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STATE OF NEW MEXICO) ss

SLDC HEARING OFFICER M
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TRANSCRIPT OF THE

SANTA FE COUNTY

SLDC HEARING OFFICER MEETING

Santa Fe, New Mexico

July 27, 2017

I. This meeting of the Santa Fe County Sustainable Land Development Code Hearing Officer meeting was called to order by Santa Fe County Hearing Officer Nancy Long on the above-cited date at approximately 3:03 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Staff Present:

Vicki Lucero, Building & Services Manager
John Lovato, Development Review Specialist
John Michael, Development Review Specialist
Paul Kavanaugh, Building & Services Supervisor
Jose Larrañaga, Development Review Specialist
Rachel Brown, Deputy County Attorney
Tony Flores, Deputy County Manager

II. Approval of Agenda

HEARING OFFICER LONG: I will approve the agenda. There is an amended agenda that was published, and so cases A. and B. are tabled. So we will begin with Case C.

III. Public Hearings

C. CASE # CUP 17-5080 Tumbleroot Brewing LLC Conditional Use Permit. Tumbleroot Brewing LLC, Jason Kirkman/Jason Fitzpatrick, applicants, request approval of a Conditional Use Permit to allow manufacturing of craft beer and distilled spirits. Tumbleroot Brewing will occupy an existing 4,250 square foot structure to house a brewery,

a distillery, a packaging line, both warm and cold storage for the product and a small tasting room. The site is within the Planned District Santa Fe Community College District (CCD) and zoned as Employment Center (CCD-EC). The site is located at 32 Bisbee Court via Hwy 14 within T16N, R8E, Section 24, SDA-1 (Commission District 5)

Hearing Officer Long read the case caption.

JOSE LARRAÑAGA (Case Manager): Thank you, Hearing Officer Long. The applicants are requesting approval of a Conditional Use Permit to allow a manufacturing use within an existing structure. The manufacturing will consist of a small production brewery and distillery. The site is within the Planned District Santa Fe Community College District, Employment Center of the Sustainable Land Development Code. Table 8.44: CCD Use Table, illustrates manufacturing plants as a conditional use which is a permitted use within the Employment Center Subdistrict upon approval of a conditional use permit.

The applicants propose to utilize the existing 4,250 square foot structure to house a brewery, a distillery, a packaging line, both warm and cold storage for the product, and a small tasting room. Table 8.44: CCD Use Table, illustrates a tap or tasting room, warm and cold storage, and the sales of beer, wine, and liquor for off-premises consumption as a permitted use within the Employment Center Subdistrict upon approval by the Land Use Administrator.

The applicants propose to make minor modifications to the interior of the structure to meet the needs of the brewing facility. The exterior of the existing structure as well as the parking and access will not be altered. The lot is built out and most site improvements are existing. Limited outdoor development is proposed.

Building and Development Services staff has reviewed this project for compliance with pertinent SLDC requirements and has found that the facts presented support the request for a conditional use permit to allow a manufacturing use within an existing structure: the use is compatible with the current development within the Employment Center; the use will not impact adjacent land uses; and the application satisfies the submittal requirements set forth in the SLDC inclusive of the conditional use criteria set forth in Chapter 4, Section 4.9.6.5.

The review comments from state agencies and County staff have established findings that this application to utilize an existing 4,250 square foot structure to house a brewery, a distillery, a packaging line, both warm and cold storage for the product, and a small tasting room is in compliance with State requirements and design standards set forth in the SLDC.

Staff recommends approval of a Conditional Use Permit to allow the manufacturing of craft beer and distilled spirits within an existing 4,250 square foot structure, located at 32 Bisbee with the following condition:

1. The CUP showing the site layout and any other conditions that may be imposed through the approval process shall be recorded at the expense of the applicant in the office of the County Clerk in accordance with Chapter 4, Section 4.9.6.8.

Staff requests the Hearing Officer memorialize findings of fact and conclusions of law in a written order. The Santa Fe County Planning Commission will be holding a public hearing on this matter on September 21, 2017. Hearing Officer Long, I stand for any questions.

HEARING OFFICER LONG: Thank you. I couldn't tell from the pictures. Is this a free-standing structure or part of a larger building?

MR. LOVATO: It is part of a larger building.

HEARING OFFICER LONG: And what is the limited outdoor use that is planned? Is that seating as part of the tasting room, or are they allowed to do that?

MR. LOVATO: They are allowed to do that once their liquor license gets approved. They have room for seating but the plans that we have are just for the structure itself and the parking and the existing landscaping.

HEARING OFFICER LONG: All right. Thank you. The applicants are present I assume? All right. Will both of you come forward and I can have you sworn in at the same time in case you both want to speak.

[The applicants were placed under oath.]

HEARING OFFICER LONG: Go ahead with anything you would like to address. The staff has recommended approval, so with that I'll probably be inclined to go with their recommendation. I make a recommendation and I don't do that until I issue a written decision within two weeks of today, but if there's anything you would like to add regarding the presentation please feel free to do so.

[Duly sworn, Jason Fitzpatrick testified as follows:]

JASON FITZPATRICK: So just to answer the couple of questions that you did have, this is a picture of the building that we're talking about, and it's just that center section there. There are two on the other side. One is a lighting showroom and sales office and the other is a warehouse for Santa Fe Tortilla Company. And there will be no outside seating.

HEARING OFFICER LONG: What will be the hours of operation for you?

MR. FITZPATRICK: So the hours of operation, we'll start manufacturing early in the morning, depending on what the requirements of that workday are. I would say sometimes as early as 6:00, but most of the time it would be between 8:00 and 9:00. We will be receiving shipments in of grain and raw product and those trucks we'll start receiving those trucks around 8:00 am and that will be probably once or twice a week. Very minimal. And our hours of operation for the taproom, most of that business will come during tours on the weekends but it will not be open past 10:00 pm.

HEARING OFFICER LONG: Do you plan to serve any food?

MR. FITZPATRICK: We will serve supplemental food. It won't be produced on site. It will all be brought in from offsite.

HEARING OFFICER LONG: And what types of beer do you plan on brewing.

MR. FITZPATRICK: I'll let the brewer tell you.

[Duly sworn, Jason Kirkman testified as follows:]

JASON KIRKMAN: Yes, just a variety of ales, lagers, and because we are a brewery and distillery, we'll be focusing on kind of where those two products meet, so barrel-aged beers will be something that's kind of part of our regular offerings.

HEARING OFFICER LONG: Okay. Will you have employees?

MR. FITZPATRICK: Yes, we will. So the two of us are the only employees now. We're the founders, Jason Kirkman, he's in charge of brewery and distillery operations. Jason Fitzpatrick – me – I'm in charge of business operations. At that site we do plan to have two full-time employees as well as part-time employees, probably up to four part-time employees. We'll also have, and have submitted with the City of Santa Fe for a special use permit for a taproom closer into town, and we plan to have upwards of 20 employees at that taproom.

HEARING OFFICER LONG: Great. Now, there is one condition that staff has recommended and that is just that you record the conditional use permit showing the site layout and that that be at your expense with the County Clerk. I take it you don't have any problem with that.

MR. FITZPATRICK: We have no problem with that.

HEARING OFFICER LONG: Okay, let me ask if there's anyone here that came to speak in regard to this application for the conditional use permit. No one is present that wishes to speak to this application. Okay. Thank you very much and good luck to you with your business ventures. It's exciting.

- D. CASE # V 17-5170 Hager Road/Los Sueños Trail Extension Variance.**
Los Sueños Trail Extension, Inc. and the Catholic Foundation,
Applicants, Jenkins Gavin, Inc., Agent, request a variance of the
Sustainable Land Development Code (SLDC), Chapter 7, Section 7.11
Road Design Standards, Table 7-13, Rural Road Classification and
Design Standards (SDA-2 and SDA-3) to permit the construction of
the Hager Road/Los Sueños Trail Extension from collector road
standards to local road standards. The 14 lots, referred to as the
Hager Lands, are accessed via County Road 70 (West Alameda St.)
within Sections 30 & 31, Township 17 North, Range 9 East
(Commission District 2) [Exhibit 1: West Santa Fe Association Letter in
Opposition; Exhibit 2: Applicant's Suggested Modified Conditions;
Exhibit 3: Trail Agreement]

Hearing Officer Long read the case caption.

JOHN MICHAEL SALAZAR (Case Manager): Thank you, Hearing Officer Long. Handed out to you was a letter of opposition from the West Santa Fe Association, along with some proposed modified conditions of approval by the applicant's agent. So as mentioned in the caption, the applicant, independent of any proposal to develop the Hager Lands, is requesting a variance of SLDC Table 7-13, Rural Road Classification and Design Standards, to permit applicant to construct the Hager Road/Los Sueños Trail Extension at local road standards rather than the more rigorous collector road standards.

Within the SLDC Official Map Series Future Road Network, Exhibit 6, the Hager Road/Los Sueños Trail extension is designated as a minor collector-rural road. Table 7-13 requires a collector road for roadways with an average daily traffic count of 401-1999

vehicles per day and requires two 11-foot driving lanes with a minimum right-of-way width of 80 feet.

The applicant states that a collector road is not warranted at this time and is requesting a permit to construct an access road for the existing 14 lots at the local road standards and including a dead ending to the road with a cul-de-sac. Table 7-13 allows for cul-de-sacs to be used on roads with an average daily trip count of 300 or less.

