

MINUTES OF THE
SANTA FE COUNTY
PLANNING COMMISSION

Santa Fe, New Mexico

November 19, 2020

1. A. This meeting of the Santa Fe County Planning Commission called to order by Chair Charlie Gonzales on the above-cited date at approximately 4:00 p.m.

In accordance with the Public Health Emergency Order issued by the State of New Mexico, this meeting was conducted on a platform for audio/video meetings.

[For clarity purposes, repetitive identification and confirmations of those on the phone have been eliminated and/or condensed in this transcript.]

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

Members Present:

Charlie Gonzales, Chair
Frank Katz, Vice Chair
J. J. Gonzales
Leroy Lopez
Susan Martin
Fred Raznick

Member(s) Excused:

Steve Krenz

Staff Present:

Vicki Lucero, Building & Development Services Manager
Paul Kavanaugh, Building & Development Services Supervisor
Jose Larrañaga, Development Review Specialist
John Lovato, Development Review Specialist
Roger Prucino, Assistant County Attorney
Jaome Blay, Assistant Fire Chief

2. **Approval of Agenda**

There were no changes and the agenda was accepted by consensus.

SFC CLERK RECORDED 01/08/2021

3. **Approval of Minutes: October 15, 2020**

Member Katz moved to approve and Member Raznick seconded. The minutes were approved without opposition.

4. **Old Business**

- A. **Gerald Ohlsen, Applicant, Siebert and Associates, Agent, requests variance of Chapter 7, Section 7.17.10.4.1, (25% Slope Disturbance for Roads and Driveways), a variance of Chapter 7, Section 7.17.9.2.7, (Significant Tree Removal), a variance of Chapter 7, Section 7.17.9.2.3 (30% Slope Disturbance for Residence), and a variance of Chapter 7, Section 7.17.10.1.1 (Building Area Analysis). The property is within the Residential Fringe Zoning District and located at 66 Coyote Mountain Road, within, Section 17, Township 16 North, Range 10 East, (Commission District 4). SDA-2**

Chair Gonzales advised the public that he would allow public input of up to 10 minutes and if there is one representative for the public he will allow additional time.

John Lovato read the case caption as shown above.

JOHN LOVATO (Case Manager): On August 20, 2020, the Santa Fe County Planning Commission met and heard this case. The decision of the Planning Commission was to postpone the case, so the Applicant could re-survey the lot and determine if the Applicant has legal access from Coyote Mountain Road. The Applicant has hired a licensed surveyor, and the survey was completed and submitted to Santa Fe County Staff. After review from Santa Fe County staff, it has been determined that the Applicant has legal access to the lot via an access easement on Coyote Mountain Road. Both the easement and road encroach onto the Applicant's property as shown on the survey plat, Exhibit 18. The easement shown on the plat that proved legal lot of record, recorded in the Santa Fe County Clerk's office as book number 131 page 30, Exhibit 13, confirms that the survey done by the Applicant show legal access as illustrated on both plats.

Staff recommendation: On August 20, 2020, the Santa Fe County Planning Commission met and heard this case. The decision of the Planning Commission was to postpone the case, so the Applicant could re-survey the lot and determine if the Applicant has legal access from Coyote Mountain Road.

The Applicant has provided documentation that establishes legal access to the lot and the recommended buildable area. 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 the lot without variances. The site offers limited buildable area due to the requirements and legal litigation on the access easement. If the Applicant were allowed to build on the ridgetop, the access would scar the entire face of the mountain and the proposed residence on the ridgetop would be visible from many locations along I-25 and Old Pecos Trail. The Applicant has 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. Therefore, staff recommends approval of the variances requested to build on the lower site subject to the following conditions. Mr. Chair, may I enter those once again into the record again?

CHAIR GONZALES: Yes, you may.

Conditions:

1. The Applicant shall provide a plan showing the limits of disturbance and provide a construction fence along the limited area.
2. The proposed structure shall not exceed 18' in height.
3. The site shall be screened with native vegetation.
4. The Applicant shall submit a stabilization plan for all disturbed areas that includes re-seeding of native vegetation.
5. The Applicant shall submit a grading and drainage plan and soil report for approval prior to building permit issuance.
6. No future development of the ridgetop site will be permitted.
7. The Applicant shall comply with Santa Fe County Fire Prevention requirements.

MR. LOVATO: Thank you and I stand for any questions you may have.

CHAIR GONZALES: Okay. Thank you, John. Does the Commission have any other questions of staff? Okay, any of the Commissioners have any questions of staff? Okay, I hear no questions from the Commission. Does the applicant want to speak?

[Very poor connection]

WAYNE DALTON: Mr. Chair, this is Wayne Dalton with James W. Siebert and Associates. If I could get sworn in please?

[Duly sworn, Wayne Dalton testified as follows:]

MR. DALTON: Thank you, Mr. Chair and Commissioners. Like John stated into the record, on August 28th at the Planning Commission the decision was to postpone this request in order for us to have a legal access survey completed. Since that time, as John said we have submitted a survey that does prove that Mr. Ohlsen does have legal access to his property. Mr. Chair, since meeting with staff we are in full agreement with staff conditions and I stand for any questions, Mr. Chair.

CHAIR GONZALES: Thank you, Mr. Dalton. Does the Commission have any questions of the applicant? Okay, no questions of the applicant. I am going to open this meeting up to the public. Who is going to speak on behalf of the public and how do you guys want to do it?

JIM TERHUNE: This is Jim Terhune. I think myself and Susan Kennedy Zeller are intending to speak and the both of us will be a total less than 20 minutes.

CHAIR GONZALES: Okay. Please proceed, Mr. Terhune.

MR. TERHUNE: I don't see evidence of Susan Zeller on but we can make sure when she is on.

[Duly sworn, Jim Terhune, 99 Coyote Mountain Road,
Santa Fe, NM 87505, USA, testified as follows]

MR. TERHUNE: Did Susan Zeller say she was on?

CHAIR GONZALES: I don't see her.

MR. TERHUNE: She's in New York, so I'll speak. May I start?

CHAIR GONZALES: Please proceed.

MR. TERHUNE: As you're aware, this case has been complicated since day one and it is even more so now with the surfacing of applicant's partial execution of the action item that we received 10 days ago. At this point, we can only go by what we see as posted. But the recent material is in error. I'll discuss it according to the new rules.

This is becoming a big waste of time with delays and inaccurate details. We received confirmation of this meeting three days ago at 3:40 in the afternoon – thank goodness we weren't on airplanes. We just want the record to show that we were only able to perform a cursory review of this material and no, absolutely no time did we engage legal or a more professional review of any said material but we are prepared to contest the obvious issues that we see and you all can see the issues, the two new exhibits.

Before I start, regarding the rules for today, we have a few comments. We reviewed the transcript of the last hearing and the Chairman did not announce the public hearing portion of the meeting that the hearing is closed. Per Robert's Rules of Order that means this public hearing is still open.

Twenty-four hours ago we received and good thing we weren't on a plane, emails from Vicki and John that they were only allowing us to discuss the new exhibit presented by the applicant. Nothing new from us would be allowed. We don't agree with that but we're going to follow that. For the record we object and it is possible we will focus all of our comments on the new exhibits and the accuracy of the material that's being provided to the County. We ask the committee's patience, respect and understanding as we go through this because this is a significant application and the accuracy – the accuracy of the details is obviously foremost. I assume this is acceptable and we will strive for a very focused version of this continuation of the public hearing.

Before we start again, regarding the minutes of the last meeting which were accepted I guess, I was reading through the old transcript and I'm not sure why we are not able to discuss last meeting's minutes and answers but there was an action taken by the committee to review the rule book for the possibility of doing a field inspection. When is this going to be decided? We would like to know. These are our homes and we are trying our best to help the County and assist them. Is there any – can we get a reading on the action that was taken the last meeting on the field – or when will we hear a decision on a field –

[Staff responds that no decision has been made]

MR. TERHUNE: Okay, so we're not going to get any answer. Thank you.

The applicant was given two actions. They performed one of them. I'm going to skip through our concerns that we would have liked to bring up again, concerning the terrain, the retaining walls and disturbances. But for the new rules we'll skip right to – and I did want to share my screen, I do this every day with the NASA and the world so it may just be a second here. We were lucky to be able to even make this meeting.

[There is a disturbance on the line]

MR. TERHUNE: Thank you, appreciate that. Are you going to say hallelujah again? You are sharing your screen – let me see. That was kind of uncalled for so I'd like to go on record that that's disrespectful. But thank you very much for your comment though.

