light bulbs and light sources shall be recessed into any canopy structure that is designated for pedestrian use, loading or service, unless a suitable alternative is submitted for approval. Decorative lamps housing an

incandescent light source of 160W or less for hanging under portals are exempted.

- (e) In nonresidential districts building facades may be illuminated with ground floodlamps installed close to the structure; wall mounted floodlamps shall be shielded so that the light source is not visible. Spotlights without a shielding device are prohibited. Ground mounted luminaires for building facade illumination are not permitted in residential districts.
- (f) Control of the distribution of illumination for outdoor recreation areas, outdoor storage areas or outdoor display of merchandise is subject to additional submittals.
- (g) Automatic timing devices may be required to turn off lighting installed for display or outdoor sporting events at specified hours. The use of security lights using motion sensors is encouraged, especially for residential applications.
- (h) A range of lighting design solutions for the various aspects of a development shall be considered over a single lighting solution.

5) Street Lighting Design Standards

- (a) It is the intent of these Regulations to require installation of street lights only where necessary to continue the urban streetscape or to provide for pedestrian and motorist safety. It is not the intent to require or encourage installation of street lights in subdivisions with a rural character.
- (b) Street lights are required in the following circumstances:
 - (1) on paved streets and roads where curb, gutter and sidewalk are required;
 - (2) for safety purposes on arterial roads or at intersections of any road with a highway or arterial.
- (c) Standards for street light installations:
 - (1) Lighting shall be provided in accordance with a plan designed using guidelines and standards set forth by the Illuminating Engineers Society (IES) Lighting Handbook, latest revision, and the standards set forth in this section. Recommended lighting levels and uniformity ratios are found in Appendix 3.B of the Code.
 - (2) Plans designed by utility companies shall meet the standards in this section.
 - (3) Low or high pressure sodium lamps or other energy efficient sources shall be used in all installations.
 - (4) Cut-off luminaires shall be used to direct light downward in order to prevent the spillover, nuisance or hazard effects of light and glare on any adjacent locations. Cobra head fixtures shall be equipped with skirting or other design features to shield the light source. See Table 3.1, Outdoor Lighting Requirements.
 - (5) Street lights shall be located and designed to enhance the safety of motorists and pedestrians during evening hours. Location shall be planned to provide a transition from unlit areas to lit areas and continuity and uniformity of lighting. Street lights shall be installed so as to create a transition from dark to illuminated areas and avoid blind spots or dark shadows which are hazardous to drivers.
 - (6) The maximum height of standards (upright supports) shall not exceed twenty-four feet (24'), except on public roads wider than two (2) lanes and arterials where taller standards up to thirty-six feet (36') may be used. This height limit may be varied by the Code Administrator if a site specific study clearly demonstrates that use of a taller standard will

better achieve the purposes of this subsection 4.4.4 h, Outdoor Lighting, and these Street Light Design Standards.

- (7) Street lights in subdivisions shall be equipped with electric meters to allow billing to the developer or owners' association unless other arrangements are agreed to by the Board.
 - (8) All street light conductors shall be installed underground.
 - (d) Safety. Notwithstanding other requirements of this Section, the County Development Review Committee or Board may require installation of street lights whenever needed to protect the safety of motorists and pedestrians due to the particular characteristics or location of the site.
 - (e) Maintenance. Payments for operations, maintenance and energy charges shall be the responsibility of the developer or owners' association. The disclosure statement and owners' association by-laws shall set forth an acceptable method for charging each lot owner for maintenance and operation.
- 6) Non-Conforming Outdoor Lights
- (a) Mercury vapor lamps in use for outdoor lighting on the effective date of this amendment to the Code (April 30, 1996, Ordinance No. 1996-3) shall be removed or replaced with lamp fixtures meeting the standards of this Article III, Section 4 within five (5) years.
 - (b) All other outdoor light fixtures lawfully installed prior to and operable on the effective date of this Code amendment (April 30, 1996, Ordinance No. 1996-3) are exempt from the requirements of this Section. However, whenever there is a change in use or lamp type or any replacement or structural alteration made to such non-conforming outdoor light fixtures, they shall be made to conform to all applicable requirements of this Code.
 - (c) Non-conforming outdoor lights which are found by the Code Administrator or the County Development Review Committee to create a nuisance or hazard and are in violation of this ordinance shall be required to be replaced with lamp types or fixtures which conform to the requirements of this Code.

TABLE 3.1 OUTDOOR LIGHTING REQUIREMENTS

FIXTURE LAMP TYPE	SHIELDING	DETAILED STANDARDS/NOTES
Low pressure sodium	Partial*	Shielding shall permit no more than ten percent (10%) of light rays emitted at angles above the horizontal plane running through the lowest part of the fixture as certified by photometric test report. This is the preferred light source to minimize undesirable light emission into the night sky.
High pressure sodium	Full*	Full shielding shall permit no light rays emitted by the installed fixture at angles above the horizontal plane running through the lowest part of the fixture, as certified by photometric test report.
Metal halide	Full*	To be used for display purposes; the light source shall be filtered by a glass, acrylic or translucent enclosure; may be subject to timing devices or restricted hours of operation.
Fluorescent, quartz, incandescent greater than 160W	Full*	Signs constructed of translucent materials and lit from within do not require shielding. See Art. VIII, Sign Regulations.
Incandescent 160W or less	None	
Any light 50W or less	None	
Halogen	Prohibited except for special uses approved by CDRC	For outdoor display of merchandise or sporting events; may be subject to timing devices or restricted hours of operation.
Mercury vapor, laser	Prohibited	
other sources	As approved by CDRC	May be conditioned as part of development approval or temporary use permit.

See Appendix 3.A for illustration.

SECTION 5 - MINERAL EXPLORATION AND EXTRACTION

5.1 General Provisions

5.1.1 Applicability

- A. Any person who conducts or intends to conduct a mineral exploration or extraction activity or an expanded use of a mining land use within Santa Fe County shall be subject to the provisions of this Code, as applicable, and this Section 5. Mining uses

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

4.8 Common Promotional Plans

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

SECTION 5 - PROCEDURES AND SUBMITTALS

5.1 Pre-application Procedures

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

1. Submittals required by the Code.
2. Type and/or class of the proposed subdivision.
3. Individuals and/or agencies that will be asked to review the required submittals.
4. Required improvements.
5. Conditions under which Master Plans and Development Plans are required as described in Sections 5.2 and 7.
6. A determination will be made as to the appropriate scale and format for plans and plats and as to the appropriateness of applicable submittal requirements.

5.2 Master Plan Procedure

5.2.1 Introduction and Description

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

5.2.2 Master Plan Submittals

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



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

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

- g. Master plan report which includes the following:
- 1) A general description of the project, existing development on the parcel, location, adjacent properties, acreage, lot coverage, access, traffic impacts, terrain management, soils, landscaping, outside lighting, parking, signage, water, liquid waste, solid waste, archaeological sites and fire protection measures;
 - 2) If appropriate, market analysis and economic impact report which address: demand, projected sales and build-out; identifies a trade area; estimates retail sales and potential, and identifies the scale and extent of local competition.
 - 3) Preliminary fiscal impact estimates of net local public costs, including capital outlay and operating expenses, and revenues attributable to the proposed project.
 - 4) Preliminary environmental assessment, which identifies the possible effects of proposed development on natural resources or natural features. This may be combined with Section 5.2.2.c of this Article.
 - 5) A written preliminary traffic report prepared by a licensed traffic engineer or other qualified expert acceptable to the Code Administrator.
 - 6) Description of concepts for restrictive covenants proposed for the development if applicable, outlining the areas and extent of restriction or regulation. Detailed covenants are not required at this time.
 - 7) Schools impact report. A written report which projects the effects the proposed project will have on public schools, and which includes:
 - the proposed number, size, and price of residential units within the project;
 - a description of the project's target market; and
 - where applicable, any special educational needs of the project's school-aged residents.

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

5.2.3 Master Plan Review

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

5.2.4 Master Plan Approval

- a. The approved master plan shall show the area of residential use and general density measured in dwelling units per acre of land, less dedicated or conveyed rights-of-way, and the area and intensity of commercial and industrial use measured in gross square feet of building area or maximum gross floor area ratio. These shall constitute the maximum permitted number of dwelling units and maximum permitted area and intensity of commercial or industrial use.
- b. The County Development Review Committee and Board shall consider the following criteria in making determinations and recommendations for approval or amendment of master plans:
 1. Conformance to County and Extraterritorial Plan;

2. Suitability of the site to accommodate the proposed development;
3. Suitability of the proposed uses and intensity of development at the location;
4. Impact to schools, adjacent lands or the County in general;
5. Viability of proposed phases of the project to function as completed developments in the case that subsequent phases of the project are not approved or constructed;
6. Conformance to applicable law and County ordinances in effect at the time of consideration, including required improvements and community facilities and design and/or construction standards.



5.2.5 Filing of Approved Master Plan

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

5.2.6 Amendments and Future Phase Approvals

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

5.2.7 Expiration of Master Plan

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

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

5.3 Preliminary Plat Procedure

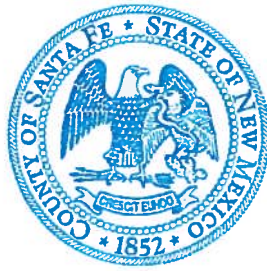
5.3.1 Introduction and Description

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

Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

**CASE NO. CDRC V 12-5200
VARIANCE OF ORDINANCE NO. 2007-2, VILLAGE OF AGUA FRIA ZONING
DISTRICT, SECTION 10.5 VILLAGE OF AGUA FRIA ZONING DISTRICT USE
TABLE
ROBERT AND BERNADETTE ANAYA, APPLICANTS**

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on August 14, 2012 and November 13, 2012, on the Application of Robert and Bernadette Anaya (hereinafter referred to as "the Applicants") for a variance of Ordinance No. 2007-2, Village of Agua Fria Zoning District, Section 10.5, Village of Agua Fria Zoning District Use Table, to allow a Towing Business on 0.70 acres. The BCC, having reviewed the Application and supplemental materials, staff reports and having conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicants request a variance to allow a towing business as a Special Use under Ordinance No. 2007-2, Section 10.5, Village of Agua Fria Zoning District Use Table. A Special Use is an allowed use which is subject to Master Plan and Development Plan approval by the Board of County Commissioners. The use as a towing company falls under the category of "Vehicle service not listed" which is not allowed as a use as outlined in the commercial use category within the Traditional Community Zoning District.



NBA-75

REC'D CLERK RECORDED 02/13/2013

2012 JUN 21 10 58 AM

2. The project is located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East, (Commission District 2).
3. Following a hearing on the Applicants' request for a variance, the County Development Review Committee, at its June 21, 2012 meeting, recommended denial of the variance request.
4. Article II, Section 3 (Variances) states where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance. This Section goes on to state that in no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.
5. Article II, Section 3.2 (Variation or Modification) states in no case shall any variation or modification be more than a minimum easing of the requirements.
6. On August 14, 2012, the Applicants stated that the towing business had been in operation since 1989 at the current location and the property had been in the family for generations. The business started with 2-3 tow trucks on the family property and expanded to 8 tow trucks varying in size. The trucks were being parked across from their residence. As the property was developed, by family members, the trucks were moved to different locations on the family property.

Eventually the trucks were moved to the back portion of the lot currently owned by the Anayas. The ability to operate the business with eight towing vehicles on the site provides a community service by improving response time to emergencies.

7. On August 14, 2012, Merit Bennett and Talia Kosh, on behalf of the Applicants, submitted material and testified in support of the variance.
8. On August 14, 2012, on behalf of the Applicants eight (8) members of the public spoke in favor of the variance.
9. On August 14, 2012, four (4) members of the Public spoke in opposition to the variance.
10. After conducting a public hearing on August 14, 2012 on the request and having heard from the Applicants and members of the public, the Board of County Commissioners tabled the request for the variance so that this issue could go through mediation.
11. Santa Fe County retained Rosemary Romero as a mediator.
12. On November 13, 2012, the BCC reviewed the Application and supplemental materials as well as staff reports including a summary of the mediator's findings.
13. On November 13, 2012, Rosemary Romero, the mediator hired to facilitate the mediation between the Anayas' and the neighbors, testified that due to reluctance, refusal and/or timing, mediation between the parties involved was not possible.

14. On November 13, 2012, the Applicants answered questions posed by the BCC.
15. The granting of the requested variance is a minimal easing of the Code.
16. Granting this variance request will not nullify the purpose of the Code.
17. After conducting a public hearing on the request and having heard from the Applicants, the Board of County Commissioners hereby finds that a variance of Ordinance No. 2007-2, Village of Agua Fria Zoning District, Section 10.5, Village of Agua Fria Zoning District Use Table, to allow a Towing Business on 0.70 acres by recognizing the towing business as a Special Use under the Village of Agua Fria Zoning District Use Table, should be approved conditioned on the Applicants presenting a Master Plan to the BCC, within eight (8) months of the November 13, 2012 hearing (July 9, 2013).

IT IS THEREFORE ORDERED that the Application is approved, and the Applicants are allowed a variance of Ordinance No. 2007-2, Village of Agua Fria Zoning District, Section 10.5, Village of Agua Fria Zoning District Use Table, to allow a Towing Business on 0.70 acres as a Special Use subject to Master Plan Zoning and Development Plan approval, by which approval must be sought, by the Board of County Commissioners, no later than July 9, 2013.

I certify that the Application was approved by the Board of County Commissioners on this 12th day of February, 2013.

The Board of County Commissioners of Santa Fe County

By: Kathleen Hale
BCC Chairperson

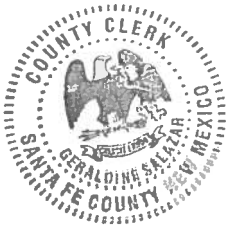
ATTEST:

Geraldine Salazar 2/12/13
Geraldine Salazar, County Clerk



Approved as to form:

Stephen C. Ross
Stephen C. Ross, County Attorney



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC ORDER
PAGES: 54

I Hereby Certify That This Instrument Was Filed for
Record On The 13TH Day Of February, 2013 at 03:13:17 PM
And Was Duly Recorded as Instrument # **1696461**
Of The Records Of Santa Fe County

Deputy Marcella Salazar Witness My Hand And Seal Of Office
Geraldine Salazar
County Clerk, Santa Fe, NM

SFC CLERK RECORDED 02/13/2013

CHAIR STEFANICS: Thank you. Let's go to public comment. This is a public hearing. Is there anyone here to support or oppose this project? Okay, the public hearing is now closed. There was a motion to approve and a second. Discussion, questions from the rest of the Commission?

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Yes.

COMMISSIONER ANAYA: I just wanted to apologize for jumping in there. I read the packet and saw the discussion in CDRC and saw the condition contained therein and those approvals, but I definitely don't want to jump the gun on the public, so thanks for realigning us.

CHAIR STEFANICS: No further discussion?

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

- XV. A. 5. **CDRC Case # V 12-5200 Robert & Bernadette Anaya Variance.**
Robert & Bernadette Anaya, Applicants, Talia Kosh (the Bennett Firm), Agent, Request a Variance of Ordinance No. 2007-2 (Village of Agua Fria Zoning District), Section 10.5 (Village of Agua Fria Zoning District Use Table), to Allow a Towing Business on 0.70 Acres. The Property is Located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East (Commission District 2)
[Exhibits 2 & 3: Letters of Opposition]

MR. LARRAÑAGA: Thank you, Madam Chair. Robert & Bernadette Anaya, applicants, Talia Kosh, agent, request a variance of Ordinance No. 2007-2, Section 10.5 to allow a towing business on 0.70 Acres. The property is located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East, Commission District 2.

On June 21, 2012, the County Development Review Committee met and acted on this case. The decision of the CDRC was to recommend denial of the applicants' request for a variance.

The applicants request a variance to allow a towing business as a special use under Ordinance No. 2007-2, § 10.5, Village of Agua Fria Zoning District Use Table. A special use is an allowed use which is subject to master plan and development plan approval by the Board of County Commissioners. The use as a towing company falls under the category of vehicle service not listed which is not allowed as a use as outlined in the commercial use category within the Traditional Community Zoning District.

The applicants state, The towing business has been in operation since 1989 at the current location and the property has been in the family for generations. The ability to operate the business with eight towing vehicles on the site provides a community service in response time to emergencies.

The applicant's were issued a notice of violation of Ordinance No. 1992-3 on February 9, 2012, for operating a business without a county business registration. It was

SFC CLERK RECORDED 8/13/2012
SFC CLERK RECORDED 10/11/2012

determined by staff that this type of business activity was not allowed within the Agua Fria Traditional Community under Ordinance No. 2007-2.

On July 12, 1989, the applicant made application to allow a small-scale commercial vehicle impound yard on this site as a special exemption of the Extraterritorial Zoning Ordinance. On August 28, 1989 the Extraterritorial Zoning Authority denied the Applicants' request and ordered the Applicants to discontinue all commercial activity on the site.

Article II, Section 3 of the County Code states: Where in the case of proposed development, it can be shown that strict compliance with the requirements of the code would result in extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition or that these conditions would result in inhibiting the achievement of the purposes of the Code, the applicant may submit a written request for a variance. This section goes on to state, In no event shall a variance, modification or waiver be recommended by a Development Review Committee, nor granted by the Board if by doing so the purpose of the Code would be nullified.

Article II, Section 3.2 states: In no case shall any variation or modification be more than a minimum easing of the requirements.

Growth Management staff thoroughly reviewed the application for compliance with pertinent Code requirements and found the application is not in compliance with County criteria for this type of development. Staff has conceptually reviewed the site for zoning requirements as a special use and has determined that further variances may be required for this site to meet master plan/development plan criteria.

Staff recommendation is denial of a variance from Ordinance No. 2007-2, Village of Agua Fria Zoning District, Section 10.5 Village of Agua Fria Zoning District Use Table, to allow a towing business as a special use under the Zoning Use Table. Madam Chair, I stand for any questions.

