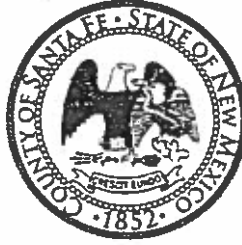


Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

**CASE NO. MIS 14-5231
HIGH SUMMIT III
GREVEY-LIBERMAN FAMILY GROUP, APPLICANTS
JAMES W. SIEBERT AND ASSOCIATES, AGENT**

ORDER

THIS MATTER came before the Board of County Commissioners (BCC) for hearing on September 9, 2014, on the Application of Grevey-Liberman Family Group, (Applicants) for suspension of enforcement of Article V, Sections 5.2.7, 5.3.6 and 5.4.6 of the Code for the recording of the Final Plats for Phases 2 through 5 of the High Summit III Subdivision, in accordance with Santa Fe County Ordinance 1996-10, the Santa Fe County Land Development Code (Code) as amended by Santa Fe County Ordinance 2011-11. The BCC, having reviewed the Application, supplemental materials, staff reports and having conducted a public hearing, finds that the Application is well-taken and should be granted and makes the following findings of fact and conclusions of law:

1. The property at issue in this Application (Property) is located off of Hyde Park Road (State Road 475), southwest of the Summit Subdivision, within Sections 15, 16, 21 and 22, Township 17 North, Range 10 East.
2. Applicant's Agent submitted the letter requesting the time extension and proof of ownership of the land.

3. On December 9, 2003, the BCC granted Master Plan, Preliminary and Final Plat, and Development Plan approval for the High Summit III residential subdivision consisting of 105 lots with 107 dwelling units on 154 acres to be developed in five phases, and a single 342.3 acre tract.
4. One phase of the development was to be constructed every three years with a full build-out over a 15 year period.
5. In 2008, the City of Santa Fe (City) and the County of Santa Fe (County) entered into a settlement agreement for the phased Annexation of lands, incrementally transferring County lands to the City's urban area. Through this agreement, the City assumed jurisdiction to regulate, review, and permit lands contained within the annexation area. The City added Area 18 into the City's urban area, including the High Summit development.
6. During the time that this development was under the City's jurisdiction, the City granted two (2) one-year time extensions of both the Master Plan and Final Plat, extending the expiration date for development through December 31, 2014.
7. In January of 2014, the City and County amended the annexation settlement agreement, removing Area 18 from the City's future annexation and adding Area 18 to the County's jurisdiction. The Property is within Area 18.
8. Santa Fe County Ordinance No. 2011-11, which amended the Code, states: "The Board of County Commissioners may approve, by resolution, temporary retroactive suspension of enforcement of Article V, Sections 5.2.7, 5.3.6 and 5.4.6 of this Code concerning expiration of master plans, preliminary plans and final plats for any development located within the unincorporated lands of Santa Fe County and within the extraterritorial planning and platting jurisdiction as described in NMSA 1978, Sections 3-20-5 (1965) and 3-21-2 (1965), upon a finding that severe economic conditions justify such a suspension either for a particular project

or for a described class of projects. Any such resolution shall not suspend enforcement of Article V, Sections 5.2.7, 5.3.6 or 5.4.6 more than three (3) years, nor apply to a master plan, preliminary plan and final plat expiring more than three (3) years prior to the effective date of this ordinance, and such resolution may contain conditions that the Board deems appropriate to such approval. For purposes of this section "severe economic conditions" are present when the Conference Board Leading Economic Index® for the United States is less than 100 for any quarter, and for three years following any such event."

9. On December 13, 2011, the BCC approved Resolution No. 2011-193, A Resolution Finding the Existence of Severe Economic Conditions and Suspending Enforcement of Specified Provisions of Article V of the Land Development Code that Concern Expiration of Master Plans, Preliminary Plats and Final Plats Pursuant to Ordinance No. 2011-11.
10. No member of the public commented in opposition to the Application.
11. Applicant's Agent spoke regarding the Property's recent history. The Property was sold and Applicants reclaimed it following a default, the Property has been in bankruptcy, and has been the subject of protracted litigation all of which eventually came to an end in May of 2013.
12. The High Summit Home Owners Association Board of Directors submitted a letter in support of the Application.
13. The BCC finds that there are conditions which support a finding of severe economic conditions to warrant a time extension.
14. On November 7, 2013 the Extraterritorial Land Use Authority (ELUA) approved Ordinance 2013-01, An Amendment to the Ordinance Establishing Subdivision, Platting, Planning and Zoning Rules Within the Presumptive City Limits and Within Unincorporated Areas of the County that are Subject to the Extraterritorial Subdivision, Platting, Planning and Zoning

