

MINUTES OF THE
SANTA FE COUNTY
PLANNING COMMISSION

Santa Fe, New Mexico

June 16, 2016

I. This meeting of the Santa Fe County Planning Commission was called to order by Chairman Frank Katz on the above-cited date at approximately 4:00 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

II. & III. Roll call preceded the Pledge of Allegiance and indicated the presence of a quorum as follows:

Members Present:

Frank Katz, Chair
Susan Martin, Vice Chair
Bette Booth
Louie Gonzales
Rena Gray
Leroy Lopez

Member(s) Excused:

Phil Anaya

Staff Present:

Vicki Lucero, Building & Services Manager
Wayne Dalton, Building & Services Supervisor
John Lovato, Development Review Specialist
Mathew Martinez, Development Review Specialist
Mike Romero, Development Review Specialist
Andrea Salazar, Assistant County Attorney
Victoria DeVargas, Fire Prevention

IV. APPROVAL OF AGENDA

- A. Amendments**
- B. Tabled or Withdrawn Items**

Upon motion by Member Martin and second by Member Gonzales the agenda was unanimously approved as published.

V. APPROVAL OF MINUTES: May 19, 2016

Member Martin moved to approve the May minutes as submitted. Member Lopez seconded and the motion passed by unanimous voice vote.

VI. NEW BUSINESS

- A. Case # V 16-5060 Lucero Height Variance. Travis & Jessica Lucero, Applicants, Request a Variance of Chapter 8, Section 8.6.6.3, Dimensional Standards –RES-E (Residential Estate), Table 8-10, of the Sustainable Land Development Code to Allow a Residence to Exceed 24'. The Property is 20 Acres and Located At 300 Highway 472, within the Vicinity of Stanley, Within Section 31, Township 11 North, Range 8 East (Commission District 3)**

JOHN LOVATO (Case Manager): Thank you, Mr. Chair. On April 28, 2016, the application for a variance of height was presented to the Hearing Officer for consideration. The Hearing Officer supported the application as memorialized in the findings of fact and conclusions of law written order, which is Exhibit 11. The property consists of 20 acres within the Residential Estate Zoning District, as defined by the SLDC, Chapter 8, Section 8.6.6.3, which states the maximum allowable height is 24 feet. Therefore, the applicants are requesting a variance

The applicants state the residence will be two stories and the neighboring incorporated area of Edgewood which is approximately two miles west, allows for a 36-foot height requirement. They further state they would like to exceed height requirements to create a pitched roof due to snow loads that are possible during winter months and would like to raise the floor level in order for their small children to remain safe from rodents and snakes in the area.

Staff Response: Some surrounding structures are legal non-conforming and other structures meet height requirements of 24 feet applicable to former Ordinance No. 1996-10, the Land Development Code. The property is zoned within the Residential Estate Zoning District where maximum allowed height is 24 feet. The incorporated area of Edgewood is located approximately two miles west and not adjacent to the subject site. Staff has confirmed the required height limitation for Edgewood is 36 feet.

Recommendation: Staff recommends denial of the applicants' request for a variance to allow the proposed residential structure to be constructed 30' in height. Chapter 8, Section 8.6.6.3, Table 8-10, Dimensional Standards, states, the maximum height within the Residential Estate is 24 feet.

On April 28, 2016, the application for a variance of height was presented to the Hearing Officer for consideration. The Hearing Officer supported the application as memorialized in the findings of fact and conclusions of law written order. Mr. Chair, I stand for any questions.

CHAIRMAN KATZ: Thank you. Does anybody on the Commission have any questions of staff? Okay. Do we have the applicant here? Please come forward.

[Duly sworn, Travis Lucero and Jessica Lucero testified as follows:]

TRAVIS LUCERO: My name is Travis Lucero.

JESSICA LUCERO: My name is Jessica Lucero.

CHAIRMAN KATZ: What do you have to tell us?

MR. LUCERO: Oh, not – we're going to keep it brief. We think that our application for the variance is more a matter of speaking to the spirit of the SLDC. Our interpretation of the spirit is to protect and promote the welfare of county residents. I think that we've done some planning, ad nauseum, if you will, to take into account all the different environmental factors and variables so that we end up with a final dwelling that suits the residential estate section and that being said, we feel that the plans we have – yes, they do go above the 24-foot allowance that's currently in effect but we think that by granting us this variance it would be – we'd end up with a final product that would see the spirit of the SLDC as well as our needs.

We told Hearing Officer Long it's a matter of math, a lot of times, especially with our plan. When you look at a nine-foot ceiling height for the first story, a two-foot floor joist – you're at 11 feet, nine feet ceiling height for the second story. Now you're at 20 feet, and then to allow for a nice proportionately sloped pitched roof, that only gives you four feet within how the code reads currently. We're just trying to end up, again, with a nice product that fits the area, that fits the code, that fits our needs and there's – without having a variance we don't see any way that we could end up with that.

CHAIRMAN KATZ: Okay. Thank you. Jessica, do you want to say anything?

MS. LUCERO: Just essentially we're trying to build something that is safe for our family. We get sometimes in the wintertimes a lot of snow where we're at. We just don't see a flat roof on our home as an option because the snow loads can be very heavy and we just want something that's going to shed that snow.

I would also like to submit a picture if I could, just to show you guys. So this picture was take actually last week at the metal building that is there on our property. That's directly outside the front door of the building, which is one of the reasons why we want to build up the house a little bit and have a porch that's not directly on the ground because we have a lot of rattlesnakes in the area. [*Exhibit 1: Photo of snake*]

CHAIRMAN KATZ: That wasn't a family pet?

MS. LUCERO: Not hardly. But we have two young children, a 10-year-old and a 2-year-old and luckily that morning I was the one headed out the door and saw that before I stepped outside, but that's just an example of what we're dealing with out there. We have a large plot of land. It's 20 acres. We feel like the structure that we're proposing to build is not going to impede anybody's view. We actually did get letters from neighbors, neighboring properties and then some others in support of what we're trying to do. Basically, anybody we talked to was happy to see a nice home being built in that area and so that's basically why we're here and hoping to have a variance.

