

MINUTES OF THE
SANTA FE COUNTY
PLANNING COMMISSION

Santa Fe, New Mexico

June 21, 2018

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

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

Members Present:

Charlie Gonzales, Chair
Frank Katz, Vice Chair
Rena Gray
Leroy Lopez
Susan Martin
Steve Shepherd

Member(s) Excused:

Phil Anaya

Staff Present:

Vicki Lucero, Building & Development Services Manager
Paul Kavanaugh, Building & Development Services Supervisor
John Lovato, Development Review Specialist
Tony Flores, Deputy County Manager
Rachel Brown, Deputy County Attorney
Cristella Valdez, Assistant County Attorney
Jaome Blay, Fire Marshal

IV. Approval of Agenda

Vicki Lucero noted that there were no changes other than those posted on the amended agenda.

Member Katz moved approval and Member Martin seconded. The motion carried by unanimous [6-0] voice vote.

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V. Approval of Minutes: May 17, 2017

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

VI. OLD BUSINESS

- A. **CASE # V 17-5290 James Baker Variance.** James Baker, Applicant, Karl Sommer, Agent, requests a variance of Chapter 7, Section 7.6.3.1.1.2b, (Preservation of Existing Vegetation and Significant Trees), Chapter 7, Section 7.17.4.1, No-Build Areas (Disturbance of Rock Outcroppings), Chapter 7, Section 7.17.10.4.1, Roads and driveways over 25 percent, and a variance of Chapter 7, Section 7.17.4.3, No Build Areas (Disturbance of 30 percent Slope). The property is located at 38 Stacy Road within, Section 18, Township 18 North, Range 10 East, (Commission District 4) [*Exhibit 1: Plat Provided by Applicant; Exhibit 2: Photos Provided by Applicant*]

JOHN LOVATO (Case Manager): Thank you, Mr. Chair. After the commencement of my presentation there will be a video clip, in which I will walk through the property for a presentation. On May 17, 2018, the Santa Fe County Planning Commission met on this case.

CRISTELLA VALDEZ (Assistant County Attorney): Mr. Chair, I think it would be appropriate for the Commission to reconvene the public hearing before hearing anything on this matter.

CHAIR GONZALES: I'm sorry. What was that again?

MS. VALDEZ: Mr. Chair, it would be appropriate for the Planning Commission to have a motion to reconvene before commencing the –

CHAIR GONZALES: This case?

MS. VALDEZ: Yes. The public hearing.

CHAIR GONZALES: Does anyone make a motion to reconvene this case?

MEMBER MARTIN: I'll so move to reconvene this case, V #17-5290, James Baker Variance.

CHAIR GONZALES: Do I have a second?

MEMBER KATZ: Second.

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

CHAIR GONZALES: John, please start.

MR. LOVATO: Thank you, Mr. Chair. On May 17, 2018, the Santa Fe County Planning Commission met on this case. The decision of the Planning Commission was to table the case so the applicant could have the platted buildable area staked out and provide a new grading and drainage plan for the site. The request by the

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Planning Commission was to have new grading and drainage plans that are stamped by an engineer and provide more technical information on the plans, including:

1. Pre- and post-construction conditions
2. Locations of rock outcroppings removed
3. Significant trees that were removed
4. Retention pond sections
5. Soils types
6. Cross sections of disturbed areas
7. Contour elevations
8. Building envelope per plat with overlay of proposed building footprint
9. Proposed driveway and fire staging area sections

The applicant has not submitted any of the above information.

The applicant has since staked the site, but did not contact staff to be present at that time.

The applicant has failed to submit any documentation regarding the surveyor's findings about the buildable area. The applicant has also been unresponsive to the request for the additional information by the Planning Commission. There are existing violations on the property. The applicant has known this for nearly two years, and therefore, this application should continue move forward through the process to resolve the violations.

On June 12, 2018, staff inspected the staked out building envelope and has confirmed the Applicant is partially within the building envelope. However, the Applicant graded outside of the building envelope and disturbed slopes in excess of 30 percent for the house pad and disturbed slopes in excess of 25 percent slope for the driveway without a permit.

