

MINUTES OF THE
SANTA FE COUNTY
PLANNING COMMISSION

Santa Fe, New Mexico

August 16, 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 4:00 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
Filandro "Phil" Anaya
Rena Gray
Leroy Lopez
Stephen Shepherd

Member(s) Excused:

Susan Martin

Staff Present:

Vicki Lucero, Building & Development Services Manager
Paul Kavanaugh, Building & Development Services Supervisor
John Lovato, Development Review Specialist
Cristella Valdez, Assistant County Attorney
Eric Ames, Assistant County Attorney
Jaome Blay, Fire Marshal

IV. Approval of Agenda

MS. LUCERO: Mr. Chair, staff doesn't have any changes to the agenda, however, the appellant for case B is here and is requesting that this case be tabled. The property owner is also here for that case, if the Planning Commission wants to hear from them.

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CHAIR GONZALES: Okay. I guess we're going to go into discussion on this. I am going to recuse myself from this case and I'll turn it over to the vice chair, Frank Katz.

COMMISSIONER KATZ: Okay, thank you. Might we hear from the party requesting the tabling first.

JOSEPH KARNES: Thank you, Vice Chair Katz. Joseph Karnes, Sommer Karnes and Associates. I am here on behalf of Bruce and Debbie MacAllister who are present today as the appellants of the second case before you tonight.

Let me start by explaining what happened over the last couple of days. In my experience with the Planning Commission the staff report typically comes out on Friday. I came down on Monday to get my hard copy and around mid-day I noticed that my 21-page appeal was not part of the staff packet. So I went down, I talked to my clients and prepared a letter and came down and talked to Mr. Lovato and it became clear that an error was made. It was inadvertently excluded from the staff packet. And let me just read to you for a moment the correspondence back and forth. The upshot of it was, last night at about 5 o'clock I received the MacAllister appeal supplemental – I don't know if you all have a copy of.

COMMISSIONER KATZ: I got mine when I walked in this afternoon.

MR. KARNES: Okay, great. And so in looking at that Mr. Lovato said on July 26, 2018, an updated letter of appeal was submitted which staff understood to be a replacement of the June 6th appeal letter. As you know, there is a five-day appeal period and so I filed my appeal on June 6th. And then filed a supplement on July 26th. Mr. Lovato continued and he said, Staff was unaware that this was intended to be additional information rather than a replacement of the July 6th letter. So what was in your staff packet was a relatively short letter that was the supplement from July 26th and then it included information from Dean Shrader our surveyor that the MacAllisters hired and Bruce MacAllister's hydrologic information and he's present here tonight. Well, I just need to read to you and I'll try and be brief. But on June 6th within the five-day period I explained in my appeal letter, I said, The MacAllisters have engaged experts to address several of the SLDC violations identified below and I will be submitting a follow-up letter when I am able. That led to the next letter on July 26th, where I started by saying, On behalf of the MacAllisters this letter follows up on my letter dated June 6th and provides additional evidence, not substituting but additional evidence, supporting the grounds for an appeal.

So clearly that was misread and I'm not here to cast any dispersions. We all make mistakes. The question is what do you do in this situation? I'm going to talk a little bit. Initially, retired Court of Appeals Judge Lynn Pickard is very involved in this case in a couple of ways. She and Sarah Singleton used to live in a house that they sold to Bruce and Debbie MacAllister and she also wrote a letter of support that is in your packet. And if we're forced to have the appeal tonight, I'll be reading from it later on. I bring her up because you as the Planning Commission are sitting in the same type of position as a court of appeals judge in this case. You're hearing an appeal and what you have when you have an appeal is you have a record; all of the documentation, correspondence, etc. below and you have essentially briefs from both parties. You have information, you have my appeal letter and you have the staff report. That's like the briefs that are filed in an appellant court case. You consider that information, hear the testimony and make a

decision. Well, in this case, it sounds like, Mr. Katz, you received the letter from Mr. Lovato that I got at 5 o'clock yesterday afternoon with, he attached, my 21 page appeal. As you know, Mr. Katz and Planning Commission, when you're in appellant court you file your briefs well ahead of time. What you're dealing with in these types of cases are factual issues, code interpretation issues, somewhat complex issues. There's five separate code violations that are alleged in this appeal and you have a bunch of paper to deal with and I know you're all very busy and you need time to look at that and I'm sure you read the letter, at least, as much as you could. But this Planning Commission is put in an awkward situation. The public who if they came in on Friday, Monday or Tuesday didn't have an opportunity to even read my appeal. If I walked into court and found out my brief that I'm going to argue in front of a judge, you're the quasi-judicial judges in this case, if I found out I was mortified. So what do we do about this? Mr. Lovato did his best to cure the situation. To make the best of it by giving my 21 pages of information that constituted the appeal yesterday at 5 o'clock. I don't think that cures the harm that's resulted.

This is a very important case. When you hear it, it involves interpretation of the SLDC with respect to flood issues, which as you know, particularly this summer they are very important issues. And this is a precedent setting case as far as what you can do within a certain distance from an arroyo which floods periodically. There are also serious fire code issues and there are other issues that I'll get to if we get to that point.

I believe providing 21 pages worth of information mere hours the night before the hearing, that doesn't put you in a position – it doesn't do justice to this process. And we are looking for fundamental fairness. We are looking for enforcement of the code. That's what staff does on a daily basis and we want to put this Planning Commission and the public in a position to fairly and adequately understand the issues. I don't like hitting you cold, relatively cold, with information in my presentation and by postponing this matter to the September agenda no harm will be done. That structure is there. This is an after-the-fact permit. The structure is sitting there. My clients and the supporters that we have here tonight are more than willing to come back. We are just looking for a fair hearing and the opportunity for you all and the public to be fully informed of the record before we go into arguments on appeal.

