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MINUTES
VILLAGE OF LOS RANCHOS
Planning and Zoning Commission
6718 Rio Grande Blvd. NW
Warren J. Gray Hall
2019
July 9, 7:00 P.M.

Present:

Attorney: Nann Winter
Planning Staff: Tim McDonough, Director
Tiffany Justice, Planner
Scribe: Jennifer Schilling

1. **CALL TO ORDER – Chairman Phillips** called the meeting to order at 7:00p.m.

A. OATH OF OFFICE – Gilbert “Gil” Benavides was sworn in as the new Commissioner by Attorney Winter.

B. ROLL CALL – Commissioner Benavides, Commissioner Pacheco, Commissioner Eby, Commissioner Phillips. Commissioner Park was excused, Commissioner Seavey was excused, and Commissioner Gay was excused.

Chairman Phillips stated there was a quorum present for the meeting.

C. APPROVAL OF THE AGENDA

Chairman Phillips asked Planner McDonough if there were any changes to the agenda.

Planner McDonough stated that there were no changes to the agenda.

MOTION: Vice Chair Pacheco moved for approval of the agenda.

SECOND: Commissioner Eby seconded the motion.

VOTE: The motion carried unanimously (4-0).

2. **PUBLIC COMMENT PERIOD**

Speakers for the Discussion:
Joaquin Romero 421 Schulte Rd.
Joe Craig 505 Calle del Pajarito
James Kircher 433 Schulte Rd.

1 **Joaquin Romero** *421 Schulte Rd.* Mr. Romero was concerned of the number of people who
2 speed down Schulte road. He mentioned that Taft Middle School is nearby and that the
3 speeding on the road makes it an unsafe place for the kids to cross the street. He addressed
4 the desire to have speedbumps on Schulte Road.

5
6 **Chairman Phillips** thanked Mr. Romero and informed him that his comment would be
7 recorded in the meeting minutes. He also advised that Mr. Romero bring this concern to the
8 Planning and Zoning Director, Tim McDonough, who is also the current Village Administrator.

9
10 **Planner McDonough** stated that there is a standard process for assessing speedbumps and
11 could explain that to Mr. Romero.

12
13 **Chairman Phillips** called Joe Craig to the stand to speak.

14
15 **Joe Craig** *505 Calle del Pajarito NW.* Mr. Craig stated that he was previously a Planning and
16 Zoning Commissioner, current president of the Calle del Pajarito Neighborhood Association,
17 and president of Friends of Los Ranchos. He stated he has been very active in the Village for
18 over 20 years. While his father was in hospice the current cell tower in the neighborhood was
19 installed and he had not been able to be at the hearing in which the tower was discussed. He
20 stated that one of the comments made by the Planning and Zoning Director at the time was
21 that had there been anyone who had shown up to that hearing, the tower would not have been
22 allowed. He stated that the tower is in violation of every Village ordinance now, but that it was
23 not at the time it was put up, since there were no Village ordinances. At that time the Calle del
24 Pajarito Neighborhood Association was formed, about 21 years ago now. Mr. Craig outlined
25 responsibilities of the Association and achievements they have had since its creation,
26 including the Del Norte Open Space, the Paseo Bridge, and murals. He stated the problems
27 the Association has had for the last six years include flooding of the neighborhood's street
28 created by a berm in the area and the commercial business in the neighborhood, Crego
29 Roofing on the corner of 4th St. and Calle del Pajarito, which Mr. Craig stated is entirely paved
30 and does not have drainage. He stated that Crego Roofing had two buildings go up without a
31 permit, which was caught by Planning and Zoning and later received permits. He stated there
32 is no ponding which causes significant flooding on the street. He stated when Linda Seebach
33 was here, she had said that the area would be part of the fourth street project, and that there
34 were studies done, but the plan had been cancelled by the Village. He also stated that Kelly
35 Ward had said there would be French drains put in but that had not yet happened. The existing
36 French drains have not been maintained. He stated that he had sent extensive letters to the
37 Village that have gone unanswered and he had received minimal answers from the Planning
38 and Zoning Administrator. He also stated that five of the 18 residents in the neighborhood
39 were commercial, which bring large trucks, forklifts, and other equipment to the street
40 extensively at 7:00 in the morning and 4:30 in the evening. He went on to list the commercial
41 businesses in the area and that they have caused issues including unpermitted buildings,
42 trailers parked in the right-of-way, and businesses running without a Village license. He stated
43 that his intent was to start a dialog with Planning and Zoning and acknowledged that Tim
44 would be leaving his role as Director. He suggested that due to the hybrid nature of permitting
45 done between the Village and Bernalillo County, that the Village should allow Bernalillo to take
46 over Planning and Zoning. He stated that he is very active in the neighborhood and that he
47 thinks there may be other issues in the Village that need action taken. He thanked the
48 Commissioners for their consideration and concluded.

