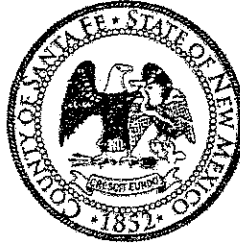


Henry P. Roybal
Commissioner, District 1

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 17-5021
Jerry West, Applicant
Santa Fe County, Appellant

ORDER

THIS MATTER came before the Board of County Commissioners (BCC) for hearing on October 10, 2017 on the Application of Appellant, Santa Fe County, appealing the Santa Fe County Planning Commission's (Commission) decision to approve Applicant, Jerry West's request for a variance from the Santa Fe County Sustainable Land Development Code, Ordinance No. 2016-9 (SLDC) Chapter 9, Table 9-14-4: Dimensional Standards of the San Marcos Community District overlay Rural Residential (SMCD RUR-R) zoning district, to allow 4 dwelling units on a 5.963 acre lot, where the allowable density is one dwelling unit per 10 acres. The BCC, having reviewed the Application, staff reports, the Hearing Officer's recommended decision, the Commission's Order, and having conducted a public hearing on the Application, finds that the Application is well-taken and upholds the Commission's determination and allows the Application based on the following findings of fact and conclusions of law:

I. Background

1. On August 15, 2017 the Appellant, through the Santa Fe County Land Use Administrator, Penny Ellis-Green, submitted an appeal of the Commission's decision to approve the

Applicant's request for density variance from the Sustainable Land Development Code (SLDC as amended), Chapter 9, Table 9-14-4: Dimensional Standards of the San Marcos Community District overlay Rural Residential (SMCD RUR-R) zoning district.

2. On June 15, 2017, the Commission approved a variance of Chapter 9, Table 9-14-4 to allow the applicant to exceed the density requirement of one dwelling unit per ten acres by allowing 4 dwelling units on a 5.963 acre lot.
3. In its appeal, the Appellant states "The BCC took action on a variance request to subdivide the subject property in 2006. The BCC granted approval of the variance with the condition that no additional dwellings be allowed on the property. Only 2 dwellings were allowed by the BCC. On May 15, 2017 the Commission approved a variance to allow 4 dwelling units on this property. Therefore the Appellant is appealing the Commission's decision in accordance with the BCC's earlier condition."
4. The property consists of 5.963 acres located at 2 Loma Oriente Road within, Section 26, Township 15 North, Range 8 East in Commission District 5.
5. There are currently 4 dwellings located on the 5.963 acre lot.
6. On June 13, 2006, the BCC acted upon a variance to allow a 10.9 acre lot to be divided into 2 lots, one of which is the subject of this appeal. The BCC allowed that variance with conditions that read:
 1. Water use shall be restricted to 0.25 acre-feet per lot. A water meter shall be installed on both lots. Annual water meter readings shall be submitted to the Land Use Administrator by January 31st of each year. Water restrictions shall be recorded in the County Clerk's Office.
 2. No additional dwellings will be allowed on the property.

3. The existing driveway will serve both homes.
4. The applicant shall submit an updated Environment Department liquid waste permit showing correct lot size and correct number of homes.
5. No further division of this land shall be permitted; this shall be noted on the plat.
6. Failure to comply with all conditions shall result in administrative revocation of the appeal.

II. Applicable Provisions of the SLDC

7. The Applicable provisions of the Sustainable Land Development Code, Ordinance No. 2016-9 (SLDC), which govern the subject application are the Following:

8. Chapter 4, Section 4.9.7.1, Variances, Purpose

“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 of the Code, but in no way shall it authorize a use of land that is otherwise prohibited in the relevant zoning district.”

- Chapter 4, Section 4.9.7.4, Variance Review criteria

“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:

1. Where the request is not contrary to public interest;
 2. 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
 3. So that the spirit of the SLDC is observed and substantial justice is done.”
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. The Public Hearing Process

10. As required by the SLDC, the Applicant presented the Application to the Technical Advisory Committee (TAC) on November 3, 2016, at the regular scheduled monthly meeting, which satisfied the requirements set forth in Chapter 4, TAC Meeting Table 4-1.
11. The Applicant conducted a pre-application neighborhood meeting on December 16, 2016, in accordance with Chapter 4, Section 4.4.4. Table 4-1.
12. Evidence in the record established that the 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 Applicants 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 April 12, 2017. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on April 12, 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 those people sent a mailing was contained in the record. In advance of a hearing on the Appeal, public notice posting regarding the Appeal was made for fifteen days on the property. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on September 25, 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 those people sent a mailing was contained in the record.

13. On April 27, 2017, the Application was presented to the Hearing Officer. The Hearing Officer recommended denial of the requested variance.

14. On June 15, 2017, the Application was presented to the Commission.

15. At the public hearing before the Commission on May 15, 2017, County staff recommended denial of the Applicant's variance request. Staff recommended converting two of the dwelling units into studios, by removing the kitchens and showers and bathtubs. County Staff recommended that if the variance was granted, the following conditions should be imposed:

- a. The Applicant must obtain building permits for the two dwelling units constructed after 1981;
- b. There shall be no expansion or addition to any of the dwelling units other than the primary dwelling unit;
- c. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application.

16. The recommendation of denial was based on the fact that the Applicant did not address the variance criteria of the SLDC, the fact that a variance was already granted to the Applicant when he was allowed a lot split, and the fact that the Applicant informed the BCC at the time of the lot split that there were only two dwelling units on the property.

Finally, as a condition of the lot split, the BCC prohibited further dwelling units on the property.

17. The Commission approved the requested variance by a 5-2 vote, subject to the conditions recommended by Staff.

IV. Standard of Review

18. 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

19. The Application acknowledged that there are currently 4 dwelling units on the 5.963 acre lot.
20. The Applicant’s property was approximately ten acres, and was approved for a lot split in 2006 by the Board of County Commissioners, reducing it to 5.963 acres.
21. The Applicant testified that in 2011, he received a permit for an art studio/shed and started construction. On August 8, 2016, Santa Fe County Code Enforcement noticed there was construction going on at the subject property and that there was no building permit posted on the property for the structure under construction. The permit that was issued for this structure had expired in 2013. The Applicant states that at that time he was not aware his permit had expired.
22. Chapter 9, Table 9-14-4 Dimensional Standards SMCD RUR-R (Rural Residential) allows 1 dwelling unit per 10 acres. The Applicant has submitted documentation which demonstrates that 2 dwellings existed prior to 1981 which are therefore considered legal

non-conforming. The Applicant was unable to provide documentation of permitting for the remaining two dwelling units, although he testified that one of the units was permitted in 1991 as a studio, and converted over time into a dwelling unit.

23. The Applicant confirmed that each of the four dwelling units has a bathroom and kitchen, but only one bedroom.

24. The Applicant further clarified that all buildings on the property were built before 2006, but kitchens were added later to two of the buildings. The Applicant states that kitchens may have been added between 2006 and 2011, but is unsure of the exact year.

25. The Applicant asserted that the impact of four individuals living in these four dwellings, could be less than the impact of a family dwelling with five bathrooms.