The applicant has not submitted any documentation regarding the surveyor's findings. The applicant has also been unresponsive to the request for the additional information requested by the Planning Commission. There is an existing violation on the property, and therefore, this application must move forward through the process to resolve the violation.

Staff recommendation: The applicant has been unresponsive to the request from the Planning Commission for the additional information. The applicant was also unresponsive to staff's request to be present when the surveyor staked the site. The notice of violation for unpermitted development and disturbance of 30 percent slopes was issued almost two years ago. The applicant has been unresponsive to staff's and Planning Commission's requests in order to resolve the issues. Staff recommends the Planning Commission take action on this request.

And now we'll proceed with the presentation, the video.

[A video was shown.]

MR. LOVATO: Mr. Chair, Commissioners, I stand for any questions you may have.

CHAIR GONZALES: Mr. Katz.

MEMBER KATZ: I was confused by the reference to the building envelope and the residential corners.

MR. LOVATO: So, Mr. Chair, Commissioner Katz, the building envelope was a lot lower than where the residential corners were staked out. That is the upper portion of what was disturbed. Down below, where the stockpiled dirt was to the roadway

is where they had staked out the building envelope. But perhaps the surveyor and the applicant's agent can further –

MEMBER KATZ: Thank you.

CHAIR GONZALES: Karl, or both of you guys, could you maybe show – that tape was pretty good but I'd have to look at it like two or three times to really get the hang of it. Could you maybe show the pattern that you walked as you filmed it on your plat?

KARL SOMMER: If I could hand out – this plat here is a lower scale. Is it all right? May I approach?

MR. LOVATO: Mr. Chair, Commissioners, would you want me to point out the area that I walked?

CHAIR GONZALES: Yes, on the map there, if you can point out the area that you walked.

MR. LOVATO: Mr. Chair, Commissioners, that end that I walked was up along the road right here, and the buildable area which is in question is where Mr. Sommer has outlined as the location right here. The actual buildable area out of this box was indicated down below on the actual roadway. More up on the east portion, as we come up to around this boxed area where they have indicated the buildable area, above is where they have the actual corners staked out for the residential areas. So up above was all the disturbance outside of the actual buildable area.

CHAIR GONZALES: Okay, you kept mentioning property line stakes. Where were those stakes, with the 50-foot buffer? Is that the one on the south side?

MR. LOVATO: The 50-foot on the south side was along this section here, where this line is, more or less.

CHAIR GONZALES: Okay, John, first of all, you taped this, right? You made this tape?

MR. LOVATO: Mr. Chair, that is correct. I taped this. So along here was the actual 50-foot on the south side. The western boundary was along the roadway, up into this corner, and then back across, staked out as buildable area. The disturbance has occurred there in addition to above. And this is the location where they had the residential corners staked out.

CHAIR GONZALES: So at no time on that tape did you show that existing road that shows up there? Did you go that far?

MR. LOVATO: Mr. Chair, I did not go that far.

CHAIR GONZALES: Okay. Thank you. Any other questions?

MEMBER KATZ: So the buildable area is the box? The rectangle?

MR. LOVATO: Yes.

MEMBER KATZ: Thank you.

MEMBER SHEPHERD: Mr. Chair.

CHAIR GONZALES: Steve, go ahead.

MEMBER SHEPHERD: I had a question. You had a statement you made, a preface before you showed the video. Do we have that in writing anywhere? You made some recommendations. You made some statements about the current status, what was delivered and not delivered. I didn't understand all of that.

MR. LOVATO: Mr. Chair, Mr. Shepherd, could you reiterate that question?

MEMBER SHEPHERD: When you first approached the podium there you made some statements before you showed the video.

MR. LOVATO: Mr. Chair, Commissioner Shepherd, the statements I made was what I actually encountered out on site.

MEMBER SHEPHERD: Is that written anywhere so we can reference it?