1 **Chairman Phillips** thanked Mr. Craig and addressed a letter that was sent by Mr. Craig; the
2 letter was sent to the Mayor and later distributed to the Commissioners and the Board of
3 Trustees.
4

5 **Joe Craig** confirmed that that is how the letter was delivered. He stated that a meeting was
6 held in January with the attendees being himself, Tim McDonough, Keen Heinzelman, Bill
7 Chappell (the Village attorney at the time), the Public Safety Officer, and somebody else who
8 Mr. Craig did not recall. He stated that the purpose of that meeting was to try to get some
9 action, and that there was a court case that was cancelled by Keen, arbitrarily. He also stated
10 that with this case the location of the hearing was changed by the Judge. He stated that these
11 issues had been going on for years, not recent issues. He was unsure as to why there had
12 not been action taken. He stated that these issues have caused the housing value in his
13 neighborhood to decrease and that another neighbor, who he identified as Julie Baca,
14 Bernalillo County Manager, had stated she wished she could pick up her house and move.
15 He stated that that statement was a sad commentary from a County official.
16

17 **Chairman Phillips** thanked Mr. Craig and proceeded to invite James Kircher to speak.
18

19 **James Kircher 433 Schulte Rd.** Mr. Kircher presented his concerns of the speeding on
20 Schulte Road. He stated that there is a digital radar speed sign on Schulte but that it seems
21 drivers use it to see how fast they can go. He agreed with Mr. Romero, that there is a concern
22 for the kids crossing the street and would like to see something done to remedy the issue.
23

24 **Chairman Phillips** thanked Mr. Kircher and stated that his concerns would be on record. He
25 suggested that comments on this issue be brought to Director Tim McDonough. Chairman
26 Phillips closed the Public Comment Period.
27

28 3. CONSENT AGENDA

29 A. APPROVAL OF CONSENT AGENDA

30 1. Minutes of the Regular Meeting on June 11, 2019

31
32 **Chairman Phillips** asked if there were any changes or comments on the minutes of the June
33 11, 2019 regular meeting.
34

35
36 **Vice Chair Pacheco** made note of four typos to be corrected.
37

38
39 **MOTION: Vice Chair Pacheco** moved to approve of the June 11, 2019 as amended.
40

41 **SECOND: Commissioner Benavides** seconded the motion.
42

43 **VOTE:** The motion carried unanimously (4-0).
44

45 4. PUBLIC HEARINGS AND APPLICATIONS

46
47 **Attorney Winter** swore in those present who would be speaking before the Commission.
48

49 **A. V 19-02** A request by John Avila for a Variance from §9.2.7(E)(1) Area
50 Regulations, the minimum lot area shall be one (1) acre (43,560 square feet)
51 for an MRGCD Tract with an area of 0.41 ac. of the property located in the A-

1 1 Zone of the North Rio Grande Character Area. The property is located at 85-
2 - Rio Grande Blvd. (address has not been assigned) and is legally known as a
3 tract of Land being and comprising a portion of Section 17, T. 11 N., R. 3 E.,
4 NMPM, within Bernalillo County, New Mexico, being shown and designated on
5 Middle Rio Grande Conservancy District's Amended Map No. 25 as Tract 32-
6 D. The Tract contains 0.41 acres, more or less.
7

8 **Speakers for the Discussion:**

9 **John Avila 8529 Rio Grande Blvd. NW**

10 **Kathleen Avila 8529 Rio Grande Blvd. NW**

11 **William Plotner 1005 21st St. SE Rio Rancho, NM 87124**
12
13

14 **Chairman Phillips** asked for the Planning Report from Planner McDonough.
15

16 **Planner McDonough** gave the Planning Report for Item 4A: V-19-02 with recommendation
17 to approve the application. The report included a history of the MRGCD tract and why a
18 variance would be required for the lot in question. Based on a previous study 60% of lots in
19 the A1 zone are less than the required one acre, partly due to annexations. Planner
20 McDonough stated that the lot in question is not outside the norm for the area.
21

22 **Chairman Phillips** asked the Commissioners if there were any questions for Planner
23 McDonough.
24

25 **Commissioner Eby** asked how many of the lots, along the strip of land shown on the map,
26 currently had dwellings built on them. She stated that the lots appeared to be part of a Tripa
27 lot and asked if the lots there had individual owners.
28

29 **Planner McDonough** stated that the lots were all individually owned, but that some of them
30 were owned by a common individual.
31

32 **Commissioner Eby** asked what hardship claims were made for the variance.
33

34 **Planner McDonough** referred to the Village code: Chapter 9, Article 1, Section 7:
35 §9.2.25(E)(7)(b)(4) which defines hardship concerning the use of the land. He stated that short
36 of getting a building permit, a lot like that could not be used for much and stated that the lot is
37 too small for agriculture use. Lots of that size have just grown weeds. He stated that the lot
38 was not inconsistent with other lots in the Village, especially in the given area. Planner
39 McDonough cited §9.2.25(E)(7)(b)(6) that the request is justifiable in accordance with the
40 goals and policies of the Master Plan.
41

42 **Commissioner Benavides** asked if access is through an easement to lots 32B through 32G.
43

44 **Planner McDonough** responded that he was unable to get a specific answer from the
45 MRGCD about an easement, and it is not shown on their maps. He stated that there was a
46 road visible from the aerial map, and if it was not a filed easement it would likely fall under
47 the rules of a prescriptive easement.
48

49 **Commissioner Benavides** followed up by asking if the easement was an agreement by
50 property owners, and sometimes agreements are entered into with restrictions. He asked if
51 the Village knows of any such agreement or if the property is bound by such an agreement.

