

STATE OF NEW MEXICO  
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES  
OIL CONSERVATION DISTRICT

RECEIVED OCD  
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APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION ("OCD") COMPLIANCE AND ENFORCEMENT MANAGER FOR A COMPLIANCE ORDER AGAINST BLUE SKY NM, INC., DIRECTORS, AND OFFICERS, JOINTLY AND SEVERALLY, FINDING THAT THE OPERATOR IS IN VIOLATION OF THE OIL AND GAS ACT, NMSA 1978, SECTIONS 70-2-1 *et seq.* AND OCD RULES, NMAC 19-15-2 *et seq.*, REQUIRING OPERATOR TO RETURN TO COMPLIANCE WITH DIVISION RULES BY A DATE CERTAIN, AND IN THE EVENT OF NON-COMPLIANCE, REQUEST FOR ADDITIONAL SANCTIONS.

CASE NO. 15277

MOTION TO VACATE AND CONTINUE HEARING

COMES NOW, Blue Sky NM, Inc., by and through its counsel of record, Domenici Law Firm, PC (Pete V. Domenici, Jr.) and for its Motion to Vacate and Continue hearing, states as follows:

1. Blue Sky NM, Inc. requests the hearing set for April 2, 2015 be vacated and reset for hearing on May 14, 2015.
2. Further, Counsel for Blue Sky NM, Inc. has previously scheduled hearings which conflict with the hearing on April 2, April 16, April 30 and May 7, 2015. (Hearing Notices attached) Blue Sky NM, Inc. is attempting to address issues raised in the Compliance Order and needs additional time.
3. As part of addressing the issues in the Compliance Order, Blue Sky NM, Inc. needs to address collateral issues.
4. It would be in the best interest of the requirements of the OCD, including prevention of waste and conservation of oil to allow for the extension.
5. The Opposing party concurs with this motion.

Respectfully submitted,

*Electronically filed,*

/s/Pete V. Domenici, Jr.

Pete V. Domenici, Jr., Esq.

Domenici Law Firm, PC

320 Gold Ave. SW, Suite 1000

Albuquerque, New Mexico 87102

I certify that a copy of the foregoing  
Was mailed to all parties of record on this  
23<sup>rd</sup> day of March 2015.

/s/Pete V. Domenici, Jr.

Pete V. Domenici, Jr., Esq.

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
SECOND JUDICIAL DISTRICT

VICTOR KEARNEY, as Beneficiary and Trustee  
of the Mary Pat Abruzzo Kearney  
Testamentary Trusts B and C,

Plaintiff,

v.

No.: D-202-CV-2013-07676

LOUIS ABRUZZO, Trustee of the Mary Pat Abruzzo Kearney  
Testamentary Trusts B and C; and BENJAMIN ABRUZZO, Trustee  
of the Mary Pat Abruzzo Kearney Testamentary Trusts B and C,

Defendants.

NOTICE OF HEARING

A hearing in this case is set before The Honorable Alan Malott as follows:

Date of Hearing: April 2, 2015  
Time of Hearing: 9:15 a.m.  
Length of Hearing: Forty (40) minutes  
Place of Hearing: Second Judicial District Court  
Matter to be Heard: Plaintiff's Motion to Compel Documents from Nancy Abruzzo,  
Nancy Abruzzo's Motion for Protective Order and  
New Mexico Bank & Trust's Motion to Quash Subpoena

HON. ALAN M. MALOTT

By: Susan L. Gibson TCAA

Notice provided to parties listed on attached sheet.



*Attorneys for Plaintiffs:*

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*Attorney for Nancy Abruzzo*

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*Attorney for New Mexico Bank & Trust*

HURLEY, TOEVS, STYLES, HAMBLIN & PANTER, P.A.  
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E-file

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DISTRICT COURT CLERK  
9/24/2014 12:07:53 PM  
GREGORY T. IRELAND  
Gwendolen Lindquist

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

No. CV-2012-09356

WHOLLY TOLEDO LLC,  
Plaintiff,

vs.