Jurisdiction of the City of Santa Fe; Establishing Definitions; Providing for Transitional Provisions; Repealing Ordinance Nos 1997-4, 1997-3, 1999-1, 1999-5, 1999-6, 2000-01, 2000-03.

15. Section 13. B of Ordinance 2013-01 states "Subdivisions of Land, Development Plans, and Master Plans in which the City has required a developer to enter into an Agreement to Construct Improvements, a Financial Guarantee, or both pursuant to City Code Section 14-9.5 prior to the effective date of this ordinance, shall be administered and governed by the City until completion as defined by that section and the City's infrastructure completion policies."

16. In January 2014, the City and County amended the Agreement and Area 18, the area within which High Summit III sits, was removed from the City's jurisdiction and was returned to County jurisdiction with the exception of developments addressed by the exception set forth in paragraph 15 above.

17. After the September 9, 2014 BCC meeting, the City of Santa Fe provided the County with written correspondence asserting that the City had taken a financial guarantee for subdivision improvements and entered into an Agreement to Construct Improvements for High Summit III, and, therefore, that the City retained jurisdiction over the platting of High Summit III.

18. The City has since communicated that it was receding from this position and allowing the County to exercise land-use jurisdiction over the development, if the County chooses to do so, given what the City perceived to be an ambiguity of ELUA Ordinance 2013-01 and the City's desire to amicably resolve the jurisdictional issues that had been raised. The City's

agreement that the County can, pursuant to ELUA Ordinance 2013-01, exercise jurisdiction over the development in no way represents an abandonment of any claims the City may have in litigation involving the development.

WHEREFORE, the BCC hereby approves the Application to suspend enforcement of Article V, Sections 5.2.7, 5.3.6 and 5.4.6 of the Code for a two-year period for the previously approved Final Plat for Phases 2 through 5 of the High Summit III Subdivision. The Final Plats for Phases 2-5 of High Summit III will now expire on December 31, 2016. The motion to approve the Application passed by a 5-0 vote; Commissioners Mayfield, Anaya, Holian, Chavez, and Stefanics were present and unanimously voted.

IT IS SO ORDERED.

This Order was approved by the Santa Fe County Board of County Commissioners on this 24th day of March, 2015.

SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
Robert A. Anaya, Chair

Attest:

Geraldine Salazar, County Clerk

Approved as to form:



Gregory S. Shaffer, County Attorney

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would suggest, in a show of good faith that you do consider doing the plaster and the stucco. It's not a condition. We didn't make any requirement but I know that there was some concern that we have in our packets so whatever you could do to -- so I think that might help. Thank you.

MR. KNUTSON: Mr. Chair, Commissioner Anaya, thank you for those comments and I will suggest that to my client.

MR. SHAFFER: Mr. Chair if I could. I think we skipped over the public hearing. I don't believe there's anyone here from the public but you may want to note that for the record.

CHAIR MAYFIELD: Right. So let me reopen this up and go to a public hearing. Is there anybody from the public wishing to comment on this case? Seeing none the public hearing is closed. Thank you, Mr. Shaffer for that reminder. Thank you.

- VII. A. 3. BCC CASE # MIS 14-5231 High Summit III. Grevey-Liberman Family Group, Applicant, James W. Siebert and Assoc., Inc., Agent, request a two-year time extension of the previously approved Final Plat for Phases 2 through 5 of the High Summit III Subdivision under Ordinance No. 2011-11. The property is located off Hyde Park Road (State Road 475, southeast of the Summit Subdivision, within Sections 15, 16, 21 and 22, Township 17 North, Range 10 East (Commission District 4)

CHAIR MAYFIELD: Vice Chairman Anaya, Mr. Chair, I know we're going to afford Vicente a chance to read this in, but is this consistent with other requests we've had associated with master plans in recent years and requests for extensions?