1
2 **Planner McDonough** stated that he was not aware of any such agreements and that if there
3 were, it would not be the responsibility of the Village to maintain those, similar to neighborhood
4 covenants. It would be an issue between land owners.

5
6 **Commissioner Benavides** asked if section §9.2.25 *Application of Approval Process;*
7 *Conditions for Variances*, served as a guide for the Commissioner or code.

8
9 **Planner McDonough** responded that it is not general guidance but code to be interpreted
10 and applied.

11
12 **Commissioner Benavides** clarified that the Commission should view this as code, not
13 guidance. He then asked about the conditions for a variance and if the applicant only needed
14 to satisfy only one of those conditions.

15
16 **Planner McDonough** stated that is how he had interpreted the code.

17
18 **Vice Chair Pacheco** asked for verification if there were structures built on these properties
19 that are no longer there.

20
21 **Planner McDonough** responded that the applicant could answer that question better, but that
22 his understanding was that there was a structure built on one of the properties and it was
23 removed.

24
25 **Vice Chair Pacheco** asked if the property having had a house on it previously changed
26 anything concerning what it is today.

27
28 **Planner McDonough** responded that the way he interpreted the code, because there is no
29 longer a structure on the property, the property still needs to go through the variance process.

30
31 **Commissioner Eby** referred to page 31 of the meeting packet concerning the findings and
32 the history of the MRGCD tracts at the time the lot was purchased by the owners. She asked
33 if Planner McDonough could explain that further.

34
35 **Planner McDonough** stated what was suggested in the application process, was that the
36 property was acquired with the intent to build a dwelling.

37
38 **Commissioner Eby** asked when the property was purchased.

39
40 **Planner McDonough** replied that would be best answered by the applicant.

41
42 **Chairman Phillips** thanked Planner McDonough and invited the applicant of Item 4A: V-19-
43 02 to speak.

44
45 **William Plotner 1005 21st St. SE, Rio Rancho, NM 87124** Mr. Plotner acted as the agent for
46 the Avila's in this matter. He stated that the lots were different in description, in deed, and in
47 title. He asked if he could present handouts that show easements.

48
49 **Chairman Phillips** stated that there are regulations concerning completed packets submitted
50 to the Commission prior to the meeting. He suggested that Mr. Plotner explain what was on
51 the handout without submitting further documentation.

1
2 **William Plotner** explained the dividing of the properties in 1955 by Jose Sanchez, into seven
3 parcels, intended to be given to the Sanchez children. Several of Jose Sanchez's children did
4 build on the tracts; 32D & 32F had homes built on them for several years. He stated that those
5 homes were in a state of disrepair when Mr. Avila bought the properties, therefore they were
6 demolished. He stated that the Sanchez family came to the Avila's and asked if they would
7 like to purchase the property. It was shortly after that purchase that homes were demolished
8 for safety reasons. He stated that the lot lines shown on the plat were always adhered to;
9 homes were never built over the lot lines. He emphasized that the lots are all separate by
10 deed and title. He stated that the plat done in 1955 shows a 12-foot easement, and when
11 replatted there were additional easements made.

12
13 **Commissioner Eby** asked what year the properties were purchased by the Avila's.

14
15 **William Plotner** stated that they bought two of the lots in 2000, and the third one they bought
16 in 2010.

17
18 **Commissioner Eby** asked if he had said, "the third one" and asked to clarify which lots were
19 purchased in 2000 and which was purchased in 2010.

20
21 **William Plotner** stated that 32C & 32D were purchased in 2000. Lot 32F was purchased in
22 2010.

23
24 **Vice Chair Pacheco** asked if the Avila's were currently living on the property in question.

25
26 **William Plotner** stated that the Avila's live on the property just north of 32C and 32D, in the
27 house shown on the map.

28
29 **Chairman Phillips** asked if the Avila's are current participants in the use of the easement.

30
31 **William Plotner** confirmed that they are.

32
33 **Vice Chair Pacheco** asked for clarification on which house the Avila's currently live in.

34
35 **William Plotner** identified the property on the map, such that if a line were drawn from 32C
36 and 32D, across the street, north, the house would be roughly in the middle.

