Sustainable Land Development Code
Hearing Officer Meeting
June 14, 2018
CASE NO. V18-5070
Angelo Ortega, Applicant

RECOMMENDED DECISION AND ORDER

THIS MATTER came before the Sustainable Land Development Code Hearing Officer for hearing on June 14, 2018, on the application of Angelo Ortega (Applicant) for variances of the Sustainable Land Development Code (SLDC). Applicant seeks a variance of Chapter 10.4.2.1 (Number Permitted) to allow an accessory dwelling within a major subdivision and a variance of Chapter 10.4.2.4 (Utilities) to allow a separate liquid waste system for the accessory dwelling unit. The property is located at 120 N Paseo de Angel Road (Property) within the La Cienega and La Cieneguilla Community District Overlay, within the Residential Estate Zoning District, within Section 22, Township 16 North, Range 8 East (Commission District 3). The Hearing Officer, having reviewed the application, staff reports, and having conducted a public hearing on the request, finds that the variances should be granted, subject to certain conditions and makes the following findings of fact and conclusions of law:

1. On March 6, 2018, Applicant submitted his application for the variances.

2. As required by the SLDC, Applicant presented the application to the Technical Advisory Committee (TAC) on March 15, 2018, at the regular scheduled monthly meeting, which satisfied the requirements set forth in Chapter 4, Section 4.4.4.3 Pre-application TAC Meeting and Table 4-1.

3. Notice requirements of the SLDC were met pursuant to Chapter 4, Section 4.6.3., General Notice of Application Requiring a Public Hearing. In advance of the hearing on the

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application, 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 May 30, 2018. Additionally, notice of hearing was published in the legal notice section of the Santa Fe New Mexican on May 30, 2018, 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 feet of the Property and a list of persons sent a mailing is contained in the record.

4. In 1994, an application for Vista de Sandia Subdivision was submitted, which was approved by the Board of County Commissioners (BCC) in 1996. Based on the accompanying hydrologic survey, the water use on each of the 16 lots was restricted to 0.25 acre feet. At the time of approval, the BCC established a condition that no guest homes would be allowed within the Subdivision.

5. Applicant's property is located within a major subdivision. Chapter 10, Section 10.4.2.1 states that platted major subdivisions shall only be permitted to have an accessory dwelling unit if their approval and reports and SRAs allowed and accounted for this. None of the reports accounted for two homes on a single lot.

6. Further, Chapter 10, Section 10.4.2.4 (Utilities) requires the principal dwelling to share a septic system with any accessory dwelling.

7. Applicant provided that "the accessory dwelling unit will be occupied by my daughter who currently lives with me in my current home." Applicant's principal residence is a 2,300-square foot residence located on a 2.5-acre lot. On March 6, 2018, Applicant requested authorization to construct a 920-square foot accessory dwelling unit on the Property. The 920 square feet proposed accessory dwelling unit is 50% of the 1884 square feet heated space of the

principal residence which complies with Chapter 10, Section 10.4.2.2, as to the size allowed for an accessory dwelling unit.

8. Applicant submitted a signed letter from the New Mexico Environment Department (NMED) attesting that the lot size is adequate to install two septic systems.

9. The following SLDC provisions are applicable to this case:

A. Chapter 10.4.2.1 (Number Permitted) states:

> Only one accessory dwelling unit shall be permitted per legal lot of record. Platted major subdivisions shall only be permitted to have an accessary dwelling unit if their approval and reports and SRAs allowed and accounted for this.

B. Chapter 10.4.2.2 (Size) states:

> The heated area of the accessory dwelling shall not exceed the lesser of (a) fifty percent (50)) of heated area of the principal residence; or (b) 1,400 square feet.

C. Chapter 10.4.2.3.3 (Building and Site Design) states:

> An accessory dwelling shall be accessible through the same driveway as the principal residence.

D. Chapter 10.4.2.4 (Utilities) states:

> Liquid waste disposal shall be in common with the principal residence.

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

F. 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:

1. where the request is not contrary to the 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.

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

1. 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.

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

3. 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. Applicant and Staff have addressed the variance criteria as to the variance for an **accessory dwelling unit** in a major subdivision (Section 10.4.2.1) as follows:

a. *Where the request is not contrary to the public interest.*

i. Applicant stated that his daughter presently resides with him in the principal residence on the property, so having her own home will not have an additional impact to public roads, water, liquid waste or traffic.

ii. Staff stated that Applicant's Property is located within a major subdivision. Chapter 10, Section 10.4.2.1, states that platted major subdivisions

shall only be permitted to have an accessory dwelling unit if their approval and reports and SRAs allowed and accounted for it. The subdivision water availability report concluded that 0.28 acre feet per year was available per lot. Therefore, the subdivision approval did not include approval for two homes on single lot. Staff also responded that liquid waste and water may potentially intensify by allowing an accessory dwelling.

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.*

i. Applicant stated that it would be a hardship if he were unable to provide separate and affordable housing for a family member, a benefit which he stated the majority of County residents enjoy.

ii. Applicant's Property is located within a major subdivision. The SLDC only allows accessory dwelling units in major platted subdivisions if their approval and reports and SRAs allowed and accounted for this.

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

i. Applicant stated that under the previous Codes in which this Subdivision was approved, it would have allowed Applicant to divide the 2.5 acre lot into two 1.25 acre lots via Small Lot Family Transfer. This would have allowed each dwelling unit to have its own septic system. Applicant lost this mechanism when he was told by Count Land Use staff to wait until the SLDC was adopted. Therefore, the spirit of the SLDC has not provided substantial justice to Applicant.

ii. Staff responded that under the previous Ordinance, Applicant may have been able to divide the Property under the Small Lot Family Transfer provision. However, this provision no longer exists. Prior to the adoption of the SLDC, property owners were notified that their property had been assigned a base zoning classification and invited owners to determine how code changes could affect their property.

11. Applicant and Staff have addressed the variance criteria as to the **utility variance** (Section 10.4.2.4) as follows:

a. *Where the request is not contrary to the public interest.*

i. Applicant stated that the 2.5 acre lot is adequate to install a second septic system and the proposed separate septic system for the accessory dwelling has been permitted through NMED and meets the distance from existing wells on the surrounding properties.

ii. Staff stated that Section 10.4.2.4 requires that the accessory dwelling share in common the septic system with the principal residence. Staff acknowledges that Applicant has submitted an approved permit for the separate septic system from NMED.

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.*

i. Applicant stated that the existing tank is the largest tank manufactured and little to nothing can be done to accommodate the proposed

accessory dwelling unit. For this reason, NMED has permitted a second system on the Property.

ii. Staff responded that NMED documentation does not address the need for an additional septic system to provide efficient liquid waste discharge and only states that the Property is of sufficient size for two septic systems..

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

i. Applicant stated that previous Codes would have allowed Applicant to divide the 2.5 acre lot into two 1.25 acre lots by applying for a family transfer. This would have allowed the separate septic system but that Applicant had been advised by staff to defer the application until the SLDC became effective. Delaying the application resulted in prejudice to Applicant.

ii. Staff stated that all County residents had received communications and information from the County about the proposed zoning and Code changes that became effective upon adoption of the SLDC.

12. Staff said that the County is currently reviewing whether a Code change is warranted regarding the septic system issues since NMED regulates such systems and the County does not.

13. At the public hearing, no one spoke in support or opposition to the case.

14. The Hearing Officer acknowledges the precedent of Case No. V17-5230, Dorothy Montoya, Applicant (Montoya Application). The Montoya Application was substantially similar in all material respects to the current application: it involved the same subdivision; it included a request for an accessory dwelling with a separate liquid waste system for a family member of the applicant's; the applicant's family member also had resided with Applicant in Applicant's

principal residence on the Property. The Montoya Application received approval for the variance and approval from the Board of County Commissioners for a partial plat vacation as to the prohibition on guest houses. The Hearing Officer recommends that any decision concerning the current application be consistent with the precedent of the Montoya Application.

15. Based on the application and the evidence and testimony presented at the public Hearing, as described herein, as well as the precedent of the Montoya Application, the Hearing Officer finds that the application is not contrary to the public interest and is in the spirit of the SLDC and that because there was a finding in the Montoya Application of extraordinary and exceptional situations or conditions of the Property as required in order to grant a variance, that the same finding will be made here.

WHEREFORE, the Hearing Officer, based on the evidence presented and findings above, recommends as follows:

A. Approval of a variance of Section 10.4.2.1 (Major Subdivision) to allow construction of an accessory dwelling on the Property; and

B. Approval of a variance of Chapter 10.4.2.4 (Utilities) to allow an accessory dwelling a separate liquid waste system.

C. The recommended approval is subject to the following conditions:

1. Applicant must request a partial plat vacation to modify the note that prohibits guest houses and re-record the plat;

2. Applicant must install a meter on the well and submit proof at time of development application; and

3. Applicant will ensure that water use on Lot 10 does not exceed a total of 0.25 acre feet per year for the dwelling and accessory dwelling combined.

