

City of Santa Fe, New Mexico

200 Lincoln Avenue, P.O. Box 909, Santa Fe, N.M. 87504-0909

www.santafenm.gov

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Renee Villarreal, Dist. 1

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Christopher M. Rivera, Dist. 3

Ronald S. Trujillo, Dist. 4

Mike Harris, Dist. 4

Memorandum

To: Members of the Board of Adjustment

From: Zachary Shandler *ZS*
Assistant City Attorney

Re: Appeal by Mr. Rudy A. Rodriguez from the April 5, 2016 Decision of the Land Use Department to Issue Building Permit #16-716 to Ms. Christine Wiltshire at 612 Gomez Street.
Land Use Case No. 2013-116

Date: June 29, 2016 for the July 5, 2016 Meeting of the Board of Adjustment

The Appeal

On April 13, 2016, Mr. Rudy Rodriguez (Appellant) filed a Verified Appeal Petition (Petition) appealing the April 5, 2016 issuance by the Land Use Department (LUD) of Building Permit No. 16-716 to Ms. Christine Wiltshire ("Respondent") for the construction of a fence on property owned by the Gomez Road Condominium Association ("Condo Association") at 612 Gomez Road. (Property). (Petition attached as **Exhibit A**; BP No. 16-716 attached as **Exhibit B**).

The Property

612 Gomez Road is zoned R-21 (Residential, 21 dwelling units per acre) and is part of the six-unit Gomez Road Condominiums. It is accessed off Gomez Road. Mr. Rodriguez owns the property to the northwest of the condominiums. Mr. Rodriguez's property is zoned R-21 and has existing residential structures and is addressed as 1433 Paseo de Peralta. One access point is off Paseo del Peralta. The other access point is a purported easement off Gomez Road and across the condominium property.

History of the Case

In winter/spring 2016, Mr. Rodriguez and a construction company began to rehabilitate the structures on his property. He drove on Gomez Road and across the condominium property and parked cars along the property line. On or about March 31, 2016, Ms. Wiltshire, resident in one of the condominiums, and on behalf of the Condominium Association, applied for a building permit to build a fence on the northwest side of the condominium property. The permit was for an approximately sixty foot long, six foot high wood fence that would block access to Mr. Rodriguez's property. Ms. Wiltshire submitted documents to the Land Use staff evidencing site control. On April 11, 2016, the City issued the building permit. The fence was built and completed. On April 13, 2016, Mr. Rodriguez filed the Petition. Since it was an appeal of a building permit, the Board of Adjustment has jurisdiction over the matter. The City Attorney's Office attempted to resolve/facilitate this issue short of Board hearing and the parties submitted numerous documents in support of their positions. However, in mid-May 2016, the City

Attorney's Office determined that the easement matter revolved around legal and factual testimony that was best served to be resolved by a Board of Adjustment hearing. Due to City Code notice requirements, the earliest available Board meeting date was July 5, 2016.

Documents Submitted

In 1940, Mr. Robert Benavides, surveyor, provided a plat of survey for Charles Nieman ("Benavides survey"). It was for 608 Gomez Road (north of 612 Gomez Road). It was not filed with the County Clerk. It described the driveway for 612 Gomez Road as the "Entrance from Gomez Road." (Attached as **Exhibit C**).

In 1970, Mr. George Rivera, surveyor, provided a plat of survey for Secundino Roybal ("Rivera survey") for 612 Gomez Road. It described the driveway for 612 Gomez Road as "Entrance from Gomez Road." The survey was not filed until January 1979.¹ (Attached as **Exhibit D**).²

Or on about 1979, Frank/Lena Rodriguez (no relation to Rudy Rodriguez) filed a quiet title against their neighbors and won. The Judge adopted a deed description that referenced the boundaries of the Rivera survey. The deed description refers to an ingress and egress easement. (Attached as **Exhibit E**).³

In February 1984, Mr. Mitchel Noonan, surveyor, provided a plat of survey for Mr. Steve Jackson ("Noonan survey.") It described the driveway for 612 Gomez Road as "Ingress and Egress Easement (From Gomez St. to Rodriguez Parcel)." (Attached as **Exhibit F**).

In February 1984, the Page family sold 612 Gomez Road to Mr. William Sargent and Mr. Steve Jackson. The deed ("Condo deed") did not expressly refer to any easement across the property. It was filed with the County Clerk in Book 484, Page 031. The Condo Deed did make reference to the Noonan survey. (Attached as **Exhibit G**).

In October 1984, Mr. Gary Dawson, surveyor, provided a plat of survey for the Gomez Road Condominium ("Dawson survey"). It was filed with the County Clerk in Book 146, Page 17. It described the driveway for 612 Gomez Road as a "common element utility and access easement." The description's citation is to the Condo Deed at Book 484, Page 031. (Attached as **Exhibit H**).

In October 1984, the Gomez Condominium Declarations were filed with the County Clerk. It was filed in Book 503, Page 241. The Declarations provided "Section 5.3 Other Easements. Other easements affecting the property are shown on the Plat, Exhibit B." The Exhibit B was the Dawson survey. (Attached as **Exhibit I**).

In 2004, Ms. Melanie Stillion purchased Condo Unit #1. The title insurance policy stated: "Covenants, conditions, restrictions...contained in Declaration for Gomez Road Condominium, recorded in Book 503, Page 241..." This reference was to Gomez Condominium Declarations. The title insurance policy further stated: "Easement, and rights incident thereto, notes and conditions ... Recorded in Plat Book 146, Page 017, records of Santa Fe County, New Mexico." This reference was to the Dawson survey. (Attached as **Exhibit J**).

In 2006, Ms. Christine Wiltshire purchased Condo Unit #5. The Warranty Deed ("Wiltshire Deed") says "created by the Condominium Declaration for Gomez Road Condominiums, recorded in Book 503, page 241..." This reference was to the Gomez Condominium Declarations. The deed further reads: "as

¹ It is our understanding that Mr. Roybal sold the land to Mr. Chambers who sold the land to the Page family who sold it to Mr. Sargent and Mr. Jackson.

² In 1984, Mr. Rivera made a change to the survey—his note is that it was to draw in an acequia, but he also apparently labeled the 1433 Paseo de Peralta property with Tract A, Tract B and Tract C. (Attached as **Exhibit D1**).

³ Mr. Rodriguez did not provide all seven pages to the City Attorney's Office.

shown on plat filed in Plat Book 146, page 017, recorded in the office of the County Clerk, Santa Fe County, New Mexico.” This reference was to the Dawson survey. (Attached as **Exhibit K**).

In October 2015, Mr. Paul Armijo, surveyor, provided a boundary survey for Rudy Rodriguez (“Armijo survey”). (Attached as **Exhibit L**).

On June 24, 2106, Ms. Wiltshire submitted a series of witness declarations and four photographs. (Attached as **Exhibit M**).

A City GIS map showing the property locations. (Attached as **Exhibit N**).

Mr. Rodriguez’s affidavit of mailing of notice to Ms. Wiltshire (Attached as **Exhibit O**).

Basis of Appeal

Mr. Rodriguez has claimed that the 2016 fence blocks his easement across the condominium’s property (“servient property”) to his property (“dominant property”). Ms. Wiltshire has claimed the easement never existed or has been abandoned.

Discussion

Code §14-3.17(A)(2) provides that an appeal can only be filed if:

- (1) the final action appealed from does not comply with Code Chapter 14 or §§3-21-1 through 3-21-14 NMSA⁴ (the Statute);
- (2) Code Chapter 14 has not been applied properly; or
- (3) the decision appealed from is not supported by substantial evidence.

Pursuant to Code §14-3.17(D)(6)(a) the City Attorney’s Office (CAO) has reviewed the Petition and for the reasons set forth below concludes that the Board of Adjustment must act like a trial court and act as the fact-finder because it is an easement dispute. The Court of Appeals has stated: “The issues of whether the underlying purpose of an easement has ceased to exist and whether an easement has been abandoned are questions of fact.” Sitterly v. Matthews, 129 N.M. 134, 138 (Ct. App. 2000). (Attached as **Exhibit P**). “We review factual questions for substantial evidence.” Id. The definition of “[s]ubstantial evidence is relevant evidence that a reasonable mind would find adequate to support a conclusion.” Id.

General Claims.

Issue #1—Easement vs. Easement Ceased.

- Mr. Rodriguez may present facts to show the easement is in effect because it was expressly created by a Court Order.

Or on about 1979, Mr. Frank/Lena Rodriguez (no relation to Rudy Rodriguez) filed a quiet title against his neighbors, including the Page family (owners of 612 Gomez Road), and won. The documents do not explain why the lawsuit was filed or why the Page family did not fight it. The District Court Judge adopted a deed with a description that referenced the boundaries of the 1970 Rivera survey. More importantly, the deed description added: “Together with an easement for ingress and egress from the

⁴ Section 3-21-8 B. NMSA 1978 provides in pertinent part: “Any aggrieved person...affected by a decision of an administrative...commission or committee in the enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or ordinance, resolution, rule or regulation adopted pursuant to these sections may appeal to the zoning authority. ...”

hereinabove-described tract to Gomez Road over and across a twelve and one-half foot wide right of way situated on the real estate of the defendants, C.M Page and Mary L. Page.”

- Ms. Wiltshire may present facts to show the easement (if it was ever in effect) is not in effect now because its purpose has ceased.

The Court of Appeals has written: “An easement created to serve a particular purpose terminates when the underlying purpose for the easement ceases to exist.” Sitterly v. Matthews, 129 N.M. 134, 139 (Ct. App. 2000). “If the trial court determines that the purpose no longer exists, then it may terminate the easement.” Id. In the case of Sitterly v. Matthews, there was a dispute about an easement between a northern lot (Matthews family) and a southern lot (Sitterly/Seten family). According to the facts, the only place to park a car on the Matthews lot was in their backyard on the western side of their property. The only way to access the western side of the Matthews property for several decades was to cut through an “easement” up the Sitterly/Seten property and up the western side. Yet, in the early 1990s, the Matthews purchased a lot to its west, which had a driveway to a city street and thus the Matthews obtained a new way to access their backyard. This meant they did not have to cross the Sitterly/Seten property. About that time, and it is unclear which family did it, but someone put up a fence blocking off the “easement” between the properties. After several deaths in the family, in 1997, Sitterly/Seten filed a lawsuit to resolve certain estate issues and asked to formally invalidate the easement. It is unclear why, but the Matthews objected. The trial court invalidated the easement. “[T]he trial court then determined that the easement’s purpose [ingress and egress] ceased to exist” when the new entry point to the backyard was established. Id. at 140. The Matthews appealed to the Court of Appeals. The Court of Appeals ruled: “we nevertheless uphold the trial court’s decision on the ground that the easement, as an easement by necessity, became a nullity when the [northern lot]... obtained another means of ingress and egress.” Id.

It is likely that Ms. Wiltshire may present facts that the easement is not in effect because there was a “cessation of purpose.” She may likely argue: (a) there is access to the property from Paseo de Peralta and (b) the need/necessity for access from Gomez Road was never needed.

Issue #2—Easement vs. Easement Abandoned.

- Mr. Rodriguez may present facts to show there is a lack of evidence to show Frank/Lena Rodriguez intended to abandon the easement.

The Court of Appeals stated: “In order to abandon such an easement, the owner must evince a clear and unequivocal intention to do so.” Sitterly v. Matthews, 129 N.M. 134, 140 (Ct. App. 2000). A clear and unequivocal intention is a high standard of proof. It is likely that Mr. Rodriguez will present facts that the easement is still in effect because when he purchased the property from Frank/Lena Rodriguez there was no discussion of any abandonment of the easement. In addition, he will likely argue that any stories from witnesses about Ms. Rodriguez’s non-use of the easement are hearsay (and while admissible in an administrative hearing) they should be given minimum weight as evidence and should not be considered as “clear and unequivocal” evidence.

- Ms. Wiltshire may present facts to show the easement is not in effect because it was abandoned.

The Court of Appeals in the Sitterly case wrote: “The owner of the dominant property may abandon the right to an easement.” Id. “In order to abandon such an easement, the owner must evince a clear and unequivocal intention to do so.” Id. “The owner’s ‘intention may be evidenced by acts as well as words[,] but where an act is relied on as the proof, it must unequivocally indicate such intention.” Id. In the case, the trial court found that the Matthews did show an intention to abandon their right to the easement. For example, they purchased the western property to gain a new access point. They also did not object when the fence went up. They also did not object to their non-use of the easement for multiple

years leading up to the lawsuit. The Court of Appeals agreed: “[W]e hold that the trial court could reasonably conclude that [Matthews]... clearly and unequivocally abandoned the easement.” Id. at 141.

It is likely that Ms. Wiltshire may present testimony that the easement is not in effect because Frank/Lena Rodriguez never used the easement (or at least since the condominiums were created in 1984).

Issue #3—Reliance on Title Insurance/Deed documents

- Mr. Rodriguez may present facts to show any purchaser of a condominium unit could have reasonably been aware of the easement.

There is a link between the title insurance/deed documents and the Noonan survey. For instance, a purchaser’s deed and title insurance expressly refer to the Dawson survey. The Dawson survey has the description of the driveway for 612 Gomez Road as a “common element utility and access easement.” The Dawson survey cites to Book 484, Page 031. This is the 1984 Condo Deed. The 1984 Condo Deed refers to Noonan survey. The Noonan survey described the driveway for 612 Gomez Road as “Ingress and Egress Easement (From Gomez St. to Rodriguez Parcel).”

- Ms. Wiltshire may present facts to show a purchaser of a condominium unit could not reasonably been aware of the easement.

A purchaser’s deed and title insurance expressly referred to Gomez Condominium Declarations and Dawson survey. These documents do not expressly use the word “easement” to benefit the Rodriguez property. After reviewing these documents, a purchaser may have no reason to believe there were easements benefitting the Rodriguez property across the condominium property.

Motions

Option #1—I move to dismiss the appeal on grounds there is substantial evidence to affirm the Land Use Department’s issuance of the building permit to build the fence.

Option #2—I move to grant the appeal on grounds there is substantial evidence to overturn the Land Use Department’s issuance of the building permit to build the fence and therefore the fence must be removed.



LUD Use Only
 Time Filed: 11:50 AM
 Fee paid: \$100.00
 Receipt attached:

(date stamp)
RECEIVED
 APR 13 2016
 Land Use Dept.

Case # 2016-45
VERIFIED APPEAL
PETITION

****Two originals of this form must be filed. The Land Use Department Director or his/her designee will enter the date and time of receipt and initial both originals. See Section 14-3.17(D) SFCC 2001 for the procedure.****

Appellant Information

Name: Rodriguez Rody A
Last First M.I.
 Address: 1433 Paseo de Pesalta
Street Address Suite/Unit #
Santa Fe, NM 87502
City State ZIP Code
 Phone: (505) 577-1626 E-mail Address: rodyrod951@gmail.com
 Additional Appellant Names: _____

Correspondence Directed to: Appellant Agent Both

Agent Authorization (if applicable)

I/We: _____
 authorize _____ to act as my/our agent to execute this application.
 Signed: _____ Date: _____
 Signed: _____ Date: _____

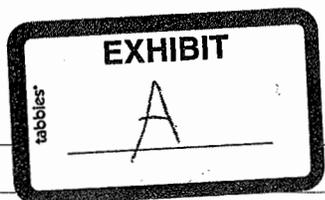
Subject of Appeal

Project Name: _____
 Applicant or Owner Name: Christine Wiltshire
 Location of Subject Site: 612 Gomez St #5
 Case Number: _____ Permit Number (if applicable): 16716

Final Action Appealed:
 Issuance of Building Permit Other Final Determination of LUD Director
 Final Action of Board or Commission (specify): Planning Commission Board of Adjustment BCD-DRC HDRB

Basis of Standing (see Section 14-3.17(B) SFCC 2001):
 Basis for Appeal: The facts were incorrectly determined Ordinances/laws were violated and/or misrepresented
 Description of the final action appealed from, and date on which final action was taken:

Check here if you have attached a copy of the final action that is being appealed.



Description of Harm

Describe the harm that would result to you from the action appealed from (attach additional pages if necessary):

Fence being constructed blocks entrance to my property on 1433 Paseo de Peralta

Explain the Basis for Appeal

Please detail the basis for Appeal here (be specific):

There is easement from Gomez St. to my property on 1433 Paseo de Peralta. The permit that was issued to Christine Wiltshire for 612 Gomez St # 5 (permit # 16716) clearly does not reflect this

Signature and Verification

I hereby certify that the documents submitted for review and consideration by the City of Santa Fe have been prepared to meet the minimum standards outlined in the Land Development Code, Chapter 14 SFCC 2001. Failure to meet these standards may result in the rejection or postponement of my application. I also certify that I have met with the City's Current Planning staff to verify that the attached proposal is in compliance with the City's zoning requirements.

Appellant Signature: [Signature] Date: 4-13-16

Agent Signature: _____ Date: _____

State of New Mexico)

) ss.

County of Santa Fe)

I/We Rody A. Rodriguez, being first duly sworn, depose and say: I/We have read the foregoing appeal petition and know the contents thereof and that the same are true to my/our own knowledge.

Petitioner/s:

[Signature] _____
Signature Signature

Rody A. Rodriguez _____
Print Name Print Name

Subscribed and sworn to before me this 13 day of April 20 16.



