

MINUTES OF THE
SANTA FE COUNTY
PLANNING COMMISSION

Santa Fe, New Mexico

July 20, 2017

I. This meeting of the Santa Fe County Planning Commission was called to order by Vice Chair Louie Gonzales on the above-cited date at approximately 4:04 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

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

Members Present:

Louie Gonzales, Vice Chair
Charlie Gonzales
Rena Gray
Leroy Lopez
Susan Martin

Member(s) Excused:

Filandro Anaya, Chair
Frank Katz

Staff Present:

Vicki Lucero, Building & Services Manager
Paul Kavanaugh, Building & Services Supervisor
Mathew Martinez, Development Review Specialist
John Lovato, Development Review Specialist
Rachel Brown, Deputy County Attorney

IV. Approval of Agenda

Vicki Lucero noted that Case V 17-5050, the Stromquist/Felker Variance was tabled as shown on the agenda. She added Member Anaya might be calling in to joint the meeting telephonically. Member Martin moved approval and Member Gray seconded. The motion carried by unanimous [5-0] voice vote.

V. Approval of Minutes: June 15, 2017

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

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VI. CONSENT CALENDAR: FINAL ORDERS

- A. Case # V 17-5020 Jerry West Variance. Jerry West, Applicant, Requested a Variance of Ordinance No. 2016-9, the Sustainable Land Development Code (SLDC as Amended), Chapter 9, Table 9-14-4: Dimensional Standards of the San Marcos Community District Overlay Rural Residential (SMCD RUR-R) Zoning District. The Applicant Requested a Variance to Exceed the Density Requirement of one Dwelling Unit Per Ten Acres by Allowing Four Dwelling Units on a 5.963-Acre Lot. The Property is Located at 2 Loma Oriente Road within Section 26, Township 15 North, Range 8 East (Commission District 5) (Approved 5-2) Mathew Martinez, Case Manager**

Member C. Gonzales moved to approve. Member Lopez seconded and the motion carried by unanimous 5-0 voice vote.

- B. Case # V 17-5000 EAWSD. Eldorado Area Water and Sanitation District, Applicants, Steve King, Agent, Requested, a Variance Of Chapter 7, Section 7.17.5.2.6 to Allow an 800 Square Foot Well Production Facility and Water Treatment Purifying Equipment to be Placed within the 75-Foot Setback from the FEMA Designated Floodplain Hazard Area; a Variance of Chapter 7.11.12.3, Table 7-15, to Allow a 25-Foot Separation from Access Points; and a Variance of Chapter 7.3.3. Setbacks, Table 7-A (Setback Table) to Allow the Facility to be Located 7.5 Feet from the Property Boundary. The 0.072-Acre Easement Site is within a 3.56-Acre Parcel and Lies within the Residential Estate Zoning District. The Property is Located at 3 Carissa Drive in Eldorado within Section 17, Township 15 North, Range 10 East (Commission District 5) (Denied 5-2) John Lovato, Case Manager [*Exhibit 1: Final Order for Case #17-5000*]**

Member Martin moved to approve and Member C. Gonzales seconded. The motion passed by unanimous 5-0 voice vote.

B. Petitions from the Floor

None were offered.

C. Communications from the Committee

MEMBER C. GONZALES: At the Agua Fria Village Association last week I was speaking with the village and Commissioner Hansen and an address at 2477 Callejon de Rita, there is a possibility or there are two RVs being used as dwelling units and it appears also that they are storing RVs as well. Years ago, when I was working for the County, a gentleman by the name of Louis Chavez owned that property and he

illegally extended the sewer line, I believe, and he was trying to put a mobile home park there. I don't know if you remember that, Vicki. I think Joe Catanach and I were involved in that one. And anyways, we stopped him and now it looks like years later the next generation is trying to do the same thing but with an RV park. So I'd like to see if staff could check into that for me.

MS. LUCERO: Mr. Chair, Commission Member Gonzales, we will have our Code Enforcement Officers check into that.

MEMBER C. GONZALES: And to let you know, I have also spoken to the City sewer already, so if you need some information on that let me know.

D. Communications from the Attorney

None were presented.

E. Matters from Land Use Staff

None were presented

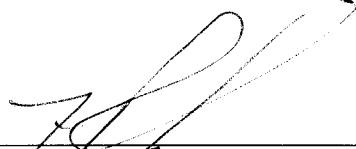
F. Next Planning Commission Meeting: August 17, 2017

G. Adjournment

Having completed the agenda and with no further business to come before this Committee, Vice Chair L. Gonzales declared this meeting adjourned at approximately 4:13 p.m.