Respectfully submitted,

Nancy R. Long,
Hearing Officer

Date: 6-30-18

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

SLDC HEARING OFFICER 0
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I Hereby Certify That This Instrument Was Filed for Record On The 5TH Day Of July, 2018 at 08:40:12 AM
And Was Duly Recorded as Instrument # **1861849**
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy Estrella Martinez County Clerk, Santa Fe, NM

COUNTY CLERK
GERALDINE SALAZAR
SANTA FE COUNTY NEW MEXICO

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TRANSCRIPT OF THE

SANTA FE COUNTY

SLDC HEARING OFFICER MEETING

Santa Fe, New Mexico

June 14, 2018

I. This meeting of the Santa Fe County Sustainable Land Development Code Hearing Officer meeting was called to order by Santa Fe County Hearing Officer Nancy Long on the above-cited date at approximately 3:00 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Staff Present:
Vicki Lucero, Building & Development Services Manager
Tony Flores, Deputy County Manager
John Lovato, Development Review Specialist
Mike Romero, Development Review Specialist
Paul Kavanaugh, Building & Development Services Supervisor
Cristella Valdez, Assistant County Attorney
Jaome Blay, Fire Marshal

II. Approval of Agenda

HEARING OFFICER LONG: I will approve the agenda unless – are there any changes or amendments that need to be made to the agenda?

VICKI LUCERO (Building & Development Services Manager): Hearing Officer Long, there are no changes.

HEARING OFFICER LONG: Okay, so I'll approve the agenda. We have three cases for this afternoon's meeting.

III. Public Hearings

A. **CASE # V 18-5070 Angelo Ortega Variance. Angelo Ortega, applicant, James W. Siebert & Assoc., (Wayne Dalton), Agent, request a variance to the requirements set forth in the Sustainable Land Development Code (SLDC) of Chapter 10, Section 10.4.2.1 to allow an accessory dwelling within a major subdivision, and a variance of Section 10.4.2.4 (Utilities) to allow a separate liquid waste system for the accessory dwelling unit. The property is located at 120 North Paseo de Angel, within the La Cienega and La Cieneguilla Community District Overlay (LCLCCD) (RES-E), within Section 22, Township 16 North, Range 8 East (Commission District 3**

MIGUEL ROMERO (Case Manager): Good afternoon, Hearing Officer Long. The applicant is the owner of the property as evidenced by warranty deed recorded in the records of the Santa Fe County Clerk on July 5, 2001, as recorded in Book 1935 page 547. The property consists of 2.5 acres within the Residential Estate Zoning District within the La Cienega and La Cieneguilla Community Overlay Zoning District. The applicant is requesting a variance of Chapter 10, Section 10.4.2.1 to allow an accessory dwelling within a major subdivision and a variance of Section 10.4.2.4 to allow a separate liquid waste system for the accessory dwelling unit.

The applicant wishes to place a 920 square foot accessory dwelling unit on his property, providing the applicant's daughter a place of her own. The proposed accessory dwelling unit will be 920 square feet of heated area. The applicant states the heated area of the accessory dwelling is 50% of the 1,884 square feet of heated area of the principal residence. The applicant further states that the architectural design will be the same as the principal residence. The accessory dwelling height will not exceed the height requirements of the current dwelling unit, which is approximately 13 feet in height. After further review of the subdivision plat, it was determined that the subject lot was located within a major subdivision.

A note on the applicant's subdivision plat states, guest homes are prohibited on this lot. Currently, there is a 2,300 square foot residence on the property that is served by a well and a conventional septic system. The applicant is also requesting to install a separate septic system to accommodate the proposed 920 square foot accessory dwelling unit. The applicant states that the existing septic tank is already the largest tank manufactured; and very little to nothing can be done to the septic tank to accommodate the proposed accessory dwelling unit. Due to this exceptional situation, New Mexico Environment Department permitted a second system for the property. The second septic system has yet to be installed.

In 1994, an application for Vista de Sandia Subdivision was submitted, which is located within the La Cienega and La Cieneguilla Community District Overlay. The application for plat approval was granted by the Board of County Commissioners in 1996 under case number 94-2173. The approval was for a 16-lot subdivision and lot sizes ranged from 2.5 acres to 2.63 acres. The lot sizes were derived from a hydrologic study prepared by Geologist/Hydrologist, Jack Frost. Water use on each lot within the subdivision was restricted to 0.25 acre-foot water restriction based on the amount of water that the geo hydrologic report proved. At that time, a condition was imposed by the BCC that no guest homes were allowed within the Vista de Sandia Subdivision.

If the variances are granted by the Planning Commission, the applicant will request a partial plat amendment to change the note on the plat to allow an accessory dwelling unit on Lot 10 for the applicant's 2.5-acre parcel. This is a separate application process that requires a public hearing that will go before the BCC.

Previously in 2017, under Ordinance 2016-9, the applicant applied for a permit to allow a 920 square foot accessory dwelling unit. During the permit application review process, staff observed guesthouses were prohibited within the subdivision. Staff notified and advised the applicant that a permit would not be issued for the accessory dwelling unit on said property due to condition No. 12, as stated on Vista de Sandia Subdivision plat. The applicant then withdrew his application.

The applicant's property is located within a major subdivision. Chapter 10, Section 10.4.2.1, states that platted major subdivisions shall only be permitted to have an accessory dwelling unit if their approval and reports and SRAs allowed and accounted for this. The subdivision water availability report concluded that 0.28 acre-feet per year was available per lot. Therefore, they did not prove water for two houses. None of the reports accounted for two homes. The applicant currently proposes a separate septic system for the lot. Chapter 10, Section 10.4.2.4 requires the principal dwelling to share a septic system. Within the current application, the applicant has provided a signed letter from NMED stating that the lot size is adequate to install two systems.

Recommendation: The applicant and applicant's Agent did provide responses to the variance criteria. Staff recommends denial of a variance from Ordinance No. 2016-9 the Sustainable Land Development Code (SLDC) of Chapter 10 Section 10.4.2.1 to allow an accessory dwelling unit within a major subdivision. The Vista de Sandia Subdivision Hydrogeological Review did not prove more than 0.28 acre-feet per lot. The subdivision plat states under Notes and Conditions No. 12 Guest houses are prohibited on these lots. The subdivision plat states under Notes and Conditions No. 12 Guest houses are prohibited on these lots.

Staff recommends denial of a variance from Ordinance No. 2016-9 the Sustainable Land Development Code of Chapter 10, Section 10.4.2.4 to allow an accessory dwelling with a separate liquid waste system. The applicant has not provided any documentation from NMED that the existing septic system is at capacity and that an additional septic system will be required. The SLDC does not allow separate septic systems, for accessory dwelling units.

If the Hearing Officer recommends approval of the variances, staff recommends the following conditions be imposed:

1. The applicant must request a partial plat ~~amendment~~ vacation from the BCC to modify the note that prohibits guesthouses and re-record the plat. [Modified at staff report.]
2. The applicant must install a meter on the well and submit proof at time of development permit application.
3. The applicant will ensure that water use on Lot 10 does not exceed a total of 0.25 acre-feet per year for the dwelling and accessory dwelling combined.

Staff requests the Hearing Officer memorialize findings of fact and conclusions of law in a written order. The Santa Fe County Planning Commission will be holding a public hearing on this matter on July 19, 2018. I stand for any questions.

HEARING OFFICER LONG: Okay. Thank you. First, just a general question as to why staff is recommending denial of this variance when it's similar to the Dorothy Montoya case that's referenced in the report where an accessory dwelling unit was approved and the partial plat vacation was also approved by the BCC. So I'm wondering, are the cases similar enough that there was consideration given to that case as precedent?

MR. ROMERO: Hearing Officer Long, there is some difference between this case and the Dorothy Montoya case. I believe the Dorothy Montoya case did have some additional variances attached to the application for the variance. Staff recommended denial for the Dorothy Montoya case and so within the code, within the

major subdivisions, even though the other applicant did get final approval we still have to recommend denial. For the fact [inaudible]

HEARING OFFICER LONG: Yes. Well, I agree with you on that because I didn't see it as a condition relating to the land itself but rather a personal hardship of the applicant, but obviously, I was overruled so I've got to take a look at that and I'm wondering if you all looked at that too. Do you have any comment, Vicki?

MS. LUCERO: Hearing Officer Long, they are very similar requests within the same subdivision with the same plat notes and conditions. The one difference that I can tell you is, as far as Dorothy Montoya, the second septic system, that was based on terrain issues. She did have where one area of the terrain was raised well above where the existing septic was. So there was a terrain-related issue in regards to her request.

HEARING OFFICER LONG: Okay. And then the third condition, if this request is approved is to limit water use to .25 acre-feet for both the dwelling unit and the accessory dwelling unit. And why is it not .28, which is what the water availability report allowed for when the subdivision was approved.

MR. ROMERO: Hearing Officer Long, that was what was come up with at the time. However, the water restrictions I believe that were set for that subdivision were set for a quarter acre-foot, .25.

MS. LUCERO: Hearing Officer Long, the County Commission did approve the plat vacation or partial plat vacation with a condition of a quarter acre-foot water restriction, so we're just being consistent with that approval and with the standard.

HEARING OFFICER LONG: Okay. And you want to keep going back to the Commission in a partial plat vacation lot by lot, or why don't we just have a general plat vacation that removes that prohibition on accessory units for the entire subdivision? That would just seem fair since there's already two applicants that have come forward, why not just do it all at one time?

MS. LUCERO: Hearing Officer Long, I think in order to process a request like that we would need every landowner within the subdivision to be part of the application or to be part of the request. So that's not something that has been submitted to us at this point but if that continues then maybe that's something that we can look at.