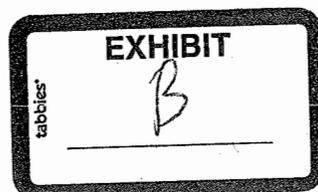
[Signature] _____
NOTARY PUBLIC
My commission expires: 2-14-19

BP200I01

City of Santa Fe
Application Inquiry

6/29/16
09:07:19

Application number : 16 00000716
 Application status, date . . . : ON HOLD 4/14/16 Exp
 Property : 612 GOMEZ RD 5
 UPC Code : 1-054-098-039-482- -
 County Assessor Acct Num . . . :
 Subdivision :
 Zoning : RM1 MULTI-FAMILY RES 21 DU/AC
 Application type : FENC FENCES/WALLS
 Application date : 3/31/16
 Tenant number, name : UNIT 5,
 Master plan number, rev'wd by: RAT
 Estimated valuation : 3000
 Total square footage : 0
 Public building : NO
 Work description, qty :
 Pin number : 152700
 Application desc : 6' high coyote fence placed along north prop lin
 Press Enter to continue.
 F3=Exit F5=Land inq F7=Appl names F8=Tracking inq F9=Bond inquiry F10=Fees
 F11=Receipts F12=Cancel F13=Val calcs F14=Misc info F24=More keys



BP401I01

City of Santa Fe
Permit Inquiry

6/29/16
09:08:47

UPC Code : 1-054-098-039-482- -
Property address : 612 GOMEZ RD 5
Application, str, pmt nbr : 16 00000716 000 000 BLDR 00
Application type : FENCES/WALLS
Permit type : BUILDING PERMIT RESIDENTIAL
Permit status, date : PERMIT PRINTED 4/11/16
Issue date by : 4/11/16 RICHARDTRU
Expiration date : 4/11/17
Reissue date by :
Permit value : 3000
Permit square footage : 0
Property owner : Wiltshire, Christine
Contractor : HOMEOWNER
Additional permit desc :
Phone interface number : 1240423
Permit pin number : 1240423
Last maintained by : RICHARDTRU 4/11/16 14:57:09

F3=Exit F5=Land inq F6=Sub-contractors F8=Permit fees F9=Req'd insp
F12=Cancel

BP502I03

City of Santa Fe
Inspection Inquiry - Inspection Selection

6/29/16
09:07:49

Property address : 612 GOMEZ RD 5
UPC Code : 1-054-098-039-482- -
Application number : 16 00000716
Application type : FENCES/WALLS

Type options, press Enter.

1=Select

Opt	Str/Seq	Pmt/Seq	Inspection Type	Seq	Insp	Result/Date
	000 000	BLDR 00	FOOTING	0001	MDP	AP 4/12/16

F3=Exit F11=View 2 F12=Cancel

Bottom

500116

- DENOTES POINTS FOUND THIS SURVEY, AS NOTED.
- ⊙ DENOTES SANITARY SEWER MANHOLE FOUND AND TIED.
- DENOTES POINT SET THIS SURVEY.

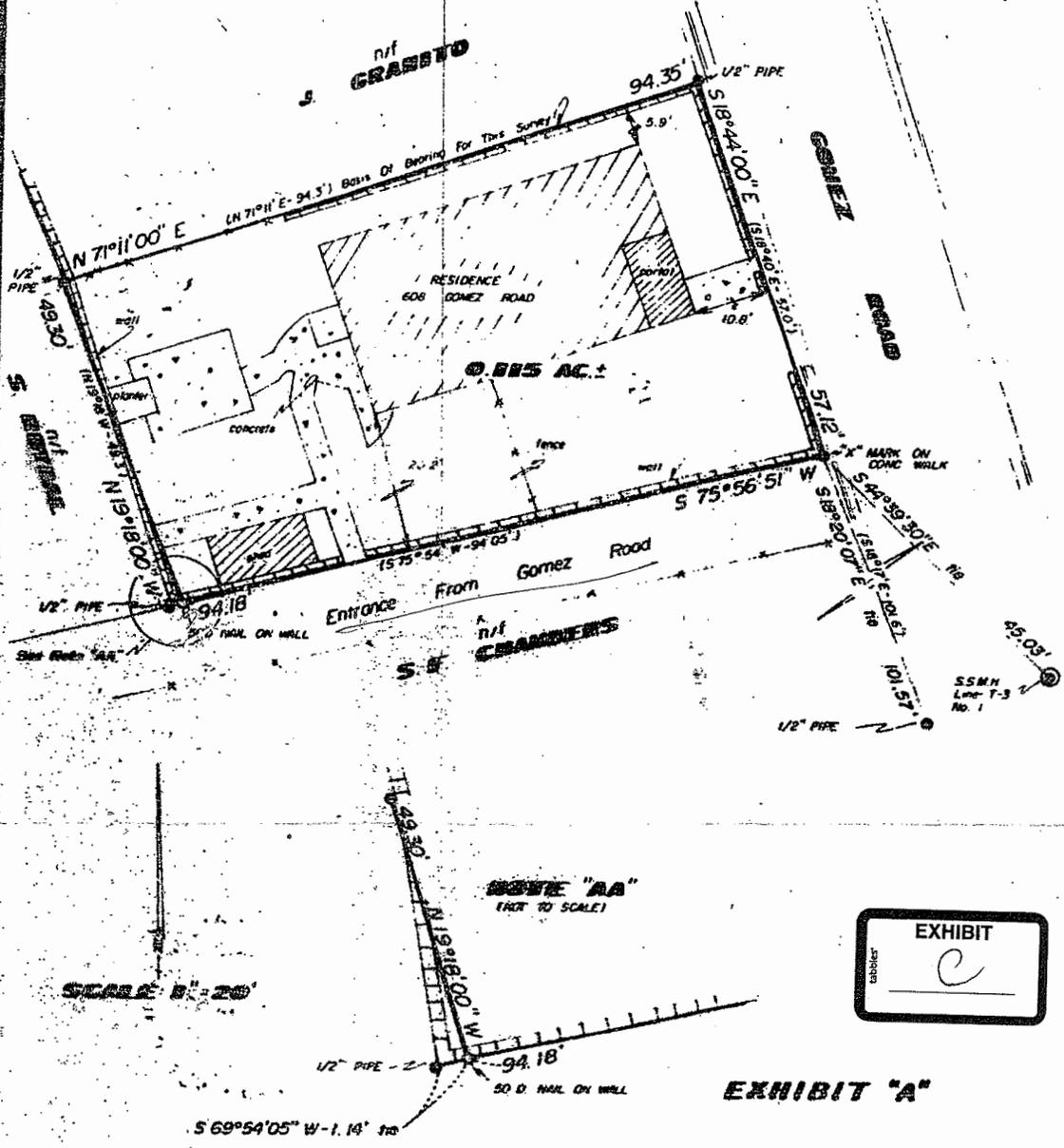


EXHIBIT
 Exhibit C

EXHIBIT "A"

**PLAT OF SURVEY
 FOR
 CHARLES NIEMAN
 608 GOMEZ ROAD, CITY OF SANTA FE
 SANTA FE COUNTY, NEW MEXICO**

THE BASIS OF BEARING FOR THIS SURVEY AND THE BEARINGS AND DISTANCES IN PARENTHESES WERE TAKEN FROM A SURVEY DONE BY W.C. JACKSON, N.M.P.E. & L.S. No. 0315, ENTITLED "PLAT SHOWING PROPERTIES LOCATED ON WEST SIDE OF GOMEZ ROAD BETWEEN ARROYO TENDRILLO and PACHOX STREET, SANTA FE, NEW MEXICO," DATED SEPTEMBER 29, 1940.

I HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR AND THAT THIS PLAT IS AN ACCURATE DELINEATION OF A SURVEY COMPLETED UNDER MY SUPERVISION IN MAY 1984, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

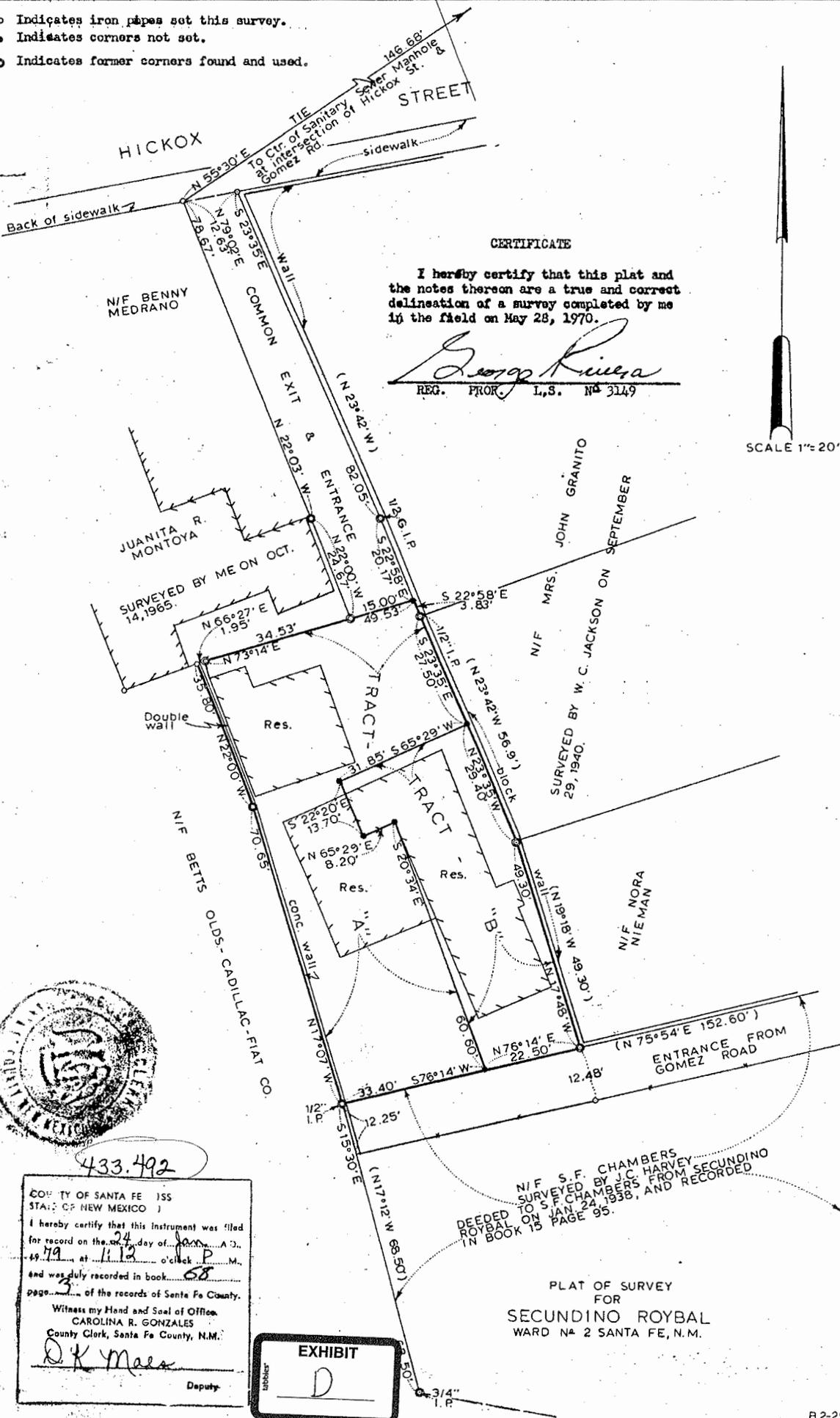
Robert J. Benavides
 ROBERT L. BENAVIDES,

N.M.L.S. No. 5924



PREPARED BY
PROFESSIONAL LAND SURVEYORS
 SANTA FE, NEW MEXICO Ph. 471-7400

- o Indicates iron pipes set this survey.
- Indicates corners not set.
- o Indicates former corners found and used.



CERTIFICATE

I hereby certify that this plat and the notes thereon are a true and correct delineation of a survey completed by me in the field on May 28, 1970.

George Rivera
 REG. PROR. L.S. No 3149

SCALE 1"=20'



433.492

COUNTY OF SANTA FE
 STATE OF NEW MEXICO

I hereby certify that this instrument was filed for record on the 24 day of Jan. A.D. 1979 at 11:13 o'clock P.M. and was duly recorded in book 68 page 3 of the records of Santa Fe County.

Witness my Hand and Seal of Office.
 CAROLINA R. GONZALES
 County Clerk, Santa Fe County, N.M.

D.K. Mares
 Deputy

EXHIBIT
 D

N/F S.F. CHAMBERS
 SURVEYED BY J.C. HARVEY
 TO S.F. CHAMBERS FROM SECUNDINO ROYBAL ON JAN 24 1938, AND RECORDED IN BOOK 15 PAGE 95.

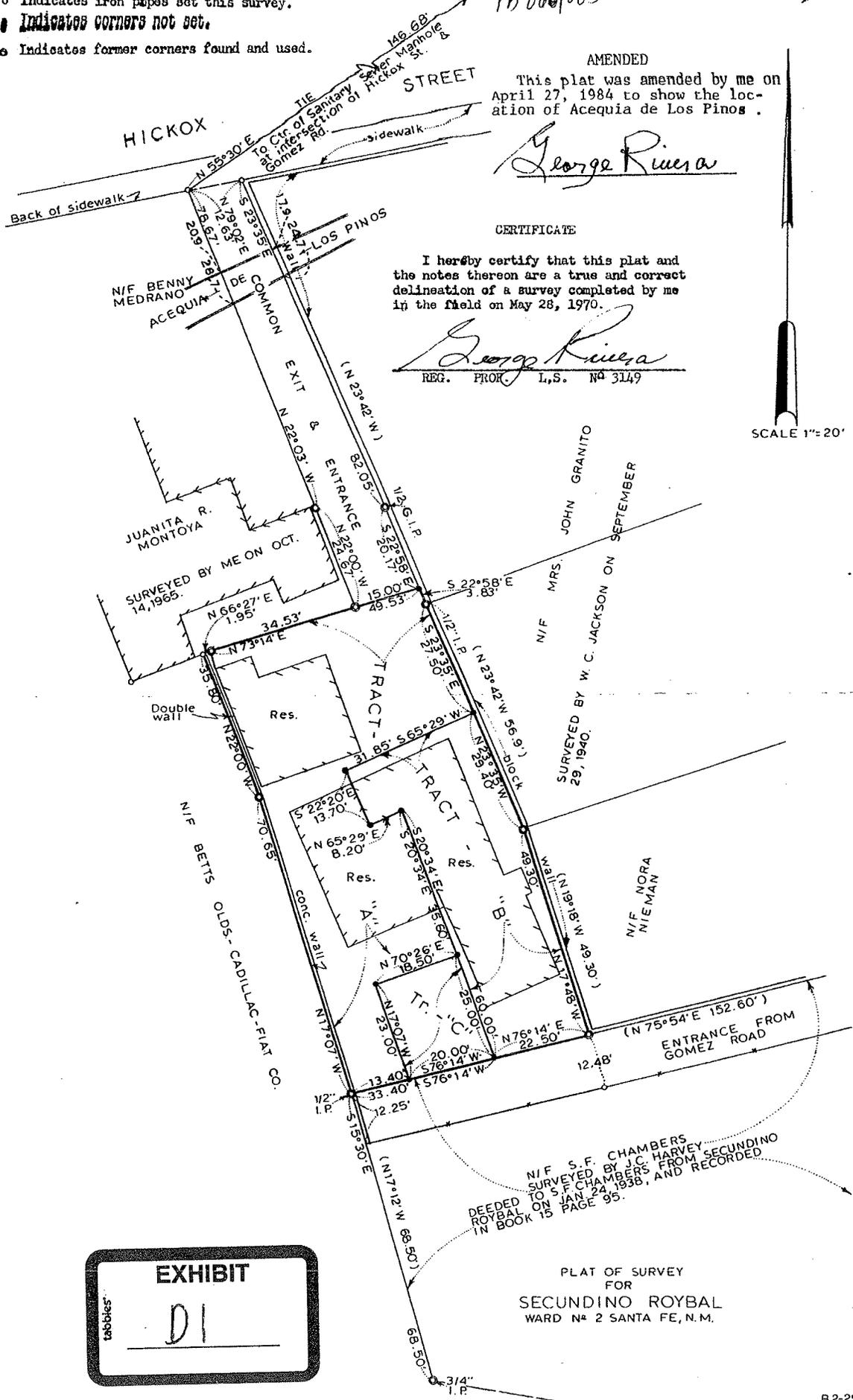
PLAT OF SURVEY FOR SECUNDINO ROYBAL WARD No 2 SANTA FE, N.M.

DN 439492

Office Copy

- o Indicates iron pipes set this survey.
- Indicates corners not set.
- ⊙ Indicates former corners found and used.

PB 068/003



AMENDED
 This plat was amended by me on
 April 27, 1984 to show the loca-
 tion of Acequia de Los Pinos.

George Rivera

CERTIFICATE

I hereby certify that this plat and
 the notes thereon are a true and correct
 delineation of a survey completed by me
 in the field on May 28, 1970.

George Rivera
 REG. PROR. L.S. N° 3149

SCALE 1"=20'

EXHIBIT
 DI

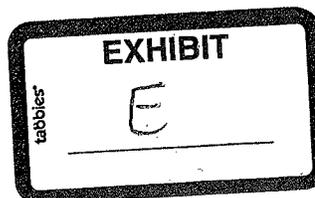
PLAT OF SURVEY
 FOR
 SECUNDINO ROYBAL
 WARD N° 2 SANTA FE, N.M.

FINAL DECREE

THIS CAUSE having come on duly and regularly for final hearing before the above-entitled Court; and the Plaintiffs appearing in person and by Ruben Rodriguez, their attorney; and those defaulting Defendants who are or may be in the military service of the United States appearing by their Court-appointed attorney, James V. Noble, Jr.; and all other Defendants failing to appear either in person or by counsel, excepting those whose answer, entry of appearance or disclaimer is filed herein; and the Court having considered the pleadings and proceedings had herein, having heard and considered the evidence introduced and being now fully advised and informed in the premises, FINDS:

1. That the Court has jurisdiction of the parties hereto and the subject matter herein.

2. Plaintiffs have made due search and inquiry to ascertain the places of residence of each and all of the Defendants herein; and each of the Defendants have been duly served with process as required by law and the rules of this Court or otherwise submitted to the jurisdiction of this Court; all defendants have failed to enter their appearance, answer or otherwise pleaded herein within the time limited by law and prescribed in said Summons and the Notice of Pendency of Suit dated the 21st of March, 1979, excepting those who have answered, entered their appearance or disclaimed aforesaid are now in default.



3. Each and all of the allegations of Plaintiffs' Complaint are sustained by the evidence and are true and correct, and are hereby adopted as Findings of Fact by this Court by incorporation by reference herein to the same extent as if set forth at length in this Decree.

4. The claim or claims of each and all of the Defendants herein, to or upon the land and real estate herein involved, are without foundation in law or equity, and said Defendants, and each of them and anyone claiming by, through or under them have no right, title or interest in or to, or lien of any nature upon said land and real estate, or any part thereof.