So, I'll start by discussing the accuracy of the details that we keep getting provided by the applicant. This is one of the exhibits that they are showing and there are three images. It depicts the uphill side – I don't know whether you can see my mouse – it's the uphill side of the driveway as a very pleasant looking –

[At this point, all those on the call were asked to mute except the speaker]

MR. TERHUNE: May I proceed?

CHAIR GONZALES: Please proceed. Thank you.

MR. TERHUNE: This is the first image. This is their OBA, page 88. It's a fictitious depiction of the 10 to 12 foot house the proposed building and the height of the east side. The point of showing this is that is the most inaccurate depiction of this driveway and the hillside. If I go to the next slide what is accurate is what we talked about last time, and we're all about the accuracy of the new exhibits, but that currently as they're showing it and as the topography and as you would see if you visited, there's 21 feet of dirt. So you have to start to back that in the excavation. It's 6 foot back, 5 foot up, so what's concerning us is that when you show this diagram it looks real quaint, and the fact of the matter is that it's going to be effectively about a 40-foot high wall. Where is the accuracy in what we're receiving? And then quickly, the next slide is the lower back, north-south end of the building; it is actually going to result in something more like a 60-foot wall. So those are the kinds of things that have been bothering us. We have asked to make sure that you all understand that we are receiving inaccurate depictions of this material and it's egregious.

So as she said, we are drawing what best material we have access to and this shows where the setbacks of at least 48 feet – this entire area of disturbance is nothing like what they're talking about. It's more like 20,000. So we're not talking about them today, but we're really concerned about the handling of these two ravines and the setback and what have you for walls. I do show this as we still have data that has not been validated or invalidated. And on the left side of the screen, this solid yellow line that was asked of last time is restated is the centerline of the legal roadway and, yes, the roadway is on the curve is actually on the property. And so what we want to get to and what needs to be gotten to is the accuracy of these details. So one of the – and we have not received this detail, obviously.

The request that the applicant was given was to have a licensed surveyor do two things: survey and document the legal coordinates of the 21-acre parcel and then two, define and compare, the key word being compare, the parcel coordinates to the legal coordinates of the centerline. They've not done that. And, again, the key word comparing the legal centerline to the legal property line. That's all we ever had a concern about. There's no evidence that this has been completed. So the issue since the very preliminary hearing back February 13th has been, and I quote, the legal definition of the roadway easement with respect to the legal boundary of the applicant. That is the number one issue that we have yet to have answered.

Regarding the definition of the roadway easement, it is clear that the applicant continues to misrepresent the roadway in offering a repeated blurred exhibit. It's their own OBA, page 221, and that is not a legal definition of the roadway. At hearing number 2 the applicant's agent stated and it was at one hour, 21 minutes and 47 seconds into the recording, quote the exhibit 13 is the legal document recorded with the County in 1983 and signed by the surveyor in 1979, end quote. The dichotomy of that statement is yes,

it is a signed and recorded document. But it is not the legal definition but the plat and the roadway that's recorded in Book 463, page 638 and 639 and the warranty deed that defines the plat of a roadway. This is a huge difference in the legally recorded signed documents and the legal definitions sworn to in the New Mexico Supreme Court. This sharing of the screen is exactly the action item that we received at the initial hearing. It is a sworn-to document by the owner of the property, Ohlsen and his company, that Exhibit B, that on the left there is a legal definition of the acreage, and on the right is the legal definition of Coyote Mountain Road centerline. We presented this. It is in the records for this hearing and it's not being used. All we've asked for is this gets plotted and confirmed that the left side, the best that we have to understand, does not touch the roadway of the right on that page. And their recent – it appears that they just don't like this legal definition so they go to something else which is one of their new exhibits and I'll talk about that, is one of their new exhibits is quite blurred and it does not show the coordinates which are the cadastral coordinates. They're on the right side of the screen.

So in the recent exhibit survey, the origin of the coordinates is curiously whited-out and we'll talk – we'll show that in a second. And our action from the very first hearing with Mr. Virtue was to provide the legal definition, which we did and those are in Exhibit K, which I'm showing right now. In hearings one and two we presented this [inaudible] sworn to. This was sworn to as accurate by the applicant. I don't know how much more legal you can get to a definition.

Another case of apparent misrepresentation of facts. So we're very concerned and I'm getting to the next two exhibits of their recent – it is just basic accuracy of how they depict this. We believe that the roadway is a legal roadway and it's probably about 70 feet north of what is shown as the current location and that's what we have been consistently showing. And, again, why is the applicant not using this sworn application is beyond us. This material that I am sharing is so easily plotted and is presented by me in 5 decimal place accuracy using the Vincenty formula and that's coordinates that's starting at the very legal beginning of all of this.

And that – I won't read it, but in the middle of the right page is where you start this entire journey. And it starts out with for a point for reference commence. From that point you draw all of the cadastral dimensions the Vincenty formula gives you over the globe and you get the results of this and we've shown this before, and we still believe that this is an accurate depiction of the centerline and an accurate depiction of their boundary. One point of this that makes it convincing that it's accurate is that there is in the lower left corner, this roadway that we've plotted, not fuzzed out; it's plotted to accuracy, crosses the exact centerline of the [inaudible] the southwest corner of this 81-acre parcel when all of this was defined. We know that's a standard that is generally used to try to get the closest point of getting in to a new parcel. Then you lay it out through all the pieces in the parcel.

So we still feel very strongly that we've got the materials and we've shared it with the County and all we're doing is trying to help the County. One of the things that is very interesting and I'm going to – well, let me – I'm going to get back to this but the orange little box that's there as we've presented back in Exhibit 1, is the refuted 50 x 100-foot easement and you're going to see in a minute this is where it is actually at in legal documentation. They're showing it 500 feet to the left. They're showing it at the other curve, the lower access. So right there, I don't understand how they can come up with

something that is so wrong. But let me proceed. Just to show and prove this documentation and this yellow line is exactly this yellow line and it's all the boundaries and then the green, the purples are the legal definitions of the plat and the tract. Those are here as the plat and the tract and the tract and the township. You takes those coordinates, you find the corners of those what is claimed as the green by green and in this case you start with the green by the purple on the far left, you do what they say in cadastral coordinates, and you end up making that road all the way up to the top, all the way over to the right and it's not where the actual road is. There's nobody ever saying anything about that. It's legally though where it's at. It is legally where it is shown and the plot of land is legally where it is shown.

So, let's get to the applicant's two new recent exhibits. [poor connection] we would request people be respectful to us as we are being respectful to you.

VICTORIA DALTON (Siebert and Associates): Mr. Chair, Commissioners, are you asking the applicants to go ahead and do a presentation on the survey that was recently done? I'm sorry. I didn't know if that's what you asking. This is Victoria with Jim Siebert and Associates.

CHAIR GONZALES: I'm sorry, Vicky, what was that?

MS. DALTON: Mr. Chair, this is Victoria Dalton with Siebert and Associations. Did the Chairman ask for a presentation of the new documentation?

CHAIR GONZALES: I can't hear you.

MR. TERHUNE: Is this our time for speaking or is the applicant's time?

MS. DALTON: I'm sorry.

CHAIR GONZALES: Okay. I'm sorry. Let the applicant continue. Go ahead and continue, Mr. Terhune.

MR. TERHUNE: Thank you. The last two images are their representation and they're not legal representations. What they're showing and you see the lower left the whited out detail at the beginning of the legal beginning – the other thing that I just showed earlier to the courts, it was sworn to by the New Mexico Supreme Court, they give clear definition to what those whited out, parched out dimensions. And as defined via easement is what they're showing, they're painting a picture, they've handwritten an arrow and it shows that the left side of the plat is their easement. Well, I just showed you that that is not where the paperwork calls it. It's 500 feet to the right, and then we get to their lot and there's – so this repair – this is not even a good document because it's not a legal definition of the road and it's not a legal definition of what they're going to call out as the easement. So we're just looking to have that the County and us get the truth and that's all we've been looking for.

Another exhibit of the legal documentation – last meeting when the applicant agent claimed that this is a legal document. It's not a legal definition of the roadway. It is a sworn-to, done by a surveyor and it's been recorded. But to call this the official, the legal definition of the roadway is pretty wild in our opinion.