HEARING OFFICER LONG: Okay. When the applicant withdrew their application in 2017 after they were advised of the plat note that prohibited an accessory dwelling unit, or that condition, were they advised of the process of requesting the variance at that time?

MR. ROMERO: Hearing Officer Long, I believe permitting staff did advise Mr. Ortega of the variance process and I believe also he was one of the residents that may have received notice when the prior applicant, Dorothy Montoya, was requesting a variance for the same thing.

HEARING OFFICER LONG: Okay. In the report at one point, under staff response, it's stated that the applicant may have been able to divide their property under the small-lot family transfer provision under the prior Land Development Code. But I take it would have also required a partial plat vacation? Or is there some other provision that would have allowed them to divide their property? Or to build the accessory dwelling unit?

MS. LUCERO: Hearing Officer Long, under the old code, under the 1996 code, they were allowed to do a family transfer that would allow half the minimum lot

size. So they could have divided their lot into two 2.5-acre parcels, but those lots would not have been allowed to have an accessory dwelling unit under that code.

HEARING OFFICER LONG: They'd just have two dwelling units but on their own lot.

MS. LUCERO: Correct.

HEARING OFFICER LONG: Okay, I think that's all I have at this time. Thank you. Mr. Dalton is here as the applicant's agent, and I'll have you sworn in.

[Duly sworn, Wayne Dalton testified as follows:]

WAYNE DALTON: Hearing Officer, my name is Wayne Dalton, with James Siebert and Associates. I represent Angelo Ortega. Hearing Officer Long, I just want to touch on a few issues that you talked about just a few minutes ago, especially regarding the small-lot family transfer. I'm not going to sit up here and say anything negative about staff. I'm just going to say that at the time when he came into the County was well before the SLDC was going into effect and he could have applied for a small-lot family transfer. He had owned the property for five years. That option was not given to him at that time. He was advised until the SLDC went into effect and apply for an accessory dwelling unit. So I just wanted for the record that he was given poor advice on numerous occasions.

Madam Hearing Officer, I also want to state that the second dwelling will be for the applicant's daughter. The applicant's daughter currently resides with him in the existing residence so water will stay the same, liquid waste will stay the same, and traffic in the area will stay the same. She already lives there. We're all aware the Vista de Sandia Subdivision was a previously approved major subdivision with a water restriction of .28 acre-feet. I would just like to state when that subdivision was approved the density in that area was 2.5 acres, so therefore it was only required to prove enough water for 16 lots. He may not have wanted guest units at the time.

Hearing Officer, there are actually many lots, I could say maybe hundreds, maybe thousands of lots in Santa Fe County that have a quarter acre-foot water restriction under allowed accessory dwelling unit. So this is just because it's located in a major subdivision it's not allowed. But I just wanted to point that out. Also with the septic system, we feel that that shouldn't even be in the code. The County doesn't regulate septic systems; the New Mexico Environment Department regulates septics. So it should say accessory dwellings units should share the septic or as approved by the New Mexico Environment Department. In this case there's really nothing the applicant can do to accommodate an extra bedroom and a bathroom. He's already got the maximum manufactured tank size which is 1250 gallons, so there's really nothing he can do to modify the system for this accessory dwelling unit. So that's why the New Mexico Environment Department issued him a second septic permit.

Based on that fact and based on the fact that he had enough land on the property as well.

HEARING OFFICER LONG: So that permit has been issued by NMED.

MR. DALTON: Hearing Officer, that is correct. He has been issued a second permit for the second septic system. That basically concludes my presentation. We do agree with staff's condition and I want to thank staff for working with us, especially Miguel. He's been great, and I do stand for any questions.

HEARING OFFICER LONG: Okay. Thank you. I just had the question about the NMED approval. So I think that's all. I have a follow-up question for staff, just philosophically, why does the code require that the dwelling unit and the accessory dwelling unit share one septic tank for a lot of this size?

MS. LUCERO: Hearing Officer Long, I think the general – when the code was being developed it was intended to have – since the family transfer provision went away it was intended to allow people relief as far as having a family member on site to kind of deter them from being rentals. I think that requirement was added to where they had to share a septic system, but we are actually looking at some possible changes to the code and that's something that we're looking at is amending that language.

HEARING OFFICER LONG: I think that makes sense, because I don't know that having a separate septic system is going to encourage rentals or having one septic system discourages it. Because it's not like you have a monthly sewer bill; you have a septic system.

All right. Is there anyone here that came this afternoon that would like to speak to this case? In support or against? I will note for the record that there is no one wishing to speak to this case.

Thank you for the presentations and thank you, Mr. Dalton. You know what the process is, that I issue a recommendation and that would be done within two weeks and you'll go to the Planning Commission. Thank you. And maybe to the BCC too.

III. B. CASE # V 18-5060 Emilio E. Ortiz and Linda D. Ortiz Variance. Emilio E. Ortiz and Linda D. Ortiz-Chavez, applicants, Eileen Ortiz Agent, request a variance to the requirements set forth in the Sustainable Land Development Code (SLDC) of Chapter 9, Table 9.16.5 (Dimensional Standards) to allow a 1.43-acre parcel to be divided into two equal lots; each lot consisting of 0.715 acres. The property is located at 39 Cañada Ancha, within the Chimayo Community District Overlay (ChCD) in the Traditional Community Zoning District (TC), within Section 1, Township 20 North, Range 9 East (Commission District 1

MR. ROMERO: Hearing Officer Long, the applicants acquired the property as evidenced by warranty deed recorded in the records of the Santa Fe County Clerk on August 3, 2011, as Instrument No. 1641770. The property is recognized as a legal lot of record located in the Traditional Community Zoning District within the Chimayo Community District Overlay. The applicants are requesting a variance to the requirements set forth in the Sustainable Land Development Code of Chapter 9, Table 9.16.5 to allow their property to be divided into two equal lots.

The applicants have indicated in their letter of intent, a request to divide their 1.43-acre parcel into two equal lots; each lot consisting of 0.715 acres for each of his daughters. However, the recorded survey plat indicates that the parcel consists of 1.453 acres. If the applicants were to divide their 1.453-acre parcel into two equal lots, each lot would consist of 0.7265 acres. The applicants would be lacking approximately 0.047 of an acre in order to divide their property administratively. Currently, there is single-family residence located on the property, which was permitted in March 2018. The

CASE NO. V18-5070
ANGELO ORTEGA VARIANCE

ORDER

THIS MATTER came before the Santa Fe County Planning Commission (Commission) for a hearing on July 19, 2018, on the Application of Angelo Ortega, Applicant, to request a variance of Chapter 10, Section 10.4.2.1 to allow an accessory dwelling within a major subdivision, and a variance of Section 10.4.2.4 (Utilities) to allow a separate liquid waste system for the accessory dwelling unit. The property is located at 120 North Paseo De Angel, within Section 22, Township 16 North, Range 8 East (Commission District 3).

The Planning Commission, having reviewed the Application, staff report, staff's recommendation, the Hearing Officer's Recommended Decision and Order, and having conducted a public hearing on the Application, finds that the Application is not well-taken and denies the application for a variance with the following findings of fact and conclusion of law:

I. Background

1. The property on which the Proposed Development will occur is located at 120 North Paseo De Angel (hereinafter Property), within the La Cienega and La Cieneguilla Community District Overlay (LCLCCD) (RES-E), within Section 22, Township 16 North, Range 8 East (Commission District 3).

EXHIBIT
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102 Grant Avenue · P.O. Box 276 · Santa Fe, New Mexico 87504-0276 · 505-986-6200 · FAX: 505-995-2740 www.santafecountynm.gov

2. The Property is owned by the Applicant Angelo Ortega as evidenced by warranty deed recorded in the records of the Santa Fe County Clerk on July 5, 2001, as recorded in Book 1935 page 547.

3. The Applicant currently owns a single family residence of approximately 2,300 sq. ft. of total roofed area that sits on a 2.5 acre lot. The Applicant is requesting to place an accessory dwelling unit for his daughter, who currently resides at the home. NMED has indicated that the accessory dwelling unit will require its own separate septic system. [Exhibit 1 to Staff Report; NBA-9]

4. The Property is located within the Vista de Sandia Subdivision, which is identified as a major subdivision. Plat approval for the Vista de Sandia Subdivision was granted by the Board of County Commissioners (BCC) in 1996 under case number 94-2173. The approval was for a 16 lot subdivision and lot sizes ranged from 2.5 acres to 2.63 acres. The lot sizes were derived from a hydrologic study prepared by Geologist/Hydrologist, Jack Frost. Water use on each lot within the subdivision was restricted to 0.25 acre foot per year (afy) based on the amount of water that the geo hydrologic report proved. A that time, a condition was imposed by the BCC that no guest homes were allowed within the Vista de Sandia Subdivision. [Staff Report, NBA-3; Exhibit 7 to Staff Report, NBA-21]

5. If the variances are granted, Staff states that the Applicant will need to request a partial plat vacation to change the note on the Plat to allow an accessory dwelling unit on Lot 10 for the Applicant's 2.5 acre parcel. This is a separate application process that requires a public hearing that will go before the BCC. [Staff Report, NBA-3]

II. Applicable Provisions of the SLDC

6. The applicable requirements under the Santa Fe County Land Development Code (SLDC), Ordinance No. 2016-9, which govern this Application are as follows:

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a. Chapter 10, Section 10.4.2.1. Number Permitted states,

10.4.2.1. Number Permitted. Only one accessory dwelling unit shall be permitted per legal lot of record. Platted major subdivisions shall only be permitted to have an accessory dwelling unit if their approval and reports and SRAs allowed and accounted for this.

b. Chapter 10, Section 10.4.2.4. Utilities states,

10.4.2.4. Utilities. Water and electricity for the accessory dwelling unit shall be shared with the principal residence. Liquid waste disposal shall be in common with the principal residence; however, if the principal residence is on a septic system, then any modifications to the system to accommodate the accessory dwelling unit shall be approved by NMED.

c. Chapter 4, Section 4.9.7.1. Variance, 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.

d. Chapter 4, Section 4.9.7.4. Review criteria states:

A variance may be granted only by 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 the 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.

