

MINUTES OF THE
SANTA FE COUNTY
PLANNING COMMISSION

Santa Fe, New Mexico

December 19, 2024

1. This meeting of the Santa Fe County Planning Commission was called to order by Chair J.J. Gonzales on the above-cited date at approximately 4:00 p.m.

A. & B. Roll call preceded the Pledge of Allegiance and indicated the presence of a quorum as follows:

Members Present:

J.J. Gonzales, Chair
Erik Aaboe, Vice Chair
Ruben Mendoza
Jeremy Mier
Dan Pava
Wendy Pierard
Carl Trujillo

Member(s) Absent:

None

Staff Present:

Jordan Yutzy, Building & Development Manager
John Lovato, Building & Development Supervisor
Roger Prucino, Assistant County Attorney
Alexandra Ladd, Land Use Administrator
Maggie Valdez, Building & Development Review Specialist
Dominic Sisneros, Building & Development Supervisor
Destiny Romero, Building & Development Review Specialist
Jessica Gonzales, Building & Development Review Specialist
Marie Martinez, Building & Development Review Specialist

SFC CLERK RECORDED 01/30/2025

- 2. **Approval of Agenda**
 - A. **Amendments**
 - B. **Tabled or Withdrawn Items**

Member Aaboe moved to approve the agenda as published. Member Mier seconded and the motion passed by unanimous [6-0] voice vote. [Member Trujillo was not present for this action.]

- 3. **Approval of Minutes**
 - A. **November 21, 2024**

Member Pierard moved to approve the minutes of the November 21st meeting. Member Aaboe seconded. The motion passed by unanimous [6-0] voice vote. [Member Trujillo was not present for this action.]

- 4. **Consent Agenda**

A. CASE # 24-5140 Jezebel Inc. Conditional Use Permit (CUP) Jezebel Inc. (Jessica Caplan), Applicant, is requesting a Conditional Use Permit (CUP) to allow a bar or tavern within the existing 2,500 sq. ft. structure (Unit A) and 800 sq. ft. of outdoor patio area. The site is within the Madrid Community District Overlay (MCD) with the base zoning as Traditional Community (TC) and is within the Madrid Rural Commercial Overlay (MCD O-RC). Section 9.6.4.1.2.b.vi, MCD Overlay Zones states, "Supplemental Conditional Uses; MCD TC. The following uses are only allowed in the MCD O-RC within the MCD TC Base Zoning District; bars, taverns, nightclubs and tattoo parlors." The property is located at 2860 A N.M. Hwy 14, Madrid. SDA-2 (Commission District 3). Marie L. Martinez, Case Manager APPROVED (5-0) voice vote.

B. CASE # 24-5150 Maryann Andrews, Applicant, request a variance of Table 7-A (Set Back Table) to allow two residential structures to encroach onto the required setback of a proposed property line and an additional residential structure to encroach on an existing property line. The property is within the Residential Estate (RES-E) zoning district. Table 7-A illustrates that the setback in RES-E is 25' from the sides and the rear of the parcel and 10' from the front of the parcel. The property lies within the Tres Arroyos Del Poniente Community District Overlay. The site is located at 68 Calle Enrique within Township 17 North, Range 08 East, Section 25. (Commission District 2). SDA-2, Parcel ID No. 53983616 (The "Property"). Case Manager, Destiny Romero APPROVED (7-0)

Member Aaboe moved to approve the consent agenda. Member Pierard seconded and the motion passed by unanimous [6-0] voice vote. [Member Trujillo was not present for this action and arrived shortly thereafter.]

[Each speaker is recognized by the Chair before speaking.]

5. New Business

A. Case # 24-5210 ORR Acquisitions, LLC (James Omstrom, Trevor Cutler and Chase Becker), Applicant, propose the consolidation of the existing 8.03-acre Santa Fe KOA Journey site and the 3 lots to the east (1.46-acre lot, 1.42-acre lot and 2.566-acre lot) to increase the size and use of the Santa Fe KOA Journey site to 13.476-acres in total. The Applicant will be requesting SDP approval to allow changes to the Santa Fe KOA Journey portion and CUP approval for the remaining portion. The existing 8.03 acre Santa Fe KOA Journey site is zoned Commercial General (CG) where the use of Camps, Camping and Related Establishments is a permitted use and expansion or change of the existing site requires a Site Development Plan. The 3 lots to the east are zoned Residential Estates (Res-E) where the use of Camps, Camping and Related Establishments requires approval of a Conditional Use Permit (CUP). These parcels are located at 934, 946, 956 and one unassigned address at Old Las Vegas Highway, SDA-2, (Commission District 4) Case Manager, Jessica Gonzales

JESSICA GONZALES (Case Manager): ORR Acquisitions LLC, applicant, requests approval of a CUP to allow camp, camping and related establishments on three lots. These lots are Residential Estates. Appendix B, use matrix of the Sustainable Land Development Code, Ordinance 2026-9 illustrates that camps, camping and related establishments is a conditional use within RES E zoning.

These lots are currently addressed as 956, 956 and one assigned address at Old Las Vegas Highway, SDA-2, Commission District 4.

The applicant is requesting approval of a CUP on the three subject lots to allow the use of camp, camping and related establishments. If approved, the applicant will proposed to consolidate the three lots along with an existing 8.03-acre tract that the Santa Fe KOA Journey site is located directly to the west and expand the Santa Fe KOA Journey site to a total of 13.4676 acres.

The expansion of the Santa Fe KOA Journey site is dependent on the CUP approval for the three subject lots. The existing three lots are zoned residential estates where the use of camp, camping and related establishments requires approval of a conditional use permit. Two of the lots of currently developed but the applicants are proposing to demolish all existing structures on those lots. The existing KOA Journey site that is directly to the west of the subject lots is zoned commercial general where the use of camp, camping and related establishments is a permitted use.

The applicant has addressed the CUP criteria and staff has responded to the applicant's comments.

Building and Development staff has reviewed this project for compliance with pertinent SLDC requirements and has found that the facts presented support the request for a conditional use permit to allow the three subject lots that are zoned residential estates for the use of camps, camping and related establishments requires the approval of a conditional use permit. The use is compatible with current development within the affected zoning district. The use will not impact adjacent land uses and the application

SFC CLERK RECORDED 01/30/2025

satisfies the submittal requirements set forth in the SLDC inclusive of the condition use criteria set forth in Chapter 4, Section 4.9.5

On November 14, 2024 this request was presented to the Sustainable Land Development Hearing Officer. The Hearing Officer memorialized findings of fact and conclusions of law in her recommended order on this request. The Hearing Officer, based on the evidence presented recommended approval of the COP with staff's recommended conditions.

Staff recommends approval of a conditional use permit to allow an existing 8.03 acre Santa Fe KOA Journey site is zoned Commercial General where the use of camps, camping and related establishments is a permitted use and expansion or change of the existing site requires a site development plan. The three lots to the east are zoned residential estates where the use of camps, camping and related establishments requires approval of a Conditional Use Permit subject to the following conditions.

The conditions were entered as follows:

1. The Applicant shall obtain a Santa Fe County Business License.
2. The Applicant shall obtain development permits for all proposed development and site improvements.
3. Applicant at his own expense shall record the Conditional Use Permit showing the site layout and the conditions imposed in this approval process in the office of the County Clerk as required by the SLDC, Section 4.9.6.8.
4. Applicant shall obtain an inspection and approval of and comply with any conditions imposed by the County Fire Department prior to use of the Facility.
5. Applicant shall comply with the approved water budget of 1.967 acre-foot per year for the Development.

This Report and the Exhibits listed below are hereby submitted as part of the hearing record

CHAIR GONZALES: Any questions of staff.

MEMBER MENDOZA: What are related establishments – what are those?