ANDY CARRASCO III, et. al.,  
Defendant,

RULE 1-016-NMRA (1998) PRETRIAL SCHEDULING ORDER  
(Non-Jury)

This matter coming before the Court upon (a pretrial scheduling conference) (the submission of counsel pursuant to Rule LR2-301 - NMRA 1997), the Court hereby ORDERS:

1. (Trial will be set for 3 days\hours on April 14/2015 at 9:00 a.m.

2. Any motions made pursuant to Rule 1-013(E) through (H), Rule 1-014, Rule 1-018, Rule 1-019 or 1-020 and any motion made pursuant to Rule 1-015 that alleges new causes of action or seeks to add new parties shall be filed by November 15, 2014

3. Plaintiff(s), counterclaimants, plaintiff-in-intervention and third party Plaintiffs shall serve a list of the fact witnesses they anticipate calling in their case in chief by November 1, 2014. All parties defending against a claim shall serve defense fact witness lists by December 1, 2014. The witness lists shall include each witness' address, relationship to any party, and a brief summary of anticipated testimony.

4. Plaintiff(s) and other claimants shall disclose opinion witnesses by November 1, 2014. Defending parties shall disclose trial opinion witnesses by December 1, 2014. Disclosure shall include the expert's name, address, job title and qualifications, and the disclosures set forth in Rule 1-026(B)(6)(a). If there is an objection regarding disclosures, the objecting party must notify opposing counsel within (10) ten days of receipt of the disclosure list, and opposing counsel will be given (10) ten days to supplement the disclosures set forth in Rule 1-026. All opinion witnesses shall be ready to be deposed at the time of being named and shall be available for deposition within \_\_\_\_\_ weeks of their being listed.

5. All counsel and parties with the power to settle the case shall participate in a settlement conference (by March 1, 2015, (with a settlement facilitator agreed to by the parties whose fee, if any, is divided equally among the parties) (at Settlement Week). The parties shall comply with Rule LR2-602(G)(H) and (I). Parties who wish to use the services of the Second Judicial District Court Alternatives office must give that office notice by four weeks before the conference deadline.

*William Dany*

6. All pretrial discovery shall be completed by February 15, 2015, except for defense expert depositions, which shall be completed by \_\_\_\_\_ 2015.



7. \_\_\_\_\_ Counsel do not intend to file dispositive motions.

Any dispositive motions shall be filed by December 15, 2014. Responses are due by rule, 20. Any reply shall be filed by rule, 20. They will be heard on Sept. 14, 2015 at \_\_\_\_\_ m. with \_\_\_\_\_ minutes allotted. Counsel shall provide the judge with the highlighted copies of all case and treatise authority cited at least two business days before the hearing. *when you file notice of completion of briefing.*

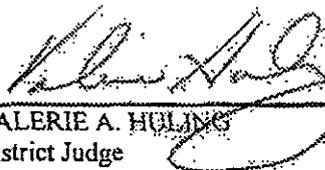
8. Plaintiff shall submit a completed proposed final pretrial order with all parties' insertions by March 18, 2015. Plaintiff(s) shall provide opposing counsel with plaintiff portions by March 7, 2015. Defendant(s) shall provide opposing counsel with defense portions by March 9, 2015. Third-party defendant(s) shall provide its/their portion to opposing counsel by \_\_\_\_\_, 20\_\_\_\_\_.

9. The parties shall exchange exhibits at least 14 days before trial.

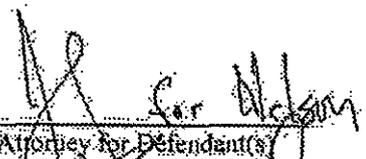
10. The provisions of this order may be modified only by the Court order upon a showing of good cause. Motions for modifications shall state a basis therefor, beyond the agreement of counsel. Any proposed modification order that impacts hearing dates set herein must be signed by Judge Valerie Huling.

11. If this case is settled, the parties shall immediately so advise the Court and shall advise the Court of all hearing dates affected.

12. If counsel wish to submit pretrial proposed rulings or pre-trial proposed findings and conclusions and/or trial memoranda, opposing counsel shall be so notified seven days before trial, and the material shall be submitted and with highlighted copies of cited cases and treatises at least two business days before trial.