37
38 **Vice Chair Pacheco** asked if 32E was part of the same property.

39
40 **William Plotner** replied that 32E is a separate tract and that the owner's whereabouts of that
41 tract are unknown, but that the Avila's have maintained it for the good of the neighborhood.

42
43 **Commissioner Benavides** asked what the current width of the easement is given that
44 additional easement was added at the time the properties were replatted.

45
46 **William Plotner** referred to the exhibit in the meeting packet on page 37, which shows the
47 easement as 20-feet.

48
49 **Chairman Phillips** thanked Mr. Plotner and asked if the Commissioners had any further
50 questions for the Applicant-Agent. There were no further questions. He then asked if there
51 was anyone present that wanted to speak in favor of the application.

1
2 **Kathleen Avila** 8529 Rio Grande Blvd. NW. She stated that she and her husband own the
3 property across the lane from the property in question. She stated that they bought their
4 property in 1995 and built their house in 1999. She stated that she enjoyed their lane because
5 of the chickens and rural feel. She stated that her neighbors came to them and asked if they
6 would like to purchase their property, which the Avila's did come to purchase. She stated that
7 the properties purchased were never intended to resale or develop. Their vision for the lots
8 was a place where their children could come and live sustainably. She stated that this would
9 be an opportunity to improve the neighborhood and that it would bring a tax-basis for the
10 Village and the County. She stated that the variance would take these under-sized, oddly-
11 shaped lots and build something that would fit the Village. She stated that they are not looking
12 to build huge houses but want a place for their family. She asked that the variance be
13 approved, having stated that their intent for the Village is good.

14
15 **Chairman Phillips** thanked Mrs. Avila and invited others in favor of the application to speak.

16
17 **John Avila** 8529 Rio Grande Blvd. NW. Mr. Avila stated that they have lived in the
18 neighborhood for 45 years, a little more than half his life. He stated that this application is an
19 opportunity to support his family. He explained what he likes about their neighborhood,
20 including the rural dirt road and the chickens. He explained how the land was purchased
21 between neighbors and how he wanted the properties to be a legacy for his children. He
22 thanked the Commissioners for hearing the application and what he had to say.

23
24 **Chairman Phillips** thanked Mr. Avila and asked if there were any others who wanted to speak
25 in favor of the item. Hearing none, he asked if there were any people in the audience that
26 would like to speak in opposition of the application. There were no comments made in
27 opposition. There were no additional comments made from the Applicant-Agent. Chairman
28 Phillips asked that the Applicant-Agent or the Avila's approach for a question from
29 Commissioner Eby.

30
31 **Commissioner Eby** asked if the application was only for tract 32D and not the other tracts.

32
33 **William Plotner** responded that this application was only for 32D. The next item is for 32F.
34 Tract 32C would be an application presented at another time, when they were ready to build
35 on that property.

36
37 **Chairman Phillips** asked if there were any other questions. Hearing none he closed the floor
38 for comments and would stand for a motion on the item.

39
40 **MOTION: Vice Chair Pacheco** made a motion to approve the variance, Item 4A.

41
42 **SECOND: Commissioner Benavides** seconded the motion.

43
44 **Chairman Phillips** asked if there was any discussion from the Commissioners on the motion.

45
46 **Commissioner Eby** expressed her concern that allowing the variance would greatly increase
47 the density of the area. She stated that the fact there were dwellings on those lots previously
48 mitigates that concern. She asked if anyone knew if there were water rights from the ditch to
49 this property.

1 **Planner McDonough** replied that he did not know the answer to that question. He asked the
2 applicant if he would be irrigating that land.
3
4 **Chairman Phillips** restated the question concerning water rights to the property and restated
5 the reply from the applicant that the land would be irrigated and does have water rights.
6
7 **Commissioner Eby** addressed her concern of having dwellings go up instead of using the
8 land for agricultural use. She stated that she had driven down the easement and saw that
9 there is no agriculture going on there, that the lots were mostly weeds.
10
11 **Chairman Phillips** asked if there were any comments from Vice Chair Pacheco or
12 Commissioner Benavides.
13
14 **Commissioner Benavides** stated that concern of irrigation was a good point and added that
15 the flow of the water should be discussed, particularly concerning the lots that are downstream
16 with the potential of being cut off from water from those upstream. He asked if there was any
17 obligation to continue with those ditch water rights, if they already exist, and if there were
18 plans for doing so in any of the deeds.
19
20 **Chairman Phillips** responded that the floor had been closed for comments.
21
22 **Planner McDonough** stated that if the Commission chooses, they could approve the variance
23 with conditions to maintain waterflow to the downstream properties. He also stated that it is
24 his understanding that state law protects people that are currently irrigating from being isolated
25 from upstream water-users. He stated that a few years prior he had looked up the state law,
26 which stated that if a property owner had been irrigating for 10 years, they had a right to the
27 water-flow and an upstream property could not stop the flow of water to the that property. He
28 stated that that information is what he recalled and that if the Commission were to choose,
29 they could make the variance conditioned upon the continuation of irrigation through that
30 property.
31
32 **Chairman Phillips** asked if that is all well and good, or if there was a way to make that binding
33 as a condition.
34
35 **Planner McDonough** stated that the Commission could enforce it as a condition of the
36 variance.
37
38 **Chairman Phillips** stated that the questions had been asked and answered. He then asked
39 if there were any further comments.
40
41 **Commissioner Benavides** asked if the Avila's or their agent would like to speak on the
42 comments made.
43
44 **Chairman Phillips** restated that the floor had been closed for comments. He stated that they
45 could make an exception and reopen the floor, but that there was an active motion present,
46 in favor of the application. He then asked if there was any other discussion on the motion.
47
48 **Planner McDonough** stated that he did not think it would be inappropriate if Chairman Phillips
49 wanted to ask a specific question to the Avila's.
50