CHAIR STEFANICS: Are there questions for staff? Commissioner Vigil.

COMMISSIONER VIGIL: Does this comply with the Agua Fria plan? Have you had an opportunity to do that evaluation?

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, no, not to the plan. It doesn't comply with the ordinance.

COMMISSIONER VIGIL: Thank you.

CHAIR STEFANICS: Any other questions for staff before we go to the applicant?

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Mr. Larrañaga, could you talk again – and I'm reading back through some of what you just went through- but relative to the length of time that the company's been in business, and restate when the violation was issued. Has it been in place since 1989? Is that correct? Has the business been in place in that location since 1989?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, that's what the applicant states. The notice of violation was issued February 9, 2012. That's when we had a complaint and an officer went out there and saw that they were running a business without a business license.

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COMMISSIONER ANAYA: Has the County – and I thought you mentioned we had issued some other violations? Have we issued other violations preceding February 12th of this year?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, not to my knowledge. In 1989, that's when the applicant made application to the EZO for a special exemption to have a towing – to have a storage yard and parking yard there and they were denied. One of the letters, exhibit 8, where they were supposed to take the cars out of there as an impound yard.

COMMISSIONER ANAYA: So we provided a notice for them to take the cars out in 1989 for an impound yard? The County did?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, that's correct. It was after a denial from the Extraterritorial Zoning Authority.

COMMISSIONER ANAYA: So then we only followed up on that and 23 years later in February of this year we got another complaint and we followed up with a code enforcement violation. Is that what it was?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, of course I wasn't here in 1989 but they followed up and made them take out all the cars. Some of the aerals, they covered a lot more than what their property is, .70 acres as an impound yard, and then we recently got a complaint back in February, January/February of having the tow trucks. They don't have any more, that I know of – they're not using it as an impound yard as you can see from the newest aerial. It's all filled up with residential houses and different lots on that area.

COMMISSIONER ANAYA: So, Madam Chair, Mr. Larrañaga, did the County ever, prior to February of this year, issue any violations for a tow truck business?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, not to my knowledge.

COMMISSIONER ANAYA: Thank you.

CHAIR STEFANICS: Anything else for staff before we go to the applicant? Okay, is the applicant here? Please come forward and be sworn in. Okay, anyone who is going to speak for the applicant needs to be sworn in, so yourself or others.

MERIT BENNETT: I'm counsel for the applicant.

CHAIR STEFANICS: So is anyone else going to speak for the applicant except yourself?

MR. BENNETT: I think counsel will and also Mr. Anaya will speak.

CHAIR STEFANICS: Okay. So anyone who's not counsel – are rules are different for counsel, correct, Steve? They're bound to the word. Okay, so anybody on this group who's not an attorney would you please stand and be sworn in.
Dddgroup.

CHAIR STEFANICS: Okay, so when you speak, we're going to need you to say your name, your full name and your address so it goes into the record. And why don't you start off with your introduction. I missed your name. I'm sorry.

MR. BENNETT: Merit Bennett.

CHAIR STEFANICS: Oh, Merit Bennett. Okay.

MR. BENNETT: Good evening. Thank you for taking this time to hear the

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case of the applicant. First, in response to Mr. Larrañaga's comments with respect to the decision in 1989 regarding not having an impound lot on this property. That decision was obeyed. This is not about an impound lot. The Anayas were conducting a towing business. They were since 1989 to this date at this location. At that time they did make application to store some of the vehicles that they had towed when they would go to the scene called by the State Police, County Sheriff's Office or City Police, they would oftentimes – drunk drivers, they would have to tow an impounded vehicle and impound it. And yes, they were making application to be able to impound those vehicles on this particular property and their application was denied.

In response to that denial the Anayas then established another offsite impound lot where they have been since 1989 towing the vehicles that are impounded to that lot and they're stored and warehoused at that lot. The impound lot question has nothing to do with this application, just to be clear, because that, as we already know, that petition was denied for those reasons. It presents a whole different issue within a community area than conducting a family business. So this is not that, just to make clear.

The Anayas have owned this property. They're fifth generation family, have owned this particular property on Ben Lane for probably as long as we've been here and they have been landowners. Their family compound has been in the Agua Fria Village for that period of time. In 1989 Mr. Anaya purchased an existing towing company, Padilla's Roadrunner Wrecker Service. This is Anaya's Roadrunner Wrecker Service, purchased an existing towing company that had been grandfathered in in 1981 by the Agua Fria Village Ordinance. So there already was an existing towing company that I believe, according to Mr. Anaya had the same number of vehicles as the Anayas currently park at their location.

This towing company consists of eight vehicles of varying sizes and capabilities and in order to perform a varying degree of tasks for state, local, federal, our City and our County. These services include anything from towing a vehicle from the scene of a crash or a drunk driver is stopped, to recovering vehicles that have gone down ravines or into riverbeds or off the road during ice storms or whatever, and some of these vehicles have very large weight capacities and degrees of difficulties in extracting them from various hazardous positions. And the Anayas are really the only towing company in northern New Mexico that can accommodate all of these needs of state and local authorities.

So they're called constantly, and this is a constant, 24/7 business. They have a contract with the County to provide 24/7, 365 days a year service and that contract I will discuss later. It's in the exhibit book that you've been provided.

As a part of this obligation to keep the community safe and perform activities that are vital to our community they run a 24-hour business and as a result, most of these vehicles are not always on the property at the same time. This is 24/7. On average they have about four vehicles that are parked on this property. There's plenty of room on this property to park the vehicles and I will discuss that with you in a minute. There's adequate ingress and egress. They've been doing this for 23 years, safely. There's never been any safety incident at all in this neighborhood caused by one of their emergency tow truck vehicles in the last 23 years, which I think is really remarkable.

This business is operated by Robert and Berna, his wife. Berna sits in the house and take the dispatch calls. They don't have any signage out on Agua Fria and their son Robert

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has been a part of this business, has grown up there and is now working with his dad helping manage the vehicles and the employees they need to drive the trucks. In addition, some of the employees who drive these trucks take them home with them, so that's another reason you'll never find more than four trucks on this property at any give time, is because some of the employees take them home. But there has to be a core number of trucks on the property to be able to respond and to perform the services.

For example, for the County, in their contract they require 60 minutes onsite response time from the call. Anywhere within the county that require that those vehicles be immediately accessible so they can get in the vehicles and go to the scene of a crash or something. Also, as you can imagine, the emergency responder, the lower the time of response the more likely you're not going to have somebody die on you or sustain a serious or disabling injury. So the service that they perform is really kind of a unique business service to this community that is other than just selling goods in a wholesale-retail or in a retail shop. And so consideration should be given for that.

Robert's been a volunteer firefighter for most of his life. He was the chief of the local Agua Fria volunteer force for five years. The Anayas even housed one of the volunteer fire trucks on their property for a year in 1992. This is a family of service to the community. Over the last 23 years they have received community recognition and awards. You can go to tab 8 in the notebooks, and I will warn you about these notebooks. When you get to tab 5, tab 5 has subtabs one through 32 attached. So you don't want to get lost in 1 through 32 which is attached to tab 5. So when I say go to tab 8 you have to bypass that collection of 1 through 32 that's attached to tab 5, and then go on to tab 8 in this notebook. This is a recent, 2012 nomination by the Chamber of Commerce for an outstanding business award in this tab. This is again major tab 8, following the tabs 1 through 32, and it goes to 6, 7, and then 8. Also in this tab is a recent note from Robert Schilling who you may know is the Chief of the New Mexico State Police. Thanks so much for the tow and taking care of me last week. You're a great guy and run a great company. Enjoy and thanks for taking care of my troops out here. This is the type of business that's been operated in Agua Fria Village that improves this important community service.

I indicated that they currently have a contract with Santa Fe County. We've attached that as tab 6. Again, you're going to have to bypass the 1 through 32 of tab 5 to come to - I'm sorry. I take that back. The County contract is under tab 9. So you need to go to tab 9, again, bypassing 1 through 32 in tab 5, to tab 9, is the County contract. It runs from the 2nd of June 2009 to the 1st of June 2013. You'll be able to locate it. In this contract you can see that the Anayas are required by the County to provide emergency wrecker and towing and related services. I'm now looking at page 1 of the contract's scope of work, subparagraph C. The contractor shall provide emergency wrecker and towing and related services 24 hours per day and seven days per week, 365 days per year at the request of the Santa Fe Sheriff's Office.

The contract - and go down to E. The contractor is allowed a maximum 60-minute response time for contractor's tow truck to arrive at the arrest location. Response time begins upon receipt of notification of request for services by the Santa Fe Sheriff's Office.

So to park these vehicles somewhere else, out away from their property and have to go to get the vehicle at some other location and then respond would then be very difficult in some cases in some parts of the county impossible. So that's another reason that they've been

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operating this tow business on their property for the last 23 years is so they can provide that type of emergency response that's not only required by local law enforcement, it's required by the community to literally save lives.

Just to orient you to the property, I'm going to direct your attention to tab 4. This is the tab 4 that's before the tab 5 that has the 32 tabs in it. If you go to tab 4, the last page of tab 4 has a survey map of the Anaya's property on Ben Lane. This is the Anaya's compound and you will see to the left of this fold-out survey, Agua Fria Street and the yellow marked roadway is a dirt road and that is called Ben Lane, and it cuts through the middle of the Anaya family compound that has been there for now five generations. The Anaya's, Bernadette and Robert, own two portions of this property. The first portion as you come down Ben Lane is on the right. That is their residence. The next portion is on the left and that is an open area, a large open area, you're going to see photographs of that in a moment. And at the far end of that open area there is a line here which has been marked here as the Romero wall. This is where the neighbors to the right, on the right of this survey had erected a wall to provide them with privacy for between their property and the Anayas' property and presumably their trucks.

We believe this wall to have been built within the last ten years. You will see a circle where it's indicated that the Anayas park one or more of their trucks when they are unoccupied or unused in this big open area that is designated with the hatch marks as going to the Anayas at the end. There's no structures on it. It's an open area with a huge turnaround and you'll see photographs of that where large vehicles can come in, in order come into this lane and then back out somehow. They can come in and they can turn around no matter what size of the vehicle, around in this big circular area in the back, and then exit, and this is a question that's also been raised about fire access, access to the fire vehicles in and out of this property in case of fire. I will also discuss that as well.

In order to further orient you as to what we're talking about, if you could go to tab 3. This is right at the beginning of the book, tabs 1, 2, 3. This is another fold-out and this is an aerial view, I think from Google Earth, looking down onto their property. This again will help you orient as to what we're actually talking about. As you can see on the left side of this fold-out is again Agua Fria Road, and as you come up to - you see the number 5 that's circled down in the lower left-hand corner, if you then proceed on Agua Fria a little further, the first road on the right is Ben Lane and you can see it lightly marked Ben Ln. And you'll see where that traverses.

You'll see as you come into the road on Ben Lane then you first jog to the left on Ben Lane, then it straightens out and goes down past a large structure with a white roof on it. That's the Anayas' home. The purple roofed structure is their garage. So you will pass that down to the #11 that has been circled. That is the same circled area that I just directed your attention to on the plat survey. That's where the Anayas' vehicles are parked. So you can see, if you're standing on Agua Fria Road and you look to the right, or northward, you cannot see those trucks because the road, Ben Lane, is hooked to the left and then straightens out again. So all you can see if you're a commuter or passerby on Agua Fria is nothing. It's a residential area and the trucks are parked way back down on the end.

You can see that straight white line just to the right of the circled #11 and that is the wall that was constructed by the Romeros who are the chief complainants in this case.

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They're the ones who initiated this review, if you will, 23 years after the Anayas began doing business there. That wall was erected by them and to the right of them is their compound. And we'll see pictures of their compound where they conduct a business of their own. They rent property, apartments to people. And so we'll talk about that a little later.

So this is one way to help you orient to the total environment. With respect to the character of the surrounding community, the Anayas are not the only business in this immediate locale. As you can see on tab 3 that we just looked at those circled numbers are all businesses. Every one of them are businesses within this very immediate vicinity. And what we've also done, if you now turn to tab 5, which has the multiple 32, 33 exhibits attached to that, these are the businesses within a quarter mile of the Anayas' driveway, along Agua Fria, along and near Agua Fria in this area. And if you look, we've identified 32 businesses within a quarter mile in the Agua Fria Village of the Anayas' home and business.

And attached – those tabs are photographs of each of these businesses that are numbered within Exhibit 5. We provide the numbers, then you can go to these subtabs and you can see a little bit more about the businesses being conducted here. And there are just a few of these businesses that I would like to direct your attention to.

If we can go to subtab 3 of Exhibit 5, this is photographs of the Rodriguez Brothers Sand and Gravel Company. And as you flip through the pages, if you go to the second page of the exhibit, you will see this is a major business. Far greater activity involving large trucks, sand and gravel trucks. Go to the third page, the third photograph, we've got four trucks side by side, a very substantial size, similar in size to the Anayas' towing vehicles. There's another view of the Rodriguez Brothers Sand and Gravel. Several views, you can see the extent of this business. And this business is located in the immediate vicinity of the Anaya's business. This is on that Exhibit 3 fold-out. This is one of those businesses that is right there next to the Anayas' business. On Exhibit 4 it's business #3, circled #3. As you can see it's within hailing distance of the Anayas' – where they park their trucks. You can actually see it from where they park their trucks.

If we jump to subtab 8, this is Scott's Garage. Talk about impound lots, it looks like an impound lot. Scott's garaging a lot of cars here, a lot of vehicles. So this is the impound lot type situation that naturally the Agua Fria Village was seeking to avoid in 1989, but this is what it then looks like.

If you go to tab 9, this is within a very short distance of Ben Lane. This is the Padilla Bingo Buses business, where they operate bingo buses that transport people to and from their bingo hall. If you go to subtab 12, this is Santa Fe Concrete. This is as you can imagine utilizing very large concrete trucks that tow large concrete trailers that are very heavy and occupy a lot of space and movement within the [inaudible]

Exhibit 13, August Construction Company, and if you'll just thumb through the photographs, you'll see – you're going to get the flavor of the character of this community and how what the Anayas are doing here is consistent with that character. If you just thumb through these photographs you get a quick picture of it.

If you go to subtab 15, we have Cassidy's Landscaping. Again, multiple vehicles parked here. So of them with large trailers and plowing vehicles for landscaping, small tractors.

If you go to Exhibit 23, sub-exhibit 23, this is the property of Mr. Larrañaga's brother,

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where they hold rodeo events on at least a monthly basis, and when they have these rodeo events they have over 200+ people come with their vehicles, families and that creates blockage of traffic, quite a stir in Agua Fria Village and I don't believe Mr. Larrañaga's been investigating them lately.

Number 26 is a combination of businesses. This is owned – these are four businesses owned by four brothers, all located within the same general area. Padilla's Towing, Quality Towing, A-1 Towing, and Tony's Towing, all belonging to the four brothers, and they have an impound lot in addition to towing facilities. So if you just look through some of these photographs you can see that there's a lot more going on here than there is on the Anayas' property.

Subtab 27 is another wrecker service. This is the Flores Wrecker Service and again an impound lot. So they're storing vehicles on these properties as well as storing their own tow vehicles, they're storing other people's vehicles on these properties.

Subtab 28 is Chavez Septic. Again, large septic vehicles. You all know what those look like when they pull up to drain a septic tank. This is the character of this portion of the Agua Fria Village. This is the character of their family businesses that's being conducted there.

29 – 29 is the Romero property, and we've looked at that on the plat. This is the property of the people who have initiated this proceeding in fact. As you can see, the first photograph is looking from the Agua Fria River towards – this is the Romero compound. The Romero compound is blocked by trees that run along the wall that they built and the Anaya property is out of view in this photograph. It's on the other side of the Romero compound. The next photograph is a shot of the compound. Again, there's no view of the Anayas' property from this perspective, from the river perspective. Then if you go down about four photographs you come to a photograph of part of the Romero compound that is the apartment business, the rental business that they conduct on their property.

The next photograph and the third to the last photograph of sub-exhibit 29 is a view, an elevated view of the Romeros' garage – now, this is on the back side of the photos you were just looking at, and what you can see here is you can see the wall that they have constructed, which by the way, the right-hand portion of this wall – what you see on this side of the wall is the Anayas' property, that open area, part of the open area I was talking about. That wall blocks the easement of Ben Lane. The easement of Ben Lane as I showed you on that plat, goes through that wall. That wall has been blocked by the Romeros, and there's been no vacation of the easement that's been recorded of record. So that easement has been blocked. So if the Anayas wanted, or a fire truck needed to get through from Agua Fria to the river or any structure along the way, ordinarily, if that easement were open like it should be, they would go right along that easement and keep on going, but at some point the Romeros blocked this.

The next photograph is again another photograph of their compound and again, you can't see Anayas' vehicles, you can't see anything on the other side of their wall, which is on the opposite side of this photograph. And yet another photograph.

CHAIR STEFANICS: So, Mr. Bennett, are you almost finished so that we can hear the rest of your applicants?

MR. BENNETT: Yes. I'm getting – I just wondered if you could direct your

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attention to exhibits 30 and 31. We've got more construction companies and Santa Fe Frame and Auto, again, large vehicles. Let me try and move a little faster.

CHAIR STEFANICS: Right. And just remember, you'll have a chance to answer questions as they come up after the public hearing as well.

MR. BENNETT: Okay. The other thing I would just like to bring up quickly is I think I've pretty well discussed the character of the surrounding community, is if you look at tab 11, it's entitled, and this is in right at the back and it has six subtabs. It's the last major tab with six subtabs, and it's the table of contents to this, tab 11 is entitled to impeachment of opposition. And Ms. Kosh, my colleague is going to discuss the legal issues surrounding all of this including the issue regarding the ingress or the access to the Anayas' property and the other homes in that vicinity by a fire truck. So I'm not going to discuss that.