The applicant provided an average daily traffic report prepared by Santa Fe Engineering Consultants, which estimates the daily traffic for the road at 250 vehicles per day, despite the fact that the fourteen lots are not yet developed. That trip count assumed that each lot would contain no more than one dwelling unit. The applicant asserts that, based on the average daily traffic of 250 vehicles, a collector road is unnecessary, and only a local road is needed.

Section 7.11.7.1 prohibits dead end roads accessing 30 or more residences. The applicant states that there are currently 14 existing lots with the potential of one landowner, Ponderado, LLC, subdividing an additional 12 lots in the foreseeable future. This would bring the total lots up to 25, which, if developed at a density of one dwelling unit per lot, would still be under the 30-residence limit as set forth in Chapter 7, Section 7.11.7.

However, it is difficult to project future use of the road as development proposals have not been presented and future use could be higher. Staff reviewed the potential number of lots which could be placed on the fourteen lots and accessed off of Hager Road. The analysis included the following: the subject properties are within the Residential Estate zoning where density is one dwelling unit per 2.5 acres; the total acreage of the fourteen lots is 368.3 acres; the total number of potential dwelling units on those fourteen lots is 147; the SLDC allows for the potential of each lot being allowed an additional accessory dwelling unit which could increase the total number of dwelling units; the increase in the number of dwelling units could be accomplished through land divisions or development permits or a combination of both.

The applicant's agent addressed the variance criteria and staff provided a response to each one as noted in the staff report.

The Growth Management Department's Planning Division has reviewed the application and provided the following long range planning, historical notes regarding this roadway: the Los Sueños Trail extension is referenced in the 1999 Arterial Road Task Force as a number 2 local priority for the West Area as a north/south connector road to be linked to County Road 70; Los Sueños Trail is also identified in the 2006 TAP Community Plan – that's the Tres Arroyos del Poniente Community Plan – and described as a two-lane road normally associated with trail and bike paths; Los Sueños Trail extension is identified in the SLDC Future Road network and Map 10-3, as a collector road; Los Sueños Trail and Los Sueños Trail Extension, as indicated in the SLDC Future Road Network Map connects Las Campanas Drive at its north terminus and County Road 70 at its south terminus; the Los Sueños Trail extension would function as a collector, providing a north-south access to development in the Las Campanas/Cloud March area and new development adjacent or near the Los Sueños Trail extension to County Road 70; the Los Sueños Trail Extension has been identified as a potential capital project in the County long-range capital planning process.

Recommendation: Staff recommends denial of the applicant's request for a variance of Table 7-13, Rural Road Classification and Design Standards for SDA-2 and 3. Should the Hearing Officer recommend approval of the variance, Staff recommends the following conditions. Hearing Officer Long, may I enter those into the record?

HEARING OFFICER LONG: Yes.

[The conditions are as follows:]

1. Right-of-way width shall be 80' and platted through all properties in which the Hager Road/Los Sueños Trail extension accesses.
2. The proposed design for the all-weather crossings shall be submitted with the permit application for the road improvements or at the time of subdivision application, whichever occurs first. All-weather crossings shall be designed and constructed to Collector Road standards.
3. Los Sueños Trail Extension shall be constructed from County Road 70 to the Los Sueños Trail/La Vida Trail intersection.
4. At the time that the Average Daily Traffic volume exceeds 400 trips per day on Los Sueños Trail Extension, the road shall be upgraded to Collector Road standards.
5. The property owners along Los Sueños Trail Extension shall enter into a Development Agreement for full build-out of Hager Road to Collector Road standards including the two all-weather crossings.
6. The applicant shall conduct a community meeting prior to the September 21, 2017 Planning Commission meeting and provide Staff with minutes and documentation from the meeting.

MR. SALAZAR: Staff requests the Hearing Officer memorialize findings of fact and conclusions of law in a written recommendation. The Santa Fe County Planning Commission will be holding a public hearing on this matter on September 21, 2017, and I'll stand for questions, Hearing Officer.

HEARING OFFICER LONG: So the 14 lots are referenced are vacant, large lots, I take it.

MR. SALAZAR: That's correct. Hearing Officer Long.

HEARING OFFICER LONG: And is there any development planned for those at this time that's been approved?

MR. SALAZAR: Hearing Officer Long, the only future proposal is the Ponderado, LLC tract which I believe is Lot 3.

HEARING OFFICER LONG: And what is the plan that has been submitted for that lot?

MR. SALAZAR: Well, it hasn't been submitted yet, Hearing Officer but the proposal is for 12 lots on that particular tract.

HEARING OFFICER LONG: And what are the lot sizes that are proposed?

MR. SALAZAR: I believe 2.5 acres is the average lot size.

HEARING OFFICER LONG: And in terms of the cul-de-sac or dead end, are you recommending that if the variance is granted that the road not be dead-ended?

MR. SALAZAR: Hearing Officer Long, that's correct. We're recommending a connection to the Los Sueños Trail/La Vida Trail intersection.

HEARING OFFICER LONG: Thank you. I may have some more questions later but that's it for now.

VICKI LUCERO (Building & Development Manager): Hearing Officer Long, if I could just add to what Mr. Salazar said in regards to the dead-end road, the cul-de-sac, there would need to be a separate variance request to allow that dead-end road as the code does not allow that and that was not part of the request. And then in addition, that road was always planned to be a connector road, not to ever have a gap in the road or a stopping point without connection to La Vida Trail.

HEARING OFFICER LONG: So it is not part of this variance request.

MS. LUCERO: That's correct.

[Duly sworn, Jennifer Jenkins testified as follows:]

JENNIFER JENKINS: Good afternoon, Hearing Officer Long. I'm Jennifer Jenkins with JenkinsGavin here on behalf of Los Sueños Trail Extension Association, essentially the Hager property owners. And I have a brief presentation, I'm a little baffled by what Ms. Lucero shared regarding the dead end. I specifically requested a dead-end road as part of the application. I have not been informed until this moment that that would be an additional variance request, so we don't need to discuss that right this second but I would request clarification on that prior to the close of the hearing.

So what is outlined in blue here is the extent of what we call the Hager lands. Mr. Hager owned a lot of the properties in this vicinity. He created some 40-acre tracts and then down below we have kind of an anomalous 67-acre tract here. Three of these tracts are owned by the Catholic Foundation in Albuquerque and then there are some other independently owned tracts by various property owners that live out of state as well as that live locally.

And just to get our bearings, this is 599, this is where West Alameda used to go straight before 599 bisected it here, and then West Alameda continues, and then you get into the Piñon Hills Subdivision here, to the west, and then we have the existing Puesta del Sol Subdivision to the east. That is accessed via La Entrada off of the 599 frontage road here. This is the Arroyo las Trampas and this is the Arroyo Frijoles.

A 66-foot easement was created along this red line here on a plat in 1998 intended as the primary access point to what was Suerte del Sur which was a master plan approved here, over 300 homes. And there was a cost sharing agreement among Suerte del Sur and the Hager property owners to share the expense of constructing Hager Road or what has come to be called the Los Sueños Trail Extension, because Los Sueños Trail currently terminates at the north boundary of the Suerte property coming out of Las Campanas, and then that would be the extension would be all the way south down to Alameda or Highway 70.

In 2015 the master plan for Suerte del Sur expired. It is no longer. And what went with that was Suerte's obligation to pay for 2/3 of the cost to construct this road. Each of the original seven Hager lots contributed money into an escrow account. So they contributed their funds up front. Suerte was not required to contribute their funds until they recorded their first subdivision plat for their first phase, which never occurred. So 2/3 of the funding for this has gone away.

So now we have the Hager lands, which the zoning for these properties is 2.5-acre lots, very traditional county zoning in this area. And they're left holding the bag, just to create reasonable access to these properties. And the interesting thing is, although staff

directed us to pursue the variance request to construct to local road standards, there is actually no basis in the code that would require a collector road to serve 14 lots. There is no basis in the code. Should the Ponderado Subdivision occur, which is here, if that occurs – there is no submittal before the County – but that is the next possible, most likely next development proposal, there's no basis in the code to require a collector to serve 25 lots.

A dead end is permissible serving a maximum of 30 lots. As a matter of fact, speaking to the connectivity question, if we look in the code, Section 7.11.3.1, which speaks directly to connectivity, and it says, The arrangement of roads in any development shall provide for the continuation or appropriate projection of existing or proposed highway or arterial roads. There's no mandate for connectivity for collector roads, especially when it is not warranted, based upon the number of lots or dwellings that would be accessed.

So after the Suerte del Sur master plan expired, Suerte came forward, just with a lot line adjustment – not a big deal. So these are the Suerte lands here. So the Hager lands start here. So this is the northern boundary of the Hager lands, so that's the northern extent; they go down south from there. This is where Los Sueños Trail comes out of Las Campanas and was the original termination there. And so as part of this lot line adjustment that Suerte did in late 2015, the County required that they construct a 20-foot gravel road along that pre-platted easement, the 66-foot wide easement that was platted to accommodate the extension, that they build a 20-foot gravel road in order to create access to Lot 1 here.

Okay. That's fine. That's not a problem. It was just a lot line adjustment. These are large tracts. This is a 96-acre tract. This is a 46-acre tract. Lot 1 is a 31-acre tract. Lot 2 is a 52-acre tract. So staff is talking about what's the potentiality. That we have to build a road today for something that might or might not happen in the future. These lands here that would be accessed via Los Sueños Trail, there's the potential based on 2.5-acre lot sizes for 182 lots. No, actually, it's more than that. Let me double-check my notes on that point. 261 – my apologies.

