

**TRANSCRIPT OF THE**  
**SANTA FE COUNTY**  
**SLDC HEARING OFFICER MEETING**

**Santa Fe, New Mexico**

**October 27, 2016**

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 3:05 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

**Staff Present:**

Vicki Lucero, Building & Development Service Manager  
John Lovato, Building & Development  
Vicente Archuleta, Building & Development, Subdivisions  
Andrea Salazar, Assistant County Attorney

II. **APPROVAL OF AGENDA**

Hearing Officer Long approved the agenda as published.

III. **PUBLIC HEARING**

A. **Case # V 16-5210 High Summit III Subdivision. White Bear Properties LLC, Applicant, Karl Sommer/Design Enginuity, Agents, Request the Following Variances of the Sustainable Land Development Code: Section 7.17.4.3 to Allow an Additional 7040 Square Feet Of 30% or Greater Slope Disturbance on Calle Juanita and Cuesta Brava to Accommodate a Cul-de-Sac and Widen Roadbed; Section 7.8.1.4 to Not Require Street Lighting; Section 7.15.3.3 to Not Require a One-Acre Developed Open Space; Section 7.11.2, Table 7-12, (Local Road Standards) to Allow a 33' ROW for an 850' Length of Cuesta Brava and Grades of 11.6%; Section 7.11.15 to Not Require Sidewalks; Section 7.17.9.2.1 to Allow Structures on Ridgetops, Ridgelines or Shoulders; Section 7.17.9.2.2 and 7.17.10.6 to Modify the Setback Required from the Shoulder to 5' from Where the Profile of the Upper Slope Changes from Greater Than 30% to Less Than 30%; Section 7.17.10.1.3 to Allow Building Areas at an**

SEC CLERK RECORDED 11/15/2016

**Elevation above 7400 Feet That Are Not Closest to the Nearest Public or Private Roadway; Section 7.17.10.3.1 to Exclude Driveway Construction and Emergency Turnarounds from the Disturbed Area Limitation; and Section 7.17.11.2 to Not Require a Conditional Use Permit for Lot Development above 7800 Feet in Elevation. The Property is Located at South Summit Drive within the Vicinity of Ten Thousand Waves, within, Section 16, Township 17 North, Range 10 East (Commission District 4)**

*[Exhibit 1: Bridgette Kennedy letter dated 10/26/16; Exhibit 2: Applicant submitted road design information]*

HEARING OFFICER LONG: I will approve the agenda which contains one case, Case #V 16-5210, High Summit Subdivision. White Bear Properties is the applicant. Karl Sommer, Design Enginuity are the agents. And they're requesting variances of the Sustainable Land Development Code as listed on the agenda. There are a number of variances so we won't read them all into the record but they are contained in the agenda. There are 14 variances in all. So I will ask Mr. Lovato to address only those variances which staff does not support which I understand to be three variances and your report will be entered into the record of course and I have reviewed it.

JOHN LOVATO (Case Manager): Thank you, Hearing Officer Long. Under variance request number 2, it talks about open space and what can be done in this instance is placement of benches and port, carports or – not carports. Excuse me.

HEARING OFFICER LONG: I think it was picnic benches and –

MR. LOVATO: Picnic benches and little ports for them.

HEARING OFFICER LONG: And where would those be placed? On that tract or what would you propose? Somewhere else?

MR. LOVATO: Along the area where the tracts are and just create a space. Instead of a park because that's not feasible, due to the mountainous terrain, but I believe that we can have certain areas, certainly along some of the supporting trails and whatnot.

HEARING OFFICER LONG: Yes, I think your report says picnic shelters and benches.

MR. LOVATO: Exactly.

HEARING OFFICER LONG: Okay.

MR. LOVATO: In terms of three and four, they're both of the same portions of the code where it requires right-of-way. This is not disturbed area; it's just a platted area where it shows right-of-way from the 20-foot road that they're proposing. Staff feels that that could be addressed and placed on the plat.

HEARING OFFICER LONG: And what is the required right-of-way in Table 7-12 for local roads?

MR. LOVATO: So we have a 33-foot proposed right-of-way along Dancing Bear, and then we have a 38 right-of-way on 7-12 is what's required. So those – the 38 is what we actually require.