VI. Public Comment

26. At the public hearing Louise Baum, Lawrence Longacre, Valley West, Laura Lew Allen, Gayla Bechtol, and Cynthia Gonzales spoke in favor of the Application, commenting on how the property has helped build the community by providing a location for artists. They testified to the fact that the development helped make the San Marcos Community a cohesive, thriving, friendly, artist-oriented community. The property has served as a destination for artists for more than fifty years and the structures on the property evolved over many decades. They asserted in effect that the spirit of the SLDC is honored when variances are granted to recognize the unique aspects of each community and honoring the sense of place and desirable qualities of the County.

27. No one spoke in opposition to the Application.

VII. Conclusions of Law

28. The structures are carefully crafted of adobe, and preservation of the property will enhance the physical, cultural, social and traditional and environmental values treasured by County residents, as supported by Chapter 1, Section 1.4.2.8 of the SLDC.
29. Allowing these structures may honor the objectives of Chapter 1, Section 1.4.2.11, accommodating arts and crafts, including live/work and home occupations in order to support a balanced and vigorous economy. The requested variance is not contrary to public interest.
30. There would be peculiar and exceptional practical difficulties in not allowing the variance.
31. The spirit of the SLDC is observed and substantial justice is done by granting this variance.

9.1.1. WHEREFORE, the Board of County Commissioners hereby upholds the Planning Commission's decision, thereby denying the appeal, and approves the Application of Jerry West (Applicant) for a Variance from Ordinance No. 2016-9, the Sustainable Land Development Code (SLDC as amended), Chapter 9, Table 9-14-4: Dimensional Standards of the San Marcos Community District overlay Rural Residential (SMCD RUR-R) zoning district to allow the four existing dwelling units to remain on the 5.963 acre lot, subject to the following conditions:

1. The Applicant must obtain building permits for the two dwelling units constructed after 1981;
2. There shall be no expansion or addition to any of the dwelling units other than the primary dwelling unit;

3. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application.

IT IS SO ORDERED.

This Order was adopted by the Commission on this ____ day of _____, 2018.


THE SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS

Anna Hansen, Chairperson

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



R. Bruce Frederick, County Attorney

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

- VI. B. Resolution No. 2017-108, a Resolution Authorizing the County Manager to Take All Actions Necessary or Appropriate to Join Santa Fe County as Plaintiff in an Action Against the United States Department of Housing and Urban Development (HUD) Based Upon HUD'S 2012 Breach of the Annual Contributions Contract [Exhibit 5: Resolution Text]

CHAIR ROYBAL: Commissioner Hansen.

COMMISSIONER HANSEN: Yes. I would like to move to approve a resolution authorizing the County Manager to take all actions necessary or appropriate to join Santa Fe County as plaintiff in an action against the United States Department of Housing and Urban Development, HUD, based on HUD'S 2012 Breach of the Annual Contributions Contract.

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

COMMISSIONER HAMILTON: Second.

COMMISSIONER MORENO: Second.

CHAIR ROYBAL: I have a motion and multiple seconds.

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

VIII. PUBLIC HEARINGS

A. Land Use Cases

1. CASE # MIS 17-5222 Jerry West Reconsideration of a Condition. Jerry West, Applicant, Sommer, Karnes & Associates, LLP, Agent, Request the Reconsideration of a Condition Imposed by the Board of County Commissioners on a Lot Size Variance for Jerry West. The Variance Allowed the Division of 10.9 Acres into Two Lots and Was Conditioned that No Additional Dwellings (Beyond What Was Existing) Would Be Allowed on the Property. The Applicant is Requesting an Amendment to the Condition Imposed by the BCC to Allow 4 Dwelling Units on 5.963-Acre Lot. The Property is Located Within the San Marcos Community Overlay District at 2 Loma Oriente Road, Within Section 26, Township 15 North, Range 8 East (Commission District 5)
2. CASE # APP 17-5021 Appeal of Jerry West Variance. Santa Fe County, Appellant, is Appealing the Santa Fe County Planning Commission's Decision to Approve a Density Variance (Jerry West Variance Case # V17-5020) of Chapter 9, Table 9-14-4: Dimensional Standards of the San Marcos Community District Overlay Rural Residential (SMCD RUR-R) Zoning District. The Planning Commission Approved a Variance to Exceed the Density Requirement of One Dwelling

SFC CLERK RECORDED 11/15/2017

**Unit per Ten Acres by Allowing Four Dwelling Units on a
5.963-Acre Lot. The Property is Located Within the San
Marcos Community Overlay District at 2 Loma Oriente Road,
Within Section 26, Township 15 North, Range 8 East
(Commission District 5)**

MR. SHAFFER: Mr. Chair, if I could, and I'm sorry to interrupt, but I think the first two cases on the public hearings both relate to the same property and arise out of the same basic materials facts, and so the recommendation from staff, and I believe that the applicant's attorney would agree with this is that we consolidate those two public hearings so that you only have one hearing and only hear the evidence one time related to both matters, and then the Board will be able to make a decision on both cases. Again, you would grant the change of condition, seemingly, and the variance, or you would deny the change of condition and deny the variance. I don't know that you would really mix and match as between those two, but that's a decision for the Board once you've heard all the evidence. But again, the cases arise out of the same facts and raise the same issue as to whether to allow additional density on the property.

CHAIR ROYBAL: Okay, thank you for that, Attorney Shaffer. I'm fine with going and putting the two together. Is there any objections from the rest of the Commissioners? Okay, seeing none, we'll go ahead and combine the two.

VICKI LUCERO (Building & Development Services Manager): Thank you, Mr. Chair, Commissioners. The applicant is the owner of the property as indicated by the warranty deed. Karl H. Sommer of Sommer, Karnes and Associates, LLP is authorized by the property owner to pursue this request for an amendment to a condition to allow four dwelling units on a 5.963-acre lot, as evidenced by a copy of the written authorization contained in the record.

On June 13, 2006, the Board of County Commissioners approved a request for a lot split to create a division of 10.9 acres into two lots. The BCC imposed a condition of approval on the property that no additional dwellings will be allowed on the property. There were two dwelling units on the property at that time.

On April 27, 2017, the applicant presented a variance to the Hearing Officer for Public Hearing. The Applicant requested a variance of Ordinance No. 2016-9, the SLDC, Chapter 9, Table 9-14-4, Dimensional Standards of the San Marcos Community District overlay Rural Residential zoning district. The applicant requested a variance to exceed the density requirement of one dwelling unit per ten acres by allowing four dwelling units on a 5.963-acre lot. The Applicant has submitted documentation which demonstrates that two dwellings existed prior to 1981 and therefore are consider legal non-conforming. These two dwellings were in place in 2006 when the applicant went to the board. The applicant was unable to provide documentation for the remaining other two dwelling units which were converted in to residences after 2006. The Hearing Officer, having reviewed the application, staff reports, and having conducted a public hearing on the requests, found that the application is not well-taken and recommended that it should be denied, as memorialized in her findings of fact and conclusions of law in a written order.

On June 15, 2017, the Planning Commission approved the requested variance by a 5-2 vote and their final order is listed in Exhibit 10.

SFC CLERK RECORDED 11/15/2017

The applicant's agent states, "At some point, existing structures on the property were converted into dwelling units resulting in a total of four dwelling units on the property. In 2017, the Planning Commission approved the applicant's request for a variance to allow for the four dwelling units on the property to remain. Subsequently, Land Use staff recognized the condition that was previously imposed by the BCC that limited the number of dwelling units, and concluded that since the condition was imposed by the BCC only the BCC can act to alter or remove the condition."