So if staff is so concerned about how many lots could potentially be created then why was Suerte permitted to build this to local road standards? It doesn't make any sense. On the face of a lot line adjustment where you need to provide access to your furthestmost lot, sure, a local road totally makes sense. These are large tracts. But where is the basis in the code to treat these landowners differently? There is none.

Yes, the SLDC official map says Hager Road is a future collector road, but today that is not warranted. And staff acknowledges it's on a potential CIP list for Santa Fe County. If the County is so concerned about providing another means of access for Las Campanas then the County needs to invest in that. They need to have some skin in the game to make that happen. If it's such a critical roadway connection for Santa Fe County that should not be on the backs of these landowners, sitting with 14 lots.

So I believe staff provided a copy – we have some proposed modifications to the conditions of approval and I would just like to review those briefly. So with respect to the right-of-way, so as I mentioned, there's a 66-foot right-of-way, and why is it 66 feet? Well, here's why. The existing right-of-way for Los Sueños Trail as it moves through Las Campanas is 66 feet. So obviously that was what precipitated the new right-of-way to accommodate the extension being at 66 feet. So – and it's also important to note that

there is an agreement that I have copies of which I'd be happy to provide, among these parcel owners, the parcels through which the easement actually travels, to provide along the west boundary here a 15-foot trail easement. And there is language in the TAP Ordinance as well as elsewhere in trails and open space and Santa Fe County also was encouraging discontinuous trail easement to the right-of-way in order to provide appropriate separation, especially because the trail would accommodate equestrians. So there's already a commitment, which I can provide to you, to provide a 15-foot trail easement here. So with the 66 feet and the 15 feet non-contiguous easement we're actually at an 81-foot right-of-way dedication. So we would ask for that to read accordingly.

In condition #2 we are of course – of course we'll submit our designs for the all-weather crossings but to require them to be developed to collector standards, we are seeking a variance for local road standards does not really make any sense, and so we would ask to build not only the roadway itself but the crossings at local road standards as well.

With respect to the dead end, as I mentioned I would look forward to staff sharing with me the assessment the dead end is not permissible for 14 lots. The code is pretty clear that a dead end can serve up to 30, and again, this is the first I am hearing of this. And so with respect to that condition, at the time that we are exceeding lots, then yes, that extension needs to happen. That is very, very common. If I owned a big tract of land on a dead-end road and my subdivision kicks the amount of lots on that road over 30 the County is going to say I'm not going to approve your subdivision until you connect your road because you can't have more than 30 lots on a dead end. That's just how it works. These things sometimes happen sequentially over time. That is how it's happened in Santa Fe County for decades.

And when we have a developer driven improvement, instead of a County funded improvement, developer driven improvements happen as development happens. It's the nature of it. If the County feels like this collector road is warranted today to serve Las Campanas then the County needs to build it.

Similarly for condition #4, a local road can serve up to – based upon, assuming 10 trips per day per lot then a local road, that requirement does not kick in until we're at 40 lots. So again, yes, the road would need to be upgraded potentially at a certain point in order to bring it to standard to be in compliance with the SLDC.

Condition #5, we request that be deleted wholesale. Again, I'm not familiar with any basis in the code to treat these particular landowners uniquely with respect to a developer agreement. Again, as projects come in and requests are made, the County with every single subdivision application, the County makes an assessment based upon the number of lots that are here and the number that are proposed, is the access compliant or is it not? It's a simple question. Every single subdivision request is assessed on that basis. And if offsite road improvements are required the Count will require them.

And of course with respect to the request for a community meeting, we are happy to do that and are already in the process of scheduling that meeting.

And with that, I would be happy to stand for any questions. Thank you very much for your time.

HEARING OFFICER LONG: So there is no agreement currently in effect then for developing the road among the property owners with Suerte bowing out?

MS. JENKINS: There still is an agreement. Absolutely. I think that's an excellent question, Hearing Officer Long. So there's the agreement that created the Los Sueños Trail Association, that association, my client that is comprised of those original seven Hager lands, those original seven lots, is very much still in place. Those funds are secured. They are on deposit. It's almost \$700,000 sitting in a bank ready to be spent on a road. Absolutely. Yes. But then separate to that was a separate cost sharing agreement where the Los Sueños Trail Association and Suerte had a separate agreement to share those expenses and that agreement is essentially null and void with the expiration of the Suerte master plan.

HEARING OFFICER LONG: And why are you seeking this variance now and not in conjunction with a subdivision or some sort of a development application for one of those lots or all of them?

MS. JENKINS: Well, all of them would not – these are all separate property owners. They all have separate agendas. Several of them are interested in selling. Like the Catholic Foundation. Hager donated this land to the Catholic Foundation. Prior to the recession they were able to sell a few of the lots and they retain ownership of three of them. They are not developers. So it is their desire to sell the remaining lots because it really goes counter to their mission for them to hold on to real estate assets for a long period of time. So there is no coordinated effort in terms of some large, master-planned community or something of that nature.

The Ponderado project was approved previously, and there was an approved subdivision. It was subject to construction of Hager Road. But due to the delays and the Suerte expiration the Ponderado Subdivision actually expired. That approval expired. So the owners of that property, once this issue is resolved, are interested in resubmitting that subdivision application under the SLDC. But putting together a subdivision submittal under the SLDC is really an expensive, time-consuming endeavor. And to do that without knowing what the access requirements are, it's a huge offsite improvement and it's expensive.

So that is something that we need to understand now, of what that requirement is going to be before there is significant dollars invested in this particular roadway. And one other thing I would like to point out, Hearing Officer Long, and as I mentioned in my application letter, we had been in communication with County staff probably for the last 2 ½ years, I think, talking about options and alternatives with respect to the fact that again, 2/3 of the funding – poof – gone. And we have – everything you see in yellow here is a public road, a County-maintained public road. So we explored with the County – we're not trying to access 300 lots up here any more at Suerte. This is just a 2.5-acre county development pattern here consistent with Piñon Hills to the west and consistent with Puesta del Sol to the east.

We have access at all of these points. We would potentially take those escrow funds. We could make any improvements that might be necessary to bring these roadways up to standard to accommodate any additional vehicular trips. We explored that idea. Obviously, the Puesta del Sol neighborhood didn't love that idea. They are concerned about the additional traffic through their neighborhood, which we totally respect.

So out of respect for that, I'm not coming to the County saying I have access to a public road and I want to access it. We've been told not to do that, by the Public Works

Department, that that is not a viable option. These properties do not get to use the public roads. They have to build a brand new one to serve Las Campanas. So we're willing to do it but it has to be designed in a way that makes it feasible. You get to a point where it just doesn't make financial sense anymore. It just doesn't make financial sense.

HEARING OFFICER LONG: And how many lots had been planned for the Ponderado Subdivision? Do you know?

MS. JENKINS: Just 12. It's the same as it was before. It's the same density as it was before. The density in this area didn't change with the SLDC.

HEARING OFFICER LONG: Okay. Thank you.

MS. JENKINS: Thank you very much.

HEARING OFFICER LONG: How many people are here to speak to this application? If I could see a show of hands. Okay. We'll have a three-minute time limit for all speakers. Do we have the ability to start a clock? Can someone do that for me? Okay. All right the first person can come on forward and I'll hear from you.

[Those wishing to speak were placed under oath.

[Duly sworn, Roy McKeag testified as follows:]

ROY MCKEAG: My name is Roy McKeag and I'm a board member of the West Santa Fe Association, and I'm just here to be sure that the email that was sent to Penny Ellis Green, Growth Management Department is included in the record. I'd be happy to read it in if that's what it takes but that's my concern is that this letter which is –

HEARING OFFICER LONG: This is from the West Santa Fe Association?

MR. MCKEAG: Yes, ma'am.

HEARING OFFICER LONG: I do have a copy of that letter, and our recorder will have it as well, or she has it already.

MR. MCKEAG: Okay. So it is included in the record, and do you see any reason for me to read it into the record? Do you think people in the audience care?

HEARING OFFICER LONG: No, sir. There's no reason for you to read that into the record. If there's anything that you want to highlight about the letter you're welcome to do so.

MR. MCKEAG: I did hear about subsequent subdivisions will be required by the County to improve the roads if they come in, but one of the concerns that we have is that there's a lot of serial subdivision going on, so that you have a 40-acre lot and you divide it up into four ten-acre lots and then that's not a subdivision; that's just a split among friends, and then each one of those divides again and again and again, and finally, you get down to 2.5 acres for the whole subdivision. But I'm not sure that the County will require anyone along that serial subdivision line to contribute to the road. It seems to me that that's not going to happen, but maybe it will, but if it's not, then there's going to be no entity that will have the ability to make the road happen that's been planned for many, many years. Thank you, ma'am.

HEARING OFFICER LONG: Thank you.

[Previously sworn, Seguna Severson testified as follows:]

SEGUNA SEVERSON: Seguna Severson. I was president of the West Santa Fe Association, Piñon Hills and that area when we worked with the County Very much on these things and I just wanted to say, I have so many things, back to what Ms. Jenkins said and she had a very long time to speak so when the public can only speak for

three minutes it's very hard to say what we need to say for you to understand, just respectfully.

Ms. Jenkins was not involved so of course she would not know, but there were so many agreements made. Richard Hager passed away and left all those lands north of Puesta del Sol to the Catholic Foundation. He did not have any immediate heirs. The Catholic Foundation did not know what to do with that and worked with, at that time, Commissioner Paul Duran and he helped them come up with these ideas of subdividing it, but everybody, including the Ponderado owners from California knew what they were getting into. They knew that this was going to have to come before the County and be a planned community. Everybody was well aware of that.

