

City of Santa Fe, New Mexico

memo

DATE: July 27, 2015, for the August 6, 2015 Meeting

TO: Summary Committee

VIA: Lisa Martinez, Director, Land Use Department

Greg Smith, AICP, Director, Current Planning Division

FROM: Noah Berke, CFM, Senior Planner, Current Planning Division *NLB*

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

RECOMMENDATION

The Land Use Department recommends **Approval** with the Conditions of Approval as outlined in this report.

BACKGROUND & SUMMARY

The applicant is requesting subdivision plat approval to divide 1.07 acres into 2 residential lots (+/- 0.68 acre and +/- 0.39 acres). The property is zoned R-3 (Residential- 3 dwelling units per acre). The proposal would create two lots: Lot 6A, consisting of +/- 0.68 acres and Lot 6B, consisting of +/- 0.39 acres. Currently, both lots are vacant and are accessible through a gate.

The original lot was created as "Lot 6" of the "Dominguez Subdivision No. 1", which was recorded on August 5, 1966. The Dominguez Subdivision No. 1 consisted of 7 lots along Agua Fria Street. The total acreage of the original 7 lot subdivision was 5.24 acres.

Both lots are directly accessible from Agua Fria Street, which is a 50 foot wide public right-of-way. Both Lots 6A and 6B are street facing lots. Public water and sewer are available from Agua Fria Street. The applicant has indicated that both of

the proposed lots will be accessed through a single 20 foot wide access easement.

The Traffic Engineering Division has examined the case and will require the following:

- The gate for access to the lots be a minimum distance of 20 feet measured from behind the back of curb along Agua Fria Street. The gate shall be depicted on the plat in both the open and closed positions.
- The plat shall demonstrate, prior to recordation, that the access easement will provide sufficient space for a vehicle to access Lot 6B by overlaying a turning template for the design vehicle on the plat.
- Expansion of the proposed access easement may be necessary, as indicated by the turning template, in order for a vehicle to access Lot 6B within the proposed easement. This will be determined by the Traffic Engineering Division prior to recordation of the plat.

The Land Use Subdivision Engineer and the Traffic Engineering Division have both indicated that prior to development of either Lot 6A or Lot 6B, the applicant shall construct a 4 inch thick, 5 foot wide sidewalk that runs the distance along both proposed lots along the Agua Fria Street frontage.

Prior to recordation, the applicant shall install a public 8 inch sanitary sewer main line extension from the existing public sewer manhole in Agua Fria Street to a point terminating in a new sewer manhole located within the existing right-of-way and outside the existing roadway, which will be examined and approved by the City of Santa Fe Wastewater Division. The applicant may provide a financial guarantee prior to recordation until this condition is approved and accepted by the City of Santa Fe.

CONDITIONS OF APPROVAL

Any staff conditions noted in the attached memoranda and not listed in the recommended conditions of approval have already been addressed on the plat.

Following standard practice, redline comments will be provided to the surveyor who shall make any necessary changes and submit the corrected plat in Mylar.

Staff recommends the following conditions of approval:

1. Add the following notes to the plat:
 - a. There shall be only one shared ingress/egress access granted for access to Agua Fria Street from Lots 6A, 6B and/or other lots that may be created through any subsequent division of either Lot 6A or 6B.
 - b. Wastewater Utility Expansion Charges (UEC) shall be paid at the time of construction permit application.

- c. Each individual building on Lots 6A and 6B must have separate water meters.
 - d. The address for Lot B shall be assigned prior to plat recordation.
 - e. New development shall have water supply that meets fire flow requirements as per IFC or install an automatic sprinkler system.
 - f. Fire Department shall have 150 feet distance to any portion of the building on any new construction.
 - g. Prior to any new construction or remodeling all Fire Department requirements must be met or automatic sprinkler systems may be required.
 - h. Sidewalk shall be installed along Agua Fria Street. The sidewalk shall be concrete and 4 inches thick with a minimum of 5 feet in width. Sidewalk must meet ADA requirements.
 - i. A public access easement is required and shall be dedicated to the City of Santa Fe for the required sidewalks.
 - j. Install a public 8 inch sanitary sewer main line extension from the existing public sewer manhole in Agua Fria Street to a point terminating in a new sewer manhole located within the existing right-of-way and outside the existing roadway
2. The gate for access to the lots be a minimum distance of 20 feet measured from behind the back of curb along Agua Fria Street. The gate shall be depicted on the plat in both the open and closed positions.
 3. The plat shall demonstrate, prior to recordation, that the access easement will provide sufficient space for a vehicle to access.
 4. Lot 6B by overlaying a turning template for the design vehicle on the plat. Expansion of the proposed access easement may be necessary, as indicated by the turning template, in order for a vehicle to access Lot 6B within the proposed easement. This will be determined by the Traffic Engineering Division prior to recordation of the plat.