MS. GONZALES: Mr. Chair that would just fall under camping. Anything related to camping or campgrounds.

MR. LOVATO: Mr. Chair, Commission Member Mendoza, that would include site facilities such as showers and playground for the children and so on and so forth.

MEMBER MENDOZA: Do all of these camps have water?

MS. GONZALES: Mr. Chair, they do.

MEMBER MENDOZA: Is it well water, what is it?

MS. GONZALES: Mr. Chair, I believe they are on well water, yes.

MR. SISNEROS: Mr. Chair, Commission members, they are actually on a community water system. They are not on a private well.

CHAIR GONZALES: Mr. Pava.

MEMBER PAVA: Thank you and good evening. I have a question for staff. If this conditional use permit were to be approved, is there a plan to merge the lots into one lot.

SFC CLERK RECORDED 01/30/2025

MS. GONZALES: They may look to consolidating the lots.

MEMBER PAVA: The reason I ask is that if the conditional use is granted the lots that are zoned RE and then the original lot is in another zoning district, I am wondering how that his going to play out. How will it be delineated on the zoning maps?

MR. SISNEROS: Mr. Chair, Planning Commission Members, it would as split zoning with a portion of the lot being commercial general and then the other portions remaining residential estates.

MEMBER PAVA: ...Are there any standards that we have in the Land Development Code regarding campground siting? Does this all comply?

MR. LOVATO: Mr. Chair, Commission members, this is compliant in accordance with our SLDC and meets all criteria. This is why this is coming before the Commission today.

CHAIR GONZALES: Other questions? If not, is the applicant here. Mr. Manzanares.

[Duly sworn, Nathan Manzanares testified as follows:]

NATHAN MANZANARES: Nathan Manzanares, New Mexico Land Solutions, 915 Mercer Street.

Mr. Chair, Commissioners, thank you. I am representing OOR Acquisitions and I have a brief presentation to give. I want to thank staff for their thorough review of the project and being extremely helpful throughout the whole CUP process.

So as mentioned, we're doing an expansion of the KOA located off of Old Las Vegas Highway. The KOA is actually the existing portion that is zoned commercial general is a legal non-conforming site. That is why there is a difference in zoning. That area has been around prior to the adoption of the Land Development Code in 1981 and our clients have acquired the three lots to the west and are looking to expand the site. This is the existing KOA here. We're doing some substantial infrastructure upgrades to the area. One of the bigger is reducing the size and efficiency of this outdated lagoon which is the wastewater treatment system for the existing KOA and expansion site.

There are some existing structures here that are residential structures that will be demoed.

Some of the expansion details include increased camp sites, updated amenities, improved infrastructure and enhanced landscaping. As mentioned, we're adding additional sites to the west. We're going to have a loop-road system that has been approved by the Fire Department that will allow for proper circulation for both the RVs and emergency vehicles. We're also putting a gated-emergency access here that will serve as another entrance to the site. There are also a number of fire hydrants within the vicinity of the existing KOA and the proposals site. There's three fire hydrants all within the required 1,000 feet of every space.

With that we're also adding a bathhouse/amenities building that will have restrooms and laundry facilities for guests. This is an example of a similar site that OOR has done, this is in Montana. This site is actually comparable in both acreage and spaces. So this is kind of giving you an idea of what is to come to the Santa Fe site.

With that I stand for any questions and thank you for your time.

CHAIR GONZALES: Questions of the applicant. Erik.

MEMBER AABOE: From the plan that you presented it looks like there will be no entrances on Camino Gurule except right at that elbow turn; is that a commonly used entrance or is that just an emergency egress?

MR. MANZANARES: Mr. Chair, Commissioner Aaboe, you are correct. The primary entrance will remain and be upgraded to current DOT standards because it is grandfathered in but we'll do a beefed-up asphalt apron there. We're also going to be fencing the property to provide some screening and buffering. The Camino Gurule to the north, there really wasn't any serviceable entrances but we did work with Jaome Blay, the Fire Marshal, to establish that gated-emergency access and that's in coordination with both County Public Works and DOT. And I think that that's going to be an ideal spot for it.

MEMBER AABOE: In the materials there was an analysis of previous water consumption and then you made projections based on that consumption for the expanded facility. So right now you get water from the Cañoncito Mutual Domestic which I believe gets bulk water from Santa Fe County and so are each of these individual spaces – if I pulled my RV up now or in the future in this expansion, am I billed for the water I consume or do I just get a hookup and then you have a single master meter; how does that work?

MR. MANZANARES: Mr. Chair, Commissioner Aaboe, I believe the way that Cañoncito is going to do it is there will be a master meter on the existing site and the expansion site. So they've had a lot of data on the existing master meter that is on the current existing site and the new expansion site will have its own separate master meter and KOA will be billed out monthly based off the usage. And, also, it is very seasonal, as you know, colder months less people so there's some fluctuation in the water usage for sure.

MEMBER AABOE: So each individual slot is not metered? They each pay the same amount

MR. MANZANARES: It is included as part of the package to rent the space.

MEMBER AABOE: Got it. Thank you.

MEMBER PIERARD: On the community water system, is the KOA allocated a certain amount of gallons per year or acre-feet or how they do it in that water system?

MR. MANZANARES: Mr. Chair, Commissioner Pierard, yes. The existing KOA has an existing contract with the Cañoncito Mutual Domestic Community Water and they're in essence going to be putting in the same exact contract on the expansion site. The lot sizes are pretty much comparable to one another.

MEMBER MIER: Just a quick question. For the bathhouse do you guys have an architect?

MR. MANZANARES: That's been quite the journey. We're actively looking. This is actually from one of the sites that they did in Idaho and it's conceptual right now. We will definitely use earth tone colors and color scheme to make it appropriate to the area. But right now we're actually still looking.

MEMBER MIER: As long as you guys know you need one.

MR. MANZANARES: For sure. We are actively trying to find one.

CHAIR GONZALES: I've got a couple of questions. I saw that your water usage and you set a chart there for like 15 months and it seems that the water usage doesn't go down very much during the winter months. Now how many permanent residents are there year-round?

MR. MANZANARES: Mr. Chair, I don't believe there are any permanent residents. We do have an onsite manager that lives at the KOA but I don't believe we provide any long-term rentals to the clients. If I could get the OOR team sworn in, they could provide some insight.

CHAIR GONZALES: I just wondered because I saw the water usage and it was 15,000 -20,000 and summer months it's 60,000 and I'm wondering in the wintertime if there's permanent residents there or what's the stay of people in that park.

[Duly sworn, Chase Becker and Jim Armstrong of OOR were duly sworn]

JIM ARMSTRONG: 107 Meadow Road, Heath, Texas.

CHASE BECKER: 14 Meadow Lake Drive, Texas.

MR. ARMSTRONG: There are no permanent residents at the campground. Throughout the busy season call it April through the end of October the average stay is about 2 to 3 nights, 2.5 nights. Over the winter months our staff is there, our general manager lives there but there are never any permanent residents in the campground. Nor will we ever have any permanent residents in the camp grounds.

CHAIR GONZALES: Are you familiar with that area?

MR. ARMSTRONG: Yes.

CHAIR GONZALES: You became familiar with it?

MR. ARMSTRONG: We became very familiar with it.

CHAIR GONZALES: How was it that you decided that you were going to take over the KOA?

MR. ARMSTRONG: So Chase and I have been good friends for a long time. We started buying campgrounds, starting looking at them back in 2018 and bought our first one in '19. And we own a little over a handful now and we've always love it here. I've come to Santa Fe and skied Taos a much of times and I've always loved this area. My wife and I frequent it and think it's a wonderful town. And we found out through – we own two other KOAs and KOA management we're friendly with them and they told us that Jerry Hoge who is the prior owner was thinking about selling and we jumped on the opportunity and introduced ourselves. Had a great conversation with him and came out and visited the property and just fell in love with it and entered into an agreement with him and closed on it in early September.

