

Minutes
Ordinance Workshop Minutes
August 23, 2023

The Village of Capitan Board of Trustees met for a Budget Workshop on Thursday August 23, 2023 at the Village Hall in Capitan, New Mexico at 6:00 PM.

Mayor Lowrance called the Workshop to order at 6:00 PM.

Roll Call: Mayor Lowrance – Present, Trustee Shearer – Present, Trustee Kerns – Present, Trustee Hair – Absent. Clerk Al Cavazos, Deputy Clerk Autrey were also present.

Item #1 Approval of the Agenda.

Trustee Kerns made a motion to approve the agenda. Trustee Fraley seconded the motion.

Discussion: There was no discussion of this item.

Roll Call: Trustee Shearer – Yes, Trustee Kerns – Yes, Trustee Fraley – Yes

Item #2 Discussion of Ordinances for Subdivision of Land, Land Use and Water.

Discussion:

Trustee Kerns – Mr. Mayor, I want to be able to talk to and visit with the trustees about regarding paragraph 197-8.

Trustee Shearer – Are we in Subdivision of Land?

Trustee Kerns – Yes. We are talking about subdividing of land. I've really got some problems with it. I wouldn't be able to vote and approve it as it is. It talks about land rights and property rights. When we start limiting property rights, that can be really hard on people. It's not our job to be doing that particularly in this excessive way like this does. What it's saying is if you have a lot that has water, that you can subdivide it no less than one half acre. To me that's extremely limiting to people who own property out here. One of the reasons Capitan has always been like the blue-collar sister to Ruidoso. This is where the electricians, the workers and the plumbers live and it's been that way since 1978 when I moved from Ruidoso. I've been living in Capitan about 13 years. What I'm seeing is, when working people have property we start limiting the ability to work with their property, I think it is a disservice. Let me talk about a half or a quarter acre. I'd like for you all, in your minds eye, go over to Mt. Capitan subdivision. Those are quarter acre lots. I don't see anything about those lots that look congested, that looks like it deteriorates the property values. I don't see homes that are too close to one another. They have water over there. They don't have sewer. Let's talk about water for the time being. I don't see why we need to impose a half acre restriction for subdivision when I look at Mt. Capitan and see quarter acre lots. I think they look great. It's good for economy, for the people and Capitan. The typical subdivision, the outskirts of whatever big town...those are like a 1/3 of an acre. Why are we imposing this half acre thing? I think a quarter acre would be more appropriate.

Mr. Mayor, it talks about, if it doesn't have city water or city sewer. Focus on the sewer. If it doesn't have sewer, you can subdivide it no less than two acres. No smaller than two acres. I can think of lots in Mesa Verde, those are ten acre lots. If a family owns a ten-acre lot, they ought to be able to subdivide it. I think putting a restriction of two acres is severe. I think more in line is what the State is saying. If you have less than ¾ of an acre, you've got to have an aerobic system. I think we all know that by now. I think having the ¾ of an acre is something that is better for the people who own the 10 to 15 acre lots

than breaking it down into two acres. All of the things would apply, we have to have access, utilities have to sign off on a subdivision, a re plat. Make sure you can get to it from a road. Egress, ingress easement all has to be done right. We'd have a committee here to make sure that our end of it is taken care of. We are talking how much better financially in the water department would be, if we added more water taps. To limit the availability for people to do what they should be allowed to do on their property is also hurting us with the number of water taps.

In town on the original plats, we have 25 ft. That's too extreme. The village has done well saying you have to have ten ft. setbacks. That means with a 25 ft. lot, a family can't put a singlewide mobile home in there because you wouldn't be able to have the 10 ft. setbacks. I think that's great, because there is congestion and there is deterioration in property values when they are all congested like that. We are doing the right things as far as that goes.

Trustee Shearer – They are getting around the setbacks. Down in the core, what you see is you have three lots. You will see two singlewides this way and one this way, like a U shape, so they can get three singlewides on three lots with the 10-foot access.

Trustee Kerns – Let me summarize.

If we don't have sewer out there, $\frac{3}{4}$'s of acre would be a better limit. If it does have water, then a $\frac{1}{4}$ acre, like Mt. Capitan. That would be a better suggestion than a $\frac{1}{2}$ acre for a water lot and 2 acres for a lot that doesn't have water. Am I saying, that right?

Mayor Lowrance – We understand what you are saying.

Trustee Shearer – This paragraph is actually very confusing because it says sewer and water, it doesn't say sewer or water. I should be read to say both which leaves out a whole category of property. But the way it's worded, you have to read it, Sewer or Water. I made some notes on that same section. My notes are: Lot's in the original Village town site should not be less than 2,500 sq. ft. There might be lots smaller than that. I'm not sure.

Trustee Kerns – The number everybody needs to remember is 43560 ft. in an acre. That would help you.

Trustee Shearer – The other notes I wrote are, lots outside of the original town site. The original town site is where we have the small front footage lots.

Trustee Kerns – Most of them are 25 ft.