ATTACHMENTS:

EXHIBIT A: City Staff Memoranda

1. Waste Water Division Engineer Memorandum, Stan Holland
2. Water Division Memorandum, Dee Beingessner
3. Traffic Engineering Memorandum, Sandra Kassens
4. City Engineer Memorandum, Risana "RB" Zaxus, PE
5. Fire Department Memorandum, Rey Gonzales
6. City Attorney Memorandum, Zack Shandler

EXHIBIT B: Maps and Photos

1. Zoning and Aerial View
2. Street View of Property Entrance

EXHIBIT C: Applicant Materials

1. Letter of Application

2. Lot Split Plat
3. Correspondence

Exhibit A

City of Santa Fe, New Mexico

memo

DATE: April 7, 2015
TO: Noah Berke, Case Manager
FROM: Stan Holland, Engineer, Wastewater Division
SUBJECT: Case #2015-26 5488 Agua Fria Lot Split

The subject property is accessible to the City sanitary sewer system.

The following are conditions of approval:

1. Prior to recordation of the plat the property owner shall be required to;
 - Install a public eight (8) inch sanitary sewer main line extension from the existing public sewer manhole in Agua Fria Road to a point terminating in a new sewer manhole located within the existing ROW and outside the existing roadway per a design as approved by the City of Santa Fe Wastewater Division.
 - In lieu of installing the sewer line prior to recordation of the plat, the owner shall provide a financial guarantee with the City for the design and installation of a public sanitary sewer line extension as approved by the City of Santa Fe Wastewater Division.
2. Add note to the plat that Wastewater Utility Expansion Charges (UEC) shall be paid at the time of building permit application.

City of Santa Fe
memo

DATE: April 27, 2015
TO: Noah Berke, Case Manager, Land Use Department
FROM: Dee Beingessner, Water Division Engineer 
SUBJECT: Case # 2015-26 5488 Agua Fria Street Lot Split

There are currently no existing water meters to the proposed lots. There is water service available in Agua Fria in front of both lots. Each lot will require separate water service when the properties are developed.

Fire protection requirements are addressed by the Fire Department.

City of Santa Fe, New Mexico

memo

DATE: April 17, 2015
TO: Noah Berke, Land Use Division
VIA: John J. Romero, Traffic Engineering Division Director *J*
FROM: Sandra Kassens, Engineer Assistant *SNK*
SUBJECT: 5488 Agua Fria Street Lot Split. (Case# 2015-26)

ISSUE:

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) and is located at 5488 Agua Fria Street.

RECOMMENDED ACTION:

Review comments are based on submittals received on April 1, 2015. The comments below should be considered as Conditions of Approval to be addressed prior to final sign-off unless otherwise noted:

1. The Applicant shall make the following changes to the plat to be approved of by the Public Works Department prior to final signoff:
 - a. Show the location of the new gate for the shared driveway at a minimum of 20 feet behind the back of curb; and depict the gate(s) in both the open and closed positions;
 - b. Demonstrate that the easement will provide sufficient space for a vehicle to access Lot 6B by overlaying a turning template for the design vehicle (a passenger car) on the plat;
 - c. Expand the proposed access easement if necessary as indicated by the turning template, (part 1b above) in order that a vehicle may access Lot 6B within the proposed easement; and
 - d. Show a 5' wide concrete sidewalk; offset 5' behind the back of curb (to provide the required landscape buffer) along Agua Fria Street for the extents of Lot 6A and Lot 6B where these lots front the Agua Fria Street Right-of-Way, and dedicate additional R-O-W or grant a public sidewalk easement if the sidewalk extends into the Applicant(s) property.
 - e. Add the following note to the plat: "There shall be only one shared ingress/egress access granted for access to Agua Fria Street from Lots 6A, 6B and/or other lots that may be created through any subsequent division of either lot 6A or 6B."
2. The applicant shall construct a 4" thick, 5' wide sidewalk, as described above in part 1.d that shall comply with the current edition of the New Mexico Department of Transportation's Standard Specifications for Highway and Bridge Construction; and shall be inspected by and accepted by the City of Santa Fe Public Works Department prior to final signoff and recordation of the plat.

