

City of Santa Fe
Governing Body
Findings of Fact and Conclusions of Law

Case No. 2013-93

Appellant's Name – Aguafina Development, LLC

Agent's Name – JenkinsGavin Design and Development, Inc.

THIS MATTER came before the City of Santa Fe (City) Governing Body (Governing Body) for hearing on January 8, 2014 (Hearing), upon the appeal (Appeal) of JenkinsGavin Design and Development, Inc. as the agent for Aguafina Development, LLC (Appellant), from the September 12, 2013 decision (the Decision) of the City's Planning Commission (Commission) denying the Appellant's application (Application) for (1) preliminary subdivision plat approval to divide three parcels of land identified as Tracts B, C-1 and C-2 (collectively, the Property) into 23 single-family residential lots and (2) a variance (the Variance) from City Code (Code) §14-9.2(D)(8) to permit the construction of two private cul-de-sac Lot Access Driveways on Tracts C-1 and C-2 rather than a continuous subcollector street dedicated to the City connecting Agua Fria Street to Rufina Street.

The record on Appeal (the Record) includes the following documents:

1. The Verified Appeal Petition filed on September 30, 2013;
2. A sketch of the Property showing the proposed subdivision;
3. Those portions of the minutes of the March 13, 2013 meeting of the Governing Body pertaining to a request by the Appellant to rezone Tracts B and C-2 from R-1 (Residential – 1 dwelling unit/acre) to R-3 (Residential – 3 dwelling units/acre) (the Rezoning);
4. Findings of Fact and Conclusions of Law adopted by the Governing Body on March 27, 2013 and filed by the City Clerk with the records of the City as Item #13-0191;
5. The report of Land Use Department Current Planning Division staff prepared for the Commission dated July 15, 2013 for the August 1, 2013 meeting of the Commission (Staff Report);
6. Those portions of the minutes of the August 1, 2013 Commission meeting pertaining to the Application;
7. Findings of Fact and Conclusions of Law adopted by the Commission on September 12, 2013 and filed by the City Clerk with the records of the City as Item #13-0920, attached hereto and incorporated herein as **Exhibit A**;
8. Memorandum dated December 27, 2013 for the January 8, 2014 Meeting of the Governing Body to the Members of the Governing Body from Kelley Brennan, Interim City Attorney and Zachery Shandler, Assistant City Attorney, regarding the Appeal of the Appellant from the September 12, 2013 Decision of the Commission in Case #2013-58 Denying the Application, with Exhibits A-G;
9. Letter from the officers of the Las Acequias Neighborhood Association to The Honorable David Coss and Santa Fe City Council (the LANA Letter), attached hereto and incorporated herein as **Exhibit B**.

After conducting a public hearing and having reviewed the Record and heard from City staff and the Appellants' representative, the Governing Body hereby FINDS, as follows:

FINDINGS OF FACT

1. The Governing Body reviewed the Record and received testimony and evidence from the Appellant's representative and from interested members of the public.
2. Pursuant to Code §14-2.2(F), the Governing Body has the power and authority on appeals of final actions of any Land Use Board to hear *de novo* and decide the matter that is the subject of appeal after giving notice in accordance with the notice provisions of Code §14-3.1(H)(4).
3. Pursuant to Code §14-3.17(A)(1)(b), final actions of a Land Use Board include a decision made after a public hearing.
4. The Decision is a final action subject to appeal to the Governing Body to hear and decide the matter.
5. Notice of the Appeal was properly given in accordance with the notice provisions of Code §14-3.1(H)(4).
6. Commission Findings of Fact 2 through 10, 14 and 16 and Conclusions of Law 1 through 3 and 5 accurately reflect the facts in this matter as presented at the hearing.
7. Tract C-1 was not included in the Rezoning and was and is zoned R-5 (Residential – 5 dwelling units/acre).
8. The Rezoning was granted upon the Appellant's undertaking to (1) submit its request for subdivision and/or development plan approval to the Commission for both the Property and Tract C-1 as a single application; (2) develop Tract C-1 consistent with R-3 zoning, notwithstanding that it is zoned R-5; (3) not request to use Powerline Road as a primary or secondary access for either the Property or Tract C-1 as part of its application for such Commission approval, but to propose instead three base-course lot access driveways, each serving eight lots; and (4) grant an easement to Abe and Kathleen Tapia and their successors across Tract C-1 to permit them to access Powerline Road (collectively, the Applicant Undertakings)
9. The Record, together with the testimony and evidence offered at the Hearing is sufficient to establish with respect to the Appellant's request for the Variance that (a) special circumstances exist in that the Applicant Undertakings impose constraints on development that distinguish it from other properties in the vicinity that are similarly configured and are otherwise subject to the same development regulations; (b) the special circumstances make it infeasible to develop the Property in compliance with Code §14-9.2(D)(8) which requires the construction of a continuous subcollector street dedicated to the City connecting Agua Fria Street to Rufina Street; (c) the intensity of development will not exceed that which is allowed on other properties in the vicinity that are subject to same relevant provisions of the Code, in that the density of development will be less than the average density in the vicinity and Tract C-1 will be developed to R-3 density rather than the R-5 density permitted on Tract C-1; (d) the Variance is the minimum variance that will make possible the reasonable use of the Property, given the special circumstances; and (e) the Variance is not contrary to the public interest, in that it is responsive to the expressed needs of residents in the immediate vicinity and the Agua Fria Historic Village.
10. The Appellant has submitted a preliminary subdivision plat prepared by a professional land surveyor, together with improvements plans and other specified supplementary material in

accordance with the requirements of Code §14-3.7(B)(3)(b) and, with the approval of the Variance, in conformance with the standards of Code §14-9 (collectively, the Applicable Requirements), subject to those conditions set out in the Staff Report (the Conditions), modified so as not to conflict with the approved Variance (the Modified Conditions). The Conditions are attached hereto and incorporated herein as **Exhibit C**.

11. The Appellant agreed at the Hearing to three additional conditions set out in the LANA Letter (the Additional Conditions).

CONCLUSIONS OF LAW

Under the circumstances and based upon the Record and the evidence and testimony submitted at the hearing, the Governing Body CONCLUDES as follows:

1. The Governing Body has the power and authority to hear and decide the matter that is the subject of the Appeal.
2. The Appellant has met the criteria for the Variance set forth in Code §§14-3.16(C).
3. The Appellant has complied with the Applicable Requirements.

WHEREFORE, IT IS ORDERED ON THE _____ OF JANUARY 2014 BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

That the Variance is granted and the Plat is approved, subject to the Modified Conditions and to the Additional Conditions.

Mayor

Date:

FILED WITH THE CITY CLERK:

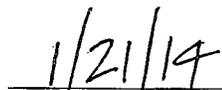
Yolanda Y. Vigil
City Clerk

Date:

APPROVED AS TO FORM:



Kelley Brennan
Interim City Attorney



Date:

City of Santa Fe
Planning Commission
Findings of Fact and Conclusions of Law

Case #2013-58

Aguafina – Preliminary Subdivision Plat and Variance

Owner's Name – Aguafina Development LLC

Applicant's Name – JenkinsGavin Design & Development, Inc.

THIS MATTER came before the Planning Commission (Commission) for hearing on August 1, 2013 upon the application (Application) of JenkinsGavin Design & Development, Inc., as agent for Aguafina Development LLC (Applicant).

The Applicant seeks the Commission's approval of a preliminary subdivision plat to divide three parcels of land identified as Tract B, Tract C-1 and Tract C-2, totaling 11.47± acres located at 4702 Rufina Street (Tract B, at 2.42± acres), 4262 Agua Fria Street (Tract C-1, at 5.61± acres) and 4701 Rufina Street (Tract C-2, at 3.44± acres) (collectively, the Property) into 23 single-family residential lots (Project). Tracts B and C-2 are zoned R-3 (Residential – 3 dwelling units/acre) and Tract C-1 is zoned R-5 (Residential – 5 dwelling units/acre). The Applicant also seeks a variance (the Variance) from Santa Fe City Code (Code) §14-9.2(D)(8) to permit the construction of two private cul-de-sac Lot Access Driveways on Tracts C-1 and C-2 rather than a continuous subcollector street dedicated to the City and connecting Agua Fria Street to Rufina Street.