CHAIRMAN KATZ: Let me ask you a question. I noticed on your site plan that your house is very close to the west border of the property. On the property immediately to the west of you, do they also have a house on their property?

MS. LUCERO: No, that's actually state land. It's a huge parcel of land. It's a full section, so the only thing that's ever there are cattle in the summertime. They lease that land to graze. So there's nothing on the side for a very long way.

CHAIRMAN KATZ: Okay. Thank you.

MS. LUCERO: Thank you.

CHAIRMAN KATZ: Are there other questions of the applicants from the

Commission?

MEMBER GONZALES: Chair Katz, Ms. Lucero, you stated that you had some neighbors that gave you letters of support, and you said your parcel is 20 acres in size. And the other parcels, are they about the same size as your neighbors or they vary in size?

MS. LUCERO: They vary in size, with 10s and 20s, and then directly north of us is actually –

MR. LUCERO: They control – between all the family land that's directly north of us they control somewhere in the neighborhood of 3,500 acres.

MEMBER GONZALES: So you have a lot of neighbors around you.

MR. LUCERO: Six, I think. Within a square mile there's about six.

MEMBER GONZALES: Just a couple snakes.

MR. LUCERO: Yes, that's exactly right.

MS. LUCERO: And some cattle.

MR. LUCERO: That's exactly right.

CHAIRMAN KATZ: Any other questions of the Commission? Okay, this is a public hearing. Does anybody from the public wish to comment on this case? Okay. Back to the Commission. Yes.

MEMBER MARTIN: I have a motion for Case #V 16-5060 to uphold the recommended decision and order of the Hearing Officer and allow the variance.

MEMBER GRAY: Second.

CHAIRMAN KATZ: Okay, it's been moved and seconded to approve the variance, upholding the Hearing Officer, based on the facts and conclusions that the Hearing Officer found.

The motion passed by unanimous [6-0] voice vote.

CHAIRMAN KATZ: You have your variance. Good luck to you. Be nice to those snakes.

B. Possible Action on the Findings of Fact and Conclusion of Law for Case # V 16-5060 Lucero Height Variance

CHAIRMAN KATZ: B is right behind this one. It's the findings of fact and conclusions of law, the order. Might I have a motion approving the order?

MEMBER MARTIN: I so move to approve the order in Case #V 16-5060 variance of height requirements [inaudible]

MEMBER GRAY: Second

CHAIRMAN KATZ: Okay, it's been moved and seconded to approve the order.

The motion passed by unanimous [6-0] voice vote.

- C. **Case # V 16-5050 La Pradera Assoc. LLC & Gardner Assoc., LLC. La Pradera Assoc., LLC & Gardner Assoc. LLC, Applicants, Design Enginuity, Agent, Request a Variance of Chapter 7, Section 7.13.11.7, Water Harvesting, of Ordinance 2015-11, the Sustainable Land Development Code (SLDC). The Applicant Proposes that the Existing Lots Within the La Pradera Subdivision be Allowed to Adhere to Prior County Water Harvesting Requirements Which Were Set Forth in Ordinance 2003-6 (an Ordinance Amending Ordinance 1996-10, the Santa Fe County Land Development Code, Article III, Section 4.4.1 and Article III, Section 2.4.1 to Require Rainwater Catchment Systems for All Commercial and Residential Development). The La Pradera Subdivision is within the Planned Community College District (CCD) and is Zoned as a Planned Development District (PD-1). The Subdivision is Located off Dinosaur Trail, within Section 17 & 18 Township 16 North, Range 8 East (Commission District 5)**

CHAIRMAN KATZ: Okay. Give us the story if you would.

MIKE ROMERO (Case Manager): The applicants acquired the property as evidenced by warranty deeds recorded in the records of the Santa Fe County Clerk on May 27, 2005, Instrument No. 1381724; May 9, 2007, Instrument No. 1482417; and March 26, 2007, Instrument No. 1475999. The La Pradera Residential Subdivision Phase One plat was recorded in the Santa Fe County Clerk's Office on November 22, 2004, Page 574, Book 17-22, and La Pradera Residential Subdivision Plat Phases Two through Six recorded in the Santa Fe County Clerk's Office on May 9, 2007, Page 654, Book 9-16. Prior to enactment of the SLDC, all development on these lots was subject to the rainwater catchment requirements of Ordinance 2003-6. Ordinance 2003-6 required homes of 2,500 square feet of heated area or greater to install a cistern, and homes smaller than 2,500 square feet of heated area to install rain barrels.

On January 15, 2016, the SLDC came into effect, repealing Ordinance No. 2003-6, and changing the rainwater catchment requirements. SLDC, Chapter 7, Section 7.13.11.7.2 states: Structures whose roof surface is 2,500 square feet or greater shall install a cistern that is buried or partially buried and insulated. The Section goes on to state, a structure whose roof surface is 2,500 square feet or less, and any accessory structure whose roof area is 500 square feet or greater shall install rain barrels, cisterns or other water catchment systems including passive water harvesting and infiltration techniques, berms, swales, and tree wells to capture rainwater from a minimum of 85 percent of the roofed area.

The applicants state that with the adoption of the SLDC, a significant code change occurred in regards to the rainwater harvesting provisions. The previous code required the installation of cisterns for homes of 2,500 square feet or more of heated space. The SLDC now requires cisterns for homes with 2,500 square feet of roofed area rather than heated space. Homes of 1,800 or 1,900 heated square feet now have to install cisterns due to the fact that they exceed 2,500 square feet when portals and garages are added to the square footage. The applicant states that the required cistern systems are typically 3,000 gallons in size and cost \$10,000 to \$14,000 to install, which is a huge cost to add on a moderately priced home.

The applicant also states that prior to the adoption of the SLDC, if a cistern was required, it could be sized to accommodate a one-month demand of irrigation water. Many moderately priced homes in the La Pradera community use very little water outdoors. Average water use in La Pradera is 3,420 gallons per month; and outdoor water use is generally less than 500 gallons per month. Homes in La Pradera typically have rain barrels beneath canales that provide much of the needed irrigation water, and it seems illogical to require homeowners to install a system that far exceeds their needs, especially at a cost that some buyers cannot afford.