If you have any questions or need any more information, feel free to contact me at 955-6697.

DATE: April 16, 2015
TO: Noah Berke, Case Manager
FROM: Risana B "RB" Zaxus, PE
City Engineer
RE: 5488 Agua Fria Lot Split
Case # 2015-26

The following review comments are to be considered conditions of approval of this Lot Split:

*Obtain and add addresses for both proposed lots.

*Add a note that: "Prior to development on either of these lots, sidewalk must be constructed along the Agua Fria frontage for BOTH LOTS, in accordance with Article 14-9.2 (E)."

City of Santa Fe, New Mexico

memo

DATE: April 18, 2015

TO: Noah Berke, Case Manager

FROM: Reynaldo Gonzales, Fire Marshal 

SUBJECT: Case #2015-26 5488 Agua Fria Lot Split.

I have conducted a review of the above mentioned case for compliance with the International Fire Code (IFC) Edition. If you have questions or concerns, or need further clarification please call me at 505-955-3316.

Prior to any new construction or remodel the current code adopted by the governing body would need to be met.

City of Santa Fe, New Mexico

memo

TO: NOAH BERKE, LAND USE DEPARTMENT
FROM: ZACK SHANDLER, ASSISTANT CITY ATTORNEY 38
SUBJECT: 5488 AGUA FRIA LOT SPLIT
DATE: 5/6/15

BACKGROUND

Mr. Gerald Sandoval (Zia Surveys), agent for Mr. Jesus Diaz and Mr. Raul Ledezma, has requested a lot split at the address of 5488 Agua Fria (a/k/a Lot 6 of the Dominguez Subdivision No. 1). On May 6, 2015, a citizen provided a copy of a warranty deed from 1976 on this property. On May 7, 2015, the City of Santa Fe Summary Committee is scheduled to hear this matter.

SUMMARY

1. The 1976 warranty deed states that "Lot 6 Block 1 Dominguez Subdivision No. 1" can have only one dwelling house.
2. The City faces legal exposure if approves a lot split after it has obtained a copy of a particular warranty deed with information limiting a property to one dwelling house.
3. The City has been previously sued in an identical situation (when it did go ahead and approve a lot split).
4. Warranty deed restrictions run with the land.
5. Warranty deed restrictions are different than private party covenants (and generally can be harder to remove from the chain of title).

CONCLUSION

The Summary Committee should not vote to approve this lot split until additional information is obtained explaining the status of the 1976 warranty deed restriction.

City of Santa Fe, New Mexico

memo

DATE: May 26, 2015, for the June 4, 2015 Meeting

TO: Summary Committee

VIA: Lisa Martinez, Director, Land Use Department
Greg Smith, Division Director, Current Planning Division

FROM: Noah Berke, CFM, Senior Planner, Current Planning Division *NLB*

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

The City Attorney has received correspondence from the Applicant's Attorney and is reviewing the Memorandum received on May, 25, 2015. The City Attorney has advised staff to postpone this case to the July 2, 2015 meeting, in order to address legal issues with the property.

