

timely fashion. The Applicants also state that they wish to utilize the .33 acre site to store personal recreational vehicles. The Applicants have operated a growing towing business in the vicinity for many years.

7. The Application is comprehensive in establishing the scope of the project.
8. The Application satisfies the submittal requirements set forth in the Land Development Code.
9. Merit Bennett and Talia Kosh, on behalf of the Applicants, submitted material and testified in support of the Master Plan.
10. The Applicants, Robert and Bernadette Anaya, spoke in favor of the Master Plan.
11. Rosemary Medrano and Henry and Georgia Romero spoke in opposition to the Master Plan. The opponents based their concerns on an increase of traffic on Agua Fria, accessibility of emergency vehicles, parking of tow trucks along Ben Lane, noise, flashing lights, 24 hour activity and the development being contrary to the goals set forth by the Traditional Community of Agua Fria to maintain and nurture a peaceful family neighborhood environment.
12. During the BCC meeting there was a lengthy discussion regarding the proposed access. The Master Plan drawings as submitted showed in concept the proposed hammerhead turn around as well as the turn radius at the intersection of Agua Fria and Ben Lane. It was stated that the Applicants would provide the required 28-foot, inside, turn radius at the intersection of Agua Fria and Ben Lane. This will be adequately addressed with the Preliminary Development Plan Application

2007-02-08 09:21:00 AM

13. Staff recommended the following conditions for approval of the Application:

- a) Master Plan with appropriate signatures, shall be recorded with the County Clerk, per Article V, § 5.2.5.
- b) Preliminary and Final Development Plan shall be submitted in a timely manner, meeting all criteria set forth in Article V, § 7, to be reviewed and presented to the CDRC for consideration.
- c) The Applicant shall comply with Ordinance No. 2007-2, § 10.6 (Density & Dimensional Standards).
- d) Storage of towed vehicles shall not be permitted on this site as per the 1989 decision of the Extraterritorial Zoning Authority. A note stating that the storage of towed vehicles on the site shall not be allowed shall be placed on the Master Plan.

14. The BCC suggested the following conditions for approval of the Application:

- a) No more than three small tow trucks and two large tow trucks may be stored on the site at any given time.
- b) The Applicant shall submit Preliminary and Final Development Plan to the County Development Review Committee for consideration within 90 days of approval of this Order.

15. The Application for Master Plan Zoning for a commercial towing business as a Special Use under the Village of Agua Fria Zoning District Ordinance Use Table (Ordinance No. 2007-2) on 0.33 acres should be approved conditioned on the Applicant complying with Staff and BCC conditions.

NBG-6^r

CLERK OF COUNTY RECORDS
SANTA FE COUNTY
1000 W. WASHINGTON
SANTA FE, NM 87501
505.833.8000

IT IS THEREFORE ORDERED that the Applicants are granted Master Plan Zoning for a commercial towing business as a Special Use under the Village of Agua Fria Zoning District Ordinance Use Table (Ordinance No. 2007-2) subject to the following conditions:

1. The Master Plan with appropriate signatures, shall be recorded with the County Clerk, per Article V, § 5.2.5;
2. A Preliminary and Final Development Plan shall be submitted within ninety days of issuance of this Order, meeting all criteria set forth in Article V, § 7, to be reviewed and presented to the CDRC for consideration;
3. The Applicants shall comply with Ordinance No. 2007-2, § 10.6 (Density & Dimensional Standards);
4. Storage of towed vehicles shall not be permitted on this site as per the 1989 decision of the Extraterritorial Zoning Authority. A note stating that the storage of towed vehicles on the site shall not be allowed shall be placed on the Master Plan;
5. No more than three small tow trucks and two large tow trucks may be stored on the site at any given time.

IT IS SO ORDERED.

This Order was approved by the Board of County Commissioners of Santa Fe County on this 13 day of August 2013.

NBG-68

The Board of County Commissioners of Santa Fe County

By: Kathy Julia
BCC Chairperson

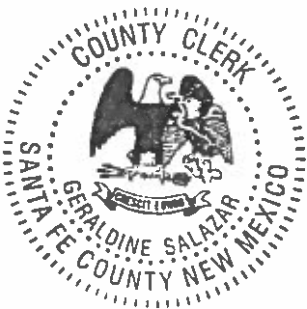
Attest:

Geraldine Salazar
Geraldine Salazar, County Clerk



Approved as to form:

[Signature]
Stephen C. Ross, County Attorney



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC ORDER
PAGES: 6

I Hereby Certify That This Instrument Was Filed for
Record On The 20TH Day Of August, 2013 at 03:59:28 PM
And Was Duly Recorded as Instrument # 1715555
Of The Records Of Santa Fe County

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

BCC ORDER RECORDED 08/20/2013 03:59:28

COMMISSIONER ANAYA: Are you okay? It's in your district, Madam Chair.

CHAIR HOLIAN: Okay. Then I will make a motion then to approve with staff conditions.

COMMISSIONER ANAYA: Second.

CHAIR HOLIAN: Okay. I have a motion and a second for approval with staff conditions for BCC Case #13-5150.

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

CHAIR HOLIAN: Thank you, Mike and thank you, Mr. Shrader. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I have a lot of questions that come in and I rely on Vicki and Wayne and Penny to answer a lot of those questions on a daily basis. And just coupling on what Commissioner Stefanics says, I think we need to make sure we're all on the same page as to what's in the recommended code and that staff is all on the same page with that because I too agree that there are some structures that are for ag purposes or small accessory structures in nature that we shouldn't be overburdening our public and shouldn't even have permits in several of those cases. So as long as we're clear across the board and everybody's singing on the same sheet of music I think that's going to be important because right now, it is required for everything. Right, Mr. Dalton?

WAYNE DALTON (Land Use): Madam Chair, Commissioner Anaya, that's correct.

COMMISSIONER ANAYA: Thank you, Madam Chair.

CHAIR HOLIAN: Thank you.

- XVIII. A. 2. **CDRC CASE # Z 13-5060 Robert & Bernadette Anaya Master Plan/Preliminary Development Plan. Robert & Bernadette Anaya, Applicants, Talia Kosh, Agent, Request Master Plan Zoning Approval for a Commercial Towing Business as a Special Use Under the Village of Agua Fria Zoning District Ordinance Use Table (Ordinance No. 2007-2). 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 2: Letter of Opposition]**

JOSE LARRAÑAGA (Case Manager): Thank you, Madam Chair. On August 14, 2012, the Board of County Commissioners approved a request, by the Applicants, for 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 approval by the BCC. The use as a towing company falls under the

NBG-7C

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.

On April 18, 2013, the County Development Review Committee met and acted on this case. The request before the CDRC was for Master Plan Zoning and Preliminary Development Plan approval. Staff recommended Master Plan approval as the request for Preliminary Development Plan was incomplete due to non-compliance with Article V, § 7.1.2.e & § 7.1.2.j, and Article III, § 4.4. The decision of the CDRC was to recommend approval of the Applicants' request for Master Plan and denial of the Applicants request for Preliminary Development Plan. The Applicants have since altered the submittal to reflect the request for Master Plan Zoning only.

The Applicants request master plan zoning approval to allow a towing business on .33 acres. The request is to allow the storage of eight tow trucks on the site. The Applicants propose to divide the existing .70-acre parcel and create a .33-acre lot to be utilized for the towing business. The remaining lot, which is where the Applicants currently reside, will remain as residential.

The Applicants state that there is a need for the tow trucks to be in close proximity to their residence to be able to respond to any emergency calls in a timely fashion. The Applicants also state that they wish to utilize the .33-acre site to store personal recreational vehicles.

Staff's response: the .33 acre site shall maintain a hammerhead 60' in length and 20' in width, parking spaces for eight large tow trucks, and the circulation of these vehicles, landscape, retention ponds and a dumpster. To combine the placement of two recreational vehicles, one boat, two low-boy trailers and other personal vehicles with the proposed towing business may significantly hinder the business activity on the site.

Ordinance No. 2007-2, § 10 states, a Special Use is allowed only if a Development Plan and Master Plan are reviewed and approved by the Board of County Commissioners.

Article V, § 5.2.1.b states: 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.

Article V, § 5.2.4.b.2 & 3state, the County Development Review Committee and Board shall consider the following criteria in making determinations and recommendations for approval or amendment of master plans. Suitability of the site to accommodate the proposed development; suitability of the proposed uses and intensity of development at the location.

Building and Development Services staff have reviewed this project for compliance with pertinent Code requirements and have found that the facts presented support the request for Master Plan: the Application is comprehensive in establishing the scope of the project; the Application satisfies the submittal requirements set forth in the Land Development Code. The review comments from State Agencies and County staff have established findings that this

NBG-71

Application is in compliance with state requirements, Ordinance No. 2007-2 and Article V, § 5, Master Plan Procedures of the Land Development Code.

Staff recommendation is approval for Master Plan Zoning to allow the storage of eight tow trucks, to be utilized as a towing business, on .33 acres, subject to the following conditions. Madam Chair, may I enter these conditions into the record?

CHAIR HOLIAN: Yes, you may.

[The conditions are as follows:]

1. Master Plan with appropriate signatures shall be recorded with the County Clerk, per Article V, § 5.2.5.
2. Preliminary and Final Development Plan shall be submitted within a timely manner, meeting all criteria set forth in Article V, § 7, to be reviewed and presented to the CDRC for consideration.
3. The Applicant shall comply with Ordinance No. 2007-2, § 10.6 (Density & Dimensional Standards).
4. Storage of towed vehicles shall not be permitted on this site as per the 1989 decision of the Extraterritorial Zoning Authority. A note stating that the storage of towed vehicles on the site shall not be allowed shall be placed on the Master Plan.

MR. LARRAÑAGA: Thank you, Madam Chair and I stand for any questions.

CHAIR HOLIAN: Are there any questions for staff? Commissioner Chavez.

COMMISSIONER CHAVEZ: Yes, Mr. Larrañaga, in your – the information that you provided in the packet, on page 4 of your amended letter/request for master plan, you stated under the category or the paragraph of access and fire code, you stated that the driveway entrance meets the 20-foot minimum width, however, access does not meet the required 28-foot radius. So in this case it seems as though we're accepting the minimum requirements, so I wanted to just raise that as a question. This is also – this language is also in Appendix H, I believe.

CHAIR HOLIAN: What page are you on, Commissioner Chavez? Is it called NB-20?

COMMISSIONER CHAVEZ: NBA-20, actually 21. And I didn't see that, Mr. Larrañaga, in your conditions of approval. Well, maybe because we're accepting the minimum requirements.

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, this is part of the submittal from the applicant. Again, the master plan is conceptual. In the drawings they are showing conceptually that they do have, that they're going to need the 28-foot radius as you see in NBA-35. They show that, and then the access road is –

COMMISSIONER CHAVEZ: So is there a better – if you look at Exhibit 2, also, is that what you're referencing?

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

COMMISSIONER CHAVEZ: Okay, so that – the master plan in Exhibit 2, that shows the 28-foot easement then? The 28-foot radius?

NBG-7:

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, correct. That's on NBA-35. Conceptually they are showing the radius on that.

COMMISSIONER CHAVEZ: Thank you, Madam Chair. That's one question I had, and then the other question I have in reading your summary, Mr. Larrañaga, there's discussion about the number of trucks in one paragraph that says eight large tow trucks and in another section it says the application shows a nine-space gravel parking lot. Can you explain that?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, yes. Originally they came in for eight tow trucks and when they brought in the drawings the drawings illustrated nine spaces where the tow trucks were supposed to park. That would be to the north side, if you look at that same exhibit on the master plan drawings on Exhibit 2. On the north side, that's where the tow trucks are to be parked, but they came in with nine spaces.

COMMISSIONER CHAVEZ: So we're really approving – the correct number of spaces would be eight then.

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, the amount of tow trucks that they're requesting is eight. They're showing nine spaces but for eight tow trucks.

COMMISSIONER CHAVEZ: Okay, well, that confused me a little bit. And then in here there's language that says eight tow trucks, just simple, and then eight large tow trucks. Are they all the same size tow truck?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, they are different sizes. There are some semi-tow trucks to tow semi vehicles or semi-trucks, or larger vehicles I should say. But there are the platform trucks where they can load a car onto it.

COMMISSIONER CHAVEZ: And so the 60-foot hammerhead and the 28-foot radius accommodates the larger vehicles?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, actually the radius for the access on Ben Lane off of Agua Fria, that was actually brought up by Fire because of the width of the road, and Buster Patty is here so he could probably explain that a little better, but because of the width of the road at 20 feet they need that 28-foot radius. The hammerhead is actually for a Fire Marshal requirement also because it is a dead-end road and that way they have room to turn around their equipment in case of an emergency.

CHAIR HOLIAN: Marshal Patty, would you like to address the 28-foot radius?

BUSTER PATTY (Fire Marshal): Madam Chair, Commissioner Chavez, the 28-foot inside radius is what is actually in the code book for a 20-foot wide road entrance. As you can well see, in the city sometimes the radius on the curves is much less than that. That's because the road gets wider. As the road is wider the radius can be much less. But on a 20-foot wide road it requires a minimum of a 28-foot inside radius on the curves to accommodate fire equipment, which would in turn accommodate any size truck that he has.

CHAIR HOLIAN: Any further questions?

COMMISSIONER CHAVEZ: That's it. Thank you, Madam Chair.

NBCG-73

CHAIR HOLIAN: Commissioner Mayfield and then Commissioner Stefanics.

COMMISSIONER MAYFIELD: Thank you. Question for staff, please. Mr. Larrañaga, as far as the agency review, why did you contact NMDOT and what approval did they give?

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, any master plan or development plan usually goes to DOT, even though it's not off a DOT right-of-way, but automatically we send them to DOT, to Environmental, to State Historic Preservation, for their review and comments.

COMMISSIONER MAYFIELD: And just because of the business and I guess my background, would you think of contacting the PRC to see if they would have any thoughts on the business and the site location?