MR. LOVATO: Mr. Chair, Commissioner Shepherd it is not in writing.

MEMBER SHEPHERD: Okay.

CHAIR GONZALES: Any other questions of staff? Karl.

MR. SOMMER: Mr. Chair, members of the Commission, what I handed out to you, we got the surveyor out there to – what we were – the principally, the first thing that needed to be done was to show the existing approved, developable building envelope, and compare that to the proposed siting of the house in relationship to what's been graded. The surveyor got out there, and Mr. Sal Vigil is the surveyor, his firm went out there and staked those two things. We got the engineer to send us the drawing of the house, put it on the lot and staked the building envelope and the proposed residence.

After the staking was done somebody went out there and moved the stakes for the buildable envelope down the hill a considerable distance. We discovered that; it had to be restaked. It was restaked. I brought photographs of the restaking so when staff was out there somebody had taken the stakes and walked them down the hill to try and mislead everybody about where the buildable envelope was. What we have been able to discover is we got the stakes redone, reset, I took photographs of where they are and you'll recognize in relationship to the video you just saw, they're up the hill.

What we have been able to discover is that the proposed house can be moved down the hill substantially, and I say probably 80 to 90 percent within the approved building envelope. So on the plat that you got, you see where the house is located substantially outside the building envelope. We can, based on our staking and what's shown, take that house and move it into the building envelope and build where the house would be. You can see how you could move that substantially in the building envelope. It would come down the slope.

I've got the photographs. So the area that we would be reclaiming on this would be – and I'll show you in the photograph a moment ago – much of what you saw. But we were able to confirm that one of the questions that the board had last time we were here is how does the proposed house relate to the approved building envelope. This demonstrates that the proposed house is substantially outside the approved building envelope. Our grading, our staking, has demonstrated that we can move it substantially within the building envelope. And if I can hand out a couple of photographs.

CHAIR GONZALES: Karl, will that house fit in this buildable area? It looks a little bit bigger.

MR. SOMMER: Substantially, it will fit in the building envelope. If you can imagine taking that structure and then moving it in there. It's not going to fit like perfect because it's not a square, but for the most part it fits within the house and [inaudible]

Members of the board, what I've given you is two photographs. One says East on it and one says West. What that means is the one that says West is the line that is the western boundary of the building envelope and that photograph is taken looking from south to north. So you're looking along – you see those two flags in there? That first one

closest to you is the one in that corner right there. The one furthest is that way. So that forms the western boundary as shown on this.

CHAIR GONZALES: That's adjacent to the road, correct?

MR. SOMMER: That's adjacent to the road. The video shows that stake on the west side of the road where somebody had taken it down the slope and moved it. The roadway is right along that area where the water line is. The roadway that he walked up. The other photograph I've shown you is the eastern boundary but that is looking from north to south. So the first is this corner up here, the northeast corner, and then the furthest flag in that one that says east is that other boundary. You can see that if the house was moved down to that location, practically everything to the east of that would be reclaimed, and that's what we would propose.

The variance as submitted requests this and we believe we can move it down the hill substantially within that building envelope. The driveway is within the 50-foot setback and it's on top of that waterline. So what we've been able to determine is that our variance request can be modified to improve the visibility of the proposed residence, fit it substantially within the approved building envelope, thereby allowing us to reclaim that area where we would otherwise have been requesting your approval to build.

So I think that has been able to be substantiated over the course of the last month. It has been hard to get this coordinated, to get these stakes done, particularly with somebody getting out there and moving the stakes. Mr. Sal Vigil is here tonight if you have questions about him and about the accuracy of the stakes. He's certified this and this is his work and he can tell you how he came about doing that. The stakes that are shown as corners that he talked about as being residential corners, those were those upper corners up on this part of the house and that will all be reclaimed and we would move the house down the hill.

CHAIR GONZALES: Karl, in your opinion, does that reduce the variances or does it do away with them?