  
VALERIE A. HULING  
District Judge

  
Attorney for Plaintiff(s)

  
Attorney for Defendant(s)

  
for Clerk (Corroborated)

BEFORE THE HEARING OFFICER  
OF THE TAXATION AND REVENUE DEPARTMENT  
OF THE STATE OF NEW MEXICO

PVD ✓  
SR  
calan  
Robert  
cc clerk  
**FILED**

MAR 17 2015

TAXATION & REVENUE  
HEARING'S BUREAU  
SANTA FE, NEW MEXICO

IN THE MATTER OF THE PROTEST OF  
WHITEHORSE LLC  
TO ASSESSMENT ISSUED UNDER LETTER  
ID NO. L1985827648

**SECOND AMENDED SCHEDULING ORDER**

On March 17, 2015, this matter *sua sponte* came before Brian VanDenzen, Esq. Because of scheduling conflicts during the week of this hearing, the hearing dates in this matter must be moved. WHEREFORE, IT IS ORDERED that Scheduling Order issued in this matter is amended to reflect the change of hearing dates noted below.

This Scheduling Order and Notice of Administrative Hearing is being issued pursuant to Department Regulation 3.1.8.9 NMAC. Changes to the schedule may only be made by order of the Hearing Officer upon submission of a motion setting out the reasons for the request. The fact that a motion is unopposed does not guarantee that the motion will be granted.

1. **Hearing.** The formal hearing on this matter has been set before Hearing Officer Monica Ontiveros on April 30, 2015 at 9:00 a.m. and will continue on May 1, 2015 at 9:00 a.m. if necessary. At the appointed time, the parties should report to the Hearings Bureau, located in Room 269 on the second floor of the Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

2. **Joint Prehearing Statement.** On or before April 6, 2015, the parties shall file a Joint Prehearing Statement setting out the following:

- (a) unresolved issues, with a summary of each party's position on each issue;
- (b) any stipulation of facts reached by the parties;



- (c) each party's final witness list, with a brief summary of expected testimony;
- (d) each party's final exhibit list; and
- (e) a list of pending motions or other matters to be decided before hearing.

The Department shall draft the Joint Prehearing Statement setting out its information listed above. The Department will then e-mail or mail to Taxpayer the draft. Taxpayer will, then, add its information for paragraph 5 (a-e) listed above to the Joint Prehearing Statement. Taxpayer will file the final Joint Prehearing Statement with the Hearings Bureau by April 6, 2015. The Joint Prehearing Statement shall serve as a supplemental statement of the grounds for the Taxpayer's protest for purposes of NMSA 1978, §7-1-24(A), and no additional supplement may be filed thereafter. Unless ordered by the Hearing Officer upon good cause shown, no issue shall be raised, no witness shall be allowed to testify and no exhibit shall be admitted into evidence unless listed in the prehearing statement.

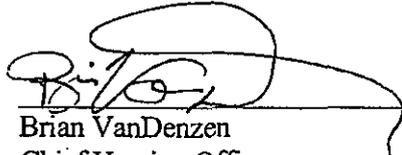
Each party shall mark all exhibits to be offered prior to the hearing. Taxpayer shall mark its exhibits with numbers and the Department shall mark its exhibits with letters. All pages of an exhibit shall be marked (e.g., A-1, 1-1). Each party should exchange an exhibit notebook or a complete set of marked exhibits prior to or at the hearing. In addition, each party should bring a set of exhibits for the testifying witness and the Hearing Officer.

Case law, revenue rulings and regulations shall not be offered as exhibits and shall not be marked as exhibits. The parties shall not provide to the Hearing Officer a list of exhibits. The Hearings Bureau maintains the official list of exhibits tendered or offered and admitted into evidence. The parties shall not submit Joint Stipulated Exhibits. Instead, the parties shall tender exhibits as either Taxpayer or Department Exhibits.

3. **Service of Documents.** Pleadings may be served by first class mail or private delivery service, provided they are received by the Hearing Officer and the opposing party by the

date set out in this scheduling order. Pleadings also may be served by facsimile transmission to the Hearing Officer at (505) 827-9732 with a copy faxed to opposing counsel on the same date.