The Applicants request a variance of Chapter 7, Section 7.13.11.7, Water Harvesting of Ordinance 2015-11, of the SLDC. The applicant proposes that the remaining 110 lots within the La Pradera Subdivision be allowed to adhere to prior County water harvesting requirements which were set forth in Ordinance No. 2003-6, an Ordinance Amending Ordinance 1996-10, the Santa Fe County Land Development Code, Article III, Section 4.4.1 and Article III, Section 2.4.1 to require rainwater catchment systems for all commercial and residential development. Both Ordinance No. 2003-6 and Ordinance No. 1996-10 were repealed when the SLDC was adopted.

Recommendation: Staff is unable to recommend approval because this request is not in compliance with the SLDC and because the criteria for a variance have not been met. As part of the six-month review of the SLDC staff will be recommending to the Board of County Commissioners that the rainwater catchment section be amended to require cisterns only on houses of 2,500 square feet or greater of heated area.

This matter went before the Hearing Officer for a hearing on April 28, 2016. The Hearing Officer recommends approval of the application. If the decision of the Planning Commission is to approve the application, you may consider adopting the Hearing Officer's finding of fact and conclusion of law in the written recommendation. I stand for any questions.

CHAIRMAN KATZ: We have in our materials on page 22 and 23 a list of a whole bunch of names of people, but it's not clear what that's about.

MR. ROMERO: That was for noticing, to show that the applicant did provide noticing.

CHAIRMAN KATZ: Thank you.

MR. ROMERO: Noting requirements for the SLDC.

MEMBER BOOTH: I have a couple of questions. I'm not sure staff – what is a moderately priced house?

MR. ROMERO: I will leave that question to the applicant.

MEMBER BOOTH: Okay. Then I'll postpone.

MR. ROMERO: Mr. Chair, Planning Commission Member Booth, in the report that was something the applicant had stated was in regard to the pricing of a moderately priced home.

CHAIRMAN KATZ: Other questions for staff? I have a question, a couple of questions actually. When will you be going back to the Commission to amend the loose ends that you have found in this first six months?

VICKI LUCERO (Building & Development Services Manager): Mr. Chair, staff is planning to give an informational presentation, probably at the end of July, just to notify them of the technical changes that we're looking at, and then we'll be actually going back out to the public to each of the growth management areas to get input

from the public on our proposed changes. Then they will request that the BCC authorize us to publish title and general summary, probably in September and we will be bringing that back to the Planning Commission for recommendation and then back to the County Commission around October, November time for final approval and adoption.

CHAIRMAN KATZ: Okay. Thank you. That's helps to know the schedule. Are there pending applications for building permits for which this would make a difference within these next few months?

MR. ROMERO: Mr. Chair, there is.

CHAIRMAN KATZ: Okay. There are evidently. Just one or multiple?

MR. ROMERO: There's multiple applications for development, whether it's additions to residences or new residential structures that fall under these water harvesting requirements for the SLDC.

CHAIRMAN KATZ: Okay. I'm a little puzzled as to this heated area standard. It seems to me that the roof area tells you the amount of water that it would need to be stored because of the runoff from the roof, and so that would inform whether you would need a cistern or whether rain barrels would work. Heated or non-heated seems to make no difference there. The lot size which is mentioned in the materials as being a basis for not needing the cistern, I can see that as a basis for whether you need to have a cistern or whether rain barrels will do, even if you have a big house. But I don't understand the basis for the heated area, rather than either the roof area or the size of the lot or the water budget for the lot. Perhaps staff can explain that to me.

MS. LUCERO: Mr. Chair, the heated area was actually – that was what the ordinance was prior to the SLDC coming into effect. The rainwater harvesting –

CHAIRMAN KATZ: I understand that.

MS. LUCERO: Did require you to provide cisterns based on the heated area.

CHAIRMAN KATZ: Can we do better than that when we go back? That's my concern is that that really doesn't make sense and it may have been the rule but maybe we could think through the need and the availability of water and I'm a little concerned about giving a variance if it may not go back to heated area.

MS. LUCERO: Mr. Chair, the old ordinance also allowed you to adjust the size of the cistern, based on the annual water budget for landscaping, so we're looking at cleaning up some of the other language in the rainwater harvesting section of the SLDC as well. So we may give them that as another option would be to provide us with an annual water budget for their landscaping in order to reduce the size of cistern requirements.

CHAIRMAN KATZ: Thank you. Yes, I'm finished.

MEMBER BOOTH: Well, a follow-up question on that. So are they required to put in a 3,000-gallon cistern?

MR. ROMERO: Mr. Chair, Planning Commission Member Booth, the way it's calculated, as it was in the old ordinance, as it is now in the SLDC is you're looking to capture at least 85 percent of roof drainage, 85 percent of roof runoff. And so with the calculation that is also provided in the code I think it's – I believe it's 1.15 square foot of roofed area is also part of the calculation. So when you get a total roofed area, multiply it by .85, which is 85 percent of roof runoff, times 1.15 which is the square footage area, that gives you the sizing of the cistern you will need to provide.

So in a situation where a home may be 1,500 square feet but now they have portals and garages and it exceeds now – maybe it exceeds the 2,500 square feet, that gets into the calculation and that's how it's sized. So you're looking at anywhere from a cistern that I've seen with the new code, 2,500 gallons, all the way up to close to 8,000 gallons of water than needs to be collected, and with that being said, even with a 3,500-gallon cistern you're looking at probably a minimum of \$10,000 to \$15,000 just for the installation of the cistern and including the equipment, with the cistern and the submersible pump. And I think that's where the concern is coming from the applicants.

MEMBER BOOTH: So if my house had 2,500 square feet of roofed area, how large a cistern would I have to have?

MR. ROMERO: So you multiple the .85 times 2,500 square feet, and also multiple that by .15 and that should give you the cistern size.

ORALYNN GUERRERORTIZ: (Speaking from the audience) 2,443 gallons.

MR. ROMERO: There you go.

MEMBER GONZALES: Chair Katz.

CHAIRMAN KATZ: Yes.