MR. SOMMER: It reduces the variance in this regard. This house is not square. And so we would move it down so that the western boundary of the house would be down to the western boundary of the building envelope. There would be a portion of the house that is sticking out to the north over there but it is minimal. I'm not sure that a variance is required for that but what we would seeking is to say – the variance is required for us to do the reclamation, but we would say, move this house down into this building envelope with that configuration and reclaim the area where the house was proposed to be and the area up the slope from that. That's what it would do. It reduces the degree of the variance we were requesting but doesn't get rid of it completely.

The area that we would be building on is less than 30 percent grade, but we graded without a permit there. So this has been difficult to do, particularly with somebody taking and moving the stakes and making it more difficult. Our engineer is ready to make all of the changes that you, Mr. Chair, talked about.

There was one other thing that happened after the last meeting. We had a meeting with – we had a discussion with the neighbor, Hillary, who spoke and her idea was, look, if we replant this with trees, it's on a sort of west-east facing slope, it gets a lot of sun. The trees are likely not to survive. She said that she works in this area. She's a landscape person. She said that she would work with us to come up with xeriscape landscaping with a use of plants that are likely to survive and will not waste water on them. She shares this

well and we believe that that's probably a logical thing to do instead of trying to replant trees on that slope in rock that aren't going to survive, to plant vegetation that is native and that will survive once it's established.

So our reclamation plan would be a little bit different than replacing trees that are not likely to survive there. That's what we have been able to accomplish and it has been productive. It has been slower than we thought it would take, and it's been productive in the sense that it improves the request and what the visibility of the house as it would be.

So I think that's a positive development in where we're at.

CHAIR GONZALES: So when you say it's going to fit, possibly fit in a buildable area, are you talking about pre-slope analysis, pre-grading or after the grading?

MR. SOMMER: It will fit in the graded area now, down the slope. That area of the ground was below 30 percent. But since we graded without a permit we need the variance to be able to reclaim.

CHAIR GONZALES: So it was after it was disturbed.

MR. SOMMER: Right.

CHAIR GONZALES: Okay.

MR. SOMMER: So I think that's positive, and so here's what I think in summary what we're requesting is grant the variances to allow us to get in there and do the reclamation and stabilization; require that the house be moved substantially into the building envelope so that the western boundary of the house is coterminous with the western boundary of the approved building envelope that moves the house the farthest down the hill as you can. It is do-able. That means that the house from a visibility standpoint will be improved from I-25 and Old Las Vegas Highway. Allow us to submit a reclamation plan that conforms with more native plants and vegetation that is likely to survive, rather than trying to replant pinon trees or trees that are not going to survive on that rocky slope and to stabilize that slope in a way that probably makes more sense.

We would be glad to bring that back to you or you could have staff approve that but given the visibility of this property you may want to approve the final plans. If that's approved then the engineering plans can be adjusted to reflect the moving of the house and the cross sections would then show exactly what you were asking for at the last meeting. So I think that's where we are in this case. We're closer than we were a month ago. We have an improved set of data to deal with, and I think it makes your decision easier to look at this process.

The driveway is really the only driveway available on that property. It goes over a waterline and it meets the requirements for the fire code to get an emergency vehicle up that property.

CHAIR GONZALES: Okay. Any questions of the applicant?

MEMBER SHEPHERD: Mr. Chair.

CHAIR GONZALES: Steve, go ahead.

MEMBER SHEPHERD: You mentioned substantially within the envelope. Do you have any numbers or percentage? Are you talking about in terms of total square feet and how much is going to be outside that envelope?

MR. SOMMER: Looking at the scale, which it is scaled, I believe that you could get no less than 85 percent of the proposed house inside the envelope, leaving no more than 15 percent outside the envelope. And the requirement that it be moved as far west as you possibly can move it would accomplish that.

MEMBER SHEPHERD: Thank you.

CHAIR GONZALES: Okay. Any other questions of the applicant? Okay, this is a public hearing. Do we have anybody in the public that wants to speak? Raise your hands. Nobody wants to speak for or against it. Okay. Vicki, go ahead.