1 **Chairman Phillips** asked if Commissioner Benavides had a specific question for the Avila's
2 and if so, they would have the applicant approach the stand to speak.

3
4 **Commissioner Benavides** stated that he wanted to know if the applicant had any issues with
5 continuing the water-flow to the downstream properties.

6
7 **John Avila** stated they have used the water to grow tomatoes and wheat. He stated that he
8 sees, upon building the houses, that the water will be used to water grass around the property
9 but that the use of water would likely not be great. He explained that each property has a gate;
10 when the water is turned on at the ditch, each individual lot can be watered independently of
11 the other lots. He stated therefore, if any of the land was to be remained vacant, the
12 opportunity to grow vegetables or wheat would still be a possibility. He stated that if the
13 Commission placed a condition on the variance for water-flow he would have no problem with
14 that. He explained that they grew some crops on the land primarily to keep the weeds down
15 and maintain the look of the neighborhood. He restated that he would be comfortable with the
16 possible conditions on the variance and that they have to talk with the ditch-writer any time
17 they intend to water any of the lots.

18
19 **Commissioner Benavides** stated that his assumption was that the Avila's did not own tract
20 32E, which is downstream from tract 32C and 32D, and that somebody may feel that the
21 water-flow is important to the value of their lot.

22
23 **Planner McDonough** explained how the water rights work at his property in Village. He stated
24 that he waters from a local ditch that flows behind several of the properties. The water gets to
25 his property after it flows to each of the properties before his. He stated that it sounded to him
26 that the ditch that feeds the properties in question is a MRGCD maintained ditch, and there
27 are individual gates to each property. Therefore, one property's use of the water is not
28 dependent upon what an adjoining property does. They all have their own gates for the water
29 from the ditch.

30
31 **Commissioner Benavides** stated that he did not see that in any of the photos submitted.

32
33 **John Avila** stated that there is a pipe that runs through the back of all of those properties.
34 The water runs through the pipe and each property has a gate that allows the water onto only
35 the lot that has a gate open. Therefore, the property owners can control the water flow at each
36 individual property without having to water all the properties at the same time. He stated that
37 they put the pipe in several years ago when he decided that, rather than growing weeds, they
38 should do something else with the property. He put the pipe in with the intent of controlling the
39 water on the lots, rather than flooding all the lots.

40
41 **Chairman Phillips** thanked Mr. Avila for the clarification and remarked that the pipe was a
42 very nice improvement. He asked if there was any further discussion on the motion.

43
44 **Commissioner Pacheco** asked Mr. Avila if each of the tracts, 32G, 32F, 32E, 32D, 32C and
45 32B, have access to the water.

46
47 **John Avila** responded that each of the lots have access to the water, which runs along the
48 backside of the total length of the combined lots.

1 **Chairman Phillips** asked if there was any other discussion. Having heard no further
2 discussion, he called for a vote, restating that the motion was to approve the application, Item
3 4A.

4
5 **VOTE:** The motion carried (3-1)
6 Chairman Phillips – Aye
7 Vice Chair Pacheco – Aye
8 Commissioner Benavides – Aye
9 Commissioner Eby – Nay

10
11 **Chairman Phillips** stated that the public hearing on Item 4A in the request by John Avila for
12 a variance is formally close. He stated that at this time they would move on to Item 4B.

13
14
15 **B. V 19-03** A request by John Avila for a Variance from §9.2.7(E)(1) Area
16 Regulations, the minimum lot area shall be one (1) acre (43,560 square feet)
17 for an MRGCD Tract with an area of 0.41 ac. of the property located in the A-
18 1 Zone of the North Rio Grande Character Area. The property is located at
19 8509 Rio Grande Blvd. and is legally known as a tract of Land being and
20 comprising a portion of Section 17, T. 11 N., R. 3 E., NMPM, within Bernalillo
21 County, New Mexico, being shown and designated on Middle Rio Grande
22 Conservancy District's Amended Map No. 25 as Tract 32-F. The Tract contains
23 0.41 acres, more or less.