III. Public Hearing Process

7. As required by the SLDC, the Applicant presented the Application to the Technical Advisory Committee (TAC) on March 15, 2018, at the regularly scheduled monthly meeting, which satisfied the requirements set forth in Chapter 4, TAC Meeting Table 4-1.

8. The Applicant also conducted a Pre-Application Neighborhood Meeting on April 12, 2018.

9. The Applicant appeared before the Sustainable Land Development Code Hearing Officer (Hearing Officer) on June 14, 2018.

10. The Hearing Officer Recommended approval of Chapter 10, Section 10.4.2.1 to allow an accessory dwelling within a major subdivision, and a variance of Section 10.4.2.4 (Utilities) to allow a separate liquid waste system for the accessory dwelling unit subject to the following conditions;

    a. Applicant must request a partial plat vacation to modify the note that prohibits guest houses and re-record the plat;
    b. Applicant must install a meter on the well and submit proof at time of development application; and
    c. Applicant will ensure that water use on Lot 10 does not exceed a total of 0.25 acre feet per year for the dwelling and accessory dwelling combined.

11. Prior to the hearing before the Commission, notice requirements of the SLDC were met pursuant to Chapter 4, Section 4.6.3., General Notice of Application Requiring a Public Hearing. In advance of the 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 May 30, 2018. Additionally, notice of the hearing was published in the legal notice section of the Santa Fe New Mexican on May 30, 2018, 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 in contained in the record.

12. At the public hearing before the Commission, staff recommended that the Commission deny the Applicant's Variance requests because water used was restricted to 0.25 afy in the Vista de Sandia Subdivision based on the Hydrogeological Review and because the Applicant has not provided any documentation from NMED that states the existing septic system is at capacity and that an additional septic system will be required. [Minutes of the Commission Meeting for July 19, 2018, pg. 10; Staff Report, NBA-8]

IV. Compliance with the Code

13. The Applicant indicated that the proposed dwelling would be occupied by his daughter who already resides on the property within the existing home. The Applicant states that there will be no immediate impact to the public with regard to water, liquid waste, and traffic. [Staff Report, NBA-10]

14. The Applicant did not submit any reports regarding the availability of water and the impact of water use on the property.

15. The Commission finds that there is insufficient information to determine whether water would be available for the Proposed Development.

16. Item Number 12 under Notes and Conditions on the Plat of Survey for Vista de Sandia Corporation Subdivision states that "Guest house are prohibited on these lots." [Exhibit 7 to Staff Report, NBA-21]

17. The Commission finds that based on the Item Number 12 on the Plat, guesthouses are prohibited on the lot.

18. The Applicant states that the liquid waste from the principle dwelling on the Property is disposed of via a septic tank. The Applicant states that NMED evaluated the septic system and the Proposed Development would require a separate septic tank. [Exhibit 1 to Staff Report, NBA-9]

19. At the public hearing, the Applicant's agent stated that it would not be cost effective to "rip out" the existing system and install a larger tank with a leach field. [Santa Fe Planning Commission Minutes for July 19, 2018, pg 16]

20. The Commissions finds that the Applicant did not provide any documentation from NMED that states the existing septic system is at capacity and that an additional septic system will

be required. [Minutes of the Commission Meeting for July 19, 2018, pg. 10; Staff Report, NBA-8]

21. The Commission finds that upgrading the septic system is a reasonable alternative because there is no evidence that NMED will require a separate septic system.

22. The Commission finds that the expense of removing and upgrading the existing septic system is not an extraordinary and exceptional situation or condition of the property, where strict application of the code would result in peculiar and exceptional practical difficulties or exceptional and undue hardship on the owner.

V. Opposition to the Application

23. At the public hearing before the Commission, Kathryn Becker board member of the La Cienega Valley Association (LCVA) spoke on behalf of the LCVA, spoke in opposition of the variance requests. [Santa Fe Planning Commission Minutes for July 19, 2018, pp. 19-20]

24. Other than the Applicant and the Applicant's agent, there was no testimony in Support of the Application at the public hearing before the Commission. [Santa Fe Planning Commission Minutes for July 19, 2018, pp 17- 20]

25. The LCVA opposed the Application on the basis that the Proposed Development would impact the limited water resources in the community and because the LCVA did not have sufficient information to make an informed decision regarding the size of the lot, water rights, and adherence to well meter requirements. [Santa Fe Planning Commission Minutes for July 19, 2018, pp 17- 20]

26. With regard to the LCVA's concerns regarding water resources and the lack of information regarding water availability, the Commission finds persuasive the testimony and comments to the effect that there is insufficient information to determine whether water would be available for the Proposed Development.

VI. Conclusions of Law

27. Any finding or conclusion of the Commission set forth above that may be construed to constitute a conclusion of law is hereby incorporated in to Section VI.
28. As to the request for a variance from the requirements set forth in Chapter 10, Section 10.4.2.1 to allow an accessory dwelling within a major subdivision, the Commission finds that:
    a. The variance is contrary to the public interest and the spirit of the SLDC is not observed because there is insufficient evidence that the accessory dwelling will not impact the limited water resources in the development and because the plat prohibited accessory dwellings on the basis of limited water availability.
    b. Section 4.9.7.1 of the SLDC provides that "[t]he 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." The Proposed Development is contrary to this provision because guesthouse are otherwise prohibited in the Vista de Sandia Subdivision. Further, because the Plat was approved with a condition specifically disallowing accessory dwelling units, this is evidence that approval, reports and SRA for the Vista de Sandia Subdivision did not account for accessory dwelling units as required by Section 10.4.2.1. Accordingly, the spirit of the SLDC is not observed by a granting of the variance.
    c. Accordingly, the variance criteria set forth in Chapter 4, Section 4.9.7.4 of the SLDC are not met.
29. As to the request for a variance from Chapter 10, Section 10.4.2.4 to allow a separate liquid waste system for the accessory dwelling unit, the Commission finds that:
    a. There is insufficient evidence that 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 exception and undue hardship on the owner when the Applicant failed to provide any documentation from NMED that states the existing septic system

is at capacity and that an additional septic system will be required and upgrading the septic system is a reasonable alternative.

b. Accordingly, the variance criteria set forth in Chapter 4, Section 4.9.7.4 of the SLDC are not met.

WHEREFORE, the Planning Commission hereby denies the application of Angelo Ortega for a variance from Chapter 10, Section 10.4.2.1 to allow an accessory dwelling within a major subdivision, and a variance of Section 10.4.2.4 (Utilities) to allow a separate liquid waste system for the accessory dwelling unit.

IT IS SO ORDERED.

This Order was adopted by the Commission on this 20th day of September, 2018.

THE SANTA FE COUNTY PLANNING COMMISSION

Charlie Gonzales, Chairperson

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:

R. Bruce Frederick, County Attorney

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

PLANNING COMMISSION OR
PAGES: 9

I Hereby Certify That This Instrument Was Filed for Record On The 24TH Day Of September, 2018 at 09:30:11 AM And Was Duly Recorded as Instrument # 1868214 Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy _____ County Clerk, Santa Fe, NM

NOTICE OF APPEAL

Any party with standing may appeal a final decision of the Planning Commission to the Santa Fe County Board of County Commissioners. The application seeking an appeal of a decision of the Planning Commission must be filed with the Administrator. An appeal from a 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

got a very different problem with him.

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

CHAIRMAN GONZALES: Any other questions of the applicant? Karl, this Sedimax stuff here, do you know where it has been used before?

Ks: I don't know other than where it says in the material that says it is widely used in construction projects. But I don't know. It looks very familiar to some of the things that I have seen in the SWYP approved plans that I see with that fibrous soil holder. But I don't know that it's the exact same thing.

CHAIRMAN GONZALES: It kind of looks like that geo-grid. Paul, are you familiar with it?

PAUL KAVANAUGH (Code Enforcement): Mr. Chair, I have not reviewed this, the geo-grid. It appears to be – a lot of this appears to be waddles but there is a back page and I haven't even reviewed this. It came in too late.

CHAIRMAN GONZALES: Right, okay, thank you. This is a public hearing. Do we have anyone here who wants to speak for or against this project? No, okay.

Does the Commission have any discussion or motions? No.

COMMISSIONER SHEPHERD: Mr. Chair.

CHAIRMAN GONZALES: Steve, go ahead.

COMMISSIONER SHEPHERD: I move that we accept the staff recommendation to deny all variances and recommend that the applicant be required to revegetate all disturbed area and build within the platted buildable area.