HEARING OFFICER LONG: Thirty-eight is required?

MR. LOVATO: Right. Correct.

HEARING OFFICER LONG: Let me just get to that table.

MR. LOVATO: Hearing Officer Long, I will let the applicants address that issue since it was not addressed in the variance criteria.

HEARING OFFICER LONG: All right. In Table 7-12, Local Roads, the minimum right-of-way is listed as 50 feet. Is that right?

VICKI LUCERO (Building & Development Services Manager): Hearing Officer Long, that is correct. It's a 50-foot right-of-way.

HEARING OFFICER LONG: Okay, so 50 is required and they're requesting 33 and 38. So something less than what is required by the code. Is that right?

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

HEARING OFFICER LONG: Thank you. Okay, thank you. I don't think I had any other questions for you right now. I'll ask the applicant to address those three variance issues that staff is not supporting.

KARL SOMMER: Chairman Long, Hearing Officer Long, Karl Sommer. My mailing address is in the file, in the record with the report. I have with me here today Ms. Oralynn Guerrerortiz from Design Enginuity. She is the project engineer and she has a very long history not only with this particular proposal but at least a decades-long history with this property and the existing approvals and construction up there and she can address the three variances that staff has raised some issues about.

I would like to say one thing that the Hearing Officer probably doesn't have in the record. As part of our overall project we have the support of the homeowners association for this application. We have a written agreement with them relating to roads and they support these variances for a variety of reasons that relate to their own subdivision but improvements.

The other thing that is not in the record and it wasn't required, I wanted to let the Hearing Officer know is we have submitted a conceptual plan approval together with a preliminary and final plat approval for portions of these lots which is moving its way through the system. As part of that application we had to commission and submit a new traffic study which essentially updated all of the traffic with respect to this development. When I say this development I mean High Summit, Santa Fe Summit and High Summit III, which are different phases of this entire development. And what was astonishing is that the traffic projections in 2003 for all of this development, including what was approved on this property that we're talking about and the roadways was a fraction of what was – is currently a fraction of what had been projected, so that the concerns about traffic that may have been an issue back in 2003, the numbers bear out that the traffic is significantly less. So we're not talking about high volumes of traffic both on a projected and actual basis and so the road variances that we're talking about do not become a safety issue. These are not high volume roads and that sort of thing.

With that I'm going to turn it over to Ms. Guerrerortiz to talk to you about the park and the two other roadway variances that we're requesting that staff has raised an issue about. Unless you have other questions that I can answer.

HEARING OFFICER LONG: I might have a few.

MR. SOMMER: Thank you.

HEARING OFFICER LONG: And do you have any other folks here with you today that are going to testify?

MR. SOMMER: There's nobody that's part of our development team but I do have – there are in the audience member of and owners and residents of the

development. Mr. Peter Vennema, Mr. and Mrs. Saival, and Mike Cosentino. They're all owners of property and they have lived in the Summit for a long time except Mr. Cosentino is building a house up there and his house is Lot 12 and it looks right down on this development.

HEARING OFFICER LONG: Okay, let me ask you a few questions while I have you here.

MR. SOMMER: Sure.

HEARING OFFICER LONG: The report indicates that the BCC granted a two-year extension on the expiration date for phases 2 through 5 of High Summit III and that will expire in December of this year, and that you will record phase 2 before the end of the year.

MR. SOMMER: Yes.

HEARING OFFICER LONG: And what about the rest of the phases? Do they all expire?

MR. SOMMER: They all expire on December 31<sup>st</sup> and if the Hearing Officer would like I have a copy of that order if you want to put it in the record.

HEARING OFFICER LONG: No, I don't need to. I was just wondering if you – if those were going to expire and then you would reapply?

MR. SOMMER: What we're going to do is phase 2, we're going to record that and that has currently in it, I believe, 22 approved lots, and as part of our agreement with the homeowners association that number is going to be significantly reduced by lot line adjustments and lot consolidations after we record the plat, the idea being that we're going to record the approved plat because we don't have to do anything to it; we just have to post a financial guarantee for the improvements, and then we will come back in accordance with our agreement and immediately submit for consolidations. I believe the number is 12 or 13 lots total in phase 2.