The applicant's agent requests that the BCC remove the Condition to allow the four dwelling units on the property to remain in place, as intended by the Planning Commission.

Staff recommendation: Staff recommends upholding the Santa Fe County Board of County Commission's 2006 decision. The BCC granted the variance requested allowing two dwellings on this property which still exceeded density with the condition that no additional dwelling would be allowed on the property. Staff recommends denial of the applicant's request for amendment to the condition to allow four dwelling units on the 5.963-acre lot. The applicant has not addressed the variance criteria. The BCC already granted a variance to allow this five-acre lot with two dwellings. The applicant stated to the Board at that time that there were only two dwellings on this property. Staff recommends that the two illegal dwelling units be converted to accessory structures by permanently removing the kitchens and showers and bathtubs.

It is at the discretion of the BCC to consider an amendment to the approved condition. The BCC may consider the information presented by staff and the applicant to allow four dwelling units on the 5.963-acre lot. If the BCC approves an amendment to the condition, staff recommends the following conditions be imposed. Mr. Chair, may I enter those conditions into the record?

[The conditions are as follows:]

1. The Applicant must obtain building permits for both dwelling units.
2. There shall be no expansion or addition to any of the dwelling units other than the primary dwelling unit.
3. The Applicant shall comply with all Fire Prevention Division requirements at time of development permit Application.

MS. LUCERO: Thank you. Would you like me to read the caption on the next case?

CHAIR ROYBAL: Yes, please.

MS. LUCERO: Case # APP.17-5021 Jerry West Appeal. Santa Fe County, appellant, is appealing the Santa Fe County Planning Commission's decision to approve a density variance of Chapter 9, Table 9-14-4: Dimensional Standards of the San Marcos Community District overlay Rural Residential zoning district. The Planning Commission approved a variance to exceed the density requirement of one dwelling unit per ten acres by allowing four dwelling units on a 5.963-acre lot. The property is located within the San Marcos Community Overlay District at 2 Loma Oriente Road within, Section 26, Township 15 North, Range 8 East, Commission District 5.

Mr. Chair, I believe that I've gone into the history of the application and the project, but just to kind of give an overview, as I mentioned before, the Planning Commission granted a variance to allow the applicant to have four dwelling units on their

SFC CLERK RECORDED 11/15/2017

property. The County Commission had previously granted a variance to split the property, which had a condition of approval that only two dwelling units would be allowed. Therefore, because the County Commission had already imposed that condition staff's position was that the Planning Commission did not have the authority to overturn a condition that was previously approved by the Board. Therefore we're appealing the Planning Commission's decision to grant the variance. I stand for any questions.

CHAIR ROYBAL: Thank you. Questions from the Board?

COMMISSIONER HANSEN: I'll ask questions after.

CHAIR ROYBAL: We're going to go ahead – if the applicant is here and they'd like to address the Commission as well.

KARL SOMMER: Mr. Chair, members of the Board and my mailing address is Post Office Box 2476, Santa Fe, New Mexico, 87504, and I'm here tonight on behalf of Meridel Rubenstein and Jerry West. Meridel is a teacher and couldn't be here tonight. Mr. Jerry West is seated here to my left and we have a presentation and there's people here from the community that will speak as well.

This is a unique case. In all my years of practicing before you all and in this community I get the rare opportunity to meet people who have made Santa Fe really what it is. This is one of those cases. I never knew Jerry and I didn't know Meridel till they walked in my office. I found these two books about them and they are artists and people who have been part of our community for a long, long time and maybe you're familiar with the books and maybe you're familiar with their work. I read through them and I realized this is the real deal. And I say that because generally in a case like this it doesn't really matter who you're dealing with. It matters what is the rule? How do we apply it? What's going on?

In a variance criteria, however, you have variance criteria that allow you to take into account a great deal more than what are just the facts. It's the totality of the circumstances that you get to look at and in this particular presentation and what I think you're going to hear from the community this is a unique situation. We're here because the Planning Commission granted to variance to remain on the property what is there. County Land Use staff recognized after the hearing was over that the plat contained a condition back from 2006 and said, well, the Planning Commission doesn't have the authority to override that. Only the Board of County Commissioners does, so Karl, would you please apply to remove that condition and in the meantime we'll appeal the variance criteria and we'll leave it up to the Board. That's why we're here tonight for your consideration of these circumstances, and I think that Mr. Shaffer is correct. It's all the same body of facts in both cases and at the end of the day, you all are going to have to decide whether or not under your code, under these circumstances it should remain the way it is.

In reading about this property and knowing about it, this property was homesteaded by Jerry's family back in the forties. It was 240 acres. His mother and father raised their kids there and this is the West family, a large family. They grew up and helped build the community that is there on State Road 14. And I think that one of the testaments to that is – just Karl Sommer speaking – this room is filled with people who support Jerry and Meridel, because precisely they helped build this.

The way this community evolved over time was almost out of what you read in

SFC CLERK RECORDED 11/15/2017

books. People helping each other on the weekend, building, making adobes, building their houses piece by piece, a bit at a time, kind of like the old barn-raising. But an added element is these structures are just beautifully hand-crafted. Aside from being a talented artist, Jerry and his brother and his family were talented builders. They built my hand, put up everything by hand. They are excellent craftsmen. And then did so over the course of 40 years, long before there was a County code, structures were going up on this property.

In addition to that, what made this property and this community really important was Jerry as an artist and Meridel as an artist invited artists from other places in the world to come live on the property, do their art, become a part of the community. Right next door to this property is a property owned by Laura Lewellen. You'll recognize that name from a local gallery. Her parents were artists. They moved to this property because of Jerry. Jerry split his property up. They developed there. They became part of the community. There are many, many artists who have come to Santa Fe, worked on Jerry's property and Meridel's property and moved out into the community. One of the structures we're dealing with I think was occupied by a gentleman who got his start who was also extremely talented and added to this community.

Now, I say these things knowing that all the unique contribution and all that community spirit and all building that doesn't save Jerry and Meridel from the law. You still have to look at the law. You have to look at the variance criteria and ask yourself, under these circumstances, under the totality of how this property developed, is a variance warranted? The Planning Commission said yes, it is, and I think you're going to hear why after a while.

I'd like to turn your attention to what is exactly the variance criteria they're looking at. And as you know your code doesn't tell you exactly how to decide a variance. It gives you fairly broad categories for you to determine what is appropriate. I'd like to go through those just briefly.

First of all, the first criterion is where the request is not contrary to the public interest. You all get to decide what is in the public interest and what is not in the public interest. Second, the criterion says where due to exceptional, extraordinary situation or conditions of the property the strict application would result in a peculiar and exceptional practical difficulty and exceptional undue hardship on the owner. You get to decide what those are because your code does not define those terms. And it's done so broadly so that you can take into account all of the facts and circumstances. And then finally, the spirit of the SLDC is observed and substantial justice is done. I'd like to talk about those three criteria for you when you analyze this case.

Meridel and Jerry live on this property and they were married for many, many years. They're divorced but they still own and live on this property and they do their artwork there, and they have two other units that other people who are often artists live and rent from them. The question in your first criterion is what is in the public interest. In this particular situation, this property developed over the course of four decades. Many structures put on this property without permits when permits weren't required. Two of the structures that were put on this property were converted to dwelling units so that other artists could live with them without permits. That is admitted and we understand that. But what is unique and what is in the public interest? And in this particular case a community has evolved and developed in this area and in part of Santa Fe and in many parts of Santa

SFC CLERK RECORDED 11/15/2017

Fe in a similar way. Is it in the public interest to allow that to continue?