For the Ponderado – and we sat with the Ponderado people at that Land – they might not have told you this. In the Land Use Planning Office, downstairs with the County Commissioners trying to have them just give us a fire break. Because we are all dead end and Puesta del Sol is all dead end. And Sierra Azul is all dead end. We have no fire hydrants, any of us. A house just burned down on Calle Francisca this winter because there's no fire hydrants in any of these neighborhoods to either side of Ponderado. We asked the Ponderado owners from California to please give us a fire break. They said not over our dead body. It's on the public record; we can go find it. They said we are not giving you anything.

So to come now and say they could come through Puesta or Piñon Hills after they wouldn't even give us a breakaway fire gate? That's good neighbors, right? They said not over our dead body. We're not giving you anything. And I just want to say, and again, Ms. Jenkins wasn't there. Everybody who bought from the Hager Catholic Foundation lands knew that this was a planned thing, that the road was going to have to work, and whether Gerry Peters builds Suerte del Sur, somebody will. There is no – I'm in the building world. There is no empty land in Santa Fe. That section that Gerry Peters owns at the end of Hager Road, at the north end, is going to be bought by somebody.

So, yes, as a stop-gap for the Ponderado developers in California, if you feel so bad for them, the County, I'm not understanding why they're crying. We tried to work with all those owners so long. I spent so many hours at the County, in meetings about this road and about getting trails and about getting fire access. And we did get fire access through Suerte del Sur. Gerry Peters was happy to give it to us; these people would not give it to us. So the whole thing about crying and hardship is not true. Everyone who bought those Hager lands knew what they were getting into.

And I just want to say there's a lot more to say but I know there's a three-minute limit, but I think you're going to have a lot of people come out in September to just say we came to the County in good faith to work with you, so please take us into consideration.

HEARING OFFICER LONG: Right. Thank you.

[Previously sworn, Don O'Sullivan testified as follows:]

DON O'SULLIVAN: Hello. My name is Don O'Sullivan. I live in the Sierra Azul neighborhood and it was previously referenced. I just wanted to come and speak to a few concerns about this, the plans associated with this. First, the notifications associated with this seemed to be inconsistent. Some of our neighbors were notified; others were not. It wasn't really clear to me how it was determined people were notified. And then just second of all, the notion of having a through road to the two connecting La

Vida Trail and Los Sueños there is a concern for our neighborhood in the sense that it could transform the area in a way that could be detrimental in terms of traffic and so forth, because the area that would be served by that is currently a bit of an island, a peninsula in terms of how it's served. And so if a new road is put in there it would create a great deal of traffic to serve those areas and that would be detrimental to neighborhoods both east and west of that road.

HEARING OFFICER LONG: So are you saying that any road along that easement you would be opposed to because of the increased traffic?

MR. O'SULLIVAN: Yes.

HEARING OFFICER LONG: Okay. Thank you.

[Previously sworn, Dave Munger testified as follows:]

DAVE MUNGER: I'm Dave Munger with Puesta del Sol. The history on this goes back quite a ways and Jennifer alluded to it. The ARTF put in the alignment. We all walked the alignment out there and it became part of the ordinance and it's platted and very specifically through there it was limited to various – within that of 100 feet, where it was 1,000 feet or some other larger number for everything else. So it was a very particular and looked at, considered alignment through there. That was ARTF.

The TAP plan comes along and validates that and says as much as they could say that to conform to that for new subdivisions. What we are mostly afraid of was the second part that Jennifer talked about, which was connecting to the existing roads. And with that threat there what we thought was settled science, so to speak, with the ARTF alignment, that got blown out of the water and all of a sudden we have thoroughfares through very small roads in the subdivision. That is not acceptable to us in any form.

The problem is, with Suerte dropping out, it became way too expensive, and I looked at the numbers, to construct this for such a small – well, the way it was being developed. The Archdiocese wasn't going to pony up another \$100, \$200k for each lot to do this and neither could or would the other lot owners do that. So therefore they are proposing using the existing roads, and we protested that decision.

So at this stage, what they're proposing is what we think is a very rational approach to this, is an interim approach. The long term would be to provide the continuance of that but at this stage it won't happen. What is the alternative? If this doesn't happen is the alternative is they have to use existing public roads. I don't know how else they would develop, if they are intent on developing. This proposal gets around that. It doesn't get around; it addresses that particular issue and for us, we support it wholeheartedly because of that issue. So three minutes. So anyway, that's my message. Thanks.

HEARING OFFICER LONG: Okay. Thank you.

[Previously sworn, Susan McMurray testified as follows:]

SUSAN MCMURRAY: Hi, my name is Susan McMurray, president of the Puesta del Sol Property Owners Association, and I also submitted a letter that should be in the packet. Basically, my main concern is maintaining the integrity of the individual neighborhoods in this region adjacent to and in some instances somewhat surrounded by Hager lands that are owned by various entities. I know Ponderado is one of them. Tierra Bella is one of them and all the Archdiocese lands. And our concern is we have County roads. They are extremely inadequate roads, and if they try to punch through to those roads and start using them the County is going to be on the line for major improvement

on those roads. Those roads are barely 20 feet wide. You can't fit two fire trucks or a dump truck and a large car going down those roads.

And I can't imagine that the County really cares about coming in and putting in the major improvements that would be needed and to put the crossings, especially while the Tierra Bella and the Hager lands, the Archdiocese and Ponderado are basically at the moment still small developments and as Jennifer said, they have this money and if they can put in this road now, it will ease a lot of the issues for the time being and it just doesn't have to be a major, a minor collector road. It would be perfectly adequate and a lot of the smaller roads, in, say, Puesta del Sol and the other ranges, and it will help alleviate the traffic and feed it all onto the frontage road and West Alameda.

So we really support this and Hager Road, ever since my family bought land in Puesta del Sol, Hager Road has always been on the maps that the County put together and we're just behind it 110 percent. Thank you.

HEARING OFFICER LONG: Thank you. Is there anyone else that wishes to speak to this application? Okay, that will close the public hearing and yes, the applicant may come forward again and I'll have a few questions for you as well.

MS. JENKINS: Great. Thank you, Hearing Officer Long. I just want to, in response to some of the comments that were made. This request is by no means an effort by the Hager landowners to shirk a responsibility. It is actually quite the opposite of that. Whether or not this road has asphalt on it or basecourse on it does not negatively impact Piñon Hills neighborhood or any of the neighborhoods west. I don't see the connection frankly. And yes, eventually, maybe as this property develops over the coming years we may see that connection, part of the County's official map, north into Las Campanas. It's not warranted today. So this is our effort to honor our neighbors and their wishes and to provide dedicated access to these properties in compliance with what is warranted today. Thank you.

HEARING OFFICER LONG: I think you had said earlier that you did not think this request warranted a variance and of course as you know, a financial hardship is not grounds for a variance.

MS. JENKINS: Correct.

HEARING OFFICER LONG: So you're saying that you're coming forward with this application but you do not believe that a variance is even required and you're requesting a decision on that issue?

MS. JENKINS: No, I'm not requesting – I think it was somewhat of an anecdotal comment. If I could – if I came to the County with a development permit for a road to serve 14 lots to build a local road to serve 14 lots that would be a dead end, that is compliant with the code, with the table in Chapter 7 for the roadway standards for SDA-2. That is really the point that I'm making.

HEARING OFFICER LONG: But the road that you're requesting really isn't to serve 14 lots because there's nothing there. So it's not as though people are going to use that road to go sit on their 100 acres or something. Or picnic there.

MS. JENKINS: Exactly.

HEARING OFFICER LONG: So it's really in anticipation of the level of development that you're anticipating some of these landowners will come forward with that still won't get it to collector standards. Is that it?

MS. JENKINS: Exactly. Exactly. So what we are looking at, and you make a very valid point, Hearing Officer Long, in that there is nobody living on this property right now. And we've tried to be very transparent with the County, as far as what is a pending – a potential pending proposal. So the potential pending proposal is a 12-lot subdivision. So if we were to look at this, it's really a local road serving 12 lots, or the potential for 12 residences. But of course it's appropriate to count all the existing lots of record because somebody could go get a building permit and build a house on those in their current state.

HEARING OFFICER LONG: Okay. That helps. Thank you.

MS. JENKINS: You're welcome.

HEARING OFFICER LONG: Okay, anything further from staff about the – or anything else?

MS. LUCERO: Hearing Officer Long, if I could just address some of the points that were brought up by the applicant. In regards to the dead-end road, the applicant was stating that it won't be serving more than 30 lots at what would be proposed with the 12 additional lots, there's 14 existing, 12 proposed lots within the foreseeable future, for a total of 25 lots. Many of those existing lots have potential for additional density beyond one dwelling unit per that lot. The 12 lots that could be created, as you know, right now, the Sustainable Land Development Code allows for accessory dwelling units, and the language in the code actually reads that dead-end roads shall not serve more than 30 dwelling units. It's not lots but it's dwelling units. So we're looking at the potential for the total number of dwelling units that would be served. So in that case, that's why I brought up the point earlier that that would be a separate variance request in order to establish a dead-end road there.