MEMBER GONZALES: This doesn't make any sense to me. If a developer wants to develop houses and he tells people, well, you know we have to have xeriscape on some of this landscape. And most people are very conscious about water usage, and they're going to have low shrubs that use hardly any water, and if it doesn't rain here, then what's the use of having a cistern? It doesn't rain here. It doesn't make any sense to me. If you can do it a different way they put the onus on not only the developer but the person that buys the house because they're very limited on their funds to build a house in the first place. Those are hard dollars. It doesn't make any sense to me why you'd have to have a \$15,000 cistern in a place that doesn't have much water in the first place.

MR. ROMERO: Mr. Chair, Planning Commission Member Gonzales, that is part of the issue, and that's where in the previous ordinance where the Land Use Administrator would be able to reduce the size of the cistern due to xeriscape and the water budget. So instead of installing a 3,500-gallon cistern it may be dropped, reduced by half. And that is part of the concerns from the constituents, the applicants, is, hey, look, I don't have – I have xeriscape. I'm not planning on planting many trees or anything that's xeriscape. However, with the new code, the SLDC there is no leeway for that and it essentially states it's very black and white, if you will in there. It tells you that if you have 2,500 square feet of roofed area or greater you're required to provide a cistern regardless.

MEMBER GONZALES: Well, maybe we should add that to the SLDC code, that if people are willing to do xeriscape and not use a lot of water, and use low-flow – I mean plants that don't take much water. Most people are willing to do that. You go around these subdivisions, people have graveled their yards, they're putting cactuses and most people are willing to do that. I think it's – if we're just getting into this and we're going to be dealing with this code for many years, every time it's going to come back. It's just not right, I don't think. I just think we needed to change that. Maybe we need to look at changing that.

MR. ROMERO: Mr. Chair, Planning Commission Member Gonzales, you are correct and I think that is – part of the review for the six months is reviewing this ordinance which myself and Vicki have done and we've wrote all our – what we think are concerns in regards to it and that is one of them. So we're looking at xeriscape, water budget, and anything else that can help in regards to reducing the size of the cistern and also being able for the Land Use Administrator to assist in that procedure, which in this point with the SLDC I don't believe she has even the authority to reduce that because there is no leeway with the new code as there was with the old ordinance. So that's what we're willing to look at to change.

MEMBER GONZALES: Thank you.

CHAIRMAN KATZ: The provision in the old ordinance that allowed a reduction in the size of a cistern or whatever, was that one-month's worth of landscaping water?

MR. ROMERO: That's correct.

CHAIRMAN KATZ: Okay. Thank you. Any other questions of staff? Okay. Would the applicant come forward please?

[Duly sworn, Oralynn Guerrerortiz testified as follows:]

MS. GUERRERORTIZ: Hello. My name's Oralynn Guerrerortiz and I own Design Enginuity, and I'm representing the applicants, La Pradera Associates and Gardner Associates. La Pradera, I don't know if you all have visited. It's just down south of I-25 to the west of Richards Avenue. At La Pradera we have a reclaimed water system. We collect all the wastewater from the project. We treat it and we reuse it. It's actually beautifully landscaped in the common areas because we reuse our water.

We have some of the tightest covenants in this community. The water restrictions are less than .15 acre-feet per lot. Actual water use averages 3,420 gallons per month. We're one of the best in our community. We are actually a flagship if you will for water conservation. We're very proud of our efforts. The homes that are in there are using rainwater barrels and they are used to irrigate people's front yards, to irrigate the little xeriscaping that we do permit, and we do have restrictions on requiring people to put in trees and things, but we have restrictions on what kind of trees and what kind of shrubs can be put in to control excess water use.

Moderately priced homes are going in. You're going to see three cases in a row – this is the first one. The other two are also mine. Every one of them are moderately priced homes in our community. This project is very successfully. I would guess if you went out there today you will see eight homes under construction.

So when this market crashed in 2008 La Pradera was one of the survivors. We've been blessed, really, because we have a niche. We are serving a moderately priced community and we are successful at it. So we have been allowed to proceed forward with our permits. The staff has been kind enough to let us proceed forward, but we're going to get to a point very soon where our COs will be held up unless we get this issue resolved. So people will not be able to move in.

When it first came up, it was a shock. I actually went through hours and hours and hours of public hearing when the new code was being adopted. I do not recall this issue ever being raised. Pretty much, we discussed the nuts and bolts of that code inside and out and all the changes. And when Penny made presentations about what the changes were she described what those changes were. When I found that problem, when I found

that this code had gone from heated space to roofed area I went to Penny and I said, Penny, I don't remember this. And she said she didn't remember it either. She did not write that section of the code. She thinks that it was written by the Legal Department and a person who is no longer present. When asked why it was changed, we couldn't find anything in the public record showing it was discussed.

We do know that the general plan, the Growth Management Plan does not mention it. It talks about heated area. 2,500 square foot of heated area, and my understanding is this new code was supposed to be based on the general plan. So somehow, most people think it was an inadvertent change, but for the developers, who some of those lots have already been sold, the price has already been determined, and we're just building the house now, we really got caught in a bad pinch.

And so staff has agreed. They think it's an inadvertent mistake and they're willing to go to the Board and try to get it changed. I hope you guys see it soon. But we can't wait till January when this new code change will happen. We've got projects that need to close. And so that's why we're before you today and we hope you will bless it. Again, this is really a project that is doing well in our community and I hope you guys will support it. Thank you very much. I'll stand for any questions.

CHAIRMAN KATZ: Questions from staff?

MEMBER BOOTH: What is a moderately priced house?

MS. GUERRERORTIZ: \$300,000. \$350,000. There are many, many Community Housing Trust homes in here that are less. I think there's more than 24 or 30. I'm sorry. 54 homes sold by Community Housing Trust as affordable under your ordinance. The ones that are sold at market rate are generally \$300,000 to \$350,000. They are have two-car garages, every single one of them. It's a covenant in our community that everybody gets a two-car garage. No carports. And so that's hurting us. And we have nice portals in our development. We have very nice portals. So that kind of construction, the garage construction and the portals, make these homes look a lot nicer for the public, and they're not much additional cost until you get to this issue.