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, we probably won't ever send it to them. What we're looking for, again, is how it fits into the Agua Fria ordinance, how it complies with that ordinance and the Land Development Code.

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

CHAIR HOLIAN: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Madam Chair and thank you, Jose. A couple questions. I believe that this has carried over for a while, correct?

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

COMMISSIONER STEFANICS: And we had requested that a mediation occur? I'm reading in here that Commissioner Virginia Vigil requested that.

MR. LARRAÑAGA: Madam Chair, Commissioner Stefanics, that's correct. During the variance process there was mediation recommended by this Board, by the Board of County Commissioners. We did get a mediator and in the minutes it explains that the mediator was here at the hearing. The mediator said that they couldn't do any kind of mediation and that's when the Board went forward with the approval of the variance.

COMMISSIONER STEFANICS: So are you indicating, Madam Chair, Jose, that in the mediation there was absolutely no negotiation that occurred?

MR. LARRAÑAGA: Madam Chair, Commissioner Stefanics, there was no mediation at all.

COMMISSIONER STEFANICS: Okay. So Madam Chair, Jose, based upon some of the questions that Commissioner Chavez was asking, would it be possible as we proceed to think about conditions that would limit the number of vehicles on that property? Because I remember there was other property for storage of vehicles, but I wondering if the number of vehicles that are permitted there would appease some of the community. Has that come to any discussion?

MR. LARRANAGA: Madam Chair, Commissioner Stefanics, there hasn't been any formal discussion with the applicant as far as limiting them. I believe staff has kind of reviewed it for eight tow trucks. The applicant threw in the personal vehicles and flat bed trailers and so on. They did come up – one of the reasons we recommended denial of the

NBG-74

preliminary development plan at CDRC, at that point in time they didn't have a circulation plan. They have since submitted a circulation plan and proved to us that they do have room and be able to circulate those vehicles, personal vehicles and eight tow trucks on that piece of property.

COMMISSIONER STEFANICS: Thank you, Madam Chair. That's all for now.

CHAIR HOLIAN: Any further questions for staff? Is the applicant here? Please come forward, and if you are not an attorney please be sworn in and state your name and address for the record.

TALIA KOSH: Madam Chair, Talia Kosh, attorney for the applicant.

[Robert Anaya and Bernadette Anaya were sworn in.]

BERNADETTE ANAYA: Yes.

ROBERT ANAYA: Yes.

MS. KOSH: Madam Chair, Thank you. I'd just like to stress that this master plan is a conceptual plan and again Jose, Mr. Larrañaga, has spoken to the fact that currently, because we did provide a circulation plan that we do have a bit more than what's needed for a master plan and of course we have many more details to establish and provide ahead of us. But we would just like to remind the Commissioners that this is a request for master plan at this time.

CHAIR HOLIAN: Thank you, Ms. Kosh. Any further comments at this point? Any questions for the applicants?

COMMISSIONER CHAVEZ: I have –

CHAIR HOLIAN: Yes, Commissioner Chavez.

COMMISSIONER CHAVEZ: Could you tell us, of the eight trucks that you're going to have there how many are the larger trucks that you use for your larger calls or your larger vehicles?

MS. KOSH: Commissioner Chavez, that was a question that I did want to address and I want Mr. Anaya to speak to in total an explanation of all the wreckers that will be parked back there.

MR. ANAYA: Could you repeat the question, please?

COMMISSIONER CHAVEZ: Well, I just was asking, of the eight tow trucks that you're going to be parking there – I guess I'll have maybe two or three questions under that. You're requesting to park eight tow trucks there. Are those eight going to be parked there all the time? And of those eight, how many are the larger trucks and how many are the smaller trucks.

MR. ANAYA: Of the eight we have four.

COMMISSIONER CHAVEZ: Four larger trucks.

MR. ANAYA: They vary in size. They vary in size from a 20-ton wrecker to a 50-ton wrecker.

COMMISSIONER CHAVEZ: 20 to 50-ton. But are they all the same length?

MR. ANAYA: No, they're not.

NBG-75

COMMISSIONER CHAVEZ: Okay, 20 to 50-ton. And then the other four are the smaller tow trucks.

MR. ANAYA: They're what you call your smaller to medium size tow trucks.

COMMISSIONER CHAVEZ: Okay. And then are all eight parked there all the time?

MR. ANAYA: It's hard to say all the time, but most of the time.

COMMISSIONER CHAVEZ: Okay. Well, here's my dilemma. I know that this is conceptual, but conceptually I have a hard time, with all due respect to the Anayas, with a towing company in the middle of a residential neighborhood. Because essentially, the Agua Fria Village is a neighborhood. That's how I look at it. And so my struggle is to try to balance the need for you to have your business on a property that you've owned and you've been operating that business there for I guess 20 years now – granted, without a permit. That's beside the point right now. And so I want to balance your needs with the needs of the neighborhood.

So the first question I want to ask is – and I think Commissioner Stefanics was going in that direction – I would be more comfortable allowing you to continue your business there but only permitting or allowing the small, the four small trucks to be there. Okay? That would be my preference. Then I also want to ask the applicant, because the condition of approval of the 28-foot radius was not in the conditions of approval. Are you going to be able to invest in that property to make those improvements?

MS. KOSH: Commissioner Chavez, just one comment on your first suggestion on parking the four smaller vehicles there.

COMMISSIONER CHAVEZ: Larger.

MS. KOSH: Well, not parking the larger ones is what you suggested, correct? We'd just like to remind the Commission that this variance as requested – and I understand your concerns but it was approved conditional upon our meeting all of the different code requirement which, yes, is still in front of us and we still are making attempts to secure that radius including the movement of – and an application to move the PNM pole among other issues that are still in front of us for the preliminary and final. There's a lot more detail that will have to go into this. We do understand that.

COMMISSIONER CHAVEZ: So you're accepting the need to make the investment for that 28-foot radius?

MS. KOSH: Yes, Commissioner Chavez.

COMMISSIONER CHAVEZ: And you would accept that as a condition of approval?

MS. KOSH: I believe that that is – that that was a condition of approval moving forward with the variance by this Commission. And one other comment, just on the area in general, is there's many mixed-use, small businesses in the area and other tow trucks companies in the area so taking into account the mixed-use nature of the neighborhood that they live in, we'd just like to remind the Commissioners of that fact.

NBG-76

COMMISSIONER CHAVEZ: Okay. I want to ask staff a question. Mr. Larrañaga, this 28-foot easement, is it something that the applicant has to – I know that they've acknowledged that it has to be done. If we approve this and they're not able to do that 28-foot radius, then what happens?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, if the master plan gets approved – again, it's conceptual and we record that – they would have to come back with the preliminary and final development plan to go forward to the CDRC, the County Development Review Committee. With that final development plan they would have to show easement. They would have to replat the property also to split the property into two .32-acre lots, and they would have to show the radius on that with the easement. So if they acquire the easement or if they just get the easement from the property owners that would have to be shown on that plat and on the final development plan. On the plat, to separate the property to show the easement, that signature of the property owner, if they're just allowing that easement would have to be on that plat also. So basically they couldn't go forward with any kind of preliminary or final development plan without those radiuses.

COMMISSIONER CHAVEZ: Okay. I want to go back to the variance that was approved, and this is something that I kind of inherited, so bear with me. The variance granted conceptual approval to park eight tow trucks on the lot that will be designated as commercial.

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, no. The variance was to allow to be considered as a special use under the table of the Agua Fria ordinance. Now they are considered -- a tow truck company is now considered a special use. Under the special use they have to come forward to the CDRC and to this Board with a master plan and also with the preliminary and final development plan, meeting all the other requirements of the Agua Fria Ordinance, and the Land Development Code.

COMMISSIONER CHAVEZ: Okay, so the number eight is only the number of trucks they're working with. That's what they run their business with, and the circulation pattern or plan that you've identified accommodates those eight vehicles.

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, yes.

COMMISSIONER CHAVEZ: If they're all there at the same time?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, yes. If they're all there. I did scale it off when they submitted so they have enough – I believe each parking area is like 30 feet – I was just glancing at it now. It's about 30 feet deep and they have approximately from 40 to 50, almost 60 feet to back out or drive forward and back into those parking spaces, plus also they proved that they can accommodate some other vehicles, whether it's a mobile home or a camper trailer or whatever on the other side if they're all parked correctly and of course in designated parking spaces. At final development plan they will have to designate those parking spaces through parking bumpers, which could be railroad ties and that would designate the parking.

NBG-77

COMMISSIONER CHAVEZ: Okay, and then there was also a concern about safety vehicles not being able to access some of the residential properties along Ben Lane or in that general area. Will that be addressed with this master plan if it's approved?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, I believe you're talking about tow vehicles parked on Ben Lane and possibly Mr. Patty can address this as far as access. Naturally, if there's a large tow truck parked on Ben Lane it would be harder for the Fire Department to get in there with an ambulance or a fire truck or whatever the case may be, and get out, to circulate. So, yes, we would – they haven't submitted anything that they are going to park on Ben Lane. Part of that would maybe be part of the business license. If approved through the master plan and development plan the applicant would have to get a business license to stow the tow trucks there and get a home occupation for the residence so they could do their calls and receipts and everything else. Part of those conditions would be that they wouldn't be parking on Ben Lane.

COMMISSIONER CHAVEZ: Are you okay with that? Good. Okay.

CHAIR HOLIAN: Any further questions?

COMMISSIONER ANAYA: Madam Chair.

CHAIR HOLIAN: Yes, Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I, like Commissioner Stefanics, remember the discussion – we had several discussions related with this case and I, as reflected in the minutes, advocated that they be able to sustain their business and continue operating their business. But if you also look in the minutes at my comments I also reflected that there was also going to have to be some give and take associated with going forward and it would meet exactly the letter of what exists today. So I just wanted to offer that comment to couple with Commissioner Stefanics' comments. And the reason I make that comment is because I believe in the dialogue that we were having as Commissioners, and Commissioner Chavez wasn't here at the time, some of the compromise that was struck on the Commission was based around that premise that there would be some compromise associated with operations.

So I just want to say that on the record and articulate that if there's any tow trucks that exist in the full business, right now, today, and had existed for that period of 20 years. Or you've built up your business over time, correct?

MR. ANAYA: That's correct.

COMMISSIONER ANAYA: Okay. I just wanted to make that comment because I think it was reflected clearly by Commissioner Stefanics.

MS. KOSH: And Commissioner Anaya, if I may speak to that, the give and take and the sacrifices that need to be made to sort of accommodate the interests of the community at large. They are giving up a significant amount of space for the hammerhead for the entire community of Ben Lane, and that's space that they will not be able to build on or get back, and that benefits the entire community. So I just would like to speak to that.

NBG-78

CHAIR HOLIAN: Thank you, Ms. Kosh. Okay. This is a public hearing. Is there anybody here that would like to speak on this case, either in favor or in opposition? Please raise your hand. And perhaps you could all stand up and be sworn in at the same time.

[Those wishing to speak were administered the oath.]

CHAIR HOLIAN: and please begin to come forward and when you come to the podium please state your name and address for the record. And please speak into the microphone.

[Previously sworn, Rosemary Medrano testified as follows:]

ROSEMARY MEDRANO: Madam Commissioner, members of the Board, my name is Rosemary Medrano and I live at 2094 Botolph Road in the City of Santa Fe. However, I do own property down in the Village of Agua Fria within 100 feet as designated for notification and anyone who has concerns. A couple of things I think that in the hearing tonight have kind of bothered me is that initially, we're talking that eight tow trucks are going to be parked on that property. Now we're hearing that they have nine space for trucks and we're also talking about spaces for recreational vehicles. So that is a concern because if this variance is granted, how are things going to change along the way. If the master plan is approved, the variance is granted. It's my understanding again that everything is in a conceptual environment right now so we really don't know what the end result is going to be. But those are concerns.

When the initial application was made my husband and I submitted a letter to the Commission addressing our concerns in total regarding the allowance of the variance for this business. I would like to take this time now to read the letter as it was issued back in June of 2012, and you should have a copy of this letter in your files. In this letter we're stating that this letter is in response to the owners of the property owners regarding a public hearing for a variance of Ordinance No. 2007-2, Village of Agua Fria Zoning District, etc. to allow a towing business as a special use under the Zoning Use Table.

We are writing to formally record out opposition to the request for a variance. Our concerns are many but for now I can think of at least nine important one. Please seriously consider the following: increased traffic congestion. Granting a variance will result in more in and out traffic flow to the business from the narrow Agua Fria Street by both business operation vehicles and personal vehicle inquiries. Safety and lifesaving events. Increased traffic flow to the business will cause increased interruption and delay of the already congested Agua Fria traffic causing safety issues for law enforcement and lifesaving emergency vehicle response teams.

Current and future property values. Granting a variance will no doubt negatively impact property values now and in the future. Area is designated as residential, and I think that's something that we need to keep in mind here and I appreciate Commissioner Chavez' recognition of that and Commissioner Vigil's recognition of that at the last hearing. Homes for families, children and the elderly. Allowing this variance will result in degrading its intended purpose. Increased noise and light pollution. Granting this variance will create

NBG-79

noise, light pollution undesirable disruption to living standards and unrest to the immediate neighborhood.

Generally a towing business is a 24-hour operation. As such the allowing this variance will increase activity and create undesirable loud noises, wandering vehicle night lights and tow truck flashing lights at all times during the night and the daytime, not to mention the disruption it creates to neighborhood animals and dogs at night.

Granting variance is contrary to traditional community of Agua Fria neighborhood goals. The purpose of the traditional community of Agua Fria is to maintain and nurture a comfortable and peaceful family neighborhood environment.

Dangerous and unhealthy environment. Granting this variance will create an unhealthy and dangerous environment for curious neighborhood children and adults. Junk metal, storage of vehicles brings safety and metal junk concerns. Storage of vehicles and junk metal is an ideal place to breed rodents, snakes, diseases and hazards normally not controlled by easy means. Storage of junk vehicles. Vehicles that are not claimed and/or abandoned become an eyesore and/or become ignored. These vehicles become orphans and are likely never removed from the area for years because of various reasons.