And then the last exhibit that we looked at quickly, actual roadway is shown; it's drawn. It's not the legal definition. There is no cadastral coordinates for the road. So I'm [inaudible] we saw them on the property – they trespassed, but they came out and they did this survey but it's not the action that was taken. The taken action was where is the centerline of the legal? Where's the land, and this certainly does not show that. Now they bring the attention to the left side of their plat, there's a presumptive location road

encroachment easement. The pages of the County are called out there. We have that page. It's very clearly defined but it's clearly defined 500 feet to the right over in the area where it says area of – I can't even read it – disturbances. So nice exhibit but it's not accurate.

Then one thing that's very interesting and we do want to point this out since it is part of the records here now is that – you look at the right side, it's the upper access, it clearly shows that the edge of the gravel road does not touch the property. This roadway is 70 feet or so too far south. That is our claim. But even as they have drawn it, it doesn't touch his property. It never has. And so, thank you, it's proven, we've known it all along, but for them to prove it is great. Show it again. But this is showing slope.

The committee members and a few people and John brings it up in the beginning of the dissertation of this whole thing that a legal litigation removed the upper access. This is showing there has never been an upper access. So we appreciate being able to have the chance to review this document.

There is one other thing about it is it is not accurate in that its survey and you can see, I have it – you can see that the most survey is slightly different than the old one. So where was the action was the legal definition of the roadway – or the property? This is where it's at today. But what we asked for is for the legal plat and the legal centerline of the road and this does not do that in anyway shape and form. Curiously, in the upper left there is a block of definitions as part of the inaccuracies of the hemming down of this property from Mr. McDuffy, through a Desert Sunrise, through Ohlsen's company and all of that. There's one of them that's curiously missing. It's not a good job of coming through and getting all the legal warranty of the property. There's a special warranty deed, 264, for 70, 71, that is suspiciously missing out of that list. It's dated in the County by 9/8/2003 so for inaccuracy, and that's not our point, this whole committee dissertation would be – and that's not even accurate. So it's curious at this point in the game that omissions of this nature – inaccuracy of the text, putting the easement encroachment in the wrong spot – these things are very concerning to us.

I'm almost finished. So we have presented in the previous prior hearings and we do not get answers but we're still concerned about public safety. I guess we're not going to hear an answer to that but there is a great deal of culpability by the County in this life threatening situation with this narrow road and any kind of construction.

We do really would like to know if there's going to be a field inspection. That action was taken at the last meeting which I think was part of that meeting. This concludes our committee [inaudible]. It's unabridged and a version of this was put together quickly without a lot of time, the timing on all of this but we do thank you for your time and we'd appreciate if there'd be a little bit more respectful comments made but we stand for questions.

CHAIR GONZALES: Thank you, Mr. Terhune. Does the Commission have any question of the applicant? Frank, please, go ahead.

MEMBER KATZ: Thank you. My first question is you showed us a graphic of the stepped wall in back of the proposed house. Who did that drawing?

MR. TERHUNE: I did.

MEMBER KATZ: And what did you base that on?

MR. TERHUNE: Thank you. I brought that up last meeting. The topography that they represent, and you can go out and see it, but that hillside which is

shown just to the right of second [inaudible] there. That hillside currently is 21 feet higher than the driveway and we're going based on the flags. We're basing it on the topo. If you had – if you'd let me given my full speech today, I could have given you the page application where this topo is existing in their exhibit. It's pretty hard to imagine that a 21-foot pile of dirt and then the start of a 37 percent slope is being shown as a cute little planter. So we're simply saying, and I appreciate the question, we're simply saying to follow the rules of the SLDC sub – whatever, whatever, whatever – if you're going to put a wall in and at the very first meeting, I think it was Victoria or Vicki of somebody said, Oh, they're only 5-foot walls. Yeah, the rule in the SLDC is if you got anything higher than 5 foot, you go 5 foot up horizontally 6, 5, 6, 5, 6, 5, 6 and this is, technically, these dimensions aren't exact and you come up with, you need about 40 feet before you can actually overcome the realistic 37 percent slope and that's also part of the topo.

So you take that and you [inaudible] and then you show the house, you compare it to what they're trying to show, and I am very concerned that that is suddenly – because I draw it there at the bottom, Frank, 48 feet more of disturbance just along the roadside. If you take that 48 feet, and that's what I've drawn as the upper bound and then you go around to the backside to the bottom, that kind of setback for walls is not being considered in this application and it concerns us. So in the next slide there's the south end of building is actually shown as dropped down. The roadway and the hillside hasn't changed so to get that wall to be SLDC compliant you're now talking about a 5x6, 5, 6, 5, 6. You're already now disturbing your land back 72 feet and don't mention all the trees that you just killed. So, I hope that answers your question.

MR. LOVATO: Mr. Chair, Commissioner Katz, I want to refer you to OBA-18 which was done by a certified licensed engineer that shows the section cuts for this residence. I'm not questioning Mr. Terhune's logic but I just wanted to state that.

MEMBER KATZ: What was the page number?

MR. LOVATO: OBA-18,

MEMBER KATZ: OBQ-18?

MR. LOVATO: OBA-18. That's the engineer drawings that were presented to us and show how they're doing the section cuts on that plat.

MEMBER KATZ: Thank you. Okay, I have another question for Mr. Terhune. When did you get the survey?

MR. TERHUNE: What survey?

MEMBER KATZ: The new survey that was done at our request?

MR. TERHUNE: Um, I wrote it down here – but very recently I think like four days ago, five days ago.

MEMBER KATZ: Okay. You have challenged the accuracy of that survey and what you have not presented us with though is testimony from a surveyor to challenge it. And we are not the experts. We rely on licensed experts to help us make decisions. And all we have is that more recent survey that shows that the road goes where the applicant says it goes. And you disagree and I understand that but there's nothing that you have told me that I can use to evaluate whether you're right or you're wrong. And I'm frustrated by not having that.

MR. TERHUNE: May I, is it okay if I respond?

MEMBER KATZ: Please.

MR. TERHUNE: This is the legal definition right here.

MEMBER KATZ: It doesn't show me where that is on the ground.

MR. TERHUNE: Yes, it does. Well, yes, it does. It is right here. It's that yellow line. That line is exactly those cadastral coordinates.

MEMBER KATZ: Who drew that line?

MR. TERHUNE: I drew it.

MEMBER KATZ: Are you a surveyor?

MR. TERHUNE: You've asked me that before. I haven't changed since you asked me the first time. No. I am able to –

MEMBER KATZ: Why should I accept your drawing on that piece of paper?

MR. TERHUNE: You don't need to.

MEMBER KATZ: How can I accept it?

MR. TERHUNE: I have given the County the dimensions of the centerline of the roadway. What else do I need to do to go find somebody who can plot that –

MEMBER KATZ: No, you are challenging the evidence that the County has accepted – that staff has accepted and it's proper for you to challenge that. I'm not saying you're wrong to do that. We are the judges here and you're not presenting us the expert testimony that we could use to decide for you. You say, no, they didn't do it, they didn't do it, they didn't do it but that doesn't give us the evidence.

MR. TERHUNE: Well, there's two points I'd like to make, sir.

MEMBER KATZ: Yes, please.

MR. TERHUNE: One is that we only got notice of this meeting three days ago. We only got the exhibits about six or seven days, I can go back and look. I don't understand what you're saying.

MR. LOVATO: Mr. Chair, Mr. Terhune, the exhibits were submitted as an email to Mr. Terhune on the 9th of November, just to clarify.

MEMBER KATZ: So that's only a few days ago, 10 days ago.

MR. TERHUNE: Yeah, and we could get somebody who has some license and it's not me and you've asked me twice and let them draw this but what I think I'm not conveying properly is, I think – I would ask you guys to review the action that was taken the first meeting. It's written in the minutes: get a surveyor to take the dimensions of the road, the legal roadway and the legal property. That has not been done and that's what we're arguing. That picture right here, sir, is not that action. And that's all we've said. We can take the action now that we've seen all of this and have the time and we will go out and we'll get somebody that can take those dimensions and draw them up and sign it and record it if they need to. There is no issue there.

MEMBER KATZ: Okay.

MR. TERHUNE: If we have the time and we started out by saying, it would have been nice if we had the time to do it but we never got that report. But I guess I want to emphasize that this picture here is not the result of the action that they were given. We're past their line at the legal – we are not arguing the actual roadway, sir. We're arguing the legal road centerline. That does not show that and I wish that you could all acknowledge that. But maybe I'm a solo of one. But that does not show the legal roadway.

MEMBER KATZ: Mr. Terhune, do you understand my problem is that I don't know that that graphic that you're showing right now isn't exactly what the legal definition is. I've never seen something that is described as that or calls out for that. And if you know that to be different or believe that to be different and I have – I am very impressed by your knowledge and your abilities – then why weren't you getting it together? Why haven't you gotten it together to submit that to us?

