Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3

Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. APP 17-5101
Regina Buckley, Applicant

THIS MATTER came before Board of County Commissioners (BCC) for hearing on December 12, 2017, on the application of Regina Buckley (Appellant) for an appeal of the Santa Fe County Planning Commission's (Planning Commission denial of a variance of Ordinance 2016-9, Chapter 8.6.5 Table 8.9, (Dimensional Standards) Residential Fringe (RES F) to allow 9.19 acres to be divided by way of Family Transfer, into two 4.6 acre lots. The BCC, having reviewed the application, staff reports, Recommended Decision of the Hearing Examiner, and final order of the Planning Commission, and having conducted a public hearing on the request, finds that the application is well-taken and should be approved, and makes the following findings of fact and conclusions of law:

I. Background

1. On April 21, 2017, the Applicant submitted an application for a variance from Chapter 8.6.5 Table 8.9 (Dimensional Standards) Residential Fringe (RES F) to Allow 9.19 acres to be divided by way of family transfer, into two 4.6 acre lots.
2. The property, which is 9.19 acres, is located at 11 Sudeste Place and is zoned RES-F. The property is located in Commission District 4.
3. The Applicant has requested two separate driveways for the two proposed lots, which would increase the number of access points on the access road.

At the August 17, 2017 The Planning Commission found that the application should not be granted because:

A. Allowing additional driveway accesses and substandard lot sizes is contrary to public interest;
B. The Applicant failed to provide evidence of extraordinary and exceptional situations or conditions of the property, such that the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner; and
C. The spirit of the SLDC is observed and substantial justice is done by maintaining minimum lot sizes when the property owner can add a dwelling unit to the property and leave the property as an inheritance to children.

4. On October 31, 2017, the Applicant filed an application of appeal to the BCC to appeal the decision of the Planning Commission's denial of a variance of Ordinance 2016-9, Chapter 8.6.5 Table 8.9, (Dimensional Standards) Residential Fringe (RES F) to allow 9.19 acres to be divided by way of Family Transfer, into two 4.6 acre lots.

II. Applicable Provisions of the SLDC

5. Chapter 8.6.5 Table 8.9 Dimensional Standards (Res-F) states the density allowed in this zoning district is 1 dwelling unit per 5 acres.

6. Chapter 4, Section 4.9.7.1, Variances, Purpose, states:

> The purpose of this Section is to provide a mechanism in the form of a variance that grants a landowner relief from certain standards in this code where, due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner. The granting of an area variance shall allow a deviation from the dimensional requirements and standards of the Code, but in no way shall it authorize a use of land that is otherwise prohibited in the relevant zoning district.

7. Chapter 4, Section 4.9.7.4, Variances, Review criteria, states:

> A variance may be granted by only a majority of all the members of the Planning Commission (or the Board, on appeal from the Planning Commission) based upon the following criteria:

a. where the request is not contrary to public interest;

b. where due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner; and

c. so that the spirit of the SLDC is observed and substantial justice is done.

8. Chapter 4, Section 4.9.7.5 Variances, Conditions of approval, states:

a. The Planning Commission may impose conditions on a variance request necessary to accomplish the purposes and intent of the SLDC and the SGMP and to prevent or minimize adverse impacts on the general health, safety and welfare of property owners and area residents.

b. All approved variances run with the land, unless conditions of approval imposed by the Planning Commission specify otherwise.

c. All approved variances automatically expire within one year of the date of approval, unless the applicant files a plat implementing the variance or substantial construction of the building or structure authorized by the variance occurs within that time.

9. Chapter 4, Section 4.5.4, Appeal of a Final Decision of the Planning Commission.

Any party with standing may appeal a final decision of the Planning Commission to the Board. The application seeking an appeal of a decision of the Planning Commission must be filed with the Administrator. An appeal from the decision of the Planning Commission must be filed within thirty (30) working days of the date of the decision and recordation of the final development order by the Planning Commission. The application shall be forwarded by the Administrator to the Board. The Administrator shall provide to the Board a copy of the record of the proceedings below of the decision appealed. The appeal shall be placed on the docket of the Board for consideration on the next available agenda. An appeal of the decision of the Planning Commission shall be reviewed de novo by the Board. The timely filing of an appeal shall stay further processing of the application unless the Board determines that special circumstances exist.

III. Public Hearing Process

10. As required by the SLDC, the Applicant presented the application to the Technical Advisory Committee (TAC) on November 17, 2016, at the regular scheduled monthly

meeting, as required by Chapter 4, Section 4.4.4.3 Pre-application TAC Meeting and Table 4-1.

11. In accordance with Chapter 4 Section 4.4.4. Table 4-1, the Applicant conducted a pre-application neighborhood meeting on February 17, 2017.

12. Notice requirements were met as per Chapter 4, Section 4.6.3., General Notice of Application Requiring a Public Hearing, of the SLDC. In advance of a hearing on the application, the Applicant provided an affidavit of posting of notice of the hearing, confirming that public notice posting regarding the application was made for fifteen days on the property, beginning on June 7, 2017. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on June 7, 2017, as evidenced by a copy of that legal notice contained in the record. Notice of the hearing was sent to owners of land within 500' of the subject property and a list of persons sent a mailing is contained in the record.

13. At the public hearing before the Hearing Officer on June 22, 2017, County staff recommended denial of the Applicant's request for a variance.

14. On June 22, 2017, this application was presented to the Hearing Officer for consideration and a recommendation. The hearing officer recommended approval of the Applicant's request with the following conditions:

    a. No further division of the property shall be allowed.

    b. No accessory dwelling units shall be allowed on either lot; and

    c. The Applicant shall obtain an answer as to whether both lots are eligible to connect to the Sunlit Hills Water System. If eligible, both properties shall connect to the system when the second lot is developed.

15. At the August 17, 2017 The Planning Commission found that the application should not be granted because:

1. Allowing additional driveway accesses and substandard lot sizes is contrary to public interest;
2. The Applicant failed to provide evidence of extraordinary and exceptional situations or conditions of the property, such that the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner; and
3. The spirit of the SLDC is observed and substantial justice is done by maintaining minimum lot sizes when the property owner can add a dwelling unit to the property and leave the property as an inheritance to children.

16. On April 21, 2017, the Applicant submitted an application for a variance from Chapter 8.6.5 Table 8.9 (Dimensional Standards) Residential Fringe (RES F) to Allow 9.19 acres to be divided by way of family transfer, into two 4.6 acre lots.

IV. Standard of Review

17. Chapter 4, Section 4.5.4 provides that "[a]n appeal of the decision of the Planning Commission shall be reviewed *de novo* by the Board." Accordingly, the BCC reviews this appeal *de novo.*

V. Compliance with the SLDC

18. At the public hearing, the Applicant presented a map showing the densities of surrounding properties. The surrounding properties (directly adjacent) consist of thirteen lots (excluding right-of-way) and are the following lot sizes: 4.4, 5.2, 4.38, 3.3, 3.8, 4, 3.4, .6, .5, .52, .95, .55 and .89. The lots under 1 acre are in a different zoning classification but are adjacent to Applicant's lot. Of the adjacent lots in the same zoning classification, only 1 of the 7 adjoining lots is 5 acres or over. Staff confirmed that many of the surrounding lots are legal non-conforming lots created prior to 1981 and are in the range of 1-40 acres in size.

19. The Applicant states that the land will appear and have a look and feel of a 5-acre parcel and will not appear smaller than the intention of the RES-F density. The minimal easing will have no discernable impact on the value of the neighboring lots in this area.

