

**MINUTES OF THE**  
**SANTA FE COUNTY**  
**PLANNING COMMISSION**

**Santa Fe, New Mexico**

**April 17, 2025**

**1.** This meeting of the Santa Fe County Planning Commission was called to order by Chair Erik Aaboe the above-cited date at approximately 4:00 p.m.

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

**Members Present:**

Erik Aaboe, Chair  
Steve Brugger  
Jose La Cruz Crawford  
Jeremy Mier  
Dan Pava

**Member(s) Absent:**

Wendy Pierard  
Carl Trujillo

**Staff Present:**

Alexandra Ladd, Growth Management Director  
Jordan Yutzy, Building & Development Manager  
John Lovato, Building & Development Supervisor  
Roger Prucino, Assistant County Attorney  
Dominic Sisneros, Building & Development Supervisor  
Kenneth Quintana, Building & Development Review Specialist

Newly appointed Commissioner Jose La Cruz Crawford was introduced and welcomed to the Commission.

**E. Approval of Agenda**

No changes were offered and Member Brugger moved to approve. His motion was seconded by Member Mier and passed by unanimous [5-0] voice vote.

SEC CLERK RECORDED 05/30/2025

**3. Approval of Minutes**

**A. March 20, 2025 – Meeting Minutes**

Upon motion by Member Mier and second by Member Brugger, the March 20, 2025 minutes were unanimous [5-0] approved.

**4. Consent Agenda**

**A. CASE #24-5300 James C. Portillo II and Miguel L. Portillo Variance. James C. Portillo II and Miguel L Portillo, Applicants, requests a variance of Chapter 8, Section 8.6.6 Table 8-10: Dimensional standards Residential Estate to create a Two (2) lot residential subdivision on a parcel of land consisting of 2.5 acres +. The subject property lies within the Residential Estate zoning district which allows for 1single family residence per 2.5 acres. The property is located at 11 Calle De Portillos. SDA-2, (Commission District 5) Kenneth Quintana, Case Manager (Approved 7-0)**

Member Brugger moved to approve the consent agenda as presented. Member Mier seconded and the consent agenda was approved by unanimous [5-0] voice vote.

**5. New Business**

**A. Case #24-5270 Robert Sherwin Variance Robert Sherwin, Applicant, requests approval of a variance of Chapter 8, Table 8-9 Dimensional Standards to allow a second two story residence on a 2.5-acre parcel. Currently, the Applicant has an existing residence that is 4,000 square feet and a second residence with a loft which is 922 square feet. The subject property lies within the Residential Estate Zoning District (RES-E) where the base density is 1 dwelling per 2.5-acres. The property is located at 28 Estrellas De Tano within Township 17 North, Range 9 East, Section 4, (Commission District 1), SDA-2. John Lovato, Case Manager [*Exhibit 1: Fischer Replat HOA letter*]**

JOHN LOVATO (Case Manager): Thank you Mr. Chair, Planning Commission members. John Lovato, Building Development Services; I'm a supervisor.

Robert Sherwin applicant requests approval of a variance of Chapter 8, Table 8-10, dimensional standards, to allow a second two-story residence on a 2.50-acre parcel. Currently the applicant has an existing residence that is 4,000 square feet and a guest home with a loft which is 922 square feet. The subject property lies within the residential estate zoning district where the base density is one dwelling per 2.5 acres, The property is located at 28 Estrellas de Tano within township 17 north, range 9 east, section 4, Commission District 1 SDA 2.

The applicant states that he bought the property as is with the two-story residence on the property in 2016. There are three permits that have been associated for this property: Permit 20 4040 is for a low impact home occupation; #2539 is for a storage addition to the garage; and #94987 is for an addition remodel. An IPRA request for Permit 94987 was unable to be located and Permit 2539 references the ADU as a studio on the plat. The applicants' plans illustrate a guest house on the illustration provided on

the site plan contrary to the plat.

The request for an accessory dwelling does not meet standards as the unit is two stories measuring 19 feet 6 inches, exceeding the height that would allow it to qualify for an accessory dwelling unit and is on an individual septic system that is not registered and does not have a leech field which is contrary to the SLDC standards of the accessory dwelling unit as defined by the SLDC, Section 10.4.2.3. Therefore, the request is for density variance.

Planning Commission members I want to note that that last paragraph that I read has been re-reviewed and they have provided a septic permit with the actual leach fields and the actual location of that. So they do have two septic systems.

CHAIR AABOE: Thank you very much, John.

MR. LOVATO: The applicant has addressed the variance criteria and staff has responded to the applicant's responses as contained in the memo. At the February 13 2025 the Santa Fe County Sustainable Land Development Hearing Officer met and acted on this case. The Hearing Officer stated the application failed to meet the requirements of chapter 4.9.7.4 for variances to the density requirements of Table 8-10 that allows one dwelling per 2.5 acres. The application did not set forth extraordinary and exceptional situations or conditions of the property to justify granting a variance and the spirit of the SLDC is to maintain the density requirements of the code.

Staff recommends denial of the request for a variance to allow the two dwelling units on the 2.5 acre parcel. If the decision of the Santa Fe County Planning Commission is to approve the variance, staff recommends the following conditions be imposed. Mr. Chair, may I enter those conditions into the record?

CHAIR AABOE: Yes, please.

MR. LOVATO: And for the record I'd like to strike condition number 4, that the applicant shall provide a OSE NMED permits at the time of after the fact permit submittal. That has been provided/

CHAIR AABOE: Thank you.

MR. LOVATO: This report and exhibits listed below are hereby submitted as part of the hearing record. Thank you, Mr. Chair and Planning Commission members. I stand for any questions you may have.

Conditions:

1. The Applicant shall submit an application (After-the-Fact) for a Residential Development Permit for the second dwelling.
2. Additional dwelling units on the 2.50-acre site shall be prohibited.
3. No accessory dwelling units shall be permitted.
4. ~~Applicant shall provide OSE and NMED permits at time of after the fact permit submittal.~~

CHAIR AABOE: Thank you John. Commissioners, do you have any questions of staff? Commissioner Pava.

MEMBER PAVA: Yes, thank you, Mr. Chair. Good afternoon. Regarding the original building permit and the conversation throughout the staff report and documentation about the house being built in the time frame of 1989 1990-ish and

that there was no building permit located could you elaborate if there's any new information regarding that because there's been, I'll call it testimony submitted at the Hearing Officers meeting that indeed there may be something or it's not searchable because it was paper. If you could just elaborate a little bit.

MR. LOVATO: Mr. Chair, Commission Member Pava, the residence is permitted and is recognized on our legal lot of record plat as well as the structure in question which – was permitted as a studio sometime between then and when the applicants purchased the property. It was found to be converted with a loft on top which qualifies it as a secondary dwelling as it functions as a bedroom.

MEMBER PAVA: A follow-on question to that and thank you for that information so it sounds like there is documentation that there is a building permit dating back to the original construction on the site; if I got that right of the two units; right?

MR. LOVATO: Mr. Chair, Commission Member Pava, it was recognized by the plat of legal lot of record as a studio, therefore, we -- even though we were unable to locate the actual permit for that, we still recognize that.

MEMBER PAVA: Okay. A related question has to do with how this all came to the attention of the County that they're now requesting the variance? I kind of read it between the lines in the staff report but maybe you could illuminate us a little bit more as to how this came to the attention of the County and why we're why we're hearing this now?

MR. LOVATO: Mr. Chair, Commission Member Pava, the applicant came in for a short-term rental and that when it when it was discovered that it was a full-blown residence and didn't meet the criteria set forth in the SLDC. Thereafter, we did issue them a temporary STR while the applicant went through the process of the variance.

MEMBER PAVA: Thank you. Regarding that short-term rental, so the applicant came in to apply for a short-term rental does staff have indication that there was a short-term rental business happening on the property prior to that?

MR. LOVATO: Mr. Chair, Commission Member Pava, staff would have never really known this until the STR ordinance came into effect. That's the Catch-22 in this scenario but then thereafter we did note that there was a home occupation associated with the property and we assumed that they did utilize that structure for part of the component of their home occupation.

MEMBER PAVA: I see, okay. Yes, I noticed the home occupation license was granted what in 20?

MR. LOVATO: Mr. Chair, the home occupation was in 2020.

MEMBER PAVA: Okay, that helps. Thank you.

CHAIR AABOE: Are there any other questions from Commissioners?

MEMBER CRAWFORD: Yes, I do have a question. So the one thing I'm trying to just kind of a follow up to what the commissioner mentioned, so with respect to this we've got another unit that essentially doesn't qualify as an ADU under the SLDC. So it's being looked at as another single-family dwelling; is that correct?

MR. LOVATO: Mr. Chair, Commission Member, that is correct. It was recognized as a studio on part of that is that it has a second story which is a loft that didn't qualify as – well, not so much as a short-term rental but an ADU. And secondly at the time we did not know where the septic system was and whether there was permits for that septic system, which have since been provided.

MEMBER CRAWFORD: Got you So because of the fact of the extra height that it has doesn't meet the ADU obviously the separate septic tank also doesn't meet the requirements for the ADU. Now my question, I guess, is with respect to this, is with the fact that the zoning allows only a single-dwelling unit for 2.5 acre lot, if this was to be approved does that mean that there would be no additional ADU allowed if that was the case?

MR. LOVATO: Mr. Chair, Commission Member, that is correct. We do have a condition on the approval.

MEMBER CRAWFORD: And as a follow-up question with that with respect to that, is there anything that would need to be recorded or any plats that would need to be recorded anything with respect to this if any you know whether it's denied or approved or whatnot so that way there could be some kind of recording for what was what's gets decided here?

MR. LOVATO: Mr. Chair, Commission Member Crawford, we can do that, however, it will be noted in the in the development order or the finding of fact that will be presented to you at such time and it'll also be noted on the actual final order of any building permit that comes through our department.

CHAIR AABOE: Any other questions? Commissioner Brugger.

MEMBER BRUGGER: Thank you, Mr. Chair. I have a few questions. The first background, so the use in question is, I guess it could be categorized as bed and breakfast/retreat. So is it correct that a bed and breakfast/retreat use is not a permitted use by a right in a Rural Estate Zone but it can be approved as a conditional use; is that correct?

MR. LOVATO: Mr. Chair, Commission Member Brugger, I believe that's the fact but I do not have the ordinance in front of me to give you a definitive answer on that. I can look into that.

MEMBER BRUGGER: Okay. If it is, even if it is a not by right but conditional use at least my version of the code has that; is it correct that if you're approved for a home occupation license you can operate a qualifying home business in a zone where it otherwise would not be permitted by right? That might be a legal question as much as that –

MR. LOVATO: Mr. Chair, Commission Member Brugger, I believe you're accurate on that. They do have an home occupation which has specific criteria that only allows such amount of visits per day, square footage to be utilized and so on and so forth. The other second part to that for the ADU would be a standalone on its own and granted where it's permissible.

MEMBER BRUGGER: So, to follow up, they have a for home occupation license and from the report – an excellent staff report – there's different there's no impact there's a low impact and then there's a medium impact home occupations. And they were designated as a low impact, rather than a medium; is that correct?

MR. LOVATO: That is correct, Commission member.

MEMBER BRUGGER: And if it were designated as a medium impact there would be per the code there would have to be other than a minimal increase in traffic and visitation on the property, there would be no further, quoting the code, no further exterior signs that there was a home business. The only reason I asked that is because at least some of the material that I read from folks opposing this request

commented on the uses that were happening exterior. But they are a low impact use; correct?

