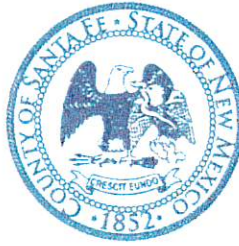


Henry P. Roybal
Commissioner, District 1

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 17-5100
Regina Buckley, Applicant

THIS MATTER came before the Santa Fe Planning Commission for hearing on August 17, 2017, on the application of Regina Buckley (Applicant) for a variance of Ordinance 2016-9 (SLDC), 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). The Planning Commission, having reviewed the application, staff reports, Recommended Decision of the Hearing Examiner, and having conducted a public hearing on the request, finds that the application is not well-taken and should be denied, and makes the following findings of fact and conclusions of law:

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

4. On June 22, 2017, this application was presented to the Hearing Officer for consideration and a recommendation. The hearing officer recommended approval of the Applicants 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. The Applicant made the following statements in support of the application:

- a. The proposed division is a natural part of the estate planning process that most families embark upon. It is permitted to divide a piece of land and donate or give to a family member as stipulated in the SLDC, Section 8.6.5.3.
- b. The proposed lot sizes are slightly substandard and a minor deviation from the Code (92%) in an area that features a wide range of lot sizes.

c. The variance request maintains the intent of the SLDC with this minimal density reduction. 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.

12. Staff responded in opposition to the variance as follows:

a. The subject lot, which is 9.19 acres, does not meet the density requirement and an additional 0.81 acres would be required to qualify for a Family Transfer Land Division.

b. 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.

c. However, since the 9.19 acre lot is a legal lot of record, the Applicant could qualify for an accessory dwelling unit in accordance with Chapter 10.4 of the SLDC.

d. Increased density in this area creates more traffic, water use, and creates a substandard lot size. The proposed variance if approved also creates a precedent for other lots/property owners in the area to create substandard lots.

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. 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.

15. The Applicant has requested two separate driveways for the two proposed lots, which would increase the number of access points on the access road.

16. 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.

17. At the hearing, no one spoke in favor of or against the application.

18. The objective of the Applicant, for her sons to inherit property, can be accomplished by adding an accessory dwelling unit on the property and allowing her sons to inherit the property jointly.

19. The Santa Fe Planning Commission hereby finds 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.

WHEREFORE, the Santa Fe Planning Commission hereby denies the application of the Applicant, Regina Buckley, for a 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.

IT IS SO ORDERED.

This Order was adopted by the Commission on this ____ day of _____, 2017.

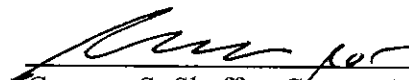
THE SANTA FE COUNTY PLANNING COMMISSION

Filandro Anaya, Chairperson

ATTESTATION:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



Gregory S. Shaffer, County Attorney

V. **Approval of Minutes: July 20, 2017**

Member Martin moved to approve the July minutes as submitted. Member C. Gonzales seconded and the motion passed without opposition. Member Katz and Chair Anaya abstained.

VI. **New Business**

- A. **CASE # V 17-5100 Regina Buckley Variance.** Regina Buckley, Applicant, Scott Hoeft, Agent requests 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: Applicant supplied depiction of lot sizes in the immediate area*]

JOHN LOVATO: On April 27, 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 as Exhibit 11, 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. The Applicant acquired the property as evidenced by warranty deed recorded in the records of the Santa Fe County Clerk on June 7, 2002, Book 2144, Page 474. The property is recognized as a legal lot of record consisting of 9.19 acres.

The Applicant requests a variance of Chapter 8.6.5, Table 8.9 Dimensional Standards to allow 9.19 acres to be divided by way of a Family Transfer into two 4.6 acre lots. Minimum lots size in the Residential Fringe Zoning District is 5 acres per dwelling. Currently there is a 1,694 square foot residence on the property in which the Applicant resides in. If the variance is granted the Applicant intends to give her son one of the lots.

The Applicants agent states, "The property is located in Sunlit Hills, an area composed of a variety of residential lots that range in size from 1-acre to 25 acres. The site abuts Seton Village to the north, which is a Residential Community and features 1-acre-densities."

