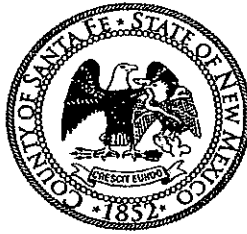


Danny Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

CASE NO. MIS 11-5020

MISCELLANEOUS

ALBERT SEDILLO, APPLICANT

ORDER

THIS MATTER came before the Board of County Commissioners (hereinafter referred to as “the BCC”) for hearing on April 12, 2011, on the Application of Albert Sedillo (hereinafter referred to as “the Applicant”) for authorization to subdivide 3.96 acres into two lots via Small Lot Family Transfer located in a previously approved subdivision (Pinon Hills). The BCC, having reviewed the Application and supplemental materials, staff reports and conducted a public hearing on the request, finds that the Application is well-taken and should be granted, and makes the following findings of fact and conclusions of law:

1. The Applicant requests authorization to subdivide 3.96 acres of unimproved property into two lots via Small Lot Family Transfer located within a previously approved subdivision located at 13 Calle Estevan, within Section 25, Township 17 North, Range 8 East (“Property”).
2. The minimum lot size for the property is 2.5 acres.
3. Article II, Section 4.3.5 of the Santa Fe County Land Development Code (“Code”) allows for Small Lot Family Transfers of half the minimum lot size, i.e., 1.25 acres in this case, with water restrictions and water conservation measures.

4. With the construction of the all-weather access into the Pinon Hills Subdivision, adequate access has been provided for emergency vehicles, as required by Article V, Section 8.1.3 of the Code.

5. Article V, Section 8.1.3 states legal access shall be provided to each lot and each lot must access a road constructed to meet the requirements of Article V, Section 8.2 of the Code. Parcels to be accessed via a driveway easement shall have a twenty (20) foot all weather driving surface, grade of not more than 11% and drainage control as necessary to insure adequate access for emergency vehicles.

6. Staff recommends the following conditions of approval:

A. Water use shall be restricted to 0.25 acre feet per year per lot. A water meter shall be installed for each lot, and this requirement shall be noted on the Plat. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office.

B. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval.

C. No further division of either tract shall be permitted. This shall be noted on the Plat.

D. The Applicant shall connect to the County Water System when it becomes available within 200 feet of the Property line.

E. A five-year holding period on the sale of the lot that is being split off.

7. In support of the Application, the Applicant stated that he agrees with staff's conditions.

8. Mr. Frank Diluzio, who owns property adjoining the Property, spoke of his concerns as to traffic and septic systems. Mr. Diluzio requested that the BCC impose a holding period on the Property in the event the Application is approved.

After conducting a public hearing, the Board of County Commissioners hereby approves Application for authorization to divide 3.96 acres into two equal lots of 1.9 acres subject to the Applicant complying with staff's conditions as stated above.

IT IS SO ORDERED

This Order was approved by the Board of County Commissioners of Santa Fe County on this ___ day of June, 2011.

By: _____

Virginia Vigil, Chair

Attest: _____

Valerie Espinoza, County Clerk

Approved as to form:



Stephen C. Ross, County Attorney

[The Commission met in closed session from 5:18 to 6:35.]

CHAIR VIGIL: We've just been in executive session.

COMMISSIONER HOLIAN: Madam Chair.

CHAIR VIGIL: Commissioner Holian.

COMMISSIONER HOLIAN: I move that we come out of executive session where we discussed pending or threatened litigation and limited personnel issues. Present were the five Commissioners, the County Attorney, the Deputy County Attorney, the County Manager and the Deputy County Manager.

CHAIR VIGIL: I have a motion.

COMMISSIONER ANAYA: Second.

CHAIR VIGIL: I have a second.

The motion passed by unanimous [4-0] voice vote. [Commissioner Stefanics was not present for this action and arrives shortly thereafter.]