So that is the basis for the request for postponement. I made the request to staff. It's not supporting my request but I make it to you now because that's all I can do given this awkward situation. I appreciate your consideration of this requests and we look forward, hopefully, to making a full presentation at the September Planning Commission meeting.

COMMISSIONER KATZ: Thank you.

MR. KARNES: I'll stand for any questions. Thank you very much.

COMMISSIONER KATZ: And the party opposing arguing the tabling.

MS. LUCERO: Mr. Chair, it doesn't appear the applicant – that the property owner has shown up yet.

COMMISSIONER KATZ: Oh, okay. I guess what we get to do is vote on whether to postpone and I understand that sometimes mistakes get made but it got compounded by the fact that I never did get the 21 pages until it was sitting on the desk when I walked in 10 minutes ago. So, of course, I have had no chance to read it. And so I would urge the Commission to table this matter until the next meeting.

COMMISSIONER ANAYA: Mr. Chair.

COMMISSIONER KATZ: Yes.

COMMISSIONER ANAYA: I'd like to make a motion to amend the agenda to table item B, MacAllister appeal until the September meeting.

COMMISSIONER GRAY: I second.

COMMISSIONER SHEPHERD: Mr. Chair, could I have discussion on it?

COMMISSIONER KATZ: Excuse me.

COMMISSIONER SHEPHERD: Could I discuss the motion.

COMMISSIONER KATZ: Absolutely.

COMMISSIONER SHEPHERD: One of the two neighbors have an unresolved issue like that and they have to get lawyers involved and come to the government, it's a lose-lose situation because somebody is going to win and somebody is going to lose which doesn't allow good neighbors. And neighbors should resolve it across the fence line first. If there is a way of tabling this but also requesting that the affected parties actually sit down and try and reach a compromise or some discussion about this first instead of having us try and decide who wins and who loses which doesn't cause the neighborhood to work well. It's just going to be payback time in the future and stuff like that.

If that could be part of the condition of the tabling that we ask each of the parties to make a good faith effort to sit down and try and resolve this and come to us with a resolution as opposed to come to us with a win-lose situation I would like that.

COMMISSIONER KATZ: Would the maker of the motion and the second accept that as a friendly amendment to the motion?

COMMISSIONER ANAYA: Mr. Katz, I would do that for a friendly amendment to the case but I would think that – no, I'll just accept it as a friendly amendment.

COMMISSIONER KATZ: Okay. The second?

COMMISSIONER GRAY: Yes.

COMMISSIONER KATZ: Okay, any other further discussion.

The motion passed by unanimous voice vote.

COMMISSIONER KATZ: Okay, the motion passes. The matter is tabled until the September – what is the date of the September meeting?

MS. LUCERO: Mr. Chair, I believe it is September 20th.

COMMISSIONER KATZ: Okay. And we hope that the parties can have some discussion. I think the suggestion was a very well taken one. Thank you.

V. Approval of Minutes: July 19, 2017

Member Shepherd moved to approve the July minutes as submitted. Member Lopez seconded and the motion passed by unanimous voice vote.

VI. NEW BUSINESS

- A. SVAR 18-5040 Nelson and Darla Vigil. Nelson and Darla Vigil, Applicants, request a variance of Chapter 8.6.4, Table 8-8, (Dimensional Standards) to allow a Family Transfer of 9.53 acres into two parcels, and a variance of Chapter 10.4.2.2 (Size) to allow an Accessory Dwelling to exceed 1,400 square feet of the principal residence. The property is within the Rural Residential Zoning District where the minimum lots size is 10 acres per dwelling unit. The property is located at 23 Camino Chamiso via Santa Cruz Lake Road, within, Section 5, Township 20 North, Range 10 East, SDA-2 Commission District 1**

John Lovato, Case Manager, read the caption and provided his report as follows:

JOHN LOVATO (Case Manager): Thank you, Mr. Chair. The Applicants request a variance of Chapter 8.6.4, Table 8-8 Dimensional Standards, Rural Residential Zoning District to allow 9.53 acres to be divided by way of a Family Transfer into two 4.76 acre lots. Minimum lots size in the Rural Residential Zoning District is 10 acres per dwelling. The Applicant also requests a variance of Chapter 10.4.2.2, size, of an Accessory Dwelling, to exceed 1,400 square feet of 50 percent of the heating floor area of the residence.

Currently, the property is vacant and surrounded by lots that range from 6.52 acres to 11.91 acres which were derived from a family transfer land division and lot line adjustment in 1996 as recorded in Plat book 349, page 43. The Applicant has a permit to place a 2,662 square foot residence on the property and is requesting a variance to place a 2,000 square foot accessory dwelling.

In part, the Applicant is seeking to place the residence and accessory dwelling initially on the property and later hire a surveyor to divide the property. If the variance is granted for the family transfer, the Applicant intends to give his adult sons each a lot, so they can have their own parcels. If the lot size variance is denied, the Applicant would like to exceed the accessory dwelling size requirements and place the 2,000 square foot modular structure on the property.

The Applicants states, "Both my sons want to live close to me. They are remarkable young men. Each has his own career and are successful at what they do, but they are always willing to help me out with whatever project I'm involved in. I own a septic system installation company and they take time to help me whenever they can. We enjoy metal work, working on oldies, and generally fooling around in my shop. Being close is very important to us."