VICENTE ARCHULETA (Case Manager): Mr. Chair, Commissioner Anaya, this one is a little bit different because this was annexed into the city in 2008.

COMMISSIONER ANAYA: My apologies. Go ahead.

MR. ARCHULETA: Okay. On December 9, 2003 the Board of County Commissioners granted master plan, preliminary and final plat and development plan approval for the High Summit III residential subdivision consisting of 105 lots with 107 dwelling units on 154 acres to be developed in five phases, and a single tract consisting of 342.3 acres. One phase of the development was to be constructed every three years with a full build-out over a 15-year period. The BCC approval also included variances of the Extraterritorial Subdivision Regulations to allow two cul-de-sacs with lengths greater than 1,000 feet and to allow the replacement of standard curb and gutter with stone.

In June 2005 Grevey-Liberman sold 490 acres of land, a portion of which would become High Summit III to Ralph Brucci. At closing the developer executed a note and mortgage in favor of Grevey-Liberman. Grevey-Liberman then released from their mortgage lien a large area designated open space consisting of approximately 341 acres that the developer subsequently deeded to the Nature Conservancy District. In 2010 the developer defaulted under the note and mortgage. After three years of litigation in

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bankruptcy and state district courts foreclosure proceedings were completed resulting in Grevey-Liberman getting a special master's deed covering approximately 130 acres of the land they had sold to the developer that had not been previously released from the mortgage, which includes all of the proposed phases 2 through 5.

In 2008 the City and County entered into a settlement agreement for the phased annexation of lands within the urban area. With the acceptance of the settlement agreement the City assumed jurisdiction over land use reviewing and permitting for Area 18 which included the High Summit development. During the time that this was under the City's jurisdiction, the City granted two one-year extensions of a master plan and final plat on the subdivision, which is set to expire in December 2014. The City and County later amended the settlement agreement and in January 2014 Area 18 was removed from the City's future annexations and is not under County jurisdiction.

The applicants now request a time extension of the expiration date of the final plat for phases 3 through 5 of High Summit III. Ordinance No. 2011-11 states the Board of County Commissioners may suspend provisions of Article V, Sections 5.2.7, 5.3.6 and 5.4.6 of the code upon a finding of economic necessity which is defined in terms of a score of 100 or less on the Conference Board's Leading Economic Index for the United States for any quarter and for three years following any such event, and the Board recognizes that these conditions are present and desires to temporarily suspend the enforcement of these sections of Article V that set forth expiration of master plans, preliminary plats and final plats for two years pending an economic recovery.

Approval sought: Approval of a 24-month time extension of a final plat for phased 2 through 5.

Recommendation: Staff recommends approval of the request for a two-year time extension of the previously approved final plat for phases 2 through 5 of the High Summit III Subdivision, per Ordinance No. 2011-11. Thank you, Mr. Chair.

CHAIR MAYFIELD: Commissioner Stefanics

COMMISSIONER STEFANICS: Thank you, Mr. Chair. In our new code, would the extension only be for two years or would it be for longer?

MR. SHAFFER: Mr. Chair, Commissioner Stefanics, we'd have to get that answer for you.

COMMISSIONER STEFANICS: Okay. if it was – let me ask the prior question I should have asked first. How long would the application approval have been for? Not an extension, an application? Five years? One year? Two years? And the reason I'm asking this question, Mr. Chair, Mr. Shaffer, staff, is perhaps two years is too short a time for an extension.

MR. SHAFFER: Mr. Chair, Commissioner Stefanics, under the current code the final plat is good for a period of 24 months and upon request of the subdivider can be extended for an additional 36 months. The ordinance and resolution under which this request is being brought forward is what I'll refer to is the so-called economic hardship ordinance, pursuant to which the Board authorized the suspension of enforcing certain time expirations. Under the ordinance and resolution the time limits – the extensions are limited to two years.

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COMMISSIONER STEFANICS: Thank you very much.

COMMISSIONER HOLIAN: Thank you, Mr. Chair. Vicente, what will happen during this two-year time extension? Are there several issues that need to be worked out, like water supply and that sort of thing?

MR. ARCHULETA: Mr. Chair, Commissioner Holian, the water has already been approved. They are connected to City water and City sewer I believe.