Trustee Shearer – So, lots outside of the original town site shall conform to any applicable restrictive covenants and be of sufficient size to meet the requirements to the New Mexico Environment Department for any septic facilities. Which would get you the $\frac{3}{4}$'s. I think that, a lot of people bought their properties in all the subdivisions that are separate legally, with restrictive covenants. Some people bought with restrictive covenants and they say the lots shall not be less than ten acres. There is a variety of restrictive covenants out there and I think we should respect the restrictive covenants, and not set something that creates a private lawsuit. Were we've allowed something that's not allowed in the covenants. I don't know if we are allowed to enforce the covenants.

Trustee Kerns – It has to be a class action suit. That's how covenants are enforce. You have to have enough neighbors in the same subdivision.

Chief Spear – We cannot enforce covenants. It has to be civil action with the neighbors.

Trustee Shearer – Can we put in there that, our decision will respect what's in the covenants? We'd have to ask the county. I tend to think that people bought with expectations, that those lots would not be divided down to $\frac{1}{4}$ acre. My house sits on .66, $\frac{2}{3}$ of an acre. It's been platted that way since about 1902. It's outside the original township. And 2 acres, I don't know what it's like to maintain 2 acres. That's a lot of mowing and maintenance. We are telling people, you have to maintain 2 acres of property. I think these numbers were picked out of the air.

Chief Spear – How are you going to make an ordinance when ever you've got 5 to 7 subdivisions out there? Each subdivision has their own covenants. How are you going to make an ordinance to cover 7 different covenants?

Trustee Shearer – Those are all recorded in the County Clerks office. What I'm saying is, if the ordinance says, if there is a restrictive covenant, it is a factor in the subdividing decision.

Steve Osborn – If you add to many. Or subdivide 10 acres into ¼ acre tracts, then you've really affected our studies and everything too.

Trustee Shearer – That's true.

Steve Osborn – If you take a 10-acre lot and divide it into ¼ acre lots, that's about 40 houses.

Trustee Shearer – But we are also talking about the Village comprehensive plan. I think the 40-year water plan, and as you know those are so out of date. I don't know how we can tell anybody that we are using the comprehensive plan.

Trustee Kerns – And too, Steve, that 10-acre tract is over in Mesa Verde area and we don't have sewer over there. So that language in there should state either or, like Bobbie pointed out, so they don't get the ¼ acre. They would have to go to the ¾ acre. There are going to be dealing with egresses that is going to limit people's ability to subdivide.

Trustee Shearer – What we are seeing, I think, is not somebody with 10 acres and wants to create 5, 2 acre lots. We are seeing someone with 10 acres that wants to carve off a 2-acre lot or 1-acre lot, for their kids, or to sell it or something. And all the sudden they can't keep 9 acres and sell one.

Trustee Kerns – It may be the acre sitting there right next to the road. Why are we arguing against that?

Trustee Shearer – The other thing we have in here, if it's in the water ordinance is, you can't have a guest house. As far as I can tell, you can't have a bathroom or a shower in a detached garage. If you've got 10 acres, and between two pieces of property, mine sits on 2 1/2. I have an accessory building with a water connection. There was a period in there that they really wanted to shut down water connection, and that's a hold over from that. Talk about affecting the ability of people being able to use their property.

Public Allison – There is a 10 x 50 concrete slab behind my house, with a nice little utility access square that is a foot in from the northwest corner. The previous owner, a while back, had a brother and he was going to go live with her. So, he could have his own place. What was the size of the mobile home back then? 10x50. They put the slab in, they were all ready to put the water in, and the Village shut them down. And that slab just sits there, and nothing was ever connected.

Trustee Shearer – The other part of that is, we say you can have 3 out buildings. Again, we are treating the lots in the core, little tiny lots in the core, just like 10 acres in the subdivision. They can have a lot in the core and 3 out buildings, but you can't have 4 out buildings or you can't have one water when you have 10 acres, so we are allowing a lot of density in the core. And if you are an investor and we say you can only have one dwelling per lot. You come into Capitan and you see 10 acres and can only have 1 dwelling. Or you see the little lots in the core that can only have 1 dwelling. As an investor, you buy up the lots in the core and you make them into rental properties. That's what we've done to the core with this over arching policy. We've watched it happen over the last 15 years.

Trustee Kerns – You lose the character of the community. Another thing I'd like to point out. Let's not confuse, when we talk about somebody wanting to come in and wanting a replat. They are wanting to take 2, 25' lots and replat that into one lot. That's a good thing. Then somebody might say, "oh, that's 50x100, that's still less than a ¼ acre." We need to make sure what we are talking about is for subdividing. If someone wants to conjoin lots. We should leave them alone.

Public Ed Reeves – A $\frac{1}{4}$ acre is 10,890 feet. But when you are talking about something being 10' exclusions, it depends on the configuration of that 10,890 square feet.

Trustee Kerns – Did you get your calculator out? That's, good.

Public Allison Provine – Didn't we discuss this in a previous meeting quite a while back, where the mobile home park is that the guy wanted to make a state tight subdivision and he got shut down. We ended up with a mobile home park because they would not let him.

Trustee Shearer – He wanted 3 single family site-built homes on 6 acres each.

Public Allison Provine – Because he had 18 acres. He was forced...

Trustee Shearer – That turned into a 20-site mobile home park.

Trustee Fraley – If we rewrote it just to say that the water and sewer conformed to state requirements, would we have to put any other restrictions other than that?

Trustee Shearer – That puts everything down to $\frac{3}{4}$'s.