And in regards to the conditions that the applicant was proposing, I believe condition #1 is basically clarifying the lots that Hager Road actually – where the easement is actually located within lots 2, 3, 5, and 7. So I don't know that we have a problem with that, although I have not reviewed the trail agreement, so I would be a little hesitant to make a comment as to whether or not we would add that condition without having reviewed that trail agreement.

And then condition #2, staff would be opposed to the changes proposed by the applicant. The all-weather crossings, once those are established it's expensive, time consuming, as far as design, to go back and retrofit what's already there, so staff is requesting that at the very least the crossings be built to collector standards to avoid future potential issues.

Condition #3, staff is not in agreement with making the change to condition #3. As I had stated earlier, the dead-end road applies to the number of dwelling units, not the number of lots, and this was always intended to be a through road that connects La Vida Trail to County Road 70.

Condition #4, at the time that the average daily volume exceeds 400 trips per day, that's actually a standard that is taken directly out of the code, out of the traffic table for SDA-3, which that's the cutoff. Basically that would kick it into collector road standards once the average daily trips were above 400, and the code also sets guidelines as far as the number of dwelling units. The average daily trips per dwelling is ten per day. So once we hit 40 dwelling units that's when that number would kick it into having to improve to

collector road standards. So staff would not be in support of that condition being changed.

Condition #5, staff put that condition in there to allow the applicant to recoup some of the costs of the road improvements. The code does allow for that, for a development agreement so that the cost could be shared amongst all the property owners.

HEARING OFFICER LONG: And are you requesting that because this applicant represents all the property owners? Because I would be concerned that you may not be able to get them all to agree.

MS. LUCERO: And Hearing Officer Long, there's also the property owners to the north that are not represented by the applicant that could be a part of this agreement as well.

HEARING OFFICER LONG: So maybe it's something that should be explored but not required, because I don't know that you could require that.

MS. JENKINS: We're very willing. The development agreement, the first I heard of it was in the staff report and I was a little unclear so I appreciate Ms. Lucero's clarification on what the intent is behind that. So I would be very willing, maybe prior to Planning Commission, we could sit with staff and kind of clarify what the intent of that would be and what maybe some of the points would be on that. I'd be happy to do that.

HEARING OFFICER LONG: All right. And did you have a comment regarding the cul-de-sac?

MS. JENKINS: I did have a comment. I think what I'm struggling with, Hearing Officer Long, is this idea of potentiality. We have the potential for this many dwelling units so it must be a through road. Well, Suerte del Sur has the potential for 261 lots, so that makes the potential – what's that times two? Over 500 dwelling units. And yet they were permitted to do a dead-end, local road through their parcels, which are large, what one could call undeveloped master tracts, which is very similar to the Hager lands. So there didn't appear to be any concern about potentiality for that roadway improvement. And they were required to put up a financial guarantee for that, to make that extension south to access their Lot 1.

So this whole idea about potentiality – those dwelling units don't exist. We're asking for the opportunity to comply with the code based on what exists and there are actually no dwelling units yet. And as things develop, things will have to be improved. Of course they will. That's typical how it works. But to burden these landowners with something like that today, it's not fair and it's inconsistent with the code. Thank you very much.

HEARING OFFICER LONG: All right. That will conclude this case and for those of you who came to speak regarding the case, you may have heard earlier that I don't issue my decision here. I issue a written recommendation that will go on to the Planning Commission for their consideration. They may like my recommendation and they may not. So I would encourage you to attend that meeting as well to express your views. Yes, ma'am.

MS. SEVERSON: Will we be able to read your recommendation before the Planning Commission?

HEARING OFFICER LONG: Yes, it will be public once it's finalized and becomes part of the Planning Commission packet. Is there a way for interested parties to get that, Vicki?

MS. LUCERO: Hearing Officer Long, it also gets recorded down in the Clerk's Office, once you finalize your decision and the packets are actually put on line, the Planning Commission packets are on our website.

HEARING OFFICER LONG: So you can access it that way. Thank you all for coming this afternoon. I appreciate it.

- E. CASE # V 17-5130 Kevin Braun Variance. Kevin Braun, applicant, requests a variance of Chapter 7.17.10.4.2 (Roads and driveways) to allow a driveway to disturb eight separate occurrences of 25 percent slope or greater. The property is located at 16 S. Cloudstone Drive, within Section 5, Township 16 North, Range 10 East (Commission District 4)**

Hearing Officer Long read the caption.

JOHN LOVATO (Case Manager): Thank you, Hearing Officer Long. The property is located above the 7,400-foot elevation and is currently vacant. The property is subject to Chapter 7.17.10, Development at or above 7400 feet of the Sustainable Land Development Code. Section 7.17.10.4.1 states, "Roads and driveways shall not be designed or constructed on slopes over 25 percent." Section 7.17.10.4.2 states, "exceptions may be approved by the administrator for roads and driveways proposed to cross slopes greater than 25 percent that disturb no more than three isolated occurrences of up to 1,000 square feet each, provided the applicant demonstrates that crossing such slopes has minimal impact to terrain or to visual quality and otherwise would conform to the purposes, design criteria and development standards set forth in this Section 7.17."

Therefore, the applicant is pursuing the request for a variance to access what he has identified as the only buildable area on the property. The applicant is proposing to disturb eight occurrences of 25 percent slope for a total of 7,963 square feet of 25 percent slope disturbance for construction of a driveway. Two of these disturbances are above 1,000 square feet and the rest are all under 800 square feet. The proposed driveway is 900 feet in length, 14 feet in width, and has a maximum grade of 10 percent. The majority of the slope disturbances are due to natural drainages that affect the property.

The applicant states that there is no other buildable area on the property due to topography and drainages associated with the property. One of the arroyos on the property is a FEMA designated floodplain. The applicant's architect stated, "It would be unstable conditions for a permanent residence to be built so close to the floodplain." The applicant has engineering plans with drainage calculations and has designed all-weather access with a series of culverts. The applicant would like to get the driveway in place so he can begin to build his residence.

The applicant has addressed the variance review and staff has responded as addressed in the report.

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 topography of the lot, the applicant is unable to build a home on their lot without some sort of variance. Criterion 1 is that the request is not contrary to the public interest. The

request meets this criterion as the site offers limited buildable area and meets all other aspect of the SLDC.

The inability to build on the property due to the requirements in Chapter 7, Section 7.17.10.4.1, demonstrates that they have met the variance criteria 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 access to the only buildable area on this property crosses three drainages. The terrain on this property consists of steep slopes due to drainages and offers minimal building locations. In order to construct any residence on this property a variance request is necessary. This causes peculiar and exceptional practical difficulties or exceptional and undue hardship on the applicant/owner, which meets Criterion 3, that the spirit of the SLDC is met. Therefore, staff recommends approval of the applicant's request for the variance.

Staff requests the Hearing Officer memorialize findings of fact and conclusions of law in a written recommendation. The Santa Fe County Planning Commission will be holding a public hearing on this matter on September 21, 2017.

Hearing Officer Long, I stand for any questions you may have.

HEARING OFFICER LONG: Thank you. I know I had a question but I found it in the material, so thank you. Will the applicant come forward please and be sworn in?

[Duly sworn, Kevin Braun testified as follows:]

KEVIN BRAUN: I'm Kevin Braun and thank you for your time, Hearing Officer Long. We appreciate the recommendations of the staff. We don't have any comments at this time.

HEARING OFFICER LONG: Okay. Is this a house that you are building to sell? Not that that's relevant but since you're a builder, I'm wondering if this is a house that you're building for you or to sell.

MR. BRAUN: Yes, that's the plan. It's a long-term project. We understand that it's a difficult lot so we're giving ourselves several years to develop it properly and it's a desirable neighborhood so we feel like it's worth the effort.

HEARING OFFICER LONG: Great. Okay. Let's see if there is anyone here that came to speak to this request for a variance. And there is no one present who wishes to speak to this case. So that will close the public hearing. So I don't have any further questions. And good luck on this difficult lot.

MR. BRAUN: Thank you. Appreciate it.

- F. CASE # V 17-5160 Prabhu Khalsa & Regina Spamer Variance.
Prabhu Khalsa and Regina Spamer, Applicants, Request a Variance of the Sustainable Land Development Code Ordinance 2016-9 (SLDC) Chapter 7.17.9.3.2, Governing Height of a Structure, to Exceed 18 Feet on a Ridgetop, and to Allow a Two-Story Residence on a Ridgetop. The Applicants are also requesting a variance of Chapter 7.17.9.2.4 to Allow a Driveway to Disturb 30 Percent Slope to Access a Buildable Area. The property is Located at 01 Anand Nivas Way within the Vicinity of Sombrillo within Section 12, Township 20**

North, Range 8 East (Commission District 1) [Exhibit 4: Trapp Letter in Opposition]

Hearing Officer Long read the case caption.

MR. LOVATO: Thank you, Hearing Officer Long. The applicants are pursuing the request for a variance to allow a proposed 2,304 square foot residence to have a 22-foot pitched roof on a ridgetop, to allow a second floor in the residence, and to disturb 3,065 square feet of 30 percent slope for construction of their driveway on their 0.92-acre parcel.

The SLDC, Chapter 7, Section 7.17.9.3.2, states, "Structures on ridges, ridgelines and shoulders shall not exceed 14 feet in height and shall be limited to one story." This section further states, "A structure on a ridge or ridgeline that is a one-story pitched roof shall not exceed 18 feet in height so long as it is screened from view from an arterial or major arterial road."