I was asked earlier tonight, well, what do I think about this case? What do you think the Board is going to do? I don't know what the Board is going to do, I said, but I do believe this. I said that sometimes in unique cases the public interest is served and that violence is not done to the public interest when particular rules are not followed. This is one of those cases. This is a unique community helped to be developed by Jerry and his family, an extended group of people who had contributed to Santa Fe and its fame and its rich culture, and I think you're going to hear tonight from people who have known Jerry forever that that's true. It's not just Karl Sommer saying this is it.

So I ask you when you look at that criteria look at these circumstances. Is it in the public interest in this particular case to allow this to continue given its history, given what we're talking about? Of course I leave it to you all to make that decision. It is your decision. I believe that because of the unique circumstances and the unique contribution of this property, these people to this community, it is in the public interest. But you get to decide that.

The second criterion dealing with extraordinary and exceptional situation or conditions on the property the strict application would impose a hardship. In this particular circumstance what are we dealing with? We're dealing with two people. Jerry is 84. He's lived on this property and helped develop it since his parents bought it in the forties and his family was raised there. So what's unique about this property is that it developed over a long period of time, some without permits, some with permits. And the reason I think that's important is the manner in which this community developed was often without permits. And it was with friends. And it was often without licensed contractors. But when you look at these circumstances, these people have lived here. They didn't come to the property and speculate and do that. They find themselves where they grew up, where they live, and that is exceptional in this time. And they're passing these properties on to their children and that is a condition that is exceptional about this property that I think you consider under the circumstances.

And your final criterion is whether substantial justice is done and the spirit of the SLDC is adhered to. What is the spirit of the SLDC today? On this property today, because there are two legal dwelling units, the code would allow them one more accessory dwelling unit. So really under the code today we're dealing with the spirit of the SLDC is one extra unit. That's what we're talking about in terms of what the policy of the code would allow in this particular circumstance. So does this property meet that spirit give the circumstances? We submit to you that it does. And again, I go back to the idea that just because a particular rule is not followed does not mean that violence is being done to this community. I think this property, its unique development and its ownership by Jerry and Meridel and their contribution to the community is an enhancement to this community, and to change it in some way diminish their ability to continue as they have done for years and years would not be in keeping with the spirit and it would not do substantial justice.

Let me add to you how this came about. In 2011, after the division was done, Jerry applied for a permit to build a large storage facility for Meridel's art, because she's a photographer and it needs specific specifications to preserve her art. He pulled the permit, began construction, and then he moved away to Roswell for a year to be an artist

SFC CLERK RECORDED 11/15/2017

in residence down in their program. He came back and after a couple years, he said, well, I've got to start this up again and he had a gentleman helping him and he said, go get the permit renewed. He went to CID, he got the permit renewed for that structure. He didn't come to the County and get the permit renewed because as you all know, there's a two-step. You've got to get a development permit and then you go to CID.

Well, he started construction again with his friend, because he thought the permit had been renewed, and one of the code enforcement people was driving by and saw this construction and said, hey, where's your permit? He showed it to him. He says, well, you've got to come in and get it renewed at the County. Well, as part of that renewal process of the storage facility an inspection was done, and that's when staff went out and found out what was on the property.

So we're not here -- and I say that to you because I don't want you to walk away from this case or look at this case that you're dealing with people who just don't care about the law. They're going to do whatever they're going to do. This came about really because the County issued a permit in 2011 and they didn't catch this. It wasn't hidden from it. I guess they didn't do an inspection in 2011 and see what was on the property. Because if they had we would have been here probably in 2011, talking to you. That's the genesis of this case. It wasn't like Jerry ran out in the night and was doing things on his property. That's not how this property developed. You're not dealing with people who have a disrespect for the law or a disregard for their community.

I'm going to end it there and answer any questions you might have and turn it over to whoever else might be speaking this evening, but I will end this with as you all are very familiar with this community. This room is not filled with people who you generally see opposing variances. It's filled with the opposite. People are here tonight in support and in your minutes you will see that Mr. Wait who is pretty well regarded in that community showed up at the Planning Commission and spoke in favor of keeping this the way it is. I'm not going to go through his testimony but it's there. With that I request on behalf of Jerry and Meridel that you remove the condition and that you grant the variance that he's requested for the reasons that I've talked about. And I'm not here saying you must do this or you must do that. We leave it to your discretion and we ask for your consideration. Thank you.

CHAIR ROYBAL: Thank you, Mr. Sommer. I think we're going to go ahead and go to the public comment and then we'll ask questions from the Commission afterwards. Can we get everybody to rise and be sworn in? How many people are here today and want to talk in favor or against this. Okay, so we have about six, seven. That's not too many so I'm just going to ask if we can try not to be repetitive. Maybe eight. So if we could try not to be repetitive and just keep it short but as much time as you need to go ahead and get your feelings out and what you want to say. So if we can have everybody stand up and get sworn in at one time

[Those wishing to speak were placed under oath.]

CHAIR ROYBAL: Okay, so if we can have our first speaker, and if you could state your name and address for the record.

[Duly sworn, Louise Baum testified as follows:]

LOUISE BAUM: Hi. My name is Louise Baum and I live at 54 San Marcos Road West, which is off of Route 14, just a couple miles down the road from

SFC CLERK RECORDED 11/15/2017

Jerry's place. I feel that Jerry and Meridel really are the spirit of Santa Fe. They really embody that and they really help it to exist and flourish. Jerry's been here a long time. He's been here since he was two years old. He's been here longer than most of us, than many of us. Jerry is really a chronicler, not only of his own life here but really of this place, and I think he's getting more and more recognized for how valuable that is. His paintings really are about the character of this place, about the characters of this place, honoring it, honoring the people who create this wonderful, amazing place of Santa Fe. And kind of crucial to that.

I also think in spite of Jerry having seen so many changes to this place he has always been so generous to newcomers and very inclusive. And really, Jerry's kind of like the glue of the community. He makes you feel at home, he makes you feel welcome. Him being an artist that's so involved with Santa Fe and knows sort of everything about it, the way it used to be, the way it is. It's really an invaluable resource. It makes you feel part of this place. I so much want Jerry to flourish and continue and the West to continue to flourish in that spot where they've been for so long. And Jerry and Meridel are both really dedicated artists and they're not rich. Jerry has never speculated or built houses to make lots of money and turn them over. He's built beautiful houses, but they're modest. They're small. The houses on this property are the opposite of McMansions. They're small, livable, important houses to the people who have been lucky enough to be in their atmosphere, which is a really wonderful, deep, artistic atmosphere, and it's so much a part of this place, and I just really request you to grant him the variance.

CHAIR ROYBAL: Thank you, Ms. Baum. Can we have our next speaker?

[Previously sworn, Lawrence Longacre testified as follows:]

LAWRENCE LONGACRE: Good evening, folks. My name is Lawrence Longacre. I live at 609 Calle de Marcos in Santa Fe. I was born in Cerrillos in 1933 and I have known Jerry since probably 1943 when we were students at Wood Gormley, and then Jerry and I were in the army together. We all know that Santa Fe is one of the great art colonies of the world and people responsible for some of that was Jerry's dad Hal who had a studio up on Canyon Road, and then Jerry himself has produced some magnificent works of art. So Jerry contributed to what Santa Fe County is today, through his buildings, his art, and just being a good, all-around good guy.