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

MEMBER BRUGGER: Okay. There was discussion in the staff report about and kind of the request justifying by the consultant representing the applicants that this should be grandfathered in because the was existing. To your knowledge, prior to the implementation of the SLDC was the zoning the same or was it different? If I understood what the applicant's consultant was saying is that the rules might have changed from before to when the SLDC was approved.

MR. LOVATO: Mr. Chair, Commission Member Brugger, while the rules did change, Santa Fe County prior to the SLDC was based off of water hydrology for more likely reasons it has always remained 2.5s in this general location. This area was known as the Extraterritorial Zoning Area. And so there was a two- and five-mile. Those basically stayed the same in terms of lot size requirements as well as many other locations within Santa Fe County.

MEMBER BRUGGER: So density controls didn't change really from before to now.

MR. LOVATO: Mr. Chair, Commission Member Brugger, correct. And just the justification behind that to kind of give a little more backup to that would be the fact that it was permitted or what we have as record as a as a studio which told me basically they weren't allowed a secondary residence at the time. And as the SLDC came into effect, that's when ADUs were being granted for certain areas.

MEMBER BRUGGER: Okay.

CHAIR AABOE: Mr. Lovato, is the word "studio" defined in either the SLDC or the previous code that it replaced?

MR. LOVATO: Mr. Chair, Commission members, I'm not sure about the previous code. I believe it was from my knowledge um and it is in our SLDC.

CHAIR AABOE: So it is essentially an accessory -- it's an accessory structure that may have plumbing but cannot be used as a residence; is that right? I'm just trying to understand what those requirements for a studio are.

MR. LOVATO: Mr. Chair, that that is correct. It's allowed to have a toilet. It's allowed to have a sink, utility sink. It's not allowed to have a shower or be functioned as or can be converted into an accessory dwelling.

CHAIR AABOE: And that's in the 2016/2017 SLDC whenever that was adopted; right?

MR. LOVATO: Mr. Chair, Planning Commission members, that is correct.

CHAIR AABOE: Thank you very much. Commissioner Brugger, do you have some more?

MEMBER BRUGGER: Yes, thank you, Mr. Chair. I read somewhere in the report and I may have got this wrong but if this request were not approved, were you asking them to or directing the applicant to take down the loft?

MR. LOVATO: Mr. Chair, Commission Member Brugger, we would not give that type of information. We would ask that they bring in compliance. That could be a possibility that they do so. They could remove the loft. They can do an addition and being that their permit was done prior to the prior SLDC, I'm sorry, we would recognize

that it's its own standalone septic system because we did allow ADUs back or accessory structures, I should say under the old ordinance to have a its own standalone septic system. So that would be a fix for them to do an addition 400 square-foot, take off the loft, it's no longer two stories and meets the criteria of the SLDC.

MEMBER BRUGGER: So if this were not approved then you would be, and forgive me for being dense, you would be asking them to take down the loft and they could do an addition but they'd have to spend the money to take the loft down or could that be grandfathered in?

MR. LOVATO: Mr. Chair, Commission members, so the request here is for density. We're not really discussing but since ADUs. But since it plays a factor into this, that would be their fix. It would be a single-story structure which is required by our accessory dwelling. We would recognize the septic permit as it was done prior to our ordinance and granted back when. And they would fit the SLDC standards because they would be still under the maximum 1,400 foot as their house is 4,000 square-foot. So they'd be half of what they have and they would meet the standards of the ADU.

MEMBER BRUGGER: Okay, thank you.

CHAIR AABOE: Any other Commissioners have questions?

MEMBER CRAWFORD: Yes, I'd like to follow up on that grandfathering questions that that was brought up. So I understand that, and I believe the last code that was up prior to the SLDC was a 1996 one, and yeah, I briefly looked at it and nothing brings up ADAs ADUs. It just brings up an accessory structure. Do you recall if there are any height restrictions in that previous code? Because I'm just wondering when this was permitted since it seems like some permits were issued. Did it meet the current code at the time?

MR. LOVATO: Mr. Chair, Commission Member de la Cruz, it would be -- so the question is would it -- would the height be allowed is what I'm hearing?

MEMBER CRAWFORD: The height and I guess as a more general question since I believe it sounds like a permit was issued at the time at least for the studio; would it have met the code at the time? And then I guess a follow-up question, because there was some sort of remodel that was done but I wasn't sure, was a permit actually found for the remodel or not?

MR. LOVATO: Mr. Chair, Commissioner Member, that is correct, it would meet it would have met the standards back in the 1996 ordinance. As it is now, it does not meet those standards. And the permit that we tried to pull from our archives was unable to be located. But I can tell you, we recognized this as a studio which would be an accessory structure due to the fact that legal lot of records indicated it was a studio.

MEMBER CRAWFORD: Okay, and then I think you kind of hit something that for me, as you mentioned it's more of a density request as opposed to an ADU request of any kind. I did not take a look at the zoning map but is this property located near another zone or is it kind of smack in the middle of a zone? I guess my question for that is there an adjacent zoning near it that has a different density requirement? Because I know sometimes there are changes to the zoning map.

MR. LOVATO: Mr. Chair, Commission Members, I can't tell you the exact distance from another zoning district but it's quite a bit a ways. This general area was, again, based off the old hydrology and then converted into our new SLDC as the proper zoning district it's located in.

CHAIR AABOE: One more history question, Mr. Lovato. So the SLDC, the '96 code it appears that this was referenced as a studio on the plat in 1991. So what I'm trying to understand is -- was everything done legitimately at the time that it was constructed because this is not a request to construct something new. This is a request to use the existing structures that may or may not have been put in legitimately at the time for a use. So we've seen this case a number of times with different properties because of the short-term rental which pushes everybody back through a new sieve. So what I'm trying to understand is, were the rules followed in 1991 for this and sorry because it's like going back in time.

MR. LOVATO: Mr. Chair, Commission Members, I can tell you that we recognize it due to the legal lot of record plat. Whether or not it was built to the actual standards or what those elevations indicate on those plans since that were unable to be located, I cannot tell you. But staff has taken the initiative to recognize the structure as a studio which is an accessory structure in 1991.

CHAIR AABOE: Okay, thank you. Commissioner Pava.

MEMBER PAVA: Sorry John, to put you on the spot. A follow-up question to the notification requirements here, can you give us an idea of how many adjacent properties were notified and with what distance? Remind me what the requirement is for notification and I know we had some people submitting their comments in opposition at the Hearing Officer, so I'm kind of curious to know how many how many adjacent property owners might have been notified for this case and I don't know if it's 100 feet or if it's more than that.

MR. LOVATO: Mr. Chair, Commission Member Pava, it is required by ordinance that they notify anyone within 500 feet of their property boundary and that's for actual pre-application or neighborhood meetings and/or general noticing requirements. I do have under Exhibit H, a listing of all the members they've sent this out to.

MEMBER PAVA: Approximately, since I don't have that handy in front of me, I'm sorry to ask but can you give me a general idea of how many people might have been notified within 500 feet?

MR. LOVATO: Roughly 20, Commission Member Pava.

MEMBER PAVA: Thank you.

CHAIR AABOE: Any other Commissioners have questions of staff?

MEMBER CRAWFORD: Just one last one, sorry. So I was just curious because obviously single family and ADU etc., with an ADU current SLDC code generally has some requirements as far as like utilities being on the same, same access and so on so forth. In this situation where it's got a separate septic field and so forth, I'm just curious, what any other current SLD codes would apply to this what would be now a single-family dwelling or if it was approved or if it wasn't? I'm just trying to figure out what other code requirements might apply in this case.

MR. LOVATO: So, Mr. Chair, Commission Members, if it was an ADU, and we're moving forward towards that route, they would be required to share a driveway access point, it would be required to share septic system and all utilities. The structure has to somewhat be of the same as the principal residence, so it has to look the same the aesthetics have to be the same -- pitch roof-pitch roof, flat roof-flat roof. We kind of



work around those standards try to make things fit. All other aspects, as I'm aware of, meet the criteria for that other than the separate septic system.

CHAIR AABOE: Any other questions, Commissioners?

ROGER PRUCINO (Assistant County Attorney): Mr. Chair, I don't have any questions but given the questions and the issues that have been raised by the Commissioners' comments, I would like to point out a couple of SLDC provisions that are applicable –

CHAIR AABOE: Please do.

MR. PRUCINO: -- that may answer some of the questions and it concerns what is referred to as a non-conforming use or a non-conforming structure that's the equivalent of the grandfathering that the applicants mentioned in their response to the Hearing Officer recommended decision. I think at least a couple of the pertinent provisions regarding non-conforming uses, is that those uses or structures have to have been in existence and lawfully constructed at the time that they were put in they have to have been constructed in accordance with laws and regulations at that time. The burden is on an applicant to seek and prove the non-conforming use or satisfying those conditions. Perhaps more significant is the fact that when a non-conforming use is found to exist and is established, that non-conforming use cannot change. And there would be some certainly issue and concern with a studio, even if it was deemed to be a non-conforming use, becoming any type of actual residential dwelling unit.

CHAIR AABOE: Thank you very much, Roger. I'm just trying to understand the word "studio" in the current code says no shower. In the previous code, two codes ago, may or may not have and so that's the dissonance I'm seeing but thank you very much. Any other questions of staff? Commissioner Brugger.

MEMBER BRUGGER: Question, just follow up on what Mr. Prucino had just stated. So to be determined as a non-conforming use the burden is on the applicant to demonstrate that all provisions were met including not just County Code but building code? Would that be a fair conclusion?

MR. PRUCINO: The phrase in the SLDC is lawfully constructed. That could be interpreted to incorporate all building codes.

MEMBER BRUGGER: So with that interpretation then to be, at least as I understand it, to be determined as a non-conforming use then you would have to demonstrate that you complied with County provisions and that CID, Construction Industries Division, approved the construction and you had a permit to do that.

MR. PRUCINO: Ideally, yes. Obviously there are practical hindrances to some of those requirements but ideally, yes.

MEMBER BRUGGER: Thank you.

MR. LOVATO: Mr. Chair, Commission Member Brugger, that is one of the reasons why we have the applicant shall submit an application after-the-fact permit to ensure this gets looked at properly by both County staff and Construction Industries of New Mexico.

MEMBER BRUGGER: Thank you, Mr. Lovato.

CHAIR AABOE: Thank you very much. Commissioner Pava.

MEMBER PAVA: Thank you, Mr. Chair. So this is kind of a hypothetical. Let's say the applicant lives on the property has this studio, whatever it is, but doesn't have, doesn't carry on short-term rentals, doesn't pursue that, but pursues their

business which if you go online shows all the kind of spa treatments that they offer. But people come and go, they don't stay there. Does that, in such a situation as that, would they even be here applying for the density variance or does the issue go away or is there still the issue even though they're not going to use it as a short-term rental or as an ADU but as a studio for maybe daytime activities; does the issue go away?

MR. LOVATO: Mr. Chair, Commission Member Pava, it does not go away due to the fact that Santa Fe County has acknowledged that this is not in compliance with our requirements. Code Enforcement will do any type of action to bring the structure into compliance.

CHAIR AABOE: Thanks very much. Any other Commissioners have any other questions of staff? So the applicant or their agent. Please stand anyone who is interested in speaking please be sworn in. Thank you.

[Duly sworn, Danny Martinez testified as follows;]

CHAIR AABOE: Thank you very much. Please proceed. Please turn your microphone on, hit the button so it turns green. Thank you.

DANNY MARTINEZ: My name is Danny Martinez. I represent Bob and Denise Sherwin, owners of the property. They will be speaking on their own behalf in relationship to the business license and their purchase and acquisition of the property from 2016 when they purchased this.