MR. TERHUNE: Good question. And we have that data. We felt that we conveyed that at the last meeting. We provided that action to the County in meeting number one with Mr. Virtue. We thought that that was being taken into account and we can easily go off and get it plotted somehow but I respect you sir, but if you look at this picture can you tell me any cadastral coordinates of any accuracy per that roadway. I challenge anybody to show me where that is in cadastral space of the United State's earth surface. It is not drawn as a legal definition. It is not drawn as an actual or a legal,; it's drawn as actual. But we will be happy to take that action and go get those dimensions from what we gave to the County. That's why we were given that action. But we have this and there is nobody arguing that.

CHAIR GONZALES: Okay, Frank, any other questions?

MEMBER KATZ: No, I think I'm good for now. Thanks.

CHAIR GONZALES: Okay, thank you, Frank. I would just like to back up what Mr. Katz has said. We have an issue here were Mr. Terhune, you are challenging the work of another professional surveyor, a surveyor, so I'd like to see some more information on where you're coming from on that as well.

Does the Commission have any more questions of the applicant? I mean Mr. Terhune?

MR. TERHUNE: Can I respond to that comment?

CHAIR GONZALES: Yes, you can.

MR. TERHUNE: We're not questioning the validity of the surveyor's ability. This does not show the action item that was taken. They did the job that they somehow were told to do but how can you draw the presumptive location in the wrong location. That page, 36 – whatever it is, has it 500 feet to the right.

CHAIR GONZALES: Sir, you just mentioned several problems with the plat just a few minutes ago. Anyway, let's go on. Does the Commission have any more questions of Mr. Terhune? No. Okay. Are there any other members of the public that have anything to say?

MR. TERHUNE: We have no evidence that Susan was able to log in out of New York, so –

SUSAN KENNEDY ZELLER: I'm in. I managed to get in.

CHAIR GONZALES: Okay, Ms. Kennedy. Please proceed. Let's not make this as long as Mr. Terhune's please.

MS. KENNEDY ZELLER: Well, basically, did you all receive my write-up that was sent?

CHAIR GONZALES: Yes.

[Duly sworn, Susan Kennedy Zeller, 71 Coyote Mountain Road, testified as follows:]

MS. KENNEDY ZELLER: I don't have great demos for you. I have trouble getting notices from you people and they're trying to straighten that out now so I am sure that will be corrected. Some conditions that I think you should know about – let

me get the right ones here. It is showing encroachment but it's not showing the legal location of the roadway in the notes that this particular person has done. The curve of the roadway is frankly illegible. It's a presumptive curve of the road and that's incorrect. The records were indeed filed by the previous 21-acre parcel owner and a survey was successfully done by professional surveyors but it can't get much more official but I cannot validate, nor could the committee comment on what was submitted in the survey at the curve in question causing an implication therefore that the valid [inaudible]. This cannot be substantiated. It is an incomplete record search, frankly.

Road blockage: Should you approve this, it is almost a one-way road. At no time may the lower or upper roadways be blocked with construction traffic. Thanks to the Fire Marshal's advice we have put in all emergency mechanisms in place that will facilitate ambulances or fire trucks to come up the road and pass through our security gate. However, should there be a health or fire emergency during any construction, as a proper precaution no vehicles may be left unmanned along the roadway at any time and, of course, none can be left along the roadway parked overnight blocking that roadway. If they do, then frankly, the County would be culpable in a legal manner in the case of death or damage to the people in cars and that kind of a thing, because you would have been able – the situation has to be part of anything that you approve.

Any developer must pay their share of Coyote Mountain Road maintenance costs, the way all homeowners do now, and should the property being developed and sold the subsequent new owners must contribute their share of road maintenance cost. And this contingency must be in the property sale agreement. Costs are based on each owner's property distance from Santa Fe Trail to their homes. Plus for those homes beyond the gate, which this particular area is beyond the gate, that roadway maintenance expense is shared equally by those owners living above the gate. I'm actually one above the gate also so I have been contributing my share of the costs as the years have gone by.

Covid: We all know that Covid is not over with yet. So should the Santa Fe County approve this unsuitable construction in this location all personnel at the site must abide 100 percent by New Mexico State's strict guidelines concerning Covid protection with proper masking and social distancing. Should they be found in violation of this, frankly, County must immediately stop the construction and take any legal means necessary to prevent construction to continue. We live along that road. We do not want the virus to be amongst us.

Two, we also feel strongly that the developer, because they will be coming up and down the road should you approve that this thing is going to happen, that the developer must finance two road damage contingency funds and these could be held in a local bank, \$100,000. And, frankly, in favor of me, because I live right next to that, for any damage done to my property and roadway between the gate and up to the developer's curve and the driveway up 71 Coyote Mountain Road, which is me. That's my curve would be getting extensive traffic to and fro, to and fro, to and fro, and not just people walking but big equipment.

Number B, \$50,000 in favor of the lower Coyote Mountain Road Association for any damages caused by construction trucks and loads passing along the common lower roadway. Those would be large trucks. It's a roadway not meant for construction. It's a roadway meant for personal car passages and they need to be protected as well.

You're probably in the process of addressing some of our earlier comments and we're focusing first on this which is perfectly correct to focus on initially, and I assume you're going to take back some of the other issues that we have, for instance, because it's a narrow roadway no vehicles – if you do approve this or any part of this construction – no vehicles can be left unmanned along the roadway at any time and none can be parked overnight. You can go down the write-up you must all have in your packages because this was submitted in plenty of time to be included in it. And those are very simple but effective ways of controlling not only the virus but of controlling the construction equipment and anything that would be done in our roads that could impede the progress of the people who are already living along the road both below the gate and above the gate. You've got a whole series of taxpayers who have been supporting this County very happily and we wouldn't have a clue who might be possibly coming in should this be approved. Thank you.

CHAIR GONZALES: Thank you, Susan Kennedy Zeller. Okay, I am going to close the public hearing – hold on. Is there anyone else out there from the public that wants to speak? One more time, is there anyone out there in the public that wants to speak?

PAUL DURAN: Charlie, Charlie.

CHAIR GONZALES: Yes.

MR. DURAN: It's Paul Duran.

CHAIR GONZALES: Hey, Paul, how is it going?

MR. DURAN: Fine, thanks. I would just like to say one thing. Mr. Ohlsen's neighbors have said repeatedly that all they are after is the truth. And the truth of the matter is that this piece of property when it was subdivided, I'm sure it was done so that an easement or some kind of easement to the property. I don't believe it was ever subdivided with the intent of land-locking it. So the truth of the matter is that you have a piece of property here that is a legal lot of record and the owner should have the same rights as anyone else has up on that road to develop it and build something on it. Thank you.

[Mr. Duran was administered the oath following his comments which he attested were truthful.]

CHAIR GONZALES: Thank you, Paul. Is there anyone else in the public who wants to speak? Okay, I am going to close the public hearing. Any discussion, questions or comments? Frank.

MEMBER KATZ: I have a couple of questions of staff. You saw the exhibit that was shown us of the stepped up wall being a whole lot bigger than is shown. What's the story on that? Is that an accurate concern?

MR. LOVATO: Mr. Chair, Commission member Katz, I don't believe that that's a concern because it was addressed in OBA-18 by a licensed engineer. We reviewed that with code criteria and this is what they came up with. So I think just having a licensed engineer on that, we accepted that and are moving forward with that design. It's not a for sure design but they will have to come back with a more accurate design before this is done. This is just for the variance procedure.

MEMBER KATZ: I'm looking at what I think is OB-18 and is it the driveway profile that I'm looking at?

MR. LOVATO: Mr. Chair, Commission member Katz, it's the one furthest to your right at the lower bottom of the page by the title block. That's the section of the actual house cut.

MEMBER KATZ: I'm not seeing that.

MR. LOVATO: It's 1-C-1.

MEMBER KATZ: What exhibit is it?

MR. LOVATO: Exhibit 2.

MEMBER KATZ: I don't quite understand why I'm not seeing it or what the story is. OBA-18.

CHAIR GONZALES: Can you share your screen?

MR. LOVATO: OBA-17 – I apologize I had the wrong number.

MEMBER KATZ: That does not show me any steps.

MR. LOVATO: If you look at the section cut it comes back where it says pad, and then it goes up and then it steps back and then up – it's the darker line on the hatch lines. Vicki, if you can show the actual section cut up. So you have the driveway profile there and on the bottom right you see the section cut of the house.