Phases 3, 4 and 5 have approved on them 55 lots currently, and we are going to obtain before the end of the year, hopefully, conceptual plan approval for all of – for the new 12 lots that we're showing on this plan, together with preliminary approval for those 12 lots and a final approval for two of those lots, what we're calling phase 3. And so when we have that finally approved at the end of this year it will expire. Those existing approvals will expire. Did that answer your question?

HEARING OFFICER LONG: I think so. And then, in terms of the 12 large lots that you're creating, they will have two dwelling units.

MR. SOMMER: It's actually – not all of them will. The code requires that there be at least two acres to have – you can only have one guesthouse, or what they're calling an accessory dwelling unit per recorded lot, and so on some of these lots, they're too small to have an accessory dwelling. So not all of them will, but it would have been up to 24 total homes, but I think that the total in our application is 20 total homes in this particular development.

HEARING OFFICER LONG: I think it's 24, according to the report.  
[Speaking from the audience, Ms. Guerrerortiz: We ask for more than we're going to be able to use.]

MR. SOMMER: All right. All right.

HEARING OFFICER LONG: Twenty-four total.

MR. SOMMER: I can tell you that we can't use them all.

HEARING OFFICER LONG: But they are – the intention is that they would be accessory dwellings? Guesthouses?

MR. SOMMER: No, there would be up to two homes on a particular lot if you had a two-acre lot, but on any one lot you can only have one accessory dwelling under the code. So if you had two homes on a lot you could only then have one accessory dwelling. We also have an agreement with the homeowners association that limits the total number of buildings and that is in writing. So on any one given lot, if I can go over there and just show you what I'm talking about.

HEARING OFFICER LONG: I'm just trying to figure out what this structure is. You're going to have two homes owned by two different individuals on one single lot?

MR. SOMMER: No. They're going to be – since these are going to be very large estate lots, we would have two dwellings that qualify as dwellings under the County code, not accessory, but two independent dwellings because of the density allows it, and those homes, as part of our agreement with the homeowners association are to be owned by no more than one family. So they're large estate lots. We put that in there so that they would know what we were talking about.

HEARING OFFICER LONG: Okay. I was just trying to figure out what the structure of this was and that answers my question.

MR. SOMMER: Right. That's the structure.

HEARING OFFICER LONG: Okay. All right. We're ready to address the variances.

MR. SOMMER: Thank you.

[Duly sworn, Oralynn Guerrerortiz testified as follows:]

ORALYNN GUERRERORTIZ: I'm Oralynn Guerrerortiz. I'm with Design Ingenuity.

I'll go backwards a little bit just for clarification that may help make it clearer. We chose to call it dwelling units, like two dwelling units, instead of a dwelling unit and an accessory structure because there's limitations on the size of accessory structures and we thought on these very large estate lots somebody might want a guesthouse that's larger than what's allowed under an accessory structure. Terminology. And that's why we asked for dwelling units. And we did our traffic analysis and everything else based on the actual potential maximum of 24 dwelling units.

So in traffic, I just wanted to add a little bit of note. When the traffic engineer at DOT looked at our numbers, they asked if this was retirement community. The numbers are unusually low. They didn't understand why they're low, and it is. It's second homes and it is in many ways a retirement community.

So one condition that we – I don't know if we were going to give something on that, on the parks. I think on the parks, I think that we would be flexible with going ahead and doing benches and picnic tables, especially along some of the major trails that the community is using, especially of the HOA wants it. I would be hesitant to want to put a shade structure up just because the trails tend to be along ridgelines. They're a little more visible and we've got agreements with the neighborhood that is in Canyon Road about what we do along our ridgeline, and that's actually probably the trail that would be most likely that we would want to go ahead and put benches on. And if you really want to push shade structure, maybe we could live with a latilla structure or something that blends

better. I don't know. But I'm hoping that you'll give us some flexibility on that and that we can just put it within the open space, we don't have to designate a one-acre park. We've got tons of open space.

On the issue of roads, I want to show you a drawing and I can give other people copies. [Exhibit 2] May I approach?