The applicant has addressed the variance criteria as follows and staff has responded:

1. Where the request is not contrary to public interest;
Applicant's Statement: The request for a family transfer lot split is not contrary to public interest and is a family exemption land division in the SLDC, Section 8.6.5.3. The proposed division is a natural part of the estate planning process that most families embark upon. It is permitted to divide a piece of land and donate or give to a family member as stipulated in this section of the code. The lot sizes at 4.6 are slightly substandard and a minor deviation from the Code in an area that features a wide range of lot sizes.

Staff Response: The property lies within the Residential Fringe Zoning District. The base density is 5 acres per dwelling unit. Family transfers are required to meet density requirements of the code. The subject lot which is 9.19 acres does not meet the density requirement. The lot would need an additional 0.81 acres in order to qualify for a Family Transfer Land Division. However, since the 9.19 acre lot is a legal lot of record, the Applicant could qualify for an accessory dwelling unit in accordance with Chapter 10.4 of the SLDC.

2. Where, owing to special conditions, a literal enforcement of the SLDC will result in unnecessary hardship to the applicant;

Applicant's Statement: Literal enforcement of the SLDC will not permit the family transfer to occur. In an area that features a host of lot sizes the subject lot is actually one of the larger parcels that range in size from 1-acre to 25-acres, not permitting the division would seem contrary to the spirit of the development of the area. Seton Village has small lots that are 1-acre in size. The subject parcel is 9.19-acres. This lot split is 4.6 acres per lot, which is 92 percent of the density requirement per the new SLDC code.

Staff Response: The 1996 Land Development Code allowed for densities of 5 acres in this area or 2.5 acres if community water was available. The existing lot is not served by community water and does not meet minimum lot size. Under the Sustainable Land Development Code, the minimum lot size is 5 acres in this zoning district. Many of the surrounding lots are legal non-conforming lots. The lots were created prior to 1981 and are in the range of on to 40 acres in size.

3. So that the spirit of the SLDC is observed and substantial justice is done.

Applicant's Statement: The variance request maintains the intent of the SLDC with this minimal density reduction. The land will appear and have a look and feel of a 5 acre parcel and will not appear that is smaller than the intention of the RES-F density. It is anticipated that the minimal easing will have no discernible impact on the value of the neighboring lots in this area.

Staff Response: Increased density in this area creates more traffic, water use, and creates a substandard lot size. The proposed variance if approved also creates a precedent for other lots/property owners in the area to create substandard lots.

Recommendation: 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.

Staff recommends denial of the Applicant's request to allow 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 5 acres per dwelling unit. Allowing a variance creates a precedent to surrounding properties and creates substandard lot sizes. Previous lot sizes that range from up to 40 acres are legal non-conforming or created prior to the Sustainable Land Development Code. If the decision of the Santa Fe County Planning Commission is to approve of the request, staff recommends the following conditions be imposed.

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

Thank you, and I stand for questions.

CHAIR ANAYA: Any questions for staff at this time? Mr. Katz.

MEMBER KATZ: You say that the current lot would allow an accessory dwelling on it, the 9 point whatever acres; is that correct?

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

MEMBER KATZ: Is there a limit on the size of the accessory dwelling?

MR. LOVATO: Mr. Chair, Commission Member Katz, the actual size would be 1,400 heated and that is if the house is above – it's either one-half that size or 1,400 total, I should put it that way.

MEMBER KATZ: I'm confused. What's the 1,400?

MR. LOVATO: That's the max size you can go up to, 1,400.

MEMBER KATZ: On an accessory dwelling?

MR. LOVATO: Right.

MEMBER KATZ: Half the size of what?

MR. LOVATO: However, you can go half of the size if it's more small. If it's a 2,000 square foot than you can only do 1,000 square feet.

MEMBER KATZ: So it's the smaller of 1,400 and half the size of the main dwelling?

MS. LUCERO: Mr. Chair, Commission Member Katz, that's correct. It would be half of the size of the main dwelling unit, the heated space of the main dwelling unit – well, actually, it is the roofed area of the main dwelling unit or 1,400 square feet whichever is less.

MEMBER KATZ: So it would be 800 some square feet here.

MS. LUCERO: Yes, that is correct.

MEMBER KATZ: The second question is – they're pretty close here – is there any di minimis standard that we have? They say five and one presumes they mean five, but is there anything that you consider di minimis?