CHAIR GONZALES: Thank you. Any other questions of these two gentlemen?

MEMBER AABOE: Yes, I wonder if you would go into a few of the details of your changes to the wastewater system. I am looking at an aerial and there's a big lagoon and so what's going to happen there.

MR. BECKER: This is one think the neighbors were really happy about. We're getting rid of the lagoon. The lagoon is going to be gone and we're going to put in a modern trip system. We're working Loren Allen from Allen Engineering and he's designed it and putting it together for us in conjunction with Nathan and Mike and the rest of the team. So the lagoon will be gone and it will be a completely modernized system.

MEMBER TRUJILLO: Obviously, for the wastewater you have to go through the ED for permitting and inspection; is that correct?

MR. BECKER: Yes and Loren Allen of Allen Engineering has handled everything for us.

[There was no one in the Chambers or on line wishing to speak to this case.]

CHAIR GONZALES: We'll close the hearing and bring it back to the Commission. What are the wishes of the Commission?

MEMBER AABOE: Could I ask a question of staff?

CHAIR GONZALES: Yes, you may.

MEMBER AABOE: If I remember correctly from reading the materials and I can't find it right now but one of the conditions is that water consumption will not exceed some number of acre-feet per year and so what's the compliance process for that and what happens if those numbers are exceeded? Thank you.

MR. LOVATO: Mr. Chair, Commissioners, this is supposed to be reported annually on January 31st of each year and those numbers are kind of just on an honorary system right now but we are putting together our own program and a metering program with Sustainability and soon it will be houses in Public Works. That will be taken care of there and the reports will go to them.

MEMBER AABOE: If I could. I think you're thinking of domestic well monitoring. This is really – they get all of their water from the mutual domestic which gets its water from Santa Fe County wheeled all the way out there so I'm just wondering, is that requirement going to add a useful burden to everybody? It's an honor system kind of thing with no real enforcement mechanism; I just want to sort that out.

MEMBER TRUJILLO: Mr. Chairman, I know the State Engineer's Office is the one that administers water so they do go to the mutual domestic. I don't know. Maybe – they're supposed to go to the mutual domestics and I've seen where they've put compliance down on some of them that have exceeded their right water levels and then they either have to curtail or they have to buy more water rights or something along those lines. So, I mean –

MEMBER AABOE: Well, I happen to know way too much about that particular mutual domestic and they did over consume. They shut off those wells which is what you can't consume from. They now get water from the river like all of us and so it's kind of tangled. But I'm just wondering if this is a meaningful requirement to impose a reporting that may not have the validity if they were pulling water out of the ground. Thanks, not a big deal but –

CHAIR GONZALES: Thank you, Erik.

MEMBER TRUJILLO: I mean if the State Engineer is supposed to administer it does the County administer water or how does that actually work? Should it be a requirement of the County or should it be a requirement of State Engineer's Office?

MR. LOVATO: Mr. Chair, Commissioners, this should be both. They need to report to both agencies because it is being supplied by Santa Fe County as well. So they will get those numbers as well. I do believe it is a valid request or condition imposed to the applicant.

CHAIR GONZALES: Thank you, John.

MEMBER AABOE: I'll move to approve with staff's conditions.
MEMBER TRUJILLO: Second.

The motion passed by unanimous [7-0] voice vote.

CHAIR GONZALES: Case approved.

B. Sergio Aldana “Case#24-5240 Sergio Aldana requests a Variance of Chapter 8, Table 8-19: Dimensional standards Planned Development District (PDD) to allow 2 primary residences on a single lot. The subject property lies within the Existing Neighborhood Planned Development District which allows for 1 single family residence per 2.5 acres. The property is located at 44 Vista Del Monte within Section 25, Township 16 North, Range 8 East. (Commission District 5), SDA-1, Parcel ID. # 64313700. (Destiny Romero Case Manager).

DESTINY ROMERO: Sergio Aldana, Applicant, requests a variance of Chapter 8 Table 8-43, (Dimensional Standards-Existing Neighborhood, to allow two primary residences on a single lot. The property is within the Existing Neighborhood Planned Development District which allows for one single family residence per 2.5 acres. The property is located at 44 Vista Del Monte.

The Applicant met with staff to submit an application to allow an additional primary residence on the property on September 26, 2024. The Applicant is requesting a variance of Chapter 8 Table 8-43. The Applicant states that his current mobile home located on the property is 1,400 square feet and the mobile home he purchased and is requesting to also place on his property is 1,967 square feet.

The property currently contains 2.5 acres with on well on the property that will be shared by both residences. The property contains one septic on site and the applicant has received NMED approval for a second septic system for the proposed second dwelling.

The property is accessed off Vista Del Monte and will share a driveway. The Applicant states that he thought it wouldn't be a problem due to surrounding neighbors with the same amount of property having added additional mobile homes to their lots.

The applicant has addressed the variance criteria and staff responded to the applicant's comments as contained in the memo.

On November 14, 2024, this request was presented to the Sustainable Land Development Hearing Officer. The Hearing Officer memorialized findings of fact and conclusions of law in a Recommended Order on this request. The Hearing Officer, based on the evidence presented, recommended that the applicants Variance be denied.

Building and Development Services staff has reviewed this request for compliance with pertinent SLDC requirements and has found that the facts presented do not support the request for a variance. Staff recommends denial of the request for a variance of Chapter 8 Table 8-43. If the Planning Commission finds that the application has met the variance criteria and recommends approval of the variance, staff recommends the following conditions be imposed. Mr. Chair, I would like to read these conditions into the record as staff has made changes to condition 3 and 4 and added condition 5 to read as follows:

SFC CLERK RECORDED 01/30/2025

1. Applicant shall comply with Fire Marshall Conditions of Approval.
2. Applicant will need to obtain a mobile home placement permit through Santa Fe County.
3. Accessory dwelling units will be prohibited. This shall be noted on development order.
4. The Applicant shall share the driveway and well on site.
5. The Applicant shall comply with NMED approvals for the second septic for proposed dwelling.

I stand for any questions.

CHAIR GONZALES: Any questions of staff. Mr. Pava.

MEMBER PAVA: Yes, thank you. Question for Ms. Romero. When I read the packet, I saw that on page 4 of the staff report it says that the Hearing Officer recommended that the variance be approved. For the record, I know that you just read in what actually I understood to be the case. So for the record I would like to make sure that we understand that the staff report should say that the variance be denied.

MS. ROMERO: Mr. Chair, Commission, that was a typo by staff. It was supposed to read denied instead of approved.

MEMBER PAVA: I just wanted to make sure we had that on the record. Thank you very much, Ms. Romero.

CHAIR GONZALES: Other questions. If not, Mr. Aldana.

[Duly sworn, Sergio Aldana, testified as follows:]

SERGIO ALDANA: My address is 44 Vista del Monte, Santa Fe. We bought these mobile home to put on my property. I didn't know that it had to be – to be considered my guest house because that property can make a guest house, you have to be only half size of the house so it would be only 1,500 square foot and the mobile home that we bought for my son is 2,000 square feet.

I didn't know and I already have it. I'm just asking for a variance.

CHAIR GONZALES: Do we have any questions of Mr. Aldana? I have to call a public hearing and have people from the public to speak for or against this case, so you may sit down.

[There was no one in the Chambers or on line wishing to speak to this case.]

CHAIR GONZALES: Okay, then the public hearing is closed and we bring it back to the Commission. What are the wishes of the Commission?