COMMISSIONER ANAYA: Second.

COMMISSIONER MARTIN: Second.

CHAIRMAN GONZALES: All in favor. All opposed.

The motion passed by unanimous voice vote.

CHAIRMAN GONZALES: The variances failed. Thank you.

VII. New Business

A. CASE #V18-5070: Angelo Ortega, Applicant, James W. Siebert & Assoc., Agent, request a variance to the requirements set forth in the Sustainable Land Development Code (SLDC) of Chapter 10, Section 10.4.2.1 to allow an accessory dwelling within a major subdivision, and a variance of Section 10.4.2.4 (Utilities) to allow a separate liquid waste system for the accessory dwelling unit. The property is located at 120 North Paseo de Angel, within the La Cienega and La Cieneguilla Community District Overlay (LCLCCD) (RES-E), within Section 22, Township 16 North, Range 8 East (Commission District 3)

MIKE ROMERO (Case Manager): Angelo Ortega, Applicant, James W. Siebert & Associates, agent, request a variance to the requirements set forth in the Sustainable Land Development Code of Chapter 10, Section 10.4.2.1 to allow an accessory dwelling within a major subdivision, and a variance of Section 10.4.2.4 to allow a separate liquid waste system for the accessory dwelling unit. The property is

located at 120 North Paseo de Angel, within the La Cienega and La Cieneguilla Community District Overlay, within Section 22, Township 16 North, Range 8 East, Commission District 3.

I believe the handout that staff is handing out is for the case after this one.

On June 14, 2018, this Application was presented to the Hearing Officer. The Hearing Officer supported the application based on the evidence and testimony presented at the public hearing as well as the precedent of the Montoya Application. The Hearing Officer finds that the application is not contrary to the public interest and is in the spirit of the SLDC and that because there was no finding in the Montoya Application of extraordinary and exceptional situations or conditions of the property as required in order to grant a variance, that the same finding will be made here. Therefore, the Hearing Officer recommended approval of a variance of Chapter 10, Section 10.4.2.1 to allow an accessory dwelling within a major subdivision, and a variance of Section 10.4.2.4 to allow a separate liquid waste system for the accessory dwelling unit. The Hearing Officer supported the Application as memorialized in the findings of fact and conclusions of law in a written order subject to the following conditions.

1. Applicant must request a partial plat vacation to modify the note that prohibits guesthouses and re-record the plat;
2. Applicant must install a meter on the well and submit proof at time of development application; and
3. Applicant will ensure that water use on Lot 10 does not exceed a total of 0.25 acre-feet per year for the dwelling and accessory dwelling combined.

The Applicant is the owner of the property as evidence by warranty deed recorded in the records of the Santa Fe County Clerk on July 5, 2001, as recorded in Book 1935 page 547. The property consists of 2.5 acres within the Residential Estate Zoning District within the La Cienega/La Cieneguilla Community Overlay Zoning District. The Applicant is requesting a variance of Chapter 10, Section 10.4.2.1 to allow an accessory dwelling within a major subdivision, and a variance of Section 10.4.2.4 to allow a separate liquid waste system for the accessory dwelling unit.

The Applicant wishes to place a 920 square foot accessory dwelling unit on his property, providing the Applicant's daughter a place of her own. The proposed accessory dwelling unit will be 920 square feet of heated area. The Applicant states, the heated area of the accessory dwelling is 50 percent of the 1,884 heated area of the principal residence. The Applicant further states, that the architectural design will be the same as the principal residence. The accessory dwelling height will not exceed the height of the current dwelling unit, which is approximately 13 feet in height.

After further review of the subdivision plat, it was determined that the subject lot was located within a major subdivision. A note on the Applicant's subdivision plat, states, guest homes are prohibited on this lot. Currently, there is a 2,300 square foot residence on the property that is served by a well and a conventional septic system. The Applicant is also requesting to install a separate septic system to accommodate the proposed 920 square foot accessory dwelling unit. The Applicant states that the existing septic tank is already the largest tank manufactured and very little to nothing can be done to the septic tank to accommodate the proposed accessory dwelling unit. Due to this

exceptional situation, New Mexico Environment Department permitted a second system for the property. The second septic system has yet to be installed.

In 1994, an application for Vista de Sandia Subdivision was submitted, which is located within the La Cienega and La Cieneguilla Community District Overlay. The application for plat approval was granted by the Board of County Commissioners in 1996 under case number 94-2173. The approval was for a 16 lot subdivision and lot sizes ranged from 2.5 acres to 2.63 acres. The lots sizes were derived from a hydrologic study prepared by Geologist/Hydrologist Jack Frost. Water use on each lot within the subdivision was restricted to 0.25 acre-feet, water restriction based on the amount of water that the geo hydrologic report proved. At that time, a condition was imposed by the BCC that no guest homes were allowed within the Vista de Sandia Subdivision.

If the variances are granted by the Planning Commission, the Applicant will request a partial plat vacation to change the note on the plat to allow an accessory dwelling unit on Lot 10 for the Applicant's 2.5 acre parcel. This is a separate application process that requires a public hearing that will go before the BCC.

Previously in 2017, Under Ordinance 2016-9, the Applicant applied for a permit to allow a 920 square foot accessory dwelling unit. During the permit application review process, staff observed, guesthouses were prohibited within the subdivision. Staff notified and advised the Applicant that a permit would not be issued for the accessory dwelling unit on said property due to condition No. 12, as stated, on Vista de Sandia Subdivision plat. The Applicant then withdrew his application.

The Applicant's property is located within a major subdivision. Chapter 10, Section 10.4.2.1, states that platted major subdivisions shall only be permitted to have an accessory dwelling unit if their approval and reports and SRAs allowed and accounted for this. The subdivision water availability report concluded that 0.28 acre-feet per year was available per lot. Therefore, they did not prove water for two houses. None of the reports accounted for two homes.

The Applicant currently proposes a separate septic system for their lot. Chapter 10, Section 10.4.2.4 requires the principal dwelling to share a septic system. Within the current application, the Applicant has provided a signed letter from NMED stating that the lot size is adequate to install two systems.

Recommendation: The Applicant and Applicant's agent did provide responses to the variance criteria. Staff recommends denial of a variance from Ordinance No. 2016-9 the Sustainable Land Development Code of Chapter 10 Section 10.4.2.1 to allow an accessory dwelling unit within a major subdivision. The Vista de Sandia Subdivision Hydrogeological Review did not prove more than 0.28 acre-feet per lot. The subdivision plat states under Notes and Conditions No. 12 guesthouses are prohibited on these lots.

Staff recommends denial of a variance from Ordinance No. 2016-9 the Sustainable Land Development Code of Chapter 10, Section 10.4.2.4 to allow an accessory dwelling a separate liquid waste system. The Applicant has not provided any documentation from NMED that states the existing septic system is at capacity and that an additional septic system will be required. The SLDC does not allow separate septic systems, for accessory dwelling units.

If the decision of the Planning Commission is to approve the Applicants request, staff recommends imposition of the following conditions. May I enter these into the record?

CHAIRMAN GONZALES: Yes.
MR. ROMERO: Would you like for me to read them?
CHAIRMAN GONZALES: Yes, please.
MR. ROMERO: They are,

1. The Applicant must request a partial plat vacation from the BCC to modify the note that prohibits guesthouses and re-record the plat. [Changed below]
2. Applicant must install a meter on the well and submit proof at time of development permit application.
3. The Applicant will ensure that water use on Lot 10 does not exceed a total of 0.25 acre-feet per year for the dwelling and accessory dwelling combined, and shall provide annual water meter readings to the Land Use Administrator.

This matter went before the Hearing Officer for a hearing on June 14, 2018. The Hearing Officer recommended approval of a variance of Chapter 10, Section 10.4.2.1 to allow an accessory dwelling unit within a major subdivision and Chapter 10, Section 10.4.2.4 to allow an accessory dwelling a separate liquid waste system, subject to conditions.

If the decision of the Planning Commission is to approve the application, you may consider adopting the Hearing Officer's findings of fact and conclusions of law in the written recommendation.

And just for clarification, Mr. Chair, Commission Members, we did add some language to our condition number three, which was the Hearing Officer's condition. So condition 3, the added language reads: and shall provide annual water meter readings to the Land Use Administrator. That's the additional language from the Hearing Officer's from staff recommendation. I stand for any questions.

CHAIRMAN GONZALES: Thank you, Miguel. Vicki?

MS. LUCERO: Mr. Chair, if I could just add a clarification on a recommended change to condition 1 also. It reads, "The Applicant must request a partial plat vacation" we would recommend that it be changed to "The Applicant must obtain a partial plat vacation…"

CHAIRMAN GONZALES: Thank you, Vicki. Okay, I have a question for staff. I am curious why they're trying to put a separate septic tank when I know you can buy 1,500 gallon septic tanks. I was reading the notes of the report and I saw something there where they said the maximum septic tank is 1,250 or something like that; can you address that? I mean, if that's the case, they that variance goes away or potential goes away right?

MR. ROMERO: Mr. Chair, to clarify your question, so you're questioning – can you state your question again please so I give you the correct answer.

CHAIRMAN GONZALES: And maybe I need to ask this of the applicant when he is up there but on the report I saw something on there that said the tank is the biggest tank you can get but I am currently installing a septic tank for the Bennie Chavez Center County in Chimayo and we're putting in a 1,500 gallon septic tank. So I am curious about the information that was given to us.