COMMISSIONER HOLIAN: And the City has definitely given approval for them to hook in and for the water supply that's anticipated?

MR. ARCHULETA: Mr. Chair, Commissioner Holian, that's correct.

COMMISSIONER HOLIAN: And the other question I have is would you explain the staff recommendation. When will each of the phases be recorded, according to the staff recommendation? Will they all be recorded, 2 through 5, in the next two years, according to the staff recommendation?

MR. ARCHULETA: Mr. Chair, Commissioner Holian, the applicants are requesting a three-year period for them to be – they'll record phase 2 and then within the next three years they'll record phase 3, and then in an additional three years they'll record phase 4. So they're asking for three-year increments to record all the additional phases.

COMMISSIONER HOLIAN: It doesn't actually say that in the staff recommendation though. It just says approve the request for a two-year time extension.

COMMISSIONER STEFANICS: It's on page 10. You're right. It's not part of the staff. It's a request.

COMMISSIONER HOLIAN: Yes, I do understand that the applicant is requesting that but it doesn't sound like it's in the staff recommendation.

MR. ARCHULETA: Mr. Chair, Commissioner Holian, this has been revised so all they're requesting right now is the final approval for phase 2 to be recorded within two years.

COMMISSIONER HOLIAN: Okay. So that's all they're requesting at this point.

MS. LUCERO: Mr. Chair, Commissioner Holian, if I could just clarify. They are requesting a two-year time extension of the final plat for phases 2 through 5. So they would have – it's set to expire currently in December of this year so they would have till December of 2016 to record all phases.

COMMISSIONER HOLIAN: All phases.

MS. LUCERO: Correct.

COMMISSIONER HOLIAN: Okay. Yes.

COMMISSIONER CHAVEZ: So that was one question that I had but I'll just read on page 3, approval sought. Approval of a 24-month time extension for the final plat for phases 2 through 5. That's how our memo reads. But then I want to go down further, because the hydrological zone is the Mountain Zone and the normal lot size per code is 80 acres per dwelling unit with water restrictive covenants. So those are self-imposed covenants that we cannot enforce and the 80 acres per dwelling unit – I guess is that County code or City code, because they're now in the county not in the city, right?

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MR. ARCHULETA: Mr. Chair, Commissioner Chavez, that is County code and what it states is 80 acres per dwelling without water restrictions and they can go down to 20 acres with water restrictions of a quarter acre-foot. It doesn't say that but that's how the ordinance is written.

COMMISSIONER CHAVEZ: So the water restrictive covenants are not the homeowners association covenants but County code?

MR. ARCHULETA: Mr. Chair, Commissioner Chavez, they recorded water restrictive covenants within the subdivision.

COMMISSIONER CHAVEZ: But we're not able to enforce that, are we?

MR. ARCHULETA: Mr. Chair, yes we are. Those are from our code.

MS. LUCERO: Mr. Chair, Commissioner Chavez, if I could just clarify. They will be required to record water restrictive covenants for the remaining phases 2 through 5 as well.

COMMISSIONER CHAVEZ: Okay. And then going down the document, we have fire protection, City of Santa Fe fire district, water supply, City of Santa Fe, Utilities, liquid waste City of Santa Fe sewer system. But what I see missing there is public safety, law enforcement. Who's responsible for that? Or is it a joint effort between City and County?

MR. ARCHULETA: Mr. Chair, Commissioner Chavez, I believe that it would be a joint issue. Whoever is closer at the time. But it would be the County Sheriff's Department. But like I say, I believe that whoever is closer at the time.

COMMISSIONER CHAVEZ: So it would be based on first responder, the closest would be the first responder?

MS. LUCERO: Mr. Chair, Commissioner Chavez, I believe, per the settlement agreement it would be the County Sheriff that would be responding.

COMMISSIONER CHAVEZ: Okay. And I just point that out because I think that we should maybe be specific in that because it doesn't really address it. It seems that that portion is left out. That's all I have, Mr. Chair.