Trustee Fraley – Is that a bad thing?

Public Ed Reeves – Who's paying for the sewer that far out?

Trustee Shearer – We can't possibly extend the sewer that far.

Trustee Fraley – I'm saying, what we are looking at with subdivision of property. If we just had a blanket statement saying, it has to fallow state requirements and restrictive covenants, would we need to be anymore strict than that?

Angela Autrey – We could say, you need an aerobic system for the septic.

Trustee Kerns – I don't think it's our jurisdiction to be adding the comment about restrictive covenants.

Chief Spear – We can't enforce them.

Trustee Kerns – This is just a proposal, that a water lot can't be any smaller than $\frac{3}{4}$'s of an acre. Why $\frac{3}{4}$'s?

Trustee Fraley – That's not what the State requires, right?

Mayor Lowrance – If you have less than $\frac{3}{4}$'s of an acre, you have to get an anaerobic system if there is not sewer.

Trustee Fraley – The State is not dictating the water. The State is dictating the sewer. Correct?

Mayor Lowrance – Yes

Trustee Fraley – In another words, Because the Sis dictating the sewer, the state is going to limit the subdivisions to a point based upon lot size for sewer. If we just follow those guidelines, would that....

Trustee Kerns – No, they are just going to say you have to have an anaerobic system. They're not limiting it. They are saying that you can't have a traditional system, you have to go with an anaerobic system. That's at $\frac{3}{4}$'s of an acre.

Trustee Fraley – So that's one limitation whether we agree to it or not. It's already there. They have to do that with the State. Do we have the capacity to push sewer out further from where we are?

Trustee Shearer – Not at this time.

Trustee Fraley – So sewer is pretty much locked into place. So, our ordinances should say, until we have a change in infrastructure, sewer can't be added.

Trustee Shearer – We might ad small extensions.

Trustee Fraley – So, we need to put a clause in there that says if sewer is going to be provided by the city, that needs to be approved by planning and zoning committee, or by the Trustee's or something. It sounds like we are not expanding sewer. The State is going to put requirements on us and our infrastructure is going to put requirements on us as far as water and sewer. What ever those requirements are, they need to be in here. Outside of that, I think we need to fallow state guidelines.

Trustee Shearer – Steve had a point, that could create a lot of lots that we would have to serve with water.

Steve Osborn – Like I said, if you take a 10-acre track and whatever the minimum is for an anaerobic system is.

Mayor Lowrance – If it's less than $\frac{3}{4}$'s of an acre you have to put in an anaerobic system.

Steve Osborn – Can you put it on a $\frac{1}{2}$ acre or $\frac{1}{4}$ acre?

Mayor Lowrance – If you want that system, you can put it in instead of a septic system. The only stipulation the State has is, if you have less than $\frac{3}{4}$'s of an acre you have to put in an anaerobic system. If you have more than $\frac{3}{4}$'s of an acre, you can have a regular one if you choose. The thing is, is the Anaerobic system cost about \$14,000 more and you have to have someone come out once a year to test it.

Trustee Kerns – It's an ongoing process.

Steve Osborn – That's what I'm going back to, at 10-acres. In order to get $\frac{1}{4}$ acre lots on 10 acres, you are talking roads, lines and all of that.

Trustee Kerns – There would be lots of issues. What I have a problem with is starting off with, nothing less than $\frac{3}{4}$'s of an acre. I'm looking at the Mount Capitan subdivision as a model at $\frac{1}{4}$ acre lots, and why $\frac{3}{4}$?

Trustee Shearer – The more common situation we have get isn't somebody wants to divide the whole 10 acres and put in roads, and infrastructure they want to carve off a piece. That's where we are having to tell people no, because it's too small.

Steve Osborn – I agree, it's more of the wordage. If someone took a 10-acre track and turned it into a 40 track. Where are the roads and the water lines going to go?

Trustee Shearer – This treat everybody as if they are a major sub divider. As if they are going to go and advertise lots. Maybe we should have a process. If you're not a sub divider, if you're not selling off lots for profit, and just carving off a piece.

Trustee Kerns – This proposal outlines all those issues. It talks about if the utilities, landscaping, the drainage aren't right. All these things on a subdivision replat could be kicked out by the planning committee. I'm not asking to change that. My issue is the, nothing smaller than $\frac{3}{4}$ acre. I just think that's too limiting to the property owners.

Minerva Davalos – There again, if you look out in the subdivisions. People went out and bought properties, 5-acre 10 acre lots, for that simple reason. They knew they had this piece of land and a neighbor wouldn't be building right next door to you. I want my open space, I want my 5/10 acres. In the ordinance you are letting people go in there and cut it up into $\frac{1}{4}$ acre lots, $\frac{3}{4}$ acre lots. Now we've got, house, house, house, house. I was out here for the peacefulness.

Trustee Shearer – That's exactly what I mean about respecting the covenants.

Minerva Davalos – I understand what you mean about respecting the covenants. But it's going to cost me thousands of dollars to fight, because I don't want the subdivision to go in there. I thought it was going to be nice and peaceful out here, because that's what the covenants said that this is the way it was going to be. I bought it because of that. Now I have a whole subdivision next door to me where I was hoping to get a nice and peaceful place to live.