On July 12, 2018 this application was presented to the Hearing Officer for consideration. The Hearing Officer supported the applicants for the lot sizes variance and size of accessory unit variances memorializing the findings of fact and conclusions of law written order. Based on the application, the evidence and testimony presented at the public hearing, as described the Hearing Officer found that the application is not contrary to the public interest, is in the spirit of the SLDC and there has been a showing of exception or undue hardship on the owner and his family if the requested variance is not

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approved subject to the following conditions:

- a. Approval of variance of Chapter 8.6.4, Table 8-8 dimensional standards to allow a family transfer of 9.53 acres into two parcels.
- b. Approval of a variance of Chapter 10.4.2.2, size, to allow an accessory dwelling to exceed 1,400 square feet of the residence.
- c. The recommended approval is subject to the following conditions of the County staff if the application is approved.
 1. No further division of this property will be allowed.
 2. Accessory dwelling units will not be allowed on either lots due to the substandard lot size. This shall be noted on the plat.
 3. The Applicant shall record the plat within six months or the variance is void.
 4. Water use shall be restricted to .25 acre-feet per year, per dwelling unit. The applicants must install meters on each well and submit proof of installation.
 5. The applicant shall comply with additional water conservation measures required by Santa Fe County ordinance including Section 7.1.3.11 of the SLDC.
 6. The deeds transferring the two lots created by the plat shall transfer the two lots to the applicant's son and shall be provided to the County staff at the time the plat is submitted to the County staff and shall be recorded immediately after the plat is recorded.

At the July 12, 2018, Hearing Officer meeting, Marcos Martinez spoke in favor of the application and stated that were several properties within the community that would like to do what Mr. Vigil is doing. No community member spoke in opposition to the application.

On July 12, 2018 the application was presented to the Hearing Officer for consideration and the Hearing Officer supported the application as memorialized in the findings of fact and conclusions of law written order subject to the following conditions. Mr. Chair, may I enter those into the record. [See conditions above]

CHAIR GONZALES: Yes you may.

MR. LOVATO: Staff recommends denial of the Applicant's request to allow 9.53 acres to be divided by way of a Family Transfer into two lots and denial of the Applicants' request to allow an accessory dwelling to exceed 1,400 square feet. The property lies within the Rural Residential Zoning District. The base density in the Rural Residential Zoning district is 5 acres per dwelling unit. Allowing a variance creates a precedent to surrounding properties and creates substandard lot sizes. Previous lot sizes that range from 6.52 to 11.91 acres are legal non-conforming or created prior to the Sustainable Land Development Code.

If the decision of the Planning Commission is to recommend approval of the request, staff recommends conditions of the Hearing Officer be imposed.

CHAIR GONZALES: Thank you, John.

MR. LOVATO: Mr. Chair, Commissioners, what you are actually acting on and just to clarify is a land division on this case. The second part would be, if it was approved, the second part would be the actual accessory dwelling if the land division is denied he would want that request as well.

MS. LUCERO: Mr. Chair, if I could just add further clarification. So the variance request is for density and lot size. The applicant is requesting to divide the 9.53 acres into two parcels which does not meet the minimum lot size. If the variance is approved, then they will go through a family transfer process in order to subdivide it. So the variance is not to allow a family transfer, it's to allow the lots to go below the minimum lot size.

CHAIR GONZALES: Thank you. Does the Commission have any questions of John or staff?

COMMISSIONER ANAYA: Mr. Chair, I do.

CHAIR GONZALES: Mr. Anaya.

COMMISSIONER ANAYA: John, if I'm understanding it right, the minimum lot size is 10 acres.

CHAIR GONZALES: Mr. Chair, Member Anaya, that is correct.

COMMISSIONER ANAYA: And we're talking about a half acre less than that, less than a half acre for approval.

MR. LOVATO: Mr. Chair, Commissioner Anaya, they would actually need 20 acres in order to subdivide this property.

COMMISSIONER ANAYA: I thought they were being subdivided to 9.53 acres.

MR. LOVATO: So 9.53 acres is what they want to divide.

COMMISSIONER ANAYA: In two?

MR. LOVATO: Into two. The minimum lot size is 10 acres per dwelling.

COMMISSIONER ANAYA: Okay, so what is the total size of the whole piece?

MR. LOVATO: 9.53 acres.

COMMISSIONER ANAYA: So they want to cut that down to three basically.

MR. LOVATO: Mr. Chair, Commissioner, that is correct.

COMMISSIONER ANAYA: Okay. So we're talking 4.71 roughly?

CHAIR GONZALES: 4.76, I broke it down.

COMMISSIONER ANAYA: Okay, thank you.

CHAIR GONZALES: Thank you, Mr. Anaya. Any other questions of John? Okay, is the applicant here? Please come forward and make your presentation. Is this Mr. Vigil?

[Duly sworn, Nelson Vigil, testified as follows]

NELSON VIGIL: Nelson Vigil, 25 Santa Cruz Lake Road, Cundiyo, New Mexico, 87522.

CHAIR GONZALES: Go ahead and start.

MR. VIGIL: I received this property from my father who initially bought 100 acres. So it had been subdivided and basically most of the acreage there is family-owned. There is a small portion there that was subdivided and it goes down to 1/2 acre lots 250 yards from the property in question. They are legal lots. You can put a house on them. You can put a septic system on them. So my request is for relief from primarily is the relief from the secondary accessory dwelling limitation of 1,400 square feet. That is my primary variance request because my eldest son, he is here with me today, moved down from Denver and has two kids. My youngest son is not married but

he is already looking into a 1,800 square foot home on the same property. So we don't care that much about splitting and having this, that and the other. We are concerned with primarily the accessory dwelling being allowed. We don't understand the limitation for 1,400 square feet. In your own documentation from the staff response, it says, Provide separate and affordable housing for elderly, single parent and multi-generational family situations. But not sons? Is that my interpretation. I mean, we pledged allegiance to the flag for equal protection for everybody and that's all I am asking at this time. We want to have our family close to us. I have almost 10 acres and we're surrounded by family members. Lot size very close to us, 6 acres, beyond that 1/2 acre lots.