Again, this is an opportunity to present what I believe is a grandfathering. And, again, we use the word "grandfathering" because it really does represent grandfathering. I did an intensive search through the County records. I did an intensive search through the Construction Industries Division and they don't keep records back to 25, 35 years ago. So there's no record to be found how but in my communication with the State Construction Industries Division, they recognize this building as a conforming structure. They don't recognize it as non-conforming based on height so anything. So the reality is this house and this guest house were probably built between the years of 1988 and 1990. The septic tank permits were issued in 1990 so that gives you the initial stage of when all this took place.

The original development code which was very ambiguous back in those days because it was very open it just didn't cover what the SLDC covers or even the 1996 code covers. They basically allowed for this type of construction to take place because it was compliant with the development code back in 1988. So it's not like we're creating something that was not approved. It was approved there's just no documentation that you can pull out to show it was permitted.

Part of the conditions is that we've been asked to resubmit for the guest house a set of plans that would allow us to permit the guest house which is kind of again ambiguous because if it's already been permitted once, permitting it again -- we're going to do it just because we think that we're satisfying what the County wants out of this. But again, we go back to the history 1988, 1990, 1976 code, the SLDC in 2018, you know, all of this that took place just really pushes you back into that issue of was it grandfathered. Well, it had to have been grandfathered otherwise we wouldn't be where we were at.

When the SLDC was adopted it was intended not to harm properties like this. It was intended to bring compliance to any new applications that come before for this type of permitting; a house, a guest house. And, again, you know, it would be run through the mill when they see that it does it meet zoning, does it meet water, does it meet all the

public utilities that's a whole different game. What we're talking about is this existing condition that basically met the conditions at the time of the permitting. And, again, it's unfortunate the records aren't kept microfiche wasn't available back then. So there's no tracing this back. Again the commitment is that we're willing to resubmit for a permit on this guest house. When we look at the conditions out there, the issue is really the compliance with height and the compliance with the loft. Well, again, if you look at the loft and I think you've got pictures, the loft is basically the roof for the bedroom, the bathroom, the kitchen and then there's a one bedroom up on top. There's no utilities. I mean there's no restroom facilities or anything upstairs. It's strictly a bedroom. So to think they can go in there and just rip that out and modify it and come back in and ask for a permit for 400 square-foot, it doesn't make any sense. And I think the staff report is very clear when it states that it's not feasible for something like that to happen on this particular property. Again, lots were completed, developed in 1988. They're legal lots of record. Whatever happens in the new SLDC is a whole different game you can't take away what is a legal lot of record.

Mr. Sherwin and his wife own the adjoining lot next to them. It's a 2.5-acre parcel, undeveloped but that lot is also grandfathered because it's considered a legal lot of record based on the date it was recorded in the Clerk's Office. So again we're going to go back to that whole scenario again how do you try to deny an application that has been in existence for over 35 years? We totally understand that, you know, we can make our submittal, bring it in for a permit and satisfy that condition. Septic tank they were approved. There's two septic tanks out there. There's one well that serves both the house and the guest house. These were all pre-approved and again we're talking back history that goes back to 1990. Now if I came over here and I told staff we want to do a house on this other lot and we want a guest house and we want all of this, then it's a whole different game for us because we know we have to come into compliance with the code and again that's what I'm trying to emphasize is what happened then and what happened tomorrow on this other lot are totally different things so what we'd like to do is we'd like to just again stand on the ground that grandfather and again the word "grandfather" it's not specific in the SLDC but it sure was specific in the 1996 code. In the 1996 Code I didn't bring it with me but I've got a copy of it, but it talks about grandfathering because a lot of these old properties back in those days were, that's what they were they were grandfathered properties.

So what we're doing is we're standing on our ground that this is definitely a grandfather property. We stand on the ground that these buildings were permitted and again there's just no way to go back and trace permits but we can stand on the fact that septic tank permits were issued, everything that we needed to build these structures was built on under compliance with the county code back then and the Construction Industry Division and it's interesting you could talk to Construction Industry Division and the first thing they tell me is, We see this stuff coming before us a lot and we don't understand why they're doing that especially that age that long. So I can permit through the County. I can go permit through the Construction Industries and that should satisfy the concern of that building even though it's very evident that it was built in 1990 or before.

There's not a whole lot that can be said about this, you know, that's our ground is, you know, we firmly believe that this is a legal conforming structure. If there's any non-

compliance, there's nothing that shows that there's non-compliance other than what the SLDC says you're no longer compliant.

So I had the great opportunity to talk to Jose Martinez so he's the Code Enforcement Officer that went out. And his comment to me was, is well you know the County has implemented this code now they're asking -- they're they put me in charge of going out there and finding facilities like this that they consider non-compliant again the word non-compliant is a very ambiguous word because how can you not be compliant when this thing is that old, 35 years. It doesn't make any sense.

So what we'd like to do is again we'll satisfy the concerns of the County. We'll permit the structure but I firmly believe that everything that we've done out there is legal and I would just only ask that you would look at it from that standpoint that this is a legal conforming property.

I'm going to turn this over to Mr. Sherwin and his wife. If you have questions about the business operation or since when they've bought it. And I think that that's the interesting part about it is when you buy a piece of property anymore you always would assume that somebody's going to issue you a disclosure statement. Well there was no disclosure statements. There was nothing that said you're buying a piece of property that's not in compliance. So again that can't be a penalty against the Sherwins because they bought it under the understanding that it was a legal use and all they're doing is just taking advantage of it by making it useful for their business. And, again, Denise will talk more about her business if you want to hear more about that.

CHAIR AABOE: Thank you very much, Mr. Martinez.

MR. SISNEROS: Planning Commission Chair and Planning Commission Members, I just wanted to inform you that that letter that John handed out was actually a letter of opposition that was sent in on February 10<sup>th</sup>, three days prior to the Hearing Officer meeting on February 13<sup>th</sup> so it didn't make it into the packet at that time and the former case manager as an oversight failed to make that as one of the exhibits for this hearing as well. So I just wanted to bring that to your attention.

CHAIR AABOE: Thank you very much appreciate that. Any questions of Mr. Martinez? Mr. Brugger.

MEMBER BRUGGER: I think, I may want to wait until after Mr. Sherwin's presentation and then ask both of you.

[Previously sworn, Bob Sherwin testified as follows]

BOB SHERWIN: So, I'm Bob Sherwin. My wife and I, Denise, own the property at 28 and 30 Estrellas de Tano. Twenty-eight is the guest house and when we got the business license it required another address. It does share the same driveway and we do share the same utilities.

CHAIR AABOE: Please confirm that you're under oath.

MR. SHERWIN: And I confirm that I am under oath, thank you. I wanted to address just a couple of the points that was brought up by the parties in opposition. Once we got notice about the STR license being required, we immediately uh contacted Christina at that time and started the process. And as it's been continued we've received temporary continuation of the STR. So we have been in compliance with that and we've also given notice to everybody within 500 feet as John pointed out. The 10 parties have been notified.

And just to give, kind of a sequence of events, of that particular property it became a legal lot of record the five acres were created into two 2.5s and as you asked what was the other zoning in that area, we back up to Sundance Ridge and Sundance Estates which are all 2.5 acre lots. And the parties that are in opposition are actually condominium association that's even smaller. And so the 2.5 acres has been consistent from the beginning.

The other thing that is important to note is that the house and guest house were under construction in 1989 and completed in '91. They have not changed. The surveyor labeled it a studio but it's been the same two-story guest house since 1990, that's 35 years. And they're both northern New Mexico style architecture and so it has the pitched roof with just a loft as has been pointed out. And we bought the house in 2016 from the original owners and they had been renting out the guest house well before we did. We've been renting it out for nine years since 2016 and what doesn't make sense to me regarding the loft, granted I get that the SDLC changed the height restriction -- first of all Santa Fe Development Code I believe was 1996 and then the SDLC was 2018. May I ask Commissioner Brugger what year?

MEMBER BRUGGER: December, the SLDC was approved December 8<sup>th</sup>, I think, 2015. So it was before you bought it.

MR. SHERWIN: Okay, thank you for the clarification.

So in either case the structure had been 25 years old at that time and so we owned the Light Vessel Wellness Center in the de Vargas and also the Love Yourself Cafe that when COVID shut down the state, we lost those businesses and had to had to shut them Down. And so that's what my wife has been doing since 2006 and the wellness facility that we have on property was really just to continue with those people that really had some health challenges and particularly the children and some people with cancer and so forth and the wellness facility has state-of-the-art frequency vibration light and sound kind of treatments that have had great success. The home occupational license that we applied for and received in 2020, we went through all of these same requirements and none of this was brought up to our attention then and it seems like that would have been the right time to bring it forward. But we were approved for that license and it has a restriction of a maximum of four people a day and we don't even do that. So it's very low-key, low impact. And then it's supplemented by Airbnb guests and it's been a five-star rating on Airbnb for nine years. It's a quiet retreat. It attracts the older clientele that are paying \$200 a night to stay there and it helps offset all the costs of everything that we're doing and so it's not getting the rowdy young people that want to party and make noise and we live very close the main house is, you know, 100 feet from the guest house so if there was noise and issues with that, we would be the first to know about it and I want to say on record we have never had a complaint in nine years from any of our neighbors if they had issues why did they why are they using this platform to make a complaint. And they have never made a complaint not one to the County, to us or any of the neighbors. So I'm not sure where that opposition is coming from but it's not valid. We haven't had noise and then for the people that stay there they're going through three and four day detox things. They're very quiet. They're going through healing and they're not partying. So again don't understand what that opposition is.

Anyway, we want to be good neighbors and we want to be in compliance. When we bought the property we were represented uh by an attorney and our realtor and

nothing was in any of the paperwork showing any disclosures that we were out of compliance with anything because those – even the 1998 changed eight years after the house. And then the SDLC was 25 years after that. So we did everything we thought we could do in our due diligence to make a good purchase and everything was permitted in 1990. This is a substantial property, a 4,000 square-foot main house and 900 and something guest house and a swimming pool. They wouldn't build that without a permit. So because the records are not -- don't go back 35 years doesn't mean it wasn't all done. It had to have been done and certainly it was represented to us that it was at the time of our purchase. So thank you.

CHAIR AABOE: Thank you very much. Ms. Sherwin, are you interested in speaking?

[Previously sworn, Denise Sherwin, testified as follows:]

DENISE SHERWIN: I'm Denise and Commissioners I appreciate the opportunity to bring a more legitimate picture of what we've actually been doing.

CHAIR AABOE: Can you please confirm that you are sworn.

MS. SHERWIN: I commit that I am sworn in.

CHAIR AABOE: Thank you.

MS. SHERWIN: When we had to close the downtown center, that was the third center I have built. The first one I built I staffed with an MD, a DC and a nurse. That center is now booked way into the future and it's helping so many people in this town. It's one of the greatest pleasures Bob and I have had to have provided that. I have a lot of experience in how to run a wellness center. I did not want to have a full-blown wellness center in our home but when we had to get out of the location because of COVID I took one of each of the equipment pieces, put the rest of it in storage, and put it on the second floor of our house so that we could at least continue to treat those people who were really dependent on what we were doing. I haven't had, in the last two weeks, I haven't had more than one client there. We are not running some kind of a traffic problem or whatever you want to consider it as. I've scaled it way down only for those that need it the most. They don't disturb anybody. I understand that they heard some noise around a fire pit that we had. It could have been our daughters. Could have been the family doing marshmallows. It could have been some guests but when I found out that was a problem no one's now allowed to use it.

