

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

Santa Fe, New Mexico

May 13, 2021

1. This meeting of the Santa Fe County Sustainable Land Development Code Hearing Officer meeting was called to order by Santa Fe County Hearing Officer Richard Virtue on the above-cited date at approximately 3:00 pm.

In accordance with the Public Health Emergency Order issued by the State of New Mexico, and pursuant to the New Mexico Attorney General's Open Government Division Advisory during COVID-19, public entities are authorized to conduct virtual meetings.

[For clarity purposes, repetitive identification and confirmations of those on the phone have been eliminated and/or condensed in this transcript.]

Staff Present:

Vicki Lucero, Building & Development Services Manager

Mike Romero, Development Review Specialist

Jose Larrañaga, Development Review Specialist

Paul Kavanaugh, Building & Development Services Supervisor

Roger Prucino, Assistant County Attorney

Jaome Blay, Fire Marshal

2. **Approval of Agenda**

HEARING OFFICER VIRTUE: Are there any changes to the agenda from staff?

VICKI LUCERO (Building & Development Services Manager) Hearing Officer Virtue, there are no changes to the agenda.

HEARING OFFICER VIRTUE: Okay. So we have one Old Business Matter, that's Case #21-5030, James Rhotenberry Variance. The applicant has requested that that matter be tabled, so we will table that matter to a date to be determined. And with that we'll turn to New Business.

SFC CLERK RECORDED 06/08/2021

3. **OLD BUSINESS**

- A. Case # 21-5030 James Rhotenberry Variance. James R. Rhotenberry, Applicant, requests a variance of Chapter 7, Section 7.17.9.2.3 (30% Slope Disturbance) to allow a portion (498 sq. ft.) of a proposed accessory dwelling unit to disturb 30% slopes, and a variance of Section 7.17.9.2.7 (Significant Tree Removal) to allow the removal of 5 significant trees. The property is zoned as Residential Fringe (RES-F). The property is located at 35 Vista Tesuque, within Township 18 N, Range 10 E, Section 17, SDA-2, (Commission District 1). Miguel "Mike" Romero, Case Manager.
TABLED

4. **NEW BUSINESS**

- A. Case # 20-5120 Anne Sahlin Accessory Dwelling Unit Variance. Anne Sahlin, Applicant, Daniel Werwath, agent, request a variance of Chapter 10, Section 10.4.2.3. (Building and Site Design) to allow a separate driveway for a proposed accessory dwelling unit. In addition, the Applicant requests a variance of Chapter 10, Section 10.4.2.4. (Utilities) to allow separate utilities for a proposed accessory dwelling unit. The property is zoned as Rural Residential (RUR-RES). The property is located at 11 Vestal Way, within Section 28, Township 16 North, Range 10 East, SDA-2 (Commission District 4)

MIKE ROMERO (Case Manager): Good afternoon, everybody. The Applicant is the owner of the property as evidenced by warranty deed recorded in the records of the Santa Fe County Clerk on February 3, 2004, as Instrument # 1312420. The Applicant is requesting a variance of Chapter 10, Section 10.4.2.3 to allow a separate driveway for a proposed accessory dwelling unit. In addition, the Applicant requests a variance of Chapter 10, Section 10.4.2.4 to allow separate utilities for the proposed accessory dwelling unit. The Agent, Mr. Werwath is a friend of the property owner who intends to purchase the property should the variance be approved.

The property, 11 Vestal Way, consists of 8.32 acres. The property has an existing 793 square foot dwelling unit, which is occupied by the Applicant. There are existing utilities on the lot which serve the existing dwelling unit, which consist of electrical, sewer and a well. The existing residence is served by a small driveway located off the older portion of Vestal Way to the north. Staff have not been able to locate any permits for the residence or any additions made to the residence but air photography shows the structure there in 1992. The Applicant states in the letter of intent that the existing residence was constructed sometime in the 1930's.