But at the hearing before the land use committee where this application was denied, I believe 5-1, there was some testimony given by opponents to the Anayas' application that was not quite accurate. For example, tab 1 of tab 12 – excuse me, I take that back – tab 2. Rosemary Medrano testified that this business use was a bane to her ownership of property in that area. Well, if you look at – as it turns out, Ms. Medrano only owns vacant land near the Anayas and Ms. Medrano lives on Botolph Road. And what we have here is a photograph of her residence on Botolph Road, there's a mailbox, 2904, and the last photograph in this is the vacant land that she claims is impaired or its use impaired by the Anayas operating of their business.

The other thing that is of note, it was at the hearing of Robert and Diane Roybal testified that they – actually, if you go to the last tab of this book, tab 6, there are two pages of the testimony given at the last hearing that I would like to direct your quick attention to. The last page, which is the last page of this notebook, talks about Robert and Diane Roybal's testimony. Ms. Roybal says she neighbors the Anaya property and her kitchen window looks out to their trucks. This is true, but she doesn't live there. She – her property is, number 1, not within 100 yards of the Anayas' property, and number 2, she lives in Rio Rancho and she rents out this property. So the impression was given to the committee that she was somehow offended by the view out of the kitchen window.

The other testimony that I want to draw – while we're on this exhibit is the status of Mrs. Romero, who is one of the, or the – her and her husband are the main complainants against the Anayas' ability to operate their business. Some of the things she said, on page 25 of the testimony, which is the second to the last page of this book. She said the Anayas are being investigated by DOT because it's dangerous for those big trucks to turn off Lopez Lane onto Agua Fria. It's not true. It's simply not true. There's no investigation by DOT of anything and Mr. Anaya can testify to that if necessary.

Ms. Romero said – all of these are highlighted. One of Anayas' tow trucks was last registered in 2006. It was not insured, knocked down her wall in January. Now, that reference is to why we're here. What happened was that wall between the Romero property that I pointed out to you, which is the end of the Anayas' property, it was an adobe wall that was erected by the Romeros within the last ten years, one of the Anayas' trucks accidentally backed into and collapsed a portion of it. And that's where all of this came from. The Anayas did have insurance and were trying to get the wall repaired, wanted to get it repaired. The truck damaged it. And got an estimate out and were all ready to go and an agreement to get it

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repaired and hire somebody to do it when a demand was made for \$7,000 by the Romeros to pay for the wall, which was of course totally exorbitant.

But the Anayas were insured, but they had a deductible. So they were trying to fix the wall within their deductible which they had to pay anyway, so this is what happened. We're sitting here tonight because of that incident.

Then Ms. Romero questioned Mr. Anaya's business ethics and was concerned that he has not been paying taxes while he continues to the deterioration of Agua Fria. Mr. Anaya pays his taxes, property taxes and –

CHAIR STEFANICS: Okay, we're kind of diverting from the presentation here.

MR. BENNETT: Okay, well, you can see this in here, which is important. The last thing about impeachment is the way that this has been handled by Mr. Larrañaga. I met with Mr. Larrañaga right at the beginning of this and he told me that the business in his office is essentially complaint-driven. So if you're not complaining then he's not going to make sure that you're complying with whatever rules that are out there that the County has. So all he does is respond to complaints. And this was one. And so he responded to this complaint and not only responded to it, inappropriately responded to it. He comes on to the Anayas' property. There's an affidavit from Mr. Anaya here. He will come on to the Anayas' property for really no good reason other than to drive up and down Ben Lane and sit on Mr. Anaya's property. He has told other supporters or neighbors of Mr. Anaya, family members, that if you support Mr. Anaya's application that your property taxes will go up. We have that in Mr. Anaya's application. Bernadette's brother was actually told that, that if you somehow support this you're going to have to actually give up property. I think they're talking about creating a hammerhead where one doesn't need to be created.

So there's been personal influence into this when at the same time all of these other businesses, including his brother's rodeo is not being vetted for compliance with the County's rules and regulations. So I would move, at least I'd have this motion on the record that Mr. Larrañaga and the land use Commission that was investigating this application be disqualified and that their input into this be stopped from making the arguments they're making. This petition should be denied. But all of that documentation is in this notebook. There are legal issues that I'm sure the Commissioners want to hear about briefly. My colleague, Ms. Kosh, will advise you of those.

CHAIR STEFANICS: Thank you. So let's here from Ms. Kosh and the applicants, and then if the Commissioners have questions now they might ask them, or then we'll go to the hearing of the pros – the opponents and the supporters, and I'm going to ask Mr. Larrañaga in a few minutes to speak, as well as Chief Buster Patty. Ms. Kosh.

TALIA KOSH: I'll try to be brief. County Commissioners, I'm Talia Kosh and I represent Robert and Bernadette Anaya. [inaudible] shorter version of what is in tab 2, their letter of request and the supplement to that. So what is the issue here? Parking up to eight towing vehicles, but really at most times, moments of the day and night, about four and dispatching those vehicles from their residence.

First I'm going to talk about, going to demonstrate how the Anayas are grandfathered in and therefore no variance is needed. Second, in the alternative, I will demonstrate the current use of the property is a permitted use consistent with the character of Agua Fria

Village Association. And I will also demonstrate that the current use of the Anaya's property has not resulted and will not result in any conditions that are injurious to health or safety.

We've already touched briefly on emergency response concerns so I'm going to say a few things about this, but the ability of their towing service, which has written and verbal agreements with several government agencies to respond quickly to emergencies is a public interest concern. Regularly, the Anayas are called by emergency responders who have no other towing company alternative due to the Anayas' range of towing option. This came into play recently. I'll just give you a couple of examples. When the Anayas were called in the middle of the night by emergency dispatch in northern New Mexico about four hours away from Santa Fe because there were no other towing services that would be able to handle a large wrecked semi truck off of a major highway. Again, recently the Anayas moved a City garbage truck that had crashed into a riverbed and no one else could get it out of the riverbed.

COMMISSIONER MAYFIELD: Madam Chair.

CHAIR STEFANICS: Commissioner.

COMMISSIONER MAYFIELD: Just real quick. The Anayas have a Class D?

MS. KOSH: Yes, Class D. Also, even Barbara Salas, the Chief of the fire department has given me permission to tell you that Robert Anaya and his business are incredibly valuable to the community and have trucks that perform services that no other towing company can perform.

Also, there's just a few constitutional issues that I'd like to touch on. Finding a site to lease and park most of these eight towing vehicles offsite from their property would be prohibitively expensive and would effectively destroy their ability to make a living in the tow truck business after 20 year of service. Further, as a tow truck business in a new place the Anayas would have an even more difficult time to get a variance because they would not be faced with a situation which I'll discuss briefly where the use could be deemed permissible within the Agua Fria Village Association and this would effectively shut down their business.

Should the use be disallowed by this Commission this would effectively be an arbitrary denial of equal protection, treating the Anayas differently from similarly situated businesses and individuals. Also this differential treatment would have no rational basis as the Anayas have been using their property without issue for over two decades. Further, the Anayas have many contracts with governmental enforcement agencies and other private parties and these contracts would be nullified by this denial, and that is also a denial of the fundamental right to make a livelihood and the right to contract for personal employment.

I'm going to quote from a United States Supreme Court case. Nothing is more clearly settled that is beyond the power of the state under the guise of protecting the public arbitrarily to interfere with business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them.

Further, in support of this I'm going to just talk briefly again about how the Anayas are grandfathered in. Mr. Bennett already discussed how the business was purchased, and I'd also like to draw your attention to tab 6, which is Mr. Mee's letter from the Agua Fria Village Association. It's the major tab 6. It's a letter from William Mee, the president of the Agua Fria Village Association. I'll call it AFVA. Mr. Mee states that also, and I'm quoting, also during the community planning process a number of businesses which have industrial land uses not compatible with residential land uses were grandfathered in, such as Anayas'

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Wrecking, L & L Portable Toilets, etc. He lists several businesses.

According to the AFVA, the Anayas' Wrecker business has been grandfathered in along with many other businesses, so many that he did not even begin to list all of the businesses that are grandfathered in within this village. Also, they're very much a part of this traditional and contemporary community of the Agua Fria zoning district, and in going back to William Mee's letter, he states parking Anayas' Road Runner Wrecker Service towing vehicles also have been parking them consistent with running their business at 2253 Ben Lane is not inconsistent with the character of Agua Fria Village and there are many mixed-use, family-run businesses within the village. This effectively demonstrates permissible use.

So the only objections to the Anayas' towing business should have been made when the Agua Fria Village Community planning process was occurring from 2003 to 2006. As Mr. Mee states in that same letter, during this process it would have been reasonable to discuss any objections to the Anayas' Roadrunner Wrecker Service land use as being incompatible with the residential land use around it. However, I recall no such objections or protests. This is also in his letter. Neither the Romeros nor anyone else who currently stands in opposition to the towing vehicles ever made objections during this time, even though they were a part of this planning process and they could have easily voiced their objections. They should now be stopped from making such objections after over two decades of the Anayas parking their towing vehicles.

Just quickly, I'd like to point out that the Anayas' use of the property is also consistent with the Santa Fe County Sustainable Growth Management Plan. This mixed-use case is not out of character for that plan and according to the plan, compact mixed-use development served by adequate facilities are a priority. Due to 2.2.4.1 of this plan mixed uses provide for a variety of uses within traditional neighborhood and village type settings and they're integral to achieving appropriate land use and transportation goals and objectives. And the Anayas [inaudible]

I also like to point out a few more statements by the Agua Fria Village Association because I think it's appropriate here. In their blog they state that the residents of AFVA are committed to maintaining their traditional way of life and protecting their independence from Santa Fe. As the Agua Fria Village Association states in its blog there is no need to better understand traditional communities in rural areas and the slow and steady growth they have had as each generation comes of age and wants to do their own thing.

Further the Agua Fria Village Traditional Community is based on three main elements: centralized purpose, cultural function, and mixed uses. The mixed uses is an integral part of the Agua Fria Village Association. Residents have extended families to provide for, childcare and supervision. Many residents are from multi-generational families that have been on their land for years. A goal of the AFVA is to pursue a diverse and sustainable local economy for traditional communities. The Anayas are exactly this type of family and business discussed in the AFVA blog. They also provide multiple family members with employment opportunity, daily childcare. They are the quintessential Agua Fria Village family business.

The Agua Fria Development Review Committee would normally be the proper authority to bring this issue to. At the current time the AFDR is on hold, according to meeting minutes from the Agua Fria Village meeting minutes since April 2, 2012. That's

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attached as an exhibit to the supplement. These minutes also state that the AFVA, the Agua Fria Village Association will be taking on the role of Agua Fria development review. These minutes also state that the AFVA took on the new role of planning for the THC area. This means that development is reviewed and approved by the AFVA, then mixed use becomes permissible use.

These minutes clearly demonstrate, along with Mr. Mee's letter that the AFVA is standing in place of the AFDRC has previously approved all the Anayas' business uses of their property as mixed use. Therefore a variance is not required to continue this permitted use of the property for just parking their vehicles and taking calls for their business. I'm getting close to the end.

Also the current use of the vehicles existed during the planning process in meetings from 2004 to 2006. The Anayas' use of the property was also approved by the AFVA. And the County's plan also speaks – the County will honor existing community plans and ordinances and support community planning and in this vein the County should honor this process and procedure.

Also, in the alternative, should the Board of County Commissioners find that the Anayas current and past use of the property is not permissible use and is not grandfathered in it should be considered a conditional use of the property which the AFVA could also review. So now we're just getting to the variance argument. As briefly as I can, but it's also very important as a part of the agency's recommendations. The variance is not needed by should the Commissioners find that the storing of eight towing vehicles not be permitted or conditional then we are requesting a variance. And the only vital part of that is the parking of the eight vehicles. The Land Use Development Code does not specify a maximum use of commercial vehicles that can be on the property at a given time, so on its face there's no specific violation of this code.

Multiple factors may be considered in deciding whether to grant a variance, including the economic detriment to the applicant. If the variance is denied the financial hardship created by any work necessary to come into strict compliance, and the characteristics of the surrounding neighborhood, which we've already discussed.

As you've seen, even without the pre-approval of the AFVA the characteristics of the surrounding area make it appropriate to grant this variance. The commercial businesses have evolved over time to create a more mixed use, commercial and industrial area. The Romeros who are the ones who brought this complaint utilize a completely different road to access their house and cannot see any vehicle enter or exit the Anayas' property or Bens Lane. This does not affect them.

Granting the variance would result in a net public benefit and public benefit is another factor that may be considered in the granting of a variance. The agency's recommendations that the entrance to Ben Lane not meet fire code and the only option for the Anayas is to give up a hammerhead are not accurate. The hammerhead option is not required and should be the last alternative considered. Bens Lane meets all requirements and is up to code. It is clear from the photos Bens Lane meets the requirement of a 20-foot entrance. It's actually over 20 feet. Further access does not meet the required 28-foot radius is also inaccurate and you can see the photos on tab 7 that we've actually taken measurements of that area. To save time we don't have to go through those.

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CHAIR STEFANICS: You are reviewing pretty much what we have in our book, so was there anything else that you'd like to say and then I'll go to the applicants?

MS. KOSH: Yes, there's a few more things.

CHAIR STEFANICS: Briefly. Briefly.

MS. KOSH: So the reason that the hammerhead is not necessary, number one a fire hydrant should be considered. There's a fire [inaudible] currently in Bens Lane. If that were replaced by a fire hydrant there would be no issues. No one would have to give up any property. This would be the most non-invasive solution to the problem at hand. If that is not possible – currently it's not even necessary because a fire truck, as you can see from these photos can complete a turn without having to use a hammerhead, without having to back up. The second alternative should be that that utility easement is opened up. There have been no vacations of easements recorded. That means it wasn't properly done. In fact the existence of this easement when the survey of the land was taken was vital to how the land was surveyed, and why a hammerhead was not created or considered in the first place.

In order for the easement to be vacated permission has to be granted by all the affected owners and the Anayas were most certainly affected by this and now they're being asked to give up land for this hammerhead, and they were never given notice of this. So at the very least that easement should be considered in lieu of the hammerhead. And that's all I have. Thank you.

CHAIR STEFANICS: Thank you both for your thoughtful remarks, Now, Robert and Bern Anaya, correct? Do either of you want to make a statement? If you'd like to now is your time. Please.

[Duly sworn, Robert Anaya testified as follows:]

ROBERT ANAYA: Basically, what we're asking is so we can park our trucks on the property that we own. We've been doing it for 23 years and we'd like to continue doing so. We're not asking for anything else; we're not asking for commercial buildings and commercial zoning, just permission to have the trucks there and have them for our availability when needed when I need to go out and provide service, be it to a motor vehicle accident or a seizure for the Sheriff's Department, whatever it is, I need my access to be there. So we're asking the County. Thank you.

CHAIR STEFANICS: Thank you very much for that statement. Before we go to public comment I'd like to hear, Mr. Larrañaga, would you please come forward. And for the record, would you please state whether you do or you do not have a conflict in this case.

MR. LARRAÑAGA: Madam Chair, I do not have a conflict in this case. This was brought by code enforcement. I did not issue the notice of violation on the property. All I did was bring it in as a variance.

CHAIR STEFANICS: So in relation, what I'm asking you, Mr. Larrañaga, is a conflict has been identified with your relative in the area carrying out a business. So could you address why you feel you do not have a conflict with this case in relation to those remarks, for the record.

MR. LARRAÑAGA: Madam Chair, for the record, that is my brother. He's been doing that for over 20 years and he is in the city limits.

CHAIR STEFANICS: So being in the city limits you do not feel that we have any purview or what? What is your – where is not your conflict?

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MR. LARRAÑAGA: Madam Chair, they listed several businesses, some of which are master planned, some of which are non-conforming, some of which I'm dealing with actually right now. The conflict that they listed is my brother having a roping arena that's been around for 20 years. He has a jackpot once a month, about 40 to 60 people, and he's always had steers there. He has practice twice a week. I don't see where there's a conflict on his property. I don't own the property –

CHAIR STEFANICS: So the issue is his property is in the city.

MR. LARRAÑAGA: Correct.

CHAIR STEFANICS: Thank you. That's where the conflict doesn't arise. Mr. Patty, could you come forward please? Mr. Patty, just in general, and other Commissioners might have questions, do you have anything that you want to add? You have a fire report in here in our book on pages 63 and 64. Anything that you want to highlight or bring to our attention?

BUSTER PATTY (Fire Department): Madam Chair, Commissioners, when this was brought to the Santa Fe County Fire Department for review for the variance for the commercial use we reviewed it like we do any other commercial business and that basically is for access or any kind of fire requirements per the 1997 Uniform Fire Code. In the 1997 Uniform Fire Code it explicitly states what size the fire lanes are to be, what the turnarounds, what the lengths of the turnarounds are. We've mentioned several times before, anything over 150 feet long then does require a turnaround.

There is on their property, on the Anayas' property, on his private property in the area where he turns his trucks around, yes, we can turn around, but it is not designated as a fire turnaround, if it got built on then the turnaround was gone. We re-reviewed and went out there and had a look at the property outside of a cul-de-sac turnaround, that was in our original letter, a hammerhead could be built to be able to turn around in this lot. It is a problem if we have to drive down in there, even if they placed a hydrant. You pull the hose off the back of the truck. So if we pulled down in there we have to turn around somewhere, hook on the hydrant and pull out. Otherwise we have to back back down in there, which is more than 150 feet long.

The access going in off of the main road is what we measured was just a little bit under 20 feet but there is no radiuses on the turns. That is also in the Uniform Fire Code of 28-foot inside radiuses on a 90 degree turn, on a 20-foot wide road. If the road was wider then those radiuses would be cut shorter.

CHAIR STEFANICS: Thank you. There might be further questions for you so stick around. Okay, we're now at that point – how many people are here to speak in support of this application? Okay, so let's hear the supporters first. Are there four or five people who wish to speak? Whoever would like to speak in support would you please come up so you can all be sworn in together, and then we'll go to the opponents in a minute. So there's five of you, right? Anybody else who wants to be sworn in at this time?
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CHAIR STEFANICS: So when you speak please identify yourself by name and address for the record and stay right up here and make it as short as you can. Let's hear. We're very happy that you're here to comment. This is part of the public process.