After conducting a public hearing and having heard from staff and all interested persons, the Commission hereby FINDS, as follows:

FINDINGS OF FACT

General

1. The Commission heard reports from staff and received testimony and evidence from the Applicant and other interested parties.
2. Pursuant to Code §14-2.3(C)(1), the Commission has the authority to review and approve or disapprove subdivision plats.
3. Pursuant to Code §14-3.7(A)(1)(b) subdivisions of land must be approved by the Commission.
4. SFCC §14-2.3(C)(3) authorizes the Commission to hear and decide pursuant to SFCC §14-3.16 a request for a variance which is part of a subdivision request requiring Commission review.
5. Code §14-3.7(B)(1) requires applicants for preliminary plat approval to comply with the pre-application conference procedures of Code §14-3.1(E).
6. Pursuant to Code §14-3.1(E)(1)(a)(ii), pre-application conferences are required prior to submission of applications for subdivisions unless waived.



7. A pre-application conference was held on May 23, 2013 in accordance with the procedures for subdivisions set out in Code §14-3.1(E)(2)(a) and (c).
8. Code §14-3.7(B)(2) requires compliance with the early neighborhood notification (ENN) requirements of Code §14-3.1 (F) for preliminary subdivision plats and provides for notice and conduct of public hearings pursuant to the provisions of Code §§14-3.1 (H), and (I) respectively.
9. Code §14-3.1(F)(2)(a)(v) requires an ENN for preliminary subdivision plats and Code §14-3.1(F)(2)(a)(vii) requires an ENN for variances.
10. Code §§14-3.1(F)(4) and (5) establish procedures for the ENN.
11. The Applicant conducted an ENN meeting on the Application at 5:30 p.m. on June 10, 2013 at the Southside Library at 6599 Jaguar Drive in accordance with the notice requirement of Code §14-3.1(F)(3)(a).
12. The ENN meeting was attended by the Applicant and City staff; approximately 31 members of the public were in attendance.
13. City Land Use Department staff reviewed the Application and related materials and information submitted by the Applicant for conformity with applicable Code requirements and provided the Commission with a written report of its findings (Staff Report) together with a recommendation that the preliminary subdivision plat and variance be denied.

The Preliminary Subdivision Plat

14. Code §14-3.7(B)(3)(b) requires the Applicant to submit a preliminary plat prepared by a professional land surveyor, together with improvements plans and other specified supplementary material and in conformance with the standards of Code §14-9 (collectively, the Applicable Requirements).
15. The information contained in the Staff Report is sufficient to establish that the Applicable Requirements have not been met, in that the Project is not in conformance with Code §14-9 without the Commission's approval of the Variance.

The Variance

16. SFCC §14-3.16(B) authorizes the Commission to approve, approve with conditions or deny the Variance based on the Application, input received at the public hearing and the approval criteria set forth in SFCC §14-3.16(C).
17. The information contained in the Staff Report and the testimony and evidence presented at the hearing is not sufficient to establish with respect to the Applicant's request for the Variance from the design criteria of §14-9.2(D)(8) to permit the construction of two private cul-de-sac Lot Access Driveways on Tracts C-1 and C-2 rather than a continuous subcollector street dedicated to the City connecting Agua Fria Street to Rufina Street in that (a) while the Property is composed of three tracts extending from Agua Fria Street to Rufina Street and across Rufina Street and its historic long narrow configuration imposes constraints on development, other properties in the vicinity are similarly configured and are subject to the same development regulations; and (b) the development on Tracts C-1 and C-2 of a continuous subcollector street dedicated to the City connecting Agua Fria Street to Rufina Street is not infeasible and would connect future development at the approved Cielo Azul subdivision to the west with Rufina and Agua Fria.

CONCLUSIONS OF LAW

Under the circumstances and given the evidence and testimony submitted during the hearing, the Commission CONCLUDES as follows:

General

1. The proposed preliminary subdivision plat and Variance were properly and sufficiently noticed via mail, publication, and posting of signs in accordance with Code requirements.
2. The Applicant has complied with the applicable pre-application conference and ENN procedure requirements of the Code.