Exhibit B

CORTE CT

MU

3601
CORTE CT

3608
CORTE CT

AGUA FRIA RD

AGUA FRIA

DOMINGUEZ LN

5432 AGUA
FRIA ST

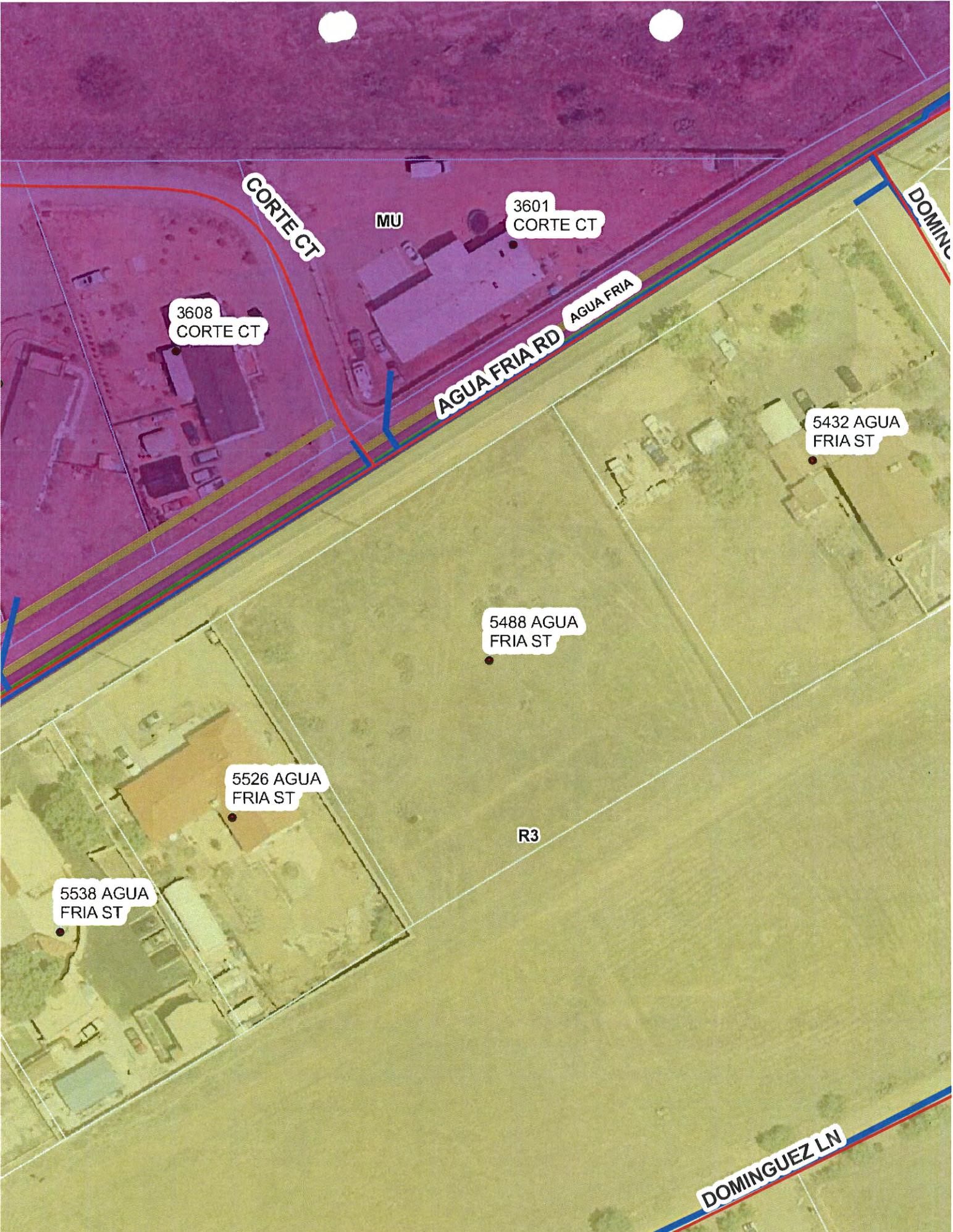
5488 AGUA
FRIA ST

5526 AGUA
FRIA ST

R3

5538 AGUA
FRIA ST

DOMINGUEZ LN



CORTE CT

3608
CORTE CT

3601
CORTE CT

AGUA FRIA RD

5432 AGUA
FRIA ST

5488 AGUA
FRIA ST

5526 AGUA
FRIA ST

5538 AGUA
FRIA ST

DOMINGUEZ LN

DOMINGUEZ LN



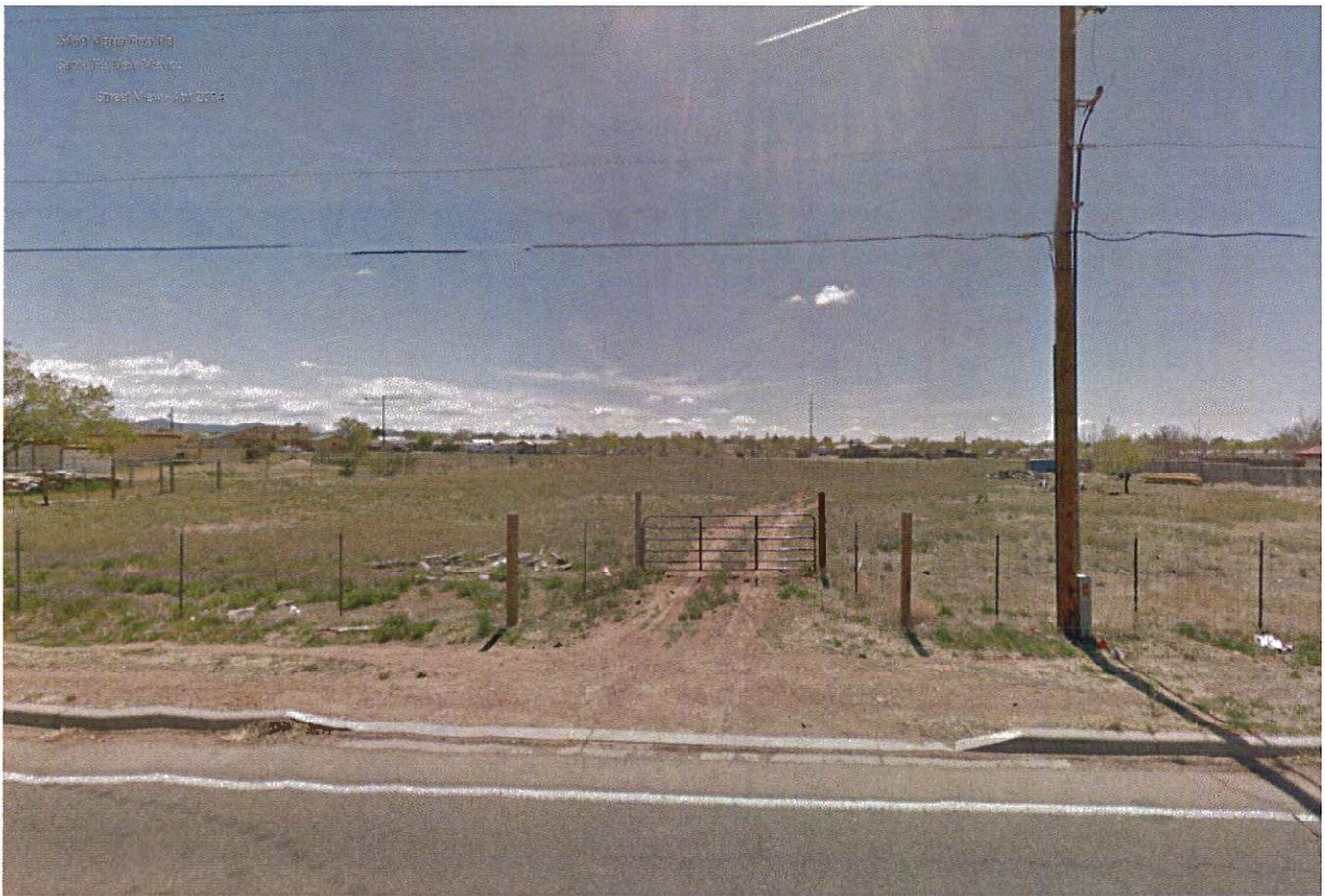


Exhibit C

Gerald A. Sandoval, P.S.

122C Jimenez St. Santa Fe, New Mexico 87501 phone & fax 505-989-7401 cell 470-4654

**To: City of Santa Fe
Summary Review Committee**

**Fr: Gerald A. Sandoval, P.S.
Surveyor and Agent for Jesus Diaz, and Raul Ledezma**

**Re: Intent to divide a parcel of land (Lot Split) located at 5488 Agua Fria Road, Santa Fe,
New Mexico**

Dear Committee,

The parties/applicants indicated above are seeking to divide a parcel of land (Lot Split) located at 5488 Agua Fria Road. The parcel, as it exists today is 1.017 acres in size. The parties are seeking to create 2 Lots.

Lot 1 will be 0.679 acres in size; Lot 2 will be 0.338 acres in size. Both Lots will share one access directly into Agua Fria Road.

The parties/applicants are willing to comply with all pertinent City of Santa Fe Zoning Ordinances, and conditions of approval.