The property is currently vacant. The proposed residence consists of two stories. The first level contains a kitchen, bedroom, laundry room, and living room/dining room. The second level consists of a master bedroom, master bathroom, two bedrooms, a study room, and bathroom. The structure is 24 X 48 on both levels for a combined total of 2,304 square feet.

The applicants are also requesting to disturb 30 percent slope to access their buildable area with a driveway which is 15' to 20' in width and 200' in length. Chapter 7.17.9.2.4, states, "Utilities, drainage structures, slope retention structures, and access roads and driveways may be located on a natural slope in excess of 30 percent so long as they disturb no more than three separate areas not exceeding 1,000 square feet each."

The first disturbance of 30 percent slope consists of 70 square feet and is consistent with the SLDC. The second occurrence is 2,378 square feet of 30 percent slope and exceeds the extent of allowable slope disturbance. The third disturbance is 617 square feet and is consistent with the SLDC. The combined total disturbance of 30 percent slope is 3,065 square feet.

The applicants state, "We are requesting these variances for permission to build a two-story home. Before we were made aware that we would require a variance, we looked at the homes of our immediate neighbors which are both two-story homes as well and we designed a two-story home for ourselves. We then paid for plans to be drawn up for the County to acquire a building permit. As we are already invested in the plans for the home, and there are already two other homes on the same hillside that are two story." In addition we would like to request a variance to disturb 30 percent slope to access the buildable area."

The applicants have addressed the variance criteria and staff has responded as contained in the report.

Recommendation: Height: Staff recommends denial of the requested variance. The applicants' 22-foot residence exceeds height requirements of the SLDC which allows a 14-foot one-story flat-roofed residence, or 18-foot pitched roof one-story residence. The applicant can create an alternative design so the structure meets height requirements.

Two Story: Staff recommends denial of the applicants' request. Structures on ridges, ridgelines, and shoulders shall be limited to one-story structures. The applicants'

proposal does not meet requirements of the SLDC; surrounding properties are not located on ridgetops and there is space for the applicant to build the same size house as a single story.

Disturbances: The application is not in strict compliance with the SLDC, but this application meets the criteria necessary for granting a variance. Due to the topography of the lot, the applicant is unable to build a home on their lot without a variance. Criterion 1 is that the request is not contrary to the public interest. The request meets this criterion as the site offers limited buildable area. The inability to build on the property due to the requirements in Chapter 7, Section 7.17.9.2.4, demonstrates that they have met the variance criteria 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 terrain on this property consists of steep slopes a minimal building location. In order to construct any residence on this property a variance request is necessary. This causes peculiar and exceptional practical difficulties or exceptional and undue hardship on the applicant/owner, which meets Criterion 3, that the spirit of the SLDC is met. Therefore, staff recommends approval of the applicant's request for the variance.

Staff requests the Hearing Officer memorialize findings of fact and conclusions of law in a written order. The Santa Fe County Planning Commission will be holding a public hearing on this matter on September 21, 2017.

Hearing Officer Long, I stand for any questions.

HEARING OFFICER LONG: In regard to the two story request, under your recommendation it states that – oh, I think I understand now. You're saying that the surrounding properties that do have two-story residences on them are not on ridgetops.

MR. LOVATO: Hearing Officer Long, that is correct.

HEARING OFFICER LONG: All right. Thank you. Would the applicants come forward please?

[Duly sworn, Prabhu Khalsa testified as follows:]

PRABHU KHALSA: My name is Prabhu Khalsa. So first I would like to just say if we could avoid breaking code we would. We didn't want to request a variance. It's been a challenging process. Actually the next meeting is the day after our due date so I'm not even sure we're going to make it.

We definitely appreciate the staff's recommendation for allowing us to do the driveway. If you've been to the property and they have; John's seen it. It's kind of obvious that – it's pretty flat on top and it's kind of a steep slope on the east side but that's the only side we can get to the property from. But it's pretty flat on top. It's a really good buildable area which is where we'd like to build a house. So we basically need the variance to be able to get to our buildable spot.

As far as the two-story building, I said in my application that I look to my left and I look in front of me and there are two-story homes immediately, closer than the distance of this courtroom would be two two-story homes to the – so why they're not considered on a ridgetop but we are doesn't make any sense to me at all. And I heard you say earlier that the financial burden is no reason to grant a variance and so the fact that we already paid for our two-story plans, I guess, doesn't weigh in on this. But I felt that – what I argued in my response about justice and about the public good and everything and undue hardship. I don't see why – I don't understand why the two residences immediately next

to me on the exact same hillside, literally at the same – one of them is at the exact same level as me, why they're allowed to be built and I'm not.

I don't really understand what qualifies a ridgetop. If they're not a ridgetop and I am, what's the qualifying factor there? I mentioned that as far as a two-story home, I was talking about the sustainable aspect of it. I'm an environmentalist. I really care about doing this house as best I can. I'm yet to determine how big of a loan I'm going to get but I'm certain that I'm not going to get a big enough loan to do what I'd like to do, which is like rammed earth, or adobe or something like that, which is a little more sustainable. So I'll probably do probably more traditional 2 X 6 construction. But I plan to like spray foam the inside so it's very low energy usage.

What I get from a two-story home in terms of sustainability is first I have half the roof size, because I have one roof for two stories. Second, what I get is the radiant heat on the first floor will radiate up towards the second floor so I may not even need to use heat on the second floor. Also what I get is I designed the house myself and then paid an architect to do the official plans. What I also get is that every bedroom has a south-facing window and they mentioned that the County's response, saying that I could do a skylight or a clerestory and I thought skylights are not sustainable at all. The amount of energy that gets lost through the skylight, so I'm planning to spray foam my ceiling and my roof so I can have like an R-50 of something on my roof so that the heat doesn't come in in the summer and that the heat doesn't escape in the winter. Skylights are not sustainable at all. They're a terrible design if you're trying to build a green home.

And as far as clerestory, I guess that might work but I'd have to do a flat roof and I don't want to mess with a flat roof. They're very difficult. You have a parapet and then you have a flat roof and the parapets always crack. They always leak. I know because I have my small, 500 square foot house that I live in now has a parapet and I had to basically get metal caps custom made to cover the parapets because I just didn't want to restucco every five, ten years or something.

So I actually took some pictures today before coming in. If you'd like to see them on my phone. This thing kind of shows – this is my property here. This is the existing driveway that goes kind of down and then up to the neighbors. And we're looking to build the driveway here. And then we're looking to build like right here. And so if we're building it kind of right in the middle of the lot it's really like 20 or 30 feet [] and then right here is a two-story home. Also, actually the distance from here to this home here is much bigger and actually that's what I have on my phone, if I can approach you and show you the picture.

HEARING OFFICER LONG: Sure. They won't be in the record but I'll take a look at them.

MR. KHALSA: Okay. I can email them in if that's allowed. So this is a picture – so here's my neighbor's two-story house. See that car – the distance between this car.

RACHEL BROWN (Deputy County Attorney): Madam Hearing Officer.

HEARING OFFICER LONG: Yes.

MS. BROWN: Can we have the comments on the record? Perhaps he could share your microphone.

HEARING OFFICER LONG: Yes. Please speak into the microphone.

MR. KHALSA: Okay, so I'm showing a picture of my neighbor's house and the distance between that house and this car in the current driveway. And then I'd like to show you this other picture I took. Here's the car again and here's my – where I'm proposing to build. If this distance is considered a ridgetop but this distance isn't, I'm not really sure why – I just don't understand it. I don't know what qualifies as a ridgetop. And so I definitely feel it would be unjust to consider my lot. So this is the top of their property here. It's literally the same height and just a few feet away from that two-story house. So if I'm standing right where the build site is, this is a two-story house and that's a two-story house.

So we designed it. We had no idea of codes when we designed the house. We just thought there's two two-story houses so why can't we just build a two-story house.

HEARING OFFICER LONG: All right. Let me ask you, we received a letter from Mr. James Trapp that is opposing the variance request and he says his property is in direct eyesight to the west, or your property is direct eyesight to the west of his.

MR. KHALSA: I can actually show you – if I'm allowed to approach again.

HEARING OFFICER LONG: Yes. Bring the microphone with you if you're going to speak.

MR. KHALSA: Well, first of all I'd like to say that I feel like his family has a little bit of a grudge against the Sikh community. I think he might have just seen my name and said I'm going to oppose this. His father was my immediate neighbor when I was a child.. When I was seven years old he came out yelling and screaming at me and my brother for stealing his cherries which we didn't take his cherries, but anyway, he was a very angry man and his son is a little bit upset about the whole thing too. So I think it's more to do with a grudge than anything else. We're actually pretty far away from him, where this property is. Any well or septic that I have won't affect him at all. We're hundreds of feet away from him.

So his property is this one.

HEARING OFFICER LONG: So we're looking at the vicinity map on the first page of the report.

MR. KHALSA: So Mr. Trapp's property is this one, next to Khalsa Way. Khalsa Way is where I grew up, just down the road from there. This is where we're building. So I am west of his property but where his home is is east of these other properties. So what he's looking at from his home, he might see my property when he is driving up his driveway but he won't see it when he's looking out his bedroom window.

HEARING OFFICER LONG: Okay. Thank you. I just wanted to determine where that property was. Did you have a comment, Vicki?

MS. LUCERO: Hearing Officer Long, I just wanted to clarify and answer kind of a question that the applicant had in regards to what defines a ridgetop. A ridgetop is not based on the elevation of the site but it's based on the slopes around the buildable site. If there's 30 percent slopes on the sides of the buildable area then we consider it a ridgetop.