This is all documented, like I said, I the letter that was issued and brought to the County on June 7, 2012. I would like to submit a copy of that for the record. [Exhibit 3]

CHAIR HOLIAN: Yes, please give it to our staff.

MS. MEDRANO: And in closing, I would just like to say that we are in opposition of approval of the master plan and we are in opposition of granting the variance for special use. Thank you for your time.

CHAIR HOLIAN: Thank you, Ms. Medrano. Next.

[Previously sworn, Henry Romero testified as follows:]

HENRY ROMERO: Good evening. My name is Henry Romero and I am opposing this variance for many reasons, mostly for what Rosemary just mentioned. The pollution of lights, traffic, the movement of vehicles, not to mention that those tow trucks are parked within ten inches of our wall. I also understand that they indicated ten feet. They're definitely not ten feet from our wall. They're within eight to ten inches from our wall. Sometimes back when our wall was knocked down some of those booms were sticking into our own property; that's how close they were backed up. We have pictures indicating those trucks are too close to our wall, and if they approve this variance that's going to continue to go on and on and on. It's been going on for many years.

Also, not to forget, they have not been in that area, that business for 24 years like they mentioned. Actually, they were denied 24 years ago from parking junk cars and using the property as keeping old vehicles for whatever reason. I don't know. There's even a burned truck right now on that property. That's not a recreational vehicle. And then they also mentioned there's only eight tow trucks. At one time they mentioned ten tow trucks. Why they have so many trucks backed up to the wall, I don't understand that and I'm really getting upset with that tonight.

I'm sorry to say this but at this time I'm very upset with the whole situation because the County is not doing their job. You all have not done your job. The PRC has not done their job. Mr. Mayfield at one time worked for PRC. He's aware of all this that's been going on. There's just been a slap on the wrist and it continues and continues. And now I'm getting fed up with it. I'm sorry to say this, but it's true, they're not working, not to our satisfaction or the other neighbors next to the Anayas, which are my other cousins. Those people have to deal with that traffic every day on a daily basis. They have kids, they have grandkids that are back and forth. They have their pets. And that's going to continue to go on and on if this is approved.

Right now they're actually abusing us by parking those trucks that close to our wall. I'm not comfortable with that at all. That's all I have to say.

CHAIR HOLIAN: Thank you, Mr. Romero. Next.

[Previously sworn, Georgia Romero testified as follows:]

GEORGIA ROMERO: First I want to thank Rosemary for her letter because it kind of puts everything into a nutshell. We're talking about ten families. That's what the Anayas say, it affects ten families. They have over a dozen children running in that neighborhood where these tow trucks go to the very end of the property. Yes, there are other businesses in Agua Fria but they all have direct access to the road. They don't go through ten residences to get back onto Agua Fria Street. And then the mixed-use of other companies, every one of those other companies has a County license to work in Santa Fe, in the Santa Fe County area. Two companies did not and it was brought to the attention of the committee. Those two were in the city limits. Everybody else has a license.

In 1989 he was denied parking back there. That's 24 years ago, and he doesn't know he needs a license? If you look at the paperwork it just suddenly came to their attention. It did after they hit our wall. He said it was \$200 to \$500 of damage; it was \$7,000. To this day he has not settled with our insurance company. We're still out our deposit to get the wall going, to get it down. We've had all kinds of problems. They still back up, right up to the wall. I have pictures to show you where they're like inches.

CHAIR HOLIAN: Perhaps you can give the pictures to staff and they will pass them out.

MS. ROMERO: We are dealing with noise, we are dealing with toxic smoke. There's a picture of a truck there that when they turn them on they throw this big thing of diesel smoke up into the air. You can't hang clothes on your clothesline. You hear those trucks coming, I run for my life. I almost died at the last incident. By minutes, I wasn't there when he hit the wall. I had been out getting clothes off my clothesline. You can't barbeque, and the ten residences, people want to have birthday parties, they want to have graduations, they're going to have showers – it just goes on and on. You can't have anything with tow trucks coming right down in front of your house. Because all these pieces of land that are right there where they're going to be trucking are on .75 of an acre, so they're all right there on that easement.

NBG-81

And right now they're not only just parking – they not only park in the back over by our property, because our property runs the whole wall – I mean a wall runs the whole length of their property, of all their properties. And they park on an easement. They park in front of our gas meters. In an emergency, they're this far away from our gas meters. The gas company can't even get in there to do anything. And it's gone on and on. He testified that he parks ten feet away from the gas meters and from the wall. Well, if he lies down – what is he? Less than six feet? If he lies down the back tires of his truck are going to run over him when he backs up to park his trucks.

He said that every one of those railroad ties has been stamped into the ground. It has not been stamped into the ground. We submitted Exhibit 14 and if he is going to be approved we want truck parking blocks and bumpers, we want bollards, a six-inch minimum diameter with 48 inches above ground and two feet underground. We want evergreen trees to block. We've done our research. We know that the tree has to be planted five feet from the wall with still another five feet on the other side. We want trees every five feet scattered so that we don't have to see his trucks. And we don't want little six-foot, eight-foot trees; we want nice tall ones, ten, twelve feet trees.

That would be like 20, 21 trees because they went out there and measured off this land to cover that area. And then he wants personal recreation vehicles. We have burnt trucks. He's got wrecked trucks. He's got tires. Is all that going to go or do we have to put up with that? Because that brings rodents. And on top of rodents, last year, well the summer – not last summer but the summer before we worked with the feral cat program at the animal shelter. We had 27 cats fixed. Every one of them was poisoned. There's a picture of a dead kitten there where they just ran over it. They would get off their trucks and walk right over it and they would not pick it up.

And all this started when they knocked down our wall, because then we wanted a way to keep him off the wall, keep him out of our yard because the back end of the trucks are being parked into our yard when the wall was down. We had to get a restraining order to be able to fix out wall. Matter of fact, he said his friend was going to do it, well, that friend, when our insurance company got everything together and we got a contractor to build the wall and we got a plasterer, his construction friend hired our plasterer to go plaster for him on another job because his construction work doesn't do plastering.

So in case you decide to accept it I know there's more than eight tow trucks because he reported eight to the County originally. He reported ten to PRC, because we've been working with that. He has numerous violations with PRC because he did not report hitting our wall with damage over \$1,000. They were working without CTLs they were questioning their medical certificates for forgery. I have a report for each of you if you want it. It's been a can of worms and we're still dealing with it. It's been a year and a half. And right now, those radiuses off of Agua Fria, the people up there, the C de Bacas don't want to give them that space. They know they're not going to get it. They have to lie. They have to resurvey. All those things before anything can get done.

And then they park on that easement. They park in front of their trailer and cars have to go around them. They block driveways for the C de Bacas, for the other people on that drive. And if you're going to do this they have to have a time limit for the development plan, and a short one. They've been at it; they're not building any buildings. All they're doing is making a parking. And we're asking you please not to approve again, because it affects ten families and there's like a dozen little children running around. There are pets, elderly people.

And yes, you may know what you're doing as a driver but you don't know if you're going to hit gravel, if you're going to – if a child is going to run in front of you. What happens when someone gets hurt? And right now, they need that radius because when they drive out to Agua Fria and they're coming back into Ben's Lane, they drive forward and have to back up into the other lane, onto oncoming traffic. What happens if there's an emergency or a school bus doesn't expect for them to do that? It's putting the whole village in a lot of danger. Who tells these families it's okay for your loved one or your child or your pet to die because no one took the time to really study this and look at the conflicts and know that gradually they moved back. In 1989 they were denied. In 2002, there's a paper in your packets that says her aunt said it was okay to park trucks on her property. All of it was her property, and gradually they moved back and they moved back and they moved back.

Then they were parking on Anthony C de Baca's property. When he planned to bring a trailer in there first he reported him because he didn't have the right permits and didn't want it there. And the day they brought the trailer he parked his tow trucks in there and they had to get the police department to come in make him move his tow trucks so that he could – Anthony C de Baca, Jr. – could park his trailer.

The extra harassment that goes with this, it's uncalled for. But again, I thank you for your time and I really am asking you to put a very strict time limit on it. They've had more than enough time. They've had ten months, that was extra time that was given to the by your committee over what anybody else would have gotten.

CHAIR HOLIAN: Thank you, Ms. Romero.

MS. ROMERO: Could I just say one more thing? On the internet, because Rosemary brought this up, they advertise that they are a salvage junk yard. They not only have this property, they have one on Industrial Road, and they are licensed, they have a place to work out of. It's approved by PRC. They do have a place to work. And then they have one on Prairie Dog Loop which is over by Nancy Rodriguez Center that you can see from [inaudible] all those semis and everything else that's parked there belongs to the Anayas. They have an acre and a half there.

So it's not like this is the only place they can park, and being that it does affect ten residents, I think that the committee should really, really look at this. Thank you.

CHAIR HOLIAN: Thank you, Ms. Romero. Is there anyone else here from the public who would like to speak? Seeing none, the public hearing is closed. Would the applicant like to make any follow-up comments?

MS. KOSH: Thank you, Madam Chair. Yes. I'm not going to go through every single fact that the Romeros have brought up especially. I will refer back to the initial

application that we had for variance that discussed the incredible disputed facts that have been raised, including major slander in the community, major extortion and even the allegations of forgery. These are very serious allegations that will be addressed in separate proceedings. But I would like to remind the Commission that the variance has been approved. A lot of these discussions have already occurred in front of this Commission but I do need to respond to a few of them. And then, number one, recreational vehicles have always been a part of this requires. There's five. They're very specifically laid out in the application and those were approved to be parked on that back lot. And there is sufficient room.

And that's who basically maintain that open space that they can utilize for those recreational vehicles. There's only five. Again, yes, there are nine spaces. There will only be eight vehicles are parked there whether or not the Anayas acquire more or less vehicles. We've had many conversations about this. How many can fit back there? There will be eight parked back there regardless. There are nine spaces in the plan, that's to fill out the spaces but each space can accommodate the largest wrecker, we made sure, can accommodate the largest boom. Then we're talking about making this area safer, so yes, we are going to have bollards. Yes, we are going to have railroad ties. A lot of the other requests like having 21 trees – a lot of these are, that's a lot of trees and that's a lot of water. So a lot of these details have to be considered which I think is more appropriate in preliminary and final plan.

Again, there's no increased traffic. Nothing is going to increase. It's going to maintain the level that it is currently if not less. And they have been in business there for 24 years. When they keep referring to the other neighbors from the community, in 1989 they were denied having an area in the back where they could store wrecked vehicles. So that was taken off the table in 1989. They do not tow vehicles back there. They do have a lot. And again, in response to why they need the lot on Ben Lane to park their vehicles is because their other lot is completely full of cars. They could not fit their wreckers there, and also Prairie Dog Loop is unfenced and is subject to vandalism.

They do have a city license and they were under a misconception that that is all that they needed. That is why we are here today in part. And again, the damage amounts that have been discussed are in dispute and I think that that is all I need to respond to. Thank you.

CHAIR HOLIAN: Thank you. Are there any more questions for staff or the applicant? Commissioner Chavez.

COMMISSIONER CHAVEZ: I have a question for staff. Mr. Larrañaga, the applicants and the adjoining property owners brought up an interesting concept and that is within this development or this proposal there needs to be some type of a buffer between this business activity and the residential component. I know that's going to be very hard to do because everything is so close; the lots are so small. But can you address that? I think that's addressed to some degree but just for the record, touch on that.

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, yes. In the conceptual plans that are in your packet there they are showing – well, there's an existing six-foot wall between the Romeros and this lot where the proposed storage of the tow trucks is, and the applicants have shown another block wall that would be to the west and then another

one on the south side and some landscape buffering alongside the easement. Also, the landscape, the trees, at preliminary and final we would figure out exactly how many trees they would need and so on, and that's going to have like a ten-foot buffer, and the plans they have do show bollards, so that way that protects the wall when they do back up. I would assume that the way they would use this property is they would back up the tow truck so that in the case of an emergency call they'd be able to just drive straight out. So this way they wouldn't back up into the wall; they'd hit the bollards first. And bumpers of course, railroad ties placed ten feet away from the wall so that any extension of that truck would not hit the wall.

COMMISSIONER CHAVEZ: I don't know if that's going to be enough, but I'm looking again, as I said earlier. I do respect the residential component. I appreciate that, but I also want to support small businesses as much as possible. So having said that I want to make a motion. Wait a minute. Before I make the motion, Mr. Larrañaga, a couple of other questions. Okay. So you dealt with the buffer and sort of separating that from the existing homes and that. There's no way that we can limit the hours of operation?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, the Board can put any kind of conditions on this proposal that they want but the type of business that it is, they get called at two in the morning or four in the morning.

COMMISSIONER CHAVEZ: See, and there's the rub right there, because most home occupation, if you're under the home occupation ordinance, and you're running a business like this in a residential neighborhood, you usually have hours of business, hours that you run your business. And so I had to ask, because I think that's only fair. In this case, sure, the nature of the business is going to say, well, we can't make money that way, but that's not being sensitive to the residential component completely.

So anyway, I'll move on to something else. What about the light pollution, especially at night? Can we limit that? Can there be screening on those lights or some kind of buffer to reduce that light pollution at night?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, they have proposed again, it's going to lead up to the preliminary and final development plan which they proposed. They did bring in cut sheets and lighting, solar lighting, which is lower to the ground and just kind of so you can see around the yard. Now, the lighting of the trucks, there won't be a six-foot wall around this property until they get out onto the roadway, Ben Lane, that's when you'll see the lights. And just to clarify on the business license, the zoning or the master plan that you're looking at gives them the zoning for a commercial business, so that would be a commercial business on the .33 acres, and to run the books and phone calls and stuff that they would get to go out into vehicles would be run from the home and that would be the home occupation. So in fact they would have two business licenses.