MS. LUCERO: Mr. Chair, Commission Member Katz, there is a figure that we use in the code but it is much less than the .81 acres that they're utilizing. It's about .05 percent.

MEMBER KATZ: Okay, that you very much.

MEMBER L. GONZALES: Chair Anaya.

CHAIR ANAYA: Mr. Gonzales.

MEMBER L. GONZALES: Right now they can build a main home and an accessory. If we were to approve the lot split, that will just give them – that won't give them anymore units but will be able to give them more square footage on the second lot that is created; correct?

MR. LOVATO: Mr. Chair, Member Gonzales, if it is approved you are actually creating a legal lot which can be built on with a whole entire new home. We don't have the lot size in that area.

MEMBER L. GONZALES: So they can build two main structures, main homes; correct? And then with the condition that you put that no accessory/other units could be built on either lots that are created.

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

MEMBER L. GONZALES: And do you know if the applicant is okay with the two conditions that you put, that you can't divide the land more and that no accessory units can be built?

MR. LOVATO: Mr. Chair, Committee member Gonzales, I would leave that up to him to answer those questions.

MEMBER L. GONZALES: Repeat that please.

MR. LOVATO: I would defer that question to the applicant's agent.

MEMBER L. GONZALES: Thank you.

MS. LUCERO: Mr. Chair, if I could just interject, staff had two conditions of approval that Mr. Lovato read into the record but for the Hearing Officer's recommendation, she actually added one additional condition and that's in the final order and conclusions of law that was handed out to you earlier this afternoon. But that third condition reads that 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.

CHAIR ANAYA: Thank you. Any other questions for staff? Mr. Gonzales.

MEMBER C. GONZALES: John, I didn't see a slope analysis map with a buildable area for the proposed lot; does that exist?

MR. LOVATO: Mr. Chair, Committee member Gonzales, there is no slope analysis. There is however a topo that they have done on the property and that is on Exhibit 2 of your packet which is NBA-9.

MEMBER C. GONZALES: Yes, I saw that. I did notice that it is not stamped by a surveyor as well. I do have concerns because how do we know there are buildable areas on this new lot that they are proposing to create?

MR. LOVATO: Mr. Chair, Committee member Gonzales, I go to all site inspections on these and there's buildable area on this site -- in particular, this lot I visited.

MEMBER C. GONZALES: There's buildable area on this lot?

MR. LOVATO: There is.

MEMBER C. GONZALES: Then maybe we need to get the surveyor to put a note that says that, that the lot doesn't exceed 10 percent, the entire lot or something to make it easier for when they submit for their submittal if they get it.

MR. LOVATO: Mr. Gonzales we'll look into it that way.

MS. LUCERO: Mr. Chair, Commission Member Gonzales, as part of the code requirements they will be required to designate a buildable area on the plat before we grant them final approval and record that. So we will make sure there is a buildable area. But as John stated, he had gone out to the site and verified that there is some flat terrain.

MEMBER C. GONZALES: Thank you.

CHAIR ANAYA: Any other questions for staff right now? Having none, is the applicant present?

[Duly sworn, Scott Hoeft, agent for the applicant testified as follows]

SCOTT HOEFT: Scott Hoeft, Santa Fe Planning Group, 109 St. Francis, Santa Fe, New Mexico, 87505.

First of all, I would like to thank staff. I thought it was an excellent staff report and covered all the topics very well. Of course, our conclusion is, of course we would like the variance granted for the variance. We feel that it is a minor deviation especially

in consideration of the lots in the area. So, first of all I would like to approach and pass this out. [Exhibit 1]

CHAIR ANAYA: Excuse me, Scott, when you come back, can I get you to speak more into the mike?

MR. HOEFT: Yes. What you're looking at is not dissimilar to what's in the staff packet, just a little bit more refined with a little more data. If you're looking at NBA 10 in the staff packet, I just added a few more lot sizes and I can obviously have an arrow pointed to the subject site which is in the middle of that. You can see that even if the variance is approved and the land is divided down to the 4.6 acres of the two parcels it is still larger than the surrounding properties in the area with the exception of one to the east, the 5.2. If you look at the green arrow and you begin to head west you can see the sizes of those parcels and even to the north.

So the area has a variety of parcel sizes, as you can see and we feel that taking this down to 4.6 is not going to be detrimental to the area.