CHAIRMAN KATZ: Any thoughts on sort of the irrelevance of heated area, in either the amount of water that is available from the roof or the amount that you need for the lot?

MS. GUERRERORTIZ: Well, I think that the reason that they set 2,500 square foot heated originally was that they thought if somebody who was building greater than 2,500 square foot was building a nicer home of our community in general, and that things that were less than 2,500 were for smaller families with less money to spend. And that's what I believe the cutoff was based on. In my opinion, lot size should play a role but it's never been considered. And there are things that are wholly just crazy because I can tell you the opera has got 80,000 gallons of storage tank and the opera is all natural piñons. They've got a couple of planters but they do not need that kind of water. But they spent that money on those cisterns tanks when they build Stieren Hall, which is the orchestra rehearsal area.

But I think some of those thoughts are not well thought through, and they should have really focused on the water budget needs because that's wasted money in my opinion.

CHAIRMAN KATZ: Yes. Thank you. I think we understand your situation and maybe the rest we'll deal with later on.

MS. GUERRERORTIZ: You will, and I've got many people – I've got many, many homeowners who are coming to me and complaining about this, and what I'm suggesting to them and I'm working with staff now to see if we can work it out, maybe posting a financial guarantee or something rather than building the cistern in hopes that when the code does change they won't actually have to install it because for Homewise and people like that, they can get them in for \$10,000 to \$14,000. It turns out that works well when you're putting a lot of them in, but if you're an individual homeowner and you're putting this in, you don't get those kinds of prices. That's when you have a landscaper that you're hiring for doing a bunch of them in general. And also they're doing a bunch of other work. If you're hiring for a single home, the prices are closer to \$20,000 for these cistern systems. When you talk about all the piping and everything else, and for the average mom and pop, that's a big chunk of change on their house. So it's a problem.

CHAIRMAN KATZ: Thank you. Any other questions?

MEMBER GONZALES: Chair Katz.

CHAIRMAN KATZ: Yes.

MEMBER GONZALES: If people had the option of not having a cistern and do rain barrels, whether it was a 1,000 square foot house or a 2,500 square foot house, does it matter to them? Does it really matter? And the actual use to water their yard, if you will, with rain barrels?

MS. GUERRERORTIZ: Well, I think that rain barrels take a little more effort.

MEMBER GONZALES: Right.

MS. GUERRERORTIZ: I mean in my own home I've got rain barrels and you've got to hook up to them and carry the hose around. It's a little more effort. Cisterns are generally connected to drop irrigation systems and it's all more automatic, but for the people who are usually – that we're talking about here, this money makes real sense to them. I mean, I certainly have plenty of wealthy clients that I can tell them they only need to put in a 4,000-gallon cistern and they tell me, well, what if we have drought, and they put in 10,000 gallons. There's a gentleman up the hill that's going to put in a 20,000-gallon cistern and I can tell you he doesn't have enough stuff growing, really, to require it. But those are people who have more money than we do. Than I do. And so it really depends on the client, in some ways.

MEMBER GONZALES: But generally speaking, rain barrels are okay?

MS. GUERRERORTIZ: Rain barrels work real well at my house. I can tell you that much, and I know they work in many – they work in La Pradera today. For what they're dealing with today, they're working really well as proven by the fact that they only use 3,420 gallons per month, on average. I don't know how they do that, because I've got a family of five, usually, at my house and I think we do real well and we use 6,000 gallons a month. I've got teenagers – maybe that's part of it.

CHAIRMAN KATZ: Okay. This is a public hearing. Does anyone wish to comment on this case? If so, please come forward. Okay, come back to the Commission.

MEMBER MARTIN: I'd make a motion in the Case #V 16-5050, La Pradera Associates, to allow the variance of Chapter 7, Water Harvesting Ordinance, and uphold the recommendation of the Hearing Officer.

CHAIRMAN KATZ: Okay, we have a motion. Have we a second?

MEMBER LOPEZ: I'll second.

CHAIRMAN KATZ: Okay, we have a motion and a second. Any discussion, comments on the motion? Okay.

The motion passed by unanimous [6-0] voice vote.

D. Possible Action on the Findings of Fact and Conclusions of Law for Case # V 16-5050 La Pradera Assoc., LLC & Gardner Assoc., LLC Variance

CHAIRMAN KATZ: Might I have a motion to approve the order? Is there an order here?

MEMBER MARTIN: Yes, Exhibit 8.

CHAIRMAN KATZ: Might I have a motion? Yes, Ms. Martin.

MEMBER MARTIN: I'll so move in Case #V 16-5050 to uphold the recommended decision and order of the Hearing Officer, on Exhibit 8, page 32.

CHAIRMAN KATZ: Okay. Thank you. Is there a second?

MEMBER GRAY: Second.

The motion passed by unanimous [6-0] voice vote.

E. Case # V 16-5030 Santa Fe Community Housing Trust. Santa Fe Community Housing Trust, Applicant, Design Enginuity, Agent, Request a Variance of Chapter 7, Section 7.13.11.7, Water Harvesting of Ordinance 2015-11, the Sustainable Land Development Code (SLDC). The Applicant Proposes That the Existing Six (6) Lots within the Aldea Subdivision Be Allowed to Adhere to Prior County Water Harvesting Requirements Which Were Set forth in Ordinance 2003-6 (An Ordinance Amending Ordinance 1996-10, the Santa Fe County Land Development Code, Article III, Section 4.4.1 and Article III, Section 2.4.1 to Require Rainwater Catchment Systems for All Commercial and Residential Development). The Aldea Subdivision is within the Tres Arroyos del Poniente Community District (TAPCD) Overlay and is Zoned As a Planned Development District (PD-3). The Lots are Located on Vista Precioso, within Section 20 Township 17 North, Range 9 East (Commission District 2)

CHAIRMAN KATZ: This should be quicker.

MR. ROMERO: Mr. Chair, Planning Commission, a lot of the language in this report and the following report are a lot a like except for the different locations. So if you would like, I could try to pinpoint some of the differences or if you'd like I could just read the whole report again.

CHAIRMAN KATZ: Just the differences, please.