COMMISSIONER CHAVEZ: Okay. Last question. Your staff recommendation says that preliminary and final development plan shall be submitted within a timely manner. Can we impose a deadline or be specific in that area, instead of just leaving it open-ended so that nobody knows if anything is going to happen or when?

MR. LARRAÑAGA: Madam Chair, Commissioner Chavez, yes. They still are running a business without a business license so it's still a violation until they get this approved and resolved. So the master plan has to be in front of this Board within a certain time limit of approval of the variance, staff was going to pretty much in a timely manner – it could be, once the master plan's recorded it could be – because it is just a tow yard. Of course submit the preliminary and final development plan to go to the CDRC, maybe within three months to go to CDRC after the recordation of the master plan seems feasible.

COMMISSIONER CHAVEZ: Within 90 days of accepting the master plan.

MR. LARRAÑAGA: Of recording the master plan. We'd have to have staff to do the final order and get all the details done for the master plan and recorded so we could probably do that by the end of July.

COMMISSIONER CHAVEZ: Okay. And then I guess – so that would take care of that. So, Madam Chair, I'm going to take a stab at a motion. I'm going to make a motion to approve the master plan with staff's recommendations but I want to modify them and add a couple. That the preliminary and final development plan would be submitted 90 days after the master plan is recorded. And then –

MS. LUCERO: Madam Chair.

CHAIR HOLIAN: Yes, Vicki.

MS. LUCERO: Commissioner Chavez, the master plan would actually be valid for five years so that's technically how long they would have to record it, so it might be better to impose a timeline based on the approval of the master plan, which if that's what occurs tonight.

COMMISSIONER CHAVEZ: So suggest some language then that would be better.

MS. LUCERO: Something based on a timeline from the date of approval, not the date of recordation of the master plan.

COMMISSIONER CHAVEZ: Are you okay with that? Are we tracking?

CHAIR HOLIAN: Commissioner Chavez, just so I can understand, you're saying that they have to submit the preliminary plat application 90 days from master plan approval?

COMMISSIONER CHAVEZ: Well, it would be preliminary and final

CHAIR HOLIAN: Preliminary and final plat.

MS. LUCERO: Madam Chair, Commissioner Chavez, they would be required to submit both.

COMMISSIONER CHAVEZ: Okay.

CHAIR HOLIAN: Okay. Preliminary and final plat within 90 days of master plan approval. Correct?

COMMISSIONER CHAVEZ: Yes. And then my motion would only include three small trucks and two large trucks.

CHAIR HOLIAN: Three large trucks and two small –

COMMISSIONER CHAVEZ: Three small trucks and two large.

NBG-86

CHAIR HOLIAN: Three small and two large.

COMMISSIONER CHAVEZ: That balances the business interest and the neighborhood's needs in my mind anyway.

COMMISSIONER ANAYA: I second that.

CHAIR HOLIAN: Okay. I have a motion and a second. Do we have any further discussion? Commissioner Mayfield.

COMMISSIONER MAYFIELD: Thank you, Madam Chair. Questions, a few questions for staff and for the applicant first. One, Jose, Mr. Larrañaga, as far as the variance that we approved back in August of 2012, and I was looking through my packet, but what conditions or staff recommendations did we put on our variance?

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, without looking at the minutes I believe the variance was, again, to allow this use to qualify as a special use and one of the conditions I remember was that it come back with the master plan within eight months of approval of the variance, which this month it met that requirement.

COMMISSIONER MAYFIELD: Well, I don't want to go by memory. I want to know if we put any actual conditions on there as far as working with the Romeros to fix their walls, working with – I just want to know what conditions were put on the variance.

COMMISSIONER STEFANICS: It's November and it's page 46 through 49.

MR. LARRAÑAGA: I'm sorry. What pages did you say, Commissioner?

COMMISSIONER STEFANICS: Madam Chair.

CHAIR HOLIAN: Yes, Commissioner Stefanics.

COMMISSIONER STEFANICS: We considered it in August. It came back to us in November of 2012 is when we approved and the motion was made by Commissioner Anaya and – it's several pages, the discussion about the motion. Things kept getting added, but if you get to the November.

CHAIR HOLIAN: NBA-135.

COMMISSIONER MAYFIELD: Okay.

COMMISSIONER STEFANICS: Down at the bottom it says NBA-130, 131, that area is when we did the motion and the conditions. It went on for pages.

COMMISSIONER MAYFIELD: I'll just read through it myself.

CHAIR HOLIAN: So, Commissioner Mayfield, the question is what conditions were put on with approval of the variance?

COMMISSIONER MAYFIELD: Madam Chair, is has the applicant complied with all conditions of the variance that we imposed at the time and has staff verified that they've been in compliance?

COMMISSIONER CHAVEZ: That's a good question.

CHAIR HOLIAN: Do we have a copy of the variance, Jose?

MR. LARRAÑAGA: Madam Chair, Commissioner Mayfield, we don't put conditions on a variance. We recommend denial of a variance and therefore we don't put conditions on a variance for approval. Staff recommended denial of the variance and the only

condition as per these minutes and the final order was that they come in within eight months to present a master plan to the Board of County Commissioners.

COMMISSIONER MAYFIELD: Madam Chair and Jose –

CHAIR HOLIAN: Commissioner Mayfield.

COMMISSIONER MAYFIELD: Typically, when variances come to me on a land use case, as I recall is this Commission will move forward with approval and we do apply conditions. And I know one of the conditions was for this to come back in front of us in eight months with master plan, but I didn't know if any other conditional approvals were given for the variance at that time. That's why I want to make sure. Because again, some photos were put up here and I know there were photos given to us last time, and one of the things, talking to the Anayas also was that they did have these other sites for their yards, and I remember that conversation. I asked that conversation if they had other facilities where they're actually keeping their tow yard because I know it was just alluded to by the Romeros of what the PRC did or didn't do, and they do, the PRC requires a yard where individuals can pick up their vehicles or not pick up their vehicles. In the minutes the Anayas, if I recall, said this is just to store their towing vehicles, not to store any of their – I don't want to even say salvaged vehicles but their recovered vehicles. They take these vehicles to their actual tow yard.

But in the pictures that were just given to us by Ms. Romero, I don't know the date of these pictures or not and I don't know if they're entered into the record or not, but I still see some pretty old vehicles on that property. So I just want to make sure that if that variance at that time said that these vehicles need to be off that property, they need to be off that property. And if they need to be moved to their storage yard then that's where they need to be moved. I want to know if staff has gone out there and assessed that and I don't know if that was a condition of our last, of our variance when we moved forward with it or if not –

CHAIR HOLIAN: Commissioner Mayfield, could I just respond to that? In reading through this it looks like the motion was to approve the variance but then there was toward the end, Commissioner Stefanics made an amendment that if this is a livelihood that has to be adapted, changed, relocated there is a period of time in which to do that. And so it was mostly the imposition of a –

COMMISSIONER STEFANICS: Madam Chair, there's language in there that says you amended Commissioner Anaya's – you put an amendment on Commissioner Anaya's – you put a different condition, and I haven't found that yet.

CHAIR HOLIAN: Okay. Commissioner Chavez, would you like to respond or perhaps Vicki could clarify.

MS. LUCERO: Madam Chair, I was just reading through the minutes and Commissioner Anaya made the motion to approve with conditions represented by Commissioner Holian is what it says, to make sure that they're adequately reflected on the record. But I have to go back and see where there are actually conditions.

COMMISSIONER ANAYA: I could help, provide some clarity.

CHAIR HOLIAN: Yes. We need clarity. Thank you, Commissioner Anaya.

NBG-88

COMMISSIONER ANAYA: So if you follow through with that recommendation, I asked the question, Madam Chair, made a motion for approval with conditions relative of fire, noted by Commissioner Holian and 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 recommendations for denial. Then if you go to the next page it speaks to the questions that I raised that had them been voted down at that time, and I'm paraphrasing now, they would have ceased to have a functional business. Then the question was asked, 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 says, Madam Chair, Commissioner Anaya, that's correct.

Mr. Larrañaga: Madam Chair, Commissioner Anaya, yes, the master plan process, preliminary and final development plan meeting all code requirements, which is exactly what we're here with master plan, not preliminary and final. So – and it's reflected in the minutes, based on those discussions the master plan is before us today and there were no conditions established or requirements. That was the purpose of this process in master plan and preliminary and final development plan approval.

So I think the motion on the table is in order.

COMMISSIONER MAYFIELD: And that's fine, but I still have a couple questions.

CHAIR HOLIAN: Yes. You still have the floor, Commissioner Mayfield.

COMMISSIONER MAYFIELD: So again, going back to the site and hearing what the motion is, respecting that the Anayas have all their vehicles that they need to try to accommodate, and that this other site should not be a site for any type of storage vehicles, recovery vehicles. And I think hearing the night sky issues, the start-up vehicle issues of the community – I'm just going to say it – I wouldn't want my son woken up at 3:00 in the morning by a truck starting up or light shining in my bedroom eight. But understanding a long-standing business has been there. That's where the compromise has to take place. But looking at all these pictures that were just afforded to us, I don't know. I'm going to have to ask the applicant Are these – I'm going to call them abandoned – are these vehicles that are not being worked on, are they still on the site? Have they been cleaned up?

MS. KOSH: Commissioner Mayfield, I believe that you are viewing pictures of –

COMMISSIONER MAYFIELD: I'll hand them to you. I don't know if you've had an opportunity to see them. So I think if we can hand them –

MS. KOSH: Yes. I'll take a look at them but I'm assuming that they're pictures of the damaged wall?

COMMISSIONER MAYFIELD: No, no. They're pictures of the whole grounds.

MR. ANAYA: These are vehicles that I personally own.

COMMISSIONER MAYFIELD: Okay. And Mr. Anaya, I appreciate that because then in the request that you have, and I read it somewhere, I guess in one of the pages, so there was a request to have, say, eight towing vehicles. I think there was a request – and let me – I highlighted it somewhere. There was a request to have – here it is. I'm on the summary page and it's staff's summary page. There was a request for staff's response for eight large tow truck vehicles, the circulation of these vehicles, retention ponds, dumpsters, the combination, the placement of two recreational vehicles, one boat, two low-boy trailers and other personal vehicles. So how many personal vehicles are we talking about on the property?

MR. ANAYA: I presume about maybe ten, twelve vehicles that are personally mine, that are registered in my name. Which I have parked at my residence as well as parked back there.

COMMISSIONER MAYFIELD: I'm just going to ask this question. Are they all running vehicles?

MR. ANAYA: Yes, they are.

COMMISSIONER MAYFIELD: Okay.

MR. ANAYA: Excuse me. The only two that are not running are the two burnt vehicles that I purchased, and I purchased those to pull the motors out.

COMMISSIONER MAYFIELD: Yes, and I think that's one of the photos. I thought I saw a truck.

MR. ANAYA: Yes, there's two burnt vehicles.

COMMISSIONER MAYFIELD: Okay, well I guess Commissioner Chavez is – that may be a different issue we have to look at. And I guess that's where I was looking at some of the community concerns, having to deal with – and there's a lot of tires I saw in those pictures. Those are other issues I think for site cleanup that would have to be addressed as far as yard maintenance for the community that maybe would have concerns with that that we would have to have addressed in the master plan.

As far as from the attorney I believe, and I'm going to bring this up because it was brought up. Santa Fe County does have a water-harvesting plan and regardless of water being used or not I know this Commission has voted on water harvesting. I know that was a recommendation. You were asking that we not consider that? But I think this Commission has put that in as conditional of all of our –

MR. ANAYA: Yes, that was brought to the attention – the person that was working on the actual site plan, but due to the topography of the property, that piece of property sits higher than all the other parts of the property so we thought putting in a holding pond where the water's not going to be sitting didn't make any sense. It can be done, but it didn't make any sense.

COMMISSIONER MAYFIELD: Mr. Anaya, I would maybe agree with you on that but I know that I've kind of have this same thought on this bench but it just kind of seems standard fare for this Commission and I don't see how we can do it on one circumstance and not another one. I guess it's something for us to talk up here.

NBG-90

Another question I need to ask, Mr. Anaya, do you do any maintenance of your vehicles on your site, where you, say, like repair engines or any type of –

MR. ANAYA: Yes, we do. We also race cars and we do other activities. Our ABTVs, we ride those. There's stuff that everyone else out here does and I mean I just – like everyone else, having an RV or a motorcycle or a boat or whatever, we have one. It's just our concern was when this whole master plan went into effect, how were we going to be able to utilize the property so that we wouldn't be in violation if we did. And that's why a lot of this stuff was put into this guidelines that putting together for you guys.

COMMISSIONER MAYFIELD: Okay. And I just wanted all that to be – in case there were questions asked, saying, look, later on, there's maintenance of these vehicles and everything else. That's why it's all put out on to the table. I didn't see this in this plan? Is it somewhere else in here that it wasn't mentioned? Do you have that in there? Your attorney has that in the recommendation here?

MR. ANAYA: Not that I know, sir.

COMMISSIONER MAYFIELD: Okay. That's all I have, Madam Chair. I just wanted to make sure that that was all disclosed. So I guess there's a motion on the floor.

CHAIR HOLIAN: Any further discussion? Questions. All right. We have a motion.

MS. KOSH: Madam Chair, I'm sorry to address you. Mr. Bennett, who is also counsel for the Anayas would also like to make one comment if you don't mind.

CHAIR HOLIAN: Yes. Mr. Bennett.

MERIT BENNETT: Good evening. I wanted to lend a little more perspective that I think might be helpful for the Commission. I've known the Anayas personally for 26 years. I've known them since two years before they started this business and I now the family quite well and I'm quite close to them. There seems to be something missing from this hearing, a perspective that I think needs to be considered. If you will take note that the only opposition in this room to the Anayas' plan is are two individuals who live on the other side of the wall that they bumped into. And that's why we're here, because the Anayas backed up a truck. It bumped into the Romeros' wall. The Romeros can't see the Anayas' property. They can't see their trucks. They don't have children over there, and you have to look at that perspective. The only other person in opposition here is a person who owns property there but doesn't live there. That's the opposition now before the Commission.

