

**SUMMARY INDEX
CITY OF SANTA FÉ
SUMMARY COMMITTEE
August 6, 2015**

ITEM	ACTION	PAGES
A. ROLL CALL	Quorum1	
B. APPROVAL OF AGENDA	Approved as published	1
C. APPROVAL OF MINUTES - June 4, 2015	Approved as amended	1-2
D. OLD BUSINESS		
1. <u>Case #2015-26</u> 5488 Agua Fria Lot Split	Approved with conditions	2-6
2. <u>Case #2015-38</u> 1011 Camino Santander Lot Split	Approved with conditions	6-8
E. NEW BUSINESS		
1. <u>Case #2015-56</u> 185 Brownell Howland Lot Split	Removed from the Agenda	8-9
F. STAFF COMMUNICATIONS	Discussion	9
G. MATTERS FROM THE COMMITTEE	Discussion	9
H. ADJOURNMENT	Adjourned at 12:00 p.m.	9

**MINUTES OF THE MEETING
OF THE CITY OF SANTA FÉ
SUMMARY COMMITTEE
August 6, 2015**

A regular meeting of the City of Santa Fé Summary Committee was called to order by Lawrence Ortíz, Chair, on June 4, 2015 at approximately 11:00 a.m. in the City Council Chambers, City Hall, Santa Fé, New Mexico.

A. ROLL CALL

MEMBERS PRESENT:

Brian Gutierrez, Chair
Sarah Propst, Commissioner
Vince Kadlubek, Commissioner

MEMBERS EXCUSED:

OTHERS PRESENT:

Greg Smith, Current Land Use Director
Noah Berke, Current Land Use Senior Planner
Zachary Shandler, Assistant City Attorney
Carl Boaz, Stenographer

There was a quorum of the membership in attendance for the conducting of official business.

B. APPROVAL OF AGENDA

Commissioner Kadlubek moved to approve the agenda as published. Commissioner Propst seconded the motion and it passed by unanimous voice vote.

C. APPROVAL OF MINUTES – June 4, 2015

Mr. Berke requested the following changes to the minutes:

On page 4 and other pages, Stan Holmes should be changed to Stan Holland.

On page 4, San Acacio should read Camino San Acacio.

On page 4, 5th paragraph, the last sentence should read “So that is what may have been required.”

There were no other changes requested for these minutes.

**Commissioner Propst moved to approve the minutes of June 4, 2015 as amended.
Commissioner Kadlubek seconded the motion and it passed by unanimous voice vote.**

D. OLD BUSINESS

1. **Case # 2015-26. 5488 Agua Fria Road Lot Split.** Gerald A. Sandoval of Zia Surveys, agent for Jesus Diaz and Raul Ledezma, requests a lot split to divide approximately 1.07 acres into two lots (± 0.68 acres and ± 0.39 acres). The property is zoned R-3 (Residential – 3 units per acre). (Noah Berke, Case Manager)

A Memorandum regarding Case #2015-26, 5488 Agua Fria Lot Split, from Mr. Noah Berke, Case Planner, Current Planning Division, prepared July 27, 2015, for the August 6, 2015 Summary Committee Meeting with attachments is incorporated herewith to these minutes as Exhibit #1.

Staff Report

Mr. Berke, after welcoming the two new commissioners, gave the staff report on Case #2015-26 which is contained in Exhibit #1. Please refer to Exhibit #1 for specifics regarding this report.

For the benefit of the new Commissioners, Mr. Berke explained that this case was first postponed on May 7, 2015, then on June 4, 2015 and was not heard in July because the meeting had been canceled.

Originally, Staff recommended approval of Case #2015-26 at 5488 Agua Fria Road with the conditions that were attached in his memo, most of which regarded sewer connection, traffic and creating a sidewalk along Agua Fria Street.

At the first meeting, where it was considered New Business, on May 7, 2015, the Committee heard testimony from neighbors who referred to a provision on the original Warranty Deed that stated that no more than one residential dwelling unit would be on this lot. The City Attorney was asked for advice and he recommended postponement until the applicants' legal team and the City Attorney could discuss this matter.

Now, the City Attorney feels that the applicant has indicated on a note on the plat that indemnifies the City of any legal responsibility for subdividing this lot and it meets all other zoning and density requirements for access and public utilities.

Mr. Shandler verified that under the City Code, a lot split is a subdivision and this Committee handles them. And as Mr. Berke said, under the City Code, there are certain requirements that must be met. Occasionally, there are disputes between neighbors regarding covenants or deed restrictions that have been put on the property. Usually, the City stays out of those civil matters but when brought to the City's attention that there could be a deed problem, the City must bring that forward because the City could be sued for going ahead. So this has been postponed and parties have been working on a solution. There were at least two possible solutions. One would be that the families that have taken over these six properties could work together to extinguish the deed restriction or those wishing to do the lot split put on

the plat language to indemnify the City so that if there was a law suit, they would step in and handle the defense and there would be no liability exposure for the City.