But the main point I would like to make is that in 1968 when George Gonzales, the father of the present mayor was elected mayor of Santa Fe he appointed me to the first every Santa Fe City/County Planning Commission, a post I had for four years. I was chairman of it and I heard many cases like this one. Then I went on and I got elected to the Santa Fe City Council in 1972, so I heard many more cases then. The point I'd like to make is that you folks are empowered to allow variances or to shift the law one way or another based on the merits of it and I know that it's possible. Not everything is chiseled in stone, like Frederico would have you believe. So it's within your power to allow Jerry to come out of this okay. And that's what I'm after for him too. I don't really know the ins and outs of it but I know that Jerry would never do anything to bring any harm to the citizens of the county. So I'm just asking you to take into account the power that you have. Thank you.

CHAIR ROYBAL: Thank you, Mr. Longacre. Can we have our next speaker, please?

SFC CLERK RECORDED 11/15/2017

[Previously sworn, Valley West testified as follows:]

VALLEY WEST: My name is Valley West. I'm Jerry West's daughter. I live at 3659 Spring River Road in Roswell, New Mexico. This is a property that I grew up on and I just think it's important that you know that it was an organic type of growth. My dad's a builder. He's an artist. He's a community organizer. It would do a great disservice for this variance not to be allowed. He doesn't have a lot of money. He lives on the property. He makes what he lives on is the meager rent that he collects on one of the extra buildings. I hope that you grant him this variance. I appreciate your listening.

CHAIR ROYBAL: Thank you, Ms. West. Can we have our next speaker, please?

[Previously sworn, Laura LewAllen testified as follows:]

LAURA LEWALLEN: Laura LewAllen. 2 Loma Oriente is my address and I am part of this community because my parents bought property from Jerry. Jerry and my father went to Highlands together and I, like Valley, grew up on this property. I've raised my son on this property and I can't think of it being any other way than it is now. I feel safe there. I feel at home there and it's just a very, very special place, and Jerry is a special person. He's become a father to me and I think it's very important that these types of situations are looked at for quality. Quality of people involved. Quality of buildings involved and I'm very proud of where I live and I'm proud of Jerry and our little community and I hope it doesn't have to change. Thank you.

CHAIR ROYBAL: Thank you, Ms. LewAllen. I had a question of our County Attorney. I didn't catch it until now but the speakers are coming up now, a couple of them didn't mention that they are under oath. Is that okay?

MR. SHAFFER: If they could just state that now and recognize that they were under oath when they spoke I think that would be fine.

CHAIR ROYBAL: So the individuals that did come up already to speak, if you could state your name and address and that your statements were under oath. Is that correct? Sorry I didn't catch that earlier but typically when you come up you state your name, your address and that you're under oath. So I missed that. It may have changed a little bit. Anybody that did speak if you could just get up and just say you made your comments under oath.

[Those that spoke, stated that they were under oath.]

CHAIR ROYBAL: So our next speakers that do come up if we could just make sure and make that statement when you say your name and address. Thank you. Next speaker.

[Previously sworn, Gayla Bechtol testified as follows:]

GAYLA BECHTOL: I'm Gayla Bechtol. I live at 1813 Hano Road in Santa Fe, New Mexico, and I am under oath. And I can't think of anything else to say that people haven't already said and I agree with all of them, the sweet comments. Jerry West was my first friend in Santa Fe when I moved here 26 years ago and took me to my first party and his daughter is one of my best friends. I was trying to imagine what could be contrary to the public interest by allowing these wonderfully build, beautifully crafted, modest adobe buildings to continue. I can't think of anything that's contrary to the public interest and contrary to that is as you've heard, a lovely community out there and I often wish I lived on the prairie and not in town. So, thank you.

SFC CLERK RECORDED 11/15/2017

CHAIR ROYBAL: Thank you, Ms. Bechtol. Can we have our next speaker, please?

[Previously sworn, Cynthia Gonzales testified as follows:]

CYNTHIA GONZALES: Hi. I'm Cynthia Gonzales and it's going to be a little odd because I actually don't live in Santa Fe any longer but I was born here and I lived here for many, many years and I've known Jerry since I was born. I'm 53 years old. I'm under oath and I live at 506 East Catalina in the City of Phoenix, Arizona. I have known Jerry my entire life. My father, Rudy Gonzales and Jerry have been building houses together. I grew up on that compound. There is nothing that is more important than having this compound remain part of Santa Fe. I came back here at least six or seven times a year. This is something that is absolutely crucial to why Santa Fe is the reason – why people come back. Why I will retire here. Why people move here. It's because of people like Jerry.

And you do, you absolutely as Mr. Longacre put it, you have the power to make sure that Santa Fe maintains a part of its history and this compound is absolutely a part of its history. It's modest. It's sweet. It's loving. It's a – I remember going to parties at this compound and as children, we grew up and the safety that was spoken of before, that's been going on for as long as I can remember. It's within your power to continue to let that be done. Thank you.

CHAIR ROYBAL: Thank you, Ms. Gonzales. Okay, did we have any other speakers? Okay, seeing that we don't have any other speakers I'm going to close the public comment and I'm going to go into questions from Commissioners. So I'm going to go to Commissioner Hansen first.

COMMISSIONER HANSEN: Thank you, everybody. So how many square feet are all the houses all together? I read all the material and I don't remember seeing the total square feet.

MR. SOMMER: These houses are each somewhere between 900 and 1,000 square feet. There's one that's fairly small called the Hogan and I think it's 800 square feet. And I'm guessing. When I say I'm guessing I asked Mr. West and I said is it 800 and 1,000 square feet, each one, yes.

COMMISSIONER HANSEN: Okay. We're talking about 4,000 square feet of living space.

MR. SOMMER: Of dwellings.

COMMISSIONER HANSEN: So the size of a rather large house.

MR. SOMMER: That's correct.

COMMISSIONER HANSEN: So, I have to say that my bias is that I really believe in the whole idea of a compound and that type of living space because that is part of what I grew up in in Santa Fe, coming here and living in that type of artists community. And even though there's some things that Planning Division didn't catch, like they didn't catch we needed to remove this condition, so I can see why in 2006 or 2011 they might have missed something else. Things happen like that. And so I can understand that there's been some exceptions here. And I personally want to remove the condition and grant the variance because I believe in this kind of community.

And part of the conditions that I know concern some of my other Commissioners is that you have maybe broken the law or built these houses and not followed the law

SFC CLERK RECORDED 11/15/2017

completely. And I can understand that, but I do think that this is an exception situation. And so I do agree with you, Mr. Sommer on that. Because it's an artists community and because that is what we're known for I think it is important that we allow this community to continue the way that it is.

There's also another basic reason that I support this is that I just attended a multi-family housing conference and the need for housing in this community is desperate. And so maybe it's only two more extra units, but then it's two more people contributing to our community. So that is another reason why I would move to remove the condition and grant the variance. But my real basic, basic feeling about this is that if we can't recognize our own humanity and our concern for genuine art and both Meridel Rubenstein who graduated from UNM way before I did and is an incredible artist and Jerry's also shown at the museum and I've seen his work over the years and respect it. This is what the fabric of Santa Fe is about is our artists communities. And this is a compound and this is how Santa Fe has lived for years and years. I lived on Garcia Street in a compound and I loved it. The Commons is another type of compound.