Dated: March 17, 2015



Brian VanDenzen  
Chief Hearing Officer  
Taxation & Revenue Department  
Post Office Box 630  
Santa Fe, NM 87504

### CERTIFICATE OF SERVICE

I hereby certify that I mailed the foregoing Second Amended Scheduling Order to the parties listed below this 17<sup>th</sup> day of March 2015 in the following manner:

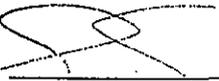
*First Class Mail*

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Robert Fiser, Esq.  
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*Interoffice Mail*

Elena Morgan, Esq.  
Taxation and Revenue Department  
1100 S. St. Francis  
Santa Fe, NM 87504



John D. Griego, Legal Assistant  
Taxation & Revenue Department  
Post Office Box 630  
Santa Fe, NM 87504  
PH: (505)827-0466, FX: (505)827-9732

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF BERNALILLO  
STATE OF NEW MEXICO

STATE OF NEW MEXICO ex. rel.  
PATRICK TOLEDO,  
PATRICK TOLEDO,  
in his individual capacity,  
WHOLLY TOLEDO, LLC,  
Plaintiffs-petitioners,

v.

No. D-202-CV-2013-08822

SMITH FOOD AND DRUG CENTERS, INC.  
d/b/a SMITH'S FUEL CENTERS,  
THE CITY OF ALBUQUERQUE and  
RICHARD J. BERRY, in his official capacity  
as the mayor of Albuquerque,  
Defendants-respondents.

**ORDER FOR ALTERNATIVE WRIT OF MANDAMUS**

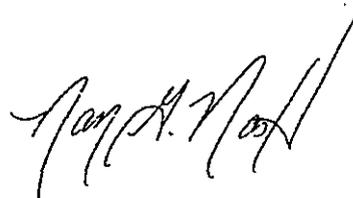
THIS MATTER having come before the Court upon the Verified Petition of Plaintiffs-petitioners ("Plaintiffs") and having heard argument January 27, 2015 on the writ proceeding from counsel for Wholly Toledo, LLC, Smith's Food and Drug Centers, Inc., and the City of Albuquerque, the Court orders that:

- 1) This order will issue and may be served on the City of Albuquerque together with Plaintiff-petitioner Wholly Toledo, LLC's verified petition and summons.
- 2) A one day hearing on the issues set forth below will take place at 8:30 a.m. on the 31<sup>st</sup> day of March, 2015 in Courtroom 702.
- 3) The issues heard will be:
  - a. Revocation of the certificate of occupancy granted to defendant Smiths regarding the Fuel station located at 1313 Carlisle Blvd. NE Albuquerque,

NM 87110 due to alleged violation of drive-way location design requirements without a variance approved by the Design/Construction Review Committee (DRC) ;

- b. voiding alleged illegal building plans for the left hand turn bay cut through the existing median on Carlisle Blvd. NE, Albuquerque regarding access to the fuel station, and
  - c. [voiding alleged illegal building plans] based on alleged Americans with Disabilities Act compliance issues set forth in the attachment of Plaintiff-petitioner Wholly Toledo, LLC's notice of filing, January 23, 2015.
- 4) Even if these issues are not in the verified petition for mandamus, they may be heard at the scheduled hearing. No other issues or matters will be heard.

**IT IS SO ORDERED.**



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District Court Judge

Submitted and approved by:

/s/Pete V. Domenici, Jr.  
Pete V. Domenici, Jr., Esq.  
320 Gold Avenue SW, Suite 1000  
Albuquerque, NM 87102  
*Counsel for Wholly Toledo, LLC*

Approved as to form by:

*Electronic approval*  
*on Feb. 2, 2015* 1

Henry Bohnhoff, Esq.  
Rodey Law Firm, PC  
PO Box 1888  
Albuquerque, NM 87103-1888  
*Counsel for Smith's*  
*Food and Drug Centers, Inc.*

John Dubois, Esq.,  
Carol Parker, Esq.,  
PO Box 2248  
Albuquerque, NM 87103-2248  
*Counsel for the City of Albuquerque and*  
*Mayor Richard J. Berry*

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1 Subject to Smith's counsel's final review of Smith's requested and incorporated revisions to the form of order