I feel like we've done everything we can to be a good neighbor. I don't. I've never had and neither has Bob, we've never had anybody have a problem with us in the neighborhood. It's been the opposite because we're decent, kind, caring people that's why the wellness business was so important for me. So I don't know how to actually address that anymore but all I can say is we don't want any ill will with anybody and we don't want anybody being upset. So no more fire ring which frankly I'm going to miss but if that's going to make them more comfortable that's why we're not going to be using it anymore.

I hope that the truth around all of this can get very clear. We're not a big noise problem. We are the opposite. We're not bad neighbors. We would help any neighbor that asked us for help. We're not those kind of people. So I hope that there can be a common sense approach to this and that we can mend this so that there aren't any more ill feelings or issues around what has been frankly impossible for me to understand.

So thank you Commissioners, any questions.

CHAIR AABOE: Thanks very much, Ms. Sherwin. Commissioners do you have any questions of either the agent or the Sherwins?

MEMBER MIER: I have a question for the staff.

CHAIR AABOE: Commissioner Mier.

MEMBER MIER: Based on the business that's being run out of the residence is that being permitted or does it need to be permitted as a business with the County?

MR. LOVATO: Mr. Chair, Commissioner Mier, could you repeat your question?

MEMBER MIER: Is there a business license associated with the business that they're running out of that the County has issued?

MR. LOVATO: Mr. Chair, Commission Member Mier, that is correct; there is one.

MEMBER MIER: So they are in compliance with that business.

MR. LOVATO: Mr. Chair, Commission Member Mier, yes.

CHAIR AABOE: Any other Commissioners have questions of the agent or applicant? Commissioner Pava.

MEMBER PAVA: Thank you, Mr. Chair. My question regarding the home occupation license, I understand that it's a County function, since you have these various medical treatments and procedures, were you required to have under state regulations; could you explain a little bit more because when I look at the website there's some pretty interesting treatments and things that are maybe non-conventional but at the same time I'm curious to know what kind of oversight that is required for your business whether it's here or there.

MS. SHERWIN: There is no oversight for the equipment I use. Everything that I use I've been trained on and certified in; however, the first center that I opened when I put the MD, the DC and a nurse on board, we could do things we could use IVs we could do a lot of things that I wish I could do there but I can't because it's outside of the scope of my licensing. But the equipment that I use I've used it on hundreds of people over many years. And they've only had positive effects because there's safety. There's great consideration about what is happening in a person's body. We've seen even young children with stage four cancer who didn't see themselves ever growing up and we would spend time telling them that they actually have the ability to work really hard and find ways to heal the body because the body's amazing resilient if you give it what it needs. We've helped a lot of families. I have taken care of a lot of children with no cost to them. I didn't get in this business to make my fortune because it's cost a fortune to do it. I did it because I care about the wellness of our planet, of children, of people who are suffering with things they shouldn't be suffering from.

I just hope that our neighbors can be willing to just sit down together and have a different type of relationship. I don't have any problems with any people in my life and I felt really bad when I realized they were having such an issue with us. So I think that's all I have to offer unless there's any more question.

CHAIR AABOE: Any other Commissioners have questions?  
Commissioner Brugger.

MEMBER BRUGGER: So how many clients do you have at any one time in the wellness facility?

MS. SHERWIN: Well, what it's gotten to now is I've cut it back so that there are oftentimes nobody in the center. I only take a handful of people and those people are the ones that I know need the treatments. She most so we've had a whole week where there was no clients then I may have one client on the next day sometimes maybe two but it isn't any more than that. Did it used to be more? When I first had to close the downtown center we had so many people counting on us that came from different parts of the country. So I had to you know find my way out of that and limit those people but now there's not a need for any more than one or two sometimes maybe five max in a week sometimes maybe three. But it is certainly no imposition on anyone so hopefully we'll just take care of those that we still can for as long as we can.

MEMBER BRUGGER: Thank you for the response. So at any one night maybe no more than two people are they that they're clients and then they stay over if I understand that's part of the package that you offer?

MS. SHERWIN: No, that is not the way it was set up we set up the Airbnb because it's really a charming place and it happened to be convenient especially when I first had to close down the downtown center we could treat people in there you know like they could stay there for the weekend and they could get treatments walk across the patio area. But now it's mostly just an income producing Airbnb and typically it's not for a lot of young rowdy people to come if there was noise around the fire it probably was our family before I realized it was an irritation to the neighbors. We don't do that anymore and that's why I decided not to even have it available. So we aren't a -- we aren't a big threat over there and I don't know what else to say.

MEMBER BRUGGER: So do you -- so you use the guest house to accommodate the clients of the Airbnb there is no one who stays in the main house other than where you live.

MS. SHERWIN: No, it's like a typical Airbnb anybody in the neighborhood can do if you go through the process. They book online they get all the information they need. We don't invite them into the wellness facility. If someone is aware of it by a friend referring it, we will look at whether or not they need to actually be treated and that rarely rarely happens now.

MEMBER BRUGGER: So the Airbnb's standalone business --

MS. SHERWIN: It's a standalone independent thing that we would use at times to accommodate people who needed to stay somewhere.

MEMBER BRUGGER: You mentioned no one is allowed to use the barbecue pit, fire pit, pool? The exterior uses.

MS. SHERWIN: We're not allowing that to be used. In fact, it's being disassembled. It had, you know, a lot of brick around it to protect it from any kind of fire issues. We just made a decision that if it was such a problem for the neighbors that we just wouldn't allow anybody to use it including family now. And shortly there'll be no sight that there was ever even a little fire ring there. It's right next to a labyrinth that was put in and people used to like to come down sometimes sit by a fire on a full moon and walk a labyrinth. It's a peaceful property. What we do with people especially who've



been sick is we try to help them understand that you've got to calm down. You've got to start taking life a little bit more mindfully, breathe more walk a labyrinth, eat better. So that's the extent of my particular life.

MEMBER BRUGGER: So there was in some of the commentary that was included in our package the testimony before the Hearing Officer, some folks were the opponents this were stating that they could hear music playing, people partying that sort of thing and what you're saying is that that's a thing of the past?

MS. SHERWIN: It's not just that it's not a thing of the past, were there ever some nights where maybe who if it was family down there roasting marshmallows whatever – but we had one beautiful party celebrating the house and moving there. And that was a lot of people but it's the only one we've had.

I can't say that you know you would never hear anybody chatting around a fire. But I do know that we would hear it if it was really bad. So now there's not an option there won't be a way for them to sit around a fire anymore.

MR. SHERWIN: Excuse me. I'll just add something. I would add that the thing that I find unusual is that the neighbor in opposition, we have never had one conversation with in the nine years we've lived there and so I would wonder or ask them if you had a problem or there was some noise why didn't you come to us and say something? That's never happened. We've never had one conversation in nine years before so I find it very odd and like I said we live 100 feet away and if we heard noise we would be the first ones to hear. They're more than a football field away.

MEMBER BRUGGER: Another question then. So what's your protocol to control noise activity?

MR. SHERWIN: Yeah, we have posted in the guest house you know quiet after 10 o'clock –

MS. SHERWIN: -- if they go outside on their little patio deck which is the opposite direction but nonetheless –

MR. SHERWIN: You know the property has a coyote fence around the entire property. It's private and quiet and we don't we don't/can't see really any other neighbors from where we are. We have a total of five acres with the two 2.5 acre adjoining properties and you know people have to go through certain protocol in the Airbnb. There are certain requirements. And they leave a, what do you call it when they the – reviews, the review of the property and we can leave a review on them. So that makes it if there if there was anybody that was disruptive we would leave a review on them and then they wouldn't be able to rent from the next Airbnb place. So everybody's pretty respectful of the rules that are built within that system.

MR. LOVATO: Mr. Chair, Commissioners, I'd like to stick to the facts of what's being requested here which is the variance request. I understand this is a component of it in some sense. That being the case there are quiet hours that the County requests and if it is being violated we request that they put a complaint in and we will address that.

MEMBER BRUGGER: Mr. Lovato, just as explanation the reason, to me, that this is a density case but there's a use factor involved too. We have three criteria that were up here for a reason that it's a variance request and the request has to meet three criteria where the request is not contrary to the public interest so that the spirit of the SLDC is observed, substantial justice is done and then extraordinary exceptional

conditions of the property. So to me, use factors in that and that's an explanation for some of the questions that I'm asking.

MR. LOVATO: Mr. Chair, Commission Member Brugger, I do agree and that's why I kind of said it's somewhat of a part of the criteria.

CHAIR AABOE: Any other Commissioners interested in asking question? Commissioner Pava.

MEMBER PAVA: Thank you, Mr. Chair. Just some questions for the applicant. So these other services that are exclusive of say somebody staying in the Airbnb, they must be in structures elsewhere on the property and not the main residence and not the Airbnb; so are there other structures on the property where these treatments occur?

MS. SHERWIN: No, the treatments all occur on the second floor of our home that has its own private entrance that you have to walk around and get into. The equipment that I use is all safe. I've used it for a long time and we don't have any concerns about safety at all because we know what we're doing. So, yeah, there's no other –

MEMBER PAVA: So it's kind of like if I were going to see a shrink and I go into their house and they got like an office off to the side and it's their home occupation licensed and all of that so there are no other structures where these activities happen. It's done as part of the home occupation in your primary residence; right?

MS. SHERWIN: Say that again please? There's no what?

MEMBER PAVA: There's no other structures on the property –

MS. SHERWIN: No.

MEMBER PAVA: -- that you're using to house equipment to do these treatments. It's in the primary house. I needed that clarification. I appreciate it. Thanks.

MS. SHERWIN: Yeah, you're welcome.

CHAIR AABOE: Any other Commissioners have questions of the applicant?

MEMBER CRAWFORD: Yeah, I do have some questions here. So I'm just looking at the at your property itself and I there's the main residence and the guest house in question. There's another structure right next to the guest house as well and I guess greenhouse as well right? Could you just tell me a little bit more about what these other structures are on the property?

MS. SHERWIN: That structure is housing an organic greenhouse to grow our own organic food.

MEMBER CRAWFORD: Is that the kind of hoop house looking one; is that the greenhouse?

MS. SHERWIN: Uh-huh, that the green house.

MEMBER CRAWFORD: What about the other structure that's nearby the guest house, what is that?

MS. SHERWIN: Oh, yeah, there's a little kitchenette area and a planting seed area that's right next to the garage which is what you're referring to.

MEMBER CRAWFORD: Okay that's the garage then there probably okay I got you. Yeah and I guess moving forward I guess that might be my other question just what's your, I guess, goals and intent with this with this property?

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MS. SHERWIN: Well, my personal goal is I'm no longer doing the kind of volume of owning three different centers. I've seen a lot of people get well and I've been rewarded by that. Now I'm only looking at taking those people or children if need be that really need the help and oftentimes their parents can't afford it. I'm certainly not in this for the money at this point. I have a strong commitment to if there's a way we can help someone who's really in trouble then we'll do what we can to do that but that's the extent of it.

MR. SHERWIN: And that's where the Airbnb does help finance some of these things because we do treat a lot of people at no charge. And the Airbnb gives us -- we have caretakers on the property to keep it up and it just helps offset the costs so that's the way we use that facility.

CHAIR AABOE: Thank you and any other questions from any other Commissioners? Commissioner Brugger.

MEMBER BRUGGER: Thank you, Mr. Chair. I just read a letter from the homeowners association and I read your report too before. Some of the objections have to do with short-term rental nature of the business. Maybe and I'm sure they'll say maybe they'd object in any event but is for the guest house is the use, the only use that you have for that short-term rental or would it be another kind of rental?

MS. SHERWIN: No, it's a short-term, short-term rental.