The property is zoned Rural Residential with a minimum lot size requirement of one dwelling unit per 10 acres. The Applicant's property consists of 8.32 acres, which does not meet code requirement to subdivide the property into two lots or allow for a secondary primary residence. If the variances are approved, Mr. Werwath intends to purchase the property from the Applicant and construct a new residence on the property approximately 200+ feet, south of the existing residence. Mr. Werwath's residence will be the primary residence and the existing dwelling unit will be identified as an accessory dwelling unit, which the Applicant will continue to reside in.

Applicant's Statement: Mr. Werwath states, "According to the Purpose and Findings of the Accessory Dwelling unit code, accessory dwellings units are an important means by which persons can provide separate and affordable housing for elderly, single-parent, and multi-generational family situations. The property is currently the residence of Ms. Sahlin, who built her modest home gradually over the last 30 years and who has lived on the site since the 1970s, originally in her grandfather's stone cabin. If approved, this variance would allow for our family to build a modest home and for Ms. Sahlin to stay in her home and age in place on her family's historical land. The reason for the variance request is that there is no buildable area in close proximity to the existing dwelling that could be served by the existing drive and utilities that isn't impacted by steep 15% to 30%+ grade slopes, several deeply incised arroyos, and substantial outcroppings of bedrock. While it appears in the map that there is relatively flat area directly adjacent to the existing structure, this in fact impacted by a 38-foot access and utility easement as well as significant bedrock outcrops. The area shown on the western boundary is similarly impacted by an access easement as well as setback rules that do not provide enough developable area to support a house without a lot line adjustment. Vestal way also becomes a very rough two-track road just beyond the existing residence and has several slope issues that would likely require variances for build-out".

Mr. Werwath further states, "The most feasible development site on the property is located at approximately 200+ foot distance south from the existing structure and 450+ from the pole-mounted transformer which according to PNM, makes it impossible to connect to the existing transformer and power pole because of the distance from the transformer. That distance also includes substantial rock outcroppings and bedrock ledge, an arroyo with exposed bedrock floor, and substantial trees located on slopes, where disturbance would cause significant risk of erosion and underground utility trenching is not possible. The proposed building site is adjacent to a newly constructed road and power access that was built in the last year to serve a residence that was recently constructed at 1 Vestal Way, on the parcel immediately to the west of the subject property. The construction of this home included the creation of a County-permitted 14-foot access road and a subterranean PNM electrical line that crosses the entire south edge of the subject property in an easement for the benefit of the adjacent property. It would be our intent to utilize this newly constructed SLDC compliant roadway for all but the last 70 feet of access, as well as accessing electrical power from this newly created buried supply line".

Staff Response: Staff has conducted a site visit at 11 Vestal Way and has confirmed that there is limited buildable area that is within close proximity of the existing residence, due to terrain constraints, potential access and utility easement issues, setback requirements, overhead utilities, isolated slope areas and future location for upgraded septic system. Staff has confirmed that the portion of Vestal Way that extends past the west side of the Applicant's residence is undeveloped.

During staff's site visit, staff did verify that there is an existing 14-foot driveway that runs along the eastern boundary of the Applicant's property which provides access to a newly constructed residence located on Tract 2. The neighbor's house is identified as 1 Vestal Way. The neighbor's driveway appears to have been constructed within the 30-foot access and utility easement illustrated in Plat Book 546, Page 020. Staff, along with the Applicant's agent has determined that there is an alternative buildable location on the

property that is relatively flat that would allow for a residence. The alternative building site is approximately 100 feet to the southwest of the proposed building site. If Mr. Werwath were to develop at that alternative buildable location, he would need to request different variances which could include disturbance of significant trees, disturbance of rock outcroppings, and disturbance of slopes 30% or greater. Staff believes that the locations proposed by Mr. Werwath in his application would be the areas that would require fewer variances.