Mayor Lowrance – You could always list in there that they have to get $\frac{3}{4}$'s of the subdivision to say it's okay for them to subdivide.

Trustee Shearer – Well that's a high hurdle.

Mayor Lowrance – That keeps them from getting sewed by somebody.

Minerva Davalos – If somebody were to violate the restrictive covenants, that is going to be a civil lawsuit, they would have to come in, there again costing a lot of money, and fight that. Understand that you have those restrictive covenants that is going to be a civil lawsuit to stop that small of subdivision. You can look at it both ways.

Trustee Kerns – Didn't the Village give some consideration to the subdivision, towards Lincoln, east of town? Imagine all of the little commercial things that's we would have along the highway. I don't know, but I suspect they would be hampered by $\frac{3}{4}$'s of acres. See what I'm saying?

Minerva Davalos – There again, it brings up zoning.

Trustee Shearer – What happens when we get into that, is we are so mixed use. We probably should have the original platted core and the rest of the Village. Because the core, with the original small lots, are just different from everything else and one size does not fit all.

Trustee Kerns. We are outlawing another Mount Capitan subdivision, which I think is one of the prettier subdivisions that we have. That would never happen again with this proposal.

Trustee Fraley – If we took that out and stuck with the State minimums, and then put in a contingency that the Planning and Zoning would review, all major subdivisions to account for the variables that you mention, would that cover us? That would eliminate certain people looking a subdivision with that in mind, or a blanket statement. A blanket statement would make saying No be easier, but also limits our ability to say Yes.

Trustee Kerns – What restrictions of the State are you talking about?

Trustee Fraley – The state is going to put restrictions on sewer.

Trustee KERNs – Okay, does it limit the size?

Mayor Lowrance – No, it doesn't.

Trustee Fraley – I'm reading here that it does.

Trustee Kerns – No, it doesn't. It just says that if you go less than $\frac{3}{4}$ then you have to go anaerobic.

Trustee Fraley – What if we did the same thing? What would be the harm in that?

Trustee Kerns – That's kind of what I was suggesting. Instead of a $\frac{1}{2}$ acre, we say $\frac{3}{4}$.

Mayor Lowrance – If you are talking about, if they have over 2 acres that they want to subdivide. Now you are saying $\frac{3}{4}$.

Trustee Kerns – It was poorly written to begin with. Are these water lots, or are they sewer lots, are they water and sewer lots? That's what's confusing us here.

Trustee Fraley – So, we need to make a distinction for water and sewer.

Trustee Shearer – It's really just sewer. We should just take that reference to water out because everybody has access to water. We don't have any lots without access to water.

Trustee Kerns – So just strike water?

Trustee Fraley – So, if we did put in 40 new taps, would that hurt us?

Steve Osborn – No, not 40 but if you've 100, 10-acre tracts out there then that's 4,000.

Trustee Fraley – In other words you are looking at an extreme development coming in that would develop a problem.

Trustee Shearer – They are going to be coming in 10 taps at a time.

Trustee Kerns – They are going to run in arroyo's, drainage, overhead utilities issues. There's going to be a lot of things that is going to restrict land use here anyway. This is all numerated in this proposal.

Trustee Fraley – The clause that we are evaluating tonight in here, is there a necessity for it at all?

Mayor Lowrance – That's true.

Trustee Fraley – Is there any reason to keep that clause in our ordinances?

Trustee Shearer – Let me think about taking it out. I don't think we could just take it out altogether. We have to have some kind of limitations.

Trustee Kerns – Let me read it. Under utilities, paragraph 1; Lots in any subdivision or replat that have access to Village sewer and water shall be no less than one half acre minimum. You've got a 5-acre tract you want to sell off or give it to your children and we are limiting that to a half acre. Any lot that does not have access to sewer and water should be a minimum of 2 acres.

Trustee Shearer – That's the question, does it mean, if it doesn't have access to water, it's a minimum of 2 acres? Or, does it mean, if it doesn't have access to sewer or water it should be a minimum of 2 acres?

Trustee Fraley – Let's stick to the first sentence. Is there any reason to keep that first sentence?

Trustee Kerns – Now this is not established subdivision that's recorded. What they are saying is, I've got 5-acre lot, I want to subdivide it. Don't confuse that with a subdivision that's been recorded like Mt. Capitan.

Trustee Shearer – Let me find their definitions. Including land within a previously approved subdivision.

Trustee Kerns – I thought we were talking about somebody has 5-acre lot that, they want to subdivide. They come in here they have a survey, they bring a plat to the committee. That's the kind of subdivision we are talking about.

Trustee Shearer – Subdivision means any division of land under this ordinance. That's one of the problems. It treats everybody as a commercial subdivider.

Trustee Fraley – A lot of the subdivisions are not following that to begin with.

Trustee Shearer – There is a summary in here, I had to bring in a replat when I sold property along the creek. There is a summary approval, and it still took about 90 days to get approved between the Planning commission and the Village Council. We are having all of the utilities sign off on it and we are treating it like a subdivision.

Trustee Fraley – Again, is there a reason to maintain that first sentence?

Trustee Kerns – I'm not sure.