MEMBER KATZ: It certainly is hard for a normal person to see a house in that.

MR. LOVATO: Right.

MEMBER KATZ: I don't think that that answers the question.

MR. LOVATO: Mr. Chair, if we're granting people a buildable area we need to see a pad, at least. The house design is not finalized. Once they come in and they do the plan for the house it will have to conform to SLDC standards; however, this was just a visual for the Commission to see the cuts that are going to be done and it's just the pad; it is not the residence.

MEMBER KATZ: Okay. What about the survey? Their complaint, the neighbors' complaint is that the survey does not show a survey of what's written in the Turner deed.

MR. LOVATO: Mr. Chair, Commissioner Katz, if you look at the actual survey that the County is recognizing, the first survey. Let me find it here – that would be Exhibit 13, and that is OBA-81. That plat right there is what we recognize as the legal lot of record. That survey basically matched the survey done by the applicant's most current recent survey. That is what staff went off of, reviewed for, and agreed upon for legal access.

MEMBER KATZ: Do you understand what Mr. Terhune is saying?

MR. LOVATO: Mr. Chair, Commission member Katz, all I can speak to is on the points of the actual surveys. I don't know anything about the actual documents that Mr. Terhune is presenting.

MEMBER KATZ: The actual survey – Mr. Terhune has said that the survey inaccurately delineates where the roadway is, where the easement for the roadway is, and he's not – I don't know whether he's disputing the accuracy of the survey itself but my concern is that he's making this allegation. My way of thinking is that given that we've just got a survey from a licensed surveyor that says this is the property, this is the road, this is the access and –

MR. LOVATO: Two licensed surveys.

MEMBER KATZ: I can accept that. Mr. Terhune is saying it's inaccurate and given that what we have is sworn to as accurate and was just redone, I think the burden is on him. But what he is saying is that if you plot the roads that specify where the road is that goes, it is not what is shown in that survey that we just got the other day. Do we have the surveyor here? Do we have anyone who could answer that question? This may be a question for the applicant?

MR. LOVATO: Mr. Chair, Commissioner Katz, I think this is a question for the applicant and/or the surveyor. Santa Fe County just accepts whatever is approved by a licensed surveyor and that's what we asked for. It matches both surveys. I don't know if the road's off. I don't know if the easement's not correctly aligned with the road. I'm just going with what we have with the surveyor.

MEMBER KATZ: I appreciate that and I think that that is what your job is. If that's all we have then that's what we're going to go on too. But I was trying to be fair to Mr. Terhune. But I guess I don't have anything more. Thank you, that's all I have of John.

CHAIR GONZALES: John, I have a question. That section that you showed earlier, was that done by a civil engineer or a structural engineer, and who is it?

MR. LOVATO: That was done by Jorge Gonzales. He's a licensed engineer in the State of New Mexico. And he's a civil engineer.

CHAIR GONZALES: Yes, thank you. Okay, any other questions from the Commissioners, discussion? Any motions? J.J.

MEMBER J.J. GONZALES: Yes, I move to approve case 18-5180.

MEMBER MARTIN: Second, with conditions I assume

MEMBER J.J. GONZALES: Yes, with conditions.

The motion passed by unanimous [5-0] roll call vote. Mr. Raznick was not online for this action.

- B. Jack and Mark Ellvinger/Sarah Stark, Applicants, Patrick Collingwood, Agent, request a variance of Chapter 7, Section 7.3.3, Table 7-A, to allow a residence to be 18' within the 25' setback, a variance of Chapter 7, Section 7.17.9.2.6, to allow the finish floor elevation to exceed 5' and allow the residence finished floor to be 8'-11" from natural grade; a variance of Chapter 7, Section 7.17.9.2.7, (Significant Tree Removal), to allow the removal of two (2) significant trees; a variance of Chapter 7, Section, 7.17.9.2.3, (30% Slope Disturbance), to allow a residence to disturb 442 square feet of 30% slope disturbance); a variance of Chapter 7, Section, 7.17.9.3.2, to allow a residence to exceed 18' in height and allow the residence to be 24'-6" in height; a variance of Chapter 7, Section, 7.17.9.2 (standards), to allow a structure to be constructed on a ridgetop; and a variance of Chapter 7, Section 7.17.9.2.2, (Ridgetop Setback), to allow the residence to be constructed on the shoulder. The property is within the Residential Fringe Zoning District RES-F and located at 53 Camino Pacifico, within, Section 30, Township 16 North, Range 10 East, (Commission District 4). SDA-2**

CHAIR GONZALES: The next case is Mark and Jack Ellvinger. This case was also tabled and we'll have discussions on the evidence and allow public input as well. If there's a lot of people out there that want to speak either get together or let us know – again, if there are several members who need to speak. With that said, I'll direct staff to begin their presentation

[Mr. Lovato read the case caption as shown above and provided his report as follows:]

MR. LOVATO: This Application came before the Santa Fe County Planning Commission on August 20, 2020. The decision of the Planning Commission was to table the case. The Planning Commission requested that the Applicant create a plan showing the access to the buildable area on the lot. The Applicant has submitted a plan and profile showing access to the buildable area and has also done one other alternative plan.

Original request Option A: The Applicants request authorization to construct a residence on the shoulder of a ridgetop, disturb 387 square feet of 30 percent slope – correct that it should 442 square feet for the residence and a 30 slope for the resident, 55 square feet on a 30 percent slope for the septic system, allow a for a 7 foot setback instead of the 25 feet side setback requirement to allow the home to be level. The residences finish floor will be 8 foot 11 inches above natural grade to maintain a single level floor and remove two significant trees within the building footprint.

Option B: If the Applicant constructs a residence on the buildable area on the lot, Option B-Exhibit 16, the Applicant's plan illustrates eight occurrences totaling 3,430 square feet of 25 percent slope disturbance, removal of five significant trees on 30 percent slope, disturbance of seven rock outcroppings and a driveway with final grades in excess of 18 percent. Option B also creates a site that during the winter months may be

inaccessible for the Applicant and the grade creates issues for fire access. In addition, this option disturbs a greater amount of 30 percent slope disturbance, rock outcroppings, and significant trees.

Option C: The Applicant has also worked with the community members to create a design at a different location on the lot. Option C is 80 feet off Camino Pacifico and would disturb a total of 1,958 square feet of 30 percent slope for the residence, would result in a finish floor elevation of 7 feet 1 inch from natural grade, a total disturbance of five significant trees on 30 percent slope, would result in a building height of 26 feet 9 inches and would cause the residence to encroach 18 feet into the 25 foot side setback.

The Applicant has addressed the variance criteria for Options B and C and both additional options, staff feels that building in these locations would be more intrusive and create greater obstacles for the Applicant as well as require additional and more extensive variances to the SLDC.

Hearing Officer recommendation, the Hearing Officer recommended that the Application, exhibits, and testimony establish that the Application meets the requirements of the SLDC for approval of the variances recommended and that the Application should be approved subject to the conditions recommended by County staff.

Staff recommendation, the Application came before the Santa Fe County Planning Commission on August 20, 2020. The decision of the Planning Commission was to postpone the case. The Planning Commission requested that the Applicant create a plan showing access to the buildable area on the lot. The Applicant has submitted a plan and profile showing access to the buildable area for Option B and has also done one other alternative plan, Option C.

Staff has examined the two alternative options submitted by the Applicant and have determined that these proposals would require removal of more significant trees, more rock outcroppings, and more disturbance of 30 percent slope than what was requested as part of the original proposal A.

The Application is not in strict compliance with the SLDC, but this Application Option A meets the criteria necessary for granting a variance. Due to the topography of the lot, the Applicants are unable to build a home on the lot without variances. The site offers limited buildable area due to the topography and the lack of access to buildable area. The Applicants 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. 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 Applicants/Owners. Based on this proposal minimizing the amount of cuts and fills and disturbance of terrain and minimizing the visibility if the residence, the spirit of the SLDC is met. Therefore, staff recommends approval of the variances requested under the original proposal Option A, subject to the following conditions. Mr. Chair, may I enter these conditions into the record?

CHAIR GONZALES: Yes.

Conditions:

1. The Applicants shall provide a plan showing the limits of disturbance and provide a construction fence along the limited area.

2. The Applicants shall submit a stabilization plan for all disturbed areas that includes re-seeding of native vegetation.
3. The Applicants shall submit a drainage plan for approval.
4. The Applicants shall submit a Geo-technical analysis for soil stability
5. The Applicants shall comply with Santa Fe County Fire Prevention requirements.

