

MINUTES OF THE
SANTA FE COUNTY
PLANNING COMMISSION

Santa Fe, New Mexico

September 21, 2023

1. This meeting of the Santa Fe County Planning Commission called to order by Chair Charlie Gonzales on the above-cited date at approximately 4:07 p.m.

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

Members Present:

Charlie Gonzales, Chair
J. J. Gonzales, Vice Chair
Erik Aaboe
Steve Krenz
Wendy Pierard
Rhea Serna
Carl Trujillo

Member(s) Excused:

None

Staff Present:

Jose Larrañaga, Building & Development Services Manager
John Lovato, Building & Development Services Manager
Lisaida Archuleta, Deputy Land Use Administrator
Jessica Gonzales, Development Review Specialist
Ryan Olivas, Development Review Specialist
Dominic Sisneros, Development Review Specialist
Estevan Sanchez, Assistant County Attorney

2. **Approval of Agenda**

A. **Amendments**

B. **Tabled or Withdrawn Items**

There being no changes, Member Krenz moved approval and Member Pierard seconded.

The motion passed by unanimous voice vote.

SFC CLERK RECORDED 10/20/2023

3. A. Approval of August 17, 2023 Regular Meeting Minutes

Member Aaboe moved to approve the August minutes as submitted. Member Trujillo seconded and the motion passed by unanimous voice vote.

4. Consent Calendar

- A. Case # 23-5090 Francis Phillips Variance. Francis Phillips, Applicant, requested approval of a density variance to allow two dwelling units on a 6.54-acre parcel. Currently there is an existing 1,340 sq. ft. residence and a 1,440 sq. ft. residence on the site. The subject property lies within the Rural Residential zoning district (RUR-R) where the base density is one dwelling per ten acres. The property is located at 35 Mescalero Trail, SDA-2, within Township 15 North, Range 10 East Section 2, (Commission District 4). Jose E. Larrañaga, Case Manager, DENIED 3-2**
- B. CASE # 23-5070 Carlos Gallegos Variance. Carlos Gallegos, Applicant, Rudy Garcia, Agent, proposed a second dwelling on 2.69- acres as allowed by SLDC, Section 10.4 (Accessory Structures). Due to the terrain constraints on the property the Applicant requested a variance of Section 10.4.2.3.3 to allow a separate access and a variance of Chapter 10.4.2.4 to allow the proposed dwelling to utilize a separate septic system and utilities. The property lies within the Residential Estate Zoning District within the La Cienega and La Cieneguilla Community District Overlay (LCLCCD). The property is located at 53 Sunset Road within Township 16 North, Range 8 East, Section 28 Commission District 3, SDA-2. Ryan Olivas, Case Manager, APPROVED 4-1**

Member Serna moved approval and Member Trujillo seconded.

The motion passed by unanimous voice vote.

5. New Business

- A. Case # 23-5131 Machel Jordan Variance. Machel Jordan, Applicant, requests approval of a density variance to allow two dwelling units on a 6.4-acre parcel. Currently, the Applicant has an existing main residence and a guest home. The subject property lies within the Residential Fringe zoning district (RES-F) where the base density is one dwelling per five acres. The property is located at 12 Northfork Road within Township 15 North, Range 8 East, Section 25 (Commission District 5), SDA-2. This Agenda Item Contains an Attachment.**

[Case Manager Gonzales read the case caption.]

CHAIR GONZALES: Jessica, please come forward.

JESSICA GONZALES (Case Manager): The applicant is requesting a variance of Table 8-9 Dimensional Standards for Residential Fringe zoning, to allow two dwellings on a 6.4-acre lot. Residential Fringe zoning allows for one dwelling per five acres. The primary residence consists of 3,100, square foot heated area and the second dwelling consists of 700, square foot heated area which includes a loft and a 200 square foot garage. The dwellings share a well and are on individual septic systems.

The Applicant states that she bought the property as is with two dwellings on the property. The second dwelling is two stories and is on an individual septic system, which is contrary to the SLDC standards for an accessory dwelling unit as defined by the SLDC Section 10.4.2.3.

The applicant has addressed the variance criteria and staff has responded to the applicant's comments.

Building and Development Services staff has reviewed this request for compliance with pertinent SLDC requirements, and has found that the facts presented do not support the request for a variance: the use may impact adjacent land uses; Residential Fringe Zoning allows for one dwelling unit per five acres.

On August 10, 2023, this request was presented to the Sustainable Land Development Hearing Officer. The Hearing Officer memorialized findings of fact and conclusions of law in a recommended order on this request. The Hearing Officer, based on the evidence presented, recommended the applicant apply for an after the fact permit for an accessory dwelling unit with staffs recommended conditions. The written order and the minutes of the August 10, 2023, hearing are attached as Exhibits 9 and 10.

Staff recommends denial of the request for a variance to allow two dwelling units on the 6.54-acre parcel. If the Planning Commission finds the variance criteria has been met and recommends approval of the variance, staff recommends the following conditions be imposed.

[The conditions are as follows:]

1. The Applicant shall submit an application (After-the-Fact) for a Residential Development Permit for the second dwelling.
2. Additional dwelling units and accessory dwelling units on the 6.54-acre site shall be prohibited.
3. Applicant shall provide OSE and NMED permits at time of after the fact permit submittal.
4. Expansion to the second dwelling shall be limited to a footprint of a total of 1,400 sq. ft.

This Report and the Exhibits listed below are hereby submitted as part of the hearing record.

CHAIR GONZALES: Okay. Thank you, Jessica. Do we want those conditions on the record, that if the Planning Commission finds the variance criteria have been met, staff recommends the following conditions be imposed?

MS. GONZALES: Mr. Chair, yes, please.

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

MEMBER SERNA: Mr. Chair, I have a question for staff.

CHAIR GONZALES: Okay.

MEMBER SERNA: When did the SLDC get created, passed and approved?

MR. LARRAÑAGA: Mr. Chair, Commissioners, 2016 was the last version to get approved.

MEMBER PIERARD: Did these structures all have permits?

MS. GONZALES: Mr. Chair, Commissioner, the accessory dwelling unit was originally permitted as a garage, and yes, there was a permit for the main dwelling.

MEMBER PIERARD: Thank you.

CHAIR GONZALES: Jessica, do we know who owned the property before she purchased it?

MS. GONZALES: Mr. Chair, I'm not sure. The applicant is here who may know that.

CHAIR GONZALES: Okay. Thank you. Does anybody else – Eric.

MEMBER AABOE: Mr. Chair and Jessica. The Hearing Officer in her recommendation for approval suggested that the secondary dwelling could be permitted as an ADU. However, staff recommendation is if this is approved it would be as a second dwelling unit. Is that because of the loft within the secondary? I'm just trying to understand, reconcile those differences. Thanks.

MS. GONZALES: Mr. Chair, Commissioner, that is correct, being that the ADU has a loft and is on its own septic system, it would have to be a second main dwelling.

CHAIR GONZALES: Okay. Any other questions? J.J.? Anything? Not yet. Eric.

MEMBER AABOE: One more, Mr. Chair, and maybe this is for counsel. I'm just trying to understand this. There seem to be a number of these cases where there is no new development. However, because folks living on the property also have a secondary unit that they're using as a short-term rental, it's causing them to get thrown back in the hopper and go through the filter again. Is there a – because this is not an approval of development but instead a variance of existing construction, is there any other remedy to allow for example, this garage think with a loft in it to be approved as an ADU that does not require ripping out staircases or things like that. I'm just trying to understand once you toss them back in the hopper, what is the approval process? What variances are allowed? Because it's possible to vary some conditions and so approval of a variance as an ADU even though it is a two-story – even though there's a loft in the elevated space. I'm just trying to understand what are the limitations that are in the Commission's – in our powers. Thanks.

MR. LARRAÑAGA: Mr. Chair, Commissioner, you are correct and you've seen one at least come through with the same situation. So with any permit when they come in for a building permit or any other land division, we have to make sure that any structures on the property are permitted through the County, or are non-conforming, pre-81 they were there, since then. Through the STRs we're finding more and more of these. We have processed quite a few administratively as an after the fact permit because they meet all the requirements, whether it's setback, height, using the same utilities, using the same driveway, and they meet those requirements. So through no fault of the current owner most of the time, but they have to get it fixed if they want to get their short-term rental license.

So in this instance, again, it's a two-story. It doesn't meet – we initially had it in as a variance of density, which would go the two units. But variance of the height and variance of the utilities would also be an option and maybe a minor easing of the code to give the applicant the ADU. Also, one of our conditions, a means to try to keep it within the ADU requirement, it's the fourth condition, Expansion to the second dwelling shall be limited to the footprint of a total of 1,400 square feet. So that would be less than half the heated area of the main dwelling. So we're trying to present this as a minor easy to allow the accessory dwelling unit.

MEMBER AABOE: Thank you, Jose. Appreciate it.

CHAIR GONZALES: Any other questions of staff? Okay. Thank you, Jessica.

MS. GONZALES: Thank you, Mr. Chair.

MEMBER SERNA: I'm sorry, Mr. Chair. One additional question for staff. Given that the SLDC was approved by the Santa Fe County Commission in 2016 and the garage was built in 1999 and the owner says it was permitted, does that structure then get grandfathered under whatever previous zoning was in place?

MR. LARRAÑAGA: Mr. Chair, Commissioner, the garage as permitted prior to the SLDC, it's legal. It's the conversion in the use as a residence, and properties are allowed an accessory dwelling unit, so this one was converted without a permit for the ADU.

CHAIR GONZALES: Okay. Thank you, Jessica.

MS. GONZALES: Thank you, Mr. Chair.

CHAIR GONZALES: Okay. Who's the applicant? Is the applicant here? Please step forward and get sworn in.

[Duly sworn, Maureen Mestas testified as follows:]

MAUREEN MESTAS: Maureen Mestas, Orion West, LLC, 2213 Brothers Road, Suite 800, Santa Fe, New Mexico, 87505.

[Duly sworn, Machel Jordan testified as follows:]

MACHEL JORDAN: And I'm Machel Jordan, 12 Northfork, Santa Fe, New Mexico, 97508.

CHAIR GONZALES: Please proceed.

MS. MESTAS: Thank you, Mr. Chair, Commission. We appeared before the Hearing Officer a few weeks ago to present this and as you know and are well informed that staff recommended a denial. I think it's important to note a few things about the features of the property and the circumstances involved. There's been discussion then and again today that the owner, current owner, relied on representations from the seller and licensed real estate brokers when she purchased the property in 2013, that all structures were permitted and the seller was able to present permits and tags of inspection and passing inspection.

Ms. Jordan, the applicant is not a real estate expert. She is not a licensed real estate broker, she's not a land use expert. She is not a real estate investor. She made all the reasonable inquiries and due diligence of an average consumer who's interested in purchasing a residential property. At the time that she purchased it it was not contemplated that she would be doing short-term rental, but in the course of her ownership she decided that she needed, as a matter of need, to supplement her income and doing a short-term rental was the way to do that. At the time she purchased the

property short-term rental permits were not required and at the time that this became an issue, short-term rental permits were not required until that ordinance was contemplated by the County.

So we have gone through all of the requirements. We have met all the burden that the County has asked Ms. Jordan. She has made application; she has followed all the directions and requirements of the County, and I think the Hearing Officer's recommended order is accurate that in summarizing the staff report and all the facts of this case she does meet certain variance requirements and to grant this variance requirement pursuant to Chapter 4.9.7.4 the request is not contrary to public interest. The property existed in its current form before she purchased it. It's a very nice residential property. All of the structures and improvements are consolidated on a 6.54 acres in a very small area. It does not sprawl. It does not have anything that a person would not expect to see in a residential property. She doesn't operate any kind of activity at the property that violates the ordinance or the zoning of the property. She's always pursued business licenses as required and she was finding out that the short-term rental ordinance was contemplated sought to have a permit.

And so I think it's important to note that this person has always complied with the County – the rules, the laws, and the ordinance and requirements of the County, and here she is today attempting to do that again. There is no reason to deny this request, the application, because it would be an extraordinary and exceptional situation that this would cause undue hardship to the owner to ask her to dismantle, demolish or any other way alter the property that takes away her much needed income from her short-term rentals would be quite a hardship on the applicant, and third, the spirit of the SLDC is observed and substantial justice is done in granting it. Ms. Jordan just wants to enjoy her property as she purchased it and operate her short-term rental as allowed by the County.

One thing I do want to point out and please excuse me. The character of the loft is not an actual full second story. It is a sloping roof and the previous owner took advantage of that slope to add a deck above the living area below so you cannot fully stand up in that area. That is an area that's utilized by the interior of the casita/guesthouse but it's not an actual second story in character and appearance.

CHAIR GONZALES: Okay. Anything else? Okay. Does the Commission have any questions of the applicant?

MS. MESTAS: Excuse me, Mr. Chair. You did ask who the previous owner was.

CHAIR GONZALES: Yes.

MS. MESTAS: The applicant is in possession of that information. The previous owner is Gustavo Duran by County record.

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

MEMBER J.J. GONZALES: Mr. Chair.

CHAIR GONZALES: J.J.

MEMBER J.J. GONZALES: Have you by any chance talked to the realtor that was involved in the sale of this property?

MS. MESTAS: No.

MEMBER J.J. GONZALES: How come you haven't talked to the realtor? Are they in town?

MS. MESTAS: All of the documentation in possession of the current owner was in her file that she obtained from both realtors during the course of the transaction. The title binder, all the marketing materials and MLS data, everything that she had at the time that she purchased it she has in her files.

MEMBER J.J. GONZALES: But you haven't talked to the realtor and explained to them that there is a little problem here that she was misled in thinking that she had an accessory dwelling unit on the property, and then all of a sudden that's not the case. Doesn't the realtor have a little responsibility for that?

MS. MESTAS: That's a question of law, and that's something that the applicants could certainly look into.

MEMBER J.J. GONZALES: Okay. Thank you.

CHAIR GONZALES: Okay. Any other questions? Steve.

MEMBER KRENZ: So if this is approved staff is asking that the applicant provide OSE and the NMED permits along with I suppose your costs. What do you think – this is a question for the owner. What do you think this is going to end up costing you if this is successful to conclude this action?

MS. JORDAN: What will this end up costing me to get it approved as a short-term rental and a residence?

MEMBER KRENZ: Yes.

MS. JORDAN: So far I'm at getting close to \$6,000 in this process and I don't know how much more it's going to cost, and that is causing difficulty for me. And also not being able to operate. I have a short-term permit right now. However, if I'm shut down that's going to cost tens of thousands. I've been doing this for seven years.

MEMBER KRENZ: So this is a sort of question for staff then. It says that the applicant shall provide OSE and NMED permits. What's the County going to charge her?

MR. LARRAÑAGA: Mr. Chair, Commissioner, charge her for the after the fact permit?

MEMBER KRENZ: Say if we approve this and we follow your recommendations, what is the County going to be charging her on top of what she's already spent?

MR. LARRAÑAGA: Mr. Chair, Commissioner, a permit like this, an after the fact permit, would probably be about \$500.

MEMBER KRENZ: Okay. Thank you.

CHAIR GONZALES: Okay. Any other questions? I have a question. What do you think about the Hearing Officer's recommendation?

MS. JORDAN: That the structure is approved?

CHAIR GONZALES: No, basically, on August 10, 2023 this request was presented to the Sustainable Land Development Hearing Officer: The Hearing Officer memorialized findings of fact and conclusions of law in a recommended order on this request. The Hearing Officer, based on the evidence presented, recommended the applicant apply for an after the fact permit for an accessory dwelling unit with staffs recommended conditions.

MS. JORDAN: So the way I'm understanding you and I appreciate how you can talk so fast because I talk so slow. But what I'm getting from what you're saying, that the after the fact permit, that I'm good with doing the after the fact permit. I believe

in compliance. I want to do things the right way. That's been my nature. But I do think that if there's a grandfathered in based on my purchase in 2013, that's what I stand for.

CHAIR GONZALES: Okay. Thank you.

MS. JORDAN: Did that answer your question?

CHAIR GONZALES: Yes.

MS. JORDAN: Okay.

CHAIR GONZALES: Any other comments or questions? Carl.

MEMBER TRUJILLO: It was mentioned if we pass this variance with the recommendations by the – the after the fact it sounds like you are good with doing, where you have to do the blueprints, submit to the County and pay the fees.

MS. JORDAN: Right.

MEMBER TRUJILLO: So you're good with that. The additional dwelling units, they basically are prohibiting from so you'll have the main home and the accessory dwelling as you do know, and they're basically saying there's no further units that will be placed on the property which would probably be in violation of the Sustainable Land Development Code and you're fine with that.

MS. JORDAN: Yes.

MS. MESTAS: I was just going to say, Commissioner, is this began with an ATF permit. She completed that and was directed by staff to this process, so my understanding is the applicant is very willing to pursue the ATF permit.

MEMBER TRUJILLO: Okay. And then the OSE and the NMED – the NMED, what they're going to do is they're going to check to see if there is a permit on file for each of the two septic tanks that are on there.

MS. MESTAS: There are.

MEMBER TRUJILLO: And if there's not one they'll either have you get a septic person out there to do an inspection and then they might issue one based on that or they may have you put an additional one on there. So that is a possibility.

MS. MESTAS: At the time the applicant purchased the property the state did require inspections of septic systems before closing, so she does have verification and she does have in her possession both septic permits approved by the state, and she has two past certifications for each septic system.

MEMBER TRUJILLO: So then, Mr. Chair, a question for staff. With these two inspections in place and approved by the NMED, will the County be looking for them – can they utilize both existing septic tanks that are there that are approved currently?

MR. LARRAÑAGA: Mr. Chair, Commissioner, the second septic doesn't meet the criteria for an ADU, so the variance would have to be granted for the second utility or second septic plus the two-story or the height for an ADU.

MEMBER TRUJILLO: Okay. So the second story height, is it because the height is greater than the allowed height? Is that correct? Or what is the reason?

MR. LARRAÑAGA: I believe the ordinance on the ADU, it can't be a two-story and it can't be higher than the primary residence. So I believe this is higher than the primary residence and it's a two-story.

MS. MESTAS: No.

MEMBER TRUJILLO: Okay. So if we did grant this we would have to eliminate the NMED permit and that would be forcing them to hook both residences up to one existing septic system. Is that correct?

MR. LARRAÑAGA: Mr. Chair, Commissioner, if the variance is granted for the second septic the second utility, in any permit that comes through our office, whether it's for a new residence or an addition, and they're on a well and septic, they need to provide that information for a permit. Therefore they would have to provide it for the after the fact permit, if the variance is granted.

MEMBER TRUJILLO: So the way the language reads, The applicant shall provide OSE and NMED permits at the time of the after the fact permit submitted. That would suffice? And the County's rules to allow this variance to go through if approved by this body.

MR. LARRAÑAGA: Mr. Chair, Commissioner, yes, that's correct.

MEMBER TRUJILLO: Okay, Mr. Chair. I don't have any other questions. Thank you.

CHAIR GONZALES: Eric.

MEMBER AABOE: Thank you, Mr. Chair. Just to be clear, there are two options on the table. The Hearing Officer recommended approval with conditions as an ADU. Staff is recommending approval of the variance would be for a second dwelling unit. If it's approved as a second dwelling unit, the two septic systems are allowed. If it's approved as an ADU then there would have to be an additional variance to allow a separate septic system with the ADU. I think that's the way it works. Is that pretty clear?

MR. LARRAÑAGA: Mr. Chair, Commissioner, the staff recommends denial of the density variance.

MEMBER AABOE: However, the conditions are if it is – if the Planning Commission finds the variance staff recommends these following conditions, and that was for a second dwelling. Is that right?

MR. LARRAÑAGA: Mr. Chair, Commissioner, that's correct.

MEMBER AABOE: Great. And then one last thing, because I saw some shaking of heads, it's my understanding that the main unit, the 3,100 square foot unit, is at a higher height off grade than the garage/loft/outbuilding/

MS. MESTAS: That's correct. As a matter of clarification, Mr. Chair and Commissioners. The unit, the additional dwelling unit that houses the garage and the guesthouse is lower in height than the primary residence.

MEMBER AABOE: Thank you so much. Thank you, Mr. Chair.

CHAIR GONZALES: Car.

MEMBER TRUJILLO: Real quick, so this ADU, this was placed – you bought this property with that on there.

MS. JORDAN: Yes.

MEMBER TRUJILLO: And this was prior to the adoption of the Sustainable Land Development Code, correct?

MS. JORDAN: Yes.

