



DOÑA ANA COUNTY
COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING • BUILDING SERVICES • GIS • ANIMAL CONTROL/CODES

<i>To:</i> Planning and Zoning Commission Members	<i>Date:</i> January 6, 2017
<i>CC:</i>	
<i>From:</i> Luis Marmolejo, Senior Planner <i>C.M.</i>	
<i>Subject:</i> Withdraw of Case # AP16-003	

Pending the effective date of February 2, 2017 of the Unified Development Code taking effect, Case # AP16-003, submitted by Quent Pirtle, an Appeal of an Administrative Decision approving Case # PDNR (L) 16-007, a Non-residential application in the Performance District for a 1,500 sq. ft., winery/tasting room on 4.14 acres, submitted by Dawn M. Oakley has been withdrawn. The applicant, Dawn Oakley, will submit a Special Use Permit as prescribed within the UDC after the effective date. Staff is working on the transition of cases that were pending to be heard by the P&Z and the former ETZC and ETA. All cases moving forward to the P&Z will be heard under the provisions of the UDC beginning February 2, 2017.

The Doña Ana County Legal Department provided the following basis of withdrawing on going cases under the existing Code to the UDC after February 2, 2017: 5584 Preliminary research indicates that “the vested rights doctrine applies to an ongoing development or project that has been approved and upon which substantial investment has been made.” *Miller vs. BOCC of Santa Fe Co.*, 144 N.M. 841, 846 (Ct.App. 2008). Any land use application that has not yet achieved a final order for which all opportunities for appeal have been exhausted is not yet a final “approval” for the purpose of conferring any vested rights upon the applicant. See *Germania Sav. Bank vs. Village of Suspension Bridge*, 159 N.Y.362 (1899).