So you know, the staff response about traffic, I can address that because we live Santa Cruz Lake. We don't have to worry about traffic because Santa Fe County doesn't maintain that road and by the size of the potholes I am sure that is all that is needed to reduce the traffic on those roads. I don't think there's any detriment to the request that is being made. We have family members surrounding. There is no public land that is anywhere close so we're just trying to live our lives and to live close together as a family and I just want my sons close to me. They want my shop to be close to them. So you guys can understand that. You understand why we are – why I am very interested in having my two sons next to me and that is all I am requesting from the County. If we can do a lot split, fine. If we can do an accessory dwelling larger than the 1,400 square feet, two kids and growing, 1,400 square feet is limited. I don't understand where the County would be so interested in limiting the size of a dwelling. So, you have everything else in front of you of all the other meetings I have been to and I just don't feel that it is in any way, shape or form negative to the SLDC for its intent and for anything else that has to do with planning. My confusion to all of this is if we get a bigger house, you get more taxes. That's my understanding. So limiting that is to me a little bit negative to the what the County is in their interest and negative to my interest. Is there anything else that I could possibly add?

CHAIR GONZALES: Unless you have anything else to say.

MR. VIGIL: Well, the only thing is that I found it a little bit disheartening when I received the recommendation from the Hearing Officer this morning and he is in favor of approval of both of the variances and then right after that I received the memo telling me that staff recommends denial. So it's kind of confusing to somebody who isn't used to all of this process. And you're up this morning and then you come crashing down on your face and you don't know how to read any of the situations. So I am asking for relief of the code. I don't understand the total intent of the zoning because it is not equal and fair to everybody in Santa Fe County. If it were, everybody would have to conform to the same code, the same site conditions, the same lot size, the same home size and that's the part that I feel is, in my opinion, unfair to me and my family members. So thank you very much for listening to me.

CHAIR GONZALES: Thank you. Does the Commission have any questions of the applicant?

COMMISSIONER GRAY: I do.

CHAIR GONZALES: Renea.

COMMISSIONER GRAY: Can you tell me who Marcos Martinez is? Is he a relative?

MR. VIGIL: Excuse me.

COMMISSIONER GRAY: Marcos Martinez.

MR. VIGIL: He is my sister's husband.

COMMISSIONER GRAY: Thank you.

MR. VIGIL: Okay. He lives on the property. Well, on an adjacent property. Also, he was one of the properties that was given to my sister from my dad, from the original 100 acres.

COMMISSIONER GRAY: Thank you.

CHAIR GONZALES: Any other questions? Frank, go ahead.

COMMISSIONER KATZ: You are a lucky man to have your sons wanting to live nearby.

MR. VIGIL: Yes, I am. I am blessed.

COMMISSIONER KATZ: Where do you live in relation to this lot?

MR. VIGIL: I live on the first lot, right off of Santa Cruz Lake Road, right on the corner.

COMMISSIONER KATZ: How close to this lot is that?

MR. VIGIL: Half a mile.

COMMISSIONER KATZ: Are there any other lots for sale in that original 100 acres that your dad bought?

MR. VIGIL: Not that I know of. There are two lots adjacent to my father's initial purchase that have been on sale for over 20 years and they haven't been able to sell them. One is a 12-acre parcel and I think the other one is like 11 acres.

COMMISSIONER KATZ: I understand the dissatisfaction that you have basically that the rules changed and that these other parcels that were divided into smaller parcels and you say, Why can't I do that? And of course the answer why you can't do that is because the law has changed. And the only – the only reason that you give for wanting a variance from the current law is basically that you want your boys there. And I can fully understand that. But that doesn't distinguish what you want from what anybody is going to want on their property. I'd like to have my boys be able to afford property near me. But we have these standards that we have to follow and there's criteria to grant a variance and feeling that the zoning is incorrect is really not a basis for that and I'm having some troubles with that.

MR. VIGIL: I am the first one to agree to that. It is just that this property has been owned since the '60s with that sole intent, to provide for family. And when we come to the table and we come to planning with the intent of I want my two sons to live here because I have almost 10 acres and you're shut down simply because in 2016 a new law was enacted. And I can understand that. And I can understand the intent. But I don't understand the zoning intent. Is it protection of groundwater? Is it specifically traffic? Is it – what is it that separates my area from every other square foot of property in Santa Fe County?

And then across the road right next to us it's 20 acres per home. Where do the laws start? Where are they initiated? Where's the common sense into the whole equation? And I am dealing right now with situations in El Rancho where a gentleman had a barn and a garage and he transferred that into four rental units on .16th of an acre with three septic systems on the property; and this is okay? They are polluting groundwater. The Environment Department has been after them for quite awhile and I'm thinking these are the situation where you see that rules are made to protect groundwater.

The rules are made to protect traffic flow. The rules are made for a specific reason and I'm just trying to dig up and find what is the reason in my area because I understand the rules are made but I need an explanation as to why this zoning is such? What makes 10 acres the magic number for my area?

COMMISSIONER KATZ: You are fortunate in this situation because the Sustainable Land Development Code was enacted after months and months, probably years actually, of discussions, forums with neighborhoods and forums here and so there was lots of discussion involved. It's not just the situation where staff says can we change this zoning ordinance and they come and you have one meeting with the County Commission. This went on for months and months and so there's lots of explanation in all of that development why some acres are 20 acre minimum lot size, some are 10, some are 5 and they were done for reasons. And the reasons are generally water availability, water usage, groundwater, traffic, a whole bunch of stuff and just saying, Gee, darn, I got stuck in an area where it's 10 acres. That really is unfortunate but it doesn't really give us a legal basis.

MR. VIGIL: You can see my frustration.

COMMISSIONER KATZ: I understand your frustration.

MR. VIGIL: I deal with Tesuque Hills. Tesuque Hills, one acre lots, and I was out there checking a job the other day and who in the world would approve this lot viable for a home site. It is on a slope like this, has three huge arroyos running through it and they can put a house on that and I can't put a house – an additional home on almost 10 acres. So the County at this point does allow a main house and an accessory house. So I am requesting again the variance for the sizing of the home. We're already allowed an accessory dwelling. I don't see how it would be of any kind of a damaging proposition to the County for that. In addition to the lot split which, you know, four acres is way more than enough than anybody needs really to put a home on, in my view.