MEMBER PAVA: One further question if I may indulge for staff. Regarding the existing structure on the site, is it also a manufactured home?

MS. ROMERO: Mr. Chair, Commissioner, yes, sir, it is.

MEMBER PAVA: Looking at the site aerial, it is hard to determine exactly that. It appears that there's some other structure maybe built around it or next to it. Maybe a garage or something like that.

So my question is is staff confident that the heated square-footage of the existing home is as stated in the report? What was it 1,400 something.

MS. ROMERO: Mr. Chair, Commissioner, the existing residence is 1,400 square feet and the one being proposed is 1,967 square feet. Staff does believe that those numbers are accurate.

MEMBER PAVA: So the 1,400 plus or minus is heated livable area. It was just hard to look at the aerial because there was kind of a rectangle, like a manufactured house and the other was something else. Thank you for clarifying that.

CHAIR GONZALES: Any other questions of staff? What are the wishes of the Commission? May I have a motion?

I'll make a motion to approve this case with conditions.

MEMBER TRUJILLO: I'll second that.

The motion passed by unanimous [7-0] voice vote.

CHAIR GONZALES: Thank you, Mr. Aldana, your variance is approved.

C. CASE # 24-5120 Annette Montoya, Variance of Density Annette F. Montoya, Applicant, along with tenants in common, Anita Montoya, Joanna M. Anya, Paula L. Abbott and Anthony V. Montoya is requesting a variance of the SLDC Chapter 8, Table 8-10: Dimensional Standards – RES-E (Residential Estate), to allow 1 dwelling unit per 2 acres in order to split the existing one (1) 8-acre parcel into four (4) 2-acre parcels. The 8-acre property lies within the Residential Estate (RES-E) zoning district. Chapter 8, Table 8-10: Dimensional Standards - RES-E (Residential Estate), illustrates the allowed density at 1 dwelling unit per 2.5 acres for this zoning district. The property is located at 16 Vereda A Tesoro within Section 9, Township 17 North, Range 9 East (Commission District 1) SDA-2. Parcel ID # 910009632 Marie L. Martinez, Case Manager
[Exhibit 1: Revised staff report dated 11/21/24; Exhibit 2: Applicants' presentation/power point; Exhibit 3: Letter from Jon Wolfe & Maureen Perkins dated 12/17/24; Exhibit 4: Letter from Thaddeus Wadleigh, with two attachments]

MARIE MARTINEZ: Annette F. Montoya, Applicant, along with tenants in common, Anita Montoya, Joanna M. Anya, Paula L. Abbott and Anthony V. Montoya are requesting a variance of the SLDC Chapter 8, Table 8-10, Dimensional Standards – RES-E, to allow one dwelling unit per 2 acres in order to split the existing one 8-acre parcel into four 2-acre parcels. The 8-acre property lies within the Residential Estate zoning district. Chapter 8, Table 8-10: Dimensional Standards - RES-E illustrates the allowed density at one dwelling unit per 2.5 acres for this zoning district.

The property is located at 16 Vereda A Tesoro within Section 9, Township 17 North, Range 9 East, Commission District 1, SDA-2. Parcel ID # 910009632.

The request of a variance of density is needed as currently the 8-acre parcel does not meet the minimum code requirements to subdivide into four 2-acre lots as the SLDC Chapter 8, Table 8-10, Dimensional Standards, RES-E illustrates the allowed density at one dwelling units per 2.5 acres for this zoning district.

Summary, the applicant is requesting a density variance on an existing 8-acre parcel that was previously owned by the deceased Ernest Montoya, father to the Applicant and the tenants in common. This variance request is being made to allow the existing 8-acre parcel to be subdivided into four 2-acre parcels so that it may be divided equally between the four living siblings in Ernest Montoya's Living Trust.

The applicant has addressed the variance criteria and staff has responded to the applicant's comments. The Building and Development Services staff has reviewed this request for compliance with pertinent SLDC requirements and upon the Applicants agreement of condition #1 has found that the facts presented would support the request for a variance: the use of a four-lot minor subdivision with a total maximum of four Dwelling Units would be less of an impact to adjacent land uses; Residential Zoning allows for one dwelling unit per 2.5-acres.

Hearing Officer's Recommendation: on October 8, 2024, this request was presented to the Sustainable Land Development Hearing Officer. The Hearing Officer memorialized findings of facts and conclusions of law in a Recommended Order on this request. The Hearing Officer, based on the evidence presented, recommended denial of the applicants Variance of Density. The written order and the minutes of October 10, 2024, hearing are attached as Exhibits L & M.

Staff's recommendations: If the Planning Commission finds the variance criteria has been met and recommends approval of the variance, staff recommends the following conditions be imposed. Mr. Chair and Commissioners, may I enter these conditions into the record?

CHAIR GONZALES: Yes, you may.

MS. MARTINEZ:

1. Accessory Dwelling Units are to be prohibited. This shall be noted on the Final Plat approval.
2. No further division of land to be allowed for less than 2.0-acres.

This Report and the Exhibits listed below are hereby submitted as part of the hearing record. Thank you and at this time I stand for any questions.

CHAIR GONZALES: Thank you.

MEMBER PIERARD: So if this variance wasn't approved then the lot would be split into three and each of those parcels could have a residence and an accessory dwelling unit.

MS. MARTINEZ: Yes.

MEMBER PIERARD: For each of those three parcels. And if the variance is approved, then they'll have four residences on those four parcels but no accessory dwelling units?

MS. MARTINEZ: Yes, that is correct.

MEMBER PAVA: Thank you. Ms. Martinez, I'm a little confused. Clarify, staff is recommending approval in your staff report because in the Hearing Officer's recommended order, item 13 says that staff recommends denial on it. I don't believe that that's correct. The way I read your staff report is that you were recommending approval and you found that it met the variance criteria but the Hearing Officer states that you're recommending denial, so would you clarify that?

MS. MARTINEZ: Yes, we had recommended [inaudible] but looking at it according to the issues with water we felt that the density for four 2 acre parcels would be better than the four 2.5 acre lots and with three accessory dwellings as well.

MEMBER PAVA: So I am correct that the staff recommendation to the HO was for approval with conditions based on your analysis and the HO in their recommended order states that staff recommended denial which is incorrect in the record – I want to set that clear – and the staff report as you stated, the staff report does

recommend approval for the four lot minor subdivision with a total maximum of four DUs.

MR. SISNEROS: Planning Commission Chair and Planning Commission Members, at the Hearing Officer meeting we were recommending denial but after the implementation of the first condition that no accessory dwelling units would be allowed, staff then reconvened and we decided that it would be less of an impact to the neighboring properties if a maximum of four total residences were allowed versus the three lots that would allow a total maximum of possibly six dwelling units.

MEMBER PAVA: That clarifies things. So there was actually – staff was recommending approval as I inferred and the staff recommending denial was prior to that.

MR. SISNEROS: That is correct.

MEMBER PAVA: Clarifying for the record. Staff is recommending approval based on what transpired before, during and after the Hearing Officer's meeting.

The follow up question that I had is were this to be approved and this minor subdivision happen, do the dimensions of these proposed lots meet the Sustainable Land Development Code; in other words, 100 foot for frontage and for width? No more variances be required?

MR. SISNEROS: That is correct Planning Commission Member and Planning Commission Chair, that is correct.

MEMBER PAVA: Thank you. That's all I have.

CHAIR GONZALES: Thank you. Erik.

MEMBER AABOE: Thank you, Chair. I just want to follow up. Has a conceptual plan of the subdivision been provided of how it would be divided? And I might have missed things.

MS. MARTINEZ: It was four lots at 2 acres.

MEMBER AABOE: And that layout has been provided in a site plan? I just didn't find that. Okay.