[Previously sworn, Robert Anaya, Jr. testified as follows:]

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ROBERT ANAYA, JR.: My name is Robert Anaya, Jr. My address is 2253 Ben Lane, Santa Fe, New Mexico, 87501. Basically, the only thing – business operations we do out of that area – my father owns the company. That's obvious. We're just asking to park our trucks there, answer our phones, keep our books, that's it. Our storage facility for the cars we tow in is at 2876 Industrial Road. It's in the city. We meet all city requirements for that. For the past 23 years we've just been parking our trucks there as we take them home and that's about it. As for an eyesore, I don't think they're ugly but those are my trucks, so it's my preference.

As for safety, those trucks are as big as any fire truck going down the road so if it's unsafe for my trucks to be driving down the road it's unsafe for the fire trucks to be going down the road. So if it's a problem for our trucks to get up and down Agua Fria whatever way then Agua Fria needs to be widened up because the fire trucks, garbage truck, all them run down those roads too.

So as for the difference in them, the only difference is our trucks are owned by us and not a government. They're there to provide a service for you, anybody out there. If you need our service we're there for you. We provide service 24/7. Not now because we're here but other than that they're always available – day, night, 24 hours, Christmas, Thanksgiving. You name it; we're there. So, thank you.

CHAIR STEFANICS: Thank you very much. Yes sir.

[Previously sworn, Antonio Montoya testified as follows:]

ANTONIO MONTOYA: Hello. My name is Antonio Montoya. I live at 2010 San Ysidro Crossing right there in the village itself. I seen the damage of the wall. I offered to fix it. The estimate was way out of line. I said, hey, I can do that for \$300, \$400. I've known Robert Anaya and his family for many years. As a matter of fact both sides of the family. He's not only a personal friend but a lot of these emergencies he would call me to go and help him. So now that my profession is so low, because I do remodeling, I do a lot of masonry.

So I offered to fix the wall and I told them, hey, I can do it for as low as \$350, \$400. He has all the material and everything. It could have been done in a timely fashion without any incident or anything else. So I think it's a shame, because I give him a lot of respect for the things that he does for the community and for me, and my brothers, he's helped us out with just work. Because right now, I'm facing – if I don't get no work eventually I'm going to be homeless. So he provides much more on a personal level, and I just want to make that known. Especially on his emergency services that no other wreckers here in Santa Fe or even 100 miles closer. I mean Albuquerque is the closest one. And when he calls me I promised that I would be there for him. And that's why I want to be here. Thank you.

CHAIR STEFANICS: Thank you very much for coming. Yes, sir.

[Previously sworn, Charles Smith. testified as follows:]

CHARLES SMITH: Yes, my name is Charles Smith. I run C. Smith Construction Company. My address is #2 Entrada de Santiago, Santa Fe, New Mexico, 87508. Robert Anaya asked him to go give him a bid, which I did and I went to do the job and I was chased off by the – I guess [inaudible] or whatever, by him, and he actually threatened my guys. Which we actually walked off at the time, due to the fact that we don't see fighting or anything going on because of that. Since then, [inaudible] about what's

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happening. I feel it's unfair that you guys, 23 years come out to take something away from them that's actually provided a good service for this community and he's been there to help each and every one of us. And everybody's been helped once in a time.

So I don't think that what you guys are looking at – I mean just to look at the truth and see the person for what he is. And his business is a good business and it should be around and left the way it is. It ain't hurting nobody. It never has, whatever the case may be with his family, should be just between them. Robert Anaya is really good people and his business has been very supportive for the community and for [inaudible] Anyway, he's been there for us; we should be there for him. That's why I'm here tonight. Thank you.

CHAIR STEFANICS: Thank you very much. Yes, sir.

[Previously sworn, Mario P. Montano testified as follows:]

MARIO P. MONTANO: Hi. My name is Mario P. Montano and I live at 28-B Prairie Dog Loop, which is right across from Agua Fria park. Obviously, this is my uncle and auntie. It's been in the family, obviously, my whole life, 29 years. I do like he just said, 23 years he's had his business, always looking up to him as far as dedicating his time. Leading a different life than a lot of kids did here in New Mexico, in Santa Fe, it was basically Santa Fe, small community, not really not much to do. He provides a service as far as his time and to the school, with us growing up. He just does a positive impact as far as me growing up in a positive way. So I just think what you said, in 23 years, one complaint and all of a sudden it's just an uproar out of basically nothing. You know what I mean? So I just want to say I support him and I love my family. So thank you.

CHAIR STEFANICS: Thank you very much for coming. Yes, ma'am.

[Previously sworn, April M. Anaya testified as follows:]

APRIL M. ANAYA: Hi. My name is April M. Anaya. I'm a daughter of Robert and Bernadette. My address is at 3019 Primo Colores, Santa Fe, 87507. I would just like to say I'm in support of my family because we have had 26 years of my life, 23 years was all I had with them before they started this business. They have run it 24/7, 365 days a year. I've given up many birthdays, many holidays, just so my dad could be out there serving the community, and now I'm giving up my brother as well. So I'm just here asking that they can continue to keep their trucks, which they are beautiful trucks; they are not eyesores and, on their property, which they have been like I said for 23 years. So I'm just in supportive of them.

CHAIR STEFANICS: Thank you very much. Yes, sir.

[Previously sworn, Patrick Romero testified as follows:]

PATRICK ROMERO: Hello, my name is Patrick Romero. I'm in support of the Anayas' business. I understand it's late and I'll be very brief. I ask for five seconds of your time. Turn around and reflect upon the drawing and the writings on the wall behind you. It states equal justice under law, and I do realize and understand this used to be the old courthouse. But it says protection of property, religion and language. Madam Chair and County Commissioners, you have the opportunity here today to protect someone's property. Please do so. Please be in support of this.

CHAIR STEFANICS: Thank you very much. How many people are here to oppose the application? Could you raise your hands? Okay. And are there – there were six people who spoke in support, are there six people who want to speak in opposition? No, you

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have to be on the record, so just a minute. Anybody who wants to speak in opposition please stand up and come forward so you can be sworn in. We're going to keep it to six since there were six on the other side. So we've got six. Great.

[Members of the audience wishing to speak were administered the oath as a group.]

CHAIR STEFANICS: So if you'd please introduce yourselves by name and by address and we'd love to hear what you have to say.

[Previously sworn, Patrick C de Vaca testified as follows:]

PATRICK C DE VACA: My name is Patrick C de Vaca. I live at 2249 Ben Lane. I'm Bernadette's brother and Robert's brother-in-law. I just wanted to set things straight. The property they're showing towards the back, their property is on the left and my property is on the right of theirs, where they say there's supposed to be an easement. I don't know what arrangements my grandma made or my grandpa made [inaudible] when we were young. That's up to them. But if they knew then [inaudible] an easement there, it's not affecting their property, it's affecting mine.

CHAIR STEFANICS: Okay. Thank you very much.

MR. C DE VACA: That's all I needed to say.

CHAIR STEFANICS: Okay. I appreciate your being here to say that. Very much. And what's your address again?

MR. C DE VACA: 2249 Ben Lane.

CHAIR STEFANICS: Okay.

[Previously sworn, Georgia Romero and Henry Romero testified as follows:]

GEORGIA ROMERO: Georgia Romero, 5124 Avenida de Sesario.

HENRY ROMERO: Henry Romero.

MS. ROMERO: I guess the first thing we should clarify is the easement that Mr. Bennett brought up. Back in 1987 there was a quiet title deed signed by the courts against – for Bernadino Sandoval. And the easement was personal to him so when he died we legally had the right to build this – well, we fenced it off first. To fence off the property so that no one could die. It was actually our property. We paid for even the easement on the land. So then in 1989 Mr. Anaya cuts the fence while we're at work and throws in like 20 cars. So we're the ones that reported him the first time that he was denied and he was hauling – he had a stack of wrecked cars and I think he had like six tow trucks at the time.

Again, back in like November – between September and December, all of a sudden we noticed these big trucks against our wall, and every day, every time they would take these trucks out, they would tap our wall to stop. Well, one day our wall said, no more. On January 13th. They put a 23-foot gap, which is about the size of what the podium you're on, 6 feet by 4 inches. There's photographs in your packet that show his tow truck backed into our wall. To get it fixed, you heard statements from all these people and Mr. Bennett, and at the last meeting they said they could have fixed it for \$200, \$500, well our insurance, home insurance had to fix it and it came in at over \$7,000.

I have insurance paperwork to prove it. Mr. Anaya has evidently received it. Otherwise he wouldn't come up with the figure of \$7,000. And then if you look at your packets from the County, the County packet, there should be pictures of what it looked like when the – when they went in and cited them for illegal parking and for not having a business license or a variance on the property, it was loaded with towed cars and Mr. Anaya corrected

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himself. At the last meeting they kept saying eight trucks. There's actually ten. Mr. Anaya corrected himself at the last meeting. He said there were ten tow trucks between 20 and 30 feet long.

Today I went out there and I looked. There were nine vehicles, two trailers, an RV and seven tow trucks and two of the tow trucks are parked in that 30-foot or 20-foot easement that they keep talking about. He constantly parks cars there. They're talking about a utility easement. Mr. Anaya blocks our gas meter with his vehicles. They're his personal tow trucks, which I think is tow truck #2 on the list he gave the County. On that list he lists eight trucks and he says there are two drivers. And yet his attorney wants to say that only four trucks are there at all times. It's not just four trucks.

These trucks run 24 hours a day, seven days a week, 365 days a year. The only difference is these tow truck drivers take a day off. The immediate area, the immediate neighbors, we don't get a day off. They also testified at the last meeting that they don't let these trucks run for hours; they do. We have the diesel fuel fumes. We have dirt. We have fighting. We have lights. We have noise. There is no safety. And the road they come down off of Ben Lane, to get there you have to come off of the four-way stop on Agua Fria and Lopez Lane. So they turn into Agua Fria, come down to go, drive into Lopez Lane, but before they do that they have to go into the left lane because their trucks are so big they can't make the turn. Then they back up into the traffic.

What happens when a school bus hits that? An emergency vehicle? One of these fire trucks? A police vehicle? People run the four-way stop all the time. We're going to have a person beheaded just on Agua Fria itself. It's not wide enough to accommodate the size of trucks they're driving.

On top of that, the truck that hit our wall, it's WD6187 is the license plate number. It hasn't been licensed and it hasn't been registered since 2006. It's still on the road constantly. To get down from Lopez Lane just onto Agua Fria we witnessed that truck making three vehicles that were going up Agua Fria towards town, had to back up to let that truck go down the road. Then they go down the road and again, into that left lane, backing up and going down into Ben Lane.

We have reviewed the piece of property and the fact that he has to have that 100-foot radius, and if you look at the plat, just looking at the plat, you know they don't have the property with a 100-foot radius that the fire department wants, plus the ten trucks they want to park there.

Another issue we're having is the rodents, which is going to even get worse because we were doing the feral cat program for the Santa Fe County. Last year we had 27 cats fixed. We trapped and had them fixed. We were feeding them; they were fine. They have been poisoned. And we've taken them in to be euthanized because they're stumbling back into our yard. So now we really have a problem because all these cats are gone that weren't bothering anybody. And the majority are coming from the other side of the Anaya wall.

If you could just give me a second here. When they talk about this plat, this map that they showed you, we're over here by number 11 and you see between 7 and 11, that's the middle of that property. Technically, that's the property they're talking about. They're talking about this property over here by number 11, against our wall, because the property's been subdivided. That's when he started to park trucks there.

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MR. ROMERO: He hasn't been owner for 23 years.

MS. ROMERO: He hasn't been doing it legally for 23 years because in 1989 in this same room by the committee and told that he had 45 days to pull out the wrecked cars. Well, he never bothered to get a business license. He never bothers to get any kind of permit to park trucks there. So yes, he's been there probably for 23 years some of the trucks, but there are no towed vehicles. This is a picture they're saying from 2005. So where are all these things that he's talking about. But now he's all the way back against the privacy wall that borders our property. There is not enough room for a turnaround and there's not enough room for ten trucks. There's no way he can do a master plan or a development plan. There is no place. There is no more room.

And it wouldn't hurt him to relocate and get himself the proper parking lot that he needs but he's afraid of variances some place else. These people on the internet make \$500,000 a year is what they're recording as income. And the nuisance – this is what they are. It's the unlawful or irresponsible use of one's own property in a manner that causes such inconvenience, annoyance or discomfort as to injure or damage the rights of an other person or the public in general.

We have people with asthma, emphysema, living there. We have small children running in their tracks. They burn down that road, Ben's Lane. They peel out. They make dust. They're abusive to all the neighborhood. You can't hang clothes out on your clothesline, because I have a clothesline right next to the wall, which will show in the picture where he knocked down our wall. And if you look at the plat again, he doesn't measure up. He doesn't have it. He just doesn't have it.

We are sixth generation on our land and we did buy from Bernadette Anaya's grandfather. My great grandchildren will be seventh generation. And we take a lot of pride in what we did. We built a beautiful home. We donate to the community. We're in the Agua Fria Association also. We've done everything we have to to make a better life for us and our family. We have title insurance. We have an abstract on our property and the reality of it is they've just outgrown the area. They just don't fit there. They started out with six small tow trucks. Now he's got two sleeper trucks, a big truck that hauls semi-trailers. And he's not only parking in that location, he also parks up on Prairie Dog Loop, right behind Nancy Rodriguez. All those semi-trailers and junked buses, and everything – the burnt cars, everything else is his.

He's got a lot there; he's got a lot behind our house. He's got a lot on Industrial Road which he testified was 1 ½ to 2 acres. It's only .4 of an acre and it's packed. Vehicles in that lot have not moved since January.

But this isn't about what he provides to the community. He does nothing for Agua Fria. He hasn't been licensed. He pays no taxes.

CHAIR STEFANICS: Could you summarize?

MS. ROMERO: Excuse me?

CHAIR STEFANICS: Could you summarize, like end your comments?

Because there are other people waiting.

MS. ROMERO: Okay. This isn't about what the – the safety issues is what they're bringing up. It's a variance for a residential area with ten residents that he has to come right past their house with a 20-foot easement to the very back property. The fire department

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can't get in there as Mr. Patty testified. It's not about the safety issue. It's about the variance. That's what we're here for, if he qualifies for a variance or not. If he's able to develop this land or not, if he should get his variance tonight, which is an impossibility. We're not giving him any land. No one else here is. No one is selling. Thank you.

CHAIR STEFANICS: Thank you. Did you want to say something, sir?

MR. ROMERO: Just the fact that we don't have nothing against – we have no objections to what they want to do. Bernadette is my cousin and to me she is my cousin, my blood. We've been family for years and her grandfather sold that property to me. He came to my property – I asked him when we first got married in 1966 if he's sell me property. He said, no, mi hijito, park your trailer there. You don't have to pay me. Just park it. I said no deal. I want to own. So we let it go at that. Seven years later he came to knock on my door and asked me, ¿todavía quieres comprar? Do you still want to buy? Yes. Vamos. He paced off what he wanted. He buried a stake. I had it surveyed and I have the [inaudible] in there that we paid him for four years, the payments that he wanted. The way he wanted it down. He only wanted so much a month, but he wanted it his way. So I honored that. He's my great uncle. My great grandfather owned that property before my Tio Benjamino owned that property, my grandma owned it first. They swapped properties. By handshake. I bought that property from my tio.

My great grandfather, I named that road, Avenida de Sesario, in honor of my great grandfather, because I stand proud on this earth. And I protect my family, my daughters, my grandkids. This is their future. This is why I'm standing here, to protect my family like he stated. We're here to protect our family. Well, fine. I have nothing against what they're doing but they're not doing it properly. As they say, 23 years? Negative. Only in the past couple years they've been parking up against my wall. And they say it's not an eyesore. Well, maybe it's not an eyesore but it is affecting my view. That's why I had to construct that type of wall that I did, for privacy. We have a personal clothesline that we use, because we're nostalgic. We're still from the old school. We hang our clothes on the clothesline.

My wife has to rewash sometimes those clothes because it was full of diesel fumes because [inaudible] If the clothes are wet and the fumes are coming over, [inaudible] she has to rewash the clothes.

On January 13th when he backed up into our wall, my wife had just removed clothes off that clothesline, and it happened within 15 minutes. She would have been under that debris. I'm sure you have a picture of our property, or our wall. If you need it I can show it to you. I don't know if you have it in your packet.

CHAIR STEFANICS: We have it.

MR. ROMERO: Okay. So that view right there. Evidence that he destroyed our table, our chairs. We used to sit out there and watch the sunset, because sit out there. That's our private quarters. Our clothesline was damaged and not repaired. Our tables and chairs were not repaired. My lawnmower. He claims that I hit him with a hammer. That's absurd. The debris was on top of my lawnmower. The pictures are evidence. The evidence is right there. What more do they need? What does Mr. Anaya need? Does he need to be grabbed by the hand and shown, this is what happened when you backed up into our wall? That's my property. And I stand proud to say that we built that home and it's not an adobe wall like he stated. It's not a wire fence either. It's 8" masonry constructed, well constructed.

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Even my insurance adjustor that came by to give us an estimate, he stated that's a very structurally sound wall to have caused that kind of damage and not destroy the whole thing. The whole thing could have toppled over. But no. Negative. Between the two pilasters that are reinforced with concrete and rebar, it didn't budge it. But he's still, the insurance claim, but he put stress on the entire 80-foot span of it. That's why it came out in the photo as it did. Repair the wall, repair my table and chairs. My brother fabricated those chairs and it was a gift to me. Those are my personal property. He [inaudible] repair. He states that he wanted to repair it, he asked me for a list of materials. It happened on a Friday 13th. Over the weekend Bernadette's dad passed away so I gave him that week out of respect. I didn't bother them, I didn't go approach them. I gave them that week out of respect, because her dad just passed away. I didn't want to go put any stress on them. So I fell back. Out of my kind heart I held back.

