

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

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

REVISED ORDER

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

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

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

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

1. All Staff redlines shall be addressed, and original redlines will be returned with final plans for Master Plan.
2. The Applicant shall comply with all requirements of the New Mexico Environment Department, the State Historic Preservation Division, County Fire Marshal, Public Works and County Utilities Department, which includes the following:
 - a. Kitchen facilities must be approved by the NMED and appropriate food service permits must be obtained;
 - b. Automatic fire suppression is required;
 - c. Site address shall be clearly posted;
 - d. 28' radius curb returns must be provided;
 - e. Site triangles (30') must be maintained at both entrances;
 - f. A Road Construction/Road cut permit must be obtained from the Department of Public Works;
 - g. The secondary access from Arroyo Hondo road must be paved with 3" of plant mix bituminous pavement;
 - h. No parking signs shall be placed on Arroyo Hondo Road as required by Public Works;
3. The Master Plan and Preliminary Development Plan, with appropriate signatures, shall be recorded with the County Clerk.
4. It shall be noted on the Master Plan and on the Final Development plan that the nursery will only be utilized during services and events.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IT IS SO ORDERED:

This Order is approved by the Board of County Commissioners of Santa Fe County on this 27 day of November 2012.

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

By *Liz Stefarnics*
Liz Stefarnics, Chair

ATTEST: *Valerie Espinoza*
Valerie Espinoza, County Clerk

APPROVED AS TO FORM:
[Signature]
Stephen C. Ross, County Attorney



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC ORDER
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I Hereby Certify That This Instrument Was Filed for Record On The 28TH Day Of November, 2012 at 02:57:52 PM And Was Duly Recorded as Instrument # 1689001 Of The Records Of Santa Fe County

Witness By Hand And Seal Of Office
Deputy *Marcella [Signature]* Valerie Espinoza
County Clerk, Santa Fe, NM