Trustee Shearer – I rewrote this to say, lots in the original town site, shall not be less than 2,500 square feet. We should say the lots in the original town site can not be divided. Although if, somebody has combined lots, that might be a problem. Then lots outside of the original town site would comply, and I'd put in restrictive covenants, and be of sufficient size to meet the size for the environment department.

Trustee Fraley – I like that second statement because, that should be a minimum. We are all going to get in trouble if it doesn't meet the EPA requirements. I don't see anything in that first sentence that is of value to us. I could be wrong.

Trustee Kerns – They are trying to establish how small a lot can be in Capitan. My point is, we have some really nice lots, that do not look congested to me. They have nice homes on them, and they are ¼ acre.

Trustee Fraley – To limit a person's property rights by an arbitrary number seems an over reach in the least. It needs to be limited based upon the environmental requirements. Outside of that, why are we limiting it?

Trustee Shearer – This was all done at the same time with the one lot, no dividing... We used to say you couldn't subdivide at all, you couldn't divide any property. And then only one water taps. So, there was a time when the Village was saying, we have this 40-year water plan. People thought we were going to become the next Rio Rancho, if we experience this huge explosion of growth. This was all designed to keep Capitan from having anymore water taps. The part about having, no guest houses is part of the...

Mayor Lowrance – You can't have another livable space, and you can't run two households off of one. There is a lot to do on this guys.

Angela Autrey – One of the issues that we've had with the Planning Board recently is, a lady came in and she had 2 acres. She wanted to subdivide it with not quite a ½ an acre. They said no, because it wasn't 2 acres.

Trustee Shearer – Where was it?

Angela Autrey – It was in the subdivision over by Deer Trail. And because it had no sewer.

Trustee Kerns – This isn't making sense.

Angela Autrey – So, we don't have sewer over there but she can get a septic.

Trustee Kerns – That's not right.

Trustee Shearer – That language is messed up. Even if we were trying to enforce that, that language doesn't make sense.

Trustee Kerns – We shouldn't be more restrictive other than the ¾ neighborhood.

Angela Autrey – That's the problem we've been running into.

Mayor Lowrance – It's happened 4 times since I've been here, that we've told them that they can't do it. It's labeled this way.

Trustee Kerns – So a ½ acre doesn't apply anywhere, it's all 2 acres.

Mayor Lowrance & Trustee Shearer – Yes

Mayor Lowrance – If they had three acres, they couldn't subdivide.

Trustee Shearer – We don't have anything on sewer that's on a large tract.

Mayor Lowrance – I know and this isn't all of them guys. You can go in there and look at the folder where I've had them work on them and say, what works best for Capitan. You know the water, the sewer, the land. Give me something we can put together. Then we can get everybody to look at it. I don't know.

Trustee Shearer – Let me ask something else, and Randy this is something you have brought up before. Every month we have 6 to 8 applications on our agenda. Most of them are non-controversial. The Planning commission doesn't have any authority to deny, and we don't have any authority to deny. Why don't we allow the Code enforcer to take a look at those and issue the permit?

Angela Autrey – We did do that for anything 200 sq. foot or less.

Mayor Lowrance – 100 sq. feet

Trustee Shearer – I like seeing them. I have to admit, but if somebody goes out and buys a modular home and we make them wait for a month, to month and a half. They are spending money they whole time we are delaying them.

-All agree-

The planning commission couldn't say no if they wanted to, and we couldn't say no if we wanted to because it's allowed by the ordinances. We really put people through a bureaucratic process for no real reason.

Chief Spear – Used to back in the day, we would go out and see where you are going to put it. They could show us and good to go. Back when Dawn and them were on the council would ask, what did you find out? It's this location and it's good to go. They would give the blessings to go ahead and put the mobile home there. The only thing we've run into fights with, since you were talking about covenants are the fences. That's what we've run into.

Trustee Shearer – Yea, fences are civil issues between neighbors. I would like it if we could streamline the process.

Trustee Fraley – When I read over this and there is so much red tape here that is...

Trustee Shearer – When the Village started, it had nothing. No land use stuff. The zoning ordinance, we nearly got drove out of town, it was bad. Most of what is in the land use is what is in the original ordinance. So, at some point when things calmed down, they came along and passed all this stuff quickly. It doesn't quite fit.

Trustee Fraley – I like your statement on making sure if it's the EPA, if it covers us there. That is a changing thing. The state may decide next year, who knows what. If we could make it as simple and clear as possible. I read through 70 pages just to find out if you can have water on your property or not.

Trustee Shearer – By they time you reach the end of it, the answer is no.

Trustee Fraley – I would like it to be as simple and concise as we could possibly make it for everybody's benefit. If I buy property and invest in it, I'd like to be able to read a page or two and know what I can or can't do. I don't know how many pages all of the ordinances are but it's more than what most people read.

Trustee Shearer – If somebody is really determined, when we do find out that someone has come in a bought a piece of property, especially investors. If they are determined to do something, they will find a way around the ordinance and we will end up with like the Mount Capitan trailer park. Another thing I was wanting to say is, we have the comprehensive plan and the 40-year water plan. We need planning work on them. If the planning commission would be able to shift some of their focus over to updating those plans, instead of having to review these applications that are just a summary approval. It would be a better use of their time.

Trustee Fraley – So based on those two sentences, again, is there anything about those that we need? Or anything about the paragraph that we need.