MS. LUCERO: Mr. Chair, just some clarifications. First off, in regards to the staff report, staff is recommending denial of the variances. If the Planning Commission chooses to approve the variances staff has a list of conditions. We would also like to add a recommended condition that there be a timeframe set on the reclamation. I believe 90 days would probably be reasonable. And then also I just wanted to address Commission Member Shepherd's earlier question regarding the – he had asked Mr. Lovato if it was documented, and I don't know if you were referring to the deficiencies that Mr. Lovato read, and it's actually in the staff report on page OB-2. Right at the beginning there there's a list of nine items that were requested at the last meeting.

CHAIR GONZALES: He's missing OB-2 to OB-10. Mr. Katz.

MEMBER KATZ: Mr. Chair, thank you. It does seem to me that some progress has been made, that the idea of getting the house in the building envelope seems to be a very positive thing. I'm a little puzzled at staff's recommendation at this point. Maybe what we need to do is just put this over to actually get drawings and further information on it. Would that be what staff is wanting?

MS. LUCERO: Mr. Chair, Commission Member Katz, based on what the applicant or the agent presented today I think staff would like to see updated drawings based on the change in location of the building site, and that would give us more information as to how much 30 percent slope disturbance or how far outside of the buildable area the building would be located.

MEMBER KATZ: Would it make sense for us then to put this over to the meeting in July?

MS. LUCERO: Mr. Chair, Commission Member Katz, that would give, hopefully, the applicant the opportunity to submit the information to staff with enough time to review it before the next meeting.

MEMBER KATZ: Okay. Thank you.

CHAIR GONZALES: I think that would be a good idea also because that way we can actually compare the prior variances to what would be needed now and we can kind of dwindle them down to see what is still needed.

MS. LUCERO: Mr. Chair, that's correct, and staff would also request that when the surveyor is out there – I don't know if they have to restake the site after the stakes were moved, but that staff be out there at that time to verify the exact location.

CHAIR GONZALES: To witness?

MS. LUCERO: Correct.

CHAIR GONZALES: I agree.

MEMBER SHEPHERD: Mr. Chair.

CHAIR GONZALES: Mr. Shepherd, go ahead.

MEMBER SHEPHERD: Could at that time could we also look at the revised revegetation plan and see exactly how that area is going to be redone now that the building is moved down, and get into the details of what it actually looks like?

MR. SOMMER: So we'll make that proposal and I realize you have to see it before, so what we will do is work with Hillary to come up with suggestions and we'll

submit that with the revised plan drawing that you have, and we'll get the engineer to give the basics that you requested. It won't be final engineering drawings because we won't know until you all make a decision about that. We can update the engineering drawings to reflect the proposal as amended. And I think that is do-able. And I apologize; it's taken longer than we thought but this is difficult and we have somebody who is messing with the site a bit and that's made it a little more difficult.

CHAIR GONZALES: Do we have any more questions of the applicant?
Susan.

MEMBER MARTIN: This is a process question, but as long as we're on this item of the agenda, I would again like to make a comment on the recommended decision and order of the Hearing Officer. On page OB-47 and 48, essentially the guidance we're given by staff in many cases to deny the variance and then the only guidance we're given by the Hearing Officer is based on the application, the evidence and testimony presented at the public hearing was described herein, the Hearing Officer finds there's sufficient evidence of extraordinary and exceptional conditions that would result in undue hardship to the applicant from a strict application of the code.

And I find that really inadequate to get any kind of guidance to the Planning Commission and I would like to reiterate that for the record. Thank you.

CHAIR GONZALES: Thank you.

MR. SOMMER: Mr. Chair, members of the Commission, I believe that based on this data we can substantially reduce the requests for variance for development practically down to nothing. What the variance would be would be you giving us the authority to get in there and work on the reclamation plan. That's the slopes that are above 30 percent. That's what I'm hopeful will be demonstrated by our next submittal.

CHAIR GONZALES: AT that point in time, yes. Okay. We need a motion. Do we have a motion?