20. The BCC finds that a lot of 4.6 is not substantially different from a lot that is 5 acres.

21. The BCC finds that the majority of surrounding lots are smaller than 4.6 acres and accordingly, the requested lot size is consistent with the surrounding lots.

22. Staff stated that increased density in this area creates more traffic, water use, and creates a substandard lot size.

23. The Applicant provided a letter dated August 7, 2017, from Sunlit Hills of Santa Fe, Inc. stating that the Sunlit Hill Water System has reached an intent of agreement to provide one new water service to a lot at 11 Sudeste Place, 87508.

24. The BCC finds that the letter from Sunlit Hills of Santa Fe, Inc. adequately demonstrates that the Subject Property would have access to water.

25. The lot is eligible for an accessory dwelling unit, which would be limited in size, although the current dwelling could be categorized as the accessory dwelling and a larger primary residence might be possible if SLDC requirements such as set-backs could be met.

26. The BCC finds that one dwelling unit each on two 4.6 acre lots would create an impact comparable to a dwelling unit and an accessory dwelling unit on the 9.19 acre lot.

27. The impact of increased density and water use can be further mitigated by a condition that prohibits accessory dwelling units on the lot.

VI. Public Comment

28. At the December 12, 2017, BCC meeting no one spoke in favor or in opposition of the requested appeal.

29. The record contains a letter dated November 30, 2017, from Chuck Cover. In his letter, Mr. Cover opposed the variance on the basis that he believes his property value will be negatively impacted by increased density on the Property.

30. With regard to Mr. Cover's concern, the BCC finds that 4.6 acre lots are consistent with the smaller lots that surround the Property.

VII. Conclusions of Law

31. Any findings or conclusions set forth above that may be construed to constitute a conclusion of law is hereby incorporated as such to the same extent as if it was expressly denominated as a conclusion of law.

32. The Applicant's appeal of the Planning Commission's decision to the BCC was timely.

33. As to the variance to Chapter 8.6.5, Table 8-9, Dimensional Standards, to allow 9.19 acres to be divided by way of family transfer into two 4.6-acre lots, the BCC finds that:

a. The variance is not contrary to the public interest and the spirit of the SLDC is observed and substantial justice is done if the variance is granted because the variance to lot size is consistent with surrounding properties, the impact on density and water use is comparable to one dwelling unit and an accessory dwelling unit on the 9.19 acre lot, and the Applicant has demonstrated that there is water available to serve both 4.6 acre lots.

b. There would be peculiar and exceptional practical difficulties in not allowing the variance because the lot is 9.19 acres and could not be split and would result in an inability to transfer property to family.

WHEREFORE, the Santa Fe County Board of Commissioners hereby approves the application of the Applicant, Regina Buckley, and grants the variance from Ordinance 2016-9,

Chapter 8.6.5 Table 8.9 (Dimensional Standards) Residential Fringe (RES F) to Allow 9.19 acres to be divided by way of family transfer, into two 4.6 acre lots subject to the following conditions.

1. No further division of this property will be allowed.
2. Accessory dwelling units will not be allowed on either lots due to the substandard lot size.

Pursuant to Chapter 4, Section 4.9.7.5, all approved variances automatically expire within one year of the date of approval, unless the applicant files a plat implementing the variance or substantial construction of the building or structure authorized by the variance occurs within that time.

IT IS SO ORDERED.

This Order was adopted by the Board of County Commissioners on this ___ day of _____, 2018.

THE SANTA FE BOAD OF COUNTY COMMISSIONERS

_____
Anna Hansen, Chairperson

ATTESTATION:

_____
Geraldine Salazar, County Clerk

APPROVED AS TO FORM:

_____
Bruce Frederick, County Attorney

participant, as allowed by Section 10-15-1 (H)(7) NMSA 1978, and discussion of the purchase, acquisition or disposal of real property or water rights, as allowed by Section 10-15-1 (H)(8) NMSA 1978, including the following: 14 Camino Torcido Loop; Mt. Chalchihuitl; rights-of-way for County roads on pueblo lands.

CHAIR ROYBAL: Thank you, Mr. Frederick. Do I have a motion?

COMMISSIONER HAMILTON: I move that we go into executive session to discuss the matters just read off by County Attorney Frederick.

CHAIR ROYBAL: We have a motion. Do I hear a second?

COMMISSIONER HANSEN: Second.

CHAIR ROYBAL: Can we have a roll call, Madam Clerk.

The motion to go into executive session pursuant to NMSA Section 10-15-1-H (7, and 8) to discuss the matters delineated above passed by unanimous roll call vote as follows:

Commissioner Anaya	Aye
Commissioner Hamilton	Aye
Commissioner Hansen	Aye
Commissioner Moreno	Not Present
Commissioner Roybal	Aye

[The Commission met in closed session from 3:38 to 5:45.]

COMMISSIONER HANSEN: I move that we come out of executive session and that nothing that we spoke about except for what was on the agenda was mentioned and the only people that were there were the five Commissioners, County Attorney Bruce Frederick, County Manager, Deputy County Manager, Diego Gomez from Projects, and Colleen Baker from Projects also, and Rachel, Deputy County Attorney. And everything that was discussed was on the agenda.

CHAIR ROYBAL: Okay, I have a motion.

COMMISSIONER HAMILTON: Second.

CHAIR ROYBAL: And a second.

The motion passed by unanimous [4-0] voice vote. [Commissioner Moreno was not present for this action.]

IX. PUBLIC HEARINGS

A. Land Use Cases

1. CASE #APP 17- 5101 Regina Buckley Appeal Regina Buckley, Appellant, Scott Hoeft, Agent are appealing the Santa Fe County Planning Commission's decision for denial to allow a variance of Ordinance 2016-9, Chapter 8.6.5 Table 8.9, (Dimensional Standards) Residential Fringe (RES F) to allow 9.19 acres to be divided by way of Family Transfer, into two

4.6 acre lots. The property is located at 11 Sudeste Place, within Section 24, Township 16 North, Range 9 East (Commission District 4) [*Exhibit 1: Sunlit Hills Water System letter to supply water – Applicant supplied; Exhibit 2: Adopted Zoning District and lot sizes in area – Applicant supplied*]

JOHN LOVATO (Cases Manager): Thank you, Mr. Chair, Commissioners. Good evening. On June 22, 2017 the applicant presented a variance of Ordinance 2016-9, Chapter 8.6.5, Table 8-9, Dimensional Standards, to allow 9.91 acres to be divided by way of family transfer into two 4.6-acre lots. The Hearing Officer, in support of the application, memorialized in her findings of fact and conclusions of law in a written order subject to the following conditions:

1. No further division of this property will be allowed.
2. Accessory dwelling units will not be allowed on either lots due to the substandard lot size.

On August 17, 2017, the variance request was presented to the Planning Commission and the Planning Commission denied the variances by a 5-2 vote, because allowing additional accesses and substandard lot sizes were contrary to the public interest, the applicant failed to provide evidence of extraordinary and exceptional situations or conditions of the property, and the spirit of the SLDC is observed and substantial justice is done by maintaining minimum lot sizes when the property owner can add a dwelling unit to her property for her children.

Recommendation: As staff did not recommend the initial variance request, staff recommends the BCC deny the appeal and uphold the Santa Fe County's Planning Commission's decision to deny a variance of 9.19 acres to be divided by way of a Family Transfer into two 4.6-acre lots. The property lies within the Residential Fringe Zoning District. The base density in the Residential Fringe is five acres per dwelling unit. Allowing a variance creates a precedent to surrounding properties and creates substandard lot sizes. Previous lot sizes that range from 1-40 acres are legal non-conforming or created prior to the Sustainable Land Development Code.