HEARING OFFICER LONG: Yes.

MS. GUERRERORTIZ: Okay. The reason we want a reduced right-of-way is primarily because we can't control PNM. Whatever right-of-way we have, we have to designate ten-foot utility easements either side of that, and PNM has a right to build that. So potentially we have, with a 38-foot easement, which is I think very safe and fits the roadway, especially considering we don't have sidewalk, it works well. That makes a construction zone of 58 feet. If we go ahead and make it a 50-foot, it increases it about 12 feet, and I know 12 feet doesn't sound excessive, but really, we want people – we don't want PNM building – we want them building right next to the road, and we don't want to give them flexibility, because we can't control them.

PNM would have a right to build wherever we designate a utility easement and under their rules, we have to designate it outside of the road right-of-way. So it's not because we're concerned about construction of our road; it's really because we really want to limit how much space is impacted. And the reason for the 33-foot right-of-way is a little unusual and that's because we've actually already designated this tract here, Tract L, to the HOA. They own it. And it was a 33-foot easement that we set in between that and some of the Nature Conservancy property and other existing open space.

So what we have right now is 33 feet. We know we can build the roadway within that. We have to build a ton of retaining walls. Actually we're doing that mainly to minimize the disturbance along that roadway, but again, our focus has been in that case to just really minimize it and also keep it on our own property and property that has not been designated to the HOA already. And we could probably negotiate with them; they're pretty flexible, but if it was me I'd want to kind of minimize it just because anything you enlarge potentially could be disturbed. That's our reason for requesting those two variances. It doesn't save us any money. It's really just to control what gets disturbed. Thank you.

HEARING OFFICER LONG: What is the improved driving surface?

Does that comply?

MS. GUERRERORTIZ: Yes. It is. It will be 20 feet with curb and gutter.

HEARING OFFICER LONG: And what about the right-of-way in the rest of the Summit?

MS. GUERRERORTIZ: It's 38 feet I think in every single case, and that met code at the time.

HEARING OFFICER LONG: Let me see if I had any other questions for you. Okay. Thank you.

MS. GUERRERORTIZ: Thank you.

MR. SOMMER: Madam Hearing Officer, just one last thing. As part of the record we would like to be able to submit to you – I don't know if it's your practice, but electronically and to staff as well as to the recorder as part of the record, requested findings of fact and conclusions of law. We recognize what your decision is but if we put those in the record for you, you would at least know what our support is for that. I don't

know if that would be helpful but we could submit them to staff as well as the recorder and to your office as part of the record tomorrow, if that's acceptable to the Hearing Officer.

HEARING OFFICER LONG: There's no requirement to do so. You may submit requested findings and conclusions and that may be helpful in putting the decision together.

MR. SOMMER: And just so the record's clear, I intend to email them to your office, to the County's office and to the recorder and provide a hard copy to each of you, if that's acceptable.

HEARING OFFICER LONG: Yes. I don't think you need to submit them to the recorder, because they're not being submitted as part of the record today.

MR. SOMMER: All right. Very well. Thank you.

HEARING OFFICER LONG: All right. Let me ask if there's anyone here in the audience that would like to speak for or against this application. I know there were some individuals that were introduced, but is there anyone that would like to speak? And there is no one present who chooses to speak to this application.

Let me ask the County about the right-of-way requirements, which is 50 feet. Is the purpose of that width for the installation of utilities? Is there any benefit to the County, other than allowing the utility companies to install utilities within that right-of-way?

MS. LUCERO: Hearing Officer Long, I'm not sure that there would be any additional benefit. The actual driving surface, they're meeting the requirement for the actual road driving surface. The only way that that would actually increase is if there were additional lots created and I don't anticipate, based on the terrain, that there's going to be additional dwelling units or lots created out in that area. So the remainder of the right-of-way would basically be used for a utility company for utilities.

HEARING OFFICER LONG: That's helpful. Thank you. All right. That case is concluded and as you know, all I do is make a recommendation to the Planning Commission so I appreciate your presentation and your attendance today and I have two weeks to make those findings and conclusions, but are you under any additional time constraint I need to know about?