The following Saturday I went by to ask him, I had my list. I had it in my back pocket. She asked me. Give us the list of the material and we'll pay you for the material and you fix it. When I went there to negotiate with them, they stated another version. They said, we have a friend that's going to fix it. Okay. So I left.

CHAIR STEFANICS: Okay, so we're not going to get involved in the fixing of the wall. We're here to hear your concerns about the property. So I heard about the wall and the space, so I got it.

MR. ROMERO: But like Mr. Merit said that he had never had an accident in 23 years, well that was an accident. That didn't just happen out of the clear blue, it was an accident, on my property.

COMMISSIONER VIGIL: Madam Chair.

CHAIR STEFANICS: Yes. We have three more people to speak.

COMMISSIONER VIGIL: I have a question of this particular -

CHAIR STEFANICS: Go ahead.

COMMISSIONER VIGIL: Mr. Romero.

CHAIR STEFANICS: She'd like to ask you a question.

COMMISSIONER VIGIL: I'm a very process oriented person and that's an issue that's being elevated for me. We heard testimony on part of the record that the Agua Fria Village Association did have a response to this case. Did any of your who are opposed to this attend that April meeting? Were you at the Agua Fria Village Association when apparently, to some extent, this case was discussed?

MR. ROMERO: At the Nancy Rodriguez?

COMMISSIONER VIGIL: Yes.

MR. ROMERO: I think at that time we were attending a funeral, so I really don't know. We didn't go to the meetings every month.

COMMISSIONER VIGIL: Yes, but that particular one, when there's been testimony that this case was discussed. You don't recall being there? Is that what you're saying?

MR. ROMERO: No, ma'am.

COMMISSIONER VIGIL: Okay. And your wife wasn't there also?

MS. ROMERO: No. We were at a family meeting, a family funeral. My sister-in-law's mother passed away.

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COMMISSIONER VIGIL: Thank you. I just needed –

MS. ROMERO: So we didn't – we had planned to make the meeting but then we helped prepare food and all the other things.

COMMISSIONER VIGIL: Most definitely understandably. Thank you very much for answering my question. Thank you, Madam Chair. And those who testify, I'd like to know how many attended any meeting at all if in fact this project was discussed with the Village Association.

CHAIR STEFANICS: I'll ask that in a minute. Yes, ma'am. Your name?

[Previously sworn, Raquel Romero testified as follows:]

RAQUEL ROMERO: My name is Raquel Romero and I live at 1330 Camino Sierra Vista. Georgia and Henry are my parents. So my interest is obviously my inheritance to their property. I'd just like to point out that I don't feel that my parents are trying to shut down the Anayas' business and the last person who spoke on their behalf, Patrick Romero states as the wall says, equal justice under law, it's unfortunate that he can't practice the law and it's unfortunate also that Mr. Larrañaga, that his business is – what's the word that they used? It wasn't the conflict. I'm sorry. I don't remember the word that he used. Something that his business is complaint-driven. And it's unfortunate that they have to make a complaint to make people comply with the law, and I just think if you're going to run a business, do it right. So for 23 years, if you're going to practice a business and you're not going to follow the law, what everybody else has to do then maybe you shouldn't be running a business. That's just my point. Thank you.

CHAIR STEFANICS: Thank you very much. We have two more speakers please.

[Previously sworn, Diane Roybal testified as follows:]

DIANE ROYBAL: Diane and Robert Roybal, 7124 Hartford Hills, Rio Rancho, New Mexico. We're the owners right across from the Anayas' property. There's a wooden fence that divides the property and I have a few problems in regard to the attorneys' comments. Number one, it's true that they've been operating illegally for 23 years. Back in 1989 the only reason we opposed it was we were raising two young boys and they started parking cars right up against our wind fence, [inaudible] window, and they were right up against my fence. And to me, that was a very – it was a safety issue, because it doesn't take the boys very long before they jump the fence, get curious and get in the cars.

You can do everything you can to try and keep them in your yard but it's bound to happen and it did happen. I'm not going to go into that, because we're not here for that right now, but it is also true that right now we are not living on that property but we are the property owners and we have rights. And it is true that we have about three families living there that have all complained about the noise from the towing trucks, the traffic, unfortunately, and again, we're not trying to keep them for being able to operate a business. We just want everyone to come to a mutual understanding, show respect to each other and comply.

We could have come back and we could have said, okay, you guys. You told them you were running an illegal business. You have 45 days to clear it up. They didn't do it so what are you going to do about it? We could have come back here. We didn't do that. Everybody deserves the right to be able to work and provide for their family. Our problem

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now here is that they're not doing that. They're not doing that and they have made it apparent – what they do, the work that they do is important. It's important to the community, but they're doing it in the wrong place. They don't have the kind of yard that they need, the space. And just like the fire chief said, there's a lot of things that we could be taking into consideration and all we want is for everyone to come to the table and find a place to have an understanding.

We did leave our property but for the first couple of years we've had family living there. It wasn't being rented out, and that's a matter of choice. We are the property owners and we need to be heard and that's why we're here. So thank you.

CHAIR STEFANICS: Thank you. Do you have anything, sir?

[Previously sworn, Robert Romero testified as follows:]

ROBERT ROMERO: I also want to say something. I'm not really opposing about this but like she said, he might have to change the zoning area for him to have that business there. And I've known the C de Vacas because I was born and raised in Agua Fria and I've known them for many years and the board asked me when we were last time why we didn't turn him in. Well, the C de Vacas are good people. They're humble people and I feel that they should say something if they really like it or not. The one of the [inaudible] said he doesn't want the roundabout. That's what we're concerned. We didn't want the roundabout to go through our property. Now he's talking about a hammerhead, and how could he afford a roundabout? How's he going to afford a hammerhead? So I couldn't see why that was brought up at the last meeting.

So that's what we were concerned, that that roundabout was going to run through our property, which is my sister's property, my sister wrote a letter, Elaine Cervantes, she's my sister, and she wrote a letter to the Board saying she's opposed to this but she don't know what it's about. But we know some others. When we first moved there, it was way before I got married, we – the C de Vacas, we were working at \$3 an hour and I know the Anayas started low, with only three trucks And we felt for him. We couldn't turn him in. We were good neighbors and we wanted to keep it that way. But then this company came about and it's turned into more turmoil and everything because we're good neighbors and we wanted to keep it that way but it's up to you guys to see what is right, if it's right for him to have these trucks parking there or not, or if they're too big.

I guess he went too big on his business. He used to stay with the smaller trucks and now that he has the bigger trucks, or he has ten trucks. I don't understand where he's going to park them. So I thank you, Commissioners, that you guys are going to do your job and we have the right to speak out, and I thank them for what they have done all these years. They have done a good job. And that's all I've got to say.

CHAIR STEFANICS: Thank you so much for coming.

MS. ROMERO: One short comment. You mentioned a meeting of the association?

CHAIR STEFANICS: There were 36 Agua Fria Association meetings and I think Commissioner Vigil wants to know how many of you attended any of those meetings to talk about –

COMMISSIONER VIGIL: No, no. That wasn't the question. There was a meeting when this project was discussed specifically, in April or something. I just wanted to

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know whether there was equal representation. If there were people for and against?

MS. ROMERO: I don't think there really was, because we were never notified of that meeting. And we have been notified – we're keeping up as much as possible. And the last meeting you had, we were here by chance.

CHAIR STEFANICS: Okay.

COMMISSIONER VIGIL: Thank you very much.

CHAIR STEFANICS: Commissioner, there was a woman in the back who attended a meeting. Do you want to hear from her or not?

COMMISSIONER VIGIL: I'm happy to, please. If you'd come forward.

CHAIR STEFANICS: I'm going to end – come on up. I'm going to end the public hearing. I'm going to end the public hearing and now it's the Commission's turn and the Commissioner has asked the question and she believes, we believe this person can answer it. Then if the Commissioners want to ask questions of the staff or the applicants they will. Okay? I want to thank everybody in the audience for coming. Your comments are taken very seriously. So the public hearing is closed. We are now at the Commissioners' point for asking questions.

DONNA ROYBAL: I did not attend – I'm Donna Roybal, but I did not attend the meeting. They did not tell people that they were having a meeting for that day. What they did is they called a community meeting, and it's usually a water association meeting, but they don't tell people ahead of time that they're going to have a community meeting at the center. They're going to have a meeting at the Nancy Rodriguez Center and they tell people ahead of time what the meeting is about. Usually, it's like a water board meeting, but they don't give us notification ahead of time when they're going to have meetings about such as what they discussed about their metal wall or anything like that. Okay?

CHAIR STEFANICS: Thank you very much for coming. Okay. So, Commissioners, questions, comments? Commissioner Vigil.

COMMISSIONER VIGIL: I have a – I represent this district. The people from Agua Fria are long-standing, traditional historic villagers. There's a lot about Agua Fria Village that needs to be protected including property rights and personal business rights and everything that was brought up in the issue tonight. I did put this vote with Agua Fria Village with regard to their planning process, and it was a very long and arduous planning process. I am concerned about whether or not this complies with that ordinance and plan that we adopted after that and I have a concern also about what our fire department is saying.

I have a recommendation though. And I think and hope that you all will agree to move forward on this because it requires an agreement. This involves neighbors. This involves family. There's lots and lots of history with family neighbors. I'm going to recommend that the parties go into facilitation on this issue. I don't think we're ready to make a decision tonight because frankly, there's enough evidence here where the Commission could decide in one favor and possibly in the other. I'm not sure, because that evidence would have to be fully weighed. But what would be far more likely a successful outcome would be if these neighbors, who want to be able to work things out, and I hope that. And those neighbors who want to continue in their businesses went through a facilitation session and I think maybe the way to follow up with that is to visit with staff.

We've actually had several cases that have gone to facilitation and I will tell you,

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when it comes to people in Agua Fria who are related and who have common interests, you have a better chance for success than many of the cases that we've sent to facilitation because you have a common bond. So my recommendation, Madam Chair, members of the Commission – and I heard that this case was discussed at the Agua Fria Village Association, and I do need to disclose that I heard from a proponent and an opponent, from one of each, and did not respond to them because it would be ex parte communication.

So irregardless of any process you go to, the most important outcome is that you all sit down and talk around the table with a facilitator, bring out your issues, and perhaps there's ways it can be resolved. Perhaps there's even a way the issue of the fire department's concerns can be resolved. But this case is not ready in my mind to be approved or disapproved.

I would move that we table this case so that facilitation can actually occur between now and our next land use meeting. That would be fine. I'd be happy to see what the applicant has got to say, to see what this issue is, but I'm really sensing a very strong need for that to occur. And I wouldn't be surprised if you came out with a good resolution of this, at least I hope that would be the outcome would be. And that would be my recommendation, Madam Chair.

COMMISSIONER HOLIAN: Second.

CHAIR STEFANICS: Okay, there's a motion and second. Now, Commissioner Anaya, I'll take your comments, but a tabling motions –

COMMISSIONER ANAYA: That's why I was going to do a comment before the second was made. And all I wanted to ask you –

CHAIR STEFANICS: [inaudible] a tabling motion.

COMMISSIONER ANAYA: I just wanted to ask you, Madam Chair, Commissioner Vigil, I absolutely concur that there is some work that needs to be done that I believe they can do. I'm not quite sure of the logistics of facilitation because this would be the first time I would experience it on the bench here, so I'd need more clarification on what that means from staff. But what I would ask you and Commissioner Holian to consider is before we move on the tabling motion I do have some comments that might help the discussion and specific questions to staff that I would like to get answered that might help that dialogue along. But I think it is worthy to give an opportunity to see if there can be something more set up but I do tonight have some things I wanted to ask.

COMMISSIONER VIGIL: I'm perfectly willing to suspend the rules on a tabling motion and allowing all Commissioners to bring forth any issue that they think might help resolve or clarify based on the testimony.

CHAIR STEFANICS: Okay, and before I do that, Commissioner Vigil, I'm going to ask you to think about how you're going to phrase your motion because you're really doing a tabling motion with a condition and you might want a different motion. But think about that a minute. And the other issue is who would be facilitating? Because we have not in the past paid for professional facilitators here. So, Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Madam Chair. Thank you, Commissioner Vigil and Commissioner Holian. I would just re-emphasize what I think that Commissioner Vigil's comments are in line with my thought process. But I did want to ask some specific question relative to the case, and then provide some comments on the record as

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one Commissioner from my perspective.

Just a comment before I ask some questions. The comment I would make is, as one individual Commissioner sitting on this bench, I would find it really difficult being quite candid with everybody in the room, to look at a business that's been in existence for 23 years, whether it's a donut shop, or anything. Construction business. Any kind of business. Understanding a lot of the sequence of events that have happened, I would have a really hard time going from that business existing to making a decision that would essentially cease the business period. I mean I'm just saying this honestly to all of you in this room and this case, that would go for anybody that would come before us. I just – I would just have a concern with that. That's why I say what Commissioner Vigil has suggested is something that I'm hopeful – like I said I don't know how the logistics would work but maybe that's even a staff mediated discussion that would help the discussion along. I don't know.

But let me just ask these questions. Mr. Bennett, I wanted to ask you a question, and if there needs to be clarification from the Anayas or anyone else I'm willing to hear that. But you say in your presentation that the towing company was purchased – the towing company started in 1981?

MR. BENNETT: No.

COMMISSIONER ANAYA: Hold on. In 1981 the Padillas – okay? – had a towing company from 1981 until it was purchased in 1989. Is that correct?

MR. BENNETT: My understanding is that as of 1981 the Padillas already had a towing company in existence and ran that towing company – I don't know how long before 1981, but ran it continuously through to 1989 when they transferred that very business that had been grandfathered in by the Agua Fria Village Association.

COMMISSIONER ANAYA: Right. But just be brief in your responses because I know there's other people that are going to ask questions. From 1981 to 1989 a towing company was operated by the Padillas in the Village of Agua Fria.

MR. BENNETT: Yes, sir. That's my –

COMMISSIONER ANAYA: Okay. So, okay. And then in 1981, 89 the towing company was purchased by the Anayas and has been operated in the same location from 1989 from to now.

MR. BENNETT: Yes, sir.

COMMISSIONER ANAYA: Okay. So, and this is for you, Mr. Larrañaga, that I think they wanted you doing some review of historical documents or issues pertaining to code enforcement and I asked it earlier but I'm going to ask it again for clarification. Are you aware of any other complaints, land use oriented or otherwise, okay, that came to the County prior to February of this last year?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya –

COMMISSIONER ANAYA: This year. I'm sorry. This current year we're in.

MR. LARRAÑAGA: On this particular site, no.

COMMISSIONER ANAYA: Okay. So towing companies, and I know my colleague to my left here is the expert on the PRC, but towing companies are regulated by the Public Regulation Commission. Correct?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, I don't know.

COMMISSIONER ANAYA: Madam Chair, Commissioner Mayfield, towing

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companies are regulated by the PRC? Correct.

CHAIR STEFANICS: Yes. There's documents in our book from the PRC records.

COMMISSIONER ANAYA: So just a couple more things. Just a couple more things and a couple comments. Relative to the land use case, and I think this is helpful information that we should see more of in our packet. I went back and read the packet again. I read the letter that came from the County again, from the Land Use Administrator, and what was to cease and desist at the time which – I'm not quite sure – I see that they wanted the commercial activity and what I heard in the testimony was the cars were removed and it just puzzles me that from that letter till now there was nothing else that the County provided or did to stop any operation. I mean, it seems like there would have been more information. I'm just asking you guys to go back and look at that actual document and the discussions and what was the backup information that we could have.

Regardless of what comes out of the outcome of the facilitation, mediation, whatever the heck we call it, I would like to see more of the detail behind that particular decision in 1980 or what was the date?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, that was 1989 and I did try to find minutes, try to find something and couldn't find anything. This letter – there is a file.

COMMISSIONER ANAYA: Okay. I think those are all the comments I have for now. The comment – I made a comment at the beginning that said that I couldn't see myself from operating in a place for 23 years and then ceasing and desisting that business. By that same token, and I think this is where the comments of Commissioner Vigil have a lot of merit and a lot of standing with me is that I don't think that having a business is a carte blanche, the opportunity to do whatever the heck you want. I mean I think there are parameters. And I'm not implying that they've done whatever the heck they wanted but I think it's obvious that their business has grown over time and they have had to try and accommodate that growth over time, so that when you look at solutions, that I think we need to look at that closely. We need to analyze the space, we need to analyze the business itself, and trying to figure out what makes the most sense. But there are limitations associated with what you can do in a confined space. And I think we would be remiss if we didn't consider that there should be some limitations associated with the business.

So those are my thoughts. I look forward to seeing what comes of the discussions between the parties and I'm hopeful, as Commissioner Vigil stated that you all will be able to come up with some agreement that is mutual and that as neighbors and as family you could work through. Thank you, Madam Chair.

CHAIR STEFANICS: Thank you. Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair, and thank you applicants and also the individuals who are opposed to this. I concur also; I think Commissioner Vigil brought up a great suggestion. This is one case that would definitely warrant some sort of mediation as far as the opposing parties, recognizing this area and all areas in Santa Fe County but in particular this area and some of the documents that were forwarded to me. It's mixed use. There's private residences in this area. There are numerous businesses in this area, but I do have a couple questions and I'm just going to shoot them out.

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I don't know who they're appropriate for, if they're appropriate for the applicant or for staff. But I am going to ask really quick that we go to Exhibit 3, the first Exhibit 3 from the applicant's packet. And there's a map, an aerial map that shows a lot of areas. Just so I have in my clarification. Ben Drive. Where on this map, County Road 62, and what is this adjacent road here to my right, to my left, straight up right here? What road is right in front of the circled 5?

MR. BENNETT: Circle #5?