There's been a mention of what is in the interest of the community. Well, let's talk about that. This business has for 24 years been pulling people out of wrecks, ravines, ditches, car crashes and they have contracts with City Police, County officials, State Police, that they're obligated to perform. And in order to be able to perform those contracts for our community and pull somebody out of trouble in the middle of the night, they have to have those vehicles, all sizes, immediately available to respond to a call from law enforcement or some other emergency force.

You have to take that into account. You can't just start to limit vehicles arbitrarily, because each vehicle is specified for a particular job. You can't just begin to put arbitrary

NBG-91

hours on an operation. And if you will note also, they've never, ever, in 24 years had any accident involving any member of this community. The residents who live on the other side of the wall, with the Anayas, are not before you tonight. They're not complaining about the business that's been conducted here for 24 years. Because they all know the service that the Anayas provide to this community. And I think that's missing here, and it's important to take that into consideration, that service to the community into consideration, when you contemplate actions that will limit an ongoing business upon which this family survives and many other people survive. This is a business of service. And to limit this business – they're not asking to expand it. They're saying we will stay at this level but then to take away from it to me takes something from the community and me having known this family for this long, it just doesn't feel right as a human, and certainly as a friend of the Anayas and a friend of Agua Fria and a friend of my community.

So I would just ask the Commission to take that into consideration.

CHAIR HOLIAN: Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, I'm going to make one more comment. I applaud Mr. Bennett for fulfilling your obligation as a legal representative of the Anayas and making the comments that you made based on your perspective and your fees associated with your legal representation and your knowledge of this family. Commissioner Mayfield and I, when this particular issue came up, and Commissioner Stefanics, voted on a split vote, three to two to afford this process to take place that we're sitting in today. Commissioner Mayfield and I can be reflected in the minutes and Commissioner Stefanics, and all the Commission at the time asking critical questions, raising concerns, bringing up compromise and other relevant issues associated with the business. No one advocated more than us that voted in the affirmative, myself being one of the ones that had probably the most to say about sustaining a business.

All that being said, had it not been for three Commissioners at the time affording the process to take place, this business wouldn't be functional. I knew from that discussion that there was going to be a need for some compromise and Commissioner Stefanics re-emphasized that and that's reflected in the minutes. Commissioner Mayfield reflected that compromise, who also voted in the affirmative of other issues that may need to be addressed between preliminary and final development plat approval. I think this is an allowable motion, if it passes, that provides reasonable use of functional property and will not put this business out of business.

I think Commissioner Chavez' motion touches on all aspects of the vehicles. It allows for the small and medium size, three of them, and allows for the very large vehicles. So, respecting your perspective and your fashion that you presented it as legal representatives for the Anayas, I can only hope, but that's okay, that you would hear some of the perspective that I brought forth and that Commissioner Chavez, Commissioner Holian, Commissioner Mayfield and Commissioner Stefanics brought forth in the discussion. But this solely exists because my colleagues had enough courage to say we'll let it go to the next step but there's going to be some compromise.

NBG-92

So that's the corpus of my comments and I applaud Commissioner Chavez and this entire Commission on the discussion that transpired in two very difficult and lengthy meetings where it wasn't just a couple people here. There was people on both sides. Supporting the business, a large group and there was a fair amount of people that were in opposition as well. So I respect you and I hope that whatever decision rendered that we can all respect and progress on to the next phase if that's the wishes of the Commission. Thank you, Madam Chair.

CHAIR HOLIAN: Commissioner Chavez.

COMMISSIONER CHAVEZ: Yes, and I didn't mean to be arbitrary at all. This is not an easy decision for me either way, because we're not going to make anybody happy. And I'm concerned about those that are not here, more than those are here, because we're not hearing from the ones that are not here but they will still be affected in one way or another. They may not know that. But I'm just doing the best I can and hope that the business can adjust and it can continue to operate there and to provide the service that they're providing. So let's call for the vote.

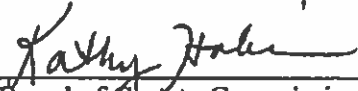
CHAIR HOLIAN: Thank you, Commissioner. We have a motion and a second on the floor for approval of CDRC case #Z -13-5060 with staff conditions and with the extra conditions that the preliminary and final plat application is submitted within 90 days of the master plan approval, and that three small and two large trucks may be parked on the property at any given time.

The motion passed by majority [4-1] voice vote with Commissioner Stefanics casting the nay vote.

XIX. ADJOURNMENT

Having completed the agenda and with no further business to come before this body, Chair Holian declared this meeting adjourned at 9:20 p.m.

Approved by:



Board of County Commissioners
Kathy Holian, Chair

ATTEST TO:

NBG-93

**MEMORANDUM IN SUPPORT OF APPLICANTS ROBERT AND BERNADETTE
ANAYA'S REQUEST FOR RECONSIDERATION OF CONDITIONS
CDRC CASE # 13-5060**

Applicants submit this Memorandum in Support of their Request for Reconsideration, and therefore state the following:

The Anaya's have made substantial efforts in good faith to comply with the BCC's requests and mandates. However, it has recently become clear that such mandates are not possible for several reasons:

1. Applicants believed that they would be able to effectuate a fair and reasonable solution for all residents on Ben Lane both with their giving up land for the hammer head for the betterment of Ben Lane and for their business. They also believed that they would be able to reach an agreement with the landowners at the entrance of Ben Lane, in order to resolve discrepancies in the need to expand the entrance in order to meet the fire code requirement of a 28' radius. These efforts have failed. After retaining more experts and expending many resources to address this issue, the Anaya's have not been able to resolve the radius issue and must first resolve the fire code issues before moving forward with the preliminary and final development plans for the variance that was approved in this case.
2. The Anaya's were disappointed with the BCC's last conditions of approval of the variance in their August 2013 Order, wherein it states, "no more than three small tow trucks and two large tow trucks may be stored on site at any given time." The Anaya's made good faith efforts to attempt to work within these conditions, including making diligent efforts to find other land that could be developed to store the other wreckers, and have found that there are no readily available and viable options. Therefore, this condition will effectively put the Anaya's out of the tow truck business, as they will have nowhere to store their tow trucks and any possible purchase of land is not only financially unfeasible, but will also have to go through the same variance process. Further, no land is available close enough to the Anayas' residence and work that will allow them to maintain their contracts with state and



local law enforcement to be able to arrive at the scene of an emergency within the requisite window of time.

Therefore, such conditions and the inability to resolve the fire code radius requirements does not recognize and honor this family and small business' rights to continue their long-standing business and would be a taking under the Takings Clause of the United States Constitution, the Takings Clause of the New Mexico Constitution, a violation of the Federal Motor Carrier's Act, the New Mexico and the Federal Equal Protection and Due Process Clauses through the 14th Amendment and 42. U.S.C. Sections 1983 and 1988.

Overview: Factual and Procedural History of this Case:

1. Robert Anaya, Sr. and Bernadette Anaya have operated Anaya's Roadrunner Wreckers from their home and adjacent property in Agua Fria Village since 1989. They purchased the business from another businessman in Agua Fria Village, under whose ownership it was grandfathered in when the village was annexed and the subsequent zoning code was put into effect. The area where they are located is zoned for mixed-use, and like many neighbors, they operate their business from their property, and maintain an off-site storage location for vehicles that are towed and need to be stored.
2. The Anaya's have applied 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 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). Their CDRC case number is 13-5060.
3. The Anaya's are fifth-generation residents of Agua Fria Village and have contributed to the community's well-being by being active members of the community association, the fire department, the planning committee and the local church. They have raised their children in the Village and provide day-care to their grandchildren from their home, where they operate their successful tow-truck company. They have been recognized as business and community leaders.
4. The company provides emergency towing services for individuals and holds several contracts with state, county and tribal police to provide emergency response to DWI

and other calls. In part, the reason they were awarded these contracts was their proven track record of timely responses and careful handling of towed vehicles and other property related to the accidents. Furthermore, they maintain a small fleet of trucks of varying sizes, including class D, that allow them to navigate difficult terrain and tow heavy loads. To maintain their quick response time (thirty minutes by contract, with some additional time available in extreme circumstances) and protect their tow-trucks from vandalism, the Anaya's must keep their tow trucks on the premises so that if an emergency call comes in, they can get in the proper-capacity vehicle and immediately travel to the location of the incident.

5. As is the case with many properties in Agua Fria Village, the majority of the Anaya's neighbors are extended family members with common ancestors and through marriage. In this case, the complaint of Mrs. Anaya's cousins from an adjacent property, the Romero's, started an investigation of the Anaya's code compliance, which has turned into a costly and time-consuming ordeal. During the process, they have been slandered and harassed as individuals and as a business. The stress and health concerns to the Anaya's are overwhelming as well. They have been targeted and neighbors who support their application have been lied to and discouraged from speaking out in support. Arbitrary and capricious decisions have been made by the board without proper research or factual evidence being presented.

BACKGROUND FACTS

The key facts to this case have been presented to the various county officials at multiple hearings and meetings, and are repeated here very briefly to put the Anaya's claims in context.

The plan for Agua Fria Village supports mixed-use zoning, and several other companies with large vehicles, including other tow companies, are located in the surrounding area. In 1989, the Anaya's purchased a pre-existing tow truck and wrecker company from a neighbor whose business had been grandfathered in. At the time of purchase, the Anaya's acquired the five tow trucks belonging to the previous owner. They also received the transfer of his business license, which was undated, which they believed to be equivalent to a liquor license, in that they believed all of the attending rights and responsibilities from the preexisting company would flow to them.

NBG-9

According to the letter of the Agua Fria Village Association, Mr. Mee, this business was grandfathered in.

The Anaya's have run their business openly and with success since 1989. They have increased to eight tow trucks, each with varying tow capacities and purposes. They do not plan to acquire any additional vehicles. The company presently provides services to individuals and the New Mexico State Police, the Santa Fe County Sheriff's Department, fire department, Sandoval County, tribal police for nearby pueblos, and other governmental entities. Their vehicles are used as part of the emergency response process, and under their contracts they are responsible to extracting and clearing roadways of all debris when called to a job.

Of particular note, the Santa Fe County Police contract for response and towing for their DWI seizures specifies a sixty minute response time to all calls, any day of the week and any time of the day. This contract can be seen as an admission that the county was aware of the Anaya's unique central location within the county and that they would have immediate access to each of their specific vehicles, depending on what requirements might be called for in any given situation. If the Anaya's are forced to relocate any of the trucks away from their property, it may interfere with their contracts due to difficulty meeting the required response times.

Given the nature of the business, the operators and employees of the company carry two way radios and cell phones for dispatch so that they can make the time needed under the contract to assist in every way possible to minimize loss of life, damage to property, and restore roadway access for other motorists. The company maintains a separate storage lot where the towed vehicles are stored, unless they are turned over to the police. This lot is located approximately two miles away from their home and primary business. If the Anaya's are forced to relocate some of their tow trucks to the storage lot, there is a strong chance of vandalism to their property. More important, the increased driving time might lead to safety risks in order to meet compliance with the contracted response times.

Like many New Mexican families, the Anaya's also maintain several personal recreational vehicles on their property for camping, boating, driving and racing. These are not affiliated with the business although they have been accused of storing towed material on their property.

It is worth noting that the configuration of the property held by the Anaya's has changed over the years, as one family elder who passed away traded out one portion of their parcel, which

was originally located directly across from their residence and on which they originally kept the trucks, for a parcel further down Ben Lane, which backs up onto the Romero's property. That lot is essentially a tamped down dirt patch where the tow trucks have been moved, and where some of their personal recreational vehicles are kept. The commission has been presented with maps and photographs to make clear the layout and nature of the property in question.

Approximately ten households are located along Ben Lane. Most of the occupants are relatives of varying degrees of sanguinity. Some have erected fences or more permanent walls. Based on the placement of the walls, it appears that consultation with the county was not sought prior to building. In fact, it seems that some of the safety code concerns now placing a burden on the Anaya's as they attempt to get approval of their master plan arise from walls blocking off utility easements which were to be used as fire lanes. Further discussion of the hammerhead and fire lanes is included in the next section.

There were no accidents or reports about safety pertaining to the Anaya's tow trucks in their 24 years of operation, a fact of which they are quite proud. Then in 2012, while backing a truck into a spot which permits for quick and easy pull out, Mr. Anaya accidentally tapped the wall which the Romero's had erected in the utility easement which separates their two properties. A portion of the cinderblock wall came down on the Romero's side of the property. The Romero's filed an insurance claim, and the Anaya's consulted with a friend who builds and repairs masonry walls to find a way to make the Romero's whole. Mr. Romero told Mr. Anaya that he could accept payment of \$7,000.00 to settle the issue, which was several thousand dollars above what it would cost to repair. Testimony and letters have been presented at the various committee meetings that describe long-standing animosity between the complaining Romero's and the Anaya's. The Anaya's refused to pay the inflated amount, and shortly thereafter a complaint was filed against them regarding having 'junk in the yard' and for operating their business without a license, which has deteriorated into the present situation.

ADMINISTRATIVE PROCESS TO DATE

In February 2012, a criminal complaint was filed against Mrs. Anaya for violation of business regulations and junk vehicles, to which she plead not guilty and the charges were dismissed.

In March 2012, the Romeros obtained a restraining order against the Anayas.

NBG-98

The County Development Review Committee met on June 21, 2012 and decided to recommend the applicants' request for variance be denied. At that meeting, county staff Jose Larranaga explained that the zoning ordinance was established in 1981 and the 1989 business could not be grandfathered in.¹ A notice of violation was issued. He further noted that the applicant did not have a County business license.² On the record, it was established that the applicants have licenses from the City and Department of Transportation and had applied for a County license, but was told by officials to wait until the variance process was completed.³

Board of County Commissioners met on August 14, 2012 and voted to table the request for variance pending mediation between the applicants and persons opposing the request.