MR. SHERWIN: And friends and family that come to stay with us.

MEMBER BRUGGER: Okay.

MS. SHERWIN: And we have a lot of those.

MEMBER BRUGGER: Okay, I do have one question if I could for staff.

CHAIR AABOE: Let's let them sit down if we're done if we're done with the Applicant. If we can, let's actually have any opponents speak and then you can ask your questions of staff because they can't leave. Thank you very much.

MS. SHERWIN: Thank you.

CHAIR AABOE: Is anyone here interested in speaking either in support or in opposition to this, please come forward, state your name and address and verify that you are sworn. Thank you.

[Duly sworn, Terri Graves, testified as follows:]

TERRI GRAVES: Good evening. I'm Terri Graves and I'm a resident at 3 Tierra de Tano and have been since 1996. I live directly across the street from the Sherwin Retreat, commercial property as it's being used according to what you many of you have assumed tonight. I'm representing also the Fischer Replat homeowners who were notified, only a portion of us were notified, about the short-term rental specifications. We've had a meeting and to discuss those of us in the Fischer Plat we are all directly across from the wellness retreat. We in turn share a well. We maintain the road ourselves. The County does not maintain it. It's a dirt road and we maintain it. Some of the concerns we've had as we've seen the traffic increase just to note that it in the Airbnb there are 76 room nights available between now and September at the Sherwin Airbnb. That being said all this has been done prior to the short-term rental approval. We're very aware of Airbnb rules. My husband is a GM of a hotel who also has Airbnb certifications. We know what it takes to run an Airbnb and how you need to be notified and how neighbors need to be included when you choose to open your home as a business. None of those things have been done.

I'm a little disappointed that the Sherwin said we have never said anything to them. We had a person-to-person meeting on October 22<sup>nd</sup> of 2024. In that meeting my husband, either he is not – Mr. Sherwin's memory is lacking or my husband's not memorable – but they had a meeting at the home where my husband toured the facility on behalf of the homeowners association. At that time he brought up those concerns that all of the homeowners have had. Those concerns being the fire pit. The reason the fire pit is a concern is not because of the noise. It's because me as a homeowner had my home insurance cancelled due to the fire of 87506 zip code. Part of it was in that inspection by those insurance and it's many of us are being cancelled is because of open pits. And if the Sherwins have decided once we brought that to their attention at that person-to-person meeting that they no longer had that pit it is advertised today in their Airbnb that they have a fire pit for everyone to use for marshmallows. So if that was something of a concern to them it has been a concern to all of us due to the fact that we are at fire risk. If you haven't read it's been in the newspaper my husband and I are some of the first ones in that area though we've never had a claim. So we are now searching for home insurance due to the fact of fire. So that's a big concern and it's a big concern in the neighborhood.

The other is the road. There is increased traffic whether the wellness center has one or two they brought a commercial business from de Vargas Mall to my residential area. You can't tell me that moving something that had traffic in a mall to a residential area does not have increased traffic. That increased traffic is on a road that I personally maintain with my own dollars. We did confront the Sherwins and said, you know, you could contribute to our road fund. They agreed to do so we've not ever seen anything since that person-to-person meeting in October.

One of the other concerns that we had is safety. This brings a lot of strangers to your neighborhood Airbnbs do, sorry to say, whether they're doing wellness or whatever it still brings a lot of traffic and a lot of strangers. And while I am a good neighbor also I have not contacted them but I am the obviously the concierge of the neighborhood for their Airbnb because it's a hard place to find where we live and when the people finally get to that area many many times I get the doorbell rang or I have somebody pull into the driveway who's lost and I'm sure those of you who have lived here and worked here know that this is kind of your refuge your home and it hasn't been since these kinds of businesses have been popping up across the street and my husband and I both work and we both work several jobs. I too work sometimes out of my home. I have a big Penske truck parked in my driveway right now. But I don't increase the traffic. I don't increase strangers coming to the area. We've had a break-in since this has all come and we've never had one before. Not to say that the customers that they're bringing from the Airbnb are individuals who can't afford the \$200 a night could be criminals but it still brings people to the area that are unwanted.

Some of the other concerns that we had was that we hadn't been contacted. When you are in turn doing an Airbnb you need to be contacted so when they were putting together the short-term rental application none of us were contacted about that. We hadn't been told so that may be the reason we didn't have a complaint was in turn we didn't know about it. I'm disappointed to see that in the administrative procedures of this Commission that my letter didn't make it on behalf of us and it was just passed out tonight. That's an administrative mistake. A second administrative mistake and this is a

question. When you have a public hearing and the public hearing notice is posted and that public hearing is changed on behalf of the applicant are those of us as neighbors supposed to be notified when it's changed? I'm asking that as a question.

CHAIR AABOE: We are not answering questions. Thank you very much.

MS. GRAVES: I was told that this is the opportunity. I called the office today and they said this is the opportunity to ask.

CHAIR AABOE: So what you would like an answer on is which meeting date was changed?

MS. GRAVES: The date for tonight's hearing.

CHAIR AABOE: So when was it originally – staff, I wonder if you could respond to her question.

MR. SISNEROS: So this case was previously tabled from last month's last month's public hearing. When a case is tabled it is not required to be republished or renoticed in the *New Mexican* or to neighbors. It's notified on the website.

CHAIR AABOE: Thanks very much.

MS. GRAVES: Thank you. I just needed to know that because the public notice has remained up there it with the wrong date and time.

Some of the things that I think that have been mentioned tonight that we've discussed about the not only the process of notifying neighbors when you're going for a short-term rental, when you decide that you're going to do something on the outside both in noise and in -- with even using a barbecue pit, those notifications need to be done to the neighbors. It says it in your short-term rental agreement. None of those are ever notified. And so that you know whether they're having a party at their fire pit or I had a party in mine and I don't have a fire pit, is still has to be a notification. None of those are being done. Some of the other things I think that our neighbors in the area are concerned about is just the water usage. We are all in our association under the agreement we only can have two bathrooms we cannot have a swimming pool but yet when you're bringing in an Airbnb they have a swimming pool they have the Airbnb that's a lot more water usage so those are some of the concerns that we've had is that a when you're having a wellness center that's considered somewhat in their description a spa is there more water usage for the neighborhood in an area that we are basically restricted. Our five homes are all restricted in water. And while we are concerned about some noise in the area, yes we're an older group of people who live in that area and have lived there way before the Sherwins purchased the property, we just want to make sure that it's it goes with the County code. If you're going to have people in your Airbnb and we all know that all Airbnb customers are not 50 and older. We know that for a fact. We want to make sure that we've been -- that they just live by those noise codes. And I think that pretty much talks about the areas that we're most concerned about we want to make sure that they've operated without certification on several areas and we just want to make sure it's not setting a precedent for the neighborhood of we will do as we please we will violate as we please and then we'll ask for forgiveness so because of that we just like to make sure that everything is within code that the uh Fischer Replat Homeowners Association that we're all respectful, that they contribute to the road fund if they in turn are going to be using the road that we use and Mr. Sherwin has said that his he has only one driveway. He has two driveways and if he'd like to see a picture of those I'll present it to him

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tonight. And that one driveway filters down into our dirt road where most of his individuals exit; both employees, himself and Airbnb customers. There's definitely more usage to a county road not being maintained by the County. Also I just wanted to make sure that we keep considering it that it was a studio. It is a studio. In one point they call it a guest house and another point they call it a studio. Did it remain a studio? That's what it was grandfathered in as. Is it now a guest house?

Thank you for your time this evening. Any questions for the homeowners association?

CHAIR AABOE: Thank you, ma'am. Any questions?

MS. GRAVES: Or from the Sherwins.

CHAIR AABOE: Commissioner Brugger?

MEMBER BRUGGER: Thank you for the testimony, Ms. Graves. First off, I read the letter.

MS. GRAVES: Thank you.

MEMBER BRUGGER: Second, I something in the packet that spoke to that the Fischer Replat Homeowners Association is not in good standing with the Secretary of State; is that correct?

MS. GRAVES: Meaning that we're not registered with the Secretary of State?

MEMBER BRUGGER: Yeah, if you don't file annual reports and pay your \$10 or \$20 then you're not in good standing and you're not.

MS. GRAVES: We are we are not an official homeowners association. We don't have a bank account. We do not have to have a tax filing. When we need the road maintained, one owner or the other pays for those things. We are known as the homeowner – the Fischer Replat Homeowners Association because that's what the deed says on each one of our properties.

MEMBER BRUGGER: So I'll address the subsequent questions to you and as individual rather than as the association. You said in your letter that it was you or someone was within 300 feet of the subject property but you weren't notified; is that for the short-term rental use or was that for this request or both?

MS. GRAVES: Both. We were notified for the first public hearing because we did come to that for with the hearing officer. But when the change for the, I guess when you tabled it and then moved it to -- we were not notified in that. I did the follow-up work on that because the neighbors have asked me to do so because they wanted to see what the outcome was. Many of our neighbors are part-time residents and still have concern for it and so that's part of when I say that in the notification. But for the short-term rental, no. We had no notification that that was going to be considered as part of the wellness retreat. And while I appreciate Ms. Sherwin's contribution to the health and wellness of human beings and children, part of that is relief of stress, we too as neighbors would like to have that relief of stress by having some of these conditions addressed.

MEMBER BRUGGER: Thank you. So you heard Ms. Sherwin's testimony when I asked about the volume of traffic coming in, how many people typically stay just out of curiosity does that -- has that been your experience?

MS. GRAVES: There is way more impact but of course I've been in the neighborhood since 1996. So you can imagine that a lot -- there has been an increase of

traffic but the major portion of what we're concerned about is that it's at an edge of a stop sign so where their property is located is on a corner and they have two ways to get in and out of their property that has increased that traffic causing that the road to really turn into an arroyo and the ingress of their driveway has been looked at by our road person several times and because of that increased traffic and when we get a snow or any kind of wet weather it causes it to drain down into our area which now has made the road have to have more maintenance. We also have one neighbor that's in our supposed association who is directly across from them and he in turn would like to have that area fixed because it makes the road almost impassible sometimes of the year.

MEMBER BRUGGER: Last question, promise, that's Ms. Graves. So you've lived in the neighborhood a long time even before this current ownership, was the use of the property similar to what had happened in the past? And I just asked that because you've heard the discussion on grandfathering.

MS. GRAVES: Correct. Prior to the Sherwins being there, if that studio was used as a rental as Mr. Sherwin said prior it must have been a long-term rental we never had any traffic in that area and I think the previous owner of the home was there on and off not there as often but it surprised me to hear tonight that that studio was also a rental at the time because I know it was not used as an Airbnb prior just from the fact that Airbnb didn't exist. And I think mainly in that area if it was ever used for a rental I'm sure it was a long-term rental but I don't know that for a fact. We knew the neighbors but we weren't social partners and I never asked them what they did with their home.

MEMBER BRUGGER: Okay, thank you.

CHAIR AABOE: Do any other Commissioners or Commissioner Brugger, does anyone else have any question? Thank you very much Ms. Graves.

MS. GRAVES: Once again thank you for your time.

CHAIR AABOE: Thank you. Is there anyone else interested in speaking either for or against this? Yes, sir.

[Duly sworn, Brian Graves, testified as follows:]

BRIAN GRAVES: My name is Brian Graves. I live at 3 Tierra de Tano and yes, I've been sworn in.

I just had a quick comment to make. In reading the Santa Fe County, you know, documentation on the website and what have you: a variance is not to negatively impact the neighbors. I don't see how increased traffic with somebody who doesn't contribute to our road fund, I don't consider increased water usage on people who there are on wells out there. Noise and increased fire danger even though they say they have taken their fire pit out of their property. I don't see how that does not negatively impact the neighborhood. That was my only comment.