MEMBER TRUJILLO: Okay. Unfortunately there's not a state law I believe that mandates the realtor has to go and do the due diligence, especially if they don't even know what's going to be passed in the future. It's impossible to do. Sounds like you did your due diligence just asking the right questions and it's hard to foresee

what any government body is going to pass in the future. We have to be very careful of not trapping people because nobody had that foresight that that was going to happen, and certainly when you were buying the property I wouldn't be able to determine that myself. So anyways, just some comments. Thank you.

CHAIR GONZALES: Thank you. All right. Steve.

MEMBER KRENZ: One question raised by this conversation. So I'm trying to get this clear too. So you have either a residential development permit or you have an ADU. Now, if we wanted to do the residential development permit then that would require a variance. Correct?

MR. LARRAÑAGA: Mr. Chair, Commissioner, yes. For the second dwelling, the density only allows one dwelling per, I believe, ten acres, and so they would need a variance for the second dwelling unit.

MEMBER KRENZ: Okay. What about if this is permitted as an ADU?

MR. LARRAÑAGA: Mr. Chair, Commissioner, the ADU, like I mentioned before, ADUs are allowed in the county, but you have to meet the criteria of the ADU, which is share the utilities, water and septic, same driveway, you have to meet setbacks and the height. So they mentioned that the primary residence is higher than this ADU, but the ADU is still considered a two-story, so the ADU has to be a one-story structure.

MEMBER KRENZ: So the only thing that's keeping this from just being an ADU automatically is because this garage is somewhat higher because it has a peaked roof from the main dwelling. Is that correct?

MR. LARRAÑAGA: Mr. Chair, Commissioner, no. The garage, the ADU or the accessory dwelling unit is a two-story, plus it's on its own septic system.

MEMBER KRENZ: So it's because it's on its own septic system and it's somewhat higher than the main building. Is that correct?

MR. LARRAÑAGA: Mr. Chair, Commissioner, it's not somewhat higher than the main building; the ADU is a two-story. So the code reads it can't be a two-story or higher than the main residence.

MEMBER KRENZ: I'm looking at the diagrams of this building and I'm trying to see – they don't really have anything that shows the various heights here. When you look at this it doesn't look like a two-story building. It looks like a single story building with a pitched roof, possibly taller than most but it doesn't look like a two-story building. I'm just trying to figure out what is the easiest thing for this poor woman to get her thing done. I mean, come on.

MEMBER TRUJILLO: I agree. I'm just wondering if the variance if you just allow the two residential zoning on this property. That would take care of all those conditions, I believe. So it's not an ADU at that point. The density requirement is the variance to two dwellings. I don't know if you call them dwellings or residential properties. What is the right term?

MR. LARRAÑAGA: It would be two residential dwellings.

CHAIR GONZALES: Does anybody want to make a motion?

MEMBER SERNA: Mr. Chair, a quick question of clarification, either for the applicant or maybe for staff. It might be listed in here, but about the well, is it a shared well?

MS. MESTAS: There is one well permit on the property as recorded with the OSE. It's a three acre-foot domestic well. It serves both properties. There's no recorded or formal well sharing agreement.

MEMBER SERNA: Serving both properties? An adjacent separate property?

MS. MESTAS: Let me correct myself. Both structures. The primary residence and the additional dwelling unit, because it's one legal lot of record they never pursued any kind of shared well agreement or formal recorded well sharing agreement.

MEMBER SERNA: And then maybe a question for staff then. As part of the conditions, if the variance is granted, then they need to obtain a shared well agreement from OSE? Is that correct?

MR. LARRAÑAGA: Mr. Chair, Commissioner, in this case, since both dwellings are on one piece of property they won't be required to have a shared well agreement. A shared well agreement would come if they were splitting the property and creating two lots or if it was already a shared well with the neighboring lot.

MS. MESTAS: We did investigate that question and according to OSE, because it's one legal lot of record in the county, the owner occupies the property, it's owner-occupied, and there is no tenant, there is no secondary interest of any kind that no formal well sharing agreement is required at this time.

MEMBER AABOE: Mr. Chair, may I make a motion?

CHAIR GONZALES: I have a question of staff. Has staff been out to the site?

MR. LARRAÑAGA: Mr. Chair, no. Staff has not been out to the site.

CHAIR GONZALES: I'm just kind of curious. I'm noticing it looks like there's a wall around the whole thing. Has anybody checked the drainage? What does the drainage look like out there? If it's all walled in I don't think it's an issue. The area looks pretty flat.

JOHN LOVATO (Building & Development Services Supervisor): I have been out to the site. I have also reviewed topography of the site and it's pretty flat. There's minimal slope to it in different locations but the site is generally flat.

CHAIR GONZALES: Sounds good. Thank you.

MR. LOVATO: Mr. Chair, just for clarification on an accessory dwelling unit, so that way you guys are all aware, accessory dwelling units are suppose to match the principal dwelling. They're supposed to be single story, not have a second floor. They're supposed to share a driveway. They're supposed to share a septic and a well. All utilities. In this case it does meet those criteria because there's separate septic systems, although it does meet probably the access and the well. So then you would be asking for a second variance on that.

If you grant it as a density variance, that eliminates the need for a secondary access, the well and the septic and so on and so forth. So that's the two choices.

CHAIR GONZALES: An accessory structure can still only be allowed to have a kitchen or a bathroom and not both? Does that still –

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

MR. LARRAÑAGA: Mr. Chair, for clarification, you said an accessory structure?

CHAIR GONZALES: Yes.

MR. LARRAÑAGA: An accessory structure only gets to have – under the SLDC has a sink and a toilet but not a shower or a tub.

CHAIR GONZALES: Okay. Thank you. Okay, did you want to say something else?

MS. JORDAN: Yes. So what you guys see in this topography of the aerial view, there is a stucco wall. That stucco wall is less than two acres that it surrounds. Within that area it's got some sloping and it's flat for the buildings. Outside the stucco wall there's a lot of slope and I've been there for ten years and never has it flooded. Everything drains down and out, because it is on top of the hill.

CHAIR GONZALES: Okay. Thank you for the explanation. What's the –

MEMBER J.J. GONZALES: Mr. Chair.

CHAIR GONZALES: J.J.

MEMBER J.J. GONZALES: I think we need to go to a public hearing, any members of the public online or in person.

CHAIR GONZALES: Oh, yes. I was forgetting that. Thank you. I'm going to open it up for the public hearing. Is there anybody out there that wants to speak on behalf or against this project? Please come forward. Jose, is there anybody online?

MR. LARRAÑAGA: Mr. Chair, I see no one on line wishing to speak on this case.

CHAIR GONZALES: Okay, so on that note –

MEMBER J.J. GONZALES: Mr. Chair, I have a question of staff. In the area adjoining this property, have you done a sweep on that Northfork area to see how many accessory dwelling units there are?

MR. LARRAÑAGA: Mr. Chair, Commissioner, no. Staff has not.

MEMBER J.J. GONZALES: Okay.

CHAIR GONZALES: Anything else?

MEMBER J.J. GONZALES: Well, the comments I have is that we've had cases like this before where the buyer, the seller represents something to the buyer. The buyer thinks that this is what they can do and all of a sudden that's not the case. They come in for a permit five or six or seven years later and they find out that what they originally bought isn't what they really have. So I'm concerned about these types of things. We've had these many times in the past and I'm very concerned that the realtors disclose something or they don't disclose and the buyer thinks that they really got into a good deal or something. I'm very concerned about this situation and it hurts the buyers. It hurts a lady like this and that's not fair. So there ought to be some recourse for her to pursue, to get some compensation for her troubles. That's all I have in my comments.

CHAIR GONZALES: I agree. Okay, where are we at here?

MEMBER AABOE: Do you want to close the hearing?

CHAIR GONZALES: If there's nobody else out there to speak I'm going to close the public hearing and do we have any more discussion or any motions on this case?

MEMBER AABOE: Mr. Chair, may I make a motion?

CHAIR GONZALES: Eric, yes, please do.

MEMBER AABOE: I recommend approval of a variance with staff conditions as outlined in the report and that would be that the staff shall review the already submitted after the fact permit for residential development. My understanding is

it's been submitted. That additional dwelling units and accessory dwelling units shall be prohibited. That the staff shall provide the existing Office of the State Engineer and Environment Department permits, and that the second dwelling unit shall not exceed a footprint of 1,400 square feet. So I approve this.

CHAIR GONZALES: Eric, did you say that staff should provide that?

MEMBER AABOE: I'm sorry. My understanding is that the ATF permit has already been submitted, and if the ATF permit needs to be resubmitted, that should happen.

DOMINIC SISNEROS (Team Leader): So the after the fact permit came in and it was denied and it was not accepted as a submittal because of the reason for the variances. So that there will need to be a resubmittal.

MEMBER AABOE: So let me restate my motion. I move for approval for a variance to allow two dwelling units on this 6.54-acre parcel with the staff conditions, submittal of an after the fact permit, the restriction that not additional dwelling units and accessory units shall be permitted, and that the applicant shall provide Office of the State Engineer and Environment Department permits, along with this ATF submittal. And expansion shall be limited to a footprint of 1,400 square feet.

MEMBER KRENZ: Second.

MEMBER TRUJILLO: Mr. Chair, can I just ask on that motion, staff, is that – that the attack catches these to two residential units. That will work? The recommendations? I thought these were only required if it was an accessory dwelling. I'm fine with them submitting these as well, but I want to make sure that we don't put them in a bind here.

MR. LARRAÑAGA: Mr. Chair, Commissioners, the conditions that were read out that staff's recommending, pretty much limits the existing ADU to meet the ADU requirements as far as 1,400 square feet, and then the density would allow the two-story. It would allow the separate septic, the density variance. So yes, it would be considered two dwellings but the second dwelling would be limited to meet the criteria of as far as square footage and the height of the ADU.

MEMBER TRUJILLO: So the final order will read a variance for the two residential properties on this 6.54 acres, not a residential and an ADU.

MR. LARRAÑAGA: Mr. Chair and Commissioner, just to clarify. It wouldn't be two residential properties, but two residential dwellings, which would exceed the density requirements of that zoning district.

MEMBER TRUJILLO: Okay.

CHAIR GONZALES: Okay, we have a motion on the table. Do we have a second?

MEMBER KRENZ: Second.

The motion passed by majority [5-1] voice vote with Member J.J. Gonzales casting the nay vote.

5. B. **CASE # 23-5050 Purnama LLC Variance. Purnama LLC, Applicant, Karl Sommer, Agent, request a variance of SLDC Section 7.17.4 (No Build Areas) to allow a residence to be constructed on a ridgetop and a variance of Section 7.17.9.2 (Standards), to allow the setback on a**

ridgetop to be less than 25 feet from the shoulder. The property is within the Rural Residential Zoning District within the New Moon Overlook Subdivision and located at 285 New Moon Overlook Road within, Sections 1 & 36, Township 14 & 15 North, Range 9 East, SDA-2 (Commission District 5). This Agenda Item Contains an Attachment.

[Case Manager Sisneros read the case caption.]

CHAIR GONZALES: Dominic.

MR. SISNEROS (Case Manager): Thank you, Mr. Chair. The proposed building site is on a ridgetop. The applicant is requesting a variance to allow a 5,726 square foot residence to be constructed on a ridgetop. Section 7.17.9.2, Standards, restricts constructing a structure on a ridgetop, ridgeline, or shoulder unless there is no other buildable area on the property. There are other areas on the parcel that are developable and would not require the need for a variance request. Per the survey titled Lot Line Adjustment for the owners of the Thornton Ranch that was approved by Santa Fe County, building envelopes were not designated. Developing the lot closer to the road, New Moon Overlook, would be consistent with other residences that were constructed within the subdivision.

After staff review and inspection, it has been determined that the applicant can meet the 25-foot setback from the shoulder as illustrated on the plans provided, therefore will not require a 2nd variance.

The applicant proposes to construct a 5,726 square foot residence on a ridgetop. The residence will be a maximum of 14 feet in height as illustrated on the elevations which are included on Exhibit 2. The maximum height limit for the structures on ridgetops, ridgelines or shoulders is 14 feet for a flat roof or 18 feet for a pitched roof. The property is located within the New Moon Overlook Subdivision.

The applicant has addressed the variance criteria and staff has responded to the applicant's comments.

Building and Development Services staff reviewed this request for compliance with pertinent SLDC requirements and has found that the facts presented do not support the request for a variance: the use may impact adjacent land uses; no structure may be constructed on a ridgetop, ridgeline, or shoulder unless there is no other buildable area on the property.

On August 10, 2023, the request was presented to the Sustainable Land Development Hearing Officer. The Hearing Officer memorialized findings of fact and conclusions of law in a Recommended Order on this request. The Hearing Officer, based on the evidence presented, recommended approval to allow a residence to be constructed on a ridgetop and a variance of Section 7.17.9.2, Standards. The Recommended Order and the minutes of the August 10, 2023, hearing are attached as Exhibits 8 and 9.

The recommendation of the Hearing Officer is for approval for a variance request to allow a 5,726 square foot residence to be constructed on a ridgetop. If the Planning Commission finds that the application has met the variance criteria and

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recommends approval of the variance, staff recommends the following conditions be imposed.

[The conditions are as follows:]

1. The maximum height of the residence cannot exceed 14' from any point on the upper surface of a structure to the natural grade or finished cut grade on any building elevation, whichever is lower, directly below that point.
2. Construction fencing to be installed onsite prior to any development to indicate the 25' setback from the shoulder.

MR. SISNEROS: This Report and the Exhibits listed below are hereby submitted as part of the hearing record.

CHAIR GONZALES: Thank you, Dominic. Does the Commission have any questions of staff?

MEMBER KRENZ: I do, sir.

CHAIR GONZALES: Steve, please do.

MEMBER KRENZ: So staff has found that there is another site on this property where they could construct a dwelling?

MR. SISNEROS: That is correct. Closer to the road, New Moon Overlook, there is a lower portion where there is a buildable area.

MEMBER KRENZ: Thank you.

CHAIR GONZALES: Okay, do Commissioners have any other questions of staff? Okay, let's continue. Okay, thank you, Dominic. Karl, do you have a question?

MEMBER TRUJILLO: Maybe it's a question for the applicant.

CHAIR GONZALES: Okay, Karl, please come forward.

KARL SOMMER: Good afternoon, Mr. Chair, members of the Commission. My name is Karl Sommer and my mailing address is Post Office Box 2476, Santa Fe, New Mexico, 87504.

[Duly sworn, Karl Sommer testified as follows:]

KARL SOMMER: Karl Sommer, P.O. Box, 2476, Santa Fe, 87504. So John and Cynthia came to Santa Fe, actually they'd lived here already, and they investigated purchasing this property. They had a lawyer – not me. They had an architect. They put the property under contract. They did their full investigation. Matthew, can I have the subdivision plat. Or a lot line adjustment plat. So they looked at this plat and their lawyer looked at this plat it shows this lot of 15 acres, and it does not on the plat show building envelopes.

So I have highlighted a couple of things for you on this plat. One of them is you'll see that this is a lot line adjustment plat that creates these lots. Normally, what you all look at is subdivision plats. They come in and they follow the subdivision rules and that sort of thing. When this plat was created in 2005 after years and years and years of work by Mr. Harrison to take the Thornton Ranch, reconfigure all the lots that were on the Thornton Ranch, and that was I think 10,000 acres – 13,000 acres, and preserve the vast majority of the Galisteo Basin, and he'll talk a little bit about that. But this is a lot line adjustment plat. If it had been a subdivision plat the County would have said, show the building envelopes.

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Instead, what happens here is you see the little box that's there that says this property is subject to covenants. In those covenants, at the time of this approval, where the County signed off on this, in the covenants there are building envelopes. And if you could go, Matthew to where it says building and equestrian envelope. So the covenants say you can only build on these lots – and it was approved as part of the plat – you can only build on these lots in two places. One, you can put horse stalls and corrals. And so the covenants, which you have in your packet, the covenants say you must build in these development envelopes. That was part of the plat, and there's two kinds of envelopes. One is for the stalls, if you want to have horses, they have to be in this location. And the other is for a home. And it has to be in that location. And it can be nowhere else on the property.

On Lot 15 there is an envelope for the horse stalls and corrals up front. So right there on the plat is – that is Lot 15. That is the envelope right there that is for the equestrian and that is the building envelope. So the building envelope and the equestrian are separate. Yes, sir.

MEMBER AABOE: Excuse me, Karl. The smaller box on 15 is the stalls?

MR. SOMMER: That's where the stalls can go, and then the other one is where a house can go.

MEMBER AABOE: Thank you.

CHAIR GONZALES: Karl.

MR. SOMMER: Yes.

CHAIR GONZALES: I couldn't read that signature from the Land Use Administrator on that plat. Who is it?

MR. SOMMER: Let me look real quick. Kolkmeier. Jack Kolkmeier.

CHAIR GONZALES: Okay. Thank you.

MR. SOMMER: And so normally, this would have shown up on the plat if it was a subdivision plat. Instead it's in the covenants and the covenants are incorporated on the plat instead of what would normally happen in a subdivision. So Cynthia and John buy the property and they say, okay, we can live with these restrictions. If we have an equestrian it has to go up front. If we have the other one, it has to go over there.

This is a 55-acre site. The building envelope in which they could build their house is about 3.25 acres. They are building a 5,700 square foot home in that area. This is not a sprawling house. It's a single story. It sits in the very front of that building envelope and the rest of it down below is undisturbed in this building envelope. Their proposal is modest. So they buy the property, they do the investigation. They hire a builder, they hire an architect, they design the house, they design everything. They go in to pull a permit. Staff comes out in the review of the permit and staff looks at the site and says, well, you might be able to get a ten percent bump because the Code Administrator is allowed to give you ten percent within her discretion in the height. They went back. Staff asked about that and the Code Administrator, Penny Ellis-Green, said this is on a ridgetop. That's the first time they heard that, John and Cynthia. This is on a ridgetop.

So technically, she's correct. But this ridgetop is not like – normally you have a mountain that goes and then it comes down and goes the other way. This is on one side there's 30 percent grade, and then 500 feet away there's 30 percent grade, and it's flat in between. It's like a mesa. It is a mesa, but it fits the technical definition of a ridgetop. I'm not here arguing with staff saying it's a ridgetop. It is a ridgetop. The problem is that the

only allowed building site is in this location on this mesa. I'll call it a mesa because that's what it is. It's 500 feet from one side to the other in one place and 400 feet from one side to the other in another place, and it may be hard to imagine but that is a good distance away, 500 feet. This house is going to sit in the middle and it's a single story.

Normally, what you think of in ridgetop development, you see these houses that loom down, they can be seen from anywhere. As you will hear this house cannot be seen from anywhere. It was sited in this location with very, very sensitive attention to its impact on this environment. And I'll tell who set that is up Mr. Harrison whose mission it was was to preserve this property to sensitive development to create one of the greatest assets we have in the county, which is the Galisteo Basin Preserve. Yes, ma'am.

MEMBER PIERARD: I have a question. So who developed the building envelopes? Was that you? When you were putting those building envelopes together did you consult with the County or did you look at the SLDC to determine –

MR. SOMMER: It happened in 2005. The SLDC was 2016. So these building envelopes were approved in 2005, ten years later the County enacts a ridgetop ordinance. Before that it did not have a ridgetop ordinance.

MEMBER PIERARD: But who approved the building envelopes?

MR. SOMMER: The building envelopes meet County standards at the time that they were approved.

MEMBER PIERARD: Okay. Thank you.

MR. SOMMER: I'm sorry I didn't say this. These were approved in 2005. The code is passed in 2015. John and Cynthia bought a year and a half ago. So I'm sorry I didn't say that. So, excuse me. Yes, sir.

MEMBER KRENZ: You said the owners bought this land when?

MR. SOMMER: About a year and a half ago.

MEMBER KRENZ: A year and a half ago.

MR. SOMMER: Yes. It might be two years ago because they went through a [inaudible] process.

MEMBER KRENZ: But they bought this property well after the SLDC was in place.

MR. SOMMER: Correct.

MEMBER KRENZ: Thank you.

MR. SOMMER: So they went in for permits, design this house and were told, you're on a ridgetop. That's why we're here. This is under the plat and the covenants the only allowable building site. It happens to be on a ridgetop that was declared ten years after the lot line adjustment was approved. That's why we are here. There's no other place that's allowed to be built on on this property except in that building envelope. I have with me tonight Mr. Mike Krupnick. He is an architect that has helped John and Cynthia make sure that their house complies with every other aspect of the code – height, location, all of those things. Yes, ma'am.

MEMBER PIERARD: Yes, I have another question. So the reason that this is the only buildable lot is based on the topography. You have 30 percent slopes on either side and you have a flat space in between. Is that correct?