Mr. Shandler was interested in hearing their solution today.

Applicant's Presentation

Present and sworn was Mr. Jesus Diaz who asked his Counsel to please speak for him (quien habla in Español solamente).

Ms. Lidia Morales, Counsel for Mr. Diaz said, "We have spoken with the persons in the neighbors who had objections to Mr. Diaz' application and our latest conversation with them is that they do not object to the lot split. They do not object to the development which is three dwelling units. So if Mr. Diaz wishes to build or construct three dwellings that is okay with them. I will let them speak for themselves; they may have some comment. I think they do want to comment. But Mr. Diaz does wish for the Committee to approve his application. He knows what he needs to do in order to get approval. We have worked with the City Attorney's Office and I believe this satisfies the concerns of the City Attorney's Office. I believe that would say it in a nutshell.

Questions by the Committee

Commissioner Kadlubek asked Mr. Shandler if he would say the agreement between the two parties is enough to suffice the City and enough to appease the City or if there needs to be something in writing. He asked what would work here that would make the situation ready to move forward.

Mr. Shandler said he understood that the plat will have an additional sentence of indemnification of the City.

Ms. Morales agreed.

Mr. Shandler said he was comfortable with that condition.

Ms. Morales responded that the opposing parties will be speaking on the record so the Committee will have it from them on the record what it is that they are agreeing to.

Commissioner Kadlubek referred to a letter written on May 22, 2015 to Jesus Diaz about obtaining a response from the immediate predecessors in interest of Ricardo F. Pacheco and Tonie O. Pacheco and asked who these parties are and if they had been spoken to.

Ms. Morales said they have been given notification on the applicant's request for a lot split and to extinguish those restrictions. Apparently, they are elderly people. They are in the care of their daughter and son-in-law and by email, they have said they are not interested in doing anything - which they sold the property years ago. As far as they are concerned, it extinguished everything. She has a copy of that email and can put it in the record if the City wishes.

The sellers have said to a son-in-law that they do not wish to do anything more because, in their mind, it extinguished the restrictions and they don't want to get involved. They did not want to sign anything. They are pretty much leaving it up to Tom Dominguez and the other family members. The Pacheco's live in Rio Rancho now. They are not there anymore.

Mr. Shandler said, "So it was an iconic grandfather, the way I understand it, who subdivided around six lots to family members and that was many years ago. And since the covenants basically affected all six properties, the applicant's goal was to try to contact all six and have them agree to extinguish it. So they tried to talk with each of the original heirs. Some of those six heirs are here now. And they can comment about it. It doesn't sound like they were able to get all six to agree to extinguish, so they went for the other strategy.

Commissioner Propst noted that the extinguishment agreement in the packet has not been signed so they are going down a different path.

Ms. Morales said it has been modified a little bit to address some concerns of the parties. Mr. Diaz is in the construction business and they don't want Mr. Diaz to have construction materials on his property. And Mr. Diaz has offered to build a six-foot wall around anything he has there. It is not trashed. She thought someone had used that word. He does not have trash on the property. He does have a few materials which she had seen herself. It is not some huge enterprise or storage area but a small amount that he had. And he has cleaned it up and got rid of what he won't use any more but kept materials to be used in his business. That was agreed to but ultimately, it was not signed.

Mr. Berke reminded the Committee that the legal aspect has been settled between the attorneys and the correspondence presented as exhibits. Staff felt it meets the requirements and the City has indemnified itself from any responsibility. The conditions of approval have to do with public utilities and sidewalks and some traffic turnarounds. If the Committee feels the conditions of approval are okay, it can proceed. The legal aspect could get messy.

Mr. Kadlubek asked if the Applicant is comfortable with the conditions.

Ms. Morales said he is.

Public Hearing

Present and sworn was Mr. Tom M. Dominguez, III, 6424 Dominguez Lane, who said they have tried to work diligently with Mr. Diaz and his attorney and trying to work on the language on this agreement. She is correct in saying that they don't oppose the lot split. That is not the big issue but with the language on the plats. There are covenants and restrictions that run with the property of the subdivision. More specifically, there are restrictions on the warranty deed that Ms. Morales was talking about extinguishing in this agreement. It is his understanding and unfortunately, their attorney was not able to be here today.

He said, "When my grandfather did the original deed to Leo Pacheco and his wife, Elizabeth, they were distant cousins. My grandfather bought the land to give the initial subdivision into seven. He gave a piece of property one part of an aunt, his dad, and another to his aunt and sold 2 parcels. This piece was sold to

Mr. Pacheco, a distant part of our family. He put in the deed restriction and his intent that he shared.