Staff determined that if the primary residence was to be constructed at the proposed location, the residence would be screened by existing mature native vegetation. The location would also be the least intrusive in protecting existing vegetation, rock outcroppings, and significant trees. Staff agrees that the sharing of a septic system and electricity is hindered significantly by the existing terrain. Mr. Werwath has asserted that the only utilities that cannot be shared are the existing septic system and the existing electrical line.

The Applicant has addressed the variance criteria for the variance requested of Chapter 10, Section 10.4.2.3 to allow a separate driveway for the proposed accessory dwelling unit as follows, and staff has also provided responses.

The Applicant has addressed the variance criteria for the variance requested of Chapter 10, Section 10.4.2.4 to allow certain utilities for a proposed accessory dwelling unit as follows, and staff has also provided a response.

Recommendation: Staff recommends approval of a variance from the Sustainable Land Development Code Ordinance No. 2016-9 of Chapter 10, Section 10.4.2.3 to allow a separate driveway for a proposed accessory dwelling unit and a variance of Chapter 10, Section 10.4.2.4 to allow separate utilities for a proposed accessory dwelling unit. Staff believes that due to terrain constraints, the Applicant doesn't have the option to construct a residence within proximity of the proposed accessory dwelling unit which would allow for utilization of the Applicant's current driveway or utilities without disturbing 30% slopes, removing significant trees and rock outcroppings.

If the decision of the Hearing Officer is to recommend approval, staff recommends the following conditions be imposed. May I enter these into the record?

HEARING OFFICER VIRTUE: You may.

[The conditions are as follows:]

1. The Applicant will be required to adhere to the approved building plans at the time of building permit.
2. The Applicants shall comply with Chapter 7, Sustainable Design Standards.
3. The Applicants shall adhere to State, County, and Fire Prevention conditions of approval and requirements.
4. The Applicant shall comply with all other sections of Chapter 10, of the SLDC.
5. The Applicant shall obtain a building permit and begin construction within a year of the final order being recorded in the County Clerk's Office.
6. The Applicant shall properly align Vestal Way that lies at the northern end of Tract 1 within the access easement.
7. The Applicant shall obtain a permit from NMED for the placement of a new septic on Tract 1.

MR. ROMERO: 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 June 17, 2021 at 4:00 p.m. At this time I stand for any questions.

HEARING OFFICER VIRTUE: Okay, I have no questions at this time. I may have some later. With that we will turn to the Applicant and I would like for the Applicant and/or anyone who will speaking on behalf of the Applicant to identify themselves by name and address and we'll have you sworn in.

DANIEL WERWATH: Both of us are here. I'm Daniel Werwath and this is Annie Sahlin.

[Duly sworn, Daniel Werwath testified as follows:]

MR. WERWATH: For the record my address is 1611 Camino Porvenir, Santa Fe, New Mexico.

[Duly sworn, Anne Sahlin testified as follows:]

ANNE SAHLIN: And I'm 11 Vestal Way, Santa Fe, New Mexico, 87505.

HEARING OFFICER VIRTUE: I'd figured that one out. Okay, let's proceed however you'd like to proceed.

MR. WERWATH: I have a presentation. Is it possible for me to share my screen so that I can bring up a power point? I have a share button here.

HEARING OFFICER VIRTUE: Ask the host, Vicki Lucero, if that's possible.

MS. LUCERO: Yes. Absolutely. You can try. It looks like you may be doing something. There we go.

MR. WERWATH: So first, I want to just say thank you to everyone for allowing us to present today and an immense thank you to Santa Fe County Land Use staff who's worked with us for almost a year and a half to look at a bunch of different options and help us work through this and help us refine our approach and answer questions. I think what you see in front of you is a result of a lot of staff work that you don't see and I just want to acknowledge that, especially John Lovato, Mike and Vicki, who's been there along the way to help us, so I just want to say thank you to them for their assistance up till now.

And I think I want to start by just saying we understand that variances are like an extreme remedy in the code, right, but we believe that this is the exact type of situation that a variance is meant to solve. It exists as a remedy in the code for a reason, and that's really about the uniqueness of this site, its history, its geography, the unique situation of the access that's created by the newly developed adjacent house, and that ultimately in the end this is the best way to uphold the intent of the Sustainable Land Development Code, which to me is the ultimate measure of success here.