XIII. PUBLIC HEARINGS

A. Growth Management

- 1. BCC Case # MIS 11-5020 Albert Sedillo Authorization Request.
Albert Sedillo, Applicant, Requests Authorization to Subdivide 3.96 Acres Into Two Lots Via Small Lot Family Transfer within a Previously Approved Subdivision (Pinon Hills). The Property is Located at 13 Calle Estevan, within Section 25, Township 17 North, Range 8 East, (Commission District 2) Wayne Dalton, Case Manager [*Exhibit 5: Wiese Letter; Exhibit 6: Maret Letter*]**

WAYNE DALTON (Building & Development Services Supervisor): Thank you, Madam Chair, Commissioners. The applicant is requesting authorization of a small-lot family transfer land division. The property is currently vacant and consists of 3.96 acres and will be divided into two equal 1.9-acre lots. The subject property is located within the Pinon Hills Subdivision, which is a previously approved subdivision created in 1965 and is located within the Basin Hydrologic Zone.

Article III, Section 10 of the Land Development Code states that the minimum lot size in this hydrologic area is ten acres and can be reduced to 2.5 acres with water restrictions. Lot size may be further reduced to 1.25 acres via small-lot family transfer.

Staff brings this request before the BCC for consideration due to the subject property being located within a subdivision previously approved by the Board of County Commissioners. The small-lot family transfer land division would result in an increase in density to the area. The BCC has approved prior requests in this area for variances, land divisions, family transfers and small-lot family transfers.

Subsequent to historic requests the Public Works Department has constructed an all-

weather access into the Pinon Hills Subdivision and there are no longer any issues regarding access into the subdivision. The applicant states he purchased the property with the intention of giving his sons a piece of property. Now that the applicant's sons are of age it is the applicant's intention to subdivide the property into two equal parcels and give his oldest son a lot.

Recommendation: Staff has reviewed this application and has found the following facts to support this submittal: Article III, Section 10 of the Land Development Code states the minimum lot size in this area is 2.5 acres with water restrictions. Article II, Section 4.3.5 allows for small-lot family transfers of one-half of the minimum lot size, which is 1.25 acres with water restrictions and other conservation measures.

With the construction of the all-weather access into Pinon Hills Subdivision adequate access has been provided for emergency vehicles as stipulated within Article V, Section 8.1.3 of the Land Development Code. Staff recommends approval of the applicant's request subject to the following conditions. Madam Chair, may I enter those into the record.

[The conditions are as follows:]

1. Water use shall be restricted to 0.25 acre-feet per lot per year. A water meter shall be installed for both lots. This shall be noted on the plat. Annual water meter readings shall be submitted to the Land Use Administrator by January 1st of each year. Water restrictions shall be recorded in the County Clerk's Office.
2. A Plat of Survey meeting all County Code requirements shall be submitted to the Building and Development Services Department for review and approval.
3. No further division of either tract shall be permitted. This shall be noted on the plat.
4. The Applicant shall connect to the County Water system when it becomes available within 200 feet of the property line.

CHAIR VIGIL: Are there any questions for staff? Commissioner Holian.

COMMISSIONER HOLIAN: Thank you, Madam Chair. Thank you, Wayne. Is it possible for the Board to place a restriction on the lot that is split off, that it not be sold off for a certain period of time after the lot split?

MR. DALTON: Madam Chair, Commissioner Holian, as I recall in the past, when these requests have come forward to the Board of County Commissioners there are a couple that have had holding periods placed on them.

COMMISSIONER HOLIAN: Okay. Thank you, Wayne.

CHAIR VIGIL: Any other questions. This is a public hearing. First of all, is the applicant here? Are you in agreement with all the conditions presented by staff?

[From the audience the applicant indicated assent.]

CHAIR VIGIL: Okay. Because it is a public hearing is anyone here to testify on this case? Please step forward. State your name and address for the record.

[Duly sworn, Frank DiLuzio testified as follows:]

FRANK DILUZIO: Frank DiLuzio. I live at 69 Calle Enrique and my property adjoins the proposed subdivision. And I just wanted to speak briefly. This isn't about it being a family transfer. My concern with these types of transfers have to do with the size of the lots they're generating in a traditionally very rural area and although there has been one all-

weather crossing brought into the community, there's still an at-grade crossing between this property and the main egress and there's still really only one way in and out of this particular subdivision.

My concerns have mostly to do with additional traffic flows in an area that was never designed to handle high traffic rates and if we continue to produce lots that are less than 2 ½ acres it will contribute additional cars to the community.