COMMISSIONER MAYFIELD: Yes. What road is that?

MR. BENNETT: The road to the right of that –

COMMISSIONER MAYFIELD: The main paved road.

MR. BENNETT: The main paved road is Agua Fria.

COMMISSIONER MAYFIELD: That is Agua Fria. So then County Road 62 is down here in front of arguably 2 and – in between 2 and 1. Okay, so the access to this property then is accessing Ben Lane right across arguably the street from 5, off of Agua Fria Road?

MR. BENNETT: No, it's just up further from 5 –

COMMISSIONER MAYFIELD: I'm sorry. Right in front of that. In between that red and white structure.

MR. BENNETT: That's correct.

COMMISSIONER MAYFIELD: And it goes to the right in between circle 7 and where it actually says Ben Lane?

MR. BENNETT: Yes, that's correct.

COMMISSIONER MAYFIELD: Okay and then we proceed down that road and now right in that middle area I'm seeing a bunch of vehicles.

MR. BENNETT: There are some vehicles –

COMMISSIONER MAYFIELD: What are those? Are those the towing vehicles? Are those the vehicles that we're talking about now?

MR. BENNETT: Those are personal vehicles. I think they belong to a neighbor.

COMMISSIONER MAYFIELD: Well, help me out, sir. This whole area right in between where those vehicles are at that has all the tire marks, that's arguably vacant property, who owns that property?

MR. BENNETT: Who owns this property?

MR. ANAYA: That belonged to Stella Sandoval. That's my wife's aunt.

COMMISSIONER MAYFIELD: Okay. So there's vehicles parked on Ms. Sandoval's lot?

MR. ANAYA: She's given us permission to park our trucks there. Those are our tow trucks.

COMMISSIONER MAYFIELD: Okay. But now your tow trucks are move to area 11.

MR. ANAYA: That's correct.

COMMISSIONER MAYFIELD: So is there a fence or is that still an open piece of property?

MR. ANAYA: It's been developed now. It's fenced off.

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COMMISSIONER MAYFIELD: Okay. So now let's go from 11 over to 6. I see there's a little entrance in that area that comes over to Entrada Fabian.

MR. ANAYA: Yes.

COMMISSIONER MAYFIELD: So is that a turnabout or is that some way that you can get your vehicles out?

MR. ANAYA: That's actually – between the property line there is an opening that we had created to cross over to visit the sister-in-law.

COMMISSIONER MAYFIELD: But that's not for your business vehicle access?

MR. ANAYA: No, sir.

COMMISSIONER MAYFIELD: Okay. So you kind of just turn around your vehicles on area 11 and then run them back out Ben Lane.

MR. ANAYA: That's correct.

COMMISSIONER MAYFIELD: Okay. Thanks. That really helps me out a lot. So now a question for again the applicants, but that fence that was knocked down on the Romeros' property, I guess to my far right. I'm assuming that's that white wall that was right there in between the green.

MR. BENNETT: Yes, that is – you're looking at still at that same –

COMMISSIONER MAYFIELD: I'm looking at circle 11 on the same page.

MR. BENNETT: Yes, it's just at the top edge of the circle, on the right side of the circle. See that white line that comes down to the right going from top to bottom downward to the right.

COMMISSIONER MAYFIELD: So the wall – I'm trying to question the wall.

MR. BENNETT: It's that white line.

COMMISSIONER MAYFIELD: The wall was built on the property line? Do we know?

MR. BENNETT: Yes.

MS. ROMERO: Actually, when we first put up a fence to separate our property, it's six inches in from the original survey, and then when we built the wall that's another six inches. So we're 12 inches in from what is actually our land boundary. But he has totally destroyed the fence and already knocked down the wall.

COMMISSIONER MAYFIELD: And that wasn't my question. I know typically, everybody does it. I may be guilty of it but I'll say this. But on an adjoining property by law you should arguably have that five-foot buffer on the size. So that means if you guys go to mediation that could arguably be a topic of discussion of at least bringing those vehicles five feet from that wall. Yes, sir.

MR. ANAYA: After the wall incident with the accident itself what we did is we brought the footings in about eight feet and we put railroad ties. So when the back of the trucks back up, when the wheel hits the railroad tie that gives whatever the distance from the wall, so that this incident will not occur again. We do have railroad ties that have been stamped into the ground to give us that boundary so that we back up to the railroad ties, that's the distance that we're given for the wall.

MS. ROMERO: Excuse me, that is incorrect.

CHAIR STEFANICS: If the Commissioner wants to ask you something he

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will. So thank you very much.

COMMISSIONER MAYFIELD: Just so I can understand this, depending on where this case goes, but thank you. So honestly, I think you guys have clarified a lot of this for me except – I'm going to ask this again. That center area that I believe you said Ms. Sandoval owns that property, there are no vehicles that you tow parked on that property, right?

MR. ANAYA: [inaudible]

COMMISSIONER MAYFIELD: Thank you, Mr. Anaya. And I guess my question is, based on some of my past experience in my past capacity, I was looking through your warrant application. The warrants do say, from the PRC, that this is for Ben Lane. I know the provisions within the Public Regulations Commission as far as having to keep an impound yard that people have access to, and I saw that in one of your packets in the back. I think it was 32 or something. Was that your impound lot?

MR. ANAYA: No, sir.

COMMISSIONER MAYFIELD: Who's impound lot is that one? It says Anaya's Towing on it. It's your guys' packet. And I may be wrong on the number; there's a lot of subtitles on here.

MR. BENNETT: Are you talking – yes, subtab 32 –

COMMISSIONER MAYFIELD: On subtab 32 it says Anaya's Roadrunner Wrecker Service. And it says it says it's storage lot 2876 Industrial Road.

MR. BENNETT: May I approach?

COMMISSIONER MAYFIELD: Sure. This one right here.

MR. BENNETT: That's Bob's Towing.

COMMISSIONER MAYFIELD: So that's not – it says Anaya's Roadrunner on the right side.

MR. BENNETT: Where is it?

COMMISSIONER MAYFIELD: So let me ask this question then. That shows an impound lot. And if you guys look at the title on this page it says Anaya's Roadrunner Wrecker, Bob's Towing, storage lot 2876 Industrial Road.

MR. ANAYA: That is correct. That's where we have our towing facility, the storage yard.

COMMISSIONER MAYFIELD: Are you sharing this facility with another towing company.

MR. ANAYA: No, we own both companies.

COMMISSIONER MAYFIELD: Okay. You own – okay, that's great. And then I'm going to go back to some minutes that were given to me in staff's packet, and I'm going to ask this question. And I am on page – let's see what page I'm on. I'm on staff's summary page and it is the second page, and it says the applicant states – so this is staff saying what the applicant stated. Oh, no. I apologize. [inaudible] I am on page 3 and the exhibit number is NBI-6. Okay, here we are. So I'm going through the second paragraph. I'm not going to read the whole paragraph but I am going to say, The Anayas utilize an impound lot away from their property to provide temporary storage for all vehicles that have been towed. However, the impound lot is vulnerable to weekly vandalism and is not an appropriate site to park the Anaya's tow vehicles.

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I'm going to say again, I'm not with the Commission but it causes me concern because you also have to have a secured facility for all impounded cars to be at. And that's why I would believe that your vehicles could also be hopefully safe at an impound lot that you have that is away from your main residence. So I'm just going to throw that out there.

And I guess my other question is in hearing the testimony that was provided on both sides, is that I've been told there are no impounded vehicles at the lot on Ben Lane but I've also been told or heard that there are occasionally impounded vehicles on Ben Lane.

MR. ANAYA: No, sir, those are my race vehicles, recreational vehicles.

COMMISSIONER MAYFIELD: I'm sorry, sir.

MR. ANAYA: They're my racing vehicles. They're recreational vehicles that we use such as my camper, my boat, my racing truck that we do in the mud. You know, various vehicles that we take out and play around when we have free time.

COMMISSIONER MAYFIELD: Again, just for the record, there are no impounded vehicles or no vehicles that you're picking up on a DWI seizure or anything that would be stored at Ben Lane.

MR. ANAYA: No, sir. All the vehicles that are picked up by the seizure contract go to the police or State Police and are held in their facilities. All we utilize that is pick up and transport are those vehicles to the law enforcement wherever they want to seize them at. Our facility on Industrial Road is not adequate enough to park all my tow trucks in there. That's the reason why we don't put them there. Are entry ways that the property has is too small. It's big enough for a small truck to get in there. And basically, that's where we store accidents and stuff that we pick up for the insurance people.

COMMISSIONER MAYFIELD: So say you have Class D wrecker license.

MR. ANAYA: Yes, sir, we do.

COMMISSIONER MAYFIELD: So if you towed a fire truck – you could tow a fire truck with a Class D, where would you store that vehicle at?

MR. ANAYA: We don't store them. Vehicles of that magnitude and size get delivered to the fire department or the – where they do the repairs at Station 5 on Siler Road, or if they're badly wrecked or whatever then we would be delivering them to Albuquerque to a facility that does work on that type of equipment. But here in Santa Fe we don't store anything of that magnitude in our yard. It's not big enough.

COMMISSIONER MAYFIELD: Okay. Thank you. And then this question will be for staff and it will just be a follow-up. Mr. Larrañaga, so in the code as it exists today – and I do appreciate what the Anayas just told me, if they are keeping towed vehicles off at a secured site, but I believe that the question here is keeping their primary business vehicles at this site. I guess my thoughts though on this is that they came in for the application from the County, they came in for a business license, but arguably they have almost like a split-use business license, because of what I heard, they're doing the bookkeeping, they're keeping their primary access vehicles for towing at this site, but everything else that they're impounding and taking to a different location.

So in our current code, if somebody's running a business or doing a business and understanding that people sometimes work 24 hours a day, what are the rules as far as if you have to have a vehicle to get to point A for work that you cannot keep that vehicle on your private residence? Because I don't honestly view it almost as a commercial business being

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run out of the Anayas on Ben Lane if they have that adjacent lot.

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, the Agua Fria Ordinance is the one that governs this and they have a home occupation and they have a home business. When the applicants first came in we discussed the possibilities of doing a home occupation or home business where they could have one tow vehicle on the property and still have their office and everything else at their house, which we've done in the past and allowed a tow vehicle just as long as it's screened and the signage and everything else is not visible from the neighbors. When I looked at the plat, the way the lot is configured, it's one big lot. So they still wanted to store their tow vehicles, the tow trucks on the back – everybody's calling it a lot but it's one lot. It's just shaped oddly. It was probably – I didn't process the family transfer but that was probably done so they could meet the density requirements to allow the family transfer or land division back then.

So it's one complete lot. So they couldn't qualify, showing it as a legal lot, they couldn't qualify as a home occupation by having on one part of the property, having seven, six, whatever tow trucks and then one tow truck parked on the part of the lot where the house is on where they could run their books and so on.

And the variance that's being requested is a variance of the Agua Fria Ordinance. The use list, looking at the use list and analyzing that and discussing that with other staff members and my supervisor we've – it didn't qualify under that use list. So to qualify under that use list as a special use, which a special use would need a master plan, eventually a master plan and development plan to rezone that property as a commercial use for that particular type of use, their best way was to ask for a variance. It's not a variance of the Land Development Code, it's a variance of the Agua Fria Ordinance to allow it to be recognized as a special use under the category that's stated in your packet so that they could still come forward for a master plan, preliminary and final development plan.

As I mentioned in my staff report we haven't analyzed it but a conceptual review it is a small lot, that many tow trucks, that's where they have to meet Fire Marshal requirements, they have to meet other requirements to access onto Agua Fria at the master plan process.

COMMISSIONER MAYFIELD: Okay. Thanks. Madam Chair, that's all I have.

CHAIR STEFANICS: Thank you. Commissioner Holian, and then we'll go back to your final – no issues? Okay. Commissioner Vigil.

COMMISSIONER VIGIL: Was the variance requested for the fire denial?

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, no. The variance is strictly on the fact that they do not qualify as a special use under that category for the type of business that they're operating and the use that they are using the property for. The Fire was brought into review for the use that they're using right now and that's why they reviewed it.

COMMISSIONER VIGIL: And under the current recommendation they really should consider, if all circumstances stay the same I'm hoping they can work something out with the fire department but if all circumstances stay the same wouldn't they need to request to variance once the fire department is denying if the regs are not met from their review of the case?

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, at the time of master plan they might not meet the requirements stated by Fire, as a commercial

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development. I believe, and Buster can answer this, but right now he's looking at it as a commercial/residential property that's running this type of business. As a master plan it would turn into a commercial property for this type of use.

COMMISSIONER VIGIL: Okay. I think that issue might need to be really insightfully discussed in the motion I'm going to make on the facilitation. With that, Madam Chair, if I may, I move that we temporarily table pending staff arranging for a mediation with a professional mediator between the applicant and persons opposing the application. The mediation should be completed prior to next month's land use agenda, at which time staff can report on the results of the mediation. If in fact more time is required for mediation that report can be given at the next land use. That is my motion.

COMMISSIONER HOLLAN: And I'll second.

CHAIR STEFANICKS: Okay. Thank you. We are on the vote. It's to temporarily table with a condition, which is allowed, and the intent is to bring this back in a month. Mr. Bennett, you had a short comment or question?

MR. BENNETT: I have a question. Before a decision is made to mediate this I have some questions about such a mediation. Number one, is there going to be input into who is the mediator? Number two, is Mr. Larrañaga going to be involved with the mediation? And number 3, who are the parties to the mediation? I know the Anayas are; they're the applicants, but is it just the Romeros? What are the limitations?

I know the likelihood of success will rise with the fewer amount of people that are involved so I'd like some clarification on that.

CHAIR STEFANICKS: Commissioner Vigil, would you like to address that?

COMMISSIONER VIGIL: What I have anticipated is that the applicants and the opponents to the application be initially the principal parties of that. They will need to meet with staff. I'm not sure if they're fully familiar with what mediation is or is not. But I think there will have to be an orientation to that. I think they can talk about a consensus with the mediator. It is anticipated that a mediator who has some background in land use would be significantly helpful in this process, but when you mediate you actually are able to identify your own process, and I think the mediator can start by identifying between these two parties what the process will be and who will be involved.

And I think they become a part of that decision process. But usually it's the applicant – so that would be the Anayas, and the Romeros. Okay?

CHAIR STEFANICKS: Let me add, the County has the ability to utilize State Risk Management Alternative Dispute Resolution Bureau, and they have a list of free mediators and paid mediators that can be drawn upon and have no relationship with the County or probably with you, Mr. Bennett. So there are some venues to selecting somebody totally objective for both parties.

MR. BENNETT: And who would bear the cost of a paid mediator?

COMMISSIONER VIGIL: I think when the County orders it the County is responsible.

MR. BENNETT: Thank you.

CHAIR STEFANICKS: So I think we're ready for a vote.

COMMISSIONER ANAYA: Madam Chair, just one comment if I could.

CHAIR STEFANICKS: Is it a question or a comment?

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COMMISSIONER ANAYA: Just a comment. What's being proposed and being voted on is an opportunity to find some middle ground – bottom line. And all of you should take it as that. Thank you.

CHAIR STEFANICS: Thank you. All those in favor of the motion to temporarily table with the condition for mediation between both parties prior to the next land use case, which is a month from now please say aye.

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

CHAIR STEFANICS: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair, just a note that this is still an adjudicated case and we're all bound by ex parte communication. Just so everybody is still aware of that.

CHAIR STEFANICS: That's correct.

MR. BENNETT: One other thing.

CHAIR STEFANICS: Mr. Bennett.

MR. BENNETT: With respect to that schedule, it's very difficult for me. I have out of state litigation that I'm involved with for the next month fairly heavily, and I just don't know if it's logistically possible for me to do it in a month.

COMMISSIONER VIGIL: That's a discussion you need to have with your client, I think. And the motion itself does say if the parties are not ready to come forth at the next land use they have the option of reporting that and extending it, but I don't know that we can make a decision about your availability. Thank you.

CHAIR STEFANICS: Thank you. So Commissioners, I would ask that you keep the section from the BCC book, and the entire binder that was given to you tonight, so that staff do not waste another tree. So we would have all of our materials if you keep the section from the staff BCC book and from the – and the entire book that was presented to us.

XVI. ADJOURNMENT

Having completed the agenda and with no further business to come before this body, Chairwoman Stefanics declared this meeting adjourned at 8:55 p.m.

Approved by:



Board of County Commissioners
Liz Stefanics, Chairwoman

ATTEST TO:

Staff recommendation is approval of a transfer of ownership of Liquor License No. 2792 which is currently located at 37 Fire Place. Madam Chair, I stand for any questions.

CHAIR STEFANICS: Thank you. And before we go to any questions for you from the Commission, I'd like to clarify for the record that we also discussed real property acquisition in our executive committee, so that the minutes would reflect that as well. Thank you.

COMMISSIONER MAYFIELD: Thank you, Madam Chair.

CHAIR STEFANICS: I do have a question. I realize that this is replacing something, but is this the Santa Fe Brewery or is this the restaurant?

MR. LARRAÑAGA: Madam Chair, this is the restaurant.

CHAIR STEFANICS: Okay. Thank you. Are there other questions or comments from Commissioners for staff? Okay, is the applicant here? Do you have anything you'd like to say?

[From the audience the applicant declined to add anything.]

CHAIR STEFANICS: Okay. Thank you for being here tonight. Okay, this is a public hearing. Is there anybody in the audience that would like to speak for or against this request? Anybody at all? Okay, seeing no one, the public hearing is now closed. We are on discussion or action on this case.

COMMISSIONER MAYFIELD: Move for approval, Madam Chair.

COMMISSIONER ANAYA: Second.

CHAIR STEFANICS: There is a motion and a second to approve BCC Case MIS #12-5370, Cordelia O. Roybal enterprises, LLC, liquor license.

The motion passed by unanimous [4-0] voice vote. [Commissioner Holian was not present for this action.]