MR. SISNEROS: Planning Commission Chair and Planning Commission Members, it is Exhibit D. That is a conceptual site plan that does show the division into four lots.

MEMBER AABOE: Thank you.

CHAIR GONZALES: Other questions? If not, is the applicant here.

[Duly sworn, Anthony Montoya, testified as follows:]

ANTHONY MONTOYA: My name is Anthony Montoya. I live at 3385 South Ash Street, Denver, Colorado 80222. I am presenting on behalf of my sister Annette who is the original petitioner and couldn't be here today.

Mr. Chair, Commissioners, I thought I would start with a little bit of history on the property. First of all, the property has been the family since 1931. It was originally a 156-acre parcel purchased by my great grandfather, Fabian Montoya. They had two children, Fabian and Crucita, Julio and Ursula. Upon the death of Fabian the land was illegally transferred to Ursula Montoya who was the daughter of Fabian.

Fast forward to 1989, Ursula Hayter attempted to sell the property and it was seemed that the Montoya heirs still possessed lawful inheritance claims to the property. At that time, there were six heirs in total – claims. Two of the heirs, Gilbert Montoya and Michael Montoya sold their shares to Rosina Romero Montoya and Ernest, my father, respectively.

In 1990, the heirs and my father Ernest Montoya settled their claims with the Hayters in return for 35 acres that were both deeded and sold to my father and his siblings. In 1998, my father and the siblings agreed to sever common tenancy through a binding arbitration to subdivide the 35 acres that were deeded and sold to them. My father's lot was 8 acres at the time. The remaining heirs held 27 acres in total. When my father chose his acreage and his lot because that's where he farmed as a child with his father and knew the property well.

The family transfer in 2004, the heirs Rosina Romero, Marcella Romero, Victoria Romero, and Antonio Montoya subdivided their lots through family transfer into a total of 14 lots. They are all adjacent to the property that we're talking about right now.

Out of the 14 lots, four of them 1.67 acres; one is 1.8 acres and the remaining are 2.0 acres. So there is a precedent with smaller acreage there done through family lot transfers.

My father chose not to participate in the family lot transfer at the time for ethical reasons. He felt that -- I apologize -- he didn't feel it was right that his children did not live in Santa Fe at the time. At the time the EZC regulations would have allowed for a five acre split had he gone forward with it and he chose again not to.

My father had always planned for a family lot split until his passing last year. [Speaker is emotional and cannot complete his sentence]. Since the arbitration agreement, my father has invested a significant amount of time and money in the property. He has completely fenced the property. He has gated it. He has built up the arroyo to avoid erosion and I'll show you a picture of that. He drilled the well with ample depth, volume and pressure to support it. He has utilities and roads that were built to code on the property. He has four build-pad sites that are back-filled, leveled and have landscaping and drainage.

We have gardened as a family there up until his passing last year. We planted, weeded and harvested peppers, squash, tomatoes, etc., and he donated a lot of the fruits that he grew to the neighbors and other places in the city. He has a dedicated open space for gardening in the same area he gardened as a young man. Currently, five of the eight acres are agricultural exemption through the work of my father's well.

What we're requesting is, myself and my three siblings, request approval of a variance to allow for the family transfer of four 2-acre lots. And as I stated before, the current zoning requires a 2.5-acre minimum.

We request further that the lots be unrestricted. The past actions to the development did not have restrictions dating back to the Garrett Qunitana who was the developer of the property originally and the purchaser of the original Hayters. All of the applicants, all of us, have children living out of state and would like to have the flexibility to have a guest house for visiting family.

One thing I'll also say, is if you know the property and you go out there, there are homes that I would guess the minimum size is probably 5,000 square-feet. Where we are as siblings we don't have the desire to build a 5,000 square foot home and would probably build something modest and would like to have an ADU to be able to have family visitors as well.

Justification: the property in question, the eight acres, was part of the original settlement agreement so therefore we should be entitled to the same treatment. In March, 2011, the District Court of Santa Fe County, Judge James Hall, rules that the 2.4 acre

minimum lot size restriction was not binding upon the original 35 acre parcel. Anything less would create a hardship to the siblings. To speak to the hardship; the four applicants each have children, so dividing any other way than equally to each, would create problems that would span generations. There is no fair or equitable mechanism to determine which applicants would share a lot which would lead to resentment. And we do have work in progress on an association agreement for the eight lots that includes road maintenance, fence maintenance, infrastructure maintenance and unequal shares would be problematic as well.

I would also like to – we were handed a letter of opposition coming into this from Mr. Wadleigh, one of the neighbors, who claims that the property is actually less than 8 acres because there's an erosion part of the arroyo. I wish I would have known that because I would have brought pictures of where my father built it up and there's a straight line fence and I'll show you on the pictures here. There's a straight line fence that proves that there's not erosion from the arroyo that takes down the actual volume of the property.

I have some pictures of the property as well. You'll see the gardens that my father did the fencing. He's put a lot of work into it. He spent a lot of time there and a lot of money, a lot of his retirement. These are pictures from last summer. You'll see the fencing, his gardens, you'll see the gate. You'll see the gabion walls where he has his [inaudible] sites along the arroyo as well. This is a depiction of the property. You'll see the smaller lots to the south of it. On the top is the actual 8 acres. You'll see the roads that go into it and again they were done to code with the Fire Department's involvement.

Lastly, I think you asked about a conceptual site plan. The County requested a conceptual site plan on the subdivision and this is one that we put together. I believe it might be in the files if not it is in your deck here as well. It's not in your hard copy though; it is something that I added later.

CHAIR GONZALES: Thank you, Mr. Montoya.

MEMBER PIERARD: I have a question about the gabions. Are they on the bank of the arroyo?

MR. MONTOYA: They're in the arroyo as well as on the bank. Yes, they go down in the arroyo. It was quite a project.

MEMBER PIERARD: So he received a permit –

MR. MONTOYA: He did. It was permitted. That was probably done I'm going to say maybe 15 years ago.

MEMBER PIERARD: That's a lot of work to put that in.

MR. MONTOYA: It was a big project. I was actually involved in it and it was a big project.

MEMBER TRUJILLO: Mr. Chair, Mr. Montoya, looking at the site map is there currently one home on there?

MR. MONTOYA: There is not a home currently on it, no. We have a – and I believe in the entry they talked about a condex that he has out there. My father moved a condex out there and was permitted to do it. The reason he did it was because he was getting tired of hauling his tools back and forth. So he put a condex out there. It is powered and he keeps his tools in there to keep safe and out of the elements in the winter.

MEMBER TRUJILLO: Mr. Chair, Mr. Montoya, how is this property currently served with a well or does a well need to be drilled?

MR. MONTOYA: It is served with a well currently. It's hard to tell if I can – there's a well on the property that we use currently to water the vegetation in the garden and some of the fruit trees on the property as well. So it does have a well.

MEMBER TRUJILLO: And that well – is that the intent to use that one well for all the four lots?

MR. MONTOYA: I think we would have to wait until we get to the permitting process to see if that would be allowed. My guess is that we may have to have a second well. I do know that it is a fairly strong and fairly deep well and the pressure is ample. But, again, on the relative basis of what is required out there I don't know the answer to that.

CHAIR GONZALES: Other questions of the applicant.

MEMBER AABOE: I've got a question in looking at the shape of this parcel. There are a couple of questions that I have about access. So right now the access comes from the south and it pretty much takes a quarter of the lot from the south. That's a legally described easement through that?

MR. MONTOYA: When we did the hearing with the siblings they were required to give us an easement along the property line. Give me a second to bring this up. So you'll see where the road goes onto the property, the lots on the road as you're entering, that lot was given to us by the siblings as well and that's Antonio's lot right now. So that's really the only place – and that's not our property. The road itself goes along the property line on the side which is part of the setback as well.