Approved by:


Filandro Anaya, Chair
Planning Commission

ATTEST TO:


GERALDINE SALAZAR
SANTA FE COUNTY CLERK

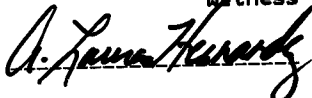
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STATE OF NEW MEXICO) ss

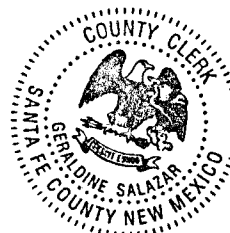
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PAGES: 15

I Hereby Certify That This Instrument Was Filed for
Record On The 22ND Day Of August, 2017 at 12:07:00 PM
And Was Duly Recorded as Instrument # 1834299
Of The Records Of Santa Fe County

Submitted by:


Debbie Doyle, Wordswork

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



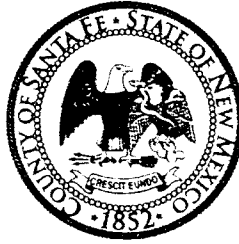
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Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. V 17-5000

Eldorado Area Water and Sanitation District, Applicants

ORDER

THIS MATTER came before the Santa Fe County Planning Commission (Commission) for hearing on June 22, 2017, on the Application of Eldorado Area Water and Sanitation District, Applicant's request for a variance of Chapter 7, Section 7.17.5.2.6, to allow an 800 square foot well production facility/and water treatment purifying equipment to be placed within the 75' foot setback from the FEMA designated Floodplain Hazard Area; a variance of Chapter 7, Section 7.11.12.3, Table 7-15, to allow a 25 foot separation from access points; and a variance of Chapter 7, Section 7.3.3, Setbacks, Table 7-A (Setback Table), to allow the facility to be located 7.5 feet from the property boundary. The 0.072 acre easement site is within a 3.56 acre parcel and lies within the Residential Estate Zoning District. The Commission, having reviewed the Application, staff reports, the Hearing Officer's recommended decision, and having conducted a public hearing on the Application, finds that the Application is not well-taken and denies the Application based on the following findings of fact and conclusions of law:

1. The property is located at 3 Carissa Drive, in Eldorado within, Section 17, Township 15 North, Range 10 East, Commission District 5.
2. The Applicant is the grantee of a 0.072 acre easement on a 3.56 acre parcel, as indicated by the well easement agreement recorded in the records of the Santa Fe County Clerk on August 4, 2016, as Instrument #1800603. The Applicant's Agent is Molzen-Corbin and Associates.

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3. The Applicant requests three variances in order to place an 800 square foot well production facility and water treatment purifying equipment within a 3,100 square foot easement. The variances sought include a variance of Chapter 7, Section 7.17.5.2.6, to allow an 800 square foot well production facility/and water treatment purifying equipment to be placed within the 75' foot setback from the FEMA designated Floodplain Hazard Area; a variance of Chapter 7, Section 7.11.12.3, Table 7-15, to allow a 25 foot separation from access points rather than the required 200 feet of separation from access points; and a variance of Chapter 7, Section 7.3.3, Setbacks, Table 7-A (Setback Table), to allow the facility to be located 7.5 feet from the property boundary.

4. The Applicant stated that a detailed design of the subject well was initiated in 2014. Based on the results of the design, the Applicant proceeded with easement acquisition and well development. According to its Utility Master Plan completed in July 2013, the Applicant has an acute need to develop additional groundwater sources to meet peak summer water demands. The Applicant filed the application for the three variances as a result of the need to meet the peak summer water demands.

5. The well house will include a facility to blend water to reduce the high levels of antimony in the water from the well before introducing it into the water system.

6. As set forth in Chapter 1, Section 1.4, Purpose, the SLDC was developed in part to promote the health, safety and general welfare of the present and future residents of the County. Additionally, according to Chapter 1, Section 1.4.2.20, the SLDC is intended to ensure that building projects are planned, designed, constructed, and managed to minimize adverse environmental impacts, a goal which includes minimizing the impact of development on the functioning of FEMA designated floodplains. The applicable requirements under the Santa Fe County Sustainable Land Development Code, Ordinance No. 2016-9 (SLDC) (which were identical in the prior iteration of the SLDC, Ordinance No. 2015-11), and which govern this Application are the following:

Chapter 7, Section 7.17.5.2.6, All other development

1. Erosion setbacks shall be provided for structures adjacent to natural arroyos, channels, or streams such that: (a) a minimum setback of 25' shall be provided from all arroyos with flow rates of 100 cubic feet per second (100cfs); or (b) a minimum setback of 75' shall be provided from all FEMA designated 100 year Floodplains. Setbacks from FEMA designated Floodplains may be reduced if bank stabilization or stream bed and bank stability is designated or provided by a professional engineer. In no case shall the setback be reduced to less than 25'.