How this started was the owner/applicant Regina Buckley who is not here this evening – she is a professor at Villanova in Philadelphia – approached me and said I'd like to do a family transfer application, how can we proceed with it? And meeting with staff revealed obviously why we're here this evening, that the lot was slightly substandard and I indicated to her that we would have to go through a variance process. She is estate planning. She is turning these parcels over to her children. This one was supposed to go to Jonathan Cohen, it's going to Andrew Cohen now so there is a little something in the family in terms of what son gets the parcel. But that's the intent of the application and it's a family transfer application.

Again, from a hardship standpoint, we feel that this is a very minor deviation in terms of what the lot needs to be at 5 acres. We are at 4.6 acres. And then addressing the Hearing Officer's comment regarding the water Sunlit Hills, this is in the Sunlit Hills water system area and if you consider this under the old code with community water and sewer we would be able to drop down to 2.5 acres, if we had community water and sewer. Now I'm not quite sure if we just had one of the two because obviously there is no community sewer out here. But we would have had 2.5 acres in parcels that technically three could have been possible. We did communicate with Sunlit Hills. We don't disagree with that condition though we don't want to be 100 percent bound to that condition because I'm uncertain of exactly what the future planning is to Sunlit Hills. They have indicated to us that they would be willing to serve the parcel, the newly created parcel, but I did not get a letter from them, an intent to serve letter. I requested it but I did not receive it in advance of the hearing. But that is the objective of the applicant is to hookup to Sunlit Hills. And I believe it is just a question of their math and the number of meters that they have available at the time and we are willing to work with Sunlit Hills to make that happen and indeed, that is what the applicant wants to do. They do not want to drill another well on the property and avoid that.

Answering Mr. Gonzales' question, Charlie, regarding the buildable area: yes, when you drive the property on the road that is adjacent to it that is essentially a relatively flat plateau and then it drops down to the second area. So the lot is naturally divided by terrain. The new lot is upper and then the existing home is further down the hill in a lower portion. But it is a relatively flat portion.

With that, I stand for questions.

MEMBER L. GONZALES: Chair Anaya.

CHAIR ANAYA: Any questions of Scott?

MEMBER L. GONZALES: Chair Anaya.

CHAIR ANAYA: Mr. Gonzales.

MEMBER L. GONZALES: Mr. Hoeft, back to this NBA 9, the survey showing the two lots. Lot 2 shows the existing improvements and the lot that's going to be created is Lot 1 is 4.595 acres and it fronts on Sudesta Place. How is the access to Lot 2; is it that little road on the very south of the plat that comes up to the home?

MR. HOEFT: There is a road that is offsite to this house. So if you go further to the south there is an easement that comes across the property to the south that accessing Lot 2.

MEMBER L. GONZALES: So the access to Lot 1 will be somewhere off of Sudesta Place?

MR. HOEFT: It will be directly – pretty much where you see it on that plat, where the dash dash is shown that essentially is where you can pull off right now and look at the lot.

MEMBER L. GONZALES: So they'll have two separate accesses?

MR. HOEFT: That is correct.

MEMBER L. GONZALES: Thank you. Thank you, Chair.

CHAIR ANAYA: Any other questions? Mr. Katz.

MEMBER KATZ: The lot currently has a well on it?

MR. HOEFT: Commissioner Katz, yes it does.

MEMBER KATZ: And do we know how much water they are allowed to use a year from that well?

MR. HOEFT: Let me check my report and see if I wrote that in.

MEMBER KATZ: We are used to seeing a condition in these situations that restrict the amount of water used and I didn't see that here. I was wondering if there is already such a restriction.

MR. HOEFT: If you look at NBA 1, in your report of exhibit 1 of my letter, and then under water service – is that NBA 1 or is that NBA 11?

MS. LUCERO: Seven.

MR. HOEFT: Oh, seven, I'm sorry. NBA 7, I'm sorry.

CHAIR ANAYA: Water service?

MR. HOEFT: That is correct. I indicate there that it's one acre foot. The well's purpose is irrigation use not to exceed 1 acre-foot for domestic per household. The permit maximum is 3 acre-feet.

MEMBER KATZ: So my question then would be for staff, why isn't there a condition that the .25 acre-feet would be the maximum for each dwelling?