The Preliminary Subdivision Plat

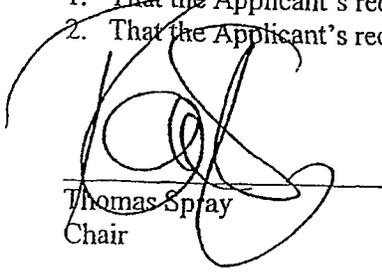
3. The Commission has the authority to review and approve the preliminary plat subject to conditions.
4. The Applicable Requirements have not been met.

The Variance

5. The Commission has the power and authority under the Code to review and approve the Applicant's request for the Variance.
6. The Applicant has not met the criteria for a variance set forth in SFCC §§14-3.16(C).

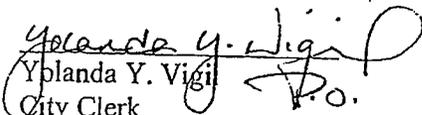
WHEREFORE, IT IS ORDERED ON THE 12TH OF SEPTEMBER 2013 BY THE PLANNING COMMISSION OF THE CITY OF SANTA FE:

1. That the Applicant's request for preliminary subdivision plat approval is denied.
2. That the Applicant's request for the Variance is denied.


Thomas Spray
Chair

9/12/13
Date:

FILED:


Yolanda Y. Vigil
City Clerk

9/13/13
Date:

A-3

Las Acequias Neighborhood Association
PO Box 28062
Santa Fe, New Mexico 87592
(505) 424-6929

The Honorable David Coss and
Santa Fe City Council
City Hall
Santa Fe, New Mexico 87501

RE: AGUAFINA APPEAL

Dear Mayor & Councilors:

The Las Acequias Neighborhood Association Board (LANA) held its regular Board meeting and after much discussion, our board voted support the above referenced Appeal before you by JenkinsGavin Design and Development, Inc. This support was also expressed to the developer by our community at the last ENN meeting.

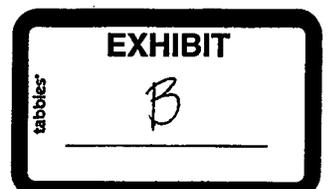
Our support is contingent upon the following items, which we have discussed with JenkinsGavin and for which we have received agreement:

- Street lights will be provided within the Aguafina property contingent to further discussion with the community of Las Acequias.
- Addressing the existing drainage problem, starting with the berm along the Las Acequias property line, thus allowing the natural acequia and water flow that starts in the field park to continue with proper drainage through the Aguafina property.
- A planned green space in Aguafina with walkways, benches, xeriscaping, etc. and not just allowing it to be just a "natural", sometimes, wet field area.

Thank you.

Sincerely,

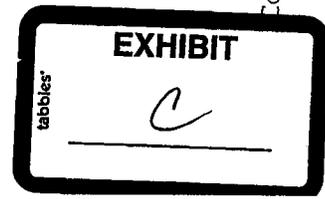
LANA Officers: Liddy Padilla, Pres., Joanna Nedboy, vice Pres., Cheryl Odem, Secretary and Larry Hudgins, Treas. and the Las Acequias Executive Board



Aguafina Preliminary Subdivision Plat—Conditions of Approval
 Planning Commission
 Case #2013-58 – Aguafina Preliminary Subdivision Plat