With that, this is a photo of Annie's grandfather, Stanley Vestal, building the stone cabin which is the namesake of the access from Old Santa Fe Trail, Stone Cabin Road in 1935. And I'll just turn it over to Annie for a couple seconds to talk about her history on the land.

MS. SAHLIN: Hi, everybody. My name's Annie Sahlin and I'm the granddaughter of Stanley Vestal who homesteaded this land in 1935. He came with my grandmother and my mother and my aunt over dirt roads from Norman, Oklahoma where he taught at the university there. And this was – he was so pleased because it was right on

the Old Santa Fe Trail or just a stone's throw away. And he'd written a book called *The Old Santa Fe Trail* and this to him was magical. And that magic feeling about the land has of course come down to me. I came here in 1970. And it's been necessary for me to sell the land, unfortunately. But I found this wonderful couple with a little two-year-old who are willing to let me stay in the house that I slowly, slowly built, and I just can't think of anything that has made me so happy than that.

It's been a slow process but it's been a good one with the County because they're really come through and we've all tried to find remedies that would have a house somewhere. Right around me there just isn't anything. I chose my site because it was 1,000 feet from the PNM pole and that's as far as you could go to get a free one, and that's why I chose that site. Anyway, I just wanted to thank you for hearing from us and if you have any questions please let me know.

MR. WERWATH: Thanks, Annie. So there's just a couple points we want to hit on and a lot of this information is in the exhibits of the staff report, which again, I think I just want to recognize was a very excellent and thorough report. This is a picture of the subject property. You can see the mountainous terrain. This is the foot of Cerro Negro, which is a fairly prominent mountain about 1,500 feet or more above the elevation of Santa Fe. And you can see in that picture the little sort of orangish dot is Annie's house on the hillside there.

Basically the land to the left of the house – it's situated right at the property boundary and so the land sort of to the left or south of Annie's house is primarily the subject property. Her house is build right up against the edge of the property.

The core point here is you can see – in this photograph you can see Annie's house in the upper right-hand corner. This is an example. This is standing about 30 feet to the south of the house and you can see the extensive rock outcrops. That's actually an arroyo course that would make it nearly impossible to connect to the same utility system both for gravity reasons and just a matter that there's extensive bedrock so you couldn't bury anything.

There's also some issues with access easement and setbacks related to the fact that this property was subdivided after – the remaining parcel, the subject parcel is part of several parcels that once made up the larger tract of family land, and so that has situated her house at the very edge of the buildable area. Or very edge of the parcel, the subject parcel. And so, yes, the bottom line is there's no way to construct or even really expand the existing dwelling without disturbing slopes, rock outcroppings, loose soils and significant trees. So that's really the driver behind that. We sort of looked to all the options up to and including potentially looking at lot line adjustments. Her brother owns two adjacent parcels that are served by the rough two-track road past Annie's house and we looked at those options as well, and really arrived at this variance request as the lowest impact way of allowing this property to achieve the level of development that's allowed by right under the code of having a house and a guesthouse.

This is a recent ILR and this explains just a little bit. You can see that red line that I've added to the ILR. That just shows that adjacent, and any flat areas immediately to the west of the existing property and the way that that access and utility easement comes in and sort of jogs diagonally to the southwest sort of bisects that and you can see the other flat areas immediately adjacent there are impacted by existing water infrastructure and other build structures.

And so the reason – that’s my family. That’s the proposed build site. You can see it’s in a natural open clearing, although it is screened by trees. The build site itself has no significant slopes or rock outcroppings that would be disturbed. No significant trees that would be disturbed. The short section of the access – and this is a site plan that was part of the submission. You can see the roadway, Vestal Way, is depicted in black here. That’s all existing road that has already been created. The southern fork of Vestal Way is the new, reconstructed fork which was built last year to SLDC code, permitted, and is a 14-foot, minimum 14-foot wide, adhering to SLDC slopes, turnouts, and has an aggregate top coat. So it’s a completely finished road. And the utilities are there as well, buried, high voltage PNM utilities.