UPON THE FINDINGS OF FACT AFORESAID, THE COURT
CONCLUDES AS MATTERS OF LAW:

1. It has jurisdiction of the subject matter hereof and the parties hereto, for all purposes of this suit.

2. Each and all of the Defendants herein have failed to appear and are in default, excepting only those in whose behalf an answer has been filed by Ames V. Noble, Jr.

3. Plaintiffs have legally entitled to and should be granted the relief prayed for in their Complaint.

4. The provisions of the Soldiers' and Sailors' Civil Relief Act as amended of 1940, have been fully complied with and no good reason appears to the Court to require a bond to indemnify any of the Defendants who are or may be in the military service of the United States, or why judgment should not now be rendered against them.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

A. That the plaintiffs, Frank A. Rodriguez and Lena F. Rodriguez, his wife, are the owners in fee simple, free and clear of all liens and encumbrances and in possession of the following described real estate located in the County of Santa Fe, State of New Mexico, to-wit:

Beginning at a point on the North side of the tract, which beginning point is on the South side of Old Hickox Street (Paseo de Peralta) and from which point of beginning the center of Sanitary Sewer Manhole located at the intersection of Hickox Street (Paseo de Peralta) and Gomez Road bears N. $55^{\circ}30'E.$, 146.68 feet distant; thence from said point of beginning N. $79^{\circ}02'E.$, 12.63 feet to the Northeast corner of this tract; thence S. $23^{\circ}35'E.$, 82.05 feet to a point; thence S. $22^{\circ}58'E.$, 24 feet to a point; thence S. $23^{\circ}35'E.$, 56.90 feet to a point; thence S. $17^{\circ}48'E.$, 49.30 feet to the Southeast corner of this tract; thence S. $76^{\circ}14'W.$, 55.90 feet to the Southwest corner of this tract; thence N. $17^{\circ}07'W.$, 70.65 feet to a point; thence N. $22^{\circ}00'W.$, 35.80 feet to a point; thence N. $66^{\circ}27'E.$, 1.95 feet to a point; thence N. $73^{\circ}14'E.$, 34.53 feet to a point; thence N. $22^{\circ}00'W.$, 24.67 feet to a point; thence N. $22^{\circ}03'W.$, 78.67 feet to the point and place of beginning. All as shown and delineated upon that certain plat of survey prepared by George Rivera, Professional Land Surveyor No. 3149 on May 28, 1970, entitled, "PLAT OF SURVEY FOR SECUNDINO ROYBAL WARD NO. 2 SANTA FE, N.M.," and being and intended to be Tracts A, B, C, and driveway as shown therein, and bearing said Rivera's identification No. B2-299 G.R.L.S., which plat of survey is recorded in the Office of the Santa Fe County Clerk in Plat Book _____, at Page _____, as Document No. 433,492, which plat of survey is made a part hereof by reference thereto. Together with an easement for ingress and egress from the hereinabove-described tract to Gomez Road over and across a twelve and one-half foot wide right of way situated on the real estate of the defendants, C. M. page and Mary L. Page. Subject to drainage easement for the Acequia Los Pinos in favor of the City of Santa Fe.

B. That the Plaintiffs' aforesaid title and estate is hereby established against the adverse claim or claims of each and all of the Defendants herein; and that the said

Defendants, and each of them, and all the persons claiming by or through or under them, be and they are hereby forever barred and estopped from having or claiming any lien upon, claim to, or right, title or interest in or to said land and real estate adverse to Plaintiffs, and that as against said Defendants, and each of them, the title and estate of Plaintiffs in and to said land and real estate be, and it hereby is forever quieted and set at rest.

Bruce C. Kaufman
DISTRICT JUDGE

Approved:

Ruben Rodriguez
RUBEN RODRIGUEZ
Attorney for Plaintiffs

James V. Noble, Jr.
JAMES V. NOBLE, JR.
Attorney for certain defendants

Joseph E. Shattuck
JOSEPH E. SHATTUCK
Attorney for Defendant
City of Santa Fe

W. Thomas Kellahin
W. THOMAS KELLAHIN
Attorney for Defendant
Patricia Van Ingen

La Merle M. Boyd
LA MERLE M. BOYD
Attorney for James Nowak

(E)

#3

PLAT OF SURVEY FOR STEVE JACKSON

LIVING AND BEING DECEASED AT 602 GOMEZ ST.
SANTA FE, SANTA FE COUNTY, NEW MEXICO
CONTAINING 0.399 AC.

NOTES:

1. INSTRUMENT (SURVEY) BASED ON PLAT OF SURVEY BY JAMES C. HAYES, DATED NOV. 1932, MAPING PLAT 114 F-12-2.
2. DATE BEARING TAKEN FROM PLAT 1012 (M.S.) AND FROM CORRECTION WARRANTY DEED CHAMBERS TO HARRIS, DATED 07/29/53, RECORDED SANTA FE COUNTY COURTHOUSE, BOOK 69, PAGE 117.
3. DATE BEARING TAKEN FROM PLAT OF SURVEY BY GEORGE WIKERS, MAPING PLAT 114 F-12-2, AND BEING THE BASIS OF PLAT TO HARRIS, DATED 07/29/53, RECORDED SANTA FE COUNTY COURTHOUSE, BOOK 69, PAGE 117.
4. REFER ALSO TO PLAT OF SURVEY BY W.C. JACKSON, P.C. 4102.LS. RECORDED SANTA FE COUNTY COURTHOUSE, BOOK 69, PAGE 117, DATED SEPT. 29, 1940 FOR SEVERAL PARCELS THIS AREA.
5. REFER ALSO TO SUIT TO QUIET TITLE, PLAINTIFF SAM CHAMBERS FINAL DECREE DISTRICT COURT CASE NO. 17451, FINAL DECREE FILED DISTRICT COURT SANTA FE COUNTY, NEW MEXICO, 1984 BY ORDER OF EAST LINE AND IDENTICAL TO RECORD DATA FROM NOTE #12.
6. ■ INDICATES POINT FOUND AS INDICATED.
7. ○ INDICATES POINT SET AS INDICATED.
8. ○ INDICATES UTILITY POLE.
9. ■ INDICATES OWNED UTILITY LINE.

CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAT AND THE INSTRUMENT WHEREON IT IS BASED ARE TRUE AND CORRECT AND THAT I AM AN ACCURATE SURVEYOR AND A FIELD SURVEY COMPLETED BY ME OR UNDER MY SUPERVISION ON JULY 11, 1984, AND THAT I HAVE THE NECESSARY RECORDS FOR PROFESSIONAL PURPOSES PRACTICING IN NEW MEXICO.

W.M. BALS, 114-0000
MICHIGAN, K. WOODWAY

STATE OF NEW MEXICO, S.S.
COUNTY OF SANTA FE

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 23rd DAY OF July, 1984 BY MICHAEL K. MORAN.

Michael K. Moran
NOTARY PUBLIC
MY COMMISSION EXPIRES: 8-2-85

SOUTHWEST 982-9429
MOUNTAIN SURVEYS SANTA FE C-312

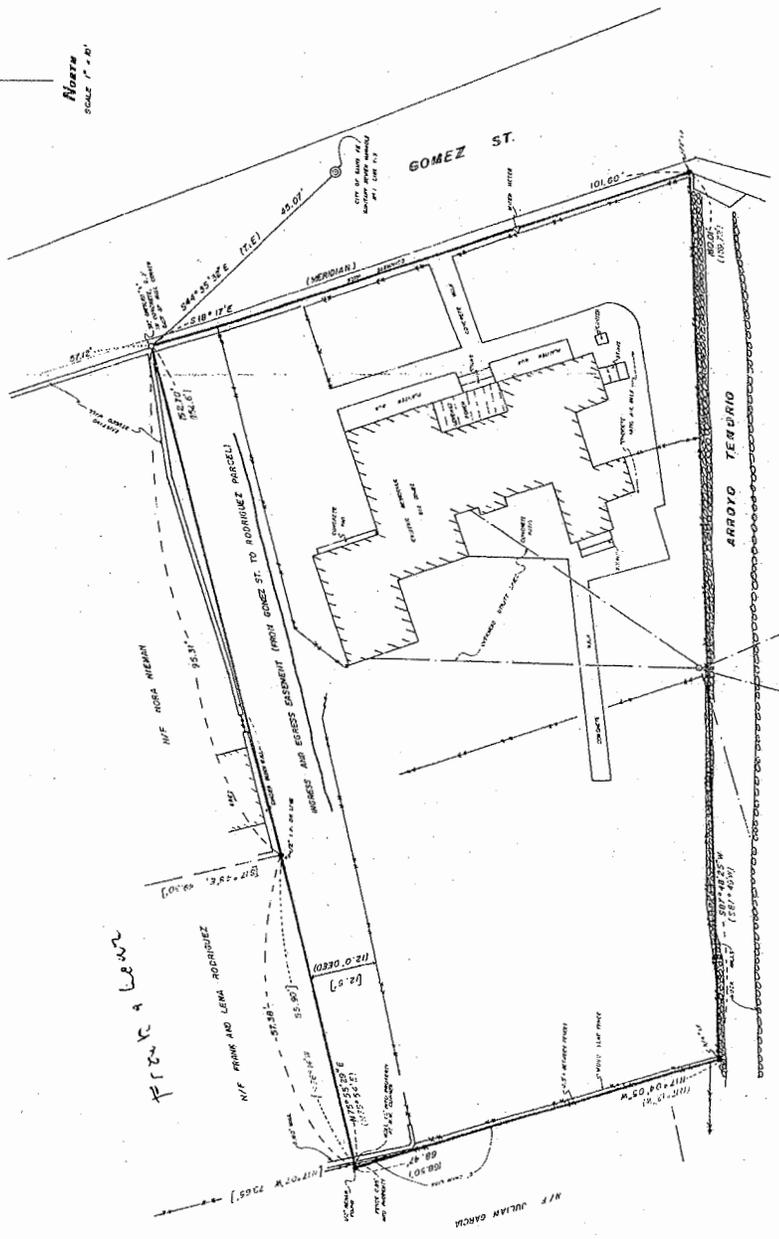
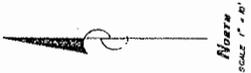


EXHIBIT
F

Exhibit C

Book 489 18031 *Gomez Clark*

WARRANTY DEED

484031

Mary L. Page, a widow,

for consideration paid, grant

to E. W. Sargent, a married man, as his sole and separate estate, and Steven A. Jackson, a married man, as his sole and separate estate.

whose address is 111. Cr. Lox 2233, Santa Fe, New Mexico 87101

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

All the following described lot or parcel of land and real estate, situate, lying and being in Precinct No. 29 of the County of Santa Fe, State of New Mexico, and further described as follows, to-wit:

Beginning at the Southeast corner of the tract marked by a 1/2 inch galvanized iron pipe, whence the angle of intersection of a stone wall on the East side of Gomez Road with a stone wall on the North side of the Arroyo Tenorio bears N. 89° 49' East, 31.94 feet distant; thence South 87° 49' West, 159.72 feet to a 1/2 inch galvanized iron pipe; thence North 17° 12' West, 68.5 feet to a 1/2 inch galvanized iron pipe; thence North 75° 54' East, 152.6 feet to a 1/2 inch galvanized pipe; thence South 18° 17' East, 101.6 feet to the place of beginning all as more fully appears on that certain plat entitled "Tracts of Lands surveyed for Samuel C. Chambers, Precinct 29, Santa Fe, New Mexico, November 13, 1937, Scale 1" = 40' N., prepared by James C. Harvey, August 1934, October and November 1937. Said parcel of land being also described as follows: Beginning at the Northeast corner of the said tract, a point on the west side of Gomez Street, whence the center of sanitary sewer manhole No. 1 in line T-3 in said Gomez Street bears S. 44° 35' 32" E., 45.07 feet distant; thence from said point of beginning S. 18° 17' E., 101.60 feet along the west side of Gomez Street to the Southeast corner of the tract herein described; thence leaving Gomez Street S. 87° 48' 25" W., 160.01 feet to the Southwest corner of the tract herein described; thence N. 17° 04' 05" W., 68.47 feet to the Northwest corner of the tract herein described; thence N. 75° 55' 29" E., 152.7 feet to the point and place of beginning. All as shown on plat of survey dated 2-20-84 entitled "PLAT OF SURVEY FOR STEVE JACKSON LYING AND BEING SITUATE AT 612 GOMEZ ST. SANTA FE, SANTA FE COUNTY, NEW MEXICO CONTAINING 0.299 Acres", more or less, certified by Mitchel K. Noonan, N. M. P. L. S. No. 6998, and bearing identification No. C-312. Being and intended to be the same property conveyed by Samuel F. Chambers and Stella M. Chambers, his wife, to C. M. Page and Mary L. Page, his wife, by Correction Warranty Deed dated January 19, 1953 and recorded in Book 62 of Deeds at page 258, records of Santa Fe County, New Mexico.

with warranty covenants.

WITNESS my hand and seal this 21st day of February, 1984

(Seal) *Mary L. Page* (Seal) *For Mary L. Page* (Seal)

ACKNOWLEDGMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO

COUNTY OF Santa Fe ss.

The foregoing instrument was acknowledged before me this 21st day of February, 1984 by Fern P. Moody, attorney in fact for Mary L. Page, a widow.

My commission expires: (Seal) Feb. 26, 1986

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO

COUNTY OF ss.

The foregoing instrument was acknowledged before me this day of 19

by (Name of Officer) (Title of Officer) (Name of Corporation Acknowledging) Corporation, on behalf of said corporation.

My commission expires: (Seal) Notary Public

FOR RECORDER'S USE ONLY COUNTY OF SANTA FE REC OF NEW MEXICO 1555 780 duly recorded 231 of the 1984 ANSIEV County Clerk, S.

EXHIBIT 6

Exhibit D

170/17 1B E

14894

- LEGEND**
- BOUNDARIES ARE SHOWN FROM SURVEY PLAT 14894, 14895, 14896, 14897, 14898, 14899, 14900, 14901, 14902, 14903, 14904, 14905, 14906, 14907, 14908, 14909, 14910, 14911, 14912, 14913, 14914, 14915, 14916, 14917, 14918, 14919, 14920, 14921, 14922, 14923, 14924, 14925, 14926, 14927, 14928, 14929, 14930, 14931, 14932, 14933, 14934, 14935, 14936, 14937, 14938, 14939, 14940, 14941, 14942, 14943, 14944, 14945, 14946, 14947, 14948, 14949, 14950, 14951, 14952, 14953, 14954, 14955, 14956, 14957, 14958, 14959, 14960, 14961, 14962, 14963, 14964, 14965, 14966, 14967, 14968, 14969, 14970, 14971, 14972, 14973, 14974, 14975, 14976, 14977, 14978, 14979, 14980, 14981, 14982, 14983, 14984, 14985, 14986, 14987, 14988, 14989, 14990, 14991, 14992, 14993, 14994, 14995, 14996, 14997, 14998, 14999, 15000.
 - UNITS ARE IDENTIFIED BY THE FOLLOWING: UNIT 1, UNIT 2, UNIT 3, UNIT 4, UNIT 5, UNIT 6, UNIT 7, UNIT 8, UNIT 9, UNIT 10, UNIT 11, UNIT 12, UNIT 13, UNIT 14, UNIT 15, UNIT 16, UNIT 17, UNIT 18, UNIT 19, UNIT 20, UNIT 21, UNIT 22, UNIT 23, UNIT 24, UNIT 25, UNIT 26, UNIT 27, UNIT 28, UNIT 29, UNIT 30, UNIT 31, UNIT 32, UNIT 33, UNIT 34, UNIT 35, UNIT 36, UNIT 37, UNIT 38, UNIT 39, UNIT 40, UNIT 41, UNIT 42, UNIT 43, UNIT 44, UNIT 45, UNIT 46, UNIT 47, UNIT 48, UNIT 49, UNIT 50, UNIT 51, UNIT 52, UNIT 53, UNIT 54, UNIT 55, UNIT 56, UNIT 57, UNIT 58, UNIT 59, UNIT 60, UNIT 61, UNIT 62, UNIT 63, UNIT 64, UNIT 65, UNIT 66, UNIT 67, UNIT 68, UNIT 69, UNIT 70, UNIT 71, UNIT 72, UNIT 73, UNIT 74, UNIT 75, UNIT 76, UNIT 77, UNIT 78, UNIT 79, UNIT 80, UNIT 81, UNIT 82, UNIT 83, UNIT 84, UNIT 85, UNIT 86, UNIT 87, UNIT 88, UNIT 89, UNIT 90, UNIT 91, UNIT 92, UNIT 93, UNIT 94, UNIT 95, UNIT 96, UNIT 97, UNIT 98, UNIT 99, UNIT 100.