CHAIR AABOE: Thank you very much.

MR. GRAVES: You bet. Thanks.

CHAIR AABOE: This is a public hearing, is anyone else interested speaking either for or against this application?

MR. YUTZY: Mr. Chair, there's nobody online indicating that they wish to speak.

CHAIR AABOE: Thanks very much. Let's close the public hearing. Commissioner Brugger, you mentioned that you had questions of staff. Now is the appropriate time to ask those. Yes, please do.

MEMBER BRUGGER: Thank you, Mr. Chair. You may not be able to answer this Mr. Lovato, but is the notification requirement for the short-term rental the same as this? Is it 500 feet or is it less?

MR. YUTZY: Mr. Chair, Commissioners, the requirements for STRs is adjacent properties -- I'm sorry abutting properties. So only properties that touch that property are required to be notified. So it was a total of four properties that were notified at the time.

MEMBER BRUGGER: Is anybody here that was -- are you an adjacent property or no? Is that a yes? Okay, thank you.

CHAIR AABOE: Commissioners, any other -- Commissioner Pava.

MEMBER PAVA: Yes, thank you, Mr. Chair. Question for staff. I'm going to get back to my question about if the variance is denied and does that affect the carrying out of the home occupation as long as it is consistent with the licensing requirements of the home occupation per se, set aside the use of the studio/ADU, Airbnb stuff; what about the home occupation?

MR. LOVATO: Mr. Chair, Commission Member Pava, that is a total separate item. They have a license to operate their business. If the variance is denied then they must bring that structure into compliance and revert it back into a studio/accessory structure is what it's labeled as.

MEMBER PAVA: Thank you for the clarification.

CHAIR AABOE: Mr. Lovato if you could stay up for a couple more questions. So let's imagine that this variance is denied and as I understand in order to bring this to compliance one option would be remove the shower, right? Remove the bath/shower because that is the difference between a studio which was the classification when it was built and now -- I'm just trying to understand the possible future scenarios, if you could help me, thank you.

MR. LOVATO: Mr. Chair, what would have to occur would be 1) the applicant only utilize the top area for storage as an accessory structure and 2) they remove the shower from the actual structure.

CHAIR AABOE: Okay, stairs and shower or some certification that the sleeping area in the loft is no longer a sleeping area and it's full of cardboard boxes instead. I'm just trying to understand a future. Thank you very much. Commissioner Mier.

MEMBER MIER: Yes, so we have quite a few issues at hand here. We have the business wellness center. We have the Airbnb issue. We have water usage. We have road traffic/usage. We have the noise and we have the fire pit. I guess the heart of this issue right now that we're voting on is the variance for the guest house. We are not considering all these other issues that go into what has been brought up or what we've received through comments. We are just simply voting on whether the guest house should be allowed to remain a guest house an Airbnb; correct?

MR. LOVATO: Mr. Chair, Commission Member Mier, that is correct.

MEMBER MIER: We are not voting on any other issues. Every is just centered around the guest house?

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

CHAIR AABOE: Thank you. Commissioners, what is the will of the Commission?



MEMBER CRAWFORD: I do have just one general comment and maybe this is -- sorry I apologize. Just a general comment based on uh the tax partial viewer and the Google maps and I hopped onto Google Earth as well to take a look at some historic imagery etc. and maybe this is something that the applicants can answer to too. But just one thing that you can see here in this particular lot is that looks like at some point in time a fence was built, maybe in like 2017 or something like that. And it does you know go into this other lot the upper lot that's also owned by the by the applicants. And it's just again more of just a general comment that I do see that this particular property does appear to be more of an estate right compared to other properties around it and is you know kind of mixed between the two lots which I just find interesting I guess and something to comment for Commissioners as well to be aware if they're not. So thanks.

CHAIR AABOE: Thanks, Commissioners. Yeah, that's a lot of coyote fence. Thank you very much. Commissioners, can I get a motion or is there further discussion. Commissioner Brugger.

MEMBER BRUGGER: A little further discussion and a request for some help.

I find it very difficult to be in favor of this variance request that I see it meeting one criteria; it's an extraordinary circumstance. These folks bought the property that the it was it existed already. But whether it's in the public interest and meets the spirit of the SLDC, I'm not there. I can't see that. And at the same time it would be good if there was a way to minimize, not that this wouldn't be appealed, but any additional expense involved in not having the second floor altered/demolished whatever. So is the path that you laid out there, Mr. Lovato, is that the only path that we've got if this is denied then they have to do that or is there another alternative?

MR. LOVATO: Mr. Chair, Commissioner Brugger, are you asking if there's an appeal process for them because --

MEMBER BRUGGER: No I'm ask and I'm sure there is an appeal process because that's how it works. No I'm asking do they have to do, is there another alternative than to take out the plumbing or --

MR. LOVATO: Sure. So, Mr. Chair, Commission Member Brugger, they can remove the second floor as a whole, which is the loft. They can convert that into a storage area because accessory structures are allowed to be two stories. They would also be allowed to remove -- and part of that would have to be they remove the shower. They would be also allowed to remove it put it as storage leave the shower and do an addition of a single level floor to allow for the bedroom.

MEMBER BRUGGER: Can I ask questions of the applicant?

CHAIR AABOE: Please, please. Would the applicant please come we have questions, thanks.

MEMBER BRUGGER: So, Mr. Sherwin, what happens if you're asked to -- your business, the wellness center, if you're asked to make these changes to the loft space in the studio?

MR. SHERWIN: To come into complete compliance we'd have to, this is a northern New Mexico house, it'd have to go from 19.6 to 18 feet cutting off 18 inches of the house which accomplishes nothing in terms of aesthetics for neighbors. There's -- nobody can hardly see this house from anywhere anyway. I don't understand why we're even fighting for a variance when this was built before the rules changed on us everybody

here bought your properties with certain property rights and if the game got changed after you bought it why would you have to ask for a variance? That's the fundamental question I have.

MEMBER BRUGGER: Mr. Sherwin, from what I understand from what staff was saying that even before this SLDC was adopted essentially the same density limits would have been in place. So it had not changed. If that is incorrect –

CHAIR AABOE: I'm not sure that's correct. They spoke to the definition of studio in 1996 this was built in the 90s or 91. I have a fully permitted house and studio, two baths, one in each. Now my wife and I never have had anyone live in either one but that was a legitimate -- because I haven't gone through and tried to get a short-term rental, my property has not been pushed through the sieve again. So I think the legal conditions have significantly changed as the applicant has said. So this is not cut and dry, thanks.

MR. SHERWIN: And I the surveyor that noted it on the survey as a studio, well, it's semantics. It could have been a guest house. But it was approved and built and has not changed since 1990. And that was before the 1996 and the 2015 changes and so I feel like our property rights are being taken from us and we will certainly challenge that. We feel that we are within our rights and I think if you your homes that you bought with personal -- not personal but with property rights, if the goalpost was moved and the game changed that doesn't seem fair when it was approved when it was built.

And a comment regarding the not contributing to the road, we're not in their association. We're not members of their five member association that's not in good standing. We're members of another association because we're on the corner and there's two roads. So we pay to the other one. And in terms of the fire pit this is a built-up brick, you know, 3-feet high that protects the fire in a labyrinth that has no trees it's very well protected. But as we said if that is the compromise we'll take it down, no problem. We're happy to do that. We don't want a fire either and we've got the same fire insurance issues that she has.

MEMBER CRAWFORD: I think Commissioner made a great point because reality is, you know, like the lawyer mentioned you've got a non-conforming structure something but you bought it that way; right. And normally if you go in and you do an addition then that's really what triggers sometimes like you know bringing things up to code and looking at everything but it's kind of unfortunate like you said it's like it's going after an STR application that caused this to come into play; right. Where now you're having to go through a variance process because of an STR application in which you're trying to actually follow the rule of law that came into place when the STRs were required to get permits. So I do find that could definitely qualify as a hardship and the situation that you were placed on that's not of your own.

And to comment also on what the Commissioner mentioned here too, obviously denying this variance and some of the discussions or questions that have been asked as far as like okay what would that mean you know as far as some sort of, you know, either not using a loft, turning it into storage or ripping it down – I mean that is certainly what I would consider an extraordinary and exceptional situation that would be a hardship to you as an owner and again something that was placed on you by the purchase of the house not by the fact that you did this or you built something out of code or anything like

that. I also am looking at the review criteria now and considering whether the request is contrary to the public interest. I'm looking at the property here and where it's located and there's obviously been discussions of like who was notified or not legally you're only supposed to notify the four properties you know around you or the direct properties adjacent to you the majority of the properties around you are empty lots is what I'm seeing here on the lot. In fact, I only see one residence that's adjacent to you across the way from Estrellas de Tano, the other property you own, the adjacent property in the corners technically doesn't necessarily even touch your lot or it doesn't appear to the 12A Camino Bonito and that house is pretty far away, property to the west empty. property to the south is empty as well. So I am not sure whether I would agree that it is contrary to the public interest if we were to accept this variance. And, you know, maybe Legal can talk to me a little bit further as far as the legal definition of public interest with respect to this as opposed to just my looking at this on a site plan and considering okay who's the public? There obviously some concern by local neighbors which is totally understandable. And the other thing is just the spirit of the SLDC which obviously we're dealing with zoning regulations one that has been in place apparently for a long time. I guess we mentioned the one single dwelling per 2.5 acres which was kind of based according to Mr. Lovato on water right or like topography right? I forget what you mentioned but there was something that you used that you mentioned that that was what the reason behind this particular zoning classification. And that's another thing that I'm trying to look at and consider as well is like; okay this property is located here is zone as such the intent of the code itself by allowing two single family dwelling units is it really that much different than a single dwelling unit and an accessory structure which is allowed by the code. If we're talking about water use and etc. and everything else like there's really not a huge difference between the two in that sense other than the fact that our code has regulated what a single family dwelling is and what an ADU is and how the ADU should be built etc. and stuff and heights and so forth. So that's just some of my own thoughts in respect to that.

CHAIR AABOE: Thanks very much, Commissioner. Commissioner Pava.

MEMBER PAVA: Mr. Chair, may I indulge the Commission in suggesting a motion for this?

CHAIR AABOE: Please, if you have a motion to make, please make that motion.

MEMBER PAVA: First, one clarification I have of Legal: if I make a motion and want to add an additional condition regarding signs and signage, is that something I can do?

MR. PRUCINO: Did you ask about an additional condition regarding –

MEMBER PAVA: Well, condition four is going to be deleted as we heard on the record and I have a substitute condition that regards way-finding signage that's in accordance with County rules and regulations.

MR. PRUCINO: You can certainly present an alternative.

MEMBER PAVA: All righty. Thank you. Give me a minute here -- My motion would be in the matter of this case requesting the density variance, I want to give the case #24-5270, a motion for approval subject to a new condition replacing condition four which was deleted by staff stating that appropriate way-finding signage shall be

provided on the property in accordance with the County regulations in the Sustainable Land Development Code. That's my motion.

CHAIR AABOE: Thank you. Is there a second for that motion?

MEMBER MIER: Yes, but what signage requirements are stipulated by Santa Fe County? Is that even a legal request for signage?

MR. SISNEROS: There are none for the STR ordinance which I believe is what Commission Member Pava is referring to is some sort of signage to find the short-term rental so that people aren't getting lost at the neighboring properties. But there is no such requirement for that in the short-term ordinance. For the business itself, the home occupation is to be limited in signage overall because there is to be no sign of a business being run there. It's just supposed to be a home occupation. I don't know if there's going to be any trouble putting some small signage directing people to where a short-term rental is that's on the property but I'm not sure how helpful that would be. It could be helpful, but that I'm not really sure about that.