And so what you can see in this picture – and this is really a concept, because frankly we can’t afford to go to the level of a detailed architectural design on a conceptual or hypothetical variance. So what we’ve just here done is sort of provided a general sketch of sort of the most intense version of development we would anticipate. And you can see there is about 60 or 70 feet of road that needs to be cleared. Within that there’s just a small amount of areas that may have steeper slopes well below the maximum allowed in the SLDC.

And then the building site is completely flat and has no real disturbance associated with the construction of the dwelling. But you can see why this made sense in a lot of ways. If you look at the exhibits of the application you can see there was a slopes analysis – just a rough sketch slopes analysis that John Lovato did about a year and a half ago where he identified this as one of only a couple possible buildable areas. The only other flat areas are either impacted by the access easement or would require vehicular access through the adjacent property owner’s property, if you were going to use existing roadways. It would still need a separate access and utility variance.

So that’s how we landed at this site being the best way to achieve the goals that we’re all seeking and allowing Ms. Sahlin to achieve the same level of development that’s allowed by right in every property in the county.

So just to review the three main criteria, this request is not contrary to the public interest. In fact it’s really focused on new development that has the minimal impact as possible. It is allowing existing Santa Fe residents to age in place and really develop in the most sustainable way that has the least impact on slopes, significant trees, rock outcroppings, sensitive soils, all those things. But this is really an unusual and extraordinary circumstance for several reasons – the history of the site, the unusual terrain on the site which is very different from the vast majority of land in the county, and the unique situation that this road and utility infrastructure already exists. We would not be here asking for this variance if we had to build this road to this site. That is a really key aspect of this.

And then ultimately, this variance is in the spirit of the SLDC. When we look at Section 10.4.1, this is the explicit purpose, the only stated purpose within the code for the accessory dwelling unit is to create an important means by which persons can provide separate and affordable housing for elderly, single parent and multi-generational family situations. And that is exactly the situation we’re aiming to create here. With that I will stand for questions and again, I appreciate everyone’s time today.

HEARING OFFICER VIRTUE: Okay. Thank you very much for that. Does anyone have a question for the Applicant? Or the Applicant’s representative? Okay,

if not, Ms. Lucero, would you unmute folks and see if there's anyone who wishes to testify in favor of the Application at this point?

MS. LUCERO: Hearing Officer Virtue, I have given everybody the capability to unmute themselves. Anyone who's calling in by phone will have to hit star 6 in order to unmute themselves to speak.

HEARING OFFICER VIRTUE: Okay, I'm hearing nobody. Let's ask one more time and then we'll move on if no one speaks up. Is there anyone who wishes to testify in favor of the Application? Okay, hearing none, we'll move on to persons wanting to testify in opposition to the Application or just generally with respect to the Application. Do we have anybody that wants to testify in that regard? Okay, hearing none, I'll just ask one more time, is there anyone who wishes to testify in opposition or generally with respect to the Application?

Okay, hearing none, at this time I'm going to close the public hearing on this matter and I will prepare a written recommendation within 15 days of today. Thank you all very much.

MR. WERWATH: Everybody, thanks so much.

4. B. **Case # 21-5020 Manuel Roybal Rural Commercial Overlay. Manuel Roybal, Applicant, Siebert and Associates, Inc., Agent, request approval to create a Rural Commercial Overlay District (O-RC) on three contiguous parcels of land (SLDC, Section 8.11.2). The current zoning on the parcels is Residential Community (RES-C). The parcels are located at 17723 B US Hwy 84/285 (2.624 acres), 17725 US Hwy 84/285 (6.254 acres), and 17747 US Hwy 84/285 (3.543 acres) within T19N, R9E, Section 28, SDA-2 (Commission District 1)**

JOSE E. LARRAÑAGA (Case Manager): Thank you, Hearing Officer Virtue. The Applicant is requesting approval to create a Rural Commercial Overlay District on three parcels of land in conformance with SLDC Section 8.11.2. The current zoning on the three parcels is a combination of Residential Community and Rural Fringe. There are adjacent tracts of land that are currently zoned as Commercial General. The creation of a commercial overlay will not alter the existing zoning of RES-C and RUR-F on the three lots.