24
25 **Speakers for the Discussion:**
26 **John Avila 8529 Rio Grande Blvd. NW**
27 **Kathleen Avila 8529 Rio Grande Blvd. NW**
28 **William Plotner 1005 21st St. SE Rio Rancho, NM 87124**

29
30 **Chairman Phillips** asked Planner McDonough for the Planning Report.

31
32 **Planner McDonough** stated that the Planning Report was a mirror-image of the previous
33 request for another variance on a MRGCD tract. He stated that all his prior comments are
34 repetitive for this.

35
36 **Chairman Phillips** thanked Planner McDonough and asked if there were any questions from
37 the Commissioners for the Director.

38
39 **Commissioner Eby** stated that her concern is agricultural use versus residential use for this
40 property. She asked what the current zoning is. Planner McDonough replied that the zone is
41 A1, which is agriculture/residential. Commissioner Eby continued by asking if there was
42 consideration for having a restriction on the variance to require that the ditch remain open for
43 irrigation.

44
45 **Planner McDonough** stated that he had not, but that was offered as a possibility based on
46 the assumption that the water-flow came through properties along the way. He stated that it
47 would be a different situation given the pipe with the individual valves. He stated that the
48 Commission could still make the conditions if it were assumed somebody might cut that pipe
49 or block it. However, if they are all dealing with MRGCD then state law covers that. He stated
50 that he did not think it would be unreasonable to allow the variance with a condition that water
51 continue to flow to each of the properties.

1
2 **Chairman Phillips** asked if there were any other questions.
3

4 **Vice Chair Pacheco** made a comment about the maintenance of the water going
5 downstream. Other than 32G, which is not owned by the Avila's, she asked if there was a
6 condition placed on this property (32F), if the water would still flow through the previous lot
7 (32D).
8

9 **Planner McDonough** stated that at that point the Commission would either need to go back
10 to the previous item, Item 4A, and place the same condition on it. He stated that applying the
11 condition now would only apply to 32F.
12

13 **Attorney Winter** spoke to clarify what Vice Chair Pacheco had said. She stated that this lot
14 (32F) is farther east and therefore if a condition is applied to the lot at the end of the line, the
15 water is not impaired for the lots to the west. Therefore, if you're not impairing water at the
16 end of the line, you're not impairing water at the middle of the line.
17

18 **Vice Chair Pacheco** agreed that is what she had meant.
19

20 **Chairman Phillips** thanked Attorney Winter for the clarification and asked for any further
21 questions for the Director.
22

23 **Commissioner Benavides** asked for more information concerning Planner McDonough's
24 previous comment of the state law requiring that the water is made accessible to the lots. He
25 asked if that is correct.
26

27 **Planner McDonough** stated that to the best of his knowledge, based on what he had
28 previously looked up, that was what state law said; that if somebody has had access to the
29 water for a period of 10 years and has been utilizing the water, a neighbor cannot cut off the
30 water supply to the former.
31

32 **Chairman Phillips** asked if there were any more questions. Having heard none, he stated
33 that they would move through the same process as before. He invited the applicant or the
34 Applicant-Agent to speak.
35

36 **William Plotner** 1005 21st St. SE, Rio Rancho, NM 87124. He stated that as the surveyor, he
37 understands there would be a prescriptive easement. Having spoken to the owner, he stated
38 that they will provide an easement across both the tracts for the water rights so that none of
39 the lots downstream would be impeded upon. He stated the Avila's intent for the property was
40 for their children to build homes of their own. He restated that the parcels are separate in deed
41 and title.
42

43 **Chairman Phillips** invited anyone in the audience who wanted to speak in favor of the
44 application to approach the stand.
45

46 **Kathleen Avila** 8529 Rio Grande Blvd. NW. Mrs. Avila stated that the acequia that provides
47 water for all the properties that have been discussed, runs north/south. She stated that they
48 thought to have a ditch irrigating the land was inefficient and therefore decided to install the
49 pipe with the individual gates, which minimizes the waste of water on the lots. She stated that
50 this pipe also feeds the lot they do not own, and likewise has its own gate. This was done for
51 the good of the neighborhood. Mrs. Avila stated that the lots are quite small for real, productive

1 agricultural use and the water rights were something they felt had always been an important
2 part of the Valley. She stated that the water use would likely be for watering grass but would
3 not impose significant water usage from the ditch, therefore their use of water would not
4 impede anyone else's use of the water.
5

6 **Chairman Phillips** thanked Mrs. Avila. He asked if there was anyone else to speak in favor
7 of the application. Having heard none, he asked if anyone would like to speak in opposition of
8 the application. There were no speakers in opposition. He asked if there were any questions
9 from the Commissioners.
10

11 **Commissioner Eby** asked Attorney Winter, as with other parts of New Mexico, if there is an
12 issue with MRGCD tracts being separated from their water rights.
13