MR. ROMERO: Mr. Chair, committee members, that is correct. That is what the applicant did state that the existing septic tank that is on the property is at its maximum capacity and that NMED did state that the property could accommodate a second septic system. But I believe possibly maybe the applicant's agent could add some

more information to that question but that is the same information that was provided to staff as well.

CHAIRMAN GONZALES: Okay, I'll have him address that at that point. I have another question to staff. Does the County code still regulate the placement of septic tanks and leach fields on slopes less than 15 percent?

MS. LUCERO: Mr. Chair, I believe that is still a requirement in the current code.

CHAIRMAN GONZALES: So on that point, we have control of the placement of the septic tank and leach fields based on slopes; correct?

MS. LUCERO: I believe based on slopes, correct. And I believe that is a NMED requirement as well.

CHAIRMAN GONZALES: Okay. Has the applicant provided a copy of the NMED permit?

MR. ROMERO: Mr. Chair, committee members, I believe so. I believe it is in the file itself. It's not as an exhibit but it is in the file.

Just for clarification, Mr. Chair, committee members, the applicant did get approval to place the – permit approval from NMED for the applicant to place it but the applicant has not installed the septic system. He just got approval from NMED for the additional septic system, for clarification.

CHAIRMAN GONZALES: I'm just curious on the septic tank because I'd hate to see him disturbing area for a septic tank when it is not needed or possible not needed.

Okay, does other Commissioners have questions of the staff? Mr. Katz.

COMMISSIONER KATZ: My question is other than in major subdivisions are guesthouses forbidden in the County area?

MS. LUCERO: Mr. Chair, Commission Member Katz, I don't believe that they are prohibited but in certain areas in certain community districts they are conditional uses rather than permitted uses.

COMMISSIONER KATZ: We don't have anything to do with approvals of major subdivision, do we? Isn't that done by the Board of County Commissioners?

MS. LUCERO: That's correct, it goes straight to the BCC.

COMMISSIONER KATZ: And evidently reading the report a crucial factor in their consideration of whether a major subdivision would allow a guesthouse is the quantity of water available; is that correct?

MS. LUCERO: That's correct, yes.

COMMISSIONER KATZ: I think in the Montoya case there was discussion of the Planning Commission can approve the variance to allow it but they still have to go to the Board of County Commissioners in order to get the plat amended. I presume that what they would need to show to the Board of County Commissioners is again sufficient water, something that the Board of County Commissioners seems to deal with rather than we; is that correct?

MS. LUCERO: Mr. Chair, Commission Member Katz, at the point that they would be requesting a partial plat vacation we wouldn't require them to submit additional SRAs if the variance is granted by the Planning Commission. But it would be up to the County Commission whether or not they require any additional information to be submitted.

COMMISSIONER KATZ: But we've had not information on SRAs or anything. It just seems puzzling to me that the County Commission that had made that determination and decided what was allowed and what was not allowed would then dodge the bullet of saying, Oh, is there enough water now? We don't have any information on that so how could we approve the variance? It's not something we ever dealt with to begin with and it's nothing that seems to be in evidence here. Is that not correct, if the County Commission is going to approve a major subdivision and they seen the SRA and they know how much water they use, they decide can we have guesthouse or can't we. They have that information. They were provided that information not us. And I'm curious that we're being asked to essentially make that decision now.

MS. LUCERO: Mr. Chair, Commission Member Katz, the process under the SLDC variance is to go before the Hearing Officer for a recommendation and then the Planning Commission would have the final authority and it is not specific to types of variance. It's all variances that would go through that process.

COMMISSIONER KATZ: What I'm disturbed by is that we're being asked to grant or deny a variance that is really based on water availability because in most of the County you can do a guesthouse unless it's a specific area that makes it a conditional use and you might want them to have to prove out water. And yet we have not information about water; how are we supposed to decide whether this is an appropriate variance? Why isn't that the Board of County Commissioners responsibility since they approved the approved the major subdivision and limited guesthouses because presumably they had a reason to do that. We don't know, we weren't there.

MS. LUCERO: Mr. Chair, Commission Member Katz, one of the options that the Planning Commission would have is to deny the requested variances and the applicant would have the ability to appeal that decision on to the BCC.

COMMISSIONER KATZ: Since they are going there anyway. Thank you.

CHAIRMAN GONZALES: Any other questions of staff. Mr. Anaya.

COMMISSIONER ANAYA: A couple or three or four questions. First one is, this is on picture number NBA-17 that is a manufactured house, correct?

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

COMMISSIONER ANAYA: Okay, and the second one is going to be same thing, manufactured housing?

MR. ROMERO: Mr. Chair, Member Anaya, that is correct.

COMMISSIONER ANAYA: And how in the world are they getting 9,200 square-foot heated?

MR. ROMERO: My understanding is, Mr. Chair, Member Anaya, my understanding is that the proposed accessory dwelling in total of, I guess, considering the roofed out heated area it's just going to be about square footage.

COMMISSIONER ANAYA: What's the bedroom capacity? Two, three, one? It's got to be at least two.

MR. ROMERO: Mr. Chair, Member Anaya, I believe I don't have – let me check the file to see if there was any kind of floor plan added.

COMMISSIONER ANAYA: I didn't see it.

MR. ROMERO: Mr. Chair, committee members, I do actually have the – if this helps and if it is relevant, I do actually do have the old permit application that was

submitted to Land Use back to 2017 that may have this information but again this isn't in the – this is in the file but this is a separate file for development permit.

COMMISSIONER ANAYA: Okay, and another thing, is it just for the daughter?

MR. ROMERO: Mr. Chair, Member Anaya, I think that it is two bedrooms.

COMMISSIONER ANAYA: Okay, so just the daughter is going to live it or does she have siblings or not siblings but children?

MR. ROMERO: Mr. Chair, Member Anaya, I don't know. Maybe the applicant's agent can clarify if she has children. It was made clear to me that it is going to house the applicant's daughter.

COMMISSIONER ANAYA: Okay, and another thing too, we were talking about septic tanks and the Environmental Department submitted a letter of clarification on Exhibit 6 stating that in, "2001 a three bedroom house permit number" yadee yadee yada, and another one for two bedroom was approved in April 12, 2017 and just for clarification to the Chair, in 2001 all the way up to almost 2010 septic systems were only up to 1,250. And this was put in in 2001 so I understand they are trying to add another one in there because it will change from the bedroom size of the existing mobile home which is probably a three, maybe a four bedroom and then adding an additional two would bring it to six so that's why they're talking about septic systems.

And the water; is a system, a County system or is it wells?

MR. ROMERO: Mr. Chair, Member Anaya, it is a well.

COMMISSIONER ANAYA: And we don't have any proof of what it produces? It's not in our records.

MS. LUCERO: Mr. Chair, while Miguel is looking up the information, I just wanted to mention that when the other case, the Dorothy Montoya case, went forward to the County Commission for the request for the partial plat vacation, the Commission did impose a condition that the property could not exceed .25 acre-feet per year. So that would be both houses combined couldn't exceed the .25 acre-foot water restriction.

COMMISSIONER ANAYA: So it is not per dwelling it is per lot.

MS. LUCERO: The condition that the BCC imposed on that specific case was for the lot, yes.

COMMISSIONER ANAYA: Is it close to this area?

MS. LUCERO: It's within the same subdivision.

COMMISSIONER ANAYA: Thank you.

MR. ROMERO: Mr. Chair, Member Anaya, I did just find – I don't actually have the well log, but I do have proof that the applicant did obtain a permit from the State Engineer's Office.

CHAIRMAN GONZALES: Okay, any other questions of staff? Okay, Wayne are you going to present this?

[Duly sworn, Wayne Dalton, testified as follows]

WAYNE DALTON: Wayne Dalton, 915 Mercer Street. I'm with Jim Siebert and Associates. Thank you, Mr. Chair, Commissioners.

Like Miguel said, we are requesting a variance to allow an accessory dwelling unit. This will be for the applicant's daughter. The applicant's daughter currently resides

with him in the existing home. Therefore, we feel that there's not going to be any impact to the community in regards to water, in regards to sewer or traffic. The daughter is already there. Her father just wants to give her her own place and her own affordable place to reside in Santa Fe. That's what this is about.

We are in agreement with staff conditions. The staff conditions are to meter both homes and we agree not to exceed .25 acre-foot which is what was proved up in the original hydro report.

Mr. Chair, I want to say a little bit about that subdivision when it was approved. Not only was it approved on water, it was approved on density as well. The density in the area was 2.5 acres. The developer comes in and says I wasn't as many lots as I can get at 2.5 acres. Staff tells him, All right, you have to prove. He comes back, proves out water, gets his 16 lots with .25 acre-foot water restriction. If you look at that plat, there's not a note there that says those lots cannot be further subdivided. So the applicant lost that mechanism to do that.