MR. LOVATO: Thank you, Mr. Chair. Mr. Chair, Commissioner Katz asked the applicant if it was possible to record an access to the lower area and walk through and the applicant has done so and I'm hoping he'll be able to show that as we share the screen with him at some point. Thank you.

CHAIR GONZALES: Thank you. Okay, does the Commission have any questions of John? Frank.

MEMBER KATZ: I had a question for staff, maybe the attorney. All of the options, A, B and C, require variances triggering an evaluation according to the criteria. So it's our job to compare the compliance of each option according to those criteria. And which ones remove fewer trees, which one disturb more terrain and things like that. I take it from the report that John just gave that he feels and recommends that Option A, the original one, does fewer violations of the standards. Are some standards more important than other standards? One of the prior standards is we shouldn't build on a ridgetop or you shouldn't build on a shoulder and you shouldn't build on a slope; is one of these more important than the other or how do we weigh it? We're going to have to grant a variance. These people have the right to build on their property and surely the courts would tell us that if we try to deny them of that possibility. But in evaluating what project would be best how do we evaluate the compliance with each according to the criteria?

ROGER PRUCINO (Assistant County Attorney): Certainly from the perspective of –

[There was some confusion regarding the identity of the speaker]

MS. LUCERO: Mr. Chair, I was just going to say that the variances kind of go hand-in-hand. Obviously when you have slope disturbance that creates scars in the hillside and visibility issues and also stabilization issues. The same runs true for the removal of significant trees because those also add to the stabilization of the slopes. As far as the height, I don't know that that would necessarily have anything to do with the stability of the slopes but there again it would impact the visual analysis or the visibility of the residence from certain roadways. So they all tend to go hand-in-hand and I didn't think I would say necessarily that one is worse than the other but I would think that slope stabilization would probably be and visibility would probably be the more extensive variances.

CHAIR GONZALES: And I would add that protecting the rock outcroppings as well because that's part of stabilization as well.

MEMBER KATZ: Thank you.

CHAIR GONZALES: Any other questions of staff?

MEMBER J.J. GONZALES: Mr. Chair.

CHAIR GONZALES: J.J.

MEMBER J.J. GONZALES: Yes, you know I've been very concerned about the number of variances that this application is requesting. My opinion is that

some of these variances are within our power to grant to approve. But I'm concerned about the options where it says your waiving the 25-foot setback from the property lines. I read the material and that is a requirement from the Sunlit Hills homeowners association where they have their own covenants and I'm kind of concerned that we are overlapping into their jurisdiction. They're asking to be within the 18 feet from expanding into the HOA setback requirement which puts them 5 or 7 feet from the next door neighbor. So I'm concerned we're granting a variance that is opposed to what their covenants say. I'm opposed to that. I think the HOA has their own covenants that we ought to recognize. In this application they want to build into the 25-foot setback and those are my concerns. I know there's variances that we can approve but when we have to overlap into the jurisdiction of the HOA that's kind of concerns me. That's all I have to say on this matter. I have more to say in the future.

CHAIR GONZALES: Thank you, J.J.

MR. LOVATO: Mr. Chair, Commissioner Gonzales, I do believe they got an approval but I will let them speak further, the applicant, on it but I do believe they got an approval from the actual homeowners association on the actual design of the residence. Again, I'll let him address that issue.

MEMBER J.J. GONZALES: That will be fine but what I read was that they're encroaching into the 24-foot easement. They're 5 feet or 7 feet from the property line. If they have an approval from the HOA then that is perfectly fine. Thank you.

CHAIR GONZALES: Any other questions from the Commission to staff? The only thing that I would like to say about that one John is that over the years the City and the County – over the City and the County enforce the County and City code and usually don't acknowledge the homeowner associations. They have to enforce their own codes. In my experience that is how it has been read. I just wanted to throw that out there. Any other questions? Is the applicant here?

[Duly sworn, Sarah Stark, 525 Canyon Road, Santa Fe, testified as follows:]

SARAH STARK: May I just say, I'm having trouble hearing and I think there are some people who are not muted and it would really help a lot if everyone would mute. I am just hearing an echo.

CHAIR GONZALES: Yes, I agree and thank you. Please proceed.

MS. STARK: So how much time do I have?

CHAIR GONZALES: Is 10 minutes sufficient?

MS. STARK: I'll take part of the time and then I'll turn it over to the architect. I want to thank John Lovato and all of the staff members at the County who have worked with us. I want to thank all of the Commissioners for their time and commitment to the Santa Fe community.

We have been at this for more than a year as you know. This is our third hearing and under trying pandemic circumstances and I appreciate the time and the energy that it is still taking.

I want to take the next couple of minutes to explain why I think the newest building site, building site C, is absolutely the best option and really our only good option on this piece of land which you all know is a non-conforming extremely difficult to build on lot. This hill site meets the concerns of the neighbors. It is in keeping of the spirit of the SLDC and it meets my own needs in building a relatively low footprint house.

At the last hearing we heard concerns from five neighbors on Camino Pacifico about the original site of the house right up near the road. We heard from Paul and Chantal Pease at 54 Camino Pacifico, John and Barbara Volt at 71 Camino Pacifico, Marsha Rolls at 43 Camino Pacifico, Stephen Lucht, 44 Camino Pacifico and Carl Van Steen at 31 Camino Pacifico. We really listened to those concerns and we went right back to the drawing board to find a site further from the road. We took the first option right off the table. Our new response is 75 feet from the road and we lowered it down on the property. So I would like to be clear, I think Option A should be off the table. Since then we've talked to many more neighbors and we have eight formally supporting this new plan: Ashley Binder at 33B Paseo de Camino, Joe McClain at 37 Camino Pacifico, Constantia and Natasha Rookin at 30 Sunlit Drive, Victor Geomata – I'm not sure I'm pronouncing that correctly – Victor at 65 Camino Pacifico, Ingrid and Robert Upton at 3 Golden Eagle Road, Jacqueline and David Dushane at 16 Sunlit Drive, Christina Laquin at 31 Sunlit Drive and finally Ruth and Paul Kelly at 83 Camino Pacifico.

Prior to today's meeting there have been no formal complaints directed at this new site that I am aware of. The other idea that we heard at the last hearing was that I should pursue the idea of asking the adjacent property owner, Frank Hatch, at the backend of my property if he would grant me an easement. The idea being that this would allow me to access some of the lower flatter sites on the back of the land more easily. We have reached out to Frank Hatch multiple times and we have even drove up to his house and we have learned that he is out of the country and has been out of the country and will be out of the country for the foreseeable future in Brazil building a house. He has not responding to my specific email requests about granting an easement and I take this to mean that he is absolutely not interested. So I propose that we take the option of an easement off the table.

Also since the last hearing, Patrick explored many sites on the property especially some of those lower sites that look and actually are flatter. The bottom line is that any site at the bottom will require an extremely long steep driveway off Camino Pacifico. The steepest exceeds the 18 percent maximum slope stipulated by the Fire Department. This steepness combined with its north facing aspect presents very real practical and safety issues. This brings me back to the site approximately 75 feet from the road. This is the sweet spot on this piece of land. It answers neighbor concerns while still meeting fire and safety regulations. This new site is in keeping with the spirit of the SLDC. I ask the Commission to consider this compromise site. If we're going to put a house on this piece of land this is where it needs to be. Thank you.

I think at this point, Patrick is going to show the video that shows the driveway – it shows me walking down the proposed driveway.

PATRICK COLLINGWOOD: Hi, my name's Patrick Collingwood I'm the contractor for this project. We took a – Frank Katz requested that we take a video –

CHAIR GONZALES: Excuse me, Patrick, please get sworn in.
[Duly sworn, Patrick Collingwood 1340 Aveida Rincon, Santa Fe, 87506 testified as follows]

MR. COLLINGWOOD: Yesterday, Frank and Vicki had a discussion and they thought it would be a good idea if we took a video of the land where it basically walks down the length of the driveway as Option B because in the last hearing Frank wanted us to explore Option B in more detail. Now, it got a little confusing with

everyone looking at drawings and googling the land and the question is, what is this terrain? What will it look like and how bad is it impacted? What this video shows you is it shows you the terrain that we'll be going about. It shows you the significant trees that will be taken out. It shows you the rock outcrops that would be taken out and it also as we go down the driveway, Sarah basically points out the locations of the different building options. Let me just share it with you. [Video and audio difficulties]

You know, we might need a little time for the video to load so maybe we can move on to the next phase while it loads. Then I can come back in and present it to everyone.

CHAIR GONZALES: Okay, but please tell us what those poles represent first.