MR. SOMMER: We are, Madam Hearing Officer. We are trying to be in front of the Planning Commission at their November 17 meeting is when it is and I've made arrangements with Wordswork to produce the minutes in a way that they could get into the packet for the Planning Commission. The one last thing is I was handed a copy of a letter that I don't know that was made part of the record and I wouldn't want Ms. Bridgette Kennedy to feel that she didn't get her letter in the record. [*Exhibit 1*]

HEARING OFFICER LONG: I received that letter as well. Did you get the letter? Yes. The recorder has that letter. So that will be part of the record. Thank you for calling my attention to that.

**IV. ADJOURNMENT**

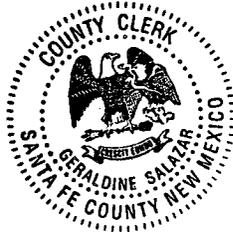
All right. Is there anything else that we need to address today? All right. This meeting then is adjourned. Thank you.

Approved by:

*Nancy Long*  
\_\_\_\_\_  
Nancy Long, SLDC Hearing

Officer

Santa Fe County



COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

SLDC HEARING OFFICER M  
PAGES: 12

I Hereby Certify That This Instrument Was Filed for  
Record On The 15TH Day Of November, 2016 at 08:59:41 AM  
and Was Duly Recorded as Instrument # **1809613**  
Of The Records Of Santa Fe County

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

SFC CLERK RECORDED 11/15/2016



DOCUMENT MANAGEMENT



SCANNING SERVICES



AUTOMATED FORMS



AGENDA MANAGEMENT



SCANNERS



PRINTER SERVICE & SUPPLIES

Dear John Lovato,  
I am concerned about Development Permit 16-5210 which is in High Summit on Hyde Park Rd. Please don't grant any variance to the law of ordinance. Upholding the ordinance is best for the health, safety and viewsheds of the mountainous steep slopes and the viewshed for the Santa Fe National Forest Scenic Byway and of the surrounding residential areas.

I believe there's a meeting starting at 4pm tomorrow regarding the issuance of a variance to the ordinance. Please uphold the ordinance as a good law and deny the request for variance.

Thank you.  
Sincerely, Bridgette Kennedy  
(505) 986 0460

SEC CLERK RECORDED 11/15/2016

Table 7-12: Urban Road Classification and Design Standards (SDA-1 and SDA-2).

	Avg. daily traffic	# of driving lanes	Lane width (ft)	Sidewalks	Bike lanes	Minimum ROW (ft)	Design Speeds (mph)	Max % Grade	Min. agg. base course	Min. bit. pavement	Max % Super- elev.
<b>Major Arterial or highway</b>	5000 +	2-6	12	Two 5'	Two 5 ft on-road	150	Level: 50+ Rolling: 50+ Mount.: 50+	5%	6"	6"	Refer to AASHTO
<b>Minor arterial</b>	2000 to 4999	2 - 4	12	Two 5'	Two 5 ft on-road	120	Level: 30-60 Rolling: 30-60 Mount.: 30-60	5%	6"	5"	Refer to AASHTO
<b>Collector</b>	601 to 1999	2	11	Two 5'	Two 5 ft on-road	80	Level: 30+ Rolling: 30+ Mount.: 30+	8%	6"	4"	5%
<b>Sub-collector</b>	301 to 600	2	11	Two 5'	Two 5 ft on-road	60	Level: 30+ Rolling: 30+ Mount.: 30+	8%	6"	4"	5%
<b>Local</b>	0 to 400	2	10	One 5'	n/a	50	Level: 20-30 Rolling: 20-30 Mount.: 20-30	7%	6"	3"	5%
<b>Cul-de-Sac</b>	0 to 300	2	10	n/a	n/a	38	Level: 30-50 Rolling: 20-40 Mount.: 20-30	9%	6"	3"	n/a
<b>Alley</b>	n/a	1	12	n/a	n/a	19	n/a	7%	6"	3"	n/a
<b>Driveway</b>	n/a	1	14	n/a	n/a	20	n/a	10%	n/a	n/a	n/a

SEC CLERK RECORDED 11/15/2016