Santa Fe County Board of Commissioners Regular Meeting was held on November 13, 2012, and the Anaya's variance application was on the agenda.

The mediator, Rosemary Romero, filed a report with the Santa Fe Board of County Commissioners on October 11, 2013 indicating that the mediation had not occurred and would not be appropriate in this instance. The reasons cited were that many family members did not want to participate (including fear of retaliation, not wanting to air family conflicts in public, and a belief that "having an attorney involved defeated the purpose of mediation.") Although the Anaya's were agreeable to participating in the proposed mediation, they exercised their right to have their attorney serve as their main point of contact.

Santa Fe County Board of Commissioners Regular Meeting was held on June 11, 2013, and the Anaya's variance application was on the agenda. County staff recommended "approval of the Master Plan Zoning to allow the storage of eight tow trucks, to be utilized as a towing business, on .33 acres" subject to certain conditions.⁴ Commissioner Chavez later proposed the Anaya's only be permitted to maintain three small tow trucks and two large tow trucks on their property to "balance" [] the business interest and the neighborhood's needs in my mind anyway."⁵ He went on to say that the situation would require compromise, although it seems the only compromise requested has been for the Anaya's to give up the use of their land. Commissioner Anaya seconded the motion.⁶ In response, Mr. Bennett, counsel for the Anayas, responded that "You can't just start to limit vehicles arbitrarily, because each vehicle is specified for a particular job. You can't just begin to put arbitrary hours on an operation. And if you will note also, they've never, ever, in 24 years had any accident involving any member of this community."⁷ In the end, a motion for approval of the case with staff conditions and with the

extra conditions that the preliminary and final plat application be submitted within 90 days of the master plan approval, and that three small and two large trucks may be parked on the property at any given time was passed by majority [4-1].⁸

An Order was entered on August 13, 2013 granting the Anaya's Master Plan Zoning for a commercial towing business as a Special Use subject to certain restrictions: a) the signed Master Plan shall be filed with the County Clerk; b) the Preliminary and Final Development Plan shall be submitted within ninety days of the issuance of the Order, to be presented to the CDRC for consideration; c) applicants shall comply with Ordinance No. 2007-2, Section 10.6; d) storage of towed vehicles shall not be permitted on the site and shall be so noted on the master plan; 3) no more than three small tow trucks and two large tow trucks may be stored on site at any given time.⁹

The Anaya's have consulted with Morey Walker to prepare a Master Plan, which is now under review. The necessary agencies have been issuing the required reviews of the Master Plan.

One issue of fire-safety has been raised which is creating great problems. Although there is a fire flush along Ben Lane, the County Planners have determined that because there is no through access along Ben Lane due to walls which have been erected which block the utility easements (and the original fire lanes) that a twenty-eight-foot hammerhead must be created at the back of the Anaya's lot to allow a large fire truck to turn around. The Anaya's have illustrated to the Commission that a fire truck could make the required turn-around in the space as it is now configured, but they continue to meet obstacles. Based on his personal experience working as the Village's fire chief and as a family of volunteers, Mr. Anaya does not see how this requirement is necessary or why as a property-owner who happens to be located on the back lot he should bear the complete burden to benefit all of his neighbors.

RESPONSE TO BCC Staff's October 30, 2013 Response to Applicants' Request for Reconsideration:

In this response, Mr. Larranaga states that "The Agent for the Applicants accepted the need to make the investment for the 28' radius and accepted the implementation of the 28' radius as a condition of approval" and that "the Applicants did not appeal the final decision of the BCC." See Staff's response, NB-3. Applicants appreciate Staff's acknowledgement of their diligent and good faith efforts to comply with each of BCC's requests and mandates. Applicants very much

wished to be compliant and work within the parameters set by the BCC and all other administrative agencies. Applicants did so attempt to work within these parameters. Recently, it became very clear that Applicants had done all they could do to try to work within these parameters, spending incredible amounts of resources to do so, and yet they had come up short. The Applicants throw themselves at the mercy of the BCC to assist them in resolving these issues that are not within their capacity to resolve and that will effectively put them out of business without the BCC's reconsideration and extension of time to attempt to address these matters.

CONSTITUTIONAL CLAIMS
TAKINGS UNDER ARTICLE V OF THE UNITED STATES CONSTITUTION
AND N.M. CONST., ART. II, § 20

As an essential element of individual liberty, the Takings Clause was included in the Bill of Rights to ensure the protection of private property from an overreaching government.¹⁰ Federal and state laws are clear that "Private property shall not be taken for public use, without just compensation." Article II, Section 20 of the New Mexico State Constitution states "Private property shall not be taken or damaged for public use without just compensation." This is so whether there is a permanent or temporary physical occupation of the property or if regulation interferes with the character of the land at issue and the "reasonable investment-backed expectations" regarding the land's use."¹¹ "[W]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking."¹² In regard to the Takings Clause, the state must provide a "reasonable, certain and adequate provision for obtaining compensation," both when property is physically taken as well as when a regulation greatly reduces the economic viability of the property.¹³ The Takings Clause is "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."¹⁴ Furthermore, the State and its subdivisions cannot claim sovereign immunity to protect itself from liability in takings cases, and the Fifth Amendment is held to be 'self-executing'. See Manning v. Mining and Minerals Division of the Energy, Minerals and Natural Resources Department et al., 140 N.M. 528, 144 P.3d 87 (N.M., 2006).¹⁵ Finally, it is worth noting that the Fifth Amendment has been made applicable to the states through the Fourteenth Amendment's guarantee of due process.¹⁶

NBG-101

The United States Supreme Court has made explicit that each takings case should "be assessed with reference to the 'particular circumstances of each case'."¹⁷ In this case the Anaya's purchased a towing business that had been grandfathered in at the time the Village zoning ordinances were adopted and are believed to have been grandfathered in themselves. They have operated their business with safety and success for 24 years in a mixed-use neighborhood under a zoning plan that encourages and promotes the type of community and family-oriented business they provide. Storage of their tow trucks on their property is essential to their contractual commitments and success to provide timely responses to emergency situations. The county itself requires immediate access to their unique vehicles to respond to the varied towing situations.

As a result of a disgruntled neighbor calling in a complaint, the Anaya's have been targeted and forced to hire legal counsel, pay several thousand dollars in fees for plan drafting, advertising and postings regarding public meetings. Their neighbors and supporters have been threatened and lied to (that they would be forced to give up land or pay higher taxes if they supported the Anaya's). The Commission has arbitrarily and capriciously determined that rather than maintain their eight tow trucks on their property, they can only keep five. Furthermore, the Commission is attempting to cap the number of personal recreational vehicles they may keep on their property. Under the terms of the Master Plan, the Anaya's are being asked, solely among their neighbors, to give up property for a hammerhead to benefit the entire street as a result of other neighbors erecting walls that block the utility easements.

EQUAL PROTECTION & DUE PROCESS CLAIMS

The Equal Protection Clause of the U.S. Constitution's Fourteenth Amendment states "No State shall make or enforce any law which shall ... deny to any person within its jurisdiction the equal protection of the laws" and Article II Section 18 of the New Mexico Constitution states "No person shall be ... denied equal protection of the laws." Equal protection prohibits "the government from creating statutory classifications that are unreasonable, unrelated to a legitimate statutory purpose, or not based on real differences."¹⁸ The threshold question in evaluating an equal protection claim is whether a law or regulation, results in dissimilar treatment of similarly-situated individuals.¹⁹

Regulations restricting the use of land must be clear and fair and apply equally to all. The N.M. Supreme Court has stated “standard-less regulation that depends on no more than a zoning official’s discretion would seriously erode basic freedoms that inure to every property owner.”²⁰ The Anaya’s would argue that to date, the reviewing agencies actions are arbitrary and capricious, that their decisions are not being supported by substantial evidence and that their actions are not in accordance with the law as it has been established by the U.S. Supreme Court and New Mexico Supreme Court.²¹

The Anaya’s are one of several tow truck companies and other local companies that maintain heavy vehicles on their property to conduct their business efficiently. Counsel for the Anaya’s believe their business was grandfathered in and/or that they have a legal non-conforming use on the property which has not been abandoned. They continue to operate their business while attempting to meet each demand the Commission is placing on them, such as contacting the utility company to move a pole so that there will be a greater turning radius onto Ben Lane.

After more than two decades of running their business safely and providing critical service to the community and state in emergencies, they are being scrutinized for a single incident involving the tapping of a wall. With each telling of the story by the Romero’s the tale becomes more dramatic, invoking dead kittens and the near collapse of the wall onto Mrs. Romero while hanging the wash out to dry. Other opponents claim that children will be lured into the dangerous trucks by their mere presence.

There is no dispute that safety in the community is a rational objective for the town’s zoning. In fact, the Anaya’s were actively engaged in the process at the time the zoning for Agua Fria Village was being considered under the development plan in 2003-2006. They live there and have raised generations of their family there and are intrinsically invested in keeping their neighborhood and village safe. In fact, with their business they help to keep the village safe. None of their operators have been involved in on-the-job accidents. Yet because the county’s zoning office is “complaint driven” the government has been drawn into a neighbor dispute which now threatens the livelihood of the Anaya’s as well as their ability to enjoy their property fully. The proposed hammerhead for fire safety will severely limit their access to their property. The family has been singled out and targeted under the ordinance and the technique for enforcement. The County Commission has imposed substantial financial and emotional

burdens on the Anaya's. There is actual interference as well as injury to the Anaya's, so that they cannot use their back lot for its original intended purpose.

The Anaya's may also bring a claim under 42 U.S.C. Section 1983 showing "that the defendants must have acted under color of law, regulation, custom or usage of the State of New Mexico, and that the plaintiff must have been deprived of federal constitutional rights, privileges and immunities."²² According to the U. S. Supreme Court: "[t]he very purpose of Section 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights – to protect people from unconstitutional action under color of state law, whether that action be executive, legislative, or judicial."²³ There is no dispute that the Santa Fe County Commission is acting under color of law for the State of New Mexico in its evaluation of the Anaya's variance request. The Supreme Court has made clear that a municipality may be sued under Section 1983.²⁴ As explained above, the causes of action arising under Article V of the United States Constitution and related Equal Protection and Due Process Claims relate to federal constitutional rights, as well as state rights. 42 U.S.C. Section 1988 allows the court to grant the prevailing party reasonable attorney's fees as part of their costs.

CONCLUSION

The Anaya's would like to continue operating their business from their property in compliance with the county's zoning requirements. They have made every reasonable effort to comply with the various deadlines, notices and other hurdles as they have been brought to light. At times, they have met with contradictory instructions and then penalized for non-compliance.

They are aware that litigation is costly, slow, and unpredictable. They do not want to resort to that if it can be avoided. Rather, they respectfully request streamlined, consistent assistance and cooperation from the county entities that oversee the variance process so that they are not deprived of their livelihood and can continue to enjoy the land that their ancestors have settled.

PROPERTY ALTERNATES PURSUED BY ANAYA'S

1. Robert J. Anaya, Jr. purchased 2 pieces of property just shy of 4 acres @ Reata Road and West Frontage Road to move business. Unable to use because the city of Santa Fe annexed property and turned commercial zoning into residential. IF THE PROPERTY ON REATA ROAD IS RETURNED TO COMMERCIAL ZONING THE ANAYA'S WOULD BE ABLE TO KEEP THEIR OVERFLOW OF HEAVY EQUIPMENT ON THAT SITE.
2. Anaya's have looked at lots near their present storage location on Industrial Road.
 - a. They cannot afford \$1.3 million purchase price for 1.5 acres on Siler Lane.
 - b. Location on Cerillos Road at Ocate – Purchase price \$2.5 million, 7 acres.
 - c. Location on Highway 14 adjacent to PNM purchase price \$960,000, 3 acres
 - d. Land on Airport and Constellation area, 2.5 acres purchase price \$1.1 million.
3. The Anaya's cannot afford property in Santa Fe in its inflated real estate market, nor the 25% down payment prior to potential funding.

¹ Santa Fe County, Board of County Commissioners, Minutes of Regular Meeting of June 21, 2012.

² Id.

³ Id at 22

⁴ Santa Fe County, Board of County Commissioners, Minutes of Regular Meeting of June 11, 2013 at page 74.

⁵ Id. At page 89.

⁶ Id.

⁷ Id. at page 94.

⁸ Id. at page 95.

⁹ Order dated August 13, 2013.

¹⁰ Manning at pages 89-90

¹¹ Arkansas Game and Fishing Commission v. United States, 568 U.S. ___ (2012) citing Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 435 at n. 12 (1982) and Palazzolo v. Rhode Island, 533 U.S. 606, 618 (2001).

¹² Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415, 43 S.Ct. 158, 67 L.Ed. 322 (1922)

¹³ Williamson County Reg'l Planning Comm'n v. Hamilton Bank, 473 U.S. 172, 194, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985).

¹⁴ Arkansas Game and Fishing, citing Armstrong v. United States, 364 U.S. 40, 49 (1960). See also First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 318-319 (1987); Penn Central Transp. Co. v. New York City, 104, 123-125 (1978).

¹⁵ See also In Re Held Orders of U.S. West Communications v. N.M. State Corporations Commission, 943 P.2d 1007, 123 N.M. 554 (1997).

¹⁶ Chicago B. & Q.R. Co. v. City of Chicago, 166 U.S. 226, 235-42, 17 S.Ct. 581, 41 L.Ed. 979 (1897).

¹⁷ Arkansas Game and Fishing citing United States v. Central Eureka Mining Co., 357 U.S. 155, 168 (1958) (citing Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 416 (1922)).

NBG-105

¹⁸ also In Re Held Orders of U.S. West Communications v. N.M. State Corporations Commission, 943 P.2d 1007, 123 N.M. 554, citing Madrid v. St. Joseph Hosp., 1996 NMSC 064 p 35, 122 N.M. 524, 535, 928 P.2d 250, 261 (1996).