MR. COLLINGWOOD: Are we talking about the poles in the video?

CHAIR GONZALES: Yes.

MR. COLLINGWOOD: So the poles in video – it's a little out of context, but the poles in the video are the new proposed building location.

CHAIR GONZALES: Maybe you could just tell us what we're seeing on the screen.

[Mr. Collingwood's connection to the meeting was lost]

MS. STARK: Hi, this is Sarah. We're trying to log in on a different computer. I think we should move on. We are having some technical difficulties with the videos as you can tell. Patrick is trying to work on that. I will just say, breaking news, I did just receive an email from Doug Hatch, finally, saying it is not a reasonable idea. That's the summary – and I can submit this to some kind of public record. It's a long email that basically, that's the gist of it.

CHAIR GONZALES: The video is in front of us now can you explain what is going on.

MS. STARK: We're about half-way down at this point and I'm stopping at every place – oh, I think the video is working. [audio is not present with the video] I can narrate it as we go and hopefully it will work. We are more than half-way down and we're through some of the more steep stuff at this point. This is a flatter area and I've been noting the outcropping as we go and the trees. I'm not sure why the video is stopping here.

I think we should – I'm very stressed out that this is not working and we're having technical difficulties and I'm also very aware of everyone's time. I feel that we should pause the video and come back to it if we're able to fix it.

MEMBER KATZ: That sounds like a good idea to me. I appreciate your having done the video and it does give us some insight into it.

MS. STARK: Thanks.

CHAIR GONZALES: Okay, is there anything else you're like to say in continuing your presentation?

MS. STARK: That was the end of my presentation and I was going to let Patrick answer any questions that might come up if you needed a technical voice.

CHAIR GONZALES: Okay, thank you very much. Does the Commission have any questions of the architect?

MS. STARK: Okay, wait.

MR. COLLINGWOOD: I'll say something. So first we got an email from [very poor connection] head of the association and I think John added it to the attached documents – yeah, from the HOA. [inaudible] and what Steve is basically saying is if it isn't in the 25 [inaudible]

CHAIR GONZALES: I don't think anyone is able to understand that. You are breaking up.

MEMBER KATZ: Maybe we can just go on to public comment and then we can come back.

CHAIR GONZALES: Okay, we have difficulties with that connection and I think we should go to the public hearing. Does anybody out there want to say anything on behalf or against this case?

CARL VAN STEEN: Yes, this is Carl Van Steen.

CHAIR GONZALES: Okay, Carl, please get sworn in first.
[Duly sworn, Carl Van Steen OF 31 Camino Pacifico, Santa Fe, testified as follows]

MR. VAN STEEN: First I want to recommend on the HOA part, our neighborhood does not have an active HOA anymore. Two years ago we effect meeting where the majority of the people who were members of the HOA gave to disconnect the HOA for this – there are CCRs of course where we have placed a 75-foot setback from the property lines where one of the major concerns of most of our neighbors and I will speak for our neighbors, one of our major concerns is that they want to build inside that 25-foot setback from the main room. And [inaudible] they actually are going with a building structure 70 feet long and almost 50 percent into the setback within part of their use at 25 feet and need an additional variance into their setback. So it's going to be in a very neighborhood they're going to structure that is Option A that we want to table it.

The major concerns is that they're going to build 70 feet along the road and in a very rural neighborhood and it's going to look like a strip mall sitting inside the forest out of nowhere. And that setback violation and height variance is actually really up against a road and in everybody's view. So it cannot be approved from an HOA. I don't where the letter from them that here is an HOA since there wasn't been an HOA in this neighborhood anymore.

So the homeowners that are next door to them are actually approving the setback variances either. That's actually [inaudible] on this street in this neighborhood that we are all concerned about changing the streetscape of this neighborhood by allowing them a variance to the building code. That's all I will leave that for now. Thank you.

CHAIR GONZALES: Thank you, Mr. Van Steen. Does anyone else out there want to speak?

JACK ELLVINGER: Hello, my name is Jack Ellvinger.
[Duly sworn, Jack Ellvinger, 2504 Camino de Vida, Santa Fe testified as follows:]

MR. ELLVINGER: I appreciate you giving me the opportunity to speak at this meeting. My father was the original owner of the two pieces of property – 53 Camino Pacifico and then adjacent hillside property. He lived there for most of his later years after he retired. As we all know, a lot of the lots out there [inaudible] present many building challenges and a lot of people have been able to overcome them with a variety of different unique techniques. My brother and I both divided the property after my dad died. We put the property on the market a couple years after he died and it remained on the market with signs posted along the Camino Pacifico with realtors from Santa Fe

Properties. After two years, we let the contract expire with them. And my thought was it would go back on the market when it became more stable. During that time, Ms. Stark approached me about selling the property. Ms. Stark had showed me plans and we had discussions at my house concerning the property and what she wanted to build. She was very friendly, forthcoming and very honest. I was pleased that this property was going to somebody who would make it a home and raise their family on it.

That's all I wanted to say. I just wanted to endorse Ms. Stark's plans for this property.

CHAIR GONZALES: Thank you for your input, sir.

MR. ELLVINGER: Thank you.

CHAIR GONZALES: Anybody else from the public want to speak on this case? Okay, please state your name and address and get sworn in.

[Duly sworn, John Volt, 71 Camino Pacifico, Santa Fe, testified as follows:]

JOHN VOLT: I want to refer all of the folks at the County to a letter where I wrote and stated on the 12th that I believe has been attached to the agenda. I can't see everything that is on there because you have access to it there. The issues that I had is that all of these proposals require a lot of variances. There was seven for the other version, six for the new version and five for the C version. So it looks better but there's still a lot of variances. The place where I have the most trouble is with the setbacks. To be clear when we talk about being within 18 feet of a side setback that means it is 7 feet from the side property line. It doesn't seem like when you look at the plans that it has to be in the side setback at all. The carport – so if they put the carport in front of the house towards the street a little bit they could be totally out of the setback and they wouldn't cause anybody including their neighbor any aggravation. That is a doable thing. I build a house on this property in the area and it was very difficult and we did it. And we did it with no variances. It seems like it is possible to build a house on this lot where they are proposing it without variances at all. But they shouldn't be putting a driveway in an easement. They shouldn't be putting a carport in an easement. There is no reason to do that. They have the house where it belongs and it's just trying to get the access to it that's a problem.

The other point is that the first [inaudible] from the architectural control committee did not for the HOA as it was stated. There is no active HOA. There is just a neighborhood association that is no longer in existence. That is a problem. There are some issues that I have with what he wrote. For example, the minimum square footage that is permitted by the bylaws is 1,750 square feet. The [inaudible] both of those numbers are the ground floor without any garages or carports included in that number. So this is a premise compared to what it is actually supposed to be. I remember from early on relative to the front setback is a challenge too. I can't really look at any of these drawings and to be able to figure out where the road really is, where the easement is for the road, where roads are – they are kind of just drawn in here but there's no dimensions given to anything specific. Covenants require that we have a 50 foot front setback and 25 foot side setbacks so [inaudible] and we have that on top of the fact that the ridgeline is supposed to have 100 foot setback to the front which is probably [inaudible]. We have a number of issues that have to go through on this thing. It seems like they are not reviewing from what these setbacks are at all and my biggest problem is that it seems like it's very doable with the plans that they have to just make them a little bit bigger so

[inaudible] and straighten out the [inaudible] line as it comes in and keep it on their own property and not use the setbacks.

CHAIR GONZALES: Okay.

CHANTAL PEASE: This is Chantal and I just wanted to add to make two comments. In the [inaudible] when I went to the website a few days ago there was a letter from the Harris that are the neighbors of 53 Camino and she could not attend this meeting. She did send a letter on November 9th because I read it on the website but I can't find it today. And basically she put in a comment pros and cons of all three options, A, B and C. So I thought I was looking for it just to refresh my mind on the position of the pros and cons that she had but I think that the committee whether they saw the letter or not, I don't know, but it's not on the website.

The other thing that I wanted to also mention – I'm sorry I forgot. So basically that's the primary thing I wanted to mention. I thank you.

CHAIR GONZALES: Thank you. Okay, anybody else on the public that wants to speak on behalf or against this case? I'm going to close the public hearing.

MS. PEASE: Oh, wait, wait. I remember, may I? Chantal speaking.

CHAIR GONZALES: Sure, go ahead.