MS. VALDEZ: And Mr. Chair, the motion would be to recess and reconvene the public hearing to the July meeting.

MEMBER KATZ: I would move to recess the public hearing until the July meeting which would be July 19th.

CHAIR GONZALES: Do we have a second?

MEMBER GRAY: Second.

CHAIR GONZALES: Second by Renae.

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

CHAIR GONZALES: Thank you, Karl. Thank you, Sal.

B. Possible action on the Order of Entry onto Land in Case #V17-5290

This was not deemed necessary.

C. Petitions from the Floor

None were offered.

D. Communications from the Committee

None were presented.

E. Communications from the Attorney

None were presented.

F. Matters from Land Use Staff


None were presented

G. Next Planning Commission Meeting: July 19, 2018

H. Adjournment

Upon motion by Member Martin and second by Member Katz, and with no further business to come before this Committee, Chair Gonzales declared this meeting adjourned at approximately 4:43 p.m.

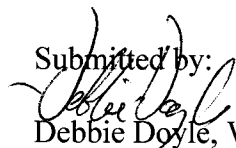
Approved by:


Charlie Gonzales, Chair
Planning Commission

ATTEST TO:


GERALDINE SALAZAR
SANTA FE COUNTY CLERK



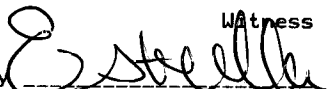
Submitted by:

Debbie Doyle, Wordswork

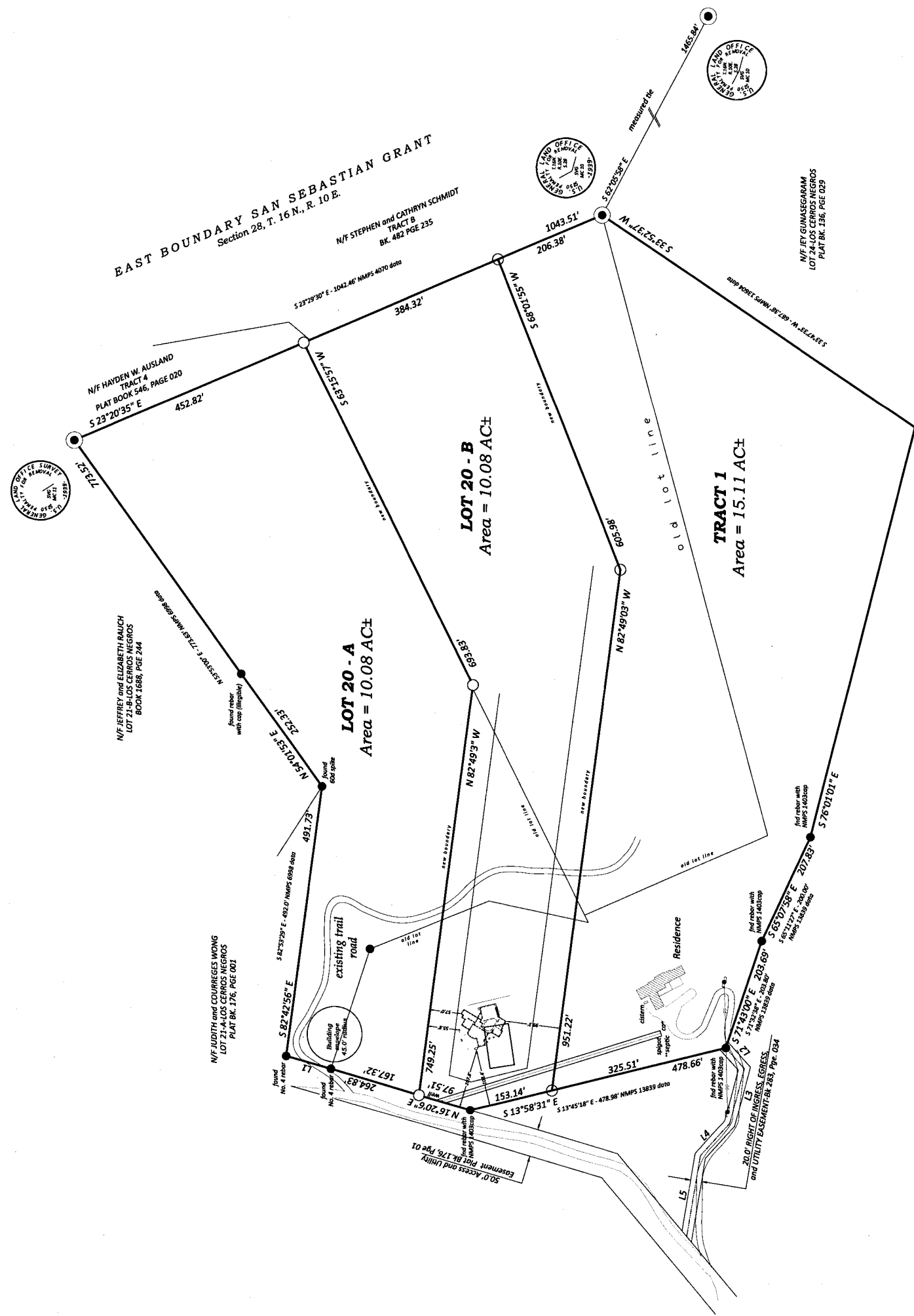
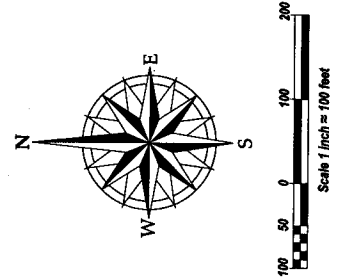


COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

PLANNING COMMISSION MI
PAGES: 13

I Hereby Certify That This Instrument Was Filed for
Record On The 20TH Day Of July, 2018 at 04:43:46 PM
And Was Duly Recorded as Instrument # 1863081
Of The Records Of Santa Fe County

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



SEC CLERK RECORDED 07/20/2018

SURVEYORS CERTIFICATE

I, SALVADOR I. VIGIL, A NEW MEXICO REGISTERED PROFESSIONAL SURVEYOR, HEREBY CERTIFY THAT THIS BOUNDARY SURVEY PLAT AND THE NOTES HEREON WERE PREPARED FROM AN ACTUAL FIELD SURVEY PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION ON AUGUST 31, 2010, AND THAT I AM RESPONSIBLE FOR THIS SURVEY AS DEPICTED ON THE PLAT HEREON. BOUNDARIES AS SHOWN WERE ESTABLISHED USING FOUND MONUMENTS AND CORNER MARKS. THIS SURVEY IS A LAND DIVISION LOT LINE ADJUSTMENT AS STIPULATED IN THE NEW MEXICO SUBDIVISION ACT AND IS SUBJECT TO THE STANDARDS SET FORTH BY THE NEW MEXICO PROFESSIONAL BOARD OF LICENSES FOR SURVEYORS AND ENGINEERS.

PRELIMINARY FOR REVIEW AUGUST 31, 2010
SALVADOR I. VIGIL N.M.P.S. No. 10988 DATE

LAND SURVEYING COMPANY, L.L.C.				
SALVADOR I. VIGIL, NMPS 10988 P.O. BOX 4384 SANTA FE, NEW MEXICO 87505-0384 505-473-0003 FAX 505-471-9050				
PREPARED BY	S.I. Vigil, NMPS	SANTA FE COUNTY CLERK'S INDEX INFORMATION		
DATE	AUGUST 31, 2010	LOTS 20-A, 20-B, and TRACT 1		
PROJECT No.	L-2336 / PLAT	LOS CERROS NEGROS		
CHECKED	S.I. Vigil, PM	SECTION 28, T.16N., R.10 E., N.M.P.M.		
SHEET No.	ONE	COUNTY OF SANTA FE, STATE OF NEW MEXICO		



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EXHIBIT
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