MR. SOMMER: If I may, the lot has on the front where the equestrian envelope is, that's flat and it doesn't have the ridgetop issues. The problem is you can't

put a house there under the covenants. The plat refers to the covenants and says this is how this will be developed.

MEMBER KRENZ: Let me see if I've got this right. I'm looking at this image up here, okay? And I see Lot 15, very nice lot and all of that. And I'm looking at Lot 11, and I'm looking at 10, I'm looking at 9, and I'm looking at 8 and from this view they all look to be on top of a ridgeline.

MR. SOMMER: Those lots do?

MEMBER KRENZ: Yes. Because this building envelope that you're talking about are basically all on these ridgelines. So now are you telling us that because this developer has decided that the only place we're going to allow you to build is up on a ridgeline, whether there's an SLDC rule about this or not, that next year we're going to get #11 in here saying, oh, same thing. We've got a building envelope. This is the only place we can put it. And then the year after that 10 comes in and says the same thing. So we end up, after some time with all these buildings on top of the ridgelines overlooking the park.

CHAIR GONZALES: Okay, you guys, I think at this point we need to let him finish his presentation here first. We don't want to take forever.

MR. SOMMER: I don't mind answering those question. Some of those lots that you've referred to have already been built in that location, in the location shown on the subdivision. And it wasn't – this developer decided hey, I don't care what the SLDC says, here's where you're going to build and that's it. The SLDC wasn't in existence and there was no ridgetop requirement. And now everybody in this subdivision is locked into locations they can't change. So to answer your question directly, and I think you will appreciate this. the answer to your question is yes, perhaps somebody might come in and ask the same thing, but you'll hear the question, the answer is to why that might be the case. And the lots that you called out are not ridgetop lots under the code. There's only – I think there's only two here and one's already been built on. But you can ask Mr. Harrison about the location of those.

So I'd like to turn it over to Mr. Harrison to tell you what the whole reasoning behind this building site and this development has been and why the building envelopes are there and how they got put there. So I'll turn it over to Mr. Harrison. And Matthew, if you could go to the power point presentation that would be great.

[Duly sworn, Ted Harrison testified as follows:]

TED HARRISON: Ted Harrison, 314 South Guadalupe Street, Santa Fe, New Mexico. Chairman Gonzales, members of the Commission. My name is Ted Harrison and I am the founder and president of Commonweal Conservancy which is the organization that created the Galisteo Basin Preserve. I just want to walk you through kind of the history of our efforts to preserve initially it was planned to be a 13,000-acre open space. As we've moved through our acquisitions we've ended up in these past 20 years protecting over 10,000 acres, but the New Moon Overlook was the second of four subdivisions, or rather boundary line approvals, boundary line plats that we had approved by the County ranging from 2003 through 2012.

This was our second venture in creating a neighborhood within this larger 13,000-acre property. Our purpose as a non-profit organization was to see the vast majority of this property protected and the way we were going to accomplish that was to go through a very – what we thought was a very thoughtful and sophisticated analysis as to how the

property was configured and how it could absorb a limited amount of development in order to then fund our acquisition and protection of the remaining acreage.

The New Moon Overlook was really the first neighborhood that we went forward with planning and we did it through countless hours on the ground, hiking around with story poles on our shoulder, walking almost every acre of this 800 acres that constitutes the New Moon Overlook. So this is an illustration Karl shared as well and this is the area of Lot 15. When we went through the process of identifying building envelopes with the goal of minimizing their visual impact on both the adjoining properties, with the benefit of trees and topography, and also the ridgelines that intervene between the public thoroughfares on what I see as the right-hand side of this map is the bow of US 285. So that's coming across the very right-hand edge of this map, and then as you're moving west and the up and above the ridgeline we were deliberate about how we would site each of the envelopes so that again, they would have minimal impact both to one another and to the public thoroughfares and to the hiking trails that we had anticipated creating.

Here's just a topographic version of that map, again, Lot 15 highlighted here. You can see very clearly how the building site – so this is what we had gone through to identify where the home sites would be located and we didn't call out the equestrian sites. We called out the home sites in this analysis. We went through a process – here's an ortho map that again gives you the illustration of Lot 15, and this is perhaps more important to you. It was important to us.

Using GIS at a time when GIS was really not a standard tool for development and planning. But we looked around at how development was occurring around us, whether it was in the Galisteo Basin area or other areas of the county, what we were seeing was ridgeline development that was just perched right on the edge or shoulder of a property without any regard to its impact on skylining, which is really a term that means whether you would see the ridgeline as the top elevation viewed from in this case US 285, or whether you would see a rooftop.

Now, our goal was to make sure that where development occurred was going to have the most minimal impact in terms of where the rooftop would disrupt your experience of the natural ridgeline. This was a process and somebody on the Planning Commission in the time that we presented this, when we presented a village plan called Trenza, starting in 2008, I believe it was, 2007. And this illustration of how we'd done our planning in this earlier neighborhood was part of our presentation in the village plan, which had anticipated a very intense project in the basin area. You're seeing the large basin area, that where we originally planned 965 homes and 150,000 square foot of mixed-use commercial and public use. That plan is no longer anything that we intend to be pursuing, and in fact the vast majority of the property now is overlaid with conservation easements ensuring its permanent protection.

New Moon Overlook, and we'll go one step further here now, this is a viewshed analysis. It's a little bit complicated but it's a viewshed analysis that is highlighting what is visible from US 285 and the other surrounding roadways of the ridgelines and the area of the New Moon Overlook. So the areas of red are highly visible. Yellow is minimally visible, and you've got a peach color, which is sort of still minimally visible from State Highway 41 but not visible at all from US 285.

When you travel US 285 going north from Cline's Corners to Eldorado, the ridgelines are peppered with homes that have been built between 2003 and today. Now,

presumably, some of those homes had a difficult time to identify a building envelope less than the exact edge of the ridgeline. It's unfortunate. When I go out to the preserve, 20 years in this process of protecting this land it is a source of great disappointment that what I see from the entry of the Galisteo Basin Preserve to the north and to the east is a series of homes that have really compromised the ridgeline and viewshed of this spectacular basin.

When you look to the west, by all of the efforts we've made, that is not the case. Those homes have been set back very deliberately to ensure that whatever impact they have is minimal. Why were we setting through the covenants a building envelope on this particular area of Lot 15? In some ways it was economic. We were trying to generate funds from the sale of these lots that would be attractive to the market that we could generate funds to pay back the loans that we had acquired to purchase the land and do some of this initial infrastructure as a means to an end. If we had had philanthropic resources, or public resources to buy up this land and make sure it was entirely protected we would have done that. The County, who was a great partner to our work and did acquire some areas of the Galisteo Basin, the Galisteo Basin Preserve, we consider it, their investment was critical as well as the investment of these private landowners.

In 2005 and into 2007 we sold these lots and moved forward with the planning and land acquisition of the remainder of the preserve, it is absolutely true that without the proceeds of the sale of these lots, the Galisteo Basin Preserve would not exist. I'm not sure what the best analogy is but there's something of a slinky effect that we were playing out where we would move the slinky down one step and down, down, down, and with each step forward, with each sale of a property, we could move the larger project forward.

We thought we were moving forward, a cutting edge, the most responsible way to bring forward development in an area that had sensitivity, that was a means to an end. The means were the funding. The means were with the goal of minimizing any public value impact, and with a goal of generating funds that would allow us to ensure the larger protection.

Today, 20 years later we have protected 10,000 acres of this property which is critically significant for cultural resources, habitat, and we've developed 44 miles of trails that are open to the public. This is a beloved public resource. And we're extremely proud of what we've been able to do through all of the different collaborations and partnerships and the private property owners, the folks that made an investment and trusted us, that when we were doing our platting work, an underline plat that did not at that time require building envelopes, they trusted us that we had done a thoughtful analysis of where development should and could occur and relied on us to be able to make their home within these areas.

We feel like we've been very responsible and that the public values of the preserve that have been funded by the purchase and sale of these lots is more than outweighing the possible negative cost or precedents that might be judged as to whether this particular envelope and this particular lot deserves a variance. As Karl mentioned, there are other lots within the neighborhood that have been developed that sit on landforms that have similar complications as Commissioner Krenz had called out. You're right. There is an issue that will come before the Commission in future applications. I regret that but as was mentioned in the earlier item on your agenda, no one, and

Commonweal Conservancy could not look out ten years into the future and anticipate that what we have done to protect the viewsheds and protect the ridgelines would suddenly be no legislature that would work against the folks that had bought these properties.

Commonweal has no stake in this issue, no financial stake in this issue at all. I'm really here to advocate for the process we went through and really for everyone's good intention and good faith that what we had done was something that the County had supported and continued to support. And it's unfortunate that we're in this point of conflict, but I'm hopeful that the Commission will find enough merit, both to our process and to our history and to the ultimate benefit of this land's protection that this variance will be something that you can support. With that, I stand for questions if you have them for me. Otherwise, I'll turn it back over to Karl.

CHAIR GONZALES: Okay. Thank you very much.

MEMBER J.J. GONZALES: Mr. Chair.

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

MEMBER J.J. GONZALES: I've got a couple questions for Mr. Harrison. You talked about this buildable area, and how large is that buildable area? How many square feet, approximately?

MR. HARRISON: It's 3.25 acres, so times 42,568 –

MEMBER J.J. GONZALES: How many acres?

MR. HARRISON: It's about 3.25.

MEMBER J.J. GONZALES: So that's like 150,000 square feet of land surface.

MR. HARRISON: That is the allowable envelope. That's right.

MEMBER J.J. GONZALES: And how large a house could you build on that and not have to ask for a variance? It seems that the 5,000 square foot house encroaches on the 25-foot area. So how large a house could you build without having to ask for a variance?

MR. SOMMER: It's not the size of the house that requires a variance. It's – you can't under the current code, Commissioner, build anything here. Nothing. Not a shed, nothing. You can't put anything there. It's not the size of the house that creates the variance request.

MEMBER J.J. GONZALES: Well, the buildable site is 150,000 square feet approximately.

MR. SOMMER: Right.

MEMBER J.J. GONZALES: So could you figure out where to build the house, a 5,000, 6,000 square foot house in the buildable area?

MR. SOMMER: Nowhere in that 3.25 acres could you put a house. Anywhere.

MEMBER J.J. GONZALES: That I did not understand. Now, the other question I have, under the current code, they're not allowed to build a house in that area but this is an approved lot, and the thing is, how hard is it to maybe modify the covenants to allow a house, or you can't build a house anywhere in that area?

MR. SOMMER: We would have to have 100 percent of everybody in the subdivision sign off to a change in the covenants to do something different than the covenants require.

MEMBER J.J. GONZALES: Okay. So I can understand a little better, are you saying that on that area you cannot build a house without variances. Is that correct?

MR. SOMMER: That is correct.

MEMBER J.J. GONZALES: But I don't understand that. If you can build something with a variance, why can't you build it without a variance? Staff says that there are buildable areas that do not require variances. That's what I'm confused about.

MR. SOMMER: So let me – may I answer the question? So the reason that it's not buildable. So this is 55 acres up front, Commissioner Gonzales, has a flat area. And you could build under the County code there. You could build there. The problem is this lot line adjustment was approved subject to covenants, and the covenants don't allow you to build your house there. They require that you build in this envelope. And that's why we can't do anything without a variance, because, yes, we could go to the front of the lot and put a house down there and be sued by whatever number of people that are there, because we can't build in that location. Or we could come ask for a variance that would allow us to build where we can build under the covenants, where the building envelopes that are references on the plat are. So that's why we have the problem.

MEMBER J.J. GONZALES: That explains it.

MR. SOMMER: I apologize; I wasn't clear.

MEMBER J.J. GONZALES: Thank you.

CHAIR GONZALES: Thank you, J.J. Does the Commission have any other questions? Eric.

MEMBER AABOE: Thanks, Chairman. Karl, so I just want to explore. So if the County rep indicated there are other buildable sites on this, but I wonder if you can talk about the risks within those covenants to the property owners if they were to say, there's no variance allowed; we will build in violation of these covenants that we have with these neighbors. What are the risks to them? Is that a district court risk?

MR. SOMMER: Yes. We'd be sued and stopped because under New Mexico law covenants are specifically enforceable. One person can say no. You bought the property. It has covenants and we're not going to let you build there and the courts would enforce that. Those are specifically enforceable by a district court. That's the fundamental problem.

MEMBER AABOE: Understood. I'm familiar with covenants and those restrictions. Thank you very much.

CHAIR GONZALES: Thank you, Eric. Wendy.

MEMBER PIERARD: Has there been any attempt to redo the building envelopes, and I know they're in the covenants but it seems like if people are going to be coming to us frequently because their building envelope is on one of these ridgetops, it seems to me you would want to start redoing some of the building envelopes so they're not having to come to us to ask for variances.

MR. SOMMER: I'll just give you my answer and then Mr. Harrison can answer. I believe – are all the lots sold or how many lots? So all of the lots are sold, and you have everybody on their own separate situation. So coming in, it's not like a developer who can come in and say, well, we're going to move these building envelopes around so you approve that. So it's like the covenants thing, getting 100 percent of people signed off on it.

MEMBER PIERARD: And how many lots are there that have been sold? Twenty? And everyone has their own well and septic?

MR. HARRISON: Mr. Chair, Commissioner, no. It's a community water system that supports the 20 lots. It's a community water system, four different wells.

MR. SOMMER: I wanted to add a couple of things in closing if I may.

CHAIR GONZALES: Okay.

MR. SOMMER: I want to just first say Ted didn't sell the lot to my clients. It was sold by somebody else, and that somebody else put a building, a pole, right in the building envelope that we're here about and said, here is your building site. So they investigate that. So it wasn't – Ted isn't here going, hey, these people are going to sue me. That's not it at all. Ted has no dog in this fight. I just think that his testimony for your purposes, as it was for the Hearing Officer's purposes to understand what this is about was important. I'm not going to go through the criteria because it's in your code and I could rattle all those things off, but you've looked at the packet and I think that you understand why we're here.

And I'll go back to what I told you at the beginning, that this case is about whether John and Cynthia should be allowed to build in a building envelope that they thought they could, and now find out that's the only place they could. And we submit to you under your criteria the answer to that is yes. And we would stand for any questions you might have.

CHAIR GONZALES: Okay, I have a question. Karl, do you know the difference in elevation between the top of the area and the entry of the driveway?

MR. SOMMER: I don't, but I do have a drawing I could look at and get the answer for you, because I have a topographical map and I believe that they are comparable in height. The building envelope might be a little lower than the driveway.

CHAIR GONZALES: The reason I was asking about it is because I do have concerns about the length of the driveway to get up there, how much more it's going to disturb, and also the grade of the driveway. Do we know what the grade of the driveway is going to be?

MR. SOMMER: There is a driveway in and it's fairly flat. It doesn't even get close to any 10 percent. It's flat and it moves along –

CHAIR GONZALES: It looks like there's a jeep trail or something on there already.

MR. SOMMER: Roughly, yes. It's basically a driveway. It's 14 feet.

CHAIR GONZALES: The difference in elevation?

MR. SOMMER: The difference in elevation, yes. From one end to the other.

CHAIR GONZALES: Fourteen feet?

MR. SOMMER: Yes.

CHAIR GONZALES: Thank you.

MEMBER AABOE: Mr. Chair, may I ask a question of staff?

CHAIR GONZALES: Yes. Thank you, Karl.

MEMBER AABOE: Two things, Jose. I would like to ask of the attorney, the connection between the approved plat and the covenants is different than it would be done now. The building envelopes that are approved would be on that approved plat. Is that a correct assumption?

ESTEVAN SANCHEZ (Assistant Attorney): Can you state that one more time? I don't know if I understood you correctly.

MEMBER AABOE: My understanding is if this were to happen today, and the plat were to be submitted, there would approved building envelopes on that plat that was submitted.

MR. SANCHEZ: That's my understanding, and of course it would have to comply with the SLDC which has been passed now.

MEMBER AABOE: Right. So is the connection that exists on the plat for this parcel, with the covenants and the covenants definition of the building envelopes, are those supported to be equivalent to the currently approved plat with the building envelopes on the plat? Do you see what I'm saying? They're making the connection. I'd like you to tell us do you see that as a valid connection?

MR. SANCHEZ: One place I would draw a difference or distinction there is the covenants are privately enforced, so it's not the County's job to go through and make sure that those are being followed by the applicant, so I don't know if I would necessarily draw a direct line like that.

MR. SISNEROS: Mr. Chair, Commissioner, so Santa Fe County does not govern private covenants. If this was to be done today, those developable areas would have to be established and shown on a subdivision plat.

MR. SOMMER: If I may add something, Mr. Chair. In answer to your question, Commissioner, today, as we all know, Santa Fe Summit was developed up in the county and it has building envelopes on it because it was a subdivision, and it was before the SLDC was adopted. It has building envelopes because that was a requirement when they got approved. Those building envelopes are grandfathered in today. If you come in for a permit at Santa Fe Summit wanting to build in that building envelope they grandfather that in, irrespective of the SLDC. You have to comply with everything else, and I know that for a fact because I've applied for on behalf of clients two or three permits up there within those building envelopes and I know that they are grandfathered in.

In this particular instance, the one gap that's away from this is that in 2005 they didn't require you show a building envelope on a lot line adjustment plat. If you were to come in today and do this lot line adjustment plat they'd say where are your building envelopes. So the reference to the covenants incorporates that but it's not on the plat and I can't stand up here and say, oh, they're grandfathered in. That would be a bridge too far.

MEMBER AABOE: Thank you so much.

CHAIR GONZALES: Thank you.

MEMBER KRENZ: I have a question for our counsel also. Are illegal covenants essentially enforceable?

MR. SANCHEZ: I don't believe so. No.

MEMBER KRENZ: So in this situation we have the SLDC which is the law. And now we have these covenants which are basically saying we're trying to force you not to follow the law. So I'm trying to understand how these covenants are somehow overriding the County laws.

MR. SANCHEZ: I wouldn't say that they're overriding the law. It's a separate requirement that is enforced by private property owners versus the law which

comes subsequent to it. So I wouldn't phrase it like that. The covenants do not require you to grant a variance, obviously. They're just using that as an argument to say that they should be granted a variance.

MEMBER KRENZ: Right, but essentially the applicant's argument is that this is the only spot that we can build because this is what the covenant says. But at the same time, the County is saying, no, you can't build here because this is what the law says.

CHAIR GONZALES: I guess what gets me nervous about that is that that plat is signed by the Land Use Administrator and is referencing it with a note.

MEMBER KRENZ: Yes, that says – yes, the plat is exactly. But still and all, when push comes to shove here, the applicant was saying, well, if we try to change these covenants we're going to get sued.

MR. SOMMER: If we try to build in violation of these covenants and incorporation we will get sued.

MEMBER KRENZ: Exactly, and that's what I'm basically asking. How can you be sued if the enforcement of the covenant essentially goes against the County law.

MR. SOMMER: That was the question I was going to answer. You had said how can these covenants trump the law?

MEMBER KRENZ: Right.

MR. SOMMER: The answer is is that the law trumps these covenants, and that's why we're here, and the law also allows you to allow for variances in circumstances like this. So if we go to court, and we got up and said to the judge, hey, Judge, the law doesn't let us build here and the covenants make us, right? The court would say, you're between a rock and a hard place, Mr. Sommer. And that's why we have a variance provision. It isn't that one trumps the other; you must comply with both, and the hardship for is we can't.

MEMBER AABOE: Mr. Chair and Steve, I think the issue is the neighbors might say, well, your option is to not build. If the County does not let you build in this 3.25-acre parcel that was designated according to the agreement that us 20 neighbors have, your option is to not build or to live in a barn.

MEMBER KRENZ: I would agree with what you're saying for this single case. But as we've seen on the map that you've shown is, there's half a dozen building sites that are essentially going to be in this problem.

MR. SOMMER: We've identified three potential others that were there. And I say potential because if I may – did you all see that drawing there? To the left is a similar situation. That's one. And then to the right there's one other situation and then those are the only ones we could identify. The third that I'm talking about is close to a shoulder, and that's a requirement. You can't build within 25 feet of the shoulder. So those are the ones we were able to identify as having this same issue. And I don't want to minimize it and I understand the fear of the floodgates, but there isn't anything we can do about it.

The last thing I wanted to say is the hardship to us is really what the variance request is about. It's not like people come in and in the previous case, if she had built that accessory dwelling unit without a permit in violation of the law, you all would have said, well, you created this problem. Instead you didn't. This is not self-inflicted just like hers

was not self-inflicted. She did her due diligence and she was where she was. I'm pointing out to you that our hardship is not self-inflicted either. If you have any other questions I'd be glad to answer.

MEMBER SERNA: Mr. Chair.