On June 22, 2017, this application was presented to the Hearing Officer for consideration. The Hearing Officer supported the application as memorialized in the findings of fact and conclusions of law written order, subject to conditions.

The Planning Commission denied the variance because they believed that the applicant did not meet the requirements and evidence necessity to grant the variance and meet the variance criteria. If the decision of the BCC is to deny the appeal, the BCC may adopt the findings of the Planning Commission. If the decision of the BCC is to grant the appeal and the variance requested the BCC may adopt the findings from the Hearing Officer.

An appeal of the decision of the Planning Commission shall be reviewed de novo by the Board per Chapter 4, Section 4.5.4 of the SLDC and the Board may make their own findings and conclusions. Thank you, Mr. Chair and I stand for any questions you may have.

CHAIR ROYBAL: Thank you, Mr. Lovato. Any questions from the Board? This is Commissioner Hamilton's district so I'll defer to Commissioner Hamilton.

COMMISSIONER HAMILTON: Is there any further information that's going to be presented or any public comment? That would be good.

CHAIR ROYBAL: So we have the applicant if they'd like to come forward. If you could state your name and address for the record.

[Duly sworn, Scott Hoeft testified as follows:]

SCOTT HOEFT: Scott Hoeft, Santa Fe Planning Group, 109 St. Francis, Santa Fe, New Mexico, 87505. Thank you very much. John, thank you for the excellent staff report. There's a few items I'd like to add if I may approach and pass out a few pieces of information I think this would be helpful to my presentation. What John is passing out, first of all, is a letter from the Sunlit Hills water system indicating that they are ready and able to connect for water service. The second item that John is passing out is a map that shows the subject site and the surrounding properties.

So armed with that information let me just start. I have a brief presentation. This was part of a family planning process. The applicant, my client, wanted to divide her property, which is 9.19 acres, into two parcels, which are 4.6 acres each, and as part of the new SLDC code the minimum parcels in that area are five acres in size. So the 4.6-acre parcel, the two that would be created are substandard. Now I think what's interesting is that under the previous code the subject parcel would have been permitted to be divided into two 2.5-acre parcels with water service. So in the past this parcel of land could have been divided three times into 2.5-acre parcel with some remaining. And under the new code, this applicant, my client, can't divide it even one time. And I think if you notice the map that I passed out, I think the thing that jumps out at you is that the divided parcel, the balance, 4.6 acres, is still larger than the surrounding properties in the area.

And so the argument is that we feel that this is a very minimal easing of the standards for a family transfer. This has taken the applicant quite some time just to get to this point. We had a TAC meeting in November of 2016. We had our ENN meeting in February of this year. We had our Hearing Officer in June, Planning Commission in August and here we are in December, so it's taken a full year to get to this point for the simple family transfer. In the past this was a process that could have been handled in about two to three months.

So we would appreciate your consideration. I think the key element at the Planning Commission which caused concern is could I hook up to the Sunlit Hills water system? And at the time I did not have a letter of intent to serve from Sunlit Hills. We requested it but I didn't have it, and I think that piece of information would have helped because it was actually requested by the Planning Commission. I did supply a letter this evening for you so the intent is that if this division is granted, this family transfer, the lady, my client is dividing her land into two for her sons. The new parcels created with hook up to the Sunlit Hills water system. And with that, I stand for questions.

CHAIR ROYBAL: Okay, do we have any questions from the Board? I think what we're going to do, since it is a public hearing we'll go ahead. Is there anybody here to speak in behalf or opposition of this request? By a show of hands? Okay, there's not anybody, so I'm going to close the public hearing. Do we have any comments from the Commission? Commissioner Hansen.

COMMISSIONER HANSEN: So the one concern that I did have was them being able to hook up to the water system, because that seemed like that was the

concern of the Planning Commission, that you didn't have that piece of information. So I think that satisfies what the Planning Commission was looking for. Am I correct in assuming that?

MR. LOVATO: Mr. Chair, Commissioner Hansen, I believe that is one of the major concerns that the Planning Commission had.

COMMISSIONER HANSEN: Yes. So they now have water. It does seem logical since all of the surrounding lots are smaller than the 4.6 that their lots would be, that this would be consistent with the surrounding lots.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Commissioner Anaya.

COMMISSIONER ANAYA: So Mr. Chair, I'd like to hear from the Commission from that district but I just wanted to say on the record that I've been supportive of family transfers throughout my time here on the bench. I think the water consideration is one of the largest considerations that we've taken any time we've had a case like this and we've gone down to a lot smaller lot sizes over the scope of the time I've been here, but I would like to hear from the Commissioner from this district, but generally speaking it seems reasonable, especially based on the fact that the Sunlit Hills has provided access to the water. So those are my thoughts. Commissioner Hamilton, respectfully.

CHAIR ROYBAL: Thank you, Commissioner Anaya. I would ditto those same comments. Commissioner Hamilton.

COMMISSIONER HAMILTON: Right. We do want to take the code seriously and give consideration to these things and a lot of the reasoning for the code has to do with water accessibility and what not, as well as other public concerns. But given the fact that water is being made available and the surrounding lots are of a similar size I'm not sure that this split would be that big a jump from what the SLDC is in spirit looking for.

CHAIR ROYBAL: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, Ms. Ellis-Green, so we've had cases in the past, because one of the things that we were trying to guard against historically was that people weren't doing family splits to immediately then, hey, this is a family split but they're going to sell it next week. We've had some conditions that we've placed on the past to cases like that. Can you comment on that? Did we address that in any way through the work of the current code, or can you address conditions that we've placed relative to resale? Immediate resale?

PENNY ELLIS-GREEN (Growth Management Director): Mr. Chair, Commissioner Anaya, under the old code we had something called a small-lot family transfer that had a holding period prior to dividing. We didn't have a holding period afterwards. This code doesn't have small-lot family transfers; it just has the statute required family transfers and it does not have a holding period. It's really difficult. We don't get involved when land is sold so it's difficult for us to put a holding period on because the sale never comes through the Land Use Department like a land division would.

I think we may well have in the past added some conditions to variances asking that it not be held. This is a land division so that could be noted on the plat as a special

condition stating no sale until – or for however long, if the Commission designated a timeframe for that, but in general, because we don't get involved with sales it's not a code requirement to have a holding period.

COMMISSIONER ANAYA: Mr. Chair and Mr. Hoeft, could you comment on the intent of the applicant associated, given that there's already a denial in place on the item that we're considering right now?

MR. HOEFT: Yes, Commissioner Anaya. Again, I was approached by the client, the applicant. She's an elderly woman and she wanted to divide the land and provide parcels to her sons. That's pretty much her intent and it's as simple as that.

COMMISSIONER ANAYA: So to your knowledge, the parcels aren't being divided for immediate sale, as far as your knowledge.

MR. HOEFT: To my knowledge, no. My understanding is she's going to provide one to her son. What her son does with that I'm uncertain.

COMMISSIONER ANAYA: Thank you, Mr. Chair. Thank you, Mr. Hoeft.

CHAIR ROYBAL: Thank you, Commissioner Anaya. Commissioner Hamilton.

COMMISSIONER HAMILTON: So one of the things was – I thought there was a comment about if the split was approved, not to allow accessory structures other than – because if it's split and there is a second house built it would be what my mother used to call the same difference as having two structures on one parcel or one structure on each of two parcels. It still amounts to two structures. And so would that be – not allowing accessory structures if the split is approved, is that a reasonable condition to put on the split?

MS. ELLIS-GREEN: Mr. Chair, Commissioner Hamilton, staff actually suggested or had recommended that condition if the Hearing Officer approved, we recommended that condition.