STATEMENTS OF FACTS

1. THE SURVEY PLAT IS A TRUE REPRESENTATION OF A SURVEY COMPLETED UNDER THE SUPERVISION OF THE SURVEYOR IN THE PRESENCE OF THE NEIGHBORS AND THE PROPERTY OWNERS AND THE SURVEYOR HAS BEEN ADVISED BY THEM THAT THE SURVEY AND PLAT ARE TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

2. THE SURVEYOR HAS BEEN ADVISED BY THE PROPERTY OWNERS AND NEIGHBORS THAT THE SURVEY AND PLAT ARE TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

3. THE SURVEYOR HAS BEEN ADVISED BY THE PROPERTY OWNERS AND NEIGHBORS THAT THE SURVEY AND PLAT ARE TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

4. THE SURVEYOR HAS BEEN ADVISED BY THE PROPERTY OWNERS AND NEIGHBORS THAT THE SURVEY AND PLAT ARE TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

5. THE SURVEYOR HAS BEEN ADVISED BY THE PROPERTY OWNERS AND NEIGHBORS THAT THE SURVEY AND PLAT ARE TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

STATEMENTS OF FACTS

1. THE SURVEY PLAT IS A TRUE REPRESENTATION OF A SURVEY COMPLETED UNDER THE SUPERVISION OF THE SURVEYOR IN THE PRESENCE OF THE NEIGHBORS AND THE PROPERTY OWNERS AND THE SURVEYOR HAS BEEN ADVISED BY THEM THAT THE SURVEY AND PLAT ARE TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

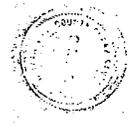
2. THE SURVEYOR HAS BEEN ADVISED BY THE PROPERTY OWNERS AND NEIGHBORS THAT THE SURVEY AND PLAT ARE TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

3. THE SURVEYOR HAS BEEN ADVISED BY THE PROPERTY OWNERS AND NEIGHBORS THAT THE SURVEY AND PLAT ARE TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

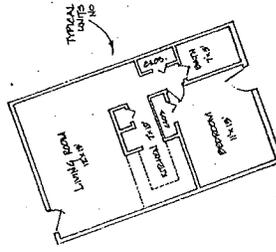
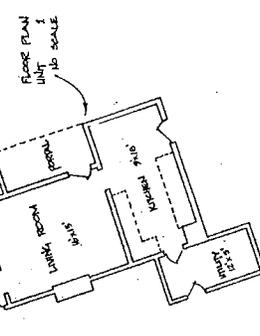
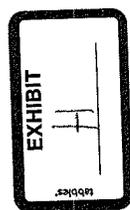
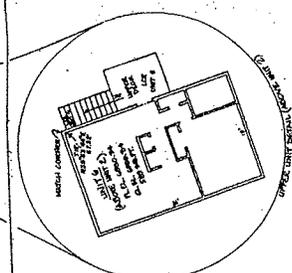
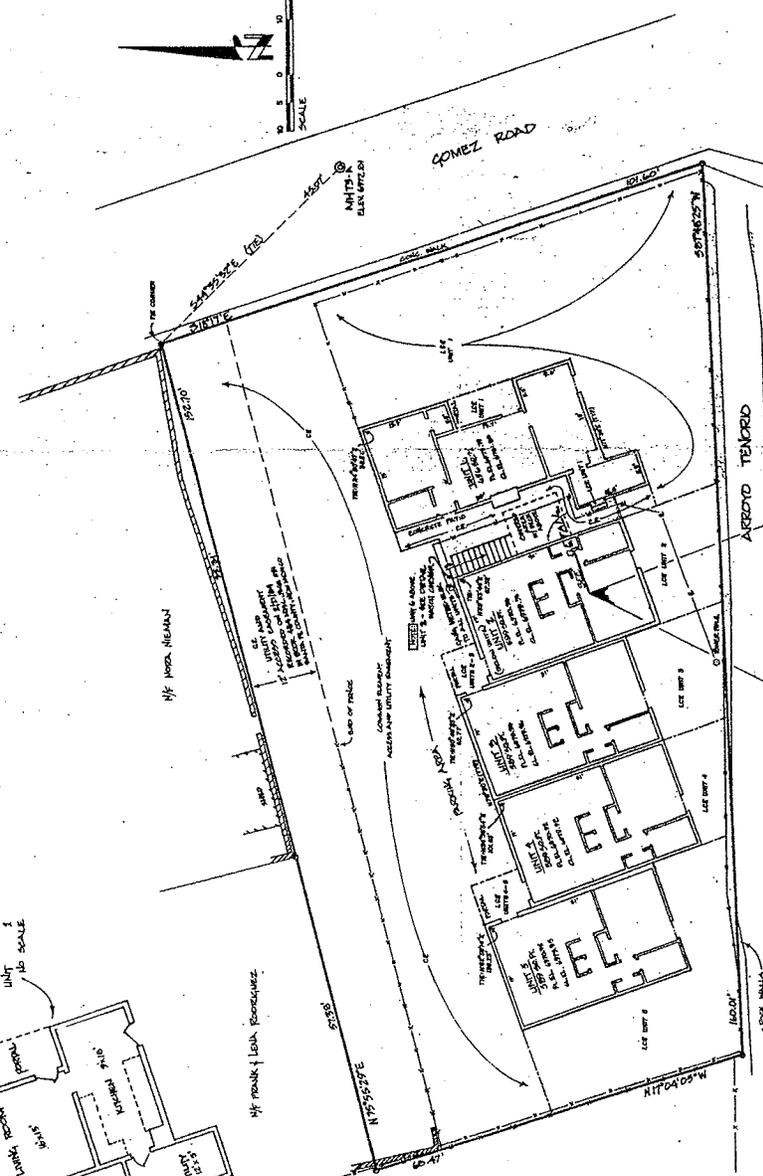
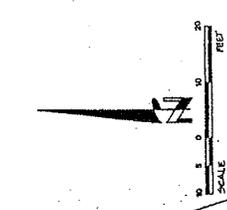
4. THE SURVEYOR HAS BEEN ADVISED BY THE PROPERTY OWNERS AND NEIGHBORS THAT THE SURVEY AND PLAT ARE TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

5. THE SURVEYOR HAS BEEN ADVISED BY THE PROPERTY OWNERS AND NEIGHBORS THAT THE SURVEY AND PLAT ARE TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

GOMEZ ROAD CONDOMINIUM
612 GOMEZ ROAD, SANTA FE, NEW MEXICO



STATE OF NEW MEXICO
COUNTY OF SANTA FE
I, [Name], Surveyor, do hereby certify that the above and foregoing plat is a true and correct representation of the survey and plat as shown on the original plat filed for record in the office of the County Clerk of Santa Fe, New Mexico, on this [Date] day of [Month], 19[Year].



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Book 503
Page 241-251
503241

CONDOMINIUM DECLARATION
FOR
GOMEZ ROAD CONDOMINIUMS

Article I

Submission; Defined Terms

Section 1.1 Submission of Property. The Gomez Road Project, a New Mexico limited partnership (the "Declarant"), which is the owner of the real property described on Exhibit A attached hereto and incorporated herein by reference, located in Santa Fe County, New Mexico, hereby submits that real property, together with all easements, rights and appurtenances belonging thereto (the "Property") to the provisions of the New Mexico Condominium Act, N.M. Stat. Ann. § 47-7A-1 et seq. (1982 Supp.), ("Condominium Act"), and hereby creates with respect to the Property a condominium to be known as the Gomez Road Condominiums (the "Condominium").

Section 1.2 Defined Terms.

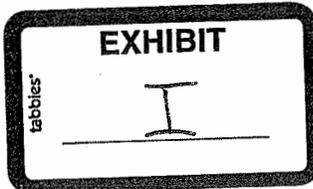
(1) Terms not otherwise defined herein or in the plats, plans, or Bylaws of the Gomez Road Condominiums Unit Owners Association, Inc. (the "Bylaws"), shall have the meanings specified in the Condominium Act.

(2) The "Association" shall refer to the Gomez Road Condominiums Unit Owners' Association, Inc.

553,384
COUNTY OF SANTA FE
Witness me
AND
County Clerk

I hereby certify that this instrument was filed for record on 8/19/06 at 3:31 P.M. 503

241-251
Julie Ferguson



Article IIBuildings on the Property; Unit Boundaries

Section 2.1. The Buildings. The location, dimensions and area of the buildings on the Property are depicted on the Plat and Plan attached hereto as Exhibit B and incorporated herein by reference (the "Plat").

Section 2.2. Units. The location of Units within the buildings is shown on the Plat and Plan attached hereto as Exhibit B. Attached as Exhibit C hereto is a list of all the Units, their identifying numbers, location, size (all as more fully shown on the Plat), and the undivided percentage interest of each unit owner in the common elements and common expenses (the "Percentage Interest") appurtenant to each Unit. The location of the common elements to which each Unit has access are shown on the Plat.

Section 2.3. Unit Boundaries. Each Unit consists of the space within the following boundaries:

(A) Upper and lower (horizontal) boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection between the vertical (perimetric) boundaries:

(1) Upper boundary. The horizontal plane of the bottom surface of the ceiling.

(2) Lower boundary. The horizontal plane of the top surface of the undecorated floor.

(B) Vertical (parimetric) boundaries. The vertical boundaries of the Unit shall be the vertical plane which includes the innermost surface of the walls bounding the Unit extending to intersections with each other and with the upper and lower boundaries.

Section 2.4. Maintenance Responsibilities. Notwithstanding the ownership of various portions of the Common Elements in the Units by virtue of the foregoing boundary description, the provisions of the Bylaws shall govern the division of maintenance and repair responsibilities between the Unit Owners and the Association.

Article III

Common Elements and Limited Common Elements

Section 3.1. Common Elements. All parts of and improvements on the property shown and depicted on Exhibit B attached hereto, excepting the space and improvements designated as being Units or Limited Common Elements, are Common Elements.

Section 3.2. Limited Common Elements. The Limited Common Elements are as shown on Exhibit B attached hereto. A portion of the Limited Elements have been set aside and reserved for parking spaces. Declarant reserves the right to assign these parking spaces as Limited Common Elements for the exclusive use of certain Unit Owners to whose Units those parking spaces shall become appurtenant.

Article IV

503244

Occupancy and Use of Units; Common Elements
and Limited Common Elements

Section 4.1. Use. Each Unit and its related Common Elements shall be used only for residential purposes. Each Unit owner shall use his Unit and any related Common Elements in conformance with all applicable laws, ordinance, rules and regulations promulgated by any applicable government entity and in compliance with the Bylaws and rules and regulations promulgated by the Association.

Section 4.2. Marketing. Declarant may use any Unit owned by the Declarant for promotional, marketing or display purposes or from using any appropriate portion of the Common Elements for closing of sales on condominium Units. Declarant further reserves the right to maintain on the Property such advertising signs to advertise the Condominium as may comply with applicable government regulations, which may be placed in any location on the Property and may be relocated or removed, all in the sole discretion of Declarant.

Article V

Easements

Section 5.1. Unit Owners. Each Unit owner is hereby granted a non-exclusive Easement in Common with all other Unit owners appurtenant to each Unit for ingress and egress through

DRIVEWAY
D.C.E.

all Common Elements, subject to such reasonable rules, regulations and restrictions as may be imposed by the Unit Owners Association.

Section 5.2. Declarant. Declarant reserves to Declarant and its managing agent or any other person authorized by the Board of Directors, the right of access to any Unit as provided in the Condominium Act and the Bylaws. In case of emergency, such entry shall be immediate whether the Unit owner is present at the time or not. The Declarant shall have, possess and retain an easement through the Common Elements as may be reasonably necessary for the purpose of remodeling condominium Units, to landscape, improve or install appurtenances to the Property, to discharge Declarant's obligations, or to exercise Declarant's special rights.

Section 5.3. Other Easements. Other easements affecting the property are shown on the Plat, Exhibit B.

→ NONE Shows Exhibit B, Plat of G22 Gomez Rd. Refers only to deed of sale when GRCA purchased the driveway outright

Article VI
Unit Owners' Vote and Liability

Section 6.1. Vote. Each Unit shall be allocated one vote in the Association.

Section 6.2. Unit's Percentage Interest in Common Elements and Percentage Expense Liability. Each Unit shall have a common undivided percentage interest in the Common Elements of the condominium and a percentage expense liability for the expenses of the Association equal to the percentages described on Exhibit C.

Article VIIAmendment to Declaration

Section 7.1. This Declaration may be amended only by an affirmative vote of at least 67% of the votes of the association. No Amendment shall create or increase the special Declarant rights, increase the number of Units or change the boundaries of any Units, the allocated interests of a Unit or the uses to which any Unit is restricted in the absence of unanimous consent of the Unit owners.

Section 7.2. No Amendments to the Declaration may be made without the prior approval of any institutional lender or lenders holding first Mortgages encumbering the Units. Unless all Mortgagees have given their prior written approval, neither the Unit Owners Association nor any Unit owner shall change the percentage interest or obligation set forth on Exhibit C attached hereto for any Unit encumbered by a Mortgage or the Common Elements of any such Unit, or withdraw the submission of the Property to the Condominium Act.

Article VIIIRight to Lease and Sell Units

Section 8.1. Declarant shall retain title to each Unit not sold to any purchaser. Declarant retains the right to enter into leases with any third parties for the occupancy of any such unsold Units retained by Declarant.

Period of Declarant Control

Pursuant to the Condominium Act, Declarant reserves the right to appoint the members to the Board of Directors to the Unit Owners Association during the maximum period allowed under the Condominium Act.

IN WITNESS WHEREOF Declarant has executed this Declaration this 15th day of October, 1984.

THE GOMEZ ROAD PROJECT,
a New Mexico Limited Partnership

By [Signature]
E. W. Sargent, Jr.,
general partner

[Signature]
Steven A. Jackson, general partner

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

15th The foregoing instrument was acknowledged before me this day of October, 1984 by E. W. Sargent, Jr., general partner, on behalf of THE GOMEZ ROAD PROJECT, a New Mexico Limited Partnership.

[Signature]
Notary Public

JANET ACE MEYER
NOTARY
My Commission Expires:
30/12/85
STATE OF NEW MEXICO

LEGAL DESCRIPTION
GOMEZ ROAD CONDOMINIUM

A CERTAIN TRACT OF LAND WITHIN THE CITY AND COUNTY OF SANTA FE, N.M. SHOWN AS "GOMEZ ROAD CONDOMINIUM 612 GOMEZ ROAD". THE PLAT OF WHICH WAS PREPARED BY GARY E. DAWSON N.M.P.L.S. #7014, DATED AUGUST 1984. WHICH SAID TRACT MAY BE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF THE HEREIN DESCRIBED TRACT. WHICH CORNER LIES N 44° 35' 32" W. 45.07 FEET FROM SANITARY SEWER MANHOLE T3-A:

THENCE S 18° 17' 00" E. ALONG THE WESTERLY BOUNDARY OF GOMEZ ROAD. 101.60 FEET:

THENCE S 87° 48' 25" W. ALONG THE NORTHERLY BOUNDARY OF ARROYO TENORIO. 160.01 FEET:

THENCE N 17° 04' 05" W. ALONG THE EASTERLY BOUNDARY OF LANDS NOW OR FORMERLY JULIAN GARCIA. 68.47 FEET:

THENCE N 75° 55' 29" E. ALONG THE SOUTHERLY BOUNDARIES OF LANDS NOW OR FORMERLY FRANK AND LINDA RODRIGUEZ, AND NORA NEIMAN. 152.70 FEET TO THE POINT OF COMMENCEMENT AND CONTAINING 0.299 ACRES, MORE OR LESS.

TOGETHER WITH ALL EASEMENTS AND RESTRICTIONS OF RECORD

— NO EASEMENTS ARE ON RECORD —

Exhibit A

UNLESS OTHERWISE SPECIFIED, ALL DIMENSIONS SHALL BE IN METERS AND DECIMALS THEREOF. ALL DIMENSIONS SHALL BE TAKEN TO THE CENTER OF THE ROAD OR TO THE CENTER OF THE LOT, UNLESS OTHERWISE SPECIFIED.

THE SURVEYOR HAS BEEN ADVISED THAT THE PROPERTY IS SUBJECT TO AN EASEMENT FOR THE CONSTRUCTION AND MAINTENANCE OF A WATER MAIN UNDER THE HIGHWAY. THE EASEMENT IS 1.5 METERS WIDE AND RUNS ALONG THE WEST LINE OF THE LOT.

THE SURVEYOR HAS BEEN ADVISED THAT THE PROPERTY IS SUBJECT TO A EASEMENT FOR THE CONSTRUCTION AND MAINTENANCE OF A WATER MAIN UNDER THE HIGHWAY. THE EASEMENT IS 1.5 METERS WIDE AND RUNS ALONG THE WEST LINE OF THE LOT.

CONDOMINIUM REGULATIONS

1. THE CONDOMINIUM SHALL BE SUBJECT TO THE REGULATIONS AND RESTRICTIONS OF THE CONDOMINIUM ACT, CHAPTER 517, OF THE FEDERAL CODE OF MEXICO.

2. THE CONDOMINIUM SHALL BE SUBJECT TO THE REGULATIONS AND RESTRICTIONS OF THE CONDOMINIUM ACT, CHAPTER 517, OF THE FEDERAL CODE OF MEXICO.

3. THE CONDOMINIUM SHALL BE SUBJECT TO THE REGULATIONS AND RESTRICTIONS OF THE CONDOMINIUM ACT, CHAPTER 517, OF THE FEDERAL CODE OF MEXICO.