CHAIR AABOE: If I may and thanks very much Commissioner Pava for the motion. If I may, Mr. Sherwin, what is the name of this short-term rental on Airbnb is it called Casa something or other? So there's not a – okay, thanks. And do you have street number signage that is visible on your coyote fence adjacent to the entries?

MR. SHERWIN: We do but I have one suggestion: we have an entry gate on the property that slides and because we have two addresses 28 and 30, and we've been leaving the gate open the 28 is blocked. So we could reposition and that's the one that the Airbnb and probably why it's caused some confusion so we could certainly replace that and it's a lighted little 28 so I could put that in a place where that I think would solve that problem.

CHAIR AABOE: So Commissioner Pava is basically having more clear address signage adequate to satisfy your motion?

MEMBER PAVA: Thank you, Mr. Chair. Now the reason I suggest this as a specific condition is this is mentioned several times in testimony this evening about confusion about addresses and neighbors having to provide directions and I get all that. Also, I think this may alleviate some of the concerns. Whatever is permitted under code, it's a minimal sign. Anything that is appropriate for the area. That's why I had mentioned it but I'm not going to fall on my sword on that if the rest of the Commission is not concerned about signage. My motion still stands for approval.

MEMBER MIER: I'll second the motion. I just want to make sure that we're not stipulating something that we're not allowed to stipulate and create a new rule that we're not allowed to create. That's my only thing.

MR. YUTZY: Mr. Chair, Commissioners, can we change your signage requirement to that they properly post their 911 address at the active gate for that address? So that way that people driving by because the ordinance does not allow signage to say STR here. But if they have a sign on the gate that says the address of the STR people driving through will be able to see that and it ought to be three-inch letters numbers, it'll need a reflective background or it needs to be lighted and that would identify the address that people are looking for and will be within code.

MEMBER PAVA: That's all good and fine. I do believe as Planning Commissioners we do have the purview to insert a condition like this but as I said I'm not going to fall on my sword about it. If I were the Airbnb folks, I would take a picture of

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this newly installed sign in context and when I go to an Airbnb and oh my god I do occasionally, I would look for clues because sometimes it is hard to find the space. So yeah that would satisfy me. Thank you staff.

CHAIR AABOE: Okay, thank you very much. We have a motion and a second. Any discussion? May we have a roll call vote, please.

The motion passed by majority [4-1] roll call vote as follows:

Steve Brugger	No
Jose La Cruz Crawford	Yes
Jeremy Mier	Yes
Dan Pava	Yes
Erik Aaboe, Chair	Yes

CHAIR AABOE: Thank you very much.

**B. TDR Staff Presentation [Exhibit 2: Presentation]**

Herbert Foster (Planning Team Leader): Good afternoon, Commissioners. I am Herbert Foster. I'm a team leader in the Growth Management Department. I manage the Transfer of Development Rights program and I'm happy to tell you a little bit about it and a status of where we are at and some ideas of where we're headed with the Transfer of Development Rights program. We're called the TDR program; the TDR program is basically a voluntary system that encourages land owners of environmental, cultural, scenic, or agricultural property to preserve their land by selling development rights to other land owners who can develop at a higher density in certain zoning districts where development is more appropriate. So we're asking landowners who own certain types of properties – use the mic and stay on script.

So there's basically three components of the TDR program: the sending area, the receiving area and the administration of the system that's what I do. The sending area basically is -- what happens in this process an owner of property in the sending area this image here is irrigated agriculture they agree voluntarily to permanently sever the remaining rights to develop on their land. They get a certificate. Certificates literally look like this and this represents their foregoing building one house on their property. This is equal to one house not built to preserve the farm. And they sell this certificate to other developers who get to build five houses at a different piece of property. So there's a density bonus there. There's a financial incentive for property owners to buy and sell these certificates to transfer density in areas where we don't want it to areas where we do want it. The incentive is they get five houses for every one certificate that they buy there other ratio other provisions if they're not building residences they'll do commercial and industrial and so forth. I'm sorry I just stepped away from the mic again.

And again they pay cash or they pay money to the property owner as the incentive the owner can pay off their mortgage they can buy farm equipment they can do whatever they like. It doesn't have to be an agriculture property so I don't want to give you that idea. Those are the three basic components of how it works.

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The sending area, the SLDC outlines several criteria for what can be considered in a sending area. Those are the number of overlay districts that we have and an overlay district can specify that this is a sending area. Sensitive environmental lands those are some examples are given are as riparian habitats, endangered or threatened species habitat or archaeological sites. Agriculture land is eligible as a sending area. And areas considered for preservation like open space, scenic vistas, natural features and what they call areas of special character. If their property meets one of those criteria it's eligible as a sending area where you can sell your development rights and permanently protect your property.

There's certain zoning districts in the County that are eligible as receiving areas. These are the mixed-use zone, planned developments, the industrial general zone, industrial light, commercial general and all of these properties regardless of its zone as one of those, it must have access to community water, sewer and a public road.

A little bit about the TDR process on the sending area side. An applicant will – we have an application. We – I conduct a site visit. I write a qualification report. A qualification report is a non-binding agreement between the County and the property owner about their intent and an estimate of the number of certificates that they're probably going to get based on what their intent is. If we want to know at that point are they planning on subdividing on developing, etc.

There is a plat that is required that identifies the sending area and a buildable area and permanently protects all of the land from future development. The TDR agreement is approved by the County Commissioners and after that Commission hearing, if they approve it, we/I print and we issue certificates. All of these documents. The certificates and the agreement and the plat get recorded and at that point the land is permanently protected we issue the signed certificates. They can sell them, they can do whatever they want with them.

The receiving process: a property owner presumably a developer would buy them at whatever market price they can get they can barter, they can trade. They apply for a development permit application just as they would any other application. TDRs do not trigger any kind of special hearing process if your application requires a public hearing, it requires a public hearing if it has TDRs or not. TDRs do not require any kind of special development review. And then once the development proposal is approved, it all gets certified and we stamp “redeemed” on these and it's done, they're redeemed. Any questions thus far?

CHAIR AABOE: I have a question. So if some rights are transferred or sent somewhere and subsequently the same or future property owner do they have the ability to receive a different uh development right or once it's severed that's it for the life of everybody here?

MR. FOSTER: It is permanent. A single property cannot be a sending area and a receiving area at the same time.

CHAIR AABOE: But even two years later, five years later, 10 years later once the rights are severed there's no way to get those rights back; is that correct?

MR. FOSTER: It is correct it's permanent correct.

CHAIR AABOE: Thank you. Please

MEMBER BRUGGER: So say I buy, I'm a developer. So say I buy TDRs. I'm going to use that to increase the density in the subdivision that I would

otherwise develop. So can I be denied? Is my approval assured or do I still have to go through the approval process?

What happens if my request, my subdivision request is denied or conditions are onerous and I don't want to go through with it.

CHAIR AABOE: Just to make sure, so conditions other than density. So if for example the thing falls apart because of some other condition that is, you know, you need too much infrastructure other than density, thanks.

MR. FOSTER: Yes, I got to be honest. I'm not certain I completely understand the question –

MR. YUTZY: Mr. Chair, Commissioners, so the TDR certificates are requirement at the time of recording the plat so after the final plat when they go to record they will have to have TDR certificates in their hands. So the developer can either a) purchase them before they go to BCC and get approval if they get denied they still hold the certificates they can be used for another project in a receiving area or they can wait until they have BCC final plat approval and then come and buy the certificates present them to us at the time of recordation of the plot.

MEMBER BRUGGER: I'm kind of with you. Bear with me. I'm a developer and this allows me to do five units an acre rather than two units an acre. So I go through all the process I'm preparing my plats, doing the engineering. I would – I'd be really upset even if I wasn't approved. So whether I bought the TDR before or I guess you'd it'd be a conditional you you'd close on it after.

MR. YUTZY: Correct. I see what you're saying. I see what you're saying. Most of the time they come in for conceptual and then preliminary and final separately. So at the time of conceptual they will be going to BCC. BCC can sit there and tell them we disagree with your density we think you have too many lots we want you to do this. At that point in time the developer has the opportunity to change it and see does it still make money to meet what they are asking me to do if not they can abandon the project then or they can keep moving forward. Very few times have we ever had a subdivision go forward for final plat approval and BCC not approve it because they have seen it at least twice before.

MEMBER BRUGGER: Okay, got it.

MEMBER CRAWFORD: So a question from my end because I'm just curious about this too. So we're talking about the sending portion of it right is a is a density scenario that a particular land has. So say it's one dwelling unit per two acres or something like. So somebody has a 4-acre lot they can sell or transfer that two acres or whatnot that they would have been able to build a one dwelling in; is that correct?

MR. FOSTER: The number of certificates is based on the zoning and the and the size of the property. So if one acre is allowed one house and they can they can get one certificate; 10 acres are allowed 10 houses they can get sent 10 certificates. It's based on the zoning and the size of the property.

MEMBER CRAWFORD: Are there any restrictions into what can be transferred? Like for instance there are a lot of lots that have non-buildable areas or are in flood zone etc. can somebody still transfer that portion of that land as part of this for a certificate?

MR. YUTZY: Yes, Mr. Chair and Commissioners. The owner does not have to sever all the development rights on all the property all at the same time. They

can set aside areas within the plat that are still developable or areas that are not subject to the restrictions of the agreement.

MEMBER CRAWFORD: Got you, thank you.

MR. FOSTER: Some frequently asked questions and there are many, these are just some of the more frequently ones. On the sending side, do you still own your land? Yes you do you're not giving up ownership of the property. You retain ownership you're just agreeing voluntarily to permanently not develop it anymore.

Does the TDR change the zoning? No that does not change the zoning on either side - sending or receiving.

Is it permanent? Yes, it absolutely is.

How much is a certificate worth? It's worth what anyone is willing to pay for it.

Do you have to sever all of the development rights on my property? No, if I'm allowed to build 10, I can agree to retain the right to build two and sell eight for example. I don't have to do that for all of the property. I can retain right to develop and that's Identified in those areas on the plat and in the agreement.

Is the TDR the same as a conservation easement? No it's a different legal mechanism but it really has the same outcome to permanently protect a property from development and with different financial incentives. With the TDR you're selling certificates at the free market for whatever price you can get. A conservation easement there's before and after appraisals and tax benefits that come with that. So slightly different legal mechanisms and costs to participate and different risks.

What can I build with a TDR certificate? I mentioned a developer who owns them can build five additional homes with each certificate that they have they can use different numbers of certificates for different setbacks and lot sizes and building heights so they can achieve the greater density with the number of certificates that they purchase.

Where can I go to buy and sell TDR certificates? In your packet I think the very the very last sheet in your packet has a screenshot of the TDR marketplace it's the county's website where it's kind of the central place to go for buyers and sellers to learn what kind of certificates are for sale or would be coming up for sale.

What about water rights? What about water rights. The ordinance does allow a property owner to permanently agree to retain their water rights on their property for in exchange for a certificate. One acre-foot of water is equal to one certificate.

CHAIR AABOE: May I ask one more not frequently asked question? What does the assessor do with regard to the taxable valuation of the land once the rights have been severed? Are those assessed at the same general amount?

MR. FOSTER: Can't really speak for the assessor. I do know that I'm required to notify the assessor whenever there is a TDR agreement is in place for a sending area. I can't say exactly how they how they would or would not respond. I know there are exemptions and procedures they go through to evaluate and re-evaluate. But I know that agriculture, for example, is also the least tax type of property and they have limits on how much they can increase and so forth but so far frankly for the few properties that we've have, I don't know of any of any real effect on property taxes.