- XVII. A. 2. **CDRC CASE # V 12-5200 Robert and Bernadette Anaya Variance. Robert and Bernadette Anaya, Applicant's, Talia Kosh (the Bennett Firm), Agent, Request a Variance of Ordinance No. 2007-2 (Village of Agua Fria Zoning District), Section 10.5 (Village of Agua Fria Zoning District Use Table), to Allow a Towing Business as a Special Use Under the Zoning Use Table on 0.70 Acres. The Property is Located at 2253 Ben Lane, within the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East, (Commission District 2 [Exhibit 3: Supplemental Material; Exhibit 4: Anaya Exhibits]**

MR. LARRAÑAGA: On June 21, 2012, the County Development Review Committee met and acted on this case. The decision of the CDRC was to recommend denial of the Applicants' request for a variance.

On August 14, 2012, the Board of County Commissioners met and acted on this case. The decision of the BCC was to table the request for a variance pending mediation between the Applicant and persons opposing the application. Rosemary Romero was contracted by Santa Fe County to be the mediator as directed by the BCC. Ms. Romero's recommendation states: "Mediation is a process that often helps bring parties together to resolve issues in a neutral setting with 3rd party support. In this particular case, several factors indicated that this case would not be appropriate for mediation. In particular, the inability to talk directly with the parties requesting the variance proved challenging to the process; getting contact information for family members and getting calls returned from family members who did not want to be involved was difficult and the issues noted above indicated that full participation from all affected parties in a mediated process would not be possible. The lack of participation from opponents to the variance is not an indicator of interest, but of 'just not wanting to be involved' in either a mediation process or the county land use process and the potential for making things worse rather than better." The Mediator Report to the BCC is attached as Exhibit 11.

Staff has included additional information that may help to clarify some of the confusion at the August 14th hearing with respect to the testimony given by the Applicants and their Agent and the documents which were submitted by the Applicants. Attached as Exhibit 12, in your packet material are plats of the property that illustrate the change in the lot lines relative to the placement of the tow trucks on the site; dated aerials of the site which illustrate the expansion of the business, the addition of larger tow trucks and where the tow trucks have been relocated on the site; photos of the Anaya property and a response to the list of businesses provided by the Applicant. The Applicant also submitted a letter from William Mee which was presented to the BCC in support of the Application by the Agua Fria Village Association. Enclosed as Exhibit 14 is a letter of clarification from Mr. Mee. In this letter, dated August 31, 2012, Mr. Mee states: "The letter that was submitted from myself on behalf of the Agua Fria Village Association in regards to CDRC Case #V 12-5200, the Robert and Bernadette Anaya Variance, may have been misinterpreted as support for the Anaya variance or led to the conclusion that the Association had taken formal action on the case." Also, attached as Exhibit 13 is the criteria set forth in the Land Development Code which describes non-conforming use as a use of a structure or property.

Madam Chair, would you like anybody to go through those exhibits right now or do you want to save it for questions?

CHAIR STEFANICS: Let's do the exhibits right now.

MR. LARRAÑAGA: Okay. So if you could turn to Exhibit 12, where it has the plats. Exhibit 9-A as the original plat that shows Tract 4, which was .332 acres, which is the original Anaya property.

CHAIR STEFANICS: So, Mr. Larrañaga, are you entering new information into this case?

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MR. LARRAÑAGA: Madam Chair, no. Most of these exhibits were brought out of the exhibits the applicant submitted. I was just clarifying how the lot started, how it expanded when there was a lot-line adjustment, how it created the lot as it is right now, and where the tow trucks started through aerials, actually that the applicant submitted, through the years, how they expanded in the tow trucks and where they've been placed on the property, on their property and on adjoining properties, and then there's just one aerial stating – really emphasizing in color what the actual lot, their lot, what it looks like and where the tow trucks were stated. That would be 2-D. Most of these aerials were already presented to you either by them or by staff in the prior hearing. We're just emphasizing to try to clarify the lot configuration and where the tow trucks were parked initially and where they are now, what brought this to our attention with the complaint.

CHAIR STEFANICS: Okay, so let's leave it then to questions to identify items that you might have to direct us to in the appendices or the attachments. Okay?

MR. LARRAÑAGA: Yes.

CHAIR STEFANICS: So are you ready for questions?

MR. LARRAÑAGA: Madam Chair, the rest of the report is pretty much as the original report. I'm ready for questions.

CHAIR STEFANICS: Okay. Thank you very much. Okay, to recap, you're still recommending denial. The mediation really could not occur, from your notes, due to the lack of presence of some of the parties.

MR. LARRAÑAGA: Madam Chair, that's correct. The letter from the mediator is in your packet materials.

CHAIR STEFANICS: Okay. Questions, comments from the Commission for staff? Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you. And Madam Chair, so help me again with your statement as far as the mediation. So there was active party involvement in the mediation?

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, actually I believe Rosemary Romero, the one that we got as a mediator is here in the audience. Maybe she could answer that question.

COMMISSIONER MAYFIELD: Okay. [inaudible], Madam Chair.

CHAIR STEFANICS: Okay, so before we go to Ms. Romero, are there other questions for staff, and then I'm going to ask our attorney about process. Well, let me just ask the process question first. Mr. Ross, we held a full public hearing on this earlier.

MR. ROSS: Correct.

CHAIR STEFANICS: And Commissioner Vigil, I believe it was, requested mediation. So we are not bound to a full public hearing at this time, just to questions and clarification?

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

CHAIR STEFANICS: Okay. Thank you. So, since that is the case, I will put Commissioner Holian and Commissioner Vigil on the list but Ms. Romero will you come up to answer Commissioner Mayfield's questions? And thank you for being with us this evening. Did you catch his questions?

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ROSEMARY ROMERO: Good evening, Madam Chair and Commissioners.
[Duly sworn, Rosemary Romero testified as follows:]

MS. ROMERO: For the record, my name is Rosemary Romero, Rosemary Romero Consulting. I am a mediator/facilitator for the City of Santa Fe and internationally as well and have 22 years experience doing mediation. So, Commissioner, to answer your question, I did watch the BCC meeting where this was sent to mediation, and the process was a voluntary process so I'm hoping that I'm going to answer the question that you asked, which was it proved rather difficult to get full participation in the process because it was voluntary. I don't think people really got it that it was – and it was nowhere stated that they would participate in mediation. I talked to every participant, every potential participant. Some said this sounds like a great idea; move forward with that, with the assumption we were going to move toward mediation, started to figure out what some of the issues were that would be addressed, but as we got closer to mediation, to the date that we had put forward, people really started to back away and even in the assessment part of the mediation, just trying to hear from people, trying to understand what the issues were, people just – they kept pushing back. This is going to cause more problems for our family than it should. There's a legal process that should be followed.

I noted I think all of them in here but to give you more of the detail people just didn't want to participate in mediation that wasn't mandatory; it was voluntary, and when push came to shove, they really didn't want to participate. I probably could have gotten three people, but in effect that wouldn't have solved the issues that were at hand. I needed full participation just given where people lived and the impact on the surrounding neighbors. I think it would have been best to have full participation and that wasn't guaranteed at all. It was not even possible.

COMMISSIONER MAYFIELD: Madam Chair, Ms. Romero, thank you for that. But how about the mediation between the two main parties, the Anayas and I believe, and I'll look at it, but the Romeros?

MS. ROMERO: Madam Chair, Commissioner Mayfield, I believe initially that the parties as noted were – the disputants were the Romeros, but in working with staff to figure out who should be involved in the mediation it was clear that there were other people beyond the Romeros that were relatives within the areas where the site was or is that should have been part of the mediation because it really was affecting everybody, and many of those were family members. So in reviewing the BCC meeting minutes of that evening where Commissioner Vigil asked for mediation, it really was broader than just the two disputants. The disputants asked Land Use staff to make it be broader than that because of the impacts to those in that area and then the Romeros who are not in that compound but were affected and will be affected by a decision made by the BCC.

So it went beyond the family members to those that were affected. I did talk to the people in the surrounding area also to see if they could be part of it, because whatever decision does get made it does affect people who are beyond that compound.

COMMISSIONER MAYFIELD: So Madam Chair, Ms. Romero, did you meet either with the Anayas or the Romeros?

MS. ROMERO: I met with the Romeros, who found the time to meet with me.

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Everybody else would either – did not meet or – I did talk to them. For the Anayas, I was unable to meet with them directly. I was given direction to speak to their attorney only. So for them, I understood what the issues were, having read the packet that was given to me by staff. What I was looking for was issues that could be mediated with those that were going to be affected by the decision.

COMMISSIONER MAYFIELD: Okay. Thank you. Thank you, Madam Chair.

CHAIR STEFANICS: Thank you. Commissioner Vigil.

COMMISSIONER VIGIL: And thank you, Ms. Romero for your efforts in this. I guess my question may go to Steve. Because I know we're looking at mediation as an alternative under Sustainable Growth, because we request mediation be done by the parties can we go to a mandatory request? It doesn't seem to me that we have a rule or regulation that allows us to do that, and I think if we define a process that includes it that would give us permission at minimum to do that.

MR. ROSS: Madam Chair, Commissioner Vigil, we weren't planning on requiring mediation except in those cases that were selected for mediation, in which case it would be required. So it wouldn't be required of all cases. You're probably not even asking that. You're probably asking whether it can be made mandatory. That's how they do it in Albuquerque and we were planning on proposing that model.

COMMISSIONER VIGIL: Okay. But we don't have currently anything that directs them to do it.

MR. ROSS: Not in the current code, there's nothing on this topic at all.

COMMISSIONER VIGIL: Okay. I just think it's unfortunate that the parties did not choose to mediate. Mediation is an alternative dispute resolution particularly created for neighbors and neighbors are the ones that have to live with the consequences which really the best alternative for both the neighbors to understand each other's position and to try to come to a compromise for those positions. That is what my motion hoped for. I don't think you can mediate with attorneys. If you were put in a position where you couldn't mediate unless you spoke to attorneys, that's not a mediation. Attorneys are trained advocates in an adversarial setting. They are not representing their clients in mediation unless their clients give them a directive to compromise. But apparently that wasn't given at all. So I can see the difficulty in trying to mediate this case. I think that's very unfortunate because that really puts this Commission in a position of having to make a choice that's either up or down, that people are either going to happy or unhappy with, whereas mediation would have brought a better outcome. I'm very disappointed. Thank you.

CHAIR STEFANICS: Thank you. Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. I have a question from you, Jose, and I think this is on Exhibit 12 which I think was in our packet, which I think was new material as compared with the packet that we had last time. Is that correct? Exhibit 12, with the aerial views?

MR. LARRAÑAGA: Actually, Madam Chair, Commissioner Holian, it's revised material. It's the same material that was in your packet, actually, like I mentioned. It's material that was brought by the applicant originally. I just used it to show the history and so on.

COMMISSIONER HOLIAN: So I just wanted to clarify something. Because in 2008 it looks like there were no tow trucks on the property in question, and then in 2011 there were tow trucks on the property. So when did they start parking tow trucks on that property? I'm looking at aerial 2-G in Exhibit 2 in our packet, not this big fat one but the one that we had at home.

MR. LARRAÑAGA: Yes, Madam Chair, Commissioner Holian. The clearest aerial is Exhibit 2-C under that same Exhibit 12. You'll see some tow trucks and you'll see Ben Lane on Tract 1, that's labeled Tract 1, so that's the clearest one that has tow trucks on it. And you are correct in stating that out on the outlined property in 2-E the tow trucks weren't on their property; they were on somebody else's property, right across from their home. I think this was created because part of the questions brought up was since they've had tow trucks there for years, what brought them to our attention was because it went to the back of their property, where they were originally parking the tow trucks. Now there's mobile homes there. The people that own the property, relatives of the Anayas have put mobile homes in there and so on so they moved the tow trucks back on their property on the back side and the Romeros live to the north of them on that wall that separates where they live and that's what brought in the complaint.

COMMISSIONER HOLIAN: So do you know what year they started parking the tow trucks?

MR. LARRAÑAGA: Madam Chair, I believe it was in the nineties, early nineties, according to –

COMMISSIONER HOLIAN: Well, it looks here like in 2008 there were no tow trucks on the lot in question.

MR. LARRAÑAGA: Yes, that's correct. On the lot in question, somewhere between 2008 and 2011 they started. I don't know exactly what year.

COMMISSIONER HOLIAN: And then I gather that the route that the tow trucks take in going to where they park is along where this yellow line is. Is that Ben Lane?

MR. LARRAÑAGA: That's exhibit –

COMMISSIONER HOLIAN: I'm looking at Exhibit 2-G, but it doesn't have Ben Lane marked on here.

MR. LARRAÑAGA: Madam Chair, on 2-G, that's correct. That's Ben Lane.

COMMISSIONER HOLIAN: But there's a yellow line that goes from Agua Fria to where the – and that's where they go in and out of that parking lot, correct?

MR. LARRAÑAGA: Correct.

COMMISSIONER HOLIAN: And is that an easement for the trucks? I mean, is that an official easement for vehicles to go up and down that lane?

MR. LARRAÑAGA: Madam Chair, Commissioner Holian, that's an easement for the property owners to go. It's a private easement for all the property owners to go through to get to their properties, Ben Lane is. This is a whole family tract which brothers and sisters live on and that was an easement that was created for everybody to use to get to their properties.

COMMISSIONER HOLIAN: Okay. Thank you, Jose. And then I have a question for Captain Patty. Captain, could you repeat what your findings were with regard to

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access for the fire department in the case of an emergency to this place where the two trucks are parked?

BUSTER PATTY (Fire Department): Madam Chair, Commissioner Holian, Ben Lane is wide enough, the whole general road is wide enough, which meets the minimum fire code of 20-foot wide. The entrance off of Agua Fria doesn't have any radiuses. It has a telephone pole and a wall that would have to be increased a little bit. We did meet with the applicants and their attorneys last week and explained that. And at the end of the road on that piece of property they would have to create a hammerhead. It doesn't have to be a cul-de-sac but there has to be a place to put a hammerhead to turn around for a commercial operation.

COMMISSIONER HOLIAN: So that would be possible to actually make those modifications?

CAPTAIN PATTY: It is possible if they choose to.

COMMISSIONER HOLIAN: Okay. Thank you, Captain.

CHAIR STEFANICS: Thank you. Any other questions for staff.

COMMISSIONER VIGIL: I --

CHAIR STEFANICS: Commissioner Vigil.

COMMISSIONER VIGIL: Mr. Larrañaga, and I was trying to dig through all of these. I didn't have these notebooks priorly. There has been increased use of this property. This is the first time it's come to our attention. Is that correct?

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

COMMISSIONER VIGIL: Do you have any history of that increase of use and what it was for?

MR. LARRAÑAGA: Madam Chair, no. This came in as a complaint. If you go down Agua Fria you can't really see what's back there so I guess in our defense as far as code enforcement and watching over Agua Fria unless it came in as a complaint we wouldn't know.

COMMISSIONER VIGIL: So it's fair to say the increased use just never got complained about, prior to this case.

MR. LARRAÑAGA: Madam Chair, that's correct, until they moved the tow trucks back to the back of the property. Yes.

COMMISSIONER VIGIL: Okay. Thank you, Madam Chair.

CHAIR STEFANICS: Thank you. Other Commissioners. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, for the record, how many years has this business been in operation, Mr. Larrañaga?

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, I have no idea. The area show it since the early nineties that there were tow trucks in there. The business has never been registered with Santa Fe County. That's what they got cited for was running a business without a business license.

COMMISSIONER ANAYA: If the Anayas could come forward and just answer that question for me. How many years have you been operating in that area.

[Duly sworn, Bernadette J. Anaya testified as follows:]

BERNADETTE ANAYA: Bernadette J. Anaya. We have been in business

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since February 14, 1989.

COMMISSIONER ANAYA: Okay. Thank you very much. Madam Chair, either yourself or someone else in the family. Are you willing to – it doesn't matter. Are you willing to adapt the property access on the fire hammerhead that Commissioner Holian just brought up the Fire Marshal for?

MS. ANAYA: Yes.

TALIA KOSH: I'm Talia Kosh, attorney for the Anayas.

COMMISSIONER ANAYA: Madam Chair, I think if the answer is yes – the answer is yes?

MS. KOSH: Yes.

CHAIR STEFANICS: Okay. That's all he wanted.

MS. KOSH: And I have answers to other questions and I'd also like to respond –

CHAIR STEFANICS: Okay, if you're asked we'll call you up so you might as well stay in the front row. Commissioner Anaya, you have the floor.

COMMISSIONER ANAYA: Madam Chair, I would move for approval with conditions represented by Commissioner Holian to make sure that they're adequately reflected on the record, with other staff conditions presented.

COMMISSIONER MAYFIELD: Second, Madam Chair.

COMMISSIONER VIGIL: Madam Chair, I'd like to comment on that.

CHAIR STEFANICS: Yes. There's a motion and a second to approve with conditions from Commissioner Holian and staff. Commissioner Vigil.

COMMISSIONER VIGIL: It scares me but the area I represent is being proposed by a different motion than I think the way it should be because as the representative of Agua Fria Village the greatest message that I have been received is that this area, this village, cannot preserve its historical back, its historical character because there are many violators of the current code, and many of these violators don't even come to the County, they just act in their own way.

Many of the business, and there are quite a few businesses in Agua Fria that actually occur and got grandfathered in before we had the code. Now that we have the code and we're able to gain some control over the development and the growth of this community the balance that needs to occur at this point in time is the preservation of the historical village. And I don't think that that preservation will occur if we allow far more activity in the village that was not intended to be there. It's currently zoned already; it's got a specific zoning, and I do agree that we need to help our communities and the members of our community to promote economic development but it has to be done in an appropriate way, and that is you come before the cc. You come and you get your business license. You come and you look at any kind of zoning change that might need to occur, and that's the way it's done. It isn't done in violation of the code, and it isn't done in a way that all of the neighbors and the village is coming to their representative and saying, this is exactly why we went through a planning process. This is exactly why we wanted control of our future.