Also I have a concern with the proliferation of additional septic systems. We're in an area that doesn't have community wastewater treatment and of course we're in an area that does not now and probably never will have a community water system, and so we're all sharing the same aquifer. And I'm not sure that lots of 1 ¼ acres are really compatible with the hydrology in that area.

So I guess what I would ask – I did review the County Code and I do understand the provisions and the Code allowing for small family lots to be split down to half of the 2 ½-size. But I would at least ask the Commission to seriously consider imposing a holding period that's reasonable on that property, just to assure that this is truly a family transfer, there's no short-term plan to trade off or sell one of those two parcels and build on the other. I guess I'd ask the Commission to seriously consider that. And I think what I'm saying has been consistent with what the West Santa Fe Association has brought forward on similar subdivisions similar to this.

CHAIR VIGIL: Thank you, Mr. DiLuzio.

MR. DILUZIO: Thank you.

CHAIR VIGIL: Does anyone have any questions? Seeing none, is there anyone else that would like to address the Commission on this? Okay. What's the pleasure of the Commission? I will say that we did pass out the email that we received from the West Santa Fe Association in regard to this case, and they also recommended as Mr. DiLuzio did a holding period. Go ahead.

COMMISSIONER HOLIAN: Madam Chair, I move for approval of BCC Case MIS #11-5020, Albert Sedillo land division, with staff conditions and with the extra condition that we put a five-year holding period on the sale of the lot that is split off.

CHAIR VIGIL: I have a motion. Is there a second?

COMMISSIONER STEFANICS: I'll second it.

CHAIR VIGIL: Okay. Does the applicant understand that condition? Would you like to address the Commission on that? Just go ahead and state your name and address once you come up.

[Duly sworn, Albert Sedillo testified as follows:]

ALBERT SEDILLO: My name is Albert Sedillo. On the holding period, what

CHAIR VIGIL: The recommendation for the holding period is if this is truly a family transfer that it not be sold for five years. Is that your understanding of that?

MR. SEDILLO: Yes, I understand that.

CHAIR VIGIL: Okay. Do you have any objections to that?

MR. SEDILLO: Well, I've had the property for 16 years. Why would I want to sell it now? Do you know what I'm saying? With the economy the way it is and the property

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values have gone down, the lot, it's –

CHAIR VIGIL: So you wouldn't have any objections to this condition?

MR. SEDILLO: No. If that's what it takes to get it subdivided I guess have no choice but to do that.

CHAIR VIGIL: Okay. We have a motion and a second. Is there any other discussion?

COMMISSIONER ANAYA: Madam Chair.

CHAIR VIGIL: Commissioner Anaya.

COMMISSIONER ANAYA: I guess just a question of staff. In an effort to understand and be consistent, what have we done? We've done it in the past a few times but do we do it sometimes but not all the time? Is there any discussion of staff to address this in another way as we go through this code process? What historically, is this something that we regularly do?

MR. DALTON: Madam Chair, Commissioner Anaya, in this area the past couple of cases that I can remember the Board imposed a ten-year holding area on these lots.

COMMISSIONER ANAYA: Thanks, Madam Chair.

CHAIR VIGIL: And Commissioner Mayfield.

COMMISSIONER MAYFIELD: Madam Chair and I guess staff, on that point, on a family land transfer, what are the conditions, or I guess what are on the books as far as how it can be allowed or afforded or how it can not be with these conditions. Is there something typical in a family land transfer on the books that says you can't sell this land at a later date?

MR. DALTON: Madam Chair, Commissioner Mayfield, right now there's nothing in the code regarding a holding period of family transfers.

COMMISSIONER MAYFIELD: Madam Chair, Mr. Dalton, when an applicant comes to us or comes to you all for a permitting process or I guess a lot split and they're coming under the code that says it's afforded for a family transfer, is there a definition of a family transfer?

MR. DALTON: Yes.

COMMISSIONER MAYFIELD: And can you tell me what that definition is?

MR. DALTON: Madam Chair, Commissioner Mayfield, I'd have to look that definition up in the code so if you give me a couple minutes I can –

COMMISSIONER MAYFIELD: If you don't mind I'd appreciate that.