The Planning Commission also did put some conditions on Mr. West and one of them is you can't build any more houses. And you can't come back here and ask us again. That is really serious because people do feel that that's taking advantage. So those are important issues to consider. I'm happy to hear they're beautiful adobe houses and I think that's fantastic and if we were talking about 10,000 square feet in living space, then I would have some issues but the fact that it's 4,000 square feet, four bathrooms and that there's low water use and there's no gardens—is this all correct? There might be some plantings.

MR. SOMMER: It's not big landscaping. It's what you might imagine. There are maybe pots of flowers here and there. Little plantings. Not extensive landscaping and that sort of thing.

COMMISSIONER HANSEN: It's the prairie.

MR. SOMMER: That's right.

COMMISSIONER HANSEN: So what is your water budget?

MR. SOMMER: They share a well with the property next door that Jerry owned. I think it's on the Lewellen property, right? It's on the other property, on the other side. So it's a shared well situation. They have enough water both in the right and in the well there. They never run out of water and they have a shared well.

COMMISSIONER HANSEN: Okay. Those are important issues. Do you have enough water? Are you over watering? Anyhow, I think I've made my feelings known and I will allow my other Commissioners to make comments.

CHAIR ROYBAL: Thank you for your comments, Commissioner Hansen. I'm going to go to Commissioner Hamilton and then I'm going to go to Commissioner Moreno last. It's his district so I'd like to hear from him at the end. Commissioner Anaya, are you still on the phone?

COMMISSIONER ANAYA: I am, Mr. Chair.

CHAIR ROYBAL: I'll go to you after Commissioner Hamilton if you have some comments.

COMMISSIONER ANAYA: Okay. Thank you.

COMMISSIONER HAMILTON: So first of all, I want to say how

SFC CLERK RECORDED 11/15/2017

wonderful I think you all are. I don't think there's any question that this community is an incredible community that Mr. West and Meridel made wonderful contributions. That's to me just not at issue. I do have a question that's partly -- and I think that the 2006 variance honored that and the intent of that variance with the conditions of no further building at that time were to grandfather everything in and assure that the community could survive as it was.

One question I want to ask is about the San Marcos Community Overlay. In the SLDC, these community overlays, somebody had to take particular effort, right? To develop this overlay and it's a community effort. So all you guys in the community did this overlay and asked all the restrictions. So the restrictions we're talking about, for which the variance was granted in 2006 were relevant to the San Marcos Community Overlay that you guys developed. I'm assuming that there are people in the audience who maybe participated in the community meetings, because there had to be all sorts of public community meetings to develop these criteria in the first place.

So I'd like you to actually address that and explain to me why it was put as a ten-acre limit in the first place. That was not something that Santa Fe County imposed on you. That's something that you as the community imposed on the SLDC. And then in 2006 everything that was existing was grandfathered in. So I completely appreciate the fact that maybe everybody in the audience thinks it's cool but there was a history of thought and of pre-planning that had to do with many principles including meeting the needs of the community, respecting the nature of the community. So part of what I'm looking forward to is that it's one thing if somebody in the community violated the conditions of the zoning and everybody wants that to be honored, but if there were a developer that came in and said, well, I want to put the same four buildings on five acres and the community should be fine with it.

So you see where I'm going. What I'd like to do is here from you. What were the inputs to developing this in the first place?

MR. SOMMER: Mr. Chair and Commissioner, I would address your point as you are exactly right. The community and this community particularly worked hard to develop standards and I think that Mr. Wait -- you probably recognize his name as being one of the leaders out there in that effort and on an ongoing basis. He showed up at the Planning Commission and spoke in favor of the variance. Why is that? And that's the central question of what you're asking and I think it's particularly this. That while the San Marcos community has strived and worked hard and persuaded the County Commission to adopt an overlay it is not a one size fits every situation. And I think that this situation is highly unique.

I agree with you. The overlay has standards, ten-acre minimums. Those sorts of things. This particular property and this particular compound and this particular area doesn't meet that, never did meet that. Even when they adopted it, this didn't meet that. And so it's impossible to build into an overlay the exception, because it does damage to the general rule when you're doing an overlay.

So I would respond, Commissioner, just by saying, that's my explanation as to why are we here when that happened. Because this has always been a fairly unique situation. The property developed from the forties to the present day in a very different way than the general way. Getting to your point as to whether a developer could walk in

SFC CLERK RECORDED 11/15/2017

here tomorrow and say, hey, you did that there; I want the same criteria. Every variance that comes in front of you stands on its own, and it is a basic, fundamental premise that it is the facts and circumstances of every case that make it unique. You are not bound to grant anybody any variance based on this case as a matter of law.

So I hope that addressed the point that you were making in your question. That's my explanation for it and I think it's supported by the facts.

COMMISSIONER HAMILTON: Well, I frankly completely appreciate the fact that you can never make rules that fit all the circumstances, I suspect that some of the special circumstances for this area were known when the overlay was done.

MR. SOMMER: Absolutely.

COMMISSIONER HAMILTON: Those exceptions could have been put in the overlay. Given the strong community support for this compound and knowing that the variance was requested in 2006 and it was given with conditions, there was so much community support, those buildings weren't there in 2006 –

MR. SOMMER: They were there. Every building we're talking about was there.

COMMISSIONER HAMILTON: My understanding was the two that were granted the variance in 2006 were there and the other two were not.

MR. SOMMER: No, they were there. All the buildings were there. What happened was that two of the buildings which had bathrooms in them had a kitchen added to them. So every building we're talking about, and perhaps I didn't develop this very well in my presentation. These buildings were built over many years and in 2006 every one of these buildings is shown on that plat. They were labeled house or dwelling, studio, studio. And I suspect that either they were or they were mislabeled, but they were all there in 2006. It wasn't like they went out and build these then. And even those buildings in 2006 had developed over decades.

COMMISSIONER HAMILTON: That I understand. And now I understand this. Thank you.

MR. SOMMER: Thank you very much.

CHAIR ROYBAL: Thank you, Commissioner Hamilton. Commissioner Anaya, are you on the line? Did you have questions?

COMMISSIONER ANAYA: I am Mr. Chair, I probably have more comment than questions. But I think I'm going to start by addressing what Commissioner Hamilton was going with her comments. The buildings were there but the buildings were not dwelling units as defined by County code. Right, Mr. Sommer?

MR. SOMMER: Commissioner Anaya, that is correct.

COMMISSIONER ANAYA: So as I'm listening, the comments you were making were frankly making me a little frustrating because you were trying to take it in a different circle. The reality is in 2006 the Commission granted a specific approval variance with specific conditions. Correct?

MR. SOMMER: That is correct, Commissioner.

COMMISSIONER ANAYA: And the applicant knowingly, intentionally, went against those conditions. Correct?

MR. SOMMER: I don't think that is correct, Commissioner, simply because I think that the understanding that Mr. West had wasn't that specific about the

SFC CLERK RECORDED 11/15/2017

condition. I'm not going to brush it off on anybody else but the surveyor is the one that handled that division through the process, but he did, there's no doubt he did add a kitchen to each one of these two studios and he obviously did that with purpose. I don't think he did it with the idea that he was violating a specific condition that was on the plat. I don't think he was that aware of what was on that plat.