CHAIR GONZALES: Rhea.

MEMBER SERNA: It's not necessarily a question but just a comment. And I'm looking at Exhibit 4, which is the lot line adjustment plat on page 10 of the exhibit. And if you look at the note, Santa Fe County approval notes and conditions it states, the approval of this plat does not constitute the approval of any further development, including building permits. Just a point to keep in mind that land can be subdivided without necessarily lots that would be amenable for residential development.

MR. SOMMER: If I may, that plat note was placed on County plats and Commissioner Gonzales, you'll remember this. What was happening was the County was showing easements on plats. People were recording their plats and going out and blading the roads. And so they came up with a note that said just 'cuz we've shown an easement on this plat you can't go build this road. You've got to do the engineering. That's that that's about. It does not mean we created a lot that you cannot build on, perhaps. That's not the purpose of that particular – or the origin of that particular note.

Some of you will remember this was the case with – who was the movie star up by Atalaya? I can't remember. Shirley MacLaine. This is the Shirley MacLaine note, because her roads were built without a permit. The next day they started putting this note on the plat.

MEMBER KRENZ: Mr. Chair.

CHAIR GONZALES: Steve.

MEMBER KRENZ: A question of the applicant here. Often times in the past when there's a request for a variance, especially about heights and views and ridgetops have been requested of the Commission here. The applicant has been able to supply us essentially a computer-generated view of what this would look like from various viewpoints. Like for example, 285 or 41 or whatever. Could you do that?

MR. SOMMER: This is a computer-generated –

MEMBER KRENZ: That's a topological view. I'm talking about a horizontal view. In other words, a rendering.

MR. SOMMER: No, I understand. You're asking could we do it? It could be done. We'd have to build a computer model of all of that and then build a computer model of our house. I do have in our packet the elevations of the proposed house so you would know that this is 14 feet. Across that distance I submit to you that it wouldn't be visible from 285. Period. At all. And from 41, which is – how many miles would you estimate? It's about three miles away. The house is 14 feet at three miles away. It would be minimally visible if you could see it.

MEMBER KRENZ: What about within the preserve?

MR. SOMMER: This house is located in the center of that mesa, so if you moved across the preserve and looked across, you would see this 14-foot house.

MEMBER KRENZ: Okay. So I'm trying to understand just how far of the requirement this project is. In other words, you said well, we were going through all of this and then suddenly, it came up and said, oh, by the way, this is on a ridgetop Can you explain for me why this is now considered a ridgetop development?

MR. SOMMER: The reason, the code defines a ridgetop as this: a property on one side where 30 percent grades are, and then it goes lower than 30 percent grade but still continues to rise, and then it drops off to another 30 percent grade. So you have a crest between two slopes. When we all think of ridgetops we all have different visions. When I look across up at Atalaya I see ridgetops. And if I look along Hyde Park Road I see ridgetops. If I drive out here, that whole spine is a ridge top. So a ridgetop has got this broad definition.

This is not the typically 30 percent slope, rising to a crest, dropping off to another 30 percent slope and sticking up. This is 30 percent slope. It comes up, flattens off, goes 500 feet, drops off. That is a mesa. But it's still a ridgetop under the code. It meets the definition. So it's the 30 percent slopes on two sides of the property that create the definition of a ridgetop. If I've misstated then – I believe that's how it works, and we're caught on this mesa.

CHAIR GONZALES: Okay. Steve, you done?

MEMBER KRENZ: Yes, thank you.

CHAIR GONZALES: Carl.

MEMBER TRUJILLO: Mr. Chair, Karl, just for my understanding and staff as well, if you take the 30 percent grade and 30 percent grade and you have some middle distance, you can define anything at that point. Between Santa Fe and the valley down there you can define that as 30 percent. What in the SLDC, how does it define the differences or the distance between these 30 percent slopes?

MEMBER KRENZ: Like when does it quit becoming a ridge?

MR. LOVATO: Mr. Chair, Commissioner, you're absolutely correct. It could happen anywhere. But when you have a ridgetop that measures more than 500 and is not visible from a public view and meets all the other standards, then the architectural appearance standards do not apply. So in other words if this was set back where the road was, where they're explaining that the covenants do not allow development, you could probably potentially allow them to build up to 24 feet, whereas now they're on a ridgetop, because it's closer to that, and it's less than 500 feet from edge to edge, right? Now you're looking at ridgetop requirements and you have to abide by setback, height requirements, and so on and so forth.

MEMBER TRUJILLO: So you're saying that under the code it's 500 feet, is what defines that?

MR. LOVATO: Shoulder to shoulder. Correct.

MEMBER TRUJILLO: Okay. Thank you.

CHAIR GONZALES: Thank you, Carl. Anybody else? Eric.

MEMBER AABOE: Just to hone in on that definition. So something that is greater than 500 feet shoulder to shoulder, you have to say 200 feet off of each shoulder, is that correct?

MR. SOMMER: Right. So you'd have a 100-foot slice that you could –

MEMBER AABOE: If it is a 500 foot mesa, then there would be a 100 foot in the middle of that that would not be considered a ridgetop. I'm trying to reconcile the definition of a ridgetop.

MR. SOMMER: In this case, no matter how you define the ridgetop, 500 to 500, if they define it as a ridgetop, you can't build there if you have another site.

MEMBER AABOE: I'm reading in the SLDC, 7.17.9.2.2. is says buildable areas on a ridgetop, ridgeline or shoulder shall be set back 25 feet from the shoulder.

MR. SOMMER: If they're allowed. That's only if you can build there. So you can build on a ridgetop if you don't have any other place on the lot.

MEMBER AABOE: Ah. Got it. Thank you.

CHAIR GONZALES: Okay. All right. Where are we at now?

MEMBER SERNA: One quick question, Mr. Chair, for the applicant.

CHAIR GONZALES: How would the drainage ways be affected that are adjacent to the property from the building site?

MR. SOMMER: Absolutely not at all, because of a couple of things. One, we're set back from the drainages, and the SLDC terrain management requires that we retain all of the excess run off post – it would have to be exactly the same. So what comes off of this mesa before, right now, must be exactly the same both in terms of quantity and rate. And the applicant has designed drainage ponds, engineered drainage ponds that do exactly that. So we are not adversely affecting drainages or creating new drainages, that kind of thing. The code is pretty specific about that.

MEMBER SERNA: Thank you.

CHAIR GONZALES: Thank you, Rhea. Okay, I'm going to open the public hearing. Is there anybody out there who wants to speak on behalf or against this project? Please come forward. Anybody on line there, Jose?

MR. LARRAÑAGA: Mr. Chair, I see no one on line wanting to speak on this item.

CHAIR GONZALES: Okay. I'm just closing it.

MEMBER TRUJILLO: Can I ask a question?

CHAIR GONZALES: Sure. Go ahead.

MEMBER TRUJILLO: I'm looking at the topo here and each line is one degree in elevation. Unfortunately it doesn't show the whole building envelope across here, but I can see from one side to the other here, if I go diagonal it's a long ways. It's several hundred feet. But in the other direction is where it seems to be more narrower, maybe 200 or 300 feet.

MR. SOMMER: We took the most conservative point of view because the Code Administrator will take the most conservative view, like what's the shortest distance, not what's the longest distance. So we could go into the County and say, hey, look. This is a ridgetop 1,000 feet away over here, 1,000 feet away. We're in the middle. Their answer would be that's not the way you do it. You do it in the shortest distance. Does that answer your question?

MEMBER TRUJILLO: Yes.

MR. SOMMER: Am I right, John?

CHAIR GONZALES: All right. I am closing the public hearing.

MEMBER KRENZ: Discussion.

CHAIR GONZALES: Do we have any motions or discussion?

MEMBER KRENZ: Mr. Chair, all these situations are always difficult, but one of the things that bothers me about this; I've already spoken about this conflict between these two rulings. But one of the things that bothers me is that the applicant says that the person that bought this land bought this land two years ago. Now, clearly, the

SLDC was in place two years ago. And so they needed – they must have been aware that this was going to be a problem, because if I were to walk out on this land at this building site I think one of the first things that I would say is, boy this is really, really a wonderful view. I wonder if it's on a ridgetop.

And I'm also very concerned about setting a precedent here where we essentially allow a covenant to overrule a County ruling. I mean, imagine this now. Some developer watches this case and says, oh, well, you know, I've got this land and I'm going to set this up now where the only buildable sites by covenant are ridgetops. And then they go around selling the land. And we'd be in the same situation we are now, because there's only one developable site. By the County standards there's more than one developable site. But by a covenant they're overriding that and saying, well, there isn't.

So this is a bad situation and I think that something needs to give. I would rather see that the covenant gives rather than both the visual impact and more importantly the potential legal precedent impact of voting in favor of this.

CHAIR GONZALES: Thank you. Wendy.

MEMBER PIERARD: Yes. And it seems the covenants are enforceable. What would happen is somebody would have to want to sue because they saw that there was a property that didn't meet the covenant requirements, but it's not an enforceable document unless someone sues you. And then you go to court and we go through – like you said, the judge would say you're in a rock and a hard place.

MEMBER AABOE: Mr. Chair, I want to just poke at Steve's hypothetical. I'm a developer and I own some other high terrain property. If I'm going to create a subdivision, first of all everything will comply with the existing standards, and if it is subject to ridgeline ordinances, I will work to define those so that they are compliant with that code. I think that this is not a green light for some developer to say, whoopee. The gates are wide open and we can create subdivisions however we want as long as we record these covenants. That's just not a credible argument. I think this really hinges on the fact that the plat was approved with the conditions that happened to be enforceable by individuals. And so the County, when Jack Kolkmeier signed that and it had that clause saying the covenants are a part of this document. The County said yeah, we approve these layouts for the buildings. Subsequent creation of the ridgeline ordinance makes it – although it is not a grandfathered issue, it is similar to that in that the variance request will allow us to say when this was created this was okay. We changed the rules, now for this to be okay you have to go through the variance process. So that's my thinking on this and I just wanted to lay that out. Because I just don't think the hypothetical is really right there. Because I think the key issue was in the approval of the plat with the conditions of the covenants kind of wrapped in. Although they're not enforceable by the County, they were approved by the County. And that's just my thinking; I'm not a lawyer.

CHAIR GONZALES: These days, when the City and the County are reviewing subdivisions, they require a slope analysis map. In the overlay, everything, the slope analysis map. So it's easy to look at these and consider these in advance these days.

MEMBER PIERARD: But given that there is now the SLDC, and there's other properties, other people who want to build on these lots, I would think that they'd want to take a second look at these building envelopes, mostly to assist the new owners in not having to go through this process.

MR. SOMMER: They don't have the ability individually to change anything. So if I wanted to change the building envelope I'd have to go out and get 20 people to sign off, and the two people who are building right next to this are not going to sign off on where the stables are. They're not going to have – they don't want the house there and they're not going to sign off. I just wanted to dispel, Commissioner, my clients did not know. You said they walked in and they must have known. I'm telling you, they did not know. They wouldn't have bought this property or they would have asked for the variance in advance and we'd be here asking this question now. So this is not a: we'll buy it, go develop, and then go ask for forgiveness. This has been a complete and utter disaster for them. They've been wanting to move here to spend the rest of their lives here. They're in their 70s and 80s and this is now a two-year process. So it is not a – I'm not here to hoodwink you.

MEMBER PIERARD: Is there a homeowners association? Is that the group that the covenants came out of this HOA?

MR. SOMMER: Yes. That's right. There's what's called an operating agreement that has the covenants in it. Has very strict requirements about how you get approved, etc., etc.

MEMBER PIERARD: Okay. Thank you.

CHAIR GONZALES: Does this development allow guesthouses?

MR. SOMMER: I think the covenants don't prohibit a guesthouse and they allow for – the code allows for ADUs. Whatever. But you have to meet the requirements. We're here asking for a variance, and you could say, we'll grant your variance condition on you don't come in for an ADU. Because that would be a reasonable condition. It would be minimal easing without somebody to come in and say, hey, now we've got a guesthouse. We'll go in and ask for a variance for that. You could condition, if you were inclined, you could say we'll approve that with a condition that you will not be allowed to have an ADU on this property.

CHAIR GONZALES: Okay, Commissioners, any discussion, comments?

MEMBER J.J. GONZALES: Mr. Chair.

CHAIR GONZALES: J.J.

MEMBER J.J. GONZALES: Mr. Harrison and Mr. Sommer made some very compelling arguments about a ridgetop, and the thing is, what sticks in my mind is that this was not a self-inflicted condition that they arrived at. This was something that the definition of ridgetop is something that the Land Use Administrator rightfully determined. But the thing is, like Mr. Sommer says, it is a mesa top, and there's a 3.5-acre buildable site. And I think they can probably build this one story house in that buildable site, so I would like to make a motion on this and motion for approval of this variance with conditions.

CHAIR GONZALES: Okay. We have a motion for approval on the table. Do we have a second?

MEMBER TRUJILLO: I'll second.

CHAIR GONZALES: Okay, we have a motion and a second on the table. With conditions, right?

MEMBER J.J. GONZALES: With conditions, yes.

MEMBER AABOE: So the recommendations of the Hearing Officer included the following conditions. May I read them, J.J., as part of your motion?

MEMBER J.J. GONZALES: Yes.

The motion passed by majority [5-2] voice vote with Members Krenz and Pierard voting against.

[The Planning Commission recessed from 6:02 to 6:12.]

CHAIR GONZALES: Let's get started with the Dominion Variance. Mr. Olivas.

5. C. **CASE # 23-5130 Dominion Variance.** Dominion, Applicant, Kaitlyn Tyeit, Agent, request a variance of Chapter 8.10.3.13 (Table 8-38, Dimensional Standards) to allow more than 25 percent of the building footprint to exceed 36 feet and to exceed the 36-foot max height to 38 feet from finished grade. The Applicant also requests a variance of Chapter 10.21.2 (Units) to allow more than 12 units per building. The site is located at 4608 State Highway 14, within the Planned District Santa Fe Community College District (CCD), within the Employment Center Subdistrict (CCD-EC), within Township 16 North, Range 8 East, Section 24, (Commission District 5). This Agenda Item Contains an Attachment.

[Case Manager Olivas read the case caption.]

RYAN OLIVAS (Case Manager): Thank you, Mr. Chair. The applicant is proposing a 312-unit affordable multi-family apartment complex consisting of 120 two-bedroom units, 132 three-bedroom units, and 60 four-bedroom units to be known as Turquoise Trails Apartments. The proposed apartments will consist of thirteen three-story walk-up style buildings with a proposed maximum height of 38 feet from finished grade.

The applicant is requesting a variance to allow more than 25 percent of the building footprints to be taller than 36 feet and to exceed the 36 feet overall max height to 38 feet from finished grade. The applicant is also requesting a variance to allow more than 12 units per building. The current plan has 24 rental units in each apartment building.

The applicant states: Our proposed community will house the workforce community that is needed to drive and stimulate economic growth and development within the county. The most cost-effective and maximization of number of homes, is via three-story, walk-up, buildings. The variances are necessary to make the project a reality. The applicant also states, The SLDC shall assure that a diversity of housing choices is available to residents within a wide range of economic levels and age groups.

The applicant has addressed the variance criteria per Section 4.9.7.4 for both height and units per building, and staff has responded to the applicant's comments.

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Building and Development Services staff has reviewed this request for compliance with pertinent SLDC requirements, and has found that the requested variances are necessary to accomplish the purposes and intent of the SLDC and the SGMP to create diverse housing for the community. The applicant addressed the variance criteria which supported the granting of the variances for the proposed multifamily development within the County.

On August 10, 2023, this request was presented to the Sustainable Land Development Hearing Officer. The Hearing Officer memorialized findings of fact and conclusions of law in a recommended order on this request. The Hearing Officer, based on the evidence presented, recommended approval of a variance of Chapter 8.10.3.13 to allow the project to exceed a height of 30 feet to a maximum of 38 feet; and a variance of Chapter 10.21.2 that restricts multi-family buildings to 12 units per residential building to allow up to 24 units per building, with the conditions recommended by staff.

The Hearing Officer and staff recommend approval of a variance of Chapter 8.10.3.13 to allow more than 25 percent of the building footprint to exceed 36 feet and to exceed the 36 feet max height to 38 feet from finished grade; and a variance of Chapter 10.21.2 to allow more than 12 units per building. Staff recommends the following condition be imposed:

1. Except for variances granted, the application for the multi-family apartments shall meet the requirements set forth in Ordinance 2016-9, the Sustainable Land Development Code.

MR. OLIVAS: This report and the exhibits listed below are hereby submitted as part of the hearing record. Mr. Chair, I stand for any questions.

CHAIR GONZALES: Thank you, Ryan. Does the Commission have any questions of staff?

MEMBER PIERARD: Is this adjacent to the other affordable housing units that we heard?

MR. OLIVAS: Mr. Chair, Commissioner, it's east of TT2 apartment complex, Cresta Ranch Apartments.

CHAIR GONZALES: I have a comment. This property looks familiar to me and it's probably familiar to J.J. I think this is the station, the truck stop that we turned down. Correct. Okay. Any other questions?

MEMBER J.J. GONZALES: Mr. Chair.

CHAIR GONZALES: J.J.

MEMBER J.J. GONZALES: I've got a question for staff. One of the variances, you mentioned that there has been a precedent set already in the area because of the brewing company and the film studios. But that were developed many, many years ago before they had these restrictions. And then you mentioned about the development TT2 that was approved with variances a couple of months ago. And I was wondering, this is a whole different piece of property, and how can you say that those precedents apply to this property. Every property is very unique, and I have a concern, you mentioned that this precedent has been set so that everything that comes before this committee already has a precedent and they can build whatever height they want, up to 38 feet. That's a concern I have.

I think the staff interpreted what we did in the past very broadly and didn't consider this was a unique piece of property. So that's my concern about granting this variance.

CHAIR GONZALES: Thank you, J.J. Any other questions or comments of staff? Okay. Is the applicant here? Please come forward.

MR. LARRAÑAGA: Mr. Chair, let me just clarify Chair Gonzales' comments. I believe that statement was done by the applicant and not by staff.

MEMBER J.J. GONZALES: I thought it was staff agreed with the statement that the applicant made.

[Duly sworn, Kaitlyn Tyeit testified as follows:]

KAITLYN TYEIT: Kaitlyn Tyeit, at 9000 E. Pima Center Parkway, in Scottsdale, Arizona. Thank you, staff, for helping us get to this point, and Hearing Officer Hebert for her recommended approval. I'll be sharing a presentation for you all today, but maybe before I get into that I can address the comment from the Commissioner just now. I think he's absolutely right in that a height shouldn't be granted just because others have gotten it. I think that's just an important point because it shows that this proposed community will conform to the area, so it won't just stand out like a sore thumb. Instead, these variances should be granted because of the undue hardship cost, construction increases that we'll get into, unrelated to other developments.

So thank you, Mr. Chair and Commissioners for allowing us to share out proposed community this evening. This is for the proposed Turquoise Trail Apartments. This is our proposed affordable, multi-family community, and we'll be presenting on two variances requests that will be needed in order to develop this type of housing.

So first, just to get an idea of the location of the site, this is south of I-25 and north of State Road 14. It's in the Rancho Viejo area. It is the 17.6 acres that is highlighted green on the screen. It is currently zoned employment center within the Community College District, and what that does allow by right is a multi-family use and it has no maximum density today.

This site is also designated by the County as a Sustainable Development Area-1, which conveys that it's a priority growth area to help encourage development, so I think that's in part why you see things like the no maximum density here.

Here is our preliminary site plan, just to help paint a picture of the community that we're talking about when we're thinking of these two variances. So again, this is multi-family rental apartment homes. These will be for family workforce homes, and these will be affordable under the low income housing tax credit program. At the end of the presentation I'll have an enlarged site plan so we can kind of take a better look at what that looks like and if there's any further questions.

So the two variance requests today for this proposal, again, as Ryan had mentioned is to allow more than 25 percent of the buildings to exceed 36 feet in height, and to exceed the 36 foot max height to 38 feet from finish grade. The second variance is to allow more than 12 units per building, and again we are proposing 24 units per building.

So I'll jump a little bit into each of these variance requests to shed a little bit more light on kind of what we're facing here for this community. Of course the first one we've got is our building height up to 38 feet. And the large part of this request is this 38 feet in height has been an industry standard since the mid-1990s for this three-story walk-up,

kind of garden style apartment building. And so what that allows is adequate ceiling height, truss spaces, to help create enough sense of spaciousness for residents. Meanwhile, this additional two feet in height over the already allowed max height will barely be visible from anybody walking or driving by from the outside.