COMMISSIONER KATZ: Thank you very much. That's all I have.

CHAIR GONZALES: Anybody else in the Commission have questions of the applicant? Leroy.

COMMISSIONER LOPEZ: Can you hear me? I move, Mr. Chair, to approve this variance. That's SVAR 18-5040, Nelson and Darlene Vigil variance with the staff recommendations that they adhere to the conditions recommended by the Hearing Officer.

CHAIR GONZALES: Okay, Leroy, I think it is a little bit premature to make a motion. I still have some questions of the applicant myself. And we still have the public hearing as well.

COMMISSIONER LOPEZ: Okay.

CHAIR GONZALES: Mr. Vigil, in your letter, explain your statement in your letter about the proposed 100 acre property how it changed and you ended up begin the first sibling to establish a house on the parcel left to you. In the minutes to the Hearing Officer, you stated that there was an original 15 or so half-acre lots that were set asked; can you explain that and how did you end up with 9.5 after all of that?

MR. VIGIL: Well, my father when he initially purchased the 100 acres he had set aside, he planned to have a boat storage area right there by Santa Cruz Lake. So he sold half-acre lots primarily for people who wanted to store their boats, have a boat storage area. But it was a viable lot at that time for a home site. So he was able to sell

half-acre lots with the primary intent for boat storage place but for some reason or another that didn't work out but everybody bought the – I think there is something like 15 or 17 half-acre lots that were initially set aside. My lot was set aside at that time because the 15 half-acre lots separated my 9.8 acres from the rest of the lots that my father had originally bought. Then he subdivided in '66 to give each one of his sons and daughters a portion of that acreage that he had procured. So of all the other acreage except for those half-acre lots which like I say are 250 yards from my property, I can throw a rock and hit them, are approved for half-acre lots. Some of the owners have realized that half-acre is not enough and have tried to buy out there neighbor but this happened quite a few years ago and no property has changed hands in at least I would say 10 years or more in that little section. You can see that in – that's that little section down at the bottom here. And that's what separates that little area on a separate mesa.

CHAIR GONZALES: Was this done pre-code, prior to 1981? Was all of this stuff done pre-code, prior to 1981?

MR. VIGIL: Excuse me.

CHAIR GONZALES: Was this done prior to 1981, pre-code?

MR. VIGIL: I think so, yes.

CHAIR GONZALES: I'm just curious because –

MR. VIGIL: It was in the '60s.

CHAIR GONZALES: Because now you can't get a septic tank for anything less than three quarters of an acre these days. Okay. So out of all of this, how did you end up with a 9.5 acre lot? For example you have 100 acres and four houses that were built, right?

MR. VIGIL: Yeah, so he had six kids so basically my sister took the portion in the center where you see that large home with a kind of a blue-green roof. That section there is my sister and her family. He separated the other three lots for his two daughters and myself which I ended up with the last lot on that road. And then on the third mesa over next to the road that comes up to Santa Cruz Lake, 503, there's three other lots which were – my sister is very smart, she bought those three lots from my dad for a super low something or another and she was able to subdivide three parcels at that time for her three sons. So that's how these lots got separated into that acreage. He wanted to have everybody have approximately 9, 10 acres which at that time he figured would be more than enough to supply his family and our families with a viable lot for our families and that's why I'm here. It's obviously a misassumption.

CHAIR GONZALES: Okay, thank you. Any other questions for the applicant. Mr. Anaya.

COMMISSIONER ANAYA: Mr. Chair. This is going to sound weird but talk to me a little bit about your dad.

MR. VIGIL: About what?

COMMISSIONER ANAYA: Tell me a little bit about your dad.

MR. VIGIL: He was a very Christian man. He believed that men's responsibility was to provide for his family. And that meant that he would tell me all the time, many people don't see opportunity because it's dressed in coveralls. And I never got that until I started working and I come to figure out that it cost a lot of money to get what we have. Every single one of us here today live in the house that we have because that's what I wanted. That's what you wanted. And I just want the same thing for my

son. That's what they want. But my father struggled and he worked two and three jobs to buy this property. That's all he did his whole life is struggle to buy this property for his family and to be able to split it up so that each one of his kids and each one of his grandkids could have a portion to live on because he realized that we're a very tight knit family and all of us get along. That's very strange but the older I get the more I come to realize my family is a very unique because I've met a lot of families that cannot get along whatsoever and we do. And our nephew, my nephew lives there. My sister lives there. I live there. Then my nephew bought one of the properties that was sold by two ladies because he wanted to live there. So we are all kind of reconnecting and re-coming back to our roots. And on their deathbed, both my father and my mother, the only thing they wanted from us is to get along. To live together and to get along and basically that's what we want. And that's what I want for my family. I can't get my sons out of my shop so they might as well live close by is what I'm saying and I dearly enjoy them being there. I know how blessed I am because I know of sons that move away and don't want anything to do with the old man. And my sons definitely help me out quite a bit. I own a small business and whenever I need help, they drop everything and run. So it's not a tear jerking story but I'm just so grateful to my father who had the foresight to try to do for me the same thing I am trying to do for my son. And I'm trying to pass on the legacy that my father left me. And that's all I – that's all I want from life.

COMMISSIONER ANAYA: Okay. So, I'm gathering that you and your dad did not work together in the business have. You and your dad, did you work together or did you not?

MR. VIGIL: Actually, my father and I, it's hard to believe, but my father and I both were firefighters together in Los Alamos. So we worked together, yes, in that capacity. But we also have a farm, had farms and we also had cattle which we ran on that piece of property because we also lease another 400 acres from the BLM. So we ran cattle, we have orchards, we have meadows and unfortunately I have three hay burners which I can't get rid of; horses, if you guys don't understand what hay burners are. But I still own those. My sons still help me with them and we just try to keep our culture the way it was. I try to teach them the values that my father taught me and it's unusual for kids nowadays to know how to irrigate out there with a shovel. How to dig a ditch. How to do stuff.