Your positive consideration of this request will be most appreciated.

Thank you.

LIDIA GARZA MORALES, ESQ.**moraleslawofc@gmail.com**

Mailing Address: 3212 Calle de Molina
Santa Fe, NM 87507-9261
Conferencing: 3600 Rodeo Lane, B-3
Santa Fe, NM 87507

Tel 505-780-5755
Fax 505-930-5172

May 22, 2015

Jesus Diaz
5255 Ilea Way
Santa Fe, NM 87507

Re: 5488 Agua Fria Lot Split
Jesus Diaz and Raul Ledezma, Applicants
Warranty Deed, Tom & Dolores Dominguez granting to Leo F. & Elizabeth Pacheco,
appearing to have been filed of record 5-18-1976; subsequent conveyance from Leo F. &
Elizabeth Pacheco to Ricardo F. Pacheco and Tonie O. Pacheco, deed recorded 5-23-1979.
Ricardo F. Pacheco and Tonie O. Pacheco conveying to Applicants herein

Dear Mr. Diaz:

I have reviewed documentation pertaining to your and Mr. Raul Ledezma's request for a lot split to divide your property of approximately 1.07 acres into two residential lots (+/- 0.68 acre and +/- 0.39 acres) in an R-3 City of Santa Fe zoning which allows 3 dwelling units per acre according to the April 27, 2015 Memo from Current Planning Division Senior Planner Mr. Noah Berke to the Summary Committee of the City of Santa Fe.