What this additional height also allows us to do is put our mechanical equipment on the roofs and this will help to screen that. And of course we prefer to put the equipment on the roofs so there's a bit more open space and it's a bit more sightly for the community. And then as I just mentioned earlier, this shouldn't be the reason to grant it, however, it will conform with other buildings in the area and will not be a standalone figure at this height.

If we are not granted this variance as well as our second one we'll be talking about in a minute, we really won't be able to build up to these three stories and what that does to us is it has an increase in our construction costs on a per-unit basis, and for this community in particular, that looks like a 25 percent increase in construction costs, so that's going from \$240,000 per unit if both variances are approved, to \$300,000 per unit if either one or neither of them are approved. So it's this substantial cost increase that would be that undue hardship to the owner.

Our second variance is to allow more than the 12 units per building, and again, we're proposing 24 units per building. This is another kind of industry standard for this three-story garden style apartment building. You'll typically see 24 to 36 units per building, and that just was largely in part due to the cost efficiencies of course having more units in a building. So this is going to be a similar situation as the other one where is we're restricted to this 12 units you run into those increased costs on a per unit basis because you have things such as the roofing and the foundations, stairwells, utility lines, that are now being spread over a lesser number of units in a building.

And so again, that cost increase of 25 percent or \$60,000 per unit, that is for the two variances paired together, and again is an undue hardship to the owner.

Now something we have tried to do to offset this variance, you can see in this rendering on the screen, just to try and break up the mass of the building as much as we could, you'll see a couple different variations in the color where there's also some shifts in the façade, you have bump-outs and inlets, and then we also have the stacks of the balconies and the patios to help break up that visual mass of the buildings.

And this is the last slide. This is that enlarged site plan I had mentioned earlier. I think probably the last thing to know before we get into any questions is you can see in this sort of north, or the southwest corner, there's a blue line. What we will be building as a part of this development is an extension to an existing trail that's here, and ultimately this trail will connect to the Rail Runner just for better access to that public transportation. So at this time I stand for questions. Thank you.

CHAIR GONZALES: Thank you. I have a question. The vacant properties fronting this development, what's the width of those?

MS. TYEIT: I'll see if I have those. I don't believe we have that information, just because it's not a part of this proposal. As I understand it that will remain commercial.

CHAIR GONZALES: Okay. That's not that important. Okay, I have another question. How high are your parapets from the actual outside of the roof? What's the height of your parapet?

MS. TYEIT: Yes, there's varying parapet heights and they range, I believe from 36 to 38 feet in height. Of course those higher parapets are going to screen that mechanical.

CHAIR GONZALES: The actual parapets themselves, what's the height?

MS. TYEIT: In some spots it's 36 feet and others it's 38.

CHAIR GONZALES: The parapet itself, that should be in inches or feet. Two or three feet?

MS. TYEIT: I see. It will be about two feet.

CHAIR GONZALES: Two feet for the parapets. Okay. Does anybody have any questions of the applicant? Eric.

MEMBER AABOE: Yes, Ms. Tyeit, I think you mentioned this, but that parcel is currently one lot and so what will happen is if this is approved, then the vacant part things shown on screen will be split off and those will be developed as commercial development subsequently? I just want to understand the process here.

MS. TYEIT: Yes, Commissioner, thank you. That's exactly right. We have submitted the minor subdivision to the County. We have had a TAC meeting on it, and I believe we will be posting signs soon, but yes, we're going through the process of that right now.

MEMBER AABOE: Thank you.

CHAIR GONZALES: Thank you, Eric. J.J.

MEMBER J.J. GONZALES: Mr. Chair, thank you. I've got a couple of questions. This area is between I-25 and State Road 14. What makes this a suitable place for your affordable housing units, 312 units? Why is that the ideal place for this development?

MS. TYEIT: Yes. Thank you, Commissioner. Dominion, we like a lot of visibility, so we actually prefer to be closer to these higher traffic roadways. Just drives more business naturally, but I think the bigger picture is it is very difficult to come across sites that are already zoned for multi-family use, especially being affordable housing we often experience a lot of NIMBYism, so push-back from neighbors, and so whenever you can find land that already allows multi-family use by right, that makes the development a lot more feasible.

MEMBER J.J. GONZALES: And the other question I have, what amenities are there going to be on this project?

MS. TYEIT: Yes. We will have a standalone club house that will be one story in height, so we have onsite management staff. There is a fitness center a community kind of kitchen/café area. There is a pool here. There's outdoor playgrounds for children, and then there's also some play space and open space throughout the property.

MEMBER J.J. GONZALES: And how affordable is this going to be for the clientele that lives in Santa Fe, the workforce people? What is the rent on these places? Are they going to be fixed rents for a certain term?

MS. TYEIT: So we will be capped by the Department of Housing, and I'll get these rents in front of us here in a second. But we enter into one-year leases with residents, so that is what we'll be held to. However, the Department of Housing releases the updated rents annually, and so we are able to implement different new rents at that

time when those are released. However, we only do that when leases end for our residents, not midterm. And I'm calling up those rent levels.

MEMBER J.J. GONZALES: The other question I have is what impact will this have in that area? I know there's traffic, issues have been mentioned with traffic, a lot of congestion there. There's been several hundred, maybe 1,500 or 2,000 units already been approved for that area, and this is right close to the intersection of I-25 and 14. What kind of traffic study did you complete on this?

MS. TYEIT: So, thank you, Commissioner. To answer your previous question about our rent levels. So these units will be restricted to households that earn at or below 60 percent of the area median income. And so in terms of kind of a nominal rent level, that's anywhere between \$950 to about \$1200, depending on the unit size.

MEMBER J.J. GONZALES: And how did you determine there was going to be 312 units? The other development that got approved was 240 units, and all of a sudden you come here with a plan on a similar sized piece of property that's 312 units, and you mentioned that you needed 312 units to make it feasible, to make it affordable to build. That's a thing I don't understand. It seems that this development is 100 units bigger than the other development we approved. Did you look at that other development and determine you wanted to be a bigger player in this apartment?

MS. TYEIT: Commissioner, thank you. No, that was not our take-away, and I can't speak to exactly what they're doing or how they're doing it, so I can only speak on behalf of our development. What I can tell you is there is no maximum density on this site, and so as we were site planning, naturally of course we want to put as many units as we can to make it as economically feasible as we can, as well as this being affordable that adds a difficult layer of making these feasible to be able to build, because as we were just mentioning we have these restricted rents we're able to charge. So if we have these higher costs on a permanent basis our land costs are staying the same. We can't just charge more rents to make up that construction cost difference.

Also, to your point on the traffic, a traffic impact analysis will be required as a part of the site plan submittal. We have already one under way and you can see our main access is off of Rancho Viejo Boulevard, and we'll have our secondary access across from Dinosaur Trail. This is into the New Mexico Department of Transportation for approval. And we have had a call with them already and they don't see any issues with these two access points.

MEMBER J.J. GONZALES: I added up that there's something like 800 bedrooms in this development. And how many people would that accommodate? Like 1,500 people or so? That's a huge number of people for this small area. That's what I'm concerned about.

MS. TYEIT: Yes. Thank you. So that will be addressed through the zoning with the no density max. We will have to submit the traffic impact analysis and we will also have to submit, as a part of the site plan submittal, an adequate public facilities assessment. So I think that will address those types of questions you might be thinking through.

MEMBER J.J. GONZALES: The other question I have is where are you going to do the sewage and where are you going to get the water from?

MS. TYEIT: Yes. So this community does already have a ready, willing, and able letter from Santa Fe County for both water and wastewater.

MEMBER J.J. GONZALES: And what is that amount of acre-feet? Any idea?

MS. TYEIT: I don't have that figure in front of me. But we can circle back to see if we can provide that.

MEMBER J.J. GONZALES: The reason I ask that is because Santa Fe County has a very limited amount of extra water rights to give out to developers. The City of Santa Fe has 20,000-some acre-feet of water rights available. Santa Fe County has at that most, 2,600 acre-feet of water rights and a lot of those are already committed to developments. And that's the thing. Are you going to purchase water rights, or are you going to get water rights from the County?

MS. TYEIT: So Commissioner, this will be County water and sewer, so there's no purchase of water rights. And when they did do our acre-feet calculation they did take into account our unit mix. So wherever they did land it was for this proposed community in front of you today.

MEMBER J.J. GONZALES: And the other question I have is was this area ever approved for some sort of other development that you know of?

MS. TYEIT: Commissioner, I'm not aware of it being approved for another use. As Mr. Chair mentioned earlier, I believe a gas station has been proposed previously but was ultimately rejected.

MEMBER J.J. GONZALES: It was partially rejected. Some of it was approved. I was wondering why the owner of the property did not go through with their approved portion of that development. I just wondered. And all of a sudden there it comes with another development. So how many times do we have to approve a development on that location? That bothers me a little bit. Well, thank you.

MS. TYEIT: Commissioner, thank you.

CHAIR GONZALES: Jose, I have a question. You don't have an LOC on this project? Letter of credit?

MR. LARRAÑAGA: Mr. Chair, yes. So the process would be the ready, willing and able letter, they submit all those studies, reports and assessments, with a site development plan. The actual site development plan will be done administratively. And prior to construction they have to come in for a construction permit to vertical and the infrastructure, and yes, we would have a letter of credit for all the improvements.

CHAIR GONZALES: Thank you. Any other questions?

MEMBER KRENZ: Yes, Mr. Chair.

CHAIR GONZALES: Steve.

MEMBER KRENZ: Getting back to the sewer here, you said that this was going to be County water and sewer.

MS. TYEIT: Commissioner, that is correct.

MEMBER KRENZ: So I'm a little unclear. Maybe this is a question for staff. Last time we talked about development on this property they were going to be pumping the sewage over to the pen, because there was not any kind of sewer conveyance in that area. Has something changed since then?

MR. LARRAÑAGA: Mr. Chair, Commissioner, yes. So there'll be the -- there is some infrastructure I believe going in and some that has come in with Colibri across the highway, all those units there. And they'll go to the Quill, the Santa Fe County facility.

MEMBER KRENZ: So this is not going to be a situation of pumping the sewage somewhere.

MR. LARRAÑAGA: Mr. Chair, Commissioner, again, I haven't seen the plans for this. I don't know if maybe they have to have a lift station where they're at, but it will be going to a County facility.

MEMBER KRENZ: Okay. Thank you.

CHAIR GONZALES: Thank you, Steve. Any other questions? Eric.

MEMBER AABOE: I just wonder if you could tell me a little bit about – when we looked at the lot that's a couple lots over, the 19-acre parcel as opposed to this 26-acre parcel. If I remember correctly, that lot was kind of down below the interstate. It was somewhat – its visual impact was somewhat less because of the topography. Does this parcel – I can't visualize it right now, because there's nothing there. Does this parcel have that same kind of a little bit lower than the interstate topography?

MS. TYEIT: Yes, Commissioner, thank you. I believe the first floor units in those sort of back buildings closest to I-25, they're about half-way, let's call it, below I-25, and I think another point to this that helps offset them even more is we do have a 224-foot setback from I-25 to the closest building.

MEMBER AABOE: Thanks.

CHAIR GONZALES: Thank you, Eric. Carl.

MEMBER TRUJILLO: Yes, thank you for the presentation. I was going to ask – first of all I was going to ask staff, the other HUD project that got approved just down the road, what was the density variance on that? Do you remember? Do you recall?

MR. LARRAÑAGA: Mr. Chair, Commissioner, the variances were identical, the 12 units, and actually, hopefully, there'll be some kind of code change in the future because it just doesn't make sense. But the variance in the height was identical to this. And just to clarify, the TT2 project is on an adjoining lot to the east of this property.

MEMBER TRUJILLO: Okay. And one question for the applicant. I remember listening to this HUD funding, obviously this is a federal government funding, but after some time period the developer owns the property? Or what does it allow?

MS. TYEIT: Sure, Commissioner, thank you. So how the LITC, that's the short for the low income tax credit program works is the developer will own this effectively right away. However, we do have to hold it or own it for a minimum of ten to 15 years. However, the project needs to remain affordable at their rent levels for a total of 30 years in the State of New Mexico.

MEMBER TRUJILLO: So, Mr. Chair, that's a state law or that's the federal requirement under this program, the 30 years?

MS. TYEIT: The federal program required that minimum 15-year kind of initial compliance period, and then each state from there typically has what they call an extended use period, and most states do an additional 15 years on top of the federal, and New Mexico does it that way.

MEMBER TRUJILLO: So if this variance is approved that affordable housing would have to be available at whatever rate increase for 30 years? Is that what I'm hearing?

MS. TYEIT: That's correct.

MEMBER TRUJILLO: Thank you, Mr. Chair.

CHAIR GONZALES: Thank you, Carl. Any other questions? Okay, this is a public hearing, I'm going to open it up to the public. Anybody out there that wants to talk on behalf or against this project, please come forward. Jose, anybody on line?

MR. LARRAÑAGA: Mr. Chair, I see no one online to speak on this item.

CHAIR GONZALES: Okay. That being said I don't see anybody coming forward. I'm going to close the public hearing, and I'm waiting for a motion or discussion. Carl.

MEMBER TRUJILLO: Mr. Chair, I'll make a motion. I make a motion that Case 23-5130 that we pass the variance that's requested, with staff recommendations.

CHAIR GONZALES: Okay. We have a motion on the table. Do we have a second.

MEMBER PIERARD: I'll second.

CHAIR GONZALES: All right. We have a motion to table and a second.

The motion passed by unanimous voice vote.

5. D. **CASE # 23-5030 David Pittis Conditional Use Permit (CUP). David Pittis, Applicant, request approval of a CUP to allow a 50'x70' outdoor area to be utilized for the purpose of producing cannabis on a 6.24-acre parcel. The property is zoned Rural Residential (RUR-R) within the San Marcos Community District Overlay (O-CD). Ordinance 2021-03 Section 9.14 states outdoor cannabis production is a Conditional Use (CUP) within the RUR-R zoning district. The site is located at 31 B Red Raven Road, (Commission District 5), SDA-2. This Agenda Item Contains an Attachment.**

[Case Manager Sisneros read the case caption.]

CHAIR GONZALES: Dominic, you're up.

MR. SISNEROS: Thank you, Mr. Chair. The applicant is requesting approval of a Conditional Use Permit to allow a cannabis producer microbusiness to cultivate cannabis plants outdoors, The 6.24-acre site is zoned Rural Residential within the San Marcos Community District Overlay (SMCD). Section 10.22.3.4 of the SLDC, states that a cannabis producer or cannabis producer microbusiness that cultivates cannabis plants outdoors is a conditional use within a Rural Residential zoning district.

The applicant has obtained a New Mexico cannabis producer microbusiness license, which would allow for a cannabis producer at a single licensed premises to possess no more than two hundred total mature cannabis plants at any one time.

The grow site will be located on the east side of the property, to the right of the existing 2,560 square foot residence and 714 square foot garage. Access to the site is provided via a 30-foot access and utility easement that runs through the adjacent 6.24-acre property to the east, which is also owned by the applicant. Surrounding properties consist of single-family uses. Roads leading up to the site are Crazy Rabbit Road and Red Raven Road, both of which are dirt and privately maintained. The proximity to NM 14 is approximately three miles. The applicant intends to have one part time employee. Drying of the cannabis will occur in the existing garage. The applicant currently has a contract

from the Entranosa Water Association to haul in water to use in the cultivation of the plants. Water will be hauled in twice a month for a five-month period out of the year.

The applicant has addressed the CUP criteria and staff has responded to the applicant's comments. The applicant addressed and staff reviewed the following applicable design standards: access, fire protection, fences and walls, lighting, signs, parking and loading, road design standards, water supply and water conservation, terrain management, solid waste and air quality and noise.

Building and Development Services staff has reviewed this project for compliance with pertinent SLDC requirements and Ordinance No. 2021-03, and has found that the facts presented support the request for a Conditional Use Permit to allow a 3,500 square foot area for the purpose of producing cannabis: the use is compatible with the current development within the affected zoning districts; the use will not impact adjacent land uses; and the application satisfies the submittal requirements set forth in the SLDC inclusive of the Conditional Use Criteria set forth in Chapter 4, Section 4.9.6.5.

The review comments from the State Historic Preservation Office and County staff have established findings that this application to allow a 3,500 square foot area to cultivate cannabis plants outdoors is in compliance with State requirements, Ordinance No. 2021-03, and pertinent design standards set forth in the SLDC.

On May 11, 2023, this request was presented to the Sustainable Land Development Hearing Officer. The Hearing Officer memorialized findings of fact and conclusions of law in a recommended order on this request. The Hearing Officer, based on the evidence presented, recommended approval of the request to allow a 50 foot x 70 foot area for the purpose of producing cannabis outdoors and to utilize a garage for the purpose of drying cannabis after harvest with the conditions recommended by staff. The recommended order and the minutes of the May 11, 2023, hearing are attached as Exhibits 6 & 7.

On the May 11, 2023 Hearing Officer's Hearing, twelve individuals testified, three were in favor, one had no position and eight were in opposition regarding of the request for an outdoor production of cannabis at this site. The concerns expressed from the opposition were specifically of odor, damage to the private road due to hauling of water, criminal activity affecting the safety of existing properties in the neighborhood and the presence of commercial activity in the area. The testimony of these individuals is stated in the minutes recorded on May 11, 2023, with the Santa Fe County Clerk's Office, Exhibit 7.

The recommendation of the Hearing Officer and staff is for approval of a Conditional Use Permit to allow a 50 foot x 70 foot area for the purpose of producing cannabis outdoors and to utilize a garage for the purpose of drying cannabis after harvest, subject to the following conditions:

1. The CUP showing the site layout and any other conditions that may be imposed through the approval process shall be recorded at the expense of the applicant in the office of the County Clerk in accordance with Chapter 4, Section 4.9.6.8.
2. The use of the on-site well is prohibited for the production of cannabis.
3. A water meter shall be installed on the existing domestic well and meter readings shall be provided to the County on a monthly basis to ensure that water from the well is not being used for the grow facility.

4. The Applicant shall obtain a Santa Fe County Business License.
5. Prior to recordation of the CUP and/or issuance of the business license the applicant shall provide cut sheets of proposed security lighting and a statement from a NM Professional Engineer indicating that the on-site driving surface is capable of supporting 75,000 lbs. imposed load of fire apparatus.
6. Prior to recordation of the CUP and/or issuance of the business license the applicant shall improve a portion of road that goes through tract B-2 and B-1 to a 20' driving surface.
7. Adequate containers for solid waste collection and storage as well as a screened area for solid waste storage will need to be provided.
8. The Applicant shall comply with Santa Fe County Ordinance 1993-6 and Ordinance 1993- 11.

This Report and the Exhibits listed below are hereby submitted as part of the hearing record. I now stand for questions.

CHAIR GONZALES: Okay. Thank you. Does the Commission have any questions of staff? No questions yet? Okay, let the applicant come forward please.

[Duly sworn, David Pittis testified as follows:]

DAVID PITTIS: David Pittis, 31-B Red Raven Road, Santa Fe, New Mexico. Thanks for letting me get this far. So I'm just going to go with all the recommendations of your staff and your Hearing Officer who have taken a long time to go through all these things, and I believe they've come to the correct decision about it. I'm open to answer any questions about it. I know that the four areas of concern that people have are the road, the odor, the security and the idea of a commercial application in this area.

I'll go with the commercial application first. There are commercial businesses in the area. The Houser Studio has just really accelerated recently. We have signs all the way out on 14. They have tour buses. They have open houses at least once a month, where there's many, many people show up there. Some of the neighbors have BnBs, so there are some commercial uses of the area already. I feel that this is a very small operation, more like a gentleman's garden kind of thing and for all intents and purposes people won't know that it's there. I mean we're talking about two deliveries of water a month. It's fenced. It's going to be screened and I don't believe people will – I don't have very many close neighbors. Only one neighbor has really objected and they seem to be focused on the odor of it.

Now, to that area right now, we're allowed to have 12 plants for two adults in a household, so I have my 12 plants and I go out every single day and I check on them and I walk a little distance, maybe 30, 40 yards away, and I walk up to the grown, upwind of the grow, of these 12 plants, and I try to see how far it is until I can smell them. And normally, you don't barely smell them at all but now, I did this just today, here in September, it's the time of year where you would have some odor for this one-month period. Usually I'm 30 to 50 feet away and sometimes closer than that. So the idea that neighbors are going to have some kind of strong odors – they're 1,000 feet away from me, seems pretty implausible.