MR. ROMERO: Okay. I'll go ahead and start off by reading the caption.

The applicant states that they are developing six homes on Lots 29, 33, 35, 37, 39 and 41 in the Aldea Subdivision. The lots are small, typically 4,000 square feet with 70

percent lot coverage leaving only 1,200 square feet of landscaping. The applicant will install xeriscape landscaping which will include an anticipated annual irrigation water demand of 1,740 gallons per year. The applicant states homes of 1,800 or 1,900 square feet now have to install cisterns and that is a huge cost on a moderately priced home due to the fact that they exceed 2,500 square feet when portals and garages are added in the square footage.

The applicant requests a variance of Chapter 7, Section 7.13.11.7, Water Harvesting Ordinance 2015-11 of the SLDC. The applicant requests that the six lots within the Aldea Subdivision, Lots 29, 33, 35, 37, 39, and 41 be allowed to adhere to prior County water harvesting requirements which were set forth in Ordinance No. 2003-6. Both Ordinance No. 2003-6 and Ordinance No. 1996-10 were repealed with the SLDC was adopted.

Recommendation: Staff is unable to recommend approval because this request is not in compliance with the SLDC and because the criteria for a variance have not been met. As part of the six-month review of the SLDC staff will be recommending to the Board of County Commissioners that the rainwater catchment section be amended to require cisterns only on houses of 2,500 square feet or greater of heated area.

This matter came before the Hearing Officer for a hearing on April 28, 2016. The Hearing Officer recommends approval of the application. If the decision of the Planning Commission is to approve the application, you may consider adopting the Hearing Officer's finding of fact and conclusion of law in the written recommendation. I stand for any questions.

CHAIRMAN KATZ: Thank you. Any questions for staff? Okay, this is a public hearing. First the applicant. Come on forward.

MS. GUERRERORTIZ: I've been sworn before and with me today is James Hicks with the executive director of Tierra Contenta, so I don't know what your role is with the Housing Trust.

[From the audience, Mr. Hicks said he was also the development director of the Housing Trust.]

MS. GUERRERORTIZ: Ah. Thank you. The Community Housing Trust, one of the non-profits in our community builds affordable housing. They got these lots at a real reasonable price and they're very small lots. There's about 1200 square feet that will be open. They're actually – the way that they're laying these lots out, and correct me if I'm wrong, don't you have to go through the house to get from the front yard to the back yard? There is no side yard in this house. So in this case, if we were going to put a cistern in we'd actually have to have a cistern in the front yard and in the backyard, unless we run pipes under the house for drainage and I just wouldn't want to do that myself.

So they have very limited amount of landscaping installed – 1740 gallons per year is what I estimate and I do estimate on the high side, I think, of the amount of water that they will use for outdoor landscaping. It seems absurd to be putting in 2,500-gallon cisterns in a project that uses under 2,000 gallons a years. And so we respectfully request, and hopefully I don't have to go into my whole spiel again but I certainly will if you'd like me to. And I'll stand for any questions. We respectfully request you also grant this variance. Thank you.

CHAIRMAN KATZ: Any questions of the applicant on this one? Okay. This is a public hearing. Anybody from the public wish to comment on this case? Okay. Back to the Commission. Yes.

MEMBER BOOTH: I move that we approve the variance on Case #V 16-5030, Santa Fe Community Housing Trust. And can I move to approve the order as well in the same motion? Or do you want to divide?

CHAIRMAN KATZ: I believe separately. And I assume you're adopting the findings of fact and conclusions from the Hearing Officer.

MEMBER BOOTH: Yes.

CHAIRMAN KATZ: Okay. Is there a second?

MEMBER GONZALES: Second.

CHAIRMAN KATZ: Any discussion of the motion?

The motion passed by unanimous [6-0] voice vote.

F. Possible Action on the Finding of Fact and Conclusions of Law for Case # V 16-5030 Santa Fe Community Housing Trust Variance

CHAIRMAN KATZ: Okay, the variance is passed. May I have a motion on the order?

MEMBER BOOTH: Mr. Chair, I move that we approve the order on Case #V 16-5030, Santa Fe Community Housing Trust.

CHAIRMAN KATZ: May I have a second?

MEMBER GONZALES: Second.

The motion passed by unanimous [6-0] voice vote.

CHAIRMAN KATZ: Okay, the order is approved.

G. Case # V 16-5040 Tessera Subdivision. Homewise, Inc., Applicants, Design Engenuity, Agent, Request a Variance of Chapter 7, Section 7.13.11.7, Water Harvesting of Ordinance 2015-11, the Sustainable Land Development Code (SLDC). The Applicant Proposes That the Existing Lots Within the Tessera Subdivision be Allowed to Adhere to Prior County Water Harvesting Requirements Which Were Set forth in Ordinance 2003-6 (Rainwater Catchment Systems). The Tessera Subdivision is Within the Tres Arroyos del Poniente Community District Overlay (TAPCD) and is Zoned As a Planned Development District (PD-4). The Property is Located Via NM 599, Within Section 20 & 17 Township 17 North, Range 9 East (Commission District 2)

MATHEW MARTINEZ (Case Manager): Thank you, Mr. Chair. On January 15, 2016, the SLDC came into effect, repealing Ordinance No. 2003-6, and changing the rainwater catchment requirements. SLDC, Chapter 7, Section 7.13.11.7.2 states: structures whose roofed surface is 2,500 square feet or greater shall install a cistern that is buried or partially buried and insulated. The section goes on to state, a

structure whose roof surface is 2,500 square feet or less, and any accessory structure whose roof area is 500 square feet or greater shall install rain barrels, cisterns, or other water catchment systems including passive water harvesting and infiltration techniques, berms, swales, and tree wells to capture rainwater from a minimum of 85 percent of the roofed area.

Recommendations: Staff is unable to recommend approval because this request is not in compliance with the SLDC and because the criteria for a variance have not been met. As part of the six-month review of the SLDC staff will be recommending to the Board of County Commissioners that the rainwater catchment section be amended to require cisterns only on houses of 2,500 square feet or greater of heated area.