From this zoning, it appears that the split lots could support at least one dwelling unit each.

However, an issue has been raised as a result of language in the 1976 warranty deed conveying the subject property referenced above. See attached copy of deed, Exhibit 1.

Issues:

1. What is the meaning and significance of the language in the subject 1976 deed?
2. Is the language ambiguous and leading to different interpretations?
3. Are the restrictions limited in scope, as well as in time or perpetual in nature?
4. If the restrictions are presently valid, who has standing to enforce the restrictions as among predecessors in interest?
5. Does the 1976 deed prohibit the proposed Diaz/Ledezma lot split as is?

Discussion:

1. The restrictive language is ambiguous regarding the duration of the reserved rights and prohibitions.

EXTINGUISHMENT AGREEMENT

The Parties to this Extinguishment Agreement (hereafter, Agreement) are Sellers Ricardo F. Pacheco and his wife Tonie O. Pacheco, and Buyers Jesus Diaz and Raul G. Ledezma (hereafter, Parties) of that property with address 5488 Agua Fria, located in the City of Santa Fe, County of Santa Fe, State of New Mexico, and more particularly described as:

Lot Six (6) , Block One (1), Dominguez Subdivision No. 1 within the SE ¼ of the SW ¼ of Section 1, Township 16 North, Range 8 East, Santa Fe, New Mexico, which plat was filed in the Office of the County Clerk, Santa Fe County, New Mexico on August d5, 1966 in Plat Book 14, page 57, as Document No. 294,614.

Subject to: Reservations, Restrictions, Easements of record, and Taxes for the year 1979 and subsequent years.

The Parties acknowledge that the 1976 conveyance of the above-described property (hereafter, the Property) by Tom Dominguez and Dolores C. Dominguez, his wife, to Leo F. Pacheco and Elizabeth Pacheco contain the following language:

This Deed is made and accepted upon and subject to existing reservations and easements and the following restrictions:

- 1. No building shall be erected upon said premises other than a dwelling house and such garages and out-buildings as may be necessary in connection therewith, and said dwelling will not contain less than 1200 square feet in floor area.*
- 2. Said premises shall not be used for camping ground, factory or any trade or business purpose, but is restricted to residential purposes only.*
- 3. No stables or corrals are to be erected or horses housed or grazed on said property.*

The Parties agree that it is in the best interests of the Parties to release Buyers and all subsequent owners of the Property from the aforementioned 1976 Dominguez restrictions enumerated 1-3 hereinabove, therefore to extinguish them, and to allow for the highest and best use of the subject Property to be determined by each owner of the Property in conjunction with all applicable government zoning and other relevant laws in effect during their ownership of the Property.

The Parties further agree that the Property remains subject to other reservations, easements of record and taxes and only the restrictions enumerated 1-3 shall be extinguished by this Agreement.

This Agreement has been entered into by the Parties knowingly, willingly and intentionally, and so signify by their notarized signatures below.

This Extinguishment Agreement shall become effective immediately upon the execution of this Agreement by the Parties and shall be filed of record with the County of Santa Fe, State of New Mexico.

NEW MEXICO WARRANTY DEED (JOINT TENANTS) - Form 708 - New Mexico Statutes 1963

WARRANTY DEED (Joint Tenants)

357959

TOM DOMINGUEZ and DOLORES C. DOMINGUEZ, his wife

for consideration paid, grant

to LEO F. FAGUECO

whose address is

and ELIZABETH FAGUECO

whose address is

we joint tenants the following described real estate in Santa Fe County, New Mexico:

Lot 6 Block 1 Dominguez Subdivision No. 1 within the SE/4 SW/4 Section 1, T16N, R8E, Santa Fe County, New Mexico as shown upon plat of survey dated April 15, 1966 and recorded in Book 24 of Plats, page 57, records of Santa Fe County, New Mexico.

Together with perpetual water rights for domestic use only of Dominguez Subdivision Community water well for one residential dwelling.

This Deed is made and accepted upon and subject to existing reservations and assessments and the following restrictions:

1. No building shall be erected upon said premises other than a dwelling house and such garages and out-buildings as may be necessary in connection therewith, and said dwelling will not contain less than 1200 square feet in floor area.
2. Said premises shall not be used for camping ground, factory or any trade or business purpose, but is restricted to residential purposes only.
3. No stables or corrals are to be erected or horses housed or grazed on said property.