COMMISSIONER HAMILTON: That's what I thought.

MS. ELLIS-GREEN: You are correct. Right now they could have their primary house and an accessory dwelling unit. Accessory dwelling units will be smaller in size and share the same driveway. If they divide, then there won't be a size limit on the house. But again, with that condition there would only be a total of two houses, and there could be two houses now.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Commissioner Anaya.

COMMISSIONER ANAYA: If I could, Commissioner Hamilton?

COMMISSIONER HAMILTON: Yes, please.

COMMISSIONER ANAYA: Yes, just on that point, I guess I would put forward that one of the purposes around the accessory structure discussion was associated with assisting families if they needed to build another dwelling in particular for a family member or somebody that needed it, and I think the operative piece on an accessory structure would still be water consumption and water availability to even be able to serve that structure. So I can see the number of units being limited but at the same time I think the intent of the accessory dwelling was to facilitate that property owner if they needed to have an accessory structure and assist a family member. So I guess I'm not as bound on

that piece, just because I think the water availability with Sunlit Hills would potentially provide, will drive whether or not they would even be able to have an accessory structure or not. That's just my overall general take on accessory structures across the county.

CHAIR ROYBAL: Okay. Thank you, Commissioner Anaya. Any other questions from the Board? What's the pleasure of the Board?

COMMISSIONER HAMILTON: Given the circumstances in this case I would move to approve the appeal and allow the split. I don't think it's really – 4.6 and five acres and two structures isn't that big a difference to be that big a variance from the SLDC and given that it has water, the intent to be served with water. But I would do it with the conditions that were recommended.

CHAIR ROYBAL: So your motion is with staff conditions, correct?

COMMISSIONER HAMILTON: Yes. With staff conditions.

CHAIR ROYBAL: So we have a motion. Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair and Commissioner Hamilton, would you consider a friendly amendment that the staff condition on accessory structure be modified to where if water availability is present for the accessory structure, as opposed to just disallowing that? Would you consider that a friendly amendment?

COMMISSIONER HAMILTON: So, let me – can I ask for clarification on the amendment?

CHAIR ROYBAL: Yes.

COMMISSIONER HAMILTON: So at 9.1 – whatever it is, acres now, they could have an accessory structure. That would put two dwellings on the property. If they split it, they're going to have two dwellings on the property, as opposed to having four dwellings if each new house is then still able to put an accessory structure. And so –

MR. LOVATO: Mr. Chair, Commissioners, if I may interrupt. Are we talking about accessory structures or are we talking about accessory dwellings? Because they're allowed to have an accessory structure.

COMMISSIONER HAMILTON: Good point. Thank you. No. Accessory dwellings. Accessory structures are –

MR. LOVATO: Thank you.

COMMISSIONER HAMILTON: Thank you for that clarification.

COMMISSIONER ANAYA: And I am speaking to accessory dwelling, because that's a provision that we've provided for accommodating in the code, and when I look at – and I think what's coming into a factor into my logic is when I look at the lots around it, 3.4 acres, 4.4 acres, 2.8 acres, 3.8 acres, 3.3 acres, we're still going to have a lot size 4.5 each –

COMMISSIONER HAMILTON: 4.6.

COMMISSIONER ANAYA: 4.6. So we're still in the realm of what's existing in the neighborhood. So I guess to create an equity standpoint, all those lots around that particular – those lots are going to have that same access to accessory dwelling and it's going to be based on water availability. So I guess I'm looking at this yellow map here.

COMMISSIONER HAMILTON: Yes. I agree with either John or Penny. In some of the surrounding lots that are considered legal non-conforming, are they all – would they be allowed to build accessory dwellings on those smaller lots?

MR. LOVATO: Mr. Chair, Commissioner Hamilton, that is correct.
COMMISSIONER HAMILTON: They would be.
MR. LOVATO: They would be allowed that.
COMMISSIONER HAMILTON: Okay.
MR. LOVATO: Provided there's no notes or restrictions on their survey plat.

COMMISSIONER ANAYA: Yes, and so, Mr. Chair, Commissioner Hamilton, if I could. I think everything's contingent – I want to emphasize that point, on whatever's recorded in the plat, and then it's all contingent on the permitting process, and EID, right? Environment Department approval as well as what I'm suggesting that appropriate water. So I think it's important to add or make sure that we have in the conditions that if this is a friendly amendment or not, Commissioner, respectfully, that that's contingent on Environment Department and water availability and approval, right? So not a new well to accommodate any of this. This would be within the realm of approval by the water association and then Environment Department relative to a new dwelling.

COMMISSIONER HAMILTON: With all respect, I understand and I appreciate the point you're coming from, to maximize people's reasonable rights, but under the circumstances, this is in a zoning area where this is already a variance for existing zoning and it's both a water consideration and a density and access and traffic levels and that sort of thing. So I think I would prefer to go ahead with the motion with staff recommendation, of approving with staff recommendations.

COMMISSIONER ANAYA: So Mr. Chair, I think I respectfully made my perspective on the record and respecting my colleague, just for clarification, accessory in the motion with staff conditions, accessory buildings would be allowed but not accessory dwellings? So I appreciate the dialogue and the back and forth comments and feedback and so, Mr. Chair, I'll go ahead and second that motion.

CHAIR ROYBAL: Okay, so we have a motion and a second.

The motion passed by unanimous [4-0] voice vote. [Commissioner Moreno was not present for this action.]

IX. A. 2. **<u>CASE #APP 17-5161 Prabhu Khalsa and Regina Spamer Appeal,</u> Prabhu Khalsa Appellant, Oralynn Guerrerortiz, Agent, are appealing the Santa Fe County Planning Commission's decision for denial to allow a variance of the Sustainable Land Development Code Ordinance 2016-9 (SLDC) Chapter 7.17.9.3.2, governing height of a structure, to exceed 18' on a ridgetop, and to allow a two-story residence on a ridgetop. The property is located at 01 Anand Nivas Way within the Vicinity of Sombrillo within Section 12, Township 20 North, Range 8 East, (Commission District 1)**
[*Exhibit 3: Letter from James A. Trapp in opposition of the variance; Exhibit 4: Applicant supplied additional material*]

Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3

Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. V 17-5161
Prabhu Khalsa, Applicant

THIS MATTER came before the Board of County Commissioners (BCC) for hearing on August 12, 2017, on the application of Prabhu Khalsa (Applicant) for an appeal of the Santa Fe County Planning Commission's (Planning Commission) decision to deny a variance of the Sustainable Land Development Code Ordinance 2016-9 (SLDC) Chapter 7.17.9.3.2, governing height of a structure, to exceed 18' on a ridgetop, and to deny a variance to allow a two story residence on a ridgetop. The BCC, having reviewed the application, staff reports, Recommended Decision of the Hearing Examiner, Final Order of the Santa Fe County Planning Commission, and having conducted a public hearing on the request, finds that the application is well-taken and should be approved, and makes the following findings of fact and conclusions of law:

I. Background

1. On May 30, 2017, the Applicant submitted an application for a variance from Chapter 7.17.9.3.2, governing height of a structure, to exceed 18' on a ridgetop, and to allow a two story residence on a ridgetop, and a variance of Chapter 7, Section 7.17.9.2.4 to allow a driveway to disturb 30% slope to access a buildable area.
2. The property is located at 01 Anand Nivas Way within the Vicinity of Sombrillo Within, Section 12, Township 20 North, Range 8 East, (Commission District 1).

3. The Applicant is pursuing the request for a variance to allow a proposed 2,304 square foot residence to have a 22' pitched roof on a ridgetop, to allow a second floor in the residence, and to disturb 3,065 square feet of 30% slope for construction of their driveway on their 0.92 acre parcel.