Trustee Kerns – I finally understand why you don't like the first sentence. Let's go the second sentence. Any lot that have access to sewer, should be a minimum of 2 acres. That's why we stopped this person. The developer will provide the infrastructure.

Trustee Fraley – What's the point of that statement? I think we should take that out. I can't see why it needs to do that.

Trustee Kerns – We need to have some limit.

Trustee Fraley – Well yes, the state requirements.

Trustee Kerns – There isn't state requirements.

Trustee Fraley – You just said for sewer. There are state requirements for sewer, isn't there?

Trustee Kerns – It's not a size requirement.

Trustee Fraley - In other words if they have a small lot then they have to bring in an anaerobic system. So, if they have a small lot and bring in an anaerobic system, is there any reason the city needs to manage that?

Trustee Shearer – Could we say shall not be less than the minimum lot size for the subdivision? Not refer to the restrictive covenants. That's an approved subdivision. We could do that, that they can't go lower than the approved lot size for that subdivision.

Trustee Fraley – That makes sense.

Trustee Shearer – We are saying that these subdivisions were originally approved with these size lots, and you can't go smaller than these size lots without a variance.

Trustee Fraley – Yes, and a variance could be granted if there was a good reason for it. That makes sense. We can simplify all of that.

Trustee Kerns – They may have already. Isn't that possible?

Steve Osborn – That leads to some subject ability too. That you are putting more onto planning. There's 5 ten acres, 5 five acres, and 5 two acres. So, what is the average size?

Trustee Shearer – I'm not saying average size, I'm saying the approved minimum size for when that subdivision was approved. That will be in the record.

Trustee Kerns – Somebody is going to have to dig those 30-page restrictive covenants up for each 10 subdivisions we have out there. Figure it out, write it down saying, Mesa Verde is 10 acres. Big Country is 5 acres. It's going to be written out so that it can be referred to quickly.

Chief Spear – If Minerva was buying a chunk of dirt in Mesa Verde, she should know how big that is, without you all having to go through that. Your office staff are going to have to go gather all this stuff and write it all down. She should know how big that property is and should be able to tell you. When you do that, your fixing to cause a lot of problems on your office staff because somebody is going to have to go down there and pull covenants and read every one of them to see what those lot sizes are.

Trustee Shearer – But it's a one-time project.

Chief Spear – I understand that but, look at how many hours you are going to use. Whenever Minerva can tell you how big it is. Then Steve buys some in another subdivision, he should be able to tell you what it is.

Trustee Shearer – If you are buying property, you get a title binder, you'll get a copy of the restrictive covenants but if you own the property and trying to carve off one acre, you might not have those.

Chief Spear – When you bought that property, you will have that covenants, because I did. So instead of causing problems for your office staff, let's get it from them. They will be able to get it from the title bond.

Trustee Fraley – We can put that in. When you come in for your plat or your permit. You need to present a copy of your page on the restrictive covenant.

Trustee Kerns – We agreed at the beginning of the meeting that the restrictive covenants are virtually unenforceful. So, we are going to have to enforce it. At some point we are going to say, go to the restrictive covenants and we are going to make you.

Chief Spear – We can not enforce it.

Trustee Kerns – No, no, no! If we pass an ordinance that says, we are going to follow restrictive covenants, you can not subdivide any smaller than what your restrictive covenants says, then we are encroaching.

Trustee Shearer – I'm not saying, enforce restrictive covenants. I'm saying, in every subdivision that is approved, there is a minimum lot size that is approved along with the subdivision plat. There are all sorts of stuff in the restrictive covenants. The County Commission or the Village approved that plat and there is a minimum lot size. I'm saying we set that minimum lot size for the approved subdivision as the minimum. It may not be the restrictive covenants, but we know that those plats have a minimum size.

Chief Spear – Okay, but Minerva would be able to tell you what that is.

Trustee Kerns – That's not going to keep her from doing it.

Chief Spear – I haven't run into anybody yet that won't tell me that or what size their property is.

Trustee Kerns – If that's the case Randy, then we don't even need to be putting this in our ordinances. You're saying that we don't need to have any lot sizes in the ordinances.

Chief Spear – No, I'm not saying that.

Trustee Shearer – But the question of what the minimum size for your subdivision. That's what you are saying they need to answer.

Chief Spear – The owner should be able to tell you.

Trustee Kerns – Let's say that the owner knows that the neighbors aren't going to be able to enforce, if she wants to carve out a little bit for her grandchildren. She knows that the subdivision people around here can not enforce this, and we stand back and let that happen.