The applicant did come in to the County and was told to wait until the SLDC came into effect and you could have an accessory dwelling unit. As you know, small family transfers no longer exist and the accessory dwelling unit kind of replaced it as a mechanism for affordable housing, affordable places for children and elderly people. So he could have done a small lot. He could have had a house and a septic on each lot. The small family transfer allowed you to go to half the minimum lot size and so in this area it would have been 1.25 acres. So he was given some bad information and lost that mechanism. Now he comes in and once to provide an affordable house for his daughter and now he can't do it again. So, you know, we feel that it is in compliance with all of the requirements in regards to an accessory dwelling unit. It meets the square footage. And in regards to the septic system. I was unaware that there's a 1,500 gallon septic system. I was told by the applicant that he went to the Environment Department, told them what the issue was and Environment told him there's really nothing that you can do unless you do a permit for a second permit system. My personal feeling is that that language shouldn't even be in the SLDC. The County does not regulate septic tanks. That is done by the New Mexico Environment Department. So if the New Mexico Environment Department wants modifications, wants a bigger tank, wants a separate system, I think that that should be decided by the Environment Department until the County actually regulates septic systems.

Mr. Chair, that's really all I have to say. We are in agreement with staff conditions. There was a variance in the same exact subdivision, similar request was approved by Planning Commission and then ultimately approved by the Board of County Commissioners. So, therefore, we ask that you approve this variance tonight.

CHAIRMAN GONZALES: Mr. Katz.

COMMISSIONER KATZ: On the septic tank, will there be a separate drain field or just a separate tank that will go into the same drain field?

MR. DALTON: Mr. Chair, Mr. Katz, there will be a whole entire system so septic and leach field.

COMMISSIONER KATZ: Okay, one other question on that. What was the basis for needing a separate septic tank? There was nothing in the record that said you had to have one and the County prefers that there not be a separate one unless there's a need.

MR. DALTON: Right, Mr. Chair, Mr. Katz, the way the SLDC reads is the utility shall be in common with the principal dwelling unit. That's the way the SLDC reads. So when our applicant was told that he went to the Environment Department to obtain a permit because he was coming in to permit the accessory dwelling unit and was told, that's there's really nothing we can do to accommodate this extra bathroom and two bedrooms, you are better off installing a new system. So that's why the Environment Department issued him a permit for a second system.

COMMISSIONER KATZ: Thank you.

CHAIRMAN GONZALES: Mr. Anaya.

COMMISSIONER ANAYA: Mr. Chair, Mr. Dalton, good to see you on the other side. Good to see you. Just a clarification on the septic tanks. Like a mentioned a while ago, that is all based on the size of the dwellings and the number of bedrooms and bathrooms so that's why they required that you add another one to that system instead of just adding a tank and extending the leach field, which they could have done that too. But new systems was probably a lot cheaper to go in the first place. The other question that I have is – on man, I lost my train of thought. That's what it is like to be a grandpa, I guess. Thank you.

CHAIRMAN GONZALES: I'll come back to you. Any other questions of the applicant? I still have a couple of questions. Wayne, so you did receive a permit for another septic tank at 2017 but you have not put it in yet right?

MR. DALTON: Mr. Chair, that's correct.

CHAIRMAN GONZALES: So, I mean, if we just upgrade to a new septic tank then this variance goes away; correct?

MR. DALTON: Mr. Chair, there's really nothing – the existing system won't accommodate an extra bathroom and two bedrooms. It's not big enough.

CHAIRMAN GONZALES: No, I'm talking about if you upgrade a system to 1,500.

MR. DALTON: You could upgrade the system. Like I said, I didn't know there was a 1,500 gallon system. I don't really think that's very cost effective for our client to rip out his existing system and install a 1,500 tank with a leach field. That's just not cost effective.

CHAIRMAN GONZALES: I don't know. I think I disagree with you on that. You're going to pay more money to disturb a whole new area for a leach field, a whole new septic tank when you can just take out that one septic tank and replace it. It might be a little bit bigger and I do disagree with you as far as the County they do have jurisdiction as far as placement of septic tanks.

MR. DALTON: Placement, yes. But they don't do inspects on them. They don't issue permits on them.

CHAIRMAN GONZALES: Yeah, but with some of this information I was looking also at the site plan when we look at a site plan, I like to see the whole lot on the site plan not a partial site plan because I like to be able to see scale between the wells and the septic to see if they're in compliance as well. I know that's not this county's job as well but that's just something that is natural. But I do want you guys to consider that.

MR. DALTON: Mr. Chair, that's my fault. I went with the site plan that he submitted to the County for his permit. I just went with that site plan since they accepted that, I said, Why not, I'll just submit the same thing. But, yes, we usually do.

CHAIRMAN GONZALES: All right. Now my other question, what's the possibility of you doing away with that one variance and upgrade your septic tank? Is that a possibility?

MR. DALTON: I really don't have the authority to say that. The applicant really thinks it is in his benefit to install a new system. I don't think – if he has to modify it I don't think he'll have a problem with that either.

CHAIRMAN GONZALES: Okay, thank you. Any other questions.

COMMISSIONER ANAYA: Mr. Chair, I remember what the other question was.

CHAIRMAN GONZALES: Mr. Anaya, go ahead.

COMMISSIONER ANAYA: Is there a garage in there? It says car port but is that a garage or is that just a cover?

MR. DALTON: Mr. Chair, Commissioner Anaya, what are you referring to?

COMMISSIONER ANAYA: On the site plan that is submitted, it says CP, which means car port. And then there's a CP covered – oh, that's a porch.

MR. DALTON: Covered portal, that's CP.

COMMISSIONER ANAYA: Okay, so no garage?

MR. DALTON: Mr. Chair, Commissioner Anaya, no.

COMMISSIONER ANAYA: Okay, thank you.

CHAIRMAN GONZALES: Okay, any more questions of the applicant. Yes, go ahead.

MEMBER LOPEZ: On your septic system and your water well, what's the distance from your water well to your septic system?

MR. DALTON: Mr. Chair, Commissioner Lopez, I'm not too sure of the exact distance but he was issued a permit from Environment Department so you have to show all of those setbacks and meet those setbacks in order to get the permit. So I could tell you that it is probably 100 feet or more.

MEMBER LOPEZ: It's 100 feet minimum I believe.

MR. DALTON: That's correct.

CHAIRMAN GONZALES: Okay, let's start the public hearing. Does anyone want to speak in favor or against the requested variances? Nobody. Okay. With that said, does the Commission have any discussion or motions.

COMMISSIONER ANAYA: Mr. Chair, I'd like to make a motion please.

MS. LUCERO: Mr. Chair, I'm sorry, before a motion, we would request that you close the public hearing.

CHAIRMAN GONZALES: Oh, I'm sorry. Being there is no questions, I close the public hearing.

KATHRYN BECKER: Excuse the late entry, I'm here on behalf of the La Cienega Valley Association. We did submit a letter and I am just asking for confirmation that that did make it into the record.

CHAIRMAN GONZALES: I don't remember seeing it.

MS. BECKER: It was electronically transmitted to the project lead earlier in the week. And barring that, Mr. Chair and members of the Commission, I respectfully request the record stay open until that letter be submitted to you such that it was in opposition to the variance and I would like you to have that before you.

CHAIRMAN GONZALES: I think we probably need to swear her in. Oh, wait I think I need to reopen the public hearing. Can I have a motion to reopen the public hearing.

COMMISSIONER KATZ: So moved.
COMMISSIONER SHEPHERD: Second.
CHAIRMAN GONZALES: All in favor.

The motion to reopen the public hearing passed by unanimous voice vote.

CHAIRMAN GONZALES: Okay, please go ahead.

[Duly sworn, Kathryn Becker, testified as follows]

MS. BECKER: Kathryn Becker, address is 19 Calle Lisa, Santa Fe, New Mexico 87507. I'm a member of the board. It was circulated and submitted. I apologize that I don't have a copy in front of me I just wanted to make sure it was before you and you had an opportunity to review it.

So with that, I just ask that the time period be extended until such time as it can be transmitted.

CHAIRMAN GONZALES: When was it submitted?

MS. BECKER: I believe it was Monday and it was submitted to the project manager is the best of my recollection. I'm sorry I don't have that in front of me. I'm actually here on another matter but I heard this and I just wanted to make sure that it was in the record.

CHAIRMAN GONZALES: Because we did receive one from La Cienega on the Nunez property. I saw that one.

MS. BECKER: Yes, sir. I am here to speak to that. However, this was a separate one that later came to our attention. We did not have a CO meeting but the transmittal is from Carl Dickens on behalf of the LCVA, the La Cienega Valley Association.

MS. LUCERO: Mr. Chair, we didn't receive a copy of that letter. So perhaps the speaker could reiterate or paraphrase what was in that letter.

CHAIRMAN GONZALES: I'm sorry what was that again?

MS. LUCERO: That perhaps she can reiterate what was part of that letter for the record.

CHAIRMAN GONZALES: Do you by chance have a copy of that letter?

MS. BECKER: If you'll allow me one minute, I'll try and pull it up on my email if that's acceptable.

COMMISSIONER SHEPHERD: Mr. Chair.
CHAIRMAN GONZALES: Steve.

COMMISSIONER SHEPHERD: When I look at what the Hearing Officer recommended, the Hearing Officer recommended that any decision concerning the current application be consistent with the precedent of the Montoya application. I have a problem with that. The Montoya application and all of the details aren't part of this package and really have, in my opinion, no bearing on the decision we need to come forth with because each application has to stand on its own merits. If the County Commissioners want to overrule or override or change what we recommend, that's

certainly within their right but I don't think that should have any factor in the decision that we're about to make.

CHAIRMAN GONZALES: Isn't that the same topic that Frank was talking about earlier?