MEMBER BRUGGER: Water rights question. So if I'm selling, if I'm sending TDR but I can still retain my water rights; is that what you said?



MR. FOSTER: Mr. Chair, Commissioners, you don't have to do anything with your water rights. It's just an option if you happen to own them.

MEMBER BRUGGER: But you can retain them even if you sell your development; correct? But you can sell those too?

MR. FOSTER: You can sell the development rights to the property and the water rights or just one or the other.

MEMBER BRUGGER: Okay, thank you.

MR. FOSTER: We've had a lot of discussion about water rights and it's – the legal staff is still discussing all the particulars of how that works and it becomes very very complicated very very quickly.

MEMBER CRAWFORD: Yeah, that was my follow-up question with that so but I think I got the answer. But essentially with these transfer of development rights you're dealing with density that you can sell, right for the development. And as you mentioned you can also sell water rights as well, right?

MR. FOSTER: You're not selling water rights. You're agreeing to never sell them. To not sell them.

MEMBER CRAWFORD: Which is interesting because I mean there's the whole thing with respect to beneficial use with water rights etc. I'm just kind of curious how that has been handled with respect to the water engineer and how they've been looking at this program with respect to that as well.

MR. FOSTER: Mr. Chair, Commissioners, the Legal Department is looking at that right now. So in summary of the TDR program of where we are today; three owners have participated and this is on the sending side; three owners have agreed to permanently protect their property. There are four different properties. These are images of the three you can see in a Rancho Viejo, Glorieta, and calling it Dalton Canyon in the upper right-hand corner of that Dalton Canyon you can see a little blue dot, that's two 1-acre properties. So between three owners there have been four different properties in the program for 11 certificates. Since then four of them have actually been sold to another owner. She's going to hold on to them. Right now well as of this month four certificates are on sale on the TDR marketplace and a total of 216 acres have been preserved since the program started. I didn't have anything to do with these but I hope to have more in the future.

The County is also participating in the TDR program. The county owns several open space properties. The BCC by the recommendation of the COLTPAC, the County's open space committee, recommended that the County participate and sever its development rights on 16 properties that it owns as a pilot project and we've been moving forward with that process. As of just the other day we have 28 TDR certificates in the bank they're not for sale yet because the Commission/the BCC we're going to be asking them within the next few months to set the price for that. There's a number of other properties coming down the pike that we're going to be severing those development rights. So the County is participating and we participate not only in the open space program but what's called the TDR Bank.

The TDR Bank is essentially three things. It's a website. It's a line item in our budget for us, the County, to buy and sell certificates. The purpose of the County retaining/getting these certificates is so the County can sell them put the money in the TDR bank and use that money to buy certificates elsewhere to preserve more land and a

way to stimulate demand in the market and to stabilize the price. So those are the basic functions of the bank that process of buying and selling the County's TDR certificates.

MEMBER BRUGGER: Question. How do you determine the price for the TDR then that you're selling? Does the state weigh in on this at all because if you have any property don't you need to sell it at market value? How do you determine market value and do you have to check with anybody at the state?

MR. FOSTER: Mr. Chairman, Commissioners, the state has enabling legislation they basically say local governments can do a TDR program. I've been working with Procurement and Legal and I work with a County staff work group about the procurement procedures on the County on how to precisely process and administer the bank, meaning set a price. We've just signed a consultant contract just the other day so we're going to get started with an expert nationally in TDRs. He's an economist. He's going to help us determine the price and give us a methodology every year to update the price. The Commission updates the price. So the precise method that we're going to go through I can't quite say this was studied in 16 and 17 and a report for the County they did what they call an internal rate of return calculation under different scenarios to come up with what they thought a developer would be willing to pay for a certificate. That was some numbers of years ago and the market has changed quite a bit. The County changed the ordinance to allow one certificate used to get you four houses, now it gets you five. So some of those dynamics have changed and we're thankfully hiring some help to help us figure out precisely that method. We are looking – we have looked into the state procurement requirements for such a kind of property. So nothing final but we're aware of that and we're tightening up that process right now.

MEMBER BRUGGER: Thanks.

CHAIR AABOE: So it basically goes through an open procurement so it's basically just going to be that you'll set a process where people will respond and you'll then find out what those are. I have a question about the 28 that the County through open space has so those can those cannot be sold as 140 individual one unit they have to be sold in chunks of five is that right?

MR. FOSTER: No, not at all, Mr. Chair, Commissioners. We can sell all of them at once to one owner. We can decide never to sell them. We can decide just to sell a few.

CHAIR AABOE: So in the usual transaction if I'm selling to Steve I send one he gets five units. When it goes in the bank those are split so you can buy, Steve can buy one out of the bank.

MR. FOSTER: Oh, I see. No, no it doesn't work that way. You can't disaggregate those five homes.

CHAIR AABOE: You have to buy in lots of five.

MR. FOSTER: Correct.

CHAIR AABOE: Okay, got it.

MR. FOSTER: If I may, Mr. Chair, Commissioners, you don't have to use all of those five. If you can only fit four okay. If you have if you want to fit six you have to buy two certificates. There's other, what we call dimensional relief. One certificate if it's not a residential project if it's commercial one certificate can get you a taller building or a bigger building.

CHAIR AABOE: Or a short-term rental. [laughter]

MR. FOSTER: On the matter of rentals, one certificate will get you 10 homeownership or 10 multifamily -- I'm sorry, I think I misspoke. One certificate will get you five home ownership units and 10 multi-family or rental units.

MEMBER BRUGGER: Long-term rentals?

MR. FOSTER: Yes.

MEMBER CRAWFORD: So just curious so if a homeowner or whoever it is who decides to transfer and get one of these certificates. Like you said, it's something that happens permanent, right. So it's a permanent thing so now they can't use that whatsoever they have the certificate with I guess the idea that they would potentially be selling it to a developer at some point in time right? I mean that's the concept right?

MR. FOSTER: Correct.

MEMBER CRAWFORD: I mean and I know this is kind of a pilot program or a beginning program now, but I mean I guess is there an instance where an owner does that, gets a certificate and then never sells it never does anything with it and they just essentially lose their rights without any benefit?

MR. FOSTER: Hard to say. I can just tell you what I know from, Mr. Chair and Commissioners, to be perfectly honest I talked to one woman who bought them and she forgot that she bought them. If that's an anecdote to tell you what might happen.

MEMBER CRAWFORD: And just to follow up on my first question because I do think you answered but I just wanted to make clear. So obviously you mentioned that you know you don't have to necessarily sell all the development rights you can kind of piece meal it all that gets kind of identified in a plat or maybe some sort of quit claim deed or something like that right. But so you know you got some properties that are you know sitting on like 30 percent slopes or more where they can't develop anyway right. So you can still allocate those portions of the land and transfer that? Can you transfer land that absolutely will not get developed anyway because it can't because you're not meeting land development code is that still, is that possible?

MR. FOSTER: Mr. Chair, Commissioner, yes and no. The example you gave of slope that can still be counted towards the TDR the acres. We've just been discussing this quite a bit. The code does have some provisions for setbacks easements those kinds of things. Deed restrictions that already put permanent restrictions on developing the land that doesn't count. There's other things other things like setback, slope, those sorts of things, wetlands that are already presumably are already very explicitly protected. But those are counted towards the acres.

MEMBER CRAWFORD: I would just add a comment because I am a mayordomo to my acequia and transferring water rights is a very very touchy subject, obviously now with agua la vida and certainly a lot of acequias want to keep water rights within our traditional communities within our acequias ourselves. And sometimes these transfer rights happen because the acequia doesn't necessarily have a rule book or whatnot with respect to that. But generally and stuff you know if somebody is trying to transfer water rights you're supposed to notify the acequia and board members of that acequia etc. and stuff like that. So I think you should make sure that legal takes that into consideration to make sure that if any kind of consideration of a selling of water rights as part of the TDR Program should have some sort of notification, just more checks and balances with respect to ours acequias here in New Mexico.

MR. FOSTER: Mr. Chair and Commissioners, I want to be clear that the

water right component of the TDRs is not giving you certificates to sell them. It's giving you certificates to retain them permanently on your land. It is very well understood that that aqua es vida and agriculture without water is really isn't much of agriculture. So the intent of retaining the water right in exchange for certificates is precisely for that goal to keep the water on the land within the system.

MEMBER CRAWFORD: Gotcha, that's good, thank you.

CHAIR AABOE: Mr. Foster, is the County open space -- you know I believe the Bobcat Ranch is an imminent acquisition, I'm not sure. Is the County open space looking at two prices either with or without the rights because I would imagine if they acquire properties that are sending areas and they can then sever and split into the bank that makes it permanent so that people -- I'm just wondering if there are -- setting the prices is going to be important and will have ramifications toward the purchase price of open space is maybe where I'm getting at.

MR. FOSTER: Yes. Mr. Chair, I can't speak to the specific thinking around the Bobcat Ranch. I can't speak to its imminence or not and considerations of its appraisal and with and without TDRs. I have to remind myself frankly of the zoning and if TDRs are even eligible in that particular zone I'll be happy to get back to you.

CHAIR AABOE: Not a problem. Just a thought exercise. Any other questions from Commissioners. Thanks so much for the presentation. It was interesting and engaging.

MR. FOSTER: You're very welcome. I look forward to being here in future presentations for developers who are who are buying them because that really gets the market going.

CHAIR AABOE: Right and you can sit in the back and when someone needs a variance you can sell them one from the bank before it comes to us.

MR. FOSTER: Thanks again for your time.

5. **Petitions from the Floor** - None were presented.

6. **Communications from the Commission Members**

On behalf of the Commission, Chair Aaboe welcomed Jose la Cruz Crawford to the Planning Commission.

7. **Communications from the Attorney** – None were presented.

8. **Matters from Land Use Staff**

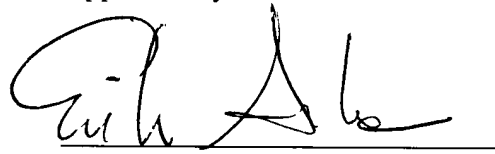
The June 19<sup>th</sup> meeting will be held on Wednesday, June 18<sup>th</sup>.

9. **Next Planning Commission Meeting: May 15, 2025**

10. **Adjournment**

With no further business to come before this Commission, Commissioner Mier moved to adjourn and Chair Aaboe declared this meeting adjourned at approximately 6:30 p.m.

Approved by:



Erik Aaboe, Chair  
Planning Commission

ATTEST TO:



KATHARINE CLARK  
SANTA FE COUNTY CLERK

Respectfully submitted by:

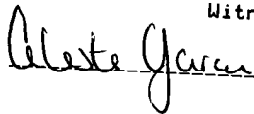
Karen Farrell, Wordswork.

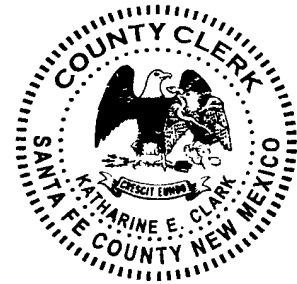
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STATE OF NEW MEXICO ) ss

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I Hereby Certify That This Instrument Was Filed for  
Record On The 30TH Day Of May, 2025 at 04:05:18 PM  
and Was Duly Recorded as Instrument # 2060027  
of The Records Of Santa Fe County

Witness My Hand And Seal Of Office

Deputy  County Clerk, Santa Fe, NM  
Katharine E. Clark



SEC CLERK RECORDED 05/30/2025