COMMISSIONER ANAYA: And what would you say to the five Commissioners that granted that variance, as the representative for the applicant? What would you say if we looked at the minutes of that particular meeting when it was granted, what would you say to that Commission if they were sitting in the audience?

MR. SOMMER: About tonight's presentation?

COMMISSIONER ANAYA: Yes, about tonight's presentation and sequence of events that are proceeding now to a request for another variance in 2017. What would you say to them? What would the applicant say? He could say it or you could say it.

MR. SOMMER: I think that basically what I would say is I would try to reiterate to the Commission that the way this property developed over time, Mr. West just continued to allow people to live on his property and made these places more livable for those folks over time. Not with the intention of saying to hell with the County Commission, but that's what happened. That is what happened in this particular case and that's what I would tell the Board of County Commissioners. It was not a conscious disregard for the Commission or a disrespect for the community.

COMMISSIONER ANAYA: So I appreciate that response and I want to quantify more remarks that I'm going to make with a premise that in the seven years that I've been on this Commission I have been a staunch advocate – So Mr. Chair, I've been a staunch advocate on this Commission for the last seven years for families and individuals that have been trying to split their properties to give to their children and to sustain some of the very same things that are being suggested here today. I've been front and center of helping families and individuals in every district of Santa Fe County to do exactly some of the variances that we're considering tonight.

And what is frustrating to me when I listen to some of the comments is there have been families – and I don't have any problem saying it on the record tonight – like the Montano family that was in that community, in that neighborhood, trying to do exactly the same thing, to sustain property for their children and to have that property where they can have their compound and live and not interrupt or bother anybody. And it's frustrating when I hear the reference to the artisan community or the reference to this particular property where in fact, many of the same people spoke against the Montano family, because those additional units were going to increase traffic. And those additional units were going to increase the need for public safety. And those additional units were going to tear away, not enhance the fabric of the community.

So as I hear the comments and the situation, I say, well, what is it? What is the recipe to be able to be considered part of the community to where a variance is acceptable in one case but on another case where maybe somebody doesn't have maybe the financial capability to build as beautiful a small home as is built in these compounds, maybe they could only afford a smaller mobile home, but yet there's a different standard and a different placeholder.

SFC CLERK RECORDED 11/15/2017

So I find myself troubled, troubled, when there's people that don't have the financial wherewithal to have representation as good as Mr. Sommer to get up and represent their case wherein their need and their presence in the community has been just as long or longer and generational, but they don't have the ability to get an approval or the variance. I say all these things intentionally, without stating what my vote will be on this item in advance, I say them intentionally on the record in hopes that everyone listening in, whether they're listening in on the computer or the radio or in that meeting themselves, would all take into consideration that there are circumstances that warrant variances but that we should be consistent and fair and equitable across the board.

And although many of those same individuals, and I bring up the Montano family again, maybe they weren't as popular and as recognized and endowed as the West family, who I respect, frankly. I respect the West family. But there is a precedent. There is a precedent that we need to be paying attention to and thinking about as we move into decisions like this, and we need to remember that precedent and remember that same consideration and thoughtfulness and Commissioner Hansen was representing in her remarks, when it's other people that may not be as fortunate or endowed or as well spoken or well known or well liked as the people like Mr. West are.

And so I say that to the West family with the ultimate respect but I can frankly tell you there's a different bar that is used for different people in different communities and it's wrong. And I'm concerned about it. And I'm concerned that if there's one property that's a beautiful compound and that has the artisan wherewithal to continue as a compound, it's okay, but if it's someone else down the road who maybe doesn't have that capability, or aren't as endowed as them that they wouldn't be given that same opportunity. Or that maybe they don't have the money to hire an attorney for legal representation.

So Mr. Chair, I apologize to you and everyone listening if I sound a little frustrated by let me tell you, I have fought tooth and nail for seven years to give everyone the same opportunity for variances for exactly the same type of purpose, but it's been piecemeal on which were approved and not approved and frankly, it really came down to economics and the endowment of who you knew and who you could get to come to a meeting. And so I just put those comments out there. I'm going to listen to the Commissioner from District 5 and his perspective, and then I'll render my vote when I render it. But I appreciate the opportunity to make comment and I hope that you were able to hear me, Mr. Chair. Thank you.

CHAIR ROYBAL: Thank you for your comments, Commissioner Anaya, and yes, we were able to hear you. So I'm going to go ahead and go to Commissioner Moreno.

COMMISSIONER MORENO: Thank you, Mr. Chair. Mr. Sommer, I'm stuck on this sentence in the summary of the Planning Commission's report. The applicant's agent states, at some point existing structures on the property were converted into dwellings resulting in a total of four dwelling units on the property. Do you know what that point in time was?

MR. SOMMER: I don't personally know, and in answer to that question, Commissioner Moreno, I believe what happened was in 2006 the plat showed the two dwelling units that were pre-code and these two studios and both those studios had in

SFC CLERK RECORDED 11/15/2017

them varying states of probably bathrooms, and I don't know when kitchens were added from 2006 to the present. I just don't know when that was and I've asked Mr. West about that and frankly, there were various people that lived on the property that he accommodated so that they could live there over time.

In 2011 I don't know if kitchens were there or not. I don't think in 2011 an inspection was done. So I believe that it occurred probably between that time and 2011. That's what basically I believe, and I don't think there's any more specific information we could find.

COMMISSIONER MORENO: So what was the event that caused the inquiry that led to this case?

MR. SOMMER: Mr. West was building with his renewed permit from CID and a code enforcement person was driving by and saw the construction on the storage facility that he was building and stopped and said, hey, do you all have a permit? And he gave him the permit that was renewed from CID and the code enforcement person said you have to come in and get the renewal from the Land Use Office as well. So they came in, immediately asked to renew it. As part of that normal process staff does a site inspection. That's what gave rise to that.

COMMISSIONER MORENO: Okay. So it was an accident that led to this case. If the CID inspector hadn't driven that way —

MR. SOMMER: It wasn't CID. It was a County code enforcement inspector. Yes. I'm sorry about that.

COMMISSIONER MORENO: Okay.

MR. SOMMER: Yes. It was by accident.

COMMISSIONER MORENO: Okay.

MR. SOMMER: And when I say it was by accident, he wasn't discovered like, Hah! Caught you! It was like show me your permit, and the gentleman that was working with him had gone to CID to get that, and that's what he believed he needed.

COMMISSIONER MORENO: Okay, well, here's my thinking here. This is a unique situation. I'm very sympathetic with the comments from my colleague Commissioner Anaya. When families want to stay together they try everything they can to do that. And this is not a standard community but it's a compound where like-minded people can be friendly with each other and live in a community of their own choosing. And I support that as well. But there's a limit as there are in life and I think Commissioner Hansen has set the bar: no more houses. In the interest of this unique situation, I'm going to support the lifting the variance that way but I also want to add an additional plug for more families that can live in the conditions that they want to live in and not where they have to live. Everybody should live like that. So I'm going to support the removal of the condition and I think I'll stop there. Thanks.

COMMISSIONER HANSEN: I'll second it.

RACHEL BROWN (Deputy County Attorney): Mr. Chair, before you vote on that can I just ask for clarification as to whether you're granting the variance?

COMMISSIONER MORENO: Okay. I move to grant the variance for this petition.