COMMISSIONER KATZ: It's the same issue but I wasn't talking about the other case.

CHAIRMAN GONZALES: Okay.

MS. BECKER: I was able to pull it up and I'm asking for permission to read the letter, the contents of the letter; may I do so?

CHAIRMAN GONZALES: Please do.

MS. BECKER: It was dated July 12th, it's addressed to Robert Griego, Planning Manager for the Growth Management Department.

"Dear Robert, at the open house on Jun 27th that you and your staff held in La Cienega I gave you a copy of the notice of public hearing for case number V18-5070, Angelo Ortega variance, submitted by James W. Siebert and Associates, Inc. The date of the public hearing before the Planning Commission is July 19th. The notice also indicated that the public hearing before the County Hearing Officer was held on June 14th which was before the notice was received by the LCVA. At the LCVA Board meeting on July 2nd the board discussed the proposed variance. The following are both the general and specific variance and concerns raised by the LCVA Board. No one on the board could remember this variance request coming before the LCVA for an established community organization as required by community code. Please inform the LCVA what review process was followed for this variance request and please include why the notice was received after the public hearing before the County Hearing Officer.

"The general concern we have is the information provided in the notice is incomplete and limited. It does not provide details needed for the board to make an informed decision on the request, the size of the lot, water rights, adherence to well meter requirements are some of the information not provided.

"This leads to a great concern about the variance review process and that is what community organizations are required to review – excuse me – and that is that community organizations are required to review variances but are required to do so without the County having conducted a site inspection to verify the variance petition as presented and the lack of understanding of the process with inadequate information and no County staff present to answer questions the board may have or may raise regarding compliance with the code and the plan. On several occasions this has placed the LCVA in the awkward position of listening to residents and attempting to make important community decisions without sufficient information. Literally placing board members in the position of guessing what the intent and parameters are of proposed variances are and whether the variances conform with the code and plan.

"It has also been brought into question as to whether there is any value in being a community organization. This is a discussion the LCVA Board will continue to have until we can gain more information and participation from the County. Finally, the LCVA Board wants to make it very clear that until there is an established and funded plan to bring the matter into our community we oppose any variance request that impact our limited water resources. Our community has stood by too long as uncontrolled and unplanned growth has steadily depleted our water sources and threatened the history and

traditions of our community. The LCVA Board opposes this variance for this reason and for the lack information and resources from the County. Sincerely, Carl E. Dickens, President on behalf of the La Cienega Valley Association."

It as cc'd to Penny Ellis-Green, Director of the Growth Management Administration and County Commissioner Robert Anaya.

CHAIRMAN GONZALES: Thank you.

MS. BECKER: Thank you very much.

CHAIRMAN GONZALES: Okay.

MR. DALTON: Mr. Chair, I just want to state for the record that a community meeting was scheduled and held on April 12, 2018 at the La Cienega Community Center. We published that. We sent out to property owners within 500 feet of the subject property. I was there from 5:30 to 7:30 no one showed up except for me, the applicant and the applicant's wife. And I did mail Mr. Dickens a letter advising him both of the community meeting and he was also mailed a notice for the Hearing Officer meeting and this Planning Commission meeting. And we did meet County requirements for the mail out and posting in the *New Mexican* for these meetings.

MS. LUCERO: Mr. Chair, the information on the pre-application neighborhood meeting is in your packet in Exhibit 9 and it includes the mailing list.

COMMISSIONER SHEPHERD: Mr. Chair, I have a question of staff.

CHAIRMAN GONZALES: Mr. Shepherd, to ahead.

COMMISSIONER SHEPHERD: The current property is in the Vista de Sandia Subdivision; is that correct?

MR. ROMERO: Mr. Chair, committee member Shepherd, that is correct.

COMMISSIONER SHEPHERD: And it says that the subdivision plat states under notes and conditions number 12, guesthouses are prohibited in these lots. Is that correct? Has that changed any?

MR. ROMERO: Mr. Chair, Member Shepherd, nothing has changed within that subdivision under the notes.

COMMISSIONER SHEPHERD: And just for my own benefit as being the newest member up here, if I look at our Sustainable Land Development Code under variances 4.9.7.1, the last sentence in that paragraph, "...the granting of an area variance shall allow a deviation from dimensional requirements and standards of the code but in no way shall it authorize a use of a land that is otherwise prohibited in a relevant zoning district." Does that apply in this case?

MS. LUCERO: Mr. Chair, Commissioner Shepherd, yes, that is applicable in this case.

COMMISSIONER SHEPHERD: Thank you.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN GONZALES: Mr. Anaya.

COMMISSIONER ANAYA: I'd like to also make a request that that letter that she, the lady read to us, be submitted to Vicki or somebody so they can put that in the record also besides the reading.

MS. LUCERO: Mr. Chair, Commissioner Anaya, it sounds like it was sent to other members of staff so we'll obtain and make sure we get a copy of that letter in the record.

COMMISSIONER ANAYA: Then once you get the copy can you send it to us just so that we can view it and then we'll destroy it.

MS. LUCERO: We will do that.

COMMISSIONER ANAYA: Thank you.

CHAIRMAN GONZALES: Okay, anymore questions? Let's close the public hearing. Does the Commission have any discussion or motions?

COMMISSIONER SHEPHERD: Mr. Chair, I can make a motion.

CHAIRMAN GONZALES: Mr. Shepherd.

COMMISSIONER SHEPHERD: Based on the fact that this is part of the Vista de Sandia Subdivision and guesthouses are prohibited and based on the purpose of a variance is not to authorize a use of a land that is otherwise prohibited, I move that we deny the variance from Ordinance 2016-9 and I also recommend denying the variance on the septic based on the new information that came before the Board today.

CHAIRMAN GONZALES: Do I have a second.

COMMISSIONER ANAYA: Clarification. Mr. Chair, Mr. Shepherd, are you saying to deny the variance on the septic tank because it can be upgraded to a 15; is that what your intent is?

COMMISSIONER SHEPHERD: I deny the variance because the SLDC does not allow separate septic systems for accessory dwelling units and it doesn't appear that in this case there is a no choice. There is an alternative that was presented today that would make that situation moot.

COMMISSIONER ANAYA: Thank you, sir.

CHAIRMAN GONZALES: We have a motion on the table, do we have a second.

COMMISSIONER KATZ: I would second it.

CHAIRMAN GONZALES: Second by Mr. Katz. All in favor say aye.

The motion passed by unanimous voice vote.

CHAIRMAN GONZALES: Okay, the variances failed.

RACHEL BROWN (Deputy Attorney): Mr. Chair, for my clarification, can you tell me how many voted in favor of the motion?

COMMISSIONER ANAYA: Mine was a silent yes.

The vote was held again by a show of hands and passed by unanimous [6-0] vote.

B. Findings of Fact and Conclusions of Law - Deemed unnecessary

CHAIRMAN GONZALES: Thanks for coming, Wayne.

C. Emilio E. Ortiz and Linda D. Ortiz-Chavez, Applicants, Eileen Ortiz Agent, request a variance to the requirements set forth in the Sustainable Land Development Code (SLDC) of Chapter 9, Table 9.16.5 (Dimensional Standards) to allow a 1.43 acre parcel to be divided into two equal lots; each lot consisting of 0.715 acres.

PARTIAL VACATION OF PLAT
OF
LOT 10, VISTA DE SANDIA SUBDIVISION

Located in Section 22, T 16N, R8E, NMPM
Santa Fe County, New Mexico

The undersigned owner of Lot 10 hereby declares that Plat Note No. 12 for property located in Section 22, T 16N, R8E, Santa Fe County, New Mexico, as shown on the "Subdivision Plat for Vista De Sandia Subdivision" filed in the office of the County Clerk of Santa Fe County, New Mexico, on April 29, 1996 in Plat Book 333, Pages 004-005, and which is more particularly described as follows, is hereby partially vacated as follows:

1. Plat Note No. 12 states that " Guests Houses are prohibited on these lots; and
2. Plat Note No. 12 is partially vacated to allow a Guest House on Lot 10; and
3. This partial vacation of Plat Note No. 12 is made with the free consent and in accordance with the wishes and desires of the undersigned.

WHEREFORE, the Landowner hereby DECLARES that the Final Plat filed in Plat Book 333, Pages 004-005, is PARTIALLY VACATED to the extent, and only to the extent, that a Guest House is permitted on Lot 10.

Owner of Lot 10

_____
Angelo Ortega

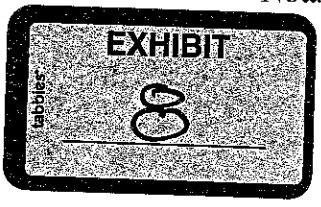
Acknowledgement

State of New Mexico)
) ss.
County of Santa Fe)

The foregoing Vacation of Easement was acknowledged before me Angelo Ortega, to me personally known, on this____ day of_____, 2018.

My Commission expires:

_____
Notary Public



[Approval by Board of County Commissioners on Next Page]

The forgoing Landowner Statement was APPROVED by the Santa Fe County Board of County Commissioner on the_____ day of_____,2018.

BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

By: _____
Board of County Commissioners Chair

ATTEST:

_____ Date: _____
Geraldine Salazar
Santa Fe County Clerk

Approved as to form:

_____
Santa Fe County Attorney