COMMISSIONER ANAYA: I understand that about respecting your elders and your parents and so forth and family tradition is something that is very, very close knit especially in the northern part of the County.

Now, Mr. Shepherd made a very good argument earlier today on the last hearing that we had is about – he didn't like to see where his neighbors or the neighbors were fighting with each other and it's something that we all should just get along with each other. And in this particular case it seems like to me that it's the opposite. All of the family is together and as I was reading a lot of the comments especially from Mr. Martinez, I guess it was, your brother in-law, who also stated the same thing. He doesn't have a problem with you having your family there and I can understand this going through what I've just gone through with my parents too. It's hard. But I totally understand your situation but on the other hand I also understand the situation that Mr. Katz brought up earlier to us. So I want you to understand that whatever decision is made it's based on – it's probably going to have to be made based on two things:

tradition and also the law. And the law is what governs us. The good thing about this though is that it's a variance question and that's where we have to kind of take into consideration the whole picture and it's tough. But that's why we asked for this job; right?

MR. VIGIL: The shocking thing is, and I don't know about you guys but how can a young person afford to buy 10 acres in northern Santa Fe County when they're just starting out. I mean to me that is the ultimate definition of hardship at that point and then try to build a home and wells and homes – it's been over six months that we've been trying to get Jemez Mountains Electric to even give us a quote to run electricity to that property. That's frustration – compounding frustration. So I just thank you for your time.

COMMISSIONER ANAYA: Well, it's a good thing you're young enough to see that.

MR. VIGIL: As a friend of mine would say, It's much better to look good than to feel good.

COMMISSIONER ANAYA: Thank you, sir.

MR. VIGIL: Thank you.

CHAIR GONZALES: Thank you, Mr. Anaya. Also, on your hay burners, you've just got to ride them then they won't be hay burners anymore. I got a couple myself.

Okay, before we start the public hearing, I've got a couple of questions of staff. Has staff been out to the site?

MR. LOVATO: Mr. Chair, committee members, I have been out to the site.

CHAIR GONZALES: How far is the property located from the traditional community?

MR. LOVATO: Mr. Chair, I would say at least a mile and a half.

CHAIR GONZALES: So it's pretty far from the traditional.

MR. LOVATO: From either side.

CHAIR GONZALES: Okay, so just to clarify, this family transfer variance is proposing to create two 4.765 acre tracts; correct?

MR. LOVATO: Mr. Chair, that is correct.

CHAIR GONZALES: Okay. And has the applicant provided an existing or proposed survey indicating location of the three wells, driveway access and any other existing improvements?

MR. LOVATO: Mr. Chair, no, he hasn't.

CHAIR GONZALES: Other than the three wells is there a lot to show out there?

MR. LOVATO: Mr. Chair, there's a lot of vacant property out there including this lot. But they just moved a mobile home onto that property as well, with a permit.

CHAIR GONZALES: Okay. The buildable areas that are shown on the aerial of Exhibit NBA-12, are those drawn by County staff or are they drawn by the applicant?

MR. LOVATO: Mr. Chair, those were drawn by the applicant.

CHAIR GONZALES: Okay, and then the last one is kind of a statement

and a question. I have a rough time approving or creating new lots without a topography or a slope analysis prepared by an engineer or a surveyor. Does the County GIS create aerials with topography or contours like the City does?

MR. LOVATO: Mr. Chair, they do.

CHAIR GONZALES: They do?

MR. LOVATO: Mr. Chair, they have nice technology where they can actually show slope analysis, non-certified, but a slope analysis.

CHAIR GONZALES: So, I guess, my question would be, the buildable areas that they're showing on their aerial, how do we know that they're buildable areas?

MR. LOVATO: Mr. Chair, I personally visited the site and the site is flat. It is basically a mesa.

CHAIR GONZALES: Thank you, that's what I wanted to hear. Okay, this is a public hearing. Does anyone want to speak on behalf or against this? No. Okay at this point I will close the public hearing. Does the Commission have any discussion, questions or motions?

COMMISSIONER SHEPHERD: Mr. Chair, I have a question. It's probably staff more than anything else. Since the time I've been on the Commission more often than not I read where the Hearing Officer decides one way and I look at how that occurred and I don't really see the rationale and yet when I look at the package it clearly looks like the decision should be the other way. And yet we're both looking at the same information, I would think, and many times it is the same people speaking and it's the same land. So if it happens once in a while I could see an aberration because there's a gray area. But I'm seeing an awful lot of these where the hearing officer is recommending one way and the Planning Commission we look at it and how can that be? It needs to be the other way.

I would like to see some consistency because I think we're all on the same team so I don't understand why it is so different.

MR. LOVATO: Mr. Chair, Commissioner, the staff reviews these and review after the ordinance – the written law. We don't have the authority to grant these types of decisions, therefore, they are brought before you all. And that's the decision that you guys need to determine whether it is a hardship or not and whether it does or does not meet those criteria as proposed by the applicant.

CHAIR GONZALES: What it sounds like to me is that the interpretation of a hardship of the hearing officer and the interpretation of a hardship of us is, I think the difference that I see. Frank, do you want to speak on this?

COMMISSIONER KATZ: I guess I'm confused and this may be Stephen's issue, there is permitted under code a variance and there are criteria that are set forth as to what would justify the variance. Does staff not take any position on whether those criteria are met or not?

MS. LUCERO: Mr. Chair, when staff is reviewing a request for a variance we do review based on the variance criteria and we do respond to the applicant's variance criteria as to whether or not we feel that they have adequately addressed it or not. So that is something that we look at and the majority of the time we do recommend denial on variances but we have brought variance before the Planning Commission where we feel that it does meet the criteria and therefore we support the request for variance. It's just based on the individual case and request.