414,304
 STATE OF NEW MEXICO
 COUNTY OF SANTA FE
 I, the undersigned, Clerk of the County of Santa Fe, do hereby certify that the foregoing is a true and correct copy of the original as the same appears in the records of said County.

1978 3 27
 335
 Kowlogoff



with warranty covenants.

WITNESS OUR hand and seal this 27 day of February, 1976

(Seal) Tom Dominguez (Seal)

(Seal) Dolores C. Dominguez (Seal)

ACKNOWLEDGMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO

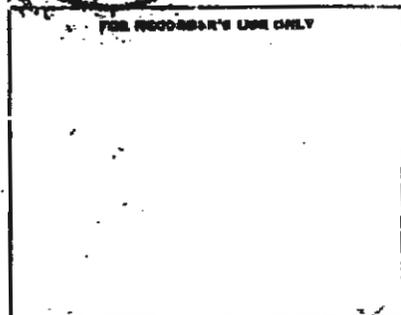
COUNTY OF SANTA FE

The foregoing instrument was acknowledged before me this 27 day of February, 1976.

by Tom Dominguez and Dolores C. Dominguez, his wife.

(Name or Names of Person or Persons Acknowledging)

Notary Public 5-15-76



ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO

COUNTY OF

The foregoing instrument was acknowledged before me this

day of 19

by (Name of Officer)

(Title of Officer) of (Name of Corporation Acknowledging)

a (State of Incorporation) corporation, on behalf of said corporation.

My commission expires: Henry Patis

EXHIBIT

1

Letter to Jesus Diaz
May 22, 2015. Page 5.

The 1976 deed should not be interpreted to flatly deny the lot split before adequate and fair and reasonable thought is used to analyze the situation.

Please feel free to call or write if you have any questions regarding this matter.

Sincerely,



Lidia Garza Morales

Cc: Noah Berke, CFM, Senior Planner
Current Planning Division
Zack Shandler, Assistant City Attorney
City of Santa Fe
Gerald A. Sandoval, Zia Surveys
Agent for Jesus Diaz and Raul Ledezma

Letter to Jesus Diaz
May 22, 2015. Page 4.

Amethyst by the predecessor owner, leading to Amethyst claiming it was invalid. After a lengthy analysis, the Court determined that the extinguishment agreement was properly recorded and was included in the subsequent conveyance to Amethyst. The Court noted that the extinguishment agreement language was sufficient in its expression that stated:

“the parties hereby extinguish [the] easement ... [burdening] the Terhune Plat,” and the agreement “shall run with the land.” [326 P.3d 15]

It follows that the only party who has legal standing to complain of a violation of a restrictive covenant is the immediately preceding grantor.

6. There are rules of construction that work against the grantor:

There are rules available by which provisions in deeds are to be construed against the grantor to balance against general statutory principles. See *Hyder v. Brenton*, 93 N.M. 378, 381, 600 P.2d 830, 833 (Ct.App.1979) (“Provisions in a deed are to be construed against the grantor and in favor of the grantee [.]”). [*Marrujo*, 191 P.3d 591]

“Forever” to indicate perpetuity

The phrase “heirs and assigns, forever” provides insight into the intent of the parties. The term “forever” indicates an indefinite period of time, and that word is missing from the deed in the present.....[191 P.3d 591]

CONCLUSION:

The restrictions in the 1976 Dominguez to Pacheco deed are the provisions of a contract between the 1976 parties only because of the contractual nature of the language.

In the alternative, if the 1976 deed is construed as including restrictions or covenants that run with the land, even without the language that would clearly indicate perpetuity, only the immediate predecessor in interest has the legal standing to claim a violation, or to agree with its grantee to extinguish the restrictions.

It would be proper and helpful if the City of Santa Fe would either provide its rebuttal to this discussion and conclusions (with citations of New Mexico statutes or caselaw and provide the case caption and case number of a case it has only referred to in general terms of a previous lawsuit against the City with identical or similar deed restrictions) if it intends to deny a lot split of the subject property because of the 1976 deed, or, it could accept the interpretation of the 1976 deed as a contract between the 1976 parties; or it could obtain a response from the immediate predecessors in interest, Ricardo F. Pacheco and Tonie O. Pacheco as to their views on the matter, including whether they might stipulate to an extinguishment agreement.