MS. LUCERO: Mr. Chair, Commissioner Moreno, does that include the conditions that were recommended by staff and imposed by the Planning Commission?

SFC CLERK RECORDED 11/15/2017

COMMISSIONER MORENO: Yes.

COMMISSIONER HANSEN: I'll second that.

CHAIR ROYBAL: So you're seconding also. So under discussion, is there any other comment from Commissioners? Commissioner Hamilton.

COMMISSIONER HAMILTON: I want to say for the record that while I feel tremendous sympathy for what's being requested, I feel like it's frankly unfair to have an area that's a special overlay where if you guys want things a certain way go through your public process, the community process of having this area carved out as an exception. Lots of overlay districts do that. So we were presented with a set of rules to follow that had all sorts of reasons. Commissioner Anaya brings up a very good point. There are places all over the county where there are certain rules set for density and therefore because of water considerations or preserving the nature of the area that took months and years to develop with public meetings and what not. And then families want – Commissioner Moreno just suggested that everybody should live in the condition they want to live in. And that's great as an overarching aspiration but it has nothing to do with when you actually have to make rules for particular area, and they're all supposed to be done in the community interest.

So here we have a special overlay district that we've been asked to then uphold for you guys except for when you don't want it with no particular reasons that actually follow guidelines for variances because there was a variance granted, however many – eleven years ago. It's hard to do subtraction quickly. And then the conditions weren't followed. So I'm kind of at a loss to know what to do when I fully appreciate what you're asking for and why you're asking for it and the nature of community, but then there are all these other situations where it sets a precedent that I just don't understand how to follow. I don't know how to address Commissioner Anaya's very strong point about other people that maybe just didn't bring as many people into the audience to speak. And what people do for a living – frankly, everybody, every person in the county is valuable, whether you're an artist or you're a garbage collector. It just to me that is not the value of what you contribute to the community and that should not – the level of respect I have for what you do, Mr. West, is not the measure of what the decision has to be.

CHAIR ROYBAL: Thank you, Commissioner Hamilton.

COMMISSIONER HANSEN: Mr. Chair.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Let me go to Commissioner Hansen and then I'll go to you, Commissioner Anaya.

COMMISSIONER HANSEN: Didn't we just recently approve the San Marcos overlay?

COMMISSIONER HAMILTON: I have to admit, I don't know the date of when it was approved.

MS. MILLER: I think what you approved with the community organization.

COMMISSIONER HANSEN: Okay, the community plan. So one of the things I want to say about the overlay and the community plan is that these buildings have been there and when those things were approved.

SFC CLERK RECORDED 11/15/2017

COMMISSIONER HAMILTON: And they were not grandfathered into the plan. So my point is they were grandfathered in the 2006 variance. They were considered legal non-conforming because of the time they were there. But in 2006, the variance was granted. The plan was made subsequently. If there was a desire to let this compound be a standalone outside of the ten-acre lot size it should have been memorialized in the plan. They had every opportunity to do that. Because that's the process by which community desires are imposed appropriately on the SLDC. That's a wonderful process. It's important that we have that. So that's what I'm asking is why was it when –

COMMISSIONER HANSEN: I can't answer that question.

COMMISSIONER HAMILTON: I know. And on the surface of it it looks like those conversions were done and then are asking for permission after the fact.

COMMISSIONER HANSEN: But the buildings were already there.

COMMISSIONER HAMILTON: The buildings were there, and given the community support, when the kitchens, when the conversion was done, that's when they should have come in to ask those conditions to be removed. Because of the level of support and the argument that it doesn't go against the nature and spirit of an existing overlay, that's all fine in the process.

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

COMMISSIONER ANAYA: Mr. Chair, thank you. Thank you very much. I want to just restate a few things and I want to say first and foremost that this day and these minutes will be reflected and remembered and reiterated for meetings to come and for issues to come. And I just hope and pray, frankly, that regardless if there was 50 people at a meeting speaking in favor of a matter or a variance or an individual or a family, or whether it was the applicants standing alone by themselves, that we take that same premise of family and humility and a compound in the interest of helping the family and we employ it and utilize it for the next year while I'm there in the hopes that for the next Commission and Commissions to come that there's always frankly that analysis and careful, thoughtful, caring, compassion for those that don't have the endowment and the resources that this particular applicant has. And I hope and pray that in my vote and my vote is going to fall to put in a position of helping more people, not in a position of hamstringing people and families. And I just hope and pray that this Commission and future Commissions will continue, because there's no plan that is a catchall for any community or any overlay. There are always going to be circumstances that warrant consideration and possible change from that plan of action. And I'll leave it at that, Mr. Chair.

CHAIR ROYBAL: Thank you, Commissioner Anaya, and I'd like to echo a lot of the comments that were made by Commissioner Anaya and Commissioner Hamilton in regards to making sure that we're fair across the board to any individuals that come in for a variance and that we take into consideration what they're asking for and their needs for their family. And with that being said, I will support Commissioner Moreno. This is his district and I will support his decision. So we have a motion and a second.

SFC CLERK RECORDED 11/15/2017

MS. LUCERO: Mr. Chair. Excuse me. If I could just get one more point of clarification. Does the motion for approval of the variance include removal of the previously imposed condition by the Board to allow only two dwelling units?

COMMISSIONER MORENO: Yes.

MS. LUCERO: Thank you.

CHAIR ROYBAL: Okay, does the second also reflect that?

COMMISSIONER HANSEN: Yes.

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

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

- VIII. A. 3. CASE # S 17-5270 Sivage Homes Reconsideration of Condition and Plat Amendment. Sivage Homes (Applicant), Design Enginuity (Oralynn Guerrerortiz), Agent, request reconsideration of a Condition imposed by the Board of County Commissioners to require shared driveways and a Plat Amendment of the previously approved Los Santeros at Las Campanas, which is now known as Las Melodias de Las Campanas to eliminate platted shared driveways. The property is located within the Las Campanas Subdivision at 2, 4, 10 and 12 Avenida Malagueña, within the Las Campanas Planned Development District, within Section 15, Township 17 North, Range 8 East (Commission District 2) [Exhibit 6: Faust Letter]

MS. LUCERO: Mr. Chair, I'll be presenting this case as well. On February 8, 2000 the BCC granted final plat and development plan approval of the Los Santeros at Las Campanas Subdivision phase in accordance with the approved master plan consisting of 68 lots and a master plat for 126 lots on 128 acres. The request also included a variance of the minimum road standards. The following variances were approved by the BCC subject to conditions of approval.

The first variance was that the road grades of between four and five percent at eight intersections, and the second one is in regards to spacing between points of ingress and egress. The BCC imposed a number of conditions of approval on the subdivision including a condition requiring shared driveways.

The applicants now request for the BCC to eliminate the previously imposed condition regarding the shared driveways. The condition states: Provide shared driveways in order to mitigate the variance for separation between points of ingress and egress.

The applicant purchased a portion of the Los Santeros Subdivision known as Las Melodias, phase 2, and staff approve the 11-lot subdivision plat administratively showing the shared driveways and drainage easements along several contiguous property boundaries. The applicant states, there is no road safety justification for a shared driveway and the use or shared driveways restricts lot development which does not meet the owners' desires for home development. There are several homes already constructed in this development that did not use the designated shared driveway locations.

The purpose of the road design standards is to provide safe and efficient access to

SFC CLERK RECORDED 11/15/2017