Mr. Dominguez said when he and his wife wanted to build on, he refused to let them have a mobile home and they had to live in a mobile home park which was better in the long run.

Secondly, it is to be used primarily for residential use. So he was not against residential use. His big concern is that mobile homes not be put on the property and one knew if a note could be put on the plat to prohibit that.

Ms. Morales said the plat has that in the language in her document.

Mr. Dominguez said in working out the agreement, Mr. Diaz has construction materials and debris and the restriction is that no construction materials would be stored there. His concern is that it not be an eyesore. It should not allow non-residential use. H was told by their attorney that they cannot be extinguished. So he doesn't want to see any commercial use of this property and no mobile homes because everyone else has followed that provision.

Mr. Shandler said the City would resist any additional notes on the plat. The City wanted the indemnification as protection. The parties need to have their own agreement about the restrictions.

Present and sworn was Mr. Michael López, the next door neighbor, who said they never denied the opportunity to split the lot. It is okay for Mr. Diaz to erect a residence but not to have a mobile home on his property. The other issue is equipment. Mr. López said they had an issue with the debris there. There was a lot of debris left over from previous jobs, buckets, and pieces of concrete dumped there. If he has a business, he should have a wall and keep it in the back. Erected buildings are okay. Other than that, he didn't have any other issues. Splitting the lot and building are okay with them but it is just to remain a residential area.

There were no other speakers from the public regarding this case.

Chair Gutierrez closed the public portion of the meeting for this case.

Ms. Morales said they are in agreement with the City Attorney's office, this is a private thing that came through that one property. She said they object to any further notation on restrictions on the plat and they agree to indemnify the City and will take care of the rest privately.

Chair Gutierrez asked about the mobile home issue.

Ms. Morales said it says nothing about a mobile home on the deed restriction but it does say "erected."

Chair Gutierrez asked Ms. Morales if she knew if Mr. Diaz intends to put in a mobile home.

Ms. Morales said the restriction is not very clear. Once the courts go with the highest and best use of that land rather than enforcing restrictions and it may not be enforceable.

Mr. Smith quoted from the Code that mobile homes are not manufactured homes and a mobile home

cannot be placed on a lot without an exception from the Planning Commission. With regard to modular units which are by far the majority after 1970, those modular homes are regulated the same way as any other dwelling units by the City. Modular homes are comparable to stick built homes.

Commissioner Kadlubek noted that commercial use was also brought up and he wanted clarification for that. He asked if the R-3 zoning would allow a business there.

Mr. Smith said the only business he could operate there is as a home-occupied business. Any materials stored would have to be screened from public view and any vehicles other than personal vehicles would have to be stored elsewhere and a home-occupation permit would have to be applied for.

Commissioner Kadlubek encouraged the applicant's negotiation with neighbors and for the neighbors to be informed on uses this property could have and speak with Mr. Smith and Land Use Department. Those are resources the applicant can use. The debris or material couldn't be stored there. So there is already in the Code ways for the neighbors to deal with inappropriate use of the land.

Ms. Morales pointed out that there already is storage on the other lots there. She drove through there. There are RVs and storage units on their lots. Her client has materials there but not in a storage structure.

She thought these things are private matters and they can continue to discuss them with each other. It hasn't been an easy task. Tom Dominguez is the spokesperson for them. It has put her client in a difficult and expensive position to have an attorney talk to everyone. At some time it has to move forward. He paid a good price for the property and he intends to use it.

Action of the Committee

Commissioner Kadlubek moved to approve Case # 2015-26 at 5488 Agua Fria Road subject to all staff conditions including the indemnification distributed to the Commission today. Commissioner Propst seconded the motion and it passed by unanimous voice vote.

- 2. Case #2015-38, 1011 Camino Santander Lot Split. Salvador Vigil of Land Surveying Company, agent for Anna Reveles, requests a lot split to divide approximately 1.12 acres into two lots (± 0.70 acres and ± 0.42 acres). The property is zoned R-5 (Residential - 5 dwelling units per acre). (Noah Berke, Case Manager)**

Staff Report

A Memorandum regarding Case #2015-38, 1011 Camino Santander Lot Split, from Mr. Noah Berke, Case Planner, Current Planning Division, prepared July 26, 2015, for the August 6, 2015 Summary Committee Meeting with attachments is incorporated herewith to these minutes as Exhibit #2. Please refer to Exhibit #2 for details of his staff report.