Chapter 7.11.12.3 Table 7-15, Separation of driveways for Non-Residential, Multi-Family and Mixed -Use Parcels. Posted Speed of 25-30 M.P.H. must have a minimum distance of 200 feet.

Chapter 7.3.3 Setbacks Table 7-A: Setback Table. The Residential Estate (RES-E) Zoning District requires a minimum front setback of 10 feet, and a minimum side and rear setback of 25 feet.

Chapter 4, Section 4.9.7.1, Variances, Purpose

The purpose of this Section is to provide a mechanism in the form of a variance that grants a landowner relief from certain standards in this code where, due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner. The granting of an area variance shall allow a deviation from the dimensional requirements and standards of the Code, but in no way shall it authorize a use of land that is otherwise prohibited in the relevant zoning district.

Chapter 4, Section 4.9.7.4, Variance Review Criteria.

A variance may be granted by only a majority of all the members of the Planning Commission (or the Board, on appeal from the Planning Commission) based upon the following criteria:

1. where the request is not contrary to public interest;
2. where due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner; and
3. so that the spirit of the SLDC is observed and substantial justice is done.

Chapter 4, Section 4.9.7.5 Variance Conditions of Approval.

1. The Planning Commission may impose conditions on a variance request necessary to accomplish the purposes and intent of the SLDC and the SGMP and to prevent or minimize adverse impacts on the general health, safety and welfare of property owners and area residents.
2. All approved variances run with the land, unless conditions of approval imposed by the Planning Commission specify otherwise.
3. All approved variances automatically expire within one year of the date of approval, unless the applicant files a plat implementing the variance or substantial construction of the building or structure authorized by the variance occurs within that time.

7. As required by Chapter 4, Section 4.4.4.3 Pre-application TAC Meeting and Table 4-1 of the SLDC, the Applicant presented the application to the Technical Advisory Committee (TAC) on December 1, 2016.

8. Prior to the Hearing before the Hearing Officer, notice requirements were met as per Chapter 4, Section 4.6.3., General Notice of Application Requiring a Public Hearing, of the SLDC. In advance of a hearing on the Application, the Applicant provided an affidavit of posting of notice of the hearing, confirming that public notice posting regarding the Application was made for fifteen days on the property, beginning on April 5, 2017. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on April 12, 2017, as evidenced by a copy of that legal notice contained in the record. Notice of the hearing was sent to owners of land within 500' of the subject property and a list of persons sent a mailing is contained in the record.

9. At the public hearing before the Hearing Officer on April 27, 2017, County staff recommended denial of the Applicant's request for variances.

10. The Hearing Officer, in her findings of fact and conclusions of law, recommended approval of the variances with staff recommended conditions as follows:

- a. The Applicant shall certify that the arroyo bank is stable or design and implement a stabilization plan to be approved by the County;
- b. The Applicant shall certify that the flood levels will not increase due to the development; and
- c. The Applicant shall comply with the conditions from the Santa Fe County Public Works Department.

One of the conditions of the Public Works Department was relocation of the driveway to the northern boundary of the easement. The other condition was to place delineators at the end of the culverts.

11 The Applicant objected to the condition requiring relocation of the driveway to the most northern boundary of the easement.

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12. As to the variance to Chapter 7, Section 7.17.5.2.6 to place facilities within the 75' foot setback from the FEMA designated Floodplain Hazard Area, the Applicant addressed the variance criteria in its Application letter and at the public hearing before this Commission as follows:

A. The variance is not contrary to the public interest because the proposed finish floor of the well house is one foot above the base flood elevation, the building meets the County's 25 foot arroyo setback requirement and the embankment around the well house has been armored with rip-rap.

B. The following extraordinary and exceptional situations or conditions of the property make strict application of the SLDC result in peculiar and exceptional practical difficulties or exceptional and undue hardship to the Applicant:

- i. Situating the building in the southwest corner of the easement keeps it out of the line-of-site of the property owner's home;
- ii. Re-design and/or additional easement acquisition would increase project costs, impose further limitations on the current property owner and significantly delay the availability of this much needed additional source of water to the community.

C. The spirit of the SLDC is observed and substantial justice is done because the variance improves the building aesthetics for the home owner and neighborhood without compromising the protection and safety of the utility structure.