The proposed Rural Commercial Overlay District would allow the non-residential uses identified in SLDC Section 8.11.2.3 as Permitted Uses and Section 8.11.2.4 as Conditional Uses. The uses permitted within the underlying zoning would also be allowed. SLDC Section 8.11.2.2 identifies RES-C and RUR-F as appropriate zoning to create a Rural Commercial Overlay District.

This Application was reviewed for the following applicable design standards as per Chapter 7, Sustainable Design Standards of the SLDC: it was reviewed for access, fire protection, road design standards, water supply, wastewater and water conservation, protection of historic and archaeological resources, terrain management and flood management and flood control.

Building and Development Services staff has reviewed this project for compliance with pertinent SLDC requirements and has found that the facts presented support the request to create a Rural Commercial Overlay District: the three parcels are either

contiguous or in close proximity; the current zoning on the three parcels is Residential Community and Rural Fringe; there are adjacent tracts of land that are currently zoned as Commercial General; the creation of a Rural Commercial Overlay District will not alter the existing zoning of RES-C and/or RUR-F on the three lots.

If the overlay zone is approved by the Board of County Commissioners, it will be included on the Zoning Map when that is next updated. These adjustments to the existing zoning map will reflect the three lots as a Rural Commercial Overlay zone with the underlying zoning as RES-C and RUR-F. Staff has established findings that this Application to create a Rural Commercial Overlay District within a Residential Community zoning is in compliance with criteria set forth in the SLDC.

Staff recommends approval of the request for the creation of a Rural Commercial Overlay District on the three parcels of land with the underlying zoning designated as Residential Community or Rural-Fringe with the following conditions. May I enter these conditions into the record?

HEARING OFFICER VIRTUE: You may.

1. A Mylar illustrating the three lots within the Rural Commercial Overlay District shall be recorded at the expense of the Applicant in the office of the County Clerk. The limits of the floodplain shall be identified on the Mylar.
2. The uses within the approved Rural Commercial Overlay District shall comply with SLDC Section 8.11.2. (Rural Commercial Overlay (O-RC)).
3. Submittal of a Site Development Plan/Conditional Use Permit and/or residential permits for any of the three (3) parcels within the approved Rural Commercial Overlay District shall comply with all pertinent SLDC requirements.
4. The three lots within the Rural Commercial Overlay District shall be required to connect to the Regional Water System when it becomes available, in accordance with Section 3.1.4.1 of the Aamodt Settlement Agreement.
5. At such time when a Site Development Plan/Conditional Use Permit is submitted for any of the three (3) parcels, a commercial driveway permit shall be secured from NMDOT. Lots may be required to share access.
6. A Traffic Impact Assessment (TIA) may be required when a Site Development Plan/Conditional Use Permit is submitted for any of the three (3) parcels.
7. A 75' setback shall be maintained from the FEMA designated floodplain. The setback can be reduced to 25' provided that engineered bank stabilization is provided. Other studies may be required per SLDC Section 7.18 (Flood Prevention and Flood Control).

MR. LARRAÑAGA: Thank you, Hearing Officer Virtue. This report and the exhibits listed below are hereby submitted as part of the hearing record. Staff requests the Hearing Officer memorialize findings of fact and conclusions of law in a written order. The Santa Fe County Planning Commission may hold a public hearing on this matter on July 15, 2021. Hearing Officer Virtue, I stand for any questions.