[Duly sworn, Jim Siebert testified as follows:]

JIM SIEBERT: Mr. Chair, Commissioners, my name's Jim Siebert. My address is 915 Mercer, Santa Fe. I'm representing the Grevey-Liberman family – this request. Let Grevey-Liberman sold this originally to the original developer. He defaulted in 2010. They went through a very long, protracted lawsuit to get the property back. It originally started as foreclosure. It went into a bankruptcy, and it ended up that it took them until May of 2013 to get the property back and there's still, even after that period of time there was another lingering lawsuit that eventually was resolved.

The other thing that took place in that period of time was the jurisdictional issues. This was originally in the Extraterritorial area. It went into the City as part of the settlement agreement. And then subsequently, under the amended settlement agreement it went back to the County. So during that period of time there was a lot of hesitancy on staff to take action, thinking that, well, it's going to go back to the County, it's going to go back to the City. It's better that that jurisdiction take care of it.

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The other thing I need to point out is phase 2 actually – we're asking for, in High Summit there's phases 1 through 5. Phase 1 was completed by the developer. Phase 2 was only partially completed by the developer. The Grevey-Libermans are not developers. They will be – in this interim, the two-year, they will be looking to have a developer step in and take over the project. The issues are really many-fold. As I say phase 2 is half-completed. They're not sure exactly what the quality of those improvements are. There's going to have to be all kinds of testing that takes place as a result of that.

And the other issue is I don't think it's still determined who's going to be the utility provider, whether it's going to be the City or the County. That issue needs to be resolved. There was a commitment on the part of the developer to transfer the land where the tank and the pump and all the water infrastructure is located to the City of Santa Fe. That never happened. And they're not really sure who exactly owns that land at this particular time.

When a bankruptcy occurs you end up with all these issues that are very difficult to kind of untangle. So that's the reason we're asking for this period of time. And I don't know if in your packet – I do have extra copies of a letter of support for this time extension as they have some particular interest in this issue, the High Summit Homeowners Association, supporting this particular request. If it's not in your packet I'd be happy to hand it out to you. Okay. It's in there. So with that I'll answer any questions you may have.

CHAIR MAYFIELD: Thank you. Commissioners? Commissioner Holian.

COMMISSIONER HOLIAN: So Mr. Siebert, in this two-year time period the owners will be working on a plan for how to go forward, correct?

MR. SIEBERT: Well, the owners will be looking to sell or do a joint venture with another developer who will be evaluating how to best develop the property.

COMMISSIONER HOLIAN: So the two-year time period is really to work out a lot of these complicated issues.

MR. SIEBERT: Yes. The issues are still going to have to be – whether it's sold to a developer immediately in the interim or not, these other issues still need to be resolved and they will be working on those issues.

COMMISSIONER HOLIAN: Thank you.

CHAIR MAYFIELD: Thank you. This is a public hearing. Anybody within the public wishing to comment on this? Seeing none, this portion of our public hearing is now closed.

COMMISSIONER HOLIAN: Mr. Chair.

CHAIR MAYFIELD: Commissioners, any other questions?
Commissioner Holian.

COMMISSIONER HOLIAN: Mr. Chair, I move for approval of the staff recommendation for BCC Case MIS #14-5231.

COMMISSIONER ANAYA: Second.

CHAIR MAYFIELD: We have a motion and a second.

The motion passed by unanimous [5-0] voice vote.

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VIII. CONCLUDING BUSINESS

A. Announcements

COMMISSIONER ANAYA: Mr. Chair.

CHAIR MAYFIELD: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, we've had a long day. We got through it, thanks to you chairing the meeting and my colleagues, but I did want to wish Rachel Brown, Commissioner Chavez, and Commissioner Holian on their happy birthday. It's Commissioner Chavez' birthday and Rachel's today and Commissioner Holian, yours is coming up. Or last week. I didn't know that until a little while ago but I wish you all a happy birthday.

COMMISSIONER CHAVEZ: We were trying to keep that to ourselves but it got out of the bag. So thank you. Thank you, Commissioner Anaya.

B. Adjournment

Having completed the agenda and with no further business to come before this body, Chair Mayfield declared this meeting adjourned at 8:40 p.m.


Approved by:

Board of County Commissioners
Daniel W. Mayfield, Chair

ATTEST TO:

GERALDINE SALAZAR
SANTA FE COUNTY CLERK

Respectfully submitted:


Karen Farrell, Wordswork
453 Cerrillos Road
Santa Fe, NM 87501