CHAIR VIGIL: Commissioner Stefanics.

COMMISSIONER STEFANICS: Madam Chair, I want to go back to the standardization of holdings. Even if we've put a hold in this particular area of the county why would we not do that in other areas of the county for family transfers as well?

SHELLEY COBAU (Building & Development Services Manager): Madam Chair, Commissioner Stefanics, there are some provisions in the code to encourage people to hold their property subsequent to a family transfer. The code states that they have to, if they don't hold the property for a period of three years I believe they have to do road improvements subsequent to a family transfer. The code states that they have to, if they don't hold the property for a period of three years, I believe they have to do road improvements.

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Because family transfer subdivisions or land divisions are exempt from providing road improvements, so that's a big savings. So if people want to sell it they're often faced with thousands of dollars in road improvements. We do have a point in the code that encourages the code.

COMMISSIONER STEFANICS: But from what I'm hearing, Madam Chair, there's an encouragement, not a requirement, for all these other cases. First of all, I'm perfectly fine with the five-year hold. If it's going to be a family transfer I think it should be a family transfer. But I also think that we should be treating everyone in a fair and equitable manner. So I guess, Shelley, I'm asking why we're not doing that everywhere.

MS. COBAU: Madam Chair, Commissioner Stefanics, I can't answer that because it's somewhat – we've had different Commissions who've had different opinions so things change with the changing Commissioners. I think the new code when it's developed will address the subject of fairness and certainly the subject of necessary road improvements.

COMMISSIONER STEFANICS: Well, Madam Chair, I certainly am recognizing right now in one part of my district some development that occurred that now needs some major roads and it wasn't required. So do see that we probably need to clarify that in our new code, whether it goes back to what you're suggesting, that if you sell or transfer sooner than a certain number of years then you're on the hook, but even within family transfers at some point, if there's any easements, you still need to be thinking about road improvements as well. Thank you.

CHAIR VIGIL: Let me get Commissioner Mayfield's question answered on the family transfer, then I'll go to Commissioner Anaya.

MR. DALTON: Thank you, Madam Chair. Commissioner Mayfield, to answer your question, the definition of a family transfer is the division of land to create a parcel that is sold or donated as a gift to an immediate family member, as defined herein. However, the exception shall be limited to allow the seller or donor to see or give no more than one parcel per tract of land per immediate family member.

COMMISSIONER MAYFIELD: Okay, Madam Chair, Mr. Dalton, the way I hear that definition though, he is dividing this land into two tracts.

MR. DALTON: Correct.

COMMISSIONER MAYFIELD: The definition says he is only required to give one tract to a family member.

MR. DALTON: One lot per tract. So if he had additional land in the county and he was subdividing another piece of property through family transfer he would only be allowed to give one of those tracts to an immediate family member.

COMMISSIONER MAYFIELD: Okay. Thank you.

CHAIR VIGIL: Okay. Commissioner Anaya.

COMMISSIONER ANAYA: Madam Chair, Commissioners and staff, I appreciate the clarification on what's historically been done. I guess the other thing I would bring up is that at some point, is there anything in our code – I support family transfers; let me make that clear. I think that they need to be evaluated as staff does, but I support them because there's people that have an opportunity to provide their families something that they can carry on and they may not otherwise be able to do that. That being said, associated with

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the hold, I'm going to vote for this motion but I'm going to ask that we get some more information and maybe it's a code issue associated with if a hardship exists. If a family has a family transfer and they're within the five-year hold and if they have a medical emergency or some other catastrophic event occurs I think we should give consideration to that event and their need to sell the tract of land, whoever that person that got it was. So I'm going to support the motion by I'm going to ask staff to look into that. I think that we should evaluate that, that there could be circumstances that would come back to the Commission potentially to allow a sale to occur before the period of time of the hold. Thank you, Madam Chair.

CHAIR VIGIL: Commissioner Stefanics.