- Trustee Fraley** – I think that we should let it happen. Honestly, if there is enough of a problem then they can do a civil action.
- Trustee Shearer** – I think we are over complicating things. There's a list somewhere of what the minimum lot size are in the subdivisions. I think we have already been down this road before.
- Trustee Kerns** – Somebody spends two weeks getting all the subdivisions, all the restrictive covenants, finding out what the limit is, printing it on the front page and we can enforce that.
- Trustee Fraley** – It's a one-time labor-intensive process. Then it would be done. Then when something new is developed, just keep a record of that. That's easy enough.
- Trustee Shearer** – Probably if you call the county clerks office, and said we need all the restrictive covenants for the subdivisions in Capitán, they would probably just send us the whole set.
- Trustee Fraley** – I don't think it would take two weeks. We could probably just do it in a day. Hopefully.
- Trustee Shearer** – They are not written in modern language. You have to wade through those things.
- Minerva Davalos** – The only problem I see there is if it's a person to person sale. You don't go through a realtor, you buy it as is and, it's hypothetical. Your lines go from here to there and we will pay me or we will carry the paperwork on it, whatever. I've seen some that don't even go through a title search and come up with problems later on, but they didn't know there was a restrictive covenant. That the lot size should be this much.
- Trustee Shearer** – Or they bought it knowing it had title issues but they wanted the lot next door to their house and they didn't care. When they get ready to sell it 20 years down the line, it needs a title. There is a lot of that here.
- Trustee Kerns** – The title insurance will have that here. But we are not going to be able to insure the fact that you've broken a restrictive covenant. This is a complicated issue.
- Public Brian Cleckler** – So, I have 10 acres. The covenants say I can divide into 5, but what's going to stop me from dividing it into 2 acres? If by what everybody is saying, no body is going to enforce it.
- Trustee Shearer** – That's why I'm saying, we need to look at the minimum sizes approved for that subdivision.
- Public Brian Cleckler** – What I'm saying, is who is going to enforce it?
- Trustee Shearer** – The Village would have to.
- Public Brian Cleckler** – He just said you can't enforce it.
- Chief Spear** – I can't enforce it.
- Trustee Shearer** – It's separate from the recorded covenants. When you approve a subdivision and then say, these are the lots in this subdivision, or this is the plat for the subdivision.....
- Chief Spear** – It also says, where I was at, the lots are 125x180 in the covenants. It says what the lots are, but in the covenants, it also said it in there.
- Trustee Shearer** – I'm saying to go off the recorded subdivision plat in all of the covenants. Go off of what the County and the Village approved as the recorded subdivision plat rather than digging into the covenants.
- Trustee Kerns** – People subdivide there lots all the time.
- Mayor Lowrance** – What about saying that, if you want to subdivide your land, you can not go over half of the total acreage, and if you do so, then there are no further subdivisions.
- Trustee Shearer** – If you've got 10 acres, you can do up to five. How does that???
- Mayor Lowrance** – You could do. One and one and one and one.
- Public Brian Cleckler** – I would sew you. Because you would be letting my neighbor....
- Mayor Lowrance** – Any way, we would be walking into that.

Chief Spear – I think, one of the best ways to deal with this, is to find a good land attorney and see their opinion, because you're not going to find a case law on it.

Mayor Lowrance – Guys, This isn't the only one. You want to dive into it, look at all of the work we have done to all of the rest of them that just doesn't fit. Then there's the water, the best thing we can do is get rid of that mandatory. That's it. That's all we can fix on the water situation. If they want extra territorial, we'll give it to them. It'll pass because we are trying to branch out. We can't mandatory the water. If anybody in town doesn't want to pay their water bill, they don't have to. We can turn them off. We can jerk the meter, and they don't have to have water.

Trustee Fraley – We need to get rid of section 215-3 Water connection required. Right?

Mayor Lowrance – But how do you control?

Steve Osborne – I'm just asking, what about anything else? How about having one tap and one house per lot? Do we enforce that?

Mayor Lowrance – If they have two meters for two living quarters, they are going to use the same amount as if they have one meter going to both places. That's my comprehension of it. Why have it in that restriction where they have to dig another trench and put in another pipe. Let's save them some money and say look, if you add on, you can go out the back of your house to that one, but we might have to upgrade you like commercial. You will need a bigger water tap because...

Trustee Shearer – We used to have it where you would pay two minimums. If you had two houses on one meter you pay a double minimum and then you pay the commodity.

Steve Osborne – Can we enforce that all? If we can't enforce them having water, can we enforce them having one, two, three of them?

Trustee Shearer – I'm not sure that we can.

Mayor Lowrance – That's a good question, I've never thought to ask the water lawyer about that.

Steve Osborne – We have places with three or four trailers on it.

Mayor Lowrance – At the same time, they are going to use the same amount of water. But, if they are not paying one bill, they're not going to pay three bills.

Trustee Shearer – We are not enforcing that, but we are not letting people have guest houses or mother-in-law quarters. In this day and age, that is a real restriction. Lot's of people are taking care of aging parents, or adult disabled children.

Public Allison Provine – Like the lady that wanted her brother to be able to live behind her house.

Trustee Shearer – And we said no.

Public Allison Provine – And the Village said no.

Trustee Shearer – We are really restricting the ability for people to live their lives.

Trustee Fraley – It is probably a lawsuit waiting to happen because I don't think we have the authority to do that, especially in an arbitrary basis. What gives us that authority to do that? It's their property.

Trustee Shearer – The reasons we give in the water ordinances, overcrowding and such, does not make since because of what we do to the core.

Steve Osborne – Here's the problem because, Al and I got to talk about that for a long time on that. If you don't restrict it. Then what you have is, how many Capitan mobile home parks. If they have 10 acres, and we don't have any restrictions, then they can put in a Capitan mobile home park on 10 acres.

Trustee Shearer – But we won't allow you to have a guest house.

Steve Osborne – Right.