4. On September 21, 2017, the variance request was presented to the Planning Commission and the Planning Commission approved slope disturbance in excess of 30% as memorialized in the findings of fact and conclusions of law in its written order. However, the Planning Commission denied the request for the height and two story variance request as the Applicant failed to prove extraordinary and exceptional conditions that would cause the Applicant undue hardship with strict compliance of the Code.

5. On October 17, 2017, the Applicant filed an application of appeal to the BCC to appeal the Planning Commission's denial of a variance from Chapter 7.17.9.3.2, governing height of a structure, to exceed 18' on a ridgetop, and to allow a two story residence on a ridgetop. The Applicant did not appeal the Planning Commission's approval of the variance of Chapter 7, Section 7.17.9.2.4, to allow a driveway to disturb 30% slope.

II. Applicable Provisions of the SLDC

6. Chapter 4, Section 4.9.7.1, Variances, Purpose, states:

> The purpose of this Section is to provide a mechanism in the form of a variance that grants a landowner relief from certain standards in this code where, due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner. The granting of an area variance shall allow a deviation from the dimensional requirements and standards of the Code, but in no way shall it authorize a use of land that is otherwise prohibited in the relevant zoning district.

7. Chapter 4, Section 4.9.7.4, Variances, Review criteria, states:

   A variance may be granted by only a majority of all the members of the Planning Commission (or the Board, on appeal from the Planning Commission) based upon the following criteria:

   a. where the request is not contrary to public interest;

   b. where due to extraordinary and exceptional situations or conditions of the property, the strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner; and

   c. so that the spirit of the SLDC is observed and substantial justice is done.

8. Chapter 4, Section 4.9.7.5 Variances, Conditions of approval, states:

   a. The Planning Commission may impose conditions on a variance request necessary to accomplish the purposes and intent of the SLDC and the SGMP and to prevent or minimize adverse impacts on the general health, safety and welfare of property owners and area residents.

   b. All approved variances run with the land, unless conditions of approval imposed by the Planning Commission specify otherwise.

   c. All approved variances automatically expire within one year of the date of approval, unless the applicant files a plat implementing the variance or substantial construction of the building or structure authorized by the variance occurs within that time.

9. Chapter 4, Section 4.5.4, Appeal of a Final Decision of the Planning Commission.

Any party with standing may appeal a final decision of the Planning Commission to the Board. The application seeking an appeal of a decision of the Planning Commission must be filed with the Administrator. An appeal from the decision of the Planning Commission must be filed within thirty (30) working days of the date of the decision and recordation of the final development order by the Planning Commission. The application shall be forwarded by the Administrator to the Board. The Administrator shall provide to the Board a copy of the record of the proceedings below of the decision appealed. The appeal shall be placed on the docket of the Board for consideration on the next available agenda. An appeal of the decision of the Planning Commission shall be reviewed de novo by the Board. The timely filing of an appeal shall stay further processing of the application unless the Board determines that special circumstances exist.

III. Public Hearing Process

10. As required by the SLDC, the Applicants presented the Application to the Technical Advisory Committee (TAC) on April 6, 2017, at the regular scheduled monthly meeting, which satisfied the requirements set forth in Chapter 4, TAC Meeting Table 4-1.

11. On July 27, 2017, this Application was presented to the Hearing Officer for consideration. The Hearing Officer supported in part of the Application and denied in part of the Application as memorialized in the findings of fact and conclusions of law and written order. The Hearing officer recommended approval to allow disturbance of 30% slope for a driveway to access the buildable area and found sufficient evidence of extraordinary and exceptional conditions that would cause the Applicant undue hardship with strict compliance of the Code. However, the Hearing Officer found insufficient evidence and recommended denial of the height and two story variance requests as the Applicant failed to prove extraordinary and exceptional conditions that would cause the Applicant undue hardship with strict compliance of the Code as the property contains 4,000 square feet to build an alternative style of home.

12. On September 21, 2017, the variance request was presented to the Planning Commission and the Planning Commission approved of slope disturbance in excess of 30% as memorialized in the findings of fact and conclusions of law and written order. However, the Planning Commission denied the request for the height and two story variance request as the Applicant failed to prove extraordinary and exceptional conditions that would cause the Applicant undue hardship with strict compliance of the Code.

13. On October 17, 2017, the Applicant filed an application of appeal to the BCC to appeal the Planning Commission's denial to allow a variance from Chapter 7.17.9.3.2, governing height of a structure, to exceed 18' on a ridgetop, and to allow a two story residence on a ridgetop. The Applicant did not appeal the Planning Commission's approval of the variance of Chapter 7, Section 7.17.9.2.4, to allow a driveway to disturb 30% slope.

14. Notice requirements were met as per Chapter 4, Section 4.6.3., General Notice of Application Requiring a Public Hearing, of the SLDC. In advance of a hearing on the application, the Applicant provided an affidavit of posting of notice of the hearing, confirming that public notice posting regarding the application was made for fifteen days on the property, beginning on November 27, 2017. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on November 27, 2017, as evidenced by a copy of that legal notice contained in the record. Notice of the hearing was sent to owners of land within 500' of the subject property and a list of persons sent a mailing is contained in the record.

IV. Standard of Review

15. Chapter 4, Section 4.5.4 provides that "[a]n appeal of the decision of the Planning Commission shall be reviewed *de novo* by the Board." Accordingly, the BCC reviews this appeal *de novo*.

V. Compliance with the SLDC

16. The Applicant's agent, Oralynn Guerroortiz, stated that, on paper, it appears there are 30 percent or greater slopes around the building site.
17. The Applicant's agent further stated that all of the slopes around the building site are man-made. The property was cleared and graded before the Applicant owned the property.
18. In addition, the Applicant's agent stated that 30 percent slope is on a five-foot hill.
19. Before the lots in the area were cleared and graded, there were gentle hills.
20. The BCC finds that based on the man-made character of the slopes and the 5 foot height of the slopes, that a house that exceeds 18' and has two stories will not have a signification impact on the view shed.
21. There are two-story homes on neighboring properties.
22. The BCC finds that the proposed development is not out of character with the neighboring properties.

VI. Public Comment

23. At the December 12, 2017, BCC meeting no one spoke in favor or in opposition of the requested appeal.
24. The record contains letters in opposition to the variance from James A. Trapp. Mr. Trapp states that the existing development in the area surrounding the property contributed to noise from vehicles, dust, and well water contamination.
25. The BCC finds that Mr. Trapp's concerns pertain primarily to the impact of building a home on the property, and that the code and zoning would allow a dwelling to be built.

26. The record contains letters in support of the variance from Megeath Spencer-Brockway, Rosita Sandoval, and Krishan Khalsa.

27. Megeath Spencer-Brockway is the neighbor directly to the east of the Applicant's proposed development and states that there are already two story homes on the same hill.

28. Rosita Sandoval is the neighbor to the North East of the Applicant's proposed development and supports the two-story home.

29. Krishan Khalsa is the immediate neighbor to the right and owns a two story home, and feels that because the two closest neighbors are two-story homes, the two story home is in line with the aesthetic of the neighborhood.

30. The BCC finds that the letters in support demonstrate that a two story home would not be out of character with the neighboring properties.

VII. Conclusions of Law

31. Any finding or conclusion set forth above that may be construed to constitute a conclusion of law is hereby incorporated as such to the same extent as if it was expressly denominated as a conclusion of law.