14 **Attorney Winter** replied that she could not answer that question without more time to
15 research the issue.
16

17 **Commissioner Eby** stated that she was considering proposing a restriction that the water
18 rights remain with the land but was unsure if the Commission could impose that kind of
19 restriction.
20

21 **Chairman Phillips** spoke to an issue that had occurred in the past, outside of the Village, in
22 which restrictions such as this had been imposed and were regretted later. He stated that he
23 thought it was something the Commission could do but it may have unfavorable results. He
24 also stated that this was an uninformed statement garnered from recollection.
25

26 **Attorney Winter** stated that land and water rights could be severed from one another. She
27 stated that she was under the impression this action would be between private individuals and
28 not by a function of government. She stated that she was unsure of where the Commission's
29 authority rests in this issue.
30

31 **Commissioner Eby** asked Planner McDonough if he had any experience in this body
32 imposing a restriction that the water rights were not to be severed from the land.
33

34 **Planner McDonough** replied that in past discussions with the previous attorney, Bill Chappell,
35 it was understood that the Village does not have the authority to require that an individual
36 sever or maintain the water rights from the land. He stated that the water rights are a property
37 right and Attorney Chappell was of the opinion that the Village could not impose such a
38 condition.
39

40 **Commissioner Eby** stated that in the case of a variance, the rule may be different.
41

42 **Planner McDonough** stated that it may be different, but he could only provide the information
43 that he currently recalled.
44

45 **Chairman Phillips** asked for any further questions or comments from the Commissioners.
46 There were no further comments, therefore a call for a motion was made.
47

48 **MOTION: Commissioner Eby** called for a motion to approve the variance for 32F with two
49 imposed conditions; 1) that the prescriptive easement that William Plotner proposed would be
50 enforced and 2) that the water rights remain with the land.
51

1 **Commissioner Benavides** asked for clarification on Commissioner Eby's wording of "lots".

2
3 **Commissioner Eby** clarified that she meant "lot". That this motion was intended for 32F,
4 although she would have liked to see these conditions also applied to the previous item, Item
5 4A.

6
7 **Vice Chair Pacheco** asked if the Commission could even vote on this given the lack of
8 understanding on the Commission's authority to impose the water rights condition.

9
10 **Attorney Winter** stated that she was uncomfortable doing so, with concerns that the
11 Commission cannot do something that private parties can. She stated that she is not 100%
12 certain.

13
14 *There was no second for this motion. The motion expired for lack of a second.*

15
16 **MOTION: Commissioner Benavides** made a motion to approve the application for a
17 variance as stated.

18
19 **SECOND: Vice Chair Pacheco** seconded the motion.

20
21 **VOTE:** The motion carried (3-1)
22 Chairman Phillips – Aye
23 Vice Chair Pacheco – Aye
24 Commissioner Benavides – Aye
25 Commissioner Eby – Nay

26
27 **Chairman Phillips** stated that the public hearing on Item 4B in the request by John Avila for
28 a variance was formally closed.

29
30 **5. OLD BUSINESS**

31
32 **A. Discussion of the 2035 Master Plan process.**

33
34 **Chairman Phillips** asked Planner Justice for the report of the Master Plan.

35
36 **Planner Justice** stated that the public open house for review of the Master Plan draft was
37 held at the end of June at Village Hall, with 11 attendees who were not committee members
38 or staff. The draft is on the Village website for review until July 31 and staff will be accepting
39 written comments on the draft until July 15. The Master Plan Committee will meet July 17 to
40 review the public open house and any revisions since. Staff will be compiling the document
41 and graphics in July for a working session in August with the Planning & Zoning Commission
42 and the Board of Trustees to review the plan and the plan development process.

43
44 **Chairman Phillips** asked if there was any resolution on photo submissions with people in the
45 photos.

46
47 **Planner Justice** stated that as long as photos of individuals were not identifiable (such as a
48 silhouette, a photo taken from behind, or from a distance great enough that they cannot be
49 identified) these would be allowed. If the individuals in the photo can be identified, there would
50 need to be a photo release form to use the image signed by the individual in the photo. She

1 also stated that there have been quite a few photo submissions from residents, and the
2 deadline for those photos has been extended to July 31st.

3
4 There were no further comments made concerning the 2035 Master Plan process.
5

6
7 **6. NEW BUSINESS**

8
9 *There was no new business*

10
11 **7. REPORTS**

12
13 A. Planning Department Report
14

15 **Planner McDonough** gave the Planning Department Report.

