

**TRANSCRIPT OF THE  
SANTA FE COUNTY  
SLDC HEARING OFFICER MEETING**

**Santa Fe, New Mexico**

**December 22, 2016**

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 3:10 p.m. at the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

**Staff Present:**

Vicki Lucero, Building & Services Manager  
Miguel Romero, Development Review Specialist  
Andrea Salazar, Assistant County Attorney

**II. APPROVAL OF AGENDA**

Hearing Officer Long approved the agenda as published.

**III. PUBLIC HEARING**

A. **CASE # V 16-5260 Manuel & Bernadette Hernandez Manuel and Bernadette Hernandez, applicants, request a variance of chapter 9 Table 9-8-7 Dimensional Standards, La Cienega and La Cieneguilla Community District Overlay of Ordinance 2015-11, the Sustainable Land Development Code (SLDC) to allow a 2.53 acre parcel to be divided into two lots; one lot consisting of 1.0 acre and one lot consisting of 1.53 acres. The property is located at 60 Camino Montoya, within the La Cienega and La Cieneguilla Community District Overlay (LCLA CIENEGAD) (RES-E), within Section 21, Township 16 North, Range 8 East (Commission District 3**

Hearing Officer Long recited the case caption as shown above.

MIGUEL ROMERO (Case Manager): Good afternoon. The applicants acquired the property as evidenced by warranty deed recorded in the records of the Santa Fe County Clerk on July 2, 2001, Book 1933, page 418. The property is recognized as a legal lot of record consisting of 2.53 acres and is currently vacant.

The applicants request a variance of Chapter 9, Table 9-8-7, Dimensional Standards, La Cienega and La Cieneguilla Community District Overlay of the SLDC to allow a 2.53-acre parcel to be divided into two lots; one lot consisting of 1.0 acre and one lot consisting of 1.53 acres. If the variance is granted the applicants intend to give their son, who has a medical condition, the

1.0-acre parcel so he and his family can build their own home. On the 1.53-acre parcel, the applicants intend to build their home, so they can live next door to their son and help care for him and his family.

The applicants state that they have owned the property for 10 years and it was their understanding at that time that they could not divide their property. They found out in 2009 the County had been allowing property owners to divide property, up until December 2015. The applicants further state that they never received notification either verbally or in writing that the option to divide their property would no longer be available, but if they had known they would have divided their property immediately. The applicants state that property owners within the La Cieneguilla area have been able to obtain lots smaller than 2.5 acres and have divided parcels into 1.25-acre lots. The applicants state that the division of their property is not to make a profit, but solely for the benefit their son and his family. The applicants believe their situation is a hardship because of their son's medical condition and therefore request the variance to divide their property. The minimum lot size in LCLA CIENEGAD, Residential Estate is 2.5 acres per dwelling unit.

Under the prior Land Development Code the applicant may have been able to divide their property under the Small Lot Family Transfer provision. However, this provision no longer exists. On October 27, 2015, the Board of County Commissioners authorized the County to publish title and general summary of an ordinance to establish zoning for all land in Santa Fe County, to which the Sustainable Land Development Code would apply. On October 28, 2015, a letter was sent out to all property owners within Santa Fe County informing them that their property had been assigned a base zoning classification and that the proposed zoning map would approve base zoning classifications for all properties in the County. This letter also provided the County's website information where property owners could look up the interactive zoning map and other resource materials pertaining to their property to find out what their zoning classification was.

Santa Fe County staff, along with the Board of County Commissioners, also conducted numerous county wide public meetings, including extensive public input at planning community meetings regarding the SLDC. Santa Fe County staff confirmed that a notification letter was sent to the applicants. In addition the La Cienega/La Cieneguilla Planning Committee was formed to review and update the community plan and write the community overlay. Another letter was sent to all property owners at the start of this process and two community wide meetings held in February of 2015.

Recommendation: Staff's determination is that the applicant did not adequately address the variance review criteria. Staff recommends denial of a variance from Ordinance 2015-11, Chapter 9, Table 9-8-7, Dimensional Standards, La Cienega and La Cieneguilla Community District Overlay to allow a 2.53-acre parcel to be divided into two lots, one lot consisting of 1.0 acres and one lot consisting of 1.53 acres.

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 February 16, 2017.

I stand for any questions.

HEARING OFFICER LONG: Thank you. Your report says that the applicant may have been able to divide their property under the small lot family transfer provision. Was there any analysis done to determine whether they would have been able to divide that property under that provision or not?

VICKI LUCERO (Building and Development Services Manager): Hearing Officer Long, since they had not made an application under the old or the prior Land Development Code we didn't analyze the project or do a complete review to find out if they would have met the requirements.

HEARING OFFICER LONG: That's why it's qualified that they may have been able to.

MS. LUCERO: That's correct.

HEARING OFFICER LONG: And what would have been, if they had made that application, what would have been the conditions for utilities and water use?