This matter came before the Hearing Officer for a hearing on April 28, 2016. The Hearing Officer recommends approval of the application. If the decision of the Planning Commission is to approve the application, you may consider adopting the Hearing Officer's finding of fact and conclusion of law in the written recommendation. And I stand for any questions.

CHAIRMAN KATZ: Thank you. Any questions for staff? Okay. Thank you. Would the applicant please come forward? Are there any differences in this one that you might want to mention to us?

MS. GUERRERORTIZ: Just a little bit of marketing. This is a project owned by Homewise. It is probably one of the most beautiful products on the market, if you go up there. Unlike Aldea, which is mass-graded, this property is dominated by juniper and piñons with incredible vistas and views. They do very little landscaping because the natural landscaping is so amazing out there. And it is sold by Homewise. Really, it is probably the most beautiful new construction going on, I think, in our community, at a very reasonable price. Other than that, the details are all the same. They only install a few trees and a few shrubs in everybody's yard, and the water budget for the outdoor water use is less than 2,000 gallons a year, estimated less than 2,000 gallons a year.

So if you all – we again, would like to keep our prices down as much as possible and we would greatly request that you – I'm sorry; I'm speaking poorly at this point – we respectfully request that you support this variance also. Thank you very much.

CHAIRMAN KATZ: Thank you. Any questions for the applicant? This is a public hearing. Would anybody like to comment on this case? Okay, back to the Commission for a motion or discussion or comments.

MEMBER GONZALES: Chair Katz.

CHAIRMAN KATZ: Yes, Mr. Gonzales.

MEMBER GONZALES: I'd like to make a motion to approve the variance in Case #V 16-5040, the Tessera Subdivision.

MEMBER MARTIN: I'll second.

CHAIRMAN KATZ: Okay, in your motion are you adopting the findings and conclusions of the Hearing Officer?

MEMBER GONZALES: Yes.

CHAIRMAN KATZ: Okay.

The motion passed by unanimous [6-0] voice vote.

H. Possible Action on the Findings of Fact and Conclusions of Law for Case # V 16-5040 Tessera Subdivision Variance

CHAIRMAN KATZ: The variance is granted. Might I have a motion on the order that is attached reflecting the motion. Is there an order attached?

MEMBER MARTIN: I so move.

CHAIRMAN KATZ: Okay. There's a motion to adopt the order that's been proposed. May I have a second?

MEMBER GONZALES: Second.

The motion passed by unanimous [6-0] voice vote.

CHAIRMAN KATZ: The order is adopted. Thank you very much.

I. Case # V 16-5100 Ramon Polanco & Isabel Olivas. Ramon Polanco and Maria Olivas, Applicants, Ralph Jaramillo, Agent, Request a Variance of Chapter 9, Section 9.8.3.6.5.C.ii, Dimensional Standards of the Sustainable Land Development Code to Allow a Residence to be within the Required Side and Rear 50' Setback. The Property Consists of 1.25 Acres and is Located at 4 Estrellas Road South, within the La Cienega and La Cieneguilla Overlay District, within Section 28, Township 16 North, Range 8 East (Commission District 3)

MR. MARTINEZ: Thank you, Mr. Chair. The property consists of 1.25 acres and is within the Residential Estate Zoning District in the La Cienega and La Cieneguilla Community District Overlay. Under Chapter 9, Section 9.8.3.6.5.c.ii, Setbacks, of the SLDC in that community district overlay the rear and sides of the building shall be set back a minimum of 50' from the property line. The property is an L-shaped lot where the horizontal leg is approximately 105 feet wide and the vertical leg is approximately 86 feet wide. Incorporating a 50-foot setback from all side and rear property lines would leave nowhere for the applicants to construct a residence. Therefore, the applicants are requesting a variance.

The agent states that a Small Lot Family Transfer was approved for Gabriel Orozco, which was recorded on December 15, 2015, prior to the implementation of the SLDC. At that time, neither Mr. Orozco, nor the agent, nor the applicants were aware that the SLDC would require the 50-foot setback. The agent states that if the parties would have known that these setbacks would be implemented, the lot lines would have been created differently. The applicants further state they have paid a good down payment, which they have saved for years, and they have hired a contractor to put a foundation along with utilities for a 28'x78' manufactured home to place on the property. The applicants further state that with the current setback requirements, there is no way they will be able to pursue building on their dream property.

Staff Response: The subject lot was approved by the Land Use Administrator in December of 2015, in accordance with the Land Development Code (Ordinance #1996-10). Although, Chapter 9, Section 9.8.3.6.5.c.ii, Dimensional Standards RES –E Setbacks states that both the rear and sides of the building shall be set back a minimum of 50 feet from the property line, the standard setback in the remainder of the County is 25 feet. Under Table 7-A, Setbacks in the Residential Estate Zoning District outside of this community district overlay are required to be a minimum of 25 feet for both the rear and side setback from property lines. The 50-foot setback leaves the applicant with nowhere to build on the property.

Recommendation: The application is not in strict compliance with the SLDC but this application meets the criteria necessary for granting a variance. Due to the size and configuration of the lot, the applicant is unable to build a home on their lot. The inability to build on the property due to the setback requirements in Chapter 9, Section 9.8.3.6.5.c.ii, demonstrates that they have met the second prong of the variance criteria. The spirit of the SLDC is to allow individuals to build on legal lots or record and the setback requirements prevent the applicants from doing this, so a variance would meet the requirement of the third prong. Under the setback requirements Chapter 7, Table 7-A, which apply to all Residential Estate Zoning outside of this community district overlay, the minimum setback is 25 feet. Therefore, staff's position is as long as the applicant keeps the 25-foot setback requirement they have met the first prong of the variance criteria.

This matter came before the Hearing Officer for a hearing on May 26, 2016. The Hearing Officer recommends approval of the Application. If the decision of the Planning Commission is to approve the application, you may consider adopting the Hearing Officer's finding of fact and conclusion of law in the written recommendation. I stand for any questions.

CHAIRMAN KATZ: Thank you. Any questions?

MEMBER BOOTH: Yes, I do, and maybe this is not quite – it's about this case. So we granted a family lot transfer and then he sold it.

MR. MARTINEZ: That is correct.

MEMBER BOOTH: Is that legal?