Trustee Shearer – There has to be a happy medium. There has to be municipalities where you can have one ADU, one guest house, or out buildings that are attached to the water. This is really restrictive.

Again, people who ignore it, get away with it. People who abide to the law are told no. I think we need to revisit that. The other thing that, the no watering between 9:30 & 4:30...

- **Every one laughs** -

Trustee Shearer - In the spring, I'm out there when the wind quits for a little bit. Get out, get some water on the lawn when the wind's not blowing 80 miles an hour. So, that whole thing. It doesn't make sense either.

Steve Osborne - That's one that the State was highly encouraging. I'd shrink it down a little bit. It doesn't make since to be watering in the middle of the day but who's going to enforce it? I'm not going to go out and tell people to turn their water off.

Trustee Shearer - If it's cool in the middle of the day, it's the right time, the winds not blowing, I'm going to get out there and water.

Chief Spear - The school waters the baseball field.

Trustee Shearer - Sometimes, if you are going to keep the grass alive, you have to get out there every day sometimes when it's dry.

Public Allison Provine - Do a little laundry and discharge the gray water and there you go.

Mayor Lowrance - Are we at an impasse time?

Trustee Kerns - Mr. Mayor, I think we are. I would at this point, turn to a lawyer who also does municipalities and I would say, what are they doing over there, that we don't seem to be able to figure out.

Trustee Shearer - I think we've got some policies that we want to figure out and we could go from there.

Trustee Fraley - I just think that the simpler, the least invasive we can be, the better. I don't think we need to limit people's property rights unless there is a really good reason to.

Trustee Kerns - They bought into that knowing that knowing these things. That goes back to Bobbies comments. It sounds funny to be enforcing a restrictive covenant....

Minerva Davalos - The restrictive covenant would supersede your lot size.

Public Brian Cleckler - I think you need something in there that says, like I said, If I subdivide, he's not going to stop me, there has got to be some way to stop me from doing it.

Trustee Shearer - We've already had some kind of litigation in this area. Where, there is lots of stuff in here that didn't get enforced or, I don't know what happened. But we've already had some litigation. And there's no good answer.

Trustee Kerns - Well we sure accomplished a lot.

Trustee Shearer - You know, we've actually got a policy direction.

Trustee Kerns - We are looking at the problem. Just not real sure to go from here.

Mayor Lowrance - These aren't the only one's though guys. If you get a chance, come look at all the markings and scratching out on the book. And if you have a better idea write it in there. It's pretty much all through the ordinances.

Angela Autrey - They are on the main page now. We got them moved. They are on the web site. They are on the front page so that you can get to them easier.

Minerva Davalos - The ordinances?

Mayor Lowrance - With the corrections. Not just the ordinances, but with the corrections.

Angela Autrey - We can get you a log in, where you go in there and make corrections.

Trustee Shearer - Mayor, I asked the other trustees to schedule a special meeting regarding the audits. I'd like to do that as soon as possible.

Mayor Lowrance - Okay.

Trustee Shearer – Can we look at next week or?

Mayor Lowrance – We are going to be gone next week.

Trustee Shearer – How about, Monday?

Trustee Kerns – I'm in Santa Fe on Sunday and back on Monday. Monday evening is a tough night for me.

Mayor Lowrance – Okay

Trustee Shearer – I don't want to put this off very long. I have had a conversation with our auditor and I think.

Trustee Kerns – I want this meeting to happen.

Trustee Shearer – Okay. I'm gone Tuesday, Wednesday, Thursday. We can do it on Friday.

Trustee Fraley – I can't do it on Friday, I will be gone for the Labor Day weekend.

Trustee Shearer – Could anybody do it by zoom, on Monday?

Trustee Kerns – What time of day?

Mayor Lowrance – I can't.

Trustee Kerns – At 6:00?

Trustee Shearer – The auditor said, she would be happy to get on the phone with us.

Public Allison Provine – So 6 p.m. is too late for you? Is that the problem?

Trustee Kerns – I have obligations Monday evening.

Trustee Fraley – Can we do Tuesday the 5th would that be too long?

Public Allison Provine – She'll be out.

Trustee Shearer – No, Tuesday the 29th I'll be out. Tuesday the 5th is the day after Labor Day?

Trustee Kerns – It's the 30th I have an obligation on. So I should be good Monday.

Trustee Shearer – Can we do Monday the 28th at 6 p.m.?

Mayor Lowrance – Do we have enough time to post?

Trustee Shearer – Yes, we have 72 hours.

Angela Autrey – Yes, we can do that.

Trustee Shearer – And this is on Audit Issues.

Trustee Fraley – I make a motion to adjourn.

Mayor Lowrance – Second?

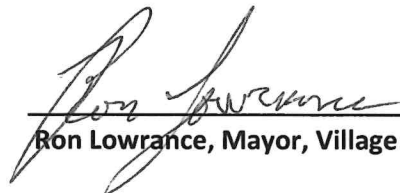
Trustee Shearer – Second.

Mayor Lowrance – All in favor.

ADJOURNMENT:


Trustee Fraley made a motion to adjourn. Trustee Shearer seconded the motion. All in favor, motion passed.

Mayor Lowrance adjourned the meeting at 7:16 PM.



Ron Lowrance, Mayor, Village of Capitán

Attest:



Al Cavazos, Village Clerk