MEMBER AABOE: The road that goes north from the word Fabian, that goes to a small parcel and is that owned by one of your siblings?

MR. MONTOYA: That is owned by Antonio Montoya.

MEMBER AABOE: And that is something that he could develop if he chooses to.

MR. MONTOYA: He can develop it if he chooses to, yes.

MEMBER AABOE: And there is an easement granted to the big –

MR. MONTOYA: There is, that's correct. That was part of the arbitration agreement, that easement.

MEMBER AABOE: And then the follow up question that I have is also about access. I believe in your testimony you suggested that there should be no restrictions on the use of this and I want to make sure that the conceptual layout that you have – so if this lot is split into four chunks there will need to be surveyed access easements across. Even though you're siblings now the future owners of the lots may not be siblings.

MR. MONTOYA: That's correct. Our plan is to have it – if we get the approval – is to have it surveyed and a plat done and then the plat going in for approval. So the conceptual one was not done with a surveyor in mind. But we agree with that.

We also, and you can tell from the roads, my father was very meticulous about his plans. The Fire Department has approved them. There's turnarounds. There's tow turnarounds currently on there that was part of the requirements as well. Or hammerheads I think they call them.

MEMBER AABOE: Thanks.

MEMBER PAVA: Thank you, Mr. Chair. Let me ask you, Mr. Montoya, in this handout which we were just privy to, there's a statement about the desire to not have a condition restricting accessory dwelling units. As you know, the staff report recommendation is that it be restricted only to the primary residence without an accessory dwelling units. I guess I would ask is how hard and fast and set you as representative of your family that you are about that condition that staff is recommendation.

MR. MONTOYA: You know, I started by commenting on the average size of the home in the area. They are large homes there. And I know it's easy to look at it and say, oh he's going to have this large home, they're going to build large homes there. They're going to be water guzzlers, and energy guzzlers and everything else. Again, me and my siblings are not in a place in life to build something like that, number one. And number two, we have children who live out state. I have two children that live out of state and I would love to have them come and visit. So I think that anything we build would be modest, number one. Now I know that is kind of me saying that but we would build something modest. Is it hard and fast, it's not.

We're also asking for just the same treatment that the other siblings got in the 38-acre original development and they are not restricted on those lots. And I would be concerned if there were not a restriction on a 1.67-acre lot. That would be a concern of mine if I were – but that ship sailed. We're asking for 2 acres without a restriction on it.

Again, we may use it. We may not use it but again if we did anything I am sure it would be modest.

MEMBER PAVA: Thank you.

CHAIR GONZALES: Other questions. I want to ask a question of staff. Was there a condition that no additional dwelling units would be built on the property if it was split into four lots; is that something that the applicant agreed to or that was a staff recommendation?

MR. SISNEROS: So that was a staff recommendation that was notified to the applicant and at the time was agreed upon.

CHAIR GONZALES: Was agreed upon?

MR. SISNEROS: That is correct.

CHAIR GONZALES: And did I hear today in your presentation that you would not agree to that condition?

MR. MONTOYA: Can I get some clarification on what agreed upon means? As I understood it, we've been going through the process so I don't have an understanding of what agreed upon means in this case.

MR. SISNEROS: So I believe it was during the Hearing Officer meeting that Annette Montoya, the original applicant that was here, it was discussed with her that condition and she did agree that they would abide with that condition.

MR. MONTOYA: Okay, but that also resulted in a denial so for the record.

CHAIR GONZALES: Okay.

MR. MONTOYA: And, again, I apologize that my sister couldn't be here today. She's got more of the history of this than I do. But we –

CHAIR GONZALES: Are you in agreement with that condition at this time?

MR. MONTOYA: I would like to see that we can go without exemptions on it.

CHAIR GONZALES: What was that again?

MR. MONTOYA: I would like to see if we can go without any sort of restrictions if we move forward.

CHAIR GONZALES: Any other questions of the applicant. If not, this is a public hearing and you may sit down Mr. Montoya.

MR. MONTOYA: Thank you for your time and your patience.

KEVIN HANSEN [via WebEx]: My name is Kevin Hansen and I live at 13 Vista Via Grande which is within the community that this property discussion is about.

[Duly sworn, Kevin Hansen, testified as follows:]

MR. HANSEN: I just wanted to comment that being a resident in the neighborhood and I'm familiar with a lot of the other owners in the neighborhood we don't have 5,000 square-foot homes. My home I think is roughly 2,700 square feet. I do not have an accessory dwelling unit nor do a lot of my neighbors. We do have family and friends who visit and we do use a guest room to accommodate them.

I am in agreeing with Hearing Officer Marilyn Hebert's recommendation that the application be denied for the reasons stated in her recommended order. [inaudible] Two acres, four residents, four accessories will have an impact on our community and on our roads. I would also like to share a document if I can do that online; is that something I can do?

CHAIR GONZALES: Are you still with us?

MR. HANSEN: I am still here. I was bringing up a document. Can you see the document on my screen?

MEMBER AABOE: Yes, we do.

MR. HANSEN: It is highlighted the Villa Don Fabian Road Association bylaws. And this is a document that was –

MEMBER AABOE: Sir, please try to share again.

MR. HANSEN: I will do that. This is a document on my property here in the community and I just wanted to point out if I scroll to page 2, that the main purpose of this document was to speak to minimum lot size to be no smaller than 2.5 acres. You see that as number 3 highlighted.

MEMBER AABOE: Yes.

MR. HANSEN: And then on the next page I just wanted to show that that was endorsed by Ernest and Anita Montoya individually and as trustees to the Montoya living trust owners of the 8.0 acres of Tract B. So the intent back in May of 2002 is that Mr. and Mrs. Montoya did not intent to leave for a family split of 2 acres and that they had placed a requirement of 2.5 acres in the area.

MEMBER AABOE: May I ask a question.

CHAIR GONZALES: Yes, you may.

MEMBER AABOE: Mr. Hansen, although the print is pretty small what I believe we're seeing is something that would allow members of the Villa Don Fabian Road Association to take some kind of action against or try and remove road access from – I'm trying to understand what is the value of this document to your argument of opposition.

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MR. HANSEN: Well, the value was as the representative mentioned today giving a little history of the ownership of the property, I also wanted to provide some history that Mr. and Mrs. Montoya had a preference or an intent not to allow anyone in our community to have acreage in less than 2.5 acres.

CHAIR GONZALES: Thank you. Unfortunately, it is my understanding that the County does not enforce covenants or bylaws. You have a document that is information but it has no bearing on what the County approves or denies. That's my understanding; is that correct, Roger?

ROGER PRUCINO (County Assistant Attorney): Yes, Mr. Commissioner, that is an accurate representation of the County's position with respect to privately recorded covenants and declarations.

CHAIR GONZALES: Thank you. Thank you, Kevin. Anyone else?
[Duly sworn, Jon Wolfe, testified as follows]

JON WOLFE: Jon Wolfe, 18 Paseo del Prado, Santa Fe, New Mexico 87506.

I would like to follow up on his question because I have the same thing but it is written up as a legal CCR recorded with the County; is that something that the County identifies or agrees with?

[Mr. Wolfe was asked to repeat his comments]

MR PRUCINO: Mr. Chairman, I'm not sure I understand the question clearly but if I understand the point is that these were executed covenants that do contain restrictions on properties that are covered by the covenant and if the member of the public is simply hoping to clarify the County's position, our position is that they are enforceable but they are enforceable privately. They are private covenants. The County records them because they are legitimate documents but they weren't insisted on by the County, the County isn't a party to those covenants and the County doesn't take any enforcement action with respect to those types of private covenants. We do acknowledge that they are perfectly appropriate and legitimate but not that they are enforceable by the County.