**A SURVEY PLAT FOR
GOMEZ ROAD CONDOMINIUM**
612 GOMEZ ROAD, SANTA FE, NEW MEXICO

503250

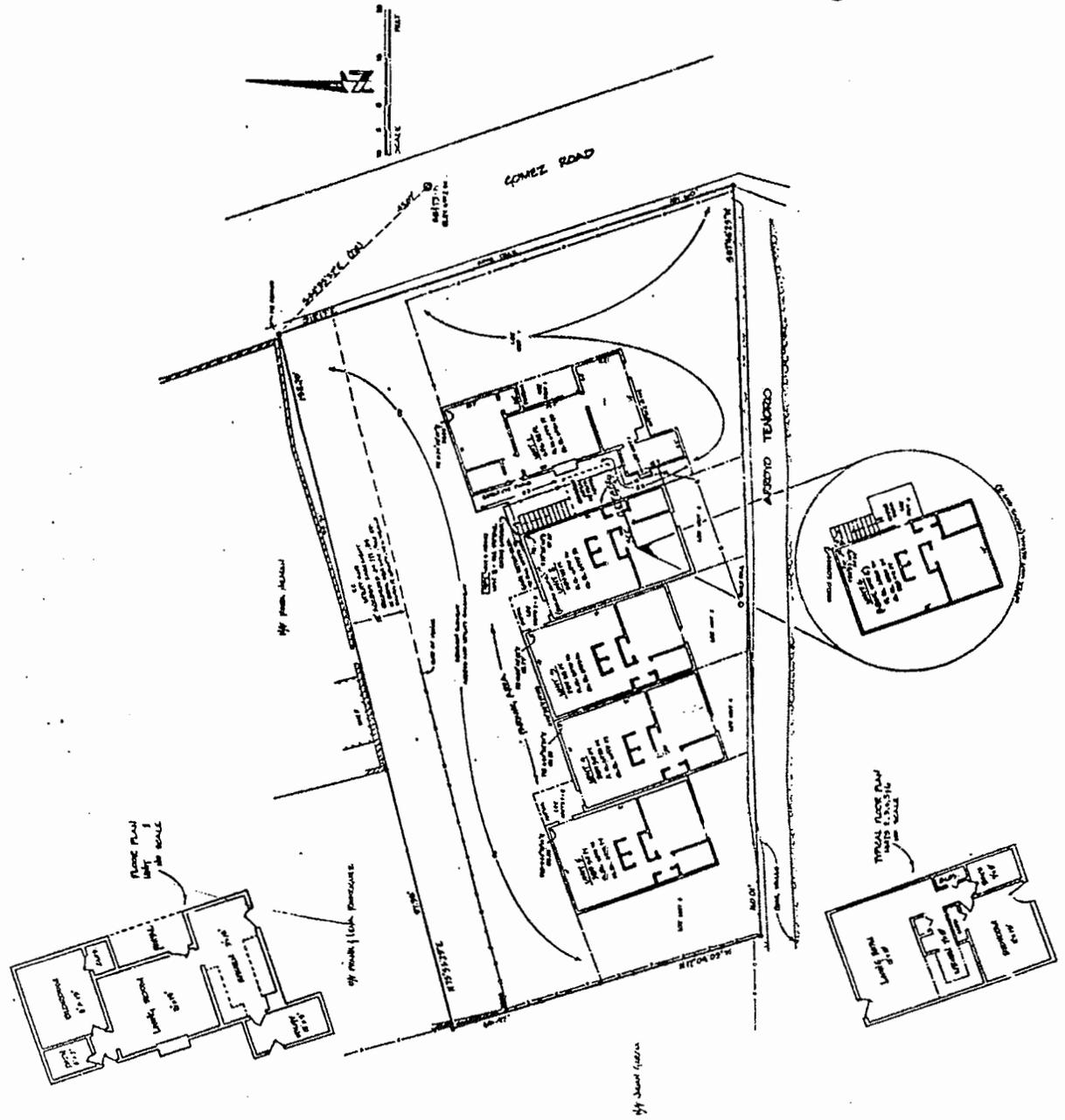


EXHIBIT B

503251

GOMEZ ROAD CONDOMINIUM

<u>Unit No.</u>	<u>Square Feet</u>	<u>Percentage Interest (Common Element Owner- ship and Expense Liability)</u>
1	656	18.5%
2	589	16.3%
3	589	16.3%
4	589	16.3%
5	589	16.3%
6	589	16.3%
Total	<u>3,061</u>	<u>100%</u>

Exhibit C

Title Insurance 612 Gomez Road

SCHEDULE B

EXCEPTIONS NUMBERED 1, 2, 3 AND 4 ARE HEREBY DELETED

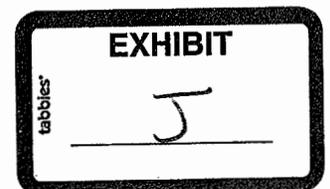
File No.: NM04423605-SF01 KJS

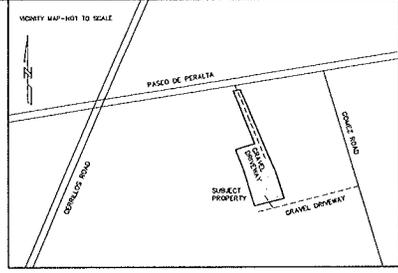
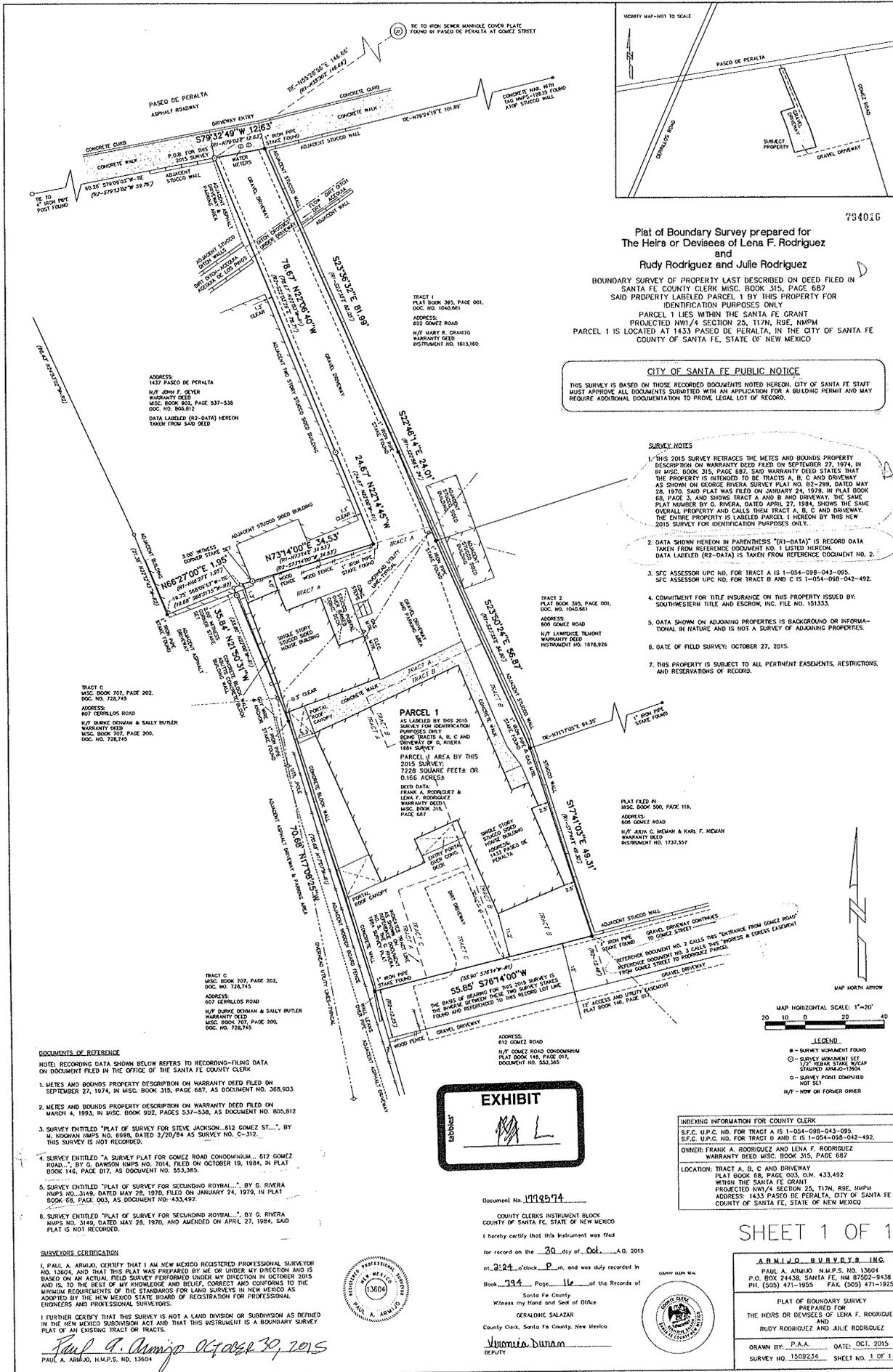
Policy No.: J2053102

In compliance with Subsection D of 13.14.18.10 NMAC, the Company hereby waives its right to demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed to by both the Company and the insured. [6-16-86, 3-1-90, 6-1-97, 6-1-98; 13.14.5.9 NMAC - Rn, 13 NMAC 14.5.9, 5-15-00; A, 8-29-03]

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Rights or claims of parties in possession not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.
3. Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matters which would be disclosed by an accurate survey and inspection of the premises.
4. Any lien, claim or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy).
6. Any titles or rights asserted by anyone including, but not limited to, persons, corporations, governments, or other entities, to lands comprising the shores or bottoms of navigable streams, lakes or land beyond the line of the harbor or bulkhead lines established or changed by the United States Government.
7. Unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.
8. Taxes or assessments which are not shown as existing liens by the public record.
9. Taxes for the year 2004, and thereafter.
10. Sewer maintenance and garbage disposal assessments for the year 2004 and thereafter.
11. Covenants, conditions, restrictions, terms, provisions and easements contained in Declaration for Gomez Road Condominium, recorded in Book 503, Page 241, records of Santa Fe County, New Mexico, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
12. Easements, and rights incident thereto, notes and conditions as shown and or provided for by subdivision plat recorded in Plat Book 146, Page 017, records of Santa Fe County, New Mexico.
13. MORTGAGE executed by Melanie Stillion, to America's Wholesale Lender, dated August 24, 2004, filed August 24, 2004, at 3:28 PM, as Document No. 1343255, in the Office of the County Clerk of Santa Fe County, New Mexico, securing the sum of \$150,000.00.





734016

Plat of Boundary Survey prepared for
The Heirs or Devises of Lena F. Rodriguez
and
Rudy Rodriguez and Julie Rodriguez

BOUNDARY SURVEY OF PROPERTY LAST DESCRIBED ON DEED FILED IN
SANTA FE COUNTY CLERK MISC. BOOK 315, PAGE 687
SAID PROPERTY LABELED PARCEL 1 BY THIS PROPERTY FOR
IDENTIFICATION PURPOSES ONLY

PARCEL 1 LIES WITHIN THE SANTA FE GRANT
PROJECTED NW1/4 SECTION 25, T17N, R9E, NUPM
PARCEL 1 IS LOCATED AT 1433 PASEO DE PERALTA, IN THE CITY OF SANTA FE
COUNTY OF SANTA FE, STATE OF NEW MEXICO

CITY OF SANTA FE PUBLIC NOTICE

THIS SURVEY IS BASED ON THOSE RECORDED DOCUMENTS NOTED HEREON. CITY OF SANTA FE STAFF MUST APPROVE ALL DOCUMENTS SUBMITTED WITH AN APPLICATION FOR A BUILDING PERMIT AND MAY REQUIRE ADDITIONAL DOCUMENTATION TO PROVE LEGAL LOT OF RECORD.

- SURVEY NOTES**
- THIS 2015 SURVEY RETRACES THE METES AND BOUNDS PROPERTY DESCRIPTION ON WARRANTY DEED FILED ON SEPTEMBER 27, 1974, IN MISC. BOOK 315, PAGE 687. SAID WARRANTY DEED STATES THAT THE PROPERTY IS INTENDED TO BE TRACTS A, B, C AND DRIVEWAY AS SHOWN ON GEORGE RIVERA SURVEY PLAT NO. 02-298, DATED MAY 28, 1970. SAID PLAT WAS FILED ON JANUARY 24, 1978, IN PLAT BOOK 80, PAGE 3, AND SHOWS TRACT A AND B AND DRIVEWAY. THE SAME PLAT NUMBER BY G. RIVERA, DATED APRIL 27, 1984, SHOWS THE SAME OVERALL PROPERTY AND CALLS THEM TRACT A, B, C AND DRIVEWAY. THE ENTIRE PROPERTY IS LABELED PARCEL 1 HEREON BY THIS NEW 2015 SURVEY FOR IDENTIFICATION PURPOSES ONLY.
 - DATA SHOWN HEREON IN PARENTHESES "(RI-DATA)" IS RECORD DATA TAKEN FROM REFERENCE DOCUMENT NO. 1 LISTED HEREON. CITY OF SANTA FE STAFF MUST APPROVE ALL DOCUMENTS SUBMITTED WITH AN APPLICATION FOR A BUILDING PERMIT AND MAY REQUIRE ADDITIONAL DOCUMENTATION TO PROVE LEGAL LOT OF RECORD.
 - SFC ASSESSOR UPC NO. FOR TRACT A IS 1-054-098-043-095. SFC ASSESSOR UPC NO. FOR TRACT B AND C IS 1-054-098-042-492.
 - COMMITMENT FOR TITLE INSURANCE ON THIS PROPERTY ISSUED BY: SOUTHWESTERN TITLE AND ESCROW, INC. FILE NO. 151333.
 - DATA SHOWN ON ADJOINING PROPERTIES IS BACKGROUND OR INFORMATIONAL IN NATURE AND IS NOT A SURVEY OF ADJOINING PROPERTIES.
 - DATE OF FIELD SURVEY: OCTOBER 27, 2015.
 - THIS PROPERTY IS SUBJECT TO ALL PERTINENT EASEMENTS, RESTRICTIONS, AND RESERVATIONS OF RECORD.

TRACT A
MISC. BOOK 303, PAGE 001,
DOC. NO. 1040,661
ADDRESS:
607 GOMEZ ROAD
N/E MARK R. GRENATO
WARRANTY DEED
INSTRUMENT NO. 1613,160

TRACT B
PLAT BOOK 303, PAGE 001,
DOC. NO. 1040,661
ADDRESS:
607 GOMEZ ROAD
N/E LAMERGEZ TILMONT
WARRANTY DEED
INSTRUMENT NO. 1578,926

TRACT C
MISC. BOOK 707, PAGE 202,
DOC. NO. 728,745
ADDRESS:
607 CERRILLOS ROAD
N/E BARRY DOMAN & SALLY BUTLER
WARRANTY DEED
MISC. BOOK 707, PAGE 200,
DOC. NO. 728,745

TRACT D
MISC. BOOK 707, PAGE 202,
DOC. NO. 728,745
ADDRESS:
607 CERRILLOS ROAD
N/E BARRY DOMAN & SALLY BUTLER
WARRANTY DEED
MISC. BOOK 707, PAGE 200,
DOC. NO. 728,745

DOCUMENTS OF REFERENCE

NOTE: RECORDING DATA SHOWN BELOW REFERS TO RECORDING-FILING DATA ON DOCUMENT FILED IN THE OFFICE OF THE SANTA FE COUNTY CLERK

- METES AND BOUNDS PROPERTY DESCRIPTION ON WARRANTY DEED FILED ON SEPTEMBER 27, 1974, IN MISC. BOOK 315, PAGE 687, AS DOCUMENT NO. 068,903.
- METES AND BOUNDS PROPERTY DESCRIPTION ON WARRANTY DEED FILED ON MARCH 4, 1993, IN MISC. BOOK 902, PAGES 537-538, AS DOCUMENT NO. 805,812.
- SURVEY ENTITLED "PLAT OF SURVEY FOR STEVE JACKSON, 612 GOMEZ ST...", BY W. HOGAN NUPM NO. 6098, DATED 2/20/84 AS SURVEY NO. C-312. THIS SURVEY IS NOT RECORDED.
- SURVEY ENTITLED "A SURVEY PLAT FOR GOMEZ ROAD CONDOMINIUM... 612 GOMEZ ROAD...", BY G. DAWSON NUPM NO. 7014, FILED ON OCTOBER 19, 1984, IN PLAT BOOK 146, PAGE 017, AS DOCUMENT NO. 553,365.
- SURVEY ENTITLED "PLAT OF SURVEY FOR SECUNDINO ROYBAL...", BY G. RIVERA NUPM NO. 3149, DATED MAY 28, 1970, FILED ON JANUARY 24, 1978, IN PLAT BOOK 69, PAGE 003, AS DOCUMENT NO. 433,492.
- SURVEY ENTITLED "PLAT OF SURVEY FOR SECUNDINO ROYBAL...", BY G. RIVERA NUPM NO. 3149, DATED MAY 28, 1970, AND AMENDED ON APRIL 27, 1984, SAID PLAT IS NOT RECORDED.

SURVEYORS CERTIFICATION

I, PAUL A. ARMUJO, CERTIFY THAT I AM A NEW MEXICO REGISTERED PROFESSIONAL SURVEYOR NO. 13604, AND THAT THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED ON AN ACTUAL FIELD SURVEY PERFORMED UNDER MY DIRECTION IN OCTOBER 2015 AND IS, TO THE BEST OF MY KNOWLEDGE AND BELIEF, CORRECT AND CONFORMS TO THE MINIMUM REQUIREMENTS OF THE STANDARDS FOR LAND SURVEYS IN NEW MEXICO AS ADOPTED BY THE NEW MEXICO STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS.

I FURTHER CERTIFY THAT THIS SURVEY IS NOT A LAND DIVISION OR SUBDIVISION AS DEFINED IN THE NEW MEXICO SUBDIVISION ACT AND THAT THIS INSTRUMENT IS A BOUNDARY SURVEY PLAT OF AN EXISTING TRACT OR TRACTS.

Paul A. Armujo
PAUL A. ARMUJO, H.M.P.S. NO. 13604

EXHIBIT

1

Document No. 1198574

COUNTY CLERK'S INSTRUMENT BLOCK
COUNTY OF SANTA FE, STATE OF NEW MEXICO

I hereby certify that this instrument was filed
for record on the 30 day of Oct, A.D. 2015
at 2:24 o'clock P.M., and was duly recorded in
Book 794, Page 16 of the Records of
Santa Fe County
Witness my Hand and Seal of Office
GERALDINE SALAZAR
County Clerk, Santa Fe County, New Mexico
Yvonne Duran
DEPUTY

INDEXING INFORMATION FOR COUNTY CLERK

S.F.C. U.P.C. NO. FOR TRACT A IS 1-054-098-043-095.
S.F.C. U.P.C. NO. FOR TRACT B AND C IS 1-054-098-042-492.

OWNER: FRANK A. RODRIGUEZ AND LENA F. RODRIGUEZ
WARRANTY DEED MISC. BOOK 315, PAGE 687

LOCATION: TRACT A, B, C AND DRIVEWAY
PLAT BOOK 68, PAGE 003, D.M. 433,492
WITHIN THE SANTA FE GRANT
AND
PROJECTED NW1/4 SECTION 25, T17N, R9E, NUPM
ADDRESS: 1433 PASEO DE PERALTA, CITY OF SANTA FE
COUNTY OF SANTA FE, STATE OF NEW MEXICO

SHEET 1 OF 1

ARMUJO SURVEYING

PAUL A. ARMUJO, H.M.P.S. NO. 13604
P.O. BOX 24438, SANTA FE, NM 87502-8438
PH. (505) 471-1058 FAX (505) 471-1925

PLAT OF BOUNDARY SURVEY
PREPARED FOR
THE HEIRS OR DEVISEES OF LENA F. RODRIGUEZ
AND
RUDY RODRIGUEZ AND JULIE RODRIGUEZ

DRAWN BY: P.A.A. DATE: OCT. 2015
SURVEY NO. 1509234 SHEET NO. 1 OF 1



COMEAU, MALDEGEN, TEMPLEMAN & INDALL, LLP

Michael R. Comeau
Larry D. Maldegen
William P. Templeman
Jon J. Indall
Stephen J. Lauer
Paula A. Cook
Michael J. Moffett
Adela M. Duran
Caitlin Craft Dupuis

Attorneys at Law
Coronado Building, 141 E. Palace Avenue
Post Office Box 669
Santa Fe, New Mexico 87504-0669
Telephone (505) 982-4611
Facsimile (505) 988-2987
Direct Number: (505) 216-3050
mcomeau@cmtisantafe.com

G. Stanley Crout
1937-1987

Charles D. Olmsted
1925-1991

June 24, 2016

JUN 24 '16 3:15 PM
CRO RECEIVED

Hand Delivered

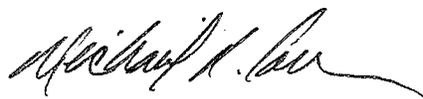
Lisa D. Martinez
Land Use Director
City of Santa Fe
Land Use Department
200 Lincoln Avenue
Santa Fe, New Mexico

Re: Rudy A. Rodriguez Appeal – Gomez Fence – Case No. 2016-45

Dear Ms. Martinez:

Enclosed are Appellee's Pre-Hearing Submittals in the above-referenced matter.