MR. KHALSA: What constitutes the sides of a buildable area/

MS. LUCERO: I'm sorry. What was the question?

MR. KHALSA: You said if it's 30 percent or greater slope on the sides of a buildable area. What defines the sides of a buildable area? Like how far away from the home?

MS. LUCERO: It would basically be adjacent to the buildable area. So you have your flat area on the top where you're building on, and then it drops off on both sides to 30 percent slopes.

MR. KHALSA: Okay, but both of my immediate neighbors have the exact same thing going on. It's the same hillside. It's a slope – if you look at this other two-story house like immediately in front of me, their driveway, it's greater than 30 percent slope right there.

HEARING OFFICER LONG: Is it possible those houses were build some time ago when the code requirements could have been different?

MR. LOVATO: Hearing Officer Long, if you look at Exhibit 2 in your packet, it defines the property and shows you the 30 percent slope. The property Mr. Khalsa is talking about is north of that location and I have analyzed and came up with many questions of what is ridgetop on this lot and after looking at the slope analysis done by an engineer it appears the 30 percent slopes on the neighboring lots were created man-made. So we don't consider man-made slopes as part of that component. And so when they cut the driveway and they cut the building pad on top of that neighboring property those slopes were created by man-made slopes. So I also did some research and looked up properties associated with permitting on lots. The property on which question is north of that actually has recent permits but in further permitting it appears to be legal non-conforming.

And I did contact NMDOT to see if we can obtain some aerial photographing to see when those structures were constructed and I had no luck in doing so, so that's just the basis where it's at right there on that.

HEARING OFFICER LONG: So you're saying that the lot is a legal non-conforming lot to the north?

MR. LOVATO: The actual structure.

HEARING OFFICER LONG: The structure is.

MR. LOVATO: Right. That's what we're feeling or justifying is that. However, even though those are man-made slopes that were created.

HEARING OFFICER LONG: On the property to the north as well?

MR. LOVATO: Correct.

HEARING OFFICER LONG: All right. Thank you for taking such a careful look at that. Why don't you just wait a moment and let me see if there's anyone here that came to speak to this application, because you may want to – okay there's two people here. All right. Why don't you come forward, both of you, to the front row, if you're both going to speak, or all three of you. And then you can be sworn in at the same time. Yes. That's fine. Just indicate that and you can be sworn in right where you're standing if you raise your right hand.

[Duly sworn, Manuel Vigil testified as follows:]

MANUEL VIGIL: My name is Manuel Vigil. I am speaking on behalf of my aunt, Rosita Sandoval.

HEARING OFFICER LONG: And is this your aunt with you, that's standing with you?

MR. VIGIL: Yes, ma'am

HEARING OFFICER LONG: All right. Go ahead.

MR. VIGIL: Her concerns, she's against this due to the fact that she feels that she's being overlooked on her property. Her property is located a little bit northeast, about may 100 feet from this gentleman's property and her concerns are construction. It's all downhill from the property up top down to her property. The driveway where he wants to get access to build, to get into the construction, there's many utilities in that area – gas lines, phone lines. In fact the County just installed a fire hydrant right at the roadway itself.

Her concerns are also are because of the area it's going to be a septic system that's going to be installed for sewage. It's possible, it could happen that there's going to be a crack in that structure. That sewage can go down hill and contaminate her will because like I explained, everything is downhill from the property itself, from #1 down to my aunt's property.

HEARING OFFICER LONG: And Mr. Vigil, we're here not on the building permit but on the development of the site but on the variance request for a two-story house as well as disturbing 30 percent slopes from the driveway. So I understand those concerns but they're not directly applicable to this application. Just so that you know.

MR. VIGIL: Okay, well, my question on that then on the 30, the proposal is to make the driveway up that slope to begin construction. Correct?

HEARING OFFICER LONG: That would be the access to the home. Yes.

MR. VIGIL: Well, that's the area that she has concern on because the utilities are right in that area where this request is.

HEARING OFFICER LONG: Okay. Thank you. All right, ma'am. Would you come forward?

[Previously sworn, Megeath testified as follows:]

MEGEATH BROCKWAY: Hi. My name's Megeath Brockway and my concern also is in the driveway because Rose's property is right – there's a little access road that goes down there and Rose's property is right on the bottom. So we right now have issues when it rains like it is now. There's just a river that goes down. So depending on the design of your driveway – I'm just concerned that that will create more of a funnel down to that bottom and just be destructive. Other than that, I'm excited to have them as neighbors, so that's great.

HEARING OFFICER LONG: Okay. Thank you. Is there anyone else that wishes to speak to this application. If not all let the applicant sum up. Nobody else? Would you come forward please.

MR. KHALSA: so as I stated earlier, I'm kind of passionate about environmentalism and the first thing I thought about, actually, was runoff when I bought that property. I thought, wow, someday when I do my driveway I'm going to have to really account for runoff and if I do it properly I might be able to do an improvised wetland and maybe plant some bamboo and stuff. When we were told that we needed a variance to do the driveway I don't remember if it was required or something for us to get an engineer, so we hired an engineer. It was an additional expense but she did a great job. She designed the driveway and she did account for the runoff and I plan to basically

watch it my whole life. We'd like to raise the child that we're expecting soon and any future child we have on that property, and I plan to always make constant improvements.

And as far as septic. I think that's a concern in northern New Mexico. It's definitely – I don't think it's related to this variance. I think if that's a problem then the County does need to change it's code but we plan to be completely compliant in terms of the code for septic and – so I think right now, in the Exhibit 2 you can see like a little ponds that the engineer designed for runoff.

So actually, I plan to do a graywater system, so most of our household water usage will go to trees and not back into the – water actually – graywater has a much better chance, any water has a much better chance or remediating in the ground, especially around mulch and other things that have bacteria than just sitting in a septic tank down in the ground. Even black water would have a better chance of being remediated above ground than in a septic.

So we would hardly use the septic except for the blackwater as required. I've considered composting toilets and everything and that may be something in the future. They need a little better development than currently. My brother knows a lot about composting toilets and he says the technology is decent but it's a little unreliable so we will need the septic for flushing toilets.

But otherwise, yes. I plan to have as minimal impact as possible with this house and so I guess that's it. Oh, actually, I did want to address what John mentioned to you about the other house not being considered on a ridgetop. There's evidence, just by looking at the property that perhaps the 30 percent slope we're trying to disturb was also created by people moving earth, including the neighbor who moved the earth to build his two-story house. If you look at it, it doesn't look completely natural. There's somewhat of an existing driveway there now, but it's really steep and it's north-facing and I wanted to do a different driveway that's south-facing so that the snow will melt in the winter and the County code, I think on that is it has to be a ten percent slope. We managed to design a very long – it's probably like an eight percent slope. But there was already a driveway there at one point.

HEARING OFFICER LONG: Ma'am, will you come forward just so we can get that on the record, and state your name again please.

MS. BROCKWAY: Megeath Brockway. We're you going to take part of the hill off, so that it's level with Krishen's property?

MR. KHALSA: So what we're trying to do is – what we'd like to do is basically – so here's the property. Well, these are the engineer's plans. So we're basically just kind of carving into the hillside a little bit and then she recommended here a cut-back, which will reduce erosion, and then she said there's these kind of – I think they're made of coconut fibers, they're these mats that you can put down to prevent erosion. And then I'm planning to plant – I was thinking to plant jujubes because they're a special kind of tree to me, that are used elsewhere for erosion control. So I'm going to put the mats in then I'm going to plant trees. I'm going to plant hundreds of trees on this property over time, between my graywater and rainwater catchment, it's going to turn into a green oasis.

HEARING OFFICER LONG: Can I just say maybe you all can talk after the hearing's over since this is unrelated and you're all here, so you may just want to meet up out in the hallway and get your questions answered.

MR. KHALSA: Thank you.

HEARING OFFICER LONG: Okay. Thank you very much. Thank you all for coming today. All right, that will conclude this case then unless there's anything else staff wanted to offer. All right.

G. Adjournment

With no further business, Hearing Officer Long adjourned the meeting at approximately 3:45 p.m.

Approved by:



Nancy Long, SLDC Hearing Officer
Santa Fe County



West Santa Fe Association

Penny Ellis-Green, Director
Growth Management Department
P.O. Box 276
Santa Fe, NM 87504-0276

Hager Road/Los Suenos Trail Extension Variance (CASE # V 17-5170).

Dear Ms. Ellis-Green,

The West Santa Fe Association does not support the proposed Hager Road/Los Suenos Trail Extension Variance (CASE # V 17-5170). We represent the Piñon Hill neighborhood, adjacent to the west side of the Hager Lands, and feel our community would be adversely impacted by the variance as proposed.

We are shocked there is no provision for emergency fire egress. With the expiration of the Peters master plan, Piñon Hills is also now left with no emergency egress. This potentially deadly situation could be mitigated with an emergency break-away gate at the east end of Calle Estevan.

The lack of accommodation for integrated community trails is directly counter the spirit and letter of the new County codes. Trails have to connect to each other or they are worthless.

Lots in the Tierra Bella section of the Hager Lands are already being marketed as to be subdivided, making initial density and traffic projection provided by the applicant obsolete even before the road is in.

We see no clear mechanism as to when and how the road is to be eventually upgraded, and who is to pay for that upgrade.

This piecemeal approach to planning does not serve the best interests of the community at large. We see one legal entry, the Los Suenos Trail Extension, Inc., facilitating the development of approximately 140 dwelling units. That is *well beyond the threshold for a master plan*. A thoughtful master plan would benefit all west of Santa Fe neighborhoods.