Now, the next thing is about security. Now, I have these 12 plants there and they're medium sized, this high kind of plants, similar to what might be expected in the grow, and they're there right now. They haven't been harvested. There's no fence. There's no lighting. There's no security, period, at all. Somebody could walk up the hill and go there and steal them, but nobody has. Nobody is really concerned about it. I think the security issue is kind of a red herring. People – they made it legal now. The price of cannabis has dropped dramatically and so the idea that some teenage kids are going to scale a fence, be photographed to steal a couple buds, it just – I guess anything is possible when you have teenagers involved but it doesn't seem like a reason to say that this isn't acceptable.

Now, when we get to the water, one of the reasons I did these 12 plants, very similar in the way I will be watering, though I think in the end I'll have a more efficient water system with an irrigated system, to give me an idea how much water the plants actually use, so I have a real idea that they use this much water, and then I can extrapolate and I believe that my estimate of the water use is pretty accurate, after going through it this year.

MEMBER KRENZ: Which is what? How much water?

MR. PITTIS: I estimate it's about 500 gallons per plant per season. So it could go up. That's not always consistent, because in July and August with the heat, especially this year, they use a little more water, or a bit more water, whereas in the early in June, in May, the plants are small; they don't use much water. And by now the plants have really cut back on their water use because they're not really in a growth stage. And of course the weather has cooled down and that's helped a lot.

So I stand by those numbers. They could go up a slight amount. Now, they say it's five months, well, it probably is less than that, actually. We're almost at harvest by the end of this month. And the plants that I have out there now, they went out in mid-July. They were small plants but they went out mid-July. So it's possible that the water use could be a little less than that, and the roof runoff that I have, a pretty extensive system for collecting the rain. The rain from the roof is way better than the rain from the well or the water that I would have hauled in because it doesn't have so much calcium and magnesium, things in it to make it harder. And so it's a better product to irrigate with or to water with, and even though we haven't had a lot of water this year and even though I don't have that many plants at the moment, I still used about half of the water requirements this year were on the roof runoff.

Now, the state is kind of cagy about this because I guess there's some laws about using it for that purpose. So I guess I've stated if the water from the roof is used for landscaping. So I mean that's the water thing.

Now, the road is really the issue that people have pushed the most. I know you have another grower in my neighborhood who has – I guess he's next Tuesday, a very long process also, and he's hauling his own water from the prison in his own truck and trailer and tank. Now, I know that you have tabled his hearing, at least once, so he has the time to organize the community in a kind of agreement, what are we going to do about the road?

So I have actually fixed Crazy Rabbit Road several times in the past. I've lived there for 13 years and several times in the past I've rented a backhoe, because I had another property there that I had to – the road would wash out and I would rent a backhoe

and I'd rent it for the whole weekend an extra few hours and I would go out on Crazy Rabbit Road and I would fix the holes and the ditches and try to improve it in a general way. I never – I guess I never had a permit. No one ever complained. Everyone was always high five, but most people didn't even realize that I had done so, because only the person driving down the road in that four-hour period.

So I have a history of repairing the road. Now, we had a guy, Bill Green, who had run a group of people to organize, to try to improve the road over and above what I ever did, bring in a blade, have it bladed and improved, and we raised about – and I contributed of course, and we raised, I think about \$3,000, \$2,700, enough to blade the road and improve it for a period of time. And that was the last time anybody really worked on the road. I sold the other property that I had that I needed the backhoe for so I haven't been renting the backhoe and having that extra time and the road is very, very packed. It has a lot of rock which is embedded into the road, so it's a very, very solid surface. When I had the water tank brought in I brought in the truck from Entramosa Water to fill the tanks up. And I asked the guy about the road and he says he does many worse roads, that the road was solid and that it wasn't steep, which was his – very heavy truck having to go up a grade.

So now we have organized a new group and we've been doing it for months. We haven't quite gotten the permit. The permit is all ready to go to get. This time we're getting a road permit because we're going to try to do a much more extensive job on the road. And we're not only doing the first half of the road that I use, but the entire road, the entire road that goes way back into the development of Crazy Rabbit Court, Crazy Rabbit Circle. I don't know what the Crazy Rabbit thing was years ago. They named all these things. But most of the houses that are actually on the road are in that back area.

It's a lower income area with much smaller lots versus the area that I'm in and the people around me have quite a lot more money than the people in the back. But we in the past, we never went back there. We never tried to improve the road back there, because frankly, those people weren't contributing any money toward it. However, I always thought that was a bit unfair, and so now I've consulted directly with those people. One of the owners of the property has a disabled child, has been trying to be able to get people to fix the road so their disabled child can have their friends – well, he's an adult, I guess, but still disabled – who can't visit because the road is so bumpy and rocky that it's impossible for these disabled friends of his to visit.

And I've assured her that this time we are going to do the whole road. So I know that the report from the Hearing Officer talks about improving the road, and we are moving forward with that. We've already raised about \$5,000. And we haven't even gotten to the main core of people. This is money from the wealthy landowners, literally around me, who are friends of mine who want the road improved. I have a new car, a Tesla. I've already spend \$1,000 on tires and one of them blew out on La Bajada in the construction zone, broke, the tire came apart, ripped through the air system on the suspension, the bill was \$8,000. So I know people think, well, this is the only reason I want to be involved in improving the road is because of this operation. We are improving the road regardless of any of that.

As I say, the truck itself to bring in the water really – does not really care about the road. People who haul water are often in these kinds of places which are in the out –

back on dirt roads or whatever. They can't afford wells. Wells now – I looked into a well. It was not for this operation but for an adjacent lot, and it was like \$70,000. It's crazy.

And I want to get to that point about the state. Now, the state created – it legalized cannabis and its production and has a lot of control over that production. And when they were there they were all, like, we want to do something for these small growers. We want to have some small growers, not just these huge corporations that are coming in from other states with giant 40 acres of greenhouses. We want to have the small growers too. We want to give them an opportunity to be able to make something off of this or do this for whatever purpose they might want. A small grower isn't somebody who's going to be able to spend the hundreds of thousands of dollars that it would cost to be able to buy a facility. They're going to want to use the facility that they have, which is what I have.

I have the 6 ½-acre lot, or 6.25. I have another lot right adjacent to it which I just purchased, so I want to use the facility that I have. I'm an old guy. I was a school teacher. I put in my hours into the community and I don't want to have to drive to Torrance County to over there to where it is very easy to go through this County permit process. I've had this license for over a year now. I'm on my first renewal of the license and I have not been able to do anything yet.

So that's basically it, that I feel that I have always done and will continue to have the road to be usable for the cars that come. I really personally think that when people talk about the road, that they are exaggerating the impacts that this water truck would have. Now, the very first thing that erodes the road is water. The rains, the heavy rains, it washes the silt out; it leaves the rocks. It's why it's all rocky right now. And the second though is the cars, the trucks, that drive at a high rate of speed, and I guess sometimes I might be guilty of this, but nonetheless, when you drive at a high rate of speed it really kicks up a lot more material than a truck which the guy told me he does five miles an hour on my road. It's about a half a mile long there. So it takes him some time.

Now, the other thing is when it gets wet or snow happens particularly in December and January, when it thaws, it thaws and freezes, it turns it into a muddy mess. And when people drive on it, they have to drive on it, they have to get to work, they have to get their kids to school, so this screws up the road, and we end up with holes.

But this has nothing to do with this operation, which takes place only in the summer, and is somewhat limited in its scope and size. And so when people talk about – this isn't a ten-acre farm, which is even small by farm standard. This is a very small lot. Maybe twice the size of this room. I have been a gardener all my life. I started as a very young person doing community gardens in New Jersey and I was the gardener, volunteer gardener for years at the Children's Museum here. And so I've been involved in gardening for a long, long time. I guess you could consider me a master gardener. And to me it's like sort of a fun retirement thing to do, maybe make a little money, but I really am not into it for the money. I'm into it because it's something I enjoy doing and I breed seeds, and it's just something that I want to do.

Whether it's a viable commercial business – the price of cannabis is going down to under \$500 a pound. So it's – you know. But that's not why I'm really doing it. Maybe I'll break even after a few years. I enjoy doing it. I really don't need a lot of people to help me. I know that since I'm so skilled at gardening I know how to do it with a very small amount of input. So my girlfriend is the person who can help me and there are people who would be involved when we set up – digging or moving materials. Obviously

I'm too old for that, and at harvest when we talk about drying the product. But for most of the time nobody would know that it was there.

Of course there's a big yellow sign now and everybody – it's in the paper. I have to send letters to everybody that is near me. So everybody around me knows about it. And yet nobody has tried to send their delinquent teenage kid to go rob me or anything. The reality is that cannabis isn't that valuable. And compared to someone's jewelry or the idea that you would break into their home and that is so much more horrible, and it has happened in our neighborhood. And this has nothing to do – there's no connection between this operation and the criminal activity of kids.

So as I started out, I feel that you should follow the recommendations of your staff, which is overwhelmed and understaffed, and they've looked at this thing for over a year now, and the Hearing Officer has looked at this thing and they've state that this should be approved. That's it. Any questions?

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

MEMBER KRENZ: Yes, Mr. Chair.

CHAIR GONZALES: Steve,

MEMBER KRENZ: So basically, I'm your neighbor. I live about a quarter mile away from Crazy Rabbit Road.

MR. PITTIS: Oh, your area?

MEMBER KRENZ: Yeah, and that's probably one of the worst roads in the county, especially when you consider that it's servicing, oh, gosh, a couple dozen families at least 30, I think.

MR. PITTIS: Yeah. Thirty families.

MEMBER KRENZ: Yet this isn't a County road. This is a private road.

MR. PITTIS: Yes.

MEMBER KRENZ: Nothing's been done to it. I've been going up and down that road now for the last three years. I haven't seen anybody do anything to it

MR. PITTIS: We haven't done –

MEMBER KRENZ: I'm really happy to hear that somebody is talking about doing something about that road again. And it's not just because people are driving fast. It's because it's never really been graded as a real honest to god road. And certainly nobody has gone through there and improved it with gravel and things like that for the whole length. I've looked at your site, and you're like way at the very, very, very end of Crazy Rabbit. There's the other ones that –

MR. PITTIS: I'm on Red Raven, halfway down Crazy Rabbit.

MEMBER KRENZ: Yeah. You're a ways away. So I'm very happy to hear that somebody's organizing to do something to that road because it really needs it very badly. So using your numbers here, you're talking about 200 plants, I think.

MR. PITTIS: Well, I'm actually – they've raised that to 200 but I am planning on growing 100 plants.

MEMBER KRENZ: Okay. Well, let's just use 200. And you were saying well it takes about 500 gallons a plant for a season. So that's 100,000 gallons.

MR. PITTIS: 50,000 gallons.

MEMBER KRENZ: Well, if you do 100 plants then it's 50,000. But at 200 plants, 500 gallons a season, that's 100,000. And so those water trucks are about 5,000 gallons apiece. So we're talking about 20 loads over a season. Would you think?

MR. PITTIS: Well, I think it's about ten loads because I'm doing 100 plants, because the size of the space isn't really capable of – the plant thing is a little – you have to understand that really, it's not the number of plants but the mass, the amount of biomass that you have. Like 100 large plants might be like 1,000 small plants. And the amount of water is dependent upon the amount of biomass. So a large plant is using more water than a much smaller plant. And in fact when people do indoor gardens they have tens of thousands of plants that may use a few gallons. Maybe not for the season of their plants. But as far as – I had applied for the permit and when we talked – we always talked about a hundred plants. Now, to squeeze 200 plants in there would mean that they would be that much smaller than the 100 plants.

MEMBER KRENZ: Well, we can go back and forth on this, but the numbers that I look at for marijuana plants, they talk about a three or four square foot for a plant. You're obviously doing a lot less than that because your property at three square foot per plant could hold as many as 875 plants – or well, 900 plants. But you're not doing that. Now you're saying 100. Somebody, either staff or somebody said 200. The state permit is 200. Okay.

MR. PITTIS: Yes.

MEMBER KRENZ: So, but you're doing half of that. The amount of water that you're talking about using seems to be very typical. Every place that I read about this, because this has come up several times now, all seem to say, yeah, it's about five 5 ½ gallons per plant per day and that would work out to be the 500 gallons that you're talking about.

MR. PITTIS: Yes.

MEMBER KRENZ: So all of those are kind of consistent. But somewhere what we're talking about here, I guess it boils down to this, is that we're looking at, say ten truckloads of water, 5,000-gallon water trucks per season.

MR. PITTIS: Yes.

MEMBER KRENZ: Especially during three months. And you're going to be working to improve the road.

MR. PITTIS: I am. We're already doing that regardless.

MEMBER KRENZ: You're already doing that.

MR. PITTIS: We have a permit ready to go. I have an appointment with the County Land Use on the 28th of this month for getting that permit.

MEMBER KRENZ: Because the water usage of course is always a question for everybody growing anything. And the road is specifically an issue because of what Crazy Rabbit Road is.

MR. PITTIS: Yes.

MEMBER KRENZ: I would just like to point that out that's the numbers I think we're talking about is probably about ten loads, maybe a little more, maybe a little less, but per growing season on a road that you're going to help the neighborhood improve.

MR. PITTIS: For all of our use.

MEMBER KRENZ: Yes. Of course.

MR. PITTIS: I feel that that's a reasonable number. Okay, so when I originally applied for my first permit, my first license from the state, at that time it was 100 plants. And since then the state has increased that micro-license size. So that is why I'm still sticking to my size. The plant – I don't use three square feet. In fact the containers I use are 100 gallons, they're four feet across. So they're pretty large. This makes a much better product because the plant doesn't get root-bound. Originally I thought I'd be in the ground, but I've used these new containers which are very wide and not very deep and they seem to work very well, and that gives a wider area so when it does rain, that area really gets more water into that soil there. We also will landscape the ground so that the water that falls in the garden area will be directed to the base of these container plants.

And then on top of that, the water we might collect to try to keep the cost down, it's ten cents a gallon, so per plant. But there's so many expenses. The irrigation system, the security system, the fencing. There's a lot of expenses.

MEMBER KRENZ: Thank you.

CHAIR GONZALES: Thank you, Steve. Does anybody else have any questions of the applicant? Carl.

MEMBER TRUJILLO: Thank you, Mr. Chair. Thank you, Mr. Pittis, for your testimony. So on the well itself, I see here in one of your statements you say that you even have to haul water in for – it looks like maybe domestic use. Is the well that you have on the property not a good well

MR. PITTIS: Well, the well is on another property. It's a shared well with three homes. It used to be an excellent well. But then recently when we sold one of the homes they had it tested at .8 gallons a minute. So we're really on the edge of being able to supply just for our domestic use, and we've all really buttoned down, put in high quality dishwashers, take short showers, try to keep it down as much as we can. I have the well. I had it put in on this other property that I sold like 30-some odd years ago. I think it's \$4,000 for the price. And at the time it produced what appeared to be an enormous sum of water, but then so many other places, when I moved there there was barely any homes. Now they've all stuck their straw in the ground and it's really dropped dramatically.

So yes, we did have a time when we thought that we were having really serious water problems, which is why I brought in that truck and filled those tanks. It ended up being a couple of things, a couple of leaky toilets, and also one of the devices that regulates the well called a pump tech, which wasn't coming on as long, so we replaced that. We fixed the leaky toilets. This resolved us I think back to our .8 gallons. So obviously there's not enough water for us to use. It wouldn't be fair. We have a pretty stringent well agreement in place that says that you just can't use. We have to conserve as much water as we have and we've been successful in doing so.

MEMBER TRUJILLO: So Mr. Chair, I think I heard you mention that you bought another lot there.

MR. PITTIS: Yes.

MEMBER TRUJILLO: Does that have a well?

MR. PITTIS: No. No.

MEMBER TRUJILLO: Okay.

MR. PITTIS: We're not allowed to use any well water for this operation. It has to be commercial water. It has to be agricultural. It could be from a utility, like you could be in Santa Fe, the City of Santa Fe and you could use the water to grow if you could get the variances and so on, because this is essentially commercial water. But out where we are we can't use that. If I were to drill a well and I was to hit a lot of water I could go through the long process of buying water rights, say from Estancia Valley and transferring it to my well. This would take years, and I really have no interest in this. If I were to drill a domestic well on that property that I purchased it would simply be to have a backup well for our homes and there might be a home built on that property at some time in the future.

MEMBER TRUJILLO: And is there just one grow season in a season? This is growing outdoors?

MR. PITTIS: This is outdoors, so – there's no greenhouses allowed. There's no lighting. As I said, people have asked about the lighting, the security. They think that there's literally going to be people breaking into this facility every day and the lights are going to be going off and they're going to be all flipped out, but we don't have any lighting. We have security cameras that are motion-detected. You can't have lighting associated with cannabis in the flowering stage because it disrupts the flowering of the cannabis. So we can't have big lights. It's essentially an invisible operation.

MEMBER TRUJILLO: Okay.

MR. PITTIS: Did I answer the question?

MEMBER TRUJILLO: Yeah. You did. You did. And Mr. Chair, for staff, I think I read in here somewhere where security is required by the state, under state law. So who enforces that or what is the level of security when you do something like this? Is the County required to do this? Or the state sends their regulators out? How does this work?

MR. LARRAÑAGA: Mr. Chair, Commissioner, yes, it is regulated by the state. The security, the County does not regulate. We would regulate if there are any lights that they aim downward as per the design standards. But the state is the one that regulates all kinds of security and implements it on the growers.

MEMBER TRUJILLO: Okay. Thank you.

MR. PITTIS: I could give a little information about that because the state shows up. They showed up a few weeks ago. They're like, okay, you're on our list. We want to see what you got. And I didn't have anything. Here's the pile of dirt. Here's the pile of materials. We're waiting. I have that stuff ready to go and so I talked to them about the security cameras, because I'm not very clear about them, and they basically said you just have to have security cameras that tape for up to one month. So they want to come in there and they want to ask you, they want to look at the date. They want to say show me the security footage from a months ago. And so basically, that's it. You have to have one month of security footage. It has to cover the entire grow. It has to cover the gate into the grow, and it has to cover any room that you might store material in. So it's maybe eight cameras, ten cameras. Thank you.

MEMBER TRUJILLO: Thank you for that response.

CHAIR GONZALES: Okay. Wendy.

MEMBER PIERARD: Odor always seems to be a problem when people come in and want to talk about these operations. And after the last one that we had I did

some researching and a lot of the statistics that were being thrown at us were for large operations. I mean acres of – and small operations like this, like in other states, don't even have an odor requirement for small operations. But you had mentioned, maybe to the Hearing Officer, about low odor plants? Is that a thing?

MR. PITTIS: Well, people have mentioned that and that's something that might be investigated, but I really don't think it's very effective. I think the distance is much more important to this. In reality, the people who cultivate cannabis cultivate it for its aroma and its odor, and to have a plant that didn't have any of that would not be a very commercial product. So I have not ever tried that, yet, as I said, the odor is limited to a few weeks, basically right now. And so most of the – for an odor to drift for a thousand feet it would have to have very specific conditions, and not windy conditions. If it's windy it agitates everything and when it's windy I can stand ten feet from the plants and not smell them. It's when there's no wind. And it was say in the direction so you just got this kind of blob of odor that might drift over to a person's house. But the idea that it wouldn't still disseminate some and it wouldn't be that terribly strong, I don't feel.

Some people have a different opinion about that and I'm not going to say that could never happen, but it's unlikely to happen. The lot to me that I bought is to the west, the majority of the winds are out of the west. I look at the weather and I looked at the weather for the next two weeks and there's not a day it's not ten to twenty miles an hour where I am. There's no day that it's zero. So I'm on the edge of an area where it's very, very windy. So I feel that – and it's mostly coming from the west. It comes from other directions of course sometimes, but that's the predominant wind.

So I have – I never smell the plants when I'm in front of my house, even with the plants that I have now are right on the other side of my house. It's only when I walk out the backdoor that I can smell the house, and we are going to have a fence. It's going to be seven, eight foot high. It's going to have material. Even though that won't completely eliminate the odor drifting out it will reduce it. It will concentrate it. When a lot of people talk about odor like you mentioned, many acre things, this small little lot, and then in relation to the landscape around it, this has to do with how pressing the owners are going to be.

So the landscape around is hundreds of times the size of as you get to the neighbor's house, as the size of this lot. So another thing about people with odors is that they think about operations where they're blowing from indoors where the odors can be much more intense because it's confined, and then they're exhausting it out. Now, some people use filters to reduce it, but they wear out and they give up and they think, oh, it doesn't matter anymore and they just vent it outside. And if you're near that, it's a very strong odor because it's very concentrated. It's very different than the situation that is before you today, however.

CHAIR GONZALES: Okay. Thank you. Any other questions? Okay, I'm going to open up to the public hearing. Is there anybody out there that wants to talk on behalf or against this project? Please come forward and get sworn in.