COMMISSIONER KATZ: My perception to kind of answer Stephen's question is that the Hearing Officer is making a judgment and all seven of us, six of us, are going to be making a judgment and I suspect some of us might come down differently on whether the criteria are met or not. So I think that's why you see a difference between what one person concludes from the evidence whether the criteria are met and what another person concludes. If it were easy, we would be out of jobs.

CHAIR GONZALES: Thank you, Frank. Steve, anything else? Frank, go ahead.

COMMISSIONER KATZ: I'd like to discuss, before we move to a motion and as I indicated earlier, the County went through a very long process to decide what the zoning should be and where the zoning should be and what the zoning should be and I think that that's important that what they decided be upheld unless the criteria for a variance for those criteria are met. And the fact that there can be a variance I think recognizes that there can be unusual cases where there are special circumstances which, of course, is what the first criteria is that call for allowing the variance. And it's our job to evaluate that. I have every sympathy in the world for Mr. Vigil. I think he's doing the right thing for his kids. But just saying I don't like the zoning and I want my kids to be able to live near me really is not a special circumstances. We all want our kids to live near us. We all want our kids to be able to afford a reasonable house. And the County enacted this zoning for reasons and what really scares me is the language quoted from Mr. Martinez who says that there are several properties within the community that would like to do what Mr. Vigil is requesting. So, yeah, of course they want to do it. They don't like the zoning. They would like to pass on land to their kids that they don't have to go out and pay more money for. But I don't think that meets the standards for granting the variance.

Mr. Vigil says that he feels the zoning is incorrect and if I wanted to do something on my land that the zoning doesn't allow, I'd probably feel the zoning was incorrect too. But the answer to that is not to say, Okay, just cause I don't like it, get rid of it. It's to get it changed.

So I would recommend that we sadly deny the variance for the lot split. I assume that we're going to handle that first and if that could either obviate the second issue or make the second issue important. Is that how you would like us to handle it?

MS. LUCERO: Mr. Chair, Commission Member Katz, I think, yes, that would be the best approach to make two separate motions on the two separate variances.

COMMISSIONER KATZ: Okay, so thank you. That's what I would like to see us do. But I think Leroy wanted to make a motion and has made a motion.

COMMISSIONER ANAYA: Mr. Chair, I would like to make one comment first.

CHAIR GONZALES: Mr. Anaya, go ahead.

COMMISSIONER ANAYA: Everybody has said something up here that really makes a lot of sense. The only issue that I have right now is what our responsibilities are and that is that we have the ability to do variances regardless of what the code states, that's why they put that statute in place is so that as we seven are sitting up here are listening, minus one tonight, but usually there are seven to make that decision whether it be hard for us to – it's the code, we have to live with it. Well, we don't have to live with the code we can make that variance providing that it's justifiable as a means

for a hardship. Now, granted Mr. Vigil came up here and talked to us and he did it through his own feelings through his own heart. He didn't have the attorney come up here and speak for him because he probably couldn't afford to have the attorney come up here and try and do what he wanted to do or what he felt was right for him to do. So that's one reason that I'm speaking about the variances is because we as a board need to consider all facts in the case. And I just felt like, you know, everybody has an opinion and everyone up here has pretty well spoken as to what they want and they all make sense. So whatever the vote is, Mr. Vigil, that's what we – you know, I appreciate you coming up here and trying to do what you feel is right for your sons and I feel that, you know, I bleed for you. Thank you, Mr. Chair.

CHAIR GONZALES: Thank you, Mr. Anaya. Okay, we have a motion on the table.

COMMISSIONER ANAYA: Restate the motion, please.

CHAIR GONZALES: Okay. No, I don't think it has been seconded. So, would you like to repeat your motion?

COMMISSIONER LOPEZ: Yes. I'd like to repeat a little bit what Mr. Anaya said about the applicant's situation and what we all feel for what's going on and keeping our family together. And I feel very strongly because I am from the northern part of the county where families really bind together and that's the purpose why I am going to make a motion to approve this variance.

And, Mr. Chair, with that I would make a motion to approve case #SVAR 18-5040, Nelson and Darla Vigil variance with staff recommendations that Mr. Vigil does comply with the recommendations of the Hearing Officer.

CHAIR GONZALES: Okay.

COMMISSIONER KATZ: May I ask, this is a motion to approve the lot split?

COMMISSIONER LOPEZ: Yes.

COMMISSIONER KATZ: Okay.

CHAIR GONZALES: Okay, this one is for the allowance of the family transfer for two parcels. Do we have a second? Oh, I'm sorry, Vicki, got ahead.

CRISTELLA VALDEZ (Assistant County Attorney): Mr. Chair, just for clarification, the variance isn't for the lot split. It is to allow density change. To allow for these smaller lot size.

CHAIR GONZALES: To allow a family transfer of 9.53 acres into two parcels.

MS. VALDEZ: Mr. Chair, the result would be that they could do the family transfer but the variance itself is a variance to Table 8-8 and the density requirement under that table which a 10 acre lot. So it's a variance from the requirement for a 10 acre lot not to allow a family transfer. The family transfer would be a different process, a development process that would occur if the variance were approved but at this point the Commission is not voting on whether a family transfer could occur. It is on whether the variance to Table 8-8 and the requirement for a lot size of 10 acres, if there can be a variance from that requirement.

CHAIR GONZALES: Okay. So do we have a second on this? No, second, no.

COMMISSIONER ANAYA: Mr. Chair, so we're actually going to vote not the density – yeah, the density not the second dwelling. I want to make that very clear, that we're just voting on the density.

MS. VALDEZ: That is correct. That is a separate motion.

COMMISSIONER ANAYA: Thank you. I second it.

CHAIR GONZALES: Okay, we have a second. All in favor say "aye."

The motion failed by majority 2-4 voice vote. Commissioners Lopez and Anaya voting for.

CHAIR GONZALES: Okay, that motion does not carry.