Without a significant re-write of this proposed variance, we feel the project is enabling crude serial subdivision. This is disrespectful to the both long time neighbors and the future residents.

We urge the Hearing Officer to deny the variance as written.

Thank for your consideration and service.

Sincerely,

The Governing Board of the West Santa Fe Association

By Michael Wiese President.

Sent by Laura Wait, Secretary

108 Calle Francisca, Santa Fe, NM

SFC CLERK RECORDED 08/16/2017



JENKINS GAVIN
LAND USE | PROJECT MANAGEMENT

EXHIBIT

tabbles

REC'D CLERK RECORDED 08/16/2017

Hager Road/Los Sueños Trail Extension Variance (Case #V 17-5170)

Proposed Modified Conditions of Approval

1. ~~Right of way width shall be 80' and platted through all properties in which the Hager Road/Los Suenos Trail extension accesses.~~
Right of way width shall be 81' and platted through Lots 2, 3, 5, and 7 of the Hager Lands, which is comprised of the existing 66-foot Road and Utility Easement and a future 15-foot non-contiguous trail easement per the 2006 Trail Agreement among the lot owners.
2. The proposed design for the all-weather crossings shall be submitted with the permit application for the road improvements or at the time of subdivision application, whichever occurs first. ~~All weather crossings shall be designed and constructed to Collector Road standards.~~
3. Los Suenos Trail Extension shall be ~~constructed from County Road 70 to the Los Suenos Trail/La Vida Trail intersection.~~ *constructed to the La Vida Trail intersection at such time that the number of lots among the Hager Properties served by the Los Sueños Trail Extension exceeds 30.*
4. At the time that the ~~Average Daily Traffic volume exceeds 400 trips per day on Los Suenos Trail Extension~~ *serves more than 40 lots among the Hager Properties*, the road shall be upgraded to Collector Road standards *as development occurs.*
5. ~~The property owners along Los Suenos Trail Extension shall enter into a Development Agreement for full build out of Hager Road to Collector Road standards including the two all-weather crossings.~~
6. The Applicant shall conduct a community meeting prior to the September 21, 2017 Planning Commission meeting and provide Staff with minutes and documentation from the meeting.

TRAIL AGREEMENT

This Agreement is made and entered into by the following parties on the date set forth below.

1. The owners of certain real estate in Santa Fe County, New Mexico, more particularly described as follows:

Lots 2, 3, 5, and 7 as shown on the plat entitled "Lot Split & Lot Line Adjustment Requested By The Estate of Richard M. Hager Creating Seven Lots Within Section 30, T.17N., R.9E., N.M.P.M., Santa Fe County New Mexico" filed in the office of the County Clerk, Santa Fe County, New Mexico, on January 28, 1999 in Plat Book 405, Pages 003 - 004 as Document NO.1 059159.

RECITALS

A. WHEREAS, the owners of certain Hager Properties have agreed with one another to construct a fifteen (15) foot wide trail running North and South along the western border of Lots 2, 3, 5 and 7 as shown on Exhibit A.

B. WHEREAS, this trail will have public access for non-motorized use by horses, bicycles, and pedestrians.

C. WHEREAS Santa Fe County wants to make this trail a part of its Open Space and Trails Program.

AGREEMENT

NOW, THEREFORE, the undersigned agree as follows:

1. **Work.** Each lot owner agrees to set aside a 15' trail easement running North and South along the western border of their respective properties.

2. **Scope of the Trail.** The Work covered by this Agreement includes and is limited to the following scope of the trail:

A. **Length.** The trail easement shall begin at Arroyo Trampas and proceed northerly through Lots 7, 5, 3, and 2.

B. **Width.** The width of the trail shall be fifteen (15) feet.

C. **Standards.** Each lot owner will work with Santa Fe County to build the trail with a surface acceptable to Santa Fe County.

D. **Other.** Each lot owner agrees to build this Trail in lieu of a separate trail running North and South along Hager Road. In addition, Hager Road will be built with a paved shoulder.

3. **Costs.** Each Lot owner is responsible for the costs of trail construction and maintenance on the portion of the trail that lies on their property.

4. **Negation of Partnership.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

5. **No Oral Amendment or Modifications.** No amendments, waivers or modifications hereof shall be made or deemed to have been made unless in writing executed by the party to be bound thereby.

6. **Governing Law.** This Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of New Mexico.

7. **Binding on Successors.** This Agreement is binding on the heirs, successors or assignees of the undersigned.

IN WITNESS WHEREOF, the undersigned has executed this Agreement effective this _____ day of _____, 2006.

THE ARCHDIOCESE OF SANTA FE CATHOLIC FOUNDATION, a New Mexico nonprofit foundation, Owner, Tract 7 of the Hager Properties.

By [Signature]
Title Real Estate Committee Chairman

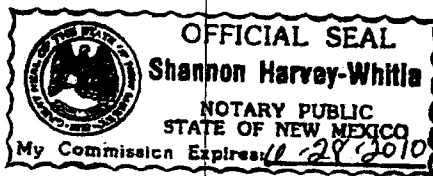
STATE OF NEW MEXICO

COUNTY OF SANTA FE

This instrument was acknowledged before me this 29th day of September, 2006 by Thomas P. Macken, Real Estate Committee Chairman of the Archdiocese of Santa Fe Catholic Foundation, a New Mexico nonprofit foundation.

[Signature: Shannon H. Whitla]
Notary Public

My commission expires:
June 28, 2010



Owners. Tract 3 of the Hager Properties
husband and wife

Judy C. Ross
JUDY C. ROSS

Ted R. Wegner
TED R. WEGNER

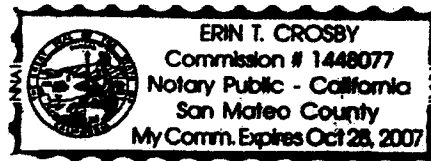
STATE OF NEW MEXICO

COUNTY OF SANTA FE

This instrument was acknowledged before me this 27th day of September 2006 by Judy C. Ross and Ted R. Wegner.

Erin T. Crosby
Notary Public

My commission expires:
October 28, 2007



SANTA RITA RANCH ESTATES, LLC,
a New Mexico limited liability company,
Owner, Tract 5 of the Hager Properties

By [Signature]
Manager

STATE OF NEW MEXICO

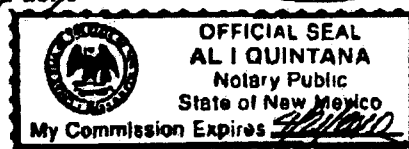
COUNTY OF SANTA FE

This instrument was acknowledged before me this 4 day of Oct, 2006 by
[Signature], Manager of Santa Rita Ranch Estates, LLC, a New Mexico limited
liability company.

My commission expires:

4/21/2010

Notary Public



LAS LOMITAS, LLC, a New Mexico limited liability company, Owner, Tract 2 of the Hager Properties.

By [Signature]
Manager

STATE OF NEW MEXICO

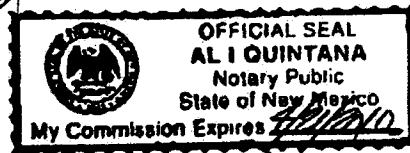
COUNTY OF SANTA FE

This instrument was acknowledged before me this 4 day of Oct., 2006 by Danny Williams, Manager of Las Lomitas, LLC, a New Mexico limited liability company.

[Signature]
Notary Public

My commission expires:

4/21/2010



7/17/2017

Mail - caleysecho@msn.com

variance

JAMES TRAPP

Mon 7/17/2017 6:06 PM

To: JAMES TRAPP <caleysecho@msn.com>;

To whom it may concern:

My name is James A. Trapp. I am writing in concern of case # v 17-5160 Kalsa/spamer. This property is in my direct eye sight to the west of my property. I am writing in the hope that you should keep to the law as it has been written and decline this variance request.

The Sikh organization already operates its Security corporate headquarters and a commercial kitchen directly west of my residential property. This brings in hundreds of cars a day with all the dust and noise that comes with it. This also tax's the area septic systems over there limits. I can not drink my well water do to high nitrates coming from septic drainage. This is a small area with a very high concentration of people with no intro structure to support them. For example there is no garbage or water service on Sombrillo road where this residence would be built. Adding another large dwelling will only increase the problems we already have. Let me be clear I can not drink my own well water and I listen to cars come and go all day do to the over population of this supposed residential area.

There are already two dwellings next to this same property in question. They are very close together, Both are over your own proposed height limits, both are unsightly and unfinished. At least one has also had septic problems in the past. The earth in this area is mostly sand when the wind blows or rain comes we have a tremendous dust and erosion problem. cutting yet another not to code driveway will only increase this problem and the others we have in this small over populated area. Will I end up with yet another eye sore on top of this hill that pollutes our ground water and does not meet your own codes? Why have codes if all you have to do is get a variance and move on?

For these reasons I hope you will hold to the law and decline this variance request.

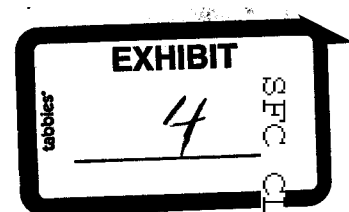
James A. Trapp

p.o. box 122 Española N.M. 87532

505-901-2826

James A. Trapp

7/17/17



SFC CLERK RECORDED

08/16/2017