13. As to the variance to Chapter 7, Section 7.11.12.3.3, Table 7-15 to allow a 25 foot separation from access points rather than a 200 foot separation, the Applicant addressed the variance criteria in its Application letter and at the public hearing before this Commission as follows:

A. The variance is not contrary to the public interest because: the driveway will be used infrequently, no more than five days per week; there is a stop sign for westbound traffic on Torreon Road which eliminates conflicts between vehicles entering or leaving the site and

westbound traffic on Torreon Road; and the intersection sight distance for southbound traffic on Torreon Road in approximately 400 feet, the speed limit is 25 miles per hour and AASHTO recommends a sight distance of only 200 feet.

B. The fact that the 200 foot setback cannot be accommodated without significant additional easement acquisition which would increase project costs, impose further limitations on the property owner and significantly delay the availability of water to the community constitutes an extraordinary and exceptional situation or condition of the property making strict application of the SLDC result in peculiar and exceptional practical difficulties or exceptional and undue hardship to the Applicant.

C. The spirit of the SLDC is observed and substantial justice is done because the variance provides for the full protection and safety of the property owner, the neighborhood, the community, District staff and all vehicle and pedestrian traffic along the affected sections of Torreon and Carissa Roads.

14. As to the variance to Chapter 7, Section 7.3.3.7, Table 7-A, to allow a 7.5 foot setback from the property line rather than a 25 foot setback, the Applicant addressed the variance criteria in its Application letter and at the public hearing before this Commission as follows:

A. The variance is not contrary to the public interest because the building is not occupied and is used only to house process piping and equipment associated with the well, and the building will be constructed of fire resistant materials consistent with the New Mexico Fire Code. Additionally, the structure is adjacent to a floodplain and therefore will not infringe on other structures.

B. Situating the building in the Southeast corner of the easement cannot be accommodated without significant additional easement acquisition which would increase project costs, impose further limitations on the property owner and significantly delay the

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availability of water to the community constitutes an extraordinary and exceptional situation or condition of the property making strict application of the SLDC result in peculiar and exceptional practical difficulties or exceptional and undue hardship to the Applicant

C. The spirit of the SLDC is observed and substantial justice is done because the variance improves the building aesthetics from the perspective of the home owner and neighborhood without compromising the protection and safety of the infrequent users of the unoccupied utility structure.

15. The Applicant acknowledged that one of the objectives of the property line setback requirement is to ensure that development does not pose a fire hazard or a nuisance to adjacent property.

16. The Applicant acknowledged that it had not done an analysis sufficient to certify that there would be no rise in flood elevations as a result of the development.

17. The Applicant offered to provide a certificate that the bank of the arroyo was stable, but did not offer to stabilize the banks with rip-rap as required in order to qualify for a 25 foot setback from the floodplain.

18. As to the variance to Chapter 7, Section 7.17.5.2.6 to place facilities within the 75 foot setback from the FEMA designated Floodplain Hazard Area, staff established that:

A. The variance is contrary to the public interest because the SLDC requires a 75 foot setback from the floodplain rather than the bank of the arroyo, making this variance much more significant than the Applicant understood. Although that setback could be reduced to 25 feet with bank stabilization, the Applicant's engineer has not provided certification that the banks are stable. Additionally, the Applicant has not demonstrated that, water tight with walls impermeable to the passage of water with structural components that have the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyance. The

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Applicant has not demonstrated the proposed encroachment into the floodplain will not result in any increase in flood levels during the occurrences of the base flood discharge. Finally, the engineer has not certified that the embankment of the arroyo is stable or agreed to stabilize the embankment, and has proposed rip-rap to fortify the building rather than to stabilize the arroyo bank as required.

B. The reasons offered to establish the extraordinary and exceptional situations or conditions of the property make strict application of the SLDC result in peculiar and exceptional practical difficulties or exceptional and undue hardship to the Applicant is outweighed by staff's concern that a 100 year storm event could cause upstream and downstream flooding.

C. Contrary to the spirit of the SLDC, the variance creates a safety concern due to the proximity to a FEMA designated floodplain area which could exacerbate the safety concern posed by the absence of adequate property line set backs that increase the risk posed by a fire in the utility infrastructure.

19. As to the variance to Chapter 7, Section 7.11.12.3.3 to allow a 25 foot separation from access points rather than a 200 foot separation, staff established that:

A. The variance is contrary to the public interest because even AASHTO requires a minimum separation of 125 feet. Although the structure may be infrequently used, any time maintenance occurs, there is no parking and well trucks and other equipment may impede and create safety hazards for pedestrians and other vehicles. Additionally, safety is compromised because the turning radius for the road intersection and radius for the driveway merge into each other. There would be no need for this variance if the Applicant acquired additional right of way further away from the intersection.