[Duly sworn, Uzi Broshi testified as follows:]

UZI BROSHI: My name is Uzi Broshi. I reside at 26 Red Raven Road, Santa Fe, New Mexico, 87508. Mr. Chair and committee, thank you so much for letting me stand in front of you. On behalf of a few residents we submitted a detailed letter to the

committee. I hope you had a chance to read it. We don't have to repeat it and we can save time, where we're disputing a lot of David's claims. We went point by point.

I want to speak to you about a different aspect about what's going on. I'm the closest neighbor to David. And the trucks are going to be arriving with the water riding 50 feet from our window. So we are the most impacted people from this operation. And just even before the weed farm, things on Red Raven Road have darkened and become cloudy for us in terms of [inaudible] impacting our life.

Since last year in May that we submitted Dave's behavior toward us has changed dramatically. I guess it expresses anger that we are expressing reservation and opposition to his cannabis operation. He became quite, what we feel, quite passive hostile toward us. It used to be friendly. When we cross each other we all would chat. We're talking about the family, we're talking about – or at least waving. We participate in some family event. All of a sudden David now – the first two weeks after the hearing, for some reason David was always accelerating on our property. Now it's subside. However, he makes sure that he doesn't make eye contact with us. He makes sure not to acknowledge us.

So this is how we are right now impacted by Dave's behavior which changed after the hearing, last hearing, and there's no communication whatsoever. For me sometimes, if you like, when Dave would pass by, passing by like a ghost, not like by neighbor, that we used to have relationship with.

David, the other issue about the road, David also holding big parties. So far there's been four parties this year where there was 80 to 50 cars driving to his property for the party and back, and this one in between 6:00, 7:00 p.m. until 4:00 a.m., 5:00 a.m. the next morning. And this pretty substantial use of road but also inconsiderable. Again, all those cars, some of them playing loud music, passing 50 feet from our window, and that at 4:00 a.m., it doesn't matter what hour. Some of them play music, loud music. Some of them should not be behind the wheel after those parties.

I must also, it's sent to you now in the letter but I must make sure that the easement is for residential use, not for commercial use. There is no commercial use easement on this property. That's what we understand from comments that we've found in our file from the 80s but I think, we believe it's still true. Sometimes the way David right now behaves it feels like is not having easement but he own the whole thing.

Another issue with the odor. Unfortunately my wife is highly chemical sensitive, including essential oil and it has a very strong impact on her and we're very concerned about the effects upon her health. When David talks about 12, we could smell it, when you have 12 plants and we express it to him. At one point David said, well, actually I had 120. So actually, it's confidential but we had 120, not 12. So the smell is not going to be more. We don't believe it. We don't believe it. And we're really concerned about it.

So again, in order to appease us and make sure that we are quiet, he just told us and we're not sure what is true. One way or the other one claim was not true. We also, we tried to discuss between us, because we are the closest neighbor and because we were close to them, because we were in good relationship with his daughter, we were treating his daughter along the years because we both in a health. We tried to see how can we come to a compromise. How can discuss? But the way David's relating to us we felt like the communication channel had been destroyed, and this is very painful. It's painful for me to stand here and say all that, but it comes to the point that I do have to say it.

So as I say, this was already impacting us before we even have the farm, [inaudible] And in a pretty disturbing way. I can't imagine with that kind of atmosphere and feeling what it's going to be when the farm actually, if it's approved, how it's going to feel. It's all there. That's it. I thank you so much.

CHAIR GONZALES: Thank you, sir. Any questions of the applicant? I guess not. I am going to open this up to the public. This is a public hearing. Anybody wishing to speak in favor or against this project please come forward.

[Duly sworn, Alexis Pittis testified as follows:]

ALEXIS PITTIS: Alexis Pittis, 4949 Roma Avenue, Albuquerque, New Mexico. Hello. Good evening everyone. I am David's youngest daughter. I am here on behalf to support my dad and a few things that I have been reflecting on during this hearing regarding our neighbors Cynthia and Uzi, who have been concerned about this for months and it has been a concern for us, is what they have not mentioned that they have also been hostile. They put cinder blocks in the road. They have done this, and they also do have an Airbnb, a bed and breakfast where they do bring in people, so that is technically considered commercial. So they have also been reacting. Me and my boyfriend, we drive past that road often. We are always very cautious. We drive slowly. My dad does as well. My dad is not the kind of person who would intentionally bring any harm to anyone, especially a community.

As he said earlier, he has made improvements on the road. He continues to make improvements on the road. He is well known in the community. He has done a lot for the community. He has helped our neighbors when they have gotten stuck in the road. He is not a hostile person. It's a situation that is making kind of this aggressive situation between both of them, but my father has been as kind as he can be and they have also been reacting in a way that is not appropriate.

I was actually one of the people that they treated, because I have a lot of health issues. I have some auto-immune disorders as well as some other issues that cannabis smell can affect me but I am not affected by it. I recently went to my father's house to visit and we walked around the property, both me and my boyfriend. We could not smell anything. We have a very good sense of smell because we're pretty young and we always immersing in food and culture and smells, so we couldn't smell it. And that is 100 percent honesty. And that's – I would like about something like that because I'm a truthful person.

So overall I hope – this has been a very stressful and long process for my dad. He is an older guy. He is doing this for his wellbeing as well and for ours too because this is also our future and it's impacting the whole family.

In terms of the parties that he's been having. He does like to party because it's closer to the end of his life. He has to live out his life. They did call the cops on him. Cynthia and Uzi have called the cops on him. I'm not entirely sure what happened but because of maybe music or people coming in, but that is something that I wanted to note. Other than that, I believe that is all that I have to say. Thank you so much for listening to me.

CHAIR GONZALES: Thank you. Okay, anybody else out there who wants to speak on behalf or against this project? Jose, anybody online?

MR. LARRAÑAGA: Mr. Chair, yes. There is a Katarina Pittis.

[Duly sworn, Katarina Pittis testified as follows:]

KATARINA PITTIS (via Webex): Katarina Pittis, and it will be 2 North Street, Beacon, New York, 12508.

CHAIR GONZALES: Please proceed.

MS. K. PITTIS: Thank you. Hello, everyone. Thank you for having us here today. I am also one of David Pittis' daughters and I am here to speak on his behalf and to fully support his business. I do want to point out that my dad truly is a community-oriented man. He has lived in this community for over 30 years and he is truly given back a lot to the community. When he talks about fixing the road, pulling people out of ditches, doing those kinds of things, he really has done that and I have witnessed it through my whole life. We've all lived off of that land. I currently reside in New York, but I come back all the time and we have a very deep connection as a family to that land.

He is an environmentalist through and through, and has always wanted to take good care of the land and make the right decisions so that we don't harm it anymore. So in terms of water, when he says we're not going to use the water from the well for this grow, there's absolutely no way you could do that because there's not enough water almost to live on in a domestic house, so he would be hauling water, which is not uncommon to do in that area anyways, as our local aquifer is already getting worse and worse, unfortunately. There are many other people that live around there even using Crazy Rabbit Road to haul water and that's in their right to haul it for their domestic life. And he is hauling water a very select amount of times for the season.

Also he has demonstrated in the past, like that he fixes the road, that he cares to put in his own time and labor, and he's planning to still do that. And he is the kind of person who will go and go above and beyond to actually do more than he has to. So when he is going to fix more of the road than he actually needs to fix he means that because he actually really does get a lot of fulfillment from helping others.

One like little example is like during the pandemic he created an entire mutual aid where they distributed hundreds of masks to the community and PPE equipment. That's the kind of person he is.

In terms of odor, I don't live there all the time. I come visit, so I'm not around it and around the smell of marijuana and used to the smells of that area. But I am not impacted at all by the odor when I come. I never smell it at all, and I'm pretty sensitive to smells. I'm not around marijuana much either, since that's something I'm not accustomed to. And that is – when you really think about this this is not a huge operation. I think people are assuming that this is like a big farm, that this is a huge swath of land. It's like a small garden. There's people already in the area with gardens. There's already people with livestock and horses. There's a ton of people that have animals and are we going to say that you can't have plants but you can have livestock. When you talk about odor that doesn't really make sense in my mind.

And in terms of security, he's at the total end of the road. He's going to have everything set up so it stays as safe as possible. He lives at this house and he's obviously not wanting crime to happen at his house, so he will take the precautions he needs. But marijuana is legal now. And there is not that much incentive to steal it. You can't make a lot of money. It's not as expensive anymore. So why would this be like a reason for people to steal something that's legal. That to me just is not a valid reason for people to come on the land.

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And some of the last things I just wanted to say is in terms of our neighbors, we have had some really hostile behavior from our neighbors that are directly near us and it is very unfortunate. We have always been very neighborly. We have always helped them. My dad in particular has. I think that folks are very wary of change, especially related to cannabis and this very new industry that is breaking into New Mexico and I to that would say that we really need to support local businesses. We need to keep things small. We need to boost our local economy and local families with these kinds of businesses. My dad being able to make money from this is going to help him have a livelihood and work comfortably as an older man at this home, but also help with my entire family and these things are opportunities that will only benefit our community.

So we really do need to look in and see why are we being so reluctant to allow folks to make their own business. And a lot of the people that are also out in Santa Fe, even our neighbors, they have businesses too. They are making money. They are at their home. So this is at the end of the day, a man trying to make his own at his house. It is just as simple as that. And I think that is pretty much all I was going to say. Thank you guys so much for giving me the time to speak.

CHAIR GONZALES: Thank you very much. Okay. Jose, anybody else out there?

MR. LARRAÑAGA: Mr. Chair, yes. There's a Cynthia Broshi.

[Duly sworn, Cynthia Broshi testified as follows:]

CYNTHIA BROSHI: Cynthia Broshi, 26 Red Raven Road.

CHAIR GONZALES: Please proceed.

MS. BROSHI: So it's very sad for Uzi and I that this has come to pass. We've been extremely fond of Dave's three daughters and we've all been really good neighbors with each other. If anybody were to read my testimony at the Hearing Officer meeting on May 11th it would be apparent that I was bending over backwards to come to an amicable solution, despite having strong concerns. And I did propose that there be a two-year trial period for the permit, and if the business was affecting the community unduly then the permit would be reconsidered.

There's been a number of things said at this meeting that I need to speak to quickly. I don't know when Dave said that they're not allowed to use any domestic water when he replied to a question about a well on the adjacent property. I think you need to ask Mr. Sisneros about that because I asked him that question and when I asked him he did not know. It's very likely he has ascertained it is not allowed but I think that should be noted for sure.

When Dave says it's an essentially invisible operation, well, I will be speaking to that. That is not true. In terms of odor, whether there's something that can be done to ameliorate odor, I've heard from people who are in agriculture that if tall trees are built, excuse me, planted, surrounding the grow that that can prevent odor, and the fact is when Dave has a fire in his fireplace we smell smoke in the wind or the air is in the right condition. And there were some times last year when we smelled the odor of cannabis. I thought he was having a big party at ten in the morning. But later I understood that cannabis growing has a strong odor.

As well, people on other properties as far away as Crazy Rabbit have smelled the odor which seemingly comes from his place because it doesn't seem anyone else in the area is growing enough to produce that much odor.

And in terms of an Airbnb, we did have an Airbnb but we have closed that.

In terms of the cinder block, one time after this very hostile sort of fast driving by our houses by Dave, when one of the bags from his vermiculate blew to our house I put it in the road and I used his cinder block that he had left there to adhere it. He texted me and said, don't ever do that again. People drive this road, and I was like, oh, yeah. Good point. So that has not happened before or since.

In terms of hostile behavior, neither Uzi nor I nor any of the other neighbors as far as I'm aware of have been the least bit hostile to anyone in the family. So I want to speak especially about a letter of objection which I submitted by email yesterday to Mr. Sisneros and I think it's a miracle if he had time to read it or anyone else on the staff, and I'm quite certain the Commissioners have not. I apologize for getting it in so late but I did not read the testimony from the Hearing Officer. It was sent to me about a month ago just shortly before I was traveling for a month. And so I have been working on it while traveling.

And this letter includes a few questions about regarding the requirements by the Fire Department. It requests some binding stipulations should the permit be approved. There are four folders of photos supporting the contents of the letter, and the bulk of it contests the accuracy of testimony that was made at the Hearing Officer meeting on May 11th. In two places information which was given by Mr. Bustos who was at the time the case manager was incomplete, clearly inadvertently so. And then there are 17 places listed in which Dave's testimony is either inaccurate, incomplete, or misleading. All 19 of these statements regard topics and relay information that the Hearing Officer refers to in her recommendation to approve the permit.

Many of the seeming variations within this letter could seem insignificant to the Commission. History of road use and maintenance, odor, views – these might have no import upon the Commission's decision. However, all together they would seem to indicate a tendency for Dave to disregard the seriousness of testifying under oath and that may have obscured the Hearing Officer's understanding of the situation enough to alter the recommendation.

I wrote this letter. However, three unrelated neighbors provided information and have been in communication for a few weeks, and one is also fact-checked. I sent the letter in an email to two different emails of neighbors asking them to fact-check. I didn't get the letter into Mr. Sisneros until yesterday morning. I didn't get the letter out to the neighbors until Tuesday evening. So I can only think that some have not read it yet and that there may still be fact-checking that needs to go on in the neighborhood. But so far, I've only received a question from one person, the person that Dave mentions who is hoping he will bring the road into good shape. Her question related to that she thought my letter was objecting to fixing the road, which is not the case at all.

Some of the objections listed or some of the information listed questions Dave's statements about fixing the road. Everyone supports fixing the road, but it is in process. This doesn't have to a he-said/they-said situation because the truth of at least some of the apparent discrepancies that are listed in this letter can easily be proven or disproven. However, I think both the neighborhood and Dave himself would have an opportunity to respond to this very serious – I took it very seriously that this letter is saying he was not completely truthful at the last public meeting and he should have a chance to respond to

that. But as well, other neighbors should have a chance to say their point of view about what the truth is.

Because the question the list raises, regardless of whether there's any significance to someone not being fully truthful under oath, if whether this is an individual who should be trusted with substantial amounts of a controlled substance. When I sent the letter on Tuesday evening I also invited neighbors to co-sign it. So far four unrelated neighbors have done so. When I sent the letter to Mr. Sisneros they had not yet replied, so those names need to be added to that letter.

Some of the items in this letter are going to sound like I'm a prying neighbor, but I'm not. I really treasure my privacy and I treasure others' privacy. When you see the photo taken from our house you will see that it is impossible for us when we step out of front door not to see if something's going up. [inaudible] the new garage is going up on the ridge where Dave lives, for instance, as well, many times people looking for Dave's house stop at our house and ask for directions, so it's impossible not to notice that they're delivering a whole bunch of cyclone fencing, say.

Okay, so unfortunately, I was hoping I could just paraphrase but I think that the decision is made tonight, if I understand correctly, so unfortunately I think that means I do need to read the contents of this letter. Dear Santa Fe County Planning Commission members and staff; Upon reading the SLDC Hearing Officer meeting, the 11, 2023 –

CHAIR GONZALES: Ms. Broshi, how long is that letter?

MS. BROSHI: Well, there are 17 items referred to in which Dave's testimony is being questioned.

CHAIR GONZALES: We need to move along. We have some more cases, we have another case after this. We need to move along here.

MS. BROSHI: So how do these things get considered? Is it important to determine whether he was truthful when he's under oath.

CHAIR GONZALES: What was that?

MS. BROSHI: My question is, is it important for you guys, for the Commission, to be able to determine, to be able to know, whether Dave has been truthful when he was under oath at the last meeting.

CHAIR GONZALES: We have the information that we received in our packets. We've all reviewed it and based on the information we received today in our packets, we'll make our decision based on that.

MS. BROSHI: Okay, so do you guys have – I'm sorry. Does the Commission have the letter of objection that was sent to Mr. Sisneros yesterday?

CHAIR GONZALES: It's in the exhibits?

MS. BROSHI: Fantastic. And the photos also? There are folder of photos.

MEMBER AABOE: The white fertilizer bag, for example, that photo?

MS. BROSHI: No. No.

MEMBER AABOE: Okay.

MS. BROSHI: There were, because of the size of photos, this packet, so to speak, was – I sent to Mr. Sisneros in four different emails. So I don't know if they all got – first of all, who knows if they got received, but also whether they all got put together for you all to be able to see. Because some of the photos are what are basically the proof of the pudding of the difference between what Dave is claiming and what one sees with

one's own eyes. If those photos are not in the packet, is it possible that I can arrange to have them sent so that all the Commissioners have them?

CHAIR GONZALES: Those photos, do they have them?

MS. BROSHI: There's four folders and they are titled Photos #A, #B, #C, and #D. And there's also a scan of the covenant, of a notarized covenant. And the letter is five pages, so I want to make sure you received the entire letter.

MEMBER AABOE: Mr. Chair, and staff, while you're looking for that, I'd like to understand what we can consider and what the deadlines for submittal might be, because if this is something that we have not received because it passed some deadline, then it would be of concern for Cynthia, for you to make assertions in this letter that we – if we cannot see the letter we cannot see the letter, so I'm just concerned about that.

MS. BROSHI: Yes, the letter was not submitted until yesterday morning. Wednesday morning.

MR. SANCHEZ: Mr. Chair, Commissioner, the packet material that's available on BoardDocs is not really covered by the Open Meetings Act the way the agenda items would be, so I don't think – there's no deadline in state law that would require material to be submitted by a certain deadline before a hearing. I don't know if that answers your question.

MEMBER AABOE: And so just to follow up, so did we receive the material that you received Tuesday morning or evening from Cynthia? I'm just trying to understand, is this in our packet? I'm not able to see it easily.

MR. LARRAÑAGA: Mr. Chair, Commissioner, no, you did not receive that. Staff just informed me that they just saw the email this morning. Usually we try to print it out and bring it, but that was not done in this case.

CHAIR GONZALES: Does that include the letter as well?

MR. LARRAÑAGA: That includes the letter that she's mentioning.

CHAIR GONZALES: [inaudible]

MEMBER AABOE: Does staff have a recommendation in light of this submittal, but omission to provide it to us, because I think to read a 17-item letter that we can't review might be challenging.

MR. SANCHEZ: Mr. Chair and Commissioner, if it helpful to the Board I'll state while there's no state law deadline as far as the Open Meetings Act and providing notice to all parties involved, at least our practical deadline as far as uploading things to our BoardDocs website was on Thursday last week I believe. So once that deadline was passed I don't think it was going to be able to uploaded by staff before this meeting, so it would be at the discretion of the Chair, I believe, if you want to consider this or not.

CHAIR GONZALES: There is a letter from her and some photos in the packet.

MEMBER AABOE: Can you point that to me, Wendy? So 65 of 76 of the Exhibits? Thanks.

MEMBER KRENZ: Mr. Chair.

CHAIR GONZALES: Steve.

MEMBER KRENZ: What are we trying to consider here by looking at this letter and/or pictures? Are we trying to add information to the application, or are we

trying to somehow adjudicate whether this gentleman spoke truthfully at a previous meeting?

CHAIR GONZALES: I think that being at one point we didn't think we had the letter but now that Wendy put out to me that we have a letter and pictures I don't think there's an issue.

MEMBER KRENZ: So we have it in our packet we could be looking at it. Okay. Thank you.

CHAIR GONZALES: Okay, I guess we're at the point now where if you want to finish up your testimony so we can continue our meeting over here. Please try and finish up.

MS. BROSHI: Okay. I have one question about the letter that you have. I did send a letter a couple months ago. That is not the letter of objection that I'm referring to, with some photos, by the way. So that might be a whole different letter, if it has a date on it it's a different letter. It is not the letter that is speaking of the testimony at the Hearing Officer meeting.

CHAIR GONZALES: I think after speaking with the County Attorney we're just going to go ahead and continue forward.

MR. SANCHEZ: Yes. It's at the discretion of the Board, if you want to limit any public comment or the time for which somebody can make a public comment or even I think trying to present material that hadn't previously been submitted.

CHAIR GONZALES: Please continue your – we don't need you to read the whole letter. We have what's in the packet.

MS. BROSHI: I understand.

CHAIR GONZALES: Please close up your presentation so we can continue this meeting.

MS. BROSHI: Okay. I will close it with two questions. Regarding the requirement that the applicant provide a statement – this is a quote – a statement from a New Mexico professional engineer indicating that the onsite driving surface is capable of supporting 75,000 pounds [inaudible] fire apparatus. Do the access roads need to be able to bear this weight also? Because the access that was described by Mr. Sisneros at the beginning of this meeting, which was also described by Mr. Bustos last meeting that the grow area is accessed by the adjacent property, which is owned by Dave, but there are two roads which access that property. And so the question is would the Fire Department have requirements of those roads also? He's also being required to widen the road and the road right below his property is not nearly the 20-foot driving surface required and that would need to be widened also.