Mr. Berke noted this property is within the Historic Review District. He stated that at the last meeting, staff recommended approval with the original conditions and required a 20' easement on the west border

and extending a sewer line from or adjacent to the northwest corner of the property. The applicant had a cost estimate done to extend and provide the sewer easement and was too high and hired legal representative and requested a waiver. His attorney included a letter requesting that the Summary Committee waive the financial guarantee and allow them to defer the construction until the property is sold.

If the Committee approves, there are conditions and a review by Wastewater to be added and notice to the plat that an extension shall be installed and/or a financial guarantee as approved by the City.

There was also a main condition of a slope analysis and the analysis identified a 2,000 square foot that meets the terrain regulations. Staff specified that as the only buildable area.

Questions to Staff

Commissioner Propst asked if putting the burden on the buyer is done often.

Mr. Berke said this was the first time he had encountered it but Mr. Smith has been here longer so he could speak to it.

Mr. Smith said the practice is predominantly over the years that the improvements are deferred and two years ago the City decided it is up to the Summary Committee to decide. Wastewater staff is not here. They have asked more often that they not be deferred as buyers discover the improvements were not made at the time.

Before the final plat can be recorded, the financial guarantee has to be achieved. Once the plat is recorded, they may sell the lot and may or may not disclose the improvement deferral so the buyer is not responsible for the cost of the improvements.

For the lot split only, the Committee can decide whether to defer with or without financial guarantee. Wastewater does not object to the deferral.

Commissioner Kadlubek asked what the intent was to give this judgment to the Summary Committee.

Mr. Smith said depends on the extent of improvements - like a family transfer - to put those on the plat. The majority practice over the years until two years ago, was that improvements were always deferred and buyers being unaware of them caused the change.

Chair Gutierrez saw that the improvement costs would be about \$32,000. He asked what the financial guarantee would cost.

Mr. Berke said the bank chooses a percentage in one of two choices: one is an escrow account held and the second is a financial guarantee by the bank. The amount required is the engineer's estimate.

Applicant's Presentation

Present and sworn was Mr. Joseph Kames, who said the applicant is present along with Mr. Sal Vigil,

surveyor. He explained that this is an issue of timing. He appreciated the staff input. Mr. Holland has two measures to make sure the buyer is aware of the situation. He requested a note on the plat and any buyer would get that plat ahead of the purchase and it is a legal requirement to disclose the note. So there are two levels of assurance that it will happen. The cost of the extension is factored into the sale price and the buyer will be building a house so he asked the Summary Committee to follow the evaluation of Mr. Holland. They determined the financial viability of the transaction. He asked that the obligation to construct be deferred.

Public Hearing

There were no speakers from the public regarding this case.

Chair Gutierrez closed the public hearing portion of this case.

Commissioner Kadlubek asked Mr. Karnes if the applicant is comfortable with the conditions imposed by Staff.

Mr. Karnes agreed that he is.

Action of Committee

Commissioner Propst moved in Case #2015-38, 1011 Camino Santander Lot Split to approve the application with all staff conditions, including the two additional conditions presented by Wastewater in a memo dated July 17, 2015. Commissioner Kadlubek seconded the motion and it passed by unanimous voice vote.

E. NEW BUSINESS

1. **Case #2105-56. 185 Brownell Howland Lot Split.** Southwest Mountain Surveys, agent for Christopher and Debra Lyons, requests a lot split to divide approximately 77.45 acres into two lots (± 74.45 acres and ± 3.0 acres). The property is currently zoned R-1 (Residential - 1 dwelling unit per acre) and lies partially in the Escarpment Overlay district. (Noah Berke, Case Manager.)

Staff Report

Mr. Berke reported that upon further staff analysis, this lot split requires a variance that can only be granted by full Commission until that is considered.

Mr. Smith explained that Staff is removing it from this agenda so no further action is required.

F. STAFF COMMUNICATIONS

Mr. Smith welcomed the two new members of the committee and thanked them for getting up to speed without any further orientation. He explained the scope of work of this Committee to them. Typically, it is

just dealing with utility matters. The Summary Committee has no jurisdiction over variances. The goal is to make sure any new lots created can have buildable areas in compliance with the Code.

Mr. Berke added that some of the cases are exciting and some have been easy. All of his have been exciting. He looks forward to working with the Committee.

G. MATTERS FROM THE COMMITTEE

Commissioner Kadlubek thanked the Staff for welcoming them.

Commissioner Propst thanked Staff for making our jobs easier.

Chair Gutierrez asked about the stakes evident up and down St. Michael's Drive.

Mr. Smith said the applicant says they have them for construction at St. Vincent Hospital. He will try to get more information for the Planning Commission meeting.

H. ADJOURNMENT

Having completed the business of the Committee, the meeting was adjourned at 12:00 p. m.

Approved by:

Brian Gutierrez, Chair

Submitted by:



Carl Boaz for Carl G. Boaz, Inc.