Letter to Jesus Diaz
May 22, 2015. Page 3.

The Marrujo deed provided that Marrujos as grantors, including their heirs and assigns, reserved all timber 18 inches in circumference and 18 inches above the ground, along with rights to ingress and egress for the purpose of harvesting and removing said timber.

Sanderson argued that the language in the deed did not plainly and clearly reserve timber rights in perpetuity, even with the reference to "heirs and assigns," which had occasionally been regarded to suggest a lengthy or perpetual right. Citing, *e.g.*, *R.M. Cobban Realty Co. v. Donlan*, 51 Mont. 58, 149 P. 484, 486-87 (1915) [other citations omitted].

The Court concluded that since the language in the reservation did not provide a clear expression of intent, the document was ambiguous. [Citing *Young v. Thomas*, 93 N.M. 677, 679, 604 P.2d 370, 372 (1979) ("The mere fact that we have to speculate demonstrates the ambiguity of the agreement."). [191 P.3d 590]

The Court then concluded that it was unreasonable to consider the reservations in the Marrujo deed to be unreasonable as one to be considered in perpetuity.

Although ambiguity of terms has a different connotation in the context of a reservation of timber rights, it still follows that a similar analysis can be applied to reservations and restrictions of a different subject matter.

5. What are the conclusions to be made if the restrictive language is judged to be a restrictive covenant?

See *Heltman v Catanach*, 2010-NMCA-016 (Ct App 2009), 229 P.3d 1239, a case in which restrictive covenants were disputed by the parties as to their enforceability. The Court stated:

Restrictive covenants "are to be read reasonably but strictly and, to the extent language is unclear or ambiguous, the issue of enforcement of a restriction will be resolved in favor of the free enjoyment of the property and against limitations." *Mason Family Trust v. DeVaney*, 2009-NMCA-048, ¶ 9, 146 N.M. 199, 207 P.3d 1176. [229 P.3d 1242]

Even if the restrictions are determined not to be an agreement between the 1976 parties, and are instead covenants, the obligation of the burdened party can be extinguished by the person entitled to enforce the covenant. Those persons in this case are the predecessors to Jesus Diaz and Raul Ledesma, grantors Ricardo and Tonie Pacheco

Generally, the "obligation of the burdened party under a covenant can be extinguished by action by the person entitled to enforce the covenant."

In *Amethyst Land Co. v Terhune*, (NM 2014), 326 P.3d 12, the issue involved a conveyance of 22 acres to Amethyst and an easement through an adjoining parcel of Terhune's land. Terhunes had recorded their extinguishment agreement 5 days after the conveyance to

Letter to Jesus Diaz
May 22, 2015. Page 2.

There is no language in the restrictive provisions that states the duration of the restrictions, does not state that they run with the land or state that the restrictions run in perpetuity or "forever," thus not clearly stating the intentions of the 1976 parties.

2. The restrictive provisions can be interpreted to be a contract between the grantors Dominguez and grantees Pacheco and therefore limited in scope and time.

The 1976 deed states:

This Deed is made and accepted upon and subject to existing reservations and easements and the following restrictions:

1. *No building shall be erected upon said premises other than a dwelling house and such garages and out-buildings as may be necessary in connection therewith, and said dwelling will not contain less than 1200 square feet in floor area.*
2. *Said premises shall not be used for camping ground, factory or any trade or business purpose, but is restricted to residential purposes only.*
3. *No stables or corrals are to be erected or horses housed or grazed on said property.*

Because the introductory words are:

"This Deed is made and *accepted*...."

These introductory words are terms of contracting (e.g., offer, accept) and indicate that the restrictions are actually an agreement by the parties and a contract for performance by grantees Pacheco. Therefore, the restrictions do not run with the land and can only apply to the person(s) who accepted the restrictions.

3. The restrictive language in the 1976 deed could possibly be regarded as ambiguous as to its scope and limitations.

First, it must be determined whether the subject deed restrictive language in fact meets legal criteria for being a restriction that runs with the land. In fact, the language is somewhat ambiguous. Is it a contract? If it is a covenant that runs with the land, are there any legal limitations in time or scope?

Answers to these questions are dependent on caselaw.

4. Some restrictions and reservations of rights in deeds have been limited by New Mexico Courts.

In *Marrujo v Sanderson*, 2008 NMCA 112 (Ct App 2008), 191 P.3d 588, the Court found that the Marrujo's reservation of timber rights to land they conveyed years prior to a subsequent conveyance to Sanderson should be limited even if the language in their deed did not provide for such limitation.