COMMISSIONER KATZ: I would make a motion to not grant a variance to allow a density lower than the density allowed under the code on the basis of the fact that the criteria for granting the variance have not been met as I have spelled out earlier.

COMMISSIONER GRAY: I second.

CHAIR GONZALES: All in favor.

The motion to deny the variance passed by majority [5-1] voice vote with Commissioner Lopez casting the nay vote.

COMMISSIONER ANAYA: Mr. Chair, why would we be voting on that if the first one was the density and it failed anyhow? So why is there a second motion as to approve the denial? It was already approved because we voted and it didn't pass.

COMMISSIONER KATZ: Yes, it didn't pass but it wasn't voted the other way to deny it.

COMMISSIONER ANAYA: Well, it would have been a denial because that was the request of the staff. I'm just asking for a –

COMMISSIONER KATZ: Perhaps the County Attorney can explain it.

CHAIR GONZALES: Yes, can you clarify what we just did.

COMMISSIONER ANAYA: Clarify the order.

MS. VALDEZ: Mr. Chair, Section 4.9.7.4 requires a variance – that states that a variance may be granted only by a majority of the members of the Planning Commission so if a majority doesn't vote, it does automatically mean that it's a denial but that doesn't preclude the Commission, if it chooses for clarity, to make a second motion to deny just so that it is clear that there was a denial. It can happen, I think, either way. Procedurally you're fine but for clarity I think a second motion to deny certainly makes it clear.

COMMISSIONER ANAYA: Okay, thank you, ma'am, but, again, I was just so – Mr. Katz, you're right and Mr. Anaya, you're right.

CHAIR GONZALES: So now we would need a second motion for the next part right? And that would be for the allowance of the accessory structure.

COMMISSIONER KATZ: May I discuss that. There's a reason why the County Ordinance specifies that the accessory dwelling can only be 1,400 feet. It's to recognize and to avoid there being too much activity, too many people living on land and the reference to having the mother in-law or grandma or someone living there is to kind of underline the fact that what they're looking for is a smaller house not, again, this

whole issue is the number of people living in a house. That very often will impact the number of cars that are there and the number of trips that the cars are taking over the roads. The amount of water used and the amount of waste produced and all of those things. That is why there is a limit. Now I understand that Mr. Vigil has a son, one son who is married and has two wonderful kids and that the other son is not married. It seems to me that if the married son with the kids and the family has the larger house and the other son has the smaller house it could work with 1,400 square feet. I wouldn't be huge. My son manages in 840 square feet just fine. We can't always have everything that we want just because we want it. And there's the rule in place and there's a reason for the rule and just wanting to have a bigger house does not meet the criteria of special circumstances and the other criteria. That's my discussion.

CHAIR GONZALES: Also, as an accessory dwelling it would require the accessory dwelling to tie into the existing septic tank as well and that also makes it – if you have the accessory dwelling the same size, the septic tank wouldn't be able to handle it. Okay, so do we have a motion on the accessory dwelling to exceed 1,400 square feet?

COMMISSIONER SHEPHERD: Mr. Chair.

CHAIR GONZALES: Steve.

COMMISSIONER SHEPHERD: I move to deny the variance of Chapter 10.4.2.2 size to allow an accessory dwelling to exceed 1,400 square feet of residence. If I refer to Section 10.4, the accessory dwelling unit shall be clearly incidental and subordinate to the use of the principal dwelling. As opposed to putting two principal dwellings on a property. And that's the basis for my motion.

COMMISSIONER KATZ: Second.

CHAIR GONZALES: Okay, seconded by Frank. All in favor say aye.

The vote was a tie with Commissioners Katz, Shepherd and Gonzales voting for and Commissioners Lopez, Anaya and Gray voting against.

CHAIR GONZALES: Three-three tie so the motion fails.

COMMISSIONER SHEPHERD: So that means it is approved.

CHAIR GONZALES: It failed.

COMMISSIONER KATZ: Well, I guess there should be a motion going the other direction.

CHAIR GONZALES: Attorney?

MS. VALDEZ: Mr. Chair, Section 6.7 of the County Rules of Order would govern in this case. And it states that if a vote results in a tie and one or more members are absent for reason other than voluntary or involuntary disqualification, the item shall be tabled until the next meeting at which a greater number of members are present or a special or emergency meeting if necessary.

So, Mr. Chair, I believe the most appropriate action would be to table this and when all Commission members are present take another vote.

COMMISSIONER KATZ: I would move to table.

CHAIR GONZALES: Do we have a second?

COMMISSIONER SHEPHERD: Second.

The motion to table passed without opposition.

C. Petitions from the Floor

None were offered.

D. Communications from the Commission Members

CHAIR GONZALES: I just want to say, Vicki, thank you for getting that number VI fixed.

E. Communications from the Attorney

None were presented.

F. Matters from Land Use Staff

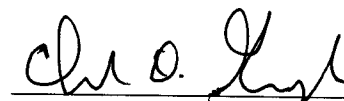
None were presented

G. Next Planning Commission Meeting: September 20, 2018


H. Adjournment

Chair Gonzales declared this meeting adjourned at approximately 5:10 p.m.

Approved by:


Charlie Gonzales, Chair
Planning Commission

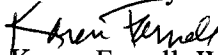
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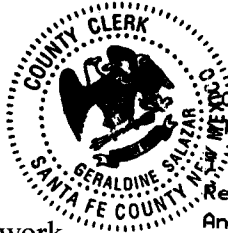

GERALDINE SALAZAR
SANTA FE COUNTY CLERK



SFC CLERK RECORDED 09/24/2018

Submitted by:



Karen Farrell, Wordswork



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

PLANNING COMMISSION MI
PAGES: 19

I Hereby Certify That This Instrument Was Filed for
Record On The 24TH Day Of September, 2018 at 09:30:10 AM
And Was Duly Recorded as Instrument # 1868213
Of The Records Of Santa Fe County

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