¹⁹ See Madrid, 1996 NMSC 064 p 35, 122 N.M. 524, 928 P.2d 250.

²⁰ Smith v. Board of County Commissioners, 137 N.M. 280, 110 P.3d 496 (2005).

²¹ San Pedro Neighborhood Association v. Board of County Commissioners of Santa Fe County, 206 P.3d 1011, 146 N.M. 106 (N.M. App. 2009).

²² Gomez v. Board of Education, 85 N.M. 708, 711, 516 P.2d 679, 682 (1973); cited by Chapman v. Luna, 102 N.M. 768, 701 P.2d 367 (S. Ct. 1985).

²³ Mitchum v. Foster, 407 U.S. at 242.

²⁴ Monell v Department of Social Services, 463 U.S. 658 (1978).

Daniel "Darryl" Mayfield
Commissioner, District 1

Miguel Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

**BCC CASE # MIS 13-5061 ROBERT AND BERNADETTE ANAYA
ROBERT AND BERNADETTE ANAYA, APPLICANTS**

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as "the BCC") for hearing on March 25, 2014, on the Application of Robert and Bernadette Anaya (hereinafter referred to as "the Applicants") for reconsideration of four conditions imposed at the time of Master Plan Zoning approval. 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 not well-taken and should be denied, and makes the following findings of fact and conclusions of law:

1. On June 11, 2013, the BCC held a public hearing on an Application for a variance and Master Plan Zoning approval for a commercial towing business as a Special Use under Ordinance No. 2007-2, § 10.5, Village of Agua Fria Zoning District Use Table.
2. The Applicants sought a variance because a towing business is not an allowed Special Use under Ordinance No. 2007-2.
3. The Application was granted subject to certain conditions, and on August 13, 2013, the BCC approved an order which granted Applicants Master Plan Zoning to allow a towing business on .33 acres +, conditioned as follows:
 - a. Master Plan with appropriate signatures, shall be recorded with the County Clerk, per Article V, § 5.2.5.;

SFC CLERK RECORDED 06/13/2014

1



NBG-105

- b. Preliminary and Final Development Plan shall meet all criteria set forth in Article V, § 7, to be reviewed and presented to the CDRC for consideration;
- c. The Applicant shall comply with Ordinance No. 2007-2, § 10.6 (Density & Dimensional Standards);
- d. Storage of towed vehicles shall not be permitted on the site as per the 1989 decision of the Extraterritorial Zoning Authority. A note stating that the storage of towed vehicles on the site shall not be allowed shall be placed on the Master Plan;
- e. No more than three small tow trucks and two large tow trucks may be stored on the site at any given time;
- f. The Applicants shall submit Preliminary and Final Development Plan to the County Development Review Committee for consideration within 90 days of issuance of this Order.

4. The Order granting Master Plan Zoning was recorded on August 20, 2013, triggering the start of the ninety days for submission of a Preliminary and Final Development Plan to the County Development Review Committee.

5. The Applicants did not appeal the order granting Master Plan Zoning, and instead on September 26, 2013, filed an application seeking relief from the following conditions of approval of the Master Plan Zoning:

- a. The Applicants shall submit Preliminary and Final Development Plan to the County Development Review Committee for consideration within 90 days of approval of the Final Order;
- b. No more than three small tow trucks and two large tow trucks may be stored on the site at any given time;

c. The implementation of a landscape buffer on the east side of the site alongside the platted easement;

d. The listing of personal vehicles that will be stored on the on 0.33 acres.

6. The landscape buffer and the listing of personal vehicles were not conditions of approval, but were elements of the Master Plan submitted by Applicants and approved by the BCC.

7. The subject 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) and is surrounded on all sides by residential properties.

8. During the hearing on this application, the Applicants stated that the landscape buffer on the east side of the site alongside the platted easement will create a burden on the Applicants to safely park the tow trucks on the site.

9. The Applicants stated that the condition to limit the Applicants to three small tow trucks and two large tow trucks at any given time to be stored on the site will inhibit the business as follows:

a. The limitation will force the Applicants to seek other property to store the remainder of their tow trucks;

b. The limitation will affect Applicants' response time to emergency calls;

c. The limitation will jeopardize the business as it currently exists.

10. The Applicants requested an extension of the 90 day requirement imposed by the BCC to submit Preliminary and Final Development Plan to the County Development Review Committee for the following reasons:

- a. to provide adequate time to seek relief of the above mentioned conditions imposed by the BCC; and
- b. to address the requirement of the 28' radii required by the County Fire Department at the intersection of Ben Lane and Agua Fria Road.

11. On March 11, 2014, the BCC held a public hearing on the Application and then deliberated over the matter in closed executive session on March 25, 2014 and again on May 13, 2014.

12. Article V, § 5.2.4.b.2 & 3 (Master Plan Approval) of the Santa Fe County Land Development Code (the Code) states: "the County Development Review Committee and Board shall consider the following criteria in making determinations and recommendations for approval or amendment of master plans: Conformance to County and Extraterritorial Plan; Suitability of the site to accommodate the proposed development; Suitability of the proposed uses and intensity of development at the location; Impact to schools, adjacent lands or the County in general; 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; 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".

13. The site, within a congested residential area, is not suitable for the proposed business absent the requirement for landscape buffering, and a corresponding limit on the number and type of tow trucks stored on the property, as well as a limit on the number of personal vehicles.

14. The limitation on the number of tow trucks and personal vehicles ensures sufficient circulation within the site and ensures access to the property for emergency response. The limitation also reduces the impact of the nonconforming uses on adjoining properties.

15. There are properties available in Santa Fe for storage of tow trucks, and Applicant found and utilized locations to store trucks off site after receiving Master Plan Zoning.

16. The landscape buffering is required by the Code and ensures an adequate and aesthetically acceptable buffer between residential and non-residential properties. The Application for Master Plan Zoning included the landscape buffer as required by Code rather than seeking a variance of that requirement. The site plan submitted by the Applicants provided adequate circulation of vehicles on the site.

17. The 90 day requirement to submit Preliminary and Final Development Plan to the County Development Review Committee ensures that the business, which Applicant admitted during the public hearing is still in operation in a residential neighborhood without a County business license, timely comes into compliance with the conditions of Master Plan Zoning approval.

18. The approval of Master Plan establishes operation of a business consistent with the adjoining residential user, and ensures a suitable intensity of uses at the location. The conditions coupled with the specifics of the proposed Master Plan create a balance between the interests of the residential community which will be impacted by the towing business and the interests of the Applicants in operating a towing business from that location. Removal of the two conditions of approval, the landscape buffers and limits on personal vehicles, would result in a commercial business not suitable for the densely developed residential area within which it operates.

19. Having considered the factors set forth in Section 5.2.4(b) of the Code, the BCC concludes that the Application should be denied, except that the deadline for submitting a Preliminary and Final Development Plan to the County Development Review Committee shall be extended until thirty days after recording of this Order.

IT IS THEREFORE ORDERED that the Application for reconsideration of two conditions imposed by the BCC at the time of Master Plan Zoning approval and the two elements of the Master Plan proposed and approved is denied, except that the deadline for submitting a Preliminary and Final Development Plan to the County Development Review Committee shall be extended until thirty days after recording of this Order.

IT IS SO ORDERED.

This Order was approved by the Board of County Commissioners of Santa Fe County on this 10th day of June 2014.

The Board of County Commissioners of Santa Fe County

By: *Daniel W. Mayfield*
Daniel W. Mayfield, Chair

Attest:

Geraldine Salazar
Geraldine Salazar, County Clerk



6-11-2014

Approved as to form:

Gregory S. Shaffer
Gregory S. Shaffer, County Attorney

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC ORDER
PAGES: 6

I Hereby Certify That This Instrument Was Filed for Record On The 13TH Day Of June, 2014 at 11:45:38 AM And Was Duly Recorded as Instrument # 1739036 Of The Records Of Santa Fe County

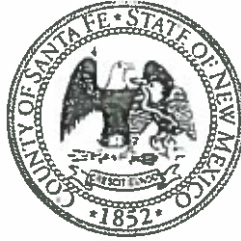
Deputy *Geraldine Salazar* Witness My Hand And Seal Of Office
Geraldine Salazar
County Clerk, Santa Fe, NM



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

June 13, 2014

Robert and Bernadette Anaya
2253 Ben Lane
Santa Fe, NM 87507

Re: BCC CASE # MIS 13-5061 Robert & Bernadette Anaya

Mr. & Mrs. Anaya:

This letter is to inform you that the Board of County Commissioners (BCC) met and acted on your request for reconsideration of conditions which were imposed by the BCC for Master Plan Zoning approval to allow a towing business on .33 acres. The decision of the BCC was to deny your application, except that the deadline for submitting a Preliminary and Final Development Plan to the County Development Review Committee shall be extended until thirty (30) days after recording of the Final Order. The Final Order was recorded on June 13, 2014.

The enclosed order is a final order of the Board of County Commissioners, which, pursuant to Section 39-3-1.1 of the New Mexico Statutes Annotated 1978, you may appeal by filing a timely Notice of Appeal in the appropriate district court. Any such district court appeal must be filed within 30 days of the recording of this Order. The Order was recorded today, which is a matter of public record.

If you have any questions, please do not hesitate to contact this office at 986-6296.

Sincerely,

Jose E. Larranaga
Development Review Team Leader
Fax-(505) 986-6389
joselarra@santafecountynm.gov



NBG-11

English

Customer Service

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Have questions? We're here to help.

Tracking Number: 7013060000186614937

Product & Tracking Information

Postal Product:

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
June 17, 2014, 2:11 pm	Notice Left (No Authorized Recipient Available)	SANTA FE, NM 87507
We attempted to deliver your item at 2:11 pm on June 17, 2014 in SANTA FE, NM 87507 and a notice was left because an authorized recipient was not available. Information, if available, is updated periodically throughout the day. Please check again later.		
June 17, 2014, 10:40 am	Out for Delivery	SANTA FE, NM 87505
June 17, 2014, 10:30 am	Sorting Complete	SANTA FE, NM 87505
June 17, 2014, 5:20 am	Arrival at Unit	SANTA FE, NM 87505

Available Actions

Text Updates

Email Updates

Track Another Package

What's your tracking (or receipt) number?

Track It

LEGAL

- Privacy Policy ›
- Terms of Use ›
- FOIA ›
- No FEAR Act EEO Data ›

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NBG-114

SOMMER, KARNES & ASSOCIATES, LLP

Mailing Address

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Santa Fe, New Mexico 87504-2476

Street Address

200 West Marcy Street, Suite 139
Santa Fe, New Mexico 87501

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

1305
August 8, 2014

Via Hand Delivery

Jose Larranaga
Santa Fe County
102 Grant Avenue
Santa Fe, NM 87501

Re: Application for Master Plan, Preliminary and Final Development Plan Approval
2252 Ben Lane
Re: BCC Case # MIS 13-5061

Dear Mr. Larranaga:

On behalf of property owners Robert and Bernadette Anaya, enclosed is the above-referenced application and the required plans.

Per your attached letter, dated June 13, 2014, the Anayas were to submit the application within 30 days following the recording of the Order. As documented by the attached USPS information, your letter was mailed on June 16, 2013 but was not delivered until July 18, 2014 and the Anayas did not receive notice until that time.

The Anayas have acted diligently and are submitting this application at their soonest opportunity. We have been advised of the Department's position that expiration of the 30 day timeframe voids the BCC approval. However, the Order contains no such condition, and we are not aware of any Code provision to that effect. The Anayas request that the County process their application and thereby avoid violating their due process rights.

Please let me know how the application will be processed. Likewise, if the Department refuses to process the application, please inform me in writing of that decision and the basis therefore.

Sincerely,


Joseph M. Karnes



NBG-115

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

November 13, 2014

Joseph Karnes
Sommer Karnes & Associates LLP
200 W. Marcy Street, #133
Santa Fe, NM 87501

Re: Robert and Bernadette Anaya, Master Plan and Preliminary and Final Development Plan

Dear Mr. Karnes,

I am writing to you in your capacity as agent and counsel for Robert and Bernadette Anaya. On August 13, 2014, you hand delivered to the Land Use Department of Santa Fe County, on behalf of Mr. and Mrs. Anaya, an application consisting of the following:

- a. A development permit application;
- b. A letter requesting Master Plan, Preliminary and Final Development Plan approval;
- c. Documents from the U.S. Post Office;
- d. A deed to the subject property;
- e. A survey plat; and
- f. A plan set titled "Anaya Property Master/Preliminary/Final Development Plan Set."

Thereafter, Mr. Sommer advised that he would provide additional information supportive of accepting the submission after the expiration of the deadline for submission of the Preliminary and Final Development Plan imposed by the Board of County Commissioners (BCC) in their order pertaining to Master Plan Zoning. Mr. Sommer has not yet provided the additional information supportive of Applicant's position. The Santa Fe County land use staff has now fully evaluated your submission.

The submission of the Robert & Bernadette Anaya Master Plan, Preliminary and Final Development Plan is rejected as untimely and not constituting a complete application.



NBG-116

On June 11, 2013, the BCC granted Robert and Bernadette Anaya, Master Plan Zoning approval for a commercial towing business with conditions (Exhibit A).

On September 26, 2013, the Applicants filed an application seeking relief from the following conditions of approval of the Master Plan Zoning:

- a. The Applicants shall submit Preliminary and Final Development Plan to the County Development Review Committee for consideration within 90 days of approval of the Final Order;
- b. No more than three small tow trucks and two large tow trucks may be stored on the site at any given time;
- c. The implementation of a landscape buffer on the east side of the site alongside the platted easement;
- d. A listing of personal vehicles that will be stored on the 0.33 acres.