MS. LUCERO: Hearing Officer Long, I believe they would have been allowed to utilize a shared well for the two lots and then each residence or each lot would have had to have had its own septic system or some sort of an advanced system that was shared between the two.

HEARING OFFICER LONG: And that provision, the small lot family transfer provision, was not included in the Sustainable Land Development Code then.

MS. LUCERO: Hearing Officer Long, that is correct. I believe, to kind of allow that benefit to families for them to utilize the property there was a provision in the SLDC added for accessory dwelling units which would allow them to construct a second dwelling unit on the property but it would have to meet certain guidelines, size guidelines, as compared to the main residence. Same architectural style. They would have to share driveways, wells, that sort of thing.

HEARING OFFICER LONG: And is that something that would be allowed for this property?

MS. LUCERO: Hearing Officer Long, yes. That is correct. As long as they met the requirements for accessory dwelling units.

HEARING OFFICER LONG: But the applicants did not want to pursue building an accessory dwelling unit?

MR. ROMERO: Hearing Officer Long, that option was given to the applicants to avoid the variance process. However, their will is to subdivide the property to create two lots.

HEARING OFFICER LONG: And then under your recommendation, you state that the applicant did not adequately address the variance review criteria. Is it that they did not address the variance review criteria adequately, or that it just doesn't meet the variance review criteria? If you understand what I'm asking.

MR. ROMERO: Hearing Officer Long, I do. I'll try to find the words to explain this. Within the variance criteria there are few different – what I'll do is I'll refer to the report. On page #3 towards the bottom of the report it talks about the variance review criteria and what it states. The applicant is made to address essentially these – not questions but the criteria as addressed in number one, two and three of the variance criteria into their letter of intent. The applicant provided two letters to staff in their attempt to try and supply the review criteria as it states in one through three on page 3.

MS. LUCERO: Hearing Officer Long, if I could just add to that. The applicants did address the variance review criteria on page 4 of the staff report but staff's determination was that it didn't meet the criteria as set forth in the code.

HEARING OFFICER LONG: That's how I was reading that too. Is the hardship here – does not deal with a condition of the property. Is that correct?

MS. LUCERO: Hearing Officer Long, that is correct.

HEARING OFFICER LONG: It's a personal hardship, it sounds like. Okay. Thank you. All right. Could the applicant come forward please?

[The applicants were placed under oath.]

HEARING OFFICER LONG: So you heard my questions and it sounds like your desire is to divide the property, rather than build an accessory structure for your son and his family. Why don't you tell me why that is?

BERNADETTE HERNANDEZ: I would like to have the property divided into two so my son could have his property in his name, and then ours would be in our name.

HEARING OFFICER LONG: And the staff report and your letter indicates that your son has a certain medical condition where he needs your assistance.

MS. HERNANDEZ: Yes. He has to take medication and he has three kids and I'm getting ready to retire soon, so I bought the property so we were going to build our house and when I found out we were able to divide – when we first bought the property we could not divide it. They were 2.5-acre lots. Ours is a little bit more than 2.5-acre lots.

HEARING OFFICER LONG: And it was your understanding that you could not divide it.

MS. HERNANDEZ: We could never divide it. And we were okay with that. That's why we bought it. But later down on the line we found out that you could divide it. So when I found that out I had missed the deadline but I had never received anything. We used to be route boxes, and they would -- the County did the addresses into physical addresses. So we never received a letter stating that we could divide our property because if we would have received a letter we would have come on time and done it and we wouldn't have to go through all this process. Now we're going through the whole process of trying to get it divided.

HEARING OFFICER LONG: And I don't know if the letter would have said that you could divide your property. I think the letters were informing landowners of – that their property would be zoned now under the proposed Land Development Code and so you might want to look at the interactive maps on the website or check in with the County if you had any concerns about the proposed zoning. I think that was the intention. It probably didn't say that you could divide your property because that would take an application and a review to do that.

Now how did you come to understand that you could have divided your property?

MS. HERNANDEZ: We go to visit the property every once in a while and when I went out there I found out that an individual had a for sale sign and it was a real estate property and they had divided – well, because our property was in the front. Well, I believe theirs is in the back, and they divided all those lots into one-acre parcels. Several of them. There's like four of them. Because he did four of them. So he's selling his property.

MANUEL HERNANDEZ: For profit.

MS. HERNANDEZ: So I provided him one of my exhibits. I believe that the flyer that we took, and they had divided their property into –

HEARING OFFICER LONG: Into one-acre size lots.

MS. HERNANDEZ: One-acre lots, and I was like – I said I thought we couldn't do that.

HEARING OFFICER LONG: And those are next to your property?

MS. HERNANDEZ: They're like – ours is in the front and I believe theirs is right in the middle like in the back.

HEARING OFFICER LONG: And so do those lots abut your property line?

MS. HERNANDEZ: Well, it's in the same area. Like, we're right on the same – yes, we're all up on the same division. We sit up on a hill and Camino Montoya is like this. Our property is in the front and theirs is all in the back on the sites. There's two sites [inaudible] they're dirt roads, so they're like on this side right here and we're like right here. Because the parcels are big.