MS. LUCERO: Mr. Chair, Commission Member Katz, if the variance is approved then the applicant will have to come in and go through our platting process, our subdivision process and in this case for a family transfer. At that point we would do the review and we would impose the condition that all new dwelling units shall not exceed .25 acre-feet. We would have that note recorded also on the plat and water restrictive covenants referenced on the plat.

MEMBER KATZ: All new dwellings, that then wouldn't apply to the old dwelling that is there now?

MS. LUCERO: Mr. Chair, Commission Member Katz, the new water restrictions in the County Code that is exactly what it states in the County Code, that all new single-family residences would be subject to .25 acre-foot of water.

MEMBER KATZ: So if we wanted to limit the current existing house to .25 acre-foot would have to make that an additional condition?

MS. LUCERO: Mr. Chair, Commission Member Katz, that is correct.

MEMBER KATZ: Thank you very much. Scott, would that be a problem?

MR. HOEFT: Commissioner Katz, it is an interesting question; unfortunately, I don't have my client in the back of the room. Given that we've got a 700 square foot house I can't imagine that they're using that much water. So at a glance, I wouldn't think that it would be a problem but I would hate to limit that house and that well without communicating with them from 3 acre-feet down to .25 acre-foot. In a glance, it wouldn't seem like a big deal. I can't imagine that they're using more than a .25 acre-foot.

MEMBER KATZ: You said the house is 700 square feet?

MR. HOEFT: The staff report said 700 square feet; is that correct?

MEMBER KATZ: No, I thought it was 1,600. Which is it?

MR. HOEFT: I'm sorry. Existing home, on the same page where the water is at –

MS. LUCERO: Mr. Chair, Commission Members, the staff report states that there is a 1,694 square foot residence on the property.

MR. HOEFT: That is correct. My mistake, Commissioner Katz. 1,694 and if you look at NBA 7.

MEMBER KATZ: It says 1,326 heated; is that right?

MR. HOEFT: With 1,694 total roof, portal.

MEMBER KATZ: The limitation on an accessory dwelling, is that heated or total roofed?

MS. LUCERO: Mr. Chair, Commission Member Katz, I believe that it is roofed area.

MEMBER KATZ: Thank you very much. Nothing further.

CHAIR ANAYA: Any other questions for Scott? Mr. Gonzales.

MEMBER C. GONZALES: Scott, I am just kind of curious on that letter from the community water association would that be Ralph Vail and Company, Sunlit Hills?

MR. HOEFT: I believe that is correct. My client they were reaching out to him and they had a communication with him and said they received positive feedback from him and I said please get it in writing in a letter so I can distribute it and they didn't get that.

MEMBER C. GONZALES: Yeah, because usually the way I'm used to it being done is for example in Agua Fria Village, if we're trying to get a variance or something we get a letter from the community water system saying the water is not available or is not available and that way if it is not available then we come in for the variance and get the variance because we have that letter saying they can't serve them. So I am just curious how far you pushed it.

MR. HOEFT: One communication with him, received positive. And then I asked for a letter and then we didn't receive the letter.

MEMBER C. GONZALES: So you did ask for a letter?

MR. HOEFT: I'm sorry.

MEMBER C. GONZALES: So you did ask for a letter?

MR. HOEFT: We did ask for a letter to serve and we did not receive that letter.

MEMBER C. GONZALES: Okay, thank you.

MR. HOEFT: Sure.

MS. LUCERO: Mr. Chair, if I could just clarify my prior statement. It's actually 50 percent of the heated floor area of the principal residence that they would be allowed to utilize for an accessory dwelling unit.

MEMBER KATZ: Okay, so the existing dwelling is less than 1,400 feet, could they build a quote another dwelling on the property that would be designated as the main house that would be 2,500 square feet?

MS. LUCERO: Mr. Chair, Commission Member Katz, they could in fact come in to construct a main residence and designate the existing residence as the accessory dwelling unit.

MEMBER KATZ: Thank you.

MEMBER L. GONZALES: Chair Anaya.

CHAIR ANAYA: Mr. Gonzales.

MEMBER L. GONZALES: Scott or maybe this is a question for the staff but since there is an existing well on that property and it has 3 acre-feet per year; is that correct?

MR. HOEFT: That is correct.

MEMBER L. GONZALES: And so if they indeed get access to – what is it, the Sunlit Hills Water System?

MR. HOEFT: That's correct.