Sincerely,



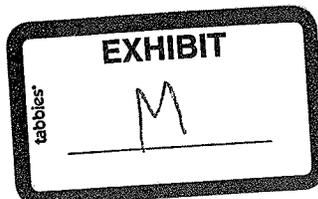
Michael R. Comeau

MRC/sad

Enclosures

cc: Kurt Sommer, w/encl.
Hand Delivered

cc: Zachary Shandler, w/encl.
Hand Delivered



**BEFORE THE CITY OF SANTA FE
BOARD OF ADJUSTMENT**

RUDY A. RODRIGUEZ,

Appellant.

Case No. 2016-45

GOMEZ FENCE

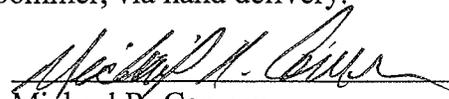
APPELLEES' RULE VIII. A. SUBMITTALS

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III. Declaration of Christine Wiltshire.....	4, 5, 6
IV. Declaration of Randy Nieman.....	7, 8
V. Declaration of Mary E. Pougiales.....	9, 10
VI. Declaration of Laura Conrad.....	11, 12
VII. Declaration of Pat Jackunas.....	13, 14
VIII. Declaration of Jamy Myatt.....	15, 16
IX. CD containing photographs of Rodriguez contractor vehicles blocking Condominium Unit Owners parking.....	17

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2016, a true and correct copy of Appellees' Submittals was served on Appellant's counsel of record, Kurt Sommer, via hand delivery.



Michael R. Comeau

WITNESS LIST

1. Melanie Stillion, Gomez Road Condominium Unit Owner
2. Christine Wiltshire, Gomez Road Condominium Unit Owner

DECLARATION OF Melanie Stillion

I hereby declare and affirm that the Statement attached to this Declaration was given by me on June 24 2016, and that the Statement is true and correct under penalty of perjury under the laws of the State of New Mexico.

By 
Date: 6/24/16

Melanie Stillion
612 Gomez Road, #1
Santa Fe, New Mexico 87505

June 24, 2016

To Whom it May Concern:

I have been an owner in the Gomez Road Condominium Association since 2004, and have lived there continuously from August 2004 to the present day. In the 12 years that I have been in residence, there has not been access from 612 Gomez Road to 1433 Paseo de Peralta at any time.

Our title insurance says nothing about an easement to adjacent properties. Our deeds say nothing of an easement to adjacent properties. Our recorded plat refers only to "Common Element and Utility Access Ingress and Egress". That is, Common Element for all condo unit owners at 612 Gomez Road to access, versus Limited Common Element, which is for each condo unit to privately access.

The new owner, Rudy Rodriguez's, construction crew abruptly arrived in the Fall of 2015. They began using our driveway everyday, blocking access to units 4 and 5 of Gomez Road Condo Association. It is illegal to assume use of a 30 year old expired easement with no due process. We went through proper channels to get a City of Santa Fe building permit and Historic Review permission to build a coyote fence on our property line to protect our property.

Through the appeal process that Mr. Rodriguez put into motion regarding the fence on our property line, I recently learned that there was an old lawsuit, suing for access from Gomez Road to the backyard of 1433 Paseo de Peralta. This easement has not been used since the early 1980's. Current GRCA owners all purchased our properties, as did previous owners, believing that no one other than GRCA owners had access to our property. Nothing about this lawsuit was disclosed to us at any time, and we had no reason to imagine anyone else had access. No one has used our driveway until Rudy Rodriguez's construction crew arrived in the Fall of 2015.

We have lived peacefully together, enjoying our quiet community. If Mr. Rodriguez is allowed to develop this single family home into 3 apartments, and reclaim this easement, abandoned over 30 years ago, our quality of life will be forever changed. The burden on our property will increase exponentially, creating a very congested parking situation. There is not room at 1433 Paseo de Peralta for 3 housing units to park or turn around. There will be traffic overflow onto our property and onto the street in front of our driveway to make up the space.

For Mr. Rodriguez, this is strictly a commercial enterprise. He has no concern for the quality of life for the neighbors. For me, this is my home, and I worked hard through the recession to keep it. I don't have the resources to buy a different house and am not about to sell. For the Board to re-instate this long abandoned easement in service of high density, for profit, housing over my rights as an established property owner, would fail to protect the quality of the neighborhood as a historic zone.

Respectfully,



Melanie Stillion

DECLARATION OF *Christine Wiltshire*

I hereby declare and affirm that the Statement attached to this Declaration was given by me on June 24, 2016, and that the Statement is true and correct under penalty of perjury under the laws of the State of New Mexico.

By *CW*
Date: June 24, 2016

Christine Wiltshire

612 Gomez Road #5

Santa Fe, NM 87505

June 24, 2016

To whom it may concern

Dear Madam/Sir,

I purchased my condo 11 years back and raised my daughter there. The prior owner of 1433 Paseo de Peralta, Lena Rodriguez was frequently in her back yard gardening. My daughter as a toddler and I would go over and help Lena with yard work for she was getting on in years, and I believe in good neighborly relations. She would tell me stories past of when she was younger and had beautiful gardens in her back yard. Lena felt sad that she did not have the strength to keep such gardens anymore and care of the area had become pulling and cutting trees down in her yard. The weeds and years had overtaken. She invited me and my daughter to play in her yard anytime and was always very thankful for the help. Lena's garden is where the new owner Rudy is planning on putting his parking lot.

My condo unit directly borders by connection of the driveway into Lena's gardens gone by. In all my years at Gomez Rd, I have quietly enjoyed the neighborhood and the property. Never has the Gomez Condo Association's driveway been used to access the Paseo property until recently when Rudy acquired it.

About 9 months ago all of a sudden there are 6 construction trucks parked in Lena's garden, in our parking spaces and blocking mine and my direct condo neighbor's access to our properties. I was very surprised for I there was not a construction permit posted and had never experienced an adjoining property use our driveway. My purchase doc's listed the driveway as an easement for condo owners only and all title doc's had no other easements recorded.

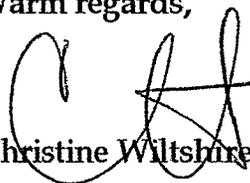
We as a Condo Association had a meeting about this use of our drive and property illegally. We decided the best course of action was to go through the proper Historic and City permitting process to build a fence to fix this new problem we had never experienced. We obtained the legal permit after 3-4 months of going through the proper channels and steps to build our fence.

We did notice a red tag on Rudy, the new owner's property about 4 months ago and all his construction trucks were now parked on Gomez Road and the workers were walking up our driveway to continue construction on the house. Rudy was red tagged and never stopped construction to this day. 8 to 9 months of construction ½ of it being red tagged without stopping. Part of the exterior of the house was demolished and most of the work was and is being done inside illegally, without permit or inspections. Rudy has shown total disrespect for the proper permitting requirements of historic Santa Fe and Gomez Condo property verses his.

I implore you to find in our favor of following the law and proper procedures and extensive history with the property over someone who has recently purchased a historic property that has not followed procedures and plans to overburden the neighborhood with tiny rentals. Use of our driveway for rentals does not make any sense for Rudy has his own driveway and the parking would be a nightmare. There is no room for it. His tenants would be backing directly into Gomez Condo parking spaces. His plan would overburden our driveway and land that has historically been used exclusively for us would be greatly devalued.

Please accept my honest account.

Warm regards,



Christine Wiltshire

DECLARATION OF RANDY NIEMAN

I hereby declare and affirm that the Statement attached to this Declaration was given by me on June 24, 2016, and that the Statement is true and correct under penalty of perjury under the laws of the State of New Mexico.

By: 
Date: JUNE 24, 2016

Randy Nieman
608 Gomez Road
Santa Fe, NM 87505

June 24, 2016

To Whom it May Concern:

My name is Randy Nieman. My family has owned the property at 608 Gomez Road since 1933. Our property is adjacent to both 612 Gomez Road and 1433 Paseo de Peralta. I have used the address as my primary residence since 1984. Although I travelled quite a bit from 1984 until 2003, I would spend time in between traveling adventures in Santa Fe, New Mexico. Since I became a full time resident of 608 Gomez Road in 2003, I have truly enjoyed my stay here, living in peace.

Concerning access to the Rodriguez property, personally, I saw Mrs. Rodriguez being dropped off on Gomez Road by her daughter after church a few times, and she would walk along our fence to her property, but as far as remembering any cars driving along the Southern part of our property, I do not recall that. I do believe that the cars and visitor's vehicles were always parked on the north side entry to Mrs. Rodriguez's house.

Lastly, I do believe that increased vehicle traffic and increased density occupancy levels will negatively change the quiet, quaint Santa Fe charm of grandma's house and our neighborhood.

Sincerely,

A handwritten signature in black ink, appearing to read 'Randy Nieman', with a large, stylized initial 'R'.

Randy Nieman

DECLARATION OF *Mary E. Pungiales*

I hereby declare and affirm that the Statement attached to this Declaration was given by me on June 21 2016, and that the Statement is true and correct under penalty of perjury under the laws of the State of New Mexico.

By: *Mary E. Pungiales*
Date: June 21, 2016

MARY E. POUZIALES

448 Ignacio Boulevard, # 191
Novato, CA 94949
(415) 883-4949
weaver94949@yahoo.com

June 21, 2016

Re: Abandonment of Claimed Easement at 612 Gomez Road

To Whom It May Concern:

I have recently learned that a developer in Santa Fe is seeking to reanimate a long abandoned easement through the parking and driveway area that services 612 Gomez Road. I am writing as a former owner of Unit 2 at this complex from the Fall of 2002 to January, 2009, to report my knowledge of the use of the driveway and parking area during that seven year span.

Unit 2 was a second home for me, my primary residence being in Novato, California. During most of the seven years that I owned the unit, I rented it for five months every year to the Santa Fe Opera and their librarian, Laura Conrad, who lived there full-time. I lived there for stretches of up to 3 weeks, and also opened the home to the use of family and friends when I was not there.

My own observations, and those described by my tenant and family members, are consistent. I have never observed any usage of the driveway and/or parking spaces by anyone other than residents of 612 Gomez Road and their invitees. I never observed any neighboring owner or any of their invitees using the driveway or parking area. The driveway and parking area at 612 Gomez Road always appeared to be dedicated to the exclusive use of the 612 Gomez Road tenants. I also observed that all properties bounding on 612 Gomez had their own, separate access roads that did not require they use the driveway and parking area used to access 612 Gomez Road.

Very truly yours,



Mary E. Pouziales

DECLARATION OF Laura Conrad

I hereby declare and affirm that the Statement attached to this Declaration was given by me on June 21, 2016, and that the Statement is true and correct under penalty of perjury under the laws of the State of New Mexico.

By Laura Conrad
Date: June 21 / 2016

Laura Conrad
3780 82nd Avenue Circle East, #106
Sarasota, Florida 34243

June 18, 2016

To Whom It May Concern:

My name is Laura Conrad and although I am not a year-round resident of New Mexico, I have spent the last fifteen summers, at three months each, in Santa Fe as a seasonal employee with The Santa Fe Opera. Through the Santa Fe Opera's housing department, I have had the pleasure of staying at 612 Gomez Rd for 13 of the 15 years I've been here. I was a summer resident of #2 from 2004-2010; and since then, from 2011 until the present, have resided in #6.

I have requested to stay at 612 Gomez Road year after year because of the quiet and safe neighborhood, respectful neighbors, and proximity to amenities. Because I am only in Santa Fe for three months each year, I take advantage of my time here— I am often up early to go hiking or biking, and my work requires me to work nights, therefore it is not unusual for me to arrive back well after midnight or later. During this time I have never observed any usage of the driveway and/or parking spaces by anyone other than residents of 612 Gomez Road and their guests. With each adjacent property owner having their own access to their residence, I have not witnessed any usage of the property at 612 Gomez Road by neighboring owners or their tenants.

Sincerely,

A handwritten signature in cursive script that reads "Laura Conrad". The signature is written in black ink and is positioned below the word "Sincerely,".

Laura Conrad

DECLARATION OF PAT JACKUNAS

I hereby declare and affirm that the Statement attached to this Declaration was given by me on June 18, 2016, and that the Statement is true and correct under penalty of perjury under the laws of the State of New Mexico.

By Patricia Jackunas
Date: 6.18.16

June 18, 2016

To whom it may concern:

I have been an owner in the Gomez Road Condominium Association since September of 2003. Our drive way was created for residences in the compound at 612 Gomez Road, with easement only for utility and communal condominium use in units 1-6.

Since that time, I have never seen anyone that did not live at 612 Gomez Road use our driveway. There has never been a need for any property owners in the area to use our driveway to access their property with a vehicle using our driveway. They all have their own address and access from neighboring streets.

Regards,


Pat Jackunas

DECLARATION OF Jamy MyATT

I hereby declare and affirm that the Statement attached to this Declaration was given by me on June 20, 2016, and that the Statement is true and correct under penalty of perjury under the laws of the State of New Mexico.

By Jamy MyATT
Date: 20 June 2016

20 June 2016

Jamy Myatt
612 Gomez Road # 6
Santa Fe, NM 87505

To Whom it May Concern:

My name is Jamy Myatt and I have been an owner of a unit in the Gomez Road Condominium Association since 1988. I moved to 612 Gomez Road in 1987 and shortly thereafter bought the condo I was living in, Unit #6. I lived there continuously from January of 1988 until December of 1992. Since then, I continue to make regular visits to stay in the compound for extended periods, several times a year.

In the history of my residency at 612 Gomez Road, there have always been fenced or walled boundaries between neighboring properties to the north, west and south, all which have their own established, independent driveways and corresponding addresses on different streets. Our entire driveway was created and has always been used exclusively for the residents and guests of 612 Gomez Road only, units 1-6. There has never been anyone else using the driveway property other than the Gomez Road condominium unit owners and their guests. The use of the easement aligned with our driveway at 612 Gomez Road was clearly specified on our original plat as designed for utility access and communal condominium space for unit residents only.

Having had a significant presence there for almost 30 years, I would have observed any other use of the driveway, especially as my unit is upstairs and has a view of the entire compound. There would never have been a need for neighbors to use our driveway to access their property, because all properties in proximity have their own addresses and corresponding driveways with independent access from their addressed streets, on, for example Paseo de Peralta, Gomez Road and West Gomez Road.

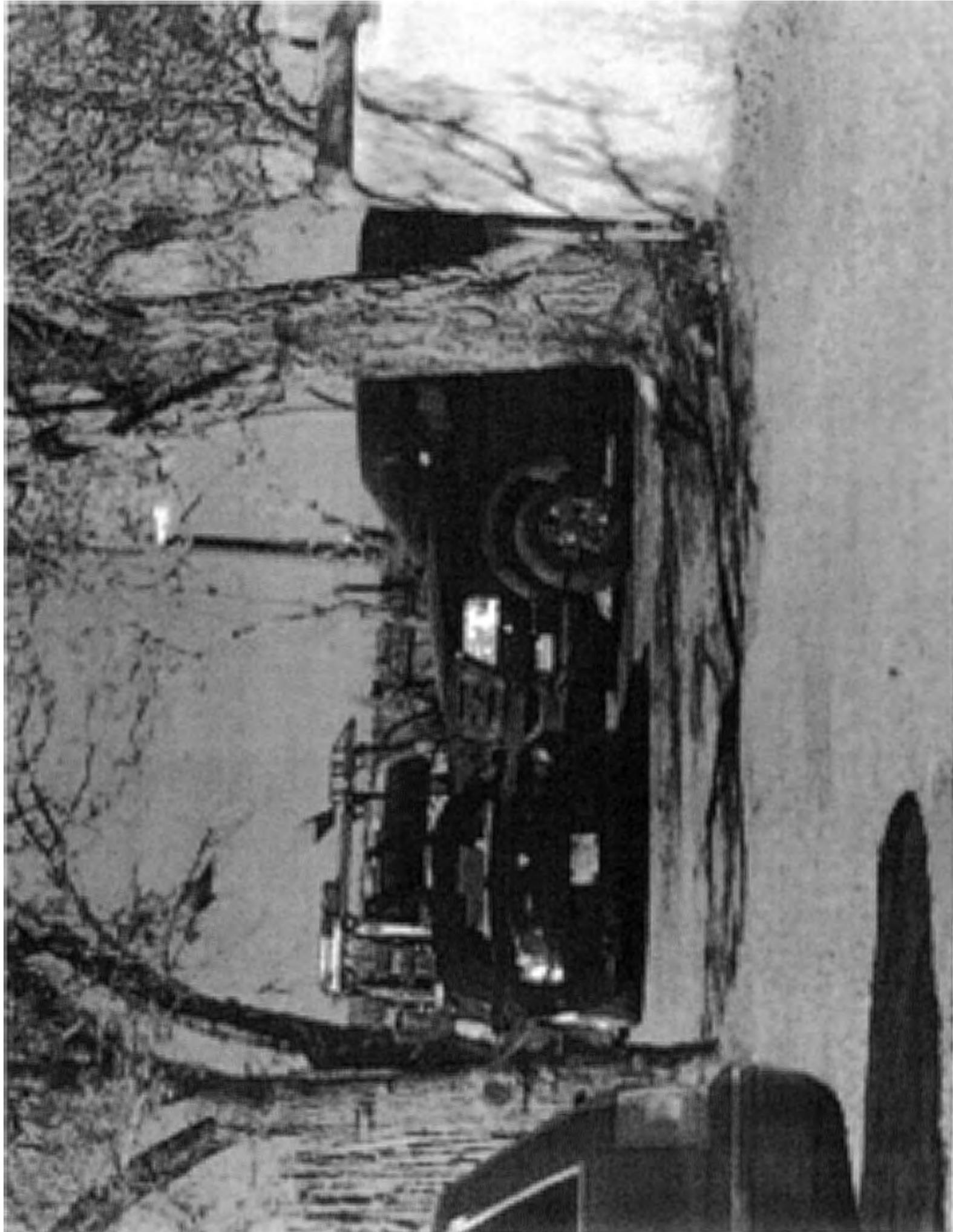
Any neighbor using the driveway of 612 Gomez Road would be, in effect, going through the front yard of our fenced property in order to access their backyard or side yard rather than using their own existing driveway officially designated for access to their property. Any neighbor's plans to overdevelop a tiny house on Paseo de Peralta intending to use our front yard for their driveway, access and parking is unsustainable and illegal. Please help us protect the little space we have that was designed specifically for our peaceful, small (and already rather crowded) community. Thank you.