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B. The reasons offered to establish the extraordinary and exceptional situations or conditions of the property make strict application of the SLDC result in peculiar and exceptional practical difficulties or exceptional and undue hardship to the Applicant are inadequate, because they address aesthetics and cost, both of which are outweighed by the safety risks associated with the variances and the fact that the risks can be resolved without variances if the Applicant simply acquires additional easement to the east.

C. The spirit of the SLDC is not observed and substantial justice is not done if the variance is granted despite the fact that traffic counts showed peak A.M. volumes at four vehicles and peak P.M. volumes at 5 vehicles, because the safety risks previously described will exist.

20. Staff addressed the variance criteria for the variance to Chapter 7, Section 7.3.3.7, Table 7-A, to allow a 7.5 foot set back from the property line rather than a 25 foot setback as follows:

A. The variances are contrary to the public interest because the structure is in a residential area and, although the structure is not occupied, the existence of a structure containing a well and processing equipment does pose some risk of fire, especially when placed within a FEMA designated floodplain without bank stabilization. Acquisition of additional easement would obviate the need for a variance to lot line setbacks and the placement of the structure within the setbacks to the floodplain.

B. Obtaining sufficient easement to avoid variances could have been accommodated since the setback requirement existed prior to the easement acquisition. The Applicant's decision to acquire an easement for this project which would require variances, does not constitute an extraordinary and exceptional situation or condition of the property making

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strict application of the SLDC result in peculiar and exceptional practical difficulties or exceptional and undue hardship to the Applicant.

C. The spirit of the SLDC is observed and substantial justice is done when no variances are requested and the Applicant acquires the easement necessary to safely site the utility structure in accordance with SLDC requirements.

21. At the public hearing, Kristina Hornig spoke in opposition to the Application because the structure would impede her views and create unnecessary safety risks. Ms. Hornig also expressed concern for the quality of the water which would be introduced into the water system from this well.

22. At the public hearing, Joe Loewy and John Poles spoke in favor of the Application. Mr. Lowe confirmed the need for the additional water supply, shared his opinion that the variances preserve the health, safety and aesthetics of the community and the environment, and advised that the variances are supported by the neighborhood association.

23. Mr. Poles testified that he personally witnessed, within the past three years, a flash flood in the area of this development and that Carissa Road and Avenida Torreon were under water and the water spread in three directions approximately fifty feet. He could not comment on the depth of the water during that flood event.

24. The record does not contain sufficient engineering plans to support the variance requests. The Applicant failed to provide engineering certificates that the flood levels will not increase due to the development or that the banks of the arroyo are sufficiently stable.

25. The variances requested are contrary to public interest because they create safety concerns for pedestrians and vehicles as a result of the location of the driveway, increase fire risk due to the proximity of the structure to the adjacent property and within the setback to a FEMA

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designated floodplain, and the proposed placement of the facility may cause negative impacts to the structure and flooding upstream and/or downstream during a 100 year flood event.

26. The Applicant failed to establish that there are extraordinary and exceptional conditions of the property, such that strict compliance with the SLDC would result in peculiar and exceptional practical difficulties or exceptional and undue hardship to the owner. The variances are requested due to Applicant's failure to obtain sufficient easement to meet SLDC requirements, rather than due to any extraordinary and exceptional conditions of the property.

27. The spirit of the SLDC is observed by denying the variance request in light of the safety concerns raised by each of the variances. Additionally, the placement of the facility in this location may protect the interests of the property owner who sold the easement to the Applicant, however the placement compromises the view of a neighboring property owner.

WHEREFORE, the Planning Commission hereby denies the Application of Eldorado Area Water and Sanitation District for a variance of Chapter 7, Section 7.17.5.2.6 to allow an 800 square foot well production facility/and water treatment purifying equipment to be placed within the 75 foot setback from the FEMA designated Floodplain Hazard Area; a variance of Chapter 7.11.12.3, Table 7-15, to allow a 25 foot separation from access points; and a variance of Chapter 7.3.3. Setbacks, Table 7-A (Setback Table) to allow the facility to be located 7.5 feet from the property boundary.

IT IS SO ORDERED.

This Order was adopted by the Commission on this ____ day of _____, 2017.

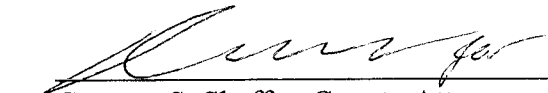
THE SANTA FE COUNTY PLANNING COMMISSION

Filandro Anaya, Chairperson

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



Gregory S. Shaffer, County Attorney

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