HEARING OFFICER VIRTUE: Okay. Thank you, Mr. Larrañaga. I have no questions at this time. With that we will turn to the Applicant. I would ask that the Applicant and/or anyone who wishes to testify on behalf of the Applicant to please identify yourself for the record by name and address and be sworn.

[Duly sworn, James Siebert testified as follows:]

JAMES SIEBERT: James W. Siebert, 915 Mercer, Santa Fe. We're going to start by bringing out the drawing just to indicate where the project is located.

[Duly sworn, Victoria Dalton testified as follows:]

VICTORIA DALTON: Manuel Roybal is also here.

[Duly sworn, Manuel Roybal, testified as follows:]

MANUEL ROYBAL: Manuel Roybal, 17721 US Highway 84/285, Santa Fe, New Mexico, 87506.

MS. DALTON: Can everyone see this map?

MR. SIEBERT: So this is directly across from the Pojoaque Pueblo. The interchange to the north is currently where the – it was the flea market. The flea market seems to be gone, whether COVID was an issue or they're waiting to develop it as a commercial site. To the south, the south end of the property, actually the parcel that doesn't have a hatch on it is where Manuel Roybal currently has his business and that's zoned for commercial purposes. And at one time this entire property had a master plan for commercial development, and actually I was the planner on that, and for whatever reason, Manuel's father didn't proceed with that. We got it to the development plan stage and the approval lapsed

But to the south of the office, which is the vacant parcel there, is the commercial area along the frontage road and it extends a considerable distance. So the deal was that this property is really caught between two commercial areas, one to the north that's on pueblo and one to the south that's an existing commercial area. And then there's another description of the zoning in the area.

So the red down here is where the office is is commercial, as we said, commercial. To the south as you can see the commercial zoning is extending to the south. And then on the north side is the pueblo which doesn't have a zoning designation. The actual use as of a few weeks or months ago was for the flea market there.

Let me go to the next slide. And this is kind of opposite. There are some properties within the Roybal ownership that are not being zoned for commercial purposes. To the very south is where their office is. It's already zoned commercial, and there's two other parcels that actually are part of the Roybal family. They do not want to have an overlay because they're concerned that with the Application and the overlay the taxes will go up and they didn't want to be subject to a higher tax, so they've opted out of this particular overlay request.

A lot of the property as well is within the floodplain of the drainage, which is really extensive over here and then with the – actually, when the property develops, the individual parcels develop, that particular area would be reserved as open space. There is a well on the current property, where the current zoning is that can serve for commercial uses, based on conversations that we've had with the State Engineer's Office. Also, there are water rights that are existing on the property. Those are currently being transferred to the well and allocated for commercial use. The anticipation, based on the attorney that's handling the water rights is that it will be a little over six acre-feet that will be available for developing this property. As commercial uses, typically they don't have any kind of demand in a certain way in that range.

This is kind of the extent of what we have. We think we've complied with all the requirements of the County code. There's three different driveways that when they build the frontage road the Highway Department installed the driveways basically to these

parcels. Now, what will happen as each development comes in on any of these properties, then we'll have to submit for a site development plan and the site development plan will have to comply with the SLDC. They may have to do a traffic study and they will do all the standard elements of the site development plan – the wastewater, the water, terrain management, the whole series of things that are relative to the SLDC.

So with that, I'll answer any questions.

HEARING OFFICER VIRTUE: Mr. Siebert, as the Hearing Examiner, I have a question about sewer. Is there any kind of a community sewer system in that area or is it all still on septic tanks. I know there's some significant commercial development nearby. I'm just wondering what the situation is with respect to sewer.

MR. SIEBERT: There is no – the County doesn't have any sewer in that area nor does the pueblo have any sewer in that area. It's my understanding that it's not planned for the future. The County is not planning for it in the future. It is part of Aamodt and at some point in time a regional water system will be available to the area and one of the conditions – I forgot to mention we agree to the conditions – one of the conditions is that when the regional water is available that they would be required to connect to the regional.