CHAIR GONZALES: Yes, that was my understanding.

MR. WOLFE: Okay, I'm sorry. I didn't quite get the point.

CHAIR GONZALES: There are other remedies for you to try and enforce those covenants as an individual but not at the County level.

MR. WOLFE: Okay, that's okay. Thank you for giving me an opportunity to speak. I also ask you to read letters of opposition from other neighbors. I know for sure that other neighbors have written in and at the last hearing before this was tabled there were six people in attendance and more on line and that was tabled. I think this timeframe is a lot more inconvenient for people being close to the holidays and we have people traveling.

For context, my lot has almost a 600-foot border with the property we're talking about to the north. Also, my house is tiny compared to what they're talking about. I have less than 1,800 square feet and I hate having this cast as some sort of class warfare. But I think you'll find that most people who have moved into the neighborhood and who have made their lives there have done so because those covenants make us feel protected and at ease with how things will be developed.

I would like to at least enter into the record an updated letter of opposition. I had mailed one before the Hearing Officer's hearing at the appropriate Hearing Officer's hearing. Anyway, the first hearing. Can I enter that?

As far as I can tell this letter does not meet any criterion for variance. It is definitely in opposition with our CCRs. I have sympathy for the family. I lost my mother recently and we had a lot of things to split that are unsplitable. So sympathy goes out but there are things that cannot be divided fairly and evenly. My siblings and I just had to work those things out and we were able to. So in general, what we would wish for more than anything is more information about this as neighbors. It becomes an emotional plea, right. It's an emotional thing for the family and for us as neighbors it's a huge unknown and that's what makes most people uncomfortable. No one has ever shared. No one has reached out to us as neighbors ever. No one shared the plan, the possible breakup of the lots or talked about covenants that might be in effect. We rely on the CCRs that we have to make sure that people don't do things like put up barbed wired bring in mobile homes. So if you disregard the CCRs it would have a big impact on people's thoughts and sense of well being. Again, we have chosen to make our homes and lives in that area and I would hope that you would look at our opposition letters and take those into account. Thank you.

CHAIR GONZALES: Thank you.

MR. LOVATO: Mr. Chair, just for clarification, Mr. Wolfe's letter is in the packet.

MR. WOLFE: That was an older version I brought in a newer version today.

MEMBER AABOE: Mr. Chair, may I ask a question of Mr. Wolfe?

CHAIR GONZALES: Yes, Erik.

MEMBER AABOE: Mr. Wolfe, are you aware of any lawsuits that have been filed by you or any of your neighbors in order to enforce the covenants that you're talking about?

MR. WOLFE: No, I'm not aware of anything. I don't think anything has been developed recently that would have caused that to happen.

MEMBER AABOE: Thanks.

CHAIR GONZALES: Thank you. Any others?

[Duly sworn, Annette Montoya, testified as follows]

ANNETTE MONTOYA (Via WebEx): I live at 4903 San Luis Place, NW, Albuquerque, New Mexico.

I have just a few comments. Mr. Wolfe who actually lives on the opposite side of the arroyo that my father got an Army Corps of Engineers permit for protecting that drainage area. He must have spent a lot of money to gabion support the embankment and then build the coyote fence on top of that. So he has preserved the arroyo in that area by getting an Army Corps of Engineers and working with the engineers at the [inaudible] to get that water flow directed in the right direction and away from people's property. I don't think Mr. Wolfe had any monetary contribution into that because he is a new neighbor in that area. Many new neighbors – my father has had this property and been working on it for over 20 years. So that's the first point I would like to address. It's not an easy feat to go get and work with the Army Corps of Engineers.

Secondly, at the end of our last meeting when we had a board meeting, a County Commission meeting, at the end of the meeting the residents were concerned about the water and so I brought up and I know it wasn't on the record but I brought up that probably three lots with six homes would be more affected water wise than four homes with four lots and they looked at me like that's a good idea why was it not brought up. For the record, Dominic just said that I agreed to that but I would like to know and have it on the record of where I agreed to four lots with four residential dwellings.

Ultimately, what we're trying to get is the same and equal consideration as the family transfer members from across the road. 1.67-acre minimum, I'm not even sure the County is going to allow a building permit on that. But that's just for the County to challenge next. So I don't really think that water is an issue. We have been working with the State Engineer's Office on the water usage because we do have some gardens out there and they have told us that they will not deny us another well if it is for residential use. So with that, I think we've covered – through Army Corps, we've covered the State Engineer's, we're here for Planning Commission now to request four acres – four lots at 2-acre minimum versus the three acres at 2.5 minimum requirement [sic].

That's all I have.

CHAIR GONZALES: Thank you. Anybody else on line?

MR. WOLFE: Mr. Chair.

CHAIR GONZALES: You had your say already, sir. Okay, step forward.

MR. WOLFE: First of all, I do know that the gabion is a lot of work. But it forces the arroyo away from their property and onto mine. The water flow is not channeled away from homes it is channeled into my area, for the record.

Also, I resent the idea that people that have recently moved here and made their lives here are somehow less valuable than people who have been here a long time. We all see beauty where it is and try and make our lives here and are committed to this area; don't live in Albuquerque, don't live in Denver. We live in Santa Fe. No one that I know of in our area has this as a second home. These are our homes and our lives so I resent the idea that somehow we are less valuable.

CHAIR GONZALES: Thank you.

[Member Pierard asks a question of Mr. Wolfe away from her microphone.]

CHAIR GONZALES: If there are no other speakers, I will close the public hearing. Mr. Montoya, you have the last say.

MR. MONTOYA: Thank you very much, Chairman. I just wanted to clarify because two people have raised now the CCRS in the area. On slide 5 I noted that on March 2011, the District Court of Santa Fe County, Judge Hall, ruled that the 2.5-acre minimum lot size restriction was not binding upon the 35 acres and that included the CCRs. So that has been – someone asked if there was a hearing on it. There was a hearing back when they did the lot split with the Romeros and it was ruled then that they were not subject to the 2.5 acre CCRs.

MEMBER AABOE: Mr. Chair, Mr. Montoya, that was in 2011?

MR. MONTOYA: 2011, that is correct.

MEMBER AABOE: Before the Sustainable Land Development Code that currently is enforce was enacted?

MR. MONTOYA: that is correct.

MEMBER AABOE: Thank you.

MR. MONTOYA: And my apologies if anybody made him feel lesser of a resident out there. That was never our intent.

MEMBER TRUJILLO: In your presentation, this parcel, this 8-acre parcel is part of the 156 acres that had been in your family since 1931?

MR. MONTOYA: Yes.

MEMBER TRUJILLO: So all of those other parcels are owned by other family members or other people that were heired out to this as the family grew.

MR. MONTOYA: Yes and no. The first part is a bit ironic to be honest with you because the people that are our neighbors that are complaining are living on the land that used to belong to my father, number one. Number two, I explained how my father had an ethical problem with doing a family lot transfer at the time because we didn't all live here. The lots then were transferred by Garrett Quintana and there's another developer where they divided 121 acres into 48 2.5-acre lots through family transfer. Lord knows where they found 48 descendants to be able to do that but nonetheless they got it done. So there were some ethical issues in that way.

So the lots that you can see on the plat here that are directly south are all owned by the Romeros who are our relatives, yes. And they were part of the 35 acre settlement with the Hayters. Does that help?

MEMBER TRUJILLO: Yes.

CHAIR GONZALES: Thank you.

MR. MONTOYA: Thank you, Mr. Chair, Commissioners.

CHAIR GONZALES: What are the wishes of the Commission?

MEMBER PAVA: I have further questions before we proceed. This is a question for staff. If this variance were to be approved and then some kind of a plat submitted to the County is this in any way shape or form could this be considered a family transfer subdivision?