MEMBER L. GONZALES: And we impose a quarter acre-foot or a half acre-foot per lot can they still use those water rights that we say they utilize maybe for landscaping and then still hookup to the water system?

MS. LUCERO: Mr. Chair, Commission Member Gonzales, we haven't actually reviewed to see to look at their water rights. What I'm thinking is normally with the NMED or with the State Engineer would issue would be up to 3 acre-feet on the well. I don't know that those were actually considered water rights but it would be the maximum number they could actually pump out of the well. So without looking at the documentation I don't know that I would be able to answer that question.

MEMBER L. GONZALES: That would be the permitted use, right?

MS. LUCERO: That's correct right. They could utilize up to 3 acre-foot but the County has the authority to limit that further as long as it is not some kind of documented water rights.

MEMBER L. GONZALES: Thank you.

MR. HOEFT: May I comment just on one issue. Initially, this was part of the family transfer process as I discussed earlier. And we're getting into comments regarding the number of homes and accessory and how large we can go but that is a bit contrary to what Ms. Buckley is trying to accomplish here which is she's trying to give a

parcel, each parcel to her children. If the land is not divided and two houses are built that doesn't really accomplish what she wants because I suspect that one is going to her one son and then upon her death the other is going to the other son. And so she wants to separate pieces of land to evenly distribute to her children is what the intent is here. That is why she approached me for this application.

CHAIR ANAYA: We understand that. But had you not come in for a variance then that's exactly what you would have gotten done but since you're in here for a variance in front of this board then this board has the right to ask any questions pertaining to subdivisions or land divisions or anything as such so that is why you're receiving these questions from us.

MR. HOEFT: No, no, absolutely, Commissioner.

CHAIR ANAYA: It is not that we don't understand what you're trying to do. We definitely do that. But we also need to understand all of the additional – we are asking additional questions because we hear a lot of other people come ahead of you and behind you and they have similar questions. So we are trying to be fair and equitable to everybody that comes up to the Board. So that's why you are being asked these questions.

MR. HOEFT: Certainly, I appreciate that, Commissioner.

MEMBER KATZ: My concern is, Scott, it is very nice that this woman is trying to provide for her children but essentially what she's asking is, please don't follow the law so that you can make my property a much more valuable asset that I can give to my children. It's just increasing the value is all it's doing. They could still have the two houses there that you would get the result. But if it is split, it is worth more and is that really a good basis for us to provide a variance just because she wants to leave a bigger estate to her kids?

MR. HOEFT: Commissioner Katz, may I respond? May I respond?

MEMBER KATZ: Please.

MR. HOEFT: I don't think it is so much in terms of value as what you're describing, it is more of equitable distribution. If you have one piece of property with two main houses that's no longer distributed equally to her children. In terms of her eyes she can't give a parcel to each child, essentially is what she is trying to accomplish here. The second thing is if you look at the area and the surrounding area and what we're asking for in terms of a deviation, this isn't as if we're trying to get a parcel that is one acre in size and two acres in size in an area that is surrounded by five acres. This parcels is still going to be larger than all the area parcels surrounding it with the exception of one. So in our eyes, it is a minor deviation for her request.

MEMBER KATZ: I appreciate that, but she could be totally equitable by just leaving the single property to both sons equally, as equal partners in the property. That's totally equitable and they could then decide who wants to live in which house. My question – the second point I think is quite a telling one and I would ask staff what their reaction is to that. I mean, I look at – I would not be comfortable but for what Scott said about that this is still going to be bigger than almost all of the properties around it; shouldn't that make a difference here?

MS. LUCERO: Mr. Chair, Commission Member Katz, the applicant has shown that there are some smaller lots surrounding this property but if you look to the – I'm not sure where the north arrow is here, but I think it's to the west there are some

larger lots that are adjacent to the 2.8, 4.0 and 3.4 acre tracts. So would that basically set a precedent for those other lots to be able to come in and request a variance because they are adjacent to smaller lots? These other lots, as Mr. Lovato stated, were created under our old code where there were other regulations that applied so under the current regulations I believe this would set a precedent for some of the other larger lots surrounding these.

MEMBER KATZ: Well the two ones you reference are bigger than 10 so they could split.