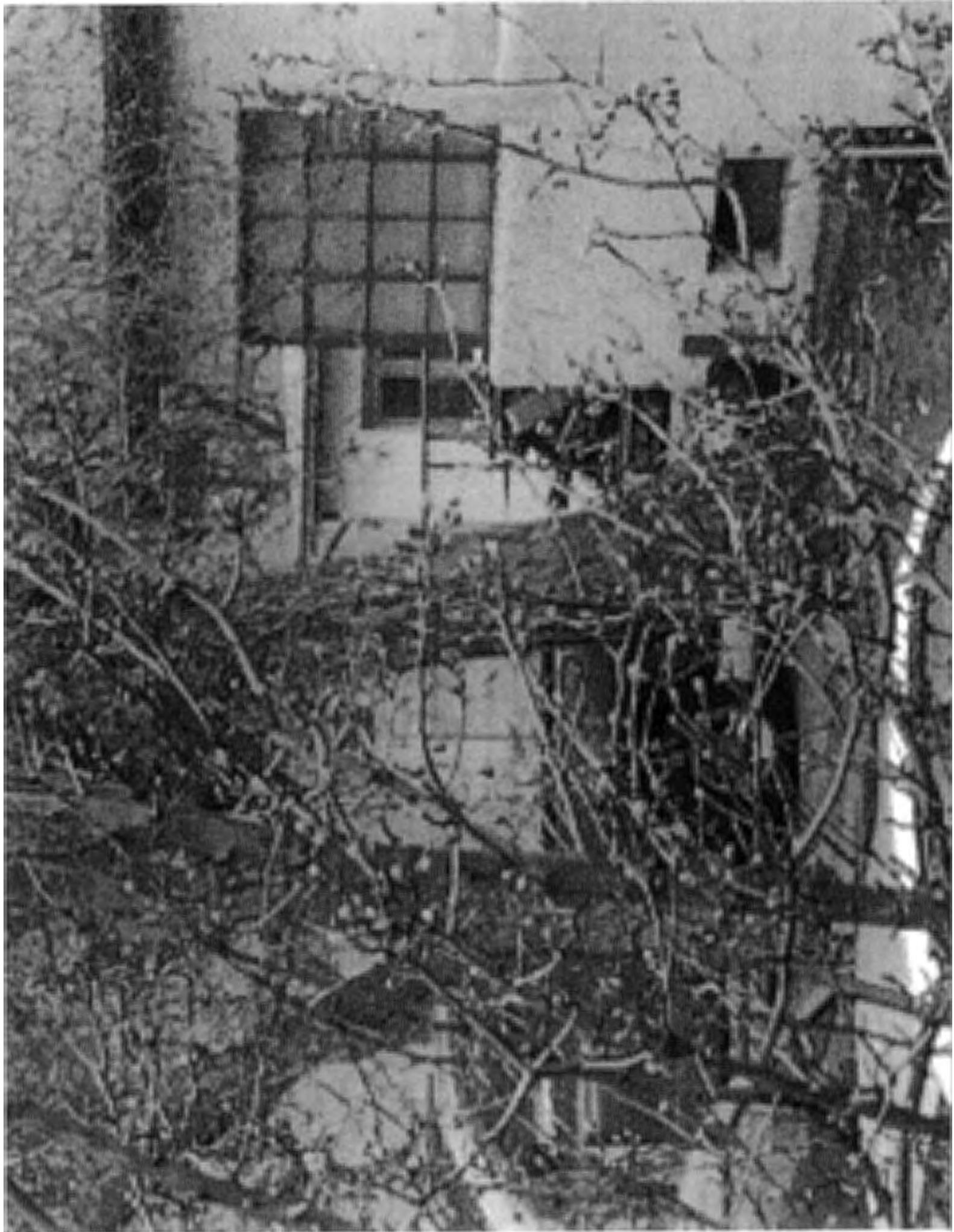
Sincerely,



Jamy Myatt











City of Santa Fe



City Limits

+ Full Address Labels

Parcels

Airport Clear Zones

Santa Fe River

Zoning

RR Rural Residential

R1, (PUD) Single - Family 1du/ac.

R2, (DT), (PUD), (AC) Single - Family 2du/ac

R3, (PUD) Single - Family 3du/ac

R4 Single - Family 4du/ac

R5, (DT), (PUD), (AC), R6 Single - Family 5-6du/ac

R7, (I), (PUD), R8 Single - Family 7-8du/ac

R5, R5A, R5B Compound 5du/ac

R6, R6A, R6B Compound 6du/ac

R7, (PUD) Multiple - Family 10du/ac

R8, (PUD) Multiple - Family 12du/ac

R9, (PUD) Multiple - Family 14du/ac

R10, (PUD), (AC) Multiple - Family 28du/ac

RAC Residential Arts & Crafts

Legend

City Limits

+ Full Address Labels

Parcels

Airport Clear Zones

Santa Fe River

Zoning

RR Rural Residential

R1, (PUD) Single - Family 1du/ac.

R2, (DT), (PUD), (AC) Single - Family 2du/ac

R3, (PUD) Single - Family 3du/ac

R4 Single - Family 4du/ac

R5, (DT), (PUD), (AC), R6 Single - Family 5-6du/ac

R7, (I), (PUD), R8 Single - Family 7-8du/ac

R5, R5A, R5B Compound 5du/ac

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R9, (PUD) Multiple - Family 14du/ac

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RAC Residential Arts & Crafts

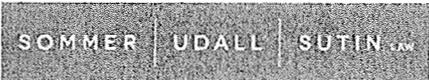
Scale: 1:1,496

EXHIBIT

N

tables

This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.



STREET ADDRESS
200 WEST MARCY STREET
SUITE 129
SANTA FE, NM 87501

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SANTA FE, NM 87504-1984

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Joseph P. Walsh
Patrick D. Barry
Lisa G. Adelman
Brian Parrish

Of Counsel to the Law Firm
Robert P. Worcester
Janet McL. McKay
J. Michael Hyatt

Joseph A. Sommer
(1922 – 2006)

June 20, 2016

Via Hand Delivery and
Email daesquibel@santafenm.gov

Dan Esquibel
Senior Land Use Planner
City of Santa Fe
200 Lincoln Avenue
Santa Fe, New Mexico 87501

Re: Appeal Case Number 2016-45 – Gomez Road Condominium Association

Dear Dan:

On behalf of our client, Rudy Rodriguez, enclosed is the Affidavit of Mailing for the referenced appeal.

Please let us know if you require any additional documentation in connection with this request.

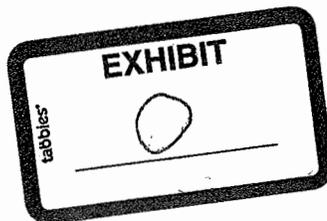
Very truly yours,

Kurt A. Sommer

KAS:lga
Enclosure

cc: Rudy Rodriguez
Michael Comeau, Esq.

13778-001





NOTICE AFFIDAVIT

14-3.1(H)

Project Information

Project Name: Gomez Road Condominium Association
Project Location: 612 Gomez Rd, Santa Fe, NM 87501
Case Number(s): 201645-

Certification

I hereby certify that the attached Notice was mailed to property owners, tenants, and registered neighborhood associations within 300 feet of the proposed project site. Notices were mailed on 6-15-16, 2016. Appellee, Ms. Christine Wiltshire, 612 Gomez St. #5, Santa Fe, NM 87505

I hereby certify that the attached Notice was sent via email to registered neighborhood associations within 300 feet of the proposed project site. Notices were emailed on _____, 20__.

I hereby certify that the subject property was posted with a sign provided by the City on _____, 20__. The sign was placed in a prominent position in public view, according to instructions provided by Land Use Department staff.

Applicant Printed Name: Rudy A. Rodriguez
Applicant Signature: [Handwritten Signature]

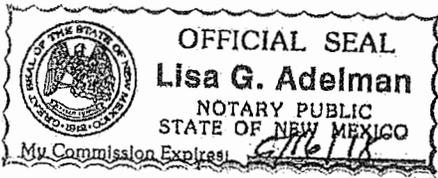
Notarization

STATE OF NEW MEXICO)
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this 15th day of June, 2016, by Rudy A. Rodriguez.

[Handwritten Signature: Lisa G. Adelman]
Notary Public

My Commission Expires: 5/16/18



KeyCite Yellow Flag - Negative Treatment
Declined to Follow by Shields v. Villareal, Or.App., October 31, 2001

129 N.M. 134
Court of Appeals of New Mexico.

Rebecca SITTERLY, as Conservator for Emily Seten, Plaintiff–Appellee,

v.

Muriel T. MATTHEWS, as Trustee for the Muriel T. Matthews Trust, Defendant/Counterclaimant–Appellant.

No. 19,577.

March 7, 2000.

Certiorari Denied, No. 26,258, April 27, 2000.

Conservator for servient estate owner brought action against trustee of dominant estate owner, seeking to vacate an easement for ingress and egress to rear portion of the dominant, residential parcel. The District Court, Bernalillo County, Susan M. Conway, D.J., terminated the easement. Trustee appealed. The Court of Appeals, Pickard, C.J., held that: (1) settlement agreement in earlier litigation to cancel servient owner’s transfer of servient parcel to dominant owner did not release claims relating to the easement; (2) easement by necessity for ingress and egress became a nullity when dominant owner obtained another means of ingress and egress; and (3) dominant owner clearly and unequivocally intended to abandon the easement.

Affirmed.

West Headnotes (15)

^[1] **Appeal and Error**
Cases Triable in Appellate Court

Whether a contractual provision is ambiguous is a question of law, which the appellate court reviews de novo on appeal.

6 Cases that cite this headnote

^[2] **Evidence**
Receipts and releases

Agreement settling servient estate owner’s lawsuit to cancel the transfer of servient parcel to dominant estate owner based on allegations of fraud and undue influence, and releasing any claims that might develop “from the facts or issues involved in this lawsuit,” was ambiguous as to whether the release included claims relating to the access easement, so that extrinsic evidence of surrounding circumstances was admissible, where the agreement did not make it clear what facts or issues were involved in the lawsuit.

1 Cases that cite this headnote

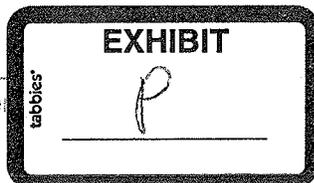
^[3] **Release**
Release of specific indebtedness or liability in general

Evidence that servient estate owner, in agreement settling lawsuit to cancel transfer of servient parcel to dominant estate owner based on allegations of fraud and undue influence, referred to the access easement only for purpose of ensuring she received same description of property that dominant owner had taken, and that she had not known at time of agreement where easement was located, supported finding that the agreement, which released any claims that might develop “from the facts or issues involved in this lawsuit,” did not release claims relating to the easement.

Cases that cite this headnote

^[4] **Appeal and Error**
Province of trial court
Appeal and Error
Province of trial court

Appellate court, when considering a substantial



evidence claim, may not reweigh the evidence and reassess the witnesses' credibility.

3 Cases that cite this headnote

1 Cases that cite this headnote

[9]

Easements

↔Termination in General

[5]

Easements

↔Questions for jury

An easement created to serve a particular purpose terminates when the underlying purpose for the easement ceases to exist.

The issues of whether the underlying purpose of an easement created for a particular purpose has ceased to exist and whether an easement has been abandoned are questions of fact.

1 Cases that cite this headnote

1 Cases that cite this headnote

[10]

Easements

↔Cessation of necessity

[6]

Appeal and Error

↔Substantial evidence

Easement was implicitly reserved for purpose of ingress and egress as matter of necessity, as element for determining whether easement was later terminated by cessation of the purpose, where rear portion of the dominant, residential parcel would have been completely inaccessible without the easement across the servient parcel.

Appellate court reviews factual questions for substantial evidence.

2 Cases that cite this headnote

Cases that cite this headnote

[7]

Evidence

↔Sufficiency to support verdict or finding

[11]

Easements

↔Sufficiency of words of conveyance in general

Substantial evidence is relevant evidence that a reasonable mind would find adequate to support a conclusion.

Easement of necessity for ingress and egress was not transformed into an easement by grant, where conveyance of servient estate by tax deed did not expressly reserve an easement for ingress and egress, though later conveyances contained easement descriptions.

5 Cases that cite this headnote

[8]

Appeal and Error

↔Cases Triable in Appellate Court

1 Cases that cite this headnote

Appellate court reviews the trial court's conclusions of law de novo to determine whether the trial court correctly applied the law to the facts.

[12]

Easements

↔Cessation of necessity

Easement by necessity for ingress and egress to rear portion of dominant, residential parcel became a nullity when dominant estate owner obtained another means of ingress and egress.

1 Cases that cite this headnote

[13] **Easements**

Abandonment or Nonuser

The owner of the dominant property may abandon the right to an easement.

1 Cases that cite this headnote

[14] **Easements**

Abandonment or Nonuser

In order to abandon an easement, the dominant owner must evince a clear and unequivocal intention to do so.

2 Cases that cite this headnote

[15] **Easements**

Abandonment or Nonuser

Dominant owner clearly and unequivocally intended to abandon easement for ingress and egress to rear portion of the dominant, residential parcel, where owner purchased an adjoining property that afforded safer and more convenient and direct access and owner allowed the easement to be obstructed for many years.

2 Cases that cite this headnote

Attorneys and Law Firms

****872 *135** Kim E. Kaufman, Rebecca Sitterly, Albuquerque, for Appellee.

Peter H. Johnstone, Law Office of Peter H. Johnstone, Albuquerque, for Appellant.

OPINION

PICKARD, Chief Judge.

{ 1 } Rebecca Sitterly (Sitterly), as conservator for Emily Seten (Seten), filed suit against Muriel T. Matthews (Matthews), as Trustee for the Muriel T. Matthews Trust (Trust), to vacate an easement on Seten’s property that ran in favor of the Trust’s property (Matthews Property). At trial, Sitterly argued the easement for ingress and egress should be vacated because (1) the purpose for the easement ceased to exist when the Trust obtained another means of accessing the Matthews Property and (2) the Trust abandoned the easement not only by failing to use it, but also by erecting, or allowing Seten to erect, a fence that made it impossible to use.

{ 2 } Matthews counterclaimed that Sitterly, by filing suit against her, was in breach of contract because Matthews and Seten had previously executed an agreement whereby each party allegedly agreed to not sue the other over any dispute concerning their respective properties. On the easement issues, Matthews argued that (1) the cessation of purpose doctrine does not apply in this case because the easement can still be used for ****873 *136** the purpose of ingress and egress and (2) the easement has not been abandoned, but merely neglected or temporarily suspended.

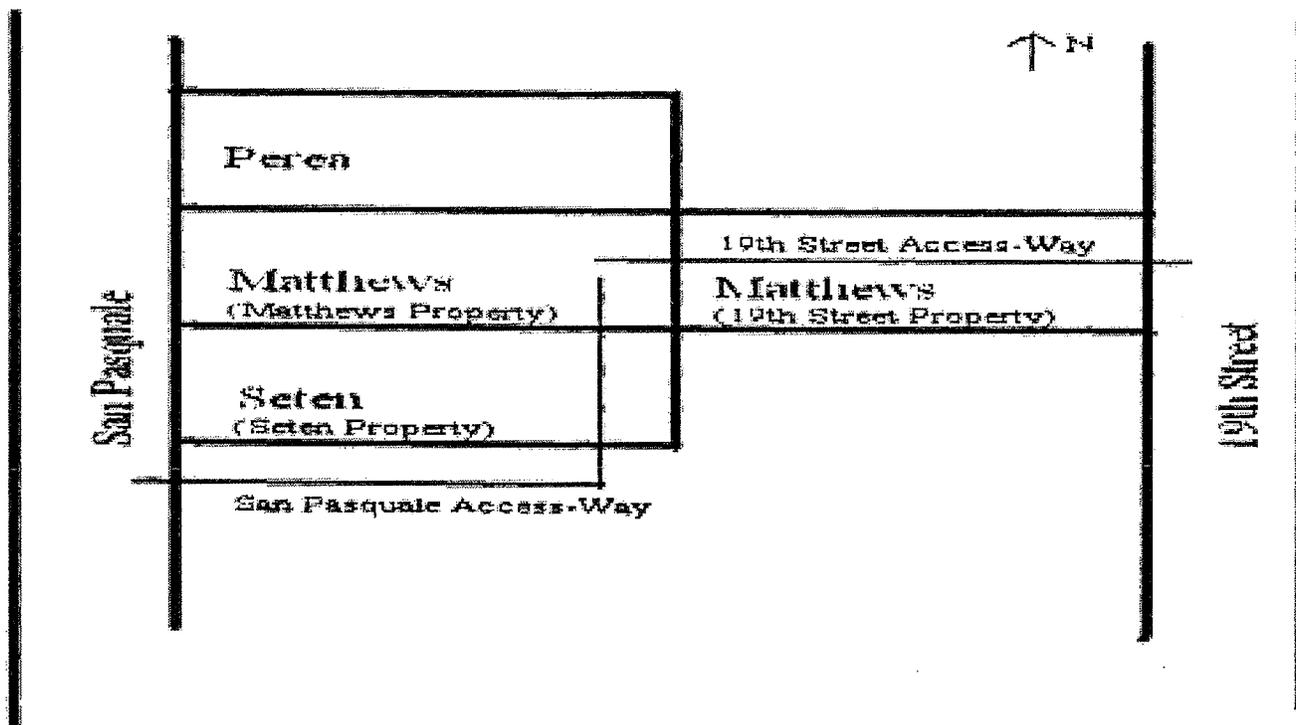
{ 3 } The trial court denied Matthews’ counterclaim on the ground that the parties did not intend to bar this lawsuit, which involves an easement dispute, by agreeing to resolve the prior dispute, which involved a property transfer allegedly effectuated by fraud and undue influence. The trial court terminated the easement on both grounds set forth in Sitterly’s complaint. We affirm.