MR. SISNEROS: So they could go for a plat exemption and do a family transfer but even family transfers by today's standards, by the 2016-9 Sustainable Land Development Code, still have to abide by density which is 2.5 acres, so they would still need the variance.

MEMBER PAVA: That's helpful. The follow-up question would be when you have a family transfer situation that rides with the lot versus when you don't, are there restrictions on the resale of the lot in the future? So if we have four new lots and each of these lots go to one of the Montoyas, does the lot have to stay in the "family" or not?

MR. SISNEROS: Not with a family transfer. That would be a different plat exemption. That would be a five-lot minimum exemption.

MEMBER PAVA: That's helpful. I appreciate it. Thank you.

CHAIR GONZALES: Thank you. Any other questions of staff? Do we have a motion?

MEMBER PIERARD: I motion to approve the variance for Case 24-5120 with the conditions listed by staff.

CHAIR GONZALES: Thank you, Wendy. Do we have a second?

MEMBER AABOE: Mr. Chair, could I verify that no additional – no auxiliary dwelling units shall be allowed on any of the four lots.

MEMBER PIERARD: That's what I'm saying, as recommended by staff.

CHAIR GONZALES: That was a condition, yes.

MEMBER TRUJILLO: So, Mr. Chairman, with that motion I need to ask a question of staff before, is that fine?

CHAIR GONZALES: We have discussion now, yes.

MEMBER TRUJILLO: So staff if it went this route with a conditional use permit and they have four lots without an accessory dwelling these folks chose not to do this or accept this variance, then they're back where they started with, right, as far as being able to subdivide it with three lots and 2.5 acres; is that correct?

MR. SISNEROS: Planning Commission Chair, Planning Commission members that is correct.

CHAIR GONZALES: Thank you, Carl.

MEMBER TRUJILLO: There is a motion and it sounds like there is a second.

MEMBER AABOE: No.

MEMBER TRUJILLO: I'm sorry, my apologies. There is a motion. The only heartburn I have with this and this is a tough case for me personally because this has been in the family for all of these years. And I get that the 2.5 acres is what is allowable in the Sustainable Land Development Code and I know they're asking for 2 acres. This has been land in their family for years and I do have a place in my heart where they should be able to have a home and follow under the same rules because they've been holding on to this for almost 100 years and so I just have a hard time with this. So as far as putting the conditional restriction of no ADUs is a little bit hard for me. But we'll go along as the committee decides.

CHAIR GONZALES: We have a motion and do we have a second?

MEMBER PAVA: I'll second it.

CHAIR GONZALES: Okay, we have a second.

The motion passed by majority [5-2] roll call vote as follows:

Commissioner Pava	Yes
Commissioner Mendoza	Yes
Commissioner Trujillo	No
Commissioner Pierard	Yes
Commissioner Aaboe	No
Commissioner Mier	Yes
Chair Gonzales	Yes

CHAIR GONZALES: For those on line, if you want to appeal this – we are a recommending committee – if you want to appeal this to the Board of County Commissioners get it on the schedule and talk to staff and there is an avenue for you to appeal this. But for right now this Commission recommended approval but it is not done yet. Thank you.

6. **Petitions from the Floor** - None were presented.

7. **Communications from the Commission Members**

Commissioner Pierard announced she would not be present at the January meeting.

The Commission expressed their appreciation to Chair Gonzales for his service to the County.

Chair Gonzales said he has served on the Planning Commission and CDRC for many years and he thanked numerous County Commissioners that appointed him, the Commission members he served with, and Land Use staff for their hard work.

Chair Gonzales received a round of applause.

8. Communications from the Attorney

Mr. Prucino thanked Chair Gonzales for his service to the County and wished all happy holidays.

9. Matters from Land Use Staff

Mr. Yutzy also thanked the Chair for his service and noted that his expertise will be greatly missed by staff.

Regarding AES, the Hearing Officer held a special hearing and selected two parties with standing. Mr. Yutzy asked whether the Commission wanted to hold a special hearing to make that determination. The San Marco Association and the Santa Fe County Clean Energy Coalition were the two parties and they were permitted to cross-examine the applicant and County staff during the hearing. They also were provided the opportunity to make presentations. There have been no new requests for standing out of the original five requestors.

Member Aaboe expressed concern that recognizing parties with standing may appear to tip the scales.

Mr. Prucino said individuals and a couple of organizations independently submitted requests or motions to the Hearing Officer that they be given the status of a party with standing. He recalled there were three individuals and two organizations that made the request. The Hearing Officer held a separate hearing to address the party with standing procedural issue. The Hearing Officer granted the two organizations that status. The notion was the larger organizations would represent the individuals.

Mr. Yutzy asked if the Commission wanted to accept the Hearing Officer's parties with standing or hold their own special meeting to address the issue. He would need to notice the public of the opening for parties of standing and application timeline. The parties with standing were allowed to cross examine AES and County staff but not a public speaker. He identified the three individuals who were not selected.

Mr. Prucino said the Commission is not required to accept or reject the parties of standing selected by the Hearing Officer.

Mr. Yutzy said other than a two-minute time limit there were no restrictions on individuals from the public speaking.

Land Use Administrator Ladd mentioned that individuals were allowed to cede their time to another public speaker up to 15 minutes. Members of the public could participate by Webex and staff intends on replicating those points of access.

Commissioner Mier asked whether accepting the Hearing Officer's parties with standing could be legally problematic for the County. Mr. Prucino said it could since this is essentially a de novo hearing that the Planning Commission is conducting. If someone were to submit an independent motion to the Planning Commission asking to be a party with standing there could potentially be a due process issue if the answer is simply no. The safer approach would be to conduct a pre-hearing procedural hearing specifically to allow people to go through the process.

Commissioner Aaboe asked whether there was a requirement to allow other parties with standing and asked what benefit there is to recognizing those parties. Mr. Prucino said the SLDC and the County's Rules of Order do contemplate parties with standing participating and they do have greater rights of participation. Those requesting to be a party with standing need to be heard on that request and a determination made after hearing their position.

Commissioner Mendoza recognized that Santa Fe has a core talent within its population of Los Alamos scientists and retired PhDs which would be useful to hear.

Mr. Yutzy said it appears the Commission would like to hold the special meeting and he would notice the public and work with the Commission to identify a special meeting data. The procedures of the meeting with AES can also be determined at the parties with standing meeting.

Commissioner Aaboe said he was unable to find anything about AES and special meetings on the County website. He urged staff to look into this. Mr. Sisneros said there was legal notice through the *New Mexican* and a press release on the website. Commissioner Pierard requested staff forward a link with the AES information on the County website.

10. Next Planning Commission Meeting: January 16, 2025

11. Adjournment

With no further business to come before this Commission, Chair Gonzales declared this meeting adjourned at approximately 6:00 p.m.



Approved by:

[Handwritten Signature]

Planning Commission

ATTEST TO:

[Handwritten Signature]

KATHARINE CLARK
SANTA FE COUNTY CLERK

Submitted by:

Karen Farrell, Wordswork



COUNTY OF SANTA FE) PLANNING COMMISSION MI
STATE OF NEW MEXICO) ss PAGES: 27

I Hereby Certify That This Instrument Was Filed for
Record On The 30TH Day Of January, 2025 at 09:39:54 AM
and Was Duly Recorded as Instrument # **2051705**
of The Records Of Santa Fe County

Deputy *[Handwritten Signature]* _____ Witness My Hand And Seal Of Office
Katharine E. Clark
County Clerk, Santa Fe, NM

SFC CLERK RECORDED 01/30/2025

D R A F T

subject to approval

SFC CLERK RECORDED 01 / 30 / 2025