MS. PEASE: It's just that when I'm looking at the plan that Patrick 4BB-119, which shows the setback – when I looked at it I thought there could be times where the house, the planning of the house let's say by a certain degree than they make it not even – the carport will not even be on overstepping the variance. Yeah, the side variance because it's a – I'm not an architect, but if you turn it 90 degrees the right which is not as steep would work nicely.

CHAIR GONZALES: Okay, thank you. Again, is there anyone else in the public that wants to speak for or against this case?

MR. COLLINGWOOD: Commissioner, we have some more people calling in. One person is calling in in a few minutes and one person is calling in 10 minutes.

CHAIR GONZALES: I'm ready to close this public hearing.

MR. COLLINGWOOD: I'm sorry can we continue the public hearing so that the people who are actually for our case get to speak?

CHAIR GONZALES: We've been here for awhile and we can't be waiting 10, 15 minutes for somebody else to speak who hasn't even got on line yet.

MR. COLLINGWOOD: Can I say something because that video sort of messed up our presentation at the beginning?

CHAIR GONZALES: Okay.

MR. COLLINGWOOD: Okay, let me start. We're going way off track here with the neighbors – some neighbors aren't happy and they're talking about setbacks. There are two things that we didn't need any variances at all. We can go back to the drawing board and figure out a solution with no variances. Now we've been working on this case for a year and a half and I think John Lovato could maybe talk about that this case does need variances. He came to the site a year and a half ago and with one look at it and said, Yep, you're going to need variances. So we've been working our butts off to figure out how to put a house in with variances and I'd like to go back to what Vicki was saying about – I mean, this should be a question about which variance is the better or worse. It's not a case of about if you turn the house this way, you wouldn't need

any variances. I can answer to that. Yes, we can turn the house 90 degrees but then we've got a house facing a septic tank and a leach field. So you need that space but there's utilities. And this is something that we've been working through during the time and for the neighbors to come in and say, oh well, no big deal you can just move the house et cetera, et cetera, I find it a little disappointing and what they're also doing is they're using – I mean, they're saying that our drawings aren't accurate and they're saying our drawings are confusing and you know since the last hearing in August John Lovato and I both have gone back and forth countless times to make these drawing accurate and we put key notes, we put dimensions, we put everything under the sun. John has looked at this and it's gone through your ranks and the drawings are good. If you'd like I can take you through the drawings. And, in fact, they were given the drawings weeks ago. They could have gone through the drawings with me to talk about this. So what this really amounts to is basically, you know, a tactic that they're playing to muddy the waters and to kick us down the road, to kick this case down the road, not the [inaudible] which would be a total pain for us, a total pain for you guys and it's ridiculous. Jack Ellvinger came on and he said the property was on the market for two years, right. So they could have bought it then. It's \$45,000, right. So they could have bought it if they didn't want a house there. And this is really what it amounts to they don't want us there. And if we are building they want us to access from Sunlit Drive. I don't really see what the problem with the neighbors is. It's disappointing and you know we have eight letters from other neighbors, different kinds of neighbors, who are fully supporting our case. They say, yeah, building a driveway is absurd, they're not trying to take us back to square one and be like actually you can build a house there with no variances or actually we're confused about drawings. They're saying, yeah we looked at the drawings, the two spots by the road make the most sense and all of those letters have been down loaded and a few of those people could come on.

Now I'd like to focus the discussion on the nature of the variances. Like Vicki was saying Option B has four variances; rock outcrops, significant trees, 30 percent slopes, over three instances of 1,000 square and the driveway slope. So I want to focus on this driveway slope. Option B has a 700 foot driveway and the maximum slope required by Fire is 18 percent. In the middle of the driveway it exceeds that by 5, 6 percent. So to me this is a clear violation of the Fire code and it's a big deal because we're building in the wildlife urban interface where there are trees everywhere. If the house started burning, we'd need to get fire equipment that goes in and out quickly and if the driveway is too steep then it might prevent that. So that's not only endangering the applicant but endangering the whole subdivision. And it's very weird for the neighbors to say, Oh, well, we're okay with that long driveway and exceed the fire slope – no big deal, like there's a bunch of driveways around there that exceed the slope – you know, we're okay with that. Because there's absolutely – it presents a real safety risk.

The option of the side setbacks, for Option C – let's do Option A first, for Option A we're talking about two ridgeline setback, a side setback, a full finish from grade setback, a height setback, significant trees, and slope over 30 percent. Now, sure it's a lot of variances, it's seven variances, but none of them prevent a safety risk. The house is only eight feet high from the top of the road so it doesn't even look like a strip mall. I am sorry but I have gone through a bunch of strip malls after living in the States for about 8.5 years and if you want to see a strip mall we can drive around and look at

strip malls. So the other variances are more aesthetic essentially and the height, yes it's 26 foot 6, but it's from where you're standing in our property looking up. So essentially the land is dropping and the house is here and the height is there. And by pushing the house back away from the road, 75 feet from the road which is what the neighbors wanted and they asked for, we actually liked it. It offers more privacy and the neighbors will be happy with it so that's good. So this option and if you look at the section, the house is entirely below the level of the road surface. So you can be standing on the road looking out at the view and you just look straight over it. We're ditching two variances. It's not impinging on the ridgeline setbacks and you're still looking at a side setback at full finished height, significant trees and a 30 percent slope. So to us this solution makes the most sense. And I would like to direct the conversation to the question about variances about which variance is better? Which variance is worse, et cetera, et cetera?

Thank you for listening and I'm sorry for the bad – the technical problems that we had earlier. We had a video of Sarah walking the hillside along the driveway and pointing out all the rock outcrops and significant trees physically. We can upload it and people can look at it later or just move on and look at the drawings and take the drawings by the letter of the law. There you have it.

CHAIR GONZALES: I have a question for you. Which option do you prefer?

MS. STARK: Is this directed to me?

CHAIR GONZALES: Yes.

MS. STARK: I prefer Option C.

CHAIR GONZALES: Okay. Thank you very much. Okay, closing the public hearing. Do we have any discussion from the Commission, any motions?

MR. COLLINGWOOD: We have someone calling in right now.

CHAIR GONZALES: We have already closed the public hearing. Frank, please.

MEMBER KATZ: Yes, it is kind of hard to evaluate all of these different variance requests. I tend to think that Option C is the best one. I understand that the people on the one side of the road Camino Pacifico feel it should be further down the hill because they're on the hill. The people on the other side looking at it, they would see the road going down to the bottom and that would be quite a scar. So I do think that C is the sweet spot and I would hope that they could try and figure out a walk to maybe back off of being quite a close to the side setback and the neighbors maybe by just moving where the carport is or something. But I would leave that to them. I am in favor of Option C.

CHAIR GONZALES: That will be with staff conditions?

MEMBER KATZ: I was just making a comment but I will happily make a motion to approve Option C with the conditions that were specified.

MEMBER MARTIN: Second.

CHAIR GONZALES: Okay, we have a motion and a second with all conditions. All in favor say aye.

The motion passed by unanimous voice vote.

CHAIR GONZALES: The motion passes it carries. Thank you very much for attending.

5. **New Business** – None were presented.
6. **Petitions from the Floor** – None were offered.
7. **Communications from the Commission**

Wishes were expressed for a happy and safe Thanksgiving.

Regarding future field inspections, Ms. Lucero said with Covid it will be difficult and there are legal challenges with site visits regarding notice and public participation. She said more discussion is required.

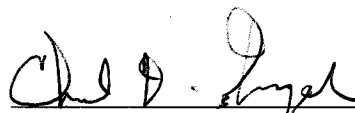
8. **Communications from the Attorney** - None were presented
9. **Matters from Land Use Staff**

Repeated wishes for a happy and safe Thanksgiving.

10. **Next Planning Commission Meeting:** December 17, 2020
11. **Adjournment**

Upon motion by Member Martin and second by Member Lopez, Chair Gonzales declared this meeting adjourned at approximately 6:11 p.m.

Approved by:



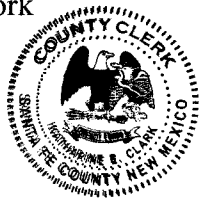
Charlie Gonzales, Chair
Planning Commission

ATTEST TO:

~~GERALDINE SALAZAR~~
SANTA FE COUNTY CLERK
Katharine E. Clark

Submitted by:

Karen Farrell, Wordswork



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

PLANNING COMMISSION MI
PAGES: 27

I Hereby Certify That This Instrument Was Filed for
Record On The 8TH Day Of January, 2021 at 04:06:44 PM
And Was Duly Recorded as Instrument # **1939891**
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Katharine E. Clark
Deputy County Clerk, Santa Fe, NM