HEARING OFFICER LONG: Are there any covenants that prohibit you from dividing the property, do you know?

MS. HERNANDEZ: I just found out that the La Cieneguilla and La Cienega are going together now. They just passed in September just of this year and we didn't even know that. We have to meet with the board members that are called LCVA. We met with them on December 5<sup>th</sup>.

HEARING OFFICER LONG: The board members for –

MS. HERNANDEZ: With La Cieneguilla and La Cienega. La Cieneguilla where our property is has never been a part of it but I guess now they've become one. So I was surprised.

HEARING OFFICER LONG: And at that meeting did you present your proposal to divide the property?

MS. HERNANDEZ: Yes, we did and we have – on page 22, I think that says 22 here, there's a letter from the LCVA board what we discussed in our meeting with the La Cieneguilla Valley Association, community organization that I didn't even know we were aware of having an association. They just did this now in September of this year.

HEARING OFFICER LONG: And the board –

MS. HERNANDEZ: There was eight board members on that committee on December 3, 2016.

HEARING OFFICER LONG: So they supported your request with their conditions?

MS. HERNANDEZ: With their conditions. They have no problem.

MR. HERNANDEZ: Yes.

MS. HERNANDEZ: One of the board members lives there in La Cienega and she divided her property and she kind of explained at that meeting where she gave her son a piece of hers.

HEARING OFFICER LONG: Now I'm going to ask staff this in a minute, but it seems like some of these conditions – and you were agreeable to the board's conditions? Is that right?

MS. HERNANDEZ: Yes.

MR. HERNANDEZ: Yes.

HEARING OFFICER LONG: Probably would not be County conditions and wouldn't be enforceable.

MS. HERNANDEZ: I was aware. That's what they told us.

HEARING OFFICER LONG: So if they wanted you to do any sort of deed restrictions, that would have to be between you and the board, because the manufactured housing, I don't think that would be prohibited. Is that right, Vicki?

MS. LUCERO: Hearing Officer Long, that's correct. The County would not prohibit manufactured homes.

HEARING OFFICER LONG: And then also the restriction on selling for five years. I think that was maybe applicable to family transfers at one point. Maybe it still is, but this wouldn't be a family transfer. Is that correct?

MS. LUCERO: Hearing Officer Long, at this point it could be a family transfer, since their deeding it to their son but it wouldn't be a small lot family transfer as it was laid out in the old code. So it would still be a family transfer but under the SLDC a family transfer has to be minimum lot size and other regulations.

HEARING OFFICER LONG: And would it qualify for that?

MS. LUCERO: I believe it would, yes. Other than the lot size.

HEARING OFFICER LONG: Oh. Because of the district. And is there a restriction currently under the code for how long you have to hold a property after a family transfer? I can't remember.

MS. HERNANDEZ: I think it's five years if I'm not mistaken.

HEARING OFFICER LONG: I remember it used to be, at one point. So it sounds like you would not have a problem with doing a family transfer.

MS. HERNANDEZ: What do you mean by family transfer?

HEARING OFFICER LONG: Your application would be for a family transfer. I'm going to ask Vicki about that in a minute. And I think the only difference in terms of conditions would be this holding period afterward, after the transfer.

ANDREA SALAZAR (Assistant County Attorney): Hearing Officer Long, it does refer – the family transfer section, which is an exemption from the subdivision, it does refer to state statute so I don't know off the top of my head if it has a holding period or not. We'd have to look at the statute to evaluate whether that is the case.

HEARING OFFICER LONG: So under the current code this application would not meet the criteria for a family transfer because of the lot size for the underlying zoning? It still has to meet that? Is that correct?

MS. LUCERO: Hearing Officer Long, that is correct. And it actually wouldn't meet the lot size for any type of a land division or summary review subdivision. So that's the whole reason for the variance. So regardless of whether we call it a summary review subdivision or a family transfer it still wouldn't meet the minimum lot size.

HEARING OFFICER LONG: I get it. Thank you. So I think the only difference is if they were to get a variance moving forward from a family transfer is that if there is some requirement for a holding period that would be a condition that the County could impose rather than the board of La Cieneguilla.

MS. LUCERO: Hearing Officer Long, that's correct and we actually just got clarification that there is no holding period under the Sustainable Land Development Code, and that is because they are required to meet the minimum lot size.

HEARING OFFICER LONG: Right. So there is no holding period at all for family transfers.

MS. LUCERO: That's correct.

HEARING OFFICER LONG: Okay. So that's not going to help. Okay, well thank you for your presentation and I will note for the record that there is no one in the audience that wishes to speak against the application. Thank you for bringing to my attention your presentation to the board and their support of this. So I now have two weeks to issue a decision which I will do so I usually don't announce a decision. I've got to look at the code and think about it and then I'll issue findings and conclusions and you'll go on to the – is it in February? Okay. Where you'll go on to the County Planning Commission.