So it really concerns me that, number one, the mediation didn't occur. And I have to ask Mr. Anaya why he didn't mediate.

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[Duly sworn, Robert M. Anaya testified as follows:]

ROBERT M. ANAYA: Robert M. Anaya. We did and we were all for it. The problem was the mediator and the Romeros didn't want to meet with us because we had an attorney.

COMMISSIONER VIGIL: Okay. You would mediate with your attorney present, yet the mediator's requirements are that there is no attorney present for mediation.

MR. ANAYA: We weren't told that. We were willing and ready to meet. It never happened. It never happened.

COMMISSIONER VIGIL: That's not what was represented tonight.

MS. KOSH: May I read an email to you?

MR. ANAYA: I need you to hear the email because it was given to her telling us what was going on.

MS. KOSH: It just shows our willingness. If I just may read this because –

COMMISSIONER VIGIL: I will have to have the mediator respond to that. So I didn't want this to be a he said-she said, Madam Chair. I think we have information here. The mediation and the willingness to mediate, I just wanted Mr. Anaya's response, Madam Chair. That's all I need.

CHAIR STEFANICS: Okay. Thank you. I have a question for Mr. Larrañaga please. Mr. Larrañaga, does the business have a second property? Where it stores vehicles?

MR. LARRAÑAGA: Madam Chair, yes. The business has one on Industrial Road, within the city limits.

CHAIR STEFANICS: Okay. Thank you very much. That's all I need to hear. There is a motion – Yes, Mr. Larrañaga.

MR. LARRAÑAGA: If I may, Madam Chair, just to clarify, the variance is to allow them to be recognized as a special use under the Agua Fria ordinance. If they get approved of this variance they still will have to come in for a master plan, preliminary and final development plan under that ordinance and under the County code. So at master plan they would have to meet the requirements of master planning, zoning – traffic impact analysis, water budget, the things that Mr. Patty talking about, at master plan.

CHAIR STEFANICS: So Mr. Larrañaga, based upon what you're telling us and what is there now, could the existing layout of the business on the property possibly pass code requirements?

MR. LARRAÑAGA: Madam Chair, without reviewing all of it, it possibly can. The access, as Mr. Patty stated, that's somebody else's property. I don't know if they'll meet the requirements of the radiuses. Again, in my report I state that the staff has conceptually reviewed the site for zoning requirements for a special use and it was determined that other variances may be required. So we won't know that until the submit for the master plan process, and see if they meet all the requirements.

CHAIR STEFANICS: Thank you. Mr. Ross, I have a question for you. If this preliminary request was granted, is the County setting an expectation that following applications will be approved?

MR. ROSS: Madam Chair, you mean following applications by this applicant?

CHAIR STEFANICS: Yes.

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MR. ROSS: It's setting the stage for – well, it's eliminating a – it's allowing them to start the process, the way I understand it. So they can start the process. It doesn't set any necessary precedent for future steps, no. But they can't even start the process without a variance under the ordinance.

CHAIR STEFANICS: Okay. Anybody else that would like to speak or ask questions before we – Yes, Commissioner Vigil.

COMMISSIONER VIGIL: So actually, this is just the beginning of a variance. They probably would need to come to us for further variances, correct?

MR. ROSS: Madam Chair, Commissioner Vigil, I don't believe they need further variances, but they need a variance in order to be able to start through the rest of the steps.

COMMISSIONER VIGIL: So if they increase their use and their density and they actually get what they're requesting tonight, and they want to change something, that is going to require a variance?

MR. ROSS: Madam Chair, Commissioner Vigil, perhaps Penny or Vicki can jump in.

COMMISSIONER VIGIL: I think probably the answer was stated by Mr. Larrañaga, but it's going to be difficult to assess that without knowing what the requests are. But the fact is that a variance may set a precedent for further variances if a variance has been granted for a particular property to move forward in this direction. I'm making a statement, Penny, I'm not asking for your comments.

CHAIR STEFANICS: So are there any other questions or comments? So Commissioner Anaya, would you restate your motion?

COMMISSIONER ANAYA: Madam Chair, I made a motion for approval with the condition relative to the fire noted by Commissioner Holian and the staff conditions contained on the case, if there are any. Are there any?

CHAIR STEFANICS: There were no conditions provided.

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, there were no conditions, just a recommendation for denial.

CHAIR STEFANICS: Okay. So we have a motion and a second. I will make a comment. I believe that if we pass this we will have a full vetting of the next step in a public venue and it won't be positive. And I'm just saying what I believe, because I believe that the community has several concerns. I believe that there would have to be a lot of reconfiguration of the property. There would have to be easement and access from a neighbor and several other things. So if I support this, I just want to go on record as saying that does not mean I would support the next plan that comes forward because it seems like there are many problems with it right now. So that's why I was asking Mr. Ross about setting any precedents for further action. Are there any other comments?

COMMISSIONER ANAYA: Madam Chair.

CHAIR STEFANICS: Yes. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I want to make sure I understand what you just said and Steve, maybe you can clarify, or Penny, whichever one of you. This action allows the business to continue functioning and they've functioned for 23 years or

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gives them an opportunity to get a license to function as they've function. I do not want – let me be explicit. I do not want this Commission to set a precedent to say after 23 years of business functioning that now we're going to close it down. There's still additional process if this is approved that the chair is referring to that needs to be vetted. Is that what you just stated, for clarity's sake?

CHAIR STEFANICS: I am, Commissioner, and it is possible that if approval is given today for this variance that when they come back with – what's next? Master plan?

MR. LARRAÑAGA: Master plan.

CHAIR STEFANICS: Master plan, that they might not get approval for the master plan because it might not meet our code.

COMMISSIONER ANAYA: This continues to afford them the opportunity to go through that process. If they do not get this approval today then they have to cease and desist operations?

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

COMMISSIONER ANAYA: Okay. Thank you, Madam Chair. There's still an additional process coming forward that will be vetted that this Commission has to hear and then make a decision on.

MR. LARRAÑAGA: Madam Chair, Commissioner Anaya, yes, the master plan process, preliminary and final development plan, meeting all code requirements.

COMMISSIONER ANAYA: Thank you, Madam Chair.

CHAIR STEFANICS: Thank you. Commissioner Vigil.

COMMISSIONER VIGIL: You're saying that if we vote against it there's a cease and desist order on them?

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, no. We have a notice of violation for operating a business without a business license. So if they get denied to be recognized as a special use under the Agua Fria ordinance to go forward with the master plan, if they can't get a business license, they would have to – if they keep on going we would have to file them into court and the court would decide to move them out. But yes, they would have to stop business because they're not doing it per code requirements in their business license.

COMMISSIONER VIGIL: So all that's required at this point in time is for them to continue operating their business with a business license and then come back with a master plan. Is that correct?

MR. LARRAÑAGA: Madam Chair, Commissioner Vigil, not entirely. We can't issue a business license because they need to qualify through this variance as a special use to qualify to go forward under the Agua Fria Ordinance for a master plan, to zone the property for that type of use.

COMMISSIONER VIGIL: Is that correct? Those consequences are dire. Mr. Ross, he's actually saying if we choose not to allow this variance that in fact the applicant can't continue their operation of their business unless they get a business license?

MR. ROSS: Madam Chair, Commissioner Vigil, they need to get a business license, sure, but what this is is concerning land use, use of the property. And under the ordinance my understanding is a very truncated, very strange process which will not be this

way under the new code, but in order to even get the zoning that they need they need to first get the variance, which is what they're asking for right now. When you hit the master plan step you're going to be assessing whether the proposed use of the property is consistent with the plan and consistent with adjoining uses, whether it should be rezoned for this use. With a use variance it's a very high standard to meet. But if they don't get this step accomplished, irrespective of the business license they don't have the proper zoning to do what they're doing on the property and they would have to stop doing it. That's how it works. The new code will be much simpler, I assure you, on the issues like this.

COMMISSIONER VIGIL: Okay. Thank you.

CHAIR STEFANICS: Thank you. Any further questions or comments. Okay, we have a motion and a second on approval. Let's read the right language here. Is to request a variance of the ordinance to allow a towing business as a special use under the zoning use table on .70 acres. Now, Mr. Ross, this seems like we are approving a variance to continue on.

MR. ROSS: Madam Chair, it's a very strange part of the existing Land Development Code and that's why there are all these questions I know are coming because it seems like why would you have a variance and then not deal with the zoning at the same time. But that's the way it works. It should not establish a precedent but it would check off a box that they would need to even file for a zone change on the property.

CHAIR STEFANICS: So I guess I do still have another question. Mr. Larrañaga or Penny. So let's say this gets approved this evening. This process could take how long for the next level, the master plan to come back to us to be approved?

MR. LARRAÑAGA: Madam Chair, master plan, preliminary development plan and possibly the final could be all rolled into one it could take four to six months for them to go through the process. They submit for all the master plan requirements. That would be reviewed by County staff and state entities, just like any other master plan. We'd create a report with all the reviews. If they meet all the requirements then it would go out to the County Development Review Committee for –

CHAIR STEFANICS: So if this were to take four to six months and we have a new code that comes out during that period of time, I don't believe this would qualify under the new code in that area.

MR. ROSS: Madam Chair, one of the advantages of the new code is there will be a zoning map and you will make the decisions concerning the – at least preliminary decisions concerning all this zoning at the time you deal with the map. And so – well, that's true; I'd forgotten about that. This is in the Agua Fria plan so it would be taken up later when all those plans are addressed. But at some point you'll be looking at the whole community as a whole and be able to make a better informed decision on this kind of application I would think.

CHAIR STEFANICS: Commissioner Vigil.

COMMISSIONER VIGIL: Having participated in the planning process of Agua Fria Village, the special use exception was not intended to really create far more usage for the village with regard to increased either density or usage of commercial vehicles or commercial transactions. As a matter of fact, special use was identified to look at some of the

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new potential businesses that would be coming into that village. I guess, and I'm sorry, Mr. Anaya, you've probably gathered by now I'm going to have to not vote in favor of this because I hope you understand that I represent the village as a whole with regard to this and their concerns have better than this and it's tugged at my heart, because the villagers concerns are Agua Fria has always been dumped on, and really I preach that all over the place because one only needs to drive from the city all the way down to the other limits of the village and you'll see where you have a water tower next to one of the oldest traditional historic churches.

You have a statue-like, castle-like structure next to one of the most historical homes in the state. You have the Camino Real ending there next to businesses that have cropped up that include CPA business, tax businesses, used car sales. Nobody was really helping the villagers out at one point in time until the code went into place. And nobody was really helping them out until they took it upon themselves to empower themselves to create their own destiny through their planning process. And their planning process doesn't only have the mission of allowing special uses, not increased usage. And that was specifically stated with other businesses that are there.

So you also are my constituent. I hope you can understand where I'm coming from with this. I really need to represent what's in the best interests of the processes that have been put in place since I have represented this area. Thank you, Madam Chair.

CHAIR STEFANICS: Thank you. This is not a public hearing. I'm sorry.
Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Commissioners, I think we should not make light of the fact that this business has provided livelihood, money and resources and food on the table for a family. And I think I even said it on the record at the last meeting when we had the last hearing. I think I even told the Anayas and I'll tell them again that as this evolves through the process there may be a scaled down version of what you've evolved into, but to put you in a position of not having that opportunity is where I have my frustration as a Commissioner and I would hope that a majority of the Commission would take into consideration that this is about family, livelihood and that there's still a process by which there's going to be a review and analysis of the site and what can and cannot be done with additional recommendations to go along with fire recommendations and others but that this gives you that opportunity to continue through that process and doesn't end it here tonight. Thank you.

CHAIR STEFANICS: Commissioner Anaya, would you be open to an amendment that would indicate that the master plan would need to come forward prior to six to eight months? If it passes?

COMMISSIONER ANAYA: I would accept that as an amendment, if the seconder will accept it.

COMMISSIONER MAYFIELD: Second, Madam Chair.

CHAIR STEFANICS: Okay. Let's say eight months, maximum.

COMMISSIONER ANAYA: I would accept that, Madam Chair.

CHAIR STEFANICS: So the reason, Commissioners, I'm making that amendment is that if this is a livelihood that has to be adapted, changed, relocated, there is a

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period of time in which to do that or in which to make drastic changes to the business. Any further comments? And I truly do appreciate Commissioner Vigil's comments for the community. I also appreciate that this is the family's livelihood, but unless there's going to be drastic changes it's not going to go forward anyway.

So we have a motion, we have a second, we have an amendment. All those in favor of the amendment first, please say aye.

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

CHAIR STEFANICS: Okay, so there is an amendment adopted. Now we are back onto the motion with the amendment that if this is approved, this variance, that the master plan would have to come back to us before the end of eight months.

The motion passed by majority [3-2] voice vote with Commissioners Anaya, Mayfield and Stefanics voting with the motion and Commissioners Holian and Vigil voting against.

CHAIR STEFANICS: Thank you very much. It's 3-2. You have eight months.

[Commissioner Vigil left the meeting.]

~~XVII A. 4. **BCC CASE # MIS 07-5502 Apache Springs Subdivision Extension. Beverly Chapman, Applicant, Joe Ortiz, Agent Request a One-Year Time Extension of the Preliminary and Final Plat and Development Plan Approval for the Apache Springs Subdivision. The Property is Located at 87 Camino Valle, within Section 10, 11, 14, and 15, Township 15 North, Range 10 East, (Commission District 4)**~~

VICKI LUCERO (Case Manager): Thank you, Madam Chair. On December 14, 2010, the BCC granted approval of a two-year time extension of the Preliminary and Final Plat and Development Plan for the Apache Springs Subdivision. On May 13, 2008, the BCC granted Preliminary Plat and Preliminary Development Plan approval for the Apache Springs Subdivision which consisted of 16 residential lots on 40 acres.

On November 18, 2008 the BCC granted Final Plat and Development Plan approval for the Apache Springs Subdivision.

Article V, Section 5.3.6 of the County Land Development Code states, An approved or conditionally approved preliminary plat shall expire twenty-four 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 months.

Article V, Section 5.4.6 of the Code states, An approved or conditionally approved final plat, approved after July 1, 1996 shall be recorded within twenty-four months after its

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10.6 Density and Dimensional Standards

The following table illustrates the dimensional standards that apply in the Village of Agua Fria Zoning District. Measurements and exceptions to the standards of this schedule are listed in the table notes.

Commentary: The density and dimensional standards set forth in this section are not a guarantee that stated development density and intensities can be attained. Other factors—water and other public facility availability, infrastructure capacity, building layout, physical limitations, and parking configuration to name a few—may have the effect of limiting development intensity more than the stated standards.

Village of Agua Fria Zoning District															
Sub districts	Minimum Lot Area/Principal Use (acres) (1)							Max. Coverage (%)	Max. Height (ft)	Min. Setbacks (ft) (2)					
	Base Density/Intensity		Water Cons.	Long Term Water	Community Services					Residential Uses	Non-residential Uses	Residential Uses		Non Res Uses	Front & Street Side
	Res Uses	Non Res Uses			Water	Sewer	Both W&S	SF	MF						
AFTCZD	.75	.75			.75	.75	0.33		40	24	24	24	0	5	5
AFLDUZ	2.5	2.5			1	1	0.5		20	24	24	24	0	20	20

Notes:

(1) Where adequate water is available, minimum lot area may be reduced by employing water conservation measures and reducing water use. Further reductions may be achieved by submitting proof of adequate long term water availability, connecting to community water, community sewer or both (W&S), all in accordance with Article III, Section 10, Lot Size Requirements of the Code or, such additional density bonus and lot size provisions of County Ordinance 2006-02, Affordable Housing.

(2) Setbacks shall be measured from the property line or from the edge of the road easement where the property line is inside the road easement.



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SECTION 6 - FEES AND LEVIES**6.1 Standard Fees**

Any person desiring to subdivide land in the County shall pay the current administrative fees set by the County. A fee schedule, which may be periodically amended, is available from the Code Administrator.

6.2 Additional Fees for Unusual Circumstances

Where additional review by the County is required above and beyond normal review requirements due to complex, unforeseen, or unique circumstances relating to the proposed plan or plat, such as complex hydrological considerations, then the County may charge an additional review fee to defray the cost of such review. Review fees shall be only for professional services rendered to the County in the case that the County does not have qualified personnel to assist in reviewing such reports, plans and plats. When an additional fee is deemed necessary, the fee shall be arrived at between the County and the subdivider.

SECTION 7 - DEVELOPMENT PLAN REQUIREMENTS**7.1 Preliminary Development Plans****7.1.1 Pre-application conference**

- a. Prior to the application for approval of a preliminary development plan for any phase or for an entire project, the subdivider may confer with the Code Administrator regarding the plan submittal and requirements of the Code according to Section 5.1 of this Article.
- b. At this time a determination will be made as to the appropriate scale and format for plans and plats and as to the appropriateness of applicable submittal requirements.

7.1.2 Information to be submitted

- a. Evidence of legal lot of record;
- b. Contour intervals of two feet or such other appropriate scale as determined by the Code Administrator;
- c. Arrangements, location and size of buildings, where applicable;
- d. Off-street parking and loading or dumping facilities, where applicable;
- e. Internal vehicular and pedestrian circulation, and ingress and egress;
- f. A drainage, grading, and erosion control plan including existing and proposed contours for roads and utilities; a preliminary/conceptual grading plan around buildings, when applicable;
- g. A landscaping plan providing a schedule specifying conceptual methods, to include type, size, and location of vegetative and non-vegetative landscape material, and a preliminary description of the irrigation system to be used;
- h. Walls, fences and earth berms; their approximate locations and identifying types of fences and walls, if applicable;
- i. Size, location, orientation, lighting and type of signage, where applicable;
- j. Conceptual plan for outdoor lighting, including type, size, location of fixtures, if applicable;
- k. Easements, rights-of-way and street design:
 - l. Access to telephone, gas, and electric utility service;
 - m. Utility plan for water and sanitary sewer;
 - n. Residential densities/gross acres;