32. The Applicant's appeal of the Commission's decision to the BCC was timely.

33. Chapter 7.17.9.3.2, governing height of a structure, to exceed 18' on a ridgetop, and to allow a two story residence on a ridgetop, the BCC finds that:

    a. The variance is not contrary to the public interest and the spirit of the SLDC is observed and substantial justice is done if the variance is granted because the variance to allow a dwelling to exceed 18' and a two-story dwelling on a ridgetop is consistent with surrounding properties and existing two story

homes, the 5' elevation and man-made nature of the slopes do not create the type of impact to view shed that Chapter 7.17.9.3.2 is intended to prevent.

b. There would be peculiar and exceptional practical difficulties in not allowing the variance because the man-made slopes and slope height of 5 feet is an exceptional condition of the land that creates a practical difficulty for the Applicant.

WHEREFORE, the Santa Fe County Board of Commissioners hereby approves the application of the Applicant, Prabhu Khalsa, and grants the variance from Ordinance 2016-9, Chapter 7.17.9.3.2, governing height of a structure, to allow the proposed 22' dwelling to exceed 18' on a ridgetop, and to allow a two story residence on a ridgetop with a pitched roof that is 22' in height. The Planning Commission's approval of the variance to Chapter 7, Section 7.17.9.2.4 to allow a driveway to disturb 30% slope remains in effect. Pursuant to Chapter 4, Section 4.9.7.5, all approved variances automatically expire within one year of the date of approval, unless the applicant files a plat implementing the variance or substantial construction of the building or structure authorized by the variance occurs within that time.

IT IS SO ORDERED.

This Order was adopted by the Board of County Commissioners on this ___ day of _____, 2018.

THE SANTA FE BOAD OF COUNTY COMMISSIONERS

_____

Anna Hansen, Chairperson

ATTESTATION:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:

Bruce Frederick, County Attorney

MR. LOVATO: Mr. Chair, Commissioner Hamilton, that is correct.
COMMISSIONER HAMILTON: They would be.
MR. LOVATO: They would be allowed that.
COMMISSIONER HAMILTON: Okay.
MR. LOVATO: Provided there's no notes or restrictions on their survey plat.

COMMISSIONER ANAYA: Yes, and so, Mr. Chair, Commissioner Hamilton, if I could. I think everything's contingent – I want to emphasize that point, on whatever's recorded in the plat, and then it's all contingent on the permitting process, and EID, right? Environment Department approval as well as what I'm suggesting that appropriate water. So I think it's important to add or make sure that we have in the conditions that if this is a friendly amendment or not, Commissioner, respectfully, that that's contingent on Environment Department and water availability and approval, right? So not a new well to accommodate any of this. This would be within the realm of approval by the water association and then Environment Department relative to a new dwelling.

COMMISSIONER HAMILTON: With all respect, I understand and I appreciate the point you're coming from, to maximize people's reasonable rights, but under the circumstances, this is in a zoning area where this is already a variance for existing zoning and it's both a water consideration and a density and access and traffic levels and that sort of thing. So I think I would prefer to go ahead with the motion with staff recommendation, of approving with staff recommendations.

COMMISSIONER ANAYA: So Mr. Chair, I think I respectfully made my perspective on the record and respecting my colleague, just for clarification, accessory in the motion with staff conditions, accessory buildings would be allowed but not accessory dwellings? So I appreciate the dialogue and the back and forth comments and feedback and so, Mr. Chair, I'll go ahead and second that motion.

CHAIR ROYBAL: Okay, so we have a motion and a second.

The motion passed by unanimous [4-0] voice vote. [Commissioner Moreno was not present for this action.]

IX. A. 2. <u>CASE #APP 17-5161 Prabhu Khalsa and Regina Spamer Appeal,</u> Prabhu Khalsa Appellant, Oralynn Guerrerortiz, Agent, are appealing the Santa Fe County Planning Commission's decision for denial to allow a variance of the Sustainable Land Development Code Ordinance 2016-9 (SLDC) Chapter 7.17.9.3.2, governing height of a structure, to exceed 18' on a ridgetop, and to allow a two-story residence on a ridgetop. The property is located at 01 Anand Nivas Way within the Vicinity of Sombrillo within Section 12, Township 20 North, Range 8 East, (Commission District 1)
[*Exhibit 3: Letter from James A. Trapp in opposition of the variance; Exhibit 4: Applicant supplied additional material*]

MR. LOVATO: Thank you, Mr. Chair, Commissioners. On July 27, 2017, this application was presented to the Hearing Officer for consideration. The Hearing Officer supported in part of the application and denied in part of the application as memorialized in the findings of fact and conclusions of law written order. The Hearing Officer recommend approval to allow disturbance of 30 percent slope for a driveway to access the buildable area and finds sufficient evidence of extraordinary and exceptional conditions that would cause the applicant undue hardship with strict compliance of the code. However, the Hearing Officer found insufficient evidence and recommended denial of the height and two-story variance requests as the applicant failed to prove extraordinary and exceptional conditions that would cause the applicant undue hardship with strict compliance of the code as the property contains 4,000 square feet to build an alternative style of home

On September 21, 2017, the variance request was presented to the Planning Commission and the Planning Commission approved of slope disturbance in excess of 30 percent as memorialized in the findings of fact and conclusions of law written order. However, the Planning Commission denied the request for the height and two-story variance request as the applicant failed to prove extraordinary and exceptional conditions that would cause the applicant undue hardship with strict compliance of the code

The appellant states, because the lands around the property have been altered in the past, it is difficult to now tell what is natural and what has been altered by the hand of man. The slopes of 30 percent on the west side of the property are only 5 feet in height, and that side has been definitely impacted by existing development so it is not clear if the slopes are natural. The adjacent roadway cut for East Sombrillo Road shows gentle slope from the west side of the building site, and likely was representative of the natural slope prior to development. Photo Exhibit 1.

Recommendation: As staff did not recommend the initial variance request, staff recommends the BCC deny the appeal and uphold the Santa Fe County Planning Commission's decision to deny a variance of Chapter 7.17.9.3.2, Height of Structures on ridges, ridgelines, and shoulders shall not exceed 14 feet in height and shall be limited to one story.

The Hearing Officer recommended denial for the height to exceed 14 feet and to allow a two-story residence on a ridgetop as memorialized in the findings of fact and conclusions of law written order as the applicant failed to prove extraordinary and exceptional conditions that would cause the applicant undue hardship with strict compliance of the code as the property contains 4,000 square feet to build an alternative style of home.

The Planning Commission denied the variances for the residence to exceed 14 feet on a ridgetop and two-story because they believed that the application and plans provided did not meet the requirements and evidence necessity to grant the variance and meet the variance criteria. If the decision of the BCC is to deny the appeal, the BCC may adopt the findings of the Planning Commission.

An appeal of the decision of the Planning Commission shall be reviewed *de novo* by the Board per Chapter 4, Section 4.5.4 of the SLDC and the Board may make their own findings and conclusions. Mr. Chair, Commissioners, I stand for any questions.

CHAIR ROYBAL: Questions from the Board? Okay, so we'll wait for additional questions, but is the applicant here? Commissioner Anaya.

COMMISSIONER ANAYA: I guess I have one question if I could ask it.

MR. LOVATO: Sure.

COMMISSIONER ANAYA: What was the feedback – so looking at it we're talking about a difference of four feet, or six feet?

MR. LOVATO: Mr. Chair, Commissioner Anaya, if you look at the exhibit –

COMMISSIONER ANAYA: Four feet, right? So from an 18-foot to 22-foot. So we're talking about four feet.

MR. LOVATO: Correct. Correct. With a pitched roof.

COMMISSIONER ANAYA: And was there a lot of public comment? Opposition? Discussion? Relative to the public hearing at the Planning Commission meeting?