BACKGROUND

{ 4 } The property at issue (Nuanes Property) originally belonged to the Nuanes family. The Nuanes Property was bounded on its north, east, and south sides by other residences, and it was bounded on its west side by a public street (San Pasquale). At some point, the Nuanes

family split its property into a north parcel (now the Matthews Property) and a south parcel (now the Seten Property), both of which contained houses occupied by Nuanes family members. The house fronts were located very close to San Pasquale, so the Nuaneses had to park their vehicles in the backyards of their respective parcels.

The diagram below shows the location of the properties.



{ 5 } At the time when the Nuanes family split their property into two parcels, the backyard to the north parcel could only be accessed from San Pasquale. The San Pasquale access-way required the north parcel’s owners to travel along the south side of the residence on the south parcel, across the backyard of the south parcel, and into the backyard of the north parcel (see diagram). Although the San Pasquale route was inconvenient, the Nuanes family used it to access the backyard of its north parcel as a matter of necessity.

{ 6 } In the 1940s, the Love family obtained the south parcel by tax deed. The tax deed did not expressly reserve an easement for ingress and egress across the south parcel, but the Nuaneses continued to use the San Pasquale route to access the north parcel.

{ 7 } In 1961, the Love family transferred the south parcel to Seten’s trustee. The deed reserved a 12-foot easement across the south parcel for ingress and egress for the benefit of the owners of the north parcel who were still the Nuanes family. In furtherance of this transfer, the

Love family brought suit against the Nuanes family and others to vacate any existing easement on the south parcel.

{ 8 } In 1962, the trial court entered an amended and modified final decree in which it imposed a 12-foot easement, for ingress **874 *137 and egress, in favor of the Nuanes family. Four years later, the Nuanes family brought a quiet title suit against several parties, including Seten’s trustee. The district court affirmed the decree it had entered in the 1961 Love lawsuit.

{ 9 } In 1988, Seten, who was 87 years old and of questionable competence, transferred the Seten Property to a person who two years later conveyed it to the Trust. In August 1990, the Trust purchased the Matthews Property for the purpose of converting the residence located on it into apartments. One month later, the Trust purchased the property to the east side of the Matthews Property (19th Street Property) for the purpose of providing its apartment tenants with easier, safer, and more convenient access to the Matthews Property. After the Trust purchased the 19th Street Property, the

Matthewses and their tenants exclusively used the 19th Street access-way for ingress and egress to the backyard of the Matthews Property.

{ 10} In late 1991 or early 1992, Muriel Matthews erected, or permitted Seten to erect, a fence between the Matthews Property and the Seten Property. The fence completely blocked the easement, making it impossible for vehicles to ingress and egress from the Seten Property to the rear of the Matthews Property. At the time the fence was erected, the easement had no longer been needed or used for more than one year because of the more convenient, less circuitous route provided by the 19th Street access-way.

{ 11} In 1994, the Trust transferred the Seten Property by deed to another trust. Later that year, a conservator was appointed for Seten, and he filed suit on Seten's behalf against various Matthews entities in order to cancel Seten's transfer to the Trust on the grounds that it was procured by fraud and undue influence. This lawsuit was settled (1995 Agreement) three months later. Under the terms of the 1995 Agreement, the Seten Property was returned to Seten. The signatories to the 1995 Agreement specifically and mutually released each other from any claims which have or may develop "from the facts or issues involved in this lawsuit." Sitterly acted as the conservator's legal counsel in this matter.

{ 12} In 1996, Sitterly was appointed to serve as Seten's conservator at a conservatorship proceeding. In 1997, Sitterly filed suit in order to extinguish the easement because it reduced the value of the Seten Property.

DISCUSSION

I. PRIOR RELEASE

{ 13} At trial, Matthews asked the trial court to dismiss Sitterly's complaint on the ground that by signing the 1995 Agreement, Matthews and Seten had agreed to not sue each other over any dispute concerning their respective properties. The trial court denied Matthews' request on the ground that the parties did not intend to bar the instant lawsuit, which involves an easement dispute, by agreeing to resolve the earlier dispute, which involved a property transfer allegedly effectuated by fraud and undue influence.

{ 14} On appeal, Matthews claims the 1995 Agreement is unambiguous and thus argues that the trial court erred when it looked beyond the four corners of the contract and considered the intentions of the parties. Alternatively, Matthews claims that if the 1995 Agreement was

ambiguous, the trial court erred by concluding that the parties, in signing the 1995 Agreement, did not intend to bar the instant lawsuit.

^[1] { 15} We must interpret the 1995 Agreement, along with its release provisions, in the same way that we would interpret any other contract. *See Ratzlaff v. Seven Bar Flying Serv., Inc.*, 98 N.M. 159, 162, 646 P.2d 586, 589 (Ct.App.1982). Whether a contractual provision is ambiguous is a question of law, which we review de novo on appeal. *See Mark V, Inc. v. Mellekas*, 114 N.M. 778, 782, 845 P.2d 1232, 1236 (1993).

^[2] { 16} In the case at bar, the 1995 Agreement is very broadly worded in that it purports to release the parties from liability for a vast range of claims and causes of action. However, it also limits its application to the claims contained in or developed from the facts or issues involved in that lawsuit. It is not clear from the 1995 Agreement just ****875 *138** what facts and issues were involved in that lawsuit. As a result, the scope of the release created by the 1995 Agreement is ambiguous. *See id.* at 781–82, 845 P.2d at 1235–36 (concluding that ambiguity exists when a contract is reasonably susceptible of different constructions). In order to resolve this ambiguity, a court may look not only to the language contained in the 1995 Agreement, but also to the circumstances surrounding its execution in an attempt to determine as a factual matter the intent of the parties. *See id.*

^[3] { 17} At trial, Sitterly testified that she did not intend to address in the 1995 Agreement the easement issue presented by her complaint in this lawsuit because she sought only the cancellation of Seten's transfer in the 1995 Agreement and nothing more. According to Sitterly, the earlier lawsuit sought relief on the narrow ground that Leone Matthews had obtained the Seten Property through fraud and undue influence. According to Matthews' brief, "[r]ather than litigate the matter, the parties agreed to settle the litigation by Leone Matthews returning the property deeded to her by Emily Seten to the Conservator...."

{ 18} Sitterly acknowledged before the trial court that she referred to the easement in the 1995 Agreement, but she testified that she did so only for the purpose of ensuring that Seten received the same description of real property that Leone Matthews had taken in the Seten Transfer. Sitterly also testified that the easement was so far removed from her consideration at the time she drafted the 1995 Agreement that she did not even know where the easement was located. The trial court found that her lack of knowledge was reasonable because the easement was

not clearly described in the deed, and there was no indication on the property, itself, of the existence of any easement.

{ 19} Based on Sitterly's testimony, the trial court found that the earlier lawsuit sought the return of Seten's property and did "not involve any allegation concerning or issue involving ... the ultimate abandonment of or cessation of purpose of the easement across the Seten Property." The trial court's finding is supported by substantial evidence. *See Landavazo v. Sanchez*, 111 N.M. 137, 138, 802 P.2d 1283, 1284 (1990) (ruling that substantial evidence is such relevant evidence that a reasonable mind would find adequate to support a conclusion).

^[4] { 20} Matthews' retort is that she also testified at trial and her testimony reflects her understanding that, in signing the 1995 Agreement, she terminated "any and all claims or causes of action that could be brought by [Sitterly] against [Matthews] in regard to the property...." We reject Matthews' claim on the grounds that she essentially asks us to reweigh the evidence and reassess the witnesses' credibility. *See Sanchez v. Homestake Mining Co.*, 102 N.M. 473, 476, 697 P.2d 156, 159 (Ct.App.1985) (ruling that when considering a substantial evidence claim, we may not reweigh the evidence or substitute our judgment for the factfinder). Accordingly, we affirm this issue.

II. EASEMENT

{ 21} At trial, Sitterly asked the trial court to vacate the easement in favor of the Matthews Property on the grounds that (1) the purpose for the easement ceased to exist when the Trust obtained another means of accessing its property and (2) the Trust abandoned the easement not only by failing to use it, but also by erecting, or permitting Seten to erect, a fence that made it impossible to use. *See 28A C.J.S. Easements* § 119 (1996) (footnotes omitted) (stating that an "easement granted for a particular purpose terminates as soon as such purpose ceases to exist, is abandoned, or is rendered impossible of accomplishment"). The trial court granted Sitterly's request for relief on both grounds set forth in her complaint. We review each basis for relief in turn.

A. Standard of Review

^[5] ^[6] ^[7] ^[8] { 22} The issues of whether the underlying purpose of an easement has ceased to exist and whether an easement has been abandoned are questions of fact. *See Olson v. H & B Properties, Inc.*, 118 N.M. 495, 498,

882 P.2d 536, 539 (1994) (interpreting the trial court's role as factfinder in a cessation **876 *139 of purpose case); *Ritter-Walker Co. v. Bell*, 46 N.M. 125, 128, 123 P.2d 381, 383 (1942) (ruling the trial court's determination on abandonment of easement issue subject to substantial evidence standard). We review factual questions for substantial evidence. *See Baker v. Benedict*, 92 N.M. 283, 287, 587 P.2d 430, 434 (1978). Substantial evidence is relevant evidence that a reasonable mind would find adequate to support a conclusion. *See Landavazo*, 111 N.M. at 138, 802 P.2d at 1284. Additionally, we review the trial court's conclusions of law de novo to determine whether the trial court correctly applied the law to the facts. *See Jacob v. Spurlin*, 1999-NMCA-049, ¶ 7, 127 N.M. 127, 978 P.2d 334.

B. Cessation of Purpose

^[9] { 23} An easement created to serve a particular purpose terminates when the underlying purpose for the easement ceases to exist. *See Olson*, 118 N.M. at 498, 882 P.2d at 539. In a cessation of purpose case, the trial court must first determine why the easement was created. *See id.* If the trial court determines that the purpose no longer exists, then it may terminate the easement. *See id.*

1. Purpose

^[10] { 24} The trial court determined that the easement in favor of the Matthews Property was created for the purpose of ingress and egress as a matter of necessity. The trial court based its determination on the following uncontested facts:

3. Both the Matthews Property and the Seten Property were at one time owned by a common grantor, the Nuanes family, which purchased the property in 1902. At some undeterminable time, the property was split into a north and south parcel, both occupied by Nuanes family members....

4. The north parcel (now the Matthews Property) had no access from 19th Street directly to the rear, and had no car access from San Pasquale except by the circuitous route of going along the south side of the residence on the south parcel (now the Seten property), across the backyard of the south parcel, and into the backyard of the Nuanes' north parcel. By necessity, the Nuanes family used this method of access to get to the rear of their residence, which otherwise would have been completely inaccessible.

5. R.E. Love and Dovie May Love obtained the Seten

Property by a tax deed which did not reserve any easement for any purpose, but the Nuanes family continued to use the access way....

{ 25} On appeal, Matthews attacks the trial court's finding that the easement was an easement by necessity. Matthews argues that in 1962, as a result of the quiet title action filed by the Love family against the Nuanes family and others, the district court confirmed the easement as an easement by grant. The thrust of Matthews' argument appears to be that if the easement can be characterized as an easement by grant, then the trial court misapplied the cessation of purpose doctrine. *See Valicenti v. Schultz*, 27 Misc.2d 801, 209 N.Y.S.2d 33, 37 (1960) (“[W]hen we are dealing with an easement by grant, the fact that it may have also qualified as an easement of necessity, does not detract from its permanency as a property right, which survives the termination of the necessity.”).

^[11] { 26} We reject Matthews' argument because, as stated above, the Nuanes family did not take any easement by grant when the Love family obtained the south parcel by tax deed in the 1940s. We also reject Matthews' argument insofar as it suggests that the original conveyance to the Love family was transformed from an easement by necessity to an easement by grant merely because subsequent conveyance instruments contained easement descriptions.

{ 27} The trial court's finding that the easement in favor of the north parcel was implicitly reserved as a matter of necessity is supported by substantial evidence. *See Hurlocker v. Medina*, 118 N.M. 30, 31, 878 P.2d 348, 349 (Ct.App.1994) (ruling that easements by necessity arise from implied grant or reservation of right of ingress and egress to landlocked parcel); *Black's Law Dictionary* 528 (7th ed.1999) (defining “reserved easement” as “[a]n easement created by the ****877 *140** grantor of real property to benefit the grantor's retained property and to burden the granted property”). Furthermore, substantial evidence supports the trial court's determination that the “easement across the Seten Property began as an easement by necessity which was [merely] incorporated into the deeds relating to both properties by judicial decrees of 1961 and 1966.” The district courts entered these decrees at a time when the San Pasquale route was still the only access-way to the north parcel's backyard. There is no evidence in the decrees that causes us to believe that the district courts intended to expand the easement by necessity to anything more. As a consequence, subsequent takers to the north parcel only received an easement by necessity. *See* 28A C.J.S. *Easements* § 110 (1996) (stating that a grantee “can obtain no greater easement than the grantor had

acquired”); *Abo Petroleum Corp. v. Amstutz*, 93 N.M. 332, 335, 600 P.2d 278, 281 (1979) (holding that grantor cannot convey more than what is originally acquired).

2. Cessation

{ 28} After finding that the easement was created for the purpose of ingress and egress as a matter of necessity, the trial court then determined that the easement's purpose ceased to exist when the Trust purchased the 19th Street Property. The trial court based its determination on the following uncontested fact:

17. On September 25, 1990, the Muriel T. Matthews Trust purchased the 19th Street Property. The stated purpose for the purchase was to provide better access to the Matthews Property.... The 19th Street access was a direct route into the Matthews Property, was safer and was more convenient for most routes into the area.

{ 29} The trial court's determination that the easement was rendered unnecessary when the Trust purchased the 19th Street Property is supported by substantial evidence. We are less certain, however, about accepting the trial court's determination that the easement's purpose ceased to exist when the Trust obtained an alternative means of accessing the Matthews Property. *See Crabbe v. Veve Assocs.*, 150 Vt. 53, 549 A.2d 1045, 1048 (1988) (“Although [the easement holders] have access to the road by means of an alternative, circuitous route, this does not mean that the purpose of the easement[] has ceased to exist.”).

^[12] { 30} Notwithstanding our reservation in applying the cessation of purpose doctrine to the case at bar because the easement here was not an easement by grant, we nevertheless uphold the trial court's decision on the ground that the easement, as an easement by necessity, became a nullity when the Trust obtained another means of ingress and egress. *See* 25 Am.Jur.2d *Easements and Licenses* § 108 (1996) (“[A]n easement of necessity lasts only as long as the necessity continues.”). Sitterly argued throughout the course of this case that the easement was created as a matter of necessity and that the necessity came to an end when the Trust purchased the 19th Street Property; thus, we may uphold the trial court's decision to vacate the easement on that basis. *See Manouchehri v. Heim*, 1997-NMCA-052, ¶ 13, 123 N.M. 439, 941 P.2d 978 (“When to do so would not be unfair to the appellant,

we can affirm a ruling by the trial court on a ground other than what was expressed by that court.”). We next consider whether the trial court could also have properly granted Sitterly’s request for relief on the ground of abandonment.

C. Abandonment

^[13] ^[14] { 31 } The owner of the dominant property may abandon the right to an easement. *See Posey v. Dove*, 57 N.M. 200, 211, 257 P.2d 541, 548 (1953). In order to abandon such an easement, the owner must evince a clear and unequivocal intention to do so. *See id.* The owner’s “intention may be evidenced by acts as well as words[,] but where an act is relied on as the proof, it must unequivocally indicate such intention.” *Id.*

^[15] { 32 } The trial court found that the Trust evinced a clear and unequivocal intention to abandon the easement based on the following uncontroverted facts:

purchase of the 19th Street Property which afforded safer, more convenient and more direct access to the Matthews Property; use of the new access for ingress and egress since shortly after September, 1990; **878 *141 instructions to tenants of the Matthews Property to use the 19th Street Property for ingress and egress; statements of John Matthews that the 19th Street Property was being purchased to provide access to the [Mathews] Property; tearing down a fence, shrubbery and structures which separated the Matthews Property from the 19th Street Property in order to create the new access; construction of or consent to the construction of a fence which completely blocked the easement on the Seten Property; failure to take any action to keep the

easement open; and allowing the easement to be completely obstructed for many years prior to trial by the gate on the Seten Property and by automobiles of Ms. Seten’s tenants.

{ 33 } Matthews does not contest the trial court’s numerous findings in support of its determination, but instead only disputes whether those findings provide substantial evidence of abandonment. Yet from the uncontroverted facts, we hold that the trial court could reasonably conclude that the Trust clearly and unequivocally abandoned the easement. *See Kelly v. Smith*, 58 Misc.2d 883, 296 N.Y.S.2d 451, 452 (Sup.Ct.1969) (finding that the act of closing off of an easement by a flower bed evinced the unequivocal intention to abandon the easement, as did the act of purchasing, then using of another parcel as the sole means of ingress and egress); *Sieber v. White*, 366 P.2d 755, 759–60 (Okla.1961) (holding that the trial court’s finding of abandonment was not against the weight of the evidence where an iron railing fence was erected on the easement and the lot was combined with another one so that another means of access was obtained); *see also Montoya v. Torres*, 113 N.M. 105, 109, 823 P.2d 905, 909 (1991) (stating substantial evidence standard).

CONCLUSION

{ 34 } For the reasons stated, we affirm.

{ 35 } **IT IS SO ORDERED.**

APODACA, and WECHSLER, JJ., concur.

All Citations

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