On March 11, 2014, the BCC held a public hearing on the Application and then deliberated over the matter in closed executive session on March 25, 2014 and again on May 13, 2014. On June 11, 2014, at a properly noticed public hearing, the BCC approved a Final Order which allowed an extension of the deadline for submitting a Preliminary and Final Development Plan to the County Development Review Committee, to thirty days after recording the Final Order. All other requests to reconsider conditions of approval were denied (Exhibit B). The approval of the Master Plan was conditioned on submittal of the Preliminary and Final Development Plan to the County Development Review Committee within thirty days of the recordation of the Final Order. The Final Order was recorded on June 13, 2014. The Preliminary and Final Development Plan were submitted approximately twenty-nine days after the deadline for their submission, or approximately fifty-nine days after the Final Order was recorded.

Your clients failed to timely appeal the BCC order imposing a deadline for submission of the Preliminary and Final Development Plan as a condition precedent to Master Plan approval. A certified letter (Exhibit C), along with the Final Order (Exhibit B) was mailed to your clients on June 16, 2014, a letter your clients did not timely retrieve. The failure of your clients to retrieve the order sent to them does not serve to extend the deadline for submission of the Preliminary and Final Development Plan, which deadline was triggered by the recording of the Order in the Office of the County Clerk. In light of the untimely filing of the Master Plan, Preliminary and Final Development Plan, no master plan zoning is in place which would form the basis for the submission of a preliminary and final development plan. Having failed to meet a condition precedent to approval of the Master Plan, staff has no authority to accept the Master Plan, Preliminary and Final Development Plan for processing.

In addition to the failure to meet a condition of approval of the Master Plan, the plan set submitted on August 13, 2014 is deficient. The plan set

submitted is identical to the original submittal of February 7, 2013, which ultimately did not meet the conditions imposed by the Board of County Commissioners. The submittal is deficient in the following ways:

- a. The proposed Master Plan, Preliminary and Final Development Plan drawings do not illustrate the easement required to create the 28 foot inside radius, at the intersection of Agua Fria and Ben Lane, which is required by the County Fire Marshal;
- b. The proposed plan set illustrates 8 parking spaces for trucks, yet the condition of approval of the BCC was to limit the Tow Trucks to 5 (three small tow trucks and two large tow trucks);
- c. A Master Plan Report and Development Plan Report was not submitted as per Article V, Section 5.2.2 Master Plan Submittals and Article V, Section 7.2.1 Final Development Plan Submittals;
- d. A survey to create a .33 acre parcel to be zoned as a Special Use, under the Village of Agua Fria Zoning District Ordinance Use Table, was not submitted.

In light of the aforementioned deficiencies in the materials submitted, staff would have rejected the submittal even if it had been received timely. No further action will be taken on this matter.

Sincerely,



Penny Ellis-Green
Growth Management Director

SOMMER, KARNES & ASSOCIATES, LLP

Mailing Address

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

Street Address

200 West Marcy Street, Suite 139
Santa Fe, New Mexico 87501

Telephone:(505) 989.3800

Facsimile:(505)982.1745

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

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

November 17, 2014

Jose Larranaga
Santa Fe County
102 Grant Avenue
Santa Fe, NM 87501

Re: Appeal of Land Use Administrator Decision
Re: BCC Case # MIS 13-5061

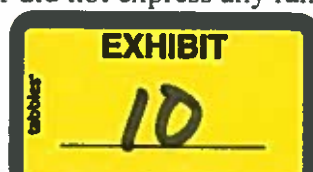
Dear Mr. Larranaga:

On behalf of property owners Robert and Bernadette Anaya, by this letter and the attached application, the Anayas appeal the decision issued by Land Use Administrator Penny Ellis-Green rejecting as untimely the Anaya's August 13, 2014 submittal for Master Plan, Preliminary and Final Development Plan approval (the "Application").

The basis for the Appeal is that the underlying Order upon which the Anayas submitted their Application extended a deadline for filing the Application, but the Anayas did not receive notice of the Order's adoption until after the 30 days had passed. Furthermore, the Order did not address ramifications of failure to submit the Application within the identified timeframe and the Land Use Administrator's refusal to accept the Application is arbitrary and capricious and violates that Anaya's rights to due process.

Also, as expressed to County Counsel Rachel Brown and contrary to the representations of Ms. Green's letter, the County has allowed for property owners to continue pursuing approvals after BCC-imposed deadlines have passed. For example, in the case of Minnie Walsh (Case # V-13-5190), in 2006 the BCC issued a temporary permit allowing a second dwelling unit for a period of 2 years and required the property owner to apply for any extension. The BCC ordered that "failure to comply with any of these conditions shall result in administrative revocation of the permit." The property owner failed to apply for extension for the following 7+ years. Instead of revoking the permit, the Land Use Administrator accepted an application from the property owner for variances to allow for the second unit to become permanent.

In the Walsh case, County failed to enforce a time deadline with specific ramifications stated in the BCC order. In contrast, through no fault of their own, the Anayas did not receive notice of the Order until after the deadline passed and then acted diligently to prepared and submit the Application. Moreover, the Order did not express any ramifications if the deadline was not met.



NBG-119

SOMMER, KARNES & ASSOCIATES, LLP

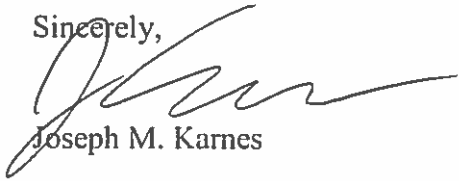
Santa Fe County Growth Management Department

November 17, 2014

Page 2 of 2

The Anayas request that the Land Use Administrator's decision be vacated and the Application be processed in the normal course.

Sincerely,



Joseph M. Karnes

NBG-120

for compliance with the requirements of the Code, and shall make and file a report to the County Development Review Committee evaluating the application and recommending that the County Development Review Committee approve, disapprove, or approve the application with modifications and/or conditions or recommending that the County Development Review Committee recommend the same to the Board depending on which body has final authority pursuant to Section 2.3.2a.

- 2.3.2b The Code Administrator may hold an informal conference with the applicant and any interested person at any time prior to the making of his recommendation. The Code Administrator shall give at least three (3) working days' notice, either orally or in writing, to the applicant or any interested person who has requested in writing that he receive notice of any informal conference held under this Subsection b.
- 2.3.2c At least twenty one (21) calendar days prior to any public meeting at which an application will be heard, the applicant shall post notice of the filing of the application prominently on the land, building, or other structure which is the subject of the application in such a way as to give reasonable notice to persons interested in the application and shall provide written verification of the posting of the notice to the Code Administrator.
- 2.3.2d For development other than subdivisions under the New Mexico Subdivision Act (which shall comply with the public agency review process as set forth in Article V, Section 5.3.3d.), the Code Administrator may refer an application to an appropriate agency or official of the State of New Mexico for an opinion concerning whether the application would be disapproved or approved with conditions or modifications. Unless otherwise required by law, the opinion of the state agency or official shall be advisory. The Code Administrator may delay the making and filing of his recommendation for up to sixty (60) calendar days to await the opinion if he believes that such a delay is in the public interest.
- 2.3.2e The County Development Review Committee has final approval authority on preliminary and final development plans and on appeals of the Code Administrator's decisions and has recommendation authority on variances, preliminary and final plats, and all master plans, including zoning, for which the Board shall have final approval authority. Plats for Type V subdivisions containing six (6) or more parcels go directly to the Board for review and approval, in accordance with Article V, Section 5.5.4b.

➔ 2.3.4 Appeals

- 2.3.4a Filing an Appeal
All appeals under the Code shall be filed in writing with the Code Administrator.

➔ 2.3.4b Appeal of Code Administrator Decision under Section 2.3.1 to the County Development Review Committee

- i. Any person aggrieved by a decision of the Code Administrator under Section 2.3.1 may file an appeal to the County Development Review Committee within five (5) working days of the date of the Code Administrator's decision. The County Development Review Committee shall hear the appeal within sixty (60) calendar days of the date the appeal is filed. The County



NBG-121

Development Review Committee shall make and file its decision approving or disapproving the application or approving the application with conditions or modifications.

- ii. A decision of the County Development Review Committee on an appeal shall become final thirty (30) calendar days after the decision is filed, unless within that month an appeal of the decision has been filed by an interested person including the Code Administrator, pursuant to Section 2.3.4c of this Article or the Board on its own initiative has decided to review the decision.



2.3.4.c Appeal of Development Review Committee Decisions to the Board

- i. Any person aggrieved by a decision of a Development Review Committee may file an appeal in writing to the Code Administrator within thirty (30) calendar days of the date of the decision of the Development Review Committee. The Board shall hear the appeal within sixty (60) calendar days after the date the appeal is filed. The Board shall timely make and file its decision approving or disapproving the application or approving the application with conditions or modifications.
- ii. The decision of the Board shall become final on the date when the decision is filed.

2.4 Notice and Conduct of Public Hearing

2.4.1 Notice by County

Notice of a public hearing to be held by a Development Review Committee or the Board, shall be given as provided by resolution of the Board and as otherwise required by law. Copies of the public notice policies shall be posted in the Code Administrator's office. Public hearings shall be conducted as provided by policies established by the body holding the hearing or as required by law. All interested persons shall be allowed a reasonable opportunity to be heard at a public hearing held under the Code.

2.4.2 Notice by Applicant

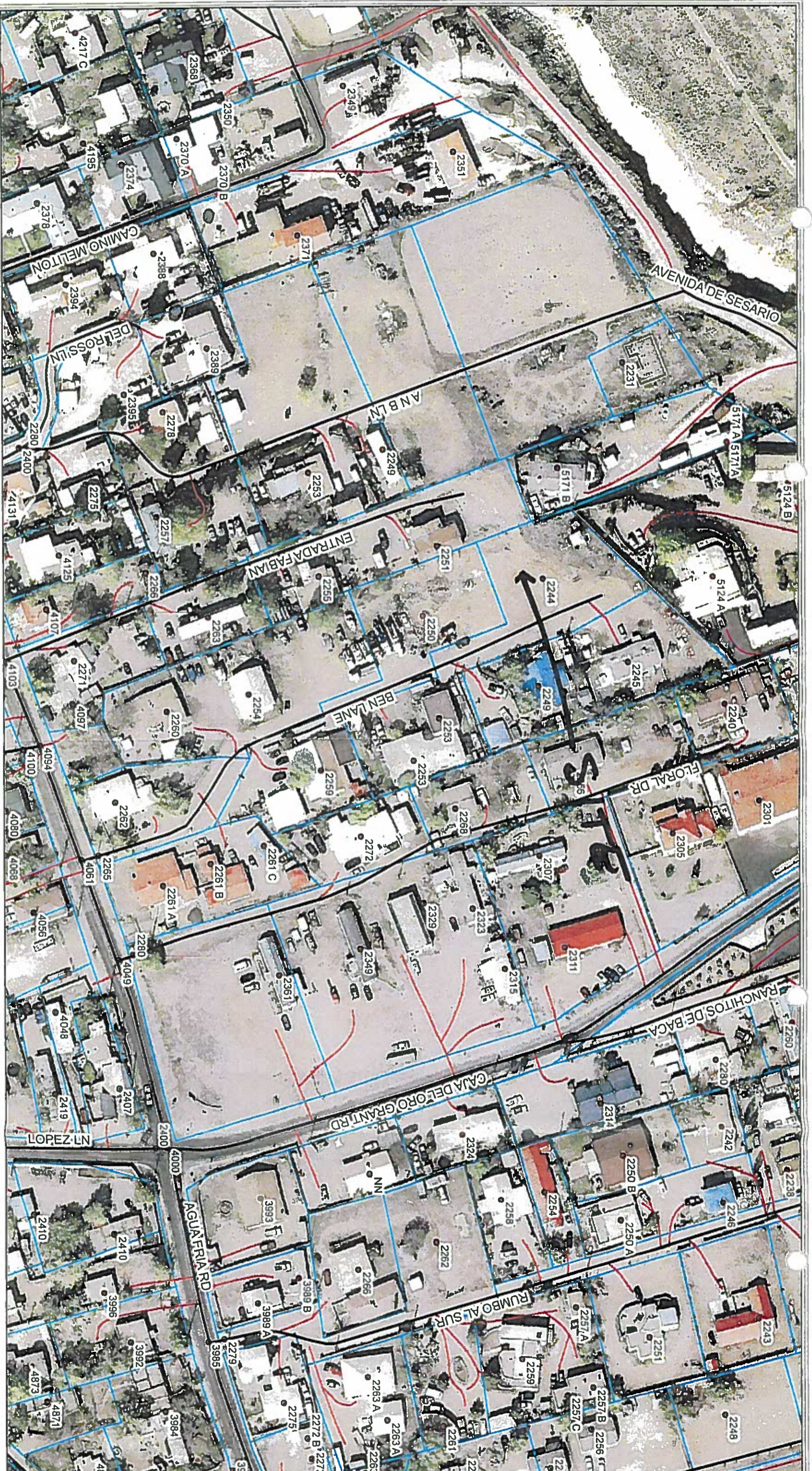
2.4.2a For all zoning cases, master plans, development plans, variances, preliminary and final subdivision plans, Type V subdivisions containing six (6) or more parcels and appeals of these matters, the following public notice requirements shall be completed by the applicant at least twenty one (21) calendar days prior to the public meeting:

- i. A notice shall be published on the legal section of the daily newspaper which covers the area in which the project is located;
- ii. Certified letters, prepared by the Code Administrator, shall be mailed return receipt requested to all property owners within one hundred (100) feet (excluding rights-of-way) of the subject property;
- iii. The subject property shall be posted, in the manner outlined in Section 2.3.2c of this Article II.

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

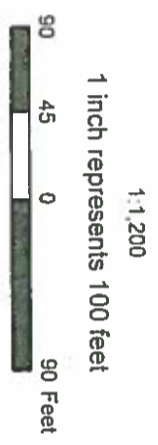
History: Section 2.4 was amended by Ordinance 1996-8 to include notice requirements for most projects.

NBG-122



Legend

- ROADS
- DRIVEWAYS



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.

NBC-123



FEBRUARY 7, 2013