MS. LUCERO: Mr. Chair, Commission Member Booth, under the old code, it did meet the requirements of the old code, so it was approved. However, the setback requirements at that time were different.

MEMBER BOOTH: Right. No, I understand that. I just feel a little taken advantage of.

CHAIRMAN KATZ: Wasn't there a period of time that was supposed to be held before a family – before it could be sold?

MS. LUCERO: Mr. Chair, Commission Member Booth, there would have been a three-year holding period unless the applicant did the road improvements that were required, but the intent of a family transfer is to transfer it to a child or a grandchild, the small-lot family transfer.

MEMBER BOOTH: Can you explain a little bit more about that? So it was supposed to be held for three years except for – what?

MS. LUCERO: Mr. Chair, Commission Member Booth, the requirement under the old code was that for a small-lot family transfer, they either have to do the road

improvements before the plat is recorded, or they had to hold the lot and not transfer the lot or sell the lot until the road improvements were complete, or wait three years.

MEMBER BOOTH: And under the new code?

MS. LUCERO: With the new code there is no longer a small-lot family transfer provision.

MEMBER BOOTH: I'm sorry. I'm having trouble hearing.

MS. LUCERO: In the new SLDC, there is not – there is no longer a provision that allows small-lot family transfers. So any kind of a family transfer would have to meet the lot size from the designated zoning district.

MEMBER BOOTH: So I go back to the original question. This lot has not been held for three years by the family, nor has the road been improved. Why is this a legal use of the family lot transfer, or the small-lot family transfer? Is this a legal lot? Can we – if they have to hold it for three years and they have not. You know what I mean?

ANDREA SALAZAR (Assistant County Attorney): Chair, Commission Member Booth, technically the small-lot family transfer was created and at the time that it was created it was made a legal lot of record. In terms of whether the enforcement process of the holding period needed to be done and if we have a cause of action, I would have to research that. The intent and the spirit of the Land Development Code with a small-lot family transfer was that you do pass it to a child for the sole purpose that they hold it as a residence. So I don't have an answer for you directly.

MEMBER BOOTH: I have trouble ruling in this, if there's –

CHAIRMAN KATZ: I think we need answers to that before we proceed. Do you want to make a motion to postpone?

MEMBER BOOTH: I do. I would like to move to postpone this until we have – this case until we have answers in terms of whether or not the original grantee of the small-lot family transfer has abided by the laws of the land.

CHAIRMAN KATZ: Would this be a postponement to the next meeting?

MEMBER GONZALES: Chair Katz.

CHAIRMAN KATZ: Yes.

MEMBER GONZALES: Can we have a little more discussion on this for a second before we make a motion or approve it?

CHAIRMAN KATZ: Sure. Of course.

MEMBER GONZALES: So the question is not whether it's a legal lot of record; it is a legal lot of record, and it was approved under the old code. And the question is – to me the question is the setback. Right? Because under the new code, because it is a lot of record, with the new code setback they can't build on the lot. Correct? Is that my understanding?

MS. SALAZAR: Chair, Commission member Gonzales, I think the question being raised is not regarding the setback itself. It's regarding did they violate their ability to be a legal lot of record by not meeting the criteria of how it was created. I don't have an answer for that, but I think that that's the underlying issue is if you then sell a legal lot of record and the pre-existing condition was to obtain this type of lot you have to obtain this type of lot you have to hold it or you have to make improvements on it and you don't do that, does that take away its ability to be a legal lot of record?

CHAIRMAN KATZ: Ms. Martin.

MEMBER MARTIN: Well, and I think I'd like to clarify that the issue is

not with respect to the actions of the applicant but the actions of the previous holder that sold to the applicant, Orozco, or –

MS. SALAZAR: And I believe that would be Mr. Orozco.

CHAIRMAN KATZ: Okay, there's been a motion to table to the next meeting.

MEMBER MARTIN: Second.

CHAIRMAN KATZ: And it's been seconded.

[From the audience, the applicants' agent, Ralph Jaramillo requested to speak.]

CHAIRMAN KATZ: I think that that will be done between now and then.

The motion passed by unanimous [6-0] voice vote.

CHAIRMAN KATZ: The motion is to table till the next meeting. Why don't you conference with the County Attorney and bring us resolution? Thank you.

J. Possible Action on the Findings of Fact and Conclusions of Law for Case # V 16-5100 Ramon Polanco and Isabel Olivas Variance

Deferred pending action on the variance.

K. Petitions from the Floor

None were offered.

L. Communications from the Commission Members

None were offered.

M. Communications from the Attorney

None were offered.

N. Matters from the Land Use Staff

None were offered.

O. Next Planning Commission Regular Meeting: July 21, 2016

None were offered.

P. Adjournment

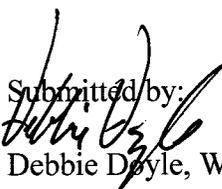
Having completed the agenda and with no further business to come before this Committee, Chair Katz declared this meeting adjourned at approximately 5:05 p.m.

Approved by:

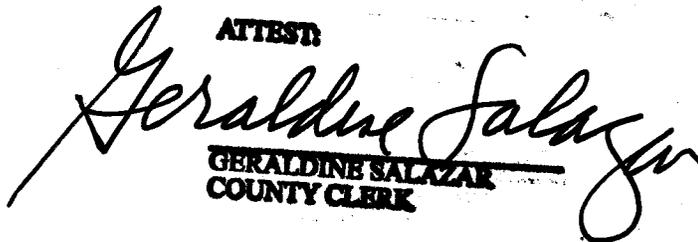


Frank Katz, Chair
Planning Commission

Submitted by:


Debbie Doyle, Wordswork

ATTEST


GERALDINE SALAZAR
COUNTY CLERK



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

PLANNING COMMISSION MI
PAGES: 21

I Hereby Certify That This Instrument Was Filed for
Record On The 27TH Day Of July, 2016 at 09:09:42 AM
And Was Duly Recorded as Instrument # 1799804
Of The Records Of Santa Fe County



Witness My Hand And Seal Of Office
Geraldine Salazar

Deputy  County Clerk, Santa Fe, NM