Conditions	Department	Staff
<p>The subject property is accessible to the City sanitary sewer system and connection to the City sewer system is mandatory and shall be made prior to any new construction. Additionally, the following notes shall be included on the plat:</p> <ol style="list-style-type: none"> The property shall connect to the existing public sewer mains through a public sewer line extension(s). Wastewater Utility Expansion Charges (UEC) shall be paid at the time of building permit application. <p>Based on the latest SFHP requirements, 20% of the proposed subdivision must be designated affordable, 10% within Income Ranges 2 and 3. Any fractional portion of a lot can be satisfied by providing another lot or paying a fractional fee. The affordable lots must be spread out and not clustered.</p> <p>CALCULATION for the SFHP requirement: = Total number of units multiplied by (0,2) = Number of Units Required = 23 total units x 0.2 = 4.6 SFHP units are required = 4 units constructed and a fractional fee paid for 0.6 units</p> <p>CALCULATION for the fractional unit fee: = Half the Price for a Tier 2,3 BR Home X Unit Fraction X .30 (70% Reduction) = \$69,000 X 0.6 percent X 0.3 = \$12,420 fractional fee</p> <p>Add a note to the Plat that on-lot stormwater ponding is required at the time of house construction for all lots except affordable lots.</p> <p>*Cover sheet vicinity map is outdated. Replace with more usable version, such as that provided on the Plat.</p> <p>The following rezoning condition has not been addressed: Section 14-8.15(C)(2) SFCC 1987 requires land to be dedicated for neighborhood parks. The conceptual site plan that has been provided does not address any park dedication. The applicant shall provide park area for the development as part of the subdivision plat process, or commit to payment of park impact fees, in order to comply with this Land Development Code requirement. [The applicant proposes open space around the drainage on the northern portion of the site, but no amenity has been provided]</p>	<p>Wastewater</p> <p>Affordable Housing</p>	<p>Stan Holland</p> <p>Alexandra Ladd</p>
	<p>Technical Review</p>	<p>Risana "R.B." Zaxus</p>
	<p>Current Planning</p>	<p>Heather Lamboy</p>

Conditions of Approval – Aguafina (Case #2013-58)



Aguafina Preliminary Subdivision Plat-Conditions of Approval
 Planning Commission
 Case #2013-58 - Aguafina Preliminary Subdivision Plat

Conditions	Department	Staff
<p>Review comments are based on submittals received on June 24, 2013. The comments below should be considered as Conditions of Approval to be addressed prior to subsequent submittal unless otherwise noted:</p> <ol style="list-style-type: none"> The roadway on Tract B shall be constructed to a Lane standard and dedicated to the City of Santa Fe. There is vacant property to the south of Tract B that will ultimately access this roadway, causing more than 8 lots to utilize this roadway. Per §14-9.2(E), this requires a Lane to be built; The roadway on Tracts C-1 and C-2 shall be constructed to a minimum of a subcollector standard and dedicated to the City of Santa Fe. The Traffic Engineering Division feels that this road shall be constructed through the entirety of both tracts from Rufina to Agua Fria, with public access being granted on to Rufina and emergency access granted onto Agua Fria. Although this portion of Agua Fria is within the County's jurisdiction, the Traffic Engineering Division does not feel that it will provide good access to what will be City residences. This area of Agua Fria has multiple access points and no medians to provide refuge for left-turners. The following rezoning condition has not been addressed: The Developer shall plan this development so that it allows future access to the west that corresponds with proposed access to the east from the approved Cielo Azul Subdivision. We required the Cielo Azul developers to provide stub-outs so that their roadway network can connect to the east. The Developer shall indicate on the subdivision plat and development plan, the locations of these future Right-of-Way accesses and stub-outs (ghost lines) to the west; The following rezoning condition has not been addressed: We have reviewed a conceptual design of a subdivision that indicates a proposed access and utility easement. At such time as a submittal is made for a subdivision plat and/or a development plan, the proposed roads shall be built to City of Santa Fe standards and dedicated as public right-of-way. <p>The Fire Marshal conducted a review of the above mentioned case for compliance with the International Fire Code (IFC) 2009 Edition. Below are the following requirements that shall be addressed prior to final approval of a subdivision plat.</p> <p>Shall comply with IFC requirements.</p> <ol style="list-style-type: none"> Fire Department Access shall not be less than 20 feet width. Fire Department shall have 150 feet maximum distance to any portion of the building on any new construction. The subdivision shall have water supply that meets IFC requirements. All Fire Department turn arounds shall meet IFC requirements and have proper signage. May require thru access for emergency vehicles depending on delay of response or water availability. 	Traffic Engineering	John Romero/ Sandra Kassens
	Fire	Rey Gonzales

C-2