MR. LOVATO: Mr. Chair, Commissioner Anaya, most at the Planning Commission and at the Hearing Officer the concerns were septic and drainage.

COMMISSIONER ANAYA: So did anybody get up at the public hearing specifically and address the height variance that we're talking about?

MR. LOVATO: Mr. Chair, Commission, I don't believe so.

COMMISSIONER ANAYA: So all the comments that were of concern dealt with septic and other drainage issues that I'm assuming were rolled up in the final decision with conditions and those concerns that were raised were addressed in those conditions?

MR. LOVATO: Mr. Chair, Commissioner Anaya, I believe so and some of the other concerns were – just the height of the structure was a concern of staff, I should say.

COMMISSIONER ANAYA: Staff. Okay. But the neighborhood, there was no concern relative to the difference from 18 to 22 feet.

MR. LOVATO: Mr. Chair, Commissioner Anaya –

COMMISSIONER ANAYA: Penny's running over there so maybe there was.

MR. LOVATO: Mr. Chair, after looking at the Hearing Officer minutes there is – Mr. Vigil had concerns about looking at the property from his property in an overlook to his property on that actual ridgetop.

COMMISSIONER ANAYA: So there was one concern of height.

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

COMMISSIONER ANAYA: Great. Thank you. I appreciate that. Thank you, Mr. Chair.

[Duly sworn, Oralynn Guerrerortiz testified as follows:]

ORALYNN GUERRERORTIZ: Hi. I'm Oralynn Guerrerortiz. I'm a civil engineer with Design Enguinity here in Santa Fe. We're at 1421 Luisa Street, Suite E. Thank you, Commissioners, for hearing me today. I'm representing Prabhu Khalsa and his wife, Regina Spamer and their newborn son and their desire to build a home on property that Prabhu purchased more than ten years ago. His wife and newborn son are

not here tonight because we thought we were going to be on very late and I recommended that they not come because it was so late, but they're here with us in spirit.

I'll start with the fact that this is not a straightforward case. The primary question is is this a ridgetop? From the strict definition of a ridgetop, and that's what the staff is looking at, is that first little photograph, or the first sheet of my handout that I've given you, it in essence says it's the top part with shoulders on both sides at 30 percent or greater slopes. And on paper it seems clear. When you look at this property there is 30 percent slopes around the building site but let me explain a few things. This is – right here is East Sombrillo and Anand Nivas Way is right here. And this is the lot that the Khalsas own.

The front part of the lot has got all man-made slopes because of some significant cuts and I'll show you photographs of that. These are man-made slopes. These are man-made slopes. These are man-made slopes. And from my perspective, I was asked to define the man-made slopes and the ones I could certify to. And as a professional I have to be real careful when I certify things and make sure I'm accurate. So that's my interpretation of what is definitely man-made. But I have a problem because if you look at the aerial photography, this is this lot. To me, it looks like it's all man-made, and when I walk around that lot it all looks man-made. It's really hard to tell what is natural anymore. If somebody asked me to certify exactly what is natural, I couldn't certify to a single square foot of that property being natural. So that's part of the problem, is what is actually real.

The land is definitely being cleared and graded and it was all done before the Khalsas owned this property, well before they owned it.

The second point is what is a 30 percent ridgetop? This is a five-foot hill. That difference in elevation, that 30 percent right there, that's five feet. I went through a lot of meetings in this room and I saw a lot of code being developed. I think the intention was always to protect obvious ridgetops in our community – think along Hyde Park Road where you didn't want a house dominating a hill. This little five foot slope, that isn't what we were trying to protect. This is just sort of an outcome of the strict reading of the code, which I respect staff for doing, but I look forward to having your opinions on this, because I think when you go out there, these are little, tiny, little lumps and they're not really hills or ridges.

I'm going to also show you a photograph from East Sombrillo Road and that's this right here. The Khalsas' property is up here. When they built this road they carved into the hillside and I think these slopes that are here, these natural slopes going up, that was what was there originally. They were gentle hills. But over time people carved into them, building houses and doing development. And so what I've provided you in this stack of photographs are various pictures of the property and showing you homes that are actually there today. They've been carved into the land.

The staff report states that the approval of this variance would set a precedent and would allow other homes to be built on ridges. I believe that this property should not be defined as a ridge and that its man-made alterations disqualify it from protection and thus development will not set a precedent. The Khalsa property has two-story homes on two sides of it. The staff report says that these homes aren't on a ridge, but at least in the case of the home to the north, which is, again, there's a two-story home right here, and there's

a two-story home right here. If they're going to call this a ridge, then that house is on a ridge too. I don't think it's a ridge though, so I think that those people are fine.

We have letters of support from three out of our four neighbors so three quarters of the way around the property you'll find in this stack of paperwork our letters of support for a two-story home. Some of these people already own two-story homes but they are perfectly fine with having a new two-story home in their neighborhood.

Why does this young family want a two-story home in this location? Primarily because a two-story home has less footprint. It's less cost to build, less cost to heat, than a similar one-story home. They want to take advantage of the southern exposure and they want to build the most energy efficient, green home that they can. Naively, they thought that they were surrounded by two-story homes and that they could also have one and they had their home plans prepared. This family has been held up for months in building their home. They've got a newborn son, which you also have a photograph of that they were hoping would come home to that home when he was first born. Hopefully, we have him in that home before he's a year old.

So tonight we ask you to please grant this variance and allow the Khalsas to built their two-story home. Thank you very much. I'll stand for any questions.

CHAIR ROYBAL: I think we're going to wait for the questions until we get comments from the public. So is there anybody from the public that would like to speak in behalf or opposition on this request? Is there anybody here? So it doesn't look like we have anybody here to speak in opposition. Commissioner Anaya, I'll go to you. Do you have some questions?

COMMISSIONER ANAYA: Mr. Chair, I would defer to your feedback. I guess I would just say that I asked some questions early on as to what we're actually talking about; we're talking about four feet and I guess there's some design aspect where they could build a two-story house and build a flat roof house as a possible option to meet the height restrictions. Is that a possibility? Could they do that?

MR. LOVATO: Mr. Chair, Commissioner Anaya, not on a ridgetop.

COMMISSIONER ANAYA: So then I guess what's – I ask Penny or whoever wants to address it. So if I build a one-story house that's 18 feet tall, that's okay. But if I build a two-story house that's 18 feet tall, that's not okay? And help me understand why, if we're doing that.

MR. LOVATO: Mr. Chair, Commissioner Anaya, the flat roof would be 14-foot; a pitch would be 18. Could you technically get a second story in there? In an 18? Possibly, but you're going to have really low ceilings and a hard time and less room. Just with experience. But –

COMMISSIONER ANAYA: Not necessarily. You could have a lot – there's other ways, but we differentiate between a pitched roof and a ridgeline, which is the view line from my perspective, for a pitched roof we allow more which from my perspective it's six of one or half a dozen of the other. If it's 18 – and maybe this is something that we need to have discussion about for the broader code, if it's a height that you're trying to limit a viewshed, then that should be the height we look at, whether you're building a one-story of a two-story. If somebody builds a two-story that's 18 or a one-story that's 18, I don't know that we're accommodating – I guess I don't understand the logic there.

MR. LOVATO: Mr. Chair and Commissioner Anaya, I think to clarify, I think the intent of the pitched roof was for the elevations that are like 7,200, 7,000. You'll looking at more like Hyde Parks Estates, High Summit. Looking at La Barbaria area where you get heavy snow loads and therefore you have adequate ability to take care of that issue but in certain areas you know – I think that was the intent. Certainly we can probably discuss some of those issues.