COMMISSIONER STEFANICS: Thank you, Madam Chair. The former Commission did in fact ask staff to develop a policy to come forward for our consideration on hardship, because we had, and I think we'd have to search through the minutes, but I think that as a group, the former Commission asked for something to be developed because we were receiving different hardship requests. And I'm not insinuating that this is a hardship request. I'm just saying that we have had illness, we've had divorce, we've had the financial market, we've had unemployment, we've had lots of things, and I believe we did ask for something to be considered. Do you remember anything like that?

MS. COBAU: Madam Chair, Commissioner Stefanics, we have had those type of cases that you're referring to where people come forward with medical hardship, financial hardship, were normally associated with variance requests. And the code only allows for contemplation of two types of hardships. Those are ones that are topographic in nature and ones that are non-self-inflicted in nature. So right or wrong, variances have been granted for people who have financial hardship. In response to that we've changed the way we word our staff reports to make it help the Commission and others understand the code and if somebody's requesting a variance based on financial hardship for example we point out in our staff report that that's not the type of variance or hardship that's contemplated by the code. That's not a reason that's contemplated by the code for granting a variance request.

So we haven't done any kind of code amendment that goes through and says we can consider hardship for these types of cases other than the ones that are topographic in nature or ones that are non-self-inflicted conditions.

COMMISSIONER STEFANICS: Madam Chair, I understand that. I think that what I'm remembering is that the Commission wanted the opportunity to vet something and so they wanted to offer the staff an opportunity to come up with some policy that could maybe be amended into code or used, but we wanted something to vet. We might not agree on it but we wanted something to vet so that we had some standard by which to assess these unique situations that might come in front of us. So that's not related to this case. I don't want to divert us in terms of our time and energy, but I just would like to put it on the table again. I'm sorry.

JACK KOLKMEYER (Land Use Administrator): Madam Chair, Commissioner Stefanics, we do remember that and we did take that into advisement but the problem at that point was that then we would go in and start making changes to a code, the existing code, that we want to make major changes to anyway. So as came up in the meeting this afternoon, I'm going to come up to you at the next meeting and let you know how we're

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going to deal with the public input process and then we're going to pick a number of really important what we're calling decision points. Two of them will be variances and family transfers that we're going to vet in great detail and have you be a part of that process with us, so we can really debate these things and then come back and put them in the new code. That's how we're thinking of doing it right now, in answer to your specific question. So there will be an opportunity to do that. Thank you.

CHAIR VIGIL: Okay. Did you want to -- Commissioner Holian?

COMMISSIONER HOLIAN: Madam Chair, well, in the interest of being consistent with what has been done in that neighborhood in the past I would like to amend my motion to ten years.

CHAIR VIGIL: So it would be a ten-year. Is the seconder of the motion in agreement?

COMMISSIONER STEFANICS: No.

COMMISSIONER HOLIAN: Okay. Then I'll stick with five.

CHAIR VIGIL: Then we'll stay with the five. There is a high concern, Mr. Sedillo, and the Commission has heard from a few of the residents there that there has been some solicitation, I don't know on who's part, to purchase this property that you're going to subdivide and they are highly concerned that that's the underlying purpose. Will you clarify that for us please?

MR. SEDILLO: I did put the property for sale a while back.

CHAIR VIGIL: The entire --

MR. SEDILLO: Yes, the whole thing.

CHAIR VIGIL: Okay.

MR. SEDILLO: It was getting hard for me to keep up with everything that was going on and I decided to, and I took the property off even before the contract, because I didn't want to sell it. The reason I bought it 16 years ago was for my boys, to help them out. I've invested a lot of money in this, in this property and I'm not going to lose out on it.

CHAIR VIGIL: Okay. Are there any other questions or statements? If not, we have a motion on the floor.

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

- XIII. A. 2. CDRC Case # V 11-5010 Bernie Romero Variance. Bernie Romero, Applicant, Requests a Variance of Article V, Section 8.1.3 (Legal Access) of the Land Development Code to Allow an Access Easement of Less Than Twenty Feet (20') in Width. The Property is Located at 11 Camino Santerra, within the Traditional Community of Canada De Los Alamos, within Section 27, Township 16 North, Range 10 East, (Community District 4) Wayne Dalton, Case Manager.**

MR. DALTON: Thank you, Madam Chair. On February 17, 2011, the CDRC