HEARING OFFICER VIRTUE: Okay. I saw the condition related to water, but I didn't see any additional information about what the future for sewer is in that area. Does anyone else have any questions of the Applicant? Or the Applicant's representative. Would Mr. Roybal like to speak?

MR. ROYBAL: Yes, I would. Okay. I'm Manuel Roybal. My father bought this property probably in the sixties. We went into 1999 he had Mr. Siebert go in. We had the property zoned as commercial through the County Commissioners. At that point the only regulation, stipulation that they put in was we could not develop the property until the State Highway developed the frontage road before we could do any commercial development. But I did get approval for development by the County. Okay.

Since then we waited and they finally put the frontage road in and the overpasses. At that time we had the money for development, so we've been waiting now, two years down the line waiting to get started on the development. The State Highway has put the frontage road in. We do lay in a commercial zone. Pojoaque Pueblo surrounds us, and Nambe Pueblo decides and they are developing all this area between the two overpasses as commercial. As it sits right now, I still pay the County for commercial property, and my taxes as commercial to this day, the County Land Department still recognizes me as commercial property.

Our intent was to develop as commercial and we have been using – the reason we went to the County back in 1999 is we needed to use a pipe yard to store our pipe, which we're using right now as part of our business. We're a construction company. Right now, the only thing we have, because of the zoning change, is the office area now. But all the property you're looking at in question have been used as commercial property ever since we got development approval. We're only using the entrance that is zoned as commercial at the moment. We're storing and selling piping material, using the lot that we have there. It is commercial, being used as commercial as it is, but when they did the new zoning change, unfortunately I was under the Board of Planning and Zoning, I retired when the new process was coming in. I didn't realize all that was contested at that time. That, it got changed to residential. So we did go through the whole process. This is my second time

doing as such. We shouldn't have to be going through a second approval. We had it approved.

There were stipulations put in and I agreed with them, and even now, if I get commercial approval I will have to go back to the County and have each individual development overlooked and get approval for each time we develop. The only thing I'm asking for is to get it rezoned to commercial, which we thought we were, and keep it there and go through approvals for developments later on and we go in development.

HEARING OFFICER VIRTUE: Thank you, Mr. Roybal. Are there any questions of Mr. Roybal at this time? Any more questions for the Applicant and his representatives at this time? Okay, hearing none, we'll have Ms. Lucero unmute the rest of the participants and I will ask if there's anyone who wishes to testify in support of the Application? Again, is there anyone who wishes to testify in support of the Application?

MS. LUCERO: Hearing Officer Virtue, I have given everybody the ability to unmute themselves but they will have to actually go in and click the unmute button.

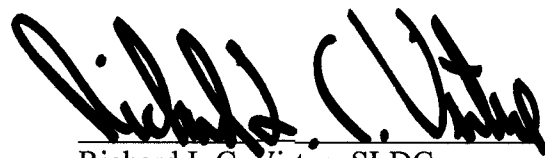
HEARING OFFICER VIRTUE: Okay. Thanks for that clarification. So I'll ask again if anybody wishes to testify in support of the Application. Okay, hearing none, I will ask if there's anyone present who would like to testify either in opposition to the Application or just generally with respect to the Application? Okay. Again, is there anyone who wishes to testify in opposition or generally with respect to the application?

Okay. Hearing none I will at this point close the public hearing on this matter and I will prepare a written recommendation within 15 working days of today. Thank you all very much for attending and with that I will close today's meeting. Thank you very much.

5. Adjournment

Hearing Officer Virtue adjourned the hearing at approximately 3:48 p.m.

Approved by:



Richard L.C. Virtue, SLDC
Hearing Officer Santa Fe County

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss SLDC HEARING OFFICER M
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I Hereby Certify That This Instrument Was Filed for
Record On The 8TH Day Of June, 2021 at 12:55:12 PM
And Was Duly Recorded as Instrument # 1955661
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Katharine E. Clark

Deputy Dorothy Romero County Clerk, Santa Fe, NM