- 16 • The Fourth Street Construction Project continues with construction on the west side. He stated
17 that the progress has picked up at a much better pace. The project remains on schedule for
18 completion in September. He stated that there have been discussions with residents about what
19 they would like to see and has addressed concerns about line-sites. All in all, the project is
20 moving along really well.
- 21 • Village staff are working with film liaisons on drafting a film policy. He pointed out that years
22 prior there was filming in the Village and it was felt at the time that filming produced a harmful
23 impact on the neighborhoods. The BOT voted to stop filming in the Village, but there is a
24 renewed interest, in particular with new production shops opening up. The Mayor has asked
25 that the Village consider allowing filming under greater controls. The film policy would allow
26 commercial filming in the Village with specific regulations relating to the intensity of the activity.
27 Planner McDonough listed those involved in the drafting of a film policy as: Planner Tiffany
28 Justice, J.T. Michaelson, members of the State Economic Development, and members of the
29 Albuquerque Film Office. He stated that the team was enlisting the help of professionals to
30 develop a new film policy that would be better for the neighborhoods. The policy should be done
31 by the end of the month.
- 32 • Code Enforcement Officer Heinzelman has been writing a number of weed letters to properties
33 that have some issues and has taken other actions concerning code violations. A comment
34 was made that a case was dropped arbitrarily, however the case was dropped because the
35 resident had made significant improvements to the property, and therefore it did not seem
36 appropriate to take that person to court when they had done work to clean the property up. Keen
37 Heinzelman can make these decisions, and that as Code Enforcement Officer it is his charge
38 to assess properties and their compliance. He has to balance our resources with all the
39 situations out there and treat them on a priority basis.
- 40 • Jennifer Schilling, our newest member of P&Z has learned the routine tasks of that position and
41 is quickly getting a grasp on the wider selection of resident questions. He stated she has a great
42 background in records.
- 43 • Assuming the approval of the budget at the July BOT meeting, there will be some
44 changes in the department. Keen Heinzelman will move over to Public Facilities as
45 Department Head there, and Dominic Tomba, the current Animal Control Officer will
46 move into the Code Enforcement position. He has been doing code enforcement under
47 the animal control ordinance and will now do code enforcement for both animal control
48 and land use. He is experienced in taking individuals to court and works well with
49 people and animals. This is assuming the budget passes.

- 1 • Tim McDonough has continued in the role of Administrator and with the current staff,
2 the department has been keeping above water.
3

4 **Chairman Phillips** asked if there were any questions of comments for Planner McDonough.
5

6 **Vice Chair Pacheco** asked about the following business report in the meeting packet, and if
7 that was part of the Department Report.
8

9 **Planner McDonough** answered that yes, that was part of the report outlining the businesses
10 that have opened and closed in the Village.
11

12 **Vice Chair Pacheco** asked if the Village has a sort of “exit interview” when businesses close,
13 so that the Village might gain an understanding on economic patterns.
14

15 **Planner McDonough** stated that there is currently no formal process to do that, however he
16 did state it would be a good idea. He also stated that most of the time they’re pretty aware of
17 the reasons some businesses close. Most of the closures seen are hair-stylists that tend to
18 more from shop to shop. Places like ABQBBQ closed due to challenges in developing the
19 clientele needed to continue financing the restaurant. He noted that ABQBBQ had some really
20 great ideas and that there have been a number of restaurants in that location that have closed
21 but he was unsure if it were a location issue or a business issue. He stated that if the Village
22 were to develop an economic development department, they would be able to track and
23 interpret that kind of information more proficiently.
24

25 **Commissioner Benavides** stated he would like to see a standard process to document
26 closures, **in the form of a survey**, in the Village and that the process would be voluntary.
27

28 **Chairman Phillips** moved on to Informal Discussion after no further comments were made
29 on the Planning Department Report.
30

31 **9. COMMISSIONER’S INFORMAL DISCUSSION**

- 32
- 33 • The discussion of emails sent to the Commissioners from residents was addressed. Chairman
34 Phillips stated that he appreciated the concerns of residents and their sharing of those concerns.
 - 35 • There was a discussion about imposing conditions on variances to have the water rights
36 maintain with the land. Attorney Winter stated that she would investigate the issues before the
37 next Planning and Zoning regular meeting. The two issues mentioned were 1) imposing that
38 water rights stay with the property and 2) the issue of impeding access to water from/to other
39 properties.
 - 40 • Procedural processes for these meetings were discussed, particularly if there was a process to
41 reopen an item that was formally closed in the same meeting.
42

43 **10. ADJOURNMENT**

44

45 **Chairman Phillips** asked if there was a motion to adjourn.
46

47 **MOTION: Commissioner Eby** moved to adjourn.

48 **SECOND: Commissioner Pacheco** seconded the motion.

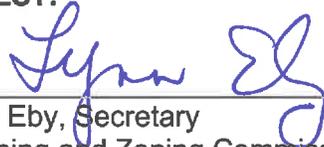
49 **VOTE:** The motion carried unanimously (4-0).

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Chairman Phillips adjourned the meeting at 8:45 p.m.

APPROVED by the Planning and Zoning Commission of the Village Los Ranchos
de Albuquerque this 21 day of August, 2019.

ATTEST:



Lynn Eby, Secretary
Planning and Zoning Commission