CHAIR GONZALES: On this type of application, I don't think that's part of the requirements for this type of application for whatever. Maintaining the road I could understand, but I don't think that would apply to this.

MS. BROSHI: Okay. Then I think I'm done. Thank you. I hope that the neighborhood's concerns – we do request – I just have one more request. Many of the neighbors request that there be a stipulation that Dave correct any damage done to the roads by the water delivery trucks. And no one who's been involved in maintaining the roads deeply knows anything about his having repaired roads, having repaired Crazy Rabbit. So the fact that he says that he'll do it is not the same as being required to do it. As well, Red Raven needs that protection. Our other neighbor on Red Raven just put

\$500 into improving Red Raven, and if one load of water were to damage that portion of the road our neighbor would not be able to drive his Airstream vehicle. So we would request that there be a written stipulation that Dave maintains the roads if he's using them for this commercial purpose.

CHAIR GONZALES: Thank you.

MS. BROSHI: Thank you. Thank you for your time.

CHAIR GONZALES: Thank you. Okay.

MR. SISNEROS: Mr. Chair, 20-foot wide driving surface.

[Duly sworn, Anastasia Pittis testified as follows:]

ANASTASIA PITTIS [via Webex]: Hi. Thank you for hearing me. My name is Anastasia Pittis, and my address is 1133 Vassar Drive NE, Albuquerque, 87106. So I am calling in support of my father, David Pittis. I am David Pittis' oldest daughter. I have grown up in the county for almost my whole life. I was really there until I was about 21, and I went back there to raise my daughter and so I've been out there a very long time, and I have seen many, many incidences of my father being extremely communal and helping out the community as well, and fixing roads. In fact I've even been a part of fixing roads.

I can't speak to the hostility between neighbors. Cynthia and Uzi have been incredible to me as neighbors and I don't live there anymore and they definitely helped me out and David helped them out and I'm saddened to see that this has been so difficult for them, but my position is in support of my father because this is his right to have this business and he's a very good citizen. He's followed all of the procedures to do this. He's checked all of the boxes and I fully support him. I think this is important for his livelihood and this is a local business and it's essential. So yeah, that's my only statement.

CHAIR GONZALES: Thank you. Jose, do we have anybody else?

MR. LARRAÑAGA: Yes, Mr. Chair. There's Kendra.

[Duly sworn, Kendra Carmona testified as follows:]

KENDRA CARMONA: Kendra Carmona, 2 Paseo de Angel North, Santa Fe, New Mexico, 87507. So I actually grew up in this community and my grandmother has a property in that area. Her address is 66 Quail Run. So I actually went to elementary school with the Pittis children and I was part – a member of that community up until I was 20 years of age. So I was in that community for 20 years and issues with the road have always occurred. I've been on their road, the Red Raven Road and anything from like snow melt damages that road. I have witnessed on my grandmother's property, she also has a private dirt road and it's just hard to maintain it.

I really don't see how a water truck, like using that road, makes Mr. Dave responsible for then continuing to fix that road, and yeah, just to speak on Mr. Dave's character. He has helped fix that road many times. He has even offered to help fix my grandmother's road over the years. Yeah, I believe it's his legal right to obtain this permit and he should be allowed to execute his right. It's a free country and as turns for the smell, it's a six-acre property and I have a really hard time believing that the smell is effective especially when we have neighbors that have livestock like horses, pigs and goats, that a smell like that would be an issue, especially since in terms of cannabis I don't think the smell really affects it unless it's being consumed. And yeah.

CHAIR GONZALES: All right. Thank you. Anything else?

MS. CARMONA: That's it.

CHAIR GONZALES: Thank you very much. Okay. Jose, anybody else?

MR. LARRAÑAGA: Mr. Chair, if you give me just a second. My screen turned off so I have to log back in. Mr. Chair, there seems to me no one else wishing to speaking on this item.

CHAIR GONZALES: Okay. Thank you, Jose. All right. I'm going to close the public hearing. Any comments or motions from the Commission?

MEMBER PIERARD: I have a motion.

MEMBER TRUJILLO: I just have one comment. I'm kind of curious. I know that the applicant has a shared well, but I didn't hear anybody speak up about the ones that are sharing it with him as far as the usage. I looked in some of the letters here and there's a big concern about water but I was surprised that anybody that said, we share a well and I see x-amount of usage, or we're having these troubles. I'm just wondering if the applicant -

MR. PITTIS: Could I please speak?

MEMBER TRUJILLO: Yes.

MR. PITTIS: Well, the people, the other two homes are aware that I'm applying for this permit. We have a well agreement. They understand that we cannot use the water from our well for this. The well agreement was submitted to the County so it's just a simple well agreement. It says we split it by thirds. If the water drops below a certain level then we have to meter each person, and it also deals with the contingency if the well goes dry how we'll go about providing water for everybody. Now -

MEMBER TRUJILLO: That's fine. That's enough.

MR. PITTIS: Can I just speak?

CHAIR GONZALES: No, we want to hold the discussion here. Okay, any other questions? Motions?

MEMBER KRENZ: Mr. Chair, I'd like to make a motion. I'd like to move that we approve this conditional use permit as proposed by the County.

MEMBER PIERARD: I have a question on that. He was talking about only growing 100 plants. Could we put a condition on there that the maximum amount of plants that you could have would be 100.

CHAIR GONZALES: I would like to limit to 100 if the Commission agrees, to be consistent with what we've done in the past.

MEMBER KRENZ: I would not agree to that. I would say, first of all, I think that would be very difficult to enforce. Secondly, the state has jurisdiction over how many plants somebody can grow, and that's 200.

MEMBER PIERARD: I think we did that the last time.

CHAIR GONZALES: I think we could ask the applicant if he would do 100.

MEMBER KRENZ: He's already stated that he only wants to grow 100 plants.

CHAIR GONZALES: So what's the motion after all that?

MEMBER KRENZ: I move that we approve the conditional use permit as presented.

MEMBER PIERARD: With the conditions as presented.

MEMBER KRENZ: With the conditions that are presented, yes.

MEMBER PIERARD: I'll second.

MEMBER AABOE: May I offer an amendment those conditions? I think in addition to providing the monthly water meter reads from his well that he also provide each month the receipts from the water haulers that kind of document the import of water to allow the County to recognize how much water is actually being purchased and used. So I would suggest that we add that, receipts for purchase of water shall also be submitted to the County along with the monthly water meter readings.

CHAIR GONZALES: That's up to Steve.

MEMBER KRENZ: No, I won't accept that either. I just think that that's an unnecessary requirement. If he hauls ten loads or 15 loads or five loads, that's what it's going to be. If he starts doing more plants, well, that might be something, but the water's not coming from the local area. That's the important thing. It's coming from Estancia. I use the same water hauler, by the way. It's coming from Estancia. So water isn't the question. The only real question here is the conditions of the roads, and I think that the applicant has spoken to that.

CHAIR GONZALES: Okay, we have a motion on the table from Steve with the conditions of staff, right.

MEMBER PIERARD: I'll second.

CHAIR GONZALES: Okay, so we have a motion, we have a second.

The motion passed by unanimous voice vote.

5. E. **CASE # 22-5230 William Horn and Robert Wong Variance. William Horn and Robert Wong, Applicants, Richard Woodbury, Agent, request a variance of Chapter 7, Section 7.17.10.6 (Ridgetop/Ridgeline Setbacks) to allow for a 3,040 square foot residence to be constructed on a ridgetop within 25 feet of a Ridgetop/Ridgeline setback. The property is within the Residential Community Zoning District within the High Summit Subdivision and located at 1112 South Summit Ridge within, Section 17, Township 17 North, Range 10 East, (Commission District 4). SDA-2 John Lovato, Case Manager**

[Case Manager Lovato read the case caption.]

CHAIR GONZALES: Mr. John Lovato himself.

MR. LOVATO: Thank you, Mr. Chair and Commission members. The applicant proposes to construct a 3,040 square foot residence on the shoulder of a ridge. The residence will be 14 feet in height as illustrated on the elevation sheets of the plan set. The maximum height limit for structures on ridgetops, ridgelines, or shoulders is 14 feet for a flat roof or 18 feet for a pitched roof. This property is located above the 7,400-foot elevation and is subject to the requirements of Chapter 7, Section 7.17.10, development at or above 7,400 feet.

The property is located within a ridgetop subdistrict per the High Summit Master Plan as well as the High Summit Phase 8.

A site visit was conducted by the Building and Development Supervisor in which he identified the proposed buildable area is the only buildable area on the site.

The proposed building envelope is also consistent with the buildable area identified on the High Summit Master Plan. Therefore, a variance to build on the ridgetop is not warranted.

On May 11, 2023 this request was presented to the Sustainable Land Development Hearing Officer. At the hearing, one member from the public spoke in opposition of the application. The Hearing Officer memorialized findings of fact and conclusions of law in a written order on this request. The Hearing Officer, based on the evidence presented, recommended approval of the variance request.

Building and Development Services staff has determined that this application is not in complete compliance with the SLDC, but it seems to be in line with the criteria necessary for granting a variance. Due to the topography of the lot, the applicant is unable to construct a home on the lot without variances. 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. In order to construct any residence on this property, a variance request is necessary. This causes peculiar and exceptional practical difficulties or exceptional and undue hardship on the applicant/owner. Based on this proposal minimizing the amount of disturbance of terrain and minimizing the visibility of the residence, the spirit of the SLDC is met.

Hearing Officer recommendation: On May 11, 2023 this request was presented to the Sustainable Land Development Hearing Officer. At the hearing, one member from the public spoke in opposition of the application. The Hearing Officer memorialized findings of fact and conclusions of law in a written order on this request. The Hearing Officer, based on the evidence presented, recommended approval of the variance request, and that's Exhibit 6.

Recommendation: Staff recommends approval of a variance to allow 120 square foot of the garage to have a setback less than 25 feet from the ridgeline , subject to the following conditions. Mr. Chair, may I enter those conditions into the record?

CHAIR GONZALES: Yes, you may.

[The conditions are as follows:]

1. Substantial construction of the buildings or structures authorized by the variance shall occur within one year of the date of approval or the variances shall expire as per Section 4.9.7.5. of the SLDC (Conditions of approval).
2. The proposed residence shall be in compliance with all pertinent requirements of Chapter 7 section 7.17.10. Development at or above 7400 Feet.
3. The proposed development will comply with Santa Fe County Fire Prevention letter of approval.

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

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

MEMBER PIERARD: So in the report, at one point it says that a variance isn't even necessary.

MR. LOVATO: So the reason for that is because originally, the way the ordinance is written, we do not allow buildable areas on ridgetops, unless there's no other buildable area. In this case this is that situation and that's why that section is in there. When the agent presented to staff at the Technical Advisory Committee meeting, he presented that the need for the second variance would be in place. It was determined later on by staff that that is not the need for that variance. So there's no need for that variance.

CHAIR GONZALES: Okay. Carl.

MEMBER TRUJILLO: Mr. Lovato, I'm looking at this correctly. So it's just a small part of the house that's being requested for the variance that's within that 25-foot setback. Is that correct?

MR. LOVATO: Mr. Chair, Committee Member Trujillo, that is correct.

MEMBER TRUJILLO: Okay. Just in looking at this site plan, maybe this is a question for the applicant. I'm not sure. But there appears to be a building envelope here as well. I just don't know if that's from the subdivision. It almost looks like the house has been scooted over outside the building envelope to minimize that area. Does that seem correct?

MR. LOVATO: Mr. Chair, Committee Member Trujillo, that is correct.

MEMBER TRUJILLO: Okay. Thank you. Thank you, Mr. Chair.

CHAIR GONZALES: Any other questions of staff from the Commission? Okay. Eric.

MEMBER AABOE: I wonder if there was any opposition from any neighbors to this request during this process.

MR. LOVATO: Mr. Chair, Commission Member Aaboe, I do believe there was a letter but I'm not sure if there's anyone in the audience tonight.

MEMBER AABOE: Okay. Thank you, Mr. Lovato.

CHAIR GONZALES: All right. Thank you, John. Is the applicant here to make his presentation?

[Duly sworn, Richard Woodbury testified as follows:]

RICHARD WOODBURY: Richard Woodbury, Osage Design Studio. My address is 1216 Vitalia Street, Santa Fe, 87505. Thank you for enjoying our evenings together. I appreciate you staying this late. So this particular subdivision and the lot in question were created – it's a legal lot that's platted prior to the current Sustainable Land Development Code, so in addition to having potentially more restrictive County covenants, the HOA covenants became more restrictive as well. So the buildable area that you had questions on, that the building's outside of was the buildable area shown on the original plat. As it turns out, with the current County code as well as the current HOA covenants, part of that buildable area was outside of the actual legal buildable area.

As a result of that, working with County staff, we tried to identify the best buildable site for this house. First I'll say this is not a large house with around 3,000 square foot heated. It's not small but it's not a massive house. The area that we could build on that complied with all County codes and HOA covenants became kind of an arrowhead shaped lot or buildable area that really was not conducive to the design of any type of house. That's when I worked with County staff to define a buildable area, work

with kind of balancing the site so that we got a decent place to build that was as compliant as possible with County code.

It was pointed out that the amount of variance that we're asking for is around 120 square foot of the total area, so it's statistically a fairly small percentage of that. And the final point I'd like to say is the shoulder is defined by County code as where slopes on a hill that are 30 percent start to flatten out as they get to the top. That area where they go from 30 percent to flatter than that is the shoulder, with a 25-foot upslope offset from that. Nature isn't perfect, and so having an exact edge where slopes go from less than 30 to more than 30 is impossible. So County staff and I worked together to try to find where that shoulder truly is, and it's approximate at best. So the point I'm trying to make is we did our best in defining the shoulder and determining where that offset would be and trying to make the house work with it. Any questions?

CHAIR GONZALES: Thank you, sir. Does the Commission have any questions of the applicant? Okay. Not at this time. Okay, Carl.

MEMBER TRUJILLO: So this is almost the opposite of something we heard earlier. My question is is that the buildable area that was placed there was put on by the developer or some homeowners association. What is the organization or who put the covenants on this property? Do you know?

MR. WOODBURY: The buildable area which looks like kind of a dashed amoeba on one of the site plans was shown on the subdivision plat on each lot when it was originally subdivided, I believe it was in the 90s. I could be wrong on that date, but it was many years before the advent of the Sustainable Land Development Code as well as my clients purchasing that lot.

MEMBER TRUJILLO: Okay.

MR. LOVATO: Mr. Chair, Commission Member Trujillo, to give a little history on this particular lot, this property was within the Santa Fe County originally, and then it was annexed in 2009 and pulled into the City of Santa Fe which did a whole new replatting on this subdivision. But between those times it was platted several times because it wasn't set in stone. The City took over. These are City ridgetop rules. Santa Fe County at this time would not basically deem this as a ridgetop because it's more of a shoulder type of development on a steep slope. But because the note was placed on it by the City of Santa Fe we basically took it forward this way to present it to you as that way.

The history is in 2009 the City did take over, and then Santa Fe County reassumed this particular area, I think in 2012, because a majority of the folks up in High Summit, in that area wanted to be reincorporated back into the county. So I just wanted to put that little note in there.

Another note for this property is the high point on the ridge is not the actual property that these applicants own. They own lower on this, as you would call it, little saddle. And then there's a high point. This structure will not protrude above that high point because it sits lower in the saddle. So maybe surrounding properties to the north may see it a bit. Maybe some to the south, and definitely above because they're looking down on this property, and because they're higher up on the ridgepoint.

MEMBER TRUJILLO: Okay. Thank you for that. Another question I have is so this building envelope is there. If you place the house outside the building envelope – now, before the case that you were here – or maybe you weren't here but was earlier, is we were asked here to give a variance because we could grant that variance

here and it was within the building envelope here, placing the home potentially outside this building envelope. Is there a body that reviews these cases within the HOA, or is it not an active body to say you can do this?

MR. WOODBURY: There is an HOA Architectural Review Committee. They actually have reviewed the current application and given their preliminary approval of where the house is located and site. The very first question I asked the HOA Architectural Committee is you're showing a buildable area with the dashed amoeba bubble. However, it no longer complies with your stated setbacks, and I was told that they would not consider a variance for us to use the footprint of the platted buildable areas. In other words, we would have to comply with their current setbacks. So by that statement they were essentially telling me that the buildable area that they themselves had platted is null and void because it's not longer aligned with current code.

MEMBER TRUJILLO: So did they give you a statement to state that? Or is there a process to allow you to change the developable area and get it within the approved?

MR. WOODBURY: The HOA did not give me a formal methodology for changing the buildable area location other than having me submit a preliminary site plan, floor plan, elevations, as the first step of the design review process of the HOA.

MEMBER TRUJILLO: Okay.

CHAIR GONZALES: Okay, so I was at the City when we were administering permits to these areas and these building envelopes were decided by the City as part of their approval to begin with. And in those days you can build out of the envelope if you can still comply with the terrain management 50-50 rule. So that's how that works. But these were actually designated by the City in their review process, unlike the other one. Okay, anything else? Okay. Thank you, sir.

MR. WOODBURY: Thank you.

CHAIR GONZALES: Okay. I'm going to open this up for a public hearing. Anybody out there wants to speak in favor or against this project please come forward, get yourself sworn in.

[Duly sworn, Robert Martin testified as follows:]

ROBERT MARTIN: Robert Martin, 310 Catron Street, Santa Fe. Commissioners, I did submit a letter several months ago, and I'm not sure if it made it into the packet or not. I'm not sure which letter you're referring to. And we are the neighbors directly to the northeast, and our main view is to the southwest, and of course this property is right in our southwestern view. And while I don't have nearly the amount of information you do, all I received in the notice of public hearing there's a picture on here which is actually upside down and it's not very clear about what exactly their project is. So I'm speaking somewhat out of ignorance because I don't understand that, but I do know that we bought our lot assuming that everybody in the subdivision would have to adhere by the County setback rules on ridgetops. And so we're just concerned that this will be on our viewshed, and I know there's a PVC pipe marker that looks like it's going to be very close to the top of the ridge, the height of the house, but once again, I'm a little bit at a loss here because I'm not – I don't have the information that you do as well. But our objection is just that we bought this with the understanding everybody in this subdivision would have to comply by the setback rules as well as we did, so we assumed that in our distance there wouldn't be anything right on top of the ridge.

CHAIR GONZALES: Thank you, sir. Okay, anybody else want to come forward and speak for or against this project? Okay. Jose, anybody on line?

MR. LARRAÑAGA: Mr. Chair, there's no one on Webex to speak on this item.

CHAIR GONZALES: Okay. I'm going to close the public hearing. Any discussion or motions from the Commissioners? Okay, I'll make a motion on this one. In my opinion, this new lot that's in front of us, the development plan, South Summit development plan, if this copy in front of us was recorded or had been incorporated into the engineering plans, which would have been approved by a civil engineers we wouldn't be here for this variance in my opinion. So on that note I make a motion for approval of this case with conditions.

MEMBER PIERARD: I'll second.

CHAIR GONZALES: Okay, we have a motion and we have a second.

The motion passed by unanimous voice vote.

6. Petitions from the Floor - None were offered.

7. Communications from the Commission Members

MEMBER PIERARD: I will not be in attendance next month.

CHAIR GONZALES: Okay. Jose, the only thing I would ask, on that cell tower in Las Campanas, do you want to get that to me next time?

MR. LARRAÑAGA: Mr. Chair, on that note, staff had gone out there, and you're correct, it's not built according to plans, so we're trying to get a hold of the individuals that came in for the tower itself and the structure to see, either they modified their plans or they built it out according to plans.

CHAIR GONZALES: Okay, just keep it simple.

8. Communications from the Attorney - None were brought forward.

9. Matters from Land Use Staff

MR. LARRAÑAGA: Mr. Chair, Land Use Staff, all we have is that there's three members that are nearing the end of their term. Chairman Gonzales and Steve Krenz and Wendy Pierard. This is her first term so she has an option to renew. There will be or has been done a press release advertising for new members.

MR. LARRAÑAGA: Thank you.

10. Next Planning Commission Meeting: October 19, 2023

11. Adjournment

With no further business to come before this Committee, Chair Gonzales declared this meeting adjourned at approximately 8:40 p.m.

Approved by:



ATTEST TO:

Katharine Clark

KATHARINE CLARK
SANTA FE COUNTY CLERK

Charlie Gonzales 10-19-23

Charlie Gonzales, Chair
Planning Commission

Submitted by:

Debbie Doyle, Wordswork

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



SFC CLERK RECORDED 10/20/2023