COMMISSIONER ANAYA: Yes, and I just think from a practical application in New Mexico, in northern New Mexico, anywhere in Santa Fe County, be that as it may, you're going to have certain communities that you don't want anything but flat roofs, but they built that into their homeowner associations and their plats early on and that's a well known fact. So John Doe buys into that subdivision, they know. I have to build a flat-roof house because that's what I bought into. But practically speaking, it's better to have a pitched roof from a maintenance perspective and longevity perspective. But we're not here to debate that. I guess there's some differences between what we allow in flat and pitched but I think as far as line of sight is concerned, it should be one. I guess we should have a conversation about that.

And I think there is some merit to the comments made of the intent of the code and how we determine those slopes. I'm not so certain this was the target area but in fact there was a lot of dialogue a couple decades ago in the county associated with what went on here in Santa Fe and it wasn't about parcels like this; it was about all the parcels that we look around and see homes on the top of very steep elevations and surrounding areas.

So, Mr. Chair, I'd defer to your thoughts but that's my perspective.

MR. LOVATO: Mr. Chair and Commissioners, if I may interrupt, the Exhibit 2, we did not have this evidence as we took it forward in front of the Hearing Officer, nor did we have it front of the Planning Commission. So this is all new to us and we do see their statement. However, by definition, it's a ridgetop.

COMMISSIONER ANAYA: And Mr. Chair, if I could –

MR. LOVATO: By evidence, well, by what they've submitted we did not have during the Planning Commission and the Hearing Officer. We've gotten this for their submittal for their appeal and they are showing man-made slopes around the area and some that are not that she's had a hard time validating, Ms. Guerrerortiz. However, by definition this is a ridgetop and that's why we have this here in front of you.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Commissioner Anaya.

COMMISSIONER ANAYA: Commissioner Hamilton, are you okay if I – so I want to say this to staff and our internal team. We understand that you're not, nor do you ever come in here with malice intent against the public. And I just want to say that, because as we go through this evaluation process we have to have within law, which code is, and I know you know this, Oralynn, we have to be literal about, well, what's the definition? And what's the slope? And what is that definition? And the further you dig into a particular item the more complicated it can get. So I want to say on the record, I'm not picking on you but there are things that we find as we evaluate these as a Board that we have to take into consideration before we render a decision. But I appreciate the complexity of the code and how we have to work through the interpretations and the literal interpretations by law – which is it. It's a law – to make sure we adhere to the code

as best we can and that there are exceptions from time to time and this may be one of those exceptions. So I defer to the Chair. Sorry, Mr. Chair.

CHAIR ROYBAL: Thank you, Commissioner Anaya, and I just want to state for the record that we did call for public hearing and there wasn't anybody here to speak to this issue. And I do want to say we did get a letter from Mr. Trapp indicating that he didn't want any more residential structures built in the area. He does talk a little bit about it being in his view, but really it seems like his main concern is that he doesn't feel there should be any more buildings in the area, but according to our Land Development Code this is an acceptable building to go into this area. Correct?

MR. LOVATO: Mr. Chair, Commissioners, that is correct. It is a legal lot of record and we are entitled to go through the variance procedure for access or what not. We are entitled to give them a buildable –

CHAIR ROYBAL: Okay. And going by the additional information that Ms. Guerrerortiz has brought forward today, I'm going to make a motion for approval.

COMMISSIONER ANAYA: I'll second it, Mr. Chair.

CHAIR ROYBAL: So we have a motion and a second. But under discussion, Commissioner Hansen, did you have something?

COMMISSIONER HANSEN: I find it hard to understand how this is a ridgetop. So I'm sorry that that might go against the code but it doesn't seem to me that it was the intent of the code to use ridgetops on such a hilly surface in such an area. I'm not exactly sure where this is but from the photos and from the images that I see. I'm just wondering, all the houses around here are two-story, so you're not out of character in any way with the type of house that you're building?

MS. GUERRERORTIZ: No. No, not at all. It's very much in character with the other homes, with portals and things. It's a very nice design.

COMMISSIONER HANSEN: Okay. That's all I have.

MS. GUERRERORTIZ: And if I could just add a little more. It's just unfortunate that Mr. Khalsa didn't have somebody like myself to support him in front of the Hearing Officer and the Planning Commission. I didn't get involved until this step, but I think this case would have been obvious to the earlier committees if I had presented the case, but I wasn't involved at that point.

COMMISSIONER HANSEN: Thank you, Ms. Guerrerortiz.

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

The motion passed by unanimous [4-0] voice vote. [Commissioner Moreno was not present for this action.]

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I guess I have a request and it's not just connected to this case but it's connected to any of the cases that we have that come before us. We respect and value our committees and our Planning Commission, but from time to time we don't agree, which is part of the process. But I do think it's important for us as a County, whether it's this committee or another policy committee to give the information to that committee to give them feedback on the discussion that was

held at the Commission for information, right? Not to tell them to do anything or change anything they're doing, but to give them information back so that they understand.

Because I know from time to time we'll overturn a decision that was made and maybe they don't get the benefit of what was discussed by the Commission or the public or other evidence. In the last case, they didn't have the evidence that there was a water hookup that was available. That's a pretty big component when you're considering additional lots or additional structures. So maybe, Mr. Chair, we could convey that information back to the Planning Commission, just the minutes, if nothing else, on the decision and then what was decided and then they can read for themselves as to the discussion and what transpired. Thank you, Mr. Chair.

CHAIR ROYBAL: Thank you for those comments, Commissioner Anaya.

VIII. PRESENTATIONS

A. Update on the Progress of Negotiation of Rights-of-Way for County Roads on Pueblo Lands [*Exhibit 5: Presentation material*]

MR. FLORES: Good evening, Mr. Chair. While they're queuing up the projector I'll go ahead and set a little introduction and framework for the discussion tonight. Before we get started I'd like to acknowledge Lt. Governor Chris Moquino, Councilor Tim Martinez and Councilor Glenda Fred-Weahkee from the Pueblo of San Ildefonso that are joining us tonight. Also, Representative Carl Trujillo is in the audience. We have Josh Mann who is from the Department of the Interior Solicitor's Office. In the back, somewhere back there, Shannon McKinnon from the Bureau of Indian Affairs who will be doing one of the presentations tonight and we have quite a few people here tonight from the Bureau of Indian Affairs and the Eight Northern Pueblos. And then lastly I'd like to introduce Mr. John Fox and members of the New Mexico Land Title Association. They're joining us tonight as well.

So the framework tonight is we're going to provide –

COMMISSIONER ANAYA: Mr. Chair, if I could. Mr. Chair, I want to acknowledge former County Manager, Santa Fe County, my former boss at the time.

MR. FLORES: Mine too. Katherine's too.

COMMISSIONER ANAYA: Bureau of Reclamation, Estevan Lopez is here with us, and it's good to see you, Estevan. Welcome back.

MR. FLORES: Thank you, Mr. Chair. Thank you, Commissioner Anaya. So we're going to provide a power point presentation that talks about kind of where we came from and where we are tonight. Embedded in the power point presentation the County Manager and I will kind of tag-team on discussion points also and the frequently asked questions which are embedded in this presentation as well. Mr. McKinnon from BIA will do a short presentation on the Tribal Transportation program and how that comes into play for this item that we're discussing tonight. We'll close the discussion with next steps, what this means between now and hopefully the first meeting in January and just to let everyone know, if they haven't seen it already, there's handouts in the back that have this power point, the power point by Mr. McKinnon and also our frequently asked questions handout.

So Mr. Chair, I don't need to really reiterate too much on this but the Board back