MR. HOEFT: Correct and under the old code, I don't believe this would have even been a variance. We could have done three lots in this area. I think that should weigh into the equation a little bit here. Meaning that the circumstances have changed within the last two years which if she would have come in to me in 2013 and I proceeded, I believe I could have went in with a division administratively, lot split, and could have accomplished this.

MEMBER KATZ: Thank you.

CHAIR ANAYA: Okay, Scott, I have a question. On the document that you passed out to us, you've got yellow, pink, blue and then the subject as 9 acres; the pink lots that are over here that are .6, .5, .52 those lots which are pretty similar to city lots. Do all of those lots have water piped into them from a water system?

MR. HOEFT: Commissioner, I am uncertain on that question if those are all hooked up to the Sunlit Hills Water System. That is essentially the Seton Village – why you're seeing that shaded in the pink color and why those lots are so teeny.

CHAIR ANAYA: So where is the water located?

MR. HOEFT: The water in this property is located in the road to the right of the subject site.

CHAIR ANAYA: How far away from it?

MR. HOEFT: The road abuts our property/the subject property.

CHAIR ANAYA: Right to it? Is there a meter there?

MR. HOEFT: No, the water line goes down the road from what I understand, yes.

CHAIR ANAYA: Thank you. Any other questions for Scott? Having none, this is an open meeting so do we have anybody in the audience that is speaking for the client or against? If so, we'll start with for? Seeing none, against?

The public comment section is closed. Comments from the Board and questions for the staff. Hearing none, seeing none, do we have a motion for the variance request? Mr. Gonzales.

MEMBER C. GONZALES: I'll make a motion. I move that Case V 17-5100 under Regina Buckley Variance, be denied.

MEMBER MARTIN: Second.

CHAIR ANAYA: We have a first and a second for denial on case V 17-5100; can we have a vote?

The motion to deny passed by majority [5-2] voice vote with Commissioners L. Gonzales and Gray voting against.

B. Possible Action on the Findings of Fact and Conclusions of Law for Case # V 17-5100 Regina Buckley Variance.

MS. LUCERO: Mr. Chair, the next item on the agenda was possible action on findings of fact and conclusions of law for the Regina Buckley variance and since the Planning Commission voted against the decision of the Hearing Officer, we will request that that item be tabled and we will prepare a new final order for the next meeting.

CHAIR ANAYA: Okay.

C. CASE # V 17-5110 Willa Shalit Variance. Willa Shalit, Applicant, Craig Hoopes, Agent, requests a variance of Chapter 7.17.9.3.2 height of a structure to exceed 18 feet on a ridgetop and allow a two story residence on a ridgetop. The property is located at 63C La Barbaria Trail within, Section 9, Township 16 North, Range 10 East, (Commission District 4)

MS. LUCERO: Mr. Chair, I will be reading the report for this case.

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.

On March 3, 2017, the Applicant obtained a permit to demolish a 928 square foot residence and reconstruct a 2,943 square foot residence/studio. The permitted residence is 1,799 square feet of heated space. The rest of the residence is 340 square feet of unheated space and 1,144 square feet of portals, overhangs, and pergolas. Currently, there are two other accessory structures on the property. The permitted residence contains a great room, a bedroom, a kitchen, an office, a powder room, and a pantry. The maximum height on the permitted residence is 18 feet. The Applicant is now requesting a variance to place a second floor within the previously permitted structure. The garage contained a high ceiling and the Applicant is now proposing a second story within the garage. The Applicant intends to add 325 square feet to be utilized as a master bedroom and bathroom.

The addition is directly above the garage area and is 18 feet in height from final cut grade. In addition to the master bedroom and bathroom, the Applicant intends to add a series of clear story windows to allow for light to enter the house. This addition is located on the main portion of the house above the great room and this section of the house is 18 feet in height. However, the grade on this portion of the house is 3 feet 4 inches above grade of the garage and increases the height on the south and west elevation to 21 feet 4 inches.

The property consists of 5.07 acres within the Residential Fringe Zoning District as defined by Ordinance 2016-9, Sustainable Land Development Code. Chapter 7, Section 7.17.9.3.2, states, structures on ridges, ridgelines and shoulders shall not exceed 14 feet in height and shall be limited to one story. This section further states, a structure on a ridge or ridgeline that is a one story pitched roof shall not exceed 18 feet in height so long as it is screened from view from an arterial or major arterial road.